Matrix Partners India Investment Holdings, Llc & Ors Vs Shailendra Bhadauria & Ors

Court: Delhi High Court

Date of Decision: Nov. 9, 2021

Acts Referred: Code Of Civil Procedure, 1908 â€" Section 38, 51(b), Order 34 Rule 14, Order 34 Rule 15
Arbitration And Conciliation Act, 1996 â€" Section 2(1)(e)(i), 11, 30, 32(1), 36, 42
Transfer of Property Act, 1882 â€" Section 100

Hon'ble Judges: C. Hari Shankar, J

Bench: Single Bench

Advocate: Akhil Sibal, Nitesh Jain, Akshay Puri, Varun Mansinghka, Nitya Gupta, Amarjeet Chandhiok, Swati Surbhi, Priya, Bindu Saxena, Shailendra Swarup, Aparajita Swarup, Dhruv Chand Saxena

Judgement

C. Hari Shankar, J

1. The petitioners were the claimants, and the respondents the defendants, in arbitral proceedings which culminated in the passing of a consent award

dated 24th May, 2019, of which the petitioners seek execution.

2. The respondents have raised a preliminary objection. They contend that this Court does not possess the territorial jurisdiction to decide this

execution petition.

3. Mr. Akhil Sibal, learned Senior Counsel for the petitioners and Mr. Amarjit Singh Chandhiok, learned Senior Counsel for the respondents, were

heard at length on the aspect of territorial jurisdiction. A written note of arguments has also been tendered by learned Counsel for the petitioners.

4. This order decides the said objection.

5. Matrix Partners India Investment Holdings, LLC, Matrix Partners India Investments, LLC and Resurgence PE Investments Ltd, the petitioners and

award holders are investors and shareholders in Respondent 3 Maharana Infrastructure & Professional Services Ltd (Ã¢â‚¬Å“MIPSÃ¢â‚¬) holding, together,

41.37% of the equity shareholding in MIPS. Respondents 1 and 2 are promoters in MIPS, and respondents 4 to 7 are affiliates of MIPS which,

together with MIPS, constitute the Ã¢â‚¬Å“Maharana GroupÃ¢â‚¬â€‹.

6. Consequent on claims, raised by them against the respondents remaining unsatisfied, arbitration proceedings were initiated. A former Judge of the

Supreme Court of India was appointed the arbitrator. During the course of arbitral proceedings, the parties agreed to amicably settle their disputes.

Consent Terms of settlement were, therefore, submitted to the learned Arbitrator who passed, on 25th May, 2019, a Consent Award in terms thereof,

under Section 30 of the Arbitration and Conciliation Act, 1996 (Ã¢â‚¬Å“the 1996 ActÃ¢â‚¬â€‹).

7. The Consent Terms envisaged payment, by the Maharana Group, to the petitioners, of Rs. 90 crores, in 3 tranches. The payment was undertaken to

be made by the Promoters and/or an Eligible Third Party. The first tranche of Rs. 9,00,00,050/Ã¢â‚¬" was to be paid within 10 business days of the said

award, the second tranche of Rs. 9,00,00,050/Ã¢â‚¬" within 45 days of the Consent Award, the third tranche of Rs. 35,99,99,950/Ã¢â‚¬" on or before 31st

December, 2019 and the fourth tranche, also of Rs. 35,99,99,950/Ã¢â‚¬", on or before 31st March, 2020. It was agreed that these timelines were of the

essence of the agreement, and mandated strict adherence. Clause 19 of the Consent Terms stipulated that, were the Maharana Group unable to make

payment of any of the tranches in terms of the aforenoted arrangement, the Maharana Group would be jointly and severally liable to pay, to the

petitioners, Rs. 225 crores, less any tranche payments already made. Clause 16 of the Consent Terms, which is seminal to adjudication of the dispute

regarding territorial jurisdiction and which, as it were, constitutes the focal point of the submissions of Mr. Chandhiok, read thus:

