



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment reserved on: 15<sup>th</sup> January, 2026*  
*Judgment pronounced on: 23<sup>rd</sup> February, 2026*

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**EX.P. 87/2022 & EX.APPL.(OS) 3572/2022, EX.APPL.(OS) 3573/2022, EX.APPL.(OS) 3574/2022**

PETER BECK UND PARTNER

VERMOGENSVERWALTUNG GMBH .....Decree Holder

Through: Mr. Ankur Kashyap, Mr. Ajith S. Ranganathan, Mr. Rohit Rajershi, Mr. Aman Bajaj, Mr. Purushartha Singh & Mr. Siddharth Dua, Advocates.

versus

PRAKASH INDUSTRIES LIMITED .....Judgement Debtor

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Ankur Chawla, Mr. Akshay Ringe, Mr. C. B. Bansal, Mr. Gurpreet Singh, Mr. Kunal Aggarwal, Mr. Ishanee Kapoor, Ms. Janhavi Negi, Mr. Shivam Bansal and Mr. Ravi Sharma, Advocates.  
Mr. Abhinav Sharma, Mr. Ankur Sharma and Mr. Snehashish B., Advocates for RBI.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

1. The present execution petition has been filed by the decree holder/petitioner under Section 44A of the Code of Civil Procedure, 1908 ('CPC'), seeking execution of the final judgment dated 1<sup>st</sup> April, 2022 along with the



ancillary order dated 20<sup>th</sup> May, 2022 (**‘Foreign Decree’**) passed by High Court of Justice Business & Property Courts of England & Wales Commercial Court, Queen’s Bench Division (**‘English Court’**).

2. Peter Beck und Partner Vermögensverwaltung GMBH, the decree holder in the present petition, shall hereinafter be referred to as **‘Peter Beck’**. Prakash Industries Limited, the judgment debtor in the present petition, shall hereinafter be referred to as **‘Prakash Industries’**.

### **PREFATORY FACTS**

3. Prakash Industries is an integrated steel and power company incorporated in India.

4. Prakash Industries issued *‘Foreign Currency Convertible Bonds’* (**‘FCCBs’**) in 2009 and 2010, which were subscribed by Peter Beck. A Subscription Agreement dated 20<sup>th</sup> December, 2017 was entered between Prakash Industries and Peter Beck (**‘Subscription Agreement’**). The said Subscription Agreement was governed by the English law.

5. FCCBs are subject to comprehensive regulatory regime under Foreign Exchange Management Act, 1999 (**‘FEMA’**), including directions/circulars issued by the RBI.

6. In the present case, FCCBs subscribed by Peter Beck were duly approved by RBI through its letter dated 8<sup>th</sup> November, 2017.

7. Disputes arose between the parties on account of default committed by Prakash Industries in paying the coupon interest on the aforesaid FCCBs.

8. Prakash Industries instituted proceedings against Peter Beck before the English Court, seeking a declaration of non-liability to pay the coupon interest and damages for late conversions.



9. Peter Beck filed its counter-claim seeking payment of Early Redemption Amount ('ERA') triggered by non-payment of coupon interest and damages for late conversion of the FCCBs.

10. The English Court pronounced its final judgment on 1<sup>st</sup> April, 2022 and held that Prakash Industries defaulted in making payments of coupon interest and delayed the conversion of the FCCBs into equity.

11. Subsequently, the English Court *vide* ancillary order dated 20<sup>th</sup> May, 2022 directed Prakash Industries to pay to Peter Beck the following sums:

- i. The debt amount in respect to ERA amounting to USD 11,230,700 along with an interest amounting to USD 2,634,915.15.
- ii. Damages for late conversion of bonds amounting to USD 3,532,711.67 along with an interest amounting to USD 514,995.52.
- iii. 60% of Peter Beck's costs for the proceedings.
- iv. An amount of GBP 558,034.99 as an interim payment on account of the costs awarded.
- v. Future Interest at a rate of 8% per annum, calculated from 4<sup>th</sup> June, 2022 till the date of payment.

