$~16 to 42

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 261/2019 and CM APPL. 7162/2019, 7166/2019**
+ **CM(M) 284/2019 and CM APPL. 7884/2019**
+ **CM(M) 287/2019 and CM APPL. 7949/2019**
+ **CM(M) 288/2019 and CM APPL. 7952/2019**
+ **CM(M) 289/2019 and CM APPL. 7955/2019**
+ **CM(M) 290/2019 and CM APPL. 7958/2019**
+ **CM(M) 291/2019 and CM APPL. 7961/2019**
+ **CM(M) 292/2019 and CM APPL. 7964/2019**
+ **CM(M) 293/2019 and CM APPL. 7967/2019**
+ **CM(M) 294/2019 and CM APPL. 7970/2019**
+ **CM(M) 295/2019 and CM APPL. 7973/2019**
+ **CM(M) 296/2019 and CM APPL. 7976/2019**
+ **CM(M) 297/2019 and CM APPL. 7979/2019**
+ **CM(M) 298/2019 and CM APPL. 7982/2019**
+ **CM(M) 299/2019 and CM APPL. 7985/2019**
+ **CM(M) 300/2019 and CM APPL. 7988/2019**
+ **CM(M) 301/2019 and CM APPL. 7991/2019**
+ **CM(M) 302/2019 and CM APPL. 7994/2019**
+ **CM(M) 303/2019 and CM APPL. 7997/2019**
+ **CM(M) 304/2019 and CM APPL. 8000/2019**
+ **CM(M) 305/2019 and CM APPL. 8004/2019**
+ **CM(M) 306/2019 and CM APPL. 8007/2019**
+ **CM(M) 307/2019 and CM APPL. 8010/2019**
+ **CM(M) 308/2019 and CM APPL. 8013/2019**
+ **CM(M) 309/2019 and CM APPL. 8016/2019**
+ **CM(M) 310/2019 and CM APPL. 8019/2019**
+ **CM(M) 311/2019 and CM APPL. 8022/2019**

TRANSGULF FROZEN FOOD CONTAINERS
PVT LTD. .....Petitioner

Through: Mr. Sunil Diwan, Chairman and Managing Director of the Company (M: 9810260899)

versus

SHRIRAM TRANSPORT FINANCE CO LTD ..... Respondent

Signature Not Verified
Digitally Signed
By:AMULYA

Through: Mr. Jeevesh Nagrath, Advocate and Mr. Abhinav V. Gupta, Advocates (M: 9711175701).

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% **07.11.2019**

1. The present petitions challenge the impugned order dated 31st March, 2018 by which the Appellate Court i.e. the ld. ADJ, granted a stay subject to the deposit of Rs. 4,00,000/- *qua* each of the impugned awards in the form of an FDR. This order was challenged before this Court and on 7th March, 2019, the condition was modified from Rs. 4,00,000/- to a sum of Rs. 2,00,000/- to be deposited by the Petitioner.

2. The brief background of these petitions is that the Petitioner had availed ICICI's loan facility, which stood transferred to the Respondent. Some instalments were paid by the Petitioner, however, some remained outstanding. In order to recover the outstanding amounts, a sole arbitrator was appointed in the year 2016 to adjudicate upon the disputes and determine the amount payable by the Petitioner. The Petitioner participated in the said arbitration proceedings. However, the sole arbitrator – Mr. Rajesh Kumar (Retd. ADJ) passed away.

3. The case of the Petitioner is that, thereafter, when Mr. B.L Garg (Retd. ADJ) was appointed as the sole arbitrator by the Respondent, no notice was ever given to the Petitioner and only a publication was claimed to have been made in a newspaper called *Bande Mataram*. Accordingly, it is claimed that Mr. B.L Garg passed the award *ex parte*, without notice being served upon the Petitioner, and hence, petitions under Section 34 of the Arbitration and Conciliation Act, 1996 *(hereinafter, "Section 34 petition")*

were filed before the ld. Trial Court. Initially, in the Section 34 petitions, the ld. ADG had granted a conditional stay subject to the deposit of Rs. 4,00,000/- which condition was later modified to Rs. 2,00,000/- by this Court.