Ã¢â‚¬Å“16. The Maharana Group hereby represents to the Investors that payment under these terms shall be achieved by selling the encumbered and

unencumbered properties identified in Annexure Ã¢â‚¬Å“CÃ¢â‚¬ to these terms (Ã¢â‚¬Å“Annexure C PropertiesÃ¢â‚¬) which as on the date of these terms have an

appropriate value as indicated in the Annexure therein. The Parties agree and acknowledge that if for whatever reason, the Maharana Group is unable

to sell the said Annexure C Properties and/or the sale proceeds from the Annexure C Properties is insufficient to meet the payment obligations under

these terms, the Maharana GroupÃ¢â‚¬â„¢s obligations for payment under these terms shall remain unaffected, and the Maharana Group shall under all

circumstances ensure complete payment and performance of these terms. The Maharana Group undertakes that all the Annexure C Properties shall

be sold by the Maharana Group only for the purpose of making payment to the Investors under the Consent Award, and for no other purpose. In this

regard, until receipt by the Investors of the total payment under these terms, the Promoters undertake to provide the Investors with a monthly

statement updating details of the Annexure C Properties sold by the Maharana Group and the consideration received by the Maharana Group against

such conveyances.Ã¢â‚¬â€‹

Mr. Sibal, on the other hand, places reliance on Clause 17 of the Consent Terms:

Ã¢â‚¬Å“17. Save and except the Annexure C Properties, the Maharana Group agrees and undertakes that they shall not dispose of and/or create any third

party rights in any of their movable and immovable assets (whether encumbered or not) and maintain injunctions with respect to the same in

accordance with the order passed by the HonÃ¢â‚¬â„¢ble Bombay High Court in the Execution Application (notwithstanding the withdrawal of the

Execution Application under Clause 23 herein) till such time the Consent Award is satisfied.Ã¢â‚¬â€‹

8. At the time of drawing up of the Consent Terms, Execution Application (L) 2113/2018, Writ Petition (L) 1409/2018 and Contempt Petition 82/2018,

before the High Court of Bombay and SLP 2974/2019 and 3731/2019 before the Supreme Court were pending, between the petitioners and one or

more of the respondents inter se. These litigations were collectively denoted, in Clause 7 of the Consent Terms as Ã¢â‚¬Å“DisputesÃ¢â‚¬. Clause 23 of the

Consent Terms required the parties to, within 7 days of receipt of the Tranche 1 payment, take steps to withdraw their respective Disputes.

Specifically with respect to Execution Application (L) 2113/2018, which had been filed by the petitioners seeking execution of an interim order passed

by the learned Arbitrator, Clause 24 recorded the agreement of the parties that, by way of a joint praecipe, the original executed Consent Terms, along

with a copy of the Consent Award would be filed before the High Court of Bombay, for disposal of the Execution Application in terms thereof. It

appears that, in accordance with Clause 24, Execution Application (L) 2113/2018 stands disposed of, by the High Court of Bombay, vide order dated

20th June, 2019.

9. Payments under Tranches 1 and 2 were made, by the respondents on 24th June, 2019 and 23rd August, 2019. Vide email dated 14th January, 2020,

Respondent 1 assured the petitioners that payment of the remaining amount of Rs. 72 crores would be completed on or before 31st March, 2020. At

the respondentsÃ¢â‚¬â„¢ request, the petitioner granted extension of time, till 30th June, 2020, to the respondents, to pay Rs. 10 crores and till 30th

September, 2020, to liquidate the balance payment as per the Consent Award. On the respondents failing to make the said payments within the

extended period, the parties agreed mutually, vide letter dated 3rd August, 2020, that payments as per Tranches 3 and 4 would be made by the

respondents thus:

(i) Of the amount of Rs. 35,99,99,950/Ã¢â‚¬" payable under Tranche 3,

(a) Rs. 4 crores would be paid within 10 business days,

(b) a further Rs. 4 crores would be paid by 30th September, 2020,

(c) a further Rs. 19 crores would be paid by 31st December, 2020 and

(d) the remaining Rs. 8,99,99,950/Ã¢â‚¬" would be paid by 31st March, 2021.

