$~P-2 to 4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 30th April, 2024

\+ **O.M.P.(EFA)(COMM.) 2/2019, EX.APPL.(OS) 27/2020, EX.APPL.(OS) 182/2020, EX.APPL.(OS) 346/2022, EX.APPL.(OS) 2985/2022 & EX.APPL.(OS) 1620/2023**

MERCATOR LTD. ..... Decree Holder

versus

DREDGING CORPORATION
OF INDIA LTD. ..... Judgement Debtor

\+ **O.M.P.(EFA)(COMM.) 3/2019, EX.APPL.(OS) 28/2020, EX.APPL.(OS) 183/2020, EX.APPL.(OS) 347/2022, EX.APPL.(OS) 368/2022 & EX.APPL.(OS) 1622/2023**

MERCATOR LTD. ..... Decree Holder

versus

DREDGING CORPORATION
OF INDIA LTD. ..... Judgement Debtor

\+ **O.M.P.(EFA)(COMM.) 4/2019, EX.APPL.(OS) 29/2020, EX.APPL.(OS) 184/2020, EX.APPL.(OS) 369/2022, EX.APPL.(OS) 2986/2022 & EX.APPL.(OS) 1621/2023**

MERCATOR LTD. ..... Decree Holder

versus

DREDGING CORPORATION
OF INDIA LTD. ..... Judgement Debtor

Appearances:
Mr. Amitava Majumdar, Mr. Arvind Kumar Gupta, Mr. Suraj Sonwal, Advocates for decree holder.
Mr. Adhish Rajvanshi, Mr. V. Seshagiri, Advocates for judgment debtor.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. The award holder – Mercator Ltd., has filed these proceedings for enforcement of three awards [all dated 15.03.2018], against the judgment debtor - Dredging Corporation of India Ltd. By this common judgment, I propose to dispose of the objections raised by the judgment debtor, to the enforcement proceedings.

I. Factual Background

2. The arbitral proceedings arose under three charterparty agreements - dated 23.08.2007, 12.10.2007 and 24.04.2008, in respect of dredgers Triloki Prem, Banwari (Darshani) Prem and Bhagwati Prem [respectively], owned by the award holder, which were taken on hire by the judgment debtor. Although the arbitral proceedings culminated in three separate awards, it is undisputed that the issues raised in the judgment debtor's objections are similar in these cases. They have, therefore, been heard together.

3. At an earlier stage, there was some controversy as to whether the awards under enforcement fall within Part I of the Arbitration and Conciliation Act, 1996 ["the Arbitration Act"] (applicable to India-seated arbitral proceedings) or under Part II of the Arbitration Act (applicable to foreign-seated arbitral proceedings), the issue has been settled in an earlier round of proceedings in this Court. The awards under enforcement were first challenged by the judgment debtor before this Court.[1] The challenges were rejected by a common judgment dated 10.10.2018, on

the ground of jurisdiction, holding that the seat of arbitration was in London and that this Court, therefore, lacked jurisdiction to entertain proceedings for setting aside the awards. The judgment debtor thereafter filed petitions for setting aside of the awards under Section 68 of the English Arbitration Act, 1996, before the High Court of Justice of England and Wales ["the seat Court"], which were dismissed by a judgment dated 25.01.2019.

4. The enforcement proceedings have, therefore, proceeded on the basis that the seat of the arbitral proceedings in each of the three cases was in London.

5. In the course of these proceedings, the judgment debtor was directed to deposit certain amounts into Court. These directions have been partially complied with, and an amount of Rs.21 crores has been deposited, out of the total awarded sum.[2] Although the judgment debtor had undertaken to make a further deposit of Rs.8 crores by 30.11.2023,[3] it failed to make the deposit and instead filed applications[4] seeking deferment of further deposits until disposal of the objections.

II. Submissions and Preliminary Points

6. I have heard Mr. Adhish Rajvanshi, learned counsel for the judgment debtor/objector and Mr. Amitava Majumdar, learned counsel for the award holder, on the objections. They have also filed written submissions, *albeit* belatedly.

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[1] In O.M.P.(COMM.) 334/2018, O.M.P.(COMM.) 335/2018 and O.M.P.(COMM.) 336/2018.
[2] In the order dated 09.02.2024, the awarded sum was recorded as Rs. 72 crores, inclusive of interest until then.
[3] As recorded in the order dated 11.09.2023.
[4] Ex. Appl. (OS) 1620/2023 in OMP (EFA) (COMM) 2/2019, Ex. Appl. (OS) 1622/2023 in OMP (EFA) (COMM) 3/2019 and Ex. Appl. (OS) 1621/2023 in OMP (EFA) (COMM) 4/2019.

