$~J-1 to 20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 22.08.2023

\+ ARB.P. 366/2021 and IA Nos.10176/2021, 18015/2022, 18261/2022, 18840/2022, 19304/2022, 20490/2022, 7862/2023, 12592/2023, Rev. Pet.301/2022

(1) SPLENDOR LANDBASE LTD. ..... Petitioner

Through: Mr. Gaurav Puri, Mr. Sarthak Gupta and Mr. Saksham Thareja, Advs.

versus

APARNA ASHRAM SOCIETY & ANR. ..... Respondents

Through: Mr. Sanjay Kumar, Mr. Tarandeep Singh, Mr. Karandeep Singh, Mr. Amit Singh and Ms. Pragya Bhushan, Advs. for R-1 and 2.

Mr. Jatin Sehgal, Mr. Viren Bansal, Mr. Adhirath Singh and Mr. Avik Sarkar, Advs. for R-3 to 6.

\+ O.M.P.(I) (COMM.) 25/2021, Crl.M.A. 16902/2022 and IA Nos. 10561/2021, 14465/2022, 16775/2022, 17184/2022, 18016/2022, 18264/2022, 18824/2022, 20367/2022, 7861/2023, 12608/2023, Rev. Pet.300/2022

(9) M/S SPLENDOR LANDBASE LTD. ..... Petitioner

Through: Mr. Gaurav Puri, Mr. Sarthak Gupta and Mr. Saksham Thareja, Advs.

versus

M/S APARNA ASHRAM (SOCIETY) & ANR. ..... Respondents

Through: Mr. Sanjay Kumar, Mr. Tarandeep Singh, Mr. Karandeep Singh, Mr. Amit Singh and Ms. Pragya Bhushan, Advs. for R-1 and 2.

Mr. Jatin Sehgal, Mr. Viren Bansal, Mr. Adhirath Singh and Mr. Avik Sarkar, Advs. for R-3 to 6.

\+ ARB.P. 1115/2022

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

(7) DELHIVERY LTD. ..... Petitioner
Through: Mr. Naman Joshi, Ms. Ritika Vohra and Mr. Anirudh Singh, Advs.

versus

HANEL LOGISTICS LLP ..... Respondent
Through: Mr. Gurpreet Singh Sachdeva and Mr. Rukban Tyagi, Advs.
Mr. M.L. Vashishtha, Adv.

\+ ARB.P. 472/2022 and IA No.2364/2023

(2) M/S. RELIABLE ENGINEERING COMPANY ..... Petitioner
Through: Mr. Harpreet Singh and Mr. Rajesh Gupta, Advs.

versus

ITUK MANUFACTURING INDIA PVT LTD ..... Respondent
Through: Mr. Sourav Roy, Mr. Kaushal Sharma, Mr. Vasudev Singh and Mr. Atharva Kotwal, Advs.

\+ ARB.P. 643/2022

(3) GURDEV SINGH ..... Petitioner
Through: Mr. Sanjeet Singh, Adv.

versus

MS BPTP LIMITED ..... Respondent
Through: Mr. Manish Sharma and Ms. Jigyasa Sharma, Advs.

\+ ARB.P. 644/2022

(4) NILESH PATEL ..... Petitioner
Through: Mr. Sanjeet Singh, Adv.

versus

MS BPTP LIMITED ..... Respondent
Through: Mr. Manish Sharma and Ms. Jigyasa Sharma, Advs.

\+ ARB.P. 645/2022

(5) MS SHIVANSHI ELECTRICAL AND ELECTRONICS P LTD ..... Petitioner
Through: Mr. Sanjeet Singh, Adv.

versus

MS BPTP LIMITED ..... Respondent

Signature Not Verified
Digitally Signed
By:RADHA BISHT
Signing Date:22.08.2023
13:25:10

Through: Mr. Manish Sharma and Ms. Jigyasa Sharma, Advs.

\+ ARB.P. 646/2022

(6) PAWAN KUMAR SHARMA ..... Petitioner

Through: Mr. Sanjeet Singh, Adv.

versus

MS BPTP LIMITED ..... Respondent

Through: Mr. Manish Sharma and Ms. Jigyasa Sharma, Advs.

\+ O.M.P.(I) (COMM.) 247/2021 and IA Nos.13542/2021, 13543/2021, 2822/2023

(8) PAWAN KUMAR SHARMA & ORS. ..... Petitioners

Through: Mr. Sanjeet Singh, Adv.

versus

M/S BPTP LIMITED ..... Respondent

Through: Mr. Manish Sharma and Ms. Jigyasa Sharma, Advs.

\+ ARB.P. 1307/2022

(10) PEARSON INDIA EDUCATION SERVICES PVT LTD ..... Petitioner

Through: Mr. Saurabh Bindal, Adv.

versus

MR GAUTAM BARKATAKI SON OF LATE MR SASHI KANTA BARKATAKI ..... Respondent

Through: Mr. Sidhartha Barua and Mr. Rupan Das, Advs.

\+ ARB.P. 1334/2022

(11) M/S BIO PETRO CLEAN INDIA PRIVATE LIMITED..... Petitioner

Through: Ms. Monisha Handa, Mr. Rajul Srivastava and Mr. Anubhav Sharma, Advs.

versus

PARAMOUNT LIMITED ..... Respondent

Through: Ms. Monisha Handa, Mr. Mohit D. Ram and Mr. Rajul Shrivastav, Advs.

