

**HIGH COURT OF GUJARAT (D.B.)**

**SALORA FINANCE LIMITED**

*Versus*

**MCM HOTELS PRIVATE LIMITED**

**Date of Decision:** 05 December 1997

**Citation:** 1997 LawSuit(Guj) 593

**Hon'ble Judges:** [J N Bhatt](#), [M H Kadri](#)

**Eq. Citations:** 1999 2 GLR 1028

**Case Type:** Misc Civil Application; Company Petition

**Case No:** 6 of 1997; 119 of 1994

**Subject:** Civil, Contempt of Court

**Editor's Note:**

**Contempt of Courts Act, 1971 - Secs 2(b), 12 - Undertaking given to the court not beyond in spite of several adjournments, such conduct amounts to civil contempt and punishment of imprisonment in civil prison for one month awarded - Sentence suspended conditionally -**

**Contempt of Courts Act, 1971 - Secs 2(b), 12(1), - When contemner tenders apology, it should be bon fide & not an afterthought - Apology not accepted considering facts of the case -**

**Contempt of Courts Act, 1971 - Secs 2(b), 12, - Contempt jurisdiction - Purpose - Stated - Petition allowed**

**Acts Referred:**

[Contempt of Courts Act, 1971 Sec 12\(1\)](#), [Sec 2\(b\)](#), [Sec 12](#)

**Final Decision:** Petition allowed

**Advocates:** [Nandish Chudgar](#), [Nanavati Associates](#), [P B Majmudar](#)

**[Cases Referred in \(+\): 11](#)**

**J. N. BHATT, J.**

**[1]** Rule. Heard the learned Advocates for both parties and with the consent of learned Advocates matter is heard and finally disposed of today.

**[2]** Should we accept the plea of mercy in accepting an unqualified apology ? Would it not be a travesty of majesty of justice ? Could the contemner be let off or left scot-free in case of gross contemptuous conduct and virulent vilification in the shape of breaches of five undertakings and 15 orders of the Court ? Such a question comes in focus in view of repeated requests to accept an unqualified apology for contempt.

**[3]** Before we examine the mercy jurisdiction and jurisprudential justness on this count, let it be manifestly pronounced at the inception that it is not that, the Court is empowered with one of the weapons in its armory to punish for contempt only is for preserving, protecting and piloting the dignity, decency and decorum of a Court, as it would appear from the plain expression of Contempt of Court, but also to protect, promote and preserve the public interest and faith in the basic feature of administration of law and its method and mode provided for vindicating the constitutional goals and its active manifestation against misuse, abuse and disintegrating or disreputing the process of law.

**[4]** It is unquestionable that this Court has, under the Contempt of Court Act, 1971, as well as inherent and plenary constitutional powers enshrined in Art. 215 of the Constitution of India, being a case of civil contempt of this Court. It cannot be questioned that every High Court is a Court of Record and has powers including the power to punish for contempt of Court. Thus, in this context the merits need to be examined by us. Should the justice be tampered with mercy ? Should the contemner be allowed unpunished accepting the unqualified apology which is claimed to be genuine and bona fide, contending that though disobedience and defaults are committed, they were not intentional, wilful in the light of financial crunch.

Factual Matrix :

**[5]** A broad spectrum of material facts leading to the rise of the present contempt proceedings may shortly be narrated so as to appreciate the merits of the contempt application and the challenge against it. The chief source is the consent order and the direction of the Court in Company Petition No. 119 of 1994 initiated for the winding-up of the respondent No. 1 - Company in which respondent No. 2 happens to be a Managing Director. Following chronological catalogue and events are unquestionable :

Date :

1994 Company Petition No. 119 of 1994 filed by petitioner-Salora

Finance against respondents - MCM Hotels, for winding-up.

30-11-1995 Consent terms signed by both the parties including Managing Director of MCM Hotels - Mr. Vijay Modi. Undertaking filed by Mr. Vijay Modi, Managing Director of MCM Hotels, undertaking was filed to the effect that the entire dues shall be paid in the stipulated time as per the consent terms.

4-12-1995 Company petition was disposed of in terms of the consent terms and the undertaking dated 30-11-1995 by the Company Court.

