



Supreme Court holds that the limitation period applicable to enforcement of foreign awards is 3 years¹

Brief Facts

A dispute arose regarding the interpretation of a production sharing contract (“PSC”) executed between Vedanta Limited, Ravva Oil (Singapore) Pte. Ltd. and Videocon Industries Limited (“Respondents”) and the Government of India (“Appellant”) on the issue of recoverability of a certain head of costs that were incurred by the Respondents at the Ravva Oil and Gas Field. In 2011, the arbitral tribunal made an award (“Foreign Award”) in favour of the Respondents declaring that the Respondents had rightly interpreted the PSC and had correctly recovered costs incurred by them.

In 2014, the Appellant issued a show cause notice to the Respondents stating that since the Respondents had not formally sought enforcement of the Award before Indian courts, the Respondents could not rely upon the Award. Hence, the recovery of costs that was declared as proper by the Award was liable to be reversed. In view of this, the Respondents approached the High Court of Delhi for enforcement of the Award, which the Appellant contested

as being time barred. The objection on limitation was rejected by the High Court of Delhi by judgment dated 19 February 2020, which also allowed enforcement of the Award. In an appeal by the Appellant, the Supreme Court of India (“Court”) upheld the enforcement of the Award and rejected the Appellant’s challenge on grounds of limitation and public policy.

Issues

Issue (i): Whether the petition for enforcement of the Foreign Award was barred by limitation?

Issue (ii): Whether the Malaysian Courts were justified in applying the Malaysian law of public policy while deciding the challenge to the Foreign Award?

Issue (iii): Whether enforcement of the Foreign Award would be in conflict with the public policy of India?

Judgment

Issue (i): The Court held that the period of limitation for enforcement of a foreign award would be three years as per the residuary provision of Article 137

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of the Limitation Act, 1963 (“**Limitation Act**”). The Court disagreed with the High Court of Delhi, which had held that the limitation period was 12 years in terms of Article 136 of the Limitation Act. The Court found that: (a) Article 136 of the Limitation Act was confined to decrees of Indian civil courts; (b) foreign awards were not decrees passed by Indian civil courts; and (c) foreign awards would be deemed to be decrees under Section 49 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) only for the limited purpose of enforcement. Therefore, Article 136 of the Limitation Act would not apply. The Court further held that the period of limitation would begin to run from when the right to apply for enforcement accrued to the award holder (in this case, in July 2014, when the Appellant issued the show cause notice).

The Court also held that if there is any delay, such delay is condonable under Section 5 of the Limitation Act. The bar contained therein prohibiting condonation of delay in execution proceedings under Order 21 of Code of Civil Procedure, 1908 would not apply to enforcement of a foreign award inasmuch as these are substantive proceedings under the Arbitration Act, which is a complete code in itself.

Issue (ii): The Court held that in a foreign-seated arbitration with Indian law as the substantive law of the contract, the curial courts hearing the challenge proceedings in the seat jurisdiction would decide the issue of whether the award is contrary to public policy,

by applying the curial law. It is only when the foreign award is sought to be enforced before Indian courts that the question of enforceability of the foreign award on the ground of Indian public policy would arise, as these are separate proceedings distinct from challenge proceedings. The Court accordingly held that the Malaysian courts (i.e. the curial courts) were justified in deciding the challenge proceedings by applying the curial law, i.e. Malaysian law, while deciding whether the Foreign Award offended public policy.

Issue (iii): The Court held that enforcement proceedings do not entail a review of the merits and interpretation of the PSC was entirely in the domain of the arbitral tribunal. Resultantly, the Foreign Award was held to be in consonance with the public policy of India and enforcement of the Foreign Award was allowed.

Importantly, the Court held that as the amendments made to Section 48 of the Arbitration Act in 2015 are substantive in nature, these amendments are prospective and cannot be treated to be clarificatory and retrospective. Accordingly, the Court held that the Appellant’s objections are to be decided by applying the unamended Section 48 of the Arbitration Act as the enforcement petition had been filed by the Respondents in October 2014, i.e., prior to the amendments that came into force on 23 October 2015.

Analysis

The decision has brought the much needed clarity on the limitation period

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applicable to enforcement of foreign awards, considering the divergent views taken by the High Courts of Delhi, Bombay and Madras in this regard. The Court has cleared this ambiguity by holding that the limitation period for enforcement of foreign awards is three years in terms of Article 137 of the Limitation Act.

As regards the issue of the law that the curial courts would apply, the decision is consistent with established jurisprudence that the seat court would decide the challenge by applying curial law. Importantly, the judgment has clarified certain observations in a previous judgment in **Reliance**

Industries v. Union of India,² which appeared to suggest that in a case where the substantive/governing law is Indian law, the curial courts would decide the challenge on the ground of public policy by applying Indian law.

On the issue of the prospective nature of the amendments made to Section 48 of the Arbitration Act, the Court has rendered an important finding that would impact pending petitions for enforcement of foreign arbitral awards that were filed prior to 23 October 2015. In these petitions, the judgment debtors would have a broader canvass to resist enforcement of the foreign awards.

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1 Authored by Anirudh Das and Aashish Gupta, Partners, Arjun Pall, Principal Associate and Satya Jha, Associate; *Government of India v. Vedanta Limited and Ors.*, Civil Appeal No. 3185 of 2020, Supreme Court of India, 2020 SCC OnLine SC 749, judgment dated 16 September 2020.

Coram: S. Abdul Nazeer, Indu Malhotra and Aniruddha Bose, JJ.

2 (2014) 7 SCC 603.

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