

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 03rd DAY OF NOVEMBER 2017

THE HON'BLE DR.JUSTICE ANITA SUMANTH

A. Nos.6899 to 6902 of 2017
in

O.P. Nos.943 to 946 of 2016

O.P. No.943 of 2016:-

In the matter of Section 11 of
the Arbitration & Conciliation
Act, 1996

And

In the matter of Contract
Agreement No. TBM/SG/CN/337/
1/73/3/CGL - VM/IBS & BPAC/
CONT DATED 27.05.2011 Between
Southern Railway and M/s.VNR
Infrastructures Limited.

M/s. VNR Infrastructures Limited
No.8-2-310/7, Road No.14,
Banjara Hills, Hyderabad - 500 034
represented by its Authorised Signatory ... Petitioner

-Versus-

Union of India
Ministry of Railways, Southern Railway
Park Town, Chennai - 600 003,
represented by its General Manager ... Respondent

A. No.6899 of 2017:-

Union of India
Ministry of Railways, Southern Railway
Park Town, Chennai - 600 003,
represented by its General Manager ... Applicant/
Respondent

-Versus-

M/s. VNR Infrastructures Limited
No.8-2-310/7, Road No.14,
Banjara Hills, Hyderabad - 500 034
rep. by its Authorised Signatory ... Respondent/
Petitioner

Application praying that this Hon'ble Court be pleased to recall the order dated 27.06.2017 passed in O.P. No.943 of 2016.

O.P. No.944 of 2016:-

In the Matter of section 11 of the Arbitration & Conciliation Act, 1996

And

In the matter of contract Agreement No.TBM/SG/CN/337/1/73/3/KGZ-MTL/E1/CONT dated 08.10.2012 between Southern Railway and M/s.VNR Infrastructures Limited,

M/s.VNR Infrastructures Limited
No.8-2-310/17, Road No.14,
Banjara Hills, Hyderabad 500 034
represented by its Authorised Signatory ... Petitioner

-Versus-

Union Of India
Ministry of Railways, Southern Railway,
Park Town, Chennai 600 003,
represented by its General Manager ... Respondent

A. No.6900 of 2017:-

Union of India
Ministry of Railways, Southern Railway
Park Town, Chennai - 600 003,
represented by it General Manager ... Applicant/
Respondent

-Versus-

M/s. VNR Infrastructures Limited
No.8-2-310/7, Road No.14,
Banjara Hills, Hyderabad - 500 034
rep. by its Authorised Signatory ... Respondent/
Petitioner

Application praying that this Hon'ble Court be pleased to recall the order dated 27.06.2017 passed in O.P. No.944 of 2016.

O.P. No.945 of 2016:-

In the matter of Section 11 of
the Arbitration and
Conciliation Act, 1996

and

In the matter of Contract
Agreement No.TBM/SG/CN/337/1 /
73/3/CGL-TZD/E1/CONT dated
28.12.2011 between Southern
Railway and M/s.VNR
Infrastructures Limited

M/s.VNR Infrastructures Limited,
No.8-2-310/17, Road No.14,
Banjara Hills, Hyderabad-500 034
rep. by its Authorised Signatory

... Petitioner

-Versus-

Union of India,
Ministry of Railways, Southern Railway,
Park Town, Chennai-600 003
rep. by its General Manager

... Respondent

A. No.6901 of 2017:-

Union of India
Ministry of Railways, Southern Railway
Park Town, Chennai - 600 003,
represented by its General Manager

... Applicant/
Respondent

-Versus-

M/s. VNR Infrastructures Limited
No.8-2-310/7, Road No.14,
Banjara Hills, Hyderabad - 500 034
rep. by its Authorised Signatory

... Respondent/
Petitioner

Application praying that this Hon'ble Court be pleased
to recall the order dated 27.06.2017 passed in O.P. No.945
of 2016.

O.P.946 of 2016

In the matter of Section 11 of
the Arbitration and
Conciliation Act, 1996

and

In the matter of Contract
No.TBM/SG/CN/337/1/73/3 VM
MMK/CONT dated 09.02.2009

between Southern Railway and
M/s.VNR Infrastructures
Limited

M/s.VNR Infrastructures Limited,
No.8-2-310/17, Road No.14,
Banjara Hills, Hyderabad-500 034
rep. by its Authorised Signatory ... Petitioner

-Versus-

Union of India,
Ministry of Railways, Southern Railway,
Park Town, Chennai-600 003
rep. by its General Manager ... Respondent

A. No.6902 of 2017:-

Union of India
Ministry of Railways, Southern Railway
Park Town, Chennai - 600 003,
represented by its General Manager ... Applicant /
Respondent

-Versus-

M/s. VNR Infrastructures Limited
No.8-2-310/7, Road No.14,
Banjara Hills, Hyderabad - 500 034
rep. by its Authorised Signatory ... Respondent/
Petitioner

Application praying that this Hon'ble Court be pleased
to recall the order dated 27.06.2017 passed in O.P. No.946
of 2016.

