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Bumpy road ahead for UAE banks chasing Indian debtors despite new legal deal

Recovering billions from loan defaulters no cakewalk even after new civil procedure

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Dubai: Recovering billions of dirhams from loan defaulters who have fled to India won't be easy for UAE banks even after a new India-UAE civil procedure, industry experts told Gulf News.

India's recent announcement about the UAE civil court judgements being eligible for execution through Indian courts is expected to be a deterrent for potential loan defaulters who flee from the UAE to India.

Creditors can now execute their UAE judgments for recovering money in India directly, without having to file a fresh lawsuit in India.

However, this doesn't mean UAE banks will be able to quickly recover their money, say industry experts.

The new system is likely to cut short the process of execution by 50-60 per cent but it will take years to recover the money, said Amir Al Khaja, commercial and banking litigation team leader with Dubai-based legal firm Baker McKenzie Habib Al Mulla.



Amir Al Khaja, commercial and banking litigation team leader with Dubai-based legal firm Baker McKenzie Habib Al Mulla
Image Credit: Supplied

"Though it is safe to say most banking claims are straightforward, the process currently takes 38 to 60 months depending on the complexity of the application and how much the other party challenges it," said Al Khaja, whose firm has filed cases all over India.

"In some cases, disputing by the other party itself used to take five to seven years. Getting the judgment [from the Indian court] and finishing the proceedings [of recovery] takes about 12 to 15 years."

With the new procedure, he expects the entire procedure to take five years.

"It would provide a quicker remedy for the banks and financial institutes that provide loans," said Khaja.

Challenges ahead



K.P. Sreejith, managing partner of Mumbai-based India Law LLP
Image Credit: Supplied

K.P. Sreejith, managing partner of Mumbai-based India Law LLP, said there are still some challenges ahead for UAE banks.

The requirement of local representatives in India to attend court and sign case documents is one of the major challenges, said Sreejith.

UAE lawyers conduct the legal process under the power of attorney issued by the client or litigant which gives complete power or authority to deal with the case including conducting the entire case, entering settlement and signing all documents without requiring the client.

"However, under the Indian legal system, lawyers are not allowed to take power of attorney in their name for the purpose of conducing the case of signing court papers or other process."

This means every action requires the personal presence of the client or representative to sign and appear in court whenever required.

Unlike other litigations in India, Sreejith said, execution process will require active involvement of the litigant in every stage.

"For instance, all applications are required to be signed by the litigant in person or through a representative. This is required for accompanying court staff for service of summoning process, attaching properties and appearing in court to give evidence."

He observed that traditionally, Indian lawyers do not assist or provide any service beyond the actual court process like filing and attending the case in court, and expect the client to do or provide everything beyond the actual court process.

"Thus, it will be impractical to enforce judgment without appointing a representative in India by giving proper authority under a power of attorney."

Usually foreign entities appoint someone from their representative offices and give the power of authority for enforcement. Representative office or local Indian banks act as agents for foreign banks.

Identification of properties, solvency

The identification of the properties of the defaulters in India is the next major hurdle for the UAE banks.

"Most of the UAE judgments are in relation to money recovery. Therefore, to enforce a money recovery decree, the decree holder needs to provide complete details of the properties owned by the debtors for the courts to proceed with the attachment and sale [to recover the claimed money]," said Sreejith.

Identifying solvency of debtors is another a huge task. "Before initiating the enforcement process in money claims, it is important to ascertain the financial background and assets of the person against whom the judgment is sought to be enforced."

"In effect, it will not be an easy task to enforce the UAE judgment in India without following an integrated enforcement process," said Sreejith.

Banks need patience

Another expert, who has worked as head of recovery section and head of collection with two UAE banks, said it is difficult for banks to gauge the individual share liabilities of partners in the case of bulk loans taken by companies.

"Collection guys in India will tie up with lawyers to check if the customer really exists and has the potential to pay back. In most cases, banks can't recover the full money."

He said banks need to have patience and have to be ready to go through the entire process.

"It is still not going to be easy. It will be slightly more possible for individual liabilities than commercial liabilities," he said.

However, Sreejith said banks should be bold enough to experiment the new procedures.

"In my understanding, it might take at least one year in non-complicated cases to get a UAE decree executed in India."

"We have some cases that our clients want to pursue in India. We are still waiting to see how Indian courts interpret the new system," said Sreejith.

Al Khaja said the judgement that the claimant has obtained from the UAE courts must not be older than 12 years. "This is a statutory timeline provided under the Indian law," he added.

Greater trade security: DIFC Courts



Zaki Azmi, Chief Justice of DIFC Courts
Image Credit: Supplied

Meanwhile, the Dubai International Financial Centre (DIFC) Courts have welcomed the India-UAE civil and commercial law deal and said it will ensure greater trade security between the two markets.

In an exclusive statement to Gulf News, Chief Justice of DIFC Courts, Zaki Azmi said: "An increasing number of emerging economies have recognized that investing in efficient and globally connected courts is a necessity to compete for world trade and investment – and India is no exception."

He pointed out that increased foreign trade has also resulted in a steep rise in the number of cross-border transactions and a proportionate rise in commercial disputes, leading to a greater need for contract and judgment enforcement.

"This new notification by the Indian Ministry of Law and Justice declaring the UAE as a reciprocating territory for the Code of Civil Procedure will enable greater trade security between our two markets and further reinforce the enforcement regime of the DIFC Courts," the Chief Justice observed.