

(2007) 08 AP CK 0053

In the Andhra Pradesh High Court

Case No : Contempt Case No. 915 of 2002

Edpuganti Bapanaiah

APPELLANT

Vs

Sri K.S. Raju and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5
Civil Procedure Code, 1908 (CPC) — Section 10, 100A, 151
Companies Act, 1956 — Section 10E, 10E(1), 10E(4), 10E(4C), 10E(4D)
Company Law Board Regulations, 1991 — Regulation 26, 28, 4, 43, 44
Constitution of India, 1950 — Article 141
Contempt of Courts Act, 1971 — Section 10, 11, 12, 12(1), 12(2)
Criminal Procedure Code, 1973 (CrPC) — Section 195, 196
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 193, 228
Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 — Regulation 2
Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Section 3(2), 9A, 9A(1), 9A(2)

Citation : (2007) 5 ALD 380 : (2007) 5 ALT 236 : (2007) 139 CompCas 545 : (2007) 79 SCL 468

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : G. Krishna Murthy, for the Appellant; S. Ravi, for Respondent No. 1, M. Anil Kumar and D.V. Sitarama Murthy, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This Contempt petition is filed by the petitioner u/s 10 - 12 of the Contempt of Courts Act, 1971, alleging that the respondents committed civil and criminal contempt by interfering in the course of administration of justice, by violating and disobeying the orders of the Company Law Board, Southern Region Bench at Chennai in C.P.35 of 2000, dated 29.02.2000 and order in C.A. 344/634-A/SRB/2001, dated 21.08.2001 and also for breach of affidavits filed before the Company Law Board and this Court in Company Appeal

No. 7 of 2001, and to pass such other order or orders as this Court deem it fit and proper.

2. It is stated that 3rd respondent is a company, while the 1st respondent is the promoter director of the 3rd respondent company and the 2nd respondent is the President of the 3rd respondent company. It is stated that the 1st respondent and other directors, on behalf of the 3rd respondent company, issued a public advertisement, inviting deposits, proposing to return the deposits with attractive interests., and accordingly, received deposits from the public. In that process, the petitioner deposited Rs. 40 lakh as it was informed that the same would multiply to double the amount within 45 months, and as such, the said amount was deposited in 8 fixed deposits of Rs. 5 lakh each for a period of 45 months. The said deposit was made on 28.07.1997 and is due for repayment on maturity on 28.04.2001. But, however, even before the said date of maturity, the 3rd respondent failed to pay to various other similar depositors, and therefore, filed an application under Sub-section 9 of Section 58A of the Companies Act, 1956 before the Company Law Board, Southern Region Bench at Chennai for framing a scheme for repayment of the deposits in instalments within a period of 48 months and the said petition was numbered as C.P.35 of 2000. The Company Law Board passed an order on 29.02.2000, exercising its suo motu powers, granting time as claimed by the Company and its directors by approving the scheme.

3. During course of pendency of the petition before the Company Law Board, as per the directions, the directors, especially the promoter director, the 1st respondent herein, along with group companies, filed affidavits, giving undertaking to the Company Law Board that they will abide by the scheme and pay off the depositors as per the scheme, by implementing the order passed by the Company Law Board. On that assurance an order was passed on 29.02.2000.

4. But, however, contrary to the said understanding and assurances given by the promoter director and its group companies, appeal was filed by the Company as well as by the contempt petitioner as Appeal Nos. 9 and 7 of 2001, against the order dated 29.02.2000 in C.P.35/2000.

5. It is stated that even during pendency of the above appeals, an affidavit was filed before this Court, by one Sri G. Ramdas, Senior Manager, on behalf of the respondent company, giving an undertaking that the respondent will pay one half of the 1st year's entitlement of the petitioner within a period of 30 days from the date of the order of the Court and the remaining half of the 1st year's entitlement on or before 20.04.2002. But, however, no amount was paid. Therefore, the petitioner has come up with the present contempt petition, seeking to punish the respondents for deliberate violation of the orders of the Company Law Board, as well as undertaking given by them.

6. It is further stated in the affidavit that while obtaining the scheme from the Company Law Board, series of affidavits were filed before the Company Law

Board, assuring that the 1st respondent promoter director, along with group companies will comply and implement the order of the Company Law Board once the scheme is formulated. It is stated by the petitioner that by dubious methods adopted by the respondents in making false representations, obtained orders, which they did not intend to implement, would amounts to obstructing the administration of justice and the same would amounts to civil as well as criminal contempt, in terms of the provisions of the Contempt of Courts Act. It is stated that as per the scheme, the company has to repay the deposit amount in a phased manner within a period of 6 to 42 months. While obtaining such an order, the 1st respondent who is the promoter director filed an affidavit, stating that he was the promoter director of the 3rd respondent company, and as such, gave assurance that the 3rd respondent company shall make repayment of deposits as per the approved scheme by the Company Law Board. It is further reiterated that all steps shall be taken to cause the respondent to comply with aforesaid repayment schedule. The statements made are true to his knowledge and he solemnly affirms that this declaration is true and that no part of it is false.

7. In fact, before the Company Law Board, another director by name Sri L.V.V. Iyyar appeared and represented on behalf of the company, while seeking exercise of suo motu powers of the Company Law Board that the company will be in a position to repay the deposits maturing up to December, 2001 over a period of 6 to 42 months. He also represented before the Company Law Board that the promoter director the 1st respondent herein and group companies would ensure duly payment of deposits by the company in accordance with the scheme, which is to be complied with by the company. In view of the assurances given by the promoter director as well as other directors and the group companies, the Company Law Board exercised its suo motu powers, and approved the scheme. But, however, the respondent did not comply the undertaking as well as the approved scheme. In fact, they were directed to file update reports as to the implementation of the scheme, which the respondents did not even comply. The non-payment and non-compliance of the orders is a deliberate act on the part of the respondents.

8. In fact, after obtaining the scheme, the 1st respondent claimed that there was a change in the management of the 3rd respondent company and even sought for relieving the 1st respondent promoter director as well as the group companies from the undertaking which the Company Law Board, declined to, and further ordered that the undertaking given by them shall continue till the repayment, irrespective of the understanding that was arrived at between the alleged two sets of the management of the 3rd respondent company. It is stated by the petitioner that the Company Law Board is a Court, as held by the Supreme Court in *Canara Bank v. Nuclear Power Corporation India and Ors.* 1995 3 SCC 81 and further the Company Law Board is subordinate to the High Court, since against the order of the Company Law Board an appeal lies to this Court u/s 10F of the Companies Act. Thus, it is subordinate to this Court, therefore, this Court has got the power u/s 10 and 12 of the Contempt of Courts Act to initiate

and punish the contemnor for breach of the orders of the Company Law Board as well as the undertaking.

9. It is stated that the actions of the respondents are deliberate and intentional and the same would amount to interference with the administration of justice. Therefore, this Court has to exercise its powers to punish the contemnors for their actions, which amounts to Contempt of Court as held by the Supreme Court in *State of U.P. and Others Vs. Ashok Kumar Saxena and Another Etc.*, . It is stated that the Company Law Board do not have the power to punish the respondents for Contempt of Court, therefore, this Court alone has got such power.

10. It is stated that the order was passed on 29.02.2000 against which an appeal was filed which was dismissed on 03.01.2002. Even after dismissal of the said appeal, the respondents did not comply with the order of the Company Law Board. It is stated that the respondents, especially the 1st respondent who is the promoter director, who was responsible for issuance of an advertisement, while calling for deposits from the public, thereafter, unable to repay the deposits and further approached the Company Law Board, seeking approval of a scheme for repayment and further, after giving assurance by the said promoter director, including his group companies, obtained an order where the promoter director as well as group companies filed affidavits before the Company Law Board stating that the scheme, if approved, would be implemented. Further, during pendency of the appeals filed against the said order, an affidavit was filed on behalf of the company, giving assurance that the amount would be paid within specified dates, which was due and payable by that date, but failed to pay the same, and in fact, the 1st respondent is attempting to evade his liability, on the ground that he has resigned from the directorship. Therefore, the said action is clearly in violation of the orders as well as undertaking given before the Company Law Board as well as before this Court, and therefore, the respondents are liable to be punished for contempt of a Court.

11. Originally, Respondents 2 and 3 filed separate counters, which were adopted by the 1st respondent. In both the counters, filed by Respondents 2 and 3, they denied the allegations in general and also contended that the petitioner filed the contempt petition to execute the order of the Company Law Board. Both the respondents 2 and 3 denied having violated the orders of the Company Law Board. It was also stated that even assuming that there is non-compliance of the order of the Company Law Board and the orders of this Court in Appeal Nos. 7 and 9 of 2001, the same would not constitute contempt of Court, and therefore, the contempt petition itself is not maintainable.

12. A counter is filed on behalf of the 1st respondent in the month of February, 2003, disputing and denying the averments made in the petition. It is stated that this respondent has great respect for the Courts and especially for this Court. It is stated that he has no intention to commit any contempt of whatever nature criminal or civil. The petitioner has embarked upon a campaign to malign and

needlessly mulct this respondent in an unwarranted case. He further stated that he was not the Managing Director of the 3rd respondent company for more than a decade now. He was only one of the several directors of the 3rd respondent company, which is evident from the affidavit filed by Mr.Sridhar Chari, Managing Director of the 3rd respondent company, which is produced by the petitioner himself along with the material papers. As such, the decisions of the 3rd respondent company are not taken at his behest. He stated that he has done nothing to prevent the repayment of deposits of the petitioner. He is not responsible either directly or indirectly for the delay in repayment of the deposits of the petitioner.

13. It is stated that he tendered his resignation from the Board of Directors of the 3rd respondent company in September, 2000. He is not in a position to exercise any control over the said company, and he cannot be responsible for repayment of the deposits by the said company, and therefore, he submitted that the contempt application filed against him is misconceived and is not maintainable.

14. It is further submitted that the order of the Company Law Board passed in the first instance at the behest of the 3rd respondent was on the basis of the merits of the application filed. A complete reading of the order dated 29.02.2000 would show that in coming to the conclusion while sanctioning the scheme, the Company Law Board did not rely upon any assurance or any undertaking given by any of the parties. On the other hand, in the operative portion of the order, the Company Law Board was pleased to direct the Managing Director of the 3rd respondent company to file an affidavit of undertaking. No such direction was given to any other director of the company including himself. Even the affidavit filed by this respondent only assures that he will ensure that the 3rd respondent will honour the scheme. In as much as this respondent has no control today over the 3rd respondent company, he cannot be held responsible.

