



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. 3847 OF 2024
IN
COMMERCIAL SUIT NO. 48 OF 2024

Khark Petrochemical Company
A Company incorporated under the Laws of
Islamic Republic of Iran, registration No. 11569,
having its office at No. 40, Dejam Jou St.,
North Dibaji St., Farmaniyeh Tehran, Iran
through its duly constituted Power of Attorney,
Mr. Pradeep Singh

..Applicant/
Plaintiff

Versus

Hazel Mercantile Limited,
a company incorporated under the laws of India
having its registered office at 181, Ashoka
Centre, G.T. Hospital Complex, L.T. Road,
Mumbai – 400 001.
Through Its Managing Director,
Mr. Nitin Didwania

...Respondent/
Defendant

Mr. Ratan Kumar Singh, Senior Advocate, with Mr. Akshay Gandotra
and Ms. Irima Pereira, i/b Vibha Juris Consult Co, for the
Applicant.

Mr. Prateek Seksaria, Senior Advocate (though VC), with Mr. Vivek
Kantawala, Mr. Amey Patil, Mr. Nishant Chotani and Mr. Rohit
Agarwal, i/b Mr. Vivek M. Sharma, for the Respondent.

CORAM: N. J. JAMADAR, J.

JUDGMENT RESERVED ON : 16th OCTOBER 2024.

JUDGMENT PRONOUNCED ON : 9th JUNE 2025.

JUDGMENT:

1. This is an Application for grant of interim relief in the Suit instituted for decree on a foreign award dated 7th September 2018 passed by the Aribtral Tribunal in Arbitration Case No. 36/P/95/26 under the Rules of Arbitration Center of Iran Chamber (“ACIC”) in Iran, in favour of the Plaintiff and against the Defendant.

2. The background facts can be summarised as under:

2.1 The Plaintiff is a foreign company incorporated under the laws of Islamic Republic of Iran. The Plaintiff produces, and deals in, petrochemical products such as methanol, naphtha, propane and butane.

2.2 The Defendant is a company incorporated under the Companies Act 1956. The Defendant is engaged in international trade and distribution of chemicals and petrochemical products.

2.3 The Plaintiff and Defendant had been engaged in commercial transactions since the year 2007. The Plaintiff had been supplying methanol and naphtha to the Defendant as per mutually agreed terms and conditions. The Defendant through Mr Abolfazl Maleki, its authorized representative in Iran, used to place purchase orders upon the Plaintiff for supply of methanol and naphtha. Thereupon, the Plaintiff issued proforma invoice along with the terms and conditions of the sale and delivery. The

Defendant, through its representative in Iran, conveyed its acceptance of such proforma invoice. Thereafter, the cargo was shipped as per the instructions of the Defendant. The payment was to be made within 60 days of the delivery of cargo. The Defendant had been paying for the goods sold and delivered through its wholly owned subsidiary Hazel Middle East FZE till, the year 2014.

2.4 The Plaintiff affirms from 2014 onwards, the Defendant used Interglobe Trading FZE (“IGT”) and Venture Crosstrade FZE (“Venture Crosstrade”) for making payments on the Defendant's behalf to the Plaintiff's authorized broker in United Arab Emirates (“UAE”), Khat Al Abyad, for the cargo delivered by the Plaintiff. During the period 2015-2016, the Plaintiff claims, 17 cargos were shipped for the Defendant. As per the business practice, adverted to the above, the proforma invoices raised by the Plaintiff were accepted by the Defendant as “buyer” by appending its seal and signature thereto. Bills of lading were also issued in favour of the Defendant as consignee.

2.5 The instant Suit pertains to the eight transactions effected between the August 2015 to January 2016. The Plaintiff claimed, the Defendant made only part payment with respect to the first cargo, leaving the balance of amount of AED 80,289,741.53 as

due and payable in respect of the supplies made by the Plaintiff to the Defendants under the aforesaid contract. 36 cheques for an aggregate amount of AED 47,366,126.12 issued by IGT and Venture Crosstrade, the entities of the Defendant, for and on behalf of the Defendant, towards the price of the cargo were dishonored on presentment. A security cheque drawn in the sum of AED 38,000,000 was also dishonored on presentment.

2.6 The Plaintiff pursued the matter with the Defendant. The later categorically admitted its default in making the payment. It was, however, claimed that the cheques could not be cleared on account of “compliance issue”. On 3rd January 2016, the Defendant sought revised proforma invoice in the name of IGT and Venture Crosstrade. The Plaintiff reluctantly complied with the said demand and issued revised proforma invoices.

2.7 The Defendant kept on buying time, on one or the other pretext. Eventually, the Defendant falsely claimed that the payment was to be made by IGT & Venture Crosstrade; being the principal of the Defendant.

2.8 As the Defendant continued to make defaults, despite assurances, the Plaintiff was constrained to invoke Arbitration as per the Clause (32) of the terms and conditions of the contract. In accordance with the Rules of ACIC, the Arbitral Tribunal came to

be constituted. Eventually, the Arbitral Tribunal passed an Award on 7th September 2018. The Tribunal ordered the Defendant to pay AED 82,709,509.34 towards the price of the cargo and late payment charges plus costs of EUR 207,158.82. The Defendant was also directed to pay the sum of AED 1,100 as compensation for late payment for each day from the date of the award till payment of the principal sum of AED 80,299,741.53.

2.9 The Defendant challenged Arbitral Award before the 105th Branch of Public Civil Court of Tehran Province and sought its annulment. The challenge was dismissed by a Judgment dated 15th July 2019. An Appeal was preferred thereagainst before the 33rd Branch of Tehran Province. The matter was remitted to the Court of first instance. As the Defendant-Appellant failed to remedy the defects in the Petition, the Court of first instance again dismissed the Appeal by its judgment dated 13th January 2021.

2.10 The Plaintiff asserts, as the Defendant failed to prefer an Appeal against the Judgment dated 13th January 2021, the said judgment attained finality on 4th February 2021, as certified by the 'Certificate of Finality' dated 10th January 2024.

2.11 Since Iran is a non-reciprocating foreign territory for the purpose of enforcement of Award passed in Iran, in India, the

Plaintiff is constrained to institute the Suit based on the foreign award for the recovery of the sums, as awarded under the said Award, as it furnishes a fresh cause of action. All the prerequisites for a decree on foreign award are fulfilled.

INTERIM APPLICATION:

3. By this Interim Application, the Plaintiff seeks a direction to the Defendant to secure the amount as awarded under the said foreign award dated 7th September 2018 by depositing the said amount in this Court or furnishing an unconditional bank guarantee in the said sum. In the alternative, the Plaintiff seeks disclosure of assets of the Defendant and injunction to restrain the Defendant from creating any third party interest in whatsoever manner, in the movable and immovable property of the Defendant or otherwise selling, diluting or dealing with the shares as disclosed by the Defendant in the consolidated financial statement of Defendant, filed with the Registrar of Companies, during the pendency of the Suit.

4. The aforesaid reliefs are premised on the fact that the Plaintiff learnt, in the last week of December 2023 that, a proceeding being CSA No. C.A. (CAA) 66/MB/2022, has been initiated by the Defendant along with Shimer Trade Impex Pvt Ltd, another company before the National Company Law Tribunal (NCLT) Mumbai, Bench-I, under Section 232 of the Companies Act 2013. The Defendant intends

to thereby transfer/demerge its business into Shimer Trade Impex Pvt Ltd. Certain orders have been passed in the said proceeding. The name of the Plaintiff has not been included in the list of secured and unsecured creditors furnished by the Defendant. Thus, the Plaintiff asserts, the said proceeding has been initiated behind the back of the Plaintiff with an ulterior motive to deprive the Plaintiff of its legally recoverable dues. The scheme submitted before the NCLT reveals that the Defendant intends to remove or dispose all its properties with a view to defraud its creditors including the Plaintiff. It is averred that the Defendant has defrauded other creditors, like the Plaintiff. Hence, the Suit seeking urgent interim reliefs without resorting to the pre-institution mediation under Section 12A of the Commercial Courts Act 2015.

5. Initially a limited Affidavit in Reply was filed on behalf of the Defendant in opposition to the prayer for ad-interim reliefs. By an order dated 22nd March 2024, this Court declined to grant any ad-interim relief and granted liberty to the Defendant to file an Additional Affidavit in Reply. Thereupon, on 19th April 2024, an Additional Affidavit in Reply came to be filed.

RESISTANCE BY THE DEFENDANT:

6. The substance of the resistance put forth by the Defendant is that the Suit, in the present form, is not at all tenable. Neither a Suit

can be filed on the strength of the alleged foreign award. Nor the said foreign award gives a fresh cause of action in favour of the Plaintiff. Iran is a non-reciprocating country. The foreign award relied upon by the Plaintiff is not a foreign judgment under Section 2(6) of the Code of Civil Procedure 1908 ("the Code"). Thus, the provisions of Sections 13 and 14 of the Code are not attracted. The foreign award having been passed by an Arbitral Tribunal of a non-reciprocating country, it is incapable of being recognized much less enforced under the provisions of part II of the Arbitration and Conciliation Act 1996 ("The Act of 1996"). The Plaintiff cannot be permitted to seek enforcement of a foreign award, indirectly; which the Plaintiff is not entitled to enforce under the provisions of the Act of 1996. Thus, the suit is misconceived and untenable in law.

