



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

Contempt Petition (C/Act)/ 02/ KOB/2025

IN

IA(C/Act)/137/KOB/2023

IN

TCP/ 21/ KOB/2019

*(Under Section 425 of the Companies Act, 2013 read
with Rule 11 of NCLT Rules, 2016)*

Date of Institution :25.05.2025

Order delivered on :24.11.2025

In the matter of:

M/s Bhagyodayam Company vs Mr Paul Joseph

MEMO OF PARTIES:

M/s Bhagyodayam Company

Represented by its Managing Director,

Domnic Xavier Ralph

Chathiath Road, Pachalam P.O.,

Ernakulam, 682012

... Petitioner

-Vs-

Mr Paul Joseph

S/o VG Joseph

Valiyaparambil (II), Pachalam P.O., Ernakulam,

Kochi 682012

... Respondent

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA



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Appearances:

For the Petitioner : Ms. Karthika K J, Advocate
For the Respondent : Mr. Aditya B Shenoy, Advocate

ORDER

Per Coram

1. This contempt petition has been filed under Section 425 of the Companies Act, 2013, read with Rule 11 of NCLT Rules, 2016, by the Petitioner Company represented by its Managing Director. The Civil Contempt Petition is filed seeking the following prayers: -

a. Initiate proceedings against the respondent for wilfully violating the order dated 19.3.2024 passed by this Hon'ble Tribunal and for committing Civil Contempt of Court and punish him in accordance with law;

b. Pass any other directions or orders as the Hon'ble Tribunal deems fit and proper in the facts and circumstances of this case.

2. **The brief facts of the case as stated in the Petition**

a) The Petitioner Company, incorporated on 16.01.1928 and now governed under Section 8 of the Companies Act, 2013, was managed by Respondents 2 to 6 in TCP/21/KOB/2019 since December 2013. Following allegations under Sections 241 and 242, the NCLT, Chennai, appointed an Interim Administrator on 28.08.2018, with Mr. Justice K. Narayana Kurup assuming charge on 05.11.2018, succeeded by Mr. Jinan KR from 29.11.2021 to 07.04.2024. In compliance with the Tribunal's directions, and subsequent confirmations by NCLAT and the Supreme Court, elections were conducted as per the AoA, and the newly elected Board took effective charge on 08.04.2024. The Administrator



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was discharged upon filing of the final report on 28.05.2024, and the Board appointed a Managing Director to represent the company.

- b) At the time of the Administrator's appointment on 28.08.2018, the NCLT, Chennai, directed a detailed audit to assess any losses from fund disbursements contrary to the AoA, holding Respondents 2 to 6 liable for compensation. The Administrator repeatedly requested relevant company documents from the then Managing Director, the Respondent, herein, but the same was not furnished, leading NCLAT on 24.05.2019 to direct their submission within seven days, which was ignored. Due to the unavailability of essential documents, the company's financials could not be audited, prompting the Administrator to file IA/29/KOB/2020 seeking investigation by the RoC or other authorities and permission to appoint an Auditor. The application was allowed vide order dated 11.03.2020, directing SFIO, Chennai, to investigate non-compliance, prosecute offenders under Section 439(2), submit a report within two months, and permitting the Administrator to appoint an Auditor.
- c) Accordingly, Mr. Babu A. Kallivayalil was appointed as Auditor to conduct a detailed audit, but he resigned on 31.07.2021 after filing a preliminary report. Although financial statements for 2014-15 to 2016-17 were filed with the RoC, the Administrator believed they were based on incomplete records, as vital documents, including several statutory registers, were not provided by the Respondent. Consequently, on 03.08.2023, this Tribunal appointed Chartered Accountant Sri P.K. Raju to conduct a fresh internal audit for 2014-15 to 2016-17 and submit a report within two months, but the Respondent failed to produce the necessary records despite repeated reminders. Consequently, on 03.08.2023, this Tribunal appointed Chartered Accountant Sri P.K. Raju



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to conduct a fresh internal audit for 2014-15 to 2016-17 and submit a report within two months, but the Respondent failed to produce the necessary records despite repeated reminders.

