HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

C.C.No.913 of 2015

Date : 02-12-2016

Between:

Quinn Logistics Sweden AB (in bankruptcy)

.. Petitioner

And

Mr. Mohd Sabir Pervez and others .. Respondent

Counsel for petitioner : Mr. S. Niranjan Reddy, Senior Counsel
for Mr. Tarun G. Reddy

Counsel for respondent Nos.1 & 2 : Mr. S. Ravi, Senior Counsel
for Mr. Vivek Jain

Counsel for respondent No.3 : Mr. S. Vivek Chandrasekhar

Counsel for respondent No.4 : Mr. B. Vijaysen Reddy

The Court made the following :

ORDER:

This Contempt Case is filed alleging willful disobedience of order dated 11-2-2015 in C.R.P.No.3113 of 2014.

The dispute pertains to the property situate at Hyderabad called “Q-City”. This property is owned by M/s. Mack Soft Tech Pvt. Ltd. – respondent No.1 (for short “Mack Soft”) in the above mentioned C.R.P. The petitioner is a Sweden Company. It is its pleaded case that the Q-City property has been financed through the funds advanced by Irish Bank Resolution Corporation (IBRC) to Quinn Finance, a Quinn group Company. That Bankruptcy proceedings were initiated in the District Court, Stockholm, Sweden, against the petitioner and a Receiver was appointed therein on 6-7-2011. It is the further case of the petitioner that Quinn Logistics Sweden AB, Quinn Hotels Sweden AB, Quinn Logistics India Pvt. Ltd. and Quinn Lodgings India Pvt. Ltd., comprised the Quinn group of Companies and that Quinn Logistics India Pvt. Ltd. holds 9990 shares in Mack Soft while Quinn Lodgings India Pvt. Ltd. holds only 10 shares. The petitioner alleged that in order to take Mack Soft out of the control of the Receiver appointed by the District Court, Stockholm, Mack Soft issued 3,76,301 shares for a total consideration of Rs.40,71,579/-, on 22-6-2011, to Mecon FZE – defendant No.4 in the suit i.e., O.S.No.21 of 2012, filed by the petitioner through its Bankruptcy Receiver, for a declaration that allotment of the said shares to defendant No.4, is null and void, besides other reliefs claimed in the suit. Along with the said suit, the petitioner filed I.A.No.133 of 2013 for an order of injunction directing Mack Soft to deposit all income generated from the suit schedule property i.e., Q-City whether by way of lease rent, fit out rent, maintenance charge or otherwise, with the lower court. By order dated 1-5-2014, the lower Court has dismissed the said I.A. Calling the said order in question, the petitioner filed C.R.P.No.3113 of 2014. After Mack Soft filed its counter affidavit, this Court passed an order disposing of the C.R.P. on the consent of both the parties on 11-2-2015. The agreed terms on which the said order was passed are as follows:

(1) That the respondents shall file the audited monthly statements relating to the income and expenditure of the suit schedule property in the suit, with copies furnished to the petitioner;
(2) that the surplus amounts received by respondent No.1 shall be kept in Fixed deposit pending the suit;
(3) that the Court below may be directed to dispose of the suit at an early date; and
(4) that neither the order of the lower Court nor the present order of this Court will have any impact on the right of the respondents to seek variation of the order of injunction granted in favour of the petitioner in I.A.No.78 of 2012 in O.S.No.21 of 2012.

The concluding part of the order reads as under :

> "In the light of the understanding reached between the parties, on the above-reproduced terms, the Civil Revision Petition is disposed of by placing on record the terms of the understanding reached between the parties and without adjudicating the same on merits. The lower Court is directed to make endeavour to dispose of the suit within six months from the date of receipt of a copy of this order."

Alleging that the respondents have deliberately violated the aforementioned agreed order by showing inflated expenditure over and above that mentioned in the counter affidavit of Mack Soft in order to overreach the order of this Court passed in the Civil Revision Petition, the revision petitioner filed this Contempt Case.