15. It is stated that not even a tangible reference to the affidavit dated 14.02.2000 was made in the order of the Company Law Board, therefore the affidavit dated 14.02.2000 filed by him was neither an affidavit on the basis of which the Company Law Board passed its order nor was the said affidavit filed in compliance with the direction issued by the Company Law Board. In the circumstances, there can be no contempt arising out of the alleged violation of the order of the Company Law Board. It is further stated that in view of the guidelines and orders of the Reserve Bank of India, it was no longer possible to carry on the business of the 3rd respondent company as a non-banking finance company. Whatever business was needed to be done was only for the purpose of recovering the receivables and repaying the creditors of the 3rd respondent company. It was in these circumstances that an agreement was entered into with Mahalakshmi Factoring Services Limited (MFSL). There is no sale of the assets of the Company as alleged by the petitioner. On the other hand, the management and control of the 3rd respondent company was handed over to MFSL who

nominated the 2nd respondent as the President and Chief Executive Officer to look after the affairs of the 3rd respondent. The 2nd respondent and his team are actual and complete control of the affairs of the 3rd respondent company and they alone are responsible for complying with the orders of the Company Law Board.

16. It is further stated that even though the Company Law Board directed that his affidavit should remain on record, there will be no personal liability on him to pay the amount. As long as the petitioner does not allege and prove before this Court that he was responsible for non-payment, he cannot be held liable for contempt. It is further stated that although the shareholders of the 3rd respondent company have resolved to change the name of the company, the same was not given effect. It is denied that the company has been sold to third party. The company as a corporate entity remains as such. This respondent denies that he had committed civil and criminal contempt as alleged. It was stated that the allegations made in the written arguments are unfair allegations, without proving any of the facts alleged against him. This respondent, therefore, sought for dismissal of the contempt case.

17. However, subsequently, both the respondents 2 and 3 filed elaborate additional counters on 29.04.2003 and 20.03.2003. In the additional counter filed by the 2nd respondent, it was stated that without prejudice to the contentions regarding the maintainability of the contempt case, it was stated that, if there is any violation of any undertaking before the Company Law Board and before this Court, the violation is only by the 1st respondent and his promote companies and not by the deponent. It was stated that the 2nd respondent was appointed as President of the 3rd respondent company on 01.09.2000 by the then Managing Director Mr.Sridhar Chary, who was continuing as a Managing Director over a decade and was the nominee of the 1st respondent Sri K.S.Raju. The appointment of the 2nd respondent as President was ratified by the Board of Directors at their meeting on 16.09.2000.

18. It was stated that the paid up share capital of the 3rd respondent company at the relevant point of time was approximately Rs. 26.32 crores and out of the same, the 1st respondent and his group companies were holding Rs. 16.16 crores which is approximately 61%. It was also stated that the Board of Directors authorized the 2nd respondent as well as the Managing Director Mr.Sridhar Chary to take necessary steps on behalf of the 3rd respondent company and to engage counsel/consultant and to execute/file on behalf of the company, the vakalatnamas, written statements, affidavits and such other documents as may be required to be filed or submitted before the authorities. The 2nd respondent stated that he was not a Director or part of the Board of Directors of the company, when the company filed undertaking to get an order from the Company Law Board, and he was only an employee of the 3rd respondent company.

19. It is further stated that as per Article 104 and 140 of the Articles of

Association of 3rd respondent company, the 1st respondent Sri K.S.Raju is having power to appoint the Managing Director/whole time Director and three other directors as his nominees in the board of the 3rd respondent company. Accordingly, the 1st respondent got appointed the 2nd respondent as his nominee director on 04.05.2001 and became whole time director from that date which was ratified by the shareholders of the company. He further stated that he has resigned as whole time director and director of the 3rd respondent company due to his ill health on 15.08.2002, and thereafter, he is no way concern with the 3rd respondent company. The 2nd respondent denied that he was nominee of MFSL. He also stated that there was no change in the management of the 3rd respondent company during his tenure. However, it is stated that some of the promoters have sold their shares to some other companies. Despite these transfers of shares, the entire management remained under control of the 1st respondent Sri K.S.Raju and his nominees.

20. It is further stated that Mr.G.Venkatapathi, the executive director was also appointed as nominee of Mr.K.S.Raju and his promoter associates. It is also evident from the letter of the 1st respondent dated 26.09.2002, as a reply to the Reserve Bank of India, that the 1st respondent has stated that there is no change in the management or change in the control of the company. It was specifically stated in para-11 that the 1st respondent in his counter affidavit dated 23.04.2004 stated that the management and control of the 3rd respondent was handed over to MFSL who nominated the 2nd respondent as President and Chief Executive Officer is false and incorrect. The 2nd respondent stated that he has no connection whatsoever with MFSL and he was never their employee and was ever associated with them. This allegation was being made by the 1st respondent only with a view to wriggle out of the undertaking given by the 1st respondent and his other group companies before the Company Law Board, which is evident from his own reply letter to the Reserve Bank of India dated 26.09.2002.

21. Almost to the same effect, is the additional counter filed by the 3rd respondent, by the Executive Director Mr.G.Venkatapathi. This respondent has stated in categorical terms as to the order passed by the Company Law Board, where it was specifically stated that the scheme order was passed in the light of the undertakings as well as the affidavits filed by the promoter director and his group companies. This Executive Director has even stated various lapses that have been committed which were found by the auditors who conducted a special audit on receivables and to advice the management on the status of the receivables. The auditors were appointed for special audit in April, 2002, where the report clearly shows that several irregularities have been committed by the management which had resulted in failure of recoveries, and in certain cases loans were advanced even to the companies, which were before the BIFR, and in several cases loans were advanced are multiple loans, even though the earlier loans were overdue and also advanced loans to the companies, whose addresses were not traceable. In many cases, the recovery proceedings could not be

initiated due to the deficiency in the documentation, and even execution proceedings could not be initiated for want of address as well as the documentation. Warrants could not be executed in Section 138 of Negotiable Instruments Act proceedings for want of correct addresses of the borrowers. This Executive Director therefore, has brought on record the several of the lapses that have been committed by the erstwhile directors, which had resulted in non-recovery of the loans that were advanced by the company.

22. It was also specifically referred to the powers of the 1st respondent according to the Articles of Association where he was given the power to nominate the directors, and accordingly, he has appointed the deponent as Executive Director. This deponent has also stated about the letter addressed by the 1st respondent, the promoter director dated 26.09.2002, confirming that there is no change in the management or no change in the control of the company. Finally this deponent has stated that as per the Memorandum of Understanding referred to by the 1st respondent that after 14.05.2001, no nominees of MFSL, continued in the board, and further the Company Law Board confirmed that the 1st respondent and his associated group companies are responsible for the due compliance of the Company Law Board order. It was also stated that there was an attempt to change the name of the company, but the same was dropped.

23. The 1st respondent filed another counter in the month of May, 2003, especially intending to deny the allegations of the 3rd respondent with reference to the findings of the special audit report, stating that the representatives of MFSL appears to have engineered and secured such a report from the auditors, and reaffirmed that the Managing Director who was incharge of the day to day affairs of the company is responsible and the remaining directors did not have any say or control in the day to day affairs of the company.

24. After the contempt case was heard at length, with a delay, on behalf of the respondent, written arguments were filed and thereafter, reply arguments were filed on behalf of the petitioner. Even though the petitioner has filed its written arguments as reply to the written arguments of the respondent, I propose to consider the arguments of the petitioner first.

25. It is contended by the petitioner that the 1st respondent Sri K.S. Raju and 11 group holding companies filed affidavits before the Company Law Board, in pursuance of the representation made before the Company Law Board by one of the Director and authorized representative Sri L.V.V. Iyyer, and accordingly, the said undertaking affidavits were filed. It is further stated that the 1st respondent along with the other group companies hold about 61% of equity capital in the 3rd respondent company and the 1st respondent is the promoter director, who filed affidavits, giving assurance of repayment of the deposits by the 3rd respondent as per the approved deferment scheme. It is stated that on the strength of the affidavits filed on 14.02.2000 before the Company Law Board in conformity with the representation made by one of the Directors Sri L.V.V. Iyyer

on 11.02.2000, the scheme order was passed by the Company Law Board dated 29.02.2000. The appeals filed by both parties against the said order dated 29.02.2000 in C.As.7 and 9 were dismissed by this Court on 03.01.2002, confirming the scheme order.

26. It is contended that subsequent to the said order, one Sri Sridhar Chari, Managing Director of the Company, filed an application, assuring repayment of the deposits by the Company as per the scheme approved by the Company Law Board, sought permission of withdrawal of the affidavits filed by the 1st respondent and other group companies by substituting the affidavits on behalf of MFSL. But the Company Law Board rejected the said relief, observing that "the agreement made between the company and MFSL shall not be of any consequences in relation to the repayment schedule approved by the Company Law Board, the Company, its promoter director and group holding companies shall continue to be responsible for due compliance of the order stated supra." Therefore, it is contended that even from the said order it is also evident that the promoter director as well as the group companies have given an undertaking for implementation and repayment of the deposits as per the repayment schedule, but failed to comply the same, and is being claimed by the 1st respondent that he has resigned from the company, and therefore, he is not in a position to comply the order. It is contended by the learned Counsel that the said resignation and substitution of somebody in his place as Director and Managing Director would not absolve the liability, which he had incurred and also suffered in the order before the Company Law Board. Therefore, the learned Counsel for the petitioner contended that the stand taken by the 1st respondent in the present proceedings would in fact, amounts to a deliberate and intentional act to evade the liability as well as avoiding the undertaking which he had given before the Company Law Board, while getting an order from the said Company Law Board, accepting the scheme of reschedule in the repayment of deposits.

27. The learned Counsel contended that the contempt which is alleged against the respondents is a continuing contempt since the failure to repay the deposits as ordered is being continued, therefore, it is a continuing cause of action and question of limitation does not arise. The learned Counsel relied upon the decision of the Apex Court in Pallav Sheth Vs. Custodian and Others, . It is stated that the contention that there is no statutory obligation to the 1st respondent to repay the amount is misleading and incorrect. It is stated that every officer including the directors of the company shall be jointly and severally responsible for due compliance of the scheme order, more so, when they have filed affidavits before the Company Law Board for obtaining such an order. It is stated that the Company Law Board can exercise its discretion for framing a scheme order by rescheduling the repayment of deposits. But, such discretion was exercised by the Company Law Board in the light of the affidavits filed by the 1st respondent as well as its group companies, assuring the repayment, therefore, it is not open to the 1st respondent to contend that he is not obligated to comply the order to repay the deposits.

28. In addition to the affidavits filed before the Company Law Board, further an affidavit was filed by one Sri G.Ramdas, Senior Manager (legal) of the respondent company even before this Court, while the appeals were pending, stating that the respondent will pay one half of the 1st year's entitlement of the appellant within a period of 30 days from the date of the order and the remaining half of the 1st year's entitlement on or before 20.04.2002.

