

CONUNDRUM REGARDING LEGALITY OF UNSTAMPED ARBITRATION AGREEMENT

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Abstract: *In the vast realm of Alternative Dispute Resolution (ADR), arbitration quite profoundly stands out as an expeditious tool to untangle knotty litigations that traditionally shatter through our court corridors. One shall and must be reminded of the profound and imperative implications of the Arbitration and Conciliation Act, 1996, which, in its wisdom, heralded an era where courts would step back, letting arbitration flourish. Yet, it's impossible to overlook a peculiar quandary that seems to exist in every arena, this paper revolves around scenario, what happens when an arbitration agreement is tarnished by the blot of being unstamped or inadequately stamped? While one must not overlook the tip of the iceberg of the honoured Indian Stamp Act of 1899, which meticulously deals with the stamp duty and penalty mechanism, one cannot shy away from noting its intricate, occasional, and cumbersome pathways. It is within the helm of possibilities, that the winds of legislative change might soon bring forth modifications, ensuring the two regimes – of arbitration and stamp duty – exist in a more harmonious ballet, free from unnecessary interruptions, and conundrums in the statutory matrix. This inquiry in this very paper seeks to delve deep, not just into the literal provisions, but also into the very spirit and ethos behind them, by channelling the judicial pulse and understanding the rich tapestry of judgments that have grappled with this question.*

Keywords: *Arbitration, Expeditious Tool, Unstamped Stamped, Indian Stamp Act, Harmonious.*

I. INTRODUCTION

‘I can imagine no society which does not embody some method of arbitration.’

- Herbert Read.

That being said the societal notion of India has meticulously developed and nurtured the very idea of arbitration that has been delicately woven, nurtured, and cherished over time. This ancient land, with its traditions steeped in dialogue and resolution, has recently rediscovered and embraced arbitration with renewed vigour. The increasing popularity of this mode of dispute resolution, in this contemporary era, can be attributed to the myriad benefits it unfurls. One witnesses a confluence of time-honoured wisdom and modern pragmatism in India's approach to arbitration.

“The Arbitration and Conciliation Act, 1996 (“the Act” for brevity) is the statute which in the contemporary time regulates arbitration in India and pragmatically embrace and lays down

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the procedure of arbitration. The Act is a special legislation and is not bound by the tiresome and exhaustive process of the Civil Procedure Code, 1908.

The Arbitration and Conciliation Act of 1996 was enacted by Parliament to fall in line with the “UNCITRAL model law on international commercial arbitration”, adopted by the UN in 1985, which recommended that all countries give due consideration to the said Model Law, given the desirability of uniformity of the law of arbitral procedure and the specific needs of international commercial arbitration law of practice.¹ Further to stay in the eye of the cyclone called globalization and to rank up in the ease of doing business this commercial practice of arbitration was crystallized by the enactment of the “Act”.

According to the Oxford Dictionary, “arbitration” means the settlement of a question at issue by one to whom the parties agree to refer their claims to obtain an equitable decision². Section 7 of the Arbitration and Conciliation Act, 1996 delineates the nature and form of an 'arbitration agreement.' It emphasizes that such an agreement refers to a consensus between parties to submit present or potential disputes, arising from a specified legal relationship to arbitration.

This agreement can either be a specific clause within a contract or a standalone agreement. Essential to its validity is its written form, which can be a signed document, an exchange of written communications confirming its content, or an exchange of statements where its existence is claimed by one party and not refuted by the other. Additionally, a contract's reference to a document with an arbitration clause can be deemed as an arbitration agreement if the reference effectively integrates the clause into the contract.”³

"Under the ambit of the said Act, the jurisdiction to adjudicate upon such matters lies singularly and unequivocally with the Arbitral Tribunal. Parallely, the venerable Indian Stamp Act of 1899 underscores the imperative that instruments must bear the appropriate stamp, as a testament to their validity, and to be executed in the manner ordained by our laws. An instrument devoid of this requisite stamping stands outside the precincts of evidentiary acceptance within the hallowed halls of the Indian Evidence Act and the courts of Law."