7. Secondly, the Suit is ex-facie barred by the law of limitation. Though in the Plaint an alternative prayer of a decree on original cause of action has been made, yet, the Suit primarily rests on the foreign award dated 7th September 2018. The Suit based on the original cause of action to recover the price of the goods sold and delivered in the year 2015-2016 is clearly barred by law of limitation as the period expired by the year 2018-2019. Even the Suit based on the alleged foreign award dated 7th September 2018 is also barred by limitation as the alleged foreign award attained finality on its

notification under the Rules of ACIC and the award-debtor became forthwith liable to pay the amount under the said award. Since the suit has been instituted on 13th January 2024, it is ex-facie barred by limitation.

8. Thirdly, the Defendant contends, there was no privity of contract between the Plaintiff and the Defendant. In view of the sanctions imposed on Iran by USA in the year 2011, the Defendant contends, the Plaintiff entered into circuitous transactions. The goods were supplied by the Plaintiff to IGT and Venture Crosstrade, invoices were raised on those two entities and even those two entities had drawn cheques towards the price of the goods allegedly sold and delivered. Upon dishonor of the cheques, the Plaintiff initiated criminal proceedings against those two entities in the Court at Dubai. Thus, the Defendant, who operated as an agent of disclosed principal, cannot be proceeded against as there is no cause of action qua the Defendant. A reference is made to the previous transactions between the Plaintiff, on the one part, and IGT and Venture Crosstrade, on the other part, to buttress the defence that the Plaintiff was fully cognizant of the legal character of IGT and Venture Crosstrade and has now falsely claimed that IGT and Venture Crosstrade were introduced by the Defendant only to facilitate payment of the goods sold and delivered.

9. The Defendant contends that the foreign award is otherwise legally infirm and unsustainable. The proceeding before the Arbitral Tribunal were in complete breach of the fundamental principles of judicial process and natural justice. The alleged foreign award thus does not command any binding force. The award has been passed in utter disregard to the Indian laws and even the principles of natural justice. Thus, the Suit itself does not deserve to be countenanced.

10. Fourthly, the Suit is barred by the provisions of Section 12A of the Commercial Courts Act 2015, for not resorting to the mandatory pre-institution mediation. On the own showing of the Plaintiff, the Suit did not contemplate any urgent ad-interim or interim relief. The Plaintiff has made an undisguised attempt to proclaim a false case of urgency. A facade of urgent interim relief is created with a view to bypass the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act 2015. As no case for urgent interim relief was made out, the Suit itself is liable to be rejected in view of the bar contained in Section 12A of the Commercial Courts Act 2015.

11. In any event, the Defendant contends, the prayers in the instant Application do not deserve any countenance. Since the very foreign award, which is the basis of the claim of the Plaintiff, is incapable of being recognized and enforced, the interim relief seeking direction to deposit or furnish bank guarantee for an unadjudicated sum

of money and/or unliquidated damages is clearly unsustainable. No case for grant of reliefs which partake the character of attachment before judgment is made out.

12. An Affidavit in Rejonder came to be filed controverting the contentions in the Affidavit in Reply.

SUBMISSIONS:

13. In the wake of the aforesaid pleadings and facts, I have heard Mr. Ratan Kumar Singh, the learned Senior Advocate for the Plaintiff-Applicant, and Mr. Prateek Seksaria, the learned Senior Advocate for the Defendant-Respondent, at some length. The learned Counsel took the Court through the pleadings and documents on record, the statutory provisions which, according to them, govern the arbitral proceeding before the Arbitral Tribunal and the proceedings thereagainst before the jurisdictional Courts in Iran.

14. Mr. Singh, the learned Senior Advocate for the Plaintiff-Applicant, submitted that the Defendant having dishonestly defaulted in payment of the price of the goods sold and delivered, has resorted to all sorts of defences to further delay and thereby defeat the legitimate claim of the Plaintiff. Mr. Singh would urge that, there is no denial of the fact that the Defendant did participate in the arbitral proceedings before the arbitral tribunal. Neither the factum of the award by the Arbitral Tribunal based at Iran is in contest. Nor there is much

controversy over the orders passed by the Courts in Iran in accordance with the governing Rules. In the backdrop of these rather uncontroverted facts, the tenability of the Suit, as such, before this Court, based on the foreign award, can never be contested, urged Mr. Singh.

15. Mr. Singh would urge that the Suit of the present nature is maintainable before this Court as the foreign award is enforceable in India in the same manner and on the same ground as in England under the common law, i.e., on the grounds of justice, equity and good conscience. Mr. Singh placed a very strong reliance on the judgment of the Supreme Court in the case of **Badat and Co Bombay Vs East India Trading Co**¹ wherein the Supreme Court has enunciated the circumstances in which a Suit can be filed on the basis of an award passed by an Arbitral Tribunal the seat of which is in a non-reciprocating country.

16. Mr. Singh made a strenuous effort to draw home the point that the law laid down by the Supreme Court in the case of **Badat and Co (Supra)** has remained unaffected even after the incorporation of the Act of 1996. Amplifying the submission, Mr. Singh would contend that the Part II of the Act of 1996, deals with enforcement of, “certain foreign awards”. The Act of 1996 thus cannot be said to cover the foreign awards which have been passed by the Arbitral Tribunal based

1 1963 SCC OnLine SC 9.

in a non-reciprocating country. Reliance was also placed by Mr. Singh on the judgment of the Supreme Court in the case of **Harendra H. Mehta & Ors Vs Mukesh H Mehta & Ors**² wherein, according to Mr. Singh, the law enunciated by the Supreme Court in the case of **Badat & Co (Supra)** was reiterated. A judgment of the Delhi High court in the case of **Marina World Shipping Corporation Limited Vs Jindal Exports Private Limited**³ was also pressed into service to buttress the submission that the enunciation of law in the case of **Badat & Co (Supra)** still holds good.

17. Therefore, according to Mr. Singh, the principal defence that the suit, on the basis of a foreign award, is not tenable, is devoid of any substance. Once this inference is drawn, according to Mr. Singh, the enquiry in the Suit would be restricted to the question as to whether the prerequisites for enforcing the foreign award, as enunciated by the Supreme Court in the case of **Badat & Co (Supra)**, have been fulfilled. This Court would then be not required to examine the correctness of the determination by the Arbitral Tribunal, submitted Mr. Singh.

18. Mr. Singh would urge, the defence of bar of limitation is equally infirm. Taking the Court through the timeline of the proceedings before the Arbitral Tribunal and the Courts in Iran, Mr. Singh submitted that the judgment dismissing the Appeal was passed by the Civil Court at Iran on 13th January 2021, while granting liberty to the Defendant to

2 (1999) 5 SCC 108.

3 2012 SCC OnLine Del 1229.

prefer an Appeal within a period of 20 days. Consequently, the Award became final on 4th February 2021. Institution of the Suit on 12th January 2024 was clearly within the period of limitation.

19. In any event, according to Mr. Singh, the order passed by the Supreme Court dated 10th January 2022 in *Suo Moto Writ Petition No. 3 of 2020* extending the period between 15th March 2020 to 28th February 2022, enures to the benefit of the Plaintiff. If the period of limitation is reckoned from 1st March 2022, as ordered by the Supreme Court, the Suit is well within the period of limitation. To this end reliance was placed on the Supreme Court's order dated 10th January 2022 and a decision of a learned Single Judge of this Court in the case of **Novacare Drug Specialities Pvt Ltd Vs State of Goa and Others.**⁴

20. Adverting to the proceedings before the NCLT, for approval of the scheme under the provisions of Section 232 of the Companies Act 2013 and the orders passed therein, Mr. Singh submitted that the Plaintiff does contemplate an urgent interim relief. The de-merger of the Defendant-company, without showing the Plaintiff as one of its creditors, despite the Award in question having been passed by the competent Arbitral Tribunal, would jeopardise the prospect of recovery of the amount under the said Award, irretrievably. Thus, the challenge to the tenability of the Suit for not resorting to the mandatory pre-

⁴ 2023 SCC OnLine Bom 1557.

institution mediation under Section 12A of the Commercial Courts Act 2015, does not merit countenance.

21. Mr. Singh would further urge that the endeavour made on behalf of the Defendant to question the jurisdiction of the Court, in the light of the pendency of the proceeding before the NCLT, need not detain the Court as the reliefs which are sought in the instant Suit and the Interim Application can never be granted by the NCLT. Consequently, the bar contained in Section 430 of the Companies Act 2013 is not at all attracted.

22. On the merits of the matter, Mr. Singh would urge, there is overwhelming material on record which shows that the Defendant and its authorized representative have categorically acknowledged the liability. Belatedly a defence was raised that the Defendant was a broker and the transactions were between the Plaintiff and IGT and Venture Crosstrade. The said defence is ex-facie dishonest and not borne out by the record. In fact, in a Suit of the present nature, this Court is not required to delve into the merits of the Arbitral Award. It was reiterated that the enquiry would be restricted to the satisfaction about the five principles enunciated in the case of **Badat & Co (Supra)**. Even otherwise, the correspondence exchanged between the parties squarely establishes that the Plaintiff had supplied the goods, and after accepting the proforma invoice and delivery of the goods, the Defendant

committed default in payment of price thereof. In these circumstances, the Plaintiff who has a huge claim against the Defendant cannot be left in the lurch and interest of the Plaintiff deserves to be appropriately secured, submitted Mr. Singh.

