**ARTICLE**

**on recognition and enforcement of foreign arbitral award IN INDIA- an overview**

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**synopsis**

The history of the Enforcement of Foreign Awards paved way to various enactment of special Act such as The Foreign Awards ( Recognition and Enforcement) Act-1961 to recent landmark judgments like Vijay Karia & Ors Vs Prysman Cavi Sisterni SRL & Ors [[1]](#footnote-1). Since it is being the complex issue , the Hon’ble Courts has to go through a hair spit check of morality, justice and Public Policy while Enforcing a Foriengn Arbitration Award in India.

The basic purpose of arbitration is to bring about cost-effective and expeditious resolution of disputes and further preventing multiplicity of litigation by giving finality to an arbitral award. The article ambidextrously and comprehensively analyzes India’s Commitment and challenge to the International Arbitration in the era of globalization when the investment by the foreign entities is at the peak.  
  
Public Policy of India has most important role in the whole process of enforcement of an arbitral awards particularly the foreign awards because it involves parties, lawyers and arbitrators form diverse legal &cultural traditions. Most often the arbitral tribunal consists of arbitrators from multiple jurisdictions & legal traditions different from those of parties and of their council.

**INTRODUCTION**

In India, the scheme for enforcement of foreign awards is provided in Part – II of the Arbitration and Conciliation Act, 1996 (“the Arbitration Act”). Section 44 of the Arbitration Act defines a foreign award as “an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after 11 October 1960”. For an arbitral award to be considered as a foreign award under Section 44 of the Arbitration Act, the said award is required to be made pursuant to a written arbitration agreement to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“New York Convention, 1958” or “NYC”) applies and in a country which the Central Government has notified as per Section 44.

While India has adopted a pro-enforcement approach with foreign arbitral awards, it is important to understand the legislative background and the development of law over the years since 1923.

**A. HISTORICAL BACKGROUND**

The Geneva Protocol of 1923 was drawn up on the initiative of International Chamber of Commerce (“ICC”) under the auspices of the League of Nations. The Geneva Protocol had two objectives, firstly, to make arbitration agreements, and arbitration clauses in particular, enforceable internationally; and secondly, to ensure that awards made pursuant to such arbitration agreements are enforced in the territory of the State in which they were made. The Geneva Protocol of 1923 was followed by the Geneva Convention of 1927 (“Geneva Convention”).

**THE GENEVA CONVENTION 1927**

Under the Geneva Convention, 1927, in order to obtain recognition or enforcement of a foreign arbitral award, the requirements of clause (a) to (e) of Article 1 had to be full filled and in Article 2, it was prescribed that even if the conditions laid down in that article were fulfilled recognition & enforcement of the award would be refused if the court was satisfied in respect of matters mentioned in clause a,b and c hereunder  
  
a) The award has been annulled in the Country in which it was made.  
b) That the party being under a legal incapacity, he was not properly represented.  
c) That the award contains decisions on matters beyond the scope of the submission to arbitration.  
The principles which apply to recognition and enforcement of foreign awards are in substance, similar to those adopted by the English court at Common law, It was, however, felt that the Geneva Convention suffered from certain defects which hampered the speedy settlement of disputes through arbitration.

The Geneva Convention widened the scope of the Geneva Protocol of 1923 and provided the recognition and enforcement of protocol awards within the territory of contracting States. India was a signatory to the Geneva Protocol of 1923 and also the Geneva Convention of 1927. To implement its obligations, India enacted the Arbitration (Protocol & Convention) Act, 1937. As noticed in  Renusagar Power Co. Ltd. vs. General Electric Co.[[2]](#footnote-2) “a number of problems were encountered in the operation of the aforesaid Geneva treaties inasmuch as there were limitations in relation to their field of application and under the Geneva Convention of 1927, a party seeking enforcement had to prove the conditions necessary for enforcement and in order to show that the awards had become final in its country of origin the successful party was often obliged to seek a declaration in the countries where the arbitration took place to the effect that the award was enforceable in that country before it could go ahead and enforce the award in the courts of the place of enforcement”. 1 6. Thereafter in 1953, the ICC promoted a treaty to govern international commercial arbitration, which led to the adoption of the NYC.

