

\$~47

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

% Judgment delivered on: 22.03. 2023

+ CM(M) 466/2023

MITSUBISHI HEAVY INDUSTRIES LIMITED Petitioner

versus

PUNJ LLOYD LIMITED & ANR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Saurabh Kirpal, Sr. Advocate with
Mr. Anuj Berry, Ms. Anusha Ramesh,
Ms. Bhargavi Vadeyar, Ms. Neharika
Modgil, Mr. Brian Moses and Ms.
Mrinalini Mishra, Advocates

For the Respondent : Mr. Sunil Fernandes, Mr. Raghav
Chadda, Ms. Priyansha Sharma and
Ms. Diksha, Advocates for Liquidator.

Mr. Ankur Mittal, Mr. Raushal Kumar
and Mr. Abhay Gupta, Advocate for R-
2.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL No. 13974-75/2023

1. These are an application seeking exemption from filing certified copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. Applications stand disposed of.

CM APPL. No. 13976/2023

4. This is an application seeking leave to file lengthy list of dates.
5. Application is allowed and stands disposed of.

CM(M) 466/2023

6. The petitioner challenges the order dated 13.11.2019 passed by the National Company Law Tribunal, New Delhi (hereinafter referred to as “NCLT”) in (IB)-731 (PB)/2018 titled ‘*ICICI Bank Ltd vs. Punj Lloyd Limited*’, whereby the invocation and encashing of the bank guarantee by the petitioner herein, was stayed.

7. Mr. Saurabh Kirpal, learned senior counsel appearing for the petitioner submits that the law is well settled on the aspect that the invocation of bank guarantee ordinarily cannot be interfered with unless and until a case of fraud is pleaded. Learned senior counsel submits that no such case was pleaded. Learned senior counsel also submits that the NCLT could not have restrained the encashment of Performance Bank Guarantee, that too, at the instance of the IRP.

8. Learned senior counsel further submits that as of now, the petitioner would be satisfied, if a direction is passed, directing the NCLT to hear the matter and dispose it of expeditiously keeping in view that the said order was passed on 13.11.2019 and considerable time has elapsed since then, without any corresponding benefit to the petitioner.

9. Learned senior counsel also refers to page 266 of the present petition to submit that vide the order dated 14.03.2022 passed in CM(M) 228/2022 titled ‘*Mitsubishi Heavy Industries Limited vs. Punj Lloyd & Anr.*’, the petitioner had approached this Court raising the similar grievance, whereon this Court had requested the NCLT to dispose of the

grievance expeditiously. Learned senior counsel also submits that despite passage of one year, the issue is under limbo and there has been no compliance of the order dated 14.03.2022 passed by this Court.

10. *Per Contra*, Mr. Sunil Fernandes, learned counsel for the Liquidator submits that the petitioner has an equally efficacious remedy under Section 61 of The Insolvency and Bankruptcy Code, 2016, and ought not to have filed the present petition under Article 227 of the Constitution of India.

11. This Court has not considered the merits, which have arisen in the present dispute, and is only passing a direction in furtherance of the directions already passed by this Court on 14.03.2022 in the aforesaid CM Main.

12. Despite the fact that there was an order already passed by this Court on 14.03.2022, it is informed that 19 hearings have already taken place, without the learned NCLT disposing of the said application filed on behalf of the petitioner.

13. In view of the aforesaid facts and circumstances as also the order dated 14.03.2022 passed by this Court, it is directed that the NCLT takes up the matter on 28.03.2023, when the petition is stated to be listed before the learned Tribunal and dispose of the same in accordance with law, not later than 25.04.2023.

14. With the aforesaid terms, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 22, 2023

ॐ