

Shephali

**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**

Asian Natural Resources (India) Ltd (Bhatia
International Ltd) ...Applicant
Versus
Vitol SA (original Award Holder) ...Respondent

**WITH
CHAMBER SUMMONS 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
WITH
CHAMBER SUMMONS NO. 238 OF 2019
WITH
CHAMBER SUMMONS NO. 1440 OF 2018
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

Mr Zal Andhyarujina, *with Ms Naira Jejeebhoy, Mr Aditya Krishnamurthy, Ms Tripti Sharma & Mr Mayank Suri, i/b Bose & Mitra & Co, for the Award Holder.*

Mr Aagam Doshi, *with Ms Shweta Rankhambe, i/b Aagam Doshi, for the Applicant in Chamber Summons No. 1440 of 2018.*

Mr Nainesh N Amin, *i/b NN Amin & Co, for Respondent No. 2 in Chamber Summons No. 305 of 2019.*

Mr Rakesh Agrawal, *for the Applicant in Chamber Summons No. 305 of 2019.*

Mr SD Chitgopekar, *Deputy Sheriff, present.*

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

Ms Trupti Surve, *for Auction Bidder, present.*

Ms Neeta Parikh, *for Respondent No. 4 in Chamber Summons No. 305 of 2019.*

CORAM: G.S. PATEL, J

DATED: 23rd April 2019

PC:-

1. There is a matter that now requires investigation. This proceeding in execution has been going on since 2011 with the Decree Holder Vitol SA trying, so far with a significant lack of success, to gain satisfaction of its foreign award. The Award Debtor was a company formally known as Bhatia International Limited, renamed Asian Natural Resources (India) Ltd or ANRIL. Previous

orders indicate that Courts including an Appellate Court permitted the lifting of the corporate veil, issuance of precepts and allowed the Decree Holder to move against the assets of entities of what I nicknamed the 'Bhatia International Ring'. Perhaps a more dramatic name is now called for, given what has happened since.

2. On 10th January 2017 I followed a previous order of SJ Kathawalla J of 30th December 2016. There was then imported coal lying at Madgalla Port in Gujarat. It was said to be the property of another BIR entity, Bhatia Global Trading Limited or BGTL. I appointed a receiver of that cargo at Magdalla Port. There was also an injunction operating in respect of other cargo at Dharamtar Port in Maharashtra. On 28th April 2017, I had an application by the Union Bank of India which claimed that the Magdalla Port and Dharamtar Port cargo were charged to it and that both consignments were assets of BGTL. I left it open to Union Bank of India to proceed against these assets in accordance with law.

3. An application was made yesterday essentially saying that all this cargo was lying in the open as was other cargo at Krishnapatanam Port in Andhra. All of it has degraded over a period of time and should now be sold. After allowing a minor amendment yesterday, I listed the matter today. I was informed that a Resolution Professional has been appointed of BGTL. Meanwhile ANRIL itself is in liquidation. The point however is that nobody has applied to this Court so far to vacate the order of receivership of the Magdalla Port cargo or to vacate the broader injunction. The matter has been on board on numerous occasions in 2017 and 2018.

4. There is today a separate Chamber Summons of January 2019 by PNP which manages the Dharamtar Port seeking a modification and for sale of the cargo. This is the only proper application in relation to this cargo.

5. I am informed by Mr Amin for UBI on the basis of a photocopy of an unknown newspaper that on 28th July 2018 one Nitin Hasmukhlal Parekh, apparently a Resolution Professional appointed of BGTL, advertised the Magdalla Port and Dharamtar Port cargo for sale by public auction.

6. Mr Andhyarujina also points out that Union Bank of India triggered this sale by writing to BGTL on 2nd June 2018 and asking for sale through the RP. It seems that UBI approved some draft sent by BGTL. How UBI could have done this after the previous orders of 10th July 2017 and 20th April 2018 is unexplained.

7. I confess I do not understand how Parekh could have done this if the assets were hypothecated to Union Bank of India, or how Union Bank of India could have asked Parikh to do anything of the kind given the receiver's appointment of at least the Magdalla Port cargo. That entire quantity was in custodia legis. An application here was essential. This would apply also to any operative injunction. In no circumstances that I can tell could Parekh have proceeded to sell or offer for sale any of this cargo.

8. He seems to have received two offers in September 2018. The Dharamtar Port cargo is still certainly where it is. Nobody knows the status of the Magdalla Port cargo.

9. Vitol SA has had occasion to question and challenge the appointment of Parekh as a Resolution Professional in the first place, alleging that he is conniving and colluding with the Bhatias. Pertinently, Parekh's advertisement is issued from Indore. Absolutely nothing has happened there — except that Indore is the Bhatias' base. Mr Andhyarujina points out that Parikh's conduct and his appointment as RP was questioned before the authority on 17th March 2018. Replies and rejoinders were filed. The matter was heard until 10th January 2019 and is pending for orders since then. If this was going on it is even more unclear how Nitin Parekh could have in the meantime on 28th July 2018 offered any of this cargo for sale. We do not know at whose instance he acted, by what authority or under what law.

10. I need a valid explanation as to how the resolution professional could have in direct contravention of orders of injunction and receiver of this Court proceeded to sell the cargo. Ms Parikh who appears for the Resolution Professional states that he will be present in Court on 30th April 2019. He lives in Baroda. At this stage, it is entirely uncertain whether the RP even has any such powers under law or is empowered only to safeguard the assets of the company in question.

11. For this reason, between now and 30th April 2019 the present status quo will be maintained by all concerned. None will be given delivery of any cargo at any of these locations. The cargo is to be maintained as is between now and 30th April 2019. UBI will file a detailed Affidavit explaining how this has come to pass and putting these documents on record. In the meantime the compilation given to me is taken on record and marked 'U1' for identification with today's date.

(G. S. PATEL, J)