

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16-12-2020

Judgment Delivered on : 24-03-2021

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

O.S.A. No. 156, 157, 160, 161 and 162 of 2020
and
C.M.P.Nos.7808, 7810, 7811, 7814, 7815, 7816 and 9019 of 2020

(Heard through Video-Conferencing)

O.S.A No. 156 of 2020

ETA Mauritius Limited
A Company incorporated under the appropriate
Laws of the Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius. ..Appellant

Versus

1. PUEBLO Holdings Limited
Rep. by its Authorized Signatory
Mr.Siddhesh Sham Kshirsagar
Trust Company Complex
Ajeltake Road, Ajeltake Islands,
Majuro MH 96960, Marshall Islands.
2. Emirates Trading Agency LLC,
A Company incorporated under the
appropriate Laws of the United Arab Emirates,
having its Registered Office and/or business address
at ETA Star House,
Salahuddin Road, Deira, Dubai,
United Arab Emirates.

3. Electromechanical Technical Associates Ltd.,
A Company incorporated under the
appropriate laws of Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius.
4. ASCON Constructions Ltd.,
A Company incorporated under the
appropriate Laws of Mauritius,
having its Registered Office at
Les Cascades, Edith Cavell Street,
Port Louis, Mauritius.
5. Real Value Investments Ltd.,
A Company incorporated under the
appropriate Laws of Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius.
6. ETA Port Operations and Rapid Transport
System Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.
7. ETA Engineering Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office
at New No.71, Old No.63,
3rd Floor, Sterling Road,
Nungambakkam, Chennai-600 034.
8. East Coast Terminal Operations
and Port Services Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at
Buhari Towers,

6th Floor, No.4, Moores Road,
Chennai-600 006.

9. Pink City Expressway Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at Nos.10 and 11,
Dr.Radhakrishnan Salai, 4th Floor,
Chennai Citi Centre,
Mylapore, Chennai-600 004.
10. West Asia Maritime Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at Buhari Towers,
6th Floor, No.4, Moores Road,
Chennai-600 006.
11. ETA Karnataka Estates Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at 4th Floor,
Chennai Citi Centre,
10 and 11, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
- 12 . ASCON Travels Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at MKM Chambers,
No.42, Kodambakkam High Road,
Chennai-600 034.
13. ETA India Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at
No.5, Moores Road, Chennai-600 006.
14. ETA Properties and Investment Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
4th Floor, Chennai Citi Centre,
10 and 11, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

15. ETA General Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
R.S.Nos.79, 80 and 81,
Kalitheer-Thalkuppam Village,
Magadipet, Pondicherry-605 107.

16. ETA Constructions (India) Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at Fourth Floor,
Chennai Citi Centre,
Nos.10 and 11, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

17. TRADEMIN International Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at
7th Floor, Khivraj Complex-II,
Chennai-600 035.

... Respondents

O.S.A. No. 157 of 2020

Real Value Investments Limited,
A Company incorporated under the appropriate
Laws of the Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius.

.. Appellant

Versus

1. PUEBLO Holdings Limited
Rep. by its Authorised Signatory
Mr.Siddhesh Sham Kshirsagar
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Majuro, Marshall Islands MH 96960.

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A Company incorporated under the
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business address at ETA Star House,
Salahuddin Road, Deira, Dubai,
United Arab Emirates.

3. ETA Mauritius Ltd.,
A Company incorporated under the
appropriate laws of the Mauritius,
having its Registered Office at
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3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius.
4. Electromechanical Technical Associates Ltd.,
A Company incorporated under the
appropriate laws of the Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius.
5. ASCON Constructions Ltd.,
A Company incorporated under the
appropriate Laws of the Mauritius,
having its Registered Office at
Les Cascades, Edith Cavelli Street,
Port Louis, Mauritius.
6. ETA Port Operations and Rapid
Transport System Limited,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.
7. ETA Engineering Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
New No.71, Old No.63, 3rd Floor,
Stereling Road, Nungambakkam,
Chennai-600 034.
8. East Coast Terminal Operations and
Port Services Limited,
A Company incorporated under the

Companies Act, 1956,
having its Registered Office at
Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.

9. Pink City Expressway Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Nos.10 and 11, Dr.Radhakrishnan Salai,
4th Floor, Chennai Citi Centre,
Mylapore, Chennai-600 004.
10. West Asia Maritime Limited,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.
11. ETA Karnataka Estates Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Nos.10 & 11, Dr.Radhakrishnan Salai,
4th Floor, Chennai Citi Centre,
Mylapore, Chennai-600 004.
12. ASCON Travels Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
MKM Chambers,
No.42, Kodambakkam High Road,
Chennai-600 034.
13. ETA India Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
No.5, Moores Road,
Chennai-600 006.
14. ETA Properties and Investment Private Limited,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Nos.10 and 11. Dr.Radhakrishnan Salai,

4th Floor, Chennai Citi Centre,
Mylapore, Chennai-600 004.

15. ETA General Private Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
R.S.Nos.79, 80 and 81,
Kalitheer-Thalkuppam Village,
Magadipet, Pondicherry-605 107.
16. ETA Constructions (India) Limited,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Nos.10 and 11, Dr.Radhakrishnan Salai,
4th Floor, Chennai Citi Centre, Mylapore,
Chennai-600 004.
17. TRADEMIC International Private Limited,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
7th Floor, Khivraj Complex-II,
Chennai-600 035.

... Respondents

O.S.A. No. 160 of 2020

Electromechanical Technical Associates Ltd.,
A Company incorporated under the appropriate
Laws of Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius

.. Appellant

Versus

1. PUEBLO Holdings Limited,
Rep. by its Authorized Signatory,
Mr.Siddhesh Sham Kshirsagar,
Trust Company Complex,
Ajeltake Road, Ajeltake Islands,
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2. Emirates Trading Agency LLC,
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3. ETA Mauritius Limited,
A Company incorporated under the
appropriate Laws of the Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius.
4. ASCON Constructions Ltd.,
A Company incorporated under the
appropriate Laws of Mauritius,
having its Registered Office at
Les Cascades, Edith Cavell Street,
Port Louis, Mauritius.
5. Real Value Investments Ltd.,
A Company incorporated under the
appropriate Laws of Mauritius,
having its Registered Office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.,
President John Kennedy St.,
Port Louis, Mauritius.
6. ETA Port Operations and Rapid Transport System Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.
7. ETA Engineering Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
New No.71, Old No.63, 3rd Floor,
Sterling Road,
Nungambakkam, Chennai-600 034.

8. East Coast Terminal Operations and Port Services Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.
9. Pink City Expressway Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Nos.10 and 11, Dr.Radhakrishnan Salai,
4th Floor, Chennai Citi Centre,
Mylapore, Chennai-600 004.
10. West Asia Maritime Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.
11. ETA Karnataka Estates Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
4th Floor, Chennai Citi Centre,
10 and 11, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
12. ASCON Travels Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
MKM Chambers,
No.42, Kodambakkam High Road,
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13. ETA India Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
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14. ETA Properties and Investment Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,

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4th Floor, Chennai Citi Centre,
10 and 11, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

15. ETA General Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
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R.S.Nos.79, 80 and 81,
Kalitheer-Thalkuppam Village,
Magadipet, Pondicherry-605 107.

16. ETA Constructions (India) Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
Fourth Floor, Chennai Citi Centre,
10 & 11, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

17. TRADEMIN International Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its Registered Office at
7th Floor, Khivraj Complex-II,
Chennai-600 035.

... Respondents

O.S.A. No. 161 of 2020

1. ETA Fort Operations and Rapid Transport System Ltd.,
A company incorporated under the
Companies Act, 1956, having its
Registered Office at Buhari Towers,
6th Floor, No.4, Moores Road, Chennai-600 006.

2. ETA Engineering Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956, having its
Registered Office at
New No.71, Old No.63, 3rd Floor,
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Nungambakkam, Chennai-600 034.

3. East Coast Terminal Operations
and Port Services Limited,
A company incorporated under the
Companies Act, 1956, having its

Registered Office at Buhari Towers,
6th Floor, No.4, Moores Road,
Chennai-600 006.

4. West Asia Maritime Limited,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at Buhari Towers,
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Registered Office at MKM Chambers,
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Registered Office at
No.5, Moores Road,
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8. ETA Properties and Investment Private Limited,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at
4th Floor, Chennai Citi Centre,
10 and 11, Dr.Radhakrishnan Salai,
Mylapaore, Chennai-600 004.
9. ETA General Private Limited,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at R.S.Nos.79, 80 & 81,
Kalitheere-Thalkuppam Village,
Magadipet, Pondicherry-605 107.

10. ETA Constructions (India) Limited,
A Company incorporated under the
Companies Act, 1956, having its
Registered Office at Fourth Floor,
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10 and 11, Dr.Radhakrishnan Salai,
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11. TRADEMIN International Private Limited,
A Company incorporated under the
Companies Act, 1956, having its
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7th Floor, Khivraj Complex-II,
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.. Appellants

Versus

1. PUEBLO Holdings Limited,
A Company incorporated under the
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A Company incorporated under the
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A Company incorporated under
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Companies Act, 1956, having its
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Nos.10 and 11, Dr.Radhakrishnan Salai,
4th Floor, Chennai Citi Centre,
Mylapore, Chennai-600 004

... Respondents

O.S.A. No.162 of 2020

ASCON Constructions Ltd.,
A Company incorporated under the
appropriate laws of Mauritius,
having its Registered Office at
Les Cascadess,
Edith Cavell Street,
Port Louis, Mauritius.

.. Appellant

Versus

1. PUEBLO Holdings Limited
Rep. by its Authorized Signatory
Mr.Siddhesh Sham Kshirsagar
Trust Company Complex
Ajeltake Road, Ajeltake Islands
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A Company incorporated under
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17. TRADEMIN International Pvt. Ltd.,
A Company incorporated under
the Companies Act, 1956,
having its Registered Office at
7th Floor, Khivraj Complex-II,
Chennai-600 035.