Post-dated cheques as per the details below were handed over to petitioner - Salora Finance :

Cheques No.	Date	Amount	020283	31-12-1995	Rs. 2 lacs	020284	31-1-1996	Rs. 3 lacs
020285	28-2-1996	Rs. 3 lacs	020286	31-3-1996	Rs. 3 lacs	020287	30-4-1996	Rs. 3 lacs
020288	31-5-1996	Rs. 3 lacs	020289	30-6-1996	Rs. 3 lacs			

All the said cheques were dishonoured on their due dates which aspect has not been disputed. 29-3-1996 Payment of Rs. 1.5 lacs made by MCM Hotels by way of Demand

Draft. 2-4-1996 Payment of Rs. 1.5 lacs made by way of Demand Draft. 15-4-1996 Contempt application was filed by Salora Finance. 22-4-1996 Notice issued by this Court returnable on 29-4-1997. 29-4-1997 Learned Advocate Mr. P. B. Majmudar appeared on behalf of the respondents.

The matter was adjourned to 2-5-1997. 2-5-1997 Respondent did not remain present, matter was adjourned to 5-5-1997, Respondent was directed to hand over a cheque of Rs. 25,000/- and Demand Draft of Rs. 25,000/- along with concrete proposal on 5-5-1997. 5-5-1997 Instead of making payment of Rs. 50,000/- by way of cheque of Rs. 25,000/- and DD of Rs. 25,000/- only a DD of Rs. 25,000/- was handed over by the respondent. 9-5-1997 Cheque of Rs. 25,000/- dated 15-5-1997 was handed over by respondent to the applicant, though the said cheque was in fact to be given on 5-5-1997.

Note : The said cheque dated 15-5-1997 was dishonoured on presentation on due date.

Matter adjourned beyond summer vacation to 30-7-1997.

30-7-1997 Respondent did not remain present, matter was adjourned to

14-8-1997, it was further ordered that Rs. 25,000/- by DD be paid to the applicant on 4-8-1997 and Rs. 1 lac by DD to be paid to the applicant on 14-8-1997. Copy of the order dated 30-7-1997 is annexed hereto and marked as Annexure II.

14-8-1997 Vijay Modi remained present, however, on that day the Bench was not available. DD of Rs. 75,000/- was handed over by the respondent instead of DD for Rs. 1 lac.

19-8-1997 Matter was adjourned to 27-8-1997 with a direction to Mr. Vijay Modi to remain personally present along with entire remaining balance amount as per original undertaking-Annexure II.

27-8-1997 Respondent remained present. Mr. Modi had filed an undertaking to pay an amount of Rs. 1 lac on or before 15-9-1997 by DD. Remaining total amount was assured to be paid on or before 30-11-1997. Learned Advocate Mr. Majmudar on the said date had further stated that a cheque of Rs. 25,000/- was given to the applicant at its Baroda office on 27-8-1997 (said cheque had also subsequently been dishonoured) is tendered and marked Annexure IV.)

First undertaking in contempt proceedings had not been complied with and it is an admitted aspect.

16-9-1997 Again respondent did not remain present.

A sum of Rs. 1 lac which was to be paid on or before 15-9-1997 has not been paid. Undertaking not complied with. It was also pointed out to the Court that cheque of Rs. 25,000/- was dishonoured. Matter adjourned to 17-9-1997.

17-9-1997 Undertaking filed by Mr. M. C. Shah, P.R.O. of respondent-

company that DD of Rs. 2 lac shall be paid. Undertaking was not complied with and it is also not disputed.

18-9-1997 Once again respondent did not remain present. Order dated

18-9-1997 annexed hereto and marked Annexure VI.

19-9-1997 Surprisingly again non-appeared. Neither Mr. Vijay Modi nor

P.R.O., Mr. M. C. Shah remained present and detailed order was passed by this Court directing Mr. Modi to remain personally present on 23-9-1997. Order dated 19-9-1997-Annexure VII.

23-9-1997 Despite the earlier order Mr. Vijay Modi, Managing Director of the respondent-company did not remain present, order dated 23-9-1997 is Annexure VIII. Matter adjourned to 25-9-1997.

