



UAE judgments find their way to execution in India

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Dispute Resolution analysis: Shweta Sahu of Nishith Desai Associates reflects on a recent notification that the United Arab Emirates (UAE) is to be a ‘reciprocating territory’ for the purposes of section 44A of the Indian Code of Civil Procedure 1908 (CPC), paving the way for easier enforcement of UAE judgments in India.

What is the background to this development?

According to [official records](#), the UAE has invested over US\$ 5bn in India through FDI (Foreign Direct Investment) and FII (Foreign Institutional Investors) routes which makes UAE one of the top investors in India—India is also a third largest investor in UAE. As per an [estimate published by the Indian Embassy](#), there has been a growth of 20.09% in India-UAE trade in 2018–19.

Such steep rise in the number of cross-border transactions between India and UAE has also resulted in a proportionate rise in commercial disputes. This has further necessitated efficient methods of dispute resolution, and enforcement of consequent decrees in both the countries. Therefore, in the absence of an effective enforcement mechanism, securing a judgment from courts may only be a battle half won.

Execution of foreign judgments in India—a summary

The procedure for enforcement of foreign judgments in India primarily depends on the reciprocal arrangements between India and the country where the judgment was delivered, ie whether such country is a reciprocating country under CPC, s 44A or not.

A decree of any of the superior courts of any reciprocating territory may be executed in India as if it had been passed by such court. The CPC further defines ‘reciprocating territory’ as any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory—and ‘superior Courts’, with reference to any such territory, refers to such courts as may be specified in the said notification (Explanation 1 to CPC, s 44A).

However, in case of judgments from non-reciprocating territories, a fresh suit would have to be filed before the relevant court in India, based on the foreign judgment or the original cause of action, or both. The consequent decree obtained in India, would thereafter be executed (see, *Marine Geotechnics LLC v Coastal Marine Construction & Engineering Ltd* (2014) 3 AIR Bom R 193 (not reported by LexisNexis® UK)).

Status of the UAE—pre-notification

On 25 October 1999, India and UAE entered into the ‘Agreement on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgements and Arbitral Awards’ (the Agreement). The Agreement was subsequently ratified on 29 May 2000. However, the details regarding designation of ‘superior courts’ in UAE were not received. Therefore, the relevant notification under CPC, s 44A had not been issued.

Without such a notification in place, judgments from the UAE courts could not be executed under CPC, s 44A, which is the only enabling provision in the CPC for executing a foreign judgment/decrees for money (see, *Super General Company v Suresh Thonikkadavu Veedu*, 2017 Online Ker 1115 (not reported by LexisNexis® UK)).

Therefore, notwithstanding the ratification of the Agreement between UAE and India since 2000, decrees from UAE courts could be executed only as decrees from non-reciprocating territories.

Interestingly, the Agreement had been incorporated into UAE law by Federal Decree No 33 of 2000, thereby according the status of a 'reciprocating territory' on India.

A detailed procedure for execution of judgments from UAE courts, in this regard, is explained in a [Guide](#) signed between Dubai International Financial Centre (DIFC) Courts and Nishith Desai Associates on 14 September 2018.

Status of the UAE—post-notification

In exercise of the powers conferred by the CPC, the Central Government issued a notification (the Notification) on 17 January 2020, declaring UAE to be a 'reciprocating territory' for the purposes of execution of judgments under CPC, s 44A. Pursuant to the Notification, the following courts in UAE were notified to be 'superior courts':

(1) Federal Courts: (a) Federal Supreme Court—(b) Federal, First Instance and Appeals Courts in the Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain and Fujairah—

(2) Local Courts: (a) Abu Dhabi Judicial Department—(b) Dubai Courts—(c) Ras Al Khaimah Judicial Department—(d) Courts of Abu Dhabi Global Markets—(e) DIFC Courts.

With the issuance of the Notification, the two-step process need not be followed, and UAE judgments would be directly executable in India as judgments from reciprocating territories. On filing a 'certified copy of decree' of any of the superior courts of UAE (as notified), such decree may be executed in India as if it had been passed by the court where such filing was made. For proceeding with the execution, the certified copy of the decree would have to be filed along with a 'certificate' from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted (CPC, s 44A).

As provided under CPC, s 13, such a judgment from UAE may operate as *res judicata* by being conclusive with respect to any matter adjudicated upon, except where:

- it has not been pronounced by a court of competent jurisdiction. While ascertaining competence of a foreign court, it has to be established that the concerned court is vested with jurisdiction in terms of its pecuniary and territorial limits, as well as rules of private international law
- it has not been given on the merits of the case
- it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable
- the proceedings in which the judgment was obtained are opposed to natural justice
- it has been obtained by fraud
- it sustains a claim founded on a breach of any law in force in India

Concluding remarks

Needless to say, the transition in the status of UAE to that of a 'reciprocating territory' is a much-awaited change, which plays a pivotal role in transforming the enforcement regime in India. Such overhaul in the applicable procedures has given way to an easier, quicker and more effective execution of judgments of UAE courts in India.

However, the status of judgments pronounced prior to the Notification remains unclear. It may be noted that the Central Government has previously indicated the retrospective or prospective nature of such notifications, eg those declaring 'reciprocating territories' for the purposes of the Arbitration and Conciliation Act 1996 (the Arbitration Act), and the notification declaring Hong Kong as a reciprocating territory under CPC, s 44A. Therefore, in the absence of an explicit clarification as to the retrospective or prospective applicability of the Notification, such judgments passed prior to the Notification, may face certain resistance on the applicability of the post-Notification procedure.

It may also be noted that the Notification is applicable to judgments pronounced by 'superior courts' of UAE and not to arbitral awards passed in arbitrations seated in UAE. In case of the latter, UAE continues to remain a 'non-reciprocating territory' for the purposes of Arbitration Act.