



MAJESTY LEGAL
Advocates & Solicitors

“ARBITRATION PROCEEDINGS CAN BE INITIATED DESPITE PENDING IBC PROCEEDINGS”

“VALMAR PROJECTS LLP VS ISTHARA PARKS PRIVATE LIMITED”

Hon'ble High Court of Telangana, in the case of *Valmar Projects Llp vs Isthara Parks Private Limited*¹, Hon'ble court addressed an application under Section 11(6) of Arbitration and Conciliation Act, 1996 concerning disputes arising from Facilities Service and Catering Service Agreements. Agreements terminated in May 2023 led to subsequent actions: respondent's notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 and a subsequent Section 9 petition before the National Company Law Tribunal (NCLT). Applicant countered with a notice under Section 21 of the Arbitration and Conciliation Act, 1996 initiating arbitration proceedings despite the pending NCLT matter. Respondent contested maintainability of Section 11(6) applications alleging ulterior motives. Hon'ble court, after deliberating on the submissions cited precedents to establish that mere initiation of an IBC proceeding does not pre-empt arbitration proceedings under the Arbitration Act. It emphasized that Section 21 notices need not quantify and in support of the same referred to various Hon'ble Supreme Court rulings underscoring independence of arbitration proceedings from pending IBC matters until adjudicated.

Accordingly, Hon'ble Court appointed a sole arbitrator to resolve disputes between the parties. This decision underscores Hon'ble Courts' support for arbitration's autonomy and its role in resolving commercial disputes promptly despite parallel legal actions under other statutes.

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¹ 2024 LiveLaw (TS) 111

² Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

ARBITRATION APPLICATION Nos.6 AND 7 OF 2024

COMMON ORDER:

Mr. Kailash Nath P.S.S., learned counsel represents
Mr. Sai Sanjay Suraneni, learned counsel for the applicant.

Mr. P.S.D.S.Kaarthik, learned counsel represents
Dr. P.Bhaskara Mohan, learned counsel for the respondent.

2. The applicant and the respondent in both these applications are one and the same.

3. These applications are filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act') seeking appointment of an arbitrator to adjudicate the disputes which have arisen between the parties.

4. Facts giving rise to filing of these applications briefly stated are that the parties have entered into a Facilities Service Agreement on 23.02.2022 and Catering Service Agreement on 16.03.2022. Under the Catering Service Agreement, the respondent was required to supply food to

the inmates of the hostel students of the applicant. Under the Facility Service Agreement, the respondent was under an obligation to provide housekeeping services to the inmates of the hostel. The dispute had arisen between the parties. Thereupon, the Agreements were terminated on 23.05.2023.

5. After termination of the Agreements, the respondent issued a notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') on 05.08.2023, which was responded to by the applicant by submitting a reply on 15.08.2023. The respondent, thereafter, filed a petition under Section 9 of the IBC on 04.09.2023 before the National Company Law Tribunal (NCLT), Hyderabad. In the aforesaid petition, the Tribunal by an order dated 06.10.2023 directed issuance of notice to the applicant.

6. After receipt of the notice of the proceeding pending before the NCLT, the applicant issued a notice on 21.10.2023 under the 1996 Act. The respondent sent reply on 12.11.2023. Thereafter, these applications were filed on 27.12.2023 before this Court.

7. Learned counsel for the applicant submitted that neither the existence of the arbitration agreement nor existence of dispute between the parties has been disputed by the respondent. It is further submitted that the agreement envisages reference of dispute to the sole arbitrator. It is contended that notwithstanding pendency of the proceeding before the NCLT, this Court can proceed to deal with the arbitration applications on merits and there is no statutory bar. It is also contended that the notice under Section 21 of the 1996 Act need not quantify the amount of claim.

8. On the other hand, learned counsel for the respondent submitted that these applications seeking appointment of an arbitrator was filed as a counterblast to the proceeding initiated by the respondent before the NCLT. It is urged that the applicant has initiated the proceedings with ulterior motives. It is also urged that the applications filed under Section 11(6) of the 1996 Act are not maintainable. It is contended that notice issued under Section 21 of the 1996 Act on behalf of the applicant does not contain any demand or claim and in the absence of any claim against the

respondent, the matter does not require reference to Arbitral Tribunal.

9. I have considered the rival submissions and perused the record.

10. Section 21 of the 1996 Act deals with commencement of arbitral proceedings and unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. The Supreme Court dealt with Section 21 of the 1996 Act in **State of Goa vs. Praveen Enterprises**¹ and it was held that Section 21 requires a party to set out the disputes but need not quantify the amount in the notice. Therefore, the contention that in the absence of any amount mentioned in the notice under Section 21 of the 1996 Act, there is no claim against the respondent and the same cannot be referred for adjudication to arbitrator is misconceived. It is pertinent to note that a three-Judge Bench of the Supreme Court in **Indus Biotech Private**

¹ 2011 SCC OnLine SC 860

Limited vs. Kotak India Venture (Offshore) Fund² *inter alia* held that mere filing of an application under Section 7 of IBC, which is yet to be admitted, cannot assume the status of a proceeding in *rem* and therefore, the same does not operate as a bar to invoke the provisions of the 1996 Act.

11. Admittedly, in the instant case proceeding under Section 9 of IBC which is initiated by the respondent is pending before the NCLT. Mere filing of such a petition does not bar initiation of proceeding under Section 11(6) of the 1996 Act. No statutory provision has been brought to the notice of this Court which bars a party from initiating the proceeding under Section 11 of the 1996 Act. Admittedly, no order has been passed in the proceeding under Section 9 of IBC and therefore, till such time the proceeding under Section 11(6) of the 1996 Act cannot be said to be not maintainable.

12. The dispute admittedly has arisen between the parties, which requires adjudication in the manner agreed to by the parties.

² (2021) 6 SCC 436

13. Therefore, Mr. Justice P.Naveen Rao, a former Acting Chief Justice of this Court, (#3001, My Home Bhooja, Block-A, Plot Nos.22-24 & 31-33, Rayadurgam, Ranga Reddy District, Mobile No.8374012311), is appointed as sole arbitrator to adjudicate the dispute between the parties.

14. The parties are directed to appear before the sole arbitrator on 13.07.2024 at 11:00 a.m. along with a copy of this order.

15. Thereupon, the sole arbitrator shall proceed with the arbitral proceedings in accordance with law.

16. Accordingly, the Arbitration Applications are allowed.

Miscellaneous applications pending, if any, shall stand closed.

ALOK ARADHE, CJ

27.06.2024
Pln