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ENFORCING THE UNSTAMPED: AN ANALYSIS ON THE VALIDITY AND ENFORCEMENT OF UNSTAMPED ARBITRATION AGREEMENTS UNDER INDIAN LAW

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Abstract:

The evolution of legal interpretation regarding the interplay between arbitration agreements and stamp laws in India has been marked by complex jurisprudential shifts. This paper examines the landmark ruling of the Indian Supreme Court in "In Re: The Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996, and the Indian Stamp Act, 1899" ("In Re: The Interplay"), which provided clarity on the admissibility and enforceability of arbitration agreements within inadequately stamped instruments. It traces the historical evolution of jurisprudence on unstamped arbitration agreements, highlighting seminal cases such as SMS Tea Estates v. Chandmari Tea Co. Pvt. Ltd. and N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. (NN Global 2). A paradigm shift occurred with the N.N. Global Mercantile case (NN Global 1) in 2021, emphasizing the autonomous nature of arbitration agreements. This paper analyzes the implications of these legal developments and their significance in fostering investor confidence and enhancing alternative dispute resolution mechanisms in India. Keywords: arbitration agreements, stamp laws, jurisprudential evolution, Indian judiciary, landmark ruling, doctrinal clarity, legal conundrum, Supreme Court, enforcement mechanisms, statutory compliance, alternative dispute resolution.

Keywords: arbitration agreements, stamp laws, jurisprudential evolution, Indian judiciary, landmark ruling.

Introduction:

The evolution of legal interpretation within the Indian judiciary concerning the interplay between arbitration agreements and stamp laws represents a complex and nuanced journey marked by jurisprudential shifts and doctrinal clarifications. At the heart of this evolution lies the intricate balance between fostering the efficacy of arbitration as a dispute resolution mechanism and upholding the sanctity of statutory requirements embodied in the Indian Stamp Act, 1899. On December 13, 2023, the Indian judiciary witnessed a significant milestone as a seven-judge bench of the Supreme Court delivered a landmark ruling in the case of "In Re: The Interplay between Arbitration Agreements under the Arbitration

and Conciliation Act, 1996, and the Indian Stamp Act, 1899¹¹²⁷" ("In Re: The Interplay"). This ruling not only elucidated the legal position on the admissibility and enforceability of arbitration agreements contained within inadequately stamped instruments but also marked a pivotal departure from previous judicial pronouncements.

The genesis of this jurisprudential discourse can be traced back to the confluence of three statutes: the Arbitration and Conciliation Act, 1996, the Indian Stamp Act, 1899, and the Indian Contract Act, 1872. The inherent tension between these statutes, particularly concerning the treatment of unstamped or insufficiently

¹¹²⁷ Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re, 2023 SCC OnLine SC 1666

stamped instruments in evidence, had engendered a series of conflicting judicial decisions, leading to a palpable atmosphere of uncertainty within the arbitration community. Central to the debate was the question of whether an arbitration agreement embedded within an inadequately stamped instrument should be considered void or unenforceable. This question assumed critical significance in the context of applications under Section 8¹¹²⁸ and 11¹¹²⁹ of the Arbitration and Conciliation Act, 1996, where courts were tasked with deciphering the existence and validity of arbitration agreements.

The legal landscape preceding the "In Re: The Interplay" ruling was characterized by oscillating judicial opinions, epitomized by decisions such as *NN Global Mercantile Private Limited v. Indo Unique Flame Limited*¹¹³⁰ ("NN Global 2"). This jurisprudential oscillation not only exacerbated the uncertainty surrounding the enforceability of arbitration agreements but also underscored the imperative for doctrinal clarity and consistency. The "In Re: The Interplay" ruling, by unequivocally affirming the inadmissibility of unstamped or insufficiently stamped instruments in evidence while preserving the enforceability of arbitration agreements contained therein, heralded a definitive resolution to this longstanding legal conundrum. By overruling precedent and articulating a coherent legal framework, the Supreme Court provided much-needed certainty to stakeholders within the arbitration ecosystem. However, the journey towards this judicial pronouncement was fraught with interpretational complexities and doctrinal nuances. From seminal cases such as *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*¹¹³¹ to *NN Global 2*, the evolution of judicial reasoning underscored the iterative nature of

legal interpretation and the iterative pursuit of doctrinal coherence.

