OCD 49

ORDER SHEET
AP-COM/887/2024
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

VIOM INFRA VENTURES LIMITED
VS
A2Z INFRASERVICES LTD. AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 14th July, 2025.

Appearance:
Mr. Altamash Alim, Adv.
Ms. Akanksha Mukherjee, Adv.
Mr. Sumit Biswas, Adv.
…for the petitioner

Mr. Utpal Bose, Sr. Adv.
Ms. Hashnuhana Chakraborty, Adv.
Ms. Neelina Chatterjee, Adv.
Ms. Payal Shaw, Adv.
…for the respondents

The Court:

1. This is an application for extension of the mandate of the learned Arbitrator. The mandate of the learned Arbitrator expired on July 7, 2024. This application was filed in October, 2024.
2. Mr. Alim prays for extension of the mandate and submits that the petitioner company was sold as a going concern by order of the National Company Law Tribunal (NCLT), Hyderabad. The auction notice was issued on January 1, 2024, on the basis of the orders passed by the learned NCLT. Pursuant to the auction notice, Dickey Alternative

Investment Trust (in short Dickey) submitted its expression of interest on February 5, 2024 and participated in the e-auction conducted by the liquidator on February 7, 2024. Dickey was the successful bidder. A letter of intent was issued to Dickey on May 24, 2024, by the liquidator, which was accepted and acknowledged by Dickey on May 24, 2024. Dickey made payment to the liquidator towards full and final consideration for the acquisition of the petitioner company as a going concern. The liquidator issued the sale certificate in favour of Dickey on July 3, 2024 and handed over all assets, documents, books of account etc. on July 9, 2024.

3. A meeting was convened on August 14, 2024, between Dickey and the liquidator wherein one of the agenda amongst others was the constitution of the new board for the petitioner company. A new board was constituted for the company. The board authorized Mr. Raghav Sharma to file this application. Hence, it is submitted that the time consumed during the entire process was the reason for the delay in filing the application for extension of the mandate of the learned Arbitrator.

4. Mr. Bose, learned senior advocate appearing on behalf of the respondents submits that, the petitioner does not have the locus to file this application. Once the arbitration proceeding was sold as a separate block, the petitioner cannot continue with the arbitration proceeding. It had lost all rights emanating from the agreement between the parties, including the arbitration agreement. Referring to the affidavit-in-

opposition, Mr. Bose submits that in the arbitration proceeding, the petitioner suppressed the factum of publication of the e-auction notice for sale dated January 1, 2024. In the sale notice, the counterclaim of the respondents against the petitioner was also suppressed. The sale was concluded in favour of Dickey in a clandestine manner, by taking advantage of the fact that the learned Arbitrator would not have any jurisdiction beyond July 8, 2024 in view of the termination of the mandate by efflux of time. The entire proceeding before the NCLT and the consequences thereof, including issuance of sale certificate in favour of Dickey were intentional exercises, undertaken only to deprive the respondents of their legitimate claim against the petitioner. Mr. Bose submits that unless the sale agreement with regard to sale of Block-G is disclosed before the Court, the Court will not be in a position to decide whether the mandate is required to be extended for further adjudication by the learned Arbitrator at the instance of the petitioner. Mr. Bose emphasizes that, the terms and conditions of the sale of the arbitration case or the claim in the arbitration case are required to be gone into to understand whether the dispute survives. It is also submitted before the Court that the order of sale passed by the NCLT, Hyderabad, is under challenge at the instance of the respondents, inasmuch as, the said sale took place in the teeth of the interim order passed by the learned Arbitrator. The Arbitrator had directed the liquidator to stay his hands for a period of two weeks or until Dickey had been brought on record in the arbitration proceeding. The order was violated.

5. Considered the rival submissions. The issues which have been raised by Mr. Bose, although important, are not to be decided by this Court at the stage of consideration of a prayer for extension of the mandate of the learned Arbitrator. The learned Arbitrator had already passed an interim order on July 4, 2024. This application has been filed with the averments that upon Dickey acquiring the petitioner company, the board was reconstituted and one Mr. Raghav Sharma was authorized by the board to file this application for extension of the mandate of the learned Arbitrator. It is submitted that the application has been filed at the instance of Dickey through its newly constituted board upon granting an authority to Mr. Sharma to file this application on behalf of Dickey. The company is a legal entity. The management may have changed, but the company's name continues as it was before. The issues raised by Mr. Bose with regard to non-disclosure of the terms and conditions of the sale of Block-G which deals with the arbitration and claims made thereunder, must be raised before the learned Arbitrator. The learned Arbitrator can rule on his own jurisdiction which includes deciding issues relating to arbitrability. The submissions before this Court that, disclosure of the terms and conditions of the sale and agreement entered into with Dickey will disclose the locus of the petitioner to continue with the arbitral proceeding, is not relevant at this stage. All objections raised by Mr. Bose, including whether in the teeth of the interim order passed by the learned Arbitrator the sale could have continued, are left open.

Moreover, the learned NCLT, Hyderabad is already in seisin of the application filed by the respondents, seeking setting aside of the sale. The learned NCLT will pass appropriate orders on the basis of the issues which have been raised before the NCLT.

6. This is an application simpliciter for extension of the mandate of the learned Arbitrator which expired in July, 2024. The proceeding is pending. The fate of the arbitration proceeding pursuant to the sale and the objections which have been raised by Mr. Bose, including the conduct of the petitioner in attempting to frustrate the counterclaim of the respondents, are matters which have to be decided before the learned Arbitrtor.
7. Under such circumstances, the mandate of the learned Arbitrator is extended for a further period of one year from the date of communication of this order.
8. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

B.Pal