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### SUPREME COURT: NO STAMP DUTY PAYABLE ON A FOREIGN AWARD

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#### Introduction

The Hon'ble Supreme Court of India (Supreme Court) in its recent judgment *M/s Shriram EPC Limited v Rioglass Solar SA* dated 13 September 2018, has put to rest the issue qua enforcement of foreign awards without being stamped (stamp duty need not be paid). The dispute at hand arose before the Supreme Court on appeal from the Madras High Court Division Bench. The rationale for this decision was that the Indian Stamp Act, 1899 (Stamp Act) is only operational in the territory of the Union of India, and the definition of the term "award" under Stamp Act has never been amended to include a foreign award, despite the parallel developments in the arbitration law in India, and hence it needs to be construed that for the sake of enforcement, no stamping is required.

#### Factual Background

Rioglass Solar SA (Respondent) filed a petition before the Madras High Court to enforce a foreign award delivered by the International Chambers of Commerce in London against M/s Shriram EPC Limited (Appellant).

The Single Bench of the Madras High Court enforced the foreign award and the Appellant filed an appeal against this enforcement before the Division Bench of the Madras High Court. One of the contentions raised by the Appellant was that stamp duty had not been paid on the foreign award under the provisions of the Stamp Act. The Division Bench of the Madras High Court decided in favour of the Respondent in the appeal and upheld the enforcement of the foreign award. Consequently, the dispute was brought before the Supreme Court, but only to the extent of the question of law regarding whether stamp duty is payable on a foreign award under the provisions of the Stamp Act.

#### View of the Supreme Court

The Supreme Court discussed the scope of operation of the Stamp Act in 1899, as well as the definition of the term "award", which is an instrument upon which stamp duty is payable under the Stamp Act. It also traced the evolution of the definition of the term "award" across all the landmark arbitration legislations in India. While it is clear that stamp duty must be paid on an "award" in itself, the definition in the Stamp Act made no reference to a "foreign award".

The Supreme Court reasoned that at the time of enactment of the Stamp Act, it was applicable to British India alone, which was then extended to the entire territory of India. Therefore, an award as contemplated under the Stamp Act could only be one rendered within the territory of India. Accordingly, an award rendered in a princely state or a foreign country could not be considered an "award" under the Stamp Act and was in fact a foreign award.

The Supreme Court discussed how the Arbitration Act, 1996 (1996 Act) had separate parts that dealt with domestic and foreign awards, thereby making a clear conceptual distinction between the two, and how the latter took into account the principles expounded in the New York Convention and the reciprocal obligations of the enforcement of awards that India has with certain countries.

The Supreme Court also kept in mind the provisions of Section 47 of the 1996 Act which stated that a foreign award may be enforced in India if the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made, the original agreement for arbitration or a duly certified copy thereof and such evidence as may be necessary to prove that the award is a foreign award are provided.

The Supreme Court also dismissed the Appellant's argument that the definition of "award" under the Stamp Act must include a foreign award because an act "must be construed as on date", as per *Senior Electric Inspector and Ors v Laxminarayan Chopra and Anr*, (1962) 3 SCR 146. The *ratio* of the case was inapplicable because there had been no advancement in technology or concept that could lead to the necessity of the context of the term being widened, as foreign awards were in conceptual existence at the time of the enactment of the Stamp Act. Additionally, the Supreme Court observed that the Stamp Act, being a fiscal statute, must mandatorily be given a literal construction as per the principles of statutory interpretation.

The Supreme Court also disagreed the Respondent's contention that the three requirements under Section 47 of 1996 Act indicate that the payment of stamp duty was not necessary for the enforcement of an award and observed that *if* a fiscal statute such as the Stamp Act had provided for the payment of stamp duty on a foreign award, it would fall within the "fundamental policy of Indian law" and would be necessary for the enforcement of a foreign award.

The Hon'ble Supreme Court relied on the judgment of the Madhya Pradesh High Court in *Narayan Trading Co. v. Abcom Trading Pvt. Ltd.*, (2013) 2 MP LJ 252. This judgment categorically provided that the 1996 Act deigned to make a foreign award enforceable as if it were a decree, and accordingly, no amendment was made to the Stamp Act whereby stamp duty would be payable on a foreign award. In light of the above, the Supreme Court upheld the judgement of the Division Bench of the Madras High Court and dismissed the appeal.

### Comment

This judgment of the Supreme Court provides extreme clarity regarding an issue which has clearly divided the High Courts of India and ruminates upon the extensive evolution of the law of arbitration in India. Most importantly, it reinforces India's desire to be considered an arbitration-friendly jurisdiction by clarifying that the enforcement of foreign awards need not be encumbered by the requirement of payment of stamp duty and caters to the principles of ease of doing business in India.

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