IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2026	Pronounced on : 27.02.2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR JUSTICE K. KUMARESH BABU

O.S.A (CAD) No. 15 of 2024

and

CMP No.3586 of 2024

LSS OCEAN TRANSPORT DMCC
A Company incorporated under the appropriate
Laws of the United Arab Emirates,
Having its Registered Office at Unit #2708,
Jumeirah Business Center 5- Cluster W - Dubai,
United Arab Emirates
Rep. by its Power of Attorney Holder
Mr. Ram Jay Narayan,
A6 Kumaravijayam, 99, Royapettah High Road,
Mylapore, Chennai – 600 004.

..Appellant/Petitioner

Vs

1. K.I. (INTERNATIONAL) LIMITED,
   A Company incorporated under the Companies
   Act 1956, Having its Registered Office at #664,
   T. H. Road , Tondiarpet, Chennai – 600 081.

2. Goyal Ispat Private Limited,
A Company incorporated under the Companies
Act 1956, Having its Registered Office at #664,
T. H. Road, Tondiarpet, Chennai 600 081.

..Respondents/
Respondents

This Original Side Appeal filed under Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act and section 50 of the Arbitration and Conciliation Act, 1996 read with Order XXXVI Rule 9 of the O.S. Rules and Clause 15 of the amended Letters Patent, prayed to set aside the order passed by the learned Judge in Arb.O.P.No. (Comm.Div) 195 of 2022 dated 16.10.2023 and allow the present Appeal.

For Appellant: Mr.P.Giridharan
For Mr.H.Siddarth

For Respondent(s): Mr. B. Arvind Srevatsa

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

This appeal had been filed questioning an order dated 16.10.2023 in Arb.O.P.No.(Comm. Div.).195 of 2022 passed by a learned Single Judge of this Court.

2.The appellant herein was the petitioner in Arb.O.P.No.(Comm. Div.).195 of 2022.

3.Arb.O.P.No.(Comm. Div.).195 of 2022 had been filed taking advantage of Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 seeking a declaration that the award dated 26.03.2021 and the corrected award dated 17.05.2021 are decrees of this Court and for a direction against the 1st and 2nd respondents to jointly and severally to pay to the petitioner therein a sum of Rs.2,28,91,856.20/- and for a further direction against the 1st and 2nd respondents to jointly and severally pay to the petitioner a further sum of Rs.67,66,770.10/- and for a further direction against the 1st and 2nd respondents to jointly and severally pay to the petitioner a further sum of Rs.32,91,147.96/- and for a further direction against the 1st and 2nd respondents to pay the costs of the petition.

4.By order dated 16.10.2023, a learned Single Judge of this Court had partly allowed the petition by granting a decree in terms of the foreign arbitral award dated 26.03.2021 and the corrective award dated 17.05.2021 against the 1st respondent alone, in accordance with Section 49 of the Arbitration and Conciliation Act, 1996. The petition was dismissed as against the 2nd respondent. Costs were also not granted. Liberty was granted to the petitioner to execute the foreign arbitral award and the corrective award against the 1st respondent by filing an execution petition seeking appropriate reliefs.

5.Aggrieved by the dismissal of the petition, as against the 2nd respondent, the petitioner had filed the present Appeal.

6.It is the contention of the appellant that by a voyage Charterparty dated 22.01.2018 entered into between the appellant and the 1st respondent, the appellant as the disponent owner, agreed to carry a cargo of approximately 1,50,000 MT +/- 10% MOLOO (More or Less Owners Option) of coal on board a single Decker Bulk Carrier Capesize ship from Richards Bay Terminal, South Africa to Krishnapatnam Port, in this Country. The appellant then Chartered out a vessel MV Citrus for this purpose. The vessel arrived at Krishnapatnam Port on 30.01.2019 and proceeded to berth after discharge of 163,114 MT of coal. She left Krishnapatnam Port on 05.03.2019.

7.According to the terms of the Charterparty, the 1st respondent was to ensure that 25,000 MT of cargo was discharged everyday after the vessel had tendered her notice of readiness at the port of discharge. Accordingly, cargo of quantity of 163,114 MT should have been discharged within 7 days or to be more precise in 6.5246 days, failing which demurrage charges would become payable at the rate of USD 14,000 per day as stipulated in the terms of the Charterparty. It had been specifically contended that the 1st respondent took 33.5972 days to discharge the cargo. The demurrage was therefore payable for 27.0727 days and at USD 14,000 per day, it came to a sum of USD 379,017. This amount was claimed by the petitioner from the 1st respondent.

8.The 1st respondent, however, disputed the computation of demurrage on the ground that the cargo had been discharged in 12.497222 days (as opposed to 33.5972 days as claimed by the petitioner) and it was therefore stated that the demurrage charge was payable only for 5.972662 days (as opposed to 27.0727 days). The 1st respondent claimed that the Krishnapatnam Port had suspended ship movement which the appellant denied. The 1st respondent also stated that they had cash flow problems.

