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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 41 OF 2017

IN

EXECUTION APPLICATION NO. 240 OF 2011

IN

FOREIGN AWARD DATED 17TH JANUARY 2011

Asian Natural Resources (India) Ltd. (Formerly Bhatia International Limited)	…Respondent/ Org. Claimants/ Award Debtor
Versus	
Vittol S.A.	…Org. Respondent/ Award Holder
And	
Bhatia Coke And Energy Limited	...Respondent No. 1

WITH

JUDGE'S ORDER NO. 5 OF 2017

IN

EXECUTION APPLICATION NO. 240 OF 2011

IN

FOREIGN AWARD DATED 17TH JANUARY 2011

Vitol S.A. & Others	…Applicant
In the matter between	
Asian Natural Resources (India) Limited (Formerly Bhatia International Limited)	...Original Clainant/ Award Debtor
Versus	

Vitol S.A. & Others ...Original Respondent/ Award Holder

Mr. Kezer Kharawala, *i/b Lex Juris, for BGTL.*
Ms. Naira Jeejeebhoy, *with Mr. Aditya Krishnamurthy, with Ms. Damaytanti Sen, i/b Boss & Mitra & Co., for the Applicant/ Award Holder.*
Mrs. Kavita Ambekar, *IInd Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J
DATED: 12th January 2017

PC:-

1. It is accepted that Bhatia Coke & Energy Limited has the ownership of 50,000 MT of coal at Krishnapatanam Port, Nellore, Andhra Pradesh. It is also accepted that Bhatia Coke & Energy Limited is a group concern or sister company of the Award Debtor, Asian Natural Resources (India) Limited (formerly Bhatia International Limited). It is further accepted that on piercing the corporate veil, one would find a commonality of directors and shareholders. In addition, the two entities also share other business assets such as domain name, logos etc. Given these statements, I am satisfied that the unity of the two entities is firmly established. Apart from the statements made before me, this is also *ex facie* evident from the materials adduced by Ms. Jeejeebhoy. I need only note that this is not the first instance of its kind in this series of matters; in previous orders too, relating to other companies in the Bhatia International group, this court has, on piercing the corporate veil, found such commonality and held other companies to be the alter egos of the judgment/award debtor. This case is no different. In one such order, it was in fact noted that the modus operandi adopted by the Bhatia International group was to execute Business Transfer Agreements, and constantly gerrymander asset distributions between a raft of closely and commonly held and controlled corporate entities; and that the sole purpose of this was to defeat the award holder from enforcing the award. In those orders, which I do not think it is necessary to dilate on again, orders were passed issuing precepts and in furtherance of execution.

2. Mr. Kharawala says that his contentions on law must be left open. Evidently, this can only extend to a question of the correct procedure to be followed in execution, but not to any question of ownership of the cargo or the commonality of the two entities referred to above.

3. In view of this, the Judge's Order is separately signed with today's date for issuance of a precept under Section 46 of the Code of Civil Procedure, 1908 and the Chamber Summons is made absolute in terms of prayer clauses (a) and (b), which read as follows:

> "(a) That pending the issuance f a precept under Section 46 of the Code of Civil Procedure, 1908 under Judges Order No. 5 of 2017, this Hon'ble Court be please pass orders directing Bhatia Coal and Energy Limited to state on affidavit if they had any involvement in the import of the cargo of 50,000 MT of coal discharged from the vessel MV Fulvia and lying at Krishnapatnam Port;

(b) That pending the issuance of a precept under Section 46 of the Code of Civil Procedure, 1908 under Judges Order No.5 of 2017, this Hon'ble Court be pleased to pass order of injunction against the cargo of 50,000 MT of coal discharged from the vessel MV Fulvia and lying at Krishnapatnam Port;"

(G. S. PATEL, J.)