



*E.P.No.52 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 31.01.2022

Pronounced : 02.03.2022

C O R A M :

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

**E.P.No.52 of 2021**

**and**

**Application No.2838 of 2021**

Pueblo Holdings Limited  
Having its registered office at  
Trust Company Complex,  
Ajeltake Road, Ajeltake Island,  
Majuro, Marshall Islands MH96960  
and having its operating address at  
No.85, Akti Miaouli St,  
Piraeus 185 38, Greece.

... Petitioner/Decree Holder

Vs

1.Emirates Trading Agency LLC  
Having its registered office and/or  
business address at ETA Star House,  
Salahuddin Road,Deira,  
Dubai, United Arab Emirates

... Respondent/Award Debtor

2.Syed Mohammed Salahuddin  
3.Hameed Syed Salahuddin  
4.Arif Rahman Buhary  
5.Ashraf Rahuman Buhary  
6.Abdul Quadir Rahman Buhary  
7.Khalid AK Buhary



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8.Sabiha Khalid Buhary

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9.ETA Constructions (India) Limited,  
Having its registered office at  
Fourth Floor, Chennai Citi Centre,  
10 & 11, Dr. Radhakrishnan Salai,  
Chennai - 600 004.

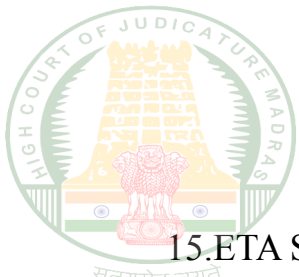
10.ETA Properties and Investment Private Limited,  
Having its registered office at  
Fourth Floor, Chennai Citi Centre,  
10 & 11, Dr. Radhakrishnan Salai,  
Chennai - 600 004.

11.ETA Karnataka Estates Limited  
Having its registered office at  
Fourth Floor, Chennai Citi Centre,  
10 & 11, Dr. Radhakrishnan Salai,  
Chennai - 600 004.

12.ETA Engineering Private Limited,  
Having Its registered office at  
71 No.20/21. Razak Garden Main Road,  
1<sup>st</sup> Floor, Arumbakkam,  
Chennai – 600 106.

13.ETA Star Property Developers Limited,  
Having its registered office at  
Fourth Floor, Chennai Citi Centre,  
10 & 11, Dr. Radhakrishnan Salai,  
Chennai - 600 004.

14.ETA General Private Limited,  
Having its registered office at  
R.S.No.79,80 & 81, Kalitheer,  
Thalkuppam Village,  
Magadipet, Pondicherry – 605 107.



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15.ETA Star Infopark

Having its office at

Unit No.501, 502, 5<sup>th</sup> Floor, Front Wing,  
North Block, Manipal Centre,  
No.120, Dickenson Road,  
Bengaluru – 560 042.

16.ETA Builders Pvt Limited,

Having its registered office at

No.501 & 502, North Block,  
Frontwing, 5<sup>th</sup> Floor,  
Manipal Centre, 47, Dickenson Road,  
Bengaluru,  
Karnataka – 560 042.

17.Amricar Estates Private Limited,

Having its registered office at

Fourth Floor, Chennai Citi Centre,  
10 & 11, Dr.Radhakrishnan Salai,  
Chennai – 600 004.

... Respondents 2 -17/Garnishees

This Petition has been filed under Order XXI Rule 46(1) (B), 46-A and 49 and Section 46 of the Code of Civil Procedure Code,1908, to pass an order as prayed for in the Execution Petition.

For Petitioners : Mr. Ratnanko Banerji  
for Mr.Karthik Sundaram  
Mr.Adiya Krishnamurthy  
Mr.Amitava Majumdar  
Mr.K.Mukund Rao  
for M/s.Easwar Kumar and Rao

For Respondents : Mr.P.Giridharan  
for Mr.Dominic S David  
Ms.Priyanka Shetty  
Ms.Shera Doongaji  
R-2, R-4 and R-5



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Dr.Fr.A.Xavier Arulraj  
Senior Counsel for  
Mr.M.Baskaran for R-3

Mr.J.Sivanandaraj  
for Ms.Ridhima Sharma  
R-6 to R-17

## **ORDER**

Execution Petition No.52 of 2021 (the Third EP) is filed by Pueblo Holdings Limited, a company incorporated under the laws of the Republic of Marshall Islands. The Petitioner is the Award Holder under Arbitral Awards dated 09.04.2017 and 06.08.2017 (the Foreign Awards) in a foreign seated arbitral proceeding instituted by it against Emirates Trading Agency LLC, which is the first Respondent herein. By the Foreign Awards, an aggregate sum of INR 222,02,22,206.92 was directed to be paid by the first Respondent to the Award Holder. Upon calculating interest thereon, the Award Holder claims that a sum of INR 461,65,63,742.40 is due and payable by the first Respondent to the Award Holder. In addition, the Award Holder claims costs of INR 74,71,854.93.



