IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 6th DAY OF DECEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.A.No.772 of 2018
in
A.Nos.7041 to 7046 of 2018

O.A.No.772 OF 2018:

In the matter of Arbitration and conciliation (amendment) Act, 2015.
and
In the matter of London arbitral Awards dated 6th August 2017 and 9th April 2017.

Pueblo Holdings Limited
A company incorporated under the appropriate laws of the Marshall Islands having its registered office at Trust Company Complex, Ajeltake Road, Ajeltake Islands, Majuro
MH 96960, Marshall Islands
Rep.by its Authorised Signatory
...Applicant

-Vs-

1.Emirates Trading Agency LLC
A company incorporated under the appropriate laws of the United Arab Emirates having its registered/business office at ETA Star House
Salahuddin Road, Deira, Dubai
United Arab Emirates.

2.Star Health and Allied Insurance Company Limited
A company incorporated under the companies Act, 1956 having its registered officer at No.1
New Tank Street, Valluvarkottam High Road
Nungambakkam, Chennai - 600 034.

3.ESSA Abdulla Ahmed Al Ghurair
A national of the United Arab Emirates having his address at P.O.Box 128704
Building #3580467, Street 4, Al Quoz 3
Dubai, United Arab Emirates

4.Syed Mohamed Salahuddin
An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai - 600 034

Also at
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai, UAE.

5.Hameed Syed Salahuddin
An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai 600 034
Also at:
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai UAE

6.Ahmed Syed Salahuddin
An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai 600 034
Also at:
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai UAE.

7.Arif Buhary Rahman
An individual residing at No.8 Subba Rao Garden
Avenue, 3rd Street,
Nungambakkam, Chennai

Also at:
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai UAE

8.ETA Star Holdings Limited
A Company incorporated under the appropriate laws of the
United Arab Emirates having its registered/business office at
Ascon House,
5th Floor, Salahuddin Road
Deira, Dubai
United Arab Emirates

9.ETA Star Holdings LLC
A Company incorporated under the appropriate laws of the
United Arab Emirates having its registered/business office at
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5th Floor, Salahuddin Road
Deira, Dubai
United Arab Emirates

...Respondents

Original Application praying that this Hon'ble Court be pleased to grant an order of injunction restraining the respondents, its men, servants, agents, employees or officers, whomsoever authorised collectively or severallly from selling, alienating transferring, encumbering or otherwise creating third party interest in relation to schedule mentioned properties.

A.Nos.7041 and 7042 of 2018:

1.Syed Mohamed Salahuddin
An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai - 600 034

Also at
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai, UAE.

Represented herein by his power of Attorney
Mr.Syed Shamsudeen Iqubal and Bazir Ali

...Applicant/Respondent No.4

1.Pueblo Holdings Limited
A company incorporated under the appropriate
laws of the Marshall Islands having its registered
office at Trust Company Complex, Ajeltake
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5.Hameed Syed Salahuddin
An individual residing at No.6 Wallace Garden
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Deira, Dubai UAE

6.Ahmed Syed Salahuddin
An individual residing at No.6 Wallace Garden
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Deira, Dubai UAE.

7.Arif Buhary Rahman
An individual residing at No.8 Subba Rao Garden
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...Respondents

A.No.7041 of 2018:

The Application praying that this Hon'ble Court be pleased to Vacate the exparte ad interim order dated 23.08.2018 in O.A.No.772 of 2018 with immediated effect.

A.No.7042 of 2018:

The Application praying that this Hon'ble Court be pleased to Suspend the Exparte order dated 23.08.2018 in O.A.No.772 of 2018 with immediated effect.

A.Nos.7043 and 7044 of 2018:

1.Hameed Syed Salahuddin

An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai 600 034
Also at:
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai UAE
Represented herein by his power of Attorney
Mr.Syed Shamsudeen Iqubal and Bazir Ali

...Applicant/Respondent No.5

1.Pueblo Holdings Limited
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office at Trust Company Complex, Ajeltake
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MH 96960, Marshall Islands
Rep.by its Authorised Signatory

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A company incorporated under the companies
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Nungambakkam, Chennai - 600 034.

4.ESSA Abdulla Ahmed Al Ghurair
A national of the United Arab Emirates
having his address at P.O.Box 128704
Building #3580467, Street 4, Al Quoz 3
Dubai, United Arab Emirates

5.1.Syed Mohamed Salahuddin
An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai - 600 034
Also at

Villa 123-494, 29th Street, Al Muteena
Deira, Dubai, UAE.

Represented herein by his power of Attorney
Mr.Syed Shamsudeen Iqubal and Bazir Ali

6.Ahmed Syed Salahuddin
An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai 600 034
Also at:
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai UAE.

7.Arif Buhary Rahman
An individual residing at No.8 Subba Rao Garden
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Nungambakkam, Chennai

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...Respondents

A.No.7043 of 2018:

The Application praying that this Hon'ble Court be pleased to Vacate the Exparte ad interim order dated dated 23.08.2018 in O.A.No.772 of 2018 with immediated effect.

A.No.7044 of 2018:

The Application praying that this Hon'ble Court be pleased to Suspend the Exparte order dated dated 23.08.2018 in O.A.No.772 of 2018 with immediated effect.

A.Nos.7045 and 7046 2018:

1.Arif Buhary Rahman

An individual residing at No.8 Subba Rao Garden
Avenue, 3rd Street,
Nungambakkam, Chennai

Also at:
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai UAE

...Applicant/Respondent No.7

1.Pueblo Holdings Limited
A company incorporated under the appropriate
laws of the Marshall Islands having its registered
office at Trust Company Complex, Ajeltake
Road, Ajeltake Islands, Majuro
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Rep.by its Authorised Signatory

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having his address at P.O.Box 128704
Building #3580467, Street 4, Al Quoz 3
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5.1.Syed Mohamed Salahuddin
An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai - 600 034

Also at

Villa 123-494, 29th Street, Al Muteena
Deira, Dubai, UAE.

Represented herein by his power of Attorney
Mr.Syed Shamsudeen Iqubal and Bazir Ali

6.Hameed Syed Salahuddin

An individual residing at No.6 Wallace Garden
1st Street, Nungambakkam, Chennai 600 034
Also at:
Villa 123-494, 29th Street, Al Muteena
Deira, Dubai UAE
Represented herein by his power of Attorney
Mr.Syed Shamsudeen Iqubal and Bazir Ali

7.Ahmed Syed Salahuddin
An individual residing at No.6 Wallace Garden
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...Respondents

A.No.7045 of 2018:

The Application praying that this Hon'ble Court be pleased to Vacate the Exparte ad interim order dated dated 23.08.2018 in O.A.No.772 of 2018 with immediated effect.

A.No.7046 of 2018:

The Application praying that this Hon'ble Court be pleased to Suspend the Exparte order dated dated 23.08.2018 in O.A.No.772 of 2018 with immediated effect.

This Original Application along with these applications coming on this day before this court for hearing the court made the following order:

By an order dated 23.08.2018, an ad-interim injunction was passed to restrain the respondents 3 to 7 in O.A.No.772 of 2018 from transferring or alienating the shares held by them in the 2nd respondent company for a period of four weeks. The said order came to be extended from time to time. Meanwhile, 2nd, 3rd, 4th, 5th and 8th respondents have filed their counters.

2.Application Nos.7041 to 7046 of 2018 have been filed to vacate and suspend the said interim order dated 23.08.2018 in O.A.No.772 of 2018 by 4th, 5th and 7th respondents respectively.

3.Paras 2 to 6 of the order dated 23.08.2018 in O.A.No.772 of 2018 reads as under:

> *"2. The dispute between the applicant and the first respondent is covered by an arbitration clause in charter party agreement, which reads as follows:*
>
> *"Clause 17 of the Charter party provided:*

"That should any dispute arise between owners and the charterers, the matter in dispute however shall be referred to arbitration in London before three persons one to be appointed by each of the parties hereto, and the third by the two so chosen......... . The Arbitrators shall be shipping men and the arbitration proceedings shall be conducted in accordance with the current rules of the LMAA/See Clause #101."

3.The applicant has an award in its favour against first respondent. The applicant has also filed O.A.No.398 of 2018 against the first respondent and others named therein to restrain the first respondent from selling or alienating the assets. The applicant has also filed O.P.No.416 of 2018 for enforcement of the awards. As on the date O.P.No.416 of 2018 is pending and it is informed that the respondent has not appeared.

4. The applicant mentions that it is unable to recover any amount from the first respondent as the first respondent choses to remain absent. The applicant has averred that the details of the assets of all LLC incorporated in Jabel Ali Free Zone in UAE, a secrecy jurisdiction are not available for public viewing and therefore the assets of respondent No.1 are not traceable.

5. It is submitted that the first respondent is controlled by respondents 3 to 7. 1. It is further submitted that 1st respondent has made investment in the 2nd respondent in the name of respondents 3 to 7 through the 8th respondent.

1 *6.The respondents 3 to 7 approximately hold 6.16% of shares in the 2nd respondent-company, details of the shares held as part of the schedule in the Judges Summons.*

4. Briefly, the facts are as follows:

(i) The applicant in O.A.No.772 of 2018 has two foreign awards dated 09.042017 and 06.08.2017 in its favour against the 1st respondent and therefore, in a bid to enforce the same, has filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 to restrain the 3rd to 7th respondents from selling, alienating, transferring, encumbering or otherwise creating third party interest in relation to the shares in its name in the 2nd respondent company.

ii) It is stated that the purchase of these shares in the 2nd respondent company were funded by the 1st respondent award debtor and routed through 7th and 8th respondents and since the shares are held for an on behalf of the 1st respondent, these respondents be restrained from selling, alienating, transferring or encumbering the shares. In other words, it is stated that the shares are the real assets of the 1st respondent award debtor.

iii) The case of the applicant is that it has filed collateral proceeding for enforcing the award against the 1st respondent company Award Debtor and therefore to secure its interest order may be passed by restraining the respondent No.3 to 3 from alienating the shares.

iv) It is the case of the applicant that these were few of the assets of the Award Debtor of 1st respondent which are visible, which can be attached therefore as an interim measure pending enforcement of the award under Section 47, 48 and 49, Part II of the Arbitration and Conciliation Act, 1996, the applicant is entitled for interim protection under Section 9 of the Act. The applicant has filed O.P.No.416 of 2018 under Part III of the Arbitration and Conciliation Act, 1996.

v) It is the case of the applicant that the shares held in the 2nd respondent company by the 3rd to 7th respondents were held for and on behalf of the 1st respondent and therefore the applicant was well within its rights to seek for an order of injunction restraining them from selling or alienating the shares and/or create third party right in respect of the shares.

