

Kluwer Arbitration Blog

Stay or Pay: Decoding the Deposit Dilemma in Staying Arbitral Awards

Vrinda Pareek, Aayushi Singh · Thursday, January 2nd, 2025

Earlier this year, the Bombay High Court in *Balmer Lawrie & Co. Ltd. v. Shilpi Engineering Pvt. Ltd.* (“**Balmer Lawrie Decision**”) reviewed an application to stay the enforcement of an arbitral award for payment of money (“**Money Award**”). The award debtor (“**Applicant**”) had already provided a 100% bank guarantee for the Money Award amount (plus interest) as security in the Calcutta High Court during the set-aside process.

The Bombay High Court (“**Court**”) dismissed the Applicant’s argument that the nature of an arbitral award and the conditions for staying its enforcement could differ depending on whether the stay was sought during the set-aside stage or during an appeal against the set-aside order. The Court ruled that the stage of proceedings does not impact whether an arbitral award is final or whether it becomes a court decree. Additionally, the Court determined that under Indian legislative provisions and case law, simply providing a bank guarantee for the amount of the Money Award is not adequate for a stay. Instead, the award-debtor must deposit the full amount of the arbitral award to secure the award-holder.

The Balmer Lawrie decision has been recently appealed to the Supreme Court of India. While the Supreme Court has ordered a stay on the operation of the order until the appeal is decided, it remains to be seen how the Court ultimately treats the interpretation taken by the Bombay High Court.

The Balmer Lawrie Decision raises two critical questions: (a) when does an arbitral award attain finality or become a court decree; and (b) what are reasonable conditions for staying an arbitral award, and in particular a Money Award? These questions are universally significant primarily due to the importance accorded by arbitration users to finality, and predictability, as key features of the dispute resolution mechanism (as discussed on the Blog [here](#)). Potential answers to these questions from a comparative lens, through Indian and Singaporean case law are discussed in this post.

Jurisprudence on Enforcement of Arbitral Awards in India: Where does the Balmer Lawrie Decision fit?

Despite recent concerns about excessive judicial interference in awards (discussed [here](#)), the Indian Arbitration and Conciliation Act, 1996 (“**Indian Arbitration Act**”) and Indian courts are

clear: an international commercial arbitration award becomes final, binding, and enforceable when the set-aside application period (3 months plus an additional 30 days at the jurisdictional courts' discretion) has elapsed. In practice, however, Indian courts will often keep an enforcement proceeding in abeyance while the set-aside application (or a further appeal on limited grounds from the set-aside decision) is pending. The Balmer Lawrie Decision supports the legislative position regarding the finality of the arbitral award, while recognising this practice adopted by Indian courts. It affirmatively states that the principles for governing finality of the arbitral award remain the same at both stages: (a) the set-aside; and (b) any further appeal from such set-aside (which is permissible under the Indian Arbitration Act). Accordingly, the Balmer Lawrie Decision reaffirms that principles for staying enforcement should be consistent at all stages, once the arbitral award has become final and enforceable.

As to the conditions for staying a Money Award, the proviso to Section 36(3) of the [Indian Arbitration Act](#) simply requires courts to have “due regard” to the provisions of the [Code of Civil Procedure, 1908](#) (“CPC”). Broadly, these provisions (under Order XLI of the CPC) require: (a) a deposit of the amount in appeal *or* such security in lieu thereof as the court deems fit; (b) that the party establish that “substantial loss” may result if such stay is not ordered; and (c) that there has been no unreasonable delay in making the application.

The Supreme Court of India has interpreted this “due regard” to the CPC to be a “directory” and not a mandatory provision of the Indian Arbitration Act, as in *Pam Developments Pvt. Ltd. v. Union of India*. Thus, arguably, a stay on enforcement could be granted at the discretion of the courts even without requiring security, although this may entail pushing the boundaries of the legislative framework. Even within this framework, however, the CPC (which the Indian Arbitration Act adverts to on this point) itself requires that the appellant (or applicant for staying the award) deposit the awarded amount “or furnish such security in respect thereof as the Court may think fit”. In some cases, the Supreme Court of India has permitted the furnishing of securities (such as bank guarantees) as a condition for stay of enforcement, instead of depositing the full awarded amount. In other instances, the Supreme Court’s departure from this position (as relied on in the *Balmer Lawrie* decision by the Bombay High Court) arose from faulty reasoning underlying the direction of less than 100% deposits, and is not in principle or on an interpretation of the statute. Some high courts, such as the Calcutta High Court (see [here](#), [here](#) and [here](#)), have followed this lead and allowed the furnishing of bank guarantees (or alternate forms of security, such as title deeds to immovable properties) instead of depositing awarded amounts in cash. Given the magnitude of the awarded sums involved in some cases, it may be a commercially viable and legislatively-compliant approach for Indian courts to allow such alternate forms of security, at least in part if not for 100% of the awarded amount.

