

\$~

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

+ **CONT.CAS(C) 199/2020 & CM APPL. 33307/2020, CM APPL. 20910/2021, CM APPL. 35040/2022**

DR HANS RAJ & ANR

..... Petitioners

Through: Ms. Jaya Goyal and Ms. Manpreet Kaur, Advocates.

versus

ANAND KAMAL GOEL

..... Respondent

Through: Mr. Chirag Madan, Advocate with Respondent in person.

%

Reserved on: 06th March, 2023

Date of Decision: 28th April, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present contempt petition has been filed stating that the Respondent has acted in wilful breach of the Memorandum of Understanding ('MoU') dated 07.09.2019 entered into between the parties herein during the pendency of Complaint Case Nos. 27671/2019 & 27736/2019 ('the cases') titled as *Hans Raj and Anr. v. A.M Investment Advisors and Associations and Anr.*, filed by the Petitioners under Section 138 of Negotiable Instruments Act, 1881 ('the NI Act'), and the consequent

undertaking dated 30.10.2019 given to the MM-03, South, Saket Court, Delhi ('the Trial Court') in the said cases.

1.1. In the MoU, the Respondent acknowledged that he had received from the Petitioners herein stock portfolio valued at Rs. 1,97,62,499/-. In addition, the Respondent agreed to pay a sum of Rs. 69,22,529, which has accrued till 17.07.2019 on the said stocks. The Respondent further agreed to pay interest at the rate of 12% per annum on the above amount till 29.02.2020.

1.2. This MoU was filed before the Trial Court, wherein, the Respondent gave an undertaking to the Trial Court that the entire settlement amount shall be paid on or before 29.02.2020 and it was further stated that in case of default, the Respondent herein would become liable for contempt of Court.

2. This contempt petition has been filed by the Petitioners on 02.03.2020 stating that the Respondent has only paid a sum of Rs. 42 lakhs and has failed to pay the balance of Rs. 2,40,84,782.14 as per the undertaking recorded in order dated 30.10.2019 passed by the Trial Court.

2.1 It is stated in the petition that the Petitioners are senior citizens, who are registered medical practitioners who were defrauded by the Respondent, who represented himself to be a portfolio Manager and lured the Petitioners to transfer their stock in shares to the Respondent. The said stock was misappropriated by the Respondent leading to the filing of two complaint cases under Section 138 of the NI Act, which led to the execution of the MoU for returning the said amount to the Petitioners.

3. By the detailed orders dated 13.07.2021 and 20.12.2021, the Respondent has been held guilty of contempt for wilful breach of terms of the MoU and the undertakings given *vide* order dated 30.10.2019.

4. This Court *vide* order dated 20.12.2021 granted an opportunity to the Respondent to purge the contempt, failing which it directed the matter would be heard on sentencing on 24.02.2022. A further opportunity was granted on 17.11.2022 and it was directed that if the Respondent fails to clear the outstanding payment, he shall be sentenced on the next date of hearing.

5. The Respondent failed to make the balance payment and, in these circumstances, arguments on sentencing were heard on 06.03.2023.

Arguments of the Respondent

6. During the course of hearing on 06.03.2023, the Respondent acknowledged that a sum of Rs. 1.89 Crores remains outstanding as on date. He states that the amount of Rs. 1.89 Crore remains outstanding towards interest; and this has been noted by this Court in the orders dated 02.06.2022 and 17.11.2022. He states that the principal amount has been paid.

6.1. He states that Respondent owns an immovable asset i.e., property No. B-7/111A, Extension Safdarjung Enclave, New Delhi which he is willing to sell, however, he is unable to sell the same in view of the restraint order dated 24.02.2022 passed in the present proceedings.

6.2. He further states that the MoU, which is the subject matter of compliance in the present contempt petition was signed by the Respondent under coercion and should, therefore, not be enforced.

6.3. He lastly, states that the Respondent may not be sentenced to imprisonment and in this regard, he relies upon paragraphs 6 and 7 of the judgment of Supreme Court in ***Smt. Pushpaben and Another v. Narandas v Badiani and Another, (1979) 2 SCC 394.***

***Brief facts leading to holding the Respondent guilty for contempt
Proceedings before the filing of this contempt petition***

7. The admitted facts which led this Court to hold Respondent guilty of contempt are as under:

7.1. The Respondent herein received the stock portfolio of the Petitioners and his family members. The said stock portfolio was approximately valued at Rs. 1,97,62,569, on the date of transfer of each stock.