9.The appellant and the 1st respondent then entered into a first Deferment Agreement on 13.03.2019. The appellant was permitted to exercise a lien on 15,000 MTs of cargo carried on in the vessel in consideration for all load port and discharge port demurrage and deferring the payment of undisputed load port demurrage in five month instalments of USD 45,201.17 per month starting from 15th day of April 2019 and subsequent instalments on the 15th day of each subsequent month.

10.The 1st respondent also issued five post dated cheques dated 15.04.2019, 15.05.2019, 15.06.2019, 15.07.2019 and 15.09.2019 drawn in favour of the agents of the appellant M/s.Taurus Shipping Pvt. Ltd., and drawn on Union Bank of India, Washermanpet Branch, Chennai – 600 021. It was also agreed between the parties that if the payment on any one of the months was not honoured, M/s.Taurus Shipping Pvt. Ltd., was entitled to encash the other post

dated cheques to cover the amount outstanding and payable by the 1st respondent to the appellant.

11.Thereafter, on request of the 1st respondent, the first Deferment Agreement was amended by a second Deferment Agreement dated 12.04.2019. By this agreement, the 1st respondent agreed to make payment towards the load port demurrage of USD 226.005.86 and the undisputed discharge port demurrage of a sum of USD 83,617.27 in three instalments to be paid on 15.04.2019 – USD 100,000 and on 25.04.2019 – USD 100,000 and on 05.05.2019 – USD 109,623.13.

12.Again the 1st respondent had provided as security an undated cheque drawn on Union Bank of India, Washermanpet Branch, Chennai, for a sum of Rs.2,06,78,000/- to be handed over to the agent of the appellant, M/s.Taurus Shipping Pvt. Ltd. On the basis of the aforementioned agreement, the 1st respondent took delivery of 12500 MTs out of 15,000 MTs on which lien had been exercised by the appellant on the first Deferment Agreement. The 1st respondent also surrendered his right to lien to the appellant for the balance 2500 MTs.

13.It had been further stated that in breach of their obligations, the 1st respondent failed to make payment of the admitted sums and paid only the first

instalment of USD 100,000 towards the undisputed debt. In view of the said breach, the appellant called upon M/s.Taurus Shipping Pvt. Ltd., to present the cheque held as security for clearance. It was informed to the appellant that the cheque dated 15.04.2019 for Rs.31,18,869/- and the cheque dated 15.05.2019 for Rs.31,18,869/- both drawn on Union Bank of India, Washermanpet Branch, Chennai, had been dishonoured and returned with a memo dated 06.06.2019 on the ground that the bank account of the 1st respondent was frozen. The further cheque dated 15.06.2019, again for Rs.31,18,869/- and again drawn on Union Bank of India, Washermanpet Branch, Chennai, was also dishonoured by memo dated 17.06.2019 on the ground that the account of the 1st respondent was a Non Performing Asset Account.

14.In view of the dishonour of the cheques, the appellant issued notice dated 20.06.2019 under Section 138 of the Negotiable Instruments Act, 1881 calling upon the 1st respondent to effect payment of the amount due and payable within a period of 15 days. It is further contended that the 1st respondent admitted its liability and made payment by way of wire transfer / RTGS transfer of the balance undisputed demurrage as agreed in the second Deferment Agreement in two tranches on 28.06.2019 and 10.07.2019 through another associate company M/s.Stride Steels Pvt. Ltd.

15.However, the disputed sum of USD 295,400/- towards discharge port demurrage remained unpaid. The appellant invoked the arbitration clause in the Charterparty dated 02.08.2018 which was incorporated in the Fixture Note dated 22.11.2018 which required disputes to be referred to London arbitration, in accordance with English Law and the London Maritime Arbitrators Association (LMAA) Terms. The arbitral tribunal then came to be constituted. After the commencement of the arbitration proceedings, the appellant apprehended that the cheque issued as security towards the disputed amount of USD 295,400 would also be dishonoured.

16.In view of that particular fact, the appellant filed A.No.4708 of 2019 under Section 9 of the Arbitration and Conciliation Act, 1996 seeking protection of the security given by the 1st respondent. In the proceedings, the 1st respondent replaced the undated cheque with another undated cheque for Rs.2,06,78,000/- drawn on Union Bank of India, Washermanpet Branch, Chennai in favour of M/s.Taurus Shipping Pvt. Ltd., with a covering letter of the 2nd respondent issued in terms of clause 7 of the second Deferment Agreement dated 12.04.2019. In the letter, the 2nd respondent stated that the said cheque was issued in accordance with clause 7 of the agreement dated 12.04.2019.

17.It was contended that the 2nd respondent was a group company of the 1st respondent. This was recorded in the order dated 17.09.2019 in A.No.4708 of

2019. The appellant then sent a letter dated 31.07.2019 to the 1st respondent that an agreement can be reached whereby the cargo which was under the lien could be monetized. Since there was no response, the appellant filed A.No.6092 of 2019 for sale of the 2500 MTs of cargo under lien and appointment of an Advocate Commission (A.No.231 of 2020) for sale of the remaining cargo of 2500 MTs.

