

Atul

**REPORTABLE**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
COMM EXECUTION APPLICATION NO. 58 OF 2017  
WITH  
CHAMBER SUMMONS NO. 706 OF 2017  
WITH  
CHAMBER SUMMONS NO. 66 OF 2016  
WITH  
COMM CHAMBER SUMMONS (L) NO. 599 OF 2019**

**GLOBAL ASIA VENTURE COMPANY**  
A company incorporated under the laws of  
Mauritius and having its registered office at  
C/o International Management (Mauritius)  
Ltd, Les Cascades Building, Edith Cavell  
Street, Port Louis, Mauritius

**... Decree Holder**

**~ VERSUS ~**

- 1. ARUP PARIMAL DEB**  
Having his residential address at  
Bundil No. 25 Neelkanth Woods,  
Mulla Bagh, Manpada, Thane 400  
610 And having his address of service  
at Flat No. 802, 8th Floor, White  
Field, Off Pokhran Road No.,  
Hiranandani Meadows, Thane 400  
067

2. **ANUSILA ARUP DEB,**  
Having her residential address at  
Bundil No. 25 Neelkanth Woods,  
Mulla Bagh, Manpada, Thane 400  
610 And having his address of service  
at Flat No. 802, 8th Floor, White  
Field, Off Pokhran Road No.,  
Hiranandani Meadows, Thane 400  
067
3. **KAMALAKAR P SHANBAG,**  
Adult, Indian having his residential  
Address at A-52 Ocean Gold, Twin  
Tower Lane Off Cadell Road,  
Prabhadevi, Mumbai 400 025
4. **BASUDEV MAJUMDAR,**  
Adult Indian having his residential  
address at 8, Iswar Choudhary Road,  
Kolkata 700 029

... Judgment Debtors

#### APPEARANCES

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FOR THE APPLICANT	<b>Mr Sharan Jagtiani,</b> <i>with Siddharth Rathod &amp; Riya Chopra, i/b Nishith Desai Associates.</i>
FOR THE RESPONDENTS	<b>Ms Jyoti Sinha,</b> <i>with Devangshu Nath, &amp; Pratiksha Basarkar, i/b Khaitan &amp; Co.</i>

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**AND**  
**COMM EXECUTION APPLICATION (L) NO. 2113 OF 2018**  
**WITH**  
**COMM CHAMBER SUMMONS NO. 1030 OF 2018**

1. **MATRIX PARTNERS INDIA INVESTMENT HOLDINGS LLC**  
a company registered under the laws of Mauritius and having its registered office at Suite No. 7020, 7th Floor, Hennessy Court, Pope Hennessy Street, Port Louis, Mauritius
2. **MATRIX PARTNERS INDIA INVESTMENTS LLC**  
a company registered under the laws of Mauritius and having its registered office at Suite No. 7020, 7th Floor, Hennessy Court, Pope Hennessy Street, Port Louis, Mauritius
3. **RESURGENCE PE INVESTMENTS LTD,**  
(previously known as AVIGO PE Investments Limited), a company registered under the laws of Mauritius and having its registered office at 3rd Floor, 355 Next Telecom Tower 1, Cybercity, Ebene, Mauritius.

**... Applicants**

**~ VERSUS ~**

1. **SHAIENDRA BHADAURIA,**  
Indian inhabitant, residing at 117/Q/676, Sharda Nagar, Kanpur 208 005 and C-8, Paschimi Marg, Vasant Vihar, New Delhi 110 057.

