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Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/INHERENT JURISDICTION

I.A. No. 58156 of 2020
In

Civil Appeal No. 6707 of 2019

Committee of Creditors of AMTEK Auto Limited
Through Corporation Bank **…Applicant**

Versus

Dinkar T Venkatasubramanian & Ors. **…Respondents**

And with

Contempt Petition (C) No. 524 of 2020
In

Civil Appeal No. 6707 of 2019

Committee of Creditors of AMTEK Auto Limited
Through Corporation Bank **…Appellant**

Versus

Vinit Bodas, Authorised Signatory,
Deccan Value Investor LP **…Alleged Contemnor**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 This judgment will govern two proceedings:

(i) A Contempt Petition[1] instituted by the Committee of Creditors of AMTEK Auto Limited ("**corporate debtor**") *inter alia* against Deccan Value Investors LP (**"DVI"**), the third Respondent in the Civil Appeal[2] for violation of an order passed by this Court on 18 June 2020[3].

(ii) An application for rectification[4] of the order of this Court dated 18 June 2020 instituted by DVI.

Both the proceedings are inter-related. Both have been heard together.

2 On 24 July 2017, an application under Section 7 of the Insolvency and Bankruptcy Code 2016 ("**IBC"**) was admitted by the National Company Law Tribunal (**"NCLT"**). Mr Dinkar T Venkatsubramanian was appointed as Interim Resolution Professional. He was later confirmed as the Resolution Professional ("**RP"**).

3 On 31 August 2017, the RP published an advertisement inviting resolution plans from prospective resolution applicants. Resolution plans were submitted by Liberty House Group and DVI.

[1] Contempt Petition (C) No.542 of 2020
[2] Civil Appeal No. 6707 of 2019
[3] Order dated 18 June 2020 passed in I.A. No. 54321 of 2020 in Civil Appeal No. 6707 of 2019
[4] I.A. No.58156 of 2020

4 On 6 March 2018, a revised plan submitted by Liberty House Group emerged as the highest evaluated plan, while DVI withdrew its plan.

5 The Committee of Creditors (**"CoC"**) by a majority of 94.20 per cent approved the final revised plan of Liberty House Group on 2 April 2018. On 25 July 2018, the NCLT approved the resolution plan of Liberty House Group.

6 On 4 December 2018, the CoC filed an application seeking a declaration that Liberty House Group had willfully contravened the terms of the resolution plan as approved by the NCLT and for the RP to attempt a fresh process of resolution. NCLT by an order dated 13 February 2019 held that Liberty House Group had failed to fulfill its obligations under the approved resolution plan and directed the reconstitution of the CoC for consideration of the resolution plan submitted by DVI. NCLT did not accede to the request for carrying out a fresh process by inviting the plans again.

7 As a result the CoC filed an appeal[5] before the National Company Law Appellate Tribunal (**"NCLAT"**). The appeal was limited to the extent of challenging the rejection of the prayer for inviting fresh applications from prospective applicants for submitting resolution plans. On 15 April 2019, DVI filed an interlocutory application seeking impleadment before the NCLAT, which was allowed by an order dated 22 April 2019. In the course of the proceedings before the NCLAT, DVI supported the plea of the CoC for restarting the process of inviting fresh applications for resolution plans. By its order dated 16 August 2019, NCLAT came to the conclusion that since more than 270 days had elapsed, an order of liquidation of the corporate debtor would have to ensue and

[5] Company Appeal No. 219 of 2019

accordingly directed the NCLT to pass appropriate orders of liquidation. The Civil Appeal before this Court arose out of the order of the NCLAT directing liquidation of the corporate debtor and was instituted on 26 August 2019 by the CoC.

8 This Court issued notice in the Civil Appeal on 6 September 2019 and stayed the liquidation of the corporate debtor. The second proviso to Section 12(3) of the IBC was amended with effect from 16 August 2019 by the Amending Act 26 of 2019 so as to stipulate a time limit of 330 days for the completion of the corporate insolvency resolution process from the insolvency commencement date. On 24 September 2019, this Court accordingly directed the RP to invite fresh offers within a period of 21 days, following which the CoC was directed to take a "final call in the matter" within two weeks. The decision was to be placed before this Court on 5 November 2019. The RP made a public announcement for inviting fresh resolution plans on 26 September 2019, and the last date for submission of resolution plans was 22 October 2019. The CoC on 23 October 2019 concluded that only one resolution plan was received within the stipulated timeline. DVI submitted a financial proposal on 4 November 2019. In the meantime on 6 November 2019, the CoC moved an IA[6] before this Court seeking an extension of four weeks to consider three resolution offers received by the RP, including that of DVI. On 13 November 2019 when the I.A. came up before this Court, an order was passed that:

> "The consideration to be confined to five offers received within the time specified in the advertisement inviting offers. Two offers received thereafter not to be considered."

[6] I.A. No.168814 of 2019

9 On 21 November 2019, the CoC again moved an IA[7] for modification of the order dated 13 November 2019 on the ground that while five resolution applicants had responded to the fresh invitation of offers, only one had submitted the resolution plan before the last date specified in the advertisement.

10 On 2 December 2019, the IA seeking modification of the earlier order was partly allowed by this Court by directing that fresh offers be invited within 30 days after due advertisement. The CoC was directed to evaluate the offers within three weeks thereafter and to submit its evaluation before this Court. On 3 December 2019, the RP made a public announcement for inviting fresh resolution plans. Fresh resolution plans were submitted by four applicants, including DVI and LHG, and eventually on 6 January 2020, DVI was declared the highest evaluated resolution applicant. On 17 January 2020, DVI submitted its resolution plan together with a performance bank guarantee of INR 150 crores (representing the first tranche). On 18 January 2020, DVI submitted a revised resolution plan. The revised proposal of DVI was discussed in the 29th meeting of the CoC, following which certain revisions were sought from DVI.

