2026:DHC:5273

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

Judgment reserved on: 27.02.2026

Judgment pronounced on: 01 .07.2026

\+ **O.M.P.(EFA)(COMM) 2/2025, EX.APPL.(OS) 377/2025, EX.APPL.(OS) 378/2025, EX.APPL.(OS) 379/2025, EX.APPL.(OS) 380/2025, EX.APPL.(OS) 381/2025, EX.APPL.(OS) 382/2025**

AMADEUS IT GROUP S.A. (SPAIN) .....Award Holder

Through: Mr. Anuj Berry, Mr. Raghav Bhargava, Advs.

versus

EBIX CASH LIMITED & ANR. .....Respondents

Through: Mr. Ankit Jain, Sr. Adv., Mr. Harsh Sethi, Mr. Ankur Garg, Mr. Sukhpreet Maan, Mr. Raghav Luthra, Mr. Eish Kesarwani& Mr. Parth Gautam, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E NT

1. By way of this petition filed under Section 47 to Section 49 of the Arbitration and Conciliation Act, 1996 ***("the Act")***and under Order XXI read with Section 151 of the Code of Civil Procedure, 1908, the petitioner ***("Award Holder")*** has approached this Court for recognition and enforcement of a foreign Arbitral Award ***("the Award")*** dated 17.02.2022 passed in ICC Arbitration No. 25636/AZR/SPN/AB under the rules of Arbitration of the

International Court of Arbitration of the International Chamber of Commerce, effective from 01.03.2017***("ICC rules")*** by the Arbitral Tribunal ***("AT")***.

FACTUAL BACKGROUND

2. The Award Holder namely, Amadeus IT Group, S.A. (Spain) is a company having its office at Salvador de Madariaga, 128027, Madrid, Spain, and is working as an information technology provider for travel and tourism sector. The Award Holder runs a fully automated platform which performs comprehensive information, communications, reservations, ticketing, and related functions on a worldwide basis.

3. The respondent No. 2 namely, Ebix Inc. is a Delaware, United States of America, based corporation having its registered office at 1 Ebix Way, Johns Creek, 30097, Georgia, USA.

4. The respondent No. 1 i.e., Ebix Cash Limited is a company incorporated in India under the Companies Act, 2013, having its registered office at Plot 122/123, NSEZ, Noida, Phase 11, 201305, Uttar Pradesh.

5. As a part of expansion of business of respondent No. 2 in Asian travel and tourism industry, the respondent No. 2 announced on 17.07.2019 that it is in the process to acquire Yatra Online Inc. marking its entry in the Indian market.

6. The Award Holder and respondent No. 1 entered into a global agreement ***("the Agreement")*** dated 01.10.2019 wherein the Award Holder was to provide access to the System for the Asia pacific region, for which the respondent No. 2 i.e., Ebix Inc. stood as a guarantor.

7. Under the Agreement, the Award Holder was to provide access to their system to the offices of travel companies being run by the respondent No. 1.

8. Pursuant thereto, the Award Holder made an advance payment to the tune of USD 15,000,001.50/- towards incentives to respondent No. 1, out of which the respondent No. 1 was permitted to invoice the Award Holder for incentives which were to be found due on the specified quarterly volumes in accordance with the eligible bookings.

9. The said advance incentive was repayable either in case of failure of respondent No. 1 to achieve international airline bookings in quarterly/annual volumes and within the set timeframe, or the failure of respondent No. 1 to acquire Yatra by 31.12.2019, failing which the Award Holder would have the right to terminate the Agreement and recover the advance incentive payment.

10. Thereafter, the Award Holder terminated the Agreement on the ground of failure of the respondent No. 1 to acquire Yatra by 31.12.2019 (violation of Section 3.2 (iv) of the Agreement) and failure of the respondent No. 1 to produce international eligible bookings, as the respondent No.1 could achieve only a very small portion of bookings than the minimum requirement in quarter Nos. 1 and 2.

11. Upon termination, the respondent No. 1 was intimated to make the payment of all dues by 19.06.2020 under the Agreement towards shortfall bookings and other charges aggregating to USD 15,053,523/-.

12. The respondent No. 1 took defence of the force majeure exception attributing the lapses in the execution of the Agreement to COVID-19 lockdown.

13. The Award Holder, on 08.09.2020, invoked Arbitration mechanism contained in Clause No. 9.4 of the Agreement and filed a request for arbitration in accordance with the ICC rules.

14. Consequently, an AT was constituted, which passed the award dated 17.02.2022, deciding the controversy in favour of the Award Holder and that the respondent No. 1 was, in fact, in violation of its obligations.

15. The respondent No. 1 was directed to pay a total amount of € 13,265,792.38/-, for which the respondent No. 2 was held to be jointly and severally liable.

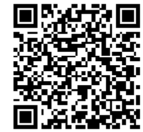
Events Post-Award

16. The Award Holder after receiving no response for the demand notices, proceeded to file a petition being Case No. 1:22-CV-04109-SEG seeking enforcement of the Award before United States District Court ***("USDC")*** for the Northern District of Georgia, Atlanta Division.

