

RAMA NARANG

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v.

RAMESH NARANG AND OTHERS

Contempt Petition (Civil) No. 92 of 2008

In

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Contempt Petition (Civil) No. 148 of 2003

In

Civil Appeal No. 366 of 1998

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JANUARY 19, 2021

[A. M. KHANWILKAR AND B. R. GAVAI, JJ.]

Contempt of Courts Act, 1971: s.2(b) – Contempt proceedings – Scope of – Violation of Consent Order – Petitioner and his sons (respondents) were the only Directors of a company – Dispute between petitioner and respondent-sons – Purported settlement of the dispute in terms of Consent Order recorded in orders dated 12th December 2001 and 8th January 2002, of the Supreme Court – Petitioner-father filed contempt petition alleging that respondent-sons had violated the terms of the Consent Order – By judgment dated 15th March, 2007, Supreme Court held respondents guilty of contempt – Respondents filed Company Petition before the Company Law Board (CLB), whereupon CLB passed interim order dated 10th April 2008 – Petitioner filed instant contempt petition alleging that the order of CLB was violative of the order of Supreme Court dated 15th March 2007 – Whether invoking the jurisdiction of CLB and entertaining of said proceedings by CLB amounted to contempt – Held: A person does not commit contempt of court if during pendency of certain proceedings, he takes recourse to other judicial proceedings open to him, even though the latter proceedings puts the other party at a loss – On facts, respondents thought it prudent to approach CLB by invoking its powers u/s.397, 398 and 403 of the Companies Act – Respondents took recourse to legal remedy available to them under the statutory provisions in compelling circumstances to safeguard the interest of the Company and its stakeholders – Petitioner failed to make out a case of wilful, deliberate and intentional disobedience of any of the directions

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- A given by Court or acting in breach of undertaking given to Court – Contempt Petition accordingly dismissed – Companies Act, 1956 – ss.397, 398 and 403.

Contempt of Court: Contempt proceedings – Nature and scope of – Held: The contempt proceedings are quasi-criminal in nature

- B and the standard of proof required is in the same manner as in the other criminal cases – The alleged contemnor is entitled to protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt – Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority.

C Contempt of Court: Contempt proceedings – Difference from execution proceedings – Held: Contempt proceeding is not like an execution proceeding under the Code of Civil Procedure – Before punishing the contemnor for non-compliance of decision of the

- D Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but should also be satisfied that such disobedience was wilful and intentional – The civil court however, while executing a decree against the judgment-debtor is not concerned and bothered as to whether the disobedience to any judgment or decree was wilful and once the

- E decree had been passed, it is the duty of the court to execute the decree, whatever may be the consequences thereof – Code of Civil Procedure – Execution.

Jurisdiction: Jurisdiction of the Court to pass interim orders pending decision on question of its' jurisdiction – Held: Even if

- F objection is raised to the jurisdiction of a forum, it has jurisdiction to pass interim orders till it finally decides the issue of jurisdiction and such orders are binding on the parties till the issue of jurisdiction is decided – If the Court holds that it has no jurisdiction, it is open to it to modify the orders – However, while in force, the interim orders passed by such Court have to be obeyed and their

- G violation can be punished even after the question of jurisdiction is decided against the plaintiff, provided violation is committed before the decision of the Court on the question of jurisdiction – Judgment /Order – Interim Order.

Civil Contempt: Wilful disobedience or wilful breach – Court has to record a finding that such a disobedience was wilful & intentional – There must be a clear cut case of obstruction of justice by a party intentionally – Where the court is satisfied that such disobedience is the result of some compelling circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish the alleged contemnor.

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Dismissing the contempt petitions, the Court

HELD: 1. For bringing an action under the ambit of civil contempt, there has to be a wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to the court. [Para 48][422-G; 423-A]

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2.1 Such action of a person which he takes in pursuance of his right to take legal action in a court of law, will not amount to interfering with the course of justice, even though that may require some action on the part of the other party in connection with his own judicial proceedings. The principle is, that a party is free to take action to enforce his legal right. A person does not commit contempt of court if during the pendency of certain proceedings, he takes recourse to other judicial proceedings open to him, even though the latter proceedings put the other party at a loss. [Para 68][432-D-F]

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2.2 In the instant case, the respondents had legitimately approached the Company Law Board (CLB) invoking its jurisdiction under Sections 397, 398 and 403 of the Companies Act. The CLB had also passed interim orders in exercise of its powers under Section 403 of the Companies Act. Merely taking recourse to the statutory remedy available to the respondents would not amount to contempt. It appears, that after the order was passed by this Court holding the respondents guilty and thereafter finding, that the present petitioner is not co-operating with the respondents in running the affairs of the Company, but on the contrary making every attempt to stall the functioning of the Company; the respondents thought it prudent to approach the CLB by invoking its powers under Sections 397, 398 and 403 of the Companies Act. The respondents had to take recourse to that remedy in compelling circumstances to safeguard the

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- A interest of the Company and its stakeholders. [Paras 66, 71][431-F-G; 433-D-F]
3. The contempt proceeding is not like an execution proceeding under the Code of Civil Procedure. Though the parties in whose favour, an order has been passed, is entitled to the benefits of such order, but the Court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the directions of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience of
- B any judgment, decree, direction, order, writ or other process of the Court. Before punishing the contemnor for non-compliance of the decision of the Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but should also be satisfied that such
- C disobedience was wilful and intentional. Though, the civil court while executing a decree against the judgment-debtor is not concerned and bothered as to whether the disobedience to any judgment or decree was wilful and once the decree had been passed, it was the duty of the court to execute the decree, whatever may be the consequences thereof. In a contempt
- D proceeding before a contemnor is held guilty and punished, the Court has to record a finding, that such disobedience was wilful and intentional. If from the circumstances of a particular case, though the Court is satisfied that there has been a disobedience but such disobedience is the result of some compelling
- E circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish the alleged contemnor. [Para 73][435-D-H]
4. The contempt proceedings are quasi-criminal in nature and the standard of proof required is in the same manner as in the other criminal cases. The alleged contemnor is entitled to
- F the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally, to bring the matter within the ambit of the said provision. Punishment under the law of contempt is called
- G for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. [Para 75][437-C-E]

5.1 In the instant case, the petitioner has failed to make out a case of wilful, deliberate and intentional disobedience of any of the directions given by this Court or acting in breach of an undertaking given to this Court. On the contrary, the respondents had taken recourse to the legal remedy available to them under the statutory provisions. [Para 76][437-C-G]

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5.2 Where an objection is taken to the jurisdiction to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance. However, that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. Though, the question of jurisdiction should be decided at the earliest possible time, the interim orders so passed are orders within jurisdiction, when passed and effective till the court decides that it has no jurisdiction, to entertain the suit. Those interim orders would undoubtedly come to an end with the decision that the Court had no jurisdiction. If the Court holds that it has no jurisdiction, it is open to it to modify the orders. However, while in force, the interim orders passed by such Court have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff, provided violation is committed before the decision of the Court on the question of jurisdiction. [Paras 76-79][438-G-H; 439-A-C]

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6. In the facts and circumstances of the case, the CLB considered it appropriate, that till the petition is disposed of, as an interim measure, in the interest of the Company as well as more than 3000 employees/workers, there should be a mechanism by which day to day operations are carried out without any hitch. The said order has not been challenged by the petitioner before any forum. Any order passed by the CLB was appellable before the higher forums. The petitioner has not challenged the said order. Having not challenged the same, it is not open for the petitioner to argue, that since the petitioner has taken objection as to maintainability of the proceedings before CLB, the said orders are without jurisdiction and the initiation of the proceedings

- A and the orders passed thereon, would amount to respondent's committing contempt of this Court. Even if the objection is raised to the jurisdiction of a forum, it has jurisdiction to pass interim orders till it finally decides the issue of jurisdiction and such orders are binding on the parties till the issue of jurisdiction is decided.
- B However, it should not be construed, that the proceedings under the CLB were maintainable in law. Since the proceedings are pending final adjudication, the parties would be at liberty to raise all issues available to them including the issue of jurisdiction. Also, this is not a case wherein directions as sought, should be issued under Article 142 of the Constitution. On Insolvency and
- C Bankruptcy Code 2016, coming in force, the proceedings which are pending before the CLB, now stand transferred to the National Company Law Tribunal (NCLT). It would be appropriate for the parties to invoke the jurisdiction of NCLT for seeking such orders as deemed fit in the facts and circumstances in accordance with law. [Paras 81, 84][440-D-H; 441-C, F-H]
- D *Pratap Singh and Another v. Gurbaksh Singh* [1962] SCR 2 Suppl. 838; *Mehar Rusi Dalal (Mrs.) v. T.K. Banerjee and Others* (2004) 5 SCC 119; *Niaz Mohammad and Others v. State of Haryana and Others* (1994) 6 SCC 332 : [1994] 3 Suppl. SCR 720 ; *Kanwar Singh Saini v. High Court of Delhi* (2012) 4 SCC 307 : [2011] 15 SCR 972; *Debabrata Bandopadhyay and Others v. State of West Bengal and Another* AIR 1969 SC 189 : [1969] SCR 304 and *Tayabbhai M. Bagasarwalla and Another v. Hind Rubber Industries (P) Ltd. And Others* (1997) 3 SCC 443 : [1997] 2 SCR 152– relied on.
- E *Hrishikesh Sanyal v. A.P. Bagchi* ILR 1940 All 710 and *Radhey Lal v. Niranjan Nath* AIR 1941 All 95 – held approved.
- F *Rama Narang v. Ramesh Narang and Another* (2006) 11 SCC 114 : [2006] 3 SCR 1068; *Rama Narang (V) v. Ramesh Narang and Another* (2009) 16 SCC 126 : [2007] 3 SCR 1099; *Vijay Laxmi and Others v. Prabhu Devi and Others* (2017) 11 SCC 169; *State Bank of India v. Ajit Jain and Others* (1995) 1 Suppl. SCC 683; *Re: Vinay Chandra Mishra (The Alleged Contemnor)*
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(1995) 2 SCC 584 : [1995] 2 SCR 638; *Sangramsinh P. Gaekwad and Others v. Shantadevi P. Gaekwad (Dead) Through LRs and Others* (2005) 11 SCC 314 : [2005] 1 SCR 624; and *Kale and Others v. Deputy Director of Consolidation and Others* (1976) 3 SCC 119 : [1976] 3 SCR 202 – referred to.

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Case Law Reference

[2006] 3 SCR 1068	referred to	Para 8
[2007] 3 SCR 1099	referred to	Para 11
[1997] 2 SCR 152	relied on	Para 39
(2017) 11 SCC 169	referred to	Para 40
(1995) 1 Suppl. SCC 683	referred to	Para 40
[1995] 2 SCR 638	referred to	Para 43
[2005] 1 SCR 624	referred to	Para 44
[1976] 3 SCR 202	referred to	Para 44
[1962] 2 SCR Suppl. 838	relied on	Para 68
(2004) 5 SCC 119	relied on	Para 70
[1994] 3 Suppl. SCR 720	relied on	Para 73
[2011] 15 SCR 972	relied on	Para 74
[1969] SCR 304	relied on	Para 75

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INHERENT JURISDICTION : Contempt Petition (Civil) No. 92 of 2008 in Contempt Petition (Civil) No. 148 of 2003 in Civil Appeal No. 366 of 1998.

