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Delhi High Court

Case No: CCP (CO.) No. 30 of 2010 in CO.PET. No. 75 of 2002

M/S Koshika Telecom Ltd.	APPELLANT
Vs	
Ms. Shalini Soni, IFCI Ltd. and Mr. R.K. Bansal	RESPONDENT

Date of Decision: Feb. 6, 2012

Acts Referred:

- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 19(19)

Citation: (2012) 187 DLT 717

Hon'ble Judges: P.K. Bhasin, J

Bench: Single Bench

Advocate: Rajiv Bahl Advocate for Official Liquidator, Mr. Maninder Singh with, Mr. P.S Bindra, for Ms. Shalini Soni and IFCI Ltd. and Mr. Arvind Kumar Singh, for Mr. R.K. Bansal, Recovery Officer, DRT, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.K. Bhasin, J.
The official liquidator had filed this contempt petition against respondent-contemnor Ms. Shalini Soni, who is the Assistant General Manager (Law) of IFCI Ltd., for non-compliance of the order dated 08.10.2009 passed by this Court in Company Petition No. 75 of 2002. The relevant facts leading to the filing of this contempt petition may first be noticed. This Court had ordered winding up of M/s. Koshika Telecom Ltd.(hereinafter to be referred as "the Company in liquidation") vide order dated 02.08.2005 in Company Petition No. 75 of 2002 and the official liquidator was directed to take charge of all the assets etc. of the said Company. It appears that before some of the assets of the Company in liquidation had been sold in auction in some proceedings initiated by the respondent-contemnor IFCI Ltd., a creditor of the Company in liquidation, by the Debts

Recovery Tribunal-I, Delhi and part of the sale proceeds amounting to twelve crores of rupees came to be deposited with IFCI Ltd. (instead of the Recovery Officer attached to the Debts Recovery Tribunal) and process was on for sale of more assets of the Company under liquidation. The official liquidator filed a report no. 281/2009 before this Court on 06.10.2009 in which some directions were sought from the Court and one of the directions, which only is relevant for the present purpose, was as under:-

"(iii). Directions may kindly be given to the IFCI to deposit the sale proceeds with official liquidator forthwith."

2. On 8.10.2009, this Court passed the following order in respect of aforesaid direction no.(iii) sought for by the official liquidator:-

"Directions may also issue to IFCI, as prayed for, including a direction to the IFCI to pay for the expenses of the publication of advertisement inviting the claims."

3. After the aforesaid direction was given to IFCI Ltd. by this Court the official liquidator had a meeting on 26.10.2009 with the respondent Ms. Shalini Soni, who was pursuing the case on behalf of IFCI Ltd., being its senior Law Manager, for the recovery of its money from the Company in liquidation before the Debts Recovery Tribunal and in that meeting she was apprised of the direction given by this Court to IFCI Ltd. in the Company Petition no.75 of 2002 for remitting to the official liquidator the sale proceeds of the assets of the Company in liquidation which it was retaining. Photo copy of the minutes of that meeting has been annexed with this petition as a part of Annexure "C". As per the further averments made in this contempt petition, IFCI Ltd. did not remit the money to the official liquidator despite the fact That necessitated filing of this contempt petition by the official liquidator. The contempt petition was however filed against Ms. Shalini Soni only.

4. Initially this Court also had issued notice of this application to Ms. Shalini Soni only vide order dated 3rd June, 2010. She filed her response to the notice and denied that IFCI Ltd. had violated the direction of this Court. The relevant portions of her reply are re-produced below:-