17. The Award was duly confirmed in the aforesaid petition by the USDC *vide* Order dated 21.06.2023.

18. The USDC pursuant to the aforesaid Order, passed a final judgment in effect confirming its Order and ruling in favour of the Award Holder and directing the respondent No. 2 to pay USD 15,070,913.40 plus post judgment interest and the filing fees. Consequently, a writ of execution dated 16.08.2023 was also issued.

19. A forbearance agreement dated 01.09.2023 was executed between the Award Holder and the respondent No. 2, wherein it was agreed that the Award Holder will not immediately proceed with collection of amount pursuant to the Award confirmed by the judgment of USDC, provided



respondent No. 2 made payments in accordance with the timelines fixed therein.

20. Some payments were made by respondent No. 2 in accordance with the forbearance agreement, however, for payment of outstanding dues of USD 6,071,364.40/-, an amendment to the forbearance agreement was made and the date for remaining payment was deferred to 15.12.2023.

21. Bankruptcy proceedings were filed by respondent No. 2 before the US Bankruptcy Court for Northern District of Texas, Dallas, wherein the Award Holder also participated as a general unsecured creditor.

22. During the pendency of this petition, the Regions Bank disputed some tranches of payments made in furtherance of the forbearance agreement between the Award Holder and the respondent No. 2, and sought to recover an amount of USD 5,260,000/- on the ground that the same could not have been paid by the respondent No. 2 as per the US law.

23. Consequently, the Award Holder entered into a settlement agreement and a mutual release dated 17.03.2025 with the Regions Bank, whereby the Award Holder made a payment of USD 4,050,000 to the Regions Bank as received from the respondent No. 2.

24. Hence, relying on paragraph No. 42 of the Order dated 02.08.2024 of US Bankruptcy Court, the present petition is filed and the enforcement of the Award is sought to the extent of payment of unrecovered dues aggregating to € 9,713,912.52/- (Rs. 104,55,37,546/-).

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 (Objections against enforcement of the Award).

25. At the outset, Mr. Jain, learned senior counsel for the respondent No. 1, challenges the maintainability of the present petition on the ground of

being filed after the expiry of period of limitation of 3 years as the Award was passed on 17.02.2022 and consequently, the petition became time barred on 16.02.2025. However, the present petition has been filed on 20.02.2025 i.e., after the expiry of the limitation period. Reliance is placed on *Union of India v. Vedanta Ltd.*[1]

Violation of Public Policy

26. It is stated that the steps in enforcement/recognition of foreign Arbitral Award are sequential and it is only on judicial determination of the Award standing the scrutiny of Section 48 of the Act, that the Section 49 is triggered into operation. Thus, the enforcement of a foreign Arbitral Award is subject to withstanding the judicial scrutiny under Section 48.

27. The nature of transaction entered into between the respondent No. 1 and the Award Holder in terms of the Agreement is in essence that of a "Factoring transaction". The Award Holder provided a loan to the tune of about USD 15 million to the respondent No. 1, the same was to be paid back out of the money which respondent No. 1 would earn by selling flight tickets.

28. The transactions involving assignments of receivable as in the present case are governed in India by the Factoring Regulation Act, 2011 ***("the Factoring Act")***. Reliance is placed on Section 2(j) of the Factoring Act to state that the nature of transaction is that of "Factoring business".

[1](2020) 10 SCC 1.

29. Further, if any company engages in such factoring arrangement, it necessarily needs to be registered with the Reserve Bank of India ***("RBI")***, in accordance with the Section 3 of the Factoring Act.

30. On this premise, the arrangement between the Award Holder and respondent No. 1, wherein the respondent No. 1 was provided unsecured loan and the same was repaid by discounting invoices, is in itself not in accordance with the extant rules and legal regime of India.

31. The enforcement of this Award would amount to judicial validation of a foreign currency liability which has arisen out of a structured financial exposure, *qua* which the Award Holder has not shown any compliance with the Factoring Act or the other applicable laws. The same would lend validity to financial structure not within the ambit of Indian statutory regime.

32. The Award Holder is stated to be evading the regulations of Indian regulatory authorities (RBI), as the repayment mechanism as set out in Exhibit-3 of the Agreement is clearly of the nature of "Factoring" and the Award Holder is not registered as a "Factor". Thus, the award shall not be enforced by this Hon'ble Court for the reason of being illegal and against the public policy of India. Reliance is place on Section 48(2)(b) Explanation 1(ii) of the Act.

33. It is purportedly only for this reason that the Award was not sought to be enforced in India earlier.

<u>Doctrine of Election of Remedies</u>

34. Pursuant to the default in payment in response to demand notices, the Award Holder has already actively pursued its remedy before the USDC, which culminated in a judgment in its favour, subsequent to

which the Award Holder also executed a forbearance agreement restructuring its liabilities and the Award Holder has also proceeded to participate in the bankruptcy proceedings before the US Bankruptcy Courts.

35. In the present case, the Award Holder has already lodged its Claim in the bankruptcy proceedings and the claim is duly admitted. Since, the Award Holder has voluntarily submitted to the insolvency jurisdiction, the claim stands subservient to the insolvency resolution.

36. It is also stated that the doctrine of election of remedies is clear in its terms as it prohibits availing of inconsistent and parallel remedies *qua* the same cause of action.

37. As the Award Holder has already pursued its remedy in the insolvency regime, it cannot seek enforcement of the Award before this Hon'ble Court, the same would amount to double recovery.