11 On 20 January 2020, when the proceedings came up before this Court, an extension of two weeks was granted for finalizing the resolution plan. On 7 February 2020, DVI submitted an addendum along with its resolution plan dated 17 January 2020. On 10 February 2020, this Court was apprised of the fact that a resolution plan was being voted upon by the members of the CoC in view of which an extension of one week was granted to finalise the resolution plan. On 11 February 2020, the resolution plan of DVI was approved by 70.07 per cent of the voting share of the CoC. On 19

[7] I.A. No.177847 of 2019

February 2020, the RP filed an affidavit before this Court intimating it about the outcome of the voting. On 13 May 2020, the CoC filed an IA[8] seeking approval of the resolution plan of DVI. On 8 June 2020, this Court passed an order relegating the matter to the NCLT to decide upon the approval application within a fortnight. The time spent before the NCLT and this Court was directed to be excluded for calculating the long stop date. An email was addressed to DVI on the same day by the RP to submit a performance bank guarantee for the balance of INR 150 crores by 15 June 2020. DVI filed an application[9] before this Court on 12 June 2020 seeking a modification of the order of 8 June 2020 for grant of a period of two months to it to examine and understand the impact of the onset of COVID-19 and to re-evaluate the resolution plan. Simultaneously, the RP filed an application[10] before the NCLT on the same day seeking approval of the resolution plan submitted by DVI. While seeking a extension of time of two months before this Court, DVI in its IA *inter alia* stated that:

> "4. The Approval Application by the Appellant seeking approval of DVI's Resolution Plan, was listed for hearing on 08.06.2020, when the Applicant submitted that due to Covid-19 pandemic DVI's Resolution Plan (as submitted and approved by the CoC) was unviable and not feasible in the present circumstances and the Respondent No. 3/Applicant required sometime to assess the impact of the Covid-19 pandemic on the Indian economy as well as the Auto Industry (including but not limited to the impact on the overall business and financial health of the Corporate Debtor). It was therefore requested that this Hon'ble Court may be pleased to relegate the issue of the approval of a resolution plan to the Adjudicating Authority, so as to enable the parties to re-negotiate the terms of the Resolution Plan and to hear all the stakeholders before approving a resolution plan.
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> […]

[8] I.A. No. 48906 of 2020
[9] I.A. No.54321 of 2020
[10] IA No.225 of 2020 in CP (IB) No.42/CHD/HRY/2017

> 7. […]
>
> Based on a prima facie analysis of the said information provided by the RP and subject to a detailed examination and verification, the Applicant, at the present stage, understands that the significance of the information is substantial.
> The information provided strongly indicates an adverse impact which is likely to be over INR 700 crores.
> […]
>
> 9. **However**, **COVID-19 pandemic has materially and adversely impacted commercial assumptions underlying the business plan and financial proposal for revival of the Corporate Debtor and the feasibility and viability of the Resolution Plan**.
>
> 10. That faced with the limited time granted under the Order, the RP has been insisting on the Respondent No. 3/ Applicant that it executes the letter of intent and submit its additional bank guarantee pursuant to the resolution plan which had been approved, and which is now to be filed before the NCLT.
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> 11. That the Respondent No. 3/ Applicant also suffers from the threat of invocation of its existing bank guarantee of INR 150 crores that it had submitted in support of the DVI Resolution Plan, if it does not execute the letter of intent and submit the additional bank guarantee."
>
> (**emphasis supplied**)

12 On 18 June 2020, the IA filed by DVI was listed before this Court when the following order was passed:

> "The application made by the applicant for withdrawal of the offer is hereby rejected **and in case he indulges in such kind of practice, it will be treated as contempt of this Court** in view of the various orders passed by this Court at his instance. The application is accordingly dismissed."
>
> (**emphasis supplied**)

Following the order of this Court, the RP called upon DVI to submit a performance bank guarantee for a balance of INR 150 crores which was reiterated on 6 July 2020 setting an outer limit of 10 July 2020. In the meantime, on 30 June 2020 DVI moved its

rectification application[11] before this Court on the ground that:

(i) No application had ever been filed by DVI seeking withdrawal of the order; and

(ii) DVI had never approached this Court earlier for any relief including seeking an extension of time.

13 NCLT passed an order on 9 July 2020 approving the resolution plan submitted by DVI. Following this, on 10 July 2020, an email was addressed to DVI by the erstwhile RP to provide its nominations to the Implementation and Monitoring Committee ("**IMC**"). By this email, DVI was also requested to attend the first meeting of the IMC scheduled on 14 July 2020. On 14 July 2020, DVI by its email stated that formation of the IMC and the convening of meetings was premature and recorded its intent to institute an appeal against the order of the NCLT dated 9 July 2020 approving the resolution plan. On 21 July 2020, the RP addressed a communication to DVI to implement the resolution plan and submit a performance bank guarantee for the balance INR 150 crores. This was reiterated in a communication dated 23 July 2020 of the CoC to DVI. DVI by its letter dated 25 July 2020 reiterated its intent to lodge an appeal against the order of NCLAT and eventually filed its appeal[12] before the NCLAT challenging the order of the NCLT dated 9 July 2020. The said appeal is pending adjudication before the NCLAT. On 3 September 2020, DVI addressed an email invoking clause 8.7 of the resolution plan to seek its termination forthwith. The email recorded that:

> "6. Our client states that **in view of outbreak of the COVID-19 pandemic since March 2020 and continuing till date, the business/assets/revenues of the Corporate Debtor have been adversely and materially affected beyond INR**

[11] IA No.58156 of 2020
[12] Company Appeal (AT) (Insolvency) No. 654 of 2020

> **300 crores triggering clause 8.7 (iii) of the Resolution Plan**. This constitutes a 'Force Majeure Event' (as defined in the Amtek Resolution Plan) which is a self operating clause providing for the forthwith termination of the Resolution Plan. The extent of the aforesaid adverse and material impact on the business/assets/revenues of the Corporate Debtor have remained uncontroverted by you in proceedings before the NCLT Chandigarh. I**n any event, withholding of the information sought vide the email dated 13 July 2020 only reinforces the fact that the event of Force Majeure has occurred resulting in the forthwith termination of the Amtek Resolution Plan**."
>
> (**emphasis supplied**)

14 On 26 August 2020, the CoC filed a Contempt Petition[13] before this Court on the ground that DVI was in breach of the order of this Court dated 18 June 2020 by seeking to withdraw the resolution plan. On 10 September 2020, DVI filed an IA[14] in the pending appeal before the NCLAT seeking cancellation and return of the performance bank guarantee.

15 Notice was issued by this Court in the contempt petition instituted by the CoC on 25 September 2020.

16 On 14 December 2020, notice was issued by this Court on the rectification application filed by DVI.

17 The learned Senior Counsel who have principally urged submissions on behalf of the contesting parties are:

(i) Mr Mukul Rohatgi for DVI in support of the rectification application;

(ii) Mr Tushar Mehta, Solicitor General of India in support of the Contempt Petition filed by the CoC;

[13] Contempt Petition No.524 of 2020
[14] IA No.21814 of 2020

(iii) Mr Niraj Kishan Kaul, learned Senior Counsel for the RP; and

(iv) Dr Abhishek Manu Singhvi, learned Senior Counsel on behalf of the contemnor.

18 Mr Mukul Rohatgi, learned Senior Counsel appearing on behalf of DVI submitted that the order of this Court dated 18 June 2020 needs to be rectified or clarified on the ground that it proceeds on two factual misconceptions. The factual errors are stated to be that:

(i) The IA that was moved by DVI was for withdrawal of the offer (resolution plan); and

(ii) Various orders have been passed by this Court at the instance of DVI.

19 The submission is that the observation of the Court that "in case he [DVI] indulges in such kind of practice, it will be treated as contempt of this Court" is premised on a factual misconception. Addressing the Court on the first of the above premises, Mr Rohatgi submitted that the reliefs which were sought in the application that was filed by DVI on 12 June 2020 were in the following terms:

> "
>
> (a) Pass an order modifying the Order dated 08.06.2020 to grant a period of 2 (two) months from the date of the Order to the Respondent No. 3/ Applicant to examine and understand the impact of the Covid-19 pandemic and the lock down to discuss the terms of the Resolution Plan with the Committee of Creditors and thereafter direct the NCLT to consider the matter of I.A. No. 48906 of 2020 and pass appropriate orders;
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> (b) Pass an order directing the Committee of Creditors and the resolution professional not to act upon the existing resolution plan until conclusion of the above process, subject to the Applicant/ Respondent No. 3 extending the term of the existing bank guarantee for a corresponding period;"

20 It was urged that there was no attempt on the part of DVI to withdraw from the resolution plan. On the contrary, what the IA postulated was that a period of 15 days which was fixed, commencing from 8 June 2020, for the NCLT to pass orders on the approval application had resulted in practical difficulties for parties to enter into a meaningful discussion and negotiation. DVI, according to the submission, stressed that the period which was reserved for the NCLT to decide the approval application, which was to expire on 23 June 2020, was inadequate and there was a threat on the invocation of the performance bank guarantee. It was in this context that DVI highlighted the serious financial impact of COVID-19 on the business of the corporate debtor in the context of which it sought time to assess the impact of the pandemic on the business and financial health of the corporate debtor. On the second of the factual premises set out in the order of this Court, DVI has stressed that it had never moved any application before this Court earlier for seeking an extension of time and hence the basis of the order of this Court is factually incorrect.

The submission which has been urged on behalf of DVI has been opposed by Mr Tushar Mehta, learned Solicitor General and by Mr Niraj Kishan Kaul, learned Senior Counsel, appearing respectively for the CoC and the RP. The Solicitor General submitted that:

(i) a detailed process was undertaken following the order of this Court dated 24 September 2019 to ensure that resolution plans could be invited so as to obviate an order of liquidation of the corporate debtor. DVI was in the fray even before the proceedings had reached this Court and even after the order of 24 September 2019, it had indicated its intent to enter the fray. From 4 November 2019 when DVI submitted its financial proposal, extensions of time were granted

by this Court on 13 November 2019, 2 December 2019, 20 January 2020 and 10 February 2020. Though the extensions were sought by the CoC, there can be no manner of doubt that this was to facilitate the finalization and approval of a resolution plan and DVI was among the resolution applicants. After the CoC approved DVI's resolution plan on 11 February 2020, an IA was filed by the CoC on 13 May 2020. This Court by an order dated 8 June 2020 relegated the proceedings to the NCLT for considering the approval application. Laying stress on the IA filed by DVI on 12 June 2020, it was urged that an attempt was made by DVI to wriggle-out of its commitments under the resolution plan which has been approved by the CoC on 11 February 2020 by highlighting the impact of COVID-19 on the financial health of the corporate debtor.

