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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 AMAPROP LIMITED,

4 Plaintiff,

5 v.

11 CV 2001 (PGG)

6 INDIABULLS FINANCIAL SERVICES  
7 LIMITED, et al.,

8 Defendants.

9 New York, N.Y.  
10 February 16, 2012  
11 11:16 a.m.

12 Before:

13 HON. PAUL G. GARDEPHE,

14 District Judge

15 APPEARANCES

16 ORRICK, HERRINGTON & SUTCLIFFE LLP

Attorneys for Plaintiff

17 BY: ROBERT L. SILLS

RICHARD S. GOLDSTEIN

18 WIGGIN and DANA LLP

Attorneys for Defendant ICICI Bank Limited

19 BY: STEVEN B. MALECH

STEVEN CAMEROTA

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1 (Case called; in open court)

2 THE COURT: All right. I am prepared to rule on  
3 Amaprop's petition for post-judgment relief seeking: (1) to  
4 compel ICICI Bank Limited to comply with the restraining notice  
5 served upon it by Amaprop; (2) to hold ICICI Bank in contempt  
6 for its failure to comply with that restraining notice; and (3)  
7 for an order requiring ICICI Bank to turn over funds belonging  
8 to Indiabulls to Amaprop.

9 Familiarity with the facts of this case, as set forth  
10 in this Court's previous orders, is presumed; and I will now  
11 set forth only a summary of the events and rulings most  
12 pertinent to the instant motion.

13 Amaprop Limited is a company organized under the laws  
14 of the Cayman Islands. Indiabulls Financial Services Limited  
15 is a company organized under the laws of India. Amaprop and  
16 Indiabulls were both parties to a "Shared Subscription and  
17 Shareholders Agreement" which contains a broad arbitration  
18 clause. In January 2010, a dispute arose between Amaprop and  
19 Indiabulls as to certain rights Amaprop wished to exercise  
20 under the agreement and, on January 19, 2010, Amaprop filed a  
21 request for arbitration with the International Center for  
22 Dispute Resolution of the American Arbitration Association here  
23 in New York.

24 On March 21, 2011, an arbitration panel sitting in New  
25 York rendered a final unanimous decision in Amaprop's favor

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1 against Indiabulls. (Complaint, Exhibit D; 12/22/11 Sills  
2 Decl. Paragraph 2) On March 23, 2011, Amaprop filed a petition  
3 to confirm the final arbitration award. On September 9, 2011,  
4 I issued an opinion and order confirming the arbitration award.  
5 (Docket No. 16) Pursuant to that opinion and order, the Clerk  
6 of the Court was directed to enter judgment for Amaprop, and  
7 judgment was in fact entered on September 14, 2011. (Docket  
8 No. 17) The judgment equaled approximately \$48.9 million.  
9 (Sills Decl. Paragraph 4) To date, Indiabulls has not paid any  
10 part of the award. (Id. Paragraph 5)

11 Amaprop issued restraining notices and information  
12 subpoenas to various banks with branches in New York, including  
13 ICICI Bank Limited, which it believed held Indiabulls assets.  
14 (Id. Paragraph 6-7) ICICI Bank is organized under the laws of  
15 the Republic of India (Def. Opp. Br. 2), and maintains an  
16 unincorporated branch office in New York City. (Sills Decl.  
17 Paragraph 16; Resp. Opp. Br. 2) The restraining notice and  
18 information subpoena issued to ICICI were served on October 4,  
19 2011, at ICICI's New York branch office located at 500  
20 Fifth Avenue in New York City. (Sills Decl. Paragraph 8).

