

Enforcing U.S. Arbitral Awards and Judgments in India

January 2020

Enforcing U.S. Arbitral Awards and Judgments in India

January 2020

DMS Code: 532230,I:

About NDA

We are an India Centric Global law firm (www.nishithdesai.com) with four offices in India and the only law firm with license to practice Indian law from our Munich, Singapore, Palo Alto and New York offices. We are a firm of specialists and the go-to firm for companies that want to conduct business in India, navigate its complex business regulations and grow. Over 70% of our clients are foreign multinationals and over 84.5% are repeat clients.

Our reputation is well regarded for handling complex high value transactions and cross border litigation; that prestige extends to engaging and mentoring the start-up community that we passionately support and encourage. We also enjoy global recognition for our research with an ability to anticipate and address challenges from a strategic, legal and tax perspective in an integrated way. In fact, the framework and standards for the Asset Management industry within India was pioneered by us in the early 1990s, and we continue remain respected industry experts.

We are a research based law firm and have just set up a first-of-its kind IOT-driven Blue Sky Thinking & Research Campus named Imaginarium AliGunjan (near Mumbai, India), dedicated to exploring the future of law & society. We are consistently ranked at the top as Asia's most innovative law practice by Financial Times. NDA is renowned for its advanced predictive legal practice and constantly conducts original research into emerging areas of the law such as Blockchain, Artificial Intelligence, Designer Babies, Flying Cars, Autonomous vehicles, IOT, AI & Robotics, Medical Devices, Genetic Engineering amongst others and enjoy high credibility in respect of our independent research and assist number of ministries in their policy and regulatory work.

The safety and security of our client's information and confidentiality is of paramount importance to us. To this end, we are hugely invested in the latest security systems and technology of military grade. We are a socially conscious law firm and do extensive pro-bono and public policy work. We have significant diversity with female employees in the range of about 49% and many in leadership positions.

Accolades

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

- **Legal500:** Tier 1 for Tax, Investment Funds, Labour & Employment, TMT and Corporate M&A 2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012
- **Chambers and Partners Asia Pacific:** Band 1 for Employment, Lifesciences, Tax and TMT 2020, 2019, 2018, 2017, 2016, 2015
- **IFLR1000:** Tier 1 for Private Equity and Project Development: Telecommunications Networks. 2020, 2019, 2018, 2017, 2014
- **AsiaLaw Asia-Pacific Guide 2020:** Tier 1 (Outstanding) for TMT, Labour & Employment, Private Equity, Regulatory and Tax
- **FT Innovative Lawyers Asia Pacific 2019 Awards:** NDA ranked 2nd in the Most Innovative Law Firm category (Asia-Pacific Headquartered)
- **RSG-Financial Times:** India's Most Innovative Law Firm 2019, 2017, 2016, 2015, 2014
- **Benchmark Litigation Asia-Pacific:** Tier 1 for Government & Regulatory and Tax 2019, 2018
- **Who's Who Legal 2019:**
Nishith Desai, Corporate Tax and Private Funds – Thought Leader
Vikram Shroff, HR and Employment Law- Global Thought Leader
Vaibhav Parikh, Data Practices - Thought Leader (India)
Dr. Milind Antani, Pharma & Healthcare – only Indian Lawyer to be recognized for 'Life sciences-Regulatory,' for 5 years consecutively
- **Merger Market 2018:** Fastest growing M&A Law Firm in India
- **Asia Mena Counsel's In-House Community Firms Survey 2018:** The only Indian Firm recognized for Life Sciences
- **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"

Please see the last page of this paper for the most recent research papers by our experts.

Disclaimer

This report is a copy right of Nishith Desai Associates. No reader should act on the basis of any statement contained herein without seeking professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this report, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this report.

Contact

For any help or assistance please email us on concierge@nishithdesai.com or visit us at www.nishithdesai.com

Acknowledgements

Moazzam Khan

moazzam.khan@nishithdesai.com

Shweta Sahu

shweta.sahu@nishithdesai.com

Contents

1. INTRODUCTION	01
2. ENFORCEMENT OF U.S. AWARDS IN INDIA	02
I. Procedure for challenge and enforcement	02
II. Enforcement of U.S. Awards: Appropriate forum and limitation	04
III. How Indian courts examine awards	05
3. ENFORCEMENT OF U.S. JUDGMENTS IN INDIA	06
I. Procedure for enforcement of U.S. Judgments	06
II. Enforcement of U.S. Judgments: Appropriate forum and limitation	10
4. MODES OF EXECUTION	11
OUR EXPERTISE	12
Enforcement of awards and execution of decrees	25

1. Introduction

The United States of America (“U.S.”) remains one of the most important trading partners of India.

