

UPDATE

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Enforcement Paradox re Foreign Awards - Foreign Investor's Perspective

A. *Introduction*

The enforcement of foreign arbitral awards presents a unique paradox from the perspective of foreign investors: while securing recognition and enforcement of an award has become increasingly achievable, the timing and the quantum of actual recovery of the awarded amount remains uncertain. India's arbitration jurisprudence has evolved significantly over the past three (3) decades, with courts consistently adopting a pro-enforcement approach that limits judicial interference and narrowly construes the grounds for refusal under Section 48 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**"). Landmark decisions such as *Renusagar*¹, *Shri Lal Mahal*² and *Vijay Karia*³ have strengthened confidence in India's commitment to the New York Convention by affirming the finality of foreign awards and discouraging merits-based review.

The commercial value of an award is in its actual monetary recovery, as opposed to mere recognition as a legal right. Even after an award attains recognition of a decree, foreign investors may encounter practical obstacles such as asset concealment, insolvency proceedings, complex corporate structures, competing creditor claims, execution delays and regulatory hurdles. Consequently, a fundamental distinction exists between certainty of enforcement versus certainty of actual recovery. While the former reflects the willingness of courts to uphold arbitral awards, the latter determines whether the award holder ultimately receives the economic benefit of the award.

For foreign investors assessing jurisdictional risk, this distinction is particularly significant because the effectiveness of an arbitration regime is measured not merely by the number of awards recognised and enforced, but by the extent to which successful parties are able to realise the economic value of those awards. Therefore, the enforcement paradox lies in the fact that jurisdiction, in principle, may be strongly pro-enforcement, while continuing to present practical challenges in the actual recovery of awarded sums.

B. *Legal Framework for Enforcement of Foreign Awards*

The legal framework governing the enforcement of foreign arbitral awards in India reflects a conscious legislative effort to balance limited judicial oversight with the commercial

¹ *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644: AIR 1994 SC 860

² *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 433

³ *Vijay Karia & Ors. v. Prysmian Cavi E Sistemi SRL & Ors.*, (2020) 11 SCC 1

imperative of ensuring finality in international dispute resolution. As global investment increasingly depends upon predictable mechanisms for resolving cross-border disputes, the enforceability of arbitral awards has become a critical indicator of a jurisdiction's investment climate. India's accession to the New York Convention and the subsequent incorporation of its principles through Part II of the 1996 Act marked a significant departure from earlier enforcement regimes that were often criticised for procedural rigidity and excessive court intervention. The contemporary framework facilitates the recognition and enforcement of foreign awards by confining judicial scrutiny to narrowly defined exceptions, thereby reinforcing the principle that arbitral awards must be honoured rather than reopened. This legislative architecture seeks to assure foreign investors that rights vindicated through international arbitration shall receive effective legal protection within India.

At the heart of this framework lies a pro-enforcement philosophy that treats refusal of enforcement as an exception rather than the rule. Sections 46 to 50 of the 1996 Act establish a structured mechanism through which foreign awards are recognised as binding, subjected to limited judicial review, and ultimately accorded the status of a decree capable of execution in India. Significantly, the grounds for resisting enforcement are largely confined to jurisdictional defects, procedural unfairness and narrow public policy considerations, thereby preserving the autonomy and finality of the arbitral process. Legislative reforms, particularly those introduced in 2015, have further narrowed the scope of judicial interference by expressly prohibiting merits review at the enforcement stage. Consequently, India's statutory regime has evolved to substantially align with best practices and the objectives of the New York Convention. Yet, as the following sections demonstrate, the existence of a robust legal framework does not necessarily guarantee effective recovery, giving rise to the enforcement paradox, especially, from the perspective of foreign investors.