(ii) Despite this Court having rejected the IA on 18 June 2020 :

(a) DVI failed to take steps in pursuance of the resolution plan which is approved by the NCLT on 9 July 2020 by

(i) failing to submit the second tranche of the performance bank guarantee of INR 150 crores;

(ii) failing to provide its nomination to the IMC;

(iii) refusing to attend the meetings of the IMC;

(iv) setting up through its advocates the plea that a force majeure event had occurred resulting in termination of the resolution plan.

(b) This conduct, it has been submitted, is contumacious in that despite being placed on notice by the order of this Court dated 18 June 2020 that:

(i) DVI's IA stood dismissed; and

(ii) Any attempt to resile from the resolution plan would result in the

invocation of the contempt jurisdiction, DVI effectively thwarted the implementation of the resolution plan.

The Solicitor General has thus opposed the application for rectification and supported the contempt petition on the above submissions.

21 Adopting a similar line of submissions, Mr Niraj Kishan Kaul, learned Senior Counsel urged that:

(i) A plea of force majeure on account of COVID-19 was specifically raised in the application filed by DVI before this Court on 12 June 2020;

(ii) By a letter dated 3 September 2020 addressed by the advocates of DVI, a plea of force majeure was set up even after the order of this Court dated 18 June 2020 rejecting the IA; and

(iii) Even before the NCLAT, DVI filed an additional affidavit on 12 September 2020 for pleading a case of force majeure based on the COVID-19 pandemic.

On these grounds, it was submitted that DVI has made an intentional and willful attempt to evade compliance of its obligation under the approved resolution plan though its IA was specifically rejected on 18 June 2020 by this Court.

22 Dr Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the contemnor submitted that:

(i) In order to invoke the contempt jurisdiction, a disobedience has to be willful and not by implication;

(ii) The exercise of legal rights by a party to a proceeding cannot constitute contempt;

(iii) DVI was within its legitimate rights in challenging the order of the NCLT;

(iv) The view which may be taken on the merits of the submissions which have been addressed by DVI on whether the conditions precedent to the implementation of the resolution plan have been fulfilled cannot be basis for invoking the contempt jurisdiction. An adjudicatory forum may take a decision, one way or the other on the merits of DVI's submissions, but a plea of contempt cannot be founded on the acceptance or rejection of the plea of DVI that the conditions precedent to the implementation of the resolution plan have not been fulfilled.

(v) In this context, the reply filed by the contemnor to the contempt petition specifically sets out the case of DVI that the condition precedents to the implementation of the resolution plan have not been fulfilled. The following paragraphs of the reply have been emphasized:

> "5. It is submitted that Resolution Plan dated 17.01.2020 (r/w the addendum dated 07.02.2020) as submitted by DVI and approved by the COC contains several obligations/conditions precedents for its effective implementation and to ensure the going concern status of the Corporate Debtor. It is an admitted position that the Resolution Professional / COC *inter alia* failed to ensure compliance of certain conditions precedents under the Resolution Plan including failure of obtaining the prior written consent of the mortgage of the Ace Complex Land whilst executing a long term lease deed on behalf of the Corporate Debtor. By an email dated 29.01.2020, such default was brought to the due notice of the Resolution Professional by the representative of DVI. The aforesaid requirement of obtaining the prior written consent was further reiterated by DVI in the addendum dated 07.02.2020. A copy of the email dated 29.01.2020 is attached as Annexure R-1. (Pages 37-40)
>
> 6. It is a matter of record that the aforesaid issues were brought before the National Company Law Tribunal, Chandigarh ("**NCLT"**) at the time of hearing of the IA filed by the Resolution Professional for the approval of the Resolution Plan. However, the NCLT proceeded to approve the Resolution Plan on 09.07.2020 by *inter alia* unilaterally modifying the provisions of the Resolution Plan to the detriment of DVI. Respectfully, it is submitted that in the

absence of fulfilment of the aforementioned provisions of the Resolution Plan (amongst others), the very implementation/feasibility/ viability of the Resolution Plan and revival of the Corporate Debtor fails into jeopardy. DVI has accordingly exercised its rights as available under lay by filing its appeal before the National Company Law Appellate Tribunal (**"NCLAT"**). Without prejudice to the aforesaid and as elaborated hereunder, the Resolution Professional was also intimated of the termination of the Resolution Plan on 03.09.2020 pursuant to the self-operative termination clause of the Resolution Plan as approved by the CoC.

9. DVI's Resolution Plan dated 17.01.2020 (read with its addendum dated 07.02.2020) *inter alia* contains contingent conditions in the form of clause 2.5.2, which is set out as under:

"Unless waived (where permissible under Applicable Law) by the Resolution Applicants, Acquisition of the Corporate Debtor by the Resolution Applicants in terms of sub-section 5.1 (Acquisition as a Going Concern) of this Resolution Plan and any other action set out in sub-sections 5.1 and 5.2 (Acquisition as a Going Concern), of the Resolution Plan are contingent on the following conditions having been fulfilled in a form and manner satisfactory to the Resolution Applicants (**"Effective Date Conditions Precedents"**)

(a) Occurrence of NCLT Approved Date;
(b) Receipt of a copy of the order of the NCLT approving this Resolution Plan; and
(c) term lease (subsisting for 20 years or more) for the ACE Complex Land with Acceptable Terms."