"4. It is respectfully submitted that it is true after the Hon"ble High Court was pleased to pass orders dated 8.10.2009 in the official liquidator report no. 281/2009, the representative of the respondent with all good intentions had attended the meetings called by the official liquidator on 26.10.2009..... Further, in so far as the deposit of the sale proceeds lying with the respondent, it is respectfully submitted that the entire sale of assets of the company in liquidation was conducted under the aegis of the recovery officer who is empowered to conduct such sale in accordance with the provisions of recovery of debts due to Banks and Financial Institutions Act, 1993, as per the procedure laid down under the said Act with the Income Tax Rules. The auction purchasers are required to deposit the sale proceeds for the assets with the recovery officer, DRT. It is further submitted that the part of money realized from the sale of assets

of M/s Koshika Telecom Ltd. was kept with IFCI Ltd. in no lien interest bearing account as per the orders of the Ld. Recovery Officer,DRT and the balance were kept in form of a FDR with a nationalized bank by the recovery officer. The recovery officer was the custodian of the funds and IFCI Ltd. the same has not been disclosed by the official liquidator to this Hon"ble Court....

5. It is submitted that since after publication of notice inviting claims by the official liquidator, no claim was received by the official liquidator IFCI Ltd. filed an application before learned recovery officer for appropriating the entire sale proceeds received from sale of assets of M/s Koshika Telecom Ltd. By the order dated 22.2.2010 Ld. Recovery Officer relying on the reply filed by the official liquidator that no claim was received by the official liquidator till date, disposed of the aforesaid application directing out of the total sale proceeds of sum of Rs. one crore shall be kept with the official liquidator on provisional basis and IFCI shall be at liberty to appropriate the remaining sale proceeds on provisional basis till final adjudication....

6. Aggrieved by the aforesaid order, the official liquidator filed an appeal before learned Presiding Officer, DRT which was disposed of on 11.6.2010 modifying the order passed by Recovery Officer to the extent that Official Liquidator would be entitled to the amount to the extent of value of land of M/s Koshika Telecom Ltd. sold by Recovery Officer....

7. The aforesaid order dated 11.6.2010 was impugned by IFCI Ltd. before DRAT by way of an appeal which was dismissed on 13.7.2010....

8. Against the aforesaid dismissal order, the IFCI Ltd. filed a writ petition bearing W.P. (C) No. 5014/2010 which is pending adjudication before Division Bench of this Hon"ble Court."

5. In view of the stand taken by Ms. Shalini Soni that after the passing of the order dated 8th October,2009 by this Court, violation of which was being alleged by the official liquidator, IFCI Ltd. had approached an authority subordinate to this Court i.e. the Recovery Officer attached to the Debts Recovery Tribunal for seeking permission to appropriate the sale proceeds of the assets of the Company in liquidation, in respect of which it undisputedly was not even a secured creditor, knowingly that this Court had already given a direction to the contrary, and the Recovery Officer had also passed a direction which was in direct conflict with the direction of this Court given to the IFCI Ltd. on 8th October,2009, this Court ordered production of the records of the Recovery Officer to find out the circumstances in which the Recovery Officer had permitted IFCI Ltd. to not only to retain the money with but also to appropriate the same. The relevant file was produced by the Recovery Officer Mr. R.K. Bansal himself. Perusal of his file showed that after he had issued notice of the IFCI"s application for allowing it to appropriate the money lying with it to the official liquidator, the official liquidator had filed his reply opposing the permission being sought from him by IFCI Ltd. and in that reply there was a reference made to the direction given by this Court on 8th October,2009 and in fact a

copy of the order dated 8th October,2009 of this Court was also placed on record along with the reply.

6. Some explanation was given by Mr. Bansal as to how his order dated 22nd February,2010 came to be passed whereby he had permitted IFCI Ltd. to appropriate the sale proceeds and only a sum of Rs. one crore was directed to be remitted to the official liquidator. Since the explanation of Mr. Bansal was not found to be palatable this Court vide order dated 23rd May,2010 directed issuance of show cause notice to the Recovery Officer Mr. R.K. Bansal. Similarly show cause notice was ordered to be given to IFCI Ltd. also since it being and financial institution and a legal entity, was really the violator of the direction of this Court, as per the official liquidator''s case.

