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expert talk

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INTRODUCTION

1. When it comes to the enforcement of foreign arbitral awards in India, the starting point is usually Part II of the Arbitration and Conciliation Act, 1996 **("Arbitration Act").**[i] But India's New York Convention **("NYC")** framework comes with an important qualifier – notified reciprocity. Under Section 44(b) of the Arbitration Act, an award is treated as a "foreign award" only if it is rendered in an NYC signatory that has also been separately notified by the Central Government.[ii] In practice, that second step can lag behind, with the result that even awards from key NYC jurisdictions may fall outside the enforcement framework under the Arbitration Act.

2. The position of the UAE is particularly peculiar and precisely illustrates this point. The commercial ties between India and the UAE are deep and longstanding, and the UAE has been a natural commercial hub for Indian and Indian-origin parties, given its geographic location and connectivity not only with the MENA but also with Europe. It is also an attractive arbitral seat, with sophisticated institutions like DIAC and arbitrateAD, and increasing relevance for disputes. Yet, despite the UAE having ratified the NYC in 2006, it remains unnotified under Section 44(b) of the Arbitration Act.

3. As late as in 2020, in relation to foreign judgments, the UAE was notified as a reciprocating territory under Section 44A of the Code of Civil Procedure, 1908 **("CPC").** This altered the landscape in an important way. Attention naturally turned not only to standalone UAE judgments, but also to UAE-seated arbitral awards which had

been left in abeyance. In that context the prevailing view took shape – that the viable recourse for a creditor of a UAE-seated award is to first obtain a judgment from a UAE court in terms of the arbitral award, and then enforce that judgment in India.[iii] However, that route presents its own threshold issues. To begin with, a consistent trend is yet to emerge. Doubt has been cast on this route on the basis that a judgment on an award may fall within the exception in Explanation 2 of Section 44A of the CPC, which excludes an arbitral award enforceable as a decree or judgment.[iv] Further, it is limited to the set of countries notified under Section 44A of the CPC. Where no such notification exists, a foreign judgment is enforced by way of a fresh suit under Sections 13 and 14 of the CPC,[v] where one of the requirements is that the judgment be on the merits – a requirement that a judgment on an award may struggle to satisfy.

4. Against that backdrop, there appears to be other routes, far less discussed but with deep roots in Indian law. One lies in the common law recognition of foreign awards. The other, in bilateral treaty arrangements that separately contemplate the recognition and enforcement of arbitral awards. This article examines both.

The common law route to enforcement of foreign awards

5. As early as 1963, the Supreme Court in *Badat v East India Trading Co*[vi] **(*"Badat"*)** considered whether a foreign award (in that case, rendered in New York) could itself furnish a cause of action in India. The relevant statute then in force was the Arbitration and (Protocol and Convention) Act, 1937 **("1937 Act").** Notably, the US was not a reciprocating territory within the scheme of the 1937 Act.

6. The dispute arose between Badat and Co., an Indian firm, and East India Trading Co., a company incorporated in the US, in relation to supply of turmeric. The parties agreed to do business on the standard terms of the American Spice Trade Association, which contained an arbitration clause. In the wake of a dispute, the foreign company invoked arbitration and obtained two *ex parte* awards from a New York tribunal, followed by a confirmation judgment passed by New York courts. Thereafter, a suit was instituted in the Bombay High Court, based on the foreign judgment, and alternatively, on the arbitral awards themselves.

7. The Supreme Court rejected the foreign judgment route on jurisdictional grounds, holding that a suit on the foreign judgment was founded on the judgment debt itself, and not on underlying contractual dealings. Since no obligation under the foreign judgment was shown to be payable within Bombay, the foreign judgment could not sustain the original jurisdiction of the Bombay High Court.

