Research

Enforcement of Arbitral Awards and Decrees in India

Domestic and Foreign

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Enforcement of Arbitral Awards and Decrees in India: Domestic and Foreign

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1. Introduction

The growth of international commerce has necessitated the creation of efficient methods of resolution of disputes. 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 midway. The enforcement of these awards/judgments where the party is in absentia is sometimes more complicated than one where the opposite party has participated in the proceedings. In certain 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.¹

A few steps that are crucial for ensuring successful enforcement of arbitral awards and execution of decrees are:

- Making effective service on opposite party/judgment debtor is crucial to prevent objections at later stage;
- Taking necessary steps by way of attachment/notice/arrest/appointment of receiver or in another manner;
- Remember that principles of natural justice apply to even execution proceedings.

¹ 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.
Part I: Enforcement of Arbitral Awards

2. Enforcement of Domestic Awards

An award holder would have to wait for a period of three months after the receipt of the award prior to applying for enforcement and execution. During the intervening period, the award may be challenged in accordance with Section 34 of the Act. After expiry of the aforesaid period, if a court finds the award to be enforceable, at the stage of execution, there can be no further challenge as to the validity of the arbitral award.

Prior to the recent Arbitration and Conciliation (Amendment) Act, 2015 (“Amendment Act”), an application for setting aside an award would tantamount to a stay on proceedings for execution of the award. However, by virtue of the Amendment Act, a party challenging an award would have to move a separate application in order to seek a stay on the execution of an award.

I. Process for Challenge and Enforcement

2. See Arbitration and Conciliation Act 1996, s 34(3) proviso.
3. A further period of 30 days may be granted by a court upon sufficient cause being shown for condonation of delay.
3. Enforcement of Foreign Awards

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 enforcement of a foreign award in India is 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 an 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. Process for challenge and Enforcement

![Diagram of the process for challenge and enforcement of foreign awards]

II. Requirements for enforcement of foreign awards

- Original award or a duly authenticated copy in the manner required by the country where it is made.
- Original agreement or duly certified copy.
- Evidence necessary to prove the award is a foreign award, wherever applicable.

4. Australia; Austria; Belgium; Botswana; Bulgaria; Canada, Central African Republic; Chile; China (including Hong Kong and Macau) Cuba; Czechoslovak Socialist Republic; Denmark; Ecuador; Federal Republic of Germany; Finland; France; German Democratic Republic; Ghana; Greece; Hungary; Italy; Japan; Kuwait; Mauritius; Malagasy Republic; Malaysia; Mexico; Morocco; Nigeria; Norway; Philippines; Poland; Republic of Korea; Romania; Russia; San Marino; Singapore; Spain; Sweden; Switzerland; Syrian Arab Republic; Thailand; The Arab Republic of Egypt; The Netherlands; Trinidad and Tobago; Tunisia; United Kingdom; United Republic of Tanzania and United States of America. India has entered into an agreement with the United Arab Emirates for juridical and judicial co-operation.
3. Enforcement of Foreign Awards

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”. 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.”
4. Conditions for Enforcement of Arbitral Awards – Domestic and Foreign

Enforcement of a foreign award may be refused and a domestic award may be set aside if it is proven that:

- 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 (especially in case of foreign awards).
- 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.
- 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 award (specifically a foreign award) has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which that award was made.
- 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.

A foreign award is in conflict with the public policy of India, only if, —

i. the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81 of the Arbitration Act; or

ii. it is in contravention with the fundamental policy of Indian law; or

iii. it is in conflict with the most basic notions of morality or justice.

The test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

A domestic award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award. However, a domestic award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

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5. Stamping and registration requirements of awards – domestic and foreign

I. Domestic Awards

- The Indian Stamp Act 1899 provides for stamping of arbitral awards with specific stamp duties and Section 35 provides that an award which is unstamped or is insufficiently stamped is inadmissible for any purpose, which may be validated on payment of the deficiency and penalty (provided it was original). Issues relating to the stamping and registration of an award or documentation thereof, may be raised at the stage of enforcement under the Act. (M. Anasuya Devi and Anr v. M. Manik Reddy and Ors⁸). The Supreme Court had also observed that the requirement of stamping an award and registration is within the ambit of Section 47 of the CPC and not covered by Section 34 of the Act.

- 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.

- Under Section 17 of the Registration Act, 1908 an award has to be compulsorily registered if it affects immovable property,⁹ failing which, it shall be rendered invalid.

