



AP.EFA No. 1 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11<sup>TH</sup> DAY OF AUGUST, 2022



BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

**ARBITRATION PETITION (ENFORCEMENT OF  
FOREIGN ARBITRAL AWARD) NO. 1 OF 2022**

**BETWEEN:**

CTI FUTURE CORPORATION  
HAVING ITS REGISTERED OFFICE AT  
710B, CCMM BUILDING  
YEOUNGONGWON -RO  
YEONGDEUNGPOGU  
SEOUL-150 968  
REPUBLIC OF KOREA  
REP. BY ITS AUTHORIZED  
SIGNATORY SUDARSHAN GUJAR

...PETITIONER

(BY SRI. SHREYAS JAYASIMHA, ADVOCATE OF AARNA LAW LLP)

**AND:**

DUCGIANG CHEMICAL AND  
DETERGENT POWDER JOINT  
STOCK COMPANY  
HAVING ITS REGISTERED OFFICE AT  
18/44, DUCGIANG  
LONGBIEN, HANOI  
VIETNAM

... RESPONDENT

(ABSENT)

THIS PETITION IS FILED UNDER SECTION 47, 48 AND 49 OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO ENFORCE THE AWARD DATED 18 AUGUST 2021 PASSED BY THE SOLE ARBITRATOR IN SIAC.ARB.903/2020 AND REGISTERED WITH





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THE SIAC REGISTRY OF AWARDS AS AWARD NO.087 OF 2021 (ANNEXURE-A) AND EXECUTE THE AWARD IN THE EXECUTION PETITION ANNEXED HEREWITH.

THIS PETITION COMING ON FOR FURTHER HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 29.07.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:
  - a. *To enforce the Award dated 18 August 2021 passed by the sole Arbitrator in SIAC.ARB.903/2020 and registered with the SIAC Registry of Awards as Award No.087 of 2021 (Annexure-A) and execute the Award in the Execution Petition annexed herewith.*
  - b. *Pass such other order as this Hon'ble Court may deem fit and proper in the interest of justice.*
2. The petitioner claims to be incorporated under the laws of South Korea and involved in the business of trading chemicals and the respondent is incorporated under the laws of Vietnam being involved in the business of manufacturing wholesale materials and chemicals for agricultural industry.
3. The petitioner and the respondent entered into a Supply Agreement dated 30.05.2018 with the



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petitioner as a seller and respondent as a buyer which is governed by an Arbitration clause which reads as under:

**"ARTICLE 16. LAW AND ARBITRATION**

*Any dispute in the interpretation and/or execution of this contract to be settled in an amicable way. If an amicable solution of the problem is impossible, both parties agree to refer the dispute for settlement by arbitration at Singapore in accordance with the rules of Singapore International Arbitration Centre (SIAC). The arbitration shall be conducted in accordance with the rules of Singapore International Arbitration Centre (SIAC) current at the time when the arbitration proceedings are commenced."*

4. There being dispute which had arisen, arbitral proceedings were initiated before the Singapore International Arbitration Centre (SIAC). The Arbitral Tribunal passed an award in favour of the petitioner and awarded a sum of US\$ 47,112.00 being the demurrage incurred under the Supply Agreement, interest at US\$ 2,545.46 and cost of arbitration in Singapore Dollars SG\$12,656.82, filing fee of



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SG\$2000 with claimant's legal cost of US\$ 15,000.00.

5. The arbitral award being rendered by an Arbitral Tribunal seated in Singapore which is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards i.e. New York Convention. Singapore being a reciprocating country and recognized as such by the Republic of India in terms of an Official Gazette issued, the petitioner is before this Court seeking for enforcement of the aforesaid award which is a foreign award within the meaning of Section 44 of the Arbitration and Conciliation Act, 1996 ('A&C Act' for short).
6. This Court vide its order dated 18.02.2022 taking into consideration the various aspects relating to the matter has held that the above petition is maintainable. In view of the reasoning already provided in the aforesaid order, the award, subject



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matter of the above proceedings is required to be recognized by this Court and be capable of being enforced within the territorial limits of this Court and as such, the award dated 18.08.2021 passed by the Arbitral Tribunal in SIAC.ARB.903/2020 is recognized.