8. The Court nevertheless proceeded to examine whether the awards themselves could be acted upon. As the provisions of the 1937 Act were not attracted, the enforceability of foreign awards in India was examined under common law on the grounds of justice, equity, and good conscience. Analysing the position in the England, the Court accepted that a foreign award on its own standing, may furnish a cause of action outside the statutory framework, on the ground that it creates a contractual obligation arising out the submission to arbitration. Since the contract had been entered into within the original jurisdiction of the Bombay High Court, the Court had jurisdiction to entertain the suit on the awards. It then laid down the following five conditions to be satisfied:

(a) that there was a contract between the parties where under disputes between them could be referred to arbitration to a tribunal in a foreign country;

(b) that the award is in accordance with the terms of the agreements;

(c) that the award is valid according to the law governing arbitration proceedings obtaining in the country where the award was made;

(d) that it was final according to the law of that country; and

(e) that it was a subsisting award at the date of suit.

9. Importantly, the Court held that when a suit is brought on the basis of a foreign award as long as it is final, it is not open to the defendants to re-open the merits of the dispute before the Indian courts. The challenge to the suit is limited to the abovementioned conditions. Hence, an award creditor adopting this route need not be concerned with any re-examination or variation of the award or the amount therein on merits by Indian courts.

10. The plaintiff in *Badat* nevertheless failed. The majority held that the awards in question had not attained the requisite finality under the law of New York at the time. In doing so, the Court drew a distinction between *finality* and *enforceability* – when an award is no longer open to challenge on merits, it may be considered final, even though it still requires a formal order for enforcement; but where the law of the seat treats the judgment on the award, rather than the award itself, as the operative instrument, the award may not by itself furnish a cause of action abroad. It was on that footing that the majority declined relief, even while accepting the common law route in principle.

11. The question, then, is whether these common law principles survived the enactment of the Arbitration Act in 1996, which now consolidates the arbitration law in India. While after the incorporation of the Act in 1996, it has consistently been held to be a complete and self-contained code, the Supreme Court has clarified that the Arbitration Act is a complete and self-contained code, but with respect to matters governed by its provisions.[vii] A constitution bench of the Supreme Court has rejected the contention that the exclusion of non-Convention awards from the Arbitration Act creates a legislative vacuum, holding instead that the deliberate limitation reflects a clear legislative intent to confine the statutory enforcement framework to Convention awards.[viii] It does not, by itself, answer the distinct question whether a foreign award falling wholly outside Part II may still be sued upon otherwise.

12. As recently as 2025, this question arose before the Bombay High Court in *Khark Petrochemical v Hazel Mercantile* ***("Khark").***[ix] There, the dispute arose out of non-payment for multiple shipments, pursuant to which arbitration seated in Iran was invoked, resulting in an award in favour of the plaintiff. Following an unsuccessful challenge to the award before Iranian courts, and in light of Iran being a non-reciprocating territory, the plaintiff instituted a suit on the Original Side of the Bombay High Court against the defendant – a Mumbai-based company. The suit sought a decree on the foreign award, along with interim relief. The central issue before the Court was the tenability of such a suit after the enactment of the Arbitration Act in 1996, and whether the principles in *Badat* continued to apply.

13. The Bombay High Court answered that question in the affirmative. It affirmed that the Arbitration Act is a self-contained

code only in respect of matters covered by it, and that the exclusion of certain categories of foreign awards does not, without more, render their enforcement impermissible. Accordingly, it affirmed that the principles in *Badat* continue to apply, and that a suit for enforcement of a foreign award from a non-reciprocating country is maintainable under common law, *de hors* any statutory framework.[x]

14. Similar to *Badat*, the Bombay High Court in *Khark* was not convinced of the finality of the underlying award. Although the Bombay High Court held that the suit itself was maintainable, it nevertheless declined interim protection because the plaintiff failed to demonstrate *prima facie* that award attained finality, and, if so, the date on which the award attained finality.

15. The route recognised in *Badat* and affirmed in *Khark* is therefore neither automatic nor universal. It remains subject not only to the ordinary rules governing the court's jurisdiction, but also to the conditions laid down. Even so, it remains a route capable of solving the problem in an appropriate case. Since most UNCITRAL Model Law jurisdictions, including India, accord finality to arbitral awards rendered in them once the period for challenge has expired or any challenge has been dismissed, it may be argued that arbitral awards seated in the UAE – whether governed by the Federal Arbitration Law[xi] or seated in DIFC[xii] – likewise attain finality and may therefore form the basis of a suit in India. If available, this route would circumvent the need to first obtain a judgment in terms of the award and then sue on the judgment.