- d) Consequently, the Administrator filed IA/137/KOB/2023 seeking directions for the production of Books of Account, Register of Directors, Register of Loans, Investments, and Guarantees, Register of Contracts with Related Parties, Register of Charges, and Register of Deposits, which this Tribunal allowed on 19.03.2024, directing the Respondent to furnish the documents within three weeks. Additionally, vide order dated 20.10.2023 in IA/105/KOB/2023, this Tribunal directed the Administrator to conduct elections and hand over charge to the newly elected Board. Despite these clear directions, the Respondent has wilfully failed to provide the requested documents for over nine months, amounting to Contempt of Court, with no justification for non-compliance.
- e) Also stated that there is no justification for the Respondent's failure to comply with the order dated 19.03.2024, and he remains bound to obey the directions therein.

3. Respondent filed reply stating the following:

- a) The present Contempt Petition is filed without due authority, as the Board of Directors, including the Managing Director who signed and verified the Petition, ceased to hold office from 08.10.2024 six months after their election on 07.04.2024 under Section 164(2) of the Companies Act, 2013, for default in filing financial statements, Annual Returns, and Balance Sheets from FY 2017-18 onwards. By virtue of Clause 26 of the Articles of Association, they also ceased to be Directors one year from 07.04.2024. Therefore, they had no legal authority to file



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or act on behalf of Bhagyodayam Company, rendering the Petition not maintainable.

- b) The Contempt Petition seeks action against the Respondent for alleged non-compliance of order dated 19.03.2024 in IA/137/KOB/2023, which was passed pursuant to the directions in CP(C/Act) 08/KOB/2022 for an internal audit of FY 2014-15 to 2016-17 through CA Sri P.K. Raju. CP/08/KOB/2022 was filed on 17.03.2022 seeking re-opening and re-casting of accounts for FY 2014-15 to 2016-17, which was beyond the three-year period permitted under Section 131 of the Companies Act, 2013. Further, the order dated 03.08.2023 in CP/08/KOB/2022 directed the fresh internal audit. However, both directions were obtained based on misrepresentations and incorrect factual assertions, rendering them beyond the Tribunal's jurisdiction and barred by limitation, making the present Contempt Petition untenable and liable to be dismissed.
- c) The order dated 03.08.2023 in CP/08/KOB/2022 (Annexure A1) was passed on an application by the Administrator seeking to re-open and recast financial statements for FY 2014-15 to 2016-17, without including the then Board of Directors or the auditor who had approved and filed the statements, whose participation was necessary as the statements had already been approved in the respective AGMs. The order also erroneously appointed a new Chartered Accountant, Mr. P.K. Raju, to complete the audit, presuming the erstwhile auditor had sanction of this Tribunal, which was incorrect, as confirmed in IA No.15/KOB/2023. Appointing a new auditor based on an incomplete preliminary report was therefore unjustified, leading the Respondent to challenge the order before the Hon'ble NCLAT in Company Appeal No.100 of 2023, which is pending restoration.



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- d) While the appeal before Hon'ble NCLAT is pending, the Petitioner filed IA/137/KOB/2023 seeking documents for compliance with Annexure A1, resulting in the Annexure A2 order dated 19.03.2024. However, the petition lacked essential jurisdictional facts, as there was no pending proceeding requiring production of documents under Order XI Rule 14 CPC read with Section 424(2) of the Companies Act, 2013, rendering Annexure A2 passed without jurisdiction and the present Contempt Petition unsustainable. Moreover, IA/137/KOB/2023 was filed without due locus, as the Administrator had already been directed on 02.06.2022 and 20.10.2023 to conduct elections and hand over charge to the newly elected Board, yet misrepresentations were made suggesting these orders were stayed by Hon'ble NCLAT, and the Administrator, without authority, attempted to remove certain members, including the Respondent, for alleged loan defaults despite pending adjudication.
- e) Elections were duly conducted on 07.04.2024, and the newly elected Board took charge; however, the Contempt Petition filed by this Board is not maintainable, as they lack authority to investigate or challenge prior audits for FY 2014-15 to 2016-17. The Annexure A1 order dated 03.08.2023 itself was based on erroneous presumptions, misrepresentations, and actions beyond the period of limitation, with no explicit direction to conduct any audit beyond what it provided. Furthermore, all records, documents, books of accounts, and statutory registers have been in the custody of the former Administrator since 05.11.2018, and the Respondent never had possession or control over the alleged withheld documents referred to in IA/137/KOB/2023. Consequently, the present Contempt Petition against the Respondent is baseless.



