* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 06.12.2024

Pronounced on: 24.02.2025

\+ EX.P. 93/2019

DISCOVERY DRILLING PTE LIMITED .....Decree Holder

Through: Mr.Tanmaya Mehta, Mr.Aseem Chaturvedi, Mr.Karan Gupta & Ms.Phalguni Nigam, Advs.

versus

PARMOD KUMAR & ANR. .....Judgement Debtors

Through: Mr.Rakesh Tiku, Sr. Adv. with Ms.Arpan Wadhawan, Mr.Sandeep Kumar & Mr.Devashish Mishra, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 44A read with Order XXI Rule 10 and Section 151 of the Code of Civil Procedure, 1908 (in short, 'CPC') seeking execution of the Judgment dated 31.05.2019 passed by the Singapore International Commercial Court of the Republic of Singapore (hereinafter referred to as, 'SICC') in Suit No. 1 of 2017.

2. As a matter of brief background, the facts in which the present Execution Petition has been filed, are narrated as under:

2.1 It is the case of the petitioner that Jindal Drilling & Industries Limited (hereinafter referred to as, 'JDIL'), a company incorporated under the laws of India, entered into a contract with the Oil and Natural Gas Corporation

(hereinafter referred to as, 'ONGC') for providing offshore drilling services to the ONGC.

2.2 In order to provide such services, the petitioner, a company incorporated under the laws of Singapore and a joint venture of JDIL, purchased the Rig that was to be given on charter hire to JDIL.

2.3 Since the Rig required repair work, the petitioner entered into an Agreement with AKRO Group DMCC (hereinafter referred to as, 'AKRO'), a company incorporated under the laws of Dubai, United Arab Emirates, who was to provide the petitioner with Specialised Project Management (SPM) services for the activation and mobilisation of the petitioner's Rig.

2.4 It is the case of the petitioner that the respondents were the then employees of the JDIL and acted as the representatives of the petitioner for the purposes of the aforementioned Agreement. It is further claimed that in their capacity as the representatives of the petitioner, the respondents were required to work with the representatives of AKRO to obtain quotes for materials, equipment, and services for the project, and to negotiate the best prices.

2.5 The petitioner claims that due to delay on the part of AKRO in fulfilling its contractual obligations, the Rig could not be provided to JDIL on time. The petitioner claims that thereafter, disputes and differences arose between the petitioner and AKRO *inter alia* with respect to the payment

of invoices, and at this time, both the respondents unexpectedly resigned from the petitioner.

2.6 On 13.12.2016, AKRO initiated recovery proceedings against the petitioner before the High Court of Singapore, claiming an alleged outstanding amount of project management fee and expenses under the above Agreement. The respondents are claimed to have filed their affidavits of evidence on behalf of AKRO, and also travelled to Singapore at AKRO's expense to support the claim made by AKRO.

2.7 The case was subsequently transferred to the SICC, before which the petitioner entered its appearance on 12.01.2017 and filed its Statement of Defence denying any liability towards AKRO, and also filed a counterclaim *inter alia* seeking damages and other claims under the Agreement.

2.8 By way of the Second Amendment to the counterclaim, the petitioner arrayed the respondents as defendants, alleging breach of contract, breach of fiduciary duties, and fraud and forgery in respect of the invoices. The petitioner further claimed that the respondents had colluded and conspired with AKRO and its representatives to defraud the petitioner.

2.9 The petitioner claims that thereafter it served the respondents with not only the notices issued by the SICC on the counterclaim, but also kept the respondents abreast of all subsequent proceedings by marking the respondents in the emails sent to the SICC. The respondents, however, did not

enter appearance before the SICC, and the SICC passed the subject judgment dated 31.05.2019, *inter alia* in the following terms:

> *"174. Judgment is entered in favour of Discovery Drilling Pte Ltd on the balance of its claims against each of AKRO Group DMCC, the First Cross-Defendant, Parmod Kumar, the Second Cross-Defendant, Sunil Kumar Arora, the Third Cross-Defendant, Arjun Suresh Kandoth, the Fourth Cross-Defendant, David William Fowler, the Fifth Cross-Defendant in the amount of*US$5,743,155.14.
>
> *175. Interest on US$5,743,155.14 is to he paid at 5.33% per annum from 1 May 2016 to the date of entry of judgment.*
>
> *xxxxx*
>
> *178. Judgment is entered in favour of Discovery Drilling Pte Ltd against Parmod Kumar, the Second Cross-Defendant, and Sunil Kumar Arora, the Third Cross-Defendant in respect of the secret profits that they received from MrKandoth in the amount of US$500,000.*
>
> *179. The Cross-Defendants are to pay Discovery Drilling Pte Ltd its reasonable costs of the proceedings."*

2.10 Further, the judgment was also passed in favour of the petitioner and against the other parties, including AKRO, holding the petitioner entitled to certain amounts from them. However, as the same is not relevant to the present proceedings, details thereof need not be mentioned herein.

2.11 The petitioner thereafter applied to the SICC for a certified copy of the judgment, and filed the present petition seeking enforcement thereof against the respondents.

OBJECTIONS OF THE RESPONDENTS:

3. Mr.Rakesh Tiku, the learned senior counsel appearing for the respondents, has challenged the maintainability of the present petition that has been filed under Section 44A of the CPC. To briefly summarize his objections, he has contended that:

3.1 The SICC is not a 'Court' in its true sense within the meaning of Section 44A of the CPC;

3.2 Section 44A of the CPC is not attracted to the judgment in question as the SICC is not a "superior Court" in terms of Explanation 1 to Section 44A of the CPC;

3.3 The present petition is not accompanied by a certificate from the SICC stating the extent, if any, to which the decree has been satisfied or adjusted;

3.4 The alleged manner of service of the summons issued by the SICC on the respondents is in contravention of Indian Law and, therefore, the decree in question has been passed in violation of the principles of natural justice;

3.5 The respondents could not have been impleaded in the counterclaim and the case could not have been tried by the SICC without the express consent of the respondents;

3.6 The impugned judgment of the SICC has not been passed on merits, but only because the respondents had failed to enter their appearance and were proceeded against *ex-parte*;

3.7 The nature of the counterclaim of the petitioner cannot be termed as a "commercial dispute" and, therefore, the SICC did not have the jurisdiction to try the said counterclaim of the petitioner.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. On the other hand, Mr. Tanmaya Mehta, the learned counsel appearing for the petitioner, submits that none of the above grounds for challenging the impugned judgment and/or for resisting the enforcement of the judgment under Section 44A of the CPC are made out by the respondents. He has submitted that:

4.1 The SICC has all the characteristics and trappings of a 'Court' inasmuch as, in terms of Section 18B of the Supreme Court of Judicature Act, 1969 (hereinafter referred to as the 'SC Act'), the President of the SICC is a Supreme Court Judge, a senior Judge or an international Judge appointed by the Chief Justice of Singapore; the proceedings are heard and disposed of before a Single Judge or a Bench of three Judges; it exercises its powers in accordance with the 'Rules of the Court' (hereinafter referred to as, 'Rules') and it ordinarily applies the rules of evidence as applicable in Singapore, unless the dispute is an international commercial dispute, and the parties have agreed upon any other rules of evidence.

4.2 He submits that by the Gazette Notification dated 01.09.1955 issued by the Central Government, the 'Colony of Singapore' has been declared as a "reciprocating territory" and the 'Supreme Court of the Colony of Singapore' was declared to be a "superior Court" with reference to that territory. Thereafter, by a Gazette Notification dated 25.06.1968, the 'Republic of Singapore' was recognised as a "reciprocating territory" for purposes of Section 44A of the CPC and the 'High Court of the Republic of Singapore' was declared to be a "superior Court" with reference to that territory.

4.3 He submits that the SICC, being a division of the High Court of Singapore, in terms of the above mentioned two Notifications, it is a "superior Court" for the purposes of Section 44A of the CPC.

4.4 He submits that as there is no procedure in the SICC for issuing a certificate as prescribed under Section 44A of the CPC, the petitioner has received an email from the SICC certifying that there have been no enforcement proceedings filed in the Singapore Supreme Court seeking execution of the judgment dated 31.05.2019, and no recovery made before the SICC. He submits that this email shall suffice for the requirement of the certificate under Section 44A(2) of the CPC.

4.5 Giving complete details of how the respondents were served with the summons on the counterclaim and marked as a recipient of various emails, he submits that the respondents, despite having knowledge of the pendency of the counterclaim,

intentionally chose not to appear before the SICC and, therefore, now cannot challenge the judgment passed by the SICC.

