ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1039 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

Plaintiffs: **Pakistan National Shipping Corporation & others Through Mr. Obaid-ur-Rehman, Advocate.**

Defendant No.1: **M/s. Coniston Limited Through Mr. Shaiq Usmani along with Ms. Syeda Ayesha Sarfaraz, Advocate.**

Defendant No.2: **Pakistan Steel Mills (Pvt) Limited Through Mr. Agha Zafar Ahmed, Advocate.**

1. For hearing of CMA No.9966/2018.
2. For hearing of CMA No.8738/2018.
3. For hearing of CMA No.8739/2018.
4. For hearing of CMA No.7806/2018.

Dates of hearing: **13.09.2018, 11.10.2018, 30.10.2018, 22.11.2018 & 18.12.2018.**

Date of Order: **25.02.2019**

O R D E R

Muhammad Junaid Ghaffar J. All these four applications are being decided through this common order. Application at Serial No.1 bearing CMA No.9966/2018 has been filed by Defendant No.1 under Order VII Rule 11 CPC for rejection of Plaint; whereas, rest of the applications have been filed on behalf of the Plaintiffs seeking interim relief by way of an anti-suit injunction and so also directions to the Defendant No.1 to deposit an amount of US$ 6.0 Million or its equivalent Pakistan Rupees with the Nazir of this Court. The Plaintiff has filed instant Suit seeking following reliefs:-

a) declare that the arrest of vessels of the Plaintiffs i.e. M.V. Hyderabad and M.V. Chitral caused by the Defendant no. 1 in South Africa, so also any further arrests of vessels of the Plaintiffs pursued, contemplated or effected by the Defendant no. 1 anywhere in the world are unlawful, without jurisdiction, void ab-initio and of no legal effect;

b) permanently and pending disposal of the main suit restrain the Defendant no. 1, its officers, agents, and servants from taking any steps so as to cause the arrest of any of the vessels of the Plaintiffs anywhere in the world in future;

c) direct the Defendant no. 1 to deposit with Nazir of this Hon'ble Court US$ 27.1 million or any further amount claimed by the Defendant no. 1 against the Defendant no. 2, while permitting the Plaintiffs to withdraw there-from US$ 581,622/- or any further amount to which the said Plaintiffs are so exposed;

d) award damages to the tune of US$ 6 million against the Defendant no. 1 along with mark up and dollar indexation from the date of accrual till the date of actual payment;

e) permanently and pending disposal of the main suit restrain the Defendant no. 1 from pursuing its claim of arbitration against the Defendant no.2, while staying further proceedings of such arbitration proceedings as prescribed in paras 7, 8 and 14 of the plaint;

f) award costs and special costs;

g) award any other relief as deemed fit.

2. The facts as stated in brief are that the Plaintiff No.1 is a Statutory Corporation and National Flag Carrier of Pakistan and is engaged in transportation of dry bulk and liquid cargoes. The Plaintiff No.1 is an autonomous corporation, which functions under the overall control of the Ministry of Ports and Shipping, through The Director General Ports & Shipping who owns 85.16% shares in Plaintiff No.1, whereas, Plaintiffs No.2 to 10 are wholly owned subsidiaries of Plaintiff No.1, being independent entities, which are incorporated under the Company Laws of Pakistan, and are controlled and managed by their respective Board of Directors. The Defendant No.1 is a Company incorporated in Hong Kong engaged in the business of providing shipping and cargo services worldwide. The Defendant No.2 is a Company incorporated under the Companies Ordinance, 1984, (since repealed with the Companies Act, 2017), engaged in the business of steelmaking and various other products of steel having 100% beneficial shares owned by the Government of Islamic Republic of Pakistan (as stated by it in Suit No.1785/2017 being objections to the award dated 8.4.2017). It is further stated that on 20.08.2008, Defendant No.1 and Defendant No. 2 (as charterers), agreed to load and to discharge a total quantity of 750,000 metric tons (+-10%) CHOPT (which is to say the margin of 10% was at "charterers option") of coal during the period 20.08.2008 to 31.08.2009. The aforesaid coal was to be loaded as follows:

a. 400,000 metric tons to be loaded at Gladstone, Australia and discharged at Port Muhammad Bin Qasim, Karachi as aforesaid (the "Gladstone CoA");

b. 150,000 metric tons of coal to be loaded at Newcastle, Australia and discharged at Port Muhammad Bin Qasim, Karachi as aforesaid (the “Newcastle CoA”); and

c. 200,000 metric tons to be loaded at Robert Bank, Canada and discharged at Port Muhammad Bin Qasim, Karachi as aforesaid (the "Robert Bank CoA”).

The aforesaid contracts of Affreightment (“CoAs”) were embodied in the form of three separate Americanized Welsh Coal Charters.

3. Pursuant to these CoAs several cargoes were carried and discharged, whereas, due to some dispute between them Defendant No.2 withheld payment of 10% balance freight under the terms of the CoAs. The Defendant No.1, through its agent invoked the Arbitration clause and appointed an Arbitrator and the dispute was referred to Arbitration at Karachi. It is the case of the Plaintiff that during pendency of the dispute before the learned Umpire for his final award, Defendant No.1 submitted to the jurisdiction of this Court at Karachi, by filing numerous Judicial Miscellaneous Applications under the Arbitration Act, 1940. However, whilst these were pending, Defendant No.1 applied to the High Court of South Africa invoking its Admiralty Jurisdiction under Section 5(3) of the Admiralty Jurisdiction Act No. 105 of 1983 (“**South Africa Admiralty Act**”) for the arrest of Plaintiff’s vessel “MV HYDERABAD” i.e. even before the passing of the interim award. Plaintiff No.1 had to arrange for an insurance guarantee from M/s. Aspen Insurance UK Limited for the release of the vessel M.V. Hyderabad. Thereafter again Defendant No.1 caused further arrest of the vessel “M.V. CHITRAL” through order of the High Court of South Africa at Durban, and for which in view of the Court’s order, Plaintiff No.1 again had to furnish an insurance guarantee and make payments through M/s. Aspen Insurance UK Limited to seek the release of the vessel M.V. Chitral. It is alleged that Defendant No.1 maliciously approached the High Court of South Africa invoking its Admiralty jurisdiction, after having submitted to the jurisdiction of this Court multiple times by filing Judicial Miscellaneous Applications; hence the said proceedings before the High Court of South Africa are oppressive and vexatious, with the sole intention to prejudice the Plaintiffs, as the appropriate forum is this Court since the Plaintiffs are situated in Karachi. It is their case that Defendant No.1 could have approached this Court to seek relief under the Admiralty Jurisdiction of High Court Ordinance (XLII of 1980) (“**Admiralty Ordinance, 1980**”). However, the Defendant No. 1’s invocation of South African jurisdiction in the present circumstances reeks of *mala fide*; hence, instant Suit seeking the aforesaid relief(s).

4. Learned Counsel for the Plaintiffs has made his submission by formulating certain propositions that as to whether; Plaintiffs' Suit is maintainable; whether this Court has jurisdiction to decide the issue; whether this Court can grant an Anti-Suit Injunction against Defendant No.1; and whether the Plaint can be rejected as prayed on behalf of Defendant No.1. Per learned Counsel, Defendant No.1 is a Company incorporated under the Laws of Hong Kong; whereas, Section 19 of the Code of Civil Procedure ("**CPC**") states that where a wrong has been committed against the Plaintiff and the Defendant is not a resident of the local jurisdiction of the said Court, the discretion lies with the Plaintiff to institute proceedings for compensation of wrong done; either before the Court where the wrong has been committed, or where the Defendant resides. To support this arguments, learned Counsel placed reliance on the cases reported as ***Mazhar Valjee Vs. Sher Afghan Khan Niazi*** **(SBLR 2004 Sindh 1041)** and ***Ehsanul Haq Piracha, Etc. Vs. Tajammul Hussain*** **(NLR 1991 Civil 493).** He has then referred Section 20(c) of CPC and submitted that a Suit may be instituted within the local jurisdiction of the Court, where the cause of action wholly or partly arises and in this regard he has placed reliance on the cases of ***M/s. Popular Pharmacy, Karachi Vs. M/s. Nova Bio Medical and others*** **(PLD 1996 Karachi 411)**, ***Munawar Ali Khan Vs. Marfani & Co. Ltd (PLD 2003 Karachi 382)***, ***Builders Association Ltd. Vs. The Federation of Pakistan and others*** **(PLD 1986 Lahore 171)**, ***Muhammad Yasin and others Vs. Ch. Muhammad Abdul Aziz*** **(PLD 1993 Supreme Court 395)** and ***Province of Punjab through District Collector, Mianwali and others Vs. Mehmood-ul-Hassan Khan*** **(2007 SCMR 933)**. According to him in terms of Sections 19 & 20 CPC, it is clear that this Court has jurisdiction to adjudicate this matter as the Plaintiff is based in Karachi and cause of action, which culminated in the arrest of the Vessels i.e. Award dated 04.05.2017, passed by the learned Umpire in the Arbitration Proceedings between Defendant No.1 and Defendant No.2 arose within the territorial jurisdiction of this Court. Per learned Counsel it settled law that when a cause of action arises partly in both the places, then it is the plaintiff's choice to institute the Suit where the Plaintiff resides. According to him, the Agreement between Defendants No.1 & 2 was entered into at Karachi, in which Arbitration Proceedings are also pending, then this Court has ample jurisdiction to entertain this matter. Learned Counsel then referred to the case from the United States Supreme Court reported as ***Burger King Corp v. John Rudzewicz*** – **[471 US 462]**, wherein it has been held that the Court could exercise jurisdiction over a nonresident despite his physical absence, where an alleged injury arises out of or relates to actions by the defendant himself that are "purposefully directed towards forum residents". According to him it has been further held in this case that the plaintiff was required to show that such contacts resulted from the "actions by the