18.The 1st respondent in their pleadings had claimed that the security given by the 2nd respondent by way of cheque for Rs.2,06,78,000/- would be sufficient to safeguard any claim. In view of that particular statement A.No.6092 of 2019 was disposed of by order dated 04.10.2019. The Court permitted both the appellant and 1st respondent to depute one person each as joint receivers for the sale of 2500 MTs of coal. It was further observed that since the 2nd respondent had issued a cheque as security, 2500 MTs of cargo could be sold.

19.However, the 1st respondent did not nominate anybody as a receiver and therefore, the appellant filed A.No.231 of 2020 seeking appointment of an Advocate Commissioner for sale of 2500 MTs of coal. An Advocate Commissioner was also appointed and he also effected sale by auction of the said cargo which was confirmed by order dated 10.11.2020. Therefore, an order was passed that against the demurrage charges, a sum of Rs.25,07,500/- which

was due as on 07.12.2020 shall be paid to Krishnapatnam Port Company Ltd., Nellore and with respect to the customs duty, the auction purchaser may pay the same within the specified period. It was also directed that the Customs Authority can take steps to auction the remaining 2500 MTs of coal and after deducting the customs charge and demurrage charges deposit the balance amount to the credit of the appellant. That amount was directed to be deposited in fixed deposit in a Nationalized Bank. It had been stated that consequent to the sale of the cargo by the Advocate Commissioner a sum of Rs.50,07,898/- was credited to the account of the appellant and an application was filed for payment out and the same had also been allowed.

20.It must also be stated that parallelly the arbitration proceedings proceeded and the first final partial award was passed by the Tribunal on 26.03.2021, adjudicating the claim of the appellant for a sum of USD 294,816.67 and directing the 1st respondent to pay the same together with interest at 4.5% per annum, compounded at three-monthly rests, from the date of award till date of payment. The 1st respondent was also directed to pay costs to the appellant herein.

21.The appellant then filed an application under Section 57 of the Arbitration Act, 1996 (English Act) for correction of certain typographical errors and the corrected award was issued on 07.05.2021. The appellant then

issued demand notices dated 05.07.2021, 26.07.2021 and 05.10.2021 to the 1st respondent calling upon them to pay the sums awarded under the award dated 26.03.2021 and the corrective award dated 17.05.2021.

22.Though notices were delivered to the 1st respondent, they failed to honour their commitment. Thereafter, the appellant filed petition for enforcement of the award under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996 as against the 1st and 2nd respondents jointly and severally.

23.The 2nd respondent was not a party to the arbitration proceedings. But however, the appellant sought to enforce the award also against the 2nd respondent claiming them to be a group company of the 1st respondent and that they had issued a cheque in accordance with clause 7 of the Arbitration Agreement dated 12.04.2019 for a sum of Rs.2,06,78,000/-. It was contended that the 1st and 2nd respondents should be considered as one single economic entity having common directors and having common key personnel in management and also operating from the same premises. It was contended that the businesses were interlinked each other and they were both of the business dealings of the other and also about the contracts entered into by each other. It was also contended that the members of the same family were operating the two companies, interchangeably, with an intention to evade their liabilities.

24.Before the learned Single Judge, the appellant sought lifting of corporate veil to enforce the award against both the 1st and 2nd respondents jointly and severally. The learned Single Judge had directed the respondents to disclose their assets in an affidavit in a sealed envelope before the Court. The financial statement for the Financial Year 2016-17 to 2020-21 were disclosed and it was contended by the appellant that both the 1st and 2nd respondents were family owned group companies having common Directors and intercompany transactions. The learned Single Judge before whom Arb.O.P.(Comm.Div.) No 195 of 2022 came up for consideration had partly allowed the said petition by granting a decree in terms of the Foreign Arbitral Award dated 26.03.2021 and the corrective award dated 17.05.2021 against the 1st respondent and granted liberty to execute the award by filing execution petition, but dismissed the petition as against the 2nd respondent since the 2nd respondent was not a party to the arbitration proceedings.

25.Challenging that particular order, the present appeal had been filed.

26.Heard arguments advanced by Mr.P.Giridharan learned counsel for the appellant and Mr.B.Arvind Srevatsa, learned counsel for the 2nd respondent.

27.It is to be noted that it is the contention of both the learned counsels that the 1st respondent had entered into liquidation and that process is pending.

28.Mr.P.Giridharan, learned counsel for the appellant took the Court through the facts of the case. The learned counsel pointed out that the appellant and the 1st respondent had entered into a Charterparty Agreement dated 22.11.2018 to transport 15,000 MTs of cargo / coal from South Africa to the port at Krishnapatnam. The Charterparty Agreement contained a clause to refer disputes to arbitration. There were demurrage charges payable to the load port. After the cargo had been discharged at Krishnapatnam, the 1st respondent had agreed to remove the cargo within a period of 5 days, but however, there was a delay in such removal. The cargo was removed only after 35 days. The learned counsel stated that for each day, the demurrage charge payable was USD 1,00,000. The appellant became liable to pay demurrage charges for the 27 days of delay in removing the cargo by the 1st respondent. The 1st respondent, however, disputed that fact but admitted that there had been a delay of about 8 days.