21 On October 24, 2011, ICICI provided responses to the  
22 information subpoena, including documentation revealing that --  
23 as of that date -- ICICI held approximately \$18 million in  
24 funds belonging to Indiabulls in approximately 30 different  
25 accounts. (Id. Paragraph 11, Ex. J) ICICI advised Amaprop

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1 that it would not comply with the restraining notice with  
2 respect to any Indiabulls assets held in India. (Id., Ex. K)

3 On December 22, 2011, Amaprop moved by order to show  
4 cause for an order: (1) declaring the restraining notice to be  
5 valid and enforceable with respect to all funds and property  
6 held in India or elsewhere belonging to or held for the benefit  
7 of Indiabulls; (2) compelling ICICI to transfer all funds held  
8 for Indiabulls to ICICI's New York branch; (3) ordering ICICI  
9 to turn over to Amaprop any and all of Indiabulls' assets up to  
10 the judgment amount, together with all post-judgment interest;  
11 (4) holding ICICI in civil contempt of the restraining notice;  
12 and (5) granting Amaprop a compensatory fine for ICICI's  
13 contempt of the restraining notice up to the lesser of the  
14 amount by which the judgment amount is not satisfied out of the  
15 assets turned over to Amaprop and the amount transferred in  
16 violation of the restraining notice.

17 The first issue here is whether the Court has subject  
18 matter jurisdiction and personal jurisdiction over ICICI.  
19 Amaprop argues -- and ICICI does not dispute -- that "[b]ecause  
20 this proceeding seeks to compel compliance with the restraining  
21 notice issued under this Court's authority, and to enforce the  
22 judgment of this Court, this Court has jurisdiction over the  
23 proceeding." (Pet. Br. 7) As Amaprop notes, "[a] federal  
24 district court retains jurisdiction over supplementary  
25 proceedings to effectuate enforcement of its judgments."

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1 Cordius Trust v. Kummerfeld, No. 99 Civ. 3200(DLC), 2009  
2 Westlaw 3416235, at \*7(S.D.N.Y. October 23, 2009)(citing  
3 Peacock v. Thomas, 516 U.S. 349, 356(1996) ("Without  
4 jurisdiction to enforce a judgment entered by a federal court,  
5 the judicial power would be incomplete and entirely inadequate  
6 to the purposes for which it was conferred by the  
7 Constitution."))

8 Accordingly, this Court has subject matter  
9 jurisdiction over this proceeding.

10 Amaprop further argues that this Court has two bases  
11 for exercising personal jurisdiction over ICICI. First, ICICI  
12 was required to submit to personal jurisdiction as a condition  
13 of obtaining a license to operate a branch office in New York.  
14 (Pet. Br. 7 (citing Sills Decl., Ex. K)) Second, pursuant to  
15 New York C.P.L.R. Section 301, "New York courts may exercise  
16 general jurisdiction over a foreign corporation where that  
17 corporation is 'engaged in such a continuous and systematic  
18 course of "doing business" here as to warrant a finding of its  
19 "presence" in this jurisdiction.'" (Pet. Br. 7 (quoting JW  
20 Oilfield, 764 F.Supp.2d at 592 (quoting Simonson v.  
21 International Bank, 14 N.Y.2d 281, 285(N.Y. 1964)))) Courts in  
22 this district have held that operating a bank branch in New  
23 York constitutes a "continuous and systematic course of doing  
24 business." See JW Oilfield Equipment, LLC v. Commerzbank AG,  
25 764 F.Supp.2d 587, 592 (S.D.N.Y. 2011); Eitzen Bulk, A/S v.

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1 Bank of India, No. 09 Civ. 10118(AKH), 2011 Westlaw 4639823, at  
2 \*4 (S.D.N.Y. October 5, 2011).

3 Accordingly, I find that ICICI is subject to personal  
4 jurisdiction in New York.

5 The second issue is whether the restraining notice  
6 issued by Amaprop applies to Indiabulls' assets held by ICICI  
7 in India.

8 Amaprop argues that "[u]nder New York law, as declared  
9 by the New York Court of Appeals in Koehler, a 'court sitting  
10 in New York that has personal jurisdiction over a garnishee  
11 bank' may enforce post-judgment enforcement measures enumerated  
12 in Article 52 of the New York CPLR on property held by that  
13 bank outside of New York, including property held in other  
14 countries." (Pet. Br. 9 (citing Koehler v. Bank of Bermuda  
15 Ltd., 12 N.Y.3d 533, 541 (N.Y. 2009))) Because this Court has  
16 personal jurisdiction over ICICI, Amaprop contends that the  
17 restraining notice "is a classic example of the post-judgment  
18 enforcement measures to which Koehler, and subsequent cases  
19 applying Koehler, apply." (Pet. Br. 9)