defendant himself that created a substantial connection with the Forum State" i.e. he must have engaged in significant activities within the Forum State or have created continuing obligations between himself and residents of the Forum State. It has been has further held that for due process to establish minimum contact it has to be to ascertained that the defendant's conduct and the connection with the Forum State are such that he should reasonably anticipate being held into court before the Forum State, where the defendant purposefully avails itself of the privilege of conducting activity in the Forum State. Per learned Counsel the defendant can reasonably foresee being subjected to the Forum State's legal system. He then referred to the case of the High Court of Delhi reported as ***Independent News Service Pvt Limited v. India Broadcast Live LLC and Ors*** **– [(2007) ILR 2 Delhi 1231]** (paras 16, 26, 27 and 28), whereby, the Court has liberally interpreted Section 20(c) of CPC on the establishment of minimum contact of the defendant with the Forum State to exercise its jurisdiction. Insofar as interpretation of Section 20 C.P.C is concerned, learned Counsel has placed reliance on the cases reported as ***Province of Punjab v. Muhammad Tufail and Company*** **(PLD 2017 Supreme Court 53)** and ***Habib Bank Ltd. v. WRSM Trading Company, LLC*** **(PLD 2018 Supreme Court 795)** wherein the Apex Court has also adopted the minimum contact theory to expand jurisdiction of Courts when some non-residents are involved. Learned Counsel further argued that it is not in dispute that Defendant No.1 has an Agreement with Defendant No.2, which was entered into at Karachi and there is dispute between both these Defendants and matter has been referred for Arbitration; therefore, the stance of Defendant No.1 that they do not come within the territorial jurisdiction of this Court is baseless and without any justification. Learned Counsel next contended that this is a Suit, which could appropriately be called an Anti-Suit Injunction and the Plaintiff seeks restraining Defendant No.1 from pursuing proceedings against the Plaintiff in another jurisdiction. According to the learned Counsel in the case reported as ***The Hub Power Co. Vs. Wapda*** **(1999 CLC 1320)** it has been held that when the proceedings before another parallel Court are oppressive and vexatious, the Court is entitled to restrain the parties from pursuing the legal proceedings before another forum. Learned Counsel then referred to Section 56 of the Specific Relief Act 1877 in Pakistan and Section 41 of the Specific Relief Act, 1963 in India and contented that in terms of Section 56(b), there is no bar to restrain a party from pursuing a Suit in another Court not Sub-Ordinate to that from which the injunction is sought. Learned Counsel then referred to the case from Indian jurisdiction reported as **AIR 2003 SC 1177** ***(Modi Entertainment Network and Ors Vs. W.S.G Cricket PTE. Ltd),*** wherein, Indian Supreme Court has laid down certain principles for grant or refusal of an Anti-Suit Injunction.

According to the learned Counsel the principles laid down by the Indian Supreme Court in the aforesaid case fully applies to the case of the Plaintiff. Per learned Counsel the three tests laid down by the Indian Supreme Court; that the Defendant against whom injunction is being sought must be available to the personal jurisdiction of the Court; that if injunction is declined, ends of justice would be perpetuated; and the Principal of Comity-respect for the Court in which the commencement or continuance of action / proceeding is sought to be restrained-must be born in mind; are fully available in this case and based on these principles, the Defendant No.1 may be restrained by granting the prayer of Anti-Suit Injunction. Per learned Counsel the attempt by Defendant No.1 in getting the Vessels of Plaintiff arrested is not only oppressive and vexatious, as it has got nothing to do with the South African Court and Defendant No.1's tactics are hostile and is by virtue of a mistaken impression that Plaintiffs are also owned by the Government of Pakistan, who owns Defendant No.2 as well. Per learned Counsel the South African Court has been misled by Defendant No.1 in getting the Vessels of the Plaintiff arrested and this Court is competent to pass the Orders as prayed. According to the learned Counsel the Defendant No.1 has knowingly approached the South African Courts as the Admiralty jurisdiction of this Court is of no help to the Defendant No.1 since different rules apply in South African Court as to the Admiralty jurisdiction. According to him Defendant No.1, who is already before this Court in Arbitration proceedings with Defendant No.2, has chosen a wrong forum just to black mail and harass the Plaintiffs. Learned Counsel in support of Anti-Suit Injunction has relied upon the case reported as ***Oil and Natrual Gas Commission V. Western Company of North America*** **(AIR 1987 Supreme Court 674)**, ***A Milton and Co. V. Ojha Automobile Engineering Co.*** **(AIR 1931 Cal 279)** and ***Independent News Services Pvt. Limited V. India Broadcast Live LLC and Ors.*** **(2007 ILR Delhi 1231).** He has further contended that there are numerous judgments of this Court, wherein, inherent powers of this Court for grant of an injunction have been dilated upon, even if the case before the Court does not fall within the four corners of the well settled principles for grant of an injunction under Order 39 Rule 1 & 2 CPC and this has been done to prevent the ends of justice from being defeated. In support of this proposition he has relied upon the cases of ***Hussain A. Haroon v. Mrs. Laila Sarfaraz*** **(2003 CLC 771)** & ***Mst. Salma Jawaid v. S. M. Arshad*** (**PLD 1983 Karachi 303)**. He has then referred to the cases of ***Jannana De Malucho Textile Mills Ltd. v. Waqar Ahmed*** **(PLD 1972 SC 34)** *and* ***Umapati Choudhuri v. Subodh Chandra Choudhuri*** **(AIR 1953 Calcutta 377)** and has contended that it has been held that there is no bar on the Court in terms of Section 56 of the Specific Relief Act, 1877, not to restrain a party from judicial proceedings before another forum.

According to him this Court has to see that whether the conduct of Defendant No.1, by having two Vessels of the Plaintiffs arrested before the High Court of South Africa, is oppressive, vexatious and inequitable; hence tantamount to abuse of legal process, which as per Plaintiffs' case has been done, and therefore, the Plaintiff is entitled for an Anti-Suit Injunction. Insofar as CMA No.8738/2018 is concerned, learned Counsel contended that the plaintiffs have prayed to direct the Defendant No.1 to deposit US $ 6.0 Million or its equivalent of Pakistani rupees with the Nazir of this Court, which is the amount of Insurance Guarantees and legal costs that has been incurred by the Plaintiff for release of its two Vessels from the South African Courts. According to the learned Counsel this Court has inherent powers to secure the interest of the Plaintiff by attaching the property of the Defendant so that same remains available for realization of the decretal amount and in support of this contention he has referred to the case of ***Mst. Afshan Vs. Syed Kamran Ali Shah*** **(2013 CLC 1220)**. As to the issue that Plaintiffs and Defendant No.2 are not owned by the Government of Pakistan, he has contended that Plaintiff No.1 is a Statutory Corporation and a National Flag Carrier of Pakistan and functions under the overall control of Ministry of Ports and Shipping; whereas, the Director General Ports and Shipping owns 85.16% shares in Plaintiff No.1; whereas, Plaintiff No.2 to 10 are independent Companies duly incorporated under the erstwhile Companies Ordinance 1984 and in fact are 100% owned subsidiaries of Plaintiff No.1. He has read out various provisions of the Pakistan National Shipping Ordinance, 1979 to support his contention. According to the learned Counsel the Hon'ble Supreme Court has time and again settled the principle that commercial functions and business functions of the State are not the same and Companies that are incorporated under the Company Laws of Pakistan, may have Government shareholding; but neither the property, nor the income can be said to be the property or income of the Government. In support of his contention he has relied upon the cases reported as ***Central Board of Revenue, Islamabad v. WAPDA*** (**2014 PTD 1861**), ***Development Authority v. Central Board of Revenue*** **(2000 AC 53)**, ***Printing Corporation of Pakistan v. Province of Sind*** **(PLD 1990 Supreme Court 452)**, ***Province of N.W.F.P. v. Pakistan Telecommunication Corporation*** **(PLD 2005 Supreme Court 670),** ***National Fertilizer Marketing Ltd. v. Secretary Local Government and Rural Development Department*** **(1992 MLD 1203)**. Per learned Counsel though the Director General Ports & Shipping owns 85.16% shares of the Plaintiff No.1; however, this by no means is to be ascertained that the Federal Government controls Plaintiff No.1 and the Hon'ble Supreme Court in the aforesaid cases has carefully deliberated upon that aspect of the Government's corporate functions, which are different from its sovereign functions; hence, Plaintiff No.1 along with

Plaintiff No.2 to 10 are separate and distinct juristic entities, which are not under the Control of the Federal Government. As to the objections of the learned Counsel for Defendant No.1 that Plaintiff did not approached the South African Court to have the orders of arrest vacated, he has contended that this is not the subject matter of any of the applications pending before this Court, as instant Suit is in fact praying for an Anti-Suit Injunction and such aspect of the matter could be heard and decided at the time of hearing of the entire Suit at the trial stage. In these circumstances, learned Counsel has prayed to grant all applications of the Plaintiff while dismissing Defendant No.1's application for rejection of plaint.

5. On the other hand, learned Counsel for Defendant No.1 has contended that this Court has no jurisdiction over Defendant No.1, who has neither any office, nor resides within the jurisdiction of this Court, and has in fact appeared before this Court only out of respect and to give assistance. Per learned Counsel, the case filed by Defendant No.1 before the South African Court is only to the extent of seeking security of the amount awarded in favour of Defendant No.1 against Defendant No.2 in the Arbitration proceedings, and it is the case of Defendant No.1 that Plaintiffs and Defendant No.2 are both owned by the Government of Pakistan; hence, the case filed before the South African Court is fully competent under the Admiralty Jurisdiction of that Court as well as the Arbitration Award. Per learned Counsel it is not in dispute that Defendant No.2 is in default in respect of freight charges and in the Arbitration proceedings, an interim award has been passed; whereas, 95% of the freight amount already stands paid and it is only the amount of 5%, which is being disputed since last 10 years and is still unpaid. According to the learned Counsel Defendant No.2 has shut down its operation; is almost bankrupt, and is not in a position to pay the amount owed to Defendant No.1. Learned Counsel has then referred to PNSC Ordinance, whereby, the Plaintiff No.1 has been incorporated and according to him in terms of Section 11(2), Government of Pakistan owns not less than 51% shares; hence it is a Government entity for all legal and factual purposes. Per learned Counsel, the Plaintiffs after arrest of the Vessels have not approached the South African Court for seeking modification, varying of, or setting aside of such order and have instead submitted themselves to the jurisdiction of such Court by furnishing insurance guarantee(s); hence, the present Suit is not maintainable and Plaint is liable to be rejected. According to the learned Counsel, the cause of action, as raised in this Suit, has not arisen within the territorial jurisdiction of this Court, as it is the arrest of the Vessel, which is the primary concern of the Plaintiffs, and for that, the jurisdiction lies with the South African Court and not with this Court. Similarly the prayer for deposit of US $ 6.0 Million, comes from nowhere and has

