IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2020

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

E.P.No.55 of 2019

PUEBLO HOLDINGS LIMITED
rep. by its authorised signatory
Mr.Siddhesh Sham Kshirsagar
Trust Company Complex,
Ajeltake Road, Ajeltake Island,
Majuro, Marshall Islands MH 96960 .. Petitioner/
Decree Holder

Vs.

1. EMIRATES TRADING AGENCY LLC,
A company incorporated under the
appropriate laws of the United Arab
Emirates having its registered office and/or
business address at ETA Star House,
Salahuddin Road, Deira, Dubai,
United Arab Emirates .. Respondent No.1/
Award Debtor

2. ETA MAURITIUS Ltd.
A company incorporated under the
appropriate laws of the Mauritius
having its registered office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.
President John Kennedy St., Port Louis,
Mauritius.

3. ELECTROMECHANICAL TECHNICAL
ASSOCIATES LTD.

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A company incorporated under the
appropriate laws of the Mauritius
having its registered office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.
President John Kennedy St., Port Louis,
Mauritius.

4. ASCON CONSTRUCTIONS LTD.
A company incorporated under the
appropriate laws of the Mauritius
having its registered office at
Les Cascades, Edith Cavell Street,
Port Louis, Mauritius.

5. REAL VALUE INVESTMENTS LIMITED,
A company incorporated under the
appropriate laws of the Mauritius
having its registered office at
Port Louis Management Services Ltd.,
3rd Floor, Harbour Front Bldg.
President John Kennedy St., Port Louis,
Mauritius.

6. ETA PORT OPERATIONS AND RAPID
TRANSPORT SYSTEM LIMITED,
A company incorporated under the
Companies Act 1956 having its registered
office at Buhari Towers, 6th Floor,
No.4, Moores Road, Chennai-600 006.

7. ETA ENGINEERING PVT. LTD.
A company incorporated under the
Companies Act 1956 having its registered
office at New No.71, Old No.63, 3rd Floor,
Sterling Road, Nungambakkam,
Chennai-600 034.

8. EAST COAST TERMINAL OPERATIONS AND
PORT SERVICES LIMITED
A company incorporated under the
Companies Act 1956 having its registered
office at Buhari Towers, 6th Floor,

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No.4, Moores Road, Chennai-600 006.

9. PINK CITY EXPRESSWAY PVT. LTD.,
A company incorporated under the Companies Act 1956 having its registered office at No.10 & 11, Dr.Radhakrishnan Salai, 4th Floor, Chennai Citi Centre, Mylapore, Chennai-600 004.

10. WEST ASIA MARITIME LIMITED,
A company incorporated under the Companies Act 1956 having its registered office at Buhari Towers, 6th Floor, No.4, Moores Road, Chennai-600 006.

11. ETA KARNATAKA ESTATES LTD
A company incorporated under the Companies Act 1956 having its registered office at No.10 & 11, Dr.Radhakrishnan Salai, 4th Floor, Chennai Citi Centre, Mylapore, Chennai-600 004.

12. ASCON TRAVELS PVT. LTD.
A company incorporated under the Companies Act 1956 having its registered office at MKM Chambers, No.42, Kodambakkam High Road, Chennai-600 034.

13. ETA INDIA LTD.
A company incorporated under the Companies Act 1956 having its registered office at No.5, Moores Road, Chennai-600 006.

14. ETA PROPERTIES AND INVESTMENT PRIVATE LIMITED,
A company incorporated under the Companies Act 1956 having its registered office at No.10 & 11, Dr.Radhakrishnan Salai, 4th Floor, Chennai Citi Centre, Mylapore, Chennai-600 004.

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15.ETA GENERAL PRIVATE LTD.
A company incorporated under the
Companies Act 1956 having its registered
office at R.S.No.79, 80 & 81,
Kalitheer-Thalkuppam Village,
Magadipet, Pondicheery 605 107.

16.ETA CONSTRUCTIONS (INDIA) LIMITED,
A company incorporated under the
Companies Act 1956 having its registered
office at No.10 & 11, Dr.Radhakrishnan Salai,
4th Floor, Chennai Citi Centre, Mylapore,
Chennai-600 004.

17.TRADEMIN INTERNATIONAL PRIVATE LIMITED,
A company incorporated under the
Companies Act 1956 having its registered
office at 7th Floor, Khivaraj Complex II,
Chennai-600 035. .. Respondents 2 to 17/
Garnishees 1 to 16

* * *

Prayer : Petition filed under Order XXI, Rule 46 of the Code of Civil Procedure for attachment and sale of debts and shares as mentioned in the schedule.

