



CMP No. 20274 of 2025 in
O.S.A (CAD) No.89 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-09-2025

CORAM

THE HONOURABLE MR JUSTICE M. SUNDAR
AND
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR

CMP No. 20274 of 2025
in
O.S.A (CAD) No.89 of 2025

Owners and Parties interested in the vessel

MV POLARIS GALAXY

having IMO : 9339648,

now lying at the outer anchorage of the

Port of Tuticorin

(V.O. Chidambaranar Port)

Tuticorin - 628 004

represented herein by its Master

... Appellant / petitioner

Vs.

1. Banque Cantonale De Geneve
having its office at Case Postale 2251, 1211
Geneve 2, represented herein by its
Power of Attorney Agent, V.Padmanabhan



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O.S.A (CAD) No.89 of 2025

2. Gulf Petrochem FZC

Hamriyah Free Zone,

P.O. Box 41506

Sharjah, United Arab Emirates. .. Respondents / Respondents

For Petitioner : Mr.Prashant Pratap
Senior Counsel
instructed by Ms,Deepika Murali

For Respondents : Mr.Zarir Barwcha
Senior Counsel
instructed by Mr.S.Raghunathan for R1

ORDER

(Order of the Court was made by M.Sundar J.)

Read this in conjunction with and in continuation of earlier
proceedings / order made in the listing on 18.08.2025, which reads as
follows:

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2025

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE HEMANT

CHANDANGOUDAR

O.S.A (CAD) No.89 of 2025



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CMP No. 20274 of 2025 in
O.S.A (CAD) No.89 of 2025

and
C.M.P.No.20274 of 2025
in
O.S.A (CAD) No.89 of 2025

Owners and Parties interested in the vessel
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having IMO : 9339648,
now lying at the outer anchorage of the
Port of Tuticorin
(V.O. Chidambaranar Port)
Tuticorin - 628 004
represented herein by its Master ... Appellant / petitioner

Vs.

- 1. Banque Cantonale De Geneve*
having its office at Case Postale 2251, 1211
Geneve 2, represented herein by its
Power of Attorney Agent, V.Padmanabhan
- 2. Gulf Petrochem FZC*
Hamriyah Free Zone,
P.O. Box 41506
Sharjah, United Arab Emirates. .. Respondents Respondents

For Appellant : Mr.Prashant Pratap
Senior Counsel
instructed by Ms.Anila R

For Respondents : Mr.Zarir Barwcha
Senior Counsel



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CMP No. 20274 of 2025 in

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instructed by Mr.S.Raghunathan

ORDER

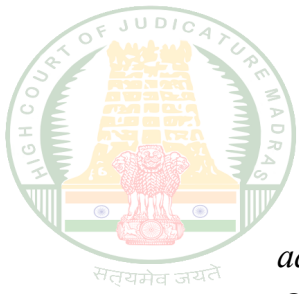
(Order of the Court was delivered by **M.SUNDAR, J.**)

'MV Polaris Galaxy' [hereinafter 'said vessel' for the sake of brevity, convenience and clarity] flying under Liberian Flag constitutes a part of nucleus of lis which has given rise to the captioned 'Original Side Appeal' [hereinafter 'OSA' for the sake of brevity, convenience and clarity]. '27,000 to 28,000 metric tonnes of what is described as '0.5% marine fuel' (we are informed that it is also described as 'fuel oil') being Cargo' [hereinafter 'said cargo' for the sake of brevity, convenience and clarity] constitutes the other part of the nucleus of the lis.

2. The Charterer of said vessel is one 'Profitable Wealth INC' [hereinafter 'Profitable Wealth' for the sake of brevity, convenience and clarity] operated by a Corporation in Singapore.

3. The crux and gravamen of the lis is that one 'Banque Cantonale De Geneve' [hereinafter 'BCGE' for the sake of brevity, convenience and clarity] and 'Gulf Petrochem FZC' [hereinafter 'GP' for the sake of brevity, convenience and clarity] are the other players; that GP approached BCGE for financing said cargo which in turn was purchased from Indian Oil Corporation for further sale to one 'Aramco Trading Fujairah FZE' [hereinafter 'Aramco' for the sake of brevity, convenience and clarity] head quartered in UAE; that there was alleged mis-delivery of said cargo in Singapore Port i.e., delivery without production of original bills of lading; that such alleged mis-delivery was between 09.06.2020 and 10.06.2020; that such alleged mis-delivery is the bone of contention and eye of storm qua lis between the parties.

