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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 18th November, 2020

Decided on: 24th November, 2020

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CS(COMM) 286/2020

DHOLI SPINTEX PVT. LTD.

..... Plaintiff

Represented by: Mr.Nakul Dewan and Mr.Devang Nanavati, Sr. Advocates with Mr.Rishi Agrawala, Mr.Karan Luthra, Ms.Prachiti Shah, Ms.Aarushi Tiku, Ms.Anushka Shah, Mr.Sambit Nanda and Mr.Dev Shah, Advocates.

versus

LOUIS DREYFUS COMPANY INDIA PVT. LTD..... Defendant

Represented by: Mr.Jayant K. Mehta, Mr.Rakesh K. Ojha, Mr.Sanjeev Sarawast, Mr.Achintya Dwivedi, Mr.Surya Kapoor, Mr.Pranay Chitale, Mr.Ankush Chattopadhyay and Mr.Arjun Parashar, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

I.A. 8685/2020 (under Order XXXIX Rule 1 and 2 CPC-By plaintiff)

1. In the above noted suit arguments were concluded by the parties on 24th September, 2020 when the suit was reserved for orders, whereafter the plaintiff-Dholi Spintex Pvt. Ltd. (in short 'Dholi Spintex') filed this application seeking interim injunction inter-alia on the ground that the defendant-Louis Dreyfus Company India Pvt. Ltd (in short 'Louis Dreyfus') in utter disregard to the undertakings before this Court has been clandestinely participating in the proceedings before the ICA despite having made a statement before this Court that it is not required any further to participate in the same and has virtually rendered the suit infructuous.

Therefore, Dholi Spintex prays for a temporary injunction restraining the defendant-Louis Dreyfus from proceeding with and/or continuing with and/or participating in any manner whatsoever in the proceedings referred to as ICA Reference No.LOU005.0004/AO1 2020 24 initiated before the International Cotton Association (in short 'ICA') including making any payments pursuant to the directions of the ICA in its email dated 24th September, 2020.

2. When this application came up before this Court on 28th September, 2020 this Court besides issuing notice in the application, passed the following order issuing show cause notice to the Managing Director of the defendant as to why proceedings under the Contempt of Court Act be not initiated against him:

“I.A. 8685/2020 (under Order XXXIX Rule 1 and 2 CPC-By plaintiff)

1. *Arguments in CS (Comm.) 286/2020 along with I.A. 6298/2020 (under Order XXXIX Rule 1 and 2 CPC), I.A. 6299/2020 (under Order II Rule 2 CPC) and I.A. 6701/2020 (under Section 45 of the Arbitration and Conciliation Act-by defendant) had been concluded on 24th September, 2020 when judgment was reserved and the parties were given time to file their comprehensive written submissions by 28th September, 2020. However in the wake of a communication dated 24th September, 2020 received from ICA, the present application has been filed by the plaintiff.*

2. *According to learned counsel for the plaintiff in the technical arbitration sought by the defendant, despite learned counsel for the defendant having made the statement before this Court on 31st July, 2020 to the effect that not only the defendant but the plaintiff has already subjected itself to the jurisdiction of the Arbitral Tribunal and that the defendant is required to take no further action, the defendant did not communicate this order of 31st July, 2020 wherein statement on behalf of the*

defendant was noted by this Court that the defendant has to take no further action in the arbitration proceedings, till 9th September, 2020. Further, besides not informing the Arbitral Tribunal about the statement made on behalf of the defendant before this Court, it appears that the defendant sent an email dated 4th August, 2020 wherein detailed replies have been given to the queries raised by the Tribunal.

3. When this issue of participation of the defendant in arbitration proceedings earlier cropped up before this Court, learned counsel for the defendant stated that the ICA was only informed about the documents where they existed, constraining this Court to pass order dated 1st September, 2020 wherein in paras-3 to 6 this Court noted as under:

“3. Learned Senior Counsel for the plaintiff at the start of hearing pointed out that an email has been received by the plaintiff informing that there has been some participation on behalf of the defendant before the ICA. The said email has also been forwarded to this Court. The message from the Tribunal notes that a document was being looked into by the ICA Tribunal for which the defendant through a call informed the ICA Secretariat where the document was located.