Moreover, the ramifications of the "In Re: The Interplay" ruling extend beyond the confines of domestic jurisprudence, resonating with broader international discourse on arbitration law. As India seeks to position itself as a favorable jurisdiction for arbitration, the clarity provided by the Supreme Court assumes paramount significance in fostering investor confidence and enhancing the efficacy of alternative dispute resolution mechanisms. Against this backdrop, this paper endeavors to dissect the nuances of the "In Re: The Interplay" ruling, delineate its implications on the Indian arbitration landscape, and contextualize its significance within the broader framework of international arbitration law. By engaging with doctrinal intricacies and jurisprudential developments, this paper seeks to offer a comprehensive analysis of a legal question that has long perplexed scholars, practitioners, and jurists alike. In conclusion, the "In Re: The Interplay" ruling represents not only a culmination of the Indian judiciary's evolving stance on arbitration agreements but also a clarion call for doctrinal coherence and jurisprudential consistency in navigating the complex intersection of arbitration law and stamp legislation.

Historical Evolution of Jurisprudence on Unstamped Arbitration Agreements

The evolution of jurisprudence surrounding the enforceability of arbitration agreements in India has traversed through a labyrinth of judicial interpretations, legislative interventions, and nuanced doctrinal considerations. Over the past decade, the Indian judiciary, particularly the Supreme Court, has grappled with reconciling the mandates of the Indian Stamp Act, 1899 (ISA) and the Arbitration and Conciliation Act, 1996 (Arbitration Act) concerning the validity and admissibility of unstamped arbitration agreements. This journey has been marked by seminal judgments such as *SMS Tea Estates v.*

¹¹²⁸ Arbitration and Conciliation Act, 1996, §8

¹¹²⁹ Arbitration and Conciliation Act, 1996, §11

¹¹³⁰ *M/s NN Global Mercantile Private Limited vs. M/s Indo Unique Flame Limited & Ors.*, 2023 SCC OnLine SC 495

¹¹³¹ *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66

Chandmari Tea Co. Pvt. Ltd.¹¹³², Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.¹¹³³, and N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.¹¹³⁴, each contributing to the legal landscape with its unique perspective and doctrinal insights.

The discourse on the admissibility and validity of unstamped arbitration agreements finds its roots in the landmark judgment of SMS Tea Estates v. Chandmari Tea Co. Pvt. Ltd.¹¹³⁵ in 2011. Here, a division bench of the Supreme Court held that an arbitration clause embedded within an unstamped or inadequately stamped document cannot be enforced under Section 35¹¹³⁶ of the ISA. This decision underscored the significance of stamp duty compliance in ensuring the enforceability of arbitration agreements, setting a precedent that resonated in subsequent judicial pronouncements. In response to the evolving legal landscape, the Parliament introduced a legislative amendment to the Arbitration Act in 2015, inserting Section 11(6A)¹¹³⁷ to restrict judicial intervention in arbitration proceedings. However, the Supreme Court, in its 2019 ruling in Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd.¹¹³⁸, reaffirmed the principle established in SMS Tea Estates. The Court reiterated that unstamped agreements lack enforceability, thereby rendering arbitration clauses contained therein unenforceable. The jurisprudential trajectory witnessed further refinement in the judgment of Vidya Drolia v. Durga Trading Corporation¹¹³⁹, where the Court elucidated the intertwined nature of the existence and validity of arbitration agreements. Emphasizing the mandatory legal requirements, including stamp duty payment, the Court underscored that an arbitration

agreement's validity hinges upon compliance with statutory provisions. However, the judicial pendulum swung once again in the landmark ruling of N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. (NN Global 1) in January 2021. Here, a three-judge bench of the Supreme Court challenged the prevailing stance, contending that the independent nature of arbitration agreements necessitates a departure from stringent stamp duty requirements imposed on underlying contracts. This pivotal decision set the stage for a nuanced reevaluation of the legal landscape surrounding unstamped arbitration agreements. The culmination of this legal saga arrived with the pronouncement of N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. (NN Global 2) in April 2023, wherein a majority of the Court reaffirmed the primacy of stamp duty compliance in validating arbitration agreements. Drawing upon statutory provisions and doctrinal principles, the Court elucidated the inextricable link between stamp duty obligations and the enforceability of arbitration agreements, thereby providing clarity amidst doctrinal ambiguities.

