

M/S Shapoorji Pallonji And Co Pvt Ltd vs Sinnar Thermal Power Limited & Ors on 21 November, 2022

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ OMP (ENF.) (COMM.) 221/2022

M/S SHAP00RJI PALLONJI
AND CO PVT LTD

..... Decree Holde

Through: Mr. Saurav Agrawal, Mr. Chirag
Sharma and Mr. Siddharth Dey,
Mr. Anshuman Chowdhury,
Advocates (Mobile No
9599705898).

versus

SINNAR THERMAL POWER
LIMITED & ORS.

..... Judgement Deb

Through: Mr. Karan Batura, Advocate for
Suspended Board of Directors of
JD No.1 (Enrolment
D/3162/2010, Mobile
9810733630).
Mr. Rajat Navet, Advocate for R
Nos. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 21.11.2022 EX.APPL.(OS) 3669/2022 (for exemption) Exemption allowed, subject to all just exceptions. This application stands disposed of.

OMP (ENF.) (COMM.) 221/2022

1. This petition under Section 36 of the Arbitration and Conciliation Act, 1996 ["the Act"] seeks enforcement of an award dated 22.04.2022, OMP (ENF.) (COMM.) 221/2022 Signing Date:22.11.2022 11:31:20 rendered in arbitration proceedings between the decree holder and Sinnar Thermal Power Limited ["Sinnar"], which has been impleaded as judgment debtor No.1.

2. At the very outset, Mr. Karan Batura, learned counsel for the suspended Board of Directors of Sinnar, submits that, at the instance of the decree holder, the National Company Law Tribunal ["NCLT"] passed an order dated 19.09.2022 in Company Petition No. (IB) 2561/(ND)/2019, admitting Corporate Insolvency Resolution Proceedings against Sinnar under the Insolvency and Bankruptcy Code, 2016 ["IBC"]. By the same order, an Interim Resolution Professional ["IRP"] was appointed and a moratorium against institution or continuation of suits or proceedings against Sinnar was granted. It is further submitted that the National Company Law Appellate Tribunal ["NCLAT"] vide order dated 26.09.2022 in Company Appeal (AT) (Insolvency) No. 1185/2022, filed by one of the suspended directors of Sinnar, issued notice and directed that the IRP may not take any steps in pursuance of the impugned order of the NCLT. It is, therefore, submitted that, as of today, there exists a moratorium imposed by the order of NCLT, which has not been stayed by the NCLAT.

3. Mr. Saurav Agrawal, learned counsel for the decree holder, on the other hand, submits that the directions of the NCLAT, restraining the IRP from acting in pursuance of the order of the NCLT, is tantamount to suspension of the moratorium as well.

4. I am prima facie of the view that the submission of Mr. Agrawal is not borne out of the order passed by the NCLAT. I am informed that the proceedings before the NCLAT are listed tomorrow i.e. 22.11.2022. It is OMP (ENF.) (COMM.) 221/2022 Signing Date:22.11.2022 11:31:20 open to the decree holder to seek an appropriate clarification from the NCLAT, if it is so advised.

5. The decree holder has arrayed two other parties also as judgment debtors- Rattan India Power Limited, of which judgment debtor No.1 is a wholly owned subsidiary, and Mr. Rajiv Rattan, director and Executive Chairman of Rattan India Power Limited. Mr. Rajat Navet, learned counsel on behalf of judgment debtor Nos. 2 and 3, raises a preliminary objection that they have been improperly impleaded as the arbitral award under enforcement is not against them.

6. As the petition seeks to make out a case for lifting of the corporate veil in respect of judgment debtor No.1, judgment debtor Nos. 2 and 3 are at liberty to file an affidavit within four weeks dealing with the allegations regarding lifting of the corporate veil, without prejudice to their contention that enforcement proceedings are not maintainable against them.

7. Judgment debtor No.1 has filed O.M.P.(COMM) 324/2022, which is next listed on 20.01.2023. List these proceedings also on 20.01.2023. However, in the event the NCLAT clarifies the order to the effect that the moratorium has also been suspended, the decree holder may move an application for early listing of these proceedings.

PRATEEK JALAN, J NOVEMBER 21, 2022 'vp'/ OMP (ENF.) (COMM.) 221/2022 Signing Date:22.11.2022 11:31:20