

# Enforcement of Foreign Arbitral Awards in India: Procedures, Challenges, and Key Considerations

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Arbitration is one of the most common ADR mechanisms to resolve disputes of a civil and commercial nature. The primary legislation governing domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards, and conciliation matters is the Arbitration and Conciliation Act, 1996 (A&C Act), which has been amended multiple times, such as in 2015, 2019, and 2021. The decision made by an Arbitral Tribunal is referred to as an Award. Section 2 (1) (c) of the A&C Act further provides that an arbitral award also includes an interim award.

Section 36 of the A&C Act provides for the enforcement proceedings for domestic awards, which are to be done following the provisions of the Code of Civil Procedure, 1908 (CPC). Enforcement of Foreign Arbitral Awards in India is covered by Part II of the A&C Act, and such enforcement can occur either under the New York Convention or under the Geneva Convention. The A&C Act has been drafted and introduced keeping in mind the Model Law on International Commercial Arbitration by the United Nations Commission on International Trade Law (UNCITRAL).

This article aims to shed light on the procedure for enforcement of foreign arbitral awards in India in the following manner:

- Procedure for Enforcement of Foreign Arbitral Awards in India
- Enforcement of Foreign Judgments in India
- Challenging enforcement of Foreign Arbitral Awards
- Procedure for Enforcement of Foreign Arbitral Awards in India
  - Enforcement of Awards passed under the New York Convention
  - Enforcement of Awards passed under the Geneva Convention
- Enforcement of Foreign Judgments in India

- Enforcement of Foreign Judgments from Non-Reciprocating Countries
- Challenging Enforcement of Foreign Arbitral Awards
- Conclusion
- FAQs
- What are the key considerations for the enforcement of foreign arbitral awards in India?
- Can a foreign arbitral award be challenged in India?
- Is it necessary to obtain a court order for the enforcement of foreign arbitral awards in India?

#### Procedure for Enforcement of Foreign Arbitral Awards in India

Enforcement of Foreign Arbitral Awards in India, as dealt with by Part II of the A&C Act, provides for such enforcement to occur either under the New York Convention or the Geneva Convention. These applications lie only before a High Court.

However, the powers of Indian courts to grant interim relief relating to foreign seated arbitrations, such as in situations of emergency arbitration in India are limited.<sup>[1]</sup>

#### Enforcement of Awards passed under the New York Convention

This part is dealt in Chapter I, Part II of the A&C Act and the relevant provisions range from Sections 44-52.

Section 44 defines a foreign award as an arbitral award on disputes between persons that arise from a legal relationship, whether contractual or not. The dispute must be recognized as a commercial one under the law in force in India, on or after 11<sup>th</sup> October 1960. The two prerequisites for enforcement here are that the country needs to be a signatory to the New York Convention and the Award must be made in the territory of another state that the Central Government notifies as a reciprocating territory.

Per Section 47, the party applying for the enforcement of the foreign award in India is required to submit the following at the time of application:

- The original award or authenticated copy
- The original arbitration award or its certified copy
- Any evidence of the foreign nature of the Award

Section 48 provides certain grounds on which the other party gets the opportunity to file an objection against such enforcement. Finally, per Section 49, when the Court is satisfied with the enforceability of the foreign award under this Chapter, the award is then considered a decree of that Court.

#### Enforcement of Awards passed under the Geneva Convention

This part is dealt with in Chapter II, Part II of the A&C Act and the relevant provisions range from Sections 53-60.

Section 53 defines a foreign award as an arbitral award on disputes related to matters considered commercial under the law in force in India after 28<sup>th</sup> July 1924. The three pre-requisites for enforcement here are:

- The award is in pursuance of an agreement for arbitration to which the Geneva Protocol on Arbitration Clauses, 1923 applies.
- The award is between persons subject to the jurisdiction of reciprocating territories, as designated by the Central Government and where the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 applies.
- The award is made in a territory designated as a reciprocating one by the Central Government.

Per Section 56, the party applying for the enforcement of the foreign award

in India is required to submit the following at the time of application:

- The original award or authenticated copy
- Evidence showing that the award has become final
- Evidence to prove that the award was made in pursuance of a valid arbitration under the applicable law

Section 57(2) lays down certain conditions where the enforcement of the award can be refused. Finally, per Section 58, when the Court is satisfied with the enforceability of the foreign award under this Chapter, the award is then considered a decree of that Court.

#### Enforcement of Foreign Judgments in India

Under Section 2(6)[2] of the CPC, foreign judgments in India are defined as decisions of courts located outside the country that are neither formed nor sustained by the authority of the Central Government. The procedure for enforcing foreign judgments differs depending on whether the judgment is from a reciprocating or non-reciprocating country.