The journey of judicial pronouncements pertaining to the validity and admissibility of unstamped arbitration agreements in India reflects a nuanced interplay of legal principles, legislative intent, and doctrinal considerations. From the foundational precedent established in SMS Tea Estates to the nuanced delineation of legal principles in NN Global 2, each judgment has contributed to the jurisprudential evolution in this domain. As the Indian judiciary continues to grapple with the complexities inherent in arbitration law, these judicial pronouncements serve as guiding beacons, navigating the legal fraternity towards a nuanced understanding of the interplay between arbitration agreements and stamp duty obligations.

Paradigm Shift: N.N. Global Mercantile case (NN Global 1) (2021)

The case of N.N. Global 1 before a 3-Judge Bench of the Supreme Court marked a

¹¹³² Id.

¹¹³³ Garware Wall Ropes vs. Coastal Marine Constructions & Engineering Ltd., (2019) 9 SCC 209

¹¹³⁴ M/s NN Global Mercantile Private Limited vs. M/s Indo Unique Flame Limited & Ors., 2023 SCC OnLine SC 495

¹¹³⁵ SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66

¹¹³⁶ Indian Stamp Act, 1899, § 35

¹¹³⁷ Arbitration and Conciliation Act, 1996, § 11(6A)

¹¹³⁸ Garware Wall Ropes vs. Coastal Marine Constructions & Engineering Ltd., (2019) 9 SCC 209

¹¹³⁹ Vidya Drolia & Ors. vs. Durga Trading Corporation, (2021) 2 SCC 1

significant juncture in the jurisprudential evolution concerning the validity of arbitration agreements within unstamped or inadequately stamped contracts. The Court's elucidation on the principle of severability underscored the autonomous nature of arbitration agreements, distinct from the substantive contract. By delineating the arbitration clause as a separate and enforceable commitment, the Court affirmed the sanctity of arbitration as a preferred mode of dispute resolution.

Moreover, the invocation of the doctrine of kompetenz-kompetenz fortified the exclusive jurisdiction of the Arbitral Tribunal in determining its competence, including issues pertaining to the existence, validity, and scope of the arbitration agreement. This doctrinal assertion reaffirmed the principle of party autonomy and conferred deference to the arbitral process in adjudicating jurisdictional matters. The Court's reference to *SBP & Co. v. Patel Engg. Ltd.*¹¹⁴⁰ elucidated the evolution of judicial interpretation vis-à-vis Section 11¹¹⁴¹ of the Arbitration Act, particularly in light of the post-amendment landscape delineated by sub-section (6-A). The Court's reliance on subsequent decisions such as *Duro Felguera SA v. Gangavaram Port Ltd.*¹¹⁴² and *Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman*¹¹⁴³ further bolstered the restrictive scope of judicial intervention at the referral stage.

In delineating its stance in *N.N. Global I*, the Supreme Court sought to distinguish precedents such as *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*¹¹⁴⁴ and *Garware Wall Ropes Ltd. v. Coastal Marine Constructions and Engg. Ltd.*¹¹⁴⁵ by affirming that the non-payment of stamp duty on the underlying contract does not vitiate the validity of the arbitration agreement. However, the Court's reservation regarding certain findings in *Vidya Drolia v.*

Durga Trading Corpn. highlighted the need for authoritative clarity on the issue, prompting the reference of the matter to a 5-Judge Bench for authoritative resolution. In essence, the significance of *N.N. Global I* lies in its jurisprudential reaffirmation of the autonomy of arbitration agreements, the primacy of the Arbitral Tribunal in determining jurisdictional matters, and the delineation of the limits of judicial intervention in arbitration proceedings. As a pivotal precursor to the present case, *N.N. Global I* serves as a foundational cornerstone in shaping the legal landscape governing arbitration agreements within the realm of stamp duty compliance and enforceability.

Challenges to NN Global I: NN Global 2 (2023)

In *N.N. Global II*, a watershed moment unfolded as a 5-Judge Bench of the Supreme Court overturned the preceding decision in *N.N. Global I*, challenging the foundational premise regarding the validity of arbitration agreements within unstamped or inadequately stamped contracts. The majority verdict in *N.N. Global II* refuted the notion that arbitration agreements, as independent entities, were exempt from stamp duty, asserting instead that they remained subject to such fiscal obligations. This departure from the precedent established in *N.N. Global I* was underscored by a meticulous examination of Article 5 of Schedule I¹¹⁴⁶ in the Stamp Act, elucidating the legislative intent behind stamp duty imposition. Additionally, the Court invoked *Hindustan Steel Ltd. v. Dilip Construction Co.* to underscore the stringent enforcement mechanism envisaged by the Stamp Act, emphasizing its pivotal role in revenue generation and legal compliance. This invocation underscored the judiciary's duty to uphold the sanctity of legal provisions, thereby preventing their circumvention or dilution.

