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Arb.O.P.(Comm.Div.) No.16 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.11.2024

Pronounced on:13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**Arb.O.P.(Comm.Div.) No.16 of 2021**

**and**

**A.No.2328 of 2021**

Bulk and Metal Transport (UK),  
LLP having its Office at No.85,  
Great Portland Street,  
First Floor London W1W 7LT,  
United Kingdom, Rep.by its Power of Attorney

... Petitioner

VS.

1.Jason Bulk Shipping and Trading Private Limited,  
190 Middle Road, 14-08A,  
Fortune Centre Singapore 188979

2.Jason Shipping Services Private Limited,  
No.150, St. Thomas Building,  
Luz Church Road Chennai 600 004

3.Mr.Justin Sahaya Babu Muthuswamy,  
residing at Mariamalkulam, Vadipatti Taluk,  
Thanichiyam, Madurai 625 221.

4.Ms.Jenniffer Antoinette Anandhi Jayabalan,  
Residing at Old No.48/New, No.52, Kondareddy Street.  
Reddiyarpalayam, Pondicherry 605 010.

... Respondents



**PRAYER:** Arbitration Original Petition filed under 47 to 49 of the Arbitration and Conciliation Act, 1996, the petitioner prays that the Award dated 17.12.2020 be deemed to be a decree of this Court and that this Court pronounce judgment according to the Award dated 17.12.2020, made and published by LMAA arbitration London UK and consequently, pierce the corporate veil by directing the respondents to pay to the petitioner a sum of USD 441,333.04 (being the principal amount plus with interest @ 5% p.a pro-rata compounded at three monthly rests from 27.08.2018 till payment/realization) and GBP 149,901.98 (being the Arbitral Costs along with Interest @ 5% p.a. pro-rata compounded at three monthly rests from the date of payment by Petitioner till realization) along with further interest as would continue to apply till the date of realisation of the monies (Convertible at the exchange rate as on the date the award is finally considered as a decree of this Court and all appeals including any special leave petition (if any) filed against order of enforcement, are dismissed) and the respondents be ordered and decreed to pay the petitioner the costs of this petition.

**(Prayer amended as per order dated 28.03.2023)**

For Petitioner : Mr.H.Siddarth  
for Mr.P.Giridharan

For Respondents : No Appearance for R1  
Exparte for R2 to R4

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**ORDER**

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This Original Petition has been filed to enforce a Foreign Award dated 17.12.2020, made and published by LMAA Arbitration UK and to consequently proceed against the Respondents for a sum of USD 441,333.04 together with interest at 5% per annum pro rata, compounded at 3 monthly rests from 27.08.2018 till date of payment and GBP 149,901.98 being the cost of Arbitration along with interest at 5% per annum, pro rata compounded at 3 monthly rests from the date of payment by the Petitioner, till the date of realisation and for future interest.

2. Though the Respondents were initially served with notice and they had also chosen to engage a Counsel, subsequently a memo was filed by the learned counsel who had entered appearance for the Respondents stating that he has no instructions from the Respondents. This Court also directed the Registry to find out whether service was completed on the Respondents. Finding that the Respondents were all served, the names were also printed in the cause list, but however, the Respondents had not chosen to either



appear in person or through a Counsel to defend the above proceedings, I have therefore proceeded to hear the learned counsel for the Petitioner.

3. The learned Counsel for the Petitioner would take me through the Award which is sought to be enforced before this Court under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996. In fact, the Award is sought to be enforced against Respondents 2 to 4 who are Garnishees 1 to 3 and admittedly, not parties to the Arbitration Award. The 1<sup>st</sup> Respondent alone suffered the Foreign Award which is now sought to be enforced. However, the learned Counsel for the Petitioner addressed elaborate arguments on the maintainability of the Original Petition as against Respondents 2 to 4 who have been shown as Garnishees 1 to 3 in the O.P.

4. According to the learned Counsel for the Petitioner, the 2<sup>nd</sup> Respondent/1<sup>st</sup> Garnishee is a Group Company of the 1<sup>st</sup> Respondent Judgement Debtor and the Garnishees 2 and 3 are Directors in the 1<sup>st</sup> as well as 2<sup>nd</sup> Respondent Companies. Learned Counsel for the Petitioner would primarily contend that this Court is empowered to lift the corporate veil and



see that the Respondents 2 to 4 are also liable to pay the amounts due to the Petitioner under the Award. In this regard, the learned Counsel would take me through the Charter Party Agreement dated 12.06.2018, the financial statement and holding structure of the Respondents 1 & 2 dated 31.03.2020, and Company Master Data of the 2<sup>nd</sup> Respondent from the MCA website which has been downloaded on 11.04.2021.