29. The learned Counsel also contended that the Company Law Board is a Court, as held by the Supreme Court in the case of *Canara Bank v. Nuclear Power Corporation India and Ors.* 1995 (3) Suppl. SCC 81. In the light of the judgments of the Supreme Court, the judgment of this Court in *Rdf Projects Limited and Others Vs. Mr. M. Murali Krishna, Shareholder and Others*, and *Prakash Timbers Pvt. Ltd. and other Vs. Smt. Sushma Shingla and another*, are *Perincurium* as the same are in complete disregard of the decisions of the Supreme Court and binding nature of the said judgments in terms of Article 141 of the constitution of India.

30. It is further stated that the agreement that was alleged to have been entered into between the management of the 3rd respondent company, including the 1st respondent and Mahalaxmi Factoring Services Limited (MFSL) is of no consequence, as is observed by the Company Law Board, and therefore, the claim of the 1st respondent that he is not in the management, cannot be a ground to claim any excuse for non-compliance of the order. It is contended by the learned Counsel that as observed by the Company Law Board, even assuming that the erstwhile of the management of the 3rd respondent company, including the 1st respondent have entered into an understanding or agreement with third parties, the same would not absolve the erstwhile management, including the 1st respondent, from complying the orders of the Company Law Board as well as this Court, since the orders were passed against the erstwhile management, more so, in the light of the affidavits filed by the 1st respondent as well as group companies.

31. It is stated that though the 1st respondent claimed that he has resigned from the 3rd respondent company, he is no longer liable to comply the scheme order, but, however, he did not file any application before the Company Law Board, setting out all necessary facts to get an order of discharge from the liability from the Company Law Board which passed the order. In the absence of any such order, it is not open to the 1st respondent to claim that he is no way concern with the 3rd respondent company, having filed an affidavit, giving an undertaking on behalf of the 3rd respondent company for prompt repayment as per the scheme. Further, in the light of the subsequent order, where it was even pleaded by the then Managing Director for withdrawing the affidavits filed by the 1st respondent as well as the group companies, which was negated by the Company Law Board, it would not be permissible for the 1st respondent to claim that he is no more in the management of the 3rd respondent company and is unable to comply the order for that reason. Therefore, the learned Counsel for

the petitioner sought for appropriate orders, imposing appropriate punishment.

32. At the time of hearing, the learned Counsel contended that though Form-1 was issued after admission of the contempt case, the 1st respondent has deliberately and intentionally failed even to appear before this Court and did not even bother to file an application, seeking dispense with his presence, and an application is filed only in the year 2005, perhaps when the fact of his non-appearance was stated in the written arguments filed by this petitioner. Therefore, the learned Counsel sought for appropriate orders, taking note of the fact of deliberate failure of the 1st respondent even to appear before this Court when Form-1 was issued, directing him to appear before this Court and to pass appropriate orders.

33. Coming to the arguments filed on behalf of the 1st respondent, the counsel for the 1st respondent, while reiterating the averments made in the counter, stated that the 1st respondent was one of the directors of the 3rd respondent company, and at the relevant point of time, one Mr.Sridhar Chary was the Managing Director. It is stated that the 1st respondent tendered his resignation for the Board of Directors of the 3rd respondent company in September, 2000, pursuant to the transfer of management of the 3rd respondent company, therefore, the respondent was not in a position to exercise any control over the repayment of deposits. It is further stated that the 2nd respondent and one Sri G.Ramdas, representing the 3rd respondent, had filed affidavits before this Court. In the affidavit of Sri G.Ramdas, the property belongs to MFSL, situated at Maxworth Nagar, Bannerghatta, Bangalore, was offered as security for the dues of Mr.E.Bapanaiah, the petitioner herein. These affidavits establish that MFSL has taken over the management of the 3rd respondent from Nagarjuna Group, pursuant to the Memorandum of Understanding. Mr.C.Muthuswamy, a director of MFSL had also filed an affidavit before this Court. Properties worth Rs. 18 crores had been offered by MFSL as securities before the Company Law Board. Mr.P.Palanivel, a director of M/s.Maxworth Home Limited (an associate of MFSL) had filed an affidavit confirming that the said company would execute the sale deed in favour of a nominee of MFSL. These affidavits confirm the take over of management.

34. It is stated that these affidavits filed on behalf of MFSL form part of company appeals 7 and 9 of 2001. It is further stated that in the month of July, 2003, the present management of the 3rd respondent developed idea of denying the Memorandum of Understanding executed in the year 2000, and started sending notices addressed to the 1st respondent. Though the 3rd respondent has means to pay, but the present management appears to be not interested in paying the dues to the depositors. The 3rd respondent company in 2000 possessed the following assets:

- a) Office premises at Free Press House, Journal Building, Nairman Point, Mumbai;
- b) Flat at Worli, Mumbai;

- c) Office premises at Lee Road Properties, Camac Street, Calcutta;
- d) Office Premises at Shareef Complex, Richmond Road, Bangalore;
- e) Office premises at Vijayawada;

35. It is stated that with reference to the allegations made in the present contempt case that the 1st respondent is not eonominee party to the order passed by the Company Law Board in the month of February, 2000. The affidavit of the respondent dated 14.02.2000 which is referred to by the petitioner was not before the Company Law Board, when it passed the order dated 29.02.2000, and no reference to it has been made in the order dated 29.02.2000 by the Company Law Board. As a matter of fact, the very cause title in the affidavit dated 14.02.2000 makes it clear that it was in totally different proceedings initiated by the Company Law Board that the said affidavit has been filed. That apart, that particular scheme of the Company Law Board was completely satisfied and fulfilled, and therefore, that affidavit has no bearing or relevance. Even in the order of the Company Law Board there is no reference to the affidavit of this respondent, nor was there any direction to this respondent to file an affidavit undertaking to comply with the orders of the Company Law Board. The direction of the Company Law Board that all the directors are responsible can only be co-extensive during the period when they are directors and cannot extend for periods beyond.

36. It is submitted that this respondent had not contracted any personal liability. There is no statutory obligation on this respondent to pay the depositors. There is no proof or allegation of mismanagement by this respondent, as would make him personally liable. At any rate that cannot be the subject matter of the contempt petition in this Court.

37. It is contended by the learned Counsel that the case of the petitioner that the Company Law Board is a subordinate Court to this Court is incorrect, and even assuming for a minute but not admitting that there is any such violation as alleged, the jurisdiction of this Court cannot be invoked under contempt jurisdiction. It is submitted that a learned single Judge of this Court in Rdf Projects Limited and Others Vs. Mr. M. Murali Krishna, Shareholder and Others, has considered the judgment of the Allahabad High Court in Prakash Timbers Pvt. Ltd. and other Vs. Smt. Sushma Shingla and another, which in turn had considered the judgment of the Supreme Court in Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others, and has come to the conclusion that the Company Law Board is not a Court. In the circumstances, the respondent cannot be held liable for contempt jurisdiction of this Court for the alleged violation of the orders of the Company Law Board. It is further submitted that from the following judgments of the Apex Court viz. in (1) Babu Ram Gupta Vs. Sudhir Bhasin and Another, , (2) R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, , (3) Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others, , (4) Niaz Mohammad and others, etc. etc. Vs. State of Haryana and

others, and in (5) Bhatnagars and Co. Ltd. Vs. The Union of India (UOI), it is evident that mere non-payment of decretal amount does not amounts to contempt. The option available to the decree holders is to execute the decree. Therefore, the contempt jurisdiction cannot be used for the purposes of executing a decree.

38. It is further contended that the contempt petition is barred by limitation, as this Court did not issue notices to the party within one year from the alleged date of committing contempt.

39. Further, it is stated that as the alleged violation of the affidavit filed in Company Appeal is concerned, it is stated that this respondent has not filed any affidavit whatsoever before the learned Judge, who heard the company appeal.

This respondent had not made any promises nor had he assured this Court or undertaken to settle the dues of the petitioner so as to be liable for contempt proceedings, therefore, sought for dismissal of the contempt case.

40. From the above rival contentions, the issues to be considered are;

(1) whether the order passed by the Company Law Board in the company petition filed on behalf of the 3rd respondent is binding on the 1st respondent; and whether non-compliance of the same would amounts to violation of the order of the Company Law Board as well as the undertaking given by the 1st respondent to the Company Law Board; (2) whether the Company Law Board could be treated as a Court, and subordinate to the High Court, for the purpose of invoking the provisions of the Contempt of Courts Act, 1971; (3) whether the contempt proceedings initiated by the petitioner are not barred by limitation; and (4) whether the contemnors are liable for punishment as provided under the provisions of the Contempt of Courts Act;

Issue No. 1:

41. The admitted facts are that the 1st respondent was a promoter director of the 3rd respondent company, while he was so, on behalf of the 3rd respondent, a publication was issued, inviting deposits from the public and accordingly, public deposits were received and accepted by the 3rd respondent company. In that process, the petitioner made a deposit of Rs. 40 lakhs under 8 fixed deposits of Rs. 5 lakh each. Some of the deposits were matured for repayment by virtue of lapse of time stipulated, but, however, the 3rd respondent company was unable to repay the depositors as stipulated, representing that it is in financial crunch and crisis.

42. On behalf of the 3rd respondent company, a company petition was filed under Sub-section 9 of Section 58 of the Companies Act, seeking approval of a scheme of repayment by re-scheduling the deposits payable to various depositors. When the said company petition was pending, one of its director Sri L.V.V. Iyer, on behalf of the company represented on 11.02.2000 that the promoter director 1st respondent as well as group holding companies would

ensure repayment of the deposits by the company in accordance with the scheme. Accordingly, affidavits are filed by them on 14.02.2000. Pursuant to the above, the Company Law Board, exercising its discretion u/s 58A(9) approved the scheme with various stipulations. As per the said scheme of rescheduling, where the deposits exceeds above Rs. 50,000/- the amounts payable with interest from the date of deposit till the payment shall be paid within 36 months from the date of maturity or date of the order of the Company Law Board, whichever is later, at 30% of the principal amount with interest thereon during the first year, 35% of the principal amount with interest thereon during second year and balance of 35% with interest thereon during the third year. It was also stipulated that the payment shall be spread over all the months in each year. There were also other stipulations, which may not be relevant for the purpose of the present proceedings.

43. The company was also directed to file affidavit of compliance together with return, furnishing the information specified in the schedule with reference to the status of the scheme before the Company Law Board for every two months, starting from the repayment of deposits with interest thereon till the scheme of repayment of deposits, as approved, is fully implemented. Further, in para-15 of the order, it was specifically stated "the Company and every officer including the Directors of the Company shall be jointly and severally responsible for due compliance of the order". It was also stated in the order that "any failure to comply with this order on the part of the Company, its officers and Directors shall attract the penal provisions contained in Sub-section (10) of Section 58A of the Act."