2. **SURABHI BHADAURIA**,  
Indian inhabitant, residing at  
117/Q/676, Sharda Nagar, Kanpur 208  
005 and C-8, Paschimi Marg, Vasant  
Vihar, New Delhi 110 057.
3. **MAHARANA INFRASTRUCTURE &  
PROFESSIONAL SERVICES LTD**  
a limited company registered under the  
Companies Act, 1956 having its  
registered office at W23, Sector 11,  
Noida 201 301.
4. **MAHARANA CONSTRUCTION  
PRIVATE LIMITED**  
a company registered under the  
Companies Act 1956 having its  
registered office at 117/Q/66 Sharda  
Nagarkanpur, Kanpur Uttar Pradesh.
5. **MAHARANA PRATAP EDUCATION  
CENTER**  
a society registered under the Societies  
Registration Act 1860 having its  
registered office at 117/Q/66 Sharda  
Nagar, Kanpur, Uttar Pradesh 208 005  
through its Secretary Chairman Mr  
Ram Singh Bhadauria residing at  
117/Q/66 Sharda Nagar Kanpur
6. **SAKSHI INSTITUTE OF  
TECHNOLOGY & MANAGEMENT**  
a society registered under the Societies  
Registration Act 1860 having its address  
at 430, Indrapuri Sharda Nagar, Kanpur  
208 005 through its Chairman Mr  
Ratnesh Tewari, 117/L/437B Naveen  
Nagar, Kakadev, Kanpur

**7. MAIR RAJPUT EDUCATIONAL SOCIETY**

a society registered under the Societies Registration Act 1860 having its registered office at 11/4, Central Market, Ashok Vihar, New Delhi 110 052 through its Secretary Mr Gaurav Bhaduria having his office address at 3 E, 3rd White House, Bhagwan Dass Road, New Delhi 110 001

**Respondents**

**APPEARANCES**

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<b>FOR THE APPLICANTS</b>	<b>Mr Sharan Jagtiani</b> , <i>with Nitesh Jain, Juhi Mathur &amp; Atika Vaz, i/b Shardul Amarchand Mangaldas &amp; Co.</i>
<b>FOR RESPONDENTS NOS. 1 TO 4</b>	<b>Mr Prashant Pratap</b> , <i>Senior Advocate, with Kumar Abhishek Singh, Shubham Agrahari, Nishant Bhatiya, Jahnavi Agrawal &amp; Nishaan Shetty, i/b Anoma Law Group LLP.</i>
<b>FOR RESPONDENTS NOS. 5 TO 7</b>	<b>Mr Pravin Samdani</b> , <i>Senior Advocate, with Prathamesh Kamat, Anchal Singhanian, Nivit Srivastava &amp; Sneha Patil, i/b Maniar Srivastava Associates</i>
<b>FOR DR AM SARASWAT</b>	<b>Mr Yogesh Dandekar</b> , <i>with MD Shahid.</i>

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**AND**  
**COMM EXECUTION APPLICATION (L) NO. 2195 OF 2018**  
**WITH**  
**COMM CHAMBER SUMMONS NO. 1131 OF 2018**

**RELIANCE NIPPON LIFE ASSET  
MANAGEMENT LIMITED**  
(formerly known as 'Reliance Capital Asset  
Management Ltd')  
CIN: L65910MH1995PLC220793  
Reliance Centre, 7th Floor, South Wing, Off  
Western Express Highway, Santacruz (East),  
Mumbai 400055

**... Claimants**

**~ VERSUS ~**

1. **BV SATYA SAI PRASAD**  
Plot No. 5, H. No. 8-2-603/M/5,  
Mithila Nagar, Road No. 10, Banjara  
Hills, Hyderabad 500 034  
ALSO AT : Plot No. 11A, MP & MPA  
Colony, Road No. 10C, Jubilee Hills,  
Hyderabad 500 034.
2. **SAI RAYALASEEMA PAPER MILLS  
LTD**  
CIN: U0000TG1974PLC001772  
Plot No. 5, H. No. 8-2-  
603/M/5, Mithila Nagar, Road No. 10,  
Banjara Hills, Hyderabad 500 034  
ALSO AT:  
Flat No. S3, Priya Apartments, 6-3-  
1104/1, Somajiguda, Hyderabad,  
Telangana 500 082

