

EXPERTS CORNER

Enforcement of Arbitral Awards in India: An Analysis of Potential Issues and Strategies for Success



Vasanth Rajasekaran
Founder and Head



Harshvardhan Korada
Counsel

Enforcement of Arbitral Awards in India: An Analysis of Potential Issues and Strategies for Success

by Vasant Rajasekaran* and Harshvardhan Korada**

Cite as: 2024 SCC OnLine Blog Exp 26

Published on April 2, 2024 - By Bhumika Indulia



Form and contents of arbitral awards

(i) Awards rendered under Part I of the Arbitration Act

Under Part I of the Arbitration and Conciliation Act, 1996 (Arbitration Act), Section 31 outlines the legal requirements in terms of the form and contents for arbitral awards. Section 31 mandates that arbitral awards must be rendered in writing and carry the signatures of the arbitrators constituting the tribunal, ensuring the formal validation of the award.¹ In cases involving multiple arbitrators, the signatures of a majority of all the members of the Arbitral Tribunal shall be sufficient so long as the reason for any omitted signature is stated.²

In terms of Section 30 of the Arbitration Act, engaging in a settlement is an encouraged form of dispute resolution.³ For the purposes of settling disputes, parties may resort to mediation, conciliation, or other procedures.⁴ If the parties in arbitration reach a settlement, the Tribunal will terminate the proceedings.⁵ Further, if the parties ask and the Arbitral Tribunal does not object, an award may be rendered stating the settlement terms.⁶ An arbitral award on agreed terms shall be made in accordance with Section 31 of the Arbitration Act and shall carry the same weight as any other award.⁷

An arbitral award must state the reasons upon which it is based,⁸ unless: (i) the parties

have agreed that no reasons are to be given,⁹ or (ii) the award is based on settlement terms entered under Section 30 of the Arbitration Act.¹⁰

In addition to the above, an arbitral award shall state the date of rendering and the place of arbitration determined in accordance with Section 20 of the Arbitration Act.¹¹ The costs of arbitration shall be fixed by the Arbitral Tribunal in accordance with Section 31-A of the Arbitration Act.¹²

Stamping and registration related considerations for arbitral awards

(a) Domestic arbitral awards

The Stamp Act, 1899 (Stamp Act) stipulates the requirement for arbitral awards to be stamped with specific stamp duties. The amount of stamp duty varies across States, depending on where the award originates. According to Section 35 of the Stamp Act, any award lacking proper stamping or with insufficient stamping is deemed inadmissible in evidence unless the deficiency is addressed, and the penalty is paid. Typically, matters pertaining to stamping and registration of awards or related documentation arise during the enforcement stage as a means to resist the enforcement of the arbitral award. Furthermore, under Section 17 of the Registration Act, 1908 (Registration Act), registration of an award is compulsory if it affects immovable property. Failure to register shall also render the arbitral award invalid.

(b) Foreign arbitral awards

A foreign arbitral award is not bound or restricted by the considerations of stamping and registration under the Stamp Act and Registration Act, respectively.¹³ The Delhi High Court in *Naval Gent Maritime Ltd. v. Shivnath Rai Harnarain (I) Ltd.*¹⁴ affirmed that foreign awards do not necessitate registration and can be enforced as decrees. Similar judicial trends have been observed in other High Courts¹⁵ across India.

Changes permissible post rendering of the award

(a) Correction of computational, clerical, or typographical errors

Unless otherwise agreed by the parties to arbitration, within 30 days from the receipt of the arbitral award, a party may, with notice to other part(ies), request the Arbitral Tribunal to correct any computational, clerical, or typographical errors occurring within the award.¹⁶ Further, if agreed by the parties, a party may, with notice to other part(ies), request the Arbitral Tribunal to give an interpretation on a specific point or part of the arbitral award.¹⁷

If the Arbitral Tribunal considers the request for correction or interpretation justified, it should ideally make the necessary correction or give the interpretation within 30 days from the receipt of the request.¹⁸ Even otherwise, the Arbitral Tribunal may correct any computational, clerical, and typographical errors of its own volition within 30 days from

the date of passing of the arbitral award.¹⁹

(b) Additional award for claims presented but not decided in the award

Unless otherwise agreed by the parties to arbitration, within 30 days from the receipt of the arbitral award, a party may, with notice to other part(ies), request the Arbitral Tribunal to make an additional award on the claims which were otherwise presented but omitted in the arbitral award.²⁰ If the Arbitral Tribunal believes that the request is justified, it should make an additional award within 60 days from the receipt of the request.