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2. O.P.No.416 of 2018 was filed by the Award Holder before this

WEB COPY Court under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act). By order dated 02.11.2018 in O.P.No.416 of 2018, this Court held that the Foreign Awards are enforceable as a decree of this Court. Pursuant thereto, the Award Holder filed E.P.No.40 of 2019 (the First EP) and E.P.No.55 of 2019 (the Second EP) (collectively the Earlier EPs) in relation to the alleged assets of the Award Debtor. Both the Earlier EPs are pending at different stages. The admitted position is that the Award Holder has not realized any money towards part or full satisfaction of the Foreign Awards. By the Third EP, the Award Holder seeks to enforce the decree against the Award Debtor by attaching assets held in the names of Respondents 2-17.

3. Towards such end, an attachment is sought in respect of: (i) a debt of United Arab Emirates Dinar (AED) 6.35 million, which is alleged to be owed by the 4<sup>th</sup> Respondent/Arif Rahman Buhary to the Award Debtor; (ii) a debt of AED 0.69 million, which is alleged to be owed by the second Respondent/Syed Mohamed Salahuddin to the Award Debtor; (iii) shares allegedly held ostensibly by Respondent 2 in Respondents 9-12 and 14 for



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the benefit of the Award Debtor ; (iv) shares held allegedly ostensibly by

Respondent 3 in Respondents 9-12 for the benefit of the Award Debtor; (v)

shares held allegedly ostensibly by Respondent 4 in Respondents 9-12 for

the benefit of the Award Debtor; (v) shares held allegedly ostensibly by

Respondent 5 in Respondent 11 for the benefit of the Award Debtor; (vi)

shares held allegedly ostensibly by Respondent 7 in Respondent 9 for the

benefit of the Award Debtor; (vii) shares held allegedly ostensibly by

Respondent 8 in Respondent 9 for the benefit of the Award Debtor; (viii)

shares held allegedly ostensibly by Respondents 9 and 15 in Respondent 13

for the benefit of the Award Debtor. In addition, the Award Holder seeks

issuance of precepts under Section 46 of the Code of Civil Procedure, 1908

(the CPC) to the High Court of Karnataka to make an order under Order

XXI Rule 49(2) CPC to charge the partnership interest of Respondents

9,10,11,16 & 17 in Respondent 15, which is a partnership firm under the

name and style of ETA Star Infopark.

4. Since execution is sought against persons or entities who/which were not parties to the arbitral proceedings and against whom the Foreign Awards were not pronounced, objections were raised by the contesting



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Respondents with regard to the maintainability of the Third EP. It should be

noticed that although notice was served on the Award Debtor, Emirates Trading Agency LLC, the said party was not represented in the proceeding either through counsel or otherwise. Therefore, as a preliminary issue, the question of maintainability is dealt with by this order.

5. Oral submissions were made on behalf of Respondents 6 to 17 by Mr.J.Sivanandaraj, learned counsel, assisted by Ms.Ridhima Sharma; on behalf of Respondents 2,4 and 5 by Mr.P.Giridharan, learned counsel, assisted by Mr.Dominic S David, learned counsel; on behalf of the Respondent 3 by Dr.Fr.A.Xavier Arulraj, learned senior counsel, assisted by Mr.M.Baskaran, learned counsel; on behalf of the Petitioner by Mr.Ratnanko Banerji, learned senior counsel, assisted by Mr.Karthik Sundaram and Mr.Aditya Krishnamurthy, learned counsel.

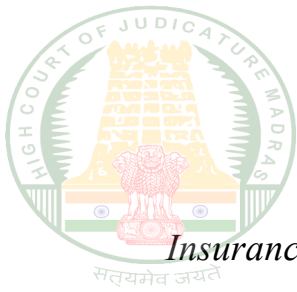
6. The first contention on behalf of Respondents 6 to 17 was that these Respondents do not owe any money to the Award Debtor. Therefore, they are not garnishees. The second contention was that the Petitioner relies upon financial statements of the Award Debtor, which is a company