7.2. Both the parties entered into agreement dated 26.03.2018 for the management of the said stock portfolio. The Respondent issued six (06) cheques in favour of the Petitioners, however, the same were dishonored on 02.08.2019 due to insufficiency of funds.

7.3. Thereafter, the Petitioners filed two (02) complaint cases, Complaint Case Nos. 27671/2019 and 27736/2019, under Section 138 of the NI Act.

7.4. Subsequently, with a view to arrive at a settlement, the parties entered into the MoU, whereby, the Respondent agreed to pay a total sum of Rs. 2,66,85,028 along with interest at the rate of Rs. 12% per annum till 29.02.2020 to the complainant in both the cases collectively.

7.5. The breakup of this amount was (i) Rs. 1,97,62,499, i.e., the value of the stocks and; (ii) profits to the tune of Rs. 69,22,529, which had accrued till 17.07.2019 on the said stocks. In addition, the interest at 12% was also payable.

7.6. The Respondent agreed to pay a sum of Rs. 25,00,000/- (first installment), within a week from the date of the MoU and to continue to pay the remaining sum in instalments till 29.02.2020.

7.7. It was further agreed that, if the Respondent defaults in payment of the entire amount with interest by 29.02.2020, he will be liable to pay Rs. 30,00,000 over and above the aforesaid amounts.

7.8. The parties agreed that if the Respondent fails to pay the amount as mentioned in paragraphs 5.4 and 5.5, the Petitioners would be free to take legal recourse available to them.

7.9. The Respondent also agreed that, if he defaults to pay the amount of Rs. 3 crores to the Petitioners by 31.03.2020, then the Petitioners herein would be free to sell the property No. B-7/111A, Extension Safdarjung Enclave, New Delhi, belonging to the Respondent, in any manner, without informing the Respondent about the same. The relevant portion of the MoU reads as under:

“NOW THIS MOU WITNESSETH AS UNDER:

- 1. That the First Party has agreed to pay a total sum of Rs. 1,97,62,499, i.e., value of stocks along with profits to the tune of Rs. 69,22,529/- which has accrued till 17.07.2019 on the above stocks. He has further agreed to pay interest on the above amount @12% per annum till 29.02.2020. He has agreed to pay this amount latest by 29.02.2020. He has further agreed that he will pay a sum of Rs. 25,00,000/- within a week from the date of this MOU and would continue to pay the remaining sum in installments till 29.02.2020.*
- 2. That the First Party has further agreed that in case he is unable to clear the entire balance by 29.02.2020 then he would be liable to pay Rs. 30,00,000/- over and above the amount mentioned in para 1 of the present MOU.*
- 3. That the First Party has further agreed that if the total amount plus a sum of Rs. 30,00,000/- is not cleared by the First Party till 31.03.2020 then the Second Party and his family members would be free to take legal recourse available to them.*
- 4. That the First Party has further assured that he owns Property No. B-7/111A, Extension Safdarjung Enclave, New Delhi AND Flat No. 1552, AWHO, Sector 37, Noida, Gautam Budh Nagar (U.P) and Plot bearing No. 984, Sector 7, Sonapat, Haryana admeasuring 185 SQ. Yards. The First Party today has handed over the original title document of the NOIDA Flat to the Second Party, the receipt of which the Second Party do hereby acknowledges. If the First Party fails to pay the total amount of Rs. 3 Crores*

to the Second Party and his family members by 31.03.2020 then the Second Party and his family members would be free to sell this Noida Flat or to deal with the same in any manner they like without informing the First Party about the same. He has further assured the Second Party that in case he is unable to pay the money of the Second Party, he will hand over the possession and title documents of Sonapat Property also to the second party and his family members and they would be free to sell the same to anyone they like.”