\+ ARB.P. 12/2023

(12) INNOVISION LIMITED ..... Petitioner

Signature Not Verified
Digitally Signed
By:RADHA BISHT
Signing Date:22.08.2023
13:25:10

Through: Mr. Ajit Amar and Mr. Akashdeep Kakkar, Advs.

versus

HPCL-MITTAL ENERGY LIMITED ..... Respondent

Through: Mr. Kartik Nayar and Mr. Rishab Kumar, Advs.

\+ ARB.P. 338/2023

(13) SH. RAJESH JAIN ..... Petitioner

Through: Mr. Jatin Rana, Adv.

versus

M/S SEVEN SEAS HOSPITALITY PVT LTD. ..... Respondent

Through: Mr. Manish Malhotra and Mr. Kamlesh Kumar, advs.

\+ ARB.P. 36/2023

(14) ALLCARGO LOGISTICS LTD ..... Petitioner

Through: Mr. Saket Agarwal and Mr. D. Acharya, Advs.

versus

AMIGO CONNECT ..... Respondent

Through: Mr. Padam Sharma, Adv.

\+ ARB.P. 437/2023

(15) CITY X RAY AND SCAN CLINIC PVT. LTD. ..... Petitioner

Through: Mr. Manish Malhotra and Mr. Kamlesh Kumar, Advs.

versus

MATA ROOP RANI MAGGO HOSPITAL PVT. LTD....Respondent

Through: Mr. Fanish Kumar Rai and Mr. Gaurav Sahdev, Advs.

\+ ARB.P. 513/2023 and IA Nos.8894/2023, 8895/2023

(16) ADO (INDIA) PRIVATE LIMITED ..... Petitioner

Through: Mr. Dheeraj Kumar Garg, Adv.

versus

UMRITHA INFRASTRUCTURE DEVELOPMENT LLP ..... Respondent

Through:

\+ ARB.P. 522/2023

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

(17) M/S SYNERGY INTERNATIONAL ..... Petitioner
Through: Mr. Rakesh Kumar Dudeja, Adv.

versus

M/S SANSKAR AYUSH MEDICARE PVT LTD & ANR.
..... Respondents
Through:

\+ ARB.P. 539/2023 and IA No.9459/2023

(18) VSERV DIGITAL SERVICES PVT. LTD ..... Petitioner
Through: Mr. Ashish Verma, Ms. Pooja Rohatgi and Ms. Salonee Keshwani, Advs.

versus

WINZO GAMES PRIVATE LIMITED ..... Respondent
Through: Ms. Srishti Gupta and Ms. Ishita Goel, Advs.

\+ ARB.P. 547/2023 and IA No.9627/2023

(19) M/S ABHISHEK INFRA ..... Petitioner
Through: Ms. Nishtha Sinha, Adv.

versus

M/S D.S PIPELINE PROJECTS PVT. LTD. ..... Respondent
Through: Mr. Mohit Yadav and Mr. Akashdeep, Advs.

\+ ARB.P. 92/2023

(20) RENAISSANCE REALTY ..... Petitioner
Through: Mr. Aman Kumar Thakur, Adv.

versus

ROYALGOLF LINK CITY PROJECTS PVT LTD. .... Respondent
Through: Mr. Dushyant Bhati, Adv.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. These matters have been listed together inasmuch as the relevant

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

arbitration agreements on the basis of which these petitions have been filed are admittedly unstamped and/or have been incorporated in an instrument/agreement which is unstamped. As such, these have to be dealt with in the light of, and in consonance with the judgment rendered by a Constitution Bench of the Supreme Court in the case of ***N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd***[1] (hereinafter referred to as *'**N.N. Global'***).

2. In ***N. N. Global***, it has been, *inter alia*, held as under:-

> ***"****110. Section 11(6-A) cannot be understood as merely predicating for an arbitration agreement existing literally. This means that the mere existence of the arbitration agreement for all intents and purposes on the exterior purporting to project a contract duly executed, may in certain situations, be insufficient under Section 11.* ***If for reasons such as it being unstamped when it is clearly required to be stamped, then it cannot be said to be a case where the agreement exists for it would be no existence in law****. While we agree, the Court must be careful in selecting contracts where an arbitration agreement which is produced is not to be acted upon for the reason that it does not exist in law,* ***all we hold is that an arbitration agreement, which is unstamped, does not exist and an unstamped contract, containing an arbitration agreement, would not exist as it has no existence in law.***
>
> *xxx* *xxx* *xxx*
>
> *141. The interplay of the Evidence Act, the Stamp Act and the Registration Act is to be understood as follows:*
>
> *141.1.* ***In regard to an instrument, which is executed in India and which is liable to be stamped, then, stamping has to take place before or at the time of the execution of the instrument.*** *It is after the instrument is stamped that it can be presented for registration. Section 17 of the Registration Act provides for documents, which are compulsorily registrable. Section 18 permits registration of other documents at the option of the persons concerned. An instrument, which is registered, necessarily involves, it being duly stamped before it is so registered. This result is inevitable, having regard to the impact of Section 35 of the Stamp Act. In fact, an instrument, which is not duly stamped and which is produced before the Registering Authority, would be liable to be impounded under Section 33 of the Stamp Act.*

