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

Date of Decision: 05.01.2022

\+ **W.P.(C) 2826/2017 & CM APPLs. 35339/2017, 29530/2018, 32209/2020, 21902/2021, 46752/2021**

M/S. SHEENA OVERSEAS PVT LTD & ANR. ..... Petitioners

Through Ms.Malika Sharma, Mr.Rudra Pratap, Advs.
Mr. Ram Prakash Chugh, Managing Director of petitioner company in person by virtual mode.

versus

ASSETS CARE & RECONSTRUCTION ENTERPRISE LTD. (ACRE) ..... Respondent

Through Mr.Rajeeve Mehra, Sr.Adv. with Mr.R.P.Agrawal, Ms.Manisha Agrawal and Mr.Kuldeep Sharma, Mr.Priyal Modi, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. The present petition has been filed by the petitioners challenging the order dated 14.03.2017 passed by the learned Debts Recovery Appellate Tribunal (hereinafter referred to as 'DRAT'), Delhi, in Appeal No.288/2016, finding the Managing Director of the

petitioner company namely Mr.Ram Prakash Chugh guilty of having wilfully and deliberately abused the process of law and committing him to civil prison for a period of one month.

2. The Impugned Order came to be passed by the learned DRAT as in the appeal proceedings pending before it, on 18.10.2016, the petitioner had handed over two post-dated cheques amounting to Rs.6,43,29,003/- and Rs.13,17,92,130/- to the respondents, with Mr.Chugh undertaking that both the cheques shall be duly honoured on presentation on the due dates.

3. The cheque for sum of Rs.6,43,29,003/- was dishonoured on presentation for the reason that the account from which the two cheques were issued had already been frozen.

4. On 23.12.2016, the learned counsel for the petitioners stated before the learned DRAT that he has brought a fresh cheque dated 31.01.2017 for the total amount of Rs.19,61,21,133/- which was earlier tendered by way of the abovementioned two cheques. The Learned DRAT however, adjourned the appeal for considering the effect of the dishonour of the cheque.

5. On 09.01.2017, the petitioners gave two fresh cheques for the above amounts, both dated 31.01.2017, to the respondent. The learned DRAT, however, observed that the effect of the dishonour of the earlier cheques shall be considered on the next date of hearing as Mr. Chugh, inspite of direction, had not appeared in person before the learned DRAT.

6. On 2.01.2017, the learned DRAT directed the petitioner to make the payment of the two cheques by way of a bank draft on or before 23.01.2017.

7. The above order was challenged by the petitioners before this Court by way of writ petition being W.P.(C) No.595/2017. This Court, taking into account the cheques handed over by the petitioners to the respondent were supposed to be honoured on 31.01.2017, vide its order dated 23.01.2017, directed that the learned DRAT will refrain from taking any penal action against the petitioners till the presentation of the said cheques, however, making it clear that if the cheques dated 31.01.2017 are not honoured, the learned DRAT will proceed against the petitioner.

8. The fresh cheques given by the petitioners were also dishonoured on presentation.

9. Faced with the above contemptuous act of the petitioners, the impugned order was passed by the learned DRAT, which has been challenged by the petitioners by way of the present petition.

10. On 01.05.2017, the statement of the learned senior counsel for the petitioners was recorded in the present petition to the effect that the petitioners are still willing to abide by the offer made by Mr.Chugh before the learned DRAT of paying an amount of Rs.19.62 crores (approximate) to the respondent, if granted some more time.

