

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 09.05.2024 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Contempt Application (IBC)/16/2023 in CP(IB) No.296/7/HDB/2018
NAME OF THE COMPANY	Lanco Babandh Power Ltd
NAME OF THE PETITIONER(S)	ICICI Bank Ltd
NAME OF THE RESPONDENT(S)	Lanco Babandh Power Ltd
UNDER SECTION	7 of IBC

ORDER

Contempt Application (IBC)/16/2023

Orders pronounced, vide separate sheets. In the result, this application is disposed of. In view of the order passed in the Contempt Application (IBC)/16/2023, issue warrant of arrest against Respondent No.2 and 3 to be executed through the concerned Superintendent of Police. **Matter is fixed on 06.06.2024.**

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH-II

**Contempt Petition No.16 of 2023 in IA No.939 of 2020
in CP (IB) No.296/7/HDB/2018**

**[Under Section 425 of the Companies Act, 2013, r/w
Sections 10 and 12 of the Contempt of Courts Act, 1971
& Rule 11 of the National Company Law Tribunal Rules, 2016]**

IN THE MATTER OF:

ICICI Bank Ltd

... Financial Creditor

Versus

Lanco Babandh Power Limited

...Corporate Debtor

AND IN THE MATTER OF:

Mr.Sanjay Gupta

Liquidator – Lanco Babandh Power Limited

Having Office at: E-10A, Kailash Colony,

New Delhi-110048

...Petitioner

Versus

1. Mr. Tarun Kumar Panda

Deputy Commissioner
Paradeep Customs Division

Custom House, Paradeep (Odisha)-754142

...Respondent No.1/Contemnor No.1

2. Mr. Ravi Kiran Saladi Konda

Deputy Traffic Manager
New Mangalore Port Authority
Panambur, Mangalore - 575010

...Respondent No.2/Contemnor No.2

3. Mr. Sriman Nayan Mishra

Senior Assistant Traffic Manager
Paradip Port Authority

District: Jagatsinghpur, Odisha-754142

...Respondent No.3/Contemnor No.3

Date:09.05.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Ms. Shalya Agarwal, Advocate
For the Respondent : None appeared for the Respondents.

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

1. Aggrieved with violation of the order dated 29.03.2023 in IA No.939 of 2020 in CP (IB) No.296/7/HDB/2018, Mr.Sanjay Gupta, Liquidator for the M/s.Lanco Babandh Power Limited (hereinafter referred as Petitioner) filed the present Contempt Petition under Section 425 of the Companies Act, read with Sections 10 and 12 of the Contempt of Courts Act, and Rule 11 of the National Company Law Tribunal Rules, 2016 for holding the Respondents guilty for wilful and deliberate violation of the impugned order and further punishing them appropriately.
2. The brief facts, leading to the filing of the present application, as stated, are that:
 - 2.1 M/s. Lanco Babandh Power Limited was put in Corporate Insolvency Resolution Process (CIRP) vide order dated 29.08.2018 and in the absence of any Resolution Plan, order for Liquidation Process was passed on 27.11.2019.

- 2.2 The Corporate Debtor had registered a Project Import Contract for the import of goods, items and machinery in setting up a “2×600 MW Thermal Power Plant” in Khadagprasad P.S, Motagan, District, Dhenkanal, Odisha.
- 2.3 The Corporate Debtor had filed 45 numbers of Bills of Entry for import and clearance of Project Import Goods/Items/Machinery (**goods**) falling under Chapter Heading No.98010013 of the Customs Tariff Act, 1975 against Project Import Registration No.02/PROJ. CONTRACT REGN/PDP/2011 dated 04.08.2011 and No.06/PROJ. CONTRACT REGN/PDP/2011 dated 30.12.2011.
- 2.4 For non-payment of the customs duty etc., the goods are lying at the Paradeep Port in the custody of the Respondents. The Petitioner wrote a letter dated 24.01.2020 (**Annexure A-2** of the application), to the Respondent No.2 asking for the release of 17,273 MT of goods of the Corporate Debtor lying in the Port. He was also informed that after the initiation of the liquidation, the Liquidator was to take into custody and control all the assets, property, effects etc., of the Corporate Debtor.
- 2.5 Subsequently, the Respondent No.1 filed claim of pending customs duty with the Petitioner for a total sum of Rs.346,43,38,61/-. The Respondent No.2 also filed claim of Rs.4,36,30,691/-. However, Respondent No.1 sent e-mail dated 11.02.2020 (**Annexure A-3** of the application) giving reference of Section 48 of the Customs Act, which gives power to the proper officer to sell the imported goods.