(ii) The payment of Rs. 35,99,99,950/Ã¢â‚¬", under Tranche 4, would be made on or before 30th June, 2021.

10. The petitioners allege that the respondents defaulted in making payments of the second, third and fourth instalments of Tranche 3, and of Tranche

4. This, submit the petitioners, triggered Clause 19 of the Consent Terms and rendered the respondents liable to pay, to the petitioner, the entire

amount of Rs. 225 crores, less the payment of Rs. 27,80,00,100/Ã¢â‚¬", made under the tranches, i.e., for a net amount of Rs. 197,19,99,900/Ã¢â‚¬".

11. Alleging that, in order to frustrate the arbitral award, the respondents have alienated many of their movable and immovable properties, albeit

leaving intact the properties covered by Annexure C to the Consent Terms, the petitioners have, by the present petition, sought execution of the

arbitral award. Schedules A and B to the petition list the movable and immovable properties of the respondents which are, to the knowledge of the

petitioners, located within the territorial jurisdiction of this Court.

12. The legal position regarding the appropriate High Court, before which an application for execution of an arbitral award, could be filed, stands

authoritatively exposited by the judgement of the Supreme Court in Sundaram Finance Ltd v. Abdul Samad (2018) 3 SCC 622. In the said case, the

Supreme Court, having noticed the conflict of views, among various High Courts on this aspect, upheld the view Ã¢â‚¬" adopted, inter alia, by this Court in

Daelim Industrial Co. Ltd v. Numaligarh Refinery Ltd 159 (2009) DLT 579 Ã¢â‚¬" that execution of an arbitral award could be sought before any Court

within whose territorial jurisdiction the assets of the judgement debtor are located. Indeed, Mr. Chandhiok, learned Senior Counsel for the respondents,

too, did not dispute this general proposition.

13. Mr. ChandhiokÃ¢â‚¬â„¢s submission is that the present case is, in fact, sui generis, as the arbitral award, of which execution is being sought, charged

the Annexure C properties, within the meaning of Section 100 of the Transfer of Property Act, 1882, towards payment of the amounts payable under

the award. He emphasises, in this context, the following sentence from Clause 16 of the Consent Terms:

Ã¢â‚¬Å“The Maharana Group undertakes that all the Annexure C Properties shall be sold by the Maharana Group only for the purpose of making

payment to the Investors under the Consent Award, and for no other purpose.Ã¢â‚¬â€‹

This stipulation, according to Mr. Chandhiok, is clearly in line with Section 100 of the Transfer of Property Act. Once such a charge has been created,

Mr. Chandhiok would submit that execution of the award creating the charge could only be by a court having territorial jurisdiction over the charged

properties. All the Annexure C properties being located outside the territorial jurisdiction of this Court, he submits that the present execution petition is

not maintainable here. The jurisdiction of this Court, he submits, cannot be perforce invoked by merely referring to properties of the respondents other

than the Annexure C properties, located within such jurisdiction, as the Annexure C properties stand specifically charged towards discharge, by the

respondents, of their liabilities to the petitioners under the Consent Award. According to Mr. Chandhiok, the petitioners would, on default by the

respondents in complying with their obligations towards the petitioners under the Consent Award, have, in the first instance, to sell the charged

Annexure C properties. The right of the petitioners to proceed against any other property/properties of the respondents would, in his submission, arise

only if the monies payable by the respondents were not realised by sale of the Annexure C properties. Till then, submits Mr. Chandhiok, this Court

would have no jurisdiction in the matter. He also relied, for this purpose, on the following definition of Ã¢â‚¬Å“CourtÃ¢â‚¬â€‹, as contained in Section 2(1)(e)(i) of

the 1996 Act:

Ã¢â‚¬Å“(e) Ã¢â‚¬Å“CourtÃ¢â‚¬â€‹ means Ã¢â‚¬

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in the district, and

includes 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, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any

Court of Small Causes ;Ã¢â‚¬â€‹

Execution of the Consent Award in terms of Clause 16 thereof amounts, in fact, submits Mr. Chandhiok, to a decree of mortgage within the meaning

of Order XXXIV Rules 14 and 15 of the CPC. Sundaram Finance (2018) 3 SCC 622, submits Mr. Chandhiok, did not involve any such clause and

would not, therefore, apply to the present case.

