

## SUPREME COURT ON STAMP DUTY QUA THE FOREIGN AWARDS

*The Supreme Court of India in its decision in M/s. Shriram EPC Limited v. Rioglass Solar SA (Civil Appeal No. 9515 of 2018) has settled the issue on which various High Courts had provided differing judgments and held that foreign awards are not required to be stamped for enforcement under the Arbitration and Conciliation Act, 1996.*

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### FACTS

A foreign award was passed in London on 12<sup>th</sup> February 2015 ordering the Appellant to pay damages and interest thereon. The foreign award was challenged by way of a Petition under Section 34, Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") which was dismissed by the High Court stating that a Petition under Section 34 will not be maintainable against a foreign award. In the meanwhile, the Respondent filed a Petition under Section 47 of the Arbitration Act for enforcement of the foreign award which was allowed vide Madras High Court's order dated 9<sup>th</sup> February 2017. An intra court appeal was preferred by the Appellant challenging the High Court's order dated 9<sup>th</sup> February 2017 which was held to be not maintainable. Accordingly, a Special Leave Petition was filed challenging the decision of the High Court of Madras dated 9<sup>th</sup> February 2017 which allowed the enforcement of a foreign award.

### ISSUE

Whether an unstamped foreign award can be enforced under Sections 48 and 49 of the Arbitration Act and whether the expression "award" would include a foreign award under the provisions of the Indian Stamp Act, 1899 (the "**Stamp Act**").

### SUBMISSIONS

It was submitted on behalf of the Appellant that a foreign award would be covered by the provisions of the Stamp Act and the same cannot be enforced on account of the non-payment of stamp duty. The Counsel for the Appellant stated that Article III of the New York Convention makes it clear that the stamp duty being in the nature of fees or charges for recognition and enforcement of a foreign award can be enforced in accordance with the rules of procedure of the territory in which the award is sought to be enforced.

On the other hand, it was submitted on behalf of the Respondent that the expression "award" occurring in Schedule I of the Stamp Act applies only to a domestic award and not a foreign award. It was submitted that stamping of a foreign award is not a condition precedent to enforcing it under Section 47 of the Arbitration Act.

### JUDGMENT

Tracing the history of the Stamp Act, the apex court analysed the meaning of the term "award" under the Indian Stamp Act, 1899 and stated that the only award that is referred in the Indian Stamp Act is an award made in the territory of British India. The court expressed its view by stating "*the expression "award" has never included a foreign award from the very*

*inception till date.*" The court took into account the separate parts in the Arbitration Act which dealt with domestic and foreign awards, providing a conceptual distinction between the two parts. The Court further analysed the meaning of the term "foreign award" under the Arbitration (Protocol and Convention) Act, 1937, the Foreign Awards (Recognition and Enforcement) Act, 1961, the New York Convention, the Geneva Convention and held that a foreign award not being includible in Schedule I of the Stamp Act is not liable for stamp duty.

The court approved the reasoning provided in the decision of the Madhya Pradesh High Court in **Narayan Trading Co. v. Abcom Trading Pvt. Ltd.**, (2013)2 MPLJ 252 which stated that the Arbitration Act came into force to consolidate and amend the law relating to domestic arbitrations, international commercial arbitration, enforcement of foreign awards and to define the law relating to conciliation. In *Narayan Trading Co. v. Abcom Trading Pvt. Ltd.* (*supra*), it was further stated: "*Apart from other object, the object of the Arbitration Act is to provide that every final arbitral award is enforced as if it were a decree of the Court. While Arbitration and Conciliation Act, 1996 was enforced, no amendment was made in the definition of award given in the Indian Stamp Act. Similarly, the Schedule which lays down the stamp duty payable on award was not amended by including the foreign award. It appears that law makers while enforcing the Arbitration and Conciliation Act, 1996 was of the view that foreign award shall be enforceable as if it were a decree of the Court, no amendment was brought either in the definition of award or in the Schedule relating to payment of stamp duty on award.*"

The court rejected the Respondent's argument that Section 47 of the Arbitration Act provides only three requisites for the enforcement of a foreign award and stamp duty not being one of the three requisites, cannot ever be levied. Holding the same to be an extreme argument, the apex court clarified that Section 47 of the Arbitration Act does not interdict the payment of stamp duty if the same is otherwise payable in law. If a fiscal statute like the Stamp Act had provided for payment of stamp duty on foreign award, then the same would fall within "fundamental policy of India."

In light of the above, the court held that the fact that a foreign award has not borne stamp duty would not render it unenforceable. Accordingly, the appeal challenging the decision of the High Court of Madras was dismissed.

## CONCLUSION

The court reinforced the principle that a fiscal statute i.e. the Stamp Act should be construed literally and any ambiguity in the said statute shall enure to the benefit of the assessee who is liable to pay the stamp duty. On the enforceability of a foreign award, the court observed that so long as none of the grounds in Section 48 of the Arbitration Act are attracted, the award becomes enforceable as a decree. The decision reinforces India's commitment to become arbitration friendly jurisdiction and clarifies that the enforcement of foreign awards need not be encumbered by the requirement to pay stamp duty.

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*The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.*