CHAITANYA ASHOK JADHAV
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 473 OF 2025

Doha Marine Services W.L.L. ...Petitioner

Versus

Adsun Offshore Diving Contractors Pvt. Ltd. ...Respondent

Mr. Prathamesh Kamat *a/w Adv. Kayush Zaiwalla, Adv. Devesh Dange i/b Adil Patel, for the Petitioner.*

Mr. Ashwin Shankar *a/w Ramjay Narayan, for the Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.
RESERVED ON: APRIL 2, 2026
PRONOUNCED ON: APRIL 8, 2026

JUDGEMENT :

Context and Factual Background:

1. This is a Petition filed under Part II of the Arbitration and Conciliation Act, 1996 *("the Act")*, seeking recognition of three Arbitral Awards in connection with a Charterparty Agreement dated October 7, 2021 *("Agreement")*, executed between the Petitioner, Doha Marine Services W.L.L. *("Owners")*, a company incorporated under the laws of Qatar, and the Respondent, Adsun Offshore Diving Contractors Pvt. Ltd., an Indian Company *("Charterer")*.

2. The Agreement was executed in connection with the hiring of MV Topaz Rayyan ***("Vessel")***. The Charter was for a period of 15 days, which was amenable to extension from time to time. Disputes and differences arose between the parties, which led to arbitration being initiated by the Owners on July 14, 2022. The Learned Sole Arbitrator came to be appointed on August 15, 2022, to conduct the arbitration in accordance with the Dispute Resolution Clause in the Agreement.

3. The Owner made a claim for recovery of the hire (charges for hire of the Vessel) and after one round of submissions, neither party appears to have had any grievance about the conduct of the arbitration on a "documents-only basis".

4. The Owners made a claim for sum of USD 439,036.98 towards hire, equipment, material and services and damages; and USD 29,205 for sums invoiced for storage, transport and other charges relating to the Charterer's equipment, which had been held by the Owners under lien, on the premise that the hire remained unpaid, along with interest and costs.

5. The Charterer lodged a counterclaim seeking damages on the premise that the Owners wrongfully exercised a lien over the equipment used by the Charterer on the Vessel, including rental payments incurred

by the Charterer on such equipment and its replacement value, amounting to USD 637,000; damages for loss of charter hire in the sum of USD 661,770; and along with interest and costs.

6. Pursuant to the Agreement, the Vessel is said to have been delivered for service to the Charterer on October 22, 2021, and the Charterer placed diving equipment on board the Vessel including setting up a decompression chamber for the divers. The charter was for a period of 15 days, and there was an optional standby period of 5 days and two agreed extensions of seven days each.

7. On November 24, 2021, the Owners purported to suspend performance under Clause 12 of the Agreement on the ground of non-payment of hire and exercised a lien over the equipment placed on board in terms of Clause 19 of the Agreement. There is a dispute between the parties as to whether the Vessel was re-delivered on November 25, 2021, as claimed by the Charterer or whether such re-delivery took place only on December 5, 2021 as claimed by the Owners.

8. The Agreement is governed by the English Law. The Owners claim that under English Law, the Charterer may only claim a set-off or make a deduction from the hire payable to the Owners, in respect of damages claim, when the breach on the part of the Owners as alleged,

has deprived the Charterer of the use, or effective use of the Vessel. The Owners would claim that no other deduction can be made in terms of the position under English Law, including the Judgements of the English Courts in the ***Kostas Melas***[1] and ***Boskalis Offshore***[2]**.**

9. The Owners' contention was that any identifiable issue entitling the Charterer to withhold payment would need to be notified promptly in the agreed time period and no deductions can be made from the sums claimed at a later stage as per Clause 12(e) of the Agreement. The Charterer was said to have signed the off-hire certificate ***("Off-hire Certificate")*** confirming that the Vessel was off-hire on December 5, 2021. The Owners deny that there is any basis to withhold payments of hire on the contention that the certificate in question was fabricated or was dishonestly procured. They would also claim that even if the certificate dated December 5, 2021 was not to be relied upon, in fact, the Vessel was re-delivered to the Owners on that very date. Therefore, the Owners would claim that the Learned Arbitral Tribunal should declare that the amount payable towards the hire in the sum of USD 266,042.64 is due and a partial award in that sum was sought as an alternative prayer.

