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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **OMP (ENF.) (COMM.) 145/2021**  
**DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED**

..... Decree Holder

Through: Mr. Kapil Sibal, Sr. Adv. with  
Mr. Mahesh Agarwal, Mr. Rishi  
Aggarwal, Mr. Vineet, Mr.  
Suhael Buttan, Mr. Shri  
Venkatesh, Ms. Megha Mehta,  
Ms. Niyati Kohli and Mr.  
Pranjit Bhatt Acharya, Adv.

versus

**DELHI METRO RAIL CORPORATION LTD.**

..... Judgement Debtor

Through: Mr. R. Venkataramani, AGI  
with Mr. Maninder Singh, Sr.  
Adv. and Mr. Tarun Johri, Mr.  
Vishwajeet Tyagi and Adv. for  
DMRC.

2(A)

+ **CONT.CAS(C) 654/2022**  
**DELHI AIRPORT METRO EXPRESS PVT. LTD.**

..... Petitioner

Through: Mr. Kapil Sibal, Sr. Adv. with  
Mr. Mahesh Agarwal, Mr. Rishi  
Aggarwal, Mr. Vineet, Mr.  
Suhael Buttan, Mr. Shri  
Venkatesh, Ms. Megha Mehta,  
Ms. Niyati Kohli and Mr.  
Pranjit Bhatt Acharya, Adv.

versus

**DELHI METRO RAIL CORPORATION LTD. & ORS.**

..... Respondents

Through: Mr. R. Venkataramani, AGI  
with Mr. Maninder Singh, Sr.  
Adv. and Mr. Tarun Johri, Mr.  
Vishwajeet Tyagi and Adv. for  
DMRC.

3 (A)

+ **CONT.CAS(C) 845/2022**

DELHI AIRPORT METRO EXPRESS PVT. LTD.

..... Petitioner

Through: Mr. Kapil Sibal, Sr. Adv. with  
Mr. Mahesh Agarwal, Mr. Rishi  
Aggarwal, Mr. Vineet, Mr.  
Suhael Buttan, Mr. Shri  
Venkatesh, Ms. Megha Mehta,  
Ms. Niyati Kohli and Mr.  
Pranjit Bhatt Acharya, Advs.

versus

DELHI METRO RAIL CORPORATION LTD. & ORS.

..... Respondents

Through: Mr. R. Venkataramani, AGI  
with Mr. Maninder Singh, Sr.  
Advs. and Mr. Tarun Johri, Mr.  
Vishwajeet Tyagi and Advs. for  
DMRC.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**ORDER**

**17.02.2023**

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**EX.APPL.(OS) 2933/2022 IN OMP (ENF.) (COMM.) 145/2021**

1. The present execution proceedings have been instituted in respect of an Arbitral Award which was rendered on 11 May 2017. In terms of the said Award and as per the disclosures made in these proceedings by the Enforcement Petitioner, the total gross decretal amount along with interest up to 14 February 2022 stood at Rs. 8009.38 crores as on that date. According to the petitioner, out of the aforesaid amount, a sum of Rs. 1678.42 crores alone has been paid so far by the Respondent **Delhi Metro Rail Corporation**<sup>1</sup>. According to the Enforcement Petitioner, the said amount along with interest has further swelled to Rs. 6330.96 crores.

2. For the purposes of disposal of the proceedings today, the entire history of the present execution petition, the various orders passed

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<sup>1</sup> Respondent Corporation

thereon as well as those which were passed by the Supreme Court on challenges laid by respective parties need not be reiterated in this order. Suffice it to note that from the various additional affidavits which have been filed by DMRC post the order of the Supreme Court dated 14 December 2022, it is essentially submitted that despite requisite efforts having been expended, its two principal shareholders have been unable to arrive at a consensus of the manner in which the debt due and payable under the Award is proposed to be liquidated.

3. Mr. Sibal, learned Senior Counsel appearing for the Enforcement Petitioner, has commended for the consideration of the Court the judgment rendered by the Bombay High Court in **Bhatia Industries vs. Asian Natural Resources & Anr.**<sup>2</sup> as well as of the Supreme Court in **Cheran Properties Ltd. vs. Kasturi & Sons Ltd.**<sup>3</sup> to submit that in light of the position as it prevails today, the Court would be justified in lifting the corporate veil of the DMRC and proceeding further against the shareholders for the purposes of execution of the Award which undisputedly has attained finality.

4. The Bombay High Court in **Bhatia Industries** while dealing with the issue of whether the doctrine of piercing of the corporate veil could be adopted in execution proceedings observed as follows:-

“19. From the conspectus of the judgments which are referred to hereinabove, it is now quite well settled that the doctrine of piercing or removing corporate veil is applicable not only in the case of holding of subsidiary companies or in the case of tax evasion but can be equally applied in execution proceedings. It can be seen from these judgments that the doctrine has been referred to also in cases:

(i) where “two separate corporate entities are functioning as if they are in partnership with one company as an alter-ego of the other company, where one company is bound hand and foot by the other”;

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<sup>2</sup> 2016 SCC OnLine BOM 10695

<sup>3</sup> (2018) 16 SCC 413

(ii) where “parent company's management has steering influence on the subsidiary's core activities that the subsidiary can no longer be regarded to perform those activities on the authority of its own executive directors”; and

(iii) where “the company is the creature of the group and the mask which is held before its face in an attempt to avoid recognition by the eye of equity or is a mere cloak or sham and in truth the business was being carried on by one person and not by the company as a separate entity”.

