**(2012) 03 DEL CK 0332**

**In the Delhi High Court**

**Case No :** CCP (Co.) No. 30 of 2010 in Co. Petition No. 75 of 2002

M/s. Koshika Telecom Ltd. APPELLANT

Vs

IFCI Ltd.,Mr. Atul Kumar Rai, Ms. Shalini Soni and Mr. R.K. Bansal RESPONDENT

**Date of Decision :** 19-03-2012

**Acts Referred:**

**Citation :** (2012) 03 DEL CK 0332

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

**Bench :** Single Bench

**Advocate :** Rajiv Bahl, for OL, Mr. P.S. Bindra, for R-1, Mr. K.K. Sharma, with Mr. Arvind Kr. and Ms. Priyadarshini Verma, for Mr. R.K. Bansal, for the Appellant; Ashwani Kumar Matta, with Mr. Suresh Dobal, Advocate for Mr. A.K. Rai, for the Respondent

## Judgement

P.K. Bhasin

1. In the present contempt matter Industrial Finance Corporation of India Ltd. ("IFCI? in short), its CEO-cum-Managing Director Mr. Atul Kumar Rai, Ms. Shalini Soni, Assistant General Manager (Law) of IFCI and one Recovery Officer attached to the Debts Recovery Tribunal-I, Delhi Mr.R.K.Bansal have been held guilty of having committed contempt of this Court and are now awaiting further decision of this Court regarding the punishment to be awarded to them. Before proceeding further to pronounce the punishment for the contemnors, the facts and circumstances leading to the conviction of the four contemnors may once again be noticed since those facts and circumstances shall have a bearing even on the point of punishment to be awarded to the contemnors. Contempt proceedings were initiated initially at the instance of the Official Liquidator only against contemnor Ms.Shalini Soni. The initiation of contempt proceedings was ordered when the Official Liquidator had informed this Court during the pendency of the winding up proceedings in this Court in respect of one telecom Company by the name of M/s Koshika Telecom Ltd.(hereinafter to be referred as "Koshika")

 

that some of the assets of this Company had been auctioned at the instance of IFCI by the Debts Recovery Tribunal-I, Delhi(DRT), where proceedings had been initiated by IFCI against Koshika for recovery of over two hundred crores of rupees. Out of the sale proceeds of the auctioned assets of Koshika about twelve crores were permitted by the Recovery Officer attached to the DRT to be retained by IFCI. The Official Liquidator had sought certain directions to IFCI from this Court and one of those was a direction to IFCI to remit to the Official Liquidator the sale proceeds of the assets of Koshika which it was having. On 08.10.2009 this Court had passed an order directing IFCI to remit the money to the Official Liquidator. That direction was duly communicated to IFCI through the contemnor Ms. Shalini Soni who had been pursuing the recovery case against Koshika before the DRT. However, that direction was not complied with by IFCI and so the Official Liquidator filed an application for initiating contempt proceedings against Ms. Shalini Soni.

2. This Court ordered issuance of notice to Ms. Shalini Soni. She filed her reply to the show cause notice and while admitting the fact that in the meeting between her and the Official Liquidator the direction of this Court given to IFCI on 08.09.2009 was brought to her notice, claimed that she had not committed contempt of this Court. From her reply it transpired that after this Court had directed IFCI on 08.10.2009 to remit the sale proceeds of the assets of Koshika to the Official Liquidator, IFCI, instead of complying with that direction or approaching this Court for seeking modification of the order dated 08.10.2009 or going to the Supreme Court challenging the legality of that direction chose, quite shockingly, to approach a subordinate authority, namely, the Recovery Officer attached to the DRT with an application seeking his permission to appropriate the sale proceeds of the assets of Koshika towards partial discharge of Koshika''s liability and, still more shockingly, it was argued before the Recovery Officer on behalf of IFCI, which has a fleet of legal experts, that he only had the jurisdiction to pass appropriate orders regarding the utilisation/disbursement of the sale proceeds of the assets of Koshika and not the Company Court even if it was under liquidation. The Recovery Officer, Mr. R.K.Bansal, in utter defiance of the order of this Court obliged IFCI by accepting its application and granting the permission to it to utilise the sale proceeds till final adjudication of the matter vide his order dated 22.02.2010. Since there was no reference to the direction of this Court dated 08.10.2009 in the order passed by the Recovery Officer that aroused the anxiety in the mind of this Court to go deep into the matter to find out as to how a petty Recovery Officer had given the relief to IFCI which was in direct conflict with the direction of this Court. Accordingly, the record of the Recovery Officer was ordered to be produced before this Court. Mr. R.K.Bansal himself produced the relevant file. That file was perused by me and it was noticed that the Official Liquidator, to whom notice of the application of IFCI had been given by the said Recovery Officer, had opposed that application and had also placed on record alongwith its reply a copy of the order dated 08.10.2009 passed by this Court. Despite that order having been placed before Mr.R.K.Bansal