II. Foreign Awards

- As far as foreign awards are concerned, the Supreme Court of India has categorically held that a foreign award is not liable to be stamped.¹⁰

- Previously, the Delhi High Court in Naval Gent Maritime Ltd v Shvnath Rai Harnarain (I) Ltd.,¹¹ 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 Vital S.A v. Bhatia International Limited¹² and the High Court of Madhya Pradesh in Narayan Trading Co. v. Abcom Trading Pvt. Ltd.¹³.

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⁹. The Registration Act, 1908, s 17(1)(x).
6. Enforcement of arbitral awards: Appropriate forum & limitation

The Supreme Court in its recent ruling in, *Sundaram Finance Ltd. v. Abdul Samad and Anr*[^14] 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 value[^15], commercial courts established under the Commercial Courts Act 2015 ("Commercial Courts Act") would have jurisdiction, as given below:

I. Award arising out of an India seated arbitration (being an international commercial arbitration)

By virtue of the Commercial Courts Act and the Amendment Act, the Commercial Division of a High Court where assets of the opposite party lie shall have jurisdiction for applications relating to enforcement of such awards if the subject matter is money. 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, i.e., where the opposite party resides or carries on business or personally works for gain.

II. Award arising out of an India seated arbitration (not being an international commercial arbitration)

As per the Commercial Courts Act and the Amendment Act, for such cases, the appropriate court would be the Commercial Court exercising such jurisdiction which would ordinarily lie before any principal Civil Court of original jurisdiction in a district, as well as the Commercial Division of a High Court in exercise of its ordinary original civil jurisdiction.

III. Foreign Awards

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.

[^15]: Commercial Courts Act, 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".
IV. Limitation period for enforcement of awards

Under Indian law, a foreign award is already stamped as the decree, and once the court decides that the foreign award is enforceable, it can proceed to take further effective steps for execution of the same (M/s. Fuerst Day Lawson Ltd v. Jindal Exports Ltd. 2001 (6) SCC 356) ACA 1996 does not specify the time period within which the application for enforcement should be made before Indian courts.

Enforcement of a foreign award under Part II of the Arbitration Act would be covered by Article 137 of the Limitation Act which provides a period of three years, from when the right to apply accrues.16

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7. How courts examine awards

- The grounds of challenge enlisted are exhaustive and courts cannot expand the grounds for refusal of enforcement.

- In limited circumstances, the court may refuse to enforce the foreign award even if one of the grounds under Section 48 of the Arbitration Act for refusing enforcement of the award has been proved.

- 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.\(^{17}\)

- 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).

\(^{17}\) Shri Lal Mahal v Progetto Grano Spa (2014) 2 SCC 433.
8. Payments under a foreign award

Payments that are being made by a person in India to a person outside India may require the permission of the Reserve Bank of India in the usual course. However, such permission may not be required if the arbitral tribunal has characterised the payment to be made under the award as ‘damages’. Further, several courts have been of the view that payment under the judgment of a court or an arbitral award should not be subject to any withholding tax in India. Thus, payments made pursuant to the orders of the Indian court would not be subject to withholding tax and the full amount would be remitted. However, this position is yet to be confirmed by the Supreme Court of India.

In case of foreign awards which have to be enforced in India in INR, the rate of conversion expressly provided for in the award or the underlying contract would be considered for the purposes of the forex rate. In these scenarios, the executing court would be bound to follow such date as provided for in the award or contract, as the case may be. In the absence of such express provision on the forex rate, the effective date for considering the exchange rate is the date of rejection of objections to the enforcement of the foreign award, or when all the remedies (including appeals, revision petitions, etc.) against enforcement of the foreign award were exhausted.

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18. NTT Doocomo v Tata Sons 2017 (4) ArbLR 127.
22. Menakshi Saxena & Anr. v. ECGC Ltd. (Formerly known as Export Credit Guarantee Corporation of India Ltd.) and Anr. Civil Appeal No.5681/2018 (arising out of SLFC/C No. 6286 of 2017).
Part II: Enforcement of Decrees in India

On a decree being passed, execution proceedings can be initiated for enforcement of the decree. Section 36 to 74 and Order XXI of the CPC set out the provisions in respect of execution.

The person in whose favour a decree has been passed or an order capable of execution has been made is known as a “decree-holder” while the person against whom a decree has been passed or an order capable of execution has been made is known as a “judgment-debtor”.

