Bombay High Court
M/S. Louis Dreyfus Commodities ... vs M/S. Govind Rubber Limited on 4 February, 2013
Bench: R.D. Dhanuka

hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 174 OF 2012

M/s. Louis Dreyfus Commodities Asia Pte Ltd.
501, Orchard Road #19-01,
Wheelock Place,

Singapore 238880 .. Petitioner

Versus

M/s. Govind Rubber Limited,

Having their registered office at
First Floor, Durga Trading Building,

Sitaram Mills Compound,
Lower Parel, Mumbai 400 011 .. Respondent

Mr. Jay Savla along with Ms. Shreeja John i/by M.P. Savla & Co. for the petitoienr.

Mr.Harish Pandya along with Mr. R.A. Iyer i/by M/s. Khaitan & Co. for

respondent.

CORAM : R.D. DHANUKA,J.

DATED : FEBRUARY 04, 2013 ORAL JUDGMENT :

1. By this petition filed under section 47 and 48 of the Arbitration & Conciliation Act, 1996, the petitioner seeks an order that the foreign award dated 18th December, 2009 be deemed to be the decree of this court and for the direction to enforce and execute the said award as decree in favour of the petitioner and against the respondents and also seeks various directions against the respondents for disclosure of assets and properties and for attachment and sale of the properties of the respondents.

2/36 ARBP-174.12.sxw

2. The learned counsel for the respondents raised preliminary objections about the maintainability of this petition in this court on various grounds. As both the parties have made submissions in detail on those issues also, it would be proper to deal with those submissions together with the other issues in the latter part of this judgment.

3. Some of the relevant facts for the purpose of deciding this petition are as under :

(a) The Petitioner company is having its office at Singapore. The respondent is carrying on business at Mumbai inter alia of import and export of commodities. On 20th August, 2008, the respondent through the broker B.B. Rubber Pvt. Ltd. confirmed for purchase of natural rubber RSS-3 (Thailand origin). It is the case of the petitioner that upon receiving the broker's confirmation of the orders and advise to fax over the sales contracts, the petitioners issued a sales contract bearing No. 03S8755 for 200 Metric Tons (MT) of Thai RSS3 at US$ 2,880 per metric ton, CIF Nhava Sheva, India with payment term 100% against Letter of Credit for shipment in September, 2008. The said sale contract provided the governing terms as "Singapore Commodities Exchange". The said sale contract is signed by the representative of the petitioner. The name of the respondent was described as buyer. The name of the broker was also mentioned (hereinafter referred to as "First Sale Contract").

3/36 ARBP-174.12.sxw

(b) The respondent issued purchase Order No. BOM:PO:2008-

09:286 dated 21st August, 2008. It is the case of the respondent that by this purchase order, the respondent placed orders on the terms and conditions set out therein. The commercial terms and conditions are printed on the reverse of the said purchase order.

Clauses 9 and 11 of the commercial terms of the purchase order reads as under :

"9.0 JURISDICTION OF THE COURT : The contract shall in all respects be constructed and operated as an Indian Contract and in conformity with the Laws of India and shall be taken to have been made in Mumbai, India and be subject to the exclusive jurisdiction of Mumbai, India Courts only.

11.0 ONLY THESE TERMS TO OPERATE :

Only the terms thus specified herein shall be applicable irrespective of anything written or printed in any of the correspondence, enquiry, offer related to this purchase from the Seller or his agent unless otherwise expressly and explicitly amended by the Purchaser in writing.

The Terms and conditions attached to Purchase Order shall constitute part of this offer to purchase to the same extent as if set out on the face hereof, and any acceptance of this order shall be deemed to be given subject to each and all of the said Terms and conditions."

4/36 ARBP-174.12.sxw (c) The respondent thereafter requested to change the payment term in the said sales contract to be 10% advance by TT and balance 90% by DP at sight through email dated 26 th August, 2008.

It is the case of the petitioner that the said request for amendment was accepted by the petitioner in respect of new payment term and accordingly petitioner issued invoice dated 27th August, 2008 for the 10% advance payment for 200 metric tons RSS 3 @ US$2,880/MT. It is the case of the petitioner accordingly latter the invoice was split into two invoices of 100 metric tons each for which 10% of contract value was US$28,800. On 28th September, 2008, cargo of 2 x 100 MT RSS 3 was shipped from Lame Chabang on MT APL Cairo/OOCL Mumbai to Nhava Sheva under Bill of Lading No. APLU 027620177 and No. APLU 027631421 respectively. The original documents of shipments were couriered to the Respondent's Bank.

(d) On 11th October, 2008, the broker sent a letter to the Respondent to confirm acceptance of their request to split bills of lading separately, as conditions for payment upon presentation.

The Petitioner on 17th October, 2008 requested for return of the documents from Indian Overseas Bank of the respondent in order to split the bills of lading into smaller lots as requested by the respondent. On 31st October, 2008, the petitioners sent the 5/36 ARBP-174.12.sxw revised split bills of lading and invoices for resubmission on Indian Overseas Bank for payment. On 31 st October, 2008, the respondent confirmed receipt of non-negotiable documents for both contracts and requested for price deduction as conditions to make payment, which was not accepted by the petitioners. On 10 th November, 2008, the broker emailed to the respondent to insist performance of the contracts and recapping the sequence of events of the contracts. The respondent however, did not make payment.

The dispute arose between the parties.

