

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CCP (Co.) No. 7/2008 in Co. Pet. No. 128/2005

Date of Decision : October 14, 2009

SHIN SATELLITE PUBLIC CO. LTD.

.....Petitioner

Through : Mr. Nikhil Nayyar and  
Mr. T.V.S.Raghavendra,  
Advocates.

Versus

STV ENTERPRISE LTD.

.....Respondent

Through : Mr. Ashok Gurnani, Adv.

CORAM :

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J. (ORAL)

1. On 09.01.2009, a notice to show cause why contempt proceedings be not initiated against him, was issued to Sh. S.P. Gupta, Principal officer and vice president of STB Enterprises Ltd. for breach of undertakings given to this court.

2. Earlier, on 6.9.2006, this court took note of the averments made in paragraph 6 of an affidavit dated 29/30.8.2006 filed by the

respondent, wherein it was stated that respondent company was to pay an amount of US \$125,570 in terms of the schedule mentioned therein.

3. On the same date, Counsel for the respondent also stated at the bar that the respondent company was bound by that schedule and that the aforesaid amount would be paid in terms thereof. This was accepted by counsel for the petitioner, and on that undertaking, the petition of Shin Satellite Public Co. Ltd. was disposed of, with liberty to revive the petition in case of any default. Petitioner's counsel also stated that, in such a situation, the petitioner would be entitled to claim interest.

4. The respondent defaulted. Consequently, C.A. 522/2007 was moved by the petitioner seeking revival of the petition. During the pendency of this application, on 30.10.2007, the respondent was granted time to give a proposal for immediate payment of the outstanding dues. On 11.12.2007, respondent's counsel stated that 25% of the total outstanding amount would be paid on or before 25.12.2007 and left it to the court to fix the schedule for repayment of the balance amount due as well as rate of interest, on the next date. On 11.12.2007, the submission of the petitioners' counsel, that in case the respondent failed to abide by the aforesaid statement to pay 25% of the outstanding amount on or before 25.12.2007, the respondent would render itself liable for contempt, was also recorded.

5. It is contended by the counsel for the respondent that a reading of the order of 11.12.2007 shows that the statement made by the respondent to the effect that 25% of the total outstanding principal

amount would be paid on or before 25.12.2007, was accepted by this court, and consequently, the earlier commitment made by the respondent towards payment on 6.9.2006 stood superceded. It is submitted that the acceptance of the aforesaid commitment made on 11.12.2007 can only be read in that light and that, in case any sanction was to attach to the respondent for non-compliance with the commitments made on 6.9.2006, then the same should have been imposed on 11.12.2007 itself.

6. Even the aforesaid statement made on 11.12.2007 that the respondent would pay 25% of the total outstanding principal amount on or before 25.12.2007, was not honoured.

7. Consequently, on 9.1.2008, this court revived the petition for winding up. At the same time, as stated above, notice was also issued to Sh. S.P. Gupta, Principal Officer and Vice President of the respondent company to show cause why proceedings of the contempt be not initiated against him for breach of the undertakings.

8. Significantly, the order of 9.1.2008 directing issue of show cause notice of contempt does not specifically mention the undertakings which the court felt had, ex-facie, been breached. The respondent had given undertakings twice. The first undertaking was given on 6.9.2006 and second one was given on 11.12.2007. Even if it is presumed that the undertaking which was accepted by this court on 11.12.2007 had the effect of releasing the respondent-company from the undertaking given on 6.9.2006, there is no gainsaying the fact that even the undertaking given on 11.12.2007 was breached.

9. After the petition was revived, the company was directed to be wound up by a judgment delivered on 16.6.2008. Two aspects of that judgment are important. First, in paragraph 11 of the judgment, it is stated as follows:-

“On 9.1.2008, this Court took note of the fact that admittedly the schedule for payment had not been adhered to , and out of the admitted liability of US \$ 1,25,750, only an amount of US \$ 72,786 was paid by the respondent within the time schedule provided in the affidavit of undertaking. The Court also took note of the fact that the respondent had undertaken to pay 25% of the total outstanding principal amount on or before 25.12.2007 and that the said assurance had also not been fulfilled inasmuch as only US \$ 3000/- had been paid by the respondent to the petitioner which was far less than the 25% of the outstanding liability. In these circumstances, this Court revived the company petition and listed the same for hearing on 4.2.2008. The Court also issued notice to Shri S.P.Gupta, the principal officer of the respondent company who had filed the affidavit giving an undertaking for payment of the outstanding dues of the petitioner as aforesaid, to show cause as to why contempt proceedings be not initiated against him under the Contempt of Courts Act for breach of his undertaking to the Court. Thereafter, the company petition was heard on 4.2.2008 and judgment reserved.”