"Acceptable Terms" has been defined in the Resolution Plan as under:

"Shall mean terms relating to the lease of ACE Complex Land and shall be suitable protective terms acceptable to the Resolution Applicants including (i) confirmation of the validity and subsistence of the lease arrangement by way of prior written consent of Vistra ITCL Limited acting as the security trustee on behalf of KKR India Financial Services Limited and L&T Finance Limited in a form and substance acceptable to the Resolution Applicants; (ii) no right of termination according to the lessor as long as lease rentals are paid; and (iii) right of first refusal occurring to the Resolution Applicants, in case of sale of ACE Complex Land."

10. It is thus seen that it is one of the essential requirements of the Resolution Plan for the Corporate Debtor to execute a long-term lease (for 20 years or more) in respect of the Ace Complex Land with "Acceptable Terms" i.e. with the prior written consent of Vistra ITCL (India) Limited (**"Vistra")** viz; the mortgagee of the Ace Complex Land.

> 11. Significantly, the aforesaid requirement of the "Execution of a long term lease (subsisting for 20 years or more) for the ACE Complex Land with Acceptable Terms" was reiterated in the addendum to the Resolution Plan dated 07.02.2020."

23 During the course of the hearing, Dr Singhvi made the following oral statement namely that "the application filed by DVI before the Supreme Court was to consider finding solutions for the delay occasioned by COVID-19. Neither was force majeure pleaded nor has it been pleaded now and only an extension of time has been sought on the ground of Covid-19". In other words, the submission of Dr Singhvi is that

(i) DVI has not set up a plea of force majeure as a basis for withdrawing from the resolution plan; and

(ii) Whether the conditions precedent under the resolution plan have been fulfilled is a matter which is sought to be urged in the appeal before the NCLAT.

The application for rectification

24 The application for rectification is premised on the assertion that there are two factual misconceptions contained in the order of this Court dated 18 June 2020. Firstly, the order proceeds on the basis that DVI in its IA of 12 June 2020 intended to withdraw from the resolution plan, which was not the case; and secondly, the order indicates that extensions of time for the submission of resolution plans were obtained on behalf of DVI, which is contrary to the record. The submission, in other words, is that DVI did not intend to resile from the resolution plan and only sought to highlight the financial impact of the COVID-19 pandemic on the economy, the auto industry and the viability of the corporate debtor. This submission has been reiterated by Dr Abhishek Manu Singhvi,

learned Senior Counsel when he urged that the application moved before this Court on 12 June 2020:

(i) was to consider finding solutions for the delay due to COVID-19;

(ii) force majeure was not pleaded; and

(iii) the only plea was for the extension of time.

25 The record before this Court would however belie the critique of the order dated 18 June 2020 and of the submissions made by learned Senior Counsel. The IA filed by DVI was styled as “an application for rectification”, as its title indicates, but paragraph 1 states that it is “an application for clarification / modification of the order dated 8 June 2020”. On 8 June 2020, this Court had relegated the matter of approval of the resolution plan to the NCLT with a timeline of 15 days. In the IA filed by DVI purportedly for ‘clarification and modification’, it was submitted that “due to Covid-19 pandemic DVI’s resolution plan (as submitted and approved by the CoC) was unviable and not feasible in the present circumstances”. DVI submitted that when the proceedings came up on 8 June 2020 it had urged that its resolution plan was required to be relegated to the adjudicating authority to assess the impact of the pandemic on the economy, the auto industry and the financial health of the corporate debtor and to enable the parties to renegotiate the terms of the resolution plan. In other words, DVI sought to submit that the purpose of relegating the issue of approval of the resolution plan was to enable a re-negotiation to take place before the resolution plans which have been approved by the CoC could be the subject matter of an approval of the adjudicating authority. Now, this submission of DVI cannot be accepted for two reasons: firstly, it is a settled principle of law that the record of the Court speaks for itself and the terms of a judicial order reflect what has been decided. The order of this Court dated 8 June 2020

indicates that since the fresh resolution plan had been passed by the CoC with the majority of 70 per cent, “the matter of IA” namely, IA 48906 of 2020 filed by the CoC was being relegated to the NCLT for passing “appropriate orders”. There is absolutely no indication in the order of the Court dated 8 June 2020 that the purpose of relegating the IA to the NCLT was to facilitate a fresh evaluation being made by DVI in regard to the impact of the pandemic on the economy, the auto industry and the health of the corporate debtor. DVI, in other words, has attempted to read into the order dated 8 June 2020 a basis which does not find expression in the terms of the order. Such an exercise is plainly impermissible. Secondly, Section 31 of the IBC provides the requirements to be observed, before the adjudicating authority approves the resolution plan. Sub-Sections (1) and (2) of Section 31 are in the following terms:

> “(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan:
> [Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]
> (2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order reject the resolution plan.”

26 The role of the adjudicating authority under sub-section (1) of Section 31 comes into being upon the approval of the resolution plan by the CoC under sub-section (4) of Section 30. The function which is assigned by the statute to the adjudicating authority is

to determine whether the resolution plan which has been approved by the CoC meets the requirements of sub-section (2) of Section 30. Upon being satisfied that the resolution plan meets those requirements, the adjudicating authority "shall by order approve the resolution plan". Before passing an order of approval the adjudicating authority has to satisfy itself that the resolution plan has provisions for its effective implementation. In the backdrop of the above provisions, the order of this Court dated 8 June 2020 required the adjudicating authority to perform the functions which are entrusted to it under Section 31 of the IBC. To suggest that the purpose of the order dated 8 June 2020 was to enable DVI to re-negotiate the resolution plan after assessing the impact of the pandemic is thus fundamentally flawed. It is flawed because this assertion is contrary to the plain terms of the record. It is flawed also because the submission is contrary to the nature of the function which is expected to be exercised by the adjudicating authority by the plain terms engrafted into the provisions of Section 31. When DVI moved its application on 12 June 2020, it asserted that the timeline of 15 days has "resulted in practical difficulties for parties to enter into any meaningful discussions and negotiations". To assert that there was any scope for negotiations and discussions after the approval of the resolution plan by the CoC would be plainly contrary to the terms of the IBC. DVI, in paragraph 7 of its application stated that it was seeking a clarification/modification for, *inter alia,* the following reasons:

(i) Its management team was based out of the US and found it difficult to travel to India during the course of the pandemic;

(ii) The pandemic had had a drastic impact on the business, revenue, assets and financial and operational health of the corporate debtor;

(iii) The meeting of the CoC dated 4 May 2020 recorded the performance updates of

the corporate debtors bearing on its financial health;

(iv) The RP had on 3 June 2020 shared additional information with DVI, which was substantial in its significance;

(v) DVI's resolution plan was based on the financials of the corporate debtor prior to the COVID-19 pandemic;

(vi) The pandemic had materially and adversely impacted commercial assumptions underlying the business plan and financial proposal for revival of the corporate debtor;

(vii) The RP was requiring DVI to submit an additional bank guarantee pursuant to the resolution plan failing which DVI faced the threat of the invocation of the performance bank guarantee of INR 150 crores which it had submitted;

(viii) DVI even pleaded "special equities". The reference to special equities contains a distinct flavor of a ground being set up to injunct the invocation of the performance bank guarantee. DVI sought a period of two months to (i) assess the impact of the pandemic on the business and financial health of the corporate debtor; (ii) the consequential impact of these circumstances on the feasibility and viability of the resolution plan; and (iii) to allow parties to negotiate the terms of the resolution plan. It was in this backdrop, that the reliefs which were sought in the IA were to permit DVI a period of two months "to examine and understand the impact of Covid-19 pandemic and the lockdown to discuss the terms of the resolution plan with the CoC"; and

(ix) DVI in its IA also sought a restraining order against the CoC and the RP from acting upon the existing resolution plan until the conclusion of the above process subject to it extending the existing bank guarantee.

27 The order of this Court dated 18 June 2020 must be understood in the context of the IA which was moved by DVI. When the three judge Bench in its order dated 18 June 2020 observed that the "application made by the applicant for withdrawal of the offer is hereby rejected" it must be understood in the context of the plea which was setup by DVI. There can be no mistaking the fact that DVI, despite having submitted a resolution plan which had undergone discussion and revision before the CoC before being approved in the meeting of the CoC of 11 February 2020, was seeking to renege its applications to fulfill the resolution plan. The plea for being allowed to re-examine the impact of the pandemic and to re-negotiate the terms of the resolution plan makes it abundantly clear that DVI was not willing to fulfill the terms of the obligations which it had agreed. This is evident from the fact also that though DVI was obliged to furnish the second tranche of its performance bank guarantee of INR 150 crores, it was not ready to do so. On the contrary, apprehending a threat of the invocation of the first tranche of the bank guarantee of INR 150 crores, DVI pleaded special equities and sought a direction allowing it to keep the bank guarantee alive until the process of re-negotiation was completed in two months. This again was to overcome the consequence of the invocation of the bank guarantee arising from DVI's default. The prayer seeking a direction to allow DVI to extend the bank guarantee was artfully worded since the effect would be to restrain the invocation of the bank guarantee. One of us (Justice MR Shah) was a member of the Bench which declined to grant relief on the IA filed by DVI on 12 June 2020. But, for the purpose of the present application, this judgment is based on the record as it stands, which leaves no manner of doubt that DVI was seeking to renege on its commitments. When the order of this Court dated 18 June 2020 alludes to "the application made by the applicant for withdrawal of the offer", the reference is

clearly to the substantive content of the IA which indicates that DVI was not ready to abide by the commitments made by it in the resolution plan. The latter part of the order dated 18 June 2020, placed DVI on notice that if it indulged in such kind of practices in the future, it was "to be treated as contempt of this Court in view of the various orders passed by this Court at his instance". DVI submits that the orders of this Court were not passed at its instance since applications for the extension of time had earlier been granted on the request by the CoC. The list of dates filed by DVI indicate that DVI filed its Vakalatnama in the appeal on 5 June 2020 a point which was stressed by Mr Mukul Rohatgi, learned Senior Counsel. However, there can be no manner of doubt that the extensions of time granted by this Court were to enable a due consideration of the proposals of resolution applicants of which DVI undoubtedly was an applicant. This is evident from the manner in which the proceedings unfolded. On 24 September 2019, this Court directed the RP to invite fresh offers within a period of 21 days. As a result of offers being received after the deadline under the invitation which was issued pursuant to the above directions, an IA was moved on 6 November 2019 seeking an extension of four weeks. On 13 November 2019, this Court directed that the consideration would be confined to five offers "received within the time specified in the advertisement". On 21 November 2019, the CoC sought a modification of the order of 13 November 2019 to correctly record that while five resolution applicants had responded to the fresh invitation by the RP only one resolution plan had been submitted before the last date of submission. The CoC sought liberty to consider the additional three resolution offers, one of which was the offer by DVI. It was in this context that on 2 December 2019, this Court partly allowed the application for modification by directing that fresh offers to be invited within thirty days. It was in pursuance of the order of this Court dated 2

December 2019 that a public announcement was made by the RP on 3 December 2019. DVI submitted undertakings under Section 29A of the IBC and other documents on 6 December 2019. Fresh resolution plans were submitted by four entities including DVI on 31 December 2019.