(e) It is the case of the petitioner that on 22 nd August, 2008, upon receiving brokers confirmation of order and advice to fax over the sales contrats, the petitioner issued sales contract on 25 th August, 2008, bearing No. 03S8739 for 201.6 Metric tons (mt) of SIR20 at us $ 2,895/mt CIF Nhava Sheva,India, with payment term 100% Letter of Credit for shipment in September, 2008 with the Petitioner's contract stating governing terms as Singapore Commodity Exchange to the respondent which issued its purchase order No. BOM:PO:2008-09:290. (For short the said contract is referred to as second sales contract). By email dated 27th August, 2008 the respondent requested to change payment terms in respect of the said second sales contract and requested for 10% advance by TT and balance 90% by DP at site. The petitioner accepted new payment terms as requested by the 6/36 ARBP-174.12.sxw respondent. On 15th September, 2008, the petitioner issued proforma invoice for 10% advance payment as requested by the respondent. On 23rd September, 2008, 100.8 Mt SIR 20 cargo was shipped on Kota Intan/APL Zircon from Palembang, Indonesia to Nhava Sheva under BL No. APLU073596794 and the other lot was shipped on 3rd October, 2008. On 11th October, 2008, the broker sent letter to the respondent to confirm acceptance of its request to split bill of lading of each 100 MT into 1 fel + 2 fels + 2 fels and bill separately as conditions for payment upon presentation. On 17th October, 2008 the petitioner asked for return of shipping documents from Indian Overseas Bank in order to split bill of lading into smaller lots as requested by the respondent.

On 27th October, 2008, the broker sent a message to the respondent to ensure that all the payments be made against revised documents to be presented on the respondent bank when it opened. On 31st October, 2008, the respondent confirmed receipt of non negotiable documents for both RSS 3 and SIR 20 contracts with price of US$ 2880 and US$2895 per metric tons and requested for price reduction as conditions to make payment which was rejected by the petitioner. The dispute arose between the parties in respect of the second sales contract. The petitioner therefore, vide letter dated 12th May, 2009 referred the matter to Singapore Commodity Exchange for arbitration in accordance 7/36 ARBP-174.12.sxw with the terms of contract and attached points of claim in arbitration. The respondents vide letter dated 23rd May, 2009 to SICOM Rubber Contract Dispute Resolution Committee, the Singapore Commodity Exchange and contended that the respondent had incurred huge loss in view of the failure on the part of the petitioner to supply the goods in time with standard of second party in quantity. By the said letter the respondent lodged their claim on the first party for US $ 3734036.25 and also agreed for acceptance of nomination to Mr. Leong Tim Fook as their sole arbitrator. The respondent also contended that the Singapore Commodity Exchange or its committee did not have any jurisdiction. It was submitted that the jurisdiction shall be in Mumbai.

(f) There was further correspondence exchanged between the parties and the Singapore Commodity Exchange. The arbitral tribunal made award bearing Award No. 11 of 2009 on 18th December, 2009 directing the respondent to pay to the petitioner sum of US $716283 for breach of contract and also to bear cost and expenses of said arbitration amounting to Singapore dollar 20330. The arbitral tribunal rendered a finding that SICOM and its arbitral tribunal had arbitration jurisdiction over two contracts in dispute and the said two sales contracts existed and were valid.

The arbitral tribunal rejected the counter claim made by the 8/36 ARBP-174.12.sxw respondent.

(g) It is common ground that the respondent did not challenge the said award dated 18th December, 2009 in any court of law so far. Some time in the year 2010, the respondent filed a suit against the petitioner in this court (2753 of 2010) inter alia praying for damages. The petitioner has filed notice of motion in the said proceedings. The said suit is pending. The Petitioner thereafter filed this proceedings on 11th January, 2012 for seeking enforcement and execution of the said award as decree.

4. I shall first summarize the submissions made by the respondent by way of preliminary objections and also the submissions made by the petitioner.

5. Mr. Pandya, the learned counsel for the respondent made following submissions :

> (a) The sales contract dated 20th August, 2008 and 25th August, 2008 were not signed and returned by the respondents. The respondents had issued purchase orders which provided clause that the contract was in all respects to be constructed and operated as Indian contract and in conformity with the laws of India and shall be taken to have been made in Mumbai, India and be subject to exclusive jurisdiction of Mumbai, India Courts only. The learned counsel placed reliance upon clauses 9 and 11 and submits that 9/36 ARBP-174.12.sxw only the terms referred in commercial terms and conditions printed on the purchase order were applicable irrespective of anything written or printed in any of the correspondence/enquiry/offer related to that purchase from the seller or his agent unless otherwise expressly and explicitly amended by the purchaser in writing. The learned counsel submits that it was categorically provided that the terms and conditions attached to the said purchase order shall constitute part of the said offer to purchase to the same extent as if it set out on the face thereof and ig in acceptance of that, the order shall be deemed to be given subject to each and all of the said terms and conditions. Relying upon this clause, the learned counsel would submit that the parties had acted upon the purchase order which did not contain any arbitration agreement and dispute was subject to the proceedings in courts in India. It is submitted that the sales order was not signed and returned by the respondents. It is submitted that in any event, the said sales contracts only referred to "Singapore Commodity Exchange" which could not amount to arbitration agreement between the parties.

(b) The Singapore Commodity Exchange did not have jurisdiction to appoint any arbitrator on behalf of the petitioner or on behalf of the respondent or to proceed with arbitration. It is submitted that the entire proceedings before the Singapore Commodity Exchange was without jurisdiction. Only the courts in India would have 10/36 ARBP-174.12.sxw jurisdiction to decide the dispute between the parties. The respondent has already filed a suit against the petitioner for claiming damages and the same is pending.

(c) The counter offer made by the respondent by issuance of purchase order was accepted by the petitioner and was concluded.

No reliance thus can be placed by the petitioner on the sales contracts. The offer was made and accepted in India and thus Singapore Commodity Exchange did not have jurisdiction. The award made by the arbitral tribunal appointed by Singapore Commodity exchange is not a foreign award under section 44 of the Arbitration & Conciliation Act, 1996.

