



September 2023

## **Delhi High Court delineates the procedure and modalities that can be followed while dealing with petitions under Section 11 of the Arbitration Act involving unstamped or insufficiently stamped arbitration agreement(s).**

Recently, the Hon'ble High Court of Delhi ("Delhi HC"), in *Splendor Landbase Ltd. vs. Aparna Ashram Society & Anr.*<sup>1</sup>, disposed of a batch of petitions under Section 11 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), where the arbitration agreement, or the instrument/agreement containing the arbitration agreement, was unstamped or inadequately stamped.

The Delhi HC outlined the procedure and modalities that can be followed while dealing with petitions under Section 11 of the Arbitration Act, where appointment of an arbitrator was sought, involving unstamped or insufficiently stamped arbitration agreement(s). The Delhi HC, while doing so, considered the observations made by the Hon'ble Supreme Court of India ("Supreme Court") in *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd*<sup>2</sup> ("N.N. Global"). For a detailed analysis, please refer to the [JSA Prism of May 6, 2023](#).

### Issues

The Delhi HC framed and answered the following 4 (four) issues:

- Issue No. 1.** Whether it is incumbent on the petitioner, in a petition filed under Section 11 of the Arbitration Act, to file the original of the duly stamped arbitration agreement or whether it would suffice for a 'true copy' thereof to be filed?
- Issue No. 2.** Whether, under the Indian Stamp Act, 1899 ("Stamp Act"), it is permissible for the petitioner to pay the deficient stamp duty together with the penalty in these proceedings or whether it is mandatory to send the concerned agreement to the Collector for adjudication as to the proper stamp and penalty payable thereon?
- Issue No. 3.** Whether the adjudication by the Collector under Section 40 of the Stamp Act can be made time bound?
- Issue No. 4.** Whether the stamping of the arbitration agreement must conform to the local laws prescribed at the place where the arbitration agreement was executed and/or the place where the petition under Section 11 of the Arbitration Act has been filed?

### Findings and Analysis

While answering Issue No.1, the Delhi HC observed that while entertaining a petition under Section 11 of the Arbitration Act, the function being performed by the court is akin to receiving evidence. Accordingly, it was held that

<sup>1</sup> Arb. P. 366/2021 decided on 22 August 2023

<sup>2</sup> (2023) 7 SCC 1

whether the agreement/instrument is duly stamped or not, has to be examined in the backdrop of Section 17 of the Stamp Act, which contemplates that all instruments chargeable with duty and executed by a person in India, will be stamped before or at the time of execution. The Delhi HC observed that this task of examining and impounding any instrument can be delegated to an officer appointed by the court in terms of proviso (b) to Section 33(2) of the Stamp Act.

After reproducing the observations made by the Delhi HC in N.N. Global and reading the same in conjunction with the scheme of the Arbitration Act and Stamp Act, the Delhi HC held that it would be incumbent for a petitioner who files a petition under Section 11 of the Arbitration Act on the basis of an unstamped/insufficiently stamped agreement to file the original instrument as executed.

However, the requirement of filing the original of the concerned agreement/instrument can be obviated when the instrument/agreement is duly stamped and a statement to that effect has been specifically made in the petition under Section 11 of the Arbitration Act.

As per N.N. Global, if a certified copy of an agreement is filed along with a petition under Section 11 of the Arbitration Act, the party filing it must necessarily declare the stamp duty which has been paid in respect of the original instrument.

When, at any stage, the issue as to the sufficiency of stamping arises, it would be open for the court to require the concerned party (in possession of the original agreement) to file the same.

While dealing with Issue No.2, the Delhi HC held that after impounding the unstamped instrument/agreement, as mandated under Section 33 of the Stamp Act, it would be open for the court to either:

1. Send the impounded agreement/ instrument to the concerned Collector of Stamps, who will adopt the procedure under Section 40 of the Stamp Act to require payment of stamp duty along with the penalty (as contemplated).