9. Enforcement of decrees in India: Appropriate forum & limitation

I. Domestic decrees

A. Appropriate forum

The proceedings to execute a decree must 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

As per the Limitation Act 1963, the period of limitation for the execution of a decree (other than a decree granting a mandatory injunction, in which case, it is three years) is twelve years from the date of the decree. However, an application for execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

II. Foreign judgments

A. Appropriate forum

An application for execution of a foreign judgment may be filed in the jurisdiction where the assets of the judgment-debtor are, or where the judgment-debtor resides or carries on business.

Regarding the “court” before which an execution petition is to be filed, where there is a split jurisdiction between High Courts exercising original jurisdiction and District Courts based on pecuniary value, such High Courts would be competent to execute a foreign decree of the superior court of a reciprocating territory.

25. Code of Civil Procedure 1908, s 44A.
B. Limitation Period

If a decree holder does not take any steps to execute the foreign judgment in the foreign country, where it was rendered, he may file an execution petition in India as per the law of limitation of that foreign country. However, if the decree holder takes steps in aid to execute a foreign decree in the country where it was rendered and the decree was not fully satisfied, he may file an execution petition in India within 3 years from the finalization of the execution proceedings in such foreign country.

27. ibid
10. Enforcement of foreign 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.

At the time of enforcement of foreign judgments in India, two situations may arise depending on whether the foreign judgment is passed by a court in: (i). A reciprocating country; (ii). A non-reciprocating country. A party seeking enforcement of a decree of a court in a reciprocating country is required to file execution proceedings in India while in case of a decree from a non-reciprocating country, a fresh suit has to be filed before the relevant court in India. The time limit for filing a suit for enforcement for such foreign judgments is three years from such judgment being delivered.

I. Procedure for enforcement of foreign judgments

The first major step towards enforcement of foreign judgments in India is, to file execution proceedings, which is done by following the procedure, as envisaged under Section 44A and Order XXI of the CPC (illustrated above).

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28. “Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of Section 44A of the Civil Procedure Code. Countries which have been officially recognized as “reciprocating countries” by the Central Government of India include:- Aden; Bangladesh; Federation of Malaya (now Malaysia); Fiji Colony; Hong Kong; New Zealand; Cook Islands and Western Samoa; Papua New Guinea; Republic of Singapore; Trinidad and Tobago; United Kingdom of Great Britain and Northern Ireland, UAE.
II. Requirements for enforcement of foreign judgment

Under Section 44A of the CPC, where a 'certified copy of decree' of any of the superior courts of any reciprocating territory has been filed in a district court, the decree may be executed in India as if it had been passed by the district court. For proceeding with the execution, the certified copy of the decree shall be filed along with a 'certificate' from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted. Such certificate shall be deemed as the conclusive proof of the extent of such satisfaction or adjustment.

III. Grounds of challenge to enforcement of foreign judgments

Section 13 of the CPC provides that a foreign judgment may operate as res judicata by being conclusive with respect to any matter adjudicated upon thereby (which does not include the reasons laid down in the foreign judgment). However, this shall not be applicable where:

   a. It has not been pronounced by a Court of competent jurisdiction. While ascertaining competence of a foreign court, it has to be established that the concerned court is vested with jurisdiction in terms of its pecuniary and territorial limits, as well as rules of private international law.

   b. It has not been given on the merits of the case;

   c. 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. The proceedings in which the judgment was obtained are opposed to natural justice;

   e. It has been obtained by fraud;

   f. It sustains a claim founded on a breach of any law in force in India

III. Judicial Approach

Courts have been consistent of the view that a party would not be bound by the jurisdiction of a foreign court if it has not submitted to such jurisdiction of the foreign court. Whether a party has voluntarily submitted to the jurisdiction of the foreign court, would depend on the facts and circumstances of the concerned case, for example, if a defendant appears in the court where the suit is instituted and questions both the jurisdiction and challenges the action on merits, he is said to have submitted to the jurisdiction voluntarily. Generally, as noted by the Madras High Court, the following denote instances of submission to the jurisdiction of the foreign court:

   • Where the person is a subject of the foreign country in which the judgment has been obtained against him on prior occasions.

   • Where he is a resident in foreign country when the action is commenced.

