



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 16 October 2024**
Judgment pronounced on: 09 December 2024

+ CONT.CAS(C) 631/2017, CM APPL. 4726/2019, CM APPL.
12739/2019, CM APPL. 8089/2023 & CM APPL. 56198/2023

LECHAMPS (SEA) PTE LTDPetitioner
Through: Mr. Sanjeev Sahay, Mr. Archit
Rajput, Ms. Shagun Sapru &
Mr. Karan Deep Singh, Advs.
versus

ASHISH GUPTA & ANR.Respondents
Through: Mr. Hemant Chaudhri, Mr.
Arjun Sanjay, Ms. Shaurya
Pushpam & Mr. Vasu Goel,
Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

1. The present petition has been filed by the petitioner under Sections 2, 10 and 12 of the Contempt of Courts Act, 1971¹ seeking initiation of contempt proceedings against the respondents/contemnors for the alleged wilful breach and disobedience of the Memorandum of Understanding [‘MoU’] dated 27.04.2017 which was taken on record by this Court *vide* consent order dated 02.05.2017 in CS (OS) No. 2130/2015 titled “*Le Champ (SEA) PTE LTD. vs. Delhi Control Devices Private Limited*”.

2. The admitted facts leading to the filing to the present petition are that the petitioner herein, over a period of time, supplied and

¹ CC Act



delivered certain goods in the nature of “Super Capacitors, Industries, LCD, Chip Capacitors, Coin battery etc.”, valued at a total of USD 346,359.91/-, to the respondent’s company i.e., M/s Delhi Control Devices Private Limited. However, due to failure on the part of the respondent to pay the amount for the goods purchased, the petitioner was constrained to file a suit for recovery bearing CS (OS) No. 2130/2015 against M/s Delhi Control Devices through its director, namely Mr. Ashish Gupta, i.e., respondent herein.

3. During the pendency of the suit, the parties entered into a settlement duly recorded in the MoU dated 09.03.2016. It is brought out from the record, however, that the dispute between the parties could not be put to a quietus since the terms of the said MoU dated 09.03.2016 were never honoured by the respondent herein. Subsequently, this Court, in the suit proceedings, *vide* order dated 02.01.2017, recorded as under:

*“Mr. Ashish Gupta, one of the Directors of defendant's company is present. It is submitted that other Directors are his mother and father and he has the permission from them to make a submission before this Court. **It is submitted that defendant no. 1 accepts its liability to pay a sum of USD \$ 3,46,358.91.***

However, he seeks an adjournment stating therein that he wants to discuss the modes of payment of this amount with the plaintiff.

Not opposed.

It is further submitted that he wishes to move the joint application disclosing the details of the assets within a week.

At request, list the matter on 21.03.2017.”

4. Upon the respondent herein admitting his liability before this Court, besides showing his readiness and willingness to pay the outstanding dues to the petitioner herein, the parties entered into another MoU on 27.04.2017 which was declared “lawful” and taken



on record by this Court *vide* subsequent order dated 02.05.2017 passed in an application bearing I.A. No. 5375/2017 filed jointly by the parties under Order XXIII Rule 3 of the Code of Civil Procedure, 1908. The relevant portion of the order dated 02.05.2017 passed in CS (OS) No. 2130/2015, of which contempt is presently alleged, is reproduced hereinbelow:

“LA. 5375/2017

*...I have perused the terms and conditions contained in the said Memorandum of Understanding dated 27.04.2017 entered into between the parties. The same is lawful and is taken on record. **The parties shall abide by the terms and conditions of the said Memorandum of Understanding dated 27.04.2017, without demur.***

With the above directions, the application is allowed and disposed of accordingly.

CS(OS) 2130/2015

In view of the out of court settlement arrived at between the parties, as recorded in the Memorandum of Understanding dated 01.05.2017, the present suit is decreed in terms thereof.”

[bold emphasis supplied]

5. The relevant extracts of the MoU dated 27.04.2017 executed between the petitioner herein as “first party” and the respondent herein as “second party”, are reproduced hereinunder:

*“1. Second Party shall pay an amount of \$346,359.91 USD (hereinafter referred to as said **Amount**) to the First Party in five Installments. The First Three Installments of \$50,000/- USD shall be paid by the Second Party to the First Party on 25.06.2017, 25.07.2017 and 25.08.2017. The Fourth Installment of \$100,000/- USD shall be paid by the Second Party to the First Party on 25.09.2017. The Fifth Installment of \$96,359.91/- USD shall be paid by the Second Party to the First Party on 25.10.2017. The Interest amount of \$91,406/- USD @7% for the period November 2014 to Nov. 2017 shall be paid by the Second Party to the First Party on 25.11.2017. Second party shall pay the total amount of \$437,765.91 USD including the interest amount.*