20 In Koehler, a Pennsylvania citizen obtained a judgment  
21 in an action in the District of Maryland against a Bermuda  
22 resident. 12 N.Y.3d at 536. The plaintiff registered the  
23 judgment in this district and then sought to enforce it here  
24 through a turnover petition directed to the Bank of Bermuda  
25 Limited. Id. The Bank of Bermuda held stock certificates owed

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1 by the judgment debtor (the Bermuda resident). The bank argued  
2 that a New York court could not lawfully order a party other  
3 than the judgment debtor himself to deliver assets to New York,  
4 even if the court had personal jurisdiction over that party.  
5 Id. at 540. The court held that a "New York court with  
6 personal jurisdiction over a defendant may order him to turn  
7 over out-of-state property regardless of whether the defendant  
8 is a judgment debtor or a garnishee." Id. at 541.

9 Similarly, in JW Oilfield, a court in this district  
10 considered the petitioner's application for a turnover order  
11 requiring Commerzbank -- a German bank -- to remit funds held  
12 in a checking account for the judgment debtor, including  
13 accounts held in Germany. 764 F.Supp.2d at 590. Commerzbank  
14 argued that it should not be required to turn over funds held  
15 in Germany because the funds were held in a German bank at a  
16 German branch office. Id. at 591-92. Citing Koehler, the  
17 court found that because it has general personal jurisdiction  
18 over the bank based on the fact that the bank was engaged in a  
19 continuous and systematic course of doing business in New York,  
20 it may issue a turnover order under CPLR Section 5225(b)  
21 directing Commerzbank to turn over funds up to the amount of  
22 the judgment "regardless of those accounts are held in Germany  
23 or New York." Id. at 593.

24 ICICI argues that Koehler is distinguishable and, in  
25 any event, improperly failed to address the "separate entity

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1 rule." (Res. Br. 9) Under New York's separate entity rule,  
2 "'each branch of a bank [must be] treated as a separate entity  
3 for attachment purposes.'" JW Oilfield, 764 F.Supp.2d at 595  
4 (quoting Det Bergenske Dampskibsselskab v. Sabre Shipping  
5 Corp., 341 F.2d 50, 53 (2d Cir. 1965) (quoting Cronan v.  
6 Schilling, 100 N.Y.S.2d 474, 476 (Sup. Ct., N.Y. County 1950));  
7 see also Samsun Logix Corp. v. Bank of China, No. 105262/10,  
8 2011 Westlaw 1844061 (Sup. Ct, N.Y. County May 12, 2011).

9 In support of its separate entity argument, ICICI  
10 cites Samsun Logix, a New York County Supreme Court case, in  
11 which the court found that Koehler did not abrogate the  
12 separate entity rule in post-judgment enforcement proceedings.  
13 Samsun Logix, 2011 Westlaw 1844061 at \*3. However, a court in  
14 this district has expressly rejected the analysis in Samsun  
15 Logix, finding that where a judgment creditor is seeking a  
16 post-judgment enforcement against a bank that is subject to  
17 general personal jurisdiction in New York, the separate entity  
18 rule does not apply. See Eitzen Bulk, 2011 Westlaw 4639823, at  
19 \*5-6 ("[t]he court in Samsun Logix did discuss Koehler, but I  
20 do not agree with that court's analysis. In any event,...  
21 Samsun Logix [is not] authority binding upon me. In this  
22 proceeding, I am concerned with the procedures for  
23 post-judgment enforcement... Because Bank of India is subject  
24 to general personal jurisdiction in New York, I conclude that  
25 the separate entity rule has no application here.") Similarly,

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1 in JW Oilfield, the court noted that "Koehler indicates that  
2 New York courts will not apply the separate entity rule in  
3 post-judgment execution proceedings." JW Oilfield, 764  
4 F.Supp.2d at 595. The court further reasoned that, "[t]his  
5 Court has *in personam* jurisdiction over Commerzbank by virtue  
6 of its presence in New York, creating general jurisdiction over  
7 the entire entity... The order here would issue against the  
8 entity, not against the New York branch..." Id. at 596.

