

# SC solves stamp duty puzzle in arbitration

**BALANCING SCALES.** In a three-round battle, the apex court rules for the harmonious coexistence of Arbitration Act and Stamp Act

—  
Vasanth Rajasekaran  
Harshvardhan Korada

In a recent seven Judge Bench decision, the Supreme Court crystallised the legal position pertaining to a pressing issue which arose in the context of three laws — the Arbitration and Conciliation Act, the Indian Stamp Act and the Indian Contract Act. In a rare instance, the matter witnessed three rounds of adjudication at SC.

In the first round of adjudication in *NN Global Mercantile Pvt Ltd vs Indo Unique Flame Ltd* (*NN Global – I*), a three Judge Bench was faced with the question — whether an arbitration agreement found within an unstamped or inadequately stamped contract would be legally enforceable. The Bench invoked the doctrine of separability to hold that an arbitration clause was deemed to be an independent and a separate contract, compared with the underlying contract. In addition, the court opined that in contem-



**FINAL WORD.** Stamp Act — fiscal statute, not a weapon of technicality, rules SC

porary jurisprudence, arbitral tribunals are believed to be competent to rule on issues pertaining to their jurisdiction. However, in its examination of relevant judicial pronouncements on the issue, this Bench was unable to concur with the findings of another three Judge Bench which approved the understanding that arbitration agreements contained in unstamped agreements would be unenforceable.

In the second round in *NN Global – II*, by a majority verdict, a five Judge Bench rejected these findings — that the independent status of an arbitration clause as a distinct agreement would still leave it eligible to stamp duty. Thus, the five Judge Bench held that the foundational premise in *NN Global* was untenable. The Supreme Court also emphasised that the Stamp Act served as a fiscal measure and was designed to be

rigorously enforced. An unstamped instrument is liable to be impounded under the applicable provisions of law and, as such, is unenforceable. In essence, parties could execute transactions and goods may exchange hands, but the Courts or the State would not provide legal protection to an inadequately stamped or unstamped instrument.

The decision, rightly, came with a lot of criticism. Without having much guidance on the practical implications of the decision, the references to arbitration almost came to a standstill. While dealing with referral applications seeking the appointment of an arbitrator, many Courts across India witnessed parties raising objections pertaining to stamping. Interestingly, instruments were also impounded in matters for further steps to be taken in compliance with the statutory mandate under the Stamp Act.

Eventually, in a curative petition, a seven Judge Bench of the Supreme Court settled the issue. The SC held that the inadequately or improperly stamped instru-

ments were inadmissible as evidence under the Stamp Act. There is a fine distinction between voidness and inadmissibility. The voidness of an agreement referred to its enforceability, whereas inadmissibility focused on whether a Court could depend on the agreement as a piece of evidence in legal proceedings.

The apex court held that the Stamp Act was a fiscal statute, intended to raise revenue and not to arm a litigant with a weapon of technicality. At the stage of referring a matter to arbitration, a referral court need only check for the existence of arbitration agreement, it said.

This landmark decision not only sets a precedent for the harmonious coexistence of the Arbitration Act and the Stamp Act but also safeguards the delicate balance between them. While rectifying the perceived imbalance from *NN Global – II*, the SC has rejected prioritising the Stamp Act's revenue objective over the Arbitration Act.

The writers are advocates at Trinity Chambers, Delhi