..Respondents

Original Side Appeals (O.S.As.) filed under Clause 15 of the Letters Patent, read with Order XXXVI Rule 1 of the Original Side Rules of this Court, against the order dated 03.06.2020 passed by the learned Single Judge in E.P. No. 55 of 2019 filed under Order XXI Rule 46 of the Code of Civil Procedure for attachment and sale of debts and shares as mentioned in the schedule of the Execution Petition.

For Appellants : Mr. AR.L.Sundaresan, Senior Advocate
assisted by Mr. Aditya Bhat and
Ms. Priyanka Shetty
for Mr. K. Mahendran
in O.S.A. No. 156 of 2020

Mr. M.S. Krishnan, Senior Advocate
assisted by Ms. Priyanka Shetty
for Mr. P. Giridharan and Mr. S. Santhosh
in O.S.A. No. 157 of 2020

Mr. J. Sivanandaraj
assisted by Mr. Aditya Bhat and
Ms. Priyanka Shetty
for Mr. V. Chandra Prabhu
in O.S.A. No. 160 & 162 of 2020

Mr. Vijay Narayan, Senior Advocate
for Mr. Srinath Sridevan
in O.S.A. No. 161 of 2020

For Respondents :Mr. Ratnako Banerjee, Senior Advocate
assisted by Mr. Mukund Rao
for Mr. Karthik Sundaram for R1
in all the Original Side Appeals

COMMON JUDGMENT

R. SUBBIAH, J

All these appeals are filed against the order dated 03.06.2020 passed by the learned Single Judge of this Court in Execution Petition No. 55 of 2019. The Execution Petition was filed by the award holder/first respondent in these appeals, namely Pueblo Holdings Limited to execute two foreign awards dated 09.04.2017 and 06.08.2017 passed against the second respondent namely Emirates Trading Agents LLC in which 16 companies were shown as garnishees and they were arrayed as respondent Nos.2 to 17 in the Execution Petition.

2. O.S.A.No.156 of 2020 had been filed by ETA Mauritius limited, a company incorporated under the Laws of Mauritius.

3. O.S.A.No.157 of 2020 has been filed by Real Value Investment Limited, a company registered in Mauritius.

4. O.S.A.No.160 of 2020 has been filed by Electro-mechanical Technical Associates Limited, a company incorporated as per the Laws of Mauritius.

5. The ETA Indian Companies group, joined together, have preferred a common appeal in O.S.A.No.161 of 2020. They are Respondent Nos.6 to 17 in E.P.No.55 of 2019.

6. O.S.A.No.162 of 2020 has been filed by ASCON Constructions Limited, Mauritius, a company incorporated and registered in Mauritius.

7. For the sake of convenience, the parties to these appeals are referred to as per their ranking in the Execution Petition filed before the learned Single Judge, i.e. petitioner in the Execution Petition is Pueblo Holdings Limited, which is the award-holder (decree-holder), the first respondent in the Execution Petition is Emirates Trading Agency LLC (ETA-LLC), which is the award-debtor and the respondents 2 to 17 in the Execution Petition are the Garnishee-Companies.

8. We shall first narrate facts and circumstances, which led to the filing of the Execution Petition No. 55 of 2019 before the Court.

9. The award-holder (decree-holder - Pueblo Holdings Limited) is a Company incorporated under the Marshall Islands and it is a wholly owned subsidiary of Navios Maritime Holdings Inc., which specialises in world wide carriage, trading, storage and related logistics of international bulk cargos and got listed in the New York Stock Exchange. The award-debtor - Emirates Trading Agency (ETA)-LLC is a Company incorporated in the United Arab Emirates, whose shares are allegedly held beneficially in four of the appellants in O.S.A.Nos.156, 157, 160 and 162 of 2020 and the other Garnishee companies, which are the appellants in O.S.A.No.161 of 2019. Claiming that the 'situs' of the shares of the second respondent/award debtor (ETC-LLC) in these Garnishee Companies, are within the territorial jurisdiction of this Court, the award-holder has filed the said Execution Petition before the learned Single Judge of this Court. Both before the learned Single Judge in E.P.No.55 of 2019 and also in all the present O.S.As., the award debtor-ETA-LLC remained absent.

10. It is the specific case of the award-holder that the award-debtor was a chronic defaulter and is liable for several claims across the world. The ETA Group was originally established by Al Ghurair Group and Salaudin and Buhari families, having its head quarters at Dubai. Salaudin and Buhari families are Indian groups. The award-debtor had engaged the award-holder under a Charter Party, in respect of which, there were dues. The award-holder therefore appointed a sole arbitrator on 23.09.2019 in terms of Clause 17 of the Charter Party, dated 09.04.2008 and filed a claim petition on 21.12.2016 with respect to the said Charter Party and a Suspension Agreement, dated 30.12.2012 being the owner of the

Vessel "Navios Lumen" seeking certain amount from the award-debtor, owned a Charter by way of debt and/or damages, with interest. The award-debtor preferred not to appear before the sole arbitrator. The Arbitrator passed a partial final award on 09.04.2017 and the second partial final award on 06.08.2017. Therefore, the Execution Petition has been filed before the learned Single Judge to execute the Award(s) before this Court as against the award-debtor showing 17 Companies as garnishee. Out of 17 companies, Respondents 2 to 5 in the Execution Petition are the companies incorporated in Mauritius. Respondents 6 to 8 and 10 to 17 in the Execution Petition are Indian companies having their Registered Office at Chennai and are situated within the jurisdiction of this Court. Respondent No.9 in the Execution Petition in E.P.No.55 of 2019 is also an Indian Company, which has not filed any appeal in this batch of O.S.As. The Execution Petition in E.P.No.55 of 2019 was filed before the learned Single Judge to attach the shares held by the award-debtors as mentioned in the Schedule to the Execution Petition under Order 21 Rule 46 of the Code of Civil Procedure (in short 'the CPC'). These shares are two categories. One category of share is the direct shares, viz., the shares held by the award-debtor in the Indian companies. Another category of share is the shares held in Mauritius company. According to the award-holder, the shares of the Indian Companies held by the Mauritian Companies/respondents 2 to 5 in the Execution Petition, are the Companies, for the beneficial interest of award-debtor.

11. The Execution Petition filed by the decree-holder (incorporated in Marshall Islands) as against the award-debtor-Company, (incorporated at Dubai), was opposed by all the garnishee-companies (Indian companies), by raising the ground of "jurisdiction" of this Court to attach the shares. The learned Single Judge, by negating the objection(s) raised by the garnishee-companies, passed an order of attachment of the shares of the award-debtor, held by the respondents No.2 to 17 (garnishee-Companies) in the Execution Petition, in terms of Order 21 Rule 46 of the CPC. Aggrieved by the impugned order, dated 03.06.2020 passed by the learned Single Judge in E.P.No.55 of 2019, these Original Side Appeals (O.S.As.) have been filed.

Submissions of the counsel:-

12. Mr.M.S.Krishnan, learned Senior Counsel appearing for the appellant in O.S.A.No.157 of 2020--Real Value Investment Limited, which is one of the Mauritius Companies, arrayed as respondent No.5 in the Execution Petition, submitted that the award-holder, instead of proceeding against the award-debtor to recover the money based on the foreign award, had initiated the

Execution Proceedings against the appellant-Real Value Investment Limited, which is a third party to the Arbitration proceedings. The Execution Petition had been filed alleging that the award-debtor has got 100% beneficial interest in the appellant-Real Value Investment Limited. It is submitted that such a plea can be raised only before the Courts in Dubai and as per the laws in force in Dubai. Therefore, it is his contention that the Execution Petition filed before the learned Single Judge of this Court against the appellant-Real Value Investments Limited, as if it is holding the shares of the award-debtor for beneficial interest, was without any basis. It is submitted that the award-debtor does not hold any shares in the appellant-Real Value Investments Limited. It is further submitted that no document had been produced by the award-holder to show that the award-debtor has any beneficial interest over the shares of the appellant-Real Value Investments Limited. In spite of failure to produce any documentary evidence, the learned Single Judge erroneously attached the shares of the appellant-Real Value Investments Limited, without taking note of the fact that the said Company is not a garnishee of the award debtor-ETA LLC. The learned Single Judge did not consider that the award-holder has to first establish the claim of beneficial interest allegedly held by the Dubai based award-debtor in Mauritius Companies, where such interest is created. In the absence of proof of beneficial interest, the Execution Petition cannot be maintained before this Court. However, the learned Single Judge concluded that the appellant-Real Value Investments Limited is a garnishee-Company and therefore, the appellant was liable to satisfy the arbitration award. Even otherwise, the issue of alleged beneficial interest by Dubai company viz., award-debtor (ETA-LLC), held in Mauritius company, cannot be heard by this Court in Chennai. In other words, it is the submission of the learned Senior Counsel appearing for the appellant-Real Value Investments Limited that the beneficial interest created as per Dubai Law in the Mauritius Companies, cannot be claimed before the Indian Court, without the same being determined in Dubai. In any event, such claims cannot be adjudicated in the Execution Proceedings. In this regard, the learned Senior Counsel appearing for the appellant-Real Value Investments Limited, relied on the decision of the Supreme Court of India in the "lis" between the same parties in the case of Ahamed Abdullah Ahamed Al Ghurair Vs. Star Health and Allied Insurance Company Limited, reported in 2019 (1) CTC 211(SC). Since the appellant-Real Value Investments Limited, is a Mauritius entity, the question of beneficial interest in the share holding, cannot be determined by this Court.

