Enforcement of Arbitral Awards and Decrees in India

Domestic and Foreign

January 2019
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1. Introduction

The growth of international commerce has necessitated the creation of efficient methods of resolution of disputes like arbitration and enforcement of the consequent awards that determine the rights and obligations of the parties. In some situations securing an award or a final judgment from the courts may only be a battle half won; this is especially true in the Indian context.

We have come across situations where the opposite parties decide not to participate in the arbitral process or abandon it mid-way. The enforcement of these awards/judgments where the party is in absentio is sometimes more complicated than one where the opposite party has participated in the proceedings. In some situations, objections have been raised even against costs awarded by the tribunal or the jurisdiction of the tribunal or court, as the case may be. Therefore, the stage of execution of an award or decree warrants a high degree of caution.

The procedure for enforcement and execution of decrees in India is governed by the Code of Civil Procedure, 1908 ("CPC") while that of arbitral awards in India is primarily governed by the Arbitration & Conciliation Act, 1996 ("Act") as well as the CPC.

Domestic and foreign awards are enforced in the same manner as a decree of the Indian court. This is true even for consent awards obtained pursuant to a settlement between parties. However, there is a distinction in the process for enforcement of an award based on the seat of arbitration. While the enforcement and execution of an India-seated arbitral award ("domestic award") would be governed by the provisions of Part I of the Act, enforcement of foreign-seated awards ("foreign award") would be governed by the provisions of Part II of the Act.¹

A few steps that are crucial for ensuring successful enforcement of arbitral awards and execution of decrees are:

- Making effective service on opposite party/judgment debtor is crucial to prevent objections at later stage;
- Taking necessary steps by way of attachment/notice/arrest/appointment of receiver or in another manner;
- Remember that principles of natural justice apply to even execution proceedings.

¹. Part II specifically deals with foreign awards which are in consonance with the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 or Convention on the Execution of Foreign Arbitral Awards, 1927.
2. Enforcement of domestic awards

An award holder would have to wait for a period of 90 days after the receipt of the award prior to applying for enforcement and execution. During the intervening period, the award may be challenged in accordance with Section 34 of the Act. After expiry of the aforesaid period, if a court finds the award to be enforceable, at the stage of execution, there can be no further challenge as to the validity of the arbitral award.

Prior to the recent Arbitration and Conciliation (Amendment) Act, 2015 ("Amendment Act"), an application for setting aside an award would tantamount to a stay on proceedings for execution of the award. However, by virtue of the Amendment Act, a party challenging an award would have to move a separate application in order to seek a stay on the execution of an award.

I. Process for Challenge and Enforcement

2. A further period of 30 days may be granted by a court upon sufficient cause being shown for condonation of delay.
3. Enforcement of foreign awards

India is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“New York Convention”) as well as the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 (“Geneva Convention”). If a party receives a binding award from a country which is a signatory to the New York Convention or the Geneva Convention and the award is made in a territory which has been notified as a convention country by India, the award would then be enforceable in India. Out of the 196 countries in the world only 50 countries have been notified by the Central Government as reciprocating countries, with the most recent addition being Mauritius.

The enforcement of a foreign award in India is a two-stage process which is initiated by filing an execution petition. Initially, a court would determine whether the award adhered to the requirements of the Act. Once an award is found to be enforceable it may be enforced like a decree of that court. However at this stage parties would have to be mindful of the various challenges that may arise such as frivolous objections taken by the opposite party, and requirements such as filing original/authenticated copy of the award and the underlying agreement before the court.

I. Process for challenge and enforcement

Offshore

Application for Setting aside in the foreign curial court.

Period for setting aside in the curial court.

Appeal

In India

Enforcement of Award as a decree - Recognition

Appeal

3. Australia; Austria; Belgium; Botswana; Bulgaria; Central African Republic; Chile; China (including Hong Kong and Macau); Cuba; Czechoslovak Socialist Republic; Denmark; Ecuador; Federal Republic of Germany; Finland; France; German Democratic Republic; Ghana; Greece; Hungary; Italy; Japan; Kuwait; Mauritius; Malagasy Republic; Malaysia; Mexico; Morocco; Nigeria; Norway; Philippines; Poland; Republic of Korea; Romania; Russia; San Marino; Singapore; Spain; Sweden; Switzerland; Syrian Arab Republic; Thailand; The Arab Republic of Egypt; The Netherlands; Trinidad and Tobago; Tunisia; United Kingdom; United Republic of Tanzania and United States of America. India has entered into an agreement with the United Arab Emirates for Juridical and Judicial co-operation.
II. Requirements for enforcement of foreign awards

- Original award or a duly authenticated copy in the manner required by the country where it is made.
- Original agreement or duly certified copy.
- Evidence necessary to prove the award is a foreign award, wherever applicable.

Section 47 of the Act provides that the above “shall” be produced before the court, at the time of the application for enforcement of the foreign award. However, in a recent judgment, the Supreme Court of India interpreted that the word “shall” appearing in Section 47 of the Act relating to the production of the evidence as specified in the provision at the time of application has to be read as “may”. It further observed that such an interpretation would mean that a party applying for enforcement of the award need not necessarily produce before the court a document mentioned therein “at the time of the application”. Nonetheless, it further clarified that such interpretation of the word “shall” as “may” is restricted “only to the initial stage of the filing of the application and not thereafter.”

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4. *PEC Limited v. Austbulk Shipping SDN BHD* (Civil Appeal No. 4834 of 2007) decided on 14 November 2018
4. Conditions for enforcement of arbitral awards – domestic and foreign

A party may resort to the following grounds for challenging an award. Such an award would be rendered unenforceable when:

- The parties to the agreement were under some incapacity.
- The agreement in question is not in accordance with the law to which the parties have subjected it, or under the law of the country where the award was made (especially in case of foreign awards).
- There is a failure to give proper notice of appointment of arbitrator or arbitral proceedings.
- Award is *ultra vires* the agreement or submission to arbitration.
- Award contains decisions on matters beyond the scope of submission to arbitration.
- Composition of the arbitral authority or the arbitral procedure is *ultra vires* agreement.
- Composition of the arbitral authority or the arbitral procedure is not in accordance with the law of the country where the arbitration took place (in case of foreign awards).
- The award (specifically a foreign award) has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which that award was made.
- Subject matter of the dispute is not capable of settlement by arbitration under Indian law.
- Enforcement of the award would be contrary to the public policy of India.
5. Stamping and registration requirements of awards – domestic and foreign

I. Domestic Awards

- The Stamps Act 1899 provides for stamping of arbitral awards with specific stamp duties and Section 35 provides that an award which is unstamped or is insufficiently stamped is inadmissible for any purpose, which may be validated on payment of the deficiency and penalty (provided it was original). Issues relating to the stamping and registration of an award or documentation thereof, may be raised at the stage of enforcement under the Act. (M. Anasuya Devi and Anr v. M. Manik Reddy and Ors). The Supreme Court had also observed that the requirement of stamping an award and registration is within the ambit of Section 47 of the CPC and not covered by Section 34 of the Act.

- The quantum of stamp duty to be paid would vary from state to state depending on where the award is made. Currently, as per the Maharashtra Stamp Act, the stamp duty for arbitral awards stands at five hundred rupees in Maharashtra; and in case of Delhi, as per Schedule 1A to the Stamp (Delhi Amendment) Act 2001, the stamp duty is calculated at roughly 0.1% of the value of the property to which the award relates.

- Under Section 17 of the Registration Act, 1908 an award has to be compulsorily registered if it affects immoveable property, failing which, it shall be rendered invalid.

II. Foreign Awards

- As far as foreign awards are concerned, the Supreme Court of India has categorically held that a foreign award is not liable to be stamped.

- Previously, the Delhi High Court in Naval Gent Maritime Ltd v Shrivnath Rai Harnarain (I) Ltd. had observed that a foreign award would not require registration and can be enforced as a decree, and the issue of stamp duty cannot stand in the way of deciding whether the award is enforceable or not. A similar approach had been adopted by the Bombay High Court in the case of Vitol S.A v. Bhatia International Limited and the High Court of Madhya Pradesh in Narayan Trading Co. v. Abcom Trading Pvt. Ltd.