Jayant K. Sud, ASG, Mukul Rohatgi, Jaideep Gupta, Kapil Sibal, Akhil Sibal, Ms. V. Mohana, Sr. Advs, Abhinav Mukerji, Ms. Bihu Sharma, Ms. Pratishtha Vija, Bhargava V. Desai, Ms. Aditi Diwan, S. Uday Kumar Sagar, Ms. Bina Madhavan, Salim Inamdar, Ms. Sweena Nair, M/S. Lawyer S Knit & Co, D.L. Chidananda, Ms. Menakshi Grover, Arvind Kumar Sharma, Ms. Sheena Taqui, Kshitij Vaibhav, Mrs. Bina Gupta, Ms. Suwarna Dubey, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

B. R. GAVAI, J.

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1. The present contempt petition arises out of an unfortunate family dispute between a father on one hand and his two sons from his first wife on the other hand. This family dispute has given rise to number of proceedings, some of which have even reached up to this Court.

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- A 2. Factual matrix necessary for the adjudication of the present case is thus:-

The petitioner in the contempt petition Rama Narang was married to Smt. Motia. The respondent Nos.1 and 2 i.e. Ramesh Narang and Rajesh Narang so also Rakesh Narang are sons of the petitioner and B Smt. Motia. The petitioner and Smt. Motia divorced in 1963. The petitioner thereafter married Smt. Mona. Out of the said wedlock, two sons Rohit and Rahul as well as a daughter Ramona were born.

- C 3. In a previous round of litigation between these parties, the respondent No.1- Ramesh Narang had approached this Court by filing a Contempt Petition (C) Nos.265-67 of 1999 in Contempt Petition (C) No. 209 of 1998 in Civil Appeal Nos.366 of 1998, 603 of 1998 and 605 of 1998. The present petitioner Rama Narang was respondent No.1 in the said proceedings. This Court passed the following order in the said proceedings on 2nd November 2001:-

- D “*In Conmt. Pet. (C) Nos.265-267/1999 in Conmt. Pet. (C) No.209/1998 in Civil Appeal No.366/1998, 603/1998 & 605/1998.*

- E *After hearing Mr. Kapil Sibal, learned senior counsel for the petitioner and Mr. Gopal Subramaniam, learned senior counsel for the alleged contemnor, at length, we are satisfied that the contemnor has flouted the order of this Court dated 4th May, 1999 by not transferring 50% of the share (and contending that he could make out the 50% share only by calculating the shares of NIHPL held by M/s. Fashion Wears Private Ltd., which have been forbidden by the order dated 22.01.1998). We call upon the contemnor to show cause regarding the punishment to be imposed on him for which he shall be present in this Court on 29th November, 2001.*

- F *I.A. No.6 in C.P. (C) No.209/1998 in C.A. No.366/1998. Dismissed as withdrawn.*

- G *List all matters on 29th November, 2001.”*

- H 4. It appears, that subsequently the matter was settled between the parties and the parties had placed on record the Minutes of the Consent Order. It will be apposite to reproduce the entire order passed by this Court on 12th December 2001:-

"The following cases are pending between the parties who are parties in the present proceedings before us one way or the other. We are told that all the parties have settled their disputes in respect of all the litigations specified below.

1. *O.S. No. 3535 of 1994 before the Bombay High Court.* A
2. *O.S. No. 3578 of 1994 before the Bombay High Court.* B
3. *O.S. No. 1105 of 1998 before the Bombay High Court.* C
4. *O.S. No. 3469 of 1996 before the Bombay High Court.* C
5. *O.S. No. 1792 of 1998 before the Bombay High Court.* D
6. *O.S. No. 320 of 1991 before the Bombay High Court.* D
7. *Company Petition No. 28 of 1992 Before the Principal Bench, Company Law Board, New Delhi.* E
8. *Arbitration Suit No. 5110 of 1994 before the Bombay High Court.* E

Today they filed a document styled it as "MINUTES OF CONSENT ORDER" signed by all the parties. Learned counsel appearing on both sides submitted that all the parties have signed this document. Today except Mona Narang and Ramona Narang (two ladies), all the rest of the parties are present before us when these proceedings are dictated. As for Mona Narang and Ramona Narang learned counsel submitted that Mona Narang had affixed the signatures and the power of attorney holder of Ramona Narang has signed the above document in his presence. This is recorded.

Both sides agreed that all the suits can be disposed of in terms of the settlement evidenced by "MINUTES OF CONSENT ORDER" produced before us. For disposal of those cases and/or for passing decrees in them we have to pronounce the final formal order in terms of the settlement now produced before us.

- A *We, therefore, withdraw all the aforesaid suits to this Court under Article 139-A of the Constitution of India.*
- B *Prothonotary and Senior Master of the Bombay High Court are directed to transmit the records in the above mentioned suits by special messenger to this court so as to reach the Registry here within ten days from today. The Bench Officer of the Principal Bench of the Company Law Board, New Delhi is directed to forward the records relating to Company Petition No. 28 of 1992 to the Registry of this Court so as to reach the Registry within ten days from today.*
- C *All the parties have undertaken before us that they will implement the terms of the "MINUTES OF CONSENT ORDER" on or before 1.1.2002 and that no further time will be sought for in the matter.*
- D *Clause (f) of the compromise relates to the operation of the bank accounts. That clause will come into force from today onwards.*
- D *All the afore-mentioned suits and the company petition will be posted for final formal orders on 8.1.2002 at 10.30 a.m. along with these contempt proceedings."*
- E 5. The matter came up again before this Court on 8th January 2002. This Court passed the order thus:-
- F *"Pursuant to the order dated 12th December, 2001 the following suits and company petition have been transmitted to this court and they are on the file of this court now and registered as Transferred Cases Nos. 1 to 8 of 2002:*
- G 1. *O.S. No. 3535 of 1994 before the Bombay High Court.*
- G 2. *O.S. No. 3578 of 1994 before the Bombay High Court.*
- G 3. *O.S. No. 1105 of 1998 before the Bombay High Court.*
- G 4. *O.S. No. 3469 of 1996 before the Bombay High Court.*
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5. *O.S. No. 1792 of 1998 before the Bombay High Court.* A

6. *O.S. No. 320 of 1991 before the Bombay High Court.*

7. *Company Petition No. 28 of 1992 Before the Principal Bench, Company Law Board, New Delhi.*

8. *Arbitration Suit No. 5110 of 1994 before the Bombay High Court.* B

All the above are now being disposed of in terms of the Minutes of Consent Order incorporated in the proceedings passed by us on 12.12.2001. C

The decree will be drawn up in terms of the Minutes of the Consent Order.

In regard to the property (64, Sunder Nagar, New Delhi) which is the subject matter for O.S. No. 3578/1994 of the High Court of Bombay Rama Narang, who is present in court, gives an undertaking that the same would be transferred with clear and marketable title to Rajesh Narang or his nominee on or before 31.03.2002. This undertaking is recorded. D

In the light of the above developments we deem it necessary to drop the steps against Rama Narang for contempt pursuant to the order of this court dated 2.11.2001. We order so. E

Similarly all other contempt petitions are dropped and IAs and Transferred Cases are disposed of.”

It will also be relevant to refer to the Minutes of the Consent Order, which is a family settlement between all the members of the family including the parties herein:- F

“1. Ramesh’s Suit No.3535 of 1994 [for specific performance of family settlement] both pending in the Bombay High Court to be decreed and implemented forthwith. G

2. Ramesh’s Suit No. 1105 of 1998 [Fashion Wears] opening in the Bombay High Court to be decreed and implemented forthwith; 19184 shared held by FWPL in NIHL are validly transferred to Ramesh on 27th June 1992 and Ramesh having already transferred 5194 (12%) shares in the joint names of H

- A *Rama and Ramesh on 21st May 1990 directed by order of this Hon'ble Supreme Court dated 4th May 1999. It is clarified and agreed that the transfer of 142 additional shares by Ramesh on 24th May 1999 to the joint names of Rama and Ramesh is void and the said 142 shares stand restored to the name of Ramesh. The purported transfer of shares by Rama on 14th May 1999 in compliance with order dated 4th May 1999 is void. It is further clarified that the transfer by Rama of 3998 shares to Ramesh pursuant to order dated 4th May 1999 is void and the said 3998 shares stand restored to the joint names of Mohini, Rama and Mona. It is also clarified that Ramesh, Rajesh and Rakesh shall have no objection to the transfer of 403 shares held by FWPL in NIHL to Rama.*
- B *3. The following directions issued by this Hon'ble Supreme Court in the above matter are re-affirmed and agreed to by the parties as follows:-*
- C *(a) With effect from 4th May, 1999 Rama, Ramesh and Rajesh are the only Directors of NIHL (and its subsidiaries). Any increase in the Board of Directors shall be with the mutual consent of Rama and Ramesh/Rajesh.*
- D *(b) None of the Directors (Rama, Ramesh and Rajesh) can be removed from directorship.*
- E *(c) Rama and Ramesh shall continue to be in joint management and control of NIHL and Rajesh shall continue to be the Permanent Whole Time Director thereof in charge of day to day operations/management.*
- F *(d) No decision shall be adopted concerning or affecting the said Company (and its subsidiaries) without the consent of Rama and Ramesh (or Rajesh) in writing. It is further clarified and agreed that save and except as provided herein no prevailing decisions including appointment of Directors/Executives or any other persons shall continue unless Rama and Ramesh (or Rajesh) consent to the same in writing.*
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- (e) *All the collections coming in cash shall continue to be remitted in the bank accounts of the Company and all transactions will only be made in the form of cheques and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh).* A
- (f) *All bank accounts of the Company shall continue to be operated jointly by any two out of the three Directors namely Rama, Ramesh and Rajesh and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh). If the amount of any transaction exceeds Rs. 10 (ten) lacs the same shall be undertaken through a cheque signed jointly by Rama and Ramesh/Rajesh.* B C
- (g) *All statutory record of the Company [and its subsidiaries] including minutes of Directors Meetings and/or Shareholders Meetings shall be valid only if signed jointly by Rama and Ramesh or Rajesh.* D
- (h). *The remuneration and perquisites to which Rama, Ramesh and Rajesh shall be entitled as Directors with effect from 4th May 1999 shall be the maximum permissible under the provisions of the Companies Act, 1956 and which shall be divided/allocated between them in equal shares as provided and/or as may hereafter be agreed to between Rama and Ramesh [or Rajesh].* E
4. *Rahul's Suit No. 3469 of 1996 and Rama's Suit No. 1792 of 1998 both pending in the Bombay High Court to be withdrawn.* F
5. *Ramesh's Company Petition No. 28 of 1992 pending before the Company Law Board, New Delhi to be withdrawn.*
6. *Rakesh's Suit No. 320 of 1991 [who is part of the Rama Group] to be compromised and implemented as follows:* G
- “a. *Rama shall transfer 5410 shares in NIHL to the sole name of Rakesh.*
- b. *Rama Group agree and undertake to restore to Rakesh his residential accommodation on the third floor of the* H

- A *bungalow at 40, Pali Hill, Bandra, Bombay and consent to carry out all additions and alterations required by him therein.”*
- In consideration of the above Rakesh hereby agrees and undertakes to ratify and confirm and implement the family settlement
- B *and do all the acts, deeds and things required in that purpose including;*
- “a. Transfer 1000 equity shares held by Rakesh in Narang Overseas Private Limited to Rajesh.
- b. Confirm his retirement as partner in the firm of United Corporation and withdraw his claims referred to arbitration in Arbitration Suit No. 5110 of 1994.
- c. Consent to the transfer of entire undertaking of Bull Worker Private Limited from FWPL to the Manu Group.
- D *d. Consent to hive off land at Marol, Sahar, Bombay owned by NIHL admeasuring about 45105.70 square meters to the Manu Group.*
- e. Consent to hive off ownership and possession of the property at 64, Sunder Nagar, New Delhi to Rajesh.”
- E 7. All the above is to be performed by the Rama Group before 01.01.2002.
8. Matter to be listed before this Hon’ble Court on 08.01.2002.”
- F 6. Perusal of the family settlement would reveal, that insofar as Narang International Hotel Limited (hereinafter referred to as ‘NIHL’) and its subsidiaries are concerned, Rama Narang, Ramesh Narang and Rajesh Narang were to be the only Directors. Any decision by the Board of Directors was to be taken only by the mutual consent of Rama Narang on one hand and Ramesh and Rajesh, on the other hand. The settlement
- G also provided, that none of the Directors i.e. Rama Narang, Ramesh Narang and Rajesh Narang could be removed from the Directorship. Rama Narang and Ramesh Narang were continued to be in joint management and control of NIHL and Rajesh Narang was continued to be whole time Director In-Charge of day-to-day operations and management of NIHL. It also provided, that no decision shall be taken
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concerning the said NIHL and its subsidiaries, without the consent of Rama Narang on one hand and Ramesh/Rajesh on the other hand. It is further provided, that all bank accounts of the Company have to be operated jointly by any two of the three Directors as agreed between Rama Narang and Ramesh/Rajesh. It further provided, that if amount of any transaction was exceeding Rs. 10 lakhs, then the same could be undertaken only through a cheque singed jointly by Rama Narang on one hand and Ramesh or Rajesh on the other hand.

