

Enforcement of Arbitral Award

A jurisdiction's credibility as an arbitration friendly one rests primarily on the efficiency and efficacy of its award enforcement regime. An arbitral award will be enforced almost always like a decree is enforced, except if stated otherwise.

Before January 1996, the law of enforcement of arbitration awards in India was stretched between three enactments. Enforcement of domestic awards was dealt with under a 1940 Act¹. Enforcement of foreign awards was divided between two statutes-a 1937 Act² to give effect to Geneva Convention³ awards and a 1961 Act to give effect to the New York Convention awards. As the Geneva Convention became virtually otiose (by reason of Article VII of the New York Convention) enforcement of foreign awards, for all practical purposes, was under the 1961 Act and for domestic awards was under the 1940 Act. The enforcement regime between these two statutes was however quite distinct. The 1961 Act confined challenge to an arbitral award only on the limited grounds permitted under the New York Convention. The scope of challenge to domestic awards under the 1940 Act was much wider. This Act permitted judicial scrutiny *inter alia* on the ground that the arbitrator had "misconducted" himself or the proceedings - an expression which came to be widely interpreted and awards were interfered with *inter alia* on the ground of fundamental errors of law apparent on the face of the record.

In January 1996, India enacted a new Arbitration Act called the Arbitration and Conciliation Act 1996 ("1996 Act"). This Act repealed all the three previous statutes (the 1937 Act, the 1961 Act and the 1940 Act). Any arbitration conducted in India or enforcement of award there under (whether domestic or international) is governed by Part I while enforcement of any foreign award to which the New York Convention or the Geneva Convention applies, is governed by Part II of the Act.

Steps for Enforcement

One of the declared objectives of the 1996 Act is that every final award: 'is enforced in the same manner as if it were a decree of the Court'. Hence the scheme of the Act is that it is up to the losing party to object to the award and petition the court for setting it aside. The winning party has to make no procedural move. If the objections to the

¹ the Arbitration Act, 1940 (No 10 of 1940)

² the Arbitration (Protocol & Convention) Act 1937 (No 6 of 1937)

³ the Convention on the Execution of Foreign Arbitral Awards (Geneva, 26 September 1927) ('the Geneva Convention'). India became a signatory to this Convention on 23 October 1937 (one amongst six Asian nations to become a signatory).

award are not sustained (or if there are no objections within the time allowed) the award itself becomes enforceable as if it were a decree of the Court.

Execution is an enforcement of award passed by an arbitrator which is a deemed decree under Section 36 of the 1996 Act. It is a judicial process which enables the decree-holder to realize the fruits of the decree based on award. Order 21 of Civil Procedure Court (CPC) makes detailed provisions for making an application for execution and how they are to be entertained and decided. Order 21 is the longest order in the whole CPC schedule. It consists of 103 rules.

Execution against the person or judgment debtor is made by arresting and detaining him in jail. Execution against the property of judgment debtor is made by attaching and selling his property and paying the decree holder the amount of the judgment debt out of the sale proceeds. There are certain statutory limitations as execution against the person and against the property.

(i) Competent court to enforce award:

Execution petition for the decree is to be filed in the same court which is the competent court under Section 34. In all cases, decree for execution is to be filed only in the court that fulfills the requirement of Section 2(1) (e) also. Some doubts exist about the competent court in which the application for execution is to be filed. The Karnataka High Court had held that the courts that can exercise the power under Section 34 can alone take steps to enforce the award.

(ii) Stamping requirements:

The Arbitration Act does not talk of stamping of an award. However stamping is required under the provisions of the Indian Stamp Act, 1899. Section 35 of the said Act states the documents which are required to be stamped, if inadequately stamped (or not stamped) will not be admissible in evidence "for any purpose". Further they are liable to be impounded and subjected to penal duties. Though the Indian Stamp Act is a Central Legislation, various States have prescribed their own schedule of applicable stamp duties. Hence stamp duties vary from State to State.

(iii) Application for Execution of Award

Order 21, Rule 10 of CPC provides for an application for execution of decree. Where the holder of an arbitration award (deemed decree) desires to execute it, he has to apply to the competent court or to the officer (if any) appointed in this behalf , or if the

decree has been sent under the provisions hereinabove contained to another court, then to such court or to the proper officer thereof.

All proceedings for execution of award are commenced by an application for execution under Rule 10, Order 21 of CPC. The application for execution should be in writing and should contain the particulars set forth in Rule 11(2) to 14 of Order 21 of CPC.

The application for execution to the transferee court must be made within three years of the order of transfer.⁴ Where a decree directs the ascertainment of the identity of a property and the mesne profits, an application for such ascertainment is one for a final decree, and not one for execution of a decree.⁵

⁴ AIR 1972 Guj 179, p 184.

⁵ 1972 Ker LR 226 (DB).