

Challenging and Enforcing Arbitration Awards in India

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Why is Alternative Dispute Resolution (ADR) a much more preferred form of dispute resolution compared to conventional litigation?

This is because the Dispute Resolution mechanism is cost-effective and time-conserving and provides amicable measures to resolve issues outside Courts. There are four types of Alternative Dispute Resolution namely – Arbitration, Conciliation, Judicial Settlement through Adalat and Mediation.

One such Alternative Dispute Resolution is “Arbitration”. Arbitration provides a speedy remedy arising out of a commercial contract. It is internationally used and it provides a binding and clear enforceable decision. By implementing arbitration in our legal system, the issue of judicial pendency, tedious courtroom proceedings and costs involved in litigation can be substituted with a simple process of settling disputes and enforcing Arbitration awards.

An arbitral award is a binding order/decreed passed by an arbitral tribunal, after adjudication based on the merits of the case. It is equivalent to a decree passed by Civil Judge and is binding upon the parties. The enforcement procedure and execution decrees and an arbitral award in India are governed as per the Arbitration and Conciliation Act, 1996. The Act of 1996 recognises domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards.

Process for challenge and enforcement of arbitral awards in India

Part I of the Arbitration and Conciliation Act deals with Arbitration Agreements, the Composition of Arbitral Tribunals, the Jurisdiction of Tribunals and executing and enforcing Arbitration awards of domestic awards. After an award has been granted, the award holder would have to wait for a period of 3 months before applying for execution or enforcing of Arbitration

awards. During this intervening period, as per section 34 of the Act, an award may be challenged. The provision also includes the procedure for making an application to set aside an arbitral award. The timeline of 3 months can further be extended to 30 days if the applicant shows sufficient cause for delay in challenging the award. After the expiry of the intervening period, the court upon finding the award to be enforceable at the execution stage, will not permit questioning of the validity of an arbitral award in India. The Amendment Act of 2015 provides for a party to challenge an award, wherein the party would have to move a separate application to stay the execution of an award. Prior to the said amendment, there was the practice of automatic stay of the award, once the application challenging the award is made by the parties, however, the said practice has been done away with to focus on the Arbitration centric approach.

The process for enforcing Arbitration awards is as follows:

After the intervention period of 3 months and 30 days have passed from the date of receipt of the award, the award will be directly enforced as a decree in cases where there is no challenge. In cases where the tribunal sets aside an award by appeal, if the challenge is rejected, then the award is declared a decree. However, if it is accepted, then the parties will go for an appeal after which the tribunal enforces the award as a decree.

An award can be challenged under several provisions of the Arbitration Act. The grounds for challenging an award are there under Section 34 of the Arbitration Act and the party challenging the award has the recourse limited to the same. Section 34(2)(b)(ii) of the Arbitration Act stipulates that an arbitral award can be challenged if it is a violation of the public policy of India.

The Supreme Court in the case of *Haryana Tourism Limited. Kandhari Beverages Limited*[1] has held that an award can be set aside only if the award is against the public policy of India. Explanation to the said section stipulates certain conditions wherein an arbitral award can be termed as in conflict with the public policy of India which includes if the award is against the basic notions of morality if it is against the fundamental policy of Indian law and if the award was induced by fraud or was in violation of Section 75 or 81 of the Arbitration Act.

In the *Renusgarcase*[2] and the *ONGC case*[3] the Supreme court made the definition of the term "public policy", enshrined under Section 7 of the Recognition and Enforcement Act, clear and stated that it must be a contravention to (i) fundamental policy of Indian law, (ii) the interests of India and (iii) Justice and morality. These cases expanded the meaning and necessity of public policy decisions.

Process for challenge and enforcement of foreign arbitral awards in India
Part II of the Arbitration and Conciliation Act deals with the enforcement of certain foreign awards.

