

Requirement for stamping of Foreign Arbitration Awards in India

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In a recent Judgment delivered on 13th September 2018 Supreme Court of India upheld the Judgment of High Court of Madras held that a foreign award which is not stamped is enforceable in India in Shriram EPC case². Any instrument which is covered by the Indian stamp Act, if not sufficiently stamped it becomes unenforceable by law in India. It is also important to note that even the Article III of the New York Convention³ also recognizes countries imposing stamp duty for enforcement and the only limitation is that the stamp duty on foreign awards should not be more than the stamp duty imposed on the domestic awards for enforcement. It is also important to note that Schedule I of the Indian stamp Act, 1899 specifically states “award” is included in the items that require stamping as per the Act. It is also important to note that the 194th Law Commission Report also suggested changes in the stamp duty aspect of Part II of the 1996 Act.

The argument of the party objecting to the enforcement of the said award was that since the international Arbitration award is not stamped as required by the Indian stamp Act, 1899, it cannot be enforced in India. The contention of the enforcing party was that the award mentioned in the 1899 Act is only the domestic award and S.47 & 48 of the Arbitration and Conciliation Act, 1996 which is the procedural law in India, there is no mandate that only stamped awards can be enforced. The Supreme Court while dealing with those contentions did not conclude if the stamping is mandatory or not for an international arbitration award and it simply said it is accepting the view of High Court of Madras. High Court of Madras followed Harendra H Metha⁴ of the Supreme Court of India and M Anasuya Devi⁵ which held that a foreign award can be assailed only in the seat of arbitration and in India it would not require registration or stamping. It further held that the enforcement of a foreign award could be refused under Section 48(2) (b) only if it is contrary to the (a) fundamental Policy of Indian Law (b) interests of India and (c) justice or morality. It was further held that Section 48 of the 1996 Act does not give an opportunity to have a second look at the foreign award in the award enforcement stage. Hence the final decision of the court is that enforcement of a foreign award cannot be stopped since it is not stamped.

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² M/S. Shri Ram EPC Limited Vs Rioglass Solar SA (2018) SCC Online 1471

³ New York Convention on Recognition and Enforcement of Foreign Awards, 1958

⁴ Harendra H Metha Vs Mukesh H Metha (1999) 5 SCC 108

⁵ M Anasuya Devi Vs Manik Reddy (2003) 8 SCC 565

Comments of the Author: Even though the present Shriram EPC judgment confirms the earlier view of Indian courts that an enforcement cannot be stopped for want of stamping, it has not conclusively held that stamping is not required. But it has also kept one more issue open that Indian stamp Act, being a fiscal statute levying stamp duty on instruments, is an Act deals with the economy of India and on parity of reasoning, be an Act reflecting the fundamental Policy of India. (comparing with the finding of Supreme Court in Renu Sagar Power Co limited⁶ & Associate Builders⁷ while dealing with Foreign Exchange Regulation Act,1973). May be the law relating to the requirement of stamping, independent of enforcement perspective, is not fully settled as of now.

⁶ Renu Sagar Power Co Limited Vs General Electric Co 1994 Supp (1) SCC 644

⁷ Associate Builders Vs Delhi Development Authority (2015) 3 SCC 49