**... Respondents**

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**APPEARANCES**

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FOR THE APPLICANT      **Mr Mayur Khandeparkar, with MB Kale  
& Juhi Bhogle, i/b GNP Legal.**

FOR THE RESPONDENT    **Mr SS Prabhune**

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**CORAM : GS Patel, J**

**DATED : 26th April 2018**

**ORAL JUDGMENT:**

1. The respondents in all three execution applications question the maintainability of the claimants' execution proceedings. The objection is of territorial jurisdiction or territoriality, namely, that the respondents in execution, or the parties against whom execution is sought in these proceedings, and their assets are all outside the local limits of the jurisdiction of this Court. Therefore, the respondents argue, Section 39(4) of the Code of Civil Procedure 1908 ("**the Code**") will govern. Since a court that passed the decree cannot execute it against any person or property outside the local limits of its jurisdiction, therefore, these execution proceedings, although they are not in execution of a court decree but in enforcement of arbitral awards or orders under the Arbitration and Conciliation Act 1996 (as amended), cannot be maintained in this Court. The submission is that the claimants must move the local district courts for enforcement.

2. I am not today making any order at all on the merits of the execution applications or the Chamber Summonses filed for specific reliefs in each. I have clubbed these three matters together because the respondents raised an identical objection in each. The matters are therefore tagged and clubbed together only for convenience, not because they share any commonality on facts. I will note the facts to the limited extent necessary.

3. In *Global Asia Venture Company v Arup Parimal Deb* (Commercial Execution No. 58 of 2017 and associated applications), the arbitration agreement is dated 18th September 2007. The amended award is dated 16th February 2015. The agreement provides that the seat of the arbitration is in Mumbai. There is no express provision in the agreement about a jurisdictional Court.

4. In *Matrix Partners India Investment Holdings v Shailendra Bhadauria and Ors* (Commercial Execution No. 2113 of 2018 and associated applications), there was an interim order under Section 17 of the Arbitration Act. The arbitration agreement in question said that the courts in Mumbai would have exclusive jurisdiction. Clause 17.3 said that the seat of arbitration was Mumbai and clause 17.4 said that enforcement would be in any court of appropriate jurisdiction. The Shareholders Agreement in question was dated 27th December 2012, and the interim order of 4th July 2018 required a deposit of Rs. 190 crores.

5. In *Reliance Nippon Life Asset Management Ltd v BV Satya Sai Prasad & Anr* (Commercial Execution Application (L) No. 2195 of



2018 and associated applications), the seat of the arbitration was stated in the arbitration agreement to be in Mumbai. There was a consent award made in Mumbai, and the arbitration agreement specifically said that courts in Mumbai alone would have jurisdiction.

6. In each of these cases, as I have noted, the opposition is that the respondents and their assets are all outside Mumbai and, therefore, enforcement cannot be sought in this Court.

7. I have heard Mr Jagtiani and Mr Khandeparkar for the Applicants, and Mr Pratap, Mr Samdani and Ms Sinha for the Respondents in opposition.

8. Mr Jagtiani begins with a consideration of the definition of Court under Section 2(1)(e)(i) of the Arbitration and Conciliation Act 1996 (“**Arbitration Act**”). It is true that this clause was substituted by the 2015 amendment, but, for our purposes, the relevant portion remains unchanged. This is how ‘Court’ is defined in that clause:

“2. In the Arbitration and Conciliation Act, 1996 (26 of 1996) (hereinafter referred to as the principal Act), in section 2, —

(1) in sub-section (1) —

(e) “Court” means —

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

... .. "

