Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 450 OF 2017

IN

CHAMBER SUMMONS NO. 14 OF 2017

IN

EXECUTION APPLICATION NO. 240 OF 2011

Union Bank of India ...Applicant/ Intervener

IN THE MATTER BETWEEN

Asian Natural Resources (India) Ltd (formerly Bhatia International Ltd) ...Claimant/ Award Debtor

~ VERSUS ~

Vitol SA ...Respondent/ Award Holder

Mr H Toor, *i/b N Amin, for the Applicant/Intervener.*
Mr ZT Andhyarujina, *with Ms N Jeejeebhoy, Mr Aditya K, Ms D Sen, i/b Bose & Mitra, for the Award holder.*
Mr K Kharawala, *i/b Lex Juris, for BGTL.*
Ms Radha Bhandari, *i/b MV Kini, for BPT.*
Ms Dipti Shah, *for the Applicant in NMSL 454/17 for Ganpati Energy.*
Ms Ramola Bhowmik, *i/b A Dhanuka, for the Award Debtor.*

CORAM: G.S. PATEL, J
DATED: 28th April 2017

PC:-

1. This is a Chamber Summons by the Union Bank of India ("**UBI**"). It says it is a secured creditor of a large quantity of coal that belongs to Bhatia Global Trading Ltd ("**BGTL**"). Mr Toor for the Applicant Bank points out that there are various undisputed documents to establish that UBI has a first charge on the coal and coke imported by BGTL. This includes 30,000 MT at Magdalla port and 25,000 MT at Dharamtar port, and also any rupee realizations of sales from those quantities. UBI's charge is not limited to these quantities.

2. There is no doubt that the UBI is a secured creditor or that these coal and coke imports constitute security for its loans to BGTL. The award holder, Vitol SA ("**Vitol**"), holds an executable foreign award against Bhatia International Ltd, now Asian Natural Resources Ltd, ("**ANRIL**"). BGTL has been held to be an alter-ego of ANRIL and Vitol attempts to proceed against BGTL's assets in execution of its award against ANRIL. However, any steps Vitol takes against BGTL must necessarily be subject to the charge in favour of UBI.

3. I am not deciding in this matter whether the UBI can proceed against these assets without initiating steps under SARFAESI, or whether its claim must be 'adjudicated', or if this is to be at UBI's instance, Vitol's instance or BGTL's instance. All those questions are kept open for appropriate proceedings. There is no doubt that the UBI can only proceed in accordance with law as a secured creditor. No further orders are either necessary or even appropriate on the present Chamber Summons. It is disposed of with these observations.

4. It is to be noted, finally, that an amount of Rs.6,41,64,162/- is presently deposited with the Prothonotary and Senior Master. This was brought into Court because BGTL "inadvertently" sold parts of the imported cargo after a restraint order. It did not dispute the sale or that it was after that restraint order. It offered to bring the sale proceeds into Court. That is how the amount comes to be deposited with the Prothonotary and Senior Master. Clearly, the same principles that will govern UBI's rights as a secured creditor in respect of cargo will also apply in relation to this deposit of Rs.6,41,64,162/-.

5. The amount lying with the Prothonotary and Senior Master is to be invested with the Central Bank of India at the best possible rate of interest.

6. The Chamber Summons is disposed of in these terms. No order as to costs.

(G. S. PATEL, J.)