5.On 23.08.2018, when O.A.No.772 of 2018 was taken up and ad-interim order was passed when my attention was drawn to the order passed by this Court in A.Nos.1387 to 1392 of 2018 in C.S.No.33 of 2018.

6.The said suit was filed by another group of shareholders of ETA Group of Companies of which the 1st, 2nd, 8th and 9th respondents were constituents.

7.C.S.No.33 of 2018 was filed by two of the other shareholders of the 2nd respondent company representing Al Ghurair's group, who are not party to the present proceedings. The said suit was filed for the following reliefs:-

> *a. Declaring the beneficial interest of Defendant No.2 in the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8 held by Defendant Nos.3, 4, 5, 6 and 7 constituting a total of 6.16% of the shareholding of defendant No.1 as described in Para 34;*
>
> *b. Permanently injunct defendant Nos.1, 3 to 10 from in any manner interfering with the beneficial interest of Defendant No.2 with respect to suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8.*
>
> *c. Permanently injunct Defendant Nos.1, 3 to 10 from acting in any manner or dealing with the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8, which is likely to prejudice the interests of defendant No.2;*
>
> *d. Direct that appropriate measures be taken by Defendant Nos.1, 8 and 9 to make and record the beneficial interest of Defendant No.2 over and with respect to the suit shares bearing folio numbers 0001; 0002; 0005; 0006; 0008; 01; 08; 1 and 8;*
>
> *e. Direct that if not already issued no duplicate share certificates are issued to Defendant Nos.3, 4, 5, 6 and 7 with respect to the originals share certificate in the possession of Defendant No.11 and direct the cancellation of any duplicate share certificate if any issued:*
>
> *Or Direct that in the event the duplicate shares have been issued in favour of Defendant No.3 to 7 the same be cancelled.*

f. For costs;

g. Pass any other or such order(s) as this Hon'ble Court may deem fit and proper.

8.Defendants Nos.1,2,11and 12are respondents Nos.2,8, 9 and 1 respectively in O.A. No.772 of 2018. For the sake of clarity, following table may be relevant to appreciate the case of the applicant and the defence of the contesting respondents:

Sl.No.	Parties	In suit 33/18	In O.A.772/18
1.	Star Health and Allied Insurance Company Limited	D1	R2
2.	ETA Star Holdings Limited	D2	R8
3.	Mr.Syed Mohamed Salabuddin	D3	R4
4.	Mr.Essa Abdulla Ahmed Al Ggurair	D4	R3
5.	Mr.Hameed Syed Salahuddin	D5	R5
6.	Mr.Ahmed Syed Salahuddin	D6	R6
7.	Mr.ArifBuhray Rahman	D7	R7
8.	V.Jagannathan C/o.Star Health and Allied Insurance Company Limited	D8	Not parties in this application
9.	V.P.Nagarajan C/o.Star Health and Allied Insurance Company Limited	D9	Not parties in this application
10.	C.M.K.Unni C/o.Star Health and Allied Insurance Company Limited	D10	Not parties in this application
11.	ETA STAR Holding LLC Dubai UAE	D11	R9
12.	Emirates Trading Agency LLC Dubai UAE	D12	R1

9. The respondent No.3-7, 8 and 9 have uniformly submitted that the applicant has not out come clean in as much as it has not disclosed the source of document relied

in support of the present application.

10.Countering the preliminary objections regarding territorial jurisdiction raised by the respondents the Learned Senior Counsel for the applicant Mr.Ratnanko Baneerjee submitted that decision of the Court in the following cases are not applicable as they are pre-amendment.

i) **Bhatia International V. Bulk Trading S.A.**(2002) 4 SCC 105;

ii) **Bharat Aluminium Co. V. Kaiser Aluminium Technical Services Inc.,**(2012) 9 SCC 552;

iii) **Hardy Exploration and Production V. Oil & Natural Gas Corporation Limited,**O.A.No.346 of 2017 and A.No.2049 of 2017;

iv) **Harmony Innovation Shipping Ltd. Vs. Gupta Coal India Ltd.,** (2015) 9 SCC 172;

11.In this connection, my attention was drawn some of the pages in the typed set of documents filed by the applicant, which indicates notings made on the documents either at the Application stage in C.S.No.33 of 2018 or before the Division Bench to draw an adverse inference on the conduct of the applicant.

12.As a preliminary objection, the learned senior counsel Mr.Sriram Panchu appearing on behalf of the 4th to 7th respondents submitted that the present application was not bonafide and therefore prayed that the interim order passed on 23.8.2018 to be vacated.

13.In this connection, the learned senior counsel for 4th to 7th respondent invited my attention to following decisions of the court to submit that the applicant was not entitled for interim relief on account of their conduct in filing collusive proceeding:-

(I) **ICICI Bank Limited Vs. BGR Energy Systems Limited and Ors** MANU/TN/1393/2017

(ii) **Wheels India V. Nirmal Singh** MANU/DE/3908/2010

(iii) **Seema Arshad Zaheer V. Muncipal corporation of Greater Mumbai** (2006) 5 SCC 282.

14.In all these cases, it was held that interim order being an equitable remedy cannot be granted where there is suppression of fact.

15.It was submitted that in this case there is a material suppression of fact regarding the existence of Division Bench of this Court.

16.The Learned Senior Counsel for these respondent also filed a flow chart indicating the shareholding pattern of the ETA group of companies and the commonality in the prayer in C.S.No.33 of 2018 and the present application viz., O.A.No.772 of 2018 and the parties to the lis and it was submitted that the applicant was guilty of suppression of facts while securing the interim order on 23.08.2018.

17.It was submitted that had the applicant disclosed full particulars, the Court would not have perhaps granted ad interim relief to the applicant.

18.He submitted that said suit was filed as a derivative action by Ahmed Abdulla Ahmed Al Ghurair and Ibrahim Abdulla Ahmed Al Ghurair to declare the shares held in the name of the 3rd to 7th respondents (3rd to 7th Defendant therein) in the 2nd respondent herein (1st defendant therein) as that of the 8th respondent herein(2nd Defendant herein).

19.The Learned Counsel for the 3rd respondent Mr.J.Sivanandaraaj submitted that the applicant was colluding with the plaintiff in the said suit and therefore the application was liable to be dismissed. In this connection, he relied on the decision of the Court in the following cases:

i) **M/s.Sukhwinder Pal Bipan Kumar V. State of Punjab** (1982) 1 SCC 31;

ii) **Amar Singh V. Union of India**(2011) 7 CC 69;

iii) **Kishore Samrite V. State of Uttar Pradesh,** (2013) 2 SCC 398.

20.In **M/s.Sukhwinder Pal BipanKUmar V. State of Punjab,** it was held source of knowledge must be disclosed. In **Amar Singh V. Union of India** it was held that "*58.It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by the principles of "uberrima fides."*

21.In **Kishore Samrite V. State of Uttar Pradesh,** it was held that "*The people, who approach the court for relief on an exparte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the court knows law, but not facts. One, who does not come with candid facts and clear breast cannot hold a writ of the court with soiled hands. Suppression or concealment of* *material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty bound to discharge rule nishi and such applicant is required to be deal with for contempt of court for abusing the process of court."*

22.Learned counsel Mr.J.Shivanandraaj for the 3rd respondent submitted that the entire application arises from the award passed by a sole arbitrator in respect of the alleged Time Charter Party Agreement and related to agreements signed between the applicant and the 1st respondent.

23.It was argued that the Hon'ble Supreme Court has consistently taken stand that when there is an international arbitration and is governed by a different law and the seat of arbitration is located outside India, there is an implied exclusion to the applicability of Section 9 of the Act.

24.The 3rd respondent in A.No.772 of 2018 though from the Al Ghurair family had fallen out with the plaintiffs in C.S.No.33 of 2018.

25.The respondents 4 to 6 who are part of Salahuddin family submitted that the applicant was fighting a proxy battle for and on behalf of the plaintiff in C.S.No.33 of 2008 and suppressed vital facts and secured an interim order from this Court on 23.08.2018.

26.It was further submitted that in the present case the arbitration clause itself made it clear that the arbitration was to be was governed by English law and seat of arbitration was in London, UK.

27.According to the learned counsel an ex parte award came to be passed for a large sum of Rupees 460 crores against 1st respondent-award debtor. According to the learned counsel, the applicant has not moved the court in London for interim relief and instead approached this court by colluding with the plaintiffs' in C.S.No.33 of 2018.

28.It is further submitted that though the 1st respondent was aware of the arbitrate proceeding, has neither chosen to initiate the said proceedings in London nor has taken steps to set aside the award.

29.It is further submitted that the first respondent award debtor was located in Dubai, and strangely no proceedings had been initiated in Dubai to enforce the award. It is further submitted that there are several assets of the first respondent in Dubai against which no steps have been initiated by the applicant in a bid to enforce the award.

30.Citing the decisions in the case of **Bhatia International** case (2002) 4 SCC 105 and **Bharat Aluminium Co. V. Kaiser Aluminium Technical Services Inc.,**(2012) 9 SCC 552 and few others it was submitted that the use of the expression "subject to an agreement to the contrary" in proviso to section 2 (2) of the Arbitration and Conciliation Act, 1996 makes it clear the applicability of the provision is limited and this subservient to provisions of Section 9, 27 and Section 37 (1) (a) and Section 37 (3).

31.The learned counsel therefore referred to the decision rendered in **Hardy Exploration** case in A.No 2049 of 2017 and **Raffles Designs International India Private Ltd vs. Educomp Professional Education Ltd** 2016 SCC Online Del 5521.

32.The decision of the Hon'ble Supreme Court in **Harmony Innovation Shipping Ltd vs. The Gupta Coal India Ltd** was referred to wherein it was held that provisions of section 9 was not applicable under similar circumstances.

33.It was submitted that Indian law will not be applicable and therefore invocation of section 9 was misplaced. It was further submitted that even in the agreement LMAA rules govern the procedure which clearly excludes the applicability of section 9 of the Arbitration and Conciliation Act, 1996 in view of specific language in the arbitration clause and proviso to Section 2.

