



Arb.O.P.(Com.Div) No.195 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2023

Pronounced on : 16.10.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.195 of 2022

and

A.Nos.60 of 2023 and 1733 and 1734 of 2022

LSS OCEAN TRANSPORT DMCC,
A Company incorporated under the appropriate
Laws of the United Arab Emirates,
Having its Registered Office at Unit #2708,
Jumeirah Business Centre 5-Cluster W - Dubai,
United Arab Emirates,
Rep. by its Power of Attorney Holder
Mr.Ram Jay Narayan,
A6, Kumaravijayam, 99, Royapettah High Road,
Mylapore, Chennai - 600 004. ... Petitioner

Vs.

1.K.I. (International) Limited,
A Company incorporated under the Companies Act, 1956,
Having its registered Office at # 664,
T.H.Road, Tondiarpet, Chennai - 600 081.

2.Goyal Ispat Private Limited,
A Company incorporated under the Companies Act, 1956,
Having its registered Office at # 664,
T.H.Road, Tondiarpet, Chennai - 600 081. ... Respondents



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Prayer: Arbitration Original Petition (Commercial Division) filed under Sections 47 - 49 of the Arbitration and Conciliation Act, 1996 to:

a) declare that the award dated 26.03.2021 and corrected award dated 17.05.2021 be a decree of this Court;

b) direct the respondent No.1 and respondent No.2 to jointly and severally pay the petitioner a sum of Rs.2,28,91,856.20/- equivalent to USD 3,06,655.81/- (Being USD 294,816.67 towards principal plus interest of USD 11,839.14/- @ 4.5% per annum compounded at three monthly rests from 26.03.2021 till payment / realization);

c) direct the respondent No.1 and respondent No.2 to jointly and severally pay the petitioner a sum of Rs.67,66,770.10/- equivalent to USD 90,646.62/- (Being legal expenses in the Madras High Court of USD 87,147/- plus interest of USD 3,499.62 @ 4.5% per annum compounded at three monthly rests from 26.03.2021 till payment / realization);

d) direct the respondent No.1 and respondent No.2 to jointly and severally pay the petitioner a sum of Rs.32,91,147.96/- equivalent to arbitration cost of GBP 32,588.85/- (Being GBP 31,350 towards principal plus interest of GBP 1,238.85 @ 4.5% per annum compounded at three monthly rests from 01.04.2021 till payment / realization)

e) direct the respondent No.1 and respondent No.2 to pay the petitioner the costs of this petition.

For petitioner : Mr.P.Giridharan



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Mr.H.Siddarth

For respondents : Mr.B.Arvind Srevatsa
for R2

Mr.Ramaswamy Meyyappan
Mr.Pranav V. Shankar
for R1

ORDER

Arb.O.P.(Com.Div.)No.195 of 2022 has been filed by the petitioner under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 (in short 'the Act'), seeking enforcement of a foreign arbitral award dated 26.03.2021, which was corrected under a corrective award dated 17.05.2021.

2. The first respondent had chartered a vessel from the petitioner, who is the disponent owner, under a Voyage Charterparty dated 22.11.2018. According to the petitioner, demurrage is payable by the first respondent to the petitioner as per the terms and conditions of the Charterparty dated 22.11.2018. According to the petitioner, the first respondent took 33.5972 days in discharging the cargo and hence, demurrage is payable by them for 27.0727 days. There arose disputes between the petitioner and the first respondent with regard to the demurrage payable by the first respondent. In accordance with the



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arbitration clause contained in the Voyage Charterparty dated 22.11.2018, the petitioner had referred the dispute to arbitration in London and the first respondent had also participated in the arbitration at London. The arbitral tribunal passed a foreign arbitral award dated 26.03.2021 in favour of the petitioner, who is the claimant in the arbitration against the respondent, by granting the following reliefs:-

(a) The first respondent was directed to pay the petitioner a sum of USD 2,94,816.67 together with interest at 4.5% per annum and pro rata compounded at three-monthly rests from the date of the award till the date of payment.

(b) The first respondent was also directed to pay the petitioner the costs of the arbitration, which costs, unless agreed, shall be assessed by the tribunal in an award of assessed costs, for which purpose, the tribunal reserved its jurisdiction. The first respondent was additionally directed to pay the interest calculated at the rate of 4.5% per annum compounded with three-monthly rests running from the date of the award till the payment is made.

(c) The first respondent was also directed to pay the costs of the arbitral tribunal in the sum of GBP 31,350 and if, in the first instance, the petitioner has paid all or any part thereof, they shall be entitled to



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immediate reimbursement from the respondents of the sum so paid together with interest thereon at the rate of 4.5% per annum compounded at three-monthly rests from the date of such payment till the date of reimbursement.

3. The foreign arbitral award dated 26.03.2021 referred to supra was thereafter corrected for certain typographical errors and missed claims, and thereby a corrective award dated 17.05.2021 was passed by the arbitral tribunal.

4. The petitioner had sent demand notices to the first respondent in terms of the foreign arbitral award dated 26.03.2021 and the corrective award dated 17.05.2021. Since the payment was not made in terms of the foreign arbitral award, the petitioner has filed this petition under Sections 47 to 49 of the Act against the respondents jointly and severally for recovery of the money mentioned in the arbitral awards. According to the petitioner, the second respondent is a group company of the first respondent and therefore, they are entitled to enforce the foreign arbitral award against the second respondent as well by piercing the corporate veil. It is also the case of the petitioner that the foreign arbitral award has



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now attained finality as the same has not been challenged by the respondents before the English Courts.

5. The petitioner also claims that the respondents cannot question the enforcement of the foreign award under Section 48 of the Act, as there is no violation of any of the grounds mentioned in Section 48 of the Act by the arbitral tribunal.