* * *

For Petitioner : Mr.Ratnanko Banerji, Senior Counsel
for Mr.K.Mukund Rao

For Respondents : Mr.J.Sivanandaraj
for Mr.K.Mahendran for R2 and
Mr.Chandraprabhu for RR 3 and 4

Mr.P.Giridharan for R5

Mr.Srinath Sridevan
for RR 6 to 8 and 10 to 17

Served - No Appearance for R1

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O R D E R

This Execution Petition is instituted by Pueblo Holdings Limited, a company incorporated under the laws of Marshall Islands, under Order XXI, Rule 46 of the Code of Civil Procedure (in short, "CPC") seeking to attach and sell the debts and shares mentioned in the schedule appended to the petition for executing the foreign awards dated 09.04.2017 and 06.08.2017.

2. In other words, by virtue of this petition, the petitioner prayed that the judgment and order of this Court dated 02.11.2018 in O.P.No.416 of 2018, wherein and whereby, this Court held that the foreign awards dated 09.04.2017 and 06.08.2017 passed by a Sole Arbitrator stationed at London on the petition filed by the petitioner herein are enforceable against the assets of Emirates Trading Agency LLC, Dubai, United Arab Emirates/the first respondent herein, under Part II, Chapter 1 of the Arbitration and Conciliation Act, 1996 ("A & C Act", for the sake of brevity), as the same deemed to be the decrees of this Court pursuant to Section 49 of the A & C Act, be executed under Order XXI, Rule 46 of the CPC.

2.1. It needs no mention that the said petition in O.P.No.416 of 2018 was filed under Sections 44, 47, 48 and 49 of the A & C Act with

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a prayer to declare the Foreign Awards dated 09.04.2017 and 06.08.2017 published by the arbitral tribunal consisting of the sole arbitrator, Mr.David Farrington be made enforceable as a decree of this Hon'ble Court in terms of Chapter 1, Part II of the A & C Act.

3. The petitioner submitted that it is a wholly owned subsidiary of Navios Maritime Holdings Inc, which specializes in worldwide carriage, trading, storage and related logistics of international bulk cargoes and got listed on the New York Stock Exchange. According to the petitioner, it is one of the leading shipping groups worldwide. The petitioner appointed a Sole Arbitrator on 23.09.2019 in terms of Clause 17 of the charterparty dated 09.04.2008 and filed a claim petition before him on 21.12.2016 with respect to the said charter-party and a Suspension Agreement dated 30.10.2012, being the owners of the vessel "Navios Lumen", seeking certain amounts which the first respondent herein owed as charterers, by way of debt and/or damages, with interest. The first respondent chosen not to appear before the sole Arbitrator, and thus, the Arbitrator passed the Partial Final Award on 09.04.2017 and the Second Partial Final Award on 06.08.2017.

3.1. As indicated above, in O.P.No.416 of 2018, by order dated 02.11.2018, those Foreign Awards were made enforceable as decree

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of this Court in terms of Chapter 1, Part II of the A & C Act. In this backdrop, this execution petition is filed by the petitioner.

4. Interestingly, the petitioner arrayed 17 parties as respondents in this petition. The first respondent is the Award Debtor. The respondents 2 to 17 have been shown as Garnishees No.1 to 16. The attachment and sale of certain debts and shares of respondents 2 to 17 allegedly held by respondents 1 and 2 to 5 have been sought for in this execution petition.

5. The first respondent was *ex-parte* in the arbitral proceedings as well as before this Court. It is contended by the applicant that all the parties appearing now were aware of the Charterparty and Suspension Agreements, the arbitration agreement contained thereon and also the award passed, though they were all not parties to the arbitral proceedings.

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6. Before delving into the merits of this petition, it is necessary to cull out certain factual matrix of the case briefly :

6.1. The ETA Group was originally established by Al Ghurair, Salahahuddin and Buhary families having its headquarters at Dubai. The first respondent Award Debtor is an entity based in Dubai and is,

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admittedly, held by ETA Ascon Holding LLC, Dubai, and Al Majal Group, Dubai. Both the first respondent and its two shareholders are held and controlled by Al Ghurair Group in Dubai.

6.2. It is stated that there was a dispute between Al Ghurair Group and the other two families, namely, Salahahuddin and Buhary families, who are Indian groups, which culminated into a deconsolidation of the ETA Group in 2014. It was agreed that the assets held in the personal names of Shareholders, Directors, Companies and related parties of the ETA Group will vest with them. The relationship between the two groups continued to remain acrimonious, as a result proceedings against Indian Group companies commenced.