25-9-1997 Assurance made by Mr. Modi that on 29-9-1997 a draft of Rs. 1 lac shall be brought and given in the Court and Mr. Modi was directed to remain personally present on 29-9-1997. Second undertaking filed by Mr. Modi. Matter admitted. Service was waived by Mr. Majmudar - Annexure IX.

6-10-1997 Though Mr. Modi was directed to remain present in Court, he did

not remain present. Matter was adjourned to 13-10-1997 with a specific direction to respondent No. 2 Mr. Modi to remain present on 13-10-1997 without fail. Order at Annexure X.

13-10-1997 Respondent No. 2 did not remain present and the draft of Rs. 1 lac as per the undertaking dated 25-9-1997 also not made available. Matter came to be adjourned to 20-10-1997 taking once again liberal approach.

20-10-1997 Respondent No. 2 remained present but DD of Rs. 1 lac as per earlier undertaking was given had not paid. Matter got adjourned to 23-10-1997. Third undertaking filed by Mr. Modi that he shall remain present on 23-10-1997 along with DD of Rs. 1 lac. It was also stated that the said amount of Rs. 1 lac in fact to be paid on 15-10-1997. Order dated 20-10-1997 Annexure XI. Upon such assurance and undertaking, one more chance was given.

23-10-1997 Cheque of Rs. 50,000/- only was given and rest of the amount Rs. 50,000/- was paid in Court and was handed over. Fourth undertaking filed that the cheque shall be honoured as and when presented. Again, lenient view was taken and the matter was adjourned to 17-11-1997.

17-11-1997 Surprisingly or rather shockingly the Cheque of Rs. 50,000/- was dishonoured. Matter got adjourned to 24-11-1997 with a direction to Mr. Modi to remain present personally - Annexure XII so as to enable contemner to purge once again.

24-11-1997 Fifth undertaking was filed by Mr. Modi that Rs. 1,50,000/- which was to be deposited by 15-11-1997 will now be deposited on or before 30-11-1997. Further undertaking was given to deposit the remaining full amount on or before 21-11-1997. (Order at Annexure XIII) and upon such assurance one more chance was given and matter was adjourned to 1-12-1997 with a direction to Mr. Modi to remain personally present without fail.

1-12-1997 Mr. Modi unfortunately did not remain present nor any payment was made in utter disregard to the orders of this Court and in clear breach of the earlier undertaking filed by Mr. Modi. Court was constrained to issue non-bailable warrant

and matter was painfully adjourned to 4-12-1997.

5. Aforesaid spectrum of material facts and chronological events would undoubtedly radiate an imprint of deliberate disobedience, virulent violation and blatant breach of several undertakings and the orders of the Company Court and subsequent five undertakings tendered before this Court and recorded by us and also directions contained in our 15 aforesaid orders on divergent dates and on different occasions. Tendering of undertakings and assurances to the Court for compliance and performance and purging contempt has rightly not been questioned.

**[6]** Under the circumstances, the controversy has shrunk down to a very narrow compass and it is under the facts and circumstances the financial involvement or monetary disability pleaded on behalf of the respondents could be said to be an action or cause absolving the contemnors from non-compliance or non-observance of undertakings and the directions of the Court. It was submitted that there was no wilful disobedience. Obedience or disobedience is not in controversy. Dis-obedience and non-performance or not abiding by the assurances contained in the undertakings and directions issued by this Court narrated hereinabove has not been questioned. Contention advanced is that there was no wilful disobedience or intentional non-performance of the obligations followed by repeated and persistent requests for mercy and accepting the apology tendered orally at the time of marathon submissions on different dates and also at the fag-end of the conclusion of arguments.

**[7]** There is a purpose and a policy behind empowering the Court with the power of committal and consequent punishment for contempt Court as Court being the custodian of administration of justice and guardian of Rule of Law. Not only that we would venture to say that apart from statutory and constitutional empowerment of power for contempt, it is mandated and power is invested to the Court and Court has also a duty to see that the personality or an authority howsoever high or mighty one may be, as nobody is above the law, and also to see that the dignity, decency and decorum of the Court as well as the concept of Rule of Law which is one of the basic features of the Constitution are maintained, advanced and zealously preserved and guarded. What we try to highlight<sup>1</sup> is that it is not a question of confirmation (sic.) of power on the Court, but there is entrustment of duty also upon the Court to exercise and use the weapon of contempt for vindicating the right of public so as to uphold the Rule of law. It is, therefore, rightly said that the contempt of Court power is emanated out of public interest, public duty, public good and also law and order in the society.