6. The petitioner has also filed application Nos.1733 and 1734 of 2022 in Arb.O.P(Com.Div.) No.195 of 2022. In Application No.1733 of 2022, the petitioner has sought for a direction to the respondents to furnish security for Rs.3,29,49,774.3/-, failing which, order attachment of the bank account of the respondents. In Application No.1734 of 2022, the petitioner has sought for a direction to the respondents to disclose their assets and bank accounts balance maintained therein.

7. Application No.60 of 2023 has been filed by the petitioner seeking to permit the petitioner/applicant to amend the prayer in Arb.O.P(Com.Div.) No.195 of 2022.

8. According to the first respondent, the foreign arbitral award is



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not legally enforceable for the following reasons:-

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(a) The award passed by the arbitral tribunal is contrary to public policy of India and is in contravention with the fundamental policy of Indian law.

(b) The findings rendered in the award are contrary to Section 52 of the Contract Act. The arbitral tribunal has failed to take note of Force Majeure circumstances, as, according to the first respondent, the performance of the Charterparty contract has been rendered impossible due to a cyclonic storm at the discharge port.

(c) The vessel arrived at the port of discharge i.e., Krishnapatnam port, and on 30.01.2019, tendered Notice of Readiness (NOR) at 0100 hrs. After proceeding to berth at the Krishnapatnam Port and discharging 1,63,114/- MT of coal, she eventually left Krishnapatnam Port on 05.03.2019. The terms of the Charterparty imposed an obligation on the first respondent to ensure that 25,000 MT of cargo is discharged per day after the Vessel tendered NOR at the port of discharge. Accordingly, for a cargo of 1,63,114 MT, the same would have to be discharged with 6.5246 days and thereafter, for the delay period, demurrage would be payable at the rate of USD 14,000 per day in terms of the Charterparty contract.



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(d) Krishnapatnam Port Company Limited, vide its letter dated

16.12.2018, announced about the Force Majeure Condition caused by severe cyclonic storm 'Phethai' and declared "Force Majeure" with effect from 16.12.2018 and thereby, shipping movements were also suspended till further notice. Thereafter, Krishnapatnam Port, vide its another letter dated 18.02.2019, announced the lifting of Force Majeure Condition.

(e) The first respondent, by its email dated 07.01.2019, put the petitioner on notice through their agent 'Saigalseatrade' about the Force Majeure Condition and intimated that the same has to be taken into consideration as waiting period. According to the first respondent, there was no objection received from the petitioner and therefore, it was understood that the petitioner was aware of the Force Majeure situation. According to the first respondent, the vessel was permitted to berth only on 20.02.2019 by the Port Authorities. According to the first respondent, the laytime until 20th February 18:19 hrs. cannot be added to the first respondent's account owing to Force Majeure condition.

(f) The first respondent was compelled to execute the First Deferment Agreement and Second Deferment Agreement dated 13.03.2019 and 12.04.2019 respectively with the petitioner. According to the first respondent, since the petitioner withheld the entire cargo, the



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first respondent had to enter into the said agreements at the terms dictated by the petitioner and they were asked to provide post-dated cheques and other security against the will of the first respondent. According to the first respondent, the agreements dated 13.03.2019 and 12.04.2019 were entered into on account of economic duress.

(g) According to the first respondent, clauses in the Deferment Agreement make it clear that there are two parts to the agreement; (i) Load Port Demurrage and Undisputed Discharge Port Demurrage; and (ii) Disputed Discharge Port Demurrage. According to the first respondent, as per the terms of the First Deferment Agreement and Second Deferment Agreement, on payment of INR 70,00,000/- on 25.04.2019 by the first respondent, the petitioner released 5,000 MT of the cargo; on 28.06.2019, although INR 1,40,00,000/- was paid, no cargo was released; and on 10.07.2019, INR 7,50,000/- was paid. To that effect, the arbitral tribunal has also rendered findings in the arbitral award that undisputed demurrage to the tune of USD 83,617.27 has been paid by the first respondent.

(h) According to the first respondent, the findings of the arbitral tribunal in relation to duress and withholding of cargo and the consequential security provided by the first respondent are patently



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illegal. According to the first respondent, all payments have been made by the first respondent to the petitioner and no dues are payable towards load port demurrage and discharge port demurrage.

(i) According to the first respondent, they have already paid the petitioner the undisputed demurrage and since the petitioner continued to retain possession of 10,000 MT of cargo, this Court, vide its order dated 17.07.2019 passed in O.A.No.4708 of 2019, had directed the petitioner to release 7,500 MT of cargo. According to the first respondent, the finding of the arbitral tribunal that “the force majeure event made the performance more difficult for the respondents to perform their sale is insufficient to meet the test” is in contravention of fundamental policy of Indian Law. According to them, the concept of fundamental policy of Indian Law includes (a) compliance of the statutes and judicial precedence; (b) need for judicial approach; (3) natural justice compliance; and (4) standards of reasonableness.

(j) According to the first respondent, the findings of the arbitral tribunal that force majeure could have been overcome by the first respondent; that the force majeure only made the performance difficult and not impossible; and that consequently fixing the liability on the first respondent, are contrary to settled law and not a reasonable finding



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considering the facts. According to the first respondent, in addition to any contractual remedies, rights and recourses, the rights of any contracting party under Section 52 of the Indian Contract Act always remains. It is also their case that in relation to the facts of the instant case, there is an additional protection under the contract itself in terms of Clause 60. According to them, Section 32 of the Contract Act protects the first respondent from any liability in this regard.

9. The learned counsel for the first respondent reiterated the aforesaid contentions of the first respondent in his submissions.

10. The second respondent contends as follows:-

(a) They are not party to the Charterparty dated 22.11.2018 and the foreign arbitral award has also not been passed against them. Hence, this petition is not maintainable, as the foreign arbitral award cannot be enforced against them.