**THE NEW YORK CONVENTION-1958**

The New York Convention (1958), Art III provides that each contracting State Shall recognize awards as binding and enforce them in accordance with the rules & procedure of the territory, where award is relied upon.   
The NYC sought to overcome the issues of the Geneva Convention by providing an effective and simpler method for recognition and enforcement of foreign awards. India became an early signatory to the NYC (signed in 1958 and ratified in 1960). The NYC provides for a much more simple and effective method of obtaining recognition and enforcement of foreign awards and it replaces the Geneva Convention as between the States which are parties to both the Conventions. 8. Article V of the NYC enumerates certain well defined grounds on which an award may be refused to be recognized and enforced. Under Article V(2)(b), a foreign award may not be enforced if the award is contrary to public policy of the country where the award is sought to enforced. . The Government of India gave statutory recognition to the NYC by enacting the Foreign Awards (Recommendation and Enforcement) Act, 1961 (“1961 Act”). Section 7 of the 1961 Act was identical to Article V of the NYC. Under Section 7(1)(b)(ii), a foreign award may not be enforced if the enforcement of that award was “contrary to public policy”. See Renusagar ( Supra)

Thereafter, in 1985, the UNCITRAL, a core body of the United Nations, came out with the Model Law on International Commercial Arbitration (“Model Law”). The Model Law was a legislative template for countries across the world seeking to develop their arbitral regimes. Accordingly, in 1996, India enacted the Arbitration Act to consolidate and amend the law relating to domestic arbitration (those seated in India), international commercial arbitration (those also seated in India but where one of the parties is foreign [Section 2(1)(f)]) and the enforcement of foreign arbitral awards (those under the NYC or Geneva Convention). The Preamble of the Arbitration Act also confirms that the statute was made “taking into account the” Model Law. The Arbitration Act is divided into four parts, namely - Part I, “Arbitration”; Part II, “Enforcement of Certain Foreign Awards”; Part III, “Conciliation”; and Part IV, “Supplementary Provisions”. The Supreme Court has held that Part I and Part II of the Arbitration Act are mutually exclusive of each other, and that there shall be no overlapping between Part I and Part II of the Arbitration Act. Part II of the Arbitration Act provides for the “enforcement of certain foreign awards”. Chapter I of Part II deals with the enforcement of foreign awards to which the NYC applies and Chapter II of Part II deals with the enforcement of foreign arbitral awards to which the Geneva Convention applies. As per Section 47 of the Arbitration Act, a foreign award holder seeking enforcement of an award in India must file a petition, under Section 47 read with Section 49 of the Arbitration Act, in the High Court within whose jurisdiction the award debtor or its assets are located. It also mandates certain documents to be produced before the Court, while applying for enforcement. However, the Supreme Court vide its judgment in the matter of PEC Limited v. Austbulk Shipping SDN BHD.[[3]](#footnote-3) eased the requirement of document production at the initial stage of filing by observing that a party applying for the enforcement Bharat Alumunium Co. v. Kaiser Aluminiun Technical Service Inc,[[4]](#footnote-4) .A foreign award need not necessarily produce the documents mentioned in Section 47 “at the time of the application”. Further, the Supreme Court has also held that under the Arbitration Act, a foreign award “is already stamped as a decree” and therefore, the process of enforcement and execution of a foreign award can be done in the same proceeding. The Supreme Court also clarified that every foreign award, which is final, is to be enforced “as if it were a decree of the court”. On the other hand, the party resisting the enforcement is required to prove that the foreign award should not be accorded recognition on account of the existence of one or more of the conditions under Section 48 of the Arbitration Act – where the Court may refuse enforcement if the grounds under Section 48 have been established.

