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(2011) 05 DEL CK 0360

In the Delhi High Court

Case No : CCP 30 of 2010

Koshika Telecom Ltd. APPELLANT

Vs

Ms. Shalini Soni RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 151
Contempt of Courts Act, 1971 — Section 11, 12

Citation : (2011) 05 DEL CK 0360

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : None, for the Appellant; Maninder Singh P.S. Bindra, for contemnor, Rajiv Bahl, for O.L., R.K. Bansal, Recovery Officer DRT-1 and Sara Najmi, Manager Law, IFCI, for the Respondent

Judgement

P.K. Bhasin, J.—The Official Liquidator had filed this contempt petition under Sections 11 and 12 of the Contempt of Courts Act 1971 read with Order XXXIX Rule 2A and Section 151 of the CPC for holding one Assistant General Manager(Law) of the Industrial Finance Corporation of India Ltd. (IFCI) guilty of committing contempt of this Court and punishing her for deliberately not complying with the order dated 08/10/2009 passed by this Court in Company Petition No. 75/2002.

2. The undisputed facts leading to the initiation of present contempt proceedings may first all be noticed. Company Petition No. 75/2002 was filed by Lord Krishna Bank for the winding up of one Company by the name of M/s Koshika Telecom Ltd. and in that petition this Company was ordered to be wound up vide order dated 02/08/2005 and the Official Liquidator attached to this Court was asked to take charge of all the assets of the said Company. Thereafter, in his status report dated 6th October,2009 it was pointed out by the Official Liquidator that IFCI, a creditor of the Company under liquidation, had realized some money by sale of some assets of the Company under liquidation, through the intervention of the Debt Recovery Tribunal-I, Delhi where recovery proceedings for the recovery of

its dues had been initiated. In that report the Official Liquidator had sought a direction to the IFCI for depositing the sale proceeds already realized by it from the sale of assets of the Company under liquidation with the Official Liquidator. This Court vide order dated 08/10/2009 had allowed that prayer. After the passing of the order dated 08/10/2009 by this Court, a meeting was held on 26/10/2009 by the Official Liquidator with the Respondent-contemnor, Assistant General Manager(Law) of IFCI and in that meeting the Official Liquidator apprised her of the said direction dated 08/10/2009 given to IFCI for the deposit of the sale proceeds of the assets of the Company under liquidation with the Official Liquidator. However, the IFCI did not honor that direction of this Court and that non-compliance of the orders of this Court led to the filing of this contempt petition by the Official Liquidator.

3. However, after the filing of the contempt petition the counsel for the Official Liquidator had submitted on 08/03/2011 that it had been decided not to press the contempt petition in view of the decision dated 6th December,2010 of a Division Bench of this Court in W.P.(C) No. 5014/2010 " IFCI v. Koshika Telecom Ltd.". It was submitted by the counsel for the Official Liquidator on that date of hearing that the IFCI instead of complying with the direction given to it by this Court on 08/10/2009 to remit the amount of sale proceeds of the assets of the Company under liquidation to the Official Liquidator lying with it approached the Recovery Officer attached to the Debt Recovery Tribunal-I in December, 2009 with an application seeking permission to appropriate the money lying with it. The Official Liquidator had while opposing that application informed the Recovery Officer also about the order dated 08/10/2009 of this Court. The Recovery Officer however decided that application vides his order dated 22nd February, 2010 and a sum of Rs. one crore only, out of the total sale proceeds of about 12 crores lying with IFCI, was ordered to be remitted to the Official Liquidator by IFCI and the balance amount was allowed to be provisionally appropriated by the IFCI. Aggrieved by that order, the Official Liquidator filed an appeal before the Delhi Rent Tribunal-I which was disposed of on 11.6.2010 and the Official Liquidator was held entitled to the amount realized by sale of immovable properties of the company under liquidation. An appeal, impugning that order of DRT was filed by IFCI before appellate tribunal but its appeal was dismissed on 13.7.2010. Against that order IFCI filed a writ petition which was decided by a Division Bench of this Court vide order dated 06/12/2010 and IFCI was allowed to keep the sale proceeds with it. In these circumstances, counsel for the official liquidator submitted, it was decided not to press the contempt petition though it was maintained that IFCI had initially committed contempt of this Court. This Court on finding that the Recovery Officer had allowed IFCI to keep the money with it after the passing of the order dated 08/10/09 by this Court refused to drop the contempt proceedings and summoned the records of the Recovery Officer and Recovery Officer was also summoned.

