

OCD 12

ORDER SHEET
AP-COM/879/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

L AND T FINANCE LIMITED
VS
M/S SAMRAT GEMS IMPEX PVT. LTD. AND ANR.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 9th December, 2025.

Appearance:
Mrs. Shrayashee Das, Adv.
Mr. Tridibesh Dasgupta, Adv.
Mr. Shubhayan Chakraborty, Adv.
Ms. Roshni Dahiya, Adv.
...for the petitioner

Mr. Devasis Mitra, Adv.
Mrs. Maheswari Sharma, Adv.
Mrs. Tulika Banerjee, Adv.
Ms. Tuli Sil, Adv.
...for the respondents

The Court:

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in terms of Clause 9 of the Loan Agreement dated July 28, 2023.
2. The petitioner is a financial institution and claims to have advanced a loan of Rs.50 lakhs to the respondents who are all situated at Mumbai. The petitioner submits that the respondents failed to repay the loan in

terms of the repayment schedule contained in the agreement itself. This gave rise to a dispute between the parties. A notice was issued on May 19, 2025 terminating the business loan agreement. The business loan agreement provides that disputes between the parties shall be referred to arbitration by the lender, according to the provisions of Section 29B (3) (Fast Track Arbitration) under the said Act. The proceeding shall be in English. Clause 9.5 provides that the venue of arbitration shall be Kolkata or such other place that may be determined at the sole discretion of the lender and courts in Kolkata or such other place shall have exclusive jurisdiction. The disputes were referred to an Online Dispute Resolution forum by letter dated May 29, 2025 by the petitioner. The respondents objected to such unilateral appointment and the learned arbitrator recused.

3. Thereafter, an application under Section 11(6) was filed before this Court which was dismissed as withdrawn as the Court was of the view that notice invoking arbitration was not in proper form. Subsequently, another notice of invoking arbitration was issued. The parties were not *ad idem* on the nomination of the learned arbitrator. The petitioner has thus, moved this Court for appointment of an arbitrator under Section 11(6) of the said Act.
4. Mr. Mitra, learned advocate for the respondents submits that the loan agreement was executed in Maharashtra and ought to have been stamped within the jurisdiction of Maharashtra as per the prevalent law. The said agreement cannot be admitted without proper stamping. He next contends that the referral court should look into such issue

before referring the dispute on the basis of the clause which has been incorporated in an inadmissible document. According to Mr. Mitra, the notice invoking arbitration was not proper, as request was not made for appointment of an arbitrator.

5. First and foremost, the law has now been put to rest by the Hon'ble Apex Court in the decision of ***Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 In Re*** reported in **(2024) 6 SCC 1**. The relevant paragraphs are quoted below:-

“54. Section 35 of the Stamp Act is unambiguous. It stipulates, “No instrument chargeable with duty shall be *admitted in evidence*...” The term “admitted in evidence” refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp duty is paid and which is endorsed as such will be “*admissible in evidence*”. The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterised as a curable defect. The Stamp Act itself provides for the manner in which the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be “cured”.

58. The above observation of this Court in *N.N. Global (2) [N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564]*, is incorrect. Section 2(j) of the Contract Act provides as follows:

“2. (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.”

E. The Arbitration and Conciliation Act, 1996

67. Arbitration is a method of alternative dispute resolution where parties agree to refer their disputes to a neutral third party known as an arbitrator. The aim of arbitration is to provide speedy, efficient, and binding resolution of disputes that have arisen between the parties in regard to their substantive obligations. The thrust of arbitration law is succinctly encapsulated in Redfern and Hunter: “It is to be expeditious where the law is slow, cheap where the law is

costly, simple where the law is technical, a peacemaker instead of a stirrer-up of strife.” [Redfern and Hunter on International Arbitration (7th Edn., Oxford University Press, 2023) 3.]

(ii) Principle of minimum judicial interference

76. The principle of judicial non-interference in arbitral proceedings is fundamental to both domestic as well as international commercial arbitration. The principle entails that the arbitral proceedings are carried out pursuant to the agreement of the parties or under the direction of the tribunal without unnecessary interference by the national courts. [Gary Born, “The Principle of Judicial Non-Interference in International Arbitration Proceedings”, (2009) 30 University of Pennsylvania Journal of International Law 999, 1002.] This principle serves to proscribe judicial interference in arbitral proceedings, which would undermine the objective of the parties in agreeing to arbitrate their disputes, their desire for less formal and more flexible procedures, and their desire for neutral and expert arbitral procedures. [Gary Born, *International Arbitration Law and Practice* (3rd Edn., 2021) 2361.] The principle of judicial non-interference in arbitral proceedings respects the autonomy of the parties to determine the arbitral procedures. This principle has also been incorporated in international instruments, including the New York Convention [Article II(3), New York Convention.] and the Model Law.

