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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th January, 2022

\+ **ARB. A. (COMM.) 6/2021 & I.A. 2614/2021**

RELIGARE FINVEST LIMITED ….. Appellant

Through: Mr. Ashish Dholakia, Senior Advocate with Mr. Sandeep Das, Mr. Sitesh Mukherjee, Ms. Arushi Mishra and Mr. Akash Panwar, Advocates.

versus

ASIAN SATELLITE BROADCAST PRIVATE LIMITED AND ORS. ..... Respondents

Through: Mr. Nakul Dewan, Senior Advocate with Mr. Aman Raj Gandhi, Mr. Sambit Nanda, Mr. Vardaan Bajaj and Ms. Ridhima Sharma, Advocates.

\+ **ARB. A. (COMM.) 7/2021 & I.A. 2625/2021**

RELIGARE FINVEST LIMITED ..... Appellant

Through: Mr. Ashish Dholakia, Senior Advocate with Mr. Sandeep Das, Mr. Sitesh Mukherjee, Ms. Arushi Mishra and Mr. Akash Panwar, Advocates.

versus

KONTI INFRAPOWER AND MULTIVENTURES PRIVATE LIMITED AND ORS. ..... Respondents

Through: Mr. Nakul Dewan, Senior Advocate with Mr. Aman Raj Gandhi, Mr. Sambit Nanda, Mr. Vardaan Bajaj and Ms. Ridhima Sharma, Advocates.

\+ **ARB. A. (COMM.) 8/2021 & I.A. 2627/2021**

RELIGARE FINVEST LIMITED ..... Appellant

Through: Mr. Ashish Dholakia, Senior Advocate with Mr. Sandeep Das, Mr. Sitesh

Mukherjee, Ms. Arushi Mishra and Mr. Akash Panwar, Advocates.

versus

WIDESCREEN HOLDINGS PRIVATE LIMITED AND ORS.
..... Respondents

Through: Mr. Nakul Dewan, Senior Advocate with Mr. Aman Raj Gandhi, Mr. Sambit Nanda, Mr. Vardaan Bajaj and Ms. Ridhima Sharma, Advocates.

\+ **ARB. A. (COMM.) 9/2021 & I.A. 2629/2021**

RELIGARE FINVEST LIMITED ..... Appellant

Through: Mr. Ashish Dholakia, Senior Advocate with Mr. Sandeep Das, Mr. Sitesh Mukherjee, Ms. Arushi Mishra and Mr. Akash Panwar, Advocates.

versus

EDISONS INFRAPOWER AND MULTIVENTURES PVT. LTD. AND ANR. .....Respondents

Through: Mr. Nakul Dewan, Senior Advocate with Mr. Aman Raj Gandhi, Mr. Sambit Nanda, Mr. Vardaan Bajaj and Ms. Ridhima Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present appeals under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 [*hereinafter referred to as the* ***'A&C Act'***], impugned four separate orders dated 22nd October, 2020, passed by the learned

Arbitrator under Section 16 of the A&C Act.

2. Since the impugned orders have identical reasoning, and all the appeals contain common grounds of challenge, the same are fit to be disposed of by way of this common order.

BRIEF FACTS

3. A summary of the facts of the case, is as follows:

3.1. In March 2014, seven companies forming part of the Zee Group of Companies approached the Appellant *viz.* Religare Finvest Limited [*hereinafter,* ***"Religare"***] to avail loan facilities for investment and consolidation of promoters' interest in their group companies.

3.2. Separate Loan Agreements dated, all on 15th March, 2014 [*hereinafter referred to as the* ***"Loan Agreements"***] were entered into between Religare and (i) Asian Satellite Broadcast Pvt. Ltd.,[1] (ii) Konti Infrapower & Multiventures Pvt. Ltd.,[2] (iii) Widescreen Holdings Pvt. Ltd.,[3] and (iv) Edisons Infrapower & Multiventures Pvt. Ltd.[4] [*hereinafter collectively referred to as the* ***"Zee Companies"***].