Procedure for enforcement of an arbitral award

(i) India seated awards

Section 36 of the Arbitration Act sets out the provisions for enforcement of arbitral awards arising from India-seated arbitrations. After receiving an award, the award-holder must wait for three months before seeking enforcement of the award.²¹ During this time, the award may face challenges under Section 34 of the Arbitration Act. Once this three-month period is over, if a Court deems the award to be enforceable, there can be no further challenges during the enforcement process.²² The award shall be enforced in the same manner as if it were a decree of the Court in accordance with the provisions of the Code of Civil Procedure, 1908 (CPC).²³ A petition seeking enforcement of an arbitral award may be filed at any place where a decree may be executed. In such a case, an applicant is not mandated to obtain a transfer of decree from the Court, which would have jurisdiction over the arbitral proceedings.²⁴

For domestic awards not arising out of an international commercial arbitration defined under Section 2(1)(f) of the Arbitration Act, the enforcement petition would be filed before the commercial court exercising jurisdiction, which could be the Principal Civil Court of Original Jurisdiction in a district, or if the case may be, the commercial division of the High Court concerned (exercising ordinary original civil jurisdiction).²⁵

In case of an international commercial arbitration as defined under Section 2(1)(f) of the Arbitration Act, where the award grants monetary reliefs, a party seeking execution must approach the commercial division of the High Court where the assets of the opposite party are located. Where the subject-matter of the award is not money, the party may approach the High Court where the counterparty resides or carries on business or personally works for gain.

Previously, before the Arbitration and Conciliation (Amendment) Act, 2015, filing an application to set aside an award would automatically bring the enforcement proceedings to a halt.²⁶ However, with the amendment in place, the mere filing of an application to set aside an arbitral award would in itself not render the award unenforceable, unless the Court grants a stay of the operation of the award in a separate application seeking the

stay.²⁷

While considering an application for grant of stay of the operation of an arbitral award for payment of money, a court shall have due regard to the provisions for grant of stay of a money decree under the provisions of the CPC.²⁸

In cases where the Arbitral Tribunal is satisfied that a prima facie case is made out that (i) the underlying arbitration agreement or the contract, or (ii) the making of the arbitral award was induced or effected by fraud and corruption, the Court has the power to grant an unconditional stay of the award until the disposal of the challenge under Section 34 of the Arbitration Act.

(ii) Foreign arbitral awards

India is signatory of both the New York Convention²⁹ and the Geneva Convention³⁰ concerning the recognition and execution of foreign arbitral awards. When a party receives a binding award from a country that is a signatory to either of these Conventions, and the award originates from a territory designated as a convention country³¹ by India, it becomes enforceable within India.

The process of enforcing a foreign award in India involves two steps, beginning with the filing of an execution petition. At first, the Court evaluates whether an arbitral award meets the criteria outlined in the Arbitration Act. If the Court finds that the arbitral award is enforceable, it would be executed like a decree issued by that court.

The grounds and conditions for challenging the enforcement of domestic and foreign arbitral awards

A court may set aside a (i) domestic arbitral award³² or a (ii) foreign arbitral award³³ and refuse to enforce the same if the party challenging the award establishes that:

- (i) The parties to the arbitration agreement were under some incapacity.³⁴
- (ii) The arbitration agreement in question does not adhere to the applicable law chosen by the parties or the law of the country where the arbitral award was issued, especially for foreign award.³⁵
- (iii) A proper notice of the appointment of the arbitrator or the initiation of the arbitral proceedings was not issued or the party against whom the award was rendered could not present its case adequately.³⁶
- (iv) The Arbitral Tribunal exceeds the scope of powers and authority vested in the Arbitral Tribunal as per the arbitration agreement.³⁷
- (v) The arbitral award contains decisions on matters beyond the mandate of the Arbitral Tribunal and the scope of the arbitration agreement.³⁸
- (vi) The composition of the Arbitral Tribunal or the arbitration process goes beyond the scope of the underlying arbitration agreement or is not in line with the law of

the country where the arbitration took place.³⁹

(vii) The subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force.⁴⁰

(viii) The arbitral award is in conflict with the public policy⁴¹ of India or patently illegal.⁴²

(ix) The arbitral award (particularly a foreign award) has not yet become binding on the parties on account of an application for setting aside or suspension of the arbitral award made to the competent authority of the country in which the award was made, or under the law of that country.⁴³

Essentials for enforcing foreign awards

The requirements for validating foreign awards in India include presenting:

- (i) either the original award or a properly authenticated copy in accordance with the laws of the country where award is rendered;
- (ii) the original agreement or a certified copy of the same; and
- (iii) any other evidence to support the foreign award when necessary.