6.3. Thus, the first respondent suffered the arbitral awards at the hands of the petitioner on 09.04.2017 and 06.08.2017 *ex-parte*. Based on the said awards, on 19.04.2018, the petitioner sought for injunction proceedings before the Supreme Court of Mauritius. On 02.05.2018, the petitioner also obtained an order passed by the Supreme Court of Mauritius granting *mareva* injunction, which is a worldwide injunction order. In support of the injunction application, Annexures 10 and 11 were furnished, showing the companies, in which, the respondents 7, 11 to 17 herein held shares. In such circumstances, the present Execution Petition is filed for attachment

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and sale of debts and shares as mentioned in the schedule to the Execution Petition.

7. Heard Mr.Ratnanko Banerji, learned Senior Counsel appearing for Mr.K.Mukund Rao, learned counsel for the petitioner ; Mr.J.Sivanandaraj, learned counsel appearing for Mr.K.Mahendran and Mr.Chandraprabhu, learned counsels appearing on behalf of respondent 2, 3 and 4 respectively ; Mr.P.Giridharan, learned counsel appearing on behalf of the fifth respondent and Mr.Srinath Sridevan, learned counsel appearing on behalf of respondents 6 to 8 & 10 to 17.

8. The questions that arise for consideration in the instant Execution Petition based on the facts are as follow :

(1) Whether the Execution Petition is maintainable, when the assets of the Award Debtor are not within the jurisdiction of this Court ?

(2) Whether the Execution Petition is maintainable in Chennai, with respect to the shares located in Dubai / Mauritius ? and

(3) Whether this Court has got jurisdiction to adjudicate this Execution Petition ?

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9. Part II, Chapter I of the A & C Act deals with enforcement of certain foreign awards, as per which, a party holding an international award is entitled to apply in any jurisdiction in the world, where, the

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assets of the defaulting party are located for recognition and enforcement of the award. If a party receives a binding award from a country, which is a signatory to the New York Convention or the Geneva Convention and the award is made in the territory, which has been notified by India as a convention country, the award would be enforceable in India. The present Execution Petition is filed on the strength that the Award Debtor has its assets, namely, shares in the companies, which are situate within the jurisdiction of this Court. The said shares are held in the registered companies incorporated in Chennai either in the name of the Award Debtor or held by the Award Debtor through Mauritius companies. The Schedule B of this Execution Petition are the shares directly held by the Award Debtor in respondents No.6 to 10, which are the companies having their registered office in Chennai. Item Nos.2 to 5 are the shares held beneficially by the Award Debtor through the Corporate facade of respondents 2 to 5. It is relevant to point out that the award has been recognized for the purpose of enforcement by this Court through the order on the basis that the assets are located within the jurisdiction of this Court vide order dated 02.11.2018 in O.P.No.416 of 2018. Admittedly, there is no challenge to the said order converting the awards into decree. In this petition, Mauritius companies are made as respondents 2 to 5, as the location/ situs of the shares are in Chennai.

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In case, where the assets of the Judgment Debtor are located in more than one Court, the award holder can file execution petitions simultaneously in all such Courts.

10. In O.A.No.772 of 2018 filed by the petitioner herein, originally an order of injunction was granted by this Court against the respondents 3 to 7 and after notice and contest, the same was vacated on 06.12.2018. Aggrieved over the same, an appeal in O.S.A.No.62 of 2019 was preferred by the appellant, who is the petitioner herein. A Division Bench of this Court, vide judgment dated 07.03.2019, while confirming the impugned order therein held that "... dispose of this appeal by vacating the findings rendered by the learned Single Judge against both the appellant as well as the respondents and leave it open to the appellant to move the Executing Court for necessary relief. In such an event, it is well open to the respondents to raise all defenses available to them on facts and in law". Thus, the Division Bench also had left open the question of jurisdiction to be decided only in the Execution Court.

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11. The attachment and sale of shares held by Award Debtor can be within the jurisdiction, where, the assets or the shares are located. In law, shares are located, where the registered office of the company,

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in which, the shares are held and not where the holder of the shares is located. In support of the said submission, reliance was placed on the following judgments :

(1) Vishwanathan V. Rukn-Ul- Mulk Syed Abdul Wajid, AIR 1963 SC 1 ;
(2) Motorola INC V. ModiWellvest, 2005 (79) DRJ 173 ; and
(3) State Trading Corporation of India Ltd. V. Global Steel Holding, 2015 SCC OnLine Del 7968.