29.In order to resolve the issues, the appellant and the 1st respondent had entered into a first Deferment Agreement. The 1st respondent had issued five separate cheques towards payment of the undisputed amount. They had also issued yet another cheque as security. The cheques when presented for payment

were dishonoured initially on the ground that the account was frozen and later on the ground that the account was declared as Non Performing Asset. The learned counsel pointed out that issuing cheques with the knowledge that the 1st respondent was heading towards liquidation was a clear indication that the 1st respondent had intention to default the appellant.

30.With respect to the disputed amounts, in accordance with the clause to refer matters to arbitration, the appellant had instituted arbitration proceedings at London which was the seat of arbitration. The arbitral tribunal returned a finding adjudicating the claim of the appellant. Towards that particular claim, the 1st respondent again issued three separate cheques. At this juncture, the 2nd respondent came forward to issue a cheque for the entire amount as security for the 1st respondent to discharge their liability to the appellant. The matters then proceeded before a learned Single Judge of this Court by filing application under Section 9 of the Act and directions were issued to bring to sale by auction 2500 MTs of coal.

31.The thrust of the arguments of the learned counsel was that the 1st and 2nd respondents are part of Group Companies with common Directors hailing from the same family with business being done interchangeably and amounts transferred from one company to another. It was specifically argued that his transfer was done to evade liabilities. The learned counsel argued that the 2nd

respondent was an alter-ego of the 1st respondent and if the corporate veil of the 1st respondent was lifted, it would be clear that they were only a screen for the activities of the 2nd respondent. It was under those circumstances that the learned counsel filed the petition before the learned Single Judge seeking to enforce the arbitral award against both the 1st and 2nd respondents and to declare the foreign award as the decree of the Court. This is required under Section 47 of the Arbitration and Conciliation Act, 1996. The learned Single Judge had granted a decree as prayed with respect to declaration but refused to mulct the liability on the 2nd respondent. The learned Single Judge was of the opinion that since the 2nd respondent was not a party to the arbitral proceedings, the 2nd respondent cannot be made liable for the award.

32.The learned counsel assailed that particular reasoning of the learned Single Judge and stated that the Court should have taken a step forward to hold that the 1st respondent had, even at the inception of the contract, knew that they would not be in a position to honour their commitments under the agreement and had issued cheques with knowledge that they would be dishonoured and further pointed out that the 2nd respondent had stepped in and had issued a cheque as security for and on behalf of the 1st respondent.

33.The learned counsel pointed out that a learned Single Judge had recorded that they were both Group Companies and had therefore accepted the

cheque issued by the 2nd respondent as security and had raised the lien over the cargo and permitted it to sold by auction. The learned counsel stated that therefore, the appellant should be permitted to enforce the award even against the 2nd respondent, irrespective of the fact whether they were parties to the arbitration proceedings or not. The learned counsel therefore urged that this Court should reverse the judgment of the learned Single Judge and permit enforcement of the award as against the 2nd respondent also.

34.Mr.B.Arvind Srevatsa, learned counsel for the 2nd respondent, however, strongly contested the arguments advanced. The learned counsel pointed out that the 2nd respondent as a Private Limited Company is a separate entity having a separate seal, independent of the 1st respondent. It could be a fact that some of the Directors were common to both companies, but that would not indicate that the 2nd respondent should be made liable for the commitments of the 1st respondent. The learned counsel pointed out that the 2nd respondent was not a party to any of the agreements entered into between the 1st respondent and the appellant herein. Naturally, not being a party to the agreement, they cannot be made liable for any breach of the said agreements. It was an issue only between the appellant and the 1st respondent and as a third party stranger, the 2nd respondent could never be called upon to answer the breach committed by one or made responsible for any award passed owing to such breach.

35.The learned counsel further pointed out that the 2nd respondent had issued a cheque only as a security and not with any intention for the amount being encashed by the appellant herein. It was only to show bonafide of the sister concern and nothing more and nothing less. The learned counsel argued that since there was no privity of contract between the 2nd respondent and the appellant in any of the transactions between the appellant and the 1st respondent, the 2nd respondent can never be made liable to honour the award which was obtained only against the 1st respondent. He pointed out that even a pre-arbitration notice was not issued to the 2nd respondent and therefore, the 2nd respondent, not being a party to the arbitration proceedings cannot be bound by any award granted by the Tribunal. The 2nd respondent was not heard during the arbitral proceedings. The 2nd respondent did not have opportunity to test the documents filed by the appellant. The 2nd respondent was kept completely in dark about the said proceedings. He therefore argued that the learned Single Judge had correctly appreciated the facts and had refused to permit enforcement of the award against the 2nd respondent. The learned counsel sought dismissal of the appeal.

36.We have carefully considered the arguments advanced and perused the material records.