[1] (2023) 7 SCC 1: 2023 SCC OnLine SC 495

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

141.2. What Section 74 read with Section 76 of the Evidence Act provides for is, the issuance of certified copies. ***Certified copies can be issued only in respect of public documents.*** *Section 62 inter alia of the Evidence Act defines "primary evidence" as the document itself produced for the inspection of the court. Section 63 of the Evidence Act defines "secondary evidence" as meaning and including, inter alia, "certified copies under the provisions hereinafter contained". The provisions "hereinafter contained" referred to in Section 63 must be understood as Section 74 read with Section 76.* ***A certified copy can be given, no doubt, of "public records kept in any State of private documents"****. Thus, if a sale deed between two private parties comes to be registered, instead of producing the original document, a certified copy of the sale deed, may qualify as secondary evidence and a certified copy can be sought for and issued under Section 76 of the Evidence Act. The expression "public records kept in any State of a private document" in Section 74 is not confined to documents, which are registered under the Registration Act. A private document, which is kept as a public record, may qualify as a public document.* ***What is important is, to bear in mind that in view of Section 33 of the Stamp Act, an instrument, which is not duly stamped, if it is produced before any public office, it would become liable to be impounded and dealt with as provided in the Stamp Act.***

141.3. Let us assume a case where a contract, which contains an arbitration clause, is registered. As we have noticed, if the contract, in which the arbitration clause is contained, is exigible to stamp duty, then, registration cannot be done without the instrument being duly stamped. ***It is keeping the same in mind that in SMS Tea Estates, this Court held that, "if what is produced is a certified copy of the agreement/contract/instrument, containing the arbitration clause, it should disclose that the stamp duty has been paid on the original". This again is for the reason that a certified copy is a true copy of the document****. The officer, who certifies the document, must be the person having the custody of the public document. The public document in the case of public records of private documents, in the case of a registered document, would necessarily involve the document being stamped before registration.* ***The Scheme framed by the Chief Justice, permits the production of a duly certified copy to relieve the party of the burden of producing the original but what is contemplated is only the production of the certified copy, which duly discloses the fact of payment of stamp duty****.*

xxx *xxx* *xxx*

145. ***The production of a copy of an instrument, may not lead to the impounding of the copy as Section 33, which mandates impounding, applies only in regard to the original, which alone is treated as an instrument under Section 2(14) of the Stamp Act****. We must understand the context of the ruling*

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

in JupudiKesava Rao and Hariom Agrawal to be that a party cannot "validate" an instrument by producing a copy and by getting it impounded and paying the duty and penalty. In fact, as observed in para 13 of JupudiKesava Rao, the Court cannot be invited to act upon a copy of an instrument, which is insufficiently stamped. Thus, such a copy, while it cannot be impounded under Section 33, it cannot also be acted upon under Section 35.

O. Sections 33 and 35 of the Stamp Act; the Court or the arbitrator to Act?

146. There was considerable debate at the Bar as regards the wisdom in relegating the issue relating to payment of stamp duty to the arbitrator. On the one hand, the learned Amicus Curiae, supported by the learned counsel for the respondent, would canvass that, bearing in mind the object of the Act, and in particular, Section 5 of the Act, prohibiting judicial interference, except as provided, questions relating to non-payment of stamp duty and the amount to be paid, are capable of being dealt with by the arbitrator. The concern of the Court, that the interest of the Revenue is protected, is best balanced with the overwhelming need to fastrack the arbitration proceedings and they are best harmonised by ensuring that the arbitrator will look into the matter and ensure that the interest of the Revenue is not jeopardised. On the other hand, the appellant and the intervener would point out that the Court cannot ignore the mandate of the law contained in Sections 33 and 35 of the Stamp Act and a view taken by this Court, on the said lines, will only encourage evasion of the law, whereas, if the Court follows the mandate of Sections 33 and 35 of the Stamp Act and adheres to what has been laid down in Garware[3], not only would the law be observed, but, when the matter reaches the arbitrator, the issue would have been given the quietus. Such a view would also encourage persons falling in line with the Stamp Act.

147. We see merit in the contention of the appellant. ***Apart from the Court acting in consonance with the law, when it adheres to Sections 33 and 35 of the Stamp Act, where it applies, in our view, under the watchful gaze of the Court, be it the High Court or the Supreme Court, the issue relating to stamp duty, in a case where there is no stamp duty paid, is best resolved.***

148. The question would arise as follows : A document containing the arbitration clause may not bear any stamp duty. We have already found that even an arbitration agreement, on its own, may be required to be stamped, as submitted by the learned Amicus Curiae. But then the Court can proceed on the basis that the amount of stamp duty, which the arbitration agreement contained in an arbitration clause, would be exigible to being extremely meagre, there is very little likelihood of such an agreement not being stamped. ***Therefore, what the Court is to consider is, whether when the contract, in which the arbitration clause is contained, is not duly stamped, it becomes the duty of the Court to act under Sections 33 and 35 of the Stamp Act.***

Signature Not Verified
Digitally Signed
By:RADHA BISHT
Signing Date:22.08.2023
13:25:10

