

IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-II, CHENNAI

IA(IBC)/485(CHE)/2021

In

IBA/838(CHE)/2019

(filed under Section 40 r/w 42 r/w 65 r/w 238 of the Insolvency and Bankruptcy Code, 2016  
r/w Section 279(1) of the Companies Act, 2013)

**P. SRIRAM**

Liquidator of STT Limited  
10/17, Anandam Colony,  
South Canal Bank Road,  
Mandaiveli, Chennai - 28

... Applicant / Liquidator

-Versus-

1. **SHRI. PRADEEP CHATURVEDI**  
C 4, Gulmohar Park  
New Delhi – 110 049
2. **SHRI KESHAV SARAN**  
151, Raja Garden,  
New Delhi – 110 015
3. **SHRI JUSTICE SN SAPRA (RETD)**  
B-64, Sector 14,  
Noida 201 301
4. **NTPC LIMITED**  
NTPC Bhawan,  
Scope Complex, 7 Institutional Area,  
Lodi Road,  
New Delhi – 110 003

... Respondents

In the matter of

K. Rajagopal, CA

...Operational Creditor

-Versus-

STT Limited

...Corporate Debtor

Order Pronounced on 20<sup>th</sup> March 2023

CORAM

**ASHOK KUMAR BHARDWAJ, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : S. Sathyanarayanan, Advocate

For 4<sup>th</sup> Respondent : Arun Dhanapalan, Advocate



ORDER

*Per:* ASHOK KUMAR BHARDWAJ, MEMBER (JUDICIAL)

The captioned application has been preferred by one Mr. P. Sriram, the Liquidator of M/s. STT Limited under Section 40, 42, 65 r/w 238 of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows,

*"The Applicant humbly prays that this Hon'ble Tribunal may be pleased to call for the records of the Arbitral Tribunal consisting of the Respondent Nos. 1 to 3, and quash the impugned order dated 05.02.2021 in so far (a) it challenges, transgresses and overrides the powers, authorities and jurisdiction of this Hon'ble Tribunal under various sections of the insolvency and Bankruptcy Code, 2016 ('Code') including Section 42, Section 60(1), section 60(5), Section 63, Section 231, Section 238, etc., of the code as well as Section 279(1) of the Companies Ac, 2013 and (b) it impugns and overrules the statutory exercise of the authority of the Applicant as the Liquidator of the Corporate Debtor under section 40(1) of the code in rejecting the unadjudicated counter claims of the 4<sup>th</sup> respondent in the arbitration proceedings before the 1<sup>st</sup> to 3<sup>rd</sup> respondent;*

*In the interim, this Hon'ble Tribunal may kindly be pleased to direct the 1<sup>st</sup> to 3<sup>rd</sup> Respondent to refrain from continuing with the arbitration proceedings until further order of this Hon'ble Tribunal, and thus render Justice."*

2. The Learned Counsel for the Applicant espoused that this Adjudicating Authority vide order dated 30.08.2019 had initiated Corporate Insolvency and Resolution Process against the Corporate Debtor viz., M/s. STT Limited and the Applicant initially appointed as the Interim Resolution Professional was later confirmed as the Resolution Professional by the sole Committee of Creditor (CoC). On 12.11.2019, during its 2<sup>nd</sup> Meeting the COC had



unanimously resolved to liquidate the Corporate Debtor as there were no assets lying in the Company. Thereafter, based on an application moved by the applicant herein, an order for Liquidation of the Corporate Debtor was passed by this Adjudicating Authority on 10.12.2019 appointing the Applicant herein as the Liquidator.

3. It is submitted by the Learned Counsel for the Applicant that the 4<sup>th</sup> Respondent herein, M/s. NTPC Limited had entered into a Contract with the Corporate Debtor viz., M/s STP Limited pursuant to Letter of Agreement Nos. 6466 and 6465 dated 21.04.2004. According to him owing to certain disputes between the parties, the Arbitration Clause contained in the agreement could be invoked, resultantly, The Arbitral Tribunal consisting Respondents 1 to 3 was formed and proceedings could commence since 2008.

4. The submission put forth by the Learned Counsel for the Applicant is that the arbitration proceedings between the Corporate Debtor and the 4<sup>th</sup> Respondent herein could be suspended on account of financial difficulties in payment of the Arbitration fees, even before the CIRP Order dated 30.08.2019 could be passed. Thereafter, an order for Liquidation of the Corporate Debtor was passed by this Adjudicating Authority, subsequently, the Applicant sent a letter dated 22.02.2020 to the Respondents No.1 to 3, regarding the initiation of liquidation and the moratorium, under Section 33(5) of IBC, 2016. It is further submitted that the 1<sup>st</sup> and



2<sup>nd</sup> Respondents viz. the Learned Arbitrators had passed an order dated 05.02.2021 for continuation of arbitral proceedings pending before them. However, the 3<sup>rd</sup> Respondent, the Learned Arbitrator, who is also a Retired Judge of Hon'ble High Court of Delhi had passed a dissenting order and has held that the present arbitration proceedings cannot be continued unless this Adjudicating Authority passes necessary orders in that regard.

5. It is also the contention put forth by the Id. Counsel for the applicant that the liquidation order passed by this Adjudicating Authority was on the sole decision of the COC, in the absence of realisable assets belonging to the Corporate Debtor. This being the situation, it is averred that even before initiation of CIRP, the Corporate Debtor was not in a position to pay the arbitral fee to the constituted Arbitral Tribunal and hence the Applicant herein had come up with this application stating that the arbitral proceedings between the 4<sup>th</sup> Respondent and the Corporate Debtor cannot be continued either by virtue of the provisions or in the interest of justice since the Corporate Debtor has no means in its corpus.

