

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA(IB) No. 1820/(KB) /2023

In CP(IB) No. 1256/KB/2019

*Application under Section 60(5) of IBC, Code 2016 read with Rule 11 of
the National Company Law Tribunal Rules, 2016;*

In the Matter of:

Mahavir Industrial Corporation

.....Operational Creditor

Versus

Hindustan Controls and Equipment Private Limited

...Corporate Debtor

In the mater of:

**Subodh Kumar Agarwal, the Resolution Professional of Hindustan
Controls and Equipment Private Limited having its office at
Room No. 301, 3rd Floor, 1, Ganesh Chandra Avenue, Kolkata –
700 013.**

...Applicant

Versus

**Steel Authority of India (SAIL) having its registered office at Ispat
Bhawan, Lodhi Road, New Delhi – 110 003 and the unit office at
4th Floor, SAIL House 50 JLN Road, Kolkata – 700 071.**

....Respondent

Date of Pronouncement of order: 23.04.2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Prantik Garai, Adv.] For the Respondent IA(I.B.C)/1820(KB)2023

Mr. Abhishek Sikdar, Adv

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Mr. Avijit Ghoshal, Adv.] For R-1 in IA(I.B.C)/782(KB)2022

Mr. Subhasis Sengupta, Adv.] For R-3

Mr. Souvik Kundu, Adv.

Ms. Nilanjana Adhya, Adv.] For R-4 in IA(I.B.C)/782(KB)2022

Ms. Bishalaxmi Ghosh, Adv.]

Ms. Ranjana Seal, Adv.

Mr. Subodh Kumar Agarwal, CA] For Ex. RP

Ms. Pooja Agarwal, CA

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard at length.
3. The Applicant Resolution Professional of Hindustan Controls and Equipment Private Limited, the Corporate Debtor has preferred this application seeking the following reliefs:
 - a. An order be passed setting aside of the impugned Arbitral Award dated 06.03.2023 passed by Learned sole Arbitrator in an Arbitration Case between M/s. Steel Authority of India – Versus – Hindustan Controls & Equipment Private Limited and Amiya Commerce & Construction Co Private Limited.
 - b. To restrain the Respondent to take any steps in terms of Impugned Arbitral Award dated 06.03.2023.
 - c. Ad Interim orders in terms of above.

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4. It is the contention of the RP that the Arbitral Award was passed after initiation of Resolution Process against the Corporate Debtor vide order dated 05.07.2022 and ignoring the provisions of moratorium under Section 14 of the IBC.
5. It is submitted that the Arbitrator was aware of the order admitting the Corporate Debtor into Insolvency, yet it did not stay its hands off and went on with the Arbitration proceedings to pass its award during the course of Moratorium.
6. The Applicant has cited the decision of the Hon'ble Apex Court in Civil Appeal No. 16929/2017, arising out of S.L.P. (C) No. 18195/2017 (**Alchemist Asset Reconstruction Company Ltd. -Versus- M/s. Hotel Gaudavan**) to contend that Arbitration instituted after the Moratorium is *non est* in law.
7. Per contra, the sole Respondent would contend as under:
 - a. Challenge to the Award dated March 06, 2023 cannot be made under Section 60(5) of the IBC.
 - b. This Interlocutory Application is therefore, is not maintainable.
 - c. The application seeking setting aside of the Arbitration has to be preferred under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996.
 - d. NCLT as an Adjudicating Authority is not a Court within the meaning of Arbitration and Conciliation Act to excise power under Section 34 of the Arbitration and

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Conciliation Act, hence setting aside application can only be made under Section 34 of the Arbitration and Conciliation Act, which power NCLT cannot invoke.

8. We have considered the rival contentions and perused the records.
9. We would note that although NCLT has the power to issue an Ante Arbitration injunction, in light of the Section 430 of the Companies Act and also has the power to refer parties to Arbitration or enforce Arbitration Award, it cannot set aside an Arbitral Award.
10. We are mindful of the decision of Hon'ble Apex Court where NCLT has been cautioned not to usurp the legitimate jurisdiction of the other Courts, Tribunals and Forum, when the dispute is not related to the Insolvency of the Corporate Debtor in an Appeal filed by Gujrat Urja Vikas Nigam Limited against the decision of the Hon'ble NCLAT upholding the decision of NCLT staying termination of a power, purchase agreement entered with a firm which latter went into Insolvency, Hon'ble Apex Court has held that "for adjudication of dispute that arise dehors the Insolvency of the Corporate Debtor, the Resolution Professional must approach the relevant Competent Authority" and that Section 238 of the IBC stipulates that Code would override other laws including an instrument having effect by virtue of any such law, NCLT's jurisdiction can be invoked only on the

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ground that relates to Insolvency Resolution Process. NCLT cannot derive its power from the spirit and object of the IBC. The NCLT has a wide residuary jurisdiction, under Section 60 (5) of the IBC to adjudicate question of law a fact arising out of Insolvency Proceedings nonetheless it is defined by the text of IBC. The NCLT cannot do what the IBC consciously did not provide the power to do.

11. In as much as, the Arbitration Award has been challenged in this application, whereas this Tribunal lacks jurisdiction to set aside an Arbitral Award, although it was passed in course of moratorium under Section 14 of IBC, we dispose of the IA with liberty to the Resolution Professional to initiate appropriate proceedings to challenge the said Award.

12. **This application IA(IB) No. 1820/(KB) /2023 is accordingly, disposed of.**

13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee,
Member (Judicial)**

Signed on this the 23rd day of April, 2024

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M. Jana (P.S.)