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5. (2003) 8 SCC 565
7. 174 (2009) DLT 391
8. 2014 SCC OnLine Bom 1058
9. 2012 SCC OnLine MP 8645
6. How courts examine awards

- The grounds of challenge enlisted are exhaustive and courts cannot expand the grounds for refusal of enforcement.
- Executing court cannot re-examine the award apart from satisfying itself on a superficial basis about the award.
- Executing court cannot examine the merits of the case.
- The exercise is not an “appeal” on merits against order of tribunal, but merely review.
- Accordingly, the court has to first make enquiry as to enforceability of award and secondly hold that it is enforceable and thereafter enforce it.
7. Enforcement of arbitral awards: Appropriate forum & limitation

The Supreme Court in its recent ruling in, *Sundaram Finance Ltd. v. Abdul Samad and Anr*\(^\text{10}\) clarified that an award holder can initiate execution proceedings before any court in India where assets are located. In case the subject-matter of the arbitration is of a specified value,\(^\text{11}\) commercial courts established under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015 ("Commercial Courts Act") would have jurisdiction, as given below:

I. Award arising out of an India seated arbitration (being an International Commercial Arbitration)

By virtue of the Commercial Courts Act and the Amendment Act, the Commercial Division of a High Court where assets of the opposite party lie shall have jurisdiction for applications relating to enforcement of such awards if the subject matter is money. In case of any other subject matter, Commercial Division of a High Court which would have jurisdiction as if the subject matter of the award was a subject matter of a suit shall have jurisdiction, i.e., where the opposite party resides or carries on business or personally works for gain.

II. Award arising out of an India seated arbitration (not being an International Commercial Arbitration)

As per the Commercial Courts Act and the Amendment Act, for such cases, the appropriate court would be the Commercial Court exercising such jurisdiction which would ordinarily lie before any principal Civil Court of original jurisdiction in a district, as well as the Commercial Division of a High Court in exercise of its ordinary original civil jurisdiction.

III. Foreign Awards

Where the subject matter is money, the Commercial Division of any High Court in India where assets of the opposite party lie shall have jurisdiction. In case of any other subject matter, Commercial Division of a High Court which would have jurisdiction as if the subject matter of the award was a subject matter of a suit shall have jurisdiction.

\(^{10}\) (2018) 3 SCC 622

\(^{11}\) Commercial Courts Act, s 2(1)(i), “Specified Value”, in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government"
A. Limitation period for enforcement of awards

i. Domestic awards

Since arbitral awards are deemed as decrees for the purposes of enforcement (as observed by the Supreme Court in M/s Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society, the Limitation Act 1963 applies to arbitrations. The limitation period for enforcement of such an award is twelve years.

ii. Foreign awards

Various High Courts have given varying interpretations on the limitation period within which a party may enforce an award. The Bombay High Court has observed that since a foreign award is not a decree per se and would not be binding on parties unless a competent court records it as enforceable, it would undergo a two-step process. Thus, the application for enforcement of a foreign award would fall within the residuary provision of the Schedule to the Limitation Act, that is, the limitation period would be three years. Thereafter, on recognizing the award as a decree, the limitation period for execution of such a decree would be twelve years therefrom. However, the Madras High Court held a contrary view by referring to foreign awards as deemed decrees, and the corresponding limitation period would be twelve years. It held that, “the foreign award is already stamped as a decree and the party having a foreign award can straight away apply for enforcement of it and in such circumstances, the party having a foreign award has got 12 years’ time like that of a decree holder.”

The Act provides that certain conditions (as listed above) have to be assessed prior to enforcement of a foreign award, and where the court is satisfied that the foreign award is enforceable, the award would be deemed to be a decree of that court. The Supreme Court in M/s. Fuerst Day Lawson Ltd v. Jindal Exports Ltd, held that under the Act a foreign award is already stamped as the decree. It observed that, “In one proceeding there may be different stages. In the first stage the Court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award as a rule of court/decree again.”

12. (2016) 11 SCC 313
15. The Arbitration and Conciliation Act 1996, s 49
16. 2001 (6) SCC 356
8. Enforcement of domestic decrees in India: Appropriate forum & limitation

I. Appropriate forum

On a decree being passed, execution proceedings can be initiated for enforcement of the decree. Section 36 to 74 and Order XXI of the CPC set out the provisions in respect of execution.

The person in whose favour a decree has been passed or an order capable of execution has been made is known as a “decree-holder” while the person against whom a decree has been passed or an order capable of execution has been made is known as a “judgment-debtor”.

The proceedings to execute a decree must be initiated, in the first instance, before the court which passed it. Where appropriate, such court may transfer the decree to another court for execution for various reasons including the locus of the judgment debtor or the locus of the property against which the decree is sought to be executed.18

A. Limitation Period

As per the Limitation Act 1963, the period of limitation for the execution of a decree (other than a decree granting a mandatory injunction, in which case, it is three years) is twelve years from the date of the decree. However, an application for execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

18. The Code of Civil Procedure 1908, s 39
9. Enforcement of foreign judgements in India

Section 2(6) of the CPC defines “foreign judgment” as “the judgment of a foreign Court,” which refers to a Court situated outside India and not established or continued by the authority of the Central Government.

At the time of enforcement of foreign judgments in India, two situations may arise depending on whether the foreign judgment is passed by a court in: (i). A reciprocating country; (ii). A non-reciprocating country. A party seeking enforcement of a decree of a court in a reciprocating country is required to file execution proceedings in India while in case of a decree from a non-reciprocating country, a fresh suit has to be filed before the relevant court in India. The time limit for filing a suit for enforcement for such foreign judgments is three years from such judgment being delivered.

The foreign judgment has to satisfy the conditions laid down under Section 13 of the CPC, failing which such a judgment is rendered inconclusive.

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19. “Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of Section 44A of the Civil Procedure Code. Countries or territories which have been officially recognized as “reciprocating territories” by the Central Government of India include: Aden; Bangladesh; Federation of Malaya; Fiji Colony; Hong Kong; New Zealand; Cook Islands and Western Samoa; Papua New Guinea; Republic of Singapore; Trinidad and Tobago; United Kingdom of Great Britain and Northern Ireland; and Victoria. India has entered into an agreement with the United Arab Emirates (“UAE”) for Juridical and Judicial co-operation. However, the details regarding designation of courts in UAE have not yet been received, therefore, the notification under Section 44A of the CPC in India has not been issued.
10. Procedure for enforcement of foreign judgments

The first major step towards enforcement of foreign judgments in India is, to file execution proceedings, which is done by following the procedure, as envisaged under Section 44A and Order XXI of the CPC (illustrated above).

Regarding the “court” before which an execution petition is to be filed:

- The Bombay High Court has an established view that Section 44A clearly gives jurisdiction to the Bombay High Court which, for the purposes of execution of the decree, would be considered as the District Court.  

- However, the Delhi High Court has an unsettled view. On reference to Section 5(2) of the Delhi High Courts Act 1966, notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees two crores. Thus, a Single Judge of the Delhi High Court had observed that for avoiding “unnecessary confusion...There is no legal impediment ... to approach the High Court in the first instance for execution of the decree of a value of more than Rs. 20 lakhs, as in the instant case.” However, it was set aside by the Division Bench of the Delhi High Court which observed that “the legislature has vested such ‘District Court’ the power to execute the ‘foreign decree’ as if it had been passed by itself” and not the Delhi High Court. This judgment was further appealed before the Supreme Court of India, which has granted a stay on the judgment of the Division Bench. This is now pending before the Supreme Court for final disposal.

I. Requirements for enforcement of foreign judgment

Under Section 44A of the CPC, where certified copy of decree of any of the superior courts of any reciprocating territory has been filed in a district court, the decree may be executed in India as if it had been passed by the district court. For proceeding with the execution, the certified copy of the decree shall be filed along with a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted. Such certificate shall be deemed as the conclusive proof of the extent of such satisfaction or adjustment.

II. Grounds of challenge to enforcement of foreign judgments

Section 13 of the CPC provides that a foreign judgment may operate as res judicata by being conclusive with respect to any matter adjudicated upon thereby (which does not include the reasons laid down in the foreign judgment). However, this shall not be applicable where:

a. 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.