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- f) The allegations in the Contempt Petition that the Respondent withheld documents from the former Administrator are false, as the Respondent had already delivered all available records, including the Register of Members, AGM Minutes, Director Attendance Registers, and vouchers for 2018-19, on 24.04.2019, with proper receipts acknowledged by the Company Clerk, and informed the Administrator by letter dated 04.05.2019, which was duly acknowledged. Subsequent meetings held on 03.10.2019, 08.10.2019, and 09.10.2019 led to a compliance report, considered by the Hon'ble NCLAT in its order dated 23.10.2019, resolving all complaints regarding documents. IA/137/KOB/2023 was filed nearly four years later, suppressing these facts and relying solely on the order dated 24.05.2019, without disclosing the subsequent resolutions by Hon'ble NCLAT or the Respondent's prior compliance. Consequently, claims that the Respondent retained documents or failed to cooperate are fictitious and without basis, and assertions regarding the appointment of Mr. Babu A. Kallivayalil as auditor pursuant to IA/29/KOB/2020 are misleading, as no order ever sanctioned him to audit FY 2014-15 to 2016-17, and the alleged preliminary report cannot be attributed to lawful directives.
- g) The former Administrator assumed control of the Company's affairs on 05.11.2018, including custody of all records, documents, and books of accounts, without preparing any inventory, and the Respondent has had no access since. All relevant records, including registers, minutes, vouchers, and books of account, were delivered to the former Administrator in April-May 2019, duly acknowledged, and subsequent meetings and compliance reports were considered by the Hon'ble NCLAT in its order dated 23.10.2019, resolving all complaints regarding document delivery. The Petition relies on the preliminary



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report of Mr. Babu A. Kallivayalil, who was never authorized by this Tribunal to audit FY 2014-15 to 2016-17, and the directions in Annexure A1 and A2 orders were based on erroneous assumptions regarding auditor appointments; the Respondent cannot be held responsible for compliance with such directions, and there is no evidence to support claims of any violation by him.

h) And stated that none of the allegations amounts to contempt of court. The Respondent has not wilfully or deliberately disobeyed any order, interfered with proceedings, or acted against the authority of this Tribunal. The Contempt Petition is therefore baseless, unsustainable, and liable to be dismissed. The Respondent has at all times acted lawfully, respecting the authority and dignity of this Tribunal

4. Rejoinder filed by the Petitioner:

- a) Petitioner stated that the Annexure A2 order dated 19.03.2024 in I.A. No/137/KOB/2023 of this Tribunal directed the Respondent to furnish specific company records, including Books of Account, Registers of Directors, Loans, Investments, Guarantees, Contracts, Charges, and Deposits, to the Administrator within three weeks. Despite clear and unambiguous directions, the Respondent has failed to deliver these documents even after more than 11 months, which constitutes deliberate and wilful disobedience of this Tribunal's order. Such inaction amounts to contempt of court under the Contempt of Courts Act, 1971.
- b) The Respondent's contentions challenging the maintainability of the Contempt Petition on the basis of the authority of the present Board of Directors are unfounded. The Managing Director was duly authorized



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by the Board meeting dated 23.08.2024 to file the petition. Claims regarding alleged disqualification of directors under Section 164 of the Companies Act, 2013, are misconceived, as the disqualification provisions do not apply to the Company in question. Further, the elections and appointment of directors, including extraordinary general meetings held in May 2025, validate the authority of the Board to file the Petition.

