

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 05.02.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Contempt A (IBC)/5/2023 in CP(IB) No.720/9/HDB/2019
NAME OF THE COMPANY	SSB Structural & Galvanising Pvt Ltd
NAME OF THE PETITIONER(S)	Bharat Industrial Corporation
NAME OF THE RESPONDENT(S)	SSB Structural & Galvanising Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Contempt A (IBC)/5/2023

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**Cont. A. No. 5 of 2023 in
CP (IB) No.720/9/HDB/2019**

In the matter of SSB Structural and Galvanising Pvt. Ltd.

Between:

Mr. Theegala Venkateswar Rao,
Interim Resolution Professional of
M/s. SSB Structural and Galvanising Pvt. Ltd.,
Plot No.90, NCL Colony,
Pet Basheerabad,
Hyderabad – 500 014.

...Applicant

V E R S U S

Mr.Basanthlal Shah,
H.No.6-264-1/13/1/A-35,
Raghavendra Colony,
Qutubullpur,
RR District,
Hyderabad.

...Respondent

Date of Order :05.02.2024

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Mr.Y.Suryanarayana, Mr.N.N.Sarma, Advocates

Per: [Rajeev Bhardwaj, Member (Judicial)]

O R D E R

1. The present application is filed by Interim Resolution Professional (**IRP/Applicant**) of M/s.SSB Structural and Galvanising Private Limited (**hereinafter referred as Corporate Debtor/CD**) under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the NCLT

Rules, 2016 seeking to initiate contempt proceedings against the respondent (**Sole member of CoC**) for his wilful and deliberate disobedience of the order dated 13.12.2022 passed in IA 325 of 2022 in CP(IB) No. 720/9/HDB/2019 by this Adjudicating Authority and to exercise its powers under Section 425 of the Companies Act, 2013, read with Sections 10, 11 and 12 of the Contempt of Court Act, 1971 against the Respondent.

2. The CIRP of the Corporate Debtor was initiated vide orders dated 28.07.2021 and the applicant was appointed as IRP vide orders dated 27.08.2021. After initiation of CIRP, public announcement was made in Form A on 01.10.2021. Thereafter, the IRP had collated the claims received from the Creditors of the CD and constituted the Committee of Creditors (**CoC**).
3. It is claimed that the applicant had incurred expenses of Rs.3,60,000/- from 01.10.2021 till 24.10.2021 and this matter was placed before the CoC in the 1st CoC meeting conducted on 30.10.2021 for ratification and approval. In the said meeting, the respondent dissented and did not approve the said expenses. Therefore, the applicant had filed IA 325 of 2022 claiming Rs.3,60,000/ and further an amount of Rs.14,40,000 incurred from 01.10.2021 till the filing of this IA. The IA 325 of 2022 was allowed vide order dated 13.12.2022 and the CoC was directed to pay the said amount.
4. The applicant had informed the respondent about the order dated 13.12.2022 through e-mail dated 05.01.2023 and letter dated 04.01.2023 which was successfully delivered to the respondent.
5. The respondent neither filed any counter nor contested the petition.

6. We have heard learned Counsel for the applicant and perused the records.
7. The order which is subject of contempt was passed by this Authority on 13-12-2022 in IA 325 Of 2022 and the relevant extract of this is as given below:

“...There shall be a direction to the respondent who is the sole member of the CoC, to pay Rs. 14,40,000/- borne by the applicant and also pay the amount of Rs. 3,60,000/- incurred by the applicant.”

8. Despite clear directions from this Adjudicating Authority, the respondent failed to pay the said expenses incurred by the applicant. Initiating contempt has a dual purpose, (a) upholding majesty of law by punishing the contemnor, and (b) coercing the contemnor to do what the law requires him to do.
9. For punishing the guilty on account of disobedience, there is no specific provision in IBC like section 425 under the Companies Act, which says:

"425. Power to punish for contempt - The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that-

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf."

10. Under Section 425, the Tribunal and the Appellate Tribunal are only empowered with powers under Contempt of Courts Act, 1971 in respect of contempt of itself as the High Court. Section 469 of the Companies Act, 2013 vests in the Central Government the authority to "makes rules" for carrying out the provisions of this law, by notification, clarifying by sub-

section (2) that such enabling power confers the jurisdiction to make rules "for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.". The Central Government framed rules, known as "the National Company Law Tribunal Rules, 2016, by virtue of power conferred under section 469 by issuing notification G.S.R. 716(E) in the official Gazette on 21.07.2016.

