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[The Foreign Exchange Management Act, 1999](#)

[Section 39 in The Foreign Exchange Management Act, 1999](#)

[Section 37 in The Foreign Exchange Management Act, 1999](#)

[Section 38 in The Foreign Exchange Management Act, 1999](#)

[Section 42 in The Foreign Exchange Management Act, 1999](#)

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## Delhi High Court

### Peter Beck Und Partner ... vs Prakash Industries Limited & Anr. on 3 May, 2023

Neutral Citation Number: 2023:DHC:2986

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Order reserved on: 26 April 2023  
Order pronounced on: 03 May 2023

+ EX.P. 87/2022 & EX.APPL.(OS) 3572/2022, EX.APPL.(OS) 3573/2022, EX.APPL.(OS) 3574/2022, EX. APPL. (OS) 3784/2022 & EX. APPL. (OS) 3785/2022  
PETER BECK UND PARTNER  
VERMOGENSVERWALTUNG GMBH ..... Decree Holder  
Through: Mr. Ankur K., Mr. Rohit R.,  
Mr. Ajit S Ranganathan, Mr.  
Aman Bajaj, Advs.  
Versus

PRAKASH INDUSTRIES LIMITED & ANR.  
..... Judgment Debtors  
Through: Mr. Arvind Nigam, Sr. Adv.  
with Mr. Ankur Chawla, Mr.  
C.B. Bansal, Mr. Gurpreet  
Singh, Ms. Kanika Singh and  
Ms. Purna Mahajan, Advs. for  
JD-1.  
Mr. P. Chidambaram, Sr. Adv.  
with Mr. Akshay Ringe and Mr.  
Tavdeep Singh, Advs. for JD-2.

CORAM:  
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

EX. APPL. (OS) 3784/2022 & EX. APPL. (OS) 3785/2022

1. The instant petition has been preferred before the Court for executing the final judgment dated 01 April 2022 and ancillary order dated 20 May 2022 pronounced by the High Court of Justice, Signature

Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 Business and Property Courts of England and Wales, Commercial Court (QBD)1 passed in CL-2019-000527. For reasons which follow, the Court proposes to notice Prakash Industries Limited, the first respondent, as the —judgment debtor|. The second respondent, Prakash Pipes Limited shall be referred to as the —respondent|.

2. Taking cognizance of the present petition and in light of the undisputed fact that the judgment had been rendered by a competent court of a recognized reciprocating territory as contemplated under Section 44A of the Code of Civil Procedure, 1908, the Court on 20 October 2022 called upon the judgment debtor/ respondent to file their replies as well as an Affidavit of Assets in terms of Order XXI Rule 41 of the Code. Pursuant to the aforesaid order and taking note of the nature of affidavits that had come to be filed, the Court on 09 December 2022 directed the judgment debtor to update the Affidavit of Assets disclosing the value of all accounts, Fixed Deposit Receipts as well as movable securities including their gross values as on 01 December 2022.

3. The Court had on that date also noticed the judgment debtor having preferred EX. APPL. (OS) 3785/2022, an application which questioned the jurisdiction of the Court to entertain the present execution petition. The execution petitioner was consequently granted time to file a reply to the aforesaid application. An application for modification of the order of 09 December 2022 as well as a prayer for Foreign Court Code Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 placing the disclosures in respect of assets in sealed cover was disposed of by the Court by its order of 19 December 2022.

4. The respondent who also questioned the execution petitioner describing it to be a judgment debtor had independently filed EX. APPL. (OS) 3784/2022 asserting that since the judgment of which execution was sought had not framed or granted any relief against it, it was liable to be deleted from the array of parties. Learned counsels for respective sides were thereafter heard on the aforementioned two applications on different dates.

5. The principal objection which was taken by the judgment debtor was noticed by the Court in its order of 07 February 2023 which reads as under: -

—1. Mr. Nigam, learned senior counsel appearing for the first respondent, has taken a preliminary objection to the maintainability of the present execution petition and contends that undisputedly the present proceedings have been instituted referable to Section 44A of the Civil Procedure Code, 1908 [the Code]. Learned senior counsel has drawn the attention of the Court to Section 37 of the Code and the concept of court as introduced in terms thereof and which would govern the meaning to be assigned to the said expression as appearing in [Section 44A](#).

2. The facts would evidence that the contract between the parties had indicated London to be the jurisdictional seat for the purposes of all claims that may arise or be chosen to be laid. The suit on which the decree ultimately came to be rendered and of which execution is sought in these proceedings was thus instituted in London.

3. It is submitted that [Section 37\(b\)](#) would indicate that the court for the purposes of execution would have to necessarily be one which could have tried the suit in the first instance. According to Mr. Nigam, the Execution Petitioner could not have instituted suit proceedings before this Court since no part of the cause of action arose within the jurisdiction of this Court and that no assets of the respondent are situate within its territorial jurisdiction.

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4. The above submissions are controverted by learned counsel for the Execution Petitioner who has taken the Court through the Affidavit of Assets to indicate that some of the assets of the respondent do stand located within the territorial jurisdiction of the Court. It was further submitted that since the

corporate office of respondent No. 1 and which would constitute its place of business is situated within the territorial jurisdiction of this Court, the suit could have been presented here and consequently the execution proceedings are clearly maintainable.

5. Learned counsel for the Execution Petitioner was continuing with his submissions when the Court had to rise for lunch. Consequently, let this petition be called again on 14.02.2023.¶

6. In order to lay in place the essential backdrop in which the present execution petition has come to be instituted as well as to render context in which the objections are raised, it would be pertinent to refer to the following facts. These are gathered from the judgment of the Foreign Court of which enforcement is sought.

7. On 14 October 2009, the judgment debtor issued the first set of convertible bonds along with Elara Capital PLC3 as the lead manager, global coordinator and book runner thereof. The execution petitioner subscribed to these bonds. A second set of convertible bonds4 came to be issued by the judgment debtor on 29 April 2010. These bonds were due for maturity on 30 April 2015. The judgment debtor anticipating difficulties in the redemption of the 2010 bonds is stated to have initiated negotiations with the bond holders in order to avoid default. According to the execution petitioner, while most of the existing bond holders agreed to the restructuring as proposed, some including the execution petitioner here did not accede to those Elara 2010 bonds Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 proposals. Both the execution petitioner as well as the judgment debtor ultimately appear to have arrived at an agreement and which stands embodied in the Subscription Agreement5 dated 20 December 2017. As per the terms of the SA, the entirety of the execution petitioner's holding in the 2010 bonds was to be converted into a new issue of Foreign Currency Convertible Bonds6 bearing a coupon interest rate of 5.95% maturing in 2023 and with a conversion price of INR 100.