3.3. Zee Companies failed to repay their debt on time, constraining Religare to issue notices dated 7th May, 2019 invoking arbitration *viz.* Clause 16.1 contained in the Loan Agreements. Consequently, a common Sole Arbitrator was appointed on 7th May, 2019 and four separate arbitration proceedings ensued.

[1] Respondent No. 1 in Arb. A. (Comm.) 6/2021.
[2] Respondent No. 1 in Arb. A. (Comm.) 7/2021.
[3] Respondent No. 1 in Arb. A. (Comm.) 8/2021.
[4] Respondent No. 1 in Arb. A. (Comm.) 9/2021.

3.4. Zee Companies filed applications in each of the proceedings, challenging the scope of proceedings and jurisdiction of the Arbitrator under Section 16 of the A&C Act. It was *inter-alia* contended that, as the Loan Agreements were first executed in Mumbai, they should have been stamped in accordance with Section 24 read with Entry 5(h)(A)(iv)(b) of Schedule I of the Maharashtra Stamp Act, 1958 [*hereinafter, **"MSA"***] at the rate of 0.2%, and since the Loan Agreements are insufficiently stamped, they are unenforceable. Thus, unless deficient Stamp Duty is paid, the proceedings should be terminated.

3.5. Religare contested the application raising several jurisdictional objections and on merits contended that the Loan Agreements are duly stamped as per Article 5(c) of Schedule I-A of the Indian Stamp Act, 1899 (as applicable to the National Capital Territory of Delhi) [*hereinafter, **"ISA"***].

4. On 22nd October 2020, the Arbitrator passed the impugned Orders, accepting the plea of the Zee Companies. However, instead of terminating the proceedings, they were adjourned *sine die*, observing that if Religare wishes to continue with its claim, it should take the original Loan Agreement to the Collector of Stamp, Maharashtra – who will, within three months, determine the Stamp Duty payable on the same, including penalty, if any, in terms of the MSA. Further, both parties were given liberty to approach the Tribunal after the requisite Stamp Duty on the Loan Agreements is paid.

5. Aggrieved with the afore-noted order, Religare has filed the present appeals.

RELIGARE'S CONTENTIONS

6. Mr. Ashish Dholakia, Senior Counsel for Religare, has made extensive submissions that are broadly categorised under separate heads, and are discussed in detail later in the judgment while giving issue-wise findings. His contentions are as follows:

A. *Judgments relied upon in the impugned order have been over-ruled.*

6.1. The judgments relied upon by the learned Arbitrator *viz.* ***SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd.***,[5] and ***Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engineering Ltd***,[6] have been overruled by the Supreme Court in ***N.N. Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. & Ors.***[7]

6.2. In the ***N.N. Global*** judgment, the Supreme Court has expressly held that:- (a) there is no legal impediment on the enforceability of an arbitration agreement pending payment of Stamp Duty on the substantive contract; and (b) relief can be granted under Sections 9 and 11 of the A&C Act, even if the substantive contract is insufficiently stamped.

B. *Issue of insufficient stamp duty is not a jurisdictional issue under Section 16 of the A&C Act.*

[5] (2011) 14 SCC 66.
[6] (2019) 9 SCC 209.
[7] 2021 SCC OnLine SC 13.

6.3. The application under Section 16 of the A&C Act was not maintainable, since the sole ground taken thereunder - regarding payment of insufficient Stamp Duty - is not a jurisdictional issue, but is instead purely a question of fact.

C. *The MSA is inapplicable*

6.4. The learned Arbitrator has wrongly applied the MSA. Section 1(2) thereof restricts its applicability only to the State of Maharashtra. In the facts of the present case, the following distinguishing features emerge:- (i) the Loan Agreements were executed by the lender *i.e.*, Religare, in Delhi; (ii) they are being enforced in Delhi; and (iii) they had been duly stamped under Article 5(c) of Schedule I-A of ISA, as applicable to Delhi.