(d) The Petitioner had suppressed true and correct facts and the complete copy of the purchase order was not filed before the arbitral tribunal as well as before this court and thus on this ground alone, petitioner would not be entitled to get any relief.

(e) The Petitioner has not satisfied the conditions under section 47 of the Arbitration & Conciliation Act, 1996 in filing this petition. The Petitioner has not annexed original or authenticated copy of the award or the original agreement. The Petitioner has not produced any evidence to prove that the award is a foreign award as contemplated under section 47 of the Act. The Petitioner has not 11/36 ARBP-174.12.sxw filed any pleadings as required to be pleaded and proved under section 47. There is no reference to purchase order in the entire award made by the arbitral tribunal which shows that the said document was suppressed by the petitioner.

(f) It is submitted that the point of foreign law is a matter of fact and plea based on the point of foreign law must satisfy the requirement of complete and material fact in the petition filed before this court while seeking enforcement of award under section 47 of the Arbitration Act, 1996.

(g) In case of variation, the terms and conditions of purchase order only would prevail. The transaction cannot be made subject to Singapore laws. The substantive law in India has to be applied otherwise, it would be in conflict with public policy of India.

(h) The learned counsel for the respondent placed reliance upon the following judgments in support of various submissions made aforesaid.

(1) (1992) 3 SCC 551 (National Thermal Power Company Vs. Singer Company) (2) (1981) 1 SCC 80 (Ramji Dayawala Vs. Invest Import) (3) (1994) 1 SCC 1 (S.P. Chengalvaraya Naidu Vs. Jagananth and Ors.) (4) AIR 2011 SC 1989 (Narmada Bachao Andolan Vs. Narmada Hydro Dev. Ltd.) 12/36 ARBP-174.12.sxw (5) 2005(1) ALLMR 703 Rhodia Ltd. Vs. Neon Laboratories) (6) (1996) 3 SCC 310 (Gaurishankar & anr. Vs. Joshi Amba Shankar Family Turst) (7) (2006) 1 SCC 751 (Dresser Rand S.A. Vs. Binda Agro Chem)

6. Mr. Savla, the learned counsel appearing for the petitioner on the other hand made the following submissions :

> (a) Both the sales contracts issued by the petitioner were concluded contract on the date of its issuance. Both the sales contracts categorically recorded that the petitioner had confirmed having sold to the respondent goods described therein on the terms and conditions already mentioned therein. The respondent had made a request to change the payments terms/to split the bills of lading into smaller lots and negotiated for price reduction as condition to make payment. These changes were accepted by

the petitioner. The request made by the respondent was to the terms and conditions of the sales contract which were accepted by the petitioners and accordingly payment terms were revised. The bills of lading were split. The goods were shipped. The respondent had requested for reduction of price which was declined by the petitioner. Both the parties had acted upon the terms and conditions recorded in the sales contracts. Even in the correspondence the sales contracts were referred as contracts between the parties. The sales contracts contained provisions that the parties shall be 13/36 ARBP-174.12.sxw governed by Singapore Commodity Exchange and rules of Singapore Commodity Exchange provided for resolution of dispute between the parties by arbitration to the knowledge of the respondent. The respondents had also filed counter claim before the arbitral tribunal and did not challenge the arbitral award in any court of law which has become final and is binding on both the parties.

(b) The provisions of Singapore Commodity Exchange containing arbitration clause stood incorporated in the sales contracts by reference. The Petitioner having satisfied condition under section 44, 46 and 47 of the Arbitration & Conciliation Act, 1996, and respondent having failed to furnish any proof as to why arbitration award cannot be enforced under section 48, this court shall pass appropriate order for the enforcement of the award under section 49 of the Act.

(c) Under section 7(4) of the Arbitration & Conciliation Act, 1996, even if arbitration agreement is contained in the exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, it satisfies the definition of arbitration agreement. Even if there is reference in a contract to a document containing an arbitration clause it constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

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(d) It is submitted that the arbitration clause of Singapore

Commodity Exchange thus stood incorporated in the sales contract and the parties having acted upon the terms and conditions of the sales contract, thus also agreed to abide by the arbitration agreement recorded therein. Singapore Commodity Exchange thus had jurisdiction to entertain the dispute. The arbitral tribunal has also rendered a finding that it had jurisdiction which has not been challenged by the respondent in any court of law by challenging the award.

(e) The suit filed by the respondent in this court was after declaration of the award by the learned arbitral tribunal and is of no significance.

(f) The respondent had participated in the arbitration proceedings and had filed counter claim and raised issue of jurisdiction. The arbitral tribunal has considered the claims made by the petitioner and counter claim made by the respondent and had allowed the claims of the petitioner and rejected the counter claim.

The said award not having been challenged after participation in the arbitration proceedings, has become decree and is enforceable.

(g) There was no suppression of any facts or documents before the arbitral tribunal or in this court. The complete copy of the 15/36 ARBP-174.12.sxw purchase order was produced before the arbitral tribunal. It was an inadvertent error in not annexing the second page of purchaser order containing the printed terms and conditions in the present proceedings and did not amount to suppression of any documents.

(h) The Petitioner has produced all the evidence as required to be produced under section 47 of the Arbitration & Conciliation Act, 1996. The award delivered by the arbitral tribunal is a foreign award within the meaning of definition of foreign award under section 44 of the Act. The disputes and differences between the parties had arisen out of the legal relationship under the sales contracts which were commercial contracts under the law in force in India. It is common ground that the petitioner being one of the parties to the said agreement is body corporate incorporated outside India. The arbitration between the parties was thus international commercial arbitration within the meaning of section 2(1)(f) of the Act.