12. Prakash Industries did not file any appeal against the aforesaid judgment and decree passed by the English Court and hence, the judgment /decree became final under the English law.

13. The present execution petition has been filed on behalf of Peter Beck under Section 44A of the CPC seeking execution of the judgment/ decree



passed by the English Court, being ‘Superior Court’ of a ‘reciprocating territory’.

14. Prakash Industries filed an application being EX.APPL. 3785/2022, stating that this Court did not have territorial jurisdiction to entertain the present petition since Prakash Industries does not have any immovable property within the jurisdiction of this Court and no cause of action has arisen within the jurisdiction of this Court. The said application was dismissed *via* judgment dated 3<sup>rd</sup> May, 2023. The said judgment was challenged by Prakash Industries by way of an appeal being EFA (OS) 9/2023, which was dismissed as withdrawn *vide* order dated 10<sup>th</sup> April, 2024.

#### **OBJECTIONS RAISED BY PRAKASH INDUSTRIES**

15. In the objections filed on behalf of Prakash Industries, it is stated that the Foreign Decree is in violation of the provisions of FEMA and therefore, falls within the exceptions provided under Section 13(c) and 13(f) of the CPC.

16. Yet another objection taken on behalf of Prakash Industries is that under the provisions of FEMA, payment under FCCBs can only be made to the ‘registered account’ of the bond holder within the meaning of contractual definition and no such registered account of the bond holder was available in the present case.

17. In light of the objections raised by Prakash Industries with regard to the FEMA violations, this Court issued a notice to the Reserve Bank of India (‘RBI’) to clarify its position on the remittance of funds in satisfaction of a Foreign Decree.

18. On 5<sup>th</sup> November, 2024, counsel appearing on behalf of RBI made a statement before the Court that there is no bar insofar as remittance of any



amount is concerned, since the same is in satisfaction of a judgment. Pursuant to the aforesaid order, an affidavit dated 25<sup>th</sup> February, 2025 was filed on behalf of the RBI. Yet another affidavit was filed on behalf of RBI on 18<sup>th</sup> November, 2025, pursuant to the order passed on 8<sup>th</sup> September, 2025 and 10<sup>th</sup> October, 2025.

### **SUBMISSIONS ON BEHALF OF PETER BECK**

19. No ground relating to the violations of the FEMA was raised by Prakash Industries before the English Court and therefore, Prakash Industries is now precluded from raising this ground at the stage of execution.

20. FEMA violations by themselves cannot bar execution of a foreign decree. The issues arising under FEMA are only compliance related and do not affect the execution of a decree. *Ex-post facto* permission, if required, can be obtained from the RBI. Reliance in this regard is placed on the judgments in *NTT Docomo Inc. v. Tata Sons Limited*<sup>1</sup> (*'NTT Docomo'*) and *Arun Kumar Jagatramka v. Ultrabulk A/S*,<sup>2</sup> (*'Ultrabulk'*).

21. As per the '*all-in-cost ceiling*' provided in paragraph 2.1(vii) of the Master Direction of External Commercial Borrowing, Trade Credits and Structural Obligations dated 26<sup>th</sup> March, 2019 issued by the RBI (**'Master Direction-ECB'**), pre-payment charges and penal interest upto 2% over and above the contracted rate can be awarded. In the present case, the coupon rate of FCCBs was 5.95%. Therefore, the interest awarded by the English Court at 7.95% was within the 2% ceiling.

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<sup>1</sup> 2017 SCC OnLine Del 8078.

<sup>2</sup> 2023 SCC OnLine Guj 3152.



22. Insofar as the claim for damages is concerned, it arises from a breach of a contractual obligation by Prakash Industries, *i.e.* failure to convert FCCBs into equity in a timely manner. Therefore, the Master Direction-ECB would have no applicability on the question of damages. Neither paragraph 2.1(vi) nor paragraph 2.1(vii) of the Master Direction-ECB refers to ‘damages’. The imposition of interest is judicial determination made by the English Court, which squarely falls within its jurisdiction.

### **SUBMISSIONS ON BEHALF OF PRAKASH INDUSTRIES**

23. The Foreign Decree passed by the English Court is in violation of the provisions of FEMA and the directions/circulars issued by the RBI and hence is unenforceable under Section 13(c) and (f) of the CPC.

