

2025 SCC OnLine Bom 5565

In the High Court of Bombay
(BEFORE M.S. SONAK AND ADVAIT M. SETHNA, JJ.)

Imax Corporation ... Appellant;

Versus

E-City Entertainment (I) Pvt. Limited and Others ...
Respondents.

Commercial Arbitration Appeal (Carba) (L) No. 38267 of 2024

Decided on December 30, 2025, [Reserved on: 19th November
2025]

Advocates who appeared in this case :

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Shanay Shah, Mr. Rahul Mahajan, Mr. Amit Surve & Adv. Simran Gulabani i/by Fortitude Law Associates for the Appellant.

Mr. Vikram Nankani, Senior Advocate a/w Mr. Sumeet Nankani, Ms. Pooja Tidke, Mr. Krushi N. Barfiwala, Mr. Shlok Bodas, Ms. Alisha Mohite and Ms. Ishika Lodha i/by Parinam Law Associates for Respondent No. 1.

Mr. Navroz Seervai, Senior Advocate a/w Mr. Saket Mone, Ms. Gulnar Mistry, Mr. Shrey Shah, Ms. Shrushti Thorat and Mr. Archit Rao i/by Vidhi Partners for Respondent Nos. 2 & 3.

Mr. Sharan Jagtiani, Senior Advocate a/w Mr. Saket Mone, Mr. Shrey Shah, Ms. Shrushti Thorat, Mr. Akshay Doctor, Mr. Siddharth Joshi, Ms. Avanti Divan, Ms. Samriddhi Lodha and Mr. Archit Rao i/by Vidhi Partners for Respondent No. 4.

The Judgment of the Court was delivered by

M.S. SONAK, J.:— Heard learned Counsel for the parties.

PRELIMINARIES

2. This Commercial Arbitration Appeal is directed against the judgment and order dated October 24, 2024 passed by the learned Single Judge disposing of Commercial Arbitration Petition No. 414 of 2018 along with Chamber Summons No. 99 of 2019, 100 of 2019 and 101 of 2019 under Sections 47 to 49 of the Arbitration and Conciliation Act, 1996 (said Act), thereby refusing to recognise and enforce three foreign arbitral awards dated February 09, 2006, August 24, 2007 and March 27, 2008 [foreign awards] made by the ICC Arbitral Tribunal.

3. The 2nd and 3rd Respondents objected to the maintainability of this Appeal. By order dated April 23, 2025, made by the Coordinate Bench of this Court comprising A. S. Chandurkar, J (as His Lordship

then was) and M. M. Sathaye, J, rejected the objections regarding maintainability and admitted this Appeal *qua* all the Respondents.

4. This Court's order dated April 23, 2025, rejecting the objections to maintainability and admitting this Appeal was challenged *inter alia* by the first Respondent by instituting Petition(s) for Special Leave to Appeal (C) No. (s) 22422 of 2025 before the Hon'ble Supreme Court.

5. By order dated September 16, 2025, the Hon'ble Supreme Court disposed of the Special Leave Petition by passing the following order:—

"1. Petitioners challenge the judgment and order dated 23.04.2025 in Commercial Arbitration Appeal (L) No. 38267/2024 passed by the High Court of Judicature at Bombay, titled "IMAX Corporation v. E-City Entertainment (I) Pvt. Limited".

2. We have heard learned counsel for the parties.

3. Having considered the contentions made across the Bar, we are not inclined to interfere with the impugned order, clarifying that all contentions on merits and law, including that of the maintainability of enforcement or executability of the Foreign Award under Section 48 as envisaged under Section 50 of the Arbitration and Conciliation Act, 1996 (for short, the Act, 1996), are left open qua the petitioner.

4. We further add that the issue of maintainability of the appeal, should the need so arise, shall be considered at an appropriate stage by this Court. We notice that the parties have been litigating for the last 20 years. As such, we request the High Court to decide the appeal expeditiously and preferably within a period of six months.

5. Accordingly, with the aforementioned observation, the present Special Leave Petition is disposed of.

6. Pending application(s), if any, shall stand disposed of."

6. This Appeal was then mentioned before the first Court presided over by the Hon'ble the Chief Justice and taken up on October 10, 2025. On that date, an order was made not to place this Appeal before the Bench of which Gautam A. Ankhad, J was a member.

7. A praecipe was moved on the administrative side to the Hon'ble the Chief Justice for the constitution of a Bench to take up this Appeal. Directions were issued on November 06, 2025, for listing this Appeal before the Division Bench presided over by M. S. Sonak, J, under the caption "expedited matters" on November 10, 2025.

8. Accordingly, this Appeal was placed before this Bench on November 10, 2025, and we were apprised of the Hon'ble Supreme Court's above-quoted order dated September 16, 2025, for expedited hearing of this Appeal.

9. In deference to the order, we requested the learned Counsel for

the parties to commence the final arguments in this Appeal. At their request, however, we deferred the hearing to 03.00 pm and commenced the final arguments in this Appeal on November 10, 2025, at 03.00 pm.

10. Final arguments were heard in the afternoon sessions on 10, 11, 12, 13, 18, and 19 November 2025, as during the morning sessions, we had to attend to other matters on the cause list. The final arguments concluded on 18 November 2025, and the matter was closed for orders on that date.

GENESIS

11. This Appeal arises in the facts and circumstances set out briefly hereafter.

12. On September 28, 2000, the Appellant - IMAX Corporation ("IMAX") entered into an agreement (Master Agreement) with the first Respondent, i.e. M/s. E-City Entertainment (I) Pvt. Ltd. ("E-City"), providing for the lease of six IMAX systems for 20 years, with an option to extend for a further 10 years.

13. Disputes arose between IMAX and E-City during 2003-2004, and IMAX's claim of USD 18.3 million, with interest thereon, was referred to arbitration before the ICC, London.

14. The ICC Arbitral Tribunal disposed of the arbitration proceedings by passing the following three awards [collectively called the foreign awards]:—

- (a) *On 09/02/2006, the Arbitral Tribunal issued a partial Award (final as to liability-the "Liability Award") stating that the Master Agreement in fact gave rise to legally binding obligations and that E-City Entertainment had breached its obligation to lease all of the six (6) systems required under the Master Agreement. The Liability Award ordered an assessment of damages suffered by IMAX.*
- (b) *On 24/08/2007, the Arbitral Tribunal issued an Award on the damages phase of the arbitration (the "Quantum Award") holding that E-City Entertainment was required to pay IMAX a sum of U.S. \$ 9,406,148.31 (approximately INR 62,22,21,478.86) plus interest at 2% in excess of the prime rate in Canada on that amount, as provided for in the Respondent's contract.*
- (c) *After further briefing on the issue of costs and interest, a Final Arbitral Award was declared on 27/03/2008 (the "Final Award") holding that Respondent, E-City Entertainment is liable to pay to the Petitioner IMAX (i) U.S. \$ 1,118,558.54 (approximately INR 7,39,86,305.03) by way of interest up to and including 30/09/2007, (ii) U.S. \$ 2,512.60 (approximately INR 1,66,215.69) per day from 01/10/2007 until payment of the*

Award amounting to U.S. \$ 9,406,148.31 (approximately INR 62,22,21,478.86) (iii) costs by way of attorney's fees, export fees and related expenses in the sum of U.S. \$ 84,789.21 (approximately INR 56,08,854.62) (iv) U.S. \$ 400,000 (approximately INR 2,64,53,245.69) fixed by the ICC as the costs of the arbitration to the Respondent. The total amount payable by Respondent No. 1 E-City Entertainment is U.S. \$ 11,309,496.06 plus interest at the rate of U.S. \$ 2,512.60 per se from 01/10/2007. As of 31/03/2018, the total amount payable by E-city Entertainment is U.S. \$ 20,864,913.86."

15. The Appellant-IMAX argues that during the Arbitration Proceedings before ICC, London, and solely to obstruct the recovery of damages from E-City, the 2nd and 3rd Respondent-Companies were registered on 29 April 2005 and 8 June 2006, respectively [*related companies*], and the substantial assets of E-City [property valued at Rs. 170 Crores and other assets at Rs. 38.5 Crores] were improperly divested and diverted to these related companies through a series of demerger schemes [approved by this Court on June 20, 2007, and August 31, 2007], leaving E-City with assets worth only USD 769,287.

16. IMAX argues that the relationship between the companies is evident because, inter alia, the fourth Respondent company [*holding company*], which is held and controlled by Dr. Chandra and his family, controls E-city, and has approximately 99% of the shares in the 2nd and 3rd Respondent companies. IMAX submits that the improper diversion and divesting of E-City's assets valued at Rs. 210 Crores and their transfer to related companies was to retain control over such assets, but at the same time to try to render such assets "execution proof" or "immune from execution".

17. On July 22, 2008, E-City filed an Arbitration Petition (L) No. 525 of 2008 under Section 34 of the said Act to challenge the foreign awards. IMAX objected to the invocation of Part I (Section 34) of the said Act by contending that this was a case of enforcement of foreign arbitral awards, and therefore, Part II and not Part I of Chapter I of the said Act would govern the review of such foreign arbitral awards.

18. By order dated June 10, 2013, the learned Single Judge of this Court [Anup Mohta, J], overruled the Appellant's objection and held that Part I of Chapter I of the said Act would govern the review of the foreign awards. Accordingly, E-City's application under Section 34 of the said Act was held to be maintainable.

19. IMAX challenged the order dated June 10, 2013, by instituting Special Leave Petition No. 34009 of 2013 before the Hon'ble Supreme Court on November 10, 2013. On December 19, 2013, the Hon'ble Supreme Court granted ex parte ad interim relief by order that "*Further*

proceedings in Arbitration Petition (L) No. 525 of 2008 before the High Court shall remain stayed."

20. On March 10, 2017, the Hon'ble Supreme Court allowed IMAX's Special Leave Petition, holding that Part II and not Part I of Chapter I of the said Act would govern the review of such foreign awards made in England by following the Singapore Law. Accordingly, the Hon'ble Supreme Court dismissed E-City's Arbitration Petition (L) No. 525 of 2008 filed under Section 34 of the said Act.

21. On April 02, 2018, IMAX filed the present Commercial Arbitration Petition No. 414 of 2018 [IMAX's Petition] under Sections 47, 48 and 49 contained in Part II of Chapter I of the said Act for recognition and enforcement of the three ICC London awards before this Court.

22. In addition to E-City, against whom the three foreign awards were directed, the IMAX also impleaded the 2nd, 3rd and 4th Respondents as parties to this Commercial Arbitration Petition No. 414 of 2018. IMAX contended that a rolled-up Petition or a consolidated Petition seeking recognition and enforcement of foreign arbitral awards was maintainable, considering the law laid down in *Government of India v. Vedanta Ltd.*¹

23. IMAX, while admitting that the 2nd, 3rd and 4th Respondents were not parties to the arbitration agreement or the arbitration proceedings before the Foreign Arbitral Tribunal, argued that in the execution of the foreign awards, IMAX was entitled to go against E-city's substantial assets improperly divested and diverted to the related companies during the pendency of foreign arbitration proceedings solely to obstruct the execution of the foreign awards that were made or liable to be made against E-City. IMAX urged that, in such extraordinary facts and circumstances, a case was made out to lift the corporate veil by relying on the law laid down in *Balwant Rai Saluja v. Air India Ltd.*² and *Bhatia Industries & Infrastructure v. Asian Natural Resources (India) Ltd. & Vitol S.A.*³

24. On July 21, 2018, E-City objected to recognition and/or enforcement of the three foreign awards broadly on the following grounds:—

- (a) That IMAX's Petition was barred by the limitation period prescribed under Article 137 of the Schedule to the Indian Limitation Act, 1963 ("Limitation Act");
- (b) The master agreement between the parties was void for want of RBI clearance mandated under the Foreign Exchange Management Act, 1999 ("FEMA"). Furthermore, the Arbitral Tribunal did not accept the oral testimony of one of E-City's

expert witnesses, even though IMAX did not cross-examine such a witness, and this constituted unfairness. On these two grounds, IMAX urged that the enforcement of the foreign awards would be contrary to the public policy of India, and their enforcement ought to be refused under Section 48(2)(b) of the said Act.

(c) The IMAX's Petition, in essence, challenged the scheme of arrangement [demerger] already sanctioned by this Court, which was not permissible.

(d) The invocation of the arbitration was invalid under the Law of Singapore, i.e. the seat of arbitration, as the Appellant had already merged with IMAX Corporation.

25. The 2nd, 3rd, and 4th Respondents objected to their impleadment or the levy of execution against the E-City's properties transferred to them. On 23 July 2018, they filed a Chamber Summons seeking to have their names removed as party-Respondents in the Enforcement/Execution Petition.

26. A Learned Single Judge, by order dated 13 November 2019, (Kulkarni, J's order) held that IMAX's Petition was filed within the prescribed period of limitation. This order determined that the 12-year period specified under Article 136 in the Schedule to the Limitation Act would apply. Additionally, this order also ruled that even if the three-year period under Article 137 were applicable, IMAX's Petition was still filed within that timeframe, as the substantive cause of action for filing this Arbitration Petition arose only on March 10 2017, when the Hon'ble Supreme Court set aside Mohta J's order dated June, 10 2013, holding that foreign awards could be challenged only under Part II, and not Part I of Chapter I of the said Act.

27. The E-City and others instituted SLP (C) (L) No. 030357 of 2019 before the Hon'ble Supreme Court to question Kulkarni, J.'s order rejecting their preliminary objection based on the bar of limitation. On January 10, 2020, the Hon'ble Supreme Court issued notice in the SLP and stayed the enforcement proceedings in IMAX's Petition.

28. Significantly, in the pleadings in this SLP, E-city and others specifically relied on the decision in *Vedanta Ltd.* (supra) to contend that not the 12-year period under Article 136, but the 3-year period prescribed under Article 137 in the Schedule to the Limitation Act would apply for the enforcement of foreign awards. E-City and others also relied on *Hindustan Construction Company Ltd. v. Union of India*⁴, to contend that the decision in *Fiza Developers v. AMCI*⁵ relied on Kulkarni, J's order, which was subsequently overruled in *Hindustan Construction Company* (Supra).

29. On October 18, 2022, the Hon'ble Supreme Court dismissed the E-City's SLP (C) (L) No. 030357 of 2019 filed against Kulkarni, J's order

holding that IMAX's Petition was not barred by limitation. E-City filed a Review Petition before the Hon'ble Supreme Court, once again relying on *Vedanta Ltd.* (supra) and *Hindustan Construction Company* (Supra). However, on August 16, 2023, even this Review Petition was dismissed by the Hon'ble Supreme Court.

30. Upon the dismissal of SLP (C) No. 30357 of 2019, IMAX's Petition and the Chamber Summons filed therein were heard by the learned Single Judge [Coram: Bharati Dangre, J]. The final arguments concluded on 07 May 2024, and by the impugned judgment and order dated 24 October 2024 [Dangre, J's order], the Enforcement/Execution Petition and the Chamber Summons were disposed of.

31. Dangre, J's order neatly formulates Issues/Points for determination (A) to (G) and answers them in the following terms:—

Issue No. A:— that the common Petition filed by the IMAX seeking Enforcement/Execution of the foreign awards was maintainable and could be entertained.

Issue No. B:— that under section 48 of the said Act, it was impermissible for the Court to undertake a review on the merits of the foreign awards.

Issues No. C:— that IMAX's Enforcement/Execution Petition was barred by limitation, given the law laid down in *Vedanta Ltd.* (supra).

Issue No. D:— that the master agreement violated the provisions of FEMA, and there was a breach of the fair hearing principle because the Foreign Arbitral Tribunal did not consider the unchallenged testimony of one of E-City's witnesses. Therefore, enforcement of the foreign awards would be contrary to the public policy of India as provided under Section 48(2)(b) of the said Act.

Issue No. E:— that IMAX was not competent to raise any challenge to the demerger schemes in its Enforcement/Execution Petition.

Issue No. F:— that the impleadment of 2nd, 3rd and 4th Respondents was unwarranted and based on the assumption that E-City's assets were improperly diverted to or through them.

Issue No. G:— that on the ground of IMAX Ltd. merging into IMAX Corporation in January 2002, neither could the invocation of the arbitration clause by IMAX Ltd. be regarded as invalid under the Laws of Singapore nor could this be a ground to interfere with the foreign arbitral awards by invoking Section 48(1)(a) or (d) of the said Act, as this would amount to a review on merits.

32. Thus, in effect, the impugned judgment and order dated October 24, 2024, i.e. Dangre J's order, dismissed IMAX's Enforcement/Execution Petition, by holding (a) that IMAX's

Enforcement/Execution Petition was time-barred [Limitation issue]. (b) that the enforcement of the foreign award was liable to be refused under section 48(2)(b) of the said Act because it would be contrary to the public policy of India [Public policy issue]. (c) that the impleadment of the 2nd, 3rd and 4th Respondents and levy of execution against them was unwarranted and they were liable to be deleted from the array of parties in the Arbitration Petition No. 414 of 2018 [Impleadment issue].

33. Aggrieved by the above-referred impugned Judgment and Order dated October 24, 2024, i.e. Dangre J's order, dismissing IMAX's Petition, IMAX has instituted the present Commercial Arbitration Appeal under Section 50 of the said Act.

34. In this Commercial Arbitration Appeal, therefore, apart from the above-referred three issues of limitation, public policy and impleadment, the issue of maintainability of this appeal qua the 2nd, 3rd, and the 4th Respondents also arises for determination.

35. Therefore, for this appeal, the following points arise for our determination:

- (i) Was IMAX's petition barred by limitation?
- (ii) Could the enforcement of the foreign awards have been refused on the ground that it would be contrary to the Public Policy of India?
- (iii) Was this appeal maintainable as against the 2nd, 3rd, and 4th Respondents?
- (iv) Could the 2nd, 3rd, and 4th Respondents have been impleaded, and execution of the foreign awards have been sought against them in IMAX's petition?

RIVAL CONTENTIONS REGARDING THE LIMITATION ISSUE:

36. IMAX, through its Learned Counsel, Mr. Chinoy and Mr. Shah, contend that Kulkarni, J's order correctly determines the limitation issue. In any event, since the order has attained finality, it operates as *res judicata*. Accordingly, the issue about IMAX's Petition being within the limitation could not have been revisited at the final hearing stage. They contend that the principle of *res judicata* applies to two separate stages of the same proceedings.

37. IMAX, through its Learned Counsel, Mr. Chinoy and Mr. Shah, contended that the finding that IMAX's Petition was within the limitation period prescribed under Article 137 of the Limitation Act was correct and by no means an "*incidental observation*". They submitted that even the finding of a lack of clarity on the issue of competence to file Enforcement/execution proceedings during the pendency of challenges to the foreign awards was a good ground for condonation of

delay, even though no application for condonation of delay was filed. They contended that the Hon'ble Supreme Court never reversed Kulkarni, J's order, and that there is a difference between partial overruling a precedent and reversal of a judgment inter partes, which was missed in Dangre, J's order.

38. E-City and other Respondents, through their Learned Counsel, defended Dangre, J's order based on the reasoning reflected therein. They contended that the issue of limitation involved a pure question of law going to the root of the jurisdiction of the Court to entertain IMAX's Enforcement/execution proceedings. They submitted that under Section 3 of the Limitation Act, it was every Court's duty to reject proceedings barred by limitation, whether or not any of the parties set up the limitation defence. Accordingly, they submitted that the principle of res judicata could not be applied in such a situation.