37.The point which arises for discussion and determination is as follows:

"1.Whether the appellant is entitled to seek enforcement of the Foreign Arbitral Award dated 26.03.2021 and the Corrective Award dated 17.05.2021 against the 1st and 2nd respondents jointly and severally since they were Group Companies, irrespective of the fact that the 2nd respondent was not a signatory to the agreement relating to which arbitration proceedings were initiated and also not a party during the arbitral proceedings but solely on the basis of a cheque issued by the 2nd respondent as security for the liabilities of the 1st respondent?"

38.The appellant / LSS OCEAN TRANSPORT DMCC, a company incorporated under the appropriate Laws of the United Arab Emirates and the 1st respondent / K.I. (INTERNATIONAL) LIMITED, a company incorporated under the Companies Act, 1956 had entered into a voyage Charterparty on 22.11.2018, whereby the appellant as a disponent owner agreed to carry cargo of 1,50,000 MT +/- 10% MOLOO (More or Less Owners Option) of coal on board a vessel which had been chartered, M.V.Citrus from Richards Bay Terminal, South Africa to Krishnapatnam Port, India.

39.The Vessel M.V.Citrus arrived at the port of discharge, Krishnapatnam Port on 30.01.2019 and tendered notice of readiness (NOR) at 0100 hrs and proceeded to berth and after discharging 163,114 MT of coal left Krishnapatnam Port on 05.03.2019. The terms of the Charterparty stipulated that the 1st respondent was to ensure that 25000 MT of cargo was discharged per day after the vessel tendered her NOR at the port of discharge.

40.It was therefore contended by the appellant that the cargo should have been discharged within 6.5246 days failing which demurrage charge would be payable at the rate of USD 14,000 per day, as stipulated in the terms of the Charterparty. It is further contended by the appellant that the 1st respondent took 33.5972 days to discharge the cargo and therefore demurrage charges was payable for 27.0727 days and thus, a sum of USD 379,017 became due and payable by the 1st respondent to the appellant which was the demurrage for the period in excess of 6.5246 days. The 1st respondent, however, disputed this computation and claimed that the vessel had used only 12.497222 days and therefore, the demurrage was payable only for 5.972662 days.

41.Both the appellant and the 1st respondent then entered into a first deferment agreement on 13.03.2019. The 1st respondent permitted lien on 15,000 MTs of cargo in consideration for all load port and discharge port demurrage and agreed to pay the demurrage in five monthly instalments of USD

45,201.17 per month. Cheques in this connection, were drawn in favour of the agents of the appellant M/s.Taurus Shipping Pvt. Ltd., on Union Bank of India, Washermanpet, Chennai. It had been covenanted in the said agreement that if the payment of even one instalment is defaulted, then M/s.Taurus Shipping Pvt. Ltd., can encash the post dated cheques to recover the amount due and payable by the 1st respondent. Thereafter, this agreement was further amended and a second demurrage agreement was entered into on 12.04.2019 wherein, the terms of payment were readjusted to three instalments. The 1st respondent issued a cheque again drawn at Union Bank of India, Washermanpet Branch, Chennai for a sum of Rs.2,06,78,000/- as security to adhere to the terms of payment.

42.The 1st respondent then took delivery of 12,500 MTs of cargo and surrendered its right of lien for 2500 MTs in addition to the cheque issued for a sum of Rs.2,06,78,000/-. The 1st respondent paid only the first instalment. The appellant therefore called upon M/s.Taurus Shipping Pvt. Ltd., to present the cheques held as security for encashment. The cheques were returned for the reason that the account of the 1st respondent was frozen and subsequently that it was a Non Performing Asset Account. The appellant had separately initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of the cheques. Upon receipt of notice of such proceedings, the 1st respondent paid the undisputed demurrage charges as agreed in the second demurrage agreement in two tranches through another associate company M/s.Stride Steels Pvt. Ltd.

43.But however, the disputed sum of USD 295,400/- was still payable towards discharge port demurrage. The appellant invoked the arbitration clause in the Charterparty dated 02.08.2018 and an award was passed on 26.03.2021 and a corrective award was passed on 17.05.2021 against the 1st respondent.

44.The appellant then filed an application in A.No.4708 of 2019 under Section 9 of the Act seeking security for the claim. The 2nd respondent herein came forward to replace the earlier cheque of Rs.2,06,78,000/- issued by the 1st respondent with another cheque for the same sum, undated, but again drawn on Union Bank of India, Washermanpet, Chennai, in favour of M/s.Taurus Shipping Pvt. Ltd., in accordance with clause 7 of the second deferment agreement dated 12.04.2019.

45.The facts narrated above are not in dispute.

