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Arb Appln Nos.26 & 28 of 2022

Arb. Appln Nos.26 & 28 of 2022
in
O.A.Nos.328 & 329 of 2021

SENTHILKUMAR RAMAMOORTHY J.

By these two applications, the applicant seeks directions in relation to encashing the fixed deposit lying to the credit of O.A.Nos.328 & 329 of 2021 in Indian Bank, Esplanade Branch and for the payment of the proceeds thereof to the applicant.

2. The applicant operates ships which were chartered by the first respondent. On the ground that there were substantial dues in relation thereto, applications (O.A.Nos.328 & 329 of 2021) under Section 9 of the Arbitration and Conciliation Act,1996 (the Arbitration Act) were filed by the applicant seeking prohibitory orders against the garnishees who were arrayed as respondents in the respective application. Initially, orders restraining the garnishees from making payments to the first respondent herein were issued.



3. By order dated 15.07.2021 in the above mentioned original applications, this Court recorded that there is no dispute as far as the sum of Rs.19,71,31,022/- is concerned. The said order was carried in appeal by filing O.S.A.Nos.40 & 41 of 2021. The Division Bench of this Court recorded, in paragraph 3 of the order dated 17.08.2021, that there is no defence to the extent of about Rs.19.71 crore out of a claim of about Rs.58 crore. On that basis, the respondents herein were directed to deposit a sum of about Rs.19 crore in a no lien account in any nationalised bank of the first respondent's choice. By a subsequent order dated 03.09.2021, the Division Bench of this Court recorded that a sum in excess of Rs.19 crore had been deposited in a no lien account. After taking note of the fact that the first respondent had issued a letter seeking reconciliation of accounts, the Court disposed of the appeals by leaving it open to the parties to reconcile accounts.

4. Pursuant to such reconciliation, two statements verified and signed by the chartered accountant and the then General Manager-Finance of the first respondent were produced in Court. The statement with regard to the



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vessel, MV MP PANAMAX 5, specifies that the amount due and payable is Rs.10,84,73,881/-. As regards the vessel, MV MP PANAMAX 4, the amount payable is specified as Rs.8,77,73,932/-. By a subsequent order dated 24.09.2021, in paragraph 10 thereof, this Court recorded that both parties admitted that accounts had been reconciled. It was further recorded that parties are in agreement with regard to Rs.19.71 crores and that the only dispute is with regard to Rs.3.53 crore. On that basis, the Court concluded that the applicant is entitled for the immediate release of Rs.7 crore with accrued interest. The said sum of Rs.7 crore was paid to the applicant pursuant to this order.

5. As regards the remaining sums, the applicant presented applications for withdrawal thereof. The said amounts were directed to be paid under order dated 28.10.2021. In the said order, at paragraph 4, the Court recorded, once again, that the liability to the tune of Rs.19.71 crore is not at all disputed by the first respondent. This order was carried in appeal. By judgment dated 13.10.2022, in O.S.A.Nos.91 and 92 of 2022, the Division Bench dismissed the appeals after considering all objections



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raised by the first respondent herein. Paragraph 7 of the judgment is instructive and is set out below:

"7. It is thereafter these two applications were taken by by the first respondent for payment out of the amount. Even in the said proceedings, the learned single Judge has recorded that as directed by the Division Bench, the process of reconciliation of accounts was once again carried on and considering the fact that the appellant corporation was unable to raise any dispute whatsoever in respect of the balance amount outstanding, learned single Judge has ordered withdrawal of the amounts. Therefore, in that view of the matter, factually we find that even today before us, even for the sake of the case, no contra information has been projected by the appellant corporation and the earlier finding of the Division Bench that the liability of Rs.19.71 crore is admitted has become final. In that view of the matter, the claim of the first respondent to withdraw the amount already deposited is fully justified."

The present applications are consequential to the order dated 28.10.2021, as affirmed by the judgment of the Division Bench. Out of the amount of Rs.19.71 crore, as indicated *supra*, a sum of Rs.7,00,00,000/- was paid to the applicant previously. An aggregate sum of about Rs.12,71,32,020 (Rs.8,77,73,932/- + Rs.3.93,58,090/-) is currently lying in fixed deposit.



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6. Mr.A.Edwin Prabakar, learned Special Government Pleader, submits that the alleged admission of liability to the extent of Rs.19.71 crore was made by officers of the first respondent without proper authority. In fact, he states that departmental proceedings may be initiated against them. In these circumstances, he makes a request that the applicant should be directed to approach the arbitral tribunal for this relief because the arbitral tribunal has since been constituted. Without prejudice, he submits that the applicant should be directed to furnish security as a condition precedent for the release of these amounts. Learned Special Government Pleader also submits that the first respondent may raise counter claims before the arbitral tribunal, and that such counter claims may include the amounts which are subject of the present applications. Therefore, he seeks the preservation of rights in such regard.

7. Both by orders dated 01.10.2021 and 28.10.2021, this Court recorded categorical findings that the claim of Rs.19.71 crore is not disputed by the first respondent. In appeal, the said orders were not interfered with. Therefore, at this juncture, it is not possible to countenance



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and accept the contention that the amount is disputed. Although the arbitral tribunal has been constituted, in view of the series of orders passed by this Court, including by the Division Bench, it would be neither appropriate nor efficacious to relegate parties to the arbitral tribunal as regards these applications.

8. As a party to arbitral proceedings, subject to the applicable limitation period, it is obviously open to the first respondent to lodge a counter claim. In such event, it is also open to the first respondent to file an appropriate application under Section 17 of the Arbitration Act for interim relief. It is needless to say that the applicant herein may defend any such counter claim or interim application. Merely on that ground, the applicant cannot be directed to furnish security in respect of a claim which has been admitted by the first respondent in these proceedings.

9. For reasons set out above, these applications are allowed by directing the respondents to take necessary steps to encash the fixed deposit for sums of Rs.8,77,73,932/- and Rs.3,93,58,090/-, along with interest



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accruals thereon, and pay the same to the applicant either by issuing a payment instrument in favour of an authorised representative of the applicant or by remittance into the account of the applicant. If it is necessary for the Registrar General or other officer of this Court to take any action in this regard, such action shall be taken. This process shall be completed within a period of two weeks from the date of receipt of a copy of this order.

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15.11.2022



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