



NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 41

IA(I.B.C)/3176(MB)2025 IN C.P. (IB)/1058(MB)2017

CORAM:

SH. PRABHAT KUMAR **SH. SUSHIL MAHADEORAO KOCHEY**
HON'BLE MEMBER (TECHNICAL) **HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF THE HEARING ON **20.08.2025**

NAME OF THE PARTIES: **UNITY INFRAPROJECTS LIMITED**

Section 10 of the Insolvency and Bankruptcy Code, 2016 & Any other provision -
Govt body

ORDER

IA(I.B.C)/3176(MB)2025 IN C.P. (IB)/1058(MB)2017

- 1) Though the Counsel for the Applicant is present, however, appearance has not been marked neither in the Chat Box nor in the physical attendance sheet. Mr. Dhruva Gandhi, Ld. Counsel for the Respondent is also present.
- 2) The present Interlocutory Application has been filed by the Applicant viz. Mumbai Metropolitan Region Development Authority, seeking leave of this Bench under Section 33(5) of the Insolvency and Bankruptcy Code, 2016, to continue the Arbitration Petition No. 1602 of 2014, pending for adjudication before the Hon'ble Bombay High Court against the Corporate Debtor, through the Liquidator.
- 3) This Tribunal *vide* its Order dt. 08.04.2021, appointed the Liquidator in the present Matter. Arbitration Petition No. 1602 of 2014 has been filed by the Applicant under Section 34 of the Arbitration and Conciliation Act, 1996



before the Hon'ble Bombay High Court, challenging the Arbitral Award dated 06.05.2014, passed by the Arbitral Tribunal, thereby awarding the Corporate Debtor an amount of Rs.7,76,58,307/- together with interest at 18% per annum from 30.05.2014.

- 4) The Applicant submits that continuation of the proceedings of the said Petition will not in any manner interfere with or delay the liquidation process, as it is confined solely to the adjudication of the Applicant's challenge to the Impugned Award and does not seek to affect the custody or control of the Corporate Debtor's Asset.
- 5) Applicant relies upon Section 279 of the Companies Act, 2013 which reads as follows:

Section 279: Stay of suits, etc., on winding up order.

279. (1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.



(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

- 6) Heard the Ld. Counsel and perused the material on record.
- 7) It is admitted fact that the Liquidation proceedings are going on against the Corporate Debtor in terms of the Insolvency and Bankruptcy Code, 2016 (the Code). The Applicant herein has relied upon Section 279 of the Companies Act, 2013, however, the provision in relation to the continuance of proceedings against the Corporate Debtor are provided under Section 33(5) of the Code, which reads as under:

5) *Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:
Provided that a suit or other legal proceeding^{J3} may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.*

- 8) Under Section 33(5) of the Insolvency and Bankruptcy Code, 2016, the Liquidator is the only one who can file an application or initiate a legal proceeding against or on behalf of the corporate debtor, but only after obtaining prior approval from the Adjudicating Authority. This provision essentially prevents fresh suits or legal proceedings against the corporate



debtor once a liquidation order has been passed, however, there is no embargo on continuance of existing legal proceedings against the Corporate Debtor after commencement of Liquidation. Further Section 35(1)(k) of the Code vests the power under the Liquidator to defend any suit, prosecution or other legal proceedings.

9) It is to be noted that Sections 279 of the Companies Act, 2013 and 33(5) of the Insolvency and Bankruptcy Code, 2016 are not *pari materia*. While both sections deal with the impact of Winding-up or Liquidation on Legal Proceedings, Section 279 of the Companies Act, 2013 bars the continuance of existing suits or legal proceedings against a Company once a Winding-up Order is passed or a Provisional Liquidator is appointed by this Tribunal, but, Section 33(5) of the Code does not do so and only bars fresh institution of legal proceedings against the Corporate Debtor, after commencement of liquidation under the Code.

10) The Insolvency and Bankruptcy Code, 2016, being a Specific Law for Insolvency, has its own Rules and Procedures, including Section 33(5), and the provisions contained therein does not require any approval of this Tribunal for continuance of any proceedings. It is stated that the said Petition challenge in the Arbitral Award was admitted by the Hon'ble High Court by its order dated 28.01.2015 and is pending final hearing. The CIRP Process commenced on 20.06.2017 and thereafter, a corporate debtor was admitted into liquidation process on 08.04.2021. Since, the proceedings



in question was pending before the commencement of CIRP and no fresh legal proceedings are contemplated by the Applicant, we are of the considered view that the approval of this Tribunal is not required in terms of Section 33(5) of the Code for continuance of existing legal proceedings. Accordingly, there is no requirement of leave of this Tribunal. In that view of the matter, the present Interlocutory Application bearing IA No. 3176 of 2025, sans merit, thus, deserves to be dismissed.

11) Accordingly, the present Interlocutory Application bearing IA No. 3176 of 2025, is disposed of as dismissed. There will, however, be no order as to costs.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**SUSHIL MAHADEORAO KOCHEY
MEMBER (JUDICIAL)**

Vedant Kedare
(Stenographer)