38. He also substantiate his argument on the doctrine of estoppel to state that the Award Holder by accepting the arrangement of payment are now estopped from pursuing coercive execution of the Award, as the respondents have in pursuance of the arrangement altered their financial planning and obligations, and has also made substantial payments of about USD 9 million.

Extinguishment of Debt

39. The Award Holder has voluntarily altered the nature of its liability by the execution of the forbearance agreement and opted to receive all its dues under the Award from the respondent No. 2 by treating it as the party primarily liable for recovery.

40. The respondent No. 1 was neither made a party to the forbearance agreement nor any obligation was fastened to it. Thus, by such an arrangement, the Award Holder has consciously elected to proceed in to alter the character of the original liability.

41. In this backdrop, there is no subsisting liability/debt under the Award which can be enforced against the respondent No.1.

42. The Award Holder by restructuring its liability through a forbearance agreement, not including respondent No. 1 in it, and proceeding to pursue a claim in the bankruptcy proceedings, has changed the essential nature of the Award leaving no subsisting debt to be paid.

Non-maintainability qua respondent No. 2

43. Mr. Jain, also submits that the respondent No. 2 is a foreign entity incorporated and based outside India, and the same does not fall in the territorial jurisdiction of this Hon'ble Court for the purpose of execution as the execution proceedings are inherently territorial in nature.

44. Since, the Award Holder failed to demonstrate any assets the respondent No. 2 is having in India, the Award cannot be executed in India.

Territorial objection and non-disclosure of assets

45. The Award Holder by way of present petition has neither disclosed the assets of respondent No. 1 nor any mode of execution by which the Award needs to be executed.

46. In absence of specifying any mode of execution by which the assistance of Court is sought, the Award Holder has wrongly invoked the jurisdiction of this Court. Thus, the petition is liable to be rejected.

Reliance is placed on *M.L. Gupta v. Aerens Gold Souk International Ltd.*[2]

SUBMISSIONS ON BEHALF OF THE AWARD HOLDER (Response to the objections raised by the respondent No. 1)

47. Mr.Anuj Berry, learned counsel for the Award Holder, at the threshold submits that the Award is a foreign Arbitral Award within the meaning of Section 44 of the Act and is capable of being enforced in India.

48. He also states that the petition is filed well within the limitation period of three years as the Award was received by the Award Holder on 21.02.2022, and the petition was filed on 20.02.2025. It is on 21.02.2022, when the right to apply accrued in favour of the Award Holder and accordingly, the present petition is filed within the limitation period.

Violation of Public Policy

49. The respondent No. 1 did not submit any oral arguments during the course of proceedings and it is only in the reply that the respondent No. 1 has stated the Award to be against public policy of India on the ground of being violative of the Factoring Act.

50. This argument of the respondent No. 1 is misconceived as the Factoring Act itself is not applicable on the Award Holder because the Award Holder is a company based in Spain and the Agreement is not a factoring transaction.

51. The contention that the Award Holder requires registration with the RBI is frivolous as Section 3 of the Factoring Act read with Section

[2] 2018 SCC OnLine Del 7621.

2(i) of the same, makes it clear that the registration requirement only applies on "Factors" and the Award Holder does not fall within the definition of "Factors".

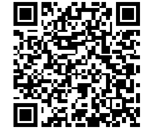
52. Without detracting from the above, the respondent No. 1 has attempted to misrepresent the transaction as "Factoring". However the same is not in the nature of "Factoring" under Section 2(j) of the Factoring Act.

53. In a factoring business, the transaction involves acquisition of receivables either for collection of those payments or for the purpose of financing. However, in the present case an upfront incentive (advance incentive payment) was given by the Award Holder to the respondent No. 1 which was linked to achieving specific volumes of future airline bookings. The respondent No. 1 then could invoice the Award Holder for incentives on eligible bookings.

54. This is a standard commercial practice which is not only legitimate but also widely practised in the travel technology industry. The present transaction does not contemplate any assignment of invoices or receivables to render it vulnerable to scope of the Factoring Act.

55. Additionally, this objection is not relevant as the Award Holder by way of this petition is seeking enforcement of the Award and not of the Agreement which is executed between the parties.

56. Section 48(2)(b) contain the grounds including that of public policy on which the execution of a foreign award can be rejected and the same are very narrowly interpreted by the Courts in India, to only allow interference on the basis of this exception when the conscience of the Court is deeply shocked or most basic notions of morality and justice are violated.



57. There is no such standard established in the present case.

Extinguishment of Debt

58. The contention of the Award Holder that the execution of forbearance agreement has novated the Award is untenable as the respondent No. 1 was not even a party to the forbearance agreement.

59. The forbearance agreement was only limited and conditional in scope to the extent it provided for forbearance from immediate execution of the Award for collection of full dues. However, the same was also breached on account of defaults by the respondent No. 2.

60. The Clause No. 2(d) of the forbearance agreement clearly contains a stipulation that in case of default by respondent No. 2, the Award will be revived/become enforceable again.

61. On account of default as contemplate under the forbearance agreement, the Award stood revived and the Award Holder had the right to proceed against the respondent No. 1.

