

Enforcement Of Foreign Arbitration Award In India

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ABSTRACT

In India, the enforcement of foreign awards are guided by both the Arbitration and Conciliation Act of 1996 and the Code of Civil Procedure of 1908. An arbitral award is a decision (judgement) made by a group of arbitrators, whether they are resolving a dispute within a country or internationally. These decisions includes any temporary decisions made during the process etc.

With regards to implementing foreign arbitral awards in India, it falls under Part II of the Arbitration and Conciliation Act of 1996. This enforcement can be done either under the rules of the New York Convention or under the Geneva Convention. The Arbitration and Conciliation Act of 1996 was created in the direction of the Model Law on International Commercial Arbitration by the United Nations Commission on International Trade Law (UNCITRAL). Foreign arbitral awards India is signatory of both the New York Convention and the Geneva Convention concerning the recognition and execution of foreign arbitral awards. At the point when the party receives a award from a country that is a signatory of either of above said Conventions, and the award rises from a jurisdiction of that country then it is termed as a convention country by India, it becomes enforceable within India.

KEYWORDS

Arbitration, Enforcement, public policy, central government, UNCITRAL, New York Convection, Geneva Convection etc.

1. Introduction

Foreign arbitral awards refer to decisions made by arbitration experts in international or in domestic arbitration proceedings. These awards, whether in India or abroad, includes interim decision, Final decision, Partial decision etc. In India, these awards enforcement is governed by the Arbitration and Conciliation Act, 1996 and the Code of Civil Procedure, 1908.

Enforcement under the New York or under Geneva Conventions is specified, with the process involving submission of the necessary documents, objections and upon satisfaction of enforcing country judicial system, the award treated as a decree of the court, providing legal recognition to the arbitral decision.

The term “foreign arbitral awards” specifically refers to the award issued by foreign arbitration, which is different from domestic arbitration. In the case of Serajuddin and Company v. Michael Golodetz and Others, (1959) the Calcutta High Court explained the necessary restrictions and conditions aligning

with the term “foreign arbitration”. The court also laid down certain essentials for what all constitutes a foreign arbitration. According to above said decision, arbitration will be considered to be foreign arbitration, if:

1. a foreign person is involved,
2. Arbitration is held in a foreign land,
3. Arbitration is conducted by foreign arbitrators, and
4. Foreign laws are applied to the arbitration.

The foreign award is an settlement of arbitration disputes between parties that arising out of the legal relationship, whether there nature contractual or not, must to be considered as a commercial under law.

According to the Supreme Court of India, also explained the term “commercial” which encompasses various activities structured towards international trade. This interpretation was explained in case of R.M. Investments & Trading Co. Pvt. Limited v. Boeing Co (1994) In this case the Court stated that the Arbitration Act was enacted to facilitate international trade through a speedy disposal of disputes, As a result, the Act's use of terms like "commercial" ought to be given a "liberal construction."

2. Objectives

1. To research and develop better understanding of the Enforcement of arbitration award in India.
2. To investigate the primary justification for allowing foreign arbitration award enforcement in India
3. To analyze and draw comparison between Arbitration Award base on New York Convention and Geneva Convention.

3. Scope and Methodology

This study adopts a doctrinal approach to investigate how to enforce a arbitral award in India, what are the challenges faced by the parties while enforcing.

4. Literature Review

A comprehensive review of existing literature on Arbitration, Enforcement of arbitration Award , What is difference between recognition and enforcement of award, what are its essentials, how to see that the given award is valid or void, how fairness, equity, confidentiality within legal systems maintained while enforcing an arbitral award. This review will encompass academic articles, government reports, policy documents, and legal analyses to provide a comprehensive understanding of the subject matter.

5. Findings In The Paper

5.1 Appropriate Court For Enforcement Application

In India, the appropriate court for the enforcement of the foreign arbitral awards is the High Court of the respective states where enforcement application is made. The process involved two stages: first is filing an application under Section 48 or under Section 59 of the Arbitration and Conciliation Act, 1996. The Court may also order the execution similar to the decree execution only in the case if the award is declared enforceable.

5.2 Process Followed For The Enforcement OF Foreign Arbitral Awards In India

The enforcement of foreign arbitral awards is examined under Part II of the Arbitration and Conciliation Act of 1996, allows for this enforcement under either the New York Convention or the Geneva Convention. A high court is the only venue for applications of this kind. Steps that are required to enforce a foreign award in India, the first of which is the filing of an execution petition. From the outset, the Court first assesses whether an arbitral award meets the measures illustrated in the Arbitration Act. If the Court determines that the arbitral award is enforceable, it would be surely executed like a decree issued by that court.

In case of an international commercial arbitration as defined under Section 2(1)(f) of the Arbitration Act, where the arbitral award grants monetary reliefs, a party seeking execution must approach the commercial division of the High Court where the assets of the opposite party (Defaulting Party) are located. Where the subject-matter of the award is not money, the party can approach the High Court where the counterparty resides or carries on business or personally works for gain. Previously, before the amendment 2015 made in the Arbitration and Conciliation act, the filing an application to set aside an award would automatically / itself bring the execution proceedings to a stay.

