



May 2026

Supreme Court of India holds that foreign judgments passed in summary jurisdiction are unenforceable in India if it fails the 'conclusiveness' test under Section 13 of the Code of Civil Procedure, 1908

The Supreme Court of India ("Supreme Court") has in *Messer Griesheim GmbH (Now Called Air Liquide Deutschland GmbH) vs. Goyal MG Gases Private Limited*¹ *inter alia* held that a foreign judgment passed in summary jurisdiction, despite the presence of triable issues, cannot be enforced in India since it fails to satisfy the requirements under Section 13² of the Code of Civil Procedure, 1908 ("CPC").

Brief facts

The appellant, a foreign company, and the respondent, an Indian company, acquired funding for their Indian joint venture from a United Kingdom ("UK") based lender bank, after procuring requisite approvals from the Indian authorities. The loan agreement was executed with the respondent, subject to compliance of conditions imposed by the Indian authorities, and the appellant guaranteed repayment upon respondent's default.

Certain disputes arose between the appellant and the respondent. During this period, the lender bank invoked the appellant's guarantee. The appellant discharged its liability and sought reimbursement from the respondent in exercise of its subrogation rights under the loan agreement. The respondent, however, failed to make the payment on the ground that the amount paid by the appellant was in partial discharge of other liabilities and not under subrogation rights.

The appellant instituted recovery proceedings before the English Court. The respondent did not enter appearance and consequently, the English Court passed a default judgment against the respondent ("**Default Judgment**"). Based on the Default Judgment, the appellant issued a statutory notice seeking winding up of the respondent. The respondent replied contending that the Default Judgment was unenforceable in India since it was passed *ex parte* and did not constitute a judgment on merits under Indian law.

Given the above, the appellant applied to set aside the Default Judgment and requested for passing of a summary judgment on merits as per the rules of the UK High Court. The respondent contested the invocation of summary proceedings before the English Court and contended that it had good defences on merits. The English Court, however, set aside the Default Judgment and passed a summary judgment against the respondent ("**Foreign Judgment**").

¹ 2026 INSC 401 (decided on April 21, 2026)

² Section 13 of the CPC stipulates the conditions for when a foreign judgment is construed to be conclusive.

The appellant then filed an execution petition in respect of the Foreign Judgment under Section 44-A³ of the CPC before the Delhi High Court. A Single Judge of the Delhi High Court dismissed the respondent's objections under Section 13 of the CPC and held that the Foreign Judgment was passed 'on merits' and was enforceable in India.

Being aggrieved, the respondent filed an appeal before the Division Bench of the Delhi High Court, which set aside this Single Judge's order by holding that the Foreign Judgment was contrary to Indian law and had been rendered without consideration of material evidence, thereby attracting the bar under Section 13 of CPC ("**Impugned Order**"). The appellant preferred a civil appeal before the Supreme Court against the Impugned Order.

Issue

Whether the Foreign Judgment was rendered in consonance with the requirements under Section 13 read with Section 44-A of the CPC?

Findings and analysis

The Supreme Court upheld the Impugned Order and *inter alia* observed as follows:

1. Section 44-A of the CPC stipulates that enforcement of a foreign decree can be refused if the court is satisfied that the decree falls within any of the exceptions specified in clauses (a) to (f)⁴ of Section 13. The principles governing conclusiveness of foreign judgments under Section 13 of the CPC *inter alia* mandate that the judgment must be rendered: (a) on merits after having considered the evidence and having adjudicated upon the substantive rights of the parties; and (b) in accordance with the principles of natural justice;
2. Where disputes involve highly contested facts requiring deeper scrutiny, disposal of the case in summary jurisdiction would cause great prejudice to the party seeking leave to defend. In such cases, courts must assess whether the defences raised are 'realistic' or 'fanciful'. This principle is recognised under both Indian and English jurisprudence;
3. In the present case, the respondent sought leave to defend on the basis of oral agreements and contemporaneous documents in support of its defence, thereby disclosing triable issues. Granting summary judgment led to premature adjudication and effectively denied the respondent a meaningful opportunity to establish its case through oral evidence and cross-examination;
4. The grant of summary judgment despite the existence of bona fide triable issues meant that the Foreign Judgment could not be regarded as having been rendered 'on merits' within the meaning of Section 13(b) of the CPC. Further, the failure of the English Court to grant leave to defend in the presence of such triable issues amounted to a denial of natural justice, thereby attracting the bar under Section 13(d) of the CPC; and
5. Additionally, the failure to give due effect to the statutory conditions imposed by Indian authorities, and to ensure compliance with applicable Indian laws, rendered the Foreign Judgment in breach of Sections 13(c) and 13(f) of the CPC.