4. BCGE filed a suit in C.S.No.96 of 2021 against the owner of said vessel inter alia claiming a sum of a little over 6.70 Million USD. To be noted, the arrest of said vessel was one of limbs of prayer. Subsequently, the issue of adding GP as a co-defendant arose, the matter was carried to Hon'ble Supreme Court and Hon'ble Supreme Court in and by judgment dated 23.09.2022 inter alia directed



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addition of GP as a party vide Order I Rule 10(2) of 'the Code of Civil Procedure, 1908 (Central Act V of 1908)' [hereinafter 'CPC' for the sake of brevity], GP was added and the Commercial Division of this Court in and by summary judgment and decree dated 09.07.2025 under Order XIII-A of CPC as amended by 'The Commercial Courts Act, 2015 (Act No.4 of 2016)' [hereinafter 'CCA' for the sake of brevity, convenience and clarity] decreed the suit with costs and with a directive to renew and keep alive a bank guarantee. This 09.07.2025 summary judgment and decree shall hereinafter be referred to as 'impugned judgement' for the sake of brevity, convenience and clarity. The operative portion of the impugned judgement is paragraph No.54 which contains an adumbration of three clauses and this paragraph No.54 reads as follows:

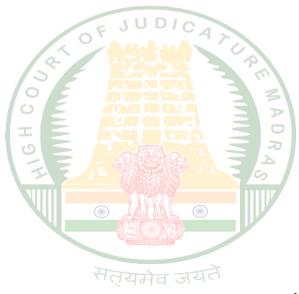
'54. For reasons set out above, this application is allowed by issuing a decree on summary basis on the following terms:

(i) The 1st defendant is directed to pay the plaintiff the sum of USD 6,705,357.38 with further interest thereon at 6% per annum from the date of filing of the suit until realization.

(ii) The 1st defendant is also directed to pay a sum of Rs.59,11,961/- as costs to the plaintiff.

(iii) Subject to the right of the contesting parties to apply for payment of the above amount from the proceeds of the bank guarantee, the 1st defendant shall renew and keep alive the bank guarantee provided earlier as security until the above amounts are realised by the plaintiff from the 1st defendant.'

5. Mr.Prashant Pratap, learned Senior Advocate, instructed by Ms.Anila.R, counsel on record for appellant, in his campaign against the impugned judgement contended that Hon'ble Supreme Court in the afore-referred judgement has held that a trial is imperative but the Commercial Division has resorted to summary judgement.



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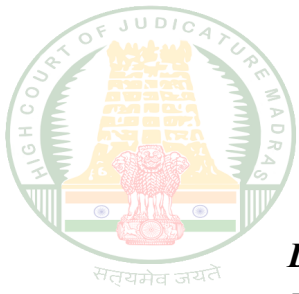
6. Issue notice in the captioned OSA and the captioned 'Civil Miscellaneous Petition' [hereinafter 'CMP' for the sake of brevity, convenience and clarity].

7. BCGE / plaintiff before Commercial Division is R1 in the captioned OSA, R1 is on caveat and Mr.Zarir Barwcha, learned Senior Counsel appearing on behalf of Mr.S.Raghunathan, counsel on record for caveator is before us. Learned counsel on record for caveator accepted notice for R1 in captioned OSA and captioned CMP. As regards R2, notice [notice in captioned OSA and captioned CMP] will go, notice is returnable by 10.09.2025 and private notice is permitted.

8. This takes us to the interim order that has been sought for vide captioned CMP. Appellant has sought for blanket stay of operation of impugned judgment. Though blanket stay has been sought for, advertng to Sections 2(1)(b), 4(1)(f), 4(1)(g) and 4(4) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (22 of 2017) [hereinafter 'Admiralty Act' for the sake of brevity, convenience and clarity], learned Senior Counsel for appellant / CMP petitioner submitted that the bank guarantee that has already been given being Bank Guarantee No.060530221000036 dated 30.06.2021 issued by Doha Bank for a sum of 7.30 Million USD (to be noted, BCGE is beneficiary) is good enough as it covers the principal sum of a little over 6.70 Million USD and a part of interest. It was also submitted that the appellant / CMP petitioner is ready to do a top up subject to the discretion of this Court.