**POSITION PRIOR TO AMENDMENT ACT - 2015**

As early as in 1994, the Supreme Court (three-judge bench) in Renusagar (Supra) held that the phrase “public policy” as it appears in Section 7(i)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961, had been used in a “narrower sense” - therefore, in order to attract the bar of public policy, the enforcement of a foreign award “must invoke something more than the violation of the law of India”. Enforcement thus, could only be refused if the award was found to be contrary to (i) fundamental policy of Indian law; or (ii) interests of India; or (iii) justice or morality. See PEC Limited v. Austbulk Shipping SDN BHD.[[5]](#footnote-5) 4 Fuerst Day Lawson Ltd vs. Jindal Exports Ltd.[[6]](#footnote-6); Also see Shriram EPC Limited vs. Rioglass Solar SA,[[7]](#footnote-7). The Supreme Court also held that the NYC did not envisage refusal of recognition and enforcement of a foreign award on the grounds of it being contrary to the law of the country where enforcement was sought. Further, while interpreting “public policy” under the 1961 Act, the Supreme Court held that it must be construed in the sense the doctrine of public policy is applied in the field of private international law. However, peculiarly, the Supreme Court (two-judge bench) in 2011 in Phulchand Exports v. OOO Patriot.[[8]](#footnote-8) (“ Phulchand”), while relying on ONGC v. SAW Pipes[[9]](#footnote-9) (“Saw Pipes”) (a decision where the award was challenged under Part I - Section 34), interpreted Section 48(2)(b) in the same vein as Section 34 of the Arbitration Act. It did so by holding that a foreign award could be set aside if “it is patently illegal”. The implication of the Phulchand judgment was that a foreign award, at the time of enforcement, was susceptible to challenge on the same ground as a domestic award. Subsequently, in 2013, the Supreme Court (three-judge bench) in Shri Lal Mahal Ltd. v. Progetto Grano SPA,[[10]](#footnote-10) (“Shri Lal Mahal”) while overruling Phulchand, stated that the wide interpretation given in the case of Saw Pipes to the expression “public policy of India” was in the context of a domestic award facing challenge under Section 34 and the same was certainly not applicable if the award were a foreign award, challenged under Section 48. The Supreme Court clarified that although the same expression “public policy of India” is used in Part I (Section 34) and Part II (Section 48), it has to be applied differently. Its application for the purpose of a foreign award under Section 48 is more limited as opposed to when it is used in the context of a domestic award. The unarticulated premise appears to be that this is because a foreign award has already been challenged at the seat court, or become final (when not challenged), in contrast to a domestic award, which is challenged under Section 34. The Supreme Court in Shri Lal Mahal also held that the scope of the defence of public policy as explained in Renusagar, “would apply equally” to the defence of public policy under Section 48(2)(b) of the Arbitration Act. The Court also held that it was impermissible for a court to have a “second look” at the foreign award under Section 48 and that the scope of enquiry under Section 48 does not permit a “review of the foreign award on merits”. It was also clarified that while considering the enforceability of foreign awards, the court “does not exercise appellate jurisdiction over the foreign award” nor does the court enquire as to whether, while rendering a foreign award, “some error has been committed”. Lastly, the Supreme Court reiterated the three grounds as highlighted in Renusagar, i.e. (i) fundamental policy of Indian law; or (ii) interests of India; or (iii) justice or morality, under which the enforcement of a foreign award could be refused under Section 48.