7. This Court had on 27.06.2022 formulated the following points for consideration:

***i. Whether a proceeding for the enforcement of a foreign award is maintainable before this Court as against a respondent, who is neither resident of, registered in or does not normally carry on business within the jurisdiction of this Court?***

***ii. Whether once a proceeding for enforcement of a foreign award is filed before this Court could any other proceedings be filed during the pendency of this matter within the jurisdiction of the Court where respondent is registered or carries on his business?***



**iii. Whether this Court can exercise jurisdiction under Arbitration and Conciliation Act, 1996 against the respondent merely because the award passed in Singapore is recognized by Republic of India to be enforceable in terms of Section 44(b) of the Arbitration and Conciliation Act, 1996 when there are no properties of the judgment debtors situate within the jurisdiction of this Court?**

**iv. What order?**

8. It is the above points which would be required to be answered by this Court to determine the way forward in the matter.
9. Heard Sri. Shreyas Jayasimha, learned counsel for the petitioner. Perused papers.
10. I answer the above points as under:
11. **ANSWER TO POINT NO.1: Whether a proceeding for the enforcement of a foreign award is maintainable before this Court as against a respondent, who is neither resident of, registered in or does not normally carry on business within the jurisdiction of this Court?**



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11.1. The international commercial arbitral award dated 18.08.2021 has been delivered by the Sole Arbitrator in international arbitration proceedings held in Singapore, the final award being registered with the Singapore International Arbitration Centre (SIAC) Registry of Awards as Award No.87 of 2021. It is the said award that is sought to be enforced in these proceedings.

11.2. A perusal of the award as also cause title of the present proceedings indicates that both the petitioner and respondent are body corporates which are incorporated outside India, the petitioner having its registered office in Korea and the respondent having its registered office in Vietnam.

11.3. Part II of the A&C Act deals with New York Convention Awards, under which Sections 44 to



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52 find place. Section 44 of the A&C Act deals with foreign awards and defines the same as an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India. Section 44(b) contemplates a situation of an award being delivered in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification declare to be territories to which the Convention applies.

11.4. Thus, for an award to be recognised as a foreign award, it has to be as regards a commercial relationship as per the laws in India and rendered in a territory where the Convention has been made applicable by a suitable notification by the Central Government.





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11.5. Section 46 of the A&C Act makes any foreign award enforceable under the Act within India. Section 47 of the A&C Act requires the original award or a copy thereof, duly authenticated in the manner required by the law in the country it is made, the original agreement for arbitration or a duly certified copy thereof and such evidence as may be necessary to prove that the award is a foreign award.

11.6. Section 47(2) contemplates that if the award or agreement to be produced is in foreign language, then the same shall be translated into English.

11.7. The explanation to Section 47 provides for the definition of 'Court' which means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the



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subject-matter of a suit in its ordinary original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.

11.8. It is relevant to quote Section 2 (e) (ii) of the A&C Act which reads as under:

"2.(e) "Court" means -

(i) xxx

(ii) *in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court."*



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11.9. Section 2 (f) of the A&C Act deals with international commercial arbitration, which is reproduced hereunder for reference:

*"2.(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—*

- (i) an individual who is a national of, or habitually resident in, any country other than India; or*
- (ii) a body corporate which is incorporated in any country other than India; or*
- (iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or*
- (iv) the Government of a foreign country;"*

11.10. Section 2(f) of the A&C Act, when applied to the present case it is clear that the present arbitration is international commercial arbitration.



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11.11. The Central Government by its notification dated 06.07.1999 has declared an arbitral award rendered in Republic of Singapore could be enforced in India, the said notification reads as under:

*"S.O.542(E) - In exercise of the powers conferred by clause (b) of section 44 of the Arbitration and Conciliation Act, 1996 (26 of 1996), the Central Government, being satisfied that reciprocal provisions have been made, hereby declares the Republic of Singapore to be a territory to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, set forth in the First Schedule to the said Act, applies for the purpose of any award of the nature referred to in that section made on or after the 11<sup>th</sup> day of October 1960"*

11.12. From the above notification, it is clear that any award which has been rendered in Singapore could be enforced in India.

11.13. The contention of Sri Shreyas Jayasimha, learned counsel appearing for the petitioner is that in view of the said notification, an arbitral award rendered in the Republic of Singapore



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can be enforced in the Republic of India in a Court which would have territorial jurisdiction to pass the necessary orders relating to execution sought for.