If it is from a reciprocating nation, the party seeking enforcement must file execution proceedings in India, whereas a non-reciprocating country decree requires a new suit to be brought in India. The deadline for filing an enforcement suit is three years after the verdict is delivered. Section 44A of the CPC requires that a certified copy of the decree and a certificate from the superior court detailing the level of satisfaction or adjustment to be filed to execute a decree from a reciprocating nation.

Under Section 13 of the CPC, a foreign ruling can be conclusive as *res judicata*, but there are some restrictions. Courts have repeatedly maintained that if a party does not willingly submit to the jurisdiction of a foreign court, they are not bound by it. If the plaintiff presents evidence, the court will rule on the merits.[3]

The Supreme Court in *R. Vishwanathan v. Rukn – Ul- Mulk Syed Abdul Wajid*[4] held that the enforcement of a foreign judgment will be harmed if the court fails to meet the bare minimum of natural justice criteria, or if the foreign court was forced or duped into issuing the verdict.

#### Enforcement of Foreign Judgments from Non-Reciprocating Countries

To enforce a foreign decision from a non-reciprocating country in India, an action must be filed on the verdict. The plaintiff might sue based on either the foreign judgment or the original cause of action. If the litigation is unsuccessful, no further application for execution can be brought; but, if successful, the decree can be carried out in India.

To enforce the foreign judgment, a certified copy of the judgment and an extra certificate from a representative of the Central Government of India in the foreign nation is necessary, and the judgment must pass the conditions set out in Section 13 of the CPC before it may be enforced in India.

If the decree-holder takes efforts to execute a foreign decree in the nation where the decree was rendered and the decree is not fully satisfied, the decree-holder may file an execution petition in India within three years of the completion of the execution proceedings in the foreign country.

#### Challenging Enforcement of Foreign Arbitral Awards

Enforcement of Foreign Arbitral Awards in India may be refused on grounds such as:

- The parties to the arbitration agreement are incapacitated.
- The invalidity of the arbitration agreement under the legislation controlling it.

- The party challenging the award did not get appropriate notice of the arbitrator's appointment or the arbitration proceedings, or they were otherwise unable to present their case.
- The award addresses a dispute not anticipated by or lying outside the scope of the submission to arbitration, or it incorporates decisions on subjects outside the scope of the submission.
- The appointment of arbitrators or the arbitral procedure was not in conformity with the parties' agreement, or in the absence of such agreement, with the legislation of the country in which the arbitration took place.
- 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 cannot be resolved by arbitration under Indian law.
- The award's implementation would be contrary to India's public policy.

#### Conclusion

Alternative Dispute Resolution (ADR) mechanisms have witnessed significant growth over the past few decades owing to their several benefits. With the globalized world and the increased transactions between companies in different companies, disputes of a foreign nature arise quite often. In such cases, it becomes crucial to lay down guidelines as to how foreign awards can be enforced in a country and also provide for grounds to challenge such enforcement. In India, the same has been provided in detail by the Arbitration and Conciliation Act, which has ensured uniformity in all such related matters. However, development regarding growing concepts and needs such as that of emergency arbitration in India needs better recognition and understanding.

#### FAQs

What are the key considerations for the enforcement of foreign arbitral awards in India?

The important considerations for enforcing international arbitral awards in India include ensuring that the award was rendered by a competent authority, that the arbitration agreement is legal and enforceable, and that the award is not averse to public policy. The party seeking enforcement must file an application with the appropriate court and present an original or certified copy of the award as well as the arbitration agreement. The court will review the award to determine that it fits the standards for enforcement under Indian law, and if so, will continue with the enforcement as if it were a court order.

Can a foreign arbitral award be challenged in India?

Yes, in India, a foreign arbitral award can be challenged. The grounds for challenge, however, are restricted and are stated in Section 48 of the Arbitration and Conciliation Act, 1996. These include the incapacity of the parties, the invalidity of the arbitration agreement, a lack of sufficient notice, improper appointment of arbitrators, a violation of natural justice principles, or the award being in opposition with Indian public policy. The only way to oppose the award is to file an application with the appropriate court, which will conduct a restricted review of the award.

Is it necessary to obtain a court order for the enforcement of foreign arbitral awards in India?

No, obtaining a court order is not required for the enforcement of foreign arbitral verdicts in India. Foreign awards can be directly enforced by filing

an execution petition with the appropriate court. The party seeking enforcement must, however, present a certified copy of the arbitral award, the original arbitration agreement, and evidence that the award is foreign. The award must also meet the conditions for enforcement established by the Arbitration and Conciliation Act.

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[1]BALCO vs. Kaiser Aluminum Technical Services, (2012) 9 SCC 552.

[2] Section 2(6), Code of Civil Procedure, 1908.

[3]International Woollen Mills v. Standard Wool (U.K.) Ltd., (2001) 5 SCC 265.

[4]R. Vishwanathan v. Rukn – Ul- Mulk Syed Abdul Wajid, AIR 1963 SC 1.

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