S.No.06

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
18.08.2026 AT 10:30 A.M.

Cont.A (IBC)/18/2023 in
CP (IB) No.102/7/HDB/2019
U/S 7 of IBC

IN THE MATTER OF:
Allahabad Bank **…Petitioner/s**

Vs
Sarda Agro Oils Ltd **…Respondent**/s

C O R A M:-
SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Cont.A (IBC)/18/2023

Present: Mr. G. Madhusudhan Rao, Liquidator.

Mr. Pranay Sohini, Ld. Counsel for the Respondent.

Orders pronounced, recorded vide separate sheets.

In the result, this application is dismissed.

Sd/- Sd/-
MEMBER(T) **MEMBER(J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – II

Cont.A (IBC) No. 18 of 2023 in

CP (IB) No. 102/7/HDB/2019

In the matter of

M/S SARDA AGRO OILS LIMITED

Between:

Mr G Madhusudhan Rao, Liquidator of

M/s Sarda Agro Oils Limited,

7-1-285, Flat No 103, Sri Sai Swapna Sampada Apt.

Balkampet, Hyderabad 500 03

....Applicant/Liquidator

And

1. **Mr Jagadish Sarda,**
   Ex-Director of Sarda Agro Oils Limited
   6-3-900/1/1, Rajbhavan Road,
   Somajiguda, Hyderabad
   500082, Telangana, India.
2. **Manohar Lal Sarda,**
   Ex-Director of Sarda Agro Oils Limited
   21-3-140, Tagarikanaka,
   Hyderabad-500001,
   Telangana, India.
3. **Anup Sharma**
   Ex-Director of Sarda Agro Oils Limited
   8-5-132/2/B Durga Nagar, Bandlaguda,
   Chandrayangutta, Keshogiri,
   Hyderabad - 500005 Telangana, India.

....Respondents

Date of order : 18.08.2026

CORAM:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Sanjay Puri, Hon'ble Member (Technical)

Counsel present:

For the Applicant	:	Ms. Vazra Laxmi, Ld. Counsel along with Mr. G. Madhusudhan Rao Ld. Liquidator/Applicant
For the Respondents	:	Mr. Pranay Sohini

1. This application has been filed by the Liquidator of M/s Sarda Agro Oils Limited (hereinafter referred to as "the Applicant"/"the Liquidator", the Corporate Debtor ("CD"), under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("IBC") read with Section 425 of the Companies Act, 2013 and Rule 11 of the NCLT Rules, 2016, seeking to initiate contempt proceedings against the Respondents for their wilful and deliberate disobedience of the order dated 18.08.2023 passed by this Adjudicating Authority in IA No. 487/2023, and further seeking that appropriate punishment be awarded to the Respondents for the said acts of contempt.

<u>Background Facts</u>

2. The CD was admitted into Corporate Insolvency Resolution Process ("CIRP") vide order dated 27.08.2019 of this Tribunal in CP (IB) No. 102/7/HDB/2019. Aggrieved thereby, the suspended directors preferred an appeal before the Hon'ble National Company Law Appellate Tribunal ("NCLAT"), and the Hon'ble Appellate Tribunal was pleased to set aside the order of this Tribunal.

3. The Financial Creditor carried the matter in appeal against the order of the NCLAT before the Hon'ble Supreme Court of India by way of Civil Appeal No. 3849 of 2020, and the Hon'ble Supreme Court, vide judgment dated 13.09.2020, allowed the said appeal, thereby restoring the CIRP proceedings against the CD.

4. The 11th meeting of the Committee of Creditors ("CoC") was held on 25.10.2022, in which the Applicant/RP sought approval to file a fresh application for liquidation. The CoC, with 100% voting share, resolved to approach this Adjudicating Authority, and the Applicant accordingly filed IA No. 1323/2022 seeking liquidation of the CD. This Tribunal was pleased to order liquidation of the CD on 09.01.2023, as amended on 23.01.2023.

5. Since the date of his appointment, the Liquidator has been requesting the Respondents to hand over the assets of the CD situated at Kakinada and Hyderabad, together with the Books of Accounts and other information relevant to the conduct of the liquidation process.

6. It is the case of the Applicant that the Respondents did not cooperate with the Liquidator and failed to hand over the assets, books of accounts and information required by the Liquidator. Consequently, the Liquidator filed IA No. 487/2023 praying for a direction to the Respondents to cooperate with the Liquidator and hand over the assets, books of accounts and other relevant data of the CD, which application was allowed, and the Respondents were directed, vide order dated 18.08.2023, to hand over the assets of the CD to the Liquidator.