39. Learned Counsel for the Respondents argued that Kulkarni, J's finding in the context of Article 137 of the Limitation Act was incorrect, and in any event, only an incidental observation, to which the principle of res judicata could never apply. In any event, they submitted that Kulkarni, J's order, to the extent it held that Article 136 of the Limitation Act would apply to an enforcement or execution application concerning a foreign award, or that there was an automatic stay of enforcement or execution of a foreign award during the pendency of a Section 34 petition, was expressly overruled by the Hon'ble Supreme Court in *Vedanta Ltd.* (supra) and *Hindustan Construction Company Ltd.* (supra). Accordingly, they submitted that Kulkarni, J's order was a nullity and could never operate as res judicata.

EVALUATION OF THE RIVAL CONTENTIONS ON THE LIMITATION ISSUE.

Does Kulkarni J's order operate as res judicata on the limitation issue?

40. The first point for determination in this appeal is whether IMAX's petition was instituted within the prescribed period of limitation. This limitation issue was already answered in favour of IMAX by Kulkarni J's order, which had attained finality because the SLP against it was dismissed on 18.10.2022. Even a review against the SLP dismissal order was rejected by the Hon'ble Supreme Court on 16.08.2023.

41. However, at the final hearing of IMAX's petition, Dangre J's order held that Kulkarni J's order does not operate as res judicata, and the finding therein was revisited, ruling that IMAX's petition was barred by limitation. Therefore, the crucial issue is whether Kulkarni J's order on the limitation issue, which had already attained finality, could have been virtually reviewed or whether such a revisit or review was barred under the principle of res judicata or principles analogous thereto?

42. Kulkarni, J's order holding that IMAX's Petition was not time-barred, attained finality. Subject to the case falling within some of the well-established exceptions to the res judicata rule, its validity or the finding that IMAX's Petition was within the prescribed period of limitation could not have been re-agitated by the parties or revisited in Dangre, J's order disposing of IMAX's Petition at the final stage. The res, in Kulkarni, J's order had already become a judicata. It is well settled that the principle of res judicata, which is founded on public policy, applies between two stages in the same litigation.

43. In *Satyadhyan Ghosal v. Deorajin Debi*⁶, the Hon'ble Supreme Court has held that once a "res" is "judicata", it shall not be adjudicated again. This principle is embodied in relation to suits in Section 11 of CPC, *but even where Section 11 does not apply, the principle of res judicata has been applied by Courts for the purpose of achieving finality in litigation. The result of this is that the original Court as well as any higher Court must in any future litigation proceed on the basis that the previous decision was correct. The principle of res judicata applies also as between two stages in the same litigation to the extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.*

44. In *Bhanu Kumar Jain v. Archana Kumar*⁷ and in *Y. B. Patil v. Y. L. Patil*⁸, the Hon'ble Supreme Court has reiterated that the principles of res judicata can be invoked not only in subsequent proceedings, but also at a subsequent stage of the same proceedings. Thus, once an order made during the proceedings becomes final, it would be binding in the ensuing stage of that proceeding.

45. In *S. Ramachandra Rao v. S. Nagabhushana Rao*⁹, the Hon'ble Supreme Court held that it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. *This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.*

46. Applying this principle to the facts of the present case, it is evident that Kulkarni, J's order and the finding therein that IMAX's Petition was within the prescribed period of limitation, upon its finality, were binding at the final hearing stage. The same issue could not have been re-agitated or revisited, as has been done in Dangre, J's order, unless, of course, certain well-known exceptions to the application of the principle of res judicata were to apply. The well-known exceptions to the application of the principle of res judicata, however, do not include a plea that the earlier decision was erroneous and, therefore, not binding.

Does this case fall within any of the exceptions to the principle of res judicata?

47. To deflect the principle of res judicata, the learned Counsel for the Respondents relied on the following three primary reasons or circumstances, which, according to them, constituted exceptions to the res judicata principle. These reasons were accepted in Dangre, J's order, for revisiting the limitation issue and concluding that IMAX's Petition was barred by limitation when Kulkarni J's order had reached the diametrically opposite conclusion in these very proceedings.

48. The first reason was that Kulkarni, J's order had held that the 12-year limitation period prescribed under Article 136 of the Limitation Act applied, and this view was expressly overruled by the Hon'ble Supreme Court in *Vedanta Ltd.* (supra). Similarly, Kulkarni, J's order had reasoned that the pendency of a Section 34 petition to challenge an award operates as an automatic stay on IMAX's Petition, relying on the law laid down in *Fiza Developers* (supra). However, in *Hindustan Construction Co.* (supra), the Hon'ble Supreme Court, on 27.11.2019, expressly overruled *Fiza Developers* (supra). Accordingly, the learned Counsel for the Respondents submitted that, since the two fundamental bases for Kulkarni, J's order had been explicitly overruled, Kulkarni, J's order was "*entirely erroneous and constituted a nullity*" and could never operate as res judicata, and that the limitation issue could be revisited at the final hearing stage of the same proceedings.

49. The second reason was that the finding in Kulkarni, J's order about IMAX's Petition being within the three-year limitation period prescribed under Article 137 of the Limitation Act was a mere "incidental observation", based upon which the principle of res judicata would not apply. It was contended that the main finding in Kulkarni, J's order was that IMAX's Petition was governed by the 12-year limitation period prescribed under Article 136 of the Limitation Act and, therefore, it was within limitation. This view was expressly overruled in *Vedanta Ltd.* (supra) and was consequently a nullity to which the principle of res judicata would not apply.

50. The third reason was that in the present case, the issue of

limitation was purely a question of law concerning the Court's jurisdiction to entertain IMAX's Petition. In such a situation, applying the law established in *Mathura Prasad Bajoo Jaiswal v. Dossibai N. B. Jeejeebhoy*¹⁰, and subsequently followed in *Noharlal Verma v. Dist. Cooperative Central Bank Ltd.*¹¹, and *Canara Bank v. N.G. Subbaraya Setty*¹², the principle of res judicata would not apply. This is because res judicata concerns procedural matters, and such a rule cannot confer jurisdiction on a Court that lacks it.

51. The learned counsel for the Respondents stressed that under Section 3 of the Limitation Act, it was every Court's duty to dismiss proceedings barred by limitation, regardless of whether any party raises a limitation defence. Therefore, the very act of entertaining a time-barred application would render the order made therein as without jurisdiction. They urged that in such circumstances, the rule of res judicata would not apply.

52. To determine whether Kulkarni, J's order operates as res judicata, an analysis of this order becomes necessary.

53. Firstly, this order squarely deals with and rejects the Respondents' preliminary objection that IMAX's Petition against the foreign awards was barred by limitation and consequently, should not have been entertained by the Court, i.e., the learned Single Judge of this Court.

54. Secondly, this order holds that the limitation for filing an Enforcement/execution petition was governed by Article 136 of the Limitation Act, which provided a 12-year limitation period (see paras 9, 20 and 26 of Kulkarni, J's order);

55. Thirdly, this order, in the alternative, and assuming that the three-year period prescribed under Article 137 of the Limitation Act applies, holds that upon considering the factual aspects, IMAX's Petition was still within this three-year limitation period prescribed under Article 137 of the Limitation Act. (See paras 11, 28 and 33 of Kulkarni, J's order).

56. Fourthly, this order holds that a broader view is required when it comes to the Enforcement/Execution of foreign awards, having regard to the object and legislative intention behind the said Act. Therefore, IMAX's Petition cannot be held as time-barred under Article 137 in the absence of any delay-condonation application or condonation of delay order. (See paragraph Nos. 28, 31 and 32 of Kulkarni, J's order);

57. Thus, it is evident that the limitation issue was directly and substantially in issue in Kulkarni J's order. It was squarely raised and answered in Kulkarni, J's order at the preliminary stage in IMAX's Petition. As noted earlier, this order has attained finality. This order holds that IMAX's Petition was within limitation, primarily on three

grounds i.e. (i) Because it was within the 12-year limitation period prescribed under Article 136 of the Limitation Act; (ii) assuming that the 12-year limitation period under Article 136 was not applicable, still, it was within the three-year limitation period prescribed under Article 137; (iii) In any event, a broader view was required to be taken and IMAX's Petition could not be held as time-barred under Article 137 in the absence of any delay condonation application.

58. Furthermore, in this case, apart from the objection based on the bar of limitation, the Respondents had nowhere contended that the learned Single Judge of this Court was not a competent Court or that it lacked inherent jurisdiction to entertain applications for the enforcement or execution of foreign awards. Therefore, all parties had agreed and proceeded on the premise that the learned Single Judge of this Court was the competent Court having jurisdiction to deal with IMAX's Petition of the foreign awards.

59. Apart from agreement, the law also clearly provides that the learned single judge is the competent Court vested with jurisdiction to entertain IMAX's Petition of the foreign awards. The only argument was that since this enforcement/execution petition was instituted beyond the prescribed period of limitation, the learned Single Judge of this Court should not have entertained the same, given the provisions of Section 3 of the Limitation Act, coupled with the specific objection raised by the Respondents invoking the bar of limitation.

60. Since the SLPs against this order and the review against the SLP dismissal order were rejected by the Hon'ble Supreme Court, Kulkarni, J's order that IMAX's Petition was within the prescribed period of limitation, attained finality. Such an order could not have been revisited at the final hearing stage by applying the principle of res judicata, unless, of course, any of the three exceptions relied upon by the Respondents applied.

The argument that the subsequent overruling [at least partially] of Kulkarni J's view renders the order inter partes, a nullity and operates as an exception to the principle of res judicata

61. The first exception relied upon by the Respondents concerns the subsequent overruling of Kulkarni, J's, views on two aspects. First, Article 136 of the Limitation Act governs the filing of Enforcement/execution petitions of foreign awards. This view was expressly overruled in *Vedanta Ltd.* (supra), decided by the Hon'ble Supreme Court on 16.09.2020, i.e. about ten months after Kulkarni, J's order was delivered on 13.11.2019. Second, the Hon'ble Supreme Court, in *Hindustan Construction Co.* (supra), decided subsequently i.e. on 27.11.2019 (about 14 days after Kulkarni, J's order was delivered on 13.11.2019), the Hon'ble Supreme Court overruled its earlier decision

in *Fiza Developers* (supra), which had held that a petition under Section 34 to challenge the award, operates as an automatic stay on its enforcement/execution.

62. Though the Hon'ble Supreme Court has partially overruled the view taken in Kulkarni, J's order on the above two aspects, it is evident that Kulkarni, J's order, to the extent it holds that IMAX's Petition was within the three-year limitation period prescribed under Article 137, was neither overruled nor reversed. But instead, the same was affirmed inter partes.

63. Similarly, Kulkarni, J's finding that a broader view must be taken and there was no bar to condone delay even in the absence of an application for delay condonation, was neither overruled nor reversed but affirmed inter partes. Therefore, there was no scope to regard Kulkarni J's order as "erroneous or a nullity" in the subsequent stage of the same proceedings.

64. Incidentally, even a subsequent overruling of a precedent is not a legally accepted ground for reviewing a decision inter partes that may have otherwise attained finality. In any event, there is a distinction between "*overruling a precedent*" and "*reversing a decision inter partes*". Therefore, the argument that on account of partial overruling of the view taken in Kulkarni, J's order, the said order was entirely erroneous or constituted a nullity, thereby not attracting the principle of res judicata, will have to be rejected.

65. As held in *S. Ramchandra Rao* (supra), a binding decision cannot be lightly ignored, and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of *per incuriam* because that principle applies to precedents and not to the doctrine of res judicata.

66. The distinction between "*overruling of a precedent*" and "*reversing a decision inter partes*" was explained by the Hon'ble Supreme Court in *Nilima Srivastava v. State of Uttar Pradesh*¹³, by holding that a judgment of a competent Court, delivered before the view in such judgment being overruled in some other case involving some other parties and which had attained finality is binding inter se between the parties and needs to be implemented.

67. The Court explained that mere overruling of the principles on which the earlier judgment was passed by a subsequent judgment of a higher forum will not have the effect of uprooting the final adjudication between the parties and setting it at naught. *There is a distinction between overruling a principle and reversal of the judgment. The judgment in question itself has to be assailed and got rid of in a manner known to or recognized by law. Mere overruling of the*

principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.

68. The attempt to distinguish *Nilima Srivastava* (supra) on certain irrelevant grounds cannot be countenanced. Recently, in *Rohan Vijay Nahar v. In State of Maharashtra*¹⁴, the Hon'ble Supreme Court held that it was unlawful for a Court to ignore a binding precedent by distinguishing it only superficially, thereby ignoring its essence.

69. The essence and the ratio of *Nilima Srivastava* (supra) is that the overruling of a precedent denudes it of its precedential status. However, a decision *inter partes*, even though erroneous, binds the parties, and the doctrine of res judicata would apply to such a decision inter partes. This ratio, or the essence, is not whittled down in the least by the attempted distinguishing on superficial facts.

70. The Hon'ble Supreme Court, by referring to its decision in *Naresh Shridhar Mirajkar v. State of Maharashtra*¹⁵ held that *when a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court.*

71. By further reference to its decision in *Rupa Ashok Hurra v. Ashok Hurra*¹⁶, the Court held that, while dealing with an identical issue, reconsideration of a judgment that has attained finality is not normally permissible. *The Court cannot sit in appeal against its own judgment.* The Court also referred to *Union of India v. S. P. Sharma*¹⁷, in which it was held that a decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so, there would be “*confusion and chaos and the finality of proceedings would cease to have any meaning.*”

72. Finally, the Court held that it is very well settled that *it is not permissible for the parties to re-open the concluded judgments of the Court, as the same may not only tantamount to an abuse of the process of the Court but would have a far-reaching adverse effect on the administration of justice.*

73. In *Vice Chancellor Anand Agriculture University v. Kanubhai Nanubhai Vaghela*¹⁸ the contention before the Hon'ble Supreme Court was that its decision in *Gujarat Agricultural University v. Rathod Labhu Bechar*¹⁹ was overruled by a subsequent decision in *Secretary, State of Karnataka v. Umadevi*²⁰. Therefore, it was contended that there was no obligation on the University to follow the direction in *Gujarat*

Agricultural University (supra).

74. The Hon'ble Supreme Court rejected such a contention by holding that the judgment in *Gujarat Agricultural University (supra)* had become final and was binding on the University. Therefore, even though, according to paragraph 54 of *Umadevi (supra)*, any judgment, which was contrary to the principles settled in *Umadevi (supra)*, shall be denuded of the status as a precedent, such an observation does not absolve the university of its duty to comply with the directions in *Gujarat Agricultural University (supra)*.

75. Thus, it was held that mere overruling of a precedent relied upon in a decision inter partes does not absolve the parties to the decision from complying with such decision.

76. Recently, in *Sulthan Said Ibrahim v. Prakasan*²¹, the Hon'ble Supreme Court, after surveying several authorities on the point of the principles of res judicata applying as between two stages in the same litigation, reiterated that "*the only manner in which a decision arrived at by a Court of competent jurisdiction can be interfered with is by modification or reversal by the Appellate Authorities*". *As long as the decision in question was not modified or reversed by the Appellate Authorities, such decision will bind the parties to the litigation even at the subsequent stages of the same suit or proceedings. The decision which had attained finality, either for want of Appeal or because the Appeal was dismissed, cannot be lightly ignored on the ground that the same was erroneous or that the legal principle involved in such a decision was subsequently overruled or not approved by the higher court.*"

77. Though not necessary, we must refer to the arguments of Mr. Chinoy and Mr. Shah, learned Counsel for IMAX that E-City and Others, in the pleadings of their SLP (C) (L) No. 030357 of 2019 to challenge Kulkarni, J's order, made specific reference to the decisions in *Vedanta Ltd. (supra)* and *Hindustan Construction Co. (supra)* to urge how Kulkarni, J.'s order was legally flawed. However, this SLP was dismissed by the Hon'ble Supreme Court on 18 October 2022. Even the Review Petition to challenge this SLP dismissal order, again relying extensively on *Vedanta Ltd. (supra)* and *Hindustan Construction Co. (supra)*, was dismissed by the Hon'ble Supreme Court on 16 August 2023. All this is a matter of record and undisputed.

78. Therefore, the Respondents' contention that the subsequent Supreme Court decisions in *Vedanta Ltd.* or in *Hindusthan Construction Co.* render Kulkarni, J's order a "nullity" or that it could be ignored or deviated from in derogation of the principle of res judicata cannot be accepted. Neither the facts in the present case nor the law support such a contention.

79. Arguments identical to those raised before the Learned Single Judge were raised in the SLP against Kulkarni, J's order. But the SLP was rejected. The same arguments were reiterated in the Review Petition filed before the Hon'ble Supreme Court. But even that Petition was denied. After all this, it was not open to the Respondents to even urge that Kulkarni, J's order did not bind them or that the limitation issue already decided and such decision finalised, could still be revisited at the final hearing stage of the same proceedings.

80. Suffice to say that following the dismissal of the SLP on 18 October 2022 and the Review Petition on 16 August 2023, Kulkarni, J's order holding that IMAX's Petition was not time-barred remains final. The res in question has become *judicata*. Although some legal propositions in that order may have been overruled, this is far from a reversal *inter partes*.

81. Significantly, the key, albeit alternative, finding in Kulkarni, J's order—that IMAX's Petition was within the limitation period under Article 137 (a question of fact and law)—has not been disturbed. Kulkarni J's order, which rejected the limitation objection, was never overturned. Consequently, even if certain legal propositions in Kulkarni, J's order have been subsequently overruled in different cases involving different parties, they do not provide sufficient grounds to revisit the issues that have attained finality *inter partes*.

82. In the present case, the principle of *res judicata* could not have been bypassed on the ground that the view taken in Kulkarni, J's order on the applicability of Article 136 to the Limitation Act or that a petition under Section 34 of the said Act operates as an automatic stay on Enforcement/execution proceedings, was subsequently overruled by the Hon'ble Supreme Court in unconnected matters involving unconnected parties. The view that IMAX's Petition was within limitation, assuming Article 137 of the Limitation Act applied, was never disturbed.

83. In fact, even the subsequent decision in *Vedanta Ltd.* (supra) has held that Article 137 would govern the limitation period for filing Enforcement/execution petitions of foreign awards. To that extent, even the law laid down in Kulkarni, J's order aligns with the Hon'ble Supreme Court's view in *Vedanta Ltd.* (supra). This is followed by a factual finding that IMAX's Petition was indeed within the three years prescribed under Article 137 of the Limitation Act.

84. The distinction between overruling a precedent and reversing a judgment *inter partes* was also not considered. For all these reasons, we hold that the rule of *res judicata* could not have been bypassed, and Kulkarni, J's order delivered at the preliminary stage, could not have been revisited or virtually reviewed at the final hearing stage of IMAX's Petition.

The argument that the finding in Kulkarni J's order that IMAX's

Petition was filed within the period specified in Article 137 was only an “incidental observation” based on which the principle of res judicata would not apply.