(b) The second respondent is also not a party to Application No.4708 of 2019. In the order dated 17.07.2019 passed in Application No.4708 of 2019, this Court has also recorded the submissions made by the petitioner and the first respondent that the second respondent has handed over a cheque in favour of Taurus Shipping Private Limited as per



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Clause 7 of the Agreement entered into between the petitioner and the first respondent. The question of jointly and severally as against the second respondent does not arise, since the second respondent is not a party to the arbitration proceedings held between the petitioner and the first respondent.

(c) This petition is not maintainable as against the second respondent for the following reasons:-

(i) Section 46 of the Act makes it clear that the foreign arbitral award is binding only on the persons against whom the arbitral award has been passed, not against third parties to the arbitration.

(ii) The petitioner had initiated the arbitration proceedings as against the first respondent and even at the stage of arbitration, the petitioner had not taken any steps to make any claim against the second respondent. The arbitral award does not relate to the second respondent in any manner whatsoever and therefore, the foreign arbitral award cannot be enforced against the second respondent.

(iii) Only for the first time in this petition, the plea of group companies and intermingling of funds between the first respondent and the second respondent has been raised by the petitioner. There is no whisper about the claim of group companies and any claim against the



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second respondent even in the claim statement filed by the petitioner before the arbitral tribunal.

(iv) The second respondent is an independent legal entity incorporated under the Companies Act, 1956 and cannot be legally made liable for the breach of contract alleged to have been committed by the first respondent, which has culminated in the passing of the foreign arbitral award.

(v) A false and invented plea of group companies and intermingling of funds between the first respondent and the second respondent has been taken by the petitioner only at the stage of enforcement and execution of the arbitral award, which is not legally maintainable.

(vi) The present petition is an abuse of process of law, as the second respondent is no way liable for the payment of the arbitral award to the petitioner. The petitioner is attempting to include the second respondent at the stage of enforcement and execution by raising a new and false claim and the present petition is nothing but an abuse of process of law.

(d) Application No.60 of 2023 has been filed after a period of 10



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months from the date of filing of main OP seeking to amend the prayer in

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(e) The relief cannot be changed especially when the relief of piercing the corporate veil is sought against a non-party to the arbitration in a petition filed under Sections 47 to 49 of the Act. Application No.60 of 2023 is nothing but an abuse of process of law and filed by way of an afterthought. The issues to be answered in the main OP for the enforcement of the foreign arbitral award and the ingredients requiring this Court to pierce the corporate veil are entirely different and independent; and the issue of piercing the corporate veil raised by the petitioner at this stage of the proceedings as against a non-party to the arbitration proceedings is not maintainable.

11. The learned counsel for the second respondent reiterated the aforesaid contentions of the second respondent in his submissions. In support of his submissions, the learned counsel for the second respondent



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relied upon the following authorities:-

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(a) Oil and Natural Gas Corporation Limited Vs. Discovery Enterprises Private Limited [(2022) 8 SCC 42]; and

(b) Padma Sundara Rao Vs. State of Tamil Nadu [(2002) 3 SCC 533].

Discussion:

12. The issues that arise for consideration in this petition filed, seeking enforcement of a foreign award as per the provisions of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 are as follows:

a) Whether the foreign arbitral award dated 26.03.2021 is enforceable against the first respondent;

b) Whether this Court is having the power to modify the foreign arbitral award in a petition filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 by passing a decree as per the provisions of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 against the second respondent by lifting the corporate veil of the first respondent, even though the second respondent was not a party to the arbitration and the award has also not been passed against them.



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13. The petitioner contends that both the respondents are group companies and they belong to a single economic entity and therefore, the petitioner is entitled to lift the corporate veil of the first respondent on account of its impropriety and to make the second respondent also jointly and severally liable to pay the award amount. The petitioner contends that they have satisfied the legal requirements for lifting the corporate veil of the first respondent to make the second respondent also jointly and severally liable to pay the award amount and therefore, they claim that they are entitled to enforce the arbitral award as per the provisions of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 against both the respondents jointly and severally.

14. The following are the undisputed facts:

a) The foreign arbitral award has been passed in favour of the petitioner only as against the first respondent;

b) The second respondent is not a party to the arbitration agreement between the petitioner and the first respondent and they were also not a party to the arbitration, which has culminated in the passing of the foreign arbitral award dated 26.03.2021 passed against the first respondent;



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c) In the arbitration, the petitioner has never raised a plea that the second respondent is a group company of the first respondent and that both the respondents are a single economic entity;

d) Only for the first time, in this application filed under Sections 47 to 49 of the Arbitration and Conciliation Act, seeking to convert the arbitral award into a decree as per the provisions of Section 49 of the Arbitration and Conciliation Act, the petitioner is attempting to lift the corporate veil of the first respondent to make the second respondent also jointly and severally liable to pay the award amount;

e) When this petition was filed at the first instance, the petitioner never pleaded lifting of the corporate veil of the first respondent. Only through an amendment application, the petitioner is seeking amendment of the pleadings to incorporate the legal requirements for lifting the corporate veil.

15. A foreign award as per Section 44 of the Arbitration and Conciliation Act, 1996 means an arbitral award which relates to differences relating to the matters considered as commercial under the law in force in India.



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16. An arbitral award is not defined under the Arbitration and Conciliation Act, 1996. But, from the provisions of the Arbitration and Conciliation Act, 1996, the essentials of an arbitral award can be culled out. For an arbitral award to be valid, it must contain the following essential elements:

- a) The award shall be in writing;
- b) The award shall be signed by all the members of the arbitral tribunal;
- c) The award shall state the reasoning on which it is based;
- d) Date and place of arbitration should be mentioned on the award.

17. The arbitral award is the arbitral tribunal's judgment on the dispute referred to it and shall include an interim arbitral award.

18. Section 44 of the Arbitration and Conciliation Act, 1996, defines a foreign award and it reads as follows:

"44. Definition.—*In this Chapter, unless the context otherwise requires, “foreign award” means an arbitral award on differences between persons*



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arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960— (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies."

