



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on: 17.05.2024***

Judgment Pronounced on: 19.07.2024

+ **EFA(OS) 8/2023 & CM APPL. 26688/2023**

GAURAV DHAWAN

..... Appellant

Through: Mr D.P. Singh, Mr Manu Mishra, Ms
Shreya Dutt and Mr Imaan Khera,
Advocates.

versus

TRANSASIA PRIVATE CAPITAL LIMITED Respondent

Through: Mr Rajshekhar Rao, Senior Advocate
with Mr Rajdeep Panda, Mr
Munawwar Naseem, Ms Akshita
Upadhyay and Mr Jaskaran S. Bhatia,
Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

AMIT BANSAL, J.

1. The present appeal has been filed on behalf of the Judgment Debtor against the impugned judgment dated 6th April, 2023 passed by the learned Single Judge in EX.P. 37/2021. By way of the impugned judgment, the objections filed on behalf of the judgment debtor were dismissed and the judgment dated 16th October, 2020, passed by the High Court of Justice Business and Property Courts of England and Wales Commercial Court (QBD) [hereinafter referred to as the 'UK Court'] was held to be conclusive and executable in India.

BRIEF FACTS AND LITIGATION HISTORY

2. Brief facts which led to the filing of the present appeal are as follows:

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KUMAR

Signing Date: 19.07.2024

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EFA(OS) 8/2023



2.1 Phoenix Global DMCC (hereinafter referred to as 'Phoenix UAE'), a company incorporated in the United Arab Emirates (UAE), was granted two 'Uncommitted Revolving Trade Finance Facilities', detailed as follows:

- (i.) USD 23,402,785.83/- by the Asian Trade Finance Fund on 19th July, 2017 (First Credit Facility) and;
- (ii.) USD 21,338,131.93/- by the Asian Trade Finance Fund-2 on 17th November, 2017 (Second Credit Facility).

2.2 Both the Credit Facilities were secured by two Corporate Guarantees furnished by Phoenix Commodities Private Limited (hereinafter referred to as 'Phoenix BVI'), a company incorporated in the British Virgin Islands. The appellant/judgment debtor, Gaurav Dhawan, (hereinafter 'the appellant') being the executive chairman of Phoenix UAE and Phoenix BVI also furnished two 'Irrevocable and Unconditional Personal Guarantees' (hereinafter Personal Guarantees) dated 14th May, 2019 for the First Credit Facility and the other dated 17th November, 2017 in respect of the Second Credit Facility.

2.3 With regard to both the Credit Facilities, the Asian Trade Finance Fund and Asian Trade Finance Fund -2 (hereinafter 'the lenders') appointed Trade Finance Corporation Limited as their agent and the respondent/Decree Holder TransAsia Private Capital Limited as their manager.

2.4 There were defaults in repayment of dues under the abovesaid credit facilities. On 21st April, 2020, the respondent sent a letter to the appellant asking him to repay the sum of USD 23,402,785.83/- advanced in respect of





the First Credit Facility. On 27th April, 2020, another letter was sent seeking repayment of USD 21,338,131.93/- in respect of the Second Credit Facility.

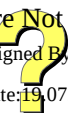
2.5 In reply to the above, the appellant requested the respondent for a standstill period of 45 days to allow the appellant to assess the situation. However, the said request was not acceded to by the respondent.

2.6 Subsequently, when the said demands were not met by the appellant, the respondent, along with the lenders, being Asian Trade Finance Fund and Asian Trade Finance Fund-2 and the agent, Trade Finance Corporation Limited moved the UK Court for recovery of the aforesaid amounts.

2.7 The appellant was served with the Claim Form of the aforesaid suit on 21st May, 2020, at his registered address, Flat 605, Washington Building, Deals Gateway, London, SE13 7SE, as provided in respect of Aakar Investments Limited (hereinafter Aakar), a company registered in UK under the [English] Companies Act, 2006 in which the appellant was a director.

2.8 Subsequently, the appellant changed his registered address in respect of Aakar to 33, St. James's Square, London, England, SW1Y, 4JS and he was served again on 22nd June, 2020 at his new address. The appellant was also served *via* email and WhatsApp Messenger.

