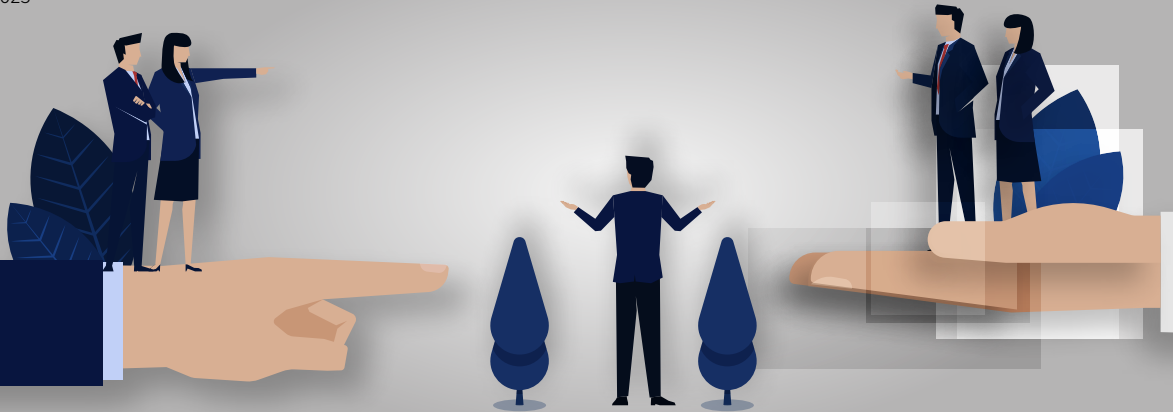


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Arbitration Agreement In Unstamped Or Insufficiently Stamped Contract

- On 25 April 2023, the Supreme Court of India in *N.N. Global Mercantile Private Limited v. Indo Unique Flame Ltd. & Ors.* (**Judgment**),¹ discussed the enforceability and validity of: (a) unstamped / insufficiently stamped agreements; and (b) the arbitration agreement (if any) contained therein. The Court held as follows:
 - An unstamped (or insufficiently stamped) instrument exigible to stamping (**Unstamped Instrument**) is not a contract under Indian law, unenforceable and non-existent, until it is sufficiently stamped as per the applicable stamp act.
 - An unstamped (or insufficiently stamped) arbitration agreement that attracts stamp duty (**Unstamped Arbitration Agreement**) cannot be acted upon until it is sufficiently stamped as per the applicable stamp act.
 - An arbitration agreement (even if it does not attract stamp duty under the applicable stamp act) contained in an Unstamped Instrument is non-existent under Indian law until the underlying Unstamped Instrument is sufficiently stamped.
- In sum, the underlying contract must be sufficiently stamped for it (and the arbitration agreement contained therein) to be valid and enforceable in law and admissible in evidence. Consequently, if an Unstamped Instrument is governed by Indian laws and the arbitration agreement therein provides for an India seated arbitration, the court / arbitral tribunal cannot adjudicate a dispute under the Unstamped Instrument until it is duly stamped.
- **Impact on appointment of an arbitrator:** Practically, arbitration proceedings may be commenced prior to or simultaneously with the underlying Unstamped Instrument being adjudicated / stamped, since commencement is within the claimant's control. However, the respondent in such a scenario is likely to raise objections and not take part in the arbitrator appointment process and the claimant will have to approach the court for appointment under Section 11 of the Arbitration and Conciliation Act, 1996 (**Act**). In such a scenario, the court is now required to scrutinize whether the underlying contract (including the arbitration agreement, where required) has been sufficiently stamped, and only if it has, can appoint an arbitrator to adjudicate the dispute.
- **Impact on arbitration proceedings:** If the parties mutually appoint an arbitrator and either party raises an objection or if the arbitrator is of the opinion that the instrument under which arbitration has been invoked is unstamped / insufficiently stamped, the arbitrator will be required to examine the sufficiency of stamp duty required to be paid on the agreement. If the arbitral tribunal concludes that the agreement is an Unstamped Instrument, it may either: (a) restrain from entering an Unstamped Instrument into evidence but permit the filing of pleadings till the evidence stage; or (b) suspend proceedings till such an instrument is sufficiently stamped. Where the arbitrator, in its examination, concludes that the agreement is sufficiently stamped, it would pass orders to that effect and continue with the arbitral proceedings.
- **Impact on ability to seek interim relief:** Till the Judgment, courts have had the power to grant interim reliefs under Section 9 of the Act even where the matter pertains to Unstamped Instruments. The Judgment does not specifically alter this position. That said, given that the Judgment has held that an Unstamped Instrument is not a valid and enforceable contract under Indian law, courts may become hesitant in granting reliefs under Section 9 of the Act in cases pertaining to Unstamped Instruments.
- **Impact of the Judgment on Unstamped Instruments already executed:** Non-stamping / insufficient stamping of instruments is a curable defect.
 - **Timing of stamping:** Generally, instruments must be stamped prior to or at the time of execution. In certain states (e.g., Maharashtra) an instrument may be stamped till one working day after the execution date. Where an instrument is executed outside the territory of India or a particular state, it must be sufficiently stamped within 3 months of the instrument (or a copy thereof) digitally or physically entering India or that state. If this is not done, executed Unstamped Instruments may be stamped in one of the following ways:
 - **Self-adjudication:** Parties may self-assess Unstamped Instruments and pay stamp duty



(with applicable penalty²) online after execution. However, this does not prevent a judicial authority or a Collector of Stamps from impounding such an instrument if they are of the opinion that the stamp duty (and penalty) remains deficient.

- **Formal adjudication:** Parties may formally submit an Unstamped Instrument for adjudication to the office of the Collector of Stamps in whose jurisdiction the same was originally executed or is sought to be enforced.
- **Applicable stamp act:** The stamp duty payable must be

determined in accordance with the stamp act applicable to the specific state where the instrument has been executed, unless such state-specific stamp act does not exist or refers to the Indian Stamp Act, 1899.

As a practical solution, parties should ensure that adequate stamp duty is paid at the time of execution of a document. If that is not done, if the parties are not in a dispute scenario, it would be preferable to take the self-assessment approach. Alternatively, if parties are nearing a dispute scenario, it would be preferable to opt for formal adjudication of applicable stamp duty.

² Generally, 2% simple interest on the deficient stamp duty amount per month of delay from execution date.

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