

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/126/2023

ZILLION INFRASTRUCTURE PVT. LTD.
VERSUS
BRIDGE AND ROOF CO (INDIA) LTD.

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 10th May, 2023.

Appearance:

Mr. Soumen Das, Adv.
Ms. A. Choudhury, Adv.
...for the petitioner.

Mr. Amitabh Shukla, Adv.
Mr. Prakash Chandra Pandey, Adv.
...for the respondent.

The Court : Learned Counsel for the petitioner submits that in view of the existing arbitration clause in the agreement-in-question between the parties, the dispute which has arisen between the parties, for which arbitration has been invoked under Section 21 of the Arbitration & Conciliation Act, 1996, ought to be referred to arbitration.

Learned Counsel appearing for the respondent takes a preliminary objection as to maintainability of the present application. It is contended that a Corporate Insolvency Resolution Proceeding (CIRP) is going on against the petitioner company. As such, as contemplated in Section 29A of the Insolvency and Bankruptcy Code, 2016, the petitioner is ineligible as the Director to represent the Company for the purpose of making this application under Section 11 of the 1996 Act.

Learned Counsel appearing for the petitioner controverts such contention and submits that under Section 25(1)(b), the resolution professional may represent and act on behalf of the corporate debtor with third parties.

Read in conjunction with Section 28(1)(h), during the corporate insolvency resolution process, the resolution professional may, with prior approval of the Committee of Creditors, delegate its authority to any other person.

In the present case, the petitioner has annexed a Letter of Authorization by the resolution professional in that regard, which establishes the right of the Director of the petitioner company to maintain the present application under Section 11 of the said Act.

A perusal of Section 28 (1)(h) of the IBC clearly indicates that the petitioner is right in contending that the resolution professional, with prior approval of the Committee of Creditors, may delegate its authority to any other person.

The Letter of Authorization annexed at page 28 of the present application clearly indicates that the resolution professional of the petitioner company has authorized the signatories of the present application, being the Directors of the petitioner company, inter alia, to appear and depose, verify, declare etc., and maintain all proceedings and matters in connection with any arbitration or other proceedings filed by or against the petitioner company and to nominate, appoint and engage advocates for such purpose.

Although it is not specifically mentioned in the said letter of authorization that the approval of the Committee of the Creditors was taken by the resolution professional prior to giving such authority to the present applicants, in the absence of any rebuttal to the statement on oath made in the application under Section 11 of the 1996 Act, the Court has to proceed on the presumption that the said letter of authorization was given in due course of law and is otherwise valid.

In such view of the matter, since the arbitration clause covers the dispute between the parties and there is no dispute as regards the arbitrability of the issue otherwise, the only option before this Court under Section 11 is to appoint an Arbitrator to decide the dispute between the parties.

Accordingly, AP No.126 of 2023 is allowed, thereby appointing Justice Subhro Kamal Mukherjee (Mobile No. 7022891675 / 9830929722), a former Judge of this Court and former Chief Justice of Karnataka High Court, as the sole Arbitrator to resolve the disputes between the parties, subject to obtaining his consent under Section 12 of the 1996 Act.

It may be recorded here that such appointment is being made on the joint submission and consent of the parties, since both the parties suggest the appointment of Justice Subhro Kamal Mukherjee as the sole Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)