14. Mr. Chandhiok has also relied on Section 51(b) of the CPC, specifically adverting to the power of the Court, under the said clause, to order

execution of a decree by sale of any property without attachment.

15. Mr. Chandhiok has also relied on Clause 10 of the Consent Terms, which reads thus:

Ã¢â‚¬Å“10. The Parties agree and acknowledge that the Consent Award passed in terms of these terms shall not be challenged and shall be final, binding,

conclusive and enforceable in the same manner as if it were a decree of the court as per the provisions of the Arbitration Act. In this regard, the

Parties confirm that the Investors shall be entitled to take all actions and proceedings as available under the Applicable Law. The parties agree that

Bombay High Court will have jurisdiction, including to seek enforcement and execution of the Consent Award.Ã¢â‚¬â€

16. Mr. Chandhiok further submitted that, having earlier approached the High Court of Bombay by way of Execution Application (L) 2113/2018,

arising out of the arbitral proceedings which culminated in the passing of the award of which execution is presently sought by the petitioners, they

could not now seek to invoke the jurisdiction of this Court, for execution of the final award.

17. Mr. Sibal, in response, submits that the reliance, by Mr. Chandhiok, on Clause 16 of the Consent Terms, to plead ouster of the jurisdiction of this

Court to entertain the present petition, is completely misconceived. He submits that Clause 16 is merely an enabling provision, to ensure compliance

with the Consent Terms, and not to disable the petitioners from approaching this Court for enforcement thereof, consequent on their breach by the

respondents. The necessity of this Clause, he submits, was because of Clause 17, which excepted the Annexure C Properties from the assurance,

tendered by the respondents, against creation of third party interests. As such, despite the embargo on alienation contained in Clause 17, Clause 16

enabled the Annexure C Properties to be sold for the purposes of satisfying the award. This, submits Mr. Sibal, does not mean that honouring of the

arbitral award required, in the first instance, sale of the Annexure C Properties, as contended by Mr. Chandhiok.

18. The submissions of Mr. Chandhiok, according to Mr. Sibal, are in the teeth of the clear terms of the Consent Award. He submits that the Award

cannot be regarded, by any stretch of imagination, as an award creating a charge on properties, or envisaging sale of properties. It is a pure and simple

money award. It is unfettered and unimpeded by any list of properties. He has drawn specific attention, in this regard, to Clauses 11 and 12 of the

Consent Award. He points out that the Award specifically envisaged payment of the amounts due, by the respondents to the petitioners, in four

tranches and also specified the dates by which payments were to be made. This was not made conditional to sale of any property. Rather, the very

fact that Clause 13 of the Consent Terms made time of the essence, he submits, militated against any contention that the Award was in the nature of

sale of properties which were specifically charged thereunder. He also emphasises Clause 19 of the Consent Award to submit that the award

contemplated payment of money by the respondents to the petitioners, stipulated the time within which the payment was to be made and also provided

for the consequences in the event of default. Clause 16 of the Consent Terms, too, he submits, militates against the contention, of Mr. Chandhiok, that

the Consent Terms envisaged sale of charged property, as it retained, as intact, the obligations of the respondents even if the sale proceeds from the

Annexure C Properties were found to be insufficient to meet the payment obligations. As such, the liability of the respondents, to make payment to the

petitioners as per the Consent Terms, was independent of the sale of the Annexure C properties, or receipt of proceeds of such sale. This aspect was

further clarified by Clause 17 of the Consent Terms, whereunder the respondents undertook not to create any third party interests in respect of any

other movable or immovable assets, save and except the Annexure C properties.

