



Enforcement of Foreign Awards

India's global exposure in international arbitration is well-known. Ever since the enactment of the Arbitration and Conciliation Act, 1996, there has been a surge in international commercial arbitration. It is noteworthy that the Arbitration and Conciliation Act, 1996, based on what is popularly known as the UNCITRAL model.

In order to be considered as a foreign award, (for the purposes of the Act) the same must fulfill two requirements. First it must deal with differences arising out of a legal relationship (whether contractual or not) considered as commercial under the laws in force in India. The expression "commercial relationship" has been very widely interpreted by Indian courts. The Supreme Court in the case of R.M. Investments Trading Co. Pvt. Ltd. v. Boeing Co. & Anr while construing the expression "commercial relationship" held:

"The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not..."

CHALLENGE OF FOREIGN AWARDS

In the case of Venture Global Engineering, while relying on its decision in Bhatia International, the Apex Court held that Provisions of Part I would apply even to Foreign Award and accordingly a petition for setting aside a foreign award would lie in India. It is to be noted here that provisions regarding enforcement of foreign award are contained in Part II and there is no specific provision therein for setting aside of foreign award. Only the courts in India can refuse to enforce foreign award on the grounds mentioned in Section 48 (in respect of awards made as per New York Convention) and Section 57 (in respect of awards made as per Geneva

A foreign award is defined as an arbitral award on differences between persons arising out of legal relationships whether contractual or not, considered as commercial under the law in force in India made or before 11.10.1960 in pursuance of an agreement in writing for arbitration to which either New York Convention or Geneva Convention applies or is made in such territory which central Government declares to be the territories to which either New York or Geneva Convention applies.

The Apex court in para 19 of the judgment held that “ in any event, to apply Section 34 to foreign international awards would not be inconsistent with section 48 of the Act, or any other provision of Part II as a situation may arise, where, even in respect of properties situated in India and where an award would be invalid if opposed to the public policy of India, merely because the judgment-debtor resides abroad, the award can be enforced against properties in India through personal compliance of the judgment-debtor and by holding out the threat of contempt as is being sought to be done in the present case. In such an event, the judgment-debtor cannot be deprived of his right under Section 34 to invoke public policy of India, to set aside the award. As observed earlier, the public policy of India includes-

(a) the fundamental policy of India; or (b) the interest of India; or (c) justice or morality; or (d) in addition, if it is patently illegal. This extended the definition of public policy can be bypassed by taking the award to be foreign country for enforcement.”

For **further information** on any subject raised in this case study, please contact:



Vikas Goel
Partner,
vg@singhania.in



Ritu Chhabra
Associate Partner,
rc@singhania.in

This case study is published solely for the interests of clients and associations of Singhania & Partners. This document is for general guidance only and does not constitute definitive advice. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought.

Copyright © 2010 Singhania & Partners.

EXECUTION OF FOREIGN AWARD

A person who intends to enforce a foreign arbitral award should apply to the court and produce the original award or certified/authenticated copy thereof, agreement for arbitration and evidence as may be necessary to prove the award is a foreign award. If the Court is satisfied under provisions of Section 49 that a foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court and that court shall proceed further to execute the foreign award as a decree of that court. One interesting feature of enforcement of a foreign award is that there is no statutory appeal provided against any decision of the court rejecting objections to the award. An appeal shall lie only if the court holds the award to be non-enforceable. Hence a decision upholding the award cannot be appealed against. However a discretionary appeal would lie to the Supreme Court of India under Article 136 of the Constitution of India. Such appeals are entertained only if the Court feels that they raise a question of fundamental importance or public interest.

CONCLUSION

The Indian courts have developed a reasoned, cautious and a sophisticated approach concerning the enforcement of foreign judgments and foreign awards. This anticipates well for growth and development of legal jurisprudence in India in the field of “conflict of laws”.