IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION APPEAL (L) NO.38267 OF 2024

IMAX Corporation ...Appellant/(Orig. Petitioner)

V/s

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

Mr. Aspi Chinoy, Senior Advocate with Mr. Shanay Shah, Mr. Rahul Mahajan, Mr. Amit Surve & Ms. Simran Gulabani i/b Fortitude Law Associates, Advocates for appellant.

Mr. Prateek Seksaria, Senior Advocate with Ms. Pooja Tikde, Ms. Krushi Barfiwala, Ms. Rima Desai, Mr. Nishant Chothani, Mr, Rohit Agarwal, Mr. Shlok Bodas & Ms. Jahnavi Bhatia i/b Parinam Law Associates, Advocates for respondent No.1.

Mr. Navroz Seervai, Senior Advocate with Ms. Gulnar Mistry, Mr. Saket Mone & Mr. Devansh Shah i/b Vidhii Partners, Advocates for respondents No. 2 & 3 .

Mr. Sharan Jagtiani, Senior Advocate with Mr. Saket Mone, Ms. Apoorva Manwani, Mr. Siddharth Joshi & Mr. Devansh Shah i/b Vidhii partners, Advocates for respondent No.4.

****

CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.

The arguments were heard on : 06/03/2025
The order is pronounced on : 23/04/2025

Per A. S. Chandurkar, J.

1] This Commercial Arbitration Appeal has been filed under Section 50(1) of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996) raising a challenge to the judgment dated 24/10/2024 passed by

the learned Single Judge in Commercial Arbitration Petition No.414 of 2018. The said proceedings had been filed under the provisions of Sections 47, 48 and 49 of the Act of 1996 for a declaration that three Foreign Awards passed in favour of the appellant – Imax Corporation were enforceable under the provisions of Part-II of the Act of 1996. By the impugned judgment, the learned Judge dismissed the Arbitration Petition holding the same to be barred by limitation with the further finding that the said Foreign Awards in favour of Imax Corporation did not deserve to be enforced and executed. It was also held that the impleadment of the 2nd to 4th respondents in the Arbitration Petition was unwarranted as they were not parties to the arbitration proceedings.

2] Mr. Aspi Chinoy, learned Senior Advocate for the appellant submitted that the learned Judge erred in holding that the Arbitration Petition as filed was barred by limitation. A further error was committed by the learned Judge in holding that the Foreign Awards passed in favour of the appellant were not liable to be enforced under Part II of the Act of 1996. The finding that the petitioner in the Arbitration Petition could not have impleaded the 2nd to 4th respondents on the premise that the petitioner was seeking execution of the said awards against them was also incorrect. According to him, pursuant to the Partial Liability Award dated 09/02/2006, the Quantum and

Jurisdiction Award dated 24/07/2007 and the Final Award passed by the International Court of Arbitration on 27/03/2008 were sought to be enforced against the 1st respondent who was a signatory to the arbitration agreement. The execution of the Foreign Awards had also been sought against the 2nd to 4th respondents as it was the case of the appellant that the entire assets/properties of the 1st respondent had been improperly diverted in their favour so as to defeat enforcement of the Foreign Awards against the 1st respondent. It was well settled that a combined petition seeking recognition and enforcement of a foreign award as well as its execution was maintainable. Though proceedings for enforcement of a foreign award could be stated to comprise of two stages; the first stage being recognition of a foreign award and the second stage being its enforcement and execution as a deemed decree, it would not mean that two separate proceedings were required to be filed while seeking enforcement of a foreign award. Reference was made to the judgments of the Supreme Court in *M/s Fuerst Day Lawson vs. Jindal Exports Ltd.*(2001) 6 SCC 356 and *Government of India vs. Vedanta Limited (Formerly Cairan India Ltd) and Others*, (2010) 10 SCC 1 in that regard. Since various grounds of challenge on merits were raised by the appellant, it was submitted that the appeal deserved detailed consideration.

3] The admission of the appeal was strongly opposed by Mr. Prateek Seksaria, learned Senior Advocate for the 1st respondent. It was submitted that after consideration of all relevant aspects, the learned Judge had rightly found that the Arbitration Petition was barred by limitation. On being further satisfied that the Foreign Awards did not deserve enforcement under Part-II of the Act of 1996, the Arbitration Petition had been rightly dismissed. No interference with the findings as recorded was called for.

