

(2022) 05 DEL CK 0023

In the Delhi High Court

Case No : Civil Suit (COMM) No. 54 Of 2021, I.A. No. 5381, 7811, 8084, 9389, 9578, 9360, 11866 Of 2021

OCM Singapore Njord Holdings Hardrada Pte Ltd. & Anr

APPELLANT

Vs

Prerit Goel & Ors

RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 141, 142, 144

Code Of Civil Procedure, 1908 — Section 13, 14, 20, 44A, 151, Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 10, Order 7 Rule 11

Citation : (2022) 05 DEL CK 0023

Hon'ble Judges : Amit Bansal, J

Bench : Single Bench

Advocate : Prashant S. Pratap, Kanhaiya Singhal, Shubham Agrahari, Nishant Bhatia, Heena Tangri, Krishnan Venugopal, Rohan Poddar, Pallavi Srivastava, Ashwin Shankar, Shyel S. Trehan, Siddharth Nath, Aditya Kumar, Ishaan Karki

Judgement

Amit Bansal, J

I.A. No. 1540/2021 (u/O.XXXIX R.1 & 2 of CPC), I.A. No. 1541/2021 (u/S.151 of CPC), I.A. No. 8073/2021 (of the defendants no. 1 to 4 u/O.VII R.10 & 11 of CPC) & I.A. No. 9321/2021 (of the defendant no. 5 u/O.VII R.10 & 11 of CPC)

1. By this order, I propose to decide the I.A. No. 1540/2021 filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) and I.A. No. 1541/2021 filed by the plaintiffs under Section 151 of the CPC, seeking a direction to the defendants no. 1 to 4 for disclosure of assets of the defendants no. 1 to 5 on affidavit. Further, I shall decide I.A. No. 8073/2021 filed by the defendants no. 1 to 4 under Order VII Rules 10 and 11 of the CPC and I.A. No. 9321/2021 filed by the defendant no. 5 company under Order VII Rules 10 and 11 of the CPC.

BRIEF FACTS

2. Brief facts relevant for deciding the present applications, as given the plaint, are set out below:

(i) The plaintiff no. 1, OCM Singapore Njord Holdings Hardrada Pte Ltd., is a company incorporated in Singapore and carries on business as ship owners. The plaintiff no. 1 is the registered owner of the vessel "Torm Hardrada" (hereinafter, referred to as the 'Vessel'). The plaintiff no. 2, Torm A/S, is a company incorporated under the laws of Denmark and is one of the leading tanker carriers of clean oil products. The plaintiff no. 2 is the disponent owner of the Vessel.

(ii) The defendant no. 5, Gulf Petrochem FZC, is a Company incorporated under the laws of the United Arab Emirates (UAE). The defendants no. 1 to 4 are or were at the material time, the owners and promoters and also the key managerial personnel of the defendant no. 5 company.

(iii) The defendant no. 5 company had voyage chartered the Vessel from the plaintiff no. 2 vide a Voyage Charterparty dated 8th May, 2020.

(iv) Under the aforesaid Voyage Charterparty, the Vessel loaded 40,533.05 metric tonnes of Jet Aviation Fuel (hereinafter, referred to as the 'Cargo') on 20th May, 2020 and a bill of lading was issued by the master of the Vessel, which was consigned to the order of Natixis, France, a French bank for delivery at Rotterdam.

(v) On 6th June, 2020, the defendant no. 5 company ordered the Vessel to proceed to Fujairah, UAE and deliver the Cargo to Vitol Bahrain E.C. as receivers, when originally, the Cargo was to be delivered to the port of Rotterdam.

(vi) In this regard, a Letter of Indemnity (hereinafter, referred to as the 'LoI') was issued on 9th June, 2020 on behalf of the defendant no. 5 company, in favour of the plaintiffs, in terms of which the defendant no. 5 company agreed to indemnify the plaintiffs in respect of any liability, loss, damage, or expense caused by arrest or detention or threatened arrest of the Vessel.

(vii) On the basis of the aforesaid LoI, the Vessel berthed at the VTTI terminal, UAE and commenced discharge on 10th June, 2020. The Vessel completed discharge the following day i.e., on 11th June, 2020.

(viii) In the ordinary course, the buyer would have paid the defendant no. 5 company, who would have used the sale proceeds to repay the Natixis. In this way, Natixis would have released the original bills of lading to the defendant no. 5 company or to their buyers Vitol Bahrain E.C., who would in turn have presented them to the plaintiffs. However, this did not happen. Although the defendant no. 5 company received payment from the buyers, the defendant no. 5 company did not pay Natixis and misappropriated the proceeds of the sale. Natixis was, therefore, left holding the bill of lading and the plaintiffs were exposed to a claim by Natixis.

(ix) On 11th August, 2020, the plaintiff no. 2 received a legal notice on behalf of

the Natixis, alleging mis-delivery of the Cargo by the plaintiff no. 2 and demanded the delivery of the Cargo to Natixis, or in the alternative, damages in the sum of USD 11,099,611/-, expressly reserving Natixis' right to arrest the Vessel.

(x) On 17th August, 2020, the plaintiffs, through their solicitors, sent a letter to the defendant no. 5 company calling upon them to pay sum of USD 11,099,611/- directly to Natixis so as to prevent the arrest of the Vessel. However, the defendant no. 5 company neither paid the aforesaid amount to Natixis nor replied to the aforesaid notice.