11. On 24.05.2017, this Court passed the following order on the statement of the parties:

> "*1. Mr. Khanna, learned Senior Advocate appearing for the petitioners and Mr. Mehra, learned Senior Advocate appearing for the*

respondent jointly state that after the last date of hearing, they have been able to negotiate an interim arrangement without prejudice to the respective rights and contentions of the parties, whereunder the petitioners shall pay a sum of Rs.5.08 crores to the respondent as the price of Property No. 1(C), mentioned in para 2 of the order dated 01.05.2017. It is further agreed that as a sum of Rs.3 crores has already been deposited by the petitioners in this Court, they shall have no objection to the said amount being released in favour of the respondent, thus leaving a sum of Rs.2.08 crores from out of the sum of Rs.5.08 crores, which shall be paid by the petitioners to the respondent within 10 days from today. Upon receipt of the balance sum of Rs.2.08 crores, the respondent shall hand over the title deeds of the captioned property to the petitioners, who shall then be entitled to deal with the same as they deem appropriate. Counsel for the respondent is granted liberty to approach the Registry for release of the drafts of Rs. 3 crores.

2. It is further agreed that the price of the two parcels of land mentioned at Sr.1(A) and (B) of para 2 of the order dated 01.05.2017, assessed by the respondent at Rs.9.46 crores, shall be paid by the petitioners within 30 days reckoned from 05.06.2017. On receiving the sum of Rs.9.46 crores, the respondent shall release the title deeds of the said properties to the petitioners for them to deal with the same as they may be appropriate.

3. It is made clear that in the event of the petitioners failing to adhere to the interim arrangement recorded hereinabove, the interim order dated 28.03.2017 operating in their favour shall stand vacated.

4. It is further agreed that the petitioners shall meet the officers of the respondent to carry further, the talks of settlement.

> *5. List in the category of 'Directions' on 05.07.2017.*"

12. The petitioners, however, failed to comply with the instalments schedule and pay a sum of Rs.2.08 crores. The petitioners filed an application being CM No.22387/2017 seeking extension of time to make the payments in terms of the order dated 24.05.2017. The said application was listed before this Court on 14.06.2017 when the counsel appearing for the petitioners assured the Court that the amount of Rs.2.08 crores shall be brought to the Court by way of a demand draft on 16.06.2017. The said order, however, came to be complied with only on 19.06.2017.

13. On 05.07.2017, the petitioners sought further time to make the deposit of Rs.9.46 crores. To test the *bona fide* of the petitioners, learned counsel for the petitioners assured the Court that a bank draft for sum of Rs.4 crores shall be handed over to the respondent on the next date of hearing that is 28.07.2017. Instead, on 28.07.2017, only a bank draft of Rs.3.55 lacs was handed over to the respondent. Learned senior counsel for the petitioners assured the Court that a further demand draft of Rs.1.20 crores shall be handed over to the respondent by 29.07.2017 and the balance amount of Rs.4 crores shall be paid on or before 04.08.2017.

14. The above undertaking was again violated and on 08.08.2017, it was stated that only a sum of Rs.2.95 crores has been paid; Rs.50 lacs shall be paid by 09.08.2017; and balance amount of Rs.55 lacs shall be tendered on or before 16.08.2017.

15. The above order was again violated, and on 24.08.2017, it was stated that instalment of Rs.55 lacs has been paid only on 23.08.2017, leaving a balance of Rs.4.71 crores, which shall be paid within four weeks of the order dated 24.08.2017. The said amount was in fact Rs.5.46 crores as was clarified in the subsequent order dated 25.09.2017, when the petitioner undertook to make the said payment within one month of the said order.

16. The petitioner, however, again defaulted in making the said payment. On 11.01.2018, the petitioner handed over demand drafts for an amount of Rs. 1 crore to the respondent, with an undertaking to pay the balance Rs. 4.46 crores on or before 09.03.2018.

17. Mercifully, this time, and probably the only time, the petitioner complied with the undertaking/assurance given to the Court and paid the balance Rs. 4.46 crores to the respondent on 09.03.2018.

18. It is important here to emphasise that during all this period, based on the above assurances/undertakings, the petitioner not only enjoyed an interim protection against the respondent proceeding against the mortgaged properties, but Mr. Chugh also escaped the imprisonment ordered by the learned DRAT. The above narration is also relevant as it shows that the petitioner and Mr. Chugh have been habitually giving statements/assurances/undertakings to the Court and have been defaulting to honour the same.