A report published by Office of the United States Trade Representative, accessed on 26 December 2019¹ estimates that:

- “U.S. goods exports to India in 2018 were \$33.5 billion, up 30.6% (\$7.9 billion) from 2017 and up 89.5% from 2008. U.S. exports to India account for 2.0% of overall U.S. exports in 2018...”
- U.S. goods imports from India totaled \$54.3 billion in 2018, up 11.9% (\$5.8 billion) from 2017, and up 111.4% from 2008. U.S. imports from India account for 2.1% of overall U.S. imports in 2018...
- U.S. foreign direct investment (FDI) in India (stock) was \$46.0 billion in 2018, a 3.4% increase from 2017...
- Sales of services in India by majority U.S.-owned affiliates were \$27.0 billion in 2016 (latest data available), while sales of services in the United States by majority India-owned firms were \$17.0 billion...”

The steep rise in the number of cross-border transactions between India and US has resulted in a proportionate rise in commercial disputes. This has further necessitated efficient methods of dispute resolution, award and decree enforcement.

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 to not participate in the arbitral process or abandon it mid-way.

The enforcement of these awards/judgments where the party is *in absentio* often becomes 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 enforcement 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.² Awards rendered in arbitrations seated in the U.S. are hereinafter referred to as “**U.S. Awards**”.

This paper is aimed at providing practical insight to US parties looking to enforce awards and judgments emanating from the U.S. in India

1. ‘U.S.-India Bilateral Trade and Investment’ <<https://ustr.gov/countries-regions/south-central-asia/india>> accessed 26 December 2019

2. 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.

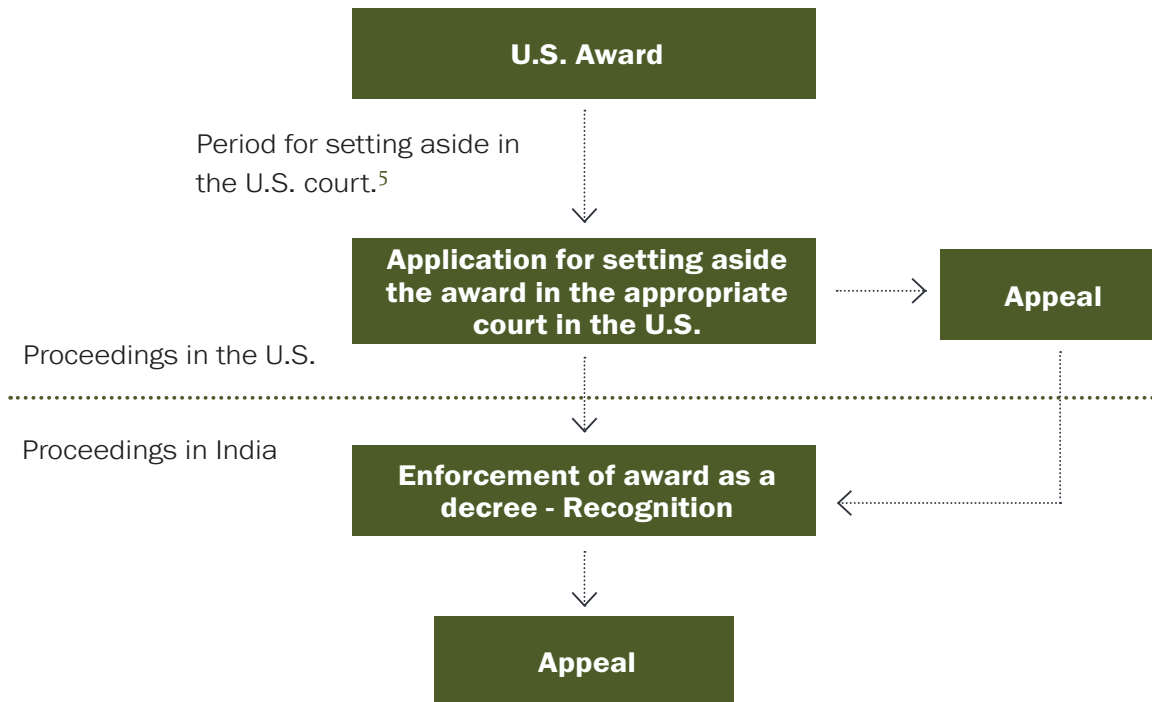
2. Enforcement of U.S. Awards in India

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.

The U.S. is a signatory to the New York Convention. Further, U.S. has been notified as a ‘reciprocating territory’³ by the Central Government of India for the purpose of

enforcement of foreign awards under Part II of the Act.⁴ Therefore, the enforcement of a U.S. Award in India would follow 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 the 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 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. Procedure for challenge and enforcement



3. Arbitration and Conciliation Act 1996, s 44(b)

4. Vide Notification No. 11(4)/72-P&P dated 24 November 1972. See,

5. A foreign award cannot be set aside by an Indian court. See, *BGS SGS Soma JV v. NHPC Ltd.* 2019 SCC OnLine SC 1585; *Bharat Aluminium Co. (BALCO) v. Kaiser Aluminium Technical Service, Inc.*, (2012) 9 SCC 552; *Reliance Industries Ltd. v. Union of India* (2014) 7 SCC 603

A. Requirements for enforcement of U.S. Awards

- Original award or a duly authenticated copy in the manner required by the country where it is made, i.e., the U.S.
- 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”.⁶ 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.”