In the structured realm of legal instruments, it is of paramount importance that stamp fees are settled in their entirety before the instrument's execution. Only then does the agreement don

¹ G. Subba Rao, *Applicability of the Civil Procedure Code to Matters Before the Civil Courts Under the Arbitration and Conciliation Act, 1996*, (last visited 3 Oct. 2023, 4:20 PM). <https://shorturl.at/ajWXZ.html>

² Oxford Learner's Dictionaries, (last visited Oct. 25, 2023). www.oxfordlearnersdictionaries.com

³ Arbitration and Conciliation Act, 1996, § 7, No. 26, Acts of Parliament, 1996 (India).

the robe of legal enforceability. In the case of N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., it was held by their Lordships Dr. Justice D.Y. Chandrachud, Justice Indu Malhotra, and Justice Indira Banerjee, forming the Bench, that Arbitration clause in an agreement, held, need not be stamped thus the very contention challenging the maintainability of the suit stands futile.⁴

Thus, in the great theatre of legal instruments, there lies an often-misunderstood protagonist: the arbitration clause. This clause, when woven into the fabric of any lawful instrument or contract, stands apart, not as a mere shadow of the document, but as an entity with its own distinct character. Thus, when the contract, is rendered null or void, it does not spell the end of the arbitration clause. The demise of the contract does not, by any means, signal the downfall of the arbitration clause housed within it.

II. GRASPING THE ENFORCEABILITY OF THE AGREEMENT

In the nuanced labyrinth of contractual jurisprudence, the 'proper law of contract' emerges as a touchstone, judiciously chosen by the courts to dictate its multifarious dimensions. In instances where the confluence of the parties' intentions remains enigmatic, this law is invariably the one that shares the most intimate and genuine nexus with the contract in question. The courts, however, depend on several tests and presumptions for ascertaining the proper law; many of them are rebuttable.⁵

In the crafted contours of a contract, the arbitration clause stands as a beacon of mutual consensus. When shadows of divergence or transgressions against the covenant's terms emerge, this very clause, dedicated to the resolution of disputes, awakens to its role. Notably, the expiration of a contract doesn't signify the end of all its provisions. Within this intricate legal framework, we find ourselves greeted by the Doctrine of Separability⁶, highlighting the resilience of certain clauses. It means that the Arbitration clause in the contract is completely different, autonomous, and has a distinct existence from the other clauses or terms laid under the agreement.

This Doctrine is the foundation of the jurisprudential development of the International Arbitration Regime. Furthermore, in the case of the National Agricultural Coop. Marketing

⁴ N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2021) 4 SCC 379.

⁵ CR Rao, Proper Law of Contracts with Arbitration Clauses, 29 JILI (1987) 60.

⁶ Indian Const. art. 7.

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Federation India Ltd. v. Gains Trading Ltd., (2007)⁷ In the nuanced expanse of contractual relationships, an arbitration clause elegantly carves its distinct identity. Rather than dovetailing with the performance aspects of a contract, this clause predominantly concerns itself with the contours of dispute resolution. The cessation of a contract's performance, be it due to repudiation, inherent frustration, or a breach, doesn't cast a shadow on the vitality of the arbitration agreement. Instead, it remains as a beacon, illuminating the path for dispute redressal stemming from or linked to the contract.

This understanding isn't merely doctrinal but finds its firm grounding in the statutory fabric, as crystallized in Section 16(1)⁸. The said section emphasizes the autonomy of the arbitration clause, ensuring its insulation even if the overarching contract is deemed null and void. In essence, the demise of a contract doesn't, by default, spell the end for the arbitration agreement enshrined within. In the nuanced framework of an agreement, the arbitration clause serves a pivotal role, offering parties a pathway toward a judicious, streamlined, and prompt alternative to conventional courtroom battles.

This mechanism not only facilitates resolution but eases the strain on our judiciary. It charts a course for parties to find common ground in a secluded enclave, distinct from the public gaze of traditional courts. Predominantly, such clauses are anchored in the foundational principles of a legally binding contract. In many jurisdictions, notably India, the infusion of an arbitration clause in contracts necessitates the shared assent of the involved parties, paving the way for a mechanism to resolve disputes that may arise between them.