got nothing to do with the arrest of Vessel in South Africa. He has further submitted that prayer of Anti-Suit Injunction cannot be granted, nor asked for against the Court irrespective of the fact that such Court has any jurisdiction or not and it is only against a party restraining it from approaching any other Court and for that the party against whom such orders are being solicited should be amenable to the jurisdiction of the Court, whereas, Defendant No.1 has neither any office nor any agent in Pakistan and is only before the Court in some proceedings, which are in respect of Arbitration and does not amounts to submitting to the jurisdiction of the Court. According to the learned Counsel, appearance before a Court in respect of some Arbitration proceedings does not amounts to submitting to the jurisdiction of the Court as it is only in respect of that very Agreement between the parties, whereas, Defendant No.1 has no such Agreement with the Plaintiffs. Learned Counsel has then referred to the South Africa Admiralty Act and various provisions thereof, by virtue of which according to him the South African Court has jurisdiction in the matter specifically in relation to the claims in matters of Arbitration. According to him Plaintiffs have already submitted to the jurisdiction of the South African Court by seeking release of the arrested Vessel(s) and they ought to have approached the very Court for any further relief and not this Court. He has further submitted that the prayer in this Suit is also imaginary and is seeking future restraining order(s) against Defendant No.1 from taking any further action against them, which according to the learned Counsel cannot be granted; whereas, to the extent of the Vessel(s) already arrested, this Suit has become infructuous. Insofar as the prayer for grant of Anti-Suit Injunction is concerned, learned Counsel, at the very outset, has contended that if this Court exercises any such jurisdiction in this matter, it would be against the principles of Comity of Nations as no Court ought to be restrained from exercising any jurisdiction. As to the question of equitable relief, he has contended that in such cases there must be some personal jurisdiction which must exist against a Defendant, but in the instant matter, this Court lacks such jurisdiction. He has further submitted that Defendant No.1 has already filed an application under Order VII Rule 11 CPC for rejection of the plaint as in terms of Sections 19 & 20 CPC, this Court lacks jurisdiction and none of the situations provided in both these provisions are applicable to the facts of this case. Per learned Counsel only because of the fact that Defendant Nos.1 & 2 have a dispute and in this regard some Arbitration proceedings are pending before this Court, would not amount to submitting to the jurisdiction of this Court. Insofar as Defendant No.1 is concerned, according to him even if this Court passes any order(s), it is but natural that the Court must also have means to enforce such order(s) by way of contempt or any other suitable measure; however, in the given

facts this would not be possible; hence, the prayer of the Plaintiffs cannot be granted. In support he has relied upon the cases reported as **[1993] I SCR 897** ***(Workers' Compensation Board and others V. Amchem Products Incorporated and others)***, **AIR 2003 SC 117** ***(Modi Entertainment Network & Anr. V. W.S.G. Cricket Pte. Ltd.)***, **2007 (35) PTC 177** ***(India Tv) Independent News vs. India Broadcast Live LIc and Ors),*** **[1997] 2 LLR Vol-2 page 8** ***(Airbus Industrie Gie V. Patel and others)***, **1999 CLC 1320** ***(The Hub Power Co. V. Wapda),*** **PLD 1986 Lahore 171** ***(Builders Association Ltd. V. The Federation of Pakistan and others)***, **PLD 2003 Karachi 382** ***(Munawar Ali Khan Vs. Marfani & Co. Ltd.),*** **PLD 1972 SC 34** ***(Jannana De Malucho Textile Mills Ltd. V. Waqar Ahmad Chaudhry),*** **36 Calcuta 233** ***(Vulcan iron Works V. Bishumbhur Prosad).***

5. Learned Counsel for Defendant No.2 has supported the arguments of Plaintiff's Counsel and has further submitted that the dispute between Defendants No.1 & 2 is pending in Arbitration proceedings and some interim award has been passed by the learned Umpire, but it has been challenged in Suit No.1785/2017; hence, nothing turns on as to the claim in respect of the interim award. Per learned Counsel even before passing of such Award, the Vessel of Plaintiffs were arrested in South Africa, whereas, until the award is upheld, no such case is made out, whereby, the Vessels of Plaintiffs could be arrested and security be obtained. Per learned Counsel, the Plaintiffs and Defendant No.2 are distinct and separate legal entities being Companies incorporated under the relevant laws and are not owned by the Government of Pakistan for such purposes. He lastly argued that dispute between Defendants No.1 & 2 is to be governed by the Pakistani Law as well as Seat of the Arbitration is Karachi; therefore, in all such matters or dispute between such Defendants, this Court has supervisory jurisdiction in respect of all issues and since present claim of Defendant No.1 arises out of such dispute; therefore, this Court has jurisdiction to pass any orders deemed fit.

6. I have heard all learned Counsel and perused the record. The precise facts have been already stated hereinabove, and need to be repeated for the sake of brevity; but in short this Suit has been filed primarily against Defendant No.1 seeking a restraining order against it from taking recourse to any further proceedings of the nature, which have already been initiated before the South African Court through arrest of two Vessels of the Plaintiffs. Plaintiffs wants an order from this Court restraining Defendant No.1 from taking any such action before any of the Court(s) worldwide. This in other words is also known as an "*Anti-injunction Suit*" or "*Anti-Suit injunction*". There is not dispute that Defendant No.1 and No.2 had a contract in between them in respect of

Affreightment and a dispute had arisen for non-payment of the entire amount of freight as claimed by Defendant No.1. The parties have entered into Arbitration proceedings pursuant to the Contract and presently as of today, some interim award has been passed by the learned Umpire and is a subject matter of Suit filed by Defendant No.2. This in fact is objections to the Award in terms of Sections 30 & 33 of the Arbitration Act, 1940. During pendency of such proceedings, Defendant No.1 has approached and invoked the jurisdiction of the South African Court under the Admiralty Law applicable therein, and has sought, rather obtained two orders of arrest of Vessels of the Plaintiffs. The precise case of Defendant No.1 is to the effect that the South African Admiralty Law provides for an occasion to invoke such jurisdiction in respect of Arbitration matters also. Their further case is that Plaintiffs and Defendant No.2 are Companies owned by the Government of Pakistan, and therefore, the interim award can be enforced under the South African Law in rem, as according to him this law is somewhat different as against the Admiralty Law prevalent in other Countries including Pakistan, which do not provide for such protection to a successful claimant. Per learned Counsel this is added by the fact that these Arbitration proceedings, have unfortunately continued for last more than 10 years without any fruitful results; hence, it has compelled Defendant No.1 to take recourse to such proceedings. This is the precise gist of this case and the claims of the respective parties.

7. There are four applications listed before this Court for decision. CMA No.9966 of 2018, which has been filed by Defendant No.1 is in terms of Order VII Rule 11 CPC for rejection of the Plaint. Learned Counsel for Defendant No.1 was at the very outset confronted as to how in the given facts, an application of such nature under Order VII Rule 11 CPC could be entertained as the grievance of Defendant No.1 is in respect of jurisdiction. And if this Court has no jurisdiction, then how come it can reject the plaint, as for that the merits of the case are to be examined and decided. To this learned Counsel has though made an effort to argue that since it is a matter of jurisdiction of this Court, which does not vests in this Court; hence the Plaint ought to be rejected. Now it is to be appreciated that on the one hand, Defendant No.1 has challenged and disputed the very jurisdiction of this Court; and at the same time an application has also been made for rejection of the Plaint. The grounds taken in the application and the arguments so made are in fact more akin to the provisions of Order VII Rule 10 CPC (for return of the plaint); however, the present application is altogether seeking rejection of the Plaint. Now once a party comes before the Court seeking rejection of the Plaint in terms of Order VII Rule 11 CPC, then a presumption is attached to such claim that the Court is vested with some jurisdiction to examine the plaint and

reject it. It needs to be appreciated that an application under Order VII Rule 11 CPC can only be entertained by a Court of competent jurisdiction. It is settled law that a plaint can only be rejected by a Court which otherwise has jurisdiction to entertain the Suit / Plaint and to decide the entire *lis* on its merits, and if during such proceedings, an application has been filed by the Defendant for rejection of the plaint on the grounds so mentioned under Order VII Rule 11 CPC, the Court having such jurisdiction can decide the application either way. However, once it is pleaded on behalf of the Defendant that the Court has no jurisdiction, this Court is of the view that no such application can be filed and entertained under Order VII Rule 11 CPC by the same Court. By filing such application the Defendant submits to the jurisdiction of the Court and waives the objections to that effect, and therefore, cannot press upon an application under Order VII Rule 11 CPC for rejection of the plaint. In view of such position, I am of the view that at least an application under Order VII Rule 11 CPC for rejection of the Plaint at this stage of the proceedings cannot be entertained. However, this does not preclude Defendant No.1 from seeking appropriate remedy for return of the Plaint under Order VII Rule 10 CPC, if so advised, which, naturally is to be decided by the Court in accordance with law. This discussion leads to the conclusion that for the present moment, and in the mode and manner, in which this application has been filed, cannot be granted; hence, it is liable to be dismissed and it is so ordered.

8. Insofar as remaining applications are concerned, CMA No.7806 of 2018 has been filed seeking a restraining order against Defendant No.1 from taking any steps so as to cause arrest of any of the Plaintiffs' Vessels anywhere in the world in future. CMA No.8738 of 2018 has been filed on behalf of the Plaintiffs seeking directions to Defendant No.1 to deposit an amount of US $ 6.0 Million or its equivalent Pakistani Rupees with the Nazir of this Court pending final disposal of the entire Suit. The third and last application, which has been filed by the Plaintiff is CMA No.8739 of 2018 for taking into consideration an additional affidavit in support of the main injunction application i.e. CMA No.7806 of 2018. Since I am deciding the injunction application on merits, therefore, I do not see any reason not to entertain the additional affidavit filed through CMA No.8739/2018. Accordingly it is hereby allowed and the additional affidavit stands considered for the purposes of deciding the injunction application. However, this is without prejudice and has been entertained in the peculiarity of facts involved in this case, and is not to be considered as a binding precedent for any other case, which has to be dealt with in accordance with the facts and circumstances prevalent thereunder. Insofar as the Plaintiff's stance is concerned, it is premised on two accounts. Firstly, the Plaintiffs' case is that Plaintiffs and Defendant No.2 have no relation

or nexus with each other, and notwithstanding the claim of Defendant No.1 that both of them have certain shareholding of the Government of Pakistan, they are not fully owned by the Government of Pakistan so as to maintain the claim of Defendant No.1 under the Admiralty jurisdiction of the South African Court. The second limb of their argument is that in such circumstances this Court has ample jurisdiction to grant an Anti-Suit Injunction restraining Defendant No.1 from taking any further steps in future for the arrest of any of the Vessels of Plaintiffs. In support of such argument reliance has been placed on the law developed internationally as well as in this country and it is their case that the proceedings before the South African Court are cumbersome, vexatious and oppressive in nature; whereas, Defendant No.1 is within the jurisdiction of this Court as it is already contesting the Arbitration proceedings; hence the principle laid down for grant of an Anti-Suit Injunction are present and fully available in this case.