9. Mr Jagtiani's submission is that the unamended version of this clause fell for consideration before the Supreme Court in *Bharat Aluminium Company v Kaiser Aluminium Technical Services Inc. (BALCO)*<sup>1</sup>. The five-Judge Bench decision in *BALCO* considered the purport and ambit of Section 2(1)(e)(i), at that time simply Section 2(1)(e). After setting out the definition, the Supreme Court held that the expression '*subject matter of the arbitration*' is not to be confused with the expression '*subject matter of the suit*'. The expression '*subject matter*' is itself confined to Part I of the Arbitration Act. The purpose is to identify Courts having what the Supreme Court described as 'supervisory control over the arbitration proceedings'. Now this phraseology in *BALCO* is important, for, as we shall see, the Respondents' arguments are essentially centred on whether in enforcement of an arbitral award there is a cessation of this supervision, and, therefore, a divesting of jurisdiction in what I will describe as the 2(1)(e) Court. This is the expression that the Supreme Court itself used when it said that the expression refers to a Court that would essentially be a Court with jurisdiction over the seat of the arbitration process. This was necessary to accord the relevant primacy in arbitral law to party

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<sup>1</sup> (2012) 9 SCC 552.

autonomy. It is for parties to choose (hence their ‘autonomy’) a jurisdictional forum of their choice. Before the Supreme Court, it was argued that a narrower construction was inescapable. Rejecting this submission, the Supreme Court said a limited construction would defeat the avowed legislative intent and purpose; specifically the legislative intent to confer jurisdiction — and this is crucial — on two Courts: the Court that would have causal jurisdiction, i.e. where the cause of action arose; and the arbitral Court, i.e. the Court where the arbitration ‘takes place’. There is, therefore, in BALCO an explicit linkage between a 2(1)(e) Court’s jurisdiction and the seat of the arbitration. The Supreme Court explains why this is necessary. It said that there could be a situation where an arbitral agreement could provide for a seat of arbitration neutral to both sides. It would be the Courts within whose jurisdiction that arbitration seat lies that would exercise supervisory control. There is an illustration provided in paragraph 96 itself of BALCO. This is best reproduced to avoid all ambiguity.

“96.... For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction, i.e. the court within whose jurisdiction the

**subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e. arbitration is located."**

*(Emphasis added)*

10. This is the starting point of Mr Jagtiani's submission. What he says is this. It is the arbitration-seat 2(1)(e) court that can hear challenges to the award. With the amendment to Section 9 of the Arbitration Act, it is only the 2(1)(e) Court that can also pass post-award interim protective measures. These include appointing a receiver, orders of disclosure and orders of deposit.<sup>2</sup> Therefore, there is no reason why, merely because it is now taking up 'enforcement', a 2(1)(e) court should suddenly find itself divested of the very jurisdiction that *BALCO* said it had.

11. Two other judgments are waypoints in Mr Jagtiani's journey to this conclusion. The first is the 2018 decision of a two-judge Bench of the Supreme Court in *Sundaram Finance Ltd v Abdul Samad & Anr.*<sup>3</sup> This could not be a departure from *BALCO*; nobody says it is. In *Sundaram Finance*, the Supreme Court had to deal with conflicting views of different courts regarding arbitral award enforcement. At the head of the judgment Sanjay Kishan Kaul J framed the issue before the Court like this:

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<sup>2</sup> See the decision of 6th March 2019 of GS Kulkarni J in *Mahyco Monsanto Biotech (India) Pvt Ltd v Nuziveedu Seeds Ltd*, Commercial Arbitration Petition No. 312 of 20198, following the decision of the Division Bench, per Dr DY Chandrachud J (as he then was), in *Dirk India Pvt Ltd v Maharashtra State Electricity Generation Co Ltd*, 2013 (7) Bom CR 493.

<sup>3</sup> (2018) 3 SCC 622.

“The divergence of legal opinion of different High Courts on the question as to whether an award under the Arbitration and Conciliation Act, 1996 is required to be first filed in the court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree or whether the award can be straightaway filed and executed in the Court where the assets are located is required to be settled in the present appeal”.

