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

Judgment reserved on: 03.08.2026
Judgment pronounced on: 02.11.2026

\# **CNR No. DLHC010232502026**

\+ O.M.P. (COMM) 253/2026, I.A. 14326/2026, I.A. 14327/2026, I.A. 14328/2026 & I.A. 14329/2026

ASIAN SATELLITE BROADCAST PVT LTD & ANR.
.....Petitioners

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma, Ms. Natasha Singh, Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

versus

RELIGARE FINVEST LIMITED & ANR. .....Respondents

Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates for R-1.

\# **CNR No. DLHC010232512026**

\+ O.M.P. (COMM) 254/2026, I.A. 14338/2026, I.A. 14339/2026, I.A. 14340/2026 & I.A. 14341/2026

WIDESCREEN HOLDINGS PVT LTD & ANR.
.....Petitioners

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr.

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Ojasvi Sharma, Ms. Natasha Singh, Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

versus

RELIGARE FINVEST LIMITED & ANR. .....Respondents

Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates for R-1.

\# **CNR No. DLHC010232522026**

\+ O.M.P. (COMM) 255/2026, I.A. 14342/2026, I.A. 14343/2026, I.A. 14344/2026 & I.A. 14345/2026

EDISON INFRAPOWER AND MULTIVENTUTRES PVT LTD FORMERLY KNOWN AS EDISONS UTILITY WORKS PVT LTD .....Petitioner

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma, Ms. Natasha Singh, Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

versus

RELIGARE FINVEST LIMITED & ANR. .....Respondents

Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates for R-

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CNR No. DLHC010232532026

\+ O.M.P. (COMM) 256/2026, I.A. 14346/2026, I.A. 14347/2026, I.A. 14348/2026 & I.A. 14349/2026

KONTI INFRAPOWER AND MULTIVENTURES PVT LTD & ANR. .....Petitioners

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma, Ms. Natasha Singh, Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

versus

RELIGARE FINVEST LIMITED & ANR. .....Respondents

Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates for R-1.

CNR No. DLHC010320452026

\+ O.M.P. (COMM) 323/2026, I.A. 19073/2026, I.A. 19074/2026 & I.A. 19075/2026

RELIGARE FINVEST LIMITED .....Petitioner

Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates.

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versus

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

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma, Ms. Natasha Singh, Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

CNR No. DLHC010322302026

\+ O.M.P. (COMM) 327/2026, I.A. 19251/2026, I.A. 19252/2026 & I.A. 19253/2026

RELIGARE FINVEST LIMITED .....Petitioner

Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates.

versus

EDISONS INFRAPOWER AND MULTIVENTURES PRIVATE LIMITED AND ANR & ANR. .....Respondents

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma, Ms. Natasha Singh, Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

CNR No. DLHC010322312026

\+ O.M.P. (COMM) 328/2026, I.A. 19258/2026, I.A. 19259/2026 & I.A. 19260/2026

RELIGARE FINVEST LIMITED .....Petitioner

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Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates.

versus

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

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma, Ms. Natasha Singh, Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

CNR No. DLHC010322362026

\+ O.M.P. (COMM) 331/2026, I.A. 19289/2026, I.A. 19290/2026 & I.A. 19291/2026

RELIGARE FINVEST LIMITED .....Petitioner

Through: Mr. Abhimanyu Bhandari, Sr. Adv with Mr. Siddharth Sharma, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Mr. Maj. Nirvikar Singh, Ms. Shruti Arora, Ms. Priyakshi, Ms. Ishika Chauhan and Mr. Daanish Abbasi, Advocates.

versus

WIDESCREEN HOLDINGS PRIVATE LIMITED & ORS. .....Respondent

Through: Mr. Kunal Tandon, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Ojasvi Sharma, Ms. Natasha Singh,

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Mr. Shreni Taran and Ms. Vanika Kansal, Advocates.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 02.11.2026

INTRODUCTION

1. The present batch of petitions have been filed under Section 34 of the Arbitration and Conciliation Act of 1996[1], assailing the common interim arbitral award dated 28.02.2026[2], whereby the learned Sole Arbitrator held that the loan agreements executed between the parties dated 15.03.2014, are governed by the Maharashtra Stamp Act of 1958[3]. The learned Sole Arbitrator further held that Article 5(h)(B) of Schedule I to the MSA is applicable to these agreements, thereby attracting a fixed stamp duty of Rs. 100/- each.

2. This present dispute arises out of eight cross-petitions instituted by the parties. OMP(COMM) Nos. 253/2026, 254/2026, 255/2026 and 256/2026 are filed by four distinct companies incorporated under the Companies Act, 1956, all of which form part of the Zee Group of companies[4]. Religare Finvest Ltd.[5] is the sole Respondent in the aforesaid petitions.

[1] "Act" hereinafter
[2] "impugned award" hereinafter
[3] "MSA" hereinafter
[4] "Zee Group" hereinafter
[5] "Religare" hereinafter

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3. On the other hand, OMP(COMM) Nos. 323/2026, 327/2026, 328/2026 and 331/2026 are the cross-petitions preferred by Religare against the Zee Group, assailing the very same interim arbitral award, albeit on distinct grounds.

