

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CCP No.132/2007 in OMP No.320/2007**

Judgment reserved on: 13th July, 2009

% Judgment decided on : 31st July, 2009

MTECH SOLUTIONSPetitioner
Through: Mr. C. Mukund, Adv. with Ms. Vandana
Anand, Adv.

Versus

PCLIT SOLUTIONS PVT. LTD.Respondent
Through: Mr. Anil Sapra, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MANMOHAN SINGH, J.

1. By this order I shall dispose of CCP No. 132/2007 in OMP No. 320/2007. The present application has been filed by the petitioner under Sections 2, 10 & 12 of the Contempt of Courts Act, 1971 read with Section 151 of the CPC, 1908 and the following prayers have been made thereunder:

- (i) Pass an appropriate order against the contemner for violating the order dated 04.06.2007 (and subsequent orders continuing this order) passed by this court and continued by the Arbitral Tribunal;

- (ii) Appoint a local commissioner to determine all relevant facts and bring the same to the notice of this court;
- (iii) Direct the contemner to comply with the terms of the said order, both in letter and in spirit;
- (iv) Grant the costs of this petition in favour of the petitioner and against the respondent, and
- (v) Such other order as this court may deem fit.

2. The brief facts leading up to this application are as follows. The petitioner filed OMP No. 320/2007 wherein it was prayed inter alia that the respondent be restrained from causing any disturbances or hindrances in the calling process of the petitioner and be directed to abide by all the provisions of the Campaign Services Agreement till the Arbitrator decides the disputes between the parties.

3. In the petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 it was alleged that the petitioner has been regular with its payments to the respondent as is evident from the fact that the respondent has never approached this or any other court as regards any inadequacy in the said payments.

4. This court, by order dated 4th June, 2007 issued an ad interim order to the following effect:

“The petitioner is directed to make all payments up to date if not already made within a period of one week from today. Till the next date of hearing the respondent is hereby restrained from causing any interference and disturbance in the calling process of the petitioner.”

5. In spite of this, the respondent issued a termination notice dated 31st July, 2007 thereby unilaterally terminating the Campaign

Services Agreement. In lieu of this act of the respondent, the petitioner vide I.A No. 9042/2007 prayed that the respondent and its agents be restrained from suspending/terminating the Campaign Services Agreement and from acting on the termination notice dated 31st July, 2007.

6. Pursuant to this application, this court passed an order dated 31st August, 2007 while disposing the main OMP itself by observing that the interim order dated 4th June, 2007 should continue for seven days only during which period the Arbitrator may grant whatsoever relief he/she considers appropriate.

7. As regards termination of the agreement, the said issues were left to be urged before the Learned Arbitrator. The Ld. Arbitrator Hon'ble Justice Ms. Manju Goel (Retired) held in order dated 7th September, 2007 that the restraining order passed by this court on 4th June, 2007 be extended till 12th September, 2007 subject to the claimant furnishing a bank guarantee of Rs. 6 lakhs. On 12th September, 2007 it was held that as the arguments were inconclusive, the restraining order was to continue till 17th September, 2007.

8. The petitioner submits that the respondent's act of terminating the Campaign Services Agreement vide notice dated 31st July, 2007 is in violation of this court's order dated 4th June, 2007. The respondent, as regards any activity on its part relating to the Campaign Services Agreement, clearly states that as the very agreement which underlies the calling process has been terminated, the respondent is under no obligation to take any action what so ever.

9. The petitioner also submits that in a final act of flagrant violation of this court's orders, the respondent on 11th September, 2007 completely shut down the operations of the petitioner as of 5.30 AM by maliciously not providing the requisite telephone lines (T1s) and the telephone minutes (PSTN). Without the said T1s and the PSTN, the petitioner cannot make any phone calls at all and its entire operation comes to a standstill. Thereafter, the petitioner made several requests to the respondent asking the latter to provide the T1s and PSTN, but to no avail.

10. In letter dated 13th September, 2007 the petitioner conveyed to the respondent that it was aware that the latter had not paid its dues to a vendor COLO in Atlanta, Georgia, USA and that it was due to this non-payment on part of the respondent that the requisite T1s and PSTN were not being provided to the petitioner. The petitioner again requested the respondent to either pay its dues to the vendor or to provide an alternate arrangement whereby the requisite T1s and PSTN would be made available to the petitioner in order for it to carry on its calling process.