   • Where a person selects the foreign court as the forum for taking action in the capacity of a plaintiff, in which forum he is sued later

Where the party on summons voluntarily appears

Where by an agreement a person has contracted to submit himself to the forum in which the judgment is obtained.\textsuperscript{31}

As had been held in \textit{International Woollen Mills v. Standard Wool (U.K.) Ltd.}\textsuperscript{32}, a judgment would be considered to be given on merits if some evidence (oral and/or documentary) is adduced on behalf of the plaintiffs. The Orissa High Court in \textit{Trilochan Choudhury v. Dayanidhi Patra}\textsuperscript{33}, observed that a judgment, however, brief, would be enforceable if it is based on a consideration of evidence. Similarly, the Bombay High Court, in \textit{Marine Geotechnics LLC, v. Coastal Marine Construction & Engineering Ltd}\textsuperscript{34} held that ex parte decrees would also be valid. Judgments which follow summary procedure or otherwise shall not be considered as judgments given on merits of the case if there has been no examination of the evidence. Further, judgments based on consent or terms of settlement are also considered valid as being given on merits of the case.\textsuperscript{35} However, cases where the decree results from the sheer absence of the defendant either by way of penalty or in a formal manner, the judgment may not be one based on the merits of the case.

Similarly, the Supreme Court in \textit{R. Vishwanathan v. Rukn – Ul- Mulk Syed Abdul Wajid}\textsuperscript{36}, observed that enforcement of a foreign judgment would be vitiated on non-observance of the judicial process, i.e. if the court rendering the judgment fails to observe the minimum requirements of natural justice. Thus, it is required that parties are given reasonable notice and adequate opportunity of presenting their respective cases. Additionally, a foreign judgment would be rendered unenforceable if the foreign court was imposed upon or tricked into giving the judgment.\textsuperscript{37}

\begin{itemize}
\item \textsuperscript{31} \textit{Ramanathan Chettiar v. Kalimuthu Pillai} AIR 1914 Mad. 556.
\item \textsuperscript{32} (2001) 5 SCC 265.
\item \textsuperscript{33} AIR 1961 Ori 136.
\item \textsuperscript{34} (2014) 3 AIR Bom R 193.
\item \textsuperscript{35} \textit{HSBC Bank USA v. Silverline Technologies Ltd} AIR 2006 Bom 134.
\item \textsuperscript{36} AIR 1963 SC 1.
\item \textsuperscript{37} \textit{Sankaran Govindan v. Lakshmi Bharathi & Others} AIR 1974 SC 1764; \textit{Satya v. Teja Singh} AIR 1975 SC 105.
\end{itemize}
11. Enforcement of foreign judgments from non-reciprocating countries

In case of a foreign judgment from a non-reciprocating country, it can be enforced only by filing a suit upon the judgment. The party is left with the option to sue on the basis of the foreign judgment or on the original cause of action in the domestic court or both. The resultant decree would thereafter be executed in India.

Where a suit on a foreign judgment is dismissed on merits, no further application shall lie for the execution of such foreign judgment as it had merged in the decree which dismissed such suit for execution. In an event a decree is passed in favour of the party filing such a suit for enforcing the foreign judgment, it may proceed to execute it.

I. Requirements for enforcement of foreign judgments from non-reciprocating territories

A certified copy of the 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”). Further, an additional certificate by a representative of the Central Government of India in the foreign country is required under Section 86 of the Evidence Act. The procedure stipulated under Section 86 of the Evidence Act does not exclude other modes of proof, e.g. deposition of an official as to what took place in his presence in the court of the foreign jurisdiction (subject to the requirements of the Evidence Act).

In any event, as a preliminary requirement, such foreign judgments sought to be executed in India have to satisfy the tests prescribed under Section 13 of the CPC (as stated above).

II. Procedure for execution of foreign judgments from non-reciprocating territories

A. Filing a fresh suit in the relevant court of jurisdiction in India

A suit is instituted by filing a ‘plaint’ in a manner prescribed under Orders VI and VII of the CPC in a court of competent jurisdiction, along with the payment of appropriate court fees. Under Order V of the CPC, notice is issued to the defendant summoning his appearance and directing him to file his reply within a specified date.

After the plaintiff has instituted the suit and notified the defendant, the defendant is required to file its written statement, along with a set-off or counter claim, if any, in the court within 90 days of service of the summons. This is governed by Order VIII of the CPC.

After the parties complete the pleadings in the suit, the court frames the issues under Order XIV of the CPC, which is followed by the production, admission and denial of evidence. Thereafter, the examination and recording of evidence (documentary and/or oral) is completed.