6.5. The learned Arbitrator has erroneously relied upon the latter half of the definition of "chargeable" under Section 2(d) of the MSA – which only deals with instruments executed before the MSA, whereas, admittedly, the Loan Agreements were executed after commencement of the MSA. After the commencement of MSA, one has to look at Sections 3 and 19 thereof, which clearly state that instruments would be chargeable with duty in Maharashtra under the MSA, when such instruments are received in the State, and not otherwise. The chargeability has reference to "*instrument*", as defined under Section 1(l) of the MSA, to mean a document by which any right or liability is created, etc. Notably, this definition expressly excludes promissory notes and debentures. It is pertinent to note that in the present case, admittedly, the only securities provided under the Loan Agreements were unlisted debentures and a

demand promissory note. Therefore, the Loan Agreements should not be treated as chargeable instruments under the MSA.

6.6. In any case, an "instrument" which is in the nature of a loan agreement, comes into existence only when the borrower and lender both sign it. If only one of them signs it, then it is not yet an instrument chargeable with duty. Since the Loan Agreements became an instrument only when Religare signed it in Delhi, duty is payable under the relevant provisions of ISA. In support of his contentions, Mr. Dholakia placed reliance upon the judgments of the High Court of Madras in ***Chief Controlling Revenue v. Canara Bank***,[8] and ***M. Manohar v. M. Ram Mohan***.[9]

6.7. Mr. Dholakia also made additional submissions regarding the learned Arbitrator applying the wrong provision of the MSA for determining the duty payable. However, such submissions would involve going into subject matter, which would become relevant subject to the determination of the question of applicable statue. Thus, at this stage the same are not being recorded.

ZEE COMPANIES' CONTENTIONS

7. Mr. Nakul Dewan, Senior Counsel for Zee Companies, on the other hand, defends the impugned Order and at the onset, states that no claims lie against Zee Companies, since they have already entered into a Settlement Agreement dated 30th July 2018 with Religare. Further, *qua* the contentions urged by Religare, he controverts as follows:

[8] 1967 SCC OnLine Mad 102.
[9] 1991 SCC OnLine Kerala ITA DB.

A. *Religare has admitted that the Loan Agreements are insufficiently stamped.*

7.1. This is the undisputed position of both parties, that the Loan Agreements, as on the date of invocation of arbitration, as well as on the date of the filing of the statement of claim, were insufficiently stamped. This is evident from paragraph no. 5 of the preliminary submissions of the Zee Companies' reply to the application under Section 16 of the A&C Act, where it has been stated that:

> *"Even though it was the duty of the Respondent to pay the requisite Stamp Duty as applicable on the loan against securities agreement, however, the Appellant has now additionally paid the requisite Stamp Duty of Rs. 1000 bearing Certificate No. IN- CL80662529543007R dated 08.11.2019 as applicable on Loan against Securities as per Schedule I-A, Entry No. 5(b) of the Indian Stamp Act, 1899 as in force in the National Capital Territory of Delhi and shall be entitled to recover the amount of the stamp duty paid from respondent No. 1"*

7.2. Therefore, the only dispute between the parties is the consequence which results from commencement of arbitration proceedings on the basis of an inadequately stamped document. The loan agreement was required to be stamped in accordance with the MSA, at 0.2% of the transaction value, per Section 24 read with Entry 5(h)(A)(iv)(b) of Schedule I, in accordance with the definitions of: "chargeable" under Sections 2(d), "executed" under Section 2(i), "instruments chargeable with duty" under Section 3, and "instruments executed in State" under Section 17 of the MSA. A plain reading of the aforenoted provisions establishes the following:

i. Section 3 of the MSA requires that every instrument executed within Maharashtra is to be stamped at the rates mentioned in Schedule I.

ii. Execution, according to Section 2(i) of MSA, is completed when an executant signs the document.

iii. In situations where a document is executed by multiple parties at different times, Section 2(d) of the MSA makes Stamp Duty chargeable where the instrument was first executed.

iv. The document must be stamped within one working day after its execution as per Section 17.

