FEDERAL COURT OF AUSTRALIA

Suzlon Energy Ltd v Bangad (No 5)
[2012] FCA 1505

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| Citation: | Suzlon Energy Ltd v Bangad [2012] FCA 1505 (No 5) |
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| Parties: | **SUZLON ENERGY LTD AND OTHERS NAMED IN THE SCHEDULE; SANJEEV BANGAD AND OTHERS NAMED IN THE SCHEDULE** |
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| File number: |  |
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| Judge: |  |
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| Date of judgment: | 13 November 2012 |
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| Legislation: | *Admiralty Act 1988* (Cth) ss 12, 29 *Federal Court of Australia Act 1976* (Cth) s 22 *Federal Court Rules 1979* (Cth)*Federal Court Rules 2011 (Cth)* rr 10.42, 10.43(4)(c) |
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| Cases cited: | *Agar v Hyde* (2000) 201 CLR 552 applied*Amin Rasheed Shipping Corporation v Kuwait Insurance Co* [1984] AC 50 referred to*Beluga Shipping GmbH KS “Beluga Fantastic” v Headway Shipping Ltd (No 2)* (2008) 251 ALR 620 applied*Beluga Shipping GmbH v Suzlon Energy Limited* [2009] FCA 1020 referred to*Bray v F Hoffman-La Roche Ltd* (2003) 130 FCR 317 applied*Ho v Akai Pty Limited (in liq)* (2006) 24 ACLC 1526 applied*Siskina (Owners of the cargo on board) v* *Distos Compania Naviera SA* [1979] AC 210 referred to*Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 applied *Suzlon Energy Ltd v Bangad (No 3)* [2012] FCA 123 referred to*Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538 applied  |
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| Date of hearing: | 13 November 2012 |
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| Place: |  |
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| Division: |  |
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| Category: | No catchwords |
|  |  |
| Number of paragraphs: | 27 |
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| Counsel for the Second Cross-Claimant: | Mr J Hogan-Doran |
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| Solicitor for the Second Cross-Claimant: | HWL EbsworthWL Ebsworth |
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| Counsel for the Third Second Cross-Defendant: | Mr E Cox |
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| Solicitor for the Third Second Cross-Defendant: | Norton White |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| IN ADMIRALTY |  |
| NEW SOUTH WALES DISTRICT REGISTRY |  |
| GENERAL DIVISION | NSD 1670 of 2008 |

SECOND CROSS CLAIM

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| BETWEEN: | SUZLON ENERGY LTD AND OTHERS NAMED IN THE SCHEDULEFirst Cross-Claimant |
| AND: | SANJEEV BANGAD AND OTHERS NAMED IN THE SCHEDULEThird Cross-Defendant |

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| JUDGE: | RARES J |
| DATE OF ORDER: | 13 NOVEMBER 2012 |
| WHERE MADE: | SYDNEY |

THE COURT ORDERS THAT:

1. The parties confer and provide short minutes of orders to give effect to the reasons given by Rares J on 13 November 2012, by 4 pm on 19 November 2012, and in the event of disagreement, the parties serve and provide a copy to the associate to Rares J the orders that each party proposes, together with brief written submissions outlining the areas of disagreement.
2. The interlocutory application stand over to 9:30 am on 21 November 2012 for the making of final orders.
3. The proceedings be stayed in so far as they concern the seventh, fifth, eighth, ninth, eleventh and twelveth second cross defendants (**Mr Sridhar**), SS Oceanwind Shipping Pte Limited (**SS Oceanwind**), Bluewind Enterprises (UK) Ltd (**Bluewind**), Sunshine Trade Services Limited (**STS**), BIP Holdings Limited (BIP) and Manning Limited (**Manning**) on the condition that:
	* + 1. within 28 days SS Oceanwind, Bluewind, STS, BIP and Manning appear in these proceedings;
			2. within 28 days SS Oceanwind pays all monies currently held by or in the name of SS Oceanwind, including but not limited to the funds in account number 0074-001521-01-6-022 held by DBS Bank Ltd, to the Federal Court of Australia;
			3. within 28 days Bluewind pays all monies currently held by or in the name of Bluewind, including the funds in account number 477.214 held by Merrill Lynch Bank (Suisse) SA, to the Federal Court of Australia;
			4. within 28 days STS pays all monies currently held by or in the name of STS, including the funds in account number 100.994 held by Frankfurter Bankgesellschaft (Schweiz) AG and account number 469.244 held by Merrill Lynch Bank (Suisse) SA, to the Federal Court of Australia;
			5. within 28 days BIP pays all monies currently held by or in the name of BIP, including the funds in account number 0835-1490-6 held by Credit Suisse AG, to the Federal Court of Australia;
			6. within 28 days Manning pays all monies currently held by or in the name of Manning, including the funds in account number 495.158 held by Merrill Lynch Bank (Suisse) SA and account number 1357788-8 held by Credit Suisse AG, to the Federal Court of Australia;
			7. within 28 days all monies currently held in account numbers 0835-1622414-5 and DE17500700100942868100 in the name of Blue Ocean Consultants FZE held by Credit Suisse AG be paid into the Federal Court of Australia;
			8. within 28 days all monies currently held in account number 94.648 in the name of Rodney Marsh held with Frankfurter Bankgesellschaft (Schweiz) AG be paid into the Federal Court of Australia;
			9. within 28 days Mr Sridhar files an affidavit:

(i) annexing the most recent bank account statements for all accounts held by or in the name of SS Oceanwind, Bluewind, STS, BIP, Manning, Blue Ocean Consultants FZE and Rodney Marsh; and

(ii) affirming, to the best of his knowledge, that the monies paid into Court pursuant to Orders 1(b)–1(h) constitute all the monies currently held by or in the name of SS Oceanwind, Bluewind, STS, BIP, Manning, Blue Ocean Consultants FZE and Rodney Marsh; and

(j) in any proceedings which the second cross claimants bring in India including the matters the subject of these proceedings:

* + - * 1. Mr Sridhar will appear within 28 days of being served with the Indian proceedings;
				2. Mr Sridhar will accept service of the Indian proceedings on behalf of SS Oceanwind, Bluewind, STS, BIP and Manning;
				3. SS Oceanwind, Bluewind, STS, BIP and Manning shall appear within 28 days of being served with the Indian proceedings;
				4. Mr Sridhar will not invoke or rely on any limitation defence, not otherwise available in these proceedings;
				5. SS Oceanwind, Bluewind, STS, BIP and Manning shall not invoke or rely on any limitation defence, not otherwise available in these proceedings;
				6. Mr Sridhar will not object to or otherwise oppose the exercise of jurisdiction by the Courts of India;
				7. SS Oceanwind, Bluewind, STS, BIP and Manning shall not to object to or otherwise oppose the exercise of jurisdiction by the Courts of India;
				8. Mr Sridhar will not object to, or seek to prevent, the second cross claimants from pursuing the claims which have been made in these proceedings against the second cross defendants other than Mr Sridhar, SS Oceanwind, Bluewind, STS, BIP and Manning;
				9. SS Oceanwind, Bluewind, STS, BIP and Manning shall not to object to, or seek to prevent, the second cross claimants from pursuing the claims which have been made in these proceedings against the second cross defendants other than Mr Sridhar, SS Oceanwind, Bluewind, STS, BIP and Manning.
1. The Court notes the agreement between the second cross claimants and Mr Sridhar that:
2. The onus is on Mr Sridhar to satisfy whatever authorities need to be satisfied (including any authorities in Switzerland and India) to arrange for the funds referred to in Order 1 to be paid into Court.
3. The second cross claimants shall co-operate with any authorities as necessary to facilitate the funds referred to in Order 1 being paid into Court by Mr Sridhar.
4. The sums referred to in Order 1 are to be retained by the Court as security for the satisfaction of any order, award or judgment that may be made in these proceedings, or any proceedings which the second cross claimants bring in India including the matters the subject of these proceedings.
5. Within 3 days of the sums referred to in Order 1 being paid into Court, the Registrar shall notify each party in writing that the sum has been received.
6. Any payment made into Court pursuant to Order 1 shall be invested by the Court in an interest-bearing account with a bank in Australia agreed by the second cross claimants and Mr Sridhar or as directed by the Court in default of such agreement.
7. In any proceedings which the second cross claimants bring in India including the matters the subject of these proceedings, the second cross claimants are permitted to use all documents discovered, produced, filed or obtained in connection with these proceedings, and to that extent are released from their implied undertaking to only use those documents for the purposes of these proceedings.
8. On the conditions in Order 1 being satisfied, the second cross claimants are to pay Mr Sridhar’s costs of his interlocutory application filed on 8 March 2012.
9. In the event that the conditions in Order 1 are not satisfied, Mr Sridhar is to pay the second cross claimants’ costs of the application.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules* 2011.