8. On 08 January 2018, FCCBs' were issued to the execution petitioner in terms of an Offering Circular7 dated 08 January 2018. Of the total issue of USD 24.3 million, the execution petitioner was the registered holder of USD 21.6 million. As per Clause 5.1 of the OC, the coupon interest was payable on 01 April and 30 September of each year unless the publicly traded shares of the judgment debtor were traded at more than INR 135 for thirty consecutive trading days prior to the relevant payment date.

9. As per the disclosures made in the execution petition, during the period of January to February 2018 the share price of the judgment debtor reached a high of INR 250. The execution petitioner on 14 February 2018 consequently served a conversion notice on Elara to convert the FCCBs' of a principal amount of USD 4 million and at a share price of INR 220. It is asserted by the execution petitioner that the judgment debtor delayed converting the FCCBs' as per the request conveyed in terms of the first conversion notice. The first conversion SA FCCBs OC Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 notice was thereafter following by a second and third notice dated 02 May 2018 and 11 June 2018. These too were not acted upon. A default in the payment of the coupon interest occurred on 30 September 2018.

10. It is also the case of the execution petitioner that it was on or about this time and more particularly on 14 March 2019 that the Plastics Pipes Division of the judgment debtor was demerged into an independent entity and which stands arrayed in these proceedings as the respondent. A legal notice thereafter came to be issued to the judgment debtor on 03 July 2019 apprising it of the event of default and the consequential right of the execution petitioner to accelerate the maturity of the bonds.

11. On or about 23 July 2019 the judgment debtor instituted proceedings before the Foreign Court seeking a declaration of it not being liable to pay the coupon interest or damages for late conversions. The execution petitioner on 14 February 2020 served its defense and counter claim in the aforementioned proceedings. The Foreign Court rendered judgment on 01 April 2022 dismissing the claim of the judgment debtor and upholding the counter claim raised by the execution petitioner. This would be evident from paragraph 219 which embodies the operative directions framed by the Foreign Court:

219. It follows from my judgment above, that the Claimant's claim for declaratory relief must be dismissed. There will be judgment for the Defendant [PBP] on its counterclaim (1) in relation to the ERA claim and (2) for damages in relation to the late conversion claim to be assessed on the basis of my findings above, namely by reference to the difference between the amount that would have been realized for the shares (calculated separately for each of CN2 and CN3) had they been Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 sold at a rate of 12% of actual daily trading volumes (i) from the date on which they should have been issued and (ii) from the date on which they were actually issued. I propose to remit the matter to the parties in the hope that they can reach agreement on the appropriate figures.¶

12. An ancillary order thereafter came to be drawn on 20 May 2022 in terms of which the judgment debtor was held liable to pay sums as more fully described in that order and relevant parts whereof are extracted hereinbelow: -

—2. Judgment be entered for the Defendant on its Counterclaim for a debt in the sum of \$13,865,615.15, the Court having ruled that the bonds and shares which are the subject of these proceedings are and always were beneficially and legally owned by the Defendant. This sum is comprised of the Early Redemption Amount of \$11,230,700.00 and interest on the Early Redemption Amount accruing at a rate of 7.95% per annum in the sum of \$2,634,915.15.

3. Judgment be entered for the Defendant on its Counterclaim for damages in the sum of \$4,047,707.19, the Court having ruled that the bonds and shares which are the subject of these proceedings are and always were beneficially and legally owned by the Defendant. This sum is comprised of damages in the sum of \$3,532,711.67 and interest on damages at the US Prime Rate in the sum of \$514,995.52.

4. The Defendant be awarded 60% of its costs of the case to be assessed on the indemnity basis if not agreed.

5. The Claimant pay the Defendant the sum of £558,034.99 by 3 June 2022 by way of an interim payment on account of the costs awarded pursuant to paragraph 4 of this Order.¶

13. Undisputedly and till the Court reserved orders on the application moved by the judgment debtor questioning its territorial jurisdiction, no appeal had been filed by it against the aforesaid judgments rendered by the Foreign Court. The judgment has thus and for all purposes attained finality. Having set out the backdrop in which the present execution petition has come to be preferred, the Court Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 proceeds to notice the reply and objections that have been filed by the judgment debtor and the respondent.

14. The judgment debtor has filed EX.APPL.(OS) 3785/2022 questioning the filing of the present execution petition before this Court asserted that it would lack the territorial jurisdiction to entertain the same. It is averred that the registered office of the judgment debtor is situate at 15 Km. Stone, Delhi Road, Mayar, Hisar. The judgment debtor asserts that although it does have a corporate office at New Delhi, the same is not in its ownership and is occupied on the basis of a lease. It relies on the provisions contained in Section 39(4) of the Code to contend that since no properties are situate within the territorial limits of this Court, the execution petition has been incorrectly instituted before the High Court of Delhi.

15. In the objections which have been filed to the main petition for execution, the judgment debtor additionally asserts that apart from the objections which are taken and stand comprised in EX.APPL. (OS) 3785/2022, the judgment rendered by the Foreign Court is unenforceable in light of [Sections 10\(4\), 10\(5\), 10\(6\), 11 and 13](#) of the Foreign Exchange of Management Act, 1999. It is further averred that as per the External Commercial Borrowing Framework issued by the Reserve Bank of India<sup>9</sup>, it is authorized to make payments only to the registered bond holder and not to any other

person. It is also contended that as per the directives of the RBI, no foreign individual could have subscribed to bonds issued by it. Reference is made to the FEMA RBI Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 RBI directives which proclaim that individual as lenders can only be permitted if they hold equity or in respect of subscriptions to bonds / debentures listed abroad. The judgment debtor states that the execution petitioner had issued instructions for payments being made in favour of Mr. Bernie Hogel who is not the registered bond holder. It is asserted that Mr. Bernie Hogel does not hold any equity in the judgment debtor nor were the bonds listed for subscription abroad. In view of the aforesaid, it is contended that the judgment of the Foreign Court is hit by the provisions of Section 13(1)(c) and 13(1)(f) of the Code. It may be noticed at this juncture that learned counsels for parties had addressed submissions only with respect to the miscellaneous applications noticed above. The Court thus and in terms of the present order does not propose to rule on the aforesaid objections and restricts its decision to the issue of maintainability and the prayer of the respondent for deletion. All other objections as preferred by the judgment debtor are thus kept reserved for consideration at a later stage.

16. The respondent has moved EX.APPL.(OS) 3784/2022 seeking its deletion from the petition since it is neither named as a party respondent in the proceedings which were taken by and before Foreign Court nor does the judgment of which execution is sought hold it liable. It is contended that since it was not a party to the original proceedings, no justification exists for it being arrayed as a party respondent in these proceedings. It is contended that the respondent is a separate juristic entity which came into being consequent to a scheme of demerger being sanctioned by the National Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 Company Law Tribunal, Chandigarh in terms of an order dated 14 March 2019. It is on the aforesaid basis that it is urged that since that demerger had come to be sanctioned and approved prior to the passing of the judgment of the Foreign Court, the execution petition as laid against it is misconceived and clearly not maintainable. It is on the aforesaid basis that a prayer for its deletion has been addressed.

