IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL (L) NO.20333 OF 2026
IN
INTERIM APPLICATION NO. 569 OF 2026

WITH

INTERIM APPLICATION (L) NO.21931 OF 2026

Limited Liability Company Eurochem North-West-2 .. Appellant

Versus

Tecnimont S.P.A. (Foreign Company) .. Respondent

WITH

INTERIM APPLICATION (L) NO. 23525 OF 2026

Tecnimont S.P.A. Foreign Company Registration No. F02979 .. Applicant

Versus

Limited Liability Company Eurochem North West 2 Tin Inn 4707040090 .. Respondent

Mr. Zal Andhyarujina, Sr Adv a/w Mr. Prateek Bagaria, Ms. Maithili Parikh, Ms. Jimisha Dalal, Ms. Nitansha Nema, Mr. Mihir Govande and Ms.Shrilakshmi Sankaranarayanan i/b Singularity Legal, for Appellant.
Mr. Vikram Nankani, Sr Adv a/w Mr. Alok Jain, Mr. Samarth Saxena, Ms. Ria Gard, Mr. Aditya Athreya, Mr. Mihir Beradia i/b Quillon Partners, for Respondent.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
RESERVED ON : 30th JULY, 2026
PRONOUNCED ON : 29th OCTOBER, 2026

Ashish

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JUDGMENT (PER BHARATI DANGRE, J)

1. The Commercial Appeal filed under Section 13 (1A) of the Commercial Courts Act, 2015 raises a challenge to the order dated 08/06/2026 passed on an IA No. 569 of 2026 in Commercial Suit No. 6 of 2026 filed by the Plaintiff (Appellant) for recovery of debt on the basis of the operative part of the decision of Arbitrazh Court Moscow, Russia (Moscow Commercial Court) announced on 27/11/2025 along with full decision announced on 05/12/2025. The Plaintiff sought a fresh decree of the Indian Court in terms of the reliefs set out in the plaint by asserting the Russian judgment as the cause of action for instituting the Suit, by stating that it stood as a conclusive evidence for the material findings of fact and law relevant to the underlying transaction and liability, in terms of Section 13 of CPC.

By the said judgment, the Respondent and its Russian subsidiary are held jointly and severally liable to pay to the Appellant RUB 171,115,220,555 comprising of interest and damages. This judgment has attained finality in the concerned jurisdiction, being upheld by Ninth Arbitrazh (state commercial) Appeal Court, Moscow (for short 'Arbitrazh Appeal Court, Moscow') on 04/03/2026.

2. Pending the hearing of the Suit an interim application was taken out seeking several directions and the learned Single Judge (Justice Gauri Godse) by judgment dated 08/06/2026 refused to grant any relief and dismissed the interim application by recording her reasoning in detail, indicative of the conclusion that no case for grant of interim injunction was made out.

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It is this judgment which is subjected to challenge on the basic premise that the order proceeds on an erroneous legal standard and has ignored the provision contained in Section 13 and 14 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC/Code'), by which once a certified copy of the Russian Judgment was produced, it ought to have been accepted as a statutory basis for treating the judgment as conclusive as the competence of the Arbitrazh Court, Moscow stood established.

The challenge to the impugned order is also based upon an assertion that the said order applies an unduly high threshold to the Appellant's case on dissipation of assets and despite the fact that a *prima facie* risk of removal or disposal of assets to defeat its claim was demonstrated, the Single Judge dismissed the application, by recording that the Russian judgment could not be relied upon as conclusive evidence under Section 13 of CPC for grant of relief and the presumption under Section 14 could be applied at the stage of grant of interim relief and particularly, in the wake of the arbitration agreement between the parties and pending international arbitration, the competence of the Arbitrazh Court was doubtful even at the pre-trial stage.

3. We have heard learned Senior Counsel Mr. Zal Andhyarujina for the Appellant and learned Senior Counsel Mr. Vikram Nankani for the Respondent.

With their able assistance, we have perused the impugned order along with the supporting material placed before us.

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4. Before we appreciate the rival contentions, it would be necessary to refer to the background facts in which rival contentions are to be appreciated.

The Appellant, LLC, EuroChem North-West-2 (hereinafter referred to as 'EuroChem') is incorporated and existing under the laws of Russia, having its registered office at Leningrad Region. Tecnimont S.P.A. Italy is a Foreign Company having a registered office in Malad (West), Mumbai, in India.

The EuroChem Group planned construction of a Fertiliser Complex at Leningrad Region at Russia, with an annual production capacity of 1.1 million tones of ammonia and 1.4 million tones of urea ("K2 Project"). As a step towards the implementation of this project, it entered into contract with Tecnimont ('Respondent') and its 99% owned Russian subsidiary LLC 'MT Russia' ('MTR'). Three agreements were signed between the parties to the following effect:-

a) An onshore engineering, local procurement, and construction contract with MTR ('Onshore Contract'/ 'Contract-I');

b) An offshore engineering and procurement contract with Tecnimont ('Offshore Contract'/ 'Contract-2');

c) A coordination and interface agreement among the parties ('Coordination Agreement' / 'Contract-3').

All the above contracts were concluded in Russia.

5. The aforesaid K-2 Contracts, all executed on 01/06/2020, provided that the disputes arising therefrom shall be referred to a London seated arbitration under ICC Rules. Contract-2 and Contract-3 were to be governed by the laws of England and Wales, whereas Contract-1 was to be governed by the laws of Russian Federation.

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In February 2022, due to Russian (Special Military Operation) in Ukraine, European Union (EU) and United Kingdom (UK) imposed sanctions on various individuals. Since the Appellant, an indirect subsidiary of EuroChem AG (Switzerland) was founded and owned by Russian businessman Mr. Andrey Melnichenko, he along with his wife were subjected to sanctions in March and June 2022, respectively, they being the ultimate beneficiaries of the assets of EuroChem. Due to the inability to perform the works under K-2 Contract on account of the sanctions, the Respondent and MTR suspended performance temporarily under Contract-1 and Contract-2 on account of the imposition of the sanctions by invoking Clause 17.3 of the agreement.

This was followed by EuroChem terminating K-2 Contract on the basis that the Respondent unilaterally suspended performance under Contract-1 and Contract-2 by issuing notices of termination on 04/08/2022.

6. Being aggrieved by the said termination, Tecnimont and MTR initiated ICC Arbitration against the Appellant by filing request for arbitration seeking, *inter alia*, damages arising out of the alleged breach of K-2 Contracts. The arbitral proceedings commenced in the wake of the arbitration agreement in the K-2 Contracts in August 2022 and Tecnimont appointed its arbitrator and even the Appellant participated and nominated its arbitrator, Professor Douglas Samuel Jones, an Australian National and did not raise any objection to the jurisdiction of ICC Tribunal to resolve the dispute through arbitration and it also filed its counter claim. The ICC arbitration continued for a

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period of 3 years and we are informed that it even continue today.

In the interregnum, after the arbitral proceedings commenced at the instance of the Respondent and MTR, on 19/08/2022, appellant issued demand notices of approximately INR 2,240 Crores in respect of the performance bonds under the K-2 contracts. The Banks, SocGen and ING, however, refused to pay the demanded sums in light of the sanctions and this resulted in EuroChem filing a claim before the English Commercial Court against the Banks with impleadment of Tecnimont and MTR as third parties, for enforcement of performance bonds under the K-2 Contract.

On 31/07/2025, the English Commercial Court declared that the banks were justified in withholding the payment to the Appellant under the bonds due to sanctions, as the ultimate beneficiaries were the sanctioned individuals. This is referred to by the parties before us as the 'Bright Judgment'. The dismissal was therefore based upon a finding that the Melnichenkos were subject to sanctions and the banks were justified in not honoring the demands.

7. At this stage, we must note the contention of Mr. Andhyarujina the counsel for the Appellant, that because of the 'Bright Judgment', despite the Appellant itself not being a sanctioned entity, it was treated to be so, thereby rendering the arbitration agreements unenforceable and thus allowing the Russian Courts to have exclusive jurisdiction over the dispute pursuant to Article 248.1 of the Arbitrazh (state commercial) Procedural Code of the Russian Federation ("APC RF"). According to him, the Appellant encountered severe restrictions on banking operations that hindered *inter alia* its ability to pay for legal representation and transfer funds towards

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arbitration costs.

It is in the wake of the aforesaid, the Appellant filed an application before the ICC Tribunal on 25/11/2025, challenging the Tribunals jurisdiction on two grounds; (i) That following the Bright Judgment, it was treated as a sanctioned entity, (ii) That this situation rendered the arbitration agreements unenforceable.

8. It is on 01/09/2025, the Appellant filed a Statement of Claim before the Arbitrazh Court, of the city of Moscow, which was premised in the background that the arbitration agreements were rendered unenforceable, and it sought the following reliefs:-

(a) Recovery of unutilised advance payments;

(b) Interest for the use of another's funds, accrued on the amount of the unearned advance payment;

(c) Damages incurred in entering into substitute agreements;

(d) Thus claiming damages approximately in the sum of INR 22,764 Crores.

9. The proceedings were filed in a Moscow Court on the basis that it had exclusive jurisdiction over the disputes by virtue of Article 248.1 of 'APC RF'. It is in this proceeding, at the instance of the Appellant, the Respondent was impleaded as co-defendant on 28/10/2025, but this joinder was appealed by the Respondent, who seriously objected to its joinder, but its appeal was returned and the Respondent was ordered to appeal the joinder with merits, whenever the stage arises.

However, on 11/11/2025, MTR challenged the jurisdiction of Moscow Court which received support from Tecnimont by filing its submissions in writing. In the meantime, the Appellant filed a

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Statement of Claim before St. Petersburg Court seeking to prohibit the Respondent from continuing the arbitration proceedings and initiating any other proceeding outside Russia, this proceedings being filed in form of Application for Anti-arbitration and Anti-suit injunction.

On 19/12/2025, St. Petersburg Court issued Anti-suit and Anti-arbitration injunction against the Respondent and MTR. However, it is worth to note that even the Respondent approached ICC Tribunal and English Courts seeking Anti-suit injunction against the Appellant restraining it from proceeding before the Russian Court, and according to the Respondent, Anti-suit injunction was issued by English Court (‘Butcher Judgment’) prior to 19/12/2025, but the St. Petersburg Court completely ignored the same.

10. Another development which warrant its mention, are the steps taken by the MTR when on 08/10/2025, it irrevocably assigned the Respondent a bundle of claims including proceeds from K-2 Contracts under the Assignment Deed, and the Appellant perceived it as an attempt to transfer assets out of Russia to Italy to avoid recovery in Moscow, the intention being to defraud the creditors.

The Arbitrazh Court, on 13/10/2025, granted interim measures securing part of the Appellant’s case including attaching funds and property of MTR and the Respondent.

This constrained the Appellant to file a case before the Arbitrazh Court on 24/11/2025, so as to declare the assignment deed null and void and the Arbitrazh Court, Moscow on 03/12/2025, issued an injunction restraining the Respondent from acting under the

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Assignment Agreement.

11. As far as the ICC arbitration proceedings are concerned, on 13/10/2025, the Arbitral Tribunal issued procedural order no. 18 (subsequently corrected as '23/10/2025') *inter alia*, directing the Appellant to withdraw its proceedings in Arbitrazh Court, Moscow and the claim before the St. Petersburg Court. Pursuant to this, the Respondent instituted Anti-suit proceedings in the English High Court seeking to enforce the ICC Tribunal's Procedural Order No. 18.

On 11/11/2025, the ICC Tribunal issued Procedural Order no. 22, when it directed the Appellant to withdraw the Russian Interim Measures Application, which was filed before the Moscow Court.

Once again, on 14/11/2025, Procedural Order No. 23 was issued by ICC Tribunal reiterating its earlier orders.

12. On 05/12/2025, the Arbitrazh Court, Moscow declared its full judgment in furtherance of the operative part declared on 27/11/2025 and it is this judgment which is placed before the Commercial Division of this Court for seeking a decree by relying upon its conclusiveness upon the underlying transactions and liability by instituting Commercial Suit No. 6 of 2026.

Pursuant to this, the ICC Tribunal on 09/12/2025 issued Procedural Order No. 25, issuing anti-enforcement order, restraining the Appellant from enforcing the Russian Judgment. It is on 10/12/2025, the St. Petersburg Commercial Court issued operative part of the Judgment, thereby prohibiting the Respondent and MTR from proceeding with arbitration and related Court proceeding pending before Courts outside Russian jurisdiction though the full

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judgment was issued by the Court on 19/12/2025.