Second, in paragraph 18, the judgment concluded as follows:-

“For the aforesaid reasons, the winding up petition is admitted and the official liquidator attached to this Court is appointed as a provisional liquidator in respect of the respondent company. The official liquidator is directed to forthwith take over all the assets and books of accounts of the respondent-company. The respondent company is also restrained from transferring, alienating, encumbering or dealing with any of its moveable and immoveable assets, bank accounts and other securities, except for the purpose of, and to the extent it is necessary to meet the liability owed to the petitioner and to meet the expenses in the usual course of business. Citation is directed to be published in the newspapers Times of India and Navbharat Times for 4.8.2007. The aforesaid order, except the order relating to the injunction granted as aforesaid which shall come into

force forthwith, shall remain in abeyance for a period of two weeks from today to enable the respondent-company to pay the outstanding debts to the petitioner as quantified on 6.9.2006 (of US \$ 125,750) with interest @ 12% p.a. from 6.9.2006 onwards till payment, after granting adjustment for the amount paid after 6.9.2006 from time to time within two weeks. In case the aforesaid amount is paid, in full, this order shall stand vacated. If the entire amount is not paid within two weeks, the order shall be complied forthwith in its entirety. In that event, the petitioner is authorized to take steps in co-ordination with the official liquidator for publication of the citation."

10. A perusal of paragraph 11 of the judgment passed by this court on 16.6.2008, which has been reproduced above, shows that this court took note of the show cause notice of contempt issued to the respondent for breach of his undertakings. In the concluding paragraph 18, also reproduced above, the petition was admitted and the official liquidator attached to the Court was appointed as the provisional liquidator of the respondent company, along with a direction to take over all the assets and books of accounts of the company. Furthermore, the court also directed that these orders, except for certain interim injunctions, would remain in abeyance for a period of two weeks to enable the respondent-company to pay the outstanding debts to the petitioner as quantified on 6.9.2006 with interest @ 12% per annum after deducting the amount already paid in the meanwhile. It was further stated in case this amount was paid in full, the order admitting the petition and appointment of the Official Liquidator would stand vacated. However, it is noteworthy that apart from noticing the fact that the aforesaid show cause notice of contempt had been issued to the respondent, no other reference was made to the contempt proceedings in this judgment.

11. On the same date, i.e. 16.06.2008, by a separate order passed on the contempt petition, the court noted that the *suo motu* notice of contempt, which had been issued to Mr. S.P.Gupta was initially posted for 25<sup>th</sup> March, 2008, but since the judgment had been reserved in the company petition on 4<sup>th</sup> February, 2008 and had not been pronounced before 25<sup>th</sup> March, 2008, contempt proceedings were also not listed before the court on 25<sup>th</sup> March, 2008. Now, since the orders had been pronounced on 16<sup>th</sup> June, 2008, the contempt proceedings were directed to be listed before the court on 18<sup>th</sup> August, 2008. Significantly, this Court did not discharge the contempt notice at this stage.

12. As already noted, counsel for the respondent contends that the aforesaid order passed by this Court on 16.6.2008 in the exercise of its company jurisdiction on the winding up petition granting a further opportunity to the respondent to pay the outstanding amount, amounted to a variation of the order of 11.12.2007, and therefore even the undertaking given by the respondent on 11.12.2007 stood superseded and waived by the Court.

13. In addition, my attention has also been drawn to some observations of the Division Bench in the appeal filed by the respondent against the order of 16.6.2008. There, during arguments the respondent had confined the scope of his appeal to the issue of further time to make payments, and in paragraph 4 of the said order passed by the appellate court on 2.7.2008, it was observed as follows:-

“We have given our careful consideration to the submissions made at the bar and are of the view that the limited prayer made by the appellant for extension of time beyond two weeks can, on the terms suggested by the

appellant be granted as a last opportunity to the appellant to liquidate the outstanding liability. It is true that the appellant company has, despite an undertaking furnished by it and two subsequent extensions granted by the company court, failed to make the payment of the entire amount payable by it to the respondent creditor. It is also true that the Company Court has initiated contempt proceedings against the appellant company and Sh. S.P. Gupta, its Principal Officer for the breach of the undertakings furnished to it which proceedings are now listed for further orders on 18<sup>th</sup> August, 2008. Even so, the Company Court had considered it appropriate to grant a final opportunity to the appellant to pay the outstanding amount within a period of four weeks. Before us, the only submission which learned counsel for the appellant made was that instead of two weeks, this Court could grant time till 30<sup>th</sup> September, 2008, within which time the appellant company would liquidate the entire amount outstanding as on date with interest as indicated earlier. It was in support of that submission pointed out by learned counsel for the appellant that there are nearly 300 workers presently in employment with the appellant company who are likely to be adversely affected in case the winding up proceedings would be allowed go any further.