62. The forbearance agreement with the respondent No. 2 was only *qua* the enforcement proceedings in the US against the respondent No. 2 and the same would not absolve the respondent No. 1 from its independent liability which was joint and several in nature under the Award. Reliance is placed on Order dated 02.08.2024 by the US Bankruptcy Court.

63. In fact, the respondent No. 1 entails the primary direct liability under the Award as it was the principal party under the Agreement to which the respondent No. 2 stood as a guarantor making both of them jointly and severally liable.

ANALYSIS AND FINDINGS

64. I have heard learned counsels for the parties and perused the documents placed on record.

<u>Preliminary objection of limitation</u>

65. The preliminary objection raised by the respondent No. 1 to the present petition is that the petition filed on 20.02.2022 is beyond the limitation period and hence, it is time barred. The Award was passed on 17.02.2022 and the limitation period being 3 years expired on 16.02.2025. The major objection of the respondent No. 1 on this issue of limitation is that the Award Holder has failed to place on record documentary proof that the Award was actually received by it on 21.02.2022.

66. Enforcement of foreign Arbitral Awards is governed by Article 137 of the Limitation Act, 1963, ***(“the 1963 Act”)*** which confers 3 years limitation period from the accrual of the right to apply. The respondent No. 1 has placed reliance on ***Vedanta (supra)*** to substantiate this submission.

67. It has been held by the Hon’ble Supreme Court in ***Vedanta (Supra)*** that in case of enforcement of foreign Awards, the date of accrual of the right to apply is not necessarily the date on which the Award was passed, the right to apply can accrue at a later stage as well. The relevant paragraphs of the judgment reads as under:

> *“30. Article 137 applies to the enforcement of foreign awards, which provides a period of 3 years from “when the right to apply accrues”. It was submitted that the right to apply would accrue from the date of making the award. In the present case, the award was passed on 18-1-2011, and*

the petition for enforcement/execution was filed by the respondents on 14-10-2014. The petition was barred by 268 days beyond the period of limitation.

…

46. In the alternative, it was contended that if Article 137 of the Limitation Act is held to be applicable for the enforcement of foreign awards, the limitation period would commence from "when the right to apply accrues", <u>which does not necessarily mean the date of the award. Had this been the intention of the legislature, it would have been expressly provided so. The right to apply may accrue even on a later date, as it has in the present case.</u>

47. The award was passed on 18-1-2011 granting a declaration in favour of the respondent-claimants. The counterclaim of the Government of India was partly allowed, directing the respondents to revise the cost recovery statements. Consequently, an amount of US $22 million became payable by the respondent-claimants to the Government of India. On 10-7-2014, the Government of India issued a notice to the claimants to show cause as to why US $77 million ought not to be directly recovered from the amounts payable by the oil marketing companies. It was thus contended that the right to apply for enforcement of the award accrued on 10-7-2014.

…

78. In the facts of the present case, the respondents submitted that after the award dated 18-1-2011 was passed, the cost account statements were revised, and an amount of US $22 million was paid to the Government of India. On 10-7-2014, a show-cause notice was issued to the respondents, raising a demand of US $77 million, being the Government's share of profit petroleum under the PSC. It was contended that the cause of action for filing the enforcement petition under Sections 47 and 49 arose on 10-7-2014. The enforcement petition was filed on 14-10-2014 i.e. within 3 months from the date when the right to apply accrued. We hold that the petition for enforcement of the foreign award was filed within the period of limitation prescribed by Article 137 of the Limitation Act, 1963. In any event, there are sufficient grounds to condone the delay, if any, in filing the enforcement/execution petition under Sections 47 and 49, on account of lack of clarity with respect to the period of limitation for enforcement of a foreign award."

68. Additionally, Section 47 of the Act, which provides for requisite evidence required for filing enforcement application states that the original copy of the Award or its duly authenticated copy is required for the purpose of proceeding with enforcement of foreign Award in India. Section 47 of the Act reads as under:

47. Evidence.—(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—

(a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;

(b) the original agreement for arbitration or a duly certified copy thereof; and

(c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.

(Emphasis Supplied)

69. Even Section 34 of the Act, which provides for application for setting aside of domestic Arbitral Award clearly specifies that the application has to be filed within three months from the date of applicant receiving the Arbitral Award or disposal of proceedings under Section 33 of the Act. The relevant portion of Section 34 of the Act reads as under:

> *"34. Application for setting aside arbitral award.-*
>
> *....*
>
> *(3). An application for setting aside may not be made after three months have elapsed from the date on which* ***the party making that application had received the arbitral award*** *or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:*
>
> *Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.*
>
> *...."*

(Emphasis Supplied)

70. From a conspectus of the aforesaid and drawing necessary inference from the judgment and the relevant provisions, the preliminary objection raised by the respondent No. 1 that limitation for the present petition reckoned from the date on which the Award was made i.e., 17.02.2022 and hence expired on 16.02.2025 is untenable and cannot be accepted as the limitation for enforcement of foreign Arbitral Award

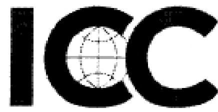
starts not from the date of passing of the Award but on accrual of the right to apply.