Certain jurisdictions go a step further, mandating 'consideration' to reinforce the legal sanctity of the arbitration clause within the contract. It's rare for courts to enforce a waiver of such a clause. Should either party find the Arbitrator's decision disagreeable, the law grants them the prerogative to appeal. However, this right isn't indefinite; legal provisions prescribe a stipulated timeframe for lodging such appeals.

For an agreement to wear the cloak of enforceability, it shall and must pass the touchstone contemplated under section 10⁹ of the Indian Contract Act which states for an agreement to attain the status of a contract, it necessitates the uncoerced consensus of parties possessing the legal capacity to enter into such an arrangement. Further, the foundation of the agreement

⁷ National Agricultural Coop. Marketing Federation India Ltd. v. Gains Trading Ltd., (2007) 5 SCC 692.

⁸ *Supra* note 3 § 16(1).

⁹ Indian Contract Act, 1872, § 10, No. 7, Acts of Parliament, 1872.

should rest on legitimate consideration and a lawful objective, provided it isn't expressly rendered void by the law, per-contra those agreements to have an arbitral clause then it must be according to the legislative mandate of section 7(4)¹⁰ of “the Act” which contemplates that, the term "arbitration agreement" is delineated as a consensus reached by parties to direct all or specific disputes, whether already manifested or potentially arising, stemming from a particular legal bond to arbitration.

This could be irrespective of its contractual nature. An arbitration agreement takes written form when it is: (a) Embodied in a document bearing the signatures of the involved parties; (b) Reflected through exchanged correspondences, be it letters, telex, telegrams, or any telecommunication modality, including electronic mediums, which chronicle the agreed terms; or (c) Manifest in exchanged submissions of claims and defenses where one party proclaims the agreement's existence and meets with no refutation from the other side.

The division bench of the Supreme Court comprising of Tarun Chatterjee and Dalveer Bhandari, JJ. In the case of Shakti Bhog Foods Limited vs. Kola Shipping Limited held that The existence of an arbitration agreement can be inferred from a document signed by the parties, or an exchange of letters, telex, telegrams or other means of telecommunication, which provides a record of the agreement. By virtue of Section 7¹¹, in the intricate maze of contract law, it emerges with clarity that a Charter Party Agreement doesn't mandatorily demand a formal written endorsement bearing signatures from the concerned parties.

The nuances of modern communication – be it through exchanged letters or digital avenues such as faxes and emails – are sufficiently eloquent. These seemingly ephemeral exchanges, when viewed in the crucible of intent and understanding, often crystallize into tangible evidence of mutual agreement and assent.¹²

III. JURISPRUDENTIAL DEVELOPMENT VIS-À-VIS JUDICIAL DICTUMS OF THE INDIAN COURT OF LAW

In its neonate stance, the esteemed Supreme Court maintained a stringent and unwavering view concerning the enforceability of arbitration agreements that were either unstamped or inadequately stamped, arguably sidelining broader objectivity but in the contemporary period, there stands a shift in the doctorial approach of the Supreme Court. Like, in the case of

¹⁰ *Supra* note 3 § 7(4).

¹¹ *Supra* note, 3 § 7.

¹² Shakti Bhog Foods Limited v. Kola Shipping Limited, MANU/SC/4185/2008.

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Hindustan Steel Ltd. v Dilip Construction Co. (1969) Upon reflection, the Supreme Court's deliberations seemed to overlook Section 17 of the Stamp Act¹³, which meticulously outlines the stipulated timeline for an instrument's appropriate stamping as per the Act's provisions.

The Court, recognizing an award as an 'instrument' within the ambit of the Stamp Act, reasoned that it necessitates proper stamping. An unstamped award, in such a scenario, cannot be admitted as evidence or acted upon. Nevertheless, the Court retains the authority to seize such an instrument and forward it to the Collector, duly indicating the due stamp duty and any consequent penalty. Moreover, it's pertinent to note that Section 36 of the Act doesn't proscribe the enforcement of an inadequately stamped instrument, provided the requisite stamp duty and penalty are settled in the manner detailed by the Act.¹⁴

Further in the case of *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) In instances where an arbitration agreement is encapsulated within a contract, one must perceive it as a collateral provision tailored specifically for dispute resolution, and it stands apart from the contract's core execution. Effectively, it's as though the court has been presented with two distinct agreements: the primary outlining the substantive terms, and the second dedicated solely to settling disputes.