19. The submission of Mr. Chandhiok that Clause 16 of the Consent Terms amounted to a charge on the Annexure C Properties was, therefore,

according to Mr. Sibal, completely misconceived in law. If anything was charged, he submits, Clause 17 charged all other properties, including the

properties of the respondents located within the territorial jurisdiction of this Court, till such time as the Consent Award was satisfied. The contention

of Mr. Chandhiok that the Annexure C properties were in the nature of a security for ensuring compliance with the terms of consent, he submits, was

inimical to the Consent Terms, which provided for their sale as one of the modes of ensuring compliance.

20. The issue, submits Mr. Sibal, is no longer res integra, as it stands concluded by Sundaram Finance (2018) 3 SCC 622. There is no need, he would

submit, to reinvent the wheel.

21. I am inclined to agree with Mr. Sibal, and to disagree with Mr. Chandhiok.

22. As I have already noticed, Sundaram Finance (2018) 3 SCC 622 clearly empowers the court, within whose jurisdiction the properties of the award

debtor are situated, to execute the award. The decision notices the somewhat foggy situation created as a result of diverse views of different High

Courts on the aspect, and clears the air. In doing so, the Supreme Court has clarified that Section 36 of the 1996 Act merely allows an award to be

executed as if it were a decree of the Court. It does not ipso facto convert the award into a decree of a court, or even equalise it with a decree of a

court. The view, expressed by certain High Courts, based on Section 38 of the CPC, that the arbitral award could be executed only by the court,

within whose territorial jurisdiction the award was rendered, was consequently disapproved. The Supreme Court upheld the decision of this Court in

Daelim Industrial Co. 159 (2009) DLT 579, permitting the institution of the execution proceedings in the court having jurisdiction over the assets of the

award debtor.

Ã¢â‚¬Å“38. Court by which decree may be executed. Ã¢â‚¬" A decree may be executed either by the Court which passed it, or by the Courts to which it is

sent for execution.Ã¢â‚¬â€‹

23. Mr. Chandhiok does not seek to contend that the properties, enlisted in Schedule A to the Execution Petition are not the properties of his clients.

These properties are clearly within the territorial jurisdiction of this Court. Applying Sundaram Finance (2018) 3 SCC 622, therefore, the present

Execution Petition would be maintainable, and this Court cannot be regarded as coram non judice.

24. Sundaram Finance (2018) 3 SCC 622 also effectively neutralises another contention of Mr. Chandhiok. Mr. Chandhiok sought to place reliance on

Clause 10 of the Consent Terms, which vests jurisdiction in the Bombay High Court to enforce and execute the Consent Award. Per corollary,

submits Mr. Chandhiok, this Court cannot do so. Reliance was placed, for this purpose, on the judgement of the Supreme Court in Swastik Gases (P)

Ltd v. Indian Oil Corporation Ltd (2013) 9 SCC 32.

25. The High Court of Himachal Pradesh accepted a similar contention, canvassed before it, in Jasvinder Kaur v. Tata Motors Finance Ltd 2013 SCC

OnLine HP 3904, relying, inter alia, on Swastik Gases (2013) 9 SCC 32. This is noticed in para 5.2 of Sundaram Finance (2018) 3 SCC 622, thus:

Ã¢â‚¬Å“Jasvinder Kaur v. Tata Motors Finance Ltd 2013 SCC OnLine HP 3904 of the High Court of Himachal Pradesh, Shimla Ã¢â‚¬" The learned Single

Judge took note of the fact that the arbitration proceedings were to be settled in Mumbai in accordance with the said Act and the award had been

made in Mumbai. Thereafter the learned Single Judge copiously extracted from the judgment of this Court in Swastik Gases (P) Ltd. v. Indian Oil

Corpn. Ltd. (2013) 9 SCC 32Ã¢â‚¬â€‹

The agreement in Jasvinder Kaur 2013 SCC OnLine HP 3904 contained the following exclusive jurisdiction clause:

Ã¢â‚¬Å“Subject to the provisions of clause 23 above, any suit, petition, reference or other filing permitted or required to be made pursuant to the arbitration

and conciliation Act, 1996 in respect of the matters arising out of the agreement including without limitation, a petition for appointment of an Arbitrator

or Arbitrators under section 11 of the Arbitration and Conciliation Act, 1996 shall be instituted only in competent courts at Mumbai.Ã¢â‚¬â€‹

Following a host of decisions, including Swastik Gases (2013) 9 SCC 32, the Himachal Pradesh High Court declined to exercise jurisdiction for

execution of the arbitral award, in view of the aforenoted exclusive jurisdiction clause.