19. On 25.07.2018, the petitioners again stated that it is ready and willing to pay a sum of Rs.4.91 crores to the respondent subject to the respondent releasing the mortgaged property. The said amount was, however, not paid for almost 1 and a half years thereafter.

20. On 22.01.2021, the following order was passed by this Court:

> "*Mr.Sameer Rohtagi, learned counsel for the petitioners, on instructions, states that Mr.Ram Prakash Chug, Managing Director of the petitioner company shall pay the balance amount of Rs.5.08 crores within three months. The undertaking given by Mr.Rohtagi is accepted by this Court and Mr.Ram Prakash Chug as well as the petitioners are held bound by the same.*
>
> *Let Mr.Ram Prakash Chug also file an affidavit of undertaking within a week. In the event, the affidavit of undertaking is not filed within a week, the respondent is given liberty to mention the matter before this Court.*
>
> *List on 5th May, 2021.*"

21. That in compliance with the above order, though belated, Mr.Chugh filed his affidavit of undertaking wherein he undertook as under:

> "*That in compliance of the order dated 22.01.2021 passed by this Hon'ble Court I undertake to deposit the balance amount of Rs. 5.08 crores within three months before this Hon'ble court.*"

22. That in spite of the above order and the undertakings, the petitioners/Mr.Chugh failed to make payment of Rs.5.08 crores to the respondent, in fact no payment was made. The respondent therefore, filed an application being C.M. APPL. NO. 21902/2021 praying therein that the petitioners be directed to pay an amount of Rs. 5.08 crores to the respondent and that Mr. Chugh be proceeded against for having committed contempt of court.

23. On 07.09.2021, the following order was thereafter passed on the submission of the learned senior counsel for the petitioners:

"***<u>CM Appl. 21902/2021</u>***

Mr. Ravi Kant Chadha and Mr. Vivek Sood, learned senior counsel appearing on behalf of the petitioners pray for last and final opportunity to comply with the undertaking as recorded in the order dated 22nd January, 2021 as well as the affidavit dated 30th January, 2021 filed by the petitioner.

Mr. Ram Prakash Chugh, Managing Director of the petitioner company who also appears virtually, assures and undertakes to this Court that Rs.5.08 crores shall be paid to the respondent within two months. <u>He further states that in the event the said amount is not paid, he would have no objection if this Court were to send him to prison.</u>

The undertaking given by Mr. Ram Prakash Chugh and his learned senior counsel are accepted by this Court and Mr. Ram Prakash Chugh is held bound by the same.

<u>It is made clear that in the event there is default in payment, on the next date of hearing, this Court would have no other option, but to detain Mr.Ram Prakash Chug for violation of orders and undertakings given to this Court.</u>

List the matter on 25th November, 2021."

(Emphasis supplied)

24. Inspite of the warning recorded in the above order, the said order was again not complied with by the petitioners, and on 30.11.2021, the following order came to be passed again on the submission of the petitioner and Mr.Chugh:

" *Mr. Vivek Sood, learned senior counsel for the petitioner states that the petitioner cannot appear today as he is suffering from viral fever.*

Mr. Ram Prakash Chugh, uthorized representative of the petitioner, who appears virtually, states that a cheque of Rs.1 crore shall be handed over to the learned counsel for respondent on or before 01st December, 2021. He states that the said cheque can be encashed by the respondent by 10th December, 2021 and the same shall be good for payment.

Mr. Ram Prakash Chugh also undertakes that he shall hand over post-dated cheques of Rs.4.08 crores to the learned counsel for respondent on 01st December, 2021. He states that the said post-dated cheques of Rs.4.08 crores shall be encashable after two months.

Mr. Ram Prakash Chugh reiterates that in the event the amount of Rs.1 crore is not received by the respondent on or before 10th December, 2021 and the additional sum of Rs.4.08 crores is not received within two months from today, this Court may take action in accordance with the last order.

Mr. R.P. Agrawal, learned counsel for respondent states that in the event the respondent receives the payment of Rs.5.08 crores, the papers of property No.3 as mentioned in the order dated 01st May, 2017 shall be released to the petitioner.

