

Shanghai Electric Group Co. Ltd vs Reliance Infrastructure Ltd on 29 January, 2024

Author: Jasmeet Singh

Bench: Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
O.M.P. (EFA) (COMM.) 4/2023, CCP(0) 77/202
1406/2023, EX.APPL.(05) 1407/2023
SHANGHAI ELECTRIC GROUP CO. LTD.

RELIANCE INFRASTRUCTURE LTD

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

% 29.01.2024

1. Mr. Singh, learned counsel for the judgment-debtor states that he has filed an application under Section 47 read with 151 of CPC seeking dismissal of the present enforcement petition on the ground of lack of territorial jurisdiction vide diary No. 178359 of 2024. The application has been called from the Registry and taken up for hearing. Let it be numbered.

2. The present execution petition has been filed under Section 44 to 49 of the Arbitration and Conciliation Act, 2006 seeking enforcement of the foreign award dated 08.12.2022, which was passed in favour of the decree- holder. The said award has been passed to the tune of USD 146,309,239.27 along with interest at the rate of 5.33% per annum.

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3. Vide the application filed by Mr. Singh, learned counsel for the judgment-debtor has raised 3 objections.

4. Firstly, that this Court has no territorial jurisdiction to entertain the execution petition as the sole basis for coming to this Court is given under para 71 of the execution which reads as under:

"71. It is submitted that this Hon'ble Court is the "Court" as defined in the Explanation to Section 47 of Arbitration Act.

This is because, this Hon'ble Court is "the High Court having original jurisdiction to decide the questions forming the subject-matter of the [Foreign Award].." as the Respondent has several assets within the territorial jurisdiction of this Hon'ble Court. In this regard, it is submitted that the Respondent owns and holds equity shares in several companies, which have their registered offices in New Delhi. i.e. within the territorial jurisdiction of this Hon'ble Court. The Respondent has the below mentioned shareholding in the following companies (whose registered offices are situated within the territory of this Hon'ble Court):

(a) 100% shareholding in Delhi Airport Metro Express Private Limited;

(b) 51% shareholding in BSES Yamuna Power Limited;

(c) 51% shareholding in BSES Rajdhani Power Limited; and

(d) 3.06% shareholding in Indian Highways Management Company Limited."

5. Secondly, he states that the shares of the respondent are in demat form in Mumbai and in view of Section 88(3) of the Companies Act read with Section 11 and 17 of The Depositories Act, 1996, it will be the Courts at Mumbai which will have jurisdiction.

6. In addition, he states that the reliance of the learned counsel for the This is a digitally signed order.

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7. Thirdly, he states that the award is based on forgery and hence this Court in execution petition can set aside the award.

8. I have heard learned counsel for the decree-holder.

9. Section 88(3) of the Companies Act, 2013 read with Sections 11 and 17 of The Depositories Act, 1996 read as under:

"Section 88:- Register of members, etc. (1).....

(2)....

(3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), shall be deemed to be the corresponding register and index for the purposes of this Act.

Section 11: Register of beneficial owner:- Every depository shall maintain a register and an index of beneficial owners in the manner provided in sections 150,151 and 152 of the Companies Act, 1956 (1 of 1956).

Section 17: Rights and obligations of depositors, etc.- (1) Subject to the provisions of this Act, the rights and obligations of the depositories, participants and the issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations."

10. In the present case, there are 4 companies and all the 4 companies are incorporated in Delhi and have their registered offices at Delhi.

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11. For the said reasons, I am of the view that the assets of the judgment- debtor being share holding of the above 4 companies are situated at Delhi and this Court would have territorial jurisdiction.

12. The reliance on Section 88(3) of the Companies Act read with Sections 11 and 17 of the Depository Act is misconceived as the same refers to the register and index of the beneficial owners maintained by the depository.

13. Needless to add, that the list of beneficial owners and shareholders is also maintained at the registered office of the company which is in the present case, situated within the territorial jurisdiction of this Court.

14. The reliance of the counsel for the judgment-debtor on the judgment of "ETA Mauritius Limited vs. Pueblo Holdings Limited" at the High Court of Judicature at Madras in O.S.A. Nos. 156,157,160,161 and 162 of 2020 is misconceived.