9. As to the issue that whether Plaintiffs and Defendant No.2 are Companies or Associations, which are owned by the Government of Pakistan or not, I am of the view that it would not be in the interest of all the parties before this Court to decide finally this aspect of the matter. The reason for such restraint is that as of today Defendant No.1 has already invoked the jurisdiction of the South African Court, which has already taken cognizance and passed certain orders of arrest of Vessels of Plaintiffs. After passing of such orders of arrest, the Plaintiffs have furnished appropriate security/guarantee before such Court and the Vessels have been released pending final adjudication of the matter. To this extent the South African Court has already assumed jurisdiction, and it appears that to that extent perhaps even the Plaintiffs' case is that whatever has happened may not be disturbed; but at least in future Defendant No.1 be restrained from taking any further steps for arrest of any of their Vessels. If I go on to adjudicate this aspect that whether Plaintiffs and Defendant No.2 are Government owned entities or not, and if my finding is against the Plaintiff, then this would deprive them from contesting this issue before the South African Court any further. And this does not seem to be a correct approach for this Court. The South African Court has taken cognizance, and must have at least tentatively examined this aspect before ordering the arrest of vessel, and its release against security under the Admiralty Jurisdiction; and therefore, the Plaintiff must agitate this aspect of the matter, finally before the said Court as they have already furnished sureties for release of their Vessels.

10. The nature of this Suit i.e. ***Anti-Suit Injunction*** is meant to restrain a party to a Suit or proceedings from instituting or prosecuting a case in another Court including a Foreign Court. Though this type of jurisdiction is seldom invoked and

is rarely exercised by the Courts; but such concept has already developed internationally and so also in this Country (though very rarely). However, I have not come across any judgment of our jurisdiction on the issue in hand to restrain a party from proceeding in another (foreign) jurisdiction, nor has any judgment been cited to this effect by the Plaintiffs' Counsel. As internationally recognized an Anti-Suit Injunction is a judicial order, which restrains one party from prosecuting a case in another Court outside its jurisdiction. It is to be noted that such an order is not a restraining order against the Court from assuming any such jurisdiction; but against a party not to invoke such jurisdiction. It is also a settled law that principles governing the grant of injunction are common and equally apply to that of granting an Anti-Suit Injunction. This is nothing but governed by the Doctrine of Equity. At the same time, it is of utmost importance to take note that the Court in this Country has though limited powers to issue an Anti-Suit Injunction; however, this could only be applied on a party over whom the Court has some personal jurisdiction. It is also pertinent to observe that while passing orders of such nature i.e. Anti-Suit Injunction, Courts are to remain cautious as well as careful and should not grant such injunction as a matter of routine, but only sparingly and this is for the reason that ultimately such orders involve a Court impinging or restricting the very jurisdiction of another Court; though indirectly, by restraining a party to a Suit. Universally, exercise of such jurisdiction by another Court is not entertained very easily as after all no Court would like to be restrained from entertaining a case brought before it, merely on the ground that Court of some other jurisdiction has restrained it. This naturally sounds strange and somewhat bewildering. It is settled law that the jurisdiction to grant such an injunction would be exercised with very considerable caution and for that reason would probably be very rarely exercised and an injunction should in such circumstances only be granted where the very clearest case of oppression is made out. Learned Counsel for the Plaintiff has forcefully relied upon the case of ***Modi Entertainment Network*** (supra) from the Indian jurisdiction, which has laid down certain parameters, which are required to be taken into consideration by a Court while granting an Anti-Suit Injunction. The three principles as settled by the Indian Supreme Court are as follows:-

a. The Defendant against whom injunction is sought must be amenable to the personal jurisdiction of the court.

b. If the injunction is declined the ends of justice will be defeated and injustice will be perpetuated; and

c. The Principle of Comity - respect for the Court in which the commencement or continuance of action/proceeding is sought to be restrained - must be borne in mind.

11. This Court like the Indian Court as well as the Courts in England are Courts of law and equity. Primarily, the principle for grant of Anti-Suit Injunction is essentially an equitable relief and this Court can exercise such jurisdiction for grant of an Anti-Suit Injunction, if the case is made out to such effect. However, the first and foremost principle, which has been laid down by the Indian Supreme Court in the aforesaid case is that the party against whom injunction is being sought is amenable to the personal jurisdiction of the Court. Personal jurisdiction does not mean that if a party is before the Court by any reason or default then it could be said that the party is under personal jurisdiction of the Court as well. The law which governs the personal or territorial jurisdiction of this Court is contemplated under Section 19 & 20 of the Civil Procedure Code, which reads as under:-

> **19.** *Suits for compensation for wrongs to person or movables.*---Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.
>
> ***20.*** *Other suits to be instituted where defendants reside or cause of action arises.*--- Subject to the limitation aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--
>
> (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
>
> (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
>
> (c) the cause of action, wholly or in part, arises.
>
> *Explanation I.* Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.
>
> *Explanation II*: A corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

12. Insofar as Section 19 CPC is concerned where a Suit is for compensation for a wrong done to the person or to a movable property and if the wrong was done within the local limits of the jurisdiction of one Court and the Defendants resides, or carries on business, or personally works for gain, within local limits of the jurisdiction of another Court, the Suit may be instituted at the option of the Plaintiff in either of the said Courts. Therefore, to assume jurisdiction under this

provision, the cause of action ought to have arisen within the local limits of the jurisdiction of a Court, and notwithstanding that Defendant resides or is outside the territorial jurisdiction of such Court, the Plaintiff has an option to institute a Suit in either of the said local limits of the Court. For the present purposes, though according to the Plaintiffs the cause of action is the pending award in question (to which respectfully I do not agree) it can be safely said that the cause of action, which has arisen to the plaintiffs is not within the local limits or the territorial jurisdiction of this Court. The arrest of Vessels already made is a matter before the South African Court; whereas, the future restraining order is also being sought in respect of the entire world, wherever it may be, having direct nexus with the intended arrest of their Vessels. The Plaintiffs' cause of action is not that Defendant No.1 be restrained from initiating any proceedings within the territorial jurisdiction of this Court; rather it is the opposite that it may be restrained to take such an action anywhere in the entire world. Their cause is that since the Vessels being owned by them are in the high seas all over the world, therefore, they have an apprehension that such action of arrest could be initiated by Defendant No.1 anywhere in the world, except the jurisdiction of this Court. So in all fairness though the Plaintiff has an option to institute a Suit in any of the two Courts, wherein, the cause of action arises or where the Defendant resides; however, in this case even as per the Plaintiffs own case, the cause of action has not arisen within the territorial jurisdiction of this Court; therefore, I am of the considered view that the first principle laid down by the Indian Supreme Court in respect of personal jurisdiction does not apply in this matter. The argument that since Arbitration proceedings are pending in this Court; hence, this Court can exercise jurisdiction is without any substance and is not impressive, in that, such proceedings have no nexus or relation with the Plaintiffs. This Suit has not been filed by Defendant No.2; but by the Plaintiffs. Therefore, reliance on the Arbitration proceedings and to ask this Court to exercise any jurisdiction in this matter, does not support the cause of the Plaintiffs, insofar as the issue of jurisdiction is concerned.

13. Insofar as Section 20 CPC is concerned, Subsection (a) provides that subject to the limitations as aforesaid (i.e. Sections 16,17,18 & 19 C.P.C) every Suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant or each of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides or carries on business, or personally works for gain. Similarly, Section 20(b) provides for institution of a Suit when any of the defendants where there are more than one, at the time of the commencement of the Suit, actually and voluntarily resides or

carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution. And Section 20(c) caters to the situation for institution of a Suit where the cause of action, wholly or in part, arises. There are two Explanations to this Section and Explanation-I provides that where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. Explanation-II provides that a Corporation shall be deemed to carry on business at its sole or principal office in Pakistan or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. In the present case neither subsection (a) nor sub-section (b) is relevant and applicable. Similarly, none of the Explanations as above are applicable or could be considered for deciding the present controversy. The Plaintiffs claim that since Defendant No.1 is already before the Court is also not supportive if the language of sub-section (b) is read as a whole, as it provides that "….or the *defendants who do not reside, or carry on business, or personally work for gain, as aforesaid,* ***acquiesce in such institution***;" The Defendant No.1 has categorically stated that they are before this Court in this Suit as a matter of courtesy and voluntarily; but do not submit to the jurisdiction of this Court. This can hardly be called or termed as acquiescence. The alternative ground that cause of action has accrued partly within the territorial jurisdiction of this Court due to pending Arbitration proceedings between Defendant No.1 and 2 is also repelled for the discussion already made in this opinion.

14. From the discussion made hereinabove, it appears that the first test or principle laid down for exercise of personal jurisdiction over Defendant No.1 fails. At the same time it may also be observed that merely for the fact that Defendant No.1 is already agitating or contesting the dispute in Arbitration proceedings before this Court, against Defendant No.2, could not be treated as submission to the jurisdiction of this Court in this Suit filed by the Plaintiffs. It is important to note that present proceedings have not been initiated by Defendant No.2 but by Plaintiffs, and this has a very pivotal impact on the issue of jurisdiction. Insofar as Defendant No.2 is concerned, it has not come before this Court agitating against Defendant No.1 in causing arrest of Vessels of Plaintiffs. In fact it could not have done so, as the case of the Plaintiffs and Defendant No.2 is that they are separate and independent legal entities within itself and are not owned by the Government of Pakistan as pleaded by Defendant No.1. Though Defendants No.1 & 2 are in dispute with each other, but insofar as the Plaintiffs

are concerned, they are not under any contractual obligation with Defendant No.1. Lastly it may be of relevance to note that in the case of ***Modi Entertainment Network*** (Supra), parties to the dispute had consented that their "*agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts (without reference to English conflict of law Rules)"*. Hence, even otherwise, the principles settled in the said judgment are to be read with the relevant facts and the agreement between the parties which is very much absent in this case.

