IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 403 OF 2025

Osterreichischer Llyod Seereederei … Petitioner

Versus

Victore Ships Private Limited … Respondent

Mr. Prathamesh Kamat a/w. Ms. Ankita Sen and Ms. Arpeeta Paanvalkar i/b. Renata Partners LLP for Petitioner.

Mr. Anil Kumar Verma a/w. Ms. Sheetal Mishra i/b. Mr. Animesh Jadhav for Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 5th AUGUST 2026

P.C.

1. The Petitioner seeks enforcement of a foreign arbitral Award dated 23rd March 2020 ("**the Award**"). The Award was passed in arbitration proceedings between the Petitioner and the Respondent conducted under the Rules of the London Maritime Arbitrators Association ("**LMAA**") in accordance with English law as agreed between the Parties.

2. The Respondent has filed an Affidavit in Reply, opposing the present Petition on several grounds.

Submissions on behalf of the Petitioner:

3. Mr. Kamat, learned counsel appearing on behalf of the Petitioner, submitted that the Petitioner and the Respondent had, on 10th December 2018, entered into a Charterparty Agreement ("**CPA**"), by which the Petitioner had agreed to charter the Petitioner's Vessel, i.e., MCP Villach ("**the Vessel**"), to the Respondent, for a period of three months at the rate of USD 4,300 per day. He submitted that Clause 125(a) of the CPA contained an arbitration.

4. He then pointed out that as per Clause 2[1] of the CPA, the Respondent was to bear the bunker charges in respect of the said Vessel. Mr. Kamat submitted that the Respondent, however, failed to make payment of the bunker charges, which resulted in the Vessel being arrested in Bangladesh. He submitted that the Petitioner had no option but to make

[1] ***"Clause 2***

That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port charges, Pilotages, Stevedoring, Tallymen, sludge disposal, except customary port requirement, any vessel maintenance... towage, canal dues, municipality or state taxes including taxes levied on Chatterers' own account of cargo carried, hatch watchmen, all other watchmen, Agencies, Commissions."

payment of the bunker charges in order to secure the release of the Vessel.

5. Mr. Kamat submitted that the Petitioner, therefore, vide an email dated 26th June 2019, invoked arbitration and, as per Clause 125(a), nominated Mr. Simon Gault as the Petitioner's nominee arbitrator. Clause 125(a) reads thus, viz.

> *"**Clause 125-Dispute Resolution Clause English Law, London Arbitration***
>
> *(a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in Singapore In accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.*
>
> *The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.*
>
> *The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party*

> *does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.*
>
> *Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator."*

(emphasis supplied)

6. Mr. Kamat submitted that since the Respondent failed to nominate its Arbitrator within the stipulated fourteen-day period as prescribed in Clause 125(a), Mr. Simon Gault stood appointed as the sole arbitrator as per the terms of the aforesaid Clause.

7. Mr. Kamat submitted that the Respondent did not, despite repeated opportunities being given by the Tribunal, either enter an appearance or file a Statement of Defence. He submitted that the Tribunal therefore rendered an Award dated 23rd March 2020, upholding the Petitioner's claim and directing the Respondent to make (i) payment of a sum of USD 2,00,733.01, (ii) payment of the interest at the rate of 5% per annum and pro rata and compounded at three monthly rests from 3rd July 2019, upon

the said sum and (iii) payment of USD 7,082.12 towards the costs of the Award to the Petitioner.

8. Mr. Kamat submitted that, by email dated 27th March 2020, the Petitioner called upon the Respondent to comply with the Award, and since the Respondent failed to do so, the present Petition came to be filed.

9. Mr. Kamat then submitted that the Respondent also did not challenge the Award, and the Award had therefore attained finality. He then placed reliance upon the Affidavit of Mr. Danyel James White, an English Solicitor, by which Mr. White confirmed that the Award had become final and binding under English law.

10. Mr. Kamat submitted that the said Award would be enforceable as a foreign Award as defined under Section 44 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), since the Award was passed by an Arbitral Tribunal in England, the United Kingdom, i.e., the territory to which New York Convention applies, and the same is recognised in Part II of the Arbitration Act.

Basavraj

Submissions on behalf of the Respondent:

11. Mr. Verma, learned counsel appearing on behalf of the Respondent, submitted that the present Petition deserved to be dismissed in limine. He submitted that the Award suffered from several procedural infirmities and had also been passed in violation of the principles of natural justice. He thus submitted that the Respondent was entitled to resist enforcement of the Award under one or more provisions of Section 48 of the Act.