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| IN ADMIRALTY |  |
|  DISTRICT REGISTRY |  |
|  |  |

second cross claim

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| BETWEEN: | SUZLON ENERGY LTD AND OTHERS NAMED in the SCHEDULEFirst Cross-claimant |
| AND: | SANJEEV BANGAD AND OTHERS NAMED IN THE SCHEDULEThird Cross-Defendant |

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| : |  |
| DATE: |  |
| PLACE: |  |

**REASONS FOR JUDGMENT**

**(REVISED FROM THE TRANSCRIPT)**

1. This is an application for a stay brought by the seventh second cross‑defendant, Rajagopalan **Sridhar** on 9 March 2013. The history of the proceedings has been set out in a number of other judgments that I have given, to which I referred in, among others, *Suzlon Energy Ltd v Bangad (No 3)* [2012] FCA 123 and the judgment in which I ordered that Mr Sridhar be joined and served outside the jurisdiction: *Beluga Shipping GmbH v Suzlon Energy Limited* [2009] FCA 1020.
2. Essentially there are two principal issues that have been raised on Mr Sridhar’s application for a stay. The first is whether or not each of the six second cross-claimants, who I have called the **Suzlon** parties, is required to establish that it has an individual proceeding or claim that falls within an item in the table to rule 10.42 of the *Federal Court Rules 2011* (Cth). The second issue is whether this Court is a clearly inappropriate forum, because it would be oppressive to conduct a trial of the issues between the Suzlon parties and Mr Sridhar here.
3. Mr Sridhar accepted that none of his rights was affected by the replacement of the *Federal Court Rules 1979* (Cth) with the current rules, and both parties have been prepared to have the application for a stay determined on the new Rules.

# The nature of the Suzlon parties’ claims against Mr Sridhar

1. The essence of the Suzlon party’s claims is that, in substance, Mr Sridhar masterminded a significant international maritime fraud, while working as a very senior executive in the Suzlon group of companies. The fraud allegedly involved interposing entities that were controlled by Mr Sridhar and his associates, particularly the third, second cross‑defendant, Sanjeev **Bangad**, who was one of his subordinates, in creating chains of charterparties between deponent owners and one of the Suzlon parties as ultimate subcharterer that were used to generate secret profits or commissions, paid to a number of companies that are now joined as the second cross-defendants; namely, ***SS Oceanwind*** Pte Limited, Genus Shipping Services Pvt Limited, **Bluewind** Enterprises (UK) Limited, **Sunshine Trade Services** Limited, **BIP Holdings** Limited and **Manning** Limited. A number of the charterparties for carriage of cargo for Suzlon companies, were entered into by previous parties to the proceedings, Headway Chartering (Canada) Ltd and its subsidiary, Headway Shipping Limited (**Headway**). One of the Suzlon companies guaranteed the charterer’s performance of those charterparties.
2. Mr Sridhar denies any involvement as a principal in any fraudulent activity claimed in respect of those Headway transactions, or, indeed, as I understand it, any other transactions complained of. However, he has accepted, for the purposes of the present application, that the Suzlon parties have established a *prima facie* case for relief within the meaning of r 10.43(4)(c).
3. Mr Sridhar argued that the Rules relating to service should be construed strictly in favour of the foreigner where there is any ambiguity. He relied on Lord Diplock’s remarks in *Siskina (Owners of the cargo on board) v* *Distos Compania Naviera SA* [1979] AC 210 at 254H-255B, namely, that rules providing for the long arm jurisdiction of the court are to be strictly construed in favour of the foreigner. However, in *Agar v Hyde* (2000) 201 CLR 552 at 570-571 [42]-[43], Gaudron, McHugh, Gummow and Hayne JJ, after referring to another of his Lordship’s speeches to similar effect, in *Amin Rasheed Shipping Corporation v Kuwait Insurance Co* [1984] AC 50 at 65-66, observed that considerations of comity and consequent restraint have informed many of the reported decisions about service out of the jurisdiction. But their Honours said that it was important to have regard to the fact that rules of court or local statutes that provided for service out were now a commonplace, at least in jurisdictions whose legal systems had been informed or influenced by common law traditions. They continued (201 CLR 571 [42]-[43]):