19. To fall within the definition of a foreign award, the following ingredients have to be satisfied as per Section 44 of the Arbitration and Conciliation Act, 1996, which deals with New York Convention Awards which is the subject matter of consideration in this petition:

a) An arbitral award should have been passed on differences between the persons arising out of legal relationships whether contractual or not;



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b) There must be an arbitration agreement between the parties to the dispute in writing.

20. In the case on hand, the petitioner did not raise any dispute in the arbitration against the second respondent. Either before or during the arbitration, the petitioner did not claim that they are having legal relationship with the second respondent. There is also no arbitration agreement in writing between the petitioner and the second respondent with regard to the subject matter of the dispute which has culminated in the passing of the arbitral award in favour of the petitioner against the first respondent. Part - II of the Arbitration and Conciliation Act, 1996, dealing with enforcement of foreign awards will bind only as against parties against whom an arbitral award has been passed.

21. As seen from Section 46 of the Arbitration and Conciliation Act, 1996, a foreign arbitral award is binding and enforceable on the persons as between whom it was made and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India. Therefore, the foreign arbitral award will be binding only as against the parties to the arbitration.



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22. Section 46 of the Arbitration and Conciliation Act, 1996, reads as follows:

"46. When foreign award binding.—Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award."

23. In the case on hand, the second respondent is not a party to the arbitration and they have also denied their liability to the petitioner. The petitioner contends that the first and second respondents are group companies and both the companies are a single economic entity and therefore, piercing of corporate veil to make the second respondent jointly



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and severally liable is legally permissible. The petitioner also contends that even in an application filed under Sections 47 to 49 of the Arbitration and Conciliation Act, seeking for conversion of the arbitral award into a decree as per Section 49 of the Arbitration and Conciliation Act, the petitioner is entitled to pierce the corporation veil of the first respondent which according to the petitioner is a group company of the second respondent to make the second respondent also jointly and severally liable for payment of the dues determined under the foreign arbitral award. However, the contention of the petitioner is disputed by both the respondents. Infact, the second respondent has categorically denied in its counter affidavit that the first and second respondents are group companies belonging to the same economic entity. They have also disclosed their bank accounts pursuant to the directions given by this Court to show that there is no impropriety or fraud committed by them which is a pre-requisite for lifting of the corporate veil. The second respondent also categorically contends that the nature of their business is different from that of the first respondent whose main object was to do chartering business.

24. Enforcement of a foreign arbitral award may be refused by the



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Court at the request of the party against whom it is invoked if the party satisfies any of the requirements as prescribed under Section 48 of the Arbitration and Conciliation Act, 1996.

25. Section 48 of the Arbitration and Conciliation Act, 1996, reads as follows:

"48. Conditions for enforcement of foreign awards.—(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—

(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) the party against whom the award is invoked was not given proper notice of the



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appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on



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the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or



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(iii) it is in conflict with the most basic

notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security. "

26. In order to make the Court refuse enforcement of a foreign award, a party against whom the foreign award is sought to be enforced will have to satisfy any of the following requirements:

a) Any of the parties to the arbitration were in some incapacity or



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the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication thereon, under the law of the country where the award was made;

b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; in other words, principles of natural justice were violated by the arbitral tribunal;

c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

d) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place;

e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the Country in which, or under the law of which, that award has been made;

f) The enforcement of an arbitral award may also be refused if the Court finds that the subject matter of the difference is not capable of settlement by way of arbitration in the law of India;



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g) The enforcement of the award will be contrary to the public policy of India. The award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81 of the Arbitration and Conciliation Act, 1996. The award is in conflict with public policy if it is in contravention with the fundamental policy of the Indian law. The award is also in conflict with the public policy if it is in conflict with the most basic notion of morality or justice;

h) The test as to whether there is contravention with the fundamental policy of the Indian law shall not entail a review on the merits of the dispute.

27. In the case on hand, the foreign arbitral award is sought to be enforced by the petitioner not only against the first respondent, against whom an arbitral award has been passed, but, also against the second respondent who is not a party to the arbitration but the petitioner claims that the first and second respondent are a single economic entity and on the ground of alleged impropriety on the part of the first respondent, the petitioner seeks to lift the corporate veil of the first respondent to make the second respondent also liable to pay the award amount.



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28. One of the grounds on which a party can make this Court refuse to enforce the foreign arbitral award is that the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case. Admittedly, the second respondent was not given notice by the arbitral tribunal in the arbitration and they were also not a party to the arbitration. The second respondent could not have also been able to present their defence in the arbitration as they were not parties to the arbitration.

29. The second respondent has also categorically denied that the second respondent and the first respondent are a single economic entity and that both of them are jointly and severally liable to pay the sums of money as determined by the foreign arbitral tribunal in its arbitral award passed against the first respondent. There is no undisputed evidence in the form of admission of liability on the part of the second respondent to pay the demurrage amount as per the charter party entered into between the petitioner and the first respondent which has culminated in the passing of the arbitral award against the first respondent. Admittedly, the



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petitioner never pleaded in its claim statement filed before the Arbitral Tribunal that the second respondent is a group company of the first respondent and both the respondents are a single economic entity which enables the petitioner to lift the corporate veil of the first respondent to make the second respondent also jointly and severally liable along with the first respondent to pay the demurrage amount.

30. Section 48 (1) (b) of the Arbitration and Conciliation Act, 1996, makes it mandatory for the arbitral tribunal to adhere to the principles of natural justice by issuing proper notice of the appointment of the arbitrator and the arbitral proceedings to enable the party against whom the arbitral claim has been made to present its defence before the arbitration. The foreign arbitral award which is sought to be enforced by the petitioner as per the provisions of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, has been passed only as against the first respondent and not against the second respondent. The second respondent was also not put on notice in the arbitral proceedings. Even in this petition filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, the petitioner at the first instance, though had sought for enforcement of the foreign arbitral award, against both the first



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and second respondents, jointly and severally, they never sought to pierce the corporate veil of the first respondent to make the second respondent also jointly and severally liable to pay the award amount. Only at a later date, during the pendency of this petition, the petitioner has pleaded that both the respondents are a single economic entity and on that ground has sought to pierce the corporate veil of the first respondent in order to make the second respondent also jointly and severally liable to pay the award amount.