23. Per contra, Mr. Seksaria, the learned Senior Advocate for the Defendant, mounted a four-pronged attack to the tenability of the Suit and the reliefs claimed in the instant application. Firstly, it was submitted that the Suit based on the foreign award is not at all maintainable. It was urged that the judgment in the case of **Badat & Co (Supra)**, which constitutes the sheet-anchor of the Plaintiff's case, has no application at all to the facts of the case at hand. With the enactment of the Act of 1996, which consolidated and amended the law relating to Arbitration in India, including enforcement of Foreign Arbitral Awards, the remedies must be worked out under the provisions of the said Act 1996. Since Part II of the said Act 1996 mandates recognition and enforcement of the Arbitral Award passed by the Tribunal in a reciprocating territory, the foreign award passed by an Arbitral Tribunal in a non-reciprocating country, can never be enforced, lest the foreign award of a non-reciprocating country would stand on a better footing than that of a reciprocating country which has to pass the rigours under Part II of the Act of 1996.

24. Mr. Seksaria would submit that, the Act of 1996 does not permit recognition and enforcement of a foreign award from a non-reciprocating country and, thereby, contains a negative import. A very strong reliance was placed by Mr. Seksaria on the Seven Judge Constitution Bench judgment in **Re: Interplay Between Arbitration Agreement under the Arbitration And Conciliation Act 1996 and The Indian Stamp Act 1899**⁵ (N.N. Global), to bolster up the aforesaid submission that there is a negative import in the matter of recognition and enforcement of a foreign award of non-reciprocating country. Reliance was also placed on the judgment of the Supreme Court in the case of **Sundaram Finance Ltd Vs NEPC India Ltd**⁶ as regards the approach in the matter of interpretation of the provisions contained in the Act of 1996.

25. Mr. Seksaria would urge that, even otherwise, the prerequisites for the enforcement of a foreign award in a non-reciprocating country, as enunciated by the Supreme Court in the case of **Badat & Co (Supra)** have not been fulfilled in the facts of the case at hand. The foreign award, according to Mr. Seksaria, cannot be said to have attained finality under the laws of Iran. It was controverted that the judgment dated 15th July 2019 passed by the Tehran Court was

5 2023 INSC 1066

6 1999 (2) SCC 479.

under the International Commercial Arbitration Act of Iran 1997 (“Iran Act of 1997”).

26. The bar of limitation was premised in two parts. First, the Suit based on original cause of action was ex-facie barred by the law of limitation as the last of the alleged proforma invoices was raised on 1st April 2016. Second, as regards the Suit based on the foreign award, Mr. Seksaria would urge the right to sue accrued to the Plaintiff on the date of the said Award, i.e., 7th September 2018. The further proceedings before the Civil Courts at Iran, according to Mr. Seksaria, did not arrest the period of limitation which began to run from the date of the passing of the said Award. For this purpose, Mr Seksaria, placed reliance on the judgment of the Supreme Court in the case of **Hindustan Construction Company Limited And Anr Vs Union of India And Ors.**⁷

27. As a second limb of the submission, Mr. Seksaria would urge even if the period of limitation is computed from the date of the dismissal of the Appeal, i.e., 15th July 2019, the Suit instituted in the month of January 2024 would be ex-facie barred by the law of limitation. It was urged that under the provisions of Article 137 of the Limitation Act 1963 the period of limitation for enforcement of a foreign award is three years from the date of the Award. To draw support to this submission, Mr. Seksaria banked upon the judgment of

⁷ (2020) 17 SCC 324.

the Supreme Court in the case of **Government of India Vs Vedanta Limited (Formerly Cairn India Limited) And Anr.**⁸

28. Thirdly, Mr. Seksaria would urge, with a degree of vehemence, that the institution of the Suit was clearly in teeth of the provisions contained in Section 12A of the Commercial Courts Act 2015. It was submitted that the very fact that the foreign award was passed on 7th September 2018 and the Suit came to be instituted in the month of January 2024 rules out any element of urgency in the matter. On the own showing of the Plaintiff, the said foreign award attained finality on 13th January 2021. Yet, the Plaintiff allowed the prescribed period of limitation to expire and then instituted the Suit.

29. The endeavour of the Plaintiff to press into service the pendency of the proceeding under Section 232 of the Companies Act 2013, before the NCLT and the orders passed therein, was stated to be an instance of clever drafting and subterfuge to shore up a false case of urgency with a view to avoid the mandatory pre-institution mediation. The entire endeavour of the Plaintiff was to circumvent the peremptory requirement of Section 12A of the Commercial Courts Act 2015. It was incumbent upon the Plaintiff to demonstrate promptitude of such nature that exhausting the remedy of mandatory pre-institution mediation, without any Court intervention, could lead to into an irreversible situation as enunciated by Madras High Court in the case of

⁸ (2020) 10 SCC 1.

K Varathan Vs Prakash Babu Nakundhi Reddy,⁹ submitted Mr. Seksaria. Consequently, in view of the decision of the Supreme Court in the case of **Patil Automation Private Limited And Ors Vs Rakheja Engineers Private Limited,**¹⁰ the Plaint is liable to be rejected by invoking the provisions contained in Order 7 Rule 11 of the Code.

30. Fourthly, Mr. Seksaria made an endeavour to draw home the point that the material on record would unmistakably indicate that the transactions were between IGT and Venture Crosstrade and the role of the Defendant was that of a broker. Attention of the Court was invited to the documents which purportedly indicate that the Plaintiff had raised invoices upon IGT and Venture Crosstrade even in respect of transactions which do not form part of the subject matter of the Suit and the Plaintiff had also received payment from IGT and Venture Crosstrade. The acceptance of the cheques from the above-named entities and the initiation of action upon dishonor of the cheques were also pressed into service, to substantiate the aforesaid defence.

31. In substance, Mr. Seksaria would urge that no monies are payable by the Defendant as claimed by the Plaintiff and, in these circumstances, on the basis of a legally infirm foreign award passed by the Arbitral Tribunal in a non-reciprocating country, the reliefs in the nature of attachment before the judgment cannot be granted. Even

9 C.S. (Comm. Div.) No. 202 of 2022, decided on 13th October 2022.
10 (2022) 10 SCC 1.

otherwise this Court's jurisdiction to grant the prayers in the Interim Application is expressly barred by the provisions contained in Section 430 of the Companies Act 2013, submitted Mr. Seksaria.

CONSIDERATION:

32. To begin with it is necessary to note that the parties are in unison on the point that the subject Award has been passed by an Arbitral Tribunal, the seat of which was in a non-reciprocating country. The parties were, however, at issue over the tenability of the Suit on the basis of the foreign award passed by a Tribunal situated in a non-reciprocating country. As this issue goes to the root of the matter, I deem it appropriate to deal with the same at the threshold.

TENABILITY OF SUIT ON THE BASIS OF AWARD PASSED IN A NON-RECIPROCATING COUNTRY:

33. Evidently, the edifice of the Suit is sought to be built on the judgment of the Supreme Court in the case of **Badat & Co (Supra)**. Since considerable submissions were canvassed on the import of the judgment of the Supreme Court in the case of **Badat & Co (Supra)** and its applicability to the facts of the case, especially in the light of the enactment of the Act of 1996, it may be apposite to note the factual backdrop in which the said decision was rendered by the Supreme Court.

34. In the case of **Badat & Co (Supra)** the dispute arose between Badat and Company, an Indian Firm, and East India Trading Company, a private limited company incorporated under the laws of the State of New York in USA, in relation to supply of turmeric by the Indian Firm to the said foreign company. The parties had agreed to do business on the terms of the American Spice Trade Association, which warranted that all questions and controversies and all claims arising under the contract should be submitted and settled by Arbitration.

35. In the wake of the dispute, the American company invoked the Arbitration and obtained two ex-parte Awards, followed by the confirmation judgments passed by the Courts in America. Thereafter, the American company instituted the Suit based on the Foreign judgments and, in the alternative, on the two Awards given by the Tribunal based in New York, before this Court.

36. The tenability of the Suit was questioned by the Indian Firm, *inter alia*, on the ground that the Indian Firm was not residing within the limits of the original jurisdiction of the Bombay High Court or carrying business therein and thus the High Court had no jurisdiction to entertain the Suit.

37. In the aforesaid context, the Supreme Court, enunciated that the Plaintiffs were not entitled to enforce the judgment of the Supreme Court of the State of New York against the Defendant by a Suit

instituted on the Original Side of the High Court. The provisions of the Arbitration (Protocol and Convention) Act 1937 were not attracted as the United State was not a party to the convention.

38. The Supreme Court, however, went on to examine the enforceability of the foreign award in India, under common law on the grounds of justice, equity and good conscience.

