

## Petition for appointment of arbitrator – important points

The Honible Single Bench of Delhi High Court in a recent judgment has issued important directions with respect to petitions filed under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) on the basis of unstamped arbitration agreement or arbitration clauses incorporated in an unstamped instrument/agreement. Post constitution bench judgment of the Honible Supreme Court in case of *N.N. Global Mercantile (P) vs. Indo Unique Flame Ltd.*<sup>1</sup> Several issues started arising in the matters of appointment of arbitrators in an unstamped/deficiently stamped arbitration agreement. The single bench of Delhi High Court in a judgment pronounced on 22.08.2023 in the matter of *Splendor Landbase Ltd. vs. Arpana Ashram Society & Anr.*<sup>2</sup> (and several other connected matters) issued several directions, gist of which is as under:

1. The high court while entertaining a petition under Section 11 of the Act is bound to examine whether the instrument/agreement is duly stamped or not. It is, however, permissible for the court to delegate the task of examining and impounding any unstamped/insufficiently stamped instrument to an officer, as may be appointed by the Court.
2. It is incumbent for the Petitioner filing Section 11 petition on the basis of unstamped/insufficiently stamped agreement, to file the original instrument as executed. However, where instrument/agreement is duly stamped, filing of original instrument is not necessary provided a true copy or certified copy thereof indicating that it has been duly and properly stamped is filed with a clear and cogent statement to that effect in the petition. However, court entertaining Section 11 petition shall always have power to direct filing of original agreement at any stage when an issue arises as to sufficiency of stamping.

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

<sup>2</sup> Arb. P. 366/2021



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3. The court entertaining Section 11 petition based on unstamped/insufficiently stamped agreement, has following two options:

- (i) Send the impounded agreement in original to the concerned Collector of Stamps, who will take step for proper payment of proper stamp duty with penalty. Once that is done, Collector shall certify by endorsement that proper duty along with penalty, if any, has been levied. Thereafter, the instrument/ agreement shall be admissible in evidence and it would be open for the court to act on that basis in the proceeding under Section 11 of the Act.

While exercising this option, it will be open for the court to issue time bound direction to the Collector to perform the adjudicatory function under the Stamp Act.

OR

- (ii) The court can enable the parties to deposit of the requisite stamp duty along with penalty equal to ten times in the court itself. Thereafter, an authenticated copy of such instrument duty endorsed together with the certificate in writing, stating the amount of duty levied in respect thereof, be sent to the Collector along with amount so collected. The Collector shall have power to refund any portion of the penalty, which has been paid/levied in respect of such agreement/instrument. If the Collector is aggrieved by the decision of the court as regards the duty and/or penalty payable on the agreement/instrument, it will be open for the Collector to move the concerned Appellate Court u/s 61 of the Stamp Act.

4. Where the court takes recourse to the option of enabling the party to deposit the concerned stamp duty with penalty in the court, it shall be mandatory for the court to determine the nature of the instrument and stamp duty payable thereon. Such a task cannot be delegated to any officer appointed by the court. However, court can delegate the task of preparing the report on the said aspect to one of its officers and upon submission of the report, the necessary final determination can be made by the court.

5. For the sake of clarity, where the court exercises the option of enabling the party to deposit of stamp duty and penalty with the court, court can delegate following tasks, or any of them depending on facts and circumstances of the case, to its officer or the Registrar:

- (i) The duty of examining and impounding of any instrument which is unstamped or insufficiently stamped;
- (ii) Preparation of a report on the nature and character of the document and the amount of duty and penalty payable thereon;

- (iii) Endorsement on the original instrument in terms of Section 42(1) that the instrument is now duly stamped and the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them;
  - (iv) Preparation of a copy of the original instrument (after endorsement) thereby ensuring the genuineness and exactness of the contents thereof, at the expense of the party paying the stamp duty (alongwith penalty)/clearing the stamp defect, and expressly marking the copy thus prepared as an "Authenticated copy" of the original instrument;
  - (v) Preparation of a "certificate" as provided in Section 38(1) stating the amount of stamp duty and penalty levied in respect of the original instrument; and
  - (vi) Transmission of the a) Authenticated Copy; b) Certificate; and c) the total amount of the stamp duty and penalty collected to the concerned Collector at the place where the instrument was executed.
6. In respect of an instrument executed in one state but related to property situated or things done or to be done in another State and received in the second State, the law laid down by the Supreme Court in the matter of *New Central Jute Mills Co. Ltd. v. State of W.B.*<sup>3</sup> will have to be followed. As per the law laid down in the aforesaid judgment, such instrument must be stamped in accordance with law of the first State and it will not require any further stamping in accordance with the law of the second State when the rate of stamp duty prevalent in the second State is the same or lower than the rates prevalent in the first State. However, where the rates prevalent in the second State are higher, statement will be stamped additionally only with the excess amount payable as per the rate applicable in the second State.

## **CONCLUSION:**

The High Court has issued several directions on areas of concern post *N.N. Global* judgment. These directions will bring in clarity to the litigants and the lawyers in the matter of petition concerning appointment of arbitrator by the court.

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<sup>3</sup> AIR 1963 SC 1307