B. Requirements for stamping and registration of U.S. Awards

In India, certain documents and instruments are required to be stamped in accordance with the Indian Stamp Act 1899, which is a fiscal statute to prevent evasion of the revenue. Documents which are required to be stamped, if they are not stamped, or are inadequately stamped, would be inadmissible in evidence ‘for any purpose’.⁷

The Indian Stamp Act 1899 requires stamping of arbitral awards with specific stamp duties. 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.

However, the Supreme Court of India has categorically held that a ‘foreign award’ is not liable to be stamped.⁸

Previously, the Delhi High Court in *Naval Gent Maritime Ltd v Shivnath Rai Harnarain (I) Ltd.*⁹, 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*¹⁰ and the High Court of Madhya Pradesh in *Narayan Trading Co. v. Abcom Trading Pvt. Ltd.*¹¹

Therefore, U.S. Awards do not have to be stamped and registered for them to be enforced in India.

C. Conditions for enforcement of U.S. Awards

Enforcement of a U.S. Award may be refused in India if it is proven that:¹²

- 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 (the U.S. law).
- There is a failure to give proper notice of appointment of arbitrator or arbitral proceedings or the party against whom the award was rendered was otherwise unable to present his case.

6. *PEC Limited v. Austbulk Shipping SDN BHD* (Civil Appeal No. 4834 of 2007) decided on 14 November 2018

7. The Indian Stamp Act 1899, s 35

8. *M/S. Shri Ram EPC Limited v Rioglass Solar SA* (2018) SCC Online 147

9. 174 (2009) DLT 391

10. 2014 SCC OnLine Bom 1058

11. 2012 SCC OnLine MP 8645

12. Arbitration and Conciliation Act 1996, s 48

- 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 (the U.S. law).
- The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the U.S.
- 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.

II. Enforcement of U.S. Awards: Appropriate forum and limitation

A. Appropriate forum

The Supreme Court in its recent ruling in, *Sundaram Finance Ltd. v. Abdul Samad and Anr*¹³ 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 value¹⁴, commercial courts (“**Commercial Courts**”) established under the Commercial Courts Act 2015 would have jurisdiction.

13. (2018) 3 SCC 622

14. Commercial Courts Act 2015, 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 three lakh rupees or such higher value, as may be notified by the Central Government”

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.

B. Limitation period for enforcement of U.S. Awards

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.¹⁵ The Supreme Court in *M/s. Fuerst Day Lawson Ltd v. Jindal Exports Ltd*¹⁶, 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.*”¹⁷

Accordingly, courts have been of the view that the limitation period for enforcement of a foreign award would be the limitation period for execution of decrees, i.e., twelve years^{18,19}

15. The Arbitration and Conciliation Act 1996, s 49

16. 2001 (6) SCC 356

17. *M/s. Fuerst Day Lawson Ltd v. Jindal Exports Ltd.* 2001 (6) SCC 356

18. Limitation Act 1963, Schedule (item 136): “For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court – Twelve years from when the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.”

19. *Compania Naviera ‘Sodnoc’ v. Bharat Refineries Ltd.* AIR 2007 Mad 251; *Imax Corporation v. E-City Entertainment (I) Pvt. Ltd. and Ors.*, Commercial Arbitration Petition No. 414 of 2018 (Bombay High Court, decided on 13 November 2019)

III. How Indian 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.
- Once an award is found to be enforceable by a court, it would be enforced like a decree of that court (in accordance with relevant provisions of the CPC – as explained below)

3. Enforcement of U.S. Judgments 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. Therefore, judgments rendered by the courts in the U.S. would be treated as ‘foreign judgments’ (hereinafter referred to as ‘**U.S. Judgments**’).

I. Procedure for enforcement of U.S. Judgments

The procedure for enforcement of foreign judgments in India, would primarily depend on whether the country where the judgment (to be enforced) was delivered is a reciprocating country under Section 44A of the CPC or not.