11. For contempt of any order passed under the IBC, this Authority has power to punish contemnor by following the procedure prescribed under the Contempt of Courts Act. Here, reference can be made to the decisions in *Shailendra Singh versus Nisha Malpani (2021) ibclaw.in 528 NCLAT; Mahesh Kumar Panwar versus M/s Mega Soft Infrastructure Pvt. Ltd. and Ors. (2019) ibclaw.in 331 NCLAT; C.Vinod Hayagriv and Ors. versus C. Ganesh Narayan and Ors., Contempt Case (AT) No. 13 of 2023 in Company Appeal (AT) No. 65 of 2019 , decided on 09.08.2023 and Registrar NCLT and Ors. versus Manoj Kumar Singh, IRP Palm Developers Pvt. Ltd., Contempt Petition No. CA/11/2021 in Company Petition No. 894/ND/2019, decided on 17.01.2022.*
12. Section 2(a) & 2(b) of the Contempt of Courts Act, 1971 defines the contempt as under:
 2. Definitions.-In this Act, unless the context otherwise requires,-
 - (a) "contempt of court" means civil contempt or criminal contempt;
 - (b) "civil contempt" means 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;
13. Non-compliance of the order of this Authority is civil contempt, for which two elements are required to be established i.e.,

- (i) *Disobedience of any judgment, decree, directions, orders or other process of Court.*
(ii) *Disobedience or breach must be wilful, deliberate and intentional.*

14. The key ingredient of civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971 is deliberate flouting of orders of this Authority i.e. "willful" disobedience. The element of willingness is an indispensable requirement to bring home the charge within the act, in view of the decision in *Anil Ratan Sarkar & Ors. versus Hirak Ghosh & Ors., AIR 2002 SC 1405*. It has been held by the Hon'ble Supreme Court in *Indian Airports Employees' Union versus Ranjan Chatterjee (1999) 2 SCC 537*:

7. It is well settled that disobedience of orders of Court, in order to amount to 'Civil Contempt' under Section 2(b) of the Contempt of Courts' Act, 1971 must be 'wilful' and proof of mere disobedience is not sufficient. S.S. Roy v. State of Orissa and Ors. AIR 1960 SC 190 . Where there is no deliberate flouting of the orders of the Court but a mere misinterpretation of the executive instructions, it would not be a case of Civil Contempt Ashok Kumar Singh and Ors. v. State of Bihar and Ors. 1992 CriLJ 284.

15. In *Kapildeo Prasad Sah & Ors. versus State of Bihar & Ors. (1999) 7 SCC 569* also it is clearly stipulated that disobedience should be wilful and should be clear violation of court's order with the knowledge of contemnor. It also records that initiation of contempt proceeding is not a substitute for execution proceedings though at times purpose may also be achieved. The Hon'ble Supreme Court of India in *U.N. Bora versus Assam Roller Flour Mills Ass. reported in (2022) 1 SCC 101* has elaborately dealt with the issue as what amounts to civil contempt and how it is to be proved. The relevant paragraphs of the judgment reads as under :

"8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the "wilful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an

order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.

9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166] wherein the celebrated judgment in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311], has been quoted. The following paragraphs would govern the aforesaid principle: (Hukum Chand Deswal case [Hukum Chand Deswal v. Satish Raj Deswal, (2021) 13 SCC 166], SCC paras 20-21 & 25-27).

"20. At the outset, we must advert to the contours delineated by this Court for initiating civil contempt action in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311]. In paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-11)

'11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities...

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an

*indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct. ***"*

*15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.****

16. Thus, it is to be proved that despite having knowledge of such an 'order', the person concerned had deliberately and wilfully breached, with an intention of lowering the dignity and image of the 'Court', as per decision of the Hon'ble Supreme Court in ***Salauddin Ahmed versus Samta Andolan AIR 2012 SC 3891.***
17. In the backdrop of the law discussed above, we are of the considered opinion that the respondent has intentionally disregarded the order of this Authority. The respondent was served in IA 325 Of 2022 as well in the present application which fulfils the ingredients of Section 14(1)(a) and (b) of Contempt of Court Acts, 1971, but he did not prefer to appear to controvert the question of contempt.
18. As such, we are left with no option except to hold the respondent guilty of contempt so that to maintain the dignity of this Authority and majesty of law.

19. Before punishing the contemnor, it is in the interest of justice that the contemnor be heard on the quantum of sentence. Accordingly, notice be issued to the respondent for 21.02.2024.
20. With the above directions, **Cont.A.No.5 of 2023 in CP (IB) No.720/9/HDB/ 2019** is allowed.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)