

The logo of Galgotias University is a stylized 'G' composed of three curved, overlapping bands in shades of yellow, blue, and red, set against a light pink circular background.

Enforcement of Arbitral Award

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Introduction

- 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
- 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

Conditions for enforcement of arbitral awards

- 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.

Conditions for enforcement of arbitral awards (contd..)

- 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

Enforcement of Domestic Award

- 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.
- by virtue of the Amendment Act, 2015 a party challenging an award would have to move a separate application in order to seek a stay on the execution of an award
- **Section 36 to 74** and **Order XXI** of the CPC set out the provisions in respect of execution
- Proceedings to execute a decree must be initiated, in the first instance, before the court which passed it

Enforcement of Foreign Award

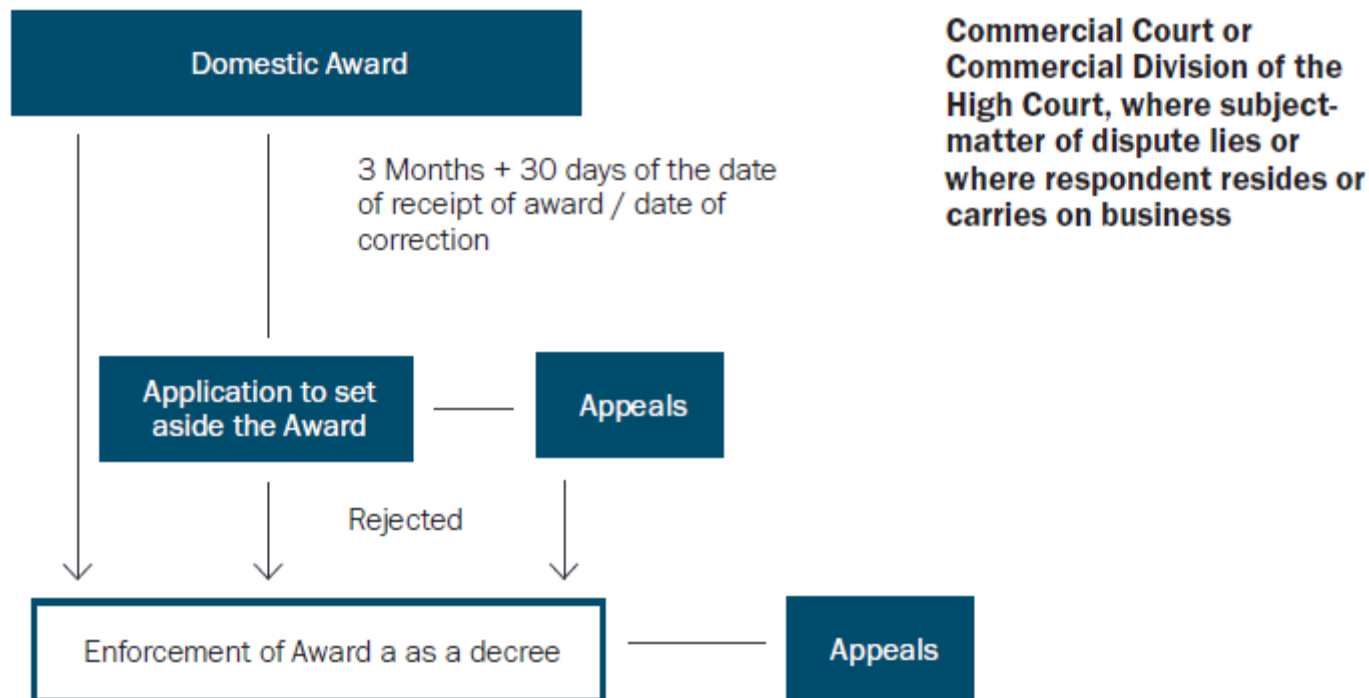
- India is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“New York Convention”) as well as the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 (“Geneva Convention”).
- a party receives a binding award from a country which is a signatory 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
- The enforcement of a foreign award in India is a *two-stage process* which is initiated by filing an execution petition
 - a court would determine whether the award adhered to the requirements of the Act.
 - an award if is found to be enforceable it may be enforced like a decree of that court