These four applications are filed by the Southern
Railways praying for recall of order dated 27.06.2017.

2.The recall is sought in the following circumstances:

(i) Orders dated 27.06.2017 were passed by this Court
recording the consent of Mr.G.Kalyan Jhabakh, learned
counsel appearing for the petitioner and Mr.P.T.Ramkumar,

learned counsel appearing for Southern Railways, appointing Mr.Velu a retired District Principal District Judge, Chennai in O.P.No.943 of 2016; Ms.M.Rajalakshmi, retired District Judge and Additional Judge, Chennai in O.P.No.944 of 2016; Mr.G.Palaniappan, retired District Judge, Chennai in O.P.No.945 of 2016 and Mr.P.Ganesan, retired District Judge, Chennai in O.P.No.946 of 2016 as Arbitrators to enter upon reference and adjudicate the disputes inter se the parties.

(ii) On 10.09.2017, the petitioner in the Original Petitions appears to have filed a memo before the respective Arbitrators pointing out that the petitioner had filed Company Petition No.12/10/HDB/2017 before the National Company law Tribunal (NCLT), Hyderabad under Section 10 of the Insolvency and Bankruptcy Code 2016 CODE read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating authority) Rules 2016 initiating Corporate Insolvency Resolution Process.

(iii) The NCLT, vide order dated 10.02.2017 admitted the company petitions and as such the Corporate Insolvency Resolution Process stands initiated. By the said order, one Mr.Deivandraparamchand Jain was appointed as an interim Resolution Professional for initiating the insolvency process.

(iv) Thereafter Company Application No.142 of 2017 was filed before the NCLT by the Resolution Professional

seeking relief in terms of Sections 33(1) and 34(1) of the Insolvency Code and by order dated 24.08.2017, the NCLT passed an order directing the liquidation of the petitioner in accordance with the provisions of the CODE. By order dated 21.09.2017, a direction was also issued for the appointment of Mr.TSN Raja as liquidator in whom all powers of the director and key managerial personal of the liquidated company presently vest.

(v) Section 14 of the Insolvency and Bankruptcy Code, 2016 provides for a Moratorium in respect of various proceedings, including sub-clause (a) thereof, the institution or continuance of pending suits and proceedings for arbitration. Section 14 reads thus:

'14.Moratorium - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall be 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 judgement, decree or order in any Court of law, tribunal, arbitration panel or other authority;

(b)transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c)any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

.....'

(vi) Such moratorium has been declared by the NCLT vide its order dated 24.08.2017.

3. Unfortunately, the aforesaid facts have been omitted to be brought to the notice of this Court at the time of disposal of the Original Petitions and are narrated only now. In fact, the order of this Court appointing the Arbitrator is a consent order passed with the concurrence of both learned counsel. Mr. Kalyan Jhabakh appearing for the respondent in the present applications would express his regret pointing out that he himself was unaware of the aforesaid facts and has learnt of the same only from the present petition filed by the Southern Railways. As the preamble states, the CODE has been enacted to consolidate

and amend laws relating to reorganisation and insolvency resolution of corporate persons, and other entities in order to maximise the value of their assets and balance the interests of all the stakeholders involved. The moratorium in terms of Section 14 is in furtherance of the aforesaid object and is an absolute one, that includes proceedings for arbitration as well.

4. In the light of the narration as above, this Court recalls orders dated 27.06.2017 appointing Mr.Velu, retired District Principal District Judge, Chennai in O.P.No.943 of 2016; Ms.M.Rajalakshmi, retired District Judge and Additional Judge, Chennai in O.P.No.944 of 2016; Mr.G.Palaniappan, retired District Judge, Chennai in O.P.No.945 of 2016 and Mr.P.Ganesan, retired District Judge, Chennai in O.P.No.946 of 2016 as Arbitrators to enter upon reference and adjudicate the disputes inter se the parties.

5. The provisions of Section 35 of the Code detail the powers and duties of the liquidator.

6. The Liquidator appointed by the NCLT is at liberty, in terms of Section 35(k) of the code to pursue the proceedings for arbitration in the name of the petition in accordance with the Contract between the parties dated

27.05.2011 in O.P.No.943 of 2016; 08.10.2012 in O.P.No.944 of 2016; 28.12.2011 in O.P.No.945 of 2016 and 09.02.2009 in O.P.No.946 of 2016 specifically clause 39 providing for arbitration. These applications are disposed of in the above terms.

Sd/-A.S.M.J
03/11/2017

//Certified to be a true copy//

Dated this the day of 2017

JJ 11/12/2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.