1 *The Kostas Melas [1981] 1 Lloyd's Rep 18*
2 *Boskalis Offshore Marine v. Atlantic Marine and Aviation, The Atlantic Tonger, [2019] EWHC 1213 (Comm)*

10. The various deductions made by the Charterer towards internet charges, additional crew requests, consumables and catering were said to be untenable, and that there was no entitlement to claim a set off or effect any deductions from the hire payable to the Owners.

11. The Charterer contended that the total sum admitted and payable to the Owners was USD 266,042.64 and that the various deductions sought to be made were not legitimate and various specific invoices were either not payable at all or payable only at a future date, or for that matter were invalid (for example invoices in respect of a lien exercised over the Charterer's equipment which was assailed as illegal).

12. The most important contention raised by the Charterer, which also forms the subject matter of the core objection tabled by the Charterer in this Court, is the manner in which the Learned Arbitral Tribunal dealt with the Charterer's entitlement under Clause 12(e) of the Agreement. The law declared in ***Boskalis Offshore*** was also contended to be inapplicable inasmuch as the invoices covered in that case were issued and payable in arrears rather than being issued and payable in advance, which is contrary to what is stipulated in the Agreement. The absence of a due date set out in the invoices in question was also said to confirm that the invoices were payable in advance, which resulted in Clause 12(e) becoming inoperable and thereby

inapplicable. Therefore, it was contended by the Charterer that the Charterer's cash flow must be considered by the Learned Arbitral Tribunal and set off as an equitable remedy, as would be customary, must be recognized.

13. The Learned Arbitral Tribunal delivered three awards, which are collectively referred to as the ***"Subject Awards"*** – *first*, a Final Partial Arbitration Award dated September 19, 2023; second, an Award of Costs dated April 23, 2024; and *third*, a Second Award on Costs dated August 7, 2024.

Contentions of the Parties:

14. The core challenge mounted by Mr. Ashwin Shankar, Learned Advocate for the Charterer, while tabling objections for the purposes of Section 48 of the Act, is that the Learned Arbitral Tribunal has simply not dealt with the contentions of the Charterer in relation to Clause 12(e) of the Agreement. This is said to result in an infirmity by way of a violation of the principles of natural justice, rendering the Subject Awards contrary to the public policy of India within the meaning of Section 48(2)(b) of the Act. At the threshold, it would be appropriate to extract Section 48(2)(b) of the Act:

48. Conditions for enforcement of foreign awards.—

(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—

(a) *****

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) to (e) *****

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) *****

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation 1.— For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.— For the avoidance of doubt, ***the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute****.*

[Emphasis Supplied]

15. Mr. Shankar would submit that the Charterer was entitled to the right of setting off the amounts due to it or demonstrably not payable by it, from the hire claimed by the Owners. He would submit that the Owners illegally exercised a lien over equipment that was kept on board the Vessel. Such equipment was stated to be owned by third parties, namely Adsun Middle East FZE and Usha Trading and Offshore LLC. Therefore, the Charterer had to suffer serious damages by incurring further lease rentals on such equipment, and by the equipment allegedly having been reduced to scrap value, thereby resulting in the Charterer incurring replacement costs.

16. The consequential counterclaim mounted by the Charterer against the Owners in respect of the wrongful exercise of lien is quantified at approximately USD 1.2 million. It is contended that the same could not be adjudicated because of the insistence by the Learned Arbitral Tribunal on a deposit of approximately Rs. 2 crores, which the Charterer could not furnish, thereby allegedly imposing an unreasonable condition on the Charterer and depriving it of a fair

consideration of the counterclaim, resulting in an imbalance in the assessment of the amounts awarded.