“… contemporary developments in communications and transport make the degree of ‘inconvenience and annoyance’ to which a foreign defendant would be put, if brought into the courts of this jurisdiction, ‘of a qualitatively different order to that which existed in 1885’.

The considerations of comity and restraint, to which reference has so often been made in cases concerning service out of the jurisdiction, will often be of greatest relevance in considering questions of forum non conveniens. **The starting point for the present inquiry, however, must be the terms of the Rules, not any general considerations of the kind just mentioned.**” (footnotes omitted) (emphasis added)

1. Mr Sridhar formally argued that the decisions of the Full Court in *Bray v F Hoffman-La Roche Ltd* (2003) 130 FCR 317 and *Ho v Akai Pty Limited (in liq)* (2006) 24 ACLC 1526, were incorrectly decided, insofar as they held that there need only be a *prima facie* case for the relief sought by a party on one of any number of the bases pleaded or contended to exist by that party. In *Ho* 24 ACLC 1535 [44]-[47] Finn, Weinberg JJ and myself refused to entertain the argument that *Bray* 130 FCR 317 was wrongly decided and we followed it. As a single judge I am, of course, bound by those decisions, and, in any event, I consider them to be correct. Moreover, the Rules have been remade by the judges of the Court since each of those decisions and repeat the same provisions as previously existed in O 8 r 3 to govern the issue of service out of the jurisdiction. For those reasons it seems to me that Mr Sridhar’s objection to the jurisdiction of the Court fails, he having accepted that each of the Suzlon parties has made out a *prima facie* case, at least on one of the grounds it claimed. It is not necessary for the Suzlon parties to do more.
2. Mr Sridhar also argued that the only evidence of loss or damage suffered in the jurisdiction that could possibly have been incurred by a Suzlon party, related to Suzlon Energy Australia Pty Limited when it paid or expended money in connection with the release of cargo. That occurred because the shipowner interpleaded in respect of the cargo when the initial dispute between Headway, as charterers, and the Suzlon parties developed in late October and early November 2008.
3. However, it seems to me that the concession Mr Sridhar made also accepted that each of the Suzlon companies has an established, at least, a *prima facie* case for relief on a cause of action that was justiciable in this Court. Accordingly, I reject the argument that each of the Suzlon parties has not established jurisdiction over Mr Sridhar for the purposes of the present application.

