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

% **Date of decision: 14th August, 2024**

+ **CONT.CAS(C) 351/2014**

KONINKLIJKE PHILIPS N.V. & OTHERS.Petitioners

Through: **Mr. Manoj Kumar Sahu, Adv.**

versus

S.K.BHALLA & ORS.Respondents

Through: **Mrs. Avnish Ahlawat, Mr. N.K. Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat & Mr. Amitoj Chadha, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioner company is seeking initiation of contempt proceedings against the respondents in terms of Section 2 (2) (b) read with Section 12 of the Contempt of Courts Act, 1971 [“CC Act”] predicated on the alleged wilful non-compliance of an undertaking given by the defendant No.1 on his behalf as well as on behalf of defendant No.3 on 30.01.2013 in IA No. 1500/2013 that was jointly moved by the parties in suit bearing CS (OS) 2874/2012 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 [“CPC”], which reads as under:-

“...3. That the Defendants undertake not to:-

(i) Import any product for commercial purposes bearing the trade mark PHILIPS, RESPIRONICS, or the Philips SHIELD EMBLEM without written consent of the



Plaintiffs.

(ii) Purchase any product for commercial purposes bearing the trademark PHILIPS, RESPIRONICS, or the Philips SHIELD EMBLEM which product has been imported into India or made available in India without written consent of the Plaintiffs.

4. The Defendants pray for release of all the products bearing the mark PHILIPS, RESPIRONICS seized by the local commissioner on 27th September 2012 including the goods set out in Annexure A of this application to the Defendants on the condition that the Defendants shall not sell any of the products to any person but shall use the said product in his rental business only. The Defendants undertake that they shall be solely liable for repair, maintenance and any liability whatsoever arising on account of use of such products bearing the mark PHILIPS and RESPIRONICS in the rental business. The Defendants hereby fully and completely indemnify the Plaintiffs against any and all legal action, including costs and damages, brought by Defendants consumer arising on account of use of products bearing the mark PHILIPS and/ or RESPIRONICS in the rental business of the Defendants.

5. The Defendants undertake to inform its customers in writing whenever a product bearing the trade mark PHILIPS, RESPIRONICS, or the Philips SHIELD EMBLEM is rented that the Plaintiffs herein are in no way responsible to the customer and that the Defendants would be solely liable to the customer for such product and service.

6. In view of the undertakings given by the Defendants, the Plaintiffs consent for release of all products bearing the mark PHILIPS and/or RESPIRONICS seized by the local commissioner on 27th September 2012 including the units are set out in Annexure A of this application to the Defendants on the condition that the Defendants shall not sell any of the said products to any person but shall use the said products in his rental business only. The parties agree that they shall jointly de-seal the goods at 11.00 am on the following day after recordal of the present compromise and shall immediately file the serial number of each of the 09 (Nine) de-sealed Units before this Court, which shall also form part and parcel of the present settlement. The Defendants will be entitled to custody of the goods only after the serial number of 09 de-sealed units is recorded and signed by both the Plaintiffs and the Defendants.

7. The Plaintiffs clarify that it has no objection in Defendants purchasing any product from any person in India for commercial purposes bearing the- mark, PHILIPS, RESPIRONICS,



or the Philips SHIELDEMBLEM which product has been imported into

India with the Plaintiff's consent. The Defendant's undertake that it will be the Defendant's obligation to verify whether such product bearing the mark PHILIPS, RESPIRONICS, or the Philips SHIELDEMBLEM has been imported into India with the Plaintiff's consent.....”.

2. Short of unnecessary details, the petitioner company alleges that the respondents are in grave violation of the aforesaid undertaking since respondent No.1, is openly selling the products bearing the trade mark ‘PHILIPS, RESPIRONICS’ and has sold one “CPAP Machine” bearing the trade mark PHILIPS, RESPIRONICS for Rs. 49,875/- on 16.04.2014, bearing Serial No. SN PO87223226E 4C, the invoice of which is annexed as **Annexure-C** and other details in **Annexure-B**.

3. The respondents, upon issuance of the notice by this Court *vide* order dated 23.05.02014, have filed a detailed reply. In an affidavit dated 11.09.2019, they have denied the allegations made by the petitioner company in the contempt petition, asserting that there has been no wilful of the undertaking given in the Court. They also dispute the invoice filed as **Annexure-C** dated 16.04.2014, claiming that it is not genuine but rather a forged computer-generated copy, which does not even bear the watermark or seal of the respondent’s company. Additionally, they assert that no VAT¹ return has been filed and that the signatures of the person signing the document are forged.

4. Having heard the learned counsels for the parties and on perusal of the record, this Court finds that the petitioner company has failed to present the foundational facts necessary to proceed against the

¹Value Added Tax



respondents for committing any breach of the undertaking before this Court recorded *vide* order dated 30.01.2013.

5. First things first, there is no affidavit on record from the buyer, Mr. P.S. Walia, who is alleged to have purchased the product bearing the trademark of the petitioner company with a cash payment. The invoice itself does not indicate whether any product belonging to or bearing the trademark of the petitioner company was sold². The images placed on the record by itself carry no proof, since the products are easily available in the open market. The identity of the authorized signatory, who is alleged to have signed the invoice is also not brought out. It is the petitioner company's own case that after the undertaking was recorded on 30.01.2013, the plaintiffs filed original and handwritten typed copy of the inventory list showing serial numbers of the products bearing trademark PHILIPS, RESPIRONICS, which were de-sealed by the petitioners and the respondents on 01.04.2013. If that was the case, nothing would have remained in the respondents' stock to be sold in open market.

6. All said and done, it is well settled that jurisdiction in contempt proceedings can be invoked only when there is wilful, dishonest disobedience and contumacious conduct on the part of the wrong doer/contemnor in committing breach of an undertaking. Mere bald allegations of selling the product on a single occasion cannot justify the initiation of contempt proceedings against the respondents. There is no iota of material to assume that the respondents have committed

²The invoices shows selling of: Cpap Machine-Auto Flex P
Accessories including: Main Unit, Nasal Mask, Hose Pipe, Exaltations Port, Power Cord, Power Supply, Carry Case



continuous breach of their undertaking. The matter is between this Court and the contemnor, and in the instant matter, no compelling grounds have been demonstrated to hold the respondents guilty of committing breach of their undertaking given in the Court.

7. Hence, the present contempt petition is dismissed.

DHARMESH SHARMA, J.

AUGUST 14, 2024

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