

The Saga Continues: Unstamped and Insufficiently Stamped Documents

- The Supreme Court delivered its judgment in the matter of ***NN Global Mercantile Ltd v. Indo Unique Flame Ltd & Ors***¹ (NN Global) that an unstamped or insufficiently stamped agreement would not be enforceable till the time it is 'validated' and further went on to hold that the unstamped or insufficiently stamped agreement does not 'exist in law' up until it has been stamped.²
- While the Apex Court attempted to harmonize the Arbitration and Conciliation Act 1996 (Arbitration Act), the Code of Civil Procedure 1908 (CPC), and the Indian Evidence Act 1872 (Evidence Act) with the Indian Stamp Act, 1899 (Stamp Act) it did not consider that the CPC and the Evidence Act do not apply strictly to the Arbitration Act. The question on applicability of the judgment *i.e.*, whether the same would apply retrospectively or prospectively was left in ambiguity.
- Another ambiguous aspect of the judgment was the lack of clarity on whether in ongoing arbitrations, the agreements which have been relied on and admitted into evidence but are unstamped or insufficiently stamped would now be susceptible to challenge or would be covered under the exception of Section 36 of the Stamp Act.
- The Delhi High Court dealt with this very issue 'amongst other questions of law' in the matter of ***ARG Outlier Media Pvt Ltd v. HT Media Ltd***³ (ARG Outlier).

Brief about ARG Outlier Media Pvt Ltd v. HT Media Ltd

- ARG Outlier (Petitioner) challenged an arbitration Award passed by a Sole Arbitrator, directing it to pay the Respondent a sum of INR 5 crore under the Barter Agreement dated April 19, 2017, executed between the parties (Barter Agreement) along with *pendente lite* interest at 5% per annum from March 08, 2019, till the passing of the Award and at the rate of 10% per annum from the date of the Award (Impugned Award).
- The Petitioner challenged the Impugned Award on the following 3 grounds:
 - The agreement containing the arbitration clause was insufficiently stamped and thus should not have been acted upon (Issue 1);
 - Incorrect interpretation of the agreement between the parties regarding compensation/indemnity for the excess inventory utilized (Issue 2); and
 - No proof of loss was adduced by the Respondent to show that the Respondent suffered a loss in the amount of INR 5 crore (Issue 3).
- For this article, we will only deal with the findings of the Court regarding Issue 1.

Judgment

- The contention of the Petitioner under Issue 1 was that the Barter Agreement was insufficiently stamped since the same was executed in Mumbai *i.e.*, the place where the Petitioner counter signed the Barter Agreement. It was the case of the Petitioner that the Barter Agreement was stamped as per the Delhi Stamp Act but should have been stamped according to the Maharashtra Stamp Act.
- In view thereof, the Petitioner alleged that the Barter Agreement could not have been relied on as evidence/acted upon and thus the award passed by the Sole Arbitrator is liable to be set aside.

The first article on this topic, titled 'The Case of Unstamped and/or Insufficiently Stamped Documents' was published in May 2023. To access the article, please click [here](#).



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¹ Civil Appeal No(S). 3802-3803 of 2020

