

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.183/2020
In
CP(IB)No.262/7/HDB/2018

In the matter of:
Transstroy Tirupati Tiruthani Chennai Tollways Private Limited

Mr.Sanjay Kumar Mishra
(IBBI Registration No.IBBI/IPA-001/IP-P01047/2017-2018/11730)
Resolution Professional of
Transstroy Tirupati Tiruthani Chennai Tollyways Pvt Ltd.
...Applicant/RP

Vs

1. The Hon'ble Arbitral Tribunal comprising of
 - a) Hon'ble Presiding Officer
Shri D.Sree Rama Murthy,
Former Chief Engineer Roads & Building (Retd.)
Magnificent Home, H.No.10, Tolichowki, Shaikpet,
Hyderabad – 500028.
 - b) Hon'ble Arbitrator
Shri Samirendra Chatterjee,
IAS(Retd.), 71, Vikramshila Apartment,
IIT Delhi, Hauz Khas, New Delhi – 110 016.
 - c) Hon'ble Arbitrator
Shri R.L.Koul,
(Former member of NHAI)
B-40, SFS, Sheikh, Sarai, Phase-I,
New Delhi.
2. National Highways Authority of India (NHAI)
Represented by Sh.Ravinder, General Manager (T)
Tamil Nadu, G 5&6, Sector -10, Dwarka,
New Delhi – 110 075 and also having office at
Sri Tower, 3rd Floor, DP-34(SP), Industrial Estate,
Guidy, Chennai – 600032.

...Respondents

Order pronounced on: 14.10.2020.

Coram: K. Anantha Padmanabha Swamy, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/ Counsels Present:-

For the Applicant/RP: Mr. P.Ravi Charan, Counsel

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. The present Application bearing IA No.183/2020 is filed by the Resolution Professional of the Corporate Debtor namely M/s Transstroy Tirupati Tiruthani Chennai Tollyways Pvt Ltd. seeking following reliefs:-
 - a. To pass an order clarifying that moratorium order issued under section 14 of the Insolvency and Bankruptcy Code, 2016 does not apply to arbitration proceedings initiated by Corporate Debtor before Hon'ble Arbitral Tribunal comprising of (i) Shri D.Sree Rama Murthy, Hon'ble Presiding Arbitrator; (ii) Shri Samirendra Chatterjee, Hon'ble Arbitrator; (iii) Shri R.L.Koul, Hon'ble Presiding Arbitrator and
 - b. Consequently to direct the Hon'ble Arbitral Tribunal comprising of (i) Shri D.Sree Rama Murthy, Hon'ble Presiding Arbitrator; (ii) Shri Samirendra Chatterjee, Hon'ble Arbitrator; (iii) Shri R.L.Koul, Hon'ble Presiding Arbitrator to continue the arbitration proceedings initiated by Corporate Debtor against Respondent No.2; and
 - c. Pass such other orders/directions, which this Adjudicating Authority may deem fit and proper in the facts and circumstances of the present case.



2. It is stated that the National Highway Authority of India (NHAI) i.e., Respondent No.2 herein issued suspension notice on 10.10.2018 to Corporate Debtor alleging various alleged defaults committed by Corporate Debtor and suspended the rights of the Corporate Debtor under Concession Agreement in exercise of its rights prescribed under Article 36 of the Concession Agreement.
3. That the Corporate Debtor and Respondent No.2 have appointed Hon'ble Arbitral Tribunal i.e Respondent No.1 herein for adjudication of disputes arising out of Concession Agreement dated 12.07.2010.
4. That the Corporate Debtor filed statement of claims alleging breaches committed by Respondent No.2 in granting of right of way, change of scope orders etc. before the Hon'ble Arbitral Tribunal.
5. That pending adjudication of claims by Hon'ble Arbitral Tribunal, an application u/s section 7 of IBC 2016 filed by Allahabad Bank against Corporate Debtor got admitted on 03.06.2019 and this Adjudicating Authority declared moratorium till completion of CIRP for the purposes referred to in section 14 of the Code.
6. That in view of the orders passed by this Adjudicating Authority and declaration of moratorium, the Hon'ble Arbitral Tribunal passed orders on 25.06.2019 stating that it would not be able to proceed and decide the 'claims' and 'counter claims' and further directed the parties to notify the Hon'ble Tribunal as and when the moratorium prohibiting continuation of the arbitral proceedings against the Corporate Debtor are lifted either by the NCLT or other Court.





