

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.178/2024
(IA Nos.486 & 487/2024)

In the matter of:

Ravi Kiran Saladi Konda & Anr. ... Appellants
V
Sanjay Gupta, Liquidator-Lanco Babandh Power Ltd. ...Respondent

Present :

For Appellants : Mr. P H Arvindh Pandian, Senior Advocate
For Mr. P Ulaganathan, Advocate

For Respondent : Ms. Shalya Agarwal, Advocate

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

The Appellants have challenged the order dated 09.05.2024 by which they have been held guilty of contempt and are sentenced for simple imprisonment of one month each and a fine of Rs. 1,000/- has also been imposed on each of them. They have been further ordered to go under simple imprisonment for 15 days each in case of default paying the fine.

2. In brief, Lanco Babandh Power Limited was pushed into CIRP on 29.08.2018 and then into liquidation on 27.11.2019.

3. The CD registered a project import contract for the import of goods, items and machinery for setting up a 2x600 MW Thermal Power Plant in Khadagprasad P.S, Motagan, District Dhenkanal Odisha.

4. The CD imported goods being items of machinery in between July, 2011 to April, 2016 against 45 number of bills of entry but the goods were not released because the CD failed to furnish required documents.

5. The CD provided bills of entry of 42 bills. The Deputy Commissioner, Paradip Customs Division (for short 'DC') issued out of charge (OOC) in respect of those goods but in respect of three bills of entry, no OOC was granted because the CD did not file bill of entry even after more than one year of import.

6. Since, the CD slipped into Liquidation on 27.11.2019, the DC filed a claim of Rs. 34,64,33,861/- and Appellant No. 1 / Deputy Traffic Manager of Paradip Port Authority (DTM) filed a claim of Rs. 4,36,30,691/- before the Liquidator.

7. Since, the goods were not released by the DC and the present Appellants, the Liquidator filed I.A No. 939 of 2020 seeking direction for the release of the same by the DC and present Appellants. The said application was allowed vide order dated 29.03.2023 with the following directions:-

“Direct the Respondents to release the goods belonging to the CD laying with them without insisting for filing the installation certificate, reconciliation statement, final payment certificate etc. or a payment of customs duty by the CD under Liquidation, within 30 days from the date of this order, besides 1st Respondent to issue no objection certificate for sale of these goods by the liquidator in accordance with the provisions of the IB Code”

8. During the pendency of I.A No. 939 of 2020, Jindal Steel & Power Limited (JSPL) purchased the assets including the imported goods of the CD in the e-

auction dated 27.08.2021 but balance sale consideration was not paid because imported goods were still lying with the DC and the present appellants.

9. After the order dated 29.03.2023, the Respondent (Liquidator) sent notice dated 17.04.2023 and 23.05.2023 asking Paradip Customs Division and the Paradip Port Authority to release the said goods, but the same was of no avail.

10. Ultimately, contempt no. 16 of 2023 came to be filed under Section 425 of the Companies Act, 2013 read with the provisions of the Contempt of Courts of 1971.

11. In the petition, the present appellants were proceeded against ex-parte and a reply was filed by the DC only.

12. The Tribunal observed that the DC had complied with the direction though after the passing of order in IA No. 939 of 2020 but the present Appellants were found violating the order passed in I.A No. 939 of 2020 and thus they were held guilty of contempt for disobeying the direction and were sentenced.

13. Simultaneously, while pronouncing the order, the Tribunal further issued warrant of arrest of Appellants through the concerned superintendent of police.

14. Aggrieved against the aforesaid orders, the present appeal has been filed by both the appellants under Section 61 of the Code.

15. At the threshold of the hearing of this appeal on 11.07.2024, the Appellant submitted that non-compliance was not intentional and that it happened because of misunderstanding and misreading of the order dated 29.03.2023 because of letter of liquidator dated 17.04.2023 and he also undertook to comply with the

direction passed by the Tribunal to purge the contempt and tendered unconditional apology and prayed for purging the contempt.

16. On this premise, this court issued the notice in the appeal on 11.07.2024 and stayed the operation of the order. The said order dated 11.07.2024 is reproduced as under:-

“This appeal is directed against the order dated 09.05.2024 by which the Appellants have been held guilty of contempt and sentenced for simple imprisonment of one month each and are further directed to pay a fine of Rs. 1,000/- each for the disobedience of the order dated 29.03.2023 passed in CP (IB) No. 296/7/HDB/2018.

2. Sr. Counsel for the Appellant has submitted that the noncompliance of the order was not intentional but because of mis-reading and mis-understanding of the order by the present Appellants because of the letter of the liquidator dated 17.04.2023.

3. He has further submitted that the Appellant shall comply with the directions of the Ld. Tribunal immediately and also tender their unconditional apology.

4. Issue notice. At this stage, Counsel appearing on behalf of the Respondent (Liquidator) accepts notice in court.

5. List again on 15th July, 2024 at 03:00 PM.

In the meantime, operation of the impugned order shall remain in abeyance till then.”