14. In its aforesaid order dated 2.7.2008, the appellate court also noticed the fact that, despite contempt proceedings having been initiated for violation of the earlier undertakings, the company court had nevertheless made the winding up order passed later, on 16.6.2008, conditional, by giving the respondent one further opportunity to pay the outstanding amount within four weeks. Keeping this fact in mind, and also due to other surrounding circumstances, the appellate court permitted the respondent to pay the balance amount on another undertaking to abide by the conditions prescribed and the fresh schedule set down.

15. Learned counsel for the respondent submits that the undertaking which the appellate court permitted his client to give in its judgment passed on 2.7.2008 has, in fact, been complied with.

16. He further submits that it has long been held by the courts that in case two views are possible with regard to the interpretation of orders, which are stated to have been violated, benefit of the same is usually granted to the alleged contemnor and that the power to punish for contempt is used by the courts sparingly and only in the most clear-cut and obvious cases. With regard to the former aspect, learned counsel has taken the position that, it could legitimately be inferred that various orders which came to be passed from 2.9.2006 onwards, in fact, modified previous orders. In this way, the order passed on 6.9.2006 stood modified on 30.10.07 and then again on 11.12.07, and also thereafter, by the conditional final order passed on 16.6.2008, whereby another opportunity was granted to the respondent to clear the outstandings. The conditions set down on 16.6.2008 were again modified in appeal on 2.7.2008. Therefore, the benefit of such a view being a plausible one, should be given to the respondent and the proceedings dropped.

17. Apart from the fact that the undertaking given on 6.9.06 was clearly violated, the second undertaking on 11.12.2007, to the effect that 25% of the outstanding dues shall be paid before 25<sup>th</sup> December 2007, was also violated. While it is true that some further opportunities were given to the respondent to pay, but what is significant is that, firstly, all these opportunities came about after the time fixed for performing the undertakings given by the respondent had already expired. Secondly, the notice of contempt came to be issued by the court in full knowledge of the fact that time granted for the performing the undertakings had expired and that a further opportunity was being granted to make the payment. In addition, the

fact that although it was always open to the company court to discharge the notice of contempt whilst admitting the winding up petition on 16.6.2008, or even when the contempt petition was taken up immediately thereafter, it chose not to do so, is also relevant. Even the appellate court, whilst granting time on 2.7.2008, had the power to discharge the notice of contempt, but it again chose not to do so. Significantly, no cogent reasons were given by the contemnor to that Court for his non-compliance within the time specified. Moreover, the respondent never applied for modification of these undertakings before the date by which they were to be performed. In the absence of any special circumstances, or specific orders to that effect, it would be difficult for this Court to now hold that merely by granting time once again, the infraction or violation of the undertakings either stands waived or that the undertakings themselves stand modified. Under the circumstances, and looking to the fact that while granting another opportunity to pay, specific orders were also passed issuing notice of contempt, and, no orders were passed withdrawing that notice thereafter, to say that the undertakings themselves stood modified, even by implication, is not well founded.

18. To my mind, even the orders passed on 2.7.2008 in the appeal, have been passed pursuant to the appeal of the respondent impugning the final order of the Company Court passed on 16.6.2008 admitting the winding up petition. Consequently, that was an order passed on the merits of the appeal keeping in view the request made by the respondent during the course of hearing of that appeal. In these circumstances, the submission that by granting another opportunity on terms, the appellate court had, in effect, discharged the

notice of contempt, also deserves to be rejected. It bears repetition that although the appellate court also noted the fact of the contempt notice, it did not discharge the same.