9 I agree with the reasoning in Eitzen Bulk and JW  
10 Oilfield and find that the separate entity rule does not  
11 require dismissal of Amaprop's petition. I further find that  
12 the other arguments that ICICI has made to distinguish Koehler  
13 are not persuasive. I conclude that the rule established in  
14 Koehler applies to the restraining notice at issue here.

15 The third issue is whether Indian law clearly  
16 prohibits ICICI from complying with the restraining notice.

17 ICICI bears the burden of demonstrating that India law  
18 would "clearly, plainly, and unmistakably" be violated by its  
19 compliance with the restraining notice. See Telenor Mobile  
20 Communications AS v. Storm LLC, 587 F.Supp.2d 594, 616  
21 (S.D.N.Y. 2008) ("'Inability to comply is...a long-recognized  
22 defense to a civil contempt citation.' However, the alleged  
23 contemnor must prove 'clearly, plainly, and unmistakably' that  
24 'compliance is impossible.'")

25 ICICI argues that Indian law precludes Amaprop from

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1 seeking post-judgment relief with respect to Indiabulls' assets  
2 held in India. (Resp. Br. 10) ICICI asserts that three Indian  
3 laws would be violated: Section 44A of the Indian Code of  
4 Civil Procedure of 1908; the stay of enforcement proceedings  
5 created by the Section 34 proceeding in India; and the Foreign  
6 Exchange Management Act of India, which I will refer to as  
7 FEMA. (Resp. Br. 10-13)

8 The parties have offered to the Court contrary expert  
9 opinions from Indian attorneys in support of their arguments.  
10 I will address each argument in turn.

11 Beginning with Section 44A of the Indian Code of Civil  
12 Procedure, ICICI notes that Section 44A of the Indian Civil  
13 Procedure Code of 1908 provides that only decrees passed by  
14 courts in "reciprocating territories" may be enforced in India  
15 as if they had been issued by an Indian court. (Resp. Br. 10)  
16 ICICI maintains that the United States is not a reciprocating  
17 territory, and the term "decree," as used in Section 44A,  
18 includes transfer and turnover orders. (Id. (citing Saraf  
19 Decl. Paragraphs 10, 11; Isaac Decl. Paragraphs 9, 10))  
20 Accordingly, ICICI argues that "Amaprop cannot evade the  
21 requirements of Indian law through a restraining notice issued  
22 in New York and/or a court order from the Southern District of  
23 New York, but instead must seek a decree or order from an  
24 Indian court that would permit the freezing, transfer or turn  
25 over of [Indiabulls] assets held in India by ICICI." (Id.

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1 (citing Saraf Decl. Paragraph 12; Isaac Decl. paragraph 11;  
2 Trivedi Op. paragraph 2))

3 Amaprop maintains that, "as is apparent on the face of  
4 that statute, [Section 44A] simply provides a procedural means  
5 by which the holder of a foreign judgment may have it enforced  
6 through the Indian judicial system without a plenary  
7 proceeding." (Pet. Reply Br. 6) The statute does not, Amaprop  
8 contends, prohibit an Indian company from complying with orders  
9 of a court in another jurisdiction in which it does business.  
10 (Id.) Amaprop notes that "ICICI cites no statute or decision,  
11 under either Indian or New York law, to support the assertion  
12 that complying with an order of a New York court constitutes  
13 enforcement in India, nor could it do so." (Pet. Supp. Br. 4)

14 As Amaprop correctly notes, it is not seeking to  
15 enforce the judgment in India, but rather in New York. Under  
16 New York law, the situs of the funds at issue is in New York.  
17 See Hotel 71 Mezz Lender LLC v. Falor, 14 N.Y.3d 303, 316 (N.Y.  
18 2010) ("Where...the garnishee owes the judgment debtor a  
19 debt...the garnishee's physical presence in New York fixes New  
20 York as the situs of the debt.") As noted above, this Court  
21 has personal jurisdiction over ICICI.

