

RAMA NARANG  
v.  
RAMESH NARANG AND ANOTHER

MARCH 15, 2007

[B.N. AGRAWAL, DALVEER BHANDARI AND  
LOKESHWAR SINGH PANTA, JJ.]

*Contempt of Courts Act, 1971—Section 2(b)—Dispute between father and his two sons regarding control and management of a company—To ensure that company was run with participation of all, consent terms entered into and incorporated in Supreme Court order—Father and one of the sons were to be in joint management and control of company, while the other son was to be in charge of day-to-day operations; no decision was to be taken concerning the Company without consent of father and either of his two sons; amount of any transaction exceeding ten lakhs rupees was to be undertaken through cheque signed jointly by father and either of two sons—Violation of these terms—Contempt of Court—Held—Under guise of day-to-day operation, all decisions affecting the company were taken by one son—On amount of transaction exceeding rupees ten lakhs, payment made by splitting the amount in two or more cheques; explanations given regarding this by sons found untenable; in case of genuine difficulty or confusion, the sons ought to have approached Court for directions—Sons found guilty and convicted for contempt of court for deliberate and willful disobedience of their undertaking to Supreme Court—Sentence of simple imprisonment for a period of two months, and a fine imposed—However, keeping in view interests of company and its employees, sentence of imprisonment kept in abeyance, to be revived in future on similar violations.*

*Words and phrases—Undertaking—In context of Section 2(b) of the Contempt of Courts Act, 1971*

**Petitioner is father (R-1) and respondents (R-2 and R-3) and his two sons. Disputes between them were subject-matter of diverse court proceedings with regard to shareholdings and control and management of a company, NIHL. To ensure peace in the family and all groups run the company harmoniously with the active participation of all as a family**

A business, consent terms were entered into, accepted and incorporated by this Court while finally disposing of all the disputes between the parties. These terms *inter alia* included that R-1 and R-2 were to be in joint management and control of NIHL; R-3 was to be the 'Permanent Whole Time Director' thereof in charge of day to day operations/management; no decision concerning the Company was to be taken without the consent of R-1, R-2 (or R-3) in writing; all bank accounts of the Company were to be operated jointly by any two out of the three viz. R-1, R-2 and R-3 and/or as may be agreed to between them; if the amount of any transaction exceeds ten lakhs rupees, it was to be undertaken through a cheque signed jointly by R-1 and R-2/R-3.

C Present contempt petition has been filed on the allegation that the respondents had violated the terms of the consent order. Petitioner gave numerous instances of violation and contended that they amounted to a willful disobedience of the order of this Court, punishable under its power of contempt.

D Respondents contended that it was never the intention of the parties that the petitioner should enjoy a veto power over the company transactions whose value exceeds ten lakhs rupees, and clause regarding same was meant purely for operation of bank accounts.

E Disposing of the Contempt Application, the Court

F HELD: 1. All the management decisions and other decisions affecting the company were taken by the respondent Rajesh Narang, the whole time Director under the guise of the day to day operation/management in clear violation of clause 3(c) of the consent terms which clearly state that Rama Narang and Ramesh Narang shall continue to be in joint management and control. The parties gave undertaking to the court regarding the consent terms. [Para 32] [1116-B]

G 2.1. In order to keep the petitioner out of the management and control of the company where the amount of transaction exceeded Rs.10 lakhs, the payment was made by splitting the amount in two or more cheques. This subterfuge was adopted to keep the petitioner out of the control of the management and company. [Para 51] [1121-C]

H 2.2. The explanations given by the respondents for splitting up the cheques are wholly untenable. In case of genuine difficulty or confusion,

the respondents ought to have approached the Court for directions. A  
[Para 31] [1115-H]

**3.1 Wilful breach of an undertaking given to the Court amounts to contempt of court under Section 2(b) of the Act. [Para 48] [1120-E]**

*Noorali Babul Thanewala v. K.M.M. Shelly & Ors.*, [1990] 1 SCC 259, B  
*Mohd. Aslam v. Union of India*, [1994] 6 SCC 442, *Rita Markandey v. Surjit Singh Arora*, [1996] 6 SCC 14, *KCG Verghese v. KT Rajendran*, [2003] 2 SCC 49, *Bank of Baroda v. Sadruddin Hasan Daya and Anr.*, reported [2004] 1 SCC 360 and *Babu Ram Gupta v. Sudhir Bhasin & Anr.*, [1980] 3 SCC 47, relied on

*Bajranglal Gangadhar Khemka & Anr. v. Kapurchand Ltd.*, AIR (1950) Bombay 336, approved C

*M. v. Home Office*, [1992] 4 All ER 97, *In re Hudson* [1966] Ch. 209, *Shoreham-by-Sea U.D.C. v. Dolphin Canadian Proteins* (1972) 71 L.G.R. 261 referred to D

*Black's Law Dictionary*, 5th Edition, *Osborn's Concise Law Dictionary*, 10th Edition, referred to

**3.2. The respondents are clearly guilty of committing contempt of court by deliberate and wilful disobedience of the undertaking given by them to this Court. In this view of the matter, in order to maintain sanctity of the orders of this Court, the respondents must receive appropriate punishment for deliberately flouting the orders of this Court.** E

[Para 53] [1121-G-H]

**3.3. Consequently, the respondents are convicted under Section 2 (b) of the Contempt of Courts Act and sentence them to a simple imprisonment for a period of two months. Further, a fine of Rs.2000/- is to be deposited by each of them within one week failing which they shall further undergo imprisonment for one month. [Para 54] [1122-B]** F

**3.4. The fact that immediately sending the respondents to jail would create total chaos in the company which would also vitally affect the interests of large number of people including the employees of the company. Therefore, while keeping in view the peculiar facts and circumstances of this case, the sentence of imprisonment imposed on the respondents is kept in abeyance. Further, parties are directed to** G  
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**A** meticulously comply with the undertakings given by them to this Court. In case, similar violation of the undertakings given to this Court is brought to the notice of the Court, in that event, the respondents shall be sent to jail forthwith to serve out the sentence imposed in this case.