17. The core contention of Mr. Shankar is that Clause 12(e) of the Agreement explicitly provides for payment in advance. The covering sheet of the Agreement, under Box 22 and Box 24, required the hire to be invoiced in advance with payment being due prior to the commencement of each seven-day hiring block. Therefore, the framework for disputing an invoice, paying the undisputed portion and withholding the disputed portion pending resolution, as envisaged in Clause 12(e), was unworkable, and therefore business efficacy ought to have been accorded to Clause 12(e) so as to provide a reasonable and equitable interpretation of its substance.

18. Therefore, there could never have been any contemporaneous set-off or deduction. The Learned Arbitral Tribunal has held that the Charterer did not raise objections within the deadline for raising objections. However, since under the Agreement, invoices were to be raised and paid in advance of the hire, there was no question of being able to raise objections before the payment was due.

19. The key contention by Mr. Shankar is that the Subject Awards entirely failed to consider the material submissions made by the

Charterer on the proper operation of Clause 12(e). Towards this end, substantive objections were filed by the Charterer vide email dated August 1, 2023, which were dealt with by the Owners on August 15, 2023. Mr. Shankar would submit that in a documents-only arbitration, an Arbitral Tribunal has to discharge a higher standard of reasoning, and it is incumbent upon the Arbitral Tribunal to render reasoned findings on each material argument advanced in the written submissions. Any failure to do so would go beyond procedural irregularity and would constitute a fundamental denial of the opportunity of being heard.

20. Mr. Shankar would also assail the reliance by the Learned Arbitral Tribunal on ***Boskalis Offshore*** to submit that this was a case where invoices were issued 14 days in arrears and payment fell due 21 days thereafter. He would submit that the Learned Arbitral Tribunal had simply concluded that the Charterer had not challenged the invoices within the due date as stipulated under Clause 12(e), and therefore, failed to address the Charterer's submission that the invoices contained no due date and that Clause 12(e) would not apply to hire payments required to be made in advance. Mr. Shankar would submit that the Charterer's contention that based on business efficacy and commercial

common sense, Clause 12(e) ought to have been interpreted with equitable adjustment has not been addressed.

21. According to Mr. Shankar, the entire line of argument in relation to Clause 12(e) has been dismissed by a finding that the payment mechanism under Clause 12(e) would apply regardless of whether the charges are payable in advance or arrears (Paragraph No.31 of the Final Partial Award) and no reasoning has been provided for the finding on why Clause 12(e) must be made applicable despite charges being payable in advance. Such failure, according to Mr. Shankar, constitutes a clear breach of principles of natural justice and despite the line of submissions being quite clear, the Learned Arbitral Tribunal has not engaged with those submissions on a material issue going to the root of the dispute, thereby resulting in a violation of the Charterer's right to effectively present its case.

22. On the aforesaid premise, Mr. Shankar would claim that the Subject Awards fall foul of Section 48(2)(b) of the Act as being contrary to the public policy of India. The Subject Awards are said to be unreasoned inasmuch as they deprive the Charterer of the legitimate expectation of knowing the reasons for rejection of its material submissions. The Clause 12(e) point is therefore contended as having remained unadjudicated. In the result, he would submit that the Subject

Awards ought to shock the conscience of the Court, and therefore this Court must refuse recognition and enforcement of the Subject Awards under Part II of the Act.