26. After holding, in the preceding paragraphs, that execution of an arbitral award could be sought before any court having territorial jurisdiction over

the assets of the award debtor, the Supreme Court, in para-21 of the report in Sundaram Finance (2018) 3 SCC 622 held that the effect of the view

expressed by it was that the judgement of the Himachal Pradesh High Court in Jasvinder Kaur 2013 SCC OnLine HP 3904 could not be regarded as

good law.

27. Mr. Chandhiok, relying on Clause 10 of the Consent Terms and the judgement in Swastik Gases (2013) 9 SCC 32, would exhort me to hold, as

was held by the Himachal Pradesh High Court in Jasvinder Kaur 2013 SCC OnLine HP 3904. I cannot do so, after Sundaram Finance (2018) 3 SCC

622. Clause 10 of the Consent Terms, therefore, does not oust the jurisdiction of this Court to entertain the present petition. The contention of Mr.

Chandhiok, to that effect, is rejected.

28. The only surviving contention of Mr. Chandhiok is predicated on Section 100 of the Transfer of Property Act. The provision reads thus:

Ã¢â‚¬Å“100. Charges. Ã¢â‚¬" Where immovable property of one person is by act of parties or operation of law made security for the payment of money to

another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions

hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as

otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to

whom such property has been transferred for consideration and without notice of the charge.Ã¢â‚¬â€‹

How Section 100 of the Transfer of Property Act can be sought to be pressed into service in the present case, I may confess, completely befuddles

me. None of the clauses of the Consent Terms, to which Mr. Chandhiok alluded, secures the liability of the respondents to the petitioners, under the

Consent Award, by the Annexure C Properties or, for that matter, by any other properties of the respondents. Ã¢â‚¬Å“All that is necessaryÃ¢â‚¬, held the

Supreme Court in J.K. (Bombay) Pvt Ltd v. New Kaiser-I-Hind Spinning and Weaving Co. Ltd AIR 1970 SC 1041 , to Ã¢â‚¬Å“create a chargeÃ¢â‚¬ under

Section 100 of the Transfer of Property Act Ã¢â‚¬Å“is that there must be a clear intention to make a property security for payment of money in

praesenti.Ã¢â‚¬ The Kerala High Court, in Balakrishnan v. P.V. Mohanan AIR 1998 Ker 257 held that a charge could not be created over property, as

security for realisation of amounts due, without the consent of the owner of the property or person having enforceable interest therein. Animus and

intent to secure the debt by the property is, therefore, integral to creating a Ã¢â‚¬Å“chargeÃ¢â‚¬ over the property, within the meaning of Section 100 of the

Transfer of Property Act.

29. An interesting decision, in this context, is M.C. Chacko v. State Bank of Travancore (1969) 2 SCC 343. One K.C. Chacko, in that case,

distributed his properties amongst his family members. The properties in Schedule A to the deed, whereby they were distributed, were given to his son

M.C. Chacko. Para-17 of the deed contained the following recital:

Ã¢â‚¬Å“I have no debts whatsoever. If in pursuance of the letter given by me to the Kottayam Bank at the request of my eldest son, Chacko, for the

purpose of the High Land Bank Ltd., Kottayam, of which he is the Managing Director, any amount is due and payable to the Kottayam Bank, that

amount is to be paid from the High Land Bank by my son, Chacko. If the same is not so done and any amount becomes payable (by me) as per my

letter, for that my eldest son, Chacko and the properties in Schedule A alone will be answerable for that amount.Ã¢â‚¬â€‹

