

## Enforcement of UAE Court Judgements in India



United Arab Emirates (“UAE”) and India have executed a bilateral agreement in 1999, namely, the “Agreement on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgements and Arbitral Awards” (“Agreement”). This Agreement was ratified by India but not implemented as the details regarding the designation of superior UAE Courts was not received.

As a result, the UAE Court judgments were not directly enforceable in the Indian Courts. Despite having a favorable final judgment issued by the UAE Courts, such party was unable to enforce it against the debtor in India and was required to undergo a lengthy process of filing a new suit before the Indian competent court viz., issuing summons to the debtor, framing of issues, leading of evidence, examination of witnesses etc.

On January 17<sup>th</sup>, 2020, the Ministry of Law & Justice in India declared UAE to be a reciprocating territory under the Section (“44-A”) of the Indian Civil Procedure Code, 1908 (“Notification”). The Notification now enables direct enforcement of the final judgments (i.e. non-appealable) issued by the following UAE Courts after issuance of the Notification in the Indian Courts without any requirement to file a new proceedings in Indian Courts to substantiate the case. The Notification does not clarify whether it shall apply prospectively or retrospectively.



#### UAE Federal Courts:

- The Federal Supreme Court,
- The Federal, Court of First Instance and Court of Appeal in the Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain and Fujairah.

#### UAE Local Courts

- Abu Dhabi Judicial Department.
- Dubai Courts.
- Ras Al Khaimah Judicial Department.
- Abu Dhabi Judicial Department Courts.
- Dubai International Financial Centre (DIFC) Courts.
- Abu Dhabi Global Market Courts.

#### Limitation period for executing a UAE judgement in India

The limitation period for executing a UAE judgment in Indian Courts is 12 years from the date when the judgement became enforceable.

#### Process for enforcement of UAE Court judgment in India

- Party to file the following duly authenticated documents before the Ministry of Justice in UAE:
  - An official copy of the final judgment/decree.
  - A Certificate showing that the judgment/decree is final and executable unless it is provided for in the judgment/decree itself.

In case of a judgment/decree in absentia, an authenticated copy of the summons or any other document showing that the defendant was duly summoned.



If the request is only for execution of a judgment/decree, then an official copy should be produced in proper executable form. An English translation of the judgment/decree in case of varied languages.

#### Process for enforcement before the Indian Courts

The party intending to enforce the UAE Court judgment, is required to file a certified copy of the foreign judgment in the competent Indian District Court to be executed as though it had been passed by the District Court in India. It is crucial to file the application for enforcement before a competent District Court in whose jurisdiction the borrower/debtor is residing and/or carrying on business or properties are situated.

In the event a part of the judgment has been satisfied, then the certified copy of the judgment should be supported with a certificate issued by the UAE Court stating the extent upto which the judgment is satisfied, along with conclusive proof of such satisfaction or adjustment.

The UAE Court judgment will qualify for successful enforcement in Indian Courts provided it fulfills the following parameters for the “test for conclusiveness” stipulated under Section (13) of Indian Civil Procedure Code (“the Code”), 1908:

- *The judgement was issued by a Court of competent jurisdiction;*
- *Judgement is final and comprehensive (not subject to further appeal before Court of Appeal or Cassation);*
- *The judgement was not obtained by fraud;*
- *Judgement is not contrary to the principles of public order in India; and*
- *Judgement was not passed in absentia and the defendant was duly summoned in the proceedings.*



### Insolvency & Bankruptcy Code of India (“IBC”)

The IBC enables an operational creditor to initiate corporate insolvency resolution process against the corporate debtor as per the laws of IBC. The IBC proceedings are adjudicated by the National Company Law Tribunal (“NCLAT”). NCLAT has recognized a foreign decree taking note of Section 44A and Section 13 of the Code and treated it as a debt for the purposes of IBC<sup>1</sup>. With UAE now being notified as a reciprocating territory, a party may benefit from the IBC process by executing the UAE Court judgment for debt realization.

The Notification provides the UAE creditors with an expedited recourse to recover debts and enforce judgements against the debtors in India who have failed to fulfil their legal and contractual obligations. Given the scale of trade between the two nations, the implementation of effective and efficient cross-border enforcement mechanisms will without a doubt improve business confidence and lead to ever-greater trade ties in business and in law.

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<sup>1</sup> CP/670/IB/2017 issued by NCLAT, Division Bench, Chennai.