13. The next fold of submission of the learned Senior Counsel appearing for the appellant-Real Value Investments Limited, is that the appellant was not a party to the Charter Party, and hence, the Execution Petition is not maintainable before the Court at Chennai. The learned Senior Counsel also relied on a judgment of the Supreme Court in the case of R.Viswanathan and others Vs. Rukn-ul-malik Syed Abdul Wajid (since deceased) and others, reported in AIR 1963 SC 1, to fortify his submission that the location of the corporate or branch office of the companies, whose shares are held by the judgment debtors, would not confer jurisdiction on the Court to order attachment or sale of those shares. On the other hand, as to where the share are located, is the criteria to invoke the jurisdiction of this Court to seek for an order of attachment of those shares. In the instant case, even according to the statement of the decree-holder, the shares are held by the Mauritius companies for the beneficial interest of the award-debtor in the Indian companies, which means that the 'situs' of the shares are in Mauritius. In such circumstances, they have to approach only the Courts at Mauritius and not the Indian Courts. In fact, the award-holder had already filed Execution Petition before the Supreme Court of Mauritius and the same is pending. Therefore, the award-holder cannot seek to execute the decree against the same share by simultaneously executing a foreign Award before both the Supreme Court of Mauritius and the High Court at Chennai, without taking leave of the Supreme Court of Mauritius.

14. The next submission of the learned Senior Counsel appearing for the appellant-Real Value Investments Limited, is that the appellant is not the garnishee of the award-debtor. The appellant is also disputing this fact from the beginning and the appellant, at all times, has maintained that it owes no funds to the award-debtor. The appellant, therefore, cannot be construed as a garnishee in terms of Order 21 Rule 46 of CPC. In fact, the award-holder has not filed any document to show that the appellant is a garnishee of the award-debtor. The learned Senior Counsel appearing for the appellant further submitted that the award-holder alleges that the appellant is a 100% wholly owned subsidiary of the award-debtor. The award-holder made an unsubstantiated contention that the fifth respondent in the Execution Petition, namely Real Value Investments Limited, which is the appellant in O.S.A.No.157 of 2020, owes 12,50,000 equity shares in Trademin International Private Limited, having its registered office at Chennai. But the issue as to whether the appellant-Real Value Investments Limited (a Mauritius company) is a 100% subsidiary of the award-debtor and also as to whether

the Dubai based award debtor beneficially holds the shares owned by the Mauritius company, cannot be decided by this Court. This Court cannot take a "bottom up" approach based on unsubstantiated allegations, alleging beneficial interest, but only "top down" approach, can be initiated in a Court from the place of origin, i.e., UAE and Mauritius. Therefore, it is submitted that this Court does not have the territorial jurisdiction to adjudicate the present dispute.

15. The share-holders of the appellant-Real Value Investments Limited, and the award-debtor-ETA LLC, are different. In paragraph No.15 of the affidavit filed in support of the EP No. 55 of 2019, the first respondent/award holder has categorically stated that there are two share-holders of the award-debtor, namely ETA Ascon Holding LLC (ETA Ascon) and Al Majal Group Company LLC, i.e. it is specifically stated in the said affidavit that the award-debtor is a wholly owned subsidiary of ETA Ascon Holding LLC (ETA Ascon), which owns 99.98% of its equity share capital and the balance 0.2% equity stake of the award-debtor is held by Al Majal Group Company LLC, whose share capital is beneficially owned and controlled by the Al-Guhrair Emirati Family. The share-holders of these companies are not the share holders of the appellant-Real Value Investments Limited. When there is no commonality between the share-holders, the "Corporate Veil" cannot be lifted in the Execution Proceedings. The learned Senior Counsel further submitted that no reason had been assigned by the award-holder for not proceeding against the assets of the award-debtor in Dubai. Thus, it is the submission of the learned Senior Counsel appearing for the appellant-Real Value Investments Limited that this Court has no jurisdiction to execute a foreign Award, since the alleged share sought to be attached is located in Mauritius, even as per the averments of the decree-holder. The fact as to whether the appellant is holding the share for the beneficial interest of the award-debtor, cannot be decided by the Indian Courts.

16. The learned Senior Counsel appearing for the appellant-Real Value Investments Limited in O.S.A.No.157 of 2020, placed reliance on the judgment of this Court in the case of M.A.A.Raoof Vs. K.G.Lakshmipathi, reported in 1968 (81) Law Weekly 634 = 1968 (2) MLJ 634 = AIR 1969 Madras 268 = CDJ 1968 MHC 158, and contended that the Executing Court is not competent to attach the debt payable outside the jurisdiction of the Chennai Court(s) and when the award-debtor and garnishees are having place of business outside the jurisdiction of the Court(s) at Chennai. Thus, for all the above reasons, the learned Senior Counsel appearing for the appellant in

O.S.A.No.157 of 2020 sought for setting aside the impugned order passed by the learned Single Judge and the attachment had to be raised, thereby to allow O.S.A.No.157 of 2020.

17. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellant-ETA Mauritius Limited, in O.S.A.No.156 of 2020, i.e. the second respondent in the Execution Petition filed before the learned Single Judge and Mr.Sivanananda Raj, learned counsel appearing for the appellant-Electromechanical Technical Associates Limited, in O.S.A.No.160 of 2020, i.e. the third respondent in the Execution Petition filed before the Single Judge, and also for the appellant-ASCON Constructions Limited in O.S.A.No.162 of 2020, in unison, submitted that the award-debtor is a Dubai based ETA Group of Companies. In the year 1970, the Dubai based Al Ghurair family, Buhari Family and Salaudin Family formed ETA Group of companies. Thereafter, in the year 2012, major dispute arose within the ETA Group companies and various litigations were instituted world-wide, including Mauritius and India and many of the same are pending. In the year 2014, the Board meeting of the ETA group, Al Ghurair, Salauddin and Buhari families and other share-holders agreed to de-consolidate the ETA group with effect from 01.12.2014 and part ways, which was recorded in the consolidated Financial Statement of the year ended 31.12.2014 of the ETA Star House LLC, one of the ETA Group of companies based in Dubai. Pursuant to the de-consolidation, which took place subject to the Laws of Dubai and as per Dubai Accounting Standards, it was decided that the assets held in the personal names of the share-holders, Directors and related parties of the ETA Group, would continue to vest in them. Therefore, as a result of de-consolidation, any existing beneficial interest, if at all of the shares, ceased to exist and the holders of the subject shares became complete legal owner of those shares. The de-consolidation was confirmed by the ETA Group in Dubai and all the share-holders of rival groups, i.e., Al Ghurair and the Indian family members admitted in various proceedings before the Indian Courts, including C.S.No.33 of 2018 before this Court, holding that the second defendant therein is a foreign entity governed by the laws of Dubai and the the Plaintiff therein is only a share-holder. Therefore, any dispute between them will have to be resolved only as per the Laws of Dubai. Further, as to whether the Mauritius company is holding the shares of the Indian company for the beneficial interest of the award-debtor, can be resolved only by the Courts at Mauritius. Further, it is submitted that, if there is any beneficial interest over the shares held by the appellants in O.S.A.No.156 and 160 of 2020 in the Indian companies, then suitable declaration has to be made in the records of the Registrar of Companies, as required under Section

89 of The Companies Act, 2013. In the instant case, no such declaration has been made. The award holder obtained an ex-parte award amounting to more than Rs.461,00,00,000 by way of two arbitral awards. Not even a single step was taken to enforce the foreign award against the award-debtor, had been filed in Dubai. However, the present Execution Proceedings is filed only against the appellants by alleging that they are holding the share of the award-debtor in beneficial capacity. It is submitted that the ETA group Company in Dubai is a Billion Dollar group. The financial statement of 2008 of the award-debtor filed as per the Dubai accounting standards, relied on by the award-holder itself, indicates that the award-debtor has assets over INR 23000 Crores. Despite this, the award holder did not file any Execution Proceedings in Dubai or seek disclosure etc., in Dubai, but has falsely stated in E.P.No.55 of 2019 filed before the learned Single Judge of this Court, that, it cannot trace the other assets of the award-debtor. The award-holder, without approaching the Court in Dubai, which is the natural jurisdiction of the award-debtor as well as its share-holders, filed O.P.No.416 of 2018 against the award-debtor and respondent Nos.6 and 7 in E.P.No.55 of 2019, the appellant(s) herein, seeking enforcement of foreign award under Part II of the Arbitration Act. In the said O.P., the award-debtor did not enter appearance. An ex-parte order was passed in O.P.No.416 of 2018, pursuant to the same, the Execution Petition had been filed before this Court. Thus, instead of proceeding against the award-debtor to recover the money awarded in foreign Award, the award-holder initiated the Execution Proceedings against the appellants who are merely third parties. As a matter of fact, after 2014, de-consolidation of ETA group in Dubai, the beneficial interest, if any of the appellant(s), had been nullified. In fact, the de-consolidation was confirmed and admitted in various proceedings in the Indian Courts, including C.S.No.33 of 2018 filed before this Court. The said C.S.No.33 of 2018 had been filed by the Dubai Group Al Guhrain, who are having disputes with the Indian group, namely Salaudin Buhari family to seek declaration of beneficial interest created in Dubai, as per Dubai Law. This Court dismissed Civil Suit No.33 of 2018 stating that this Court has no jurisdiction to entertain the suit and the beneficial ownership of shares declared as per Dubai Law, which was held by individual share-holders even though they are held in Indian companies. This Court clearly held that the Courts at Dubai alone are entitled to go into the beneficial interest of such shares and no Court in India will have jurisdiction to deal with the beneficial interest in accordance with laws of India. The decision of this Court in C.S.No.33 of 2018, was confirmed by the Supreme Court. The said decision of the Supreme Court squarely applies to the present

proceedings also. Even in the instant case, the award-holder, contending that the Mauritius Companies are holding the shares of the Indian companies for the beneficial interest of award-debtor, was persuading this Court to adjudicate the same as an issue, which cannot be done as per the dictum laid down by this Court in C.S.No.33 of 2018, which was confirmed in O.S.A. before this Court and the judgment rendered in O.S.A. was also confirmed by the Supreme Court.