2.9 On 17th July, 2020, the lenders moved an application before the UK Court for obtaining a summary judgment in respect of the aforesaid claims. This application was allowed *via* judgment dated 16th October, 2020 (hereinafter 'judgment of the UK Court') and the appellant was directed to pay a total of USD 47,779,823.02/- along with costs of GBP 72,741.13/-, along with interest.





2.10 The respondent filed execution proceedings before this Court [EX.P. 37/2021] under Section 44A of the Code of Civil Procedure, 1908 (CPC) seeking enforcement of the aforesaid judgment of the UK Court. The appellant filed its Objections *via* an application [EX.APPL.(OS)1191/2021], stating that the judgment of the UK Court was not executable in India as it was covered under the exceptions under Section 13 of the CPC.

3. The learned Single Judge, *via* the impugned judgment dated 6th April, 2023, dismissed the aforesaid Objections holding that the UK Court had correctly exercised jurisdiction in the present case. The impugned judgment held that the agreement between the parties contained an asymmetrical jurisdictional clause which allowed the respondent to institute proceedings in any court of competent jurisdiction of its choice. It was noted that the appellant had provided a registered address in the United Kingdom (UK) and he was duly served at the said address in terms of Section 1140 of the [English] Companies Act. Therefore, the UK Court was a court of competent jurisdiction. Furthermore, the UK Court decided the dispute on merits after evaluating the evidence placed on record. Therefore, it was held that the judgment of the UK Court has to be considered as a judgment on merits and not an *ex parte* judgment.

4. Aggrieved by the aforesaid judgment, the appellant has filed the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

5. Learned counsel appearing on behalf of the appellant has made the following submissions:



- I. The UK Court had no jurisdiction to adjudicate on the claims as the subject matter of the dispute had no connection with UK. Neither were any of the agreements signed in UK, nor did any transaction take place there. The Credit Facilities were transferred to accounts maintained in Dubai and the default also took place in Dubai. The Credit Facility Agreements stipulated the governing law to be the laws of Singapore. Moreover, the two Personal Guarantees furnished on behalf of the appellant conferred jurisdiction on the courts in UAE and Singapore respectively and the address of the appellant mentioned therein was that of Dubai.
- II. The UK Court erroneously invoked Section 1140 of the [English] Companies Act to hold that service was validly affected. In this regard, the appellant places reliance on the judgment of the UK High Court, Queen's Bench Division (Commercial Court) in *Idemia France SAS v. Decauter Europe Ltd.*, [2019] EWCH 946 (Comm).
- III. Asymmetrical jurisdictional clauses, as provided in the Personal Guarantees, only enable a Court of competent jurisdiction to exercise jurisdiction over matters which it otherwise has a connection with. However, such clauses cannot grant jurisdiction to a court which has no connection to the dispute. In the present case, proceedings could not have been initiated in the UK as the appellant was neither a resident of UK, nor did he submit to the jurisdiction of UK.
- IV. The UK Court has wrongly applied the UK law to adjudicate the present dispute. The UK Court should have applied the governing law as stipulated in the two Personal Guarantees, being the laws of



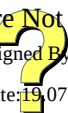
the Dubai International Financial Centre (DIFC) and Singapore respectively.

- V. The judgment of the UK Court cannot be regarded as a judgment on merits as it was rendered only on the basis of the affidavits filed on behalf of the respondent and without any evidence being led in support.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

6. *Per contra*, learned Senior Counsel appearing on behalf of the respondent has made the following submissions in support of the impugned judgment:

- I. The UK Court considered the issue of jurisdiction and after due analysis, correctly came to the conclusion that it had the jurisdiction to adjudicate the matter.
- II. The Personal Guarantees furnished by the appellant contained asymmetrical jurisdiction clauses which permitted the respondent/lenders to initiate proceedings in any court having jurisdiction. The appellant had submitted to the jurisdiction of the UK Courts by providing a registered address for affecting service in terms of Section 1140 of the [English] Companies Act. Section 1140(3) of the [English] Companies Act extends the scope of service to any dispute in question and is not limited to purposes arising out of the company for which the address is provided for. Therefore, the UK Court correctly assumed jurisdiction and adjudicated on the present matter.