After the hearing of a matter is completed, the judgment is pronounced in open court. Within fifteen days of the pronouncement of a judgment, the concerned court draws up the decree.38 If a defendant does not appear when

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the suit is called for hearing, irrespective of summons being duly served on him, the court may make an order that the suit be heard \textit{ex parte}.\footnote{39}

**B. Fresh suit filed under Commercial Courts Act**

In case the dispute is commercial in nature and of a specified value (as discussed earlier), a suit under the Commercial Courts Act would be initiated.

In all such commercial disputes of specified value, a party may make an application\footnote{40} (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:

\begin{itemize}
  \item 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
  \item there is no other compelling reason why the claim should not be disposed of before recording the oral evidence.
\end{itemize}

When it appears to a court that a judgment creditor may succeed but it is improbable that it will do so, it can pass a conditional order against the judgment debtor including, but not limited to, a condition requiring the judgment debtor to deposit a sum of money as security for the judgment.\footnote{41}

**C. Execution proceedings**

The resultant decree would be enforced like a decree of that court which rendered the same. The modes of execution are elaborated below.

A detailed procedure for execution of foreign judgments from non-reciprocating territories is explained in the Guide signed between Dubai International Financial Centre ("DIFC") Courts and Nishith Desai Associates on 14 September 2018.\footnote{42} Notwithstanding the focus of the Guide on recognition and enforcement of civil and commercial judgments in DIFC Courts and the courts of India, this Guide may also be referred to, in the context of execution of judgments from non-reciprocating territories.

\textit{Note: UAE was notified as a reciprocating territory by India, vide notification dated 17 January 2020}

**III. Enforcement of foreign judgments in India: Limitation**

If the decree holder does not take any steps to execute the foreign decree in the country where the decree was rendered, he may file an execution petition in India as per the law of limitation of that foreign country.\footnote{43} If the decree holder takes steps\footnote{6in.6aid} to execute a foreign decree in the country where the decree was rendered, and the decree is not fully satisfied, he may file an execution petition in India within 3 years from the ‘finalization’ of the execution proceedings in the country where the decree was rendered.\footnote{44}

\footnotesize
\begin{itemize}
  \item \textsuperscript{39} Code of Civil Procedure 1908, Order IX, Rule 6(b).
  \item \textsuperscript{40} In accordance with Order XIII-A, Rule 4 of the CPC, as amended by the Commercial Courts Act 2015.
  \item \textsuperscript{41} In accordance with Order XIII-A, Rule 7 of the CPC, as amended by the Commercial Courts Act 2015.
  \item \textsuperscript{43} Bank of Baroda v. Kotak Mahindra Bank Ltd (2020) 17 SCC 798.
  \item \textsuperscript{44} ibid.
\end{itemize}
12. Modes of Execution

Since foreign awards, domestic awards and foreign judgments (from reciprocating countries) are to be executed in India as a decree passed by an Indian court, the modes of execution for foreign awards and judgments and domestic awards and judgments are also common.

On an application made by the decree-holder for execution of the decree/award (whether foreign or domestic), the court may order the execution of the decree/award by one or more of the following modes:

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

In case of decrees involving payment of money, execution by arrest and detention in civil prison would be ordered only after the judgment debtor is given an opportunity of showing cause as to why he should not be imprisoned.\(^{45}\)

While issuing such notice, the executing court has to record in writing and be satisfied that the judgment debtor would obstruct or delay the execution of the decree.\(^{46}\) Such notice may not be necessary if the court is satisfied, by affidavit or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the Court. A warrant for the arrest of the judgment debtor may also be made where appearance is not made in obedience to the notice, if the decree holder so requires.\(^{47}\)

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. In case there are multiple decree-holders, the assets, after deducting the costs of realization, shall be distributed among all such persons.

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46. ibid.
13. 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

+ .... Decree Holder

Through: Mr. Moazzam Khan and Mr. Alipak Banerjee, Advocates.

versus

...... Judgement Debtors

Through: None.

CORAM:
HON'BLE MR. JUSTICE

ORDER

EX.APPL.

Allowed subject to just exceptions.

EX.P.

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 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.
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:

---

IN THE HIGH COURT OF
O.M.P.(EFA)(COMM.)

[Redacted]

decrees-holder

Through Mr.Moazzam Khan, Adv. with
Ms.Payal Chatterjee, Mr.Alipak Banerjee and Mr.Brijesh Kumar, Adv.s.

versus

[Redacted]

.... judgment-debtor

Through

CORAM:

ORDER

I.A. No. [Redacted] (exemption)

Exemption allowed, subject to just exceptions.
The application is disposed of.
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:

**ORDER**

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 [date mentioned].