[Para 55] [1122-C-D]

**B** CIVIL APPELLATE JURISDICTION : Contempt Petition (C) No. 148 of 2003.

In

Contempt Petition (C) No. 265-267 of 1999.

**C**

In

Contempt Petition (C) No. 209 of 1998.

In

**D**

Civil Appeal No. 366 of 2007.

Mukul Rohtagi, Gopal Jain, R.N. Karanjwala, Ritu Sharma, P.S. Baghel and Manik Karanjwala for the Petitioner.

**E** F.S. Nariman, A. Sibal Barooaha, A. Swarup and Bina Gupta for the Respondents.

The Judgment of the Court was delivered by

**F** **DALVEER BHANDARI, J.** 1. This is an unfortunate litigation amongst the most intimate family members where the father has been driven to file a contempt petition against his sons. The parties are intensely involved in *inter-se* litigation for the last two decades. The petitioner, Rama Narang is the father of Ramesh Narang and Rajesh Narang, the respondents herein. Both are the children of his first wife, namely, Motla, whom he divorced in 1963. The petitioner has three children from his second wife Mona, namely, Rohit, **G** Ramona and Rahul.

2. The petitioner has prayed that the respondents herein namely Ramesh and Rajesh are guilty of committing gross contempt of the orders of this Court dated 12.12.2001 and 8.1.2002.

**H** 3. The petitioner in this contempt petition has also prayed that the order

dated 12.12.2001 may be recalled. The petitioner has further prayed that respondent no. 2, Rajesh Narang be restrained from interfering in the affairs of Narang International Hotels Ltd. (for short, NIHL) and its joint management by the petitioner, Rama Narang and respondent no.1, Ramesh Narang. A

4. It is further prayed that the bank accounts of the company hereinafter be operated jointly for all amounts and transactions by the petitioner and respondent no.1 only. B

5. The petitioner stated that the disputes between the petitioner and the respondent-contemnors *inter se* were subject-matter of diverse court proceedings with regard to shareholdings and control and management of the company, NIHL and Fashion Wears Pvt. Ltd. C

6. It is incorporated in the contempt petition that for accomplishing the object of ever-lasting peace in the family and having regard to the views exchanged in the family, all groups should work, be represented and have trust in one another. All groups should run the company harmoniously with the active participation of all as a family business. The consent terms dated 12th December, 2001 were entered into, accepted and incorporated by this Court while finally disposing of all the disputes between the parties. D

7. The terms embodied in the order of 12th December, 2001 reads as under:- E

“The following cases are pending between the parties who are parties in the present proceedings before us one way or the other. We are told that all the parties have settled their disputes in respect of all the litigations specified below.

1. O.S. No. 3535 of 1994 before the Bombay High Court. F
2. O.S. No. 3578 of 1994 before the Bombay High Court.
3. O.S. No. 1105 of 1998 before the Bombay High Court.
4. O.S. No. 3469 of 1996 before the Bombay High Court. G
5. O.S. No. 1792 of 1998 before the Bombay High Court.
6. O.S. No. 320 of 1991 before the Bombay High Court.
7. Company Petition No. 28 of 1992 before the Principal Bench, Company Law Board, New Delhi. H

- A 8. Arbitration Suit No. 5110 of 1994 before the Bombay High Court.

B Today they filed a document styled it as "MINUTES OF CONSENT ORDER" signed by all the parties. Learned counsel appearing on both sides submitted that all the parties have signed this document. Today except Mona Narang and Ramona Narang (two ladies), all the rest of the parties are present before us when these proceedings are dictated. As for Mona Narang and Ramona Narang learned counsel submitted that Mona Narang had affixed the signatures and the power of attorney holder of Ramona Narang has signed the above document in his presence. This is recorded.

C Both sides agreed that all the suits can be disposed of in terms of the settlement evidenced by "MINUTES OF CONSENT ORDER" produced before us. For disposal of those cases and/or for passing decrees in them we have to pronounce the final formal order in terms of the settlement now produced before us.

D We, therefore, withdraw all the aforesaid suits to this Court under Article 139-A of the Constitution of India.

E Prothonotary and Senior Master of the Bombay High Court is directed to transmit the records in the above mentioned suits by special messenger to this Court so as to reach the Registry here within ten days from today. The Bench Officer of the Principal Bench of the Company Law Board, New Delhi is directed to forward the records relating to company petition No. 28 of 1992 to the Registry of this Court so as to reach the Registry within ten days from today.

F All the parties have undertaken before us that they will implement the terms of the "MINUTES OF CONSENT ORDER" on or before 1.1.2002 and that no further time will be sought for in the matter.

