* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**%** ***Reserved on : 28th January 2025***

***Pronounced on : 12th March 2025***

**+ O.M.P.(EFA)(COMM.) 3/2023, EX.APPL.(OS) 408/2023 EX.APPL.(OS) 409/2023, EX.APPL.(OS) 410/2023 EX.APPL.(OS) 630/2023 EX.APPL.(OS) 1685/2023 EX.APPL.(OS) 142/2024**

MERCEDES-BENZ GROUP AG

(PREVIOUSLY DAIMLER AG) .....Decree Holder

Through: Mr. Rajshekhar Rao, Senior Advocate; with Mr. Pallav Shukla, Mr. Aayush Chandra; Ms. Raashika Kapoor; and Mr. Arsh Rampal, Advs.

versus

MINDA CORPORATION LIMITED ....Judgment Debtor

Through: Mr. Sandeep Sethi, Sr Adv.; Mr. Manu Krishnan, Adv.; and Ms. Shruti Arora, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**ANISH DAYAL, J.**

**1.** This petition has been filed under Sections 44-49 of the Arbitration and Conciliation Act, 1996 ('**A&C Act**') and Order XXI of Code of Civil Procedure, 1908 ('**CPC**') for enforcement of Foreign

Award dated 29th November 2021 passed by the Arbitral tribunal comprising of *Dr. Fabian Von Schlabrendorff, Dr. Ulrich Trost, And Mr. Arne Fuchs* in Stuttgart, Germany under the *Rules of Arbitration of the International Chambers of Commerce, 2012* ('**ICC Rules**') in *ICC Case No. 22523/FS*.

**2.** The Award by the Arbitral Tribunal was a Consent Award arising out of differences and disputes between the parties from the *Letter of Comfort dated 12th June/21st August 2013* ('**LoC**').

**3.** The Award Amount along with LoC has been duly authenticated in accordance with Section 47 of A&C Act.

**4.** *Mr. Rajshekhar Rao, Senior Counsel* for the Decree Holder, in support of enforcement of the foreign Arbitral Award, places the following facts before the Court.

**5.** In a contractual dispute between *Mercedes-Benz Group AG* ('**MBAG**')/Decree Holder ('**DH**') and *Minda Corporation* Limited/Judgment Debtor ('**JD**'), the dispute was adjudicated before a three-member Arbitral Tribunal at Stuttgart, Germany. The Arbitral Tribunal was informed that the parties had executed a *Settlement Agreement dated 30th August 2021* ('**Settlement Agreement**') and the Tribunal was requested to render a Consent Award on that basis.

**6.** The basic crux of the Settlement Agreement, was an agreement by Minda Corporation/JD, to pay DH an amount of EUR 5.5 million. The said amount is approximately Rs.52 Crores and has since been deposited

by JD, as directed by the order of this Court dated 1st March 2024, before the Registry of this Court.

**7.** An objection was taken by *Mr. Sandeep Sethi, Senior Counsel* for JD that the DH had in fact recovered these amounts from the subsidiary of Minda Corporation in Germany, in favour of whom Minda Corporation, India had given an open Letter of Comfort to cover the contractual obligations of Minda Corporation, Germany.

**8.** This recovery, as per *Mr. Sethi* had been done through the Liquidator *Mr. Wolfgang Bilgery* ('**Bilgery**') appointed for Minda Corporation, Germany and, therefore, the DH would not be eligible for a '*double dip*' on the said payments/dues.

**9.** In this respect, *Mr. Rao*, Senior Counsel for the Decree Holder pointed out to *paras 55-58* & *paras 67-75* of the Arbitral Award, where it is noted that the Minda Corporation, India was quite aware of the previous settlement with the Liquidator for EUR 11 million; DH had agreed to take a '*haircut*' and consent to a settlement of EUR 5.5 million, instead, with Minda Corporation. In fact, the preamble to the Settlement Agreement, which is recorded in *para 69* of the Award also states that the Decree Holder confirmed that they will not benefit from any '*double dip*' by virtue of payments agreed by Minda Corporation under the Settlement Agreement.

**10.** Yet another issue was relating to the permission by RBI to compound the offence under *Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulations, 2004* ('**FEMA**') alleged of

Minda Corporation, India, having issued open Letter of Comfort/guarantee for their subsidiary abroad, without prior permission.