(Emphasis supplied)

7.10. On 18.09.2019, the Respondent paid a total sum of Rs. 20 lakhs in favour of the Petitioners.

7.11. On 30.10.2019, the Respondent paid a sum of Rs. 14 lakhs by way of demand draft to the Petitioners and also undertook to pay a remaining sum without any fail. The order dated 30.10.2019 passed by the Trial Court reads as under:

“I am accused in the present cases bearing number 27671/2019 & 27736/2019 filed by the complainant against me u/s 138 of NI Act. **I have amicably settled all the claims of complainant against me, arising out of the cheque in question, I had agreed to pay full and final settlement amount of Rs. 2,66,85,028/- alongwith interest at the rate of 12% per annum to the complainant in both the cases collectively. I hereby undertake that I will make the whole payment of aforesaid settlement amount till 29.02.2020 without any fail. All the terms and conditions of the settlement has been recorded between the parties in an MOU which is Ex. X1. Till today, I had paid a sum of Rs. 34 lakhs to the complainant.** I understand that only on the basis of aforesaid undertaking and MOU and in case of any breach of the said undertaking, proceedings for recovery of the amount may be initiated against me as per the provision of Section 421 read with Section 431 Cr.P.C. and **I may also be held liable for contempt of this Court.** Besides the complainant shall be at liberty to avail appropriate legal remedy for recovery of the aforesaid amount as may be available to him under the applicable law, I shall remain bound by our aforesaid statement.”

(Emphasis supplied)

7.12. The said MoU was filed before the Trial Court. The Respondent recorded his statement undertaking to make the payment of the entire settlement amount by 29.02.2020 without any default. In the said statement,

the Respondent admitted his liability to pay a full and final settlement of Rs. 2,66,85,028 along with interest at the rate of Rs. 12% per annum to the complainant in both the cases collectively. In the said statement, the Respondent also acknowledged that a default in the payment would make him liable for contempt of court.

7.13. The Trial Court *vide* order dated 30.10.2019, accepted the undertaking of the Respondent.

7.14. Thereafter, on 16.01.2020, the Respondent further paid a sum of Rs. 8 lakhs to the Petitioners.

Undertakings given in this contempt petition

8. It was averred in the contempt petition that till the filing of the petition; the Respondent has paid only a sum of Rs. 42 lakhs out of total dues of Rs. 2,82,84,782.14.

8.1. Notice in the contempt petition was issued on 04.03.2020. The Respondent has filed reply dated 17.10.2020, tendering 'unconditional apology' for being unable to honor the undertaking dated 30.10.2019 given to the Trial Court. It was also stated in this reply that on 15.10.2020, the Respondent has again undertaken before the Trial Court to pay the Petitioner a sum of Rs. 35,00,000 by 04.12.2020 and Rs. 20,00,000 by the 20th of every month and the balance will be paid by 31.03.2021.

8.2. The aforesaid undertaking was accepted by this Court *vide* order dated 21.01.2021 (1st undertaking to this Court), the relevant portion whereof reads as under:

"2. Notice of contempt was issued to the respondent, to which he has filed a reply, including an affidavit of unconditional apology dated 17.10.2020 wherein he says, "That I tender my unconditional apology to this Court." and in para 7 of his reply, he has given further undertaking that, "...the

respondent has further undertaken to pay to the respondent (sic, petitioner) Rs.35 lakh by 04.012.2020 and R.20 lakh by the 20th every month and the balance by 31.03.2021...”

3. The learned counsel for the respondent submits that the said undertaking shall be duly complied with by the respondent. The said undertaking is accepted.

4. List for compliance on 28.04.2021.”

(Emphasis supplied)

8.3. However, the Respondent failed to make any payment in furtherance of the undertaking recorded on 21.01.2021.

8.4. In these circumstances, by order dated 13.07.2021, this Court has taken adverse note of the conduct of the Respondent in not even tendering a partial compliance in making the payments; and thereby held the Respondent guilty of contempt of Court. The relevant portion of the order dated 13.07.2021 reads as under:

“3. The learned counsel for the petitioner submits that the respondent has defaulted in making the payment for the last 6 months, without any explanation. The counsel for respondent says that the respondent was going through some therapy for depression. However, there is not even partial compliance. Neither an affidavit, nor an application has been moved for extension of time. Clearly, the respondent is in deliberate contempt of this Court’s order. He is guilty of contempt of court.

4. List on 16.07.2021 for sentencing.

5. The respondent shall remain present in the Court on the next date.”

(Emphasis supplied)

8.5. Thereafter, Respondent filed CM APPL. 20910/2021 dated 14.07.2021 seeking extension of time by a period of three (03) months for making payments to the Petitioners. This Court relying upon the submissions of the Respondent on 16.07.2021 deferred the sentencing.