17. Before the next date of hearing i.e. 15.07.2024, both the Appellants had filed the affidavits dated 11.07.2024 to tender apology and to demonstrate compliance with the direction contained in the order dated 29.03.2023 in order to purge the contempt.

18. In this regard, the following averments have been made in paras 4, 5 & 6 which are reproduced as under:-

4. I humbly state that while steps were taken to comply with the directions issued by the Hon'ble NCLT, the 1st Respondent herein had issued two letters to M/s. Paradeep Port Trust, on 17.04.2023 and 23.05.2023, wherein the 1st Respondent had categorically prayed that the goods belonging to the Corporate Debtor which is lying with M/s. Paradeep Port Trust be released to the to the auction purchaser, M/s. JindalSteel and Power Limited, **on payment of entire sale consideration and issuance of sale certificate in favour of the auction purchaser**. The Appellants were under genuine and bona fide belief that the auction purchaser, M/s. JindalSteel and Power Limited would approach M/s. Paradeep Port Trust after paying entire sale consideration and after obtaining sale certificate issued by the 1st Respondent. However, the auction purchaser never approached the port authorities with such proof of payment or sale certificate issued

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by the 1st Respondent. The relevant portion of the letters dated 17.04.2023 and 23.05.2023 are extracted below for the sake of convenience: -

Letter dated 17.04.2023: -

"Therefore, a humble request is made to your good office to:

(1) Release the goods belonging to the Corporate Debtor lying with yourself within 30 days from the date of this order without insisting for filing the Installation Certificate, reconciliation statement, final payment certificate etc. or a payment of customs duty by the corporate debtor.

(ii) Release the belonging to the Corporate Debtor lying with yourself to purchaser M/s Jindal Steel & Power Limited after issuance of the Certificate of Sale by the Liquidator,

(iii) Issue No Objection Certificate for sale of these goods

(iv) Not to invoke the bank guarantees issued by various banks.

Request you to comply with the directions of the Hon'ble NCLT at the earliest."

Letter dated 23.05.2023: -

"PRAYER

Hence, in compliance of the aforesaid order dated 29.03.2023 passed by Hon'ble NCLT, your good office is advised to release the following goods belonging to or purchased by Lanco Babandh Power Limited lying with your at Paradip Port trust Authority or Custom

department at Paradip or any other place, to the Liquidator's possession and subsequent handover to the purchaser i.e., M/s Jindal Steel & Power Ltd (Subject to receipt of balance payment and issuance of sale certificate by the Liquidator) in order to be legally compliant to the aforesaid order."

5. I humbly state that in both the letter address to M/s. Paradeep Port Trust by the 1st Respondent herein, the 1st Respondent had categorically stated that the goods belonging to the Corporate Debtor, be released **on payment of entire sale consideration and issuance of sale certificate in favour of the auction purchaser.** In view of the same, the Appellants herein, though were ready and willing to comply with the order of the Hon'ble NCLT, in both letter and spirit, were awaiting further instructions from the auction purchaser, M/s. JindalSteel and Power Limited. Owing solely to the same, the Appellants awaited the handing over of the goods of the Corporate Debtor. In fact, the Appellants herein, had addressed a letter dated 24.05.2024 to the 1st Respondent herein expressing their readiness and willingness to comply with the orders of the Hon'ble NCLT and had in fact requested the 1st Respondent to take possession of the goods belonging to the corporate debtor that are lying in the Port area. The port authorities, M/s. Paradip Port Trust, have also issued another letter on 11.07.2024 to the 1st Respondent to take possession of the goods of the Corporate Debtor. The relevant portion of the letter is extracted below for the sake of convenience: -

"It is therefore, requested that the subject goods may kindly be taken possession by you immediately and



arrange to lift without any further delay. Paradip Port Authority is ready to provide all possible assistance and Gate Pass to release the material from the Port Prohibited Area."

6. I humbly submit that the Appellants have therefore always been ready and willing to comply with the orders of the Hon'ble NCLT and have never wilfully and deliberately attempted to disobey the orders of the Hon'ble NCLT. Owing solely to the confusion that had arisen in view of the letters referred to above issued by the 1st Respondent herein on 17.04.2023 and 23.05.2023, the Appellants awaited the handing over of the possession of the goods of the Corporate Debtor.

19. On 15.07.2024, the affidavits filed by both the Appellants were taken on record while allowing the interim order to continue.

20. On 26.09.2024 Counsel for the Respondent (Liquidator) submitted that NOC, sale certificate and letter of possession have been given but she wanted to file an affidavit in this regard in which the following averments have been made:-

“13. Notably, after the present contempt ruling, the appellants finally issued a letter along with the NOC dated 24.05.2024, indicating a shift in their stance granting their no-objection and releasing the concerned goods in favor Liquidator lying at the Paradeep Port.

14. Additionally, post the NOC from the appellants, even the H1bidder has now paid the entire sale consideration amounting to Rs. 70,13,09,575 and a Certificate of Sale and letter of possession was issued on 09.08.2024, officially transferring ownership of the said goods of Corporate Debtor.