85. The second reason for bypassing the principle of res judicata cited in Dangre, J's order was that the finding about IMAX's Petition being within the three-year limitation period prescribed under Article 137 of the Limitation Act allegedly being only an “*incidental observation*”, to which the principle of res judicata would not apply. With respect, we disagree that this was only an incidental observation, and for this reason, the doctrine of res judicata would not apply.

86. On perusal of Kulkarni, J's order, it is evident that Mr. Tuzapurkar, the learned Counsel for IMAX, made three submissions in support of his contention that IMAX's Petition was within limitation. The first limb of his argument was that Article 136 and not 137 of the Limitation Act applied. The second limb was that, assuming Article 137 applies, the facts of the case showed that IMAX's Petition was well within the limitation period. The third limb concerned the broader interpretation of the concept of sufficient cause in the enforcement of foreign awards, even in the absence of a delay condonation application.

87. The above-referred “second limb” [*the expression used in Kulkarni J's order*] was considered in the context of the facts and the law, and a positive finding was recorded that IMAX's Petition was within the limitation period prescribed under Article 137 of the Limitation Act. The issue of whether IMAX's Petition was within the limitation period prescribed under Article 137 of the Limitation Act was thus directly and substantially in issue in Kulkarni J's order. The mere fact that this finding was recorded on a demurrer or in response to the alternate and without prejudice argument does not mean that the finding was only an incidental observation. The issue was squarely raised, argued and answered by reference to the law and the facts.

88. The salutary principle of res judicata, which is conceived in public interest, could not have been overcome by dismissing the categorical finding as a mere ‘incidental observation’. As is evident from the record, Kulkarni, J's order regarding this categorical finding was never interfered with by the Hon'ble Supreme Court when dismissing the SLP and the review against the SLP dismissal order. The findings in Kulkarni, J's order, were therefore confirmed *inter partes*. Such a confirmation could not have been set at naught by styling the finding as a mere “incidental observation”, which, respectfully, we believe, it was not.

89. The Learned Counsel for the Respondents argued that the Hon'ble Supreme Court had interpreted Kulkarni, J's order, and such interpretation was binding on this court. About the binding authority, there can be no doubt. However, neither in the orders dismissing the

SLP/Review nor in *Vedanta Ltd.* has Kulkarni, J's order been interpreted or construed to suggest that the finding on IMAX's Petition being within the three-year limitation period prescribed in Article 137 was merely an incidental observation.

90. Mr. Chinoy and Mr. Shah submitted that this dismissal of the SLP and the Review Petition, even after E-City and others emphasizing upon the law laid down in *Vedanta Ltd.* (supra) and *Hindustan Construction Co.* (supra), was because Kulkarni, J's order, in the alternative, had held that IMAX's Petition was well within the limitation period prescribed under Article 137 of the Limitation Act and, in any event, that the absence of a delay-condonation application was not a good enough ground to hold IMAX's Petition as time-barred under Article 137 of the Limitation Act.

91. This distinct part of Kulkarni, J's order, in fact, aligns with the view in *Vedanta Ltd.* that the limitation period for instituting a petition to enforce a foreign award would be governed by Article 137 of the Limitation Act. Therefore, this could have been one of the grounds on which the SLP against Kulkarni, J's order was dismissed. In *Vedanta Ltd.*, there was no question of overruling or commenting on the distinct part of Kulkarni, J's order, which aligns with the Hon'ble Supreme Court's Order.

92. Therefore, based on the "incidental observation" argument, the finding in Kulkarni, J's order that IMAX's Petition was within the three-year limitation period prescribed in Article 137 could not have been revisited at the final hearing stage in derogation of the principle of *res judicata*.

The argument that *res judicata* does not apply because the finding on the limitation issue involved a pure question of law going to the root of jurisdiction.

93. The third reason in Dangre, J's order for not applying the principle of *res judicata* qua Kulkarni, J's order, is that the doctrine of *res judicata* would not usually apply to a pure question of law going to the root of the jurisdiction of the court to entertain any proceedings, i.e., in the present case, IMAX's Petition. In support of this proposition, reliance was placed on *Mathura Prasad Jaiswal* (supra), *N. G. Subharaya Setty* (supra) and *Noharlal Verma* (supra).

94. To attract this exception, however, a party resisting the application of the *res judicata* doctrine must first establish that the decision or finding which was claimed as finally adjudicated or *judicata* involved a pure question of law as distinct from a question of fact or a mixed question of law and fact. Secondly, such a finding goes to the root of the Court or Tribunal's jurisdiction to entertain the proceedings. The evolution of precedents on the subject would show that this refers

to the Court or Tribunal's lack of inherent jurisdiction to entertain the proceedings before it, rather than a mere incorrect finding by a Court or Tribunal vested with jurisdiction over the subject matter and the parties to a cause.

95. In the present case, neither of the above two conditions is satisfied, even though the law requires that both be satisfied. The finding in Kulkarni, J's order that IMAX's Petition was within the three-year limitation period prescribed under Article 137 was not a finding based on a pure question of law. It was a finding involving a mixed question of law and fact. Secondly, it is well settled that even an erroneous finding on the limitation issue by a Competent Court having inherent jurisdiction to entertain a matter, neither renders the adjudication a nullity nor does it affect the jurisdiction of the Court or Tribunal to entertain the matter.

96. In *Mathura Prasad Jaiswal* (supra), the Hon'ble Supreme Court explained that, in determining the application of the rule of res judicata, *the Court is not concerned with the correctness or otherwise of the earlier judgment*. The matter in issue, if it is one purely of fact decided in earlier proceedings by a competent Court, must, in a subsequent litigation between the same parties, be regarded as finally decided and cannot be reopened. *A mixed question of law and fact determined in the earlier proceedings between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties*.

97. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression 'the matter in issue' in Section 11 of the Civil Procedure Code, 1908 means a right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. *Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata, a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land*.

98. The above-emboldened observations from *Mathura Prasad Jaiswal* (supra), which were strongly relied on in Dangre J's order, were made in the context of a Court lacking inherent jurisdiction to deal with the cause before it. The above observations were not made in the context of a Court otherwise having jurisdiction over the subject matter and the parties, incorrectly deciding the limitation issue.

99. The Hon'ble Supreme Court reasoned that the res judicata

principle cannot confer jurisdiction upon a Court which lacks inherent jurisdiction over the subject matter and the parties. All this is evident from the facts in the backdrop of which the above-referred observations were made in *Mathura Prasad Jaiswal* (supra). There, by invoking the doctrine of res judicata, the attempt was to confer jurisdiction upon a Court which lacked inherent jurisdiction over the subject matter and the parties.

100. In *N. G. Subharaya Setty* (supra), the Hon'ble Supreme Court explained its decision in *Mathura Prasad Jaiswal* (supra) as being an authority for the proposition that an earlier erroneous decision conferred jurisdiction upon a Court, when in fact, it inherently lacked such jurisdiction, cannot be perpetuated by applying the doctrine of res judicata. The Court explained that there can be no estoppel *on a pure question of law which relates to inherent jurisdiction*.

101. In *N. G. Subharaya Setty* (supra), the Hon'ble Supreme Court explained the above concept by giving illustrations, such as that a Civil Court cannot send a person to jail for an offence committed under the Penal Code. If it does so, such a judgment would not bind a Magistrate and/or Sessions Court in a subsequent proceeding between the same parties, where the Magistrate sentences the same person for the same offence under the Penal Code. Equally, a Civil Court cannot decide a suit between a landlord and a tenant arising out of the rights claimed under the Rent Act, where the Rent Act clothes a special Court with jurisdiction to decide such suits. For example, under Section 28 of the Bombay Rent Act, 1947, the Small Causes Court has exclusive jurisdiction to hear and determine proceedings between a landlord and a tenant in respect of rights arising under the Bombay Rent Act, and no other Court has jurisdiction to entertain the same. In a case, even though the Civil Court, in the absence of the statutory bar created by the Rent Act, would have jurisdiction to decide such suits, it is the statutory bar created by the Rent Act that must be given effect to as a matter of public policy. An erroneous decision clothing the Civil Court with jurisdiction to embark upon a suit filed by a landlord against a tenant, in respect of rights claimed under the Bombay Rent Act, would, therefore, not operate as res judicata in a subsequent suit filed before the Small Causes Court between the same parties in respect of the same matter directly and substantially in issue in the former suit.

102. As noted earlier, in the present case, none of the parties contend that the learned single judge of this Court [Kulkarni J.] lacked inherent jurisdiction to entertain IMAX's Petition. The only argument was that it was the Court's duty, given the provisions in Section 3 of the Limitation Act, to dismiss a Suit or proceedings instituted beyond the prescribed period of limitation, whether limitation may have been set up as a defence or not. Accordingly, they reasoned that if the Court

were to entertain a suit or proceedings which are barred by limitation, then it would act 'without jurisdiction'.

103. The above contention, based on section 3 of the Limitation Act, cannot be accepted and has, in fact, been rejected in several decisions of the Supreme Court and at least one decision of the Privy Council, approved by the Hon'ble Supreme Court.

104. It is now well settled that even an erroneous decision holding that a suit is within limitation does not render the decree made in such a suit a 'nullity'. A Court having inherent jurisdiction may decide a limitation issue rightly or wrongly. Unless the Appellate Courts reverse the wrong decision, it stands. It cannot be ignored or revisited on the ground that such a finding goes to the root of the Court's inherent jurisdiction or because such a decision is a nullity and can be collaterally and even repeatedly challenged.

105. In *Ittyavira Mathai v. Varkey Varkey*²², the Judgment Debtor, argued that the decree in OS No. 59 of 1093 in a suit on the hypothecation bond executed by the decree holder was a nullity because the suit was barred by time. Such contention was rejected by the Hon'ble Supreme Court, observing thus:—

"... In assuming that the suit was barred by time, it is difficult to appreciate the contention of learned counsel that the decree can be treated as a nullity and ignored in subsequent litigation. If the suit was barred by time and yet, the court decreed it, the court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullities...."

106. In the above case, the learned counsel for the Judgment Debtor, however, relied upon the decision of the Privy Council in *Maqbul Ahmad v. Onkar Pratap Narain Singh*²³ and contended that *since the court is bound under the provisions of Section 3 of the Limitation Act to ascertain for itself whether the suit before it was within time, it would act without jurisdiction if it fails to do so.* [This contention is almost

identical to what was now urged before us.]

107. The Hon'ble Supreme Court rejected this contention by observing thus:—

"... All that the decision relied upon says is that Section 3 of the Limitation Act is peremptory and that it is the duty of the court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. The Privy Council has not said that where the court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity..."

108. In *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rahman*²⁴ the Hon'ble Supreme Court while reiterating the principle that even an erroneous decision would bind the parties unless the same were set aside by an appropriate proceedings in Appeal, Revision etc., held that *even if a decree or an award were made in proceedings instituted beyond the prescribed period of limitation, that would, be an error of law at the highest wrong decision which could be corrected in Appellate proceedings but not by an Executing Court which was bound by such decree*. The Court noted that it was not the case that the judgment debtor that the Court which passed the decree 'was lacking inherent jurisdiction to pass such a decree'.

109. In *Balvant N. Viswamitra v. Yadav Sadashiv Mule*²⁵, the Hon'ble Supreme Court explained the circumstances in which the decree passed by the Trial Court can be said to be "null" and "void", in the following terms:—

"... In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."

110. In *Nusli Neville Wadia v. Ivory Properties*²⁶, the Hon'ble Supreme Court explained the meaning of the word 'jurisdiction' by stating that it is the authority of law to act officially in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. The same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversies and includes questions of law as well as questions of fact on the merits. Jurisdiction is the right to hear and determine. It does not depend upon whether a decision is right or wrong. Jurisdiction means the power to entertain a suit, consider merits, and render binding decisions, and "merits" means the various elements which enter into or qualify Plaintiff's right to the relief sought. If the law confers a power to render a judgment or decree, then the court has jurisdiction. The court must have control over the subject matter, which comes within the classification limits of law under which the Court is established and functions.

111. The Hon'ble Supreme Court further explained that the word 'jurisdiction' is derived from Latin words "*Juris*" and "*dico*," meaning "I speak by the law" and does not relate to rights of parties as between each other but to the power of the court. Jurisdiction relates to a class of cases to which a particular case belongs. Jurisdiction is the authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases.

112. The Hon'ble Supreme Court further explained that jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, apply the law, and pronounce a judgment. When there is the want of general power to act, the court has no jurisdiction. When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine. It means the power or capacity fundamentally to entertain, hear, and determine.

113. The Hon'ble Supreme Court also held that the word 'jurisdiction', which has been used in several provisions of CPC, etc., must be interpreted in the context in which it has been used in such provisions. In the context of Section 9-A CPC, the Court explained that the word "jurisdiction" is qualified with "to entertain the suit", and the expression used is "jurisdiction to entertain the suit". The expression

“entertain” means to admit for consideration. It does not mean giving relief. When a suit or proceeding is not thrown out in *limine*, but the court receives it for consideration for disposal under the law, it must be regarded as entertaining the suit or proceeding. It is inconsequential what the final decision is. The expression “entertain” means to adjudicate upon or to proceed to consider on merits. Further, the Court has held that it is in the context of the ‘inherent lack of jurisdiction’ to entertain the suit that the expression has been used in Section 9-A of CPC.

114. Finally, in the specific context of the argument based on Section 3 of the Limitation Act, the Hon'ble Supreme Court held that *though this Section provides that subject to the provisions contained in Section 4 to 24, every Suit instituted, Appeal preferred or the application made after the prescribed period shall be dismissed, it nowhere provides that the Court has no jurisdiction to deal with the matter. Until and unless the Court has jurisdiction, it cannot proceed to dismiss the matter on the ground of limitation under Section 3 of the Limitation Act.*

115. The Hon'ble Supreme Court further explained that it is apparent that when a claim is dismissed as barred by limitation, no doubt the refusal is within the realm of the exercise of jurisdiction by the Court or the Tribunal. It cannot be said that the Court has refused to exercise its jurisdiction to go into the merits by a wrong decision dismissing the case on the ground of limitation. In a case barred by limitation, the Court has jurisdiction to decide the issue. In a case where it has no jurisdiction, it cannot decide such an issue on merits at all. *The issue of res judicata and limitation can be decided if the Court has jurisdiction to entertain a Suit, not otherwise. There is a difference between the existence of jurisdiction and its exercise of jurisdiction. A wrong decision on the question of limitation will not render the judgment a nullity. It may be a case of illegal exercise of jurisdiction to decide the issue, but the judgement would not be a nullity.*

116. In the present case, E-City or the other Respondents never challenged this Court's jurisdiction to entertain a Petition to enforce or execute a foreign award. There were no grounds for such a challenge. The only objection to IMAX's Petition was that it was filed after the prescribed period of limitation. Therefore, even if the learned Single Judge of this Court (Kulkarni, J.) mistakenly held that IMAX's Petition was within the three-year limitation period prescribed under Article 137 of the Limitation Act, that decision cannot be regarded as a nullity that could have been disregarded at the final hearing of the same Enforcement or Execution Petition. Besides, there is no ground to hold that the reasoning or finding in Kulkarni J's order about IMAX's petition being within the three-year limitation period prescribed under Article

137 of the Limitation Act was erroneous.

117. This is more so after the direct challenge to Kulkarni, J.'s order holding that IMAX's Petition was within the prescribed period of limitation had failed before the Hon'ble Supreme Court consequent upon the dismissal of the SLP against such order. Even the Review Petition against the SLP dismissal order was rejected by the Hon'ble Supreme Court.

118. Besides, as held by the Hon'ble Supreme Court in the case of *Ittyavira Mathai* (supra) and *Bhawarlal Bhandari* (supra), even an erroneous decision on the issue of limitation does not go to the root of the jurisdiction of the Court or the Tribunal if such Court or Tribunal does not otherwise inherently lack jurisdiction over the parties or the subject matter.

119. As noted earlier, firstly, the finding in Kulkarni, J's order that IMAX's Petition was within the three-year limitation period prescribed under Article 137 was not a finding based on a pure question of law. The perusal of paragraph 28 of Kulkarni, J's order shows that this finding was based on a mixed question of law and fact. This is because paragraph 28 of Kulkarni, J's order, quite categorically notes the following:—

“considering the facts of the present case and as is noted above, that the Supreme Court on 10 March 2017 set aside the order passed by this Court holding that section 34 petition filed by the respondents was not maintainable and the present proceedings being filed on 2 April 2018, even by applicability of the provisions of Article 137 of the Limitation Act, the Petition is not barred by limitation.”

120. Kulkarni, J., undoubtedly, on a demurrer, held that Article 137 of the Limitation Act would apply to IMAX's Petition. This would be a question of law. However, the finding that IMAX's Enforcement/Execution Petition was filed within the prescribed period of three years was a question of fact. To record this conclusion, Kulkarni, J's order refers to various facts and circumstances like the pendency of Section 34 Petitions filed by E-City, orders made by multiple Courts, lack of clarity on the issue of such pendency operating as an automatic stay on the execution, the interim order made by the Hon'ble Supreme Court and finally, the Hon'ble Supreme Court's order of 10 March 2017 setting aside this Court's order and holding that E-City's Section 34 Petition was not maintainable.

121. The issue at this stage is not whether the findings involving mixed questions of law and fact recorded in Kulkarni, J's order, are correct or incorrect. Even if we assume that some such findings were vulnerable, still, they do not cease to be findings based on mixed questions of law and fact which had already attained finality

consequent upon the dismissal of SLP and dismissal of Review against the SLP dismissal order made by the Hon'ble Supreme Court in proceedings to challenge Kulkarni, J's order.

122. Therefore, the first precondition for the exception to the application of the doctrine of res judicata, namely that the issue decided involved a pure question of law and not a question of fact or a mixed question of law and fact, is not fulfilled in the present case.

123. Secondly, the expression "jurisdiction" referred to in *Mathura Prasad Jaiswal* (supra) and explained in *N.G. Subbaraya Setty* (supra), refers to the inherent jurisdiction of a Court or the legal competency of the Court to entertain a suit or a proceeding of a particular nature. The examples given in *N.G. Subbaraya Setty's* (supra) case bring home this point very clearly.

124. Thus, even the second condition referred to in *Mathura Prasad Jaiswal* (supra) about the principle of res judicata not applying to a pure question of law going to the root of the jurisdiction of the Court to entertain the proceedings cannot be said to be fulfilled in the present case.

125. *Noharlar Verma* (supra) relied upon in Dangre J's order, was a matter neither concerned with the Application of the principle of res judicata nor does it hold that an order made by a Court or a Tribunal, which does not lack any inherent jurisdiction, amounts to a nullity, simply because its order was made in a Petition or a proceeding which were subsequently found to be instituted beyond the prescribed period of limitation. That was a case where an Appeal was filed in a service dispute beyond the prescribed period of limitation before the Registrar under Section 55 of the Madhya Pradesh Co-operative Societies Act, 1960. The counsel for the Respondent-Bank conceded that the Appeal was within limitation, and therefore, the Registrar took up the Appeal and decided the same on merits.

126. The Bank then challenged the Registrar's order before the High Court. The High Court dismissed the Petition, holding that the Bank, having conceded that the Appeal was within limitation, cannot be allowed to "blow hot and cold" by taking inconsistent pleas and by raising the "technical" defence of limitation. The Hon'ble Supreme Court was considering an Appeal against the High Court's decision.