5. Referring to all these documents, the learned Counsel for the Petitioner would submit that the Respondents 3 and 4 hold shares in both the 1<sup>st</sup> Respondent Company as well its Group Company in 2<sup>nd</sup> Respondent, and even though the Respondents 2 to 4 may not be parties to the Award which is now sought to be enforced before this Court, the Respondents 2 to 4 are not distinct from the 1<sup>st</sup> Respondent Company and in this regard he would refer to the Application Form submitted to City Union Bank Ltd., Triplicane Branch on 29.06.2018, which has been marked as Ex.P2, and Lease Deed dated 04.12.2019, which has been marked as Ex.P6 before the learned Additional Master at the time of recording evidence in the above Arbitration OP. In the said Lease Deed marked as Ex.P6, there is a



representation made by the 1<sup>st</sup> Respondent Company that the 2<sup>nd</sup> Respondent Company is their Group Company which is managed by the same person.

Therefore, the learned Counsel for the Petitioner would submit that 1<sup>st</sup> and 2<sup>nd</sup> Respondents themselves have held out on behalf of each other. There is no impediment for this Court to lift the corporate veil and ascertain whether the Award can be enforced against the Respondents 2 to 4 despite they are not being parties to the Award.

6. The learned Counsel for the Petitioner would also invite my attention to Ex.P12 and Ex.P13 to show the interest of the Respondents 3 and 4 in the 1<sup>st</sup> and 2<sup>nd</sup> Respondent Companies. Further, as contended by learned Counsel of the Petitioner, the Charter Party Agreement dated 12.06.2018 was only signed by the 3<sup>rd</sup> Respondent as a Managing Director of the 1<sup>st</sup> Respondent Company. He would also invite my attention to few of the e-mails which had been sent by the 3<sup>rd</sup> Respondent on behalf of the 1<sup>st</sup> Respondent Company. In short, the contention of the learned Counsel for the Petitioner is that there is commonality of shareholding of the Respondents 1 and 2 at the hands of Respondents 3 and 4. He would also



refer to the flowchart which has also been exhibited during evidence to fortify his contention regarding the substantial shares/interest being held only by Respondents 3 & 4.

7. There is no difficulty with regard to enforcing the Award as against the 1<sup>st</sup> Respondent. However, the issue that remains to be tested and answered is as to whether the Respondents 2 to 4 can be proceeded against when they have not been parties to the Arbitration proceedings. In this connection, the learned Counsel of the Petitioner would place reliance on the following decisions: *Fuerst Day Larson Ltd. v, Jindal Exports Ltd.*, reported in 2001 6 SCC 356, where the Hon'ble Supreme Court held that the Arbitration and Conciliation Ordinance, 1996, was promulgated only with an object to consolidate and amend the law relating to domestic arbitration, international and commercial arbitration and enforcement of Foreign arbitral awards and to define the law relating to conciliation and matters connected therewith or incidental thereto. In the very same decision, the Hon'ble Supreme Court held that separate Execution Petition cannot be filed and enforcement of Foreign Award can be taken recourse to only by



proceeding in accordance with Sections 47 to 49 of the Arbitration and Conciliation Act, 1996.

8. In *Pueblo Holdings Ltd. v. Emirates Trading Agency LLC*, in O.P. No. 416 of 2018 dated 02.11.2018, this Court following the ratio laid down by the Hon'ble Supreme Court in *Fuerst Day Larson Ltd.*'s case (referred herein supra), held that a Foreign Award is enforceable under Part II Chapter 1 of the Arbitration and Conciliation Act, 1996. In *Gemini Transcription Pvt. Ltd. v. Integrated Cell Service Reported in 2022 1 SCC 753*, where again the Hon'ble Supreme Court discussed the scope of enforcement of a Foreign Award. In the said decision, the Hon'ble Supreme Court also held that Section 48(1)(a) cannot be interpreted to mean that it confines itself only to parties of the agreement and held that it would be open in an appropriate case for a non-signatory to bring its case within Section 48(2) and that Section 47(1)(c) is only procedural in nature and does not go to the extent of requiring substantive evidence to prove that a non-signatory to an Arbitration Agreement can be bound by a Foreign Award.



9. In *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metrorail*

*Corporation Ltd.*, reported in 2023 SCC OnLine Del 1619, where a Single Judge of the Delhi High held that the principle of lifting the corporate veil can be extended and equally applied to execution proceedings. The learned Counsel would also fairly invite my attention to the order of this Court in Arb. O.P.(Com.Div) No.195 of 2022 dated 16.10.2023, where in a similar case of this nature, this Court after discussing the various decisions on the point, held that the Court exercising power under Sections 47 to 49 under the Arbitration and Conciliation Act, 1996, has the limited power of either granting a seal of approval on the Arbitral Award or to refuse the enforcement of the Arbitral Award and on the facts of the said case held that a new party, i.e., a party who is not a party to the Arbitral Award cannot be made liable in an Enforcement Petition filed under Sections 47 to 49 of the Act. However, the learned Counsel for the Petitioner would attempt to distinguish the facts of the said case from the facts of the present case, by contending that in the case before the Court in Arb. (O.P. (Com.Div) No.195 of 2022, there was no sufficient material available to justify piercing the corporate veil and that it was an attempt to misuse the Company as a



device to conceal the wrongdoing.

