

Learning Curve-1031

March 18, 2024

Insolvency proceedings under IBC does not prevent the CD from filing application u/s 11 of Arbitration and Conciliation Act, 1996 against other party.

CASE TITLE	Godavari Projects (J.V) Vs. Union of India
CASE CITATION	ARB.P. 1342/2022
DATE OF ORDER	March 04, 2024
COURT/ TRIBUNAL	High Court, New Delhi

BRIEF FACTS:

A petition u/s 11(6) of the Arbitration and Conciliation Act, 1996 has been filed seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties. Respondent submitted that the petition is not maintainable due to insolvency proceedings being undertaken against one of the member constituents of the petitioner JV.

DECISION:

The Hon'ble NCLAT, New Delhi held that,

"In terms of the settled legal position, the scope of inquiry in a petition under Section 11 of the A&C is limited to examination of the existence of an arbitration agreement..."

Even assuming the petitioner JV is under insolvency, the same will not prevent it (corporate debtor) from filing an application under Section 11 of the A&C Act against another party, since the said proceedings are for the benefit of the corporate debtor..."

Accordingly, Mr. Justice (Retd.) Krishna Murari, Former Judge Supreme Court of India, (Mob No.- 9415308516) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. 18. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law..."

The present petition stands disposed of in the above terms."