2. Second Party as a guarantee to pay the said Amount will issue



06 (six) Post Dated Cheques in favour of the First Party. The first Three Cheques shall be for an amount of \$ 50,000 USD Cheques Date will be 30.06.2017, 30.07.2017, and 30.08.2017. Fourth Cheque of \$ 1,00,000/ USD shall be dated 30.09.2017. Fifth Cheque of \$ 96,359.91/- USD shall be dated 30.10.2017. Sixth cheque of \$ 91,406/- USD USD shall be dated 30.11.2017 Post Dated Cheques will be issued in Indian currency i.e. Rupees with an undertaking given by the Second Party that T.T. Payment in US Dollars will replace the Post Dated Cheques for each Cheque 05 Days before the Cheque Date. Once the Second Party makes the T.T. Payment to the First Party, First Party shall return the said Post Dated Cheque of the said Instalment to the Second Party. In case of any default in making the payment of any Installment, the First Party shall be at liberty to present the said Post Dated Cheque for encashment.

3. Second Party shall also pay an Interest of \$ 91,406/- USD @ 7% per annum on the due amount w.e.f. November 2014 till June 2017 payment on the said Amount. (Hereinafter referred to as **Interest Amount**).

4. Second Party shall arrange for the sale of Materials as mentioned in Schedule A, on the same terms and conditions as mentioned and detailed in the Purchase Order as raised by the First Party to the Second Party. All terms regarding Description, Payments, Shipments, and Port of Delivery of the said Materials etc. shall be according to terms of the Invoice raised by the First Party on the Second Party. In case the Second Party fails to arrange for the sell of the Materials as mentioned in Schedule A within 4 months with effect from 1st April, the Second Party shall purchase the entire material as mentioned in Schedule A within one month thereafter. Second Party agrees to pay the entire amount of USD 2,13,514.95 to the First Party on or before 31.08.2017.

5. Second Party undertakes that in case any of the Post Dated Cheque on presentation is returned due to insufficiency of funds, the Second Party shall pay damages of Rs. 20000/- per week/per cheque plus 12% interest of the said amount from the date of cheque bounced till the payment realization of the money by Le Champ.

6. In case the Second Party fails to sale the shipment or delay in making the payment of the Purchase Price as indicated in the Invoice/s raised by the First Party and /or fail to act in terms of the



said Invoices, the First Party shall be at liberty to recover the Purchase Price from the Second Party along with 12 % PA Interest on the Period of delay from the Date of this Mol. The First Party shall recover the Purchase Price by filing an Execution Petition before the Hon'ble Court.

7. In case, the Second Party fails to make the payment of the said Amount or the Interest Amount, the First Party shall be at liberty to initiate Contempt Proceedings, Execution Proceeding etc. against the Second Party."

6. It is claimed that the respondents have wilfully breached clause (1) of the said MoU insofar as the first instalment which fell due on 25.06.2017 and even the second instalment which fell due on 25.07.2017 were not paid by the respondent herein despite numerous reminders and requests from the petitioner. Moreover, in accordance with clause (2) of the said MoU, even the post-dated cheque issued by the respondent, when presented by the petitioner for encashment on 31.07.2017 was dishonoured for insufficiency of funds. It is in the aforesaid backdrop that the petitioner herein filed the present contempt petition against the respondent for wilful and deliberate breach and disobedience of the MoU dated 27.04.2017 and order of this Court dated 02.05.2017 respectively.

PROCEEDINGS BEFORE THIS COURT

7. Upon the institution of the present petition, this Court *vide* order dated 16.05.2018, recorded a new undertaking given by the respondent through his counsel, to the effect that the amounts of USD 34,635.91/-, USD 91,000/- and USD 2,13,514.95/- which sum up to the total liability of the respondent towards the petitioner, shall be cleared by the respondent herein on or before 31.10.2018.

8. However, yet again the respondent reneged from his



undertaking, consequent to which, this Court *vide* order dated 01.02.2019, issued a Show Cause Notice to the respondent to explain as to why contempt proceedings be not initiated against him.

9. Interestingly, on 18.03.2019, the respondent for the first time before this Court raised the contention that there is no direction of the Court to the petitioner because the suit was ultimately decreed in terms of the MoU dated 27.04.2017. This Court held the same to be untenable for the reason that *ex facie* this Court had directed that the parties herein shall abide by the terms and conditions of the MoU dated 27.04.2017. Faced with what had fallen from this Court, the respondent again sought more time till 30.06.2019 to pay the total outstanding amount to the petitioner. Further, on affidavit, he undertook to make a payment of INR 55,00,000/- to the petitioner before 08.04.2019 and stated on oath that he would abide by the terms of the said undertaking.