# The application for a stay

1. The parties developed and led a considerable deal of evidence going to, among other things, what might be Mr Sridhar’s defence to the proceedings. However, it is important to bear in mind that the issue on an application for a stay is based on Australia being a clearly inappropriate forum. That issue is not one that goes, or relates, to the merits of the underlying claim or defence.
2. Mr Sridhar is currently on bail in India having been arrested on 18 September 2009, coincidentally the same day that I delivered reasons for the orders I had made joining him to these proceedings early on 13 August 2009. He remained in custody, detained in prison on remand until 21 October 2011 when he was released on bail. Although apparently served on 18 September 2009 while at the police station with the originating documents, he said that he did not accept service. But I have no doubt that from then Mr Sridhar was aware of the proceedings and knew that they were on foot against him. The present application was filed by him on 9 March 2012, about two weeks after I published my reasons for ordering a stay against the three Swiss banks in *Suzlon Energy Limited v Bangad (No 3)* [2012] FCA 123.
3. Mr Sridhar’s bail conditions require him to report on a daily basis to police in Pune, India, where he lives. He says that his current assets are worth approximately AUD5.65 million, but none of those assets takes account of the moneys the subject of the claims made by the Suzlon parties in these proceedings. However, those assets that Mr Sridhar said were his are the subject of freezing orders made by the Indian criminal authorities, and, accordingly, his access to funds is limited. In particular, his ability to come to Australia to defend these proceedings, instruct any Australian lawyers or otherwise bring Australian lawyers to India to interview and take instructions from him is extremely limited by the impact of the Indian freezing orders and his bail conditions.
4. Mr Sridhar discussed his association with SS Oceanwind, Bluewind, Sunshine Trade Services, BIP Holdings and Manning in his principal affidavit in support of his application for a stay that he affirmed on 19 March 2012. He appears to have accepted that so far as SS Oceanwind was concerned, that company held whatever assets it had for the benefit of the Suzlon parties, and that he did not make any claim to funds that that company held, even though he and Mr Bangad were its directors and shareholders. He said in his first affidavit:

“As a general response to the allegations made against me in these proceedings, I say that throughout the period of my employment by Suzlon I acted on instructions from those senior to me within Suzlon and at all times in the interests of and for the benefit of Suzlon and not for my own personal gain or at the expense of the legitimate business interests of Suzlon.”

1. When counsel for the Suzlon parties drew attention to this as being a barely credible defence, further evidence was led by Mr Sridhar as to what he meant. That included his subsequent evidence that he did not mean that the other second cross defendant companies with which he was associated, apart from SS Oceanwind, held their assets, including bank accounts, beneficially or for the purposes of Suzlon. There is, therefore, a lively potential factual issue as to what Mr Srihar’s relationship with each of those companies was and whether or not the moneys it received into those companies’ bank accounts that came directly or indirectly from dealings that the Suzlon parties had with others, are moneys in respect of which the Suzlon parties will have any claim.