- 2.6 The Petitioner has quoted Sections 35 and 238 of the IBC to press his point that the Liquidator has power to take into custody and control all the assets, property, effects and actionable claims of the Corporate Debtor and further, the IBC overrides any other law for the time being in force.
- 2.7 When the Liquidator failed to take possession of the goods despite his best endeavours, he filed an IA No.939/2020 seeking direction for its release.
- 2.8 During the pendency of the IA No.939/2020, the goods of the Corporate Debtor were e-auctioned and M/s.Jindal Steel & Power Limited purchased the assets including the imported goods lying at the Paradeep Port, subject to the pending litigation. In view of non-release of the imported goods, the balance sale consideration was not paid by M/s. Jindal Steel & Power Limited.
- 2.9 Finally, the IA No. 939/2020 was allowed vide order dated 29.03.2023 and the Respondents were asked to release the goods lying with them.
- 2.10 After passing of the order in IA No. 939/2020, the Petitioner asked both the Respondents vide letter dated 17.04.2023 (**Annexure A-4** of the application) to comply with the directions passed by this Authority. The Respondent No.2 was also requested vide letter dated 09.05.2023 by M/s. Jindal Steels & Power Limited for the release of the goods. Instead of releasing the goods, the Respondent No.2 vide letter dated 20.05.2023 (**Annexure A-5** of the application) informed that the goods would be released only upon the submission of No

Objection/Out of Charge Order (OCC) pertaining to the entire quantity of cargo of Corporate Debtor by M/s.Jindal Steel & Power Limited, who was also asked to approach the Liquidator for the purpose of considering the settlement of outstanding dues owed to the Paradeep Port. The Petitioner again vide letter dated 23.05.2023 (**Annexure A-6** of the application) asked the Respondents to handover the assets and they were further notified that the failure to release the goods would amount to disruption of the Liquidation Process.

2.11 Again, the Respondent No.1 vide letter dated 01.06.2023 (**Annexure A-7** of the application) stated that the goods can be released as per the Customs Act. The Liquidator also personally visited the offices of the Respondent No.1 and 2 along with the representatives of the M/s.Jindal Steels & Power Limited on 09.06.2023 for the release of the goods, but the same was of no avail.

2.12 In these circumstances, it is claimed that the Respondents have not only violated the order dated 29.03.2023, but also disobeyed the law laid down by the Hon'ble Supreme Court in the matter of *Sudarshan Bhatt, Liquidator of ABG Shipyard versus Central Board of Indirect Taxes and Customs in Civil Appeal No.7667 of 2021, dated 26.08.2022*, wherein it has been specifically held that once the moratorium is introduced under the Code, either under Section 14 or Section 33(5), the authorities under the Customs Act have limited powers to the extent that they can only initiate assessment or re-assessment of the duties and other levies, but not recovery proceedings.

3. The Respondents No.2 and 3 were set ex-parte and it is only the Respondent No.1 who has contended and contested the averments in the petition by submitting:

3.1 The Corporate Debtor had filed 42 Bills of Entry in between July 2011 and April, 2016 for importation and clearance of project import goods/ machinery falling under Chapter Heading No 9810013 of the Customs Tariff Act, 1975. Out of these Bills, 42 Bills of entry were assessed provisionally under Section 18(1) of the Customs Act, 1962, but the required documents were not furnished by the importer even after more than 3 years of their last import. Finally, the Respondent No.1 assessed with demand of Rs.200,54,23,826/- vide order No.3570-74 dated 10.05.2019.

3.2 On the passing of the liquidation order dated 27.11.2019, final claim for an amount of Rs.346,43,38,610/- including interest was lodged with the Liquidator. After the disposal of the IA No.939/2020 in CP (IB) No.296/7/HDB/2018 vide order dated 29.03.2023, the Liquidator intimated that request has been made to the replying Deputy Commissioner, Paradeep Customs Division as well as the Traffic Manager of Paradeep Port Authority vide letters dated 17.04.2023 and 23.05.2023 for releasing the assets/goods of the Corporate Debtor lying at Paradeep Port. Similarly, letters dated 09.05.2023 and 24.05.2023 were also received from M/s. Jindal Steel & Power Limited, Paradeep requesting to release and handover the goods of the Corporate Debtor.

