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AC-56-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ARBITRATION CASE No. 56 of 2024*MOSHERS**Versus**SHRI MITTAL AGRITECH PVT. LTD.*

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Appearance:

Mr. Shivansh Soni with Mr. Kanishka Gupta - Advocates for petitioner.

Mr. Veer Kumar Jain - Senior Advocate with Mr. Sanjay P. Joshi - Advocate for respondent.

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Reserved on : 11/08/2026

Delivered on : 21/08/2026

ORDER

The subject application has been preferred by the petitioner under Section 44 to 49 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, 'Act of 1996') for enforcement of the foreign award dated 26/08/2022 passed by the sole Arbitrator J. Hawkins in Arbitration Case No. 18-634 of GAFTA.

2) The parties were directed by order dated 15/09/2025 to advance their arguments on the question of enforceability of the award in question. The parties advanced their arguments and thereafter, by order dated 08/05/2026 this Court decided the enforceability of the award and held that the objection raised by the respondent against the enforcement of the arbitral award are not acceptable and the award passed by the sole Arbitrator dated 26/08/2022 is enforceable as the decree of this Court. The Court fixed the



case for further consideration and proceedings for execution of the award.

3) The respondent raised an oral objection in respect of the execution of the award that after deciding the enforceability of the award by an order dated 08/05/2026 now by virtue of Section 49 of the Act of 1996 the award has attained the status of deemed decree of this Court and is executable like any other decree under the provisions of Code of Civil Procedure, 1908 (hereinafter for short referred to as, 'CPC'). The respondent raised the issue that this Court is not having ordinary original civil jurisdiction, the decree is required to be sent to the sub-ordinate Court for further execution. It is also stated by the respondent that there is no machinery such as *Nazarat* Department for execution of the decree with this Court and therefore, it is practically not possible for this Court to execute the decree.

4) The respondent submits that Section 38 of CPC provides that the decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution. The learned Senior Counsel Mr. Veer Kumar Jain appearing on behalf of the respondent submits that the enforceability of the award has been decided by this Court by the order dated 08/05/2026 and as per the provisions of Section 49 of the Act of 1996, the award is executable as decree of this Court, therefore, this Court can sent it for execution to the District Court or Commercial Court.

5) Learned Senior Counsel further relied on the provisions of Section 39(1)(d) and 39(2) of CPC and submits that these provisions empower this Court to transfer the decree to any Court and it is not necessary that the decree has to be executed by this Court itself, especially when this Court is



not having any machinery required for execution under Order XXI of the CPC. The learned Senior Counsel submits that once the foreign award is declared enforceable, the provisions of CPC will be applicable for its enforcement and the same may be sent to the competent District Court for further execution.

6) Mr. Shivansh Soni, learned counsel appearing on behalf of the petitioner submits that this Court while deciding the enforceability of the foreign award dated 26/08/2022 *vide* order dated 08/05/2026 has also considered the maintainability of composite application for enforcement and execution of foreign award and after relying upon the judgments delivered by the Supreme Court in the matter of **Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd.** reported in (2001) 6 SCC 356 and **LMJ International Limited vs. Sleepwell Industries Company Limited** reported in (2019) 5 SCC 302 has held that there is no need to take two separate proceedings, one for deciding the enforceability of the foreign award and another for its execution and the composite proceeding can be filed, but also makes it axiomatic that it is for this Court to execute the foreign awards. The relevant portions of the order dated 08/05/2026 are reproduced hereunder for the sake of convenience:

"16. The issue that whether a composite application for enforceability of foreign arbitral award and its execution can be filed and whether this Court can execute the award, once it is held to be enforceable, despite not exercising ordinary original civil jurisdiction.

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16.4 In view of the above, it is clear that there is no need to take separate proceedings : one for deciding the enforceability of the foreign award another for its execution thereafter. These



judgments of the Hon'ble Apex Court not only clarify the composite proceeding can be filed but also makes it axiomatic that it is for this Court to execute the foreign award.

16.5 Apart from above, Section 49 of the Act of 1996 provides that where the Court is satisfied that the foreign award is enforceable, the award shall be deemed to be decree of that Court. Further, as per Section 2(1)(e)(ii) of the Act in the case of International Commercial Arbitration, the "Court" means the High Court having jurisdiction to hear appeals from decrees of court subordinate to it. As such, when Section 49 provides that the award shall be deemed to be decree of 'that Court', the expression 'that Court' means the High Court. Thus, it is decree of the High Court itself which is to be executed by the High Court in accordance with the scheme of Sections 47, 48, and 49 of the Arbitration and Conciliation Act, 1996."

7) The counsel further submits that under Part II of the Act of 1996, which deals with enforcement of foreign award, pursuant to the amendment in Section 47 the definition of "Court" means the "High Court" as set out in the Explanation below Section 47 of the Act of 1996, which reads as under:

"Explanation.— In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes."

He further submits that the High Court is the competent Court to enforce the foreign award irrespective to the fact that the High Court is not having original civil jurisdiction.