12. Mr Pratap, Mr Samdani and Ms Sinha would have it that *Sundaram Finance* did not address the question that arises today before me because the Supreme Court was not called on to decide whether any execution proceedings could be filed in the supervisory arbitral 2(1)(e) Court at all. It was limited to a consideration of the other dimension, that is to say, whether enforcement could be straightaway sought in the *local* court where the respondents or their assets, or both, were located. To illustrate: let us assume that the respondents and their assets are all outside Mumbai in Ratnagiri. According to Mr Pratap, Mr Samdani and Ms Sinha what *Sundaram Finance* was asked to decide was whether a claimant could straightaway go to a court in Ratnagiri or, if the Bombay High Court was the 2(1)(e) Court whether the claimant had to first file for enforcement in this Court and then seek a transfer to the Ratnagiri Court. Their case, they submit, is entirely different. Their submission is that nothing can at all be filed in execution in this Court but can *only* be filed in the Ratnagiri Court because of Section 39(4) of the Code.

13. I do not believe this interpretation is warranted or supported by *Sundaram Finance* at all. There is, of course, the discussion in

*Sundaram Finance* of Section 42 of the Arbitration Act. The Supreme Court said that this applies to an application under Part I, i.e. jurisdiction over arbitral proceedings, and therefore subsequent applications are to be made to that Court alone. In paragraph 19, the *Sundaram Finance* Court said that an award under Section 36 is equated to a decree of a court for the limited extent of execution.<sup>4</sup> An arbitral award is deemed to be a decree under Section 36 but — and this is crucial — there is no deeming fiction anywhere that says that the Court within whose jurisdiction the award was passed should be taken to be the court that passed the decree. Then comes the all-important explanation that, in my view, puts the matter beyond all controversy. *Sundaram Finance* says the Arbitration Act transcends all territorial barriers. This is fundamental. Section 39(4) is a limitation of territoriality. *Sundaram Finance* tells us that arbitration law transcends territoriality. The matter must end at that. If there was any doubt about this, it is put to rest, I think, by paragraph 20 of *Sundaram Finance* which has not the slightest ambiguity in its wording. The Court was unhesitant in its view that enforcement of an award (through execution) can be filed wherever in the country a decree can be executed. The claimant need not obtain a transfer of the decree from the 2(1)(e) court, that is to say, the one with jurisdiction over the arbitration proceedings.

14. *Sundaram Finance* therefore says that an Award Holder has a choice. Its ratio does not operate to strip the 2(1)(e) Court of its

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<sup>4</sup> I will take this to mean a final award, an interim award or an interim order, since none have urged there is any material difference in these regarding enforcement.

jurisdiction. It only says that a successful claimant is not compelled to come to the 2(1)(e) Court only to then have to detour to a local court for enforcement. He may go to that local court directly to execute his award.

15. Conceptually this is significant because I suspect the arguments from the Respondents before me tend to obliterate a fundamental distinction between a civil decree in execution and an arbitral award in enforcement. Arbitration is not a distinct judicial forum like a subordinate Court. It is an alternative dispute resolution mechanism with a standalone statute. It is intended to provide for the speedy resolution of disputes and enforcement with a minimal level of judicial intervention. The essence of arbitration is an agreement unlike a civil proceeding in a law Court. The fact that Section 36 uses a phraseology which equates an award with a decree cannot be divorced from the legislative intent. Section 36(1) is enabling. It was meant to allow for the smooth enforcement of arbitral awards and it, therefore, allows these to be enforced 'as' decrees. Read as the Respondents would have it Section 36(1), far from being enabling, suddenly becomes *disabling*, and itself becomes a restriction, wholly contrary to the statutory intent of arbitration law, for rapid and quick enforcement. When, therefore, Section 36(1) says that an award shall be enforced in accordance with the Code in the same manner as if it was a decree of a Court, what this really tells us is not that limitations and ousters of jurisdiction will apply but that the enabling provisions of the Code must apply to arbitral award as well. Section 36(1) has to be read not in isolation but also as part of the framework of the Arbitration Act. Mr Jagtiani

is correct in pointing out that if this is read in isolation, then Section 9 and its post-award provisions are rendered entirely otiose. That Section allows the Court to take interim steps before the award is enforced. These include several steps in aid of enforcement, such as orders of receivership, injunction, deposit, disclosure and so on.