**11.** In this regard, *Mr. Rao*, Senior Counsel for DH, points out to the communication by RBI dated 13th May 2022, placed on record, which states that ***firstly***, RBI had no objection for remittance of EUR 5.5 million by Minda Corporation to MBAG, pursuant to the Consent Award passed; ***secondly***, that the issuance of Letter of Comfort was not in consonance with FEMA and is a contravention under Section 13 of FEMA; ***thirdly***, RBI granted their *post facto* approval for the transaction subject to compounding of the said contravention.

**12.** *Mr. Rao*, therefore, contended that neither any regulatory issue subsisted for remittance of EUR 5.5 million to DH nor the objection by JD, noted above, relating to a '*double dip*', was tenable.

**13.** *Mr. Sethi*, Senior Counsel for JD did not deny that DH had in fact admitted in affidavit filed before this Court that the Award Amount per the Consent Award, did not overlap with any amounts received by DH for MBAG on account of insolvency of Minda Germany. He submitted that in June 2013, Minda Germany had financial trouble and the DH requested Minda India (*the JD herein*), to place an LoC.

**14.** On 29th November 2013, Minda Germany went into insolvency. On 29th December 2016, DH filed a request for arbitration for claims against Minda Germany and on that basis the Consent Award was finally passed on 29th November 2021.

**15.** On 5th January 2022, JD filed for RBI permission to remit the amount. On 16th March 2022, the dealer bank (Federal Bank) wrote to the RBI to remit the said amount. On 13th May 2022, the RBI allowed the said remittance. The email dated 13th May 2022 is extracted hereunder for ease of reference:

> "*2. In the instant case, we do not have objection for remittance of Euro 5.5 million by Minda Corporation Limited to Mercedes Benz AG pursuant to the consent award passed in the arbitration proceedings before the International Chamber of Commerce in Stuttgart, Germany.*
>
> *3. Further, it is observed, the transaction of issuance of letter of comfort which was open ended is not in consonance with the provisions of Notification No. FEMA.120/RB-2004 dated July 7, 2004 as amended from time to time, and therefore, same has been considered as a contravention under Section 13 of FEMA, 1999.*
>
> *4. We grant our post-facto approval for the above transaction subject to compounding of the contravention. The period and amount of contravention of FEMA 1999 will be crystallised and communicated to you in due course.*"
>
> (emphasis added)

**16.** The RBI approval issue being out of the way, the essential basis, now, of resistance by the JD to enforcement was that DH had not disclosed when they applied to the Liquidator of Minda Germany for payment and it was accepted in part, as to ***firstly***, what was the extent of settlement; and ***secondly***, whether there was any waiver of rest of the claims which are now sought to be foisted on Minda India. Counsel for JD stated that the agreement should have been requisitioned and therefore, for lack of such disclosure, the JD had a right to object under

Section 48(2)(b) of A&C Act as the enforcement would be contrary to public policy of India.

**17.** *Mr. Rao,* Senior Counsel for DH, rejoined to this argument by stating that the DH's affidavit was filed pursuant to order dated 17th November 2023 of this Court. A request had been made by JD for disclosing the '*Bilgery Settlement*' i.e. the settlement with the Liquidator of Minda Germany. On 22nd November 2023 counsel for DH confirmed that enforcement of the Award will not result in a double benefit to the DH. An affidavit to this effect had been prepared and was handed over. The affidavit was filed in context that there was no overlap between the settlement with the Liquidator of Minda Germany and Consent Award with Minda India. He further stated that the question of disclosing the settlement will not arise since this issue had been raised before the Courts at Germany and a ruling had been delivered that the said Settlement Agreement was not liable to be disclosed. The question of waiver also would not arise because it is an admitted position before the Arbitral Tribunal that this amount had to be paid by Minda India and these aspects had been already accounted for in the Award itself.