7.3. Both the parties are *ad idem* on the fact that Loan Agreements were first signed and executed by the Zee Companies in Maharashtra. Thus, the parties clearly understood that the Loan Agreements were to be stamped in accordance with the MSA. Further, that if the Loan Agreements were indeed to be stamped in Delhi, in such case, adequate stamp paper would have been purchased from Delhi and sent to Bombay for execution, which was not done. Since the Loans Agreements were first signed in Maharashtra, the parties were thus, well-aware that Stamp Duty had to be paid at rates prescribed under the MSA.

7.4. The money transactions under the Loan Agreements were facilitated through a bank account which was located in Maharashtra and was also credited into the respective accounts of the Zee Companies/Respondents – too also located in Maharashtra.

7.5. The stand taken by Religare – that the Loan Agreements were accepted, signed and completed in Delhi – is inconsequential due to the mandate of Section 3 read with Sections 2(d) and 2(i) of the MSA, which for imposition of Stamp Duty, requires only execution of the document.

7.6. Religare has failed to pay the requisite Stamp Duty as per the MSA. Consequently, the Loan Agreements are insufficiently stamped under the

law applicable to the Loan Agreements.

B. *Jurisdiction is to be decided as a preliminary objection*

7.7. Courts in several cases have held that the issue of jurisdiction raised under Section 16 of the A&C Act is required to be decided as a preliminary ground, and not at the time of the passing of the final Award.[10]

7.8. The Tribunal rightly decided the application under Section 16 of the A&C Act as a preliminary issue – as it goes to the root of the matter. This is because the Loan Agreements, being insufficiently stamped, cannot be accepted in evidence in terms of Section 34 of the MSA. Section 33 of the MSA empowers the Tribunal to impound insufficiently stamped document(s). It is a settled principle of law that an Arbitral Tribunal has the authority to impound an insufficiently stamped document.

7.9. The Supreme Court in ***SMS Tea Estates*** *(supra)*, has held that where an arbitration clause is a part of an insufficiently stamped document, it cannot be acted upon and enforced. Similarly, it was held in ***Garware Wall Ropes*** *(supra)* that an arbitration clause contained in an insufficiently stamped document is not enforceable by law. Both these decisions also demonstrate that Religare's reliance on the doctrine of separability is without any basis.

C. *Liability to pay stamp duty as applicable to Delhi is independent of liability under the MSA*

[10] *McDermott International Inc. v. Burn Standard Co.* (2006) 1 SCC 181. *See* Para 51; *Kvaerner Cementation India Ltd. v. Bajranglal Agarwal* (2012) 5 SCC 214. *See* Para 5; and *A. Ayyasamy v. A. Paramasivam Paramasivam* (2016) 10 SCC 386. *See* Paras 12.3 & 12.4.

7.10. The liability towards Stamp Duty arose on two occasions *i.e.,* when the Loan Agreements were: (i) executed in Maharashtra; and (ii) received in New Delhi for execution by Religare. The Stamp Duty payable in Maharashtra was significantly higher than what is payable in Delhi. The submission made by Religare that since the Loan Agreements were executed in Delhi, the MSA would be inapplicable in view of Section 1(2) of the MSA – is a feeble attempt at evading the lawful payment of higher Stamp Duty and suffers from the vice of perversity. Where an instrument is executed in more than one State, and Stamp Duty of one State is paid, the requirement to pay the Stamp Duty of another State should only arise when the instrument is taken into that State and is acted upon. In such a scenario, only the difference of Stamp Duty is required to be paid in case the other State has a higher rate of Stamp Duty. Reliance is placed upon the judgement in ***New Central Jute Mills Co. Ltd. v. State of West Bengal & Ors.***,[11] to this effect.

