DAILY JUS

Enforcement of a Foreign Arbitral Award: Indian Supreme Court Invokes Transnational Issue Estoppel to Bar Merits Relitigation at Enforcement Stage

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Introduction

Enforcement of foreign awards often presents a familiar tactical problem. An award debtor may challenge the award at the seat, lose, and then resist enforcement in another jurisdiction by repackaging the same objections as matters of '*public policy*'.

The Supreme Court of India has now addressed that problem in ***Nagaraj v. Mylandla v. PI Opportunities Fund-I*** [2026 INSC 298], dismissing a challenge to the enforcement of a Singapore-seated SIAC (Singapore International Arbitration Centre) award and engaging, for the first time at Supreme Court level, with the doctrine of *transnational issue estoppel* under the Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**").

The judgment is important for three reasons. *First*, it provides Indian enforcement courts with a tool to prevent repeated challenges to foreign awards. *Secondly*, it clarifies that Section 48 of the Arbitration Act cannot be used to reopen factual or contractual findings already considered by the seat court. *Thirdly*, it preserves a narrow but important space for genuine Indian public policy-related objections.

Section 48 of the Arbitration Act bars a merits review at the enforcement stage. Transnational issue estoppel adds another layer of discipline by holding that where the seat court has finally decided a factual, contractual, or otherwise forum-neutral issue between the same parties, the Indian enforcement court will not reopen that issue merely because it is recast in the language of public policy. Genuine Indian public policy objections, however, remain for the Indian court to decide.

The Statutory Context

India is a party to the New York Convention (1958). Foreign arbitral awards are enforced under Part II of the Arbitration Act. Sections 47 to 49 set out the framework, and Section 48 contains the limited grounds on which enforcement may be refused. Once no Section 48 ground is made out, the award is deemed a decree of the court under Section 49.

The principal substantive objection routinely invoked by award debtors is the ground of public policy under Section 48(2)(b). Following the 2015 amendment, the statute confines "public policy of India" to three categories:

- fraud or corruption;
- contravention of the fundamental policy of Indian law; and
- conflict with the most basic notions of morality or justice.

The statute also makes clear that, in considering whether an award violates the fundamental policy of Indian law, the enforcement court cannot review the merits. This statutory design reflects India's pro-enforcement approach.

A catena of judicial decisions in *Renusagar Power Co. Ltd. v. General Electric Co.* [1993 INSC 342], *Shri Lal Mahal Ltd. v. Progetto Grano SPA* [(2014) 2 SCC 433], *Ssangyong Engineering and*

Construction Co. Ltd. v. NHAI [(2019) 15 SCC 131], and *Vijay Karia v. Prysmian Cavi E Sistemi SRL* [(2020) 11 SCC 1] also form part of that settled line of pro-enforcement jurisprudence.

Nagaraj Mylandla addresses a more specific question: what happens when the same issue has already been raised, considered and rejected by the court at the seat?

Underlying Facts

Financial Software and Systems Private Limited ("**FSSPL**") is an Indian digital payments company with two business divisions, CashTech and PayTech. The petitioner is one of the promoters of FSSPL. In 2014, three investors, PI Opportunities Fund-I, Millenna FVCI Limited, and the NYLIM Jacob Ballas, acquired a combined 51.76% shareholding of FSSPL through a Share Acquisition and Shareholders Agreement ("**SASHA**"). The agreement was governed by Indian law, with Singapore as the seat of arbitration under the SIAC Arbitration Rules.

Clause 19 of SASHA set out an "*exit waterfall*" for the investors. If a Qualified IPO ("**QIPO**") did not occur by 31 March 2016, the investors could first require FSSPL and its promoters, the Mylandlas, to procure a secondary sale of their shares at the agreed "exit price". If that did not materialise, the agreement contemplated other exit routes, including buy-back, an investor-led IPO, and, upon a material breach, a strategic sale.

The QIPO did not materialise. After repeated unsuccessful attempts to provide an exit, the investors issued notices on 11 April 2022, invoking material breach, terminating the promoters' rights, and triggering a strategic sale. The Mylandlas denied the notices, and arbitration followed.

The three-member tribunal, which included senior counsel familiar with Indian law, awarded damages to the investors at the contractual exit price as on 18 September 2020 (the date the secondary sale notice was originally issued), and directed that, upon payment of damages, the investors would surrender their shares. If damages were not paid within 90 days, the investors could proceed with a strategic sale. The tribunal later clarified, by its correction order dated 22 August 2024, that the investors were not being granted all remedies at once. Once damages were awarded, the remedy of termination of promoter rights fell away. Strategic sale remained only as a fallback if the damages were not paid.

The Mylandlas challenged the award before the Singapore High Court on two grounds. *First*, they argued that the investors had waived their right to a secondary sale by participating in a proposed split sale process. *Second*, they argued that the award, by granting damages against surrender of shares, effectively required an impermissible buy-back under Indian company law.

The Singapore High Court rejected both objections on 21 February 2025. Although the order was appealable, Mylandlas did not appeal to the Singapore Court of Appeal.

