

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Contempt.Petition.No.1564 of 2018

M/s.SONY INDIA PVT. LTD.,
Represented by its authorized signatory, Mr.S.Balaji
Having its Registered Office at A-31,
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi - 110 044. ...Petitioner

Vs.

Mr.D.Satish Babu,
Managing Director,
M/s.INDUS MOBILE DISTRIBUTION PVT. LTD.,
Having its registered office at
281, T.T.K.Road, Alwarpet,
Chennai - 600018, Tamil Nadu. ...Respondent

Prayer: Petition filed under Section 11 of the Contempts of Court Act, 1971,
seeking to punish the respondent herein for contempt of the orders of this
Hon'ble Court dated 08.08.2016 passed in C.P.No.118 of 2016.

For Petitioner : Mr.P.J.Rishikesh

For Respondent : Mr.M.S.Murali
for M/s.R & P Partners

ORDER

This contempt petition has been filed, seeking to punish the
respondent for violation of the affidavit of undertaking filed pursuant to the
order of this Court dated 08.08.2016.

2.The petitioner herein sought for winding up of one M/s.Indus Mobile Distribution Private Limited, of which, the respondent herein happens to be the Managing Director, in C.P.No.118 of 2016. The said company petition was disposed of by this Court, giving liberty to the Company namely, M/s.Indus Mobile Distribution Private Limited to pay a sum of Rs.1,39,55,982/- due and payable to the petitioner herein in 12 equal monthly installments, commencing from 15.09.2016. Paragraph 4 of the said order reads as follows:-

“4) That the Managing Director of the respondent company shall furnish a personal undertaking in the form of an affidavit with this Court, stating therein that the aforesaid terms shall be scrupulously adhered to. The said affidavit shall be filed within seven (7) days from the date of receipt of a copy of this order.”

3. This contempt petition has been filed, complaining that the undertaking given to this Court has not been complied with and the monies have not been paid as agreed to. Mr.M.S.Murali of R&P Partners, appearing for the respondent brought to notice of this Court that the Company in question is undergoing a process of liquidation before the National Company Law Tribunal (NCLT), Chennai in C.P.No.763 of 2018. It was also stated

that the National Company Law Tribunal (NCLT) has initiated a Corporate Insolvency Resolution Process against the company. Therefore, the Company is unable to honour the commitment / undertaking given to this Court. The minutes of the 4th meeting of the Committee of Creditors has also been produced. A perusal of the same would show that the process of liquidation is on.

3.Mr.P.J.Rishikesh, learned counsel appearing for the petitioner would contend that the undertaking given is the personal undertaking of the Managing Director and therefore, *de hors* the liquidation, the Managing Director would be liable for contempt.

4.I am unable to accept the said submission of the learned counsel. The order dated 08.08.2016 compels the Managing Director to furnish a personal undertaking, stating that the aforesaid terms shall be scrupulously adhered to, but the same cannot be equated to a personal guarantee. If the company is under liquidation and there is a statutory bar on any preference being made to any creditor, I do not think, the Managing Director could be held personally liable for the non-compliance of the order, due to the statutory bar created by the Insolvency and Bankruptcy Code. Therefore, I do not see any ground to proceed with the contempt.

5.Accordingly, this contempt petition is closed. No costs. It is

open to the petitioner to pursue it's claims before the Resolution Professional appointed by the National Company Law Tribunal, Chennai.

SD/-
ASSISTANT REGISTRAR(COMM.CASES)

kkn

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
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GS/22/11/2021