127. The Hon'ble Supreme Court held that if the Appeal was not within the period of limitation, the so-called concession would neither bind the Bank nor empower the Registrar to entertain the Appeal which was barred by limitation. In this context, the Hon'ble Supreme Court held that limitation goes to the root of the matter and, by relying upon Section 3 of the Limitation Act, concluded that where an Appeal or Application is made after the prescribed period of limitation, it has to

be dismissed even though no such plea has been raised or defence has been set out. The observations that limitation goes to the root of the matter have to be construed in the context of such facts and cannot be torn out of context.

128. Even this decision does not hold that the issue of limitation goes to the root of the Court's jurisdiction to entertain an Appeal. The "jurisdiction" that is referred to in *Mathura Prasad Bajoo Jaiswal* (supra) or the other decisions that follow *Mathura Prasad Bajoo Jaiswal* (supra) is the inherent jurisdiction or the inherent competency of the Court to try a particular suit or proceeding. In fact, examples given by the Hon'ble Supreme Court in the case of *N.G. Subbaraya Setty* make this position very clear. The examples refer to a Civil Court sentencing a person to imprisonment for an offence under the IPC, or to a Civil Court making a decree to evict a tenant protected under the Rent Control Act.

129. Therefore, by reading a singular sentence out of context, it cannot be contended that a decision on the issue of limitation is something that goes to the root of the jurisdiction of the Court to entertain a proceeding. Such a reading would run counter to the other decisions directly on the point.

130. IMAX's Petition was objected to, at the very threshold, on the ground that it was barred by limitation. E-City and the others argued that Article 137, which provided for a three-year limitation period and not Article 136, which provided a 12-year limitation period, applied to the filing of the Enforcement/Petition. They argued that the final award in the matter was made on 27 March 2008 and, therefore, IMAX's Petition filed on 02 April 2018 was wholly outside the limitation period. They also argued that this inordinate delay could not even be condoned because (i) there was no application seeking such condonation of delay, and without such application, the Court had no power to condone the delay; and, in any event, (ii) also because there was no sufficient cause shown for the condonation of delay.

131. In paragraph 28 of Kulkarni, J's order, it is observed that a broader view is required to be taken to advance the object and intention of the provisions of the Arbitration Act and not a hard and technical approach has urged by the Respondents that the Petition be held time barred, by applying Article 137 of the Limitation Act in the absence of a delay condonation application and the delay being condoned. Further, in paragraph 31 of Kulkarni, J's order, after referring to several decisions, the order concludes by holding that the Respondents' objection that the Petition is required to be held as time-barred cannot be accepted and that IMAX's Petition was filed within the prescribed period of limitation.

132. In *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*²⁷, it was held

that the question as to whether any period of limitation is prescribed for making an application for enforcement of a foreign award, and if so, what would be that period, is not a question free from doubt. Given the lack of clarity on this issue, the delay was condoned.

133. In the present case, apart from the fact that there was no clarity on the issue whether Article 136 or 137 would govern the limitation period for enforcement/execution of a foreign award until the issue was settled in *Vedanta Ltd.* (supra), there was also lack of clarity on the issue of automatic stay on execution of award during pendency of Section 34 Petition. *Fiza Developers* (supra), which was the decision of the Hon'ble Supreme Court holding the field when Kulkarni, J's order was made, held that the mere pendency of such an application would operate as an automatic stay on execution. Subsequently, in *Hindustan Construction Co.* (supra), this view was held to be erroneous and was overruled.

134. However, it is sufficient to note that there was a lack of clarity, both on the issues of the precise period of limitation in such matters and automatic stay on execution proceedings pending decision on a Section 34 Petition. On such grounds, delay has been condoned.

135. The argument that the Court has no power to condone delay in the absence of an application seeking condonation was considered and rejected by the Hon'ble Supreme Court in *Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd.*²⁸

136. The relevant observations from 63 and 64 of *Sesh Nath Singh* (supra) are transcribed below for the convenience reference:—

63. *Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.*

64. *A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation*

for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application."

137. Kulkarni, J's order, when read in its entirety, holds that IMAX's Petition was filed within the prescribed period of limitation. In any event, even if the finding in this order on the applicability of Article 136 of the Limitation Act is excluded from consideration, the alternate finding that IMAX's Petition was filed within the three years prescribed under Article 137 has attained finality; it could not have been ignored.

138. Even the finding that no technical approach should be adopted, but rather a broader approach should inform consideration of delay issues, if any, cannot be entirely ignored. After Kulkarni, J's order attained finality consequent to the dismissal of the SLP and the Review Petition against the SLP dismissal order, the question is not whether the view taken by Kulkarni, J, is correct or incorrect. The question is whether such a view could have been revisited at the final hearing stage, after the preliminary objection to the same effect was rejected by Kulkarni, J, and that rejection had attained finality. We believe that this could not have been done.

Conclusion on the limitation issue.

139. For all the above reasons, we hold that Kulkarni, J's order that IMAX's Petition was filed within the prescribed period of limitation provided under Article 137 of the Limitation Act had attained finality and will operate as res judicata at the subsequent stage of the same proceedings.

140. Accordingly, the Respondents were not at liberty to re-argue this issue, and Dangre, J's order could not have revisited this issue, which had attained finality *inter partes*.

RIVAL CONTENTIONS REGARDING THE PUBLIC POLICY ISSUE.

141. The second point for determination is whether the enforcement of the foreign award could have been refused on the ground that it would be contrary to India's public policy?

142. Mr. Chinoy and Mr. Shah, learned counsel for IMAX, submitted that the expression 'Public Policy of India' in Section 48(2)(b) of the

said Act must be construed narrowly in the enforcement of a foreign award. They submitted that, in this case, there was no breach of FEMA, and, in any event, a mere violation of FEMA does not render the master agreement or the foreign award directing its implementation contrary to the public policy of India.

143. Mr. Chinoy and Mr. Shah submitted that the master agreement was restructured by the parties in November/December 2000. The expert evidence on record established that the RBI routinely approved such restructured agreements. They submitted that there was no contingency in the contract, and that the finding in the foreign award that the contract was not a contingent contract could not have been revisited or reviewed, as that would amount to a review on the merits of the foreign award.

144. Mr. Chinoy and Mr. Shah submitted that there was no unfairness involved, and Akshay Chudasama's evidence was not accepted because by the time this evidence was produced, the Arbitral Tribunal had already concluded the issue in the liability award. Besides, expert opinion did not align with several decisions of the Hon'ble Supreme Court directly on the subject.

145. For all these reasons, Mr. Chinoy and Mr. Shah submitted that the finding in Dangre J's order that enforcement of the foreign award would conflict with India's public policy warrants interference. They relied on *Vijay Karia v. Prysmian Cavi E Sistemi SRL*²⁹, *Cruz City Mauritius Holdings v. Unitech Ltd.*³⁰, *POL India Projects Limited v. Aurelia Reederei Eugen Friederich GmbH Schiffahrtsgesellschaft and Company KG*³¹, *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*³², *Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd.*³³, *Shri Lal Mahal Ltd. v. Progetto Grano Spa*³⁴, in support of their submissions.

146. Mr. Seervai, Mr. Nankani and Mr. Jagtiani, the learned counsel for the Respondents, defended the refusal of enforcement of the foreign award on the ground in Section 48(2)(b) of the said Act based upon reasoning reflected therein. They reiterated that the master agreement was subject to RBI approval, which was never obtained. Therefore, to require the implementation of a master agreement without its essential precondition, as provided under FEMA, being fulfilled, would directly conflict with India's public policy.

147. The learned counsel for the Respondents submitted that the decision in *Vijay Karia* (supra) was distinguishable because the breach pointed therein was rectifiable. They submitted that Dangre J's order correctly relied on the cases of *NAFED* (supra) and *Asha John Divianathan v. Vikram Malhotra*³⁵. They submitted that this was a clear

case where the enforcement of a foreign award would conflict with the public policy of India and, therefore, such enforcement was correctly refused.

148. The learned counsel for the Respondents submitted that Akshay Chudasama's evidence had gone unchallenged for want of cross-examination. Still, foreign awards have ignored this crucial piece of evidence, thereby demonstrating unfairness. The learned counsel submitted that this was also a good ground for holding that the enforcement of such a foreign award would be contrary to India's public policy.

149. For the above reasons, the learned counsel for the Respondents submitted that there was no case made out to disturb the breach of public policy finding made in Dangre J's order, and the appeal deserves to be dismissed.

150. In rejoinder, Mr. Chinoy and Mr. Shah distinguished the decisions of the Hon'ble Supreme Court in the case of *NAFED* (supra) and *Asha Divianathan* (supra). They pointed out that, in *NAFED's* case, clause 14 expressly prohibited certain transactions, whereas *Asha Divianathan* (supra) concerned FERA, not FEMA. Relying on *Vijay Kariya* (supra) and *POL* (supra), they submitted that there was no breach of FEMA provisions and, in any event, a mere violation of FEMA provisions would not be a good ground to refuse enforcement of a foreign award under Section 48(2)(b) of the said Act.

EVALUATION OF THE RIVAL CONTENTIONS ON THE "PUBLIC POLICY ISSUE".

151. To conclude that the enforcement of the foreign award would be contrary to the "Public Policy of India", Dangre, J.'s order accepts the following distinct submissions:—

- (a) that the master agreement was contrary to the provisions of the Foreign Exchange Management Act (FEMA), and therefore, its implementation by the enforcement or execution of a foreign award would conflict with the public policy of India.
- (b) that there was procedural unfairness because Akshay Chudasama's expert testimony was not accepted by the arbitral tribunal, even though it was unchallenged in cross-examination.

152. Dangre J's order holds that the foreign awards were against the public policy of India as they had failed to appreciate that the Master Agreement violated the provisions of FEMA, 1999 and the FEMA Capital Account Rules, 2000, which govern the remittances to be made under the Master Agreement. The order reasons that the various transactions under the Master Agreement required the prior approval of RBI, which was admittedly not obtained. Accordingly, enforcement of the foreign awards, which, in turn, are related to the implementation of the Master

Agreement, would be contrary to the public policy of India. The order relied mainly on the decisions of the Hon'ble Supreme Court in *NAFED* (supra) and *Asha Divianathan* (supra).

153. Dangre, J., also held that the Master Agreement was a contingent contract, the contingency being the prior approval of the RBI. It holds that, since such approval from the RBI was admittedly never obtained, the agreement was not enforceable. The order reasons that foreign awards that seek to implement or enforce an unenforceable contract are therefore opposed to India's public policy.

Evaluation of the argument based on the violation of FEMA.

154. Now, the perusal of the Master Agreement and its terms would unmistakably show that none of the transactions contemplated thereby were prohibited either under FEMA or the 2000 Rules. Some of these transactions may have required RBI approval. The correspondence on record shows that the parties had even sought such approval from the RBI, particularly regarding remittance of lease rentals, annual maintenance charges, royalties, etc. Both IMAX and E-City applied for these approvals.

155. Since there was no response from the RBI, there is evidence that in November-December 2000, the contracting parties agreed to restructure the transactions under the Master Agreement. The restructuring involved a shift from a lease transaction to a sale transaction on a deferred payment basis. Based upon such restructuring, E-City, by its communication of December 15, 2000, even applied to the RBI for permission to purchase equipment from IMAX on a deferred payment basis.

156. Though there is nothing on record to suggest that the RBI issued any formal permission for such a restructured transaction, the Tribunal unhesitatingly accepted Mr. Berman's evidence that the RBI had granted permission for the remittance of funds pursuant to similar contracts entered into by IMAX with other parties. IMAX's case was that RBI, at least in similar cases, had invariably permitted remittance of funds under contracts for sale and purchase on a deferred payment basis rather than IMAX's customary lease format.

157. The Arbitral Tribunal not only relied on IMAX's witness, Mr. Berman, but also referred to the testimony of Mr. Mody of E-City, who stated: "*For a sale transaction, I am sure that RBI would have approved - has approved the systems that are already there. I mean I am not saying that they are operating illegally. They cannot.*"

158. Thus, the evidence on record shows that the transactions contemplated under the Master Agreement were, *per se*, not "prohibited transactions". Secondly, in December 2000, the parties, after receiving no response from the RBI to their applications seeking permission to remit funds, restructured the transaction/arrangement

from IMAX's customary lease format to a sale transaction on a deferred payment basis. Thirdly, there is evidence on record, duly accepted by the Arbitral Tribunal, that the RBI had no difficulties in approving the sale transactions on a deferred payment basis and had, in fact, granted approvals for similar transactions involving IMAX and other parties.

159. The evidence in this regard comprises not only the testimony of IMAX's witness, Mr. Berman, but also E-City's witness, Mr. Mody. Mr. Chinoy pointed out that the factum of the re-structure of the transaction was expressly accepted in E-City's "skeletal" submissions. Besides, there is evidence that the parties applied to the RBI on December 15, 2000, for permission based on such restructuring.

160. The Arbitral Tribunal has found as a fact that the Master Agreement was not a contingent contract and has further noted that both parties acted on the premise that it was a concluded contract. This is a finding of fact or, in any event, a finding involving a mixed question of law and fact. A merit-based review of this finding was neither permissible nor justified, given that E-City had fully taken advantage of the Master Agreement and is now resisting payment for the benefits obtained thereunder.

161. The arguments, very similar to those raised on behalf of the Respondents in the context of a FEMA violation, were considered and rejected by the Hon'ble Supreme Court and the Bombay High Court in the cases discussed hereinafter.

162. In *Vijay Karia* (supra), the Hon'ble Supreme Court has considered that the enforcement of a foreign award directing the implementation of an agreement for the purchase of shares at a discounted value. The award debtors argued that the underlying agreement and the foreign award violated the FEMA and the Rules made under FEMA. Therefore, their enforcement would violate the fundamental policy of Indian Law, and such enforcement should not be ordered, given the provisions of Section 48(2)(b) of the said Act.

163. The Hon'ble Supreme Court rejected the above arguments by firstly explaining that a mere variance between a foreign law and the national law would not constitute a breach of the 'fundamental policy of Indian law'. Secondly, the Court approved the Delhi High Court decision in *Cruz City 1 Mauritius Holdings* (supra) that the objections to the enforcement of a foreign award on the ground of public policy must be such that offend '*the core values of a member State's national policy and which it cannot be expected to compromise*'.

164. Thus, it was held that the expression '*fundamental policy of law*' must be interpreted in that perspective and mean only the fundamental and substratal legislative policy and not a mere provision of any enactment. The Court referred to the objective of the New York

Convention, which was to ensure enforcement of awards even though such awards may not have been rendered in conformity with the national laws.

165. *Vijay Karia* (supra) also distinguishes between the provisions of the former FERA and FEMA. It clarifies that Section 47 of FERA is no longer applicable, and that consequential transactions that breach FEMA cannot be considered void. The Court further held that if any act or transaction contravenes a specific provision of FEMA, RBI permission could always be sought post facto if the breach is condonable.

166. Finally, the Court distinguished *Dropti Devi v. Union of India*³⁶, noting that FEMA, unlike FERA, does not provide for prosecution or punishment. Therefore, the observations in *Dropti Devi* (supra) cannot be taken out of context to contend that any violation of FEMA would be sufficient to sustain the defence that enforcement is contrary to the fundamental public policy of India. For all these reasons, the Court concluded that enforcement of a foreign award or agreement underlying the same could be refused on the ground that it contravenes the provisions of FEMA.

167. The Court held that mere contravention of the provision of national law could be insufficient to invoke the defence of public policy when it comes to the enforcement of a foreign award. The Court noted that the fundamental policy of Indian law, as held in *Renusagar Power Co. Ltd. v. General Electric Co.*³⁷, must amount to a breach of a legal principle or legislation so basic to Indian law that it is not susceptible to compromise. The Court observed: “*Fundamental Policy refers to the core values of India's public policy as a nation, which may find expression not only in statutes but also time-honoured, hallowed principles which are followed by the courts*”.

168. *Cruz City 1 Mauritius Holdings* (supra), a decision of Delhi High Court, which was explicitly approved by the Hon'ble Supreme Court in *Vijay Karia* (supra), also involved the contention that the enforcement of a foreign award would be contrary to public policy as it violated the provisions of FEMA. After a detailed review of the case law, the Delhi High Court, inter alia, held that the mere violation of any regulation or provision of the FEMA would not ipso jure offend the public policy of India.

169. The Court held that the question of whether enforcement of a foreign award violates the public policy of India must be considered in the context that India is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. Therefore, it is India's sovereign commitment to honour foreign awards except those that fall foul of any of the grounds as expressly provided under Article V of the New York Convention. The Court, after

considering several decisions, noted that such decisions emphasise that *the width of public policy defence to resist enforcement of a foreign award is extremely narrow, and the same cannot be equated to offending any particular provision or statute.*

170. In *Gemini Bay Transcription Pvt. Ltd.* (supra), the award debtor argued that the award held a non-signatory liable and that such a finding violated the fundamental principles of Indian contract law. The factual backdrop was that the foreign tribunal found the Indian company and its affiliates liable for their conduct, despite their absence as signatories to the underlying contract.

171. The Supreme Court held that the question of whether the foreign tribunal correctly applied principles of lifting the corporate veil could not be reopened under Section 48. It was emphasised that even a plausible error of law by the tribunal is not a ground for refusal of enforcement. This decision is relevant because the Respondents before us have similarly argued that the Tribunal erred in its appreciation of expert testimony or in its interpretation of the contractual provisions. *Gemini Bay* confirms that such contentions are outside the scope of Section 48, which bars a merit-based review.

172. In *Banyan Tree Growth Capital LLC* (supra), a learned Single Judge of this Court considered the argument that a foreign award could not be enforced because the agreement sought to be implemented violated FEMA and the Rules and Regulations made under FEMA. The Court rejected this argument, *inter alia*, on the ground that FEMA, though a successor to FERA, had significant differences that could not be ignored. The Court noted that, unlike FERA, FEMA contained no provisions that would void transactions. The fact that RBI permissions may be required to remit funds outside India was not a ground for refusing to enforce a foreign award that may have directed payments to a foreign entity.

173. In *POL India Projects Limited* (supra), the learned Single Judge of this Court was again concerned with the provisions of the Foreign Exchange Management (Guarantees) Regulations, 2000, since it was alleged that the award creditor could not have executed a guarantee letter without the prior permission of the RBI. Since there was no such permission, the letter of guarantee was void, and its enforcement would be contrary to India's public policy.

174. This argument was rejected by relying on *SRM Exploration Pvt. Ltd. v. N & S & N Consultants S.R.O.*³⁸ and the decision of the Division Bench in *Videocon Industries Ltd. v. Intesa Sanpaolo SPA*³⁹. The Court held that, even assuming a simplicitor violation of the FEMA provisions, such a violation would not render the underlying contract or the award directing its implementation contrary to the fundamental policy of

Indian Law.

175. The ratio of the above decisions, when applied to the facts of the present case, would show that there was no violation, as such, of the provisions of FEMA in either the execution of the Master Agreement or its restructuring. In any event, even if the requirement of obtaining prior permission from RBI was lacking, that does not void the Master Agreement as originally entered or restructured. Besides, a mere violation of FEMA provisions does not, by itself, lead to the conclusion that enforcement of a foreign award would be contrary to India's public policy.