(i) The petitioner had annexed certified copy of the award passed by the arbitral tribunal establishing/proving that the arbitral award dated 18th December, 2009 was a foreign award. It was notarized by the notary public at Singapore. There are sufficient pleadings in that regard and more particularly in para 16 and 17 of the Arbitration Petition. Section 47(A) of the 16/36 ARBP-174.12.sxw Arbitration Act, 1996, permits filing of copy of the original award duly authenticated in the manner required by law of that country in which it was made. The copy duly certified as true by the notary public in Singapore is a copy duly authenticated within the provisions of section 47(A) of the Act.

7. The learned counsel for the respondent placed reliance upon the judgment of the Supreme court in the case of Smita Conductors Vs. Euro Alloys Ltd. (2001) 7 SCC 728 and Trimax International Vs. Vedanta Aluminium (2010) SCC 3 and Groupe Chemique Tunisien SA Vs. Southern Petrochemicals Industries Corporation Ltd. (2006) 5 Supreme Court Cases

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8. I shall first decide whether there existed any arbitration agreement between petitioner and the respondent in the contract entered into between the parties. It is not in dispute that petitioner had executed the sales contracts dated 20th August, 2008 in respect of the first sales contract and dated 25th August, 2008 in respect of the second sales contract. Both the sales contracts provided clause governing terms: "Singapore Commodity Exchange". Both the sales contracts also provided that the

petitioner had confirmed having sold to the respondent the goods described therein on the terms and conditions recorded in the said sales contracts. The respondents had subsequently made request for change of terms of payment and also for spliting of bills of exchange. Certain amendments were required by the 17/36 ARBP-174.12.sxw respondent to the terms and condition recorded in the sales contracts. The Petitioner accepted the said request made by the respondents and amended those terms and after accepting those terms duly amended by the petitioner, the parties acted upon the same. There was no amendment to the term "Governing terms : Singapore Commodity Exchange". The vessel thereafter shifted contained goods in question. The respondent had thereafter made a request for reduction of rate which was not accepted by the petitioner. All the correspondence referred to and relied upon in the petition, as well as referred to by the respondent, including inter party correspondence, refers to the sales contracts. Perusal of the sales contracts and also purchase orders which was issued subsequently in the case of first sale contract and also considering subsequent conduct of both the parties, it is clear that both the sales contracts were concluded contracts and were duly acted upon by both the parties. In my view, merely because the respondent did not sign sales contract or did not return the copy thereof duly signed to the petitioner, would not mean that the terms and conditions recorded in such sales contracts would not be binding. In view of the fact that the respondent had acted upon the terms and conditions of the sales contract, which included the provisions of Singapore Commodity Exchange, which contained arbitration clause, in my view section 7(5) the provisions of Singapore Commodity Exchange i.e. rules framed therein stood incorporated as part of the terms and conditions of the sales contracts containing arbitration clause. The parties having acted upon such terms and conditions are bound by arbitration 18/36 ARBP-174.12.sxw clause. In my view, the arbitration clause contained in the sales contract though not signed by both the parties, but having acted upon, would amount to arbitration agreement in view of section 7(4) read with 7(5) of the Arbitration & Conciliation Act, 1996. I am, therefore, not inclined to accept the submission of the respondent that there was no arbitration agreement agreed upon by and between the parties. The purchase orders in any event was issued subsequently in point of time after such sales contract which was concluded contract contained all terms and conditions and such purchase orders would be of no consequence.

ig The learned arbitral tribunal has rendered finding that the arbitration clause existed and tribunal had

jurisdiction to resolve the dispute referred to the tribunal. As a matter of record, the respondent also had filed counter claim before the arbitral tribunal and the same was dealt with by the arbitral tribunal and rejected. The respondent not having challenged the said award, cannot be permitted to raise the issue of jurisdiction in the present proceeding.

9. Mr. Savla, the learned counsel appearing for the petitioner then placed reliance upon the judgment of the Supreme Court in the case of Trimax International and more particularly Paragraphs 10, 11, 53 to 60 which read thus :

> "10. Mr. K.K. Venugopal, learned senior counsel for the petitioner, after taking me through the sequence of events which took place on 15.10.2007 and 16.10.2007,

> submitted that the contract between the petitioner and the respondent stood concluded by acceptance of the offer for five shipments by the respondent at 3.05 p.m. on 16.10.2007. He further contended that the commercial offer of 16.10.2007 was pursuant to the 19/36 ARBP-174.12.sxw request of the respondent on 10.10.2007 and on the basis of a similar transaction which had been concluded in the previous month between the parties. By taking me through various e-mails exchanged between the parties, he contended that the charter was entered into a contract by the parties on 17.10.2007 i.e. the next day.

He finally submitted that from the materials it was established beyond doubt that the intention of parties in case of any dispute between them arising out of the contract which was concluded on 16.10.2007 at 3.06 p.m. shall be settled through arbitration.

11. On the other hand, Mr. C.A. Sundaram, learned senior counsel for the respondent contended that there was no concluded contract between the parties and that the agreement between the petitioner and the respondent was only in respect of the number of shipments (two or five) and nothing more. According to him, there is no arbitration agreement and that Clause 6 is vague and ambiguous. He further contended that even in the legal notice dated 01.09.2008 issued by the petitioner's counsel, there is no specific reference to Clause 6 of the commercial offer but mentioned only Clause 29 of the purchase order exchanged between the parties on 08.11.2007 but the present petition before this Court mentions both of them.

53. In the present case, where the Commercial Offer carries no clause making the conclusion of the contract incumbent upon the Purchase Order, it is clear that the basic and essential terms have been accepted by the respondent, without any option but to treat the same as a concluded contract.