**246th LAW COMMISSION REPORT**

The 2015 amendments to Section 34 and 48 of the Act were on the basis of the Supplementary Report no.246 of the Law Commission of India and sought to prevent review on merits as done in the case of Western Geco (supra). The Court revisited the findings in the arbitration and reviewed those findings to ascertain whether they were sustainable in the light of the evidence on record. In Western Geco (supra) the challenge was not as much as of the procedure adopted by the tribunal but that on the basis of the record, the tribunal ought to have arrived at a different conclusion. This approach in Western Geco (supra) amounted to a review on merits. The Supplementary Report refers to the wider interpretation of the term "public policy" by including the Wednesbury principle of reasonableness within the expression "fundamental policy of Indian Law" alluding to the possibility of a review on merits. It is such a review on merits that the legislature sought to do away with  by introducing Explanation 2 to Section 34(2) and 48(2).

On 5 August 2014, the 246th report of the Law Commission of India - “Amendments to the Arbitration and Conciliation Act 1996” (“LC Report”) suggested several significant amendments to the Arbitration Act. The principal object was to make the Arbitration Act more effective and in line with international standards. One of the primary objects of the LC Report was aimed at boosting the confidence of foreign investors by ensuring that arbitration matters are dealt with expeditiously; one of their main concerns being the inordinate delay in Indian courts and arbitration tribunals in resolving the disputes. In order to minimize judicial interference, the Law Commission recommended that the definition of “public policy” must be restricted and be brought in line with what was held by the Supreme Court in Renusagar. However, after the LC Report, the Supreme Court (three-judge bench) on 14 September 2014 in ONGC v. Western Geco (“Western Geco”)[[11]](#footnote-11) examined the question “[w]hat then would constitute the ‘Fundamental policy of Indian Law’” under Section 34 of the Arbitration Act and held that (a) judicial approach (b) principles of natural justice and (c) rationality of reasonableness (Wednesbury principles) “must necessarily be understood as a part and parcel of the Fundamental Policy of Indian law”. After the decision of Western Geco and due to the “deleterious effect” of the judgment, the Law Commission of India, in February 2015, issued a Supplementary Report to the LC Report. The Law Commission noted that the Supreme Court's ruling in Western Geco undermines the recommendations made in the LC Report and accordingly, recommended that further clarifications are required in Section 48 of the Arbitration Act to ensure that the ground of “fundamental policy of Indian law” is narrowly construed.

**POST AMENDMENT 2015**

2015 amendment Explanation 2 prohibits the review on merits of the dispute while considering a challenge to the enforcement on the ground that it is in contravention with the fundamental policy of Indian law.

The 2015 amendment to the Arbitration and Conciliation Act grants for opposing enforcement of foreign award only include public policy restricted to fundamental policy of Indian Law is contemplated in Renusagar (supra) and Shri Lal Mahal (supra). Justice and morality as contemplated in Associate Builders (supra) and if the award is affected by fraud or corruption or violation of section 75 and 85of the law as laid down in Renusagar and Shri Lal Mahal apply and the scope for resisting enforcement is extremely limited. That the 2015 amendment act has brought section 48 in line with Shri Lal Mahal and this was as a result of the 246th Law Commission Report.

The Supreme Court reaffirmed in HRD Corporation in the matter of Board of Control for Cricket in India vs. Kochi Cricket Pvt. Ltd [[12]](#footnote-12) observing that it was in consonance with the objects of the Act to avoid increased interference by Courts. A contrary view would mean that 2015 amendment is not to be given effect to. Integrated Sales Services (supra) also follows Shri Lal Mahal (supra).

Renusagar (supra) lays down the following tests; (a) A Foreign award cannot be resisted on the basis of a challenge on merit. New York Convention tilts towards pre enforcement grounds. (b) Article V of the New York Convention does not include mistake of fact or law by the arbitrator is ground for refusing enforcement. (c) The New York Convention does not permit a review on merits. The award cannot be impeached on merits. (d) Objections to enforcement are limited in its scope and lastly (e) Contravention to some local law will not attract the public policy concept. In other words something more than violation of the Indian law is required.