31. Necessarily, in any arbitration which includes international commercial arbitration, principles of natural justice has to be adhered to by the arbitral tribunal. In the instant case, the first respondent is the only party against whom a claim has been made in the arbitration. The nature of business carried on by the first respondent is different from the nature of business carried on by the second respondent. Though the petitioner may contend that both the companies are managed by family members and some of the Directors are also common, that would not suffice to make the second respondent also jointly and severally liable along with the first respondent to pay the sums of money as determined in the arbitral award. Further, the petitioner can seek enforcement of the



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foreign arbitral award as per the provisions of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, against the second respondent only if there is an arbitral award passed against the second respondent as well. Admittedly, no arbitral award has been passed against the second respondent and the arbitral award which is sought to be enforced has been passed only against the first respondent.

32. Enforcement of arbitral award can also be refused if the Court finds that the enforcement of the award will be contrary to the public policy of India. Certainly, adherence of principles of natural justice before passing of the arbitral award is a public policy necessity. In the instant case, the second respondent was never a party to the arbitration and the arbitral award has also not been passed against them and they have also categorically denied that they along with the first respondent are a single economic entity. There is also no documentary evidence placed on record by the petitioner to prove that the second respondent has acknowledged its liability to pay the sums of money determined by the arbitral tribunal in its award passed against the first respondent alone. If, without an arbitral award having been passed against the second respondent, this Court permits enforcement of the foreign award against the second



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respondent who is not a party to the arbitration and was not put on notice about the arbitration, it will amount to contravention of the public policy of India. Adherence to the principles of natural justice is a *Sine-qua-non* for any dispute adjudication.

33. Execution of a foreign arbitral award is different from enforcement as per the provisions of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996. Only after the foreign arbitral award is converted into a decree after satisfying all the statutory requirements, the foreign arbitral award is converted to a decree as per Section 49 of the Arbitration and Conciliation Act, 1996. In the case on hand, the arbitral award cannot be converted into a decree against the second respondent since the second respondent was not a party to the arbitration and the arbitral award was also not passed against them. They have also categorically denied that they and the first respondent are a single economic entity and that they have committed an act of impropriety to deprive the petitioner of recovering its dues as per the arbitral award. An enforcement petition under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, cannot be ordered against the second respondent as the provisions of the Part - II of the Arbitration and Conciliation Act,



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1996 makes it clear that enforcement petitions are maintainable only against the parties against whom an arbitral award has been passed.

34. For the foregoing reasons, it is clear that this petition filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, seeking enforcement of the foreign arbitral award against the second respondent is not maintainable in view of the fact that the second respondent is not a party to the arbitration and no award has been passed against them.

35. The Courts apply the piercing of corporate veil principle as a tool to bring out the offenders who they feel are using the Company as a shield for its illegal actions. In the case on hand, the petitioner has produced;

- (a) Screen shot of website of Kamachi group, indicating the second respondent as a group company of the first respondent;
- (b) Company Master Data of respondent Nos.1 and 2 available in the Ministry of Corporate Affairs for the purpose of proving the close connection between the first and second respondents. The petitioner also claims that both the respondent companies are run by family members.



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According to the petitioner, the aforesaid documents will prove that both the respondents are a single economic entity. No documentary evidence is also placed on record to establish impropriety and fraud played by any of the respondents to hoodwink the petitioner from recovering its dues as per the arbitral award.

36. It is now well settled as laid down by various decisions of the High Courts as well as the Honourable Supreme Court, including the decisions relied upon by the learned counsel for the petitioners, the law around lifting of corporate veil has been crystallized around the following principles:

- a) Ownership and control of a company are not enough to justify piercing the corporate veil;
- b) The court cannot pierce the corporate veil, even in the absence of third party interests in the company, merely because it is thought to be necessary in the interests of justice;
- c) The corporate veil can be pierced only if there is some impropriety;
- d) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;



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e) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is misuse of the company by them as a device or facade to conceal their wrongdoing;

f) The company may be a "facade" even though it was not originally incorporated with any deceptive intent provided that it is being used for the purpose of the deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

g) There must be cogent evidence of the fact that the company has been found with the guilty of fraud by siphoning off of funds to frustrate the execution of a decree.

37. The circumstances for lifting the corporate veil to bring the second respondent also jointly and severally liable to pay the sums of money as determined under the arbitral award has not been satisfied by the petitioner. As seen from the documentary evidence produced by the petitioner in this petition, it is not visible that the first respondent is a smoke screen intentionally established for commission of offence and for escaping the liability of such acts under the disguise of a "Company".



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Though, in the website it may disclose that the first and second respondents belong to the very same Kamachi Group, that alone is not sufficient for the purpose of conclusively proving that both the companies belong to a single economic entity and they have been incorporated only for the purpose of hoodwinking parties who are having business relationship with them. Lifting of corporate veil is a drastic measure and can be entertained by Courts only when there is undisputed evidence to prove that both the respondents have been deliberately incorporated to hoodwink the parties who are entering into business relationships with them. The documents placed on record by the petitioner is not sufficient for the petitioner to pierce the corporate veil of the first respondent and make the second respondent also liable to pay the sums of money as determined under the arbitral award.