16. The correct view is, therefore, that while there may be certain restrictions on the enforcement of a decree of a Civil Court, since the Arbitration Act ‘actually transcends all territorial barriers’ as *Sundaram Finance* said, those restrictions cannot be made to apply to the enforcement of arbitral awards without resulting in a completely incongruous situation. Award holders have a jurisdictional choice that decree holders do not. The source or provenance of that jurisdictional choice is the fundamental nature of the dispute resolution process. A decree results in a lawsuit brought in a causal court governed by Section 20 of the Code. An award emanates from an arbitration. Arbitral proceeding jurisdiction is wholly independent of Section 20 of the Code, as *BALCO* tells us. That arbitral proceeding jurisdiction is created by Section 2(1)(e) of the Arbitration Act, not Section 20 of the Code. Therefore the result returned in *Sundaram Finance* that arbitral proceeding jurisdiction transcends territoriality. There is no warrant at all to drag a now firmly defenestrated territoriality back into arbitration only at the time of enforcement.

17. I believe this needs some illustration. We must return to the *BALCO* principle. The 2(1)(e) Court need not be the causal Court. It is a court of the parties’ choice. Nothing has happened there —



see the illustration quoted from *BALCO*, paragraph 96. A civil Court could not possibly exercise such jurisdiction in a civil suit. It would be constrained causally by Section 20 of the Code. An arbitral Court is not. *BALCO* says so, and entirely consistent with it, so does *Sundaram Finance*. It is for this reason that *Sundaram Finance* says that there is a transcending of territorial barriers. That transcending starts from the inception of the arbitration. It continues throughout. The suggestion from the Respondents that this transcending of territoriality somehow comes to a grinding halt at the time of enforcement, and *only* at the time of enforcement, seems to me to be nothing more than an argument designed to defeat the effective enforcement of arbitral awards.

18. The second decision in Mr Jagtiani's arsenal is the recent Full Bench decision of this Court in *Gemini Bay Transcription Pvt Ltd., Nagpur v Integrated Sales Service Ltd & Ors.*<sup>5</sup> Speaking for the Bench, AS Chandurkar J set out the facts leading to the reference and in paragraph 3 re-framed the question for consideration. This is how he put it:

"3. We have accordingly re-framed the question to be considered and answered as under:

"Whether an Award made under Part-I of the Arbitration and Conciliation Act, 1996 has to be executed only by the Court as defined by section 2(1)(e)(i), or, whether it can also be executed by the Court to which it is sent for

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<sup>5</sup> 2018 (2) Mh LJ 329.

execution under section 38 of the Code of Civil Procedure, 1908?

19. Again this was a discussion (post the 2015 Arbitration Act amendment) whether arbitral award enforcement had to be in the arbitral 2(1)(e) Court or whether it could be done in a Court to which 'it was sent' for execution under Section 38 of the Code.

20. Mr Jagtiani's submission is that the Full Bench not only considered *Sundaram Finance* but also took into account a previous three-Judge decision of the Supreme Court in *State of West Bengal & Ors v Associated Contractors*<sup>6</sup> which *Sundaram Finance* did not notice. The Full Bench in *Gemini Bay* reconciled all views. The conclusion that the Full Bench reached is that the provisions of the Arbitration Act 'permit a decree to be executed either by the Court which passed it', i.e. the Section 2(1)(e) Court, *or* the court to which it was sent for execution. The 2(1)(e) Court can *also* transfer for execution to any subordinate Court of competent jurisdiction. The Full Bench then went on to hold that the expression 'Court' used in Section 36 has to be read in a certain context, and that the provisions of Section 39(1) of the Code must be read independently of the provisions of Section 2(1)(e)(i) of the Act. In paragraph 30, the Full Bench answered the reference by saying that an arbitral award under Part I of the Arbitration Act can be executed not only by the 2(1)(e) Court but *also* the court to which it is sent under Sections 38 and 39 of the Code. Mr Jagtiani, therefore, submits, and in this is supported by Mr Khandeparkar, that there is no 'ouster' of the 2(1)(e) Court's