4] The maintainability of the Commercial Arbitration Appeal was challenged by Mr. Navroz Seervai, learned Senior Advocate for the 2nd and 3rd respondents. It was urged that the said respondents were neither signatories to the arbitration agreement nor were parties to the Final Award proceedings. Despite aforesaid, the Foreign Awards were sought to be executed against said respondents on the ground that the 1st respondent had diverted its assets in favour of 2nd and 3rd respondents under a fraudulent de-merger scheme. The said respondents had preferred Chamber Summons in the Arbitration Petition seeking deletion of their names from the proceedings. The Chamber Summons filed by them were rightly allowed by the learned Judge after considering the settled law in that regard. Since the Chamber Summons and Arbitration Petition were heard together and as

the learned Judge thereafter held that the Chamber Summons deserved to be made absolute, the names of the said respondents were dropped from the array of the parties. The decision on the Chamber Summons had not been challenged by the appellant by raising any ground in that regard. While an order refusing to enforce a foreign award was appealable under Section 50(1)(b) of the Act of 1996, the order passed on the Chamber Summons making it absolute and directing deletion of non-party respondents was not appealable. As the said Chamber Summons were allowed by the learned Judge, the appeal as filed against the 2nd and 3rd respondents was not maintainable. The only remedy available to the appellant was to independently challenge the decision allowing the Chamber Summons in appropriate proceedings. The appeal as filed challenging the refusal to enforce the award was maintainable only against the 1st respondent and not the other respondents. To substantiate this contention, reference was made to the decision in *Noy Vallesina Engineering SPA (now known as Noy Ambiente S.p.a.) vs. Jindal Drugs Limited and Others*, 2020 INSC 659. It was thus submitted that it be held that the appeal was not maintainable against the 2nd and 3rd respondents for challenging the order deleting their names from the array of parties.

Similar contentions were raised by Mr. Sharan Jagtiani, learned Senior Advocate for the 4th respondent while objecting to the

maintainability of the appeal against the said respondent. It was submitted that the 4th respondent had also filed Chamber Summons seeking deletion of its name from the array of parties which came to be allowed by the impugned judgment. In addition to what was urged on behalf of the 2nd and 3rd respondent, it was submitted that it was necessary for the appellant to first seek recognition and enforcement of the Foreign Awards against the 1st respondent. After crossing that threshold, the aspect of their execution would come into picture. Referring to the provisions of Section 50(1)(b) of the Act of 1996, it was urged that an appeal could be filed only against an order refusing to enforce a foreign award and not any other order. As the 4th respondent was not party to the Foreign Awards, there was no question of the same being executed against it. Considering the limited scope of the provisions of Section 50(1)(b) of the Act of 1996, it was submitted that the appeal in its present form was not maintainable against the 4th respondent. Reference was made to the judgments of the Supreme Court in *Kandla Export Corporation and Another vs. M/s OCI Corporation and Another*, 2018 INSC 113 and *Vijay Karia and Others vs. Prysmian Cavi E Sistemi* SRL 2020 INSC 178 in that regard. It was then submitted that any appeal from an order passed at the stage of execution of a foreign award would be governed by Section 13 of the Commercial Courts Act, 2015 read with the provisions of Orders XLIII

and XXI of the Code of Civil Procedure, 1908 (for short, the Code). In that regard, reliance was placed on the order dated 04/02/2025 passed in Commercial Appeal (L) No.14519 of 2024 (*Suresh Tulsidas Bhatia and another vs. ARF SV 1 Sarl*) decided on 04/02/2025. It was also urged that an indirect challenge to the process of de-merger that had attained finality could not be permitted to be raised in the present proceedings. It was thus submitted that Commercial Arbitration Appeal ought to be dismissed against the 4th respondent as being not maintainable.

5] We have heard the learned counsel for the parties at length on the issue of maintainability of the Commercial Arbitration Appeal filed under Section 50(1)(b) of the Act of 1996 as against the 2nd to 4th respondents. We have also perused the written submissions made on behalf of the parties in that regard and have thereafter given due consideration to the same.