44. Later, it appears that there was a memorandum of understanding between the 3rd respondent company and a third party by name Mahalakshmi Factoring Services Limited (MFSL). Basing on the said alleged memorandum of understanding that was said to have been entered into between the 3rd respondent and the third party, an attempt was made to withdraw the affidavits filed on behalf of the 1st respondent who was the promoter director as well as other group companies and permission was, in fact, sought for from the Company Law Board by substituting the affidavits of the persons, stated to be the persons in the management, on behalf of the other company i.e. MFSL. But, the Company Law Board rejected the said relief by order dated 14.11.2000.

45. Subsequently, as the company did not pay the amounts due to the petitioner in terms of the scheme approved by the Company Law Board, C.A.344/2001 was filed in C.P.35/2000 before the Company Law Board u/s 634A of the Companies Act, seeking to enforce the order dated 29.02.2000. Before the Company Law Board, an argument was advanced in the said application that the amounts are not due, as stipulated under the scheme, the first instalment of 30% is payable at the end of the first year, and therefore, represented that the order was not enforceable. Rejecting the claim of the 3rd respondent company, the Company Law Board passed the order, after referring to its own order, passed on

29.02.2000, approving the scheme and directed that the first instalment was payable before 27.04.2002, and second instalment on or before 27.04.2003 and third instalment on or before 27.04.2004 and all payments have to be paid spread over all the months in each year. In the said order, it was also made clear that the company and every officer, including the directors of the company are jointly and severally responsible for due compliance of the order dated 29.02.2000, and accordingly, directed the respondent company to pay 30% within 30 days from the date of the order i.e. 21.08.2001.

46. Against the original order, passed by the Company Law Board in C.P.35/2000 dated 29.02.2000, both the company as well as the petitioner filed appeals and both the appeals were heard and disposed of by a common order dated 03.01.2002, dismissing the appeals. However, during the pendency of the said appeals, an affidavit was filed on behalf of the 3rd respondent company by the Senior Manager (legal) by name Mr.G.Ramdas, representing before this Court that "the respondent will pay one half of the 1st year's entitlement of the appellant within a period of 30 days from the date of the order of this Court. The respondent will pay the remaining half of the 1st year's entitlement of the appellant on or before 20th April 2002." With reference to the second and third instalments, it was also stated that the said amount would be paid in two instalments for every six months i.e. in the month of October and April. The said affidavit was filed on 20.11.2001. In spite of such undertaking, no amount was paid to the petitioner.

47. The matter again came up before the Company Law Board as to the implementation of the scheme. On 14.11.2000 it was represented before the Company Law Board that the company paid an amount of Rs. 264.96 lakhs to 2474 depositors, including the payments made between 19.9.2000 and 13.11.2000, amounting to Rs. 59.86 lakhs. At the same time, separate affidavit of undertaking was filed by one Sri C. Muthuswamy, Director of MFSL, and Sri N. Selvaraj, President of the 3rd respondent company and sought for permission to treat the affidavit filed earlier by the 1st respondent Sri K.S. Raju, the promoter may be treated as withdrawn. The Company Law Board, after hearing and considering the claims and the permissions sought for by the company, and on behalf of the 1st respondent, passed an order on 14.11.2000. The relevant portion is as under:

the affidavit of Shri K.S. Raju, promoter of the Company shall remain in force, especially when the scheme was sanctioned by the Company Law Board on the strength of among other things, the undertaking given by Shri K.S. Raju.

48. The affidavits filed by the 1st respondent shows that the 1st respondent shall take all steps to comply the order by the 3rd respondent. Accordingly, the Company Law Board passed the scheme order taking into account such affidavits that are filed on behalf of the promoter director as well as his group companies. But, contrary to the undertaking, the 1st respondent claims that he ceases to be a director of the 3rd respondent company, therefore, he is not liable to comply

the order. He further claims that he had no control over the 3rd respondent company, hence, there is no liability on his part. This argument of the 1st respondent is clearly devoid of merit, hence, rejected. With his undertaking, he obtained an order from the Company Law Board, approving the scheme, a benefit to himself, as well as to his company. Later, he will not be permitted to say that he ceased to be a director, and therefore, there is no liability.

49. But, as already noticed by this Court that the claim of the respondent that the affidavit was filed in the context of some other proceedings is clearly not based on any material, and in fact, it is incorrect to advance such factual incorrect statement. Affidavits were filed not only by the 1st respondent, but also on behalf of other group companies. As per the representation made by the then Director of the 3rd respondent company that the promoter director as well as group companies have filed affidavits undertaking to comply the order of the Company Law Board, if the scheme is approved. The said representation was made on 11.02.2000, and accordingly, affidavits were filed on 14.02.2000 and the Company Law Board passed orders on 29.02.2000.

50. Further, it is very clear from the order of the Company Law Board dated 14.11.2000 where the Company Law Board has categorically observed that the affidavit of Sri K.S. Raju, promoter of the company shall remain in force, especially when the scheme was sanctioned by the Company Law Board on the strength of among other things the undertaking given by Sri K.S. Raju. Therefore, it is clearly devoid of merit to claim that the affidavit of the 1st respondent was not on record when the order was passed by the Company Law Board, and in fact, when a representation was made to withdraw the said affidavit by substituting with affidavits of the alleged new management, the Company Law Board declined to accept such proposal which is evident from the order dated 14.11.2000. Therefore, there is absolutely no merit in the claim of the 1st respondent that he ceases to be a director of the 3rd respondent company, and therefore, there is no obligation on his part either to comply the order or get the order complied with through the 3rd respondent, since he has no way concerned with the 3rd respondent company as he has resigned as a director.

51. When once the 1st respondent suffers an order and in fact, availed the benefit from the Company Law Board, by representing as well as filing affidavits undertaking that they will see that the order of the Company Law Board is implemented, if the scheme is approved, and accordingly, obtained an order of approval of the scheme, re-scheduling the repayment of deposits, the same is binding on all the parties to it. Therefore, he cannot deny his obligation to comply the order as well as to discharge the undertaking given to the Company Law Board by filing the affidavits. The said action of the 1st respondent is clearly not only in violation of the orders of the Company Law Board as well as the undertaking, but also a deliberate attempt to circumvent the proceedings of the Company Law Board. After suffering an order, if the 1st respondent is permitted to transfer his obligations to some third party and then claims that he has no

control over the 3rd respondent, and therefore, he cannot be held responsible for non-compliance. Then there would not be any sanctity to the judicial proceedings and the orders passed by the judicial authorities, especially when an undertaking has been filed before the authority for obtaining an order, and further made an attempt to get out of the proceedings, by seeking permission to withdraw the affidavits which were rejected.

52. Under the above circumstances, the liability of the 1st respondent by virtue of the orders passed by the Company Law Board as well as the undertaking given by the 1st respondent would continue and failure to comply the order would amounts to deliberate attempt to circumvent the orders of the Company Law Board by his own action, which was not approved by the competent authority which passed the order against him.

53. In view of the above admitted facts, since no amount was paid to the petitioner, the petitioner has come up with the present contempt petition.

54. It is the contention of the petitioner that the 1st respondent and other directors represented before the Company Law Board that they will ensure that the scheme, if approved, would be implemented. Giving such undertakings, the 1st respondent and other directors have obtained an order from the Company Law Board, approving the scheme of rescheduling the repayment of the deposits, which were received by the 3rd respondent company and which were already due. The scheme covers not only the deposits already matured, but also the deposits to be matured in the future. The 1st respondent as well as the other respondents, having represented before the Company Law Board, assuring the repayments and having obtained an order of rescheduling, failed to comply the order. Apart from the original order passed on 29.02.2000, a subsequent order was also passed by the Company Law Board, directing the company to pay the amounts payable to the petitioner within the specified time of 30 days from the date of its order passed on 21.08.2001. That order was also not complied with.

55. Further, even during pendency of appeals in Company Appeals 7 and 9 of 2001, an affidavit was also filed on behalf of the company, undertaking to pay the amounts, which are due in the first year i.e. to the extent of 30% to be paid within 30 days from the date of the order of the High Court in the appeals and the balance on or before 20.04.2002. This Court passed orders in the above appeals on 03.01.2002 and the amounts, as per the undertaking, are payable on or before 02.02.2002 to the extent of 50% and the balance 50% payable on or before 20.04.2002. The respondents failed to pay any part of it.

56. The failure of the respondents in complying the order of the Company Law Board as well as the undertakings would amounts to violation of the undertaking and the orders of the Company Law Board. Whether the same would amounts intentional and deliberate violation or not?

57. Before deciding the said issue, it would be appropriate to refer to the decisions, relied upon by the parties; Coming to the decisions relied upon by the

petitioner in Bank of Baroda Vs. Sadruddin Hasan Daya and Another, the Apex Court considered the issue of what amount to civil contempt in terms of Section 2(b) of the Contempt of Courts Act, 1971. In that case, in a suit filed by the petitioner bank against the respondents for recovery of money due, during the pendency of appeal before the Supreme Court, parties arrived at a settlement, in terms of which, consent decree was passed by the Court. As per the terms of the decree, certain specified properties shall remain under attachment in execution and shall not be sold, mortgaged, alienated, encumbered or charged to anyone until decree was satisfied. No payments were made by the respondents in satisfaction of the decree. However, subsequently, in another summary suit instituted in High Court by another Bank, the respondent entered into another settlement, whereunder they again placed the same properties under attachment and also undertook not to alienate, encumber or create a third party right over the said properties till satisfaction of the decree in the said suit. The respondents further agreed that the Court Receiver of the High Court shall stand appointed as Receiver in execution in respect of the said properties with power to sell and pay over the sale proceeds to the plaintiff towards satisfaction of the decree, which was passed by the High Court with the consent of the parties. When the petitioner bank moved Debts Recovery Tribunal for execution of the earlier decree, respondents took a legal plea that decree passed by the Supreme Court was without jurisdiction and a nullity. It was held that the respondents have committed contempt of Court, since an undertaking and consent was given through a power of attorney do not personally liable but the same will not make any difference as regards liability for contempt. It was further observed that the petitioner could execute the decree passed by the Supreme Court has no bearing on the contempt proceedings. It was further observed that the decree holder could execute the decree is no defence as the matter is one between the Court and the alleged contemnor.

58. In Bank of India Vs. Vijay Transport and Others, the Apex Court, while considering the provisions of the Contempt of Courts Act, held that unauthorisedly dealing with property custodia legis, and violating orders of the Court are acts of contempt. In that case, the trial Court while decreeing the suit of the plaintiff in part, allowed the defendants' counter claim in full. On appeal, the High Court granted stay of execution of the decree, relating to the counter claim, subject to the plaintiff depositing certain amount with the trial Court. High Court granted liberty to the defendants to withdraw the same after furnishing bank guarantee. The plaintiff deposited and defendant withdrew the said amount accordingly.