Enforcement under bilateral treaties

16. There is a separate and more ambitious route that deserves closer attention. In 1999, India and the UAE entered into an agreement, *inter alia,* for mutual cooperation in civil and commercial matters, including the execution of judgments and arbitral awards **("India-UAE Treaty"),** which was subsequently ratified in 2000.[xiii] Article XXV contemplates that arbitral awards rendered in the territory of either State "shall" be recognised and enforced in the other, subject to three limited conditions – namely, that (a) the award is based on a written arbitration agreement, (b) the award is made on matters arbitrable according to the law of the requested State unless it is contrary to its public policy, and (c) the enforcing party produce the award, a certificate from the competent judicial authority in the requesting State that the award is executable. On paper, the treaty appears directly relevant to the present problem. Yet, in practice, it appears to gather dust while sitting in plain sight.

17. Notably, Singularity has successfully relied on Article XXV of the India-UAE Treaty to enforce a Mumbai-seated MCIA award before the DIFC Courts.[xiv] The DIFC Court of First Instance accepted that, where there is an applicable treaty, the treaty conditions would supersede those otherwise contained in the DIFC Arbitration Law (which itself incorporates conditions modelled on the NYC). On that note, it refused to test enforcement against NYC grounds which were not part of Article XXV. That does not, of course, answer the position in India. But if the India-UAE Treaty can be used in the UAE to enforce arbitral awards on its own terms, the possibility of relying on it in India is at least worth serious exploration.

18. It is important to note that the treaty route should be kept analytically distinct from a notification under Section 44(b) of the Arbitration Act. Such a notification would not implement Article XXV as such. It would instead make UAE-seated awards enforceable through the statutory NYC framework of the Arbitration Act, which rests on different conditions and defenses mentioned in Part II of the Act. The present argument proceeds on a footing that Article XXV may itself furnish an independent route to enforcement, apart from the statutory framework.

19. The first step to this analysis has discussed in the common law route – that the non-applicability of the Arbitration Act does not leave a complete remedial vacuum, and alternative routes may be available. The next step comes from the position in India on the domestic operation of treaties, clarified by the Supreme Court in *Maganbhai Ishwarbhai Patel v UOI* ***("Maganbhai").***[xv] There, the Court considered whether a constitutional amendment/ legislation would be required to implement the treaty. It distinguished between the formation of a treaty and the performance of treaty obligations in municipal law, noting that while the executive may enter into treaties that bind India internationally, legislation is required where the treaty restricts the rights of citizens or others, or modifies the law of the State. However, where justiciable rights are not affected and domestic law is not modified, no legislative measure is necessarily required to give effect to the treaty. That principle is critical here. It means that the absence of a specific implementing statute is not, by itself, fatal to the operation of a treaty provision in domestic law.

20. That opens the space for a positive case on direct application of the India-UAE Treaty. The argument would be that direct

recognition and enforcement under Article XXV does not require the court to rewrite the Arbitration Act or to displace the conditions of Part II (especially, since Part II is already inapplicable absent the requisite notification). Nor does Article XXV necessarily require the creation of a new municipal cause of action from whole cloth. As discussed above, Indian law already recognises that courts may act upon foreign awards where the statutory framework does not apply. On that basis, Article XXV may be said to do no more than furnish a treaty-based rule of recognition for a class of awards, leaving the forum, procedure, and execution mechanics to existing Indian process. If so understood, the treaty would not be modifying municipal law so much as supplying a substantive norm which Indian courts may give effect to through existing procedural law.

21. *Union of India v. Agricas*[xvi] reinforces this line of reasoning by emphasising the concept of invocability, *i.e.*, the justiciability or admissibility of a treaty before domestic courts as part of municipal law. The Court explained that the invocability of a treaty depends on whether an act of transformation, *i.e.*, legislative incorporation, is required. It further held that the test to determine whether an act of transformation would be required would depend on the test laid down in *Maganbhai,* namely, whether the treaty affects justiciable rights or modifies domestic law. On this basis, it may be seriously contended that, where no such impact is demonstrated, provisions such as Article XXV of the Treaty could arguably be invoked before an Indian court and given effect through existing municipal procedures.