71. To my mind, the right to apply in case of a foreign Award as contemplated under Article 137 of the 1963 Act, would mean a fact/bundle of facts which would trigger the Award Holder to take steps for execution of its rights under the Award, and the same is not fixed. There is no straight jacket formula for accrual of right to apply and it will vary from case to case and in the present case it will be from date of communication of the Award.

72. In the present case, if the submissions *qua* preliminary objection of respondent No. 1 is to be accepted, it would lead to an absurd situation where the right to apply would be deemed to have accrued triggering the impact of limitation for an Award which has been passed but not yet communicated/notified to either of the parties. This interpretation is incomprehensible and cannot be allowed.

73. A perusal of the notification/letter dated 21.02.2022 issued by the Secretariat of the ICC International Court of Arbitration shows that the original of the Award was sent to the Award Holder on 21.02.2022, it is this communication which would be the starting point for reckoning the period of limitation. The notification/letter dated 21.02.2022 is reproduced as under:

Annexure A 7



INTERNATIONAL COURT OF ARBITRATION INTERNATIONAL CENTRE FOR ADR

21 February 2022 – scy/bno/ab

25636/AZR/SPN/AB
AMADEUS IT GROUP, S.A. (Spain) vs/ 1. EBIXCASH PRIVATE LIMITED (formerly EBIX SOFTWARE INDIA PRIVATE LTD) (India) 2. EBIX, INC (U.S.A.)

Counsel: Ms Ashleigh Brocchieri
Deputy Counsel: Mr Benjamin Ng'eno

Dear Mesdames and Sirs,

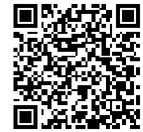
Notification

The Secretariat hereby notifies the final award dated 17 February 2022 (Article 35(1)), which wa approved by the International Court of Arbitration of the International Chamber of Commerce ("Court") on 4 February 2022.

A courtesy copy in PDF format was also sent to you by email. Subject to section "Signature of Terms of Reference and Awards – Notification of Awards" of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration. the sending of this courtesy copy by email does not trigger any of the time limits under the ICC Rules of Arbitration.

We remind you of your obligations under Article 35(6) of the Rules. which provides: "*Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made*".

.../...



Publication of Awards

We note that a confidentiality agreement exists covering certain aspects of the contract, the arbitration or the award. As we have not been informed of a subsequent agreement to the contrary, no award and related documents will be published.

Costs of Arbitration

The Court fixed the ICC administrative expenses and the arbitral tribunal's fees (Article 38) as indicated in the enclosed Financial Table.

The amount remaining to be reimbursed to the parties represents unused expenses initially estimated.

We will reimburse the parties as indicated in the enclosed Financial Table. We invite the parties to complete electronically the enclosed Banking Instructions Form, sign it and return it to us by **28 February 2022**. Incomplete or unclear banking instructions may cause delay.

Documents

We may destroy any documents, communications or correspondence submitted (Article 1(8) of Appendix II), unless a party or an arbitrator requests that we return the same within **30 days**. If a party or an arbitrator does so, we will ask the requesting party or arbitrator to pay all related costs and expenses. Disbursements in connection with additional services may also be charged to the parties.

Evaluation of our Services

As the Court strives to improve its services, we invite you to complete the enclosed Evaluation Form and return it to [redacted] Your responses will be kept strictly confidential.

Yours faithfully,

Ashleigh Brocchieri
Counsel
Secretariat of the ICC International Court of Arbitration

encl. - Original of the final award dated 17 February 2022
- Financial Table
- Evaluation Form
- Banking Instructions Form

c.c. - [redacted]
- [redacted]
- [redacted]

74. From a perusal of the aforesaid position, and the notification/letter dated 21.02.2022, it is clear that the right to apply accrued in favour of the Award Holder on 21.02.2022 i.e., the date on which the signed (original) copy of the award was received by the Award Holder in terms of Article 35(1) of the ICC rules, and in this view the petition filed on 20.02.2025 is within the period of limitation. Accordingly, the preliminary objection raised by the respondent No. 1 stands rejected.

Violation of Public Policy

75. The scheme of the Act is such that its Part-I governs Domestic Arbitration and Part-II governs the enforcement of certain foreign Awards, more particularly Chapter-I of the Part-II governs the enforcement of foreign Awards falling under the ambit of New York Convention.

76. Section 46 of the Act accords a binding force to the foreign awards for all the relevant purposes, and by virtue of Section 49 of the Act, a foreign Award which is found to be enforceable under the Chapter-I of Part-II, is deemed to be a decree of that Court. It is only under Section 48 of the Act, the grounds are provided on which the enforcement of a foreign award may be refused by a Court of law. Section 48 of the Act reads as under:

> *"48. Conditions for enforcement of foreign awards.—(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—*
>
> *(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some*

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incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party

claiming enforcement of the award, order the other party to give suitable security."

77. In the present case, the core of the controversy can be distilled into one primary issue which is the Award being in contravention of the fundamental policy of India as provided under Section 48(2)(b) read with Explanation 1 (ii) for the reasons as submitted by the respondent No. 1.