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incorporated in Dubai, United Arab Emirates (the UAE), to establish the alleged beneficial interest of the Award Debtor. The validity of these documents should be established as per UAE law. Therefore, the Petitioner should first approach courts in the UAE to establish the existence of beneficial interest in favour of the Award Debtor. Only upon succeeding in legal proceedings in the UAE, would the Petitioner be entitled to approach courts in India. Besides, due to the efflux of time, reliance cannot be placed on these documents. On this issue, Respondents 6-17 relied on the judgment dated 03.08.2018 of the Division Bench of this Court in O.S.A.Nos.220-223 of 2018 and the related batch of cases (***Star Health Insurance DB***) arising out of an interim order in C.S.No. 33 of 2018. In ***Star Health Insurance DB***, this Court held that the plaintiffs therein were indirectly seeking relief in respect of the decisions of the ETA group and ETA Star Holdings Limited, a Dubai based company, and that proceedings should be instituted before courts in the UAE before seeking consequential relief against Star Health and Allied Insurance Company Limited, which is a company incorporated in India. The judgment of the Hon'ble Supreme Court, *Ahmed Abdulla Ahmed Al Ghurair (through their power of attorney holder Bartholomew Kamy) and another v. Star Health and Allied*





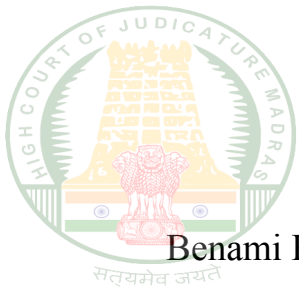
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*Insurance Company Limited and others (2019) 13 SCC 259 (Star Health*

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*Insurance SC)* by which the above mentioned judgment of the Division Bench was affirmed was also cited. In *Star Health Insurance SC*, the Supreme Court concluded that the real dispute was between shareholders of ETA Star Holdings Limited, and that the cause of action for such dispute did not arise at Chennai. The third contention of Respondents 6-17 was that the relief prayed for in the Third EP is not maintainable since Section 89 of the Companies Act, 2013 (CA 2013) was admittedly not complied with as regards the shares. The said Respondents contended that Section 89 provides for declarations by the ostensible owner, beneficial owner and by the company concerned in case shares are held in the name of an ostensible owner for and on behalf of a beneficial owner. Section 89 should be read with Section 60 of the CPC which deals with saleable interest and disposing power over an asset. If read together, it is evident that the Award Debtor does not have either saleable interest or disposing power over the shares held by these Respondents.

7. The next contention of Respondents 6-17 was that the Third EP is liable to be rejected because it contravenes Section 4 of the Prohibition of



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Benami Property Transactions Act, 1988 (the Benami Act). As per Section 4,

no suit or other proceeding is maintainable for or on behalf of a person claiming to be a real owner of a property against the benami. Since the Award Holder claims that the Award Debtor is the real owner, it was contended that the Award Holder is claiming through the Award Debtor. Hence, the petition is barred under the Benami Act. The last contention was that the alleged beneficial interest of the Award Debtor in respect of shares held by these Respondents was subsequently relinquished pursuant to the deconsolidation of the ETA group. In this regard, Respondents 6-17 relied upon the financial statement of ETA Star Holdings LLC.

8. In support of these contentions, Respondents 6-17 relied upon the following judgments:

(i) *P.Ramachandar Rao v. G.Jangaiah & others 1988 (2) APLJ 126 (Ramachandar Rao)* for the proposition that the expression 'any other person' in sub-section (1) of Section 2 of the Benami Act includes the purchaser from the alleged real owner.

(ii) *Greaves Cotton and Company by Power Agent Baskar Rao, Madras v. J.Jamal Mohammed Abdulla 1992 - 2 - L.W. 42(Greaves Cotton)*



and, in particular, paragraphs 3 and 4 thereof, where the Court concluded

that the prohibition in Section 4 of the Benami Act would apply to a decree holder who contends that the judgment debtor is the real owner of the property.

(iii) *A.Thayammal & another v. Kaladevi 1993 - 1 – L.W.710*

**(Thayammal)** and, in particular, paragraphs 12,13 and 15 thereof on the ingredients of a Benami transaction under the Benami Act.

(iv) *Urmila Bala Dasi v. Probodh Chandra Ghosh and another*

*AIR 1989 Cal 283 (Urmila Bala Dasi)* for the proposition that the prohibition under the Benami Act would apply both to the institution and continued prosecution of proceedings.

(v) *Narayanan v. Gangadharan 1988 (2) MWN (Cr) 260.*

(vi) *Ganjhu Upendra Singh v. Ganjhu Meghnath Singh, AIR 1939*

*Pat 598*, that restrictions on alienations are void under Section 10 of the Transfer of Property Act, 1882( the TP Act).

(vii) *Kandhai Lal v. Sheo Nath, AIR 1936 Oudh 235*, on the

question of saleable interest.

(viii) *Nawab Khajeh Habibulla v. Kaviraj Jogendranath Sen*

*Vol.33 CWN 282.*



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(ix) *Surender Singh Bajaj v. M/s.Kitty Steels Ltd & another* 2002

(2) *A.P.L.J. 226 (HC)* for the proposition that a property can be attached under Section 60 of the CPC only if the person has disposing power over the property.