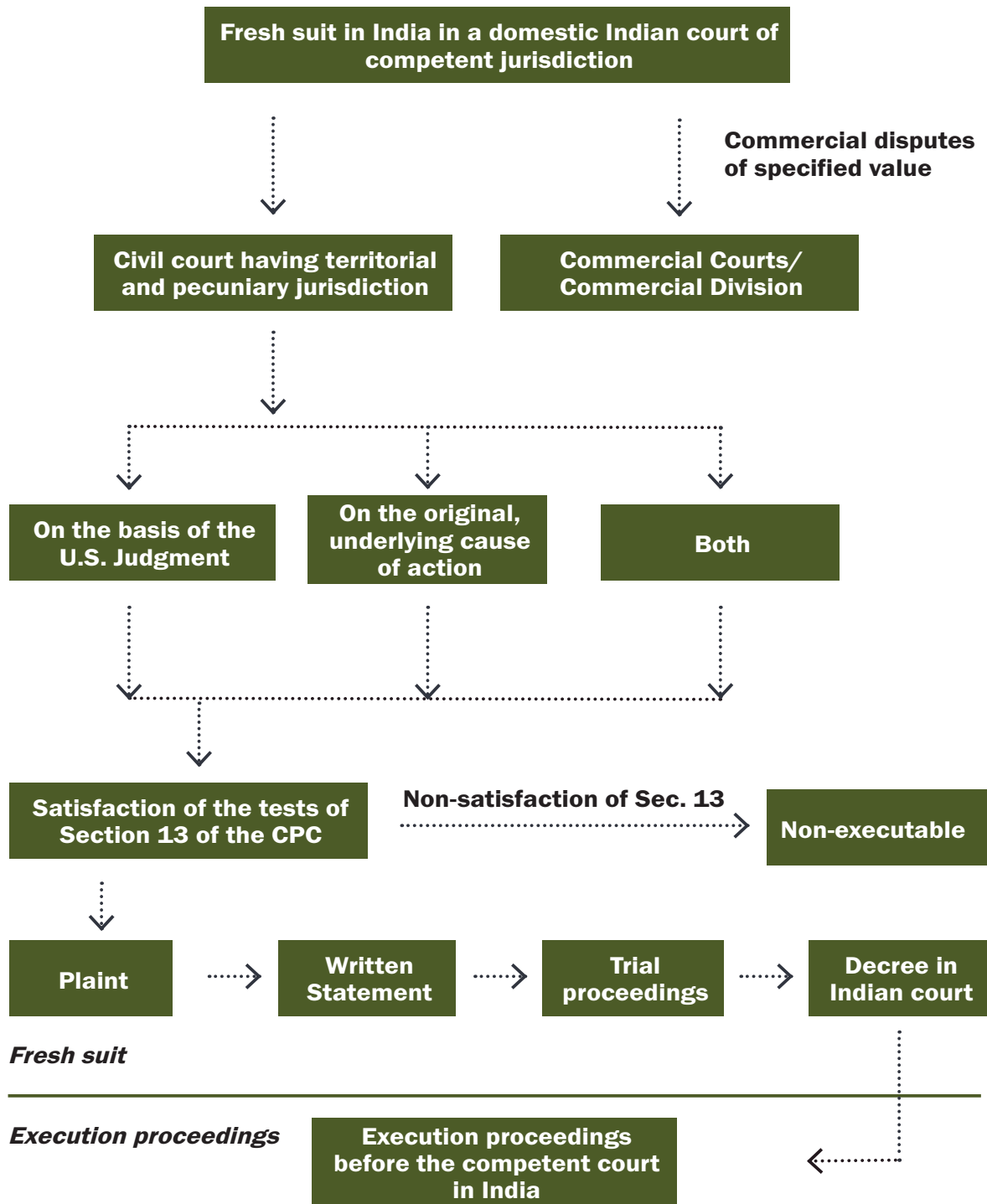
For the purposes of Section 44A of the CPC, the U.S. has not been notified as a ‘reciprocating country’.

Thus, U.S. Judgments cannot be executed directly in India as judgments delivered by Indian courts. Instead, the judgments would be executed as a decree from a non-reciprocating country.

For execution of a U.S. Judgment, a fresh suit has to be filed before the relevant court in India, based on (i) the foreign judgment or (ii) the original cause of action, or (iii) both.²⁰ Thereafter, the consequent decree obtained in India would be executed.

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

20. *Marine Geotechnics LLC v. Coastal Marine Construction & Engineering Ltd* (2014) 3 AIR Bom R 193
 “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. At that time, the judgment-debtor can resist the decree-holder by raising any of the grounds under Section 13. If he does not, or fails in his attempt, the decree will be executed as if it were a decree passed by a competent court in India.”



A. Requirements for execution of U.S. Judgments

A certified copy of the U.S. Judgment 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”), i.e. according to the rules in use in the U.S. for certification of the copies of judicial records. Further, an additional certificate by the Indian Consulate in the U.S. is also required under Section 86 of the Evidence Act.²¹

²¹. See, *Narasimha Rao v. Y. Venkata Lakshmi*, (1991) 3 SCC 451 (para 23, 24)

Upon the production of the certified copy of the U.S. Judgment, the Indian court before which it is placed, shall presume that such judgment was pronounced by a court of competent jurisdiction.²² However, an adverse inference may be taken in case something contrary appears on record, or on proving want of jurisdiction.²³

Further, the tests prescribed under Section 13 of the CPC have to be satisfied.²⁴ Section 13 provides that a foreign judgment shall 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;
- 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.