78. Section 48(2)(b) of the Act embodies the ground for refusal of a foreign Award when the same is contrary to public policy of India and then its Explanation 1(ii) clarifies that a foreign award will only be considered to be violation of the public policy of India when it is against the very fundamental policy of Indian Law. Explanation 1(iii) to Section 48(2)(b) further stipulates that in order to be in violation of the public policy of India, the Award has to be in contravention with the most basic notions of justice and morality. Undoubtedly, from a perusal of the statutory scheme, the baseline to trigger this ground into application is very high. The Hon'ble Supreme Court in ***Vijay Karia v. Prysmian Cavi E Sistemi SRL***[3] has made some observations with regards to the ground of public policy, which read as under:

"83. Having said this, however, if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide a claim or counterclaim in its entirety, the award may shock the conscience of the Court and may be set aside, as was done by the Delhi High Court

[3] 2020 SCC OnLine SC 177 .

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in Campos [Campos Bros. Farms v. Matru Bhumi Supply Chain (P) Ltd., 2019 SCC OnLine Del 8350 : (2019) 261 DLT 201] on the ground of violation of the public policy of India, in that it would then offend a most basic notion of justice in this country [In Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213 this Court cautioned that this ground would only be attracted with the following caveat: (SCC pp. 199-200, para 76)"76. However, when it comes to the public policy of India argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. ... However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment."]. It must always be remembered that poor reasoning, by which a material issue or claim is rejected, can never fall in this class of cases. Also, issues that the Tribunal considered essential and has addressed must be given their due weight — it often happens that the Tribunal

considers a particular issue as essential and answers it, which by implication would mean that the other issue or issues raised have been implicitly rejected. For example, two parties may both allege that the other is in breach. A finding that one party is in breach, without expressly stating that the other party is not in breach, would amount to a decision on both a claim and a counterclaim, as to which party is in breach. Similarly, after hearing the parties, a certain sum may be awarded as damages and an issue as to interest may not be answered at all. This again may, on the facts of a given case, amount to an implied rejection of the claim for interest. The important point to be considered is that the foreign award must be read as a whole, fairly, and without nit-picking. If read as a whole, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counterclaims of the parties, enforcement must follow."

79. Also, with regards to the Explanation 1(ii) of fundamental policy of Indian law, the following has been held in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[4]**:**

37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law

[4](2025) 2 SCC 417.

including a law meant to serve public interest or public good.

…

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(a) the fundamental policy of Indian law; and/or

(b) the interest of India; and/or

(c) justice or morality.

52. In the judicial pronouncements that followed Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] , already discussed above, the domain of what could be considered contrary to the "public policy of India"/"fundamental policy of Indian law" expanded, resulting in much greater interference with arbitral awards than what the lawmakers intended. This led to the 2015 Amendment in the 1996 Act.

...

55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

(Emphasis Supplied)

80. It is the case of the respondent No.1 that the nature of transaction entered into between the parties in accordance with the Agreement is that of the nature of a "Factoring transaction" regulated by the Factoring Act. The Award Holder not being a company registered as a "Factor" under the relevant Act, cannot undertake such a transaction. Thus, the Award is against public policy more particularly violative of fundamental policy of Indian law i.e., Section 48(2)(b) Explanation 1(ii).

81. Section 2(j) of the Factoring Act defines the term "Factoring business" in the following words:

> *"(j) "factoring business" means the business ofacquisition by way of assignment of receivables of assignor for a consideration for the purpose of collection of such receivables or for financing, whether by way of making loans or advances or otherwise, against such assignment, but does not include—*
>
> *(i) credit facilities provided by a bank or a non-banking financial company in its ordinary course of business against security of receivables;*
>
> *(ii) any activity as commission agent or otherwise for sale of agricultural produce or goods of any kind whatsoever or any activity relating to the production, storage, supply, distribution, acquisition or control of such produce or goods or provision of any services.*
>
> *Explanation.—For the purposes of this clause—*
>
> *(i) the expression "agricultural produce" shall have the meaning assigned to it under clause (a) of section 2 of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937); and*
>
> *(ii) the expressions "goods" and "commission agent" shall have the meanings assigned to them respectively under clause (d) and Explanation (ii) of clause (i) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);"*

82. Further, Section 2(i) of the Factoring Act, defines the term "Factor", which reads as under:

> *"(i) "factor" means a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which has been granted a certificate of registration under sub-section (1) of section 3 or anybody corporate established under an Act of Parliament or any State Legislature or any Bank or any company registered under the Companies Act, 1956 (1 of 1956) engaged in the factoring business;"*

83. From a conspectus of the aforesaid provisions, it is clear that the essential ingredients for a business transaction to be in the nature of factoring is such that it requires existence of receivables owed to an assignor, acquisition of such receivables by way of assignment in favour of a Factor, and such acquisition of receivable being for the purpose of either collection or for financing.

84. The nature of transaction in the present case can be deduced from the perusal of the Agreement more particularly Section 4.1 and Exhibit-3 of the Agreement, wherein the Award Holder paid to respondent No. 1, a substantial amount as advance against booking incentives which were to be paid by the Award Holder to respondent No. 1 on the respondent No. 1 achieving specific volumes of eligible bookings. The respondent No. 1 was permitted to raise invoices on the Award Holder towards the incentives for eligible bookings, and such incentiveswere to be adjusted from the money already advanced. In case of failure to meet the

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minimum booking requirement, the respondent No. 1 was obliged to repay an amount based on the shortfall.