During the hearing of the Contempt Case, the learned Counsel for the petitioner argued that there is a steep variation between the figures of expenditure mentioned in the counter affidavit filed in the C.R.P. by the respondents and the expenditure claimed to have been incurred after its disposal. Mack Soft, however took the stand that they are maintaining true and correct accounts and that there was no attempt on their part to manipulate accounts to show inflated expenditure. In view of these extreme stands taken by the parties on the correctness or otherwise of the surplus amounts directed to be deposited by Mack Soft, this Court felt that examination of the accounts by an auditor of repute is necessary to decide as to whether there is any grain of truth in the allegation of manipulation of accounts by Mack Soft. Therefore, this Court has passed a detailed order in the Contempt Case on 13-10-2015. Paragraph-13 of the said order delineated the scope of the Contempt Case as under :

> "The scope of the contempt case is confined to adjudicating whether the respondents have suppressed any part of the surplus amount and come out with exaggerated expenditure with a view to overreach the order of this Court passed on the agreed terms. Indeed, the judgment of the Supreme Court in *Kanwar Singh Saini* (supra), on which the learned Senior Counsel for respondent Nos.1 and 2 has placed reliance, held in unequivocal terms that violation of breach of an undertaking given to the Court on the basis of which a decree was passed constitutes civil contempt and not criminal contempt, as the decree was passed for the sole benefit of the other party to the suit."

By the said order, this Court has appointed a well known auditor by name Brahmayya & Co., Chartered Accountants.

In pursuance of the aforementioned order in the Contempt Case, Mack Soft has produced in two cartons the vouchers and accounts before the Registrar (Judicial) of this Court, who in turn, has forwarded the same to the auditor. After examining the records received by them, in their undated letter addressed to the Registrar (Judicial), the auditor inter alia stated as under :

> "We submit that we are not provided with cash book and vouchers for cash & bank payments. We further submit that unless all vouchers (cash and Bank) along with supporting bills and ledger accounts matching with the amounts mentioned in the Profit & Loss Statement are provided to us, we cannot comment on the correctness of the statements provided to us.
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> We further submit that we are not provided with supporting vouchers for expenses under the heads (a) employees cost, (b) interest and (c) depreciation and amount shown as interest income in the Profit & Loss Statement."

In view of the said letter, the learned Counsel for the respondents, on instructions, reported to the Court that the additional documents as sought by the auditor will be furnished. Accordingly, documents running to about 1323 pages were handed over on behalf of Mack Soft to the Registry, which were directed to be transmitted to the auditor by the Registry vide this Court's order dated 29-4-2016. After receiving the additional documents, the auditor has sent a second undated report with a covering letter addressed to the Registrar (Judicial) wherein it is stated as under :

> "We have verified the papers of Mack Soft Tech Private Limited in the carton received from your office which

> contained Journal Vouchers, Cash Book, Bank Book, copy of bank statements for the months of February to July, 2015 which were not sent earlier to us and details of Employee Cost, Interest Expense, Interest earned, Depreciation for the months of February to August, 2015.
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> Thereafter we have also interacted with the Finance and accounts personnel of Mack Soft Tech Private Limited and obtained clarifications wherever required. On verification of the said documents and after interacting with the personnel of the company, we observed certain variances between monthly Profit & Loss Accounts submitted to the Hon'ble High Court and the Profit & Loss Accounts maintained by the Company which are explained in statements enclosed herewith."

In their report, the auditor pointed out that there is a difference of about Rs.80,70,786/- between the statement of net surplus as submitted to this Court and that shown as per ledgers for the period between February 2015 and August 2015.

Sri S. Niranjan Reddy, the learned Senior Counsel for the petitioner, strenuously submitted that Mack Soft is guilty of furnishing false Profit & Loss accounts as evident from the auditor's report thereby brazenly violating the order of this Court; that Mack Soft has further aggravated the contempt by withholding relevant bills, vouchers and other documents from the auditor in the first instance; that the low expenditure deliberately given by Mack Soft in the C.R.P. before this Court led to the petitioner agreeing for disposal of the revision petition otherwise than on merits and that to avoid adjudication on merits, Mack Soft deliberately filed incorrect statement of expenditure and it has thereby mislead this Court. He has further argued that the respondents are clever litigants who sold the property worth about Rs.300 crores for just Rs.40 lakhs, hoodwinked this Court as well as the petitioner and still displayed brazen conduct in maintaining before this Court that they have not committed contempt. He has also pointed out that respondent Nos.3 and 4 were found by this Court to have committed perjury in another case and prosecution was initiated under Section 340 Cr.P.C.