- c) This Tribunal, after considering the facts, issued Annexure A2 dated 19.03.2024 in I.A. No/137/KOB/2023, which remains binding. The Respondent neither obtained a stay nor any modification from the Hon'ble Appellate Tribunal. Reliance on limitation under Section 131 of the Companies Act, 2013, or subjective disagreements with orders, does not justify non-compliance. Similarly, contentions regarding auditor appointments are irrelevant to the Respondent's obligation under Annexure A2.
- d) The Respondent's reliance on prior meetings, reports, or document deliveries in 2019 is misplaced, as the directions in the order dated 19.03.2024 were issued specifically for conducting internal audits for FY 2014-15 to 2016-17, independent of past proceedings, and arguments that all matters had attained finality or that documents were previously delivered are misleading. Claims concerning the former Administrator, the scope of audits, and preliminary reports of auditors, including Mr. Babu A. Kallivayalil, are extraneous and do not absolve the Respondent from complying with clear judicial directions, which, if aggrieved, should have been challenged through proper legal recourse.



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e) Petitioner stated that the Respondent has wilfully and deliberately failed to comply with this Tribunal's directions in Annexure A2. His repeated refusal to produce the required documents undermines the authority of this Tribunal and amounts to contempt under the Contempt of Courts Act, 1971. The Petition has been filed solely to ensure the enforcement of lawful directions and preserve the integrity of corporate governance. The Respondent's claims of vexatiousness, non-possession, or prior delivery are false and cannot absolve him from liability.

FINDINGS: -

5. We have heard both sides and gone through the records. The present Contempt Petition has been filed alleging wilful and deliberate disobedience of the directions issued by this Tribunal vide order dated 19.03.2024 in IA(IBC)/137/KOB/2023. The relevant portion of the order dated 19.03.2024 is as under,

14. Upon examining the Applicant's statements and Annexure A2 produced along with the rejoinder, which outlines the documents received by the current administrator from the previous one, it is apparent that the requested documents are not currently in the possession of the present Administrator. Furthermore, the Respondent alleges that certain documents, including the Register of Members, Annual General Board meeting minutes, Annual General Body Attendance Register, Director Board minutes, Director Board Attendance Register, and vouchers for 2018-2019, were returned to the registered office and acknowledged by Ms. Liya Clara, the clerk, through a receipt issued to the Respondent. However, it is noted that the Administrator subsequently initiated disciplinary proceedings and



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terminated Ms. Lily Clara for issuing the receipt without consent, thus casting doubt on the actual possession of these documents.

15. Given the significance of the requested documents for conducting audits and investigating potential non-compliance and violations of the Companies Act 2013, and considering the Administrator's need for access to fulfil their duties effectively as mandated by this Tribunal, it is evident that the balance of favour lies with the Applicant. Therefore, we find that the Respondent's claim regarding the possession of the documents is not convincing.

16. Therefore, we deem it fair and reasonable to allow the application and instruct the Respondent to furnish the requested documents, including the Books of Account, Register of Directors, Register of Loans, Investment and Guarantees, Register of Contracts and Arrangements with related parties, Register of Charges, and Register of Deposits. This will facilitate the Administrator in carrying out his responsibilities effectively. The Respondent is hereby instructed to deliver the requested documents to the Administrator within three weeks from the date of receiving this order.

6. The Respondent has raised a preliminary objection as to the maintainability of the petition on the ground that the present Board of Directors ceased to hold office from 07.10.2024 under Section 164(2) of the Companies Act, 2013, and that the Managing Director had no authority to file the present Petition. The Petitioner, in rejoinder, has stated that there is a Board resolution dated 23.08.2024 authorising the Managing Director to initiate the present proceedings. Further, the Petitioner has contended that the disqualification provisions under Section 164(2) do not apply to this Company, which is registered under Section 8 of the Act.



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7. It is to be noted that the Respondent has not produced any order or communication from the RoC disqualifying the present Directors. In the absence of such proof, and in view of the Board resolution authorizing the Managing Director, this Tribunal is satisfied that the present Petition has been filed with due authority and is maintainable.
8. The core contention of the Respondent is that he had already handed over all available records to the former Administrator in 2019 and has not retained custody of any further documents. The Petitioner, on the other hand, has contended that despite repeated requests from both the Administrator and the Chartered Accountant appointed by this Tribunal, the Respondent failed to produce several key records necessary for the audit.
9. The Respondent has relied upon acknowledgments allegedly issued by the Company Clerk and certain correspondence from 2019. The earlier Administrator had also reported that these very documents were not handed over to him at the time of assuming charge. There are no pleadings or averments from the side of the Respondent to the effect that such records were never maintained by the Company. Therefore, the non-availability of the documents raises doubts regarding their handling and custody.
10. The Respondent took a similar defence in IA(IBC)/137/KOB/2023; however, being not satisfied with such defence, this Tribunal passed the order dated 19.03.2024 directing the Respondent to hand over certain documents. The non-compliance with that order has led to the filing of this contempt petition.
11. It is necessary for the Respondent to either produce the documents or demonstrate, through verifiable evidence, that they were not in his