4. For the sake of convenience, these petitions are being heard together and shall be adjudicated by way of a common judgment since they arise out of a common interim arbitral award and involve overlapping questions of fact and law.

THE DISPUTE

5. The present petitions revolve around a single issue, i.e., whether MSA or ISA[6] shall apply to the loan agreement(s) dated 15.03.2014? An ancillary question arises: if MSA is to apply, then which provision governs the applicable rate of stamp duty?

6. The facts leading up to the present dispute are that in March 2014, Religare extended four distinct loan facilities to the Zee Group pursuant to separate loan agreements, each executed on 15.03.2014.

7. However, due to alleged non-repayment by Zee Group, Religare invoked the first round of arbitration *inter se* the parties.

[6] Indian Stamp Act, 1899 (2 of 1899), as applicable in NCT of Delhi

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8. The question of adequate stamp duty on the loan agreement(s) dated 15.03.2014 arose before the learned Sole Arbitrator in the first round of arbitration in the Section 16 application filed by the Zee Group.

9. By order dated 22.10.2020, the learned Sole Arbitrator held that the MSA was applicable in view of Section 2(d) read with Section 24 therein. Accordingly, Religare was directed to approach the Collector of Stamps, Maharashtra, to determine the payable duty and penalty (if any) if it wished to proceed with its claim, in the following terms:

> *"22. For the foregoing reasons the Tribunal finds no merit in the submission of the claimant. The application under section 16 is allowed. The original Loan Agreement has not been filed before the Tribunal. If the claimant 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 the penalty, if any, in terms of the Stamp Act. Both parties shall be at liberty to approach the Tribunal after the requisite stamp duty on the Loan Agreement is paid.*
>
> *23. The matter is adjourned sine-die."*

10. Religare challenged the aforesaid decision before this Court under Section 37(2)(a) of the Act.

11. On 10.01.2022, this Court, by way of a common judgment, held that ISA was applicable to the loan agreements instead of MSA since these agreements bore only the signatures of the Zee Group in Maharashtra and hence, did not become 'instruments' to attract MSA. The matter was consequently remanded to the learned Arbitrator in light of the aforesaid finding.

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12. Being aggrieved, Zee Group challenged the abovementioned judgment before the Hon'ble Supreme Court by way of Special Leave Petitions[7].

13. The Hon'ble Supreme Court, by order dated 22.04.2022[8], observed that the original loan agreements were neither produced before the Arbitrator nor before this Court in the Section 37 appeal, hence, the agreements could not be impounded. The Hon'ble Supreme Court directed that the learned Arbitrator may pass appropriate orders for production of the same and only thereafter the learned Arbitrator may take a call on impounding the loan agreements. Notably, the SLP was dismissed as follows:

> *"Considering the fact that even the loan agreement which contains the arbitration Clause which was sought to be impounded is not produced before any Tribunal and/or Court and till then, there is no question of impounding any document, the High Court is justified in passing the impugned order.*
>
> *Shri Kaul, learned Senior Advocate has submitted that the original applicant(s) is not placing on record the original loan agreement containing the arbitration Clause. If the original claimant who has initiated the arbitration proceedings relying upon the arbitration Clause contained in the loan agreement is not producing the same, it is ultimately for the learned Arbitrator to pass an appropriate order and to take into consideration such a conduct. So far as the impounding of the document is concerned unless and until the same is produced on record before any Court/Tribunal, there is no question of any impounding the same, as observed hereinabove.*

[7] "SLP" hereinafter
[8] SLP(C) No. 6826-6829/2022

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The Arbitrator may take call on the impounding of document provided it is produced by the original claimant.

With the observation, the present Special Leave Petition stands dismissed."

14. Thereafter, the Zee Group preferred miscellaneous applications[9] and *vide* order dated 20.05.2022, the Hon'ble Supreme Court further clarified that upon production of the original loan agreements, the learned Arbitrator shall decide whether sufficient stamp duty had been paid or not. The aforesaid is order is reproduced as thus:

"ORDER

In furtherance of our earlier order dated 22.04.2022, it is observed and it goes without saying that as and when the original document is produced before the learned Arbitrator, the question whether the document is to be impounded or not is to be considered. The Arbitrator has to take a call on whether the original document produced is on a proper stamp duty or not. The same is to be considered in accordance with law and on its own merits.

With this, the application stand disposed of.

Pending application(s), if any, shall stand disposed of."

15. The Zee Group again filed miscellaneous applications[10] before the Hon'ble Supreme Court, this time with a specific prayer seeking a conclusive finding with respect to whether the MSA or ISA would apply to the loan agreements.