11.1. A learned Single Judge of the Delhi High Court in **Motorola INC V. ModiWellvest, 2005 (79) DRJ 173,** placing reliance on the judgment of the Hon'ble Apex Court in **Vishwanathan V. Rukn-Ul-Mulk Syed Abdul Wajid, AIR 1963 SC 1** and other judgments, held as follows :

15. In so far as the plea of JD of its holding of the share certificates at Modipuram and consequent ousting of the jurisdiction of this Court on this ground is concerned, the judgments in Vishwanathan's case (supra), Eri Beach Co. Ltd' case (supra) and Brassard's case (supra) clearly hold that shares are held at the registered office of the Company and hence even proceeding on the assumption that shareholder certificates are held at Modipuram, an execution petition qua such shares of such a company with its registered office at Delhi is certainly maintainable at Delhi. There is nothing which prevents an astute JD from transferring its shares/assets to another place repeatedly so as to escape/avoid execution and consequently since the situs of the shares has been held by the Supreme Court in Vishwanathan's case (supra) to be the registered office of a company, which in the present context of

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Spice is in Delhi, this execution petition is maintainable on this ground too in this Court.

....

18. In so far as the reliance on Vishwanathan's case (supra) is concerned, the said judgment itself holds that the situs of shares in question is the registered office of the company and I fail to see how this judgment comes to the aid of the judgment debtor. In accordance with the Vishwanathan's case (supra) the situs of the shares is normally the place where they can be effectively dealt with and consequently it is not in dispute that as per the law laid down in Eri Beach Co. Ltd' case the location of the shares is the registered office of the company where the register is required by law to be kept and this determines the locality of the shares. Similar was the view taken in Bassard's case (supra) both of which judgments, i.e., Eri Beach Co. Ltd' case (supra) and Bassard's case (supra) were referred to with approval by the Hon'ble Supreme Court in Vishwanathan's case (supra).

19. The DH is also right in contending that the present action for execution of the award is not action against personam of the JD and not even against the title of the shares but is for an attachment and sale of the assets of the JD. The only relevant factor is the location of the assets or the property and not the JD itself and in the present case the DH is right in contending that the location of the assets in question, i.e., shares and bank accounts, is in Delhi and this Court thus has jurisdiction.

20. ***Finally the position of law now is well settled as per the judgment of the Hon'ble Supreme Court in Brace Transport Corporation's case (supra) wherein it has been held that a party seeking enforcement of an international award will be able to go forum shopping and locate the assets of the losing party for executing the award. Thus it is open to the DH to locate the assets of the losing party that is the judgment debtor which have been found to be in New***

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Delhi in the form of both bank accounts and shares of Spice Communications Ltd."

(Emphasis supplied)

11.2. In **State Trading Corporation of India Ltd. V. Global Steel Holding, 2015 SCC OnLine Del 7968**, the issue as to whether the Courts could entertain Execution Proceedings against share certificate of a company incorporated in a place outside the jurisdiction, but held by Award Debtor/Judgment Debtor within the jurisdiction arose for consideration before the Delhi High Court. It was held that the decree could not be executed against the share certificate of the company incorporated outside the jurisdiction, even if the share certificate was held by the Award/Judgment Debtor within the jurisdiction.

11.3. The Hon'ble Supreme Court in **Vodafone International Holdings BV V. Union of India, (2012) 6 SCC 613,** held that situs of shares situated at the place, where the company is incorporated and/or the place where the shares were dealt with by way of transfer. It is apposite to extract the following paragraphs in this regard :

"***Situs of CGP***

347. Situs of the CGP share stands where, is the next question. Law on situs of share has already been discussed by us in the earlier part of the judgment. Situs of shares situates at the place where the company is incorporated and/or the place where

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the share can be dealt with by way of transfer. The CGP share is registered in the Cayman Islands and materials placed before us would indicate that the Cayman Islands law, unlike other laws does not recognise the multiplicity of registers. Section 184 of the Cayman Islands Act provides that the company may be exempt if it gives to the Registrar, a declaration that "operation of an exempted company will be conducted mainly outside the Island". Section 193 of the Cayman Islands Act expressly recognises that even exempted companies may, to a limited extent trade within the Islands. Section 193 permits activities by way of trading which are incidental of offshore operations, also all rights to enter into the contract, etc.

348. The facts in this case as well as the provisions of the Cayman Islands Act would clearly indicate that the CGP (CI) share situates in the Cayman Islands. The legal principle on which situs of an asset, such as share of the company is determined, is well settled. Reference may be made to the judgments in Brassard v. Smith, 1925 AC 371 (PC), London and South American Investment Trust Ltd. v. British Tobacco Co. (Australia) Ltd. (1927) 1 Ch 107, Erie Beach Co. Ltd. v. Attorney General for Ontario 1930 AC 161 (PC), R. v. Williams, 1942 AC 541. Situs of the CGP share, therefore, situates in the Cayman Islands and on transfer in the Cayman Islands would not shift to India."