(x) *Sabita Rajesh Narang v. Sandeep Gopal Raheja of Mumbai and others, 2015 SCC Online Bom 4802, (Sabita Rajesh Narang)* for the proposition that a trust in respect of shares cannot be established unless statutory declarations under Section 187C of the Companies Act, 1956 (CA 1956) or under Section 89 of CA 2013 are filed.

(xi) *Sundararajulu Naidu and two others v. B.Papiiah Naidu* 1938 *ILR* 767.

(xii) *T.A.Mohideen Abdul Kadir (died) and another v. Abdul Rahim (died) others* (2003) 3 *M.L.J.* 604 for the proposition that the burden of proof squarely lies upon the person alleging a benami transaction.

(xiii) *Sanjeev Mahajan v. Aries Travels Pvt. & others, order dated 04.02.2020 in CS(OS) No.46 of 2020 (Sanjeev Mahajan).*

9. On behalf of Respondents 2,4 & 5, the first contention was that the said Respondents are not Indian nationals. The next contention was



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that the Foreign Awards were pronounced as *ex parte* Awards. The petition

under Section 47 and 49 of the Arbitration Act was also decided *ex parte*

because the Award Debtor did not participate in the proceedings.

Respondents 2,4 and 5 submitted that the Foreign Awards are contrary to

Section 74 of the Indian Contract Act, 1872. Respondents 2,4 and 5 also

alleged that there was collusion between the Award Holder and Award

Debtor. In support of these contentions, these Respondents pointed out that

the plaint and interim applications filed by the Award Debtor in earlier suits

before this Court were filed by the Award Holder in spite of the fact that the

Award Holder was not a party to those proceedings. Therefore, it was

contended that the Award Holder was set up by the Al Ghurair group. The

next contention was that the Award Holder was granted express permission

to file only one additional EP by order dated 08.04.2019 in the First EP.

Therefore, the Third EP has been filed without obtaining permission from

this Court. As regards the First EP, it was submitted that the said petition is

pending before the Hon'ble Master for recording evidence and that the order

passed in the Second EP is under challenge before the Supreme Court. By

drawing reference to Order XXI Rule 21 of the CPC, these Respondents

contended that multiple execution petitions against the same respondents



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cannot be permitted because it constitutes an abuse of process. In support

of these contentions, Respondents 2,4 and 5 relied upon the following judgments:

(i) *Ram Narayan Bhattad v. Krishna Bai Jhaver and six others*

2004 (2) CTC 81 (**Ram Narayan Bhattad**).

(ii) *Prem Lata Agarwal v. Lakshman Prasad Gupta and others*

1970 (3) SCC 440.

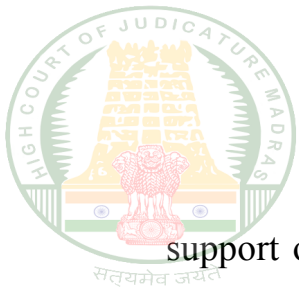
(iii) *Dr.Vimala v. M/s.Shriram Chits & Investments Pvt. Ltd. 1999*

(III) CTC 210.

(iv) *Bulk Trading S.A. v. Dalmia Cement (Bharat) Limited*

MANU/DE/2945/2005 (**Bulk Trading**).

10. The next contention on behalf of these Respondents was that Section 89 of CA 2013 was not complied with. In particular, these Respondents relied upon Section 89(8) of the CA 2013 to contend that neither the beneficial owner nor any person claiming through him can make a claim against the person in whose name the shares are registered unless Section 89 is complied with. The next contention was that courts in India cannot decide on the beneficial interest held by a foreign company. In

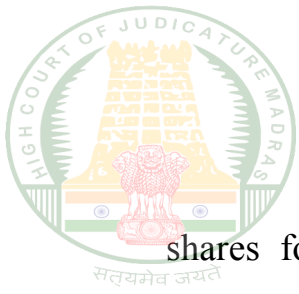


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support of this contention, these Respondents relied upon the judgment of

the Division Bench of this Court in ***Star Health Insurance DB*** and paragraphs 44 to 54 of ***Star Health Insurance SC***. Respondents 2,4 and 5 also contended that Order XXI Rule 46C CPC would apply to the remedy prayed for herein and that such remedy cannot be granted without following the procedures for a suit. These Respondents further contended that there is no debt due to the Award Holder from these Respondents. Page 300 of Volume 1 of the typed set of papers was relied upon in this connection. It was further contended that the claims are barred by limitation as per Article 26 of the Schedule to the Limitation Act, 1963. Respondents 2,4 and 5 referred to and relied upon the judgment of the Hon'ble Supreme Court in *Fargo Freight Ltd v. The Commodities Exchange Corporation and Ors. (2004) 7 SCC 203 (Fargo Freight)* for the proposition that serious disputed issues cannot be decided in a petition under Sections 46 to 49 of the Arbitration Act.