54. Though Mr. C.A. Sundaram, learned senior counsel heavily relied on the judgment of this Court in Dresser Rand S.A. v. Bindal Agro Chem Ltd. MANU/SC/0151/2006 : (2006) 1 SCC 751, the same is distinguishable because in that case only general conditions of purchase were agreed upon and no order was placed. On the other hand, in the case on hand, specific order for 5 shipments was placed and only some minor details were to be finalized through further agreement.

55. This Court in Dresser Rand S.A (supra) rejected the contention that the acceptance of a modification to the General Conditions would not constitute the conclusion of the contract itself. On the other hand, in the present case, after the suggested modifications had crystallized over several emails. Further in para 32 in Dresser Rand S.A 20/36 ARBP-174.12.sxw (supra) this Court held that "parties agreeing upon the terms subject to which a contract will be governed, when made, is not the same as entering into the contract itself" whereas in the case on hand, the moment the commercial offer was accepted by the respondent, the contract came into existence. Though in para 44 of the Dresser Rand S.A (supra), it is recorded that neither the Letter of Intent nor the General Conditions contained any arbitration agreement, in the case on hand, the arbitration agreement is found in Clause 6 of the Commercial Offer. In view of the same, reliance placed by the respondent on Dresser Rand S.A (supra) is wholly misplaced and cannot be applied to the case on hand where the parties have arrived at a concluded contract.

56. Mr. Venugopal pointed out that the Charter Party Agreements are governed as per international shipping practices. The normal procedure is that the brokers from both sides first agree on the vital terms over phone/telex (these terms relate to Freight, Type of Ship, Lay Can (Period of shipping), Demurrage Rate, Cranes, etc.) At this stage, no agreement is formally signed but the terms are binding on both the parties, as per the Contract of Affreightment (CoA), which in the present case was entered into on the next day, i.e. 17.10.2007. Certain minor modifications could go on from either side on mutual agreement but in the absence of any further modification, the originally agreed terms of the CoA are binding on both the parties. Till the agreement is actually signed by both the parties, the term draft is used. This does not mean that the terms are not binding as between the Petitioner and the Ship-owners. Further, according to him, the existence of the Charter Party, various international shipping practices etc. which are to be pleaded in detail before the Arbitral Tribunal once it is constituted and not before this Court since this means extensive quoting of shipping laws and decided cases which cannot be done in the present arbitration petition. The above submissions cannot be under estimated.

57. Both in the counter affidavit as well as at the time of arguments Mr. C.A. Sundaram, learned senior counsel for the respondent has pointed out various differences between the version of the respondent and the petitioner. However, a close scrutiny of the same shows that there were only minor differences that would not affect the intention of the parties. It is essential that the intention of the parties be considered in order to conclude whether parties were ad idem as far as adopting arbitration as a method of dispute resolution was concerned. In those circumstances, the stand of the respondent that in the absence of signed contract, the arbitration clause cannot be relied upon is liable to be rejected.

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58. Smita Conductors Ltd. v. Euro Alloys Ltd. was a case where a contract containing an arbitration clause was between the parties but no agreement was signed between the paties. The Bombay High Court held that the arbitration clause in the agreement was binding. Finally, this Court upholding the judgment of the Bombay High Court held that the arbitration clause in the agreement that was exchanged between the parties was binding.

59. In Shakti Bhog Foods Limited v. Kola Shipping Limited MANU/SC/4185/2008 : (2009) 2 SCC 134, this Court held that from the provisions made under Section 7 of the Arbitration and Conciliation Act, 1996 that the existence of an arbitration agreement can be inferred from a document signed by the parties, or an exchange of letters, telex, telegrams or other means of telecommunication, which provide a record of the agreement.

60. It is clear that in the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams and other means of tele-communication."

10. The learned counsel placed reliance upon the judgment of the Supreme Court on this issue in the case of Groupe Chemique Tounisien S.A. more particularly paragraph Nos. 4, 6 to 8 which read thus

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> "4. The respondent has not disputed the fact that it had placed five purchase orders (referred to above) on the petitioner for supply of Phosphoric Acid, nor the fact that each of these purchase orders specifically provided that "all other terms and conditions are as per FAT terms". It is also not disputed that Clause 15 of FAT terms provides for settlement of disputes by arbitration (extracted below):
>
> In the event of any question or dispute arising under or out of these conditions or in connection with or relating to this contract (except as to any matter(s) the decision of which is specially provided for in these conditions), the matter in dispute shall be referred to two arbitrators, one to be nominated by the seller and one to be nominated by the buyers or in the case of said arbitrators not agreeing, then to an Umpire to be appointed by the Arbitrators in writing before proceeding on the reference and the decision of the 22/36 ARBP-174.12.sxw Arbitrators or in the event of their not agreeing, of the said Umpire shall be final and conclusive and the provisions of Indian Arbitration and Conciliation Act, 1996 and any modification thereon and the rules thereunder shall be deemed to apply to the proceedings. The arbitrators or the Umpires as the case may be shall be entitled with the consent of the parties to enlarge the time, from time to time for making the award. The arbitrator/Umpire will give a reasoned award.
>
> The venue of the Arbitration shall be Delhi.

6. Whether there is an arbitration agreement or not, has to be decided with reference to the contract documents and not with reference to any contention raised before a court of law after the dispute has arisen. Reference to pleadings before the Jordanian Courts would have been relevant if the plea was that the arbitration agreement between the parties is contained in the exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other (as contemplated under Section 7(4)(c) of the Act). Be that as it may. Section 2(b) of the Act defines 'arbitration agreement' as meaning an agreement referred to in Section 7 (extracted below):

7. Arbitration agreement. - (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

23/36 ARBP-174.12.sxw (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

7. The purchase orders placed by the respondent on the petitioner are the contracts between the parties and they are subject to FAI terms which contain the arbitration clause. Sub-section (5) of Section 7 specifically provides that where there is reference in a contract (in this case, the purchase order) to a document containing an arbitration Clause (in this case, the FAI terms), such reference constitutes an arbitration agreement, if the contract is in writing and the reference is such as to make that arbitration clause a part of the contract. The case squarely falls under Section 7(5) of the Act and there is an arbitration agreement between the parties as per Clause 15 of the FAI terms.