4. Vide order dated 31st July, 2020 when summons in the suit and notice in the application were issued, this Court had noted the statement of learned counsel for the defendant that the defendant has already subjected itself to the Arbitral Tribunal and has to take no further action therein, in view whereof this Court did not deem it fit to pass any interim order, however the defendant was bound by its statement.

5. Learned counsel for the defendant states that defendant would abide by his statement and would issue a clarification to the Tribunal that pending decision in the applications before this Court, the defendant is not participating in the proceedings before the ICA.

6. Learned counsel for the defendant further states that the defendant has abided by the statement made through learned counsel on 31st July, 2020 and would continue to

abide by the same.”

4. Despite learned counsel for the defendant having made the statement that the defendant would issue a clarification to the Tribunal, no such clarification was issued rather only a copy of the order dated 31st July, 2020 was communicated to the Arbitral Tribunal on 9th September, 2020. Thus, on 9th September, 2020 for the first time, the order dated 31st July, 2020 of this Court and the statement made on behalf of the defendant was communicated to the Arbitral Tribunal much after the defendant vide its email dated 4th August, 2020 had effectively participated in the proceedings before the Tribunal. On 18th September, 2020 when the clarification, as directed vide order dated 1st September, 2020, was not issued, this Court noted the statement of learned counsel for the defendant in para-3 of the order dated 18th September, 2020 which reads as under:

“3. Learned counsel for the defendant states that the defendant had written a letter intimating their statement made before this Court on 31st July, 2020. Learned counsel for the defendant further states that the defendant will also communicate to the Tribunal the order of this Court dated 1st September, 2020.”

5. It is only thereafter on 24th September, 2020 that the defendant sent the copy of the order dated 1st September, 2020 of this Court having effectively participated in the technical arbitration which was based on documents only.

6. The plaintiff has been constrained to file the present application in view of the communication now received from the ICA dated 24th September, 2020 which indicates that the Tribunal is publishing an Award on 2nd October, 2020 however, the Award will not be released until payment of an additional deposit of £4277.50p received from either of the parties.

7. Issue show cause notice to the Managing Director of the defendant as to why proceedings under the Contempt of Courts Act be not initiated against him.

8. Learned counsel for the defendant accepts notice.

9. Reply affidavit to the show cause notice be filed within one week.

10. *Rejoinder affidavit be filed within one week thereafter.*
11. *List this application on 15th October, 2020.*
12. *In the meantime, defendant would take no further action in the proceedings in the arbitration being ICA Reference LOU005.0004/A01 2020 24 initiated by the defendant.*
13. *Order be uploaded on the website of this Court.”*

3. Before proceeding to deal with the prayers in the present application as also the show cause notice issued to the Managing Director of the defendant, a brief background of the case is that pursuant to a contract dated 30th May, 2019 which provided in Clause-6 of the agreement that in case of any dispute arising out of this contract, the same will be resolved through arbitration in accordance with the ICA Rules and ICA procedure, venue of the arbitration being London, Louis Dreyfus invoked the technical arbitration before the ICA on 13th April, 2020 and appointed its nominee arbitrator. On 29th April, 2020 ICA wrote to Dholi Spintex informing the request for arbitration and asking Dholi Spintex to nominate its arbitrator in 14 days. Since Dholi Spintex failed to nominate its arbitrator, on 2nd June, 2020 ICA appointed the nominee arbitrator for Dholi Spintex being Mr. David Adcroft. On 11th June, 2020 Louis Dreyfus filed its claim before the ICA which was responded by Dholi Spintex on 6th July, 2020 requesting for 30 days for necessary action citing COVID-19 situation. On 16th July, 2020, Louis Dreyfus submitted its reply to Dholi Spintex's jurisdictional objections to the Arbitral Tribunal and on 20th July, 2020 ICA wrote to Dholi Spintex to reply to/provide additional comments received from Louis Dreyfus. Dholi Spintex did not reply to the Tribunal and instituted the suit being CS (Comm.) 286/2020 before this Court seeking a decree of declaration declaring Clause-6 of the Contract dated 30th May, 2019

providing for reference of disputes to ICA being invalid, null, void and unenforceable and consequently the letter dated 29th April, 2020 issued by ICA and the ICA reference as null and void besides a decree of permanent injunction restraining the defendant-Louis Dreyfus from proceeding with the arbitration. The issues raised in the suit are not relevant for the decision of this application as judgment on the same is being separately pronounced.

