$~7

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

\+ **LPA 526/2019 & CM APPL. 36719/2019**

ANDHRA BANK .....Appellant

Through: Mr. Sumit Swami, Ms. Srishti Bansal & Ms. Aanchal Pundir, Advs.

versus

M/S ATHENA ENERGY VENTURES PVT LTD .....Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

ORDER

% **24.03.2025**

1. This hearing has been done through hybrid mode.

2. The present Letters Patent Appeal ('LPA') has been filed by the Appellant under Clause 10 of the Letters Patent challenging the impugned judgment dated 30th May, 2019 passed by the ld. Single Judge. *Vide* the said judgment, the Appellant-Bank was directed to refund a sum of Rs.68,93,783/- along with interest @ 6% per annum to the Respondent.

3. The brief background is that a bank guarantee for a sum of Rs.25 crores was obtained by the Respondent and an agreement was executed in this regard on 4th August, 2009. The bank guarantee itself was returned to the Appellant on 1st March, 2012 and the amount of Rs.5 crores which was retained by the Appellant-Bank was returned to the Respondent. However, while returning the said amount, the pre-termination charges of Rs.68,93,783/- was debited/deducted from the total amount. The Respondent approached the Banking Ombudsman and thereafter the Reserve Bank of India, both of whom did not interfere in the matter. Accordingly, the ***W.P.(C) 3527/2014*** titled ***M/s***

Athena Energy Ventures Pvt. Ltd. v. Andhra Bank was filed in which the question was about the said bank guarantee commission. The ld. Single Judge *vide* the impugned judgment dated 30th May, 2019, observed as under:

> *"xxx xxx xxx*
> *25. **Be that as it may, since it is not disputed that the petitioner was informed that the commission for the facility of Bank Guarantee would be 2% per annum and the petitioner was not informed about any pre-payment charges, the levy of any commission for the unexpired term of the Bank Guarantee is unsustainable**.*
> *26. The petition is, accordingly, allowed.*
> *27. The Bank is directed to refund the amount of Rs.68,93,783/- along with interest at the rate of 6% per annum."*

4. The present LPA has been preferred against the said judgment. The Division Bench issued notice on 19th August, 2019. However, till date the Respondent has not been served. According to the Bank, the deduction is justified on the ground that the Respondent was duly informed about the imposition of pre-closure charges on the concerned Bank Guarantee, along with the applicable rate. It is further submitted that it was at the behest of the Respondent that the periodicity of the commission was changed from being charged on an annual basis to a quarterly basis. Reliance was placed on letters dated 4th June, 2011, 18th June, 2011 and 29th April, 2013 as captured in order dated 10th October, 2022. The said order also notes that the Respondent has not been served. The order dated 10th October, 2022 reads as under:

> *"1. The issue in the appeal centres around the appellant/bank seeking to recover pre-payment charges amounting to Rs. 68,93,783/-.*
> ***2. Mr PBA Srinivasan, who appears on behalf of the appellant/bank, says that, at the behest of the***

respondent, the periodicity of the commission charged for issuance of a bank guarantee was altered. It is stated, accordingly, the appellant bank charged commission quarterly, as against annually. It is submitted that the commission was charged annually before the aforementioned alteration, as agreed at the point in time when the facility was first sanctioned.

3. The record shows that the appellant/bank inter alia, seeks to rely upon the letters dated 04.06.2011, 18.06.2011 and 29.04.2013.

3.1. The learned Single Judge, in the impugned judgment, has noted the contention advanced on behalf of the respondent that the communication dated 04.06.2011 had not been received by it.

3.2. To be noted, the communication dated 29.04.2013 is an internal communication. Mr. Srinivasan says that this communication was in the knowledge of the respondent.

4. Since the respondent is not served, this aspect of the matter will be examined once the respondent is represented.

5. On steps being taken, fresh notice shall issue to the respondent via all modes including e-mail.

6. List the matter before the concerned Registrar on 09.11.2022 for completion of pleadings.

7. List the matter before this court on 21.04.2023"

5. After the above order which was passed, the Respondent has still not been served. No effective steps have even been taken to serve the Respondent. The ld. Counsel for the Appellant also submits that the Counsel is not receiving any instructions from the bank. Under such circumstances, this being an appeal of 2019 where the Respondent has not been served till date due to no steps being taken by the Appellant, this Court is of the opinion that the present appeal is liable to be dismissed for non-prosecution.

6. Accordingly, the present appeal is dismissed for non-prosecution. All pending applications, if any, are disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

MARCH 24, 2025/ *Rahul/Ar.*