8.6. However, the Respondent defaulted and did not comply with the undertaking given to this Court.

8.7. By the order dated 05.10.2021, this Court noted that the Respondent is making 'excuses' for not complying with the directions passed by this Court and imposed costs of Rs. 10,000 upon the Respondent. The relevant portion of the order dated 05.10.2021 reads as under:

"1. By order dated 13.07.2021, the respondent was found guilty of having committed contempt of court. On 16.07.2021, the case was listed for orders on sentencing, whereby, the respondent had appeared with his counsel. The latter sought time to obtain instructions and make payments to the petitioners.

xxx

xxx

xxx

3. The aforesaid order has not been complied with. The learned counsel for the respondent submits that some documents have been filed as of yesterday and he will pursue with the Registry to have the same brought on record.

*4. **The court would notice that this is yet another excuse from the respondent for not complying with the court's directions.***

5. At request of the learned counsel for the respondent, renotify on 15.11.2021.

*6. Let copy of the documents filed by the respondent be supplied to the learned counsel for the petitioner. **Costs of Rs.10,000/- is imposed upon the respondent which shall be paid to the petitioners within two weeks.***

(Emphasis supplied)

8.8. Thereafter by a detailed order dated 20.12.2021, this Court recorded the conduct of the Respondent in not complying with the orders of the Court, even after being provided with sufficient opportunities to pay the Petitioners and mitigate the difficult circumstances. This Court specifically observed that the order on sentencing was deferred so as to bring about some rapprochement and some action from the Respondent to pay the outstanding dues to the Petitioners, as undertaken before this Court. Even on the said date (20.12.2021), this Court granted one last and final opportunity to the Respondent to make the payments to the Petitioners. The relevant portion of the order dated 20.12.2021 is reproduced herein under:

“2. It is evident from the aforesaid orders that despite the court holding the respondent guilty of contempt of court, it provided the respondent with sufficient opportunity to pay the petitioners and mitigate their difficult circumstances.

3. The case has been adjourned on four occasions post holding the respondent guilty. **The order on sentencing was deferred, so as to bring about some rapprochement and some movement from the respondent to pay the monies. Albeit costs of Rs.10,000/- have been paid, the monies owed to the petitioner are still due. The respondent, who is present in court, continues to state that he does not have the monies to pay the outstanding amount.**

4. The learned counsel for the petitioners submits that the respondent has a history of conviction for fraud and has undergone a jail term for eight months. She refers to an order of the learned Session Judge dated 02.12.2015, in Criminal Appeal No. 24/1/15 dated 28.09.2015, FIR No. 650/1997, P.S. Sarojini Nagar, New Delhi, under section 420/471 IPC. She states that in the said case, one Smt. Usha Suri had given shares held by her in companies, for management by the respondent, but she was dishonestly cheated and wrongful loss was caused to her, resultantly, said court held the respondent guilty for committing fraud.

5. The petitioners are medical practitioners who invested monies with the respondent, are interested in getting their money back. **The respondent has not paid the said monies despite his undertaking to the court. The monies are due since 2018.**

xxx

xxx

xxx

10. As recorded in the previous orders and as quoted hereinabove, the respondent sought time before the learned Trial Court on 30.10.2019 and undertook to pay all due monies by 29.02.2020, in terms of Memorandum of Understanding dated 07.09.2019. **Having failed to do so, he filed an unconditional apology in the instant petition and gave another undertaking before this court to make payments to the petitioner. The said undertaking was accepted by this court on 20.01.2021. Eleven months have gone by; the respondent has not paid any monies due to the petitioner. The case was passed over for the learned counsel for the respondent to find some solutions. Despite the court repeatedly putting to the learned counsel for the respondent as to whether any solution could be found in the matter, his answer is in the negative. It is thus clear from the respondent's conduct that he had no intentions of complying with orders of the court. His undertaking given to the court was a false promise to mislead the petitioners and an act of fraud played upon the court. The respondent's conduct, as recorded hereinabove, constitutes as wilful disobedience.**

11. In view of the above, the respondent is guilty of contempt of court under section 2(b) read with section 10 and 12 of the Contempt of Courts Act, 1971. Nevertheless, the court provides one last opportunity to the respondent to mitigate his circumstances by making the payments before

the next date, failing which, the respondent shall be present in court on the next date for orders on sentencing. No further opportunity shall be granted.