15. Following this, I also reached out to the second appellant to inform them of the payment and to request their cooperation in facilitating the immediate lifting of the Block-C assets from the port premises by the H1 bidder.

16. The process of lifting the assets (approx.. 18,000 tons) is currently in progress. Given that the NOC has now been granted and the lifting is underway, I have no objection to the setting aside of the operative part of the contempt order against the appellants, provided that they comply with future directives. However, I reserve the rights to take further action should any breaches occur moving forward”.

21. On 11.12.2024, after taking the affidavits dated 30.10.2024 on record, this Court passed the following order:-

“The Respondent/liquidator has filed his affidavit dated 30.10.2024 in pursuance of the order dated 26.09.2024. Paragraph no. 13 to 16 of the said affidavits are reproduced as under:

“13. Notably, after the present contempt ruling, the appellants finally issued a letter along with the NOC dated 24.05.2024, indicating a shift in their stance granting their no-objection and releasing the concerned goods in favour Liquidator lying at the Paradip Port.

14. Additionally, post the NOC from the appellants, even the H1bidder has now paid the entire sale consideration amounting to Rs. 70,13,09,575 and a Certificate of Sale and letter of possession was issued on 09.08.2024, officially transferring ownership of the said goods of Corporate Debtor.

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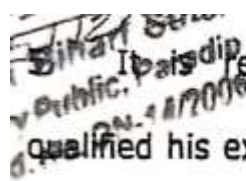
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The Deponent/liquidator has categorically averred in paragraph 16 of this affidavit that he reserves the right to take further action should any breach occur moving forward i.e. on the part of the contemnors.

Although Ld. Sr. Counsel appearing on behalf of the Appellant has submitted at the bar that the appellant will not cause any breach, it would be in the interest of justice if the appellant file an affidavit in this regard.

Ld. Sr. Counsel has submitted that the necessary affidavit shall be filed. Let the needful be done before the next date of hearing with advance copy to the Counsel for the Respondent/liquidator. Adjourned to 08.01.2025.”

22. The Appellants have filed the affidavit dated 24.12.2024 in which the following averments in para 5 & 6 have been made:-

 respectfully submitted that the Liquidator/Respondent had qualified his expression of no objection to the setting aside of the contempt order on condition that the appellants should comply with future directives. By their own admission, the appellants have fully complied with the order of the Adjudicating Authority in releasing the goods to the highest bidder and there can be no iota of doubt that the Port has been more than willing to

facilitate the removal of goods by H1. The Port Authority have no intention to renege on the commitment given by them in complying with the order of the AA in letter and spirit. We undertake to honour and comply with any direction that might be passed by the Adjudicating Authority and Appellate Authority in future. It is also pertinent to note that the H1 bidder is yet to complete the process of lifting the goods and has been seeking extension of time for completing the process, which has also been permitted from time to time. We are also committed to comply with the instructions of the Liquidator in this regard.

6. It is respectfully submitted that we deeply regret the incidents that led to the AA passing the impugned order punishing the appellants for contempt of court and sincerely tender our apologies for the same. The averment made above would clearly show that we have taken all steps to purge our contempt. We, therefore, plead for the mercy of this Hon'ble Tribunal in condoning our acts that led to the contempt of court action against us.

It is therefore prayed that this Hon'ble Tribunal may be pleased to pass an order purging the Appellants of the charge of contempt of court for which they had been imposed punishment by the Hon'ble Adjudicating Authority in National Company Law Tribunal, Hyderabad Bench in their order dated 09.05.2024 in Contempt Petition No. 16/2023 in IA No. 939/2020 in CP (IB) No. 296/7/HDB/2018 by setting aside the said order dated 09.05.2024 passed by the Hon'ble Adjudicating Authority and pass such other order or direction or grant any other relief as this Hon'ble Appellate Authority may deem fit and thus render justice.

23. On 27.01.2025 this Court has passed the following order:-

“Counsel for the Appellant has filed the affidavit dated 24.12.2024 which is taken on record. Counsel for Respondent has submitted that she is satisfied with the averment made in affidavit much less in paras 5 & 6 of the affidavit. We have heard Counsel for the parties. Order reserved.”

24. Since, the order dated 29.03.2023 has been duly complied with and Respondent has recorded his satisfaction in the aforesaid order and both Appellants being the Govt. Officials regret the lapse on their part and have tendered their unqualified apology for purging the contempt and that alleged disobedience of the order was neither intentional nor deliberate but due to misunderstanding and misreading of the record, therefore, in such circumstances, we are of the considered opinion that once the Appellants have purged the contempt by meticulously complying the order dated 29.03.2023 and have no previous history of being obstinate and head strong in so far as compliance of the judicial orders are concerned, the contempt can be purged of. Therefore, in the aforesaid peculiar facts and circumstances, we allow this appeal and set aside the order passed by the Tribunal. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

New Delhi
13th February, 2025
Sheetal