24. The English Court has not followed the FEMA Regulations and the directions/circulars issued by the RBI while awarding interest and/ or damages. Under the Master Direction-ECB, the interest must be within the ‘*all-in-cost ceiling*’ and damages have to comply with stipulations of paragraphs 2.1(vi) and 2.1(vii). The English Court has awarded an interest at the rate of 7.95% per annum, which exceeds the permissible ‘*all-in-cost ceiling*’ under the Master Direction-ECB.

25. In terms of paragraph 2.1(vii) of the Master Direction-ECB, ‘*other costs*’ including pre-payment charges should not exceed 2% of the contracted interest rate, however, the English Court has awarded damages of USD 4,047,707, which is way beyond the 2% of the principal outstanding amount.

26. The affidavit filed on behalf of RBI on 25<sup>th</sup> February, 2025 confirms that interest awarded beyond the ceiling stipulated in the RBI’s ECB guidelines would be in violation of Master Direction-ECB. Similarly, it has



been clarified by RBI in its affidavit dated 18<sup>th</sup> November, 2025 that any damages or other costs payable in connection with ECB transaction must not exceed 2% per annum over the contracted interest rate.

27. The aforesaid ceilings prescribed by the RBI have a force of law and are not merely regulatory guidelines. Any payments in excess of these limits would be in contravention of FEMA. Therefore, the contention of Peter Beck that the issue of violation of FEMA is only a regulatory issue and not a substantial issue is misplaced.

28. The judgments relied upon by Peter Beck are in relation to enforcement of foreign arbitral awards. The statutory framework of foreign awards under Arbitration and Conciliation Act, 1996 is distinct and materially different from execution of foreign judgments under Section 44A read with Section 13 of CPC. Therefore, the aforesaid judgments would not be applicable in the present case.

29. Since the account furnished by Peter Beck is not in the name of a registered bond holder, the amounts cannot be remitted to the said account.

#### **ANALYSIS AND FINDINGS**

30. I have heard the counsel for the parties and perused the material on record.

31. It is an undisputed fact that the United Kingdom is a 'reciprocating territory' as per Section 44A of the CPC. It is also not in dispute that in the present case, the judgment/decreed has been passed by the High Court of Justice Business & Property Courts of England & Wales Commercial Court, Queen's Bench Division, which would be a 'Superior Court' of a 'reciprocating territory'.



32. To begin with, I will discuss the legal position with regard to execution of a foreign judgment/decreed under Section 44A of the CPC. In *Alcon Electronics Private Limited v. Celem S.A. of FOS 34320 Roujan, Frane and Another*<sup>3</sup> (*Alcon Electronics*), the Supreme Court has emphasised that Courts of all nations should enforce judgments of the Foreign Courts. In the said case, the appellant (judgment debtor) had taken a plea that the costs imposed by the Foreign Court exceed the limit imposed under Section 35A of the CPC and therefore, the said order of the English Court is not executable in India. The aforesaid contention was rejected by the Supreme Court.

33. Relevant extracts from the said judgment are set out below:

*“31. The appellant has advanced an argument that as per Section 35-A CPC, no court should pass any order for the payment of compensatory costs exceeding Rs 3000 or exceeding the limits of its pecuniary jurisdiction of the said court whichever amount is less. It is thus argued by the appellant that in the present case, since the costs imposed exceed the bar imposed by Section 35-A, therefore, the order of the English Court is not executable in the present case.*

*32. This argument lacks merit and deserves to be rejected. A bare perusal of Section 35-A shows that bar operates on the Indian Courts with regard to imposition of costs in respect of false or vexatious claims or defences. The bar is not attracted in the present case as the Court that has ordered the costs is the High Court of Justice in England which is not governed by the provisions of CPC...*

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*37. It is to the reciprocal advantage of the courts of all nations to enforce foreign rights as far as practicable. To this end, broad recognition of substantive rights should not be defeated by some vague assumed limitations of the court. When substantive rights are so bound up in a foreign remedy, the refusal to adopt the remedy would substantially deprive parties of their rights. The necessity of maintaining the foreign rights outweighs the practical difficulties involved in applying the foreign remedy. In India, although the interest on costs are not available due to*

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<sup>3</sup> (2012) 2 SCC 253.