12. Mr. Verma first submitted that the Tribunal's constitution was not in accordance with Clause 125(a) of the CPA. He pointed out that Clause 125(a) of the CPA expressly provided for Singapore to be the seat of arbitration. He submitted that notwithstanding this express stipulation, the arbitration had proceeded entirely in England.

13. He then also submitted that the Tribunal was not constituted in accordance with the arbitral mechanism contemplated in Clauses 1, 17, 43 and 125(a) of the CPA, which provided for a panel of 3 arbitrators, and the Award was passed by a sole arbitrator. He submitted that an Award

passed by a Sole Arbitrator was therefore not in accordance with the Agreement between the parties and was thus incapable of being enforced.

14. Learned Counsel also submitted that enforcement of the Award must be refused under the provisions of Section 48(1)(b) of the Arbitration Act, as the Respondent had been unable to present its case due to procedural unfairness and circumstances beyond its control. He submitted that the Tribunal had, despite the fact that the Respondent having raised jurisdictional and procedural objections to its constitution, nevertheless proceeded to pass an Award against the Respondent. He further submitted that the Award was delivered on 23rd March 2020, at the onset of the COVID-19 pandemic, when unprecedented global disruptions prevailed, thereby preventing the Respondent from taking timely steps to challenge the Award before the appropriate forum.

15. Mr. Verma submitted that, even assuming the constitution of the Tribunal to be valid, the Award nevertheless was unenforceable for the following reasons:

i. *First*, the Award dealt with matters falling outside the scope of the arbitration agreement since it determined claims relating to payments made to UMS for the supply of bunkers, although UMS was admittedly not a party to the CPA. He submitted that disputes relating to payments due to UMS neither arose out of nor fell within the scope of the CPA and consequently lay beyond the Tribunal's jurisdiction. He also submitted that the Petitioner had objected to the bunkers supplied by UMS, resulting in the original bunkers being discharged and replaced, thereby causing the Respondent substantial commercial loss.

ii. *Second*, he submitted that the CPA never contemplated the Petitioner's payments to UMS. According to him, the Petitioner had unilaterally settled UMS's claims without informing or obtaining the Respondent's consent and without issuing any notice of the proposed settlement. He therefore submitted that such settlement was entirely dehors the CPA and, consequently, beyond the scope of the arbitration agreement. The liability arising from such unilateral payments, which according to him was a self-created liability for which the Respondent could not be held responsible.

He thus submitted that the dispute which was referred to arbitration did not fall under the scope of the CPA, and hence, the Award passed by the Tribunal, upon the issues it had no jurisdiction over, cannot be enforced, and therefore, the present Petition must be dismissed with costs.

<u>Submissions on behalf of the Petitioner in Rejoinder:</u>

16. Mr. Kamat submitted that the Respondent had, at no time before the Tribunal, raised any objection *qua* the seat of arbitration. He was at pains to point out that the Respondent had raised this objection only for the first time in these proceedings.

17. He then pointed out that the CPA expressly provided that the arbitration would be governed by the LMAA Terms and that the applicable law was English law. He submitted that Section 30 of the English Arbitration Act, 1996, which is *pari materia* to Section 16 of the (Indian) Arbitration Act, 1996, required that any objection to the jurisdiction or the constitution of

the Arbitral Tribunal must be raised before the Tribunal itself. He reiterated that the Respondent had admittedly not done so.

18. Mr. Kamat further submitted that Section 31 of the English Arbitration Act, 1996, provides that jurisdictional objections can be raised by any party to the arbitration before the Arbitral Tribunal. He also submitted that Section 67 of the English Arbitration Act, 1996, provides that a party aggrieved may approach the Court against any ruling by the Arbitral Tribunal on its jurisdiction. He therefore submitted that the Respondent had ample opportunity to invoke these statutory remedies, including, if so advised, the remedy under Section 72 of the English Arbitration Act, 1996, but the Respondent had not done so. He submitted that the Respondent, having failed to avail itself of any of these remedies, could not now be permitted to raise these issues for the first time, solely to resist enforcement of an Award that the Respondent had in fact never opposed.