7.11. Religare has adopted a contradictory position in its reply to the application filed under Section 16 of the A&C Act vis-à-vis its written submissions. In its reply, Religare has stated that the Stamp Duty of Rs. 100/- was incorrectly paid by it at Mumbai, at the behest of the Zee Companies, and since the Loan Agreements were finally concluded in Delhi, Stamp Duty would be payable as applicable to Delhi, and not Maharashtra. On the other hand, in its written submissions, Religare has contended that the Stamp Duty of Rs. 100/- has been paid correctly and in accordance with the MSA, and the Stamp Duty applicable to Delhi of

[11] AIR 1963 SC 1307

Rs. 50/- has also been paid. Nevertheless, these submissions are without merit and only go to show that Religare accepts Zee Companies' submission that the instruments were subject to Stamp Duty in both Maharashtra and Delhi. However, by setting out an incorrect determination of Stamp Duty payable on the Loan Agreements, Religare is trying to evade its payment obligation.

ANALYSIS AND FINDINGS

8. Mr. Dholakia argued that Zee Companies' applications under Section 16 challenging the jurisdiction of the learned Arbitrator were not maintainable, inasmuch as the sole ground taken thereunder – regarding insufficiently of stamp duty – is not a jurisdictional ground in the first place. In the opinion of the Court, this contention is unmerited. No doubt, in ***N.N. Global*** *(supra)*, the Supreme Court had partially overruled the earlier decisions in ***SMS Tea Estates*** *(supra)* and ***Garware Wall Ropes*** *(supra)*, nevertheless, the question of insufficiency of Stamp Duty is a jurisdictional issue. To this extent, in ***N.N. Global*** (*supra*), the Supreme Court has observed as under:

> *"In our view, there is no legal impediment to the enforceability of the arbitration agreement, pending payment of Stamp Duty on the substantiative contract. The adjudication of the rights and obligations under the Work Order or the substantive commercial contract would however not proceed before complying with the mandatory provisions of the Stamp Act."*
>
> [Emphasis Supplied]

9. It also held that an Arbitral Tribunal is obligated to examine whether an instrument before it is adequately stamped or not. The relevant portion reads as under:

> *"Section 33 casts a statutory obligation on every person empowered by law, or holding a public office, or a person who by consent of parties (which would*

> *include an arbitrator) is empowered to receive evidence, to examine the instrument presented before him, and ascertain whether the instrument is duly stamped. This would include the court being an authority empowered to receive an instrument in evidence. In view of the statutory interdict, the bar against the admissibility of an unstamped instrument, is absolute in nature, including for a collateral purpose."* [Emphasis Supplied]

10. Further, the Supreme Court also dealt with the power of an Arbitrator to impound insufficiently stamped documents, holding as under:

> *"In an arbitration agreement, the disputes may be referred to arbitration by three modes.*
> *a) The first mode is where the appointment of the arbitrator takes place by the parties consensually in accordance with the terms of the arbitration agreement, or by a designated arbitral institution, without the intervention of the court. In such a case, the arbitrator / tribunal is obligated by Section 33 of the Indian Stamp Act, 1899 (or the applicable State Act) to impound the instrument, and direct the parties to pay the requisite Stamp Duty (and penalty, if any), and obtain an endorsement from the concerned Collector.*
>
> *This would be evident from the provisions of Section 34 of the Stamp Act which provides that "any person having by law or consent of parties authority to receive evidence" is mandated by law to impound the instrument, and direct the parties to pay the requisite stamp duty"* [Emphasis Supplied]