11.14. The arbitral award being an international commercial arbitral award is not in dispute, the award being rendered in Singapore is not in dispute, the enforceability of the said award in India is not in dispute in view of the notification issued by the Central Government.

11.15. In the peculiar facts and circumstances of the case, could this Court exercise its jurisdiction when both the parties are not connected to India and they are not corporate bodies established within the territorial limits of the Republic of India, more particularly within the territorial limits of this Court.



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11.16. A foreign award under a New York Convention has been given a special status. India being a signatory to the said New York Convention it is required that all countries including India which are signatories to the New York Convention enable execution of a foreign arbitral award rendered in a reciprocating country in the event of a property against which the arbitral award is sought to be enforced is situated within the jurisdiction of that particular country.

11.17. In this background considering that the above application which is filed under Sections 44 to 52 of the A&C Act which deals with New York Convention awards under Chapter I of Part II of the A&C Act and the obligations of the Republic of India in terms of Article 51 (c) of the Constitution of India, I am of the considered opinion that this Court could exercise jurisdiction to enforce a foreign award in the



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event the properties of the respondent against which the enforcement is sought for is situated within the territorial limits of this Court in view of later part of Section 2 (e) (ii) of the A&C Act as also later part of the explanation to Section 47(2) of the A&C Act.

11.18.I answer Point No.1 by holding that a proceedings for enforcement of a foreign award is maintainable before this Court as against a respondent, who is neither resident of, registered in or does not normally carry on business within the jurisdiction of this Court, if the award is passed by an Arbitral Tribunal seated in a country which is party to the New York convention and the said country has been recognized by way of a gazette notification to be a reciprocating country.

12. **ANSWER TO POINT NO.2: Whether once a proceeding for the enforcement of a foreign**



**award is filed before this Court could any other proceeding be filed during the pendency of this matter within the jurisdiction of the Court where respondent is registered or carries on his business?**

12.1. This would be a common aspect which would come up for consideration in respect of international commercial arbitrations inasmuch as the awarded amount may be such that the assets of the Judgment debtor in a particular jurisdiction may not be sufficient to meet and satisfy the award passed.

12.2. In such situations, if the Judgment debtor were to have assets in different jurisdictions, in my considered opinion, the decree holder would be eligible to initiate proceedings in different jurisdictions so as to satisfy the award.

12.3. For example, if the award passed is for \$100,000, the assets of the Judgment debtor in the jurisdiction of this Court, if were to be





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\$20,000, the decree holder could execute the same to an extent of \$20,000 through this Court. If another \$20,000 of assets is situated within the jurisdiction of Australian courts, the decree holder could execute the same through Australian Courts for that \$20,000 and so on. This could however, be misused by an unscrupulous decree holder to recover more monies than due, since the proceedings would be taking place in jurisdictions in different countries.

12.4. In this regard it would also have been necessary for the convention to have dealt with these kinds of situations, since the same is not done till now and until it is so done, there would be a requirement of the decree holder while filing a proceeding for execution of an international arbitral award to solemnly swear, affirm and file an affidavit on oath of a director



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of the Decree holder if a company, a partner of the Decree holder if a Partnership, proprietor of the decree holder if a proprietary concern stating about the proceedings which have been taken by the decree holder in different jurisdictions, as against what assets, how much recovery has been made in what manner etc., so that the decree-holder would not misuse the award so as to recover more than what is due to the decree-holder.

12.5. In this regard it is not only the proceedings which are filed earlier but the proceedings which are filed during the pendency also would have to be fully disclosed placing on record all the above facts/details.

12.6. In the event of there being any false statement in the affidavit, the same would have to be considered to be amounting to the offence of



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perjury, as also contempt of Court, apart from gross abuse of the process of the court since it is only acting on the said affidavit that this Court would enforce an award by attachment or otherwise.

12.7. In the event of there being any doubt this court could always request the court where proceedings for execution are filed, disposed and/or pending to forward copies of the proceedings filed, objections thereto if any and status of the matter, this being so to foster better commercial relations and prevent abuse of the process of courts.

12.8. I answer point no.2 by holding that once a proceeding for the enforcement of a foreign award is filed before this Court any other proceeding can be filed during the pendency of this matter within the jurisdiction of the Court



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where respondent is registered or carries on his business and/or where the assets of the Judgment debtor are found so long as the requirements of law in that country are satisfied and full disclosure of all proceedings filed, disposed or pending and status thereof is made on oath as detailed above.