22. Goyal MG Gases Pvt. Ltd. v. Messer Griesheim GmbH (judgment passed on 1 July 2014 in EFA (OS) 3 of 2014)
23. SLP (C) No. 22539/2014 (order dated 1 September 2014)
b. It has not been given on the merits of the case;

c. 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;

d. The proceedings in which the judgment was obtained are opposed to natural justice;

e. It has been obtained by fraud;

f. It sustains a claim founded on a breach of any law in force in India

III. Judicial Approach

Courts have been consistent of the view that a party would not be bound by the jurisdiction of a foreign court if it has not submitted to such jurisdiction of the foreign court [Raj Rajendra Sardar Maloji v. Sri Shankar Saran24; R.M.V. Vellachi Achi v. R.M.A. Ramanathan Chettiar25]. Whether a party has voluntarily submitted to the jurisdiction of the foreign court, would depend on the facts and circumstances of the concerned case, for example, if a defendant appears in the Court where the suit is instituted and questions both the jurisdiction and challenges the action on merits, he is said to have submitted to the jurisdiction voluntarily.26 Generally, as noted by the Madras High Court, the following denote instances of submission to the jurisdiction of the foreign court:

- Where the person is a subject of the foreign country in which the judgment has been obtained against him on prior occasions.

- Where he is a resident in foreign country when the action is commenced.

- Where a person selects the foreign Court as the forum for taking action in the capacity of a plaintiff, in which forum he is sued later

- Where the party on summons voluntarily appears

- Where by an agreement a person has contracted to submit himself to the forum in which the judgment is obtained.27

As had been held in International Woollen Mills v. Standard Wool (U.K.) Ltd28, a judgment shall be considered to be given on merits if some evidence (oral and/or documentary) is adduced on behalf of the plaintiffs. The Odisha High Court in Trilochan Choudhury v. Dayanidhi Patra,29 observed that a judgment, however, brief, would be enforceable if it is based on a consideration of evidence. Similarly, the Bombay High Court, in Marine Geotechnics LLC, v. Coastal Marine Construction & Engineering Ltd30 held that ex parte decrees would also be valid. Judgments which follow summary procedure or otherwise shall not be considered as judgments given on merits of the case if there has been no examination of the evidence. Further, judgments based on consent or terms of settlement are also considered valid as being given on merits of the case, as observed by the Bombay High Court in HSBC Bank USA v. Silverline Technologies Ltd AIR 2006 Bom 134. However, cases where the decree results

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24. AIR 1962 SC 1737
25. AIR 1973 Mad. 141
27. Ramanathan Chettiar v. Kalimuthu Pillai AIR 1914 Mad. 556
29. AIR 1961 Ori 136
30. (2014) 3 AIR Bom R 193
from the sheer absence of the defendant either by way of penalty or in a formal manner, the judgment may not be one based on the merits of the case.

Similarly, the Supreme Court in *R. Vishwanathan v. Rukn – Ul- Mulk Syed Abdul Wajid*, 31 observed that enforcement of a foreign judgment would be vitiated on non-observance of the judicial process, i.e. if the court rendering the judgment fails to observe the minimum requirements of natural justice. Thus, it is required that parties are given reasonable notice and adequate opportunity of presenting their respective cases. Additionally, a foreign judgment would be rendered unenforceable if the foreign court was imposed upon or tricked into giving the judgment. 32

31. AIR 1963 SC 1
11. Enforcement of foreign judgments from non-reciprocating countries

In case of a foreign judgment from a non-reciprocating country, it can be enforced only by filing a suit upon the judgment. The party is left with the option to sue on the basis of the foreign judgment or on the original cause of action in the domestic court or both. The resultant decree would thereafter be executed in India.

Where a suit on a foreign judgment is dismissed on merits, no further application shall lie for the execution of such foreign judgment as it had merged in the decree which dismissed such suit for execution. In an event a decree is passed in favour of the party filing such a suit for enforcing the foreign judgment, it may proceed to execute it.

I. Requirements for enforcement of foreign judgments from non-reciprocating territories

A certified copy of the foreign judgment would have to be filed along with the plaint. This judgment would have evidentiary value, and be certified in manner, as required under Section 86 of the Evidence Act 1872 (“Evidence Act”). Further, an additional certificate by a representative of the Central Government of India in the foreign country is required under Section 86 of the Evidence Act. The procedure stipulated under Section 86 of the Evidence Act does not exclude other modes of proof, e.g. deposition of an official as to what took place in his presence in the court of the foreign jurisdiction.

In any event, as a preliminary requirement, such foreign judgments sought to be executed in India have to satisfy the tests prescribed under Section 13 of the CPC (as stated above).

II. Procedure for execution of foreign judgments from non-reciprocating territories

A. Filing a fresh suit in the relevant court of jurisdiction in India

A suit is instituted by filing a ‘plaint’ in a manner prescribed under Orders VI and VII of the CPC in a court of competent jurisdiction, along with the payment of appropriate court fees. Under Order V of the CPC, notice is issued to the defendant summoning his appearance and directing him to file his reply within a specified date.

After the plaintiff has instituted the suit and notified the defendant, the defendant is required to file its written statement, along with a set-off or counter claim, if any, in the court within 90 days of service of the summons. This is governed by Order VIII of the CPC.

After the parties complete the pleadings in the suit, the court frames the issues under Order XIV of the CPC, which is followed by the production, admission and denial of evidence. Thereafter, the examination and recording of evidence (documentary and/or oral) is completed.

After the hearing of a matter is completed, the judgment is pronounced in open court. Within fifteen days of the pronouncement of a judgment, the concerned court draws up the decree.33 If a defendant

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33. Code of Civil Procedure 1908, Order XX, Rule 1
does not appear when the suit is called for hearing, irrespective of summons being duly served on him, the court may make an order that the suit be heard ex parte.\textsuperscript{34}

**B. Fresh suit filed under Commercial Courts Act**

In case the dispute is commercial in nature and of a specified value (as discussed earlier), a suit under the Commercial Courts Act would be initiated.

In all such commercial disputes of specified value, a party may make an application\textsuperscript{35} (with a notice being issued to the opposite party) for summary judgment requesting the court to decide on the claim underlying the commercial dispute without recording oral evidence.

Prior to issues being framed the court may pass a summary judgment on consideration of the following:

- the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and
- there is no other compelling reason why the claim should not be disposed of before recording the oral evidence.

When it appears to a court that a judgment creditor may succeed but it is improbable that it will do so, it can pass a conditional order against the judgment debtor including, but not limited to, a condition requiring the judgment debtor to deposit a sum of money as security for the judgment.\textsuperscript{36}

**C. Execution proceedings**

The resultant decree would be enforced like a decree of that court which rendered the same. The modes of execution are elaborated below.

A detailed procedure for execution of foreign judgments from non-reciprocating territories is explained in Schedule I hereto, which contains a Guide signed between Dubai International Financial Centre (“DIFC”) Courts and Nishith Desai Associates on 14 September 2018. Notwithstanding the focus of the Guide on recognition and enforcement of civil and commercial judgments in DIFC Courts and the courts of India, this Guide may also be referred to, in the context of execution of judgments from non-reciprocating territories.

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34. Code of Civil Procedure 1908, Order IX, Rule 6(b)
35. In accordance with Order XIII-A, Rule 4 of the CPC, as amended by the Commercial Courts Act 2015
36. In accordance with Order XIII-A, Rule 7 of the CPC, as amended by the Commercial Courts Act 2015
12. Modes of Execution

Since foreign awards, domestic awards and foreign judgments (from reciprocating countries) are to be executed in India as a decree passed by an Indian court, the modes of execution for foreign awards and judgments and domestic awards and judgments are also common.

On an application made by the decree-holder for execution of the decree/award (whether foreign or domestic), the court may order the execution of the decree/award by one or more of the following modes:

- by delivery of any property specifically decreed
- by attachment and sale or by sale without attachment of any property
- by arrest and detention in prison
- by appointing a receiver
- by any other manner as the nature of the relief granted may require.

In case of decrees involving payment of money, execution by detention in prison shall be ordered only after the judgment debtor is given an opportunity of showing cause as to why he should not be imprisoned. In doing so, the court has to record in writing and be satisfied that the judgment debtor would obstruct or delay the execution of the decree. An executing court cannot go behind the decree, that is, it does not have the power to modify the terms of the decree and must take it as it stands. In case there are multiple decree-holders, the assets, after deducting the costs of realization, shall be distributed among all such persons.
13. Our Expertise

By way of strategy we seek measures of protection during the first hearing itself, in order to mitigate the risks caused by time dilatory tactics and frivolous challenges adopted by the opposite parties. These mostly include a stay order on alienation of the assets of the opposite parties. Where assets are not known, we routinely engage experts to trace and identify the assets since obtaining a restraint order against alienation of assets is possible only in a situation where such assets are identified. Obtaining the disclosure of assets and financial status of the opposite parties at the initial stages is another facet of our strategy, which reduces the risk of the opposite party alienating or disposing of its assets. Once a disclosure is made, the next step is seeking an order for attachment and sale of assets disclosed.