34.To understand the defence put forward it will be useful to refer to facts narrated in the said suit.

35.The averments in the said suit were to the effect that the 2nddefendant(8th respondent herein) was the beneficial owner of the shares in the name of the 3rd to 7th

defendants (3-7 respondent herein) in the 1st Defendant company (2nd respondent herein) in collusion with 1st(2nd Respondent herein), 8th and 9th defendant therein and were acting against the interest of defendant No.2 (8th respondent herein) and that the share certificates were that of with the defendant No.11 (9th respondent herein).

36.The Plaintiffs therein submitted that the lis relates to the denial and non-recognition of the beneficial interest of 1stDefendant (2nd Respondent herein) of the shares held by the Defendant Nos.3, 4, 5, 6 and 7 and the draft consolidated financial statement of Defendant No.11(9th respondent herein) recording deconsolidation of its accounts.

37.It was averred that on 31.12.2016, it became manifested that the recording of declaration of beneficial interest of the Defendant No.2 (8th Respondent) would no longer be caused to be made by those in control of Defendant No.2 (8th respondent) and it's affairs namely Defendant Nos.3, 4 and 7(respondent herein) and that hostile action led to not only the denial of the recording of beneficial interest of Defendant No.2 (8th respondent) but also to deconsolidation with retrospective effect of its accounts with Defendant No.11 (9th respondent).

38.It was submitted that from the deconsolidation of accounts it became clear that a hostile action denying the beneficial interest of Defendant No.2 stood taken by Defendant Nos.3, 4 and 7 and that the cause of action arose on 07.06.2017 when Defendant No.1(2nd Respondent) refused to acknowledge the beneficial interest in the suit shares.

39.It was further averred that the Defendant No.1(2nd Respondent) through Defendant No.10on 27.06.2017 once had refused to acknowledge the beneficial interest in the suit shares. The cause of action arose on 12.11.2017 and 24.11.2017 when newspaper articles, being in public knowledge suggested that the equity of the Defendant No.1 (2nd Respondent) was being sold to private equity investors through a bidding process and the present investors including the Defendant Nos.3 to 7 along with Defendant Nos.8 and 9 are attempting to sell their investments in the Defendant No.1 (2nd Respondent) and exit the health insurance business in India.

40.The cause of action further arose on 21.12.2017 when newspaper articles of the Economic Times, being in public knowledge suggested that the five (5) companies have been short-listed to purchase the Defendant No.1 and that the floor price of INR 5,500 crores has been put for the sale.

41.The article further suggested that the sale of the Defendant No.2 (8threspondent) will help ETA Trading Agency LLC. to exit from Defendant No.1(2nd Respondent). As the beneficial interest of Defendant No.2 (8th respondent) has been negated and continues to be negated the cause of action has and is continuing to arise.

42.Thus, it was in respect of the very same shares the applicant wanted to enforce and protect its rights in this application in a bid to enforce the award against the 1st Respondent (12th Defendant therein).

43.In the said suit, an attempt was made to dislodge the plaint therein by filing an application to revoke the leave granted to institute a suit within the jurisdiction of the Court and to reject the plaint.

44.By an order dated 06.06.2018, A.Nos.1387 to 1392 of 2018, to revoke the leave granted by the Court on 12.01.2018 and to reject the plaint in C.S.No.33 of 2018 were dismissed.

45.However, that order was set aside on 03.08.2018 in O.S.A.Nos.220 to 223, 227, 228, 230 to 237 of 2018. However, the fact was not stressed upon while seeking the interim order.

46.The respondents 3 to 5, 7 and 8 have filed a detailed counter and have stated that the applications for injuncting the respondents from selling/transferring or alienating the shares in their name under Section 9 was not bonafide as the applicant had suppressed material fact that order dated

06.06.2018 in the above applications in C.S.No.33 of 2018 had been set aside by the Division Bench of this Court on 03.08.2018 vide order in O.S.A.Nos.220 to 223, 227, 228, 230 to 237 of 2018.

47.The Division Bench of this Court while setting aside the order of the learned Single Judge in C.S.No.33 of 2018 has concluded that the 1st respondent herein, who was the 2nd defendant in C.S.No.33 of 2018 was a foreign entity governed by the laws as in force in Dubai and therefore the dispute between the plaintiffs therein i.e. Ahmed Abdulla Ahmed Al Ghurair and Ibrahim Abdulla Ahmed Al Ghurair against the subject shares will have to be initiated only in Dubai.

48.Hon'ble Division Bench of this Court considered the decision of the General Body of ETA group of various capacities of which the respondents were part along with the plaintiffs therein had agreed for a de-consolidation and removal of status of the shares held by the individuals and that the decision taken to implement the same with retrospective effect from 10.01.2014. Paras 6.14 to 6.19 of the order is reproduced as under:

> "6.14.*The decision of the ETA Group, which consists of numerous entities, applies to every shareholder of the Group. Accordingly, the status*

of a registered owner would get transferred into one of absolute ownership. Therefore, even if we go by the averments in the plaint while eschewing the defence of the defendant No.2, no relief can be claimed before this Court. It is an indirect way of challenging the decision of the ETA Group, in which, the plaintiffs were also parties. Any adjudication on this though indirectly, will have a serious spiralling effect, as settled things would get unsettled for the reason that it might have an adverse impact on other shareholders of other entities coming under the umbrella of the ETA Group. The logic and rationale behind the decision of a foreign entity cannot be adjudicated here. Be that as it may, certainly the remedy lies elsewhere. We should also keep in mind defendants 2 and 11 are admittedly situated outside the jurisdiction of the Court though the *plaintiffs contend that defendants 3 to 7, despite being non resident Indians are permanent residents of Chennai. This is nothing but an attempt to review the decision made already by the ETA Group as acknowledged by the defendant No.11 in the draft financial statement. After all, the relief that is sought against the defendant No.1 is a mere consequential one. When once the plaintiffs succeed against defendant Nos.2 to 7 then defendant No.1 is bound to give effect to it. For doing so, the remedy for the plaintiffs against defendants Nos.2 to 7 lies elsewhere.*

6.15. When the status of defendant No.2 (appellant herein/8th respondent in O.A.No.772 of 2019 being the foreign company is not in dispute, no relief either direct or indirect can be sought against it under the Indian Law. We are not concerned with the ultimate relief but the issues leading to it. What we are dealing is nothing but a fight between two groups. Defendant No.2 is controlled by defendant Nos.3 and 5 to 7 whereas, defendant No.11 is by the plaintiffs. This explains the letter sent by the defendant No.11 through the plaintiff No.2 to the defendant No.1 dated 01.06.2017.

6.16. A perusal of the cause of action as indicated in the plaint would show that it started happening only from the date of deconsolidation. Monies were sent by the defendant No.2 and on its behalf by defendant No.12 atleast till 2011. *Though prima facie, the payment made was not in dispute,* *the entity from which it emerged actually cannot be decided here. The very fact that payments were made by defendant No.12(1st respondent in O.A.No.772 of 2018) on behalf of defendant No.2 followed by book adjustment itself would vouch for the fact that such things have happened involving the other entities of the ETA Group as well and atleast defendant No.2 and its subsidiaries. These issues also cannot be looked into by this Court.*

6.17. In the plaint, the plaintiffs have not stated anything about the derivative action available to a shareholder on behalf of the company in Dubai. We also note that the Indian Companies Act, 1956/2013 do not have an application to a foreign entity. Even assuming it to be so, Section 187(c) read with 89(8) of the Companies Act, 1956/2013 would disentitle the plaintiffs from getting the relief, when once, the reliefs cannot be granted through a statutory bar, a suit filed claiming it also would be barred. After all, a Court is required to grant a relief, which parties are entitled to in law. Similarly, there is no corresponding duty fixed on the defendant No.1 to seek the declaration from defendants 3 to 7 in favour of defendant No.2. Suffice it is to state that the plaintiffs do not raise any such issue till 2016, though share certificates were issued in the year 2012 itself. Though the limitation is a mixed question of law and fact, when facts are not in dispute, certainly it would apply. A Civil Court is mandated to check its jurisdiction to deal with a lis qua the limitation.

6.18. As against the defendants 8 to 10, there is no specific allegation of misuse of money. This alleged fraud is said to have been committed between 2005-2006/2012. It is to be seen that the plaintiffs knew the factum of share standing in the name of Defendant Nos.3 to 7. As discussed above, the situation stood changed after a decision made in the meeting held by the ETA Group which was given effect in 2016. That is the reason why, the cause of action has been mentioned to be starting from 2016 onwards. Therefore, the alleged role of the defendant Nos.8 to 10 will not give any jurisdiction to this Court. Defendant No.11 who is stated to be in possession of the shares, is situated in Dubai. As the plaintiffs felt the importance of the defendant No.11 who would in all probability support their case, it has been *accordingly arrayed. We have to keep in mind the notice dated 01.06.2017 signed by the plaintiff No.2 on behalf of defendant No.11 on the very issue.*

6.19. It is no doubt true that what has to be seen at this stage is the averments in the plaint along with the documents filed. Therefore, there is no difficulty in accepting the submission made by the learned Senior Counsel appearing for the plaintiffs in this regard. However, in the light of the discussion made above, a mere situs of the share in the first defendant's company alone cannot give jurisdiction to institute the suit within the jurisdiction of this Court. Thus, we find that the reasons assigned by the learned single Judge cannot be sustained in the eye of law, particularly, with reference to the provisions of the Companies Act, 1956/2013, the examination of the books of defendant No.1 qua the declaration made, flow of funds and the allegations of fraud made against defendants 7 to 10."

49.That apart, the Division Bench also dealt with the issue relating to the beneficial interest of the assets held on behalf of the "Group" by individuals and the related parties were withdrawn.

50.The Hon'ble Division Bench has delineated the background of the dispute based on which the above conclusions was arrived. Paragraphs 3.6 to 3.8 are reproduced below:

"3.6. Consequently, the beneficial interest of the assets held on behalf of the Group by the individuals and the related parties was withdrawn. This exercise was done with effect from 01.01.2014. Resultantly, a financial statement dated 31.12.2016 was issued by the defendant No.11 reiterating the above, which according to the plaintiffs is only a draft though the content is not in dispute. This financial statement deals with need for deconsolidation, the decision made by the Directors of the Group and the effect on the assets held in the personal names of the shareholders, Directors and related parties. It is apposite to refer the following passages contained in the financial statement of the Defendant No.11 dated 31.12.2016.