B. Fresh suit filed before civil courts for enforcing U.S. Judgments

For enforcement of a U.S. Judgment in India, a fresh suit would have to be filed in a manner prescribed under the CPC, along with the payment of appropriate court fees. After completion of the pleadings, issues are framed, which is followed by the production, admission and denial of evidence. Thereafter, the examination and recording of evidence (documentary and/or oral) is completed.

Pursuant to completion of the hearing of the matter, the judgment is pronounced in open court, followed by the decree being drawn up.²⁵

If a defendant does not appear when the suit is called for hearing, irrespective of summons being duly served on him, the court may order that the suit be heard *ex parte*.²⁶

C. Fresh suit filed under Commercial Courts Act 2015 for enforcing U.S. Judgments

In case the dispute is commercial in nature and of a specified value (as explained earlier), a suit under the Commercial Courts Act 2015 would be initiated,²⁷ as given below:

22. Code of Civil Procedure 1908, s 14

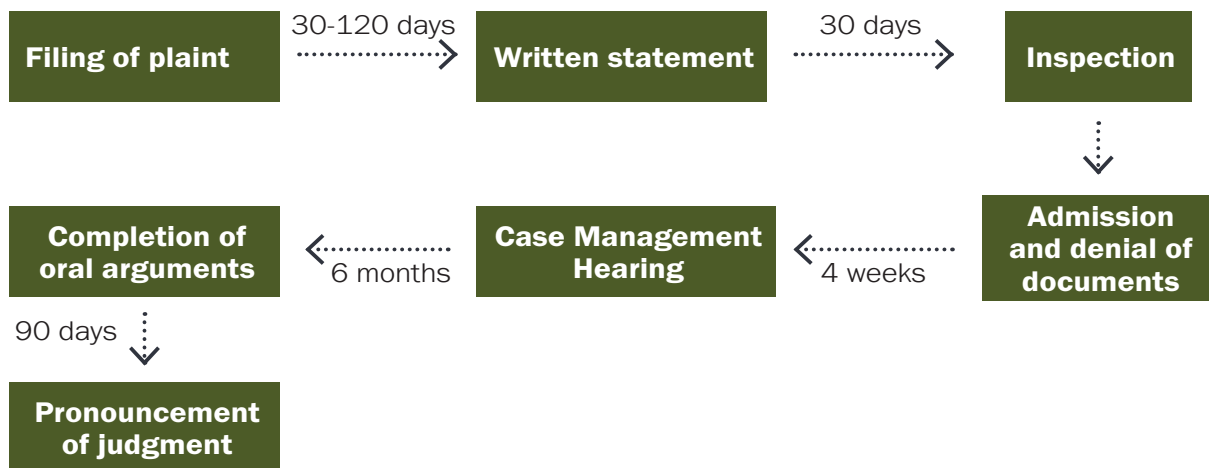
23. For example, whether or not a party has submitted to the jurisdiction of the foreign court.

24. *Yehudha Silberberg Ltd v. Premier Poly Weaves Ltd* (2010) 6 Mad LJ 1:
“if a suit is filed on the basis of any judgment obtained in any Court other than an Indian Court, it would be a conclusive subject as regards the matters adjudicated upon the exceptions under Section 13. The judgments of Courts of reciprocating country stand on a better footing since those judgments can straightaway be put in execution in India as if it had been passed by the Indian Court and provisions of Section 47 will apply subject to the limits created by Section 13... Therefore, every person against whom there is a judgment of a foreign court whether it is a reciprocating or a non-reciprocating country could raise the defense if a suit is filed or an execution petition is filed and resist it by showing that he has a valid defense which falls under one of the categories mentioned in Section 13.”

25. Code of Civil Procedure 1908, Order XX Rule 1

26. Code of Civil Procedure 1908, Order IX Rule 6(b)

27. The Commercial Courts Act 2015 provides for dispute resolution in a time-bound mechanism in fora.



Suits and applications filed in the High Court having original civil jurisdiction (such as the High Courts of Delhi and Bombay) 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.

Summary judgments under Commercial Courts Act 2015:

In all such commercial disputes of specified value, a party may make an application²⁸ (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.

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 the defendant may succeed but it is improbable that it will do so, it can pass a conditional order against the defendant including, but not limited to, a condition requiring the judgment debtor to deposit a sum of money as security for the judgment.²⁹

D. Proceedings for execution of the decree rendered in India

On a decree being passed, execution proceedings would be initiated for enforcement of the decree, which is governed by Sections 36 to 74 and Order XXI of the CPC.

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’.

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

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.