4.6 He submits that in terms of Order 110 of the Rules applicable to the SICC, there is no requirement for seeking consent of the party who is subsequently impleaded in the claim or the counterclaim; the consent is required only from the original parties to the *lis* at the time of the originating process. He submits that the consent can also be presumed as the respondents not only filed their affidavit of evidence but also travelled to Singapore to depose on behalf of AKRO.

4.7 He submits that the judgment has been passed by the SICC on examination of the merits of the claim of the petitioner and the evidence led, and not solely on the basis of the non-appearance of the respondents, as contended by the learned senior counsel for the respondents.

4.8 He submits that the underlying dispute between the petitioner and the defendants in the counterclaim was commercial in nature and therefore, SICC had the jurisdiction to adjudicate on the same. He submits that even otherwise, the jurisdiction of SICC can be challenged by the respondents only before the SICC and not before this Court and certainly not in these proceedings.

ANALYSIS AND FINDINGS:

5. Before I consider the above submissions of the learned counsel for the petitioner and the learned senior counsel for the respondents, it

would be apposite to first quote Section 44A of the CPC, which reads as under:

> *"44A.* ***Execution of decrees passed by Courts in reciprocating territory.****—(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.*
> *(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.*
> *(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.*
> *Explanation 1.— "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.*
> *Explanation 2.— "Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if*

such an award is enforceable as a decree or judgment."

6. From the above, it is apparent that for invoking Section 44A of the CPC, the decree must have been passed by "*any of the superior Courts of any reciprocating territory".* Explanation 1 to Section 44A of the CPC states that a "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be so for the purposes of Section 44A of the CPC, and "superior Courts" with reference to any such territory means such courts as may be specified in the said notification.

7. There is no dispute that the Republic of Singapore has been declared as a "reciprocating territory" for the purposes of Section 44A of the CPC and the High Court of the Republic of Singapore has been declared as a "superior Court" with reference to that territory, by way of the Gazette Notification dated 25.06.1968. The parties, however, are at a variance on whether the SICC can be considered to have been notified as a "superior Court" for the purposes of Section 44A of the CPC.

a. <u>Superior Courts</u>

8. The learned senior counsel for the respondents submits that in terms of Explanation 1 to Section 44A of the CPC, the said provision is available only for the execution of a decree of any "superior Court" of any "reciprocating territory", and it is the Central Government, which notifies a "reciprocating territory" as also specifies the "superior Courts" with reference to such territory. He submits that as

far as the Republic of Singapore is concerned, the Central Government notified it to be a "reciprocating territory" *vide* Gazette Notification dated 25.06.1968, and by the same Notification, the 'High Court of the Republic of Singapore' was declared to be a "superior Court" with reference to the territory. He submits that it is, therefore, only the High Court of Singapore that has been recognized by the Central Government as a "superior Court" for the purposes of Section 44A of the CPC. He submits that as of the date of the said Notification, the High Court of Singapore, in terms of Section 3 of the SC Act, was vested with original and appellate civil and criminal jurisdiction, and it was only on 01.01.2015, that the SICC was established as a Division of the High Court of Singapore under Section 18A of the SC Act. He submits that post the creation of the SICC, however, the Central Government has not issued any Gazette Notification under Explanation 1 to Section 44A of the CPC, recognizing the SICC as a "superior Court". He submits that, therefore, a judgment passed by the SICC cannot be enforced under Section 44A of the CPC.

9. On the other hand, Mr.Mehta, the learned counsel appearing for the petitioner, submits that the SICC, having been created as a Division of the High Court of Singapore, which has been recognized by the Central Government as a "superior Court" in terms of the Gazette Notification dated 25.06.1968 is, therefore, also a "superior Court" for the purposes of Section 44A of the CPC, and does not require any further notification to that effect to recognize its status as such. He submits that a fresh Gazette Notification is not required each time the Rules of a Court, which has been recognized as "superior

Court", are amended by such Court. Giving an example, he submits that with the enactment of the Commercial Courts Act, 2015, the Commercial Division has been created in the High Court to adjudicate commercial disputes of a specified value. It cannot be said that these are new Courts that would require further recognition in countries having reciprocal provisions of law like Section 44A of the CPC. He submits that new jurisdictions are also vested in Courts by local Acts, and again, it cannot be said that with the vesting of such new jurisdictions, these Courts would no longer be "superior Courts" and would require a new Gazette Notification each time such new jurisdiction is vested.

10. Placing reliance on the Judgment of this Court in ***Transasia (P) Capital Ltd. v. Gaurav Dhawan***, 2023 SCC OnLine Del 1957, he further submits that the SICC has all the characteristics of a "superior Court" as is evident from the fact that the President of the SICC is appointed by the Chief Justice and may be either a Judge of Appeal, a Judge of the High Court, a Senior Judge of the Supreme Court or an International Judge of the Supreme Court; every proceeding in the SICC is to be heard and disposed of before either a Single Judge or Three Judges; the SICC exercises its powers in accordance with the Rules of Court and any other written law relating to that Court or those powers; and it ordinarily applies the rules of evidence applicable in Singapore unless the dispute is an international commercial dispute and the parties have agreed upon any other rules of evidence.

11. I have considered the submissions made by the learned counsels for the parties.

12. From a reading of Section 44A of the CPC, it is evident that a decree passed by any "superior Court" of any "reciprocating territory" can be executed in India as if it had been passed by a District Court in India. This is a special status granted to a decree passed by a "superior Court" of any "reciprocating territory". Explanation 1 to Section 44A of the CPC empowers the Central Government to, by a Notification in the Official Gazette, declare any country or territory outside India to be a reciprocating jurisdiction for the purposes of Section 44A of the CPC, and any Court in such country or territory to be the "superior Court". Therefore, even if any country or territory outside India is recognized as a "reciprocating territory", not all Courts of such territory are necessarily recognized as "superior Courts" for the purposes of Section 44A of the CPC.

13. As far as Singapore is concerned, the Central Government, by a Gazette Notification dated 01.09.1955, recognized the Colony of Singapore to be a "reciprocating territory" and the Supreme Court thereof as a "superior Court" for the purposes of Section 44A of the CPC. By another Gazette Notification dated 25.06.1968, which was issued in supersession of the Gazette Notification dated 01.09.1955, the Central Government declared the Republic of Singapore to be a "reciprocating territory" and the 'High Court of the Republic of Singapore' to be a "superior Court" with reference to that territory, for the purposes of Section 44A of the CPC.

14. The SICC was created by Act No.42 of 2014, with effect from 01.01.2015, as a Division of the High Court of Singapore. Section 18A of the SC Act provides as under:

> *"18A.There shall be a division of the High Court known as the Singapore International Commercial Court."*

15. Section 18D of the SC Act provides for the jurisdiction of the SICC as under:

> *"**Jurisdiction of Singapore International Commercial Court***
> *18D.—(1) The Singapore International Commercial Court shall have jurisdiction to hear and try any action that satisfies all of the following conditions:*
> *(a) the action is international and commercial in nature;*
> *(b) the action is one that the High Court may hear and try in its original civil jurisdiction;*
> *(c) the action satisfies such other conditions as the Rules ofCourt may prescribe.*
>
> *(2) Without limiting subsection (1), the Singapore International Commercial Court (being a division of the High Court) has jurisdiction to hear any proceedings relating to international commercial arbitration that the High Court may hear and that satisfy such conditions as the Rules of Court may prescribe."*

16. Order 110 of the Rules under Chapter 322 of Section 80 of the SC Act deals with the SICC. Order 110 Rule 1 sub-rule 2(a) of the Rules defines what claims are to be treated as 'international in nature', while Order 110 Rule 1 sub-rule 2(b) of the Rules lists out the disputes that are 'commercial in nature'.

17. Order 110 Rule 7 of the Rules prescribes the other conditions that are to be met for vesting the jurisdiction in the SICC, as under:

> *"**Jurisdiction (O. 110, r. 7)***

7.-(1) For the purposes of section 18D(1)(c) of the Act, the other conditions that an action (not being proceedings relating to international commercial arbitration that the Court has jurisdiction to hear under section 18D(2) of the Act) must satisfy are as follows:

(a) the claims between the plaintiffs and the defendants named in the originating process when it was first filed are of an international and commercial nature;

(b) each plaintiff and defendant named in the originating process when it was first filed has submitted to the Court's jurisdiction under a written jurisdiction agreement; and

(c) the parties do not seek any relief in the form of, or connected with, a prerogative order (including a Mandatory Order, a Prohibiting Order, a Quashing Order or an Order for Review of Detention).