18. As next fold of submission, it is submitted that the award holder failed to prove the allegation that the respondents 2 to 17 in the Execution Petition (filed before the learned Single Judge), are the garnishees. A feeble attempt was made to bring respondents 2 to 17 in the Execution Petition, within the ambit of garnishee by producing a stale balance sheet of 2008 of Dubai companies which was issued as per Dubai Accounting Standards as per Dubai Laws. After de-consolidation in the year 2014, relying upon the 2008 balance sheet is not proper. No tangible evidence was produced by the award-holder to prove the theory of beneficial interest. When respondents 2 to 17 in the Execution Petition/garnishee companies are denying the case of the appellant(s) that they are not holding the shares for the beneficial interest of the award-debtor, such disputed fact cannot be gone into in the Execution Proceedings, that too in the Court(s) in India. The learned Senior Counsel/learned counsel appearing for the appellants in O.S.A.No.156, 160 and 162 of 2020, further submitted that an independent third party right cannot be decided in the Execution Proceedings. In the present Execution Proceedings, the award-holder seeks to adjudicate the issue as to whether Dubai based award-debtor owes 100% beneficial interest over the Mauritius appellants-companies in O.S.A.Nos.156, 160 and 162 of 2020 and also as to whether the shares held by the said Mauritius companies in the Indian company, are the assets of the award-debtor. The Indian Law does not permit the Courts in India to decide independent right with regard to third parties in enforcement of Arbitral Award and Execution Proceedings. In this regard, the learned Senior Counsel appearing for the appellants in O.S.A.Nos.156, 160 and 162 of 2020 relied on a judgment of the Supreme Court reported in Fargo Freight Limited Vs. Commodities Exchange Corporation and others, reported in 2004 (7) SCC 203, wherein it has been held as follows:-

"23. The question, which really needs to be answered, is whether in these proceedings any order could have been passed against the third respondent directing them to make payment.

24. As stated above, the suit was a limited suit. The only prayer was that the letter of credit be kept

alive. In the suit, there are no averments or allegations against the third respondent. Once the letter of credit was kept alive, the suit became infructuous. The learned Judge was right in dismissing the suit as having become infructuous. In this suit, without an amendment and there being proper averments and prayers, the dispute between the appellant and the third respondent pertaining to discrepancy could not have been decided.

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 CPC. Order 21 Rule 46 CPC 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 in independent proceedings which should have been adopted by the appellants."

19. By relying upon the above judgment of the Supreme Court, it is submitted that this Court has no jurisdiction to entertain the Execution Petition. Further, it is submitted by the learned Senior Counsel/learned counsel appearing for appellants in O.S.A.Nos.156, 160 and 162 of 2020 that E.P.No.55 of 2019 is not maintainable and the shares sought to be attached, are not the assets of the award-debtor, nor the subject matter of the Arbitration Proceedings. Further, the foreign awards are to be executed only under Sections 47 and 48 of Arbitration and

Conciliation Act, 1996. The respondents 2 to 5 in the Execution Petition are not garnishees as per Section 5 of the Indian Trusts Act. A Trust can be created only by a registered document and beneficial interest shall be created by filing a declaration under Section 89 of the Companies Act. In this case, there is no such declaration and therefore, the Execution Petition is not maintainable. The question with regard to the holding of the shares for the beneficial interest, can be decided only in substantial proceedings and not in the Execution Proceedings. Therefore, the Award passed by the learned Arbitrator cannot be executed against the appellants in O.S.A.Nos.156, 160 and 162 of 2020, which are the third parties. In support of such contention, the learned Senior Counsel/learned counsel appearing for the appellants in O.S.A.Nos.156, 160 and 162 of 2020 relied on a judgment of the Bombay High Court in the case of Mitsui OSK Lines Limited Vs. Orient Ship Agency Pvt Ltd., reported in 2020 SCC Online Bombay 217, wherein it has been held as follows:-

"69. The Chamber Summons appears on the face of it to be an attempt on the part of the Award Holder to trace monies in the hands of the Additional Respondents, particularly, since the Additional Respondents were not parties to the arbitration proceedings and/or the foreign award. Such personal liability sought to be imposed upon the Additional Respondents can only be determined in a substantial suit being filed by the Award Holder against the Additional Respondents. By allowing the award holder to execute the foreign award against the additional respondents by making them personally liable, the Executing Court would indeed be proceeding behind and/or beyond the decree.

72. It is clear from this provision that the party against whom the foreign award is to be enforced, is required to be given an opportunity as to why the foreign award should not be enforced against it. The provision also contemplates a case where the enforcement of the foreign Award may be refused by the Court and which includes the subject matter of the difference is not capable of settlement by arbitration under the law of India or the enforcement of the award is contrary to the public policy of India. The additional respondents not being parties to the foreign arbitration proceedings and/or the foreign award, the Chamber summons appears to evade this provision. The additional respondents have not been given an opportunity to show cause as to why the foreign Award should not be enforced against them, as they were not

parties as envisaged under Section 48 of the said Act. The foreign Award was enforceable only against the Judgment Debtor who was the party to the arbitration agreement and against whom the foreign award was passed. The foreign award cannot be enforced against the additional respondents who are neither parties to the arbitration agreement nor to the award."

20. Further, the Execution Petition had been filed by the award-holder claiming assets of the appellants-companies (in O.S.A.Nos.156, 160 and 162 2020) in which the award-debtor became a share-holder, the share-holder has no right over the assets of the company. On this ground also, the Execution Petition is liable to be dismissed. In this regard, the learned Senior Counsel/learned counsel appearing for the appellants in O.S.A.Nos.156, 160 and 162 of 2020, relied on a judgment of the Supreme Court reported in the case of Bacha Guzdar Vs. Commissioner of Income Tax, reported in AIR 1955 SC 740, wherein, in Paragraph Nos.7 and 9, it was held as follows:-

"7. It was argued by Mr. Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue vs. Forrest (8 Tax cases, p.704 and 710) that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the interference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them.....

9. It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company

which stands as a separate juristic entity distinct from the shareholders.....

21. Further, the learned Senior Counsel/learned counsel appearing for the appellants in O.S.A.No.156, 160 and 162 of 2020, referred to 2008 Financial Statement of the award-debtor, in support of his claim of alleged beneficial interest held by the award-debtor in the shares of the appellants/Mauritius Companies in O.S.A.Nos.156. 160 and 162 of 2020. According to the learned Senior counsel/learned counsel in the said O.S.As., the very Financial Statement discloses assets worth about more than Rs.23,000 crores possessed by the award-debtor. After-de-consolidation, the entire position with regard to the shares have been changed and therefore, there is no use of relying upon the 2008 Accounts Statement. Viewed from any angle, according to the learned Senior Counsel/learned counsel appearing for the appellants in the said O.S.As., the Execution Petition is not maintainable and it has to be dismissed on the ground of jurisdiction as well as on merits.

22. Mr.Vijay Narayan, learned Senior Counsel appearing for the appellant-ETA Fort Operations and Rapid Transport System Ltd., in O.S.A. No. 161 of 2020 / respondent No.6 in the Execution Petition filed before the learned Single Judge of this Court, submitted that the ETA Group was established in the year 1970. The award-debtor is a Dubai based company and admittedly, held by ETA ASCON Holdings LLC, Dubai (owns 99.98% equity share capital) and Aj Majal Group Company LLC, Dubai (owns 0.02%-equity share capital). The award-debtor Company-ETA LLC (first respondent in E.P.No.55 of 2019 filed before the learned Single Judge) and its share holders are held and controlled by Al Guharair Group. In the year 2012, dispute arose between Al Guharair Group and Indian Group. Subsequently, in the year 2014, there was a de-consolidation of ETA Group, in which it has been agreed that the assets held by the shareholders, Directors, companies and related parties of ETA Group, would continue to vest in them. ETA Group based in Dubai is controlled and managed by Al Guharair Group, whereas entity based in India and Mauritius are to be owned and controlled by Indian Group. However, the relationship between the two groups, continues to be acrimonious and hence, the Al Ghurair Group initiated proceedings against the Indian based Group Companies, including respondent No.7 (in E.P.No.55 of 2019 filed before the learned Single Judge), i.e. ETA Engineering Private Limited, before the National Company Law Tribunal (NCLT), Chennai in T.C.P.No.191 of 2016, which disproves the contention of the award-holder that the appellant in O.S.A.No.161 of 2020 (ETA Fort Operations and Rapid Transport System Limited) and the

award-debtor-Company (Emirates Trading Agency-LLC) are common economic entities. These companies obtained a world wide order on 28.01.2016 against award-debtor-ETA LLC for a sum of Rs.118,8,01,381.90 for enforcement of the award. The said award is still in force. While so, on 05.04.2017, the award-holder-Pueblo Holdings Limited had obtained ex-parte award against the award-debtor/ETA LLC before an alleged arbitration seizure in London. That apart, on 11.01.2018, Al Guharair Group filed C.S.No.33 of 2018 before this Court against Indian Group. Thus, there are lots of disputes between the parties, inter-se, and in those circumstances, whether Mauritius companies are holding the shares of the Indian companies for the beneficial interest or not, can be decided only by recording evidence. Whereas, the learned Single Judge, ignoring these principles, had straight away passed an order of attachment of the shares. The learned Senior Counsel submitted that the award-holder had not produced any documents to prove the beneficial interest. The learned Single Judge also, without any basis, had concluded that the appellant-ETA Fort Operations and Rapid Transport System Limited and the respondents 2 to 17 (garnishee companies), with a dishonest intention, are evading the execution of two Foreign Awards, lawfully obtained by the award-holder-Pueblo Holdings Limited. In this regard, the learned Senior Counsel appearing for the appellant in O.S.A.No.161 of 2020 relied on a decision of the Bombay High Court in the case of Sparrow Technology Vs. Ravinder B.Kumar, reported in 2012 SCC Online Bombay 349 and contended that as per Order 21 Rule 46 of the Code of Civil Procedure Code (CPC), a garnishee order for attachment of a debt, which is not in the possession of the garnishee, cannot be sustained. When a garnishee disputes the liability, the Court may order that any issue or question necessary for determination of the liability, shall be tried as if it were an issue in a suit and upon determination of such issue, the Court shall make such order or orders deems fit. In such circumstances, taking note of the stand taken by the petitioner(s) in the said decision, in the reply filed to the application under Order 21 Rule 46 CPC to the effect that the petitioner(s) are not responsible or liable to pay the amount claimed by respondent No.1 in that decision, as according to them, they are not the judgment debtors in the execution proceedings. It was further held in that decision that the learned Judge was not justified to pass the impugned order therein without holding an inquiry as contemplated under Order 21 Rule 46-C of CPC.