They are, for simplicity's sake, integrated into one document. In its judicial wisdom, the Court elucidated that, those instruments not duly stamped fall short of gaining admissibility in the courtroom's evidentiary purview. An imperative scrutiny of such instruments is mandated, leading to their impounding in instances of insufficient stamping. Further, the Court opined that an agreement, albeit housing an arbitration clause, when devoid of the requisite stamp¹⁵ and emanating as an instrument necessitating registration, cannot lay the groundwork for the appointment of an arbitrator. Notably, the apex court's perspective appeared to cast a shadow over the esteemed Doctrine of Separability concerning the registration of the instrument in question.¹⁶

In the matter of *Garware Wall Ropes Ltd. v Coastal Marine Constructions and Engineering Ltd.*¹⁷, the Bench, with judicial wisdom and understanding, reaffirmed the tenets enshrined in the landmark *SMS Tea*¹⁸ judgment. The Court opined that the introduction of Section 1(6A)

¹³ Indian Stamp Act, 1899, § 17, No. 2, Acts of Parliament, 1899 (India).

¹⁴ *Hindustan Steel Ltd. v. Dilip Construction Co.*, (1969) 1 SCC 597.

¹⁵ *Supra* note 13, § 33 & 35.

¹⁶ *SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66.

¹⁷ *Wall Ropes Ltd. v. Coastal Marine Constructions and Engineering Ltd.*, (2019) 9 SCC 209.

¹⁸ *Supra* note 15.

through the Arbitration and Conciliation (Amendment) Act of 2015¹⁹ does not in any manner alter or overshadow the legal position crystallized in the aforementioned precedent.

Furthermore, in a trajectory of legal deliberations, the principles were echoed in both *Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v Bhaskar Raju*²⁰ and *Bros. and Vidya Drolia & Ors. v Durga Trading Corporation*²¹. The Supreme Court, with its judicious acumen, reinforced the findings and rationale manifested in the *Garware* judgment. It was elucidated that delving into the foundational elements of an agreement inevitably beckons an examination of its validity.

Such scrutiny undeniably encompasses, ensuring that the agreement's foundational dimensions are met, stamping being paramount among them. In synthesizing the rulings of these cases, it became evident that the mere termination of a contract or its severability does not cloak the Arbitration Agreement, or a related clause, in immunity, especially when it stands as a segment of the very instrument.

IV. CASE STUDY

M/S N.N. Global Mercantile Private Limited V M/S Indo Unique Flame Ltd. & Ors.²²

In a pivotal appeal that descended from the full bench verdict in the matter of *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*²³, prima, the focus was sharply set on the admissibility of unstamped arbitration agreements and the ambit of judicial intervention within the domain of arbitration. Before a five-judge bench, constituted by Justices K.M. Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy, and C.T. Ravikumar, the decision unfolded in a 3:2 ratio.

With the majority verdict, delivered by Justices K.M. Joseph, Aniruddha Bose, and C.T. Ravikumar, it was determined that an unstamped arbitration agreement does not find its footing in law. In contrast, Justices Ajay Rastogi and Hrishikesh Roy, charting a divergent path in their dissent, postulated the validity of such unstamped arbitration agreements, particularly during the pre-referral phase.

¹⁹ Arbitration and Conciliation (Amendment) Act, 2015, § 11(6A), No.3, Acts of Parliament, 2016.

²⁰ *Dharmaratnakara Rai Bahadur Arcot Narainswamy Mudaliar Chattram v. Bhaskar Raju and Bros.*, (2020) 4 SCC 612.

²¹ *Vidya Drolia v. Durga Trading Corpn.*, (2019) 20 SCC 406.

²² *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, (2021) 4 SCC 379.

²³ *Id.*

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The issue formed by the constitutional bench was does the statutory bar delineated in Section 35 of the Stamp Act, 1899²⁴, when applied to documents necessitating a stamp duty as per Section 3²⁵, coupled with the Schedule of the Arbitration and Conciliation Act, 1996, lead us to infer that an arbitration agreement embedded within such a document (not itself requiring the stamp duty) is rendered nugatory or unenforceable until the substantive contract is dutifully stamped?"