(Emphasis supplied)

8.9. On 24.02.2022, the Respondent issued demand draft for an amount of Rs. 70 lakhs to the Petitioners. It was submitted by the learned counsel for the Respondent that a further payment of Rs. 37 lakhs will be made by the Respondent within a week from 24.02.2022. He also undertook not to encumber and/or dispose of any property in which he may have an absolute or partial share or interest. In view of the assurances made and undertaking given before this Court, the orders on sentencing were deferred. The relevant portion of the order dated 24.02.2022, reads as under:

“3. The learned counsel for the petitioner submits that after due adjustments, the total amount now due is Rs.2.89 crores, inclusive of all interest as of date. After setting off today’s payment of Rs.70 lacs and the promised payment of Rs.37 lacs, the total amount due will be Rs.1.82 crores.

4. The learned counsel for the respondent seeks time to obtain instructions in this regard.

5. The respondent undertakes not to encumber and/or dispose off any property in which he may have an absolute or partial share or interest.

6. In view of the above, the orders on sentencing are deferred.

7. List on 26.05.2022.

8. In the interim, the respondent would endeavour to make further payments.”

(Emphasis supplied)

8.10. The matter was listed before the Court on 26.05.2022; however, the Respondent sought an adjournment to prepare an agreed schedule for the payment of the balance amount of Rs. 1.89 crores.

8.11. Thereafter, in compliance with the order dated 26.05.2022, an affidavit dated 30.05.2022 was filed by the Respondent providing a schedule

of date of instalment by which payments of the outstanding amount of Rs.1.89 crores will be made to the Petitioners. The same was duly taken note in the order dated 02.06.2022 (2nd undertaking given to this Court), which reads as under:

“1. Apropos the order dated 26.05.2022, an affidavit has been filed by the Respondent giving a schedule by which the Respondent shall make the payments. The relevant portion of the said affidavit reads as under:-

“3. That in compliance of the order dated 26.05.2022 a meeting was held amongst the parties and both the parties have agreed to the following schedule for the balance of payment due from the Respondent. The Respondent has already paid a sum of Rs.1,97,22,529.00 and undertakes to pay the balance payment of Rs. 1,89,00,000.00 to the Petitioner(s). The schedule agreed between the parties is as follows for the balance payment of Rs.1,89,00,000.00 is as follows:

<i>Sr. No.</i>	<i>Amount to be paid</i>	<i>Date of instalment</i>
<i>1.</i>	<i>Rs. 50,00,000 {Rupees Fifty Lakhs}</i>	<i>On or before 31st July, 2022</i>
<i>2.</i>	<i>Rs. 70,00,000 (Rupees Seventy Lakhs)</i>	<i>On or before 31st August, 2022</i>
<i>3.</i>	<i>Rs. 79,00,000 (Rupees Seventy Nine Lakhs)</i>	<i>On or before 30th September, 2022</i>
	<i>Total Amount = Rs. 1,89,00,000.00 (Rupees One Crore Eighty Nine Lakhs only)</i>	

2. List on 12.10.2022, for compliance.”

8.12. The Court accepted the said affidavit of undertaking filed by the Respondent and listed the matter for compliance.

8.13. On 08.08.2022, the learned counsel for the Petitioner submitted that the Respondent has not made any payments in terms of the order dated 02.06.2022. In fact, the Respondent defaulted on making the payment of the

first instalment (dated 31.07.2022) itself and therefore, the Petitioner moved an application before this Court seeking advancement of hearing.

8.14. Thereafter, *vide* order dated 31.08.2022, the Respondent sought further time to make pending payments. In this manner the Respondent, yet again, undertook (3rd undertaking was given to this Court) to make payments of the outstanding amount to the Petitioners before 12.10.2022.

8.15. However, no payment was made in furtherance of 3rd undertaking as well.

8.16. Thereafter, on 17.11.2022, this Court gave one final opportunity to the Respondent to purge the contempt and to pay the requisite amount to the Petitioner within a period of three (3) weeks and noted that the orders on sentencing will be passed, taking into account the steps taken by the Respondent to purge the contempt. The order dated 17.11.2022 reads as under:

“The respondent has not complied with the undertaking given vide order dated 31.08.2022 to the effect that the requisite amount will be paid to the petitioner on or before 12.10.2022.