23. According to the learned Senior Counsel appearing for the appellant-ETA Fort Operations and Rapid Transport Systems Ltd., in O.S.A.No.161 of 2020, the beneficial interest of the award-debtor in the shares of the appellant-Company, cannot be

gone into in the Execution Proceedings. In this context, he placed reliance on the decision of the Supreme Court in the case of Hari Shanker Jain Vs. Sonia Gandhi, reported in 2001 (8) SCC 233, wherein, it was held that the Foreign Law must be proved as fact before the Indian Courts, which the award-holder completely failed to do in this case. In paragraph No.23, 27 and 28 of the said judgment of the Supreme Court, it was held as follows:-

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of Court. Omission of a Single material facts leads to an incomplete cause of action and the statement of claim becomes bad.....

27. Italian law is a foreign law so far as the courts in India are concerned. Under Section 57 (1) of the Indian Evidence Act, 1872, the Court shall take judicial notice of, inter alia, all laws in force in the territory of India. foreign laws are not included therein. Sections 45 and 84 of the Evidence Act permit proof being tendered and opinion of experts being adduced in evidence in proof of a point of foreign law. Under order 6 Rule 2 of the Code of Civil Procedure, 1908, every pleading shall contain a statement in concise form of the material facts relied on by a party but not the evidence nor the law of which a court may take judicial notice. But the rule against pleading law is restricted to that law only of which a court is bound to take judicial notice.....

28. There is, thus, no manner of doubt that in the courts in India, a point of foreign law is a matter of fact and, therefore a plea based on a point of foreign law must satisfy the requirement of pleading a material fact in an election petition filed before the High Court. The two election petitions do not satisfy this requirement. The averments made in the two election petitions do not go beyond making bald

assertions. The pleadings do not give any indication of such Italian law on which are based the averments made in the election petitions-whether it is any statutory enactment or any other provision or principle having the force of law in Italy. During the course of hearing, we asked the two appellants if they could show us any book, authority or publication based whereon we could form an opinion, even prima facie, in support of the averments relating to Italian Law made in the election petitions. The two appellants regretted their inability to show us anything."

24. The learned Senior Counsel appearing for the appellant in O.S.A.No.161 of 2020 further submitted that the learned Single Judge failed to appreciate the scope of Order 21 Rule 46 CPC and had not considered Order 21 Rule 46-C of CPC. The Execution Proceedings under Order 21 Rule 46 of CPC are governed by Order 21 Rule 46-A CPC. The decree-holder invoked Order 21 Rule 46 CPC to attach the shares of the award-debtor-Company. Further, Order 21 Rule 46-C of CPC prescribes special procedures where the garnishee can dispute the liability/interest, qua, the debt/share to the garnishees. Such disputes are required by the said Order 21 Rule 46-C of CPC, to be tried as if it were an issue in a suit. After such trial is concluded, then this Court may pass orders on such dispute as it thinks fit. Order 21 Rule 46 H - CPC contemplates that "An order made under Rule 46-B, Rule 46-C or Rule 46-E shall be appealable as a decree." Therefore, according to the learned Senior Counsel appearing for the appellant in O.S.A.No.161 of 2020, the dispute raised in the present case with respect to the beneficial interest, had to be treated as a suit, and an adjudication thereon is appealable as a decree. Since the dispute between the garnishee and award-holder, is not a dispute between the parties to the award, none of the restrictions in Sections 47 or 48 of the Arbitration and Conciliation Act, would apply. Therefore, it is submitted that the scope of enquiry under Order 21 Rule 46-C - CPC, is akin to that of the suit, and cannot be tried on filing of an affidavit in support of the Execution Petition. In this regard, the learned Senior Counsel relied on a decision of this Court in the case of M.Saraswathi Achi Vs. Chitralaya Pictures (P) Ltd.,, reported in 1979 (92) LW 209, wherein it has been held as follows:-

"6. The question is whether by our Court adopting the language as it stands which does not quite fit in with the language deployed by the Parliament when it introduced Or.21, Rule 46-C, the procedure which is contemplated or intended under Or.21, Rule 46C in the main Code can be given the go-by by a bare enquiry on

affidavits or a decision rendered on evidence, which is not acceptable. The Madras amendment contemplates that the Court should decide the dispute, if the garnishee disputes his liability or its extent. The Parliament prescribes that where the garnishee disputes a liability, the Court may order that any issue or question necessary for the determination of the liability shall be tried as if it were an issue in a suit and upon the determination of such issue shall make such order or orders as it deems fit. The compendious manner in which our Court has amended Or.21, Rule 46C, C.P.C. cannot be misunderstood as if this Court wanted to depart from the real intention, purpose and meaning of Or.21, Rule 46C. Presumably, the amendment in our Court was made on the foot that making a decision in a dispute would obviously unfold within its compass a decision on the issue between the parties. 'Issue' as defined in Or.14, Rule 1 CPC arises when a material proposition of fact is affirmed by the one party and denied by the other. Even so, a decision on a disputed liability would arise under similar circumstances. In my view, therefore, the non-adoption of the language in toto by our Court while amending Or.21, Rule 46-C, does not mean that an issue need not be framed in such circumstances when the garnishee disputes his liability or its extent and that the Court is enabled automatically to decide without evidence the alleged dispute and more so to be satisfied with self-serving evidence."

25. By placing reliance on the aforesaid decision of this Court, the learned Senior Counsel appearing for the appellant in O.S.A.No.161 of 2020, contended that the learned Single Judge has passed the order in the Execution Petition merely on the basis of the affidavit filed by the award- holder without there being any evidence as to the determination of liability of the garnishee. In such view of the matter, the learned Senior Counsel prayed for setting aside the order passed by the learned Single Judge.

26. Countering the above submissions of the learned Senior Counsel/ learned counsel appearing for the appellants in all the O.S.As., Mr.Ratnako Banerjee, learned Senior Counsel appearing for the award-holder-PUEBLO Holdings Limited, in these appeals, submitted that the Execution Petition filed by the award-holder to execute the foreign awards, is very well maintainable before this Court. In this regard, the learned Senior Counsel invited the attention of this Court to the provisions of Sections 46 to

49 of Arbitration and Conciliation Act, 1996, as well as the judgment of the Supreme Court in the case of Brace Transport Corporation Monrovia, Bermuda Vs. Orient Middle East Lines Limited, Saudi Arabia and others, reported in 1995 Supp (2) SCC 280 and submitted that an international award or foreign award can be executed before a Court where the assets of the award-debtor are located.

27. The learned Senior Counsel appearing for the decree-holder proceeded to contend that a debt of Rs.7.07 Crores owed by the sixth respondent in E.P.No.55 of 2019, viz., ETA Port Operations and Rapid Transport System Limited, is a Company incorporated in India and having its registered office in Chennai. Similarly, the shares held directly in the name of award-debtor in companies of the respondents 8 to 10 in E.P.No.55 of 2019, are incorporated in India and having their registered office in Chennai. Similarly, the shares held by the first respondent in Execution Petition No.55 of 2019, i.e. ETA LLC/award-debtor, through its Mauritius subsidiaries, viz., respondents 2 to 5-companies (in E.P.No.55 of 2019), are incorporated in India and having their registered office in Chennai, which are respondents 7 and 11 to 14, 16 and 17 in E.P.No.55 of 2019. Further, the learned Senior Counsel appearing for the award-holder invited the attention of this Court to 2008 Financial Statement to show the beneficial interest in the Indian companies held by the award-debtor. Therefore, the 'situs' of the shares is in Chennai and hence, the Execution Petition is maintainable before this Court to attach shares and to sell the same to realise the amount due to the award holder from the award debtor.

28. With regard to the submission made by the learned Senior Counsel/learned counsel appearing for the appellants in all the O.S.As., that, since the award-debtor-company--ETA-LLC is incorporated under the Laws of Dubai/United Arab Emirates, this Court has no jurisdiction to entertain the Execution Petition itself, it is replied by the learned Senior Counsel appearing for the award-holder that, the issue of jurisdiction of the Court cannot be raised by ETA Mauritius subsidiaries, through which, ETA LLC/award-debtor holds shares in the ETA Indian companies registered in Chennai. Similarly, ETA Indian Companies, registered in Chennai also cannot raise the issue of jurisdiction, when the shares and debts sought to be attached are held by the award-debtor, either directly and indirectly in the garnishee Companies/respondents 2 to 17 in E.P.No.55 of 2019. Irrespective of the fact as to whether the companies are registered in Chennai or United Arab Emirates (UAE), this Court has jurisdiction to attach the shares, because the location of

the assets confers jurisdiction on this Court. In this regard, the learned Senior Counsel appearing for the award-holder relied on a decision of the Delhi High Court in the case of State Trading Corporation of India Limited Vs. Global Steel Holdings Limited, reported in 2015 SCC Online Delhi 7968 and submitted that the situs of the shares which are movables, may normally be the place where they can be effectively dealt with. In other words, the place where the register is required by law, is to be kept, determines the locality of the shares.