8. The respondent next contended that in the invoices for the supplies, there is no reference to FAI terms or arbitration agreement and, therefore, the disputes are not arbitrable. As noticed above, the purchase orders are the contracts. Invoice is a document which is prepared with reference to the supplies made under the contract. When the contract (purchase order) incorporates an arbitration agreement by reference, the invoice need not contain a provision for arbitration."

11. On reading of the relevant paragraphs of the judgment of the Supreme Court, it is clear that in view of reference to Singapore Commodity exchange which contains arbitration clause in the sales contracts which are in writing, it constitutes arbitration agreement. Considering the documents and correspondence on record and the fact that the respondents acted upon the sales contracts, I am of the view that the arbitration clause contained in the sales contract was binding on both the parties and thus the petitioner had rightly invoked the said arbitration clause.

12. The learned counsel appearing for the respondents on this issue placed reliance on the judgment of the Supreme Court in the case of Dresser Rand 24/36 ARBP-174.12.sxw S.A. Vs. Binda Agro Chem (2006) 1 SCC 751 and more particularly paragraph No. 24 thereof which reads thus :

> "24. The principle as to how to find out whether the correspondence shows consensus ad idem, was stated by this Court in Rickmers Verwaltung Gmbh v.
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> MANU/SC/0726/1998 : Indian Oil Corporation Ltd. AIR1999SC504 :
>
> The submission of Mr. Nariman that an agreement, even if not signed by the parties, can be spelt out from correspondence exchanged between the parties admits of no

> doubt. In fact, various judgments cited by him at the bar unmistakably support this assertion. The question, however, is can any agreement be spelt out from the correspondence between the parties in the instant case?
>
> In this connection the cardinal principle to remember is that it is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding contract between them but the Court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The Court is required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement, upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence."

13. Relying upon the said judgment, the learned counsel for respondent submits that from the correspondence it can unequivocally and clearly indicate that the parties were ad idem to the terms of the contract and it cannot be said that the arbitration agreement came into existence between 25/36 ARBP-174.12.sxw them through correspondence. In my view the fact that the respondent had requested for amendment to the terms incorporated in the sales contracts and said request was accepted by the petitioner and few terms of said sales contracts were amended and thereafter acted upon by the respondents, presupposes that the sales contract was concluded contract containing arbitration clause. The sales contracts were also subsequently referred in the correspondence exchanged between the parties. Considering the documents on record, it is clear that both the parties had acted on sales contracts only as concluded contracts.

14. The learned counsel appearing for the petitioner placed reliance upon the judgment of the Supreme Court in the case of Smita Conductors (supra) and more particularly para 6 which reads thus :

> "6. What needs to be understood in this context is that the agreement to submit to arbitration must be in writing. What is an agreement in writing is explained by para 2 of Article II. If we break down para 2 into elementary parts, it consists of four aspects. It includes an arbitral clause (1) in a contract containing an arbitration clause signed by the parties, (2) an arbitration agreement signed by the parties, (3) an arbitral clause in a contract contained in exchange of letters or telegrams, and (4) an arbitral agreement contained in exchange of letters or telegrams. If an arbitration clause falls in any one of these four categories, it must be treated as an agreement in

> writing. In the present case, we may advert to the fact that there is no letter or telegram confirming the contract as such but there is certain correspondence which indicates a reference to the contract in opening the letters of credit addressed to the Bank to which we shall presently refer to. There is no correspondence between the parties either disagreeing with the terms of the contract or arbitration clause. Apart from opening the letters of credit pursuant to the two contracts, the appellant also addressed a telex message on 23.4.1990 in which there is a reference to two contracts bearing Nos.S-142 and S-336 in which they 26/36 ARBP-174.12.sxw stated that they want to invoke force majeure and the arbitration clauses in both the contracts which are set forth successively and thus it is clear that the appellant had these contracts in mind while opening the letters of credit in the bank and in addressing the letters to the bank in this regard. May be, the appellant may not have addressed letters to the respondent in this regard but once they state that they are acting in respect of the contracts pursuant to which letters of credit had been opened and they are invoking the force majeure clause in these two contracts, it obviously means that they had in mind only these two contracts which stood affirmed by reason of these letters of credit. If the two contracts stood affirmed by reason of their conduct as indicated in the letters exchanged, it must be held that there is an agreement in writing between the parties in this regard."

15. The Supreme Court after considering the correspondence between the parties held that the contract stood confirmed by the reasons of their conduct and by their letter of exchange and it cannot be held that there was no agreement in writing between the parties in that regard. In my view, the learned counsel appearing for the petitioner was right in placing reliance upon the judgment of the Supreme Court in the case of Smita Conductors (supra).

The view taken by the Hon'ble Supreme Court in the said case are similar to the facts of this case and is binding on this court.

16. As far as the suit filed by the respondent in this court inter alia praying for damages is concerned, it is not in dispute that the respondent did not challenge the impugned award though had raised counter claim before the arbitral tribunal after raising the issue of jurisdiction. It is not in dispute that the said suit has been filed by the respondent after the award came to be delivered by the arbitral tribunal. In my view, the suit filed by the respondent after declaration of the award by the arbitral tribunal is of no consequence.