176. *NAFED* (supra), on which Dangre, J's order relies, was concerned with the export of groundnuts. This required explicit governmental permission under the Export Control Order. Such permission was applied for, but the Government of India declined such permission. As a result, the contract became unenforceable or the enforcement of the agreement became legally invalid. Considering such peculiar facts, the Hon'ble Supreme Court concluded that the enforcement of the foreign award would effectively compel NAFED to violate a statutory provision, explicitly prohibiting the export of groundnuts. Such facts do not obtain in the present case; therefore, relying on *NAFED* (supra), we cannot hold that the Master Agreement, or its enforcement under the foreign awards, violates India's public policy.

177. Similarly, *Asha Divianathan* (Supra), as relied on in Dangre, J's order, concerned the provisions of the FERA, not the FEMA. In *Vijay Karia* (supra) and in *Cruz City* (supra), which was explicitly approved by *Vijay Karia* (supra), a distinction is drawn between the provisions of the FERA and the FERA regime and the FEMA and the FEMA regime. Based on the same, *Vijay Karia* (supra) and *Cruz City* (supra) expressly hold that a mere breach of the provisions of FEMA without anything more is not a ground to refuse the enforcement of a foreign award on the ground that such enforcement would violate the public policy of India. Therefore, based on *Asha Divianathan* (supra), which concerns FERA rather than FEMA, in the present case, the enforcement of the foreign awards could not have been refused.

178. In any event, in *Asha Divianathan* (supra), the Hon'ble Supreme Court noted that prior permission of the RBI under Section 31 of FERA was a mandatory precondition for a foreign citizen to transfer immovable property in India. Further, the Court observed that a transaction in breach of this mandatory precondition was void and unenforceable. In the decisions referred to earlier, the Hon'ble Supreme Court has noted that there is no similar provision under the FEMA that declares the transaction void. Accordingly, based upon *Asha Divianathan* (supra), the enforcement of the foreign awards in the

present case could not have been refused.

179. In this case, E-City has secured and enjoyed the benefits under the Master Agreement as restructured or otherwise. However, when it comes to payment under the same Master Agreement, various arguments are being raised to resist it. E-City has managed to keep IMAX at bay for over two decades. The fruits of the foreign awards are being denied to IMAX by raising all kinds of pleas, in the fond hope that at least some might stick. Neither the public policy of India nor the pro-enforcement bias, which informs the interpretation of the provisions under Part II of the said Act dealing with the enforcement of specific foreign awards, promotes the frustration of enforcement of foreign awards based upon such pleas.

180. Dangre, J's order, in paragraph 118, observes:—

"118. It being a well settled principle, right from the decision of the Apex Court in Renusagar (supra) that violation of Foreign Exchange Act and disregarding the orders of superior courts in India, would be regarded as being contrary to the fundamental policy of Indian Law, since the mandatory condition of obtaining approval of RBI is not satisfied in the present case, which was necessary and the preceding condition for executing an Agreement for Lease, which definitely is not curable in nature, and if any remittances were made without its approval, it would have impacted the Indian economy and affected the interest of the public at large and, therefore, it amounts to breach of fundamental policy of Indian Law as violations of FEMA is not curable and as distinguished, the observations of the Apex Court in the case of Asha John has clarified the position."

181. From the above, it is apparent that the distinction between the provisions of FEMA and FERA has not been noted or, in any event, adequately considered. The above observations, at least to the extent they concern arguments about violations of FEMA provisions, with respect, do not align with binding precedents directly on the subject. The principle settled by *Vijay Karia* (supra) and other decisions referred to above, in fact, hold that mere breach of the provisions of FEMA neither renders the underlying transaction or contract void nor can the enforcement of such a contract be refused on the ground that it contravenes the public policy of India.

182. The above-quoted observation in paragraph 118 also omits the finding of fact, which E-City, to some extent, accepted: that there was a restructuring of the agreement. Under such restructuring, the lease format was changed to a sale format, with the sale prices to be paid on a deferred basis. There was evidence that the RBI routinely approved such transactions or contracts in IMAX cases. E-City's witness, Mr. Mody, had also admitted that there was nothing *per se* illegal about the arrangement, from which E-City has benefited immensely.

183. For all the above reasons, we respectfully dis-agree with the conclusion in the impugned order that the Master Agreement, in its re-structured form or even otherwise violated the public policy of India or that the enforcement of the foreign award which had directed the implementation of such agreements or required E-City to pay for the benefits under such contracts, would be contrary to the public policy of India. The enforcement of the foreign awards, therefore, could not, with respect, have been refused on the ground that it violated India's public policy.

The unfairness argument because expert testimony from E-City was not considered.

184. Insofar as the alleged non-consideration of Akshay Chudasama's expert testimony is concerned, firstly, we note that the Tribunal, in its liability award, had already decided the issue of whether the performance of the contract was rendered illegal because of the absence of RBI's permission under the FEMA regulations, or because of any other violation of the provisions of FEMA. There is no grievance that E-City was denied the opportunity to lead evidence before the liability issue was determined.

185. Mr. Chudasama's evidence was tendered after this issue was already decided in the liability award, i.e. at the stage of the quantum award. Once this issue was decided at the stage of the liability award, there was no question of any party leading fresh evidence at the stage of the quantum award. Therefore, there was no obligation as such to consider Mr. Chudasama's evidence.

186. Even otherwise, Mr. Chudasama's evidence does not align with the law in *Vijay Karia* (supra), *Cruz City Mauritius Holdings* (supra), *POL India Projects Limited* (supra) and *Gemini Bay Transcription Pvt. Ltd.* (supra). No doubt, most of these decisions were rendered subsequently.

187. Therefore, the alleged failure to consider such belated evidence hardly raises any issues of procedural fairness, perversity or public policy. This was not critical evidence that would have made a difference to the outcome on the merits. The evidence was produced belatedly, i.e., even after the issue of the alleged violation of FEMA had already been decided in the liability award. On such grounds, the enforcement of the foreign award could not have been denied.

188. That apart, we are satisfied that the ground relating to the alleged non-consideration of Mr. Chudasama's evidence is concerned with the merits of the foreign awards. Such merit-based review is not contemplated under Section 48 of the said Act. In fact, even Dangre, J's order correctly accepts that a merit-based review is beyond the scope of proceedings under Section 48 of the said Act.

189. In *Vijay Karia* (supra), the Hon'ble Supreme Court squarely rejected the arguments objecting to the enforcement of a foreign award, inter alia, on the ground that the Tribunal had ignored critical evidence or adopted disparity thresholds in determining material breach or that the Tribunal had selectively considered contemporaneous evidence. The Court held that these are nothing more than invitations to merit-based review, though couched as perversity.

190. In *POL India Projects Ltd.* (supra), the Hon'ble Supreme Court reiterated that Section 48 does not permit a rehearing on the merit or a reappraisal of evidence and that only those violations that shock the conscience of the Court would justify refusal to enforce. In *Shri Lal Mahal Ltd.* (supra), the Court held that disagreements on evidentiary interpretation cannot be a ground to refuse enforcement of a foreign award under Section 48(2)(b) of the said Act. In *Gemini Bay Transcription Pvt. Ltd.* (supra), the Court held that arguments about error in appreciation of expert testimony and interpretation of contract were matters outside the scope of Section 48 of the said Act.

Conclusion on the public policy issue

191. Therefore, considering the facts and law on the subject, we are satisfied that this was not a case in which the enforcement of the foreign award could have been refused on the ground of breach of India's fundamental policy. By attempting to elevate the mere and alleged violation of FEMA or the alleged non-consideration of expert evidence to the status of a public policy issue, the enforcement of the foreign award could not have been refused.

MAINTAINABILITY OF THIS APPEAL QUA THE 2ND, 3RD AND 4TH RESPONDENT

192. The third point for determination is whether this appeal is maintainable qua the 2nd, 3rd, and 4th Respondents?

193. At the outset, it needs clarification that no dispute was raised regarding the maintainability of this appeal qua the 1st Respondent, E-City. However, the 2nd, 3rd and 4th Respondents raised a preliminary objection to the maintainability of the present appeal qua them.

194. The Coordinate Bench (Coram: A. S. Chandurkar, J., as his Lordship then was, and M. M. Sathaye, J.), by order dated April 23, 2025, rejected this preliminary objection and held the appeal as maintainable qua the 2nd, 3rd and 4th Respondents.

195. The 2nd, 3rd and 4th Respondents challenged the order dated April 23, 2025, by instituting a petition for Civil Leave to Appeal (C) No. 22422 of 2025 before the Hon'ble Supreme Court. By order dated September 16, 2025, the Hon'ble Supreme Court disposed of the Special Leave Petition, and this order is transcribed verbatim in

paragraph 5 of this judgment and order.

196. The Special Leave to Appeal was dismissed, but it was clarified that all contentions on merits and law, including the maintainability of the enforcement or executability of the foreign award under Section 48, as envisaged under Section 50 of the said Act, were kept open qua the 2nd, 3rd and 4th Respondents. Accordingly, the Learned Counsel for the parties were heard on this objection.

The rival contentions of the maintainability issue:

197. Mr. Seervai and Mr. Jagtiani, the learned Counsel for the 2nd, 3rd and 4th Respondents, argued that under the provisions and the scheme of Chapter I Part II of the said Act, the enforcement of a foreign award contemplates two distinct stages. The first stage is the enforcement, i.e. recognition of the foreign award. Upon finding such a foreign award to be enforceable and its recognition, such a foreign award is deemed to be a decree that can proceed for execution. The second stage is the actual execution of the foreign award, which is now deemed to be a decree. They submitted that under the provisions of Section 50(1)(b) of the said Act and the scheme of Chapter I of Part II, the appeal would lie only against the order refusing to enforce or recognise the foreign award. Still, no appeal would lie against the refusal to execute such an award.

198. The learned Counsel submitted that in the present case, the 2nd, 3rd and 4th Respondents were neither parties to the arbitration agreement nor to the arbitration proceedings in which the foreign awards have been made. As such, there was no question of even seeking enforcement/recognition of the foreign awards qua the said Respondents. In any event, the challenge in this appeal is now to the refusal to execute the foreign award qua the 2nd, 3rd and 4th Respondents, inter alia, on the ground that they were never parties to the arbitration agreement or the arbitration proceedings.

199. The learned Counsel submitted that, as against such a refusal to execute, neither Section 50(1)(b) nor the scheme of Chapter I Part II of the said Act provided for any appeal. They submitted that an appeal is a creature of a statute, and there is never any inherent right to appeal, nor can a right to appeal be read into a statute by implication. Accordingly, they submitted that this appeal is not maintainable qua the 2nd, 3rd and 4th Respondents.

200. Learned Counsel for Respondents submitted that an appeal might lie against an order denying enforcement/recognition of a foreign award. Still, the legislature has not provided for an appeal against the refusal to execute the Award. Such an appeal would be contrary to the plain terms of Part II of Chapter I, particularly Sections 47 to 50 of the

said Act. They reiterated the arguments reflected in the Coordinate Bench's order dated April 23, 2025, rejecting the preliminary objections to maintainability.

201. For all these reasons, the learned Counsel for the 2nd, 3rd and 4th Respondents submitted that the present appeal was not maintainable qua the 2nd, 3rd and 4th Respondents.

202. In response, Mr. Chinoy and Mr. Shah also reiterated the arguments on the maintainability of the appeal qua the 2nd, 3rd and 4th Respondents, as reflected in the Coordinate Bench's order dated April 23, 2025.

203. Learned Counsel for IMAX submitted that the expression “enforcement” in Part II, Chapter I of the said Act was an umbrella provision that included both “recognition” and “execution” of foreign awards. They submitted that a combined petition for enforcement of a foreign award was maintainable, as held in *Vedanta Ltd.* (supra).

204. Accordingly, they submitted that it would be a tenuous and strained interpretation of the provisions in Sections 47 to 50, or of the entire scheme of Part II of Chapter I of the said Act, to contend that an appeal would lie against refusal of recognition but not against refusal of execution. They submitted that such an absurd interpretation would also run counter to the enforcement bias inherent in the scheme of Part II of Chapter I of the said Act.

EVALUATION OF THE RIVAL CONTENTIONS ON THE MAINTAINABILITY ISSUE

205. To consider the issue of maintainability of this appeal qua the 2nd, 3rd and 4th Respondents, a brief reference to the scheme of Part II of Chapter I of the said Act becomes necessary.

206. Part II, Chapter I of the said Act comprises Sections 44 to 52. Section 44 is the “definition clause”. Section 45 concerns the judicial authority's power to refer parties to arbitration. Section 46 provides the circumstances under which a foreign award is binding. Section 47 deals with the evidence that the party applying for the enforcement of a foreign award must produce before the Court.

207. Section 48 prescribes the conditions for the enforcement of foreign awards. Section 49 provides for the enforcement of foreign awards. Section 50 provides for “appealable orders”. Section 51 is the Saving clause, and Section 52 provides that Chapter II of Part I shall not apply in relation to foreign awards to which this Chapter applies.

208. Section 49 of the said Act provides that where the Court is satisfied that the foreign award is enforceable under this Chapter, the Award shall be deemed to be a Decree of that Court. Section 50, which deals with “appealable orders”, provides that notwithstanding anything

contained in any other law for the time being in force, an appeal shall lie from the order refusing to - (a) refer the parties to arbitration under Section 45; (b) enforce a foreign award under Section 48, to the Court authorised by law to hear appeals from such orders. Sub-Section 2 of Section 50 provides that no second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

209. Upon reference to the pleadings and prayers in IMAX's petition, it is evident that it was a combined or rolled-up petition seeking both enforcement/recognition and execution of the foreign awards. Though, Part II of Chapter I of the said Act neither provides nor prohibits the filing of such a combined or a rolled up petition, still, given the authoritative pronouncement of the Hon'ble Supreme Court in the case of *Vedanta Ltd.* (supra), there can be no dispute that such a combined or rolled up petition seeking enforcement/recognition and execution is maintainable.

210. In *Vedanta Ltd.* (supra), the Hon'ble Supreme Court after referring to its decision in *LMJ International Limited v. Sleepwell Industries Co. Ltd.*⁴⁰, held that given the legislative intent of expeditious disposal or arbitration proceedings, and the limited interference by Courts, the maintainability of the enforcement petition and adjudication of the petition filed "*are required to be decided in a common proceedings*".

211. The issue of maintainability of a common or a rolled-up petition was squarely answered in paragraph 83.7 of *Vedanta Ltd.* (supra), and, therefore, the contents of paragraph 83.7 are transcribed below for the convenience of reference:

*"83.7. The award-holder is entitled to apply for recognition and enforcement of the foreign award by way of a common petition. In Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*⁴¹*, this Court held that a proceeding seeking recognition and enforcement of a foreign award has different stages: in the first stage, that the Court would decide about the enforceability of the award having regard to the requirements of Sections 47 and 48 of the 1996 Act. Once the enforceability for the execution of the award is decided, it would proceed to take further effective steps for the execution of the award. The relevant extract from the judgment reads deprecated. as: (SCC pp. 371-72, para 31)*

31. Prior to the enforcement of the Act, the law of arbitration in this country was substantially contained in three enactments, namely, (1) the Arbitration Act, 1940, (2) the Arbitration (Protocol and Convention) Act, 1937, and (3) the Foreign Awards (Recognition and Enforcement) Act, 1961. A party holding a

foreign award was required to take recourse to these enactments. The Preamble of the Act makes it abundantly clear that it aims at consolidating and amending Indian laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The object of the Act is to minimise supervisory role of the court and to give speedy justice. In this view, the stage of approaching the court for making the award a rule of court as required in the Arbitration Act, 1940 is dispensed with in the present Act. If the argument of the respondent is accepted, one of the objects of the Act will be frustrated and defeated. Under the old Act, after making award and prior to execution, there was a procedure for filing and making an award a rule of court i.e. a decree. Since the object of the Act is to provide speedy and alternative solution of the dispute, the same procedure cannot be insisted under the new Act when it is advisedly eliminated. If separate proceedings are to be taken, one for deciding the enforceability of a foreign award and the other thereafter for execution, it would only contribute to protracting the litigation and adding to the sufferings of a litigant in terms of money, time and energy. Avoiding such difficulties is one of the objects of the Act as can be gathered from the scheme of the Act and particularly looking to the provisions contained in Sections 46 to 49 in relation to enforcement of foreign award. In para 40 of Thyssen Stahlunion GmbH v. SAIL⁴², it is stated that as a matter of fact, there is not much difference between the provisions of the 1961 Act and the Act in the matter of enforcement of foreign award. The only difference as found is that while under the Foreign Awards Act a decree follows, under the new Act the foreign award is already stamped as the decree. Thus, in our view, a party holding foreign award can apply for enforcement of it but the court before taking further effective steps for the execution of the award has to proceed in accordance with Sections 47 to 49. In one proceeding there may be different stages. In the first stage the court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award as a rule of court/decreed again. If the object and purpose can be served in the same proceedings, in our view, there is no need to take two separate proceedings resulting in multiplicity of litigation. It is also clear from the objectives contained in para 4 of the Statement of Objects and Reasons, Sections 47 to 49 and the scheme of the Act that every final arbitral award is to be enforced

as if it were a decree of the court. The submission that the execution petition could not be permitted to convert as an application under Section 47 is technical and is of no consequence in the view we have taken. In our opinion, for enforcement of a foreign award there is no need to take separate proceedings, one for deciding the enforceability of the award to make it a rule of the court or decree and the other to take up execution thereafter. In one proceeding, as already stated above, the court enforcing a foreign award can deal with the entire matter. Even otherwise, this procedure does not prejudice a party in the light of what is stated in para 40 of Thyssen judgment."

(emphasis supplied)"

212. Thus, there can be no dispute that IMAX's petition, which was nothing but a combined or rolled-up petition seeking enforcement/recognition and execution of the foreign awards, was very much maintainable under Part II Chapter I of the said Act. Even Dangre, Js. Order, when answering Issue No. A has held that IMAX's petition seeking enforcement/execution of the foreign awards was maintainable and could be entertained.

213. Once it is accepted that a common petition or a rolled up petition to seek enforcement/recognition and execution of foreign awards was maintainable under the legislative scheme under consideration, it would make no difference to the issue of maintainability of appeal against the rejection of such a combined or a rolled up petition, simply on the ground that one of the parties to such petition or proceedings had filed a chamber summons seeking deletion of their names and by a separate order, such chamber summons was allowed by the competent Court and the names of such parties were ordered to be deleted. The argument was that the said Act does not provide an appeal against the Judicial Authority's order allowing such a chamber summons to delete the parties.

214. With respect, such an argument misses the effect and import of the order allowing such a chamber summons to delete the parties. Ultimately, the net effect of an order like the above would be the rejection of the common petition seeking enforcement, recognition and execution of the foreign awards qua the deleted party or parties. Such a refusal or rejection would, in the end, be attributable to or amount to an order refusing to enforce the foreign award under Section 48 of the said Act. This, when coupled with the pro-enforcement bias which is to inform the proceedings under the New York Convention awards or Part II of Chapter I of the said Act, militates against the contention that no appeal would lie against Dangre, J's order, qua the 2nd, 3rd and 4th Respondents.