29. With regard to the judgment of the learned Single Judge of this Court, relied on by the learned Senior Counsel appearing for the appellant in O.S.A.No.157 of 2020, reported in 1968 (81) LW 634 (cited supra), it is replied by the learned Senior Counsel appearing for the award-holder that in the said Judgment in 1968 (81) LW 634, this Court had not considered the dictum laid down by the Supreme Court in R.Viswanathan's case mentioned supra, wherein it has been held that shares must be deemed to be situated where they could be effectively dealt with and that is where the head office of the Company is situated. Further, it is submitted that the judgment of the learned Single Judge cannot be relied upon before a Division Bench and therefore, no significance could be attached to the judgment relied on by the learned Senior Counsel appearing for the appellant in O.S.A.No.157 of 2020. In this regard, the learned Senior Counsel appearing for the award-holder relied on a decision of the Supreme Court in the case of Central Board of Dawoodi Bohra Community Vs. State of Maharashtra, reported in 2005 (2) SCC 673, wherein it has been held that judgment passed by a Court without considering the binding judgments of the Apex Court would be "per-incuriam"

30. With regard to the submissions of the learned Senior Counsel/learned counsel appearing for the appellants in all the O.S.As. that there was a de-consolidation and pursuant thereto, it was decided that the assets held in the personal names of share-holders, Directors and related parties of the ETA Group, would continue to vest in them, it is replied by the learned Senior Counsel appearing for the award-holder that the alleged de-consolidation, if carefully examined, reveals that it is without any material particular or proof. Even in these O.S.As., they have not produced any material or proof as required under Order 41 Rule 27 of CPC in support of their contention(s). If at all there is purported de-consolidated agreement, it should be within the exclusive knowledge of the ETA Mauritius Subsidiaries and ETA Indian companies. The appellants have not disclosed the de-consolidation agreement and consequently they are estopped from relying on it. If there is

no factual existence of the purported de-consolidation agreement, then it cannot be of any support to the appellants. On the other hand, all the ETA Mauritius subsidiaries viz., respondents 2 to 5 in the Execution Petition, have admitted that the award-debtor had 100% beneficial interest in all the ETA Mauritius subsidiaries and the supporting contents of the 2008 Financial Statements of the second respondent in E.P.No.55 of 2019, i.e. ETA LLC/award-debtor. Since the appellants herein and respondents 2 to 17 in E.P.No.55 of 2019 are seeking to dislodge the 2008 Financial Statements of the award-debtor--ETA LLC by relying upon the purported de-consolidation agreement relating to the dispute between ETA-LLC among the rival share-holders, the burden of proof is upon respondents 2 to 17 in the Execution Petition to establish the existence, validity and enforceability of such purported de-consolidation agreement. In this regard, the learned Senior Counsel appearing for the award-holder/deeree-holder relied upon Section 103 of the Indian Evidence Act, which provides that the burden of proof as to any particular fact lies on the person who wishes Court to believe its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Moreover, it is not the award-holder who is calling upon this Court to take cognisance of the de-consolidated agreement, but respondents 2 to 17 in E.P.No.55 of 2019, who are relying on the purported de-consolidated agreement to displace factual assertions made in the 2008 Financial Statements, which was signed by Arif Buhary Rahman. In these circumstances, if the Indian Courts would not have jurisdiction to examine issues in relation to purported de-consolidation of the ETA Group, which was denied by the award-debtor, then it has to be concluded that the appellants have not discharged their burden of proof to dislodge the factual assertions made on the basis of the 2008 Financial Statement. Therefore, no significance could be attached to the so-called de-consolidated statement relied on by the appellants. In fact, the share-holding pattern as it existed prior to 2008, as admitted, has present share-holding by Mauritius and Indian entities, which have filed affidavit(s) in the Execution Petition in E.P.No.55 of 2019. The 2014 Financial Statement of ETA Star Holding LLC, as pointed out by the learned Senior Counsel/learned counsel appearing for the respondents 2 to 17 in the Execution Petition, does not, in any manner, evidence the de-consolidation. Moreover, ETA Star Holding LLC, whose draft Finance Statement was relied upon, is also not a party to the present execution proceedings. In any event, these are the subject matter of evidence before the Executing Court.

31. With regard to the submission of the appellants that in C.S.No.33 of 2018, it has been observed that the shares held by

Mauritius Company(ies) in the Indian Companies for the beneficial interest of the award-debtor, cannot be decided by the Indian Courts, it is replied by the learned Senior Counsel appearing for the award-holder that the award-debtor is not a party to the proceedings in the suit and it will not bind them. Moreover, the decree-holder is denying the de-consolidation agreement, as it is not a bona-fide and genuine transaction. The plaintiff(s) and defendant(s) in C.S.No.33 of 2018 acted in unison in being economical with the truth, distorting facts and creating a subterfuge/charade that the purported de-consolidation agreement entered into by and between the Buhary-Salahuddin Indian Family and the Al-Guharair Emirati family, was a legitimate transaction. Thus, they have jointly acted in unison to mislead this Court in C.S.No.33 of 2018 and relied on an incomplete document titled 'draft consolidated Financial Statement' dated 31.12.2016 of ETA Star Holdings LLC as evidence of the purported de-consolidated statement, which is recorded in paragraphs 3.5 to 3.7 of the judgment. Moreover, in C.S.No.33 of 2018, dispute between the share-holders of the ETA Group is with regard to the ownership of assets of the ETA Group and the judgments rendered in such proceedings. The judgment in C.S.No.33 of 2018 had been passed in the context of an application for revocation of leave taken under Clause 12 of the Letters Patent by Mr.Al Easa Al Guharair and members of the Salahuddin-Buhari Family. Probably, the Courts in Dubai were thought to be a better forum, inter alia, because members of the Al Guhrair Emirati Family challenged the distribution of assets pursuant to the purported de-consolidated agreement entered into in Dubai between the share-holders. It was held by the Supreme Court/this Court in the connected proceedings that, the disputes between the share-holders of a foreign company, registered in Dubai, should not be permitted to be agitated in India. In both these judgments, the issue was as to whether a derivative action could be filed by the share-holders of a company incorporated in Dubai being denied its right to the shares of an Indian company. The observations made in the said judgment(s) cannot be made applicable to the Execution Proceedings, because a foreign award could be executed where the assets of the award-debtor, are situated, which, in this case, is at Chennai. Therefore, the submissions made by the learned Senior Counsel appearing for the appellants in the present O.S.As., based on C.S. No.33 of 2018, are liable to be rejected.

32. With regard to the submissions made by the learned Senior Counsel/learned counsel appearing for the appellants in all the O.S.As., relying on Section 89 of the Companies Act, it is replied by the learned Senior Counsel appearing for the award-holder that Section 89 cannot be a bar for Execution

Proceedings. A reading of Section 89(8) of the Companies Act shows that the bar on enforcement under such section is only 'qua' the beneficial owner or any person claiming through him and it does not apply to a decree-holder, who proceeds against the assets beneficially owned by, or held on behalf of the award-debtor. The learned Senior Counsel appearing for the decree-holder made detailed submissions in this regard and submitted that the bar under Section 89(8) of the Companies Act, is, in respect of a person, who is mandated to make a declaration under Section 89 of the Companies Act, but does not comply with such requirements and fails to make such a declaration. Therefore, if the obligation of declaration prescribed under Section 89 of the Companies Act, is not complied with, then there is a bar on the enforcement of rights "qua" such shares by the person who failed to make such mandatory declaration or comply with such obligation. In this case, ETA Mauritius subsidiaries are in breach of Section 89(1) of the Companies Act and therefore, the award-holder has no obligation under Section 89 of the Companies Act or such breach by ETA Mauritius Subsidiaries, will not render the decree-holder seeking remedies under law. The learned Senior Counsel appearing for the decree-holder also referred to Section 89(8) of the Companies Act and submitted that the words "claiming through him" employed therein indicate that a right derived by an assignee or beneficiary of an Estate or a legal representative of the beneficial holder or a successor-in-interest, will also come within the purview of Section 89(8) of the Companies Act, and therefore, the Execution Petition against the Mauritius Subsidiaries is maintainable before this Court.

33. Further, the Execution Proceedings filed under Order 21 Rule 46 read with Section 60 CPC, entitled the decree-holder to proceed against the assets of the award-debtor, held either directly or for beneficial interest of the award-debtor. Therefore the non-declaration of the beneficial interest is not a bar to proceed against the respondents 2 to 17 (garnishees) in this case.

34. With regard to the submission of the learned Senior Counsel/learned counsel appearing for the appellants in the present O.S.As. that injunction was granted by Mauritius Court is for freezing the accounts of the award-debtor(s) world-wide, it is submitted by the learned Senior Counsel appearing for the award-holder that the Execution Proceedings in Mauritius are different from the subject matter in the present Execution Proceedings. He also contended that an application seeking injunction is different from that of an order of attachment sought for in the present Execution Proceedings. Even the order

dated 30.04.2018 passed by the Mauritius Court, is not an order of attachment passed by the Mauritius Courts in Saisie-arret (Execution) proceedings, but on the contrary, it is a "Mareva Injunction", which includes an injunction against the shares held by the Mauritius Subsidiaries in India.

35. In effect, it is submitted by the learned Senior Counsel appearing for the decree-holder that the decree-holder is only seeking to execute the decree passed against the assets of the award-debtor, which are held in the name of third parties, namely respondents 2 to 17 (garnishees). In such circumstances, the learned Senior Counsel prayed for dismissal of the present O.S.As.

36. Heard both sides and perused the materials available on record. Though very many contentions have been raised by the learned Senior Counsel/learned counsel on either side, the questions required for determination in these appeals are as follows:-

(i) Whether this Court has jurisdiction to entertain Execution Petition No.55 of 2019 filed to attach and sell the debts and shares mentioned in the schedule appended to the petition, for executing the foreign awards dated 09.04.2017 and 06.08.2017, when the companies of the award-debtor and decree-holder were incorporated in foreign countries?

(ii) Whether the Mauritius subsidiary companies are holding the shares in the Indian companies for the beneficial interest of the award debtor, or not, can be decided by this Court?

