

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (Court-I)

KOLKATA

IA.(I.B.C.) No. 1657/(KB)/2022

In

C.P. (I.B.) No. 891/(KB)/2020

An application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Steel Authority of India Limited

.....Applicant

-Versus-

Mr. Ravi Sethia, Resolution Professional of McNally Bharat Engineering Company Limited

.....Respondent

Date of Hearing: 16/02/2023

Date of pronouncing the order: 21/04/2023

Appearances (via Video Conferencing/ Physical):

For the Applicant : Mr. Sarathi Dasgupta, Advocate
: Mr. Arijit Basu, Advocate

For the Respondent : Ms. Shweta Dubey, Advocate
: Ms. Ishita Srivastava, Advocate
: Mr. Atul Sureka, Advocate

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The instant application has been filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 by Steel Authority of India Limited, which is an Operational Creditor of the Corporate Debtor wherein the applicant seeks that permission be accorded by this Tribunal to allow the applicant to continue with the arbitration proceedings against the Corporate Debtor.

Brief Facts of the Case are summarised herein below:

2. The applicant states that the Financial Creditor had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor and the same was admitted by this Hon'ble Tribunal on 29.04.2022.
3. The applicant is the Operational Creditor of the Corporate Debtor and has filed this Application in order to seek permission from this Hon'ble Tribunal to allow it to continue with the arbitral proceedings that are pending before Hon'ble Mr. Justice T.S. Thakur, Hon'ble Mr. Justice Badar Durrez Ahmad and Dr. Vinod Kumar Agarwal, numbered as AC-2182 (M/s Steel Authority of India Limited (SAIL) versus M/s McNally Bharat Engineering Company Limited & Southern Cooling Tower Private Limited).
4. Applicant states that arbitral proceedings had commenced between the Corporate Debtor and Applicant on account of disputes arising under arbitration agreement dated 22.09.2012. It is further stated that the Corporate Debtor failed to mobilize enough resources and persistently failed to execute the work in accordance with the specified timelines under the contract. Due to non-adherence to the specified timelines for the completion of contract, the Applicant on 20.05.2016 had terminated the contract and informed the Corporate Debtor that the additional cost for execution of balance work would be recoverable from it against other liabilities.

5. The Applicant states that its claim may be classified as contingent since arbitral proceedings with respect to the dues are pending. It states that the arbitral proceedings be allowed to continue in the interests of justice for an award to be passed. It also undertakes not to execute any award passed in its favour while the moratorium continues to remain in effect.
6. The Applicant prays for the following reliefs: -
 - (a) That this Hon'ble Tribunal be pleased to allow the Applicant with the arbitral proceedings against the Corporate Debtor pending before the Arbitral Tribunal comprising of the Hon'ble Mr. Justice T.S. Thakur, the Hon'ble Mr. Justice Badar Durrez Ahmad and Dr. Vinod Kumar Agarwal, numbered as AC-2182 (M/s Steel Authority of India Limited (SAIL) versus M/s McNally Bharat Engineering Company Limited & Southern Cooling Tower Private Limited).
 - (b) To pass such other order or orders as may be deemed fit in the circumstances.

Analysis

7. Heard the Learned Counsel appearing for both the parties and perused the records.
8. The limited issue that requires determination by this Adjudicating Authority is:
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 - ***Whether the arbitral proceedings can continue in view of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 that came into force while admitting the Corporate Debtor into Corporate Insolvency Resolution Process (CIRP) on 29.04.2022?***

While answering the issue raised before us we refer to the judgment of the Hon'ble Supreme Court in **Alchemist Asset Reconstruction Pvt Ltd v. M/s Hotel Gaudavan Pvt. Ltd. & Ors.**¹ where the Apex Court observed:

"5. The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against Corporate Debtors."

9. We also refer to Section 14 (1) (a) of the Insolvency and Bankruptcy Code, 2016 as reproduced hereinafter: -

"Section 14: Moratorium- *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely:-*

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority....."

10. A plain reading of Section 14 (1) (a) read with observations of the Hon'ble Supreme Court referred above leaves this Adjudicating Authority with no doubt to conclude that the arbitral proceedings under reference cannot continue after 29.04.2022, when the Corporate Debtor was admitted to CIRP along with declaration of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 by this Adjudicating authority. Continuation of arbitral proceedings falls within the scope of moratorium under Section 14 (1) (a).

¹ Civil Appeal No. 16929 of 2017 on 23.10.2017

11. In view of the above legal position we are of the view, relief as asked for cannot be allowed and therefore this application is accordingly dismissed.

Balraj Joshi
Member (Technical)
(Judicial)

Rohit Kapoor
Member

(FA, LRA) This order is pronounced on the 21st day of April, 2023