7. During oral arguments, it was contended by Mr. Raghuvanshi that this Court lacks jurisdiction to entertain the present petition. This contention has not been pressed in the judgment debtor's written submissions. In any event, it is the admitted position that the judgment debtor's registered office is located within the jurisdiction of this Court. In an affidavit dated 01.12.2022, filed by the judgment debtor, it has disclosed property at *"1st Floor, "SCOPE MINAR" Plot No. 2A & 2B, Laxminagar District Centre, Delhi"* as part of its immovable properties. The enforcement of an award can be sought in any jurisdiction where the judgment debtor has assets. The objection is, therefore, unmerited.

8. In the written submissions filed by the judgment debtor, only three objections have been pressed:

A. The composition of the arbitral tribunal was not in accordance with the arbitration agreement, and enforcement may, therefore, be denied under Section 48(1)(d) of the Arbitration Act;

B. The arbitration was violative of substantiative provisions of Indian law, particularly the Merchant Shipping Act, 1958 ["the Merchant Shipping Act"], and, therefore, contrary to the public policy of India, under Section 48(2)(b) of the Arbitration Act; and

C. The award exceeds the claims asserted by the award holder, and enforcement of the same would be contrary to the public policy of India under Section 48(2)(b) of the Arbitration Act.

9. The objection relating to the award being in excess of the claims [Point C above], is based upon a controversy with regard to the exchange rate to be applied in the determination of the award holder's claim. Having regard to the nature of the objection, although this point does not

appear to have been raised in the objections filed by the judgment debtor, I placed the proceedings for clarification on 24.04.2024 and 25.04.2024. The order dated 25.04.2024 recorded as follows:

> *"1. The objections of the judgment debtor in these three enforcement proceedings were heard, and judgment was reserved on 09.02.2024. The proceedings have thereafter been placed on board at my instance for clarification.*
>
> *2. The clarification arises out of a point taken in the written submissions filed by the judgment debtor after the hearing. Section C of the written submissions refers to a discrepancy in the exchange rate upon which the award has been computed. Learned counsel for the parties are ad idem that* ***this issue arises only in O.M.P.(EFA)(COM) 3/2019 [which relates to the dredger 'Triloki Prem'].***
>
> *3. Although no specific ground with regard to this issue has been taken in the judgment debtor's objections, Mr. V. Seshagiri, learned counsel appearing for the judgment debtor, refers to the judgment dated 25.01.2019, of the High Court of Justice of England and Wales, by which the judgment debtor's petition for setting aside of the award was rejected.*[5] *In the said judgment, the High Court has dealt with this issue in paragraphs 37 to 47. It has come to the conclusion that "the tribunal simply appears to have got this point fundamentally wrong."*[6] *However, the tribunal having denied to entertain an application for correction of the award, the Court found itself circumscribed by Section 68 of the English Arbitration Act, 1996, and held that "In those circumstances, with some regret, I conclude that there is really nothing I can do about this error."*[7]
>
> *4. Mr. Seshagiri submits that this Court may decline enforcement on the ground of public policy in view of the aforesaid observations of the seat Court.*
>
> *5.* ***Mr. Amitava Majumdar, learned counsel for the decree-holder, however, states that the decree-holder concedes this point and will not enforce the award to the extent of ₹5,04,825/-.***
>
> ***6. Mr. Seshagiri accepts that this statement of Mr. Majumdar renders the objection on this ground infructuous.***
>
> *7. The objections of the judgment debtor remain reserved for judgment, with the aforesaid observations."*[8]

[5] Document No.VI of the decree holder's list of documents.
[6] Paragraph 40 of the judgment dated 25.01.2019.
[7] Paragraph 47 of the judgment dated 25.01.2019.
[8] Emphasis supplied.

In view of the statements made on behalf of the parties, this point does not survive for adjudication.