**18.** In this regard he pointed out to various portions of the Award, in particular *para 52* (*extracted below*), where a communication was sent to Minda India setting out a deadline to comply with the obligations under the Settlement Agreement:

52. On 7 May 2021, Counsel for Claimant sent the following message to the Tribunal and Counsel for Respondent:

"*Dear Members of the Tribunal,*

*Counsels for the parties have liaised yesterday. Considering the Corona-situation in India, Claimant is amenable to grant Respondent more time to revert to the Tribunal's draft consent award respectively Claimant's editorial comments thereto. Claimant therefore requests that the Tribunal extend the deadline for Respondent to comment until 31 May 2021.*

*Dear Mr. Hilgard,*

*On behalf of Claimant and MBAG,* ***we hereby set Respondent a deadline until 31 May 2021 to comply with Respondent's obligations arising under the Settlement Agreement*** *to have the Settlement implemented by Consent Award, either by accepting the Tribunal's draft dated 1 April 2021 or Claimant's edits thereto dated 13 April 2021. Should the deadline expire without Respondent accepting either the Tribunal's draft or Claimant's edits, Claimant and MBAG reserve the right to rescind / terminate the Settlement Agreement and all agreements concluded in connection therewith and to continue the present arbitration proceedings as well as the Indian court proceedings."*

**19.** *Para 55* of the Award notes the communication dated 31st May 2021 by Minda India which states that because of the pandemic, the process had been delayed and required copy of the Settlement Agreement between DH and Mr. Bilgery and a copy of agreement executed between Daimler AG and MBAG. For ease of reference, same is extracted as under:

55. On 31 May 2021, Counsel for Respondent sent the following message to the Tribunal with six attachments:

*"on the ground of lockdown in India, this Tribunal granted time to Respondent for providing its input/confirmation on the draft consent award ("Award") until May 31, 2021. The members of the Tribunal are aware of the fact that India is still going through one of the worst phases of pandemic and that the standstill situation is still continuing due to the lockdown.*

*Respondent also wants to submit here that its statutory auditor raised some serious concerns on ongoing settlement proceedings and required two documents:*

*(i) a copy of a settlement agreement concluded between Daimler AG and Mr. Wolfgang Bilgery in his capacity as insolvency administrator over the assets of Minda Schenk Plastic Solutions GmbH; and*

*(ii) a copy of an agreement executed between Daimler AG and Mercedes Benz AG.*

**20.** *Para 58* of the said Award notes communication of DH to Arbitral Tribunal noting that Minda India was very well aware of the settlement with Mr. Bilgery and that the Liquidator had agreed to pay the DH at least EUR 5.5 million. For ease of reference, same is extracted as under:

> 58. On 2 June 2021, Counsel for Claimant sent the following message to the Tribunal:
>
> *"Claimant is surprised, to put it mildly, about Respondent's intentional breach of the settlement agreement ("Minda-Settlement"). Respondent knew prior to its conclusion that Claimant had concluded a settlement with Mr Bilgery ("Bilgery-Settlement"), the insolvency administrator. Respondent even knew that the insolvency administrator had agreed to pay Claimant at least EUR 11 million. Respondent had requested Claimant to produce that Bilgery-Settlement prior to the conclusion of the Minda-Settlement, which Claimant refused. Nevertheless, Respondent and Claimant consciously concluded the Minda-Settlement (+ ancillary documents), which provided for a settlement to be implemented by Consent Award. It is now quite plain that Respondent's ability to comply with its obligations arising from the Minda-Settlement was not at all prevented by the second Corona-wave in India, but by its parallel attempts to get access to the Bilgery-Settlement by means of an access to file-motion to the AG Esslingen (see the attached motion for access to the file dated 2 March 2021).*
>
> *Claimant does not appreciate Respondent's conduct and objects to the requested time-extension for another two months. Respondent does not need another two months to comment on the draft Consent Award. Respondent hopes to obtain the Bilgery-Settlement within these two months in order to re-open the discussions about the Minda-Settlement. The Tribunal may remember that Claimant accepted to reduce the settlement amount in the initial Minda-Settlement from EUR 11 million (see Respondent's email dated 11 March 2020) to EUR 5.5 million because of Respondent's difficult economic situation following the outbreak of the Corona-pandemic.*
>
> *This being said, and while Claimant objects to the requested extension, Claimant is currently unable to request the immediate continuation of the arbitration proceedings since Respondent's non-compliance with the Minda-Settlement came as a serious surprise. Claimant now needs to discuss internally, inter alia about the funds required for the continuation of the proceedings, and to involve new decision-makers. Claimant expects that, factoring-in the current vacation periods, it will be able to take a position by the end of June. Thus, Claimant requests that the proceedings continue to be suspended until 30 June 2021.*
>
> *For the record, Claimant denies Respondent's allegations contained in Respondent's Counsel's email to the undersigned dated 31 May 2021 that it "confirmed and assured Minda Corporation Ltd. that the agreement executed between Daimler AG and the insolvency administrator (i) does not contain any language that waives, settles or in any other way forfeits the claims of Daimler AG against Minda Corporation Limited under the Letter of Comfort and (ii) Daimler AG does not receive any further payments in its capacity as insolvency creditor from the insolvency estate of Minda Schenk Plastic Solutions GmbH." Respondent positively knows that the allegation in (ii) is wrong since itself argued vis-à-vis the AG Esslingen in support of its motion for access to the file that the insolvency administrator paid EUR 11 million to Claimant (see Respondent's attached motion)."*

