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# STAMPING OF ARBITRAL AWARD: A SINE QUA NON?

## A. Legal concept behind Stamps - layman language:

1. The Indian Stamp Act, 1899 (for short “the said Act”) along with relevant state amendments deal with law relating to stamps in India.
2. The need of such law, as propounded in the 231<sup>st</sup> Report of the Law Commission of India, draws its genesis from the idea of raising state revenue from transactions between its citizens.
3. The said Act is a fiscal enactment with the sole objective to increase revenue. [Jagdish Narain v. Chief Controlling Revenue Authority, AIR 1994 All 371].
4. Non-compliance of the same therefore has obvious pecuniary measures and legal implications.

## B. Stamping of Arbitral Awards – Statutory Provisions:

1. Relevant provisions from the said Act to be read in conjecture to the provisions from respective state amendments:
  - a. Section 2 (11) – an instrument is said to be duly stamped once it bears a stamp of proper amount in accordance with law.
  - b. Section 17 – All instruments chargeable with stamp duty and executed by any person in India has to be compulsorily stamped before or at the time of execution.
  - c. Chapter IV, Sections 33-48 – deal with measures in case documents are not properly stamped.
    - Section 33 – unstamped or inadequately stamped documents shall be impounded when presented before courts, public authority, etc.
    - Section 35 - documents which are required to be stamped, if not stamped or are inadequately stamped, will not be admissible as evidence or ‘acted upon’ for any purpose.
  - d. Article 12, Schedule I – provides amount of stamp duty payable in case of an ‘Award’.
  - e. The power to ascertain and impose the stamp duty is on the States, respectively, and as such the rate of duty on stamping of Award as given in Article 12, Schedule

I of the said Act shall vary State to State.

2. The process of arbitration and consequent pronouncement of arbitral Award is governed by the Arbitration and Conciliation Act, 1996 (as amended) (for short “the said Arbitration Act”).

## C. Stamping of Arbitral Awards – Law of the Land:

1. The said Arbitration Act does not explicitly state the necessity to pay stamp duty on an arbitral Award.
2. However, the said Act provides for stamping of Awards with specific stamp duties and that an Award which is un-stamped or insufficiently stamped is inadmissible and/or cannot be acted upon at the time of presentation of the Award before the Judicial Authority for enforcement.
3. In absence of specific and clear elucidation on whether an Award has to be stamped, reliance is placed on diverse jurisprudence evolved by the Courts.
4. The Hon’ble Supreme Court has clarified that the question of stamping an Award arises only in case of domestic Awards. The reason for the same has been propounded by the Hon’ble Court in *Shriram EPC Limited v. Rioglass Solar SA* [(2018) 18 SCC 313].
5. Further, the Courts have clarified that stamp duty is required for only domestic Awards that too at the time of execution. [K. Santhakumari v. K. Suseela Devi, AIR 1961 AP 424; M. Anasuya Devi & Anr. v. M. Manik Reddy & Ors., (2003) 8 SCC 565].
6. The quantum of stamp duty to be paid depends on the value of property (both movable and immovable) to which the Award relates to and the same depends on State Amendments to the said Act. For example, Rs. 150 is the maximum stamp duty payable in the form of stamp paper as per the amendment made by the State of West Bengal to the said Act, Rs. 100 in Maharashtra and in Delhi, the maximum depends on the value of the Award as per Schedule IA to the Stamp (Delhi Amendment) Act, 2001.
7. As regards foreign Awards, they are not liable to be either stamped or registered. [Naval Gent-



**Paramita Banerjee**

Associate, MCO Legals

B.A., LLB (Hons.)  
School of Law, Christ University  
Bangalore

**Expertise:**  
Litigation and Arbitration

✉ paramita.b@mcolegals.co.in

Maritime Ltd. v. Shivnath Rai Harnarain (I) Ltd., 174 (2009) DLT 391; Vitol SA v. Bhatia International Limited, 2014 SCC OnLine Bom 1058].

8. The reason for same is that foreign Awards are deemed to be already stamped as a decree of a Court. [Shriram EPC Limited v. Rioglass Solar SA [(2018) 18 SCC 313; Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. (2011) 8 SCC 333].

**D. Conclusion: Steps to be taken on receipt of the Award**

1. Generally, the Award itself states that stamp duty be paid on the Awarded amount. However, even if the same is not stated, it is the legal duty of the Award-Holder to get the Award stamped.
2. Therefore, for an Award to be enforceable in law:
  - a. It must be stamped according to the stamp duty applicable at the State where such Award was made/ pronounced by affixing a Non-Judicial Stamp Paper.
  - b. If it affects immovable property, the same has to be compulsorily registered, else the same will be rendered invalid. [M. Chelamayya v. M. Venkataratnam, AIR 1972 SC 1121].

c. If the Award is only for money decree, the same is to be only stamped.

d. If the Award is for money decree as well as for transfer of immovable property, then :

- The same shall be required to be stamped as per the said Act.
- Over and above the stamp duty, the registration duties, etc shall also have to be paid on the value of Immovable Property.

e. Thus, it can be said that all Awards shall be required to be stamped. However, the ones that transfers interest in the immovable property shall also be required to be additionally registered. It is pertinent to mention that the registration charges can be paid by either affixing Non-Judicial Stamp Paper and/or through payment in treasury/ online mode, if the same is supported in the subject State of payment.