9. Opposing the aforementioned plea qua interim order, Mr.Zarir Barwcha, learned Senior Counsel for caveator submitted that there should be a deposit of the entire decretal amount as it stands today and one of primary grounds on which this argument was predicated is that the appellant does not have assets in India. In support of contrary contentions, learned Senior Counsel for caveator pressed into services the following orders and case laws:

(i) **Manish Vs. Godawari Marathawada Irrigation**



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Development Corporation reported in
MANU/SCOR/30132/2018;

(ii) Toyo Engineering Corporation and another Vs. Indian Oil Corporation Limited in Civil Appeal Nos.4549-4550 of 2021;
and

(iii) Union of India Vs. Arsh Constructions reported in
MANU/DE/6173/2024.

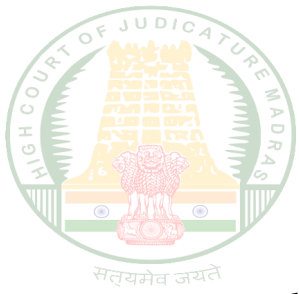
10. At this stage, we are only concerned with the kind of security or conditions that will have to be imposed. At the outset, this Court deems it appropriate to write that **Manish and Toyo case laws** supra have been rendered by Hon'ble Supreme Court and **Arsh Constructions case law** has been rendered by Hon'ble single Judge of Delhi High Court.

11. We respectfully notice that all the three judgments arise out of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] and awards made under A and C Act, more particularly challenge to awards under Section 34 of A and C Act. As regards challenge to awards under Section 34 of A and C Act, Section 36 of A and C Act as it stood prior to 23.10.2015 reads as follows:

'36.Enforcement.- Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.'

Section 36 on and from 23.10.2015 reads as follows :

'36. Enforcement - (1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the Court.



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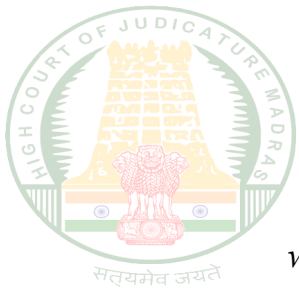
(2) *Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*

(3) *Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing :*

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).'

*12. As Section 36 of A and C Act as it stood prior to 23.10.2015 meant that there would be an automatic stay or deemed stay to put it in legal parlance, the moment an award is challenged under Section 34 provided the challenge is filed within the prescribed period of three months vide Section 34(3). To be noted, delay is capped at 30 days. Hon'ble Supreme Court in **Simplex Infrastructure Limited Vs. Union of India** reported in (2019) 2 SCC 455 has held that even one day delay beyond 3 months and 30 days cannot be condoned. To be noted, ecosystem and architecture of A and C Act is completely different.*

*13. As regards precedent, celebrated **Padma Sundara Rao** case law [**Padma Sundara Rao Vs. State of Tamil Nadu** reported in (2002) 3 SCC 533] is of relevance. **Padma Sundara Rao** case law on facts is, a notification issued under Section 6 of the Land Acquisition Act, 1894 was assailed in Madras High Court and the High Court relying on N.Narasimhaiah case reported in (1996) 3 SCC 88 held that the same was validly issued. The matter was carried to Hon'ble Supreme Court on the question of law as to*



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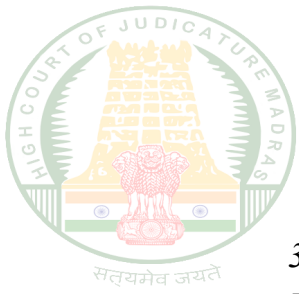
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whether after quashing of a notification under section 6, a fresh period of one year is available to the State Government to issue another notification under section 6. It is in this context, i.e., while deciding this legal question, a Constitution Bench of Hon'ble Supreme Court declared the law as regards how courts should place reliance on case laws / precedents. Relevant paragraph is paragraph 9 and the same reads as follows:

*'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL)] [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

*14. In the light of declaration of law in **Padma Sundara Rao** case law and as factual matrix is not available, we are of the considered view that at this juncture, in the case on hand, the afore-referred orders / case laws do not come to the aid of the caveator. However, we hasten to add that we would in any event, be writing *infra* that there will be security for the entire suit claim as it stands today making provision for further interest which is ticking.*

15. A careful perusal of cover letter of Doha Bank dated 13.05.2025 makes it clear that the afore-referred bank guarantee for 7.30 Million USD is renewable from year to year from 30.06.2021 without amendment until disposal of the suit by the Commercial Division. In this view of the matter, the last renewal was obviously on 30.06.2025 for a period of one year i.e., upto



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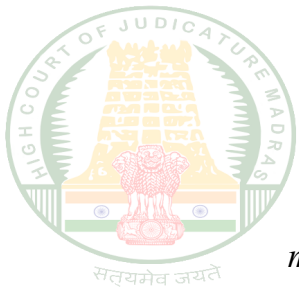
30.06.2026 but the suit came to be disposed of on 09.07.2025.