**21.** A request for *Bilgery Settlement* had been made even prior to settlement with Minda India, pursuant to which this settlement was concluded resulting in the Consent Award. An attempt was made by Minda India to access that *Bilgery Settlement* and they filed a motion before the Court in Germany. It was further clarified that *Bilgery Settlement* did not contain any language that waives or settles or forfeits, in any way, the claims of claimant against Minda India under the LoC. Essentially the claimant was pressing on knowledge of Minda India on all these issues even prior to the settlement. *Mr. Rajshekhar Rao,* Senior Counsel for DH, therefore, stressed these issues are being raised yet again despite that they were taken care of, in the Arbitral Award itself.

**22.** Most importantly, *paras 68 and 69* of the Award were pressed, where it is noted that settlement had been concluded between claimant and Minda India and the preamble of the settlement stated that Daimler AG and MBAG confirm that Daimler AG and/or MBAG will not be benefited from any '*double dip*' by virtue of the payments agreed by Minda India under the settlement.

**23.** Further in *para 75* (*extracted below*), a communication of 28th September 2021 by Minda India clearly recorded the confirmation asking the Tribunal to render an Award by consent:

> "*75. Later on 28 September 2021, Counsel for Respondent informed the Tribunal as follows:*
>
> *"<u>On behalf of Respondent, I hereby confirm [sic] that (i) it asks the Tribunal to render an Award by Consent as reflected in the draft circulated by the Tribunal, (ii) subject</u>*

*to and with incorporation of the modifications proposed by Claimant."*

(emphasis added)

**24.** *Mr. Rao*, relied upon the decision in ***Cruz City 1 Mauritius Holdings v Unitech Limited*** 2017 SCC Online Del 7810, where the Supreme Court in *paras 113 - 115* stated that Unitech resisting enforcement of a Foreign Award is clearly dishonest and no such contentions had been advanced by Unitech before the Arbitral Tribunal and that the only issue that remained was whether enforcement of the Award would violate the provisions of FEMA.

**25.** Reliance was also placed on ***Vijay Karia v Prysmian Cavi E Sistemi SRL*** 2020 11 SCC 1, in particular *paras 81-82*, highlighting that Section 48 of A&C Act was to enforce foreign Awards subject to certain well-defined exceptions, and that Section 48(1)(b) of A&C Act cannot be given an expansive meaning. Reliance was also placed on *paras 84 and 87* where the decision in ***Cruz City*** (*supra*) was noted.

**26.** ***Cruz City*** case had effectively held that the objective of the New York Convention was to ensure enforcement of Awards, notwithstanding that Awards were not rendered in conformity with national laws. The expression '*Fundamental Policy of Law*' must be interpreted in that perspective and must be fundamental and substratal of legislative policy and not a provision of any enactment. This was in context, where an assertion was made in those cases resisting enforcement of Foreign Awards, that the provisions of FEMA would be violated.

**27.** *Mr. Rao*, therefore, contended that in this situation there was not even an issue of FEMA since the RBI had given approval for remittance of the amounts notwithstanding that resistance on basis of violation of FEMA had already been dealt with in prior decisions of both ***Cruz City*** (*supra*) and ***Vijay Karia*** (*supra*).