15. Insofar as the exercise of jurisdiction by the South African Court and the objections raised on behalf of the Plaintiff to this effect is concerned, it would be just and proper to have a better understanding, of the law of Admiralty under which the South African Court has assumed jurisdiction. The law prevailing in South Africa is known as ***Admiralty Jurisdiction Regulation Act 105 of 1983***. The relevant Sections are Section 1(1)(aa), Section 2, Section 3(3)(a)(b), Section 3(6), Section 3(7)(a)(i),(ii) & (iii), Section 5(3)(4), Section 7(1), which reads as under:-

1 Definitions

(1) In this Act, unless the context indicates otherwise-

"Admiralty action' means proceedings in terms of this Act for the enforcement of a maritime claim whether such proceedings are by way of action or by way of any other competent procedure, and includes any ancillary or procedural measure, whether by way of application or otherwise, in connection with any such proceedings;

'maritime claim' means any claim for arising out of or relating to-

(aa) any judgment or arbitration award relating to a maritime claim, whether given or made in the Republic or elsewhere;

2 Admiralty jurisdiction of Supreme Court

(1) Subject to the provisions of this Act each provincial and local division, including a circuit local division, of the Supreme Court of South Africa shall have jurisdiction (hereinafter referred to as Admiralty jurisdiction) to hear and determine any maritime claim (including, in the case of salvage, claims in respect of ships, cargo or goods found on land), irrespective of the place where it arose, of the place of registration of the ship concerned or of the residence, domicile or nationality of its owner.

3 Form of proceedings

(4) Without prejudice to any other remedy that may be available to a claimant or to the rules relating to the joinder of causes of action a martime claim may be enforced by an action in *rem*--

(a) If the claimant has a maritime lien over the property to be arrested; or

(b) If the owner of the property to be arrested would be liable to the claimant in an action in *personam* in respect of the cause of action cornered.

(5) An action in rem shall be instituted by the arrest within the area of jurisdiction of the court concerned of property of one or more of the following categories against or in respect of which the claims lies:

(a) The ship, with or without its equipment, furniture, stores or bunkers;

(6) An action in rem, other than an action in respect of a maritime claim referred to in paragraph (d) of the definition of 'maritime claim' may be brought by the arrest of an associated ship instead of the ship in respect of which the maritime claim arose.

(Sub-s. (6) substituted by s. 2 (c) of Act 87 of 1992 and by s. 20(a) of Act 66 of 2008.)

(7)(a) For the purposes of subsection (6) an associated ship means a ship, in respect of which the maritime claim arose-

(i) owned, at the time when the action is commenced, by the person who was the owner of the ship concerned at the time when the maritime claim arose; or

(ii) owned, at the time when the action is commenced, by a person who controlled the company which owned the ship concerned when the maritime claim arose; or

(iii) owned, at the time when the action is commenced, by a company which is controlled by a person who owned the ship concerned, or controlled the company which owned the ship concerned, when the maritime claim arose.

5 Powers of court

(3)(a) A court may in the exercise of its Admiralty jurisdiction order the arrest of any property for the purpose of providing security for a claim which is or may be the subject of an arbitration or any proceedings contemplated, pending or proceeding, either in the Republic or elsewhere, and whether or not it is subject to the law of the Republic, if the person seeking the arrest has a claim enforceable by an action in *personam* against the owner of the property concerned or an action in *personam* against the owner of the property concerned, or an action in rem against such property or which would be so enforceable but for any such arbitration or proceedings.

(4) Any person who makes an excessive claim or requires excessive security or without reasonable and probable cause obtains the arrest of property or an order of court, shall be liable to any person suffering loss or damage as a result thereof for that loss or damage.

7 Disputes as to venue or jurisdiction

(1)(a) A court may decline to exercise its Admiralty jurisdiction in any proceedings instituted or to be instituted, if it is of the opinion that any other court in the Republic or any other court or any arbitrator, tribunal or body elsewhere will exercise jurisdiction in respect of the said proceedings and that it is more appropriate that the proceedings be adjudicated upon by any such other court or by such arbitrator, tribunal or body.

16. In terms of the above law, Admiralty action means proceedings in terms of this Act for the enforcement of a Maritime claim where such proceedings are by way of action or by way of any other competent procedure and include any ancillary or procedural measure, whether by way of application or otherwise.

Maritime Claim has been defined as any claim for, arising out of or relating to any judgment or *Arbitration Award* relating to a *Maritime Claim* whether given or made in the *Republic or elsewhere*. Insofar as the Admiralty jurisdiction of the Court is concerned, this has been provided in Section 2 and it confers jurisdiction on the Court to hear and determine any Maritime Claim; whereas, Subsection 3(4) provides that if the claimant has a Maritime lien, it may be enforced by an action in *rem* by having complete property to be arrested; or if the owner of the property is to be arrested would be liable to the claimant in an action in *personam* in respect of the cause of action concerned; whereas, Subsection (5) provides for action in rem, which also includes Ship with or without its equipment, furniture, stores or bulkers. Subsection (6) thereof is most relevant in that it provides action in rem other than an action in respect of a Maritime Claim referred to in Para-D of the definition of Maritime Claim and may be brought by the arrest of an Associated Ship instead of Ship in respect of which Maritime Claim arose and in terms of Subsection (7) thereof, it has been provided that for the purposes of Subsection (6) an Associated Ship means a Ship, in respect of which the maritime claim arose, owned at the time when the action is commenced, by the person who was the owner of the Ship concerned at the time when the Maritime Claim arose; or owned at the time when the action is commenced, by person who controlled the Company which owned the Ship concerned when the Maritime Claim arose; or owned, at the time when the action is commenced, by a Company which is controlled by a person who owned the Ship concerned, or controlled the Company which owned the Ship concerned, when the Maritime Claim arose. Section 5 of the said Act Deals with Powers of Court and Subsection (3) thereof provides that the Court may in the exercise of its Admiralty Jurisdiction order the arrest of any property for the purpose of providing security for a claim which is or may be the subject of an *Arbitration* or any proceedings contemplated, pending or proceeding, either in the *Republic or elsewhere* and whether or not it is subject to the law of Republic, if the person seeking the arrest has a claim enforceable by an action in *personam* against the owner of the property concerned or an action in *rem* against such property or which would be so enforceable but for any such Arbitration or proceedings. It is further provided in Sub-section 3(a A) that any property so arrested or any security for or the proceedings of any such property shall be held as security for any such claim or pending the outcome of any such Arbitration proceedings and finally Subsection (4) also secures the interest of the person by providing that any person, who makes an excessive claim or required excessive security or without any reasonable and probable cause obtains the arrest of property or an order of Court shall be liable to any person suffering loss or damage as a result thereof for that loss or damage. Section 7 also provides for

settlement of dispute as to venue or jurisdiction and the Court is empowered to decline to exercise its Admiralty jurisdiction in any proceedings, if it is of the opinion that any other Court can exercise jurisdiction in respect of said proceedings and that it is more appropriate, the proceedings be adjudicated upon by any such other Court or tribunal or body.

17. On an overall perusal of the relevant provision of the Act, as discussed hereinabove, it transpires that Admiralty jurisdiction of South African Courts is much wider as compared to Admiralty jurisdiction of the Courts around the world and specially the Admiralty jurisdiction of this High Court. The law in South Africa has a wider and broader definition of a Maritime Claim as compared to similar Laws around the World. It also applies to an *Arbitration Award* relating to a Maritime Claim, whether given or made in South Africa, or elsewhere. It is not in dispute that claim of Defendant No.1 is a Maritime Claim and an *Arbitration Award* (though interim) has been given in its favour, and by invoking such jurisdiction, orders for arrest of Plaintiff's Vessel(s) have been obtained twice. The law unlike our jurisdiction does not provide that such an Award can only be enforced through making it a Rule of the Court (See Section 17 of the Arbitration Act, 1940), but talks about merely of an *Arbitration Award* and it would suffice, for the Court to take cognizance and exercise jurisdiction. Now this Court, at least cannot go into the fact that whether the Admiralty Law of South Africa has been properly appreciated by the Court or not in South Africa. This would definitely be an attempt against the sanctity attached to the concept of respect of jurisdiction of other Courts as well as comity of nations. It further appears that the law as prevailing in South Africa in respect of Admiralty jurisdiction provides a complete procedure for the Plaintiff to approach such Court and firstly seek release of the arrested Vessel, and then seek discharge or modification of the Order and can also raise an objection regarding jurisdiction being exercised by the South African Court. None of these remedies have been apparently availed by the Plaintiff except furnishing insurance guarantee(s) and seeking release of their two Vessels, which were arrested by the orders of South African Court. The law even provides that if someone while invoking such jurisdiction, has done so wrongly or excessively to have a Vessel arrested; then the affected person can be compensated as well. Insofar as the arrest of the Plaintiff's Vessel and its nexus with and its ownership being that vesting in the Government of Pakistan along with Defendant No.2 or not is concerned; again the law of Admiralty is broad and wide enough in South Africa, and tentatively the Court while exercising such jurisdiction can always order for arrest of a Vessel pending final adjudication of the matters, and objections if any can be validly and conveniently argued and

contested at the time of final hearing of the arrest application. This admittedly has not been done as yet and instant Suit has been filed on the apprehension that Defendant No.1 will once again resort to the same process.

