

Enforcing Monetary Awards in India: Navigating Forex Rates and Dates

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With cross-border dispute resolution on the rise, currency variations and exchange rate fluctuations remain a concern in enforcement of foreign awards and decrees. It is not unusual for courts and arbitral tribunals to render judgments and awards in a foreign currency,[fn]For example, Section 48(4) of the UK Arbitration Act 1996 provides that: “*The tribunal may order the payment of a sum of money, in any currency*”.[/fn] which is required to be enforced in India in Indian rupees (“INR”). Consequent to fluctuations in currency rates the actual amount payable to the award-holder in INR, remains speculative, even after the arbitral award has been rendered. The Indian award debtor would prefer a conversion date on which the rupee is stronger and the inverse would be true for the foreign currency award holder. Thus, myriad dates come up for consideration before the executing court for determining the most suitable date for currency conversion rate.

What aren't the “relevant dates” for conversion

In the landmark case of *Forasol v. Oil and Natural Gas Commission*, 1984 Supp SCC 263, the Supreme Court examined and rejected the prospect of considering the following dates as the “relevant date” for conversion:

Date when the claim amount became due and payable:

This date does not effectively reinstate the claimant in the same position he would have been if the respondent had discharged his obligations when he should have, *i.e.* when the claim became due and payable. Owing to currency fluctuations, there would be a difference between the exchange rates as on date on which the amount is paid and the amount became payable. Thus, the parties are exposed to unforeseeable changes in the international monetary market.

Date of commencement of action or proceedings:

This date is marred with issues such as delay tactics by the opposite parties or prolonged litigations in court. At times, extended proceedings such reviews, appeals, revisions etc. render dispute resolution a perennial affair. This leaves parties in an uncertain and precarious position as to the actual recovery of the amounts awarded in favour of the claimant.

Date of award

In case of foreign arbitral awards, which are deemed decrees,[fn]*Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (2001) 6 SCC 356; *Vitol S.A v. Bhatia International Limited* 2014 SCC OnLine Bom 1058; *Narayan Trading Co. v. Abcom Trading Pvt. Ltd.*, 2012 SCC OnLine MP 8645.[/fn] the date of the award may be considered as the “relevant date” for conversion of currency. Specifically speaking, where the court is satisfied that the foreign award is enforceable under the Arbitration and Conciliation Act 1996 (“Arbitration Act”), the award shall be deemed to be a decree of that court.[fn]Arbitration and Conciliation Act 1996, s 49.[/fn] Similarly, domestic awards are executable as a decree of the court where the time for making an application to set aside the arbitral award has expired, or such application having been made, it has been refused.[fn]Arbitration and Conciliation Act 1996, s 36.[/fn]

However, the choice of date of decree as the “relevant date” is ridden with issues such as challenges or objections to the award itself or appeals against subsequent orders from court.

Date of payment:

The date of payment of the decretal amount is also flecked with additional concerns. The “date of payment” may not be a practical option as the award holder would have to specify the rupee equivalent of its claim at the time of filing the execution petition since, execution must issue for a specific sum expressed in Indian currency “due upon the decree”. [fn]Code of Civil Procedure 1908, Order XXI Rule 11(2); *Forasol v. Oil and Natural Gas Commission* 1984 Supp SCC 263.[/fn] This serves the purpose of satisfying the court that the claim falls within the pecuniary limit of the court’s jurisdiction.

Conclusion: What is the “relevant date” for conversion

An ideal scenario would be where the award [fn]*Forasol v. Oil and Natural Gas Commission* 1984 Supp SCC 263.[/fn] or the underlying contract [fn]*Meenakshi Saxena & Anr. v. ECGC Ltd. (Formerly known as Export Credit Guarantee Corporation of India Ltd.) and Anr.* Civil Appeal No.5681/2018 (Arising out of SLP (C) No. 6286 of 2017).[/fn] explicitly states the date to be considered for the purposes of the forex rate. In these scenarios, the executing court would be bound to follow such a date.

In absence of such ideal situations, the courts have determined the following dates as the relevant dates for conversion:

Relevant date of conversion for enforcement of foreign awards

Under the pre-Arbitration Act regime

For enforcing awards under the erstwhile Foreign Awards (Recognition and Enforcement) Act, 1961, on being satisfied that the foreign award is enforceable, the award was required to be filed for pronouncement of a judgement according to the award, which would be followed by a decree. The date of such decree would be the relevant date for considering the forex rate.

Under the Arbitration Act

Under the extant Arbitration Act, the effective date for considering the exchange rate is the date of rejection of objections to the enforcement of the foreign award, or when all the remedies (including appeals, revision petitions, etc.) against enforcement of the foreign award were exhausted.[fn]*Fuerst Day Lawson Limited v. Jindal Exports Limited; Progetto Grano S.P.A. v. Shri Lal Mahal Limited; DLF Universal Limited & Ors. v. Koncar Generators and Motors Limited* (2018) 190 PLR 398.[/fn]

Relevant date of conversion for enforcement of domestic awards

Under the pre-Arbitration Act regime

For enforcing awards under the erstwhile Arbitration and Conciliation Act 1940, a suit was required to be filed for obtaining a decree for enforcement of the award. The date of the resultant decree passed in terms of the award, would govern the rate of exchange adopted for conversion.[fn] *Forasol v. Oil and Natural Gas Commission* 1984 Supp SCC 263.[/fn] Thus, the date of conversion would be the date when the award attained finality.[fn] *Renusagar v General Electric* AIR 1994 SC 860.[/fn]

Under the Arbitration Act

Awards rendered in India would be enforced after refusal of applications for challenging the award[fn] Arbitration and Conciliation Act 1996, s 34.[/fn] or upon expiry of the time for making such applications to set aside the arbitral award.[fn] Arbitration and Conciliation Act 1996, s 36.[/fn]

In a recent judgment, the Delhi High Court steered through the following dates:[fn] *Trammo AG v. MMTC Limited* (Ex. P. 164/2015 and Ex. Appl. (OS) 1229/2015, decided on 18 February 2019).[/fn]

1. Date of award, *i.e.*, date when the award was quantified in terms of Indian currency for payment of stamp duty
2. Date of disposal of the petition challenging the domestic award by the Single Judge of the High Court
3. Date of disposal of the appeal against the order of the Single Judge by the Division Bench of the High Court
4. Date of disposal of the special leave petition filed against the order of the Division Bench, by the Supreme Court of India
5. Date of disposal of the review petition filed against the order of the Supreme Court.

In doing so and applying the principles of “date of finality” of award, the Delhi High Court observed that an award becomes an executable decree immediately upon the dismissal of the challenge to the award. Thus, the date of dismissal of the challenge application would be the relevant date for consideration of the forex rate.

However, in the event of the subsequent appeals or review petitions, the relevant date would be one when the challenge to the award was finally dismissed, *i.e.* the date on which the award attained finality. This follows from the “doctrine of merger”, which is applicable where an appeal or revision against an order passed by a subordinate forum is modified, reversed or affirmed by a superior forum – on appeal/revision. Under the “doctrine of merger”, the decision by a subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement under law.[fn] *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359.[/fn]