CIVIL

Court Can Determine Stamp Duty Payable Under The Unstamped Arbitration Agreement – Bombay High Court

AUTHOR Zoheb Khatri
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Recently, in the case of *John Cockerill India Ltd. vs. Sanjay Navare*[1], the Hon'ble Bombay High Court held that the Court can determine the stamp duty payable under the unstamped Arbitration Agreement. The Court was dealing with the Application filed under section 11 of the Arbitration and Conciliation Act, 1996 (**"Arbitration Act"**). The Appointment of the Arbitrator was sought on the basis of the Arbitration clause contained in the Agreement executed between the parties.

John Cockerill India Limited (**"Employer"**) filed an Application against Sanjay Kamalakar Navare (**"Erstwhile Employee"**) in respect of the Agreement titled 'Employee Non-Disclosure and Non-Solicitation Agreement' dated 15.11.2021.

The Hon'ble Court was appraised of the fact that the Arbitration clause contained in the Agreement was not stamped. The recent Judgment[2] of the Hon'ble Supreme Court observed that in the case of an unstamped or insufficiently stamped agreement, the same cannot be acted upon, unless the document is impounded and requisite stamp duty is paid and a certificate to that effect is made available.

In this case, the original Agreement was produced before the Hon'ble Court. The Hon'ble Court found that it is simply a non-disclosure and non-solicitation agreement executed between the parties and has no monetary value assigned to it. The Hon'ble Court observed that a similar contention has been discussed by the Hon'ble Delhi High Court. Under the said Judgment[3] the Hon'ble Delhi High Court held that considering an Application under Section 11 of the Arbitration Act could undertake the exercise of determination of requisite stamp duty that enables deposit of the same, to be forwarded to the Collector of Stamps so that a defect, essentially curable in nature, could be cured and the application for appointment of arbitrator could proceed.

The Hon'ble Court observed that there are two options before the Court that can be identified i.e. (i) Send the impounded agreement/ instrument to the concerned Collector of Stamps, who shall then adopt the procedure under Section 40 of the Stamp Act for payment of proper stamp duty and penalty.

Once such duty or penalty is paid, the Collector shall certify by endorsement that the proper duty (together with penalty, if any) has been levied; Alternatively, (ii) The Court to take recourse to Section 35 of the Stamp Act and enable deposit of the requisite stamp duty along with penalty as contemplated under other sections of the Stamp Act which eventually culminating in the concerned instrument being admitted in evidence/acted upon for the purpose of proceedings under Section 11 of the Act.

The Hon'ble Court conducted the exercise of determining stamp duty payable on the subject agreement. The Hon'ble Court perused the Maharashtra Stamp Act and Article 5 envisaged under the Schedule appended to it. The Hon'ble Court also calculated the penalty by applying proviso (a)(ii) to Section 34 of the Maharashtra Stamp Act.

In the present case, the Hon'ble Bombay High Court exercised the alternate option and authorised the Prothonotary and Senior Master to receive the stamp duty and endorse the same on the original Agreement within 10 days.

Pertinently, the Curative Petition[4] is pending before the Hon'ble Supreme Court against the judgment passed in *N. N. Global Mercantile Private Limited vs. Indo Unique Flame Limited.*

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[1] Comm. Arb. Application (L) 10282/2023, Bombay High Court Mumbai

[2] N. N. Global Mercantile Private Limited vs. Indo Unique Flame Limited, (2023) 7 SCC 1

[3] Splendor Landbase Limited Vs. Aparna Ashram Society & Anr., Arbitration Petition No.366 of 2021

[4] Curative Petition (Civil) No 44 of 2023

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