- III. The UK Court correctly applied the UK law after following the ‘default rule’ as the appellant did not plead invocation of any other specific set of laws.
- IV. The judgment of the UK Court is a judgment on merits as it duly considers the evidence and documents placed on record by the respondent. In any event, Section 13 of the CPC does not provide that *ex parte* judgments cannot be considered as conclusive.

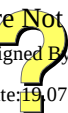
ANALYSIS AND FINDINGS

7. Having heard the rival submissions on behalf of the parties and after perusing the material on record, in our view, the following issues arise for consideration in the present appeal:

- i. Whether the UK Court could have assumed jurisdiction over the disputes in question?
- ii. Whether the UK Court could validly apply the UK Law to the dispute?
- iii. Whether the judgment of the UK Court can be considered as a judgment on merits?

WHETHER THE UK COURT HAD THE JURISDICTION OVER THE DISPUTES

8. The genesis of the present dispute was the invocation of the two Personal Guarantees furnished by the appellant. The respondent, along with the lenders, had initiated legal proceedings before the UK Court claiming the amounts due in terms of the Credit Facilities/Personal Guarantees. Therefore, at the outset, it may be useful to refer to the relevant clauses in the aforesaid Personal Guarantees.





9. The clause relating to governing law and jurisdiction in the First Personal Guarantee executed by the appellant on 14th May, 2019 is set out below:

“14. **Governing law and jurisdiction**

14.1 *Governing law*

*This Guarantee, and all rights, obligations and liabilities arising out of or in connection with it, shall be governed by and construed **in accordance with the laws of the Dubai International Financial Centre.***

14.2. *Enforcement*

(A) **The courts of the Dubai International Financial Centre shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee** (including a dispute relating to the existence, validity or termination of this Guarantee or any non-contractual obligation arising out of or in connection with this Guarantee) (a “Dispute”).

(B) *The Parties agree that the courts of the Dubai International Financial Centre are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.*

(C) **This Clause 14.2 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.**”

10. The clause relating to governing law and jurisdiction in the Second Personal Guarantee executed by the appellant on 17th November, 2017, is set out below:

“21. **Governing law and enforcement**

21.1 *Law*

This Deed is governed by Singapore law.

21.2 *Jurisdiction*



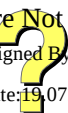
(A) *The Personal Guarantor irrevocably agrees that the Singapore courts have exclusive jurisdiction and accordingly submits to the jurisdiction of the Singapore courts in relation to any matter arising in connection with this Deed (including regarding their existence).*

(B) *The Personal Guarantor agrees that the Singapore courts are the most appropriate and convenient courts to settle any matter falling within this Guarantee.*

(C) *The Lender may, however, bring proceedings in connection with this Deed (including their existence) in any court of competent jurisdiction and to the extent allowed by law, take concurrent proceedings in any number of jurisdictions.”*

11. Clearly, the clauses relating to governing law and jurisdiction are similar in both the Personal Guarantees. The First Personal Guarantee provides that the governing law would be the laws of the DIFC and in case of a dispute, the courts of DIFC shall have exclusive jurisdiction. On the other hand, the Second Personal Guarantee provides for the laws of Singapore as the governing law and vests jurisdiction with the courts in Singapore. Pertinently, both the aforesaid guarantees contain asymmetrical jurisdiction clauses i.e., Clauses 14.2(C) and 21.2(C) of the First and Second Personal Guarantee respectively, that provide that the lender would have the liberty to approach any competent court having jurisdiction.

12. It is submitted on behalf of the respondent that an asymmetrical jurisdiction clause is a usual clause that finds a mention in financing/lending agreements to secure the interest of the lender. The intent of such an asymmetric jurisdiction clause is that besides the place of jurisdiction provided in the agreement, the lender could also sue the borrower in any other competent court having jurisdiction.





13. The UK Court in its judgment dated 16th October, 2020, has elaborately dealt with the issue of jurisdiction. Therefore, to begin with, it may be profitable to refer to the said judgment.