Conclusion

This ruling has significant implications for enforcement of foreign judgments in India. It restricts the parameters for enforceability of foreign judgments in India by clarifying that summary judgments which fail to meet the 'conclusiveness' test under Section 13 of the CPC will be rendered unenforceable in India.

³ Section 44-A of the CPC provides for the procedure for execution of decrees in reciprocating territories.

⁴ The exceptions pertain to foreign judgments which: (a) have not been passed by a court of competent jurisdiction; (b) are not on merits; (c) are not in recognition of international or Indian law; (d) have not been passed in keeping with the principles of natural justice; (e) have been obtained by fraud; and (e) sustain a claim founded on breach of Indian law.

As a result, the enforcement risk for foreign creditors seeking to execute foreign judgments in India by relying on summary or expedited procedures increases and such parties must rely on more robust litigation strategies abroad. This also prompts lenders and investors to revisit dispute resolution clauses in cross-border transactions involving Indian parties.

Disputes Practice

With domain experts and strong team of dedicated litigators across the country, JSA has perhaps the widest and deepest commercial and regulatory disputes capacity in the field of complex multi-jurisdictional, multi-disciplinary dispute resolution. Availing of the wide network of JSA offices, affiliates and associates in major cities across the country and abroad, the team is uniquely placed to handle work seamlessly both nationally and worldwide.

The Firm has a wide domestic and international client base with a mix of companies, international and national development agencies, governments and individuals, and acts and appears in diverse forums including regulatory authorities, tribunals, the High Courts, and the Supreme Court of India. The Firm has immense experience in international as well as domestic arbitration. The Firm acts in numerous arbitration proceedings in diverse areas of infrastructure development, corporate disputes, and contracts in the area of construction and engineering, information technology, and domestic and cross-border investments.

The Firm has significant experience in national and international institutional arbitrations under numerous rules such as UNCITRAL, ICC, LCIA, SIAC and other specialist institutions. The Firm regularly advises and acts in international law disputes concerning, amongst others, Bilateral Investor Treaty (BIT) issues and proceedings.

The other areas and categories of dispute resolution expertise includes; banking litigation, white collar criminal investigations, constitutional and administrative, construction and engineering, corporate commercial, healthcare, international trade defense, etc.

This Prism is prepared by:



Farhad Sorabjee
Partner



Pratik Pawar
Partner



Shanaya Cyrus Irani
Partner



Sanjana Pandey
Associate



19 Practices and
40 Ranked Lawyers



8 Ranked Practices,
22 Ranked Lawyers



15 Practices and
20 Ranked Lawyers



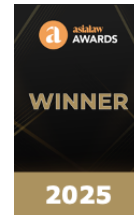
13 Practices and
49 Ranked Lawyers



20 Practices and
24 Ranked Lawyers



8 Practices and
10 Ranked Lawyers
Highly Recommended in 5 Cities



**Regional Legal Expertise Awards
(APAC) of the Year**
Energy Firm Competition/
Antitrust Firm



Among Best Overall
Law Firms in India and
14 Ranked Practices



Recognised in World's 100 best
competition practices of 2026



Ranked Among Top 5 Law Firms in
India for ESG Practice

9 winning Deals in
IBLJ Deals of the Year

15 A List Lawyers in
IBLJ A-List – 2026



Asia M&A Ranking
2025 – Tier 1

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This Prism is not an advertisement or any form of solicitation and should not be construed as such. This Prism has been prepared for general information purposes only. Nothing in this Prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this Prism disclaim all and any liability to any person who takes any decision based on this publication.

Copyright © 2026 JSA | all rights reserved