4. When the present suit came up before this Court for the first time on 31st July, 2020, this Court noted the contentions of the parties as also the statement of learned counsel for Louis Dreyfus who stated that not only Louis Dreyfus but Dholi Spintex has already subjected itself to the jurisdiction of arbitration under ICA Byelaws and Regulations and to the Arbitral Tribunal and that Louis Dreyfus is not required to take any further action thereon. In view of the statement made by the learned counsel for Louis Dreyfus that Louis Dreyfus has to take no further action before the Arbitral Tribunal, this Court did not deem it fit to pass any further ad-interim order at that stage in I.A. 6298/2020 (under Order XXXIX Rule 1 and 2 CPC) and heard arguments on the suit advanced by the learned counsel for the parties on number of dates.

5. On 1st September, 2020, learned counsel for Dholi Spintex at the start of the hearing pointed out that an email had been received by Dholi Spintex informing that there has been some participation on behalf of Louis Dreyfus before the ICA. This Court noted that on 31st July, 2020 statement of learned counsel for the defendant as noted above was recorded and the defendant was bound by the said statement. Learned counsel for Louis Dreyfus also stated that Louis Dreyfus would be bound by its statement and would issue a clarification to the Tribunal that pending decision in the applications before

this Court, Louis Dreyfus is not participating in the proceedings before the ICA. Learned counsel for Louis Dreyfus further stated that the defendant has abided by the statement made through learned counsel on 31st July, 2020 and would continue to abide by the same. As noted above after the judgment was reserved on 24th September, 2020, by the present application Dholi Spintex pointed out the facts as noted above resulting in this Court passing the order dated 28th September, 2020 when the show cause notice as to why proceedings under the Contempt of Courts Act be not initiated against the Managing Director of Louis Dreyfus was issued.

6. According to learned counsel for Dholi Spintex, Louis Dreyfus has transgressed the undertaking before this Court on three counts; firstly that an email was received on 28th July, 2020 from ICA to which despite having undertaken before this Court on 31st July, 2020, Louis Dreyfus sent a detailed email to the ICA and as the arbitration was a technical arbitration, based on documents only, sending the documents in reply constituted an action taken before the ICA. The second transgression by Louis Dreyfus was that despite having undertaken before this Court, this undertaking was never communicated to the ICA. Thirdly, despite this Court specifically noting the undertaking on behalf of the defendant as stated by learned counsel on 1st September, 2020 that Louis Dreyfus would abide by its statement and would issue a clarification to the Tribunal that pending decision in the applications before this Court, Louis Dreyfus is not participating in the proceedings before the ICA, Louis Dreyfus did not bring this clarification to the notice of the Arbitral Tribunal and communicated the same only on 24th September, 2020 having effectively participated in the proceedings. Further not only has repeatedly violated the undertakings

made before this Court, Mr.Madhu Sharma on behalf of Louis Dreyfus has filed two contradictory and false affidavits before this Court.

7. The fact that Louis Dreyfus effectively participated is evident from the email of the defendant dated 4th August, 2020 sent by Mr.Pravin Yadav on behalf of Louis Dreyfus to ICA which reads as under:

RESPONSE TO ICA EMAIL OF 28-07-2020

1. *The Tribunal asks for additional documentation about the negotiations that led to the conclusion of this contract.*

This transaction was originally between LDCI and a Chiripal Group company namely Nandan Terry Pvt. Ltd. Later, Nandan Terry requested LDCI to have this transaction with its group company in Dubai namely CPF Packaging, FZE. Subsequently, Chiripal Group requested to have the transaction with its another group company Dholi Spintex Pvt. Ltd. on High Seas Sale basis. Finally, the Sale Contract was signed between LDCI and Dholi Spintex Pvt. Ltd.