7. Then on behalf of IFCI Ltd., its CEO & Managing Director Mr. Atul Kumar filed his affidavit in which he reiterated the stand already taken by Ms. Shalini Soni in her reply and relevant portions therefrom have already been noticed. However, relevant paras from his affidavit are also being reproduced below verbatim;-

"3. That I say that I had no knowledge of the development leading to filing of the contempt nor was I aware of the orders passed by this Hon''ble Court on 8.10.2009, violation of which is alleged in the present contempt proceedings. That all the decisions regarding the matter being routine in nature were taken by the then dealing official.

4. Without prejudice to the aforesaid, I say that IFCI Ltd. tenders an unconditional apology to this Hon''ble Court if this Hon''ble Court is of the opinion that any act of IFCI Ltd. has violated any order passed by this Hon''ble Court.

5. I say that from the record maintained by IFCI Ltd., the following is borne out:

i) That IFCI Ltd. granted loan facility to M/s. Koshika Telecom Ltd. for which its Directos had given a guarantee. Moveable assets namely Microwave Towers were also hypothecated with IFCI Ltd.. Since M/s. Koshika Telecom Ltd. and its guarantors failed tor epay the amount owed to IFCI Ltd., it filed Original Application being O.A. No. 148 of 2002 in Debts Recovery Tribunal in which the Recovery Certificate was passed on 27.04.2005. The said certificate was placed before the Recovery Officer, DRT resulting in Recovery Proceedings bearing RC No. 43/2006 before the Recovery Officer, DRT-I, New Delhi.

ii) In the present proceedings, Official Liquidator was appointed by this Hon''ble Court who has been representing the Company before the Recovery Officer. In recovery proceedings Towers and land belonging to the Company were sold by Recovery Officer after publishing advertisements etc. in newspapers.

iii) Since no valid claim was received by Official Liquidator and IFCI Ltd. was the only Claimant, it filed an application for appropriating the amount realized from the sale of Towers and Land.

iv) On 27.2.2010, Official Liquidator filed reply to the aforesaid application when the Application was argued and relying on the Judgment of Hon"ble Supreme Court in the case of Allahabad Bank Vs. Canara Bank and Another, in which Hon"ble Supreme Court held as follows order was passed permitting IFCI Ltd. to appropriate the amount.

"the adjudication, execution and distribution of the sale proceeds and working and priorities as between banking and financial institutions and other creditors of the defendant company so far as the monies realized under the RDB Act are concerned - has to be done only by the Tribunal and not by Company Court. The next question is as to the manner of distribution of these monies between the banks or financial institutions on the one hand and the other creditors secured or unsecured of the company under winding up. This question depends upon the effect of Section 19(19) of the RDB Act as introduced by Ordinance 1 of 2000."

v) That as per records maintained, IFCI Ltd. was given a copies of order dated 8.10.2009 passed by this Hon"ble Court and Report No. 281/09 was on 22.2.2010 as annexures to the reply filed before Recovery Officer, Prior thereto though a meeting was oon 26.10.2009 in the Chamber of Official Liquidator which was attended by Ms. Shalini Soni, AGM, Law of IFCI Ltd., when copies of order dated 8.10.2009 and report No. 281/09 was not supplied.

vi) Aggrieved by order passed by Recovery Officer dated 22.2.2010, Official Liquidator filed an appeal before the Presiding Officer, DRT which appeal was partially allowed by order dated 11.6.2010 and the order passed by Recovery officer was modified to the extent that Official Liquidator was held to be entitled to the amount received from sale of land of M/s Koshika Telecom Ltd. sold by Recovery Officer and IFCI Ltd. was held to be entitled to the amount received from sale of moveable assets of M/s Koshika Telecom Ltd. including Microwave Towers and other machinery.

vii) The aforesaid order dated 11.6.2010 was challenged by IFCI Ltd. before DRAT and the same was rejected by order dated 13.7.2010.