11. The first contention of the third Respondent was that he was not a party to the time charter. He was appointed as a General Manager on 12.05.2010. The third Respondent contended that he does not hold the



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shares for and on behalf of the Award Debtor. According to the third

Respondent, the deconsolidation of the group is undisputed. The third

Respondent also contended that the Award Holder should have impleaded

this Respondent as a party in the arbitral proceedings if the Award Holder

intended to attach the assets of this Respondent. The third Respondent

referred to and relied upon the following judgments:

(i) *Mitsul OSK Lines Ltd, (Japan) v. Orient Ship Agency Pvt. Ltd*

*2020 SCC Online Bom 217* for the proposition that the corporate veil cannot

be lifted in execution proceedings.

(ii) *Sabita Rajesh Narang v. Sandeep Gopal Raheja of Mumbai*

*and others 2015 SCC Online Bom 4802.*

(iii) *Sanjeev Mahajan v. Aries Travels Pvt. & others, order dated*

*04.02.2020 in CS(OS) No.46 of 2020.*

(iv) *Ahmed Abdulla Ahmed Al Ghurair (through their power of*

*attorney holder Bartholomew Kamya) and another v. Star Health and Allied*

*Insurance Company Limited and others (2019) 13 SCC 259 (Star Health*

*Insurance SC).*

(v) *R.Viswanathan and others v. V. Gajambal Ammal & Another*

*AIR 1963 SC 1.*





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12. These contentions were refuted by the Award Holder. With regard to the reliance on **Star Health Insurance DB** and **SC**, it was submitted that the Award Holder was not a party to the suit; therefore, the judgments are not binding on it. Besides, it was contended that the said findings were rendered in the context of a derivative action by shareholders of a UAE incorporated entity and, therefore, are inapplicable to the present proceeding. As regards the contention on Section 89 of CA 2013, the Award Holder submitted that the obligations of the ostensible owner, beneficial owner and the company are continuing obligations under Section 89. More importantly, it was submitted that the said obligations are not imposed on a third party Award Holder. Therefore, the persons on whom such obligations are imposed cannot benefit from their default in fulfilling the obligations. Even the restriction under Section 89(8) is applicable only to the beneficial owner or a person claiming through him. Hence, such prohibition or restriction does not apply to a third party Award Holder.

13. The next contention of the Award Holder was that it is entitled to indulge in forum shopping by identifying and seeking orders against the assets of the Award Debtor, wherever there may be situated. In this case, the



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Award Holder relied upon the consolidated financial statements of the

Award Debtor. The said statements disclose that there are debts due to the

Award Debtor from some Respondents. The said financial statements also

disclose that the Award Debtor holds beneficial interest in shares held in the

names of the Respondents herein in companies incorporated in India. Upon

discharging the initial burden of proof, the burden shifts to the Respondents

herein. The Award Holder contended that the orders prayed for in the Third

EP are garnishee orders, attachment of shares held ostensibly by some of

the Respondents for the beneficial interest of the Award Debtor in

companies limited by shares, and attachment of the partnership interest

ostensibly held by some of the Respondents for and on behalf of the Award

Debtor in a partnership firm. By adverting to the orders dated 03.06.2020

and 21.07.2020 in the Second EP, by the Single Bench and Division Bench,

respectively, the Award Holder pointed out that the Division Bench of this

Court held that the prohibition under Section 89(8) of the CA 2013 would

not apply to the Award Holder. It was further pointed out that the Division

Bench of this Court held that the Second EP is maintainable and that the

existence of beneficial interest in the shares can be decided in the said EP.



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14. With regard to the filing of multiple execution petitions, it was submitted that Order XXI Rule 21 CPC deals with an execution petition against both the person and property of a judgment debtor. Without prejudice, it was contended that the said provision confers a discretion on the court concerned. On this issue, the Award Holder distinguished the judgments in ***Bulk Trading*** and ***Ram Narayan Bhattad*** on the ground that the former dealt with two execution petitions at two levels of the same Court and the latter dealt with the necessity for an application for permission to prosecute, simultaneously, one execution petition before the court to which the decree was transferred and another before the court issuing the decree, whereas the execution petitions, in this case, are before the same Court and that such Court is fully aware that the decree was not satisfied. On the issue of forum shopping, the Award Holder relied upon ***Brace Transport Corporation of Monrovia, Bermuda v. Orient Middle East Lines Ltd., Saudi Arabia and Ors. 1995 Supp (2) SCC 280 (Brace Transport)*** and contended that forum shopping is permissible in execution proceedings.