² See para 65 of the NN Global judgment

³ O.M.P. (Comm) 161/2023 & IA 8019/2023

- While dealing with Issue 1 the Court observed that ‘on facts’ the Barter Agreement itself recorded that the same has been executed at New Delhi; and the Petitioner does not dispute that the Barter Agreement has been stamped in accordance with the rates as applicable to the NCT of Delhi.⁴
- The Court also observed that this issue was agitated by the Petitioner before the Sole Arbitrator also under Section 16 of the Arbitration Act wherein the Sole Arbitrator observed and held that all aspects related to the drafting and drawing up of the Barter Agreement and the terms contained in the Barter Agreement thereof, was to be worked out in Delhi and thus the requisite stamp duty was affixed and paid. The Sole Arbitrator also held that even if the Respondent’s ‘Petitioner herein’ contentions were to be accepted, in that case, in law it was the obligation of the Respondent to put the requisite stamp duty as per the Maharashtra Stamp Act.⁵
- Based on the observations made, the Court held that Issue 1 is a mixed question of law and fact. As far as law goes, the Court emphasized that it is well settled that under Section 34 of the Arbitration Act, the Court exercising jurisdiction cannot sit as a Court of Appeal against the findings of the Tribunal. The case of *Ssangyong Engineering and Construction Company Ltd v. National Highways Authority of India*⁶ and *Delhi Airport Metro Express Pvt Ltd v. Delhi Metro Rail Corporation Ltd*⁷ was relied on.
- Basis the grounds enumerated in the judgments stated above, the Court held that⁸:
 - Even assuming that the Sole Arbitrator misinterpreted the Maharashtra Stamp Act, the same cannot be a reason to interfere with the award;
 - No such challenge of insufficient stamping of the Barter Agreement was raised by the Petitioner in its reply to the legal notices exchanged between the parties or in its reply to the Section 11 petition filed by the Respondent; and
 - Even in the admission/denial of the documents, the Barter Agreement was admitted and no objection to its admissibility as evidence was raised.
- The Court then opined that anyway under Section 36 of the Stamp Act where an instrument has been admitted in evidence, such admission shall not, be called in question at any stage of the same suit or proceeding or on the ground that the instrument has not been duly stamped⁹. In this regard, the Court referred and relied on the decisions in *Javer Chand & Ors v. Pukhraj Surana*¹⁰, *Shyamal Kumar Roy v. Sushil Kumar Agarwal*¹¹, and *Sirikonda Madhava Rao v. N Hemalatha*¹².
- Even recently, the Court observed that, in *SNG Developers Ltd v. Vardhman Buildtech Pvt Ltd*¹³ it was held that it is well settled that in arbitral proceedings the rigours of procedure which attach to civil proceedings under CPC and the Evidence Act will not apply, and the Court sitting in review of an Arbitral Award cannot and will not interfere with the award on the ground that it does not follow strictly the procedure envisaged by the CPC. Even otherwise, the court held that if at the stage of admission/denial of documents, if an objection as to insufficient stamping was not taken then the same cannot be allowed to be raised at a later stage and does not call for interference under Section 34 of the Arbitration Act.
- The Court held that in the given facts and circumstances and despite the judgment in *NN Global*, once an agreement has been admitted in evidence by the Arbitrator, whether or not the same is adequately stamped or stamped at all, the Award passed by relying thereon cannot be faulted with on this ground. The Court also went on to hold that a Section 34 court does not act as a court of appeal against the Award and thus does not have powers vested in Section 61 of the Indian Stamp Act. Even if it is assumed that Section 61, proviso (b) applies, the court could only impound the document and refer it to the Collector of Stamps for proper stamp duty and penalty and would not in any manner effect the enforceability or validity of the Award¹⁴.
- While dealing with Issue 2, the Court re-iterated the limited grounds and power of the court under a Section 34 challenge. With regards to Issue 3, the Court briefly held that since the claim of the Respondent is not based on any alleged breach of the Barter Agreement but is the consideration payable under the Barter Agreement itself, therefore the question of proof of damage is not relevant to the claim.

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Viewpoint

The judgment of the Delhi High Court has provided much-needed clarity that was required after the judgment in NN Global. The fear after the judgment in NN Global was that the parties would have yet another reason to challenge an award on the basis of insufficient or non-stamping of the document by stating that when an agreement does not exist in law, any award arising thereof would be invalid and liable to be set aside.

This judgment reiterates the well settled principles of law of Section 34 of the Arbitration Act i.e., the grounds for challenge are limited and do not include insufficient stamping or non-stamping of an agreement as a reason to interfere with the award. More importantly it puts to rest the doubt that under Section 34 of the Arbitration Act, parties cannot challenge the insufficient/non-stamping of a document especially when the same was not raised at the threshold. The Delhi High Court has correctly observed that the court dealing with a Section 34 petition is not a court of appeal and thus cannot traverse into the merits of the case.

Another important factor that the judgment brings clarity on, is the exemption under Section 36 of the Stamp Act. Under this section, once the document has been relied on as evidence without either party raising objection as to the stamping of the document, then the same cannot be raised at a later stage. This exemption is a necessary factor to be considered because it evades and discourages dilatory practices that may be indulged in during any proceedings.

Keeping in mind the view taken in NN Global, the Delhi High Court has also stated that the exemption under Section 36 may get caught by Section 61 proviso (b) of the Stamp Act, even in such a scenario the court dealing with such a matter may only impound and refer the agreement for proper stamp duty and penalty but cannot interfere with the validity/enforcement of the Award. With this, the Delhi High Court has ensured the effectiveness of an arbitration such that the party with the Award would not be faced with challenges on this ground to the Award.

The judgment by the Delhi High Court aims to preserve the efficiency and effectiveness of an arbitration and the award thereof. The clarity the judgment brings by merely relying on the settled positions of law comes as a big relief.

⁴ See para 17

⁵ See para 18

⁶ (2019) 15 SCC 131

⁷ (2022) 1 SCC 131

⁸ See paras 21 – 24

⁹ See para 27

¹⁰ (1962) 2 SCR 333

¹¹ (2006) 11 SCC 331

¹² SLP (C) No. 14882 and 14883/2022

¹³ 2021 :DHC:4100

¹⁴ See para 36