The principles in Renusagar (supra) have been followed in Shri Lal Mahal (supra) and applied to enforcement of foreign Awards. There is a very limited scope to resist enforcement. That Shri Lal Mahal (supra) examined the effect of the meaning of the expression "merits of the award" to hold that section 48 does not facilitate a Second look at the foreign award at the stage on enforcement or its review on merits. Nor does it permit considering of acceptance or rejection of evidence by the tribunal. In view thereof he submitted that reliance on a report which was not provided for in contract or rejection of a report of a contractual agency cannot come in the way of enforcement of an award and the Court in any event does not exercise Appellate jurisdiction over foreign award nor it will enquire whether an error has been committed in rendering the award.

 In M/s. Louis Dreyfus Commodities Suisse S. A. vs. Sakuma Exports Ltd ,[[13]](#footnote-13) the Court held that even in case where the tribunal considered the documents along with written arguments without giving an opportunity to the respondents to deal with it could not be a ground to refuse enforcement. . A submission that the tribunal did not consider an Expert's report was one that touched the merits of the claim and could not be used for resisting a foreign award. The Court enforcing an award cannot review the award on merits even for considering an objection on the ground of violation of fundamental policy and conflict with basic notions of justice.

The Arbitration Act was amended by the Arbitration and Conciliation Amendment Act, 2015 (“Amendment Act”).Based on the recommendations 246th Law Commission Report. The Section 48(2)(b) of the Arbitration Act was amended and the scope of the public policy defence was further narrowed by crystalizing the meaning of “public policy of India”. Further, “interest of India” as one of the grounds under public policy was removed for being vague and susceptible to interpretational misuse, more so when it came to objections to the enforcement of a foreign award. The amendment also inserted an explanation which clarified that 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. The amendments therefore, gave statutory recognition to the judgment of the Supreme Court in Shri Lal Mahal. Position after the Amendment Act .After the amendment, various courts, while taking forward the legislative intent of the Arbitration Act and the amendments made thereafter, have limited the interference in the enforcement of foreign awards. The Delhi High Court in Cruz City 1 Mauritius Holdings vs. Unitech Limited, (“Cruz City”)[[14]](#footnote-14) read fundamental policy of Indian law to connote the “basic and substratal rational values and principles which form the bedrock of laws in India”. Importantly, Cruz City held that regard must be given to the fact that a foreign award may be based on foreign law, which maybe “at variance” with the corresponding Indian statute. To then interpret “fundamental policy of Indian law” as a reference to a provision of an Indian statue, would frustrate one of the principal objects of the NYC. The position thus is that in order to successfully resist enforcement of a foreign award on the ground of public policy, the objections must be such that offend the core values of a member State's national policy and which it cannot be expected to compromise. Therefore, the expression fundamental policy of Indian law must be interpreted in the above perspective and must mean only the fundamental and substract legislative policy and not a provision of any enactment.

The ordinance (dated 23 October 2015) was promulgated into the Amendment Act which received the President’s assent on 31 December 2015 and is dated 1 January 2016. Several other decisions have been passed by various High Courts 6 and the Supreme Court7 after the Amendment Act. All of these decisions have applied a narrow test under Section 48 while dealing with the enforcement of foreign awards. The common findings in of all these decisions are that a court is precluded from examining a foreign award on merits and that a court, under Section 48, does not sit as an appellate court. These decisions take forward the legislative intent of the Arbitration Act and in particular, the amendments made by the Amendment Act.

**The Public Policy and Foreign Award :-The Section 34 and 48 of the Act**

The grounds for challenge under Section 34 and for the Court to decline enforcement under Section 48 are identical and that the expression public policy of India has now been defined with the intention of restricting the scope of public policy under Section 34 and 48.

The scope for resisting enforcement pursuant to 2015 Amendment Arbitration Act are similar to the ground available under Section 34 for challenging an award, that except for the ground of patent illegality under Section 34(2)(a) which is available for challenging awards other than awards passed in international Commercial Arbitrations under Part I.