11.4. Even as per the Companies Act, 2013, any transfer of a share of a company incorporated in India will have to be registered in its register of members, which is required to be kept at the registered office of the Indian Company.

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12. Learned counsel for the respondents 6 to 8 and 10 to 17 Mr.Srinath Sridevan submitted that the petitioner had, admittedly, obtained an injunction order in Mauritius against all the sharers and assets of the ETA LLC including but not restricted to shares held by respondents 2 to 5 in the entities as per Annexure 10 and 11 of the order passed by the Supreme Court of Mauritius on 02.05.2018. When admittedly the petitioner obtained such an order, it is estopped from seeking a similar order with respect to the very same shares in Mauritius before this Court. The argument of the petitioner that such an order passed by the Supreme Court of Maritius did not preclude the petitioner from filing a separate Execution Petition in India was assailed by the counsel for the respondents contending that it is a second attachment with respect to the same asset, which cannot be entertained, as the same is not maintainable.

13. Learned counsel for the petitioner further explained that the subject matter of execution proceedings in Mauritius is different from the subject matter of the present proceedings. By explaining that the subject matter in the Execution proceedings in Mauritius are the shares held by the Award Debtor in Mauritius companies, i.e., the assets, which are located in Mauritius and not the shares in Indian companies. Learned counsel for the petitioner attempted to further explain the

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order obtained from the Mauritius Court stating that the order of injunction is different from an order of attachment and that the order passed by the Supreme Court of Mauritius on 02.05.2018 is not an order of attachment, but on the contrary, it is mareva injunction and that the mareva injunction is different from an attachment.

14. P.Ramanatha Aiyar's Advanced Law Lexicon, 4th Edition, page No.2422, defines "Injunction" as a judicial process, by which one who has invaded or is threatening to invade the rights, legal or equitable, of another, is restrained from continuing or commencing from such wrongful acts. It is an authoritative order or judicial process restraining a person from doing or continuing to do an act complained of, or restraining him from continuing an omission, the non-compliance of which would amount to contempt. At page No.416 of the said book "attachment" is defined as "taking into custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it ; a writ issued at the institution or during the progress of an action, commanding the sheriff or other proper officer to attach the property, rights, credits, or effects of the defendant to satisfy the demands of the plaintiff."

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15. The present Execution Petition is filed under Order XXI, Rule 46 of the Code of Civil Procedure and the said provision reads as follows :

"XXI. Execution of Decrees and Order.

46. Attachment of debt, share and other property not in possession of judgment-debtor

(1) In the case of-

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,-

(i) in the case of the debt, the credit or from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall

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discharge him as effectually as payment to the party entitled to receive the same."

16. As per the above rule in cases of a share, the attachment shall be made by a written order prohibiting the person in whose name, the share is standing from transferring the share or receiving any dividend thereon. Therefore, when the petitioner has taken an order before the Supreme Court of Mauritius, which is a restraint on the respondents through its Directors, Officers, Employees, Agents and preposes, from doing any act which would result in creating any encumbrance on disposing, selling or otherwise transferring to any third party, any or all the shares it holds in respondent Nos.7, 11 to 17 pending disposal of that execution petition, an attachment also is to the similar effect that the subject matter, namely, the shares should not be dealt with by the parties. In the present case, respondents 2 to 5 are domiciled in Mauritius and Dubai and the shares are held both in Mauritius and Dubai. Therefore, the execution of the order of attachment or the injunction from dealing with the shares held by them is to be obtained only from the Court within whose jurisdiction the shares are located. The petitioner also rightly obtained an order of injunction from the Courts at Mauritius.

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17. Before proceeding further, it is to be recollected that Sir L.J. Earl Warren said, "It is the spirit and not the form of law that keeps the justice alive."

18. In **Raoof V. Lakshmipathi, (1968) 2 MLJ 634,** it has been categorically held that the execution is levied by attachment of share, the appropriate Court is not the Court of the registered office, but the Court having jurisdiction over the physical location of the certificates.

18.1. Further the same principle is clarified in **Viswanathan V. Rukn-Ul- Mulk Syed Abdul Wajid, AIR 1963 SC 1**.

18.2. The Hon'ble Apex Court in **Ahmed Abdulla Ahmed Al Ghurair V. Star health and Allied Insurance Company Limited, AIR 2019 SC 413,** relying the judgment in **Viswanathan's case (cited supra),** upheld the judgment of a Division Bench holding as follows :

> *"56. The High Court in the impugned judgment has also discussed in detail the meaning and scope of 'cause of action' by referring to various judgments including A.B.C. Laminart (Pvt.) Ltd. v. A.P. Agencies, Salem, . It has also considered the scope of Clause 12 of the Letters Patent which is peculiar to Madras High Court, where a leave is required to be obtained when part of cause of action arises within the territorial jurisdiction of the said court. In such a situation, as rightly contended by Mr. Mukul Rohatgi, the*

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principles of forum convenience would become applicable as laid down in the case of Kusum Ingots and Alloys Ltd. v. Union of India, (2004) 6 SCC 254. We find that court in Dubai would be more convenient forum to decide the dispute between the parties who are residents of Dubai and which revolves around Defendant no.2, again a Company registered and situate in Dubai.