G Clause (f) of the compromise relates to the operation of the bank accounts. That clause will come into force from today onwards."

8. The aforementioned suits and company petition were posted before this Court on 8th January, 2002 along with the contempt proceedings. The consent minutes as agreed amongst the parties are reproduced:

H (a) With effect from 4th May, 1999 Rama, Ramesh and Rajesh are

the only Directors of NIHL (and its subsidiaries). Any increase in the Board of Directors shall be with the mutual consent of Rama and Ramesh/Rajesh. A

(b) None of the Directors (Rama, Ramesh and Rajesh) can be removed from the directorship.

(c) Rama and Ramesh shall continue to be in joint management and control of NIHL and Rajesh shall continue to be the 'Permanent Whole Time Director' thereof in charge of day to day operations/management. B

(d) No decision shall be adopted concerning or affecting the said Company (and its subsidiaries) without the consent of Rama and Ramesh (or Rajesh) in writing. It is further clarified and agreed that save and except as provided herein no prevailing decisions including appointment of Directors/ Executives or any other persons shall continue unless Rama and Ramesh (or Rajesh) consent to the same in writing. C

(e) All the collections coming in cash shall continue to be remitted in the bank accounts of the Company and all transactions will only be made in the form of cheques and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh). D

(f) All bank accounts of the Company shall continue to be operated jointly by any two out of the three Directors namely Rama, Ramesh and Rajesh and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh). If the amount of any transaction exceeds Rs. 10 (ten) lacs the same shall be undertaken through a cheque signed jointly by Rama and Ramesh/Rajesh. E

9. The consent terms also provided for the performance of various actions by the parties which are not necessary to be recorded. It is sufficient to note that all the agreed actions were to be performed by the petitioners group before 1.1.2002. F

10. When the matter appeared in the list on 8.1.2002 the Court recorded that all the eight suits and proceedings withdrawn from other courts had been transmitted. The petitioner's suits were disposed of in terms of the minutes of the consent order incorporated in the proceedings passed by this Court on 12.12.2001. The order dated 8th January, 2002 further provided:- G

H

A "All the above are now being disposed of in terms of the minutes of consent order incorporated in the proceedings passed by us on 12.12.2001.

The decree will be drawn up in terms of the minutes of the consent order."

B 11. On the allegation that the two respondents had violated the terms of the orders specially the clauses 3(c), (d) and (f) of the consent minutes, this contempt petition has been filed. It is also the case of the petitioner that the violations of the orders had been admitted by the respondents. According to the petitioner the violations amounted to a willful disobedience of the  
C orders dated 12.12.2001 and 8.1.2002 and were punishable under this Court's power of contempt.

D 12. This Court issued notice on the petitioner's application on 9th May, 2003. This Court initiated contempt proceedings on 15th September, 2003 at the behest of the petitioner. It may be pertinent to mention that this Court requested Justice V. A. Mohta, a retired Chief Justice of the Orissa High Court to act as a mediator for settlement of disputes between the parties. Despite very serious efforts by the mediator, the settlement could not be arrived at between the parties.

E 13. The contempt petition was directed to be listed in the Court. A preliminary objection was taken regarding the maintainability of the contempt petition. According to the respondents, in the absence of the undertaking given to the Court and an allegation that such an undertaking had been violated, this Court could not exercise its jurisdiction over mere violation of the terms of the consent order. According to the respondents, the order dated  
F 12.12.2001 has been implemented within the stipulated time. The respondents also pleaded that order dated 12.12.2001 had merged in the final order dated 8.1.2002.

G 14. A three-Judge Bench of this Court in *Rama Narang v. Ramesh Narang & Anr.*, reported in (2006) 4 Scale 280 came to a definite finding that violation of the terms of the consent order would amount to violation of the court's orders dated 12.12.2001 and 8.1.2002. The relevant para 37 of the *Rama Narang's* judgment (*supra*) reads as under:

H "In the present case, the consent terms arrived at between the parties was incorporated in the orders passed by the Court on 12th December

2001 and 8th January 2002. The decree as drawn up shows that order dated 8th January, 2002 was to be "punctually observed and carried into execution by all concerned". A violation of the terms of the consent order would amount to a violation of the Court's orders dated 12th December 2001 and 8th January 2002 and, therefore be punishable under the first limb of Section 2(b) of the Contempt of Courts Act, 1971.' A B

15. The preliminary objection raised by the respondents regarding maintainability of the contempt petition was rejected. Now, the issue which arises for adjudication is whether the respondents have violated the terms of the undertaking given to the Court and if so, what are its consequences? C

16. The petitioner has narrated various instances of violation of the undertaking given to the Court by the respondents leading to contempt of court. The parties have filed the detailed written submissions. The relevant paragraphs of the written submissions filed by the petitioner read as under:

"The petitioner states that the consent terms agreed between the parties on which a decree was drawn, it was inter alia agreed that: D

"3. The following directions issued by this court in the above matter are re-affirmed and agreed to by the parties as follows:

(a)..... E

(b).....

(c) Rama and Ramesh shall continue to be in joint management and control of NIHL and Rajesh shall continue to be the '*Permanent Whole Time Director*' thereof in charge of day to day operations/ management. F

(d) No decision shall be adopted concerning or affecting the said Company (and its subsidiaries) without the consent of Rama and Ramesh (or Rajesh) in writing. It is further clarified and agreed that save and except as provided herein no prevailing decisions including appointment of Directors/Executives or any other persons shall continue unless Rama and Ramesh (or Rajesh) consent to the same in writing. G

(e) All transactions coming in cash shall continue to be remitted in the bank accounts of the Company and all transactions will only be H

A made in the form of cheques and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh).

