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

Decided on 9th February, 2021

\+ O.M.P.(MISC.) (COMM.) 277/2020

RELIANCE COMMUNICATIONS INFRASTRUCTURE LIMITED ..... Petitioner

Through: Mr. Gauhar Mirza, Mr. Prakhar Deep and Mr. Nishant Doshi, Advs.

versus

BHARAT SANCHAR NIGAM LIMITED ..... Respondent

Through: Mr. Nalin Tripathi, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

% **09.02.2021**

(Video-Conferencing)

1. This petition is in the nature of an application under Section 29A (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act"), and has been filed by Mr. Anish Niranjan Nanavaty, who claims to be an Interim Resolution Professional (IRP), appointed by the National Company Law Tribunal (hereinafter referred to as "NCLT"), *vide* order dated 25th September, 2019, to oversee the affairs of M/s. Reliance Communications

Infrastructure Limited (hereinafter referred to as "the Company"), in terms of the Insolvency and Bankruptcy Code, 2016 (IBC). Mr. Mirza, learned counsel for the petitioner, submits that subsequently, *vide* a resolution of the Committee of Creditors (CoC) of the Company, passed on 22nd October, 2019, the petitioner was appointed as Resolution Professional (RP) in respect of the Company.

3. Admittedly, arbitral proceedings, between the petitioner and the respondent, were continuing before a three-member Arbitral Tribunal, and have yet to conclude. The mandate of the learned Arbitral Tribunal has, in the interregnum, expired. The petitioner has, in these circumstances, invoked Section 29A(5) of the 1996 Act, by means of the present petition, seeking extension of the mandate of the learned Arbitral Tribunal to conclude the arbitral proceedings and render award.

4. A reply to the present petition has been filed by the respondent, which is represented by Mr. Nalin Tripathi, learned counsel. Mr. Tripathi, essentially, questions the competence of the petitioner, as RP, to file the present petition on behalf of the company. Reliance has been placed, for this submission, on Section 12 of the IBC, which reads thus:

> "**12. Time-limit for completion of insolvency resolution process –**
>
> (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such

process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once."

5. Mr. Tripathi submits that a strict regimen is stipulated in Section 12 of the IBC, with the resolution process requiring to be completed within 180 days under sub-section (1) thereof and in default, an application to be filed by the RP, under subsection (2), seeking extension of time. In the present case, he submits, such an application was filed by the RP, being IA 941/2020, whereon the learned NCLT, *vide* order dated 19th March, 2020, extended the Corporate Insolvency Resolution Period (CIRP) by 90 days, commencing 24th March, 2020. Even so reckoned, submits Mr. Tripathi, the authority of Mr. Anish Niranjan Nanavaty to continue as RP expired on 22nd June, 2020. He submits that no second extension could be granted to the RP, in view of the first proviso to Section 12(3) of the IBC.

6. In response, Mr. Mirza, learned Counsel for the petitioner, has placed on record an order dated 30th March, 2020, passed by the learned National Company Law Appellate Tribunal (hereinafter referred to as "the learned NCLAT") in Suo Motu Company Appeal (AT) (Insolvency) No. 1 of 2020, which reads thus:

> "Upon requests for urgent listing of cases having been made telephonically to Registrar of this Appellate Tribunal from various persons, who were unable to physically file the same on account of complete lockdown declared by Government with effect from 25th March, 2020, we take *suo moto* cognizance of the unprecedented situation arising out of spread of COVID19 virus declared a pandemic. Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/cases, which has already been taken care of by the Hon'ble Apex Court by extending the period of limitation with effect from 15th March, 2020 till further order/s in terms of order dated 23rd March, 2020 in Suo Motu Writ Petition (Civil) No(s).03/2020, inasmuch as certain steps required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 or to comply with various provisions and to adhere to the prescribed timelines for taking the 'Resolution Process' to its logical conclusion in order to obviate and mitigate such hardships, this Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 r/w the decision of this Appellate Tribunal rendered in ***"Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018"*** decided on 8th May, 2018 do hereby order as follows: -
>
> > (1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for

'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.

(2) It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later.

A copy of this order be communicated to Registrar of National Company Law Tribunal, New Delhi with a request to circulate the same to all Benches of NCLT across the country including the Principal Bench based at Delhi.

A copy of this order be also communicated to Secretary, Ministry of Corporate Affair, New Delhi for information and compliance by various Authorities under its control."

7. In conjunction with the aforesaid order of NCLAT, Mr. Mirza invites my attention to various orders, passed by the Government of Maharashtra, where the registered office of the Company is situate, which indicate that the period of lockdown in Maharashtra stands extended till 31st March, 2021. The last order dated 29th December, 2020 passed by the Chief Secretary, Government of Maharashtra reads thus:

"GOVERNMENT OF MAHARASHTRA
Department of Revenue and Forest, Disaster Management,
Relief and Rehabilitation, Mantralaya, Mumbai- 400 032
No: DMU/2020/CR. 92/DisM-l, Dated: 29th December, 2020

ORDER

Easing of Restrictions and Phase-wise opening of Lockdown. (MISSION BEGIN AGAIN)

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Reference:

1) The Epidemic Diseases Act, 1897.