46.The 2nd respondent handed the cheque for consideration to the Court and claimed that it could be held over as security. It was stated before the Court that the 2nd respondent was one of the group companies of the 1st respondent. This statement had been recorded in the order dated 17.07.2019. Paragraph Nos.4, 5, 6 and 7 on the said order in A.No.4708 of 2019 is extracted below:

"4. The respondent defaulted in making payment of second and third installments. So the applicant presented the cheques given as security and all the three cheques were dishonoured for the reason that the accounts were frozen. Hence, the security furnished by the respondent was not a good security. The cargo with the applicant is 5,000 MT of which 2,500 MT goes for the lien pending an award as per Clause 7 of the agreement dated 12.04.2019 and for the balance 2,500 MT, the applicant is before this Court seeking for an injunction as other than this cargo there is no other asset of the respondent, which the applicant can attach. If the applicant does not have any valid security equivalent to the value of its claim, it will be difficult in the event an award being passed to recover the same from the respondent.

5. After arguments and deliberations, today the parties have come up with certain proposal, as per which, out of the balance 5,000 MT being held by the applicant, 2,500 MT to be sold and the sale proceeds could be adjusted. Accordingly, the respondent has today handed over an undated cheque bearing No.233455 drawn on Union Bank of India, Washermenpet branch, Chennai 600 021 for a sum of Rs.2,06,78,000/- (Rupees Two Crores Six Lakhs and Seventy Eight Thousand only) in the name of "Taurus Shipping Pvt. Limited", as per Clause 7 of the agreement issued by Goyal Ispat Private Limited, which is said to be one of the group companies of the respondent i.e. K.I. (International) Limited to the learned counsel for the applicant, which is also hereby acknowledged.

6. In view of the cheque that has been received today, out of the 5,000 MT of Coal retained by the applicant, 2,500 MT

shall be released to the respondent. The balance 2,500 MT, as per Clause 7 of the agreement, will be kept as lien by the owner.

7. With the above directions, the application is closed."

47.The appellant then filed O.A.No.6092 of 2019 for appointment of a receiver to effect sale of 2500 MTs of cargo which was held in lien by the appellant. That application was resisted by the 1st respondent herein, wherein they specifically pointed out in their counter affidavit that the cheque issued by the 2nd respondent was noted in the order in A.No.4708 of 2019 extracted *supra* as sufficient security. In the counter affidavit, it was also stated that the 1st respondent had become insolvent and therefore, they were forced to handover a fresh cheque from their group company, the 2nd respondent herein. The pleading to that extent in the counter affidavit of the 1st respondent in O.A.No.6092 of 2019 is as follows:

> *"5. The fact that the Respondent under Clasue 7 of Agreement dated 22/11/2018, was forced agree to the Applicant to exercise lien on the balance cargo of 2500 MTs and in addition also agreed to provide an undated cheque for USD 295,4000 (equivalent to Indian Rupees of Rs.2,06,78,000) as security for the disputed amount of dischage port demurrage itself amount to an act of duress, rendering the contract null and void. Since the cheque issued by Respondent's sister concern on the earlier instance had become insolvent, the Respondent's was once again forced to hand over a fresh undate cheque from the Respondent's group concern Goval Ispat Private*

Limited, on 16/07/2019 as part of O.A. No 4708 of 2019, before this Hon'ble Court for release of 7,500Mt cargo under the Agreement clearly establishes the intention of the Applicant to merely force the Respondent for out-of-court settlements. The Applicant even verified the financial soundness of the company and was satisfied with the security provided. That the same security is sufficient for the Applicant to safeguard any claim, which is subject matter of dispute between the parties. Hence, the clause which was entered into upon duress cannot be operated to the detriment of the Respondent. Equity demands the Applicant to permit the Respondent to make use of the cargo. The lien is bad since the clause was imposed under economic duress."

48.The aforementioned pleading is extracted since it discloses reliance of the 1st respondent on the 2nd respondent to provide security for the debts which could arise or which had arisen and which might become payable by the 1st respondent or become enforceable against the 1st respondent. The 2nd respondent had stepped in only on the ground that they are a group company of the 1st respondent. This interlink between the 1st and 2nd respondents had been relied on by the 1st respondent and projected by the 1st respondent and therefore is not a new fact pleaded by the appellant.

49.A learned Single Judge of this Court had passed orders on 04.10.2019 and the earlier fact that a cheque had been provided as security by the 2nd respondent was again noted. It had further been noted that the cheque had been

issued in accordance with clause 7 of the second deferment agreement dated 12.04.2019. Further, taking into consideration that the cargo was a perishable commodity and the weight and quality would deteriorate everyday the Court had permitted both the 1st respondent and the appellant to nominate joint receivers for the sale of 2500 MTs of coal held as security, in manner agreed by the parties. The sale proceeds were directed to be kept in fixed deposit pending disposal of the arbitral proceedings. At this stage, it would only be appropriate to extract clause 7 of the second deferment agreement dated 12.04.2019.