59. In the appeal, High Court decreed the suit in full and dismissed the counter claim. Consequently, plaintiff applied to the trial Court for restitution of the said amount, which it had deposited and withdrawn by the defendants. Pursuant to the trial Court's order, the guarantor bank deposited the amount. At this stage, the defendants getting the restitution application transferred to another trial Court and in a planned way, procuring from that Court a cheque for the said

amount and getting the same encashed. In such circumstances, the defendants dealt fully with property custodia legis. Order of the trial Court permitting the withdrawal, held, could not save the plaintiffs as their filing of the application before the trial Court for withdrawal was itself an abuse of process of the Court. Moreover, withdrawal of the money by the defendants in the absence of any subsisting bank guarantee, held, violated the orders of the High Court. Hence, defendants were guilty under both the counts. In such circumstances, sentence of fine alone was, held, not enough. Hence, sentence of two months' simple imprisonment and a fine of Rs. 2,000/- each imposed, with a further direction for one month simple imprisonment in case of default of payment of fine.

60. In *Daroga Singh and Others Vs. B.K. Pandey*, the Apex Court while considering the case under the provisions of the Contempt of Courts Act, relating to the assault on Judge in a Courtroom in a pre-planned and calculated manner, and thereafter after chase, in chambers by police officials not in uniform, held, the incident amounts to deliberate interference with discharge of duty of a judicial officer by intimidation, apart from scandalizing and lowering dignity of the Court and interference with the administration of justice. The said incident was deprecated in the strongest terms possible. Further, highlighted the urgency of curbing possibility of such incidents stressed, to prevent collapse of judicial system of country, prison sentence imposed by the High Court on the appellants affirmed.

61. In *Challappli Ravi and Others Vs. B. Krupanandam, IAS, Industries and Commerce (Sugar) Department, Govt. of A.P. and Others*, a Division Bench of this Court while considering a case under the provisions of the Contempt of Courts Act, observed that deliberate defiance of Court order would amounts to willfully and deliberately flouting the orders of the Court. Respondents 1 to 4 who are the officials have failed to implement the order of this Court and failed to deliver possession of the property in question to the 5th respondent. While considering the said case, it was observed where the Constitutional Court's order is disobeyed by the authorities to whom it is addressed, the latter authority commits contempt of Court for its acting disobedience to the authority of the Constitutional Court. Such acts of disobedience are calculated to undermine public respect for the Constitutional Courts and jeopardize the preservation of social order, and accordingly, punishment was imposed, however, taking a lenient view, only fine was imposed.

62. In *Official Liquidator v. Thirunavukkarasu Chettiar* (1964) II Comp. L.J. 118 the Madras High Court was considering the case under the provisions of the Contempt of Courts Act, 1952, in that case in the proceedings u/s 397 and 398 of Companies Act, 1956, a scheme was made on the basis of representations and undertakings by person offering to act in a particular way and giving undertaking, therefore, an order was passed, approving the proposed scheme and that person who represented was appointed as Managing Administrator and giving directions as to course of action. The said Managing Administrator

committed default in complying with the directions and disobedience of the order of this Court and non-compliance with undertakings, it was held that the same would amount to contempt within the provisions of the Contempt of Courts Act and imposition of punishment is proper, and accordingly, the contemnor was sentenced to simple imprisonment for a period of six months, in addition to the imposition of fine of Rs. 2,000/-.

63. In *Babu Ram Gupta Vs. Sudhir Bhasin and Another*, the Apex Court while considering the issue of civil contempt whether willful breach of an undertaking given to a Court would amount to contempt of Court, it was observed that in the absence of a written undertaking given by the contemnor to the Court or incorporation of the same by the Court in its order, mere non-compliance of a consent order or compromise decree, would not amount to a civil contempt. The Apex Court further observed that "the reason why a breach of clear undertaking given to the Court amounts to contempt of Court is that the contemnor by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the Court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution."

64. In the case of consent order or a compromise decree, the fraud, if any, is practiced on the person concerned not on the Court but on one of the parties. In such a case, the remedy of the aggrieved party would be not to pray for drawing up proceedings for contempt of Court against the defaulting party but to approach the executing Court for necessary relief.

65. In *R.N. Dey and Others Vs. Bhagyabati Pramanik and Others*, the Apex Court while considering the issue of Contempt of Court, held that the same cannot be used as a weapon for the purpose of executing the decree or implementing an order for which, law provides appropriate procedure. The purpose of discretion granted to Courts to punish for contempt of Court is to maintain dignity of Court and majesty of law. In that case, an interim order was passed by the High Court in an appeal filed by the respondents, imposing certain conditions. The appellant got information indicating that fraud has been played by the respondents in the appeal in obtaining an award in their favour. Therefore, the appellants filed petition for vacating the order regarding payment. The respondent filed contempt application against the appellants for not making payments ordered by the Court. Appellant tendered unqualified apology, which was accepted by the Court. However, High Court did not discharge rule issued in the contempt application. But, directed the appellants to deposit the amount with the Registrar. The Apex Court held that contempt proceedings were not required to be initiated at all. Further, after the unconditional apology was accepted, the proceedings ought to have been dropped, and further held that the High Court erred in not discharging the rule issued in the contempt proceedings.

66. In *Union of India (UOI) and Others Vs. Oswal Woollen Mills Ltd. and Others*, the Apex Court while considering whether non-compliance of an interim order

would amount to contempt in terms of Section 2(b) of the Contempt of Court Act, 1971, it was held that since no time limit was fixed for compliance of the order by the Court passing the interim order nor Court's direction fixing time for compliance sought for, in the absence of either of it, it was held that contempt proceedings are not sustainable.

67. In *Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others*, the Apex Court while considering the issue of civil contempt in terms of Section 2(b) of the Contempt of Courts Act, 1971, held:

Section 2(b) of the Contempt of Courts Act, 1971 defines "civil contempt" to mean "willful 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 contemnor, 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 contemnor 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 willful disobedience of any judgment, decree, direction, order, writ or other process of a Court. Therefore, a contemnor 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 willful and intentional....

...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 willful 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.

68. In *Bhatnagars and Co. Ltd. Vs. The Union of India (UOI)*, the Apex Court while considering the issue what constitutes contempt, held that the assumption that the Supreme Court's order required that his revisional petition should be disposed of by the Central Government within a month, was entirely unwarranted. In that case the Apex Court while disposing of a writ petition on

the representation of the Solicitor General of India, passed an order, directing the revisional authority to dispose of the revision petition and allowed a months time to the petitioner from the date of order to enable it to file a petition before the Apex Court. The Apex Court did not direct the Central Government to dispose of the petition pending before the Central Government within a period of one month. But, however, the Apex Court was moved for alleged contempt on the ground that the revision petition was not disposed of by the Central Government within a period of one month. The Apex Court rejected the claim of the petitioner in that case, as no such stipulation was fixed by the Apex Court.

69. If we examine the facts of the present case in the light of the above judgments, it is clear that during pendency of the application of the respondents, seeking approval of a scheme order, a representation was made on behalf of the directors of the company that the promoter director as well as group companies would file undertakings for compliance of the order. In conformity of the said representation made, on 14.02.2000 affidavits are filed not only by the 1st respondent, but also the group companies. Though the order passed on 29.02.2000 does not refer to the affidavits filed or any undertaking was incorporated, but, however it is clear from the order dated 21.08.2000 that the Company Law Board which passed the order on 29.02.2000, approving the scheme, has categorically observed that the scheme order was passed in the light of, apart from other things the undertaking given by the promoter director Sri K.S. Raju. The said affidavits filed giving undertaking were treated as part of the record.

70. Further, on the representations made by the directors on behalf of the 3rd respondent company, a benefit of scheme order, rescheduling the payment of deposits was obtained by the company and its directors. Further, the said order was even confirmed by this Court in the appeals filed by both the company and the depositor. Even during pendency of the appeals before this Court, on behalf of the company, an affidavit was filed giving an undertaking that the amounts payable to the petitioner would be paid to the extent of 50% of the first year's outstanding within 30 days from the date of the order and balance on or before 20.04.2002. Even that order was not complied with. Therefore, it is clear that the 1st respondent as well as the company have committed violation of the orders as well as the undertakings that are given by way of filing affidavits, which clearly amounts to violation of the orders.

71. In fact, the 1st respondent made a deliberate attempt to disown the liability, representing that he has resigned from the 3rd respondent company and the management was even taken over by third parties. This fact was noted by the Company Law Board in the subsequent proceedings and observed that the memorandum of understanding entered into by the company and its management is of no consequence and the liability of the 1st respondent, the promoter director, would continue. Further, it has come to light as per the material filed by the 3rd respondent that even the said memorandum of

understanding allegedly entered into by the management of the 3rd respondent with the third party called MFSL was even cancelled as per the resolution dated 30.01.2002 of the Board's meeting. The present stand of the 1st respondent is contrary to his reply dated 26.09.2002 to Reserve Bank of India, where he has stated that the terms of memorandum of understanding do not (i) constitute change in management or control of the company; (ii) confer any right to appoint directors on the Board so as to control the company; and (iii) constitute transfer of ownership of the company by sale of shares or control within the meaning provided to the said term in regulation 2(i)(c) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997. Therefore, it is clear that the 1st respondent not only violated the orders of the Court as well as the orders of the Company Law Board as well as the undertakings, but also made a deliberate attempt to deny the liability, taking contrary stands, thereby violating the orders.

Issue No. 2:

72. Coming to the issue whether the Company Law Board is a Civil Court or not. The Company Law Board was constituted u/s 10E of the Companies Act, which forms part of Part 1-A of the Companies Act, which deals with Board of Company Law Administration.

73. As per Section 10E(1), as soon as commencement of the Companies (Amendment) Act, 1988, the Central Government shall constitute a Board to be called the Board of Company Law Administration, which shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or any other law. The provision also provides for appointment of members as well as Chairman whose tenure shall be for the period not exceeding three years. The qualifications of the persons to be appointed as Chairman and members are also prescribed. The Board may form one or more Benches from among its members, and authorize each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act of the Board.

74. As per Sub-section (4-C) of Section 10E of the Companies Act, every Bench shall have powers which are vested in a Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:

(a) discovery and inspection of documents or other material objects producible as evidence;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

- (c) compelling the production of documents or other material objects producible as evidence and impounding the same;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence on affidavits;

75. As per Sub-section (4-D) of Section 10E of the Companies Act, every Bench shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and for the purpose of Section 196 of that Code.

76. In addition to the above, it was provided under Sub-section (5) that the Company Law Board shall in the exercise of its powers and the discharge of its functions be guided by the principles of natural justice and shall act in its discretion. As per Sub-section (6) the Company Law Board shall have the power to regulate its own procedure.

77. u/s 10F of the Companies Act, any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court on any question of law.

78. In accordance with the provisions of Section 10E(6) of the Companies Act, Company Law Board Regulations, 1991 were framed to regulate the procedure of the Company Law Board.