22 Amaprop's expert, Neerav Merchant, opines that  
23 "Section 44A of the code does not prohibit an Indian company  
24 from obeying the decree of a foreign court in a jurisdiction  
25 outside of India in which that company does business. Amaprop

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1 has not attempted to enforce either the foreign award or the  
2 foreign judgment in the Indian courts." (Merchant Decl.  
3 Paragraph 7(A)(vi)) Mr. Merchant explains that in order to  
4 enforce the award in the Indian courts, Amaprop would be  
5 required to proceed under Section 48 of the Arbitration Act.  
6 (Id. Paragraphs 7(A)(viii), 7(C)(i)) Amaprop has not  
7 instituted any such proceeding in India.

8 (Id. Paragraph 7(c)(i))

9 In discussing Section 44A's application to this  
10 dispute, ICICI's experts operate under the mistaken presumption  
11 that Amaprop seeks to enforce this Court's judgment in India.  
12 (See Saraf Decl. Paragraphs 10-12; Isaac Decl. Paragraphs 9-11;  
13 1/11/12; Trivedi Decl. at I). Amaprop, instead, seeks an order  
14 of this Court to compel a bank present in New York to comply  
15 with a restraining notice and turnover order issued under New  
16 York law to enforce a New York judgment confirming an  
17 arbitration award issued at an arbitration held in New York and  
18 governed by New York law.

19 I find that Amaprop's efforts to collect on the  
20 judgment do not constitute an attempt to enforce the judgment  
21 in India.

22 ICICI also maintains that under Indian law, Amaprop  
23 cannot attempt to enforce the arbitration award in India  
24 because Indiabulls and Amaprop are currently engaged in  
25 proceedings before the Delhi High Court and Indian law imposes

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1 an automatic stay on enforcement activities pending the  
2 resolution of that matter. (Resp. Br. 12-13)

3 Amaprop argues that the "pendency of the Section 34  
4 proceeding would only act to stay any attempt by Amaprop to  
5 reduce the award to a judgment in the Indian courts under  
6 Section 48 of the Indian Arbitration Act. Amaprop has not yet  
7 attempted to do so." (Pet. Reply Br. 7)

8 As I previously noted, ICICI's argument fails because  
9 the Court finds that Amaprop is not seeking to enforce the  
10 arbitration award in India under Indian law, but rather in New  
11 York under New York law.

12 ICICI also argues that FEMA prohibits ICICI from  
13 freezing, transferring, or turning over Indiabulls' assets  
14 without the approval of the Reserve Bank of India. (Resp. Br.  
15 11) In its surreply submission, ICICI maintains that certain  
16 regulations promulgated under FEMA -- specifically,  
17 Regulation 4 of the FEMA regulations, which relate to  
18 permissible capital account transactions; and Regulation 3 of  
19 the Foreign Exchange Management Regulation, which relates to  
20 remittance of assets -- prohibit ICICI from turning over the  
21 funds.

22 According to ICICI's expert, Robi Isaac, FEMA  
23 regulates "all foreign exchange transactions to/from India,  
24 more particularly the remittance of monies outside India by a  
25 person resident in India." (Isaac Decl. Paragraph 5(i))

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1 Mr. Isaac notes that the regulations promulgated under FEMA  
2 provide that "a person resident outside India may sell or  
3 transfer shares of an Indian company, without the prior  
4 permission of the Reserve Bank of India, to a person resident  
5 in India subject to the adherence to pricing guidelines,  
6 documentation and reporting requirements for such transfers as  
7 specified by the Reserve Bank of India from time to time."  
8 (Id. Paragraph 5(ii)) Mr. Isaac refers to Reserve Bank of  
9 India Circular No. 49 dated May 4, 2010, which sets a maximum  
10 price that can be paid for a transfer of shares that are not  
11 listed on a recognized stock exchange in India. (Id.  
12 Paragraph 5 (iii)) Mr. Isaac avers that "a certificate in  
13 compliance with the provisions set forth [in the circular] also  
14 needs to be submitted to ICICI...by Indiabulls before ICICI can  
15 engage in a foreign exchange transaction such as  
16 remitting/turning over the assets of Indiabulls as directed  
17 under the restraining notice." (Id. Paragraph 5(iv)) According  
18 to Mr. Isaac, complying with the restraining notice and any  
19 subsequent turnover order without obtaining such a certificate  
20 would violate FEMA.