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10. Adverting my attention to the facts of the present case, the learned Counsel for the Petitioner would contend that here the Applicant/Petitioner has been able to demonstrate the fact that the 2<sup>nd</sup> Respondent is only a Group Company and Respondents 3 and 4 are major shareholders in both respondents 1 and 2 and therefore, the earlier decision can be distinguished on facts.

11. I have carefully considered the submissions advanced by the learned Counsel of the Petitioner. In fact, this Court in Arb. O.P. (Com.Div).No. 195 of 2022 has culled out about seven principles that emerge from the various decisions of the Hon'ble Supreme Court as well as the High Court which have already been discussed herein above. In fact, the very same decisions were relied on before this Court in the earlier decision. However, ultimately this Court found that in all those decisions, even though principles regarding lifting of the corporate veil were set out and discussed, none of those cases involved enforcement of a Foreign Arbitral



Award against a party who was not a party to the Arbitral Award.

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12. Further, this Court held that it was not dealing with an Execution Petition but only with enforcement provisions available under Sections 47 to 49 of the Act. Finding that the execution of an Arbitral Award is entirely different from its enforcement, this Court rendered a categorical finding that a new party, i.e., a party who was not a party to the Arbitral Award cannot be proceeded against under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996. I do not see any facts projected by learned Counsel for the Petitioner, compelling me to take a different view, since this Court has rightly held that the principles of lifting the corporate veil cannot be pressed into service while enforcing a Foreign Award. However, there is no difficulty with regard to the enforcement of the award as against the 1<sup>st</sup> Respondent Company who actually suffered the Foreign Award.

13. Therefore, for all the foregoing reasons, this Arbitration Original Petition is **partly allowed** and decree is granted in terms of the Foreign Award dated 17.12.2020 against the 1<sup>st</sup> Respondent Company in terms of



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Section 49 of the Arbitration and Conciliation Act, 1996. The Petition is dismissed as against the Respondents 2 to 4 and it shall be open to the Petitioner to proceed against the 1<sup>st</sup> Respondent for realising the Award amount by filing an appropriate Execution Petition in accordance with law. In view of above discussions, A. No.2328 of 2021 is allowed with regard to the first respondent alone.

**13.12.2024**

**Witnesses examined on the side of the Petitioner:**

P.W.1. - Mr.Santosh Koli

**Exhibits produced on the side of the Petitioner:**

| S.No. | Exhibits | Date       | Description                                                                                      |
|-------|----------|------------|--------------------------------------------------------------------------------------------------|
| 1.    | P-1      | 12.06.2018 | certified copy of the Charter Party Agreement                                                    |
| 2.    | P-2      | 29.06.2018 | copy of the Bank Account details of the 2nd Respondent dated 29.06.2018 (Pg.No.51 & 52 Vol - I). |
| 3.    | P-3      | 02.08.2018 | Copy of the Invocation of Arbitration (Pg.53 Vol - I).                                           |
| 4.    | P-4      | 03.12.2018 | Copy of the Claim Submission to the Arbitral Tribunal (Pg 1-12 Vol - II).                        |
| 5     | P-5      | 03.12.2018 | Copy of the Evidence before Arbitral Tribunal (Pg 13 Vol - II).                                  |
| 6     | P-6      | 04.12.2019 | Copy of the Lease Deed entered by the Respondent (Pg 54-59 Vol -I).                              |
| 7     | P-7      | 31.03.2020 | Copy of the Financial Statement and Holding structure of the Respondents (Pg 60-87 Vol-1)        |



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|    |      |            |                                                                                                                                                    |
|----|------|------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 8  | P-8  | 17.12.2020 | Certified copy of the Final Partial Award passed by the Arbitral Tribunal.                                                                         |
| 9  | P-9  | --         | Copy of the Shareholding Structure and List of Shareholders of the 2nd Respondent (Pg 171-185 Vol-1).                                              |
| 10 | P-10 | 20.01.2021 | Copy of the Demand Notice sent by the Petitioner dated (Pg 186-187 Vol- I).                                                                        |
| 11 | P-11 | 11.04.2021 | Copy of the Company Master Data of the 2nd Respondent taken from MCA Website (Pg 188 Vol - I).                                                     |
| 12 | P-12 | 19.09.2022 | Copy of the Extract of Business Profile of 1 <sup>st</sup> Respondent taken from Accounting and Corporate Regulatory Authority (Pg 1-4 Vol - III). |
| 13 | P-13 | 19.09.2022 | Copy of the List of Directors of 1 <sup>st</sup> Respondent Company as on 18.08.2022 taken from ACRA (Pg 5-8 Vol III).                             |
| 14 | P-14 | --         | Copy of the Corporate Profile of the 1 <sup>a</sup> Respondent (Pg 9-16 Vol - III).                                                                |
| 15 | P-15 | 18.03.2021 | Copy of the Power of Attorney.                                                                                                                     |

**Witnesses examined on the side of the respondents:**

Nil.

**Documents marked on the side of the respondents:**

Nil.

**13.12.2024**

Index:Yes/No

Speaking order/Non-speaking order

rkp



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**P.B.BALAJI.J.**

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**13.12.2024**