[9] Miscellaneous Application Nos. 899-902/2022 in SLP(C) No. 6826-6829/2022
[10] Miscellaneous Application Nos. 1547-1550/2022 in SLP(C) Nos. 6826-6829/2022

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16. In this light, by order dated 19.09.2022, the Hon'ble Supreme Court clarified that, in view of the aforesaid order of 20.05.2022, the learned Arbitrator, while deciding whether the stamp duty is sufficient or not, shall also decide which of the two Stamp Acts is applicable to the loan agreements. This order is reproduced hereinbelow for convenience:

> *"ORDER*
>
> *In the present Miscellaneous Applications, in a disposed of Special Leave Petition(s), the following prayers are sought:-*
>
> > *"a. provide a final and conclusive finding on the question of law involved in the captioned SLP i.e. whether the Maharashtra Stamp Act, 19587 or the Indian Stamp Act, 1899 would be applicable to the Loan Agreement;*
> >
> > *b. direct the Arbitral Tribunal with respect to the said question of law;"*
>
> *At the outset, it is required to be noted that our earlier Order dated 20.05.2022 in M.A. Nos. 899-902 of 2022 in the respective Special Leave Petitioners is very clear. We have specifically observed that the Arbitrator has to take a call on whether the original document produced is on a proper stamp duty or not. For that purpose, the Arbitrator has to decide whether the Maharashtra Stamp Act, 1958 or the Indian Stamp Act, 1899 would be applicable to the Loan Agreement.*
>
> *In that view of the matter the present miscellaneous applications are untenable and the same deserves to be dismissed and are, accordingly, dismissed."*

17. Accordingly, the matter was remanded for consideration by the learned Arbitrator. However, the then learned Arbitrator recused herself and another Arbitrator came to be appointed by this Court.

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18. It is the proceedings conducted before the subsequently appointed Arbitrator which have culminated into the impugned interim award dated 28.02.2026 assailed before me.

19. The Zee Group questioned the maintainability of the proceedings for want of adequate stamp duty on the loan agreements dated 15.03.2014 before the learned Arbitrator.

20. Accordingly, by way of the impugned interim award, the learned Arbitrator held that the loan agreements would be governed by Sections 17 and 18 read with Article 5(h) B of Schedule I of the MSA as the agreements did not stipulate any monetary value and since each of the four loan agreements were executed on a Rs. 100/- stamp paper, the agreements were held to be sufficiently stamped and did not warrant impounding.

21. Aggrieved thereby, both Zee Group and Religare filed their respective objection petitions under Section 34 of the Act, assailing the aforementioned interim award before this Court, but on distinct grounds.

22. The Zee Group assails the finding that Article 5(h) B of Schedule I of MSA, stipulating Rs. 100/- stamp duty, is applicable. According to them, while MSA is applicable, specifically Article 5(h)(A)(iv)(b) of Schedule I to the MSA would be applicable, which mandates a rate of 0.2% for stamp duty and not Article 5(h) B.

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23. On the other hand, Religare contests the application of MSA altogether. Religare maintains that ISA is applicable since the agreements became legally enforceable in New Delhi after their execution in New Delhi or alternatively, if MSA is applicable then the learned Arbitrator was correct in holding that the loan agreements were sufficiently stamped.

24. Thus, while the Zee Group disputes the quantum of stamp duty determined under the MSA, Religare questions the very applicability of the said enactment. The rival challenges, therefore, necessitate an examination of the situs of execution of the loan agreements, the statutory framework governing their chargeability to stamp duty, and the correctness of the findings returned by the learned Arbitrator in the impugned award.

CONTENTIONS BY THE PARTIES

(i) On Maintainability

25. At the very outset, Mr. Abhimanyu Bhandari, learned Senior Counsel on behalf of Religare raised a preliminary objection that all the Section 34 petitions were liable to be dismissed since they assailed an order passed under Section 16 of the Act and therefore, it could only be challenged after passing of the final award in light of Section 16(5) and 16(6) of the Act. Mr. Bhandari contended that Religare's petitions were only filed as a matter of caution since the arbitral proceedings were kept at abeyance.

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26. *Per contra,* Mr. Kunal Tandon, learned Senior Counsel for Zee Group, resisted the preliminary objection so raised, by contending that in the present case, the Section 16 application only pertained to the first round of arbitration after which the learned Arbitrator recused herself and the subsequent Arbitrator proceeded to frame four preliminary issues in light of the directions of the Supreme Court. Thus, the impugned award did not constitute an adjudication of the earlier applications under Section 16 of the Act.

27. Mr. Tandon further submitted that in the post-amendment regime, the Act does not leave any room for doubt that an arbitral award under Section 2(c) of the Act includes an interim award defined under Section 31(6) of the Act.

28. In view of Section 31(6), the learned Senior Counsel submitted that the preliminary issue regarding which stamp legislation is applicable, the quantum thereof, and if the agreement is liable to be impounded were all finally decided and could not be reopened in the final award, therefore, the impugned award is necessarily an interim award amenable to challenge under Section 34. It was further submitted that the style of the impugned award clearly indicated that it was rendered as an interim award under Section 31(6).