(xi) The plaintiffs filed proceedings before the High Court of Justice, Commercial Court (Queen's Bench Division) (hereinafter, referred to as the 'English Court') against the defendant no. 5 company on 21st August, 2020, seeking a declaration confirming the defendant no. 5 company's liability to provide security in terms of the LoI and seeking a mandatory injunction, requiring the defendant no. 5 company to provide security so as to prevent the arrest of the Vessel.

(xii) Vide order dated 25th August, 2020, the English Court, directed the defendant no. 5 company to notify Natixis by 26th August, 2020 as to the form, wording and amount in which the security would be furnished by the defendant no. 5 company.

(xiii) On 26th August, 2020, the Independent Chief Restructuring Officer (CRO) of the defendant no. 5 company sent a communication to the solicitors of the plaintiffs as well as Natixis, informing that he has been appointed as the CRO by the defendant no. 5 company since 30th July, 2020. It was further communicated in the said letter that the defendant no. 5 company does not have the financial capacity to furnish the security as directed by the English Court.

(xiv) Vide judgment dated 9th October, 2020 and the subsequent order dated 12th October, 2020, the English Court directed the defendant no. 5 company to furnish security to Natixis by 6th November, 2020, which deadline was further extended to 13th November, 2020.

(xv) Thereafter, the defendant no. 5 company moved an application before the English Court for discharge of the order passed by the English Court directing the defendant no. 5 company to furnish a security on the ground that the defendant no. 5 company is not in a position to furnish the security on account of its financial inability. The said application was dismissed by the English Court on 22nd December, 2020.

(xvi) Meanwhile, Natixis filed two separate proceedings before the United States District Courts in New Jersey and in Southern District of New York for arrest of the plaintiffs' Vessel on account of damages suffered by Natixis on account of the mis-delivery of the Cargo to Vitol Bahrain E.C.

(xvii) In order to mitigate their losses, the plaintiffs on 16th November, 2020 furnished security in favour of Natixis to the tune of USD 14,908,056/- through

Britannia Steam Ship Insurance Association Limited (hereinafter, referred to as the 'P&I Club Britannia') towards the principal claim amount of USD 12,423,380/-, being the value of the subject Cargo plus interest and costs. In order to get the concerned Letter of Undertaking issued, the plaintiff no. 2 has in turn furnished a cash security of the same amount to the P&I Club Britannia.

(xviii) Thus, the entire transaction involving the purchase and on-sale of Cargo by the defendant no. 5 company and procurement of trade finance from Natixis was a fraudulent act and the victim of the aforesaid fraud were the plaintiffs, who had to secure Natixis to the tune of USD 14,908,056/-.

(xix) The aforesaid fraud has been perpetrated by the defendants no. 1 to 4, who are the shareholders, key managerial personnel and directors of the defendant no. 5 company.

(xx) The defendants no. 1 to 4 have defrauded many more companies globally in a similar manner by inducing shipping companies to deliver cargo to other buyers without production of the original bills of lading on the basis of similar LoIs and, thereafter, not honouring the said LoIs. Particulars of other such fraudulent transactions have been given in paragraph 51 of the plaint. The defendants no. 1 to 4 have used the corporate structure/status of the defendant no. 5 company to engage in fraudulent activities to defraud the plaintiffs as well as Natixis. The defendants no. 1 to 4 have personally benefitted from these fraudulent transactions, as no amounts are available with the defendant no. 5 company.

(xxi) The defendants no. 1 to 4 have left UAE, from where they were operating the defendant no. 5 company, and are stated to be presently in New Delhi.

3. In view of the aforesaid, the plaintiffs have filed the present suit against the defendants, inter-alia, for piercing the corporate veil of the defendant no. 5 company, and holding the defendants no. 1 to 4 jointly and/or severally liable in their personal capacity for the admitted liability of the defendant no. 5 company, and consequently, the payment of USD 12,423,380/-, being the principal amount (value of the subject Cargo) due and payable to the plaintiffs, as prayed for in the plaint, plus costs and interest.

PROCEEDINGS IN THE SUIT

4. Based on the aforesaid, I.A. No. 1540/2021 has been filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC, seeking the following reliefs:

"a) That pending the hearing and final disposal of the Suit, the Defendant Nos. 1 to 4 be restrained by themselves, their servants, agents or any person claiming through them, from selling, transferring, alienating, encumbering, parting with possession, dealing with or otherwise creating any third—party rights/interest in relation to the assets and properties, both movable and immovable belonging to the Defendant Nos. 1 to 4;

b) That pending the hearing and final disposal of the Suit, the Defendant Nos. 1

to 4 be restrained by an order and injunction from transferring or removing any amounts in excess of INR 500,000.00 (Rupees Five lacs only) from any of their bank accounts whether held singly or jointly with any other individual, whether within or outside India”

5. I.A. No. 1541/2021 has been filed by the plaintiffs under Section 151 of the CPC, seeking the following reliefs:

“a) That pending the hearing and final disposal of the Suit, this Hon’ble Court be pleased to direct Defendant Nos. 1 to 4 to disclose the following on affidavit:

i. Details and particulars of immovable assets of the Defendant Nos. 1 to 5 within and outside the jurisdiction of this Hon’ble Court with a statement showing transfers and alienations from 1st January 2020 till date;

ii. Details and particulars of movable assets of the Defendant Nos. 1 to 5 within and outside the jurisdiction of this Hon’ble Court with a statement showing transfers and alienations from 1st January, 2020 till date;

iii. All bank account statement/s from 1st January, 2020 till date of Defendant Nos. 1 to 5 and full details of all bank accounts whether in India or outside India;

iv. List of charges and mortgages together with complete details of charges and mortgages including the amount of the charge and mortgage in respect of the assets belonging to the Defendant Nos.1 to 5.”

