

**IN THE HIGH COURT OF JUSTICE**  
**THE BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES**  
**COMMERCIAL COURT (QBD)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/02/2019

**Before :**

**MR JUSTICE ROBIN KNOWLES CBE**

**Between :**

**SUPER-MAX OFFSHORE HOLDINGS**

**Claimant**

**And**

**RAKESH MALHOTRA**

**Defendant and**  
**Additional**  
**Claimant**

**and**

**ACTIS CONSUMER GROOMING PRODUCTS LIMITED**

**Additional**  
**Defendant**

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**Camilla Bingham QC and Amy Rogers** (instructed by **Clifford Chance LLP**) for the **Claimant**  
**Philip Marshall QC** (instructed by **Keystone Law LLP**) for the **Defendant**

Hearing dates: 13 November 2018  
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**APPROVED JUDGMENT**

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version may be treated as authentic

MR JUSTICE ROBIN KNOWLES CBE

1. This is the decision of the Court on the question whether the Defendant (“Mr Malhotra”) is guilty of contempt of Court. The contempt alleged is breach of an injunction ordered by Popplewell J on 27 March 2018. The decision is made on the Claimant’s application dated (“the Application”).

2. On the hearing of the Application Mr Malhotra was not present. Abbreviating emerging details greatly, the situation was as follows. Mr Malhotra was overseas, and had received medical advice that he should not travel. The medical issue concerns one of his eyes. His Leading Counsel and Solicitors had instructions to proceed in his absence. They indicated that Mr Malhotra did not wish to give evidence (and in particular did not wish to put in evidence an affidavit that he had sworn and served). In the circumstances of the particular case the Court did proceed.
3. The Court however reserved its decision. This was in the hope that it would be possible for Mr Malhotra to travel at a later date on which the decision could be given with him present at the Court. Unfortunately the medical advice not to travel still stands. It is undesirable that the Court's decision wait longer, or indefinitely.
4. Much of the background to the commercial dispute that has given rise to this litigation appears sufficiently from a judgment of Popplewell J dated 13 December 2017 after an 8 day trial. For the purposes of the present decision of the Court it is not necessary to set out what is in that judgment. The Claimant and Mr Malhotra are in strong opposition to each other and see things very differently.
5. Following the trial the Claimant sought and obtained from Popplewell J orders including an injunction in these terms ("the Injunction"; the bold font is in the original):

**"Disparagement of Relevant Managers to Trade Contacts and Regulators**

9. [Mr Malhotra] **must not** communicate directly or indirectly with any Trade Contact or Regulator of the Group in terms that are disparaging of any of the Relevant Management or calculated or likely to undermine their authority in their respective positions, save as specifically permitted by paragraph 10 below:

- a. for so long as he is a Director of the Claimant or any Group Company; and
- b. thereafter, during the six-month period beginning upon the date when he ceases to be a Director of the Claimant or any Group Company, insofar as such communication makes use of Confidential Information.

10. [Mr Malhotra] shall be permitted to communicate with Trade Contacts and Regulators:

- a. with the prior written consent of the Chief Executive Officer of the Group;
- b. with the prior written consent of each member of the Group Advisory Board;
- c. with the prior written consent of each shareholder of the Claimant; or
- d. by Order of the Court."

6. The terms "Relevant Management" and "Trade Contact" were expressly defined as follows:

" 'Relevant Management' shall mean:

- i. Anindo Mukherji (Super-Max Group Chief Executive Officer);
  - ii. Ketan Desai (Super-Max Group Chief Financial Officer);
  - iii. Kenny Abraham (Super-Max Chief Executive Officer, India);
  - iv. R.Sreeram (Group Chief Supply Chain Officer); or
  - v. Any individuals appointed in those roles from time to time;
- each a 'Relevant Manager' and together 'Relevant Management' "

“ ‘Trade Contact’ shall mean any supplier, distributor, customer, trade union representing employees, financier, or accounting or financial advisor of the Claimant or any Group Company.’ ”.