Sr. No.	Email Date	Particulars
1.	05-04-2019 from LDCI to Chiripal Group	Sending Sale Confirmation in favour of Nandan Terry Ltd. (a group company of Chiripal Group) for 600 MT of imported American raw cotton
2.	08-04-2019 from Nandan Terry Ltd. to LDCI	Email from Mr. Vijay Thadani of Chiripal Group stating that 600 MT of the cotton referred to in Sale Confirmation will be procured by its group company CPF Packaging, FZE
3.	11-04-2019 from LDCI to Nandan Terry	Sale Confirmation in favour of CPF Packaging, FZE.
4.	Till 01-05-2019	No prepayment received from

		CPF Packaging, FZE.
5.	30-05-2019 from Nandan Terry to LDCI	Asking LDCI to change the contract from the name of CPF Packaging, FZE to its another group company Dholi Spintex.
6.	31-05-2019 from LDCI to Dholi Spintex	Sending Sale Confirmation in favour of Dholi Spintex Pvt. Ltd.
7.	03-06-2020 from LDCI to Dholi Spintex	Sending Sale Contract in favour of Dholi Spintex.

2. Did there exist a previous business relationship between the Louis Dreyfus Group of Companies and Dholi Spintex or any other member of their group? If yes, please send documentation accordingly.

Yes, there existed previous business relationship between the LDCI and other group companies of Dholi Spintex namely Nandan Denim Ltd. and Nandan Terry Private Limited. List of few such contracts is set out below:

Sr. No.	Contract No.	Date	Name of the Company
1.	SO/GJ/2013-14/162	03-04-2014	Nandan Denim Ltd.
2.	SO/GJ/2013-14/163	03-04-2014	Nandan Denim Ltd.
3.	SO/IMP/2018-19/022	28-03-2019	Nandan Denim Ltd.
4.	SO/IMP/2018-19/023	28-03-2019	Nandan Denim Ltd.
5.	SO/IMP/2018-19/024	28-03-2019	Nandan Denim Ltd.
6.	SO/IMP/2018-19/028	03-04-2019	Nandan Denim Ltd.
7.	SO/IMP/2018-19/029	03-04-2019	Nandan Terry Pvt. Ltd.

3. *Is there any additional correspondence in this matter between the parties from End August 2019 to 16th December 2019*

<i>Sr. No.</i>	<i>Email Date</i>	<i>Particulars</i>
1.	10-10-2019 from LDCI to Dholi Spintex	Intimating that there was no update on the L/C from Dholi Spintex. Carry charges, Warehousing Charges and other charges were mounting.
2.	22-10-2019 from LDCI to Dholi Spintex	Intimating Dholi Spintex that L/C from Dholi Spintex had not been received by LDCI yet. LDCI also stated that if it will not be received from Dholi soon, LDCI will be constrained to call Dholi Spintex in default of sale contract.
3.	26-11-2019 from LDCI to Dholi Spintex	Reminding Dholi Spintex for payment.
4.	11-12-2019 from LDCI to Dholi Spintex	Stating that LDC was waiting for payment plan from Dholi Spintex for the 600 MT.

4. *What was the intention of the parties when agreeing clause 7. of the Other Terms & Conditions, “Only courts in New Delhi will have jurisdiction.”?*
The intention of the parties while agreeing to Clause 7 of the Other Terms and Conditions was that Clause 7 was for the purposes of giving jurisdiction to the court of New Delhi for the disputes which were beyond the scope of arbitration like criminal action for fraud etc. or any other dispute that may not be legally arbitrable. This Clause 7 also covers execution or enforcement proceedings that may be initiated in India after award by ICA.
5. *As part of the payment Clause (a) 10% of the contract value had to be paid by Recipient to Supplier within 3*

days from contract date on the mean contract quantity, as initial Margin money towards the performance of this contract. Please confirm whether this Deposit was paid.

Yes, this margin deposit amounting to INR 7,500,000/- was paid by Dholi Spintex to LDCI which was received by LDCI on 04-06-2019. Receipt of this Deposit was acknowledged by LDCI by way of its email dated 06-06-2019.

6. Any correspondence from the Respondent asking the Supplier for the goods to be custom cleared and to be stored into a warehouse?