Therefore, there will be no stay of clause (iii) of the impugned judgment. This means that the appellant should renew the bank guarantee within a period of fortnight from today, i.e., on or before 01.09.2025 and keep it alive until further orders. This takes us to topping up of bank guarantee so as to cover the total suit claim. Both sides are on the same page with regard to the decretal amount as it stands today. Both sides agree that the decree as it stands (18.08.2025) is USD 8,493,942.54. This means that there is a shortfall of a little over 1.19 Million USD. As regards topping up, we round it of to 1.20 Million USD. Both sides also agree that an exchange rate of INR 87.3 can be applied.

16. 1.20 Million USD at 87.3 INR conversion rate translates to 10,47,60,000 INR, making provision for the time that may be consumed in disposal of captioned CMP, we round of this figure to 12,50,00,000 INR. In addition to keeping the bank guarantee alive, the appellant shall deposit 12.50 Crores INR to the credit of the captioned appeal which shall be kept in an interest bearing Fixed Deposit in Indian Bank, High Court Branch. Usual procedure for such deposit qua Registrar General shall be followed. As regards this 12.50 Crores INR, 6.25 Crores INR shall be deposited in three weeks i.e., on or before 08.09.2025 and another 6.25 Crores INR shall be deposited in another three weeks i.e., on or before 29.09.2025.

17. There will be no stay of clause (ii) also of paragraph No.54 of impugned judgement i.e., costs. To be noted, we have made it clear supra that there will be no stay as regards clause (iii) of paragraph 54. There will be stay of clause (i) of paragraph 54 of impugned judgment subject to (a) renewal of the bank guarantee within a period of fortnight and (b) deposit in two tranches as above.

18. It is open to the caveator to file a counter affidavit and insist on deposit and make further payment out plea and it is equally open to the appellant / petitioner to resist the same. This



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means that the captioned CMP will be listed along with main OSA in the next listing which shall be on 10.09.2025. Both sides also agree that the main OSA can be heard out on 10.09.2025 subject of course to second respondent being served. It is made clear that applications, if any, before the Commercial Division qua captioned suit will await further orders of this Court.

List captioned OSA and CMP on 10.09.2025.

(M.S.,J.) (H.C.,J.)
18.08.2025'

2. Today Mr. Prashant Pratap, learned Senior counsel instructed by Ms.Deepika Murali, for petitioner and Mr.Zarir Barwcha, learned Senior counsel instructed by Mr.S.Raghunathan for first respondent are before us. To be noted, second respondent is given up in the CMP.



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3. Adverting to the aforementioned earlier proceedings/ order, learned Senior counsel on both sides, on instructions, submit that a) the bank guarantee has since been renewed and it will continue to be kept alive until further orders of this Court, and b) though 12,50,00,000 INR was directed to be deposited in two tranches i.e., one on or before 08.09.2025 and another on or before 29.09.2025, the entire 12,50,00,000 INR has since been deposited on 29.08.2025.

4. The above means that the conditions for stay have been complied.

5. Be that as it may, Mr.Prashant Pratap, learned Senior counsel for petitioner submitted that it would be open to R1 to make a prayer to invoke bank guarantee if the appeal fails. In our considered view, this is stating the obvious. If such a request is made, the same will be considered on its own merits and in accordance with law.

6. As regards the CMP, both sides agree that the same can be closed recording the obtaining factual position. We do so making it clear



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that the order of interim stay will now continue to operate as much as

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bank guarantee will continue to be alive and 12,50,00,000 INR will be in
interest bearing deposit.

7. Captioned CMP disposed of in the aforesaid manner. There
shall be no order as to costs.

(M.S.,J.) (M.S.K.,J.)
10.09.2025
(1/2)

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M.SUNDAR J.
AND
MUMMINENI SUDHEER KUMAR J.

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(1/2)