**28.** Reliance was also placed on decision of Bombay High Court in ***POL India Projects Ltd. v Aurelia Reederei Eugen Friederich GmbH*** 2015 SCC OnLine Bom 1109 where the Bombay High Court held that prior permission of RBI was required under FEMA to issue a Letter of Guarantee and there was no prohibition from issuing such Letter of Guarantee and since such objections had not been raised before the Arbitral Tribunal, the enforcement of Foreign Awards cannot be denied.

**29.** *Mr. Rao* further highlighted that the issue of FEMA is not determinative in any event in view of order passed by the Supreme Court in ***GPE India Ltd. & Ors. v Twarit Consultancy Services Pvt. Ltd. & Anr.*** SLP (C) No. 6856/2023 decision dated 12th December 2023, where the counsel for RBI had stated that payment under an Award is treated as a current account payment and does not require any specifical approval or permission. He, therefore, submits that there is absolutely no impediment for enforcement of Arbitral Award.

***Analysis***

**30.** It may be useful to advert to background facts briefly to establish the context of assessment before this Court.

**31.** It may be useful to advert to background facts briefly to establish the context of assessment before this Court.

**32.** MBAG/Award Holder is a company incorporated and existing under the laws of the Federal Republic of Germany. It is a multinational automotive manufacturer, headquartered in Stuttgart, Germany. It's previous name was '***Daimler AG***'. On 1st February 2022, its name was changed to '***Mercedes-Benz Group AG***' (*DH herein*).

**33.** JD/Award Debtor is a company incorporated under the laws of India and is a part of the Ashok Minda Group of Companies engaged in the manufacture of machines and equipment used in the automobile industry. This group of companies was a supplier of automotive parts to the petitioner. The supply was made to petitioner in Germany through subsidiary of respondent namely '*Minda Schenk Plastic Solutions GmbH*' (*referred to as Minda Germany*). In order to guarantee the liabilities of Minda Germany, Minda India provided an LoC for the purpose of expansion of its business of Minda Germany as a supplier to petitioner. The LoC undertook to take all necessary actions to enable Minda Germany to meets its present and future obligations to the petitioner.

**34.** *Clause 2.4* of LoC provided that all disputes under LoC would be settled under the ICC Rules by three arbitrators and place of Arbitration would be Stuttgart, Germany.

**35.** Disputes arose between DH and Minda Germany, however, Minda Germany went into insolvency and was administered by the Liquidator,

Mr. Wolfgang Bilgery. A settlement was arrived at between petitioner and Mr. Bilgery ('**Bilgery Settlement**') and Liquidator agreed to pay EUR 11 million.

**36.** DH then sought to commence arbitral proceedings as per *Section 2.4* of LoC and in claim DH sought damages in the amount of EUR 39,361,111 amounting to roughly INR 266,74,24,609/-subject to interest at the rate of 5% points above the respective base interest rate from the time of filing the claim.

**37.** A Tribunal was constituted; on 27th March 2017 JD filed its response; on 15th May 2017 counsels for the parties informed the Tribunal that parties have entered into a '*standstill agreement*' to suspend the arbitral proceedings in an effort to engage into settlement discussions. In the meantime, in 2019, DH had gone through a business restructuring and the Group had been demerged in three Mercedes-Benz' entities namely (i) Mercedes-Benz Group AG (the Award Holder), (ii) MBAG (Mercedes-Benz AG); and (iii) DTAG (Daimler Truck AG), respectively.

**38.** On 30th August 2021, Settlement Agreement was executed between DH and JD. This was pursuant to negotiations and settlement discussions in respect of various claims between the parties. As per *Clause 3(i)* of the Settlement Agreement, parties agreed to submit a joint request to the Tribunal to pass the Consent Award (*under Article 32 of the ICC Rules*). On 29th November 2021, the Tribunal passed the Consent Award; on 29 December 2021 parties were notified.

**39.** As per the Consent Award, the respondent was to pay MBAG an amount of EUR 5.5 million approximately INR 48,94,95,996/- as on 3rd April 2023. The deadline for payment was a period of 195 days from the date of notification of the Consent Award.

