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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CONT.CAS(C) 291/2015
SEABORNE COMMODITIES
INTERNATIONAL PVT LTD Petitioner
Through Mr.R.K.Sharma, Advocate

versus

TWILIGHT LITAKA PHARMA LTD & ANR Respondents
Through Ms.Nishtha Khurana, Adv. for R-2
with Sh.Gopal Ramurthi, R-2 in
person

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **15.11.2017**

This contempt petition is filed under Section 12 read with Section 2 of the Contempt of Courts Act, 1971 seeking to take action against the respondents for disobeying the order of this court dated 16.04.2014.

The background facts are that the petitioner had filed a suit against the company, namely Twilight Litaka Pharma Ltd. and others for recovery of its dues. The matter was sent to the Delhi High Court Mediation and Conciliation Centre, New Delhi. The parties entered into a Settlement Agreement dated 14.03.2014. In terms of the said Settlement Agreement, it is made specifically clear that defendant Nos.2 to 4 in the suit, namely Sh.Gopal Kupposwami Ramourti, Sh.Suresh Raka & Sh.Nainish Bora were deleted from the array of the parties. It was the company that agreed that a sum of Rs.23 lacs is payable to the plaintiff in 14 instalments.

The suit was disposed of as not pressed against defendant Nos.2 to 4.

As regards the company, it was disposed off with a decree in favour of the petitioner binding defendant No.1 to the terms of the Settlement.

The stand of the petitioner in the present contempt petition is that despite having being bound by the terms of the Settlement, the company out of agreed sum of Rs.23 lacs has paid only Rs.6 lacs. The grievance of the petitioner is that the default in making payment of the agreed sum would tantamount to the disobedience of the order of this court.

The learned counsel for the respondents, however, pointed out that in terms of the judgment and decree passed by this court on 16.04.2014 apart from the same being an executable order, it was defendant No.1 company which was bound by the said order. The company has gone into winding up inasmuch as a winding up petition was admitted on 30.04.2014 and the OL was appointed as a provisional liquidator by the Mumbai High Court. It is stated that the affairs of the company continued to be run by the Directors till 30.09.2014. Thereafter, the OL took control of the assets and other records of the defendant company. Payment of Rs.6 lacs has been made prior to September, 2014. It is urged that now the only remedy with the petitioner is to approach the OL by making appropriate application as per law.

A perusal of the order dated 16.04.2014 shows that it was the defendant company that was bound by the terms of the Settlement. The order specifically notes that the suit is not pressed against defendant Nos.2 to 4, who were arrayed as the respondents to the present contempt petition.

In my opinion, the Directors of the defendant company, namely, the respondents cannot be held liable for any inability of the defendant company in fulfilling its obligation under the Settlement Agreement.

In terms of the Old Companies Act, when a winding up order has been made and the Official Liquidator has been appointed as a provisional liquidator, he takes over the affairs of the company and the entire assets of the company. The erstwhile Directors of the company have no control over the company.

In my opinion, it cannot be said that the respondents are guilty of disobedience of the order of this court. There is no merit in the contempt petition. The same is dismissed.

However, this order is passed without prejudice to the rights of the petitioner to take steps for recovery of its dues as per law.

JAYANT NATH, J.

NOVEMBER 15, 2017/v