> *"7.Charterers agree that owners can exercise a lien on the balance of cargo of 2,500 MT and charterers further agree to provide an undated cheque in the sum of USD 295,400 (equivalent to Indian rupees Rs.2,06,78,000/-) in favour of "Taurus Shipping Pvt. Ltd.," as security for the disputed amount of discharge port demurrage."*

50.It must be stated that the signatories to this agreement were only the appellant and the 1st respondent. It must be further stated that the 1st respondent had issued a cheque for a sum of Rs.2,06,78,000/- in favour of Taurus Shipping Private Limited as undertaken. Since the other cheques issued by the 1st respondent had been dishonoured, on the ground that the account was frozen and subsequently, on the ground that the account was declared as Non Performing Asset, the cheque already issued came to be of no value. The 2nd

respondent then stepped in and issued another cheque for an even sum as security for the disputed amount of discharge port demurrage which was the subject matter of arbitration initiated between the parties.

51.Thus, it is seen that the 2nd respondent, who now claims to be a stranger third party to the agreements between the appellant and the 1st respondent was actually aware of the nature of the agreements, was aware that the 1st respondent had undertaken to provide security towards the disputed amount which was the subject matter of arbitration, was aware that the 1st respondent would not be able to honour the security provided and therefore, had, with knowledge issued the cheque for a sum of Rs.2,06,78,000/- as security for the disputed amount of discharge port demurrage.

52.Thus, the cheque had been issued as security towards the award amount, if passed by the arbitral tribunal, and which would become enforceable against the 1st respondent. The 2nd respondent had, therefore voluntarily, issued the said cheque with knowledge that there was a possibility that the 1st respondent would be in a position not to satisfy an award if passed by the arbitral tribunal and had permitted enforcement of the said award against the security which it provided namely, the cheque for Rs.2,06,78,000/-

53.The 2nd respondent was therefore aware of the nature of dispute referred to the arbitral tribunal. Though the 2nd respondent can claim that they were not a signatory to the agreement relating to which the arbitration proceedings had been initiated, they had taken a conscious decision to provide security for any award if granted against the 1st respondent. Naturally, when an award had been passed, and if the appellant could not enforce the same against the 1st respondent then they could proceed against the security provided by the 2nd respondent. By the act of issuing a cheque as security for the award amount if passed, the 2nd respondent had directly undertaken to satisfy the award on failure of the 1st respondent to satisfy the award, if passed against it.

54.Viewed from this angle, the technical stand now taken by the 2nd respondent that the award cannot be enforced against them since they were not a signatory to the agreement relating to the arbitration proceedings initiated and since they were not party to the arbitration proceeding has to be necessarily rejected. The arbitration proceedings was confined to the disputes which had arisen between the appellant and the 1st respondent relating to the demurrage charges payable at the discharge port which proceeded from the terms of the Charterparty Agreement dated 22.11.2018, and the first Deferment Agreement dated 13.03.2019 and the second Deferment Agreement dated 12.04.2019.

55.Those agreements related to the Charter of M.V.Citrus by the appellant to transport 1,50,000 MTs +/- 10% MOLOO (More or Less Owners Option) of coal on board a single Decker Bulk Carrier Capesize ship from Richards Bay Terminal, South Africa to Krishnapatnam Port, India and towards the demurrage charges payable at the load port and discharge port. The 2nd respondent was not involved in that business transaction. They however walked into the dispute voluntarily by providing a cheque for Rs.2,06,78,000/- as stipulated under the second deferment agreement dated 22.11.2018 as security "*for the disputed amount of discharge port demurrage*". The arbitral proceedings related to "*the disputed amount of discharge port demurrage*". The appellant as claimant has claimed a sum of Rs.2,06,78,000/- in the arbitral proceedings. We therefore hold that the 2nd respondent effectively stood as a guarantor for enforcement of the award, if passed by the arbitral tribunal at London and in evidence thereof and in acceptance of such status thereof had issued the cheque as security for the amount claimed in the arbitral proceedings.

56.The allegation that the 1st and 2nd respondents are group companies are neither denied nor disputed. It is admitted by both sides that they have common directors, that they have a common registered address and that there had been transactions interse between them at various points of time. Though the fortunes of one may not benefit the other directly, the misfortunate of one, in this instance, the 1st respondent which had entered into liquidation would certainly

have an effect on the security provided by the other. This security had been provided to offset debt which might arise under a specific arbitral award. The 2nd respondent, in their capacity as group company by issuing a cheque as security for the award is therefore bound to answer the claim for the award amount granted.

57.This view now presented by this Court does not require to apply the principle of lifting the corporate veil. The very fact that the cheque was issued as security for a specific amount and for the exact sum claimed by the appellant before the arbitral tribunal itself is sufficient to hold that the 2nd respondent had voluntarily and consciously offered the cheque as security for the enforcement of the award, if passed and for no other purpose.

58.An award had actually been passed in favour of the appellant for the exact amount claimed by them and for the amount in the cheque provided as security by the 2nd respondent. If on the basis of such cheque issued by the 2nd respondent, the appellant is not permitted to enforce the award against the 2nd respondent, it would only lead miscarriage of justice.