viii) Aggrieved by the aforesaid dismissal, the IFCI Ltd. filed a writ petition before this Hon"ble Court being W.P.(C) No. 5014/2010. In the said petition, Official Liquidator filed its counter affidavit inter alia taking a plea that Official Liquidator was entitled to the said amount and IFCI Ltd. was in contempt of order dated 8.10.2009 passed by this Hon"ble Court since it had not deposited the expenses as well as sale proceeds as directed by this Hon"ble Court.

ix) The aforesaid writ petition was allowed by order dated 6.12.2010 modifying the order passed by DRAT on 11.6.2010 and permitting IFCI to retain the amount realized from sale making it clear that claim of unsecured creditors would run pari pasu with that of IFCI Ltd. and claims of workmen would first have to be satisfied and IFCI Ltd. would bear the amount of cost of advertisement and abide by undertaking given to Recovery Officer,

DRT pursuant to Recovery Officer"s order dated 22.2.2010.

8. The recovery officer also filed his affidavit in reply to the show cause notice and the relevant portions from that affidavit are reproduced below:-

"3. That I say that the Deponent is performing his duties as Recovery Officer attached to the Hon"ble Debts Recovery Tribunal-I, Delhi since May 2007. It is apparent from the perusal of the career record of the Deponent that during the tenure of the Deponent as a Recovery Officer for more than 4 years now, the Deponent has never flouted any direction/order passed by any Court of law which have been brought the notice and attention of the Deponent by the parties and always endavoured to the best of may ability to pass orders in accordance with law and specially within the four corners of powers/jurisdiction conferred upon the Deponent under the provisions of Recovery of Debts Due to Banks & Financial Institution Act, 1993 and the Debts Recovery (Procedure) Rules, 1993 as well as the provisions as envisaged under the Second Schedule of the Income Tax Act, 1963 and also keeping in mind the purpose of enactment of the said Act.

4. That I say that the Deponent has not intentionally or deliberately disobeyed any orders passed by this Hon"ble Court and under no circumstances would act in any manner that would undermine the dignity and/or majesty of this Hon"ble Court. If however, it is contended and held that in the course of his duties as a Recovery Officer there have been any lapses, theDeponent respectfully states and submits that any such lapse is wholly unintentional and the Deponent tenders his sincere and unconditional apology to this Hon"ble Court and prays for pardon of this Hon"ble Court.

5. That the OL had filed Report No. 281 dated 06.10.2009 in this Hon"ble Court in the matter of M/s. Koshika Telecom Ltd. (In liquidation) for seeking various directions from this Hon"ble Court. One of the directions sought was that IFCI should deposit the sale proceeds with the OL forthwith. The said Report No. 281 of 2009 was disposed off on 08.10.2009. Vide this order, this Hon"ble Court directed, inter-alia, that "directions may also issue to IFCI, as prayed for, including a direction to the IFCI for expenses of the publication of the advertisement inviting the claims".

A copy of the order dated 08.10.2009 is filed herewith as Annexure R-1.

6. It is submitted that a perusal of the order dated 08.10.2009 does not by itself indicate that IFCI had been directed to remit the entire sale proceeds of the assets of the Company (in liquidation) to the OL. This aspect becomes clear only when the said order 08.10.2009 is read with Repot No. 281 of 2009.

7. That the IFCI Ltd. had filed the application praying for permission to appropriate the sale proceeds received from the sale of the assets of the Company under liquidation in partial discharge of Recovery Certificate on 09.12.2009. The reply to the said application was filed o behalf of the Official Liquidator on 17.02.2010. The arguments were heard on

19.02.2010 and the order was passed on the said Application by the Deponent on 22.02.2010. Vide the said order dated 22.02.2010 passed by the Deponent, a sum of ` 1.00 crore out of the total sale proceeds of about 12 crores lying with the IFCI was ordered to be remitted to the Official Liquidator by IFCI and the balance amount was allowed to be provisionally appropriated by IFCI Ltd.

