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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CCP(CO.) 9/2013& CO.APPLs. 1405/2013, 396/2018  
M/S GOKALDAS PAPER PRODUCTS ..... Petitioner

Through: Mr. Ranjeet Singh Sidhu, Advocate.

versus

M/S LILLIPUT KIDSWEAR LTD & ANR ..... Respondents

Through: Mr. Nakul Mohta, Mr. Bharat Monga  
and Mr. Samyak Jain, Advocates for  
Respondent No. 2 – Mr. Sanjeev  
Narula, Managing Director of  
Respondent No.1-Company.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**  
**05.04.2023**

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1. The Petitioner was a supplier of paper carry bags to Respondent No. 1-M/s Lilliput Kidswear Ltd. (currently in provisional liquidation) of which, Respondent No. 2-Mr. Sanjeev Narula, is the ex-Managing Director. On account of non-payment of dues, Petitioner filed a petition [CO.PET. 519/2012] under Section 433 of the Companies Act, 1956 [hereinafter “*the Act*”] for winding up of Respondent No. 1. In the said proceedings, Respondent No. 2 expressed willingness to repay the Petitioner’s dues. His assurance and commitment, as recorded in orders dated 21<sup>st</sup> March, 2013 and 09<sup>th</sup> July, 2013, led to partial resolution of the disputes between the parties. The said orders are extracted hereinbelow:-

**ORDER DATED 21<sup>ST</sup> MARCH, 2013**

*“1. The Respondent does not dispute that the principal amount payable to the Petitioner is Rs.41,22,376. Learned counsel for the Respondent states, on instructions, that the Respondent will pay the aforesaid amount to the Petitioner in ten equal monthly instalments beginning 1<sup>st</sup> April 2013.*

*2. The above offer is acceptable to learned counsel for the Petitioner who states that the amount should be paid together with interest at some reasonable rate. Although what is claimed by the Petitioner is interest at 24% per annum, the Petitioner is willing to go in for mediation on this aspect.*

*3. Accordingly, the parties will appear before the Delhi High Court Mediation and Conciliation Centre (DHCMCC) on 25<sup>th</sup> April 2013 at 3.30 pm. The report of mediation be placed on record by the next date of hearing.*

*4. List on 9<sup>th</sup> July 2013.*

*5. A copy of this order be sent to the Secretary, DHCMCC forthwith.*

*6. In the event the mediation is not successful, the Respondent will file its reply at least three weeks prior to the next date. Rejoinder be filed before the next date.”*

[Emphasis Supplied]

**ORDER DATED 9<sup>TH</sup> JULY, 2013**

*“It is submitted on behalf of the petitioner that the respondent- company is not adhering to the instalments set down by the order of this Court passed on 21.3.2013. As against the total amount due of 41,22,376/- the respondent has paid two instalments of 4,12,237/- each. It is stated that the instalment for April, 2013 was paid only on 25<sup>th</sup> April, 2013 and the instalment payable for May, 2013 was paid more or less in time. Thereafter, nothing has been paid.*

*The learned counsel for the respondent-company requests for rescheduling of the scheme of instalments to enable the entire dues to be cleared without much difficulty. I have considered the matter carefully. The order of this Court has to be adhered to. I therefore, direct that the instalments for the months of June and July, 2013 shall be paid on or before 31st July, 2013. There is no other modification of the instalment scheme set down in the earlier order of this Court. It is however clarified that the instalment of every month should be paid on or before the 10th of each month.*

*The payment by way of instalments is without prejudice to the right of the petitioner to claim interest. It is stated that the mediation proceedings (for the interest claim) have failed.*

*Renotify on 8<sup>th</sup> October, 2013.”*

[Emphasis Supplied]

2. Subsequent to afore-noted orders, in another company petition [CO.PET. 66/2012] filed for winding up of Respondent No. 1, this Court, *vide* judgment dated 06<sup>th</sup> January, 2014, appointed the Official Liquidator attached to this Court [hereinafter “*OL*”] as the Provisional Liquidator of Respondent No. 1. Accordingly, CO.PET. 519/2012 was disposed of on 20<sup>th</sup> August, 2018 as infructuous.

3. Mr. Ranjeet Singh Sidhu, counsel for Petitioner presses for contempt as the Respondents have paid only three out of the ten instalments towards repayment of dues, in breach of the undertaking given to the Court as recorded in the afore-noted orders. He also seeks directions for release of an amount of approximately Rs. 16 lacs, deposited by the Respondents with this Court, in terms of order dated 31<sup>st</sup> October, 2013, which reads as under:

*“The learned counsel for the respondent shall file reply to the contempt petition within 4 weeks from today and rejoinder by the learned counsel for the petitioner before the next date of hearing.*

*The learned counsel for the respondent has brought demand drafts in favour of the Registrar, Delhi High Court in excess of ₹16 lakhs in this Court, which he is directed to deposit with the Registry within 7 working days from today. On deposit of the same, the Registrar General of this Court shall keep the said amount in fixed deposit initially for three months and thereafter to be renewed for every three months till the final disposal of this matter.*

*Renotify on 14.02.2014.”*

[Emphasis Supplied]

4. Counsel for Petitioner also refers to order dated 28<sup>th</sup> April, 2014, wherein this Court had expressed a *prima facie* view that Respondent No. 2 had made contradictory statements before this Court.

