

HIGH COURT OF ANDHRA PRADESH:: AMARAVATI

MAIN CASE NO.: **CRP.No.1786 of 2024**

PROCEEDING SHEET

Sl. No.	Date	ORDER	OFFICE NOTE
4.	13.08.2024	<u>RNT, J & VN, J</u> 1. Heard Sri P.Rajasekhar, learned counsel appearing for the petitioner. 2. The petitioner is the judgment debtor and the respondent is the decree holder. 3. There is an Arbitral Award dated 25.08.2011 passed by the sole Arbitrator in favour of the respondent/decreed holder in A.O.P.No.1451 of 2011, which commenced on 01.06.2009. For setting aside the same, the proceedings under Section 34 of the Arbitration and Conciliation Act were initiated by the petitioner. But, said objections were rejected on 29.08.2019. The Award attained finality. For execution of the Award, C.E.P.No.12 of 2020 was filed in AOP.No.1451 of 2011. The petitioner filed objections, which were rejected by the order dated 07.12.2023 by the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam. Challenging the said order, dated 07.12.2023 the	

	present Civil Revision Petition under Article 227 of the Constitution of India has been filed. 4. Learned counsel for the petitioner submits that the Arbitral Award cannot be executed in the present execution proceedings. He submits that Bharat Heavy Electrical Limited (Heavy Plates and Vessels Plant) (BHPV), Visakhapatnam was declared as Sick Industrial Company by the proceedings dated 06.10.2005, by the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies Act, 1985. The Draft Resolution Scheme (DRS) for revival of the BHPV was published under the proceedings dated 23.07.2010. The petitioner BHEL Limited is the transferee company from BHPV Limited pursuant to merger under Modified Sanctioned Scheme approved by BIFR under Section 18 of the SICA Act, 1985. He submits that in arbitration proceedings, the aforesaid proceedings under SICA were not informed. Even in the proceedings under SICA, there was no adjudication of the claim of the present respondent. However, he submits that the objection was taken before the execution court that the directions for the BIFR would also apply to the present decree holder-respondent, i.e the decree holder is entitled if at all only to the principal amount, but the said objection was	
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		rejected. He submits that on the repeal of SICA in 2016, the resolution plan would continue to govern under Indian Bankruptcy Code (IBC). 5. He further submits based on the Judgment in <i>Ghan Shyam Mishra and Sons Private Limited through the Authorized Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and Others [(2021) 9 Supreme Court Cases 657]</i>, that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31 of the IBC, frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, State Government or any local authority, guarantors and other stakeholders, and further that on the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to claim which is not part of the resolution plan. Consequently, the proceedings cannot be initiated for execution of the Arbitral Award independent of Modified Sanctioned Scheme.	
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		6. Learned counsel for the petitioner, on specific query by us, submits that in the proceedings under Section 34 of the Arbitration Act, the objections of this nature were not taken. The objections which were taken were rejected. So, the Arbitration Award attained finality under the Arbitration Act. 7. Learned counsel, however, further submits that after the order in the execution case, some negotiations have taken place between the parties and as per such negotiation vide letter in Ref.HR/Legal/REPL/2024, dated 26.06.2024, the petitioner has agreed to pay an amount of Rs.1,10,00,000/-. He submits that the liability to the extent of principal amount is admitted. 8. From perusal of the impugned order of execution Court, it appears that there is Modified Sanctioned Scheme (MSS) dated 29.08.2013. Para 11.6 of MSS of which provided as under:- “11.6. Details of court case: If any suit, writ petition, appeal, revision or other proceedings of whatsoever nature by or against the Transferor Company be pending, the same shall not abate, be discontinued or be in any way prejudicially be affected by reason of the amalgamation of the Transferor Company or of anything contained in the scheme, but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to	
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		the same extent as it would be or might have been continued, prosecuted or enforced by or against the Transferor Company as if the scheme had not been made. On and from the effective date, the Transferee Company shall and may initiate any legal proceedings for and on behalf of the Transferor Company.” 9. <i>Prima facie</i>, in our view, under the MSS, the proceedings of whatsoever nature, which would therefore <i>prima facie</i> include Arbitration proceedings, were permitted to be continued and also to be enforced by or against the transferee company in the same manner and to the same extent as it would be or might have been continued, proceeded or enforced, as if the scheme (MSS) had not been made. 10. However, the matter requires consideration, after affording opportunity of hearing to the respondent; <i>inter alia</i>, on the following points:- <i>i) Whether the Award of the Arbitrator in the proceedings under the Arbitration Act can be executed by the executing Court considering the law as laid down Ghan Shyam Mishra and sons Private Limited (supra) and the MSS, dated 29.08.2013, as referred to in the order of the execution Court?</i> <i>ii) What would be the effect, if an objection (as of the present nature) was not taken in the proceedings under Section 34 of the Arbitration and Conciliation Act for setting aside the Award; i.e if such an objection is still open to be taken at the time of execution under Section 36 of the Arbitration and Conciliation Act.</i>	
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		11. Issue notice to the respondent. 12. Let the Counter Affidavit if any be filed within three (3) weeks. 13. In addition to the normal mode, the learned counsel for the petitioner is permitted to take out personal notice to the respondent by R.P.A.D and file proof of service. 14. As an interim measure, it is provided that the execution proceedings shall remain stayed subject to the petitioner depositing the amount of Rs.1,10,00,000/- (Rupees one crore ten lakhs only) before the Execution Court, within three (3) weeks. 15. We make it clear that we have not observed anything on the submission with respect to the negotiations, as the respondent is at present not before us. 16. Post this matter on 03.09.2024. <u>RNT, J</u> <u>VN, J</u> IS	
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