Moreover, the Supreme Court in *N.N. Global II* elucidated the procedural intricacies concerning the admissibility of unstamped instruments, clarifying that endorsement under Section 42(2) of the Stamp Act was imperative

¹¹⁴⁰ *SBP & Co. v. Patel Engg. Ltd.*, (2005) 8 SCC 618

¹¹⁴¹ Arbitration and Conciliation Act, 1996, §11

¹¹⁴² *Duro Felguera, S.A. v. Gangavaram Port Ltd.*, (2017) 9 SCC 729

¹¹⁴³ *Mayavati Trading (P) Ltd. v. Pradyuat Deb Burman*, (2019) 8 SCC 714

¹¹⁴⁴ *I SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66

¹¹⁴⁵ *Garware Wall Ropes vs. Coastal Marine Constructions & Engineering Ltd.*, (2019) 9 SCC 209

¹¹⁴⁶ Indian Stamp Act, 1899, Sch. I, art. 5

for the document to attain evidentiary status. The Court's emphasis on mandatory impoundment under Section 33 of the Stamp Act underscored the imperative nature of compliance, with enforceability contingent upon the payment of associated penalties. Furthermore, the dissenting opinions offered valuable insights into the nuanced legal debate. Roy, J. cited international arbitration practices, advocating for limited judicial intervention at the referral stage in alignment with the kompetenz-kompetenz principle. Conversely, Rastogi, J. emphasized the legislative intent behind the 2015 Amendment Act, advocating for a prima facie examination of arbitration agreements' existence as the sole purview of the courts under Section 11 of the Act.

The dissenting voices offered compelling arguments, signaling potential shifts in judicial interpretation and paving the way for future legal discourse. Roy, J.'s reference to the overruling of SMS Tea Estates case by the 2015 Amendment Act highlighted the evolving legal landscape, while Rastogi, J.'s reliance on precedent underscored the need for contextual application of statutory provisions. In essence, the judgment in N.N. Global II marked a pivotal juncture in legal history, delineating the contours of stamp duty applicability to arbitration agreements and reaffirming the judiciary's commitment to statutory compliance and procedural integrity. As the legal fraternity grapples with the ramifications of this decision, it underscores the dynamic nature of legal interpretation and the imperative of striking a delicate balance between legislative intent and judicial discretion.

Stamp Duty Compliance and Admissibility of Instruments:

The Stamp Act delineates stringent requirements regarding the stamping of instruments executed in India, as encapsulated in Section 17, which mandates stamping either before or at the time of execution. Failure to comply with this mandate carries penalties, as stipulated under Section 62 of the Stamp Act.

Despite this legislative imperative, parties often attempt to circumvent stamp duty obligations, leading to instances of improper stamping. These instances encompass various scenarios, including the misclassification of duty payment under Schedule I, payment of sufficient duty under an incorrect description, non-compliance with provisions under Section 5 governing diverse instrument matters, and violations of Sections 13 and 14, rendering instruments unstamped under Section 15. In the event an instrument appears chargeable with duty but lacks proper stamping, Section 33 of the Stamp Act empowers any person authorized to receive evidence to impound such instruments. Subsequently, under Section 35, instruments not duly stamped face inadmissibility in evidence for any purpose, precluding their registration, authentication, or action. The responsibility to impound instruments primarily falls upon the Collector as per Section 33. If impoundment occurs by any other authority, they must forward the instrument to the Collector, as mandated by Section 38(2). Upon receipt, the Collector is vested with the authority, under Section 40, to stamp the instrument and make determinations regarding its duty status. This authority includes certifying the instrument as duly stamped if deemed appropriate, certifying it as not chargeable with duty if warranted, or demanding payment of proper duty or requisite amounts if the instrument is chargeable but lacks proper stamping. Crucially, Section 42¹¹⁴⁷ of the Stamp Act establishes a pivotal threshold for instruments to become admissible in evidence. This provision stipulates that an instrument achieves admissibility only upon complete payment of duty and any applicable penalty. Therefore, compliance with stamping requirements, including the rectification of any deficiencies through payment and certification by the Collector, is indispensable for an instrument's evidentiary admissibility.