(2) To avoid doubt, the Court has the jurisdiction to hear and determine –

(a) a case transferred to the Court under Rule 12 or 58; and

(b) an originating summons under Order 52 for leave to commit a person for contempt in respect of any judgement or order made by the Court."

18. A reading of the above shows that the jurisdiction to try any action is to be vested in the SICC with the consent of the parties. A complete set of procedures is also prescribed under Order 110 of the Rules for the proceedings before the SICC.

19. An analysis of the above provisions of the SC Act, as also the Rules, would show that the SICC is a Division of the High Court of Singapore. In terms of Section 18D of the SC Act, it has jurisdiction to hear and try any action, which, *inter alia*, is one that the High Court

may hear and try in its original civil jurisdiction. In addition to the said requirement and pre-qualification for the jurisdiction of the SICC, Section 18D of the SC Act and Order 110 Rule 7 of the Rules further prescribe other prerequisites that have to be met for the SICC to have jurisdiction to hear and try any action. The above clearly evidences that the SICC is only a division of the High Court of Singapore with jurisdiction to hear matters over which the High Court of Singapore already had the jurisdiction; only certain other conditions are to be met if the dispute is to be adjudicated by the SICC instead of the Civil Division of the High Court. The jurisdiction of the SICC is therefore, a sub-set of the jurisdiction of the High Court and it is not that a new jurisdiction that was earlier not vested in the High Court, gets vested in it. Merely because Order 110 of the Rules also prescribes a special procedure applicable to the proceedings before the SICC, the same would not detract from the position that the SICC is only a part of the High Court of Singapore and, therefore, in terms of the Gazette Notification dated 25.06.1968, issued by the Central Government, is a "superior Court".

20. I, therefore, do not find any merit in the objection raised by the learned senior counsel for the respondents that the SICC cannot be treated as a "superior Court" for the purposes of attracting Section 44A of the CPC.

b. <u>Whether the SICC can be termed as a 'Court'?</u>

21. As noted hereinabove, the learned senior counsel for the respondents has submitted that the SICC cannot at all be considered to be a 'Court', as is understood in legal parlance. He submits that a

'Court' is an institution empowered to adjudicate by the authority of the State and not by mere consent of the parties. He submits that for vesting jurisdiction in the SICC, none of the parties to the *lis* is required to be a national of the Republic of Singapore and the consent of the parties is not dependent on the concept of territorial jurisdiction. He submits that even the rules of evidence of Singapore are not applicable to the SICC and the parties can determine the questions of foreign laws applicable to the dispute. He submits that even Judges from foreign jurisdictions can be appointed to the SICC. He submits that from the above it would be evident that the SICC does not have the trappings of a Court and consequentially, cannot be considered as a "superior Court" within the meaning of the said term under Section 44A of the CPC.

22. On the other hand, the learned counsel for the petitioner submits that the SICC has all the characteristics of a "superior Court" and the trappings of a 'Court'. The President of the SICC in terms of Section 18B of the SC Act is a Supreme Court Judge, a senior Judge or an international Judge appointed by the Chief Justice of Singapore. The proceedings before it are to be heard and disposed of before a Single Judge or a Bench of three Judges. The SICC exercises its powers in accordance with the Rules of Court. It ordinarily applies the rules of evidence as applicable in Singapore, unless the dispute is an international commercial dispute and the parties have agreed upon any other rules of evidence.

23. I have considered the submissions made by the learned counsels for the parties.

24. The SICC has been created by the authority of the State, that is, the Republic of Singapore and under Section 18A of the SC Act, as a Division of the High Court of Singapore. Section 18B of the SC Act empowers the Chief Justice to appoint a Judge of Appeal, a Judge of the High Court, a senior Judge of the Supreme Court or an International Judge of the Supreme Court to be the President of the SICC or to himself act as the President of the SICC. Section 18C of the SC Act provides that Sections 18D to 18M and 80(2A) of the SC Act shall apply to the proceedings in the SICC as they apply to proceedings in the High Court exercising its original civil jurisdiction.

25. Though it may be true that Section 18D of the SC Act read with Order 110 Rule 7 of the Rules, *inter alia*, provide for a written agreement of the parties for vesting jurisdiction in the SICC, the same would not denude the SICC of its status of being a 'Court'. Furthermore, written consent is required only to transfer the dispute from the regular division of the High Court to a special division of the High Court namely, the SICC, which follows a special procedure.

26. Similarly, only because a different procedure is prescribed in certain aspects so as to expedite the adjudication of disputes, keeping in view the international and commercial nature thereof, it would again not denude the SICC of its status of being a 'Court'.

27. The submission of the learned senior counsel for the respondents that the SICC, not being bound by the rules of evidence found in Singapore law, cannot be considered as a 'Court', does not also impress me.

28. In terms of Order 110 Rule 23 of the Rules, it is only by the consent of the parties that an application can be made before the SICC for the non-application of the rules of evidence found in Singapore law or for any other rules of evidence as found in foreign law or otherwise, to apply. In considering such an application, the SICC is to be guided by the object of just, expeditious and economical disposal of the proceedings. Therefore, it cannot be said that the dispute would be decided by the SICC without it being bound by any rules of evidence and at its own whims and fancies. It is only with the object of just, expeditious and economical disposal of the proceedings, and with the consent of the parties, that the SICC may decide to not apply the rules of evidence found in the Singapore law or apply other rules of evidence. Order 23 of Rule 110 of the Rules is quoted hereunder:

> *"**Court may specify applicable rules of evidence (O. 110, r. 23)***
> ***23.**-(1) The Court may, on the application of a party, order that-*
> *(a) any rule of evidence found in Singapore law, whether under the Evidence Act (Cap. 97), in these Rules (but not in this Rule) or elsewhere, shall not apply; and*
> *(b) such other rules of evidence (if any), whether such rules are found in foreign law or otherwise, shall apply instead.*
> *(2) An application under paragraph (1) can only be made if all parties agree on*
> *(a) the rules of evidence that shall not apply for the purposes of paragraph (1)(a); and*
> *(b) any rules of evidence that shall apply instead for the purposes of paragraph (1)(b).*
> *(3) In making an order under paragraph (1), the Court may, for the just, expeditious and economical disposal of the proceedings –*

> *(a) modify the parties' agreement under paragraph (2), but only with the parties' consent; and*
>
> *(b) stipulate such further conditions that supplement and are consistent with the parties' agreement (or modified agreement) as the Court sees fit.*
>
> *(4) The Court may, from time to time, amend or supplement any order under paragraph (1), but only in accordance with paragraph (3) and after hearing the parties.*
>
> *(5) Despite any order under paragraph (1), the Court must exclude from evidence any document or statement (whether oral or written) where there are grounds of special political or institutional sensitivity (including anything that has been classified as secret by the Government, a foreign government or a public international institution) that the Court determines or the Attorney-General certifies to be compelling.*
>
> *(6) In this Rule and Rule 24, "rule of evidence" includes any rule of law relating to privilege or the taking of evidence."*

29. Equally, merely because in terms of Order 110 Rule 25 of the Rules, the SICC may dispense with a formal proof of any question of foreign law, this again would not detract the SICC from its status as a Court. In terms of Order 110 Rule 25 of the Rules, there is a prescription of conditions that need to be satisfied before the formal proof of foreign law can be waived by the SICC. In any case, this itself cannot be a ground to hold that the SICC is not a 'Court' as understood in the general legal parlance.

30. I, therefore, do not find any merit in the submission made by the learned senior counsel for the respondents challenging the status of the SICC as a 'Court'.

c. ***<u>Certificate of satisfaction or adjustment of the decree from the superior Court</u>***

31. The learned senior counsel for the respondents has further submitted that for an Execution application to be maintainable under Section 44A of the CPC, it must be accompanied by a certified copy of the decree along with a certificate from the superior Court that passed the decree, stating the extent, if any, to which the decree has been satisfied or adjusted. He submits that in the present case, the petitioner has not filed such a certificate and instead, has merely filed a letter dated 19.11.2019 from the SICC certifying that no appeal has been filed against its judgment, and nor have any enforcement proceedings been taken out in the Singapore Supreme Court in relation to the sums awarded in the judgment. He submits that this is not a certificate in terms of Section 44A of the CPC.

32. In support of his submission that filing such a certificate is a mandatory requirement, he has placed reliance on the Judgment of the Supreme Court in ***Bank of Baroda v. Kotak Mahindra Bank Ltd***, (2020)17 SCC 798. He also places reliance on the Judgment of the Madras High Court in ***Uthamram v. K.M. Abdul Kassim Co.***, 1962 SCC OnLine Mad 239.