215. Though a combined or a rolled-up petition seeking enforcement/recognition and execution can be allowed or is maintainable, an absurd situation would arise if the appeal is held to be maintainable only qua the orders made at the stage of refusal of enforcement/recognition of a foreign award [as narrowly construed by the Respondents]. Still, no appeal is held maintainable against the orders made to refuse the execution of such recognised award, which is deemed to be a decree in terms of Section 49 of the said Act. Such an interpretation providing for separate or truncated appeals before two different fora will only prolong the enforcement process. Such an interpretation may also give rise to conflicting opinions, thereby rendering the enforcement of foreign awards extremely cumbersome.

216. Now that it is held that a combined or rolled-up petition seeking enforcement/recognition and execution of a foreign award is maintainable, a refusal to execute would typically be a sequitur to a refusal to enforce or recognise the foreign award. Therefore, to provide for an appeal against an order refusing enforcement/recognition of a foreign award but denying such right of appeal against an order refusing to execute the foreign award would unduly impede the enforcement proceedings of foreign awards. Such an interpretation would not only delay the enforcement of foreign awards. Still, it would also run counter to the “pro-enforcement bias” that must inform all provisions and proceedings under Chapter I, Part II, of the said Act.

217. Even if we assume that there would be a few cases where the competent Court is prepared to enforce/recognize a foreign award but for some reasons refuses to execute such recognized/enforceable award, still, to deny right of an appeal under the provisions of Section 50(1)(b) of the said Act would not be conducive to expeditious disposal of proceedings to enforce foreign awards.

218. Even if two interpretations are reasonably possible, given the legislative scheme and the pro-enforcement bias that must inhere in the enforcement proceedings, the interpretation that facilitates facile and quick enforcement and execution must be preferred over one that renders this process cumbersome or hedged with several avoidable impediments. At least in Arbitration matters, we cannot afford to bemoan that the fundamental problems of an award holder or a decree holder begins after securing an award or a decree.

219. This is even more so in matters of enforcing foreign awards, lest the confidence of the international commercial community be severely dented. The foreign awards or the legal provisions that provide for minimal grounds to interfere with such foreign awards will not amount to much if we return to business as usual by making the enforcement or execution process extremely cumbersome, hyper-technical and dilatory.

220. Recently, in *Periyammal (Dead), through LRs v. V. Rajamani*⁴³, the Hon'ble Supreme Court prefaced its judgment by referring to the long and arduous route a decree holder must take to get the fruits of the decree. When he is ready to take a bite of that fruit, he must pass through the same procedural terrain in execution proceedings; the moroseness is writ large on his face. What looked inevitable to him to receive it at his hands' distance is deluded back to the horizon. The party resisting the execution stretches the litigation as much as possible. Therefore, if more than one interpretation is possible, the one which curtails procedure without eluding justice is to be adopted. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

221. Though the said Act was silent regarding the maintainability of a combined or rolled up petition for enforcement/recognition and execution of a foreign award, still, having regard to the objective of expeditious enforcement of foreign awards, the Hon'ble Supreme Court held that such a combined or rolled up petition is maintainable.

222. Similarly, in deference to the same objective of expeditious disposals of proceedings to enforce foreign awards and the pro-enforcement bias that must inhere in the enforcement proceedings, this appeal will have to be held as maintainable against the refusal of such a combined petition or a rolled-up petition seeking enforcement/recognition and execution of a foreign award.

223. Simply because the enforcement proceedings can be artificially divided into two stages, i.e. enforcement/recognition of the foreign award and the execution of the foreign award, we cannot hold that an appeal will lie against an order refusing the relief at the first stage. Still, no appeal will lie against an order refusing execution of the foreign awards, i.e., against an order made in the second stage of the enforcement proceedings. Instead, by treating the expression "enforcement" as an umbrella provision, an appeal will have to be held as maintainable qua the orders made at both stages of the enforcement proceedings.

224. A truncated right of appeal will neither promote the objective of expeditious disposal of proceedings to enforce foreign awards, nor be in tune with the pro-enforcement bias which must inform proceedings under the New York Convention or the enforcement of certain foreign awards referred to in Chapter I Part II of the said Act.

225. In fact, such a truncated right of appeal will force the aggrieved parties to seek other remedies to challenge only part of the common order, ultimately resulting in the refusal to enforce the foreign award and the maintenance of an appeal against a party whose recognition is denied.

226. Such a dual procedure would run counter to the provisions or the scheme of Part II of Chapter I of the said Act, which is intended to be a self-contained code. Such an interpretation would also run counter to the decisions of the Hon'ble Supreme Court, which have held that enforcement proceedings in relation to foreign awards constitute a complete code and that there is a need to promote the expeditious disposal of such proceedings.

227. No excessive stress can be laid on the expression "under Section 48" in Section 50(1)(b) of the said Act. Section 50 must be read in its entirety together with the legislative scheme under Part II of Chapter I of the said Act. In *Kandla Export Corporation v. In Oci Corporation*⁴⁴, the Hon'ble Supreme Court rejected the argument that the scope of a Section 50 appeal was wider than that of a Section 37 appeal, which dealt only with domestic arbitrations. The Hon'ble Supreme Court held that the absence of the expression "*and from no others*," though conspicuous by its absence in Section 50 of the said Act, was much wider than the scope of an appeal under Section 37 of the said Act, dealing exclusively with domestic arbitrations.

228. Apart from the above reasons, based upon which we have independently concluded that this appeal is maintainable even qua the 2nd, 3rd and 4th Respondents, we draw sustenance from the observations in the Coordinate Bench's order of April 23, 2025, which had held that the present appeal is very much maintainable even qua the 2nd, 3rd and 4th Respondents.

229. The contents of paragraphs 6.7 and 6.8 of the Coordinate Bench's order dated April 23, 2025, are transcribed below for the convenience of reference:

"6.7 Under Section 50(1)(b) of the Act of 1996, an appeal lies from an order refusing to enforce a foreign award under Section 48. The enforcement of a foreign award would also take within its compass the execution of such foreign award. The consequence of the recognition and enforcement of a foreign award is its execution. The legal position now stands settled that an award holder can seek recognition and execution of a foreign award in a common Arbitration Petition. The appellant had sought dual reliefs in the Arbitration Petition filed by it. The impugned order passed by the learned Judge declines the enforcement and execution of the Foreign Awards that was sought against all the respondents. Thus, if the recognition, enforcement and execution of a foreign award is permissible in a common arbitration petition as held by the learned Single Judge in paragraphs 51 and 52 of the impugned judgment, which finding is not assailed by the 2nd to 4th respondents, the mere fact that the said respondents had filed Chamber Summons seeking deletion of

their names, which relief came to be granted, would not render the appeal filed under Section 50(1)(b) of the Act of 1996 as not maintainable. The appellant is aggrieved by the refusal to enforce and execute the Foreign Awards against all the respondents. That was, in fact, the prayer made in the Arbitration Petition filed against all the respondents. The learned Judge having refused the enforcement as well as execution of the Foreign Awards against all the respondents, it goes without saying that an appeal filed under Section 50(1)(b) of the Act of 1996 against all respondents, who were parties to the Arbitration Petition, would be maintainable.

6.8 It is thus held that on an Arbitration Petition having composite prayers seeking recognition, enforcement and execution of a foreign award being dismissed on merits, the enforcement of the foreign award and consequentially its execution would stand declined. The order in its entirety would become appealable for being challenged under Section 50(1)(b) of the Act of 1996. In our view, the filing of Chamber Summons seeking deletion of the names of the 2nd to 4th respondents and the same being made absolute cannot be the determinative factor as regards maintainability of the appeal under Section 50(1)(b) of the Act of 1996 on the refusal to enforce the Foreign Awards. As the entire Arbitration Petition itself has been dismissed on merits, the Chamber Summons being made absolute is only a consequential order, rather a fall-out of the refusal to enforce and execute the Foreign Awards.”

230. The Coordinate Bench, by its order of April 23, 2025, also rejected the argument that an order made on the chamber summons seeking deletion of the 2nd, 3rd and 4th Respondents could not be appealed against, because such an order was not an order refusing the enforcement of the foreign award. This discussion appears in paragraphs 6.9 and 6.10 of the Coordinate Bench's order, which concluded that, because the reasons for the rejection of IMAX's Petition were common and intertwined, there would be a likelihood of diverse orders being passed in the suggested distinct proceedings, and that this would also result in their multiplicity.

231. The contents of paragraphs 6.9 and 6.10 of the Coordinate Bench's order of April 23, 2025, containing discussion on the above aspect, are transcribed below for the convenience of reference:

“6.9 The matter can be viewed from another angle. Assuming that the 2nd to 4th respondents had not filed any Chamber Summons seeking deletion of their names from the array of the parties, the final consequence qua them would not have been any different on the dismissal of the Arbitration Petition. This is for the reason that the learned Single Judge has found that the Foreign Awards as

passed in favour of the appellant did not deserve to be enforced and executed against any of the respondents. Hence, in these facts, the Chamber Summons being made absolute would not change the complexion of the adjudication undertaken by the learned Judge because the final result of dismissal of the Arbitration Petition would not have been different.

*6.10 If the contention raised by the 2nd to 4th respondents that said part of the judgment making the Chamber Summons absolute ought to be separately challenged by the appellant in separate proceedings is accepted, the same would result in an odd situation. It is a fact that by a composite judgment rendered while deciding the Arbitration Petition and the Chamber Summons, the enforcement and execution of the Foreign Awards has been refused. Whilst that part of the judgment which declines recognition and enforcement of the foreign award can be appealed as against the 1st respondent by filing an appeal under Section 50(1)(b) of the Act of 1996, the consideration in that very judgment to the extent it allows the Chamber Summons resulting in deletion of the name of the other respondents from the array of the parties would have to be challenged in different proceedings. The reasons for arriving at the conclusion that the enforcement and execution of the Foreign Awards ought to be refused against all respondents, being common and intertwined, this would result in a likelihood of diverse orders being passed in such distinct proceedings besides also resulting in their multiplicity. Thus even on this count, the contention of the 2nd to 4th respondents cannot be accepted. In these facts, the ratio of the decision in *Noy Vallesina Engineering SPA (now known as Noy Ambiente S.p.a)*(supra) cannot be applied."*

232. Accordingly, apart from our independent reasons, we respectfully agree with the reasons recorded by the Coordinate Bench in its order of April 23, 2025 and proceed to hold that this appeal is maintainable qua all the Respondents, including the 2nd, 3rd and 4th Respondents, who have now raised this plea of maintainability of the appeal qua the 2nd, 3rd and 4th Respondents.

233. The learned Counsel for the Respondents, however, stressed that since the Hon'ble Supreme Court had left all contentions regarding the maintainability of the appeal open, no reference to the Coordinate Bench's reasoning in its order of April 23, 2025, would be appropriate. At least, this is not what the Hon'ble Supreme Court has said when dismissing the SLP against the Coordinate Bench's order of April 23, 2025.

234. Admittedly, the Hon'ble Supreme Court refused to interfere with the Coordinate Bench's order of April 23, 2025. and the Special

Leave Petition against the same was dismissed. No doubt, the contentions on behalf of the Petitioners in the Special Leave Petition, inter alia, regarding the maintainability of the appeal qua them, were kept open.

235. This only means that the 2nd, 3rd and 4th Respondents were allowed to urge their contentions that this appeal was not maintainable qua them, and that such contentions had to be evaluated independently of, and uninfluenced by, the reasoning in the Coordinate Bench's order of April 23, 2025.

236. Accordingly, the learned Counsel were fully heard on the maintainability issue. Having considered the rival contentions, we have independently concluded that this appeal is maintainable. However, this does not mean that there was any restraint upon this Court at the final hearing stage from referring to the reasoning in the Coordinate Bench's order of April 23, 2025, or from drawing sustenance from that reasoning, particularly if it aligns with this Court's reasoning at that stage. It was not as if that reasoning was set aside or disapproved by the Hon'ble Supreme Court. Only the question was kept open for consideration at the final hearing stage.

Conclusion on the appeal maintainability issue.

237. For all the above reasons, we reject the contentions to the contrary raised by and on behalf of the 2nd, 3rd and 4th Respondents, and hold that this appeal is maintainable qua the 2nd, 3rd and 4th Respondents.

IMPLEADMENT OF 2nd, 3rd AND 4th RESPONDENTS IN IMAX'S PETITION AND EXECUTION AGAINST THEM

Rival contentions on the impleadment/execution issue:

238. The fourth point for determination is whether the 2nd, 3rd, and 4th respondents could have been impleaded in IMAX's petition, and whether execution of the foreign awards could have been sought against them?

239. Mr. Chinoy and Mr. Shah submitted that the 2nd, 3rd and 4th Respondents are Associates/Group of Companies of E-City (1st Respondent). They admitted that the 2nd, 3rd and 4th Respondents were not parties to the Arbitration proceedings, which culminated in the foreign awards, nor were they sought to be made liable as Award/Judgment Debtors in the enforcement proceedings. However, they submitted that the 2nd, 3rd and 4th Respondents were impleaded as parties because during the pendency of the arbitral proceedings, almost the entire properties/assets of E-City (1st Respondent) were

improperly diverted to the 2nd and 3rd Respondents, only to defeat the enforcement of the foreign awards.

240. Mr. Chinoy and Mr. Shah submitted that by applying the law laid down in *Balwant Rai Saluja v. Air India Limited* (supra) and *Bhatia Industries & Infrastructure Limited v. Asian Natural Resources (India) Limited & Vitol S.A.* (supra), the Enforcement/Executing Court was entitled to enforce/execute the foreign awards against such improperly diverted assets of E-City-the Award Debtor.

241. Mr. Chinoy and Mr. Shah submitted that the circumstance about the 2nd, 3rd and 4th Respondents not being parties to the arbitral agreement or the arbitral proceedings is quite irrelevant because, admittedly, the 2nd, 3rd and 4th Respondents are all associated Companies of E-City, i.e. the Award Debtor. Further, they are not sought to be personally/independently liable as Award Debtors. Still, execution is sought to be levied against them primarily because they are associated Companies to whom the properties and assets of E-City (1st Respondent), i.e. the Award Debtor, were improperly transferred with the sole intention of frustrating the enforcement/execution of the foreign awards.

242. Mr. Chinoy and Mr. Shah admitted that E-City's, i.e. the Award Debtor's properties and assets, may not have been diverted to the 4th Respondent. However, they submitted that the 4th Respondent was correctly impleaded and execution ought to be levied against the 4th Respondent because it was the holding Company of the 1st, 3rd and 4th Respondents and further was directly involved in arranging the diversion of E-City's properties and assets to the 2nd and 3rd Respondents.

243. Mr. Chinoy and Mr. Shah referred to the sequence of events to submit that the divesting of E-City's (1st Respondent's) properties was grossly improper and was only to render such properties and assets as 'execution proof'. They submitted that the entire legal control over such properties and assets of E-City (1st Respondent) was in fact retained by the 4th Respondent, which was the holding Company for E-City (1st Respondent), and the 2nd and 3rd Respondents. Thus, control over the properties and assets of E-City (1st Respondent), i.e. the Award Debtor, was retained. Still, such properties and assets were sought to be rendered immune from execution only to defeat and frustrate the execution of the foreign awards.

244. Mr. Chinoy and Mr. Shah submitted that IMAX was not challenging, directly or indirectly, the order/arrangement of the

demerger. However, even if by legally or procedurally valid orders of demerger, the properties and assets of an Award Debtor are sought to be improperly divested, an execution can be levied against such improperly diverted/divested properties and assets.

245. For all the above reasons, Mr. Chinoy and Mr. Shah submitted that IMAX was justified in impleading the 2nd, 3rd and 4th Respondents and in seeking to levy execution against the properties and assets of E-City (1st Respondent), i.e., the Award Debtor. They clarified that the execution against the 2nd and 3rd Respondents was not because they were independently liable to satisfy the foreign awards, but instead to the extent of the Award Debtor's properties and assets that were improperly diverted to the 2nd and 3rd Respondents. They submitted that the 4th Respondent was, however, liable because it had arranged for such improper diversion while retaining full control over the Award Debtor and the 2nd and 3rd Respondents.

246. Mr. Seervai and Mr. Jagtiani learned Counsel for the 2nd, 3rd and 4th Respondents submitted that the impleadment of these Respondents was entirely misconceived and that no execution could be levied against these Respondents or the properties and assets acquired by the 2nd and 3rd Respondents pursuant to valid and validly approved demerger Schemes.

247. Mr. Seervai and Mr. Jagtiani submitted that the demerger Schemes, which were validly approved, had no nexus with the arbitral proceedings. They submitted that resolutions for such demerger had been passed even before the liability award was made. They submitted that all legal procedures were duly complied with, and even the approval of this Court was obtained for the demerger and transfer of properties and assets. They submitted that IMAX filed no objections despite full knowledge of the demerger proceedings. They submitted that collateral challenges were impermissible.

248. Mr. Seervai and Mr. Jagtiani submitted that the 2nd, 3rd and 4th Respondents were neither parties to the arbitral agreement nor to the arbitral proceedings. They submitted that making the 2nd to 4th Respondents liable to satisfy the foreign awards to which they were not even parties, and consequently were not given any opportunity to put forth their version, would amount to the grossest breach of the principles of natural justice and fair play.

249. Mr. Seervai and Mr. Jagtiani submitted that the scheme of Sections 44 to 48 of the said Act and the decision in *Gemini Bay Transcription Private Limited v. Integrated Sales Service Limited*⁴⁵ and

*Cox and Kings Limited v. Sap India Private Limited*⁴⁶ make it evident that it would not be permissible to foist liability under any arbitral awards on persons or entities who were not parties to the commercial relationship or arraigned in the arbitral proceedings. They defended Dangre, J's order, which had precisely held to this effect.

250. Mr. Nankani also adopted the contentions of Mr. Seervai and Mr. Jagtiani. He submitted that the very impleadment of the 2nd, 3rd and 4th Respondents was misconceived and was rightly held as such in Dangre, J's order. He submitted that Dangre, J's order was consistent with the statutory scheme and promoted the observance of principles of natural justice and fair play. Accordingly, he submitted that this order may not be interfered with.

251. For all the above reasons, Mr. Seervai, Mr. Nankani and Mr. Jagtiani submitted that Dangre, J's order warranted no interference. Evaluation of the Rival Contentions on the impleadment and execution issue:

252. To appreciate and evaluate the rival contentions on the impleadment and execution issue, reference becomes necessary to the sequence of events relevant to the allegation of E-City's (1st Respondent's) properties and assets totally valued at about Rs. 210 Crores being diverted to the 2nd and 3rd Respondents during the pendency of the arbitral proceedings with the motive of rendering such properties and assets immune from execution:

- (a) IMAX and E-City entered into a Master Agreement on 28.09.2000 concerning the provision of six IMAX systems for twenty years, with an option to extend for a further ten years;
- (b) In 2003-2004, disputes arose between the parties, which resulted in IMAX submitting a request dated 16.06.2004 for arbitration before ICC, claiming an award of USD 18.3 million from E-City (1st Respondent);
- (c) E-City Real Estate Private Limited (2nd Respondent) was incorporated and registered on 24.09.2005, and E-City Projects Constructions Private Limited (3rd Respondent) was incorporated and registered on 08.06.2006. These are associated Companies qua E-City (1st Respondent);
- (d) The ICC Arbitral Tribunal made its liability award on 09.02.2006, holding that the Master Agreement gave rise to a legally binding obligation which E-City (1st Respondent) had breached and consequently was liable to pay damages suffered by IMAX;
- (e) On 20.06.2007, under the first Scheme of Arrangement between

E-City (1st Respondent) and E-City Real Estate Private Limited (2nd Respondent), E-City's, i.e. the Award Debtor's properties and assets valued at Rs. 92 Crores, i.e. lands at Coimbatore and Lucknow having a book value of Rs. 75 Crores and current assets of Rs. 17.07 Crores, were transferred to the 2nd Respondent, in consideration of the second Respondent allotting shares to the 4th Respondent as shareholders of the 1st Respondent.

