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

+ CONT.CAS(C) 312/2021

JINDAL STEEL AND POWER LIMITED Petitioner

Through: Mr. Prashant Mehta and Mr. Aaryav
Mehra, Advocates.

versus

DINESH KAUSHIK & ANR. Respondents

Through: Mr. Deepanshu Choithani, Advocate.
Mr. Gautam Narayan, ASC, GNCTD.
Ms. Prabhsahay Kaur, Standing
Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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21.02.2022

The hearing has been conducted through video-conferencing.

CM APPL. 9320/2022 (for directions)

1. This application by the DCF seeks directions of opening a bank account, specifically dedicated for depositing of costs as may be imposed by this court or contributions as may be made by litigants for undertaking plantation work in NCT of Delhi.
2. The learned ASC for GNCTD submits that the account may be opened in the UCO Bank, Delhi High Court Branch to facilitate the expense towards purchase of plantation of trees, as otherwise, the money is being deposited into a Government bank account of the Forest Department.

3. The court is persuaded by the arguments. Let an account be opened by DCF concerned with UCO Bank, Delhi High Court Branch in which all such monies may be deposited. Earlier monies/ costs already deposited or directed to be deposited by this court for plantation of trees, too shall be shifted from the departmental/ Governmental bank account, to the said UCO Bank account, within a fortnight from receipt of this order. Details of the same shall be brought on record for the same to be quoted in all orders for deposit of costs etc. It will be open to the DCF concerned to withdraw the monies for procurement of trees for plantation.
4. The learned ASC for GNCTD assures the court that the plantation will start within a fortnight from today and the land will be prepared within a week. The DCF has sought identification of lands from DDA abutting NH-24 for plantation of trees. Ownership of the land will continue to vest with DDA/ land-owning agency. The maintenance of the trees would be done by the Forest Department till further orders. The DDA and Forest Department shall endeavour to secure the trees from being trampled upon by cattle or otherwise being damaged.
5. Issue notice to DDA. The learned Standing Counsel for DDA named above accepts notice.
6. Reply by DDA be filed within a week apropos the identification of lands for plantation. The learned ASC for GNCTD submits that the plantation will be carried out largely in the 'O' Zone which, indeed, would be the endeavour of DDA too, to ensure that Yamuna Riverbelt is developed in as a green belt on the lines of

Yamuna Biodiversity Park or as a city forest.

7. List on 12.05.2022.

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8. On 08.09.2021, show cause notice for contempt of court was issued to the respondents. Reply was to be filed within two weeks of the said order. It has not been filed despite the case having been listed four times thereafter. Indeed, costs of Rs.20,000/- was imposed upon the respondents. It has been deposited with the DCF. For the reasons best known to the respondents, they did not pay Rs.7.5 lacs as directed to be paid within 10 days from the order dated 21.12.2021. It has been deposited only on 19.02.2022. The delay of more than two months is unexplained.
9. It is the petitioner's case that in terms of the undertaking given to the petitioner, which formed a part of the order of the learned Trial Court dated 28.09.2019 (Annexure-P-9), the respondents were to pay about Rs.1,62,96,575/- along with interest @15% p.a. till date of payment. They had given this undertaking to the court in criminal proceedings against them. The monies were not paid.
10. The order of 08.09.2021 reads as under:-

“ 1. On a query put by the Court to the learned counsel for the respondents whether there is a breach of the undertaking given to the Court, the answer is in the affirmative. 2. In terms of the Settlement Agreement dated 26.09.2019, the respondents had agreed to pay an amount of Rs.1,62,96,575/- along with interest @ 15% per annum thereon. Pursuant thereto, three cheques, as detailed in Annexure-I to the Settlement Agreement dated 26.09.2019, were issued as under:

Annexure I

S No.	Cheque No.	Drawee Bank	Amount (Rs.)
1	000227	WDFC	5639806-
2	000221	WDFC	5840722
3	000222	WDFC	6617284

[Handwritten signature]
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Specimen Signatures (of Mr. Dinesh Kaushik)

Signature

[Handwritten signature: D Kaushik]

3. The guarantee cheques were issued by the guarantor at page 58 of the petition as under:

Annexure I

S No.	Cheque No.	Drawee Bank	Amount (Rs.)
1	000348	ANDHRA BANK	6657284
2	000349	ANDHRA BANK	5810722
3	000251	ANDHRA BANK	5639806

[Handwritten signature: Kaushik]
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Specimen Signatures (of Mrs. Sanchya Kaushik)

Signature

[Handwritten signature: S Kaushik]

4. However, none of these cheques were honoured.

5. The learned counsel for the respondents states that the monies could not be paid on account of COVID-19 pandemic. However, it is to be noted that these monies were required to be paid at least six months prior to the onset of COVID

lockdown, which only took place on the intervening night of 24/25.03.2020. Therefore, the plea of COVID pandemic is untenable.

6. The learned counsel for the petitioner submits that the respondents have committed contempt of court by not abiding with the Settlement Agreement dated 26.09.2019 as well as the learned Trial Court's order dated 28.09.2019 (Annexure-P9); the latter had undertaken so in criminal proceedings against them.