28 On 6 January 2020, the CoC declared DVI as the highest evaluated resolution applicant. DVI submitted a revised resolution plan dated 17 January 2020, following which the voting which was scheduled by the CoC on that day was cancelled. The revised proposal of the DVI was discussed in the 29th meeting of the CoC. On the same day – 20 January 2020 –when the proceedings were listed before this Court it took note of the fact that the CoC was in the process of approving a resolution plan following which an extension of two weeks was granted. DVI submitted an addendum to the resolution plan on 7 February 2020.

29 On 10 February 2020, the CoC sought an extension of a week for the resolution plan to be voted upon by the members of the CoC. On 11 February 2020, the resolution plan of DVI was approved and an affidavit was filed by the RP before this Court on 19 February 2020 reporting the approval of DVI's resolution plan by the CoC. Appropriate directions were sought. This sequence of events leaves no manner of doubt that the extensions which were granted were to facilitate the process initially of inviting resolution applicants to submit their plans and later for the evaluation of the plans which had been submitted. After DVI was found to be the highest evaluated resolution applicant, extensions were sought and granted for the resolution plan to be finalized and voted upon by the CoC. Who sought an extension of time is really beside the point and is of subsidiary importance. Formally it may be true that the extensions were

applied for by the CoC, with the RP having apprised this Court also of the approval granted to DVI's resolution plan. However, DVI was the beneficiary of the extensions which were granted by this Court. The extensions granted from time to time facilitated the consideration of the resolution plan submitted by DVI. DVI cannot be heard to contend that the order of this Court dated 8 June 2020 suffers from an error when the process of seeking extensions before this Court ultimately led up to the approval of its resolution plan. DVI's application for rectification, in other words, is an attempt to renege from the resolution plan which it submitted and to resile from its obligations. This is a devious attempt which must be disallowed. The rectification application must accordingly be dismissed.

Contempt Petition No. 542 of 2020

30 The premise of the contempt proceedings which has been initiated by the CoC is that despite the order of this Court dated 18 June 2020, DVI has by its conduct

(i) Obstructed the implementation of the resolution plan; and

(ii) Set up a plea in the teeth of the rejection of its IA by this Court on 18 June 2020.

31 Dr Abhishek Manu Singhvi, learned Senior Counsel is correct in the formulation of legal principle but it is in the application of those principles where the fine-print of this case lies. There can be no manner of doubt that

(i) the contempt jurisdiction is to be exercised with circumspection;

(ii) the acceptance or rejection of a plea on merits is distinct from whether a party is in breach of the order of court;

(iii) the disobedience of an order must be willful before it constitutes contempt;

(iv) a willful breach must appear clear by the conduct of a party not by implication; and

(v) the exercise of legal rights and remedies would not constitute contempt.

32 We must at the outset note that on 8 June 2020, this Court relegated the matter to the NCLT to decide upon the approval application within a fortnight. NCLT passed an order approving the resolution plan submitted by DVI on 9 July 2020. DVI having taken recourse to its appellate remedy before the NCLAT under the provisions of Section 61 of the IBC does not constitute contempt. The plea of contempt however proceeds on the conduct of DVI. Bearing on this issue, the following circumstances have to be noted:

(i) the pleas which were set up by DVI in paragraphs 9,12,13,15 and 17 of its IA filed on 12 June 2020, clearly sought to setup a foundation for force majeure. In paragraph 9, DVI pleaded that "Covid-19 pandemic has materially and adversely impacted commercial assumptions underlying the business plan and financial proposal for revival of the corporate debtor and the feasibility and viability of the resolution plan". In paragraph 12, DVI urged that the execution of a letter of intent and submission of an additional bank guarantee "would mean that the approved resolution plan is being implemented without taking into consideration the changed circumstances, and would be directly in conflict with the intent of discussing the plan after understanding the impact of the changed financial position of the Company and the market as a whole";

(ii) Para 13 of the IA stated that DVI "has been placed in an impossible situation where, on one hand the impact of the changed circumstances needs to be taken into consideration for examining the impact of the same on the resolution plan…";

(iii) In para 15, DVI submitted that it was "imperative that the CoC and the resolution professional do not move forward without first giving it [DVI] the opportunity to examine the impact of the changed circumstances on the plan and its feasibility and to thereupon discuss the same with the CoC"; and

(iv) Finally, in para 17, DVI pleaded that it "may be allowed to assess the impact of the COVID-19 pandemic on the overall business and financial health of the Corporate Debtor, and the consequential impact of these circumstances on feasibility and viability of DVI's resolution plan and a period of 2 (two) months […] may be granted to the parties to negotiate the terms of DVI's resolution plan […]".

These averments clearly indicate a foundation for the defence of force majeure.

33 On 3 September 2020, after the order of this Court dated 18 June 2020 rejecting the above IA, an email was addressed on behalf of the DVI by Mr Dinesh Pednekar, of Economic Laws Practice (**"ELP"**), the advocates representing DVI to the RP. The email *inter alia* stated that:

> "6.Our client states that in view of outbreak of the Covid-19 pandemic since March 2020 and continuing till date, the business/assets/revenues of the Corporate Debtor have been adversely and materially affected beyond INR 300 crores triggering clause 8.7(iii) of the Resolution Plan. This constitutes a 'Force Majeure Event' (as defined in the Amtek Resolution Plan) which is a self-operating clause providing for the forthwith termination business/assets/ revenues of the Corporate Debtor have remained uncontroverted by you in proceedings before the NCLT Chandigarh. In any event, withholding of the information sought vide the email dated 13 July 2020 only reinforces the fact that the event of Force Majeure has occurred resulting in the forthwith termination of the Amtek Resolution Plan."

