

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AT NEW DELHI**

**Date of Pronouncement: 13<sup>th</sup> April 2017**

**Contempt Petition No. 3(ND)2017**

**IN**

**Company Petition No. 69/2003**

**In the matter of**

Contempt Petition u/s 2(b) r/w Section 12 of the Contempt of Courts Act,  
1971

**Smt. Vijay Khanna & Ors.**

**.....Petitioners**

**Versus**

**M/s V.K.Kapoor Associates Pvt. Ltd.**

**.....Respondent no.1**

**Mr. Vinod Kumar Kapoor**

**.....Respondent no.2**

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**For Petitioner (s) Mr. V Hari Pillai, Advocate**

**For Respondent(s) Mr. R.S. Bhatia, Practicing Company Secretary**

**ORDER**

**INA MALHOTRA, (JUDICIAL)**

This Contempt Petition arises from non compliance of the various directions given in Company Petition No. 69/2003. The petitioner has alleged of wilful disobedience of the undertaking given to the Court by the Respondents on 14.08.2014 and directions given by the predecessor Bench on 04.01.2007 and 13.06.2013 to comply with its orders. Respondent no. 2, who is the Managing Director of the Respondent no.1 Company and wholly

in-charge of the affairs of the Company has flagrantly disregarded the orders of the Court and is liable for contempt.

2. As per averments made, the main Company Petition was disposed of by the erstwhile Company Law Board on 04.01.2007. The Respondent/Contemnor impugned the said order in an appeal before the Hon'ble High Court of Delhi which was also dismissed vide order dated 02.08.2011. Despite the same, the respondents resisted compliance, compelling the petitioners to file two executions applications being CA No. 143/2012 & CA No. 443/2012, praying for implementation of the Court's order. Both these applications were disposed of vide a common order dated 10.06.2013, directing the respondents.

- a. To pay interest @ 12% to the petitioners on the loans paid to the respondent company;
- b. Maintain the shareholding of the respondent company at 2000 shares in the records of the RoC from 1987-88 till date;
- c. File Revised Balance Sheets, Annual Returns, P&L Accounts with the revised shareholding before the RoC in terms of the Balance Sheet dated 31.03.1998 filed by the Company before the IT Department.

3. The grievance in the present Contempt Petition arises on the Contemnors wilfully failing to file their revised Balance Sheets, Annual

Returns, P&L Accounts showing the correct shareholding as reflected in the Balance Sheet dated 31.03.1988 filed with the IT Department.

4. It is averred that despite categorical directions of the predecessor Court, the respondents have deliberately chosen to ignore the order passed in the Execution Petitions and intentionally failed to comply with the same. The petitioners were compelled to file yet another Execution Petition being CA No. 148/C-II/2014. It was only upon the intervention of the Court in the third Execution Petition that the respondents paid the interest amount as directed to the petitioners but continued to evade the filing of the Revised Annual Returns and other financial statements with the RoC. It is further stated that on 14.08.2014, the Contemnor appeared in person and gave an undertaking to the Court that the revised Balance Sheets, P&L Accounts, Annual Returns etc as filed with the Income Tax Department would be filed with the RoC within 60 days of the order. The predecessor Court categorically observed that failure to comply in this respect would attract heavy costs on Respondents 1 & 2.

5. The petitioner submits that despite a lapse of more than two years of giving the express undertaking, the Contemnor Respondent no.2, has flagrantly violated and breached his undertaking given to the Court.

6. On issuance of notice, the Contemnor appeared and expressed his inability on grounds that the said record was not within his possession. Such a plea had been rejected, not only by the predecessor Court, but also

by the Hon'ble High Court in the Appellate Proceedings. It is stated that the Respondents have been raising this fallacious plea. His conduct is not only evasive and dilatory, but also contemptuous as it reflects a wilful disobedience of this Court by flouting the orders for several years and the Undertaking given by himself.

7. A perusal of the order sheets of the file reflect that the predecessor Court's have repeatedly rejected the Contemnors defence for non-compliance on grounds of the records not being in his custody and/or the same not being accepted on the portals of the RoC.

8. Given the aforesaid facts, non-compliance of the Court's directions in CA 148/2014 attracts heavy costs. The undertaking given by Contemnor no.2 before the Bench and then resiling from it, tantamounts to contempt of the Court. The Hon'ble Supreme Court of India has held that every person is expected to obey the order of the Court in its true spirit and substance. The intentional and flagrant violation of the Court's orders undermines the authority of the Court, its dignity and administration of justice. A wilful breach of undertaking given to a Court amounts to contempt of the Court, for which the Contemnor deserves to be punished appropriately.

9. I therefore deem it just, fit and expedient in the facts of this case to direct the following:

- a. Impose a costs of Rs.5 lacs on the Contemnor no.2, the Managing Director of the Respondent Company, who was solely liable to take



the required steps in furtherance of the order dated 10.06.2013 and further Undertaking given by him on 14.08.2014. Failure to pay this amount from his personal account shall necessitate attachment and sale of the Company's property to be duly appropriated from his share holding and/or attachment and sale of his personal assets. Costs is to be paid to the equitably to the petitioners.

b. Direct simple imprisonment of Shri. Vinod Kumar Kapoor, Contemnor no.2 for a period of one month for the wilful breach of the undertaking dated 14.08.2014 given to the Court.

10. The warrants of arrest be issued by the Registrar NCLT to be executed by the Ld. CMM, Central District through the District Judge-1, Tis Hazari, Delhi.

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**(Ina Malhotra)**  
**Member Judicial**