15. The reliance of Mr. Singh on para 43 of the aforesaid judgment as under:

"43. Yet another submission of the learned Senior Counsel appearing for the award-debtor is that, even assuming for a moment that if the version of the award-holder is accepted and that the award-debtor is having shares in Indian company, it can be attached where the share certificates are located. In the instant case, even as per the award-holder, the share certificates are located in Mauritius. Under such circumstances, this Court has no jurisdiction to attach those shares certificates to realise the decree. But, we are of the opinion that the share certificates held in physical form, will not confer jurisdiction, but the "situs" of the share certificates alone will confer jurisdiction. Wherever the share certificate is located, the transfer of shares can be effected only in the place where it was issued by the competent Registrar of companies.

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16. However, what is relevant is para 40 of the said judgment which reads as under:

"40. In view of the above submissions made on either side, we proceed to analyse the maintainability of the Execution Petition before this Court. As per the statement of the award-holder, the assets sought to be attached are in the form of share certificates and since the 'situs of the shares is within the jurisdiction of this Court, the foreign awards can be executed, though the companies are incorporated in the Foreign Country(ies). In support of his contentions, the learned Senior Counsel appearing for

the award-holder placed heavy reliance on the decision of the Supreme Court in the case of *Brace Transport*. This is a digitally signed order.

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" 13. Before we deal with the facts of the case before us, a statement of some broad principles is necessary. The New York Convention speaks of 'recognition and enforcement of an award. An award may be recognised, without being enforced, but if it is enforced, then it is necessarily recognised. Recognition alone may be asked for as a shield against re-agitation of issues with which the award deals. Where a court is asked to enforce an award, it must recognise not only the legal effect of the award but must use legal sanctions to ensure that it is carried out. In the *Law and Practice of International Commercial Arbitration* by Redfern and Hunter (1986 Edn.,) it is said (at pages 337 and 338);

A party seeking to enforce an award in an international commercial arbitration may have a choice of country in which to do so; as it is sometimes expressed, the party may be able to go forum shopping. This depends upon the location of the assets of the losing party. Since the purpose of enforcement proceedings is to try to ensure compliance with an award by the legal attachment or seizure of the defending party's assets. Legal proceedings of some kind are necessary to obtain title to the assets seized or their proceeds of sale. These legal proceedings must be taken in the State or States in which the property or other assets of the losing party are located.""

17. A perusal of the same shows that in the case before the Madras High Court, the companies were incorporated in foreign lands and hence the Madras High Court was of the view that transfer of shares can only be effected at the place where it is issued by the competent Registrar of Companies.

18. However, in the present case, the competent Registrar of Companies This is a digitally signed order.

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19. As regards the finding in the judgment u/s 9 is concerned, para 87 in *Shanghai Electric Group Co. Ltd.* (supra) is also relevant, wherein the Coordinate Bench has categorically held as under:

"87. Thus, in light of the original jurisdiction exercisable by the Court, the location of assets to satisfy the resultant foreign award, can indeed come into play when taking

recourse to proceedings under Section 9.

88. Applying this principle, the Court does not find any ground to dismiss the present petition on the ground of lack of jurisdiction, pending adjudication of arbitral proceedings."

20. Even though Section 9 filed by the decree-holder was dismissed, the observations noted above are of relevance.

21. Mr. Singh, learned counsel for the judgment-debtor does not press the third objection, which will be pressed before the appropriate forum.

22. Mr. Singh, learned counsel for the judgment-debtor further states that the judgment-debtor has filed cross objections in the appeal filed by the decree-holder against the judgment of the Coordinate Bench dated 19.07.2022.

23. For the said reasons, the objections to the jurisdiction of this Court are declined.

24. Mr. Singh, learned counsel for the judgment-debtor states that there is another objection filed yesterday and the order of making payments may be considered only after his objections are decided.

25. Let the objections be listed before 12.03.2024.

26. The parties are at liberty to file a short note and documents which they wish to rely on before the next date of hearing.

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27. List on 12.03.2024.

JASMEET SINGH, J JANUARY 29, 2024/DM Click here to check corrigendum, if any This is a digitally signed order.

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