- (f) On 24.08.2007, the Arbitral Tribunal issued the quantum award holding that E-City, i.e. the Award Debtor, was required to pay IMAX a sum of USD 9,406 million with interest thereon; this was only the actual quantification. The liability was already determined under the liability award dated 09.02.2006.
- (g) On 31.08.2007, the second Scheme of Arrangement between E-City (1st Respondent) and E-City Projects Constructions Private Limited (3rd Respondent) was sanctioned. Under this Scheme, immovable properties and assets of E-City (1st Respondent) valued at Rs. 119.80 Crores, i.e. the lands at Ahmedabad, Andheri and Chandigarh having a book value of Rs. 98.49 Crores and current assets of Rs. 21.34 Crores, were transferred to the 3rd Respondent, in consideration of the 3rd Respondent allotting shares to the 4th Respondent, in its capacity as the shareholder of E-City (1st Respondent);
- (h) Thus, under the two Schemes of demerger, properties and assets of E-City (1st Respondent) valued at Rs. 210 Crores were diverted to the 2nd and 3rd Respondents, thereby leaving E-City (1st Respondent) with assets worth only USD 769,287.

253. From the above sequence of events, it is evident that both the Schemes of Arrangement, which resulted in the diversion of properties and assets of E-City (1st Respondent), were sanctioned on 20.06.2007 and 31.08.2007, i.e. after the arbitral proceedings commenced and the Arbitral Tribunal made its liability award dated 09.02.2006.

254. The first Scheme of Arrangement was sanctioned within one year & four months of the Arbitral Tribunal making its liability award, and the second Scheme of Arrangement was sanctioned within a week of the Arbitral Tribunal making its quantum award, determining that E-City (1st Respondent) was liable to pay to IMAX damages of Rs. 9.406 million together with interest thereon.

255. Under the two Schemes of Arrangement, properties and assets of E-City (1st Respondent) valued at approximately Rs. 210 crores were

diverted to the 2nd and 3rd Respondents. In return for such properties and assets, the shareholder of E-City (1st Respondent), i.e. the 4th Respondent, was granted shares of the 2nd and 3rd Respondents. No amount as such was paid by the 2nd and 3rd Respondents to E-City (1st Respondent) for the transfer of properties and assets to the tune of approximately Rs. 210 crores. Only shares were allotted to the shareholders of E-City (1st Respondent), i.e. the 4th Respondent.

256. The records show that the 1st, 2nd and 3rd Respondent Companies are associated Companies. The records also show that the 4th Respondent is the holding Company, which is held and controlled by Dr. Chandra and his family members. The 4th Respondent, i.e. the holding Company, holds approximately 99% of the shares in the 2nd and 3rd Respondent companies.

257. In effect, therefore, there is substance in the contention of Mr. Chinoy and Mr. Shah that the properties and assets of E-City (1st Respondent), valued at Rs. 210 Crores, were diverted during the arbitral proceedings and even after the liability award was made to the associated Companies, i.e., the 2nd and 3rd Respondents. This diversion did not involve any payment of money or any properties in exchange to E-City (1st Respondent). Still, it was effected by allotting shares in the 2nd and 3rd Respondent Companies to the 4th Respondent Company, which, in turn, was the major shareholder of E-City (1st Respondent) and held 99% of the shareholding in the 2nd and 3rd Respondent Companies.

258. By this, in effect, the properties and assets of E-City (1st Respondent) were effectively immunised from execution. At the same time, E-City (1st Respondent), through its major shareholder, the 4th Respondent, retained complete control over such properties and assets in the hands of the 2nd and 3rd Respondents.

259. The corporate device was thus an attempt to frustrate the enforcement of the liability, which was in principle already determined in the arbitral proceedings. At the same time, the properties and assets of E-City (1st Respondent) would continue to be controlled by, or remain in the hands of, the associated Companies and the 4th Respondent, i.e., the holding company.

260. Though Mr. Nankani, learned Counsel for the 1st Respondent, argued that the Schemes of Arrangement were for the optimum utilisation of resources and assets or that the Schemes had no nexus

with the pending arbitral proceedings or the liability award already made, the sequence of events referred to above makes it rather difficult to accept this submission. The entire objective was to enable E-City (1st Respondent) to retain effective control over its properties and assets, but at the same time, make it extremely difficult, if not impossible, to allow such assets to be attached or sold in satisfaction of the awards under pending arbitral proceedings.

261. In short, the objective was to render the properties and assets of E-City (1st Respondent), valued at Rs. 210 Crores, immune from any enforcement or execution proceedings, even if IMAX were to obtain awards and seek to execute them.

262. Mr. Chinoy and Mr. Shah submitted that they did not have to, and were not arguing, on aspects such as fraud or the group of companies' doctrine, but that their whole case was that this was an instance of gross impropriety linked to the use of corporate structure to avoid or conceal liability. They submitted that the corporate structure was used as a façade, and therefore, a case was made out to pierce the corporate veil.

263. They pointed out that there was both control of the Company by the wrongdoers and impropriety, i.e., the use or misuse of the Company by them as a facade to conceal their wrongdoings. Accordingly, they submitted that this was a case warranting the lifting of the corporate veil, at least to the extent of levying execution against the improperly divested properties and assets of E-City (1st Respondent) to the extent of Rs. 210 Crores. They strongly relied on the Hon'ble Supreme Court's decision in the case of *Balwant Rai Saluja* (supra).

264. In *Balwant Rai Saluja* (supra), The Hon'ble Supreme Court considered the test for when the corporate veil could be lifted. In this case, the Hon'ble Supreme Court explained that the doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the company's separate personality and attribute its acts to those allegedly in direct control of its operations.

265. The Court explained that the starting point of this doctrine was discussed in the celebrated case of *Salomon v. Salomon & Co. Ltd.*⁴⁷, by Lord Halsbury LC, to the following effect:

"...a company must be treated like any other independent person with its rights and liabilities legally appropriate to itself ... whatever may have been the ideas or schemes of those who brought it into existence."

The Hon'ble Supreme Court explained that most of the cases after *Salomon* (supra) attributed the doctrine of piercing the veil to the fact that the company was a “sham” or a “façade”. However, there was yet to be any clarity on the applicability of the said doctrine.

266. The Hon'ble Supreme Court, after referring to the case of *Ben Hashem v. Ali Shayif*⁴⁸ observed the following in paragraphs 71 to 74:

71. *In recent times, the law has been crystallized around the six principles formulated by Munby J. in Ben Hashem v. Ali Shayif (supra). The six principles, as found at paragraphs 159-164 of the case are as follows:*

- (i) Ownership and control of a company were not enough to justify piercing the corporate veil;*
- (ii) The Court cannot pierce the corporate veil, even in the absence of third party interests in the company, merely because it is thought to be necessary in the interests of justice;*
- (iii) The corporate veil can be pierced only if there is some impropriety;*
- (iv) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;*
- (v) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and*
- (vi) The company may be a 'façade' even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The Court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.*

72. *The principles laid down by the Ben Hashem case (supra) have been reiterated by UK Supreme Court by Lord Neuberger in Prest v. Petrodel Resources Limited*⁴⁹, *at paragraph 64. Lord Sumption, in the Prest case (supra), finally observed as follows:*

“35. I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The Court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's

separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil."

73. *The position of law regarding this principle in India has been enumerated in various decisions. A Constitution Bench of this Court in Life Insurance Corporation of India v. Escorts Ltd.*⁵⁰, while discussing the doctrine of corporate veil, held that:

"90. ... Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

74. *Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case."*

267. *Balwant Rai Saluja (supra)*, therefore, holds that the corporate veil may be lifted where *improper conduct* is intended to be prevented or *where associated Companies are inextricably connected, in reality, as part of one concern*. Relying on the decisions in *Ben Hashem's case*, *Prest case (supra)* and *LIC v. Escorts Ltd. (supra)*, the Hon'ble Supreme Court held that the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a Company and impose liability upon the person exercising real control over the said Company.

268. However, the Hon'ble Supreme Court cautioned that this principle has been and should be applied in a restrictive manner, that

is, only in scenarios wherein it is evident that the Company was a mere camouflage or sham deliberately created by the persons exercising control over the said Company for the purpose of avoiding liability. The intent of piercing the veil must be such that it would seek to remedy a wrong done by the persons controlling the Company. The application would thus depend upon the peculiar facts and circumstances of each case.

269. In the present case, the incorporation of the 2nd and 3rd Companies may be proper or even the Schemes of Arrangement may have been got sanctioned by complying with the prescribed legal formalities, still, the fact that such Schemes were intended to divert properties and assets of E-City (1st Respondent) worth Rs. 210 crores to the 2nd and 3rd Respondents Companies so that such properties and assets would be immunised from execution in the pending arbitral proceedings in which a liability award had already been made cannot be ignored. Such divesting, therefore, was improper in the sense that the same suffered from an impropriety as distinct from an illegality.

270. The impropriety was linked to the use of the Company's structure to avoid the liability which had arisen and, in any event, was most imminent. The corporate structure, in the present case, was utilised as a "sham" or a "façade" only to render the execution of any arbitral award by IMAX complicated, if not impossible. By using the corporate device, the Respondents Nos. 1 to 4 brought about a situation in which the properties and assets of E-City (1st Respondent) would continue to be controlled by the 4th Respondent, the holding Company. At the same time, such properties and assets would be immune from execution of liabilities imposed by the foreign awards.

271. Therefore, by applying the principles in *Balwant Rai Saluja* (supra) to the facts of this matter, a case is made out for lifting of the corporate veil and holding that the 2nd and 3rd Respondents were impleaded correctly as parties to the enforcement/execution proceedings, and further execution could be levied against the properties and assets of E-City (1st Respondent) improperly diverted or divested in favour of the 2nd and 3rd Respondents.

272. In *Bhatia Industries & Infrastructure Limited* (supra), the Division Bench of this Court was concerned with an International Award passed in favour of the Respondent - Vitol S.A., a Swiss Company, on 17.01.2011. Under this award, Bhatia International Ltd. (BIL) was liable to pay an amount of Rs. 443 Crores along with interest to the Respondent Award Holder/Judgment Creditor, i.e. Vitol S.A.

273. In execution, Vitol S.A. applied for issuance of percept under Section 46 of CPC in respect of coal belonging to the Award Debtor. i.e.

BIL. In this application, it was argued that, though Bhatia Industries and Infrastructure Ltd. [BIIL] was a Company established under the Companies Act, 1956, in 1993, it was a Group Company of the Bhatia Group. It was under the control of Bhatia International Limited and Mr. S.S. Bhatia, who was the main person behind all those Companies and other Companies which were fraudulently siphoning off the funds from BIL to defeat the execution of the International Award and therefore it was prayed that the goods may be shown to be belonging to Bhatia Industries and Infrastructure Limited, [BILL] in fact, they belonged to the Group Companies. Therefore, they were liable to be attached in execution of the International Award.

274. The Division Bench of this Court, after considering a view taken by the Delhi High Court in the case of *Formosa Plastic Corporation Ltd. v. Ashok Chauhan*⁵¹ and the Punjab and Haryana High Court in *Sai Sounds Private Limited v. Kiran Contractors Private Limited*⁵² held that the doctrine of lifting the corporate veil can be resorted to in execution proceedings and is not restricted to cases of evasion of statutory dues.

275. The Division Bench then referred to the sequence of events and agreed with the learned Single Judge's view, which indicated that Mr. S.S. Bhatia and his family members had created several corporate bodies which Mr. S.S. Bhatia and his family controlled. The Court also concurred with the learned Single Judge that these corporate bodies were being used as cloaks behind which Mr. Surinder Singh Bhatia and his family members were using the device of incorporation as a ploy adopted for preventing execution of the international award which was passed against BIL and in favour of Vitol S.A.

276. Mr. Seervai and Mr. Jagtiani, however, relied upon the decision of the learned Single Judge in the case of *Mitsui OSK Lines Ltd. (Japan) v. Orient Ship Agency Pvt. Ltd.*⁵³ to submit that this is a clear authority to hold that the third parties, which never had any opportunity to participate in the arbitral proceedings, should not be forced to suffer the execution of an award made in such proceedings. They contended that if this is permitted, then it would amount to the grossest violation of principles of natural justice and fair play. Strong emphasis was led on the observations in paragraphs 72 to 80 of the learned Single Judge's judgment in which the decisions in the case of *Balwant Rai Saluja* (supra), *Bhatia Industries and Infrastructure Ltd.* (supra) were considered.

277. We have considered the decision in *Mitsui OSK Lines Ltd. (Japan)* (supra). The main issue there was whether a third party could be made personally liable to satisfy a decree or a foreign award, even though it was not a party to the arbitration proceedings and no award had been made against it.

278. In this case, IMAX does not argue that the 2nd and 3rd Respondents are personally liable to satisfy the foreign award. However, they contend that the properties and assets of E-City (1st Respondent), which were admittedly a party to the arbitration proceedings and the foreign arbitration awards, which have been improperly diverted to the 2nd and 3rd Respondents pending such arbitral proceedings and for defeating the execution of the foreign awards, can be proceeded against by levying execution upon them. Thus, this is not a case where the 2nd and 3rd Respondents are sought to be made personally liable to satisfy the foreign awards. This is a significant distinguishing feature that cannot be overlooked.

279. The Learned Single Judge deciding *Mitsui OSK Lines Ltd. (Japan)* (supra) was in fact careful to clarify that, in the case before him, the Award Holder was not going against the Associate Companies, who were the additional Respondents, or against any specified assets claimed to belong to the Judgment Debtor. Instead, in the case before the Learned Single Judge, the additional Respondents were sought to be made personally liable in respect of the foreign award passed against the Judgment Debtor.

280. In the present case, IMAX has repeatedly clarified that it does not propose to hold the 2nd and 3rd Respondents personally liable to satisfy the foreign awards. Further, the claim is to levy execution against the specified properties that were improperly diverted from E-City, i.e. the award debtor, during the pendency of the arbitral proceedings and even after the liability award was made, only to defeat the execution that would have been levied against such specified properties. Hence, the judgment in *Mitsui OSK Lines Ltd. (Japan)* (supra), given the facts in the present case, will assist IMAX's case. In any event, it will not apply to the facts and circumstances of the present case.

281. Further, in *Mitsui OSK Lines Ltd. (Japan)* (supra), the learned Single Judge also held that the decision in *Balwant Rai Saluja* (supra) holds that the Court will not lift the corporate veil unless it is satisfied that the principles laid down by the English Court in *Ben Hashem* (supra) are satisfied. Therefore, to justify the piercing of the corporate veil, the Courts will be required to be satisfied that there is some impropriety in question. There must be both control of the company by the wrongdoer(s) and impropriety, with the company using and misusing them as devices or façades to conceal their wrongdoings. In the facts before the Learned Single judge, no such case was established.

282. In the present case, however, the impropriety is evident, as

properties and assets valued at Rs. 210 Crores held by E-City (1st Respondent) were diverted solely to defeat execution of the liability award. Secondly, in the present case, there is both control of the Company by the wrongdoers and the impropriety, i.e., the Company's use and misuse of them as a device or façade to conceal their wrongdoings. In fact, the wrongdoers have managed to retain complete control over the diverted properties while, at the same time, attempting to render them immune from execution proceedings to defeat the enforcement and execution of the foreign awards.

283. This is not a case in which IMAX is challenging the orders of this Court that sanction the Schemes of Arrangement. Therefore, the arguments that such orders operate in rem rather than merely in personam need not detain us. Even if such orders were made in compliance with the validly prescribed procedures, that by itself would not prevent the enforcing/executing Court from lifting the corporate veil and addressing the impropriety of diverted properties and assets, given the facts in the present case.

284. For example, in the case of a transfer *under lis pendens*, the Sale Deed by which the property subject to civil litigation is transferred is not void for all purposes. The Sale Deed may have been executed in compliance with all the provisions of the Contract Act, Transfer of Property Act, Registration Act, etc. Still, the underlying transaction can always be voided by the affected party on the ground that the transfer was *lis pendens* and was intended to defeat the rights of the parties pending the litigation.

285. There are undoubtedly different considerations that apply in the doctrine of *lis pendens*. Still, the reference is only to show that a transaction may be legal, in the sense that the statutory formalities have been complied with. However, there may still be impropriety, which will entitle the Court to lift the corporate veil, as was held in *Balwant Rai Saluja* (supra). There is a distinction between illegality and impropriety that cannot be ignored. Impropriety may not always overemphasise the form but would stress the substance, the motives, the intentions and the final effect of the disputed transaction.

286. From the sequence of events and the fact that the Respondents are associated Companies, it is evident that the corporate device was used or rather abused to ensure that the substantial properties and assets of E-City (1st Respondent) valued at approximately Rs. 210 Crores remain entirely in control of the Respondents but at the same time these properties and assets are not available to satisfy the foreign awards should any execution be levied against them.

287. In *State of UP v. In Renuagar Power Co.*⁵⁴, the Hon'ble Supreme Court explained that the concept of lifting the corporate veil is

evolving. The veil of corporate personality, though not easily lifted, is becoming increasingly transparent in modern jurisprudence. The Court held that it is high time to reiterate that, in the expanding horizon of modern jurisprudence, lifting of the corporate veil is permissible, and its frontiers are unlimited. But it must depend primarily on the realities of the situation. In this case, the Hon'ble Supreme Court held that where the holding Company holds 100% shares in a subsidiary Company and the latter is created only for the purpose of the holding Company, the corporate veil can be lifted.

288. In *Gilford Motor Company v. Horne*⁵⁵, Horne had been employed by the Company under an agreement that he shall not solicit the customers of the Company or compete with it for a specific period after leaving its employment. After ceasing to be employed by the plaintiff, Horne formed a Company which carried on a competing business and caused all its shares to be allotted to his wife and an employee of the Company, who were appointed as its directors. It was held that since the defendant (Horne) in fact controlled the Company, its formation was a mere 'cloak or a sham' to enable him to break his agreement with the plaintiff. Accordingly, an injunction was issued against him and against the Company he had formed, restraining them from soliciting the plaintiff's customers.

289. In *Jones v. Lipman*⁵⁶, the seller of a piece of land, sought to evade specific performance of a contract for the sale of the land by converting the land into a Company he formed for that purpose. Initially, the Company was formed by third parties, and the vendor purchased the whole of its shares from them, had the shares registered in his and a nominee's names, and had himself and the nominee appointed directors. It was held that the vendor could not resist specific performance of the contract by conveying the land to the Company, which was a mere façade to avoid the contract of sale, and specific performance was therefore ordered against the vendor of the Company.