79. Regulation-7 deals with the jurisdiction of the Bench that all proceedings, other than the proceedings before the Principal Bench under Regulation-4, shall be instituted before the Bench within whose jurisdiction the registered office of the company is situated. Regulation-7(2) specifies the regions, where the Benches shall ordinarily have their sittings; the Southern Region is one such region and places of sittings are also specified under Regulation-7(3) such as Calcutta, Bombay, Madras and New Delhi.

80. Regulation-26 deals with the procedure to be followed where any party does not appear. Where, on the date fixed for hearing of the petition or any application or on any other date to which such hearing may be adjourned, a party does not appear the regulation provides that the Bench may, in its discretion, either dismiss the petition or the application for default or hear and decide the same ex parte. It was also further provided that where a petition or application has been dismissed for default and the petitioner or the applicant files an application within 30 days from the date of dismissal and satisfies the Bench that there was sufficient cause for his non-appearance when the petition or application was called for hearing, the Bench may pass an order setting aside the order dismissing the petition or the application and restore the same. It was further

provided that, however, where the case was disposed of on merit, the decision shall not be recalled.

81. Regulation-28 provides that in the case of death of any party during the pendency of the proceedings before the Bench, the legal representatives of the deceased party may apply within 30 days of the date of such death for being brought on record as necessary parties, and where no application was received within the period specified, the proceedings against the deceased party shall abate. However, further discretion was provided to the Bench on good and sufficient reasons to set aside the abatement order and substitute the legal representatives.

82. Under Regulation-43, the Board was provided with the powers to enlarge the time where any period is fixed by or under these regulations or granted by a Bench, for doing of any act, or filing of any documents or representation, the Bench may, in its discretion, from time to time, enlarge such period, even though the period fixed by or under these regulations or granted by the Bench may have expired.

83. Regulation-44 provides inherent powers to the Bench. As per the said regulation, nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

84. As per Regulation-45, the Company Law Board has got the power to amend its order for any clerical or arithmetical mistakes or for any error arising from any accidental slip or omission may, at any time, be corrected by the Bench either on its own motion or on the application of any party.

85. Regulation-46 provides further general power to amend the order. As per the said regulation, a Bench may, at any time, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

86. Further Regulation-47 provides that the Bench to be deemed to be a Court for certain purposes. As per the said regulation, a Bench shall be deemed to be a Court or lawful authority for the purpose of prosecution or punishment of a person who willfully disobeys any direction or order of such Bench.

87. From the above provisions, it is clear that the Company Law Board has got almost all powers while dealing with the petitions or applications before it similar to that of a Civil Court, having the powers while dealing with a civil suit instituted before it.

88. The learned Counsel for the petitioner contended that the Company Law Board was held to be a Civil Court in various judgments by the Apex Court, apart from other Courts. The learned Counsel also contended that under Sub-section 4(c) of Section 10-E, the Company Law Board is vested with the powers that are

vested in the Civil Court under the provisions of the CPC for various purposes, specified therein. Further, under Sub-section 4(d) of the said section, the Company Law Board shall be deemed to be a Civil Court for the purpose of Chapter-XXVI of the Criminal Procedure Code as well as in respect of certain of the provisions of the Indian Penal Code. The regulations that are framed as per the powers that are conferred on the Company Law Board clearly show that the Company Law Board is having all the powers, which are similar to that of the Civil Court.

89. In addition, it is contended by the learned Counsel that Regulation-47 provides that a Bench shall be deemed to be a Court for the purpose of prosecution or punishment of a person who willfully disobeys any direction or order of the Company Law Board. Therefore, it is contended by the learned Counsel that not only as interpreted by various Courts, but also as per the regulations, the Company Law Board is deemed to be a Court even for the purpose of punishment, as contemplated under Regulation-47. Therefore, there is no dispute that the Company Law Board is a Court, at least for the purpose of the Contempt of Courts Act, which provides for punishment for violation of the orders of the Court.

90. The learned Counsel also contended that the order of the Company Law Board is appealable under the provisions of the Companies Act to this Court, and this Court has got supervisory powers over the Company Law Board as an appellate authority, therefore, the Company Law Board is deemed to be subordinate to this Court, in the light of the various judgments.

91. The learned Counsel for the respondents, on the other hand, sought to contend that the Company Law Board is not a Court, as is claimed by the petitioner, and it is only a Tribunal. Further, the Company Law Board cannot be termed as subordinate to this Court, even though an appeal is provided under the statute against the orders of the Company Law Board to this Court. The learned Counsel also relied upon the judgments of this Court, where it was held that the Company Law Board is not a Court, as is referred to under the provisions of the Contempt of Courts Act. Therefore, the learned Counsel sought for rejection of the said plea of the petitioner.

92. Before proceeding further, it would be proper to consider the decisions relied upon by both sides; Coming to the decisions relied upon by the petitioner, In *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, the Apex Court had an occasion to consider whether the Assistant Registrar discharging the functions of Registrar u/s 48 read with Section 6(2) of Bihar and Orissa Co-operative Societies Act is a Court and subordinate to the High Court for the purpose of Section 3 of the Contempt of Courts Act, 1952. The facts in that case are that the Sitamarhi Central Co-operative Bank Limited was a society registered under the Bihar and Orissa Cooperative Societies Act. The appellant before the Apex Court was the elected Chairman of the Society and was in control of its entire affairs. The bank was engaged in carrying on a

business inter alia in salt, sugar and kerosene oil. It was alleged that the appellant entrusted to one Suraj Banshi Choudhary the work of supplying coal for which purpose he was given an advance of Rs. 7,004-5-0 and out of this amount a sum of Rs. 5,014-5-9 could not be realized from the said Choudhary. Therefore, surcharge proceedings u/s 40 of the Act were taken before the Registrar of Cooperative Societies on December 22, 1953 when a sum of Rs. 14,288-13-9 was held to be realizable from the appellant and another person.

93. In the appeal before the State Government, the amount was reduced to Rs. 5,014-5-9. The bank was not made a party to the appeal before the State Government and it raised a dispute u/s 48 of the Act that the appellant was liable for the whole of the original amount, for which surcharge proceedings were initiated on the ground that the State Government's order being ex parte was not binding on it. The dispute went to the Assistant Registrar of Cooperative Societies exercising powers of the Registrar u/s 48 of the Act. On May 15, 1964, the Assistant Registrar decided the matter upholding the contention of the bank and making the appellant liable for the entire amount.

In the meantime, however, the appellant had challenged his liability for the amount of Rs. 5,014-5-9 as determined in appeal by the State Government by a Writ Petition to the High Court of Patna which was dismissed. He then filed a title suit before the Subordinate Judge of Muzaffarpur who decreed it in his favour and at the time when the contempt matter was heard by the Patna High Court, an appeal preferred by the bank from the said decree was pending before the District Judge, Muzaffarpur.

94. The appellant preferred an appeal to the Joint Registrar of Cooperative Societies against the order of the Assistant Registrar who was made respondent No. 2 in the appeal. One of the grounds of appeal was that the order of the 2nd respondent is mala fide inasmuch as after receiving the order of transfer he singled out this case out of so many for disposal before making over charge and used double standard in judging the charges against the defendants 1 and 2. It was also prayed that it should be declared that the order of the Assistant Registrar is without jurisdiction, illegal and mala fide and heavy costs should be awarded making respondent No. 2 responsible mainly for such costs. The bank filed an application in the Patna High Court for starting proceedings in contempt against the appellant.

95. The appellant filed a petition showing cause and in grounds 29 and 30 of his petition, he asserted that he was within his legitimate right to call the decision of the Assistant Registrar mala fide for the reasons given and that he had the right to criticize the discriminatory order of the Assistant Registrar as the said officer had laid down two standards in judging the alleged liability of himself and Sri Jagannath Jha by exonerating Jagannath Jha from the liability for the entire amount, while holding the appellant liable for the entire amount.

In the supplementary affidavit, the appellant further stated that the order of the

Assistant Registrar was mala fide since by the time the order was passed he was due for transfer and he had picked out two or three cases out of about fifty pending before him.

96. The High Court of Patna turned down all the contentions of the appellant in an elaborate judgment and held that the appellant was guilty of a calculated contempt and he was sentenced to undergo simple imprisonment until the rising of the Court and to pay a fine of Rs. 200/- in default whereof he was to undergo a further simple imprisonment for two weeks.

97. Against the said order, in appeal before the Apex Court, the questions raised before the Apex Court were; (1) Whether the Assistant Registrar of Cooperative Societies was a Court within the meaning of the Contempt of Courts Act, 1952; (2) Even if it was a Court, whether it was a Court subordinate to the Patna High Court; and (3) Whether the words used by the appellant in one of his grounds of appeal, which formed the basis of complaint, did amount to contempt of any Court.

98. The Apex Court, after referring to various provisions of the Cooperative Societies Act, observed that "It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted u/s 57 of the Act in case of disputes which fell u/s 48. A Registrar exercising powers u/s 48 must therefore be held to discharge the duties, which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the CPC including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in Section 151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred u/s 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do.

99. The Apex Court further after referring to the term "Court" and thereafter, referring to various decisions, approved the observations made in *Cooper v. Wilson* (1937) 2 KB 309:

It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

Finally, the Apex Court concluded that "In conclusion, therefore, we must hold that the Assistant Registrar was functioning as a Court in deciding the dispute between the bank and the appellant and Jagannath Jha."

100. Further, after exhaustively considering various aspects with reference to the issue whether the Assistant Registrar discharging functions u/s 48 could be treated as subordinate to the High Court, made the following observations:

Generally speaking "any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice party litigants or their witnesses during their litigation" amounts to contempt of Court see Oswald on Contempts p.6. In order that Courts should be able to dispense justice without fear or favour, affection or ill-will, it is essential that litigants who resort to Courts should so conduct themselves as not to bring the authority and the administration of law into disrespect or disregard. Neither should they exceed the limits of fair criticism or use language casting aspersions on the probity of the Courts or questioning the bona fides of their judgments. This applies equally to all Judges and all litigants irrespective of the status of the Judge i.e., whether he occupies one of the highest judicial offices in the land or is the presiding officer of a Court of very limited jurisdiction. It is in the interests of justice and administration of law that litigants should show the same respect to a Court, no matter whether it is highest in the land or whether it is one of inferior jurisdiction only.

The Contempt of Courts Act, 1952 does not define "contempt" or "Courts" and in the interest of justice any conduct of the kind mentioned above towards any person who can be called a "Court" should be amenable to the jurisdiction under the Contempt of Courts Act, 1952. It must be born in mind that we do not propose to lay down that all Registrars of all Cooperative Societies in the different States are "Courts" for the purpose of the Contempt of Courts Act, 1952. Our decision is expressly limited to the Registrar and the Assistant Registrar like the one before us governed by the Bihar and Orissa Cooperative Societies Act.