- 3.3 It is explained that under the Customs Act, 1962, the Respondent No.1 is empowered to issue/grant 'Out of Charge' (OOC) on the imported cargo/goods in cases where Bill of Entry has been filed by the importer and provisionally assessed by the Customs Officer. Subsequently, order of movement of such imported goods/items is to be issued by the custodian of the property i.e., Port Authority who is to issue gate pass for the transportation of the imported goods.
- 3.4 The Respondent No.1 has already intimated the Liquidator vide letter dated 01.06.2023 (**Annexure-1** of the counter) which was also addressed to the Traffic Manager and M/s.Jindal Steel & Power Limited that the Customs Authority has already issued Out of Charge (OOC) on 42 Bills of Entry and accordingly, the OOC may be treated as No Objection Certificate (NOC).
- 3.5 On the question of remaining cargo involved under 3 Bills of Entry, no OOC was granted because the importer had not filed any Bill of Entry even after more than one year of importation. In such situation, the cargo/goods are to be treated as Unclaimed/Uncleared goods under Section 48 of the Customs Act, 1962. The liability to release the said cargo shall lie exclusively with the custodian i.e., the Paradeep Port Authority in view of Circular No.50/2005-Cus dated 01.12.2005 (**Annexure-2** of the counter) and Circular No.49/2018-Cus dated 03.12.2018 (**Annexure-3** of the counter). In this regard, reliance has also been placed on the judgement of the Hon'ble Supreme Court in '*Sudarshan Bhatt, Liquidator of ABG Shipyard versus Central Board of Indirect Taxes and Customs*' decided on 26.08.2022.

- 3.6 In view of the factual decision, the Respondent No.1 issued letter dated 24.07.2023 (**Annexure-4**) to the Traffic Manager of the Paradeep Port Authority, requesting him to take appropriate action in releasing the cargo.
4. Heard. We have also gone through the entire records.
5. For the purpose of setting up Thermal Power Plant in Khadagprasad, P.S,Motagan, District, Dhenkanal, Odisha, the Corporate Debtor imported goods/items/machinery in between July 2011 and April, 2016 against 45 number of Bills of Entry, the details of which have been given in (**Annexure-4** of the counter). However, the goods could not be released because the Corporate Debtor failed to furnish required documents. The Corporate Debtor provided Bills of Entry in respect of 42 bills (Items No.1 to 42 of **Annexure-4** of the counter) and accordingly the Respondent No.1 issued Out of Charge (OOC) in respect of those goods. As far as 3 Bills of Entry (Items No.43 to 45 of **Annexure-4** of the counter), no OOC was granted by the Respondent No.1 because the Corporate Debtor had not filed any Bill of Entry even after completion of more than one year of import.
6. Meanwhile, the Corporate Debtor was put under CIRP vide order dated 27.11.2019. The Respondent No.1 filed claim of Rs.346,43,38,61/- and Respondent No.2 of Rs.4,36,30,691/- before the Liquidator.
7. M/s Jindal Steels and Power Limited has purchased the assets including the imported goods of the Corporate Debtor in pursuance of the e-auction conducted on 27.08.2021, but the successful bidder did not pay the balance sale consideration because the cargo/goods are still in the custody of the Respondents.

8. When the Respondents did not release the cargo/goods despite the request, the liquidator filed an IA No.939/2020 for initiating contempt proceedings by impleading both the Deputy Commissioner, Paradeep Customs Division and Traffic Manager of Paradeep Port Authority as parties. Finally, this Authority vide order dated 29.03.2023 allowed the application and the relevant part of the order is reproduced as below:

We, accordingly, hereby direct the Respondents to release the goods belonging to the Corporate Debtor lying with them without insisting for filing the Installation Certificate, reconciliation statement, final payment certificate etc. or a payment of customs duty by the corporate debtor 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. It is further ordered that upon complying the first direction, the Liquidator shall sell the goods of the Corporate Debtor within three months as per the provisions of the Code and the relevant regulations and deposit the sale proceeds into the liquidation account of the Corporate Debtor.

9. After passing of the directions for the release of the goods covered under 45 Bills of Entry, the liquidator sent notices dated 17.04.2023 (**Annexure-A4** of application) and 23.05.2023 (**Annexure-A6** of application) asking Paradeep Customs Division and the Paradeep Port Authority, respectively to release the said goods. When nothing happened, the present petition has been filed on 24.07.2023.
10. In the aforesaid background, we have to decide whether there is any contempt of the directions passed by this Authority. 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.
11. 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."

12. 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.
13. In case of 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.

14. 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;

15. 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.

16. 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. 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 Hiral 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.

17. 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 read 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.

18. 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*.