**[8]** We would like to put it on record that there is a growing tendency wherein instead of attempting to perform the obligations and the directions of the Court, to take orders of the Court lightly and flout them and then at the fag-end tendering unqualified

apology with a persistent request for mercy. If we were to accept the apology first orally and later followed in writing, we deem it expedient to observe that we shall be failing in our duty in absolving the contemner from the obligations and the sacrosanct liability for observance of orders and directions given by the Court. We are also further painfully but dutifully compelled to observe that in the light of aforesaid factual scenario which is traced from the records of two proceedings of the Court, we will be helpless if someone is tempted to accuse us of taking lenient and liberal approach in case where civil contempt appeared on the face of it admittedly in not observing and performing the obligations and duties arising from undertakings filed by the respondent No. 2, Managing Director of respondent No. 1 on divergent dates which were accepted by the Company Court and on the basis of undertakings and consent terms the learned Company Court Judge permitted the applicant-petitioner Company to withdraw the proceedings on different 15 occasions we have shown our liberal and lenient approach in granting and giving opportunities for not less than 15 times so as to enable the respondents to abide by obligations and duties arising out of undertaking dated 30-11-1995 tendered by the respondent No. 2 - Vijay Modi, M. D. of the respondent No. 1 - Hotel Management Company to the effect that the entire dues shall be paid in a stipulated time as per the consent terms which could be very easily visualised from the proceedings transpired before this Court in company matter.

**[9]** The aforesaid facts, unequivocally, would radiate one aspect that because of an undertaking tendered by the respondent No. 2 - Vijay Modi for and on behalf of respondent No. 1-Company and for himself which permitted the applicant-company to agree and waive sum of Rs. 78,163/- from the total outstanding dues in the event of Rs. 20,81,613/- would be paid by the respondent. It was specifically undertaken by a sworn undertaking by no less than responsible corporate executive - Mr. Vijay Modi of a Hotel Management and which along with consent terms prompted the Court to accept it on record with a hope and solemn trust that same shall be observed to and followed which could be seen from the order passed by the learned Company Judge. The hope and trust with which the learned Company Judge passed the order on 4-12-1995 in Company Petition No. 119 of 1994 has been betrayed. It is admitted fact that there was no compliance of any one of the instalments of total amount of Rs. 20 lac and odd. That too by post-dated cheques drawn on the South Indian Bank Ltd., Sayajiganj, Baroda.

**[10]** It is under these circumstances the petitioner was directed to move this Court for contempt and this application under Secs. 10 and 12 of the Contempt of Court. Since it was stated that there was bona fide case of monetary disability on account of prevalent financial crunch we went on accepting and reposing the trust in the respondents in general and respondent No. 2 in particular so as to enable them to comply with and

abide by the obligations, and at last, our hope and solemn trust also came to be betrayed which can be safely and radiantly visualised from the aforesaid admitted facts. On 15 occasions, with hope against hope, we have granted one more opportunity to respondents for observance and fulfilment of solemn obligations in undertakings made before the Company Court as well as the directions contained in the order. With a view not to burden the judgment by quoting orders we do not deem it expedient to quote and cite the material portions out of the said orders. When the respondent No. 2 sought adjournments on the ground of making payment came to be settled despite 15 opportunities before the Court in this contempt proceedings right from the order dated 9-5-1997 down upto the last opportunity in the order, dated 1-12-1997 wherein, we were constrained to observe that lenient and liberal approach exhibited and adopted by this Court during the course of proceedings of contempt is not only misused, but in reality flagrantly abused. It is under these circumstances we were even constrained to issue non-bailable warrant for the presence of respondent No. 2 who remained absent despite his unequivocal undertakings and assurances before this Court to afford to him one more opportunity to make his defence good and to decide question of examining contempt and resultant punishment.