C. Evolution of India's Pro-Enforcement Jurisprudence

The evolution of India's foreign award enforcement jurisprudence reflects a sustained judicial effort to align domestic law with the pro-enforcement philosophy of the New York Convention. In this journey a significant milestone was the decision in *Renusagar Power Co. Ltd. v. General Electric Co.*⁴, where the Supreme Court (the "Court") adopted a restrictive interpretation of the public policy exception and held that enforcement of a foreign award could be refused only if it was contrary to the fundamental policy of Indian law, the interests of India, or justice and morality. By confining public policy to these limited categories, the Court insulated foreign awards from expansive judicial review and established the foundational principle that enforcement proceedings should not become an avenue for re-adjudication of disputes. Although this position was subsequently diluted in *Phulchand Exports Ltd. v. O.O.O. Patriot*⁵, where the broader concept of patent illegality was imported into the enforcement framework, the Supreme Court decisively corrected course in *Shri Lal Mahal Ltd. v. Progetto Grano Spa*⁶. Reaffirming *Renusagar*, the Court held that the wider public policy standard applicable to domestic awards had no application to foreign awards and that Section 48 does not permit a review of the award on merits. This restoration of the

⁴ *Supra*

⁵ *Phulchand Exports Ltd. vs O.O.O. Patriot*, (2011) 10 SCC 300

⁶ *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 433

narrow public policy standard significantly strengthened the finality and enforceability of foreign arbitral awards in India.

The pro-enforcement trajectory was further reinforced through the landmark decision in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)*⁷, which established the territoriality principle and clarified that supervisory jurisdiction over an arbitration rests primarily with the courts of the seat of arbitration. By rejecting the earlier approach adopted in *Bhatia International*, the Supreme Court enhanced legal certainty in cross-border arbitrations and reduced the scope for intervention by Indian courts in foreign-seated proceedings.

The jurisprudence reached a more mature stage in *Vijay Karia v. Prysmian Cavi E Sistemi SRL*⁸, where the Court described the grounds contained in Section 48 as “watertight” and emphasised that enforcement could be resisted only within the narrow confines expressly contemplated by the statute. The Court reiterated that the fundamental policy of Indian law must be understood in a restrictive sense and cautioned against attempts to disguise merit-based objections as public policy challenges.

More recently, the Bombay High Court in *Trammo DMCC v. Nagarjuna Fertilizers and Chemicals Ltd.*⁹ and *Trading and Agency Services Ltd. WLL v. Ion Exchange (India) Ltd*¹⁰ has continued this trend by refusing to revisit factual and legal determinations made by foreign-seated tribunals and by reaffirming that enforcement itself constitute an important facet of public policy. Collectively, these decisions demonstrate the emergence of a coherent judicial philosophy that prioritises finality, party autonomy and international comity, thereby positioning India as an increasingly reliable jurisdiction for the enforcement of foreign arbitral awards.

D. The Regulatory Element: FEMA, RBI and Cross-Border Remittances

For several years, the enforcement of foreign arbitral awards in India was accompanied by regulatory uncertainty arising from the intersection of arbitration law and foreign exchange regulation. While courts increasingly demonstrated a willingness to recognise and enforce foreign awards, questions persisted regarding whether the remittance of award amounts to non-resident award holders required separate regulatory approval under India's foreign exchange law. This dichotomy created an unusual situation in which a successful foreign investor could obtain a favourable enforcement order yet remain uncertain about the practical ability to repatriate the awarded sum. Recent judicial developments have sought to resolve this tension by recognising that regulatory compliance should not operate as an indirect mechanism for undermining the finality of arbitral awards. The emerging approach reflects a broader understanding that foreign exchange regulation and arbitral enforcement serve distinct objectives and must be harmonised, rather than placed in conflict. This development, as regards the foreign investors, represents more than a procedural clarification; it signifies a paradigm shift towards a legal environment where regulatory requirements facilitate lawful remittance without becoming substantive barriers to recovery. The significance of this

⁷ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Service, Inc.*, (2012) 9 SCC 552

⁸ *Vijay Karia v. Prysmian Cavi E Sistemi SRL*, (2020) 11 SCC 1

⁹ *Trammo DMCC v. Nagarjuna Fertilizers and Chemicals Ltd.*, 2026 SCC OnLine Bom 1773

¹⁰ *Trading and Agency Services Limited WLL v. Ion Exchange (India) Limited*, 2026: BHC-OS:6744

development lies in its contribution to commercial certainty, helping foreign investors to place confidence in a dispute-resolution framework where the transition from enforcement to payment is clear, predictable, and free from unnecessary administrative impediments.