 

he showed the audacity to overrule the direction of this court by brazenly accepting the application of IFCI observing that no useful purpose would be served by asking IFCI to remit the sale proceeds to the Official Liquidator (as ordered by this Court) since there was no other creditor of Koshika claiming money from Koshika. Mr. R.K.Bansal was also then called upon by this Court to show cause as to why he should also not be held guilty of having committed contempt of this Court. Simultaneously, similar show-cause notice was ordered to be given to IFCI also through its Managing Director.

3. Mr. Atul Kumar Rai, CEO & Managing Director of IFCI as well as Mr. R.K.Bansal submitted their replies and they also pleaded that they had all the respect for the orders of this Court and had not disobeyed any direction of this Court. Mr.Rai while pleading that IFCI as a public finance institution had all the respect for judicial orders took a plea that the order dated 08.10.2009 of this Court was not even brought to the notice of Ms. Shalini Soni during her meeting with the Official Liquidator on 26.10.2009 and for the first time copy of that order was supplied to IFCI by the Official Liquidator alongwith its reply to the IFCIs application which it had moved before the Recovery Officer seeking his permission to appropriate the sale proceeds. This Court, however, rejected the explanation of Mr. Rai as being false since Ms. Shalini Soni herself had not taken the stand in her reply that she was not aware of the order dated 08.10.2009 of this Court.

4. Mr. R.K.Bansal took the plea that during the course of hearing of IFCIs application that none of the parties had brought to his notice the exact reliefs which the Official Liquidator had sought from this Court and only the direction dated 08.10.2009 which did not clearly specify that IFCI was being directed to remit the entire sale proceeds to the Official Liquidator was brought to his notice and the true spirit of the order dated 08.10.2009 was also not urged before him by any of the parties and that if that had been done, he would not have passed the impugned order dated 22.02.2010. This Court, however, rejected the defence of Mr. R.K.Bansal also.

5. Vide order dated 6th February, 2012 this Court finally held IFCI, Mr. Atul Kumar Rai, Ms. Shalini Soni and Mr.R.K. Bansal guilty of having committed contempt of this Court. After holding so this Court thought it appropriate to give hearing to all the contemnors regarding the punishment to be awarded to them and accordingly the matter was fixed for hearing on that aspect of the matter. 6. However, before hearing on the point of sentence could commence Mr. Atul Kumar Rai and Ms. Shalini Soni decided to challenge the order of this Court holding them guilty of contempt of Court and accordingly they approached the Supreme Court but the Supreme Court did not entertain their separately filed Special Leave Petitions. However, while disposing of their SLPs liberty was given to both of them by the Supreme Court that they could file an appeal after appropriate orders on the point of punishment are passed by this Court.

7. After having failed to get any relief from the Supreme Court the contemnor Mr.

 

Atul Kumar Rai instead of making his submissions on the point of sentence decided to seek review of the order dated 06.02.2012 of this Court holding him guilty of contempt of Court by filing a review application(being C.M. No.361 of 2012). The relevant averments which were made in the review application as well as pressed into service during the hearing on this application by Mr. Ashwani Kumar Matta, learned senior counsel for the contemnor-review petitioner:-

5. Neither the Applicant at any point of time either expressed any opinion or stated any incorrect fact. In para no. "v" of the said Affidavit, the Applicant only stated that as per the record of the IFCI Limited and as per the understanding of the said records by the Applicant (at the time of perusal of the same), it is borne out that in the meeting held on 26.10.2009, copies of the Order dated 08.10.2009 and report No. 281/2009 were not supplied to IFCI Limited......... Further, the Applicant had always maintained the said position that he had neither any knowledge of the Order nor was he ever involved in the decision making process.