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7. It appears, that though the matter was settled between the parties in terms of Minutes of Consent Order as recorded in the orders dated 12th December 2001 and 8th January 2002, passed by this Court, there was no quietus to the dispute between the parties. Rama Narang alleging, that Ramesh and Rajesh had violated the terms of the Consent Order stipulated in Clause 3 (c), (d), (e) and (f) of the Minutes of the Consent Order, filed a contempt petition being Contempt Petition(C) No. 148 of 2003 in Contempt Petition (C) Nos. 265-67 of 1999 in Contempt Petition (C) No.209 of 1998 in CA No. 366 of 1998. It was the case of the petitioner Rama Narang, that the violations of the Consent Order by Ramesh and Rajesh amounted to clear disobedience of the orders dated 12th December 2001 and 8th January 2002 and thus punishable under the Contempt of Courts Act, 1971. This Court had initiated contempt proceedings against the respondents vide order dated 15th September 2003. This Court had also requested Justice V.A. Mohta, retired Chief Justice of Orissa High Court to act as a Mediator for settlement of disputes between the parties. However, despite serious efforts made by the Learned Mediator, the settlement could not be arrived at.

8. A preliminary objection was taken regarding the maintainability of the abovesaid contempt petition. According to the respondents Ramesh and Rajesh, in the absence of any undertaking given to the Court, this Court could not exercise its jurisdiction on mere violation of the terms of the Consent Order. The respondents had contended, that the order dated 12th December 2001, had merged in the order dated 8th January 2002 and that they had implemented the said order. A three-Judge Bench of this Court in **Rama Narang v. Ramesh Narang and Another**¹ rejected these objections raised by the respondents with regard to maintainability

¹(2006) 11 SCC 114

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A of the contempt petition. It will be relevant to refer to the following observations of this Court:-

- “33. In the present case, the consent terms arrived at between the parties were incorporated in the orders passed by the Court on 12-12-2001 [Ramesh Narang (1) v. Rama Narang, (2009) 16 SCC 631] and 8-1-2002 [Ramesh Narang (2) v. Rama Narang, (2009) 16 SCC 600]. The decree as drawn up shows that order dated 8-1-2002 [Ramesh Narang (2) v. Rama Narang, (2009) 16 SCC 600] was to be ‘punctually observed and carried into execution by all concerned’. A violation of the terms of the consent order would amount to a violation of the Court’s orders dated 12-12-2001 [Ramesh Narang (1) v. Rama Narang, (2009) 16 SCC 631] and 8-1-2002 [Ramesh Narang (2) v. Rama Narang, (2009) 16 SCC 600] and, therefore, be punishable under the first limb of Section 2(b) of the Contempt of Courts Act, 1971. The question whether the respondents should not be held guilty of contempt because of any earlier confusion in the law reflected in Babu Ram Gupta case [(1980) 3 SCC 47 : 1980 SCC (Cri) 527] is a question which must be left for decision while disposing of the contempt petition on merits. It may be argued as an extenuating or mitigating factor once the respondents are held guilty of contempt. The submission does not pertain to the maintainability of the petition for contempt. The preliminary objection raised by the respondents regarding the non-maintainability of the petition for contempt is, for the reasons stated, dismissed.”
- F 9. After the preliminary objections raised by the respondents were rejected, the aforesaid contempt petition was heard by this Court on merits. The main allegations against the respondents with regard to violation of Clause 3 (c), are thus:-
- G (a) that the high value contracts were executed by issuing multiple cheques under the value of Rs. 10 lakhs, though, the contract amount was much more. It was done so as to overcome the requirement, that for a transaction worth more than rupees ten lakhs, the cheques had to bear joint signatures of Rama Narang on one hand and Ramesh or Rajesh on the other hand;
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- (b) the vital information with regard to management of the Company was withheld and as such the Company was managed to the complete exclusion of Rama; A
- (c) settlement with trade union was unilaterally undertaken by the respondents and the petitioner was only asked to sign the enhanced salary cheques, which the petitioner refused B as he was not consulted; and
- (d) it was also alleged, that the respondents had taken unilateral decisions with regard to appointment and promotion of senior executives and as such, had acted in clear violation of Clause 3 (d). C

10. The respondents had filed response to the said contempt petition. It was contended on behalf of the respondents, that the petitioner was deriving undue advantage from the alleged technical breach of the consent terms; which too was based on interpretation of the consent terms contrary to the mutual understanding of the parties. It was submitted, that the petitioner was attempting to stall the functioning of the company by trying to use the veto power. It was submitted, that it was never the intention of the parties, that the petitioner should enjoy the veto power over the company transactions having value of more than Rs. 10 lakhs and create a deadlock. E

11. However, the Court did not find favour with the submissions made by the respondents and while rejecting the respondent's contention, this Court in its judgment and order dated 15th March 2007 reported as **Rama Narang (V) v. Ramesh Narang and Another**², observed thus:- F

"32. The object of entering into consent terms and jointly filing the undertaking was to run the family business harmoniously with the active participation of all as a family business but the respondents had taken absolute control of the Company NIHIL to the total exclusion of the petitioner. All the management decisions and other decisions affecting the Company were taken by the respondent Rajesh Narang, the whole-time Director under the guise of the day-to-day operation/management in clear violation of Clause 3(c) of the consent terms which clearly states that Rama Narang and Ramesh Narang shall continue to be in joint management and G

² (2009) 16 SCC 126 H

- A *control. The parties gave undertaking to the Court regarding the consent terms.*
- B *33. The respondents have erroneously submitted that joint management and control of the Company means giving veto power to the petitioner. According to the terms of undertaking the petitioner and the respondents were under an obligation to run the Company harmoniously with the active participation of all as a family business but unfortunately the respondents have taken absolute control to the total exclusion of the petitioner. This is contrary to the terms of the undertaking given to this Court."*
- C 12. This Court while convicting the present respondents under Section 2(b) of the Contempt of Courts Act observed thus:-
"52. We have carefully perused the undertaking given by the parties to the Court and orders of this Court dated 12-12-2001 [Ramesh Narang (1) v. Rama Narang, (2009) 16 SCC 631] and 8-1-2002 [Ramesh Narang (2) v. Rama Narang, (2009) 16 SCC 600] based on the undertaking of the parties given to this Court and other relevant facts and circumstances. According to our considered view the respondents are clearly guilty of committing contempt of court by deliberate and wilful disobedience of the undertaking given by them to this Court. In this view of the matter, in order to maintain sanctity of the orders of this Court, the respondents must receive appropriate punishment for deliberately flouting the orders of this Court.
- D *53. Consequently, we convict the respondents under Section 2(b) of the Contempt of Courts Act and sentence them to a simple imprisonment for a period of two months. We further impose a fine of Rs 2000 to be deposited by each of them within one week failing which they shall further undergo imprisonment for one month."*
- E 13. It will also be relevant to refer to para (54) of the said judgment and order passed by this Court in **Rama Narang (V)³ (supra)** dated 15th March 2007:-
"54. We are also not oblivious of the fact that immediately sending the respondents to jail would create total chaos in the Company

H ³(2009) 16 SCC 126

which would also vitally affect the interests of large number of people including the employees of the Company. Therefore, while keeping in view the peculiar facts and circumstances of this case, the sentence of imprisonment imposed on the respondents is kept in abeyance. We further direct the parties to meticulously comply with the undertakings given by them to this Court. In case similar violation of the undertakings given to this Court is brought to the notice of the Court, in that event, the respondents shall be sent to jail forthwith to serve out the sentence imposed in this case.”

14. It could thus be seen, that though this Court held the respondents guilty of contempt, taking into consideration the fact that immediately sending the respondents to jail would create total chaos in the Company and it would also vitally affect the interest of large number of people including the employees of the Company, the sentence of imprisonment imposed on the respondents was kept in abeyance. This Court further directed the parties to meticulously comply with the undertaking given by them to the Court. It was further observed by the Court, that in case, similar violations of the undertaking given to this Court, was brought to the notice of this Court, the respondents shall be sent to jail forthwith to serve out the sentence imposed in the said case.

15. It appears, that the dispute between the parties not only continued but got aggravated. Contending that on account of non-cooperation by Rama, the functioning of the Company had come to a standstill, Ramesh filed Company Petition No.47 of 2008 before the Company Law Board, New Delhi (hereinafter referred to as ‘CLB’). It was contended in the said company petition, that due to non-cooperation by Rama in signing cheques, the employees could not be paid their salaries from November 2007 onwards. It was also contended, that bills for payment to supplier could also not be paid, due to which, the entire functioning of the various units of the Company had been seriously affected. On 14th March 2008, the CLB directed the board meeting of NIHL to be held on 24th March 2008 at 11.00 AM in the registered office of the Company. Each of the three Directors were also directed to circulate a list of items, that they desired to discuss in the meeting, to the Directors by 18th March 2008. The CLB also appointed Shri C.R. Das, Former Member of CLB as Observer, to observe the proceedings of the said meeting. In the said proceedings, Ramesh also filed CA No.194

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- A of 2008 on 20th March 2008, pointing out therein, that due to non-payment of salaries/wages for the months of December 2007 and January 2008, about two hundred workers at Delhi Flight Catering Unit of the Company had stopped the work and started protest and agitation.