85. The said Agreement is a commercial agreement under which the Award Holder, being a party liable to pay incentives (on eligible bookings) for performance by the respondent No. 1, made an advance payment towards these incentives, which was its own contractual liability. The advance payment of this incentive was in turn coupled with performance based conditions for invoicing and repayment condition in case of shortfall to reach the minimum number of eligible bookings as decided by the parties. Thus, this payment (advance) is in substance a prepaid consideration for anticipated services, and not a loan against receivable owed to respondent No.1 by some third parties.

86. The respondent No. 1 in addition has also failed to demonstrate how does the transaction involves any assignment to Award Holder of the respondent No. 1's receivables. There is no such involvement of assignment of any form of receivables.

87. In this backdrop the transaction between the Award Holder and respondent No. 1 is a purely commercial transaction wherein Award Holder and respondent No. 1 have agreed for payment of advance incentives which is then to be adjusted as per their internal arrangement, the same cannot be said to be in the nature of factoring governed by the Factoring Act.

88. Even otherwise, the Section 2(i) of the Factoring Act defines "Factor" as a non-banking financial company or any bank or any company incorporated by State or under the Companies Act. However, in the present case the Award Holder is a Company based in Spain, and does

not fall under the definition of "Factor" to require registration under the Factoring Act.

89. By way of the present petition, the Award Holder is seeking enforcement of an Arbitral Award for which the grounds of refusal are very limited and narrow and this Court is not required to undertake examination on merits into the parties commercial bargain.

90. Hence, the transaction in question is purely a commercial transaction and cannot be said to be in the nature of a "Factoring business" transaction falling under the ambit of the Factoring Act.

91. In this view of the matter, there is no violation of public policy of India to satisfy the scrutiny as contemplated under Section 48(2)(b) read with Explanation 1(ii) i.e., the fundamental policy of Indian law.Thus, the challenge of the respondent No. 1 against the Award is wholly untenable and misconceived.

Doctrine of election of remedies.

92. The respondent No. 1 has also raised an objection that the present proceedings are barred by virtue of doctrine of election of remedies.

93. The Award Holder has out of their own volition pursued its remedy before the USDC and in pursuance thereof a series of events transpired. Now, at this stage after participating in the proceedings before the US Bankruptcy Court, the Award Holder cannot seek enforcement of the Award before this Court.

94. It is also stated that the Award Holder is barred by doctrine of estoppel as in pursuance of the forbearance agreement, the respondents have already altered their strategies and plannings.

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95. To my mind, this objection by the respondent No. 1 is misconceived and is fleetingly raised. I am only required to refuse the enforcement of the foreign Award when it is barred under the grounds as contemplated under Section 48 of the Act, which is not the case in the present petition.

96. *Qua* the objection with regards to doctrine of election of remedies, it is apposite at this stage to see the judgment of Hon'ble Supreme Court wherein the essential elements for its applications are laid down. The relevant paragraphs of the judgment titled ***Transcore v. Union of India***[5] read as under:

> *"64. In the light of the above discussion, we now examine the doctrine of election. <u>There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply.</u> According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent*

[5](2008) 1 SCC 125.

remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application."

97. It is required at this stage to see the operative portions of the Award, and the same read as under:

"309. The Tribunal declares and orders as follows:

(1) The Tribunal has jurisdiction over all claims decided in this Award.

(2) The Tribunal declares that EbixCash Private Limited is liable to pay, and orders EbixCash Private Limited to pay to Amadeus IT Group, SA, within 14 days after the date of this Award, the amount of €12,061,814 pursuant to Section 3.3(ii) and Section 3.2 of Exhibit 3 of the Global Agreement (being the Euro equivalent of US$ 13,714,283), plus interest on such amount at 2 % per annum above the three-month Euribor rate from 14 June 2020 until full payment.

(3) The Tribunal declares that EbixCash Private Limited is liable to pay, and orders EbixCash Private Limited to pay to Amadeus IT Group, SA within 14 days after the date of this Award, the amount of €551,598.38 Euros pursuant to Section 3.3(ii) and Exhibit 4 of the Global Agreement, plus interest on such amount at 2 % per annum above the three-month Euribor from the date of the Award until the date of full payment.

(4) The Tribunal orders EbixCash Private Limited to pay (i) €465,045 for Amadeus IT Group, SA's legal and other costs incurred in this Arbitration and (ii) €187,335 being the Euro equivalent of US$213,000 that Amadeus has paid to the ICC for costs of this Arbitration. The Tribunal orders that the Respondents (EbixCash Private Limited and Ebix Inc.) bear their own legal and other costs in this Arbitration and the cost of their advances to the ICC for the costs of arbitration.

(5) The Tribunal declares that Ebix Inc. is liable to pay, and orders Ebix Inc. to pay, ***on a joint and several basis*** *with EbixCash Private Limited, (i) the amount due to Amadeus IT Group, SA in accordance with para. (2) above, (including interest until payment of such amount) and (ii) the amounts due in accordance with para (4) above, within 14 days after the date of this Award."*

(Emphasis Supplied)

98. The Award is clear in its terms that the liability of both respondents is joint and several. Thus, there is no question of application of the doctrine of election of remedies as contended by the respondent No. 1. The pursuit of remedy against one of the jointly and severally liable Award Debtor shall not extinguish or result in waiver of right to proceed against the other, unless there is a clear unequivocal stipulation to this effect in the Award. In the present case, the Award Holder availed its remedy against respondent No. 2 before the US Bankruptcy Court and also entered into a forbearance agreement with it. However,

at that stage, the Award Holder was neither proceeding against nor prosecuting any claim against the respondent No. 1.

