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

% Judgment delivered on: 16.01.2024

+ FAO(OS) 125/2023

AIR INDIA LIMITED

..... Appellant

versus

ALL INDIA AIRCRAFT ENGINEERS ASSOCIATION & ANR.

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Harish N. Salve, Sr. Advocate
(Through V.C.) with Ms. Anuradha
Dutt, Mr. Lynn Pereria, Ms. Priyanka
M.P. , Ms. Shivangi Suid, Ms. Srishti
Prakash and Mr. Arkaprava
Dass, Advocates

For the Respondents : Mr. Jay Savla, Sr. Advocate with Mr.
Sameer Kumar, Ms. Somi Sharma, Mr.
Shah Rukh Ahmad and Mr. Mandeep
Baisala, Advocates

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T (O R A L)

(The proceeding has been conducted through Hybrid Mode)

CM APPL. 1172/2024 (Exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 1171/2024 (Modification of order dated 30.11.2023)

3. This is an application on behalf of the Appellant under Section



151 of the Code of Civil Procedure, 1908 (in short “CPC”), for modification of the Order dated 30.11.2023 passed by this Court, on the ground that instead of granting an unconditional stay as prayed for, this Court had restrained the execution of the Arbitral Award dated 25.05.2016, subject to the condition of deposit of the entire decretal amount, along with interest accrued till date, within a period of six weeks, failing which Respondent No. 1 would be entitled to execute the Award.

4. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the Applicant/Appellant, has submitted that the Applicant/Appellant has a *prima facie* strong case in its favour, and is therefore urging that the Order dated 30.11.2023 be modified to grant of unconditional stay. Learned Senior Counsel has reiterated the arguments submitted on behalf of the Applicant/Appellant urged on 30.11.2023.

5. Mr. Harish N. Salve, learned Senior Counsel appearing on behalf of the Applicant/Appellant, invites attention of this Court to relevant paras of the Order dated 09.05.2013 of the Supreme Court in SLP (C) No. 16397/2013, to submit that even if one were to go by the undertaking given before the Supreme Court, the interests and security of the Respondent No.1 and its members have sufficiently been taken care of and as such, the said direction of conditional stay may not be appropriate in these circumstances. Mr. Salve submitted that in any case the Respondent No.1 would be bound by the terms of Memorandum of Settlement in question, which was relied upon by the Respondent No.1 itself in its Writ Petition as also the SLP (C) No. 16397/2013.



6. Apart from this, learned Senior Counsel on behalf of the Applicant/Appellant, submits that the Applicant/Appellant is a *going concern* and a running corporation, and direction of such nature in clearing the dues to Respondent No. 1/employees would seriously jeopardize the Corporation, in the sense that, the same would put the Applicant/Appellant in more financial distress as the amount is required to run the Airlines. In that view, learned Senior Counsel puts forth that such direction of payment of an amount of more than Rs.100 Crores to the Respondent No.1, is onerous upon the Applicant/Appellant.

7. Mr. Salve, learned Senior Counsel submits such deposit would neither benefit any person nor would it be prudent to take the money out from the business of the Applicant/Appellant and put the same in banks. So far as securing the interests of the members of Respondent No.1 are concerned, learned Senior Counsel very fairly submits, as an alternative, that the Applicant/Appellant would be willing to furnish a bank guarantee for the amount so directed to be deposited *vide* Order dated 30.11.2023.

8. *Per Contra*, Mr. Jay Savla, learned Senior Counsel vehemently and seriously disputes the maintainability of the present application and submits that the same is actually in the nature of review of the said order. He submits that the impugned Arbitral Award is in the nature of money decree and therefore, the directions so passed in the interim order are squarely covered under the principles of Order XLI Rule 5 CPC. Furthermore, Mr. Savla submits that the present appeal in question is filed under Section 37 of Arbitration and Conciliation Act, 1996 (in short



“A&C Act”), and therefore, the Applicant/Appellant has an extremely narrow and limited scope of challenge.

9. Mr. Savla, learned Senior Counsel submits that the said amount are arrears of salaries of 480 employees from 1997-2006, which is required to be paid by the Applicant/Appellant. Moreover, the employees have been waiting for their rightful dues of the salaries from the past 10 years. Having lost the litigation before the learned Arbitrator as also the petition under Section 34 A&C Act, before the learned Single Judge of this Court, the Applicant/Appellant is under a legal obligation to make such deposit.

10. This Court has considered the submissions made on behalf of the learned Senior Counsel appearing for both the parties.

11. We have given our anxious thoughts to the submissions made by Mr. Salve as also Mr. Savla, learned Senior counsel for the parties, and are of the opinion that the Order dated 30.11.2023 takes a *prima facie* view of the entire conspectus and in the said backdrop has directed the Applicant/Appellant to make the said deposit subject whereof, the operation of the Arbitral Award had been restrained and as such, there seems to be no error apparent on the face of it, in the said order.

12. The application whereon the aforesaid order was passed, was ostensibly under Order XLI Rule 5 CPC and as such the direction for such deposit is within the jurisdiction and discretion of this Court.

13. We are conscious of the undertaking of the Applicant/Appellant



as also the Union of India as noted in Order dated 09.05.2013, by two competent officers of the Applicant/Appellant and UOI respectively, before the Supreme Court. We also understand that the Applicant/Appellant is a going corporation and does not appear to be under any extreme or grave financial distress. Equally, the undertaking of the UOI also assures us that any default by the Applicant/Appellant, would be made good by it and is sufficient to allay the concerns of the Respondent No.1.

14. That having been said, we are also concerned with the dues of the Respondent No.1 as has been upheld by the Arbitral Award as also by the learned Single Judge in a petition under Section 34 A&C Act, which is the subject matter of challenge in the present appeal. The clashing interests have to be therefore, balanced.

15. In view of the above, we are of the considered opinion that the interests of justice would be subserved by not altering the intent and import of the Order dated 30.11.2023, in respect of the deposit so directed. However, the said direction to deposit the entire 100% decretal amount alongwith interest upto date is modified to direct the Applicant/Appellant to deposit 50% of the said decretal amount with interest before this Court in the name of the Registrar General. The said amount shall be invested in an interest bearing FDR with an auto-renewal clause. The balance 50% of the said amount with interest be deposited in the form of a bank guarantee to the satisfaction of the Registrar General of this Court. The aforesaid direction shall be complied by the Applicant/Appellant within 3 weeks from today.



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Mr. Jay Savla, learned Senior Counsel, on instructions, submitted that the aforesaid modified directions would be acceptable to the Respondent No.1.

16. The application is disposed of in terms of the above directions.

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17. List on the date already fixed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J.

JANUARY 16, 2024

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