7. Mr Malhotra did not attend and was not represented at the hearing before Popplewell J when the Injunction was made. As permitted by the Order containing the Injunction, it was served by email to a personal email address rather than personally. Mr Malhotra’s Leading Counsel submits that “there was no response to these emails and no evidence that they were ever actually received or read before the Letter was sent.” Mr Malhotra has not responded to the allegation that he is in contempt of the Court’s order by asking the Court to receive evidence from him that he did not receive the Order containing the Injunction. That is his entitlement. There is however no reason to conclude that the Order was not received by email. The Court is quite sure that the Order was received.
8. On or about 29 June 2018 Mr Malhotra wrote a letter (“the Letter”) to Punjab National Bank in these terms (the bold font is in the original; for ease of reference I have inserted paragraph numbers in square brackets):

“To  
Mr L.D. Sikri  
Asst General Manager  
Punjab National Bank

...  
Mumbai ...

From:  
1. Supermax Mauritius  
2. [Mr Malhotra]

Dear Sirs

**Sub: False and misleading representation by SPCPL to the Consortium Bankers with malafide intentions and ulterior motives**

[1] As you are aware, **Supermax Mauritius** is the **owner** of **60% shares** of the **Supermax Group of Companies** through the device of Supermax Offshore Holding (SMOH) and Tigaksha Metallics Private Limited (TMPL).

[2] **Actis** LLP had through Actis Consumer Grooming Products Limited (ACGPL) had come in as an **investor**, but had as a condition for its investment required the allotment of both equity in its favour and control of the group. Accordingly, the investment agreement which primarily came to be recorded in a document dated 4<sup>th</sup> November 2010 termed a “subscription and shareholders deed (SSD) provided for not only the representation of ACGPL in all Group companies and in the Advisory Board of the Group but also provided for the appointment of the Group CEO and Group CFO, amongst other, by ACGPL. This is by reason of the fact that **Actis** LLP **agreed to bring** along with its investment in the group a **gold standard management** which would ensure significant growth of the group and its companies, significant increase in generation of revenue and consequently significantly larger profits. It was accordingly the express term of the agreement

that Actis LLP through ACGPL, through the management put in place by it would ensure sufficient returns which would enable recovery of its investment and of a return on the same.

**[3] Contrary to its obligation Actis LLP, however, destroyed the value of the group through inept management amongst other things. In this context it may be relevant to note that at the time of enjoying with Actis LLP the value of the Supermax group was in the region of USD 700 million. In course of time through erratic inept management, Actis LLP succeeded in reducing the value of the group to around USD 10 million. In the circumstances, we were forced to file a proceeding in the Cayman Island against Actis LLP and ACGPL seeking damages from them for having destroyed the value of the company.**

**[4] This apart, despite SMM, through [Mr Malhotra] being entitled to nominate four Directors to the Board of Supermax Personal Care Private Limited (SPCPL), Actis LLP frustrated the working of SPCPL creating an artificial deadlock upon refusing to participate in the Board meeting with SMM's nominees being in majority. As it significantly affected the functioning of the company and amounted to oppression of SMM and Malhotra parties under the SSD, [Mr Malhotra] was compelled to file a proceeding before the NCLT, Mumbai seeking reliefs against such acts of oppression and mismanagement including with regard to the holding of Board and general meetings of SPCPL. This was, however, strenuously opposed by Actis LLP and/or ACGPL. In the course of the said proceeding before the NCLT, Mumbai, Actis LLP further contended that it had acquired 80% of the voting rights of the holding companies of SPCPL through invocation of a pledge of shares. In the circumstances, [Mr Malhotra] and the other petitioners before the NCLT sought an amendment of the petition to bring a challenge to the wrongful acts of Actis LLP and/or ACGPL through the purported invocation of pledge and the purported reconstitution of the Board of SPCPL, amongst others, through such device. Such challenge before the NCLT is also present pending.**

[5] Although SMM through its majority in the Board is operating TMPL and is generating profits, every attempt has been made by Actis LLP and/or ACGPL, inter alia, acting through SPCPL to stop the functioning of TMPL by, inter alia, seeking to seal its manufacturing machinery. Actis LLP and/or ACGPL have through SPCPL succeeded in sealing the bulk of TMPL's machinery which has caused and is continuing to cause its significant loss and damage. Actis LLP and/or ACGPL have thereby acted against the interest of the group and are continuing to do so. In an effort to recommence full scale production with the use of the sealed machinery, TMPL has since applied for unsealing of the same, which application now stands transferred by an order of the Mumbai High Court to the arbitration of Mr Justice Wazifdar (Retired).