11. The petitioner submits that the respondent has carried out petty acts such as not providing cleaning agent to the cleaning persons for the washrooms of the call centre of the petitioner, all in an attempt to hinder its operations. In view of these blatant and wilful violations of the continued restraining order by the respondent, the petitioner has filed the present contempt application.

12. In its reply to the present application, the respondent has stated that the petitioner has been filing application after application with this court as well as with the arbitral tribunal only with the intent of harassing the respondent. The respondent also submits that the Contempt of Courts Act is not applicable to the present proceedings as the interim order was passed by this court under Section 9 of the Arbitration and Conciliation Act, 1996.

13. As regards the provision of T1s and PSTN, the respondent submits that it is a company in USA which provides the same to the petitioner. The petitioner is alleging contempt against the respondent on a ground which is not even an obligation of the respondent under the agreement between parties. Under the agreement, the respondent was only supposed to facilitate the connection provided by that company so that the agents employed by the petitioner could run the campaigns. The petitioner, as per the respondent, is trying to confuse issues and trying to make it appear as if it is the respondent who is responsible for providing the said connections to the petitioner thereby making it seem as if the respondent is obstructing the petitioner's work and consequently, violating the directions of this court. The respondent further submits that the petitioner had moved an application for a direction to the respondent to provide T1s and PSTN but the Learned Arbitrator after hearing the parties did not pass any order in favour of the latter.

14. The respondent submits that T1s and PSTN were provided to the petitioner via a DS-3 since the date of agreement i.e. 7th May, 2007 effective from 10th May, 2007. Further, it is alleged that the petitioner

had not enough work and therefore the said company withdrew some of its T1s. One T1 has 24 telephone lines and one DS-3 has 28 T1s making it in all 672 lines.

15. The respondent submits that the petitioner had, at any point in time, not more than 116 agents using the facilities thereby making even 5 T1s sufficient as 5 T1s means 120 telephone lines which are adequate for 116 agents. The respondent also states that as per the log sheet available with it, the petitioner had at no time from 10th May, 2007 onwards more than an average of 10 agents working on any day. On a perusal of the said log sheet it is clear that the reason for the service provider withdrawing its services is that the petitioner did not have sufficient number of agents to use the provided T1s.

16. The respondent submits that the telephone company earns a fixed rent on the T1s provided as well as the variable cost which a consumer is liable to pay for the use of telephone lines, i.e. calls made. In the petitioner's case, the use of telephone lines was virtually nil which compelled the service provider to first reduce the number of T1s provided and then to completely withdraw its services.

17. It is the respondent's contention that with a view to circumvent payment of fixed charges and specific directions contained in this court's order dated 4th June, 2007, the petitioner started writing various letters making allegations therein that the respondent was not providing complete infrastructure etc to it. It is also submitted that the respondent does not run any telephone company and it was, under the agreement, only to facilitate the connection of T1s and PSTN. The

respondent has also denied, during the course of argument, that the respondent is in default of any dues to a vendor and it was due to non-payment that the said service was withdrawn.

18. Learned counsel for the respondent has referred Clause 1.1 'c' of Exhibit A of the Campaign Services Agreement dated 7th May, 2007 provides as under:

“c. CALL CENTER shall provide International Private Leased Circuit, T1s, Servers, Multiplexers remote end, Internet on all seats, PSTN, Dialer services and Support services.”

And also, the MOU dated 7th May, 2007 between the parties which adds to the above-mentioned clause. The relevant portion of clause 3 of the MOU states the following:

“(3) In the beginning, the CLIENT is planning to apply and get its own PSTN facility through a company called TSI, situated in the USA. The CLIENT is planning to pay a security deposit to TSI for PSTN and will make periodic usage payments to TSI directly in this connection. However, the CLIENT has right to request the CALL CENTER to provide the PSTN, as envisioned in the Agreement, anytime in future by giving a 15 day notice. At the time of such notice only, appropriate PSTN deposit, which is estimated to be \$5450, will become payable.”

19. The respondent has denied the receipt of the letter dated 13th September, 2007 in its reply. As regards the respondent's contention that the Contempt of Courts Act is not applicable to the present proceedings as the interim order was passed by this court under Section 9 of the Arbitration and Conciliation Act, 1996, **Section 42** of the Arbitration and Conciliation Act, 1996 provides:

“Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

20. In light of the clear intention of the statute conveyed through the above-stated section which gives jurisdiction to this court over the arbitral proceedings as well as any subsequent application with regard to the same, the contention of non-maintainability by the respondent cannot be accepted.

