

Whether an Arbitral Award Passed in India, Itself is a Court Decree or an Instrument Which Can Be Enforced Like a Court Decree?

Author:

S. Ravi Shankar,
International & Domestic Arbitration Lawyer,
Senior Partner – Law Senate Law Firm

www.lawsenate.com

B3/73, Safdarjung Enclave, Lower Ground Floor, New Delhi - 110029 India.

+91-11-26102873, +91-11-26104773

contactus@lawsenate.com, info@lawsenate.com

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One of the very important step forward in the development of arbitration law in India is the enactment of Arbitration and Conciliation Act, 1996 which was enacted keeping in mind the UNCITRAL Model law. One of the significant aspects of the above said New Act is, giving the Arbitral award the status of a court decree after 90 days from the date of service of the award to the parties or immediately after the disposal of the application seeking to set aside the Arbitral award, by a competent court. This is because, as per the earlier Act Arbitration Act, 1940 the Arbitral award requires an approval of the court before getting it enforced and the New Act has removed that mandatory requirement of court approval. But many a times the courts are dealing with a question “**Whether the Arbitral award is a decree or a document which can be enforced like a court decree?**”

Contention of the Parties: The contentions of the parties arise from the recitals of Section Sections 36 and Section 49 of the Arbitration and conciliation Act and corresponding interpretations by the Courts in India.

The following are the above said Sections of the said 1996 Act:

36. Enforcement: Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court.

49. Enforcement of Foreign Awards: Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court.

The recitals with regard to “**Court**” in the above said sections were interpreted by the Courts in India. In one of the Judgment the Supreme Court of India observed that Section 36 by a deeming fiction requires the court to proceed to enforce the award under the CPC by treating it to be a decree of the court. Therefore it was held that the Act is unambiguous that for the purposes of enforcement the award is in fact a decree and can be straight away enforced as such.

Hence an arbitral award passed in India on completion of three months or after the disposal of the application seeking to set aside the arbitral award becomes a court decree and can be executed directly.

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