10. The other two objections are disposed of by this judgment.

III. Applicable Legal Principles

11. Objections to enforcement of foreign awards require consideration in terms of Section 48 of the Arbitration Act, which provides as follows:

> *"Section 48 – Conditions for enforcement of foreign awards.*
>
> *(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—*
>
> *(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or*
>
> *(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
>
> *(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*
>
> *Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or*
>
> *(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place ; or*
>
> *(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.*
>
> *(2) Enforcement of an arbitral award may also be refused if the Court finds that—*
>
> *(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or*
>
> *(b) the enforcement of the award would be contrary to the public policy of India.*
>
> *[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—*

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security."

12. Before dealing with these grounds in detail, certain legal principles relating to the exercise of jurisdiction under Section 48 of the Arbitration Act may be summarised:

A. The power to set aside an award vests only in the Courts at the seat of arbitration, which exercise "supervisory" or "primary" jurisdiction over the award.[9]

B. The jurisdiction of the Court in which enforcement is sought is a secondary jurisdiction, limited to the question of whether the award is enforceable in that particular jurisdiction.[10]

C. A judgment of the seat Court rejecting a challenge to the award is not binding under Section 48 of the Arbitration Act,[11] but can be considered while deciding whether to permit relitigation of the issue before the enforcement court.[12]

D. The public policy grounds for resisting enforcement of a foreign award under Section 48(2) of the Arbitration Act are limited to

[9] *Union of India v. Vedanta Ltd*. [(2020) 10 SCC 1], paragraph 83.11.
[10] *Id* at paragraph 91.
[11] *Id* at paragraph 94.
[12] *Cruz City 1 Mauritius Holdings v. Unitech Limited* [2017 SCC OnLine Del 7810], paragraph 50,

"narrow and international standards" of public policy,[13] in contrast with the grounds available for challenging a domestic award under Section 34 of the Arbitration Act.[14]

E. Similarly, while deciding questions of bias also, internationally recognised narrow standards of public policy, which reference the most basic notions of morality or justice, or shock the conscience of the Court, alone can be considered.[15]

F. The Court can take into consideration the fact that a challenge on the ground in question was not raised before the seat Court.[16]

G. Even when the grounds under Section 48 of the Arbitration Act are made out, the Court has discretion as to whether enforcement should be refused.[17]

H. A review on the merits of the dispute does not fall within the jurisdiction of the Court under Section 48 of the Arbitration Act.[18]

13. The objections raised by the judgment debtor to the enforcement of the awards, will be considered in the light of these principles.

IV. Objection with regard to the Constitution of the Tribunal

14. The contentions of the judgment debtor in support of this ground are that the arbitration clause[19] provided for reference to arbitration in London to be "*conducted in accordance with the London Maritime*

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cited with approval in *Vijay Karia v. Prysmian Cavi E Sistemi SRL* [(2020) 11 SCC 1].

[13] Order dated 04.03.2024 in Civil Appeal Nos. 3825-3836 of 2024 [*Avitel Post Studioz Limited & Ors. v. HSBC PI Holdings (Mauritius) Limited*], paragraph 20.

[14] *Id*, at paragraph 19 and *Shri Lal Mahal Ltd. v. Progetto Grano SpA* [(2014) 2 SCC 433], paragraph 27.

[15] *Id*, at paragraph 25.

[16] *Id*, at paragraph 27.

[17] *Supra* note 12, at paragraph 28 to 43.

[18] *Shri Lal Mahal Ltd. v. Progetto Grano SpA* [(2014) 2 SCC 433], paragraph 45.

[19] Clause 24 of the charterparty agreements.

Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced." The judgment debtor contends that Rule 5(a) of the LMAA Terms required the arbitrators to be members of the LMAA, but the tribunal in the present case comprised of two retired judges and a lawyer, who are not experts in the field of maritime law. It was submitted that no agreement to the contrary was entered into between the parties and that, in any event, any such agreement would have had to be in writing, signed by both parties, to constitute a modification of the charterparty agreements in terms of Clause 25 thereof.

15. The award holder, however, submits that these grounds were neither raised by the judgment debtor in the course of arbitration, nor in the applications filed by them for setting aside the award before the seat Court. It is also submitted that the averments are contrary to the case pleaded by the judgment debtor before the seat Court.