16. When the matter was listed before CLB on 7th April 2008, the CLB found, that though the Board met on two consecutive dates totally for fifteen hours, not a single decision had been taken, in view of each one holding of his own views/opinion. From the Report of the Observer, the CLB found, that all the three Directors had adopted a rigid stand resulting in complete deadlock. The CLB found, that in the proceedings under Section 397/398 of the Companies Act, 1956, it was the interest of the Company, which was paramount. The CLB noticed, that due to differences among the Directors, many operational issues like payment of salaries/wages, payment to supplier etc. were pending, leading to agitation by employees and irregularities in supply. The CLB found it appropriate, that till the petition was disposed of, as an interim measure, in the interests of the Company and more than 3000 employees/workers, there should be a mechanism by which the day-to-day operations of the Company were carried on without any hitch. The CLB thus passed the following order on 10th April 2008:-

- E “8. Accordingly, as I indicated during the hearing, I appoint Shri Justice Arvind V. Savant, Former Chief Justice of Kerala High Court, who has given his consent, as the Facilitator (Mobile No.). As the Facilitator, he would try to bring about a consensus among the directors on matters which are urgent and essential to ensure that the business of the Company is carried on smoothly and in case a consensus is not possible, taking into consideration the views of the three Directors, he will take a final decision which will be binding on the Directors and the Company. I make it abundantly clear that his role will be limited only to operational matters, like, issues relating to workers/employees of all categories, issues relating to suppliers/supply contracts, urgent repairs to equipments etc. These are only illustrative. It will be within his competence to decide considering the spirit of this order that the business of the company should be carried on smoothly till the petition is disposed of, which are urgent/essential operational issues.”

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17. Alleging, that the order passed by CLB dated 10th April 2008, A was violative of the order of this Court dated 15th March 2007 and nothing but an attempt to legalize their conduct of contempt, the petitioner approached this Court by the present contempt petition.

18. It appears, from the Record of Proceedings, that on 15th December 2008, this Court had heard the counsel for the parties and reserved the order. The contempt petition was listed before this Court on 10th February 2009 and on the said date, this Court passed the following order:- B

"We have perused the order dated 27.01.2009.

On 15th December, 2008, this Court heard learned counsel C for the parties at length and reserved the order.

Before this Court could pronounce the order, IA No.1 of 2008 D was filed by respondent No.1 in which a prayer was made to recall the order dated 15th December, 2008. In the said IA what has been incorporated in para No.2 is reproduced hereunder:

"Instructions had duly been taken that the Hon'ble Court be requested to kindly hear the Contempt Petition on merits.

On 15.12.2008, Mr. Nariman, learned Senior Counsel, who E has been appearing in the matter could not be present for personal reasons. In order not to inconvenience the other side and this Hon'ble Court, another learned Senior Counsel had been briefed to argue the case. On that day, your Lordships were pleased to observe that in case Mr. Nariman was available on another day, your Lordships might consider adjourning the matter for a day or two and the availability of F Mr. Nariman was sought. However, regrettably, on an erroneous impression, a statement was made without consulting Mr. Nariman that he would not be available till January, 2009."

In the interest of justice, we deem it appropriate to recall the G order dated 15th December, 2008. We order accordingly.

List this matter on Friday, the 20th February, 2009 before another Bench."

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- A 19. The matter thereafter came up before this Court on 9th April 2009. Perusal of the order dated 9th April 2009, would reveal, that this Court, on a query found, that for the last one decade, the Company has not filed its returns under the Income Tax Act. It also found, that the Books of Accounts had not been prepared and/or audited. It was also found, that the requisite financial statements had not been filed before the Registrar of Companies. The Court noticed, that none of the authorities had taken any action under the Companies Act or under the Income Tax Act, 1961. The Court therefore, called for the status of the matter pending before the Income Tax Authorities. The Court, in order to protect the interest of the Revenue as well as the workmen, as the first step, directed M/s K.P.M.G. Chartered Accountants to prepare financial accounts after verifying the Books. The Court directed both the parties to sign the accounts, without prejudice to their rights and contentions. The Chartered Accountant was also directed to consult both the sides. The matter was directed to be kept on 13th July 2009.
- D 20. On 13th July 2009, again this Court passed a detailed order. The perusal thereof shows, that the Court directed the Registrar of Companies and Chief Commissioner of Income Tax to be impleaded in the proceedings. The Court also observed, that it would also like to know from the Chief Commissioner of Income Tax, as to what action has been taken against the Company with regard to dues under the Income Tax Act. The Court also wanted to know as to why assessment has not been done for all the years, particularly, when the Return/Accounts have not been filed by the Company. The matter was directed to be listed by this Court thereafter on 21st July 2009. On 21st July 2009, the Court considered the Status Report submitted before it, by the Chief Commissioner of Income Tax. Apology was tendered to the Court by the Registrar of Companies for not taking action under the Companies Act. The Court recorded, that both these officers have assured to take action in accordance with law. The Court also noticed, that apart from non-compliance of the statutory provisions, the Books of Accounts had not been audited by the Auditors of Company. The Court therefore, in order to set the house in order and particularly, keeping in mind the interest of 3000 workmen as well as exchequer, while invoking powers under Article 142 of the Constitution, appointed an independent Director, who was to look into the financial management of the Company and submit his report to this Court from time to time, on the state of the Company's Accounts and due compliance of the statutory provisions of

the Companies Act and Income Tax Act. He was also requested to suggest steps for good corporate governance, including financial management in future. The Court therefore, requested Shri Homi Ranina, a Tax Expert to accept the assignment and submit the Status Report to this Court, so that appropriate directions could be issued. From the perusal of the order, it appears, that this Court was more concerned with putting the house in order before taking the contempt petition for hearing.

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21. This Court, however, clarified in its order dated 21st July 2009, that the same will not come in the way of functioning of Shri Arvind Savant, Former Chief Justice of Kerala High Court as Facilitator appointed by the CLB.

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22. The contempt petition thereafter came up before this Court on 29th July 2009. By an order passed on the said date, this Court requested Shri Ranina to take charge as independent Director and further clarified that the same would be confined only in the context of compliance of the provisions of the Companies Act as well as the Income Tax Act. By the said order, this Court directed M/s BSR & Company, Chartered Accountants to prepare and audit the accounts of the Company and observed, that its function will not overlap with the functioning of the Facilitator, who was free to proceed in accordance with law. The Court further found, that the regular meetings in accordance with the provisions of the Companies Act have not been held and therefore, charted out the functions to be undertaken by Shri Ranina who was appointed as an independent Director vide order dated 21st July 2009. The directions in nutshell are thus:-

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- (i) Shri Ranina will convene an informal meeting of all the concerned parties including M/s BSR & Company and at the said meeting, Shri Ranina was to act only as an advisor and not as an independent Director of the Company;
- (ii) After going through the relevant papers, Shri Ranina was to convene one more meeting in which he was to suggest mode of his induction into the Company as an independent Director. It was further clarified that, Shri Ranina was not to be subjected to prosecution which the Court had directed in its earlier order dated 21st July 2009 with regard to the action to be taken by the Registrar of Companies against the Directors for violation of the provisions of Companies Act;

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- A (iii) The BSR & Company was to update and audit the Accounts of the Company. If the BSR & Company found any impediment, they were to report to Shri Ranina, who in turn, was to try to resolve the problem himself in the first instance and if not, to submit a report to this Court;
- B (iv) The BSR & Company would also submit the reports on the status of the accounts from time to time to Shri Ranina. In case, Shri Ranina found any impediment or difficulty in carrying out the orders passed by the Court, he would submit Status Report to this Court through Shri Parag Tripathi.
- C 23. The matter thereafter came up before this Court on 14th December 2009. This Court noted, that the Accounts of the Company stood duly audited upto 31st March 2006, whereas accounts of the subsidiary Companies stood audited upto 31st March 2009. The Court further noted, that as on that date, there was no compliance of the provisions of Section 212 of the Companies Act. The Court extended the time for filing of accounts before Registrar of Companies upto 31st January 2010. The Court therefore directed, that the proceedings shall remain pending till further orders.
- D 24. By the same order, the Court appointed Shri Habib Rehman, Expert in Hotel Management, to advise Shri Ranina from time to time. It E further directed, that in the event of any dispute between the Directors, the decision taken by Shri H.P. Ranina in consultation with Shri Habib Rehman, shall be final and binding on Board of Directors. The matter was thereafter listed before this Court on 16th April 2010. In the said order, the Court noted, that pursuant to its order dated 8th February 2010, F the Registrar of Companies had submitted a report on 26th March 2010. It was found, that the Register of Directors maintained by the Company was not in conformity with the Court orders/Resolutions, passed by the Board or Company during the period right from 1990. The court therefore authorised Shri H.P. Ranina to update the said Register of Directors and bring it in conformity with the Court Orders and Resolutions passed by G the Board. The said order was passed by the Court without prejudice to the rights and contentions of the parties appearing before the Court.
- H 25. Thereafter, the matter came up for hearing before the Court on 3rd May 2010. By order on said date, the Court appointed Shri Syed Habibur Rehman as an independent Director to manage the affairs of

the Hotel and the flight kitchens on day-to-day basis. M/s J.G. Verma & Co. was directed to be appointed as Tax Auditors of the Company in place of M/s BSR & Company. It was clarified that Shri Habibur Rehman was appointed as an independent Director and shall not be prosecuted for any violation of the statutory provision. Thereafter, the matter was listed before this Court on 6th August 2010. By order on said date, the Court noticed the earlier proceedings and observed, that although number of steps were taken; even as on that day, the signing of the Accounts remained pending because of the family disputes between the father and the sons. The Court noticed, that at the end of the day, the position remained that some of the provisions of the Companies Act were not complied with and the Accounts remained unsigned. The Court therefore directed the Additional Chief Metropolitan Magistrate, 37th Court, Mumbai, to expedite the hearing and finally dispose of the cases pending before him. The Court by the said order dispensed with the services of Shri H.P. Ranina and Shri Syed Habibur Rehman.

26. In the parallel proceedings before the CLB, Rama Narang had filed Company Application No.57 of 2011 in Company Petition No. 47 of 2008, praying for the discharge of the Facilitator Retired Justice Arvind V. Savant, on the ground of collusion with the petitioner and the respondent before the CLB. The Court found no substance in the allegation made by Shri Rama Narang and therefore, dismissed the said CA by imposing exemplary cost of Rs. 1,00,000/. It will be relevant to refer to paragraph (7) of the order dated 22nd February 2011, as under:-

“7.I therefore dismiss CA 57/2011 while awarding an exemplary cost of Rs. one lakh against R-2. The cost so awarded shall be deposited by R-2 in the High Court Legal Aid Committee, New Delhi within a week from today. The Facilitator shall now proceed to fix a date for holding meeting of the Board of Directors for ensuring statutory compliances and also for acting in furtherance of directions contained in the Order dated 10.04.2008,12.10.2010 and 22.11.2010 and send a status report as directed by me in the Order dated 6.1.2011.”

27. It further appears from the record, that Rajesh-respondent No.2 herein, who was a whole-time Director, filed Company Application No.223 of 2011 before the CLB in pending Company Petition No. 47 of 2008. It was contended on behalf of the applicant in the application, that

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- A due to non-cooperative attitude of the respondent i.e. the petitioner herein, the entire functioning of the Company had come to a standstill. It was further averred, that Rama was making every attempt to put hindrance in the day to day functioning of the company. As such certain necessary directions were sought in the interest of the Company so also its workers.
- B On 28th April 2011, the CLB after considering the rival contentions, passed the following order:-
 - C *"On an overall consideration of the factual scenario while rejecting the objection raised by learned senior counsel for R-2 as to the locus of the applicant and considering the complete, repeated, persistent and deliberate non-cooperation by R-2 in the smooth functioning of R-1 company and also to regulate the conduct of the company's affairs I deem it fit to grant the relief as prayed for in CA No. 223/2011 and order that pending the hearing and final disposal of C.P. No.47/08 and in addition to the directions already made in C.P. No.47/08, in the event of dispute/ disagreement inter se between the Directors in the Board Meeting on any items on the agenda, a decision shall be taken by the Facilitator which shall be final and binding on the Board of Directors and the company. With the paramount object of smooth running of R-1 the Facilitator is further empowered to sign cheques/minutes and statutory records in case of disagreement between or refusal by any of the Directors or inability of the Board to take a decision. Before signing any cheque/ minutes/statutory records the Facilitator shall record reasons for not agreeing with the dissenting Director/s or agreeing with the assenting Director/s."*
 - D 28. It appears from the record, that in the emergent situation i.e. not making payment of electricity bills and the resultant possibility of electricity supply of the Hotel being disconnected, Company Application No.610 of 2011 was mentioned before the CLB. It was brought to the
 - E notice of the CLB, that the Facilitator was not able to function and operate smoothly and therefore, vide order dated 29th November 2011, the CLB, as a temporary measure, appointed Shri H.S. Acharya as a Special Officer-cum-Advisor, in addition to the Facilitator already appointed. The CLB further directed, that since the present Facilitator has stayed his hands from exercising additional powers given vide order dated 28th
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April 2011, the said powers could be exercised by Shri Acharya until A further orders.