**[11]** It will not be out of place to state that even after the arguments came to be concluded as a last resort affidavit of unconditional apology for non-fulfilling the undertaking and for failing to make payment of Rs. 1,50,000/- on or before 30-11-1997 and again that too on the same ground of financial inability came to be filed. We cannot allow a situation to emerge wherein one would be tempted to feel that the Court can be taken for a ride or that the process of Court can be misused and abused and that too by a known three-Star MCM Hotels Pvt. Ltd., and a corporate executive of no less than the rank of M. D. in whom unnecessary trust and hope was reposed. It cannot be contended even for a moment that there was a financial crisis and that the respondents were put in a helpless situation so as to warrant and invoke mercy. It was rightly submitted before us that the persistent and repeated contention of financial disability of the company has to be accepted. Nothing is produced from the record of the company to substantiate this contention.

**[12]** Apart from that it is not the intentional non-compliance of orders in case of civil matters under Sec. 2(b) of the Act which needs to be proved. It is in this context, it will be relevant and material to have a close look into case law. The observations made in Para 53 of Volume 9 of Halsburys Laws of England, 4th Edition wherein it has been specifically observed that even the contempt may be committed in absence of wilful disobedience on the part of contemner 1971 (2) All ER 393. It is true that the committal ordinarily directed unless conduct involves manifest misfeasance to decide the misconduct. Could it be even for a moment conceived from the aforesaid admitted



factual aspects that the respondents who are running a three-Star Hotel did not know or even could not know the commitments and some even made before this Court on repeated days' not only for payment but even for presence. We were called upon to examine and appreciate the recovery of dues and that the commitment process cannot be used as a lever or handle for recovery, but repeated requests for fulfilling the obligations and observations of the directions of the Court.

**[13]** Not less than 15 times opportunities came to be granted leading to loss of our patience and lastly even today after having heard the respondent No. 2 there appears to be no change in the situation. Disability or inability to make payment pleaded as defence in contempt proceedings may not be examined mechanically in these proceedings for the simple reason that the question of non-fulfilment of decree or order of the Court is altogether different than failing to abide by solemn undertaking in a sworn affidavits before the Company Court and before this Court also could not be complied. It is in this context we are obliged to consider the relevant provisions of the Act.

**[14]** Section 2(a) defines the Contempt of Court which means civil contempt or criminal contempt, whereas we are concerned with civil contempt which is defined under Sec. 2(b). Civil contempt is wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. Let us not forget that we are dealing with a case of civil contempt of a Court. Criminal contempt has been defined under Sec. 2(c).

**[15]** Disobedience to a process amounts to civil contempt as discussed in para 52 (Page 33) of Halsburys Laws of England 4th Edition, Vol. 9, We may conclude without any hesitation that in a case civil contempt like one on hand can be enforced and cannot be impeded or obstructed on the alleged ground of monetary inability, more so, in a case where the Court is not apprised of financial status, balance-sheet, audit account and what not. Wilful disobedience or breach of undertaking given to a Court would constitute civil contempt. The word undertaking means to take upon oneself solemnly or absolutely to put wilfully under obligation to perform and make an attempt. In the present case no less than five and on 15 occasions in the course of contempt proceedings, assurance had been given before this Court. No question may be raised that it was not a wilful disobedience, but as observed by us hereinbefore intention is not always a necessary element to constitute civil contempt. Though we are fully convinced from the aforesaid admitted factual scenario that it was an attempt to salvage or run away from the punishment for breach of obligation emerging from the undertakings and arising out of orders of the Court.

**[16]** At this stage, we are also obliged to refer to legal propositions in this behalf. The following propositions of law emerge from the relevant provisions of contempt of Court and the case-law relied upon by the learned Advocates for the parties.

**[17]** Breach of undertaking by a party is like a breach of injunction of a Court or order or direction of a Court more so when it was tendered in a Company Petition for liquidation, wherein, undertaking and consent terms to Court was obliged to permit the parties to settle and to put an end to proceedings even by giving up no less amount than Rs. 7,891,613/-.