8. That I say that the true spirit of the order dated 08.10.2009 as passed by this Hon''ble Court was not brought to the specific attention of the Deponent by any of the parties during the course of the arguments held on 19.02.2010 which led to passing of the order dated 22.02.2010 by the Deponent. I say that neither of the parties i.e. IFCI or the Official Liquidator drew the attention of Deponent to the specific prayers/directions that were sought for by the Official Liquidator in his report dated 06.10.2009. Had this fact been brought to the knowledge of the Deponent during the course of arguments, the Deponent would have never passed the order permitting IFCI Ltd. to appropriate any portion of the sale proceeds of the assets of the Company(in liquidation).

9. I say that while passing the order dated 22.02.2010, the attention of the Deponent was drawn to the operation part of the order dated 08.10.2009 passed by this Hon''ble Court, which as aforesaid reads follows:-

"Directions may also issue to IFCI, as prayed for, including a direction to the IFCI to pay for the expenses of the publication of the advertisement inviting the claims".

10. That in the hindsight, the Deponent states that he ought to have read the entire application and the reliefs/directions that had been sought by the Official Liquidator. This as stated, was a bonafide oversight and was totally unintentional.

11. I say that the Deponent passed the above mentioned order dated 22.02.2010 within the four corners of law and due to over sightedness as the directions sought in the report dated 06.10.2009 were not specifically brought to my knowledge by any of the parties during the course of the hearing before me.

12. I reiterate that the Deponent has all respect for the directions/orders passed by this Hon''ble Court and had no intention to flout any directions issued by this Hon''ble Tribunal. I further say that the Deponent passed the order dated 22.02.2010 not to violate or willfully disobey the directions passed by this Hon''ble Court and the same was passed due to the aforesaid reasons.

13. That I say that it is relevant to bring to the notice of this Hon''ble Court that the deponent herein duly appeared before this Hon''ble Court on 06.05.2011 and has apprised this Hon''ble Court of the reasons as to how and under what circumstances the order had come to be passed by the Deponent.

14. It is humbly reiterated that deponent has all due respect and regards for the orders passed by this Hon''ble Court. However, with utmost humility, it is stated that in the event

that this Hon''ble Court still arrives at the conclusion that the deponent has committed contempt of the order dated 08.10.2009 passed by this Hon''ble Court, I hereby tender my sincere, unconditional and unqualifies apologies to this Hon''ble Court and pray that the same be accepted by this Hon''ble Court."

9. Subsequently Mr. R.K. Bansal filed an apology affidavit of two paragraphs which are also reproduced below:-

i) I may say that I am part of the judicial system and I am at the lowest in the hierarchy and have greatest respect and regard for this Hon''bel Court and orders/directions passed by any Court of law at any point of time including this Hon''ble Court. I may say that I never had any intention to disobey and direction passed by this Hon''ble Court.

ii) I may say that I have not intentionally or deliberately disobeyed any orders passed by this Hon''ble Court and under no circumstances would act in any manner that would undermine the majesty of law or of this Hon''ble Court. I unconditionally and with all humility tender my sincere any unequivocal apology to this Hon''ble Court any pray that the Hon''ble Court may discharge by accepting the apology."

10. All the contemnors were represented by their respective counsel. Initially, on behalf of Ms. Shalini Soni as well as IFCI Ltd., even when it was not a formal party in these proceedings, submissions were made by Mr. Maninder Singh, learned senior counsel, but after formal show cause notice had been issued to IFCI Ltd. further submissions were advanced by Mr. P.S. Bindra, advocate who was earlier the advocate on record for IFCI Ltd. The learned counsel for the contemnors had reiterated the same submissions during the course hearing of this contempt petition which had been pleaded in their respective replies.