29. Thereafter, by an order dated 30th April 2015, the CLB passed the following order:-

"16. Therefore, for the reasons stated above, I hereby appoint Mr. H.P. Ranina as Facilitator cum Advisor by removing Mr. H.S. Acharya as Administrator cum Advisor. Mr. Ranina has to act as Facilitator cum Advisor with the powers that were conferred upon on Mr. Acharya by CLB when he was made as Facilitator cum Advisor. It is made clear that Mr. Ranina will not go beyond the powers conferred upon when Mr. Acharya was appointed by CLB through orders dated 29.11.2011, R1 Company shall not close down flight catering units without prior permission from Company Law Board."

It could thus be seen, that by the said order, CLB appointed Shri H.P. Ranina as Facilitator-cum-Advisor in place of Shri H.S. Acharya with all the powers that Shri Acharya had as a Facilitator-cum-Advisor. D

30. It appears from the record of this Court, that the contempt petition was listed before various Benches of this Court on various dates. On 15th March 2016, this court found, that the business of the Company had come to a standstill and therefore, it was of the tentative view, that it was a fit case where the Company may be wound up. The Department of Corporate Affairs therefore was directed to make an enquiry/investigation into the affairs of the Company and submit its report to the Court within a period of four weeks. On 19th April 2016, this Court granted further eight weeks' time to enable the Department of Corporate Affairs to make necessary enquiry and submit a report in terms of the order dated 15th March 2016. This Court also observed, that it would be open to the parties to settle the matter and make a mention of the Terms of Settlement before this Court. On 19th July 2016, this Court directed the report of the Registrar of Companies, Maharashtra, Ministry of Corporate Affairs, to be made available to the counsel for both the sides. It further observed, that if so required, on the next date, the Court will proceed to appoint an independent Board/Committee to run the affairs of the Company until appropriate solution to the present impasse between the Directors is arrived at. On 16th August 2016, the Court directed the contempt petition to be listed for final disposal in the month of November

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- A 2016. It further ordered, that without prejudice to the rights of the respective parties, the present arrangement for running the affairs of the Company will continue until further orders. On 29th November 2016, the matter was directed to be adjourned *sine die*.

31. From the documents placed on record, it appears, that in the meantime, the meeting of the Board of Directors of NIHL was held on 30th April 2019. From the Minutes of the Meeting, it would appear, that one of the subjects that came up for discussion before the Board of Directors, was with regard to sale of the Companies' property at 40 Pali Hill, Bandra West, Mumbai (hereinafter referred to as the 'Bandra property') so as to tide over the financial crisis. From the perusal of the Minutes of the Meeting, it could be seen, that it is stated therein, that the Bandra property was only non-business asset of the Company. It is further stated in the Minutes of the Meeting, that if funds were not available, it would result in closure of the Company's Flight Catering Business, which would result in over 3000 persons losing their livelihood as well as create serious financial and legal challenges. It was suggested in the said Meeting, that on the sale of the Bandra property, an amount of Rs. 351 crore could be received from Maverick Realty & Developers LLP. In the said Meeting, the petitioner was also asked by the respondent No.1 as well as the Facilitator, as to whether the petitioner had any other suggestions to offer so as to tide over the financial crisis. However, the petitioner refused to offer any suggestion, as such under the directions of the Facilitator, the following resolutions came to be passed:-

- F "RESOLVED THAT pursuant to applicable provisions of the Companies Act, 2013 as amended from time to time (including any statutory modification or re-enactment thereof) and any other applicable rules, regulations, laws, circulars, the Company do sell its right, title and interest in the property/ non business asset comprising of land admeasuring 2,530 (Two Thousand Five Hundred and Thirty) square meters or thereabouts along with Bungalow situated at 40 Pali Hill, Bandra West, Mumbai CTS No. 1345/46/47/48, to Maverick Realty & Developers LLP for a consideration of Rs.351,00,00,000/- (Rupees Three Hundred and Fifty One Crores Only) exclusive of stamp duty, registration charges and applicable taxes based on vacant and peaceful possession of the said property being made available to the said buyer,
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and on such other terms and conditions as may be agreed to between Maverick Realty & Developers LLP and Mr. Ramesh Narang, Joint Managing Director of the Company. A

RESOLVED FURTHER THAT Mr. Ramesh Narang, Joint Managing Director of the Company, be and is hereby authorized to execute, sign, register, modify, required definitive agreements, documents, papers, deeds, letters, writing, forms etc. and to do all such acts, deeds, matters and things as may be required to give effect to the above Resolution.” B

32. As per the said Resolutions, the petitioner as well as the respondent No.1 were required to vacate the said property. However, since the petitioner along with his other family members did not vacate the premises, IA No.87565 of 2019 came to be filed seeking directions to the petitioner along with his family members to vacate the said property. The said IA also came to be listed before various Benches of this Court. However, the matter came to be adjourned from time to time. IA as well as the contempt petition was listed before us on 4th December 2020. On the said date, we informed the learned counsel for the parties, that we would hear the main contempt petition as well as the IA for directions simultaneously. Accordingly, we have heard the learned counsel for the parties on the main contempt petition as well as the IA for directions at length on 10th December 2020 and 11th December 2020. C D E

33. Shri Jaideep Gupta, the learned Senior Counsel opened the arguments on behalf of the contempt petitioner. The learned Senior Counsel submitted, that the perusal of the orders passed by this Court dated 12th December 2001 and 8th January 2002, would reveal, that the respondents were required to run the affairs of NIHL jointly along with the petitioner. However, they were running the affairs of the Company totally to the exclusion of the present petitioner. It was further submitted, that this Court in the judgment reported in **Rama Narang⁴ (supra)** had clearly held, that the contempt petition at the behest of present petitioner against the present respondents was very much tenable. He further submitted, that not only this, but the judgment of this Court reported in **Rama Narang (V)⁵ (supra)** would clearly show, that this Court in unequivocal terms has held, that the present respondents had acted in breach of the undertaking given to this Court. It is submitted, that though F G

⁴(2006) 11 SCC 114

⁵(2009) 16 SCC 126

- A the respondents were required to run the affairs of NIHL jointly with the present petitioner, it was clearly found, that they had acted in breach of the orders of the Court and were running the business totally to the exclusion of the petitioner. The learned Senior Counsel submitted, that the acts which are alleged to be contemptuous in nature, in the present proceedings, are identical with the acts which are found to be contemptuous in the judgment of this Court dated 15th March 2007. He submitted, that in spite of having been held guilty, similar acts have been continued by the respondents even after 15th March 2007. He submitted, that in view of the findings of this Court in its judgment dated 15th March 2007, for the reasons recorded therein, the present respondents are required to be held guilty for committing contempt of this Court and be punished in accordance with law.

- 34. With regard to the application for directions filed by the respondent No.1 herein, Shri Jaideep Gupta submitted, that such an application was not tenable in the contempt proceedings initiated by the petitioner. He submitted, that as a matter of fact, the CLB has no jurisdiction to pass an order of a nature as passed by it. It is submitted, that when there was settlement between the parties which has a seal of approval by this Court, the respondents could not have initiated the proceedings before the CLB. He submitted, that in any case, the petitioner had taken objection with regard to maintainability of the proceedings before the CLB and the CLB, without deciding the issue regarding tenability, had passed the interim orders. It is therefore submitted, that the reliance placed by the respondents on the orders passed by CLB is of no assistance to their case.

- 35. Shri Kapil Sibal, the learned Senior Counsel made his submissions in reply to the contempt petition and in support of the application for directions. He submitted, that originally Narang's family consisted of three brothers, namely Manu, Rama and Rohit. He submitted, that the Terms of Settlement between various members of the family was recorded by an order passed by the Bombay High Court on 3rd July 1997. He submitted, that the proceedings arising out of the settlement had reached up to this Court. This Court vide order dated 4th May 1999, had called for a report from Justice Lodha, Judge of the Bombay High Court (as His Lordship then was) with regard to, Rama-petitioner herein committing contempt of Justice Dhanuka's order. He submitted, that after perusal of the report, this Court vide order dated 2nd November

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2001, held the present petitioner guilty for contempt. However, in view of the subsequent settlement between the parties, the order holding the present petitioner guilty was recalled.

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36. Shri Sibal submitted, that the family settlement between the parties is in two parts. He submitted, that the first part is with regard to various suits filed by Ramesh Narang which were withdrawn and transferred to this Court and decreed by this Court. He submitted, that the second part of the settlement was with regard to the management of the Company. The learned Senior Counsel submitted, that the conduct of the present petitioner was throughout of non-cooperation in the functioning of the Company. The petitioner, at every stage, was attempting to put a hindrance so that the functioning of the Company comes to a standstill. He submitted, that after the orders were passed by this Court on 12th December 2001 and 8th January 2002, though the petitioner was required to co-operate, the petitioner refused to do so and in order to run the affairs of the Company, the respondents were required to do certain things in the interest of the Company. He submitted, that had the respondents not done what they had done, the entire business of the Company would have come to a standstill thereby, depriving the livelihood of 3000 persons and further resulting into closure of the Company, apart from incurring various financial and statutory liabilities.