13. It is in this background facts, the Commercial Suit is instituted by EuroChem**,** the Appellant by pleading that the Russian Judgment in its favour is final and conclusive, since the Arbitrazh Court, Moscow is a Court of competent jurisdiction and the Commercial Court in India be pleased to issue a decree for the amount sought for in the plaint. The plaint specifically pleaded that the Arbitrazh Court had granted the plaintiff's claim for RUB 8,058,168,619.35/- towards an unjust enrichment, RUB 3,834,694,789.96 as interest for the use of another's fund till 13/11/2025 and RUB 159,222,357,146.00 as damages. Moreover, the Arbitrazh Court awarded interest for the use of another's funds, calculated on the debt amount of RUB 8,058,168, 619.35 using the key rate of the Central Bank of Russia effective during the relevant periods, for the period from 14/11/2025 to the date of actual payment of the debt.

It is also pleaded that the Arbitrazh Court rejected the Respondent's jurisdictional objection and noted that there was sufficient ground to doubt the independence and impartiality of the arbitrators before the ICC Tribunal. Pleading that the Russian Judgment is conclusive on merits, as it has even pronounced upon the objection on jurisdiction, by applying the principle of Comity of Nations, a decree is sought in terms of the final decision (Russian Judgment) dated 05/12/2025, in case No. A40 - 231304/25-141-1793.

Pending the Suit, an interim application was taken out seeking interim relief restraining Tecnimont S.P.A from removing from India, or in any way disposing of, dealing with or diminishing the value of any of its assets, which are in India upto the value of RUB

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171,115,220,555 (or INR equivalent). It was specifically prayed that the injunction shall apply to all of the Tecnimont S.P.A assets whether or not they are in its name, and whether they are solely or jointly owned.

The interim application contained a list of assets, to which the injunction was sought to be made applicable and it also prayed for a direction to Tecnimont S.P.A to file and serve an affidavit, setting out all its assets in India, whether in its own name or not, or whether solely or jointly owned, giving the value, location and details thereof.

14. It is this application, which came to be rejected by the learned Single Judge on consideration of the rival contentions.

The Single Judge pronounced upon the facts before her in the backdrop of the legal principle propagated, as to when a Foreign Judgment is conclusive, and whether it can be accepted as a conclusive evidence at the pre-trial stage while considering grant of discretionary relief of injunction.

The order passed by the Single Judge, which is impugned recorded a finding as below:-

> *"35. In the present case, in view of the arbitration agreements between the parties and the plaintiff's participation in the international arbitration proceedings pertaining to the same claim arising out of the same dispute, the competence of the Russian court in entertaining the plaintiff's claim is doubtful. Therefore, the presumption under Section 14 of the CPC cannot be applied at the pre-trial stage. As discussed in detail in the paragraphs above, the defendant has raised serious objections in view of the exceptions under Section 13 of the CPC to contend that the Russian court's judgment cannot be accepted as conclusive evidence at this stage. From the record, it is seen that the defendant has raised serious objections on the grounds that the proceedings are founded on an incorrect view of international law, and the proceedings also suffer from a breach of principles of natural justice. Therefore, the conclusiveness of the Russian judgment needs to be tested in the trial. At this stage, the Russian judgment cannot be accepted as an absolute and conclusive*

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proof or evidence to support the plaintiff's money claim."

Apart from this, it is also recorded that merely stating that the defendant is likely to transfer its funds out of India, would not be sufficient to grant an injunction, when there is no prima facie evidence to support the plaintiff's claim. In the present case, the apprehension was expressed by referring to an assignment agreement executed between the Defendant and MTR. Noting that the Russian Court had already granted an injunction in respect of the assignment agreement, it is recorded that the plaintiff had already participated in international arbitration proceedings in UK and there is no dispute that the Russian Judgment pertains to substantially the same claim as in the arbitral proceedings, in which the EuroChem had also filed a counterclaim.

Therefore, on appreciating the conduct of the plaintiff, the discretionary relief of injunction was refused. In addition, it was also recorded that the plaintiff was not able to make out a *prima facie* case in its favour, nor did it demonstrate any irreparable loss caused to it, or that the balance of convenience was in its favour. On the contrary, relying upon the material produced by the defendant showing that the dispute within the parties was subject matter of international arbitration proceedings and the English Courts had issued various orders imposing Anti-suit injunction, the balance of convenience was found to be in favour of the defendant.

It is this impugned order, which is the subject matter of challenge in the Appeal.

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15. The challenge to the impugned judgment deserve consideration in the backdrop of Section 13 and 14 of the Code of Civil Procedure, 1908.

The provision in Section 13 couched in negative terms, provide for the exception, when a foreign judgment shall not be conclusive to any matter thereby directly adjudicated upon between the same parties, or between the parties under whom they or any of them claim litigating under the same title.

Section 13 reads thus:-

> *"13. When foreign judgment not conclusive – A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-*
>
> *(a) where it has not been pronounced by a Court of competent jurisdiction;*
>
> *(b) where it has not been given on the merits of the case;*
>
> *(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of [India] in cases in which such law is applicable;*
>
> *(d) where the proceedings in which the judgment was obtained are opposed to natural justice;*
>
> *(e) where it has been obtained by fraud;*
>
> *(f) where it sustains a claim founded on a breach of any law in force in India."*

The said provision deserves a reading along with Section 14 which create presumption as to foreign judgments and we reproduce the same:-

> *"14. Presumption as to foreign judgments – The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on record; but such presumption may be displaced by proving want of jurisdiction."*

16. A 'Foreign Judgment' is defined under Section 2(6) as judgment of a Foreign Court. 'Judgment' in terms of Section 2(9) of

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CPC means the statement given by the Judge on the grounds of a decree or order.

Conclusivity is attached to a foreign judgment, as regards the matter, which is directly adjudicated therein, between the same parties or between the parties under whom they or any of them claim if the same is pronounced by a court of competent jurisdiction. However, it shall not be accepted to be conclusive, unless it is pronounced by a Court of competent jurisdiction, or it has not been given on merits of the case or it suffers from any of the infirmity as set out in clause (a) to (f) of Section 13.

It is a well settled principle that if the judgment is delivered after following due judicial process and after adhering to the principles of natural justice, and it is the judgment of a competent court, the Executing Court shall not inquire into its validity, legality and by applying the principle of Comity of Nations, the judgment shall be executed in India as if it is a judgment passed by an Indian Court.

17. In ***Alcon Electronics Pvt Ltd v. Celem S.A***[1]., in a Suit filed before the English Court for infringement of patent, the challenge raised to the jurisdiction of the English Court was dismissed and the liability was fastened upon Alcon Electronics to pay cost of application set at £ 12,229.75, which was agreed to by the Appellant. The petition filed by the Respondents for execution of the said order in India faced opposition on the ground that the order of the English Court is not executable in India as it is not conclusive, being an interlocutory order in an application challenging the jurisdiction of

1 (2017) 2 SCC 253

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the said Court and the order do not amount to a judgment on merits or a 'decree'.

It is in this background facts, the Apex Court observed thus:-

> *"9. Moreover all the Orders of the Court are required to be obeyed and implemented, unless the Court itself sets a date for its non-execution. Otherwise orders will only remain a piece of paper and merely decorate the file of litigant, which would lead to an impression being created in the minds of the litigants that they could with impunity avoid to obey the court order. It is neither the legislative intent nor the desire of the judiciary."*

Two questions were formulated for consideration namely; (i) whether the order passed by Foreign Court falls within exception to Section 13 of the CPC? (ii) whether the order passed by Foreign Court amounts to a decree and the same is executable?

A third issue was formulated as to whether if answer to the issue No. 2 is in affirmative, whether the decree for costs would fall within the ambit of Explanation (2) of Section 44-A(3) of CPC, and make it inexecutable. Answering the aforesaid issue, the Apex Court noted thus:-

> *"15. A glance on the enforcement of the foreign judgment, the position at common law is very clear that a foreign judgment which has become final and conclusive between the parties is not impeachable either on facts or law except on limited grounds enunciated under Section 13 CPC. In construing Section 13 CPC we have to look at the plain meaning of the words and expressions used therein and need not look at any other factors. Further, under Section 14 CPC there is a presumption that the foreign court which passed the order is a court of competent jurisdiction which of course is a rebuttable presumption. In the present case, the appellant does not dispute the jurisdiction of the English Court but its grievance is, it is not executable on other grounds which are canvassed before us.*
>
> *17. Applying the same analogy to the facts of the case on hand, we have no hesitation to hold that the order passed by the English Court is an order on merits. The appellant who has submitted itself to the jurisdiction of the Court and on its own requested the Court to assess the costs summarily. While passing a reasoned order by*

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> *dismissing the application filed by the appellant, English Court granted the costs against the appellant. Had it been the case where appellant's application was allowed and costs were awarded to it, it would have as well filed a petition for the execution of the order. Be that as it is, the appellant did not prefer any appeal and indeed sought time to pay the costs. The appellant, therefore, cannot be permitted to object the execution. It cannot be permitted to blow hot and cold at the same time. In our opinion, it is a pure abuse of process of law and the courts should be very cautious in entertaining such petitions."*

18. In the wake of Section 13, a foreign judgment shall be conclusive as to any matter directly adjudicated upon between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, except in the contingencies set out in clauses (a) to (f).

The very first clause, being clause (a), provides an exception where the foreign judgment is not conclusive, when it is not pronounced by a Court of competent jurisdiction.

The said provision, when read with Section 44-A, allows execution of decrees passed by Courts in reciprocating territories upon production of a certified copy of the decree and the Section providing for, as to what would amount to a 'reciprocating territory' and what would amount to a 'decree'. The said provision, therefore, permits a foreign decree to be directly executed in India, as if it is a decree passed by an Indian District Court, provided that the decree is passed by the Court in a reciprocating territory, namely, the United Kingdom, Singapore, the United Arab Emirates, as notified by the Central Government. This benefit, however, is not applicable to non-reciprocating territories, as in such case, it would be necessary to file a fresh Suit based upon a foreign judgment, which would be accepted as evidence, but would not be a conclusive proof of any liability.

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Section 14 of the Code creates a presumption and the Court upon production of any document, purporting to be a certified copy of a foreign judgment, shall presume that such judgment was pronounced by a Court of Competent Jurisdiction, unless the contrary is proved, but such presumption may be displaced by proving want of jurisdiction. Thus, upon production of a certified copy of a foreign judgment, it shall result into a presumption that the foreign court was competent, but it is a rebuttable presumption, as it is open to the opposite party to prove that the Court was not of competent jurisdiction.

Thus, Sections 13 and 14 of the Code of 1908, read together, embody the principles of private international law as it deals with foreign judgments, and by prescribing as to where it shall be conclusive, and upon production of a certified copy of such foreign judgment, the court shall presume that it is ruled on by a court of competent jurisdiction, unless the contrary appears on record, and it is also permissible to displace the said presumption.

The two provisions together, ensure Comity of Nations, but when this provision is put to use for the purposes of execution under Section 44-A of CPC, for execution of the decree passed by a Court in a reciprocating territory and a decree passed by a Court in a non-reciprocating territory, in both situations, the filter of Section 13 shall apply.

19. There is no difference of opinion between the respective counsel, as regards the understanding revolving around Section 13 and 14, but the moot question for debate is, at what stage the statutory presumption under Section 14 of the Code can be dislodged.

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The learned Senior counsel, Mr. Andhyarujina, has vehemently contended before us that once a copy of certified judgment is produced, a mandatory presumption gets triggered, and the Court shall presume that the judgment is passed by a Court of competent jurisdiction.

According to him, even Section 21(1) of the Bharatiya Sakshya Adhiniyam, 2023 ('BSA'), has prescribed that the Court shall regard such fact as proved unless and until it is disproved, and therefore, according to him, there is no discretion left in the Court once the presumption is drawn, which is imperative.

According to the learned Senior counsel, upon production of any document purported to be a certified copy of the foreign judgment, the presumption kicks in, unless something is brought on record to dispel this presumption. However, insofar as the second limb is concerned, such a presumption of the judgment being delivered by a Court of competent jurisdiction, can be displaced only by adducing proof, i.e. by leading evidence at the stage of trial.

20. The aforesaid submission, is contested by learned Senior Counsel, Mr. Nankani, who would submit that Section 14 contains the limited initial presumption to the effect that the foreign judgment has been pronounced by a Court of competent jurisdiction, and this presumption is limited to the provision mentioned in clause (a) of Section 13, which is also rebuttable 'when the contrary appears on record' or when 'it is displaced by proving want of jurisdiction'.

According to him, decrees passed by Courts in both reciprocating and non-reciprocating territories must satisfy the test of

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Section 13, and when a foreign judgment is not on merits, or violates any of the sub-clauses (a) to (f) of Section 13, it is not conclusive as to any matter thereby adjudicated upon and it is open to collateral attack on the grounds mentioned, resultantly, a decree that follows a judgment that is not on merits, cannot be enforced in India.

The onus to prove existence of exceptions specified in clauses (a) to (f) of Section 13 of the Code in a Suit filed for decree of foreign judgment, according to Mr. Nanakani, is on the plaintiff filing such Suit, whereas, in execution proceedings filed under Section 44-A, for execution of a decree passed by a foreign court in a reciprocating territory, the onus is on the judgment debtor.