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possession or control. Although the Respondent's explanation is not fully satisfactory, the material on record does not conclusively establish that the Respondent is presently in possession of or has withheld such records. It is also important to note that the Respondent has never given any undertaking or filed any affidavit before this Tribunal undertaking to produce the said documents, which weakens the allegation of wilful breach.

12. It is well settled that for civil contempt to be established, the disobedience must be wilful, deliberate, and conscious, and not merely inadvertent or due to bona fide misunderstanding.
13. Before proceeding further, it would be beneficial to quote the judgment of the Hon'ble Delhi High Court in Viterra B. V. Sharp Corporation Limited and the judgment of the Hon'ble NCLAT in Srinivas Kalluri's case. The Hon'ble Delhi High Court in Viterra B.V. v. Sharp Corp Ltd., (2024) ibclaw.in 1380 HC, held the following;

16. The easiest aid, to understanding the primary characteristic of contempt of court, is the plain etymological meaning of the word "contempt", shorn of legalese. Merriam-Webster's Dictionary defines "contempt" as "the act of despising: the state of mind of one who despise, disdain, lack of respect or reverence for something". The Cambridge Dictionary defines "contempt" as "a strong feeling of disliking and having no respect for someone or something". Collins Dictionary defines the expression as having no respect for someone or something, or thinking them to be unimportant, and enlists, as its synonyms, "scorn, disdain, mockery".

17. The meaning of the expression "contempt", when used in the context of the court, is not too far removed from its normal etymological connotation. The essence of contempt of court, therefore, is disdain and disrespect for the court, and acts which reflect that attitude.

18. Thus, every disobedience, or breach, of an order passed by a court, is not contempt. Intent is the essence of contempt. Sans intent, there can be no contempt.

19. Thus, clause (b) in Section 2 of the Contempt of Courts Act, 1971¹¹ defines "civil contempt" as "wilful disobedience to any judgement, decree, direction, order, writ or other process of court or wilful breach of an undertaking given to a court". Disobedience of an order or a direction of the Court, or breach of an undertaking



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given to the Court is not, therefore, contempt, per se. It becomes contempt when it is wilful.

20. That said, the expression “wilful” has to be understood in the context of the understanding of contempt of court as an attitude, or an act, which belittles, or undermines, the need to comply with court directives. The duty to respect orders and directives of the court, and to honour undertakings tendered before court, includes, within it, a positive obligation to do so. If, therefore, in awareness of the said directive or undertaking, a party acts in a manner which displays total indifference to the need to comply, that, too, in a given case, may partake of the character of contempt.

21. One of the sequiturs of intent being a necessary ingredient for contempt is that, where the intent to disobey, or commit breach, is not ex facie apparent, and there is a possibility that the alleged contemnor has failed to comply only on account of innocent oversight, the Court normally affords, to the contemnor, an opportunity to remedy the breach and, thereby “purge the contempt”, where it is possible. The charge of contempt, once purged, does not survive, and the possible sin of the contemnor stands expiated. Where, however, despite grant of opportunity, the disobedience, or breach, continues, an inference of intent is inevitable, and the consequences of committing contempt inexorably follow.

22. Civil contempt actions, too, partake of quasi-criminal character, inasmuch as, if contempt is found to have been committed, the punishment that follows may entail loss of liberty. Courts have, therefore, to be cautious while arriving at findings of commission of contempt, and can in no case be over-sensitive in their approach. Sensibility, while dealing with contempt actions, is of the essence; sensitivity is to be eschewed. The necessity of caution in such cases was thus underscored by the Supreme Court, in **Rosnan Sam Boyce v B.R. Cotton Mills Lt¹²** :

“We are, of course, quite conscious of the fact that the proceedings in the contempt are quasi-criminal in nature, that the law of contempt has to be strictly interpreted and that the requirements of that law must be strictly complied with before any person can be committed for contempt.” The degree of proof, for contempt to be found to exist is, therefore, the degree which applies to criminal cases, which is proof beyond reasonable doubt.¹³ As far back as in **Bathina Ramakrishna Reddy v State of Madras¹⁴**, it was observed that “the power to punish for contempt is to be sparingly used and should be used only for protecting the interest of administration of justice”.