Having said that there is one issue, which also needs consideration and must be discussed. The South African Court, which has assumed jurisdiction, has done so under the Admiralty Law prevailing in South Africa and while exercising such jurisdiction, two Vessels of the Plaintiffs have been ordered to be arrested, and thereafter permitted to be released on furnishing appropriate security. This exercise has been completed and it is not that Defendant No.1 has been paid any amount by the South African Court; rather, has only secured the claim as setup by Defendant No.1 while exercising its Admiralty Jurisdiction. At the same time this Court is of the view that the South African Court ought to and must be apprised of to consider that the Umpire's Award in question, on the basis of which Vessels have been arrested, is not yet final under the Arbitration Act 1940. The same is subject to an order of this Court making it as a Rule of the Court in terms of s.17 of the Act ibid, and once it has been done finally, the execution proceedings are to be initiated. There is every possibility (and this is without prejudice to any of the party's case) that the Award being finally passed in respect of the dispute between Defendant No.1 and Defendant No.2 being set aside by this Court. In that case eventually an extremely anomalous situation would arise inasmuch as Defendant No.1 may well have recovered the amount of Award before the South African Court and if Defendant No.2 is successful in having the Award set-aside, then Defendant No.1, though losing the Award, would have been able to force a nonexistent Award, under which nothing could have been recovered. This means that if Defendant No.1 had waited during pendency of the proceedings in respect of the Award before this Court, the South African Court would not have even passed any orders for the arrest of the Vessels. Since no final adjudication has been made by the South African Court in respect of the Award in question, which is still *sub-judice* before this Court, I am not inclined to dilate upon to this any further; however, it is expected that both parties would apprise the South African Court in respect of the proceedings, which are to be governed in terms of the Arbitration Act 1940 and to which Defendant No.1 and Defendant No.2 have agreed upon; whereas, the Award, which has been placed before the South African Court, is in fact an Award coming out of these proceedings.

Learned Counsel for the Plaintiff has vehemently argued to the effect that Plaintiffs and Defendant No.2 do not have common ownership, and even if so, they are different and independent juristic persons and merely for the fact that Government of Pakistan owns majority shares would not make the Plaintiffs liable for and on behalf of Defendant No.2. He has also referred to various

decisions of the High Courts as well as the Apex Court. However, to this I may observe that in fact this is the moot question, which needs to be argued and adjudicated before the South African Court, who has made orders for arrest of the two Vessels of the Plaintiffs precisely on the ground as set up by Defendant No.1 that Plaintiffs and Defendant No.2 are owned by the Government of Pakistan. While doing so, the South African Court has exercised its jurisdiction purportedly under its Admiralty Law which seems to cater for such an action; hence, if for any reason, adjudication on this issue is made by this Court, this may prejudice the proceedings in favour of, or against any of the parties before the South African Court. This Court is of the view that it would be more appropriate to let the South African Court decide this issue as to whether the Admiralty jurisdiction could be exercised against the Vessels of the Plaintiffs for recovery of an Award given in favour of Defendant No.1 against Defendant No.2.

18. Insofar as the case law relied upon by the learned Counsel in support of grant of an Anti-Suit injunction is concerned, there is a pivotal and distinguishing feature in those cases of which the learned Counsel has not taken note of. In all the cited cases, there was some understanding and or an Agreement (be it in respect of Arbitration or otherwise) which were interpreted by the Courts. The parties had some arrangement and or understanding as to place of suing or the Arbitration proceedings and the place and seat of such proceedings. This factor is completely lacking in this Suit inasmuch as the Plaintiffs have no relation or arrangement with Defendant No.1, by way of any Agreement or understanding. The doctrine of minimum contact and the case law on this relied upon by the learned Counsel for the Plaintiff will only come into place if there is any understanding and or agreement of any sort between the parties. In absence, this doctrine of minimum contact has no relevance in the plaintiff's case before this Court. As already noted and discussed hereinabove, Defendant No.1 has set up its case in South Africa by taking advantage (for which apparently it seems entitled) of the Admiralty jurisdiction of that Court which caters to and provides for an arrest of a Vessel on the basis of a Maritime Claim having an Arbitration Award in its favor. Therefore, the case law if any, which could be considered and relied upon must have this distinguishing feature present in it i.e. parties having no formal Agreement in between them and then seeking an Anti-Suit injunction. And for this reference may be made to the case of House of Lords reported as ***Castanho Vs. Brown and Root (UK) Ltd.*** **[1980] 1 All ER 689.** This was a case coming before the House of Lords against an order of the Court of Appeal, whereby, the Appeal of the Plaintiff was allowed discharging an injunction granted by Parker J. restraining the Plaintiff from proceeding with his claim in America. In that case before the

House of Lords, the Respondent (hereinafter referred to as Plaintiff) in the Suit was a citizen of Portugal as well as a resident thereof. On 11.02.1977, the Plaintiff in course of his employment with Defendants had sustained serious injuries on board a ship, which was owned by the second Defendant, which was a subsidiary of Jackson Marine Corporation, a Company incorporated in Texas USA. Due to accident, Plaintiff was paralyzed and he brought a Suit in England by claiming damages and personal injuries. In the Suit he obtained two interim payments, and thereafter, without seeking the leave of the Court, gave notice to discontinue the Suit because he, on advice, wanted to sue for damages in USA and such decision was based on a prospect of much higher and greater recovery of damages. The Defendants in the Suit filed an injunction application to restrain the Plaintiff from prosecuting or continuing the proceedings in USA. Parker J. granted an injunction by exercising his discretion. The matter went to the Court of Appeal, who by a majority (Shaw and Brandon LJJ), Lord Denning MR, dissenting, allowed the Appeal against both orders passed by the Court. The question before the House of Lords was not whether the United States action should be stayed; but whether the Plaintiff should be restrained by an order of the English Court from proceeding in America. In the Court of Appeal no majority ratio decidendi emerged. Lord Denning MR, though he preferred a Declaration to an injunction and agreed with the judge; however, Shaw LJ based his Judgment on lack of jurisdiction; as according to him by the notice of discontinuance the English action had been ended and the Court had no jurisdiction to grant an injunction, whereas, Brandon LJ assuming without deciding that there was jurisdiction, concluded (implicitly rather than expressly) that Judge had erred in the exercise of his discretion and gave detailed reasons why in his view no injunction ought to have been granted. In this view of the matter and the judicial difference in the order of the Appellate Court, it became necessary for the House of Lords to trace a clear path based on an accepted principle as the crux of the matter was whether the Plaintiff should be allowed to proceed in America. The House of Lords in this case also took note of the fact that a party must not be deprived of a personal or a juridical advantage while granting and or refusing such an injunction. In the instant matter, Defendant No.1 (rightly or wrongly) has taken advantage of the Admiralty Law of South Africa, which perhaps is also available to any other party in similar circumstances. The relevant observations of the House of Lords speaking through *Lord Scarman* is as follows:-

> Injunction, being an equitable remedy, operates in personam. It has been used to order parties amenable to the court's jurisdiction 'to take, or to omit to take, any steps and proceedings in any other court of justice whether in this country or in a foreign country': Leach V-C in Bushby v. Munday. The English court, as Leach V-C went on to say, 'does not pretend to any interference with the other court; it acts upon the Defendant by

punishment for his contempt in his disobedience to the order of the court'. The jurisdiction, which has been frequently exercised since 1821, was reviewed by the Court of Appeal in Ellerman Lines Ltd. v. Read. Scrutton LJ in that case quoted with approval a passage from the judgment of Lord Brougham LC in Lord Portarlington v. Soulby, where Lord Brougham LC affirmed that 'the injunction was not directed to the foreign Court, but to the party within the jurisdiction here'. I would not, however, leave Ellerman's case without a reference to the warning of Eve J: 'No doubt, the jurisdiction is to be exercised with caution... "

No doubt, in practice, most cases fall within one or other of these two classes. But the width and flexibility of equity are not to be undermined by categorization. Caution in the exercise of the jurisdiction is certainly needed; but the way in which the judges have expressed themselves from 1821 onwards amply supports the view for which the Defendants contend that the injunction can be granted against a party properly before the court, where it is appropriate to avoid injustice.

.....But, if I may respectfully express an opinion, I would think that the approach of Megaw J in The Tropaioforos was correct in principle, namely that it is a question of fact to be determined in the light of the particular circumstances of the case whether one who is suing abroad has sufficient connection with England to justify the granting of an injunction restraining him from proceeding with his foreign suit. In that case the existence of a contract was held to have provided the connection.

There remains the point that to grant an injunction in the circumstances of this case against the Plaintiff would be useless, a mere brutum fulmen. The answer was given succinctly by the Court of Appeal in Re Liddell's Settlement Trusts Romer LJ observing that 'It is not the habit of this Court in considering whether or not it will make an order to contemplate the possibility that it will not be obeyed', and Slesser LJ: 'We are not to assume that the lady will necessarily disobey the court'.

I turn to consider what criteria should govern the exercise of the court's discretion to impose a stay or grant an injunction. It is unnecessary now to examine the earlier case law. The principle is the same whether the remedy sought is a stay of English proceedings or a restraint on foreign proceedings. The modern statement of the law is to be found in the majority speeches in The Atlantic Star. It had been thought that the criteria for staying (or restraining) proceedings were twofold:

(1) that to allow the proceedings to continue would be oppressive or vexatious, and

(2) that to stay (or restrain) them would not cause injustice to the Plaintiff (see Scott LJ in St Pierre v. South American Stores (Gath and Chaves) Ltd.). In The Atlantic Star this House, while refusing to go as far as the Scottish doctrine of forum non conveniens, extended and reformulated the criteria, treating the epithets 'vexatious' and 'oppressive' as illustrating but not confining the jurisdiction. Lord Wilberforce put it in this way. The 'critical equation', he said, was between 'any advantage to the Plaintiff' and 'any disadvantage to the Defendant'. Though this is essentially a matter for the court's discretion, it is possible, he said, to 'make explicit' some elements. He then went on:

> "The cases say that the advantage must not be "fanciful" - that "a substantial advantage" is enough... A bona fide advantage to a Plaintiff is a solid weight in the scale, often a decisive weight, but not always so. Then the disadvantage to the Defendant: to be taken into account at all this must be serious, more than the mere disadvantage of multiple suits... I think too that there must be a relative element in assessing both advantage and disadvantage - *relative to the individual circumstances of the Plaintiff and Defendant*." (Emphasis in original text)

In MacShannon v. Rockware Glass Ltd. Lord Diplock interpreted the majority speeches in The Atlantic Star as an invitation to drop the use of the words 'vexatious' and 'oppressive' (an invitation which I gladly accept) and formulated his distillation of principle in words which are now very familiar:

> "In order to justify a stay two conditions must be satisfied, one positive and the other negative:
>
> (a) the Defendant must satisfy the court that there is another forum to whose jurisdiction he is amenable in which justice can be done between the parties at substantially less inconvenience or expense, and
>
> (b) the stay must not deprive the Plaintiff of a legitimate personal or juridical advantage which would be available to him if he invoked the jurisdiction of the English court."