15. On the existence of saleable interest, the Award Holder relied upon the following judgments:



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(i) *Rahul S.Shah v. Jinendra Kumar Gandhi and Others 2021*

SCC Online SC 341.

(ii) *Samson Maritime Limited v. Hardy Explanation and Ors.*

MANU/TN/0947/2020.

16. With regard to the Benami Act, the Award Holder pointed out that the Benami Act does not apply to the creation of beneficial interest in shares. Besides, it was contended that the relevant property would be liable for confiscation if the Benami Act applied. By drawing reference to ***Sanjeev Mahajan*** and ***Sabita Rajesh Narang***, the Award Holder pointed out that ***Sanjeev Mahajan*** was not an action instituted by an Award Holder. In ***Sabita Rajesh Narang***, the conclusion of the Court was on the basis that no evidence was adduced. ***Ramachandar Rao*** dealt with the purchaser of a property and not an Award Holder. ***Greaves Cotton*** was decided on the basis of evidence that the third party is the real owner and not the ostensible owner. By referring to the judgments in ***Thayammal*** and ***Urmila Bala Dasi***, the Award Holder submitted that the said judgments are clearly distinguishable on facts. With reference to the judgment in ***Fargo Freight***, the Award Holder submitted that the said judgment related to the attachment



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of letters of credit in execution proceedings. Therefore, the said judgment is distinguishable. In conclusion, the Award Holder submitted that the burden of proof to establish deconsolidation is on the Respondents and that they failed to prove or establish the same.

17. By way of rejoinder, Mr.Sivanandaraj reiterated that these Respondents, who were not parties to the Foreign Awards, cannot be divested of property in the form of shares entirely on the basis of financial statements of the Award Debtor. The next contention was that the Benami Act defines property very widely, and that the definition clearly applies to shares also. The third contention was that Section 89 of CA 2013 applies to third parties. The next contention was that issues like the existence of beneficial interest and the creation of a trust in respect of the shares should be decided as per UAE law. The last contention was that the Award Holder has failed to establish ostensible ownership.

18. Mr.Giridharan submitted that the financial statements, which refer to beneficial interest, are unsigned. His next contention was that Section 89 of CA 2013 applies and that the Award Holder cannot be in a



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better position than the Award Debtor with regard to non-compliance with

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Section 89. It was reiterated that the saleable interest criterion in Section 60 CPC is not satisfied. Mr.Giridharan further submitted that the present EP constitutes an abuse of process and that the documents on record establish collusion between the Award Holder and the Al Ghurair group.

19. These contentions raise several issues relating to the maintainability of this petition. At the outset, it should be noticed that this Court held by order dated 02.11.2018 that the Foreign Awards dated 09.04.2017 and 06.08.2017 are enforceable. Therefore, these Foreign Awards are deemed to be a decree of this Court under Section 49 of the Arbitration Act. Before delving into the contentions and counter contentions, the evidence on which the Award Holder has filed the Third EP should be examined. The consolidated financial statement of the Award Debtor, Emirates Trading Agency LLC, for the year ended 31.03.2013 is the sheet anchor of the Award Holder's case. In particular, the Award Holder relied on the Report of the Board of Directors. In paragraph 12 of such Report, receivables from Directors and shareholders, as on 31.12.2013, are set out and this includes sums of AED 0.69 million from Respondent 2 and



AED 6.35 million from Respondent 4. With regard to beneficial holding by

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the Award Debtor, the two relevant paragraphs are set out below:

*“11. The Company's consolidated financial statements include certain assets (including investment, development and trading properties, available for sale investments, and investments in certain subsidiaries) held in the names of certain shareholders and related parties for the beneficial interest of the Group. These shareholders and related parties have provided the Group with an undertaking that these assets are held by them for the beneficial interest of the Group. We have reviewed these undertakings and confirm that these assets as at 31 December 2013 continue to be held by the shareholders and related parties for the beneficial interest of the Group and therefore it is appropriate to record these assets in the Group's consolidated financial statements.”*

*“23. We confirm that the shareholders of the entities listed in Appendix D hold shares in these entities for the beneficial interest of the Group as per the percentages listed in the above referred Appendix and hence it is appropriate to consolidate these entities in the consolidated financial statements of the Group for the year ended 31 December 2013.”*



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Paragraph 23 refers to and should be read with Appendix D to the Report, which indicates that the beneficial ownership in shares of Respondents 9-12 and 14 was held by the Award Debtor although the shares were held in the names of Respondents 2-8. Similarly, Appendix D indicates that the specified percentage of partnership interest in Respondent 15 was held beneficially by the Award Debtor although the partners were Respondents 16 and 17. Thus, undoubtedly, there is *prima facie* evidence of beneficial ownership. With this preamble, the other issues are dealt with.