(iv) where “two companies are inextricably inter-linked corporate entities”.

20. We therefore hold that the concept of lifting the corporate veil is also available in execution proceedings and answer the question No. 1 above accordingly.

21. We are therefore of the view that the corporate veil can be lifted in cases where the Court from the material on record comes to the conclusion that the Judgment Debtor is trying to defeat the execution of the Award which is passed against him. In our view, the learned Single Judge was justified in carrying out that exercise.”

5. **Cheran Properties** was dealing with the question of an Award binding even non-signatories to the arbitration agreement. While dealing with the aforesaid aspect, the Supreme Court had observed as follows: -

“20. Both these decisions were prior to the three-Judge Bench decision in *Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689]* . In *Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689]* this Court observed that ordinarily, an arbitration takes place between persons who have been parties to both the arbitration agreement and the substantive contract underlying it. English Law has evolved the “group of companies doctrine” under which an arbitration agreement entered into by a company within a group of corporate entities can in certain circumstances bind non-signatory affiliates. The test as formulated by this Court, noticing the position in English law, is as follows : (SCC pp. 682-83, paras 71 & 72)

“71. Though the scope of an arbitration agreement is limited to the parties who entered into it and those claiming under or through them, the courts under the English law have, in certain cases, also applied the “group of companies doctrine”. This doctrine has developed in the international

context, whereby an arbitration agreement entered into by a company, being one within a group of companies, can bind its non-signatory affiliates or sister or parent concerns, if the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories and the non-signatory affiliates. This theory has been applied in a number of arbitrations so as to justify a tribunal taking jurisdiction over a party who is not a signatory to the contract containing the arbitration agreement. [*Russell on Arbitration* (23rd Edn.)]

72. This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, “intention of the parties” is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties.”

The Court held that it would examine the facts of the case on the touchstone of the existence of a direct relationship with a party which is a signatory to the arbitration agreement, a “direct commonality” of the subject-matter and on whether the agreement between the parties is a part of a composite transaction : (SCC p. 683, para 73)

“73. A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the Court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the Court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.”

21. Explaining the legal basis that may be applied to bind a non-signatory to an arbitration agreement, this Court in *Chloro Controls case* [*Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] held thus : (SCC p. 694, paras 103.1, 103.2 & 105)

“103.1. The first theory is that of implied consent, third-party beneficiaries, guarantors, assignment and other transfer mechanisms of contractual rights. This theory relies on the discernible intentions of the parties and, to a large extent, on

good faith principle. They apply to private as well as public legal entities.

103.2. The second theory includes the legal doctrines of agent-principal relations, apparent authority, piercing of veil (also called “the alter ego”), joint venture relations, succession and estoppel. They do not rely on the parties' intention but rather on the force of the applicable law.

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105. We have already discussed that under the group of companies doctrine, an arbitration agreement entered into by a company within a group of companies can bind its non-signatory affiliates, if the circumstances demonstrate that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties.”

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23. As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject-matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.”

6. The Court additionally takes note of the submission of Mr. Sibal who contended that in light of the unequivocal directions as appearing in the order of the Supreme Court dated 14 December 2022, both the Union Government as well as the GNCTD must be held to be liable to make good the monies payable under the Award.

7. Undisputedly, the two principal shareholders of the DMRC are the Ministry of Housing and Urban Affairs in the Union Government and the GNCTD. The ends of justice would thus warrant the said

shareholders being placed formally on notice and being invited to address submissions before this Court proceeds in the matter and evolves and adopts an appropriate measure for the purposes of recovery of the moneys payable under the Award.

8. Consequently, let the Ministry of Housing and Urban Affairs in the Union Government as well as the GNCTD acting through its Chief Secretary be impleaded in the present proceedings. Ordered accordingly. The Court requests learned counsel for the Enforcement Petitioner to effect service on the said respondents *dasti* in addition to other permissible modes. The Court additionally grants liberty to learned counsel to effect service upon the Union Ministry through the office of the learned ASG and upon the Chief Secretary of the GNCTD through the office of the Standing Counsel.

9. The newly impleaded respondents shall address submissions in light of what stands recorded hereinabove. The Court hopes and trusts that the shareholders shall bear in mind that the impasse which exists needs to be resolved expeditiously bearing in mind the peremptory directions of the Supreme Court as well as the need to protect and preserve the DMRC which not only represents a project of immense public importance but also constitutes the lifeline for the residents of the NCT.

10. Let the execution petition be called again on 20.02.2023.

11. Order *dasti* under the signatures of the Court Master.

**CONT.CAS(C) 654/2022, CONT.CAS(C) 845/2022**

List on the date fixed.

**YASHWANT VARMA, J.**

**FEBRUARY 17, 2023/Neha**