17. Appearing for the judgment debtor, Mr. Nigam learned senior counsel, submitted that while it is not disputed that the judgment rendered by the Foreign Court is one emanating from a reciprocating territory, the execution petition as preferred before this Court is clearly not maintainable. According to Mr. Nigam the jurisdiction of an executing court would be governed by Sections 37 to 39 of the Code and those provisions would also guide [Section 44A](#). Mr. Nigam submitted that [Section 39\(4\)](#) clearly proscribes a court within the territorial limit of which the person or property of the judgment debtor is not located from taking steps or assuming jurisdiction to execute a decree. Learned senior counsel argued that [Section 37](#) while defining the expression "Court which passed a decree" stipulates that the executing court would be that which would have originally and by way of by a legal fiction have had the jurisdiction to entertain the suit. Tested on those principles, Mr. Nigam argued that since no suit could have been entertained by this Court against the judgment debtor, a declaration must necessarily ensue that the execution petition too is liable to be dismissed on that score.

18. It was further submitted that merely because the judgment debtor has its corporate office within the territorial limits of this Court, Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 the same would not constitute a valid ground for the present petition being filed before it. Mr. Nigam drew the attention of the Court to Section 20 of the Code to submit that a corporation can be sued only in a court whose territorial jurisdiction extends to where its principal office may be located or where the cause of action itself arises at a place where it has a subordinate office. It was the submission of Mr. Nigam that execution proceedings or for that matter the suit itself can be instituted before a court which has jurisdiction over a subordinate office only if the cause of action for that suit or execution proceeding itself can be said to have an indelible link to that subordinate office. Learned senior counsel submitted that undisputedly, no facet of the cause of action which led to the institution of proceedings before the Foreign Court is in any manner connected to the corporate office of the judgment debtor.

19. It was also pointed out that while the judgment debtor may have maintained certain accounts and fixed deposits at New Delhi, the same would have no relevance to the question of maintainability of

the execution petition bearing in mind the fact that those fixed deposits stand placed as security favouring various banks and financial institutions. The submission in essence was that since those assets stood encumbered in favour of banks and financial institutions, the same would also not justify the filing of the execution petition before this Court. According to Mr. Nigam, since no facet of the dispute stands even remotely connected or hooked to the subordinate office of the judgment debtor in New Delhi, the execution petition is clearly not maintainable.

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20. Controverting the aforesaid submissions, learned counsel appearing for the execution petitioner submitted that [Section 44A](#) is a stand alone provision dealing with the execution of foreign judgments. It was contended that the cause of action principles which otherwise stand incorporated in Sections 37 to 39 of the Code and which govern the institution of execution proceedings generally would have no application to execution proceedings filed in respect of a foreign judgment. According to learned counsel, [Section 44A](#) concerns itself only with a judgment having been rendered by a foreign court situate in a reciprocating country. Proceedings for execution in connection therewith are to be considered solely on the basis of the Court ensuring that the execution petition is accompanied by the certificate as envisaged under [Section 44A](#) and the foreign court being duly recognized. It was submitted that the aforesaid question is no longer res integra and stands duly settled by the Supreme Court in terms of its judgment in *M.V. Al Quamar v. Tsavloris Salvage (International) Ltd.*<sup>10</sup>. It was submitted that the aforesaid issue also stands answered in favour of the execution petitioner in terms of the judgment rendered by this Court in *Oakwell Engineering Ltd. v. Enernorth Industries Inc.*<sup>11</sup>.

21. Addressing submissions based upon the principles laid down in *M.V. Al Quamar*, learned counsel drew the attention of the Court to the enunciation of the legal position in respect of [Section 44A](#) as appearing in paragraphs 39, 47, 50 and 52 of the report. Those paragraphs are extracted hereinbelow: -

(2000) 8 SCC 278 Judgement dated 29.08.2006 in Ex. P. No. 22 of 2005 passed by this Court Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 —39. [Section 44-A](#) thus indicates an independent right, conferred on to a foreign decree-holder for enforcement of its decree in India. It is a fresh cause of action and has no correlation with jurisdictional issues. The factum of the passing of the decree and the assumption of jurisdiction pertaining thereto, do not really obstruct the full play of the provisions of [Section 44-A](#). It gives a new cause of action irrespective of its original character and as such it cannot be termed to be emanating from the admiralty jurisdiction as such. The enforcement claimed is of an English decree and the question is whether it comes within the ambit of [Section 44-A](#) or not. The decree itself need not and does not say that the same pertains to an admiralty matter neither is it required under [Section 44-A](#) of the Code. Though however in the facts of the matter under consideration, the decree has been passed by the High Court of England (a superior court) in its admiralty jurisdiction, registration in this country, as a decree of a superior foreign court having reciprocity with this country would by itself be sufficient to bring it within the ambit of [Section 44-A](#). The conferment of jurisdiction in terms of [Section 44-A](#), cannot be attributed to any specific jurisdiction but an independent and an enabling provision being made available to a foreigner in the matter of enforcement of a foreign decree.

47. As noticed above [Section 44-A](#) is an independent provision enabling a set of litigants whose litigation has come to an end by way of a foreign decree and who is desirous of enforcement of the same; it is an authorisation given to the foreign judgments and as noticed above, the section is replete with various conditions and as such independently of any other common law rights, an enabling provision for a foreign decree-holder to execute a foreign decree in this country, has been engrafted on to the statute-book to wit: [Section 44-A](#) of the Code.

50. As a matter of fact this is a scheme alien to the scheme of domestic execution as is provided under [Section 39\(3\)](#) of the Code. The scheme under the latter section is completely a different scheme wherein the transferee court must be otherwise competent to assume jurisdiction and the general rule or the principle that one cannot go behind the decree is a permissible proposition of law having reference to [Section 39\(3\)](#) of the Code. [Section 44-A](#) however is having an inbuilt scheme of execution which is

not in any comparable situation with the scheme in terms of [Section 39\(3\)](#). One can thus from the above conclude that whereas the domestic law, execution scheme is available under [Sections 37, 38, 39, 41 and 42](#), [Section 44-A](#) depicts an altogether different scheme for enforcement of foreign judgments through Indian Courts. Reference in this context may also be made to the provisions as Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 contained in Order 21 Rule 22 of the Code which expressly provide that in the event of their being an application for execution and the same been taken out beyond a period of two years after the date of the decree, there is existing a mandatory obligation to serve a notice to show cause against the execution. Such a requirement of the decree being more than 2 years old is not mentioned as regards the provisions of execution of decree filed under [Section 44-A](#). This is a new introduction in the 1976 Code and in our view substantiates the reasonings as above and supports the contention of Mr Desai as regards two separate and independent schemes for execution.