Apart from this distinction, according to Mr. Nankani, whether the Foreign Court was a Court of competent jurisdiction is a question which has to be decided at the threshold, before any further orders are passed in the Suit (in case of a foreign judgment from a non-reciprocating territory), or in execution (in the case of a foreign judgment from a reciprocating territory), as the competence of the Court goes to the root of the matter, and, therefore, at least the preliminary examination thereof cannot be deferred to the stage of trial.

It is also his submission that, even jurisprudentially, the questions relating to jurisdiction have to be decided as preliminary questions, and cannot be left for determination at final trial and to defer the question until trial, would circumvent the discretion of the Court under Order XXXIX, Rule 1(b) of the CPC, on whether the plaintiff has been able to make out a *prima facie* case for the grant of an injunction.

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Reliance is placed upon the decision in case of ***Meso Private Limited v. Liberty Shoes Limited***[2], to submit that the statutory presumption can be rebutted at the interim stage and shall not await a full trial.

He would also invoke the principle laid down by the Full Bench of this Court in ***Lupin Limited v. Johnson & Johnson***[3]**,** where it is held that there is no express or implied bar under the Trade Marks Act, 1999, to completely take away the jurisdiction and power of the Civil Court to consider the challenge to the validity of the registration of a trademark at the interlocutory stage by way of a *prima facie* finding on such issue.

According to Mr. Nankani, the learned Single Judge has rightly examined, at interim stage, whether the Arbitrazh Court is a Court of competent jurisdiction and on finding that there was a doubt in regards to its competency, and the plaintiff not being able to demonstrate a *prima facie* case, or that it would suffer irreparable loss, has refused to grant the injunction as prayed for.

21. It is in the wake of the rival contentions, the following questions emerge for our consideration in the Appeal:

(a) Whether the Moscow Court, whose decision is sought to be executed by EuroChem, is a court of competent jurisdiction, as claimed, or whether the presumption available under Section 14 of CPC is rebutted in the wake of the contrary material brought on record or it stands displaced by proving want of jurisdiction.

(b) Whether the presumption available under Section 14 of the CPC, which can be displaced by proving want of jurisdiction, is permitted to be rebutted at the interim stage, or must await the

2 2020 (1) Mh. LJ 253
3 2014 SCC OnLine Bom 4596.

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trial.

(c) Whether the presumption available under Section 14 regarding the foreign court being a court of competent jurisdiction absolves the party seeking an injunction from satisfying with the triple test of *prima facie* case, balance of convenience and irreparable loss under Order XXXIX, Rule 1(b) of the CPC.

(d) Whether the view of the learned Single Judge that the Moscow judgment is not conclusive with reference to clauses (a) and (d) of Section 13 of the CPC warrants interference.

(e) Whether the appellant has made out a case for interference against the discretionary order rejecting injunction under Order XXXIX, Rule 1(b) of the CPC.

22. In the background of the sequence of events placed before us, we must note that three contracts were entered into between the parties for the construction of a Fertiliser Plant in Russia on 01/06/2020 and admittedly, all three contracts contain an arbitration clause, to the effect that the dispute between the parties shall be referred to arbitration. The Offshore Engineering and Procurement Contract dated 01/06/2020, contain an Arbitration Agreement in Clause 21.3.1 and a choice of law clause in Clause 26.3, which read as follows:-

> *"21.3.1. Any Dispute… may be submitted by either Party for binding resolution by arbitration under the Rules of Arbitration of the International Chamber of Commerce…*
>
> *21.3.2 The place of the arbitration shall be London…. The seat of arbitration shall be London…. Each Party hereby excludes and waives irrevocably any rights or application or appeal to the courts of any country otherwise having jurisdiction….*
>
> *26.3 Choice of Law*
>
> *This Contract, and any non-contractual obligations arising out of or in connection with it, shall in all respects be governed by and interpreted in accordance with the laws of England and Wales without application of the conflict of laws principles thereof. ..."*

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Similarly, the Onshore Engineering and Procurement Contract, also of the same date, prescribe that, in case of disputes, the same shall be determined by arbitration under the ICC Rules, with the seat of Arbitration at London.

The third agreement, namely, the Coordination and Interface Agreement, also incorporate the Arbitration Agreement in Clause 7.5 and choice of law in Clause 7.2.

23. Reading of the aforesaid would make it evidently clear that the parties have chosen the law of England to govern the contracts and the disputes arising thereunder were agreed to be resolved by arbitration with the seat at London, and very specifically, stipulating that each party excluded and waived any right or application to the courts of any other country. Thus, the Courts of other countries/jurisdiction are excluded and consequently not competent to adjudicate the resultant discord.

24. At this juncture, it is also necessary to make a reference to the the Arbitrazh (state commercial) Procedural Code of the Russian Federation i.e. the APC RF and what is pressed into service is Article 248.1, which confer exclusive jurisdiction of commercial courts in the Russian Federation in dispute involving persons subject to restrictive measures. It is, therefore, necessary for us to reproduce the relevant portion of the said provision and it reads thus:-

> *"1. Unless otherwise established by an international treaty of the Russian Federation or an agreement between the parties, pursuant to which the consideration of disputes involving them is referred to the jurisdiction of foreign courts or international commercial arbitration tribunals located outside the territory of the Russian Federation, the exclusive jurisdiction of arbitration courts in the Russian Federation shall include cases:*
>
> *1) in disputes involving persons subject to restrictive measures*

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imposed by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union;
2) in disputes between one Russian or foreign person and another Russian or foreign person, if the basis for such disputes is restrictive measures imposed by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union in relation to citizens of the Russian Federation and Russian legal entities."

"4. The provisions of this article shall also apply if an agreement between the parties, according to which the consideration of disputes involving them is referred to the jurisdiction of a foreign court and international commercial arbitration outside the territory of the Russian Federation, is incapable of being performed due to the application of a restrictive measure by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union against one of the parties to the dispute. restrictive measures by a foreign state, state association and (or) union and (or) state (interstate) institution of a foreign state or state association and (or) union, creating obstacles for such a person in accessing justice."

25. In the wake of the aforesaid provision contained in APC RF, and in form of Article 248.1, the same operate unless otherwise provided by an agreement of the parties and the exclusive competence of Commercial Courts in the Russian Federation shall include the dispute involving persons in respect of whom restrictive measures are imposed by a foreign State, a State association and/or Union and/or State, institution of a foreign State or State association or Union.

The said clause shall operate unless otherwise provided by an international treaty or an agreement of the parties and in this case since, by a specific agreement between the parties, they have agreed to submit their disputes to arbitration under the Rules of Arbitration of the ICC, and the place and seat of arbitration having been chosen

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as London, by excluding and waiving the jurisdiction of the courts of any other country, in our view, the exclusive jurisdiction of Commercial Courts in Arbitrazh Court is not an automatic fallout because of the sanctions imposed.

Reliance is placed before us upon a judgment in case of ***Google LLC v. Nao Tsargrad Media***[4]*, and w*e will refer to the ratio laid down therein a little later.

However, at this stage, we must also refer to Para 4 of Article 248.1, which necessarily require to satisfy a specific condition, to the effect that, when the dispute is referred to the competence of a foreign court or international commercial arbitration outside the territory of the Russian Federation, and it has become unenforceable due to the application of restrictive measures against one of the parties to the dispute, thereby creating an obstacle for such a person in accessing justice, the provision may be invoked. Therefore, for invoking the exclusive jurisdiction, the Arbitrazh Court must satisfy itself that the sanctions have resulted in obstacles for accessing justice for the Appellant before the Courts of the foreign jurisdiction, including the ICC Arbitration and the Courts of the United Kingdom, and Para 4 do not contemplate the automatic creation of obstacles or an artificial situation amounting to an obstacle.

26. We are therefore called upon to appreciate the rival claims staked before the learned Single Judge and the observations thereon, in light of the specific understanding between the parties, which was reflected through the contracts and agreements executed between them and the invocation of the ‘APC RF’ by the Arbitrazh Court so as

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to ascertain its competence, contrary to the understanding of the parties.

The sequence of events placed before us reveal that the Appellant projected a claim, that the contracts entered between the parties containing arbitration and exclusion clause, were impacted on account of the sanctions imposed by the EU and the UK, and in particular in February 2022, sanctions being imposed against the owner of EuroChem, Mr. Melnichenko. The Respondents, therefore, suspended the performance due to sanctions which prompted EuroChem to terminate all the three Contracts.

Being aggrieved by this, strictly in terms of the Arbitration Clause, proceedings were commenced in London by Tecnimont and MTR, and it is worth to note that EuroChem did not raise any objection on it's jurisdiction and rather willingly participated and even appointed an Arbitrator, and it also presented a counter claim. For three years, the ICC Arbitration continued.

However, the turning point occurred when EuroChem invoked the bonds furnished by the Respondents and the Italian Banks refused to pay, citing sanctions and EuroChem sued the Banks in London Courts by filing proceedings. However, Justice Bright of the English Court (Bright Judgment) by his judgment dated 31/07/2025 did not find any fault with the Bank refusing to pay under the bonds, as it found Mr. Melnichenko to be the beneficial owner of EuroChem, who was under sanctions.

This triggered, EuroChem approaching the Arbitrazh Court, in Moscow against MTR, the subsidiary company seeking exactly the same relief which it sought through its counter claim launched in ICC

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Arbitration. At this juncture, EuroChem invoked Para 1 and Para 4 of Article 248.1 of the 'APC RF' to submit that since it is subjected to sanctions, the Arbitrazh Court shall exercise its jurisdiction as in prosecuting its claim in the arbitral proceedings, it faced obstacles in securing justice for iteself.

EuroChem sought anti-arbitration injunction from St Petersburg Court against Tecnimont and MTR.

27. Worth it to note that the proceedings before the ICC Tribunal commenced in August, 2020, and are still in progress and ICC Tribunal had issued anti-suit injunction on three dates i.e. 13/10/2025, 11/11/2025 and 14/11/2025. However, EuroChem ignored the anti-suit injunctions and continued to prosecute its Suit in the Arbitrazh Court. Since, in the proceedings before the Arbitrazh Court were initially only against MTR, it sought joinder of Tecnimont and also sought freezing of assets and both the reliefs were granted in its favour by the Arbitrazh Court on 27/10/2025, while the anti-suit injunction remained in force against it. Even the English Court issued anti-suit injunction against EuroChem on 21/11/2025, but the proceedings in Arbitrazh Court still continued.

It is for the first time, on 25/11/2025, after a period of three years of its participation in the arbitration proceedings before ICC Tribunal, EuroChem challenged the jurisdiction of the ICC Tribunal.

28. The list of dates before us reveal that Arbitrazh Court proceeded to determine the claim of EuroChem and though the Respondent sought adjournment as on the ground that on 13/11/2025 an on 17/11/2025, EuroChem was permitted to amend its claim, 10 days prior to the final hearing and added 20,000 pages of documents,

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and time was sought by the Respondents to file a response, but the Court refused to grant adjournment sought by the Respondents and went ahead and disallowed the statement of defence, stating that it was filed beyond time and even disallowed the request of appointment of an independent expert to examine EuroChem's claim.

In specific, it is urged before us that the Arbitrazh Court granted the Respondents a few minutes of arguments in the huge claim, which it had to face and ultimately on 5/12/2025, it declared its decision although the operative part of the decision was already pronounced on 27/11/2025, by which it allowed the claim and concluded that EuroChem had suffered significant losses in connection with its unlawful conduct. The Court accordingly concluded thus:-

> *"The case materials show that LLC ' ECNW-2" suffered significant losses in connection with the unlawful unilateral refusal to perform obligations on the part of LLC "MT Russia" and Tecnimont SpA, which were established by the court in the amount of 159,222,357,146 roubles, of which:*
>
> *the amount of actual damage in the form of additional expenses incurred as a result of concluding substitute transactions – 51,754,868.124 roubles;*
>
> *the amount actual damage in the additional expenses for hiring personnel to complete the work – 2,442,899,981 roubles;*
>
> *the amount of actual damage in the form of an estimated penalty for delay in the performance of the Contracts-6,257,820,606 roubles;*
>
> *the amount of actual damage from the non-delivery of paid spare parts – 792,886,268 roubles;*
>
> *the amount of lost profits from the inability to produce and sell mineral fertilisers – 76,584,416,685 roubles;*
>
> *the amount of lost profits from the inability to make capital investments – 21,389,465, 482 roubles;*
>
> *These amounts of losses are confirmed by the primary documents submitted in the case file, the terms of substitute transactions concluded*

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by ECNW-2 LLC for the purpose of completing the construction of the plants, calculations, as well as the expert opinion dated 13 November 2025 No. 02-03/25/023, prepared by specialists of LLC "Veta Appraisal Company", the conclusions of which have not been refuted by the Respondents with any admissible and relevant evidence. This conclusion is detailed, well-reasoned and based on numerous documents studied by experts. In this regard, the court has no reason not to trust the conclusion.