In the meanwhile, upon service, the judgment debtor shall file the affidavit disclosing the movable and immovable properties owned by them.
An illustrative order granting attachment of properties is set out below:

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 and the land measuring situated in

3. The Judgment Debtor Nos. 3 & 13 have disclosed that they are owners of situated in the revenue estate of
4. The Judgment Debtor No. 9 is stated to be the owner of the property bearing

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.

7. The affidavit of JD No. 2 discloses that he owns and possesses a Vehicle of BMW make bearing registration No. The affidavit filed by JD No. 7 indicates that JD No. 7 owns vehicles of the written down value of 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. is directed to file an affidavit disclosing complete details of the vehicles, within a period of one week from today.

8. Advocate (Mobile No.), 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 superintendence 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 superintendence 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 In the first instance, the same shall be borne by the Decree Holder along with other expenses. The same shall be recovered from the sale of assets of the Judgment Debtors.

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:-

<table>
<thead>
<tr>
<th>JD</th>
<th>-</th>
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</table>

- Account No

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

```
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.

<table>
<thead>
<tr>
<th>Name of the Bank</th>
<th>Account Holder</th>
<th>Bank Account</th>
<th>IFSC Code</th>
</tr>
</thead>
<tbody>
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<td></td>
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</table>

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 [__] J

MR

IN THE HIGH COURT OF DELHI AT NEW DELHI

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

__________________________

Thru: Mr. Moazzam Khan, Ms. Shweta Sahu [__] Advs.

Versus

__________________________

Thru: [__]

CORAM:

HON'BLE MR. JUSTICE [__]

ORDER

1. No rejoinder to the reply has been filed. Time sought for filing rejoinder is declined.

2. No time left to hear arguments.
```
13. Our Expertise

3. The judgment debtor is directed to, on or before [date], file an affidavit in this Court disclosing all its assets/receivables/recoverables as well as bank account/s.

4. List on [date].

An illustrative order granting attachment of properties in the course of enforcement of a foreign judgment is set out below:

[Image of the order granting attachment of properties]

1. This execution petition is filed by the decree holder [party name], seeking execution of the judgment passed by the High Court of Republic of Singapore for [sum] along with [interest]. This judgment and decree which is sought to be executed reads as under:

   {'Judgment': [Image of the order granting attachment of properties]}

   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 [amount] was payable as principal and [amount] was payable towards interest. Interest has thereafter to be added on the principal amount at [rate].
This matter has been coming up before this Court from
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

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

should not have given the necessary security for attachment for the decree holder
towards the subject judgment and decree. Secondly,

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

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,
this case. Accordingly, since there is no stay of operation of the subject
court judgment and decree 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)**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Details of banks in Delhi</th>
<th>Account No.</th>
<th>Amount (INR)</th>
<th>References</th>
</tr>
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<tbody>
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<td>1.</td>
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<td>3.</td>
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</tbody>
</table>

**Trade Receivables**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Project Code</th>
<th>Customer Name</th>
<th>INR in crores</th>
<th>Reference</th>
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<td>1.</td>
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<td>5.</td>
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</table>
13. Our Expertise

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

Ne

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]

Through: [Redacted] with Mr. Moazzam Khan, Ms. Shweta Sahu, [Redacted] Adv.

versus

[Redacted]

Through: Mr. [Redacted] Adv.

CORAM: HON’BLE [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 ‘Cost Award’) which was passed by the arbitral tribunal after the final award on [Redacted] (hereafter referred to as ‘Cost Award’).
13. Our Expertise

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]

[Signature]
JUDGE
Some of the clients that we have represented/are representing:

- 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.
13. Our Expertise

- 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.

- A US-based company involved in the gaming industry for enforcement of an AAA arbitral award passed in US against a Mumbai based leading gaming entity.
Enforcement of Arbitral Awards and Decrees in India. Domestic and Foreign

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

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<th>TYPE</th>
<th>DATE</th>
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<td>March 2022</td>
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<tr>
<td>The Data Protection Bill: In Search Of A Balanced Horizontal Data Protection Framework</td>
<td>Technology Law</td>
<td>March 2022</td>
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</table>
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 eco-system 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 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
Enforcement of Arbitral Awards and Decrees in India
Domestic and Foreign