B (f) All bank accounts of the Company shall continue to be operated jointly by any two out of the three Directors namely Rama, Ramesh and Rajesh and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh). If the amount of any transaction exceeds Rs. 10 (ten) lacs the same shall be undertaken through a cheque signed jointly by Rama and Ramesh/Rajesh."

C The clear and manifest intention of the parties was that the petitioner had a say/role in management and affairs of the company and all transactions above Rs.10 lakhs required his signature. The respondents have in a systematic and continuous manner violated this understanding between the parties and in a blatant and defiant manner have breached the order passed by this Court and have till date continued to do so with impunity, which undermines the majesty of the court as it shows scant regard and respect for the order passed by this Court.

D The petitioner further states that in these proceedings this Court also passed the following order dated 25.01.2005:

E "by reference to paragraph 3(f) of the minutes of consent order dated 12.12.2001, we clarify that the amount of Rs.10 lakhs mentioned in that clause refers to a transaction and not to the amount of a cheque; meaning thereby, by splitting up the amount of any transaction in two or more parts the cheques cannot be issued if the amount of any transaction exceeds Rs.10 lakhs."

F 17. According to the petitioner, the respondents have deliberately violated the said order by their contumacious conduct. The petitioner alleged that there has been gross violation of Clause 3(f) of the minutes of consent order. He has given numerous instances in support of his submission. Some of the instances are reproduced as under:

G "*Violation of Clauses 3(e) & (f)*

H (i) The respondents have repeatedly split up the amount of a transaction into multiple cheques of less than Rs.10 lakhs each where the total value of the transaction exceeded Rs.10 lakhs, so as to circumvent Clause 3(f) of the consent terms which

provided that if the amount of any transaction exceeds Rs.10 lakhs the same shall be undertaken through a cheque jointly signed by Rama and Ramesh/Rajesh. This is despite the fact that the language used in the consent order was clear that "transactions" above an amount of Rs.10 lakh, and not "cheques" above Rs.10 lakhs, required the signature of both Rama and Ramesh/Rajesh. This was also explicitly clarified by an order of this Court dated January 25, 2005 in the present proceedings between the parties which stated as under:

by reference to paragraph 3(f) of the minutes of consent order dated 12.12.2001, we clarify that the amount of Rs.10 lakhs mentioned in that clause refers to a transaction and not to the amount of a cheque; meaning thereby, by splitting the amount of any transaction in two or more parts the cheques cannot be issued if the amount of any transaction exceeds Rs.10 lakhs."

- (ii) The respondents have contended that pursuant to a resolution dated February 27, 2002 which provides the ability to delegate the powers to operate the bank account, cheques above the value of Rs.10 lakhs are not required to be jointly signed by Rama and Ramesh/Rajesh. It is submitted that (a) it is not possible for a resolution to override the consent terms, and (b) the resolution only provides that the powers to "operate" the bank accounts, which is with any two out of the three directors as per the consent terms may be delegated - it does not provide that the authority to sign cheques above the value of Rs.10 lakhs may be delegated. On the contrary, the resolution specifically provides that "if the amount of any transaction exceeds Rs.10 lakhs the same shall be undertaken through a cheque jointly signed by Mr. Rama Narang and Mr. Ramesh Narang (or Mr. Rajesh Narang)".

18. According to the petitioner, the following instances would reveal how the Court's orders have been flouted by the respondents in a clandestine manner both in letter and spirit.

- (i) "*Purchase of cars*: The respondents purchased a Ford Mondeo, Honda Accord and Toyota Corolla, and proposed to purchase a BMW, all transactions above the value of Rs.10 lakhs, admittedly without the consent of Rama Narang, and as the record evidences,

A by issuing multiple cheques just under the value of Rs.10 lakhs. The respondents have, in their reply argued that the general Clause 3(h) which provides that "all three directors will enjoy equal remuneration and perquisites" gives them the right to give themselves remuneration and perquisites of over 10 lakhs without the consent of the other directors. It is submitted that not only B is this against the principles of contractual interpretation that the specific overrides the general but it also defeats the very purpose of Clause 3(f). Clause 3(f) is intended to control precisely this kind of mischief where persons with signing authority siphon off funds by purporting to give themselves valuable perks or C cash. Further, there is a mechanism provided under company law pursuant to which directors' remuneration and perquisites are fixed and Clause 3(h) is only intended to provide that when such remuneration and perquisites are fixed in accordance with that mechanism, the same shall be fixed for all the three. Finally, D it is submitted that the cars used by Rama Narang are more than 10-15 years old and therefore, the very basis of their contention that the cars were purchased to obtain the same perks as Rama Narang is incorrect.