The calculation of losses from substitute transactions is determined on the basis of a comparison of the cost of unfinished work with the contracts actually concluded by LLC "ECNW-2""

29. The Arbitrazh Appeal Court, Moscow by its Resolution dated 04/03/2026 dismissed the Appeal, by upholding the finding of the First Court by recording that it had lawfully recognized the calculation of the specified amounts as methodologically correct, justified and accurate, and the Respondent had not contested the specified amounts, no counter calculations were presented, and no evidence refuting them was provided to the Court of first instance. It also rendered a finding that from the circumstances of the present case, it could be inferred that by referring to the European Union sanctions, the Respondents, consciously and voluntarily suspended the performance of their obligations under the contracts, thereby directly complying with the specified sanctions regime and in this regard, within the meaning of Article 401 (4) of the Civil Code of Russian Federation, the Respondents cannot refer to the existence of conditions limiting liability for intentional non-performance of contractual obligations.

30. It is vehemently urged before us by Mr. Andhyarujina that the Arbitrazh Court was well within its competence to decide the claim for recovery of 202,659,375,289 Roubles as well as interest under Article 395 of Civil Code of Russian Federation, calculated on the

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amount of unearned advance payment as on the date of repayment of debt.

He would submit before us that the Respondents objected to the satisfaction of the claim raised by ECN W-2 LLC by pressing *force majeure,* being the sanctions imposed by EU. It also filed a Motion for a forensic examination of the case and the relief was denied by referring to Article 148 of APC RF, permitting the Court to leave the claim without consideration, if it was established that there was another case involving the same person, the same subject matter and the same grounds before the Arbitrazh Commercial Court. However, the Court concluded that there are no grounds for leaving the application without consideration, as the agreements concluded contain an arbitration clause, according to which all disputes related to performance of contract are subjected to consideration of the Rules of ICC (London) and it was noted that the proceedings were so initiated. However, what was invoked by the Arbitrazh Court to assume jurisdiction was Para 1 of Article 248.1 and in this regard, citing a ruling on the Judicial Panel on Economic Disputes of the Supreme Court of Russian Federation dated 09/12/2021, it was inferred that taking into account the objective of the legislative regulation that mere fact of imposing restrictive measures on a Russian person involved in a dispute in International Commercial Arbitration outside the territory of Russian Federation is sufficient to conclude that such person's access to justice is restricted.

The Arbitrazh Court, therefore, concluded thus:-

> **"***Taking into account that, according to the claimant's explanations, the arbitration at the International Chamber of Commerce (ICC), case No. 27195/ELU, is being conducted in London, the capital of the United Kingdom (included in the List of*

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foreign states and territories committing unfriendly acts against the Russian Federation, Russian legal entities and individuals, approved by Decree of the Government of the Russian Federation No.430-r of 05.03.2022), the arbitrators are also British subjects, and the basis of the dispute is the legality of the imposition and implementation of foreign sanctions, the court concludes that there are sufficient grounds to doubt the independence and impartiality of the arbitrators in considering the case."

31. As regards the Motion of MTR to conduct Forensic examination, it was held that the Motion was filed untimely without depositing the funds into the deposit account of Arbitrazh Court and it is aimed at disrupting the Court hearing. As regards to the Motion of appointing an expert for examining the claim, the conclusion is reached that the issue of scope of work performed under the Contract, the amount of financing, as well as price of replacement work and other circumstances can be established by examining evidence presented in the case material, and did not warrant any special evidence.

We are not deciding upon the merits of the finding rendered by the Arbitrazh Court, as what is only permitted for us to examine is whether the decision is delivered by the Court of competent jurisdiction. However, since we have noted that as per Article 248.1 of 'APC RF', and in particular clause 1, when there was an agreement between the parties, the jurisdiction of Russian Court is excluded and even Para 1 of Article 248.1 clearly contemplated the applicability of sub-clauses (1) and (2) unless there was an agreement between the parties.

This aspect however, is not at all considered by the Arbitrazh Court and since the agreement/ the contract entered between the parties which comprise of an exclusion clause giving primacy to

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ICC, we are not persuaded to hold that the Arbitrazh Court was justified in exercising its jurisdiction.

Para 4 of Article 248.1 of 'APC RF' also contemplate a peculiar situation, if restrictive measures are imposed which may include economic sanctions also and a Russian party is left with no access to justice and in such a scenario, the doors of the Russian Courts are open for a Russian party, provided it demonstrate that imposition of restrictive measures by a foreign State, is creating obstacles for such an entity in accessing justice. Mere imposition of sanctions, however, does not *per se* create obstacles in accessing justice, and in our view, Arbitrazh Court has wrongly presumed that because sanctions are imposed, the plaintiff which had approached it, had no means of accessing justice. The Court failed to carry out any examination about what type of obstacles were faced by the Appellant in accessing justice, and in fact, it record that the Arbitrators are British and therefore, there was every likelihood of bias because UK had imposed restrictions on Russians, but it is pointed out to us that only one of the Arbitrators before the ICC is British and the other two are Canadian and Australian.

32. One aspect which appear to us very glaring is, all the while EuroChem, the Appellant participated in ICC proceedings for a considerable length of time i.e. three years and even filed its counter claim. It was never stopped from prosecuting and infact, we have noticed that when the Banks refused to honor the commitment citing sanctions, the Appellant sued the Banks in London Court. The said Court determined the most pertinent issue, whether EuroChem NW-2 or EuroChem AG is owned or controlled by Mr. and Mrs.

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Melnichenko for the purposes of Regulation 269, which prescribed 'all funds and economic resources belonging to, owned, held or controlled by anyone listed in Annexure 1 shall be frozen' and 'no funds or economic resources shall be made available directly or indirectly to or further the benefit of anyone listed in Annexure 1'.

It is only when the Appellant did not succeed in the Bond litigation, it turned its attention to the Arbitrazh Court, Moscow, without setting out as to which factors created obstacles in its way of accessing justice and without demonstrating as to how the arbitration agreement had become unenforceable, as the counter claim filed by it, is already pending before ICC Tribunal.

The ICC Tribunal, in light of the proceedings pending before it instituted by the Respondent, on more than one occasion prevented EuroChem from commencing any proceedings including, but not limited to injunctive relief or similar proceedings in Russia against the contractors in connection to K-2 project and in breach of the arbitration agreements, except with the leave of the Tribunal or in the event such proceedings are already initiated, stay such proceedings until the Tribunal issue the final award in arbitration and any post-award proceeding ensuing thereafter are fully and finally settled.

With regard to the St. Petersburg action initiated by EuroChem, it was ordered to withdraw the action, but this was all the while ignored and even the Arbitrazh Court failed to consider the aspect of the parties agreeing mutually for resolving their disputes through ICC with a London seated Arbitration. For establishing the competence of the Arbitrazh Court, the requirements contemplated in Article 248.1 of 'APC RF' is mandatory requirement, but even this was not adhered

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to.

33. Perusal of the Offshore Engineering and Procurement Contract entered into on 01/06/2020 to be followed by the Onshore Contract and the Coordination and Interface Agreement, all executed on the same date, included a mutual understanding for referring the dispute to arbitration under the Rules of Arbitration of the ICC, with the place and seat of the arbitration also being agreed to as London. In addition, in the relevant clause in all the three Contracts, each party agreed to exclude and waive irrevocably any rights or application of appeal to the courts of any country otherwise having jurisdiction. Not only this, as regards choice of law all the three Contracts contained a specific stipulation that the said contract and any non-contractual obligations arising out of or in connection with it, shall be governed in accordance with the laws of England and Wales without application of the conflict of law principle.

Pursuant thereto, upon termination of the Contracts by the appellant, the Respondent invoked arbitration, the parties nominated their respective arbitrators and the ICC Tribunal was constituted, with no objection ever raised to its jurisdiction till the appellant decided to follow the route of the Arbitrazh Court, Moscow.

Evidently, it can be seen that during the pendency of ICC arbitration, the appellant also fought a litigation when the banks refused to pay when EuroChem invoked the bonds furnished by the Respondents and the bank refused to honor and the English Courts on being approached found sufficient justification in the banks not paying the money under the bonds. It is at this moment, the appellant deemed it appropriate to approach the Moscow Court, Moscow by

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taking recourse to Article 248.1 of the 'APC RF' by completely ignoring that there was a binding arbitration agreement which was invoked, acted upon by the parties and rather the proceedings before the arbitral tribunal were ongoing when the Arbitrazh Court was approached.

Invocation of the jurisdiction of the Arbitrazh Court only in the light of sanctions, is of no consequence as from the sequence of events, it is evident that the sanctions were imposed in February 2022, but the arbitration being invoked on 15/08/2022, continued till 2025 and EuroChem never faced any obstacle, as it continued to participate in the proceedings and even prosecute its counter claim before the ICC Tribunal. However, the turning point being the rejection in the Bonds case, on 01/09/2025, the jurisdiction of Russian Court is invoked but we must express that for satisfying the invocation of Article 248.1 of 'APC RF', it was imperative for the appellant to establish the obstacles being faced in accessing justice in England and because of which the arbitration agreement could not be enforced, as a party.

The quintessential of invoking Para 4 of Article 248.1 namely; "is incapable of being performed due to application of a restrictive measures by a foreign state…., creating obstacles for such a person in accessing justice" is what is the test to be satisfied before the Arbitrazh Court can assume jurisdiction to the exclusion of the agreement between the parties, that any dispute arising out of the contract/s shall be referred to ICC Arbitration.

In absence of any such material being placed, in our view, the Moscow Court presumed obstacles in accessing justice, simply on the

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basis that sanctions are imposed.

34. It is vehemently asserted before us by Mr. Andhyarujina that objection has been considered by the Moscow Court and the Court had ruled upon the same, and we have carefully perused the decision of the Arbitrazh Court, Moscow to ascertain whether court had considered this aspect. The decision declared on 05/12/2025, clearly noted the dispute as below:-

> *"The claims of ECNW-2 LLC are motivated by the fact that the respondents citing the effect of anti-Russian sanctions, suspended the execution of the agreements dated 1 June 2020 for the construction of fertiliser plants and Kingisepp, Leningrad Region, in connection with which LLC "ECNW-2" unilaterally terminated the aforementioned Contracts out of court by sending a notice to the Respondents dated 04.08.2025. Due to the breach of contractual obligations on the part of the Respondents, a joint and several debt arose for compensation for losses, return of unjust enrichment, and interest for the use of other people's funds in the total amount of 202, 659,375, 289 roubles 07 kopecks in roubel equivalent."*

35. The decision record that the representative of Respondent Nos.1 and 2 objected to the satisfaction of the claim, pointing to the existence of the *force majeure*, which they considered to be sanctions imposed by EU and it filed an application for forensic examination.

It is in light of this contest, the Court pronounced upon the issues before it and though the application was filed by the Respondent to leave the application, the court expressed that there are no grounds for leaving the application without consideration on the ground that the agreement concluded on 01/06/2020 contained arbitration clauses, which directed the parties to the ICC London.

The court took note of the proceedings pending before ICC, London, however, it then relied upon Para 1 of Article 248.1 of 'APC RF' and taking into account the basis of the suspension of

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performance of obligations under the disputed contracts, it held that the actions of MTR and Tecnimont S.p.A are caused by the adoption of sanctions by EU, which subsequently led to unilateral refusal of ECNW-2 LLC to perform the said contracts and therefore, a conclusion is drawn that the basis for the dispute is the restrictive measures imposed by Foreign States on citizens of Russian Federation and Russian legal entities and therefore the case clearly fall within the exclusive jurisdiction of the Arbitrazh Court, Moscow.

The Court also interpret that clause (2) Para 1, Article 248.1 of 'APC RF' is independent and its application do not require to establish whether the restrictive measures of foreign States have actually been imposed on the claimant or whether the measures are actually being applied to him.

In considering Para 4 of Article 248.1, as to whether it is established that the contract executed is incapable of performance and thus create obstacle in access to justice, the Arbitrazh Court only observed that the restrictive measures are binding and based on the power and authority of public state power whether they are personal in nature or public in nature.