Analysis of Judicial Pronouncement:

¹¹⁴⁷ Indian Stamp Act, 1899, § 42

The recent judicial pronouncement in the case of *In Re: The Interplay* represents a seminal moment in the legal landscape, particularly concerning the intricate interplay between the Arbitration Act and the Stamp Act. Led by Chief Justice Chandrachud, the bench conducted a meticulous examination, elucidating the nuanced nuances surrounding arbitration agreements embedded within unstamped or inadequately stamped instruments. This comprehensive analysis serves as the cornerstone for delineating the parameters governing the admissibility and enforceability of such agreements within the realm of Indian jurisprudence.

The genesis of the dispute stems from divergent interpretations regarding the nature of arbitration agreements vis-à-vis their underlying contracts, a discourse underscored by the precedence set forth in *NN Global 1* and *NN Global 2*. *NN Global 1* laid the groundwork by delineating the arbitration agreement as distinct from the parent contract, thereby rendering insufficient stamping a curable defect rather than an insurmountable hurdle. This perspective resonated with the dissenting opinions of Justice Hrishikesh Roy and Justice Rastogi in *NN Global 2*, which underscored both the curability of unstamped agreements and the imperative of minimizing judicial intervention in arbitration proceedings.

Chief Justice Chandrachud's majority opinion in *In Re: The Interplay* reaffirms the fundamental premise that improper stamping renders an agreement inadmissible rather than void, drawing on the meticulous language of section 35 of the Stamp Act. This distinction between inadmissibility and unenforceability forms the crux of the judicial interpretation, highlighting the inherent flexibility within the legal framework to address curable defects. Furthermore, the judgment aligns with the overarching principle of judicial non-interference in arbitral processes enshrined in both the UNCITRAL Model Law and the Arbitration Act, a principle underscored by Justice Roy's prior dissent. A pivotal aspect of the judgment lies in its definitive ruling on the

separability of arbitration agreements from their parent contracts. Recognizing the distinct contractual autonomy exercised by parties in opting for arbitration, the Court elucidates that such agreements persist independently of events impacting the underlying contract, ensuring continuity and efficacy in dispute resolution mechanisms.

Moreover, the judgment represents a significant judicial innovation by extending the *Kompetenz-Kompetenz* rule to empower arbitral tribunals to adjudicate on issues arising from improperly stamped arbitration agreements. This progressive interpretation underscores the tribunal's authority derived from the consent of parties, enabling it to address and resolve disputes emanating from such agreements in a manner consistent with the principles of fairness and expediency. In essence, the analysis of *In Re: The Interplay* heralds a paradigm shift in the legal discourse surrounding arbitration agreements, underscoring the judiciary's commitment to upholding contractual sanctity while simultaneously fostering a conducive environment for alternative dispute resolution mechanisms.

Voidness vs. Inadmissibility: Critical Distinctions

The recent judgment in the case of "*In Re: The Interplay*" underscores a crucial distinction between the concepts of inadmissibility and voidness concerning agreements, particularly focusing on arbitration agreements, within the framework of the Stamp Act and the Arbitration Act. The Supreme Court's observations in "*N.N. Global III*" elucidate this distinction, emphasizing that while inadmissibility concerns the eligibility of a document or oral testimony for presentation as evidence, voidness pertains to the enforceability of an agreement under the law. The Court's interpretation of Section 35 of the Stamp Act highlights that the phrase "admitted in evidence" specifically addresses the admissibility of an instrument, not its voidness. Additionally, Section 42(2) of the

Stamp Act reinforces this distinction by deeming duly stamped instruments as "admissible in evidence." This distinction is pivotal as it underscores that the failure to pay or inadequately pay stamp duty renders an instrument inadmissible, not void or invalid.

The Supreme Court's adherence to this distinction is evident in its acceptance of previous decisions where agreements were upheld despite insufficient or improper stamping. This adherence underscores the Court's commitment to maintaining the fine line between inadmissibility and voidness. While an agreement may be void under certain provisions of the Contract Act, its admissibility in evidence remains contingent upon compliance with the rules governing document admissibility. Furthermore, the Stamp Act itself provides mechanisms, as outlined in Section 33, to cure defects such as non-stamping or improper stamping, rendering them curable without invalidating the agreement. Consequently, under Section 42 of the Stamp Act, an agreement becomes admissible once stamp duty is rectified. In light of these observations, the Supreme Court's interpretation of Section 11(6-A) of the Arbitration Act is significant. The Court emphasizes that courts should confine themselves to examining the existence of an arbitration agreement, not its admissibility. The authority to assess the legal requirements of the arbitration agreement lies with the arbitral tribunal, empowered under Section 16 of the Arbitration Act. This assertion reaffirms the principle of Kompetenz-Kompetenz, whereby the arbitral tribunal has the competence to determine its own jurisdiction.