11. The 'doctrine of severability' of the arbitration clause, invoked by Religare, cannot be misconstrued to mean that in arbitration proceedings, the question of insufficiency of Stamp Duty has to be ignored altogether. Non-payment or deficiency in Stamp Duty may not invalidate the Loan Agreements, but certainly, this shortcoming renders such documents to be inadmissible in evidence and liable to be impounded, till the time requisite Stamp Duty is paid. The question of deficiency can be raised even if the arbitral proceedings themselves commenced on the basis of such a deficiently stamped agreement. Moreover, in light of the principle of *kompetenz-kompetenz*, the Arbitral Tribunal is vested with wide powers to rule on its jurisdiction – which includes the powers to examine any objection *qua* the existence or validity of the arbitration agreement, which by necessarily extension includes the enforceability of a document deficiently stamped.

Therefore, the plea of insufficiency of Stamp Duty, touching upon the question of the validity of the Loan Agreements, is a jurisdictional issue, and has been correctly entertained and decided by the learned Arbitrator as a preliminary issue under Section 16 of the A&C Act.

12. It must also be noted that in the instant case, the original Loan Agreements were not produced during the arbitral proceedings, and thus, could not be impounded by the Arbitrator. Hence, it was directed that Religare take the original Loan Agreements to the Collector of Stamps, Maharashtra for determination of Stamp Duty, before proceeding further in arbitration. The Tribunal has not dismissed the claim, but has merely adjourned the proceedings until till the Loan Agreement is properly stamped. The Court finds these directions to be in consonance with the decision in ***N.N. Global*** (*supra*), as well as within the scope of the A&C Act, and further finds no jurisdictional infirmity in such a direction.

13. Next, the court proceeds to examine the question of the applicable Stamp Act. But before dealing with the contentions of Senior Counsel for both parties on this issue, it would be apposite to take note of the relevant provisions of the MSA, which are produced hereinbelow:

> *"**Section 2. Definitions***
>
> *(a) xx ... xx ... xx*
> *(b) xx ... xx ... xx*
> *(c) xx ... xx ... xx*
> *(d) "chargeable" means, as applied to an instrument, executed or first executed after the commencement of this Act, chargeable under this Act, and as applied to any other instruments, chargeable under the law in force in the State when such instrument was executed or, where several persons executed the instrument at different times, first executed;*

xx xx xx xx

(i) "executed" and "execution" used with reference to instruments, mean "signed" and "signature"; Explanation. - The terms "signed" and "signature" also include attribution of electronic record as per Section 11 of the Information Technology Act, 2000;

xx xx xx xx

(l) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt;

xx xx xx xx

Section 3. Instrument chargeable with duty. - *Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in Schedule I as the proper duty therefor respectively, that is to say- (a) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act; (…)*

xx xx xx xx

Section 17. Instruments executed in State. - *All instruments chargeable with duty and executed by any person in this State shall be stamped before or at the time of execution or immediately thereafter or on the next working day following the day of execution. (…)"*

[Emphasis Supplied]

14. The learned Arbitrator has held that the Loan Agreements are amenable to payment of Stamp Duty under the MSA. It is thus imperative to examine the provisions of this Act, to determine if the MSA is indeed applicable. The controversy regarding applicable law, for the purpose of ascertaining liability for payment of Stamp Duty, arises on account of the parties appending signatures at two different points of time at two different geographical locations.

15. A plain reading of the provisions of MSA, as extracted above, reveal

that under Section 17 of the MSA, all instruments chargeable with duty and executed by all persons in the State of Maharashtra have to be stamped: (i) either before, or (ii) at the time of, or (iii) immediately one working day after - its execution. Thus, for an instrument to be "*chargeable*" under Section 3 read with Section 2(d) of the MSA, every instrument has to be executed within the state of Maharashtra. "*Executed*" and "*execution*", as defined under Section 2(i) of the MSA, with reference to "*instruments*" means, when it is signed/ signatures are appended.