Dealing with the objection of the Respondents, as regards the contingency contemplated in Para 4 of Article 248.1 of 'APC RF' of not having come into existence, the Moscow Court observed thus:-

> *"Moreover, according to the position set out in the ruling of the Judicial Panel on Economic Disputes of the Supreme Court of the Russian Federation of 28 November 2024 No. 305-ES 24-13398 in case No.A40-214726/ 2023, if the dispute arose due to the introduction of restricted measures by the state in which it was to be considered, the impartiality of the arbitrators (judges) in the legal assessment of the basis of the disputed legal relationship cannot but raise reasonable doubts. A deliberate finding of the legality (lawfulness) of the introduction of*

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> *restrictive measures may affect the resolution of the dispute on its merits, which does not meet the criteria of independence and impartiality of the court, as well as the principles of equality of the parties and adversarial proceedings.*
>
> *Taking into account that, according to the claimant's explanations, the arbitration at the International Chamber of Commerce (ICC), case No. 27195/ELU, is being conducted in London, the capital of the United Kingdom (included in the List of foreign states and territories committing unfriendly acts against the Russian Federation, Russian legal entities and individuals, approved by Decree of the Government of the Russian Federation No. 430-r of 05.03.2022), the arbitrators are also British subjects, and the basis of the dispute is the legality of the imposition and implementation of foreign sanctions, the court concludes that there are sufficient grounds to doubt the independence and impartiality of the arbitrators in considering the case."*

36. The reading of the aforesaid would reflect, that those obstacles which the appellants have faced in accessing justice in the English Courts or in the ICC Arbitration, has not at all been adverted to, and the court did not even deem it necessary to ascertain as to where the ICC proceedings had travelled, as it was not in dispute that EuroChem which now knocked the doors of Moscow Court was infact, before ICC Tribunal for past three years and even filed a counter claim. Worth it to note that even after the Bright judgment going against it, the appellant continued to participate unhindered in the ICC arbitration and conveniently ignored the anti-suit proceeding injunction granted by the ICC Tribunal, pursuant to it approaching the Moscow Court seeking the same as it sought as a counter claim in ICC arbitration.

37. On this aspect of the matter namely, that the Moscow Court usurping the jurisdiction of the ICC Tribunal, as the agreement which was still valid between the parties, un-equivocally expressing a consensus and so recorded that the dispute between the parties shall

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be resolved through ICC and therefore, the jurisdiction of Arbitrazh Court is excluded and unless and until the case falls within Para 1 of Article 248.1 of 'APC RF' and also Para 4 thereof in our view, the decision of the Moscow Court has been rightly objected to by the Respondent and even the learned Single Judge, rightly observed that if the foreign court's jurisdiction is doubtful, then the Indian Court can refuse to accept the absolute conclusiveness of the Foreign Judgment at a pre-trial stage.

Recording that the defendant has seriously objected the conclusiveness of the Russian judgment on the ground that the Arbitrazh Court, Moscow lacked jurisdiction because the agreements between the parties contemplated arbitration and due to the pendency of the arbitration proceedings before the ICC in which the appellant had participated at will, and that is how a cloud was raised over the competence of the Arbitrazh Court and therefore, the learned Single Judge arrived at a conclusion that the conclusiveness of the Russian judgment is in doubt and it deserve consideration at the stage of trial by leading evidence.

38. One more aspect that caught our attention is the breach of principles of natural justice when the judgment is delivered by Arbitrazh Court, Moscow as it is the submission of the Respondent that a huge bulk of documents, about 20,000 pages were produced before a Court by amending the claims 10 days prior to the final hearing and when an adjournment was sought on the ground that the documents placed on record by way of an amendment deserve a response, the same were simply ignored and the adjournment sought to deal with the bulk of document was declined. The statement of

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defence is also not allowed to be filed on the ground that it was not filed in time. The request made for appointment of an independent expert is also denied but what was relied upon was only the expert report produced by the claimant i.e. EuroChem before the court and this is sought to be canvassed before us as one of the ground to doubt the conclusiveness of the judgment as contemplated under Section 13 of CPC being in violation of principles of natural justice.

Perusal of the decision of 05/12/2025 is *prima facie* indicative of a lopsided approach as while considering the motion of MT Russia LLC to conduct a forensic examination, the court observed that it was filed untimely and without depositing funds into the deposit account of the court, and filing of this application is described as, 'aimed at disrupting the court hearing.'

By taking recourse to Article 82 of the 'APC RF', it is concluded that a judicial examination is appointed by a Court when considering a case to resolve issues requiring special knowledge but the issue of scope of work performed under the contract in question, the amount of financing as well as price of replacement work and other circumstances can well be established by examining the evidence presented in the case material and it did not require special knowledge.

The aforesaid approach is strongly objected to by Mr. Nankani and he would submit that the Court had never directed the Respondents to deposit any sum/funds and had it been a direction coming from the Court, it is quite possible that to raise a contest, such sum would have been deposited.

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Though we are not getting into the merits of the matter, we are restricting the aforesaid observation to the aspect of breach of principle of natural justice, so as to rebut the presumption of conclusiveness of the foreign contract and we find a case to be made out to that effect by the Respondent.

39. We are guided by two instructive Foreign Judgments, ***Bank A v. Bank B***[5] and ***Google LLC & Anr. v. NAO Tsargrad Media & Ors.*** (supra) and we must refer to the proposition of law, flowing therefrom.

40. Mr. Nankani had placed reliance upon the decision of the Hong Kong Special Administrative Region Court of First Instance between Bank A and Bank B in form of Construction and Arbitration Proceedings No. 73 of 2023, the judgment being delivered on 24/09/2024.

A perusal of the said judgment would disclose somehow similar facts with which we are confronted, when the Plaintiff licensed bank headquartered in Germany and under voluntary and solvent liquidation was subjected to supervision of the German Federal Financial Supervisory Authority and the Defendant is a bank established in Russia, with the Government of Russian Federation being its majority shareholder.

The Defendant held 99.39% of the shares of the Plaintiff and another Russian company was the minority shareholder.

On an ISDA Master Agreement being entered between the predecessor of the Plaintiff and the Defendant in respect of various foreign exchange and derivatives transactions, on 17/03/2014, the EU implemented Council Regulation No. 269/2014 concerning restrictive

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measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine and what was invoked was Article 2 of EU Sanction, which are also invoked in our case.

As a result of the war between Russia and Ukraine in February 2022, the Supervisory Authority of the Plaintiff issued an order on 24/02/2022 which prohibited it from making payments or other transfers of assets to companies belonging to a particular group including the Defendant, and from granting loans to Russian borrowers including the Russian State. By an order, the Supervisory Authority of the Plaintiff's bank also prohibited it from accepting new deposits, granting new loans, or making payments to Russian banks, with a view to winding down the Plaintiff's banking business, and eventually implementing a solvent winding up of the Plaintiff.

On 08/04/2022, the Defendant was named as a sanctioned entity and added to Annexure - I of the EU Sanction.

41. The parties entered into a Termination and Settlement Agreement ("TSA") on the very same day for termination of their respective rights and obligations under all the outstanding transactions covered by ISDA Agreement and it was agreed that the relevant transactions would be terminated and their respective rights, obligations and liabilities would also stand terminated and discharged by the Plaintiff by paying to the Defendant a sum of Euros 112,634,610 on or before 08/04/2022.

The TSA which was governed by the English Law, contained a dispute resolution clause for arbitration in Hong Kong and where the seat of arbitration was agreed to be Hong Kong, the arbitral

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proceedings to be carried out by three arbitrators, indicating that the parties mutually agreed that any dispute, difference or claim arising out of the TSA shall be resolved by arbitration administrated by the Hong Kong International Arbitration Center.

When the supervisory body of the plaintiff prohibited the defendant from exercising its voting rights as a shareholder of Plaintiff and appointed a special representative of the Plaintiff with executive powers to take over the function of the supervisory board, and a trustee was appointed to exercise the voting right of the Defendant. The trustee so appointed by the German Court passed a resolution for the Plaintiff to enter into voluntary and solvent liquidation and the liquidators of the Plaintiff were appointed and this was projected as a step to ring-fence the Plaintiff from influence of its Russian shareholders, including Defendant.

42. By placing reliance on TSA, the Defendant demanded payment of the settlement amount and in response the Plaintiff claimed that EU Sanction prohibited it from making any funds or economic resources available, directly or indirectly, to the Defendant. The Plaintiff also adopted a stand that any dispute or difference arising out of or relating to the TSA should be referred to and finally resolved by HKIAC arbitration, and no claims aimed at the recovery of any funds from the Plaintiff may be submitted to the Russian Courts.

43. It is worth to note that, the Defendant commenced the Russian proceedings for recovery of settlement amount in relation to the Plaintiff’s breach of obligations under the TSA. It obtained interim measures from Russian Court, thereby freezing securities held in the

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Plaintiff's account with the Defendant and prohibiting the Defendant from transferring the title of such securities to any party other than the Defendant.

The Plaintiff then issued the first originating summons in Hong Kong and obtained an interim anti-suit injunction when the Defendant was ordered to take necessary steps to stay or not take any further steps in the Russian proceedings except in accordance with the arbitration agreement. Despite this, the defendant commenced the 2nd Russian Proceedings, and obtained further order to prohibit the plaintiff form imitating or continuing any proceedings in Hong Kong in relation to the TSA. Russian Court passed an order in its favour prohibiting the Plaintiff from initiating any proceedings in the High Court of Hong Kong, and from maintaining petitions and claims in the High Court of Hong Kong prohibiting the commencement of legal proceedings.

With these different proceedings, Russian Court gave a judgment in favour of the Defendant for recovery of settlement amount in full and dismissed the Plaintiff's jurisdiction challenge, on holding that the Russian Court had exclusive jurisdiction in respect of the Defendant's claim for the settlement amount and in relation to EU Sanction under Article 248 of the 'APC RF'.

It is in this background, the Plaintiff approached the Hong Kong Court for final injunction to restrain the Defendant from commencing or pursuing any proceedings in relation to the disputes covered by the arbitration clause in the TSA and it also sought a declaration that the Defendants claim to recover the settlement amount from the Plaintiff in Russian Proceedings constitute breach of

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arbitration agreement.

44. As regards the jurisdictional challenge is concerned, it was urged that the defendant was seeking relief against the effects of international sanctions including the EU Sanction, which by their nature are matters of State and it was seeking relief against the acts of the German State in implementing and enforcing EU Sanction against it, which acts had culminated in the expropriation of the plaintiff. It was urged that the tribunal Hong Kong Arbitration does not have jurisdiction to determine disputes on the implementation and enforcement of sanctions vis-a-vis the German State and the Defendant. It was also urged that the Tribunal in the Hong Kong Arbitration was likely to determine, as a matter of English Law that payment of settlement amount by the Plaintiff is unenforceable due to imposition of EU Sanction.

45. It is in the aforesaid background and the objections raised, the Court observed thus:-

> *"59. In my judgment, what is pertinent is that the question for determination by the Court in this case is simply whether there is a valid and binding arbitration agreement between the Plaintiff and the Defendant, which covers the scope of the dispute between the two parties and the claims made by them in these proceedings and in the two sets of Russian Proceedings, and whether to grant the injunctions on the Plaintiff's application. It is trite, that the arbitration agreement contained in the Arbitration Clause is severable from and separate to the underlying TSA between the parties. Any illegality of the TSA, and any alleged impossibility to perform the TSA, cannot affect the validity and operation of the arbitration agreement. Nor does the impossibility of performance of any award obtained in the HK Arbitration affect the validity and enforceability of either the arbitration agreement, the HK Arbitration itself, or the award obtained. 10*
>
> *60. It is also clear, that the Court's decision on the questions identified in the preceding paragraph does not require its adjudication of the validity, lawfulness or fairness of the EU*

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> *Sanction, nor its operation within the territory of the EU. There is no attempt by the Plaintiff to seek enforcement of the EU Sanction in Hong Kong, as it has no recognition or application here. It is simply not necessary for the Court to decide whether the issue and application of the EU Sanction in the EU, or in Hong Kong, is right, or wrong, or valid. Whether the EU Sanction confers a good answer to the Defendant's claim for payment under the TSA, whether the Plaintiff can be excused from payment, and the effect of the EU Sanction on the TSA are all matters which go to the merits of the claims in the HK Arbitration, and it should not be forgotten that the Court does not consider the merits of the underlying dispute when it decides the Plaintiff's claim for the injunctions which are made solely on the basis of a valid arbitration agreement. This is also a reason to reject the Defendant's assertion that by granting the injunctions to the Plaintiff, the Court is implementing or facilitating the EU Sanction. Any injunction which the Court grants in this case is to facilitate the arbitration agreement between the parties, and nothing else."*

46. It was thus concluded that there is a dispute between the parties that falls within the scope of arbitration clause as covering any controversy, difference or claim arising out of or relating to the TSA, including the validity, interpretation, performance, breach or termination of the TSA and this could be submitted to arbitration in accordance with the arbitration clause.

Answering the question as to whether Hong Kong Arbitration would be futile in the wake of EU Sanctions in light of its prohibitive effect in blocking payment of settlement amount, it is held that the parties by their own choice had agreed to and provided for English Law to govern the TSA and if under the English law, the EU Sanctions has an effect on TSA or on the Hong Kong Arbitration in any way, that is a consequence of the party's choice. It was pertinently noted that at the time of the TSA, sanctions were already being implemented by EU and the parties to ISDA Agreement must have envisaged the risk of sanctions and their effect on the

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transaction under the agreement and the defendant being added to the list of sanctioned entities on the same day as the TSA, it was observed that it is inconceivable that this could not have been envisaged as a risk at the time when TSA was negotiated and concluded.

