

# Dispute Resolution Hotline

March 19, 2009

## YOU CAN RUN BUT YOU CAN'T HIDE!

The Hon'ble High Court at Mumbai ("Court") has, in a *one-of-its-kind* order<sup>1</sup> passed on March 12, 2009, directed the Chief Metropolitan Magistrate, Mumbai, to issue a letter of request to a court/authority in Australia, to investigate the question as to which officers of Clough Engineering Ltd. ("Appellant") were responsible for the sale of certain machinery ("Machinery") in respect of which, an injunction was allegedly subsisting. In doing so, the Court has ensured that in this day and age of globalization, no act of contempt of court is permitted to be left uninvestigated, simply because the alleged contemnor is not identified or is not within the jurisdiction of the courts in India.

### BRIEF FACTS:

Oil & Natural Gas Corporation ("ONGC") filed a contempt petition alleging that the Appellant, which had its office in Australia, had disposed of certain Machinery in Australia, in spite of there being a valid and subsisting injunction and therefore, the said act of sale constituted contempt of court.

Whilst hearing the contempt petition, the Learned Single Judge noted that if the Machinery had been disposed of or sold by the officers of the Appellant in Australia, then the Appellant would be liable for contempt for the acts done by its officers in Australia as the prohibitory orders passed by the court were binding against the Appellant and its officers. As the names of the officers of the Appellant were known only to the Appellant, the Learned Single Judge passed directions calling upon the Appellant to disclose the names of the concerned officers responsible for the sale of the Machinery, so that the Learned Single Judge could consider whether to proceed against the said officers of the Appellant.

Aggrieved by the said directions, the Appellant approached the Court.

### JUDGMENT:

At the outset, the Court held<sup>2</sup> that it did have ample power to decide and follow procedure as deemed fit by it in contempt proceedings. However, the Court further held that the directions passed by the Learned Single Judge in contempt proceedings, which were quasi-criminal in nature, may lead to self-incrimination of the Appellant, which in turn was against Article 20(3)<sup>3</sup> of the Constitution of India. The Court, therefore, proceeded to quash the said directions.

However, given the peculiar facts and circumstances of this case, the Court, ensuring that it did not remain a mere silent spectator, proceeded to issue directions to the Chief Metropolitan Magistrate, Mumbai, by invoking the provisions of Section 166-A<sup>4</sup> of the Code of Criminal Procedure, 1973, which deals with a situation where evidence in respect of a crime or offence is available outside India. The Court directed the Chief Metropolitan Magistrate, Mumbai, to issue a letter of request to the competent court/authority in Australia to investigate the issue as to who are the officers of the Appellant who were responsible for the disposal of the Machinery. Upon receipt of the said information from the competent court/authority in Australia, it was directed that the same be transmitted to the Learned Single Judge, to enable him to take further steps in the matter.

### ANALYSIS & IMPLICATION:

The advent of international trade and globalization has resulted in the entry of multinational companies into India, which companies enter into a large number of contracts locally. When such contracts go sour, for whatever reason, and the officers of such companies who are located outside India breach the orders of the Indian courts, it is necessary to ensure that Indian courts have the power to find out who these persons are and to ensure that they are brought to task for breaching any order of an Indian court. In the instant case, the Court noted that this was a case where the information in respect of the act which allegedly constituted contempt of court was outside India and the said information was required to punish the contemnors and therefore, invoked the provisions of Section 166-A of the Code of Criminal Procedure, 1973.

By this judgment, the Court has stated that it will not remain a mere mute spectator and/or helpless in such matters. The Court has further showed that in matters of contempt, which are of a quasi-criminal nature, the Court shall not hesitate in providing and following procedure as deemed fit by it, using its inherent powers, given the peculiar facts and circumstances of each matter, to meet the logical end.

- Sahil Kanuga & Vyapak Desai

1. Passed in Appeal No. 264 of 2008 in Contempt Petition No. 96 of 2007 in Arbitration Petition No. 349 of 2007.

2. Relying upon Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors. – (2006) 3 SCC 374.

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3. Article 20(3): No person accused of any offence shall be compelled to be a witness against himself.
4. 166A. Letter of request to competent authority for investigation in a country or place outside India.

- (1) Notwithstanding anything contained in this Code, if, in the Course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue letter of request to a court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and Circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the court issuing such letter.
- (2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.
- (3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.
1. Ins. by Act 10 of 1990, sec. 2 (w.e.f. 19-2-1990).

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