6. Summons in the suit and notice in the aforesaid applications were issued on 2nd February, 2021 and pursuant thereto, replies have been filed on behalf of the non-applicants/defendants.

7. I.A. No. 8073/2021 has been filed by the defendants no. 1 to 4 under Order VII Rules 10 and 11 of the CPC and I.A. No. 9321/2021 has been filed by the defendant no. 5 company under Order VII Rules 10 and 11 of the CPC.

8. Notice in the aforesaid applications was issued on 2nd August, 2021 and pursuant thereto, replies have been filed on behalf of the non-applicants/plaintiffs.

SUBMISSIONS OF THE PLAINTIFFS

9. On the basis of the aforesaid pleadings, the following submissions have been made on behalf of the plaintiffs in support of I.A. No. 1540/2021 and I.A. No. 1541/2021:

(i) The fraud is writ large in the entire transaction.

(ii) The amounts pursuant to the aforesaid transaction have been siphoned off into unknown bank accounts of the defendants no. 1 to 4.

(iii) It is a fit case for piercing of the corporate veil of the defendant no. 5 company and proceeding against the defendants no. 1 to 4. The defendant no. 5

company is nothing but an extension of the defendants no. 1 to 4.

(iv) Even though the defendant no. 5 company has been impleaded as a proper and necessary party, no relief has been sought against the defendant no. 5 company.

(v) The defendants no. 1 to 4 as well as the defendant no. 5 company are residing/working for gain in Delhi and, therefore, fall within the jurisdiction of this Court. In this regard, reliance is placed on the registered Sale Deed dated 4th November, 2010 in respect of property measuring 1 Bigha 12 Biswas, bearing Khasra Nos.19/21/1(1-12), situated in the revenue estate of Village Samalka, Tehsil Vasant Vihar, New Delhi in favour of the defendant no. 1, Sh. Prerit Goel, and the defendant no. 4, Sh. Manan Goel.

(vi) Reliance is also placed on the website of the defendant no. 5 company, which shows one of the addresses of the defendant no. 5 company at New Delhi bearing Resham House, Farm No. 9/1, Amaltas Avenue, Westend Green Farms Society, New Delhi, India – 110 037.

(vii) Even if it is held that the defendant no. 5 company does not have a presence in Delhi, the present suit is maintainable against the defendants no. 1 to 4.

(viii) On the issue of lifting of the corporate veil, reliance has been placed on the judgments in Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and Anr., 1996 4 SCC 622 and Balwant Rai Saluja and Anr. Vs. Air India Limited and Anr., 2014 9 SCC 407.

(ix) No defence has been raised on behalf of the defendants no. 1 to 4 in respect of the aforesaid averments, except for technical objections with regard to the lack of territorial jurisdiction of this Court.

(x) The fraud played by the defendants no. 1 to 4 on the plaintiffs and Natixis is evident from the findings of the English Court.

SUBMISSIONS OF THE DEFENDANTS

10. The counsel appearing on behalf of the defendant no. 5 company, opposing I.A. No. 1540/2021 and I.A. No. 1541/2021 and in support of I.A. No. 9321/2021, has made following submissions:

(i) This Court does not have the territorial jurisdiction to entertain the present suit. As per the LoI, the exclusive jurisdiction to entertain the present suit lies with the High Court of Justice at England.

(ii) The website placed on record on behalf of the plaintiffs is in respect of the entire group of companies of the defendant no. 5 company and not in respect of the defendant no. 5 company alone. The defendant no. 5 company has no presence in India.

(iii) The suit is in the nature of enforcement of a foreign decree.

(iv) It has wrongly been stated on behalf of the plaintiffs that no relief has been sought against the defendant no. 5 company.

(v) In terms of the doctrine of lifting/piercing the corporate veil, the corporate veil can be lifted/pierced only by the Court in whose jurisdiction the corporation is located. Therefore, in the present case, since the defendant no. 5 company is based in UAE and as per the LoI, the Courts with the competent jurisdiction are the English Courts, thus, the corporate veil can be lifted/pierced only in the competent Courts of the aforesaid jurisdictions and not by the Indian Courts.

(vi) The lifting/piercing of the corporate veil cannot be a stand-alone cause of action to file the present suit.

(vii) The liability of the plaintiffs has not crystalized yet and, therefore, the present suit is premature.

11. The senior counsel appearing on behalf of the defendants no. 1 to 4, opposing I.A. No. 1540/2021 and I.A. No. 1541/2021 and in support of I.A. No. 8073/2021, has made following submissions:

(i) Other than the address given in the memo of parties, there is no pleading in the plaint with regard to the cause of action arising in Delhi.

(ii) The defendants no. 1 to 4 do not reside or work for gain in Delhi.

(iii) The entire cause of action in the plaint is against the defendant no. 5 company and in view of the exclusive jurisdiction of the English Courts given by the LoI, this Court does not have jurisdiction.

(iv) No ingredients for lifting/piercing of the corporate veil have been made out in the present case.

(v) Reliance is placed on the judgment of the High Court of Bombay in Mitsui OSK Lines Ltd. (Japan) Vs. Orient Ship Agency Pvt. Ltd., 2020 SCC OnLine Bom 217.

(vi) In view of Section 13 of the CPC, no reliance can be placed on the judgments of the English Court.

(vii) No finding of fraud has been given against the defendant no. 5 company by the English Court.