29. Mr. Tandon submitted that an appeal under Section 37 would be triggered when the issue of jurisdiction is rejected and that if an issue was decided in a Section 16 application, the procedure thereunder would

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follow, whilst if the question were finally decided as a preliminary issue, an appeal under Section 34 would follow. It was further contended that the impugned award did not pertain to the Section 16 applications at all, as evident from the fact that the learned Arbitrator framed four preliminary issues *vide* procedural order dated 03.12.2024 after the matter was remanded from the Supreme Court and in furtherance of the directions of the Supreme Court, whereby the learned Arbitrator was directed to adjudicate which stamp legislation was to apply, if the duty was sufficient and if the agreements were liable to be impounded. According to the learned Senior Counsel these issues were finally decided after hearing both the parties, permitting them to lead evidence and cross-examine witnesses. It was submitted that Issue No. 2 also demonstrated that the learned Arbitrator unequivocally declined to decide whether the Section 16 application was disposed of or not.

30. It was contended that the connotation of "jurisdiction" depends on the context it appears in. It was further contended that any aspect which does not terminate arbitral proceedings cannot be considered as a jurisdictional issue under Section 16. By placing reliance on ***IFFCO Ltd. v. Bhadra Products***[11], it was submitted that "jurisdiction" under Section 16 only pertains to the existence of a valid arbitration agreement, whether the Tribunal is properly constituted and whether the matters submitted to arbitration fall under the ambit of the arbitration agreement. It was further advanced that the Supreme Court in ***In Re: Interplay Between Arbitration***

[11] **(2018) 2 SCC 534;** (Para 20)

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Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899[12] held that the principal of *kompetenz-kompetenz* empowers a Tribunal to decide the issue of stamping. It was also submitted that while stamping was held to be a jurisdictional issue, in no words did the aforesaid decision mandate that the issue of stamping must only be decided under Section 16. The decision does not stipulate any time or stage at which the issue of stamping of the arbitral agreement is to be entertained, it only clarifies that such objections fall within the ambit of the Tribunal. Therefore, the objection of stamping could be considered by way of an application, or under Section 16, or otherwise, as deemed fit by the Tribunal.

31. Therefore, according to Mr. Tandon, for the purposes of Section 16, a jurisdictional issue would be one which terminates the mandate of the Tribunal and hence, stamping is not a jurisdictional issue since it is a curable defect which can, by no stretch of imagination, terminate mandate of the Arbitral Tribunal. It was also argued that Issue Nos. 3 and 4 were finally decided by the learned Arbitrator and that doctrine of merger would not apply while subsequently deciding Issue Nos. 5 and 6.

32. In support of his submissions, Mr. Tandon placed reliance on ***IFFCO (supra)***[13]***, H.S Nag v. Asian Hotel (North) Ltd.***[14]***, NTPC Ltd. v. Siemens Atkeingesellschaft***[15]***, Aptec Advanced Protective Technologies***

[12] **2023 SCC OnLine SC 1666**
[13] (Paras 8, 11, 15-21, 24-25 and 30)
[14] **2026 SCC OnLine Del 692;** (Para 106)
[15] **(2007) 4 SCC 451;** (Paras 12, 17 to 20)

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AG v. UOI[16]***, Cinda Engineering and Construction Pvt. Ltd. v. CY Engineering India Pvt. Ltd.***[17]***, McDermott International Inc. v. Burn Standard Co. Ltd.***[18]*, and ***UOI v. M/s Best Cast Construction (P) Ltd.***[19].

33. ***Per contra***, Mr. Bhandari argued that nomenclature or the style of the award is not of any significance. Instead, the substance of the same and the prayer sought shall be taken into consideration, as also held in ***Pepsi Foods Ltd. v. Special Judicial Magistrate***[20]. It was also submitted that neither the description nor the ground of a rejection order converts it into an award. Reliance was placed on ***NHAI v. IRB Ahmedabad Vadodra Super Express Tollways***[21]. Applying the aforesaid principles to the present case, it was argued that the issues framed by the learned Arbitrator specifically arose out of the Zee Group's Section 16 application. According to the learned Senior Counsel, there is no preliminary issue independent of the Section 16 application and even if framed as preliminary issues, does not change the legal nature of the issues as being jurisdictional. It was emphasized that power under Section 16 could be exercised at any stage of the arbitral proceedings.

34. Mr. Bhandari relied on Section 16(5) and 16(6) of the Act to contend that rejection of a jurisdictional plea would oblige the learned Arbitrator to proceed with rendering the final award and that this rejection is

[16] **2025 SCC OnLine Del 92;** (Paras 26, 30)
[17] O.M.P. (COMM) 67/2025 decided by this Court on 12.05.2026; (Paras 32 to 37, 50)
[18] **(2006) 11 SCC 181**
[19] Civil Revision Petition No. 248/2014 decided by High Court of Karnataka on 02.09.2014
[20] **(1998) 5 SCC 749**
[21] **2024 SCC OnLine Del 2397**

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undoubtedly assailable under Section 34, however, in the present case, there was no such rejection. Further reliance was placed on the written submissions of Zee Group before the learned Arbitrator whereby it was stated that the question of stamping is a jurisdictional issue falling under the ambit of Section 16 and that the question of MSA or ISA stems from the Section 16 application.