On 12 September 2020, in an additional affidavit filed before the NCLAT, DVI again sought to plead the COVID-19 pandemic as a reason for allowing it to re-negotiate the resolution plan. The above circumstances leave no manner of doubt that despite the rejection of its IA by this Court on 18 June 2020, DVI continued to persist in raising the same grounds as a justification to be relieved of the obligations imposed on it by the terms of its resolution plan.

34 Dr Abhishek Manu Singhvi, learned Senior Counsel had, in the course of his submissions which have been recorded earlier, submitted that neither was force majeure pleaded then (in the IA filed before this Court) nor thereafter.

35 Faced with the communication dated 3 September 2020 of ELP made on behalf of DVI, Dr Abhishek Singhvi submitted that the submission was not before the NCLAT. However, even this is factually incorrect.

36 Mr Niraj Kishan Kaul, learned Senior Counsel has drawn the attention of the Court to the fact that on 12 September 2020, additional affidavit was filed before the NCLAT where the plea of force majeure was raised by DVI. Besides this, DVI has, despite the approval of the resolution plan, failed to

(i) submit a performance bank guarantee for the balance of INR 150 crores;

(ii) make a nomination to the IMC; and

(iii) failed to attend the meetings of the IMC.

37 The provisions of the IBC are premised on a time bound process for the resolution of corporate insolvencies. Effectively, the conduct of DVI after the CoC approved the resolution plan on 11 February 2020 has thwarted the entire process,

thus, bringing things to a stand-still. Alive to the realities of the situation, Dr Abhishek Manu Singhvi, learned Senior Counsel has stated before the Court that in the proceedings which are pending before the NCLAT, DVI shall not plead force majeure based on the outbreak of the Covid-19 pandemic.

38 The issue which needs to be addressed is whether recourse to the contempt jurisdiction is valid and whether it should be exercised in the facts of this case. Undoubtedly, as we have noted earlier, the conduct of DVI has not been *bona fide*. The extension of time in the course of the judicial process before this Court enures to the benefit of DVI as a resolution applicant whose proposal was considered under the auspices of the directions of the Court. DVI attempted to resile from its obligations and a reading of its application which led to the passing of the order of this Court dated 18 June 2020 will leave no doubt about the fact that DVI was not just seeking an extension of time but a re-negotiation of its resolution plan after its approval by the CoC. Then again, despite the order of this Court dated 18 June 2020 rejecting the attempt of DVI, it continued to persist in raising the same pleas within and outside the proceedings before the NCLAT. The conduct of DVI is lacking in *bona fides.* The issue however is whether this conduct in raising the untenable plea and in failing to adhere to its obligations under the resolution plan can *per se* be regarded as a contempt of the order of this Court dated 18 June 2020. DVI was undoubtedly placed on notice of the order that should it proceed in such terms, it would invite the invocation of the contempt jurisdiction. Having said that, it is evident that the order of this Court dated 18 June 2020 rejected the IA moved by DVI and as a necessary consequence, the basis on which the reliefs in the IA were sought. Therefore correctly, it has been now stated on behalf of the DVI that it will not set-up a plea of force majeure in view of the dismissal of its IA on 18 June 2020.

However lacking in *bona fides* the conduct of DVI was, we must be circumspect about invoking the contempt jurisdiction as setting up an untenable plea should not in and by itself invite the penal consequences which emanate from the exercise of the contempt jurisdiction. Likewise, the default of DVI in fulfilling the terms of the resolution plan may invite consequences as envisaged in law. On the balance, we are of the considered view that it would not be appropriate to exercise the contempt jurisdiction of this Court.

During the course of the hearing, Dr Abhishek Manu Singhvi, learned Senior Counsel has relied on the affidavit filed in response to the contempt petition while seeking to urge that DVI will be within in its rights to urge whether the conditions precedent to the enforcement of the resolution plan have been fulfilled. Since DVI is in appeal before the NCLAT, we express no opinion on the merits of the submission. The NCLAT will take a view on the tenability and merits of the submission of DVI that the conditions precedent under the resolution plan have not been fulfilled after hearing the parties. This is not an issue which arises before the Court in the present proceedings either upon the application for rectification moved by DVI or the contempt petition moved by the CoC.

39 For the above reasons, our conclusions and directions are that :

(i) There is no merit in the application for rectification moved by DVI. IA No. 58156 of 2020 in Civil Appeal No 6707 of 2020 shall stand dismissed;

(ii) It is not expedient in the interest of justice to pursue the contempt proceedings. The Contempt Petition (C) No. 524 of 2020 in Civil Appeal No. 6707 of 2019 shall accordingly stand dismissed, subject to (iii) below;

(iii) In terms of the submission which has been made by DVI before this Court and even otherwise, as a consequence of the dismissal of its IA on 18 June 2020, it

shall not set-up a plea for force majeure in the proceedings which are pending before the NCLAT in appeal against the order of the NCLT approving the resolution plan; and

(iv) The appeal filed by DVI against the approval of the resolution plan by the NCLT shall peremptorily be heard and disposed of by the NCLAT not later than within a period of one month from the date of the present judgment.

40 There shall be an order in the above terms.

…….....J.
[Dr Dhananjaya Y Chandrachud]

…….....J.
[M R Shah]

New Delhi;
February 23, 2021