**[6] The value destruction claim made by SMM and [Mr Malhotra] against Actis LLP and ACGPL, amongst other, now essentially stand transferred to Geneva seated arbitration, which SMM, intends to pursue earnestly and which it expects to get a substantial award for compensation against Actis**

**LLP and/or ACGPL. In connection with such arbitration Actis LLP and/or ACGPL have, however, commenced a proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 before the Shimla High Court, which is also presently pending adjudication.**

[7] This apart, SPCPL is currently in litigation with one Vidyut Metallica Private Limited (VMPL) which includes disputes with regard to the SPCPL's right to continue to occupy its Plant-1 at Thane, as the said lands were never transferred to SPCPL and as the five years' lease of the plant to lands by VMPL in favour of SPCPL has expired. Litigations concerning the same are presently pending adjudication in or arbitration between VMPL and SPCPL and in applications filed by VMPL and by some other companies, inter alia, against SPCPL in the NCLT, Mumbai. **There are also insolvency actions that have been commenced against SPCPL under the Insolvency and Bankruptcy Code, 2016 which also presently pending adjudication before the NCLT, Mumbai.**

[8] **In the circumstances afore-stated, there is complete anarchy in the management of SPCPL. Since, SPCPL [sic] has proceeded to wrongfully and illegally take control of the Board of SPCPL, inter alia, by removing the nominated Directors of SMM from the same, [Mr Malhotra] did not come forward to execute the renewal of the banking documents earlier executed by him as guarantor.**

[9] **In the existing circumstance, where he has been wrongfully deprived of his control of SPCPL, there cannot be any question of his executing any documents of renewal of its guarantee as he has no way of ensuring the performance or the profitability of SPCPL.**

[10] **These are important matters which are required to be brought to the attention of the bankers of SPCPL, to ensure that no misleading or wrongful representation with regard to the current state of SPCPL's affairs is made to the Consortium of bankers.**

[11] The attempt of this letter is to briefly summarise the situation on the ground so that the same may receive active consideration of the SPCPL's bankers. SMM and [Mr Malhotra] will at all material times be available to answer all questions if any, to provide any clarification in the matter [sic].

Thank you

Yours sincerely

[signature]

Rakesh Malhotra  
Group Chairman & Majority Shareholder  
Cc. Chairman & Managing Director – PNB”

9. There is no room for doubt that the Letter was sent. Punjab National Bank referred a copy to Supermax Personal Care Private Limited (SPCPL) on 2 July 2018 having received it, and requested a “point-wise reply on the allegations made”.
10. Leading Counsel for Mr Malhotra points out that there is no evidence of a response to the Letter being sent by the Claimant to the Bank or of the adverse impact of the Letter. However whilst these may have a bearing on the consequences of sending the Letter they do not answer the question whether sending the Letter breached the Injunction.
11. There is no suggestion that the Letter had one of the consents referred to in the Injunction (at paragraph 10). There is no question that it was sent within the time period covered by the injunction (at paragraph 9a). That the addressee Punjab National Bank was a “Trade Contact” as defined is quite clear; indeed the letter itself makes plain that it is written to SPCPL’s bankers.
12. The real issue, addressed by argument from Leading Counsel for the Claimant and Leading Counsel for Mr Malhotra, is whether the Letter was “in terms that are disparaging of any of the Relevant Management”.
13. In Pan Petroleum AJE Limited v Yinka Folawiyo Petroleum Co Ltd and Others [2017] EWCA Civ 1525 at [41] Flaux LJ summarised the applicable legal principles in relation to the construction of Court Orders and findings of contempt in relation to breach of an Order in these terms:
  - “(1) The sole question for the Court is what the Order means, so that issues as to whether it should have been granted and if so in what terms are not relevant to construction (see [16] of the judgment [in JSC BTA Bank v Ablyazov (No 10) [2015] UKSC 64; [2015] 1 WLR 4754 per Lord Clarke of Stone-cum-Ebony JSC].
  - (2) In considering the meaning of an Order granting an injunction, the terms in which it was made are to be restrictively construed. Such are the penal consequences of breach that the Order must be clear and unequivocal and strictly construed before a party will be found to have broken the terms of the Order and thus to be in contempt of Court (see [19] of the judgment [in Ablyazov (No 10) (above)], approving *inter alia* the statements of principle to that effect in the Court of Appeal by Mummery and Nourse LJ in Federal Bank of the Middle East v Hadkinson [2000] 1 WLR 1695).
  - (3) The words of the Order are to be given their natural and ordinary meaning and are to be construed in their context, including their historical context and with regard to the object of the Order (see [21]-[26] of the judgment [in Ablyazov (No 10) (above)], again citing with approval what Mummery LJ said in Hadkinson).”
14. It is clear from the words of the Injunction that the reference to “Relevant Management” expressly includes “any individuals appointed” in the role of Super-Max Chief Executive Officer, India. It is not in dispute that Super-Max “India” is SPCPL or Supermax Personal Care Private Limited.