An illustrative order obtained in the initial hearings for enforcement of a domestic award, granting disclosure of assets and restraining the transfer/ alienation of assets is set out below:

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* IN THE HIGH COURT OF

+ 

... Decree Holder

Through: Mr. Moazzam Khan and Mr. Alipak Banerjee, Advocates.

versus

... Judgement Debtors

Through: None.

CORAM:

HON'BLE MR. JUSTICE

ORDER

EX.APPL...

Allowed subject to just exceptions.

EX.P...

1. Issue notice to the judgement debtors by all modes including registered speed post and/or approved courier on filing process fee within one week returnable on Dasti in addition. The affidavit of service, enclosing the tracking report of the postal authority and/or courier agency be filed by the decree holder at least one week before the next date of hearing.
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An illustrative order obtained in the initial hearings for enforcement of a foreign award, granting disclosure of assets and restraining the transfer/alienation of assets is set out below:

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IN THE HIGH COURT OF
O.M.P.(EFA)(COMM.)

Through Mr. Moazzam Khan, Adv. with
Ms. Payal Chatterjee, Mr. Alipak
Banerjee and Mr. Brijesh Kumar,
Adv.s

versus

.... judgment-debtor

CORAM:

ORDER

I.A. No. (exemption)
Exemption allowed, subject to just exceptions.
The application is disposed of.
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Issue notice to the respondent through all modes including registered post and courier, on filing of process fee and Regd. A.D. Covers, returnable on [redacted].

In the meanwhile, upon service, the judgment debtor shall file the affidavit disclosing the movable and immovable properties owned by them.

* IN THE HIGH COURT OF [redacted]

O.M.P. (EFA)(COMM.) [redacted]

Petitioner
Through Mr. Moazzam Khan, Adv. with Ms. Payal Chatterjee and Mr. Brijesh Kumar, Adv.

versus

Respondent

ORDER

I.A. [redacted]

Issue notice to the respondent through all modes including registered post and courier, on filing of process fee and Regd. A.D. Covers within a week, returnable on [redacted], the date already fixed.

Along with the application, the copy of the affidavit of [redacted] has been filed, which was earlier filed by the respondent before the Supreme Court [redacted] in which it is mentioned that all the fixed and current assets of the company are charged with the banks and financial institutions, the details of which are mentioned at [redacted].
An illustrative order granting attachment of properties is set out below:

IN THE HIGH COURT OF DELHI AT NEW DELHI

..... Decree Holder

Through: Mr Moazzam Khan and

versus

..... Judgement Debtors

Through: 

CORAM:
HON'BLE MR. JUSTICE

ORDER

1. The learned counsel for the Decree Holder has handed over a statement culled out from all the affidavits filed by the Judgment Debtors, which indicates that several of the Judgment Debtors hold shares in various companies. However, the necessary details whether the shares are held in DEMAT account or in physical form, are not indicated. In the event, the share scrips are held in the physical form, the Judgment Debtors are directed to deposit the share certificates with the Registrar General of this Court, within a period of one week from today. In the event, the shares are held in fungible form (dematerialised form), the Judgment Debtors are also directed to file an affidavit disclosing all the details including the details of the Depository Participant and the DEMAT account number.

2. The affidavits filed by the Judgment Debtor No.2 indicates that he owns a property consisting of land and residential house bearing and the land measuring situated in
3. The Judgment Debtor Nos. 3 & 13 have disclosed that they are owners of [redacted] situated in the revenue estate of [redacted].

4. The Judgment Debtor No. 9 is stated to be the owner of the property bearing [redacted].

5. Warrants of attachment are directed to be issued in respect of the aforementioned immovable properties. The attachment shall also be executed by beat of drums, at least for one hour.

6. The affidavits also indicate that Judgment Debtor Nos. 3 and 4 have paid share application money of [redacted] respectively to [redacted] learned counsel for the [redacted] accepts notice on behalf of the company. [redacted] is directed to deposit all amounts that are lying to the credit of the Judgment Debtor with the Registry of this Court including the share application money or any other deposit, within a period of one week from today.

7. The affidavit of JD No.2 discloses that he owns and possesses a Vehicle of BMW make bearing registration No. [redacted]. The affidavit filed by JD No.7 indicates that JD No.7 owns vehicles of the written down value of [redacted] who has affirmed the affidavit on behalf of JD No. 7 states that the said amount reflects the written down value of three vehicles: one is Mahindra XUV and the other is Mercedes and he is not aware of the make or the details of the third vehicle. [redacted] is directed to file an affidavit disclosing complete details of the vehicles, within a period of one week from today.

8. [redacted] Advocate (Mobile No. [redacted]), is appointed as the Court Commissioner to take possession of the above vehicles. The Court Commissioner shall have the vehicles valued and release the vehicles on supersdiary to the respective Judgment Debtors.

9. The affidavits of Judgment Debtor Nos. 2 and 11 also disclose certain jewellery and precious metal. The Court Commissioner is also directed to take possession of the said jewellery and precious metal. He shall have the photographs of the same taken and have the same valued by an approved valuer. Thereafter, the jewellery and the precious metal shall be returned on supersdiary to the respective Judgment Debtors. The Judgment Debtors are directed to cooperate for the aforesaid purposes.

10. The Court Commissioner is entitled to take police assistance for recovering the possession of the assets. The Court Commissioner shall submit a report before the next date of hearing.

11. The fees of the court commissioner is fixed at [redacted]. In the first instance, the same shall be borne by the Decree Holder along with other
12. Warrants of attachment be also issued in respect of the bank accounts of the Judgment Debtors. The details of the bank accounts are as under:

<table>
<thead>
<tr>
<th>Bank</th>
<th>Account Holder</th>
<th>Bank</th>
<th>Account No.</th>
<th>IFSC Code</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

13. On the strength of this order, the respective banks shall remit the amounts lying to the credit of the respective Judgment Debtors in the abovementioned accounts, to the credit of the account of the Decree Holder, the details of which are as under:

14. This Court is of the prima facie view that the details of the assets have been wilfully withheld by the Judgment Debtors as repeated opportunities have been granted to the Judgment Debtors to disclose complete details of their assets. As indicated above, the necessary details have not been provided. A final opportunity is granted to the Judgment Debtors to make a clear and candid disclosure of their assets with full particulars which would enable this Court to identify the assets for the purposes of attachment and sale. The Judgment Debtors are cautioned that the failure to do so would invite this court to take a serious view.

15. The Judgment Debtor No. 2 and 3 shall be present in the Court on the next date of hearing for examination.

16. List on
An illustrative order granting attachment of properties in the course of enforcement of a foreign judgment is set out below:
S-4

IN THE HIGH COURT OF DELHI AT NEW DELHI

EX.P. 

..... Decree Holder

Through: Mr. Moazzam Khan, Advocate. Ms. Shweta Sahu, Advocate.

versus

..... Judgement Debtor

Through:

CORAM:
HON’BLE MR. JUSTICE

ORDER

1. This execution petition is filed by the decree holder seeking execution of the judgment passed by the High Court of Republic of Singapore for along with This judgment and decree which is sought to be executed reads as under:

“JUDGMENT

sd/-

SINGAPORE”

2. As per the execution petition filed for the aforesaid judgment and decree, as on the date of filing of the execution petition, approximately a sum of was payable as principal and was payable towards interest. Interest has thereafter to be added on the principal amount at.

3. This matter has been coming up before this Court from , and whereafter efforts were made to see if the judgment debtor can give some security for being attached for satisfaction of the subject judgment and decree, however in spite of taking repeated adjournments, the
judgment debtor company has not given any security to the decree holder being available for satisfaction of the judgment and decree. The judgment debtor was giving a corporate guarantee, and which is neither here nor there, inasmuch as what a corporate guarantee can do unless it is secured by properties, whether immovable or movable.