23. The nature of civil contempt proceedings was thus classically expressed in **Baradakanta Misra v Bhimsen Dixit¹⁵** :

“Contempt of court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the court’s order, it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute.”

Rama Narang v Ramesh Narang¹⁶ observes thus, in para 55:

“55. It is thus clear that for bringing an action under the ambit of civil contempt, there has to be a wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to the court.”



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*In Ram Kishan v Tarun Bajaj*¹⁷, the Supreme Court held as under, apropos contempt, clearing the air on several counts: “

11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide *V.G. Nigam v Kedar Nath Gupta*¹⁸, *Chhotu Ram v Urvashi Gulati*¹⁹, *Anil Ratan Sarkar v Hirak Ghosh*²⁰, *Bank of Baroda v Sadruddin Hasan Daya*²¹, *Sahdeo v State of U.P.*²² and *National Fertilizers Ltd. v Tuncay Alankus*²³.)

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one’s state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, 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 contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.” (Vide *S. Sundaram Pillai v V.R. Pattabiraman*²⁴, *Rakapalli Raja Ram Gopala Rao v Naragani Govinda Sehararao*²⁵, *Niaz Mohammad v State of Haryana*²⁶, *Chordia Automobiles v S. Moosa*²⁷, *Ashok Paper Kamgar Union v Dharam Godha*²⁸, *State of Orissa v Mohd. Illiyas and Uniworth Textiles Ltd. v CCE*²⁹.)

13. In *Lt. Col. K.D. Gupta v Union of India*³⁰ this Court dealt with a case wherein direction was issued to the Union of India to pay the amount of Rs 4 lakhs to the applicant therein and release him from defence service. The said amount was paid to the applicant after deducting the income tax payable on the said amount. While dealing with the contempt application, this Court held that :

“4. ... withholding the amount cannot be held to be either mala fide nor is there any scope to impute that the respondents intended to violate the direction of this Court.”



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14. In *Mrityunjoy Das v Sayed Hasibur Rahaman*³¹, the Court while dealing with the issue whether a doubt persisted as to the applicability of the order of this Court to the complainants held that it would not give rise to a contempt petition. The Court was dealing with a case wherein the statutory authorities had come to the conclusion that the order of this Court was not applicable to the said complainants while dealing with the case under the provision of the West Bengal Land Reforms Act, 1955.

15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See *Sushila Raje Holkar v Anil Kak*³² and *Three Cheers Entertainment (P) Ltd. v. CESC Ltd.*³³]

14. The essential ingredients of civil contempt are well settled. To establish civil contempt under Section 2(b) of the Contempt of Courts Act, 1971, the following must be proved: (i) there must be a clear and unambiguous order of the court; (ii) the alleged contemnor must have knowledge of such order; and (iii) there must be wilful and deliberate disobedience of the said order to undermine the majesty of the court. Mere non-compliance, inadvertence, or bona fide inability to comply does not amount to contempt. The element of wilfulness is essential. Unless the non- obedience is shown to be deliberate, intentional, and without justifiable cause, the offense of contempt cannot be said to have been made out. So, it is well settled that to initiate civil contempt, it is to be established that their adjusted disobedience and said disobedient must be wilful, deliberate, and conscious, and not merely inadvertent or due to bona fide misunderstanding.