23. Mr. Shankar would submit that there are multiple Judgements from which the Court must draw inspiration as to how to test the Subject Awards and these would include Judgements of the Singapore High Court, namely, ***PT First Media***[3]***, Wan Sern Metal***[4] and ***Front Row Investment***[5] and a judgement of the Supreme Court of the United Kingdom in ***Dallah Real Estate***[6]. The contention is that objections can be raised by the Award Debtor in the enforcement court, even if the Award has not been challenged in the jurisdiction in which it was rendered. Mr. Shankar would also rely on ***Vijay Karia***[7], which endorses the finding of the Delhi High Court in ***Campos Brothers***[8]**.**

3 *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v. Astro Nusantara International BV and others and another appeal – [2013] SGCA 57.*
4 *Wan Sern Metal Industries Pte Ltd v. Hua Tian Engineering Pte Ltd. – [2025] SGCA 5*
5 *Front Row Investment Holdings (Singapore) Pte Ltd v. Daimler South East Asia Pte Ltd – [2010] SGHC 80.*
6 *Dallah Real Estate and Tourism Co v. Ministry of Religious Affairs of the Government of Pakistan – [2010] 3 WLR 1472*
7 *Vijay Karia And Others v. Prysmian Cavi E Sistemi SRL And Others – (2020) 11 SCC 1*
8 *Campos Brothers Farms v. Matru Bhumi Supply Chain Pvt. Limited and Others – 2019 SCC OnLine Del 8350*

24. In sharp contrast, Mr. Prathamesh Kamat, Learned Advocate on behalf of the Owners, would submit that paragraphs 29 to 31 of the Final Partial Award squarely demonstrate the manner in which Clause 12(e) of the Agreement has been dealt with. Mr. Kamat would submit that not only has the provision been analysed in detail, but also the Learned Arbitral Tribunal has stated why, according to it, the contention of the Charterer that it was entitled to withhold monies in reliance upon that Clause was not justified. Mr. Kamat would submit that it would be wholly inappropriate to contend that the Final Partial Award does not contain reasons, since it has fairly dealt with the submissions made on behalf of the Charterer. While the Learned Arbitral Tribunal's reasons may not be to the Charterer's liking, by no stretch can it be contended that the Final Partial Award fails to deal with the material submissions of the Charterer.

25. Mr. Kamat would rely upon the Judgements of the Supreme Court in ***Shri Lal Mahal***[9] and ***Vijay Karia***, and also point to how the Supreme Court has rejected, in ***Vijay Karia***, reliance upon some of the very same judgements now sought to be pressed into service by the Charterer in these proceedings.

9 *Shri Lal Mahal Limited v. Progetto Grano Spa – (2014) 2 SCC 433*

Analysis and Findings:

26. Against this backdrop, I have examined the material on record with the assistance of the Learned Advocates for the parties, and the case law cited by them to support their respective positions.

27. The Learned Arbitral Tribunal has pointed to Section 47 of the Arbitration Act, 1996, i.e. the Act applicable in United Kingdom ("***English Arbitration Act***"), and the declaration of the law in ***Kostas Melas*** to point to the authority of the Learned Arbitral Tribunal to exercise discretion to make a partial and expedited award for payment of the hire on the grounds that a certain minimum sum is due and owing. The Learned Arbitral Tribunal found that the Charterer may indeed seek to rely on any rights enjoyed by them to make deductions to resist the making of such an award, and the burden to establish such right and the justification for making deductions or claiming a set-off lies on the Charterer.

28. Against this backdrop, the Learned Arbitral Tribunal went on to examine whether the Charterer had established such an entitlement and whether based on such entitlement, the right to make deductions or claim an equitable set-off could have been exercised by them. When one examines the Final Partial Award, it is apparent that the contention

of the Charterer, in particular its reliance upon Clause 12(e), has been expressly noticed by the Learned Arbitral Tribunal. The proposition that Clause 12(e) could be read down on equitable and commercial common-sense principles to permit withholding or an equitable set-off has also been addressed. This has been specifically dealt with in Paragraphs 30 and 31 of the Final Partial Award.