7. It is submitted that the Liquidator immediately communicated the said order to the Respondents and called upon them to comply, and reminded them to hand over the assets of the CD forthwith; however, there was no response from the Respondents.

8. It is further stated that Mr Ashok Sarda (brother of Respondent Nos. 1 and 2) and Mr Vijay Sarda (son of Respondent No. 1) submitted a Scheme of Compromise and Arrangement on 13.02.2023 under Section 230 of the Companies Act, 2013, read with Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, and subsequently revised the said Scheme. In order to deliberate on the revised Scheme, the Liquidator convened the 5th SCC meeting on 25–26.09.2023, wherein

the members of the SCC advised the Respondents to hand over the assets and records of the CD forthwith.

9. In the said meeting, Respondent No. 1 stated that he would not be in a position to visit the factories and could not hand over the assets and records of the CD on account of dues owed to creditors. The Liquidator offered that the suspended management could depute an authorised representative for the purpose. Respondent No. 1 stated that he would communicate his intention by 27.09.2023. The SCC recorded that, if the assets and records were not handed over by 30.09.2023, the Liquidator would proceed to file a contempt application, to which the Liquidator agreed.

Submissions of the Applicant

10. It is submitted that under Section 35(1) of the IBC, 2016, the Liquidator is obliged to take into his custody or control all assets of the CD, without which the liquidation process cannot be conducted; it is further submitted that Section 36 casts a duty on the Liquidator to form an estate of the CD's assets, Section 36(3) enumerating the assets to be included therein, and that such custody and control is necessary to give effect to these provisions and to consider the Scheme of Compromise and Arrangement received from the shareholders/family members of the Respondents.

11. It is contended that Section 70 of the IBC, 2016 specifies the punishment for misconduct during the CIRP, and it is alleged that the Respondents' withholding of the assets of the CD is nothing but misconduct within the meaning of Section 70, deserving of punishment.

12. It is submitted that Section 236 of the IBC, 2016 lays down the procedure for trial of offences punishable under the Code, and that this Adjudicating Authority accordingly has the power to refer the matter to the Insolvency and Bankruptcy Board of India, which may refer the matter to the Special Court for trial.

13. It is alleged that the failure of the Respondents to comply with the order dated 18.08.2023 in IA No. 487/2023 is nothing but contempt of the order of this Tribunal, and that contempt proceedings can be initiated against the Respondents under Section 425 of the Companies Act, 2013.

14. The Applicant relies on Mahesh Kumar Panwar v. M/s Mega Soft Infrastructure Pvt. Ltd. and Ors., (2019) ibclaw.in 331 NCLAT, for the proposition that Section 425 of the Companies Act, 2013 can be invoked during insolvency proceedings.

15. The Applicant further relies on Shailendra Singh v. Nisha Malpani and Anr., and submits that Section 12 of the Contempt of Courts Act, 1971 provides for punishment for contempt of court.

16. It is submitted that the Respondents are not cooperating with the Liquidator, are neither handing over the assets nor submitting the relevant documents, books of accounts and information, thereby causing delay in completion of the liquidation process, and that the Liquidator has accordingly filed the present Application seeking appropriate directions from this Tribunal.

Reply of the Respondents

17. It is stated by the Respondents that the present Application has been filed by suppressing true and correct facts, and is founded on distorted facts which, to the knowledge of the Applicant, are untrue.

18. It is stated that the CD had two plants/factory premises, located at Kakinada and at Gaganpahad/Satamrai near Hyderabad (which is also the Registered Office of the Company), and that the CD has, since 1991, been engaged in the business of refining and selling vegetable/edible oils, including groundnut, rapeseed, sunflower, cotton-seed, rice bran and palm oil.

19. It is stated that the CD was a family business run by Mr Jagadish Sarda, Mr Manohar Sarda and Mr Ashok Sarda, and it is alleged that Mr Ashok Sarda diverted, misused and misappropriated Company funds to

the extent of approximately Rs. 42 crores, and illegally occupied the factory premises, plant & machinery and the Registered Office of the CD, in respect of which FIR No. 90 of 2019 was registered at the Central Crime Station, Hyderabad, at the instance of the Company's banker.