101. In *Canara Bank v. Nuclear Power Corporation India and Ors.* 1995 (3) Su SCC 81 the Apex Court was considering the issue whether the Company Law Board is a Court within the meaning of Section 9A of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. In that the Canara Bank had made an application before the Company Law Board u/s 111 of the Companies Act seeking relief against the Nuclear Power Corporation of India Limited, which had refused to register in its books in the name of Canara Bank in respect of the bonds of the Nuclear Power Corporation purchased by the Canara Bank. The Standard Chartered Bank had also claimed ownership of the said bonds. The Canara Bank alleged that it had acquired the said bonds from the Andhra Bank Financial Services Limited through one Hiten P.Dalal, who had acted as a broker. Hiten P.Dalal is a person notified under the provisions of Section 3(2) of the Special Court Act and was, as the application of the Canara bank before the Company Law Board showed, involved as a broker in the transactions relating to the said bonds. The said application of the Canara Bank was pending disposal before the Company Law Board as on 25.01.1994, when the Special

Court Act was amended by the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, by which, Section 9A was introduced into the Act.

102. The Canara Bank and the Nuclear Power Corporation took the stand that the application of the Canara Bank stood transferred to the Special Court by virtue of the provisions of Section 9-A(2) of the Special Court Act. The Standard Chartered Bank contended that the Company Law Board retained the jurisdiction to deal with the application. The Company Law Board held that it was not a Court within the meaning of the Companies Act nor was it a Civil Court. Its jurisdiction was, therefore, unaffected by the provisions of Section 9-A(2) of the Special Court Act.

103. While considering the said dispute, the Apex Court observed the word "Court" must be read in the context in which it is used in a statute. It is permissible, given the context, to read it as comprehending the Courts of civil judicature and Courts or some tribunals exercising curial or judicial powers. In the context in which the word "Court" is used in Sec-9A of the Special Court Act, it is intended to encompass all curial or judicial bodies which have the jurisdiction to decide matters or claims, inter alia, arising out of transactions in securities entered into between the stated dates in which a person notified is involved.

104. The Apex Court further observed that having regard to the enormity of the "scam" and its vast ramifications, Parliament thought it was necessary that all the matters or claims arising out of transactions in securities entered into between the stated dates in which a person notified was involved should be brought before and tried by the same forum. The said forum had been invested with the jurisdiction to try persons accused of offences relating to transactions in securities entered into between the stated dates. It was also required to give directions to the Custodian in regard to property belonging to persons notified which stood attached under the provisions of the Special Court Act. Having regard to the statement of objects and reasons of the Bill to replace the Amendment Ordinance, it is proper to attribute to the word "Court" in Section 9-A(1) of the Special Court Act not in the narrower meaning of a Court of Civil judicature which is part of the ordinary hierarchy of Courts but the broader meaning of a curial body - a body acting judicially to deal with matters and claims arising out of transactions in securities entered into between the stated dates in which a person notified is involved. An interpretation that suppresses the mischief and advances the remedy must, plainly, be given.

105. The Apex Court further observed that u/s 111 of the Companies Act, as amended with effect from 31.05.1991, the Company Law Board performs the functions that were theretofore performed by Courts of civil judicature u/s 155. It is empowered to make orders, directing rectification of the Company's register, as to damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to have his name entered upon the company's register, and any question, which it is necessary or expedient to decide, it may make interim orders. Failure to comply

with any order visits the company with a fine. In regard to all these matters it has exclusive jurisdiction. Its orders are appealable. The Company Law Board, further, is a permanent body constituted under a statute.

106. The Company Law Board performs functions which are administrative, as under Sections 224 and 269, and curial, as u/s 111. In exercising its function u/s 111 the Company Law Board must, and does, act judicially. It cannot be said to be anything other than a Court, particularly for the purposes of Section 9-A of the Special Court Act. Therefore, the Apex Court decided that the Company Law Board is a Court for all purposes, especially for the purpose of Section 9A.

107. In *Kamal Kumar Dutta and Another Vs. Ruby General Hospital Ltd. and Others*, the Apex Court, while considering whether a further appeal or Letters Patent Appeal would lie against the order passed by the High Court in appeal u/s 10F, held that the appeal was not maintainable as no such further appeal was provided against the order of the High Court, especially by virtue of Section 100A CPC which was inserted by the Amendment Act 22 of 2002. While deciding the said issue, made an observation that the Company Law Board exercises quasi-judicial power as original authority and it may not be a Court, but it has all the trappings of a Court.

108. Coming to the decisions relied upon by the respondents, in *Rdf Projects Limited and Others Vs. Mr. M. Murali Krishna, Shareholder and Others*, a learned Judge of this Court (Company Judge) while disposing of an appeal filed u/s 10-F of the Companies Act, 1956 against the orders of the Company Law Board, had an occasion to consider whether the Company Law Board could be considered as a Court. The said appeal arose under the following circumstances:

109. The 2nd appellant and the respondents were the Managing Director and Directors who got the company incorporated for the purpose of establishing power projects. However, differences have cropped up, as a result of which, parallel resolutions were passed, removing the opposite parties, and finally the 2nd appellant and the company filed civil suit O.S.61/2002 on the file of the City Civil Court, Hyderabad, seeking injunction restraining the respondents from interfering with the management of the company. Though the trial Court rejected the interim relief of injunction, but, however, it was granted by the appellate Court, which was confirmed in revisions by this Court.

110. While so, the respondents filed C.P.25/2003 before the Company Law Board u/s 111A, 397, 398, 402 and 408 of the Companies Act, alleging acts of oppression and mismanagement in the affairs of the company by the appellants herein and sought rectification of the register of members of the company. While so, in the said company petition, the appellants filed an application C.A.37/2004 u/s 10 of C.P.C. seeking stay of the proceedings before the Company Law Board, on the ground that the questions in issues before the Civil Court in the suit filed by the appellant and the issues in the company petition filed by the respondents before the Company Law Board are substantially one and the same, since the

civil suit was filed before the company petition was filed, therefore, sought for stay of the company petition till the disposal of the suit. The Company Law Board rejected the said application on the ground that the issues in both before the Civil Court as well as before the Company Law Board are not substantially one and the same, therefore, dismissed the application. Against which, the appeal was filed before this Court.

111. One of the issue that fell for consideration before this Court was whether the Company Law Board could be considered as a Court for the purpose of Section 10 C.P.C since the term used is Court, and if both the proceedings are not pending before the Courts, the provision has no application. The contention of the appellants was that the Company Law Board is a Court, as it has all the trappings of a Court, and accordingly, sought for appropriate orders, while the said contention was opposed by the respondents. The learned single Judge after referring to the constitution of Company Law Board and other relevant provisions of the Companies Act and the powers that are conferred on the Company Law Board, and thereafter relying upon the judgment of the Allahabad High Court in *Prakash Timbers Pvt. Ltd. and other Vs. Smt. Sushma Shingla and another*, , negated the claim of the appellants. Further, even on merits also the Court has come to the conclusion that the issues that arise for consideration before the Civil Court and issues that arise for consideration of the Company Law Board in the company petition are not substantially one and the same, and therefore, dismissed the appeal.

112. In *Prakash Timbers v. Sushma Shingla* AIR 1996 All 262 the Allahabad High Court was considering whether a special appeal under Rule 5, Chap. VIII of Allahabad High Court Rules is maintainable against the order of a single Judge in appeal u/s 10-F of the Companies Act, which was filed against the order of the Company Law Board. In Rule 5 of the Allahabad High Court Rules, reference was made to the word "Court" in the context of ordinary Court of civil judicature. While considering the said provision, the Allahabad High Court interpreted the said term "Court" as used in contradistinction to the word "Tribunal", and further held that Company Law Board is a Tribunal and not a Court, though the Company Law Board has trappings of a Court in the sense that it has to determine a matter placed before it judicially, give fair opportunity of hearing to the parties who may be affected by the order, to accept the evidence and also to order for inspection and discovery of documents, compel the attendance of the witnesses and in the last, to pass a reasoned order which gives finality to its decision subject to right of appeal to a party u/s 10-F of the Act or such other legal remedy which is available under law to a party.

113. The Division Bench of the Allahabad High Court after referring to the relevant provisions as to the constitution of the Company Law Board of Section 10-E and other related provisions held that the Board can be held only a tribunal and not a Court. While deciding the issue, the Division Bench of the Allahabad High Court also considered the decision of the Apex Court in *Canara Bank v.*

Nuclear Power Corporation India and Ors. 1995 (3) Su SCC 81 where the Apex Court held that even the Company Law Board which was discharging the functions u/s 111 of the Companies Act is also a Court as such broader interpretation was given with purposive approach as the Special Courts Act was constituted for the purpose of constituting a Special Court, dealing with the matters relating to the securities dealt with by a specified person during the specified period. But, however, observed that all the Courts are tribunals, but all the tribunals are not Courts. The ordinary Courts of civil judicature are vested with inherent powers and are structured in a hierarchy. In the Canara Banks case it was pointed out by the Supreme Court that when the Constitution spoke of "Courts" under Article 136 and other Articles it contemplated Courts of civil judicature, but not tribunals other than such Courts.

114. If we examine the facts of the present case in the light of the above judgments, it is clear that this Court as well as the Allahabad High Court have considered the issue whether the Company Law Board is a Court or not with reference to the provisions of Section 10 CPC for staying the proceedings pending before the Company Law Board till disposal of the civil suit, pending before the Civil Court. The Allahabad High Court has considered the said issue in the light of maintainability of an appeal under letters patent under Rule 5 of the Allahabad High Court Rules whether an appeal lies against the judgment of a learned single Judge rendered while disposing of an appeal filed u/s 10-F of the Companies Act against the orders of the Company Law Board. In both the judgments, the contention that the Company Law Board is a Court was negated. But the Apex Court while considering the provisions of Section 9-A of the Special Courts Act, which was constituted for the purpose of dealing with the cases with reference to a notified person in respect of transactions that have taken place in between the specified dates, held that even pending proceedings before the Company Law Board would get transferred to the Special Court, and for that purpose the Company Law Board would be considered as a Court as is referred to u/s 9-A.

115. In addition, the Apex Court in the case of Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, had considered the issue elaborately and exhaustively and has come to the conclusion that the Assistant Registrars under the Cooperative Societies Act, exercising the powers u/s 48 as that of the Registrar would be considered not only as a Civil Court, but also as a Court, subordinate to the High Court for the purpose of entertaining the contempt proceedings. If the facts in that case and the powers that are vested in the Assistant Registrar are examined, they are almost identical to that of the Company Law Board. In addition to the above, Regulation-47 specifically provides that the Company Law Board shall be deemed to be a Court for the purpose of prosecution or punishment of a person who willfully disobeys any direction or order of such Bench (Company Law Board). Therefore, it is clear that the provisions of the Act as well as the powers that are vested in the Company Law Board and also the regulation makes it clear that the present case is a better

case on facts than the case in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, .