20. Whether the Third EP should be held to be not maintainable because of the judgments in *Star Health Insurance DB* and *SC* is considered first. The Respondents relied on findings in those judgments to contend that the Award Holder should first institute proceedings before courts in the UAE to establish the existence of beneficial interest before initiating proceedings before an Indian court. This objection is fallacious for more than one reason. First, the Award Holder seeks attachment and sale of the shares of an Indian company by asserting that the Award Debtor has beneficial interest therein. Being shares of an Indian company, CA 1956 or





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CA 2013 would apply depending on when such beneficial interest was

allegedly created. To put it differently, a court in the UAE cannot decide whether beneficial interest was created in the shares of an Indian company.

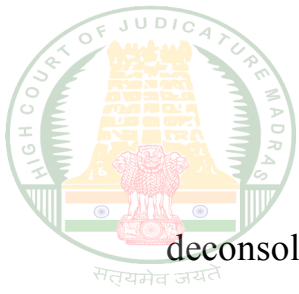
Secondly, *Star Health Insurance DB* and *SC* were pronounced in a suit filed as a derivative action by shareholders of a company incorporated in the UAE on the basis that the company concerned failed to act to protect its interest. In such context, both the Division Bench of this Court and the Hon'ble Supreme Court held that such shareholders should institute proceedings in courts in the UAE. From paragraph 6.15 of *Star Health Insurance DB* it is clear that the Division Bench concluded that it is a fight between two groups of shareholders of a company incorporated in the UAE. Likewise, paragraphs 48, 54 and 55 of *Star Health Insurance SC* contain findings that a derivative action cannot be maintained in India as regards a company incorporated in the UAE. In contrast, this is an execution proceeding by an Award Holder seeking attachment and sale of the shares of an Indian company. Thirdly, the Award Holder was not a party to those proceedings. Therefore, the objection on this ground is rejected.

21. The next objection relates to the Benami Act. The Benami Act seeks to prevent the institution of proceedings by a person claiming to be



the real owner of property against the person in whose name the property

stands. The contesting Respondents relied on ***Greaves Cotton*** to contend that the prohibition under Section 4 of the Benami Act would apply even in execution proceedings by a decree holder who seeks to proceed against an asset on the basis that the real owner thereof is the judgment debtor. It should be noticed that ***Greaves Cotton*** did not deal with shares. In addition, it is evident from paragraph 4 of ***Greaves Cotton*** that the learned single Judge concluded that the person in whose name the property stood was the real and not ostensible owner, and this factual position was endorsed by the Division Bench. The Respondents also relied on ***Thayammal***, which also dealt with immovable property and whether Section 45 of the TP Act could be relied on notwithstanding the Benami Act. Although ***Sabita Rajesh Narang*** dealt with shares, as is evident, *inter alia*, from paragraph 20 thereof, the conclusion therein was drawn on the basis of lack of evidence. The creation of beneficial ownership over shares is recognized and permitted both under CA 1956 and CA 2013. As set out in paragraph 19 *supra*, the Award Holder has placed strong *prima facie* evidence of beneficial ownership over shares and such claim was controverted by the Respondents by relying, *inter alia*, on a draft financial statement indicating



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deconsolidation and the consequential relinquishment of beneficial interest.

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These contentions can eventually be tested and determined only by putting the parties through trial on the contested issues. Therefore, this petition cannot be rejected at the threshold on the basis that the Benami Act constitutes a bar.

22. The third objection is on the basis of Section 89 of CA 2013, which is *in pari materia* with Section 187C of CA 1956. Section 89 is as under:-

**"89. Declaration in respect of beneficial interest in any share.**-(1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form **as may be prescribed** to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares."

(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars **as may be prescribed**.

(3) Where any change occurs in the beneficial



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interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars [as may be prescribed](#).

(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extent to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees [as may be prescribed](#).

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified (therein), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extent to one thousand rupees and where the failure is a continuing one, with a further fine which may extent to one



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thousand rupees for every day after the first during which the failure continues.

(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.

(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

- (i) exercise or cause to be exercised any or all of the rights attached to such share; or
- (ii) receive or participate in any dividend or other distribution in respect of such share."

