$~71

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

\+ W.P.(C) 12407/2024 and CM APPL. 51606/2024 (Stay)

M/S KURUKSHETRA EXPRESSWAY PRIVATE LIMITED & ANR. .....Petitioners

Through: Mr. Dayan Krishnan, Sr. Adv. with Ms. Purti Gupta, Ms. Henna George, Mr. Yogesh and Mr. Anant Shukla, Advs. for Petitioner No.1
Mr. Arvind Kumar and Mr. Sunil Mittal, Advs. for Petitioner No.2

versus

BANK OF BARODA & ORS. .....Respondents

Through: Mr. Santosh Kumar Rout, Ms. Dharna Veragi, Advs. for R-1,4,5,6 and 8
Mr. Santosh Kumar, Standing Counsel with Ms. Nidhi, Adv. for R-3/NHAI
Mr. O.P. Gaggar and Mr. Sachindra Karn, Advs. for R-6/Union Bank

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **10.09.2024**

1. This hearing is being conducted through hybrid mode.

2. Ms. Nidhi learned counsel for National Highway Authority of India [‘NHAI’] submits that she has instructions to inform this Court that they have “no objection” if the copy of the award is shared with the respondent No.1/Bank of Baroda.

3. In view of the statement made by learned counsel for respondent No.3/NHAI, learned Senior Counsel for the petitioner submits that he too has ‘no objection’ in sharing the copy of the final

award passed by the learned Arbitrator with the respondent No.1 bank.

4. Learned counsel for the respondent No.1/Bank of Baroda, however, submits that they not only require the copy of the final award passed by the Arbitrator, but also each and every document which were part of the arbitration proceedings.

5. On the face of it, the request made by the learned counsel for respondent No. 1 for supply of each and every document cannot be sustained in view of Section 42-A of the Arbitration and Conciliation Act, 1996.

6. Learned counsel for respondent No.1, however, invited the attention of this Court to the Circular by the Reserve Bank of India ['RBI'] dated 22.12.2014[4] and it has been vehemently urged that for non-corporation on the part of the petitioner No.1, the communication dated 08.02.2024 and legal notice dated 19.06.2024 can be acted upon by the Bank ,*which inter-alia* provides as under:-

> g) If any particular entity as mentioned in (a) above is reported as non-cooperative, any fresh exposure to such a borrower will by implication entail greater risk necessitating higher provisioning. Banks/FIs will therefore be required to make higher provisioning as applicable to substandard assets in respect of new loans sanctioned to such borrowers as also new loans sanctioned to any other company that has on its board of directors any of the whole time directors/promoters of a non-cooperative borrowing company or any firm in which such a non-cooperative borrower is in charge of management of the affairs. However, for the purpose of asset classification and income recognition, the new loans would be treated as standard assets. This supersedes the instructions contained at paragraph 8.1 (b) of the aforementioned circular dated February 26, 2014.
>
> h) It is reiterated that as the CRILC data is collected under the provisions of the RBI Act, non-adherence to reporting instructions attracts penal provisions under the Act.

7. As rightly urged by the learned Senior Counsel for the

---

[4] RBI/2014-15/362, DBR.No. CID.B.C.54/20.16.064/2014-15

petitioner, the plea urged by the counsel for the respondent/bank cannot be sustained in law. The RBI Circular dated 22.12.2014 cannot supersede a statutory amendment, and incidentally Section 42-A[5] has been brought into the Arbitration & Conciliation Act by way of notification w.e.f. 30.08.2019, instituted by Act 33 of 2019, Sec.9 [w.e.f. 30.08.2019, vide S.O. 3154(E), dated 30th August 2019.

8. In view of the above, the communication dated 08.02.2024 followed up by the legal notice dated 19.06.2024 threatening the petitioners that they would be declared as 'non-cooperative' as per the guidelines of the RBI cannot be sustained in law.

9. Before parting with this matter, insofar as the petitioner No.2/M/s. Kalpataru Projects International Limited is concerned, evidently, it was neither a party to the arbitration proceedings nor its bank account has been declared as NPA[6]. Therefore, the aforesaid impugned communication as well as legal notice cannot be directed against it.

10. The sum result is that the present writ petition is allowed. The impugned communication dated 08.02.2024 followed by the legal notice dated 19.06.2024 are hereby quashed. However, the petitioner No.1 shall supply the complete copy of the award with annexures, if any, to the respondent bank within seven days from today.

11. The writ petition is decided accordingly.

DHARMESH SHARMA, J.

SEPTEMBER 10, 2024/sp

---

[5] 42A. Confidentiality of information.-Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.

[6] Non-Performing Assets