Last opportunity is granted to the respondent to purge his contempt and to pay the requisite amount to the petitioner within a period of three weeks from today.

The orders on sentencing will be passed on the next date of hearing, taking into account the steps taken by the respondent to purge his contempt.

List on 14.12.2022.

The respondent shall remain personally present in court on the next date of hearing.”

(Emphasis supplied)

8.17. However, no payment was made by the Petitioner and the matter was adjourned and arguments on sentencing were heard on 06.03.2023.

Findings

9. This Court has heard the learned counsel for the parties and perused the paper book.

10. At the outset, it is pertinent to mention that there have been 26 listings of the present contempt petition. It has been categorically admitted by the Respondent that he is in arrears of Rs. 1.89 Crores towards the interest amount, as recorded in the order dated 02.06.2022.

10.1. A perusal of the order sheet evidences that in addition to the undertaking dated 30.10.2019 given to the Trial Court, the Respondent gave three (03) undertakings to this Court on 21.01.2021, 02.06.2022, 31.08.2022 affirming and acknowledging that he shall pay the amount agreed in the MoU dated 07.09.2019 to the Petitioners.

10.2. The order sheet also shows that even after the Respondent was held guilty of contempt of Court, this Court gave multiple opportunities to the Respondent on 20.12.2021 and 17.11.2022 to make the outstanding payments to the Petitioners and to purge the contempt. Additionally, the matter was also adjourned many a times to enable the Respondent to make the payments. It has, however, come on record that the Respondent has not made any payments even after providing a schedule of payment and giving an undertaking, as recorded in the order dated 02.06.2022 passed in the present proceedings.

10.3. The Respondent in the present proceedings has filed reply dated 17.10.2020, a separate affidavit of unconditional apology dated 17.10.2020, CM APPL. 20910/2021 dated 14.07.2021 and affidavit of undertaking dated 30.05.2022. The list of applications/reply filed by the Respondent are illustrated herein under:

Sl. No.	Application/Reply	Content
1	Reply dated 17.10.2020	Reply filed in pursuance to the notice issued <i>vide</i> order dated 05.10.2020. In the said reply, the Respondent undertook to pay the Petitioners Rs. 35,00,000 by 04.12.2020 and Rs. 20,00,000 by 20 th every month and balance by 31.03.2021. The Respondent acknowledges the payment of outstanding amount under the MoU.
2	Affidavit of unconditional apology dated 17.10.2020	Affidavit tendering unconditional apology to this Court for non-compliance of the MoU dated 07.09.2019 and the order dated 30.10.2019.
3	CM APPL. 20910/2021 dated 14.07.2021 was filed by the Respondent after the Respondent was held guilty of contempt <i>vide</i> order dated 13.07.2021	Application tendering unconditional apology and extension of time by three (03) months for making payments to the Petitioner under the MoU.
4	Affidavit of undertaking dated 30.05.2022 filed by the Respondent in compliance with the order dated 26.05.2022.	Affidavit of undertaking whereby the Respondent undertook to pay a sum of Rs. 1,89,00,000 as per the schedule agreed between the parties. Also tendered an unconditional apology to this Court.

10.4. In each of these pleadings referred to above, the Respondent has never disputed the validity of the MoU and has in fact duly acknowledged his

liability to pay the outstanding amounts to the Petitioners. In addition to acknowledging the outstanding amount payable to the Petitioners, the Respondent has also repeatedly assured and undertook to this Court that the said amount which is due, will be paid to the Petitioners.

10.5. In view of the acknowledgment, assurances and the undertakings given by the Respondent in these proceedings, the submission of the Respondent during the hearing dated 06.03.2023; that the MoU was signed under coercion is clearly a dishonest plea. This Court is, therefore, unable to accept the submission of the learned counsel for the Respondent, that the MoU was executed under coercion. In fact, the said submission of the Respondent clearly evidences that the apology tendered by the Respondent on 14.07.2021 after he was held guilty of contempt is not *bona fide*. In this affidavit of apology dated 14.07.2021, the Respondent had admitted his liability and sought further time to honor his undertaking.

10.6. This Court is of the opinion that the Respondent has only been bidding time after he was held guilty of contempt *vide* orders dated 13.07.2021 and 20.12.2021. The last payment was made on 24.02.2022 and despite giving two undertakings on 02.06.2022 and 31.08.2022, not a single paisa has been paid by the Respondent.