4. The Recovery Officer Shri R.K. Bansal, who had passed the order dated 22nd February, 2010, appeared in Court on 6th May, 2011. The record requisitioned

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from his office was perused and it showed that the Official Liquidator had in response to the notice given to him by the Recovery Officer on the filing of application by IFCI seeking permission to appropriate the sale proceeds lying with it placed a copy of the order dated 8th October, 2009 passed by this Court before the Recovery Officer besides making a reference to that order in its reply. Copies of the application moved by the IFCI before the Recovery Officer, Official Liquidator''s reply thereto along with its annexure as also various orders passed by the Recovery Officer after the filing of the said application of IFCI till 22nd February, 2010 were ordered to be kept on file of the present proceedings and the Recovery Officer''s records were ordered to be sent back. Mr. R.K. Bansal, though had not been given any formal notice to show cause as to why he had passed the order dated 22nd February, 2010 when this Court had already directed IFCI to remit the sale proceeds of the assets of the Company under liquidation to the Official Liquidator attached to this Court but Mr. Bansal voluntarily clarified that the said order of this Court was not brought to his notice during the course of hearing of IFCI''s application dated 9th December, 2009.

5. During the course of hearing, learned Counsel for the Official Liquidator was also asked as to why IFCI itself was not sought to be proceeded against for contempt of Court when the direction of this Court was given to IFCI only to remit the money to the Official Liquidator but no satisfactory reason was given.

6. As far as the Respondent - contemnor Ms. Shalini Soni is concerned, her senior counsel Shri Maninder Singh had submitted that no contempt whatsoever had been committed either by Ms. Shalini Soni or by IFCI since as per the judgment of the Hon''ble Supreme Court in the case of " Allahabad Bank Vs. Canara Bank and Another, the Recovery Officer was justified in permitting IFCI provisionally to appropriate the sale proceeds lying with it and the Official Liquidator, in fact, should not have even sought a direction from this Court for directing IFCI to remit the money to him(Official Liquidator). Earlier, in the reply to the show cause notice issued to Ms. Shalini Soni, she had categorically claimed that appropriate orders regarding distribution of sale proceeds and working out priorities between different creditors of the Company under liquidation had to be done by the Debt Recovery Tribunal only in respect of the properties sold by it in execution proceedings. Then, there was also a reference to the proceedings which took place before the Recovery Officer regarding IFCI''s application for permission to appropriate the sale proceeds lying with it, filing of appeal by the Official Liquidator against Recovery Officer''s order dated 22nd February, 2010 and the final order passed by the Division Bench of this Court permitting IFCI to retain the sale proceeds with it.

7. Learned senior counsel Shri Maninder Singh had also submitted that with the passing of the order dated 6th December, 2010 by the Division Bench the order passed by this Court on 8th October, 2009 also stood merged with that order and consequently this Court should not proceed any further with the contempt matter.

8. However, I am of the view that since, prima facie, IFCI had failed to comply

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with the direction given to it by this Court on 8th October,2009 and the Recovery Officer had passed an order which was in conflict with the direction of this Court, a show cause notice to the IFCI through its Managing Director as well as to the Recovery Officer Shri R.K. Bansal should be given requiring them to show cause as to why they should also not be proceeded against for having committed contempt of this Court. As far as the submission made by learned senior counsel for Ms. Shalini Soni that the direction given by this Court to IFCI for remitting the sale proceeds of some assets of the Company under liquidation to the Official Liquidator should not have been sought by the Official Liquidator in view of the judgment of the Hon''ble Supreme Court in Allahabad Bank''s case(supra) is concerned, the same shall be duly dealt with at an appropriate stage.

9. Accordingly, show cause notice to IFCI Ltd. through its Managing Director and to Shri R.K. Bansal, the Recovery Officer attached to the Debt Recovery Tribunal, New Delhi be issued by the registry returnable for 6th July, 2011.

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