

Dispute Resolution Hotline

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INDIA—SUPREME COURT RULES ON JURISDICTION OF COURTS IN EXECUTION OF ARBITRAL AWARDS (SUNDARAM FINANCE V SAMAD)

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Arbitration Analysis: The Indian Supreme Court in Sundaram Finance Ltd v Abdul Samad and Anor (Civil Appeal No 1650 of 2018, 15 February 2018), has put an end to the decade long debate and differing views taken by High Courts on the jurisdiction of courts when executing arbitral awards. Moazzam Khan, Head of the Global Litigation Team, Payel Chatterjee, a senior member of the International Litigation and Dispute Resolution team and Shweta Sahu, a member of the same team at Nishith Desai Associates examine the decision.

ORIGINAL NEWS

Sundaram Finance Ltd v Abdul Samad and Anor Civil Appeal No 1650 of 2018 (not reported by LexisNexis® UK)

WHAT ARE THE PRACTICAL IMPLICATIONS OF THE CASE?

This court considered whether an award can be directly filed and executed before the court where assets of a judgment debtor are located or if it needs to be first filed before the competent court having jurisdiction over the arbitration proceedings and then seeking transfer of the decree for execution.

The Supreme Court held that an award holder can now initiate execution proceedings before any court in India where assets are located.

WHAT WAS THE BACKGROUND TO THIS DECISION?

Sundaram Finance Ltd, the appellant, granted the first respondent, Abdul Samad, a loan in accordance with the terms and conditions provided in the loan agreement dated 18 August 2005. The second respondent executed a separate guarantee letter on the same day and stood as the guarantor for repayment of the loan amount. The loan was repayable in installments by 3 January 2009.

Due to a default in the payment of installments, arbitration proceedings were initiated by the appellant, as per the arbitration clause in the Loan Agreement. Due to the non-participation of the respondents in the arbitration proceedings, an ex parte arbitral award was granted on 22 October 2011.

The appellant initiated execution proceedings under s 47 read with s 151 and Order XXI Rule 21 of the Code of Civil Procedure (CPC) before the courts at Morena, Madhya Pradesh (where assets of the respondent were located) as the ex parte award was enforceable as a decree under Section 36 of the Arbitration and Conciliation Act 1996 (ACA 1996) (the Act).

The District Courts at Morena refused to entertain the application due to lack of jurisdiction and directed the claimant to file before the court of a competent jurisdiction. The District Court following the approach adopted by Madhya Pradesh and Karnataka High Courts directed the claimant to file an execution application before the court of a competent jurisdiction (having jurisdiction over the arbitral proceedings) and then seek a transfer of the decree. Being aggrieved by the District Court order and the differing views of various High Courts and the position taken by the Madhya Pradesh High Court on this issue, the claimant directly approached the Supreme Court of India.

WHAT DID THE SUPREME COURT DECIDE?

The Supreme Court analysed the differing views adopted by the Indian High Courts on the process followed for execution of arbitral awards. The views of the High Courts on this issue are:

To execute an award, a transfer decree should be obtained from the court of competent jurisdiction (having jurisdiction over the arbitral proceedings) before filing in the court where the assets are located

This approach takes into consideration the process of execution laid down in s 36 of the Act read with the provisions of CPC on 'court' which passes a decree (ie CPC, s 37), and s 39, laying down the procedure for transfer of decree, to conclude that transfer of the decree is mandatory for execution of an award.

The Madhya Pradesh High Court (*Computer Sciences Corporation India Pvt. Ltd. v. Harishchandra Lodwal & Anr* AIR 2006 MP 34 (not reported by LexisNexis® UK)) has been consistent in following this approach.

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Similarly, the Himachal Pradesh High Court, following the path of the Madhya Pradesh High Court took a similar view in *Jasvinder Kaur & Anr. v. Tata Motor Finance Limited* CMPMO No.56/2013 decided on 17 September 2013 (not reported by LexisNexis® UK), that the court having jurisdiction over the arbitral proceedings, would be the competent court for the purposes of enforcement and parties would have to obtain a transfer decree to court where assets are located.

An award can be directly filed for execution before the court where the assets of judgment debtor are located.

As per the second limb of interpretation to the issue under consideration, an award is enforced in accordance with the provisions of the CPC in the same manner as if it were a decree of the Court as per s 36 of the Act. It does not imply that the award is a decree of a particular court but only a fiction since, in case of an award, no court passes a decree, but it is the arbitral tribunal, 'execution proceedings' that are distinct from 'arbitral proceedings'.

Thus, ss 38 and 39 of the CPC have no applicability to the execution of awards and execution can be initiated before any court where the judgment debtor resides or carries on business or has properties within the jurisdiction of the said court.

The following Indian High Courts are the pioneers of this approach (case not reported by LexisNexis® UK):

- Delhi in *Daelim Industrial Co Ltd v Numaligarh Refinery Ltd* [2009] 159 DLT 579)
- Punjab & Haryana in *Indusind Bank Ltd v Bhullar Transport Company* [2013] 2 RCR (Civil) 550
- Madras in *Kotak Mahindra Bank Ltd v Sivakama Sundari & Ors* [2011] 4 LW 745
- Karnataka in *Sri Chandrashekhar v Tata Motor finance Ltd & Ors* [2015] 1 AIR Kant R 261
- Allahabad in *GE Money Financial Services Ltd v Mbhd. Azaz & Anr* [2013] 100 ALR 766
- Kerala in *Maharashtra Apex Corporation Limited v. Balaji G. & Anr* [2011] (4) KLJ 408, and
- Rajasthan *Kotak Mahindra Bank Ltd v Ram Sharan Gurjar & Anr* [2012] 1 RLW 960.

Appreciating the second limb of interpretation, the Supreme Court distinguished a decree of a court from an award passed by the arbitral tribunal, which is only treated as a 'decree' for the purposes of execution. For the purposes of execution of a decree, the award is to be enforced in the same manner as if it was a decree under the CPC.

Regarding the nature of execution proceedings as being distinct from arbitral proceedings, the Supreme Court referred to s 32 of the Act to assert that once an award is made, the arbitral proceedings stand terminated. Thus, the jurisdiction of courts stipulated under s 42 of the Act would not have any relevance in case of execution proceedings.

Further, there is no deeming fiction anywhere in the Act or the provisions of CPC that the court within whose jurisdiction the award was passed should be considered the court which passed the decree. The Supreme Court considering both views held that execution proceedings can be initiated before any court in India and there is no requirement to obtain a transfer from court having jurisdiction over arbitral proceedings.

The Supreme Court decision not only clears the conundrum of views on execution proceedings but is yet another step to simplify the court procedures post arbitration and making enforcement and execution easier for the award holder.

CASE DETAILS

- Court: Supreme Court of India, Civil Appellate Jurisdiction
- Judge: Sanjay Kishan Kaul
- Date of judgment: 15 February 2018

The views expressed are not necessarily those of the proprietor.

— **Shweta Sahu, Payel Chatterjee & Moazzam Khan**
You can direct your queries or comments to the authors

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