It is also held that in the event the Tribunal makes an award in Hong Kong Arbitration for the plaintiff to make payment to the defendant, such an award is valid and binding on the parties, even if performance of the award is impossible by virtue of EU sanctions or for any other reason and this was found to be sufficient ground to dismiss the claim that Hong Kong arbitration will be futile by reason of the fact that an award for payment to the defendant cannot be performed.

After a threadbare discussion, the Judge of the Court of First Instance, High Court was satisfied that the plaintiff's claim in the arbitration and the defendant's claim in the Russian proceedings all relate to the validity, alleged breach of termination and TSA and it fall within the arbitration clause in TSA and therefore, there is no 'strong cause' or reason not to grant injunction and relief sought to restrain the Defendant from acting in breach of arbitration clause. Merely, because the Russian Court has already assumed jurisdiction and issued an anti-suit injunction, was found not sufficient to refuse the relief, particularly when the Defendant had by the arbitration clause agreed not to invoke the jurisdiction of the Russian Court and injunctions were directed at the Defendant and not against the Russian Court.It was further recorded that the Defendant having ignored HK ASI Order warranted grant of mandatory injunction as

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well as declaratory relief in favour of the Plaintiff.

The Defendant's jurisdiction summons were therefore dismissed with the aforesaid reasoning.

47. Another judgment which is relied upon by Mr. Nankani is in case of ***Google LLC & Anr vs. Nao Tsargrad Media and Ors*** (supra) delivered by the High Court of Justice Business and Property Courts of England and Wales King's Bench Division on 22/01/2025 also has the involvement of a Russian entity where the Defendant commenced the proceedings before Arbitrazh Court, Moscow and obtained Russian judgment in contrast to the understanding between the parties that their relationship under the agreement would be governed by English law and to resolve the dispute the party shall apply to the Court of England and Wales. In addition, clause 14.11 of the Content Agreement entered between the parties specifically contain the following clause:-

> *"This Agreement shall be governed by and construed in accordance with English law. Without prejudice to the right of either party to apply to any court of competent jurisdiction for emergency, interim or injunctive relief, any dispute or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which Rules are deemed to be incorporated by reference into this clause… The seat, or legal place, of arbitration shall be London, England..."*

48. A detailed judgment delivered by Mr. Justice Henshaw, referred to the mandatory law proviso and it interprets the Article 248.1 which entitled the Russian sanction party to bring proceeding in Russia if, upon application of that party, the Russian Court concludes that the foreign forum selection agreement is inoperative as a result of foreign sanctions.

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The true interpretation of the said provision from Professor Kryvoi is relevant to note, which reads as below:-

> *v) Article 248.1 expressly provides that it applies only "[u]nless otherwise provided by... agreement of the parties, according to which the consideration of disputes with their participation is within the jurisdiction of foreign courts or international commercial arbitration located outside the territory of the Russian Federation".*
>
> *vi) Article 248.1 entitles a Russian sanctioned party to bring proceedings in Russia if, upon the application of that party, the Russian court concludes that the Foreign Forum Selection Agreement is inoperable as a result of the foreign sanctions. However, this provision does not limit a Russian sanctioned party's right to enter into a Foreign Forum Selection Agreement.*
>
> *vii) Moreover, the law does not prohibit or otherwise prevent Russian Sanctioned Parties from seeking, in Russia or outside Russia, the recognition and enforcement of court judgments or arbitral awards issued as a result of litigation or arbitration proceedings initiated by Russian Sanctioned Parties outside Russia in accordance with Foreign Forum Selection Agreements. To the contrary, Article 248.1(5) of the APC specifically states that:*
>
> *"The provisions of this [Article 248.1] shall not impede the recognition and enforcement of a decision of a foreign court or international commercial arbitration adopted pursuant to the claim of [a Russian sanctioned party], or if that person has not objected to the consideration of the dispute to which that person was a party by a foreign court or international commercial arbitration located outside the territory of the Russian Federation, including if that party did not apply for an [anti-suit] injunction prohibiting the initiation or continuation of the proceeding in a foreign court or international commercial arbitration located outside the territory of the Russian Federation."*
> *vii) Further, Article 244 of the APC sets out the grounds for refusal to recognise and enforce foreign judgments and arbitral awards in Russia. Article 244(1)(3) of the APC states:*
> *"The arbitrazh court refuses to recognise and enforce the judgment of the foreign court in full or in part if:*
> *…*
> *3) in accordance with an international treaty of the Russian*

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> *Federation or in accordance with a federal law, the case falls within exclusive jurisdiction of the court of the Russian Federation, except as indicated in Article 248.1(5) of [the APC].”*

49. The contention of the Defendant was to the effect that Article 248.1 of ‘APC RF’ is an example of exclusive jurisdiction of the Arbitrazh Court, which cannot be changed by the parties agreeing, and it was introduced to provide protection to the rights and legitimate interests of certain categories of Russian citizens and legal entities against whom ‘unfriendly countries’ introduced restrictive measures and as a result of sanctions, such citizens and legal entities were deprived of their right to judicial protection in the territory of these foreign countries, not only in State Courts, but also in arbitration institutions.

The judgment succinctly take note of the Defendant’s contention and reject the same by observing thus:-

> *“97. The Defendants submit that the "mandatory law" paragraph of the YouTube Jurisdiction clause does not require Article 248.1 to exclude the sanctioned entity's contractual right to sue in a foreign forum or for that right to be lost or overridden. Rather, if, as in the present case, the applicability of the particular local law - Article 248.1-falls within the exclusive competence of the Russian court, the Russian court becomes the only place where that issue and any dispute related to it can be resolved. They submit that that view is supported by §§ 12-14 of Professor Nikitin's report quoted above.*
> *98. I disagree. The language of the paragraph in the jurisdiction clause is clear. It applies only where the dispute "cannot", by reason of a mandatory law, be resolved in an English court applying English law. Article 248.1 does not have that effect. Nothing in Article 248.1 would prevent the Defendants from starting proceedings in England in accordance with the first paragraph of the jurisdiction clause. Moreover, any resulting judgment would be enforceable in Russia, provided that the Defendants had not objected to English jurisdiction. The situation is entirely different from that which would exist if the dispute had instead concerned one of the categories of case for which Russian law applies exclusivity properly so called, such*

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> *as real property and intellectual property rights. Accordingly, the conditions set out in the second paragraph of the jurisdiction clause do not apply.*
> *99. There was at one stage a suggestion by the Defendants that Google was issue estopped as to the meaning of the clause by the decision of the Russian court. Any such argument was not pressed in the skeleton argument or at the hearing, and would have no substance. There is no evidence that the Russian court considered or ruled on the meaning of the YouTube jurisdiction clause. To the contrary, it ignored it pursuant to Article 248.1.*
> *100. For these reasons, I conclude that, in the context of these disputes, the YouTube jurisdiction clause had and has effect as an exclusive jurisdiction clause in favour of the English court."*

50. The question that arises for consideration, must be pondered upon in light of Section 13 and 14 of the CPC, 1908 where there is a presumption of conclusiveness of a foreign judgment unless one of the stipulations mentioned in clause (a) to (f) is attracted and this include the two facets namely; (a) the foreign judgment is pronounced by Court that is not of competent jurisdiction and (d) when the foreign judgment obtained is opposed to natural justice. In absence of these factors, a foreign judgment would be conclusive.

Section 13 of CPC do not provide for any presumption but Section 14 prescribe a presumption as regards sub-clause (a) of Section 13, namely that the foreign judgment has been pronounced by a Court of competent jurisdiction but this presumption is a rebuttable one, permitted to be rebutted, when 'the contrary appears on record' or 'it is displaced by proving want of jurisdiction'.

By relying upon the two provisions, which are to be read as a part of a scheme, it is urged by Mr. Andhyarujina that since Section 13 accept conclusiveness of a foreign judgment, the judgment passed by the Arbitrazh Court, by taking recourse to Article 248.1 and in particular Para 4 thereof must receive its due weightage, as it is

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pronounced by a court of competent jurisdiction. It is urged by him that at the stage of consideration of an application for injunction, there is no scope of rebuttal of presumption and this scrutiny must be shifted to the stage of trial and according to him, the Single Judge has erroneously exercised the discretion at pre-trial stage, by declining to apply the mandatory statutory presumption under Section 13 and 14 of the CPC.

51. The question that arise for consideration before us is whether the Single Judge was justified in considering the objection about the conclusiveness of the foreign judgment or the presumption of competent jurisdiction of the foreign court, at the pretrial stage, as based on the foreign judgment, one party seek interim relief, by treating it as conclusive evidence to support its claim.

The decision of the learned Single Judge is subjected to severe criticism by Mr.Andhyarujina on this count as it is his submission that the Judge has erred, in not giving Section 13 of the CPC its due weightage, as the said provision must be accepted as the mandate of law which has assigned conclusiveness to the Judgment of the foreign court, if it is between the same parties and the competency contemplated by Section 13 in an international sense and not merely by law of foreign state in which the Court delivering judgment functions and according to him the provision reflect the principle of Comity of Nations and is recognized as the most relevant aspect of civilised jurisdictions.

This contention is specifically contested by Mr.Nankani by submitting that the learned Judge has rightly applied the filter while considering application of grant of injunction and there is no

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prohibition in forming *prima facie* view about the conclusiveness of the Judgment at this stage, instead of deferring it for trial.

52. The rule of conclusiveness of a foreign judgment as indicated in Section 13 is founded upon the principle of sanctity of Judgments delivered by a foreign court competent to render the same. A foreign judgment is made conclusive as to any matter thereby directly adjudicated upon between the same parties, but it is also the essence of the judgment of a court, that it is obtained after due observance of the juridical process i.e. by observing the basic tenets in law, which may include adherence to the minimum requirements of natural justice, the decision being delivered by acting in utmost fairness, unaffected by bias and in good faith. Adherence to the principles of natural justice is a significant facet in decision making, and applicable across different jurisdictions and it is basic requirement to be followed while adjudicating a dispute/lis between the parties, and hence a judgment which ensure its compliance is entitled to be accepted as conclusive, though the correctness of the judgment may be appreciated on factual grounds and it is different thing to say that the judgment is incorrect, because it had failed to appreciate the law in the background of the facts, in which the court has pronounced the same.

Therefore, under Section 13 a foreign judgment is considered to be conclusive unless it is pronounced by a court of competent jurisdiction; delivered on merits of the case; is based on an incorrect view of the International law; or it has refused to recognize the law; it is opposed to natural justice; has been obtained by fraud or it sustains a claim founded on breach of any law in force in India.

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In absence of a foreign judgment suffering from either of these flaws, which would rob it of its sanctity of conclusiveness, the same is allowed to be enforced in the manner prescribed in the Code by accepting its conclusiveness.

53. Section 14 creates a presumption and it prescribe that upon the production of any document purported to be a certified copy of a foreign judgment, the Court shall presume that such a judgment was pronounced by a competent jurisdiction and this presumption is available unless the contrary appears from record.

Section 14 permit such presumption to exist upon production of certified copy of the judgment though it is permissible to rebut the presumption by proving want of jurisdiction.

In Alcon Electronics (supra), the Hon'ble Apex Court held that a foreign judgment ,which has become final and conclusive between the parties, is not impeachable either on facts or law except on limited ground as set out in Section 13 of the Code and when the order is passed by a foreign court after following the principles of natural justice and it had recorded reasons, it shall be presumed that the court had conclusively tested the issue as to its jurisdiction and passed the same coupled with cost and, therefore, it had achieved the finale of 'conclusivity'.

By applying the principle of Comity of Nation, which demand respect to the order of another court ('English Court') , it is categorically held that even in regard to an interlocutory order, Indian Courts shall give due weightage to such order unless it falls under any of the exception under Section 13.

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54. Mr. Andhyarujina has rightly placed reliance in case of ***Dan Bunkering Ltd. vs. PFS Shipping India Ltd.***[6], when the court pronounced upon the scheme underlying Section 13 and 14 and the ratio reads to the following effect :

> *"13. These two provisions together indicate that a foreign judgment which has become final and conclusive between the parties is not impeachable either on facts or law except on limited grounds enunciated under Section 13 of CPC. The Court shall also presume upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction. Of course, an order or decree to be conclusive, an order or decree must have been obtained after following due judicial process by giving reasonable notice and opportunity to all the proper and necessary parties to put forth their case. Once these requirements are fulfilled, the executing Court cannot enquire into the validity, legality or otherwise of the judgment in Alcon Electronics (P) Ltd."*

Reliance was placed by the learned Single Judge upon *Alcon Electronics* (supra) and following the principle of law laid down it is held that, by default the foreign judgment will have to be considered as conclusive and an onus will be on the defendant to prove that foreign judgment would fall under any of the six exceptions and in the case in hand when the defendant except for filing of written statement in which bald averments were made, did not lead any evidence as to why the said judgment would not fall within the exception provided under Section 13, the court accepted the conclusiveness of the judgment and held it to be enforceable by applying the principles laid down in Section 13 of CPC.