14. The UK Court invoked Section 1140 of the [English] Companies Act to hold that it had the jurisdiction to entertain the claim filed by the lenders. Section 1140 is set out below for the ease of convenience:

“1140 Service of documents on directors, secretaries and others

(1) *A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address.*

(2) **This section applies to-**

(a) **a director or secretary of a company,**

(b) *in the case of an overseas company whose particulars are registered under section 1046, a person holding any such position as may be specified for the purposes of this section by regulations under that section;*

(c) *a person appointed in relation to a company as-*

(i) *a judicial tactor (in Scotland).*

(ii) *[an interim manager] appointed under [section 76 of the Charities Act 2011] [or section 33 of Charities Act (Northern Ireland) 2008], or*

(iii) *a manager appointed under section 47 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c 27)*

(3) **This section applies whatever the purpose of the document in question.**

It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.

(4) **For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection.**

(5) *If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered*



until the end of the period of 14 days beginning with the date on which notice of the change is registered.

- (6) *Service may not be effected by virtue of this section at an address-*
(a) *if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment*
(b) *in the case of a person holding any such position as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046.*
- (7) *Further provision as to service and other matters is made in the company communications provisions (see section 1143).*
- (8) *Nothing in this section shall be read as effecting any enactment or rule of law under which permission is required for service out of the jurisdiction.”*

[Emphasis is ours]

15. A scrutiny of Section 1140 of the [English] Companies Act would show that any document can be served on a director of a company at his/her registered address, that is shown as his current address in the register available for public inspection. Section 1140(3) clarifies that Section 1140 would be applicable for service of any kind of document, not necessarily restricted to service in connection with the company in respect of which the address is given or the directorship of the said company. To illustrate, if Person-X is a director in Company-A, he can be validly served any document at his registered address given in the register for Company-A which is available for public inspection, even if the said document has nothing to do with Company-A. To clarify further, Person-X can be served document pertaining to another company, say Company-B in which he is the director, at his registered address given in respect of Company-A.



16. Placing reliance on the judgment of the High Court of Justice, Chancery Division in **Key Homes Bradford Limited v. Rafik Patel**, [2015] 1 BCLC 402 and **Idemia France** (supra), the UK Court concluded that the appellant was validly served in terms of Section 1140 of the [English] Companies Act. The conclusion of the UK Court on this aspect is set out below:

“9. He was also formally served with the claim form at the residential address in London registered at Companies House for service of proceedings pursuant to section 1140 of the Companies Act 2006, namely Flat 605 Washington Building, Deals Gateway, London SE13 7SE, which was subsequently changed to another London address, namely 33 St James Square, London SW1Y 4JS. This is an address that was given in connection with Aakar Investments Limited. Mr Dhawan is or was the sole shareholder and director of that company, which was incorporated on 26 May 2017, and the certificate of incorporation lists Mr Dhawan's usual country of residence as the UK. He was served with the claim form at that second address at St James Square on 22 June 2020, and it was signed for by Mr Dhawan, which can be seen at page 268 of the bundle.”

17. On the basis of the aforesaid finding, the UK Court concluded that it has jurisdiction over the matter and therefore, in light of the asymmetric jurisdictional clause contained in the Personal Guarantees, the lenders had the right to file the present proceedings before the UK Courts.

18. Section 1140 of the [English] Companies Act was subject matter of consideration in **Key Homes** (supra) and it was held that Section 1140(3) unambiguously provides a method by which a director in a company can be served with any kind of document, including a claim form, at the registered address provided in the register available with the Companies House. It did not matter if the person to be served was not a resident of UK or physically present in UK at the time of service. It was further observed that if a director of a company registered in UK is not a resident of UK, he is



entitled to provide an address outside UK, in which case service cannot be affected on him in UK. However, once he has provided an address for service within UK, he cannot dispute service being affected on him at the said address.

19. **Key Homes** (supra) was followed in **Idemia France** (supra) wherein it was held that under Section 1140 of the [English] Companies Act, a director or secretary of a UK company who resides abroad, is not required to register an address for service within UK. Such a person is free to provide a foreign address for purposes of service. However, if he fails to provide a foreign address and retains his address in UK for the purposes of service, he would remain subject to jurisdiction of the courts in UK.

20. The appellant places reliance on the judgment in **Idemia France** (supra) in support of his submission that the UK Court did not have jurisdiction and the respondent had to take reasonable steps to ascertain the appellant's then current address in order to effect service.