21 In contrast, Amaprop argues that "[n]othing in those  
22 newly-raised regulations...states that, in order for a bank to  
23 comply with a foreign order on a foreign judgment, the bank  
24 must seek Reserve Bank of India approval." (Pet. Supp. Br. 9  
25 (citing Merchant Decl. Paragraph 7(B)(iv)) Indeed,

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1 Mr. Merchant opines that "[t]here is no provision under FEMA  
2 which requires a declaration from Indiabulls in order for ICICI  
3 to comply with the restraining notice or a turnover order  
4 issued by the New York court. Any such requirement would not  
5 only be impractical, but would reward the dishonesty of a  
6 defaulting judgment debtor." (Merchant Decl. Paragraph 7(B)  
7 xvii))

8 Mr. Merchant explains that the Foreign Exchange  
9 Management regulations relating to transfer or issue of  
10 security issued by a person resident outside India contain the  
11 policy for Foreign Direct Investment, or FDI. Mr. Merchant  
12 notes that "[t]he investment by a person resident outside of  
13 India resulting in issuance of shares/securities by an Indian  
14 company is, among other things, permitted under FDI, subject,  
15 of course, to the terms and conditions specified therein."  
16 (Merchant Decl. Paragraph 7(B)(iv)) According to Mr. Merchant,  
17 the Reserve Bank of India recently issued Circular No. 43 dated  
18 November 4, 2011 -- to which none of ICICI's experts refer --  
19 which supersedes circular No. 49, on which ICICI's experts  
20 rely. (Id. Paragraph 7(B)(v)) Mr. Merchant explains that  
21 Circular No. 43 "liberalized the procedure and policy governing  
22 FDI in India... Thus, to the extent that the investment by a  
23 person resident outside India was originally in accord with the  
24 FDI policy prevailing at the time the investment was made, the  
25 transfer of shares from a nonresident of India to a resident of

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1 India is permitted without Reserve Bank of India approval."  
2 (Id. Paragraph 7(B)(v)-(vi)) Mr. Merchant notes that  
3 Indiabulls warranted in the Shareholders Agreement that  
4 Amaprop's investment was in compliance with FEMA and its  
5 implementing regulations, (Id. 7(B)(vii)(citing Shareholders  
6 Agreement Section 4.2)), and that "the arbitrators expressly  
7 held that the Reserve Bank of India regulations at the time  
8 Amaprop exercised its put option fully allowed Indiabulls to  
9 make the required contractual payment." (Id.)

10 Moreover, Mr. Merchant takes the position that even if  
11 Indiabulls was required to obtain Reserve Bank of India  
12 permission to pay the full amount of the arbitration award, the  
13 June 24, 2011 correspondence from the Reserve Bank of India  
14 indicates that "the Reserve Bank of India has left it to the  
15 parties to mutually agree and arrive at the price and to carry  
16 out the transaction." (Id. Paragraph 7(B) (ix)-(x)) The  
17 June 24, 2011 letter from the Reserve Bank of India states, "we  
18 advise that the parties to the agreement may arrive at mutually  
19 agreed price in accordance with the extant provisions of FEMA,  
20 1999 rules/regulations/guidelines issued thereunder..." (Tiwari  
21 Decl. Ex. 3B, at 2) Mr. Merchant's interpretation of the  
22 Reserve Bank of India letter is reasonable. And, as  
23 Mr. Merchant notes, the parties have already agreed to the  
24 price as set forth in the Shareholders Agreement and the  
25 arbitration award. Finally, Mr. Merchant opines that under the

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1 provisions of the more liberal Circular No. 43, "Indiabulls  
2 would not be subject to any penalties under FEMA if it were to  
3 pay the judgment...[which should] assuage ICICI's concern about  
4 any 'derivative' liability that complying with the restraining  
5 notice and a turnover order would create."

