

17th January 2020 Notification – Enforcement in India of Decree passed by Courts in United Arab Emirates

On 17th January 2020 the Indian Ministry of Law and Justice published a notification in the Official Gazette ("**Notification**") declaring United Arab Emirates ("**UAE**") to be a "reciprocating country" and declaring (i.) Federal Supreme Court, (ii.) Federal, First Instance and Appeals Courts in the Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain and Fujairah, (iii.) Abu Dhabi Judicial Department, (iv.) Dubai Courts, (v.) Ras Al Khaimah Judicial Department, (vi.) Courts of Abu Dhabi Global Markets, (vii.) Courts of Dubai International Financial Centre to be the superior courts ("**Superior Courts of UAE**"), as required under the Indian Civil Procedure Code, 1908 ("**CPC**") for execution of foreign decrees in India.

Position prior to the Notification:

On 25th October 1999, the Republic of India ("**India**") and the UAE entered into 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/Bilateral Treaty**"). On 29th May 2000, India and UAE exchanged the instrument of ratification of the Agreement. Article XV of the Agreement states that "*Each of the Contracting Parties shall, in accordance with its laws, recognise and/or execute decrees passed by the Courts of the other Contracting Party in civil, commercial and personal matters and by criminal courts in civil matters.*". For a foreign decree to be enforced in India, Section 44A of the CPC requires the said decree to be passed by a 'superior court' (*notified as a superior court of that country*) of a foreign country (*notified by the Central Government of India in its Official Gazette as a 'reciprocating territory'*).

After the Notification passed on 17th January 2020 a decree of the Superior Courts of UAE can be enforced by the Indian Court as though the decree was passed by an Indian Court, subject to conditions stated in Section 13 of the CPC.

Position after the Notification:

A decree holder based in the UAE who wishes to sell and recover from the assets of the Judgement Debtor (whose assets are based in India) will be required to file an Execution Application in the appropriate Indian District Court along with (i.) a certified copy of the decree passed by any of the aforesaid Superior Courts of UAE, (ii.) a certificate from the Superior Courts of UAE recording the extent to which the decree has been satisfied, if applicable.

A decree holder can also consider to proceed against the Judgement Debtor under the provisions of the Insolvency and Bankruptcy Code, 2016 (in the event the Judgement Debtor is a company) or under the relevant insolvency laws in the event the Judgement Debtor is an Individual.

Conclusion:

In the absence of such a notification/declaration (i.e. as a "reciprocating country" under the CPC), the recourse available to a decree holder (from a non-reciprocating country) is to file a fresh suit in India (despite holding a decree from its home country), which process takes years to complete.

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The Notification is definitely a step forward in the right direction. With this recent development - a Judgement Debtor (who could be a borrower or a personal guarantor or whose cheque has bounced) can be proceeded against basis the decree of the Superior Court of UAE.

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