29. The Learned Arbitral Tribunal squarely held that Clause 12(e) did not justify withholding of these amounts, since, the clause covered hire, fuel invoices and disbursements, and the payment mechanism could be made applicable regardless of whether such amounts were payable in advance or in arrears. The law declared in ***Boskalis Offshore*** was treated as authority for the proposition that unless invoices were challenged promptly, they were payable. The Learned Arbitral Tribunal held that the Charterer could always bring a counterclaim if it later formed a belief that any sums already paid were not truly payable. The Learned Arbitral Tribunal held that Clause 12(e) requires due notice of an intention to withhold payment, and that the Owners had established an indisputable right to the hire and other charges invoiced in relation to the use of the Vessel prior to November 25, 2021.

30. As a matter of fact, the Learned Arbitral Tribunal assessed the indisputable hire-related charges, holding that the entitlement to claim amounts under invoices reflecting disbursements incurred during the undisputed period of the Charter could be recognised. While some costs spilled over into the period after the alleged re-delivery of the Vessel, the date of re-delivery remained in dispute. Therefore, deductions of until November 25, 2021 were considered and the Learned Arbitral Tribunal held in Paragraph 33, that the Charterer failed to establish a right to an equitable set-off. No reasonable grounds had been made for the deductions claimed by the Charterer in respect of the Charter until November 25, 2021. This date is vital inasmuch as even according to the Charterer, the re-delivery took place on November 25, 2021. The Owners claim that the re-delivery took place only on December 05, 2021 and therefore, the Final Partial Award only relates to the undisputed period of the Charter i.e. until November 25, 2021.

31. The Learned Arbitral Tribunal found that the accrued Charter hire and other invoiced charges, such as internet charges, mobilisation charges, additional crew requests, catering and consumables, could be awarded by way of a Partial Award, since under Clause 24 of the Agreement these charges were treated as sums payable in the same manner as hire. It was also noticed that Clause 46 expressly provided

that any additional cost of crew would be invoiced on terms similar to the charter hire, and therefore such charges were intended to be treated in the same manner as hire payable for the Vessel.

32. The allegation by the Charterer that the Vessel was off-hire between November 08, 2021 and November 11, 2021 has been positively rejected on the premise that the Charterer failed to provide reasonable grounds to indicate how the Charterer was deprived of or prejudiced in the effective use of the Vessel for this period in order to give rise to an equitable set off. A deduction from the hire for such period along with a deduction towards charges for additional crew was held to be not justified. A broader right of equitable set off based on claim for damages including rentals and loss of sub charter hire has also been examined and rejected on the ground that the Charterer failed to show how the Charterer has been deprived of the use of the Vessel in order to claim such a set-off.

33. Indeed, the Learned Arbitral Tribunal has held that the Charterer did not challenge the invoices within the due date under Clause 12(e), and therefore it was not entitled to withhold payment. This is the finding that would come in for sharp criticism by Mr. Shankar, pointing out that under Box 22, the invoices were to be issued and paid in advance, and that this finding is perverse inasmuch as it did not

address the alleged impossibility of challenging invoices before the due date when such due date preceded the relevant hire period. However, the Learned Arbitral Tribunal has indeed found that there was no prompt objection on such charges too.

34. Having examined the contentions and the findings in the Final Partial Award, to my mind, the reasons which weighed with the Learned Arbitral Tribunal can be said to be implicitly discernible, inasmuch as the Learned Arbitral Tribunal noticed the basis on which any equitable set-off was being claimed. On evidence, the Learned Arbitral Tribunal has found that the off-hire contention was not valid in the absence of showing how the Charterer was deprived of use of the Vessel.

35. The fact that the parties consciously agreed to payment in advance would also indicate that the parties had consciously agreed that there would be no occasion for an equitable set-off at the stage of making a partial award in respect of indisputable amounts. The Learned Arbitrator also held that a subsequent contention that a certain portion was not payable could always be raised by way of a counterclaim.