OR

2. Take recourse under Section 35 of the Stamp Act to enable deposit of the requisite stamp duty along with penalty.

The Delhi HC recommended following the latter procedure in cases where the quantum of stamp duty payable was not in dispute. In such cases, Section 40 of the Stamp Act would not apply. After payment of stamp duty (along with penalty), such amount will be sent to the concerned Collector of Stamps, along with an authenticated copy of such duly endorsed instrument and a certificate in writing stating the amount of duty levied in respect thereof.

The Delhi HC observed that following the abovementioned procedure would effectuate the mandate under Section 11(13) of the Arbitration Act and ensure that the disposal of petitions under Section 11 of the Arbitration Act is not inordinately delayed on account of the adjudicatory exercise to be carried out by the Collector of Stamps.

The Delhi HC further observed that, as per the Supreme Court's decision in *Black Pearl Hotels Pvt. Ltd. v. Planet M. Retail Ltd.*<sup>3</sup>, while taking recourse to Section 35 of the Stamp Act, the following duties can be delegated to its office or the registrar of the court in exercise of the powers conferred under Chapter-II of the Delhi High Court (Original Side) Rules, 2018:

1. Duty of examining and impounding an unstamped or insufficiently stamped instrument; and
2. Duty to prepare "report" on the nature and character of the document and the amount of duty and penalty payable thereon; and
3. Duty to endorse on the original instrument, in terms of Section 42(1) of the Stamp Act, and confirm payment of the deficit stamp duty and penalty (if any) stating the details of the payee; and
4. Duty to prepare a copy of the original instrument (after endorsement), to ensure authenticity of the contents thereof and expressly marking the copy thus prepared as an 'authenticated copy' of the original instrument; and

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<sup>3</sup> (2017) 4 SCC 498

5. Duty to transmit the authenticated copy, certificate, and the amounts collected to the concerned Collector of Stamps, located at the place where the instrument was executed.

Answering Issue No.3, the Delhi HC held that it would be appropriate for a court to issue time bound directions to the concerned Collector of Stamps, to ensure that the statutory mandate under Section 11(13) of the Arbitration Act is not defeated. In arriving at this conclusion, the Delhi HC took note of its earlier decision in *Uno Minda Ltd. v. Revenue Department*<sup>4</sup> (“**Uno Minda**”), wherein 30 (thirty) days were granted to the Collector of Stamps to adjudicate the stamp duty payable and communicate it to the parties therein. The Delhi HC in *Uno Minda* observed that a maximum of 3 (three) months’ time can be granted to the Collector of Stamps to determine the stamp duty payable in cases where the matter involved any complex/extraordinary circumstances. The Delhi HC also took note of its inherent powers as conferred on it under Rule 16 of Chapter I of the Delhi High Court (Original Side) Rules, 2018 to come to this conclusion.

While answering Issue No.4, the Delhi HC relied on the Supreme Court’s judgment in *New Central Jute Mills Co. Ltd. v. State of West Bengal*<sup>5</sup>. In that judgment, the Supreme Court held that the instrument must first be stamped in accordance with the law of the state where it has been executed, since the liability of an instrument to stamp duty arises on execution. It held that in cases where the stamping rate on the instrument is higher in a state where the document is sought to be enforced (“**second state**”), the instrument would be required to be stamped only with the excess amount and in accordance with the law and the rules in force in such second state.

## Conclusion

The judgment offers a much-needed roadmap for navigating the legal procedures involved in cases where parties seek to rely on an unstamped or insufficiently stamped arbitration agreement in a petition under Section 11 of the Arbitration Act.

Recently, issues pertaining to stamp duty have acted as impediments in appointment of arbitrators, leading to inordinate delays in the initiation of the arbitration proceedings. Parties often opt for arbitration to avoid the delays usually faced in conventional litigation, and such issues can defeat this very purpose. By outlining a clear procedure for courts to follow in these instances, the judgment is likely to fulfil 2 (two) crucial objectives. First, it advances the overarching goal of the Arbitration Act by promoting a more efficient arbitration process. Second, it aligns with the parties’ original intention in choosing arbitration as a dispute resolution mechanism, thus facilitating a more seamless path to resolution.

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<sup>4</sup> 2023 SCC OnLine Del 3598

<sup>5</sup> AIR 1963 SC 1307

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