149. We have already indicated the background, consisting of the views expressed by this Court, about the nature of review undertaken under Section 11, which led to the insertion of Section 11(6-A). Parliament clearly intended to deal with the Court undertaking excessive review, in exercise of the power under Section 11(6) of the Act. It was to curtail excessive judicial interference, which was in keeping also with the principle enshrined in Section 5 of the Act that Parliament interfered and enacted the amendment resulting in Section 11(6-A) being inserted. Parliament was aware of the view taken by this Court in SMS Tea Estates[5], namely, that if the arbitration agreement was not duly stamped, then, it had to be impounded and dealt with as provided therein. The mandate of the Stamp Act did not conflict with the legislative command contained in Section 11(6-A) viz. to examine whether an arbitration agreement existed. Proceeding on the basis, in fact, that a contract, containing the arbitration agreement, which is not duly stamped, could be said to exist in law, it would still not dislodge the duty cast on the Court under Section 11 to follow the mandate of Sections 33 and 35 of the Stamp Act. In other words, on the aforesaid view, following the command under Section 11(6-A), could not detract from, the Court also at the same time, following the equally binding mandate contained in the Stamp Act.

150. The question further arises, as to whether, in view of the power of the Court under Section 11, to find only prima facie, the existence of the arbitration agreement, it would enable the Court to make a reference and appointment and relegate the issue of impounding of the document to the arbitrator.

151. ***Any shirking of the statutory duty by the Court under Section 11 to act in tune with the peremptory statutory dictate of the Stamp Act, appears to us unjustifiable. Such abdication of its plain duty is neither contemplated by the law-giver nor would it be justifiable as causing the breach of Section 11(6-A).***

152. The view that cases under Section 11 of the Act would consume more time and hinder the timely progress of arbitration and that the matter must be postponed so that the arbitrator will more suitably deal with it, does not appeal to us. While the Stamp Act is primarily intended to collect revenue and it is not intended to arm a litigant to raise "technical pleas", this would hardly furnish justification for the Court to ignore the voice of the legislature couched in unambiguous terms. We find that the view expressed in SMS Tea Estates, being reiterated, despite the insertion of Section 11(6-A), would promote the object of the Stamp Act and yet be reconcilable with the mandate of Section 11(6-A). We may, however, qualify what we have said with a caveat. ***There may be cases, where no stamp duty is seen paid. It paves the way for the unambiguous discharge of duty under Sections 33 and 35 of the Stamp Act****. There may, however, be cases, where it may be stamped but the objection is taken by the*

Signature Not Verified
Digitally Signed
By:RADHA BISHT
Signing Date:22.08.2023
13:25:10

party that it is not duly stamped. In such cases, no doubt, it is ordinarily the duty of the Court to examine the matter with reference to the duty under Section 33(2). ***If the claim that it is insufficiently stamped, appears to the Court to be on the face of it, wholly without foundation, it may make the reference on the basis of the existence of an arbitration agreement otherwise and then leave it open to the arbitrator to exercise the power under Section 33, should it become necessary.*** *This approach does justice to the word "examine" in Section 33(2) of the Stamp Act while not ignoring the command of Section 11(6-A) of the Act. It is not to be confused with the duty to examine prima facie whether an "arbitration agreement" exists under Section 11(6-A) of the Act, but is related to the duty to examine the matter under Section 33(2) of the Stamp Act.*

153. Under the Evidence Act, production of only the original document is permissible by way of evidence (see Section 62). However, secondary evidence is permissible under Section 63 and certified copies are treated as secondary evidence. Under the Scheme, in a proceeding under Section 11, without following the procedure in the Evidence Act, secondary evidence, in the form of certified copy, is permitted. It may be true that since certified copies are permitted to maintain an application under Section 11 and, in law, impounding cannot be done of a certified copy, as it is not an instrument, the duty of the Court to examine the matter from the point of view of Section 33 of the Stamp Act, may not exist as such. However, we have explained what constitutes a certified copy, and that, in view of SMS Tea Estates[5], the stamp duty paid must be indicated in the certified copy and, in appropriate case, the Court has power, under Para 5 of the Scheme, to call for information. It becomes the duty of the Court, in cases, where a certified copy is produced, to be satisfied that the production of the certified copy, fulfils the requirement in law. As already noticed, while the certified copy which does not show that the stamp duty is paid cannot be impounded under Section 33, it cannot be acted upon under Section 35 of the Stamp Act."

3. The conclusions arrived at in ***N. N. Global*** are as under:-

"Q. Conclusions

161. The view taken in SMS Tea Estates as followed in Garware and by the Bench in Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v. Bhaskar Raju as to the effect of an unstamped contract containing an arbitration agreement and the steps to be taken by the Court, represent the correct position in law as explained by us hereinbefore. N.N. Global[1] was wrongly decided, when it held to the contrary and overruled SMS Tea Estates and Garware.

162. An instrument, which is exigible to stamp duty, may contain an arbitration clause and which is not stamped, cannot be said to be a contract, which is

Signature Not Verified
Digitally Signed
By:RADHA BISHT
Signing Date:22.08.2023
13:25:10

enforceable in law within the meaning of Section 2(h) of the Contract Act and is not enforceable under Section 2(g) of the Contract Act. An unstamped instrument, when it is required to be stamped, being not a contract and not enforceable in law, cannot, therefore, exist in law. Therefore, we approve of paras 22 and 29 of Garware. To this extent, we also approve of Vidya Drolia, insofar as the reasoning in paras 22 and 29 of Garware[3] is approved.

