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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 17769/2024**

ATS INFRASTRUCTURE PVT LTD AND ANRPetitioners

Through: Mr. Sunil Dalal, Mr. Manik Dogra,
Sr. Advocates with Mr. Kartik Nayar,
Mr. Krish Kalra, Mr. Divyansh Rai,
Mr. Dhruv Pande, Mr. Imon
Bhattacharya, Ms. Shipra Balli and
Mr. Amit Tiwari, Advocates.

versus

RASBEHARI TRADERS

.....Respondents

Through: Mr. Sidhant Kumar, Mr. Mayank
Chandok and Ms. Shagun Chopra,
Advocates.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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24.12.2024

CM APPL. 75582/2024 [Exemption from filing certified copies]

1. Allowed, subject to the Petitioners filing certified/ original/ dim/ typed/ margin/ handwritten of the annexures within a period of three weeks.
2. The Application stands disposed of.

W.P.(C) 17769/2024 & CM APPL. 75581/2024 [Stay]

3. At the outset, learned Senior Counsels for the Petitioners point out that inadvertently, an incorrect Affidavit was placed on record by the Petitioners and that the correct Affidavit has since been filed, and that the Court may consider the Petition in accordance with the Affidavit which has



been filed today.

4. The grievance of the Petitioners as articulated in the prayers is that the Arbitral Tribunal has proceeded to hear and conclude arbitral proceedings despite not having jurisdiction in the matter.

5. Learned Senior Counsel's for the Petitioners submit that an Application was filed before the National Company Law Tribunal, New Delhi [hereinafter referred to as "NCLT"] by a creditor against Petitioner No.2 on 08.05.2024. It is submitted that in terms of Section 96(1)(a) and 96(1)(b)(i) of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "IBC"], once an Application is filed under Section 94 or 95 of the IBC, all legal actions or proceedings pending in respect of any debt shall be deemed to have been stayed.

6. Learned Senior Counsels for the Petitioners submit that Petitioner No.2 is the guarantor for the claims of Petitioner No.1/company, thus once an Application was filed before the NCLT on 08.05.2024 against Petitioner No.2, the arbitral proceedings could not continue.

7. It is further contended that the Application under Section 96 of the IBC and Section 16 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the "Arbitration Act"] was filed by both Petitioner Nos.1 and 2 challenging the jurisdiction of the learned Arbitral Tribunal to proceed with the matter.

8. Learned Counsel for the Respondents, on the other hand, has raised three preliminary objections. In the first instance, he submits that the order has already been passed on Application under Section 16(1) of the Arbitration Act read with Section 96 IBC on 15.12.2024 and the Arbitral Award has also come to be passed on 19.12.2024. Hence, this Petition has



become infructuous.

9. Learned Counsel for the Respondents additionally states that there were two separate arbitral proceedings which were pending before the Arbitral Tribunal. One, in relation to the claims against Petitioner No.1 while the other in relation to claims against Petitioner No.2. He seeks to rely upon the order passed by a Coordinate Bench of this Court on 08.01.2021, wherein this has been recorded at the time the Arbitrator was appointed by the Court. Thus, it is contended by learned Counsel for the Respondents that the moratorium, if at all, is only applicable in respect of the arbitral proceedings against Petitioner No.2 and not against Petitioner No.1.

10. Lastly, it is contended that the Petition as filed is *non est*. Relying on the Judgement of the Supreme Court in ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75***, it is contended that this is not a fit case for exercise of judicial discretion when a procedure for challenge is already available under the Arbitration Act.

11. In rejoinder, learned Senior Counsel's for the Petitioners contend that once the Petition/Application was filed before the NCLT against Petitioner No.2, the Petitioners filed an Application under Section 96 of the IBC read with Section 16 of the Arbitration Act bringing this to the notice of the Arbitral Tribunal. The arguments in this Application were conducted by both the parties and orders were reserved on this Application on 15.10.2024. However, thereafter the Arbitral Tribunal did not pass orders on this Application.

12. It is further contended that the Petitioners also addressed a communication dated 10.12.2024 to the learned Arbitrator to submit that the matter must not continue in view of the moratorium under Section 96 IBC,



however, the communication was not considered by the learned Arbitrator.

13. The matter requires a detailed examination.

14. Issue Notice.

15. Learned Counsel for the Respondents accept Notice and seeks some time to file a Counter Affidavit/Short Affidavit.

16. Let an Affidavit be filed by 06.01.2025.

16.1 Rejoinder, if any, be filed before the next date of hearing.

17. List on 09.01.2025.

18. Both parties are at liberty to file their short note of contentions, not exceeding three pages, at least three days before the next date of hearing, along with the compilation of judgments, if any, they wish to rely upon. All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

TARA VITASTA GANJU, J

DECEMBER 24, 2024/pa

[Click here to check corrigendum, if any](#)