

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO.49 OF 2018

IN

COMPANY PETITION NO.6 OF 2016

OTS LTD.,

REP. HEREIN BY ITS DIRECTOR,

RAJENDRA KUMAR GUPTA.

... Petitioner

VS

PRAMOD DAMODAR BORKER

AND 2 ORS.,

... Respondents

Mr. Vibhav Amonkar, Advocate for the Petitioner.

Mr. J. J. Mulgaonkar, Advocate for Respondent Nos. 1 and 3.

Mr. Alok P. Borkar, present in person.

Coram : M. S. SONAK, J

Date : 18th March 2021

P.C.

Heard Mr. V. Amonkar, learned counsel for the Petitioner
and Mr. J. J. Mulgaonkar, learned counsel for Respondent Nos. 1 and 3.

Mr. Alok P. Borkar, is also present in person.

2. On 15th January 2021, the following order was made :

“Heard the learned Counsel for the parties. Mr. Alok P. Borkar, the Director is present in the Court.

2. Mr. Alok Borkar gives an undertaking to this Court that he will, within a period of four weeks from today, deposit in this Court an amount of Rs.3,50,000/-. This means that

the amount of Rs.3,50,000/- will be deposited on or before 16/02/2021. Mr. Alok Borkar states that within a further period of four weeks i.e. by 16/03/2021, he will make a further deposit of Rs.3,50,000/- in this Court. He states that these amounts can then be paid to the Petitioner.

3. The undertakings given by Mr. Borkar to this Court in the presence of the learned Counsel for the parties, are accepted. Mr. Borkar will have to comply with such undertakings.

4. In the facts of the present case, if the amount of Rs.7,00,000/- as against the total dues of approximately Rs.14,00,000/- are received by the Petitioner, then, this Court will consider whether this contempt proceedings should be taken any further. If this amount is indeed received by the Petitioner, this Court might even consider relegating the Petitioner to recover the balance amount by taking out appropriate execution proceedings before the appropriate forum.

5. Mr. Borkar states that liberty may be granted to him to recover this amount of Rs.7,00,000/- from M/s. Borkar Colorpacks Pvt. Ltd., the Company which, according to him, was primarily responsible for making payments to the Petitioner herein. This plea can be considered once Mr. Borkar deposits the amount of Rs.7,00,000/- before this Court.

6. The matter is now posted on 18/02/2021 to see whether Mr. Borkar complies with these new undertakings tendered before the Court. Mr. Borkar will have to remain present in the Court in these proceedings on all further dates, unless he secures previous exemption.

7. S.O. to 18/02/2021.”

3. Mr. Mulgaonkar and Mr. Borkar point out that as of now Mr. Borkar has deposited in this Court an amount of ₹7,00,000/- in terms of undertaking recorded in the above order dated 15th January 2021.

4. Mr. Mulgaonkar and Mr. Borkar point out that on 15th January 2021, there was reference to an amount of ₹14,00,000/- or thereabouts being due and payable to the Petitioner. They however point out that the accounts have been reconciled and according to them dues comes to approximately ₹10,00,000/-. Mr. V. Amonkar, however disputes this position.

5. According to me, this is not the proper stage to go into the dispute as to whether the amount payable to the Petitioner is indeed ₹14,00,000/- or thereabouts or ₹10,00,000/-. This will be the matter which will have to be looked into by the Executing Court at the appropriate stage. Therefore, all contentions of parties with regard to the precise amount due and payable to the Petitioner are left open.

6. Now that an amount of ₹7,00,000/- has been deposited in this Court, liberty can always be granted to the Petitioner to withdraw the said amount no doubt, without prejudice to the rights and contentions of all parties. Accordingly, such liberty is granted to the Petitioner.

7. Further, now that Mr. Borkar has arranged to deposit an amount of ₹7,00,000/-, it is only appropriate that this contempt proceedings should not be taken any further. By depositing this amount at least Mr. Borkar has established that there was no intention on his part to willfully or deliberately disobey the orders made by this Court. In such circumstances, these contempt proceedings can be disposed of leaving the parties to pursue their remedies before the Executing Court or any other forum as may be provided in law.

8. Accordingly, these contempt proceedings are disposed of. Liberty is granted to the parties to pursue the matter of recovery before the Executing Court or any other forum as provided under the law. All contentions of all parties including the contentions on the precise amount due and payable are expressly left open.

9. That in paragraph 5 of the order dated 15th January 2021, it was clarified that Mr. Borkar, who has now deposited an amount of ₹7,00,000/- will have liberty to recover this amount from M/s. Borkar Colorpacks Pvt. Ltd., the Company which, according to Mr. Borkar was primarily responsible for making payments to the Petitioner. Such liberty is reiterated subject to no doubt whatever defences that the Company will have in this matter. Accordingly, all contentions with regard to such liberty are also left open for determination by the appropriate Court/forum at the appropriate stage.

10. This petition is disposed of with liberty as aforesaid.

M. S. SONAK, J.

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TARI AMRUT
NAGESH

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