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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2026

CORAM

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 457 of 2025

Elboil GmbH

A company incorporated under the laws of Germany

Having its registered office at

Zippelhaus 3, 20457 Hamburg, Germany

Rep. by its Power Agent Sudarshan Gujar

Petitioner(s)

Vs

Sakthi Ferro Alloys India Pvt Ltd

A company incorporated under the Companies Act, 1956

Having its registered office at 18/26, Loganathan Nagar

2nd Street, Choolaimedu, Chennai-600094

Rep. by its Directors

Respondent(s)

PRAYER

a)Declare that the Arbitral Award dated 07.02.2025 read with the Arbitral Award on Costs dated 13.03.2025 passed by the Arbitral Tribunal comprising M/s.Jan Heiko Kohlbrandt and Wilm Steingrover is enforceable in accordance with Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 and deem it to be a decree of this Hon'ble Court;

b)Direct the Respondent to pay the Petitioner USD 213,362.20 together with interest @ 2% per month since 09.02.2024 till payment/realisation;

c)Direct the Respondent to pay the Petitioner EUR 3,994.20 together with interest @ 5% above base rate since 14.05.2024 till payment/realisation;

d)Direct the Respondent to pay the Petitioner EUR 24,385.90 towards costs;
and



e)Direct the Respondent to pay costs for the present Petition in favour of the Petitioner.

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For Petitioner(s): Ms.Ashwini Vaidialingam

For Respondent(s): Mr.Arun C Mohan

ORDER

This petition has been filed under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) for declaring that the Arbitral Award dated 07.02.2025 read with the Arbitral Award on costs dated 13.03.2025, passed by the Arbitral Tribunal, is enforceable in accordance with Sections 47 to 49 of the Act and for other consequential reliefs.

2.Heard both sides and perused the materials available on record.

3.The brief facts of the case are:

3.1.On 24.01.2024, the petitioner and the respondent entered into a Sales Agreement for very low sulphur fuel oil and low sulphur marine gas oil, which can be collectively called as bunkers. The petitioner addressed a sales confirmation by e-mail to the respondent contending *inter alia*, the details of the vessel to which the aforesaid bunkers were to be supplied, the place of supply, the manner of supply, the date of supply and the cost of the bunkers and supplies thereof.



3.2.As per the agreement, the governing law and arbitration clauses were contained in the sales confirmation e-mail. It also incorporated the general terms and conditions of sale.

3.3.The sales confirmation was confirmed by the respondent by e-mail and the petitioner arranged for delivery of the bunkers to the respondent on 26.01.2024.

3.4.On 30.01.2024, the petitioner raised an invoice to the respondent to a total amount of USD 513,362.20, which payment was falling due on 09.02.2024. The respondent by way of acknowledging the liability, made a payment of USD 300,000.

3.5.The balance amount was delayed and hence, a demand notice dated 13.02.2024, came to be issued to the respondent. On 14.05.2024, the petitioner invoked arbitration and appointed their nominee and requested the respondent to appoint their nominee.

3.6.The respondent, in spite of service of notice, did not appoint their arbitrator within the time frame fixed under the Arbitration Rules of the German Maritime Arbitration Association (GMAA) and hence, the Board of GMAA



appointed the second arbitrator on behalf of the respondent and it was informed to the respondent. On 31.07.2024, the Arbitral Tribunal informed both the parties about its constitution and requested the petitioner to file its statement of claim. Accordingly, on 16.08.2024, the petitioner filed its statement of claim and the respondent was requested to file statement of defence by 31.10.2024. The respondent did not file any statement of defence.

3.7. On 22.11.2024, the Tribunal set the hearing for 23.12.2024, with a request for depositing the Tribunal's fees by both parties. The information in this regard was also received by the respondent on 28.11.2024.

3.8. On 23.12.2024, the respondent did not attend the hearing and therefore, oral hearing was conducted on that day as scheduled. The parties were provided an opportunity to provide further submissions by 02.01.2025 and once again, the respondent failed to make any further submissions.

3.9. In view of the above, the Arbitral Tribunal, on considering the claim made by the petitioner and the materials that were placed before the Tribunal, passed the Foreign Award dated 07.02.2025. Further, on 13.03.2025, the Tribunal published the Costs Award.



3.10. After the Foreign Award was passed, the demand notice dated 14.03.2025, was issued to the respondent through e-mail, calling upon the respondent to pay the award amount. Even though e-mail was received, the respondent did not make the payment and hence, the present petition has been filed for declaring the Arbitral Award as enforceable and for other consequential reliefs against the respondent.