E. *Certainty of Enforcement versus Recovery*

India's foreign award jurisprudence has undergone a significant transformation from judicial scepticism to robust judicial support for international arbitration. Through a series of landmark decisions, Indian courts have progressively narrowed the scope of intervention at the enforcement stage and reinforced the principle that foreign arbitral awards should be respected except in exceptional circumstances. These developments have substantially reduced enforcement-related uncertainty and strengthened India's reputation as an arbitration-friendly jurisdiction.

Yet, from an investor's perspective, the true value of an arbitral award lies not in its legal recognition but in its practical realisation. An award that survives judicial scrutiny may nevertheless encounter significant obstacles during execution, including difficulties in identifying attachable assets, corporate restructuring by award debtors, competing insolvency claims, or the dissipation of assets across jurisdictions. Accordingly, the practical effectiveness of an enforcement regime must be assessed not only by the ease with which awards are recognised but also by the extent to which they can be translated into meaningful economic recovery.

F. *Beyond Enforcement Rates: Reassessing Success Through the Investor's Lens*

The effectiveness of a foreign award enforcement regime is often assessed through quantitative indicators, namely, the percentage of awards recognised or the frequency with which enforcement challenges are rejected. While such metrics demonstrate judicial support for arbitration, they do not necessarily capture the realities faced by foreign investors. Recognition of an award constitutes an important legal milestone, but from a commercial perspective it remains only one stage in the broader process of securing actual recovery.

Recent judicial developments addressing regulatory impediments and reaffirming the narrow scope of enforcement objections have strengthened India's standing as an arbitration-friendly jurisdiction. The Delhi High Court in *Cruz City 1 Mauritius Holdings v. Unitech Limited*¹¹ held that foreign arbitral awards are enforceable in India under the Arbitration and Conciliation Act, 1996, although issues relating to remittance and regulatory compliance under Foreign Exchange Management Act, 1999 (“**FEMA**”) may arise separately at the execution stage. The Bombay High Court in *Banyan Tree Growth Capital LLC v. Axiom Cordages Ltd. & Ors.*¹² reiterated that potential regulatory requirements under FEMA or Reserve Bank of Indian (“**RBI**”) guidelines cannot be used as a ground to resist enforcement of a foreign arbitral award. In a recent decision of the Court (commonly referred to as the *GPE matter, 2025*)¹³, the Court clarified that amounts payable under arbitral awards to non-residents constitute current account transactions under FEMA and do not require prior RBI approval.

¹¹ *Cruz City 1 Mauritius Holdings v. Unitech Limited*, 2017 SCC OnLine Del 7810

¹² *Banyan Tree Growth Capital LLC v. Axiom Cordages Ltd. & Ors.*, 2020 SCC OnLine Bom 781

¹³ *GPE (India) Ltd. & Ors. v. TWARIT Consultancy Services Private Limited & Anr.*, SLP (C) No. 6856/2023

Nevertheless, the long-term credibility of the system shall depend upon its ability to ensure that successful award creditors are able to obtain meaningful recovery within a commercially reasonable timeframe. Ultimately, a mature enforcement regime should blend both, judicial recognition and economic realisation, as complementary stages of a seamless dispute-resolution process.

Conclusion

India's arbitration journey has evolved over the past three (3) decades and has been marked by a decisive shift towards a pro-enforcement legal framework that reflects international best practices and the objectives of the New York Convention. Judicial decisions and legislative reforms have substantially reduced the scope of intervention at the enforcement stage, reinforcing the finality of foreign arbitral awards and strengthening investor confidence in India's dispute-resolution ecosystem.

Yet, the evolution of an arbitration-friendly jurisdiction does not end with enforceability. The next phase of development requires a transition from an enforcement-centric model to a recovery-centric one, where equal attention is devoted to the practical realization of arbitral awards. For foreign investors, the ultimate measure of legal certainty is not limited for seeking recognition of the foreign award, but whether it can be converted into monetary value within a reasonable period.

Therefore, India's future ranking as an acceptable arbitration enforcement destination shall also depend upon its ability to seamlessly bridge the remaining gap between judicial recognition and ensuring practical recovery. Ultimately, the maturity of the foreign awards enforcement system and/or mechanism shall be judged not by the number of awards that survive judicial scrutiny, but by the number of successful award-creditors are being able to realise the fruits for being patient through the enforcement process.

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