Practically, this interpretation benefits all stakeholders by streamlining the procedure for impounding unstamped or inadequately stamped arbitration agreements. Arbitral tribunals can expedite the process, including the payment of stamp duty and penalties, more efficiently than courts burdened with numerous cases. Thus, the Court's analysis underscores the pragmatic and legally sound approach to

reconciling the issue of inadmissibility versus voidness within the context of arbitration agreements and stamping requirements.

Intent and Purpose of the Stamp Act: Upholding Fiscal Integrity

In its deliberations within N.N. Global III, the Supreme Court elucidated the primary objective of the Stamp Act, recognizing it as a fiscal statute primarily designed to generate revenue for the State. The Act mandates strict adherence to its provisions, with particular emphasis on the compulsory stamping of instruments. Notably, the Court underscored that the Act's purpose was never to furnish litigants with a tactical advantage to undermine their opponents through technicalities. The Court delved into the legislative intent behind Chapter IV of the Stamp Act, which outlines provisions for the stamping of instruments. It highlighted the provision necessitating the impoundment of instruments deemed chargeable with duty but lacking proper stamping. Central to the Court's analysis was Section 35 of the Stamp Act, which deems unstamped or insufficiently stamped instruments inadmissible as evidence—a pivotal consideration in the case at hand. Through its discussion, the Court emphasized that the core function of the Stamp Act is revenue generation, safeguarding against its misuse as a tool of legal maneuvering in litigation. This judicial interpretation underscores the imperative for courts to uphold the Act's integrity while ensuring fair and equitable legal proceedings.

Intent and Purpose of the Arbitration Act: Promoting Efficacious Dispute Resolution

In the jurisprudence of Indian arbitration law, the paramount objective is to facilitate a swift, efficient, and definitive resolution of disputes arising between parties regarding their substantive obligations. This ethos aligns with the contemporary imperatives of commerce and business efficiency, where the primacy of national courts yields to the parties' intentions and the competence of the Arbitral Tribunal. A cornerstone of this legal framework is the

principle of arbitral autonomy, granting parties to an arbitration agreement the freedom to shape their contractual arrangements and endowing the Arbitral Tribunal with the authority to adjudicate ensuing disputes. In the case of NN Global Mercantile Private Limited v. Indo Unique Flame Limited ("NN Global 1"), a three-judge bench upheld the separability doctrine, affirming that non-payment of stamp duty would not invalidate the arbitration agreement. This ruling reflected the overarching goal of promoting arbitration and positioning India as a pro-arbitration jurisdiction characterized by minimal judicial intervention. However, given the disparity with the precedent set in Vidya Drolia v. Durga Trading Corporation, the matter was referred to a five-judge bench, leading to the subsequent decision in NN Global 2.

The judgment in NN Global 2, by increasing the burden on courts and potentially delaying the appointment of arbitrators, diverged from the global trend of upholding the validity of arbitration agreements within underlying instruments or contracts. This departure adversely affected India's reputation as an arbitration-friendly jurisdiction, with courts impounding unstamped or deficiently stamped agreements referencing arbitration as a dispute resolution mechanism. However, the present judgment's reversal of the NN Global 2 stance is commendable, aligning with the Arbitration Act's intended aim of providing efficacious and expeditious remedies while fostering arbitration as a preferred means of dispute resolution. Moreover, this ruling reinforces India's position as an arbitration-friendly regime, echoing the jurisprudential consensus observed in foreign jurisdictions that uphold the separability doctrine.