19. Mr. Kamat then submitted that the Respondent's contention that the Tribunal had failed to consider the issue of jurisdiction was factually

incorrect. Inviting my attention to paragraph 3 of the Award, he pointed out that the Tribunal had specifically recorded as follows:

> *"3. Disputes arose between the parties. These are more particularly described in my reasons. The Owners appointed me the undersigned Simon Gault of Field Farm, Iden Green, Benenden, Kent TN17 4HF as arbitrator. The Charterers failed to appoint an arbitrator and the Owners appointed me as sole arbitrator pursuant to the Clause 125 of the Charterparty. I accepted that appointment on LMAA Terms 2017. The Charterers failed to appoint an arbitrator and the Owners subsequently appointed me as sole arbitrator pursuant to Clause 125. Pursuant to paragraph 5 of the LMAA Terms 2017 and to Clause 125 of the Charterparty, the LMAA Terms 2017 apply to this arbitration. Furthermore, pursuant to paragraph 6 of those terms the seat of this arbitration is in England."*

20. Mr. Kamat then submitted that paragraph 6 of the LMAA Terms specifically provided that, unless the parties have agreed otherwise, where the arbitration agreement is governed by English law, England shall be the seat of the arbitration. He then placed reliance on the decision of the Hon'ble Supreme Court in ***Arif Azim Company Limited v. Micromax Informatics FZE***[2], which he pointed out had held as follows, viz.

[2] (2025) 9 SCC 750.

> "*77.6. The more appropriate criterion for determining the seat of arbitration in view of the subsequent decisions of this Court is that where in an arbitration agreement there is an express designation of a place of arbitration anchoring the arbitral proceedings to such place, and there being no other significant contrary indicia to show otherwise, such place would be the 'seat' of arbitration even if it is designated in the nomenclature of 'venue' in the arbitration agreement.*
>
> *77.7.* ***Where the curial law of a particular place or supranational body of rules has been stipulated in an arbitration agreement or clause, such stipulation is a positive indicium that the place so designated is actually the 'seat', as more often than not the law governing the arbitration agreement and by extension the seat of the arbitration tends to coincide with the curial law****."* (emphasis supplied)

He thus submitted that, in the present case, the language of Clause 125(a) of the CPA clarified that the crucial and procedural English laws will govern the CPA and that these override the reference to Singapore as the seat of the arbitration.

21. Basis the above, Mr Kamat submitted that the CPA contained no independent or unequivocal designation of Singapore as the seat of arbitration. He submitted that, on the contrary, the CPA expressly provided for English law and the LMAA Terms, both of which contemplated that the seat of arbitration would be England. He therefore

submitted that the Respondent's objection to the seat of arbitration was wholly misconceived and amounted to nothing more than a red herring to resist enforcement of the Award, which was both final and unimpeachable.

22. Mr. Kamat further submitted that, even assuming there had been any irregularity in the constitution of the Arbitral Tribunal, such an objection could not be entertained at the enforcement stage, where the Award had never been challenged before the competent forum. In support of this proposition, he relied upon the decision in ***POL India Projects Ltd. v. Aurelia Reederei Eugen Friederich GmbH***[3] wherein it was held that even if the composition of the Tribunal was not in accordance with the agreement and the Award is not challenged by the aggrieved party, the right to object to the correctness of such Award is effectively lost.

23. He then submitted that the Respondent's reliance on Section 48(1)(b) of the Arbitration Act, was plainly untenable since the Tribunal had, in fact, afforded the Respondent, not one, but several opportunities to file a Statement of Defence. He submitted that despite these repeated

[3] 2015 SCC OnLine Bom 1109.

opportunities, the Respondent had consciously chosen not to do so. In these circumstances, he submitted that the question of the Respondent resorting to Section 48(1)(b) to resist enforcement of the Award was wholly misconceived.

24. Mr. Kamat submitted that what the Respondent was attempting to do was to reopen the merits of the dispute in proceedings under Section 48. He then placed reliance upon the decision of the Hon'ble Supreme Court in ***Shri Lal Mahal Ltd. v. Progetto Grano SpA***[4] to submit that the scope of enquiry under Section 48 is extremely limited and that the Court, while considering the enforcement of a foreign Award, cannot sit in appeal over the findings of the arbitral Tribunal or reappreciate the merits of the dispute.

Reasons and Conclusions:

25. Having heard Learned Counsel for the parties and having considered the rival contentions, the record before me and the case law upon which

[4] (2014) 2 SCC 433.

reliance is placed, I find that the Petition must succeed. I say so for the following reasons, viz.

A. The Respondent's contention that UMS was not a party to the CPA and that the dispute therefore fell outside the scope of the arbitration agreement is wholly misconceived. The claim in arbitration arose from the Respondent's failure to pay for bunkers supplied to the Vessel. Clause 2 of the CPA expressly casts that obligation upon the Respondent. Upon the Respondent's default, the Vessel came to be arrested, compelling the Petitioner to discharge the outstanding bunker dues solely to secure its release. The arbitration was thereafter invoked to recover these amounts. The dispute therefore plainly arose out of and in connection with the CPA and squarely fell within the ambit of the arbitration clause. The Respondent's contention to the contrary is entirely untenable and devoid of any merit and is accordingly rejected.