E (ii) *Fixed Deposits* : The respondents have undertaken to invest Rs.39 crores of the company by means of a fixed deposit and in order to circumvent the requirement of having to obtain the consent of Rama Narang for such transaction, have split the fixed deposits into multiple deposits of Rs.9 lakhs each. The respondents, in their reply, have admitted to not having obtained Rama Narang's consent (which is also evident from the objection raised by Rama Narang in his letter dated 20.10.2003, 11.5.2005 and 10.07.2006; and sought to justify placing the fixed deposits without Rama Narang's consent on the basis that "Rama Narang wishes to cause a deadlock in the operations of the company by ensuring that the application of company funds are always subject to his consent which he can withhold, thereby pressurizing the respondents". It is submitted that the consent terms explicitly contemplate consent of Rama and Ramesh/Rajesh for application of the company's funds and such a statement by the respondents is evidence of their disregard for the letter and spirit of the consent terms.

H (iii) *Foreign Travel*: Two different cheques totaling approximately

Rs.12.5 lakhs were issued within one day of each other towards the cost of foreign exchange for the same "business trip", for which no consent of Rama Narang was taken. Similarly, foreign trips were undertaken by the respondents and family without approval of the petitioner also in violation of Clause 3(d), and payments of air tickets and other expenses were made by issuing multiple cheques. The respondents have argued that the said transaction is justified on the basis that Rama Narang has on numerous occasions undertaken foreign visits at the company expense with no objection being raised by the other directors. It is pertinent to note that for each such foreign visit, Rama Narang has sought and obtained the approval of Ramesh/Rajesh in accordance with the consent terms. Notwithstanding whether Rama took, or did not take approval from Ramesh/Rajesh, it is no justification in law for Ramesh/Rajesh to violate the consent terms."

19. According to the petitioner, there has been clear violation of Clause 3(c) also. Respondent nos. 1 and 2 and particularly respondent no.2 have taken absolute control of the company NIHL to the total exclusion of the petitioner. All the management decisions and other decisions affecting the company are being taken by Rajesh Narang, the whole-time Director under the guise of the day to day operation/management in clear violation of Clause 3(c) of the consent terms which states that Rama and Ramesh shall continue to be in "joint management and control".

20. According to the petitioner, he was not being consulted. The petitioner has been deliberately kept out of the management and control of the company. The tender items running into 40 crores per year are entered into without his consent.

21. The petitioner has given following instances of violation of Clause 3(c):-

- a. "*Executing High-value Contracts* : The respondents have entered into several high value contracts admittedly without the consent of Rama Narang. Instances include with Pacific Enterprises of a value of Rs.27.85 lakhs, for replacement of Hi-lifts of a value of Rs.24 lakhs each, for purchase of DG set of a value of Rs.70 lakhs, and for a chiller plant for Bombay flight kitchen. In each of these cases, the record also evidences that multiple cheques

- A under the value of Rs.10 lakhs were issued. While the respondents have contended that there was no splitting of cheques, and that these contracts were essential to the business, it is submitted that the fact relevant for the purposes of contempt is that a transaction outside the ordinary course of business was entered into and that a transaction over the value of Rs.10 lakhs was undertaken without a cheque jointly signed by Rama and Ramesh/Rajesh, thereby violating Clause 3 (c), 3(d) and 3(f) and the spirit of the consent order. It is further submitted that the contention that the contracts were essential to the business of the Company, and therefore, consent of Rama Narang was not required, is not tenable - on the contrary, contracts that are essential to the business of the Company come within the purview of "decisions concerning or affecting the said company" that explicitly require the approval of Rama Narang pursuant to Clause 3(d) of the consent terms.
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- C
- D b.  *Holding-back information* sought for by Rama Narang. It is submitted that refusal and blocking of information about the company is the most grave and blatant violation of the clause mandating "joint management" and is clear evidence of his complete exclusion from management of the company.
- E c.  *Settlement with Trade Union* was unilaterally undertaken by the respondents and the petitioner was only asked to sign enhance salary cheques which was refused by the petitioner as he was not consulted as being a management decision.
- F d.  *Other instances of violation* include the Leave and License Agreement entered into by Rajesh Narang and opening of Croissant outlets without the consent of the petitioner, Rama Narang. The respondents have sought to justify these actions on the basis of "day to day" operations. It is submitted that there are total of only 11 Croissant outlets that have been opened over the course of several years and the opening of a new outlet, and the taking of high-value lease therefrom, is a strategic and business decision and not something undertaken on a "day-to-day" basis."
- G

22. The petitioner also asserted that there is a clear violation of Clause (d) of the Court's order which reads as under:

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"The respondents have unilaterally, without the consent of Rama Narang, taken several decisions affecting the Company including unilateral appointment and promotion of personnel such as Vice-Presidents (Accounts) etc.; issuance of tenders and executing contracts outside the ordinary course of business, in clear violation of Clause 3(d) of the consent terms which requires that "no decision shall be adopted concerning or affecting the Company and its subsidiaries shall be made without the consent of Rama and Ramesh/Rajesh in writing". The respondents contend that decisions relating to appointment only relate to "prevailing decisions". It is submitted that the first part of Clause 3(d) which states that "no decision shall be adopted concerning or affecting the company" includes decisions adopted to appoint or promote personnel to the extent such appointment or promotion affects or concerns the Company. However, since the first part of Clause 3(d) relates only to decisions that are to be adopted, it did not cover the continuation of personnel already appointed and the latter part of clause 3(d) which states that "it is further clarified and agreed that save and except as provided therein no prevailing decisions including appointment of Directors/Executives or any other persons shall continue unless Rama and Ramesh/Rajesh consent to the same in writing" was to expand the operation of part 1 of Clause 3(d) also to prevailing decisions of appointment.