10. Unsurprisingly, the respondent again defaulted in discharging his liability towards the petitioner within the time sought by the respondent himself. Even on the subsequent dates of hearing, the respondent kept giving undertakings and kept seeking more and more time to pay the petitioner, however, to no avail to the petitioner. On 27.07.2022, this Court recorded that a sum of INR 50,00,000/- has been paid by the respondent to the petitioner, and further recorded the undertaking of the respondent that *inter alia* the entire remaining arrears shall be cleared on or before 31.12.2022. It was also provided that in case the payment, as aforesaid, was not made within the aforesaid time, the respondent should remain personally present on court on the



next date of hearing which was 19.01.2023.

11. Impudently, the respondent again breached the undertaking given by him before this Court on 27.07.2022. Taking note of the contumacious conduct of the respondent, this Court *vide* order dated 19.01.2023 observed as follows:

“1. Learned counsel for the Petitioner states that the order dated 27.07.2022 passed by this Court has not been complied by the Respondents. He states no payment was made either on 30.09.2022 or 31.12.2022 despite a statement made before this Court.

2. Learned counsel for the Respondent No.1 is present along with Respondent No.1, Mr Ashish Gupta. He states that Respondent No.1 is carrying a Demand Draft of Rs.10 lakhs. He confirms that Respondents have not made any payment in compliance of the order dated 27.07.2022. He seeks one weeks' time to place on record a firm proposal for making the payment of the balance amount to the Petitioner.

3. Learned counsel for Respondent No.1 has handed over the Demand Draft of 10 Lakhs to the learned counsel for the Petitioner.

4. This Court has heard the parties. It has been clarified to Respondent No.1 that if the said proposal is not acceptable to the Petitioner, then the present proceedings for contempt shall be proceeded with.

5. This Court also takes note that the order dated 27.07.2022 had specifically spelt out the timeline of 30.09.2022 and 31.12.2022 to make the payment. However, the Respondent has not sought any extension of time from the Court to make the payment as directed in order dated 27.07.2022 or explained the reasons for his inability to comply with the said order.

6. This Court finds that the Respondent has absolutely no regard for the present court process. The offer of payment of Rs.10 Lakhs, when the matter is listed for reporting compliance, is clearly a token display and lacks bona fide.

7. As a matter of last opportunity, the matter is adjourned at the request of Respondent No.1. He is directed to remain personally present in Court on the next date of hearing.”

[bold emphasis supplied]

12. Shockingly, despite the observations of this Court, the respondent still did not change his scandalous attitude towards the



authority of this Court. In fact, the respondent on 15.02.2023 filed an application bearing CM APPL 8089/2023 seeking dismissal of the present contempt petition, *inter alia* on the ground that the respondent is not personally liable for the amount payable by the Company M/s Delhi Control Devices Pvt. Ltd. to the petitioner herein. It was further brought to the attention of this Court for the first time that the said company is undergoing the Corporate Insolvency Resolution Process [**'CIRP'**] and a 'Resolution Professional' has been appointed by the National Company Law Tribunal [**'NCLT'**] in that regard. It was further contended that the present proceedings do not lie since the order of which contempt is alleged is an executable order. Therefore, all undertakings given before this Court would not be binding on the respondent since the present contempt proceeding itself is without jurisdiction and not maintainable. Secondly, the respondent, by way of the said application, brought on record a settlement agreement dated 17.10.2019 entered into by and between the parties herein, whereby the petitioner agreed to accept a total sum of INR 3,00,00,000/- as full and final satisfaction of its entire claim towards the goods supplied by it to the respondent. It was asserted that since the respondent shall be paying the agreed upon amount in instalments to the petitioner, the present contempt petition be disposed of accordingly.

13. Controverting to the aforesaid submissions, the petitioner has claimed that the respondent has concealed from this Court that he breached the terms of the said settlement agreement inasmuch as the respondent (first party) failed to make the entire payment of INR 3,00,00,000/- to the petitioner (second party) within the stipulated



time period. Accordingly, it is contended that the said settlement agreement stood cancelled upon the invocation of clause (B) of the same agreement, which reads as under:

“B. This Settlement is subject to the stipulation that in case the First Party defaults to pay the amount within the stipulated time as mentioned above, the terms and conditions of the MOU dated 27.04.2017, Judgment Dt 02.05.2017, Undertakings Dt 18.03.2019 & 08.04.2019 shall stand revived and the First Party shall be liable to pay the money according to the MOU dated 27.04.2017 and Judgment Dt 02.05.2017.”