The  Challenge to awards under section 34 on the ground of 'patent illegality' as contemplated in Saw Pipes, Western Geco and Associated Builders(supra) now stand negated and can only be a ground of challenge under section 34 for domestic awards and not while considering section 48 for enforcement. The ground of patent illegality contemplated a domestic award and cannot apply to foreign awards

The definitions of public policy and fundamental policy of Indian Law would apply with equal force to objections against enforcement of a foreign award. The paragraph 35, 38 and 39 of Western Geco (supra) the Supreme Court emphasized that there must be fidelity of judicial approach and one which cannot be arbitrary, capricious or whimsical manner. A judicial approach ensures that the authorities act bonafide and deals with the subject in a fair, reasonable and objective manner and that the decision is not actuated by any extraneous considerations.

Chapter I of Part II which deals with New York Convention Awards does not differentiate between enforcement of awards that have been unsuccessfully challenged at the seat or those which being not except for Section 48(1)(e) and Section 48(3).

To resist enforcement viz, the enforcement of the Award being in contravention of the Foreign Exchange Management Act. In Penn Racquet the Delhi High Court had held that recognition and enforcement of a foreign award cannot be denied merely because it was in contravention with the laws of India. An award should be contrary to the fundamental policy of Indian law and only then enforcement could be denied. This Court had in Pol India Projects approved of the decision in Penn Racquet Sports as squarely applicable to the facts of the cases. The Court in Pol India Projects further observed that the Supreme Court had held since the expression "public policy' covers the field not covered by the words "and the law of India" which follow that expression contravention of law alone will not attract the bar of public policy and something more than the contravention of law is required and adverting to the facts of the case even if a law of guarantee could not have been issued in favour of the respondents under provisions of the Foreign Exchange Management (Guarantees) Regulation, 2000 which was acted upon by the parties. The violation of the provisions would not be contrary to the fundamental policy of Indian law. POL India Projects Ltd followed the Delhi High Court decision in SRM Exploration P.Ltd vs. N & S & N Consultants holding[[15]](#footnote-15) that legislative intent while enacting FEMA is not to void a transaction even if it is in violation. As also of the decision of the Bombay High Court in Noy Vallencia Engineering Spa Vs Jindal Drugs Ltd[[16]](#footnote-16). All of which allowed enforcement of foreign awards held and held that even if guarantees are not issued under FEMA Regulations, violation of the provisions would not be contravention of the fundamental policy of Indian law.

**VIJAY KARIA CASE AND ITS IMPACTS**

The Supreme Court in Vijay Karia & Others vs. Prysmian Cavi E Sistemi SRL & Others (“Prysmian”) has while expounding on various aspects of prospective challenge to a foreign award that would not fall within the scope of Section 48 viz. matters of appreciation of evidence, methodology of valuation, application of allegedly disparate standards in determining breach etc., further held that the expression “was otherwise unable to present his case” occurring in Section 48(1)(b), and which reflects a natural-justice safeguard, “cannot be given an expansive meaning”. 30. Continuing with the pro-enforcement approach, on 13 February 2020, the Supreme Court (three-judge bench) in Prysmian reiterated the narrow scope of interference and under Section 48. In Prysmian the Supreme Court also agreed with reasoning of Cruz City that a foreign award may be enforced even if its inconsistent with the provisions of an Indian statute (i.e. the Foreign Exchange Management Act, 1999). What is equally noteworthy is the Supreme Court’s final paragraph in Prysmian. It sends out a strong message and crystalizes India’s approach in relation to enforcement of foreign awards. The Supreme Court imposed cost of INR 50 lakhs on the petitioner in Prysmian for “indulging in a speculative litigation with the fond hope that by flinging mud on a foreign arbitral award, some of the mud so flung would stick.” The Court also held that “[w]e have no doubt whatsoever that all the pleas taken by the Appellants are, in reality, pleas going to the unfairness of the conclusions reached by the award, which is plainly a foray into the merits of the matter, and which is plainly proscribed by Section 48 of the Arbitration Act read with the New York Convention”. That being so, there have also been cases 8 (both before and after the Amendment Act) where enforcement of foreign awards has been refused. Understandably so, these cases are not many in number. For instance, in Campos Brothers, the Delhi High Court refused enforcement of a foreign award principally on the ground that it was in violation of the principles of natural justice and contrary to the public policy of India as stated in sub-Section 2(b) read with Explanation 1(iii) of Section 48 of the Arbitration Act. The tribunal in this case failed to take into consideration the submissions made by one of the parties and the foreign award had incorrectly recorded that no submission/filing had been made (which the respondent in this case rebutted with proof of receipt by the tribunal). In another case of Agritrade International (which is pre-amendment judgment), the enforcement of foreign award was rejected on two grounds - (i) under Section 48(2)(a) of the Arbitration Act, since the dispute was not capable of arbitration in the absence of an arbitration agreement and (ii) under Section 48(2)(b) of the Arbitration Act (unamended) since the foreign award was not based on any evidence. See Campos Brothers Farms vs. Matru Bhumi Supply Chain Pvt. Ltd, (“Campos Brothers”)[[17]](#footnote-17), Agritrade International Pte Ltd vs. National Agricultural Co-operative Marketing Federation of India Ltd, (“Agritrade International”).[[18]](#footnote-18)

