01.07.2025
Item No.2
Court No.01
S.Bag(AR(CR)

In the High Court at Calcutta
Circuit Bench at Jalpaiguri

CO/98/2023

MJB AGRI VENTURES PVT. LTD. AND ANR
VS
DARJEELING ORGANIC TEA ESTATES PVT. LTD. AND ORS

Mr. Subham Ghosh, Adv.
Mr. Mayank Roy, Adv.
...for the petitioner

This is an application under section 11 of the Arbitration and Conciliation Act, 1996.

Briefly, the disputes between the parties arise out of an agreement for sale of land dated 30 April, 2022.

Clause 22 of the said agreement is as follows:

> *"22. All disputes and differences that may arise between the Parties hereto with regard to any terms and conditions herein in this Agreement of Sale or in the interpretation thereof shall be referred to a sole arbitrator as mutually agreed upon by the parties and the arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. The seat and venue of arbitration shall be Kolkata, and all proceedings of the arbitration shall be in the English language."*

The respondents remain unrepresented.

The matter has been pending since August, 2023 and has been repeatedly adjourned.

It is contended on behalf of the petitioner that during the pendency the proceeding the respondent is involved in a corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016. Despite the moratorium under section 14 of the Code, the applicant prays that this application be adjourned *sine die*. In this connection section 14 of the Code, inter alia, provided as follows:

"14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]

[(3) The provisions of sub-section (1) shall not apply to—

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.].

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

The object of the Code is to provide relief to the corporate debtor through a standstill period during which the assets of the corporate debtor are protected from any kind of interference, alienation, dissipation etc. The mandate of the Code is that the moment an insolvency petition is admitted, the moratorium which comes into effect under section 14(1)(a) of the Code expressly interdicts institution or continuation of pending actions or proceedings against the corporate debtor (*Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt Ltd.,(2018) 16 SCC 94 para 4 & 5)*.

It is also an admitted fact that the petitioner has approached the NCLT and filed an application for impleadment and is participating in such proceedings.

In such circumstances and keeping in mind the moratorium period which statutorily comes into play under the Code the pendency of this proceeding will serve no purpose. It is also submitted that an application under section 9 of the Act has been filed by the petitioner. There cannot be parallel proceedings which permit conflicting decisions by two separate fora.

The Insolvency Code is a complete and exhaustive in itself and section 14 categorically affords a moratorium to the corporate debtor. Once the petition is admitted by the NCLT and the moratorium comes to play, the legal consequences would automatically apply to a proceeding under the Arbitration and Conciliation Act.

In view of the above, liberty is granted to the petitioner to file a fresh application under section 11 of the Arbitration and Conciliation Act, 1996 in respect of the above disputes arising out of the arbitration clause, if the circumstances so warrant in accordance with law.

Liberty is also granted to the petitioner to take back the original of the arbitration agreement filed in this application after replacing the same with a photocopy thereof.

Liberty is also granted to the petitioner to seek return of the necessary records which substantiate that the petitioner has paid stamp duty on the subject agreement.

The judgments *General Insurance Co. Ltd. vs. Krish Spinning, 2024 SCC OnLine SC 1754, Cox and Kings vs. Sap India Pvt. Ltd. & Anr., 2024 SCC OnLine SC 2452, Millenium Education Foundation vs. Educomp Infrustruce and School Management Ltd., 2022 SCC OnLine Del 1442* and *Power Grid Corporation of India Ltd. vs. Jyoti Structures Ltd. 2017 SCC OnLine Del 18189* relied on by the petitioner are distinguishable and inapposite. This is no case of arbitrability or non arbitrability but one of exclusion of jurisdiction. There is no quarrel with the general proposition laid down in the said decisions. However, in the particular factual scenario, in view of the moratorium period of the respondent corporate debtor still being in force, there can be no useful purpose in keeping this proceeding pending.

In view of the above, CO/98/2023 stands dismissed.

(RAVI KRISHAN KAPUR, J.)