6] In our view, the Commercial Arbitration Appeal deserves to be admitted for its consideration on merits not only against the 1st respondent but also against the 2nd to 4th respondents as the same is found to be maintainable in law. We say so for the following reasons:-

6.1 The Arbitration Petition as filed under Sections 47, 48 and 49 of the Act of 1996 against the respondents seeks recognition, enforcement as well as execution of the Partial Liability Award dated 09/02/2006, the Quantum Jurisdiction Award dated 24/08/2007 as well as the Final Award dated 27/03/2008. The prayers made in the Arbitration Petition as filed read as under:-

> "(a) That this Hon'ble Court be pleased to pass an order and/or declaration that the said Arbitral Awards, i.e., Liability Award dated February 09, 2016, Quantum Award dated August 24, 2007 and Final Award dated March 27, 2008 passed by the Hon'ble Arbitral Tribunal in Case Reference No. 13339/JNK/EBS, in favor of the Petitioner, are enforceable under the provisions of the Part Il of the Arbitration Act and directions to be issued to enforce and execute the said Arbitral Awards as a decree in favor of the Petitioner and against all the Respondents;
>
> (b) That all the Respondents be directed to deposit the decretal amount of a sum of U.S. $ 11,309,496.06 plus interest at the rate of U.S. $ 2,512.60 per day from October 1, 2007 till payment and realization thereof and the Petitioner be permitted to withdraw the same;
>
> (c) That pending the enforcement and/or execution of the said Arbitral Awards, this Hon'ble court be pleased to pass the order directing all the Respondents to disclose on oath forthwith or within such time as this Hon'ble Court deem fit:
>
> i. Immovable Properties owned by all the Respondents in its possession and in possession of any third parties;
>
> ii. Movable properties owned by all the Respondents in its possession and in the possession of any third parties;
>
> iii. Shares, debentures, bonds, securities etc., held by all the Respondents in any company/entity;

iv. All debts due and payable to all the Respondents by any third party or parties;

v. Details of bank accounts which all the Respondents holds;

vi. Details of the stock in trade and raw material of all the Respondents;

vii. Details of cash in hand with all the Respondents.

(d) Upon disclosure as per prayer clause (c) above, this Hon'ble Court be pleased to order allowing realization of the total amount as per the Arbitration Awards as and by way of attachment and sale of items disclosed by all the Respondents;

(e) For ad-interim reliefs in terms of prayers (c) above;

(f) Cost of the Petition

(g) For such further and other reliefs as the nature and circumstances of the case may require."

The prayers as made thus indicate that the appellant seeks enforcement of the aforesaid awards as well as their execution against all the respondents.

6.2 Chamber Summons came to be filed by the 3rd respondent seeking deletion of its name from the cause title on the grounds stated in the affidavit-in-support of the Chamber Summons. Similar Chamber Summons were also preferred by the 2nd and 4th respondents with identical prayers.

6.3 The learned Judge while considering the Arbitration Petition as well as the Chamber Summons referred to the decisions of the Supreme Court in *M/s Fuerst Day Lawson* (supra) in paragraph 48 and *Vedanta Limited* (supra) in paragraph 49 of the impugned judgment to record a finding in paragraph 51 that it was open for the award holder to apply for recognition and execution of a foreign award through a common petition. In paragraph 52 it was held that while prayer clause (a) sought a declaration that the awards passed in favour of the appellant were enforceable under Part-II of the Act of 1996, prayer clauses (b) to (d) were reliefs sought under Order XXI of the Code. Issue-A as framed was answered by holding that a common petition seeking enforcement and execution of the Foreign Awards as a deemed decree was maintainable for enforcement and execution of the same.

6.4 On the aspect of impleadment of the 2nd to 4th respondents in the Arbitration Petition, the clarification offered by the appellant was recorded that the appellant was seeking recognition of the Foreign Awards only against the 1st

respondent and as its assets had been divested with a view to defeat the Foreign Awards, the other respondents had been impleaded to facilitate its execution. It was then held that though the 2nd to 4th respondents were not signatories to the arbitration agreement, they were joined as parties being proceeded in execution. After holding that merely on the averments that the said respondents had played fraud was insufficient for granting relief against them, the Chamber Summons preferred by the 2nd to 4th respondents came to be made absolute. Additionally, the Arbitration Petition came to be dismissed against the 1st respondent as being barred by limitation. As a result, the learned Judge declined enforcement and execution of the Foreign Awards against all the respondents.

