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

+ **CCP(CO.) 3/2019**

ITOCHU INDIA PVT. LTD.

..... Petitioner

Through: Mr. Preet Pal Singh, Advocate.

versus

MR. KAPIL GUPTA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

13.02.2024

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1. None appeared for the respondent when the matter was called.
2. As is evident, the respondent/Company has gone into liquidation and consequent to the direction passed by the NCLT, an IRP has already been appointed. The present contempt petition can conveniently be disposed of as it involves trivial issues of law and facts.
3. Petitioner, who is seeking initiation of contempt proceedings under Sections 10, 11 and 12 of the Contempt of Courts Act, 1971 against respondent Nos.1 to 3, who are the Managing Director/General Managers of respondent/Company (in liquidation) on account of failure of Mr. Om Joshi i.e., respondent No.3 for not honouring the undertaking given in this Court on 18.08.2017 pursuant to Memorandum of Understanding ('MoU'), arrived at between the parties before the Delhi High Court Mediation and Conciliation Centre.
4. A perusal of the record shows that the matter was settled in



mediation for a total sum of Rs.1.47 Crore for which 12 post-dated cheques have been issued and the last of which was payable by 05.07.2018.

5. It is submitted by the learned counsel for the petitioner that only two installments were paid by 05.10.2017, and thereafter, no payments have been made by the respondents. Learned counsel for the petitioner referring to Section 2(b) of the Contempt of Courts Act, 1971 has pointed out that a willful disobedience of any undertaking given to the Court amounts to a civil contempt.

6. I am afraid that no relief of any nature sought can be granted to the petitioner. A perusal of the MoU dated 20.07.2017 would show that it was executed by respondent No.3/Mr. Om Joshi on behalf of respondent/company (in liquidation) in his personal capacity and not in the capacity of General Manager.

7. At the cost of repetition, the respondent/company has already been in the process of getting liquidated in the pending proceedings before the NCLT and the IRP has also been appointed. It was also pointed out that the petitioner has filed its claim before the NCLT.

8. In view of the fact that the moratorium has kicked-in pursuant to the directions passed under Section 14 of the Insolvency of Bankruptcy Code, 2016, no proceedings can be allowed to be initiated against the directors in their personal capacity.

9. The contempt petition is dismissed without prejudice.

DHARMESH SHARMA, J.

FEBRUARY 13, 2024/ck