16. The above definitions have to be applied to the facts of the instant case to discern as to 'when' and 'where' the Loan Agreements were signed and executed. Indisputably, documents here *i.e.*, the Loan Agreements – were first signed by the respective Zee Companies in Mumbai. The witness also appended his signatures at Mumbai, and finally, the documents was executed by Religare in Delhi. These facts, borne out from the relevant portion of the pleadings of the parties, are beyond controversy, and have also been observed by the learned Arbitrator in paragraph no. 16 of the impugned Order. However, the crucial question to be answered is whether the initial appending of signatures in Mumbai, would render the documents chargeable to stamp duty under the MSA. On this aspect, the learned Arbitrator essentially relied upon Section 2(d) of the MSA. Relevant portion of the impugned order reads as under:

> *"15. This brings me to the rub of the issue-<u>whether the stamp duty on the Loan Agreement is payable as provided under the Maharashtra Act or under the Indian Stamp Act as applicable to Delhi</u>.*
>
> *16. <u>As already noticed above there is no dispute between the parties that the Loan Agreement was first executed in Mumbai, and then in Delhi</u>. <u>This being so, it becomes chargeable to stamp duty under Section 2 (d) of the</u>*

> *Maharashtra Act which lays down that where an instrument is executed by several persons at different times it will be chargeable with Stamp Duty where it was first executed."*
>
> [Emphasis Supplied]

17. This extract indicates that the learned Arbitrator has taken a view on the applicable law, by relying upon the expression "*first executed*" – found in the MSA – to be a determinative factor. In the considered opinion of the Court, this is where the learned Arbitrator fell in grave error, for reasons which are elucidated below.

18. A document can only be said to be executed when it is signed by both the parties. Signatures appended in Mumbai by Zee Companies alone does not have the effect of rendering such document chargeable to Stamp Duty. The documents became chargeable when they were also signed by Religare.

19. First, as *"executed"* means *"signed"* and *"execution"* means *"signature"*, it is clear that this would include signatures of all such parties required to sign under the documents, in order to give such documents, the validity, as recognised by law. The phrase *"first executed"*, as found in Section 2(d) of the MSA, cannot be construed to mean that signatures of only one of the parties to a bilateral or multilateral document is sufficient to attract stamp duty. If under law, a document requires signatures of more than one party, it cannot be called an "*executed instrument*", chargeable to stamp duty under the MSA unless the other party has signed. To put it differently, if a document is of such character that both parties to the document should sign it, to constitute it as a binding agreement between them, it should contain the signatures of both to make it valid and binding instrument. [*See:* ***Chief***

Controlling Revenue Authority, Madras v. Canara Industrial and Banking Syndicate Ltd.[12]] Thus, the signatures of only Zee Companies on their respective Loan Agreements did not give such documents any legality or validity under the law, until they were also signed by Religare's representatives. That event, concededly, occurred at a later date, and in Delhi. At that stage, the agreements became *"instruments"* amenable to stamp duty. Thus, the incident of *"execution"/"executed"* occurred at Delhi, and not Mumbai.

20. Next, Section 2(d) of MSA, which defines *"chargeable"*, has two parts – the first is applicable to an instrument *"chargeable under this act"* that is *"executed or first executed after the commencement of this act"*. The second is applicable to "*any other instruments"* which are *"chargeable under the law in force in the State"* at the time *"when such instrument was executed"* or *"first executed", "where several persons executed the instrument at different times"*. Both the parts contain the expression "*first executed"*, and include within their ambits, instruments that are executed at different times. This definition suggests that the latter part applies to instruments that are chargeable not under the MSA, but under some other law. On this point, Mr. Dholakia has argued that the second part deals only with instruments executed before the commencement of the MSA, and the first part, with instruments executed after the commencement of the MSA. Although, the second part does not use the expression "*after the commencement of the act*", yet, upon a plain reading of the provision, the Court is unable to find such a distinction as

[12] 1967 SCC Online Mad 102.