**[18]** The undertaking must be in favour of the Court. It is not in dispute that the first undertaking which culminated into the final order of the Company Petition on 4-12-1995. Consent terms and undertaking admittedly were filed on 30-11-1995. It is clearly observed by the learned Company Court Judge in the Company Court matter that the order came to be passed on account of undertaking which was accepted and acted upon.

**[19]** The non-observance of and disobedience of assurances made in the undertaking would constitute civil contempt as defined under Sec. 2(b). One undertaking was before the learned Company Judge followed by six undertakings.

**[20]** In the Halsbury's Laws of England, 4th Edition, Para 53, it has been observed a judgment or order against an individual or an undertaking given by an individual may, subject to certain exceptions, be enforced by an order of committal or by a writ of sequestration against individuals property. Committal or sequestration will not be ordered unless contempt involves a degree of fault or misconduct but the accidental and unintentional disobedience is not sufficient to justify sequestration or committal. Even in the absence of wilful disobedience on the part of contemner civil contempt is constituted. However, it is observed that in such a situation in the absence of wilful disobedience the Court must be satisfied about the fault or misconduct on the part of respondent No. 2 not only in not making payment as promised and assured but even in not recording his presence on different dates. It may be noted that there is no dispute about the breach of undertaking which was accepted by the Court and acted upon by the party will constitute civil contempt. The Honble Apex Court in the case of Noorali Babul Thanewala v. K.M.M. Shetty, AIR 1990 SC 464 has laid down proposition that the breach of 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 person breaking that undertaking as would their disobedience to an order for injunction. Therefore, it is true to say that the consent

order coupled with the undertaking tendered before the Court accepted by the Court in a Company Petition is nothing but a breach constituting civil contempt under Sec. 2(b) and resultant punishment under Sec. 12 of the Act.

**[21]** It would, therefore, be appropriate to look into the provisions of Sec. 12 of the Act which provides for punishment for contempt of Court. Section 12(5) clearly provides that when the contempt of Court is committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the Court, by the detention in civil prison of such director, manager, secretary or other officer. Section 12(1) provides punishment for contempt of Court with simple imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 2,000/-, or with both.

**[22]** Reliance is placed on the explanation to Sec. 12(1) on behalf of contemners and in that it has been contended that the apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide. It is, therefore, submitted that an unqualified and unconditional apology tendered by the respondents ordinarily should be accepted. In this connection, it was further stated that in the facts and circumstances respondents could not abide by obligations on account of financial crunch, the apology tendered is required to be accepted. As it could be seen from the aforesaid explanation that an apology shall not be rejected merely on the ground that it is conditional if it is made with bona fide intention. It also becomes clear that finding contemner guilty of contempt of Court is a condition precedent for accepting the apology. Apology tendered must be genuine and bona fide and not an afterthought to avoid legal implications and consequences following the contempt. We hasten to add that the said apology is not found satisfactory to hold that it is genuine and bona fide. In fact, the apology must not be ineffective and remorse and contrition tendered at the earliest opportunity must be considered. But it should not be an attempt to catch a straw by a drowning man. We have carried an impression that unconditional apology is nothing but like polishing the brass when the whole ship is sinking. We have not been able to convince ourselves that it is a bona fide much less genuine. We have also heard the respondent No. 2 in person on the quantum of sentence though not necessarily mandated when lawyer is appearing for also an opportunity to exhibit remorse for reprehensible conduct. Unfortunately, we could not find upon hearing the respondent No. 2 that the apology tendered is genuine and bona fide and it also does not radiate an imprint of real remorse.

**[23]** Upon hearing the respondent No. 2 against quantum of sentence, it is clear that he is in charge of 3-Star Hotel, the photograph of the Hotel relied upon by him on a mere glance would run counter to the submission.

**[24]** In this connection, it would be appropriate to mention a decision of the Honble Apex Court in the case of J. Vasudevan v. T. R. Dhanjaya, JT 1995 (7) SC 484. Proviso to Sec. 12 of the Act empowers the Court for remission of the punishment on apology or on accepting the apology to stop the proceedings. As we have noticed hereinbefore apart from Sec. 12 empowering this Court, we have plenary contempt jurisdiction being a Court of Record as provided under Constitution. Be as it may, irrespective of constitutional mandate for the prescription of powers, Sec. 12 also makes it clear that apology can be accepted even if it is conditional in the circumstances provided which may be genuine and bona fide. Since we have found that this apology is neither genuine nor bona fide, we are satisfied that there was disobedience of obligations.