16. It may be noted at the outset, that no such ground was raised by the judgment debtor before the seat Court while applying for setting aside of the awards. The proceedings taken by the judgment debtor there have been placed on record.[20] The application was supported by an affidavit dated 11.04.2018 of the judgment debtor's solicitors, affirmed by Mr. Damain Wilkes, partner of M/s Winter Scott London. Mr. Wilkes asserted in his statement[21] that the arbitration was to be conducted in accordance with the terms of the LMAA, but did not agitate any issue with regard to

[20] Document IV of the award holder's list of documents in OMP (EFA) (COMM) 2/2019.
[21] Paragraphs 5 and 6 of the statement dated 11.04.2018.

the composition of the tribunal. The judgment of the seat Court dated 25.01.2019, therefore, does not refer to this issue at all.

17. I am of the view that in such circumstances, enforcement should not be declined on grounds relating to the composition of the tribunal, which could have been raised before the Tribunal and before the seat Court, but were not so raised. The judgment debtor did not object, even at the stage of appointment, on this ground. The Tribunal was constituted of three members, one of whom was a nominee of the judgment debtor itself. In the notice of invocation of arbitration by the award holder dated 07.03.2011, the name of its nominee was mentioned. The judgment debtor did not object. It too nominated an arbitrator by letter dated 14/17.03.2011, without any reference to its nominee's membership of LMAA. The composition of the arbitral tribunal was thus a matter the parties were aware of since the commencement of the arbitral proceedings in the year 2014. The judgment debtor permitted the proceedings to proceed for more than three years. It is only after the culmination of the arbitral proceedings, and rejection of both its attempts to have the award set aside,[22] that the judgment debtor has sought to impugn the very constitution of the Tribunal. This argument is quite evidently an afterthought, intended only as "*speculative litigation with the fond hope that by flinging mud on a foreign arbitral award, some of the mud so flung would stick.*"[23]

[22] Before this Court in the earlier round of proceedings, and before the seat Court.
[23] *Vijay Karia v. Prysmian Cavi E Sistemi SRL* [(2020) 11 SCC 1], paragraph 112.

18. I am fortified in this conclusion by the following extracts from the recent order of the Supreme Court in *Avitel Post Studioz Limited & Ors. v. HSBC PI Holdings (Mauritius) Limited:*[24]

> *"27. Let us now turn to the present facts. The Award in this matter was passed in Singapore, a New York Convention Country and notified as a reciprocating territory by India. Chapter 1 Part II of the Indian Arbitration Act is applicable in the present case. The parties had expressly chosen Singapore as the seat of Arbitration.* ***It is the seat court which has exclusive supervisory jurisdiction to determine claims for a remedy relating to the existence or scope of arbitrator's jurisdiction or the allegation of bias***.[25] *A contrary approach would go against the scheme of the New York Convention which has been incorporated in India. The jurisdiction was therefore chosen based on the perceived neutrality by the parties aligning with the principle of party autonomy.* ***Interestingly in the present case, no setting aside challenge based on bias was raised before the Singapore Courts by the appellants within the limitation period.*** *In this context, the Bombay High Court in a judgment in Perma Container(UK) Line Limited v Perma Container Line(India) Ltd*[26] *had noted that since the objection of bias was not raised in appropriate proceedings under the English Arbitration Act,1996, it could not be raised at the post-award Stage. Similarly, this Court in Vijay Karia(supra) had noted that no challenge was made to the foreign award under the English Arbitration Law, even though the remedy was available. Rejecting the challenge to the award on the ground of bias, the Court in Vijay Karia(supra) remarked that the Award Debtors were indulging in "speculative litigation with the fond hope that by flinging mud on a foreign arbitral award, some of the mud so flung would stick". Similar view has also been taken by the German Supreme Court in Shipowner (Netherlands) v Cattle and Meat Dealer(Germany),*[27] *where it was held that the objection of bias must be first raised in the Country of origin of the Award and only if the objection was rejected or was impossible to raise, could it be raised at the time of enforcement.*
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> *28. In the present case also, the Award Holders had challenged the appointment of Mr. Christopher Lau SC and Dr Pryles before SIAC only on the ground that the Tribunal had intentionally fixed November 2013 for hearing knowing that it coincided with the Diwali vacation and that the Indian counsel would therefore not be available. This challenge was dismissed by the SIAC Committee of the*

[24] *Supra,* note 13.
[25] AV Dicey and L. Collins, *Dicey, Morris & Collins on the Conflict of laws*(15th edn, Sweet and Maxwell 2018) [16-36].
[26] 2014 SCC Online Bom 575.
[27] *Dutch Shipowner v. German Cattle and Meat Dealer*, Bundesgerichtshof, Germany, 1 February 2001, XXIX Y.B.Com. Arb. 700 (2004).