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37. Shri Sibal submitted, that though there was a settlement with regard to the affairs of the Company, the affairs were required to be regulated by the statutory provisions and in spite of the settlement, statutory powers cannot be abridged. He further submitted, that every Director has a fiduciary responsibility to act for welfare of the Company. The learned Senior Counsel therefore submitted, that since the present petitioner failed to act for welfare of the Company, the respondents had no other option but to approach the CLB, seeking certain directions for smooth functioning of the Company. He submitted, that having already been found guilty for contempt by the judgment of this Court in **Rama Narang (V) (supra)**, the respondents *bona fide* approached the competent statutory body to seek directions for the smooth functioning of the Company, so as to ensure the welfare of the Company and its 3000 employees. He submitted, that the order appointing the Facilitator not only continued from 10th April 2008, but this Court on several occasions has made it clear, that it was not interfering with the order of CLB appointing Facilitator. On the contrary, by order dated 16th August 2016,

- A this Court has clarified, that the present arrangement for running the affairs of the Company would continue until further orders without prejudice to the rights of the respective parties. He submitted, that if the petitioner was aggrieved by the order passed by the CLB, the remedy available to him was to challenge the same before the competent authority.
- B Having failed to avail of that opportunity, it is not open to the petitioner to now contend that the said orders cannot be given effect to. The learned Senior Counsel submitted, that the respondents have not taken a single decision from 2008 onwards without the consent of the Facilitator.
 - 38. Shri Sibal further submitted, that no Director of the Company has propriety rights over the property owned by the Company. The learned Senior Counsel further submitted, that the perusal of the Minutes of the Meeting of the Board of Directors held on 31st December 2001, which was held in order to give effect to the Consent terms filed before this Court and the order of this Court dated 12th December 2001, so also the explanatory statement to the notice for Extraordinary General Meeting convened on 1st January 2002, would clearly show, that the residential accommodation provided to Rama Narang and Ramesh Narang at Company's Bandra property, was in their capacity as a Director of the Company. The learned Senior Counsel reiterated, that no Director can claim ownership over the Company's property.
 - 39. Shri Sibal further submitted, that since after 2008, the respondents have been acting as per the orders passed by the CLB, which were passed by a competent statutory authority in exercise of the statutory provisions, by no stretch of imagination, they could be held guilty for having committed contempt of this Court. The learned Senior Counsel submitted, that even interim orders passed by the jurisdictional authorities are binding on the parties as long as they hold the field. The learned Senior Counsel relies on the judgment of this Court in the case of *Tayabhai M. Bagasarwalla and Another v. Hind Rubber Industries (P) Ltd. And Others*⁶, in support of the said proposition.
- G 40. Shri Sibal submitted, that insofar as application of the respondents is concerned, in order to save the Company from imminent danger of closure, thereby affecting the livelihood of 3000 workers and also from statutory and financial repercussions, it was necessary that this Court exercises powers under Article 142 and directs the contempt petitioner to comply with the decision of the Facilitator. He relied on the
- H ⁶(1997) 3 SCC 443

judgments of this Court in *Vijay Laxmi and Others v. Prabhu Devi and Others*⁷ and *State Bank of India v. Ajit Jain and Others*⁸ in support of this proposition. A

41. Shri Akhil Sibal, the learned Senior Counsel supplemented the arguments on behalf of the respondents in the contempt petition/applicants in the application for directions. He submitted, that insofar as the allegations made by the petitioner with regard to the respondents unilaterally entering into labour contracts, grant of increments to the executives, contract of purchase of equipments etc. are concerned, the respondents, in order to keep the Company running, were required to take several decisions between September 2007 and March 2008, in accordance with the Company Manual. He submitted, that at one point of time, the labourers went on strike and the contempt petitioner was not willing to cooperate in running the affairs of the Company, as such certain emergent decisions were taken during the said period. However, all those decisions have been ratified by the Facilitator and therefore, no case is made out to hold the respondents guilty of contempt. B

42. Shri Mukul Rohatgi, the learned Senior Counsel made his submissions in rejoinder. He submitted, that the matter pending before this Court was only a contempt petition and the IA for directions filed by the respondents was nothing but an abuse of process of law. He submitted, that there was no order passed by any competent court directing the contempt petitioner to vacate the premises. Neither had any authority approved the Resolutions of the Board of Directors with regard to vacating the premises at Pali Hill. He submitted, that the Facilitator has not been appointed by this Court. Though, this Court had earlier appointed Shri H.P. Ranina and Shri Syed Habibur Rehman, this Court itself vide order dated 6th August 2010, dispensed with their services. He therefore submitted, that after 6th August 2010, no Facilitator could have exercised the powers. He submitted, that the appointment of so-called Facilitator is not only without jurisdiction but is in breach of the orders passed by this Court dated 12th December 2001 and 8th January 2002. He therefore submitted, that the application for directions needs to be dismissed summarily. C

43. Shri Rohatgi reiterated, that since the activities which were found to be contemptuous by the judgment of this Court in *Rama Narang* D

⁷ (2017) 11 SCC 169

⁸ 1995 Supp (1) SCC 683

- A *(V)*⁹(*supra*), have been continued even after the judgment was delivered by this Court, the respondents are required to be held guilty of having committed contempt of this Court and punished in accordance with law. He relied on the judgment of this Court in *Re: Vinay Chandra Mishra (The Alleged Contemnor)*¹⁰.
- B 44. Shri Rohatgi further submitted, that the family settlements even in company matters are required to be dealt with differently. He relied on the judgment of this Court in the cases of *Sangramsinh P. Gaekwad and Others v. Shantadevi P. Gaekwad (Dead) Through LRs and Others*¹¹ and *Kale and Others v. Deputy Director of Consolidation and Others*¹².
- C 45. As indicated in the opening paragraphs itself, though initially only an interlocutory application filed by the respondent No.1 herein for direction to the petitioner to comply with the Facilitator's decision was listed, we intimated the parties that we would hear the contempt petition as well as the interlocutory application together. As such, we have heard the learned Senior counsel for the parties at length on both the Contempt Petition as well as the interlocutory application (IA No. 87565 of 2019) filed by the respondent No.1.
- D 46. We are of the considered view, that it is appropriate to first decide the contempt petition itself, inasmuch as the outcome of the contempt petition will have a bearing on the interlocutory application filed by the respondent No.1.
- E 47. It would be apposite to refer to Section 2(b) of the Contempt of Courts Act, 1971 which reads thus:-
- F “**2. Definitions.** -
- G (b) “*civil contempt*” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.”
- H 48. It is thus clear that for bringing an action under the ambit of civil contempt, there has to be a wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach

⁹ (2009) 16 SCC 126

¹⁰ (1995) 2 SCC 584

¹¹ (2005) 11 SCC 314

H ¹² (1976) 3 SCC 119

of an undertaking given to the court. No doubt, that Shri Rohatgi is justified in relying on the judgment of this Court in the case of *Rama Narang (V) (supra)* decided on 15th March 2007. In the said judgment, this Court held, that according to the terms of undertaking, the petitioner and the respondents were under an obligation to run the company harmoniously with the active participation of all as a family business but unfortunately, the respondents had taken over absolute control to the total exclusion of the petitioner. This Court held, that this was contrary to the terms of the undertaking given to this Court. Shri Rohatgi asserts, that the acts with regard to which the present contempt petition has been filed, are identical to the acts of the respondents, for which, they were held guilty of contempt. According to him, a fortiori, the present respondents should also be held guilty for the acts with regard to which, the present contempt petition has been filed.

49. We will have to consider the correctness of the said submission. For that, it will be necessary to refer to the events that have taken place subsequent to the date of the judgment of this Court in *Rama Narang (V)¹³ (supra)* i.e. 15th March 2007.

50. It is the case of the respondents, that the petitioner was attempting to use the consent terms as a veto to stall the functioning of the Company. It is their case, that the petitioner was making every attempt possible to thwart the functioning of the Company. It is also the case of the respondents, that the said acts were done with the mala fide intention. It is their case, that the son of the petitioner from his second wife namely Rohit Narang is working as the Managing Director of Sky Gourmet Catering Pvt. Ltd., which Company is a direct competitor with the Flight Catering business of NIHL. It is their case, that since the petitioner refused to offer any cooperation for proper functioning of the Company, the respondent No.1 was compelled to approach the CLB by Company Petition No. 47 of 2008. The said petition was filed on 10th March 2008. The petitioner in the said petition had averred, that after the order was passed by this Court on 15th March 2007, all genuine efforts were made by the respondents herein, to ensure that the present petitioner should not have any further grievance regarding exclusion from the management and control of the Company. It was averred, that however the attitude of non-cooperation and putting hindrances in the functioning of the Company by the petitioner continued even thereafter. It was averred,

¹³ (2009) 16 SCC 126

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- A that petitioner Rama was unreasonably withholding his consent even in routine decisions crucial to the operations of the Company. It was averred, that the situation had led to complete management deadlock. It was further averred, that the Company was in a precarious state with unpaid salaries, employee unrest both at the level of senior executives and skilled workers. It was averred, that petitioner Rama was misusing the consent decree dated 12.12.2001, as a tool of oppression, which had resulted in mismanagement and which in turn, was detrimental to the interest of the Company and its shareholders.

51. The said petition filed by the respondent No.1 Ramesh herein

- C was heard by the Chairman of the CLB on 7th April 2008. The order was passed in the said proceedings by the Learned Chairman on 10th April 2008. It is pertinent to note, that petitioner Rama had raised an objection with regard to maintainability of the said proceedings. Paragraph (8) of the order which has already been reproduced herein reveals, that the Chairman, CLB had appointed Shri Justice Arvind V. Savant, Former D Chief Justice of Kerala High Court as a Facilitator. The Facilitator was to try to bring about a consensus among the Directors on matters, which were urgent and essential to ensure that the business of the Company is carried on smoothly. The said order also provided, that in case there was no consensus after taking into consideration the views of the three Directors, the Facilitator will take a final decision, which would be binding E on the Directors and the Company. The order made it clear, that the role of the Facilitator was limited only to operational matters like issues relating to workers/employees of all categories, issues relating to suppliers/supply contracts, urgent repairs of equipments etc. The order also made it clear, that the spirit of the order was, that the business of the Company should F be carried out smoothly till the petition was disposed of. After the order was passed by the CLB, the petitioner approached this Court by way of present contempt petition alleging, that the very filing of the proceedings before the CLB and entertaining the same by CLB was contemptuous in nature. It also appears from the record, that the petitioner had also G filed an application for stay of the order passed by the CLB being IA No. 1 of 2008 in the present proceedings.

52. When the matter was listed before this Court on 21st July 2009, this Court, keeping in mind the interest of 3000 workmen as well as the exchequer, was of the view, that under Article 142 of the Constitution, this Court should appoint an independent Director, who will

look into the financial management of the Company and submit his report to this Court from time to time, on the state of the Company's accounts and due compliance of the statutory provisions of the Companies Act and Income Tax Act. He was also requested to suggest steps for good corporate governance including financial management in future. The Court therefore appointed Shri Homi Ranina, who is a Tax Expert, as an independent Director of the Company. However, by the said order, this Court noted, that Shri Arvind Savant, Former Chief Justice of the Kerala High Court had been appointed as Facilitator by the CLB. The Court therefore clarified, that the said order will not come in the way of the functioning of the Facilitator. The Court clarified, that it had requested Shri Ranina to take charge as an independent Director only in the context of compliance of the provisions of the Companies Act as well as Income Tax Act and that function will not overlap with the functioning of the Facilitator, who was free to proceed in accordance with law. There are two takeaways from the order of this Court. First, the Court recognised the continual contrarious attitude of the parties impacting the efficient management of the Company and the interests of large number of stakeholders and the need to defuse the stalemate situation by appointing a Facilitator. Thus, this Court not only did not disapprove the order of the CLB in appointing a Facilitator but on more than one occasions observed, that the orders passed by it would not come in the way of functioning of the Facilitator. As a matter of fact, the petitioner cannot be heard to challenge the order of the competent judicial forum regarding appointment of a Facilitator by way of an I.A. in a contempt petition.

53. The matter again came up before this Court on 29th July 2009. In the said order, the Court directed M/s BSR & Company, Chartered Accountants to take necessary measures to update and audit the accounts of the Company. The Court noted, that it had appointed Shri Homi Ranina as an independent Director vide order dated 21st July 2009. Since various statutory provisions had not been complied with for the last several years, the Court vide the said order also charted out the functions to be undertaken by Shri Ranina. Again, in the said order, the Court noted, that the CLB has appointed Shri Arvind Savant, Former Chief Justice of Kerala High Court as Facilitator. The Court observed, that the order passed by it on that date, was only confined to compliance of the statutory provisions of the Companies Act and the provisions of the Income Tax Act. The Court also clarified, that the work assigned to Shri Ranina as well as M/s BSR & Company would not overlap with the work of the

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- A Facilitator. It further observed, that in fact the directions issued by this Court would help the Facilitator.