28. In accordance with Order XIII-A, Rule 4 of the CPC, as amended by the Commercial Courts Act 2015

29. In accordance with Order XIII-A, Rule 7 of the CPC, as amended by the Commercial Courts Act 2015

II. Enforcement of U.S. Judgments: Appropriate forum and limitation

A. Appropriate forum

- i. A fresh suit for enforcement of a U.S. 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.

- ii. 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.

B. Limitation period for enforcing U.S. Judgments

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’.

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’.

4. Modes of execution

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;
- 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.

Since foreign awards are to be executed in India as a decree passed by an Indian court, the modes of execution for U.S. Awards and decrees of Indian courts (subsequent to U.S. Judgments) are also common. On an application (explained above) made for execution of the decree/award, the court may order the execution of the decree / award by one or more of the following modes:

- i. by delivery of any property specifically decreed;
- ii. by attachment and sale or by sale without attachment of any property;
- iii. by arrest and detention in prison;
- iv. by appointing a receiver;
- v. by any other manner as the nature of the relief granted may require.³⁰

30. Code of Civil Procedure 1908, s 51

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:

* **IN THE HIGH COURT OF** [REDACTED]
 + [REDACTED]
 [REDACTED] Decree Holder
 Through: Mr. Moazzam Khan and Mr. Alipak Banerjee, Advcoates.
 versus
 [REDACTED] Judgement Debtors
 Through: None.

CORAM:
HON'BLE MR. JUSTICE [REDACTED]

ORDER
 % [REDACTED]

EX.APPL. [REDACTED]

Allowed subject to just exceptions.

EX.P. [REDACTED]

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 [REDACTED]. *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.

2. The judgement debtors are directed to file affidavit of their assets in Form 16A, Appendix E, under Order XXI Rule 41(2) of the Code of Civil Procedure along with statements of all their bank accounts, balance sheets as well as income tax returns for the last three years within 30 days of the receipt of the notice.
3. Copy of this order be sent to the judgement debtors along with the notice.
4. The judgement debtors are restrained from transferring, alienating or creating any third party interest in respect of the movable and immovable assets mentioned in the Schedule of the properties. The schedule of the properties at page [REDACTED] be sent to the judgement debtors along with the notice.
5. The judgement debtors shall remain present in Court on the next date of hearing.
6. Copy of this order be given *dasti* to counsel for the decree holder under the signatures of the Court Master.

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:

[REDACTED]
*** IN THE HIGH COURT OF [REDACTED]**
O.M.P.(EFA)(COMM.) [REDACTED]
[REDACTED] decree-holder
Through Mr.Moazzam Khan, Adv. with
Ms.Payal Chatterjee, Mr.Alipak
Banerjee and Mr.Brijesh Kumar,
Advs.
versus
[REDACTED] judgment-debtor
Through [REDACTED]
CORAM:
[REDACTED]
ORDER
[REDACTED]
I.A. No. [REDACTED] (exemption)
Exemption allowed, subject to just exceptions.
The application is disposed of.

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

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.

[REDACTED]
[REDACTED]
[REDACTED]
* IN THE HIGH COURT OF [REDACTED]

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

[REDACTED] Petitioner
Through Mr.Moazzam Khan, Adv. with
Ms.Payal Chatterjee and Mr.Brijesh
Kumar, Advs.

versus

[REDACTED] Respondent
[REDACTED]
[REDACTED]

ORDER
[REDACTED]

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] [REDACTED] has been filed, which was earlier filed by the respondent before the Supreme Court [REDACTED] [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].

Heard learned counsel appearing on behalf of the petitioner, till the next date, the respondent is directed not to dispose of the said properties.

The respondent shall also disclose the details of the bank accounts by filing of an affidavit.

[REDACTED]

An illustrative order granting attachment of properties is set out below:

IN THE HIGH COURT OF DELHI AT NEW DELHI

[REDACTED] Decree Holder

Through: [REDACTED]
[REDACTED] Mr Moazzam Khan and [REDACTED]

versus

[REDACTED] Judgement Debtors
Through: [REDACTED]

CORAM:
HON'BLE MR. JUSTICE [REDACTED]

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 [REDACTED] and the land measuring [REDACTED] situated in [REDACTED]

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]. [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]. [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 *superdari* 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 *superdari* 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:-

	JD -	- Account No
		New Delhi

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.

Name of the Bank	Account Holder	Bank Account No.	IFSC Code

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

MEK

J

|

An illustrative order obtained in the initial hearings for enforcement of a foreign judgment, granting disclosure of assets is set out below:

S~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **EX.P. [REDACTED] & EA No. [REDACTED] (of JD by way of objection)**

[REDACTED]
[REDACTED] Decree Holder
Through: **Mr. Moazzam Khan, Ms. Shweta Sahu [REDACTED] Advs.**

Versus

[REDACTED] Judgement Debtor
Through: [REDACTED]
[REDACTED].