urged by Mr. Dholakia. The distinction between the two parts is only to the extent noted above. This understanding is also supported by the view taken by the Bombay High Court in ***ITC Limited & Anr. v. State of Maharashtra***,[13] wherein it was held as follows:

> "*9. From the aforesaid two definitions of the expression, 'chargeable' and 'duly stamped', it is clear that the stamp duty chargeable on an instrument is the duty chargeable in accordance with law in force in the State at the time of execution of such instrument. The chargeability of instrument starts at the time of execution in the State. In case of an instrument executed outside the State, the chargeability of instrument starts from the date of its receipt in the state and when several persons execute an instrument then when first of these persons sign the same in the state (…)"*
>
> [Emphasis Supplied]

21. The concept of "*first execution*" is applicable for the purpose of a starting point of chargeability - if there are multiple parties or if there are parties other than those whose signatures are necessary to constitute an agreement. In such cases, the chargeability would be from the date *"when"* such instrument was first executed. The learned Arbitrator in para 16 of the impugned order, has clearly misconstrued the definition of "*chargeable*" under Section 2(d) of the MSA to read - "*where*" the instruments were executed. In fact, upon a minute reading of Section 2(d) of the MSA, it is noted that the said provision makes no reference to place of execution whatsoever. Rather, it states that an instrument is "(…) *chargeable under the law in force in the State when such instrument was executed or, where several persons executed the instrument at different times, first executed;*". It is abundantly clear that the words "*first executed*" are a function of the expression *"when such instrument was executed"* preceding it, and not the word *"where"*. The emphasis is on the time of execution of the document and

[13] (1997) 4 Bom CR 536.

not the place. To give it any different meaning would amount to misreading the provision. Therefore, the expression *"first executed"* would only have corelation with the time of *"chargeability"*. Hence, Mr. Dewan's contention that every instrument *"first executed"* within the territorial boundaries of the State of Maharashtra has to be stamped as per MSA is an incorrect interpretation of Sections 2(d) and 2(i) thereof, and is rejected.

22. That said, the concept of *"first executed"* under Section 2(d) of the MSA would apply only if the instrument is chargeable under the MSA or a law in force in the State. A prerequisite is that the instrument should be chargeable under the MSA, for which execution has to be within the jurisdiction to which the MSA extends. In this case, as discussed above, the Loan Agreements were executed in Delhi, and are hence, not chargeable under the MSA, and are instead amenable to Stamp Duty under Article 5(c) of Schedule I-A of the ISA as applicable to Delhi.

23. For the foregoing reasons, in the opinion of the Court, the learned Arbitrator erred in concluding that the Loan Agreements were chargeable to Stamp Duty in Mumbai. Further, even if Stamp Duty has been affixed as per the MSA, it does not *ipso facto*, under law, render the instruments amenable to the MSA. A party's understanding would not preclude it from disputing/contesting the question of chargeability of Stamp Duty under law. Under Section 19 of MSA, an instrument would be chargeable to duty in Maharashtra only when it is received in the State and not otherwise. The documents with signatures of only Zee Companies were not 'instruments' to attract the said provision.

24. In view of the afore-said finding, the contentions urged by the counsel with respect to applicability of the relevant Sections of the MSA, are not required to be examined by the Court.

25. Accordingly, the impugned Order is set aside to a limited extent – *qua* findings rendered apropos applicability of the MSA. The matter is remanded back to the Arbitral Tribunal for issuing fresh directions in light of the afore-said findings. The learned Arbitrator shall examine if the instruments are sufficiently stamped under Article 5(c) of Schedule 1A of the ISA as applicable to Delhi, and issue appropriate directions. The parties are directed to appear before the learned Arbitrator on 21st February, 2022, subject of course to the convenience of the learned Arbitrator.

26. The present appeals are allowed in the above terms. All pending applications are disposed of.

SANJEEV NARULA, J

JANUARY 10, 2022
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(Corrected and released on 24th January, 2022)