81. One of the main objectives of the Arbitration Act is to minimise the supervisory role of Courts in the arbitral process. Party autonomy and settlement of disputes by an Arbitral Tribunal are the hallmarks of arbitration law. Section 5 gives effect to the true intention of the parties to have their disputes resolved through arbitration in a quick, efficient and effective manner by minimising judicial interference in the arbitral proceedings. [*Food Corpn. of India v. Indian Council of Arbitration*, (2003) 6 SCC 564.] Parliament enacted Section 5 to minimise the supervisory role of Courts in the arbitral process to the bare minimum, and only to the extent “so provided” under the Part I of the Arbitration Act. In doing so, the legislature did not altogether exclude the role of Courts or judicial authorities in arbitral proceedings, but limited it to circumstances where the support of judicial authorities is required for the successful implementation and enforcement of the arbitral process. [*Union of India v. Popular Construction Co.*, (2001) 8 SCC 470; *P. Anand Gajapathi Raju v. P.V.G. Raju*, (2000) 4 SCC 539] The Arbitration Act envisages the role of Courts to “support arbitration process” [*Swiss Timing Ltd. v. Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677 : (2014) 3 SCC (Civ) 642] by providing necessary aid and assistance when required by law in certain situations.

82. Section 5 begins with the expression “notwithstanding anything contained in any other law for the time being in force.” The non obstante clause is Parliament's addition to Article 5 of the Model Law. It is of a wide amplitude and sets forth the legislative intent of limiting judicial intervention during the arbitral process. In the context of Section 5, this means that the provisions contained in Part I of the Arbitration Act ought to be given full effect and operation irrespective of any other law for the time being in force. It is now an established proposition of law that the legislature uses non obstante clauses to remove all obstructions which might arise out of the provisions of any other law, which stand in the way of the operation of the legislation which incorporates the non obstante clause. [*State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh*, (2005) 9 SCC 129 : 2005 SCC (L&S) 460]

85. In *Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd.* [*Morgan Securities & Credit (P) Ltd. v. Modi Rubber Ltd.*, (2006) 12 SCC 642] , the issue before the two-Judge Bench was whether the provisions of the Arbitration Act would prevail over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). While noting the non obstante clause contained in Section 5 of the Arbitration Act, this Court held that the non obstante clause has “*limited application aiming at the extent of judicial intervention*”. It was held that the Arbitration Act would not prevail over SICA since the latter enactment seeks to “*achieve a higher goal*”. In other words, the scope of the non obstante clause is limited to prohibiting the intervention of judicial authorities, unless it has been expressly provided for under Part I of the Arbitration Act.

220. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. Therefore, even though the Law Commission of India Report or the Statement of Objects and Reasons of the 2015 Amendment Act do not specifically refer to *SMS Tea Estates* [*SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66 : (2012) 4

SCC (Civ) 777] , it nevertheless does not make any difference to the position of law as has been set out above.

229. The discussion in preceding segments indicates that the Referral Court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the Arbitral Tribunal. When a party produces an arbitration agreement or its certified copy, the Referral Court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. The Referral Court under Section 11 is not required to examine whether a certified copy of the agreement/instrument/contract discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in *SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.]*, (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] , as reiterated in *N.N. Global (2) [N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.]*, (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] , is no longer valid in law.

M. Conclusions

235. The conclusions reached in this judgment are summarised below:

235.3. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists;

235.4. Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and”

6. It has been held that non stamping or insufficient stamping of a document shall not be an impediment for the referral Court to refer the dispute to arbitration. When the document is sought to be admitted as an exhibit in the proceeding, the issue of non-stamping would become relevant. Thus, the first contention of Mr. Mitra is not accepted by the Court. Such contention shall be raised by Mr. Mitra at the appropriate stage before the learned arbitrator. With regard to the invocation, this Court finds that the notice conveys the nature of the dispute, the demand, the alleged failure on the part of the respondents to abide by the repayment schedule and the petitioner has suggested the name of

the learned arbitrator thereby requesting the respondents to agree with such nomination. The intention of the petitioner to arbitrate and the nomination of an arbitrator for adjudication of the disputes between the parties as per the agreement, is clear. The notice invoking arbitration does not have to be in any particular form. Section 21 only provides that an arbitration proceeding shall commence with the invocation and issuance of the notice under the said provision. Under such circumstances, this submission of Mr. Mitra is also not entertained.

7. With regard to the third submission of Mr. Mitra that, repeated applications have been filed on the selfsame issue, this Court is of the view that, the first appointment was unilateral and not in conformity with the law. Accordingly, the respondents raised an objection on such unilaterally appointed arbitrator and the said arbitrator recused. Once there was a recusal under Section 15, the only other remedy available to the petitioner was to follow the same procedure for appointment of an arbitrator. Thus, notice invoking arbitration was issued and on failure of the parties to agree to refer the dispute, this application has been filed.
8. Objections with regard to the jurisdiction of the learned arbitrator, arbitrability of the dispute, admissibility of the claim, improper stamping of the loan agreement etc. shall be raised before the learned arbitrator and the learned arbitrator shall decide the same in accordance with law. The agreement provides that the venue shall be Kolkata and the courts of Kolkata shall have jurisdiction. Under such circumstances, this Court has jurisdiction to entertain this application.

9. The Court appoints Mr. Aryak Dutta, learned Advocate, (Mob. No.9831941234), as the Arbitrator, to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.
10. AP-COM/879/2025 is, accordingly, disposed of.
11. Liberty is granted to the respondents to file vakalatnama within two weeks from date.

(SHAMPA SARKAR, J.)