8) The counsel for the petitioner relied on the judgment delivered by the Supreme Court in the matter of **Government of India v. Vedanta Ltd.** reported in 2020 10 SCC 1, wherein the Supreme Court has held that the issue of enforceability and execution of the award should be decided in one proceeding and once the enforceability of the award is decided, the same Court may proceed to take further steps for execution of the award. Relevant portion of the aforesaid judgment reads as under:

"82. A foreign award is not a decree by itself, which is executable as such under Section 49 of the Act. The enforcement of the foreign award takes place only after the court is satisfied that the foreign award is enforceable under Chapter 1 in Part II of the 1996 Act. After the stages of Sections 47 and 48 are completed, the award becomes enforceable as a deemed decree, as provided by Section 49. The phrase "that court" refers to the Indian court which has adjudicated on the petition filed under Section 47, and the application under Section 48. In contrast, the procedure for enforcement of a foreign decree is not covered by the 1996 Act, but is governed by the provisions of Section 44A read with Section 13 of the CPC.

83.7 The award holder is entitled to apply for recognition and enforcement of the foreign award by way of a common petition. In Fuerst Day Lawson Ltd. v Jindal Exports Ltd., [(2019) 11 SCC 620] this Court held that a proceeding seeking recognition and enforcement of a foreign award has different stages : in the first stage, the Court would decide about the enforceability of the award having regard to the requirements of Sections 47 and 48 of the 1996 Act. Once the enforceability of the foreign award is decided, it would proceed to take further effective steps for the execution of the award. The relevant extract from the judgment reads as: (SCC pp. 371-72, para 31)



“31. Prior to the enforcement of the Act, the Law of Arbitration in this country was substantially contained in three enactments namely (1) The Arbitration Act, 1940, (2) The Arbitration (Protocol and Convention) Act, 1937 and (3) The Foreign Awards (Recognition and Enforcement) Act, 1961. A party holding a foreign award was required to take recourse to these enactments. Preamble of the Act makes it abundantly clear that it aims at to consolidate and amend Indian laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The object of the Act is to minimize supervisory role of court and to give speedy justice. In this view, the stage of approaching court for making award a rule of court as required in Arbitration Act, 1940 is dispensed with in the present Act. If the argument of the respondent is accepted, one of the objects of the Act will be frustrated and defeated. Under the old Act, after making award and prior to execution, there was a procedure for filing and making an award a rule of court i.e. a decree. Since the object of the act is to provide speedy and alternative solution of the dispute, the same procedure cannot be insisted under the new Act when it is advisedly eliminated. If separate proceedings are to be taken, one for deciding the enforceability of a foreign award and the other thereafter for execution, it would only contribute to protracting the litigation and adding to the sufferings of a litigant in terms of money, time and energy. Avoiding such difficulties is one of the objects of the Act as can be gathered from the scheme of the Act and particularly looking to the provisions contained in Sections 46 to 49 in relation to enforcement of foreign award. In para 40 of the Thyssen Stahlunion GmbH Vs. SAIL [(1999) 9 SCC 334] judgment already extracted above, it is stated that as a matter of fact, there is not much difference between the provisions



of the 1961 Act and the Act in the matter of enforcement of foreign award. The only difference as found is that while under the Foreign Award Act a decree follows, under the new Act the foreign award is already stamped as the decree. Thus, in our view, a party holding foreign award can apply for enforcement of it but the court before taking further effective steps for the execution of the award has to proceed in accordance with Sections 47 to 49. In one proceeding there may be different stages. In the first stage the Court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award as a rule of court/decreed again. If the object and purpose can be served in the same proceedings, in our view, there is no need to take two separate proceedings resulting in multiplicity of litigation. It is also clear from objectives contained in para 4 of the Statement of Objects and Reasons, Sections 47 to 49 and Scheme of the Act that every final arbitral award is to be enforced as if it were a decree of the court. The submission that the execution petition could not be permitted to convert as an application under Section 47 is technical and is of no consequence in the view we have taken. In our opinion, for enforcement of foreign award there is no need to take separate proceedings, one for deciding the enforceability of the award to make rule of the court or decree and the other to take up execution thereafter. In one proceeding, as already stated above, the court enforcing a foreign award can deal with the entire matter. Even otherwise, this procedure does not prejudice a party in the light of what is stated in para 40 of the Thyssen [(1999) 9 SCC 334] judgment."

(emphasis supplied)



83.9 The enforcement / execution petition is required to be filed before the concerned High Court, as per the amendment to Section 47 by Act 3 of 2016 (which came into force on 23.10.2015). The Explanation to Section 47 has been amended, which now reads as:

“47. Evidence – (1)... (2)...

[Explanation.- In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.”

(emphasis supplied)

83.15 If the Court is satisfied that the application under Section 48 is without merit, and the foreign award is found to be enforceable, then under Section 49, the award shall be deemed to be a decree of “that Court”. The limited purpose of the legal fiction is for the purpose of the enforcement of the foreign award. The concerned High Court would then enforce the award by taking recourse to the provisions of Order 21 of the CPC.”

