IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
CRIMINAL CONTEMPT PETITION NO.1 OF 2014
IN
COMPANY PETITION NO.146 OF 2010
….

Contract Advertising India Pvt.Ltd. ...Petitioner
v/s.
Maneesh Pharmaceuticals Ltd. & ors. ...Respondents
…

Mr.S.V.Doijode with Ms.Taruna Nagpal and Mr.R.H.Daulat i/b Doijode Associates for the Petitioner.

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CORAM : A.S.OKA &
A.A. SAYED, JJ.
DATED : 19 OCTOBER 2016

P.C.:

Heard the learned Counsel appearing for the Petitioner. The Petitioner filed a Company Petition against the first Respondent for winding up. The allegations of Criminal Contempt are based on statements made in paragraph 3 of the Affidavit-in-Reply filed by the second Respondent in the said Company Petition. In the Company Petition, the parties were referred to arbitration. An award has been made by the learned Arbitrator in favour of the present Petitioner. The award has been confirmed in a Petition under section 34 of the Arbitration and Conciliation Act, 1996 (for short “Arbitration Act”). Learned Counsel appearing for the Petitioner states that an Appeal against the said order passed under section 34 of the Arbitration Act has been also dismissed and as of today, the award has become final.

2. The relevant part of the paragraph 3 of the Affidavit of the second Respondent on the basis of which the criminal contempt is alleged reads thus-

> "Further, the Company is a running and functioning company which is making profits and is a sound financial position which enables it to pay its debts as and when they arise. Maneesh Pharmaceuticals Limited has various subsidiaries in countries around the world and is a leading player in the Indian Pharmaceutical manufacturers and services. The company is in the business of Manufacturing, marketing and exports of pharmaceutical formulations of wide therapeutic segments, and also in Contract manufacturing, distribution and Clinical Research. Hereto annexed and marked as Exhibit `1' is a copy of the Annual Report of the Company for the financial year ended 31 March 2009. Looking to all the circumstances relating to the working of the Company, it is clear that the Company is able to pay its debts and there is no question of grant of any order winding up the Company and/or even admitting the petition."

3. Our attention is invited to another affidavit filed by the same Respondent reiterating the statement made in paragraph (3). Our attention is also invited to the order passed by the learned single Judge in a Petition under section 34 filed by the first Respondent. It shows that in the year 2012, a reference was made to BIFR at the instance of the first Respondent. Reliance is placed on the communication made by the first Respondent stating that it was in financial difficulty. Our attention is also invited to the accounts of the first Respondent. It is contended that the

second Respondent made consistent false and misleading statements. Though the Affidavit in reply was filed by the second Respondent on 16 September 2010, the Annual Report of the company for the Financial year ending with 31 March 2009 was annexed.

4. We have considered the submissions. The Affidavit-in-Reply was filed for defending the Petition for winding up. The statement in the said Affidavit dated 16 September 2010 is that the first Respondent-Company is a running functioning company, which is making profits and which is in a sound financial position. It is not the case of the Petitioner that any misrepresentation was made by annexing Annual Report of the year ending with 31 March 2009, as in paragraph 3, the second Respondent has stated that he has annexed the Annual Report of the Company for the financial year ending with 31 March 2009. The accounts of the first Respondent-Company show that at the end of the financial year ending with 31 March 2010, the company was in profit. The accounts show that as of 31 March 2011, the company was running in loss. The statement recorded by the learned single Judge while disposing of the Arbitration Petition was that a reference has been made to BIFR. It appears that the reference was made on 6 November 2012.

5. Therefore, it is not possible to accept the contention that the statements in the Affidavit dated 16 September 2010 were false statements.

6. As stated earlier, the Company Petition in which the Affidavit was filed has come to an end. Even the arbitration award has attained finality. No case is made out to initiate action under the Contempt of Courts Act, 1971 for committing criminal contempt. Accordingly, the Petition is disposed of.

(A.A. SAYED, J.) **(A.S.OKA, J.)**