7. That the Hon'ble Arbitral Tribunal basing on the representations of IRP that moratorium does not apply to the proceedings initiated by Corporate Debtor, was pleased to pass an order on 06.07.2019 stating that *"moratorium on proceedings of AT is not applicable either as per NCLT order dated 03.06.2019 or as per IBC Code 2016 and for the benefit of all stake holders, to accept the request of IRP and proceed with the claims filed by the Claimant since the same are not against the Corporate Debtor"*.
8. That the Hon'ble Tribunal vide its order dated 24.07.2019 was pleased to withdraw its earlier order dated 06.07.2019 i.e., Order No.2 and restored its original order dated 25.06.2019 i.e. Order No.1.
9. That the Applicant vide its letter dated 17.10.2019 requested the Hon'ble Arbitral Tribunal to continue the arbitration proceedings initiated by Corporate Debtor and to withdraw its order dated 24.07.2019 i.e. Order No.3. The Applicant also sent reminder email to the Hon'ble Tribunal on 25.11.2019 requesting the Hon'ble Arbitral Tribunal to continue the arbitration proceedings in respect of the various claims made by the Corporate Debtor. However, there was no response from the Hon'ble Arbitral Tribunal.
10. That section 14 of the Code would not apply to the proceedings which are for the benefit of the Corporate Debtor and section 14 interdicts institution or continuation of pending suits or proceedings against Corporate Debtor. Further the continuation of the arbitration proceedings would be in the interest of the Corporate Debtor and

maximize the value of the assets, benefiting the value of all the stakeholders including Corporate Debtor.

11. That R2 is a proforma Party and no prayer is sought against R2.
12. Reiterating above, the Applicant prayed to allow the Application as prayed for.
13. Heard RP and perused the record.
14. The instant Application is filed seeking clarification that the moratorium U/s.14 of the IB Code does not apply to arbitration proceedings initiated by the Corporate Debtor and to further direct the Hon'ble Arbitral Tribunal to continue the arbitration proceedings initiated by the Corporate Debtor.
15. On perusal of record, it is observed that the Hon'ble Arbitral Tribunal has issued three Orders dated 25.06.2019, 06.07.2019 and 24.07.2019. By Order dated 25.06.2019, the Hon'ble Arbitral Tribunal conveyed its inability to proceed with the arbitration proceedings in view of initiation of CIRP and imposition of Moratorium. However, basing on the representations of IRP that moratorium does not apply to the proceedings initiated by Corporate Debtor, the Hon'ble Arbitral Tribunal passed another Order on 06.07.2019 stating that moratorium on proceedings of Arbitral Tribunal is not applicable either as per NCLT order dated 03.06.2019 or as per IBC Code 2016 and for the benefit of all stakeholders, it would proceed with the claims filed by the Claimant since the same are not against the Corporate Debtor. However, the Hon'ble Arbitral Tribunal issued another Order dated 24.07.2019 wherein it is finally stated that since there are 'claims' and

'counter claims' between the parties, the Arbitral Tribunal cannot proceed with the matter.

16. The point for consideration before this Adjudicating Authority is whether during CIRP moratorium it can direct the Hon'ble Arbitral Tribunal to continue with the Arbitration proceeding in view of the 'claim' and 'counter claim' between the parties.
17. It will be pertinent to note here that a similar issue was considered by this Adjudicating Authority vide IA No.456/2018 in the matter of Golden Jubilee Vs. EIH Limited wherein this Tribunal has held that in view of moratorium and 'claim' and 'counter-claim', the Arbitration proceeding cannot be continued.
18. That upon appeal against the Order of this Adjudicating Authority in IA No.456/2018 *supra*, the Hon'ble NCLAT while considering the aspect of Arbitration proceedings during Moratorium, vide Company Appeal (AT) (Insolvency) No. 1122 of 2019 have held that since the Arbitral Tribunal requires to hear and decide the "claim" and "counter claim" proceedings together to arrive at the final award, the arbitral proceedings cannot continue during the moratorium period. Accordingly, the appeal in the aforesaid case was dismissed.
19. In the instant case also, there is a 'claim' and a 'counter-claim' between the parties to the arbitration which are to be proceeded with together for arriving at a final arbitral award by the Hon'ble Arbitral Tribunal. Since section 14(1)(a) of the Code clearly prohibits either institution or continuation of arbitration proceedings against the Corporate Debtor as no recovery can be made from the Corporate Debtor during the

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period of Moratorium, the arbitration proceedings involving 'Claims' by and 'Counter claims' against the Corporate Debtor in the instant case cannot continue. Accordingly, this Adjudicating Authority holds that Section 14 of the IB Code, 2016 squarely applies to the arbitration proceedings in question.

20. In view of aforesaid, it is hereby clarified that the Arbitration proceedings between the parties cannot be continued and as such, prayers made in the instant Application are hereby rejected.
21. Accordingly, Application bearing IA No. 183 of 2020 stands disposed of.

Dr. Binod Kumar Sinha
Member Technical

SKRathi

K. Anantha Padmanabha Swamy
Member Judicial