33. On the other hand, the learned counsel for the petitioner submits that filing a certificate under Section 44A(2) of the CPC is merely a procedural requirement. He submits that the email dated 19.11.2019 issued by the SICC, meets the requirement of the certificate under Section 44A(2) of the CPC.

34. I have considered the submissions made by the learned counsels for the parties.

35. Section 44A(2) of the CPC has been reproduced hereinabove. It requires that together with a certified copy of the decree passed by a superior Court of any reciprocating territory, a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted, shall be filed. This would be essential for the executing Court to appreciate whether the decree, for which the enforcement is prayed, has been satisfied and, if so, to what extent.

36. In ***Bank of Baroda*** (supra), the Supreme Court has highlighted the importance of filing a copy of the decree along with a certificate, by observing as under:

> *12. A careful analysis of Section 44A hereinabove shows that a decree passed by any superior court of a reciprocating territory can be executed in India as if it had been passed by the District Court before whom it is filed. Sub-section (2) of Section 44A casts an obligation on the person filing such application to file a certified copy of the decree. Such person must also file a certificate from the superior court which passed the decree stating the extent, if any, to which the decree has been satisfied or adjusted. This certificate shall be conclusive proof of the extent of such satisfaction/adjustment. ...*
>
> *xxxxx*
>
> *38. Having said so, we are clearly of the view that some clarification needs to be given with regard to the period in which an application under Section 44A can be filed. In this regard, when we read sub-section (1) and sub-section (2) of Section 44A together it is obvious that what is required to be filed is a certified copy of the decree in terms of sub-section (1) and also a certificate from the court in the cause*

> *country stating the extent, if any, to which the decree has been satisfied or adjusted. These are the twin requirements and no foreign decree can be executed unless both the requirements are met. It is essential to file not only a certified copy of the decree but also the certificate in terms of sub-section (2). That, however, does not mean that nothing else has to be filed. The only inference is that the decree, can be executed only once these documents are filed. …"*

37. The Madras High Court in ***Uthamram*** (supra) has specifically considered the submission that the High Court of Singapore has no provision for issuing a certificate as mandated under Section 44A(2) of the CPC, and held that merely because such a provision is not there in the Rules of the High Court of Singapore, the mandatory requirement under Section 44A of the CPC cannot be waived, and an application for execution under Section 44A cannot lie in the absence of such a certificate. I may quote from the judgment as under:

> *"It will be seen from Sub-Cl. (2) to the section that the filing of a certificate from the superior Court will be obligatory on the decree-holder. If such a certificate is not filed the process of direct execution of the foreign judgment will not be available to the decree-holder who will then be left with the other remedy open to him under S. 13, Civil Procedure Code, i.e., filing a suit on the foreign judgment. The certificate required under S. 44-A(2) being a condition to the exercise of jurisdiction cannot be equated to a non-satisfaction memo under O. 21, R. 6, Civil Procedure Code. The jurisdiction of the Court in India to execute directly the decree of a foreign Court can arise only when there is a statutory proof of the amount due. Non-submission of the certificate will therefore result in the application for execution being rejected. It is argued that as under the Rules of*

> *the High Court of Singapore there is no provision for certifying part-satisfaction of money decrees, the Courts would consequently not be prepared to issue non-satisfaction certificates. O. 21, R. 6 of the Civil Procedure Code applies to a case of a transfer of a decree for execution by the Court passing the decree to the Court to which it is sent for execution. There is no procedure of transfer of a judgment entered by the Foreign Court to the Indian Court for the purpose of execution. The petition under S. 44-A, Civil Procedure Code, is an original petition in an Indian Court and unless the terms of the section are satisfied, the petition cannot obviously lie. The circumstance that the High Court of Singapore has no practice of recording pert satisfaction cannot justify a non-compliance with the mandatory provisions of the section. We may however observe that even if in that country there is no practice of recording part satisfaction, there could be no prohibition to the decree-holder applying to the Court which passed the decree for a certificate or order that the judgment remains unsatisfied either wholly or with respect to any specified amount. We are therefore of opinion that the application for execution cannot lie in the absence of the certificate."*

38. It is now to be considered whether the correspondence dated 19.11.2019 issued by the SICC can be considered as a certificate in terms of Section 44A(2) of the CPC. The said correspondence is reproduced hereinunder:

> *"We refer to the email request sent by counsel for Discovery Drilling Pte Ltd, Mr Visheshwar Shrivastav, on 6 November 2019. In that email, counsel requests that the Singapore International Commercial Court ("SICC") issue a "Certificate of non satisfaction of decree".*
> *2 The SICC may issue a certified copy of a*

judgment, if an application is made under section 4 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264) read with Order 67, rule 13 of the Rules of Court. However, the Rules of Court do not provide for the SICC to issue a "Certificate of non satisfaction of decree" (which we understand to be a certificate stating the extent, if any, to which a judgment has been satisfied or adjusted).

3 Nevertheless, for completeness, the SICC states as follows:

(i) Discovery Drilling Pte Ltd obtained against Akro Group DMCC, Parmod Kumar, Sunil Kumar Arora, Arjun Suresh Kandoth, David William Fowler and AYBI Energy Fze the judgment sums awarded by the SICC on 31 May 2019 in AKRO Group DMCC v Discovery Drilling Pte Ltd [2019] SGHC(I) 08 ("the Judgment"), a copy of which can be accessed at http://www.sicc.gov.sg/hearings-judgments/judgrnents.

(ii) As at the date of this letter:

(a) no appeal has been filed against the Judgment; and

(b) no enforcement proceedings have been taken out in the Singapore Supreme Court in relation to the judgment sums awarded in the Judgment."

39. In ***Uthamram*** (supra), the Madras High Court observed that if in the country that has passed the foreign judgment there is no practice of recording part satisfaction, the decree holder is not prohibited from applying to the foreign Court which passed the decree for a certificate or order that the judgment remains unsatisfied either wholly or with respect to any specified amount.

40. The certificate under Section 44A(2) serves as a safeguard against double recovery from the judgment debtor. It serves as a statutory proof of the amount due as it states the extent, if any, to which the decree has been satisfied or adjusted, and is conclusive proof of the extent of such satisfaction/adjustment.

41. In the present case, the correspondence dated 19.11.2019 issued by the SICC records that by an e-mail dated 06.11.2019, the petitioner herein had requested the SICC to issue a certificate as envisaged under Section 44A(2) of the CPC, and while the Rules of Court do not provide for the SICC to issue such a certificate, the SICC, for completeness, clarified in this regard that as of the date of the said correspondence, no enforcement proceedings had been taken out in the Singapore Supreme Court in relation to the judgment sums awarded in the subject judgment.

42. The statement that no enforcement proceedings have been taken out, effectively communicates that no satisfaction or adjustment of the decree has been recorded with the SICC, which serves the essential purpose of the requirement of the certificate.

43. Section 44A of the CPC does not mandate for the decree holder to first necessarily move to the Court which has passed the decree for seeking execution thereof. It also does not prescribe a form in which the certificate is to be framed. The only requirement is that the certificate must state the extent to which, if any, the decree has been satisfied or adjusted. In the present case, the correspondence dated 19.11.2019 from the SICC satisfies the said requirement and,

therefore, can be considered as a 'certificate' in terms of Section 44A(2) of the CPC.

44. For the above reason, I do not find merit in the challenge of the learned senior counsel for the respondents.

Challenges under Section 13 of the CPC

45. Having held the above, I shall now turn to the challenge laid by the learned senior counsel for the respondents under Section 13 of the CPC.

46. Sub-section 3 of Section 44A of the CPC provides that the District Court shall refuse execution of a foreign decree, if it is shown to the satisfaction of the said Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of Section 13 of the CPC.

47. Section 13 of the CPC reads as under:-

> *"**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."

48. The learned senior counsel for the respondents has invoked sub-clauses (a), (b) and (d) of Section 13 of the CPC to challenge the judgment of the SICC.

49. He submits that the respondents could not have been impleaded in the counterclaim in the absence of the consent of the respondents to accede to the jurisdiction of the SICC, the SICC had no jurisdiction to pass a judgment against the respondents.

50. He submits that the nature of the claim made by the petitioner before the SICC was not '*commercial*' in nature and, therefore, the SICC did not have the jurisdiction to adjudicate the same.