"2.4. Deconsolidation of entities due to loss of control.

(i) Deconsolidation of entities due to loss of control during the year ended 31 December 2014.

The on-going disagreements between the shareholders of the Group had a significant impact on Group's relationships with certain subsidiaries, associates and joint ventures, in particular all subsidiaries, associates and joint ventures where the shareholding interest was not legally registered in the name of the Group and the Group was accounting for its interest in these entities based on a confirmation of beneficial shareholding interest obtained from the legal shareholders of these entities. The disagreement between the shareholders, also resulted in the Group losing physical access to the premises, management or books of accounts of certain overseas entities.

During 2014, the Board of Directors reassessed all such relationships in the light of International Financial Reporting Standards - IFRS 10 (Consolidated Financial Statements), IFRS 11 (Joint Arrangements) and IAS 28 (Investment in Associates and Joint Ventures). Based on this exercise, it was concluded that, with effect from 1 January 2014, the Group no longer had the ability to exercise control or significant influence (as applicable) over all such local and overseas entities where legal ownership was not held in the name of the Group, and a confirmation for beneficial ownership on behalf of the Group was not provided by the legal shareholders of these entities.

The Board of Directors' assessment for the loss of control over these entities was based on the following factors:

(i) Absence of confirmation of beneficial ownership from the legally registered shareholder of these entities;

(ii) No representation of the Group in the Board of Directors of certain overseas entities;

(iii)Lack of a practical ability of the Group to exercise its shareholders rights;

(iv)No involvement of the Group in day to day operations of certain overseas entitles;

(v)No visibility over the financial results of these entities due to non-receipt of financial information from certain overseas entities; and

(vi)The Group's shareholding interest in the majority of these entitles was held on its behalf by certain individuals and related parties, who were also the legally registered shareholders of these entities. The Directors were of the view that effective 1 January 2014, these shareholders ceased to hold their shareholding interest for the benefit of the Group.

Since it was a loss of control, no consideration was exchanged between the Group and the legal shareholders for the transfer of ownership interest in these entities.

Accordingly, the Group deconsolidated the operating results and financial position of these entities from its consolidated financial statements with effect from 1 January 2014 and.....

ETA Star Holding LLC and its subsidiaries Notes (continued) 2.6. Assets held in the personal name of shareholders, directors and related parties.

Until 31 December 2013, these consolidated financial statements included certain assets (including investment properties and investments in certain subsidiaries) which were not registered in the name of the respective Group entities and were held in the personal names of certain shareholders of such Group entities, directors and related parties for the beneficial interest of the Group. These related parties had provided the Group with an undertaking that these assets were held by them for the beneficial interest of the Group effective 1

> January 2014, the Board of Directors of the Group based on their assessment and review of the Group's ownership interest in such assets and entities resolved that the Group would only include in its consolidated financial statements the assets over which the Group has legal ownership interest as the Group would no longer have the benefit of beneficial interest in these assets held on its behalf by individuals and related parties. However, the Group continues to consolidated investment held by entities being consolidated under ETA ASCON Holding LLC. Accordingly, the management recorded a provision for impairment against these assets amounting to AED XXX as at 31 December 2014.

> 3.7. To the abovesaid extent there is no dispute between the parties. It is also not in dispute that the decision of the Board of Directors of the Group general body followed by the defendant No.11 through the draft financial statement would impact the beneficial interest of the defendant No.2 in the shares held in the name of defendants 3 to 7, which is the subject matter of the suit before us.

> 3.8. On 01.06.2017, a letter was issued by the defendant No.11 signed by the plaintiff No.2 to the defendant No.1 requiring it to take note of the group's interest in its shares and thus, no action would be taken to its prejudice. A reply was given to the letter dated 01.06.2017 by a communication dated 07.06.2017 by the defendant No.1 stating that it has got nothing to do with the defendant No.11 nor ETA Group. In those circumstance, the plaintiffs have come forward to file the present suits seeking the following reliefs.

51.Against the said order, the plaintiffs therein had filed an S.L.P. vide S.L.P.No.22057 to 22070 of 2018 and there status quo was ordered on the date when the case was finally argued on the date of this order the decision of the Division Bench has been upheld by the Hon'ble Supreme Court in its order dated 26.11.2018.

52.It was submitted that the timing of the present application itself raised a serious questions about the bonafide of the applicant in as much as orders passed by the learned Single Judge in A.Nos.1387 to 1392 of 2018 in C.S.No.33 of 2018 was set aside by a common order dated 03.08.2018 by the Division Bench of this Court in O.S.A.Nos.220 to 223, 227, 228, 230 to 237 of 2018 and it is thereafter the applicant filed Application in O.A.No.772 of 2018 on 14.08.2018 and secured an interim order by suppressing material fact.

53.It is submitted that had the applicant informed the Court on 23.08.2018 that the order dated 06.06.2018 of the learned Single Judge had been set aside, perhaps this Court may not have granted exparte ad interim injunction in favour of the applicant.

54.Apart from the above, uniformly the counsels for the respondents 6 and 8 drew my attention to the markings in the documents filed by the applicant at the time of application to show they have never disclosed the sources of the documents filed in support of the present application and also draw my attention to the soft noting in typed set of documents to show that the applicant has acted in collusion with the plaintiffs in C.S.No.33 of 2018 and thereby have played a fraud on the Court.

55.The respondents No.3 to 7 have contested the jurisdiction of this court to entertain an application under Section 9 of the Arbitration and Conciliation Act, 1996 on several grounds.

56.It was submitted by the learned counsel for the 3rd respondent that as per the decision of the Hon'ble Supreme Court in **Bhatia International V. Bulk Trading S.A.**(2002) 4 SCC 105, in case of international commercial arbitrations held out of India provisions of Part I would at best apply unless the parties by agreement, express or implied, exclude all or any of its provision. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply.

57.It was submitted that the above rule was diluted by the Hon'ble Supreme Court in **Bharat Aluminium Co. V. Kaiser Aluminium Technical Services Inc.**,(2012) 9 SCC 552; in Para 195 and 197. These paras read as under:

"195.With utmost respect, we are unable to agree with the conclusions recorded in the judgments of this Court in Bhatia International and Venture Global Engg. In our opinion, the provision contained in Section 2(2) of the Arbitration Act, 1996 is not in conflict with any of the provisions either in Part I or in Part II of the Arbitration Act, 1996. In a foreign seated international commercial arbitration, no application for interim relief would be maintainable under Section 9 or any other provision, as applicability of Part I of the Arbitration Act, 1996 is limited to all arbitrations which take place in India. Similarly, no suit for interim injunction simpliciter would be maintainable in India, on the basis of an international commercial arbitration with a seat outside India.

197.The judgment in Bhatia International was rendered by this Court on 13.03.2002. Since then, the aforesaid judgment has been followed by all the High Courts as well as by this Court on numerous occasions. In fact, the judgment in Venture Global Engg. Has been rendered on 10.01.2008 in terms of the ratio decision in Bhatia International. Thus, in order to do complete justice, we hereby order, that the law now declared by this Court shall apply prospectively, to all the arbitration agreements executed hereafter."

58. Countering the arguments advanced to vacate the interim order and for its continuance, theLearned Senior Counsel for the applicant submitted that though the applicant was unable to give any convincing explanation as to how the documents filed in above application came to their hands, yet application cannot be dismissed.

59. In this connection, the learned Senior counsel also referred to the decision of this High Court in **Ganesan V. M.SundararajaThevar** (2000) 1 MLJ 121, which followed the judgment of the Hon'ble Supreme Court in **Pushpadevi M Jatia V.**

ML Wadhwan 1987 Cri.L.J. 1888 and the decision of the Hon'ble Supreme Court in **Magraj Patodia V. RK Birla** (1970) 2 SCC 880. In these cases it was held that the mere fact that documents were procured improperly or by illegal means will not be a bar to their admissibility if it is relevant and its genuineness is proved.

60.It was submitted on behalf of applicant that the applicant has already initiated proceedings against the awarded debtor-first respondent herein vide O.A.No. 397 of 2018 and secured an interim order dated 23.4.2018 against the shares of various companies located in Chennai and O.P.No.416 of 2018 was filed to enforce the awards. During the pendency of this application O.P.No.416 of 2018 was also allowed.

61.It is submitted that shares totalling to 6.16 percent of the paid-up share capital in the 2nd respondent company located in Chennai's are held in trust in the name of respondent No 3-7 for and on behalf of the1st respondent award debtor and therefore the applicant was entitled to initiate proceeding in line with Section 60 of the Code of Civil Procedure, 1908.

62.It is submitted that the Act was amended on 23.10.2015 which introduced a proviso to section 2 (2) which allows the court to entertain application under section 9 even if place of arbitration is outside India as long as the award is enforceable under Part II of the Act.

