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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 03.11.2022*

\+ **FAO(OS) (COMM) 146/2022 and CM APPL. 27095/2022**

HELM DUNGEMITTEL GMBH (NOW KNOWN AS HELM AG)

......Appellant

Through: Mr Parag P. Tripathi, Sr. Adv. with Mr Amit Dhingra, Ms Mishika Bajpai and Mr Rohit Mahajan, Advs.

versus

CANARA BANK & ANR. ......Respondents

Through: Mr Pradeep Dewan, Sr. Adv. with Ms Anupam Dhingra, Adv. for R-1.
Mr Tarkeshwar Nath, Mr Lalit Mohan, Mr Shivam Roy, Mr Harshit Singh and Mr Virat, Advs. for R-2.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal is directed against the order dated 06/18.04.2022.

2. The appellant is essentially aggrieved by the direction contained in paragraph 11 of the impugned order. The said paragraph reads as follows:

> "*11. Accordingly, the present petition is allowed with the direction that the bank guarantee for Rs. 15 crores which*

> *has been furnished before Court in O.M.P.(I.)(COMM.) 318/2018 shall be kept alive for a period of eight weeks from today.*"

3. This order was passed, based on a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 [in short "1996 Act"] by Canara Bank i.e., respondent no.1.

4. To be noted, the second respondent in the appeal is the State Trading Corporation of India Ltd. ["STC"].

5. The record shows, that this matter has a somewhat chequered history.

6. Qua the award dated 29.04.2016 respondent no.1 i.e., Canara Bank preferred a petition under Section 34 of the 1996 Act.

6.1 This petition was numbered OMP(COMM) 373/2016.

7. In the section 34 petition, a learned Single Judge of this Court issued following operative directions *via* judgement dated 21.12.2021 concerning the said award:

> "*28. In light of the above discussion, the nil award rendered by the Tribunal qua Canara Bank's claim of interest, noted above, is set aside.*
> *29. Before parting, the Court may note that Mr. Chandhiok had fairly stated that he would have no objection to go back to the same Arbitral Tribunal for adjudication of Canara Bank's claim of interest if STC were to also join the said proceedings. However, Mr. Puri, representing STC, stated that STC is a government-controlled corporation, and such consent cannot be given. In these circumstances, the Court, while setting aside the nil award only to limited extent noted above, leaves Canara Bank the option open to exercise its remedies in accordance with law, for adjudication of its afore-noted claims.*"

8. As is evident from the extract hereinabove, the nil award rendered by the Arbitral Tribunal *vis-à-vis* Canara Bank's claim of interest was set aside.

9. Furthermore, the Court gave leeway to Canara Bank to exercise options that may be available to it, as per law, for having its claims adjudicated.

10. Admittedly, against the said judgment dated 21.12.2021, an appeal was preferred by Canara Bank i.e., FAO(OS)(COMM) 17/2022.

10.1 This appeal i.e., FAO(OS)(COMM) 17/2022, which was preferred under Section 37 of the 1996 Act, was confined to that part of the judgment dated 21.12.2021, whereby Canara Bank's application under Section 34(4) of the Act was dismissed.

11. However, *via* judgment dated 23.09.2022, the appeal was dismissed.

12. We are also informed, that Canara Bank has preferred an application under Section 11 of the 1996 Act, which is pending adjudication before a Single Judge of this Court.

12.1 This application is numbered Arbitration Petition 739/2022.

13. Therefore, clearly, arbitration proceedings have not commenced, as yet.

14. Both the appellant as well as STC have much to say about the Section 11 petition, filed by the Canara Bank.

15. At the moment, we are not concerned with the submissions and counter-submissions that will be made by the parties, in the Section 11 proceedings.

16. *Via* the impugned order, as noted above, the learned Single Judge has directed the appellant to keep the subject bank guarantee, amounting to Rs.

15 crores, alive.

17. On this aspect, we have heard the learned counsel for the parties.

18. Counsels for the parties are agreed, that the appeal can be disposed of with the following directions:

(i) The appellant's subsidiary i.e., Helm India Pvt. Ltd. will maintain a minimum balance amounting to Rs. 15 crores in its bank account, the details of which are given below:

*"Company name: Helm India Pvt. Ltd.
Bank A/C No. 0003699-00-0
Type: Current A/C
Branch: Deutsche Bank
Deutsche Bank House
Hazarimal Somani Marg
Fort, Mumbai - 400 001.
India"*

(ii) An affidavit of the Director of the appellant's subsidiary will be filed, which would indicate that it will comply with the aforementioned condition. This affidavit will be filed within two weeks from today.

18.1. The condition contained in paragraph 18(i) above will continue to operate, till arbitration proceedings, as sought to be triggered by Canara Bank are concluded.

18.2 The amount, which would be kept in the aforementioned bank account, will abide by the final decision in the arbitration proceedings.

19. Needless to add, this order will be served on the aforementioned bank i.e., Deutsche Bank, which will abide by the directions contained in the order.

19.1 The order will also bind the appellant's subsidiary.

20. Counsel for Canara Bank is also given liberty to serve a copy of the

order on the Deutsche Bank, to ensure that the Manager of the aforementioned Bank is made aware of the directions that we have issued today.

21. List the matter before the Joint Registrar (Judicial) on 19.12.2022 for compliance.

22. The Joint Registrar (Judicial) will communicate the order to the Branch Manager of Deutsche Bank.

23. A record of the proceedings will be maintained.

24. Resultantly, the subject bank guarantee will be returned to the appellant, once the registry carries out the exercise, as indicated above.

25. The directions issued above have been passed without prejudice to the rights and contentions of the parties before us.

26. At this stage, Mr Parag P. Tripathi, learned senior counsel, who appears on behalf of the appellant, says that the appellant should also be entitled to raise counter-claim(s), if an arbitral tribunal is constituted.

27. It goes without saying, that claim(s) and counter-claim(s) can be raised, *albeit* as per law.

28. The appeal is disposed of in the aforesaid terms.

29. Pending application shall also stand closed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

NOVEMBER 03, 2022 / tr