4. Prior to the filing of this petition, O.A.Nos.598 and 599 of 2025 were filed under Section 9 of the Act, seeking for certain interim reliefs. Notice was issued in those applications and the respondent was represented through counsel, who informed this Court that steps are being taken to resolve the dispute amicably between the parties.

5. The settlement did not go through and hence, the petitioner withdrew those applications, with liberty to file a fresh petition to enforce the award in accordance with Sections 47 to 49 of the Act. Accordingly, those applications were closed on 03.07.2025, by granting liberty.

6. Arb.Appln.No.768 of 2025 was filed for a direction to the respondent to furnish security for the award amount or furnish Bank Guarantee. This



application was heard by this Court on 03.07.2025 and the following order came to be passed:

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“This application has been filed seeking for a direction to the respondent to furnish security to the extent of the award amount of Rs.2,62,48,195.72/-, pending enforcement of the foreign arbitral award passed in favour of the applicant.

2. The respondent has raised various objections through their counter affidavit filed in this application. They claim that they have never been served with notice in the arbitral proceedings, which culminated in the passing of the foreign arbitral award.

3. The learned counsel for the respondent also drew the attention of this Court to the various correspondences relied upon by the applicant, which were sent by the arbitral tribunal and the applicant, and would submit that none of those correspondences/communications were received by the respondent. According to the respondent, the objections raised by them through their counter affidavit will fall within the parameters prescribed under Section 48 of the Arbitration and Conciliation Act, 1996(in short “the Act”), to enable the respondent to prevent the applicant from seeking enforcement of the foreign arbitral award under Section 49 of the Act from this Court.

4. Admittedly, the applicant and the respondent had entered into the contract. The applicant is the supplier of fuel oil and the respondent is the purchaser. According to the applicant, certain sums of money are still due and payable by the respondent to the applicant under the contract entered into between the parties. According to the applicant, since the respondent has failed to pay the balance payments, they were constrained to initiate arbitration in accordance with the arbitration clause contained in the contract. According to the applicant, due procedure was followed by the applicant as well as the arbitral tribunal before passing the foreign arbitral award in favour of the applicant against the respondent.

5. The learned counsel for the applicant also drew the attention of this Court to the foreign arbitral award passed in favour of the applicant against the respondent and would submit that sufficient opportunities were granted to the respondent to participate in the arbitration, but, despite the same, the respondent had failed to participate, which culminated in the passing of the foreign arbitral award in favour of the applicant.

6. As seen from the counter affidavit filed before this Court, the respondent has also not disputed that they owe certain sums of money to the applicant in respect of the supplies effected by the applicant on behalf of the respondent at Malta. Therefore, this Court at this stage is of the considered view that the applicant has made out a prima-facie case for a direction to the respondent to furnish security to the extent of the award amount, i.e.,



Rs.2,62,48,195.72/-, within the stipulated time to be fixed by this Court.

7. The respondent has also raised an objection with regard to the maintainability of this application on the ground that since the foreign arbitral award has not been challenged by the respondent before the appropriate court in Germany, this application seeking to furnish security, pending enforcement, is not maintainable.

8. The learned counsel for the respondent also drew the attention of this Court to a decision rendered by a Division Bench of this Court in *M/s.Gopuram Enterprises Ltd., Vs. M/s.Intergral Finance Company Ltd. (O.S.A.No.53 of 2021, dated 15.02.2021)*, wherein this Court has held that once an arbitral award has attained finality, an application under Section 9 of the Act is not maintainable. However, on perusal of the said judgment, it is seen that the said ratio pertains to a domestic arbitral award and does not pertain to a foreign arbitral award as in the instant case. In the instant case, the award is yet to become a decree as per the provisions of Section 49 of the Act. Only when the foreign arbitral award becomes a decree, the applicant will be able to execute the same for realization of the dues as per the foreign arbitral award. Therefore, on a prima-facie consideration, this court is of the considered view that this application is maintainable before this Court.

9. As observed earlier, this Court will have to direct the respondent to furnish security for the awarded amount. Adequate averments have been made in the affidavit filed in support of this application that the respondent is indebted to various creditors and the applicant has also stated that proceedings have been initiated against the respondent before NCLT under the Companies Act in respect of the alleged fraud said to have been committed by the respondent. Adequate averments have also been made by the applicant that the respondent is attempting to alienate/encumber their assets to deprive the legitimate claim of the various creditors including the applicant.

10. For the foregoing reasons, this Court directs the respondent to furnish security to the extent of the award amount of Rs.2,62,48,195.72/- within a period of six weeks from the date of receipt of a copy of this order. With the above direction, this application is disposed off.

Post the matter for reporting compliance on 22.08.2025.”