**40.** Relevant extracts from the *Settlement Agreement* are as under, for ease of reference.

> "*The Parties have by mutual discussions, keeping in view their commercial interests and their long-standing business relationship as well as in the interest of strengthening such relationship, agreed to resolve the business dispute and terminate the ICC Arbitration. As part of such resolution, Minda Corporation has agreed to make a payment of € 5,500,000.00 (in words: Euro Five Million and Five Hundred Thousand) to MBAG in the manner and subject to the terms and conditions stated in this agreement ("**Settlement Agreement**").*
>
> *Daimler and MBAG confirm that Daimler and/or MBAG will not be benefited from any double dip by virtue of the payments agreed by Minda Corporation Limited under this Agreement.*
>
> *Therefore, the Parties agree as follows:*
>
> *1. Minda Corporation agrees to pay to MBAG an amount of € 5,500,000.00 (in words: Euro Five Million and Five Hundred Thousand) ("Settlement Amount"), inclusive of Taxes as may be applicable, in accordance with this Settlement Agreement.*
>
> *…*
>
> *3.(ii) The Consent Award would not be a determination on merits of the subject matter of the ICC Arbitration. Daimler and Minda Corporation agree that on account of the Consent Award, the proceedings under ICC Arbitration would be terminated, without any of them admitting or*

*accepting any liability on any issue being contested under the said arbitration.*

*…*

*3. (viii) Subject to Section 5, Minda Corporation hereby agrees that it shall not resist the recognition and enforcement of the Consent Award by Daimler or MBAG. Subject to Section 5, it is understood that in enforcement proceedings in India or abroad, Minda Corporation's payment obligation under the Consent Award, including interest (Section 6), shall be (i) unconditional, (ii) not depend on RBI approval, and (iii) Minda Corporation shall, in particular, not raise the lack of RBI approval as a defense against enforcement.*

"*4. Daimler and Minda Corporation agree that upon notification of the Consent Award to Daimler and Minda Corporation (a) Daimler and Minda Corporation shall irrevocably and unconditionally waive any and all claims (whether known or unknown) against each other, which are existing as on the date of this Settlement Agreement and/ or any and all claims which relate to a period prior to the date of this Settlement Agreement and arising out of the commercial understanding/ business relationship/ agreements/ transactions inter-se between themselves, and (b) Daimler and Minda Corporation shall waive their claims under the ICC Arbitration. Daimler and Minda Corporation hereby agree that no other claims shall lie between them in respect of the matters being settled herein. This waiver does not apply to rights and claims arising out of this Settlement Agreement or the Consent Award.*

*…*

*5 (iii) If the approval of the RBI is not received within 45 days of submission of the application to the RBI as mentioned in Section 5 (ii) above, Daimler may at its own cost approach an Indian court of competent jurisdiction in the matter ("Court") and seek an order for execution of the Consent Award. In such execution proceedings initiated by*

*Daimler in India, Minda Corporation shall express its willingness to comply with the Consent Award.*

*…*

*16. This Settlement Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the Parties, whether written or oral, relating to its subject matter.*"

(emphasis added)

**41.** The Consent Award was passed in accordance with German Code of Civil Procedure ('**GCPC**'). For ease of reference, the relevant sections as provided under Division 6: "***Arbitral Award and termination of proceedings***" i.e. Sections 1053, 1054 and 1055 of the GCPC are reproduced below:

"***Section 1053. Settlement*** *- (1) Where the parties settle the dispute in the course of the arbitral proceedings, the arbitral tribunal will terminate the proceedings. On request by the parties, the arbitral tribunal will record the settlement in the form of an arbitral award on agreed terms, provided that the substance of the settlement does not violate public policy ( ordre public ).*

*(2 ) An arbitral award on agreed terms is to be made in accordance with the provisions of section 1054 and must state that it is an arbitral award. Such an arbitral award has the same effect as any other arbitral award on the merits of the case.*

*(3) Insofar as declarations must be recorded by a notary in order to be effective, this requirement is replaced, in the case of an arbitral award on agreed terms, by recording the declarations of the parties in the arbitral award.*

***Section 1054. Form and content of the arbitral award***

*(1) The arbitral award is to be made in writing and is to be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal will suffice, provided that the reason for any missing signature is stated.*

*(2) The arbitral award is to state the reasons upon which it is based unless the parties have agreed that no reasons need be provided, or unless the arbitral award is an award on agreed terms as defined in section 1053.*

***Section 1055. Effects of the arbitral award***

*Amongst the parties, the arbitral award has the effect of a final and binding judgment handed down by a court*. "

(Emphasis added)

**42.** Germany is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ('***New York Convention***') contained in the first schedule of the A&C Act. Further, the Government of India declared Germany as a reciprocating territory under section 44(b) of the A&C Act by way of the notification bearing S.O No. 3913 dated 19 December 1966 published in the Gazette of India, Part II, Section 3 (II), September to December 1966. The aforesaid notification, although issued under the *Foreign Awards (Recognition and Enforcement) Act, 1961*, is deemed to be issued under the A&C Act by virtue of section 85(b) (*Repeal and Savings*) of the A&C Act.