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<sup>6</sup> (2015) 1 SCC 32.

jurisdiction at the stage of enforcement as contended by the Respondents. The Claimants have their choices. They can come to the 2(1)(e) Court, or they can go to the local court, but the local court's jurisdiction does not oust the jurisdiction of the 2(1)(e) Court. There is nothing in any of these judgments or any fair reading of these statutes that would warrant an interpretation resulting in the cessation of a 2(1)(e) Court's jurisdiction at the stage of enforcement.

21. Interestingly, both Mr Pratap and Mr Samdani in oral arguments as well as in their written submissions endeavoured to argue that *Sundaram Finance* and *Gemini Bay* actually support their view. The essence of their argument, as I have understood it, is that execution or enforcement is one thing and the supervisory jurisdiction of an arbitral Section 2(1)(e) Court is quite another. A Court that has no territorial jurisdiction whatsoever and which is not a causal Court in any sense of the word may nonetheless be a perfectly legitimate Section 2(1)(e) arbitral Court. That ends, in their formulation, once an award is passed simply because Section 36 then says that the enforcement must be in accordance with the Code 'in the same manner' as if it were a decree. If a decree could not be thus enforced against the Respondents or their assets outside jurisdiction, nor should an award. Both learned Senior Counsel say that in *Sundaram Finance* the issue was not whether the 2(1)(e) Court had jurisdiction at all but whether it needed to send the decree to a local Court, or whether the Claimant could go to that Court directly. But this undermines their construct, for their own reading of *Sundaram Finance* posits that the 2(1)(e) Court is *not*

robbed of jurisdiction. If *Sundaram Finance* says a party may go to the 2(1)(e) Court *or* the local court, and does not have to go to the local court via a transfer from the 2(1)(e) Court, then necessarily this means that the 2(1)(e) continues to have jurisdiction. All that *Sundaram Finance* says is that the local court *also* has jurisdiction, not that the 2(1)(e) court does not.

22. Mr Pratap also draws attention to paragraphs 14 and 17 of the Full Bench decision in *Gemini Bay*. According to him, the Full Bench's answer to the reference before it must be read in light of the findings that it returned in these two paragraphs. In particular, he emphasises the observations of the Full Bench in paragraph 14 that how a decree can be executed is set out by Sections 38 and 39 of the Code. Hence, these provisions must govern. Else, the words of Section 36(1) are rendered otiose. I believe that far from supporting Mr Pratap, this argument is actually against him. If we view Section 36(1) as enabling, as I have said we must, and not as disabling, then all that the Full Bench said was that we must look at the enabling provisions of Sections 38 and 39. Mr Pratap further submits that, in any event, the observations in paragraph 17 of the Full Bench decision in *Gemini Bay* do not support Mr Jagtiani's argument. Again I believe Mr Pratap is in error. The Full Bench said that the use of expression 'Court' in Section 36(1) has to be construed in the context in which it appears. Now that expression uses the capitalised word 'Court', which means that it is a direct reference to, and only to, the definition in Section 2(1)(e). That is the context. There is no other. Section 36 contains no independent definition of a Court. It certainly does not use a lower case 'court' in its wording. The