Section 5 of the Arbitration Act: Minimizing Judicial Interference

The primary aim of the Arbitration Act is to limit the extent of judicial oversight in the arbitration process. Section 5¹¹⁴⁸ of the Arbitration Act opens with the phrase "notwithstanding anything

contained in any other law for the time being in force." This expansive language underscores the legislative intent to restrict judicial involvement during arbitration proceedings. Within the specific purview of Section 5, it mandates the full applicability and efficacy of the provisions delineated in Part I of the Arbitration Act, irrespective of any conflicting provisions in other laws. The inclusion of non obstante clauses by the legislature serves to remove impediments that may obstruct the operation of the legislation. Section 5 operates on both affirmative and negative fronts. Affirmatively, it confers jurisdiction upon judicial authorities over arbitral matters explicitly addressed or permitted in Part I of the Arbitration Act. Conversely, negatively, it constrains judicial interference in instances where the Arbitral Tribunal enjoys exclusive jurisdiction, thereby upholding the autonomy conferred upon the Tribunal by the parties involved. This statutory framework aligns with the overarching objective of the Arbitration Act to limit judicial intrusion, thereby facilitating a streamlined and autonomous arbitration process. The inclusion of Section 5 embodies a legislative commitment to promote arbitration as a preferred mode of dispute resolution, ensuring minimal judicial intervention and expeditious resolution of disputes.

Arbitration Act as a Self-Contained Code: Exclusivity and Efficacy

The Arbitration Act stands as a comprehensive and self-contained legal framework, addressing a spectrum of facets including arbitrator appointment, initiation of arbitration proceedings, award issuance, execution, and resolution of challenges to arbitral awards. Within such self-contained legal codes, the implication typically is that general legal procedures are implicitly excluded.

Being a thorough and autonomous legal code governing arbitration, the Arbitration Act mandates strict adherence to prescribed actions, precisely as delineated and not otherwise. Consequently, matters falling within

¹¹⁴⁸ Arbitration and Conciliation Act, 1996, § 5

the Act's ambit—such as arbitration agreements, arbitrator appointments, and Arbitral Tribunal jurisdiction—must adhere strictly to specified legal procedures. Implicit in this principle is the exclusion of actions not explicitly provided for within the Arbitration Act. It follows, therefore, that the interference of provisions from other statutes in the functioning of the Arbitration Act is impermissible unless expressly specified otherwise. The Arbitration Act stands as a singular and exhaustive legal framework within its scope, and any deviation from its prescribed procedures would contravene its essential provisions. This underscores the Act's role as the primary authority governing arbitration matters, ensuring clarity, consistency, and efficacy in dispute resolution processes.

Separability of the Arbitration Agreement: Foundational Tenet

The legal principle known as the separability or severability of an arbitration agreement is a fundamental tenet in arbitration law, acknowledging the distinct nature of the arbitration agreement. This principle is founded on several key considerations. Firstly, it recognizes the parties' intention to resolve any disputes, including those concerning the contract's validity, through arbitration. Secondly, it prevents a party from avoiding its commitment by claiming the underlying contract's invalidity. Thirdly, it distinguishes between the arbitration agreement and the underlying contract, ensuring that deficiencies in the latter do not affect the validity of the former. Lastly, it prevents courts from usurping the role of Arbitral Tribunals in adjudicating disputes, thereby preserving the integrity of the arbitration process. As a result, the separability presumption ensures that the arbitration agreement remains valid even if the underlying contract is terminated, repudiated, or frustrated. This upholds the parties' genuine intentions and safeguards the integrity of arbitral proceedings, thereby maintaining the sanctity of the arbitration process.

Doctrine of Competence-Competence: Tribunal's Authority to Determine Jurisdiction

The doctrine of kompetenz-kompetenz, incorporated into Indian arbitration law through Section 16 of the Arbitration Act, grants Arbitral Tribunals the authority to conclusively determine their own jurisdiction, aligning with the principle of competence-competence. This provision, mirroring Article 16 of the Model Law, mandates that challenges regarding the existence or validity of the arbitration agreement be initially addressed by the Arbitral Tribunal. Under Sections 16(2) and (3), parties retain the right to contest the Tribunal's jurisdiction based on grounds such as the non-existence or invalidity of the arbitration agreement. The Tribunal is obligated to adjudicate on these challenges, and if dismissed, it proceeds with arbitration and renders an award.

Following the Tribunal's issuance of an arbitral award, Section 16(6) allows aggrieved parties to seek the setting aside of the award under Section 34. Notably, Sections 16(5) and (6) collectively underscore Parliament's intent to entirely exclude court intervention during arbitral proceedings, reserving their jurisdiction solely for post-award matters. In essence, Section 16 of the Arbitration Act embodies the procedural and substantive elements of the competence-competence doctrine, affirming the Tribunal's primacy in determining its jurisdiction and streamlining the arbitration process.