37. Before traversing any further, we are of the view that the questions which we have framed for determination, are inter-related to each other and hence, they are answered hereunder in common. The questions framed hereinabove relates to jurisdiction of this Court to entertain the Execution Petition. Therefore, the decision with respect to jurisdiction of this Court to entertain the Execution Petition will be sufficient to dispose these appeals.

38. It is the submission of the learned Senior Counsel/learned counsel appearing for the appellants, in unison, that the decree-holder is a wholly owned subsidiary of Navios, a company which is registered in New York and incorporated in

Marshall Island. The appellants are neither subsidiaries, nor they are holding the assets of the award-debtor for their beneficial interest. The respondents 2 to 17 (garnishees) in E.P.No.55 of 2019, are no way connected with the award proceedings before the Arbitrator, as the arbitration proceedings took place at Dubai. Therefore, according to the learned Senior Counsel/learned counsel appearing for the appellants, the learned Single Judge is not right in entertaining the Execution Petition by holding that this Court has jurisdiction to decide the Execution Petition. In other words, it is the stand of the learned Senior Counsel/learned counsel appearing for the appellants that share certificates are held by the companies in Mauritius and therefore, they cannot be sought to be attached before this Court to recover the award amount. They have also relied on the decision in Viswanathan case reported in AIR 1963 SC 1, mentioned supra.

39. But, it is the reply of the learned Senior Counsel appearing for the decree-holder that though the award-debtor--ETA LLC is incorporated in UAE, it, directly and through its subsidiaries, holds beneficial interest in the shares through the respondents 2 to 17 and therefore, the Execution Proceedings is maintainable before this Court. It is submitted that the 'situs' of the shares are within the jurisdiction of this Court and therefore, the Execution Petition is maintainable before this Court.

40. In view of the above submissions made on either side, we proceed to analyse the maintainability of the Execution Petition before this Court. As per the statement of the award-holder, the assets sought to be attached are in the form of share certificates and since the 'situs' of the shares is within the jurisdiction of this Court, the foreign awards can be executed, though the companies are incorporated in the Foreign Country (ies). In support of his contentions, the learned Senior Counsel appearing for the award-holder placed heavy reliance on the decision of the Supreme Court in the case of Brace Transport Corporation Monrovia, Bermuda Vs. Orient Middle East Lines Limited, Saudi Arabia and others, reported in 1995 Supp (2) SCC 280, which reads as follows:-

"13. Before we deal with the facts of the case before us, a statement of some broad principles is necessary. The New York Convention speaks of 'recognition and enforcement' of an award. An award may be recognised, without being enforced, but if it is enforced, then it is necessarily recognised. Recognition alone may be asked for as a shield against re-agitation of issues with which the award

deals. Where a court is asked to enforce an award, it must recognise not only the legal effect of the award but must use legal sanctions to ensure that it is carried out. In the Law and Practice of International Commercial Arbitration by Redfern and Hunter (1986 Edn.,) it is said (at pages 337 and 338);

A party seeking to enforce an award in an international commercial arbitration may have a choice of country in which to do so; as it is sometimes expressed, the party may be able to go forum shopping. This depends upon the location of the assets of the losing party. Since the purpose of enforcement proceedings is to try to ensure compliance with an award by the legal attachment or seizure of the defending party's assets. Legal proceedings of some kind are necessary to obtain title to the assets seized or their proceeds of sale. These legal proceedings must be taken in the State or States in which the property or other assets of the losing party are located."

41. For the same proposition, reliance was also made by the learned Senior Counsel appearing for the award-holder, to the decision of the Delhi High Court in the case of State Trading Corporation of India Limited, mentioned supra. Useful reference can be made to the said judgment, which reads as follows:-

"28. While shares in a company are intangible property, share certificates by themselves are not. They are only the evidence of shareholding. Under Section 84 of the Companies Act, 1956, a certificate under the common seal of the company, specifying any shares held by any member, shall be prima facie evidence of the title of the member to such shares. In R. Viswanathan vs. R.S. Abdul Wajid, AIR 1963 SC 1 the Supreme Court explained that the situs of the shares of a company was its registered office. The Supreme Court referred to the decisions in Brassard vs. Smith (1925) A.C. 372 and in Erie Beach Co., v. Attorney General for Ontario (1930) A.C. 1961 wherein it was held that "the situs of the shares which are movables may normally be the place where they can be effectively dealt with". In other words, the place where the register is required by law to be kept determines the locality of the shares. In C.A.

Pacific Finance Limited., Re., (2000) 1 BCLC 494 it was held that "It is well established that shares are simply bundles of intangible rights against the company which had issued them. Share certificates are not valuable property in themselves - they are just evidence of the true property, which are the proportionate interests of the share holders in the owners of the company" The decisions in Motorola Inc., vs. Modi Welvest 116 (2005) DLT 524 and Nokia Solutions and Networks v. Union of India (decision dated 27th January 2015 in W.P. (Civil) No. 7011 of 2012) are to the same effect.

29. Therefore, merely because the DH has in its possession in Delhi the share certificates issued by GSPI to evidence the holding of its shares by GSHI cannot confer jurisdiction on this Court to pass orders in respect of those shares. Further, GSPI is incorporated in Philippines. In terms of the law explained in the above decisions the sites of GSPI's shares are in Philippines. GSPI's shares cannot be 'effectively dealt with' here. Likewise, the mere fact that the corporate or branch office of the companies whose shares held by the JDs are within the jurisdiction of this Court (while their registered offices are outside Delhi) would not confer jurisdiction on this Court to pass orders for attachment and sale of those shares. The situs of those shares are at the registered offices of the concerned companies."

42. The dictum laid down in the aforesaid decisions clearly show that the award-holder can resort to 'forum-shopping' for enforcement of a decree where the assets are located. The choice is on the award-holder to scout for or resort to reconnaissance for the assets of the award debtor on the strength of the award and to file the Execution Petition wherever they could be traced. In the case of the properties in the form of share certificates, the jurisdiction to file the Execution Petition largely depends on the "situs" of those shares within the jurisdiction of the Registrar of Companies, where shares are registered. Therefore, the "location" of the asset confers "jurisdiction" on the Executing Court. An award-holder can execute a decree, wherever the assets are located and it cannot be restricted only to a particular country. The decree-holder is entitled to "forum-shopping", unlike in other cases and file the Execution Petition, wherever the asset of the award-debtor is located. This is more so to ensure that a

person, who suffered a Judgment, may evade the execution of a decree by citing the jurisdiction of a particular court where his or her assets are located outside a Country. That is the reason why in executing an award or decree, "forum- shopping" is always permissible to facilitate the award-holder to enjoy the fruits of the decree. If the award-holder is confined to execute a Decree within the jurisdiction of the Court which passed the decree and when the assets of the award-debtor, are located outside the jurisdiction of such Court, he will be prejudiced, inasmuch as he could not realise the fruits of the decree passed in his favour.

43. Yet another submission of the learned Senior Counsel appearing for the award-debtor is that, even assuming for a moment that if the version of the award-holder is accepted and that the award-debtor is having shares in Indian company, it can be attached where the share certificates are located. In the instant case, even as per the award-holder, the share certificates are located in Mauritius. Under such circumstances, this Court has no jurisdiction to attach those shares certificates to realise the decree. But, we are of the opinion that the share certificates held in physical form, will not confer jurisdiction, but the "situs" of the share certificates alone will confer jurisdiction. Wherever the share certificate is located, the transfer of shares can be effected only in the place where it was issued by the competent Registrar of companies. Even if the award-holder seeks to execute the decree at Mauritius by attaching the share certificates, the award-holder cannot succeed, inasmuch as the share certificates can be dealt with, transferred or encashed from the Registrar of Companies who has issued it. In the present case, the share certificates have been issued by the Registrar of Companies at Chennai and it is those shares which are sought to be attached by the award-holder to realise the fruits of the decree. It is well settled that, the "situs" of the shares, which are movables, may normally be the place where they can be effectively dealt with. If that is not the criteria, a share certificate may be moved from one place to another, purportedly, to deprive the award-holder to realise the fruits of the decree. Wherever the share certificates are located in the physical form, the "situs" of the shares or transfer of such shares can be determined only based on the place where it was registered or issued. In this regard, useful reference can be made to the decision in *Erie Beach Co., Vs. Attorney General for Ontario*, reported in AIR 1930 PC 10, relied on by the learned Senior Counsel appearing for the award-holder to contend that when transfer of shares in a company must be effected by a change in the register, the place where the register is required by law to

be kept, determines the locality of the shares. For the same proposition, he also relied on a decision in the case of Brassard Vs. Smith, reported in 1925 AC 371 @ 376.

44. Mr.M.S.Krishnan, learned Senior Counsel appearing for the appellant in O.S.A.No.157 of 2020 relied on Viswanathan case (cited supra) and contended that the jurisdiction of the Court is to be determined based on the shares where the Court has jurisdiction and the shares script which are before the Court. On a perusal of the said judgment in Viswanathan case, it is seen that the dispute was between the rival claimant(s). Here the dispute is not between the rival claimant(s). On the other hand, during the process of executing the award obtained in its favour, the decree-holder seeks to realise the fruits of the decree by attaching the shares which has its "situs" within the jurisdiction of this Court. In the very same judgment in Viswanathan case, it has been clearly stated that the "situs" of the shares must be deemed to be situated where they could be effectively dealt with. Therefore, the judgment in Viswanathan case, only supports the submissions of the learned Senior Counsel appearing for the decree-holder.

45. It is the case of the award-holder (decree-holder) that Mauritius subsidiary companies are holding the Indian companies for the beneficial interest of the award-debtor. According to the appellants, even in the year 2014, a de-consolidation agreement came into force, as per which it was decided that the assets held in the personal names of share holders, Directors and related parties of the ETA Group, would continue to vest in them. Furthermore, whether the appellants are holding the assets for the beneficial interest of the award-debtor, cannot be decided by the Indian Courts, inasmuch as the de-consolidation agreement was executed in United Arab Emirates.