10.7. Even after providing multiple opportunities to make the payment to the Petitioners, the Respondent has failed to comply with the undertakings given and the orders passed by this Court.

10.8. By relying upon the judgment of Supreme Court in ***Smt. Pushpaben and Another*** (supra), the Respondent has sought to contend that his conduct of violating his undertaking and non-payment of the admitted amounts does not merit imposition of sentence of imprisonment. In the opinion of this

Court, the said submission cannot be accepted. The Respondent herein has consistently acknowledged his liability towards the payment and reiterated before this Court that he will clear the outstanding payments to the Petitioners. Therefore, this Court is of the opinion that the non- payment of the admitted dues by the Respondent is without any cause.

10.9. In the aforesaid judgment, the Supreme Court had taken note that the complainant therein has not appeared before the Supreme Court to support the sentence given by the High Court. In the said judgment, the Supreme Court has held that the contemnors who violate the undertakings given to the court are undoubtedly guilty of contempt of court.

10.10. The Apex Court has time and again reiterated that non-compliance of ‘undertakings’ given to the Court will amount to contempt of orders of the Court. In this regard, it is instructive to refer to the judgment of Supreme Court in ***HSBC PI Holdings (Mauritius) Limited v. Pradeep Shantipershad Jain and Others***, 2022 SCC OnLine SC 827, wherein it has been held that non-payment of the outstanding amount by the Respondent even after repeated opportunities and directions passed by the court will amount to punishment under contempt of Court. The relevant portion of the said judgment reads as under:

“67. Sufficient opportunities have been given to the respondents to deposit the shortfall amount so as to maintain a sum of USD 60 million in their Corporation Bank account. The first order passed by the learned Single Judge in their application under Section 9 of the Act, 1996 is passed in the year 2014 and even the same has been restored by this Court vide judgment and order dated 19.08.2020 and thereafter, further directions have been issued specifically directing the respondents to deposit the shortfall vide order dated 06.05.2021 and thereafter their application for exemption from depositing the shortfall amount has been dismissed by this Court. Despite the above, the respondents have failed to deposit the shortfall amount and therefore, they have rendered themselves liable for suitable punishment under the provisions of the Contempt of Courts Act for wilful disobedience of not

only the judgment and order passed by this Court dated 19.08.2020 in Civil Appeal No. 5158/2016 but also for wilful disobedience and non-compliance of order passed by this Court dated 06.05.2021 in the present application. The defence on behalf of the respondents lack bona fides. To maintain the rule of law and majesty of justice and so as to see that the faith and confidence of the people in judiciary is maintained, this is a fit case to entertain the present contempt proceedings and to punish the respondents under the provisions of the Contempt of Courts Act."

(Emphasis supplied)

10.11. By subsequent order dated 11.07.2022, the Supreme Court had sentenced the contemnors in ***HSBC PI Holdings (Mauritius) Limited*** (supra) for simple imprisonment for a period of six (06) months for not complying with the orders passed by the court.

10.12. Similarly, in the case of ***Urban Infrastructure Real Estate Fund v. Dharmesh S Jain and Another, (2022) 6 SCC 662***, it has been held that:

"24. When a party which is required to comply with the terms or directions in an order has not done so within such time as stipulated in the order, two options are available to the party which was required to comply with such order:

(a) give an explanation to the Court as to the circumstances due to which the party could not comply with the order of the Court;

(b) seek for further time to comply with the order of the Court.

If a delay has occurred in complying with the terms of an order and the party which was to comply with the order has not resorted to either of the two aforesaid options, then, the party responsible for delay in compliance, may be held to have committed contempt; vide State of Bihar v. Subhash Singh [State of Bihar v. Subhash Singh, (1997) 4 SCC 430].

25. Further, the decision of this Court in Maruti Udyog Ltd. v. Mahinder C. Mehta [Maruti Udyog Ltd. v. Mahinder C. Mehta, (2007) 13 SCC 220: AIR 2008 SC 309] suggests that irrespective of whether or not a decree is executable, the question to be considered by this Court in determining whether a case for contempt has been made out was, whether, the conduct of the contemnor was such as would make a fit case for awarding punishment for contempt of court.