27/36 ARBP-174.12.sxw The Petitioners had rightly filed present proceedings for seeking enforcement and execution of the award under section 49 of the Arbitration & Conciliation Act, 1996.

17. The next question that arises for consideration is whether the award given by the arbitral tribunal is a foreign award or not.

18. Section 2(1)(f) of the Arbitration & Conciliation Act, 1996 defines international commercial arbitration which reads thus :

> "(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is -
>
> (I) an individual who is a national of, or habitually resident in, any country other than India; or (II) a body corporate which is incorporated in any country other than India; or (III) a company or an association or a body of individuals whose central management and control is exercised in any country other than India;
>
> (IV) the Government of a foreign country."

19. Section 44 of the Arbitration & Conciliation Act, defines foreign award which reads thus :

> "44. Definition. In this Chapter, unless the context otherwise requires," foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force hi India, made on or after the 11th day of October, 1960 -
>
> (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and
>
> (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette. declare to be 28/36 ARBP-174.12.sxw territories to which the said Convention applies. "

20. It is not in dispute that the petitioner company is incorporated in the country other than India. The arbitration relating to disputes arising out of legal relationships between the parties, thus would fall within the definition of international commercial arbitration. Considering the fact that the dispute was resolved through arbitration which was international commercial arbitration within the meaning of section 2(1)(f) of Arbitration & Conciliation Act and the arbitral award delivered by the arbitral tribunal was on the difference between the parties arising out the legal relationships which was considered as commercial in law in force in India, in my view, the award delivered by the arbitral tribunal is foreign award within the definition as contemplated under section 44 of the Act.

21. The next question that arises for consideration is whether merely because the name of the Singapore Commodity Exchange was mentioned on the sales contract, it would not incorporate arbitration clause including rules, if any, of Singapore Commodity exchange and thus the said clause would not amount to arbitration agreement. It is not in dispute that the respondent themselves had correspondence with Singapore Commodities exchange and also had filed counter claim before the arbitral tribunal which indicates that both the parties were ad idem that the rules of Singapore

Commodities Exchange containing arbitration clause stood incorporated as arbitration agreement under the sales contract by virtue of section 7(5) of the Arbitration Act. In the case of Groupe Chemique Tunisien SA Vs. Southern Petrochemicals Industries Corpn. Ltd. (supra) decided by the Supreme Court, the purchase order contained clause that all other terms and conditions were as per FAI terms (Fertilizer Association of India Terms and Conditions for Sale and 29/36 ARBP-174.12.sxw Purchase of Phosphoric Acid). The Supreme Court has considered clause 15 of the FAI terms provided for settlement of disputes by the arbitration as arbitration agreement between the parties. It is not in dispute that the rules framed by Singapore Commodities exchange Board had framed arbitration procedure for the conduct of arbitration proceedings. In my view, thus there is no substance in the submission made by the respondent that only by referring that governing terms would be "Singapore Commodities Exchange", it would not amount to incorporation of arbitration clause in the agreement.

22. The next issue raised by the respondent for consideration of this court is whether the petitioner had satisfied the requirement of the pleadings and material fact in the petition to the effect that the petitioner had filed duly authenticated copy of the award in the manner required by the law of the country in which it was made. Mr. Pandya, the learned counsel appearing for the respondent on this issue placed reliance upon the judgment of this court in the case of Rhodia Ltd. And Ors.

vs. Neon Laboratories (supra) and more particularly paragraph 44 in which this court considered the judgment of the Supreme Court in the case of Harishankar Jain Vs. Sonia Gandhi (2001) 8 SCC 233. The relevant portion of Paragraph 44 on this issue reads as under :

> "While dealing with the similar question, the Supreme Court in the case of Hari Shanker Jain v. Sonia Gandhi, MANU/SC/0551/2001 : AIR2001SC3689 held that under Section 57(1) of the Indian Evidence Act, 1872, the Courts in India are required to take judicial notice of, inter alia, all laws in force in the territory of India. Foreign laws are not included therein. Under Order 6 Rule 2 of C.P.C., every pleading shall contain a statement in concise form of the material facts relied on by a party but not the evidence nor the law of which a Court may take judicial notice. But the rule against pleading law is restricted to that law only of which a Court is bound to take judicial notice. As the Court does not take judicial notice of foreign law, it should be 30/36 ARBP-174.12.sxw pleaded like any other fact, if a party wants to rely on the same. The Supreme Court further went on to observe that it has no manner of doubt that in the Courts in India, a point of foreign law is a matter of fact and, therefore, a plea based on a point of foreign law must satisfy the requirement of pleading a material fact in the petition fact in the petition filed before the Court. If foreign law is a matter of fact and is required to be proved as any other fact, then the question is who should establish that fact. In my considered view, obviously, the person who is alleging or seeking ouster of the jurisdiction of the Court based on the interpretation of the clauses in the agreements applying the English law."

23. The learned counsel for the respondent also submits that the petitioner has not annexed the original award or the original agreement or did not produce any evidence to prove that the award is

foreign award and thus the petitioner not having complied with the requirements under section 47, the petition is not maintainable.

