

#SB-1

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On : 14.01.2021

FAO(OS) (COMM) 168/2020, CM APPL. 31791/2020 (Stay) & CM APPL. 31792/2020 (File lengthy synopsis) and CM APPL. 31794/2020 (Bring on record subsequent facts/events/documents)

AIRPORTS AUTHORITY OF INDIA

..... Appellant

versus

**MUMBAI INTERNATIONAL AIRPORT
LIMITED & ANR.**

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Tushar Mehta, Solicitor General of India with Mr. Karan Lahiri, Mr. Arshiya Sharda, Mr. Prateek Arora and Mr. Shailender Reddy, Advocates

For the Respondents : Dr. Abhishek Manu Singhvi, Senior Advocate with Mr. Kartik Nayar, Ms. Madhavi Khanna, Mr. Sarthak Malhotra and Ms. Ashima Singh Chauhan, Advocates for R-1
Mr. S.L. Gupta, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J. (Open Court-via Video Conferencing)

1. The present appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 against the impugned order dated 27.11.2020 in OMP (I) (COMM) No.174 of 2020 passed by the learned Single Judge prays as follows:-

- (a) Set aside the Impugned Final Judgment and Order dated 27.11.2020 passed in OMP (I) (COMM.) No. 174/2020 passed by the Ld. Single Judge of this Hon'ble Court;
- (b) Award costs of the present proceedings to the Appellant and against the Respondent; and
- (c) Pass such other or further order or orders or such directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice.

2. Having heard Mr. Tushar Mehta, learned Solicitor General of India, appearing on behalf of the appellant-Airports Authority of India, Dr. Abhishek Manu Singhvi, learned Senior Advocate appearing on behalf of respondent No.1-Mumbai International Airport Limited, as well as, Mr. S.L. Gupta, learned counsel appearing on behalf of respondent No.2-State Bank of India, the only course of

action that commends itself to us is to dispose of the present appeal by issuing the following directions: -

- (i) In partial modification of the directions as contained in Paragraph 46(i) of the Judgment and Order dated 27.11.2020 of the Hon'ble Single Judge as passed in OMP (I)(COMM) 174/ 2020, MIAL shall maintain a balance of Rs. 153 crores in a separate interest bearing account / fixed deposit with SBI so as to secure any alleged claim of AAI as against MIAL in relation to the alleged pending Annual Fee for the period prior to the passing of the Order dated 27.11.2020, i.e. April 2020 to November 2020 (excluding the amount transferred to AAI for the month of July 2020 and without adjusting for the alleged excess amounts paid by MIAL in FY 19-20). This is subject to reconciliation and verification by the Independent Auditor appointed under the OMDA including with regard to the alleged excess amounts paid. It is made clear that this is without prejudice to all rights and contentions of the parties, including in respect of the liability and/or quantification of the Annual Fee for the period in question, if found payable by the Arbitral Tribunal.
- (ii) The prospective directions of the Ld. Single Judge at Paragraph 46(i) of the Judgment and Order dated 27.11.2020 in OMP (I) COMM. No. 174/2020 shall continue, i.e. 38.7% of the actual revenue, received by MIAL, from the date of the Order, i.e. 27.11.2020, shall remain deposited in the Proceeds Account. This shall not apply to revenue received/receivable prior to the Order, even if received thereafter. This will however be subject to the ultimate reconciliation to be carried out by the Independent Auditor under the OMDA.
- (iii) Subject to Para 1 above and in partial modification of the directions as contained in Paragraph 46(iii) of the Judgment and Order dated 27.11.2020 of the Hon'ble Single Judge as passed in OMP (I)(COMM) 174/

2020, the entire balance amounts in the Proceeds Account, after satisfaction of Statutory Dues (for which monies shall be retained in the Statutory Dues Account), shall be forthwith transferred to the Surplus Account by SBI upon a request by MIAL to SBI and MIAL shall be entitled to disburse and utilize the same, so as to ensure that there are no restrictions in the utilization of MIAL of these balance amounts as per the OMDA.

- (iv) Subject to Para 2 above, as regards the future amounts that maybe deposited in the Proceeds Account, subject to certain amounts remaining deposited in the Proceeds Account, as given above, the balance sums after satisfaction of Statutory Dues, shall be forthwith transferred to the Surplus Account by SBI upon a request by MIAL to SBI and MIAL shall be entitled to disburse and utilize the said amounts and there shall be no restrictions in the utilization of MIAL of these balance amounts as per the OMDA.
- (v) It is clarified that all such utilization by MIAL shall be strictly accounted, in monthly account statements to be provided to AAI and SBI, as set out in Paragraph 46(iii) of the Order dated 27.11.2020 passed by the Hon'ble Single Judge.
- (vi) This direction shall be without prejudice to the rights and contentions of the Parties and shall continue till the decision is rendered by the Arbitral Tribunal in the Interim Applications under Section 17 of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall be at liberty to alter/ modify this interim arrangement as it deems fit.
- (vii) As already expressed by the Ld. Single Judge in Paragraph 46(x) of the Impugned Order, the Tribunal shall decide any application instituted on behalf of the parties under Section 17 of the 1996 Act and the arbitration itself without being influenced in any manner by any observation or finding made in the Impugned Order.

3. The parties are directed to comply with the aforesaid directions without demur, both in letter and spirit.
4. No further directions are called for.
5. The appeal is disposed of accordingly. The pending applications also stand disposed of.

**SIDDHARTH MRIDUL
JUDGE**

**TALWANT SINGH
JUDGE**

JANUARY 14, 2021/dn

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