19. Another aspect that needs consideration is the question whether the later orders are to be taken as having modified the previous orders with regard to all the respondent's obligations; or whether they merely amounted to grant of another opportunity to pay. To my mind, the former proposition is not axiomatic. If any undertaking is given to the court by a party undertaking to do something, or to pay an amount, and the party fails to perform, the court is empowered not only to punish for contempt by fine or imprisonment, but also to direct the party to either perform as originally undertaken, i.e., to purge the contempt, or to invoke some further legal consequences of the non-performance, such as a winding up order. In a given case, depending on the facts, the court could always find the respondent not guilty of contempt, while at the same time, decline any further opportunity to pay and direct that the company be wound up. Conversely, it is also conceivable that the court may find that the respondent has violated the undertaking and deserves punishment and at the same time conclude that the company itself need not be wound up. From this, it follows that it is always open to the court, on the one hand, to issue notice of contempt for non-obedience, while at the same time, issue further directions invoking the consequences of non-payment such as a winding up order or again giving a further opportunity to the party to pay at a future date while dealing with his obligation to pay. This is precisely what has been done in this case. Here, a fresh opportunity to pay does not

necessarily mean that the party concerned stands absolved of all consequences of his previous infraction. This is because non-compliance of his undertakings could conceivably have led to two consequences; (a) winding up orders could have followed, and (b) the court could also have proceeded against the respondent for contempt. By giving another opportunity to pay, the immediate consequence of winding up of the company was avoided. But in the absence of any specific orders, that cannot be taken to automatically release the respondent from the other consequences, such as punishment for contempt, that might be visited upon him for violation of the undertakings given. It is merely a fresh chance to the company to avoid being wound up, but it does not wipe out the conduct displayed previously. A fresh chance to avoid being wound up may be given by a Court for many reasons. As the appellate court noticed, despite the fact that contempt proceedings were pending, the company court itself had given another opportunity to pay. Besides, at least 300 jobs would have been lost. A viable company contributing to the exchequer would have also been lost.

20. Furthermore, if the court had intended to release the respondent from its undertakings, it could have said so. On the contrary, by the same order the Court thought it fit to direct him to show cause why he be not punished for contempt. Besides, although the order of 16.6.2008 was a conditional order, the condition was significant. It was that if the money is paid, the order admitting the petition, appointing the provisional liquidator with directions to take over the books and assets etc. would stand vacated; and not that the violation of the previous undertakings to pay will stand condoned.

Surely, by choosing to issue notice of contempt to the respondent, the court, in effect, had taken a conscious decision not to condone the respondent's violation of his undertaking. Had it been a case where further opportunity was granted to pay and no notice of contempt was issued, and nothing whatsoever was stated contemporaneously about the respondent's violation of his undertaking given to the court, then, perhaps, it could be inferred that the court had decided to absolve the respondent entirely of the consequences of violation of the undertaking. But this is not the case here.

21. In my view, for all the aforesaid reasons, all the orders including the order of 16.6.2008 and the order in appeal of 2.7.2008, can only mean one thing, which is that the respondent is not absolved or discharged from his undertakings.

22. At this stage, learned counsel for the respondent, on instructions from the respondent, who is present in court, states that his client throws himself at the mercy of this court and prays that a lenient view be taken. His statement has been recorded separately.

23. From the facts, it emerges that although there were clear violations of undertakings given by the respondent on 6.9.2006, and again on 11.12.2007, which had the effect of not only prolonging the litigation but also of keeping the petitioner company out of the moneys due to it, however, the Division Bench in its wisdom granted a further opportunity to the respondent to pay the said amount on terms which also included interest calculated at 12% per annum on the payments outstanding. These terms have admittedly been complied with and the full amount, including interest, as directed by the Division Bench

stands paid. In that view of the matter, one can safely conclude that the Division Bench has directed interest to be paid as a measure of compensation for delayed payments of the petitioner's outstandings from the respondents. The only question that remains is the quantum of punishment to be awarded to the respondent for his conduct in the matter. Whilst this Court is inclined to be lenient, it cannot lose sight of the necessity to send a message to all litigants that undertakings given to the court from time to time are sacrosanct and cannot be treated lightly or ignored with impunity.

24. The respondent contemnor is well educated. He is a graduate and he has also completed his intermediate level in Chartered Accountancy. He is also stated to be the financial Director of the respondent company. He obviously holds a responsible position.

25. Under the circumstances and for all the aforesaid reasons, I hold the respondent guilty of contempt. He shall pay a fine of Rs. 22,000/-. The said amount shall be deposited in the common pool fund of the official liquidator within two weeks from today.

26. The matter is disposed off.

**SUDERSHAN KUMAR MISRA, J.**

**October 14, 2009**  
**bm/sl**