List the matter on 22nd December, 2021.

Mr. Ram Prakash Chug is directed to be personally present in Court on the next date of hearing, failing which, non-bailable warrants shall be issued against him."

(*Emphasis supplied)*

25. The said order again remained to be complied and on 24.12.2021, Mr.Chugh who appeared personally before Court, handed over two post dated cheques to the respondent. He also filed an affidavit of undertaking, which reads as under:

> "*3. That Petitioner is now handing over two cheque Nos for Rs.1.50 Crores and Rs.3.58 Crores as directed to be paid by this Hon'ble Court and also as per undertaking given by the Petitioner. The details of two cheques is as under:-*

S.No.	***Cheque No.***	***Date***	***Amount***
1.	*289145*	*30.12.2021*	*1.50 Crores*
2.	*289149*	*30.01.2022*	*3.58 Crores*

> *4. The Petitioner is trying hard to find buyers for the properties due to depressed market and Corona Pandemic.*
>
> *5. <u>That the Petitioner undertakes that the above two cheques shall be paid on presentation on due dates. The Petitioner may also be permitted to remit the amount by RTGS in lieu of the two cheques in case of need</u>.*"
>
> *(Emphasis supplied)*

26. On the basis of the above undertaking, the following order was passed:

> " *Today Mr.Ram Prakash Chug, an authorized representative of the petitioner company is personally present in Court. He has handed over the following two post-dated cheques to learned counsel for respondent:-*

S.No.	*Cheque No.*	*Date*	*Amount*
1.	*289145*	*30.12.2021*	*1.50 Crores*
2.	*289149*	*30.01.2022*	*3.58 Crores*

The affidavit accompanying the said post-dated cheques is also taken on record.

The authorised representative of the petitioner, who is personally present in Court, assures and undertakes to this Court that the aforesaid post-dated cheques are good for payment on due dates. Mr.Chug reiterates that, in the event, any of the aforesaid two cheques are not honoured for any reason whatsoever, this Court may take action in accordance with the order dated 07th September, 2021.

The petitioner is held bound by the undertaking/affidavit given to this Court. September, 2021.

List on 04th January, 2022.

Mr.Ram Prakash Chug shall be personally present in Court on the next date of hearing."

(Emphasis supplied)

27. We are now informed that the cheque dated 30.12.2021 has been returned dishonoured. However, subsequent thereto, the petitioner has made a payment of only Rs. 50,00,000/- (Rupees fifty lakhs only) to the respondent.

28. Mr. Rudra Pratap, Advocate for the petitioner and Mr. Chugh, who appears through video conferencing, state that the petitioners were unable to generate the funds for honouring the above cheque as the son of the person with whom the petitioners had negotiated sale of

a property had died in an accident and for this reason the said person had not paid the amount as promised. They further state that the full amount of Rs. 5.08 crores shall be positively paid to the respondents on or before 31.01.2022.

29. We have considered the explanation given by Mr. Chugh for his non-compliance with the undertaking to this court and the dishonour of the cheque.

30. The above history of this litigation has been given in detail hereinabove only to show that at each and every stage the assurances/undertakings given by Mr.Chugh have been blatantly and without any remorse violated by Mr.Chugh. It is apparent that these undertakings have been given merely to buy time from the Court with no intention of complying therewith. There is a wilful and deliberate non-compliance with the undertakings given to this Court at each and every stage and in spite of being warned of consequence thereof repeatedly by this Court. The explanation now given is merely a moonshine and generates no confidence of this court. The name of the person who was to transfer funds to the petitioners and when/where/how his son died, have not been disclosed to this court. In fact, even after dishonour of the cheque no effort was made by the petitioners or Mr. Chugh to seek extension of time to make payment. It is only today when the court expressed its anguish at the conduct of the petitioners and Mr. Chugh that the above reason was argued as an excuse for non-compliance with the undertaking.