11. The crux of the submissions advanced on behalf of all the contemnors was that the disbursement of money realized from the sale of properties of some Company pursuant to the orders passed by the Debts Recovery Tribunal in the proceedings instituted before it by any creditor is exclusively within the domain of the Debts Recovery Tribunal and the Recovery Officer attached thereto, in view of the decision of the Hon''ble Supreme Court reported as Allahabad Bank Vs. Canara Bank and Another, , which was relied upon by the IFCI Ltd. firstly while approaching the Recovery Officer after the passing of the order dated 8th October,2009 by this Court and then by the Recovery Officer also while allowing the IFCI''s application. That is evident from a perusal of the replies of the contemnors and the order of the Recovery Officer passed on 22.02.2010 relevant part of which is reproduced below:

''This order will disposed of the application filed by the CHFI vide Dy. No. 5614 dated 09.12.09 with a prayer that the sale proceeds received from the sale of assets of CD-1 company may be directed to be appropriated by the applicant in partial discharge of RC.

From the records placed before this forum it has emerged that as on date no claim is pending with the Ol except for one claim which is reported to be under scrutiny. The amount of this claim has not been disclosed. Even the amount incurred on advertisement inviting claims has not been specified, thereby making it too ambiguous to pass any direction. CHFI has rightly relied on the citation Allahabad Bank Vs. Canara Bank (2000) SCC 406 which aptly fits within thecontours of the present case....

In view of all the submissions this forum finds no impediments in allowing the application of CHFI. Accordingly it is allowed subject to the following conditions:

i) Out of the total sale proceeds of confirmed sales an amount of Rs. 01 crores shall be kept with the OL on provisional basis. CHFI shall be at liberty to appropriate the remaining sale proceeds on provisional basis till final adjudication."

12. From the fore-going narration, the position which emerges is that the order dated 8th October, 2009 passed by this Court whereby the prayer made by the Official Liquidator for directing IFCI Ltd. to remit the sale proceeds of the assets of the Company in liquidation, which it was retaining, be remitted to the Official Liquidator, was duly communicated to Ms. Shalini Soni, who was the Assistant General Manager (Law) of IFCI Ltd. Communication of that direction to Ms. Shalini Soni, who was representing IFCI Ltd., was, therefore, a due communication of the direction of this Court to IFCI Ltd. also. IFCI Ltd."s CEO and Managing Director Mr. Atul Kumar has in his affidavit taken the stand that the Official Liquidator had not informed IFCI Ltd. about this Court"s order dated 8th October, 2009 earlier to the filing of its reply to the application which had been moved by IFCI Ltd. before the Recovery Officer but this plea cannot be accepted in view of the fact that Ms. Shalini Soni herself had in her reply admitted categorically that she was made aware of the order dated 8th October, 2009 passed by this Court on 26-10-2009 by the Official Liquidator. This false plea taken by Mr. Atul Kumar shows that he also very much knew about the order of this Court and still did not decide to challenge this order nor did he order its compliance. Therefore, IFCI Ltd. approaching the Recovery Officer attached to the Debts Recovery Tribunal for getting an order from him for utilizing the money which this Court had directed to be remitted to the Official Liquidator clearly shows that IFCI Ltd., as an institution and legal entity, as well as Ms. Shalini Soni, had no respect for the directions of this Court. Even if Mr. Atul Kumar or Ms. Shalini Soni had been of the view that in view of the decision of the Hon"ble Supreme Court in the case of "Allahabad Bank vs. Canara Bank"(supra) IFCI Ltd. could have approached the Recovery Officer for seeking any direction for disbursement/utilization of the sale proceeds of the assets of the Company in liquidation which had been sold in the proceedings before the Debts Recovery Tribunal and that this Court as the Company Court could not have passed any direction of the kind which was passed on 08-09-2009 the only course available to IFCI Ltd. was to either seek a modification of this Court"s order dated 08-10-09 from this Court itself or it should have challenged that direction before the Appellate Court. In this regard a reference can be made to a recent unreported judgment of the Hon"ble Supreme Court in the case of Inderjeet Singh Grewal vs. State of Punjab and Another, Crl. Appeal No.