54. Vide another order dated 14th December 2009, the Court appointed Shri Habib Rehman, as a Consultant to guide and advise Shri Ranina from time to time, on such terms and conditions as Shri Ranina deemed fit. It also provided, that in the event of dispute/disagreement between the Directors, the decision taken by Shri Ranina, Advisor in consultation with Shri Habib Rehman shall be final and binding on the Board of Directors. The Court noted the statements made on behalf of the counsel for the petitioner Rama, that he will sign notes of accounts, director's reports and other statutory documents as may be required by Shri Ranina for compliance with the statutory provisions. It further clarified, that if Rama failed to do so, Shri Ranina was authorised to do so. Vide subsequent order dated 16th April 2010, the Court clarified, that Rama will comply with the directions given by the Court vide order dated 14th December 2009. It also clarified, that the said order dated 14th December 2009, was to be implemented by Rama without prejudice to his rights and contentions in the pending litigation.

55. It further appears from the record, that Company Application No. 223 of 2011 was filed by respondent No.2-Rajesh before the CLB in Company Petition No. 47 of 2008. Vide order dated 28th April 2011, the CLB rejected the objection raised by the counsel for Rama as to the locus of the applicant Rajesh (respondent No.2 herein). The CLB after considering the complete, repeated, persistent and deliberate non-cooperation by Rama in the smooth functioning of the Company, in order to regulate the conduct of the Company's affairs, deemed it fit to grant the relief as prayed for in Company Application No. 223 of 2011 and directed, that in addition to the directions already made in Company Petition No. 47 of 2008, in the event of dispute/disagreement inter-se between the Directors in the Board meeting on any items on the agenda, a decision shall be taken by the Facilitator, which shall be final and binding on the Board of Directors and the Company. With paramount object of smooth running of the Company, the Facilitator was further empowered to sign cheques/minutes and statutory records in case of disagreement between or refusal by any of the Directors or inability of the Board to take a decision. It further directed, that before signing any cheque/minutes/statutory records, the Facilitator shall record reasons for not agreeing with the dissenting Directors or agreeing with the assenting Directors.

56. Vide order dated 6th August 2010, this Court found, that despite its various efforts, the position remained unchanged. It will be relevant to refer to the following observations made by the Court:- A

"Although number of steps were taken, even today the signing of Accounts remains pending because of the family disputes between the father and the sons. At the end of the day, the position remains that some of the provisions of the Companies Act remains non-complied and the Accounts remained unsigned and, therefore, we have no option but to direct the Additional Chief Metropolitan Magistrate, 37th Court, Mumbai, to expedite the hearing and finally dispose of the cases pending before him." B C

Vide the said order, the Court dispensed with the services of Shri Ranina and Shri Syed Habibur Rehman. The CLB, vide order dated 29th November 2011, appointed Shri Acharya as Special Officer-cum-Advisor. Vide another order dated 30th April 2015, Shri Acharya was replaced with Shri Ranina as the Facilitator-cum-Advisor. D

57. It will be pertinent to note, that in the meantime, Company Application No. 57 of 2011 was filed by petitioner Rama in Company Petition No. 47 of 2008, praying for discharge of the Facilitator Shri Justice Arvind Savant. The CLB found, that petitioner Rama was making attempt after attempt to somehow stop the Facilitator from functioning. It was observed, that petitioner Rama had made wild, scurrilous and baseless allegations against the Facilitator. Therefore, vide order dated 22nd February 2011, the application was rejected with exemplary cost of Rs. 1 lakh. E

58. When the contempt petition was listed before this Court on 16th August 2016, this Court directed the contempt petition to be kept for final disposal on a Tuesday in the month of November 2016. This Court further clarified, that without prejudice to the rights of the respective parties, the present arrangement for running the affairs of the Company will continue until further orders. It appears, that thereafter the matter was listed before this Court on 29th November 2016, when this Court directed the matter to be adjourned *sine die*. Thereafter, the matter has come up before this Bench to which reference has already been made in the earlier paragraphs. F G

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A 59. For considering the rival submissions, it will be relevant to refer to Sections 397, 398 and 403 of the Companies Act, 1956:-

“397. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION”

- B *(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.*
- C *(2) If, on any application under sub-section (1), the Tribunal is of opinion-*
 - (a) that the company’s affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and*
 - (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up ; the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.*

398. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF MISMANAGEMENT

- F *(1) Any members of a company who complain –*
 - (a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; or*
 - (b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors 2 [***] or manager 3 [***] or in the ownership of the company’s shares, or if it has no share capital, in its*
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membership, or in any other manner whatsoever; and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399. A
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(2) *If, on any application under sub-section (1), the Tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Tribunal may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.* C

403. INTERIM ORDER BY TRIBUNAL Pending the making by it of a final order under section 397 or 398, as the case may be, the Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable." D

60. Perusal of Section 397 would reveal, that a member of a Company is entitled to apply to the CLB complaining that the affairs of the Company were being conducted in a manner prejudicial to the public interest or in a manner oppressive to any member or members including anyone or more of themselves, for an order under the said section. The only rider is that such a Member should have a right to do so by virtue of Section 399. Under sub-section (2) of Section 397, if the CLB was of the opinion, that the Company's affairs are being conducted in a manner prejudicial to the public interest or in a manner oppressive to any member or members and that to wind up the Company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground, that it was just and equitable that the Company should be wound up; it was entitled to make such order as it thinks fit, with a view to bringing to an end such matter complained of. E
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It could thus be seen, that any member of a Company is entitled to make an application to the CLB complaining that the affairs of the H

- A Company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the Company and the CLB is empowered to make such order as it thinks fit, with a view to bring to an end the matter complained of.

61. A similar provision contained in Section 398, enables the members of a Company to complain, that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to interest of the Company. It also enables a member to complain with regard to material change which has taken place in the management and control of the Company and by reason of such change, it is likely that the affairs of the Company will be conducted in a manner prejudicial to the public interest or to the interest of the Company. Again, the only rider is, that such a member must have a right to apply by virtue of Section 399. Perusal of sub-section (2) of Section 398 would further reveal, that if such an application was made under sub-section (1) of Section 398 and if the CLB was of the opinion, that the affairs of the Company are being conducted as aforesaid, the Tribunal may, with a view to bringing to an end or preventing the matter complained of or apprehended, is entitled to make such orders as it thinks fit.

62. Perusal of Section 403 would reveal, that the CLB is also entitled to make any interim order pending making by it of a final orderunder Section 397 or 398, on an application of any party to the proceedings, which order it thinks fit for regulating the conduct of the Company's affairs. Such an order has to be made on such terms and conditions as appears to CLB to be just and equitable.

63. The respondents had legitimately invoked the jurisdiction of CLB invoking the aforesaid powers under Sections 397, 398 and 403 of the Companies Act, to which they were entitled to in law and were not restrained to do so by any competent Court/forum.

64. The CLB vide order dated 10th April 2008, in Company Petition No. 47 of 2008 found, that it was necessary to appoint a Facilitator in the interest of the Company. Immediately after the said order was passed, the petitioner has filed the present contempt petition. Along with the said contempt petition, the petitioner has also filed IA No. 1 of 2008 seeking stay of the said order. A subsequent application, being IA No. 2 of 2008 was also filed by petitioner Rama seeking stay of the proceedings before CLB and the communications/directions passed by the Facilitator.

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However, perusal of the record would reveal, that no orders were passed on the said IAs. On the contrary, perusal of the record would reveal, that this Court vide order dated 21st July 2009, though had appointed Shri Homi Ranina, a Tax Expert, as an independent Director, for ensuring due compliance of the statutory provisions, it noted, that Shri Arvind Savant, Former Chief Justice of the Kerala High Court, had been appointed as a Facilitator by the CLB. The Court clarified, that the said order will not come in the way of the functioning of the Facilitator. Vide another order dated 29th July 2009, this Court while issuing various directions, before concluding the order again noted, that the CLB had appointed Shri Arvind Savant, Former Chief Justice of the Kerala High Court as a Facilitator and clarified, that the order passed by it appointing Shri Ranina as an independent Director and directing M/s BSR & Company, Chartered Accountants, to take necessary measures and to update and audit the accounts, was confined to compliance of the statutory provisions of the Companies Act as well as the Income Tax Act. The Court clearly observed, that the work assigned to Shri Ranina and M/s BSR & Company will not overlap with the work of the Facilitator. It further observed, that in fact the above directions will help the Facilitator.

65. Vide another order dated 28th April 2011, the CLB issued certain directions thereby giving additional powers to the Facilitator including signing of cheques/minutes and statutory records, in case of disagreement between the parties. This Court vide order dated 16th August 2016, observed thus:-

“Without prejudice to the rights of the respective parties, the present arrangement for running the affairs of the Company will continue until further orders.”

66. It could thus be seen, that the respondents had legitimately approached the CLB invoking its jurisdiction under Sections 397, 398 and 403 of the Companies Act. The learned CLB had also passed interim orders in exercise of its powers under Section 403 of the Companies Act. The petitioner had approached this Court immediately after the order dated 10th April 2008, was passed by the CLB by way of present contempt petition. Along with the contempt petition, IA No. 1 of 2008 was also filed for stay of the order passed by CLB. Subsequently, another IA No. 2 of 2008 was also filed seeking stay of the proceedings before CLB and the communications/directions passed by the Facilitator. However, no orders have been passed by this Court on the said IAs.

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- A 67. It is the main contention of the petitioner, that invoking the jurisdiction of the CLB and entertaining the said proceedings by the CLB, itself amounts to contempt.
- B 68. It will be relevant to refer to the observations of this Court in the case of *Pratap Singh and Another v. Gurbaksh Singh*¹⁴. This Court after referring to various judgments of the High Courts, observed thus:-
- "The principle behind all these cases is that such action of the person which he takes in pursuance of his right to take legal action in a Court of law or in just making a demand on the other to make amends for his acts will not amount to interfering with the course of justice, even though that may require some action on the part of the other party in connection with his own judicial proceeding, as a party is free to take action to enforce his legal rights."*
- C It could thus be seen, that this Court has held, that such action of a person which he takes in pursuance of his right to take legal action in a court of law, will not amount to interfering with the course of justice, even though that may require some action on the part of the other party in connection with his own judicial proceedings. The principle is, that a party is free to take action to enforce his legal right. This Court has approved the view taken by Allahabad High Court in *Hrishikesh Sanyal v. A.P. Bagchi*¹⁵ and *Radhey Lal v. Niranjan Nath*¹⁶, that a person does not commit contempt of court if during the pendency of certain proceedings, he takes recourse to other judicial proceedings open to him, even though the latter proceedings put the other party at a loss.
- D 69. In the present case, undisputedly, the respondents were entitled to invoke the jurisdiction of the CLB under Sections 397, 398 and 403 of the Companies Act. The CLB has passed the order on 10th April 2008 appointing a Facilitator and further passed order dated 28th April 2011, enhancing the powers of the Facilitator. Perusal of the orders passed by this Court dated 21st July 2009 and 29th July 2009, would reveal, that though this Court had appointed independent Director, it is clarified, that the independent Director's functioning would not come in the way of

¹⁴ 1962 SCR Supp. (2) 838

¹⁵ ILR 1940 All 710

H ¹⁶ AIR 1941 All 95

the functioning of the Facilitator. On the contrary, by order dated 29th July 2009, this Court observed, that the appointment of Shri Ranina as independent Director would facilitate the functioning of the Facilitator, appointed by the CLB. A