31. In almost similar circumstances, the Supreme Court in ***Suman Chadha & Anr. vs. Central Bank of India***, 2021 SCC OnLine SC 564 has held as under:

> " ***25***. *It is true that an undertaking given by a party should be seen in the context in which it was made and **(i)** the benefits that accrued to the undertaking party; and **(ii)** the detriment/injury suffered by the counter party. It is also true that normally the question whether a party is guilty of contempt is to be seen in the specific context of the disobedience and the wilful nature of the same and not on the basis of the conduct subsequent thereto. While it is open to the court to see whether the subsequent conduct of the alleged contemnor would tantamount to an aggravation of the contempt already committed, the very determination of an act of contempt cannot simply be based upon the subsequent conduct.*
>
> ***26***. *But the subsequent conduct of the party may throw light upon one important aspect namely whether it was just the inability of the party to honour the commitment or it was part of a larger design to hoodwink the court.*
>
> ***27***. *In this case, the series of acts committed by the petitioners **(i)** in issuing post-dated cheques, which were dated beyond the date within which they had agreed to make payment; **(ii)** in allowing those cheques to be dishonoured; **(iii)** in not appearing before the Court on the first date of hearing with an excuse that was found to be false; **(iv)** in coming up with an explanation about their own debtors committing default; and **(v)** in getting exposed through the report of the SFIO, convinced the High Court to believe that the undertaking given by the petitioners on 08.04.2015 was not based upon good faith but intended to hoodwink the Court. Therefore, we are unable to find fault with the High Court holding the petitioners guilty of contempt.*"

32. The above observations of the Supreme Court apply full force in the facts of the present case. In the present case, the petitioners have clearly taken the benefit of preventing the respondent from recovering their dues from the mortgaged properties by giving repeated undertakings to this Court that the amount shall be paid by the petitioners voluntarily and within the specified time. The respondent has, therefore, clearly suffered a detriment/injury due to the violation of the undertakings of the petitioner and Mr.Chugh. The petitioners have also issued post dated cheques with an undertakings that they shall be honoured on presentation. Such undertakings have been repeatedly flaunted and the cheques have been dishonoured. In fact, the proceedings itself started before the learned DRAT with Mr.Chugh having issued cheques from a bank account which already stood frozen. Herein, we must also note that an amount of Rs.5.08 crores is a part of Rs.19,61,21,133/- for which the cheques were given by Mr.Chugh on 18.10.2016 and had returned unpaid. By these repeated undertakings and assurances, the petitioners have therefore, gained more than five years of time and have still failed to make the entire payment, leave alone any component of interest thereon.

33. In view of the above blatant abuse of the process of the Court by Mr.Chugh and the deliberate and wilful breach of his undertakings, this Court has been left with no option but to proceed against Mr.Chugh in exercise of its powers under the Contempt of Courts Act, 1971.

34. Accordingly, Mr.Ram Prakash Chugh, son of Late Shri Chetan Das Chugh, resident of House No. 595-598, Huda Sector-11, Phase-I,

Panipat, Haryana-132103 is held guilty of having committed contempt of this Court and is sentenced to undergo simple imprisonment for a period of three month at Central Tihar Jail, Delhi from the date of his arrest.

35. As Mr. Chugh has again assured this court that the entire amount of Rs.5.08 crores shall be paid to the respondent on or before 31.01.2022, the execution of the present order shall remain suspended till 01.02.2022. In case, the petitioners and/or Mr. Chugh pay the amount of Rs. 5.08 crores to the respondent on or before 31.01.2022, the present order shall not be put to execution and Mr. Chugh shall stand discharged of contempt. However, in case the payment is not made, the SHO of Police Station, Panipat shall ensure that this order is duly executed.

36. As the Writ Petition has challenged the order finding Mr. Chugh guilty of contempt and ordering his detention for a period of one month, in view of the present order, nothing survives in the Writ Petition and the same along with all pending applications stands disposed of. The respondents shall be free to recover its dues from the petitioners in accordance with law.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 05, 2022
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