24. Mr. Savla, the learned counsel for the petitioner invited my attention to Para 13 of the petition in which the petitioner had pleaded that the arbitration award was arising out of the contractual legal relationship, which is commercial in nature between the parties and is a foreign award within the meaning of section 44 of the Act. It is further stated that Part II of Singapore Arbitration Laws i.e. International Arbitration Act, Chapter 143A, Section 52A which is squarely applicable to the facts of the present case provides that the arbitration is international if at least one of the parties to the arbitration agreement at the time of the conclusion of the agreement has its place of business in any state other than Singapore. It is pleaded that section 5(2)(d)(12) of the said Act provides that arbitration will be international also if the place of arbitration is determined in or pursuant to 31/36 ARBP-174.12.sxw the arbitration agreement. The Petitioner in para 13 has pleaded that the said foreign award has become final and binding on the parties and has not been set aside or suspended by any competent court of country in which the said foreign award is made and enforcement of the said foreign award is not contrary to any public policy in India. In para 16, the petitioner has pleaded that the petitioner was filing before this court duly certified copy of the foreign award dated 18th December, 2009 passed by the tribunal establishing/proving that the arbitration award dated 18 th December, 2009 is a foreign award. In Para 17, it is pleaded that the petitioner has satisfied all the conditions necessary for enforcement of the foreign award in terms of section 47 and 48 of the Act. Perusal of the document annexed at Exh. A to the petition, indicates that the petitioner has annexed duly certified copy of the foreign award passed by the tribunal duly notarized by notary public Mr. Wilson Yip, duly authorised and appointed practicing in the Republic of Singapore. The Petitioner has also filed certified true copy of the sales contracts which contained arbitration clauses.

25. Mr. Savla the learned counsel for the petitioner placed reliance upon the judgment of this court in the case of Euro Asia (supra) and more particularly paragraphs Nos. 2 and 3 which reads thus :

> "2. By this petition, the petitioner seeks in effect enforcement of a New York Convention award dated 16-12-2001 passed by Nicholas S. Swales, the sole Arbitrator at Singapore. The enforcement of such an award is covered by part II of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the "Act". Section 47 requires the party to comply with 32/36 ARBP-174.12.sxw certain requirements. It reads as follows :
>
> "47. Evidence.--(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court-
>
> (a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
>
> (b) the original agreement for arbitration or a duly certified copy thereof; and
>
> (c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under Sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.--In this Section and all the following Sections of this Chapter, 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes,"

In the present case, the said requirements are complied with. The original award is at Exh. A to the petition. A certified copy of the agreement for arbitration i.e. Clause 23 is tendered which is taken on record and marked 'X' for identification. One Goh Soon Hock, a Notary Public duly enrolled and authorised in Singapore has certified and attested a copy of the final award. A certified true copy is sufficient evidence that the award is a foreign award.

3. In view of the above, I am satisfied that the award in question is enforceable under this Chapter as a decree of this Court."

26. This court has held that the petitioner had annexed certified copy of the 33/36 ARBP-174.12.sxw agreement which was taken on record and marked "X" for identification. The said document was certified by the notary public duly authorised and appointed in Republic of Singapore had attested the copy of the final award . It is held that the certified true copy is sufficient evidence to hold that the award is foreign award and such award is enforceable under Chapter II as decree of this court. In my view, the certified copy of the award as well as agreement duly certified by the notary public duly authorised and appointed in the Republic of Singapore is sufficient evidence that the award is foreign award and satisfies the condition and the same is in compliance with section 47 of the Arbitration & Conciliation Act, 1996. The said documents are taken on record and marked "X" for identification. In my view there is no substance in the submissions made by the respondent that there is non-

compliance of the provisions of section 47 by the petitioner.

27. The last submission made by Mr.Pandya, the learned counsel for the respondent is that there was suppression of the purchase order by the petitioner before the arbitral tribunal and before this court in the present proceedings and therefore, petitioner cannot be granted any relief by this court on this ground alone. In support of this submission, the learned counsel placed reliance upon the judgment of the Supreme Court reported in the case of S.P.Chengalvaraya Naidu Vs. Nagannath and Ors. (supra) and more particularly paragraph nos. 5 and 6 which reads thus :

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The 34/36 ARBP-174.12.sxw principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party."

28. The learned counsel also placed reliance upon the judgment of the Supreme Court in the case of Gaurishankar and another Vs. Joshi Amba Shankar Family Trust (1996) 3 Supreme Court Cases 310 and Narmada Bachao (supra) on the similar issue. However, considering the facts of this case, I am of the view that there was no suppression of any document by the petitioner either before the arbitral tribunal or 35/36 ARBP-174.12.sxw in this court. Mr. Savla the learned counsel for the petitioner in my opinion is right in contending that the second page of purchase order was inadvertently not annexed to the present petition. However, the same was produced before the arbitral tribunal. It is submitted that the petitioner would not have been benefited by not annexing

the second page of the purchase order as the parties were governed by the concluded sales contract and not by the purchase order. In my view reliance placed by the respondent on the judgment of the Supreme Court referred to above is of no assistance to the respondent.

29. In my view, the respondents have not furnished any proof before this court as to why the enforcement of the foreign award dated 18th December, 2009 may be refused. The respondents had made counter claim before the arbitral tribunal and thereafter did not challenge the award of claim in favour of the petitioner and rejection of the counter claim against the respondents in any court of law. In my view, the said foreign award is enforceable under Part II and is binding for all purposes on the parties under section 46 of the Arbitration & Conciliation Act, 1996. I am therefore, of the view that the foreign award is already stamped as decree and petitioner holding such foreign award has become entitled for enforcement of it having taken effective steps for execution of the award. As this court has taken a view that the said foreign award is enforceable, the petitioner can proceed to take further effective steps for execution of the same. In the circumstances, the petitioner is directed to put the award in execution in accordance with the rules of this court.

The Petition is accordingly made absolute in terms of prayer clause (a) and (b). The respondent is directed to produce on oath, complete inventory of its assets and properties as prayed for in prayer clause (b) within the period of four weeks from 36/36 ARBP-174.12.sxw the date of this order.

30. Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA,J.) The learned counsel appearing for the Respondent seeks stay of operation of this order for a period of twelve weeks.

Operation of this order is stayed for a period of twelve weeks from today.

(R.D. DHANUKA,J.)