163. The true intention behind the insertion of Section 11(6-A) in the Act was to confine the Court, acting under Section 11, to examine and ascertain about the existence of an arbitration agreement.

164. The Scheme permits the Court, under Section 11 of the Act, acting on the basis of the original agreement or on a certified copy. The certified copy must, however, clearly indicate the stamp duty paid as held in SMS Tea Estates[5]. If it does not do so, the Court should not act on such a certified copy.

165. ***If the original of the instrument is produced and it is unstamped, the Court, acting under Section 11, is duty-bound to act under Section 33 of the Stamp Act as explained hereinbefore. When it does so, needless to say, the other provisions, which, in the case of the payment of the duty and penalty would culminate in the certificate under Section 42(2) of the Stamp Act, would also apply****. When such a stage arises, the Court will be free to process the application as per law.*

166. An arbitration agreement, within the meaning of Section 7 of the Act, which attracts stamp duty and which is not stamped or insufficiently stamped, cannot be acted upon, in view of Section 35 of the Stamp Act, unless following impounding and payment of the requisite duty, necessary certificate is provided under Section 42 of the Stamp Act.

167. We further hold that the provisions of Section 33 and the bar under Section 35 of the Stamp Act, applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Stamp Act, would render the arbitration agreement contained in such instrument as being non-existent in law unless the instrument is validated under the Stamp Act.

168. In a given case, the Court has power under Para 5 of the Scheme, to seek information from a party, even in regard to stamp duty.

169. We make it clear that we have not pronounced on the matter with reference to Section 9 of the Act. The reference to the Constitution Bench shall stand answered accordingly."

4. In the above conspectus, it is to be examined as to how the statutory mandate under Section 11(13)[2] of the Arbitration and Conciliation Act,

[2] Section 11(13) of the Act read as "An application made under this section for appointment of an

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

1996 (the 'Act'), which aims at expeditious disposal of petitions under Section 11 of the Act, is harmonized with the obligation imposed vide the judgement of ***N. N. Global*** i.e. to act in tune with the statutory dictate of the Indian Stamp Act, 1899 (the 'Stamp Act'). Some possible issues that arise for consideration in the aftermath of the ***N.N. Global*** judgement were identified and set out in the order dated 30.05.2023 as under:-

(i) Whether it is incumbent on the petitioner, in a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, to file the original of the duly stamped arbitration agreement/contract or whether it would suffice for a 'true copy' thereof to be filed?

(ii) Whether in terms of proviso (b) to Section 33(2) read with proviso (a) to Section 35, Section 38 and Section 42 of the Indian Stamp Act, 1899, is it permissible for the petitioner to pay the deficient stamp duty together with penalty in these proceedings or whether it is incumbent/mandatory to send the concerned agreement/contract to the Collector for adjudication as to the proper stamp and penalty payable thereon?

(iii) Whether the adjudication by the Collector under Section 40 of the Indian Stamp Act can be made time bound?

(iv) Whether the stamping of the arbitration agreement/contract must conform to the local laws/stamping rate(s) prescribed at the place where the arbitration agreement/contract was executed and/or whether the same are required to conform to the relevant prescription at the

---

arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case maybe, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

place where the petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed?

5. Considering the mandate of ***N.N. Global*** and the provisions of the Stamp Act, the procedure and the modalities that can be followed while dealing with petitions under Section 11 of the Act involving unstamped or insufficiently stamped arbitration agreement/s, is delineated hereunder.

UNSTAMPED/INSUFFICIENTLY STAMPED ARBITRATION AGREEMENT IS MANDATORILY REQUIRED TO BE IMPOUNDED IN PROCEEDINGS UNDER SECTION 11 OF THE ACT

6. As unambiguously held in ***N.N. Global,*** the statutory mandate of Section 33 of the Stamp Act, is to impound agreements which are unstamped or insufficiently stamped. This Court is obliged to do so, especially considering that ***N.N. Global*** clearly holds that while entertaining a petition under Section 11 of the Act, the function being performed by the Court is akin to "receiving evidence". In this regard, reference may be made to the observations made in the concurring opinion of C.T. Ravikumar J., wherein, it has been held as under:-

> ***"****176. The question is whether while passing an order the Court exercising the power under Section 11(6) receives any evidence, for the limited purpose of ascertaining the truth of the assertion that the document thus produced is an arbitration agreement or an instrument containing arbitration clause. In this regard it is only apposite to refer to the meaning ascribable to the term "evidence". As per Peter Murphy in "A Practical Approach to Evidence (2nd Edn.), 1985, "evidence" may be defined as any "material" which tends to persuade the court of the truth or probity of same fact asserted before it.* ***As noted hereinbefore, in such an application under Section 11(6), invariably the fact to be asserted would be the existence of "arbitration agreement" and in proof thereof the material viz. the document would be produced.*** *I will refer to the relevant provision in the statutory scheme viz. the Appointment of arbitrators by the Chief Justice of India Scheme, 1996, later.* ***Now, when that is received, it is nothing but receiving evidence to that limited purpose for deciding the question whether the "instrument" produced is one executed between the parties is an arbitration agreement or whether the instrument***