51. He further contends that the judgment in question has not been passed on merits, and the petitioner succeeded only because the respondents failed to appear before the SICC, and the proceedings were conducted *ex-parte*.

52. He further submits that in the present case, the notices issued by SICC were not served on the respondents in accordance with the law prevalent in India and, therefore, the SICC erred in proceeding *ex-parte* against the respondents, thereby violating the principles of natural justice.

53. On the other hand, the learned counsel for the petitioner has contended that the respondents were not impleaded as original parties to the claim filed by AKRO, instead, they were impleaded only in the counterclaim filed by the petitioner. He submits that it is only the consent of the originating parties to the *lis* that is mandatory for the SICC to exercise its jurisdiction. The SICC has the power to implead

any party to the *lis* at a later stage, and consent of such a party is not required for vesting jurisdiction in the SICC.

54. He submits that the underlying dispute between the petitioner and the defendants in the counterclaim was commercial in nature and therefore, the SICC had the jurisdiction to adjudicate on the same. He further submits that even otherwise, the jurisdiction of the SICC can be challenged by the respondents only before the SICC and not before this Court and certainly not in these proceedings.

55. He further submits that the judgment has been passed not because the respondents were proceeded *ex parte* but upon considering the merit of the claim of the petitioner. The judgment, therefore, has been passed by the SICC on the merits of the dispute, and Section 13(b) of the CPC is not attracted.

56. On service of notice, he reiterates that the respondents were fully aware of the pendency of the proceedings before the SICC and chose not to appear before it. They cannot, therefore, now allege violation of the principles of natural justice.

57. I shall now deal with the above contentions in more detail.

d. Absence of consent of the respondents in acceding to the jurisdiction of the SICC

58. As noted hereinabove, it is the submission of the learned senior counsel for the respondents that the respondents were initially not arrayed as parties to the claim filed by AKRO or the counterclaim filed by the petitioner herein. They were later added as party defendants by way of the second amendment to the counterclaim filed by the petitioner. However, the respondents neither consented to the

dispute being adjudicated by the SICC nor acceded to its jurisdiction to adjudicate the same, which is the pre-requisite for vesting jurisdiction in the SICC in accordance with the SC Act and the Rules.

59. On the other hand, the learned counsel for the petitioner submits that it is only when the claim is initially filed before the SICC or is transferred to the SICC that the consent of the parties is a pre-requisite. However, if the SICC finds that parties are to be added as plaintiffs or defendants, then in terms of Order 110 Rule 9 of the Rules, it is within the jurisdiction of the SICC to order the addition of such a party, even without the consent of the said party.

60. I have considered the submissions made by the learned counsels for the parties.

61. Section 18D of the SC Act states that the SICC shall have the jurisdiction to hear and try any action that satisfies, in addition to the other conditions, such conditions as are prescribed by the Rules. Order 110 Rule 7 of the Rules prescribes the other conditions that are to be satisfied for the SICC to have the jurisdiction to hear and try any action. As noted from the said Rule, which has been reproduced hereinabove, one important condition that needs to be satisfied for vesting jurisdiction in the SICC is that '*each plaintiff and defendant named in the originating process, when it was first filed has submitted to the Court's jurisdiction under a written jurisdiction agreement*'. The SICC, therefore, requires the express consent of the parties by way of a written jurisdiction agreement for vesting jurisdiction in it to hear and try any action.

62. At the same time, Order 110 Rule 9 of the Rules deals with the 'Joinder of other persons as parties', and states that in an action where the SICC has and assumes jurisdiction, or in a case which is transferred to the SICC under Rule 12 or 58 of the Rules, a person may be joined as a party, as an additional plaintiff or defendant, or as a third or subsequent party to the action. Order 110, Rule 9 of the Rules is reproduced herein below:

> *"**Joinder of other persons as parties (O. 110, r. 9)***
> ***9-**(1) In an action where the Court has and assumes jurisdiction, or in a case transferred to the Court under Rule 12 or 58, a person may be joined as a party (including as an additional plaintiff or defendant, or as a third or subsequent party) to the action if –*
> *(a) the requirements in these Rules for joining the person are met; and*
> *(b) the claims by or against the person -*
> *(i) do not include a claim for any relief in the form of, or connected with, a prerogative order (including a Mandatory Order, a Prohibiting Order, a Quashing Order or an Order for Review of Detention); and*
> *(ii) are appropriate to be heard in the Court.*
> *(2) A State or the sovereign of a State may not be made a party to an action in the Court unless the State or the sovereign has submitted to the jurisdiction of the Court under a written jurisdiction agreement.*
> *(3) In exercising its discretion under paragraph (1), the Court must have regard to its international and commercial character."*

63. A combined reading of the two provisions, that is, Order 110 Rule 7 and Order 110 Rule 9 of the Rules, though at first blush may

lead to a thought that the written jurisdiction agreement is required only from the plaintiff and the defendant named in the originating process and not from the party that may later be added by the SICC in exercise of its powers under Order 110 Rule 9 of the Rules, this, however, may not be accurate.

64. Order 110 Rule 9(1) of the Rules prescribes that for joining a party, the requirements of the Rules are to be met, and that the claim by or against the person is appropriate to be heard in the SICC.

65. As far as the addition of a party in a counterclaim is concerned, the same is provided in Order 15 Rule 3 of the Rules, which is reproduced herein below:-

> *"**Counterclaim against additional parties (O. 15, r. 3)***
> *3.-(1) Where a defendant to an action who makes a counterclaim against theplaintiff alleges that any other person (whether or nota party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to Rule 5(2), he may join that other person as a party against whom the counterclaim is made.*
> *(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time ofservice with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.*

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, Rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 10 (except Rule 1(4)), Orders 11 to 13 and Order 70, Rule 3, shall, subject to paragraph (3), apply in relation to the counterclaim and the proceedings arising from it as if —

a. the counterclaim were a writ and the proceedings arising from it anaction; and

b. the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(5) A copy of a counterclaim required to be served on a person who is not already a party to the action must be endorsed with a notice, in Form 12, addressed to that person -

i. stating the effect of Order 12, Rule 1, as applied by paragraph (4); and

ii. stating that he may enter an appearance in Form 10 and explaining how he may do so."

(Emphasis supplied)

66. Sub-Rule 2 of Rule 3 of Order 15 of the Rules provides that where a defendant joins a person, who is not already a party to the proceedings, as a party in his counterclaim, then such person, from the time of service of the counterclaim on him, shall have the same rights in respect of his defence to the counterclaim and otherwise, as if he had been duly sued in the ordinary way by the party making the counterclaim. Sub-Rule 4(b) of Rule 3 of Order 15 of the Rules further prescribes that where such person is not already a party to the action

but has been added as an additional party in the counterclaim, the further proceedings shall be conducted as if the party making the counterclaim was the plaintiff and the party against whom it is made is the defendant in that action. A combined reading of these provisions would show that as against a person who is added as a party to the counterclaim at a later stage, the action is to be treated as one 'originating' with the service of the counterclaim on such party. Therefore, consent would be required from the party who has been now impleaded in the counterclaim to accede to the jurisdiction of the SICC.

67. In case the party who is later impleaded in the counterclaim does not accede to the jurisdiction of the SICC, the SICC, in exercise of its power under Order 15 Rule 5 of the Rules, should order a separate trial of the counterclaim, or it may transfer the action to the General Division in the exercise of its powers under Order 110 Rule 12(1A) of the Rules. These provisions are reproduced hereinbelow for the sake of ready reference:-

> ***"Court may order separate trials, etc. (O. 15, r. 5)***
> *5.-(1) If claims in respect of 2 or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if 2 or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.*
> *(2) If it appears on the application of any party against whom a counterclaim is made*

that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

xxxxx

Transfer of proceedings to or from Court (O. 110, r. 12)

12.–(1) xxx

(1A) A case commenced in the Court may be transferred to the General Division."

68. In the present case, the judgment in question itself records that the original claim was filed by AKRO against the petitioner in the High Court of Singapore in December, 2016. Thereafter, the action was transferred to the SICC; whereafter the petitioner was granted leave to amend its counterclaim to include claims in '*fraud and conspiracy*' against AKRO, two of AKRO's directors, AYBI Energy FZE (a company related to AKRO), and the respondents herein. Furthermore, the respondents herein neither entered appearance before the SICC nor consented to its jurisdiction, and the proceedings continued before the SICC *ex-parte* against the respondents, resulting in the *ex-parte* judgment dated 31.05.2019, enforcement whereof is prayed herein by the petitioner.