4(i) Today, learned senior counsel for the judgment debtor sought to argue that this Court should not proceed ahead for attachment.

(ii) I reject this argument as completely frivolous firstly because if the judgment debtor was bona fide there was no reason why the judgment debtor company, and more so should not have given the necessary security for attachment for the decree holder towards the subject judgment and decree. Secondly, the judgment debtor company may be in financial difficulty, but that does not mean that what are the dues of a decree holder under a judgment and decree which is executed, and which is being executed under Section 44A CPC in

judgment debtor company has not given any security to the decree holder being available for satisfaction of the judgment and decree. The judgment debtor was giving a corporate guarantee, and which is neither here nor there, inasmuch as what a corporate guarantee can do unless it is secured by properties, whether immovable or movable.

4(i) Today, learned senior counsel for the judgment debtor sought to argue that this Court should not proceed ahead for attachment.

(ii) I reject this argument as completely frivolous firstly because if the judgment debtor was bona fide there was no reason why the judgment debtor company, and more so its major shareholders or Directors who definitely would not be under any financial difficulty qua their assets, should not have given the necessary security for attachment for the decree holder towards the subject judgment and decree. Secondly,
this case, should not be payable.

5. Accordingly, since there is no stay of operation of the subject judgment and decree passed by the High Court of Republic of Singapore, and which is being executed by this Court under Section 44A CPC with Singapore being a reciprocating territory, therefore, the following properties of the judgment debtor company are attached:

### Bank Accounts (other than Credit Attachment)

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Details of banks in Delhi</th>
<th>Account No.</th>
<th>Amount (INR)</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Trade Receivables

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Project Code</th>
<th>Customer Name</th>
<th>INR in crores</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>
6. The warrants of attachment be issued with respect to aforesaid properties on the decree holder filing process fee by today and Registry is directed to ensure that necessary warrants of attachment qua the aforesaid properties being the Bank Accounts and Trade Receivable/Book Debts are issued in favour of the decree holder by tomorrow. Warrants of attachment be issued, returnable on __________.

Ne
Enforcement of arbitral awards and decrees in India:

Representing the world’s second largest oilfield services company in the enforcement of an award passed in a London seated arbitration conducted as per UNCITRAL Rules. This matter was handled entirely by NDA’s internal Advocacy Unit out of New Delhi. Within one month of initiating the said proceedings, we secured favourable orders directing disclosure (of assets, bank accounts etc.) and the opposite party was restrained by the Court from alienating any of its assets thus securing the award amounts.

Representing a Singapore entity in the enforcement of an international commercial arbitration award passed in India against an Indian listed entity. This matter was handled by NDA’s internal Advocacy Unit out of New Delhi. Within one month of initiating the said proceedings, we secured favorable orders directing disclosure (of assets, bank accounts etc.) and the opposite party was restrained by the Court from alienating any of its assets thus securing the award amounts.

Representing an Indian fund in the enforcement of a domestic award in an ad-hoc arbitration against an Indian public listed infrastructure company and its promoters. This matter was handled by NDA’s internal Advocacy Unit out of New Delhi. On the first hearing of the matter, we secured favorable orders directing disclosure (of assets, bank accounts, tax returns etc.) and the opposite parties were restrained by the Court from alienating any of its assets thus securing the award amounts and costs were imposed. Subsequent appeals by the opposite parties before a Division Bench of the Delhi High Court were dismissed. Thereafter, we obtained an order for attachment of immovable as well as movable properties of the opposite parties.

Representing a Swiss multi-national commodity trading and mining company against an Indian public company in enforcement of a Singapore-seated SIAC award. In this matter, NDA, the lead Advocate on Record, is working in conjunction with a member of one of the leading chambers in London Bar as well as a very eminent Singapore based Law Firm.

Representing a Korean conglomerate in enforcement of an award passed in an Austria seated ICC arbitration against an Indian public listed company. The matter was handled at all stages by NDA’s Internal Advocacy Unit out of New Delhi and comprised of several related and on-going litigations, each dependent on the success of the other – initiated by the opposite party aimed at scuttling the realization of the awarded amounts by our clients. The synchronized strategy adopted by us at all levels in India, Korea as well as other jurisdictions where the Award was sought to be enforced, enabled us to successfully stem the attempts made by Indian Award debtor seeking to restrain our client from pursuing enforcement of the Award in a foreign jurisdiction through an injunction order from an Indian Court. Our concerted efforts ultimately resulted in a settlement where the opposite party paid the entire awarded amount to our client.

Representing successfully a United States of America based company involved in the gaming industry for enforcement of an AAA arbitral award passed in United States of America against a Mumbai based leading gaming entity.

Representing a Singapore based insurance company in enforcement of a judgment of Singapore High Court of over INR 100 crores against an Indian listed entity.
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Guide between

DIFC COURTS

and

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

on

MUTUAL RECOGNITION AND ENFORCEMENT OF

CIVIL AND COMMERCIAL JUDGMENTS IN DIFC COURTS AND COURTS IN INDIA
1. Introduction

1.1. The Dubai International Financial Centre (the “DIFC”) Courts issue this Guidance Note on the mutual enforcement of civil and commercial judgments delivered by the courts in India and the DIFC Courts to provide practical guidance to parties seeking enforcement of civil and commercial judgments in India and the DIFC, in accordance with the procedure prescribed under the laws of India and rules governing DIFC Courts.

1.2. On 25 October 1999, the Republic of India (“India”) and the United Arab Emirates (the “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”), which applies to service of summons and other judicial documents or processes; the taking of evidence by means of Letters of Request or commissions; and execution of decrees, settlements and arbitral awards between the two countries.

1.3. The instrument of ratification of the Agreement was exchanged 29 May 2000. To date, India has only given a gazette notification dealing with one of these three issues, namely the service of summons and other processes. It has not issued any notification in respect of the recognition and enforcement of civil judgments, as required under Section 44A of the Indian Code of Civil Procedure (“CPC”). While the UAE has given effect to the treaty by publishing it in the Federal Gazette pursuant to Federal Decree No. 33 of 2000, it is unclear whether it has advised the Indian government as to which UAE Courts are “superior courts” for the purposes of Section 44A of the CPC. Regardless, absent India’s notification in its Official Gazette to give effect to the treaty, the UAE will not be defined as a “reciprocating territory” for the execution of UAE judgments in India.
1.4. As this Guidance Note involves laws of India, the DIFC Courts have instructed Nishith Desai Associates ("NDA") to draft the portions related to Indian laws and procedures applicable for enforcement of monetary judgments from DIFC Courts.

2. Scope of this memorandum

2.1. This Guidance Note has no binding legal effect and does not constitute a treaty or legislation for any purpose whatsoever. It is not binding on the judges of either India or DIFC Courts and does not supersede any existing laws, judicial decisions or courts rules and procedures. It is not intended to be exhaustive or to create or alter any existing legal rights or relations or to create any binding arrangement for enforcement of judgments.

3. Courts in India

3.1. The Supreme Court of India is at the apex of the Indian judicial system, followed by High Courts in each state or group of states. Below each state’s High Court lies a hierarchy of subordinate courts. The hierarchy of civil courts is given in the below schematic:

```
Supreme Court of India

High Courts of India

District Courts / Additional District Judge’s courts

Sub-ordinate courts including Small Causes Courts, Courts of Metropolitan Magistrates
```
3.2. As the highest appellate court, the Supreme Court of India adjudicates appeals from the state High Courts. The High Courts entertain appeals from subordinate courts and tribunals which lie within its jurisdiction. They also act as courts of revision for the subordinate courts and the tribunals. Some High Courts also exercise original jurisdiction in civil and admiralty matters. The territorial and pecuniary jurisdiction in civil matters is usually determined by the concerned state enactments on the civil courts.

3.3. To specifically cater for commercial disputes of a specified value, the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act 2015 ("Commercial Courts Act") led to the establishment of commercial courts for resolution of disputes in a time-bound mechanism. Various states in India have established such commercial courts in several districts under the Commercial Courts Act.

4. DIFC Courts

4.1. The DIFC Courts form part of the legal system of the UAE. This Guidance Note only applies to the DIFC Courts. The Guidance Note pertains to civil and commercial disputes which are connected to the DIFC or where the parties have agreed that the DIFC Courts should have exclusive jurisdiction.