Sri S. Ravi, learned Senior Counsel, appearing for respondent Nos.1 and 2, submitted that the entire premise on which the Contempt Case is filed, namely, that the respondents have cooked up expenditure, has fallen to ground with the second report of the auditor not pointing out any such acts on the part of the respondents. He has further submitted that the low expenditure shown in the counter affidavit filed in the C.R.P. is based on the counter affidavit filed in the trial Court as far back as 9-2-2013, which in turn was based on the figures of expenditure incurred in 2012 and that the same were not updated while filing counter in the C.R.P. The learned Senior Counsel further submitted that the entire expenditure is supported by bills/vouchers and cheque payments and that no cash transactions were made by Mack Soft and that nothing adverse was commented by the auditors while pointing out the variation in expenditure shown to this Court and as reflected by the ledgers to the extent of Rs.80 lakhs. He has sought to explain the variation by stating that as the assessment of expenditure is made on annual basis and not on monthly basis, the variation in the monthly expenditure is bound to exist; that the Mercantile system of Accountancy being followed by Mack Soft is based on the theory *debitum in praesenti, solvendum in futuro,* which means ‘debt due at present to be paid in future’. In conclusion, the learned Senior Counsel submitted that mere variation in expenditure to the extent of Rs.80 lakhs for a period of seven months cannot be attributed to the deliberate act of the respondents.

Sri S. Vivek Chandrasekhar, learned Counsel for respondent No.3, submitted that his client has resigned as an employee of the Company on 14-2-2012 and the resignation was accepted w.e.f. 25-5-2012, much before order dated 1-5-2014 in the I.A. was passed and that therefore, his client cannot be made responsible for the alleged violation of the order of this Court. Sri S. Niranjan Reddy, learned Senior Counsel, fairly submitted that his client is not interested in pressing the Contempt Case against respondent No.3.

As regards the other respondents, I have carefully considered the respective submissions of the learned Counsel for the parties. During the preliminary hearing of the Contempt Case, this Court has formed a prima facie opinion that the huge variation between the figures of expenditure mentioned in the counter affidavit in the C.R.P. and the expenditure claimed to have been incurred after disposal of the C.R.P., prima facie supported the plea of the petitioner that Mack Soft has indulged in manipulation and fudging of accounts. However, this Court was not inclined to rush to a conclusive opinion without an expert examining the authenticity of the alleged expenditure claimed to have been incurred by Mack Soft. Significantly, the second and final report of the auditor has not made any adverse observation touching the authenticity of the alleged expenditure claimed to have been incurred by Mack Soft. As noted above, all that the auditor pointed out is that there is mismatch between the Profit & Loss Accounts filed before this Court and the expenditure reflected from the ledger accounts, to the extent of Rs.80 lakhs. Respondent No.1, as noted above, has taken the stand that in the Mercantile system of Accounts, such variations are bound to occur and that unless any material is produced by the petitioner positively proving that the variation is a result of manipulation or fudging of accounts, the respondents cannot be held guilty of violation of the order of this Court.

As observed in paragraph-13 of order dated 13-10-2015 passed in the Contempt Case, the scope of the Contempt Case is confined to adjudicating whether the respondents have suppressed any part of the surplus amount and come out with exaggerated expenditure with a view to overreach the order of this Court passed on the agreed terms. While pointing out variation, the auditors in their report have not commented that the expenditure reflected from the ledger is either not supported by bills or vouchers or that the same appears to be exaggerated. While this Court does not possess the expertise to know the real reason for the variation between the statement furnished by Mack Soft before this Court and that reflected in the ledger, when the expert himself i.e., the auditor, did not make any adverse comment on the expenditure shown in the ledgers, it is not safe to presume that such variation is the result of manipulation or fudging of accounts. The jurisdiction to punish a person under the provisions of the Contempt of Courts Act 1971 being quasi criminal in nature, no person who is alleged to have committed contempt could be punished unless the allegation of willful violation is supported by conclusive proof. The suspicion arising on account of huge variation in the expenditure leading to the reference of accounts to the auditor has not evolved into full proof with the final report of the auditor not making any adverse observations regarding the nature of expenditure reflected in the ledgers. Without such proof, the allegation of manipulation, fudging or exaggeration of expenditure, remained mere allegations. It is a well settled legal position that suspicion, howsoever strong it may be, cannot take the place of proof in the absence of legal evidence.

In the light of the discussion undertaken above, I am of the opinion that the petitioner failed to prove that the respondents have indulged in deliberate violation of order dated 11-2-2015 in C.R.P.No.3113 of 2014. I may however clarify that the findings rendered and the conclusions drawn in this order shall not be understood as this Court accepting the correctness of the accounts furnished by the respondents. The petitioner shall be free to raise all the legally permissible pleas questioning the correctness of the Accounts shown by the respondents and produce evidence in support of its pleas in the pending civil proceedings or in any other legal proceeding that may be pending or instituted in future between the parties. If such question is raised by the petitioner in such legal proceedings, the Court of competent jurisdiction dealing with such question shall adjudicate the same based on the evidence that may be adduced by both parties without reference to any of the observations made in this order.

Subject to the above observations, the Contempt Case is dismissed.

Justice C.V. Nagarjuna Reddy

Date : 02-12-2016

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