Sections 8 and 11 of the Arbitration Act: Distinct Criteria for Judicial Review

The 2015 Amendment to the Arbitration Act delineates distinct criteria for judicial review under Sections 8 and 11. Section 8 mandates referral courts to assess the prima facie existence of a valid arbitration agreement, while Section 11 confines the court's jurisdiction to examining the mere existence of such an agreement. Despite both provisions aiming to ensure parties adhere to their contractual

commitments, their intended scope of power is deliberately separate.

This divergence is accentuated by Section 37¹¹⁴⁹ of the Arbitration Act, allowing appeals from an Arbitral Tribunal's order refusing referral to arbitration under Section 8 but not under Section 11. Hence, these provisions should not be interpreted as establishing a similar standard. Section 11(6-A) employs the phrase "examination of the existence of an arbitration agreement." The use of "examination" suggests the legislature's intent for the referral court to scrutinize or assess the parties' interactions to ascertain the existence of an arbitration agreement. Importantly, "examination" does not imply a cumbersome or disputed inquiry.

Knowledge Nexus: Arbitration Act's Silence on Stamp Duty

Parliament's enactment of the Arbitration Act, despite its awareness of the Stamp Act, notably omits stipulating stamping as a prerequisite for a valid arbitration agreement. Unlike Section 33(2)¹¹⁵⁰ of the Stamp Act, which mandates examining appropriate stamping, Section 11(6-A)¹¹⁵¹ of the Arbitration Act directs the court to focus solely on the existence of the arbitration agreement. This divergence underscores Parliament's deliberate decision not to impose a similar requirement under the Arbitration Act, despite its cognizance of the Stamp Act's provisions.

Based on the above, the Supreme Court held as below:

- (i) Agreements lacking proper stamping or with inadequate stamping are deemed inadmissible in evidence as per Section 35¹¹⁵² of the Stamp Act. However, such agreements are not automatically void, void ab initio, or unenforceable.

- (ii) Non-stamping or insufficient stamping is a rectifiable/curable flaw.
- (iii) Challenges related to stamping do not fall within the purview of determinations under Section 8¹¹⁵³ or Section 11¹¹⁵⁴ of the Arbitration Act. The referral court should only assess the prima facie existence of the arbitration agreement.
- (iv) Objections regarding the stamping of the agreement fall under the jurisdiction of the Arbitral Tribunal.
- (v) The rulings in N.N. Global II and in SMS Tea Estates are overturned. To that extent, the content in paras 22 and 29 of Garware Wall Ropes are also overruled.

Conclusion

In essence, the evolutionary trajectory of legal provisions and judicial interpretation underscores the necessity for a flexible yet principled approach to interim reliefs in arbitration proceedings. As India endeavors to fortify its arbitration framework, ensuring coherence and transparency in the application of these provisions assumes paramount significance in fostering arbitration as a preeminent dispute resolution mechanism.

The landmark pronouncement of the Constitution Bench exemplifies a pivotal inflection point in navigating the convergence of arbitration references and stamping requisites. It not only sets forth a paradigm for the cohabitation of the Arbitration Act and the Stamp Act but also harmonizes their respective imperatives. By elucidating the primacy of adhering to stamping prerequisites while safeguarding the autonomy of Arbitral Tribunals to adjudicate on their jurisdictional ambit, the judgment augurs a balanced legal milieu.

¹¹⁴⁹ Arbitration and Conciliation Act, 1996, § 37

¹¹⁵⁰ Indian Stamp Act, 1899, § 33(2)

¹¹⁵¹ Arbitration and Conciliation Act, 1996, §11(6A)

¹¹⁵² Indian Stamp Act, 1899, § 35

¹¹⁵³ Arbitration and Conciliation Act, 1996, §8

¹¹⁵⁴ Arbitration and Conciliation Act, 1996, §11

Moreover, the judgement rectifies the perceived dissonance introduced by its antecedent ruling, thereby rectifying the imbalance that potentially privileged revenue imperatives over the efficacy of arbitral proceedings. The preeminence accorded to the competence-competence principle underscores the Arbitral Tribunal's prerogative to adjudicate on enforceability, contingent upon rectifying any defects rendering the instrument inadmissible.

In summation, the verdict represents a pivotal milestone in the evolution of Indian arbitration jurisprudence. By navigating the labyrinthine terrain of legislative intent, statutory construction, and foundational principles, the judgment articulates a narrative that harmonizes revenue interests with the efficacy of arbitral adjudication, thereby fortifying the edifice of arbitration law in India.