FINDINGS AND OBSERVATIONS

12. I have heard the counsels for the parties and perused the records of the case.

Territorial Jurisdiction

13. First, I propose to deal with the issue of territorial jurisdiction.

14. It has been vehemently argued on behalf of the defendants that this Court does not have the territorial jurisdiction to entertain the present suit as none of

the defendants are subject to the jurisdiction of this Court. Whether the aforesaid issue of territorial jurisdiction has to be considered while deciding the applications filed on behalf of the plaintiffs for grant of interim relief came up before the Division Bench of this Court in *Allied Blenders & Distillers Pvt. Ltd. Vs. R. K. Distilleries Pvt. Ltd.*, MANU/DE/0500/2017 (DB). The relevant observations of the Division Bench are set out below:

"22. We must make it clear that the considerations with regard to territorial jurisdiction in the context of Order VII Rule 10, CPC are entirely different from those in the context of an application under Order XXXIX Rules 1 & 2, CPC or in the context of an issue framed in the suit with regard to territorial jurisdiction. While in the backdrop of Order VII Rule 10, it is only the averments contained in the plaint that have to be seen in the case of an application for the grant of interim relief under Order XXXIX Rules 1 & 2, the contentions of the defendant in the reply to this application as also those contained in the written statement are required to be examined to arrive at a prima facie view. So, while in the case of an Order VII Rule 10 CPC application, the issue of jurisdiction is decided on the basis of what is stated in the plaint and, that too, after assuming the statements to be correct, an application under Order XXXIX Rules 1 & 2, CPC requires the examination of the contentions of the defendants that may be contained in the written statement and / or the reply to the application as also the other material which may be placed by the defendant before the court. Here, there is no question of considering the pleas of the plaintiff by way of a demurrer. Furthermore, the standards would be higher when an issue with regard to territorial jurisdiction is to be finally decided in the course of trial of the suit. Thus, while for the purposes of an examination under Order VII Rule 10, CPC, the court may come to the conclusion that it has territorial jurisdiction, this would not come in the way of the defendant in raising a question as to territorial jurisdiction, both when the issue of temporary injunction under Order XXXIX Rules 1 & 2, CPC is being considered and when an issue as to territorial jurisdiction is being decided in the course of trial of the suit. To put it differently, while a plaintiff may succeed in demonstrating, for the purposes of Order VII Rule 10 CPC that this court has territorial jurisdiction and that the plaint ought not to be returned, he may fail in obtaining an order of interim injunction on the ground that the plaintiff's entitlement is itself shaky because the issue of territorial jurisdiction is highly debatable and prima facie not tenable. Therefore, the decision of the court in putting down an objection of the defendant and in rejecting the defendant's prayer for return of the plaint under Order VII Rule 10, CPC, would not come in the way of the defendant raising the question of territorial jurisdiction, both as an objection to the grant of an interim injunction as also at the time of decision of the issue of territorial jurisdiction, if framed, at the time of trial of the suit."

15. The aforesaid observations of the Division Bench were considered by a Co-ordinate Bench of this Court in *Allied Blenders and Distillers Pvt. Ltd. Vs. Agribiotech Industries Limited*, MANU/DE/1936/2020. Applying the principles laid

down by Division Bench above, it was observed as under:

"22. It is important to emphasise this position, as Mr. Khandekar has, during the course of arguments as well as in his written submissions, advanced the contention that, as the issue of territorial jurisdiction is highly debatable, no case for grant of ad interim injunction is made out. The decisions in *Allied Blenders and Distillers v. R.K. Distilleries* and *Allied Blenders and Distillers v. Prag Distillery* – specifically, the paras extracted hereinabove – reveal that this is not the correct legal position. The defendant, in order to set up territorial jurisdiction as a ground to oppose the prayer for interim injunction, would have to establish that the issue of territorial jurisdiction as both "highly debatable" and "prima facie not tenable". The use of the words "prima facie not tenable", by the Division Bench of this Court in these decisions, indicates that the onus would be on the defendant to establish, prima facie, that the plaint is not amenable to the territorial jurisdiction of this Court – or, at the least, that the contentions, of the plaintiff, for invoking the territorial jurisdiction of this Court are, prima facie, not acceptable."

16. In *Agribiotech Industries Limited (supra)*, the issue before the Court was whether in view of the addresses given on the website of the defendant, jurisdiction of this Court was made out or not. This Court, taking note that one of the addresses on the website of the defendant was in New Delhi, took a prima facie view that territorial jurisdiction of this Court was made out and granted interim injunction. The relevant observations are set out below:

"30. ...Beetal House, New Delhi has, therefore, been reflected, on the website of the defendant, as an address at which it can be contacted. Prima facie, therefore, the defendant has an office at the said address. The nature of the said office, and as to whether the defendant can be said to be "carrying on business" at the said office, on the basis of the tests postulated in the passage, from *Dhodha House*, is a question of fact, which would have to be decided on the basis of pleadings and evidence. Thereafter, it would have to be ascertained as to whether the nature of the work transacted at the said office is such as to substantiate the defendant's contention that it does not "carry on business" there. At this ad interim stage, I have to proceed on the basis that, prima facie, the "Contact Us" page, on the website of the defendant, reflects that it does carry on business at the Beetal House address, in New Delhi."