6. In terms of the submissions made by the Learned Counsel for the Applicant though the 4<sup>th</sup> Respondent had filed its claim before the Liquidator, but, the same was dismissed vide a detailed order passed by the Applicant and instead of preferring an appeal

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under Section 42 of the code against the order of the Applicant the 4<sup>th</sup> respondent is now insisting upon the pending arbitration proceedings.

7. The Learned Counsel for the Applicant had submitted that the Respondents No.1 to 3 are arrayed as formal parties and the present application is in no way derogatory to the provisions of Section 42(b) of the Arbitration and Conciliation Act, 1996 and that only the order dated 05.02.2021 passed by the Learned Arbitrator is in contravention to Section 33(5) of IBC, 2016.

8. The Learned Counsel for 4<sup>th</sup> Respondent, by way of written submissions had submitted that there was a breach of the above referred contract, subsequent to which dispute arose between the parties and thereafter the parties had attempted Arbitration as the Clause provides for. The Respondents No.1 to 3 were appointed as Arbitrators in relation to the dispute between the parties in the year 2008.

9. The Learned Counsel for 4<sup>th</sup> Respondent submitted that nowhere before the commencement of CIRP, the Arbitration Tribunal had suspended the arbitration proceedings for non-payment of the arbitration fees by the Corporate Debtor. Moreover, the Arbitration Tribunal had put a question to the 4<sup>th</sup> Respondent if they are ready to pay the share of the Corporate Debtor to





continue the proceedings, but, the same was not agreed. Thereafter, the arbitration proceedings were kept on hold only on account of the moratorium declared under Section 14 of the IBC, 2016. It is further submitted that the moratorium under Section 14 of IBC, 2016 itself come to an end on the date of the liquidation order (i.e.,) 10.12.2019 and thus the Arbitration Tribunal is at liberty to resume the arbitration proceedings.

10. The Learned Counsel for the 4<sup>th</sup> Respondent submitted that, the applicant during the proceedings before the Arbitration Tribunal having understood that the 4<sup>th</sup> respondent is a Public Sector undertaking and the money involved is public money and that in order to prevent realisation of the said claim had passed a rejection order dated 19.01.2021, in a hasty manner for the reasons know to him.

11. The Learned Counsel for 4<sup>th</sup> Respondent also brought to fore that Section 42(b) of the Arbitration and Conciliation Act is incorporated in the statute to provide protection to arbitral Tribunal for the acts done in good faith and hence, the Respondents No.1 to 3 should not have been arrayed as parties to the instant proceedings.

12. The Learned Counsel for the 4<sup>th</sup> Respondent further submitted that the provisions of the act create a clear distinction





between the *moratorium* during the Insolvency Proceedings and Liquidation Period, while the former bars initiation of new proceedings and the continuation of existing proceedings the latter says only no fresh proceedings shall not be instituted and that it is implied that any existing Proceedings shall continue.

13. The Learned Counsel for the 4<sup>th</sup> Respondent further submitted that any award passed by the Arbitration Tribunal can only be challenged before the Hon'ble High Court under Section 34 & 37 of the Arbitration and Conciliation Act as the case may be, and the award passed by the Arbitrators who are Quasi-Judicial Authority as held by the Hon'ble Supreme Court of India cannot be a subject matter of challenge before another Tribunal and the Liquidator cannot maintain the instant application before this Adjudicating Authority and hence prays for dismissal.

14. Heard the Learned Counsel for the Applicant and the 4<sup>th</sup> Respondent and perused the documents on record, it is learnt from the documents on record, that the 4<sup>th</sup> Respondent and the Corporate Debtor had entered into an Agreement vide Letter of Agreement Nos. 6466 and 6465 dated 21.04.2004, subsequent to which the Parties have approached the Arbitration Tribunal in consonance with the clause of the agreement for the disputes between them in the year 2008. The Corporate Debtor was admitted to CIRP vide order dated 30.08.2019, on account of

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which Section 14, moratorium had come into existence, thereafter, vide order dated 10.12.2019, the Corporate Debtor was ordered to be liquidated ergo, Section 33(5) of IBC, 2016 came into operation and section 14 thereof ceased to be operative.

15. It is seen from the arguments made by the Ld. Counsel for the Liquidator that the Corporate Debtor has no means to even pay the outstanding fees and that it would be irrelevant at this point of time to press on the pending Arbitration. Be that as it may, not venturing further, it is seen that the answering respondent has not filed any application against the order of the Liquidator or anything else before this Adjudicating Authority and that since the answering Respondent has not taken a call in terms of the available provisions under the code, the Liquidator is at ease to expediate the Liquidation process and do the needful at the earliest.

16. In the wake, the prayer is rejected as misconceived and the application in IA(IBC)/485(CHE)/2021 in IBA/838(CHE)/2019 stands dismissed and Disposed of.

-sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**ASHOK KUMAR BHARDWAJ**  
MEMBER (JUDICIAL)

*Mohana Priya R*

*Order pronounced under Rule 151 of NCLT Rules 2016, by Sameer Kakar Member (Technical) on behalf of the Bench comprising of **Ashok Kumar Bhardwaj**, Member (Judicial) and **Sameer Kakar**, Member (Technical)*

*M. Nallachetty*  
*(Court-officer)*