22. None of this is to suggest that the treaty route is free from difficulty. Quite apart from the threshold objection that treaties do

not, by their own force alone, necessarily create enforceable rights for private parties in municipal law, there remain real questions as to procedure. If Article XXV is to be directly invoked in India, what is the precise form of proceeding by which it is to be enforced? Would the award creditor proceed by way of a suit, an execution-style application, or some other original proceeding? What would be the appropriate forum? To what extent would the court confine itself to the conditions expressly set out in Article XXV, and to what extent would it import procedural requirements from existing municipal law? These questions are not insubstantial, and they show that the route is not yet fully worked out. Even so, Article XXV is difficult to dismiss as legally irrelevant. At the very least, it furnishes a serious basis for arguing that direct enforcement in India is not conceptually foreclosed.

CONCLUSION

23. The problem of enforcing arbitral awards from non-reciprocating territories in India has generally been approached through the lens of what the Arbitration Act does not permit. The prevailing instinct for jurisdictions like UAE has been to obtain for a judgment first and to treat enforcement of the award itself as foreclosed. This approach may be too narrow. The non-applicability of Part II does not necessarily exhaust the legal possibilities.

24. The first alternative lies in the common law route recognised in *Badat* and reaffirmed in principle in *Khark*. That route is limited and conditioned, most notably by finality and by the ordinary rules of jurisdiction, but it remains a real route nonetheless. In an appropriate case, it may permit a foreign award to furnish the basis of relief in India without first being converted into a foreign judgment.

25. The second, and more ambitious, possibility lies in bilateral treaties, such as Article XXV of the India-UAE Treaty. If the treaty can operate in the UAE as a direct route to enforcement on its own terms, there is at least a serious basis for asking whether it may likewise be invoked in India. Read with prevailing authority, the better view may be that the absence of separate implementing legislation is not invariably fatal where the treaty does not alter domestic law or affect justiciable rights in a manner requiring legislative transformation. That said, the treaty route is not yet fully worked out. But those uncertainties go more to mechanics than to concept.

26. The legal position is not as barren as the prevailing view suggests. Between the common law route and the bilateral treaty route, Indian law may already contain the tools to address awards that fall outside the statutory Convention framework. In the absence of a notification bringing the UAE within the scope of Section 44(b) of the Act, these routes assume increasing significance. For award creditors, the key takeaway is that enforcement in India is not foreclosed merely because the award originates from a non-reciprocating jurisdiction; with appropriate structuring and a clear understanding of the applicable legal requirements, meaningful enforcement remains achievable. The task, perhaps, is not to wait for a new route to be created, but to recognise more clearly the routes that may already exist.

Authors: Prateek Bagaria, Natasha Kavalakkat, Aayush Khandekar

References:

[i] Part II of the 1996 Act separately deals with NYC awards and Geneva Convention awards. However, Article VII(2) of the NYC provides that the Geneva Protocol of 1923 and the Geneva Convention of 1927 cease to have effect between Contracting States upon their becoming bound by the NYC, to that extent.

[ii] To date, around 50 countries have been notified, including: Australia; Austria; Belgium; Botswana; Bulgaria; Central African Republic; Canada, 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.