39. The Supreme Court, thus, observed, *inter alia*, as under:

“**31.** Thus commercial arbitration awards, though based on a contract to arbitrate are not contracts and although they are decisions they are not judgments. Even though that is so, it has been held in several cases in England that even where an award has not been reduced to a judgment in a foreign country it can be enforced in England provided, of course, the award answers *mutatis mutandis* the tests for determining the enforceability of foreign judgments. Thus, the foreign arbitration tribunal must have acted upon a valid submission within the limits of jurisdiction conferred by the submission, and the award must be valid and final.

... ..

33. It will thus be seen that there is a conflict of opinion on a number of points concerning the enforcement of foreign awards or judgments, based upon foreign awards. However, certain propositions appear to be clear. One is that where the award is followed by a judgment in a proceeding which is not merely formal but which permits of objections being taken to the validity of the award by the party against whom judgment is sought,

the judgment will be enforceable in England. Even in that case, however, the plaintiff will have the right to sue on the original cause of action. The second principle is that even a foreign award will be enforced in England provided it satisfies mutatis mutandis the tests applicable for the enforcement of foreign judgments on the ground that it creates a contractual obligation arising out of submission to arbitration. On two matters connected with this there is difference of opinion. One is whether an award which is followed by a judgment can be enforced as an award in England or whether the judgment alone can be enforced. The other is whether an award which it not enforceable in the country in which it was made without obtaining an enforcement order or a judgment can be enforced in England or whether in such a case the only remedy is to sue on the original cause of action. The third principle is that a foreign judgment or a foreign award may be sued upon in England as giving good cause of action provided certain conditions are fulfilled one of which is that it has become final.

... ..

39. Just as a foreign judgment affords a fresh cause of action upon which a suit can be brought in an English court, so is the case with regard to a foreign award. Thus, in *Bremer Oeltransport GmbH v. Drewry*(2) it was held that a foreign award furnishes a new cause of action based on the agreements between the parties to perform the award. This view has been accepted in *Halsbury's Laws of England* Vol. II, p. 45.

40. Now, when a plaintiff sues upon a foreign award what he in fact does is to ask the court to pass a judgment in his favour for the amount stated in the award only after proving five facts :

(1) that there was a contract between the parties where under disputes between them could be referred to arbitration to a tribunal in a foreign country;

(2) that the award is in accordance with the terms of the agreements;

(3) that the award is valid according to the law governing arbitration proceedings obtaining in the country where the award was made ;

(4) that it was final according to the law of. that country; and

(5) that it was a subsisting award at the date of suit.

41. A view has been expressed in some English cases that an award must also be enforceable in the country in which it was made before a suit can be brought, in England on its basis. But upon the view we are taking it is not necessary to decide this point. Now, when a suit is brought by a plaintiff on the basis of an award it is not necessary for him to prove that the amount claimed was actually payable to him in respect of the dispute nor it is open to the defendants to challenge the validity of such an award on grounds like those which are available in India under Section 30 of the Arbitration Act. A very limited challenge to the claim based on the award is permissible to the defendants and that is one of the reasons why it is important to ascertain whether the award has in fact attained finality in the country in which it was made. We will assume that the plaintiffs have

satisfactorily established the first three of the five conditions which we have set out above. The question then is whether the fourth and the fifth conditions have been satisfied.

... ..

46. No doubt, an award can furnish a fresh cause of action. But the award must be final. If the law of the country in which it was made gives finality to judgment based upon an award and not to the award itself, the award can furnish no cause of action for a suit in India. In these circumstances we hold that though the High Court of Bombay has jurisdiction to enforce a final award made in a foreign country in pursuance of a submission made within the limits of its original jurisdiction, the awards in question being not final, cannot furnish a valid cause of action for the suit. Upon this view we allow the appeal and dismiss the suit with costs throughout. The normal rule as to costs must apply because the choice of forum made by the plaintiffs was deliberate and with the knowledge that they were taking a risk in not seeking out the defendants at the place where they reside or carry on business.”

40. The Supreme Court has thus held that apart from the provisions of Arbitration (Protocol and Convention) Act 1937, (which was then in force) foreign award and foreign judgment based upon Awards, were enforceable in India on the same grounds and in the same circumstances on which they were enforceable in England under the

common law on the grounds of justice, equity and good conscience, if the necessary conditions were satisfied, namely, the contract between the parties to refer the dispute to Arbitration to a Tribunal in a foreign country, the Award is in accordance with the terms of the Agreement, the Award is valid according to the governing law of the country where the Award was made, the Award was final according to the law of that country and the Award subsisted on the date of the institution of the Suit.

41. The judgment of the Supreme Court in the case of **Badat & Co (Supra)** with regard to the enforcement of the foreign award is based on the applicability of the common law and is *de hors* the statutory prescription in the matter of enforcement of foreign award. The pivotal question which crops up for consideration is whether the aforesaid law expounded by the Supreme Court in the case of **Badat & Co (Supra)** still holds the field, especially after the incorporation of the Act of 1996?

42. Mr. Singh would urge that the precedential value and binding efficacy of the judgment in the case of **Badat & Co (Supra)** is not diluted by the subsequent legislation. It was urged that the Supreme Court has in fact followed the judgment in the case of **Badat & Co (Supra)** in the case of **Harendra H. Mehta (Supra)**. In **Marina World**

Shipping Corporation Limited (Supra) the Delhi High Court has also followed the judgment in the case of **Badat & Co (Supra)**.

43. A perusal of the judgment in the case of **Harendra H. Mehta (Supra)** would indicate that the Supreme Court had, in fact, held that the judgment in the case of **Badat & Co (Supra)** was not applicable to the facts of the case in **Harendra H. Mehta (Supra)** which was governed by the provisions contained in Foreign Awards (Regulation and Enforcement) Act 1961.

44. In the case of **Marina World Shipping Corporation Limited (Supra)**, the Delhi High Court considered the question whether execution petition was maintainable in view of the Explanation to Section 44A of the Code?. Holding that Part II of the Act of 1996 is a complete Code in itself for the enforcement of a foreign award other than a situation where a Suit may have been filed for enforcement of such an Award. where there may be a non-reciprocating country as was the case in the case of **Harendra H. Mehta (Supra)**, it was observed that the legal position was not different in **Badat & Co (Supra)**. The Delhi High Court has in terms referred to the remedy of institution of the Suit for enforcement of a foreign award passed by the Tribunal in a non-reciprocating country.

45. In contrast to this, Mr Seksaria would urge that the enactment of the Act of 1996 which is a consolidating and amending

law with regard to the domestic and commercial arbitration as well as enforcement of the foreign award, there is no room for enforcement of a foreign award passed by the Tribunal in a non-reciprocating country by institution of a suit. It was urged that any other view would put such Award in a non-reciprocating country on a better footing than the Award passed in a reciprocating country which has to pass through the rigour of recognition and enforcement under Part II of the Act 1996.

46. It was forcefully urged that the Act of 1996 is a self-contained Code and there is a negative import against the enforcement of the foreign award which does not fall within the purview of the Act of 1996. Strong reliance was placed on the judgment of the Constitution Bench in the case of **Re: Interplay Between Arbitration Agreement (Supra)**.

47. Before the enactment of the Act of 1996, the law of Arbitration was contained in the Arbitration Act 1940, the Arbitration (Protocol and Convention) Act 1937 and Foreign Awards (Recognition and Enforcement) Act 1961. The United Nations Commission on International Trade Law (UNCITRAL) adopted the model law in 1985 to foster the development of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial arbitration. All the member States were recommended to give due

consideration to the model law. The statement of objects and reasons of the Act of 1996, reads as under:

“2. The United Nations Commission on International Trade Law (UNCITRAL), adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, In view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The UNCITRAL also adopted in 1980 a set of Conciliation Rules. The General Assembly of the United Nations has recommended the use of these Rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said UNCITRAL Model Law and Rules is that they have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application.

3. Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model Law and Rules.”

48. Part II of the Act of 1996, with which we are primarily concerned, deals with the enforcement of certain foreign awards. Chapter I deals with New York Convention Awards and Chapter II with Geneva Convention Awards.

49. The definition of “Foreign Awards” in Sections 44 and 53 of the Act of 1996 designedly restricts the operation of the Chapter I and II to the Awards in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification, declare to be territories to which the respective Convention applies. In other words, the foreign award referred to in Section 44 and 53 are the Awards made in pursuance of an agreement to which the New York Convention or Geneva Convention applies. The title of Chapter II thus gives an indication that it governs the enforcement of certain foreign awards, implying thereby that the said Chapter does not apply to the foreign awards not covered by the definition of “foreign awards” under Sections 44 and 53 of the said Act. The Act of 1996, thus, does not make any provision for Awards passed in Arbitration proceedings which take place in a non-convention country.

50. It is in the aforesaid context, the submission of Mr. Seksaria that there is a negative import requires appreciation. There can be no duality of opinion that the Act of 1996 is a self-contained Code. In the

case of **Furest Day Lawson Ltd Vs Jindal Exports Ltd.**¹¹ the Supreme Court emphasised that the Act of 1996 is a self-contained Code and exhaustive and carries with it a negative import. The observations in paragraph 89, on which a very strong reliance was placed by Mr. Seksaria, read as under:

“89. It is thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in P.S. Sathappan [(2004) 11 SCC 672]) was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J, that it carries with it “ a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done.” In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded”

(emphasis supplied)

¹¹ (2011) 8 SCC 333.