Dholi Spintex verbally informed to LDCI that they preferred opening a 90 days L/C post clearance and transportation to mill and requested that additional charges for the same be conveyed by LDCI to them. Accordingly, said charges including the clearing and transportation charges were spelt out in the email dated 10-09-2019 sent by LDCI to Dholi Spintex (attached to the Claim filed by LDCI against Dholi Spintex at page nos. 22 – 23) whereby revised price of cotton of INR 46,898/- per candy was conveyed to Dholi Spintex. By way of the said email, following table giving head wise details of additional charges was provided to Dholi Spintex.

Sr. No.	Particulars	Price (per candy)
1.	Contract Price	INR 44,150/-
2.	Customs Clearance, Liner Payment and transportation to warehouse charges	INR 1,200/-
3.	Transportation from Kandla to Ahmedabad	INR 575/-
4.	L/C confirmation and Discounting for 90 days,	INR 1043/-
	TOTAL	INR 46,968/-

Thus, upon arrival of cotton when Dholi Spintex did not custom clear it, LDCI custom cleared it and stored in the warehouse.”

“From: Pravin Yadav <PRAVIN.YADAV@ldc.com>

Sent: 04 August 2020 13:48

To: Lynne Thomas <lynne@ica-ltd.org>; Vinay Thadani
<vinay.thadani@chiripalgroup.com>; Del-CottonTraders
<Del-CottonTraders@ldc.com>;
deepak.vyas@chiripalgroup.com
Cc: John Gibson <john@ica-ltd.org>

Subject: RE: A01 2020 24 Louis Dreyfus Company India PVT
Limited (Formerly Known as Louis Dreyfus Commodities India
Pvt) Ltd v Dholi Spintex Pvt. Ltd

*Please also find additional emails against Point no.5 and
documents against Point no.2, we have been doing business
with Chiripal Group."*

8. From the email sent to ICA Tribunal on 4th August, 2020 it is evident that defendant did not abide by its undertaking made before this Court on the 31st July, 2020 and fully participated in the proceedings before the ICA thereby wilfully disobeying the undertaking. Further, Louis Dreyfus also did not abide by the undertaking and direction dated 1st September, 2020 as it did not issue the clarification to the ICA that it will not participate in the proceedings. The undertakings as given before this Court and directed to be communicated was communicated only on 24th September, 2020 by which time proceedings before Arbitral Tribunal had already concluded and it was informed to the parties to furnish the balance fee and that the award will be available on 2nd October, 2020.

9. From a reading of the orders as noted above and the email dated 4th August, 2020, it is evident that the defendant has wilfully not complied the undertaking before this Court on 31st July, 2020 as also on 1st September, 2020 and hence Mr.Madhu Sharma is guilty of contempt of Court.

10. To worsen the things further Louis Dreyfus's Director/CFO, that is, Mr.Madhu Sharma has filed two contradictory affidavits before this Court.

In its reply affidavit dated 5th August, 2020 to I.A.6298/2020 under Order XXXIX Rule 1 and 2 CPC, Mr.Madhu Sharma has stated that pursuant to the email of the ICA dated 27th August, 2020 no reply was sent which is infact false as a detailed email was sent to ICA on 4th August, 2020 providing all necessary assistance to the Tribunal relating to documents. However, response of Mr. Madhu Sharma to the show cause notice as to why action under Contempt of Courts Act be not taken notes the facts differently giving reasons how reply to ICA email dated 28th July, 2020 was sent on 4th August, 2020:

19. *I say and submit that on 28 July 2020, at 06:48 hours, the Plaintiff Company issued communication to ICA informing them that the Plaintiff Company had filed a suit against the Defendant Company before the High Court of Delhi on 27 July 2020 interalia challenging the initiation of ICA Arbitration as null and void. The Plaintiff Company also requested the ICA not to proceed with the arbitration reference any further at this stage and to await the order and outcome of the proceedings initiated by the Plaintiff Company before the High Court of Delhi.*
20. *I say and submit that on 28 July 2020, at 17:05 hours, the Tribunal through the ICA sought certain further information from the Parties in relation to the matter in arbitration.*
21. *I say and submit that the email dated 28 July 2020 of the ICA was received and forwarded by Mr. Pravin Yadav, Senior Manager, Logistics and Execution, to other employees of the Defendant Company including myself at 05:08 PM on the same date. I say that the email dated 28 July 2020 of the ICA thus, came to my notice.*
22. *I say that on 29 July 2020, Mr. Sumeet Mittal, the General Manager -Cotton platform of the Defendant Company prepared the draft reply to the email dated 28 July 2020 of the ICA and forwarded the same for filing*