1635/11 wherein it was held that even if any order of the Court is considered by aggrieved party to be illegal or void for any reason the same has to be got set aside by a competent Court of law and further that a void order is not always non-est. It was further held that a declaration to that effect cannot be obtained in collateral proceedings. In the present case, no competent Court has declared the order passed by this Court on 8th October, 2009 to be illegal or void or without jurisdiction.

13. Reference can also be made to another decision of the Hon"ble Supreme Court in the case of Rafique Bibi (D) by Lrs. Vs. Sayed Waliuddin (D) by Lrs. and Others, , wherein the Hon"ble Supreme Court had observed that:

"The order of a superior Court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain...."

14. In T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, once again the Hon"ble Supreme Court had reiterated that orders of the Courts have to be obeyed implicitly and should not be trifled with. In para no. 23 of the judgment it was observed as under:

"23. Respect should always be shown to the Court. If any party is aggrieved by the order which in its opinion is wrong or against rules or implementation is neither practicable nor feasible, it should approach the Court...."

15. IFCI"s going to an authority which is subordinate to this Court cannot be accepted as a valid defence in these contempt proceedings. Of course, if such a decision was taken by some ordinary layman the position might have been different but in the present case IFCI Ltd. is a big public financial institution having its own Law Department and its claim against the Company in liquidation was being pursued by a very senior officer of its law department, Ms. Shalini Soni, who must have been fully aware of the legal position that even if an order passed by some Court is considered to be illegal or without jurisdiction the remedy lies only in getting that order set aside from a superior Court and a subordinate authority cannot be approached for having the effect of superior Court"s order totally nullified. This Court is, therefore, of the view that it is clearly a case of willful disobedience of the direction of this Court given to IFCI Ltd. on 8th October, 2009 by IFCI Ltd. as well Ms. Shalini Soni, Mr. Atul Kumar, Managing Director of IFCI Ltd. is also guilty as his plea that he was not aware of this Court"s order dated 08.10.2009 has already been found to be not acceptable at all.

16. As far as the Recovery Officer Mr. R.K. Bansal is concerned, his decision to pass an order favourable to IFCI Ltd. on its application is equally contemptuous for the reason that despite the fact that the Official Liquidator had placed before him the order dated 8th October, 2009 passed by this Court along with its reply to the IFCI Ltd."s application seeking permission to appropriate the sale proceeds of the assets of the Company in liquidation which were lying with it he had passed an order allowing IFCI Ltd. to