4.2. The DIFC Courts consist of the Small Claims Tribunal, the Court of First Instance and the Court of Appeal. They were established by Dubai Laws No. 9 and 12 of 2004 and operate as a common-law court which applies legal procedures of the highest international standards. The Courts’ internationally renowned judiciary is selected from common law jurisdictions around the world and includes three Emirati judges equally conversant in civil and common law.

5. Enforcement of DIFC Courts’ judgments in Indian courts

5.1. Applicable Laws

---

1 As defined in Section 2(1)(i) of the Commercial Courts Act.
2 "Specified Value", in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government. A Bill amending this statute was passed by the Lok Sabha (Lower House of the Parliament of India) on 1 August 2018, reducing the value from INR 10,000,000/- (Rupees Ten Million) [approx. USD 1,50,000] to INR 300,000/- (Rupees Three Hundred Thousand) [approx. USD 4,500].
3 Including Maharashtra, Andhra Pradesh, Telangana, Karnataka, Gujarat, Chhattisgarh, Madhya Pradesh, Tripura, Tamil Nadu (all districts except the city of Chennai)
5.1.1. The procedure for enforcement of foreign judgments in India would primarily depend on whether the country rendering the judgment is a reciprocating country under Section 44A of the CPC or not.

5.1.2. A judgment creditor seeking enforcement of a decree of a court of a reciprocating country is required to file execution proceedings in India, while in case of a decree from a non-reciprocating country, a fresh suit needs to be filed before the relevant court in India, based on the foreign judgment or the original cause of action, or both. This has been reiterated by several courts in India. For example, in its recent judgment, the Bombay High Court observed as follows:

"Armed with a decree of a court in a non-reciprocating foreign territory, what must a party do in India? His option is to file, in a domestic Indian court of competent jurisdiction, a suit on that foreign decree, or on the original, underlying cause of action, or both. He cannot simply execute such a foreign decree. He can only execute the resultant domestic decree. To obtain that decree, he must show that the foreign decree, if he sues on it, satisfies the tests of Section 13. If the decree is, on the other hand, of a court in a reciprocating territory, then he can straightaway put it into execution, following the procedure under section 44A and Order XXI, Rule 22 of the CPC..."\(^4\)

5.1.3. For a country to be designated as a “reciprocating country”, a notification to that effect is mandatory under Explanation I to Section 44A of the CPC, which defines reciprocating country as:

"Reciprocating territory means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section, and “Superior Courts”, with reference to any such territory, means such courts as may be specified in the said notification.

5.1.4. The enforcement of a DIFC Courts judgment in India, owing to the absence of any notification to this effect, and irrespective of the ratification of the Agreement by India, would be similar to that of enforcement of judgments from a non-reciprocating country,

\(^4\) Badat and Co v. East India Trading Co AIR 1964 SC 538

\(^5\) Marine Geotechnics LLC v. Coastal Marine Construction & Engineering Ltd. (2014) 3 AIR Bom R 193
based on common law principles. Thus, a fresh suit is required to be filed before the relevant court in India for the purposes of enforcement, in accordance with the principles and practice described below. Thereafter, on a decree being obtained on the fresh suit, proceedings for execution of such decree in India would be initiated. This would be governed by the principles enshrined in the CPC along with the recently enacted Commercial Courts Act.

5.2. Requirements for enforcement of DIFC Courts' judgments in India

5.2.1. A certified copy of the DIFC Courts judgment (which may be obtained upon making an application to the DIFC Courts) would have to be filed along with the plaint. In the course of this suit, the DIFC Courts judgment would have evidentiary value. The DIFC Courts judgment must be certified in the manner, and according to the rules, in use in UAE for certification of the copies of judicial records, as required by Section 86 of the Evidence Act 1872 ("Evidence Act"). Further, an additional certificate by a representative of the Central Government of India in the UAE is required under Section 86 of the Evidence Act. The procedure stipulated under Section 86 of the Evidence Act does not exclude other modes of proof, e.g. deposition of an official as to what took place in his presence in the DIFC Courts.

5.2.2. Upon the production of the certified copy of a DIFC Courts judgment, the Indian court executing the judgment shall presume that such judgment was pronounced by a court of competent jurisdiction.\(^6\) However, an adverse inference may be taken in case something contrary appears on record, or on proving want of jurisdiction.\(^7\)

5.2.3. For executing a DIFC Courts judgment, the executing party would have to satisfy Section 13 of the CPC, laying down the grounds on which the DIFC Courts judgment may be challenged by the party against whom execution proceedings are initiated. Thus, the DIFC Courts judgment would be conclusive except:

a) where it has not been pronounced by a court of competent jurisdiction;

b) where it has not been given on the merits of the case;

\(^6\) Code of Civil Procedure 1908, s 14

\(^7\) For example, whether or not a party has submitted to the jurisdiction of the foreign court.
c) where 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;
d) where the proceedings in which the judgment was obtained are opposed to natural justice;
e) where it has been obtained by fraud;
f) where it sustains a claim founded on a breach of any law in force in India.8

5.3. Procedure for enforcement of DIFC Courts’ judgments in India

A tabular representation of the two-step process (i.e. filing of a fresh suit and execution proceedings) for enforcement of a DIFC Courts judgment in India is given below:

---

8 Code of Civil Procedure 1908, s 13
Enforcement of DIFC Courts judgment

Fresh suit in India in a domestic Indian court of competent jurisdiction

Insolvency proceedings against the judgment-debtor; scrutiny under Section 13 of CPC

Commercial disputes of specified value

Civil court having territorial and pecuniary jurisdiction

Commercial Courts/Commercial Division

On the basis of the foreign judgment

On the original, underlying cause of action

Both

Satisfaction of the tests of Section 13 of the CPC

Non-satisfaction of Sec. 13

Non-executable

Plaint

Written Statement

Trial proceedings

Decree in Indian court

Fresh suit

Execution proceedings

Execution proceedings before the competent court
5.3.1. Fresh suit filed before civil courts for enforcing DIFC Courts’ judgments:

5.3.1.1. For enforcement of a DIFC Courts judgment in India, a fresh suit would have to be initiated. A suit is instituted by filing a ‘plaint’ in a manner prescribed under Orders VI and VII of the CPC, along with the payment of appropriate court fees.

5.3.1.2. After completion of certain preliminary scrutiny by the registry of the relevant court, the case will be listed before a judge to whom the case would be assigned. Under Order V of the CPC, notice is issued to the defendant summoning his appearance and directing him to file his reply within a specified date.

5.3.1.3. After the plaintiff has instituted the suit and notified the defendant, the defendant is required to file its written statement, along with a set-off or counter claim, if any, in the court within 90 days of service of the summons. This is governed by Order VIII of the CPC.

5.3.1.4. After the parties complete the pleadings in the suit, the court frames the issues under Order XIV of the CPC, which is followed by the production, admission and denial of evidence. Thereafter, the examination and recording of evidence (documentary and/or oral) is completed.

5.3.1.5. After the hearing of a matter is completed, the judgment is pronounced in open court. Within fifteen days of the pronouncement of a judgment, the concerned court draws up the decree.\(^9\)

5.3.1.6. If a defendant does not appear when the suit is called for hearing, irrespective of summons being duly served on him, the court may make an order that the suit be heard \textit{ex parte}.\(^{10}\)

5.3.1.7. In jurisdictions like New Delhi, the average time taken for disposal of a suit in a civil court is approximately 2-5 years.\(^{11}\)

\(^9\) Code of Civil Procedure 1908, Order XX Rule 1
\(^{10}\) Code of Civil Procedure 1908, Order IX Rule 6(b)
5.3.2. Fresh suit filed under Commercial Courts Act for enforcing DIFC Courts’ judgments:

5.3.2.1. As explained in Paragraph 3.3, in case the dispute is commercial in nature and of a specified value, a suit under the Commercial Courts Act would be initiated\(^\text{12}\), as given below:

<table>
<thead>
<tr>
<th>Step</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing of plaint</td>
<td>30-120 days</td>
</tr>
<tr>
<td>Written statement</td>
<td>30 days</td>
</tr>
<tr>
<td>Inspection</td>
<td>15 days</td>
</tr>
<tr>
<td>Completion of oral arguments</td>
<td>6 months</td>
</tr>
<tr>
<td>Case Management Hearing</td>
<td>4 weeks</td>
</tr>
<tr>
<td>Admission and denial of documents</td>
<td></td>
</tr>
</tbody>
</table>

Suits and applications filed in the High Court having original civil jurisdiction would be brought before the Commercial Division of the said High Court. The duration for disposal of a suit under the Commercial Courts Act is approximately 15 months.