21. We are unable to agree with the aforesaid submission of the appellant. In **Idemia France** (supra), the defendant was held to be validly served at his registered address in UK in terms of Section 1140 of the [English] Companies Act, even though the defendant was not a resident of UK at the relevant time. It was further held that the UK Court had the jurisdiction over the defendant on the basis of the aforesaid registered address. However, based on the evidence led by the defendant therein, the court invoked the doctrine of '*forum non conveniens*' and held that there were no sufficient factors to link the case to UK, whereas there were linkages with Bangladesh. Therefore, the action against the defendant in





UK was stayed. In the present case, neither the appellant has pleaded ‘*forum non conveniens*’ before the UK Court, nor has led any evidence in that behalf. Pertinently, the claim in ***Idemia France*** (supra) was based on tort and there was no asymmetrical jurisdiction clause, which came into play.

22. Relying upon the aforesaid judgments in ***Key Homes*** (supra) and ***Idemia France*** (supra), the learned Single Judge concluded that the appellant has been validly served in accordance with Section 1140 of the [English] Companies Act and consequently, the UK Court had the requisite jurisdiction to entertain the claim filed against the appellant. The findings of the learned Single Judge in this regard are set out below:

“26. That takes the Court to evaluate the submissions addressed on the ambit of Section 1140. This Court firstly bears in mind the unambiguous language in which Section 1140 stands couched and framed. The said provision clearly appears to construct a special procedure for service of summons. As is manifest from a reading of sub-section (3) thereof, resort to Section 1140 can be had even when a party in the United Kingdom seeks to serve a claim upon a person otherwise than in his/her capacity as a director or secretary of an incorporated company. Section 1140 as placed in the Act contemplates service upon a director or a secretary of a company by permitting service of documents at the registered address of the corporate entity. It additionally and in terms of sub-section (3) thereof enables service of summons notwithstanding the director or secretary not residing in the United Kingdom. This subject, of course, to the director or the secretary having maintained that address in the statutory records and not having indicated anything contrary to the statutory presumption that stands raised in terms of the said provision. In fact and as would be evident from a reading of Section 1140(2), even in the case of an overseas company whose particulars may be registered under Section 1046 of the Act, directors or secretaries of such a company may also be served and placed upon notice by service being affected at the registered address of that overseas company.”

27. It is the aforesaid scheme of Section 1140 which has been explained in Key Homes and Idemia. The Court notes that both the aforesaid decisions have held that Section 1140 embodies the intent of



Parliament to institute a revised system of service and the obligation of both corporate entities as well as their directors or secretaries to keep service addresses up-to-date. Those decisions significantly hold that a director, who is residing abroad, may justifiably provide an address outside the jurisdiction of courts in England. In such a situation the plaintiff who institutes proceedings would have to seek the requisite permission to serve out of the jurisdiction and it is only when steps are taken in accordance with the provisions embodied in the CPR in this regard that service would be deemed to have been affected. However, both Key Homes and Idemia have interpreted Section 1140 as enabling a plaintiff to effect service where a director, though residing outside the jurisdiction of courts in the United Kingdom, provides an address for service albeit in connection with a corporate entity and by virtue of being a director or secretary therein. It is here that the provisions of Section 1140(3) come into play and provision for service being affected on that individual even though it may be in respect of a cause wholly unrelated to the affairs of the corporate entity or in relation to their duties and obligations flowing from the office that they may hold in that entity. Those decisions have conclusively found that the aforesaid procedure is clearly sanctioned by Section 1140 and service being affected accordingly.

23. In the present case, the appellant was validly served on 21st May, 2020, at the UK registered address given by him in respect of Aakar. Subsequently, the appellant was served once again at the new address given by him, which was also in UK. The relevant record before the UK Companies House shows that the appellant was the only director and the only shareholder of Aakar.

24. It is submitted on behalf of the appellant that he had moved from UK to India on 26th May, 2020 and was thus, no longer subject to the jurisdiction of the UK Courts. If the appellant had indeed moved his residence outside UK and did not wish to be subject to the jurisdiction of the courts in UK, he ought to have changed his address for service in the register maintained with the UK Companies House. Having failed to do so,



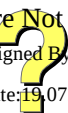
in terms of Section 1140 of the [English] Companies Act, he would continue to be subject to jurisdiction of UK courts.