52. In fine, the legal fiction created by [Section 44-A](#) makes the Andhra Pradesh High Court, the Court which passed the decree and as such competency of the High Court to entertain the execution proceeding cannot be doubted in any way.

22. Learned counsel also invited the attention of the Court to the concurring opinion which was penned by Majmudar J., in *M.V. Al Qamar*, and in which the following pertinent observations appear: -

—63. Such an extreme contention canvassed by Mr P. Chidambaram, learned Senior Counsel for the appellant, does not really call for any serious discussion in the present proceedings as we are not concerned with such a hypothetical situation. But the situation is not so alarming as wrongly assumed, with respect, by Mr P. Chidambaram. When we turn to [Section 38](#), we find that a decree may be executed either by the court which passed it, or by the court to which it is sent for execution. This section by itself refers to decrees passed by Indian Courts against defendants who may be within the territorial jurisdiction of the competent civil court in the light of the correct place for suing in such courts as laid down by Sections 15 to 20 CPC. If the nature of the suit against the defendant falls within any of these provisions then, admittedly, such a decree can be executed by the same court which passed the decree being a competent court but it can be sent by that competent court to any other court for execution if the defendant has properties within the territorial jurisdiction of any other competent court in India and that is what [Section 39\(1\)](#) provides. The said section reads as under:

—39. Transfer of decree.--(1) The court which passed a decree may, on the application of the decree-holder, send it for execution to another court of competent jurisdiction,--

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(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other court, or

(b) if such person has not property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the court which passed it, or

(d) if the court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other court. (2) The Court which passed a decree may of its own motion send it for execution to any subordinate court of competent jurisdiction.

(3) For the purposes of this section, a court shall be deemed to be a court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such court would have jurisdiction to try the suit in which such decree was passed. Sub-section (3) of [Section 39](#) provides that such a

transferee court, admittedly situated in India, shall be deemed to be a court competent to execute such a transferred decree if, at the time of making the application for transfer of decrees, it is shown to have jurisdiction to try the suit in which such decree was passed. It must at once be noted that [Section 38](#) refers to the executing courts in India which have themselves passed the decrees in suits which were within their jurisdiction and were admittedly, therefore, competent courts. Such decrees passed by competent courts in India can also be executed by getting the decrees transferred to other competent courts in India provided the requirements of [Section 39\(1\)](#) read with sub-section (3) are satisfied. Therefore, the transferee court in India must be a competent court, which at the time of making an application for transfer of decree by the decree- holder, should be shown to have jurisdiction to pass such a decree even originally. It is easy to visualise that, this requirement of a transferee court in India which gets jurisdiction qua such execution proceedings only on transfer from competent executing court which has passed the decree in India is conspicuously absent, when Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 we turn to [Section 44-A](#). It nowhere lays down that the District Court in which decree of any superior court of a foreign territory is submitted for execution by a foreign decree-holder must be a court which could have been competent to pass such a decree if in the first instance such a suit was filed by a foreign national against another foreign national in India. The second distinguishing feature is that [Section 44-A](#) permits the foreign judgment-debtor to challenge the foreign decree even before the executing court being the District Court in India on any of the grounds mentioned in clauses (a) to (f) of [Section 13](#). A transferee court under [Section 39](#) which is called upon to execute an Indian decree passed by a competent Indian Court against the judgment-debtor cannot permit the judgment-debtor to go beyond the decree sought to be executed by such transferee court. But apart from these two distinguishing features and even proceeding on the lines as suggested by Mr P. Chidambaram, learned Senior Counsel for the appellant, that in any case the District Court in India which is called upon to execute a foreign decree by treating it as if it was passed by itself should, in the first instance, be shown to be competent to pass such a decree, the result would be the same on the facts of the present case.

64. It is no doubt true that the foreign decree, which is sought to be executed, is a money decree passed by the English Admiralty Court in favour of Respondent 1 against Respondent 2. That decree is in personam for the simple reason that, at the time when the suit was filed in England, the res, namely, M.V. Al Tabish was not within the territorial waters of English Admiralty Court. Therefore, the plaintiff-Respondent 1 had to sue only Respondent 2 in personam for recovering damages for breach of salvage contract entered into between them. The said decree has become final between the parties. It is also axiomatic that if the res, namely, the vessel M.V. Al Tabish was available within the territorial waters of the English Admiralty Court it would have also become co- defendant along with its owner, Respondent 2 and then the decree would have a decree in rem against the vessel but if Respondent 2 had submitted to the jurisdiction of English Admiralty Court, the proceeding would have been converted into proceedings in personam and then a decree would have been passed also in personam against Defendant 2 along with decree in rem against the vessel. If that had happened there would have been no difficulty for the English decree-holder in pursuing the vessel M.V. Al Tabish and to get his decree executed against the vessel wherever it went during the course of its voyage over the high seas and its ultimate anchorage in any port for the discharge or reloading of cargo in the course of maritime business. The contract of salvage of such vessel and any proceedings in connection with the execution of such contract or its breach raising claim for damages Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 would remain in the realm of maritime claim legitimately within the jurisdiction of Admiralty Courts. In the absence of a decree in rem against the vessel whose salvage contract has given rise to the present maritime claim, the decree passed by the competent Admiralty Court in England though remains a decree in personam could validly be executed by the English Admiralty Court itself.

65. Once decree of foreign superior court is sought to be executed under Section 44-A CPC as if it is the decree of the Indian Court executing the same, no further question would survive regarding competence of such executing court. Still let us consider in the alternative the question of competence of the Andhra Pradesh Admiralty Court for entertaining such a suit in its inception. Then the question