35. It was reiterated that rejection of a jurisdictional plea under Section 16 would not conclude the arbitral proceedings and the learned Arbitrator as per the provisions of the Act, shall proceed with the final award. It was submitted that merely because the issues of jurisdiction relating to the Stamp Act were decided by an award styled as an interim award under Section 31 was not sufficient, as the substance matters, and hence a challenge to such an award will have to be made after final award is rendered. In this regard, reliance was placed on ***In Re: Interplay (supra)*** and ***MCM Worldwide (P) Ltd. v. Construction Industry Development Council***[22].

36. Thereafter, Mr. Bhandari sought to distinguish the authorities relied upon by the Zee Group. It was submitted that ***IFFCO (supra)*** pertained to a preliminary issue of limitation and not a Section 16 application. Similarly, ***McDermott (supra)*** and ***NTPC (supra)*** did not hold that rejection of a jurisdictional plea amounts to an interim award. Further, ***H.S. Nag (supra)*** was distinguished on the ground that it only delineated

[22] **2026 SCC OnLine SC 717**

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general tests for an interim award and was not rendered in context of Section 16(5) and 16(6). Thus, according to Mr. Bhandari, the determination on stamp duty was either procedural and/or evidentiary in nature, in which case the impugned decision is not an award at all[23] or the determination is jurisdictional, in which case rejection of Section 16 plea can only be challenged after the final award is rendered as per ***MCM Worldwide (supra)***. It was stressed that no third category exists.

37. Lastly, it was averred that while Section 19 of the Act grants the Tribunal freedom from the bounds of the Code of Civil Procedure, 1908 and Indian Evidence Act, 1872 and the Arbitrator is empowered to take up any issue as preliminary, however, such freedom only governs the manner of the decision. Ultimately, it was submitted, the power to render a decision on the existence and validity of the arbitral agreement undoubtedly stems from *Kompetenz-Kompetenz* as envisaged under Section 16.

38. **In rejoinder**, Mr. Tandon submitted that the reliance on ***MCM Worldwide (supra)*** is misplaced and it instead supports the stance of Zee Group. In the said decision, the High Court had granted liberty to file a Section 16 application. Thus, undoubtedly Section 16 application was being adjudicated by the Tribunal. Further, the Court carved out a distinction between Section 16 and preliminary issues framed. According to Mr. Tandon, this decision categorically holds that if an issue is decided under Section 16 then the bar under Section 16(5) and 16(6) will apply and

[23] Ranjiv Kumar, **2018 SCC OnLine Cal 4117**; Amanulla, **ILR 2004 Kar 4292**; Rhiti Sports, **2018 SCC OnLine Del 8678**

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if preliminary issues are framed then the same would be decided by an interim award amenable to challenge under Section 34 because once decided, such an issue would no longer be open for consideration at the time of final award. The decision further explained that in view of Section 16(5) and 16(6) of the Act, Section 37 appeal would be triggered if plea of absence of jurisdiction is accepted. Pertinently, in the present case, there was no such rejection or termination of proceedings to give rise to an appeal under Section 37.

39. It was also contended that after the matter was remanded, Zee Group filed an application for termination of the proceedings before the subsequent Arbitrator on the grounds of insufficient stamp duty paid on the loan agreements. Therefore, it was not a Section 16 application at all. Accordingly, the impugned award, rendered upon the adjudication of independently framed preliminary issues, could not be characterized as an order passed under Section 16.

40. With respect to the submission advanced on behalf of Religare that Zee Group itself categorized stamping as a jurisdictional issue, it was submitted that Zee Group's contention was limited to the aspect that the Section 16 application remained pending and the applicability of MSA or ISA ought to be considered *de novo* by the Arbitrator.

41. Lastly, Mr. Tandon vehemently emphasized that the arguments advanced by Religare on maintainability of the present objection petitions, lay directly in the teeth of its own conduct since Religare itself has filed

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four cross objection petitions before this Court. It was also submitted that Religare pleaded merger before the learned Arbitrator and asserted that nothing survived in the Section 16 application, however, it now contends that every issue traces back to that very application. Therefore, it was argued that Religare cannot be permitted to simultaneously approbate and reprobate in the same proceedings.

(i) On Merits

42. Mr. Tandon vehemently contended that MSA will be applicable in the present case and supported the impugned award to that extent. It was submitted that the learned Arbitrator's reasoning was cogent and based on the constitutional distribution of legislative competence, i.e., Entry 91 of List I of the Seventh Schedule prescribes the instruments covered by the ISA and Entry 63 of List II grants powers to the States to fix rates for instruments/documents other than those stipulated in List I.

43. Mr. Tandon placed reliance on Sections 2(d), 2(i) 3, 17 and 18 of MSA and contended that the MSA is a self-contained statute wherein Section 2(i) stipulates that "executed" or "execution" only means "signed" or "signature". Section 2(d) defines "chargeable" in association to an instrument "*executed or, where several persons executed the instrument at different times, first executed"*. MSA defines an instrument to include every document by which *"any right or liability is, or purports to be created"*. Emphasis was laid on "purports to be created" to submit that instruments signed by one party, which are yet to be converted into

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concluded contracts will also be covered in the ambit of "instruments" under MSA. In this regard, reliance was placed on ***Hazrami Gangaram v. Kamlabai***[24] and ***K.V. Abdulrahiman v. Sub Registrar***[25].