57. The High Court also appears to be right in holding that the relief sought for against Indian Company, at best, is a consequential one and cannot give a cause of action. Even Defendant no. 2 cannot seek such a relief without resolving its dispute as against Defendant nos. 3 to 7. Such a dispute can only be dealt with by competent forum in Dubai as per the law prevailing in Dubai, UAE."

18.3. The contention that when the relief is sought for with respect to shares in a listed Company, the Court, wherein, the disputed shares are located will have jurisdiction and not the Court of the registered office of the listed company. Merely because Award-Debtor has its registered office in Dubai, it cannot be stated that execution proceedings are maintainable only in Dubai. It is open to the Decree-holder to execute the award in a jurisdiction, where assets of the Award-Debtor are located.

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19. Mr.P.Giridharan, learned counsel appearing on behalf of the fifth respondent also contended that the fifth respondent is not a Garnishee of the Award Debtor, as the fifth respondent did not own

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any funds to the first respondent and hence, it cannot be categorized as Garnishee in terms of Order XXI Rule 46 of the Code of Civil Procedure. The fifth respondent also produced the extract of its shareholding from the Registrar of Companies, Mauritius, which indicates that the first respondent does not, by itself or through another, hold any share in the fifth respondent. As per Section 48(1)(e) of the A & C Act, enforcement of the foreign award may be refused, if it is proved that the award has not yet become binding on the parties. It is also pointed out by the learned counsel for the fifth respondent that the said respondent was never described as a Garnishee in the earlier proceedings by the petitioner. It was added further that though the petitioner had referred the fifth respondent as a Trustee holding the shares in trust for the first respondent or as a Garnishee in different places in the petition, no documents have been provided by the petitioner to substantiate the said relationship, which are mutually exclusive.

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20. It is well-settled that the scope of Section 48 of the A & C Act is very narrow and if at all any of the grounds stated therein is made out, the Court can only refuse to enforce the award, but cannot set aside the same. When a party is enforcing the award in execution, which is a foreign award, it has a choice of country, in which, to do so

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In other words, it is open to the decree-holder to go forum-shopping. However, it is based on the location of the assets of the award-debtor. Execution of the award is enforcement of the same for the purpose of compliance. The said enforcement proceedings can be taken in any country, where the property or other assets of the Award Debtor are located. In the instant case, admittedly, the award is not put to challenge.

20.1. At this juncture, it is relevant to state that the Hon'ble Apex Court in **Vijay Karia v. Prysmian Cavi E Sistemi SRL, 2020 SCC OnLine 177,** has held as follows :

> *"38. ....Why it is important to advert to this feature of the 2015 Amendment Act is that all grounds relating to patent illegality appearing on the face of the award are outside the scope of interference with international commercial arbitration awards made in India and foreign awards whose enforcement is resisted in India. ....*
>
> ****
>
> *48. Thus far, it is clear that enforcement of a foreign award may under Section 48 of the Arbitration Act be refused only if the party resisting enforcement furnishes to the Court proof that any of the stated grounds has been made out to resist enforcement. The said grounds are watertight - no ground outside Section 48 can be looked at. Also, the expression used in Section 48 is "may".*
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> ****
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> *55. When the grounds for resisting enforcement of a foreign award under Section 48 are seen, they may be classified into three groups - grounds which affect the jurisdiction of the*

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arbitration proceedings; grounds which affect party interest alone; and grounds which go to the public policy of India, as explained by Explanation 1 to Section 48(2). Where a ground to resist enforcement is made out, by which the very jurisdiction of the tribunal is questioned - such as the arbitration agreement itself not being valid under the law to which the parties have subjected it, or where the subject matter of difference is not capable of settlement by arbitration under the law of India, it is obvious that there can be no discretion in these matters. Enforcement of a foreign award made without jurisdiction cannot possibly be weighed in the scales for a discretion to be exercised to enforce such award if the scales are tilted in its favour.