21. I have gone through the submissions and relevant documents submitted by the parties. On a perusal of the MOU between the parties, it appears that the petitioner had voluntarily planned to obtain the requisite T1s and PSTN from the American company TSI. The petitioner went from a full fledged operation with more than 100 employees which was later on reduced to only 10-15 employees as the said connection was not being provided by the American company. Further, it appears from the pleadings that these 10-15 employees were sitting idle due to absence of the PSTN connection.

22. The injunction order granted by this court was for restraining the respondent from causing any interference and disturbance in the calling process of the petitioner. In view of these clear facts, I find myself agreeing with the Learned Counsel for the respondent. The situation of the plaintiff did not allow it to pay rent and other fixed

charges, which led the respondent to terminate the agreement between the parties.

23. The respondent has denied the averment made by the petitioner in its petition. Respondent's contention is that firstly, the requisite connection was not being provided by the Company in USA, secondly, that no payment was being made by the petitioner and thirdly, that the employees of the petitioner were sitting idle. In such circumstances, the respondent had no other alternative but to terminate the contract and appropriate proceedings in this regard are pending before the Arbitrator. The question of causing any interference and disturbance in the calling process by the respondent does not arise under these circumstances.

24. As the injunction restraining the respondent was limited to non-interference with the petitioner's calling process, the respondent has not apparently disobeyed the restraining order of this court as it has not directly or deliberately caused any such interference. The respondent's act of terminating the agreement due to drawbacks in the petitioner's work is not an intentional or deliberate attempt on its part to violate this court's order, in fact, it appears that circumstances took such a turn that no other course was available to the respondent. In my opinion the respondent's act does not sum up to be an act of wilful disobedience of court orders.

25. In the case of **Vijay Pandit v. GR Investment India Pvt. Ltd. & Anr, CCP No. 132/2008** in **CS (OS) No. 214/2002** decided on 6th April, 2009 by this Court, it was held as follows:

“14. Exercise of power under Contempt of Courts Act of 1971 is comparatively a rarity and has to be used sparingly and in the larger interest of society and for proper administration of justice. Mere disobedience of an order may not be sufficient to amount to a ‘civil contempt’ within the meaning of Section 2(b) of the Act of 1971. The element of willingness and intention is an indispensable requirement to take action. If two interpretations are possible as to the action of the alleged contemnor and one of such interpretations raises doubts about the wilful nature of his conduct, contempt will not be made out. The Supreme Court of India.

26. In the case of **Perspective Publications (Pvt.) Ltd. v. State of Maharashtra AIR 1971 SC 221** at page 230 it was held as under :

“The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.” (Perover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is also not a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed enquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it.”

27. It is made amply clear by the above-quoted observation that in order for there to be contempt by a party against court orders, it must appear that :

(i) there is an element of willful disobedience, i.e. an

intentional and deliberate attempt by the alleged contemnor to violate orders consciously, and

- (ii) no two interpretations are possible as regards the alleged act of violation and the single interpretation afforded by such act clearly indicates that there was willful disobedience.

28. It is my opinion that in the present case, two interpretations are possible as to the action of the respondent and one of these interpretations clearly raises doubts as to any deliberation on the respondent's part to act in contempt of this court's orders. As has been mentioned above, I believe that circumstances compelled the respondent to terminate the agreement with the petitioner. Further, the petitioner voluntarily wanted the connection to be provided by the American company TSI and the respondent was not responsible for the same. Further still, the injunction only restrains respondent's interference with the petitioner's calling process.

29. Willful disobedience by a party of the orders of a judicial authority causes damage to the dignity of those orders and consequently, to that of the judicial authority that has propounded them. In such cases it is available to the court adjudging such an act to pass appropriate orders in order to discipline the contemnor. Obviously, the dignity and discipline of the court and its orders has to be maintained in cases of willful and intentional disobedience. However, in a case like the present one, where there is more than one possible interpretation of the alleged violating act, it would not be proper for the court to declare contempt by

a party.

30. Prima facie, therefore, I find no merit in the petition and the same is disallowed. However, it is made clear that any damages with regard to the termination of contract suffered by the petitioner can be taken to the Arbitral Tribunal as proceedings relating to the present case are pending there.

Petition disposed of. No costs.

MANMOHAN SINGH, J.

JULY 31, 2009
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