38. The doctrine of separate legal entity is considered one of the fundamental principles of Company Law. This principle was long back recognized in the famous case of Solomon Vs. A.Solomon and Co. Ltd. in the words of Mac Naughten, "The company is at law a different person all together from the subscribers to the memorandum ". The doctrine of piercing the corporate veil stands as an exception to the principle that the



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company as a legal entity is separate and distinct from its shareholders with its own legal rights and obligations. In practice, the liability to choose between the application of the rule in Solomon's case and jurisdiction to pierce the corporate veil leaves the Court to a considerable degree of discretion and enables them to do justice and to decide individual cases in accordance with equitable consideration. But, it should be emphasized that the rule in Solomon's case is still the principle and the instance of piercing the veil is an exception. The need for piercing the corporate veil depends upon the facts and circumstances of each case.

39. In the case on hand, the petitioner relies upon a cheque issued in favour of Taurus Shipping Pvt. Ltd. for a sum of Rs.2,06,78,000/- vide cheque No.233455 drawn on Union Bank of India, Washermanpet Branch, Chennai towards payment of the outstanding dues of the petitioner. According to the petitioner, the second respondent is a group company of the first respondent which is also recorded in the order of this Court dated 17.07.2019 passed in A.No.4708 of 2019 filed under Section 9 of the Arbitration and Conciliation Act, 1996.

40. The order dated 17.07.2019 passed in A.No.4708 of 2019 which records that the second respondent is one of the group companies



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of the first respondent, reads as follows:-

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"5. After arguments and deliberations, today the parties have come up with certain proposal, as per which, out of the balance 5,000 MT being held by the applicant, 2,500 MT to be sold and the sale proceeds could be adjusted. Accordingly, the respondent has today handed over an undated cheque bearing No.233455 drawn on Union Bank of India, Washermanpet Branch, Chennai - 600 021 for a sum of Rs.2,06,78,000/- (Rupees Two Crores Six Lakhs and Seventy Eight Thousand Only) in the name of "Taurus Shipping Pvt. Limited", as per clause 7 of the agreement issued by Goyal Ispat Private Limited, which is said to be one of the group companies of the respondent i.e., K.I.(International) Limited to the learned counsel for the applicant, which is also hereby acknowledged."



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41. It is to be noticed that the second respondent was also not a party to A.No.4708 of 2019 though they issued a cheque to the petitioner for a sum of Rs.2,06,78,000/- which is recorded in the order dated 17.07.2019 passed by this Court in A.No.4708 of 2019. Further, the cheque was also not issued to the petitioner, but was issued in favour of Taurus Shipping Pvt. Ltd. and the same was issued in the name of Taurus Shipping Private Limited as per clause No.7 of the agreement issued by Goyal Ispat Pvt. Ltd.. Though the petitioner may contend that the cheque was issued in favour of the Taurus Shipping Pvt. Ltd. only on the instructions of the petitioner, the same is not reflected in the order dated 17.07.2019 passed in A.No.4708 of 2019 .

42. There are several triable issues involved which require adjudication before coming to the conclusion as to whether the petitioner is entitled for piercing the corporate veil of the first respondent for making the second respondent also liable to pay the sums of money as determined under the arbitral award or not. The second respondent is admittedly a non signatory to the charter party agreement which is the subject matter of the dispute and has also not been arrayed as a party



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respondent in the arbitration. The second respondent's representative has also not been examined as a witness in the arbitration between the petitioner and the first respondent. Though the second respondent may have issued a cheque towards discharge of the dues payable to the petitioner by the first respondent, that cannot be a ground for piercing the corporate veil of the first respondent to make the second respondent also liable to pay the sums of money, determined under the arbitral award. Further, the arbitral awards were passed on 26.03.2021 and 17.05.2021 subsequent to the date of issuance of cheque by the second respondent, which is recorded by this Court in its order dated 17.07.2019 passed in A.No.4708 of 2019 . If the petitioner was serious in making the second respondent also liable, on the allegation that it is a group company of the first respondent and being a single economic entity along with the first respondent, they would have certainly impleaded the second respondent in the arbitration. But for the reasons best known to them, the petitioner chose not to implead the second respondent as a party respondent in the arbitration. Only as an afterthought, in this petition filed under Section 47 to 49 of the Arbitration and Conciliation Act, 1996, the petitioner has chosen to make the second respondent as also a party liable to pay the award amount. Infact, when Arb.O.P.(Com.Div.) No.195 of 2022 was



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filed at the first instance, the petitioner did not make any pleading in its petition with regard to piercing of corporate veil, but only by way of an amendment application that too after a gap of considerable amount of time, the petitioner as an afterthought sought for amendment of pleadings to incorporate the pleadings legally required for lifting of the corporate veil.

43. As observed earlier, there are several triable issues which require adjudication before coming to the conclusion as to whether the corporate veil of the first respondent can be pierced to make the second respondent also liable to pay the sums of money as determined in the arbitral award. If this petition seeking for enforcement of the award against the second respondent is allowed as prayed for, it would amount to violation of principles of natural justice as without any conclusive or undisputed evidence, piercing the corporate veil would have been granted by this Court which is not the object of the said doctrine which will have to be applied only as an exception to the general Rule that any company is a separate legal entity. It is also to be seen that an application under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, is a proceeding in continuation of the arbitration. An enforcement petition



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under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, will not enable this Court to modify the arbitral award. The only limited scrutiny this Court has, while deciding an application filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, is only to see whether the award (a) is in conflict with public policy of India or (b) is in violation of fundamental principles of India or (c) the award has been passed without adhering to the principles of natural justice.

