$~92

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

% *Date of decision: 19th May, 2025*

\+ OMP (ENF.) (COMM.) 286/2024

SHARMA FABRICATORS AND ERECTORS PRIVATE LIMITED
.....Decree Holder

Through: Mr. Abhinav Mukerji, Senior Advocate with Mr. Arijit Mazumdar, Mr. Shambo Nandy, Ms. Anoushka Dey, Ms. Khushboo Hora and Ms. Archita Nigam, Advocates.

versus

BILT GRAPHIC PAPER PRODUCTS LTD .....Judgement Debtor

Through: Mr. Diwakar Maheshwari and Mr. Shreyas Endupuganti, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This Enforcement Petition is filed on behalf of the Decree Holder under Section 36 of the Arbitration and Conciliation Act, 1996 (‘1996 Act’) read with Order XXI Rules 10 and 11(2) of CPC, 1908 for enforcement and execution of the arbitral award dated 30.01.2020.

2. Disputes having arisen between the parties in relation to Work Order dated 02.06.2011 placed by the Judgment Debtor on the Decree Holder, parties took recourse to arbitration for resolution of the disputes. Learned Sole Arbitrator appointed by this Court on 17.02.2016 rendered the arbitral award on 30.01.2020. Decree Holder filed a petition under Section 34 of the 1996 Act being OMP (COMM) 571/2020, which was disposed of as

withdrawn on 25.10.2024. Being constrained by the non-payment of the amounts awarded in favour of the Decree Holder under the arbitral award, present petition was filed by the Decree Holder.

3. At the outset, learned counsel for the Judgment Debtor submits that the principal amount under the award in the sum of Rs.5,65,22,422/- stands paid to the Decree Holder on 14.01.2025 vide Cheque No. 001696 drawn on UCO Bank, Parliament Street, New Delhi, which is duly acknowledged by learned Senior Counsel for the Decree Holder. On instructions, it is fairly and candidly submitted that the Judgment Debtor does not question the grant of interest at the rate of 12% on the awarded sum from the date of the award till realisation, an objection earlier taken with respect to the Arbitrator awarding interest on interest, in light of the judgments of the Supreme Court in ***Hyder Consulting (UK) Limited v. Governor, State of Orissa Through Chief Engineer, (2015) 2 SCC 189*** and ***D. Khosla and Company v. Union of India, (2024) 9 SCC 476.***

4. It is however urged that the Judgment Debtor objects to payment of interest from 30.01.2020 i.e. the date of award as the interest is payable only from 25.11.2024 when the requisite stamp duty of Rs.89,247/- was paid by the Decree Holder. The argument is that the learned Arbitrator has clearly held in paragraph 211 of the award that deficiency in the stamp fee shall be made good by the Claimant by producing e-stamp of the requisite value within ten days and that the award shall be effective from the date the requisite e-stamp is filed by the Claimant in the office of the Tribunal. Therefore, the award became effective only from 25.11.2024 and Judgment Debtor cannot be saddled with interest liability from the date of the award. In support, reliance is placed on the judgment of this Court in ***Delhi Airport***

Metro Express Private Limited v. Delhi Metro Rail Corporation, ***2022 SCC OnLine Del 727***, which was upheld by the Supreme Court in ***Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation***, ***(2022) 9 SCC 286.***

5. *Per contra*, learned Senior Counsel for the Decree Holder submits that the Arbitrator has no power to give a direction for payment of stamp duty and/or direct that the award shall take effect from the date of payment of the requisite stamp duty. In fact, there is no obligation on the Arbitrator to ensure that the requisite stamp duty is paid. Section 36 of the 1996 Act dealing with enforcement of the award clarifies that domestic arbitral award shall be treated as a decree of the Court and subject to any challenge under Section 34 of the 1996 Act, it can simply be enforced as a decree, in accordance with provisions of CPC. It is further argued that the question as to whether an award is required to be stamped is relevant only when the parties file for its enforcement under Section 36 of the 1996 Act. Reliance is placed on the judgment of this Court in ***DM. Jawahar Merican v. Engineer India Ltd., 2008 SCC OnLine Del 980,*** for the proposition.

6. Learned Senior Counsel contends that if the plea of the Judgment Debtor is accepted, this would amount to holding that an award which is insufficiently stamped is not an award in the eyes of law, which will be wholly against the Scheme of the 1996 Act as also the Indian Stamp Act, 1899 (Stamp Act), Section 33 whereof provides that an instrument which is insufficiently stamped is required to be impounded but in such an event it does not cease to be an instrument. Moreover, the learned Arbitrator has awarded interest on the principal sums under different heads from the date of the award, in consonance with the law on the subject.

7. Heard learned senior counsel for the Decree Holder and learned counsel for the Judgement Debtor and examined their submissions.

8. The issue arising for consideration before this Court is in a narrow compass. The contention of the Decree Holder is that it is entitled to interest from the date of award i.e. 30.01.2020 while Judgment Debtor contends that the interest is payable from 25.11.2024, the day on which requisite stamp duty was paid by the Decree Holder.