63.In support of the plea for maintainability of the present application, the applicant has relied on the following decisions:

i)**Report No. 246, August 2014 of the Law Commission of India.**

ii) **Aircon Beibars FZE Vs. Heligo Charters Pvt. Ltd MANU/MH/0829/2017,** wherein the Bombay High Court held as follows:

"10. *I do not believe this to be a correct reading of the proviso. If this was so, then between the time of passing a foreign award and until an order is made on it under Section 48, the only remaining asset in India might well be dissipated if not protected by order under Section 9. What the proviso seeks to do by amendment is to make available a remedy or recourse under Section 9 as a transitory provision pending the process contemplated by Section 48. This is obviously intended to ensure that a court can step in to protect an asset from being diverted or dissipated, and to ensure that the holder of a foreign award has, if he is able to get his foreign award pronounced enforceable, an asset against which he can proceed. If the foreign award does not result in an order of enforceability, then of course a protective order under Section 9 cannot continue. But equally, it cannot have been the statutory intent to the amendment that should the holder of a foreign award obtain an order pronouncing it enforceable and recognizing it, he finds in his hands nothing but paper, since, for want of a protective order under Section 9, or something like it, the only available asset has been lost. This might actually happen more often that one imagines: it is entirely conceivable that in anticipation of losing a Section 48 28th April 2017 Aircon Beibars FZE v Heligo Charters Pvt Ltd 925-CARBPL208-17.DOC litigation, a party that has suffered*

> *an award might take rapid steps to dissipate and distribute assets to frustrate the execution of a foreign award. That, it seems to me, is precisely what the proviso to* Section 2 *sought to avoid. "*

iii)**Embassy Properties Development Vs. Jumbo World Holding Limited** 2013(4) CTC 154 wherein answering the issue that no interim orders could be granted by this Court even against a person who is not a party to the Arbitration Clause in the Share Purchase Agreement dated 21.12.05.

iv)**Heligo Charters Private Limited Vs. Aircon Feibars** FZE MANU/MH/1987/2018, wherein, it was held that "*If the injunction is refused, there is every possibility of irreparable loss being caused to the respondent. The respondent has made out a strong prima – facie case and balance of convenience is also in favour of respondent-original petitioner. We, therefore, find no merit in the Appeal. It stands dismissed. No order as to costs.*"

v) **Raffles Design International India Private Ltd. V. Educomp Professional Education Limited dated 07.10.2016** (which thereafter was corrected vide order dated 23.11.2016 in OMP(I) (Comm) 23/2015, CCP(O) 59/2016 and IA Nos.25949/2015, 2179/2016, wherein in Para 100, it was held that even if recourse to Section 9 was not available, the Court can independently apply its mind and grant interim order in case where it is warranted.

vi)**Sundaram Finance Limited Vs. Abdul Samad** (2018) 3 Supreme Court Cses 622, wherein it was held as follows:

"We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the court, which would have jurisdiction over the arbitral proceedings."

(vi) **Trammo DMCC V. Nagarjuna Fertilizers and Chemicals Lt.** 2017 SCC Online Bom 8676, wherein, para No.24, it was held as follows:

"24.*Another significant aspect which cannot be overlooked is that Section 2(1)(e) (ii) is not made applicable to foreign awards falling in Part II of the Act. It is thus clear that when neither the arbitration nor the award in question would fall under Section 2 (1)(e)(ii) of the Act there cannot be an applicability of the said provision. Thus necessarily recourse would be required to be taken to the definition of "Court" as contained in the "Explanation" to Section 47 falling in Part II of the Act, so as to hold that t is this provision which becomes relevant to confer jurisdiction on this Court to entertain the section 9 petition, pending the enforceability of the foreign award in question. Such legal fiction of applicability of Part II of the Act qua the definition of "Court" under the explanation to Section 47 is a fall out of the 2015 Amendment Act. In my opinion, considering the legislative scheme as brought about by the 2015 Amendment Act, it is not possible, in the circumstances, to resort to any other interpretation. A party in enforcing a foreign award and seeking recourse to Section 9 of the Act, cannot be left without an effective remedy, in a situation asking to the facts in the present case. This interpretation in y opinion suffices and fulfills the legislative intent in making Section 9 interalia available in enforcement of foreign awards."*

*(vii)***Motorola INC V. Modi Wellvest** 2005 (79) DRJ 173, wherein, para 21, it was held as follows:

"*21.To sum up the conclusions are:*

(a)the DH holds a foreign arbitral award against the JD.

(b)the award grants a sum of $33 million in favour of the decree holder and against the judgment debtor.

(c)the JD had bank accounts in Delhi and held shares of a company having a registered office in Delhi.

(d)these amounts and shares are undoubtedly assets of the JD company

(e)a foreign award is executable as a decree

(f)Order XXI Rule 30 of the Code permits the sale of the property of the JD Company in execution of a decree."

64.Apart from the above decisions the applicant also relied on the following decisions of the courts.

(i)**Trammo DMCC V. Nagarjuna Fertilizers and Chemicals Ltd.** 2018(1) ABR 1

(ii)**Aircon Feibars FZE V. Heligo Charters Private Limited,** Commercial Arbitration Petition (L) No.208 of 2017

(iii)**Heligo Charters Private Limited V. Aircon Feibars FZE,** Commercial Appeal No.136 of 2017 (DB)

65.It is submitted that for enforcement of award, the situs is of the assets to be attached would give the court jurisdiction to entertain an application under Section 9 of the Act.

66.The decision of the Hon'ble Supreme Court in **Harmony's Innovation Shipping Ltd (supra)** followed **BALCO** case. They are all the pre-amendments and therefore these judgments are not strictly applicable to the facts and circumstances of the present case in view of the amendment.

67.In my view, the amendments were introduced to the Arbitration and Conciliation Act, 1996 pursuant to the recommendation contained in the 246^{th} Report of the Law Commission Report of India to set right the anomaly. The proviso to Section 2 (2) introduced makes it clear that the applicant was entitled to invoke the jurisdiction of this court for obtaining interim relief proviso to Section 2(2) reads as under:

> *"Provided that, subject to an express agreement to the contrary, the provisions of sections 9, 27, 37(1)(a) and 37 (3) shall also apply to international commercial arbitration even if the seat of arbitration is outside India, if an award made, or that which might be made, in such place would be enforceable and recognized under Part II of this Act."*

68. The Learned Counsel for the applicant thereafter submitted that even otherwise on merits they were entitled to lift the corporate veil as ETA Group was single economic entity of which respondents particularly 1st, 2nd, 8th and 9th

respondents were part of ETA group. The purchase of the shares in respondent No.2 was completely funded by respondent No.1 Therefore, it was submitted the applicant was entitled to lift the corporate will and demonstrate that the shares held by Respondent No. 3 to7 indeed belonged to the 1st respondent and could be proceeded.

69. In this connection, the counsel for the applicant relied upon the following decision of the Hon'ble Supreme Court in view of the High Courts:-

(i) **New Horizons Ltd. V. Union of India** (1995) 1 SCC 478

(ii)**Delhi Development Authority V. Skipper Constructions Co. (P) Ltd.** (1996) 4 SCC 622

(iii)**Arcelor Mittal India Private Limited V. Sathish Kumar Gupta** - Civil Appeal Nos.9402 - 9405 of 2015 dated 04.10.2018

(iv)**Bhatia Industries & Infrastructure Limited V. Asian Natural Resources (India) Limited** (2017) 201 Camp Cas 46.

(v)**Formosa Plastic Corporation Ltd. V. Ashok Chauhan** 1999(1) AD (Delhi) 392

(vi)**Sasi Sounds Private Limited V. Kiran Contractors Private Limited** (2016) 1822 PLR 518

(vii)**Hemant D Shah V. Chittaranjan D Shah,** Appeal No.658 of 2006

(viii)**M/s.Value Advisory Services V. M/s.ZTE Corporation** (2009) 3 Arb LR 315

(ix)**Embassy Property Developments Limited V. Jumbo**

Wordls Holdings Limited 2013(4) CTC 154

(x)**Balmer Lawrie & Company Ltd. V. Saraswathi Chemicals Proprietors Saraswathi Leather Chemicals** (P) Ltd. (2017) 239 DLT 217

(xi)**Fargo Freight Ltd. V. Commodities Exchange Corporation** (2004) 7 SCC 203

(xii)**TSB Private Bank International V Charbra**(1992) 1 WLR 231

Xiii)**Yukong Line Ltd. V. Rendsburg Investments Corporaton**(2001) 2 Lloyd's Rep.113

(xiv)**Dadourian Group International Inc V.Azuri Ltd** (2005) EWHC 1768 (Ch)

(xv)**Syed Mohamed Salahuddin V. Ahmen Abdulla Ahmed Al Ghurair** - O.S.A.Nos.220 to 223, 227, 228, 230 to 237 of 2018 and C.M.P.Nos.11240, 11241 & 11279 of 2018

70. It was specifically submitted that as per the decision of the Hon'ble Supreme Court in **Arcelor Mittal** case, the *company may be a façade even though it was not originally incorporated with any deceptive intention, provided that it is being used for the purpose of deception at the time of relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong with those controlling the company had done."*

71.These decisions have indicated that there is a general drift forwards piercing the corporate cloak/veil to ascertain the real ownership. In this case, it is submitted the shares were actually held in beneficial capacity for and on behalf of the 1st respondent by 3rd to 7th respondent and therefore the applicant was entitled to pierce the corporate veil of the ETA group.

72. It is further submitted that Section 60 of the Code of Civil Procedure, read with Order 21 Rule 58 contemplates attachment of the properties belonging to the judgment debtor but standing in the name of another person.

73. Particularly, attention to the decision of the Delhi High Court in **M/s. Value Advice Services versus M/s. ZTE's Corporation** (2009) 3 Arb LR 315 was drawn wherein it was held that just as an executing court can pass orders of attachment against the property held in the name of another person in trust for judgment debtor under Section 60 of the Civil Procedure Code, 1908, similar orders also can be passed's under section 9 of the Arbitration and Conciliation Act, 1996.

74. It was further submitted that the decision of the Madras in **Embassy Property Development Private Limited versus Jumbo World Holdings** Ltd 2013 (4) CTC 154 recognised

the principle that orders can be passed against third parties who are not party to the arbitration proceedings in an application under Section 9 Of the Arbitration and Conciliation Act, 1996.

75. It was submitted that decision of the Delhi High Court in relied upon by the respondent in **Balmer Lawrie & Co Ltd vs. Saraswathi Chemicals Proprietress, Saraswathi Leather Chemicals Private Limited** (2017) 239 DLT 217 in fact held that in exceptional cases corporate veil can be pierced even in the execution proceedings. The decision of the Hon'ble Supreme Court in **Fargo Freight Ltd. Vs. Commodities Exchange Corporation** (2004) 7 SCC 203 cited to contend serious dispute regarding third parties to pay up could not be decided under Section 46 to 49 of the said Act is not correct as 3rd to 7th respondents are also the substantial shareholders of 1st respondent.

76. Learned senior counsel for the applicant referred to the decision **TSB Private Bank International Limited vs. Chhabra** [1992] 1 WLR 231 wherein the courts have recognised injunctions against third party who are in possession of properties of the person. Attention to the

decision of the Court of Appeal in **YuKong line Ltd vs. Rensdburg Investments Corporation** [2001] 2 Lloyds Rep 113 was drawn. The court there are held that *if a co-defendant is mixed up in an attempt to make the principle defendant judgment-proof and the assets or their procedure not readily identifiable in the hands, it is open to the Court, where it is just and convenient to do so, to make an order that catches the co-defendant's general assets up to the amount of principal defendant's assets of which he appears to have possession and control.*

77.The decision of the Division Bench of this Court in **Syed Mohammed Salahuddin vs. Ahmed Abdulla Ahmed Al Ghuriair** in OSA 220-23, 227-228, 230-37 of 2018 has recognised that 3rd to 7th respondent are the name lenders and the beneficial interest was with ETA group but has refrained from passing orders.