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

> ***contained an arbitration clause.*** *Necessarily, if the answer is in the affirmative, an order appointing arbitrator(s) would be passed and an answer in the negative would be the end of such proceedings. In that view of the matter, it can safely be said that what is to be decided while performing the function under Section 11(6) is relating a "jurisdictional aspect" as only on returning a finding that there exists an arbitration agreement or arbitration clause, in the material so produced, that arbitrator(s) would be appointed. The answering of that question, on receiving the "instrument", is the performance of the function describable as "acting upon" the document thus produced. In other words, as discernible from the statement of law by M.C. Desai, J. in Bittan Bibi v. Kuntu Lal, (the relevant para 8 extracted in the opinion of the learned Brother K.M. Joseph, J.), "acting upon" is not included in the act of admitting an instrument, though it can be acted upon, later, subject to permissibility in law therefor.*
>
> *xxx* *xxx* *xxx*
>
> *180.* ***I have already found that receiving the very "instrument" which is carrying the arbitration agreement or containing an arbitration clause from the party who asserts its existence is essentially an act of receiving the evidence, in that limited sense****. Therefore, how can the Court, which is having authority and competence to receive evidence, for the purpose of invoking the power under Section 11(6), abstain from proceeding further in terms of Section 33 if it appears to it that such instrument produced before it, though required to be stamped, is unstamped or is not duly stamped."*

7. Whether an instrument/ agreement 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, shall be stamped before or at the time of execution.

8. Under proviso (b) to Section 33 (2) of the Stamp Act, it is permissible for this Court to delegate the task of examining and impounding any unstamped/insufficiently stamped instrument to an officer as may be appointed by the Court.

WHETHER MANDATORY TO FILE THE ORIGINAL AGREEMENT WITH THE PETITION UNDER SECTION 11

9. Under the Stamp Act, and also reiterated in ***N.N. Global,*** what is liable to be impounded under Section 33 of the Stamp Act, is the original of

Signature Not Verified
Digitally Signed
By:RADHA BISHT
Signing Date:22.08.2023
13:25:10

the concerned agreement, which alone is to be treated as an instrument under Section 2(14) of the Stamp Act. Reference in this regard is apposite to the observations in para 145 of the ***N.N. Global*** as reproduced hereinabove.

10. As such, it is incumbent for a petitioner who files a petition under Section 11 of the Act, on the basis of an unstamped/ insufficiently stamped arbitration agreement, to file the original instrument as executed. However, where the arbitration agreement is duly stamped, filing of the original instrument can be obviated provided the true copy or certified copy thereof clearly indicates that it has been duly and properly stamped and it is also accompanied by a clear and cogent statement to that effect in the petition filed under Section 11 of the Act.

11. In the concurring opinion of C.T. Ravikumar, J, a distinction was drawn between a 'certified copy' and a 'true copy' and it was noticed that in the scheme for appointment of arbitrators framed by Hon'ble the Chief Justice of India in exercise of powers under Section 11(10) of the Act, it has been specifically contemplated as under:-

> *"**2. Submission of request**.—The request to the Chief Justice under sub-section (4) or sub-section (5) or sub-section (6) of Section 11 shall be made in writing and shall be accompanied by—*
> *(a) the original arbitration agreement or a duly certified copy thereof;*
> *....."*

In contradistinction, in the scheme for appointment of arbitrators framed by Hon'ble the Chief Justice of the High Court of Delhi, in exercise of powers under Section 11(10) of the Act, it has been specifically provided as under:-

> ***"2. Submission of request**—(i) The request under sub-section (4) or sub-section (5) or sub-section (6) of Section 11 of the Ordinance shall be made in writing in the form prescribed in Appendix I and shall be accompanied by:*
> *(a) **The original arbitration agreement or a true copy thereof; .***
> *....."*

Signature Not Verified
Digitally Signed
By:RADHA BISHT
Signing Date:22.08.2023
13:25:10

12. In ***N.N. Global***, the Supreme Court has observed that if a certified copy of the agreement is filed alongwith the petition under Section 11 of Act, it must necessarily declare the stamp, which has been paid in regard to the original.

13. It would not be inconsistent with the judgment in ***N.N. Global*** to obviate the requirement to file the original of the concerned agreement/ instrument when on the face of it, the same is duly stamped and a statement to this effect is made in the petition under Section 11 of the Act, and the same is not controverted by the opposite party. Of course, at any stage, when an issue arises as to sufficiency of stamping, it would be open for the Court to require the concerned party who has possession of the original agreement to file the same in Court. In this regard, it is notable that the scheme for appointment of arbitrator framed by Hon'ble the Chief Justice of the High Court of Delhi also provides as under:-

> ***"4. Seeking further information****—(i) The person designated under para 3 may seek such further information or clarification or documents, from the party making the request under this scheme, as he may deem fit.*
> *....."*

PROCEDURE TO BE FOLLOWED AFTER IMPOUNDING

14. The next issue that is required to be considered is the procedure post impounding of the unstamped instrument/ agreement as mandated under Section 33 of the Stamp Act.

