

SUPREME COURT SETTLES THE LAW ON THE VALIDITY OF ARBITRATION AGREEMENTS CONTAINED IN UNSTAMPED / INSUFFICIENTLY STAMPED INSTRUMENTS: RE INTERPLAY BETWEEN ARBITRATION AGREEMENTS UNDER THE ARBITRATION AND CONCILIATION ACT 1996 AND THE INDIAN STAMP ACT 1899^[1]



On 13 December 2023, a 7 – judge bench of the Supreme Court held that deficiency in stamping is a curable defect, and an arbitral tribunal is empowered to adjudicate on such objections. Such objections cannot be entertained by a referral Court while hearing an application under §8 or §11 of the Arbitration & Conciliation Act 1996.

Background

The question of the validity of an arbitration clause contained in an unstamped / insufficiently stamped agreement has seen several conflicting views in different judgments of the Supreme Court^[2]. On 25 April 2023, a 5 – judge bench of the Supreme Court in NN Global Mercantile (P) Ltd v Indo Unique Flame Ltd^[3] held that an unstamped instrument containing an arbitration agreement is void and cannot exist in law as per the Indian Contract Act 1872. It was also held that an arbitration agreement contained in such instrument can be acted upon only after it is duly stamped as per the provisions of the Indian Stamp Act 1899. To consider the correctness of the view taken in NN Global, the issue was referred to a bench of 7 judges of the Supreme Court.

Decision

The Supreme Court noted that the Arbitration Act is a special law and therefore has primacy over other general laws such as the Contract Act and the Stamp Act. The Arbitration Act is a code in itself and it provides for judicial intervention only in the manner provided in it. As such, the operation of the Stamp Act is an extraneous consideration for judicial intervention under the Arbitration Act.

The Court further noted the following:

1. The arbitration agreement is a separate contract and the invalidity of the underlying instrument does not render the arbitration agreement void.

¹ 2023 SCC OnLine SC 1666.

² SMS Team Estates v Chandmari Tea (2011) 14 SCC 66; Garware Wall Ropes v Coastal Marine Constructions & Engg (2019) 9 SCC 209; NN Global Mercantile Private v Indo Unique Flame (2021) 4 SCC 379.

³ (2023) 7 SCC 1.

2. The parties confer jurisdiction on the tribunal to decide jurisdictional and substantive issues. The principle of *competence-competence* applies to enable the tribunal to adjudicate on an objection pertaining to non-stamping or insufficiency in stamping of the underlying instrument.
3. Obligating the court to decide issues of stamping at the §8 or §11 stage would defeat the legislative intent of the Arbitration Act. Objections of this kind require a detailed consideration of evidence and submissions, and thus fall within the remit of the tribunal.
4. The revenue concerns in relation to the realisation of stamp duty are not defeated because the tribunal has the jurisdiction to enforce the provisions of the Stamp Act. The tribunal may impound the instrument if the stamp duty is inadequate and follow the procedure set out under the Stamp Act.
5. Tribunals, as opposed to courts, deal with a smaller volume of cases and it is therefore more likely that the process of the payment of stamp duty and other procedures under the Stamp Act will be completed faster. This is not only in line with the concept of party autonomy, but would ensure that the intended ideals of efficiency are met by arbitration proceedings.

Conclusion

In a long line of conflicting judgments, this concluded view of the Supreme Court is a welcome development. The law, which is now settled, will aid the arbitration process as delays due to technical objections being heard by courts as opposed to the tribunal will be reduced.

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.

For further information on this topic please contact Tuli & Co

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