However, with the amendment set up, the simple documenting of an application to save an arbitral award would in itself not render the award unenforceable, except if the Court give a stay by way of separate application Which depends upon facts of each case. So While take in account an application for grant of stay of the operation of an arbitral award for payment of money, a court must gave due regard to the sections for granting of stay of a money decree under the arrangements of the Civil Procedure code.

Yet, the authority of Indian courts to provide temporary relief in connection with arbitrations held in foreign locations is very limited and narrower.

5.3 Contemplations Looked While Registering An Arbitral Awards

A foreign arbitral awards are not bound or restricted by the considerations of stamping and registration under the Stamp Act or under Registration Act, respectively. The Hon'Ble Delhi High Court in case of Naval Gent Maritime Ltd. v. Shivnath Rai Harnarain Ltd reiterated that foreign awards in India not required any registration and can be enforced as decrees directly. Similar judicial trends have been observed in other High Courts across India and also by the Supreme court recently in 2024.

5.4 Awards Given Under The New York Convention And Their Enforcement

The Arbitration and Conciliation Act of 1996's Chapter I, Part II covers the enforcement of foreign awards under the New York Convention, with relevant Sections 44 to 52.

In Section 44 of Arbitration act 1996 an foreign award is characterized as an arbitral choice on debates between people emerging from a lawful relationship, regardless of whether legally binding. The debate should be perceived as business under Indian legal regulation, on or after October 11, 1960. To fit the bill for the implementation, the nation should be a signatory to the New York Show and the award should be made in an express that the central Government has recognized that state as a responding an area.

According Section 47 of the arbitration act 1996, the person seeking the enforcement of the foreign award in India state must accompany the following documents when applying:

- The original award /Certified copy.
- The original arbitration agreement or its Certified copy.
- Any evidence showing of the foreign nature of the an award.

Section 48 of the Arbitration act 1996 outlines specific grounds on which the counter party can raise objections to such enforcement application. Finally, under Section 49 of the arbitration act 1996, if the Court is satisfied with the enforceability of the foreign award as per Chapter ii, the award is treated as a decree of that Court.

5.5 Awards Given Under The Geneva Convention And Their Enforcement

The enforcement of foreign arbitral awards under Geneva Convention is shrouded in Chapter II, Part II of the Arbitration and Conciliation Act of 1996, with relevant provisions spanning Sections 53 to 60.

In Section 53, a foreign award is defined as an arbitral decision on disputes similar to matters considered commercial under Indian law after July 28, 1924. The three prerequisites for enforcement are:

- The award is in Compatibility of an arbitration agreement covered by the Geneva Protocol on Arbitration Clauses, 1923.
- The award is between parties subject to the purview of responding domains, as assigned by the central Government and where the Geneva Show on the Execution of foreign Arbitral Honors, 1927 applies.
- The award is made in a area designated as reciprocating by the Central Government.

According to the Section 56 of arbitration act 1996, the party who seeks the enforcement of the foreign award in India must submit the following documents with the application:

- The original award.
- Evidence demonstrating that the award has become final where it is made.
- Evidence proving that the award was made in accordance with a valid arbitration agreement under applicable law.

Section 57(2) outlines circumstances under which the enforcement of the award can be refused. Finally, as per Section 58, at the point when the Court is itself satisfied with the enforceability of the foreign honor under this Part, the honor is then treated as a pronouncement or decree of that Court.

5.6 Enforcement Of Foreign Judgments In India

According to section 2(6) of the CPC, foreign decisions/grants in India are choices from courts outside the country that don't have the power of the central Government. The cycle for implementing these decisions relies upon whether they come from a responding of India or non-responding nation of India.

If it's from a reciprocating state, the party seeking enforcement must initiate execution proceedings in India. However, if it's from a non-reciprocating country, a new suit needed to be filed in India. In the landmark case of *Bhatia International v. Bulk Trading S.A. & Another* (2002), the Supreme Court held that those awards which are not made in the Convention country cannot be perceived as a foreign arbitral award, and to enforce an award in a non-Convention country, a separate action has to be required. Thus, it was held that all those awards that are not arises in the Convention country are to be enforced by the process of filing another suit on the set grounds.

Section 44A of the Civil procedure says that the submission of a certified copy of the decree and a certificate from the superior court specifying the level of satisfaction.

Under section 13 of the CPC, an foreign judgment can be indisputable verification and goes about as *Resjudicata*, however for certain constraints. Courts have reliably held that on the off chance that a party doesn't eagerly submitting to the ward of an foreign court, they are not limited by it. Assuming the solicitor gives proof, the court will settle on the benefits.

In the case of **R. Vishwanathan v. Rukn Ul Mulk Syed Abdul Wajid**, the Supreme Court holds that the enforcement of an foreign judgment can be compromised if the court fails to meet the minimum requirements of principles natural justice or if the foreign court was coerced or deceived into issuing the judgment.