B. It is not in dispute that Clause 125(a) of the CPA expressly provides that the Agreement shall be governed by English law and that the arbitration shall be conducted in accordance with the LMAA Rules. The Respondent contention is that the seat of arbitration was Singapore, and therefore the constitution of the Arbitral Tribunal was invalid and must, in my view, be rejected for two reasons. Firstly, the Respondent never raised this objection before the Tribunal, even though it had every opportunity to do so. Secondly, this contention, even if taken, is lacking in merit in view of the decision of the Hon'ble Supreme Court in the case of ***Arif Azim Company Ltd. v. Micromax Informatics FZE***, since the parties had agreed to arbitration under the Rules of the London Maritime Arbitrators Association in accordance with English law.

C. The CPA provides that where one party fails to nominate its arbitrator within fourteen days of receiving notice of the other party's nomination, the arbitrator nominated by the latter shall proceed as the sole arbitrator. In the present case, the Petitioner nominated Mr. Gault by an email dated 16th August 2019, the Respondent was therefore required to nominate its arbitrator on or before 30th August 2019. Admittedly, the Respondent chose not to do so. Hence, the contention that the Tribunal was not constituted in accordance with the provisions of Clause 125(a) is untenable.

D. Crucially, none of the aforesaid objections were ever raised before the Tribunal, despite the Tribunal granting ample opportunity to the Respondent. The Petitioner's reliance upon Section 30 of the English Arbitration Act, 1996, is apposite, since it expressly provides that the arbitral Tribunal may decide on its jurisdiction. The Agreement between the Parties, which is admittedly governed by English Law, was incumbent upon the Respondent to have raised such an objection before the Tribunal as per the governing law.

E. Also, the English Arbitration Act, 1996, provides a complete statutory framework for raising jurisdictional objections before the Tribunal and, where necessary, before the supervisory Court. The Respondent consciously chose not to invoke any of these remedies and has elected to remain absent throughout the arbitral proceedings. Hence, for the Respondent to insinuate that the

Tribunal has not acted fairly is as unfortunate as it is dishonest. In my view, therefore, the Respondent's objection to the seat of arbitration does not arise in these proceedings.

F. The Award has also admittedly attained finality, and the Respondent has never challenged it. The Respondent's attempt to rely upon the COVID-19 pandemic is plainly untenable since even assuming that the pandemic prevented the Respondent from immediately availing itself of the statutory remedies, the Respondent has not so much as attempted an explanation as to the Respondent's inaction after COVID-19 had come to an end, much less what steps were taken during that time.

G. Even otherwise, assuming for the sake of argument that there was any infirmity in the Tribunal's constitution, such an objection could only have been pursued before the supervisory Court under the English Arbitration Act, 1996 within the period prescribed. The Respondent having chosen not to avail itself of the remedy specifically as provided in law, cannot now seek to reopen issues that have attained finality under the guise of resisting enforcement. In this regard, the reliance placed by the Petitioner upon ***POL India Projects Ltd. v. Aurelia Reederei Eugen Friederich GmbH*** is well founded.

H. I also find that the contention of the Respondent that Section 48(1)(b) of the Arbitration Act, 1996, would apply is equally misconceived. Section 48(1)(b) is intended to protect a party who, for reasons beyond its control, was genuinely unable to present its case before the arbitral Tribunal. It is not meant to be used as a shield to resist enforcement by a party who has chosen not to appear before a Tribunal despite ample opportunity. In the present case, it is undisputed that the Respondent was duly served with notices of the arbitral proceedings and was repeatedly afforded opportunities to enter an appearance and file its Statement of Defence. The Respondent nevertheless chose not to do so. Such voluntary abstention can by no stretch of imagination be characterised as an inability to present one's case within the meaning of Section

48(1)(b). To accept such a contention would really be doing violence to the plain language of the provision. The decision in the case of ***Shri Lal Mahal Ltd. v. Progetto Grano SpA*** would squarely apply.

26. Hence, for the aforesaid reasons set out in (**A**) to (**H**), I pass the following Order:

i. The captioned Petition is allowed in terms of prayer clause '(**a**)'.

ii. The Award dated 23rd March 2020 shall be enforceable as a decree of this Hon'ble Court, under the provisions of Chapter II of the Arbitration and Conciliation Act, 1996 and the same shall be enforced against the Respondent.

iii. There shall be no orders as to costs.

[ARIF S. DOCTOR, J.]

Basavraj