20. It is further alleged that the CD's finances were adversely affected by the non-cooperation of its bankers, including non-renewal of credit limits, freezing of accounts, and disallowance of roll-over of import bills causing foreign-exchange losses; that a Term Loan of Rs. 14 crore was wrongly and deliberately not disbursed; and that the Bank had seized the Hyderabad and Kakinada premises, hindering the CD's operations.

21. It is alleged that the Bank declared the CD's loan account as NPA without intimation, of which the Respondents learnt only upon receipt of a notice dated 29.05.2015 under Section 13(2) of the SARFAESI Act; that the Bank thereafter approached the Debt Recovery Tribunal-I, Hyderabad (RC No. 380/2018 in OA No. 694/2016) and issued a Sale Notice dated 18.01.2018 under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002; and that the said proceedings were challenged in IA No. 1 of 2018 in Writ Petition No. 5772 of 2018, wherein the Hon'ble High Court granted interim suspension of the sale notice.

22. It is stated that the Bank thereafter filed a petition under Section 7 of the IBC, which was allowed ex-parte on 27.08.2019, appointing the Applicant as Interim Resolution Professional, who was later confirmed as RP and thereafter as Liquidator.

23. It is alleged that although the order in CP (IB) No. 102 of 2019 was set aside by the NCLAT, requiring the erstwhile RP/present Liquidator to hand over possession of the CD's properties and plant & machinery, the RP refused to do so despite correspondence, and only after a gap of 1.5 years merely handed over the keys of the unit, without any panchnama or other formality.

24. It is stated that the Bank, aggrieved by the NCLAT order, preferred Civil Appeal No. 3849 of 2020 before the Hon'ble Supreme Court, which was allowed vide judgment dated 13.09.2020, thereby resuming the CIRP against the CD.

25. It is stated that, vide email dated 10.10.2022, the RP called upon the Respondents to hand over the Kakinada and Hyderabad units along with the books of accounts; the Respondents state that, to the best of their knowledge, the books of accounts, data and computers with accounting backup are situated at the factory premises themselves, possession of which was earlier taken by the RP without following due procedure, panchnama or the presence of a witness.

26. It is stated that the Hyderabad Factory Unit is not in the possession of the Respondents. As regards the Kakinada Unit, it is stated that although this Tribunal, vide order dated 13.02.2020, had directed the Respondents/Directors to accompany the RP at the time of taking possession, the RP failed to intimate any date or time to the Respondents and took possession unilaterally, without maintaining any panchnama or associating any witness; it is further alleged that the RP failed to take adequate steps in the pending litigation for recovery of the CD's receivables.

27. It is alleged that the 11th CoC meeting dated 25.10.2022 was held without intimation to the Respondents, and that the minutes thereof were not furnished in time; that it can be discerned from the said minutes that the RP had earlier filed IA No. 738 of 2020 for liquidation and intended to file a fresh application, and had sought approval for a tentative expenditure of Rs. 49.59 lakh for the first six months.

28. It is alleged that the Liquidation Order dated 09.01.2023, as amended on 23.01.2023, passed in IA No. 1323/2022, was obtained without the said application ever being served upon the Respondents, and that the Respondents were kept in the dark regarding the initiation of the liquidation process and the result of the e-voting.

29. Reliance is placed on Regulation 39BA of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, inserted by the Fourth Amendment Regulations, 2022 (with effect from 16.09.2022), which requires the CoC to explore a last-resort compromise or arrangement with the CD during the pendency of a liquidation application; it is stated that this very requirement was recorded in Item 7.2 of the 11th CoC meeting.

30. It is stated that, upon IA No. 487/2023 being allowed on 18.08.2023, the Respondents immediately sent a representation to the Liquidator setting out the aforesaid facts and stating that they are not in physical possession of the scheduled premises.

31. It is alleged that the Applicant is well aware that physical possession of the Hyderabad premises rests with BRS Refineries and others, against whom the Applicant had earlier filed IA No. 478 of 2020 (impleading BRS Refineries Pvt. Ltd., Mr Ashok Kumar Sarda and Mr Sunil Kumar Sarda), and that the Liquidator has voluntarily suppressed these facts from this Tribunal, rendering the present Application liable to be dismissed.

32. It is stated that the Respondents are presently not in custody of any properties of the CD, and that the Respondents have themselves lodged FIR No. 270 of 2022 against Mr Ashok Kumar Sarda and others for illegally trespassing upon and taking over the assets of the CD, a fact of which the Applicant is well aware.