78. It was submitted that with the Deconsolidation of the group reveals that 3rd to 7th respondent held a share for and on behalf of the judgment debtor first respondent. In other words, it was observed that the shares were held in beneficial capacity for the 1st respondent.

79. It was further submitted that vide a O.P of 416

of 2018 proceeding for recognition of the award has also been initiated before this court. An order has been later passed for enforcing the award.

80. The learned senior counsel Mr.Sriram Panchu for the 4th respondent had stated that even as per the Companies Act, 2013 only if shares are held in beneficial capacity an obligation was cast on the person holding such shares to file a declaration.

81. In this case, it was not so. Countering this argument the learned senior counsel for the applicant submitted that the respondents have breached the terms of section 89 of the Companies Act, 2013 and therefore cannot take advantage of the breaches committed by them under the Companies Act, 1956 as amended by the new 2013 Companies Act.

82.Countering this argument, the learned Senior counsel for the applicant further referred to the decision in **Brace Transport Corporation of Monrovia, Bermuda V. Orient Middle East Lines Ltd.** 1995 Supp(2) SCC 280 to state that parties cannot take advantage of their own mistake. In this case, the parties are denying beneficial interest even though the first respondent is the beneficial owner and the 3rd to 7th respondents are only the registered holders of the shares. As a creditor, the applicant was well within his rights to attach the shares of the judgment debtor-first respondent in the name of 3rd to 7th respondents.

83. Finally, the learned senior counsel for the applicant submitted that there is no question of the applicant colluding with the plaintiff in C.S.No.33 of 2018 viz., Ahmed-Ibrahim Al Ghurair Fraction of the ETA group. The applicant was merely interested in enforcing the award of the Arbitrator for which it has moved appropriate petition.

84. It is further submitted that Salahuddin and Rahman Buhary families hold 48% of share capital of ETA Ascon Holdings LLC, which in turn hold about 99.998% of equity stake for the first respondent-Award Debtor. The third respondent has not disclosed the percentage of the shares held by him. These companies have deliberately suppressed the relevant facts and have instead merely alleged that the applicant is colluding with the other Ghurair family.

85. The learned senior counsel finally stated that the decision of the Division Bench deciding the jurisdiction of Ahmad-Ibrahim Al Ghurair Fraction of ETA group claiming rights that the other share, has no relevance to the present proceedings in as much as admittedly the shares were purchased in the name of 3rd to 7th respondents by the amounts given by the 1st respondent and routed through the 8th respondent. They are the rival claim over these shares. The deconsolidation agreement in the meetings of the ETA group itself has

recognised the shares were held in the beneficial capacity of ETA group of Company by the respective shareholders and pursuant to deconsolidation, the shareholders were allowed to retain the shares proving their argument.

86. The learned senior counsel for the applicant therefore submitted that since the shares are in respect of the 2nd respondent company, which has its registered office in Chennai, the applicant was well within its rights to approach this Court under Section 9 of the Arbitration and Conciliation Act, 1998, for seeking an order of interim injunction restraining the 3rd to 7th respondents from alienating or encumbering the subject shares which are only assets of the first respondent company-award debtor.

87. The learned counsel for the 3rd respondent submitted that a single judge of the court was bound by the decision of the Division Bench of the court and therefore submitted that the decisions cited cannot be ignored while considering the merits of the present application. In support of the plea, the learned counsel drew my attention to the Decision of the Hon'ble Supreme Court in **Tribhuvandas Purushothamdas vs Ratilal Moti Lal Patel** AIR 1968 SC 372,

wherein it was held that a Single Judge of the High Court was bound to accept or correct judgments of Courts of Co-ordinate jurisdiction and Division Bench and Full Bench of this Court and the Supreme Court. It was submitted that the ratio of the decision of the Division Bench of this Court in Hardy Exploration Vs ONGC in O.A.No.346 and A.No.20490 of 2017 dated 30.11.2017was applicable to the facts of the present case.

88. Alternatively, it was submitted that this court cannot get into disputed questions of fact involving rights of third parties under section 9 of the Act. It is submitted that the respondent against whom the interim application is directed are third parties to the alleged dispute between the applicant and the 1st respondent.

89. The respondents claim that they are the real owners of the shares in the 2nd respondent company and therefore same cannot be subject to any order of interim injunction to restrain them from selling or transferring the shares. In this connection, the learned counsel for the 3rd respondent relied on the following decisions of the courts:-

1. **Fargo Freight Ltd. V. Commodities Exchange Corporation & Ors.** (2004) 7 SCC 203

2. **Hemand D Shah V. Chittaranjan D. Shah,** Appeal No.658 of 2006 in Arbitration Petition No.295 of 2006 (Bombay HC)

3. **Hemand D Shah V. Chittaranjan D. Shah,** Special Leave to Appeal (Civil) No.17376 of 2006 (SC order affirming the Bombay HC decision)

90. It is submitted that there is dispute regarding the nature of beneficial holding of the shares and therefore Section 9 cannot be invoked. Even the 8th respondent herein has refuted the stand in C.S No. 23 of 2018.

91.It is submitted that in view of the decision of the Hon’ble Supreme Court in the case of **Fargo Freight Ltd** referred to supra no application for recognition/enforcement of an award can be maintained against 6 .16% shares collectively held by the 3rd to 7th respondent. The Hon'ble Supreme Court in para 25 held as follows:

“25.The enforcement petition was for enforcing the English award. It was under sections 46 to 49 of the Arbitration and Conciliation Act, 1996. In such proceedings, the enforcement has necessarily to be between the parties to the award. In such proceedings, serious disputes regarding the liability of third persons to pay up could not be decided. Once the dispute arose, as to whether or not the documents were discrepant, the Court should have directed the appellants to have that dispute decided by a competent court in an appropriate proceeding. Provisions contained in Part II of the Arbitration and Conciliation Act, 1996 do not permit courts to decide such disputes with third parties in such proceedings. To that extent, the Division Bench is right. Such a dispute could not have been decided in these proceedings. In our view, however, the Division Bench was wrong in remitting the matter back for following the procedure under Order 21 Rule 46 C.P.C. Order 21 Rule 46 C.P.C deals with garnishee proceedings. It applies when monies of the judgment-debtor are in

the hands of third parties. In cases of letter of credit the liability of the issuing bank is an entirely independent liability. It cannot be said that the monies payable by the issuing bank are monies belonging to the judgment-debtor. Thus, the claim, if any can only be decided independent proceedings which should have been adopted by the appellants."

92. It was submitted that the application under section 9 of the Arbitration and Conciliation Act, 1996 was misconceived and in any event only a single proceeding has been contemplated for enforcement of the foreign award In the Light of the Decision of the Hon'ble Supreme Court in **Fuerst Day Lawson Versus Jindal Exports Ltd.** (2001) 6 SCC 536.

93. According to the 3rd respondent as the application is without jurisdiction and there is no scope for granting interim relief to the applicant. In this connection, reliance was placed on the decision of the court in **KPM Aboobuckar versus K Kunhamoo and Others** (1958) 71 Law Weekly 211. It was submitted that there cannot be any final relief under section 9 and this connection reliance was placed on the decision of the Hon'ble Supreme Court in **Firm Ashok Traders vs. Gurumukh Saluja** (2004) 3 SCC 155.

94. As far as the lifting of corporate veil is concerned, the learned counsel for the third respondent relied on some of the decisions relied by the counsel for the

applicant:-

a.**Balmer Lawrie V. Saraswathi Chemicals Proprietors Saraswathi Leather Chemicals Pvt. Ltd.,** 293(2017) DLT 217 (Delhi HC)

b.**Hemand D Shah V. Chittaranjan D. Shah,** Appeal No.658 of 2006 in Arbitration Petition No.295 of 2006 (Bombay HC)

c. **Hemand D Shah V. Chittaranjan D. Shah,** Special Leave to Appeal (Civil) No.17376 of 2006 (SC order affirming the Bombay HC decision)

95.Learned senior Advocate Mr.Sriram Panchu submitted that the allegation that the 1st respondent was hiving-off the assets by virtue of the so called de-consolidation of the ETA group to defraud the creditors is far-fetched. The payments for the purchase of 6.16% of shares the 2nd respondent company though made by the 8th respondent were of the year 2005-2011 and the decision to de-consolidate the collective shareholding was taken with effect from 1.1.2014 whereas the alleged dispute between the applicant and the first respondent started only in September, 2016 and the awards came to be passed on 6.8.2017 and on 9.4.2017 and therefore the events which have taken place long before the initiation of arbitration proceeding and certainly before passing of the award cannot be set to knot under an application under section 9 of the Act.

96.It was submitted that the deconsolidation which took place way back in 2014 and cannot be diluted in a proceeding under section 9 of the Act by a stranger like the applicant.

97.It was argued that the applicant was colluding with the plaintiffs in C. S.No. 33 of 2018 and is actually abusing the process of law to harass the 3rd to 7th respondents (who were the 3rd to 7th defendants therein) even though they are the actual owners of the shares in their own rights.

98.Learned Senior Counsel also filed a flow chart detailing the shareholding pattern of the ETA group.

99.It is further submitted that this court has no territorial jurisdiction to entertain the application in the light of the decision of the division bench of this High Court in O S A No. 220-223, 227 and 228 and 230-237 of 2008 arising out of orders passed in interim applications to reject the plaint and to revoke leave granted in C.S No. 33 of 2018.

100.It is submitted that almost an identical relief was sought for in the said suit though presently in the guise of enforcing the award.

101.As such a relief cannot be claimed by the applicant. On merits it is further submitted that 1st, 4th and the 8th respondent had paid the money for the purchase of the shares and that there was a book adjustments between them in Dubai which cannot be agitated in India by a third party.

102.It is further submitted that the transactions were as per the Dubai accounting principles and financial standards. It is submitted that if at all, only the courts in Dubai are competent to decide the transactions.