It is clear from the above that the Consent Order is continuously being wilfully violated by the respondents even after the filing of the contempt petition before this Court in 2003, after the clarification order issued by this Court dated 25.1.2005 and even after the order and judgment of this Court dated 14.4.2006."

23. In the written submissions filed by the respondents, considerable emphasis has been given on the background and conduct of the petitioner and the order dated 15.2.1995 in Notice of Motion No. 2646 of 1994 in Suit No.3535 of 1994 of Justice D. R. Dhanuka of the Bombay High Court and the report of the court mediator Justice V.A. Mohta. It is also incorporated in the written submissions that the petitioner is deriving all possible advantage from an alleged technical breach of the consent terms which too is based on interpretation of the consent terms contrary to the mutual understanding of the parties.

24. The respondents submitted that it was never the intention of the parties that (the company with an annual turnover of over Rs.120 crores), the

A petitioner should enjoy a veto power over the company transactions whose value exceeds Rs.10 lakhs, allowing the petitioner to create a deadlock.

25. The respondents also submitted that the petitioner at no point of time made any complaint regarding the conduct of the respondents either by sending a letter of protest or otherwise. It is also submitted that the petitioner B had not objected to purchase of cars, purchase of hi-lifts etc. In the contempt application, the petitioner has highlighted clear breach of Clauses 3(d), 3(c), 3(e) and 3(f). The petitioner submitted that there has been gross violation of Clause 3(f) of the agreement. Clause 3(f) reads as under:

C “If the amount of any 'transaction' (read 'payment/disbursement') exceeds Rs.10 (ten) lakhs the same shall be undertaken through a cheque signed jointly by Rama and Ramesh/Rajesh.”

26. The respondents also submitted that immediately after the consent terms, the circular resolution dated 27.2.2002 was entered into between the D parties. The said resolution reads as under:

E “RESOLVED THAT any two out of three Directors of the Company namely Mr. Rama Narang, Mr. Ramesh Narang and Mr. Rajesh Narang, be and are hereby jointly authorized to open and close bank accounts and place fixed deposits with such banks and on such terms and conditions as they deem fit and proper and to operate and issue instructions to the said bankers as well as the existing bankers of the company.”

27. The respondents submitted that clause 3(f) was meant purely for operation of bank accounts and as an instruction to the company bankers is F borne out by the fact that through the aforesaid circular resolution dated 27.2.2002, Rama Narang and Ramesh Narang inter alia resolved that if the amount of any transaction exceeds Rs.10 lakhs, the same shall be undertaken through cheques signed jointly by Rama Narang and Ramesh Narang (or G Rajesh Narang) and further resolved that certified copies of the said circular resolution be forwarded to the company's bankers as required. If the portion of clause 3(f) at the issue was not intended as an instruction to the bankers, why would the circular resolution dated 27.2.2002 be passed? Again, there was no explanation from Rama Narang. The respondents had tried to give explanation for splitting the cheques where amount exceeded Rs.10 lakhs. The respondents gave explanation that a Ford Mondeo car and a Honda H Accord car were purchased by the company in June 2002 by the respondents

by splitting the value of each car when exceeded Rs.10 lakhs so as to bypass the signature of the petitioner. The explanation given by the respondents that for the payment terms for purchase of the said vehicles, 50% payment was to be made at the time of placing of the order and 50% at the time of delivery of the vehicles. A

28. The respondents have also given explanation for purchase of BMW car valued at Rs.30 lakhs for the use of Ramesh Narang as Joint Director on 16.8.2002. In September 2002, Ramesh Narang suggested the purchase by the company of an identical BMW car for the use of the petitioner. However, the petitioner made it clear that he preferred a Mercedes and accordingly steps were taken to cancel the second BMW car for the petitioner. But the respondents failed to give any explanation how the payment for the first BMW car for the use of Ramesh Narang was made. B C

29. Similarly, the respondents gave explanation for purchase of Toyota Corolla car by the company for the use of respondent no.2 by allegedly splitting the transaction whose value exceeded Rs.10 lacs by issuing two cheques. The explanation is that the respondents gave Rs.4 lakhs as advance and the balance amount was paid against delivery. D

30. The respondents gave explanation regarding their visit abroad that initially they planned to visit U.K., Denmark and Northwest and later on Switzerland and Sweden were also added. Therefore, two cheques were given. The respondents also gave an explanation that the fixed deposits holdings of the company totaling approximately Rs.39 crores have been split by the respondents into smaller deposits of Rs.9 lakhs each. The explanation given was that circular resolution dated 27.2.2002 authorized any two Directors of the company to jointly open and close bank accounts, for the respondents failed to give any explanation why the fixed deposits of Rs.39 crores were split into smaller deposits of Rs.9 lacs each. The explanation given was that high-lift vehicles were purchased separately and then assembled rather than purchasing a fully assembled vehicle. The respondents have similarly given explanation for other transactions where the cheques amount had been split by the respondents. Similar explanation has been given regarding tender of high-lifts totaling Rs.40 lakhs without consulting the petitioner and regarding unilateral promotion of persons. E F G

31. The explanations given by the respondents for splitting up the cheques are wholly untenable. In case of genuine difficulty or confusion, the respondents ought to have approached the Court for directions. H

A 32. The object of entering into consent terms and jointly filing the undertaking was to run the family business harmoniously with the active participation of all as a family business but the respondents had taken absolute control of the company NIHL to the total exclusion of the petitioner. All the management decisions and other decisions affecting the company were taken by the respondent Rajesh Narang, the whole time Director under the guise of the day to day operation/management in clear violation of clause 3(c) of the consent terms which clearly state that Rama Narang and Ramesh Narang shall continue to be in joint management and control. The parties gave undertaking to the court regarding the consent terms.