44. Thereafter, Mr. Tandon relied upon the charging provision of MSA i.e., Section 3, which stipulates the instruments chargeable with duty. Section 3(a) provides that every instrument mentioned in Schedule I, not having been previously executed, is executed in Maharashtra on or after the commencement of MSA, will be chargeable under MSA. Further, Section 3(b) provides that an instrument under Schedule I, not having been previously executed, is executed out of the State, relates to any property or matter or thing being done in Maharashtra, and is received in Maharashtra shall be chargeable under MSA. Further, proviso to Section 3 stipulates that even a copy of an instrument is chargeable. Sections 17 and 18 operate to stipulate the time of stamping and applicable rate. Mr. Tandon calls for a conjoint reading of the aforesaid provisions to submit that MSA attracts liability when an instrument is first executed/signed in Maharashtra. Since chargeability pertains to "first execution" as per the definition clause, it was submitted that since the loan agreement was first executed/signed in Mumbai on 15.03.2014, chargeability has been crystallized under Section 3 of MSA. This, according to the learned Senior Counsel, was evident from the bare perusal of the loan agreements as they bear a stamp of Rs. 100/- under MSA and only afterwards were they carried to Delhi for counter signature of Religare. It was also emphasized that Religare affixed a Delhi

[24] **1966 SCC OnLine AP 250**
[25] **2019 SCC OnLine Ker 1054**

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stamp of Rs. 1000/- only in November 2019, after the stamping objection was raised.

45. It was submitted that in *arguendo,* if execution as per law was completed only at New Delhi and therefore, Section 3(a) of MSA is defeated, even then Section 3(b) read with Section 18 of MSA will operate as it pertains to matters done in Maharashtra and having been received in Maharashtra. It was submitted in this regard that the loan was disbursed from Religare's account in Mumbai and transferred to Zee Group's account in Mumbai; the pledged debentures and the pledgor thereof are entities in Maharashtra; further, the Power(s) of Attorney was executed at Mumbai and even RW-2 deposed on 24.05.2025 that a copy of the executed loan agreement was received at Zee Group's Mumbai office.

46. To submit that MSA is attracted, reliance was placed on ***New Central Jute Mills Co. Ltd. v. State of W.B.***[26] and ***Indian Hume Pipe Co. Ltd. v. State of Mahashtra***[27] and ***Splendor Landbase Ltd. v. Aparna Ashram Society***[28].

47. It was also submitted that Religare adopted inconsistent positions before the learned Arbitrator; in its reply to the Section 16 application, it stated that stamp under MSA was wrongly paid. However, in its written submissions dated 14.08.2020, Religare maintained that the loan

[26] **1963 SCC OnLine SC 201**
[27] **2018 SCC OnLine Bom 452**
[28] **2023 SCC OnLine Del 5148**

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agreement was duly stamped under MSA with a duty of Rs. 100/-. According to Mr. Tandon, these contradictory positions undermine Religare's present challenge to the applicability of the MSA.

48. Mr. Tandon argued that the Supreme Court remanded the question regarding the applicable stamp legislation for fresh determination to the learned Arbitrator. Such remittance was accepted by Religare without any demur; therefore, the question of patent illegality does not arise in order to warrant interference.

49. It was submitted that the question of law was not foreclosed by this Court's judgment dated 10.01.2022 whereby it was held that the loan agreements were executed in New Delhi. It was highlighted that the SLP filed by Zee Group was only dismissed since the original loan agreements were not placed before the learned Arbitrator or before this Court while deciding the Section 37 appeal. It was contended that the learned Arbitrator acted in accordance with the explicit directions of the Supreme Court *vide* orders dated 20.05.2022 and 19.09.2022.

50. Reliance was placed on ***Kunhayammed v. State of Kerala***[29], and ***Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.***[30] to contend that dismissal of an SLP does not attract the doctrine of merger. It was also argued that even absent the doctrine of merger, the orders dated 20.05.2022 and 19.09.2022 of the Supreme Court

[29] **(2000) 6 SCC 359**
[30] **(2019) 4 SCC 376**

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operate in the same *lis* between the same parties, pertaining to the same instrument, whereby the Court remanded the question of law to the learned Arbitrator regarding the applicable stamp legislation.

51. Having strenuously supported the reasoning adopted by the learned Arbitrator, Mr. Tandon then sought to bring out the aspect of the impugned award which warrants interference by this Court, i.e., the applicable provision under MSA stipulating the requisite stamp duty to be paid on the loan agreements.