Section 47 of the Arbitration Act stipulates that any evidentiary documents shall be submitted to the Court while filing the application for enforcement of the foreign award. However, a recent interpretation by the Supreme Court of India construed the term “shall” in Section 47 of the Arbitration Act as “may”.⁴⁴ This means that a party seeking enforcement of the award may not necessarily need to furnish the specified document to the Court “at the time of the application”. The Supreme Court further clarified that the interpretation of the word “shall” as “may” is restricted only to the initial stage of the filing of the enforcement application and not thereafter.

Limitation for enforcement of arbitral awards

(i) Limitation for enforcement of domestic awards

The Supreme Court has ruled that arbitral awards are treated as decrees for enforcement purposes. As a result, the Limitation Act, 1963 (Limitation Act) applies to arbitrations as well. Consequently, the limitation period for enforcing domestic awards is 12 years, equivalent to the limitation period for executing any decree.⁴⁵

(ii) Limitation for enforcement of foreign awards

The Supreme Court has held that the period of limitation for enforcement of a foreign award shall be 3 years in terms of the residuary provision under Article 137 of the Schedule of the Limitation Act. The limitation would trigger from the time when the right to apply for enforcement accrues.

Early disposal of execution/enforcement related cases — relevant judgments

(i) *Rahul S. Shah v. Jinendra Kumar Gandhi*

In *Rahul S. Shah*⁴⁶, taking note of the large pendency of execution proceedings before various civil courts across India, the Supreme Court, with a view to reduce delays in execution proceedings, passed a slew of directions.

(ii) *Chopra Fabricators & Manufacturers (P) Ltd. v. Bharat Pumps & Compressors Ltd.*

In *Chopra Fabricators*⁴⁷, the Supreme Court, upon taking note of the statistics⁴⁸ from Uttar Pradesh, observed that the judicial pendency of enforcement proceedings indicated a very sorry state of affairs. The Supreme Court pointed out that the Arbitration Act was brought into force and enacted for speedy disposal of the commercial disputes, considering the long pendency of cases before civil courts. It was also observed that if the commercial disputes were not decided at the earliest, the same would have larger ramifications and ultimately affect the economy of the country.

Conclusion

As the old-adage goes, securing a favourable decision is only half the battle won and often just the beginning of the journey towards justice. The persisting judicial pendency in enforcement proceedings underscores the reality that the path to actualising one's rights can be fraught with challenges and delays. To navigate these complexities and ensure a smoother enforcement process, it is vital for applicants to proactively address any potential issues that may arise at the stage of enforcement.

A robust strategy, meticulously crafted to anticipate and overcome obstacles and grounds of resistance against enforcement, is essential for achieving a successful outcome. By ironing out all such potential issues and adopting a proactive approach towards enforcement, parties can expedite the realisation of the fruits of the award.

***Head and Founder of Trinity Chambers, Delhi.**

****Counsel at Trinity Chambers, Delhi.**

1. Arbitration and Conciliation Act, 1996, S. 31(1).
2. Arbitration and Conciliation Act, 1996, S.31(2).
3. Arbitration and Conciliation Act, 1996, S. 30.
4. Arbitration and Conciliation Act, 1996, S. 30(1).
5. Arbitration and Conciliation Act, 1996, S. 30(2).
6. Arbitration and Conciliation Act, 1996, S. 30(2).
7. Arbitration and Conciliation Act, 1996, S. 30(4); *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*, (2022) 10 SCC 1.
8. Arbitration and Conciliation Act, 1996, S. 31(3).