5.3.2.2. Summary judgments under Commercial Courts Act:

In all such commercial disputes of specified value, a party may make an application\(^\text{13}\) (with a notice being issued to the opposite party) for summary judgment requesting the court to decide on the claim underlying the commercial dispute without recording oral evidence.

Prior to issues being framed the court may pass a summary judgment on consideration of the following:

---

\(^\text{12}\) The Commercial Courts Act provides for dispute resolution in a time-bound mechanism in fora.

\(^\text{13}\) In accordance with Order XIII-A, Rule 4 of the CPC, as amended by the Commercial Courts Act 2015
• the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

• there is no other compelling reason why the claim should not be disposed of before recording the oral evidence.

Such a summary procedure provides relief to the aggrieved party at a much faster rate as compared to regular suits. When it appears to a court that a judgment creditor may succeed but it is improbable that it will do so, it can pass a conditional order against the judgment debtor including, but not limited to, a condition requiring the judgment debtor to deposit a sum of money as security for the judgment.\(^\text{14}\)

5.3.3. Execution proceedings

5.3.3.1. On a decree being passed, execution proceedings would be initiated for enforcement of the decree. Section 36 to 74 and Order XXI of the CPC set out the provisions in respect of execution.

5.3.3.2. The party in whose favour a decree has been passed, or an order capable of execution has been made, is known as a “decree holder” or “judgment creditor” while the party against whom a decree has been passed, or an order capable of execution has been made, is known as a “judgment debtor”.

5.3.3.3. For initiation of execution proceedings, an execution petition is filed by the judgment creditor containing the following particulars, in accordance with Order XXI, Rule 11 of the CPC:

   a) the number of the suit;
   b) the names of the parties;
   c) the date of the decree;
   d) whether any appeal has been preferred from the decree;
   e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

---
\(^{14}\) In accordance with Order XIII-A, Rule 7 of the CPC, as amended by the Commercial Courts Act 2015
f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

h) the amount of the costs (if any) awarded;

i) the name(s) of the person(s) against whom execution of the decree is sought; and

j) the mode in which the assistance of the court is required.

5.3.3.4. On an application made by the judgement creditor for execution of the decree, the court may order the execution of the decree by one or more of the following modes:

• by delivery of any property specifically decreed;
• by attachment and sale or by sale without attachment of any property;
• by arrest and detention in prison;
• by appointing a receiver;
• by any other manner as the nature of the relief granted may require.\(^{15}\)

5.3.3.5. In case of decrees involving payment of money, execution by detention in prison shall be ordered only after the judgment debtor is given an opportunity of showing cause as to why he should not be imprisoned. In rendering such an order, the court records, in writing, its dissatisfaction with the judgment debtor’s cause as to the obstruction or delay of execution of the decree.

5.3.3.6. An executing court cannot go behind the decree, that is, it does not have the power to modify the terms of the decree and must take it as it stands.

5.3.3.7. In case there are multiple judgment creditors, the assets, after deducting the costs of realisation, shall be distributed among all such persons.

\(^{15}\) Code of Civil Procedure 1908, s 51
5.3.4. Relevant courts for enforcement

A fresh suit for enforcement of a DIFC Courts judgment would be instituted in a court within the local limits of whose jurisdiction:

- the judgment debtor(s) at the time of the commencement of the suit, actually and voluntarily resided, or carried on business, or personally worked for gain; or
- any of the judgment debtor(s) at the time of the commencement of the suit, actually and voluntarily resided, or carried on business, or personally worked for gain. However, in such a case, either the leave of the court must be taken, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- the cause of action, wholly or in part, arises.

The proceedings for execution of the decree obtained pursuant to the suit for enforcement would be initiated, in the first instance, before the court which passed it. Where appropriate, such court may transfer the decree to another court for execution for various reasons including the locus of the judgment debtor or the locus of the property against which the decree is sought to be executed. Further, locus of the judgment debtor(s) would also determine the jurisdiction of the courts for execution. In the event of execution of specific properties of the judgment debtor(s), execution proceedings may be initiated in the court within whose jurisdiction such properties are situated.

5.3.5. Limitation Period

5.3.5.1. Article 101 of the Limitation Act 1963 provides for the period of limitation for suits upon a foreign judgment as three years from the date of the judgment.

5.3.5.2. As per the Limitation Act 1963, the period of limitation for the execution of a decree, so passed, (other than a decree granting a mandatory injunction, in which case, it is three years) is twelve years from the date of the decree.
5.3.6. Initiation of insolvency proceedings against the judgment debtor

5.3.6.1. Courts in India have interpreted non-payment of amounts due under a decree (including foreign judgments) as debts against which insolvency proceedings may be initiated against the judgment debtor. However, the decree would have to undergo the scrutiny (at least a prima facie assessment) of the requirements under Section 13 (refer to Paragraph 5.2.3) to form the basis of the insolvency application. Under the Insolvency and Bankruptcy Code 2016, insolvency proceedings for such defaults in respect of a debt may be initiated by operational and financial creditors including the judgment creditor.

5.3.6.2. An insolvency application may be maintained even on the original cause of action, distinct from the DIFC Courts judgment.

5.3.6.3. Such insolvency proceedings are distinct from the enforcement proceedings prescribed under the CPC, and may be initiated as an alternative to the two-step process, explained above.

5.3.6.4. In contrast to execution proceedings, insolvency proceedings are subject to the discretion of the court, which would not proceed with the insolvency process, only on the ground that the judgment creditor is entitled to a sum from the judgment-debtor. In case of a bona fide disputed debt, an insolvency application would not be allowed, especially in cases where a fuller enquiry is required.

6. Enforcement of Indian judgments in the DIFC Courts

6.1. Applicable laws

6.1.1. The approach of the DIFC Courts to the recognition and enforcement of the Indian courts’ judgments is based on common law principles. Where a foreign court with jurisdiction has

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17 Insolvency and Bankruptcy Code 2016, ss 6, 7

18 Intesa Sanpalo SPA v. Videocon Industries Ltd. Company petition No. 528 pf 2012, decision dated 5 December 2013, per N.M. Jamdar, J.

19 Marine Geotechnics LLC v. Coastal Marine Construction & Engineering Ltd. (2014) 2 Bom CR 769. Note that debts stemming from a foreign judgement can be disputed in certain cases, e.g. where the conditions under Section 13 of the CPC are not satisfied and in case of time-barred debts.
determined that a sum is due from one party to another, a legal obligation arises for the judgment debtor to pay that sum. The creditor may either bring a claim against the debtor to enforce that judgment debt or seek to execute the foreign judgment using the Agreement between the UAE and India. The principles cited in the Agreement may apply to the enforcement of Indian judgments in the DIFC Courts if the judgment creditor chooses to execute the Indian judgment using the Agreement. However, judgment creditors have the residual right to bring an action against the judgment debtor.

6.2. Requirements for the execution of Indian judgments in the DIFC Courts using the Agreement

6.2.1. In order to be sued upon in the DIFC Courts, a judgment of the Indian court must be final and conclusive. It may be final and conclusive even though it is subject to an appeal. Under Article XXIII of the Agreement, an official copy of the decree along with a certificate showing that the decree is final and executable (unless that is provided for in the decree itself) are to be submitted for execution of the decree.

6.2.2. The DIFC Courts will not enforce certain types of judgments from Indian courts, for example judgments ordering the payment of taxes, fines or penalties.

6.2.3. Where the above requirements are established to the satisfaction of the DIFC Courts, the judgment of the Indian court may be challenged in the DIFC Courts only on limited grounds as provided under Article XX of the Agreement, in instances where the judgment:

a. is not conclusive and executable; or
b. has not been pronounced by a court of competent jurisdiction; or
c. has not been given on the merits of the case;
d. 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 UAE in cases where such law is applicable; or

e. proceedings were conducted in a manner which the DIFC Courts regard as contrary to the principles of natural justice; or
f. was obtained by fraud; or

g. sustains a claim founded on a breach of any law in force or is contrary to the constitutional rules or the principles of public order in UAE; or
h. contravenes the rules concerning the legal representation of persons suffering from lack of capacity in UAE; or
i. was passed in absentia and the defaulting party was not duly summoned in accordance with the rules applicable in his country;
j. concerns a dispute that is pending in a suit before one of the courts in the UAE between the same parties, involving the same cause of action, and that suit was raised before a competent UAE court prior to the raising of that dispute in India.