15. It is evident from the scheme of the Stamp Act, as also noticed in ***N.N. Global,*** that it is open for this court to either:

(i) Send the impounded agreement/ instrument to the concerned Collector of Stamps, who shall then adopt the procedure under Section 40 of the Stamp Act and require the payment of proper stamp duty

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

together with a penalty as contemplated therein. Once such duty or penalty has been paid, the Collector shall certify by endorsement thereon that the proper duty (together with penalty, if any) has been levied in respect thereof. Under Section 42 of the Stamp Act, every instrument/ agreement so endorsed shall be admissible in evidence, and it would be open for this Court to act on the basis thereof in proceedings under Section 11 of the Act.

ALTERNATIVELY:

(ii) It is also open for this Court to take recourse to Section 35 of the Stamp Act and enable deposit of the requisite stamp duty alongwith penalty as contemplated under proviso (a) to Section 35 of the Stamp Act and thereafter, take further steps [as amplified hereinbelow] as contemplated under other sections of the Stamp Act, eventually culminating in the concerned instrument being admitted in evidence/acted upon for the purpose of proceedings under Section 11 of the Act.

16. It would be open for this Court to exercise either of the above options, as may be deemed expedient depending upon the facts and circumstances of the case.

17. In appropriate cases, particularly where the quantum of stamp duty payable is not in dispute, it may be apposite for this Court to take recourse to the latter of the two options set out hereinabove, to enable deposit of the requisite stamp duty in Court and thereafter to act on the basis of the instrument containing the arbitration agreement. In this regard, it is notable that para 147 of ***N.N. Global***, specifically holds that it would be open for the Court seized of a petition under Section 11 of the Act, to ensure adherence

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

to Section 33 and 35 of the Stamp Act under its own "watchful gaze". It would thus, be consistent with ***N.N. Global***, for this Court to itself collect the requisite stamp duty with which the agreement/ instrument is chargeable, together with ten times the amount of proper duty or deficient portion thereof, in terms of proviso (a) to Section 35.

18. After payment of stamp duty together with penalty as contemplated under proviso (a) to Section 35 of the Stamp Act, an authenticated copy of such duly endorsed instrument (endorsed under Section 42 of the Stamp Act), together with the certificate in writing, stating the amount of duty levied in respect thereof, and such amount shall be sent to the Collector or to any person authorized by the Collector in this behalf as per Section 38(1) of the Stamp Act. It shall be open to the Collector in exercise of jurisdiction under Section 39 of the Stamp Act to refund any portion of the penalty which has been paid/levied in respect of such agreement/ instrument.

19. Where recourse is taken by the Court to Section 35 of the Stamp Act, Section 40 thereof will not come into play inasmuch as the same is applicable only where the impounded instrument is sent to the Collector for adjudication as to the stamp and penalty payable thereon.

20. If the Collector of Stamp is aggrieved with decision of the Court as regards the duty (together with penalty) payable on the agreement/ instrument, it is open for the Collector to move the concerned appellate Court under Section 61 of the Stamp Act.

21. Recourse to the above procedure will not only be in consonance with ***N.N. Global*** but will also effectuate the mandate under Section 11(13) of the Act, and to ensure that disposal of petition/s under Section 11 of the Act is not inordinately delayed on account of the adjudicatory exercise to be

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

carried out by the Collector of Stamps. The same would also be consistent with the procedure enumerated in para 22 of the judgment in the case of ***SMS Tea Estates (P) Ltd. v. Chandmari Tea Co.(P) Ltd.***[3], which has been expressly approved in ***N.N. Global***.

22. However, while taking recourse to Section 35 of the Stamp Act for the purpose of enabling deposit of concerned stamp duty together with penalty in this Court, the law laid down by the Supreme Court in ***Black Pearl Hotels Pvt. Ltd. v. Planet M. Retail Ltd.***[4], has to be adhered to. In terms thereof, although it is open for this Court to delegate [under proviso (b) of Section 33(2) of the Stamp Act] the duty of examining and impounding the concerned instrument to such officer as the Court appoints in that behalf, the duty of determining the nature of the instrument and the stamp duty payable thereon cannot be delegated and the same has to be performed by the Court itself. However, the Court can delegate the task of preparing a 'report' on the said aspect to an officer of this Court, upon submission of which the necessary final determination can be made by the Court. The relevant observations in ***Black Pearl Hotels Pvt. Ltd.***(supra)***,*** are as under:-

> ***"****16. It is evincible from the impugned order that the learned Judge has left both the aspects, that is, determination of the nature and character of the document and impounding of the same to the Registrar. Therefore, the sentinel question that arises for consideration is whether the learned Single Judge for the purpose of determining the character of the instrument could have delegated the authority to the Registrar. A judicial functioning has to be done in a judicial manner.* ***The duty of determination of an instrument or, to explicate, to determine when there is a contest, a particular document to be of specific nature, the adjudication has to be done by the Judge after hearing the counsel for the parties. It is a part of judicial function and hence, the same cannot be delegated.*** *Be it noted, under the High Court Rules, in certain*

[3](2011) 14 SCC 66
[4](2017) 4 SCC 498

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

High Courts, the computation is done by the authorities in the Registry with regard to the court fees but that also is subject to challenge before the Court when the applicability of a particular provision of the Court Fees Act, 1870 is concerned. Thus analysed, we are inclined to think that the authority is not empowered to determine the nature and character of the document. ***He may at the best send a report to the court expressing his views on a document which is subject to final determination by the court.****"*

23. Thus, while taking recourse to Section 35 and another ancillary provisions of the Stamp Act, for enabling deposit of the concerned stamp duty and penalty leviable thereon in Court, the following tasks can be delegated by this Court to its officer or to the Registrar of this court in exercise of the power conferred under Rule 3 (61)[5] of the Chapter-II of the Delhi High Court (Original Side) Rules, 2018:-

(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

[5] "3. Powers of the Registrar.—
...
(61). Such other application, as by these Rules are directed to be so disposed of by the Registrar, but not included in this Rule and any other matter, which in accordance with orders or directions issued by Court, is required to be dealt with by the Registrar."