arises whether the Andhra Pradesh High Court which is, admittedly, having admiralty jurisdiction as a successor to the Chartered High Court of Madras could have entertained such a suit in the first instance. We have, therefore, to visualise a situation by way of flashback as if a suit had to be filed in the first instance by Respondent 1 against Respondent 2 in the admiralty jurisdiction of the Andhra Pradesh High Court in 1994 instead of in an English Court provided the res i.e. the ship was found at that time in the territorial waters of Andhra Pradesh. Then Respondent 1 could have filed a suit in personam against Defendant 2 because, admittedly, it was alleged to have committed breach of salvage contract in connection with the seagoing vessel M.V. Al Tabish which is a res and which by chance was found within the territorial waters of the port of Visakhapatnam in 1994. Such a —resl would have admittedly remained within the original admiralty jurisdiction of the Andhra Pradesh High Court. Respondent 1 thus could have validly filed a suit praying for decree in rem against the vessel M.V. Al Tabish making it as Defendant 1 along with its owner Defendant 2. What the English Court could do in connection with the suit validly filed on 11-10- 1994 by Respondent 1 against Respondent 2 would have been validly done by the Andhra Pradesh High Court if the vessel, Respondent 1 and Respondent 2 were all within the territorial admiralty jurisdiction of the Andhra Pradesh High Court at that time. It is the case of Respondent 1 decree-holder that pending the said proceedings, illegally and by way of a fictitious transaction, the said vessel is alleged to have been transferred by Respondent 2 in favour of M.V. Al Quamar and the ship's name is changed to M.V. Al Quamar from M.V. Al Tabish though in fact it still remains the property of Respondent 2. That is a question which is still to be considered by the Andhra Pradesh High Court in the execution proceedings and for which we are not called upon at this stage to make any observations. But the fact remains that in such Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 settings of the dispute between the parties such a suit could have been validly filed in the Andhra Pradesh High Court's admiralty jurisdiction if the vessel was in its territorial waters on 11-10-1994. In such a contingency suit could then have been validly filed by plaintiff-Respondent 1 against defendant-Respondent 2 and it could have validly joined the vessel also as Defendant 2. The Admiralty Court, being the Andhra Pradesh High Court, could have under these circumstances validly entertained the suit and would have been perfectly competent to pass a decree in rem against the ship as well as the decree in personam against its owner Defendant 2 if it had submitted to its jurisdiction for getting the ship bailed out. Such suit is perfectly maintainable in the Andhra Pradesh High Court in exercise of its admiralty jurisdiction as already decided by a Bench of this Court in the case of [M.V. Elisabeth v. Harwan Investment and Trading \(P\) Ltd.](#) [1993 Supp (2) SCC 433 : AIR 1993 SC 1014] That was a case in which the res in question was found within the territorial waters of Visakhapatnam Port. Neither the plaintiff nor the defendant had any nexus with the territorial limits of Andhra Pradesh. The cause of action also had not arisen within Andhra Pradesh still because of the presence of res in territorial waters of Andhra Pradesh, it was held by this Court that the Andhra Pradesh High Court as Admiralty Court had perfect jurisdiction to arrest the ship being sued as Defendant 1 before judgement. In the light of the aforesaid settled legal position, therefore, it must be held that once the vessel

-- M.V. Al Tabish came within the territorial waters of Andhra Pradesh, the Andhra Pradesh High Court, as Admiralty Court, had complete jurisdiction to even initially entertain the suit against not only the ship but against its owner, that is alleged to have committed breach of salvage contract qua that ship. If such a suit was maintainable in the inception before the Andhra Pradesh High Court in its admiralty jurisdiction, then at the executing stage when [Section 44-A](#) was invoked for executing a similar decree passed by the competent superior court in England in exercise of admiralty jurisdiction, such a decree could validly be executed by invoking the aid of corresponding Admiralty Court being the Andhra Pradesh High Court when the res was already within its jurisdiction. Consequently, even reading [Section 39\(3\)](#) with [Section 44-A](#), there is no escape from the conclusion that the time when execution petition was moved before the Andhra Pradesh High Court by even treating it as a transferee court it can be said to be perfectly competent to entertain such a suit even in its inception against the ship as well as its alleged owner and to resolve the dispute between Respondent 1 and Respondent 2. It has to be kept in view that if the ship in question which is arrested at Visakhapatnam had sailed out of the territorial waters of Andhra Pradesh then the Andhra Pradesh High Court would have lost its jurisdiction to entertain such a suit or the execution proceedings for

executing the decree of foreign court. But once it was within its territorial waters, the ship could have been validly subjected to such a suit not only against itself but against its owner. Whether the subsequent purchaser is a genuine purchaser of the ship and whether the sale transaction is hit by any other provision of law and whether the ship still remains the property of Respondent 2 could have been validly examined in such a suit if it was originally filed before the Andhra Pradesh High Court in its admiralty jurisdiction. Under these circumstances, it cannot be said in the background of this fact-situation that the Andhra Pradesh High Court, in exercise of its admiralty jurisdiction, was not competent to even originally entertain such a suit in which a foreign court had passed the decree which is sought to be executed before it. Both the English Admiralty Court, which is, admittedly a court of competent jurisdiction, as well as the Andhra Pradesh High Court, being a corresponding Court of competent admiralty jurisdiction, could not only entertain such a suit in the first instance but could equally be competent to execute such a decree of Admiralty Court.¶

23. Learned counsel also laid stress upon the fact that the Supreme Court while rendering its decision in *M.V. Al Quamar* came to recognize the unique status conferred upon foreign judgments and the statutory scheme underlying [Section 44A](#) after duly noticing Sections 37 to 39 of the Code. The uniqueness of [Section 44A](#) and of the said provision being untouched by [Sections 37 to 39](#) was also sought to be highlighted from the following observations as appearing in the judgment of this Court in *Oakwell Engineering*: -

—10. Jurisdiction The next question raised by the judgment debtor is regarding the territorial jurisdiction of this Court in entertaining the prayer for execution. It is contended by the judgment debtor that the judgment debtor has its registered office and business in Ontario, Canada and, thus, both the decree holder and judgment debtor are foreigners and, Therefore, this Court will have no jurisdiction to execute the decree of the High Court of Republic at Singapore. The judgment relied upon by the judgment debtor namely *World Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 Tanker Carrier Corporation v. SNP Shipping Services Pvt. Ltd. and Ors.* [1998]2SCR1032, however, has no application to the present proceedings under Section 44A of the CPC. The subject matter for adjudication in the case of *World Tanker* (supra) was jurisdiction of the Bombay High Court in an admiralty suit. The question of jurisdiction came up in course of a trial and not in course of an execution and that too under Section 44A of the CPC. In that case the cause of action arose from a collision between two ships which had taken place in the high seas off the coast of Portugal. Neither of the vessels involved in collision was an Indian vessel. The owners of both these vessels were also foreigners. Only one of the managers of the two ships was an Indian company. The management had come into the hands of the Indian company subsequent to the collision. The Supreme Court held that the High Court of Bombay did not have any jurisdiction in handling the admiralty suit. The scheme of Section 44A of the CPC is entirely different. It makes no mention of jurisdiction to try. Only thing necessary is that the decree has been obtained from any superior court of any reciprocating territory. The decree holder is required to file a certified copy of the decree along with a certificate from such superior court stating the extent, if any, to which the decree has been satisfied. There is no requirement under Section 44A of the CPC that the District Court in which the foreign decree is presented for execution should be also a court which could have entertained the suit. The decree has to be executed in India as if it had been passed by the District Court in India. Since there is no requirement that the District Court to whom the decree is presented for execution should also have the jurisdiction to entertain the suit had it been presented before it, the point raised by the respondent particularly with reference to the judgment of *World Tanker* (supra) is entirely foreign to the context. It may be noted at this point that where a decree is transferred from the court which has passed the decree to another court for execution under Section 39 of the CPC, the transferee court would be the court of competent jurisdiction if such court has the jurisdiction to try the suit in which such decree was passed. The present proceedings are, however, not governed by Section 39 of the CPC. Section 44A of the CPC, in distinction with Section 39 of the CPC, makes no

such demand on the District Court to which the decree is presented for execution. Hence, the objection to the jurisdiction of this Court on this score has also to be rejected.