290. In both the above-referred-to vintage cases, there was no infirmity in the form of the transactions. The companies were validly incorporated in compliance with all the legally prescribed formalities. If the objective had not been suspect, there would have possibly been no question of lifting the corporate veil. But because the corporate structure was used merely as a device or façade to deprive the plaintiffs of their rights, the Court lifted the corporate veil and examined the underlying transaction.

291. In Gower and Davies' principles of Modern Company Law (Eighth Edition), it is noted that in several recent cases, the courts have considered the principle that the corporate veil can be set aside because the company has been used to carry on an unlawful activity or

to avoid the impact of an order of the court. Usually, when the veil is lifted, the principle of shareholders' limited liability remains unaffected. Instead, it is the company that is, in some way, made liable for the shareholder's obligations. The clearest case is *Re H.*⁵⁷. The learned Authors have also referred to the cases of *Gilford Motor Co. Ltd. v. Horne* (supra) and *Jones v. Lipman* (supra).

292. The learned Authors also referred to analogous cases in which directors have sought to avoid liability by allocating assets to companies they control. Where a director had misappropriated corporate assets or opportunities, but those assets had been taken by a company owned or controlled by the director rather than by the director personally, the court preferred to hold the director personally liable on the basis that the company in question was a façade (*Gencor ACP Ltd. v. Dalby*) rather than the company liable for knowing receipt of the corporate assets. The learned Authors have also held that impropriety would include deliberately using the corporate form to avoid a liability that has arisen or is anticipated.

293. In *TSB Private Bank International SA v. Chabra*⁵⁸, in a situation where there was a good arguable case that asset apparently vested in the company were the property of the individual defendant, the court, of its own motion in Mareva proceedings against the director, added the company as a defendant to the action under the provisions of Ord.15, r. 6 and then made a Mareva order against the company, even though it was accepted that the plaintiff had no cause of action against company, because there was otherwise a risk that the assets of the company would be dissipated.

294. In *Woolfson v. Strathclyde Regional Council*⁵⁹, the Court of Appeal held that piercing of the corporate veil would be permitted where the corporate structure has been used by a defendant inter alia to evade such rights of relief as third parties already possess against him. In some instances, the corporate structure is simply interposed belatedly as an attempt by the defendant to evade rights of relief which third parties already possess against him. For example, in *Re Company*⁶⁰, the defendant used a chain of companies to put assets beyond the reach of the plaintiffs after proceedings against the defendant had been commenced. It was held that the veil would be pierced to enable the plaintiffs to pursue the assets.

295. In *Trustor AB v. Smallbone*⁶¹, the court pierced the veil where a director used a company to conceal his receipt of money improperly extracted from the claimant company.

296. In *Kensington International Ltd. v. Republic of Congo*⁶², the court pierced the corporate veil with respect to a variety of companies

used to disguise the Republic of Congo's oil sales. Sales were conducted through a series of companies, which were set up to conceal the identity of the Congo as seller and the fact that it was the recipient of the proceeds of sale. These structures were adopted to avoid, so far as possible, the attachment of the oil or the proceeds of sale by existing creditors of Congo, in circumstances where it was known that the creditors were taking aggressive action with a view to enforcing Congo's debts.

297. Dangre, J's order holds that IMAX by impleading 2nd, 3rd and 4th Respondents or by attempting to go against the properties and assets of E-City (1st Respondent) diverted to 2nd and 3rd Respondents, was trying to indirectly challenge the demerger Schemes which the orders of this Court have approved.

298. IMAX has repeatedly clarified that it was not challenging or impugning the demerger schemes or the Court orders approving the same. It is their case that it is because of the properties and assets of E-City (1st Respondent) being diverted from E-City (1st Respondent) and transferred/diverted to the 2nd and 3rd Respondents, that these Respondents have been impleaded in the IMAX Petition. They have time and again clarified that the execution is not against the 2nd and 3rd Respondents in their personal capacity but restricted only to the improperly diverted properties and assets.

299. Possibly, the IMAX was not quite clear in its submissions that it had no intention to proceed against the 2nd and 3rd Respondents personally, in the sense of levying execution of properties and assets of the 2nd and 3rd Respondents, other than those diverted to them from E-City (1st Respondent). Mr. Seervai and Mr. Jagtiani referred to the pleadings and the written submissions, which, *prima facie*, suggested that IMAX wished to hold the 2nd to 4th Respondents personally liable.

300. However, whatever the pleadings, now that Mr. Chinoy and Mr. Shah clarify that IMAX only seeks to go against the diverted properties and assets, we hold that there was nothing wrong in the impleading of the 2nd to 4th Respondents or for seeking execution against such diverted properties and assets. In any event, merely seeking relief in broader terms cannot be a ground to deny relief in narrower terms where a party is found entitled to such relief in terms of the law. The Courts always have the power, and in most cases even the duty to mould the relief after due consideration of the facts and the law on the subject.

301. By the same logic, however, whatever the role of the 4th

Respondent, it is established that no properties or assets of E-City (1st Respondent) were diverted to the 4th Respondent. Accordingly, there is no question of holding the 4th Respondent personally liable or levying any execution against the properties and assets of the 4th Respondent.

302. Although the 4th Respondent could have been joined as a proper party to the IMAX Petition, there is still no question of levying any execution against the 4th Respondent or its properties and assets. To this limited extent, therefore, Mr. Jagtiani's contention about there being no question of levying any execution against the 4th respondent's properties will have to be accepted.

303. Incidentally, the records show that the 4th Respondent is a holding company that holds some 98% of the shares in the 2nd and 3rd Respondent's companies, and, together with the 2nd Respondent, holds 99-96% of the shares in E-City (1st Respondent). The Petitioners have alleged that the 4th Respondent and its shareholders were actively involved in arranging the improper diversion of E-City's assets to the 4th Respondent and the 2nd and 3rd Respondents. To make good such an allegation, it was perhaps thought necessary to implead the 4th Respondent as a party to the IMAX Petition.

304. Therefore, though we do not fault the impleadment of the 4th Respondent to the IMAX Petition, we hold that, in the facts and circumstances of the present case, there can be no execution against the 4th Respondent or its properties and assets to satisfy the foreign awards.

305. The decisions in the cases of *Gemini Bay Transcription Private Ltd.* (Supra) and *Cox and Kings Limited* (supra) would not apply, as IMAX has made it clear that it does not wish to make the 2nd and 3rd Respondents independently and substantially liable for the enforcement of the foreign awards. The 2nd and 3rd Respondents have been joined in IMAX's Petition to levy execution against the properties and assets of the first Respondent, which have been improperly diverted to the 2nd and 3rd Respondents only to defeat the enforcement of foreign awards.

306. In any case, *Gemini Bay Transcription Private Ltd.* (supra) holds that persons who were joined in the arbitration proceedings but were not parties to the arbitration agreement cannot challenge the award or resist its enforcement under Section 48 of the said Act. Similarly, *Cox and Kings Limited* (supra), deals with the situation where non-signatory third parties/associate and group companies can be

joined as parties to an arbitration proceeding/reference. None of the issues strictly arise in this matter.

307. Dangre, J's order holds that IMAX had to discharge a very heavy burden for impleading the 2nd and 3rd Respondents in the enforcement/execution proceedings and of making out a case of improper diversion of the Award Holder's assets with a view to resisting the enforcement of the foreign award. In our view, the initial burden may have been on IMAX. However, such a burden did not have to be discharged beyond a reasonable doubt. It could be discharged on the touchstone of preponderance of probability.

308. In any event, even assuming that a higher burden was required to be discharged by IMAX, in this case, the facts speak for themselves. The arbitration proceedings had already commenced. Even the liability award was made. After that, under the Schemes of demerger, substantial properties and assets of E-City (1st Respondent) valued at Rs. 210 Crores were diverted to the 2nd and 3rd Respondents. The diversion was not against any consideration in terms of money or exchange of equivalent properties and assets, but against allotment of shares in the 2nd and 3rd Respondents' Companies to the 4th Respondent. The 4th Respondent is nothing but the holding company with about 99% of the shareholding in the 1st, 2nd and 3rd Respondents.

309. As a result of all this, E-City (1st Respondent), which was staring at an award that would have required it to pay USD 9 to 10 million, divested itself of its assets and properties, retaining only USD 700000 in assets. The timing and manner of this diversion, coupled with the fact that control over these properties and assets was retained by the Respondents, who are associated Companies amongst themselves, were sufficient to discharge even this higher burden.

310. Besides, Dangre, J's order does not adequately address the effect of a pro-enforcement bias that must inform the proceedings under Part II, Chapter I of the said Act. The policy of the law is to ensure that a foreign Award Holder secures the speedy enforcement/execution of the foreign award, so that it may enjoy the fruits of the award. This is what is held in *Gemini Bay Transcription Pvt. Ltd.* (supra) and *Vijay Karia* (supra).

311. The above decisions, in fact, hold that the burden is cast on the Award Debtor to show that the award need not be set aside on the grounds specified in Section 48 of the said Act. Applying these principles, the burden should have been on the Respondents to show why the enforcement/execution of the foreign awards should be frustrated simply because of the device resorted to by the Respondents.

In any case, there was ample material on record to shift the onus to the Respondents to explain the transactions and satisfy the Court that the corporate structure was not used as a façade to defeat the enforcement and execution of the foreign awards.

312. On the one hand, the Legislature and the Courts are striving to ensure that delays and subterfuges do not bog down the enforcement of foreign awards. There is expected to be a distinct pro-enforcement bias in the enforcement of foreign awards. This aligns with international practices on the subject. These combined efforts cannot be defeated by legitimising such brazen, though ingenious, diversions of the award debtors' property during the pendency of the arbitral proceedings or even after liability awards are made. A message cannot go out to the international commercial community that the legal framework for arbitrations in India is a leaky cistern, easily breached by resorting to subterfuges such as using, or rather abusing, corporate devices as a sham or façade. That, with respect, is not the present law in India.

Conclusions on the impleadment and execution issue

313. For all the above reasons, we conclude that there was nothing wrong in impleading the 2nd to 4th Respondents in IMAX's Petition. Besides, execution can be levied against those of E-City's (1st Respondent's) properties and assets that were diverted to the 2nd and 3rd Respondents for satisfaction of the foreign awards. However, such execution can be only qua the diverted properties and assets presently held by the 2nd and 3rd Respondents, and not against the 2nd and 3rd Respondents independently.

314. This means that for the execution of the foreign awards, IMAX can proceed not only against E-City (1st Respondent) but also against the properties and assets of E-City (1st Respondent) diverted to the 2nd and 3rd Respondents under the Schemes of Arrangement sanctioned on 20.06.2007 and 31.08.2007. It is clarified that there can be no execution against any other properties or assets independently held by the 2nd and 3rd Respondents' Companies to satisfy the foreign awards.

315. Insofar as the 4th Respondent is concerned, though there was nothing wrong in its impleadment to IMAX's Petition, since no properties or assets of E-City (1st Respondent) were diverted to the 4th Respondent, there is no question of levying any execution on the 4th Respondent, its properties or assets.

CONCLUSIONS AND OPERATIVE DIRECTIONS IN THIS APPEAL:

316. The points for determination formulated in paragraph 32 of this judgment and order are answered accordingly. IMAX's petition is held

to have been filed within the prescribed period of limitation. IMAX's petition for enforcement of the foreign awards could not have been refused on any alleged violation of India's public policy. This appeal was maintainable as against all the Respondents. There was no error in impleading the 2nd to 4th Respondents as parties to IMAX's petition. The foreign awards are recognised and can be executed unreservedly against the 1st Respondent and against the 2nd and 3rd Respondents to the extent of the properties and assets diverted from E-City [1st Respondent] to them under the schemes of arrangements dated 20.06.2007 and 31.08.2007. However, no execution can be levied against the 4th Respondent. To this extent, Dangre, J's order will have to be set aside or modified.

317. Now that the foreign awards are recognised, they shall have the status of deemed decrees and be executed in accordance with what is set out above. However, this would require constant monitoring and the timely issuance of directions in execution proceedings, such as the attachment and sale of properties. Such an exercise could be best undertaken by the executing Court, i.e., the learned Single Judge.

318. Accordingly, this Appeal and the interim applications therein, if any, are disposed of by making the following order:

- (a) This Appeal is partly allowed, and the impugned judgment and order dated October 24, 2024, passed by the learned Single Judge disposing of Commercial Arbitration Petition No. 414 of 2018, along with Chamber Summons Nos. 99 of 2019, 100 of 2019 and 101 of 2019 are set aside or modified to the extent they are inconsistent with our findings in this Judgment and order.
- (b) The objections to the enforcement of the foreign awards referred to in paragraph 14 of this judgment and order are hereby rejected, and the foreign awards are recognised and held to be enforceable. The foreign awards shall now be deemed to be the decrees of the Court and executable to the extent indicated.
- (c) The matter is remanded to the learned Single Judge to proceed with the actual execution of the foreign awards/deemed decrees against E-City (1st Respondent) and against E-City's properties and assets diverted to the 2nd and 3rd Respondents under the Schemes of Arrangement dated 20.06.2007 and 31.08.2007.
- (d) However, no execution shall be levied against the 2nd, 3rd and 4th Respondents, independently, because they are not personally/juridically liable for satisfaction of the foreign awards. The 2nd and the 3rd Respondents are held liable only to the extent of the properties and assets diverted to them from E-City (1st

Respondent) under the Schemes of Arrangement dated 20.06.2007 and 31.08.2007.

- (e) Until the learned Single Judge makes any further orders in the proceedings for the actual execution of the foreign awards/deemed decrees, E-City (1st Respondent) is restrained from dealing with its properties or assets, which will include the amounts in its bank accounts, etc. Similarly, during the above period, even the 2nd and 3rd Respondents are restrained from dealing with or otherwise alienating in any manner the properties and assets diverted to them under the Schemes of Arrangement dated 20.06.2007 and 31.08.2007.

319. The 1st Respondent has succeeded in frustrating the enforcement of the foreign awards made between 2006 and 2008. Full advantage was taken of the Master Agreement entered into in 2000, and by taking undue advantage of the pressure on the Indian court's dockets, payments have been successfully resisted for all these years. During the pendency of the arbitral proceedings, the 1st Respondent improperly diverted its properties and assets worth Rs. 210 crores to the associated companies, i.e. the 2nd and 3rd Respondents, with the sole objective of frustrating the execution of the awards or, in any event, further delaying the matters.

320. To borrow the words of the Hon'ble Supreme Court in *Vijay Karia (Supra)*, the first Respondent is "*indulging in speculative litigation with the fond hope that by flinging mud on a foreign tribunal award, some of the mud so flung would stick*". For all these reasons, we impose a cost of Rs. 5 lakhs on the 1st Respondent, payable within 4 weeks to the Appellant, IMAX.

321. The parties are directed to appear before the learned Single Judge on 19th January 2026 at 11.00 am and file an authenticated copy of this judgment and order to enable the learned Single Judge [Executing Court] to proceed with the execution of the foreign awards.

322. The appeal and the pending applications therein are disposed of in the above terms.

323. At this stage, learned Counsel appearing on behalf of the 1st, 2nd, 3rd and 4th Respondents seek a stay on the implementation of the judgment and order just pronounced. Insofar as the 4th Respondent is concerned, we have not directed any execution as against the said Respondent. Therefore, there is no question of any stay.

324. Insofar as the 1st, 2nd and 3rd Respondents are concerned, for the present, we have only directed them to appear before the Executing Court on 19.01.2026 at 11.00 am. in order to enable the Executing

Court to proceed with the execution of the foreign awards/deemed decrees. This leaves the Respondents with sufficient time to challenge this judgment and order. Therefore, the motion for stay is denied.

¹ (2020) 10 SCC 1

² (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804

³ 2016 SCC OnLine Bom 10695

⁴ (2020) 17 SCC 324 : (2021) 4 SCC (Civ) 373

⁵ (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637

⁶ 1960 SCC OnLine SC 15 : (1960) 3 SCR 590

⁷ (2005) 1 SCC 787

⁸ AIR 1977 SC 392

⁹ 2022 SCC OnLine SC 1460

¹⁰ (1970) 1 SCC 613

¹¹ (2008) 14 SCC 445

¹² (2018) 16 SCC 228

¹³ (2021) 17 SCC 693

¹⁴ Civil Appeal No. 5454/2019 decided on 07.11.2025

¹⁵ AIR 1967 SC 1

¹⁶ (1999) 2 SCC 103

¹⁷ (2014) 6 SCC 351

¹⁸ CA/4443/2021 decided on 2607/2021

¹⁹ (2001) 2 SCC 574 : 2001 SCC (L&S) 469

²⁰ (2006) 4 SCC 1 : 2006 SCC (L&S) 753

²¹ 2025 INSC 764

²² AIR 1964 SC 907

²³ AIR 1935 PC 85

²⁴ (1970) 1 SCC 670

²⁵ (2004) 8 SCC 706

²⁶ (2020) 6 SCC 557 : (2020) 3 SCC (Civ) 671

²⁷ (2001) 6 SCC 356

²⁸ (2021) 7 SCC 313

²⁹ [(2020) 11 SCC 1]

³⁰ 2017 SCC OnLine Del 7810

³¹ 2015 SCC OnLine Bom 1109

³² (2024) 7 SCC 197 : (2024) 3 SCC (Civ) 780

³³ (2022) 1 SCC 753 : (2022) 1 SCC (Civ) 522

³⁴ (2014) 2 SCC 433 : (2014) 2 SCC (Civ) 1

³⁵ (2021) 19 SCC 629

³⁶ (2012) 7 SCC 499 : (2012) 3 SCC (Cri) 387

³⁷ 1994 Supp (1) SCC 644 : (1994) 81 Comp Cas 171

³⁸ (2012) 4 Comp LJ 178 (Delhi)

³⁹ 2014 SCC OnLine Bom 1276

⁴⁰ (2019) 5 SCC 302

⁴¹ (2001) 6 SCC 356

⁴² (1999) 9 SCC 334 : (2000) 99 COMP CAS 383

⁴³ Civil Appeal Nos. 3640-3642 of 2025

⁴⁴ (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664

⁴⁵ (2022) 1 SCC 753 : (2022) 1 SCC (Civ) 522

⁴⁶ (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680

⁴⁷ [1897] A.C. 22

⁴⁸ 2008 EWHC 2380 (Fam)

⁴⁹ 2013 UKSC 34

⁵⁰ (1986) 1 SCC 264 : (1986) 59 Comp Cas 548

⁵¹ 1998 SCC OnLine Del 743 : (1998) 76 DLT 817

⁵² PLR (2016) 1822 P&H 518

⁵³ 2020 SCC OnLine Bom 217

⁵⁴ (1988) 4 SCC 59 : (1991) 70 COMP CAS 127

⁵⁵ [1933] 1 Ch. 935

⁵⁶ [1963] 1 All ER 442

⁵⁷ [1996] 2 All ER 291, CA.

⁵⁸ [1992] 1 WLR 231

⁵⁹ (1979) 38 P & CR 521, HL

⁶⁰ (1985) BCLC 333, C.A.

⁶¹ (2001) 2 BCLC 436

⁶² (2006) 2 BCLC 296

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