6. It was consistently argued and maintained by the Applicant that:

(ii) The Applicant had never issued any direction, was neither aware of the decision making process nor was in any way a part of the decision making which led to the alleged contempt of the order.

7. The Applicant is CEO and MD of IFCI Limited, a premier Financial Institution and an integral part of the Financial Sector of the country. The Applicant is also the Chairman of IIDL, IFCI Factors Limited and IFCI Venture Capital Funds Limited and therefore, vested with the additional responsibilities. IFCI Limited has a lending portfolio in excess of ` 16,000 crore (approx.) and has 11 Offices pan India. IFCI Limited is professionally managed by a Board of Directors representing a broad spectrum of interest..............................................

8. IFCI Limited in pursuit of its business activities requires to prosecute/defend litigations across the length and breadth of the country from the lowest Courts right up to the Hon''ble Supreme Court. The number of litigations concerning IFCI Limited (both for and against) for the calendar year 2009, 2010 and 2011 has been more than 600 (approximately). IFCI Limited alone (leaving aside the subsidiaries) has a lending portfolio in excess of ` 16000/- crore. The business of IFCI Limited is managed through 11 offices pan India. IFCI Limited along (leaving aside the subsidiaries) had been employing more than 800 employees, however presently the number is approximately 275. The subsidiaries of IFCI Limited employ an additional workforce of Approximately 575 employees. Under these circumstances it is not humanly possible for the CEO and MD to know each and every development that too related to a routine and day to day activity of normal recovery process being followed for the recovery of dues from a defaulting Borrower more particularly when admittedly no issue of any major policy decision is involved.

11. As per its operational needs and finances, there is a reporting system and

 

different levels of decision making authorities. The Applicant was /is not involved either in 2009 or prior or subsequent thereto in Micromanagement of litigations of IFCI Limited...........................................................................................

16. It is, therefore, respectfully submitted that the order, dated 06.02.12 in so far as the same holds the Applicant guilty of contempt of the order of this Hon''ble court may kindly be reviewed and the Applicant may be held as not being guilty of the contempt of the order of this Hon''ble court.

8. As far as the prayer made by the contemnor Mr. Atul Kumar Rai at the stage of hearing on the point of sentence for reviewing the order holding him guilty of contempt on the aforesaid grounds set out in the review application is concerned I am of the view that the same cannot be accepted. No grounds exist to review the order dated 06.02.2012. By way of this application all that this contemnor wants to convey is that he has been wrongly held guilty since being the CEO & Managing Director of such a huge public sector financial institution he could not be expected to oversee each and every matter and particularly such kind of a petty matter wherein only about two hundred crores of rupees were involved and such matters do fall within his domain as per the existing hierarchy in IFCI and this Court took too narrow a view in the matter and simply for the reason that he happened to be the Managing Director of IFCI has been held guilty. However, all these submissions could be urged before the appellate Court and not here. Mr. Matta had very fairly submitted that all these facts were not earlier put forth before this Court and so it would be in the interest of justice if this Court has another look at the whole matter qua Mr. Rai, who though as the head of IFCI has already morally owned the responsibility and was still feeling sorry for what all had happened in the handling of the case at lower levels of the hierarchy. It was, however, maintained by the learned senior counsel for Mr. Rai that he personally was not guilty of disobedience of any direction of this Court. In my view, these submissions made on behalf of a person who has already been held guilty appear to have been to evoke sympathy in the heart of the Court. The tenor of the submissions which he got advanced on his behalf at the time of hearing on his review application clearly showed that what he was wanting was that this Court should let him off and everyone else under him in his organisation could be hanged. Courts are not expected to get swayed away like that just because the contemnor happens to be a person holding a high position like that of a Managing Director of a premier financial institution in the country. In my view, he has missed the bus and it is now too late in the day for him to be praying for exoneration and that too for himself only and leaving his senior law manager and co-contemnor Ms. Shalini Soni to sail alone in the sea which has now turned rough. Being the Captain of the ship he should not have even made such an attempt to jump out of the ship alone and reach the shore in a single seater boat meant only for him by filing this review application. He must sail or sink with his co-crew member.

9. Even otherwise, all the submissions now being made by this contemnor on the

 

assumption that being the Managing Director of a big public sector institution he could not have been held guilty just like that appear to have been made in ignorance of the decision of the Supreme Court in the case of National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and Another, wherein it was held that when an offence is found to have been committed by a Company then its Managing Director becomes liable for the consequences by virtue of his very position as the Managing Director without anything else. So, the prayer of Mr. Atul Kumar Rai for re-calling the decision holding him guilty of the offence of contempt of Court is rejected.