51. After referring to the aforesaid statement of law, the Seven Judge Bench, enunciated in the case of **Re: Interplay Between Arbitration Agreement (Supra)**, that it is not permissible to do what is not mentioned under the Act of 1996. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise.

52. The observations of the Constitution Bench in paragraph 85 read as under:

“85. The Arbitration Act is a self-contained code *in* *alio* with respect to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award, as well as execution of such awards. When a self-contained code sets out a procedure, the applicability of a general legal procedure would be impliedly excluded. Being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the matter indicated, and not otherwise. Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the arbitral tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. The corollary is that it is not permissible to do what is not mentioned under the Arbitration Act. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise.”

(emphasis supplied)

53. The Arbitration Act is indeed a self-contained Code, *inter alia*, with respect to matters covered by the said Act 1996. If the Act of 1996 expressly and specifically excludes the foreign awards made in non- convention countries, then, can the remedies which were available in relation to the non conventional awards be said to be barred by the provisions of the Act of 1996?.

54. I am afraid, the answer cannot be in the affirmative. There cannot be any manner of doubt that the matters which are governed by the provisions of the Act 1996 can only be dealt with in the manner ordained by the said Act. However, where the Act of 1996 expressly excludes certain categories of foreign awards, from the purview of enforcement thereunder, the principle of negative import cannot be applied to such a situation by necessary implication.

55. The prohibition in the matter of the enforcement of the Awards emanating from non-reciprocating territories ought to find a mandate in the Act of 1996. Evidently, there is no express prohibition. In the absence of an express prohibition a matter relating to Arbitration which is not covered by the Act of 1996 cannot be jettisoned away as impermissible.

56. A profitable reference, in this context, can be made to a three Judge Bench Judgment of the Supreme Court in the case of

Centrotrade Mineral & Metals Vs Hindustan Cooper Ltd,¹² where the permissibility of two-tier Arbitration, i.e., the adjudication of an Appeal by another Arbitrator/Tribunal, under the provisions of the Act of 1996, arose. In the said case, reliance was placed on the aforeextracted observations in paragraph 89 of the judgment in the **Furest Day Lawson Ltd (Supra)**, to urge that the Act of 1996 does not permit two tier Arbitration and, thus, such an Arbitration system was not permissible. The three Judge Bench observed that, it was unable to fully subscribe to the aforeextracted broad observations that acts mentioned in the statute are permissible but acts not mentioned therein are impermissible, and that the position could be converse. The relevant observations in paragraph 23 of the judgment of the **Centrotrade Mineral (Supra)** read as under:

“23. In any event, we are afraid the passage referred to by the learned counsel from Fuerst Day Lawson has been misunderstood and is even otherwise inapposite since we are not concerned with a statutory appeal but a non-statutory process agreed upon by parties that has nothing to do with court procedures. We are also unable to fully subscribe to the broad observation that acts mentioned in a statute are permissible but acts not mentioned therein are impermissible. It could very well be the converse. In any event, the observations of this Court were in the context of a statutory appeal not provided (or provided). In that context, it was observed

12 2017(2) SCC 228.

that if an appeal is not provided for by a statute, then the filing of an appeal is not permissible.”

(emphasis supplied)

57. A useful reference can also be made to the Constitution Bench judgment in the case of **Bharat Aluminum Company Vs Kaiser Aluminum Technical Services Inc.**¹³ In the said case, a submission was sought to be canvassed that since non- convention awards would not be governed either by Part I or Part II of the Act of 1996, it would mean that there is no law governing such Arbitrations. Repelling the submission, the Constitution Bench, enunciated the law as under:

“169. It was also submitted that Non-Convention Awards would not be covered either by Part I or Part II. This would amount to holding that the legislature has left a lacuna in the Arbitration Act, 1996. This would mean that there is no law in India governing such arbitrations.

170. We are of the opinion that merely because the Arbitration Act, 1996 does not cover the non convention awards would not create a lacuna in the Arbitration Act, 1996. If there was no lacuna during the period in which the same law was contained in three different instruments, i.e. the Arbitration Act, 1996 read with 1961Act, and the Arbitration (Protocol and Convention) Act, 1937, it cannot be construed as a lacuna when the same law is consolidated into one legislation, i.e. the Arbitration Act, 1996.

13 (2012) 9 SCC 552.

171. It must further be emphasised that the definition of “foreign awards” in Sections 44 and 53 of the Arbitration Act, 1996 intentionally limits it to awards made in pursuance of an agreement to which the New York Convention, 1958 or the Geneva Protocol, 1923 applies. It is obvious, therefore, that no remedy was provided for the enforcement of the ‘non convention awards’ under the 1961 Act. Therefore, the non convention award cannot be incorporated into the Arbitration Act, 1996 by process of interpretation. The task of removing any perceived lacuna or curing any defect in the Arbitration Act, 1996 is with the Parliament. The submission of the learned counsel is, therefore, rejected. The intention of the legislature is primarily to be discovered from the language used, which means that the attention should be paid to what has been said and also to what has not been said. (See: Gwalior Rayon Silk Mfg (Wvg.) Co Ltd Vs Custodian of Vested Forests (1990 Supp SCC 785 : AIR 1990 SCC 1747). Here the clear intention of the legislature is not to include the Non-convention Awards within the Arbitration Act, 1996.”

(emphasis supplied)

58. The aforesaid observations of the Supreme Court, especially to the effect that, if there was no lacuna during the period in which the same law was contained in three different enactments, i.e., Arbitration Act, 1940 read with 1961 Act and the Arbitration (Protocol and Convention) Act 1937, it cannot be construed as a lacuna when the same law came to be consolidated into one legislation (The Arbitration

Act 1996), indicate that despite the enactment of the Arbitration Act 1996, the legal position as regards the enforcement of non-convention Award remains the same.

59. I, therefore, find substance in the submission of Mr. Singh that the decision in the case of **Badat & Co (Supra)** in the matter of enforcement of non convention Awards still holds the field, and the Suit of the instant nature is tenable.

WHETHER THE CONDITIONS STIPULATED IN THE CASE OF BADAT & CO (SUPRA) HAVE BEEN FULFILLED?:

60. Mr. Seksaria submitted that one of the essential conditions for enforcement of the foreign award emanating from a non-reciprocating territory has not been fulfilled as the Award in question cannot be said to have attained finality under the laws of Iran. Laying emphasis on the observations of the Supreme Court in paragraph 46 of the Judgment in the case of **Badat & Co (Supra)**, Mr. Seksaria would urge that the instant suit must meet the same fate as the Suit in **Badat & Co (Supra)**, since the Award in question has not attained finality.

61. Mr. Seksaria submitted that under Article 6 of the Iran Act 1997, the judicial functions in relation to Article 33 and 35 therein were entrusted to Tehran Public Court. Under Article 34, an Award can be deemed to be null and void and unenforceable in the circumstances

enumerated therein. Under Article 35 of the Iran Act 1997, the Award Holder was required to file an application to seek recognition and enforcement of the Award. Since, the Plaintiff had not filed any application in the Public Court of Tehran for recognition and enforcement of the Award in question, the Award cannot be said to have attained finality. It was further urged that had the Plaintiff filed such an application, the Defendant would have had an opportunity to contend that there are circumstances which render the Award null and void.

62. Mr. Seksaria would further submit that the the reliance sought to be placed by the Plaintiff on the decision of Iranian 105th Branch of Public Civil Court, dated 15th July 2019, is of no assistance to the Plaintiff as the said Court had no jurisdiction in the matter of an international award. Thus, the judgment dated 15th July 2019 cannot be treated as a judgment passed under the Iran Act 1997 to urge that the Award attained finality.

63. In any event, according to Mr. Seksaria, when this Court has to form an opinion upon a point of foreign law, the provisions contained in Section 45 of the Indian Evidence Act would be attracted and, at this stage, there is no material to form an opinion as to the effects of the laws of Iran.

64. Mr. Ratan Kumar Singh countered the submissions on behalf of the Defendant. It was urged that the submissions on behalf of

the Defendant are premised on an incorrect reading of the decision in the case of **Badat & Co (Supra)**. Under Article 35 of the Iran Act 1997, the Award Holder was not required to seek recognition before the Award attained finality. An application was required to be made only for the enforcement of the international award. There is a difference between ‘finality’ and ‘enforcement’ of the Award. An Award may be final and yet unenforceable. This distinction in the concepts of “finality” and “enforceability” of the Award, was adverted to by the Supreme Court in paragraph 43 of the decision in the case of **Badat & Co (Supra)**, urged Mr. Ratan Singh.

65. Secondly Mr. Ratan Singh would submit that in the proceeding initiated under Article 489 of the Civil Code of Iran, which was otherwise not applicable to international commercial arbitration award, the Tehran Public Court considered the challenge both under Article 489 of the Iranian Civil Procedure Code as well as Articles 33 and 34 of Iran Act 1997. Since the Award can no longer be subjected to challenge under the mechanism provided by the Iran Act 1997, Mr. Ratan Singh would urge, the challenge to the tenability of the Suit on the ground that the Award has not attained finality is completely misconceived.