Enforcement of Foreign Award

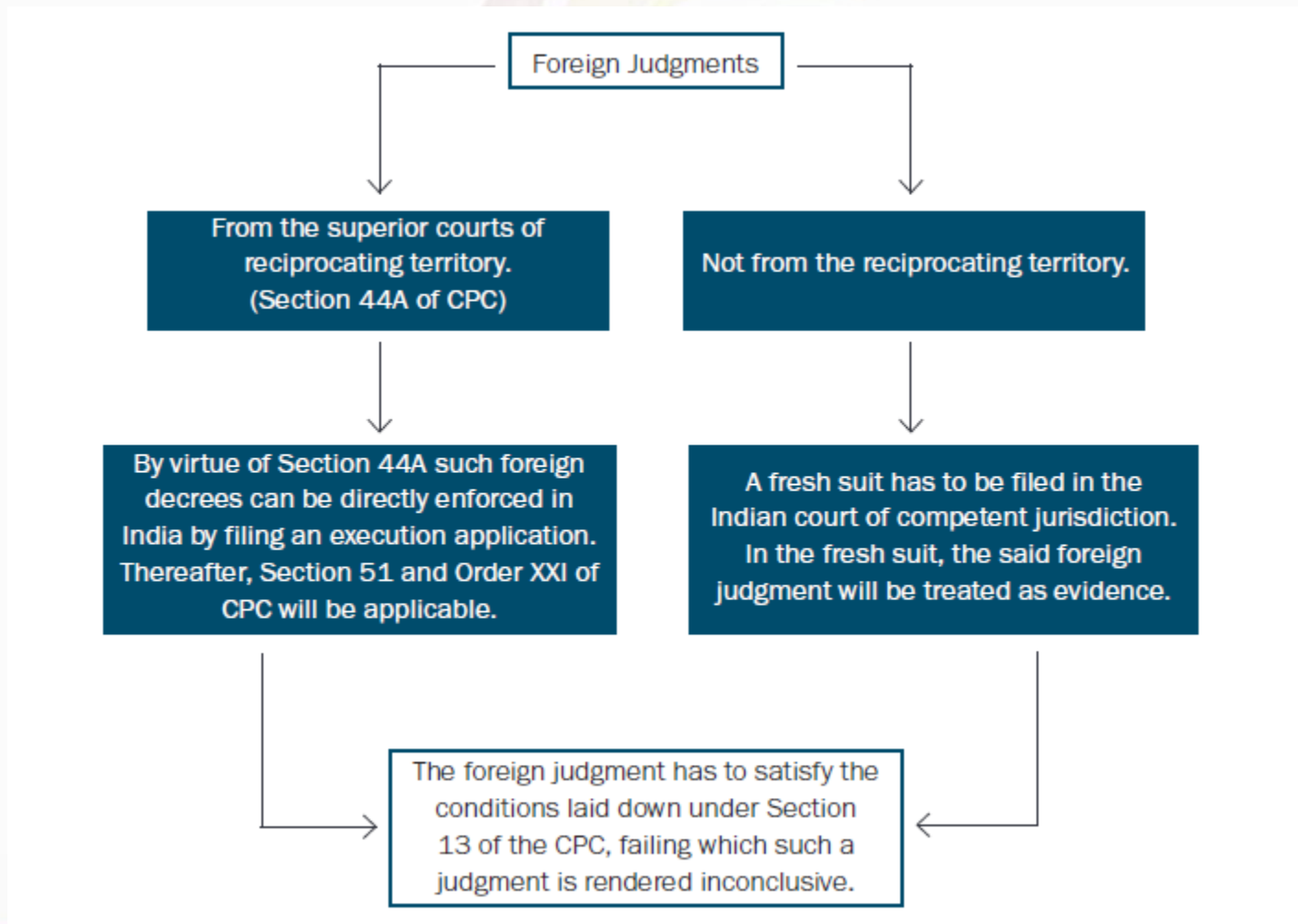
- A foreign award may be enforced in India under the *multilateral international conventions* or *the New York Convention* if the conventions apply to the relevant arbitration, the award was made in a country that is a party to the above conventions and the award was made in a country that is notified as a reciprocating territory
- if a state has been notified as a reciprocating territory for the purposes of recognition and enforcement of awards, then all territories forming part of that state would be covered under such notification. Where such state thereafter separates into different territories, as long as the new territory is also a signatory to the New York Convention, no separate notification would be required for each new territory for the purpose of recognition and enforcement of awards.
- **Requisites for the enforcement** of a foreign awards include:
 - *the original award or an authenticated copy in the manner required by the country where it is made; and*
 - *the original agreement or a certified copy*

