



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2023

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

Arb.O.P.(Comm.Div.) No.533 of 2022

Samunnati Agro Solutions Pvt. Ltd.,

Represented by its

Head of Stressed Accounts, Mr.Sankaranarayana Sarma,
Baid Hi-Tech Park, 8th Floor, 129-B,
ECR, Thiruvanmiyur, Chennai – 600 041.

...Petitioner

Versus

1.Mr.Nandlal Jawhar

2.Mr.Vipul Jawhar

...Respondents

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint an arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Deed of Personal Guarantee dated 09.02.2019.

For Petitioner : Mr.Akash
for M/s.Nithyaesh & Vaibhav

For Respondents : Mr.Muthuchharan Sundresh



ORDER

WEB COPY This petition has been filed for appointing an Arbitrator to adjudicate the disputes between the petitioner and the respondents in terms of the Deed of Personal Guarantee dated 09.02.2019.

2. The learned counsel appearing for the respondents submitted that the respondents have filed applications under Section 94 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') before the National Company Law Tribunal (NCLT), Indore. Since the respondents have initiated insolvency proceedings against the petitioner, interim moratorium under Section 96(1) of I&B Code is in operation. Therefore, the legal action/proceeding in the present petition stands stayed. He further submitted that when an application is filed under Section 94 or 95 of I&B Code, interim moratorium shall commence on the date of application in relation to all the debts and the same shall cease to have effect on the date of admission of such application, but, as per Section 101 of I&B Code, when an application is admitted under Section 100 of I&B Code, a moratorium shall commence in relation to all the debts and the same



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shall cease to have effect at the end of the period of 180 days beginning with the date of admission of application or on the date the Adjudicating Authority passes an order on the repayment plan under Section 114 of I&B Code, whichever is earlier. Hence, no order can be passed in the present petition. The learned counsel contended that when an application is filed under Section 94 of I&B Code, the interim moratorium would cease to have effect immediately upon admission of such application and moratorium shall operate thereafter. Therefore, the learned counsel prayed that this Arb.O.P may be closed and in support of his contention he referred the order passed by this Court in Arb.O.P.(Comm.Div.) No.86 of 2022 dated 18.10.2022.

3. On the other hand, the learned counsel for the petitioner prayed that this matter may be adjourned by a month.

4. Heard the learned counsel on either side.

5. A perusal of the provision of Section 95, 96 and 97 of I&B Code, it is clear that immediately upon filing of the I.P petition before the NCLT



by the debtor, interim moratorium shall commence and the same would continue until the completion of the admission. After the admission, moratorium starts and therefore, this Court is of the considered view that the dispute cannot adjudicate at this stage and this Court is not in a position to appoint any Arbitrator as requested by the petitioner. Further, it would be apposite to extract the relevant portion of the order rendered by this Court in Arb.O.P.(Comm.Div.) No.86 of 2022 dated 18.10.2022 hereunder:

“9. Another significant objection of the respondents remains to be considered. The second respondent adverted to the institution of proceedings against the petitioner as personal guarantor before the National Company Law Tribunal at Bombay (the NCLT). Upon initiation of such proceeding, he contended that an interim moratorium is triggered under Section 95 and 96 of the Insolvency and Bankruptcy Code 2016 (the IBC) Such interim moratorium continues until the petition is admitted and, if admitted, a moratorium would operate thereafter. In contrast to Section 14, by relying on State Bank of India v. V.Ramakrishnan, (2019) 1 CTC 889, he contended that the interim moratorium commences on the date of lodging of the application under Section 95. According to the learned counsel, such interim moratorium would apply in respect of any legal action or proceeding pending in relation to any debt or to the initiation of any legal action or proceeding in respect of any debt. By referring to a writ petition filed in the Bombay High Court by the petitioner, he contended that the NCLT proceedings were not interfered with. He also referred to a resolution plan submitted by the petitioner before the NCLT and alleged suppression of material facts. By relying on Sukanya



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Holdings Private Limited v. Jayesh H.Pandya (2003) 5 SCC 531, learned counsel raised the last related contention that the dispute pending before the NCLT and the dispute proposed to be raised before the arbitral tribunal cannot be bifurcated.”

6. From a perusal of the above order, it is clear that during the pendency of moratorium, this Court cannot pass any orders and therefore, this Court has come to the conclusion that the petition is liable to be closed.

7. In view of the above, this Court is of the view that as on date, interim moratorium is in operation. After the admission of the petition, the moratorium shall commence. Therefore, this Court cannot take any decision to appoint the Arbitrator. In the present matter, at this stage, the Arbitrator also cannot adjudicate the issue since the moratorium is in existence. Hence, this Court feels that it would be appropriate to close the petition with liberty.

8. Accordingly, this petition is closed with liberty.

12.01.2023

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Index : Yes/No

Speaking Order (or) Non Speaking Order

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KRISHNAN RAMASAMY, J.

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