25. On behalf of the appellant, it has also been submitted that Aakar went into liquidation and was in control of a liquidator and hence, the appellant was not aware of such service. A perusal of the extracts of the register available with the Companies House in respect of Aakar reveals that Aakar was dissolved only on 23rd March, 2021, which was much after the date when service of the claim form was affected on the appellant. In any case, as noticed above, it was for the appellant to change his address in the register.

26. It is further contended by the appellant that the register with the UK Companies House itself shows that the appellant was a resident of the UAE. Though it is correct that the aforesaid register shows the country of residence as UAE, however, the correspondence/service address in the register continued to be the UK address on which the appellant was served. It may be relevant to note that in respect of another UK registered company in which the appellant was a director i.e., Afri Green Energy Limited, the appellant had changed his correspondence/service address to that of the UAE.

27. It is also relevant to note that besides service at the aforesaid registered/correspondence addresses, the appellant was also served through WhatsApp Messenger and email, as noted in the judgment of the UK Court.

28. In respect of reliance placed by the appellant on Rule 6 of the CPR, Rule 6.1(A) of the CPR clearly provides that Part 6 would only be applicable subject to any other enactment or a practice decision having





contrary provisions. In the present case, once jurisdiction has been established in terms of Section 1140, the provisions of CPR, even if to the contrary, would be of no avail.

29. The appellant has also placed reliance on the judgment of the High Court of Andhra Pradesh in *Potluri Rajeswara Rao v. Syndicate Bank*, 2000 SCC OnLine AP 67, to submit that the UK Court did not have jurisdiction over the appellant since the appellant was not a resident of UK. Such a reliance is completely misplaced as in *Potluri* (supra), the defendant had not provided an address of service in UK in terms of Section 1140 of the [English] Companies Act and was served in Algeria. Moreover, the foreign judgment sought to be enforced was a judgment in default and not on merits.

30. Therefore, in our considered view, in the present case, the UK Court had the jurisdiction to entertain the present dispute. Consequently, the judgment of the UK Court would not be covered by the exception carved out under Section 13(a) of the CPC.¹

WHETHER THE UK COURT CORRECTLY APPLIED THE LAWS OF UK IN THE PRESENT DISPUTE.

31. The two Performance Guarantees provided for the laws of DIFC and Singapore respectively as the governing laws. However, the UK Court applied the UK law for the determination of the present disputes between the parties.

¹ **Section 13. When foreign judgment not conclusive.**—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—
(a) where it has not been pronounced by a Court of competent jurisdiction...”



32. In this regard, the UK Court invoked the ‘default rule’, which proceeds on the principle that the party pleading applicability of a foreign law has to establish that English Law would not be applicable, with sufficient evidence. However, the appellant failed to do so in the present case and therefore, the UK Court proceeded to adopt the English Law. The findings of the learned Single Judge in this regard are set out below:

*“33. It becomes pertinent to note that the High Court of England has in this regard noticed that the judgment debtor had failed to either plead or establish that English law would not be applicable. As per the law which has evolved on the subject and stands duly enunciated by courts in England including in Brownlie, it is the aforesaid principles and the default rule which would thus govern the issue. The submissions addressed on this score on behalf of the judgment debtor also clearly appear to implode bearing in mind the language in which Clauses 14.2 (C) and 21.2 (C) of the two guarantee agreements stand couched. **Both those clauses empower the Lender from initiating proceedings in respect of a dispute in any other court with jurisdiction.** Regard must also be had to the fact that the aforesaid two clauses are ordained by agreement to be for the benefit of the Lender only. The Court thus finds itself unable to either read or countenance the governing law clauses as being inviolable.*

34. The Court further finds that the applicability of the default rule would not stand negated in the facts of the present case and where the judgment debtor asserts that the proceedings were taken ex parte for the following reasons. Firstly, the judgment debtor stood duly served as per the rules and procedure applicable and in any case in accordance with Section 1140. It would thus be inaccurate for the judgment debtor to contend that the proceedings were taken ex parte by the High Court of England. This was a case where the judgment debtor failed to contest the claim despite being duly served in accordance with the law applicable in England.”

33. We cannot find any fault with the aforesaid findings of the learned Single Judge and no grounds for interference are made out.

