

EASIER ENFORCEMENT FOR INTERNATIONAL BANKS IN ENGLAND?



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A number of recent decisions involving Indian banks have demonstrated the ease with which international banks can obtain English judgments and/or enforce foreign judgments through the English courts. Defendants to such claims frequently rely on the same principal defences, namely: challenges to English law / the jurisdiction of the English courts; challenges to the effective service of proceedings; challenges to the suitability of summary judgment; and challenges to enforcement of foreign judgments because of procedural irregularities in the obtaining of the original judgment. In this article, we look at the recent trends from the English courts in dealing with these kinds of challenges.



Questions of jurisdiction

Where permission to serve outside the jurisdiction is required¹, a claim must be shown to pass through at least one

“jurisdictional gateway”. The gateways that are most frequently used in these kinds of claims are:

- a defendant is domiciled in England;
- in cases with multiple defendants, if there is one defendant who is subject to English jurisdiction (for example because of domicile), the claimant can treat them as an ‘anchor defendant’ and seek permission to sue any other necessary or proper party to that claim in England;
- a claim relates to a contract made within the jurisdiction or subject to English law or both;
- a claim relates to a breach of contract committed in England; or
- in tort claims, the harmful event occurs in England.

In the recent related cases of *Punjab National Bank International Limited (PNB) v Vishal Cruises (Private) & others* and *PNB v Passat Kreuzfahrten GmbH & others*², the Commercial Court considered a number of challenges to these gateways.

PNB provided loan and overdraft facilities to a Mauritian and a German

company. In both cases, the facility agreements contained English law and jurisdiction clauses. The loans were guaranteed by a combination of individual Indian businessman and an Indian company. Some of the guarantees contained English law and jurisdiction clauses, some were subject to Indian law, and others contained no reference to law or jurisdiction.

PNB obtained appropriate permissions (where required) to serve the claims out of the jurisdiction. It argued that three possible “gateways” for service out of the jurisdiction applied: 1) the defendants were “necessary and proper parties”; 2) some of the guarantees were subject to English law and; 3) the breach of contract (i.e. the failure to pay) occurred in England.

The court agreed that at least two gateways were met. On the third gateway (the location of the breach), the defendants had argued that this was India, the place from where the funds should have been remitted. However, the court held that where no place of performance is specified in the contract, the general rule is that the place will be that of the principal debtor. In this case, the bank to whom the guarantees

¹ Where a contract provides for the jurisdiction of the English courts, permission to serve outside the jurisdiction will no longer be required from 6 April 2021 following a change to the Civil Procedure Rules

² [2020] EWHC 1962 (Comm)



were owed was based in England and payment in at least one instance was to be made to a specified English bank account. The court also ruled it made no difference that PNB was a subsidiary of an Indian entity.

Further, the court held that England was the correct forum for the dispute. The English courts clearly had jurisdiction over some of the claims (pursuant to the English jurisdiction clauses) and the disputes were so closely linked that it would be inappropriate for the English court to decline jurisdiction as it would risk irreconcilable outcomes.



Service of proceedings

The Hague Service Convention is the treaty governing service of proceedings between many countries, including India and England. Although in PNB's claim against Vishal and Passat there were minor procedural defects in compliance with the Hague Convention, the court held that where the Indian judicial authority (as here) had provided certificates of service, there was a very strong presumption that service had been validly effected in accordance with Indian law. The court further confirmed that if service had not been validly effected, it would have exercised its discretion to permit service to be dispensed with in any event. PNB had taken steps to ensure the defendants were aware of the proceedings, the defendants clearly were so aware, and any further attempts at service would simply cause unnecessary cost and delay.



Substantive challenges

PNB's claims against Vishal and Passat have not yet reached trial. However, at the jurisdiction challenge, the court dismissed the defendants' argument that the agreements were invalid under Indian law. It is only where a contract is illegal at the place of performance (in this case, England) that the English court will refuse to pass judgment. This finding is likely to be of significant comfort to banks fighting defences based on non-compliance with local laws, where the place of performance of the contract is deemed to be England.

In *Union Bank of India (UK) Ltd v Alectrona Energy Private Ltd & Ors*³, the bank secured summary judgment on a loan agreement, despite complex issues raised in the defence, including whether an earlier alleged repudiatory breach of the contract by the bank prevented it from relying on acceleration provisions in the loan agreement. The court considered the arguments and concluded in favour of the claimant. This case is an example of the forthright approach of the English courts to spurious defences even on a summary basis. The court confirmed that it can and should resolve short points of law where this can be achieved without unfairness.



Enforcement of foreign judgments

In *Barclays Bank Plc v Shetty*⁴, the court granted summary judgment on a claim for Barclays to enforce a judgment for \$131 million against Mr Shetty (currently resident in India) which had been obtained in the Dubai International Financial Centre Courts (the DIFC). Of particular interest was the court's approach to the request for an adjournment by Mr Shetty. Mr Shetty argued that the hearing should be adjourned on the basis that he had been unable to secure legal representation due to the freezing of his assets by worldwide freezing orders granted in India. The court rejected the request, finding that Mr Shetty had failed to take 'obvious steps' to obtain representation in the time available to him and characterising the application as a 'delaying tactic'.



Easier enforcement in the future?

The successful outcomes in these cases show that the English courts will adopt a robust approach to questions of service and compliance with local laws, provided it can be shown that appropriate steps have been taken to bring proceedings to the attention of defendants, and that the English court's procedural rules have been complied with. The decisions are in line with a series of similar cases where international banks have successfully pursued debtors in the English courts who are either resident in England, have assets within the jurisdiction or where agreements are subject to English law and jurisdiction. While the English courts will adopt a practical approach to service under the Hague Convention, clearly, ensuring finance agreements have appropriate jurisdiction and process agent clauses in the first place is the best starting point.

³ *Union Bank of India (UK) Ltd v Alectrona Energy Private Ltd & Ors* [2020] EWHC 3344 (Comm)

⁴ *Barclays Bank Plc v Shetty* [2022] EWHC 19 (Comm)