Court of Arbitration in its decision dated September 13, 2014. Therefore, none of the other grounds now being pressed were raised during the arbitration or in the time period available to the appellants to apply, to set aside the Award in Singapore.

*29**. It needs emphasizing that bonafide challenges to arbitral appointments have to be made in a timely fashion and should not be used strategically to delay the enforcement process. In other words, the Award Debtors should have applied for setting aside of the Award before the Singapore Courts at the earliest point of time.**"*[28]

19. As a consequence of the above decision, the aforesaid ground of objection is rejected.

V. Objection Regarding Violation of the Merchant Shipping Act

20. The judgment debtor's submission with regard to violation of the Merchant Shipping Act is predicated on Section 313 thereof, which reads as follows:

> ***"313. Submersion of load lines.—****(1) An Indian ship (not being exempt from the provisions of this Part relating to load lines) shall not be so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line indicating or purporting to indicate the maximum depth to which the ship is for the time being entitled under the load line rules to be loaded.*
>
> *(2) Without prejudice to any other proceedings under this Act, any ship which is loaded in contravention of this section may be detained until she ceases to be so loaded."*

21. According to the judgment debtor, the vessels, which were the subject matter of the charterparty agreements, were loaded in contravention of Section 313 of the Merchant Shipping Act, and attracted the penalties provided under Section 436 thereof. It is submitted that the objects of the Merchant Shipping Act being related to the safety and security of Indian ships, the award of the judgment debtor's claims would be in conflict with the public policy of India. Reference is made in the

[28] Emphasis supplied.

judgment debtor's written submissions to the judgments of the Supreme Court in *National Agricultural Coop. Mktg. Federation of India v. Alimenta S.A.,*[29] *Associate Builders v. DDA,*[30] *Ssangyong Engg. & Construction Co. Ltd. v. NHAI,*[31] and *Vijay Karia v. Prysmian Cavi E Sistemi SRL,*[32] in this connection.

22. The award holder, on the other hand, submits that this objection has been duly dealt with, both in the arbitral award and in the judgment of the seat Court. It is further submitted that consideration of this issue in the present proceedings would be contrary to the narrow definition of public policy under Section 48 of the Arbitration Act, and would entail a review on the merits of the disputes, inconsistent with Explanation 2 to Section 48(2) of the Arbitration Act.

23. The arbitral tribunal came to the conclusion that the judgment debtor was liable for the invoiced hire charges, despite any alleged violation of Section 313 of the Merchant Shipping Act. In coming to this conclusion, the tribunal observed that such relief would be denied only if the claiming party was party to an illegality or fraud, or that the contract was opposed to public policy - in that the parties had willingly joined hands to contravene the statute for their own gains. The award holder's claims for the balance payment of hire charges were, therefore, allowed. The seat Court declined to interfere.

24. I am of the view that no point of public policy arises, so as to defeat enforcement on this ground. As noted above, the public policy

[29] (2020) 19 SCC 260.
[30] (2015) 3 SCC 49.
[31] (2019) 15 SCC 131.
[32] *Supra*, note 23.

argument, particularly in the context of enforcement of foreign awards, has to be construed narrowly and in consonance with international notions of public policy. The principles laid down in *Ssangyong*,[33] *Vijay Karia*[34] and *Avitel*,[35] describe the grounds of public policy available in such a case in very narrow terms. All violations of statute or supporting legislation do not satisfy this ground, and violations must be of fundamental policies considered shocking to the conscience of the Court. The court's approach has been summarised in *Shri Lal Mahal Ltd. v. Progetto Grano SpA*,[36] following *Renusagar Power Co. Ltd. v. General Electric Co.*,[37] as follows:[38]

> *29. We accordingly hold that enforcement of foreign award would be refused under Section 48(2)(b) only if such enforcement would be contrary to (1) fundamental policy of Indian law; or (2) the interests of India; or (3) justice or morality. The wider meaning given to the expression "public policy of India" occurring in Section 34(2)(b)(ii) in Saw Pipes [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705] is not applicable where objection is raised to the enforcement of the foreign award under Section 48(2)(b).*
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> * * *
>
> *45. Moreover, Section 48 of the 1996 Act does not give an opportunity to have a "second look" at the foreign award in the award-enforcement stage. The scope of inquiry under Section 48 does not permit review of the foreign award on merits. Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature) in the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy.*
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[33] *Supra*, note 31.
[34] *Supra*, note 23.
[35] *Supra*, note 13.
[36] *Supra*, note 18.
[37] 1994 Supp (1) SCC 644.
[38] The applicability of these tests to adjudication of public policy claims under Section 48 of the Arbitration Act has been affirmed *inter alia* in *Union of India v. Vedanta Ltd*. [(2020) 10 SCC 1], paragraph 98.