55. In yet another decision in case of ***Oren Bydorcarbons Pvt. Ltd. vs. MS Mediterranean Shipping Company***[7], dealing with a Suit

6 (2018) SCC Online Bom. 1313
7 2019 SCC Online Mad 34481

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filed under Section 13 of the CPC and Order IV Rule 1 seeking a declaration that the summary judgment passed by the High Court of Justice, Queens Bench Division (Commercial Court), is not conclusive and the same cannot be enforced against the Plaintiff under Indian Law or in any other manner and it also sought a relief of permanent injunction restraining the Defendant from enforcing judgment of Queens Bench Division.

It is in this background, the Court has noted thus :-

> *"14. When the foreign Court passed judgment on merits and there is no dispute on the correctness or otherwise of International Law oɔ refusal to Tecognize Indian Law and the principles of natural justice was duly followed in the proceedings which culminated in the judgment. Ex. D.10 reveals that summons were properly served upon the plaintiff and the same is accepted and acknowledged by the plaintiff. Ex. D.12 is the Certificate of judgment under Section 10 of the Foreign Judgments issued by the High Court of Justice, Queen's Bench Division, London. Ex. D.12 clearly indicate that the judgment has been served by the foreign Court in accordance with the provisions of Part 6 of the Civil Procedure Rules 1998. As the plaintiff failed to pay the sum decreed under the judgment and Order passed by the High Court of Justice, Queens Bench, Division Commercial Court, London, the defendant through his counsel has called upon the plaintiff to make money. Though the plaintiff has raised some allegation of fraud absolutely, there is no material on record to prove the alleged fraud. There is no allegations on fraud in obtaining the judgment and there is no claim that the judgment is founded on any breach of law in force in India. Section 14 of CPC provides presumption on the judgment and the said presumption on the jurisdiction was not rebutted by the plaintiff.*
>
> *15. From the above facts, it is very clear that the plaintiff had participated in the proceedings before the London Court and the London Court has also passed the Judgment on merits. Such being the position, it is not open to the plaintiff to relitigate and reagitate the same factual issues already considered, decided and given findings by the foreign Court. As there are appeal provisions at England against the judgment of Commercial Division which is under challenge in the instant suit, the plaintiff ought to have filed only an appeal or review before the London*

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Court and no fresh suit can be filed against the well considered foreign judgment. In view of the same, all the issues are answered against the plaintiff and in favour of the defendant."

56. Much submissions have been advanced before us as regards the effect of presumption and by this time it is a well known proposition in law, that a presumption is not in itself evidence, but it only makes a *prima facie* case for the party in whose favour it exist. It indicates the person on whom the burden of proof lies and when a presumption is conclusive, it is obvious on production of any other evidence to disallow the conclusion to be drawn on the basis of a proof of certain facts. However, when the presumption is rebuttable, it point out to the party on whom lies the burden of bringing forward the evidence on the facts presumed. The evidence so brought shall determine the true nature of the facts to be established.

In the words of the Hon'ble Apex Court in ***Sodhi Transport Co. & Ors. vs. State of U.P. & Ors***[8], 'The Rules of presumptions are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances.'.

57. In ***Neeraj Dutta vs. State (Government of NCT of Delhi)***[9], with reference to the presumption under the public accountability, vigilance and Prevention of Corruption Act, 1988 (for short 'PC Act, 1988'), the Apex Court was determining the issue, whether in absence of evidence of the complainant/direct or primary evidence of demand of illegal gratification, is it permissible to draw an inferential presumption of deduction of culpability/ guilt of a public servant under Section 7 and 13(1)(d) read with Section 13(2) based

8 (1986) 2 SCC 486
9 (2023) 4 SCC 731

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on the other evidence, with the presumption existing under Section 20 of the Act.

Recording that the presumption under Section 20 differs from the presumption available under Section 114 of the Indian Evidence Act, which is discretionary in nature inasmuch as it is open to the Court to draw or not to draw a presumption as to the existence of one fact from proof of another fact. However, in case of the presumption under Section 20 of the PC Act, 1988, it was found that the court must mandatorily draw such presumption, if the requisite facts are proved for raising the same and these requisite facts being; where any illegal gratification has been received by accused and in such a case the presumption mandatorily has to be drawn that the person received the thing as a motive or reward.

It is held that a presumption under Section 20 is a rebuttable one, where accused is entitled to show that though that money was not due to him as legal remuneration, it was legally due to him in some other manner or that he has received it under transaction or an agreement, which is lawful.

Thus, the burden being cast on an accused to rebut the presumption duly raised under Section 20 of the Act, it was held that it should not be as light as it is when presumption is raised under Section 114 of the Indian Evidence Act, and the burden to rebut the presumption under Section 20 of the PC Act, 1988 cannot be held to be discharged merely by reason of a fact that the explanation offered by the accused is reasonable and probable, but it must be shown that the explanation offered is true.

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In this regard, the pertinent observation of the Division Bench which would provide guidance with reference to Section 4 of the Indian Evidence Act deserve a reproduction:

> *"64. Courts are authorised to draw a particular inference from a particular fact, unless and until the truth of such inference is disproved by other facts. The court can, under Section 4 of the Evidence Act, raise a presumption for purposes of proof of a fact. It is well settled that a presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. As per English law, there are three categories of presumptions, namely, (i) presumptions of fact or natural presumption; (ii) presumption of law (rebuttable and irrebuttable); and (iii) mixed presumptions i.e. "presumptions of mixed law and fact" or "presumptions of fact recognised by law". The expressions "may presume" and "shall presume" in Section 4 of the Evidence Act are also categories of presumptions. Factual presumptions or discretionary presumptions come under the division of "may presume" while legal presumptions or compulsory presumptions come under the division of "shall presume". "May presume" leaves it to the discretion of the court to make the presumption according to the circumstances of the case but "shall presume" leaves no option with the court, and it is bound to presume the fact as proved until evidence is given to disprove it, for instance, the genuineness of a document purporting to be the Gazette of India. The expression "shall presume" is found in Sections 79, 80, 81, 83, 85, 89 and 105 of the Evidence Act."*
>
> *"70. As opposed to the expressions "may presume" and "shall presume", the expression "conclusive proof" is also used in Section 4 of the Evidence Act. When the law says that a particular kind of evidence would be conclusive, that fact can be proved either by that evidence or by some other evidence that the b court permits or requires. When evidence which is made conclusive is adduced, the court has no option but to hold that the fact exists. For instance, the statement in an order of the court is conclusive of what happened before the presiding officer of the court. Thus, conclusive proof gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combat that effect. When a statute makes certain facts final and conclusive, evidence to disprove such facts is not to be allowed."*

58. From reading of the aforesaid passage of the law report, it can be inferred that when the statute gives conclusiveness to a particular

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kind of evidence and it is accepted as conclusive, the evidence to disprove such fact is not allowed.

It is in this context, when we look at Section 13 of the CPC, a foreign judgment is conclusive in regards to any matter directly adjudicated upon between the same parties or between the parties under whom they or any of them claim litigating under the same title except in six situations enumerated in clause (a) to (f). However, when it comes to a presumption, it is only available in regards to the judgment being pronounced by a court of competent jurisdiction and the presumption is not applicable to clause (b) to (f) of Section 13. Even this presumption about the judgment being pronounced by a court of competent jurisdiction also operate unless the contrary appears on record and it is also permissible to displace this presumption by proving that the court lacked the jurisdiction to decide a particular issue/matter before it.

There is no presumption under Section 13 of CPC, as to what is available under Section 14 and this presumption is also permitted to be drawn with respect to clause (a) of Section 13 and, therefore, it is pertinent to note that presumption is not available as regards the conclusiveness of the judgment, but it is only available to presume that the judgment is pronounced by a court of competent jurisdiction.

59. When the question is about enforcement of a foreign judgment, under the Code of Civil Procedure, there are two methodologies stipulated, one in case of reciprocating territories when it is permissible to have direct execution of foreign judgments of courts which are recognized as reciprocating territories in terms of Section 44 A of CPC. The other mode is enforcement of foreign judgments

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of courts situated in territories that are not recognized as reciprocating territories through filing of the Suit seeking decree in terms of foreign judgment.

Thus, the judgments of reciprocating territories are directly executable, but in case of non-reciprocating territories, a suit shall be filed before the Indian Court seeking a decree, which can be in terms of foreign judgment and this distinction becomes crucial as it goes to determine on whom the burden lies and at what stage it is permitted to be rebutted.

In case of direct execution of foreign judgment of reciprocating territories, the burden of proof to prove that the foreign judgment is not conclusive, lies upon the judgment debtor in terms of Section 44-A(3), as the provision reads thus :

> *"The provisions of Section 47 shall apply…… the district court shall refuse execution of any such decree, if it is shown to the satisfaction of the court that the decree falls within any of the exception specified in clause (a) to (f) to Section 13."*

In case of a Suit filed under Section 13 of CPC seeking domestic decree in terms of foreign judgment from a court falling in non reciprocating territory, the foreign judgment is conclusive and the burden to establish that it is not conclusive lies on the judgment holder/decree holder.

60. The attempt of the appellant to read the presumption contemplated under Section 14 for the purpose of Section 13 in its entirety would be an incorrect application of law, as this presumption under Section 14 is only permitted to be drawn in respect of clause (a) of Section 13.

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Since we are talking about clause (a) of Section 13 and the issue before us is whether the Moscow Court had delivered the Judgment as it was the court of competent jurisdiction, and for this stipulation since the Section 14 presumption is available in favour of the foreign judgment, then it will be necessary to appreciate the contention of the Respondent when it submit that it is not the decision of a court which had the competence to decide.

The question is at what stage this can be gone into and in our view, it is permissible to appreciate the same or rather it is imperative to appreciate the same at the *prima facie* stage, as when the application for interim relief is pressed into service upon producing a certified copy of the foreign judgment, the onus shifts to the respondent to demonstrate how the judgment is not conclusive and because it falls in one of the exceptions carved out including the objection that the foreign court is not the court of competent jurisdiction.

Section 14 itself has permitted a presumption which is available to be refuted by use of words, 'unless the contrary appears on record', but such presumption may also be displaced by proving want of jurisdiction. Definitely, the term 'on the record' cannot be read in a restrictive sense, but it shall extend to the documents produced at the time when the interim application is being decided including the pleadings in it as well as the opposition to the said pleadings. Similarly, the term 'contrary appears on the record' , is also required to be construed in a wider sense, by having the *prima facie* view of the matter and 'unless the contrary appears on record' permit the Court to take into consideration the pleadings at the

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interim stage as well as all such material which is pressed into service by the respondent in establishing that the foreign judgment is not conclusive, because it is not passed by the court of competent jurisdiction.

It is also open for the judgment debtor to rebut/displace the presumption by 'proving want of jurisdiction' and we find it difficult to accept that it is permissible to be done only at the final stage i.e. during the trial and not at interim stage as we do not find any embargo in taking a *prima facie* view of the matter and, therefore, if on perusal of the record or if the presumption that is created by virtue of Section 14 is displaced by the defendant by proving want of jurisdiction, the court shall completely ignore the same and hold on to the 'conclusiveness' of the judgment.

61. In ***Marine Geotechnics LLC Vs. Coastal Marine Construction and Engineering Limited***[10], the learned Judge of this Court appreciated the scheme of Section 13 and described the same in the following words :-

"Section 13 enunciates the well established principle of private international law that a court will not enforce a foreign judgment that is not of a competent court. What that section provides is, therefore, substantive law, not mere procedure. Section 13 makes no distinction between judgments of a court in reciprocating territory and those of courts in non-reciprocating territories. That distinction comes only in Section 44A, an independent provision that says that a decree of a court in a reciprocating state may be put into execution in India. A decree from non-reciprocating state cannot be so executed."

10 (2014) SCC OnLine Bom 309

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Decrees of both reciprocating and non-reciprocating territories must, however, satisfy the test of Section 13 with the only difference being at what stage and on whom the burden lies.

When a foreign judgment is not on merits and violates any of the provisions of sub-clauses (a) to (f) of Section 13 it is not conclusive, even though it may be in accordance with the domestic procedure of the country in which it was passed and is valid and enforceable in that country.

In short, if it falls under any clauses (a) to (f) of Section, is it not conclusive as to any matter thereby adjudicated upon and the judgment is open to collateral attack on the grounds mentioned in the clauses of Section 13.

When a party is armed with a decree of a court in a non-reciprocating foreign territory, it has an option to file a Suit based on the foreign decree in a domestic Indian court of competent jurisdiction, but it is not open for it to simply execute such a foreign decree, but it can execute the resultant domestic decree. To obtain that decree, it has to demonstrate that the foreign decree satisfy the test of Section 13, so that it is considered as conclusive. However, if the decree is from the Court in a reciprocating territory, then it can straightaway put it into execution, following the procedure prescribed under Section 44A and Order XXI Rule 22 of CPC and the judgment debtor can resist the decree by raising the grounds under Section 13. If he is unable to do so, or fail in his attempt, the decree will be executed as if the decree was passed by a competent court in India.