103.Further, it is further submitted the Al Ghurairs, the plaintiff in C.S.No.33 OF 2018 having failed in their attempt to freeze the assets namely the subject shares in the said suit have now used the instrumentality of the applicant to frustrate the transactions and the decision of the Division Bench of this Court.

104.It was submitted that there was large-scale collusion between the plaintiffs in the above suit and the applicant as is evident from the manner in which proceedings came to be initiated.

105.It is submitted that originally an interim injunction was obtained against transfer of 6.16% of shares before the learned single judge in the above suit.

106.It is submitted when the Hon'ble Division Bench of this court had passed its order dated 03.08.2013 reversing the order of the learned Single Judge, the present application was filed suppressing vital facts before this Cout. It is submitted that the applicant resorted to material suppression of material facts and obtained an ex-parte order on 23.8.2018.

107.Learned Senior Counsel Mr.SriramPanchu further submitted that these respondents were not holding the shares for the benefit of the 1st respondent as has been stated by the applicant.

108.The learned senior counsel submitted that are no other documents to substantiate that all along shares were treated as the first respondent shares in any of the documents.

109.It was submitted that even in the collateral proceedings in C.S No. 33 of 2018, the first respondent who was the 12th defendant has not taken a stand that the shares belong it.

110.Ownership will have to be only established under the laws in force in Dubai. Learned Senior Counsel submitted that as per Section 187C Of the Companies Act, 1956/Section 89 of the Companies Act, 2013, if shares are held in beneficial capacity, filing of appropriate returns are mandatory. In this case as the shares were not held in beneficial capacity and therefore no returns were also filed.

111.In fact, if there was a failure to file returns as was contemplated, they would have been liable to be prosecuted under the Act. There are no indications on facts or in the conduct of the parties that the shares were held by them for and on behalf of the 1st respondent company.

112.It was submitted that the fact that the Division Bench has held that Section 187 (C) read with Section 89 (8) Of the Companies Act, 1956/2013 disentitled the plaintiffs therein from getting relief make it clear that same relief cannot be granted here.

113.If relief is barred under the aforesaid provision, no claim can be entertained. Learned senior counsel submitted in the light of the above observation of Division bench, the present application for the relief sought for cannot be entertained. It was submitted that piercing of the corporate veil cannot be resorted to unless there is a fraud or illegality.

114.It was further submitted that none of the entities of the ETA group of companies have claimed rights over the shares except the plaintiffs in C.S.No.33 of 2018 and therefore the application is misconceived by seeking to pierce the corporate veil.

115.To infer beneficial ownership in the shares in favour of the first respondent is far-fetched and is completely without any basis. Corporate veil can be lifted only in the event of illegality and here there was no illegality.

116.It was further submitted that the shares in questions were not be subject matter of the arbitration. None of the shareholders are party to the arbitration proceeding and therefore their rights to transfer the shares cannot be put to jeopardy.

117.The Learned Senior Counsel further stressed the chain of events commenced with the order passed by the Division bench of this Court in O.S.A against C.S.No.33 of 2018.

118.The filing of the present application on 14 August, 2018 and securing of the exparte interim order on 23 August

2018 indicated a pattern. The fact that the additional type set of documents were filed on 20thAugust, 2018 incorporating the documents included in C.S.No.33 of 2018 itself shows that the applicant was actually a fighting proxy legal battle for and on behalf of the plaintiffs in the above suit.

119.Learned Counsel for the 3rd respondent submitted that the 1st respondent is under control of the plaintiffs in the above suit and thus a proxy battle on their behalf has been instituted by the applicant herein.

120.It is further submitted that the conduct of the applicant indicate that it was in concert with the plaintiffs in the above suit. It is submitted an injunction cannot be granted, when the Hon'ble Division Bench has held otherwise.

121.The fact that the applicant has chosen not to make the plaintiffs in the said suit, a party to the present proceeding itself explains conduct of the applicant.

122.It was submitted that the applicant has not initiated any enforcement proceedings against the plaintiffs in the above suit anywhere in the world but has instead chosen to file the present application against 3rd to 7th respondent who are in dispute with the plaintiffs in C.S.No 33 of 2018.

123.The exparte awards for a huge amount does raise a serious question. The fact that the applicant has not moved from London to enforce the award also raises serious question regarding the conduct of the applicant. It is also submitted that several proceedings have been initiated in Dubai against the 1st respondent where it has assets and its registered office by others.

124.It was submitted that the claim of the applicant that there are no visible assets of the 1st respondent on the ground that the laws in Dubai make it impossible for the applicant to locate assets of the 1st respondent cannot be countenanced in the present times as a simple internet search would reveal several others have successfully initiated proceedings against the first respondent for securing their interest against the assets of the 1st respondent.

125.The learned counsel produced copies of interim orders obtained against the first respondent by others to show that the assets of the first respondent are capable of being identified and attached. Learned senior counsel submitted that strangely shares of 3rd to 7th respondent have been targeted by the applicant at the behest of the plaintiffs in the above suit.

126.It was further submitted that the conduct of the applicant clearly disentitled the applicant from seeking interim relief in a convoluted proceeding by making it seem as if the shares were held in beneficial capacity by the contesting respondent by attempting to pierce the corporate veil of the 1st respondent.

127.It is further submitted that even if the corporate veil of the first respondent is pierced, it is the plaintiff's in C.S.No.33 of 2018 who are in control of the first respondent and it has been held that the questions relating to ownership of share cannot be agitated in India. It was submitted that the applicant was in cohorts with the plaintiffs in the above suit and was fighting a proxy legal battle by a convoluted means by attempting to pierce the corporate veil without actually demonstrating who was in control of the 1st respondent.

128.Learned counsel also distinguished the decision cited by the learned senior counsel for the applicant.

129.Finally, the learned Senior Counsel 4th to 7th respondents submitted that the unsuccessful plaintiffs had approached the Hon'ble Supreme Court in Civil Appeal Nos.9786-9799 of 2018 and already a status quo order as far as the transfer of share of 3rd to 7th respondents herein was in force and therefore was no necessity to continue with the interim order as it was bringing instability in the value of the shares. Learned Senior counsel therefore requested for dismissal of the application and vacation of order.

130.Mr. Srinath Sridevan, the learned counsel appearing for the 8th respondent reiterated the submissions made on behalf of the third respondent. He submitted that 8th respondent is merely a formal party and no reliefs have been sought for.

131.Therefore, the learned counsel simplified his argument and stated that the allegation that the respondents are the alter ego of the first respondent is baseless. The plea that the shares are held in beneficial capacity is contrary to section 89 of the of the Company, Act 2013.

132.The argument that by virtue of section 60 of the Civil Procedure Code, the assets of the 3rd person can be proceeded against has to be tested on the touchstone of the Trust Act, 1882.

133.Learned counsel submitted that section 3 of the Trust Act, 1882 defines "trust", " trustee", "beneficiary" and "beneficial interest". It was submitted that the ingredients of Section 5 and 6 of the said Act have not been fulfilled. The counsel submitted that if the applicant was in a position to prove, the applicant may have some scope for argument. However, it was not so.

134.The learned counsel submitted that the present application has been filed without disclosing the source of the documents and therefore the documents are inadmissible in view of the decision of the court in **Banarsi Devi versus Janaki** AIR 1959 Pat 172. It is submitted that the applicant has not come out clean and therefore was not entitled to the relief.

135.The 9th respondent filed written submission while preserving the right to file a detailed counter and requested that the written statement to be taken on record due to the paucity of time.

136.It was submitted on behalf of the 9th respondent subject shares are not the property or the assets of the 1st respondent. On the other hand, it was submitted that the shares are the assets of the 8th respondent viz., ETA STAR Holding Ltd. (the 2nd defendant in the said suit) who has a beneficial interest.

137.It was therefore submitted that the shares cannot be liquidated to satisfy the award which the applicant seeks to enforce and execute against the 1st respondent.

138.It was submitted that the applicant can only proceed against the assets of the 1st respondent and since the shares are held by respondent Nos. 3-7 for the benefit of the 8th respondent, therefore there is no basis for interim order over the shares of the 8th respondent held in the name of 3rd to 7th respondents herein. It was further stated that the allegations relating to the de-consolidation of accounts of 8th-9th respondents are denied.

139.It was further submitted that the de-consolidation is contained only in the draft financial statements of the 9th respondent with retrospective effect from January 2014 onwards.

140.It was submitted that the shareholders of the 9th respondent decided to be deconsolidate the accounts retrospectively. The said de-consolidation was never approved by the shareholders of the 9th respondent and therefore there has been no severance of the 8th respondent's interest over the shares held by respondent No. 3 to 7 as has been alleged.

141.The 9th respondent stated that all the respondent companies are to be treated as single economic entity for and on behalf of the 1st respondent was baseless and without any factual evidence. At the same time, it was submitted that the 3rd-8th respondents were in collusion and were acting to the prejudice of the interest of the 9th Respondent.

142.During the interregnum, the Hon'ble Supreme Court has passed a final order dated 26th November, 2018 in Civil Appeal Nos. 9786-9799 of 2018 arising out of SLP Nos. 222057-22070 of 2018.

143.The appeal preferred by the plaintiffs in C.S.No. 33 of 2018 against the decision of the Hon'ble Division Bench of this court in OSA Nos. 220 to 223, 227, 228, 230 to 237 of 2018 was rejected.

144.The decision of the Hon'ble division bench of this court in OSA Nos.220 to 223, 227, 228, 230 to 237 of 2018 has been upheld by the Hon’ble Supreme Court.

145.The Hon’ble Supreme Court has observed that ETA group consists of numerous entities and shareholder of the group and therefore the status of registered owner would get transferred into one of absolute ownership.

146.The Hon’ble Supreme Court further held that any adjudication of the said de-consolidation would have a serious spiralling effect as settled things would get unsettled for the reasons that it might have an adverse impact on the shareholders of other entities coming under the umbrella of the ETA Group. The logic and the rational behind the decision of the foreign entity cannot be adjudicated here and the remedy lies elsewhere.

147.In the background of the above the question that arises for consideration is whether the applicant was entitled to relief under section 9 of the Arbitration and Conciliation Act, 1996. The decision of the Supreme Court in **Balco, Bhatia International , Harmony and Hardy** cases cited by the counsel for the respondents rendered in the context of pre-amendment to the Act before 2015 may have come in the legitimate way of the applicant approaching and invoking jurisdiction of the court under section 9 of the Arbitration and Conciliation Act, 1996.