24. Mr. Nigam, learned senior counsel, however, submitted that M.V. Al Quamar was a judgment which was principally dealing with the scope of the admiralty jurisdiction of the Andhra Pradesh High Court. It was also sought to be contended that the principles which were laid down by Banerjee, J., and embodied in the passages noticed above, were neither reciprocated nor concurred with by Majmudar, J., who penned a supplementing opinion. According to Mr. Nigam a careful analysis of the two opinions which were handed down would establish that Majmudar J. came to a conclusion on the questions which stood raised on reasoning clearly distinct from that which weighed with Banerjee J. It was additionally contended that the decision ultimately rested on the fact that the vessel in question was itself situate within the territorial limits of the Andhra Pradesh High Court and therefore that High Court would in any case have been justified in exercising its jurisdiction in light of the provisions enshrined in Sections 37 to 39 of the Code.

25. Insofar as the prayers made by the respondent for its deletion is concerned, it was contended by learned counsel appearing for the execution petitioner that the terms of the agreement between parties clearly restrained the judgment debtor from changing its corporate structure or framing any scheme of demerger till such time as liabilities were owed to it. Reference was made to the following stipulations as contained in the OC: -

—6.4 Undertakings 6.4.1 The Issuer has undertaken that so long as any Bond remains outstanding, save with the approval of an Extraordinary Resolution of the Bondholders, it will:

(i) maintain FACR of 1.75 times or higher;

For the purposes of this Condition, FACR shall mean  $\text{Net Fixed Assets} / \text{Long Term Loans}$   
 $= (\text{Gross Fixed Assets} - \text{Depreciation}) / \text{Long Term Loans}$ .

(ii) maintain Net Debt to EBITDA ratio of not more than 3 times;

(iii) maintain Total Debt, including working capital, not more than US\$ 200 million;

As used in this Condition 6.4.1, the terms Net Debt, Total Debt, Net Fixed Assets, Long Term Loans, Gross Fixed Assets and Depreciation shall bear the meanings given to them in the most recent audited accounts of the Issuer.

(iv) credit equity shares of the Issuer to the account nominated by the Bondholder within fourteen (14) business days from the date of receipt of the original conversion notice.

(v) use its best endeavours to (a) maintain a listing for all the issued Shares on the Indian Exchanges, (b) to obtain and maintain a listing for all the Shares issued on the exercise of the Conversion Rights attaching to the Bonds on the Indian Exchanges, and (c) if the Issuer is unable to obtain or maintain such listings, or maintenance of such listings is unduly onerous, to obtain the Shares issued on the exercise of the Conversion Rights, on an alternative stock exchange as the Issuer may from time to time (with the prior written consent of the Lead Manager) determine (the "Alternative Stock Exchange") and will forthwith give notice to the Bondholders in accordance with Condition 17 below of the listing or delisting of the Shares or the Bonds (as a class) by any of such stock exchanges;

(vi) reserve, free from any other pre-emptive or other similar rights, out of its authorised but unissued ordinary share capital the full number of Shares liable to be issued on conversion of the Bonds without breaching any foreign ownership restrictions in India applicable to the Shares and will ensure that all such Shares will be duly and validly issued as fully-paid;

(vii) pay the expenses of the issue or delivery of, and all expenses of obtaining listing for, Shares arising on conversion of the Bonds;

(viii) not make any reduction of its ordinary share Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 capital or any uncalled liability in respect thereof or of any share premium account or capital redemption reserve fund (except, in each case, as permitted by law);

(ix) not make any offer, issue or distribute or take any action the effect of which would be to reduce the Conversion Price below the par value of the Shares of the Issuer, provided always that the Issuer shall not be prohibited from purchasing its Shares to the extent permitted by law;

(x) not issue any convertible bond below the Conversion Price;

(xi) not make any payment in relation to its Business beyond 25% of its consolidated net income of the preceding financial year, without approval of the Bondholders;

(xii) promptly furnish a certificate from a reputed firm of chartered accountants, confirming compliance with the Negative Covenants as set out in Condition 4 and the Undertakings set out in this Condition 6.4.1. The Issuer will also publish a compliance certificate confirming compliance with financial covenants and undertakings in its annual report, so long as any of the Bonds remain outstanding.

The Shares issued upon conversion of the Bonds are expected to be listed on the NSE and the BSE and will be tradable on such stock exchange once listed thereon, which shall occur within 20 days after the relevant Conversion Date. The Issuer will make due application in respect of such listing within five (5) days following the relevant Conversion Date. If there is any delay in obtaining the approval of the NSE and the BSE to list such Shares, they shall not be tradable on the BSE and the NSE until the listing occurs.

13. CONSOLIDATION, AMALGAMATION OF MERGER

The Issuer will not consolidate with, merge or amalgamate into or transfer its assets substantially as an Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 entirety to any corporation or convey or transfer its properties and assets substantially as an entirety to any person (the consummation of any such event, a "Merger") unless:-

13.1 the corporation formed by such Merger or the person that acquired such properties and assets shall expressly assume, all obligations of the Issuer in respect of the Bondholders, the Agency Agreement and the Bonds and the performance of every covenant and agreement applicable to it contained therein and to ensure that the holder of each Bond then outstanding will have the right (during the period when such Bond shall be convertible) to convert such Bond into the class and amount of shares, cash and other securities and property receivable upon such consolidation, amalgamation, merger, sale or transfer by a holder of the number of Shares which would have become liable to be issued upon conversion of such Bond immediately prior to such consolidation, amalgamation, merger, sale or transfer;

13.2 immediately after giving effect to any such Merger, no Event of Default shall have occurred or be continuing or would result therefrom;

13.3 the corporation formed by such Merger, or the person that acquired such properties and assets, shall expressly agree, among other things, to indemnify each holder of a Bond against any tax, assessment or governmental charge payable by withholding or deduction thereafter imposed on such holder solely as a consequence of such Merger with respect to the payment of principal and all accrued interest on the Bonds, and 13.4 such merger shall not impose more onerous obligation upon the Bondholders or expose it to further liabilities or reduce its protections.

If the conditions set out in sub-paragraphs 13.1 to 13.4 of this Condition 11 are met, the Bondholders shall concur with the Issuer in the consummation of the Merger and execute the necessary documents as required.¶

26. It was submitted that the scheme of demerger was pushed through clandestinely in order to defeat the claim of the execution Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 petitioner and to overcome the judgment that ultimately came to be rendered. Learned counsel also sought to press into aid the principles of piercing of the corporate veil and submitted that since the respondent was a group company and a mere alter ego of the judgment debtor, it is clearly entitled to enforce the foreign judgment against the said respondent also.