26. Applying the legal propositions discussed supra, to the facts of the case at hand, we are of the view that the conduct of the respondent-contemnors is

such as would justify invocation of contempt jurisdiction of this Court. **Not only have the contemnors unreasonably delayed and defaulted in compliance of the orders of this Court without explaining the cause for such default, or seeking extension of time for compliance; but they have also sought to avoid compliance of the order, even after taking benefit of the extended time period granted for compliance of the same. The contemnors cannot, at this juncture, claim that the requirement of deposit was not mandatory, but directory and therefore non-compliance thereof would not constitute contempt.**

27. In view of the above and for the reasons stated above, we are of the firm view that the respondents have wilfully disobeyed the order passed by the High Court dated 8-8-2019 [Nirmal Lifestyle Ltd. v. Urban Infrastructure Real Estate Fund, 2019 SCC OnLine Bom 13106] in Notice of Motion No. 960 of 2019 in Commercial Arbitration Petition No. 55 of 2019 and have wilfully disobeyed the order dated 28-10-2021 [Dharmesh S. Jain v. Urban Infrastructure Real Estate Fund, 2021 SCC OnLine SC 3109] passed by this Court in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021 and thereby the respondents are guilty of civil contempt and have rendered themselves liable for suitable punishment under the provisions of Contempt of Courts Act. The respondents, more particularly, Respondent 1, is hereby held guilty for the contempt of this Court for wilful disobedience of the order passed by the High Court dated 8-8-2019 [Nirmal Lifestyle Ltd. v. Urban Infrastructure Real Estate Fund, 2019 SCC OnLine Bom 13106] in Notice of Motion No. 960 of 2019 in Commercial Arbitration Petition No. 55 of 2019 and specifically for disobedience of the order dated 28-10-2021 [Dharmesh S. Jain v. Urban Infrastructure Real Estate Fund, 2021 SCC OnLine SC 3109] passed by this Court in Miscellaneous Application No. 1668 of 2021 in Special Leave Petition (C) No. 14724 of 2021 and are held liable to be punished suitably under the provisions of the Contempt of Courts Act. Now, the respondents shall be heard on sentence.”

(Emphasis supplied)

10.13. By subsequent order dated 12.05.2022, the Supreme Court sentenced the Respondent, Contemnor therein to undergo simple imprisonment of seven (07) days for wilful disobedience of the orders passed by the Court.

11. In this matter on 06.03.2023, on an enquiry to the Respondent with respect to the time required by him to sell his immovable property to raise the funds, the Respondent was non-committal and vague. He stated that he is

still looking for a buyer and it was not possible to give a firm date. This Court did not find that the response of the Respondent was serious or made in good faith. The Respondent is owner of immovable properties and therefore, has sufficient means to make the payment undertaken by him; he, however, lacks the will to make the payment to the Petitioner.

12. In view of the aforesaid contumacious conduct of the Respondent, this Court is unable to accept the submission that the punishment of imprisonment should not be awarded to the Respondent.

Sentencing

13. In so far as the order on sentence is concerned, as the Respondent has already been held guilty of contempt and considering his subsequent conduct as aforesaid, this Court sentences Respondent, Contemnor, Mr. Anand Kamal Goel, to undergo two (02) months imprisonment along with a fine of Rs. 2,000. In default of payment of the fine, he shall further undergo fifteen (15) days simple imprisonment.

14. I hereby direct the Registrar General of this Court to take necessary steps to have the convicted contemnor taken into custody and cause him to send to Central Jail, Tihar, under appropriate warrant of commitment for undergoing the sentence awarded as above.

15. A copy of this judgment shall also be furnished to the convicted contemnor free of cost. He shall be informed by the Superintendent, Central Jail that he has the right to prefer an appeal against the conviction and order on sentence passed by this Court.

16. The undertaking given by the Respondent *vide* order dated 24.02.2022, that he shall restrain from encumbering or disposing off any property in which he may have an absolute or partial share or interest

including the property No. B-7/111A, Extension Safdarjung Enclave, New Delhi, is made absolute and shall continue to operate until the Respondent clears the admitted amount of Rs. 1.89 Cr., such properties cannot be sold by the Respondent without seeking written consent of the Petitioner herein and the prior permission of the Trial Court.

17. With these observations, the present contempt petition and all the pending applications, if any, are disposed of.

MANMEET PRITAM SINGH ARORA, J

APRIL 28, 2023/hp/kv/asb



सत्यमेव जयते