**CORAM:
HON'BLE MR. JUSTICE [REDACTED]**

ORDER

%

1. No rejoinder to the reply has been filed. Time sought for filing rejoinder is declined.
2. No time left to hear arguments.
3. The judgment debtor is directed to, on or before [REDACTED] file an affidavit in this Court disclosing all its assets/receivables/recoverables as well as bank account/s.
4. List on [REDACTED].

[REDACTED] [REDACTED]
[REDACTED] bs..

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. [REDACTED]

[REDACTED] Decree Holder
Through: [REDACTED] Mr. Moazzam Khan,
Advocate, Ms. Shweta Sahu,
Advocate [REDACTED]
[REDACTED]
versus
[REDACTED] Judgement Debtor
Through: [REDACTED]
[REDACTED]

CORAM:
HON'BLE MR. JUSTICE [REDACTED]

ORDER

%

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

--
JUDGMENT
[REDACTED]
[REDACTED]

sd/-
[REDACTED]
[REDACTED]
[REDACTED]
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 [REDACTED] was payable as principal and [REDACTED] was payable towards interest. Interest has thereafter to be added on the principal amount at [REDACTED].

3. This matter has been coming up before this Court from [REDACTED], 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 [REDACTED] this Court should not proceed ahead for attachment.

(ii) I reject this argument as completely frivolous firstly because if the judgment debtor was *bonafide* there was no reason why the judgment debtor company, and more so [REDACTED], should not have given the necessary security for attachment for the decree holder towards the subject judgment and decree. Secondly, [REDACTED], 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 [REDACTED] this Court should not proceed ahead for attachment.

(ii) I reject this argument as completely frivolous firstly because if the judgment debtor was *bonafide* 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, [REDACTED] 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

this case, should not be payable.

5. Accordingly, since there is no stay of operation of the subject judgment and decree [REDACTED] 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)"

Sr. No.	Details of banks in Delhi	Account No.	Amount (INR)	References
1.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Trade Receivables

Sl. No.	Project Code	Customer Name	INR in crores([REDACTED])	Reference
1.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]

		[REDACTED]		[REDACTED]
4.	[REDACTED]	[REDACTED]	[REDACTED]	
5.	[REDACTED]	[REDACTED]	[REDACTED]	

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 [REDACTED].

[REDACTED]
Ne

[REDACTED]

An extract of an illustrative order recognizing a foreign award is set out below:

-
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment Reserved on 31.1.2019*
Judgment Pronounced on 09.08.2019
+ **EX.P.** [REDACTED]
[REDACTED] Decree Holder
Through: [REDACTED] with Mr. Moazzam
Khan, Ms. Shweta Sahu, [REDACTED] [REDACTED]
[REDACTED] Advs.
versus
[REDACTED] Judgement Debtor
Through: Mr. [REDACTED] Adv.
CORAM:
HON'BLE [REDACTED]
[REDACTED] J.:

Preface

1. The captioned execution petition seeks enforcement of foreign award dated [REDACTED] (hereafter referred to as 'Final Award') and the cost of the reference awarded in favour of the decree holder i.e. [REDACTED] (hereafter referred to as [REDACTED]) which was passed by the arbitral tribunal after the final award on [REDACTED] (hereafter referred to as 'Cost Award').

2. Notice in the execution petition was issued on [REDACTED]. The judgment debtor i.e. [REDACTED] (hereafter referred to as [REDACTED]) entered appearance through its counsel on [REDACTED]. On that date, [REDACTED] was granted two weeks to file its objections to the award.

33. Thus for the foregoing reasons, in my view, none of the objections taken on behalf of [REDACTED] have any merit. The logical fall out of this conclusion would be that both the Final Award and the Cost Award would have to be recognised as prayed. It is held accordingly. Consequently, both awards would be amenable to enforcement via the instant execution petition.

34. Resultantly, [REDACTED] is directed to deposit the awarded amounts with the registry of this court both as mentioned in Final Award and Cost Award within 4 weeks from today. In case [REDACTED] deposits the awarded amounts as directed hereinabove, the Registry will invest the same in an interest bearing security maintained with a nationalised bank.

35. Furthermore, [REDACTED] will also file an affidavit in Form 16-A Appendix-E of the Code of Civil Procedure, 1908 giving details of its assets which would include its bank accounts. The credit balance obtaining in the bank accounts maintained by [REDACTED] as on [REDACTED] will also be reflected in the affidavit. The affidavit will be accompanied by the requisite bank statement(s).

35.1 Besides this, [REDACTED] is restrained from transferring, selling and/or creating third party interests in its assets, save and except, in the normal and usual course of business till further orders of the court.