6 The Court is confronted with conflicting affidavits  
7 from Amaprop's and ICICI's experts. The Court finds that the  
8 reading offered by Mr. Merchant appears reasonable and the  
9 Court has no reason to distrust it. The Court notes that  
10 ICICI's experts' reasoning on the first two issues of Indian  
11 law discussed above, which was based on the erroneous premise  
12 that Amaprop is seeking to enforce the judgment in India rather  
13 than in New York, does not inspire confidence. Mr. Merchant's  
14 position is also consistent with the position taken by the  
15 arbitrators. See 12/22/11 Sills Decl., Ex. A, at 13, 56)

16 As noted above, in Telenor Mobile, Judge Lynch noted  
17 that while inability to comply with a court's order constitutes  
18 a defense to a civil contempt citation, the alleged contemnor  
19 bears the burden of proving "clearly, plainly, and  
20 unmistakably" that "compliance is impossible." Telenor Mobile,  
21 587 F.Supp.2d at 616. Thus, in arguing that it could not  
22 comply with the restraining notice because to do so would  
23 violate Indian law, ICICI bears the burden of proving  
24 compliance would, in fact, violate Indian law. ICICI has not  
25 met that burden here.

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1           Finally, ICICI contends that principles of  
2 international comity require deference to Indian law. (Resp.  
3 Opp. Br. 13-16) ICICI argues that under the five-factor test  
4 set out in Minpeco, S.A. v. Conticommodity Services, Inc., 116  
5 F.R.D. 517, 526-27 (S.D.N.Y. 1987), for evaluating questions of  
6 comity, this Court should deny Amaprop's petition for  
7 post-judgment relief. (Resp. Br. 14-16) ICICI maintains that  
8 "[t]he U.S. has a limited interest in this case, if at all"  
9 given that Amaprop is a Cayman Islands company and both ICICI  
10 and Indiabulls are Indian companies, whereas "[i]t is axiomatic  
11 that India has a vital national interest in seeing that its  
12 regulated financial institutions are not forced to violate  
13 Indian law." (Id. at 15)

14           Amaprop first argues that ICICI has not established  
15 that any Indian laws would be violated by its compliance with  
16 this Court's orders. (Pet. Reply Br. 7) Amaprop further  
17 asserts that even if there was such a law, contrary to ICICI's  
18 assertions, "New York has a vital interest in enforcing  
19 judgments rendered within the state, especially those arising  
20 out of New York arbitrations governed by New York law, and both  
21 state and federal law strongly support the enforceability of  
22 arbitration awards." (Id. at 8) Finally, Amaprop argues that  
23 "Indiabulls... agreed that its dispute with Amaprop would be  
24 heard in New York under New York law. Moreover, by obtaining a  
25 license to operate a federal branch, ICICI obtained the

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1 benefits of conducting its banking business here and took on  
2 the burden of complying with New York law...ICICI has not  
3 demonstrated that any Indian law would be violated by its  
4 compliance with an order of this Court granting the relief  
5 Amaprop seeks." (Pet. Supp. Br. 11)

6 The Minpeco test applies "[w]here two states have  
7 jurisdiction to prescribe and enforce rules of law and the  
8 rules they may prescribe require inconsistent conduct upon the  
9 part of a person." Minpeco, 116 F.R.D. at 522. The Court  
10 agrees with Amaprop that because ICICI has not demonstrated  
11 that any Indian law would be violated by its compliance with  
12 the restraining notice and any turnover order at issue, the  
13 Court need not perform the balancing test set forth in Minpeco.  
14 See JW Oilfield, 764 F.Supp.2d at 596 (applying the Minpeco  
15 test to a turnover order but noting that the test "was adopted  
16 in this circuit 'for evaluating the propriety of an order  
17 directing production of information or documents located abroad  
18 where such production would violate the law of the state in  
19 which the documents are located.'" (quoting United States v.  
20 Davis, 767 F.2d 1025, 1033-34(2d Cir. 1985)) Even if the Court  
21 were to apply the Minpeco factors here, the Court agrees with  
22 Amaprop that principles of comity do not require the Court to  
23 deny Amaprop's petition.