(Emphasis supplied)

Kottayam Bank (Ã¢â‚¬Å“the BankÃ¢â‚¬) sued M.C. Chacko for realisation of amounts due to it, claiming that the deed of partition had created a charge, in

its favour, over the Schedule A properties, within the meaning of Section 100 of the Transfer of Property Act. The contention was rejected, by the

Supreme Court, on two grounds. The second, which is not really of relevance to the present controversy, was that the Bank was not a party to the

deed of partition. The first ground of rejection, however, as expressed in para-7 of the report, was the following:

Ã¢â‚¬Å“For creating a charge on immovable property no particular form of words is needed: by adequate words intention may be expressed to make

property or a fund belonging to a person charged for payment of a debt mentioned in the deed. But in order that a charge may be created, there must

be evidence of intention disclosed by the deed that a specified property or fund belonging to a person was intended to be made liable to satisfy the debt

due by him. The recitals in clause 17 of the deed do not evidence any intention of the donor to create a charge in favour of Kottayam Bank: they

merely set out an arrangement between the donor and the members of his family that the liability under the letter of guarantee, if and when it arises,

will be satisfied by M.C. Chacko out of the property allotted to him under the deed.Ã¢â‚¬â€‹

(Emphasis supplied)

30. In the present case, no intention, whatsoever, to secure the amounts payable to the petitioners under the Consent Award by the Annexure C

properties, is discernible from the Consent Terms. The reference, in Clause 16, to the Annexure C properties is, prima facie, meant to indicate the

source of the funds using which the respondents would liquidate their liability to the petitioners under the Consent Award. The concept of

Ã¢â‚¬Å“securityÃ¢â‚¬, in commercio-legal terms, as an enforceable asset, predicates an independent right of the creditor to proceed against the security. No

such independent right is discernible from Clause 16 of the Consent Terms.

31. Secondly, there is substance in Mr. SibalÃ¢â‚¬â„¢s contention that all covenants of the Consent Terms have to be seen in conjunction, and juxtaposed

with one another. Acceptance of the contention of Mr. Chandhiok would, in my opinion, require Clause 16 to be torn out of its context as one of a set

of interlinked covenants in the Consent Terms, on the basis of which the disputes between the parties were reconciled. A holistic reading of the

Consent Terms militate against any presumption of the Annexure C properties having been charged, or secured, towards the liabilities of the

respondents to the petitioners. The substantive covenant, in the Consent Terms, which delineates the liabilities of the respondents towards the

petitioners is not Clause 16, but Clauses 11 and 12. Clause 11 records the unconditional undertaking, of the respondents, to pay, to the petitioners, Rs.

90 crores, in accordance with Clause 12. Clause 12 requires the respondents to make payments, to the petitioners, in four tranches. In default, Clause

19 of the Consent Terms entitled the petitioners to the entire amount of Rs. 225 crores, less the amounts already paid by the respondent. It enforces a

right to payment, not a right to proceed against properties. It is this entitlement that constitutes the basis of the arbitral award. Clearly, the arbitral

award is a money award.

32. Other clauses of the Consent Terms, too, underscore this position. Time has been made of the essence, by Clause 13, for payment of the amounts

payable, by the respondents to the petitioners under the Consent Terms. Clause 16 itself retains the liability to make such payment, even if the required

amounts could not be sourced by sale of the Annexure C properties. As Mr. Sibal correctly points out, the disconnect between the liability to make

payment to the petitioners, and the Annexure C properties, is further apparent from Clause 17, under which the respondents were proscribed from

creating any third-party interest in respect of any other movable or immovable assets. Clauses 16 and 17 are clearly to be read in conjunction and not

divorced from each other. While Clause 16 gave voice to the intention, of the respondents, to source the funds, for complying with the Consent Terms,

by sale of the Annexure C properties, it retained, as intact, the liability of the respondents to the petitioners, even if the Annexure C properties were

insufficient. For this purpose, the respondent was restrained, by Clause 17, from alienating its other assets. Even holistically seen, therefore, the

Consent Terms cannot be treated as having created a charge on the Annexure C properties.