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

(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.

24. Needless to say, the Court can tailor/limit the delegation to the extent warranted depending upon the facts and circumstances of any individual case.

WHETHER TIME BOUND DIRECTIONS CAN BE GIVEN TO THE CONCERNED COLLECTOR OF STAMPS

25. In cases where the Court deems it expedient to not take recourse to Section 35 of the Stamp Act and instead send the original of the impounded instrument to the concerned Collector, it shall be open for this Court to issue time bound directions to the concerned Collector to perform the adjudicatory functions in terms of the relevant provisions of the Stamp Act.

26. In ***Uno Minda Ltd. v. Revenue Department***[6]**,** this court has held as under:-

> ***"12.*** *Under these circumstances, it is opined that reasonable time ought to be fixed in order to enable the parties to have some certainty as to the stamp duty payable. Accordingly, it is directed that the Collector of Stamps shall usually adjudicate the stamp duty payable and communicate the same to parties within 30 days. However, if the same involves any complexity/extraordinary circumstances, the adjudication of stamp duty can be extended for a maximum period of three months from the date of application."*

[6] 2023 SCC OnLine Del 3598

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

27. Rule 16 of Chapter I of the Delhi High Court (Original Side) Rules, 2018, also provides as under:-

> *"16. Inherent power of the Court not affected. — Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court."*

28. As such, it would be apposite for this Court to issue time bound directions to the concerned Collector (Stamps), to ensure that the statutory mandate under Section 11(13) of the Act is not defeated. Similar directions have been issued by different High Courts in a large number of proceedings under Section 11 of the Act[7].

INSTRUMENTS EXECUTED IN ONE STATE BUT SOUGHT TO BE RELIED/ ACTED UPON IN ANOTHER STATE

29. While following the above procedure, in the case of 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, and where local amendments to the Stamp Act have been made by the concerned State, the same is required to be adherent to the law enunciated by the Constitution Bench of the Supreme Court in ***New Central Jute Mills Co. Ltd. v. State of W.B.[8],*** wherein it has been, *inter alia*, held as under:-

> ***"14.*** *Primarily, the liability of an instrument to stamp duty arises on execution. Execution in India itself made the instrument liable to stamp duty under Section 3(a) as it stood before the amendment. Under Section 3(c) execution out of India, where the instrument relates to property situated or any matter or thing done or to be done in India together with the further fact that the*

[7] See: Nilesh Shantilal Tank v. Jairaj Devidas, 2014 SCC OnLine Bom 902; Vivek Mehta v. Karrs Designs & Developments, 2019 SCC OnLine Bom 10634; Supreme Mega Constructions LLP v. Nitin Pramod Samel, 2018 SCC OnLine Bom 20439; Suresh Kumar v. Satish Mehra, 2010 SCC OnLine Del 1144 (petition under Section 34 of the Act); Order dated 11.01.2017 passed in AP No. 701 of 2011 by the Calcutta High Court; Order dated 26.04.2017 passed in AP No.208 of 2017 by the Calcutta High Court.
[8](1964) 1 SCR 535 : AIR 1963 SC 1307

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10

instrument is received in India, made the instrument chargeable with duty. In amending the Stamp Act what the State legislatures substantially did was to treat the particular State as equivalent to India. Thus, after the amendment by the U.P. legislature the position in law is that execution of an instrument in Uttar Pradesh is made the primary dutiable event and liability to stamp duty arises on such execution. Apart from that, liability also arises where the instrument though executed out of Uttar Pradesh relates to property situated or any matter or thing done or to be done in Uttar Pradesh and is received in Uttar Pradesh. It may be mentioned that the changes in the law made by the other State legislatures are exactly similar.

xxx *xxx* *xxx*

20. The result of this will be that if an instrument after becoming liable to duty in one State on execution there becomes liable to duty also in another State on receipt there, it must first be stamped in accordance with the law of the first State and it will not require to be further stamped in accordance with the law of the second State when the rate of that second State is the same or lower; and where the rate of the second State is higher, it will require to be stamped only with the excess amount and that in accordance with the law and the rules in force in the second State."

30. In the above conspectus, list these matters for individual consideration and further directions on 01.09.2023.

31. This Court records its appreciation for the assistance rendered by respective counsel and by Mr. Saket Sikri and Mr. Shashank Garg, learned amicus curiae in these matters.

AUGUST 22, 2023 **SACHIN DATTA, J**
Rohit/hg

Signature Not Verified
Digitally Signed
By:RADHA RISHT
Signing Date:22.08.2023
13:25:10