24 Amaprop seeks an order holding ICICI in civil  
25 contempt. (Pet. Br. 11-16) Amaprop correctly notes that "[a]

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1 party may be held in civil contempt for failure to comply with  
2 a court order if (1) the order the contemnor failed to comply  
3 with is clear and unambiguous, (2) the proof of noncompliance  
4 is clear and convincing, and (3) the contemnor has not  
5 diligently attempted to comply in a reasonable manner." (Pet.  
6 Br. 11 (quoting Paramedics Electromedicina Comercial, Limited  
7 v. GE Medical Systems Information Technologies, 369 F.3d 645,  
8 655 (2d Cir. 2004)))

9           Indeed, as Amaprop notes, under New York law,  
10 "[r]efusal or willful neglect by any person to obey a  
11 restraining notice 'shall...be punishable as a contempt of  
12 court' because a restraining notice 'operates like an  
13 injunction.'" (Pet. Br. 11 (quoting Adidas Sportschufabriken  
14 v. New Generation, No. 88 Civ. 5519 (PKL), 1995 Westlaw 646213,  
15 at \*3 (S.D.N.Y. November 3, 1995) (quoting CPLR Section 5251)))  
16 "The only defenses to civil contempt are that (1) the order  
17 allegedly violated is unclear; (2) the party charged with  
18 contempt had no knowledge of the order, or (3) proof of  
19 noncompliance fails to meet the clear and convincing standard  
20 of proof." JSC Foreign Economics Association Technostroyexport  
21 v. International Development and Trade Services, Inc., No. 03  
22 Civ. 5562 (JGK) (AJP), 2006 Westlaw 1206372, at \*6 (S.D.N.Y.  
23 May 1, 2006).

24           ICICI cites Chao v. Gotham Registry, Inc., 514 F.3d  
25 280 (2d Cir. 2008) for the proposition that "[t]he requirement

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1 that the decree be clear and unambiguous is a requirement that  
2 the legal basis upon which the relief is demanded be  
3 unequivocal in its application to the dispute." (Resp. Opp.  
4 Br. 16 (citing Chao, 514 F.3d at 291)) In Chao, the Second  
5 Circuit noted that "[i]f...the law relied on by the party  
6 seeking contempt is ambiguous in its application to the  
7 challenged conduct, contempt will not lie." 514 F.3d at 292  
8 (citing Rajah Auto Supply Company v. Grossman, 207 F.84 (2d  
9 Cir. 1913) (per curiam) (affirming denial of contempt motion  
10 where plaintiff's case was too doubtful on the facts and the  
11 law to warrant contempt); United States ex rel. IRS v. Norton,  
12 717 F.2d 767, 774, (3d Cir. 1983) ("any ambiguity in the law  
13 should be resolved in favor of the party charged with  
14 contempt.") The court further found that "it seems  
15 unreasonable that [the defendant] be required, on pain of  
16 contempt, to arrive at a correct answer to such a difficult  
17 question of first impression." Id.

18 Here the Court agrees with ICICI that it would be  
19 unreasonable to find ICICI in contempt at this stage, given the  
20 issues regarding whether Indian law prohibits ICICI from  
21 complying with the restraining notice. Moreover, it appears to  
22 this Court that ICICI has exercised reasonable diligence in  
23 responding to Amaprop's restraining notice and information  
24 subpoena, in that it provided responsive information concerning  
25 Indiabulls' assets in India and raised its concerns that Indian

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1 law would be violated by its compliance with the restraining  
2 notice and any turnover order. Accordingly, the Court will not  
3 hold ICICI in civil contempt at this point.

4 Nevertheless, having determined that ICICI has failed  
5 to demonstrate that Indian law prohibits it from complying with  
6 Amaprop's restraining notice, ICICI must immediately comply  
7 with the restraining notice. If ICICI does not comply, it will  
8 be held in contempt and coercive fines will be assessed. We  
9 will enter an order consistent with this ruling later today.

10 Is there anything further?

11 MR. SILLS: There's nothing further for Amaprop, your  
12 Honor.

13 THE COURT: Anything on behalf of ICICI?

14 MR. MALECH: No, your Honor.

15 THE COURT: All right. Court adjourned.

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