*exclusion of Section 35(3), the same does not mean that Indian Courts are powerless to execute the decree for interest on costs. Indian Courts are very much entitled to address the issue for execution of the interest amount. The right to 8% interest as per the Judgments Act, 1838 of UK can be recognised and as well as implemented in India.”*

[emphasis supplied]

34. A reference may be made to the judgment of Gujarat High Court in *Arun Kumar Jagatramka v. Ultrabulk A/S*<sup>4</sup> (*‘Ultrabulk’*), wherein the Gujarat High Court was dealing with execution of a foreign judgment under Section 44A of the CPC. The Court rejected the judgment debtor’s contention that foreign judgement is not enforceable under Section 13(c) of CPC as decree was made in contravention of FEMA Regulations. It was held that transactions that violate FEMA cannot be held to be void and it is always open to a party to seek permission of the RBI on a *post-facto* basis. Relevant paragraph of the aforesaid judgment is set out below:

*“12. Having considered these provisions, what is evident is that transactions that violate FEMA cannot be held to be void. If any act violates the provisions of FEMA, permission of RBI may be obtained post- facto. Therefore, it cannot be said that the foreign judgement is in breach of Indian law or fails to recognise such breach and therefore is inconclusive. The reasonings of the learned Executing Court cannot be faulted.”*

[emphasis supplied]

35. At the outset, it may be noted that the issue of violation of FEMA was never raised by Prakash Industries before the English Court. Therefore, there was no occasion for the English Court to give a finding on the said issue. A foreign court cannot be expected to take cognizance of an Indian statute, unless it has been pointed out by a contesting party. This is not a case of an *ex*

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<sup>4</sup> 2023 SCC OnLine Guj 3152.



*parte* decree as Prakash Industries was duly contesting the case before the English Court.

36. Nevertheless, I proceed to examine the objections raised by Prakash Industries with regard to violations under the FEMA Regulations and the directions/circulars issued by the RBI.

37. In the affidavit filed on behalf of RBI on 25<sup>th</sup> February, 2025, it has been stated that the RBI is empowered to make regulations by way of notifications, to give effect to the provisions of FEMA and the rules made thereunder. The RBI by exercising the powers conferred upon it, has issued Foreign Exchange Management (Borrowing and Lending) Regulation, 2018 dated 17<sup>th</sup> December, 2018 which provides for borrowing and lending between a person resident in India and a person resident outside India.

38. Directions issued under the aforesaid Regulation in respect of borrowing transactions have been compiled in the FED Master Direction No.5/2018-19 dated 26<sup>th</sup> March, 2019 pertaining to External Commercial Borrowings, Trade Credits and Structured Obligations (**‘Master Direction-ECB’**) which has been placed on record by the RBI along with the said affidavit.

39. It may be relevant to refer to the definition of *‘all-in-cost ceiling’* given in Master Direction-ECB:

*“1.1. All-in-Cost: It includes rate of interest, other fees, expenses, charges, guarantee fees, ECA charges, whether paid in foreign currency or INR but will not include commitment fees and withholding tax payable in INR. In the case of fixed rate loans, the swap cost plus spread should not be more than the floating rate plus the applicable spread. Additionally, for FCCBs, the issue related expenses should not exceed 4 per cent of the issue size and in case of private placement, these expenses should not exceed 2 per cent of the issue size, etc. Under TC Framework, all-in-cost shall include rate of interest, other fees, expenses, charges,*



*guarantee fees whether paid in foreign currency or INR. Withholding tax payable in INR shall not be a part of all-in-cost. Various components of all-in-cost have to be paid by the borrower without taking recourse to the drawdown of ECB/TC, i.e., ECB/TC proceeds cannot be used for payment of interest/charges.*

[emphasis supplied]

40. The relevant provisions of the aforesaid Master Direction-ECB in relation the objections raised by Prakash Industries are set below.