# Consideration

1. The case involves an intricate and detailed series of allegations as to Mr Sridhar’s role and the commercial transactions on which the Suzlon parties base their claims. Accordingly, I think it is fair to say that Mr Sridhar would find it difficult to participate in the defence of these proceedings without being able either to be present here or fund his lawyers to attend on him in India for the purposes of preparing the case for trial, and to attend at the trial. However, the impact of the freezing orders, including as part of the Indian criminal proceedings, to which Mr Sridhar is currently subject will be the same whether the trial occurs in India or here since they are general. He does not suggest that he would be able to have them varied, were the proceedings brought against him in India as opposed to them continuing here.
2. The considerations relevant to the grant of a stay on the ground of a clearly inappropriate forum were summarised by me in *Suzlon Energy v Bangad (No 3)* [2012] FCA 123 at [51]-[54], [66]-[72]. Underlying all of these, it seems to me, is the fundamental rationale for the exercise of the power to stay expressed by Mason CJ, Deane, Dawson and Gaudron JJ in *Voth v Manildra Flour Mills Pty Ltd* (1990) 171 CLR 538 at 554, namely: the avoidance of injustice between parties in the particular case.
3. As I said in *Bangad (No 3)* at [66]-[72], the current proceedings involve a multiplicity of parties. Mr Sridhar has accepted that the Suzlon parties have a *prima facie* case that he in fact, legally or *de facto*, controlled and still controls five of the corporate cross-defendants: SS Oceanwind, Bluewind, Sunshine Trade Services, BIP Holdings and Manning. None of those companies has yet appeared in these proceedings. But, for the reasons I have given in other judgments, I am satisfied on an *ex parte* basis that they have been properly joined as parties and that the Court has jurisdiction over them. They are proper and necessary parties. There is a real risk that these proceedings could miscarry if the Suzlon parties are left in the position of having to proceed here only against those companies. There is no evidence that any of those companies would be amenable to the jurisdiction of the Indian Courts or would be joined by them. Even assuming that that joinder would occur in India, the Suzlon parties have engaged in considerable expense and effort to join and serve those companies in these proceedings and have obtained freezing orders against them.
4. The obligation of the Court under s 22 of the *Federal Court of Australia Act 1976* (Cth), is, as I described in my earlier reasons, so far as possible, to determine all matters in controversy between the parties completely and finally and avoid a multiplicity of proceedings. The *prima facie* position appears to be, from the evidence before me, that Mr Sridhar does, and has in the past, exercised substantive control over each of those companies. In my opinion, the reality is that, on the present evidence, he controls them, in fact, and is able to determine whether or not they should participate in these proceedings. However, that position may change when all of the facts are known. There is evidence that suggests that there are substantial sums in bank accounts in Switzerland, that are subject to the claims of the Suzlon parties against the Swiss banks. The evidence also suggests that those funds are there because Mr Sridhar exercised his control over those companies, or some of them, to cause those moneys to be placed in the Swiss bank accounts and that the Suzlon parties have a *prima facie* case that they are entitled to those moneys as being the proceeds of fraudulent transactions of which they claim to have been the victims.
5. So far as Mr Bangad is concerned, I have no doubt that he is amenable to the jurisdiction of the Indian Courts. The parties seems to be in agreement that he is also on bail in India and to the extent that he has not appeared in these proceedings that is because he has chosen to adopt such a position.
6. In those circumstances, it seems to me that the avoidance of injustice between the parties in this proceeding, will be achieved only if all of the relevant parties are before the one Court. At the moment that is the position, albeit that Mr Bangad and those companies have not appeared, although each was properly joined, on the evidence before me at the moment. If injustice is to be avoided to the Suzlon parties, I am of opinion that I should require, as conditions of any stay to be granted to accommodate the particular difficulties under which Mr Sridhar is currently labouring through his bail conditions that Mr Sridhar undertake (1) to cause each of those companies to appear in these proceedings, (2) to cause those companies to submit to the jurisdiction of the Indian Court, in which, if a stay is granted, the Suzlon parties will commence proceedings against Mr Sridhar and those companies, (3) to cause those companies to appear in that Court, (4) not to avail of any limitation point that would not have been available to him or the companies in these proceedings, if they took it now. I should also impose a condition that the various companies pay into this Court, as security for the outcome of the Indian proceedings, the moneys that they now hold. That will ensure that those moneys cannot be dissipated. In bringing that about, it will be necessary for Mr Sridhar to satisfy whatever authorities in Switzerland or elsewhere, where those funds are located, that this Court’s condition of the stay he seeks is appropriate so that any current freezing orders should be varied in order that the money can be placed under the control of this Court. Mr Sridhar should be able to do that with the co-operation of the Suzlon parties or otherwise. Those sums will not be able to be dealt with or be paid out of the control of any foreign Court or overseas authority, except when they become available for payment into this Court, preferably into an interest bearing account.
7. Section 29 of the *Admiralty Act 1988* (Cth) enables the Court to make such an order in proceedings on a maritime claim in the associated jurisdiction of this Court: see too s 12 and *Beluga Shipping GmbH KS “Beluga Fantastic” v Headway Shipping Ltd (No 2)* (2008) 251 ALR 620 at 623 [12]-[13] per myself. For similar reasons, in his seminal speech in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 at 483C-E, Lord Goff of Chieveley said:

“But the underlying principle requires that regard must be had to the interests of all the parties and the ends of justice. And these considerations may lead to a different conclusion in other cases. For example, it would not, I think, normally be wrong to allow a plaintiff to keep the benefit of security obtained by commencing proceedings here, while at the same time, granting a stay of proceedings in this country, to enable the action to proceed in the appropriate forum.”