15. The Hon'ble NCLAT in *Srinivas Kalluri and Anr. v. Birendra Kumar Agarwal and Ors*,“(2025) ibclaw.in 858 NCLAT” held that,

19. Wherein, it has been held that the Appeal would not be maintainable. A similar issue was under consideration in the Judgment reported in 1996 Volume 4 SCC Page 411, *State of Maharashtra Vs Mahboob S. Allibhoy and Another*, wherein the Hon'ble Apex Court has considered the aforesaid aspect in para 4 dealing with the question of maintainability, has made the following observations: –



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“4. It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. This Court in the case of Baradakanta Mishra v. Justice Gatikrushna Misra, C.J. of the Orissa H.C. [(1975) 3 SCC 535: 1975 SCC (Cri) 99 : AIR 1974 SC 2255 : (1975) 1 SCR 524] , said: (SCC p. 542, para 7)

“...Where the court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, sub-section (1) and no appeal would lie against it as of right under that provision.””

16. At this juncture, it is appropriate to examine the distinction between the terms non-obedience and disobedience. Non-obedience means failure to comply with a direction, which may result from negligence, inadvertence, or lack of due diligence with or without any element of wilfulness, it is a passive state of not doing. Disobedience, on the other hand, means a deliberate and conscious act showing intentional disrespect or disregard for the authority of the Tribunal and would not tantamount to active refusal
17. In the present case, though the order dated 19.03.2024 was clear and specific, the Respondent has failed to comply with the directions of this Tribunal to hand over certain documents to the Auditor. Instead of providing the records, the Respondent has taken the plea that all records were handed over to the earlier Administrator. However, as gathered from the history of this case, the earlier Administrator had also filed similar applications for production of documents. Such records,



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more or less, are mandatory to be maintained by the Company, and there exists nothing on record to show that the ROC or the Auditor ever raised any objection regarding non-compliance with such mandatory provisions.

18. Coming to the present case, the Respondent, despite the order dated 19.03.24, has failed to submit the requisite documents, and for the want of those documents audit could not be done in compliance with the orders passed by this Tribunal. The Respondent, in an astonishing manner, has come with a plea that he had already given all such documents to the earlier administrator. Even the Respondent has produced one receipt issued by a company clerk regarding some other documents, though the then administrator had taken action against said clerk for issuing any alleged receipt without his permission. But the fact remains that the Respondent is denying possession of such documents. The Applicant has come with a plea of willful disobedience and has prayed for the initiation of contempt proceedings. The scope of section 425 of the Companies Act is limited, and by issuing contempt, no purpose would be fulfilled for which this tribunal ordered to conduct an audit of the accounts of the company due to allegations of fraud, embezzlement, and financial irregularities.
19. The excuses made by the Respondent, in light of the other facts and allegations made against them, clearly suggest that the Respondents are not intending to produce such documents. The rival stance taken by both parties regarding possession, custody, handing over, and non-handing over of the requisite documents has created a strange situation. If the facts lead to two interpretations or presumptions about the custody of documents, if we believe that the Respondent had given custody of the documents to the Office of the Administrator, the non-



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availability of documents would lead to some other conclusion. If we believe, on the Petitioner, that no documents were handed over to the earlier Administrator, it would lead to the conclusion that the documents are in the custody of the Respondents. If there exist two possibilities, it would not be appropriate to punish a person for contempt, particularly when other avenues to the aggrieved person are also available.

20. On oath, both parties have given statements suited to them. There is a reference to an SFIO investigation in the order in IA(IBC)/29/KOB/2020. However, it is a fact that the NCLT cannot directly direct an investigation by the SFIO. And the Union of India filed IA(IBC)/182/KOB/2023 for modification of the said order. After hearing the matter, this Tribunal modified the order dated 11.03.2020. The modified order dated 11.03.2020 is as under:

ORDER

- I. We hereby direct the [Serious Fraud Investigation Office [SFIO], Chennai] to investigate the affairs of M/s Bhagyodayam Company and to submit a report in this regard within two months before this Tribunal.
- II. From among the list of names recommended by the petitioner herein we appoint Mr. M/s Babu A Kallivayalil and Company, as Auditor of M/s Bhagyodayam Company.

⊕ modified
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6. The Registry is directed to immediately issue the certified copy of this order:
- to Serious Fraud Investigation Office, Corporate Bhawan, Ground Floor, No. 29, Rajaji Salai, Chennai-600001 along with the IA No.29/KOB/2020 for necessary action;and also;
 - to M/s Babu A Kallivayalil and Company, Firm Regn. No.05374S Chartered Accountants P.T Usha Road Kochi-682011, for information.

