

Enforcement of Foreign Awards in a Convention Country

Foreign arbitration awards are recognised in India under Part II of the Arbitration and Conciliation Act, 1996 (“**the Act**”) amended by the Arbitration and Conciliation (Amendment) Act, 2015.

India is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral award, New York Convention, 1958 (“**the New York Convention**”) and the Geneva Convention on the Execution of Foreign Arbitral Award, 1927 (“**the Geneva Convention**”), that recognise the enforcement of foreign arbitral awards. Any foreign awards which would be enforceable under these two conventions shall be binding on the persons as between whom it was made. There are approximately 159 state parties to the convention which include countries like Singapore, Japan, United States and Germany.

Comparison of Foreign Arbitration Award Vs. Domestic Arbitration Award

The key difference between a foreign arbitration award viz a viz a domestic arbitration award, is that there is no application for enforcement required in case of a domestic award. The award is by itself capable of execution, as a decree in case no objections are filed to a domestic arbitration, within a period of ninety days or once objections (if any) are rejected, the same is treated as decree. On the other hand, a foreign arbitration award necessitates enforcement procedure. Any party seeking enforcement is required to make an application and the court upon being satisfied, that the foreign award is enforceable, the same becomes a decree and executed thereafter.

Conditions for Enforcement of a Foreign Award in India

For courts to be satisfied for enforcement of foreign awards, there are certain conditions, the party seeking enforcement is required to fulfil.

First, it must deal with differences between persons arising out of legal relationship, whether contractual or not, considered as commercial under the law in force in India. Second, in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, declare to be territories to which said Convention applies.¹ Third, in order for a foreign award to be enforceable it is necessary for the party to prove that²:

- the award has been made in pursuance of a submission to arbitration which is valid under the law applicable;

¹Section 44 of the Arbitration and Conciliation Act, 1996

²Section 57 of the Arbitration and Conciliation Act, 1996.

- the subject matter of the award is capable of settlement by arbitration under the law of India;
- the award has become final in the country in which it has been made;
- the award has been made in conformity with the law governing the arbitration procedure; and
- the enforcement of the award is not in contradiction to the law in India.

Fourth, enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court that³:

- the parties to the agreement were under some incapacity or the agreement is not valid under the law to which the parties have subjected to it;
- the party against whom the award is invoked was not given proper notice of the arbitral proceedings;
- the award contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties;
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made;
- the subject-matter of the difference is not capable of settlement by arbitration under the law of India; and
- the enforcement of the award would be contrary to the public policy of India.

Procedure for enforcement of a Foreign Award in India

The party applying for enforcement of a Foreign Award shall, at the time of the application produce⁴:

- the original award or a copy thereof authenticated in manner of the law of the country in which it was made;
- the original agreement for arbitration or a duly certified copy thereof; and
- evidences to prove that the award is a foreign award.

Court having Original Jurisdiction

The High Court has original jurisdiction on the subject-matter of the arbitral award if the same had been the subject- matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Courts.⁵ Section 2 (e) of the Act makes it clear that in the case of international commercial

³Section 48 of the Arbitration and Conciliation Act, 1996

⁴Section 47 of the Arbitration and Conciliation Act, 1996

⁵Section 47 of the Arbitration and Conciliation Act, 1996. Explanation Subs. by Act 3 of 2016, sec. 21 (w.e.f. 23.10.2015)

arbitration, the High Court in exercise of its ordinary original civil jurisdiction has jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.

TIME FRAME

The question on the time line for seeking enforcement of a foreign award is an unsettled issue. The Act clearly establishes the limitation for filing objections to enforcement of domestic award being three months, but the courts have not yet established the limitation period for enforcement of foreign awards.

Enforcement of Foreign Award between Non-Convention Countries and India

The courts have taken different stand in each case, the issue of enforcement of Arbitral Awards on Non-Convention Countries is unsettled and non-conclusive. This issue was discussed in the case of *Bhatia International Ltd v. Bulk Trading SA*⁶, where it was held that an award passed in an international commercial arbitration in a non-convention country, though not enforceable under Part II, would be treated as a domestic award and would be enforceable under the provisions of Part I of the Act.

The Supreme Court in the case of *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*⁷ took a different view overruling the Bhatia judgement. The Supreme Court was of the view that “*merely because the Arbitration Act, 1996 does not cover the non convention awards would not create a lacuna Arbitration Act, 1996*”. The court further added that “*no remedy was provided in the 1961 Act therefore, the non convention award cannot be incorporated into the Arbitration Act, 1996 by process of interpretation*”

Therefore, it is clear that a foreign award passed in a non-convention country cannot be enforced under the Arbitration Act. However, the question on Foreign Awards in the absence of legislative intervention in Non-Convention countries remains unclear.

⁶CASE NO.: Appeal (civil) 6527 of 2001

⁷ Civil Appeal No. 7019 of 2005, <https://indiankanoon.org/doc/173015163/>