*“2.1. ECB Framework: The framework for raising loans through ECB (hereinafter referred to as the ECB Framework) comprises the following two options:*

| <i>Sr. No.</i> | <i>Parameters</i>                           | <i>FCY denominated ECB</i>  | <i>INR denominated ECB</i>                 |
|----------------|---|---|--|
| <i>vi</i>      | <i><u>All-in-cost ceiling per annum</u></i> | <i>Benchmark Rate plus 550 bps spread: For existing ECBs linked to LIBOR whose benchmarks are changed to ARR.<br/>Benchmark rate plus 500 bps spread: For new ECBs.</i>   | <i>Benchmark rate plus 450 bps spread.</i> |
|                |   | <i>All-in-cost ceiling has been temporarily increased by 100 bps for ECBs raised till December 31, 2022. The enhanced all-in-cost ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies (CRAs). Other eligible borrowers may raise ECB within the existing all-in-cost ceiling as hitherto.</i> |  |
| <i>vii</i>     | <i><u>Other costs</u></i>                   | <i><u>Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.</u></i>   |  |

[emphasis supplied]

41. In terms of paragraph 2.1(vi) set out above, the ‘all-in-cost ceiling’ in respect of Bonds in the present case would be LIBOR (London Interbank



Offered Rate) plus 550 BPS. The aforesaid ceiling would apply to the rate of interest under the Subscription Agreement. In terms of Clause 5.1 of the Subscription Agreement, the interest rate on the FCCBs was stipulated at 5.95% per annum. Since it is an undisputed fact that the RBI has approved the Subscription Agreement, along with the coupon rate of 5.95% mentioned therein, it has to be presumed that the interest rate was in terms of the limits provided in paragraph 2.1(vi) of the Master Direction-ECB.

42. The relevant extracts from the RBI Approval Letter dated 8<sup>th</sup> November, 2017 are set out below:

Dear Sir

**M/s Prakash Industries Limited – FCCBs bearing LRN 2010127**

1. Please refer to your letter dated August 09, 2017.

2. Based on your submissions in respect of the captioned FCCBs, we advise that we have no-objection from FEMA, 1999 angle for restructuring the captioned FCCBs and your constituent issuing fresh FCCBs of USD 24.3 million by way of cashless exchange to the existing bondholders subject to the following terms and conditions:

- i. Restructured Amount – Not to exceed USD 24.3 million
- ii. Maturity – Minimum 5 years 1 day
- iii. Coupon – Maximum 5.95% p.a.
- iv. Regulatory floor price and initial conversion price should be in compliance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, as amended from time to time and also with the applicable SEBI guidelines.
- v. All-in-cost should be within the ceiling prescribed under ECB guidelines
- vi. Banks, FIs, NBFCs shall not provide any guarantee / letter of comfort, etc. for the new FCCBs;
- vii. The restructuring should not, in any manner, adversely impact the lenders participating in CDR or any other domestic restructuring schemes, which are applicable to the company, if any.

[emphasis supplied]

43. A reference may be made to Clause 7.6.1 and Clause 7.6.2 of the Subscription Agreement, which provide for additional default interest of 2%



per annum which is in accordance with the 2% ceiling given in paragraph 2.1(vii) of the Master Direction-ECB. Clauses 7.6.1 and 7.6.2 are set out below:

***“7.6 Default Interest and Delay in Payment***

***7.6.1 If the Issuer fails to pay any sum in respect of the Bonds when the same becomes due and payable under these Conditions, interest (including interest of 5.95% per cent and additional default interest of 2 per cent) shall accrue on the overdue sum. The additional default interest of 2 per cent per annum shall accrue on the overdue sum until receipt of all sums due in respect of the Bonds. Such interest and default interest shall accrue on the basis of the actual number of days elapsed and a 360-day year.***

***7.6.2 The default interest at the rate of 2 per cent over the contracted interest rate for default or breach of covenants will accrue in accordance with paragraph 2.4.4 of the Master Direction on External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers issued by the RBI on January 1, 2016 and updated up to October 9, 2017.***

[emphasis supplied]

44. Counsel appearing on behalf of Peter Beck submits that taking into account the aforesaid provisions of the Master Direction-ECB, the amount awarded by the English Court is within the permissible limits of RBI.