Transposed into the context of the present case, this formulation means that to justify the grant of an injunction the Defendants must show (a) that the English court is a forum to whose jurisdiction they are amenable in which justice can be done at substantially less inconvenience and expense, and (b) that the injunction must not deprive the Plaintiff of a legitimate personal or juridical advantage which would be available to him if he invoked the American jurisdiction.

The formula is not, however, to be construed as a statute. No time should be spent in speculating what is meant by 'legitimate'. It, like the whole of the context, is but a guide to solving in the particular circumstances of the case the 'critical equation' between advantage to the Plaintiff and disadvantage to the Defendants.

No question arises on (a). I will assume that justice can be done in the English proceedings at substantially less expense to the Defendants. The balance of convenience is, however, less heavily tipped against them, Texas being their headquarters. Parker J directed himself correctly as to the applicable law, founding himself on the MacShannon formulation and dealing with (b) at length. The challenge that is made to his decision is that, in exercising his discretion to grant the injunction, he wrongly analysed the relevant factors, giving weight to something which he ought not to have taken into account and failing to give weight to something which he ought to have taken into account: see Birkett v. James per Lord Diplock. It is, indeed, submitted that Parker J's exercise of his discretion was plainly wrong, a submission which Brandon LJ must have accepted, since he embarked on his own analysis of the factors relevant to discretion.

It is, therefore, open to this House to review the exercise of the judge's discretion. My Lords, on this aspect of the case I find the judgment of Brandon LJ convincing. He found that to restrain the Plaintiff from proceeding in Texas would deprive him of a legitimate personal or juridical advantage. I agree. If he had been advised early enough to sue the JMC group in Texas first, they could not have compelled him to sue in England. The only additional expense incurred by the Defendants as a result of the Plaintiff suing first in England has been that of legal costs, which are recoverable by the Defendants. Texas is as natural and proper a forum for suing a group of Texan-based companies as England, even though England, as the scene of the accident, is also a natural and proper forum. The interim payments can be repaid, if (which appears improbable) the Defendants want repayment. The admission of liability obtained in the English action, which could in some cases be a significant factor, is not in this case, for as Brandon LJ said 'it is clear beyond doubt that [the accident] was caused by negligence of the ship's chief engineer'. Finally, there is the possible injustice to the Defendants that, if the Texan court should decline jurisdiction, the Plaintiff can start afresh here; but the court can safeguard the Defendants either by putting the Plaintiff on terms or by staying whatever English action is in being. For the reasons which Brandon LJ gives I agree with his conclusion 'that the balance comes down clearly in the Plaintiff's favour'.

My conclusion is, therefore, that the Court of Appeal was right to discharge the injunction, but that the judge was right to strike out the notice of discontinuance. The Plaintiff has, therefore, succeeded in persuading the English courts that he should be allowed to continue with his American proceedings. What, then, is to be done with the English action? Had the Plaintiff sought leave to discontinue, as he should have done and now, under the amended rules of court, would have to do, the logical course for the court

> would have been to give leave to discontinue on such terms as to costs, repayment of interim payments and future proceedings in England as the Defendants might seek and the court think just. Costs are provided for; the Defendants, for sound tactical reasons, are not asking for the interim payments back or any other terms, and the House can give leave, pursuant to RSC Order 21, Rule 3(1) to discontinue the first action and maintain the stay on the second protective writ. Accordingly, I would vary the order of the Court of Appeal by substituting an order for discontinuance of the action for the Court of Appeal's order upholding the notice of discontinuance. Subject to that variation, I would dismiss the appeal.

19. To me the facts of the aforesaid case decided by the House of Lords are more or less similar to the present case in hand. In that case, the Plaintiff was a resident of Portugal and had sued the Defendant in England. In this case, Defendant No.1 is a resident of Hong Kong and has sued the Plaintiff in South Africa. In the case before House of Lords, the cause of action had accrued in England, as the accident occurred there. Whereas, in this case, the cause of action (for Defendant No.1 to sue) is the Arbitration Award, and finally in that case, the Plaintiff filed its Suit in United States as the Defendant was residing there; whereas, in this case, the Suit has been filed in South Africa under the Admiralty Jurisdiction, as the Vessels were available within the territorial jurisdiction of the South African Court; hence, in my view the above case decided by the House of Lords fully applies to the facts of the case in hand. In both cases the contesting parties i.e. the Plaintiff and Defendant No.1 had no obligation or an agreement between themselves, either for any Arbitration, or for any other reason or purpose, and were not bound to exercise their rights before an agreed jurisdiction, like it is always in Arbitration Agreements. Learned Counsel for Defendant No.2 has though argued that the Agreement between Defendant No.1 and Defendant No.2 provides for Arbitration at Karachi; however, such Agreement is only binding between them and not between Defendant No.1 and the Plaintiff herein.

20. Similar is the case of Delhi High Court reported as ***Magotteaux Industries Pvt. Limited and others v AIA Engineering Limited*** **[155 (2008) DLT 73]**

> 53. As we have seen earlier in the discussion that the question of anti- suit injunction has been discussed by Hon'ble Supreme Court in Modi's case (supra) and subsequently followed by this Hon'ble Court in many decisions. Most of the decisions given by this Court as well as the Hon'ble Supreme Court in Modi's case involves contractual dispute wherein the parties have agreed to submit themselves to the jurisdiction of one court or the other i.e. the foreign court. Such kind of situation is missing in the present case. In the absence of contractual dispute between the parties, we have to examine the present controversy by applying principles of ordinary civil law more specifically under the provisions of Section 10 of CPC in the principles of res subjudice. The explanation to Section 10 provides that the pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action. Applying the said principle conversely would mean that the foreign court is not precluded from entertaining any suit on the basis of some cause of action merely because the suit is pending in Indian Court. In the case in hand pending in this Court and the cause of action pertaining to the proceedings pending in the US Court is different. Even assuming the cause of action pertaining to both the proceedings are same then by applying the

explanation of Section 10 of CPC, the said action is maintainable in the US Court and the grant of anti-suit injunction by the learned single judge is not appropriate in the present case.

59. The injunction has to be negated in the principle of res subjudice. Even the anti-suit injunction has been denied on the ground of different parties in Moser Bear case (supra) by this Court wherein it was observed:

Secondly, the action was brought by Imation Corporation against the defendant No. 1. it is primarily not an action brought by the defendant No. 1. But, an action instituted by a third party (Imation Corporation) in which the plaintiff herein was, initially, not even a party.

Considering these observation, it is apparent that the parties to the proceedings are different and the nature of the proceedings as well as the cause of action are different. For the above said reasons, we feel that the present case does not satisfy the tests of grant of anti-suit injunction

63. It is a noticeable fact that the grounds of mere expense and inconvenience have not been the grounds for the grant of anti-suit injunction. This is supported by the law laid down in para-26 of Modi Entertainment Network's judgment {supra} wherein it is held that;

> Circumstances such as comparison of litigation expenses in England and in India or the hardship and incurring of heavy expenditure on taking the witnesses to the English Court, would be deemed to have been foreseen by the parties when they agreed to submit to the jurisdiction of the English Court in accordance with the principles of English law and the said reasons cannot be void grounds to interdict prosecution of the action in the English Court of choice....

Therefore, the Hon'ble Supreme Court of India has clearly laid down that the inconvenience does not mean merely the inconvenience vis-a-vis expenditure and hardship but more additional grounds, which makes the proceedings in foreign court as oppressive and vexatious, must be present in order to enable this Court to grant the anti-suit injunction.

21. The argument of the learned Counsel for Defendant No.1 in respect of honoring comity of nations is also noteworthy in these types of cases, as it has been contended that grant of a temporary anti-suit injunction is against the principles of comity and amounts to Court Management of the other Court (South African Court). The case of the American Supreme Court reported as ***Hilton v. Guyot, 159 U.S. 113 (1895)*** contains a definition of the term ‘comity' which has also been accepted in Circa 1990 by the Canadian Supreme Court in ***Morguaral Investment v. De Savoge***. It reads - "*Comity in the legal sense is neither a matter of absolute obligation, on the one hand, nor of courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having regard both to international duty and convenience, and the rights of its own citizens or of other persons who are under the protection of its laws."* It is not nor could it be disputed that Comity does not demand of a Court possessing jurisdiction to abdicate its duty to decide a dispute in favour of a foreign Court possessing

concurrent jurisdiction. It would be a dereliction of duty if the former declines to adjudicate so as to enable a 'forum non conveniens' Court to proceed with the hearing of a lis filed or intended to be filed before it. In some vital respects, it is wholly dissimilar, or even the antithesis of the principle of "stay of the suit" as postulated in Section 10 of the Code of Civil Procedure. We say this because the prior filing is not determinate so far as issuance of an anti-suit injunction is concerned; and the Court passing this injunction does not halt its own proceedings but brings proceedings in another Court to a standstill. It achieves this by commanding any or all the parties before it, over whom it holds sway, to take requisite action[1]. However, merely for this reason, when other ingredients for grant of an anti-suit injunction are lacking, the Court would not exercise such jurisdiction. The nature of the proceedings in both the jurisdiction must also needs to be examined and for establishing the ingredients of it being oppressive and vexatious, it ought to have been of the same nature in substance. The cause of action is to be examined with care and due regard must be given before passing of any such injunctive order. This is also lacking in this case. Further, in the given facts of this case, since the Court in South Africa is already seized of the matter, whereas, there is no other proposed action in line, any exercise of jurisdiction by this Court would amount to transgressing the norms of judicial restraint as well. It is but natural that it must be left with the Court seized of the matter to decide that whether it had any jurisdiction or not. It would not be appropriate and would rather be violative of the principles of comity that one Court should injunct another Court on the ground of forum non conveniens. It is also of less importance or weightage that pursuing such remedy in a foreign Court would cost more and is inconvenient.