44. While deciding an application under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, this Court does not have the power to modify the arbitral award. If the entire prayer sought for by the petitioner in this petition is granted, it would amount to modification of the arbitral award, as this Court will pass a decree not only against the first respondent but also against the second respondent despite the fact that the second respondent is not a party to the arbitration. The intention of the legislature as seen from Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, is only to see whether the arbitral tribunal has followed the rule of Law before passing the arbitral award and nothing more. Judicial intervention, inter alia, does not empower this Court to modify the arbitral awards. If the foreign award is enforced against the



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second respondent as well and a decree is passed accordingly as per the provisions of Section 49 of the Arbitration and Conciliation Act, 1996, it will amount to modification of the arbitral award. The Arbitration and Conciliation Act, 1996, is modelled on UNCITRAL Model Law on International Commercial Arbitration, 1995, which stipulates minimal scope for judicial intervention. The decision of the Hon'ble Supreme Court in *NHAI Vs. M.Hakeem and another, reported in [2021 (9) SCC 1]*, while dealing with the domestic arbitral awards has made it clear that there is no room for discretion of the Court to vary or change the award, even if it thinks that the same is necessary for the ends of justice. Even though the aforesaid decision of the Hon'ble Supreme Court was dealing with a domestic arbitral award and the powers of the Court under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, which falls under part-I, the ratio laid down in the said decision also applies to foreign arbitral awards also, as the proposition has been laid down only by applying the UNCITRAL Model Law on International Commercial Arbitration, which provides for a minimal scope for judicial intervention.

45. For the foregoing reasons, this Court is of the considered view that this petition under Sections 47 to 49 of the Arbitration and



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Conciliation Act, 1996, against the second respondent is not maintainable.

46. In so far as the enforcement of the foreign award against the first respondent as per the provisions of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 is concerned, this Court is of the considered view that the foreign award is legally enforceable against the first respondent for the following reasons:

a) The first respondent was a party to the arbitration. They participated in the arbitration and principles of natural justice was also adhered to by the arbitral tribunal as seen from the arbitral award;

b) Admittedly, there was a delay on the part of the first respondent to discharge the cargo at the discharge port, which is Krishnapatnam Port. The vessel which carried the cargo tendered its notice of readiness on 30.01.2019. But the first respondent took 33.5972 days in discharging the cargo and as per the terms and conditions of the voyage charterparty, demurrage is payable by them for 27.0727 days. The number of days delay referred to supra is also not disputed by the first respondent. The only contention raised by the first respondent for claiming exemption from the payment of the demurrage is "Force Majeure" circumstances.



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According to the first respondent, Krishnapatnam Port Company

Limited, vide its letter dated 16.12.2018, announced about the "Force Majeure" condition caused by severe cyclonic storm 'Phethai' and declared "Force Majeure" with effect from 16.12.2018 and therefore, shipping movements were also suspended till further notice. According to them, only on 18.02.2019, Krishnapatnam Port lifted the "Force Majeure" condition. According to the first respondent, only due to the "Force Majeure" condition, they were unable to discharge the cargo on time as per the voyage charterparty agreement dated 22.11.2018. However, as seen from the arbitral award, it is an admitted fact that when the notice of readiness was tendered by the vessel on 30.01.2019, the first respondent was not ready to discharge the cargo as they were not in possession of the original Bills of Lading and other necessary documents due to the dispute with the sellers of the cargo and for want of buyers. The arbitral tribunal in the award has also given a clear finding that "Force Majeure" conditions has not been proved by the first respondent and that the first respondent was also not ready to discharge the cargo on 30.01.2019, when the vessel tendered its notice of readiness at 01:00 hrs on that date due to a dispute with the sellers of the cargo. Only based on the oral and documentary evidence available on record, a categorical



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finding has been given by the arbitral tribunal that the first respondent is liable to pay the demurrage amount as determined under the arbitral award to the petitioner for the delay caused by them in discharging the cargo at the port of Krishnapatinam;

47. The arbitral tribunal in its award has given detailed reasons for rejecting the "Force Majeure" condition pleaded by the first respondent in the arbitration which is extracted hereunder:

"8.3 It is not disputed that both the freight, and the undisputed loadport demurrage was paid substantially late. Similarly, in relation to the undisputed discharge port demurrage. Both parties agree that this is because the Respondents had difficulties with their finance, although the cause of this is unclear. The Respondents say that this was because of the declaration of "force majeure" at the intended discharge port. The Claimants contend that this is too remote and not covered by the force majeure exemption in Clause 60 of the



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Charterparty and, in any event, as force majeure was declared before the vessel even arrived at the loadport, it was open to the Respondents to order the vessel to another discharge port under the terms of the Charterparty. Further, Clause 60 required the Respondents to give "prompt written notice (within 14 days) to the other party indicating the detail and nature of the force majeure situation". Force Majeure was declared at Krishnapatnam Port on 16th December 2018. At that time the vessel was still on its way to the loadport and she arrived there about a week later on 23rd December 2018. The first reference to force majeure from the Respondents to the Claimants was on 7th January 2019, eight days after the expiry of the contractual notice period.

8.4 On the question of discharge port demurrage, the vessel served the NOR at 1300 on 30th January 2019 local time. No objection was



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made to that notice at that time. Indeed, the NOR was not called into question until the Respondents' Closing Submissions. The Tribunal accepts the Claimants' submission that it was the Respondents' obligation to produce the necessary documentation to the Port Authority for entry. This they failed to do until 20th February 2019. We find and hold that the Respondents' failure to do so in a timely manner did not interrupt the running of time for the purposes of calculating laytime.

8.5 The Tribunal accepts the unrefuted evidence that the Respondents had not only difficulties in obtaining finance but also in finding suitable buyers. No other explanation has been put forward for the splitting and/or switching of the bills of lading and the continuing delays in discharging on the part of the Respondents during February 2019. In particular, the Respondents did not have the necessary documentation available



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when force majeure was lifted for vessels of this type and with her draft on 18th February 2019. On the following day, the Respondents requested a discharge of only a partial cargo of 100,000 mt out of a total cargo of 163,114 mt. "

48. The arbitral tribunal has also calculated the demurrage claim based on the terms of the charterparty which is extracted hereunder:

"In these circumstances the demurrage claim for 27.0310 days running from 30th January 2019 to 5th March 2019 (being 33.5556 days in total less 6.5246 days being time allowed) when discharge was completed succeeds and is upheld at a daily rate of US\$14,000pro rata. Accordingly, demurrage at the discharge port succeeds in the sum of US\$378,433.94 against which the Respondents have paid US\$83,617.27 and the Claimants are entitled to the balance sum of US\$294,816.67 as claimed."