opening words of paragraph 17 actually do not deal with the definition of a Court but with words “as if”; and what the Full Bench said was that this was the fiction, that is to say that the award is not itself a decree of the Court but it is to be treated for enforcement as if it were. That is all that the Act says. That is all that the Full Bench says the Act says. To suggest, therefore, as Mr Pratap does, that according to the Full Bench the word ‘Court’ takes on a different colour is I think unwarranted. At the end of paragraph 17 of *Gemini Bay*, the Full Bench said that this use of the capitalised word ‘Court’ in Section 36(1) supports its conclusion that the word “Court” for non-execution or supervisory purposes cannot be applied while enforcing a final order as a decree. It went on to say that the provisions of Section 39(1) would have to be construed independently of Section 2(1)(e). This is not an ouster of Section 2(1)(e)’s Court under Section 36 at all, but quite the reverse. To read the Full Bench decision otherwise would amount to saying that the Full Bench had held contrary to *Sundaram Finance* and contrary to *BALCO*. At best, the submission may be applauded for its bravery. There is no inconsistency between *Sundaram Finance*, *Gemini Bay* and *BALCO*. Thus, an unbroken line runs from *BALCO* to *Gemini Bay* via *Sundaram Finance* on the 2(1)(e) court’s continuing jurisdiction. Not a single authority says the 2(1)(e) court can take the arbitration up to the stage of enforcement, only to then stand entirely robbed of its jurisdiction. The Respondents’ argument creates an unnecessary and untenable rupture in this fabric. It means that while everything in the supervision of an arbitral proceeding is centred in the arbitral Section 2(1)(e) Court, only enforcement is to be suddenly spun off and sent exclusively elsewhere.

23. I can find no justification in law, precedent, logic or equity to support any such interpretation. Every one of these considerations seems to be against it and seem to me to support a view that the Respondents should be allowed to continually obstruct that which was intended to be a quick, efficient and fast resolution to dispute especially in commercial disputes.

24. In *Vistra ITCL India Ltd v Sanjay Dattatraya Kakade & Ors*,<sup>7</sup> I considered, again in the context of arbitral proceedings but without specific reference to arbitral proceedings, the question whether in execution a Court could appoint a Receiver for properties outside its jurisdiction. It is true that there was an award there. It is also true that in execution parties agreed to a consent order appointing a receiver of properties in Pune. The argument before me was not based on these facts, and it was not the case of Mr Chinoy appearing for the Claimants in execution as I recollect that because the parties had agreed to an order in execution of a receiver of properties in Pune, therefore it could not be questioned. The argument was instead entirely based on whether on any reading of Section 39, Section 51 and Order 40, an executing Court could ever appoint a receiver in respect of the assets outside its local jurisdiction. I held that an executing Court could, but that is not the basis on which I am deciding this case. I am only noting that there was that decision.

25. In this view of the matter, I hold that there is no substance to the preliminary objection. Execution can proceed in this Court.

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<sup>7</sup> Order dated 24th August 2018 in Chamber Summons (L) No 911 of 2018. I am told that an appeal has been filed and is yet pending admission or final orders.

26. List each of these Execution Applications and their associated Chamber Summons on 6th June 2019. All interim/ad-interim orders will continue to operate until then.

27. In Execution Application (L) No. 2113 of 2018 Mr Shailendra Bhadauria was present yesterday. I dispensed with his continued presence today. Since I am placing the matters for directions on 6th June 2019, his presence on that date is not required. He will be notified of another date when his presence will be required.

28. As regards Dr Saraswat who was also required to be present, I am informed that he has undergone a surgery and is, therefore, unable to attend the Court. Again I will excuse his presence both yesterday, today and also on the next directions day. But I will in his case make it clear that his is a question of complying with a previous order of the Court and must be followed.

29. At Mr Jagtiani's request, list Commercial Execution Application No. 58 of 2017 and Chamber Summons No. 76 of 2017 for further orders on 2nd May 2019.

30. Affidavit in Rejoinder in Chamber Summons No. 1131 of 2018 is to be filed in the Registry and served on or before 4th June 2019.

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