appropriate the entire sale proceeds of the sold properties except for a sum of rupees one crore which only was directed to be remitted to the Official Liquidator. That direction was clearly in the teeth of the direction of this Court given on 8th October, 2009. Defence plea of Mr. R.K. Bansal that at the time of hearing of IFCI Ltd.''s application neither the Official Liquidator nor IFCI Ltd.''s representative had brought to his notice the order of this Court and if it had been done he would not have passed the order dated 22.02.2010 allowing IFCI''s application is not at all acceptable. When he passed the order dated 22nd February, 2010 allowing IFCI Ltd.''s application it has to be presumed that he must have gone through the reply of the Official Liquidator which only was opposing IFCI Ltd.''s application. Infact, Ms. Shalini Soni''s reply clearly states that he had passed the order dated 22.02.2010 relying upon the official liquidator''s reply. It is quite surprising that in his order dated 22nd February, 2010 Mr. R.K. Bansal did not even refer to the reply of the Official Liquidator and simply allowed the IFCI Ltd.''s application on the ground that no creditor, except IFCI Ltd. had come forward to lodge any claim against the Company in liquidation whose assets had been sold in the proceedings before the Debts Recovery Tribunal. A perusal of the proceedings before the Recovery Officer held on 19th February, 2010, when arguments on IFCI Ltd.''s application were heard and concluded and the case was adjourned to 22nd February, 2010 for orders, shows that the Recovery Officer had accepted the submission made on behalf of IFCI Ltd. that it would be an exercise in futility in case IFCI Ltd. was asked to provide any money to the Official Liquidator in the absence of any claim from any other creditor. This also shows that the Recovery Officer was very much aware of the direction of this Court that the money which IFCI Ltd. was retaining was to be remitted to the Official Liquidator. That also shows that Mr. R.K. Bansal passed the order on 22.02.2010 intentionally avoiding to even refer to this Court''s order in his order. He should have restrained himself from passing that order even if he was having the authority in law to pass that kind of an order in view of the order passed by this Court and that authority could not have emboldened him to ignore this Court''s directions. In any case, even if it were to be accepted that Mr. R.K. Bansal was careless and negligent in not bothering to go through the Official Liquidator''s reply and the documents annexed therewith that would not absolve him of his culpability. In this regard also a useful reference can be made to a judgment of Hon''ble Supreme Court in the case of Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, wherein it had been held that even negligence and carelessness can amount to disobedience of Court''s orders.

17. At one stage during the course of hearing of this contempt matter, Mr. Maninder Singh, learned Senior counsel representing the contemnors IFCI Ltd. and Ms. Shalini Soni had also contended that this Court should, in any event, now drop these proceedings in view of the fact that a Division Bench of this Court had finally upheld the decision of the Recovery Officer Mr. R.K. Bansal granting permission to IFCI to appropriate the sale proceeds of the assets of the Company in liquidation vide order dated 06.12.2010 in writ petition (being WP (C) No. 5014/2010) which was filed by IFCI Ltd. against the orders of the Debts Recovery Tribunal and Debts Recovery Appellate

Tribunal, which had both rejected the IFCI Ltd."s prayer for retention of the sale proceeds and that decision of the Division Bench impliedly has the effect of setting aside the order dated 8th October, 2009 passed by the Company Court. I am afraid this argument cannot be accepted at all in view of the fact that the Hon"ble Supreme Court has observed in so many judgments, referred to already, that order of any superior Court, even if it is considered by some aggrieved party to be without jurisdiction or void, has to get that order set aside from the Appellate Court and further that that kind of a declaration cannot be obtained in any collateral proceedings. So, in my view, it cannot be said that in any proceedings which had not emanated from the present case, the order dated 8th October, 2009 passed by this Court as a Company Court stood set aside. In any event, till the disposal of the IFCI"s petition by the Division Bench the order dated 8th October, 2009 had to be obeyed by IFCI Ltd., Mr. Atul Kumar, Ms.Shalini Soni as well as the Recovery Officer Mr. R.K. Bansal and its violation by these people stood committed much before even filing of IFCI Ltd."s writ petition.

18. In the result, I hold IFCI Ltd, its CEO and Managing Director Mr. Atul Kumar, its Asst. General Manager(Law) Ms. Shalini Soni and Mr. R.K. Bansal, recovery officer of DRT guilty of contempt of this Court for wilful defiance of the direction of this Court given on 8th October, 2009.

19. As noticed already, all the contemnors had in their respective affidavits tendered their apology also but I am not considering those apologies at present as that would be a matter for consideration when the contemnors, who have been found guilty of contempt of Court, are heard on the point of sentence to be awarded to them since tendering of an apology is merely a mitigating circumstance to be taken into consideration whenever the question of awarding punishment to a contemnor found guilty of contempt of Court arises. Now for hearing the guilty contemnors on the point of punishment to be awarded to them, list this matter on 24th February, 2012 on which date Mr. Atul Kumar, Ms. Shalini Soni and Mr. R.K. Bansal shall all appear in person in Court.