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DELHI HIGH COURT ON SECTION 11 OF ARBITRATION ACT

A. Introduction

The High Court of Delhi (“**HC**”) in *Ambience Developers and Infrastructure Pvt. Ltd.* case,¹ held, based on Supreme Court’s (“**SC**”) 2023 subsequent ruling in *N.N Global Mercantile*² that HC cannot allow review of Section 11³ Petition.

B. Facts

1. Zesty Foods (“**ZF**”) filed a review petition (“**RP**”) before the HC seeking review of order dated 20.03.2023 passed by the HC, allowing the Section 11 of the Arbitration and Conciliation Act, 1996 (“**the Act**”).
2. This RP was filed on the ground that the arbitration agreement with Ambience Developers & Infrastructure Pvt. Ltd. (“**ADI**”) was not duly stamped. It sought a review of order dated March 20, 2023 (“**Order**”) based on the SC’s subsequent ruling in *N.N. Global Mercantile* judgment.

C. HC Judgment & Reasoning

The HC:

1. Noted that stamp duty on the agreement was paid and also stated that ZF’s argument was factually false.
2. Noted also that the consent order under Section 11 between ZF and ADI explicitly reserved ZF’s right to make preliminary objections regarding the arbitrability and jurisdiction before the arbitrator. It also applied to complaints about the agreement not being registered or about insufficient stamp duty.
3. Relied on SC’s judgment in *Intercontinental Hotels Group*,⁴ and held that the court cannot review or delve into the question as to whether the stamp duty paid on the agreement is appropriate or insufficient under Section 11(6) of the Act.
4. Noted that in the *N.N. Global Mercantile* judgment, the SC had ruled that:
 - a. The court’s standard procedure is to consider the case in light of its duty specified in Section 33(2)⁵ of the Indian Stamp Act, 1899 (“**ISA**”), when there is a complaint that the agreement is not properly stamped.
 - b. If it appears to the court that the argument on insufficient stamping of the agreement is *prima facie* wholly without foundation, it may make the arbitral reference based on the existence of

¹*Ambience Developers and Infrastructure Pvt. Ltd. vs. Zesty Foods*, (2023) SCC OnLine Del 4231.

²*N.N. Global Mercantile (P) Ltd vs. Indo Unique Flame Ltd*, (2023) SCC OnLine SC 495.

³ Section 11: Appointment of Arbitrator.

⁴ *Intercontinental Hotels Group (India) (P) Ltd vs. Waterline Hotels (P) Ltd*, (2022) 7 SCC 662.

⁵ Section 33: Examination and impounding of instruments.

the arbitration agreement. Then, if necessary, it may allow the arbitrator to exercise its jurisdiction under Section 33 of the ISA.

5. Stated that a review could not be requested with regard to the explanation of Order XLVII⁶ Rule 1⁷ of the Code of Civil Procedure, 1908.
6. Relied on the judgment in *Neelima Srivastava*⁸ in which the SC observed that a change in law or a subsequent judgment of coordinate or larger bench does not afford a ground for review.
7. Dismissed the RP, ruling that ZF had not established a case for review of its Order.

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⁶ Order XLVII: Review.

⁷ Application for review of Judgment.

⁸ *Neelima Srivastava vs. State of Uttar Pradesh and Ors.*, (2021) SCC OnLine SC 610.

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