46. To strengthen the above submission, the judgment rendered in C.S.No.33 of 2018, was heavily relied on by the appellants. In the said judgment, it is seen that the dispute was between Al Ghurair and Star Health and Allied Insurance Company Limited. As against the judgment rendered in O.S.A. filed against C.S.No.33 of 2018, Civil Appeal Nos.9786-9799 of 2018 were filed before the Supreme Court. The dispute in that case was with regard to the share-holders of the ETA Group towards ownership of assets of the ETA Group. Admittedly, in C.S.No.33 of 2018, two foreign companies incorporated outside India, have claimed ownership of shares in the Indian groups. The judgment in C.S.No.33 of 2018 was passed in the context of revocation of leave granted under Clause 12 of the Letters Patent taken by Mr.Al Essa Al Guharair and members of the

Salahuddin-Buhari family. In that case, it was felt that the Courts in Dubai will have the jurisdiction to adjudicate the dispute, more particularly in the context of the members of the Al Guharair Emirati Family who have challenged the distribution of assets pursuant to the purported de-consolidation agreement entered at Dubai between the share holders. It is in those circumstances, it was held by the Supreme Court that the disputes between share-holders of a foreign company, having Registered Offices at Dubai, cannot be permitted to be agitated in India. Therefore, the decision rendered in C.S.No.33 of 2018, which culminated in Civil Appeal Nos.9786 to 9799 of 2018, cannot be relevant for the purpose of determination of this Execution Petition. Here, the shares held by the third parties purportedly for the beneficial interest of the award-debtor, are sought to be attached to realise the fruits of decree, especially when those shares are having the "situs" within the jurisdiction of this Court. Moreover the plaint in C.S.No.33 of 2018 is a derivative action on behalf of the Dubai company. In Paragraph No.38 of the plaint in C.S.No.33 of 2008, it was averred as follows:-

"38. Various financial statements of Defendant No. 2 and 11 and the representation letters provided by the shareholders of Defendant No.2 and 11 inter alia , the plaintiffs and Defendant Nos. 3, 4 and 7 to the auditors KPMG details, acknowledges and confirms investments held in the personal names of certain shareholders and related parties of Defendant No.2 for the beneficial interest of ETA Group. As the investment has been made and/or squared off in favour of Defendant No.2 the beneficial interest is admittedly that of Defendant No.2...."

47. Therefore, we hold that the de-consolidation agreement, relied on by the appellants, will not lend support to their case.

48. It is the submission of the learned Senior Counsel appearing for the appellants that the Executing Court cannot lift the "Corporate Veil" to find out as to whether the respondents 2 to 17 (garnishees) are separate legal entities. Consequently, the assets held by the respondents 2 to 17 cannot be attached during the Execution Proceedings. Such a contention cannot be accepted, in the light of the statutory provisions contained under Section 60 of the CPC. Section 60 of the CPC specifically empowers the Executing Court to lift the "Corporate Veil" and to adjudicate that the property(ies) sought to be attached in the Execution Proceedings, which are held by a person for the beneficial interest of the other.

Section 60 of the CPC deals with the specifications of the properties, which are liable for attachment and sale in the Execution Proceedings, and the relevant portion of which, reads as follows:-

"Section 60: Property liable to attachment and sale in execution of decree: (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf.....":

49. Thus, it is evident that the property(ies) held by the award-debtor in his own name or in the name of the other, who holds for a beneficial interest, can be subjected to attachment as per Section 60 of the CPC. During such an exercise, the Courts can very well lift the "Corporate Veil" in order to ensure that a decree lawfully obtained is executed to realise the fruits of the decree. Otherwise, an award-debtor can successfully prevent the "execution" of a decree and drag on the proceeding one way or the other. The object with which a "Corporate Veil" has to be pierced, is, to ensure that there must be control of the company unlawfully with impropriety, that is, use or misuse of the company by them, as a device or face to conceal their wrong doing. These observations were made by the Supreme Court in the decision reported in 2014 (9) SCC 407 (Balwant Rai Saluja Vs. Air India Limited), which was relied on by the Apex Court in the case of Arcelormittal Vs. Satish Kumar Gupta, reported in 2019 (2) SCC 1. Thus, it is clear that the drift in the modern jurisprudence is to lift the "Corporate Veil" to see as to who is behind the actual corporate facade and who is in control.

50. It is needless to mention that the appellants in this case have denied and disputed the averments of the award-holder that they are not holding the shares of the award-debtor for its beneficial interest. However, it is the claim of the appellants that the shares are independently held in their name. The award-

holder contends that the shares sought to be attached, are held by the garnishees, for the beneficial interest of the award-debtor. The appellants contend that there is no evidence on record on that aspect and that the garnishees are not parties to the award proceedings between the award-holder and the award-debtor and have been sued only in the Execution Proceedings. From the beginning, it is the plea of the garnishees that, what is sought to be attached, in the form of shares, are independently held by them and it has got nothing to do with the asset or debt of the award-debtor. During the course of arguments, it is also contended on behalf of the appellants that, they have no opportunity to dislodge the claim of the award-holder. It is also their case that, in order to disprove such a plea, they must be given an opportunity to let in evidence. It is also their plea that the award-holder's contention that the garnishees are holding the shares for and on behalf of the award-debtor, for his beneficial interest, cannot be accepted as a "gospel truth" and the award-holder must be directed to prove the same in a manner known to law. We find force in such submission of the learned Senior Counsel/learned counsel appearing for the appellants.

51. It is the submission of the learned Senior Counsel/learned counsel appearing for the appellants that beneficial interest has not been declared as per Section 89 of The Companies Act and therefore, the question of beneficial interest cannot be gone into by this Court. If really the respondents 3 to 5 in E.P.No.55 of 2019/Mauritius Companies holds the assets/shares for the beneficial interest in the Indian companies, it could have been declared as per Section 89 of The Companies Act. There is no such declaration obtained in this case and therefore, the question of beneficial interest cannot be gone into by this Court. In view of this submission, it is necessary to look into Section 89 of the Companies Act, which reads as follows:-

Section 89. Declaration in respect of beneficial interest in any share.--(1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the

nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Where any change occurs in the beneficial interest in such shares, the person referred to in subsection (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by

any person claiming through him. (9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

52. Section 89 (8) of the Companies Act indicates that the bar on enforcement under Section 89 is only against the beneficial owner or any person claiming through him, but it will not apply to an award-holder who proceeds against the assets beneficially owned by a person for and on behalf of the award-debtor. Further, it is evident that, if at all, Section 89(8) will operate as a bar for the "Execution Proceedings" in this case, only if such bar operates beyond the scope of the "persons" referred to in Section 89 (1) of the Companies Act.

53. It is yet another submission of the learned Senior Counsel appearing for the appellants in O.S.A.No.161 of 2020 that there is a world- wide freezing order granted against the award-debtor in the Court of Mauritius. But it is the submission of the learned Senior Counsel appearing for the award-holder that the order dated 30.04.2018 passed by the Mauritius Court, is not an "order of attachment" and it is a "Mareva Injunction". It is his contention that an order of injunction is different from an attachment. Furthermore, the Mareva Injunction was obtained on 30.04.2018 subsequent to the order dated 23.04.2018 passed by this Court in O.A.No.398 of 2018 under Section 9 of the Arbitration and Conciliation Act, 1996 and there has been full disclosure of the order passed by the Mauritius Court in the Original Application.

54. In the light of the above rival submissions, we are of the view that the World Wide Freezing Order, even if any, issued against the award-debtor, will not be a bar for the award-holder to file the Execution Petition before this Court to execute the award obtained by them. This is more so that in the light of the submission of the learned Senior Counsel appearing for the award-debtor. We could only infer that the order passed by the Mauritius Court is only in the nature of an injunction and it will not in any manner have a bearing on the assets of the award-debtor, which are in the hands of the garnishee(s) within the jurisdiction of this Court. Therefore, we do not find any force in such submission.

55. In the light of what is stated above, we are of the considered view that the Execution Petition is very well maintainable before this Court to execute a foreign award

obtained by the award holder. Consequently, the award-holder is entitled to file the Execution Petition before the learned Single Judge of this Court to attach the shares of the award-debtor in the form of shares held by the respondents 2 to 17-garnishees. To sum up, we hold that:

(i) A Foreign Award can be executed in a country or countries where the assets are located;

(ii) The injunction granted by the Mauritius Courts in respect of the shares held by the Mauritius Companies in India, will not bind the present Execution Proceedings.

(iii) An Execution Petition can be filed within the jurisdiction of the Court where the "situs" of the shares are located;

(iv) The question of beneficial interest in holding the shares, can also be gone into by the Executing Court and the "Corporate veil" can also be lifted in the Execution Proceedings;

(v) The appellants are disputing that they do not have any shares of the award-debtor. The disputed questions between the parties "inter-se" can only be decided by the Executing Court and not by this Court. The garnishees/respondents 2 to 17 as well as the award-debtor, must be given an opportunity to prove their defence that they are not holding the shares or assets for the beneficial interest of the award-debtor. Similarly, the award-debtor must be given an opportunity to prove as to whether the respondents 2 to 17 (garnishees) are having a share in the Indian companies, since they are disputing the said fact. For this purpose, evidence has to be let in, during which documentary evidence can be marked. The Executing Court can go into the question of beneficial interest of the assets held by the respondents 2 to 17-garnishees, afford opportunity to all the parties and then pass orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment. The interim order granted by this Court in all these O.S.As. shall continue till the disposal of the Execution Petition.

56. In the result, we confirm the order dated 03.06.2020 passed by the learned Single Judge in E.P.No.55 of 2019. All these O.S.As. fail and they are accordingly dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-I)

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To

The Sub-Assistant Registrar,
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High Court, Madras.

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O.S.A. No. 156, 157, 160,
161 and 162 of 2020

AD(CO)
SP(17/04/2021)



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