33. There is a third, and more empirical reason for rejecting the contention advanced by Mr. Chandhiok Ã¢â‚¬" predicated on the premise of creation of a

charge on the Annexure C properties within the meaning of Section 100 of the Transfer of Property Act Ã¢â‚¬" regarding want of territorial jurisdiction,

in this Court, to adjudicate the present execution petition. Even if it were to be assumed, arguendo, that Clause 16 creates a charge on the Annexure C

properties, the job of the executing court is not to enforce the charge, but to enforce the award. The award, clearly, requires payments by the

respondents, to the petitioners, in accordance with Clauses 12 and 19. If the respondents source the monies payable, by them, to the petitioner as per

the Consent Terms, from other sources, leaving the Annexure C properties intact, nothing would survive for execution. What the petitioners seek from

the respondent is payment, in accordance with Clauses 12 and 19 of the Consent Terms. The execution petition is not for enforcing any security

interest, either against the Annexure C properties or against any other property. It seeks execution of a money award. Payment of the monies would

satisfy the execution petition. The executing court cannot, therefore, be concerned with the source from which the respondents would garner the

resources to comply with the arbitral award. Even if, therefore, Clause 16 of the Consent Terms were to be interpreted as creating a charge on the

Annexure C properties, that cannot be a factor which is relevant for the executing court, which is essentially seized with the task of executing a

money award.

34. Were the respondents to renege from their obligations under the Consent Terms, as rendered enforceable by the Consent Award of the learned

Arbitrator, there is no obligation on the court, in my view, to proceed first against the Annexure C properties. Clause 16 of the Consent Terms does

not, either, oblige the Court to do so. It would be permissible for the Court to attach, in the first instance, any properties of the respondents, as award

debtors, within its jurisdiction. There is no requirement in law for the petitioners to, in the first instance, proceed against the Annexure C properties

and, only thereafter, seek execution of the award by alternate sources. Even on this ground, therefore, the present petition cannot be treated as bad

for want of territorial jurisdiction.

35. Section 51(b) of the CPC, in my view, is entirely irrelevant to the controversy. It is in the nature of an empowering provision, enlisting one of the

modes by which a Court could execute a decree, and merely specifies that attachment of properties is not a precondition for their sale, towards

execution. That apart, the provision would equally apply to this Court, qua the properties enlisted in Schedule A to the petition. I am unable to

appreciate, therefore, how the jurisdiction of this Court would stand divested by Section 51(b).

36. The submission of Mr Chandhiok that, having approached the Bombay High Court for execution of the ad interim order of the learned Arbitrator,

the petitionerÃ¢â‚¬â„¢s right to approach this Court for execution of the final award stands foreclosed is also, in my view, completely bereft of merit.

Section 42 of the 1996 Act, which alone could constitute the foundation for such a submission, was held, in Sundaram Finance (2018) 3 SCC 622, not

to apply to execution proceedings, as, with the passing of the arbitral award, the arbitral proceedings stand terminated, by operation of Section 32(1).

Besides, the Consent Terms themselves required, as a precondition, the withdrawal of Execution Application (L) 2113/2018 from the High Court of

Bombay.

Ã¢â‚¬Å“42. Jurisdiction. Ã¢â‚¬" Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect

to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral

proceedings and all subsequent applications arising out of the agreement and the arbitral proceedings shall be made in that Court and in no other

Court.Ã¢â‚¬â€‹

Ã¢â‚¬Å“32. Termination of proceedings. Ã¢â‚¬

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub- section (2).Ã¢â‚¬â€‹

37. None of the contentions advanced by Mr. Chandhiok, therefore, persuade me to hold that the present execution petition cannot be entertained by

this Court, for want of territorial jurisdiction.

38. The objection, to the said effect, as urged by the respondents is, therefore, rejected.