62. In ***Elis Jane Quinlan Vs. Naveen Kumar Seth***[11], another learned Single Judge, (Justice Sandeep Marne) was confronted with

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the scope of the power to be exercised by the Executing Court while executing the decree passed by a Foreign Court in reciprocating territory under Section 44A of the Code and the question arose whether he can frame issue and direct parties to lead evidence while conducting an inquiry into existence of exceptions specified in clauses (a) to (f) in Section 13 of the Code.

The petitioners urged that neither the issues could be framed nor the evidence be allowed to be led when decree is to be executed under Section 44A of the CPC, as a distinction was drawn between a decree passed by a Court in a reciprocating territory and non-reciprocating territory, and it was urged that the conduct of full-fledged trial in execution proceeding by framing of issues and leading of evidence would completely convert the execution proceedings into a suit filed on judgment of foreign court in non-reciprocating territory.

Reliance was placed upon Section 14 of the Code which created a presumption as to foreign judgment and unless contrary appears on record, it was contended that presumption existed that the foreign judgment was pronounced by a court of competent jurisdiction, although the presumption could be displaced by proving want of jurisdiction.

In this regard, the following observations of the learned Judge are relevant to note :-

> *"24) Thus, there is a vital distinction between the decree passed by the foreign court in non-reciprocating territory and a decree passed by the foreign court in reciprocating territory. In the former case, the decree is not directly executable, and it is necessary to institute a suit on foreign judgment to secure a domestic decree on the foreign judgment. However,in the latter case, the decree passed by the foreign court in reciprocating*

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> *territory can be directly executed by the District Court. However, even while executing the decree of a foreign court in reciprocating territory, the exceptions specified in clauses (a) to (f) of Section 13 of the Code continue to apply and the District Court can refuse execution if the decree demonstrably falls in any of the exceptions specified in clauses (a) to (f) of Section 13 of the Code.*
> *25) Thus the onus to prove existence of exceptions specified in clauses (a) to (f) of Section 13 of the Code in a suit filed for decree on foreign judgment passed in non-reciprocating territory is on the Plaintiff filing such suit whereas in execution proceedings filed under Section 44A for execution of decree passed by foreign court in reciprocating territory such onus is on the judgment-debtor.*

63. When the test for granting an injunction in exercise of Order XXXIX Rule 1(b) of CPC, is based on the satisfaction of triple test of *prima facie* case, balance of convenience and irreparable loss, and if in a Suit filed seeking a decree based upon the foreign judgment, such an application is filed, in our view, it would be unjust for the parties to postpone the examination of the question as to whether the foreign court is a court of competent jurisdiction. In our view, in order to find out a *prima facie* case for grant of injunction, a *prima facie* opinion must be formed, which would involve the exercise of discretion by the court when it comes to grant of relief under Order XXXIX Rule 1(b) of the CPC.

A suit filed under Section 13 of CPC read with Section 14 is no exception to the general principle of law governing injunctive reliefs under Order XXXIX Rule 1 of CPC, which include a *prima facie* test, and hence a presumption shall be permitted to be rebutted even at interim stage. Postponing the determination of question whether the foreign court is a court of competent jurisdiction to the stage of trial would cause huge prejudice to the judgment debtor /respondent who would have to accept an order of injunction/ restrain

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only on the presumption that the judgment of the foreign court has weightage of conclusivity. However, if on culmination of trial the Plaintiff do not succeed in proving conclusiveness, and the defence was raised that the court delivering the judgment was not of competent jurisdiction, but if the injunction continued to operate against the defendant till this final conclusion is arrived, it would cause irreparable loss, which at times may be irreversible.

Therefore, whenever an opportunity comes for consideration of grant of injunction or any interim order pending the suit, the parameters which are applicable under Order XXXIX Rule 1(b) must apply with equal force and the court shall appreciate the *prima facie* case, even at the stage of grant of injunction, whether the judgment/ decision of the foreign court is conclusive or not on the ground that it is not delivered by the court of competent jurisdiction.

It is for this reason, we are not satisfied with the submissions advanced on behalf of the appellant and we find that the learned Judge has rightly treaded the path, when she has expressed that in the wake of the doubt that has been created whether the decision of the Moscow court was conclusive or not as in light of the existence of arbitration agreement between the parties, the parties had already resorted to ICC proceedings which were continued for last 3 years and on the date when the Moscow Court was approached the proceedings were still in progress.

64. Reliance placed by Mr.Andhyarujina on the precedents involving the judicial interpretation of ‘shall presume’ in respect of several other statutes including the Trade Marks Act, 1999, Negotiable Instruments Act, 1881 and Section 20 of the Prevention of

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Corruption Act, 1988, by placing reliance upon the authoritative pronouncement interpreting the said wording, according to us, is not applicable while interpreting Sections 13 and 14 of the CPC, as the meaning of a term/phrase used in provision in a statute shall definitely receive interpretation strictly in accordance with the object underlying the said statute as well as the provision by itself and the purpose which the provision serve in a statute.

As far as Negotiable Instruments Act, 1881 is concerned, the presumption is applied at a stage when the process is issued and therefore, it is capable of being rebutted at a trial stage, as the Magistrate is only to be satisfied on the basis of complaint and examination of the complainant. Similarly, comparison with the use of the words 'shall presume' under the Trade Marks Act, reliance upon the Full Bench decision of this Court in *Lupin* (supra), to the effect that if the words of the statute are precise and clear, then the statute must speak for itself and the use of the word '*prima facie*' in Section 31, shall mean registration which will be *prima facie* evidenced is most apt.

65. The Full Bench in *Lupin* (supra) while dealing with the presumption under Section 31 of the Trade Marks Act, 1958 regarding *prima facie* evidence of the validity of the Trade Mark, noted that it operated both, during pendency of the Suit and during pendency of the rectification proceedings. However, with the change brought about by 1999 Act, it provided that while the Suit for infringement of trade mark may be pending before the District Court or High Court, where the defendant questions the validity of registration of plaintiff's trademark, such question shall be finally

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determined only on application for the rectification of the register to be made by the Appellate Board and this question could be only answered by the Intellectual Property Appellate Board and not by Civil Court or High Court trying the suit for infringement. In light of the scheme of the statute including Section 28 which confer substantial rights, but which was made subject to other provisions of the Act, it was noted that the registration of the trade mark shall, if valid, give to the registered proprietor of the trade mark, the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of trade mark in the manner provided by the Act.

Since Section 134 provided the forum for obtaining the relief of registered trade mark, and such forum being the Court not inferior to a District Court having jurisdiction to try the suit, it is in this peculiar background the words 'if valid' were interpreted by applying the basic rule of interpretation of the statute, that if the words of the statute are precise and clear, then nothing more is required to be looked into to give effect to their natural meaning and definitely, the external and internal aids cannot be invoked and in such case, statute speaks for itself.

It is in this context, the use of the word '*prima facie*' in Section 31 was construed to mean registration which will have *prima facie* evidence and the Full Bench observed that the expression '*prima facie*' is too well settled to be expounded and to substitute the words with conclusive evidence would be re-writing the Section. The Bench held that if the registration was to be conclusive, it was not necessary

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to introduce the phrases 'if valid' and '*prima facie*' and various Courts had given plain meaning to the phrases that the registration will be *prima facie* evidence of its validity and not a conclusive evidence.

In light of this position, the Full Bench made the following observation in paragraph no.35.

> *"35. The words "if valid" in Section 28 and "prima facie evidence of title" in Section 31 support the Defendant's case that the defence of invalidity of registration of the Plaintiff's trade mark can be considered at the interlocutory stage. As per the settled legal position, a Court hearing and deciding an interlocutory application for injunction during the pendency of the suit is required to consider: (i) prima facie case; (ii) balance of convenience; and (iii) where an irreparable injury and injustice would be caused to the Plaintiff if an interim injunction is not granted."*

66. A careful reading of the aforesaid decision, would reveal that, the Full Bench held that the presumption is in fact, rebuttable even at interim stage as in paragraph no.34, the Bench observed thus :-

> *"34. While we agree with Dr.Tulzapurkar for the Plaintiff that the object of providing for registration of a trade mark and recognising the exclusive right of the registered proprietor to use the registered trade mark in order to prevent others from using an identical or deceptively similar trade mark is to obviate the necessity of proving in each and every case the Plaintiff's title to the mark, its distinctiveness and its reputation, we are of the view that the object has been achieved by raising a presumption, and a strong presumption in law, as to the validity of registration of the mark.*
>
> *The burden is therefore cast, and a heavy burden at that, on the Defendant to question the validity of registration. While such a challenge can finally succeed only in a rectification proceedings which now lie before the Intellectual Property Appellate Tribunal (IPAT), we do not find any express or implied bar in the Trade Marks Act to completely take away the jurisdiction and power of the Civil Court to consider the challenge to the validity of registration of the trade mark at the interlocutory stage by way of a prima facie finding on such issue."*

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67. In such circumstances, Mr. Nankani would submit that the use of the words ‘prima facie evidence of validity’ is distinct than the words ‘shall presume’ as used in Section 14 and the absence of the words ‘*prima facie*’ appearing in Section 14 do not make out the law laid down in *Lupin* (supra) inapplicable, because in any case, the *prima facie* test is automatically applicable once a temporary injunction under Order XXXI of Rule 1 of CPC is sought in a suit filed on foreign judgment. Whether or not, a parlance is to be drawn between the provisions of the Trade Marks Act and Section 14 of the CPC, one thing is appearing before us with clarity that, the said provision shall be interpreted by its own language, by keeping in mind the object of the legislature and the provision itself has contemplated the circumstances when the presumption can be rebutted and even the rebuttal is also permitted from the record.

68. We find fallacy in the argument of the appellant as accepting the submission of Mr. Andhyarujina would mean that in every case of foreign judgment placed before an Indian Court, where from a court of reciprocating or non-reciprocating territory, the grant of interim relief would automatically flow, as the presumption is permitted to be rebutted only at the trial stage.

By applying such an interpretation in every case, interim injunction shall automatically follow and this would definitely disrupt the exercise of civil court under Order XXXIX Rule 1(b) to assess whether a *prima facie* case is made out.

Apart from this, laying down of such a proposition would be antithetical to vital distinction between foreign judgments from reciprocating and non-reciprocating territories, where the former are

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directly executable while the latter require the entire trial to be found conclusive and thereafter executable.

69. Therefore, in the facts of the case, applying the principle laid down in ***Wander Ltd and Anr Vs. Antox India P Ltd***[12], we do not find any scope for interference in the decision of the learned Single Judge, who has rightly opined that the judgment of the Arbitrazh Court, Moscow giving rise to doubt and in absence of *prima facie* case, balance of convenience and irreparable loss being established by EuroChem, an injunction shall not automatically flow.

We must also hold that there is no presumption under Section 13 of the Code of Civil Procedure and therefore, the appellant must make out a *prima faci*e case for grant of relief under Order XXXIX Rule 1(b) of CPC, and since the burden of proving that the Moscow judgment is conclusive lies on the appellant, as Moscow Court is situated in a non-reciprocating territory with the limited presumption under section 14 being available only qua clause (a) of Section 13, which is also rebuttable, and in our view, even at the interim stage, and since the respondent has produced sufficient material to call in question its conclusivity, we find that the learned Single Judge as rightly exercised the discretion available, and refused the injunction as the plaintiff/appellant failed to make out a case under Order XXXIX Rule 1(b) of CPC.

As a result, finding no merit and substance in the Appeal, the same is dismissed. No order as to costs.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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70. After the judgment is pronounced, the learned Senior Counsel Mr. Andhyarujina seek its stay. The said request is strongly opposed by learned Senior Counsel Mr. Nankani.

In our view, the said request must receive rejection as the judgment has exhaustively dealt with the issues raised in the Appeal and since we find no reason to interfere with the order passed by the learned Single Judge, who has refused to grant interim injunction by taking a *prima facie* view of the matter at the interim stage and deemed it appropriate even to consider the conclusiveness of the judgment of Arbitrazh Court. We have expressed our agreement with the view adopted and have refused to entertain the Appeal.

71. As we have dismissed the Appeal by upholding the order passed by the learned Single Judge, the relief sought in Interim Application (L) No. 21931 of 2026 taken out by the Appellant/ Applicant, praying for extension of the interim order granted is also dismissed as the Appeal is now decided on merits and there is no cause for us to grant the said prayer, apart from the fact that upon a request being made to stay the judgment pronounced by us, we have declined the request to stay the effect of the judgment pronounced by us today. IA (L) No. 21931 of 2026 is therefore disposed of.

72. Interim Application (L) No. 23525 of 2026 is taken out by the Respondents seeking deposit of an amount as security for costs, but learned Senior Counsel Mr. Nankani under instructions state that he shall press the relief in the application before the learned Single Judge, as and when the situation demands. Hence, IA (L) No. 23525 of 2026 is also disposed of.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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