7. Accordingly, IA/29/KOB/2020 in TCP/21/KOB/2019 is disposed of.

Dated the 11th day of March, 2020


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Ashok Kumar Borah)
Member (Judicial)

(*) The words " Serious Fraud Investigation office (SFIO), Chennai" ~~is~~ appearing in ^{the first line of} page no. 4, of this order is modified as " The central Govt shall appoint an inspector to investigate ~~into~~ the affairs of M/s Bhagyodayam Company, vide order dt 3-1-2024 in IA (C/act) /182/FOB/2023 in TCP/21/KOB/2019.

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9/1/24
Deputy Registrar

21. Despite order dated 19.03.2024 the Respondent has not given any documents. However, such action would not invite any contempt proceedings, as the Respondent would be liable to face the consequences thereof, and financial liability may stand upon the Respondents or the company can take steps to restore the records. Every disobedience, non-compliance, or violation of a court order would not invite contempt proceedings unless there exists an intention to undermine the authority of the court or to obstruct the stream of administration of justice. In this case, the non-obedience may invite



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other civil consequences, and it would not be proper to initiate contempt proceedings. The power of contempt is required to be used in exceptional cases that too, as a last resort, and cannot be invoked in every instance of non-compliance. The power to initiate contempt is to be used sparingly in a case where the parties, by their act and conduct, tried to scandalize the court or pose a threat to the judge or witness, or such an act which can prompt other persons to undermine the authenticity of the court. The act complained of by the petitioner would not come under such a degree to initiate such action. In summary proceedings under the Companies Act, it is not practicable to search for and determine the whereabouts of the concerned records. However, the Inspector appointed or to be appointed during the investigation will certainly be able to reveal all such facts in the most effective manner.

22. It is a fact that the respondent, despite specific orders, did not supply the documents and records required for the audit. We are not going into the merits of their excuses for not submitting such documents. The non-submission of documents makes them vulnerable to adverse findings against them. The persons/ company aggrieved by the conduct of the respondents have an efficacious remedy under the Companies Act, 2013, to seek relief under Sections 339, 340, and 447. If such remedies are available to the company/ aggrieved persons, it would not be proper to invoke the procedure for contempt under the given circumstances.
23. Each case has its own merits and is to be adjudicated based on its given facts and circumstances. A minor deviation in the facts may change the course of adjudication. Contempt proceedings are serious in nature and have deeper ramifications on the concerned party as well as other litigants. If there exist any if's and but's, initiation of contempt proceedings would certainly tantamount to misuse of power. For



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initiation of contempt, the existence of some act beyond doubt, without any blemish or ambiguity, is required on the part of the contemnor which has caused threat to the majesty of the court itself.

24. In the present case, the fact remains that the Respondent did not give the requisite documents to the Auditor, but there exists some doubt as to whether the Respondent is still in possession of such documents or not. It is also a fact that this Tribunal directed the Respondent to hand over certain documents to the Auditor, but the scope and standard of proof at that relevant time was different, and upon the submissions of both sides, this Tribunal passed such an order. However, while issuing contempt, this Tribunal is required to reassess the entire facts and overall circumstances afresh to determine and arrive at a conclusion as to whether the alleged complaints are sufficient to initiate contempt.
25. The standard of proof at both stages is different, and as such, while reassessing the things, this Tribunal is of the considered opinion that though the Respondent was directed to handover documents to the Auditor, at this stage, under the given circumstances of the present case, it is deemed fair not to initiate any contempt.
26. The pendency of Company Appeal No.100 of 2023 against the order dated 03.08.2023 before the Hon'ble NCLAT does not operate as a stay on the subsequent directions.
27. In view of the above discussion, this Tribunal finds that while there has been a lack of cooperation and failure to produce the necessary records, for which the respondent would be liable to face any consequences but would not attract contempt jurisdiction.
28. In view of the above, **Contempt Petition (C/Act)/02/KOB/2025** is, **dismissed** and disposed of accordingly, with no order as to costs.



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29. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities

Sd /-
MADHU SINHA
(MEMBER TECHNICAL)

Sd /-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 24th day of November 2025.

K*