19. Given the factual background and the principles applicable for prosecuting a person under the Contempt of Courts Act, the Applicant is required to prove that the Respondents have wilfully disobeyed the order of this Authority. Thus, we need to know the role played by the Respondents in dealing with the issue. Respondent No.1 is Deputy Commissioner, Paradeep Customs Division and Sri Ravi Kiran Saladi, Respondent No.2 was the Senior Assistant Traffic Manager, Paradeep Port Authority before 23.08.2023, when he was replaced by Respondent No.3.
20. From the discussion as above, two situations have emerged:
 1. Cargo/goods where Bills of Entry filed by the Corporate Debtor or OOC granted by the Respondent No.1.
 2. Where Bills of Entry not filed by the Corporate Debtor or OOC not granted by the Respondent No.1.
21. For Item Nos.1 to 42 in **Annexure-4** of the counter, the Respondent No.1 has issued OOC which was pleaded to be treated as NOC by the Respondent No.1. In case of item Nos.43 to 45 in **Annexure-4**, the OOC was not issued by the Respondent No.1 because of Bills of Entry were not furnished by the Corporate Debtor. However, the Respondent No.1 has given NOC to the Paradeep Port Authority for the release of entire lot of goods. Now the custody of item Nos.1 to 45 in **Annexure-4** is with the Paradeep Port Authority as the movement order/gate pass is to be issued by it.

22. The imported goods lying with the Paradeep Port Authority is part of the “liquidation estate” consisting of the assets as defined under section 36(3) of IBC. Once the liquidation order was passed by this Authority, the Liquidator was to take into custody and control all the assets, property, effects and actionable claims of the Corporate Debtor. The provisions Section 35(a) to 35(f) give powers to Liquidator to take into possession the cargo/goods lying with the Respondents and sell them, subject to the provisions of Section 52. Both Deputy Commissioner, Paradeep Customs Division and Traffic Manager of Paradeep Port Authority have already filed the claims with the Liquidator. Despite this, the goods were not released and good sense prevailed on the Respondent No.1 after the passing of the order in IA No.939/2020, but the Respondent No.2 and 3 are so obsessed with power that they not only refused to obey the directions of this Authority but even not thought fit to appear before this Authority. In this context, Section 48 of the Customs Act, 1962 and the Circular No. 50/2005-Cus dated 01.12.2005 (**Annexure-2** of the counter) and Circular No.49/2018-Cus dated 03.12.2018 (**Annexure-3** of the counter) have been referred by the Respondent No.2 in its communication for not releasing the goods.
23. Here, we would like to reiterate the position of law that provisions of the IBC will prevail over the provisions of the Customs Act. The Hon’ble Supreme Court in *Sudarshan Bhatt, Liquidator of ABG Shipyard supra* said that once a moratorium is imposed in terms of Section 14 or 33(5) of the IBC, the Custom Authorities do not have the power to initiate the recovery of dues by means of sale/confiscation, as provided under the Customs Act. In this case, a three judges bench of the Hon’ble Apex Court was considering an appeal against NCLAT order in which it held that the

goods lying in the customs bonded warehouse were not the Corporate Debtor's assets as they were neither claimed by the Corporate Debtor after their import, nor were the bills of entry cleared for some of the said goods. It was of the view that demand notices to seek enforcement of customs dues during the moratorium period would violate the said provisions of the IBC. Therefore, anything contrary in the Customs Act or the circulars as noted above would not be law of land. The relevant portion of the judgement is reproduced as below:

"(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?"

The IBC would prevail over The Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

"(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated? Answered in negative."

54. On the basis of the above discussions, following are our conclusions:

(i) *Once moratorium is imposed in terms of Sections 14 or 33 (5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/ confiscation as provided under the Customs Act.*

(ii) *After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.*

(iii) *In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC."*

Own emphasis

24. Thus, there is no doubt that the Respondent No.1 as well as Paradeep Port Authority cannot keep the cargo/goods of the Corporate Debtor after the passing of the liquidation order. They were apprised about the position of

law and direction of this Authority not only after passing of the order dated 29.03.2023 in IA No.939/2020 but prior to this also. They were intimated vide letters dated 24.01.2020 (**Annexure-A2** of the application), dated 17.04.2023 (**Annexure-4** of the application) and dated 23.05.2023 (**Annexure-6** of the application) and e-mails (**Annexure A-3** of the application). Even the successful bidder M/s. Jindal Steel & Power Limited also informed both the Respondents about the passing of the order vide letter No.JSPL/PDP/Traffic/ 2023-24/0119 dated 09.05.2023. The Paradeep Port Authority in pursuance of letter written by M/s Jindal Steels & Power Limited wrote letter dated 20.05.2023 (**Annexure-5** of the application), the relevant portion of which is extracted below.