70. It will also be relevant to refer to a dictum of this Court in *Mehar Rusi Dalal (Mrs.) v. T.K. Banerjee and Others*¹⁷: B

"2. In our view, every party has a right to move a court of law for adjudication of his rights. Mere filing of proceedings in a court of law and applying to a court of law that the payment may not be made would not amount to breach of undertaking. We, therefore, see no reason to punish for contempt. The contempt notice will stand discharged. There will be no order as to costs." C

71. As such, merely taking recourse to the statutory remedy available to the respondents, in our view, would not amount to contempt. D With regard to the reliance placed by the learned Senior counsel for the petitioner on the judgment of this Court in *Rama Naranag (V)*¹⁸ (*supra*), we are of the view, that it would not be of assistance to the case of the petitioner, inasmuch as, at that stage, there were no orders passed by the CLB. It appears, that after the order was passed by this Court holding the respondents guilty and thereafter finding, that the present petitioner is not co-operating with the respondents in running the affairs of the Company, but on the contrary making every attempt to stall the functioning of the Company; the respondents thought it prudent to approach the CLB by invoking its powers under Sections 397, 398 and 403 of the Companies Act. The respondents had to take recourse to that remedy in compelling circumstances to safeguard the interest of the Company and its stakeholders. It was not in strict sense remedy for seeking personal relief, much less to defeat the terms of settlement recorded in a dispute between private parties who incidentally are Directors of the same Company. E F

72. Perusal of the company petition filed by the respondents before the CLB and the order dated 10th April 2008, passed by CLB would reveal, that a specific reference has been made to the order passed by this Court holding the respondents guilty for committing contempt (vide G

¹⁷ (2004) 5 SCC 119

¹⁸ (2009) 16 SCC 126

A **Rama Narang (V)**¹⁹). We are therefore of the view, that the said judgment would be of no assistance to the case of the present petitioner.

73. Apart from that, for bringing an action for civil contempt, the petitioner has to satisfy the court that there has been a wilful disobedience of any judgment, decree, direction, order, writ or other process of the

B Court. It will be relevant to refer to paragraph (9) of the judgment of this Court in *Niaz Mohammad and Others v. State of Haryana and Others*²⁰:

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as ‘the Act’) defines “civil contempt” to mean “wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...”. Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful

disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been

H ¹⁹ (2009) 16 SCC 126

²⁰ (1994) 6 SCC 332

passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemnor is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the court may not punish the alleged contemnor."

It can thus be seen, that this Court has held, that the contempt proceeding is not like an execution proceeding under the Code of Civil Procedure. It has been held, that though the parties in whose favour, an order has been passed, is entitled to the benefits of such order, but the Court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the directions of the Court, has to take into consideration all facts and circumstances of a particular case. It has been held, that is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court. It has been held, that before punishing the contemnor for non-compliance of the decision of the Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but should also be satisfied that such disobedience was wilful and intentional. Though, the civil court while executing a decree against the judgment-debtor is not concerned and bothered as to whether the disobedience to any judgment or decree was wilful and once the decree had been passed, it was the duty of the court to execute the decree, whatever may be the consequences thereof. In a contempt proceeding before a contemnor is held guilty and punished, the Court has to record a finding, that such disobedience was wilful and intentional. It has been held, that if from the circumstances of a particular case, though the Court is satisfied that there has been a disobedience but such disobedience is the result of some compelling circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish the alleged contemnor.

A 74. It will also be apposite to refer to the following observations of this Court in *Kanwar Singh Saini v. High Court of Delhi*²¹, taking a similar view:-

- B “**30.** *In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and in that situation, no punishment can be awarded to him.[See Niaz Mohammad v. State of Haryana [(1994) 6 SCC 332], Bank of Baroda v. Sadruddin Hasan Daya [(2004) 1 SCC 360: AIR 2004 SC 942] and Rama Narang v. Ramesh Narang [(2006) 11 SCC 114 : AIR 2006 SC 1883].] Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted.”*

D 75. It will also be appropriate to refer to the further observations made by this Court in para (38) of the said judgment:-

- F “**38.** *The contempt proceedings being quasi-criminal in nature, the standard of proof required is in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures. In Debabrata Bandhopadhyaya v. State of W.B. [AIR 1969 SC 189 : 1969 Cri LJ 401] , this Court observed as under: (AIR p. 193, para 9)*

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"9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. ... Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged." (emphasis added)"

This Court has observed, that the contempt proceedings are quasi-criminal in nature and the standard of proof required is in the same manner as in the other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally, to bring the matter within the ambit of the said provision. The Court has also referred to the observations made by this Court in the case of *Debabrata Bandopadhyay and Others v. State of West Bengal and Another*²², wherein it was observed, that punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority.

76. In the present case, we are of the considered view, that the petitioner has failed to make out a case of wilful, deliberate and intentional disobedience of any of the directions given by this Court or acting in breach of an undertaking given to this Court. On the contrary, we find that the respondents had taken recourse to the legal remedy available to them under the statutory provisions. No doubt, Mr. Rohatgi has argued, that the proceedings before the CLB are itself without jurisdiction.

77. In this regard, it will be appropriate to refer to following observations of this Court in the case of *Tayabhai M. Bagasarwalla (supra)*. After scanning the entire law, the Court observed thus:-

²² AIR 1969 SC 189

- A *“28. The correct principle, therefore, is the one recognised and reiterated in Section 9-A — to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the Court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction.”*
- B 78. This Court has held, that the correct principle therefore is that, where an objection is taken to the jurisdiction to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance. However, that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. It has been held, that a mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It has been held, that it can yet pass appropriate orders. Though,
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this Court has observed, that the question of jurisdiction should be decided at the earliest possible time, the interim orders so passed are orders within jurisdiction, when passed and effective till the court decides that it has no jurisdiction, to entertain the suit. It has been held, that those interim orders would undoubtedly come to an end with the decision that the Court had no jurisdiction. This Court has held, that if the Court holds that it has no jurisdiction, it is open to it to modify the orders. However, it has been held, that while in force, the interim orders passed by such Court have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff, provided violation is committed before the decision of the Court on the question of jurisdiction.

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79. Apart from that, it is to be noted that in the present case, the petitioner has raised an objection with regard to tenability of the proceedings before the CLB. It will be relevant to refer to the observations made by CLB in its order dated 10th April 2008:-

"Shri Gopal Jain once again raised the issue that without deciding on the maintainability of the petition, no interim order should be passed. In a proceeding under Sections 397/398 of the Act, it is now well settled that only if the maintainability is challenged either in terms of Section 399 or the jurisdiction of this Board, challenges on other grounds have to be considered along with the merits of the case. In the present case, it is an admitted fact that the petitioner qualifies under Section 399 of the Act and this Board has the jurisdiction to deal with the petition under Sections 397/398 of the Act. Further, in a proceeding under Sections 397/398, it is the interest of the company which is paramount. It is quite evident from the various annexure enclosed with the petition that due to differences among the directors, many operational issues, like, payment of salary/wages, payment to suppliers etc. are pending resulting in agitation by the employees and irregularities in supplies etc. Therefore, I consider it appropriate that till the petition is disposed of, as an interim measure, in the interests of the company, over 3000 employees/ workers, there should be a mechanism by which the day to day operations are carried on without any hitch." [emphasis supplied]

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- A 80. It could thus be seen, that though the counsel for the present petitioner had raised an issue that without deciding on the maintainability of the petition, the interim order could not be passed, the CLB observed, that under Sections 397 and 398 of the Companies Act, it is well settled, that only if the maintainability is challenged either in terms of Section 399 or jurisdiction of the CLB, challenges on other grounds have to be considered along with the merits of the case. It further observed, that in the present case, it was admitted fact, that the petitioner qualified under Section 399 of the said Act and that the CLB has jurisdiction to deal with the petition under Sections 397 and 398 of the Act. It further observed, that in the proceedings under Sections 397/398, it is the interest of the Company which is paramount. It observed, that it was quite evident from the various annexures enclosed with the petition, that due to differences among the Directors, many operational issues concerning the management of the Company like payment of salary/wages, payment to suppliers etc. were pending, resulting in agitation by the employees and irregularity in supplies. The CLB therefore considered it appropriate, that till the petition is disposed of, as an interim measure, in the interest of the Company as well as more than 3000 employees/workers, there should be a mechanism by which day to day operations are carried out without any hitch.
- E 81. It is not in dispute, that the aforesaid order has not been challenged by the petitioner before any forum. The observations referred hereinabove are indisputably adverse to the case of the petitioner. Any order passed by the CLB was appellable before the higher forums. Undisputedly, the petitioner has not challenged the said order. Having not challenged the same, in our view, it is not open for the petitioner to argue, that since the petitioner has taken objection as to maintainability of the proceedings before CLB, the said orders are without jurisdiction and the initiation of the proceedings and the orders passed thereon, would amount to respondent's committing contempt of this Court. In our view, the argument needs to be rejected, in view of the judgment of this Court in the case of *Tayabhai M. Bagasarwala (supra)*. This Court in unequivocal terms has held, that even if the objection is raised to the jurisdiction of a forum, it has jurisdiction to pass interim orders till it finally decides the issue of jurisdiction and such orders are binding on the parties till the issue of jurisdiction is decided. As could be seen from the order of the CLB dated 10th April 2008, though the CLB by referring
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to Sections 397, 398 and 399 of the Companies Act, *prima facie*, has observed, that only if maintainability is challenged either in terms of Section 399 of the Companies Act or on the ground of jurisdiction of the Board, the same will have to be considered first and challenges on other grounds, had to be considered along with the merits of the case. The CLB has further observed, that it was an admitted fact, that the petitioner qualifies under Section 399 of the Act and the Court has the jurisdiction to deal with the petition under Section 397 or/and 398 of the Act. Having chosen not to challenge the aforesaid observations of the CLB, in our view, the argument advanced deserves no merit and needs to be rejected. However, it should not be construed, that we have held that the proceedings under the CLB were maintainable in law. Since the proceedings are pending final adjudication, the parties would be at liberty to raise all issues available to them including the issue of jurisdiction.

82. In the result, we are of the considered view, that the present contempt petition is without any merit and deserves to be dismissed, and is accordingly dismissed.

83. That leaves us with Interlocutory Application No. 87565 of 2019 filed by the respondent No.1. The respondent No.1, by the said application is seeking direction to the petitioner to abide by the decision of the Facilitator dated 30.04.2019.

84. Having held, that the present contempt petition deserves no merit and is liable to be dismissed, we find that such an application need not be entertained. Indeed, the respondents may be well-advised to take recourse to the remedies available to them in law. We do not wish to express any opinion one way or the other in that regard. Though, Shri Kapil Sibal has strenuously argued, that this Court should invoke powers under Article 142 of the Constitution and issue directions to the contempt petitioner, we find, that this is not a case wherein directions as sought, should be issued under Article 142 of the Constitution. On Insolvency and Bankruptcy Code 2016, coming in force, the proceedings which are pending before the CLB, now stand transferred to the National Company Law Tribunal (NCLT). It would be appropriate for the parties to invoke the jurisdiction of NCLT for seeking such orders as deemed fit in the facts and circumstances in accordance with law.

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A 85. Without going into the merits and demerits of the said application, we dispose of the same relegating the parties to the statutory remedy available to them in law.

86. All pending IAs, if any, stand disposed of in aforesaid terms.

Devika Gujral

Contempt petitions dismissed.