9) The counsel further relied upon the judgment delivered by the Division Bench of the Gujarat High Court in the matter of **M/s. OCI Corporation Vs. Kandla Export Corporation & Others** neutral citation 2016 : **GujHC : 44379 - DB**, wherein the Division Bench of Gujarat High Court dealing with a matter that whether the execution petitions filed before the District Court could continue after the amendment to Section 47, considered the legal provisions and directed that all the execution petitions pending before the Courts / District Courts for enforcement of the foreign award are required to be considered and dealt with by the "Court" mentioned in Section



47 of the Act of 1996.

10) Pressing to the similar situation that Gujarat High Court has also not having original civil jurisdiction, the Division Bench of Gujarat High Court has held that the execution petitions for enforcement of the foreign award are required to be considered, dealt with and disposed of by the Commercial Division of the High Court or the concerned High Court, as the case may be.

11) The counsel further relied on the judgment delivered by the Telangana High Court in the matter of **Keytrade AG Vs. Nagarjuna Fertilizers & Chemicals Ltd.** in Execution Petition No. 3/2017 and the judgment of Rajasthan High Court in the matter of **Emeraldstone Management SIA Vs. Mamta Hygiene Products Pvt. Ltd.** in Arbitration Application No. 40/2020, wherein the Telangana High Court and Rajasthan High Court have proceeded for enforcement of the foreign award as decree of that Court.

12) The counsel appearing on behalf of the petitioner further relied on the order passed by the co-ordinate Bench in the matter of **Cereales Y. Servicios Agricolas de Burgs S.L. Vs. Sethi Agritech Pvt. Ltd.** passed in MCC No. 1834/2023, whereby the co-ordinate Bench has proceeded for execution of the award by order dated 05/05/2025. He submits that as per the provisions of Section 47 to 49, the Court in a case of foreign award is High Court and therefore, only the High Court is empowered to enforce the award as decree of this Court. He prays for overruling the objections raised by counsel for the respondent.



13) Arguments raised by the counsel for the parties are considered and perused the record.

14) The award in question was passed by the sole Arbitrator in Arbitration Case No. 18-634 of GAFTA on 26/08/2022, which is a foreign award, therefore, as per the provisions of Section 47 to 49 of the Act of 1996, whenever a foreign award is placed for enforcement, firstly, the Court has to decide the enforceability of the foreign award as per the provisions of Section 47 and 48 of the Act of 1996 and once the award is declared enforceable by the competent Court, the award is enforceable as deemed decree of that Court under Section 49 of the Act of 1996.

15) The petitioner / award holder has filed this petition under Section 44 to 49 of the Act of 1996 for enforcement of the award and the respondent filed objection to the enforceability of the award, those were decided by this Court *vide* order dated 08/05/2026 and award has been declared enforceable.

16) Part II of the Act of 1996 relates to enforcement of the foreign award and Chapter I of Part II deals with New York Convention Awards. The subject award is an award covered under the New York Convention Awards and the award holder has applied to this Court for enforcement of the award. Enforceability has already been decided and now this court has to proceed further to execute the foreign award as a decree of this Court.

17) The Supreme Court in the matter of **Fuerst Day Lawson Ltd. (Supra)** has held that a party holding a foreign award can apply for enforcement of it, but the Court before taking further effective steps in the execution of the award has to proceed in accordance with Section 47 to 49 of



the Act of 1996. In one proceeding there may be different stages. In the first stage, the Court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the Court decides that the foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award a rule of Court / degree again and if the object and purpose can be served in the same proceeding, in view of the Supreme Court, there is no need to take two separate proceedings resulting in multiplicity of the litigation.

18) The Supreme Court further observed that it is also clear from the objectives contained in para 4 of the statement of the objects and reasons, Section 47 to 49 and the scheme of the Act that every foreign arbitral award is to be enforced as it if were a decree of Court.

19) The mere submission of the execution petition can be permitted to convert as an application under Section 47 of the Act of 1996 for enforcement of the foreign award and there is no need to take separate proceedings, one for deciding the enforceability of the foreign award and another to take execution thereafter. The foreign award is executable in one proceeding.

20) Considering the law laid down in the matter of **Fuerst Day Lawson Ltd. (Supra)**, there cannot be other view except that the enforceability and execution of the foreign award will be proceeded in one and same proceeding. As the definition of "Court" in explanation to Section 47 provides that the High Court will be the competent Court for deciding the



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enforceability, the award is required to be executed by the High Court as the decree passed by the High Court. Therefore, the oral objections raised by the respondent are not tenable and are hereby rejected.

21) As the co-ordinate Bench of this Court has already proceeded to execute the foreign award in the matter of **Cereales Y. Servicios Agricolas de Burgs S.L. (Supra)**, the subject award can also be executed by this Court in the same manner.

22) So far as unavailability of the machinery is concerned, in case any practical difficulty is faced by this Court in execution of the award, the option of transfer the award / decree to any competent Court for further execution will always available, but at this stage, this Court does not deem it appropriate to issue transfer certificate under Section 39 of CPC.

23) Now award is required to execute under the provisions of Order XXI of CPC, consequently office is directed to register this case as Misc. Civil Case for the purpose of execution of award and list the matter for further consideration before the roster bench. With the aforesaid proceedings of Arbitration Case are closed.

(VINAY SARAF)
JUDGE

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