The investors then sought enforcement before the Madras High Court. Mylandlas, countering enforcement, argued that enforcement would violate Indian public policy on three grounds: (i) that the surrender of shares was, in substance, an impermissible buy-back; (ii) that the award wrongly permitted inconsistent remedies (strategic sale combined with termination of promoter rights); and (iii) that the strategic sale relief violated the provisions under the Specific Relief Act, 1963. The Madras High Court, in its decision, declared the award enforceable and imposed costs on the Mylandlas. Ultimately, the Supreme Court also rejected each objection, dismissed the

petitions, and imposed further costs payable to each investor.

Question before the Supreme Court

The Supreme Court was called upon to decide whether an award debtor, having unsuccessfully challenged a foreign award before the seat court, could raise the same factual or contractual issues before the Indian enforcement court under Section 48(2)(b) by framing them as objections based on Indian public policy.

Supreme Court's Recognition of Transnational Issue Estoppel

The Supreme Court recognised that Indian law had not previously developed a Supreme Court-level treatment of the doctrine in relation to foreign award enforcement, and drew on common law and comparative arbitration jurisprudence, including *Good Challenger Navegante S.A. v. Metalexportimport S.A.* [2003] EWCA Civ 1668, *Diag Human SE v. Czech Republic* [2017] EWHC 1639 (Comm), the US Court of Appeals decision in *TermoRio S.A. v. Electranta S.P.* [487 F.3d 928 (D.C. Cir. 2007], and the Singapore Court of Appeal's decision in *Republic of India v. Deutsche Telekom AG* [2023] SGCA (I) 10.

Drawing on the above decisions, the Supreme Court accepted the basic requirements for invoking the principle of transnational issue estoppel: (i) a final and conclusive decision on the merits, (ii) by a court of competent jurisdiction, (iii) between the same parties, and (iv) on the same issue.

Forum-Connected and Forum-Neutral Issues

The judgment's most operationally useful contribution is the distinction it draws between forum-connected and forum-neutral issues, taken from the Singapore High Court's decision in *Sacofa Sdn Bhd v. Super Sea Cable Networks* [2024] SGHC 54.

Forum-connected issues are those that the enforcement court must decide for itself because they depend on the law, public policy, or mandatory legal standards of the enforcement jurisdiction. Forum-neutral issues, by contrast, do not require the enforcement court to apply its own mandatory legal policy. They may include compliance with the agreed arbitral procedure, whether the tribunal exceeded its jurisdiction, or factual and contractual characterisations that have already been examined by the seat court. Forum-neutral issues, once decided by the seat court, are the natural domain of transnational issue estoppel. Forum-connected issues, particularly those engaging the public policy of the enforcement forum, are not. This is the line that determines which objections posed under Section 48 of the Arbitration Act survive seat-court findings and which do not.

Limits on the Doctrine

The Supreme Court also adopted, by reference to *Republic of India v. Deutsche Telekom AG* [2023] SGCA (I) 10 and *Merck Sharp & Dohme Corp v. Merck KGaA* [2021] 1 SLR 1102, important limits on transnational issue estoppel. Estoppel will not apply to: (i) questions that the enforcement court must decide for itself under its own law, (ii) where the foreign judgment is territorially limited, (iii) where fairness requires caution because the party resisting estoppel did not choose the foreign forum, or (iv) where recognising the foreign decision would conflict with the enforcement court's public policy. Put simply, the doctrine is not blind deference to the seat court.

Public Policy Cannot Be Used to Reopen Facts

The Supreme Court's application of the doctrine is best seen in its treatment of the buy-back objection. The award debtors argued that the award required the investors to surrender shares against payment of damages and that this amounted, in substance, to a buy-back in violation of the Companies Act, 2013, and therefore contrary to the fundamental policy of Indian law. The Singapore High Court had already considered the substance of the objection and rejected it, holding that the award did not operate as an impermissible buy-back. The Supreme Court held that this finding could not be reopened in India by giving the same point a public policy label.

The reasoning is important. If the seat court had held that the transaction was a buy-back but had nevertheless declined to grant relief, the Indian enforcement court might still have had to consider whether enforcement would violate Indian public policy. But where the seat court had already held that there was no buy-back, the award debtor could not invite the Indian court to revisit that factual and contractual finding.

Contractual Interpretation Is Not Fundamental Policy

The Supreme Court adopted the same approach to the objection based on election of remedies. The award debtors argued that the investors had impermissibly invoked both termination of promoter rights and strategic sale. The Supreme Court treated this as an issue of contractual interpretation. The tribunal had considered the relevant clauses, and the correction order had clarified that, once damages were awarded, the termination remedy fell away. Strategic sale survived only as a fallback if damages were not paid within 90 days. That conclusion was held to not to be open to merits review under Section 48 of the Arbitration Act.

Why the Judgment Matters

The judgment carefully calibrates the relationship between the seat court and the enforcement court. The seat court has primary supervisory jurisdiction over the award. All issues raised and rejected at the seat cannot be reopened simply because enforcement is later sought in another jurisdiction. The enforcement court does not supervise the arbitration but decides whether

enforcement should be refused on the limited grounds set out in Section 48 of the Arbitration Act.

For practitioners, the implications are straightforward. Award debtors should make their best case at the seat, including availing available appellate remedies. Similarly, award debtors should also separate genuine Indian public policy objections from factual or contractual issues already decided at the seat.

ABOUT THE AUTHORS

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