By virtue of the above order, the respondent was directed to furnish security to the extent of the award amount within a period of six weeks from the date of receipt of the order.



7. In the meantime, the present petition came to be filed and this Court ordered notice to the respondent on 05.08.2025.

8. The petition and also Arb.Appln.No.768 of 2025 came up for hearing on 12.09.2025 and the learned counsel for the respondent sought for two weeks time to comply with the order passed on 03.07.2025.

9. The case was again listed for hearing on 10.10.2025 and the following order came to be passed by this Court:

“An order was passed by this Court on 03.07.2025 directing the respondent to furnish security to the extent of the award amount of Rs.2,62,48,195.72 within a period of six weeks. Thereafter, the matter has been adjourned at least on two occasions. When the matter came up for hearing on 12.09.2025, the learned counsel appearing on behalf of the respondent sought for two weeks time to comply with the earlier order passed on 03.07.2025.

2. When the matter was taken up for hearing today, the learned counsel for respondent submitted that they are yet to get instructions from the respondent and once again sought for time.

3. Along with Application No.768 of 2025, the applicant had also moved an application in A No.766 of 2025 for a direction to the respondent to disclose the movable and immovable properties along with the details of the bank accounts and all other properties. This application was closed as “not pressed” on 03.07.2025 on the understanding that the respondent will furnish security as was directed by this Court in A No.768 of 2025. However, till date, the respondent has not furnished security.

4. In view of the above, liberty is granted to the applicant to file a fresh application seeking for disclosure of assets.

5. In the main petition in OP No.457 of 2025 seeking for enforcement of the foreign arbitral award passed in favour of the petitioner, the learned



counsel for respondent submitted that counter affidavit has already been filed after serving a copy to the learned counsel for petitioner. However, no counter affidavit is available in the case bundle. The learned counsel for petitioner is also seeking for time to file a rejoinder for the counter affidavit filed in the petition.

6.Post this case for further hearing on 15.10.2025.”

10.The matter was adjourned for a couple of hearings with a hope that the respondent will settle the matter or at least comply with the earlier order passed by this Court on 03.07.2025. Ultimately, the matter was listed for hearing on 23.01.2026 and this Court passed the following order:

“When these matters were taken up for hearing today, it was brought to the notice of this Court that the respondent had settled a sum of Rs.60,00,000/- out of the total amount of Rs.2,50,00,000/- payable to the petitioner.

2. Learned counsel for respondent seeks some more time to make further payments to the petitioner.

3. Learned counsel for petitioner submitted that no proposal is forthcoming from the respondent for settlement of the entire amount. Therefore, learned counsel prays for orders in these applications. As a final chance, post these cases on 13.02.2026. By then, the respondent has to show their bonafides, failing which this Court will proceed further to pass orders.”

11.When the matter was taken up for hearing today, the learned counsel for the respondent, once again, sought for time and this Court, refused to grant any further adjournment and proceeded to hear the case on merits.

12.The main defence that has been taken by the respondent is that they did not have proper notice of the arbitration proceedings and therefore, they were unable to present their case. To substantiate the same, they took a stand



that the communication was issued to a wrong e-mail ID. Thus, the respondent raised the defence under Section 48(1)(a) of the Act.

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13.The respondent has taken a further stand that there was lack of fairness since an incorrect e-mail ID was given by the petitioner, as a result of which, proper notice was not served on the respondent. The third ground that has been raised by the respondent is that the Arbitral Tribunal entertained and accepted submissions from a third party named AUM Scrap & Metal Waste Trading LLC (AUM Metals) and that the respondent did not give any Power of Attorney or issued any Board Resolution or gave a written authority to appear on their behalf. Therefore, the communication has been made to the so-called agent contravening GMAA Rules and the Sales Agreement.

14.Insofar as the first two grounds are concerned, it is seen from records that all correspondences prior to the arbitration, were exchanged in at least six e-mail IDs belonging to the respondent and AUM Metals. All the e-mails that were addressed to the respondent, were also marked to the respondent's international agent AUM Metals. During the relevant period, the respondent never raised any objection insofar as their relationship with AUM Metals.



15.It is also seen from records that the notice invoking arbitration was sent through e-mail as well as courier and e-mail was addressed only to anandh@sakthigroup.co. Therefore, the respondent was very well aware that steps are being taken to invoke arbitration and it had also commenced.

16.It is also seen from records that the Arbitral Tribunal had despatched procedural orders and the statement of claim through courier, which were duly served on the respondent. The acknowledgment of the same is found at pages 366, 372 and 387 of the paper book filed by the petitioner. Apart from the above, the same was also sent to six e-mail IDs of the respondent and their international agent AUM Metals.