15. The contention of the Claimant, in its application notice, was that there was disparagement of Relevant Management in three ways in particular. These are contained within this passage in the application notice:

“In particular by [the Letter] [Mr Malhotra] among other things described the Supermax group’s management as “erratic” and “inept”, he accused the Relevant Management of having destroyed the value of the Supermax group of companies and he alleged that there was “complete anarchy in the management of SPCPL”.
16. It may be noted that these particulars do not include in terms the heading of the Letter, and its reference to “false and misleading representation by SPCPL”. This may be because that reference alone is not sufficiently reliably a reference to “Relevant Management” defined as “any individuals appointed” in the role of Chief Executive Officer of SPCPL.
17. The Letter contains allegations of “mismanagement” at its paragraphs [3] and [4], but the mismanagement alleged in those paragraphs at least arguably is said to be that of Actis LLP rather than of “Relevant Management” as defined by the Injunction. The same difficulty faces the Claimant’s reliance on the references to destruction of value (see paragraphs [3] and [6]). On these parts of the Letter I accept the submission of Leading Counsel for Mr Malhotra that on a reasonable interpretation the attack is an attack on Actis LLP.
18. However, paragraph [8] of the Letter goes on to state “... there is complete anarchy in the management of SPCPL”.
19. Of this, Mr Malhotra submits by his Leading Counsel that this “does not relate to ‘Relevant Management’ and is not disparagement”. However the Court finds that there is no room for doubt that this statement at paragraph [8] of the Letter does disparage and does include “Relevant Management” in that disparagement, and in doing so directly breaches the Injunction. It may also disparage others including Actis LLP (who, for example, are said at paragraph [4] to have created an “artificial deadlock” at SPCPL’s Board), but that is neither here nor there if the statement at paragraph [8] disparages “Relevant Management” too.
20. The statement criticises or censors the management of SPCPL, and does so in a way that conveys that that management is ineffective and does not deserve to be held in respect or good opinion. The reference to “complete” anarchy in the management of SPCPL, and the nature of a reference to anarchy in management, leave no room for a suggestion that the statement did not include the Chief Executive Officer of SPCPL, in that capacity, and thus “Relevant Management”. The statement is not saved by the preceding phrase “[i]n the circumstances afore-stated” as that phrase refers, in terms, to circumstances rather than to respects.
21. The Court is sure that Mr Malhotra’s action in this respect was intentional and that he carried it out with knowledge of the Injunction.
22. In this respect, but in this respect alone, the Court finds that Mr Malhotra is guilty of contempt of Court in communicating with Punjab National Bank by means of and in terms of the Letter. If he felt he was duty-bound to draw matters to the attention of PNB

as bankers of SPCPL (see paragraph [10] of the Letter) it was for him to raise that view with the Court first and seek its permission in advance. Paragraph 10 of the Injunction expressly referenced this course.

23. The Court will deal with the consequences of this contempt at a hearing to be arranged in the near future, when it will hear any mitigation for Mr Malhotra. Unless Mr Malhotra is still credibly medically advised not to travel and the Court has full and satisfactory evidence of that position, he must attend that hearing.
24. It is noted that there are other pending allegations of contempt against Mr Malhotra but these are not before the Court on this occasion. The Court rejects the contentions of Leading Counsel for Mr Malhotra that the present application for committal was disproportionate, inappropriately threatened, or improperly motivated by an intention to pressurise Mr Malhotra. There is, with respect, no basis for these contentions. The Application was properly brought. The contempt alleged was substantive and not purely technical. The Claimant was entitled to take action when it appeared the Injunction was not being complied with. No inappropriate threat was made. The pressure resulting from the Application is an inevitable consequence of Mr Malhotra's own action in deciding to send the Letter despite the Injunction.