33. It is accordingly prayed that the present Application be dismissed.

<u>Findings & Decision</u>

34. We have heard the Counsel for the Applicant and perused the material on record. The issue for consideration is whether the conduct of the respondents amounts to wilful and deliberate disobedience of the order dated 18.08.2023 passed in IA No. 487/2023, warranting action for contempt.

35. Initiating contempt has a dual purpose: (a) upholding the majesty of law by punishing the contemnor, and (b) coercing the contemnor to do what the law requires him to do. For contempt of any order passed under the IBC, this Adjudicating Authority has the power to punish the contemnor by following the procedure prescribed under the Contempt of Courts Act, 1971. Here, reference can be made to the decisions in **Shailendra Singh versus Nisha Malpani (2021)**[1]

36. Pursuant to Sections 2(a) and 2(b) of the Contempt of Courts Act, 1971, the term 'contempt' is defined as below:

> (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;

37. Thus, the essential ingredient of civil contempt, as defined under Section 2(b), is wilful disobedience. The element of willingness is an indispensable requirement to establish the charge of contempt, as held in **Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors**[2].

38. The order, which is regarding the contempt, was passed by this Adjudicating Authority on 18.08.2023 in IA No. 487/2023, and the relevant extract of this is as given below:

> "This application is filed seeking for a direction to the Respondent to co-operate with the liquidation process. As per regulations 9 of IBBI Liquidation Process, Regulations 2016, the Respondent shall cooperate with the liquidator and since the application stands un-opposed there shall be a direction to the Respondents to cooperate with the liquidator and to hand over all the assets and pending books of accounts as prayed for"

39. It is relevant to note that, in IA No. 487 of 2023, the Liquidator had sought a direction to the Respondents to cooperate with him by handing over all the assets, updated books of accounts, documents and other relevant information of the CD, M/s Sarda Agro Oils Limited; and the

[1] [Company Appeal (AT)(INS) No.945 of 2020] ibclaw.in 528. NCLAT.

[2] AIR 2002 SC 1405

order dated 18.08.2023 allowed the said application "as prayed for", without independently specifying or itemising the particular assets, documents, or the timeline within which compliance was to be made.

40. The Applicant's case, in substance, is that the Liquidator is statutorily bound under Sections 35(1) and 36 of the IBC, 2016 to take custody and control of the CD's assets and constitute the liquidation estate; that the Respondents have failed and neglected to hand over the assets, books of accounts and records despite the order dated 18.08.2023; and that such non-compliance constitutes contempt of this Tribunal's order, apart from amounting to misconduct under Section 70 of the IBC, 2016.

41. The Respondents dispute possession of the CD's assets altogether. It is their case that the Hyderabad premises are in the possession of a third party, BRS Refineries and others, against whom the Applicant has himself proceeded in IA No. 478 of 2020; and that the Kakinada unit was already taken over by the RP/Liquidator, albeit, as alleged, without following the procedure directed by this Tribunal on 13.02.2020. It is also their case that they were not served with the liquidation application, were not intimated of the 11th CoC meeting, and sent a representation to the Liquidator immediately upon the order dated 18.08.2023 clarifying their want of possession.

42. A careful reading of the aforesaid direction reveals that the mandate issued by this Tribunal is in broad and general terms. The Respondents were directed to "***to the Respondents to cooperate with the liquidator and to hand over all the assets and pending books of accounts as prayed for***" to the Liquidator. However, no specific act, obligation, timeline, or definite course of conduct was spelt out. The direction is thus omnibus in nature and lacks the precision required for invoking contempt jurisdiction.

43. It is a settled position of law that contempt proceedings are quasi-criminal in nature, and the standard of proof required is that of proof beyond reasonable doubt. The element of wilfulness and

deliberateness must be clearly established, leaving no scope for ambiguity or inference.

44. In the present case, the directions relied upon are general and wide in amplitude. In the absence of a clearly defined mandate specifying the precise acts to be performed by the Respondent, it cannot be conclusively held that there has been wilful or deliberate disobedience so as to attract the rigours of contempt. However, the applicant is at liberty to file an appropriate application giving specific details of the documents/assets that are not handed over.

With the above directions, this Application is dismissed and disposed of.

Sd/-	Sd/-
SANJAY PURI **MEMBER (TECHNICAL)**	**RAJEEV BHARDWAJ** **MEMBER (JUDICIAL)**