69. As is evident from the above, the SICC is a special jurisdiction created by the SC Act, which requires the parties to submit to its jurisdiction. The respondents, however, have not acceded to the jurisdiction of the SICC. In fact, they were not even subjected to the jurisdiction of the High Court or the Supreme Court of Singapore,

since they are neither residents of Singapore nor were they carrying on business in Singapore, and no part of the cause of action arose in Singapore. The same is also evident from the findings in the judgment of the SICC itself wherein, while granting permission for the counsel to represent the petitioner, the SICC has observed as under:-

> *"48 As referred to above, DDPL made application for the offshore decision because the RFL was only entitled to appear for it in the proceedings if it is an "offshore case": s 360 of the Legal Profession Act (Cap 161, 2009 Rev Ed); Rule 3(2) of Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 (Cap 161, S 851). An "offshore case" is relevantly "an action that has no substantial connection with Singapore". If Singapore law is not the law applicable to the dispute and the subject matter of the dispute is not regulated or otherwise subject to Singapore law the action is an offshore case: O 110 r 1(2)(f) of the Rules of Court.*
>
> *49 In determining the application, the focus was on the "particular action": Teras Offshore at [10]. This particular action is between AKRO which was incorporated in Dubai, and DDPL which was incorporated in Singapore, is part of a group of companies incorporated in India and is a wholly-owned subsidiary of a company incorporated in Delhi, India.*
>
> *50 The Rig, the subject of the proceedings, was repaired and refurbished in Houston, Texas in the USA. The contract negotiations occurred in Houston, between 25 October 2015 and 28 October 2015. The Contract was executed on 4 November 2015 in Delhi, India. The Contract was performed in Texas and then between Texas via Corpus Christi in the US Gulf of Mexico and Gujarat, India and Mumbai, India.*
>
> *51 The dispute is multifaceted. The claim brought by AKRO, which was dismissed,*

> *related to unpaid invoices for work allegedly carried out during the performance of the Contract in the USA and en route to and in India. DDPL's claims against AKRO, its directors, AYBI and DDPL's former representatives relate to the creation of allegedly false invoices in the USA in a setting allegedly facilitated and assisted by DDPL's ex-representatives in India. The majority of the conduct occurred in the USA and partly en route to and in India. The payments that were made by DDPL to AKRO were made via its Singapore office.*
>
> *52 On the assumption that the law of Singapore is applicable to part of the dispute (DDPL brought an alternative claim under the Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act")), it was necessary to consider whether the action had "no substantial connection" with Singapore. The fact that DDPL is a Singapore company is not of itself, nor combined with the fact that monies were paid via its office in Singapore, a basis for a conclusion that the action or the dispute has a substantial connection to Singapore: Teras Offshore.*
>
> *53 The facts that the Contract was negotiated, entered into and performed elsewhere than Singapore and that the subject matter of the dispute relates to conduct that occurred elsewhere than in Singapore were persuasive matters in reaching the conclusion that the action has no substantial connection to Singapore."*

70. In view of the above, without the consent of the respondents, therefore, the SICC could not have assumed jurisdiction against the respondents.

71. Order 110 Rule 10 of the Rules castes an obligation even on the SICC to, on its own motion and at any time, consider whether it has

jurisdiction or whether it should decline to assume jurisdiction. In the present case, post the addition of the respondents as parties to the counterclaim, the SICC does not appear to have made such a decision. Rule 10 of Order 110 of the Rules is reproduced hereunder:

> *"**Court may consider jurisdiction and assumption of jurisdiction (O. 110, r. 10)***
> ***10**-(1) In an action commenced in the Court, the Court may consider whether it has jurisdiction or whether it should decline ty assume jurisdiction -*
> *(a) on its own motion at any time (but shall not make a decision before hearing parties); or*
> *(b) on an application by a party in accordance with Rule 11.*
> *(2) [Deleted by S 697/2018 wef 01/11/2018]*
> *(3) Where the Court decides that it has no jurisdiction or declines to assume jurisdiction-*
> *(a) the Court must transfer the proceedings to the General Division if -*
> *(i) the Court considers that the General Division has jurisdiction in the case; and*
> *(ii) all parties consent to the proceedings being heard in the General Division; or*
> *(b) if the proceedings are not transferred to the General Division under sub-paragraph (a), the Court may dismiss or stay the proceedings, or make any other order it sees fit.*
> *(3A) For the purposes of paragraph (3)(a)(ii), where a choice of court agreement designates the High Court or the General Division as a court for the case, the Court is to treat each party to the agreement as a party who consents to the proceedings being heard in the General Division.*
> *(3B) To avoid doubt, paragraph (3)(b) does not enable the Court in make an order for the transfer of the proceedings to any other coat in Singapore.*

> *(4) Rule 12(5) applies where the Court transfers proceedings under paragraph (3)(a).*
> *(5) The following decisions of the Court under this Rule are final for the purposes of section 29(a) of the Act, unless leave to appeal is granted:*
>
> *(a) a decision that the Court has and will assume jurisdiction;*
> *(b) a decision of the Court to transfer the proceedings to the General Division under paragraph (3)(a).”*

72. The reliance of the learned counsel for the petitioner on the Judgment of the Supreme Court in ***Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd***., (2022) 1 SCC 753, in support of his submission that this Court could not go into the question of whether the SICC could have exercised its jurisdiction to try the counterclaim filed by the petitioner in absence of the consent of the respondents to accede to its jurisdiction, cannot be accepted. The Supreme Court in ***Gemini Bay Transcription (P) Ltd.*** (supra) was considering a challenge to a foreign Award under Sections 47 and 48 of the Arbitration and Conciliation Act, 1996, which being a complete Code in itself, excluded such a challenge against the Arbitral Award. The same would, therefore, not apply as far as the objection under Section 13(a) of the CPC is concerned.

73. I must herein clarify that this Court is not to be read as finding that the respondents could not have been added as respondents in the counterclaim filed by the petitioner, but only that, in the absence of the written consent from the respondents, the SICC, given its Rules, did not have the jurisdiction to adjudicate the counterclaim against the respondents.

74. In my view, therefore, the respondents have been able to make out the exception provided in sub-section (a) of Section 13 of the CPC against the enforcement of the foreign judgment passed by the SICC.

e. <u>Claim not being 'commercial in nature'</u>

75. The learned senior counsel for the respondents has submitted that the counterclaim of the petitioner before the SICC was in '*fraud and conspiracy*'. He submits that the action of the petitioner was, therefore, based on tort and cannot be described as 'commercial in nature', which is a pre-requisite for the SICC to exercise its jurisdiction.

76. I find merit in the said objection of the learned senior counsel for the respondents as well. In the subject judgment passed by the SICC, it has been recorded that the counterclaim of the petitioner is based on allegations of fraud and conspiracy. For the exercise of jurisdiction by the SICC, the claim has to be 'international and commercial in nature'.

77. Section 18D of the SC Act vests jurisdiction in the SICC to adjudicate the disputes that are 'international and commercial in nature'.

78. Rule 9(3) of Order 110 of the Rules, also mandates that while exercising jurisdiction to add parties to a claim or a counterclaim, the SICC must have regard to its international and commercial character.

79. Rule 1(2)(b) of Order 110 of the Rules defines when a claim can be said to be 'commercial in nature'. The same is reproduced hereinunder:-

*"**Interpretation (O. 110, r. 1)***

xxxxx

(2) In this Order, unless the context otherwise requires –

xxxxx

(b) a claim is commercial in nature if-

(i) the subject matter of the claim arises from a relationship of a commercial nature, whether contractual or not, including (but not limited to) any of the following transactions:

(A) any trade transaction for the supply or exchange of goods or services;

(B) a distribution agreement;

(C)commercial representation or agency;

(D) factoring or leasing;

(E) construction works;

(F) consulting, engineering or licensing;

(G) investment, financing, banking or insurance,

(H) an exploitation agreement or a concession:

(I) a joint venture or any other form of industrial or business cooperation;

(J) a merger of companies or an acquisition of one or more companies;

(K) the carriage of goods or passengers by air, sea, rail or road;

(ii) the claim relates to an in personam intellectual property dispute; or

(iii) the parties to the claim have expressly agreed that the subject matter of the claim is commercial in nature;"

80. A reading of the above would show that the subject matter of the claim must arise from a relationship that is commercial in nature. In the present case, there was no such relationship between the petitioner and the respondents. In fact, as noted hereinabove, the subject matter of the claim was a breach of alleged fiduciary duties by the respondents; an action in tort; and an action based on fraud.

81. Therefore, even otherwise, the SICC had no jurisdiction and was not competent to adjudicate the dispute between the petitioner and the respondents.