17. In the present case, the plaintiffs have placed on record, the website of the defendant no. 5 company, which shows that the defendant no. 5 company has an office/place of business in New Delhi. The defendants no. 1 to 4 as well as the defendant no. 5 company, in paragraphs 4 of their identically worded replies to I.A. No. 5381/2021, have accepted that the New Delhi address is one of the addresses of the defendant no. 5 company but sought to put an explanation that it was only a correspondence/forwarding address and no business activities are conducted thereon. It was further submitted by the counsel for the defendant no. 5 company that at best, the said address could only be of a 'subordinate office',

where no cause of action has arisen. However, later in paragraph 4 of I.A. No. 9360/2021, filed by the defendant no. 5 company for seeking summary judgment, the defendant no. 5 company appears to have changed its stand and stated that it does not have any principal or subordinate office within the jurisdiction of this Court.

18. Clearly, the defendants are taking inconsistent stands, whereas in paragraphs 4 of the replies of the defendants no. 1 to 4 and the defendant no. 5 company to I.A. No. 5381/2021, it has been stated that the New Delhi address is the one of the addresses of the defendant no. 5 company, however, in the light of paragraph 4 of I.A. No. 9360/2021 the said fact has been denied.

19. At this stage, reference may be made to the explanation to Section 20 of the CPC, which is reproduced herein after:

"20. Other suits to be instituted where defendants reside or cause of action arises.— Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation —A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

20. Applying the principles in *R. K. Distilleries Pvt. Ltd. (supra)* and *Agribiotech Industries Limited (supra)*, on a prima facie view, the plaintiffs have established that the defendant no. 5 company has an office within the territorial jurisdiction of this Court, where it can be said to be carrying out its business. Whether the defendant no. 5 company has a sole or a principal or a subordinate office within the jurisdiction of this Court is subject matter of trial. At this stage, the Court only has to take a prima facie view. The defendants have failed to show that the territorial jurisdiction of this Court is highly debatable or prima facie not tenable.

21. As regards the territorial jurisdiction in respect of the defendants no. 1 to 4, in I.A. No. 4416/2021 filed on behalf of the defendants no. 1, 3 and 4, it has been stated that the defendants no. 1 and 4 are currently in United Kingdom and the defendant no. 3 is in Gurugram, Haryana, whereas, the affidavit filed in

support of I.A. No. 4416/2021 states that the defendant no. 4 is currently in Gurugram, Haryana. Furthermore, the affidavits filed in support of the written statements filed by the defendant no. 2 and the defendants no. 3 and 4 have been verified by the said defendants in Haryana.

22. In this regard reference may also be made to the observations made by the Dubai International Financial Centre (DIFC) Courts in its judgment dated 1st October, 2020 in the proceedings initiated by an investment banking company, Credit Suisse, bearing Claim No. CFI 066/2020, against the defendants as follows:

"11. The Guarantors are all Indian nationals, holding Indian passports, who have been residents of the UAE. However, it seems that they have recently returned to India. All of the Guarantors are associated with the GP Group of companies. That group is headquartered in Sharjah in the UAE, although it has subsidiary companies and offices all over the world. The parent company of the group is GP FZC. The Guarantors are the only four shareholders and are also the only directors of GP FZC."

23. Once again, the defendants are taking inconsistent stands with regard to their current residence, but what is clear from the aforesaid is that atleast three of the defendants, being the defendants no. 2, 3 and 4, have been in India.

24. The plaintiffs have placed on record the registered Sale Deed dated 4th November, 2010 in respect of property measuring 1 Bigha 12 Biswas, bearing Khasra Nos.19/21/1(1-12), situated in the revenue estate of Village Samalka, Tehsil Vasant Vihar, New Delhi executed in favour of the defendant no. 1, Sh. Prerit Goel, and the defendant no. 4 Sh. Manan Goel. The ownership of the said property has not been denied by the said defendants. The only defence taken on behalf of the defendants is that they do not reside at the said property. Once again, at this stage, the Court is required to take a prima facie view and on a prima facie view, the existence of Sale Deed 4th November, 2010 and the property tax receipts of the financial year 2019-20 seem to suggest that the defendants no. 1 and 4 are residing at the aforesaid property, which is within the jurisdiction of this Court. Whether the said defendants are actually residing at the said address is the subject matter of trial.

25. In light of the aforesaid, this Court is of the prima facie opinion that the present matter falls within the territorial jurisdiction of this Court.

Findings of the English Court

26. A reference may be made to the judgment dated 9th October, 2020 passed by the English Court. The relevant observations are set out below:

"16. The following points emerge from the evidence. Firstly, those who had formally controlled the company are still directors and have not been removed from the Board. However, Mr. Sutton maintains that the family members who are directors of the company currently play no role in the management of the

company but are a source of information for Mr. Sutton who says that their co-operation has been useful in obtaining information.

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21. I now go to the second witness statement of Mr. Sutton because that expands a little on the position concerning the assets of the defendant company. He makes the point that the cash position of the company as at 4 October 2020 was \$1.016 million and that none of the existing shareholders had any contribution to the capital since his appointment and that the money received in respect of the cargo, the subject of this claim, was paid into the two bank accounts with Standard Chartered that I mentioned earlier. His comment concerning the cash position ignores the value of uncollected receivables. He says in general terms that the proceeds of sale appear to have been paid out for meeting expenses in the ordinary course of business of the defendant, but there is no greater detail than that. Having regard to the way in which this transaction took place, which is described by Mr. Sutton with commendable understatement as being "irregular", means that there has to be a very full and frank disclosure of the way in which the proceeds of sale have been expended."