5. Heard. In the opinion of the Court, orders dated 21<sup>st</sup> March, 2013 and 9<sup>th</sup> July, 2013, only record the understanding between the parties for repayment of Petitioner’s dues. Respondents may have subsequently resiled from the said agreement, however, no wilful disobedience of any direction

of this Court is made out. The afore-noted orders do not record any undertaking to the court. Thus, no ground is demonstrated to hold Respondents in contempt of court.

6. Petitioner's request for release of the amount deposited by Respondents in terms of order dated 31<sup>st</sup> October, 2013, cannot be entertained. Given that Respondent No. 1 is currently in provisional liquidation and its assets are in the custody of the OL, disbursement of the said amount exclusively in favour of Petitioner would amount to granting priority to their claim. Petitioner's claim would have to be dealt by the OL under the provisions of the Companies Act, 1956 and the extant rules/ regulations. No directions can be issued for disbursement of the amount in question, to the Petitioner. Accordingly, Registry is directed to release the amount of approx. Rs. 16 lacs along with interest accrued thereon, deposited in terms of order dated 31<sup>st</sup> October, 2013, to the OL, within a period of two weeks from today. Further, OL is directed to ensure that the said amount is appropriated in accordance with the provisions and scheme of the Companies Act, 1956.

7. This brings us to the next issue i.e., whether Respondents have committed the offence of perjury by making a false statement in the reply to the present petition. In the reply, Respondent No. 2 has categorically denied the liability for Petitioner's dues, in contrast to his earlier admission. Mr. Nakul Mohta, counsel for Respondent No. 2, argues that the stand taken in the reply was in light of aforementioned facts that came to the knowledge of Respondent No. 2 at a later stage, and for this reason a civil suit was also filed against the Petitioner. Without prejudice, to the above, he contends that a mere contradictory stand taken in a pleading should not on its own invite an action for perjury in exercise of the Court's discretion provided under

Section 340 of the Code of Criminal Procedure, 1973 [hereinafter “*CrPC, 1973*”]. Respondent No. 2, present in-person, explains that his stand was revised on account of fresh information received from his accounts team regarding debit notes that had been raised on the Petitioner for defective supplies. He states that earlier at the time of confirming Petitioner’s dues, he was unaware of the said debit notes and was in fact, hard pressed by multiple legal proceedings which were ongoing. At this juncture, he is willing to tender an unconditional apology to this Court.

8. The Court is unconvinced by the above submissions. Respondent No. 2, initially refuted the liability to pay the Petitioner’s dues, as recorded in order dated 17<sup>th</sup> December, 2012 in CO. PET. 519/2012. Subsequently in the said proceedings, he filed an affidavit in reply in February, 2013 [hereinafter “*Affidavit of February, 2013*”, provided at Annexure-C] admitting his liability and clarifying that the earlier denial was a *bona fide* mistake on account of a mix-up of files with a similarly named company. He further undertook to pay Petitioner’s dues in ten equal monthly instalments commencing from 01<sup>st</sup> April, 2013. Now, faced with the present contempt action he has denied his liability entirely by raising a plea of debit notes and has instead raised a claim on the Petitioner.

9. The relevant statements in the Affidavit of February, 2013 and Respondent No. 2’s reply, juxtaposed against each other, are extracted as under:

<b>Affidavit of February, 2013, in reply on behalf of Respondent No. 1 sworn by Respondent No. 2</b>	<b>Respondent No. 2’s reply to the present contempt petition accompanied by an affidavit</b>
“3. I say that vide an application being C.A. No. 2464 of 2012 the Respondent had	“14. This Hon’ble Court vide order dated 05.11.2012 issued notice to the

disputed the debts claimed by the Petitioner in the present petition. This Hon'ble Court vide order dated 17.12.2012 had directed the Respondent to file reply to the present petition. After, the said order was passed by this Hon'ble Court the Respondent in order to file its reply to the present petition started verifying its transactions and accounts of the Petitioner. I say that while undertaking this exercise and on a closer scrutiny of the records of the Company it has now turned out that the Respondent had made a bonafide mistake in its earlier application being CA No. 2464 of 2012 as it had wrongly disputed the dues of the Petitioner. I say that this bonafide mistake as it had mixed up the accounts of another entity namely Gokaldas Exports Limited with the accounts of the present Petitioner "Gokaldas Paper Products". I further say that the mistake made by the Respondent was genuine and bonafide and the Respondent had no malafide motive.