45. *Per contra*, it is contended on behalf of Prakash Industries that the amount awarded by the English Court is in excess of the aforesaid ceiling.

46. In light of the aforesaid objections raised by Prakash Industries regarding violations of FEMA, this Court issued notice to RBI to clarify its stand and position on the issue of remittance of funds in satisfaction of a Foreign Decree. The relevant extracts from the affidavit filed by the RBI on 25<sup>th</sup> February, 2025 are set out below:

***“10. The amounts payable by the judgement debtor to the decree holder in the present case is pursuant to the Foreign Decree passed by the Foreign Court. The amount to be paid by the Judgement Debtor as the Early***



*Redemption Amount is a capital account transaction and amount to be paid as damages and interest payments is a current account transaction under FEMA.*

*11. The payment of the Early Redemption Amount is akin to the repayment of FCCBs. If the minimum average maturity period of FCCBs concerned is completed, such payment can be remitted under the general permission available to the designated Authorised Dealer as per Paragraph 13 of Schedule I of FEMA.3(R). Other payments pertaining to damages and interest payments being of the nature of current account do not require approval from RBI in terms of Section 5 of FEMA, 1999 read with the Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated May 03, 2000. Nevertheless, as the interest and damages are to be paid as part of a loan agreement between a person resident in India and a person resident outside India, these have to necessarily conform to the extant provisions of ECB guidelines under FEMA, i.e., the interest shall be within the 'All-in cost ceiling' and damages will need to comply with the other costs stipulation as defined in Para 2.1(vi) and Para c respectively of Master Direction on External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 (as updated)...."*

47. Taking note of what has been stated in paragraph 11 of the RBI's affidavit set out above, this Court on 8<sup>th</sup> September, 2025 passed an order directing the RBI to take instructions whether paragraphs 2.1(vi) and 2.1(vii) of the Master Direction-ECB would apply on damages awarded by a Foreign Court. The relevant paragraphs no. 3 and 4 of the aforesaid order are set out below:

*"3. In the portion highlighted above, the Reserve Bank of India has stated that "damages will need to comply with other costs stipulation as defined in Para 2.1(vi) and 2.1(vii) respectively of Master Direction on External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 (as updated)." However, a perusal of the provisions of the Master Direction does not make any reference to 'damages'.*



4. Accordingly, counsel appearing on behalf of the Reserve Bank of India shall take instructions whether paragraphs 2.1(vi) and 2.1(vii) deal with the aspect of damages awarded by a foreign Court.”

48. In response to the aforesaid order, an affidavit has been filed on behalf of the RBI on 18<sup>th</sup> November, 2025, wherein it has been stated as under:-

*“5.1 The paragraph 2.1 (vii) of the Master Direction on External Commercial Borrowings, Trade Credits and Structured obligations dated march 26, 2019 (as updated) regarding other costs provides that Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.*

*5.2 The objective of the said provision is to ensure that the parties entering into to an ECB agreement are aware even before the execution of a such agreement that a non-resident lender could make a maximum claim of up to 2 per cent of the outstanding principle (over and above the all-in-cost ceiling) on the resident borrower in case of a breach of any provision of the ECB agreement.*

*5.3 Although the penalty/ damages/ interest payable against a cross border borrowing transaction are current account transactions, the powers to impose conditions on such current account transactions, linked to an underlying capital account transaction (ECB), flow from Section 6(2)(c) of FEMA, 1999. Accordingly, such restrictions on current account transactions linked to ECB are part of the extant ECB Regulations and Directions stipulated under FEMA, 1999. Therefore, the damages payable by a resident borrower to a non-resident lender is required to be subjected to limits as prescribed in para 2.1(vii) of the Master Direction.”*

[emphasis supplied]

49. As per the decree passed by the English Court, amounts have been awarded in favour of Peter Beck under the following heads:

A. Early Redemption Amount (‘ERA’):

(i) USD 11,230,700.