In the realm of jurisprudential analysis, Justices Joseph, Bose, and Ravikumar have, in their collective wisdom, elucidated a nuanced interpretation of instruments subjected to stamp duty. An instrument that beckons the necessity for stamp duty and encompasses an arbitration clause, but remains unstamped, finds itself perilously poised. Such an instrument, they opined, cannot claim the sanctity of being an 'enforceable contract' as envisaged under Section 2(h)²⁶ of the Contract Act. Furthermore, its legitimacy remains equally challenged under Section 2(g)²⁷ of the said Act. The intersection of these statutory provisions casts a discerning light on the essential characteristics that breathe life into a contract and the discerning opinion of Justices Rastogi and Justice Roy, the absence or inadequacy of stamping on the principal instrument does not rob the embedded arbitration agreement of its enforceability.

The minority view underscored that a deficiency in stamping, being a rectifiable shortcoming, cannot possibly vitiate the arbitration clause into nullity. The majority further concluded that - In the jural co-relationship of obligations and duties, the Act unequivocally demands its due in the form of stamp duty. An instrument that has either escaped this duty or borne it inadequately stands crippled by the iron-clad edict of Section 35²⁸ of the Stamp Act. Until such time it is rectified through impounding and proper duty is meted out, the instrument languishes in a state of liminality.

The dictates of Section 33²⁹, coupled with the formidable embargo set by Section 35³⁰ of the Stamp Act, cast the arbitration agreement within such an instrument into a shadow, rendering it virtually ethereal in the eyes of the law. Only when the instrument gains redemption under the Stamp Act does this agreement resurface with legal life.

²⁴ *Supra* note 15.

²⁵ *Supra* note 3, § 3.

²⁶ *Supra* note 9, § 2(h).

²⁷ *Supra* note 9, § 2(g).

²⁸ *Supra* note 13, § 35.

²⁹ *Supra* note 13, § 33.

³⁰ *Supra* note 13, § 35.

Furthermore, the prevailing view held that during the scrutiny under Section 11³¹ of the Arbitration and Conciliation Act, the Court is duty-bound to meticulously inspect the document. Should it discover that the instrument is either not stamped or inadequately stamped, it ought to impound the same forthwith. Yet, in a nuanced dissent, the minority opined that the rigors of examining and impounding ought not to be undertaken at the nascent stage, notably under Section 11's³² purview.

According to this minority perspective, whether unstamped or inadequately so, the copy or authenticated replica of the arbitration agreement remains a legally binding instrument for initiating the arbitrator's appointment. It further underscored that a premature foray into stamp duty considerations introduces needless procedural intricacies, culminating in protracted litigations before the Courts. In a more elucidated stance, the majority contended that a certified copy is admissible during the Section 11³³ deliberations solely if it unequivocally marks the stamp duty paid. Absent such a clear indication, the Court, they opine, should desist from acting upon that particular certified copy.

V. POSITION IN OTHER JURISDICTIONS

A perusal of jurisprudential forays in varied jurisdictions may illuminate how other nations grapple with the conundrum of upholding an unstamped arbitration agreement. The imperative inquiry is whether the sanctity of the arbitration clause remains untarnished even when the very fabric of the contract is deemed null and void in the legal theatre.

A. United Kingdom

Section 7³⁴ of the Arbitration Act, 1996 of the United Kingdom elegantly posits that an arbitration accord, either embedded within or intended to be part of another pact (irrespective of its written form), remains unassailed in its validity even if the primary contract is rendered nugatory, never materialized, or lost its efficacy. This provision, while resonating with the spirit of Section 16³⁵ of our Act, is draped in a more expansive linguistic canvas.

³¹*Supra* note 3, § 11.

³²*Id.*

³³*Supra* note 3, § 11.

³⁴Arbitration Act, 1996, § 7, No. 23, Acts of Parliament, 1996 (UK).

³⁵*Supra* note 3, § 16.

Such phrasing underscores that the sanctity of the arbitration clause remains intact, even if the principal agreement, within which it is enshrined, stands on shaky legal grounds or is non-existent.