22. Similarly in the case reported as ***Airbus Industrie G.I.E v Patel and Others*** **[1998] 2 All ER 257**, the House of Lords has been pleased to set aside the order of the Court of Appeal, whereby, the order of refusing an anti-suit injunction had been overruled. The Appellants (defendants), Jaisukh Arun Bhai Patel, Neeta Jaisukh Patel, Deena Jaisukh Patel, Ratna Kunverji Patel, Valbai Ratna Patel and Tulsi Bhanji Vaghjiani appealed with leave of the Appeal Committee given on 9.12.1996 from the decision of the Court of Appeal (Nourse, Hobhouse and Aldous LJJ) ***([1997] 2 Lloyd's Rep 8)*** delivered on 31.7.1996 allowing the appeal by the plaintiffs, Airbus Industrie GIE, from the order of Colman J made on 28.2.1996 whereby he dismissed the plaintiffs' application for declaratory relief and an injunction restraining the defendants from claiming damages against them in any court in the world except India/Bangalore, and

[1] Essel Sports Pvt. Ltd v Board of Control for Cricket in India and others [178(2011) DLT 465.

ordering inter alia that the defendants be restrained by injunction from prosecuting further in the courts of Texas any proceedings against the plaintiffs arising out of or relating to the crash in Bangalore on 14.2.1990 of Indian Airlines Corp's flight IC 605. The facts are set out in the opinion of Lord Goff. The proceedings had arisen from an air crash which occurred at Bangalore Airport on 14.2.1990, when an Airbus A-320 aircraft crashed when coming in to land. Many of the passengers died and the remainder were injured. Among the passengers on board were two families of Indian origin who were British citizens with homes in London. Four of them were killed and the remaining four were injured. In the Report of a Court of Inquiry in India, the cause of the crash was identified as error on the part of the pilots (both of whom were killed in the crash). Proceedings were initiated in India on 12.2.1992 against I.A.C. and also against Hindustan Aeronautics Ltd. ("H.A.L."), the airport authority at Bangalore airport. On 6.3.1992 the appellants settled their claim against I.A.C. for the full amount recoverable up to the limit of I.A.C.'s liability. This resulted in a total recovery of £120,000 by all the appellants which, taking into account irrecoverable expenses, left a net sum of no more than £75,000. Meanwhile in February 1992 the appellants also commenced proceedings in Texas, where they sued a number of parties who might have had some connection with the aircraft or its operation. These included the respondent company, Airbus Industrie G.I.E. ("Airbus"), which designed and assembled the aircraft at Toulouse in France. Similar proceedings were brought in Texas in respect of three American passengers who died in the same crash. The two sets of proceedings were later consolidated. In response to these proceedings in Texas, on 21 November 1992 Airbus brought proceedings in the Bangalore City Civil Court against, inter alia, the appellants and the American claimants and on 22 April 1995 the presiding judge made a number of declarations designed to deter the defendants in those proceedings (i.e. the appellants and the American claimants) from pursuing their claims in Texas. These included a declaration that the appellants were not entitled to proceed against Airbus in any court in the world other than in India/Bangalore and an injunction which purported to restrain the appellants from claiming damages from Airbus in any court in the world except the courts in India/Bangalore. However, since the appellants were not within the Indian jurisdiction, the injunction had little deterrent effect. Airbus then issued an originating summons in England with the purpose of (1) enforcing the Bangalore judgment against the appellants and (2) obtaining an injunction from the English High Court restraining the appellants, who are resident in England, from continuing with their action against Airbus in Texas on the grounds that pursuit of that action by the appellants would be contrary to justice and/or vexatious or oppressive. The originating summons came

before Colman J. who, on 23.4.1996, refused to enforce or to recognize the Bangalore judgment and also refused to grant an injunction. Airbus then appealed to the Court of Appeal against the refusal of Colman J. to grant an injunction and on 31.7.1996 the Court of Appeal allowed the appeal and granted an injunction restraining the appellants from pursuing their action in Texas against Airbus. The aggrieved parties appealed to the House of Lords against that order, with the leave of this House and speaking through *Lord Goff of Chieveley*, in the context of comity of nations it was observed as follows;

> (see p 269 a & b)……I approach the matter as follows. As a general rule, before an anti-suit injunction can properly be granted by an English court to restrain a person from pursuing proceedings in a foreign jurisdiction in cases of the kind under consideration in the present case, comity requires that the English forum should have a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the foreign court which an anti-suit injunction entails.
>
> In an alternative forum case, this will involve consideration of the question whether the English court is the natural forum for the resolution of the dispute. The proper approach in such cases was considered in some depth by Sopinka J. in the Amchem Products case…..
>
> (see p 270 c, d & j and p 271 c, g to j):…….In any event, however, I am anxious that the principle which I have stated should not be interpreted too rigidly. I have therefore expressed it as a general rule. This is consistent with my statement of the law in Aerospatiale, an alternative forum case, to the effect that "as a general rule" the court granting the injunction must conclude that it is the natural forum for the trial of the action (see [1987] A.C. 871, 896). It is also consistent with Judge Wilkey's statement (see 731F 2d. 909, 926-7) that anti-suit injunctions are "most often" necessary for the two purposes which he specified. Indeed there may be extreme cases, for example where the conduct of the foreign state exercising jurisdiction is such as to deprive it of the respect normally required by comity, where no such limit is required to the exercise of the jurisdiction to grant an anti-suit injunction. In the present case Hobhouse L.J. attached particular importance to the fact that, at the material time, the State of Texas did not recognize the principle of forum non conveniens. For my part, however, I cannot accept that this was sufficient to entitle the English court to intervene in the present case, bearing in mind that the principle is by no means universally accepted and in particular is not accepted in most civil law countries. The present case I ask myself therefore whether there is any other aspect of the present case which would render the intervention of the English court consistent with comity. The facts upon which Airbus particularly relies are that there is a forum other than Texas, viz. India, which is indeed the natural forum for the dispute, but which is unable to grant 19-02-2019 (Page 12 of 14) www.manupatra.com Sindh High Court Karachi effective injunctive relief restraining the appellants from proceeding in Texas because they are outside the jurisdiction of the Indian courts; however, since the appellants are amenable to the jurisdiction of the English courts, Airbus is in effect seeking the aid of the English courts to prevent the pursuit by the appellants of their proceedings in Texas, which may properly be regarded as oppressive but which the Indian courts are powerless to prevent. I must first point out that, for the English court to come to the assistance of an Indian court, the normal process is for the English court to do so by enforcing a judgment of the Indian court. However, as the present proceedings have demonstrated, that is not possible here. An attempt was made by Airbus to persuade Colman J. to enforce, or at least to recognize, the Indian judgment; but he declined to do so and Airbus has not appealed from that part of Colman J.'s decision. So Airbus is relying simply on the English court's power of itself, without direct reliance on the Indian court's decision, to grant an injunction in this case where, unusually, the English jurisdiction has no interest in, or connection with,

> the matter in question. I am driven to say that such a course is not open to the English courts because, for the reasons I have given, it would be inconsistent with comity. In a world which consists of independent jurisdictions, interference, even indirect interference, by the courts of one jurisdiction with the exercise of the jurisdiction of a foreign court cannot in my opinion be justified by the fact that a third jurisdiction is affected but is powerless to intervene. The basic principle is that only the courts of an interested jurisdiction can act in the matter; and if they are powerless to do so, that will not of itself be enough to justify the courts of another jurisdiction to act in their place. Such are the limits of a system which is dependent on the remedy of an anti-suit injunction to curtail the excesses of a jurisdiction which does not adopt the principle, widely accepted throughout the common law world, of forum non conveniens. Conclusion For the reasons I have given, I would allow the appeal on the first issue and set aside the injunction ordered by the Court of Appeal. It follows that the question of oppression does not arise. Had it done so the result would have been that the appeal would have been allowed on the terms of the undertakings offered by the appellants at the end of the hearing, with the effect that the respondent would have had the benefit of the undertakings and there would have been an order for costs against the appellants. On the conclusion I have reached, however, that stage in the argument is not reached and in my opinion the appeal should be allowed with costs, both before your Lordships' House and in the courts below. It should not however be inferred from the mere fact that your Lordships have not reviewed the decision of the Court of Appeal to interfere with Colman J.'s exercise of his discretion that, had the point arisen, your Lordships would necessarily have approved of the decision of the Court of Appeal in this respect.

23. In the case of ***Amchem Products Inc. V British Columbia (Workers Compensation Board)*** **(1993) 102 D.L.R (4th) 96 Can SC**, as referred to in the aforesaid judgment of the House of Lords a very apt and elucidate observation has been made by *Sopinka J*. in respect of the same issue and reads as under;

> The first step in applying the [Aerospatiale] analysis is to determine whether the domestic forum is the natural forum that is the forum that on the basis of relevant factors has the closest connection with the action and the parties. I would modify this slightly to conform with the test relating to forum non conveniens. Under this test the court must determine whether there is another forum that is clearly more appropriate. The result of this change in stay applications is that where there is no one forum that is the most appropriate, the domestic forum wins out by default and refuses a stay, provided it is an appropriate forum. In this step of the analysis, the domestic court as a matter of comity must take cognizance of the fact that the foreign court has assumed jurisdiction. If, applying the principles relating to forum non conveniens outlined above, the foreign court could reasonably have concluded that there was no alternative forum that was clearly more appropriate, the domestic court should respect that decision and the application should be dismissed. Where there is a genuine disagreement between the courts of our country and another, the courts of this country should not arrogate to themselves the decision for both jurisdictions. In most cases it will appear from the decision of the foreign court whether it acted on principles similar to those that obtain here, but, if not, then the domestic court must consider whether the result is consistent with those principles. In a case in which the domestic court concludes that the foreign court assumed jurisdiction on a basis that is inconsistent with principles relating to forum non conveniens and that the foreign court's conclusion could not reasonably 19-02-2019 (Page 11 of 14) www.manupatra.com Sindh High Court Karachi have been reached had it applied those principles, it must go then to the second step of the [Aerospatiale] test" (i.e., whether to grant an injunction on the ground that the ends of justice require it).

24. The upshot of the above discussion is that the Plaintiffs have failed to make out any prima facie case for grant of an anti-suit injunction in this matter,

whereas, neither balance of convenience lies in their favor nor any question of an irreparable loss arises. On the other hand, even otherwise and without prejudice, Defendant No.1 is not within the personal jurisdiction of this Court and it will be a futile exercise to pass any restraining order viz. a viz. its enforceability. Accordingly, the Plaintiffs applications for injunction and deposit of amount bearing CMA No. 7806/2018 and 8738/2018 are hereby dismissed, whereas, the application of Defendant No.1 for rejection of plaint bearing CMA No.9966/2018 also stands dismissed.

25. Applications at Serial No. 1, 2 and 4 are dismissed, whereas, application at Serial No.3 is allowed.

Dated: 25.02.2019

J U D G E