

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1077 OF 2017
IN
APPEAL NO.115 OF 2017
IN
JUDGE'S ORDER NO.215 OF 2014
IN
EXECUTION APPLICATION NO.240 OF 2011
IN
FOREIGN AWARD DATED 17-01-2011
WITH
COURT RECEIVER'S REPORT NO.114 OF 2017
IN
APPEAL (L) NO.794 OF 2015
IN
NOTICE OF MOTION NO.1077 OF 2017

Bhatia Industries and Infrastructure Limited	Applicant
versus	
Asian Natural Resources (India) Limited	
and another	Respondents

Mr.Kezer Kherawala i/by Lex Juris for Applicant/Appellant.

Mr.Zal Andhyarujina with Ms.Naira Jeejibhoy and Mr.Pabitra Dutta i/by Bose and Mitra and Company for Respondent no.2.

Dr.M.S.Deshpande, Court Receiver, present.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 13th September 2017

PC :

1. This notice of motion by the original appellant-applicant seeks following relief :

“a) This Hon'ble Court be pleased to direct the Court Receiver to transfer the sale proceeds received from the sale of Cargo belonging to the Appellant to the District Court, Tuticorin (Tamil Nadu)”

2. By this notice of motion, the applicant says that the above Appeal No.115 of 2017 is disposed off, but there is an order of 26th October 2015 appointing Court Receiver, High Court, Bombay as a Receiver in respect of the cargo containing 17,000 M.T. of coal and with a power to dispose off the same, and still in force.

3. After the above order dated 26th October 2015, the Court Receiver has conducted sale and sold the subject cargo. It is stated that sale proceeds worth Rs.3,41,50,000/- are lying with the Court Receiver. The sale has been confirmed by this Court on 15th February 2017 and therefore, the prayer is that the amount namely the sale proceeds be transferred to the District Court, at Tutikorin in the State of Tamil Nadu, as the decree itself stands transferred for execution.

4. This position brought about on an affidavit-in-support is disputed and there is an affidavit-in-reply of constituted attorney of one Vitol S.A. (for short 'Vitol') stated to be the decree holder. It is opposing this request on several grounds.

5. It is urged that the said Vitol is seeking to enforce and execute a foreign arbitral award dated 17th January 2011 against one Bhatia International Limited {now known as Asian Natural Resources (India) Limited}, for a sum in excess of Rs.500 crores. In the above appeal being Appeal No.115 of 2017, an order was passed on 6th September 2016 whereby a Division Bench of this Court confirmed the findings of learned Single Judge in his order dated 5th October 2015 in Judge's Order No.215 of 2014. The learned Single Judge came to the conclusion that the applicant/original appellant/Bhatia Industries and Infrastructure Limited, now known as Hemang Resources Limited, are common and they are not separate companies and registered as such. Thus, their entity is one and the same.

6. This is done by lifting corporate veil and the Division Bench, therefore, was of the view that this was a correct approach of the learned Single Judge. In such circumstances, the apprehension expressed is that though the findings of the Division Bench have been confirmed, there are subsequent developments namely proceedings before National Company Law Tribunal. But in the meanwhile, if the money/sale proceeds are transferred to the District Court, at Tutikorin (Tamil Nadu), that would prejudice the case of decree holder and the submission is that this Court should retain complete control of the execution proceedings and execute the decree.

Without prejudice and at best, a part of the decree could have been executed by taking assistance of a Court in Tamil Nadu and that is precisely what is done. This detailed affidavit-in-reply is filed by annexing several documents.

7. After hearing Mr.Kherawala and Mr.Andhyarujina, we are of the opinion that larger issues and wider controversies need not be gone into this application. This application is filed by original appellant-applicant in which Vitol cannot claim reliefs and in the nature asserted before us.

8. After hearing both sides, we are of the view that interest of justice would be served if we discharge the Court Receiver, High Court, Bombay without passing accounts on payment of his usual costs, charges and expenses; and in the event the sale proceeds are already not handed over to the Prothonotary & Senior Master of this Court, the same be handed over by the Court Receiver and a receipt obtained in that behalf. If the amount is already handed over and stands deposited with the office of Prothonotary & Senior Master of this Court, the Court Receiver to stand discharged as above. Ordered accordingly.

9. However, we direct that for a period of eight weeks, the sale proceeds which are lying with the Prothonotary & Senior Master of this Court, shall not be transferred to any Court including the District Court, at Tutikorin (Tamil Nadu), so as to enable Vitol to adopt appropriate proceedings. We also clarify,

in the meantime, that if any expenses are to be reimbursed and the purchaser at the auction is interested in such reimbursement, this order will enable him to make appropriate application in that behalf.

10. We also clarify that we keep open all contentions including that of Bhatia Group so as to oppose the reliefs claimed by Vitol. Needless to clarify that Vitol, if do not obtain any reliefs as aforesaid, the monies then be transferred to District Court, at Tutikorin (Tamil Nadu).

11. Accordingly, Notice of Motion No.1077 of 2017 is disposed off. Equally, Court Receiver's Report No.114 of 2017 also stands disposed off.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

MST