27. Refuting the aforesaid submissions, Mr. Chidambaram, learned senior counsel appearing for the respondent, submitted that the scheme of demerger came to be approved by the NCLT in accordance with the statutory mechanism as enshrined in the [Companies Act, 2013](#) and which in turn contemplates notice as well as publication of the proposed scheme of arrangement. Mr. Chidambaram contended that the proposed demerger was a matter of public knowledge and thus it is not permissible for the execution petitioner to either question its validity in these proceedings or assail the same at this point in time. It was submitted that despite due notice and knowledge of the proposed demerger, the execution petitioner did not initiate any proceedings to assail the same at any point of time. In view of the above, Mr. Chidambaram submitted that these issues cannot possibly be raised and that too in these proceedings.

28. Insofar as the submissions addressed with respect to invocation of the piercing of the corporate veil principle is concerned, it was Mr. Chidambaram's submission that the execution petitioner had not laid any foundation in aid of its invocation. Learned senior counsel submitted that once the scheme of demerger came to be approved by the NCLT after eliciting the views of all stakeholders including Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 creditors, share holders as well as the Union Government, it cannot possibly be said that the same was designed to defeat the claims of any creditor including the execution petitioner or for that matter framed with the objective of committing fraud upon a creditor. It is these rival submissions which fall for consideration.

29. Turning firstly to the prayer for deletion as made by the respondent, the Court finds that undisputedly the said entity was not a party to the proceedings which were drawn before the Foreign Court. The judgment of which execution is sought also does not embody any direction or relief that may have been granted against the respondent. The respondent appears to have been joined in these proceedings solely on the basis of the understanding of the execution petitioner that notwithstanding the demerger of the Plastic Pipes Division allegedly without notice to it and in violation of the various stipulations carried in the OC, it must also be held liable. Additionally, and in the course of oral submissions, it was also contended on behalf of the execution petitioner that the principles of piercing of the corporate veil were liable to be invoked. The Court finds itself unable to sustain the aforesaid submissions for the following reasons.

30. It is relevant to note that the scheme of demerger which came to be sanctioned on 14 March 2019 clearly attained finality having never been assailed or questioned by the execution petitioner in accordance with law. The validity of that scheme which stands duly sanctioned in accordance with the procedure prescribed by law can neither be questioned nor justifiably form the subject matter of adjudication in these proceedings.

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31. Insofar as the principle of lifting of the corporate veil is concerned, suffice it to state that the execution petition does not lay any foundation in support of the invocation of that plea. It must be noted that a plea for piercing of the corporate veil must necessarily be founded on adequate material in order to sustain an allegation that the veil of corporate personality had been deployed so as to avoid

liabilities. As was rightly urged by the respondent not even a rudimentary foundation had been laid in support of the aforesaid plea.

32. As was rightly contended by Mr. Chidambaram, the scheme itself came to be sanctioned in accordance with the procedure prescribed under the [Companies Act, 2013](#). That statute contemplates all stakeholders being placed on due notice of the proposed scheme of arrangement and the views of the Union Government also being elicited before the scheme is sanctioned. Since the execution petitioner has failed to establish either a fundamental procedural requirement having been flouted or a mandatory requirement relating to the grant of sanction being violated, it would be wholly incorrect for the Court to take cognizance of the plea that the demerger was aimed at depriving the execution petitioner the fruits of the foreign judgment. The Court thus find itself unable to accept the contention that the respondent is liable to be joined in these proceedings based on the doctrine of lifting of the corporate veil. More importantly, the foreign judgment frames no direction against the respondent. The Court thus finds itself unable to appreciate how the respondent could be possibly held to be liable under the decree in question.

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33. The prayers made in EX.APPL.(OS)3784/2022 are thus liable to be granted. The respondent shall consequently stand deleted from these proceedings.

34. That then takes the Court to the heart of the dispute which stands raised and which turns upon the provisions of Section 44A of the Code. That provision reads as follows: -

—44A. Execution of decrees passed by Courts in reciprocating territory. --

(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment. (3) The provisions of [section 47](#) shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of [section 13](#). Explanation 1.--  
—Reciprocating territory| means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and —superior Courts|, with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.-- —Decree| with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment. | Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986

35. As would be manifest from a reading of [Section 44A](#), a judgment rendered by a foreign court can be legally put into execution in India in accordance with the procedure prescribed therein. [Section 44A](#) stipulates the following conditions being met in order for a foreign judgment being put into execution in India. There must firstly be a decree of a superior court situate in any reciprocating territory of which execution is sought. The petition for execution of such a foreign judgment must necessarily be accompanied by a certificate as contemplated under sub-section (2). That certificate is conferred the

status of an instrument conclusively proving the passing of the foreign judgment and the satisfaction or adjustments which may have been accomplished in connection therewith.

36. [Section 44A](#) further prescribes that upon the aforementioned preconditions being met, the foreign judgment may be executed in India as if it had been passed by the District Court before whom that petition comes to be laid. A "foreign judgment" has been defined in Section 2(6) of the Code to mean the judgment of a foreign court. The expression —foreign court" has been defined in Section 2(5) of the Code to mean a court situate outside India. The phrase "reciprocating territory" and the meaning to be assigned thereto is enshrined in Explanation 1 to [Section 44A](#). Explanation 2 as placed in [Section 44A](#) defines a "decree" with reference to a superior court to mean any decree or judgment of such court in terms of which a sum of money is payable not being monies payable in respect of taxes, fine or penalty. Arbitration Awards stand specifically excluded from the ambit of [Section 44A](#). The judgment or decree rendered by a foreign court is Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 thus to be understood as distinct from a decree otherwise passed by a court in India and one which would fall within Section 2(2) of the Code.

37. Turning then to Section 37 of the Code, it becomes pertinent to note that the said provision proceeds to define the expression "Court which passed a decree". Significantly, that expression is absent from [Section 44A](#). [Section 37](#) while defining the phrase the "Court which passed a decree" provides in clause (b), a direction and a guide to identify the court which would be competent for the purposes of entertaining an application for execution of a decree generally. It becomes pertinent to note that [Sections 38, 39, 41 and 42](#) would clearly be controlled by clauses (a) and (b) of [Section 37](#) since they are directly concerned with a court which passed a decree or a court of competent jurisdiction. [Section 44A](#), on the other hand, engrafts a legal fiction and enables a foreign judgment being executed in India as if it had been passed by the District Court before which such proceedings are initiated. It thus clearly appears to free the District Court which may be moved for the purposes of execution of a foreign decree from the cause of action doctrines or the situs of property or the judgment debtor which otherwise imbue the provisions contained in Sections 37 to 42 of the Code.