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C 33. The respondents have erroneously submitted that joint management and control of the company means giving veto power to the petitioner. According to the terms of undertaking the petitioner and the respondents were under an obligation to run the company harmoniously with the active participation of all as a family business but unfortunately the respondents have taken absolute control to the total exclusion of the petitioner. This is contrary to the terms of the undertaking given to this Court.

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E 34. In this case the respondents have deliberately violated the orders of this Court dated 12.12.2001 and 8.1.2002 based on the undertaking given by the parties to this Court. We have been called upon to decide whether deliberate breach of undertaking can attract Section 2(b) of the Contempt of Courts Act. Before we examine the issue further, it is imperative to clearly comprehend the expression 'undertaking' with the help of settled law which has been crystallized in a large number of cases of this Court.

F 35. Black's Law Dictionary, 5th Edition defines 'undertaking' in the following words:

G "A Promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the mutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the Court or the opposite party. A promise or security in any form."

H 36. Osborn's Concise Law Dictionary, 10th Edition defines 'undertaking' in the following words:

“A promise, especially a promise in the course of legal proceedings by a party or his counsel which may be enforced by attachment or otherwise in the same manner as an injunction.” A

37. In *M. v. Home Office*, [1992] 4 All ER 97 at p.132, the expression 'undertaking' has been dealt with in the following manner:

“If a party, or solicitors or counsel on his behalf, so act as to convey to the court the firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood.” B

38. In *re Hudson* [1966] Ch. 209 the English Court observed as under: C

“An undertaking to the court confers no personal right or remedy on any other party. The only sanctions for breach are imprisonment for contempt, sequestration or a fine.”

39. Similarly, in *Shoreham-by-Sea U.D.C. v. Dolphin Canadian Proteins*, (1972) 71 L.G.R. 261, the Court observed as under: D

“Failure to comply with an undertaking to abate a nuisance may be visited with a substantial fine.”

40. The Division Bench of the Bombay High Court in *Bajranglal Gangadhar Khemka & Anr. v. Kapurchand Ltd.*, reported in AIR (1950) Bombay 336 had an occasion to deal with similar facts. Chagla, C.J., speaking for the Court, observed as under: E

“We are not prepared to accept a position which seems to us contrary to the long practice that has been established in this Court, and, apparently, also in England. There is no reason why even in a consent decree a party may not give an undertaking to the Court. Although the Court may be bound to record a compromise, still, when the Court passes a decree, it puts its imprimatur upon those terms and makes the terms a rule of the Court; and it would be open to the Court, before it did so, to accept an undertaking given by a party to the Court. Therefore, there is nothing contrary to any provision of the law whereby an undertaking cannot be given by a party to the Court in the consent decree, which undertaking can be enforced by proper committal proceedings.” F  
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A 41. In *Noorali Babul Thanewala v. K.M.M. Shelly & Ors.*, reported in (1990) 1 SCC 259, a tenant committed breach of undertaking given by him to the Supreme Court to deliver vacant possession of certain premises. The Supreme Court held the tenant guilty of contempt. Hon'ble V. Ramaswami, J., delivering the judgment observed:

B “When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a civil proceedings is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt.”

D 42. In *Mohd. Aslam v. Union of India*, reported in [1994] 6 SCC 442, this Court dealt with the contempt proceedings raising the issues as to the amenability of the State and of its Ministers for failure of obedience to the judicial pronouncements. In this case, the Chief Minister of Uttar Pradesh had made a statement before National Integration Council that the Government of Uttar Pradesh will hold itself fully responsible for the protection of the Ram Janma Bhumi-Babri Masjid structures. Upon this statement of the Chief Minister, this Court had passed an order. However, in the contempt proceedings it was alleged that the orders passed on the basis of the statements made have been deliberately and wilfully flouted and disobeyed by the State of Uttar Pradesh. While dealing with the expression "undertaking", this Court observed as under:

E “The Chief Minister having given a solemn assurance to the National Integration Council and permitted the terms of that assurance to be incorporated as his own undertaking to this court and allowed an order to be passed in those terms cannot absolve himself of the responsibility unless he placed before the Court sufficient material which would justify that he had taken all reasonable steps and

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precautions to prevent the occurrence.”

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43. In *Rita Markandey v. Surjit Singh Arora*, reported in [1996] 6 SCC 14, this Court came to the conclusion that even if the parties have not filed an undertaking before the Court, but if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the court ultimately finds that the party never intended to act on such representation or such representation was false, even then the party would be guilty of committing contempt of court. The Court observed as under:

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“Law is well settled that if any party gives an undertaking to the Court to vacate the premises from which he is liable to be evicted under the orders of the Court and there is a clear and deliberate breach thereof it amounts to civil contempt but since, in the present case, the respondent did not file any undertaking as envisaged in the order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false.”

