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Limitation Period for Enforcement of Foreign Award: Supreme Court of India Finally Answers

Aayog Doshi · Sunday, October 18th, 2020

The issue of limitation period applicable to the enforcement of a foreign award in India has been a vexed question for a long time because of various conflicting and diametrically opposite decisions rendered by different High Courts in India. The issue has finally been settled recently by the Supreme Court of India on 16 September 2020 in the case of *Government of India v. Vedanta Ltd.* ('Vedanta Judgment'). This post briefly discusses the judicial trend on this issue and analyses the consequences of the Vedanta judgment.

[New York Convention](#) awards are enforced in India under Part II of the Arbitration and Conciliation Act, 1996 ('[Arbitration Act](#)'). Section 47 to Section 49 of the Arbitration Act are of significance: Section 47 sets out the procedure for filing of a petition for enforcement of foreign award; Section 48 replicates Article V of the New York Convention and sets out the limited conditions on which enforcement of a foreign award may be refused; Section 49 states that a foreign award, enforceable under Section 48, would be deemed to be a decree of that court for the limited purpose of enforcement. The limitation period for instituting legal actions in India is governed by the Limitation Act, 1963 ('[Limitation Act](#)').

Neither the Limitation Act nor Part II of the Arbitration Act contains any specific provision prescribing a period of limitation for filing an application for enforcement of a foreign award. Articles 136 and 137 of the Schedule to Limitation Act are relevant for this purpose. This is in contrast with the legal position in China and Hong Kong where the domestic legislation specifically provides for a limitation period of two years and six years respectively for enforcement of a foreign award in Mainland China (as noted in [this post](#)).

Application	Period of limitation	Time from which it runs
136. For the execution of any decree or order of any civil court	Twelve years	When the decree or order becomes enforceable
137. Any other application for which no period of limitation is provided in this division	Three years	When the right to apply accrues

The recurring question before the courts has been whether the limitation period for enforcement of a foreign award is 3 years (Article 137 of the Limitation Act) or 12 years (Article 136 of the Limitation Act).

Judicial Trend

The Bombay High Court in *Noy Vallesina Engineering SPA v. Jindal Drugs Ltd* ('Noy Vallesina') held that the enforcement of a foreign award takes place in two stages. The first stage of determining the enforceability of a foreign award under Section 48 of the Arbitration Act would be governed by Article 137 of the Limitation Act which provides for 3 years from when the right to apply accrues. Upon determination of enforceability, the foreign award is deemed to be a decree and its execution would thus be governed by Article 136 of the Limitation Act which provides for a period of 12 years.

The Madras High Court in *M/s Bharat Salt Refineries Ltd. v. M/s Compania Naviera "SODNAC" & Anr* ('Bharat Salt') took a contrary view where it held that the limitation period of 12 years as provided under Article 136 of the Limitation Act is applicable both for enforcement as well as execution of the foreign award. For this, the Madras High Court relied on the decision of the Supreme Court of India in *Fuerest Day Lawson v. Jindal Exports* ('Fuerest Day') where it was held that a foreign award is already stamped as a decree and can be enforced and executed in one composite proceeding. The decision in Bharat Salt was subsequently followed by Bombay High Court in *Imax Corporation v. E-City Entertainment* where, departing from its earlier ruling in Noy Vallesina, it held that the phrase 'foreign award is already stamped as a decree' as used in the case of Fuerest Day should be construed as 'foreign award is to be regarded as a decree' and in that event Article 136 of Limitation Act would be the applicable provision, providing a limitation period of 12 years.

Vedanta Judgment

The Supreme Court in the Vedanta Judgment has taken a completely divergent approach and the ruling of the Court on this issue is encapsulated as follows:

1. The 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, starting from when the right to apply accrues.
2. Article 136 of the Limitation Act would not be applicable for enforcement of a foreign award under Part II of the Arbitration Act since it is not a decree of a civil court in India.
3. Section 5 of the Limitation Act permits condonation of delay if the court in its discretion is satisfied that there was a sufficient cause for not making the application within the relevant limitation period. Holder of a foreign award under Part II of the Arbitration Act may file an application under Section 5 of the Limitation for condonation of delay if required.
4. The holder of a foreign award is entitled to apply for recognition and enforcement of the foreign award by way of a composite petition under Part II of the Arbitration Act. If the enforcing court is satisfied that the foreign award is enforceable, then under Section 49 of the Arbitration Act, the award shall be deemed to be a decree of that court and the court would then execute the award by taking recourse to Indian Law applicable to the execution of decrees.

Analysis

By resolving the confusion created due to the inconsistent decisions of various High Courts, the

Vedanta Judgment provides the long due clarity on the issue. The Vedanta Judgment needs to be seen in the context of the pro-enforcement stance of Indian courts with respect to the execution of foreign awards in India (as noted in [this](#) post).

The Supreme Court in the Vedanta Judgment, in the context of a separate issue, has reiterated the legal position that the courts should be reluctant to review the foreign award on merits and should give a narrow interpretation to grounds of refusal for enforcement of foreign award as enumerated under Section 48 of the Arbitration Act. With the enforcing courts unlikely to foray into the substance of the arbitration, losing parties in most cases have no option but to raise a sole objection on the ground of limitation to resist and delay enforcement of the foreign award. The enforcement proceeding in such cases where the losing party pleads the defence of limitation, cause the award holder to face an inordinate delay in their disposal due to the earlier prevailing lack of clarity on the applicable limitation period. The Vedanta Judgment, by settling the law on limitation period applicable to the enforcement of a foreign award, will lead to expeditious disposal of enforcement applications which are pending merely because of the issue of limitation is raised by the losing party.

The Supreme Court in the Vedanta Judgment has observed that the previously prevailing confusion regarding limitation period applicable to the enforcement of a foreign award would be a sufficient ground to condone the delay under Section 5 of the Limitation Act. This observation would ensure that all the foreign award holders who have not commenced enforcement proceedings in India within 3 years from when the right to apply has accrued are not left remediless. At least for the foreseeable future, such foreign award holders can seek condonation of delay under Section 5 of the Limitation Act on the basis of previous lack of clarity in the law.

It is pertinent to note that the Court has not delved deeper into the issue as to when the ‘right to apply accrues’ in terms of Article 137 of the Limitation Act in the context of enforcing a foreign award. The Court has not clarified when exactly the Limitation period commences for enforcement of a foreign award. It need not necessarily be the date of the foreign award and would ideally depend upon the facts of each individual case. Given the complex nature of commercial relationships between the parties and the stakes involved in international commercial arbitrations, it is conceivable that an award holder, who senses a better possibility for the satisfaction of his entire claim, might spend some time in negotiating payment terms with the losing party instead of opting for a long drawn enforcement proceeding in India where the assets of the losing party might be insufficient to cover the entire claim. In the event that the negotiation fails, it may be difficult for the courts to determine when exactly the cause of action arises for commencing the enforcement proceeding. The courts would have to adjudicate it depending upon the facts of each case.

The Vedanta Judgment does away with a lot of confusion and obscurity by pronouncing a definite position of law on the limitation period for enforcement of a foreign award. A conclusive all-encompassing judgment of the Supreme Court relating to ‘right to apply’ in the context of determining limitation for enforcement of foreign awards would be welcome.


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The graphic features a black background with white text and a circular icon. The icon depicts a magnifying glass over a group of stylized human figures, representing a search or investigation process. The text is arranged in a clean, modern layout with horizontal lines above the main text.

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