27. Subsequently, a summary judgment dated 11th January, 2022 was passed by the English Court against the defendant no. 5 company, wherein it was held as follows:

"3. The Defendant is obliged to indemnify the First Claimant, and its servants and agents, and hold all of them harmless in respect of any liability, loss, damage or expense of whatsoever nature which they may sustain by reason of delivering the Cargo on or about 10th–11th June, 2022, in accordance with the Defendant's request to do so deliver as set out within emails dated 6th June and/or 9th June 2020, including (but not limited to) any expenses arising out of or in connection with the Bank Claim, the Arrest Proceedings, and the Britannia Security, and including (to the extent applicable) such interest under section 35A of the Senior Courts Act 1981 as may be assessed by the court.

4. The Defendant is obliged to indemnify the First Claimant against any liability, loss, damage or expense caused by the threatened arrest and detention of the Vessel by the Bank, including, but not limited to, any expenses arising out of or in connection with the Bank Claim, the Arrest Proceedings, and the Britannia Security, and including (to the extent applicable) such interest under section 35A of the Senior Courts Act 1981 as may be assessed by the court.

AND IT IS ORDERED THAT

5. By no later than Friday 1st February 2022 the Defendant shall provide to the Bank security for the Bank's Claim, interest thereon and legal costs, on terms and from a security provider acceptable to the Bank, so as to obtain the return and cancellation of the letter of undertaking issued by the Britannia Steam Ship Insurance Association Limited dated 16th November, 2020 pursuant to the

agreement between the Bank and the Claimants of the same date.

6. An appeal lies from this order to the Court of Appeal (Civil Division). The Defendant's application for permission to appeal is refused. Any further application for permission to appeal must be made to the Court of Appeal (Civil Division).

7. The Defendant to pay the First Claimant's costs of this claim (save as already provided for by orders herein), including the costs of the summary judgment application and the First and Second Claimants' costs of the application for permission to amend its Defence such costs are to be summarily assessed, on paper unless otherwise ordered, by HHJ Pelling QC following the parties' written submissions on costs, to be exchanged as follows:

a. The Defendant shall serve its written submissions no later than 4.30 pm on Tuesday 18th January 2022, and

b. The First Claimant shall serve its written submissions in reply no later than 4.30 pm on Friday 21st January 2022."

28. What emerges from the aforesaid judgments of the English Court is that the defendants no. 1 to 4, (i) continue to be directors of the defendant no. 5 company; (ii) have not been removed from the board of the defendant no. 5 company; (iii) are useful in providing information as to the defendant no. 5 company; and, (iv) have failed to make any contribution to the capital of defendant no. 5 company. Further, the transactions of the defendant no. 5 company have been conducted in an irregular manner.

29. In this regard, reference may be made to Sections 13 and 14 of the CPC, which deal with foreign judgments. The same are set out below:

"13. When foreign judgment not conclusive.—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India.

14. Presumption as to foreign judgments.—The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.”

30. In *Alcon Electronics Private Limited v. Celem S.A.* of FAO 34320 Roujan, France and Another, (2017) 2 SCC 253, while analysing the aforesaid provisions, the Supreme Court has observed as under:

“14. A plain reading of Section 13 CPC would show that to be conclusive an order or decree must have been obtained after following the due judicial process by giving reasonable notice and opportunity to all the proper and necessary parties to put forth their case. When once these requirements are fulfilled, the executing court cannot enquire into the validity, legality or otherwise of the judgment.

15. A glance on the enforcement of the foreign judgment, the position at common law is very clear that a foreign judgment which has become final and conclusive between the parties is not impeachable either on facts or law except on limited grounds enunciated under Section 13CPC. In construing Section 13 CPC we have to look at the plain meaning of the words and expressions used therein and need not look at any other factors. Further, under Section 14 CPC there is a presumption that the foreign court which passed the order is a court of competent jurisdiction which of course is a rebuttable presumption. In the present case, the appellant does not dispute the jurisdiction of the English Court but its grievance is, it is not executable on other grounds which are canvassed before us.”

31. The judgment dated 11th January, 2022 of the English Court was passed in the presence of the counsel for the defendant no. 5 company as well as on the basis of the evidence led on its behalf. It is not the case of the defendants that the said judgment falls within the exceptions under Section 13 of the CPC. Therefore, in terms of Sections 13 and 14 of the CPC, the said judgment has to be held to be conclusive in respect of the issues decided by it.

32. One of the pleas taken on behalf of the defendants is that instead of filing the present action, the plaintiffs should have filed for execution of the judgment of the English Court in terms of Section 44A of the CPC. But, the fact of the matter is that there are no assets left with the defendant no. 5 company to execute the decree and it was the case of the defendant no. 5 company that it does not have the financial capacity to furnish the security. Further, as per the averments made in the plaint, all the aforesaid assets have been siphoned off by the defendants no. 1 to 4.

Lifting/Piercing of Corporate Veil

33. Now, I propose to deal with the issue of lifting/piercing of the corporate veil.

34. The principles with regard to lifting of the corporate veil have been laid down

by the Supreme Court in *Skipper Constructions* (supra). Paragraph 24 of the said judgment is set out below:

"24. In *Salomon v. Salomon & Co. Ltd.* [1897 AC 22 : (1895-99) All ER Rep 33] the House of Lords had observed,

"the company is at law a different person altogether from the subscribers ...; and, though it may be that after incorporation the business is precisely the same as it was before, the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act."

Since then, however, the courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct". [Gower: *Modern Company Law* — 4th Edn. (1979) at p. 137.] Pennington (*Company Law* — 5th Edn. 1985 at p. 53) also states that "where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the law", the court will disregard the corporate veil. A Professor of Law, S. Ottolenghi in his article "From peeping behind the Corporate Veil, to ignoring it completely" says

"the concept of 'piercing the veil' in the United States is much more developed than in the UK. The motto, which was laid down by Sanborn, J. and cited since then as the law, is that 'when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons'. The same can be seen in various European jurisdictions."