The Balmer Lawrie Decision may have missed an opportunity to liberally exercise the discretion available to courts in imposing conditions while granting stay on enforcement of awards. In fact, and to the contrary, the judgment declares that “a liberal view is not contemplated under Section 36(3) of the [Indian] Arbitration Act whilst imposing the conditions for stay of the Award” – which appears to be a narrow reading of both, legislative and jurisprudential principles around this issue.

The Singapore position: Pro-enforcement stance

In contrast to India, the enforcement process in Singapore is a seamless and streamlined process.

To begin the process of enforcing an arbitral award, the party seeking enforcement must submit an application to the Singapore High Court, without prior notice to the other party, along with an affidavit. This application requests an *ex parte* order for enforcement, a standard procedural step that is typically granted by the Singapore High Court. If the opposing party wishes to challenge the order, it must file a separate application to have it overturned within 14 days of receiving the order, unless the order is being served outside Singapore.

In *CNX v CNY*, the Singapore High Court (“SGHC”) ruled that when a leave order is delivered to a state, and the order sets a deadline for the state to contest its enforcement, the time frame for challenging the order will commence only two months after the service date of the order.¹⁾ In contrast, in *CKR and another v CKT and another*, the SGHC clarified that pending setting aside applications do not prevent the granting of leave for enforcement. The SGHC reaffirmed that such applications do not affect the finality of the awards.

In *AYY v AYZ & another*, the SGHC observed the lack of authoritative guidance on issuance of stay of arbitration pending an appeal on a ruling of jurisdiction, and developed a test for the same. Although distinct from stays in enforcing arbitral awards, the conditions to allow a stay of the arbitration serve as a helpful comparison to a stay of enforcing arbitral awards. The SGHC articulated that a stay of arbitration will typically be granted if “*an applicant is able to demonstrate with reasonable and credible substantiation that a refusal of stay would result in detriment in respect of which the applicant could not later be adequately restituted.*”

Merely incurring additional costs is generally insufficient to meet this test, as the SGHC can issue a suitable costs order if a jurisdictional challenge succeeds. A stay is warranted only if continuing the arbitration would result in a detriment or prejudice that cannot be adequately addressed by a costs order. For instance, such detriment might include a situation where a party contesting the tribunal’s jurisdiction is forced to disclose confidential or sensitive information to a competitor to defend against the arbitration.

Thus, Singapore does not consider or apply any distinct tests or principles when it comes to staying enforcement of Money Awards.

Takeaways

India and Singapore are aligned that automatic stays on the enforcement of arbitral awards should not be granted while a set-aside application is pending. Singapore does not use any unique criteria or principles for staying the enforcement of Money Awards, and this approach could serve as a model for India. Additionally, a court’s discretionary authority to grant stays on the enforcement of awards is comparable in both countries. Consequently, stays are granted at the court’s discretion and subject to the conditions set by the court; in India, these conditional stays are prevalent and typically granted in most, if not all, cases.

It is, again, noteworthy that Singaporean law does not include a specific provision for setting aside Money Awards, unlike Section 36(3) of the Indian Arbitration Act. This highlights a significant difference in how enforcement proceedings are handled in the two jurisdictions. Given that Singaporean legislation allows for judicial discretion and that the Indian CPC can be interpreted as directory rather than mandatory in the context of the Indian Arbitration Act, Indian courts might

consider not requiring a 100% deposit of the awarded amount as security. Instead, a corresponding bank guarantee for the full or partial arbitral award amount (or any other form of security) could potentially provide adequate protection for the award-holder's interests depending on the specific facts of the case.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please subscribe [here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

A promotional banner for the 2024 Future Ready Lawyer Survey Report. The background is dark with a glowing blue and red digital circuit pattern. A gavel is positioned in the center, resting on a glowing blue padlock. The text is white and blue. The title '2024 Future Ready Lawyer Survey Report' is at the top left. Below it, the main headline reads 'Legal innovation: Seizing the future or falling behind?'. A blue button with white text says 'Download your free copy →'. The Wolters Kluwer logo is at the bottom left. On the right, there is a white box with the 'FR Future Ready' logo and the word 'LAWYER' below it.

2024 Future Ready Lawyer Survey Report

**Legal innovation:
Seizing the
future or
falling behind?**

Download your free copy →

 Wolters Kluwer

 **LAWYER**

References

?1 See paragraph 52 of the decision.

This entry was posted on Thursday, January 2nd, 2025 at 8:15 am and is filed under [India](#), [Stay on enforcement](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.