10. As far as the punishment part is concerned, Mr. Matta, learned senior counsel for Mr. Rai was asked by the Court to make his submissions on this aspect also since it had been decided earlier to give each of the contemnors an opportunity to address the Court on the quantum of punishment also after they had been held guilty, but Mr. Matta submitted that since this contemnor was maintaining that he had not committed any contempt he would not be making any submission even for taking a lenient view on the point of sentence.

11. On behalf of the contemnor Ms. Shalini Soni her learned counsel Mr. P.S.Bindra simply made a prayer for pardoning her despite the fact that she had been found guilty and further that in any event no jail term should be awarded to her as punishment since very recently she had delivered a child and thereafter she was having serious medical complications which had in fact been noticed even by the Supreme Court also while disposing of her SLP and passing an order to the effect that the sentence to be awarded to her shall remain in abeyance for a period of four weeks. On behalf of contemnor Mr.R.K.Bansal his learned senior counsel Mr. K.K.Sharma also made a simple prayer for pardoning him as he had at the very first instance tendered apology for not having understood the true spirit of the order dated 08.010.2009 of this Court while accepting the prayer made before him by IFCI through Ms. Shalini Soni which order passed by him was in the teeth of the direction of this Court and if he had been careful enough to have sought further clarification from the parties and particularly the Official Liquidator he would have never accepted the prayer of IFCI. Mr. Sharma also highlighted the fact that this Court has always been adopting the path of pardon for the contemnors whenever they have expressed remorse for having at some time shown disrespect to this Court''s orders and, therefore, in the present case also this Court should take the path of pardon and forgive this contemnor for whatever lapse he had committed.

12. I have given my serious consideration to the fervent pleas made on behalf of the contemnors Ms. Shalini Soni and Mr. R.K.Bansal before this Court to pardon them. As far as Mr. Atul Kumar Rai is concerned he has chosen not to address the Court on the point of sentence.

13. There is no doubt that this Court has been adopting the path of pardon for the contemnors who have been remorseful and have been accepting their faults and offering apologies. However, I am now of the view that that path adopted by

 

this Court has yielded disastrous results as far as the sanctity and obedience of judicial orders is concerned. The litigants have started gathering the impression that the moment apology is tendered even while maintaining that no contempt was committed the Court would melt down and pardon them by expressing the hope that the contemnor shall not dare repeat that kind of a fault and that is evident from the fact that this Court is flooded with contempt petitions and the contemnors feel that at the end of the day they shall be pardoned. That kind of an impression from the minds of the litigating public needs to be washed off. This Court is, therefore, not inclined to show any leniency to any of the four contemnors. The facts of the present case show that a very dangerous trend has started amongst the litigants and that trend is to approach the authorities subordinate to this Court to get rid of some adverse orders passed by this Court and get relief from the subordinate authorities which stands declined by this Court. That kind of an evil trend needs to be nipped in the bud before it spreads any further. In case no stern action is taken at the initial stage the subordinate authorities shall also get emboldened and with impunity they shall start obliging the litigants by giving them reliefs for extraneous considerations even though the High Court had rejected the same relief.

14. Considering all the facts and circumstances, this Court is also not inclined to let off the contemnors only with imposition of fine and in my view this is a fit case where they must be sent to jail.

15. I, therefore, sentence Mr. Atul Kr. Rai, Ms. Shalini Soni and Mr. R.K. Bansal to undergo simple imprisonment for a period of one month. As far as IFCI as an institution is concerned a fine of ` 5 lakhs is imposed on it out of which a sum of two lacs shall go to Delhi High Court Legal Services Committee. Considering the fact that a public sector organisation is to bear the brunt of fine because of the lapses committed by its Head and a senior officer, this Court further orders that out of the total amount of fine after it has been paid by IFCI, for which four weeks time is being given to it, a sum of ` 3,50,000/- should be deducted from the salary of Mr. Atul Kr. Rai while the balance amount should be deducted from the salary of Ms. Shalini Soni. The execution of this order, however, shall remain in abeyance for a period of four weeks to enable the contemnors to approach the appellate Court for any appropriate relief, if so desire.

 