52. In this regard, Mr. Tandon submitted that residuary Article 5(h)(B) to Schedule I of MSA, which is applicable when the instrument does not stipulate a monetary value, was wrongly applied and that in the present case, 0.2% as per Article 5(h)(A)(iv)(b) of Schedule I of the MSA is applicable. This argument was advanced on the strength of the Facility Schedule of Terms[31] which stipulated the loan amounts. It was stressed that these facilities were part and parcel of the loan agreements and not distinct documents. Further, it was also argued that Section 24(1)(a) of the MSA provides that an instrument "given upon the occasion of the deposit of any marketable security, by way of security, for money, advanced, or to be advanced by way of loan, or for an existing or future debt" shall be chargeable "as it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5(h) of Schedule I". Therefore, in light of a specific charging provision, application of the residuary clause

[31] "FST" hereinafter

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is impermissible and a patent error apparent on the face of the award, thereby attracting interference under Section 34(2A) was called for. Reliance was placed on ***Associate Builders v. DDA***[32], ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[33] and ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[34].

53. Mr. Tandon thereafter drew attention to the express clauses of the loan agreement including Clause 1.1.6, 2.1 and 2.3, which conjointly provide that the loan agreement is to be read along with the Schedule of Terms, which is deemed to be a part of the loan agreement and that the borrower agreed to borrow the amount for various facilities as per the Schedule of Terms. Therefore, Mr. Tandon argued that the loan agreement by its own is incapable of quantification without the FST. Further, attention was drawn to Clause 16.1 invoked by Religare itself to constitute the reference, which contains the arbitration agreement for disputes arising pertaining to the loan agreement and the "Schedule of Terms/Repayment Schedule/s attached hereto". It was highlighted that even the FST booklets stipulate that "This Schedule forms an integral part of the Agreement." Furthermore, it was submitted that Religare's stance that the loan agreement is a standard-form document containing no specified amount, is of no avail. Stamp duty is attracted at the time of execution. If the loan agreement does not stipulate any amount, then no obligation, right, or

[32] **(2015) 3 SCC 49**
[33] **(2019) 15 SCC 131**
[34] **(2022) 1 SCC 131**

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interest was created at all. In such a scenario, the instrument would not even attract the Rs. 100/- stamp duty or any duty payable under ISA.

54. It was vehemently argued that the impugned award records no submission by either party that the loan agreement and FST were to be treated as separate documents in order to determine the applicable stamp duty. Therefore, it was argued that the award proceeded on a ground neither pleaded nor argued by either party and is hence liable to be set aside on this ground alone.

55. It was contended that applying the residual clause contradicted the learned Arbitrator's own findings of fact, as it was duly recorded that all FSTs were signed by the parties on 15.03.2014, which was the exact date of the loan agreements. Furthermore, even Religare pleaded in its Statement of Claim that the facility was availed under both the loan agreement and the FST dated 15.03.2014. It was submitted that when a transaction is contained in multiple documents executed simultaneously between the same parties, it is trite that these documents must be read together as parts of a single transaction. Reliance was placed on ***S. Chattanatha Karayalar v. Central Bank of India Ltd.***[35], ***Infrastructure Leasing and Financial Services Ltd. v. HDFC Bank Ltd.***[36], ***Chloro Controls India (P) Ltd. v. Severn Trent Water Purificiation Inc.***[37] and ***Ameet Lalchand Shah v. Rishabh Enterprises***[38].

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[35] **(1965) 35 Comp Cas 610**
[36] **2023 SCC OnLine SC 1371**
[37] **(2013) 1 SCC 641**
[38] **(2018) 15 SCC 678**

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56. Support was also drawn from ***S.N. Mathur v. Board of Revenue***[39] and ***Joginder Kumar Goyal v. GNCTD***[40] to aver that stamp duty is ascertained by the substance of the transaction and not the form of the instrument, the document must be read as a whole to determine its dominant purpose and accordingly stamped. In the present case, the transaction is a loan against securities of Rs. 150 crores drawn by the Zee Group from Religare.

57. Mr. Tandon submitted that the loan agreement is liable to be impounded and the award lies in teeth of public policy of India. It was reiterated that an instrument having been found that it is insufficiently stamped, is liable to be impounded under Section 33 of MSA and that such instrument cannot be acted upon till the deficiency is cured. This position of law is well-settled by various decisions including ***In Re: Interplay (supra)*** and ***N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. & Ors.***[41]. It was emphasised that stamp legislation is a fiscal measure enacted in public interest, therefore, an interpretation which permits evasion of stamp duty would be contrary to the fundamental policy of Indian law. Accordingly, it was submitted that as per MSA, stamp duty of 0.2% i.e., Rs. 30,00,000 aggregate along with penalty of 2% per month till date of actual payment must be paid to cure the defect.

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[39] **(2009) 13 SCC 301**
[40] **2016 SCC OnLine Del 3118**
[41] **(2021) 4 SCC 379**

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58. ***Per Contra***, Mr. Bhandari vehemently maintained that the impugned award is erroneous and is liable to be set aside in its entirety since it holds that MSA is applicable on the loan agreements dated 15.03.2014. It was maintained that the Zee Group signed the agreements in Mumbai, followed by Religare at New Delhi, which bore a stamp duty of Rs. 100 franked on 12.03.2014. It was submitted that the originals remained in New Delhi and that the Zee Group never pleaded or submitted in evidence that the loan agreements were ever received in Maharashtra by them.