**[25]** The observations as we have referred earlier made by the Honble Apex Court in the aforesaid decision clearly go to show that in the realm of mercy jurisdiction while awarding sentence or punishment to a contemner the Court is obliged to do so. Apology can be accepted subject to the satisfaction of the Court being bona fide. It is not the factual position in the present case. Even the written apology does not strictly indicate time-bound assurance for payment. To illustrate, we may mention that it is stated that necessary steps will be taken for payment of dues, but how, by what mode nothing has been specifically stated. Therefore, we are fortified in holding that it is neither genuine nor bona fide. Therefore, there is no question of tampering with mercy in the present case as it would send wrong signals in society that party can take it lightly and show it seriously as and when called upon. The basic concept of Rule of Law would be affected in a case like one on hand where repeatedly and consecutively number of undertakings and directions of the Court are made and violated. As mandated in Sec. 12 the contemner can be punished for a maximum term of six months and/or punished with fine of Rs. 2,000/ -, or both.

**[26]** Reliance is placed on the following case law by and on behalf of respondents.

**[27]** In the case of Mohd. Iqbal Khanday v. Abdul Majid Rather, reported in 1994 (4) SCC 34 the principle laid down is that the apology can be accepted but in order to constitute a good ground for acceptance it must be genuine and bona fide which is lacking in the present case and therefore, said decision does not help, in anyway, to the respondents. It is not possible mathematically or geometrically to show whether there was bona fide or genuine apology or not but it is to be examined and analysed in the light of entire factual scenario. In the present case, we have found that there was no bona fide and genuine apology.

**[28]** Even the reliance on the decision of Honble Apex Court in the case of Dinabandhu Sahu v. The State of Orissa, AIR 1972 SC 180 does not help for the simple reason that it lays down that an apology which was tendered sincerely accompanied with a request to forgive deserves acceptance. In the present case as observed hereinbefore, we are not satisfied that apology is bona fide and genuine and therefore, said decision is also not applicable in the present case.

**[29]** The Honble Apex Court in the decision of J. Vasudevan (supra) clearly laid down that in order to invoke mercy jurisdiction and remission of sentence even if it is impressed on a contemner it must be shown to the satisfaction of the Court so that there was sincere and genuine apology. It is observed that it would be a death-knell to the rule of law and social justice would receive a fatal blow and if mercy is shown in such repeated contempt that the people would lose faith in the system of administration of justice and would desist from approaching the Court by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. In the present case the contemner No. 2 is a person in the rank of not less than a M.D. and there was an obligation to advance the cause of public interest which requires maintenance of rule of law failing which the contemnors are required to be punished.

**[30]** After having examined the ratio laid down in the case of Pushpaben v. Narandas, AIR 1979 SC 1536 relied upon by the respondents we have found that it is not applicable to the facts of the present case. In that case the sentence of imprisonment was not warranted. What should be the quantum and quality of punishment depends upon the facts and circumstances of each case. There cannot be a universal formula or rigid yardstick. If the contempt is committed the punishment must follow in the light of the gravity of contempt committed.

**[31]** In the case of Sadhvi Ritumbhara v. Digvijay Singh, reported in 1997 (3) SCC 662 the unconditional apology of a contemner was accepted, and in view of the facts and circumstances of the case proceedings against contemner could not be withdrawn as there was clear case for accepting the apology in the circumstances of the case. Said decision is also not applicable to the facts of the case as there are peculiar facts and circumstances as could be seen from the highlights of the case.

**[32]** In the case of Anjuman Isnai Ashria v. Shanti Sarup Ashria, in AIR 1982 SC 1461 it has been held by the Honble Apex Court that the defendant in suit for possession giving undertaking to Court that he will give possession of disputed property in agreed time, and in case of breach of undertaking, contempt is constituted. However,

at the hearing the contemner was leniently dealt with as he had agreed to part with the possession of disputed premises in agreed time. As we have discussed in the written apology no time-bound programme or any indication is made. Therefore, the ratio of said decision is not applicable to the present case.