6.5 At the outset, we may clarify that at this stage we are not entering into the merits of the findings recorded by the learned Judge either qua the 1st respondent that the Arbitration Petition as filed was barred by limitation or against the 2nd to 4th respondents that their intention was to defeat the Foreign Awards passed in favour of the appellant. It is only the aspect of maintainability of the Commercial

Arbitration Appeal as filed under Section 50(1)(b) against the 2nd to 4th respondents that is being examined. For considering this aspect, it would be necessary to refer to some decisions of the Supreme Court. In M/s *Fuerst Day Lawson* (supra), the Supreme Court considered the provisions of Section 48 of the Act of 1996 in the context of the legal enactments holding the field earlier. In that backdrop it was observed as under:-

> 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 the Thyssen judgment already extracted above, 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 Award 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/decree 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 objectives contained in para 4 of the Statement of Objects and Reasons, Sections 47 to 49 and 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 foreign award there is no need to take separate proceedings, one for deciding the enforceability of the award to make 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 the Thyssen judgment.

Part II of the Act relates to enforcement of certain foreign awards. Chapter 1 of this Part deals with New York Convention Awards. Section 46 of the Act speaks as to when a foreign award is binding.

> Section 47 states as to what evidence the party applying for the enforcement of a foreign award should produce before the court. Section 48 states as to the conditions for enforcement of foreign awards. As per Section 49, if the Court is satisfied that a foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court and that court has to proceed further to execute the foreign award as a decree of that court. If the argument advanced on behalf of the respondent is accepted, the very purpose of the Act in regard to speedy and effective execution of foreign award will be defeated."
>
> (Emphasis supplied by us)

The aforesaid decision indicates that while seeking enforcement of a foreign award, there is no need to take separate proceedings, one for deciding the enforceability of the foreign award to make it rule of the Court and another to take up execution thereafter.

6.6 In *LMJ International Ltd. vs. Sleepwell Industries Co. Ltd.,* 2019 INSC 241, the Supreme Court dealt with the aspect of piecemeal consideration of enforceability of a foreign award and its execution thereafter. In paragraph 14 it was held as under :

> "14. Be that as it may, the grounds urged by the

petitioner in the earlier round regarding the maintainability of the execution case could not have been considered in isolation and *de hors* the issue of enforceability of the subject foreign awards . For, the some was intrinsically linked to the question of enforceability of the subject foreign awards. In any case, all contentions available to the petitioner in that regard could and ought to have been raised specifically and, if raised, could have been examined by the Court at that stage itself. We are of the considered opinion that the scheme of Section 48 of the Act does not envisage piecemeal consideration of the issue of maintainability of the execution case concerning the foreign awards, in the first place; and then the issue of enforceability thereof. Whereas, keeping in mind the legislative intent of speedy disposal of arbitration proceedings and limited interference by the courts, the Court is expected to consider both these aspects simultaneously at the threshold. Taking any other view would result in encouraging successive and multiple round of proceedings for the execution of foreign awards. We cannot countenance such a situation keeping in mind the avowed object of the Arbitration and Conciliation Act, 1996, in particular, while dealing with the enforcement of foreign awards. For, the scope of interference has been consciously constricted by the legislature in relation to the execution of foreign awards……"

(Emphasis supplied by us)

In *Vedanta Limited* (supra) that was relied upon by the learned Senior Advocate for the 4th respondent, it was reiterated in paragraph 83.8 that the aspect of maintainability of an enforcement petition and the

adjudication of objections filed is required to be decided in common proceedings. It thus becomes clear that the legal position in this regard stands settled that in a common petition, it is open for the award holder to apply for recognition and enforcement of the foreign award as well as its execution. In *Kandla Export Corporation* (supra) it was held that Section 50 was a provision contained in a self-contained code on matters pertaining to arbitration which was exhaustive in nature.

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.

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.

7] Hence in our view the objection raised by the 2nd to 4th respondents to the maintainability of the Commercial Arbitration Appeal filed for challenging the judgment dated 24/10/2024 refusing to recognise, enforce and execute the Foreign Awards is turned down. It is held that the present appeal as filed under Section 50(1)(b) of the Act of 1996 is maintainable against all the respondents.

Accordingly, the Commercial Arbitration Appeal is admitted against all the respondents. It is clarified that while considering the issue of maintainability, the Court has not gone into any of the aspects on merits. All contentions except the non-maintainability of the appeal are expressly kept open for being urged when the appeal is heard finally.

(M. M. SATHAYE, J.) **(A. S. CHANDURKAR, J.)**