66. The aspect of the finality of the Award is of critical salience on two counts. First, finality to the foreign award under the laws of

non- convention country, where it was passed, is a pre-condition for a Suit based on the foreign award, as enunciated in **Badat & Co (Supra)**. In fact, in the said case, the Supreme Court on facts held that, under the governing provisions of the New York State, the Defendant was entitled to apply for vacating the Award on certain grounds and thus imperil the finality accorded to the Award by his contract. Therefore, it cannot be said that the Award has attained finality till the entire procedure was gone through and, thus, the Award in question, not being final, could not furnish a valid cause of action for the Suit.

67. Secondly, the issue of finality assumes significance in the context of the bar of limitation for the Suit based on the foreign award. It is the stand of the Plaintiff that the award attained finality after 20 days of the disposal of the Appeal by an order dated 13th January 2021.

68. The parties are not at issue over the character of the Award qua Iran. It was an international award for Iran as well, though the seat of Arbitration was in Tehran. Under the Article of 1(b) of the Iran Act 1997, an Arbitration is international if at the time of conclusion of the Arbitration Agreement, one of the parties to the Agreement, is not a national of Iran under Iranian law. Article 2 of the Iran Act 1997 provides that Arbitration of disputes in international commercial relations shall be conducted in accordance with the provisions of the said Act. Article 6, which deals with the supervisory authority of the

Courts, provides that performance of functions specified in certain Articles including Articles 33 and 35 are entrusted to the Public Court in the provincial capital where the place of Arbitration is located and where, and for as long as, the place of Arbitration has not been designated, such functions will be performed by Tehran Public Court. Article 36(1) excludes Arbitration of international commercial disputes under the said Act, 1997 from the Arbitration Rules contained in the Civil Procedure Code and other laws and regulations.

69. Chapter 7 of the Iran Act 1997 governs the recourse against the Awards. Under Article 33(1) an Arbitral Award may be set aside by the Court specified in Article 6 upon the application of a party when the circumstances stipulated in Clauses (a) to (i) exists. Article 34 provides for nullity of Award. It reads as under:

“Article 34. Nullity of award

An arbitral award shall be deemed null and void and unenforceable where:

- (1) the principal subject-matter of the dispute is not capable of settlement by arbitration under Iranian law;
- (2) the terms of the award would be contrary to the public policy or good morals of the State, or to the mandatory provisions of this Act;
- (3) the arbitral award made in respect of immovable property located in Iran is in conflict with the mandatory laws of the Islamic Republic of Iran or with the contents of valid official documents, unless the “arbitrator” has been authorized to act as amiable compositeur regarding the latter issue.”

70. Enforcement of the Award is regulated by Article 35. It reads as under:

“Article 35. Enforcement

(1) Except for instances specified in Articles 33 and 34 of this Act, arbitral awards made in accordance with the provisions of this Act shall be recognized as binding and enforceable after notification thereof and, upon application in writing to the court specified in Article 6, enforcement procedures in connection with court judgments shall be put into effect.

(2) Where a party requests the court specified in Article 6 of this Act to set aside an arbitral award, while the other party requests for its recognition or enforcement, the court may, on the application of the party requesting recognition or enforcement of the award, order the other party to provide appropriate security.”

71. From the perusal of the judgment of 105th Branch of Public Civil Court dated 15th July 2019 (Exhibit “JJ”), it *prima facie* appears that the Award was challenged by invoking the provisions contained in Article 489 of the Civil Procedure Code under which an Arbitral Award shall be null and void and unenforceable if the circumstances stipulated in Clauses (1) to (7), therein, exist. As noted above, the International Arbitration is excluded from the Arbitration Rules contained in the Iranian Civil Procedure Code.

72. Mr. Ratan Singh would urge that, nonetheless, the Public Civil Court which decided the said proceeding, was the competent Court under the Article 6 of the Iran Act 1997 and has, in fact, decided the matter on merits, including the grounds which were available for setting aside an Arbitral Award under Article 33 of the Iran Act 1997.

73. The aforesaid submission, in my considered view, requires consideration, upon forming a correct opinion as to the foreign law. The merits of the decision of the Public Civil Court at Tehran dated 15th July 2019 are not as significant as the question of jurisdiction. *Prima facie*, a proceeding invoking Article 489 of the Iranian Civil Procedure Code was not tenable. In such circumstances, can element of finality be attached to the award, in the context of the said decision dated 15th July 2019 and the subsequent remand of the matter by the Court of Appeal of Tehran province, by order dated 11th August 2020 (Exhibit “KK”) and the eventual decision dated 13th January 2021 by the Public Civil Court (Exhibit “LL”), dismissing the Appeal, appears debatable.

74. It would be contextually relevant to note that Article 33(3) of the Iran Act 1997, reads as under:

“Article 33. Application for setting aside an arbitral award

(1)

(2)

(3) The application for setting aside the award under the provisions of paragraph (1) of this Article shall

be submitted to the court specified in Article 6 within three months of notification of the award, including correction or interpretation of the award, or an additional award, otherwise the application shall be inadmissible.”

75. An application for setting aside the Award is required to be made to the Court specified in Article 6, and within three months from the notification of the Award. Lest the Application shall be inadmissible. Could it be urged that after three months of the notification of the Award, the right of the party to seek setting aside of the award stood foreclosed and the award attained finality?.

76. Article 34, on the other hand, declares the circumstances in which an Arbitral Award shall be deemed to be null and void and unenforceable. At what stage and before which forum, the nullity of the Award can be agitated, is again a matter which *prima facie* does not seem to be free from doubt.

77. As noted above, Article 35 provides that except for instances specified in Article 33 (setting aside of the Award) and 34 (Nullity of award), Arbitral Awards made in accordance with the provisions of this Act shall be recognized as binding and enforceable after notification thereof.

78. The submission of Mr. Ratan Singh that the Plaintiff was not required to file an application for enforcement for the finality of the

award, may carry some substance. However, in the case at hand, the Plaintiff does not claim that the award became final and binding on the date it was made, but seeks to postpone the date of finality to the award to the order dated 13th January 2021 passed by the Public Civil Court, Tehran (Exhibit “LE”).

79. In this view of the matter, in my view, *prima facie*, it is debatable whether the award attained finality and, if so, the date on which the award attained finality, and the determination may require evidence to be adduced in the matter of interpretation of the foreign law

BAR OF LIMITATION:

80. The aforesaid, *prima facie*, finding as regards the finality of the award also bears upon the aspect of limitation. It may be apposite to note that, apart from the award in question, the Plaintiff rests his claim on the original cause of action, albeit, in the alternative. However, during the course of the submissions, it was urged on behalf of the Plaintiff that the Suit is, in fact, primarily filed on the foreign award dated 7th September 2018 having attained finality on 4th February 2021. The aforesaid being the nature of the suit claim, it may be necessary to note the averments in the Plaint as regards the point of limitation.

81. In paragraph 94 of the Plaint, the Plaintiff has averred that if the Plaintiff is not found entitled to a decree on the basis of the

foreign award then the Plaintiff is entitled to recovery of the amount on the basis of the original cause of action. In paragraph 95 of the Plaintiff's claim, the Plaintiff claims that the cause of action in respect of each of the cargos arose after the expiry of the period of 60 days from the date of issue of Bill of Lading in respect to each cargo and the assurances made by the Defendant to pay the outstanding amount, the last of which was on 26th April 2016. In the second part, the Plaintiff claims cause of action arose on the date of award, i.e., 8th September 2018 followed by the judgments of the Court of the first instance on 15th July 2019, the Appeal Bench judgment dated 11th August 2020 and again the judgment of Court of first instance dated 13th January 2021 and, lastly, on the expiry of 20 days period thereof, i.e., 4th February 2021. Lastly, the Suit is stated to be governed by Article 113 of the Limitation Act (paragraph 98).

82. Evidently, the institution of the suit on 12th January 2024, on the basis of the original cause of action constituted by the sale and delivery of the goods, the last of which was on 1st April 2016, appears *prima facie*, beyond three years from the date of the accrual of the cause of action. Though an endeavour was made on behalf of the Plaintiff that there is an acknowledgment of the debt in the form of the e-mails referred to in paragraph 95 of the Plaintiff's claim, and, therefore, a fresh cause of action accrues, yet, the Plaintiff does not seem to have made

the requisite pleadings in the Plaint to base the suit on the alleged acknowledgment of debt. In any event, the last of the e-mails referred to in paragraph 95 of the Plaint was on 26th April 2016.

83. On the aspect of the bar of limitation, in the context of the Suit based on the foreign award, before advertng to delve into the issue of finality to the award, the law which governs the period of limitation for a suit of the present nature, deserves to be ascertained.

84. Mr. Seksaria, placed a very strong reliance on the judgment of the Supreme Court in the case of **Vedanta Limited (Supra)** to urge that the suit ought to have been instituted within a period of three years from the date of the award. In the case of **Vedanta Limited (Supra)**, the Supreme Court, *inter alia*, considered the question of limitation for filing the enforcement/execution petition for enforcement of foreign award in India. In that context, the Supreme Court held that the issue of limitation for enforcement of foreign award being procedural in nature, is subject to the *lex fori*, i.e., the law of the forum that the foreign award was sought to be enforced, namely, the Limitation Act 1963. The said Act of 1963 does not contain any specific provision for enforcement of a foreign award. An application for execution of a foreign decree would be an application not covered under any other Article of Limitation Act, and, would, thus be governed by Article 137 of the Limitation Act. Article 136 of the Limitation Act (which provides 12

years period of limitation for execution of the decree) would not be applicable for the enforcement/execution of the foreign award, since it is not a decree of Civil Court in India. Thus, the period of limitation for filing a Petition for enforcement of a foreign award under Sections 47 and 49 of the Act 1996 would be governed by Article 137 of the Limitation Act 1963, which prescribes a period of three years from the date when the right to apply accrues.