B. United States of America

In the chamfered development of American jurisprudence, the esteemed Supreme Court, when confronted with 'Buckeye Check Cashing, Inc v. Cardegna et al.'³⁶, anchored its deliberation upon seminal precedents - 'Prima Paint'³⁷ and 'Southland Corp'³⁸.' At the heart of this discourse was a poignant reiteration: under the aegis of federal arbitration jurisprudence, an arbitration clause stands distinguished, almost in a sanctified silo, from the contractual tapestry it is woven into. Consequently, should clouds of contention hover over the validity of the contract, save for the arbitration clause, it is the arbitrator's mantle to first dispel or confirm these clouds

In the grand ambit of American legal discourse, the esteemed Supreme Court, when deliberating upon 'Rent-A-Center, West, Inc. v. Jackson'³⁹, astutely dissected the nature and character of challenges one might level against an arbitration agreement. The Court, with its customary sagacity, decreed that an objection to another clause or even to the contract in its entirety, should not stymie a court from lending its weight to the enforcement of a specific arbitration provision.

C. Singapore

In the throes of a dispute, wherein the challenge was directed at the constitution of an arbitration panel premised on the belief that the contract's governing law would preside over the arbitration too, the venerable High Court of Singapore, in its judgment in BNA v. BNB and BNC⁴⁰, opined with a certain gravitas. The Court underscored that the celebrated doctrine of separability should extend only as far as reasonably required to honour the parties' manifest intent to arbitrate their disagreements.

Elaborating further, the Court articulated that the doctrine's cardinal objective is to fortify a robust arbitration agreement, which lucidly mirrors the parties' aspiration to navigate their disputes through the arbitration channel. Such a safeguard ensures that the arbitration

³⁶ Buckeye Check Cashing, Inc v Cardegna et al. (2006) US SC 440.

³⁷ Prima Paint Corporation v. Flood & Conklin MFG. CO., 388 US 395 (1967).

³⁸ Southland Corp. v. Keating, 79 L Ed 2d: 465 US 1 (1984).

³⁹ Rent-A- Center, West, Inc. v. Jackson, 561 US 63 (2010).

⁴⁰ BNA v. BNB and BNC [2019] SGHC 142.

agreement retains its sanctity even if the foundational contract finds itself mired in invalidity on other fronts.

VI. CONCLUSION

In the constellation of Alternate Dispute Resolution (ADR), with Arbitration as its stellar component, has profoundly reimagined India's juristic landscape. Aspiring to be recognized as an epicenter for Arbitration proceedings, India has recalibrated its arbitration edifice with a blend of courageous changes and a forward-leaning approach. Such a proactive and invigorated framework of Arbitration not only aligns with the global investment climate but also augments the labyrinth of international business transactions.

The recent jurisprudential intervention by the Supreme Court in the case of *N. N. Global Mercantile*⁴¹ is a testament to the Court's commitment to clearing the murky waters stirred by antecedent, and at times, discordant verdicts. Such resolute strides, clearing the ambiguity, promise to cast a transformative shadow over the tapestry of Arbitration proceedings that unfurl across the Indian subcontinent. Moreover, the enactment of statutes like the Arbitration and Conciliation Act of 1996 is emblematic of India's concerted endeavor to champion ADR, placing Arbitration at the forefront as the preferred crucible for dispute resolution.

Delving deeper, it's often the nuanced intricacies woven within an agreement that lay bare the unambiguous intention of the involved entities to cast their lot with Arbitration. Such articulations, often found within the four corners of an agreement, stand as silent but compelling testaments to the parties' unequivocal faith in this non-litigious mode of dispute redressal.

In the majestic chronological canons of our jurisprudential landscape, the Hon'ble Supreme Court has, with its recent dictum, gracefully closed a chapter on the longstanding puzzle of enforceability concerning unstamped or inadequately stamped Arbitration Agreements. However, a discerning eye might perceive a subtle deviation from the Court's time-honoured philosophy of restrained judicial interference. Introducing an additional tier of examination to this already intricate process could, perhaps unintentionally, pave the way for potential delays in the consecration of arbitrators.

⁴¹ *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, (2021) 4 SCC 379.