

**Foreign Award Enforcement:** Section 48 Of The Arbitration Act Cannot Be Used To Re-Litigate Issues Decided At The Seat; Supreme Court Invokes Transnational Issue Estoppel

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## Introduction

In ***Nagaraj V. Mylandla vs. PI Opportunities Fund-I*** [2026 INSC 298], the Supreme Court considered a recurring problem in foreign award enforcement: whether an award debtor, after unsuccessfully challenging an award before the court at the seat, can resist enforcement in India by re-framing the same objections as questions of Indian public policy.

The Supreme Court answered that question with considerable clarity. It held that Section 48 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**" / "**the Act**") cannot be invoked as a second forum to re-litigate factual or contractual issues already decided by the seat court. In doing so, the Supreme Court recognised and applied the *doctrine of transnational issue estoppel* in the context of enforcement of foreign awards.

The judgment is significant not merely because it reinforces India's pro-enforcement approach. That proposition was already well settled in ***Renusagar Power Co. Ltd. vs. General Electric Co.*** [1993 INSC 342], ***Shri Lal Mahal Ltd. vs. Progetto Grano SPA*** [(2014) 2 SCC 433], and ***Vijay Karia vs. Prysmian Cavi E Sistemi SRL*** [(2020) 11 SCC 1]. Its real contribution lies in explaining how an enforcement court should treat issues which have already been tested before the supervisory court at the seat.

The Supreme Court does not say that every decision of the seat court binds the Indian enforcement court in all circumstances. Instead, it draws an important line between issues that are forum-neutral and issues that are forum-connected. Forum-neutral issues, once decided by the seat court, ordinarily cannot be reopened in India. Forum-connected issues, especially those involving the mandatory law or public policy of India, remain within the jurisdiction of the Indian enforcement court.

## Brief Facts

The dispute arose out of a Share Acquisition and Shareholders Agreement dated 10 October 2014 concerning Financial Software and Systems Private Limited (FSSPL). The investors, namely PI Opportunities Fund-I, Millennia FVCI Limited, and NYLIM Jacob Ballas entities, had acquired a substantial shareholding in FSSPL. The agreement was governed by Indian law and provided for arbitration seated in Singapore under the SIAC Rules.

Clause 19 of the agreement contained an exit mechanism for the investors. If a Qualified Initial Public Offering (QIPO) did not occur by 31 March 2016, the investors were entitled to require FSSPL and its promoters, the Mylandlas, to procure a secondary sale of their shares at the agreed exit price. If that route failed, the agreement contemplated other exit mechanisms, including buy-back, investor-led IPO, and strategic sale upon material breach.

The QIPO did not take place. The investors invoked their exit rights. After repeated attempts to secure an exit failed, the investors issued notices alleging material breach and triggered strategic sale rights. The dispute was referred to arbitration in Singapore.

The arbitral tribunal awarded damages to the investors at the contractual exit price as on 18 September 2020. It also directed that, upon payment of damages, the investors would cooperate in surrendering their shares.

In case the awarded damages were not paid within 90 days, the investors were permitted to proceed with a strategic sale. The tribunal further clarified that the investors were not being granted inconsistent remedies. Once damages were paid, the termination of promoter rights would be triggered. Thus, strategic sale would remain only as a fallback remedy in the event of non-payment.

The Mylandlas challenged the award before the Singapore High Court. Their principal objections were that the investors had waived their secondary sale rights and that the award, by directing surrender of shares against payment of damages, effectively resulted in an impermissible buy-back under Indian law. The Singapore High Court rejected these objections.

The investors then sought enforcement of the award before the Madras High Court under Sections 47 to 49 of the Arbitration Act. The Mylandlas resisted enforcement under Section 48 of the Act, contending that the award violated Indian public policy. The Madras High Court rejected the objections, declared the award enforceable, and imposed costs. The matter then reached the Supreme Court.

### **Issues before the Supreme Court**

The Supreme Court was principally required to consider whether the enforcement of the award under Section 48(2)(b) of the Act could be resisted on the ground that it violated Indian public policy.

The objections before the Supreme Court were broadly threefold. *First*, the Mylandlas contended that the award amounted to a buy-back of shares in contravention of the Companies Act, 2013. *Secondly*, they argued that the tribunal had granted inconsistent remedies by permitting strategic sale while also

dealing with termination of promoter rights. *Thirdly*, they contended that the strategic sale relief violated the Specific Relief Act, 1963.

Underlying these objections was a more important procedural and doctrinal question: could the Mylandlas raise, at the Indian enforcement stage, issues that had either been raised before the Singapore High Court or properly could have been raised there?