**43.** Enforcement of Foreign Awards in India, as per Part II, Chapter I of the A&C Act, applies to '***New York Convention Awards***'. Section 48(1) of the A&C Act empowers an enforcement court to refuse the

enforcement, if the objecting party furnishes proof *inter alia* that it was under some incapacity, the agreement was invalid under applicable law, the party was not given proper notice and was unable to present the case, the Award deals with a dispute not within the terms of arbitration, the composition of the arbitral authority was not in accordance with the agreement of parties, the Award is not yet binding on the parties, or has been set aside or suspended. It is not the case of the JD that any of these conditions apply, nor have they sought to invoke them.

**44.** The enforcement was objected, however, under section 48(2) of the A&C Act which permits a court, even *suo moto*, to refuse the enforcement if the subject matter of the dispute is not capable of settlement by arbitration in India or if the enforcement of the Award would be contrary to public policy of India. It is under section 48(2)(b), which relates to public policy exception, that the objection has been asserted.

**45.** *Explanation 1* to Section 48 (2)(b) of the A&C Act clarifies that the Award will be in conflict with public policy, *inter alia* if it is in contravention with fundamental policy of the Indian law. *Explanation 2* however, further clarifies that this assessment shall not entail a review on the merits of the dispute.

**46.** The underlying objective of Section 48 of the A&C Act is well articulated by the Supreme Court in ***Vijay Karia*** *(supra)*, the relevant paragraphs, are extracted as under:

> *"81. Given the fact that the object of Section 48 is to enforce foreign awards subject to certain well-defined*

*narrow exceptions, the expression "was otherwise unable to present his case" occurring in Section 48(1)(b) cannot be given an expansive meaning and would have to be read in the context and colour of the words preceding the said phrase. In short, this expression would be a facet of natural justice, which would be breached only if a fair hearing was not given by the arbitrator to the parties. Read along with the first part of Section 48(1)(b), it is clear that this expression would apply at the hearing stage and not after the award has been delivered, as has been held in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]. A good working test for determining whether a party has been unable to present his case is to see whether factors outside the party's control have combined to deny the party a fair hearing. Thus, where no opportunity was given to deal with an argument which goes to the root of the case or findings based on evidence which go behind the back of the party and which results in a denial of justice to the prejudice of the party; or additional or new evidence is taken which forms the basis of the award on which a party has been given no opportunity of rebuttal, would, on the facts of a given case, render a foreign award unenforceable on the ground that a party has been unable to present his case. This must, of course, be with the caveat that such breach be clearly made out on the facts of a given case, and that awards must always be read supportively with an inclination to uphold rather than destroy, given the minimal interference possible with foreign awards under Section 48."*

(emphasis added)

**47.** More specifically, on the aspects of '*fundamental policy*', decision of this court in ***Cruz City*** (*supra*) is also relevant which was approved in ***Vijay Karia*** *(supra)*. This is related to a case where Unitech as a Judgment Debtor was raising objections, which the Court found as

"*plainly dishonest*". In this regard, the following relevant extracts are instructive:

> "*113. In view of the aforesaid, the conduct and the stand of Unitech can most charitably be described as plainly dishonest. This court is of the view that permitting Unitech to prevail on such contentions to resist the enforcement of Award would plainly amount to rewarding dishonesty and would be manifestly unjust.*
>
> *114. Curiously, no such contentions were advanced by Unitech before the Arbitral Tribunal. Further, Unitech has also failed to indicate any credible explanation for not urging the same before the Arbitral Tribunal. Thus, Unitech cannot be permitted to raise such contentions at this stage. It is also necessary to bear in mind that the present proceedings are for enforcement of inter se rights between Cruz City and Unitech and Cruz City cannot be precluded from enforcing its rights which fall within the ambit of private international law.*
>
> *115. The only remaining issue now to be addressed is whether enforcement of the Award would violate the provisions of FEMA.*"
>
> (emphasis added)