4. I say that there are certain amounts due and payable to the Petitioner which the Respondent is ready and willing to pay. The Respondents submit that after the longdrawn litigation with the foreign shareholders and its aftermath and despite the difficult situation and financial constrains in the Company, the Respondent No.2 has made all possible efforts to continue the operations of the Company and also to revive the Company. Due to the consistent efforts of the in the Court of the Additional Chief Metropolitan Magistrate Court of Bangalore."

xx            ...            xx            ...            xx

"8. I say that the Respondent is fully committed to repay the dues of the Petitioner and is ready and willing to repay the dues of the Petitioner in 10 equal monthly installments beginning from 1<sup>st</sup> April 2013. However, in view of the fact that the Petitioner has already filed criminal complaints for the amounts covered by the present petition, in the

Respondent herein. It is submitted that initially Managing Director of the Respondent Company filed a reply affidavit wherein he disputed any liability to pay the petitioner. The said affidavit was filed on account of some mistake belief since the files of the Respondent were mixed up with another similarly named company namely Gokaldas Exports Limited, however the Managing director filed a subsequent affidavit bringing on record the aforementioned mistake and undertook to re-pay. the dues of the Respondent herein in 10 equal monthly installments beginning from 01.04.2013.

15. It is pertinent to note that at this time the Respondent being hard pressed due to the various pending litigations against the Respondent Company and the liquidity crunch being faced by the Respondent Company due to which there was downsizing of the staff of the Respondent Company especially in the accounts department which was largely tied up in the auditing the financial year 2010-2011 under the supervision of auditors appointed by this Hon'ble Court, the Managing Director of the Respondent Company at the time of filing the aforementioned affidavit was unaware and had no knowledge of the Debit notes issued/ claims raised against the Petitioner against the supplies made under this very transaction for which the he undertook to pay the Petitioner.

16. The Respondent submits that it is only now in the month of July 2013 that the Managing Director of the Respondent was informed by the accounts Department that amounts to the tune of Rs. 41,22,377 were not payable hence actually recoverable

<i>interest of justice the Respondent prays that this Hon'ble Court may direct the Petitioner not to pursue the criminal complaints against the Respondent and its directors for the time being."</i>	<i>from the Petitioner due to the debit notes raised on account of the defective deliveries made by the Petitioner in violation of the terms of the purchase order."</i>
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10. In the opinion of the Court, reply to the contempt petition, supported by Respondent No. 2's affidavit, which denies the liability to pay Petitioner's dues is plainly false in view of unambiguous and categorical admission made to the contrary, in the Affidavit of February, 2013. The explanation or the change in stand premised on Respondents being burdened by multiple pending litigations, downsizing/ lack of staff and lack of knowledge, is not convincing. In the opinion of the Court, the revised stand in the reply appears to be a wilful false statement. In the Affidavit of February, 2013, Respondent No. 2 verified that he was well-versed with the facts and circumstances of the case and that he is competent to swear the affidavit. He further verified that the statements made therein were true and correct to best of his knowledge. The legal system relies heavily on the honesty and integrity of individuals who appear before courts. When one makes a statement before the court or signs an affidavit, they are making a solemn declaration to tell the truth, the whole truth and nothing but the truth. Filing of a false affidavit is a serious offence that undermines the very foundation of the legal system. The subsequent reply and accompanying affidavit *prima facie* contain false statements made in the course of judicial proceedings, which is punishable under Section 193, 199 and 200 of the Indian Penal Code, 1860 [hereinafter, "**IPC, 1860**"].

11. Respondent No. 2 has offered to tender an unconditional apology. However, in the opinion of the Court, the same is of no avail. Perjury, is the

act of knowingly and wilfully making false statements under oath, with the intent to deceive or mislead the court. It is a serious criminal offence, as it strikes at the very heart of the judicial process by undermining the integrity of the evidence presented in Court. The act of contempt can be purged or remedied, by the offending party, but in contrast, perjury cannot. Simply recanting or correcting a false statement cannot undo the act. Affidavits in a court of law have sanctity and cannot be taken casually. Thus, a false statement to the Court has to necessarily invite adverse action. In the present matter, the Court is not concerned as to why the promised schedule of payments has been breached by Respondents. The primary concern is Respondent No. 2's statement of denying the liability of the dues in face of an earlier unequivocal admission. Such a contradictory stand without any cogent explanation is *prima facie* a deliberate false statement to mislead the Court and thus an apology by Respondent No. 2 would not deter an action invited for perjury.

12. Accordingly, this Court is *prima facie* of the view that offences under Sections 191 and 192 of IPC, 1860 punishable under Section 193, 199 and 200 of IPC, 1860 have been committed by Respondent No.2 in relation to the present proceedings. In terms of Section 340(1) of CrPC, 1973 read with Section 195(1)(b)(i) of CrPC, 1973, this Court is of the opinion that it is expedient in the interests of justice that an inquiry should be made into the false statement made by Respondent No. 2 in the reply to the present petition, for which a written complaint should be made to the concerned Metropolitan Magistrate. The Registrar General is hereby directed to draw up and make a complaint in the above terms and send it to the appropriate Metropolitan Magistrate within four weeks. The said complaint will be

accompanied by a complete certified copy of the entire file of the present matter and CO. PET. 519/2012.

13. With the above directions, the present petition is disposed of

**Postscript**

14. The Court, while amused with the coincidence of Respondent No. 2 being the undersigned's namesake, is not detracted from the seriousness of the offence of perjury.

**SANJEEV NARULA, J**

**APRIL 5, 2023/as**  
*(corrected and released on 11<sup>th</sup> April, 2023)*