56. On the other hand, where the grounds taken to resist enforcement can be said to be linked to party interest alone, for example, that a party has been unable to present its case before the arbitrator, and which ground is capable of waiver or abandonment, or, the ground being made out, no prejudice has been caused to the party on such ground being made out, a Court may well enforce a foreign award, even if such ground is made out. When it comes to the "public policy of India" ground, again, there would be no discretion in enforcing an award which is induced by fraud or corruption, or which violates the fundamental policy of Indian law, or is in conflict with the most basic notions of morality or justice. It can thus be seen that the expression "may" in Section 48 can, depending upon the context, mean "shall" or as connoting that a residual discretion remains in the Court to enforce a foreign award, despite grounds for its resistance having been made out. What is clear is that the width of this discretion is limited to the circumstances pointed out hereinabove, in which case a balancing act may be performed by the Court enforcing a foreign award.

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84. ..... Read along with the first part of Section 48(1)(b), it is clear that this expression would apply at the hearing stage and not after the award has been delivered, as has been held in Ssangyong (supra). A good working test for determining whether a party has been unable to present his case is to see whether factors outside the party's control have combined to deny the party a fair hearing. Thus, where no opportunity was given to deal with an argument which goes to the root of the case or findings based on evidence which go behind the back of the party and which results in a denial of justice to the prejudice of the party; or additional or new evidence is taken which forms the basis of the award on which a party has been given no opportunity of rebuttal, would, on the facts of a given case, render a foreign award liable to be set aside on the ground that a party has been unable to present his case. This must, of course, be with the caveat that such breach be clearly made out on the facts of a given case, and that awards must always be read supportively with an inclination to uphold rather than destroy, given the minimal interference possible with foreign awards under Section 48."

21. An analysis of the above facts would make it clear that in any dispute between a company and shareholders, the jurisdiction would be with the Court where the registered office of the company is situate, whereas, any disputes between a third party over the shares held in the company, the jurisdiction would vest with the Court, where the sharers are located.

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22. The international award having been recognized by this Court, the objection raised by the respondents cannot be sustained.

23. This was also reiterated as the respondents 2 to 5 are alleged to be the Garnishees and they are third parties to the award, the jurisdiction would be only with the Courts at Mauritius, where, the petitioner had rightly obtained an order of injunction. Therefore, the petitioner cannot be permitted to obtain an order overlapping the same for the same relief, though the nomenclature of the relief is differently worded.

24. No doubt, the competent Court for filing an application for enforcement of a foreign award is before the Court in whose jurisdiction the assets of the award-debtor are located, however, when the assets of the judgment-debtor are located in various territorial jurisdictions, the award holder can file simultaneously in all of such Courts. Therefore, the principle of forum non-convenience will not be applicable to execution proceedings qua foreign awards.

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25. At this juncture, it is relevant to take note of the judgment of the Delhi High Court in **Bulk Trading S.A. v. Dalmis Cement (Bharat) Limited, 2005 OnLine Del 1389,** wherein, it was held

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thus:

"14. Whether the present petition is maintainable when an identical execution petition is pending before the Additional District Judge, Delhi?

15. Insofar as this question is concerned, the learned counsel for the petitioner has relied upon a decision of a learned Single Judge of this court in the case of Cholamandalam Investment & Finance Co. Ltd. v. CEC Ltd., 1996 (II) AD (Delhi) 517. In that case, an objection has been raised that the simultaneous execution of the decree at Chandigarh and Delhi would be an abuse of the process of court and, therefore, the execution application at Delhi deserved to be dismissed or adjourned sine die unless and until the decree holder withdrew the execution application pending at Chandigarh. It was also contended, with reference to Section 41 of the Code of Civil Procedure, 1908, that so long as a certificate of non-satisfaction has not been issued and sent by one transferee court to the original executing court, a fresh application for execution seeking its transfer to another court would not lie. Repelling these objections, the court held that no provision of Civil Procedure Code had been brought to its notice which would expressly prohibit simultaneous execution of a decree before two courts. With reference to Section 39 of the CPC it was observed that the said provision is permissive in nature inasmuch as it provided for execution of a decree either by the court which passed it or by the court to which it is sent for execution. The court held that the law does not prevent simultaneous execution of a decree in more courts than one, although the court transferring the decree may in its discretion refuse such transfers as it would enable the decree holder to maintain concurrent executions before more courts than one. Ultimately, it concluded that simultaneous transfer of a decree for execution to two courts and "simultaneous execution

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proceedings are neither illegal nor without jurisdiction". Reference was also made to the Supreme Court judgment in Prem Lata Agarwal v. Lakshman Prasad Gupta, (1970) 3 SCC 440, wherein the Supreme Court held as under :

> *"Simultaneous execution proceeding in more places than one is possible but the power is used sparingly in exceptional cases by imposing proper terms so that hardship does not occur to judgment debtors by allowing several attachments to be proceeded with at the same time."*