9. Arbitration and Conciliation Act, 1996, S. 31(3)(a).
10. Arbitration and Conciliation Act, 1996, S. 31(3)(b).
11. Arbitration and Conciliation Act, 1996, S. 31(4).
12. Arbitration and Conciliation Act, 1996, S. 31-A.
13. *Shriram EPC Ltd. v. Rioglass Solar Sa*, (2018) 18 SCC 313 d
14. 2009 SCC OnLine Del 2961.
15. *Vitol SA v. Bhatia International Ltd.*, 2014 SCC OnLine Bom 1058; *Narayan Trading Co. v. Abcom Trading (P) Ltd.*, 2012 SCC OnLine MP 8645.
16. Arbitration and Conciliation Act, 1996, S. 33(1)(a).
17. Arbitration and Conciliation Act, 1996, S. 33(1)(b).
18. Arbitration and Conciliation Act, 1996, S. 33(2).
19. Arbitration and Conciliation Act, 1996, S. 33(3).
20. Arbitration and Conciliation Act, 1996, S. 33(4).
21. Arbitration and Conciliation Act, 1996, S. 34 read with S. 36.
22. *Rendezvous Sports World v. BCCI*, 2016 SCC OnLine Bom 6064.
23. Arbitration and Conciliation Act, 1996, S. 36(1).
24. *Sundaram Finance Ltd. v. Abdul Samad*, (2018) 3 SCC 622.
25. *Jaycee Housing (P) Ltd. v. High Court of Orissa*, (2023) 1 SCC 549.
26. *Hindustan Construction Co. Ltd. v. Union of India*, (2020) 17 SCC 324.
27. Arbitration and Conciliation Act, 1996, S. 36(2).
28. Arbitration and Conciliation Act, 1996, Section 36(3) proviso.
29. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
30. Geneva Convention on the Execution of Foreign Arbitral Awards, 1927.
31. Australia; Austria; Belgium; Botswana; Bulgaria; Canada, Central African Republic; Chile; China (including Hong Kong and Macau); Cuba; Czechoslovak Socialist Republic; Denmark; Ecuador; Federal Republic of Germany; Finland; France; German Democratic Republic; Ghana; Greece; Hungary; Italy; Japan; Kuwait; Mauritius, Malagasy Republic; Malaysia; Mexico; Morocco; Nigeria; Norway; Philippines; Poland; Republic of Korea; Romania; Russia; San Marino; Singapore; Spain; Sweden; Switzerland; Syrian Arab Republic; Thailand; The Arab Republic of Egypt; The Netherlands; Trinidad and Tobago; Tunisia; United Kingdom; United Republic of Tanzania and United States of America.
32. Arbitration and Conciliation Act, 1996, S. 34.
33. Arbitration and Conciliation Act, 1996, S. 48.
34. Arbitration and Conciliation Act, 1996, Ss. 34(2)(a)(i) and 48(1)(a).

35. Arbitration and Conciliation Act, 1996, S. 34(2)(a)(ii).
36. Arbitration and Conciliation Act, 1996, Ss. 34(2)(a)(iii) and 48(1)(b).
37. Arbitration and Conciliation Act, 1996, S. 34(2)(a)(iv).
38. Arbitration and Conciliation Act, 1996, Ss. 34(2)(a)(iv) and 48(1)(c).
39. Arbitration and Conciliation Act, 1996, Ss. 34(2)(a)(v) and 48(1)(d).
40. Arbitration and Conciliation Act, 1996, Ss. 34(2)(b)(i) and 48(2).
41. *Vijay Karia v. Prysmian Cavi E Sistemi Srl*, (2020) 11 SCC 1; and *Ssangyong Engg. and Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131; *Associate Builders v. DDA*, (2015) 3 SCC 49.
42. Arbitration and Conciliation Act, 1996, Ss. 34(2)(b)(ii) and 34(2-A).
43. Arbitration and Conciliation Act, 1996, S. 48(3).
44. *PEC Ltd. v. Austbulk Shipping Sdn. Bhd.*, (2019) 11 SCC 620.
45. *Umesh Goel v. H.P. Coop. Group Housing Society Ltd.*, (2016) 11 SCC 313.
46. *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418 followed in *Pradeep Mehra v. Harijivan J. Jethwa*, 2023 SCC OnLine SC 1395.
47. *Chopra Fabricators & Manufacturers (P) Ltd. v. Bharat Pumps & Compressors Ltd.*, (2023) 2 SCC 481.
48. *Chopra Fabricators case*, (2023) 2 SCC 481. The relevant para containing the statistics reads as:
 2. *The statement, so placed before this Court, shows a very sorry state of affairs insofar as the disputes under the 1940 Act and under the 1996 Act are concerned. From the statement it appears that, 30,154 execution petitions are pending with various District Courts/regular courts in the State of U.P. and the oldest one is of the year 1981. Similarly, in the commercial courts, in the State of Uttar Pradesh, 13,367 execution petitions/applications are reported to be pending and the oldest one seems to be of the year 2002.*