(ii) Interest on early redemption amount at the rate of 7.95% per annum amounting to USD 2,634,915.

B. Damages for delay in conversion:

(i) damages amounting to USD 3,532,711.

(ii) interest on damages amounting to USD 514,995.

50. The damages were awarded by the English Court on account of breach committed by Prakash Industries of its contractual obligations *i.e.* failure to convert the FCCBs into equity in a timely manner as was agreed in the Subscription Agreement. The English Court has also awarded interest on the aforesaid amount of damages, which was squarely within its jurisdiction.

51. In my considered view, the amounts awarded by a competent Court, whether Indian or foreign, towards damages for breach of contract, cannot be subject to ceilings prescribed under FEMA and/or RBI directions/circulars.

52. Even if amounts have been awarded under certain heads by a Foreign Court of competent jurisdiction, which are not permissible in Indian law, the decree passed by the Foreign Court would not become unenforceable. This would be particularly true in cases where the contract between the parties is governed by foreign law and the foreign court has adjudicated the case on the basis of the said foreign law. In *Alcon Electronics* (supra), the Supreme Court had rejected the objection raised by the judgment debtor that since costs imposed by the Foreign Court were not in terms of Section 35A of the CPC, the decree passed by the foreign Court is unenforceable. The Supreme Court held that Indian courts can execute a foreign decree for interest on costs, which are permissible under the UK law.



53. Even in the Master Direction-ECB, the reference in paragraph 2.1 (vii) is to ‘*other costs*’, which only includes (a) prepayment charges and (b) penal interest, both of which are interest related charges. By no stretch of imagination, the damages awarded by a foreign court can be made subject to the aforesaid provision. There is no reference to damages either in paragraph 2(vi) or in paragraph 2(vii) of the Master Direction-ECB or any other provision in the Master Direction-ECB. Therefore, it is clear that aforesaid Master Direction-ECB is not applicable to damages awarded by a foreign court.

54. RBI in its affidavit filed on 25<sup>th</sup> February 2025 has stated that amounts paid towards damages is a current account transaction under FEMA and hence do not require approval from RBI. However, the RBI proceeds to state that since the said current account transactions are linked to an underlying capital account transaction (ECB), the damages paid by a resident borrower to a non-resident lender would be subjected to limits as prescribed under paragraph 2.1(vii) of the Master Direction-ECB.

55. Taking note of the contradiction in the stand taken by the RBI, this Court *vide* order dated 8<sup>th</sup> September, 2025 had directed RBI to file an affidavit. Even in the subsequent affidavit filed by RBI on 18<sup>th</sup> November, 2025, same stand was maintained.

56. This Court is unable to accept the stand taken by RBI that the ‘damages’ awarded by a foreign court against a resident borrower and in favour of a non-resident lender would be subjected to limits prescribed in paragraph 2.1(vii) of the Master Direction-ECB.

57. It is manifest from reading of the judgment in *NTT Docomo* (supra) that damages for breach of contract, such as those awarded by the English



Court in the present case, cannot be subjected to FEMA Regulations or RBI guidelines. The RBI in *NTT Docomo* (supra) had raised an objection that permission from the RBI is required for transmission of amount awarded as damages by the Arbitral Tribunal. However, the Court held that in respect of damages awarded by an Arbitral Tribunal, no general or special permission from the RBI would be required. The Court while declining RBI's request for intervention in the enforcement proceedings, held that FEMA and RBI directions/circulars could not be invoked to obstruct or dilute the enforcement of a foreign award.