[iii] [4.108], Repuert Reed, DIFC Court's Practice (2nd ed., Edward Elgar Publishing); *M.V. Cape Climber v. Glory Wealth Shipping Pvt. Ltd.*, 2015 SCC OnLine Guj 956; DSK Legal, https://dsklegal.com/india-uae-arbitration-synergy-evolving-legal-frameworks-and-cross-border-enforcement/; Clifford Chance, https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/02/enforcement-of-uae-civil-and-commercial-judgements-in-india-a%20practical-overview.pdf; Obeid & Partners, https://www.lexology.com/library/detail.aspx?g=9bceaba1-1a73-48a5-9d60-4a799a5f2683; CSL Chambers, https://www.barandbench.com/columns/dawn-of-a-golden-era-uae-declared-as-a-reciprocating-territory-by-indian-government

[iv] Explanation 2 to Section 44A expressly clarifies that the provision does not extend to arbitral awards, even where such awards are enforceable as a decree or judgment. See *Marina World Shipping Corpn. Ltd. v. Jindal Exports (P) Ltd.*, 2007 SCC OnLine Del 469

References:

[v] Singularity is currently enforcing a Russian judgment in India by way of a fresh suit under Sections 13 and 14 of the CPC, as Russia is not a reciprocating territory under Section 44A of the CPC (see https://globalarbitrationreview.com/article/uk-appeal-court-upholds-anti-suit-relief-in-russian-ammonia-plant-dispute).

[vi] *Badat & Co Bombay v East India Trading Co*, 1963 SCC OnLine SC 9

[vii] *Centrograde Mineral & Metals v. Hindustan Copper Ltd.*, 2017 (2) SCC 228

[viii] *Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552

[ix] *Khark Petrochemical Company v Hazel Mercantile Limited*, Interim Application (L) No. 3847 of 2024 in Commercial Suit no. 48 of 2024 (9 June 2025)

[x] The decision in *Khark* was made as part of the interim application filed for security along with the suit. The suit is still pending before the Bombay High Court.

[xi] Article 52 and Article 53, Federal Law No. 6 of 2018

[xii] Article 41 and 44(3), DIFC Arbitration Law no. 1 of 2008

[xiii] https://www.mea.gov.in/TreatyDetail.htm?2022

[xiv] [2024] DIFC ARB 004. The decision remains unpublished, but the authors may be contacted for further details. Notably, the position would remain unchanged even under the new Courts Law No. 2 of 2025, by virtue of Article 33 of that law.

[xv] *Maganbhai Ishwarbhai Patel v. Union of India*, 1970 (3) SCC 400

[xvi] *Union of India v. Agricas LLP and Ors.*, (2021) 14 SCC 341

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(e) Chambers & Partners (Asia Pacific) – Singularity for dispute resolution practice (2025)
(f) AsiaLaw – Recognised for Dispute Resolution, Construction, Banking & Financial Services and Technology & Telecommunications practise areas (2024)

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ABOUT THE AUTHOR

PRATEEK BAGARIA
PARTNER

m: +91 98200 25813; +971 5855 25813
e: prateekbagaria@singularitylegal.com
w: www.singularitylegal.com

Prateek is a partner at Singularity Legal. He holds an LL.M in International Disputes Settlement from MIDS, a course jointly organised by University of Geneva and Graduate Institute. He is licensed to plead before courts in India and Dubai International Financial Centre (DIFC).

He specialises in advising energy & resources, construction & infrastructure, shipping & trade companies and institutional investors in shareholder and joint venture disputes, operational disputes and sovereign disputes.

His range of experience includes advising clients in international arbitrations under various rules like ICC, SIAC, LCIA, DIAC, DIFC-LCIA, ICDR, FCC, LMAA, PCA, JAMS, CAS and UNCITRAL and in cross- border disputes before courts in Cayman Islands, India, Indonesia, Israel, Singapore, Switzerland, Turkey, Mauritius, United Arab Emirates, United Kingdom and United States of America; and in investment and tax treaty disputes.

He also acts as a strategic counsel in cross-border investments, joint venture and trade deals. He has a passion for advising on law governing radical technologies and businesses.

South Asia Office

1809-1810, One Lodha Place,
Senapati Bapat Marg,
Lower Parel,
Mumbai - 400013

Tel: +91 22 4976 5861

United Arab Emirates

Level 41, Emirates Towers,
Sheikh Zayed Road,
Dubai, UAE
PO Box 31303

Tel: +971 4313 2043

Singapore Office

138 Market Street,
#24-01 CapitaGreen,
Singapore 048946

Tel: +65 6679 6045

e: singularity@singularitylegal.com
w: www.singularitylegal.com