**[33]** Reliance is also placed on the decision of this Court in the case of Ratilal Bijalbai Bharwad v. Manager, Alok Synthetics, 1995 (2) GLH (UJ) 14 the principles laid down about the exercise of discretionary contempt jurisdiction in Para 3 of the said judgment are not in controversy.

**[34]** Having regard to the aforesaid conspicuous facts and circumstances and relevant proposition of law, we have no hesitation in holding and finding the respondents guilty for contempt for breach of undertakings and directions stated hereinbefore. We, therefore, hold respondents guilty of civil contempt as defined under Sec. 2(b). The respondent No. 2 Managing Director, who has actively associated with all proceedings since inception of the Company Petition contempt of each undertaking and each direction constitute separate offence punishable under Sec. 12 of the Act, the contemptuous conduct must be punished not only for vindicating the decency and decorum and rule of law but also faith and confidence of people in the rule of law which is basic feature of the Constitution of India. We also feel guilty in having shown unduly leniency in the course of proceedings before us in giving 15 opportunities by passing different orders and resultant six undertakings. In this context we also mention the well-known saying that This world has suffered much pain and cruelty from doing what we believe to be right rather than from doing what we believe to be wrong."

We trusted and desired that there will be purging of contempt and to enable the respondents to obliterate the contemptuous conduct by complying with the first undertaking and direction of the Company Court recorded on 4-12-1995, undertaking dated 30-11-1995 and while deciding the quantum of sentence it would be also necessary to mention that pursuant to undertakings and assurances made by respondents before us in the proceedings were also not honoured. So it is not a case of mere breach of undertaking, but gross misuse, abuse of process of Court. It is, therefore, necessary to appropriately punish the respondents.

**[35]** Consequently, we hold both the respondents guilty of civil contempt and direct that the respondent No. 1 - 3 - Star Hotel, corporate personality shall pay fine of Rs. 2,000/- and in default thereof the same shall be recovered like land revenue and the respondent No. 2-MD - Vijay Modi of the respondent No. 1 - company to be detained in civil prison at Baroda for a period of one month and is further sentenced to pay fine of Rs. 2,000/- in default thereof to undergo further simple imprisonment for a period of

15 days. The respondent No. 2 - Contemner who is present in the Court is directed to be taken into custody forthwith.

**[36]** At this stage, upon a request of learned Advocate Mr. Majmudar on behalf of the contemner who is ready and willing to give undertaking to this Court in following terms, we defer the substantive sentence and imprisonment insofar as contemner No. 2 is concerned and therefore, defer the sentence on the following terms and conditions :- (i) The contemnners shall file undertaking today that pursuance to the last

assurance given to this Court amount of Rs. 1,50,000/- shall be paid by A/c. Payee DD in favour of applicant-company on or before 15-12-1997.

(ii) The contemnners shall give further undertaking that the entire amount with accrued interest as per consent terms shall be paid or deposited before this Court on or before 31-1-1998.

(iii) If the contemnners fail to make payment as stated above the aforesaid sentence and imprisonment shall be operative forthwith.

(iv) No application for extension of time shall be filed and the said terms shall be incorporated in the undertaking.

(v) The contemnners shall not leave India without prior approval/ permission of the Court until full payment is made or deposited before this Court. We therefore, direct the respondent No. 2 - MD-Vijay Modi to surrender his passport on or before 8-12-1997 before this Court with the Registry of this Court before 11-00 a.m. on 8-12-1997.

(vi) Breach of any of the aforesaid terms and conditions shall ential into forthwith enforcement of deferred sentence of imprisonment.

(vii) Obviously, it need not be clarified as suggested by Mr. Majmudar that in case of successful compliance of the aforesaid terms and conditions the order of sentence in respect of respondent No. 2 - Managing Director Mr. Modi, shall not survive.

**[37]** In view of the aforesaid observations, the terms and conditions and directions the contempt application stands disposed of and rule is made absolute to the aforesaid extent with costs of Rs. 10,000/- to be deposited in the State Legal Services Authority on or before 10-12-1997 as one of the aforesaid conditions.

Petition allowed.