WHETHER THE FOREIGN JUDGMENT IS A JUDGMENT ON MERITS

34. The record bears out that despite being served, the appellant chose not to appear in the proceedings before the UK Court and contest the case



on merits. Hence, the UK Court had no other option but to decide the case *ex-parte*. Therefore, it cannot be said that the proceedings were opposed to principles of natural justice as envisaged under Section 13(d) of the CPC.²

35. Nevertheless, the UK Court proceeded to adjudicate the dispute on merits by taking into account the evidence filed before it by the respondent. The relevant extracts from the judgment of the UK Court are set out below:

*“17. The third and final issue I need to determine is whether the conditions for summary judgment are satisfied. **I have reviewed the terms of the personal guarantees and the documents making demands for repayment under the two facilities, and then making claims on the guarantees.** I note that the demands under the guarantees were not disputed by Mr Dhawan. I will just draw attention to some of the features:*

xxx

xxx

xxx

*19. **The guarantees are in broad terms, and it is submitted and I accept that there is nothing unusual in their terms that would entitle Mr Dhawan to raise a defence.** The only issue that it seems to me potentially arises relates to clause 11.2, which says that:*

“A certificate is to be prima facie evidence, except in the case of manifest error, for all purposes, including any proceedings. A copy of a certificate signed by an officer of the lender as to the amount due under this guarantee should be prima facie evidence against the personal guarantor that such amount is in fact due and payable [‘by’, that should be ‘to’] to the lender.”

20. And in this case, the demands that were made attach a schedule, which is not signed, but under cover of a letter which is signed by the agent on behalf of the lenders, and which attaches a schedule setting out the amounts that are said to be owed. Those amounts have been checked by the claimants’ solicitors and by Mr Kimbell, and I am not told that there is no reason to think that they are incorrect or unreliable.

21. In those circumstances, although the clause appears to envisage a formal certification as in a certificate to be issued which is in signed form

² ...

(d) where the proceedings in which the judgment was obtained are opposed to natural justice”



as opposed to a schedule, I am satisfied that there is no reason to think that the demand is not set out correctly in that the figures are correct. Absent any other evidence that would cast doubt on the figures, I accept that this is a matter of form rather than substance, and does not affect the entitlement of the claimants to succeed in their claim, being claims under the guarantees.

22. *I am satisfied that Mr Dhawan has no real prospect of success in defending the claims, and that there is no other compelling reason for trial, and that it is therefore appropriate to grant summary judgment. I have considered the claims for the principal sums, and the calculation of interest that has been set out, and I am satisfied that summary judgment should be entered in the sum of US\$47,779,823.02.”*

[Emphasis is Ours]

36. A perusal of the aforesaid extracts from the judgment of the UK Court would show that it had arrived at the final judgment on the basis of the evidence placed before it and applying its judicial mind.

37. It may also be relevant to mention here that in India also summary judgments are recognized under the Commercial Courts Act, 2005. Order XIII-A of the CPC provides that the Court can give a summary judgment if it is of the view that the plaintiff/defendant has no real prospect of succeeding in the case and there is no other compelling reason for not recording oral evidence. The very same principles have been followed by the UK Court while granting summary judgment in favour of the respondent holding that the appellant had no real prospect of succeeding in defending the claims and that there were no other compelling reasons for trial.

38. In terms of Section 13(b) of the CPC³, a foreign judgment would not be conclusive if it has not been given on the merits of the case. However,

³ ...

(b) where it has not been given on the merits of the case;”



the said exception does not cover an *ex parte* judgment if the said *ex parte* judgment is on the merits of the case. Consequently, if a foreign judgment is given *ex-parte* on the merits of the case, the same would be conclusive under Section 13 of the CPC.

39. Reference in this regard may be made to the observations made in *International Woolen Mills v. Standard Wool (U.K.) Ltd.*, (2001) 5 SCC 265, the relevant extracts from which have been set out in the impugned judgment.

40. In view of the discussion above, we are of the opinion that the judgment of the UK Court would not fall in any of the exceptions enumerated in Section 13 of the CPC. The said judgment would be conclusive and hence, executable in India under Section 44(A) of the CPC.

41. In view of the above, we do not find merit in the present appeal and the same is dismissed.

42. All pending applications stand disposed of.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

JULY 19, 2024

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