$~6.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CONT.CAS.(CRL) 11/2016

ATLANTA LTD & ANR ..... Petitioner

Through: Mr. Chirag M. Shroff with Ms. Sanjana Nangia, Advocates

versus

KUMAR SHARE BROKERS LTD & ORS ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P.S.TEJI

<u>O R D E R</u>

% **31.05.2018**

<u>Crl.M.A. No. 11087/2018</u>

Exemption allowed, subject to all just exceptions. The application stands disposed of.

<u>Crl.M.A. No. 11086/2018</u>

The petitioner has preferred the present application to seek a direction for initiation of proceedings under the Contempt of Courts Act for criminal contempt against the named persons i.e.

i) Tika Ram Khare
Director
448, DDA Flat, Mansoravar Park
Shahdara, Delhi 110032

ii) Ramesh Chand Arora
Director

A-2/304, Krishna Apara Garden
Vaibhav Khand
Indirapuram 201001 UP

iii) Suman Arora
Director
A-2/304, Krishna Apara Garden
Vaibhav Khand
Indirapuram 201001 UP

iv) Ajit Kumar Mishra
Director
71, Amarpali Apartment
56, Patparganj
Delhi 110092

v) Ajit Sinha
Director
H-106, Aruna Apts
33-IP Extension
Delhi 110092

The petitioner also seeks immediate freezing of all shares in the possession of the respondent of the petitioner company, so that they are not able to trade and continue with the alleged violation of the order dated 22.05.2017 and the alleged stay orders passed by the Court in the suit.

The admitted position is that the petitioner had taken a short term loan from the respondent company against the pledge of its shares vide an agreement dated 21.02.2015 for Rs. 5 crores. The shares of Mr. Rajhoo Bbarat, Managing Director of the petitioner company whose shareholding was to the extent of 16.08% in the plaintiff/ petitioner company had been pledged with the defendant/ respondent company. One of the conditions of the loan agreement was that the value of the pledged shares should be to the tune of 2.5 times of the loan availed of by the petitioner company at any given point of time.

The petitioner/ plaintiff company had a grievance that the defendant/ respondent company had started liquidating the pledged shares in the market. Consequently, the petitioner/ plaintiff preferred CS(OS) No. 2632/2015 along with an application to seek ad interim injunction i.e., I.A. No. 18259/2015. The said suit and application came up before the learned Single Judge on the original side of this Court on 01.09.2015. After recording the aforesaid aspects, the learned Single Judge recorded the contention of the senior counsel representing the plaintiff that, as on the said date, the total outstanding loan was Rs. 4,36,74,253/-, whereas the value of the security including collateral with the defendant company, was to the tune of Rs. 9,46,30,678.59/- and even according to the plaintiff, there was a shortfall in the security value of Rs. 1,45,54,954/-. An undertaking was given by the plaintiff to the Court that within one week they will top up the shortfall to secure the outstanding loan amount. On the said premise, while issuing summons in the suit to the defendant, the Court restrained the defendant from disposing of the shares pledged by the plaintiff to the defendant under the loan agreement dated 21.02.2015.

The plaintiff, however, failed to fulfil its undertaking to top up the amount. On 11.09.2015, when the defendant appeared in the suit, the court was informed of the plaintiffs failure to top up the amount of Rs.1,45,54,954/-. The plaintiff offered to give more shares of the company to the defendant, equivalent to the said amount. This suggestion was turned down by the petitioner. The plaintiffs counsel sought two days time to take instructions from the plaintiff as to whether the plaintiff will deposit the said amount by way of bank draft/ FDR/ security of immovable property. The matter was adjourned to 16.09.2015. However, even thereafter the said amount was never deposited in a manner acceptable to the defendant.

The present criminal contempt petition was listed before this court, firstly, on 23.12.2016 when notice was issued to the respondent. Eventually, the contempt petition was disposed of on 22.05.2017. While disposing of the petition, it was stated on behalf of the respondent/ defendant, on instructions from Mr. T.R. Khare, Director of the respondent company, that except the shares sold, respondent no.1 company and its associates still hold 26,18,822 shares which could be handed over to the petitioner on their clearing their financial liability. On the basis of the said statement, the petitioner did not press the contempt petition.

The petitioner now claims that the respondents have started disposing of further pledged shares held by them.

Firstly, we may observe that the loan itself was described as a short term loan under the agreement dated 21.02.2015. The term of loan was one year as informed by learned counsel for the petitioner. Admittedly, the same has not been repaid even after over three years. Secondly, when the suit was filed, the court recorded the undertaking of the petitioner/ plaintiff to top up the security by Rs.1,45,54,954/- within one week from 01.09.2015. As notice herein above, that amount has not been topped up at all. Thirdly, the injunction granted by the court on 01.09.2015 was conditional upon the said undertaking being fulfilled by the plaintiff. Since the said undertaking was never fulfilled, there was no question of the injunction operating against the defendant.

The plaintiff borrower cannot hold the lender to ransom by not adhering to the terms of the loan agreement, and enforcing an injunction from the court, which itself was conditional upon fulfilment of its obligations by the plaintiff. Fourthly, even after disposal of the contempt petition on 22.05.2017, the plaintiff does not appear to have taken any steps to repay the outstanding loan and the said loan is still outstanding.

The submission of learned counsel for the petitioner is that the respondents have not responded to the offer made by the petitioner to repay the outstanding amount. It is not the petitioners submission that the petitioner has tendered the outstanding loan amount strictly in terms of the loan agreement.

In these circumstances, we are of the view that the present application is completely misconceived. The same is, accordingly, dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 31, 2018

sr