85. Undoubtedly, the aforesaid enunciation of law was in the context of the enforcement of a foreign award emanating from a reciprocating territory and enforceable under Part II of the Act of 1996. In the instant case, since the Award emanates from a non-reciprocating territory, the suit has been instituted on the basis of a foreign award. However, that would not make much qualitative difference in the matter of the application of law of limitation, i.e. the Limitation Act 1963. A suit for which no period of limitation is prescribed, would be governed by the residuary Article 113, which provides that a suit for which no limitation is provided elsewhere in the Schedule, the period of limitation would be three years and the time begins to run when the right to sue accrues.

86. Thus, the question as to when the right to sue accrued to the Plaintiff comes to fore. The Plaintiff asserts the right to sue accrued when the award, which was passed on 7th September 2018, attained

finality on 4th February 2021, i.e., 20 days after the dismissal of the Appeal by the Court of first instance on 13th January 2021. This claim of the Plaintiff, in turn, raises the issue of the date of finality of the award dated 7th September 2022.

87. I have already adverted to the provisions contained in Iran Act 1997. A party is entitled to seek setting aside of the award under Article 33 of the Iran Act 1997 on the grounds set out therein, within a period of three months from the date of the notification of the award, before the Court designated under Article 6 therein. This Court is persuaded to take a *prima facie* view that if the proceeding for setting aside the award were not initiated within the said period of three months, the award would attain finality. This view is in accord with the submissions forcefully canvassed on behalf of the Plaintiff that there is a distinction between “finality” and “enforceability” of the award, as indicated in paragraph 43 of the judgment in the case of **Badat & Co (Supra)**. Consistent with this view, if the Plaintiff was not required to file an application for enforcement of the award under Article 35 of the Iran Act 1997, which was again the stand of the Plaintiff, the award would have attained finality after the expiry of the period of three months from the date of the award with no proceeding having been filed by the Defendant for setting aside the award under the provisions of Iran Act 1997.

88. The Plaintiff, however, seeks to defer the finality to the award dated 7th September 2018, on the basis of the proceeding which was initiated by the Defendant, under the Iranian Code of Civil Procedure. Whether such a proceeding before the forum which apparently lacked jurisdiction, by an adversary, would extend the period of limitation or defer the finality otherwise attached to the award dated 7th September 2018, *prima facie*, appears contentious.

89. From the perusal of the provisions contained in the Iranian Act 1997 which governs an international arbitration, *prima facie*, it appears difficult to draw an inference that the finality to the award in question could have been deferred on the strength of a proceeding, which appeared to be not properly constituted, and abortive.

90. In the aforesaid view of the matter, I find substance in the submission of Mr. Seksaria that even if the benefit of the order dated 10th January 2022 passed by the Supreme Court, in Suo Moto Writ Petition No. 3 of 2020 is extended, it appears to be seriously debatable, whether the suit was filed within the period of limitation.

91. I am conscious that the question of limitation is more often than not a mixed question of fact and law, and cannot be legitimately decided on the basis of bare averments, and submissions. However, in the case at hand, since the entire case of the Plaintiff rests on the date of postponement of finality to the award, dated 7th September 2018,

which appears rather tenuous, such tentative finding as regards the bar of limitation is required to be recorded.

CONSEQUENCES OF NON-INVOCATION OF MEDIATION UNDER SECTION 12A OF THE COMMERCIAL COURTS ACT:

92. The prayer in the Interim Application were principally rested on the assertion that the proceeding before the NCLT, Mumbai, being CSA No. C.A. (CAA) 66/MB/2022 under the provisions of Section 232 of the Companies Act 2013, manifest the clear intent of the Defendant to defraud the Plaintiff as the Plaintiff has not been shown as the creditor, despite the award. Reference is made to various orders passed by the NCLT; the last one dated 12th November 2023, whereby the Applicant-Defendant herein was allowed to convene and hold meeting at any date not later than 31st March 2024, convenient to the secured creditors. The pendency of the said proceeding before the NCLT and the possibility of the orders being passed therein, to the prejudice of the Plaintiff, was pressed as justification for the non-invocation of mediation under Section 12A of the Commercial Courts Act.

93. Mr. Sekseria would urge that the aforesaid justification is plainly untenable. Inviting attention of the Court to the orders passed by the NCLT right from 14th October 2022, Mr. Seksaria would urge that the Plaintiff had full knowledge about the said proceeding long back and, yet, the suit came to be instituted without resorting to the mandatory

pre-institution mediation. Mr. Seksaria laid particular stress on the fact that the aspect of urgency is required to be considered in the light of award which came to be passed on 7th September 2018 and the Suit itself being ex-facie barred by law of limitation.

94. Mr. Ratan Singh joined the issue by strenuously urging that this ground also underscores the dishonest intent of the Defendant. An endeavour was made to demonstrate that the Plaintiff did make attempts to amicably settle the disputes at both, pre and post award stage. Attention of the Court was invited to the Minutes of the Meeting chaired by the Joint Secretary FT(SA) Department of Commerce on 17th July 2017 to resolve the issue of pending payment by the Defendant to Iranian companies. A Defendant who dishonestly evades the liability cannot be permitted to score a march by taking a technical defence, urged Mr. Singh.

95. Even otherwise, Mr. Singh would urge, the Plaintiff has satisfactorily made out the case of urgency if considered in the light of the limited enquiry warranted at the nascent stage. Reliance was placed by Mr. Ratan Singh on the judgment of the Supreme Court in the case of **Yamini Manohar Vs T.K.D. Keerthi** ¹⁴ wherein it was enunciated that non-grant of relief at ad-interim stage will not justify dismissal of the Suit under Order VII Rule 11.

14 (2024) 5 SCC 815.

96. Section 12A of the Commercial Courts Act 2015 bars the very institution of the Suit without exhausting remedy of pre-institution mediation, if the Suit does not contemplate any urgent interim relief. In the case of **Patil Automation Private Limited (Supra)**, the Supreme Court, has emphasized the mandatory character of the pre-institution mediation, in the context of legislative object behind the introduction of the pre-insitution mediation. The object unerringly points to at least partly foisting compulsory mediation on the Plaintiff in a Suit which does not contemplate an urgent interim relief.

97. In the case of **Kaulchand H. Jogani Vs Shree Vardhan Investment¹⁵** this Court had an occasion to consider the nature and import of the provisions contained in Section 12A of the Commercial Courts Act. In paragraphs 28 to 31 this Court observed as under:

“28. In the case of Patil Automation (supra) the Supreme Court has emphasized the legislative object behind introduction of preinstitution mediation as a mandatory measure. Evidently, the outlet for not resorting to pre-institution mediation is provided by the text of Section 12A itself namely a suit contemplating an urgent interim relief. In my view, if the said outlet is construed too loosely in the sense that mere filing of an application for interim relief, howsoever unjustified and unwarranted it may be, would take the suit out of the purview of Section 12A, it may run counter to the legislative object. The interdict contained in Section 12A can be easily

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circumvented by filing an application for interim relief without their being any reason or basis therefor. Such an interpretation may not advance the legislative object.

29. The Parliament, it seems, has designedly used the expression, “a suit, which does contemplate any urgent interim relief”. This phrase cannot be interchangeably used with the expression, “where the plaintiff seeks an urgent interim relief...” The test would be whether the suit does contemplate an urgent interim relief.

30. In a given case, the Court may be justified in embarking upon an inquiry as to whether there is an element of justifiability in the claim for urgent interim relief or such a prayer is a mere subterfuge to overcome the bar under Section 12A. At the same time, the scope of such an inquiry would be extremely narrow. Such an inquiry cannot partake the character of determination of the prayer for interim relief on merits. It cannot be urged that if the Court is disinclined to grant interim relief then the justifiability of the institution of the suit, without pre-institution mediation, can itself be questioned. Therefore, the Court may be called upon to steer clear of two extremes.

31. In my considered view, the proper course would be to assess whether there are elements which prima facie indicate that the suit may contemplate an urgent interim relief irrespective of the fact as to whether the plaintiff eventually succeeds in getting the interim relief. In a worst case scenario, where an application for interim relief is presented without there being any justification whatsoever for the same, to simply overcome the bar

under Section 12A, the Court may be justified in recording a finding that the suit in effect does not contemplate any urgent interim relief and then the institution of the suit would be in teeth of Section 12A notwithstanding a formal application.”