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44. In *KCG Verghese v. KT Rajendran*, reported in [2003] 2 SCC 492, this Court dealt with the "undertaking" in contempt proceedings arising out of eviction proceedings. This Court held that when at the time of giving the undertaking, the tenant did not indicate that he was in possession of a part of the premises and not the other portion nor was such a stand taken in any of the pleadings before the High Court or rent controller, the order of eviction passed against the tenant is equally binding upon the occupant of the other portion.

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45. This Court again had occasion to deal with a case in *Bank of Baroda v. Sadruddin Hasan Daya and Anr.*, reported in [2004] 1 SCC 360. In that case, the Court clearly observed as under:

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“The wilful breach of an undertaking given to a court amounts to "civil contempt" within the meaning of Section 2(b) of the Contempt of Courts Act. The respondents having committed breach of the

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A undertaking given to the Supreme Court in the consent terms they are clearly liable for having committed contempt of court.”

46. The respondents placed reliance on *Babu Ram Gupta v. Sudhir Bhasin & Anr.*, reported in [1980] 3 SCC 47. In this case admittedly no application, affidavit or any undertaking were given by the appellant.

B Therefore, this case is of no assistance to the respondents. In this case, the Court observed that "even the consent order does not incorporate expressly or clearly that any such undertaking had been given either by the appellant or by his lawyer before the Court that he would handover possession of the property to the receiver. In the absence of any express undertaking given by the appellant or any undertaking incorporated in the order impugned, it will be difficult to hold that the appellant wilfully disobeyed or committed breach of such an undertaking".

D 47. The Court even in this case observed that "in fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemnor by making a false representation to the court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution".

E 48. The critical analysis of the decided cases of this Court clearly leads to the conclusion that wilful breach of an undertaking given to the Court amounts to contempt of court under Section 2(b) of the Act.

F 49. The orders of this Court dated 12th December, 2001 and 8th January, 2002 are based on undertaking given by the petitioner and the respondents to this Court. Apart from several other conditions it is explicitly incorporated in the undertaking given to this Court that the petitioner and the respondents shall jointly operate the bank accounts (if the amount of any transaction exceeded Rs.10 lakhs) in order to ensure that both the petitioner and the respondents have the joint control on the affairs of the company. In the undertaking given by the petitioner and the respondents, it is clearly mentioned that if the amount of any transaction exceeds Rs.10 lakhs the same shall be undertaken through a cheque signed jointly by Rama Narang and Ramesh/Rajesh Narang.

H 50. Clause 3(f) of the undertaking given to the Court on 8.1.2002 reads as under:

“(f) All bank accounts of the Company shall continue to be operated jointly by any two out of the three Directors namely Rama, Ramesh and Rajesh and/or as may hereafter be agreed to between Rama and Ramesh (or Rajesh). If the amount of any transaction exceeds Rs. 10 (ten) lacs the same shall be undertaken through a cheque signed jointly by Rama and Ramesh/Rajesh.”

51. The parties gave undertaking with the object of having joint management and control of the company. The object of joint management and control can be accomplished if every major decisions of the company are taken jointly with the express consent of the petitioner and the respondents. The petitioner in the application for contempt has enlisted series of instances where in order to keep the petitioner out of the management and control of the company where the amount of transaction exceeded Rs.10 lakhs, the payment was made by splitting the amount in two or more cheques. This subterfuge was adopted to keep the petitioner out of the control of the management and company. The respondents were, in fact successful in keeping the petitioner totally out of the management and control of the company. This situation carried on for years together. This was absolutely contrary to the letter and spirit of the undertaking given by the parties to this Court. The orders dated 12th December, 2001 and 8th January, 2002 are based on the undertaking given by the parties. The respondents blatantly and deliberately violated the orders of this Court based on the undertaking given to the Court. Consequently, the respondents are guilty of deliberately flouting and disregarding the undertaking given to this Court.

52. In order to maintain sanctity of the orders of the highest court of the country, it has become imperative that those who are guilty of deliberately disregarding the orders of the Court in a clandestine manner should be appropriately punished. The Majesty of the Court and the Rule of Law can never be maintained unless this Court ensures meticulous compliance of its orders.

53. We have carefully perused the undertaking given by the parties to the Court and orders of this Court dated 12th December, 2001 and 8th January, 2002 based on the undertaking of the parties given to this Court and other relevant facts and circumstances. According to our considered view the respondents are clearly guilty of committing contempt of court by deliberate and wilful disobedience of the undertaking given by them to this Court. In this view of the matter, in order to maintain sanctity of the orders of this

A Court, the respondents must receive appropriate punishment for deliberately flouting the orders of this Court.

B 54. Consequently, we convict the respondents under Section 2 (b) of the Contempt of Courts Act and sentence them to a simple imprisonment for a period of two months. We further impose a fine of Rs.2000/- to be deposited by each of them within one week failing which they shall further undergo imprisonment for one month.

C 55. We are also not oblivious of the fact that immediately sending the respondents to jail would create total chaos in the company which would also vitally affect the interests of large number of people including the employees of the company. Therefore, while keeping in view the peculiar facts and circumstances of this case, the sentence of imprisonment imposed on the respondents is kept in abeyance. We further direct the parties to meticulously comply with the undertakings given by them to this Court. In case, similar violation of the undertakings given to this Court is brought to the notice of D the Court, in that event, the respondents shall be sent to jail forthwith to serve out the sentence imposed in this case.

56. This order is passed in view of the special facts and circumstances of this case. The Contempt Application is accordingly disposed of.

E V.S.S.

Contempt Application disposed of.