

The Unenforceability of Arbitration Clauses in Insufficiently Stamped Documents: A Reaffirmation

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It is a settled legal principle that a document containing an arbitration clause or an independent arbitration agreement which is insufficiently stamped is not enforceable in the Indian courts for arbitration under Part-I of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”). This principle was first stated by a Division Bench decision of the Supreme Court in *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd. (2011)*, which has been briefly summarized in an earlier post on this Blog [here](#). The *SMS Tea* decision came before the [2015 Amendment](#) to the Arbitration Act.

Notably, as discussed on this Blog earlier [here](#), a Bombay High Court decision in *Coastal Marine Construction and Engineering Limited v. Garware-Wall Ropes Limited (2018)* had distinguished *SMS Tea* and held that, in light of the narrow scope of section 11 of the Arbitration Act (which had been then amended by the 2015 Amendment), courts cannot interfere upon an arbitration proceeding merely because an instrument is insufficiently stamped. As discussed [here](#), the Bombay High Court decision was subsequently overruled by the Supreme Court in a Division Bench decision in *Garware Wall Ropes v. Coastal Marine Constructions & Engineering Ltd (2019)* which restored the earlier position of law as held in *SMS Tea*. This position has not changed after the [2019 Amendment](#) to the Arbitration Act.

Recently, a three-Judge bench of the Supreme Court *M/s Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram. v. M/s Bhaskar Raju & Brothers (February 2020)* has affirmed the principle laid by the Division Bench in *SMS Tea*. Here, we discuss the decision *M/s Dharmaratnakara Rai*.

Relevant Facts

M/s Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram is a registered charitable trust which sought to develop the land owned by it into a multi-purpose community hall with office complex. *M/s Bhaskar Raju & Brothers* (“**BRAB**”) had offered to develop *Dharmaratnakara*’s property and renovate other items on the land. After unsuccessful negotiations and various disputes, *Dharmaratnakara* and its trustees had filed a civil suit before a Trial Court against *BRAB* and other respondents. During the pendency of the trial court proceedings, *BRAB* issued a notice to *Dharmaratnakara* and its trustees invoking the arbitration clause in an earlier signed lease deed between the parties. Subsequently, *BRAB* filed a petition under section 11(6) of the Arbitration Act before the Karnataka High Court.

Dharmaratnakara primarily contended that as the lease deed was insufficiently stamped and had to be mandatorily impounded under section 33 of the [Karnataka Stamp Act, 1957](#), it could not be relied upon unless proper duty and penalty was paid. The High Court referred this contention to the Registrar (Judicial) to the Karnataka High Court (“**RJHC**”). The *RJHC* opined that as the document in question was a lease deed and not an agreement to lease, *BRAB* would have to pay the deficit stamp duty and penalty. Ignoring the report of the *RJHC* and *Dharmaratnakara*’s contentions, the High Court allowed *BRAB*’s petition to appoint an arbitrator to decide the dispute between *BRAB* and *Dharmaratnakara* on the basis of the lease deed.

Holdings

The Supreme Court on appeal took cognizance of the fact that the lease deeds submitted by *BRAB* were both unregistered and insufficiently stamped as against the requirements under the Karnataka Stamp Act. Noting that the court in *SMS Tea* had occasion to consider the provisions in [Indian Stamp Act, 1899](#), which are *in pari materia* with the provisions of the Karnataka Stamp Act, the Court stated that when a lease deed or any other instrument is relied upon as containing an arbitration agreement, at the outset the courts must consider whether the document is properly stamped or not. Importantly, this consideration arises even where an objection about document being insufficiently stamped is not raised.

The Court also held that where an instrument is not properly stamped in the manner specified under section 38 of the Indian Stamp Act, it should be impounded and dealt with according to the foregoing provision. A court cannot act upon such an insufficiently stamped document containing an arbitration clause. However, if the deficit duty and penalty are paid in the manner set out in sections 35 or 40 of the Indian Stamp Act, the document can be acted upon or admitted in evidence.

Nonetheless, in light of *SMS Tea*, the fact that the lease deeds were both unregistered and insufficiently stamped, as well as the fact that the RJHC had directed BRAB to pay deficit stamp duty (which was not paid by BRAB according to the facts), the High Court incorrectly relied on the lease deed. Moreover, BRAB and the other respondents were not entitled to any relief even on equity, *inter alia*, due to having placed insufficient evidence before the courts below and having taken a self-contradictory stand before the High Court on the nature of the document as an ‘agreement to develop property’, which was originally pleaded as a ‘lease deed’ before the trial court. Therefore, the decision of the High Court was quashed and set-aside. Moreover, the petition filed by BRAB and other respondents under section 11 of the Arbitration Act for appointment of an arbitrator was rejected by the Court.

Conclusion

The decision in *M/s Dharmaratnakara Rai* has affirmed the principles laid down on enforceability of insufficiently stamped documents containing an arbitration clause or arbitration agreements in *SMS Tea* and, consequently, the *Coastal Marine* decisions. Notably, as the bench strength of *M/s Dharmaratnakara Rai* is larger than that in *SMS Tea* and *Coastal Marine*, it has acquired the highest precedential value on the legal principles discussed in this post. Therefore, insufficiency of stamp duties on documents containing arbitration clause or arbitration agreements is a procedural ground to invalidate an arbitration proceeding. Nevertheless, payment of the proper duty and penalty on the instrument containing the arbitration clause can remove this procedural hurdle.

While the stance taken in *M/s Dharmaratnakara Rai* and the earlier Supreme Court decisions seem to be in line with increasing judicial intervention on arbitral proceedings, it is important to note that due to the legislative silence of the amended Arbitration Act on payment of stamp duty, the general laws, i.e., the Indian Stamp Act or the relevant State Act (whichever is applicable depending upon facts and circumstances of each case) shall take precedence.

Hence, before invoking arbitration proceedings (whether before a suit has been filed or during the pendency of court proceedings), the party that wishes to invoke the arbitration proceedings should ensure that the legal instrument (i.e., an arbitration agreement or a document containing an arbitration clause) should be sufficiently stamped according to the law. To reiterate, any arbitration proceeding invoked using an insufficiently stamped legal instrument shall be invalid under the law.

– *Anirban Chanda & Anujay Shrivastava*