1. The purpose of s 29 of the *Admiralty Act* and the similar reasons given by Lord Goff underpin my opinion that a condition of the stay should be that Mr Sridhar causes the moneys in the Swiss banks and other accounts to be paid into this Court or be placed actually under the Court’s control, so that they will be available as security for the outcome of any proceedings that the Suzlon parties are required to take in India.
2. Mr Sridhar asked that the orders be made subject to his being able to apply to vacate any particular part of those conditions, to the extent that he is not able to arrange for their satisfaction. In my opinion, I should not make such a condition subsequent as part of the orders, that I will ask the parties to prepare to reflect the conditions for the stay I have proposed. It seems to me that on the evidence, Mr Sridhar actually is in a position to bring about the appearance and submission to the jurisdiction by each of SS Oceanwind, Bluewind, Sunshine Trade Services, BIP Holdings and Manning as well as the payment of the moneys into this Court or placing them under the Court’s ultimate control, if those moneys are currently subject to the control of other Courts or lawful authorities in foreign jurisdictions.
3. If Mr Sridhar does not bring that about, he will not have the benefit of the stay because the interests of all of the parties will not be served by a bifurcation of the proceedings so that they can only proceed in part here, and in part in India. On the other hand, Mr Sridhar will not be precluded from bringing a subsequent interlocutory application to vary the orders and conditions of the stay, but he will then carry an onus to establish that any such variation is appropriate.

# Conclusion

1. Unless the conditions I have proposed for the stay are complied with, it would not seem to me to be in the interests of justice to order that a stay be granted even though the impact on Mr Sridhar, himself, will make the conduct of the proceedings here difficult. The fact is, that this is a proceeding alleging a significant international maritime fraud with parties and assets located various jurisdictions, including companies and moneys that Mr Sridhar appears to control.
2. Given, as I have considered the position to be, he is in a position to bring the other companies into this jurisdiction and, then, to get them to submit, in India, any injustice that would fall on him from a continuation of these proceedings, were he to fail to do so and to otherwise fail to arrange for the moneys to be paid into Court as security for the outcome of the proceedings, will be of his own making and not as a result of a proceedings being unduly burdensome on him.
3. For these reasons, I consider that it would be appropriate to grant a stay, but only if the conditions that I have foreshadowed are satisfied.

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| I certify that the preceding twenty-seven (27) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Rares. |

Associate:

Dated: 31 January 2013

**SCHEDULE**

**SECOND CROSS CLAIM**

NSD 1670 of 2008

BETWEEN:

SUZLON ENERGY LTD

First Second Cross Claimant

SUZLON ENERGY AUSTRALIA PTY LTD

Second Second Cross Claimant

SUZLON INFRASTRUCTURE LIMITED (NOW KNOWN AS SYNEFRA ENGINEERING & CONSTRUCTION LTD)

Third SecondCross Claimant

SUZLON WIND ENERGY CORPORATION, USA

Fourth Second Cross Claimant

SUZLON STRUCTURES LTD

Fifth Second Cross Claimant

SE SHIPPING PTE LIMITED

Sixth Second Cross Claimant

AND:

SANJEEV BANGAD

Third Second Cross Defendant

SS OCEANWIND PTE LIMITED

Fifth Second Cross Defendant

GENUS SHIPPING SERVICES PVT LIMITED

Sixth Second Cross Defendant

RAJAGOPALAN SRIDHAR

Seventh Second Cross Defendant

BLUEWIND ENTERPRISES (UK) LTD

Eighth Second Cross Defendant

SUNSHINE TRADE SERVICES LIMITED

Ninth Second Cross Defendant

S RAAM KUMAR

Tenth Second Cross Defendant

BIP HOLDINGS LIMITED (BC# 1419807)

Eleventh Second Cross Defendant

MANNING LIMITED (BAHAMAS COMPANY NO 15633)

Twelfth Second Cross Defendant

FRANKFURTER BANKGESELLSCHAFT (SCHWEIZ) AG (A SWISS COMPANY)

Thirteenth Second Cross Defendant

MERRILL LYNCH BANK (SUISSE) SA (A SWISS COMPANY)

Fourteenth Second Cross Defendant

CREDIT SUISSE AG (A SWISS COMPANY)

Fifteenth Second Cross Defendant