

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 887 of 2023

IN THE MATTER OF:

Container Corporation of India Ltd. (CONCOR)

....Appellant

Vs.

Roadwings International Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Tushar Mehta, Solicitor General, Ms. Lalit Mohini Bhat, Ms. Hetu Arora Sethi, Ms. Saumya Tandon, Mr. Rahul Jain, Mr. Siddharth Agarwal, Mr. Anirudh Bhat, Mr. Arjun Basra, Mr. Samarth Chaudhary, Advocates

**For Respondents: Mr. Abhijeet Sinha, Mr. Abhishek Swarup, Mr. Akash Chatterjee, Advocates for R-1.
Mr. Manish Jain, Advocate & Mr. Vivek Sharma, IRP (in-person) for R-2.**

ORDER

14.07.2023: Heard Mr. Tushar Mehta, Solicitor General appearing for the Appellant and Mr. Abhijeet Sinha appearing for the Respondent. This appeal has been filed against the order dated 12.07.2023 passed by the Adjudicating Authority by which Section 9 application filed by the Respondent herein has been admitted.

2. Mr. Tushar Mehta submits that award dated 01.06.2022 is in favour of the respondent which award has been put in question by filing of a Section 34 application in the High Court of Delhi. Along with the Section 34 application, an application has also been filed for condonation of delay, in case the court is of the opinion that limitation shall start from the date of receiving the minority award dated 11.06.2022 received on 14.06.2022.

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3. It is submitted that said application is still pending and the High Court has issued notices on the said application and matter is awaiting attention of the High Court and matter is already directed to be listed on 29.08.2023.

4. Mr. Mehta submits that the Judgment of the Hon'ble Supreme Court which has been referred by Adjudicating Authority i.e. *K. Kishan V. Vijay Nirman Co. (P) Ltd., (2018) 17 SCC 662* Paragraph 27 lays down the ratio and paragraph 28 which has been relied by Adjudicating Authority was with respect to those cases where it was clearly proved that application was unequivocally barred by limitation. He submits that present is a case where award was received through scope on 19.07.2022 and the application cannot be said to be clearly unequivocally barred by time so as to initiate the insolvency process against the appellant. It is submitted that appellant is a government public sector company and also a listed company.

5. Mr. Abhijeet Sinha Learned Counsel for the Respondent submits that present is the case where award was communicated on 01.06.2022 by email. Hence, application was clearly barred by time and Adjudicating Authority has rightly admitted Section 9 application.

6. Learned Counsel for the Respondent has referred to the order dated 13.04.2023 passed by High Court of Delhi in *O.M.P (COMM) 449/2022- Container Corporation of India Ltd. Vs. Roadwings International Pvt. Ltd.* where the High Court noticed the rival contention of the parties.

7. From the submissions made by Learned Counsel for the parties and materials on the record, it does appear that against the award dated

01.06.2022 application under Section 34 of Arbitration & Conciliation Act, 1996 has been filed which has been taken cognizance by the High Court and the submission of the parties has also been taken note of. The High Court is seised of the matter and next date is fixed on 29.08.2023, as submitted by counsel for the Respondent.

8. The submissions made by counsel for the appellant makes out a prime facie case for entertaining the appeal and grant of interim relief.

9. Issue notice. Notice is accepted by Mr. Abhijeet Sinha Learned Counsel for the Respondent, no fresh notice be issued. IRP is present and accepted notice through Counsel.

10. Respondent prays for and is allowed one week time to file the Reply. Rejoinder, if any, may be filed within two weeks thereafter.

11. List this appeal on **4th September, 2023**.

12. In the meantime, the order passed by Adjudicating Authority dated 12.07.2023 shall remain stayed.

13. We make it clear that the stay of insolvency proceedings has no bearing on the proceedings pending in the High Court which may be preceded in accordance with law.

14. The application seeking exemption is allowed.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

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