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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 15970/2024 & CM APPL. 67106/2024**
ANSAL PROPERTIES AND INFRASTRUCTURE LTD
THROUGH ITS RESOLUTION PROFESSIONAL MR JALESH
KUMAR GROVERPetitioner

Through: Mr. Pulkit Deora, Advocate.

versus

SAMYAK PROJECTS PVT LTD THROUGH ITS AUTHORISED
REPRESENTATIVERespondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
19.11.2024

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1. The instant writ petition filed has been filed at the instance of the Petitioner - Ansal Properties & Infrastructure Ltd. through their Resolution Professional¹ with respect to the Petitioner's project named "Fernhill". They have invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India, assailing the order dated 11th September, 2024² passed by the Sole Arbitrator in the ongoing arbitration proceedings between the Petitioner and Respondent
2. The said impugned order on an application filed by the Petitioner seeking modification/ vacation of order dated 29th October, 2022 whereby an

¹ "RP"

² "Impugned order"



interim arrangement was made.

3. In the impugned order, after taking note of the background of facts as well as the contentions of the parties, the Sole Arbitrator has dealt with the question of whether such an application could be entertained without the revival of the arbitration proceedings which stood adjourned *sine die* on the grounds that the Corporate Insolvency Resolution Process³ of the Petitioner herein (Respondent in the Arbitration proceedings) had been initiated and the moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016⁴ had been invoked. On this issue, in the impugned order, the Sole Arbitrator has taken note of the specific stand taken by the Petitioner through their RP, to the following effect:

“13. When the Application was taken up for consideration on 26.07.2024, on a specific query raised by the Tribunal as to whether the present Application, seeking modification/vacation of the Order dated 29.10.2022 can be entertained without the revival of the present proceedings, which stand adjourned *sine die* due to initiation of CIRP proceedings against the Respondent and moratorium in terms of Section 14 of the IBC had come into play, albeit, with liberty to the Parties to have the same revived, Mr. Pulkit Deora, Ld. Counsel for the RP, after addressing the Tribunal for some time, prayed for and was granted time to examine the issue and make further submissions thereon. While deferring further consideration of the Application, the Ld. Counsel for the Parties were also directed to inform the Tribunal in the next sitting the date when the mandate of the Tribunal would expire, if not already expired. In the next sitting, held on 23.08.2024, after addressing the Tribunal at a considerable length, the Ld. Counsel prayed for some more time to examine the aforementioned query raised in the proceedings held on 26.07.2024. Accordingly, on the request of the Ld. Counsel, the next sitting was scheduled for this date, ie. 11.09.2024.

14. Mr. Vivek Kohli, Ld. Senior Counsel for the Claimant and Mr. Pulkit Deora, Ld. Counsel for the RP, have addressed the Tribunal

³ “CIRP”

⁴ “IBC”



at a considerable length.

15. At the outset, Mr. Kohli submits that in view of the decision of the Hon'ble Supreme Court of India in New Delhi Municipal Council v. Minosha India Ltd., (2022) 8 SCC 384, the mandate of the Tribunal has not expired as the period of Moratorium under Section 14 of the IBC shall get excluded while computing the period of limitation as stipulated in Section 29A of the Act
16. Thus, while proceeding on the premise that the mandate of the Tribunal has not yet expired, albeit, without expressing final view on the stand of the Claimant, a specific query was put to Mr. Deora as to whether the RP is willing to have the present arbitral proceedings revived, in terms of the liberty granted vide Order dated 16.11.2022. Responding to the query, the Ld. Counsel contends that since the RP is merely asking for a clarification of the Order dated 16.11.2022 to a limited extent viz., the present proceedings shall not come in the way of any Resolution Plan, approved by the Committee of Creditors and submitted by the RP to the Hon'ble NCLT for its approval, the revival of the present proceedings at the instance of the RP would be counterproductive to the very CIRP proceedings in relation to the Respondent (Ansal), which situation cannot be countenanced.
17. The Tribunal has bestowed its anxious consideration to the relief prayed for in the Application. As noted above, the proceedings, otherwise, stand adjourned sine die, pursuant to the Order dated 16.11.2022 passed by this Tribunal. The very basis for passing the Order dated 16.11.2022 was the declaration of Moratorium in terms of Section 14 of the IBC. The position with regard to the Moratorium under Section 14 of the IBC, in respect of the Respondent remains the same. **In the circumstances, the Tribunal is of the opinion that till the time, the Moratorium under Section 14 of the IBC is lifted and/or the present proceedings are otherwise, revived by either of the Parties to the proceedings, by getting an Order from the Court/Tribunal of competent jurisdiction, or both the Parties mutually agreeing to the revival and continuation of the present proceedings, the Arbitral Tribunal is incapacitated from passing any Order in the present proceedings, irrespective of its nature and scope, in view of the specific bar contained in Section 14 of the IBC. As already noted above, the Ld. Counsel for the Parties have shown no inclination for seeking the revival of the present proceedings, either through Court or otherwise, during the operation of the period of Moratorium. There is no change in the circumstances today, as**



compared to the circumstances as they obtained on 16.11.2022, as far as the bar contained in Section 14 of the IBC is concerned. Consequently, the Tribunal is left with no other option but to refrain from passing any Order either accepting or rejecting the Application. The Application shall be taken up for consideration as and when the proceedings in the present matter get revived either by operation of law or otherwise, if at that stage, party/s are still interested in pursuing the Application under consideration. Needless to add that the Tribunal has not expressed any opinion on the maintainability or on the merits of the reliefs prayed for in the Application.

18. *The Application stands disposed of accordingly.”*
[Emphasis added]

4. As can be seen from the aforementioned extract of the impugned order, it was a specific stand of the Petitioner that they are not willing to seek revival of the arbitration proceedings in terms of the liberty which was granted by the Arbitral Tribunal on 16th November, 2022. Nonetheless, the Petitioner contends that merely for the purpose of clarification as sought by the Petitioner, revival of the arbitration proceedings was not necessary, since the arbitration proceedings were coming into the way of the resolution plan approved by the Committee of Creditors. Thus, rendering the impugned order as arbitrary.

5. However, in the opinion of the Court, the reasoning given by the Arbitrator, cannot be said to be arbitrary or unreasonable for this Court to exercise the jurisdiction under Article 226 of the Constitution of India, which in terms of the judgment of the Supreme Court in **Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.**⁵ has to be exercised only in rare circumstances. Indeed, as rightly observed by the Arbitral Tribunal that there is no change in circumstances as

⁵ (2022) 1 SCC 75



compared to the circumstances on 16th November, 2022 with respect to the moratorium under Section 14 of IBC. Thus, both on the issue of maintainability as well as on the reasoning rendered by the Arbitral Tribunal, the Court is not inclined to entertain the present petition.

6. For the foregoing reason, the present writ petition is dismissed along with pending application.

SANJEEV NARULA, J

NOVEMBER 19, 2024

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