59.The 1st respondent had entered into liquidation. This is a fact which cannot be denied or disputed by the 2nd respondent. They are, in their own terms, group companies. Significantly, though before the learned Single Judge a

counsel represented the 1st respondent there has been no appearance on behalf of the 1st respondent before this Court. This also leads this Court to hold that the issuance of the cheques as security, purportedly, under clause 7 of the second Deferment Agreement dated 22.11.2018 was tainted with fraudulent intention to defeat enforcement of the award if passed by the Tribunal.

60.When the award had been passed and there was a real possibility of enforcing the same, the stand taken by the 2nd respondent that they were not parties to the arbitral proceedings and therefore the award cannot be enforced against them has to be rejected. Their role began only when an award had been passed and there was impossibility to enforce the same against the 1st respondent. The security provided by them namely, the cheque for a sum of Rs.2,06,78,000/- then becomes a valuable security for the enforcement of the award. The 1st respondent can never claim innocence and ignorance of the nature of transactions between the appellant and the 1st respondent. They were aware of the same and they had very specifically issued the cheque, not at the calling of either the appellant or the 1st respondent, but under a specific clause in the second deferment agreement dated 22.11.2018. They had misleded the Court to hold, on the earlier occasion, when orders were passed in A.No.4708 of 2019 and in A.No.6092 of 2019, that the cheque was a valid security and had been issued with intention as security for the disputed amount which was the subject matter of the arbitral proceedings.

61.The learned counsel for the 2nd respondent had argued very forcefully that enforcement could not be initiated against the 2nd respondent. The learned Single Judge had accepted such argument and had held that the 2nd respondent not being a signatory to any of the agreements between the appellant and the 1st respondent and not being a party to the arbitral proceedings cannot now be made a party in the enforcement application.

62.We do not agree with the reasons advanced. We hold that the learned Single Judge had not taken note of one crucial fact namely, that the cheque had actually been issued only as security towards the disputed amount of demurrage charges, which was the subject matter of the arbitral proceedings and only to provide security for the enforcement of the award, if passed by the arbitral tribunal and for no other purpose. The award had been subsequently passed. We hold that the appellant has a right in law to proceed against the 2nd respondent to enforce the award on the basis of the cheque which had been issued as security voluntarily and consciously by the 2nd respondent for and on behalf of the 1st respondent. If not so permitted, it would only indicate that the Court condones an act of fraud by the 2nd respondent in misleading the learned Single Judge who accepted the said cheque and passed orders in A.No.4708 of 2019 and A.No.6092 of 2019 accepting the said cheque as security.

63.The case laws presented by the learned counsel for the appellant related to proceedings under Section 11 of the Arbitration and Conciliation Act, 1996. However, this Court is now involved with enforcement of arbitral award under Sections 46 to 49 of the Arbitration and Conciliation Act, 1996.

64.We are conscious that an award can be enforced only against a party to the arbitral proceedings. However, when a guarantor had come forward to provide a cheque as security towards the claim in the arbitral proceedings, then if an award is passed, naturally, the claimant in whose favour the award had been passed has a legal right to proceed against the guarantor either by enforcing the security or if that security had become stale and unenforceable in any other manner as is permissible under law.

65.We are deeply conscious that we have moved into unchartered territory, but the complex world of Group Companies ostensibly formed with separate objects, but in reality, to act as shadows of each other, has to be noted by us. The very concept of Arbitration Act itself is to ensure that awards are not frustrated by pleadings which might appear lawful but which are tainted with an element of deception and fraud.

66.In this case, the 2nd respondent had issued a cheque as security for a sum of Rs.2,06,78,000/- with knowledge when they issued the cheque, that if an

award is passed they would be called upon to satisfy the award. They had knowledge that they would be made a party in an application seeking enforcement of the award. Having issued the cheque with such knowledge, they cannot now put forth a plea that, since they were not parties to the agreement or party to the arbitral proceedings, they cannot be made liable jointly and severally with the 1st respondent for the award passed by the arbitral tribunal. If permitted this would indirectly indicate encouragement of an act of deception and underlying fraud, which should not be permitted and which should be prohibited and which is now prevented by us.

67.In view of these reasons, the point framed for consideration is answered that the appellant is entitled to enforce the award against the 2nd respondent also jointly and severally with the 1st respondent. We hold that there is no dispute over the fact that the 2nd respondent is a group company of the 1st respondent and in the circumstances, owing to the fact that the 2nd respondent had issued a cheque towards the claim made in the arbitral proceedings as security for the said sum, there is no need to venture into the formality of lifting the corporate veil, as the veil had been opened by the 2nd respondent by voluntarily acting as guarantor by issuing a cheque as security for the claim made before the arbitral tribunal by the appellant. The pleas of innocence of the 2nd respondent of the agreements or of the arbitral proceedings are rejected by us.

68.In view of these reasons, we hold that the order of the learned Single Judge in Arb.O.P.(Comm. Div.) No.195 of 2022 dated 16.10.2023 has to be set aside and accordingly, the same is set aside. The Appeal stands allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

(C.V.K.,J.) (K.B.,J.)
27-02-2026

smv

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.

smv

Pre-delivery Judgment mad in
OSA (CAD) No. 15 of 2024

27-02-2026