Enforcement of Domestic Award

I. Process for Challenge and Enforcement

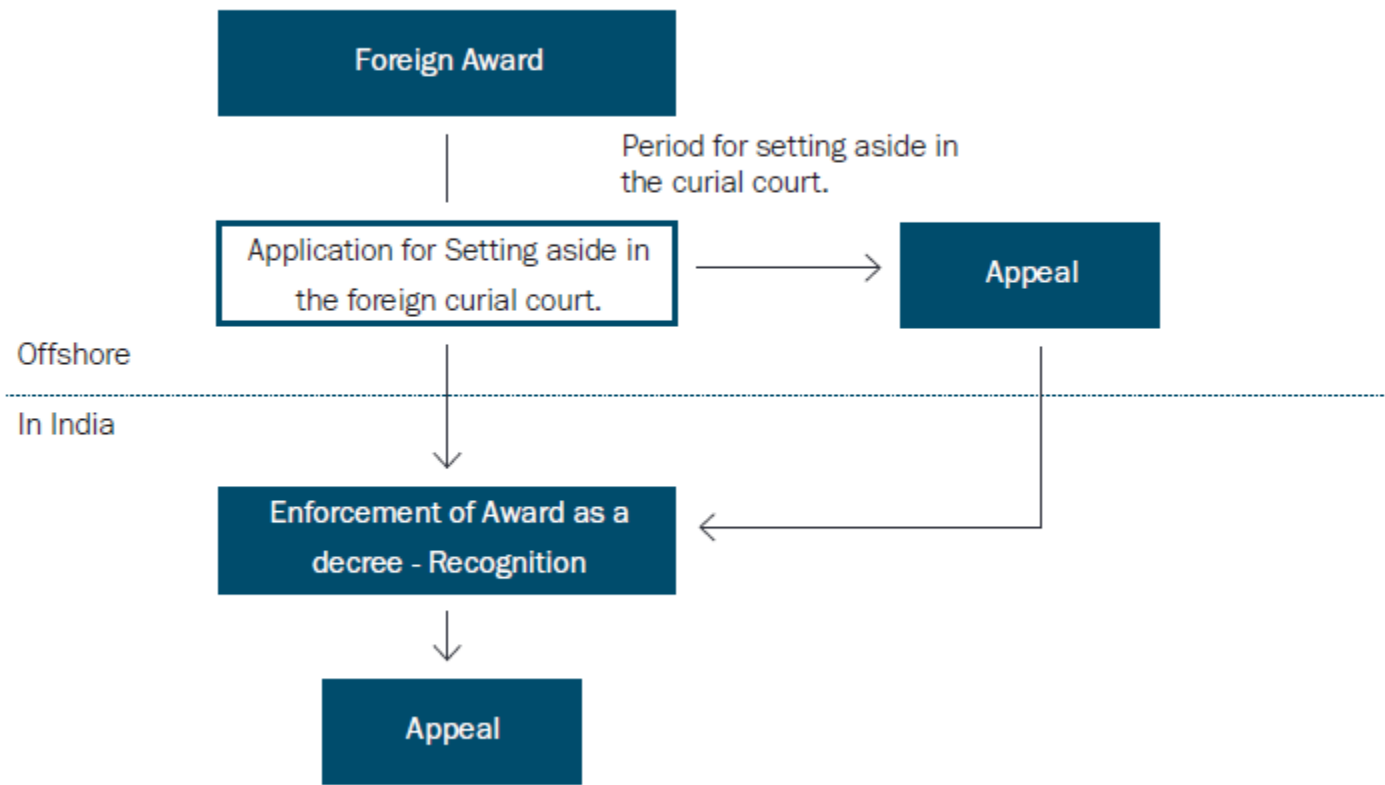


Enforcement of Foreign Judgments in India



Enforcement of Foreign Award

I. Process for challenge and enforcement



Limitation period for enforcement of awards

Domestic Award

The limitation period for enforcement of such an award is **twelve years**

An application for execution of a decree *granting a perpetual injunction* **shall not be subject** to any period of limitation

Foreign Award

Interpretation 1: 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** [Bombay High Court in Noy Vallesina v Jindal Drugs Limited 2006 (5) BomCR 155]*

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Limitation period for enforcement of awards

Domestic Award

Foreign Award

Interpretation 2: foreign awards are deemed decrees, and the corresponding limitation period would be **twelve years**. As 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 [Madras High Court in Compania Naviera 'Sodnoc' v. Bharat Refineries Ltd. AIR 2007 Mad 251]**

Appropriate forum for enforcement

<i>Domestic Award</i>	<i>Foreign Award</i>
<p>By virtue of the <i>Commercial Courts Act and the Amendment Act, 2015</i> the <u><i>Commercial Division of a High Court where assets of the opposite party lie</i></u> shall have jurisdiction for applications relating to enforcement of such awards if the subject matter is money (AN ICA)</p>	<p>Where the subject matter is money, the <i>Commercial Division of any High Court in India</i> where <i>assets of the opposite party lie</i> shall have jurisdiction</p>
<p>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 (NOT AN ICA)</p>	<p>any other subject matter, <i>Commercial Division of a High Court</i> which would have jurisdiction as if the <i>subject matter of the award was a subject matter of a suit</i> shall have jurisdiction.</p>

References

- <https://www.mondaq.com/india/arbitration-dispute-resolution/929490/enforcement-of-domestic-arbitral-awards--the-jurisdiction-conundrum>
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