**48.** Considering in the instant case, the issue of violation of provisions of FEMA is not germane to the matter anymore considering the *post facto* approval of the RBI, the only issue would be whether '*fundamental policy of law*' would cover the principal objection of the JD that they did not have visibility of the '*Bilgery Settlement*' and therefore, could not ascertain whether there was a '*double dip*' by the DH (i.e. recovery both from the Liquidator of Minda Germany and also from Minda India), or if there was a waiver in the '*Bilgery Settlement*.' Needless to state, both these aspects become a non-issue since the Consent Award was passed with the JD having full knowledge of what was before them.

**49.** The Settlement Agreement itself, as evident from the extracts in *para 35* above, would show that the agreement was the '*entire agreement*' between the parties, superseded and extinguished all previous agreements, promises, assurances, warranties, and parties has agreed that no other claim shall lie between them with respect to the matters being settled.

**50.** ***Firstly***, the parties have unconditionally and irrevocably waived any or all claims against each other existing prior to the date of the settlement; ***secondly***, the request for '*Bilgery Settlement*' had been made prior to the settlement with Minda India and a motion was filed before a court in Germany for disclosure, which had been rejected by the courts in Germany. This would obviously preclude the JD from raising this issue yet again, post the Consent Award; ***thirdly*** and more specifically, regards the issue of '*double dip*', the communication of 28th September 2021 recorded Minda India's confirmation to render an Award by consent and the preamble of the settlement leaves no doubt of the DH's confirmation that it will not benefit from any '*double dip*' by virtue of payments agreed under the settlement.

**51.** As regards the waiver, DH had filed an affidavit before this Court, pursuant to order dated 17th November 2023. The said affidavit of 22nd November 2023 also confirmed the enforcement of the Award will not result in a double benefit to the decree holder and that there was no overlap between the settlement with Minda Germany and the Consent Award with Minda India.

**52.** The JD, therefore, had consistently confirmed that they were agreeing to settlement, not only through the communication dated 28th September 2021 but also as per *clause 3(i)* of the Settlement Agreement and agreed to passing of the Consent Award. The objections being pressed by the JD to the enforcement are not *bona fide*, unjust, unreasonable and a clear attempt to obstruct the enforcement, deploying one stratagem or the other.

**53.** The Court deprecates the stand taken by the JD, particularly, having fully and knowingly entered into a settlement and agreed to a Consent Award being passed, in complete know of facts and circumstances available to them, relating to the previous '*Bilgery Settlement*'.

**54.** Accordingly, it is directed, that the Foreign Award dated 29th November 2021 passed by an Arbitral Tribunal comprising of *Dr. Fabian Von Schlabrendorff, Dr. Ulrich Trost, And Mr. Arne Fuchs* in Stuttgart, Germany under the *Rules of Arbitration of the International Chambers of Commerce, 2012* in *ICC Case No. 22523/FS*, be enforced as a decree of this Court, per section 49 of the A&C Act.

**55.** As noted by the order of this Court dated 1st March 2024, JD was directed to deposit the entire amount, being EUR 5.5 million, in terms of the Arbitral Award with the Registrar General of this Court in an interest-bearing deposit. The said amount is approximately Rs. 52 Crores and has since been deposited by JD before the Registry of this Court, as noted in the order of this Court dated 20th May 2024.

**56.** Accordingly, Registry is directed to release the deposited amount with accrued interest to DH, in the following bank account:

**Account Holder**: Mercedes-Benz AG

**Bank**: Deutsche Bank AG, Stuttgart

**IBAN**: DE58 6007 0070 0167 0611 00

**BIC**: DEUTDESSXXX

**Reference**: LN 172/41399

**57.** JD is further directed to remit the balance amounts due, if any, in consonance with the Award *within a period of 3 weeks*. If JD does not comply, the decree is liable to be executed under Order XXI of CPC to that extent.

**58.** The objections are accordingly rejected. List for compliance on 14th April 2025.

**59.** Order be uploaded on the website of this Court.

**(ANISH DAYAL)**
**JUDGE**

**MARCH 12, 2025/SM/NA**