by Mr. Pravin Yadav. I further say that on the same day i.e. 29 July 2020 at 10:59 PM, Mr. Pravesh Kukreti, the Senior Executive, Execution (International markets) of the Defendant Company forwarded the documents for filing of the response to the email dated 29 July 2020 of the ICA. Accordingly, the response to ICA's query was already prepared and completed by the Defendant Company by 29 July 2020 and the same had to be merely filed by Mr. Pravin Yadav with the ICA. I say that it was my understanding that the said response would be filed by Mr. Pravin Yadav with the ICA on 30 July 2020.

23. I say and submit that thereafter the present suit was listed before this Hon'ble Court on the first occasion on 31 July 2020. Since the Defendant Company had already filed the claim and supporting documents in the ICA Arbitration and also completed the response to the ICA communication of 28 July 2020, the counsels of the Defendant Company were instructed to inform this Hon'ble Court accordingly.

24. I say and submit that based upon the instructions of the Defendant Company, our counsel made the following submissions, voluntarily, which was recorded in the order dated 31 July 2020 passed by this Hon'ble Court.

Paragraphs 8:

" .. . the Defendant is not required to take any further action thereon. "

Paragraph 11:

" .. . the Defendant has already subjected itself to the Arbitral Tribunal and has to take no further action thereon, ... "

25. I say and submit that in the meanwhile Mr. Yadav was unable to file the reply to the ICA communication dated 28 July 2020 on account of the following difficulties:

(a) The office of the Defendant Company was not functional on a regular basis on account of closure and disruption caused by the COVID-19 pandemic.

(b) The intervening period of 01 and 02 August 2020,

being Saturday and Sunday, the office of the Defendant Company was completely closed.

(c) On 03 August 2020 due to Raksha Bandhan festival, the office of the Defendant Company was completely closed.

26. *I say and submit that on 04 August 2020, when office was resumed, Mr. Pravin Yadav issued the response to the ICA communication of 28 July 2020 which had remained waiting with him. I further say that on account of the above difficulties and inadvertence, Mr. Pravin Yadav was not informed or aware of the statement made by the counsel of the Defendant Company before this Hon'ble Court on 31 July 2020. I say that the communication dated 04 August 2020 issued by Mr. Pravin Yadav to the ICA was therefore an inadvertent error resulting from some communication gap imposed due to the prevailing irregular and disrupted functioning of the office and operations of the Defendant Company. I say that the said communication was not issued with the view to contravene the statement of the counsel before this Hon'ble Court or overreach the powers of this Hon'ble Court."*

11. Thus the case of Mr. Madhu Sharma in his affidavit to the show cause notice is that the e-mail dated 4th August, 2020 is bona-fide, inadvertent and non-deliberate. It is claimed that on 10th June 2020 Louis Dreyfus had initiated the arbitration and filed its claim with supporting documentary evidence much prior to the institution of the suit. The arbitration between Louis Dreyfus and Dholi Spintex was a document only arbitration to be decided in a time bound manner. Dholi Spintex filed the present suit on 27th July, 2020 and informed the ICA of the filing of the suit on 28th July, 2020 at 06:48 hours and requested the Arbitral Tribunal not to proceed with the arbitration until the outcome of the present suit. On 28th July, 2020 at 17:05 hours the Tribunal through ICA sought certain information from the parties.

The e-mail was received by Mr. Pravin Yadav, Senior Manager, Logistics and Execution of Louis Dreyfus who forwarded it to the other officers of Louis Dreyfus at 17:08 hours on the same date. On 29th July, 2020 Mr. Sumeet Mittal the General Manager – Cotton Platform of Louis Dreyfus prepared a draft reply to the said e-mail and forwarded it to Mr. Pravin Yadav. On the same day at 22.59 hours Mr. Pravesh Kukreti, the Senior Executive, Execution (International Market) forwarded the documents required for the reply to Mr. Pravin Yadav. Therefore the reply to ICA's query was already prepared and completed by Louis Dreyfus on 29th July, 2020 and the same was to be merely filed by Mr. Pravin Yadav with the ICA.