99. At the cost of repetition, I am compelled to say that it is a settled position of law that the scope of refusal for enforcement of a foreign Award is limited and the same is only allowed when any ground as incorporated under Section 48 of the Act is attracted. The respondent No. 1 in the present case has fleetingly raised these arguments which do not demonstrate at all, violation of any grounds under Section 48(2)(b).

Extinguishment of Debt.

100. The respondent No. 1 has also raised an objection that the Award Holder has out of its own volition altered the nature of liability arising out the Award by entering into a forbearance agreement with the respondent No. 2 and thereby opting to treat respondent No. 2 as primarily liable party. Thus, in this backdrop, the Award cannot be enforced against respondent No. 1.

101. The last recital of the forbearance agreement reads as under:

> *"WHEREAS, subject to the terms and conditions stated herein, Amadeus has agreed to conditionally forbear from immediately collecting the entirety of the amounts owed to it pursuant to the Judgment and the Arbitration Award, and the Parties seek to resolve this matter without further court intervention."*

102. The nature of the forbearance agreement, is clearly deducible from the perusal of the aforesaid recital, the forbearance agreement is in the nature of a conditional arrangement whereby for the time being, the

Award Holder and respondent No. 2 have agreed to forbear from taking coercive actions as per law for payments,subject to the same being made by the respondent No. 2 in accordance with the schedule as agreed between the parties therein.

103. The forbearance agreement is at best an arrangement between the Award Holder and respondent No. 2, for discharge of liabilities as per its terms and the same is in furtherance to the USDC Order enforcing the Award.

104. In this view, the forbearance agreement cannot be said to have resulted in extinguishment of liability of a party (respondent No. 1) jointly and severally liable under the Award.

105. Additionally, the Clause No. 2(d) of the forbearance agreement reads as under:

> *"2. Amadeus Obligations During Payment Period.*
>
> *...*
>
> *(d) If Ebix does not make payments in strict compliance with the terms set forth in Section 1, all stays and forbearance by Amadeus shall immediately cease without notice, and Ebix shall serve written responses and objections to the remaining Interrogatories within 5 days of such failure to make payment."*

(*Emphasis Supplied*)

106. From a conspectus of the aforesaid discussion, it is clear, that the forbearance agreement was merely a conditional arrangement between the Award Holder and respondent No. 2, it does not in any way extinguish the liability of a party (respondent No. 1) independently

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liable under the Award. The agreement in itself contains a stipulation that all forbearance will end in case of default/breach of the forbearance agreement, which means the Award shall stand revived in case of defaults. Admittedly, respondent no. 2 defaulted in fulfilling its payment obligations under the forbearance agreement.

107. Additionally, the position can be clearly inferred from a bare perusal of the Order dated 02.08.2024 passed by the US Bankruptcy Court. Paragraph No. 42 of the Order reads as under:

> *"42. Nothing in the Plan or this Order waives or releases any claims of Amadeus against any non-Debtor, including, without limitation, EbixCash Private Limited (formerly EbixSoftware India Private Limited), or otherwise prohibits Amadeus from pursuing such claims."*
>
> ***(Emphasis Supplied)***

108. In this view of the matter, the forbearance agreement or the Award Holder pursuing its Claim before the US Bankruptcy Court does not bar the right of the Award Holder to proceed against the respondent No. 1 which is independently liable by virtue of its joint and several liability. The plan under Chapter 11 of the Bankruptcy Code, before the US Bankruptcy Court specifically incorporated the aforesaid statement to reserve this right of the Award Holder against the respondent No. 1.

109. Neither the forbearance agreement nor the proceedings before the US Bankruptcy Court, on their own terms, effect a novation or extinguish the underlying obligations in accordance with the Award.

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110. I find no merit in the objection raised by the respondent No. 1 *qua* the extinguishment of liability and the same is misconceived and untenable.

111. In the present matter, I find, no ground as such proved by the respondent No. 1 to reject the enforcement of the Award in terms of Section 48 of the Act.

<u>CONCLUSION</u>

112. For the reasons as discussed above and having found no ground within the confines of Section 48 of the Act to reject the enforcement of the Award, the objections (under Section 48 of the Act) raised by the respondent No. 1 stands rejected.

113. Consequently, the petition is allowed and the judgment debtor/respondent No. 1 is directed to pay to the decree holder/petitioner, the remaining unpaid amount along with interest in terms of the Award dated 17.02.2022 passed in ICC Arbitration No. 25636/AZR/SPN/AB under the rules of Arbitration of the International Court of Arbitration of the ICC by the AT within 4 weeks from today.

114. The calculation sheet showing the outstanding amount with interest shall be filed by the decree holder/petitioner within 1 week from date of pronouncement of this judgment.

115. List for compliance, before the roster bench on 17.07.2026.

116. Accordingly, the present petition is allowed and all applications are disposed of.

JASMEET SINGH, J

JULY 01, 2026/SS