2) The Disaster Management Act, 2005

3) Revenue and Forest. Disaster Management. Relief and Rehabilitation Department Order No. DMU-2020/C.R.92/DMU-l, dated 2nd May 2020, 3rd May 2020, 5th May 2020, 11th May 2020, 1st May 2020, l7th May 2020, 19th May 2020, 21st May 2020, 31st May 2020, 4th June 2020, 25th June 2020, 29th June 2020, 6th July 2020, 7th July 2020, 29th July 2020, 4th August 2020, 19th August 2020, 31st August 2020, 30th September 2020, 14th October 2020, 23rd October 2020, 29th October 2020, 3rd November 2020 , 14th November 2020, 23rd November 2020, 27th November, 2020, 21st December 2020, 24th December, 2020.

4) Ministry of Home Affairs (MHA) Order No. 40-3/2020-PM-1 (A) Dated 1st May 2020, 11th May 2020, 17th May 2020, 20th May 2020, 30th May 2020, 29th June 2020, 29th July 2020, 29th August 2020, 30th September 2020, 27th October 2020 and 25th November 2020 and 28th December, 2020.

Whereas, in exercise of the powers, conferred under the Disaster Management Act 2005, the undersigned, in his capacity as Chairperson, State Executive Committee has issued an Order dated 30th September, 2020 and 14th October, 2020 (extended by order dated 29th October, 2020 and 27th November, 2020) for containment of COVD-19 in the State, for a period upto 31st December, 2020 and issued revised guidelines by including certain activities from time to time vide above mentioned orders.

Whereas the State Government is satisfied that the State of Maharashtra is threatened with the spread of COVID-19 virus, and therefore to take certain emergency measures to prevent and contain the spread of virus, the Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897, read with all other enabling provisions of The Disaster Management Act, 2005, it is expedient to extend the lockdown in the entire State of Maharashtra further till 31st January, 2021.

Now, therefore, in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897 and the powers conferred under The Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, State Executive Committee, hereby issues directions that the guidelines issued vide orders dated 30th September, 2020 and 14th October, 2020 (extended by order dated 29th October, 2020 and 27th November, 2020) to operationalize MISSION BEGIN AGAIN for easing of restrictions and phase-wise opening, will remain in force till 31st January, 2021 for containment of COVID-19 epidemic in the State and all Departments of Government of Maharashtra shall strictly implement these guidelines. The activities already allowed and permitted from time to time shall be continued and all earlier orders shall be aligned with this order and shall remain in force up to 31st January, 2021.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF MAHARASHTRA

Sd.
(SANJA Y KUMAR)
CHIEF SECRETARY
GOVERNMENT OF MAHARASHTRA"

8. Mr. Tripathi, learned counsel appearing for the respondent, disputes the contention of Mr. Mirza that the lockdown in Maharashtra is continuing till 31st January, 2021 and relies on order dated 31st August, 2020, passed by the Government of Maharashtra, which reads thus:

"GOVERNMENT OF MAHARASHTRA
Department of Revenue and Forest, Disaster Management,
Relief and Rehabilitation, Mantralaya, Mumbai- 400 032
No: DMU/2020/CR. 92/DisM-1, Dated: 31st August, 2020

ORDER

Easing of Restrictions and Phase-wise opening of Lockdown. (MISSION BEGIN AGAIN)

…………………………………………………………………...

Reference:

I) The Epidemic Diseases Act, 1897.

2) The Disaster Management Act, 2005

3) Revenue and Forest. Disaster Management. Relief and Rehabilitation Department Order No. DMU-2020/C.R.92/DMU-l, dated 2nd May 2020, 3rd May 2020, 5th May 2020, 11th May 2020, 1st May 2020, l7th May 2020, 19th May 2020, 21st May 2020, 31st May 2020, 4th June 2020, 25th June 2020, 29th June 2020, 6th July 2020, 7th July 2020, 29th July 2020, 4th August 2020 and 19th August 2020.

4) Ministry of Home Affairs (MHA) Order No. 40-3/2020-PM-1 (A) Dated 1st May 2020, 11th May 2020, 17th May 2020, 20th May 2020, 30th May 2020, 29th June 2020, 29th July 2020 and 29th August 2020.

Whereas, in exercise of the powers, conferred under the Disaster Management Act 2005, the undersigned, in his capacity as Chairperson, State Executive Committee has issued an Order dated 29th July, 2020 to extend the lockdown measures up to 31st August, 2020 and issued revised consolidated guidelines from time to time vide above mentioned orders to contain the spread of COVID-19.