13. **ANSWER TO POINT NO.3: Whether this Court can exercise jurisdiction under Arbitration and Conciliation Act, 1996 against the respondent merely because the award passed in Singapore is recognized by Republic of India to be enforceable in terms of Section 44(b) of the Arbitration and Conciliation Act, 1996 when there are no properties of the judgment debtors situated within the jurisdiction of this Court?**

10.1 *The sine qua non* for execution of an award is the existence of properties against which an order could be passed by this Court. If there were no properties of the Judgment debtor situated within the jurisdiction of this Court, no order could be passed by this Court, since no



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jurisdiction could be exercised by this Court. However, having recognized that the Arbitral Award is enforceable within the jurisdiction by this Court, in the event of any property of the respondent comes within the jurisdiction of this Court and the decree holder being in a position to establish that the said properties are the properties of the Judgment debtor with sufficient documentary evidence, then in such an event this Court would have the power to execute the arbitral award against such properties and as such, the non-existence of the properties when the decree holder approaches this Court for recognition of an award, in my considered opinion would not be relevant for the purposes of such recognition that the award is enforceable in India.

10.2 At the time of recognition of an award to be enforceable within the jurisdiction of this Court



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what this Court would essentially be doing is only to assess if the requirement of law has been satisfied in order to enforce the award if and so required by recognizing it to be so enforceable.

10.3 As held above, the requirements of law having been satisfied by Singapore being a signatory to the convention, India also being a signatory to the convention, India recognizing Singapore to be a reciprocating country, the award would have to be recognized to be enforceable in India and is as such recognized.

10.4 In commercial disputes speed being the essence a decree holder in an arbitral proceedings can to save time file proceedings in different countries and get the award recognized so that future enforcement can be faster.



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10.5 The recognition of the foreign award by one court in India would be sufficient to enforce the same in any part of India, since the recognition is by the courts of India on the treaty obligations and statutory requirements being fulfilled.

10.6 All conditions being satisfied the present Arbitral Award is recognized to be enforceable under the A&C Act.

10.7 However, as on today, there are no properties of the respondent which are available within the jurisdiction of this Court and as such, the proceedings in my considered opinion cannot be continued or kept in abeyance.

10.8 It is only when such properties of the judgement Debtor were to come within the Jurisdiction of this Court that this court can pass any orders against properties within its jurisdiction, this court cannot pass orders as



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regards properties which are not within its jurisdiction.

10.9 Since in most cases where properties would come within the jurisdiction would involve moveable properties, it would but be required of the Decree Holder to categorically aver and prima facie establish that the title of the goods is that of the Judgement Debtor and no third party would be adversely affected by any orders passed by this court.

10.10 If the title in the moveables is that of the judgement debtor, any order passed by this court to enforce the award would be just and valid. However, if the Decree holder were to have involved in *suppression veri* or *suggestion falsi* and there be any third party interests in those goods/moveables which get adversely affected on account of any orders being passed by this court, the Decree holder would be liable





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not only for restitution but also for any damages that such third party may sustain on account of the orders being passed by this court on the basis of the averments made by the decree holder.

10.11 I answer Point No.3 by holding that this Court can exercise jurisdiction under Arbitration and Conciliation Act, 1996 against the respondent as regards an award passed in Singapore which is recognized by Republic of India to be enforceable in terms of Section 44(b) of the Arbitration and Conciliation Act, 1996 when there are no properties of the judgment debtors situated within the jurisdiction of this Court to the limited extent of recognizing the enforceability of the Award in India and reserving liberty to the Decree Holder to seek for such interim measures as may be necessary once the properties of the judgement debtor



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arrive in India, by satisfying the requirements as laid down hereinabove.

14. **ANSWER TO POINT NO.4: What order?**

14.1.The award dated 18.08.2021 passed by the Sole Arbitrator in SIAC.ARB.903/2020 and registered with the SIAC Registry of Awards as Award No.087 of 2021 is recognized;

14.2.Since there are no properties of the respondent-Judgment debtor available within jurisdiction of this Court, reserving liberty to the petitioner to file fresh applications for interim measures and for enforcement of the aforesaid recognized award in the event of any properties of the judgement Debtor coming within the Jurisdiction of this court, the petition stands disposed.

**Sd/-  
JUDGE**

In