82. The present case, therefore, falls within the exception provided in Section 13(a) of the CPC on this count as well, and the judgment passed by the SICC is not conclusive and, therefore, not enforceable under Section 44A of the CPC.

f. Judgment passed by the SICC was not given on the merits of the case

83. The learned senior counsel for the respondents has challenged the subject judgment passed by the SICC, by contending that the subject judgment has not been passed on merits, and the petitioner succeeded only because the respondents failed to appear before the SICC, and the proceedings were conducted *ex-parte*.

84. I however, do not find any force in the said submission.

85. In ***International Woollen Mills v. Standard Wool (UK) Ltd***. (2001) 5 SCC 265, the Supreme Court held that for a foreign judgment to be held as conclusive under Section 13 of the CPC, and one given "on merits", the Court must see whether the Court passing the subject judgment has applied its mind and considered the evidence to adjudicate upon the questions between the parties. The Supreme Court held that in case of *ex-parte* proceedings, only if the Court passing the subject judgment has examined the evidence and considered the truth of the plaintiff's claims before giving its decision, will such a judgment be one on merits, however, if a judgment is passed merely due to the default of the defendant without evaluating

any evidence or considering the question whether the claim is well-founded or not, will mean that such judgment has been passed against the defendant as a penalty and will not be considered as a judgment on merits. The relevant paragraph from the judgment is reproduced hereunder:

> *"**29.** In the case of Govindan AsariKesavanAsari v. Sankaran Asari Balakrishnan Asari [AIR 1958 Ker 203 : 1957 Ker LT 1122 : 1957 Ker LJ 999] it is held as follows: (AIR pp. 205-06, para 3)*
>
> > *"In construing Section 13 of the Indian Civil Procedure Code we have to be guided by the plain meaning of the words and expressions used in the section itself, and not by other extraneous considerations. There is nothing in the section to suggest that the expression 'judgment on the merits' has been used in contradistinction to a decision on a matter of form or by way of penalty.*
> >
> > *The section prescribes the conditions to be satisfied by a foreign judgment in order that it may be accepted by an Indian court as conclusive between the parties thereto or between parties under whom they or any of them litigate under the same title. One such condition is that the judgment must have been given on the merits of the case. Whether the judgment is one on the merits, must be apparent from the judgment itself. It is not enough if there is a decree or a decision by the foreign court. In fact, the word 'decree' does not find a place anywhere in the section. What is required is that there must have been a judgment. What the nature of that judgment should be is also indicated by the opening portion of the section where it is stated that the judgment must have directly adjudicated upon questions arising between the parties.*

The Court must have applied its mind to that matter and must have considered the evidence made available to it in order that it may be said that there has been an adjudication upon the merits of the case. It cannot be said that such a decision on the merits is possible only in cases where the defendant enters appearance and contests the plaintiff's claim. Even where the defendant chooses to remain ex parte and to keep out, it is possible for the plaintiff to adduce evidence in support of his claim (and such evidence is generally insisted on by the courts in India), so that the court may give a decision on the merits of his case after a due consideration of such evidence instead of dispensing with such consideration and giving a decree merely on account of the default of appearance of the defendant.

In the former case the judgment will be one on the merits of the case, while in the latter the judgment will be one not on the merits of the case. Thus it is obvious that the non-appearance of the defendant will not by itself determine the nature of the judgment one way or the other. That appears to be the reason why Section 13 does not refer to ex parte judgments falling under a separate category by themselves. A foreign court may have its own special procedure enabling it to give a decision against the defendant who has failed to appear in spite of the summons served on him and in favour of the plaintiff, even without insisting on any evidence in support of his claim in the suit.

Such a judgment may be conclusive between the parties so far as that jurisdiction is concerned, but for the purpose of Section 13 of the Indian Civil Procedure Code such a judgment cannot be accepted as one given on the merits of the case, and to that extent the law in India

is different from the law in other jurisdictions where foreign judgments given for default of appearance of defendants are also accepted as final and conclusive between the parties thereto. This position was noticed and recognised in R.E. Mohd. Kassim and Co. v. SeeniPakir-bin Ahmed [AIR 1927 Mad 265 : ILR 50 Mad 261 (FB)] . The contention that the defendant who had chosen to remain ex parte, must be taken to have admitted the plaint claim was also repelled in that case as unsound and untenable. His non-appearance can only mean that he is not inclined to come forward and contest the claim or even to admit it.

His attitude may be one of indifference in that matter, leaving the responsibility on the plaintiff to prove his claim if he wants to get a decree in his favour. Such indifference on the part of the defendant cannot necessarily lead to the inference that he has admitted the plaintiff's claim. Admission of the claim is a positive act and it cannot be inferred from any negative or indifferent attitude of the person concerned. To decree the plaint claim solely on account of the default of the defendant and without considering the question whether the claim is well founded or not and whether there is any evidence to sustain it, can only mean that such a decree is passed against the defendant by way of penalty.

It will not satisfy even the minimum requirements of a judgment on the merits of the claim. What such requirements are, have been explained in Abdul Rahman v. Mohd. Ali Rowther [AIR 1928 Rang 319 : ILR 6 Rang 552] in the following terms:

'A decision on the merits involves the application of the mind of the Court

> *to the truth or falsity of the plaintiff's case and therefore though a judgment passed after a judicial consideration of the matter by taking evidence may be a decision on the merits even though passed ex parte, a decision passed without evidence of any kind but passed only on his pleadings cannot be held to be a decision on the merits.'*
>
> *The same view was taken by the Patna High Court also in Wazir Sahu v. Munshi Das [AIR 1941 Pat 109 : ILR 20 Pat 144] where the question when an ex parte decision can be said to be on the merits, was answered as follows:*
>
> *'An ex parte decision may or may not be on the merits. The mere fact of its being ex parte will not in itself justify a finding that the decision was not on the merits. That is not the real test. The real test is not whether the decision was or was not ex parte, but whether it was merely formally passed as a matter of course or by way of penalty or it was based on the consideration of the truth or otherwise of the plaintiff's claim.'*
>
> *We are in respectful agreement with the view taken in these two cases."*
>
> ***30.** In our view this authority lays down the correct law."*

86. A reading of the judgment dated 31.05.2019 passed by the SICC of which enforcement is sought by the petitioner, would show that the SICC has recorded the submissions made by the petitioner against the respondents and thereafter has based its judgment on the evidence produced before it by the petitioner, by evaluating the truth of the petitioner's claims. Even though the proceedings were

conducted *ex-parte* as against the respondents herein, the SICC did not pass a mere formal order as a matter of course or by way of penalty for the defendant's absence, but instead, asked for the production of evidence, examined its veracity, and arrived at its conclusions after due consideration of the material placed before it. The subject judgment, therefore, satisfies the test of being a judgment "on merits" under Section 13(b) of the CPC.

87. Furthermore, it is well settled that it is not the domain of this Court to decide whether the decision of the foreign Court on the materials put before it, is right or not. It is not for this Court to sit in appeal over the subject judgment while exercising its power under Section 44A of the CPC or while considering the challenge to the subject judgment under Section 13(b) of the CPC. This Court cannot examine the sufficiency of the evidence on the spacious plea of determining whether the subject judgment was based on merits.

88. Therefore, the challenge of the respondents to the judgment of the SICC by invoking Section 13(b) of the CPC is rejected.

g. Improper service of summons on the respondents violated the principles of natural justice

89. This now brings me to the challenge of the respondents under Section 13(d) of the CPC, stating that they had not been served with the notice of the counterclaim in accordance with the law of India and, therefore, have been denied their right of natural justice.

90. The learned senior counsel for the respondents has submitted that in terms of Section 29 of the CPC read with the Gazette Notification dated 29.05.1956 issued by the Central Government,

summons issued by the SICC on the counterclaim filed by the petitioner were to be served on the respondents as if they were summons issued by the Court in India. Order V of the CPC provides for the procedure of issue and service of summons of a Suit. Rule 16 of Order V of the CPC states that the serving officer delivering the copy of the summons shall obtain the signatures of the person to whom the copy is so delivered or tendered as an acknowledgement of service. Rule 19 of Order V of the CPC further provides for the examination of the serving officer on oath to ensure that the service was properly made. He submits that even the Rules of the Court at Singapore require that where the defendant is situated outside the territory of Singapore, the Rules of service of summons on such defendant, applicable to the Country where such defendant resides, shall be applicable. He submits that in the present case, the petitioner has alleged that the summons issued by the SICC were served on the respondents by the advocate of the petitioner. He submits that this was not a proper service in terms of the CPC and, therefore, the judgment passed by SICC cannot be executed.