4. Mr. Nagrath, ld. counsel for the Respondent, submits that the NCLT is now seized of the insolvency proceedings in respect of the Petitioner-company and vide order dated 17th September, 2019, a moratorium order has been passed in respect of the Petitioner-company. Thus, in any event, the amount of either Rs. 2,00,000/- or Rs. 4,00,000/- cannot be recovered from the Petitioner so long as the NCLT is seized of the insolvency proceedings. Mr. Sunil Diwan, Chairman and Managing Director of the Petitioner-company, submits that the Section 34 petition has been heard on 2nd September, 2019 and orders have been reserved. Mr. Nagrath, ld. counsel, however, submits that he is not aware of the proceedings before the ld. ADJ. He further submits that the Petitioner's claim of non-service of notice of the appointment of a second arbitrator is incorrect as the notice was sent by speed-post but was received back as unserved, as would be evident from the arbitral record. Notice was then served through publication. He submits that as per his instructions, the ld. ADJ has heard the matter and was informed of the order passed by the NCLT dated 17th September, 2019.

5. Submissions have been heard on behalf of both parties. The admitted position on record is that the Petitioner-company is now under insolvency. According to Mr. Sunil Diwan, Chairman and Managing Director of the Petitioner-company, who appears in person, the business of the Petitioner has been shut down and therefore the Petitioner has not deposited the sum of Rs. 2,00,000/- before this Court. He submits that he has moved an

application seeking waiver, however, the said application is not on record as, according to him, he did not pay the fee of his lawyer and hence, the application was not listed before the Court.

6. After hearing both the parties, it is clear that the Petitioner is now undergoing insolvency proceedings and moratorium has already been declared as per order dated 17th September, 2019. The relevant portion of the order of the NCLT reads as under:

> *"34. In the aforesaid background it is seen that the applicant clearly comes within the definition of Financial Creditor. Respondent has neither denied the ailment of various loans granted by the financial creditor, nor denied the execution of Loan cum Hypothecation Agreements. Besides there is an enforceable award in favour of the applicant. The material placed on record confirms that the respondent corporate debtor committed default in repayment of the financial debt. On a bare perusal of Form-I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.*
>
> *35. As a sequel to the above discussion and in terms of Section 7(5) (a) of the Code, the present application is admitted.*
>
> *36. Mr. Navjit Singh having registration number IBBI/IPA-001/IP-P00314/2017-18/10578 resident of 218-a, 1st Floor, Shop No. 4, Rama Market, Pitampura, Delhi-110034 with email-id navjit92ca@gmail.com is appointed as an Interim Resolution Professional.*
>
> *37. We direct the applicant Financial Creditor to*

deposit a sum of Rs. 2 Lac with the Interim Resolution Professional namely Mr. Navjit Singh to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution process cost as per applicable rules.

38. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

39. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1) (a), (b), (c), and (d) of the Code. Thus, the following prohibitions are imposed: -

> *"(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
>
> *(d) the recovery of any property by an owner or lessor where such property is occupied by or in the*

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possession of the corporate debtor."

The Petitioner submits that he has challenged the order dated 17th September, 2019 before the NCLAT. But it is not disputed that the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 continues.

7. Insofar as the question of service of notice regarding the proceedings before the second arbitrator is concerned, that is a question to be examined by the ld. ADJ in the Section 34 petition and not by this Court. Since the last hearing before the ld. ADJ was stated to be on 2nd September, 2019, which is prior to the order of the NCLT, it is directed that the NCLT order dated 17th September, 2019 be placed by the parties before the ld. ADJ.

8. The Petitioner has not deposited the amounts as directed by this Court. The NCLT order would have to be considered by the Appellate court and appropriate orders would have to be passed. No purpose is served in keeping the present petitions pending. Accordingly, the petitions and all pending applications are disposed of. Copy of this order be sent by the Registry to the Ld. ADJ hearing Arbitration Case Nos. 1252/17, 1273/17, 1258/17, 1260/17, 1266/17, 1267/17, 1272/17, 1263/17, 1265/17, 1257/17, 1254/17, 1277/17, 1256/17, 1262/17, 1268/17, 1274/17, 1278/17, 1253/17, 1264/17, 1269/17, 1270/17, 1276/17, 1255/17, 1259/17, 1275/17 and 1261/1 titled *Transgulf Frozen Food Containers Pvt. Ltd. v. Shriram Transport Finance Company Ltd. & Anr.*

Prathiba..

PRATHIBA M. SINGH, J.

NOVEMBER 07, 2019/MR