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

+ CCP(CO.) 15/2017

DESTINY FINANCE PVT. LTD. Petitioner
Through Mr.Varun Kapoor, Adv.

versus

DARAYUS NARIMAN & ANR. Respondents
Through Mr.Varun Kumar and Ms.Nandini
Singh, Advs. for the respondent.
Mr. Kunal Sharma, Adv. for the OL.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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07.03.2018

This contempt petition is filed under Section 12 of the Contempt of Courts Act to initiate appropriate contempt proceedings against the respondents, namely, Mr. Darayus Nariman and the company-Legend Surface Developers Pvt. Ltd.

As far as Legend Surface Developers Pvt. Ltd. is concerned, a provisional liquidator has been appointed. Accordingly, it is deleted from the array of the parties.

As far as respondent No. 1-Mr.Darayus Nariman is concerned, it was the plea of the petitioner that respondent No. 2 Company had failed and neglected to pay an amount of Rs.2,25,62,903/-.

On 23.03.2017, a settlement was arrived at between the parties. In terms of the settlement, the respondent issued 18 post dated cheques for a total sum of Rs.1,80,37,903/- and forwarded them to the learned counsel for

the petitioner. The first post dated cheque when presented for encashment was returned back unpaid/dishonoured by the bankers. It has been pleaded that dishonour of cheque is in wilful violation of the order dated 23.03.2017 passed by this court. Hence, the present contempt proceedings.

Learned counsel appearing for the respondent states that on account of respondent No.2 Company being wound up and bereft of funds, respondents were unable to fulfil their commitment. It is urged that dishonour of cheques was neither deliberate nor wilful nor intentional. Learned counsel also states that they are willing to pay some reasonable costs in this regard.

There is merit in the contention of the learned counsel for the respondent. The cheques that had been tendered to the petitioner were from the account of respondent No.2 Company. The affairs of the company shows that it is without funds and hence to that extent there is merit in the contention of the respondent that dishonour of the cheques were not deliberate nor intentional. However, it also cannot be over looked that instead of letting law take its own course, based on the undertaking given by petitioner No.1 this court at that stage did not pass an order of winding up against respondent No.2 company. Respondent No.1 remains guilty of having breached an undertaking made in court. Accordingly, I impose a penalty of Rs.25,000/- on respondent No.1 to be paid to the petitioner. The payment will be made within six weeks from today.

In view of the above, the petition stands disposed of.

JAYANT NATH, J

MARCH 07, 2018/rb