17.At the best, if at all, there is an error, one of the e-mail ID was shown as anandh@sakthigroup.com, instead of anandh@sakthigroup.co. Even assuming that information did not reach the respondent through this e-mail ID, the same was also sent through the remaining five e-mail IDs which were regularly used for exchanging correspondences, even prior to the disputes between the parties. In the light of the above materials, its too late in the day for the respondent to take a stand that they did not receive any notice and the entire proceedings were conducted behind their back. This stand taken by the respondent, deserves to be rejected.



18. Insofar as the communication made to AUM Metals, the said agent did not really contest the case on behalf of the respondent and they had only sought for an adjournment on behalf of the respondent, for the oral hearing on 23.12.2024. The proof of the same is found at page No.373 of the paper book filed by the petitioner.

19. Even otherwise, AUM Metals had always acted as the international agent of the respondent, at all relevant point of time. At no point, the respondent, either expressly or impliedly, informed the petitioner that AUM Metals was not their international agent. However, e-mails that were sent to the respondent was also marked to AUM Metals, since they acted as their international agent. In view of the above, such a defence raised on the side of the respondent is only liable to be rejected and this Court does not find any violation under Section 48(1)(d) of the Act, as alleged on the side of the respondent.

20. At this juncture, the order passed by this Court in Arb.O.P.(Com.Div.) No.423 of 2023 dated 17.10.2025 will be relevant. This Court, considered in detail regarding the service of notice of arbitration and the conscious and deliberate decision of a party not to participate in the arbitration proceedings. The relevant portions are extracted hereunder:



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“30. The ground under Section 48(1)(b) of the Act will not be available to a party, which makes a conscious and deliberate decision not to participate in the arbitral proceedings after receiving due notice of their commencement. The written communication made by a party refusing to participate in the proceedings constitutes a waiver of their own right to present their case and to receive further notices regarding the procedural steps taken in the arbitration. The burden is also on the resisting party to prove that they were denied an opportunity to be heard due the circumstances beyond their control. Such a circumstance cannot be presumed by merely showing that the award was passed ex parte. To hold otherwise would allow a recalcitrant party to strategically boycott foreign arbitrations and thereafter prevent an award holder at the enforcement stage, which will undermine the efficacy of international commercial arbitration and India’s treaty obligation under the New York Convention.

31. In the case in hand, there is no doubt that the notice of arbitration was served on the respondent.

32. The respondent took a conscious and deliberate decision not to participate in the arbitration proceedings after receiving the notice of its commencement. A party, which fails to take advantage of an opportunity duly accorded by the Arbitral Tribunal, cannot invoke the ground of being unable to present its case.

33. The respondent’s email dated 18.11.2019 is a proof of its deliberate choice and not its inability. The judgment of the Hon’ble Apex Court in *Centrotrade Minerals & Metals Inc.*, directly applies to the facts of this case.

34. Once a notice of arbitration is served, the respondent is deemed to have knowledge of the proceedings and a party, which chooses not to participate, cannot complain of violation of the principles of natural justice. The judgment of a learned Single Judge of the Delhi High Court in *Glencore International AG* is directly on the point.

35. The respondent was given the opportunity to participate and present its defence before the Arbitral Tribunal and the respondent consciously chose to forfeit that right. Hence, the respondent cannot use its own default as a ground to resist enforcement of the resultant foreign award. The respondent cannot be permitted to raise the grounds, which ought to have been raised before the Arbitral Tribunal by participating in the proceedings.”



21.In the light of the above discussion, this Court declares that the Arbitral Award dated 07.02.2025 read with Arbitral Award on Costs dated 13.03.2025, passed by the Arbitral Tribunal comprising M/s.Jan Heiko Kohlbrandt and Wilm Steingrover, is enforceable under Sections 47 to 49 of the Act and consequently, there shall be a direction to the respondent to pay the petitioner USD 213,632.20 together with interest @ 2% per month since 09.02.2024, till the date of actual payment. There shall be a further direction to the respondent to pay the petitioner EUR 3,994.20 together with interest @ 5% above base rate since 14.05.2024 till the date of actual payment, towards pre-litigation costs. There shall be a further direction to the respondent to pay EUR 24,385.90, towards arbitration costs.

22.In the result, this petition stands allowed with a further direction to the respondent to pay costs of a sum of Rs.2,50,000/- to the petitioner.

13-02-2026

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Index:Yes/No

Neutral Citation:Yes/No



WEB COPY

Arb O.P(COM.DIV.) No. 457 of 2025



N.ANAND VENKATESH, J.

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Arb O.P(COM.DIV.) No. 457 of 2025

13-02-2026