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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CHAMBER SUMMONS NO. 14 OF 2017  
IN  
EXECUTION APPLICATION NO. 240 OF 2011**

Vitol SA	...Applicant/ Original Respondent/ Award Holder
<i>In the matter between</i>	
Asian Natural Resources (India) Ltd	...Original Claimant/ Award Debtor
<i>Versus</i>	
Vitol SA & Ors	...Original Respondent/ Award Holder

**WITH  
NOTICE OF MOTION NO. 371 OF 2017  
IN  
CHAMBER SUMMONS NO. 14 OF 2017  
IN  
EXECUTION APPLICATION NO. 240 OF 2011  
WITH  
CHAMBER SUMMONS NO. 305 OF 2019  
IN  
CHAMBER SUMMONS NO. 14 OF 2017**

**IN**  
**EXECUTION APPLICATION NO. 240 OF 2011**  
**WITH**  
**CHAMBER SUMMONS NO. 238 OF 2019**  
**IN**  
**CHAMBER SUMMONS NO. 14 OF 2017**  
**IN**  
**EXECUTION APPLICATION NO. 240 OF 2011**  
**WITH**  
**CHAMBER SUMMONS NO. 1440 OF 2018**  
**IN**  
**EXECUTION APPLICATION NO. 240 OF 2011**

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**Mr Rohit Bhonsale**, *with Ms Chanchal S Sharma, i/b RK Agrawal, for the Applicant in Chamber Summons No. 305 of 2019.*

**Mr Zal Andhyarujina**, *with Ms Naira Jeejeebhoy, Mr Pabitra Dutta, Mr Mayank Suri and Ms Trupti Sharma, i/b Bose & Mitra & Co, for the Award Holder/Applicant in Chamber Summons Nos. 4 of 2017, 238 of 2019 and 305 of 2019 and Notice of Motion No. 371 of 2017.*

**Mr Rohit Gupta**, *with Sumedha Sawant, i/b NN Amin & Co, for Respondent No.2 (Union Bank of India) in Chamber Summons Nos. 14 of 2017 and 305 of 2019*

**Mr V D'Costa**, *with A Doshi and Ms Shweta Rankhambe, for State Bank of India/Applicant/Intervenor in Chamber Summons No. 1440 of 2018.*

**Mr SD Chitgopekar**, *Dy Sheriff present.*

**Mrs Kavita Ambekar**, *Ist Assistant to Court Receiver present.*

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**CORAM: G.S. PATEL, J**  
**DATED: 30th April 2019**

**PC:-**

1. This is in continuation of previous orders.
  
2. The original Award Holder is Vitol SA. The Award Debtor is Asian Natural Resources (India) Limited or ANRIL, previously known as Bhatia International Limited. Previous orders from 2017 have described how ANRIL and its associate concerns, which I came to call the Bhatia International Ring, have done everything possible to defeat this execution.
  
3. I am presently concerned with three consignments of coal near Magdalla port in Gujarat,<sup>1</sup> about 22917 MT, at Dharamtar port in Maharashtra, about 11440.05 MT and at Krishnapatnam port in Andhra of about 8935.282 MT. This tonnage is approximate. The cargo degrades in quantity and quality over time. All of it has been lying unattended in the open for nearly two years or more. It was imported as coking coal, of higher value, and due to this exposure to the elements over such a long period of time, its value has considerably deteriorated. It is common ground that this is all now thermal coal of far lower value than coking coal.

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<sup>1</sup> I am told the cargo is on BGTL land near Magdalla port. There is no dispute about the location of the site.

4. The ownership of the consignments differ. The Magdalla land and Dharamtar port cargo belong to Bhatia Global Trading Limited or BGTL. The Krishnapatnam port cargo is an asset of Bhatia Coal and Energy Limited, BCEL. ANRIL and BGTL are both facing insolvency proceedings. BCEL is not.

5. A few dates are necessary in regard to the Magdalla and Dharamtar cargo. There was an injunction in respect of both consignments on 22nd and 23rd December 2016. On 10th January 2017, I appointed the Court Receiver of the Magdalla cargo (but only that cargo). On 28th April 2017, the Union Bank of India or UBI came to Court saying that the Magdalla and Dharamtar cargo had been attached in execution by Vitol, but these assets were hypothecated to UBI. I made an order of 28th April 2017 on UBI's Chamber Summons saying that it was at liberty to proceed in accordance with law.