It is to inform that the materials may be released on submission of custom No Objection/Out of Charge Order (OOC) on full balance quantity of cargo of corporate debtor by your firm. You are also requested to take up the matter with liquidators for considering payment of outstanding dues of Paradeep Port, on priority basis, as Paradeep Port Authority is an autonomous organisation under the Ministry of Ports, Shipping & Waterways, Govt, of India. As on 31.05.2023, outstanding dues against M/s.Lanco Babandha Power Limited is Rs.13,76,35,956/-.

25. However, the stand of Paradeep Port Authority was more flexible before the passing order in IA No. 939/2020 when they replied by email dated 02.06.2020 (**Annexure-3**) that the Applicant can release the goods:

Paradeep Port has no objection to release the assets of the Corporate Debtor to enable you to take custody to sell the assets as per Section-35 of the code.

You are requested to obtain No-objection/Out of Charge Order from Customs to sell the assets of the Corporate Debtor.

You are also requested to consider payment of the outstanding dues of PPT, on priority basis, as PPT is an autonomous organization under the Ministry of Shipping, Govt. of India.

26. At the same time, the Respondent filed No.2 filed claim of Rs. 4,36,30,691/- dated 23.12.2019 with the liquidator and he informed the said Authority in response to the email dated 21.05.2020 vide e-mail dated 22.05.2020 that the claim will be dealt with as per section 53 IBC. Once the Corporate Debtor is put in liquidation, all its assets including in possession of the Respondents have become part of the 'liquidation estate' under section 36 IBC and the liquidator is empowered under section 35 IBC to dispose of the said property to discharge the liabilities of the Corporate Debtor. If the Respondents had any grievance about the disbursement of property of the Corporate Debtor under section 53 IBC, they should have challenged the order of the liquidator after it was received by them within 14 days under section 42 IBC, but their intention appears to derail the process of liquidation which is time bound.
27. It shows that the Paradeep Port Authority was changing its stand like chameleon as per its convenience. They became more rigid when specific direction was given in IA No. 939/2020. The Paradeep Port Authority was also intimated about the seriousness of the issue by the Respondents No.1 by writing letter dated 01.06.2023 (**Annexure-7** of the counter), but the latter neither filed any reply in the present petition nor wrote any letter to the liquidator as to why goods should not be released to the liquidator.
28. It is unbecoming on the part of the Government Authority not to respond to the lawful directions issued by this Authority. They have neither complied with the directions of this Authority, nor preferred any appeal. They sat on the matter despite knowing fully well that lawful directions have been issued by the competent authority and on account of the gross disobedience of the Paradeep Port Authority, this matter is being

unnecessarily dragged, causing loss to the exchequer as the goods in its possession have remained unutilised and would not be put to productive use.

29. In the beginning, it was all the Respondents but later on it was Respondent Nos. 2 and 3, who deliberately and continuously ignored the directions of this Authority. As far as Respondent No.1 is concerned, the directions have been complied with, though after the passing of specific order in IA 939/2020.
30. Considering the entire facts and circumstances of the case and having regard to the legal position concerning the point in issue, we think that the Respondent Nos. 2 and 3 have intended to undermine the administration of justice and their intentional acts cannot be disregarded. Administration of justice would be defeated if the order of any Authority is disregarded with impunity. There can be no laxity in such a situation because otherwise the orders of this Authority would become the subject of mockery. We want to quote the observations of Hon'ble Supreme Court in *Commissioner, Karnataka Housing Board versus C. Muddaiah AIR 2007 SC 3100* that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law.
31. The Respondent Nos.2 and 3 have left no stone unturned to avoid the directions of this Authority despite the liquidator and even Respondent No.1 bringing to their knowledge about the requirements of law after the

passing of the order in IA No. 940 of 2020, not to speak of the fact that the Respondent No.2 first agreeing to release the goods and subsequently refusing to do so. No one has the authority to conduct in a manner which would demean and disgrace the majesty of justice which is dispensed by a Court of law.

32. In view of our above mentioned discussions, we hold both Respondent Nos. 2 and 3 guilty of contempt of disobeying the directions of this Authority. Accordingly, the Respondent Nos.2 and 3 are sentenced for simple imprisonment of one month each and further fine of Rs.1000/- is also imposed on each of them. In case of default in making payment of fine, they shall further under go simple imprisonment for 15 days each.
33. Hence, the Contempt Petition No.16 of 2023 in CP (IB) No.296/7/HDB/2018 is disposed of.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

Apoorva