

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

The **Bombay High Court** in the case of **Imax Corporation vs E-City Entertainment [Commercial Arbitration Appeal (CARBA) (L) No. 38267 of 2024]** dated December 30, 2025, has allowed the impleading of the related companies for the purpose of executing the arbitral award against the diverted assets, and remanded the matter to the executing court to proceed with the execution of the foreign awards, which were deemed to be decrees of the Court.

The High Court ruled that 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. It distinguished the FEMA regime from the stricter, erstwhile FERA regime, noting that FEMA does not render transactions void for lack of prior RBI approval.

The ruling came while considering the disputes that arose between the parties in 2003-2004, leading to arbitration before the International Chamber of Commerce (ICC) in London, where the ICC Arbitral Tribunal passed three foreign awards in favour of IMAX, opining that the Master Agreement was legally binding and the E-City had breached its obligations.

The Court reiterated that the expression 'Public Policy of India' in Section 48(2)(b) of the Arbitration and Conciliation Act, 1996, must be construed narrowly, especially in the context of enforcing a foreign award. Thus, the Court dismissed the argument regarding the non-consideration of expert testimony, treating it as an attempt to seek a merit-based review of the foreign award, which is impermissible under Section 48 of the said 1996 Act.

The Court observed that the facts presented a clear case for lifting the corporate veil. The diversion of assets from E-City to its associated companies during the pendency of arbitral proceedings was deemed an "impropriety" linked to the use of the corporate structure to avoid or conceal liability. Hence, the two essential conditions for piercing the veil were met: (i) control of the companies by the wrongdoers, and (ii) impropriety in the use of the corporate structure as a façade to conceal wrongdoing.

The Court pointed out that the diversion of assets worth Rs. 210 Crores from E-City to its associated companies (2nd and 3rd Respondents) during the pendency of arbitration was a misuse of the corporate structure as a façade to conceal liability and render the assets "execution proof" while retaining control over them through the holding company (4th Respondent).