9. In my considered view, there is no merit in the contention of the Judgment Debtor. There can be no dispute that the question whether an award is required to be stamped would be relevant only when parties seek enforcement of the award under Section 36 of the 1996 Act. Section 2(12) of the Stamp Act defines the terms 'executed' and 'execution' in reference to instruments to mean 'signed' and 'signature'. An instrument that requires to be stamped does not cease to be an instrument if not stamped and at best, the legal consequence of insufficient stamping or not stamping is that the instrument is liable to be impounded. In ***NCS Sugars Ltd. v. PEC Limited, 2021 SCC OnLine Del 4826,*** objections were filed by the Petitioner under Section 34 of the 1996 Act impugning the arbitral award dated 01.05.2018. The question before the Court was whether the petition was filed within limitation period prescribed under Section 34(3) of the 1996 Act and in this context, the question that arose for consideration was whether the impugned award being insufficiently stamped could be considered as an award. Petitioner contended that in terms of Section 29 of the Stamp Act, obligation for stamping the award was on the Arbitral Tribunal i.e. executor of the award and in the absence of stamping, the award was *non-est.* Reference was made to Section 17 of Stamp Act requiring all instruments chargeable

with duty to be stamped before or at the time of execution. It was contended by the Petitioner that provisions of Stamp Act must be read conjointly with Section 31 of the 1996 Act and since the duly stamped award was received on 01.10.2019, this would be the date of commencement of limitation period of three months under Section 34(3) of the 1996 Act.

10. Dealing with the aforesaid arguments, the Court held that the contention that arbitral award cannot be considered as such and is *non-est* till stamped is misconceived. An instrument that is required to be stamped does not cease to be one if not stamped and at best becomes vulnerable to impounding and thus, an insufficiently stamped award is an award nonetheless.

11. It would be useful to allude to another judgment of this Court in ***DM. Jawahar Merican (supra),*** where again the question before the Court was the starting point of limitation for filing a petition under Section 34 of the 1996 Act. The arbitral award was made and signed by the Sole Arbitrator on 18.01.2005. The Arbitrator recorded that the original award was not being communicated since it did not bear the prescribed stamp duty and Petitioner was directed to ascertain the requisite amount and send the stamp papers to the Arbitrator to have the award imprinted on it. The award was eventually stamped and sent on 13.03.2005 and Petitioner claimed that the date on which the stamped award was received i.e. 13.04.2005 will be the date of the commencement of the limitation period.

12. Respondent, on the other hand, contended that enforceability of the award which is linked with the period within which the petition under Section 34(3) has to be preferred cannot be confused with executability of the award. Reliance was placed on the judgment of the Supreme Court in

Anusuya Devi v. M. Nanik Reddy, (2003) 8 SCC 565, where the Supreme Court held that question as to whether the award is required to be stamped or registered is relevant only when parties seek its enforcement under Section 36 of the 1996 Act, to contend that period of limitation of three months would begin from 18.01.2005 when the award was made and signed. The question before the Court was whether first point of reference for filing a petition under Section 34(3) of the 1996 Act was 18.01.2005 or 13.04.2005. Holding that the limitation would commence from the date of award i.e. 18.01.2005, the petition was dismissed by the Court as time barred and relevant passages are as follows:-

> ***10.*** *In Anusuya Devi's case (supra), the Supreme Court was concerned with a case involving a decree arising out of an award. The Court noticed the purpose of Sections 34 and 36 of the Act in the context of argument that award could not be looked into unless it was appropriately stamped. The Court rejected the contention in the following terms:*
>
> > *"The question as to whether the award is required to be stamped and registered, would be relevant only when the parties would file the award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter, the exercise undertaken to decide the said issue by the civil Court as also by the High Court was entirely an exercise in futility. The question whether an award requires stamping and registration is within the ambit of Section 47 of the Code of Civil procedure and not covered by Section 34 of the Act."*
>
> ***11.*** *In Dr. Chiranji Lal's case, (supra) the Supreme Court was called upon to consider a somewhat analogical argument as is being urged in this case. The Supreme Court observed as under:*
>
> > *"2. The question that arises for determination in this matter is when would the period of limitation for execution of a decree passed in a suit for partition commence. In other words, question is when such a decree becomes enforceable—from the date when the decree is made or when the decree is engrossed on the stamp paper which, out of these two would be the starting point of limitation.*
>
> ***12.*** *The Court, however, rejected the argument and held that the period of*

limitation begins from the date when the decree is passed and not from the date when it is engrossed on the stamp papers supplied by the parties, in the following terms:

> *"18. Thus, even if there is direction by the Court for furnishing of stamp papers by a particular date for the purposes of engrossing of the decree, the period of limitation begins to run from the date when the decree is passed and not from the date when the decree is engrossed on the stamp papers supplied by the parties.*
> *19. The Court also held that the period of limitation prescribed in Article 136 of the Act cannot be cannot be obliterated by an enactment wholly unconnected therewith, like the Indian Stamp Act. Legislative mandate as sanctioned under Article 136 of the Act cannot be kept in abeyance unless the self-same legislation makes a provision therefore. The Indian Stamp Act, 1899 has been engrafted in the statute book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Indian Stamp Act.*
> *20. It was held that though the decree may not be received in evidence or be acted upon but the period of limitation cannot be said to remain under suspension at the volition and mercy of the litigant. The period of limitation starts by reason of the statutory provisions as prescribed in the stature. Time does not stop running at the instance of any individual unless, of course, the same has a statutory sanction being conditional.*
> *XXX XXX XXX XXX*
> *23. Learned Counsel for the respondents contends that Section 35 of the Indian Stamp Act, 1899 provides that an instrument not duly stamped cannot be acted upon. Therefore, a decree passed in a suit for partition cannot be acted upon which means it cannot be enforced until engrossed on stamp paper. It is further contended that Article 136 of the pre-supposes two conditions for the execution of the decree. Firstly, the judgment has to be converted into a decree and secondly, the decree should be enforceable. It is further submitted that a decree becomes enforceable only when the decree is engrossed on the stamp paper. Therefore, the period of limitation begins to run from the date when the decree becomes enforceable i.e. when the decree is engrossed on the stamp paper.*
>
> *24. Such an interpretation is not permissible having regard to the object and scheme of the Indian Stamp Act, 1899. The Stamp Act is a fiscal measure enacted with an object to secure revenue for the state on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue.*

XXX XXX XXX XXX

26. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain purview and control of a party. No date or period is fixed for furnishing stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity.

27. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As above noted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree, on stamp paper and there is no statutory obligation on the Court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree."

13. *The above decision is a clear pointer to distinguish between enforceability and executability of an award. Its enforceability i.e. the legal validity or correctness has to be decided in the Court of law in accordance with the procedure prescribed. In the case of a decree, the validity is challenged by way of an appeal. The decision in Dr. Chiranji lal case (supra) was concerned with that question. Analogically in the case of an arbitral award the validity can be questioned in proceedings under Section 34(3) of the Act. The awards executability, is postponed in such cases as is evident on reading of Section 36 of the Act. However, in both instances (i.e. award and decree) and since the effect of an award is that it amounts to a decree under the New Act—is the same. Therefore, this Court is unpersuaded by the arguments on behalf of the petitioner that the correct date for considering it receiving the award (under Section 31 of the Act, to enable it to file the petition under Section 34 of the Act) was 13.4.2005. It was in fact 18.1.2005.*

14. *As far as reliance placed on behalf of the petitioner upon the decision in Vindhya Telelinks case (supra) and Saboo Minterals Pvt. Ltd. case (supra) is concerned, this Court is of the opinion that these decisions are of no avail in the facts of this case. The petitioner admittedly applied for clarification on 12.2.2005. The application was rejected on 20.2.2005. Even on textual application under Section 34 (3) of the Act i.e. taking the latter point of time to be referral, for purpose of limitation, the period of 90 days expired on 19.5.2005. No application for seeking benefit under the* *proviso to Section 34 (3) has been made. It is not urged that the petitioner was prevented by sufficient cause from filing the objections for any reason. Even if one were to apply, the extended period of limitation, as applicable under the proviso, that too ended on 18.6.2005. In 2005 this Court re-opened on 2nd July, 2005. This Court is of the opinion that the petition filed on 4th July, 2005 was time barred.*

15. *For the above reasons, the petition is not maintainable and is dismissed."*

13. From the aforementioned judgments, it is luminously clear that Stamp Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments as also that the engrossment of the award would relate back to the date of the award. An award is enforceable as a decree, the moment it is signed and pronounced under the 1996 Act and therefore, it cannot be argued by the Judgment Debtor that the effect and operation of the award will take place from the date of payment of stamp duty. Even if the stamp duty is paid at a later date, once stamped, the effect of the award would relate back from the date of the award. With this understanding, the learned Arbitrator himself in paragraph 210 of the award held that the Claimant will be entitled to interest @ 12% on the principal sums awarded, from the date of the award, till realisation. Consequently, it is held that the interest liability would commence from the date of the award i.e. 30.01.2020 and not from the date the stamp duty was paid.

14. Insofar as the judgment in ***Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation***, ***2022 SCC OnLine Del 727,*** is concerned, there is no consideration by the Co-ordinate Bench on the aforesaid aspects of an interplay between the Stamps Act and provisions of the 1996 Act, which have been extensively considered by this Court in ***DM. Jawahar Merican (supra)*** and ***NCS Sugars Ltd. (supra).*** Accordingly, the contention of the Judgment Debtor is rejected.

15. Judgment Debtor is accordingly directed to pay post-award interest at the rate of 12% from 30.01.2020 till 14.01.2025, when the principal sum was admittedly paid to the Decree Holder, amounting to Rs.3,36,53,314.85/-. The amount shall be paid within six weeks from today.

16. The petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

MAY 19, 2025/RW/Shivam