
AN ARBITRAL AWARD CANNOT BE SET ASIDE MERELY ON THE GROUND OF INSUFFICIENTLY STAMPED ARBITRATION AGREEMENT: ARG OUTLIER MEDIA PVT LTD v HT MEDIA LTD^[1]

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The Delhi High Court has held that the jurisdiction of the Court while hearing a challenge under §34 of the Arbitration and Conciliation Act 1996 is limited, and contravention of a statute that is not linked to public policy or public interest cannot be a ground to set aside an arbitral award.

Brief Facts

ARG Outlier challenged an award in favour of HT Media *inter alia*, on the ground that the agreement containing the arbitration clause was not sufficiently stamped.

It was contended that in view of the decision of the Constitution Bench of the Supreme Court in *NN Global Mercantile v M/s Indo Unique Flame Ltd*^[2], an agreement not being properly stamped could not have been admitted in evidence. ARG Outlier accordingly argued that until stamp duty and appropriate penalty was paid, the award could not be enforced.

Decision

The Delhi High Court emphasized that the arbitrator's findings on the issue of stamping was a mixed question of facts and law. The Court held that it is settled law that Courts exercising jurisdiction under §34 do not sit as a Court of Appeal against the findings of the arbitral tribunal. Accordingly, even if it was assumed that the arbitrator had made a mistake in the interpretation of the stamping provisions, it could not be a ground to interfere with the arbitral award.

In respect of the decision in *NN Global*, the Delhi High Court held that the judgment would not be applicable in cases where the agreement was already admitted in evidence. The Court further questioned whether a §34 Court could be vested with power to *inter alia* impound a document under §61 of the Indian Stamp Act, which is available to an Appellate Court against orders of a Court exercising its civil, revenue or criminal jurisdiction and admitting any instrument in evidence as duly stamped. In any event, the Court held that even if a §34 Court could impound the document and refer it for adjudication of payable stamp duty and penalty, the foregoing could not in any matter affect the enforcement or validity of the award.

¹ Decision dated 4 July 2023 passed by the Delhi High Court in O.M.P (COMM) 161/2023 & IA 8019/2023.

² 2023 SCC OnLine SC 495.

Conclusion

The judgment of the Delhi High Court continues to reinforce the non-interference approach adopted by Courts hearing challenges against arbitral awards. The Court's findings in respect of the limited jurisdiction available under §34 will assist award holders, especially when technical objections are raised at the time of enforcement of arbitral awards.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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