7. In view of the above, prima facie, the Court is of the view that the respondents have committed contempt of court.

8. Accordingly, issue notice to R-1 and R-2 to show cause as to why contempt proceedings be not initiated against them for obstructing the administration of justice and for committing contempt of court. Notice is accepted by the learned counsel named above for the respondents. Reply/compliance affidavit be filed in two weeks. Rejoinder thereto, if any, be filed on or before the next date.

9. Renotify on 09.11.2021.

10. In the interim, it will be open to the respondents to pay requisite monies to the petitioner."

11. Now respondent no. 1 by way of an affidavit dated 16.11.2021 has admitted the non-payment of the said monies. He states *inter alia* as under:-


" 4. That the deponent submits that the brief facts of the case are that the deponent had taken loan from the petitioner for developing educational institute in his area. That due to financial constraints, cheque issued by the deponent towards repayment of loan was dishonored and as per understanding between the petitioner and deponent, deponent executed promissory note alongwith cheques for repayment. But due to continuing financial distress, the deponent could not honor the payment of the cheques."

12. The respondents have benefitted by the disposal of the criminal case against them on the basis of the undertaking given to the petitioner and the assurance that the cheques issued by them would be honoured. The cheques were dishonoured. The petitioner has been deprived of their monies in terms of the Settlement Agreement for more than two years. The breach of assurance to the court was deliberate. When a cheque is issued, it is the duty of the payer to ensure that amount is available in the account when the cheque is presented for encashment.
13. The learned Trial Court had recorded the undertaking of respondent no. 1 in its order dated 28.09.2018 which is reproduced as under:-

Statement of (accused) Dinesh Kaushik, S/o Late Sh. Chaturbhuj Kaushik, address 50, Karnal Road, Fateh Pur, Pundri, Kaithal, Haryana-136043.

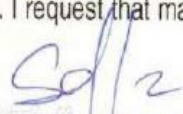
On SA

I am the accused in the present case. I affirm the terms of settlement as enumerated in mediation settlement order dated 11.07.2018 and further the settlement agreement dated 26.09.2019, which has been today exhibited as Ex. P1(colly). I further state that the settlements were entered into by me voluntarily, out of my free will and after understanding the contents and implications thereof. I fully make myself bound by the terms of settlement. I have handed over PDCs in accordance with terms of the settlement dated 26.09.2019 to AR of the complainant. I confirm that settlement Ex. P1(colly) bears my signatures on each page, which have been today encircled in red and given the name A. I shall fully abide by the terms of settlement. As the complainant is withdrawing this case owing to mediation settlement, I have understood that in case of default or non-compliance or breach of settlement on my part, the complainant can recover the settlement amount under Sections 431 r/w 421 Cr.P.C. and additionally take appropriate action as per law including initiation of contempt proceedings u/s 2(b) of the Contempt of Courts Act, 1971, against me. In case any cheque issued today is dishonoured,



then I shall be liable to appropriate proceedings including fresh complaint under Section 138 NI Act and revival of the present proceedings. I undertake to be bound by the terms of the settlement and shall cause no breach under any circumstances. I request that may be disposed off on above terms.

RO & AC


(Amardeep Kaur)

MM(N.I. Act)-03/NDD/PHC/ND

28.09.2019

: ORDER :

Statement of AR of the complainant as well as statement of accused recorded. This court is satisfied that the settlement agreement dated 11.07.2018 and 26.09.2019 today exhibited as Ex.P1(colly) are genuine, equitable, lawful and not opposed to public policy and has been voluntarily entered into between the parties and there is no legal impediment in accepting the same.

Considering the settlement as entered into between the parties and considering the request made by the complainant, on account of compromise vide the settlement agreement, that he wants to withdraw from the prosecution, the request of the complainant is accepted, keeping in view the scheme of Section of 147 of NI Act and the matter is compounded. Accused Dinesh Kaushik is acquitted for offence u/s 138 N.I. Act.

The matter is disposed of with following directions :

1. That both the parties shall be bound by the terms of the settlement agreement as entered into between them and they shall fully comply with the settlement terms under all circumstances.
2. That in event of default/ breach/ non-compliance on part of the accused, to comply the settlement, the amount agreed to be paid in settlement shall be recoverable in terms of Section 431 r/w 421 Cr.P.C. and the same would be recovered as fine. Additionally, in case of breach of undertaking by the accused, the court would take appropriate action permissible in law to enforce compliance of undertaking as well as orders of the court, including proceedings u/s 2(b) of the Contempts of Court Act, 1971, for violation thereof and in case any of the cheque handed over today is dishonored, then complainant may taken appropriate action against the accused including fresh cases under Section 138 NI Act as per law or revival of the present proceedings.

In this view, at present nothing else survives in this case.

File be consigned to record room after due compliance. Bail bonds/ surety bonds, if any, stand discharge.

Copy of order *dasti* to both the parties.




महानगर न्यायाधीश-03
(Amardeep Kaur)

MM(N.I. Act)-03/NDD/PHC/ND

मुख्यालय : 28.09.2019
Main Building : District House Courts,
नई दिल्ली
New Delhi

14. Compliance was to be done six months before the world was afflicted by COVID-19, leading to disruption of commercial activities thereafter. Respondent no. 2 is a guarantor for the payment of the said monies.
15. In view of the above, the respondents are held guilty of having committed contempt of court.
16. List on 12.05.2022 for orders on sentencing.
17. The respondents shall be present in court on the next date of hearing.
18. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J

FEBRUARY 21, 2022

RW