148.However, in view of the specific language proviso to section 2 (2), it is clear that the provisions of Section 9 shall apply international commercial arbitration as well.

149.There is nothing in the arbitration agreement which precludes this court from entertaining applications under section 9 of the Act. Therefore, if the assets are located within the jurisdiction of this court, certainly this court has territorial jurisdiction to entertain an application under the aforesaid provisions of the Act.

150.I therefore agree with the contention of the applicant that the present application is maintainable before this Court.

151.The case of the applicant is that if the corporate veil of the 1st respondent is pieced the shares held by 3rd-7th respondent were for the benefit of the 1st respondent. The 9th respondent has conceded that the shares are that of the 8th respondent.

152.The plaintiffs in C.S.No. 33 of 2018 claimed that the 8th respondent (2nd defendant in C.S.No.33 of 2018) namely ETA Star Holding Ltd., had a beneficial right over the shares in the 2nd respondent company standing in the name of 3rd-7th respondent herein.

153.The 8^{th} respondent in the present application has maintained a neutral stand as far the ownership is concerned while questioning the stand of the applicant to freeze the shares.

154.The 2^{nd} respondent whose shares are the subject matter of the present application has remained absent exparte and has not filed any counter.

155.The 9^{th} respondent herein (11^{th} defendant in the said suit) namely ETA Star Holdings LLC in this proceeding has stated in the written submission that the 3^{rd}-7^{th} respondents were holding the subject shares in the 2^{nd} respondent for and on behalf of the 8^{th} Respondent herein (2^{nd} defendant).

156.The contesting respondents namely 3^{rd} to 7^{th} respondents deny that the real ownership in the shares was vested either with the 8^{th} respondent as was stated by the 9^{th} defendant in view of the de-consolidation the shareholding or with the 1^{st} respondent as was canvassed by the applicant.

157.From the flow chart filed by the learned senior advocate for 4^{th} to 7^{th} respondents, it is evident that 3^{rd} to 7^{th} respondents hold 66% of the shares in ETA Star Holdings

Ltd., the 8th respondent herein/2nd defendant in the said suit. They are in control of the 8th respondent.

158.Al Ghurairs (Dubai), A1 Ghurairs Salahuddins (India) 3rd to 6th respondents and Buhari family (India) 7th respondent are the shareholders of the 9th respondent herein/11th defendant in the said suit (ETA Star Holdings LLC). Al Ghurair family (the plaintiff's in C.S.No.33 of 2018) hold 52% of the shares while 3rd to 7th respondents hold 48% of the shares.

159.Thus, the arguments advanced by the respondents that the applicant was colluding with Al Ghurairs/plaintiff in C.S.No.33 of 2018 cannot be believed. On the contrary it appears Al Ghurairs, the plaintiff therein and defendant 3 to 7 who are 3rd to 7th respondents are acting in unison through C.S.No.33 of 2018 was filed for a declaration as if 3rd to 7th respondents herein are holding shares for the benefit of the 8th respondent.

160.Respondents No.3 to 7 hold 66% of the shares in the 8th respondent company and so called deconsolidation of the shares is based on the retrospective reconciliation of the accounts of the 9th respondent where they are the 48% shareholders and the plaintiff in C.S.No.33 of 2018 hold 52%

shares.

161.In fact, the passages in de-consolidation document as has been extracted in the orders passed in the suit and connected O.S.A. indicate that the shares were held for the benefit of one of the entity under the ETA Group. Therefore, certainly there were breaches committed as far as Companies Act, 1956/2013 is concerned by respondent Nos.3 to 7 and the 2nd respondent.

162.According to them due to deconsolidation of the shares their status transformed from a mere registered owner to that of absolute owner and if same has to be contested it has to be in a different forum in Dubai. This has been accepted by the Hon'ble Supreme Court in the above Civil Appeal Nos. 9786-9799.

163.As per the decision of the Hon'ble Supreme Court in **Fargo freight Ltd. Vs. Commodities Exchange Corporation** (2004) 7 SCC 203 in a proceeding for enforcement of award, necessarily it has to be between the parties to the award. The 1st respondent however chooses to remain absent. It is evident that the ETA group is controlled by the contesting respondents herein and the plaintiffs in C.S.No.33 of 2018.

164.There are different versions regarding the beneficial ownership over the shares registered in the name of 3-7 respondents in the 2nd respondent company. The Hon'ble Supreme Court has accepted that the shares were held in the beneficial capacity for and on behalf of the 8th respondent herein (2nd Defendant in CS No. 23 of 2018) by the 3-7 respondents as was submitted in the 9th respondent herein and that pursuant to deconsolidation of the ETA group, the shares were transferred to the registered shareholders namely 3rd to 7th respondents.

165.This puts beyond the any doubt that the respondent No.3-7 were guilty of violating the provisions of the Companies Act, 1956/2013. Had they declared the position then and there as was required under the provisions of the Companies Act, 1956/2013, the dispute relating to beneficial ownership would not have cascaded to the court in the form of the suit or by way of this application.

166.The basis of de-consolidation is the alleged financial statement of 9th respondent (11th defendant) seeking to give retrospective rights over the shares to the registered shareholders namely 3^{rd} to 7^{th} respondents. In the said financial statement it has been made to seem as if the 8^{th} respondent herein is the real owner of the shares.

167.In the 8^{th} respondent company, 3^{rd} to 7^{th} respondents (also Defendants in C.S.No.33 of 2018) hold 66% of shares while Ahmed Ibrahim holds 34% of the shares, who is not a party to either of the case.

168.In the 9^{th} respondent company, 3^{rd} to 7^{th} respondents and the plaintiff hold 48% and 52% shares respectively. 9^{th} respondent in their written submission has also stated that the shares actually belong to the 8^{th} respondent.

169.It is evident that the 9^{th} respondent which is controlled by the plaintiff's Al Ghurairs holding 52% of the shares have categorically both here and also in C.S.No.33 of 2018 and in the appellate proceedings before the Division Bench as well as the Hon'ble Supreme Court has maintained a stand that the shares were purchased for and on behalf of the 8^{th} respondents (2^{nd} respondent company) and only in the financial statement of the 9th respondent/11th defendant there was de-consolidation.

170.In ETA group under which 1st respondent is organised, 52% of the shares are held by the plaintiffs in C.S.No.33 of 2018 along with the 3rd respondent and the balance 48% of the shares are held by the 4th to 7th respondents. It is the 9th respondent before this Court which has stated that the shares belong to 8th respondent where respondent Nos.4 to 7 hold 66% of shares. It is thus apparent that the corporate litigation has been used as a tool to mystify the ownership and the alleged deconsolidation of ETA group has been used as a tool to legitimate the ownership.

171.Though there are overwhelming indication, that 9th respondent is the umbrella company of ETA group at whose behest 1st respondent paid money to 8th respondent for the purchase of shares in 2nd respondent, in the name of 3rd to 7th respondents, an apparent dispute has been projected between the shareholder of 9th respondent i.e. Plaintiff in C.S.No.33 (Al Gurairs) and the defendant/respondents 3 to 7 and it has been agreed in the Draft Accounts of the 9th respondent for

Deconsolidation shares to transform the registered ownership with that of the real ownership. The 1st respondent has not claimed any ownership over the shares in the collateral proceeding remains absent which is controlled by plaintiff and the 3rd to 7th respondents here. The 2nd Respondent which is also part of ETA group has remained absent.

172.Therefore, I find merits in the arguments advanced on behalf learned senior counsel for the applicant that the corporate facade and battle has been used to mystify the nature of real ownership of the share, I am unable to accept the arguments of respondents that the applicant was colluding with the plaintiff in C.S.No.33 of 2018.

173.Though there are overwhelming material to probe and to pierce the corporate veil of Respondent No.1 to infer that it is the plaintiff in C.S.No.33 of 201 along with Respondent No.3 to 7 who are in control of Respondent No.1, 8 and 9 and corporate facade has been used and the failure to comply with the mandatory requirements of the Companies Act, 1956/2013 has been used to their advantage, I am unable to continue the interim order any longer in view of the subsequent development in view of the decision of the

Hon'ble Supreme Court.

173. Both the Hon'ble Division Bench and the Hon'ble Supreme Court have recognised that the 8th respondent/2nd defendant was the real owner of the share and it is only based on the financial statement in the 9th respondent/11th defendant there was deconsolidation of shares.

174.In view of the decision of the Hon'ble Divsion Bench and the Hon'ble Supreme Court, the issue as to whether the shares were actually purchased for the benefit of 1st respondent as per the applicant or for the benefit of 8th respondent in the 2nd respondent company in the names of 3rd to 7th respondents/defendants as has been stated by 9th respondent cannot be decided by way of roving enquiry in a proceeding under Section 9.

175.The Hon'ble Supreme Court has upheld the order of the Hon'ble Division Bench that this cannot be agitated here in India.

176.It has put an end to the controversy regarding the ownership even though in para 6.16, the Hon'ble Division Bench has held that monies were sent by the defendant No.2 **(8th respondent herein**) and on its behalf by defendant No.12 **(1st respondent herein**) atleast till 2011. It has been observed that "*Though prima facie, the payment made was not in* *dispute, the entity from which it emerged actually cannot be decided here. The very fact that payments were made by defendant No.12(**1st respondent in O.A.No.772 of 2018**) on*

*behalf of defendant No.2 followed by book adjustment itself would vouch for the fact that such things have happened involving the other entities of the ETA Group as well and atleast defendant No. 2 (**8th respondent herein**) and its subsidiaries. These issues also cannot be looked into by this Court."*

177.Therefore, the relief granted on 23.08.2014 and extended to the applicant cannot be continued any longer even though facts indicate C.S.No.33 of 2018 appears to have been orchestrated with view to raise a shadow of doubt over the ownership of the shares for collateral purpose.

178.As severe disputed questions of facts are involved and in view of the decision of the Hon'ble Supreme Court upholding the decision of the Hon'ble Division Bench of this Court the ad interim order injunction passed on 23.8.2018 and extended subsequently has to be vacated.

179. In view of the above observation, the Original Application No. 772 of 2018 stands dismissed. Consequently,

connected applications are closed.

Sd/C.S.N.J.

06.12.2018

//Certified to be a true copy//
Dated this the th day of 2018.

DL/24.12.2018 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.