36. Having examined the manner of analysis by the Learned Arbitral Tribunal, it is noteworthy that the Charterer did not seek oral

hearings and acceded to the documents-only approach of the Learned Arbitral Tribunal. Evidence ought to have been led by the Charterer, bearing in mind the need to demonstrate the right to a set off. The findings by the Learned Arbitral Tribunal for the limited purpose of making the Final Partial Award was necessarily within the domain of interpretation and appreciation of evidence and rendering findings thereon.

37. Indeed, the Learned Arbitral Tribunal has noticed a genuine dispute as to whether the Vessel was re-delivered on November 25, 2021 or December 05, 2021, and has adjusted for it. I am not satisfied that the manner of analysis is of the order that would shock the conscience of this Court. The award has also not been challenged in the United Kingdom, the jurisdiction where it was made and the laws of which governed the Agreement. The contentions raised at the stage of recognition of the Subject Awards therefore need to meet the high bar set in Section 48 of the Act for denial of their recognition as decrees of this Court.

38. As a matter of findings based on appreciation of evidence, the Learned Arbitral Tribunal has held that the Owners of hire certificate did not establish an indisputable right to claiming hire right until December 05, 2021. This would depend on proving of facts as to

whether the Charterer had indeed signed the off-hire certificate. Such dispute has in fact been left open by the Learned Arbitral Tribunal for final determination at a later stage. Therefore, all that the Learned Arbitral Tribunal ruled upon was its assessment of the indisputable entitlement of the Owners to the hire and the additional charges, and the consequent making of a Final Partial Award in respect of such amounts.

39. The Learned Arbitral Tribunal also examined the Owners' claim for interest at the rate of 1% per month pursuant to Clause 12(e) and the Box 25 and in the alternate interest under Section 49 of the English Arbitration Act. The Learned Arbitral Tribunal has relied on statutory provisions for the interest rate, and has awarded interest at the rate of 5% per annum, compounded quarterly, from December 12, 2021 until date of payment and realisation.

40. It is apparent that after this stage, the dispute has not been pursued in respect of the counterclaim. The Owners have not been awarded costs as claimed and the Learned Arbitral Tribunal has pruned the claims in its assessment in adjudication, indeed along with interest at the same rate.

41. The law in relation to the scope of review under Part II of the Act is well settled in a number of Judgements rendered by the Supreme Court including ***Renusagar***[10]***, Shri Lal Mahal*** and ***Vijay Karia***. The challenge mounted on behalf of the Charterer essentially invokes the provisions of Section 48(2)(b) i.e. that the Foreign Awards that are contrary to the public policy of India and for this purpose, what is claimed is denial of natural justice.

42. In ***Shri Lal Mahal***, a three-Judge Benche of the Supreme Court specifically held that Section 48 of the Act does not give an opportunity for a "second look" at a foreign award at the stage of recognition and enforcement and does not permit a review on merits. Defects such as the Tribunal having taken into consideration inadmissible evidence or having ignored or rejected binding and material evidence by itself need not lead to an award not being recognised on the ground of public policy. On a close examination of the matter, in this case, it cannot be said that the Learned Arbitral Tribunal has ignored any vital evidence or factored in inadmissible evidence. The Learned Arbitral Tribunal has dealt with the contentions on Clause 12(e) of the Agreement, which may be unpalatable to the Charterer, but the threshold for denial of recognition has not been met.

10 *Renusagar Power Co. Ltd v. General Electric Co., 1994 Supp (1) SCC 644*

43. Considering the sole reliance on the contention that the Charterer was prevented from presenting its case effectively on the ground of principles of natural justice being violated, the extensive discussion by the Supreme Court in ***Vijay Karia***, extracted below, gains significance:

> *"62. This Court's judgment in Sohan Lal Gupta V. Asha Devi Gupta, lays down the ingredients of a fair hearing as follows: (SCC pp. 504-05, para 23)*
>
> > *"23. For constituting a reasonable opportunity, the following conditions are required to be observed:*
> >
> > *1. Each party must have notice that the hearing is to take place.*
> >
> > *2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.*
> >
> > *3. Each party must have the opportunity to be present throughout the hearing.*
> >
> > *4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.*
> >
> > *5. Each party must have a reasonable opportunity to test his opponent's case by cross-examination his witnesses, presenting rebutting evidence and addressing oral argument.*
> >
> > *6. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument."*
> >
> > *[Emphasis Supplied]*

44. The contention of the inability to present one's case, as noticed by the Delhi High Court in ***Glencore***[11], was extracted and endorsed by the Supreme Court in the following terms :

> *63. A recent Delhi High Court judgment in Glencore International AG v. Dalmia Cement (Bharat) Ltd. [Glencore International AG v. Dalmia Cement (Bharat) Ltd., 2017 SCC OnLine Del 8932] puts it thus: (SCC OnLine Del paras 25-26)*
>
> *"25. **The inability to present a case as contemplated under Section 48(1)(b) of the Act [which is in pari materia to Article V(1)(b) of the New York Convention] must be such so as to render the proceedings violative of the due process and principles of natural justice**. It is rudimentary that for a fair decision each party must have full and equal opportunity to present their respective cases and this includes due notice of proceedings. **In the event a party opposing the enforcement of a foreign award is able to present sufficient proof of such infirmity in the arbitral proceedings, the courts may decline to enforce the foreign award.***
>
> *26. **A clear distinction needs to be drawn between cases where a party is unable to present its case, rendering the arbitral award susceptible to challenge as falling foul of the minimal standards of due process/natural justice and cases where the Arbitral Tribunal does not accept the case sought to be set up by a party**. The latter case, obviously, does not give*

11 *Glencore International AG v. Dalmia Cement (Bharat) Limited – 2017 SCC OnLine Del 8932*

rise to a ground as mentioned in Section 48(1)(b) of the Act, even if the decision of the Arbitral Tribunal is erroneous."

[Emphasis Supplied]

45. Indeed, the Supreme Court had occasion to examine the authorities cited in ***Dallah Real Estate*** and similar judgements rendered by the Singapore High Court. The very line of reasoning now sought to be pressed into service by Mr. Shankar was considered by the Supreme Court and it was held that the approach under Indian law would not be identical.

46. In view of the aforesaid position in law, having examined the contentions advanced by Mr. Shankar and the manner of treatment of the submissions relating to Clause 12(e) by the Learned Arbitral Tribunal, in my opinion, the Charterer has not made out a reasonable case for sustaining the objections under Section 48(2)(b) of the Act.

47. The Learned Arbitral Tribunal proceeded on a documents-only basis with the consent and acquiescence of the parties, including the Charterer. The Learned Arbitral Tribunal examined the evidence that was pressed into service by the Charterers and found that even upon application of Clause 12(e), any entitlement to withhold payment

would require a prompt and substantiated objection within the stipulated timeline.

48. It cannot be overlooked that the Learned Arbitral Tribunal was concerned with the indisputable component of the claim while making a Final Partial Award, and in that context considered the fact that the parties had consciously agreed that invoices would be issued and payable in advance. In these circumstances, bearing in mind the law governing the scope of review and the high threshold required to refuse recognition of foreign awards, the bar for denying recognition of the Subject Awards as a decree of this Court has not been met.

49. Implicit is the reconciliation of Clause 12(e) with Box 22 and Box 25 of the Agreement. The Learned Arbitral Tribunal considered that the parties intended that amounts raised towards hire prior to November 25, 2021 would remain indisputable. The counterclaim has admittedly been left open, and it remains entirely open to the Charterer to pursue the same if it so chooses.

50. In this backdrop, I am not satisfied that a case has been made out for denial of according recognition to the Subject Awards under Section 49 of the Act. I am satisfied that while ordinarily costs should

follow the event, considering the costs awarded are reasonably robust, at this stage, costs need not be awarded.

51. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]