



*Saraswati Poddar*  
*Senior Associate*

## DELHI HIGH COURT ON AWARD CANNOT BE SET-ASIDE, ON GROUND OF INSUFFICIENT STAMP DUTY.

### **A. Introduction**

The High Court of Delhi (“**HC**”), in *ARG Outlier Media* case,<sup>1</sup> held that any agreement with an arbitration clause that is not properly stamped is not admissible in court. But once the agreement is admitted into evidence and the arbitrator makes an award based on it, the award cannot be set aside on the grounds that the agreement was not sufficiently stamped.

### **B. Brief Facts**

1. ARG Outlier Media Private Limited (“**ARG**”) and HT Media Limited (“**HTML**”) entered into an Agreement of Barter (“**Agreement**”).
2. Dispute arose and was referred to Sole Arbitrator (“**SA**”). SA passed award directing the ARG to pay Rs. 5 crores along with the interest to the HTML.
3. Aggrieved by award, ARG filed petition under section 34<sup>2</sup> of the Arbitration and Conciliation Act, 1996 (“**Act**”), asserting that the Agreement containing the arbitration clause was improperly stamped as it should have been stamped in accordance with to the Maharashtra Stamp Act, 1958 (“**MSA**”), and thus should not have been admitted as evidence by the SA.

### **C. ARG’s Contentions**

1. The Agreement was signed in New Delhi by HTML and thereafter transmitted to Mumbai where the ARG signed it. Therefore, stamp duty was chargeable under the MSA.
2. It relied on the *N.N. Global* case<sup>3</sup> where it was held that an agreement being insufficiently/improperly stamped, could not have been acted upon by the SA.

### **D. HTML’s Contention**

The Agreement’s recital cites New Delhi. When the HC passed an order in 2019, ARG did not dispute the existence of the Agreement or the invocation thereof. Therefore, as a corollary, the ARG did not dispute the adequacy of stamping of the Agreement.

### **E. HC Judgment & Reasoning**

The HC:

---

<sup>1</sup>*ARG Outlier Media Private Limited vs HT Media Limited*, (2023) SCC OnLine Del 3885

<sup>2</sup> Section 34: Application for setting aside arbitral awards.

<sup>3</sup> Refer *Counselence Connect* Vol. 4, No. 5 of May 1, 2023.

1. Observed that the plea on Agreement not being stamped was not raised by ARG in its reply to legal notice or in its reply to the Section 11<sup>4</sup> of the Act filed by HTML seeking appointment of SA. Thus, the Agreement was admitted and no objection to its admissibility in evidence was taken by the ARG.
2. Noted that Section 16<sup>5</sup> application of the Act was filed on the ground of it not being properly stamped and it was rejected by SA.
3. Held: *“The Arbitrator had given an opportunity to the petitioner to re-agitate the issue of the Agreement not being properly stamped, however, the petitioner chose not to avail of such opportunity. Now, by operation of law, the petitioner is debarred from challenging the Award based on such Agreement.”*<sup>6</sup>
4. Noted that Section 36<sup>7</sup> of the Indian Stamp Act (“ISA”) states that when an instrument is admitted in evidence, such instrument cannot be later called into question based on the ground that the instrument has not been duly stamped.<sup>8</sup>
5. Referred to *Javer Chand* case<sup>9</sup> where Supreme Court (“SC”) held that once the court decided to admit the document as evidence, the matter is closed, and it is not open to go behind the order to admit such an instrument into evidence.
6. Concluded that: *“though in terms of the judgment of the SC in N.N. Global (supra), the Agreement, not being properly stamped, could not have been admitted in evidence, however, once having been admitted in evidence by the Arbitrator, the Award passed by relying thereon cannot be faulted on this ground.”*<sup>10</sup>
7. Held: *“Even assuming that Section 61<sup>11</sup> of the ISA applies, in view of the Proviso (b) to Section 61 of the ISA, the Court would only impound the document (in the present case by calling upon the petitioner to produce the original of the same) and refer it to the Collector of Stamps for adjudication on the proper stamp duty and penalty (in the present case to be paid by the petitioner), however, the same shall not, in any manner, effect the enforcement or the validity of the Arbitral Award.”*<sup>12</sup>

The HC thus dismissed the petition and upheld the arbitral award.

\*\*\*\*

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For legal advice, please contact us at: [info@counselence.com](mailto:info@counselence.com).

Past issues of *Counselence Connect* are available on the ‘Newsletters’ page of our website ([www.counselence.com](http://www.counselence.com))

---

<sup>4</sup> Section 11: Appointment of Arbitrator

<sup>5</sup> Section 16: Competence of arbitral tribunal to rule on its jurisdiction.

<sup>6</sup> Para 35 of the judgement.

<sup>7</sup> Section 36: Admission of instrument where not to be questioned.

<sup>8</sup> Para 27 of the Judgement.

<sup>9</sup> *Javer Chand and Others v. Pukbraj Surana*, (1962) 2 SCR 333.

<sup>10</sup> Para 36 of the Judgement.

<sup>11</sup> Section 61: Revision of certain decisions of Courts regarding the sufficiency of stamps.

<sup>12</sup> Para 36 of the Judgement.

© 2023 Counselence