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49. The arbitral tribunal has also taken note of the fact that the petitioner had filed an application in the High Court of Madras for security under Section 9 of the Arbitration and Conciliation Act, 1996 and that by an order dated 17.07.2019, the High Court of Madras recorded that the first respondent had offered further undated cheque to the petitioner from the sister concern as a security for the disputed discharge port demurrage and confirmed that the petitioner is entitled under the deferment agreements to retain a lien over a quantity of 2500 MT of cargo, remaining at the port of Krishnapatnam, pending order of disposal of the petition. On the basis of that order, the petitioner has released the said cargo but still retained lien over 2500 MT. The arbitral tribunal has also taken note of the various hearings that took place in the Section 9 application and only thereafter, has fixed the costs and expenses incurred in the High Court of Madras by the petitioner at US\$87,147. The said amount was disputed by the first respondent. But, however, the arbitral tribunal reiterated that a sum of US\$87,147 is due and payable by the first respondent towards costs and expenses incurred in the High Court of Madras by the petitioner which is payable together with interest at the rate of 4.5% per annum compounded with three



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monthly rests running from the date of the award till the date of the payment.

50. This Court while exercising powers under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, seeking enforcement of a foreign arbitral award is not exercising its power of Appeal on merits against an award of arbitral tribunal, but, is only reviewing the same to see whether any of the grounds set out in Section 48 of the Arbitration and Conciliation Act, 1996 for refusing enforcement has been satisfied. While deciding whether Section 48 of the Act gets attracted or not, the following have to be noted:

- a) The grounds of challenge enlisted are exhaustive and Courts cannot expand the grounds for refusal of enforcement;
- b) In limited circumstances, the court may refuse to enforce the foreign award even if one of the grounds under Section 48 of the Arbitration Act for refusing enforcement of the award has been proved;
- c) This Court cannot re-examine the award apart from satisfying itself on a superficial basis about the award;
- d) This Court cannot examine the merits of the case;



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e) The exercise is not an “appeal” against merits about the award of the tribunal, but merely a review to find out as to whether any of the grounds for refusal as provided under Section 48 of the Act has been satisfied;

f) This Court has to first make an enquiry as to enforceability of the award and secondly hold that it is enforceable and thereafter enforce it;

g) Once an award is found to be enforceable by a court, it would be enforced like a decree of that court as per the provisions of Section 49 of the Arbitration and Conciliation Act, 1996 which relates to New York Convention Arbitral Awards as is the case of the present one.

51. The first respondent has also not challenged the arbitral award which is sought to be enforced by the petitioner and therefore, the award has attained finality. When the arbitral tribunal has passed a reasoned award and principles of natural justice has been adhered to, the question of refusing enforcement as against the first respondent will not arise. None of the grounds raised by the first respondent for the purpose of refusing enforcement deserves any merit. Therefore, this petition seeking enforcement of the foreign arbitral award against the first respondent has



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to be allowed and a decree has to be passed against the first respondent in terms of the said arbitral award as per the provisions of Section 49 of the Arbitration and Conciliation Act, 1996.

52. The following decisions were relied upon by the learned counsel for the petitioner:-

(a) *Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd. [(2001) 6 SCC 356]*;

(b) *Manuchar Steel Hong Kong Limited Vs. Star Pacific Line Pte Ltd. [(2014) SGHC 181]*;

(c) *Pueblo Holdings Limited Vs. Emirates Trading Agency LLC*;

(d) *Integrated Sales Services Limited, Hong Kong Vs. Arun Dev and others [2017 (1) Mh.L.J.]*

(e) *Gemini Bay Transcription Private Limited Vs. Integrated Sales Services Limited and another [(2022) 1 SCC 753]*; and

(f) *Delhi Airport Metro Express Pvt. Ltd. Vs. Delhi Metro Rail Corporation Ltd. [2023 SCC Online Del 1619]*.

53. In the aforesaid decisions, the circumstances under which the principles of lifting the corporate veil were discussed, but, none of the decisions were dealing with a case involving enforcement of foreign arbitral award against the party, who is not a party to the arbitral award



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and against whom an arbitral award was not passed. The circumstances under which the corporate veil can be lifted are not in doubt. But, whether this Court is having the power to lift the corporate veil in a petition filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, is the issue, that requires to be answered. While this Court exercising its powers under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996, it has the limited power of either granting its seal of approval of the arbitral award or to refuse the enforcement of the said arbitral award.

54. In the instant case, this Court is not dealing with an execution petition, but, is dealing with only an enforcement provision as per Sections 47 to 49 of the Arbitration and Conciliation Act, 1996. Execution of an arbitral award is different from enforcement. The enforcement of an arbitral award is continuation of its arbitral proceedings and is a formal adjudication order passed by a Court of competent jurisdiction granting its seal of approval by passing a decree under Section 49 of the Arbitration and Conciliation Act, 1996, whereas the execution petition is the mode adopted for recovery of the sums determined under the decree. Therefore, it is clear that a new party, who



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is not a party to the arbitral award, cannot be made liable in an enforcement petition filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996.

55. For the foregoing reasons, this petition is partly allowed by granting a decree in terms of the foreign arbitral award dated 26.03.2021 and the corrective award dated 17.05.2021 against the first respondent as per the provisions of Section 49 of the Arbitration and Conciliation Act, 1996. However, in so far as the petition filed against the second respondent is concerned, the same is dismissed. No Costs. Consequently, the connected applications are closed and liberty is granted to the petitioner to execute the foreign arbitral award dated 26.03.2021 and the corrective award dated 17.05.2021 against the first respondent by filing an execution petition seeking appropriate reliefs in the said execution petition in accordance with law.

16.10.2023

Index: Yes
Speaking order
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ABDUL QUDDHOSE, J.

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and

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