**Conclusion**

That the failure to challenge the award in the seat of Arbitration would in any manner impact the right of a party to resist enforcement in this country and in this respect with the views expressed in Dallah Real Estate[[19]](#footnote-19) and PT First Media[[20]](#footnote-20) is followed in Vijay Karia& Ors (Supra). The Arbitration & Conciliation Act, 1996 in its current avatar also does not support the view that resisting enforcement would be subject to a prior challenge at the seat of arbitration. It does not support the view that absent a challenge in the seat of the Arbitration, a party could not resist enforcement of the award in a different jurisdiction. If that were to be so the legislature would have provided for appropriate pre-conditions to resist enforcement of foreign award and justifiably so because if an award were to be set aside in the seat, there may be no occasion to resist enforcement. On the other hand if a challenge at the seat is repelled, a losing party could still resist enforcement on available grounds. A foreign award was not challenged in the seat of arbitration, nothing prevents the respondents from resisting enforcement. It is akin to judgment debtor resisting execution on just and valid grounds. Merely because the decree has not being challenged does not render resistance to its execution under legitimate legal grounds invalid. This excluded cases where a challenge in the seat was necessary such as in Ark Shipping and Pol India[[21]](#footnote-21) but otherwise a party cannot be prevented from attempting to resist enforcement of a foreign award.

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9. (2003) 5 SCC 705 [↑](#footnote-ref-9)
10. (2014) 2 SCC 433 [↑](#footnote-ref-10)
11. (2014) 9 SCC 263 [↑](#footnote-ref-11)
12. [AIR 2018 SC 1549] [↑](#footnote-ref-12)
13. [(2015) SCC Online Bom 5006] [↑](#footnote-ref-13)
14. 2017 SCC Online Del 7810 [↑](#footnote-ref-14)
15. [(2012) 4 Company Law Journal 178 Delhi] [↑](#footnote-ref-15)
16. (2006) 5 Bom C.R. 155 [↑](#footnote-ref-16)
17. (2019) SCC Online Del 8350 [↑](#footnote-ref-17)
18. 2012 (128) DRJ 371 [↑](#footnote-ref-18)
19. 2012 (128) DRJ 371 Dallah Real Estate and Tourism Holding Company vs. The Ministry of Religious Affairs, Govt. of Pakistan. [↑](#footnote-ref-19)
20. PT First Media TBK vs. Astro Nausantara International B V. 1 (2014) 1 SLR 372 [↑](#footnote-ref-20)
21. ARBP/76/2012 WITH ARBP/12/2012 (BHC)  [↑](#footnote-ref-21)