The New York and Geneva conventions give the power to recognise foreign awards to its signatory members. India is one such signatory member of these conventions, and awards made under these conventions are enforceable in India as per the provisions of Part II of the Arbitration Act. In instances where a binding award is received by a signatory member country, the award would be made in a territory which has been notified in India's official gazette, as a convention country, and the award would then be enforceable in India. Section 47 of the Act states that a party which wants to enforce a foreign award must

make an application to the high court which has jurisdiction and provide certain documents.

As per Section 47 of the Arbitration Act, the requirements for enforcement of foreign arbitral awards in India are that the parties need to furnish:

- The original award or the duly authenticated copy of the award in the manner prescribed by the country,
- The original arbitration agreement or a certified copy of the agreement and
- If the award is in a foreign language, then a translated English version of the award is certified as correct by a diplomatic agent of the country to which that party belongs or in the manner that may be sufficient as per the law in force in India.

The Act of 1996 does not particularly address challenges to international arbitral awards. It is not permitted to dispute a foreign award; it may however be opposed in its enforcement on the same grounds that are available when doing so for a domestic award. While a simple reading of Section 48(1)(e) would show that a foreign award can be contested in the nation where it was made or in the nation where it was made according to the law of that nation,

If the foreign award, after the period of setting aside lapses, accepts the challenge in a foreign tribunal, then the recognition and enforcement of arbitral awards in India are done after the appeal is satisfied.

Conditions for enforcement of arbitral awards in India

Section 48 of the Arbitration Act defines the conditions for enforcement of the Arbitral Award and on what grounds the enforcement can be refused. The enforcement of the award is valid when:

- Parties were in the capacity to contract;
- The agreement is in accordance with the laws of the countries of the parties;
- The arbitrators were appointed with proper notice of the proceedings;
- The award was given with the agreement being in accordance with the law and within its scope; however, the rule of severability can be applied if the part which contains a decision within the scope of the agreement is severable with that of the rest of the part, the part so in line with the agreement can be enforced.
- The composition of the procedure and arbitral authority is in accordance with respective laws;
- The award is binding on the parties;
- The subject matter is capable of settlement by arbitration under the laws of India; and
- The award is not in conflict with the public policy of India.

Conclusion

Although the ADR mechanism may be enhanced in a number of ways, the legislative framework presently has room for this crucial mechanism. The team in KSK's Arbitration practice enables parties to engage in contracts with clauses that rely on dispute settlement. With KSK's expert team guiding the parties and informing them of the numerous grounds for challenge and the appeals procedure, the process of enforcing arbitral judgements is made much easier.

FAQs

How is an arbitral award enforced in India?

Section 36 of Part I of the Arbitration Act, which governs domestic awards, stipulates that they may be enforced in the same way that court judgments are

enforced under the provisions of CPC. Enforcement of foreign awards can be done under Sections 47 and 57, subject to the convention under which the award is passed. However, the conditions for challenging such foreign awards should not come in the way of enforcing the foreign award.

What is the limitation period for the enforcement of foreign awards in India? According to Article 137 of the Limitation Act, where no period of limitation is provided, the period of limitation will be 3 years from the date on which the right to apply accrues. Enforcement of a foreign award under Part II of the Arbitration Act would be covered under Article 137 of the Limitation Act as per the recent ruling of the Supreme Court in the case of Government of India v. Vedanta Limited. Hence, the enforcement application has to be presented within 3 years time period from the date when the right to enforce accrues.

What is the difference between a foreign award and a domestic award?

An arbitral decision rendered within a state's jurisdiction is referred to as a "domestic award." A "foreign award" is an arbitral decision that was rendered in another country or that was determined to have been rendered overseas.

[1] Haryana Tourism Limited v. Kandhari Beverages Limited, Civil Appeal No. 266 of 2022.

[2] Renusagar Power Plant Co. Ltd v. General Electric Co., AIR 1994 SC 860

[3] ONGC v. SAW Pipes Ltd., (2003) 5 SCC 705.