36. List the matter for further proceedings on [REDACTED]

[REDACTED]
JUDGE

[REDACTED]



Enforcement of awards and execution of decrees

Foreign and Domestic

Some of the clients that we have represented/are representing:

- A U.S.-based company involved in the gaming industry for enforcement of an AAA arbitral award passed in the U.S. against a Mumbai based leading gaming entity.
- 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.
- 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.
- 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.
- 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, favourable orders were obtained for recognition and enforcement of the award along with directions to the judgment-debtor deposit the respective award amount.
- 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.
- A Japanese entity in enforcement in India of a multi-billion-dollar arbitral award delivered in Singapore arising out of the biggest M&A transaction in India.
- A sovereign wealth fund in enforcement of a Finnish award against an Indian company.
- An Indian joint venture partner against a large foreign multinational to resist enforcement of a multi-million dollar award arising from an arbitration under LCIA Rules.
- Enforcement in India of awards and judgments issued by Dubai International Financial Centre (“DIFC”) Courts and executing a unique

memorandum of guidance on execution of DIFC Court Judgments in India with the Chief Justice of the DIFC Courts;

- One of the largest natural resource companies in an action for enforcement of a judgment of Singapore court in India against a large public sector undertaking
- A Saudi-based fund in enforcement of a multi-million dollar domestic award against the Indian promoters;
- A Singapore-based insurance company in enforcement of a judgment of Singapore High Court of over INR 1 billion against an Indian listed entity.
- An Indian (FinTech: Banking and Payment Software Solutions Co.) company in proceedings before the Mauritius Supreme Court & Privy Counsel for setting aside a multi-million-dollar arbitration award seated in Mauritius.
- The world's largest Art Fund before various courts including Supreme Court of India in a matter concerning enforcement of multi-million-dollar judgment of Commercial Courts, United Kingdom.

The following research papers and much more are available on our Knowledge Site: www.nishithdesai.com

	<p>Private Equity and Private Debt Investments in India</p>		<p>International Commercial Arbitration: Law and Recent Developments in India</p>		<p>Are we ready for Designer Babies?</p>
	May 2019		May 2019		June 2019
	<p>India Opens Skies for Drones</p>		<p>Digital Health in India</p>		<p>Impact Investing Simplified</p>
	August 2019		November 2019		July 2019
	<p>IP Centric Deals: Key legal, tax and structuring considerations from Indian law perspective</p>		<p>Fund Formation: Attracting Global Investors</p>		<p>Building a Successful Blockchain Ecosystem for India</p>
	February 2019		February 2019		December 2018

NDA Insights

TITLE	TYPE	DATE
Delhi Tribunal: Hitachi Singapore’s Liaison Office in India is a Permanent Establishment, Scope of Exclusion Under Singapore Treaty Restrictive	Tax	November 2019
CBDT issues clarification around availment of additional depreciation and MAT credit for companies availing lower rate of tax	Tax	October 2019
Bombay High Court quashes 197 order rejecting Mauritius tax treaty benefits	Tax	May 2019
Investment Arbitration & India – 2019 Year in review	Dispute	January 2020
Changing landscape of confidentiality in international arbitration	Dispute	January 2020
The Arbitration and Conciliation Amendment Act, 2019 – A new dawn or sinking into a morass?	Dispute	January 2020
Why, how, and to what extent AI could enter the decision-making boardroom?	TMT	January 2020
Privacy in India - Wheels in motion for an epic 2020	TMT	December 2019
Court orders Global Take Down of Content Uploaded from India	TMT	November 2019
Graveyard Shift in India: Employers in Bangalore / Karnataka Permitted to Engage Women Employees at Night in Factories	HR	December 2019
India’s Provident Fund law: proposed amendments and new circular helps employers see light at the tunnel’s end	HR	August 2019
Crèche Facility By Employers in India: Rules Notified for Bangalore	HR	August 2019
Pharma Year-End Wrap: Signs of exciting times ahead?	Pharma	December 2019
Medical Device Revamp: Regulatory Pathway or Regulatory Maze?	Pharma	November 2019
Prohibition of E-Cigarettes: End of ENDS?	Pharma	September 2019

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 unparalleled 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 dissect 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



Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

tel +91 22 6669 5000
fax +91 22 6669 5001

SILICON VALLEY

220 California Avenue, Suite 201
Palo Alto, CA 94306-1636, USA

tel +1 650 325 7100
fax +1 650 325 7300

BANGALORE

Prestige Loka, G01, 7/1 Brunton Rd
Bangalore 560 025, India

tel +91 80 6693 5000
fax +91 80 6693 5001

SINGAPORE

Level 30, Six Battery Road
Singapore 049 909

tel +65 6550 9856

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra-Kurla Complex
Mumbai 400 051, India

tel +91 22 6159 5000
fax +91 22 6159 5001

NEW DELHI

C-5, Defence Colony
New Delhi 110 024, India

tel +91 11 4906 5000
fax +91 11 4906 5001

MUNICH

Maximilianstraße 13
80539 Munich, Germany

tel +49 89 203 006 268
fax +49 89 203 006 450

NEW YORK

1185 Avenue of the Americas,
Suite 326 New York, NY 10036, USA

tel +1 212 464 7050