### **Transnational Issue Estoppel and Section 48 of the Arbitration Act**

The Supreme Court recognised that transnational issue estoppel had not previously received detailed treatment from the Supreme Court in the context of foreign award enforcement. It therefore considered comparative authorities, including *Good Challenger Navegante S.A. vs. Metalexportimport S.A.* [2003] EWCA Civ 1668, *Diag Human SE vs. Czech Republic* [2017] EWHC 1639 (Comm), *TermoRio S.A. v. Electranta S.P.* [487 F.3d 928 (D.C. Cir. 2007)], and *Republic of India v. Deutsche Telekom AG* [2023] SGCA (I) 10.

The Supreme Court accepted the core requirements for transnational issue estoppel: there must be a final and conclusive decision on the merits, rendered by a court of competent jurisdiction, between the same parties, and on the same issue.

The analytical strength of the judgment lies in its adoption of the forum-connected and forum-neutral distinction, drawn from *Sacofa Sdn Bhd vs. Super Sea Cable Networks* [2024] SGHC 54. A forum-connected issue is one which depends on the law, public policy, or mandatory legal standards of the enforcement forum. Such an issue must be decided by the enforcement court. A forum-neutral issue is one which does not depend on the peculiar law or policy of the enforcement jurisdiction. These may include factual findings, contractual characterisation, compliance with agreed procedure, or questions that have already been examined by the court at the seat.

This distinction is important because public policy objections under Section 48 of the Act often contain both elements. An objection may be described as one of Indian public policy, but its substance may merely be a request to revisit a factual or contractual conclusion already rejected elsewhere.

### **The Buy-back Objection**

The Mylandlas argued that the award required payment of damages in exchange for surrender of shares, and that this amounted, in substance, to a buy-back contrary to Sections 66 to 68 of the Companies Act, 2013. On that basis, they contended that enforcement would violate the fundamental policy of Indian law.

The Supreme Court rejected the objection on two levels.

*First*, on the facts, the Supreme Court held that there was no buy-back by FSSPL and no reduction of share capital. The award did not specify that the shares were to be surrendered to FSSPL. If the Mylandlas paid the awarded amount, the shares could be surrendered to them, which would increase their shareholding rather than amount to a buy-back by the company.

*Secondly*, and more importantly, the Supreme Court held that the issue had already been considered by the Singapore High Court. Once the seat court had held that the award did not amount to an impermissible buy-back, the Mylandlas could not reopen that factual and contractual determination in India by giving it a public policy label.

This part of the judgment is particularly important. The Supreme Court did not hold that Indian company law could never be relevant at the enforcement stage. If the seat court had held that the award did amount to a buy-back but nevertheless declined to interfere, the Indian enforcement court may still have had to consider whether enforcement would violate Indian public policy. However, where the finding itself was that there was no buy-back, the Indian court was not required to conduct a merits-based re-evaluation of that conclusion.

## Specific Relief Objection

The Mylandlas also contended that the award violated the Specific Relief Act, 1963 because the tribunal had awarded damages and also permitted strategic sale. The Supreme Court rejected this contention as well.

The Supreme Court observed that the strategic sale was not a simultaneous double recovery. It was a fallback mechanism, available only if the damages were not paid within the stipulated period. Further, the tribunal had not found the investors to be in breach of an essential term that would disentitle them to specific performance.

## Why the Judgment Matters

The decision is significant for three reasons.

*Firstly*, it clarifies that the seat court has supervisory jurisdiction over the arbitral process. The enforcement court does not sit in appeal over the award or over the seat court's refusal to set it aside. Section 48 of the Act allows refusal of enforcement only on limited grounds, and those grounds cannot be expanded by strategic drafting.

*Secondly*, the judgment discourages serial resistance to foreign awards. Award debtors frequently challenge an award at the seat and, upon failure, attempt a

second challenge at the enforcement stage. The Supreme Court makes clear that this strategy will not succeed where the second challenge merely repackages settled issues.

*Thirdly*, the judgment is careful not to overstate the doctrine of transnational issue estoppel. The doctrine is not blind deference to a foreign court. Indian courts retain authority to decide genuine Indian public policy objections. The important discipline introduced by the judgment is that courts must ask whether the objection genuinely engages Indian public policy or merely seeks to reopen a forum-neutral issue.

## Conclusion

The Supreme Court's decision in ***Nagaraj V. Mylandla (supra)* [2026 INSC 298]** is an important development in Indian foreign award enforcement jurisprudence. It affirms the narrow scope of Section 48 of the Act, strengthens the finality of seat-court determinations, and introduces a structured use of transnational issue estoppel. The decision will be particularly relevant in complex cross-border disputes where the award is challenged at the seat and later resisted in India. It signals that Indian enforcement courts will protect genuine public policy concerns, but will not permit factual and contractual issues to be relitigated under the guise of public policy.

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