47. While considering the enforceability of foreign awards, the court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether, while rendering foreign award, some error has been committed. Under Section 48(2)(b) the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to (1) fundamental policy of Indian law; or (2) the interests of India; or (3) justice or morality. The objections raised by the appellant do not fall in any of these categories and, therefore, the foreign awards cannot be held to be contrary to public policy of India as contemplated under Section 48(2)(b)."

25. The same position was elucidated in *Vijay Karia*,[39] wherein a breach of rules under the Foreign Exchange Management Act, 1999 was held to not invoke such fundamental policy. The Court made a distinction between the Foreign Exchange Management Act, 1999 and the Foreign Exchange Regulation Act, 1973 in the following manner:

"88. This reasoning commends itself to us. First and foremost, FEMA — unlike FERA — refers to the nation's policy of managing foreign exchange instead of policing foreign exchange, the policeman being Reserve Bank of India under FERA. ***It is important to remember that Section 47 of FERA no longer exists in FEMA, so that transactions that violate FEMA cannot be held to be void****. Also, if a particular act violates any provision of FEMA or the Rules framed thereunder, permission of Reserve Bank of India may be obtained post facto if such violation can be condoned.* ***Neither the award, nor the agreement being enforced by the award, can, therefore, be held to be of no effect in law. This being the case, a rectifiable breach under FEMA can never be held to be a violation of the fundamental policy of Indian law.*** *Even assuming that Rule 21 of the Non-Debt Instrument Rules requires that shares be sold by a resident of India to a non-resident at a sum which shall not be less than the market value of the shares, and a foreign award directs that such shares be sold at a sum less than the market value, Reserve Bank of India may choose to step in and direct that the aforesaid shares be sold only at the market value and not at the discounted value, or may choose to condone such breach.* ***Further, even if Reserve Bank of India were to take action under FEMA, the non-enforcement of a foreign award on the ground of violation of a FEMA Regulation or Rule would not arise as the award does not become void on that count.*** *The fundamental policy of Indian law, as has been held in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644], must amount to a breach of some legal principle or legislation which is so basic to Indian law that it is not susceptible of being compromised. "Fundamental Policy" refers to*

[39] *Supra*, note 23.

the core values of India's public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles which are followed by the courts. Judged from this point of view, it is clear that resistance to the enforcement of a foreign award cannot be made on this ground."[40]

26. The reasoning which weighed with the Court in *Vijay Karia*[41] applies equally to the Merchant Shipping Act. No provision of the Merchant Shipping Act has been cited to show that a breach of the load line would result in the charterparty agreements becoming void, fully or partially. The consequences of violation are provided in the Act itself and, as held in the awards, would not have the effect of rendering the contracts themselves illegal, so as to justify the denial of hire charges to the award holder.

27. On the aforesaid analysis, I do not find any merit in the judgment debtor's argument that the enforcement of the awards is liable to be declined on this ground.

VI. Conclusion

28. On an overall conspectus of the facts and grounds raised in these objections, I am, therefore, not inclined to exercise the Court's discretion to decline enforcement of the awards. The objections are, therefore, rejected.

29. Ex. Appl. (OS) 1620/2023 in OMP (EFA) (COMM) 2/2019, Ex. Appl. (OS) 1622/2023 in OMP (EFA) (COMM) 3/2019 and Ex. Appl. (OS) 1621/2023 in OMP (EFA) (COMM) 4/2019, whereby the judgment debtor sought deferment of further deposits until disposal of its objections, have been rendered infructuous and stand disposed of.

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[40] Emphasis supplied.
[41] *Supra*, note 23.

30. The sum of Rs.8 crores, which the judgment debtor undertook to deposit by 30.11.2023, as recorded in the order dated 11.09.2023, be deposited within four weeks from today.

31. List the enforcement proceedings on 12.08.2024.

PRATEEK JALAN, J

April 30, 2024
'*Bhupi*'/sm/