Whereas the State Government is satisfied that the State of Maharashtra is threatened with the spread of COVID-19 virus, and therefore to take certain emergency measures to prevent and contain the spread of virus, the Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897, read with all other enabling provisions of The Disaster Management Act, 2005, it is expedient to extend the lockdown in the entire State of Maharashtra further till midnight of 30th September, 2020.

Now, therefore, in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897 and the powers conferred under The Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, State Executive

Committee, hereby issues directions to extend the lockdown, with amendments, to operationalize MISSION BEGIN AGAIN for easing of restrictions and phase-wise opening, will remain in force till 30th September, 2020 for containment of COVID-19 epidemic in the State and all Departments of Government of Maharashtra shall strictly implement the guidelines issued earlier from time to time.

It is directed that the National Directives for COVID-19 management as specified in **Annexure I** shall be followed throughout the State. The activities already allowed and permitted from time to time and as mentioned in **Annexure II** shall be continued and all earlier orders shall be aligned with this order and shall remain in force up to and inclusive of 30th September, 2020. Further easing under MISSION BEGIN AGAIN will be notified in the due course.

Any person violating these measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005 besides legal action under section 188 of the IPC, and other legal provisions as applicable. Extracts of these penal provisions are at **Annexure III**.

BY ORDER AND IN THE NAME OF THE GOVERNOR OF MAHARASHTRA

Sd.
(SANJA Y KUMAR)
CHIEF SECRETARY
GOVERNMENT OF MAHARASHTRA"

9. Mr Tripathi submits that the lockdown in the State of Maharashtra could not be said to be continuing, in its complete form as initially enforced, till 31st January, 2021. He submits that several officers are working, and that the Government of Maharashtra has also implemented, to a great extent, the 'work from home policy'. He also seeks to point out that the Mumbai Bench of the NCLT is also functioning.

10. Mr. Tripathi further submits that extension of time for completion of the CIRP cannot be automatically assumed, but that a clear statutory procedure, in that regard, stands prescribed by Section 12(2) IBC. He submits that this procedure has not been followed by the RP and that, therefore, he cannot claim that his mandate stands automatically extended. He, therefore, reiterates his submission that the petition is itself not maintainable at the instance of Mr. Anish Niranjan Nanavaty, who claims to be the RP of the Company.

11. In my view, it is not necessary for this Court, while exercising its jurisdiction under Section 29A(5) of the 1996 Act, to enter into this controversy in detail, to the extent to which Mr. Tripathi would exhort examination. A reading of the order dated 30th March, 2020 (*supra*) passed by the NCLAT in Suo Motu Company Appeal (AT) (Insolvency) No. 1 of 2020, read with the order dated 29th December, 2020, passed by the Government of Maharashtra, indicates that, to one extent or the other, a lockdown is, *prima facie*, continuing in the said State. As to whether, seen in the backdrop of the order dated 31st August, 2020 (*supra*) of the State of Maharashtra, on which Mr. Tripathi places reliance, Mr. Anish Niranjan Nanavaty would be entitled to continue as Resolution Professional on the strength of para 1 of the order dated 30th March, 2020 (*supra*) of the NCLAT, is an involved issue which, in my view, is not required to be examined by this Court in exercising jurisdiction under Section 29A(5) of the 1996 Act. Suffice it to state that it cannot be said, on a plain reading, that the present petition, at the instance of Mr. Anish Niranjan Nanavaty, is not maintainable, or that it should be thrown out on that ground.

12. That there is an arbitral proceeding ongoing between the Company and the respondent, is not denied. Mr. Tripathi has not been able to afford any other sustainable ground, as to why the mandate of the learned Arbitral Tribunal should not be continued, as prayed in the petition.

13. In fact, a reading of the counter affidavit filed by the BSNL, indicates that the learned Arbitral Tribunal is also conscious of the pendency of the CIRP proceedings pending before the NCLT, and the question of whether the mandate of the Arbitral Tribunal still continues in view of the said proceedings. It appears that, on 3rd October, 2020, the learned Arbitral Tribunal had directed the parties to intimate the learned Arbitral Tribunal whether, in view of the provision of the IBC and the 1996 Act, the learned Arbitral Tribunal was authorised to proceed with the matter. The parties were also requested to place, on record, the orders passed by the NCLT, in that regard, as well as the decision taken by RP for reviving the arbitration case. The fact that the petitioner was approaching this Court under Section 29A(5) of the 1996 Act also stands noticed by the learned Arbitral Tribunal in its order dated 27th October, 2020. The email, dated 12th November, 2020, of the Hon'ble Presiding Arbitrator, reads thus:

> "From: Ananga Patnaik
> To: Mirza Gauhar
> Cc:wskendram@gmail.com;trivikramnt@yahoo.co.in;

nalinntlaw@yahoo.co.in;legalntlaw®yahoo.com; tpsingh@bsnl.co.in; infrabsnl@gmail.com; Karia Tejas; Katoch Pavit Singh; Mishra Shashank; Deep Prakhar

Subject: Re: RCTL vs. BSNL -Arbitration- Before the Ld. Tribunai- Justice (Retd.) A.K. Patnaik, Justice {Retd.) V.V.S. Rao and Mr. T.N. Tiwari

Thursday, 12 November 2020 7:00:09 PM

12th November 2020

Dear All,

Please refer to the email dated 27th October 2020 sent on behalf of the Claimant Reliance Communication Infrastructure Limited.

In this email, it is stated that under Section 14(1) (a) of the IBC Code there is a moratorium prohibiting an arbitration against the Corporate Debtor namely Reliance Communication Infrastructure Limited but there is no moratorium in the arbitral proceedings in which the Corporate Debtor is the Claimant and as there is no counterclaim filed by the Respondent (BSNL) against the Claimant the arbitration proceedings can continue.

In this email, it is also stated that as the registered office of the Claimant and the Resolution Professional are situated in Mumbai where the lockdown situation still continues, the time period as stipulated in Section 29A of the Arbitration and Conciliation Act, 1996 for making the award stands extended by virtue by the orders passed by the Hon'ble Supreme Court from time to time.

In this email, it is however stated that by abundant caution the Claimant and the Resolution professional shall also approach the Hon'ble Delhi High Court under Section 29A of the Arbitration and Conciliation Act, 1996 seeking extension of time in making the award and that in the meanwhile the arbitral Tribunal could fix a case management hearing through video conferencing.

The second proviso under Section 29A(4) inserted by

> the arbitration and Conciliation (Amendment) Act 2019 states that where any application under the Section 29A(5) for extension of time for the award is pending, the mandate of the arbitrator shall continue till disposal of the application by the High Court. Hence, the Claimant and the Resolution Professional are requested to make the application for extension before the Hon'ble High Court and intimate the arbitral Tribunal that such an application has been filed giving the particulars of such application. As soon as the arbitral Tribunal receives this intimation, it will fix a date and time for case management hearing of the arbitration case after finding out the convenience of all concerned.
>
> With regards
>
> Sd./-
> AK. Patnaik
> (Presiding Arbitrator)"

14. Section 29A(5) of the 1996 Act merely authorizes the Court to extend the mandate of the Arbitral Tribunal, on its expiry without completion of the arbitral proceedings. It is, no doubt, open to the respondent to question the maintainability of the petition preferred under Section 29A(5). Mr Tripathi has done so and, as opined hereinabove, the challenge fails to impress. All other issues, regarding the competence of the RP to represent the petitioner in the arbitral proceedings, or the impact, on the arbitral proceedings, of the proceedings pending before the learned NCLT or NCLAT, and the orders passed therein, would appropriately have to be addressed before the learned Arbitral Tribunal, and not before this Court, exercising jurisdiction under Section 29A(5).

15. Mr. Tripathi also seeks to submit, at this juncture, that the resolution dated 31st October, 2019 of the CoC of the Company, does not authorise the RP either to file the present petition or apply for extension of the mandate of the learned Arbitral Tribunal.

16. Mr. Mirza, learned counsel for the petitioner, contends, *per contra*, that the authority of the Resolution Professional extends to seeking extension of the mandate of the Arbitral Tribunal as well as to filing of the present petition.

17. To my mind, the submission merely requires to be stated, to be rejected. Para 4 of the resolution clearly approves the appointment of Mr. Anish Niranjan Nanavaty as the Resolution Professional. Mr. Tripathi has not been able to show me any provision in the IBC, which limits the authority of the Resolution Professional and does not authorize the Resolution Professional, overseeing the affairs of the Company, to apply for extension of the mandate of the Arbitral Tribunal or file the present petition.

18. In view thereof, this objection of Mr. Tripathi, is rejected.

19. This Court, therefore, deems it appropriate to extend the mandate of the learned Arbitral Tribunal, as prayed in the petition, by a period of 12 months, with effect from 8th September, 2020. While doing so, this Court makes it clear that this Court has not expressed any final opinion on the proceedings before the IBC, the authority of Mr. Anish Niranjan Nanavaty as RP of the Company, or the effect on the arbitral proceedings, of the proceedings pending before the NCLT. All these aspects are left open and the learned Arbitral Tribunal would be at liberty to take a decision, as it deems appropriate after hearing the parties in that regard.

18. With the aforesaid caveat, the present petition stands allowed in the above terms.

C. HARI SHANKAR, J.

FEBRUARY 9, 2021
r.bararia