5.7 How To Enforce Foreign Judgments From Non-Reciprocating Countries

Implementing an foreign judgment from a non-reciprocating country in India stringently requires filing a legitimate action in view of the judgment. The applicant can sue in view of either the foreign judgment or the first reason for activity. There will be no further execution applications acknowledged whether the case is ineffective. Be that as it may, assuming is effective, the pronouncement can be upheld in India.

To implement the foreign judgment, an ensured duplicate of the judgment and an extra endorsement from a delegate of the central Legislature of India in the far off country are required. The judgment should likewise meet the circumstances which are framed in section 13 of the CPC before it very well may be implemented in India.

In the event that the decree holder (DH) puts forth attempts to execute an foreign decree (award) in the nation where the pronouncement was given and the pronouncement isn't completely fulfilled, the pronouncement holder can record an execution request in India in no less than three years of the culmination of the execution procedures in the far off country. Anyway wherein in the event of homegrown honors the execution can be filled till 12 years.

5.8 Challenging Enforcement Of Foreign Awards In India

Concerning the challenging of enforcement of foreign arbitral awards in India, courts refusal may occur on grounds such as:

- The parties to the arbitration agreement have some incapacity.
- The arbitration agreement is invalid under the controlling / substantive legislation.
- The party challenging the award did not receive proper notice of the arbitrator's appointment , the arbitration proceedings (Natural Justice).
- The award addresses a dispute outside the scope of the submission to arbitration.
- The appointment of arbitrators or the arbitral procedure did not conform to the parties' agreement etc The award has not become binding on the parties or a competent authority has suspended or set it aside.
- The subject matter of the dispute is outside the scope of arbitration according to Indian law.
- Implementing the award would be against the India's public policy.

The cases of *Booz-Allen & Hamilton Inc. v. SBI Home Finance Limited and Others* (2011) and *A. Ayyasamy v. A. Paramasivam & Others* (2016) Talked about areas that the Supreme Court said to be non - arbitrable through arbitration:

- Criminal Offences
- Family court disputes, like restitution of conjugal rights, judicial separation, divorce, child custody etc
- Matters of guardianship;
- Matters Relating to insolvency of proceedings and winding up of Companies;

- Testamentary matter (Will probate);
- Matters of eviction of tenant;
- Mortgage
- Anti-trust and competition laws
- Copyright, patent, and trademark;
- Fraud, bribery, etc.

5.9 Relationship Between Limitation Act And Enforcement Of Foreign Awards

The Supreme Court has held that the limitation act applies to arbitration proceedings

The period of limitation for enforcement of a foreign arbitral award shall be 3 years in terms of the residuary provision, Article 137 of the Schedule of the Limitation Act. The limitation would trigger from the time when the right to apply for enforcement accrues (example time starts running from the date of when the judgement is given).

Early disposing of execution/enforcement relevant cases — Relevant judgments

(i) **In case of Rahul S. Shah v. Jinendra Kumar Gandhi In Rahul S. Shah**, taking note of the large no. pendency of execution proceedings before various civil courts across India, the Supreme Court, with a view to reduce delays in execution proceedings, passed a slew of directions for example like hon'ble court can use its power under discovery application (for production of documents) under cpc and if necessary can also take police assistance.

(ii) **In case of Chopra Fabricators & Manufacturers (P) Ltd. v. Bharat Pumps & Compressors Ltd. In Chopra Fabricators**, the Supreme Court observed, after reviewing Uttar Pradesh's statistics, that the judicial pendency of enforcement proceedings indicated a very deplorable situation. The High Court called attention to that the arbitration Act was brought into force and enacted for speedy disposal of the commercial questions, taking into account the long pendency of cases under the watchful eye of civil courts. It was additionally seen that on the off chance that the business questions were not settled at the earliest, the equivalent would have bigger implications and eventually influence the economy of the country.

(iii) **In the case of P.E.C. Limited v. Austbulk Shipping (2018)**, the Court said that the term “shall” in provision 47(1) should be replaced with the word “may”, indicating a pro-arbitration stance. It demonstrates that the court has the power to deny the enforcement under specific circumstances, ensuring that once satisfied, a foreign award is deemed a decree of the domestic court.

6. Conclusion

Under the Arbitration and Conciliation Act of 1996, India carefully regulates the process of enforcing foreign arbitral awards. The Act, which is based on international standards, makes a clear distinction between awards made under the New York Convention and awards made under the Geneva Convention, as well as the prerequisites and procedures for their enforcement.. Parties looking for enforcement should stick to explicit documentation necessities and complaints can be raised under defined grounds. The foreign award is regarded as a decree upon the court's ultimate approval, ensuring its legal recognition. While India's lawful system supports the requirement of enforcement of foreign arbitral awards, it concurrently upholds principles of fairness, legality and adherence to international norms in the arbitration process.

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