

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS (L) NO. 209 OF 2017
WITH
REVIEW PETITION (L) NO. 1 OF 2017
IN
EXECUTION APPLICATION NO. 240 OF 2011
IN
FOREIGN AWARD DATED 17TH JANUARY 2011**

Sathavahana Ispat Ltd	... Applicants / Intervenor
<i>In the matter between</i>	
Vitol SA	Award Holder
<i>Versus</i>	
Asian Natural Resources (India) Ltd (formerly Bhatia International Ltd)	Award Debtor
<i>And</i>	
Bhatia Coke & Energy Ltd	... Respondent No.1
<i>And</i>	
Krishnapatnam Port Co Ltd & Ors	... Additional Respondents

Mr Gaurang Mehta, with Ms Poorva Garg & Mr Parikshit Barpujari
i/b Mulla & Mulla & CBC for the Applicants.

Ms Radha Bhandari, i/b MV Kini & Co for Defendant No.2/Mumbai
Port Trust.

Mrs Naira Jeejeebhoy, with Mr Abraham V & Ms Damayanti Sen i/b
Bose & Mitra & Co for original Award Holder.

Mr A Daver, with Ms Monika Tanna, Ms M Modi & Mr Himanshu

Meena i/b Singhania Legal Services for Respondent No.1.
Mr Kiran Gaikwad, i/b MV Kini & Co. for Respondent No.2.
Mr K Kharawala, i/b Lex Juris for Bhatia Trading Co.

CORAM: G.S. PATEL, J
DATED: 10th February 2017

PC:-

1. This Chamber Summons is by Sathavahana Ispat Ltd. It claims that it is the importer of 25000 Metric Tonnes of Metropolitan Hard Coking Coal on board the vessel MV Fulvia under Bills of Lading Nos. 9 and 10, both dated 9th December 2016. This 25000 Metric Tonnes of coal is part of a larger amount of 50000 Metric Tonnes aboard the same vessel. By an order dated 12th January 2017, a statement was purportedly made on behalf of the Bhatia Coke & Energy Ltd (“**BCEL**”) said to be affiliated to the Award Debtor, Asian Natural Resources (India) Ltd (“**ANRIL**”, formerly Bhatia International Ltd), that the entire cargo of 50000 Metric Tonnes was that of the BCEL.

2. This statement was noted. The subsequent oral applications of a speaking to the minutes by Mr Kharawala to ‘correct’ the order were not accepted simply because they were not in the nature of a correction so much as a modification.

3. Mrs Jeejeebhoy for the Award Holder accepts that BCEL did not import the whole of the 50000 Metric Tonnes. Mr Davar on behalf of Respondent No.1 makes a statement that BCEL imported only 16200 Metric Tonnes of this cargo. He makes this statement on

instructions obtained in Court. Sathavahana Ispat Ltd imported 25000 Metric Tonnes, and on HK Enterprises imported the remaining 8800 Metric Tonnes.

4. The order dated 12th January 2017 will therefore be corrected to substitute the figure of 50000 Metric Tonnes in paragraph 1 with the figure of 16200 Metric Tonnes.

5. This will dispose of this Chamber Summons leaving open the Applicants' claim for damages for which it may adopt appropriate proceedings on payment of the requisite Court Fee.

6. The Chamber Summons is disposed of in terms of prayer clauses (a), (b) and (c) , which read as follows:

(a) That this Hon'ble Court be pleased to recall and / or set aside and / or vacate the order dated 12th January 2017 passed by this Hon'ble Court in Chamber Summons No.41 of 2017 in the above Execution Application No. 240 of 2011, to the extent that the same relates to the 25,000 Metric Tonnes of Metropolitan Hard Coking Coal imported per MV Fulvia vide Bills of Lading Nos. 9 and 10 both dated 9th December 2016 of the Applicants' ownership and entitlement which is particularly described in Annexure "A" hereto:

(b) If attachment under Precept has been issued under Section 46 of the Code of Civil Procedure 1908 pursuant to Judge's Order No.5 of 2017 granted by this Hon'ble Court in the proceedings of the above Execution Application No. 240 of 2011, in that event, this Hon'ble Court be pleased to issue necessary Order and advise to the Local Civil Court to

whom the Precept was issued, for raising the attachment on the 25,000 Metric Tonnes of Metropolitan Hard Coking Coal imported per MV Fulvia vide Bills of Lading Nos. 9 and 10 both dated 9th December 2016 of the Applicants' ownership and entitlement which is particularly described in **Annexure "A"** hereto:

(c) That this Hon'ble Court be pleased to Order and direct the Additional Respondents to release and to deliver to the Applicants the consignment of 25,000 of Metropolitan Hard Coking Coal imported per MV Fulvia vide Bills of Lading Nos. 9 and 10 both dated 9th December 2016 of the Applicants' ownership and entitlement which is particularly described in **Annexure "A"** hereto.

7. As regards the Review Petition, the first prayer sought is precisely for correction of the cargo quantity recorded. The second prayer seeks leave to raise contentions on law and therefore seeks a deletion of the second sentence of paragraph 2 of the order of 12th January 2017.

8. Mr Davar may raise whatever contentions he wishes in relation to BCEL and the Award Debtor, but on this condition, viz., that his clients will do so at their peril including as to exemplary and punitive cost. This requires no further clarification.

9. The precept issued under order dated 12th January 2017 will have to be returned to this Court and a fresh precept issued on a separate Judge's Order in the amount of 16200 MT.

10. The precept issued on 12th January 2017 is recalled. Liberty to the Award Holder to file a fresh Judge's Order for a fresh precept.
11. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)