

Critical Analysis on Enforcement of Foreign Awards in India

written by King Stubb & Kasiva | December 17, 2022



The expansion of international trade as a result of globalisation and the advancement of technology has demanded the development of effective dispute settlement systems. In most cases, obtaining an award or a final decision from courts is only half the battle won and the veracity of cases can be better understood upon giving a cursory glance at the Indian setting along with the procedural enforcement of foreign awards in India.

The Code of Civil Procedure, 1908 ("CPC") governs the enforcement of foreign judgements in India along with the execution of decrees, while the Arbitration & Conciliation Act, 1996 ("Act") and the CPC governs the enforcement and execution of foreign arbitral awards in India.

There is a certain amount of similarity with respect to the enforcement of awards; domestic and foreign awards are enforced in the same way that an Indian court decree is. This is true even for consent awards obtained as a result of a party settlement. The process for enforcing an award, however, differs depending on the seat of arbitration.

Enforcement of Foreign Arbitral Awards based on the New York Convention

The New York Convention defines a "foreign award" as an arbitral award made on or after October 11, 1960, on differences between people arising out of legal ties, whether contractual or not, considered commercial under Indian law;

1. In accordance with a written arbitration agreement to which the Convention set out in the First Schedule applies, and
 2. In one of such territories as the Central Government, satisfied that reciprocal measures have been made, may proclaim by publication in the Official Gazette to be territories to which the said Convention applies.
- Indian law, in accordance with Arbitration and Conciliation Act, 1996 vide

Section 44 to 52 deals with foreign awards as per the New York Convention. As per Section 47 of the Act, for the enforcement of foreign awards in India, the original award along with the original arbitration agreement and evidence to establish foreign award shall be submitted to the High Court.

For objections with respect to the enforcement of foreign judgements in India, the party concerned, in accordance with Section 48 can file an objection on the following grounds:

1. the parties to the agreement referred to in section 44 were incapacitated under the law applicable, or the said agreement is not valid under the law to which the parties have subjected it, or, in the absence of any indication thereof, under the law of the country where the award was made; or
2. Proper notice of the appointment of the arbitrator was not provided to the party against whom the award is invoked or of the arbitral proceedings or was otherwise unable to present the case.
3. the award deals with a difference not foreseen by or falling outside the scope of the arbitration submission, or it comprises decisions on subjects outside the scope of the arbitral submission.
4. The composition of the arbitral authority or the arbitral procedure was not in compliance with the parties' agreement or, in the absence of such agreement, with the legislation of the country where the arbitration took place; or
5. the award has not yet become binding on the parties, or it has been set aside or suspended by a competent authority of the nation in which or under which the award was made.
6. the subject matter of the dispute is not amenable to resolution by arbitration under Indian law, or the execution of the judgement would be adverse to Indian public policy.

It is also stated that if an application for the setting aside or suspension of the award is made to a competent authority, the Court may if it deems it appropriate, adjourn the decision on the enforcement of the award and may, on the application of the party claiming enforcement of the award, order the other party to provide suitable security.

Enforcement of Foreign Arbitral Awards in accordance with the Geneva Convention

According to the Geneva Convention, a "foreign award" is defined as an arbitral award made after July 28, 1924, on differences relating to matters considered commercial under Indian law;

1. in accordance with an arbitration agreement to which the Protocol set forth in the Second Schedule applies, and
2. between persons, one of whom is subject to the jurisdiction of someone of such Powers as the Central Government, satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and the other of whom is subject to the jurisdiction of some other Power.
3. in one of such territories as the Central Government, satisfied that reciprocal provisions have been made, declares to be territories to which the said Convention applies by similar notification, and for the purposes of this Chapter, an award shall not be deemed final if any
4. There are ongoing proceedings in any country where the award was made to challenge its validity.

Vide Sections 53 to 60, provisions related to the Geneva Conventions'

enforcement of arbitral awards are governed by the Arbitration and Conciliation Act, 2015.

In order to enforce the foreign award in India, the party can approach the court in accordance with Section 57 of the Arbitration and Conciliation Act, 1996 whilst abiding by the following pre-conditions;

1. The award was rendered in response to an arbitration request that was legitimate under the applicable legislation.
2. the subject matter of the award should be capable of settlement by arbitration under Indian laws;
3. The award was made by the arbitral tribunal specified in the arbitration request or was formed in the manner agreed upon by the parties and in accordance with the legislation governing the arbitration procedure.
4. the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
5. The award's execution is not contradictory to Indian public policy or law. Additionally, Section 58 explicates that if the Court determines that a foreign award is enforceable under this Chapter, the award is assumed to be a Court decree.

Limitation Period for Enforcement of Awards

It was held in *Government of India v Vedanta Ltd & Ors* that the enforcement of a foreign award under Part II of the Arbitration Act is governed by Article 137 of the Limitation Act, which establishes a three-year timeframe from the day the right to apply accrues.

Conclusion

There is not an iota of doubt that India has achieved a well-designed architecture in the context of Arbitration by adopting and adhering to the legal adepts of the New York and Geneva Conventions along with provisions for efficient and effective techniques for dispute resolution for both domestic and foreign investors. The two primary battles Arbitration faces pertain to the arbitration proceedings involved and on the other hand, getting the final award enforced. At, the matter specialisation lies on both ends of the table; From ensuring that parties have means to swift resolution from arbitral proceedings and awards to the journey to its final enforceability, which lies in our experienced forte.

FAQs

How can we enforce an arbitration award?

Section 47 of the Arbitration Act allows an award to be recognised and enforced on the basis of an application submitted by the award holder. Section 48 of the Act allows the judgement debtor to raise written objections to the application for recognition and execution of the judgement. It has been domain expertise to enforce arbitration awards successfully in a swift manner to ensure equitable dispute resolution.

What is arbitration enforcement?

Giving an award the same impact as a domestic court judgement, which therefore acts as the formal foundation for subsequent execution, is what enforcement entails.