Stamping of Arbitral Awards

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India | February 18 2025

Imposing stamp duty on arbitral awards seems rather unusual, as these two concepts don't naturally go together. Stamp duty is a government tax levied on 'instruments,' which are documents that outline the rights and obligations of the parties involved. Typically, stamp duty is associated with contracts or deeds of conveyance entered into by consenting parties. In contrast, an arbitral award is the resolution of claims submitted to arbitration by two or more disputing parties, akin to a court judgment. After an award is issued, the prevailing party can file for its enforcement. This distinction is why prominent arbitration hubs like Singapore and the United Kingdom do not categorise arbitral awards as instruments subject to stamp duty. These common law jurisdictions prefer to impose stamp duty on documents, such as deeds or agreements, rather than awards. Hence, the requirement to pay stamp duty on domestic awards – those arising from India-seated arbitrations – appears to be peculiar to the Indian legal system.

Another oddity under Indian law concerns the timing of stamp duty payments on arbitral awards. The stamp duty regime in India is governed by the Indian Stamp Act, 1899 along with various state-level acts that dictate the imposition of stamp duties within their respective jurisdictions. These laws mandate that an instrument must be stamped either before or at the time of its execution (except for the Maharashtra Stamp Act, 1958, which permits an instrument executed in Maharashtra to be stamped by the next working day following its execution).

In states where the duty on an arbitral award is a fixed amount, compliance with this stamping requirement is relatively simple. However, states like Delhi have an ad valorem regime for stamping awards, where the duty is calculated as a percentage of the awarded amount. Recently, the Maharashtra government passed the Maharashtra Stamp (Amendment) Ordinance, 2024, introducing a similar ad valorem system for stamping arbitral awards. In these states, the procedure becomes more complex since it requires prior knowledge of the awarded amount to ascertain the duty payable. Usually, arbitrators stamp the award with a nominal sum, leaving it to the parties to pay the remaining duty later. Alternatively, in rare instances, arbitrators issue a draft award indicating the awarded sum, enabling parties to pay the stamp duty before releasing the signed award. However, both methods have their drawbacks. In the former approach, the award ends up being insufficiently stamped at the time of issuance, whereas, in the latter, arbitrators are required to disclose the draft award to the parties and delay signing until the applicable duty is paid.

To address this issue, it would be advantageous to amend Indian stamp duty laws to allow stamping of arbitral awards at the enforcement stage, after the award has attained finality, rather than at its issuance. This change would prevent both insufficient stamping and early disclosure of draft awards while giving the parties enough time to fulfil stamping obligations. This approach is also beneficial because a domestic award can be challenged in court. Should the losing party succeed in demonstrating grounds for annulment, the award might be set aside, necessitating a fresh arbitration process for dispute resolution. In such cases, parties would have already paid stamp duty on a potentially ineffective award. Therefore, to prevent incurring stamp duty costs for an award that might be invalidated upon judicial scrutiny, it would be prudent to defer the obligation to pay stamp duty to the enforcement stage, after the award has become final. In the uncommon situation where parties choose not to act on the award or decide to accept it and forego legal proceedings, the obligation would arise once the period for filing an application to set aside the award is over.

However, the draft Arbitration and Conciliation (Amendment) Bill, 2024, released by the Indian government for public comments, seems to adopt an opposing stance on this issue. It proposes that an award is only valid if duly stamped, making stamp duty a prerequisite for the award's validity. If this proposal is implemented, arbitrators will need to ensure that awards are stamped with the full amount of applicable duty before they are signed and delivered. This proposal merits reconsideration, as it may aggravate existing challenges and impede the arbitrators' ability to issue awards.

Moreover, mandating that arbitral awards be stamped can sometimes lead to double recovery. Arbitral awards do not directly result in the transfer of assets or liabilities; parties often need to execute additional instruments to implement the award's decision. For example, if an award enforces a contractual put option and requires one party to purchase shares at a specified price, an additional stamp duty payment would be necessary to complete the share transfer. This leads to double recovery, as parties end up paying stamp duty twice: initially on the award and subsequently on the share transfer instrument. Most stamp duty statutes address double recovery in partition awards and settlement cases by explicitly allowing a nominal amount to be paid the second time, considering the previously paid amount on the partition award or settlement instrument. Providing similar explicit clarity for arbitral awards would be beneficial.

Even if the central and state governments are reluctant to exclude arbitral awards from the purview of stamp duty, it's essential for them to clarify that the duty should be collected at the enforcement stage once all legal challenges to the award have been exhausted. Importantly, the government's proposal to make stamp duty payment a prerequisite for a valid arbitral award should be reconsidered. Furthermore, it would be advantageous to apply the rule against double recovery by explicitly allowing a reduction of stamp duty based on the amount already paid on the award. These measures could enhance India's ambition of becoming a global arbitration hub while safeguarding the governments' revenue interests.

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