14. Further, the petitioner has relied upon the decisions passed in **Suman Chadha v. Central Bank of India**², **Rama Narang v. Ramesh Narang**³ in support of its contention that the director of a contemnor-company can be held guilty of contempt on behalf of the acts of the company that had been carried out with and through his knowledge and consent. Further reliance has been placed on **Bank of Baroda v. Sadruddin Hasan Daya**⁴ and **Bajranglal Gangadhar Khemka v. Kapurchand Limited**⁵ while contending that the non-compliance of a consent order can also amount to contempt of court. Aggrieved by the continuous and brazen flouting of the orders of this Court at the hands of the respondent, the petitioner herein prays that the respondent herein be punished for wilfully reneging from the undertakings given time and again by him to this Court.

ANALYSIS AND DECISION:

15. I have bestowed my anxious consideration to the submissions advanced by the learned counsels for the rival parties at the Bar and I

² 2021 SCC OnLine 564

³ (2006) 11 SCC 114

⁴ (2004) 1 SCC 360

⁵ AIR 1950 Bom 336



have also gone through the relevant material on record including the case law cited.

16. At the outset, the respondent has committed repeated breach of undertakings given to the Court and recorded in MoU dated 27.04.2017 which was approved and taken on record by this Court *vide* order dated 02.05.2017. The terms of which and the manner in which there has been brazen and wilful non-compliance of the same, is narrated hereinabove.

17. It is a matter of record that despite the undertaking given on 27.04.2017, not even a single instalment was paid by the respondent and all post-dated cheques which were issued by him, were also dishonoured. Even during the proceedings in the instant contempt petition, although a new undertaking dated 16.05.2018 was given, the same was also breached resulting in this Court issuing a Show Cause Notice dated 01.02.2019.

18. At the cost of repetition, although the respondent sought time till 30.06.2019 to make payment but except for making payment of ₹55 lakhs, he again reneged on his undertaking. Further time was sought to make payment by 31.12.2022 which was breached as well and which led this Court to pass the order dated 19.01.2023 as detailed hereinabove.

19. The long and short of the aforesaid discussion is that each time, the respondent unequivocally admitted his personal liability towards the petitioner in unequivocal terms and sought numerous opportunities through the intervention of the Court to discharge his liabilities, but in total disregard of the sanctity of the authority of this Court, he has



been continuously and deliberately reneging from his undertakings and thereby defying the order of this Court.

20. The plea by the respondent that being the director, he is not personally liable, cuts no ice. In this regard, Section 12(5) of the Contempt of Courts Act, 1971 provides as under:-

“S.12 Punishment for contempt of court-

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.”

21. A careful perusal of the aforesaid provisions, when applied to the present case, would leave no iota of doubt that the respondent/contemnor has committed repeated contumacious defaults, while acknowledging his personal liability and guarantee in respect of the debts owed to the company. In this regard, a reference may also be invited to the decision of the Supreme Court in the case of **Suman Chadha v. Central Bank of India**⁶ wherein a director of a contemnor-company was held guilty for contempt for disobeying various undertakings given to the respondent bank in the capacity of the director of the said contemnor-company. The relevant extracts read as under:

“26. 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

⁶ 2021 SCC OnLine 564



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. 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 8-4-2015 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.”

22. Avoiding a long academic discussion, reference can also be invited to the decision of this Court in the case titled **Court on its Own Motion v. Javed Hasan**⁷ wherein it was reiterated that where the contemnor, knowing the judgment or the orders of the court and on being conscious of its consequences and implications, acts in violation thereof, the disobedience would be ‘wilful’.

23. A reference can also be invited to the decision in the case of **Future Coupons Private Limited v. Amazon. Com Nv Investment Holdings LLC**⁸ wherein the Supreme Court referred to its observations in the case of **Ram Kishan v. Tarun Bajaj**⁹ which read as under:-

⁷ 2023 SCC OnLine Del 5815

⁸ 2022 SCC OnLine SC 126

⁹ (2014) 16 SCC 204



“12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”
(Emphasis supplied)

24. In view of the foregoing discussion, the respondent, namely Ashish Gupta, is held guilty of committing wilful disobedience of the directions of this Court. The contempt petition, along with all the pending applications, is disposed of accordingly.

25. The respondent/contemnor, namely Ashish Gupta, is directed to appear in person before this Court on 19.12.2024 to hear him for deciding the quantum of punishment in accordance with law.

DHARMESH SHARMA, J.

DECEMBER 09, 2024

Sadiq/Ch