116. The regulations framed as per the powers vested under the Act itself provides that the Company Law Board shall be deemed to be a Court for the purpose of punishment of a person who willfully disobeys any direction or order of the Company Law Board. Therefore, there is absolutely no scope to take any different view than the one that the Company Law Board should be treated as a Court. In addition, the provisions of the Act as well as the regulations make it clear that the Company Law Board was vested with all the powers that are similar to that of a Civil Court, while dealing with the proceedings before it, similar to that of a suit instituted before the civil Court.

117. The Company Law Board is not vested with the powers to deal with cases under the provisions of the Contempt of Courts Act. Therefore, such powers are to be exercised only by this Court for any alleged contempt to Company Law Board similar to the Civil Courts. Further, as the orders of the Company Law Board are appealable u/s 10-F of the Act before this Court, the Company Law Board should be treated as subordinate to this Court, and therefore, this Court is well within its powers in entertaining the contempt proceedings, and the contentions to the contra are devoid of merit.

Issue No. 3:

118. This point relates to limitation. In the written submissions, the respondent contended that the contempt petition is barred by limitation, as this Court did not issue notice to the parties within one year from the alleged date of committing contempt. But, however, no specific dates are furnished. The contention of the petitioner, however, is that though the Company Law Board passed its scheme order on 29.02.2000, as per the scheme order, the respondents are liable to pay amounts that are due over a period of three years, 30% in the first year after maturity, 35% in the second year and other balance 35% in the third year. During pendency of appeals, on behalf of the 3rd respondent Company, affidavit was filed on 20.11.2001 stating that the respondent will pay one half of the 1st year's entitlement of the petitioner within a period of 30 days from the date of order and the remaining half of the 1st year's entitlement on or before 20.04.2002. From this, it is clear that on behalf of the respondents, it was admitted that they are liable to pay and gave an undertaking before this Court by way of an affidavit filed by the Senior Manager (Legal) of the 3rd respondent company. In the light of the said undertaking given by the 3rd respondent, it is difficult to accept the contention that the contempt petition is barred by limitation as no notice was issued by this Court to the respondents.

119. The contempt petition was, in fact, admitted by this Court on 04.09.2002, and notices were issued to the respondents in Form-1. In response to the notices, Respondents 2 and 3 filed C.A.1273 of 2002 which came up for hearing before the Bench on 12.11.2002 and an order was passed, dispensing with the

presence of the respondents 2 and 3. Therefore, it is clear that the contempt petition was filed well within the time prescribed under law. Further, the order passed by the Company Law Board was subject matter of appeals 7 and 9 of 2001 filed by both the petitioner and the respondents, and they were disposed of by an order dated 03.01.2002. Therefore, the present contempt case filed cannot be stated to have been filed beyond the period of one year from the alleged date of contempt.

120. In fact, it was the contention of the petitioners that the cause of action for the present contempt proceedings is a continuous, since the order of the Company Law Board contemplates the respondents to pay the amount over a period of 36 months from the date of maturity or from the date of the order. In fact, in the present case, by the date of the order, the amounts deposited by the petitioner were not matured, but they were matured and payables on a subsequent date i.e.28.04.2001.

121. The learned Counsel for the petitioner relied upon a decision in Pallav Sheth Vs. Custodian and Others, . The Apex Court was considering about the period of limitation with reference to contempt proceedings. The Apex Court held that contempt proceedings can be initiated either on Court's own motion which must be by issuing a notice or it can be initiated "otherwise" than on the Court's own motion which must be by a party filing a petition before the Court, drawing Court's attention regarding commission of contempt within a period of one year from the date on which contempt is alleged to have been committed. Proceedings otherwise than on Court's own motion can be said to have been initiated only on issuance of show-cause notice by Court, where application is to be filed before Advocate-General or a Law Officer, then proceedings are initiated on the making of that application.

122. It was also held that the period of limitation of one year for initiating contempt proceedings prescribed u/s 20 of the Contempt of Courts Act, being a period provided under a special law which is different from the period prescribed under Schedule to the Limitation Act, it was held that Section 17 of the Act would be attracted by virtue of Section 29(2) r/w Section 3 thereof. As such, the period of one year would commence from the date on which the commission of contempt came to the knowledge where that had been concealed by fraud or dishonest conduct of the contemnor. It was also further held that the power to punish for contempt, though cannot be abrogated or stultified by any provision of law, but it must be exercised in consonance with validly enacted provisions of law.

123. Even after examining the facts of the case in the light of the above judgment, it is difficult to accept the contention of the respondents that the present contempt petition is barred by limitation. Since the order of the Company Law Board is merged with the order of this Court in the appeal filed and disposed of by an order dated 03.01.2002, confirming the orders of the Company Law Board, and as the contempt petition was filed in the year 2002 itself, which was even admitted on 04.09.2002, the contempt proceedings are well within the

time. Further, the amounts are payable over a period of three years from 28.04.2001. Therefore, this point is held against the respondents.

Issue No. 4:

124. Coming to this issue, in view of the conclusions arrived at on the earlier issues, the Contemnors are liable for punishment under the provisions of the Contempt of Courts Act.

125. The punishment contemplated under the provisions of the Contempt of Courts Act is provided u/s 12. As per the said provision, for contempt of Court, one may be punished for simple imprisonment for a term, which may extend to six months or with fine, which may extend to two thousand rupees or with both.

126. As per the proviso, an accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

127. Sub-section-(2) of the said section says no Court shall impose a sentence in excess of that specified in Sub-section-(1) for any contempt either in respect of itself or of a Court subordinate to it.

128. Sub-section (3) further provides that where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period, not exceeding six months, as it may think fit.

129. Sub-section (4) provides that where the person found guilty of Contempt of Court in respect of any undertaking given to a Court is a Company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the Company for the conduct of business of the Company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the Court, by detention in civil prison of each of such person.

130. The provision of Sub-section (2) as well as (3) starts with a non abstanti clause. Therefore, if the facts of the present case are examined in the light of the above provisions, it is clear that the 1st respondent-contemnor made representations before the Company Law Board by filing an affidavit and obtained a benefit by an order of re-scheduling of loans, repayable by the 3rd respondent-company. After obtaining the order, the 1st respondent-contemnor claims that the management of the 3rd respondent company-contemnor was changed and the 1st respondent contemnor no more continues to be in the management of the 3rd respondent company-contemnor, and in fact, an attempt was made before the Company Law Board to get the affidavits filed by him withdrawn unsuccessfully. Thereafter, in fact, by a resolution passed by the 3rd respondent company-contemnor dated 30.01.2002 the proposal of change of management from the original directors who were there at the time of obtaining the order from the Company Law Board under Memorandum of Understanding

was cancelled. In fact, it was even represented by the counsel appearing for the 3rd respondent that the 1st respondent-contemnor that the company whose management was proposed to be handed over to the third party along with the management of the 3rd respondent company after the cancellation of the Memorandum of Understanding, got amalgamated with another group company of the 1st respondent.

131. In spite of all these facts, the stand of the 1st respondent-contemnor before this Court was that he ceased to be a director and therefore, he was not having the control over the 3rd respondent company-contemnor, and therefore, he cannot be held responsible. The said representation is also contrary to his own representation made to the Reserve Bank of India in response to a notice issued by the Reserve Bank of India, stating that there is no change in the management as well as shareholding of the 3rd respondent company. These actions and attempts made by the 1st respondent-contemnor are deliberate attempts not only to mislead the Company Law Board as well as this Court, but also deliberate violations of the orders of the Court as well as the undertaking that was given before the Company Law Board. Therefore, the 1st respondent-contemnor is liable for punishment, as by his actions, he tried to overreach the Company Law Board as well as this Court having collected huge amounts from the public and failed to repay the same to them, even after obtaining a re-scheduling order from the Company Law Board. Therefore, the 1st respondent-contemnor is liable for severe punishment, which could be shown as an example for such persons not to indulge in such activities by deliberate false representations before the Company Law Board as well as before this Court. In view of the deliberate attempts made by the 1st respondent-contemnor, both the 1st respondent and 3rd respondent-contemnors are liable for imposition of severe punishment.

132. Though the 2nd respondent is also shown as one of the contemnor, making allegations against him for non-implementation of the order, but, however, he was not one of the directors at the time when the scheme order dated 29.02.2000 was obtained from the Company Law Board, and further it was claimed that he was only a nominee of the 1st respondent-contemnor and appointed as President of the 3rd respondent Company as paid employee and was discharging the duties as are entrusted to him as President of the 3rd respondent company. Further, he has even resigned subsequently, therefore, he may not be liable for any punishment as he has no stake either in the Company or any part in obtaining order from the Company Law Board. Therefore, he is found not guilty under the provisions of the Contempt of Courts Act and he is entitled for discharge for the allegations levelled against him. Accordingly, the 2nd respondent is discharged from the allegations of Contempt of Court, levelled against him.

133. Further, the conduct of the 1st respondent-contemnor is also a deliberate disobedience of the orders of this Court, which is evident from his non-appearance, in response to the notice, issued in Form-I pursuant to the

admission of the contempt case on 14.08.2002. The 1st respondent-contemnor neither choose to appear before this Court nor filed any application even seeking orders from this Court, dispensing with his presence, even though such an application was filed on behalf of respondents 2 and 3 who obtained an order, dispensing with their presence. Though the matter underwent number of adjournments, even then, the 1st respondent-contemnor did not choose either to appear in person or seek any order from the Court, dispensing with his presence. It is only in the year 2005 an application was filed, and even with reference to the said application also no orders were obtained, and finally even at the time of final hearing also he did not appear and appeared on 20.07.2007 when this Court specifically passed an order on 02.07.2007 for his appearance. Further, when he was asked to file an affidavit as to why he did not appear in pursuance of the notice in Form-I, an affidavit of half page has been filed stating that he was informed by his counsel that there was an oral request on his behalf and also for dispensing with his presence. On the basis of the said communication from his counsel, he did not appear before this Court. Even the above contents of the affidavit show the casual nature as to how the proceedings before this Court were taken by the 1st respondent.

134. The 1st and 3rd respondents/contemnors are found guilty and liable to be convicted u/s 12 of the Contempt of Courts Act. Accordingly, the 1st respondent as well as the other directors of the 3rd respondent company are convicted and sentenced to suffer simple imprisonment for a period of six months, together with imposition of fine of Rs. 2,000/- (Rupees two thousand only) each. The 1st respondent as well as other directors of the 3rd respondent shall be detained in Civil Prison for the period of imprisonment as ordered above.

135. Accordingly, the Contempt Case is allowed.