[(1990) 53 *Modern Law Review* 338]

Indeed, as far back as 1912, another American Professor L. Maurice Wormser examined the American decisions on the subject in a brilliantly written article "Piercing the veil of corporate entity" [published in (1912) XII *Columbia Law Review* 496] and summarised their central holding in the following words:

"The various classes of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down? The nearest approximation to generalisation which the present state of the authorities would warrant is this: When the conception of corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons.""

35. Applying the principles of the lifting/piercing of the corporate veil, the Supreme Court in *Skipper Constructions* (supra), lifted the corporate veil and

observed that where a corporate character is employed for committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil to do justice between the parties.

36. The principles with regard to lifting/piercing of the corporate veil were once again considered by the Supreme Court in *Balwant Rai Saluja* (supra). The relevant observations of the Supreme Court, as set out in paragraph 74 of the aforesaid judgment, are set out below:

“74. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.”

37. As regards the reliance placed on behalf of the defendants on the judgment in *Mitsui OSK Lines Ltd.* (supra), the said judgment was delivered in the context of the execution of a foreign award and the Court was of the view that various allegations of fraud were nothing but bare assertions, allegations, surmises and conjectures in support of lifting of corporate veil without the same being established in respect of entities that were not parties to the foreign award and/or the foreign award not having been passed against them. In the present case, the defendants no. 1 to 4, in respect of whom lifting/piercing of the corporate veil is sought, are very much parties to the present suit.

38. From a consideration of the aforesaid conspectus of facts, it is an undisputed fact that the defendants no. 1 to 4 are the only shareholders as well as the directors of the defendant no. 5 company. In light of the averments made in the plaint and the documents placed on record, including the judgments of the English Court, the defendant no. 5 company has indulged in fraudulent activities causing loss to the plaintiffs. Despite a valid bill of lading in favour of Natixis or its order, the Cargo was diverted to another destination on the basis of the LoI, the terms of which were not honoured by the defendant no. 5 company. There has been no explanation as to why the aforesaid Cargo was diverted, why the terms of the LoI were not honoured, where the consideration, once received from Vitol Bahrain E.C, went and why the same was not paid to Natixis. Therefore, on merits, the defendants have failed to set up any case. The entire defence of the defendants is based on objections with regard to the territorial jurisdiction and enforceability of the judgments of the English Court. This leads this Court to a conclusion that the defendants do not have anything to say on the merits of the case.

39. Furthermore, there is no merit in the contention of defendants that the liability of the plaintiffs has not yet crystallized. There is no reason to disbelieve that the plaintiffs had to give a security of USD 14,908,056/- in favour of Natixis through P&I Club Britannia in order to prevent the arrest of its Vessel.

40. The position which emerges is that the defendants no. 1 to 4 were, at all points of time, the controlling persons behind the defendant no. 5 company, being the shareholders and the directors. Applying the principles laid down by the Supreme Court in *Skipper Constructions* (supra) and *Balwant Rai Saluja* (supra), the present case is a fit case for piercing of the corporate veil. The corporate character of the defendant no. 5 company has been used by the defendants no. 1 to 4 to defraud the plaintiffs. The defendant no. 5 company was a mere camouflage created by the defendants no. 1 to 4 to avoid their liabilities. The defendant no. 5 company is nothing but an extension of the defendants no. 1 to 4.

41. One of the submissions made on behalf of the defendants is that lifting/piercing of a corporate veil cannot by itself be a cause of action for filing of the present suit and, as otherwise, no cause of action has been pleaded against the defendants no. 1 to 4. It is further contended that the corporate veil can be lifted/pierced only where the defendant no. 5 company is located i.e. UAE, or in England, where the jurisdiction has been given under the LoI.

42. In my view, there is no merit at all in the aforesaid submissions. If the aforesaid submission is accepted, this would imply that a businessman living in India could incorporate a company outside India for doing various kinds of fraudulent activities and when an action is filed in India against him, he could claim that the cause of action would lie outside India as the company, which perpetrated that fraud, is located outside India. This cannot be the intent of the law. So long as the perpetrators of fraud are located within the jurisdiction of this Court, this Court would have the jurisdiction to lift/pierce the corporate veil in respect of a corporate entity incorporated outside India by the aforesaid persons.

43. In respect of the contention that the lifting/piercing of corporate veil can by itself be a cause of action for filing a suit, reliance has been rightly placed by the plaintiffs on the judgment dated 9th June, 2016 of the Court of Appeals, State of Michigan in No. 325471 titled *Edward Gallagher and Joan Gallagher Vs. Kathleen Persha* and which also forms a part of the written submissions filed on behalf of the defendant no. 5 company. This was also a case where piercing of the corporate veil was sought on account of fraud or misrepresentation. The Court of Appeals reversed the Trial Court's order and held that nothing prevents the plaintiffs from filing a suit against the shareholders/directors of a company, in respect of which corporate veil is sought to be lifted. It was further held that the plaintiffs cannot be compelled to pursue the remedy of lifting of corporate veil in the original suit against the company as, at that point of time the plaintiffs would have no reasons to believe that the company would fail to honour the judgment or that a company was being abused to subvert justice. The relevant

observations are reproduced below:

"Other than to state that a separate cause of action is required in order to pursue the remedy of piercing the corporate veil, and we have rejected that argument, defendants have pointed to no law that prohibits plaintiffs from filing this second suit against Persha and seeking to pierce Kasper's corporate veil. Certainly Persha was not off limits to a new lawsuit, as the first case against her was dismissed without prejudice. See *Mable Cleary Trust v Edward Marlah Muzyl Trust*, 262 Mich App 485, 509-510; 686 NW2d 770 (2004), overruled in part on other grounds by *Titan Ins Co v Hyten*, 491 Mich 547 (2012). And, as we noted earlier, actions to enforce judgments are specifically permitted by the common law. See *Netting Co v Touscany*, 247 Mich 279, 282; 225 NW 556 (1929) (recognizing a common law action to recover on a personal judgment) and *Union Guardian Trust Co*, 308 Mich at 172. Judgment creditors like plaintiffs should also not be required to pursue a piercing remedy in the first lawsuit or face losing that remedy, as a party should first have facts to support any claim or remedy before pursuing it. See MCR 2.114(E) and *Inter-Tel*, 360 SW3d at 169 n 11. A plaintiff cannot presume at the time of filing that (1) a corporate entity will fail to pay a valid judgment entered at the end of a case and (2) that the corporate form was being abused to subvert justice, and therefore plead piercing the corporate veil as a remedy no matter the set of facts (again, see MCR 2.114(E)), as oftentimes the improprieties that lead to pursuing a piercing remedy do not come to light during the initial lawsuit. See *Belleville*, 152 Mich App at 550. We therefore hold that the trial court erred in dismissing the 2014 case, and remand for further proceedings."

44. I am in respectful agreement with the aforesaid findings of the Court of Appeals, State of Michigan. When the original action was filed by the plaintiffs against the defendant no. 5 company in the English Court, the plaintiffs had no reason to believe that the defendant no. 5 company will not honour the said judgment or that the said company was being used by the defendants no. 1 to 4 to defraud the plaintiffs. Therefore, the present suit would be maintainable based on the cause of action of lifting/piercing of the corporate veil.

45. Furthermore, the defendants contend that the pleadings in the plaint are vague and do not disclose any cause of action for lifting/piercing of the corporate veil. I do not agree. Paragraphs 58 to 68 of the plaint contain elaborate pleadings describing how the defendants no. 1 to 4 have indulged in illegal and fraudulent activities using the corporate structure of the defendant no. 5 company.

46. Thus, in light of the aforesaid, a case for lifting/piercing of the corporate veil of the defendant no. 5 company is made out.

CONCLUSIONS

47. In I.A. No. 1541/2021, the plaintiffs have sought various disclosures in respect of the assets held by the defendants. The Supreme Court in *Rahul S. Shah Vs. Jinendra Kumar Gandhi and Others*, (2021) 6 SCC 418, while exercising

jurisdiction under Article 142, read with Articles 141 and 144 of the Constitution of India, has issued directions to be followed in particular courts dealing with suits and execution proceedings. The relevant direction of the Supreme Court in the context of I.A. No. 1541/2021 is set out in paragraph 42.7 of the said judgment and the same is reproduced below:

"42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

48. Applying the aforesaid position of law to the facts of the present case, this Court determines the present case to be a fit case, wherein the defendants no. 1 to 4 are liable to disclose details of their assets on oath.

49. According, the defendants no. 1 to 4 are directed to disclose the following on affidavit, within four weeks from the date of this judgment:

(i) The details and particulars of immovable assets of the defendants no. 1 to 5 within and outside the jurisdiction of this Hon'ble Court with a statement showing transfers and alienations from 1st January 2020 till date;

(ii) The details and particulars of movable assets of the defendant no. 1 to 5 within and outside the jurisdiction of this Hon'ble Court with a statement showing transfers and alienations from 1st January, 2020 till date;

(iii) All bank account statement/s from 1st January, 2020 till date of the defendants no. 1 to 5 and full details of all bank accounts, whether in India or outside India; and

(iv) List of charges and mortgages together with complete details of charges and mortgages, including the amount of the charge and mortgage in respect of the assets belonging to the defendants no. 1 to 5.

50. Accordingly, I.A. No. 1541/2021 stands disposed of in above terms.

51. I.A. No. 1540/2021 has been filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the CPC.

52. As consolidated above, the plaintiffs have made out a strong prima facie case in their favour and the defendants have not been able to make out any credible case of defence. Irreparable harm and injury would be caused to the plaintiffs, if the defendants were to dispose off their assets. Therefore, balance of convenience requires that the plaintiffs be granted interim injunction.

53. Consequently, I.A.1540/2021 is allowed and the defendants no. 1 to 4 are restrained by themselves, and through their servants, agents or any person claiming through them, from selling, transferring, alienating, encumbering, parting with possession, dealing with or otherwise creating any third-party rights/

interest in relation to the assets and properties, both movable and immovable, belonging to the defendants no. 1 to 4, including the property measuring 1 Bigha 12 Biswas, bearing Khasra Nos.19/21/1(1-12), situated in the revenue estate of Village Samalka, Tehsil Vasant Vihar, New Delhi.

54. In light of the aforesaid findings, more particularly those made in the context of this Court having the territorial jurisdiction to entertain the present suit, no case is made out for return and/or rejection of the plaint under Order VII Rule 10 or Order VII Rule 11 of the CPC. Accordingly, I.A. No. 8073/2021 and I.A. No. 9321/2021 are dismissed.

55. Needless to state, any observations made herein are only for the purposes of deciding the present applications and would have no bearing on the final adjudication of the suit.

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56. List before the Joint Registrar on 27th May, 2022, the date already fixed.