6. Insolvency proceedings commenced against BGTL around the third week of May 2017. Mr Andhyarujina for the hapless Award Holder, Vitol, says that the moratorium period could not have lasted beyond 18th February 2018 allowing for a full run of 270 days under the Insolvency & Bankruptcy Code. On 2nd June 2018, well after the moratorium, UBI wrote to one Nitin Hasmukhlal Parekh, apparently by then appointed the Resolution Professional of BGTL, asking him to sell both consignments. Parekh advertised in a newspaper (the details of which were unclear on the last occasion) in Indore on 28th July 2018. I am told by Parekh who is present in Court that the sale was advertised in a local newspapers called Sandesh in Surat and in the Free Press Journal in Mumbai on 28th

July 2018. The bid amounts of about Rs. 6 crores in respect of 6000 MT of the Magdalla cargo lie with UBI in a suspense account. The remaining cargo at Magdalla and the whole of the cargo at Dharamtar port are said to be unsold.

7. This is the real complication here today. The Resolution Professional had no title, so long as the receivership continued of the Magdalla cargo, to pass to any bidder. UBI may have taken any steps to which it was entitled, but it needed to apply this Court to vacate that order of receivership or to obtain an order that the receiver would pass title. At the very least, the Resolution Professional should have made this application to Court. A similar application in regard to the injunction for both Magdalla and Dharamtar cargo was also necessary.

8. The Magdalla and Dharamtar consignments are both assets of BGTL, which is facing insolvency proceedings. It is not yet in liquidation. A secured creditor will undoubtedly enjoy priority over an unsecured creditor. Mr Andhyarujina submits that UBI has not had its claim adjudicated, but whether this is even necessary is something that is best left for decision to another date and need not be decided today. The only question is what, if anything, is to be done to realise the maximum possible value of these assets. This is clearly in the interest of all concerned whether they are secured creditors or unsecured creditors. Mr Gupta for UBI states that his clients will file an appropriately worded application regarding the receivership of the Magdalla cargo and the injunction in respect of both the Magdalla cargo and the Dharamtar port cargo. If there is any unsold cargo at either place, he will take instructions on what

UBI proposes to do. I am making it clear that so far as realising this constantly degrading set of assets is concerned, it is always possible to effect a sale through the Court Receiver for the protection of the value of the asset but leaving intact the rights of all claimants to that realized asset value.

9. The Krishnapatnam cargo stands on a totally diffident footing. It is an asset of BCEL, which Mr Andhyarujina says is part of the Ring but is something he has yet to establish. Those applications for piercing that corporate veil are yet pending decision.

10. The Krishnapatnam cargo has been valued by M/s Ericson and Richards at about Rs. 5 crores. Its value has diminished. Tamilnadu Coke and Power Private Limited earlier offered Rs. 3.5 crores plus taxes on 8th March 2019. KR Shriram J rejected that bid as being too low. TCPPL has revised its bid to Rs. 3.85 crores. It submits that the cargo has considerably diminished in value because of this prolonged exposure to the elements. There can be no denying that. No one contests it. The State Bank of India has a charge over the Krishnapatnam port cargo. It has deposited to Rs. 15 lakhs with the Deputy Sheriff to meet the costs of a sale. This is noted.

11. The revised offer of TCPPL of Rs. 3.85 crores can be accepted, but none is present today on behalf of that entity. The Deputy Sheriff will contact the learned Advocate Ms Trupti Surve who appeared for TCPPL on the last date, and get a confirmation whether it is yet willing to take the Krishnapatnam cargo at Rs. 3.85 crores or better.

12. The Court Receiver will, to save time, proceed to have the Dharamtar cargo and the remaining cargo at the Magdalla site valued through M/s Ericson and Richards so that this can facilitate a sale through the Court Receiver, which would be in the common interests of all creditors, both secured and unsecured.
13. List the matter for orders and directions on 4th June 2019.
14. Liberty to Ms Trupti Surve on behalf of the TCPPL to mention the matter before 3rd May 2019.
15. UBI is directed to pay the valuer's fees. These will undoubtedly be deducted and adjusted from the sale proceeds.

**(G. S. PATEL, J)**