6.3. Requirements for bringing an action on the judgment debt in the DIFC Courts

6.3.1. When an Indian judgment is handed down, the common law implies a contractual obligation on the judgment debtor to pay the sums due to the judgment creditor. This allows the judgment creditor to bring a fresh action on the implied contractual debt in the DIFC Courts using Part 7 of the Rules of the DIFC Courts. This residual right allows judgment creditors to sue on the Indian judgment at common law in the DIFC Courts, based on the principles described above.

6.4. Procedure for the enforcement of Indian judgments in DIFC Courts

6.4.1. To enforce a judgment from an Indian court in the DIFC Courts, a judgment creditor must issue a Claim Form in the DIFC Courts, providing a concise statement of the nature of the claim and claiming the amount due under the judgment. A certified copy of the judgment should be exhibited to the claim form.

6.4.2. For obtaining certified copies of the judgments, a judgment creditor is required to make applications to the court to this effect, in formats available on the websites of the respective court in India.

6.4.3. Under Rule 9.53 of the Rules of the DIFC Courts 2017, there is no requirement to obtain the permission of the DIFC Courts before serving proceedings outside the DIFC. However, it remains open to the judgment debtor to challenge the jurisdiction of the DIFC Courts. If, following service, the judgement debtor does not respond to the claim, the judgment creditor will be entitled to obtain judgment in default under Part 13 of the Rules of the DIFC Courts 2017.
6.4.4. If the judgment debtor acknowledges service, the judgment creditor must file and serve
Particulars of Claim, setting out a concise statement of the facts relied on in support of the
claim. The Particulars of Claim should contain a statement that the Indian court had
jurisdiction, which is be determined on the basis that the person against whom the judgment
was given:

a. was, at the time the proceedings were commenced, present in the jurisdiction; or
b. was the claimant, or counterclaimant, in the proceedings; or

\( c. \) submitted to the jurisdiction of the Commercial Court; or

d. agreed, before commencement, in respect of the subject matter of the proceedings,
to submit to the jurisdiction of the Commercial Court.

6.4.5. In most cases, a judgment creditor will be entitled to apply to obtain summary judgment
without trial under Part 24 of the Rules of the DIFC Courts 2017, unless the judgement
debtor can satisfy the Court that it has a real prospect of establishing at trial that:

a. the judgment was obtained by fraud;

b. the judgment is contrary to public policy; and

c. the proceedings were conducted in a manner which the DIFC Courts regard as
contrary to the principles of natural justice.

Applications for summary judgment are dealt with swiflily, without the need for oral
evidence.

6.4.6. If the claim on the Indian courts judgment is successful, the judgment creditor will then
have the benefit of a DIFC Courts judgment. The judgment creditor will be entitled, if
necessary, to use the procedures of the DIFC Courts to enforce the judgment, including:

a. third party debt orders, requiring third parties who are indebted to the judgment debtor to
pay the sum owed to the judgment creditor;

b. charging orders, imposing charges over the judgment debtor’s property in favour of the
judgment creditor;

c. orders for possession of land;

d. orders for sale of land or other property over which the judgment creditor has the benefit
of a charge;

e. orders requiring judgment debtors to provide information about their assets;
f. orders appointing enforcement officers to seize and sell the judgment debtor’s goods;
g. orders appointing receivers;
h. orders for committal for contempt of court;
i. orders relating to insolvency procedures.

7. Further information and contact details

7.1. Further details pertaining to the Indian courts may be accessed at http://indiancourts.nic.in/

Specific links to some of the important courts are as below:
- Supreme Court of India: http://supremecourtofindia.nic.in/
- High Court of Delhi: http://delhighcourt.nic.in/
- High Court of Bombay: http://bombayhighcourt.nic.in/
- Madras High Court: http://www.hcchennai.tn.nic.in/
- Calcutta High Court: http://calcuttabighcourt.nic.in/
- High Court of Judicature at Allahabad: http://www.allahabadhighcourt.in/indexhigh.html

7.2. Further information about the DIFC Courts can be obtained:
- By visiting the website of the DIFC Courts at http://www.difccourts.ae;
- By contacting the Registry:
  - at Ground Floor, Building 4, The Gate District, PO Box 211724, Dubai, UAE;
  - by telephone on +971 4 427 3333; or
  - by email at registry@difccourts.ae

[Signatures]

Dr. Michael Hwang
Chief Justice of the DIFC Courts

Mr. Muazzam Khan
Head Global Litigation Practice, Nishith Desai Associates

14 September 2018
About NDA

At Nishith Desai Associates, we have earned the reputation of being Asia’s most Innovative Law Firm – and the go-to specialists for companies around the world, looking to conduct businesses in India and for Indian companies considering business expansion abroad. In fact, we have conceptualized and created a state-of-the-art Blue Sky Thinking and Research Campus, Imaginarius Alignjan, an international institution dedicated to designing a premeditated future with an embedded strategic foresight capability.

We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bangalore, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

As an active participant in shaping India’s regulatory environment, we at NDA, have the expertise and more importantly – the VISION – to navigate its complexities. Our ongoing endeavors in conducting and facilitating original research in emerging areas of law has helped us develop unparalleled proficiency to anticipate legal obstacles, mitigate potential risks and identify new opportunities for our clients on a global scale. Simply put, for conglomerates looking to conduct business in the subcontinent, NDA takes the uncertainty out of new frontiers.

As a firm of doyens, we pride ourselves in working with select clients within select verticals on complex matters. Our forte lies in providing innovative and strategic advice in futuristic areas of law such as those relating to Blockchain and virtual currencies, Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Ed-Tech, Med-Tech & Medical Devices and Nanotechnology with our key clientele comprising of marquee Fortune 500 corporations.

The firm has been consistently ranked as one of the Most Innovative Law Firms, across the globe. In fact, NDA has been the proud recipient of the Financial Times – RSG award 4 times in a row, (2014-2017) as the Most Innovative Indian Law Firm.

We are a trust based, non-hierarchical, democratic organization that leverages research and knowledge to deliver extraordinary value to our clients. Datum, our unique employer proposition has been developed into a global case study, aptly titled ‘Management by Trust in a Democratic Enterprise,’ published by John Wiley & Sons, USA.

A brief chronicle our firm’s global acclaim for its achievements and prowess through the years –

- **Chambers and Partners Asia Pacific 2019**: Band 1 for Employment, Lifesciences, Tax and TMT
- **IFLR1000 2019**: Tier 1 for Private Equity and Project Development: Telecommunications Networks.
- **AsiaLaw 2019**: Ranked ‘Outstanding’ for Technology, Labour & Employment, Private Equity, Regulatory and Tax
- **Merger Market 2018**: Fastest growing M&A Law Firm
- **IFLR**: Indian Firm of the Year (2010-2013)
- **Legal 500 2018**: Tier 1 for Disputes, International Taxation, Investment Funds, Labour & Employment, TMT
- **Asia Mena Counsel's In-House Community Firms Survey 2018**: Only Indian Firm for Life Science Practice Sector


- **IDEX Legal Awards 2015**: Nishith Desai Associates won the “M&A Deal of the year”, “Best Dispute Management lawyer”, “Best Use of Innovation and Technology in a law firm” and “Best Dispute Management Firm”
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Research @ NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm’s culture.

Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our “Anticipate-Prepare-Deliver” research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparallel mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to Intellectual Property.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular “Hotlines”, which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports disect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

As we continue to grow through our research-based approach, we now have established an exclusive four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. Imaginarium AliGunjan is a platform for creative thinking; an apolitical ecosystem that connects multi-disciplinary threads of ideas, innovation and imagination. Designed to inspire ‘blue sky’ thinking, research, exploration and synthesis, reflections and communication, it aims to bring in wholeness – that leads to answers to the biggest challenges of our time and beyond. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams and serves as a dais to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear your suggestions on our research reports. Please feel free to contact us at research@nishithdesai.com
Enforcement of Arbitral Awards and Decrees in India - Domestic and Foreign