



UAE as Reciprocating Territory

The Dawn of New Era

The Republic of India and the United Arab Emirates ("UAE") took a qualitative leap in their ties in furtherance of an already existing bilateral treaty on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions,

Execution of Judgements and Arbitral Awards^[1]

by declaring and recognizing UAE as 'reciprocating territory'^[2]

for the purpose of Section 44A of the (Indian) Code of Civil Procedure, 1908 ("CPC") vide Gazette Notification ("Notification") dated January 17, 2020^[3].

In view of the same, a decree of a 'Superior (UAE) Court' can be enforced as if

it is a decree of a competent court in India. The new arrangement between India

and UAE would ensure expedited recoveries from the defaulters who have fled to

India. The execution is the last stage of the civil litigation and the most effective mechanism that enables a decree-holder to realise its dues from the defaulters.

The Law

The execution of the decree by a reciprocating territory is governed under Section 44A of CPC and is subject to exceptions (tests of conclusiveness)

laid down in Section 13 of the CPC. Post filing, the procedure enshrined in Order XXI of CPC is followed by the courts for adjudication and execution.

Moreover, the property (both movable and immovable) of the judgment debtor can

be attached and sold in execution to recover the debt/decreed amount.

As per the

Notification, the following courts have been identified as "Superior Court":

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Federal Court

1. Federal Supreme Court;
2. Federal, First Instance and Appeals Courts in the

Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain, and Fujairah;
Local
Courts

1. Abu Dhabi Judicial Department;
2. Dubai Courts;
3. Ras Al Khaimah Judicial Department;
4. Courts of Abu Dhabi Global Markets;
5. Courts of Dubai International Financial Centre.

All decrees are executed vide a separate petition filed by the decree-holder against the judgement debtor in accordance with the

rules under Order XXI of CPC. A decree in a money suit (recovery) can be executed broadly by the following modes:

1. By filing an application for the attachment and sale of the property of judgement debtor, or
2. By arresting the judgement debtor and putting him in a civil prison, or
3. By Realizing the decretal amount from the debtor (Garnishee) of the Judgement debtor.

The Challenges

In light of the Notification read with related provisions of CPC, the execution

of the decree is posed with several challenges listed herein under: -

1. Decrees

other than money ousted:

The Notification provides for execution of money decrees and excludes other non-money decrees like specific performance or injunction and declaratory decrees. Furthermore, it also excludes the execution of the arbitral award.

• Non- 'Superior Court':

The fate of the decrees passed by UAE Courts except that passed by Superior Courts is uncertain in absence of any directions and guidelines. In the present scenario, there are no directions, guidelines or any notification either by the legislature or the judiciary in respect of the same.

• Exchange rate:

In the absence of a mechanism to take into consideration the fluctuating exchange rates, the financial interests of the decree-holder may suffer a financial setback as the date of the decree is taken as the date of conversion from AED to INR.

• Limitation period:

As the period of limitation for filing execution of money decrees is 12 years coupled with silence over condonation of delay, the Notification fails to bring a ray of hope for the decrees passed before that period of limitation.

- High pendency of cases:
The courts in India are already burdened with a large number of pending matters that might pose an impediment to quick disposal and early realization of the defaulted amount.
- Court fee:
There exists no clarity over the issue of applicable court fees which is payable for the execution of decrees passed by Superior Courts.
The Way Ahead
The financial recovery strategies of corporate and financial institutions will undergo significant change in order to reap the benefits of the Notification from the perspective of an increased limitation period, decreased costs, expedited recoveries and additional alternatives for realizing debts.
At the same time, decree holders will also be immensely benefitted as the Notification will ensure expedited recoveries of potential claims from the defaulters who have fled the territorial jurisdiction of UAE.
The courts in India are required to be well-equipped to be able to expeditiously dispose of the execution matters as the Notification might result in an influx of execution cases. The same can be achieved by issuance of unified rules for execution of the decree of reciprocating territory across India as High Court rules of practice in each state are different along with designated courts to adjudicate upon the execution matters.
Given India's global footprint and increased investments by UAE in key sectors of India's economy, it is in best interest to safeguard and strengthen the interest of financial institutions to bolster the trade relations between the two countries.

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- [1] Entered into on 25th October, 1999
 - [2] Reciprocating territory means that decrees passed by courts in the UAE can now be executed in India as if they were passed by Indian civil courts.
 - [3] Issued by Ministry of Law and Justice, Government of India
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