38. It becomes pertinent to note that Section 2(4) of the Code while defining the word "District" also sheds light on what meaning is to be ascribed to a District Court wherever so employed in the enactment. A plain reading of that provision indicates that the District Court means the principal civil court of original jurisdiction. The Legislature Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 clearly appears to have borne these considerations in mind while employing the expression "District Court" in [Section 44A](#) as opposed to "Court which passed a decree". All that would therefore have to be ascertained is whether the petition for execution has been instituted before a District Court as contemplated under the Code. Once that prescription is found to be satisfied and the foreign judgment is found to comply with the other preconditions stipulated in [Section 44A](#), the legal fiction enshrined in that provision would come into play.

39. The ambit of [Section 44A](#) directly fell for consideration of the Supreme Court in M.V. Al Quamar. As would be evident from the passages of that decision which have been extracted hereinabove, the Supreme Court in unequivocal terms held that the said provision confers an independent right on the foreign decree holder for enforcement of a decree in India. That right was explained to constitute an independent cause of action having no correlation with any —jurisdictional issues. [Section 44A](#) was in the aforesaid light described to be an independent and enabling provision engrafted in the statute for the purposes of enforcement of a foreign decree. Significantly, an argument resting on Sections 38 and 39 of the Code came to be specifically urged for the consideration of the Supreme Court in M.V. Al Quamar. Reliance was also placed on Section 39(3) of the Code and a submission addressed that the court before which an action for execution is laid must necessarily be a court of competent jurisdiction and thus one which would have otherwise been competent to try the original suit itself. The said submission was rejected in unambiguous terms with the Supreme Court observing that Section Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation

Number: 2023:DHC:2986 44A constitutes and represents "a departure from the scheme of execution of domestic decree".

40. Banerjee, J. pertinently observed that [Section 44A](#) embodies a scheme —alien to the scheme of domestic execution as is provided under Section 39(3) of the Code. This was again and more specifically clarified with the learned Judge holding that while under the scheme for execution governed by domestic law, it would be the provisions of [Section 37, 38, 39, 41 and 42](#) which would apply, [Section 44A](#) lays in place a completely distinct regime for enforcement of foreign judgments. The aforesaid enunciation of the legal position in M.V. Al Quamar thus clearly appears to negate the contentions addressed by Mr. Nigam to the contrary and founded upon Sections 37, 38 and 39 of the Code. For the reasons recorded by the Supreme Court in M.V. Al Quamar, the submissions resting upon Section 20 of the Code must also suffer a similar fate.

41. The Court also finds itself unable to accept the contention that Majmudar, J. in M.V. Al Quamar did not accept or adopt the reasoning assigned by Banerjee, J. It must be noted at the very outset that Majmudar, J. in the introductory part of the supplementing judgment categorically records His Lordship's agreement with the conclusions recorded by the other Honourable member of the Bench. As is manifest from the introductory passages of that opinion, the supplementing opinion was penned by Majmudar, J. in light of the importance and significance of the issues which stood raised. His Lordship went on then to succinctly enunciate in paragraph 60 of the Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 report the pre-conditions which must be satisfied by a decree holder in terms of [Section 44A](#) as under:-

—60. A mere glance at that provision, read with relevant explanations, shows that before it is invoked by any decree-holder, he must satisfy the following conditions:

1. A decree-holder who seeks execution must be armed with a money decree passed by any of the superior court of any reciprocating territory, being any foreign country or territory which the Central Government may, by notification in the Official Gazette, has declared to be a reciprocating territory for the purpose of the section.

2. Such an execution petition can be entertained by the executing court in India being the District Court that will be clothed with the legal fiction as if the said foreign decree was passed by itself and whose aid and assistance are required for executing such a decree.

3. Such a decree can be put for execution before a District Court in India being the Principal Civil Court of original jurisdiction and which will include the local limits of the original civil jurisdiction of a High Court.

4. Once such execution petition is filed before the appropriate District Court the entire machinery of [Section 47](#) for execution of Indian decrees would automatically get attracted.

5. In such execution proceedings, the judgment-debtor of a foreign court decree will be entitled to satisfy the executing court in India that the foreign decree cannot be executed against him as it is hit by any of the exceptions specified in clauses (a) to (f) of Section 13 CPC.

42. His Lordship held that an execution petition in respect of a foreign judgment can be entertained by any District Court in India and which court would stand statutorily empowered by virtue of the legal fiction to exercise powers of an executing court as if the foreign decree had been passed by that court itself. Of equal significance are the observations appearing in paragraph 63 of the report and where the arguments founded on [Sections 39](#) and other provisions of the Code Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 were categorically negated. It was observed that [Section 44A](#) can by no means be interpreted to postulate that the District Court before which a petition for execution of a foreign decree is filed must be a court which could otherwise have been competent to pass a decree in the first instance. Those observations clearly debunk the adoption of tests



embodied in Section 37 of the Code. Majmudar, J. went on further to articulate and explain the legal position in paragraph 65 holding that once a decree of a foreign superior court is filed before a District Court and thus an Indian court duly empowered by virtue of the legal fiction embodied in that provision, no further question of —competency would survive.

43. While it is true that in M.V. Al Quamar on facts it was additionally noticed that the vessel was docked in the State of Andhra Pradesh, the same constitutes a facet which, in the considered opinion of this Court, was only additionally taken into consideration by the Supreme Court. In any case, this Court is of the firm opinion that the interpretation accorded to [Section 44A](#) cannot possibly be understood to be either the outcome of or founded upon that aspect of the case.

44. The Court while arriving at the conclusion that the objections resting on the principles of territoriality and cause of action are clearly misconceived also draws sustenance from the succinct exposition of the legal position in Oakwell Engineering. Undisputedly the judgment of which execution is sought is clearly one which was rendered by a court situated in a reciprocating territory. The execution petition is also accompanied by the certificate of conclusivity as envisaged in [Section 44A](#). This Court in light of the legal position as enunciated in Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13 Neutral Citation Number: 2023:DHC:2986 M.V. Al Quamar would have the jurisdiction and competency to entertain the present petition and consider execution of the foreign judgment. The jurisdiction which this Court wields by virtue of [Section 44A](#) does not stand impeded in any manner by the provisions contained in Sections 37 to 42 of the Code. For all the aforesaid reasons, the Court finds itself unable to countenance the objections which are taken in EX. APPL. (OS) 3785/2022.

45. EX. APPL. (OS) 3785/2022 shall consequently stand dismissed. The present order, however, shall not preclude the judgment debtor from urging contentions which are otherwise addressed based upon the provisions of FEMA and RBI Directives which had been alluded to in the objections filed in these proceedings.

46. For reasons set out hereinabove, EX. APPL.(OS) 3784/2022 shall stand allowed. The respondent shall stand deleted from the array of parties.

EX.P. 87/2022 & EX.APPL.(OS) 3572/2022, EX.APPL.(OS) 3573/2022, EX.APPL.(OS) 3574/2022

47. The execution petition be now placed on 16.05.2023.

YASHWANT VARMA, J.

MAY 03, 2023 rsk/bh/neha Signature Not Verified Digitally Signed By:NEHA Signing Date:03.05.2023 16:11:13