Section 89 prescribes that the obligation to declare a beneficial interest in shares is imposed on three persons. These persons are the person in whose name the shares are held, the person in whose favour beneficial interest is created and the company concerned. In the case at hand, the Petitioner is an Award Holder, which claims that shares held by some of the Respondents herein are beneficially owned by the Award Debtor. Therefore, the



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Petitioner is clearly not a person on whom any obligation is imposed by

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Section 89. Turning to sub-section (8) of Section 89, the said sub-section imposes a prohibition on the assertion of any rights over shares by the beneficial owner or a person claiming through or on his behalf. While it was contended that the Award Holder is claiming through the Award Debtor, such contention is untenable for the reason that the interest of the Award Holder is in conflict with and not aligned with that of the Award Debtor. This may be compared and contrasted with a purchaser from an award/judgment debtor who would clearly be a person claiming through the latter. Consequently, the Award Holder cannot be said to be claiming through or on behalf of the Award Debtor. Hence, the prohibition under sub-section (8) of Section 89 does not apply to the Award Holder. On this issue, it should be noticed that the Division Bench of this Court in its order in the Second EP also arrived at the same conclusion in paragraph 52 thereof.

23. The fourth objection is on the ground that multiple execution petitions were filed. Order XXI Rule 21 CPC was cited in this regard. Order XXI Rule 21 CPC is as under:



**"21.Simultaneous Execution-** The Court

may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor."

On perusal of Order XXI Rule 21, it is clear that the said provision relates to the initiation of execution proceedings against both the person and property of a judgment/award debtor simultaneously. The Award Holder herein does not seek simultaneous execution against the person and property of the Award Debtor. The scope of Order XXI Rule 21 CPC was examined in **Ram Narayan Bhattad** by a Division Bench of this Court, which concluded at paragraph 13 that it does not apply unless simultaneous execution against both the person and property of the judgment debtor is prayed for. Therefore, Order XXI Rule 21 CPC does not apply in this case. Moreover, the said provision not only uses the permissive expression 'may' but underscores the non-mandatory nature of the expression 'may' by also using the expression 'in its discretion'. However, whether the institution of multiple execution petitions constitutes an abuse of process is a distinct matter that warrants scrutiny. The Respondents contended that this petition constitutes an abuse of process when two earlier petitions are pending. The admitted position is that the Award Holder has not realised its debt or even a



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portion thereof through the Earlier EPs. In fact, the said petitions have been opposed strongly by these Respondents by carrying appeals up to the Supreme Court. As a result, the Award Holder has not been able to achieve even part satisfaction of the debt. In **Ram Narayan Bhattad**, a Division Bench of this Court held that leave should be obtained to simultaneously prosecute two execution petitions: one by the court issuing the decree and the other by the court to which the decree was transferred for execution. However, the said judgment turned on the fact that two courts were involved and, without following the process of obtaining leave, there is likelihood of injustice unless it is clear that the value of the asset, which is within the jurisdiction of the court to which the decree was transferred, was insufficient. By contrast, all three EPs are before this Court and the likelihood of injustice by recovering amounts in excess of the decree is non-existent. In these circumstances, it cannot be said that the filing of these petitions constitutes an abuse of process. Hence, Application No.2838 of 2021 for permission to prosecute the Third EP is liable to be allowed.

24. The last issue to be considered is whether the Award Holder has established that these Respondents are debtors of the Award Debtor or





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hold the shares as ostensible owners for and on behalf of the Award Debtor.

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While the Award Holder relied upon the financial statement of the Award Debtor to establish its claims, the Respondents contended that the said financial statements are outdated and have been overtaken by subsequent events such as the deconsolidation of the ETA Group. The Respondents relied on the the draft consolidated financial statement of ETA Star Holding LLC and the non-filing of declarations either under Section 187C of CA 1956 or Section 89 of CA 2013 for such purpose. The *prima facie* evidence on record is sufficient to overrule the preliminary objections. Nonetheless, the Award Holder seeks orders in the nature of garnishment with regard to alleged debts due to the Award Debtor from third parties or by way of attaching shares or partnership interest allegedly held ostensibly in the names of third parties to the Foreign Awards and such third parties strongly deny the claims. In these circumstances, as prescribed in Order XXI, Rule 46C CPC, parties should be relegated to a trial to determine whether the Respondents are indebted to the Award Debtor and whether shares are held ostensibly by these Respondents with beneficial interest vested in the Award Debtor.



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25. For the reasons set out above, the preliminary objections are overruled and it is held that the petition is maintainable. Consequently, Application No.2838 of 2021 is allowed. However, as indicated above, the Award Holder/Petitioner and the Respondents should lead evidence with regard to both the garnishee claim and the alleged beneficial ownership of the Award Debtor.

26. List E.P.No.52 of 2021 along with pending applications on 14.03.2022 for further hearing on merits.

02.03.2022

Index : Yes  
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**SENTHILKUMAR RAMAMOORTHY J.,**

rrg

Order  
made in  
**E.P.No.52 of 2021**

Dated:  
02.03.2022