91. On the other hand, the learned counsel for the petitioner has submitted that the respondents had been duly served with the summons issued by the SICC and an affidavit in this regard was filed before the SICC, which was accepted by the SICC as a due service on the respondents, and it was only thereafter that the SICC proceeded with the counterclaim in the absence of the respondents as they failed to appear in spite of service of the notice.

92. He further submits that the respondents were not only served with the summons issued by the SICC but were also marked on each and every e-mail regarding the filing made by the petitioner before the SICC. He submits that, therefore, the respondents had full knowledge of the proceedings before the SICC and intentionally failed to appear before the SICC.

93. Placing reliance on the judgment of the Supreme Court in ***R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid***, 1962 SCC OnLine SC 112, he submits that whether the service of summons was properly made on the Judgment Debtors or not, is to be considered by the SICC and not by this Court in the exercise of its jurisdiction under Section 13 of the CPC.

94. I have considered the submissions made by the learned counsels for the parties.

95. Section 13(d) of the CPC states that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the parties except, *inter alia*, where the proceedings in which the judgment was obtained are opposed to natural justice. Natural justice cannot be equated to procedural requirements of service of summons in a particular manner. Even assuming that there were procedural infirmities in the proof of service of summons affected by the petitioner on the respondents, the same cannot be equated with a denial of the principles of natural justice. The respondents have not stated that they were not aware of the filing of the counterclaim against them by the petitioner or of the proceedings being conducted by the SICC on such counterclaim. They have merely pleaded lack of

proof of proper service of summons on them. Procedural law cannot triumph substantive rights. In ***R. Viswanathan*** (supra), the Supreme Court explained the ambit and scope of Clause 13(d) of the CPC, as under:-

> *"**30.** ... "In adjudging the competence of the foreign court it would not be open to us to ignore the course of practice in that court even if it be not strictly warranted by the procedural law of that State. Whether the procedure of the foreign court which does not offend natural justice is valid is for the foreign court to decide and not by the court in which the foreign judgement is pleaded as conclusive. ...*
>
> ***xxxxx***
>
> ***40.** Before we deal with the contentions it may be necessary to dispose of the contention advanced by the executors that it is not open in this suit to the plaintiffs to raise a contention about bias, prejudice, vindictiveness or interest of the Judges constituting the Bench. They submitted that according to recent trends in the development of Private International law a plea that a foreign judgment is contrary to natural justice is admissible only if the party setting up the plea is not duly served, or has not been given an opportunity of being heard. In support of that contention counsel for the executors relied upon the statement made by the Editors of Dicey Conflict of Laws, 7th Edn., Rule 186 at pp. 1010-11 and submitted that a foreign judgment is open to challenge only on the ground of want of competence and not on the ground that it is vitiated because the proceeding culminating in the judgment was conducted in a manner opposed to natural justice. The following statement made in Private International Law by Chesire, 6th Edn., pp. 675 to 677 was relied upon:*

"The expression 'contrary to natural justice' has, however, figured so prominently in judicial statements that it is essential to fix, if possible, its exact scope. The only statement that can be made with any approach to accuracy is that in the present context the expression is confined to something glaringly defective in the procedural rules of the foreign law. As Denman, C.J., said in an early case:

> *'That injustice has been done is never presumed, unless we see in the clearest light that the foreign law, or at least some part of the proceedings of the foreign court, are repugnant to natural justice and this has often been made the subject of enquiry in our courts.'*

In other words, what the courts are vigilant to watch is that the defendant has not been deprived of an opportunity to present his side of the case. The wholesome maxim audi alteram partem is deemed to be of universal, not merely of domestic, application. The problem, in fact, has been narrowed down to two cases.

The first is that of assumed jurisdiction over absent defendants…. Secondly, it is a violation of natural justice if a litigant, though present at the proceedings, was unfairly prejudiced in the presentation of his case to the Court."

It is unnecessary to consider whether the passages relied upon are susceptible of the interpretation suggested, for private international law is but a branch of the municipal law of the State in which the court which is called upon to give effect to a foreign judgment functions and by Section 13 of the Civil Procedure Code (Act 5 of 1908) a foreign judgment is not regarded as conclusive if the proceeding in which the judgment was

obtained is opposed to natural justice. Whatever may be the content of the rule of private international law relating to "natural justice" in England or elsewhere (and we will for the purpose of this argument assume that the plea that a foreign judgment is opposed to natural justice is now restricted in other jurisdictions only to two grounds — want of due notice and denial of opportunity to a party to present case) the plea has to be considered in the light of the statute law of India, and there is nothing in Section 13 of the Code of Civil Procedure, 1908, which warrants the restriction of the nature suggested.

41. *By Section 13 of the Civil Procedure Code a foreign judgment is made conclusive as to any matter thereby directly adjudicated upon between the same parties. But it is the essence of a judgment of a court that it must be obtained after due observance of the judicial process i.e. the court rendering the judgment must observe the minimum requirements of natural justice — it must be composed of impartial persons, acting fairly, without bias, and in good faith, it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case. A foreign judgment of a competent court is conclusive even if it proceeds on an erroneous view of the evidence or the law, if the minimum requirements of the judicial process are assured : correctness of the judgment in law or on evidence is not predicated as a condition for recognition of its conclusiveness by the municipal court. Neither the foreign substantive law, nor even the procedural law of the trial be the same or similar as in the municipal court. As observed by Charwell, J., in Robinson v. Fenner [(1913) 3 KB 835 at p. 842] . "In any view of it, the judgment appears, according to our law, to be clearly wrong, but that of course is not enough : Godard v. Gray [(1870) LR 6 QB 139] and*

> *whatever the expression 'contrary to natural justice', which is used in so many cases, means (and there really is very little authority indeed as to what it does mean), I think that it is not enough to say that a decision is very wrong, any more than it is merely to say that it is wrong. It is not enough, therefore, to say that the result works injustice in the particular case, because a wrong decision always does". A judgment will not be conclusive, however, if the proceeding in which it was obtained is opposed to natural justice. The words of the statute make it clear that to exclude a judgment under clause (d) from the rule of conclusiveness the procedure must be opposed to natural justice. A judgment which is the result of bias or want of impartiality on the part of a Judge will be regarded as a nullity and the "trial coram non judice" (Vassilades v. Vassilades [AIR 1945 PC 38 at 40] and Manik Lal v. Dr Prem Chand [(1957) SCR 575]."*

96. Therefore, if the requirements of the principles of natural justice have been met, mere procedural irregularity in the service of summons, if any, will not detract from the conclusiveness of the foreign judgment under Section 13 of the CPC.

97. The challenge of the respondents to the judgment of the SICC under Section 13(d) of the CPC is, accordingly, rejected.

Conclusion

98. In view of the above, the findings of this Court are summarised as under:-

a) The SICC is a 'Court', as is understood in legal parlance.

b) The SICC, being a Division of the High Court of Singapore, qualifies as a "superior Court" under Section 44A of the CPC;

c) The correspondence dated 19.11.2019 substantially fulfills the requirement of a certificate under Section 44A(2) of the CPC;

d) The judgment dated 31.05.2019 of the SICC, in so far as it is against the respondents, has not been passed by a court of competent jurisdiction inasmuch as the respondents had not consented to vest jurisdiction in the SICC to adjudicate the dispute and the subject matter of the claim was not "commercial" in nature but rather a breach of fiduciary duties and an action in tort based on allegation of fraud. Therefore, the SICC had no jurisdiction to adjudicate the counterclaim filed by the petitioner against the respondents in terms of the Rules. The respondents therefore, have been able to make out a case for non-enforcement of the judgment dated 31.05.2019 of the SICC under Section 13(a) read with Section 44A(3) of the CPC;

e) The judgment of the SICC is based on the evidence produced before it by the petitioner and, therefore, cannot be said to be not on merits and a case under Section 13(b) of the CPC is not made out by the respondents; and

f) The proceedings before the SICC that resulted in the judgment dated 31.05.2019, cannot be said to be opposed to the principles of natural justice. Therefore, the respondents have not been able to make out a case under Section 13(d) of the CPC.

99. Accordingly, the present Execution Petition is dismissed as not being maintainable under Section 44A of the CPC, reserving liberty in the petitioner to avail of its remedies in accordance with law.

100. There shall be no orders as to costs.

NAVIN CHAWLA, J.

FEBRUARY 24, 2025/Arya/*rv*/SJ