98. In the **Yamini Manohar (Supra)**, the Supreme Court referred to the aforeextracted observations in paragraph 31, and a judgment of the Delhi High Court in the case of **Chandra Kishore Chaurasia Vs R.A. Perfumery Works (P) Ltd**¹⁶ and thereafter enunciated the law as under:

“10. We are of the opinion that when a plaint is filed under the CC Act, with a prayer for an urgent interim relief, the commercial court should examine the nature and the subject matter of the suit, the cause of action, and the prayer for interim relief. The prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the CC Act. The facts and circumstances of the case have to be considered holistically from the standpoint of the plaintiff. Non-grant of interim relief at the ad-interim stage, when the plaint is taken up for registration/admission and examination, will not justify dismissal of the commercial suit under Order VII, Rule 11 of the Code; at times, interim relief is granted after issuance of notice. Nor can the suit be dismissed under Order VII, Rule 11 of the Code, because the interim relief, post the arguments, is denied on merits and on examination of the three principles, namely, (i) prima

¹⁶ 2022 SCC OnLine Del 3529.

facie case, (ii) irreparable harm and injury, and (iii) balance of convenience. The fact that the court issued notice and/or granted interim stay may indicate that the court is inclined to entertain the plaint.

11. Having stated so, it is difficult to agree with the proposition that the plaintiff has the absolute choice and right to paralyze Section 12A of the CC Act by making a prayer for urgent interim relief. Camouflage and guise to bypass the statutory mandate of pre-litigation mediation should be checked when deception and falsity is apparent or established. The proposition that the commercial courts do have a role, albeit a limited one, should be accepted, otherwise it would be up to the plaintiff alone to decide whether to resort to the procedure under Section 12A of the CC Act. An ‘absolute and unfettered right’ approach is not justified if the pre-institution mediation under Section 12A of the CC Act is mandatory, as held by this Court in Patil Automation Privated Limited (Supra)

12. The words ‘contemplate any urgent interim relief’ in Section 12A (1) of the CC Act, with reference to the suit, should be read as conferring power on the court to be satisfied. They suggest that the suit must “contemplate”, which means the plaint, documents and facts should show and indicate the need for an urgent interim relief. This is the precise and limited exercise that the commercial courts will undertake, the contours of which have been explained in the earlier paragraph(s). This will be sufficient to keep in check and

ensure that the legislative object/intent behind the enactment of Section 12A of the CC Act is not defeated.

(emphasis supplied)

99. The Commercial Courts are enjoined to examine the matter as to whether the suit does contemplate any urgent interim relief and the Plaintiff does not have absolute and unfettered right in determining as to whether he should not resort to pre-institution mediation. The Supreme Court has postulated that the prayer for urgent interim relief should not be a disguise or mask to wriggle out of and get over Section 12A of the Commercial Courts Act. The expression, “contemplate any urgent interim relief” suggests that the suit must “contemplate”, which means the Plaintiff, documents and facts should show and indicate the necessity of an urgent interim relief.

100. On the aforesaid anvil, a primary enquiry on the basis of the averments in the Plaintiff, documents annexed thereto and the attendant facts of the case, *prima facie*, indicates that the Suit does contemplate an urgent interim relief. The fact that this Court had declined to grant ad-interim relief, or for that matter, this Court may not eventually grant the interim relief, does not bear upon the tenability of the Suit sans pre-institution mediation.

101. As noted above, the driving force for the institution of the Suit and the prayers for urgent interim reliefs, as claimed by the

Plaintiff, was the apprehension of orders being passed by the NCLT in the “scheme” proceeding. It can be urged that since the award was passed on 7th September 2018 and even the said award has attained finality almost prior to three years, there was no question of grant of urgent interim relief. However, the matter cannot be approached from this perspective only. The copies of the order passed by NCLT (annexed at Exhibit “A” to “F” to the Interim Application) do indicate that the amalgamation proceeding has been pending before the NCLT since the year 2022. NCLT had ordered issuance of notice to various persons and authorities. The Defendant was directed to hold the meetings of the secured creditors in the matter of the approval of the scheme. Time was sought by the Defendant to hold such meetings. By an order dated 22nd November 2023, extension was granted till 31st March 2024. It was the apprehension of the Plaintiff that once the creditors’ meeting is held and the creditors convey their acceptance, the scheme could be approved by the NCLT and thereupon the possibility of the recovery of the award amount would be affected. The fact that the Plaintiff was not shown as one of the creditors, despite holding an award against the Defendant, was the principal grievance.

102. Evidently, on the date of the institution of the Suit, above-numbered proceeding was sub-judice before the NCLT and the meeting of the creditors of the Defendant was yet to be held. In a case of this

nature, where the Plaintiff apprehended that the recovery of award amount would be jeopardised, on account of the orders passed in the scheme proceeding, which was, in fact, sub-judice on the date of the institution of the Suit, it cannot be said that the suit did not contemplate an urgent interim relief. What consequences follow the approval of the scheme, need not be delved into in judging the urgency of the matter. In the circumstances of the case, the pendency of such proceeding and likelihood of it being approved, in my view, furnished an adequate justification for claiming urgency. Though the delay on the part of the Plaintiff in approaching the Court from the date of the award and even the date the award attained finality, may bear upon the entitlement of the Plaintiff for interim relief. However, the urgency is required to be judged, in the light of the circumstances as obtained on the date of the institution of the Suit.

103. Thus, I am impelled to hold that the Suit did contemplate an urgent interim relief.

**LIABILITY OF THE DEFENDANT: WHETHER A VERY STRONG
PRIMA FACIE CASE HAS BEEN MADE OUT:**

104. The substance of the defence of the Defendant was that it had acted as a broker of the named principal, i.e., IGT and Venture Crosstrade. Reliance was placed on the Exclusive Brokerage Agreement with Venture Crosstrade (Exhibit “EE”), dated 27th March 2012, and IGT,

dated 31st May 2012 (Exhibit “FF”). Since, on the own showing of the Plaintiff, in respect of the subject transactions proforma invoices were issued in the name of IGT and Venture Crosstrade, 36 cheques were delivered by those entities and upon dishonor of those cheques, the Plaintiff lodged criminal proceedings against those entities, it was submitted that the transaction was between the IGT and Venture Crosstrade. Reliance was placed on the Affidavit filed on behalf of the IGT and Venture Crosstrade in a suit instituted by the Defendant against those entities before this Court.

105. On behalf of the Plaintiff, it was urged that the said Suit is collusive one. IGT and Venture Crosstrade are the entities owned and controlled by the Defendant. Rajesh Harlalka, who is the director of the Defendant, is the Managing Director of Venture Crosstrade.

106. Banking upon the purchase orders and the correspondence exchanged between the parties, the Plaintiff asserts the real transaction was between the Plaintiff and the Defendant and the later subsequently dishonestly introduced IGT and Venture Crosstrade with a design to dupe the Plaintiff.

107. Mr. Ratan Singh submitted that the Arbitral Tribunal has considered the aforesaid specific defence of the Defendant and rejected the same by ascribing justifiable reasons. Therefore, this Court need not delve into the said aspect of the matter.

108. At this juncture, it is imperative to note the trade licences of IGT and Venture Crosstrade indicate that they were incorporated as the free zone commercial entities engaged in general trading. Mr. Karan Singh Karki was shown the owner of IGT and Mr. Rajesh Harlalka the owner of the Venture Crosstrade. Secondly, there are Exclusive Brokerage Agreements in which the Defendant is shown as the broker and IGT and Venture Crosstrade as the principal.

109. The question as to whether there are circumstances which would warrant lifting of the corporate veil, for the reason that Mr. Rajesh Harlalka, who is the director of the Defendant is also the Managing Director of Venture Crosstrade, is a matter for adjudication. Had it been a case where the Plaintiff had not issued the invoices in respect of the subject transaction in favour of IGT and Venture Crosstrade, different considerations would have come into play. Not only the Plaintiff issued the proforma invoices in the name of IGT and Venture Crosstrade but also accepted cheques from those entities towards the price of the goods and, upon dishonor of the cheques, even prosecuted IGT and Venture Crosstrade before the jurisdictional Commercial Courts.

110. All these factors cannot be brushed aside as inconsequential and immaterial.

111. If considered in the light of the aforesaid nature of the claim of the Plaintiff and the action taken by the Plaintiff to enforce the liability against IGT and Venture Crosstrade, it cannot be said that a very strong *prima facie* case is made by Plaintiff so as to grant the interim relief of the nature claimed by the Plaintiff. The suit is essentially for the enforcement of a money claim. In the face of the aforesaid material, especially in the light of the nature of the award, the suit for the enforcement of which, *prima facie*, will have to encounter the challenge on the count of the finality thereto and the bar of limitation, and the fact that the Plaintiff had dealt with IGT and Venture Crosstrade as independent entities and even took steps to enforce liabilities against those entities, the test of strong *prima facie* case and the reasonable chance of the decree being eventually passed in favour of the Plaintiff cannot be said to have fulfilled.

112. Therefore, I am inclined to hold that the Plaintiff failed to establish a very strong *prima facie*, case for the grant of interim reliefs which are essentially in the nature of attachment before judgment. In the circumstances of the case having regard to the impediments which the Plaintiff will have to surmount, the balance of convenience tilts in favour of the Defendant. An interim relief of the nature sought by the Plaintiff may cause irreparable loss to the Defendant.

113. Resultantly, the Application deserves to be rejected. Hence the following order.

: O R D E R :

- (i) Application stands rejected.
- (ii) Costs in cause.

[N. J. JAMADAR, J.]