58. Relevant extracts from the judgment in *NTT Docomo* (supra) judgment are set out below:

*“44. The very stand that RBI is now taking in this Court that without its special permission there cannot be a transfer of monies by Tata to Docomo, was taken by Tata before the AT and was expressly negated by the AT by a unanimous Award. The AT decided that since the sum awarded to Docomo was in the nature of damages and not the Sale Price of the shares, the question of having to seek the special permission of RBI did not arise....*

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*51. The Award is very clear on this issue. What was awarded to Docomo were damages and not the price of the shares. The order that the share scrips must be returned to Tata was only incidental and, in fact, Docomo itself was not interested in retaining the share scrips. It could be seen as an acknowledgment of Docomo volunteering to return the share scrips as they were of no particular use to it. It is not open to RBI to re-characterise the nature of the payment in terms of the Award to which there is no longer any opposition from Tata, the only party which could possibly oppose its enforcement. RBI has not placed before the Court any requirement for any permission of RBI having to be obtained for Docomo to receive the money as damages in terms of the Award.”*

[emphasis supplied]



59. Even though *NTT Docomo* (supra) pertains to a foreign arbitral award, the aforesaid findings would equally be applicable in cases where a decree awarding damages has been passed by a foreign court.

60. Now, I shall deal with the objections in respect of amounts that have been awarded by the English Court in favour of Peter Beck towards 'Early Redemption Amount' and interest on the said amount at the rate of 7.95% per annum.

61. The ERA has been granted by the English Court in terms of Clause 10.1 and Clause 11.1 of the Subscription Agreement which provided for acceleration of the bonds in the event of default, which occurred in the present case due to non-payment of coupon interest by Prakash Industries. Clearly, there is no bar under any of the FEMA regulations or the Master Direction-ECB in respect of such early redemption.

62. Insofar as interest is concerned, as noted above, the Subscription Agreement provided for interest at the rate of 5.95% on the FCCBs and an additional default interest of 2% per annum.

63. In terms of paragraph 2.1 (vii), a penal interest with a cap of 2% could be imposed as 'pre-prepayment charge/penal interest' over and above the contracted rate of interest on the outstanding principal amount, which would be outside the '*all-in-cost ceiling*' imposed under paragraph 2.1 (vi).

64. Viewed in this light, the interest awarded by the English Court on the ERA at the rate of 7.95%, clearly falls within the cap of 2% provided under paragraph 2.1 (vii) of the Master Direction-ECB. Therefore, there is no merit in the objection taken on behalf of Prakash Industries that the interest has been awarded by the English Court over and above what is stipulated in the Master Direction-ECB.



65. Insofar as the objection raised by Prakash Industries with regard to Peter Beck not providing a bank account, RBI has categorically stated that payments can be made to the Euro account provided by Peter Beck in paragraph no. 11 of its rejoinder dated 19<sup>th</sup> July, 2023.

66. Paragraph no. 12 of the said RBI affidavit is set out below:

“12. The payment by the Judgment Debtor to the Euro account of the Decree Holder, as stated in para 11 of the rejoinder or payment by a cheque in USD or any other foreign currency is not barred by FEMA and regulations issued thereunder in terms of FEMA 14(R) read with FEMA 3(R).”

[emphasis supplied]

### **CONCLUSION**

67. In view of the discussion above, it is held that the decree passed by the English Court is executable under Section 44A of the CPC. The said Decree does not fall under the exceptions provided under Section 13(c) and 13(f) of the CPC.

68. The objections raised on behalf of the Prakash Industries are completely devoid of merits and have been filed solely to cause obstruction and to cause delay in the execution of the Foreign Decree. Consequently, the same are rejected with costs of Rs. 1,00,000 payable to the decree holder/Peter Beck.

69. In view thereof, Prakash Industries is liable to remit the decretal amount in favour of Peter Beck along with costs.

70. Accordingly, a direction is issued to the Registry of this Court to remit the amounts deposited in Court, along with accrued interest to the Euro dominated bank account, provided by Peter Beck in paragraph no. 11 of the rejoinder which is set out below:



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*“11. ...Recipient Name: Peter Beck und Partner Vermögensverwaltungs GmbH*

*International Bank Account Number ('IBAN'): DE17 6115 0020 0056 0830 95*

*Bank Identification Code ('BIC'): ESSLDE66XXX*

*Bank: Kreissparkasse Esslingen-Nürtingen”*

71. The remaining amount shall be remitted directly by Prakash Industries to Peter Beck in the aforementioned account.

72. All pending applications stand disposed of.

**AMIT BANSAL  
(JUDGE)**

**FEBRUARY 23, 2026**

*at*