16. On the strength of these decisions, the counsel for the petitioner submitted that there is no bar to the filing of the present execution petition during the pendency of the earlier execution petition before the court of the Additional District Judge. It was also contended, on the strength of a decision of this court in the case of Motorola Inc. v. Modi Wellvest Pvt. Ltd., 116 (2005) DLT 524, that a foreign award can be executed against a judgment debtor wherever he has assets. In that case, it was held that the position of law was well settled as per the judgment of the Supreme Court in Brace Transport Corporation of Monrovia Bermuda v. Orient Middle East Lines Ltd., Saudi Arabia, 1995 Supp (2) SCC 280, that a party seeking an enforcement of a foreign award would be able to go forum shopping and locate the assets of the losing party for execution of the award. It was held that the enforcement of a foreign award can be done wherever the assets of the losing party are located. Insofar as this decision ***[Motorola]*** *is concerned, there is no difficulty whatsoever. The same is not applicable at all although, the principles enunciated therein cannot be taken exception to. The present execution petition has not been resisted on the ground that the respondent does not have any assets in Delhi. It is being resisted on the ground that there cannot be two execution*

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applications within the same territorial jurisdiction of two courts falling in two tiers of hierarchy. It is on this ground that the decision in the case of Cholamandalam is also been clearly distinguishable. There, it was held that more than one execution petition was permissible where properties fell in different areas. That decision would have no applicability to the facts of the present case inasmuch as the territory over which the district court has jurisdiction is also the territory over which this court has jurisdiction. Therefore, it is not a case where assets and properties of a judgment debtor were located in different areas over which different courts had territorial jurisdiction. Clearly, the two decisions relied upon by the learned counsel for the petitioner would not be applicable to the facts of the present case. There is ho difficulty in my coming to the conclusion that a second execution application filed in this court when the first application is pending before the district court falling within the territorial jurisdiction of this court would not lie."

26. In fact, it is the argument of the counsel for the respondents 2 to 5 that without adjudication by a Court of competent jurisdiction on the issue of the alleged beneficial contract of the respondents in the shares held by Mauritius based respondents 2 to 4 in respondents 7 and 10 to 17, the petitioner cannot be permitted to maintain the Execution Petition. Curiously, the respondents had also not taken any steps to get their rights determined in a Court having competent jurisdiction.

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27. According to the petitioner, Mr.Hameed Syed Salahuddin and Mr.Anif Buhari Rahaman are cousins and they cumulatively hold 48% beneficial equity stake in the Award Debtor. If the said 48% is combined with the equity stake of Mr.Essa Al Ghurari, then the combined equity stake in the Award-Debtor is in excess of 51%. However, no steps have been taken to bring the Award Debtor before this Court and no disclosure has been made of the latest financial statement of the Award-Debtor. Hence, it is submitted by the petitioner that it is only a dishonest attempt by the said respondents to avoid the execution of the award, though they are all part of first respondent either as shareholders or part of the management. It is further pointed out that the Mauritius companies are 100% wholly owned subsidiaries of the Award-Debtor.

28. It is also further contended that the petitioner had relied on 2008 financial statement of the first respondent, which is much prior to deconsolidation of the Dubai based ETA Group of Companies. However, even these respondents have not produced any documents to support their case.

29. The Execution Court is empowered to examine the jurisdiction, limitation, etc. based on the factual details. In the instant

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case, the following are the admitted facts :

(1)That what is sought to be enforced is a foreign award ;

(2)That the same is converted into a decree on 02.11.2018 ;

(3)That there is no challenge to the same ;

(4)That though there is no period of limitation fixed, the limitation of three years would apply from the date the award is recognized as a decree by competent Court ;

(5)That the parties / persons opposing the execution are only garnishees and not the award-debtors ;

(6)That the award can be challenged only by the award debtor, however, in a country, where the award has been passed and not before the executing court in India. The award debtor has not appeared and challenged any of the proceedings ; and finally,

(7)That the award cannot be re-examined by the Execution Court;

30. In the light of the above facts and analysis of the legal aspects, the petitioner is entitled to the relief of attachment, and accordingly, the debts and shares of the respondents 1 and 2 to 5 held in respondents 2 to 17 are hereby attached and the prohibitory orders in terms of Order XXI, Rule 46 of the CPC be issued, to the extent indicated in the schedule appended to this petition.

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31. This Execution Petition is allowed to the extent indicated above. No costs.

03.06.2020

Index : Yes / No
Internet : Yes
Speaking Order/Non-Speaking Order
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To

The Assistant Registrar-I,
Original Side,
Madras High Court.

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PUSHPA SATHYANARAYANA, J.

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