12. It is in the light of these facts when the suit came up for hearing for the first time on 31st July, 2020, the learned counsel for Louis Dreyfus made a statement that since both the parties had submitted to the jurisdiction of the Arbitral Tribunal constituted under the ICA bye-laws, the defendant is not required to take any further steps thereon. However, Mr. Yadav did not file the reply to the ICA mail dated 28th July, 2020 on the 29th July, 2020 or even 30th July, 2020 or 31st July, 2020.

13. Case of Louis Dreyfus is that its offices were not functional due to ongoing COVID pandemic and due to 1st August and 2nd August, 2020 being Saturday/Sunday and 3rd August, 2020 being *Rakshabandhan* the offices of Louis Dreyfus was closed and when the defendant office reopened on 4th August, 2020, Mr. Pravin Yadav unaware of the statement made in the Court on 31st July, 2020 issued the reply to the ICA which was already prepared on 29th July, 2020 i.e. prior to the statement being made on 31st July, 2020. It is thus claimed that the sending of the e-mail dated 4th August, 2020 was bona-

fide and inadvertent as a result of the aforesaid communication gap due to disrupted functioning of the office. To overcome his earlier affidavit dated 5th August, 2020 it is claimed that in the earlier affidavit statement of fact that no reply to the e-mail dated 28th July, 2020 by the ICA was sent, was due to the fact that Madhu Sharma did not know about the e-mail being sent on 4th August, 2020. This is also claimed to be under a bona-fide impression that the e-mail to the ICA would have been sent on or before 30th July, 2020.

14. This explanation of Madhu Sharma is contrary to the affidavit of Mr. Madhu Sharma dated 6th August, 2020 wherein in Para 63 it is stated:

“63. That ICA again wrote a communication to the Parties on 28.07.2020 asking for further clarification. The Defendant is yet to file its reply to the same communication of the Tribunal.”

15. Louis Dreyfus being a company, different officers of the company cannot take different stands and come up with the plea now being taken up that Mr. Madhu Sharma did not know what the officers/managers were doing. Further the explanation of Louis Dreyfus now rendered that the statement made by the counsel on 31st July, 2020 was on the ground that Dholi Spintex and Louis Dreyfus had submitted to the jurisdiction of Arbitral Tribunal constituted under the ICA bye-laws is also clearly an afterthought. Not only Louis Dreyfus has disobeyed the undertaking before this Court but from the subsequent orders it would also be evident that Louis Dreyfus continued with its action before the Tribunal. Further vide order dated 1st September, 2020 as noted above, this Court had noted the statement of learned counsel for Louis Dreyfus that Louis Dreyfus would abide by the statement made by the learned counsel and would issue the clarification to the Tribunal that pending decision in the application before this Court, Louis

Dreyfus would not be participating in the proceedings before the ICA. However, despite the undertaking made before this Court to issue a clarification before the ICA, no e-mail was sent by Louis Dreyfus till 24th September, 2020.

16. In the present application, this Court is not required to look into whether the suit of the plaintiff has been rendered infructuous and so no order granting injunction is being passed, but the observations made hereinabove are in reference to the show cause notice issued to Mr. Madhu Sharma by this Court on 28th September, 2020 as to why proceedings under the Contempt of Court Act be not initiated against him. As noted above, it is evident that not only has there been a wilful disobedience of the undertakings before the Court, Mr. Madhu Sharma has filed contrary affidavits in this Court taking different pleas. This Court holds that Mr. Madhu Sharma is guilty of violating the undertaking before the Court. However, this Court is not proceeding further to initiate a criminal contempt proceedings against Mr. Madhu Sharma for filing contrary affidavit before this Court.

17. Section 12 of the Contempt of Courts Act, 1971 provides for the following punishments:

"12. Punishment for contempt of court.—

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: —(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide."

18. Considering the repeated violations of undertakings committed by Mr.Madhu Sharma, this Court deems it fit to impose a fine of ₹2000/- on Mr.Madhu Sharma as provided under Section 12(1) of the Contempt of Courts Act,1971.

19. Application is accordingly disposed of.

(MUKTA GUPTA)
JUDGE

NOVEMBER 24, 2020

‘vn/ga’

नित्यमेव जयते