59. Mr. Bhandari called for setting aside of the impugned award on the strength of the decision rendered by this Court dated 10.01.2022 whilst deciding Religare's Section 37 appeals. It was submitted that the execution of the loan agreements took place in New Delhi only after execution by all necessary parties to a bilateral agreement and it cannot be said that execution occurred in Mumbai solely by the Zee Group. Hence, ISA would apply. It was argued that "first executed" relates to time of chargeability and the agreements, with the signatures of the borrowers alone did not constitute a valid "instrument".

60. Drawing upon this Court's decision, it was also submitted that the Supreme Court dismissed the SLP filed against the said decision by a speaking order dated 22.04.2022 which categorically holds that without production of the original agreement, there can be no question of impounding. It was argued that the Supreme Court did not interfere with the law laid down by this Court that a bilateral agreement was required to

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be signed by all parties in order to be executed for the purposes of stamp duty. Relying on ***Kunhayammed (supra)***, it was argued that absent the grant of leave by the Supreme Court, doctrine of merger did not arise. Mr. Bhandari submitted that the Zee Group itself relied on the aforesaid decision before the Tribunal to argue that merger did not occur.

61. Learned Senior Counsel submitted that after dismissal of the SLP, the Zee Group thereafter moved two miscellaneous applications[42]. By orders dated 20.05.2022 and 19.09.2022, the Supreme Court only reiterated that the question of impounding was contingent upon production of the original and accordingly, the question of whether MSA or ISA is applicable was left open.

62. Accordingly, it was submitted that an award which overlooks a binding decision of the Court is liable to be set aside on the ground of patent illegality. It was also submitted that the reliance placed on ***Hazrami Gangaram (supra)*** by the Zee Group was of no avail since even this decision recognizes that if an agreement requires execution by more than one party then it shall become binding only upon execution by all parties.

63. It was averred that under Sections 2(l), 2(i) and 2(d) of the MSA, only a "completed document signed by all necessary parties is an executed instrument, and it is first executed when it so comes into existence". It was argued that Section 3 of the MSA attracts duty in only two situations, i.e.,

[42] M.A. Nos. 899 to 902 of 2022 and 1547 to 1550 of 2022.

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(i) execution in Maharashtra or (ii) execution out of Maharashtra coupled with the receipt of the instrument in the State. According to the learned Senior Counsel, Section 3 is the only charging provision and Sections 17 and 18 merely stipulate the time at which stamp duty is attracted and they only come into play after Section 3 is attracted. It was further submitted in this light that the distinction between charging and machinery provisions is settled: the charging provision creates the liability, and the machinery provisions only enforce it, they cannot enlarge the charge or independently determine the incidence of the levy. Reliance was placed on ***Board of Revenue v. Arthur Paul Benthall***[43] and ***Hindustan Lever v. State of Maharashtra***[44]**.** In view of the aforesaid, Mr. Bhandari argued that situation (i) was not attracted, in line with the binding decision of this Court. He further argued that situation (ii) was also inapplicable, as there was neither any pleading nor any evidence showing that the loan agreements were received in Maharashtra; in fact, the originals have always remained in Delhi. It was submitted that the Tribunal directly applied Sections 17 and 18 without entering any finding on the applicability of Section 3. Furthermore, it was contended that the statement of Zee Group's witness (RW2 Dattatray Mane) dated 24.05.2025 that a copy of the loan agreement was received in Mumbai, is entirely self-serving and unsupported by any pleading or documentary evidence. In this context, it was argued that the receipt of a mere copy is not tantamount to the receipt of the executed instrument itself.

[43] **(1955) 2 SCC 195, AIR 1956 SC 35**
[44] **(2004) 9 SCC 438**

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64. Mr. Bhandari vehemently submitted that the loan agreements were executed in New Delhi, as it was in New Delhi that the agreements were signed by all contracting parties. Therefore, ISA, particularly Article 5(c) of Schedule IA is applicable. It was further argued that the impugned award fails to delve into the question of where the loan agreements actually became executed instruments.

65. Thereafter, with respect to Section 18 of MSA, Mr. Bhandari sought to place reliance on Clause 2.4 of the loan agreements which stipulate that the borrower agrees that the lender is not bound to grant any facilities to the borrower, and such decision shall be the exclusive discretion of the lender. It was also agreed by this Clause that in the event, the lender does not grant a facility to the borrower, the lender is not required to provide any reason reasons thereof. According to Mr. Bhandari, this Clause implies that the lending itself occurred due to Religare's satisfaction at New Delhi.

66. It was further averred that as per Clause 2.1, the loan was disbursed from New Delhi. The securities were to be furnished by the Zee Group to Religare and assessed by it in New Delhi itself. Succinctly, learned Senior Counsel submitted that every obligation arising out of the loan agreements was to be acted upon by Religare at New Delhi and nothing was to be done in Maharashtra. Upon a conjoint reading of Clauses 2.4, 1.15, 1.1.7, 2.6, 3.5 and 3.8 of the agreement, it was submitted that there was no obligation *per se* on Religare to lend, the permissible loan amount was a function of security that wasn't yet offered or accepted or valued by Religare and it remained liable to be re-computed or even reduced by Religare at any time.

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Therefore, the agreement did not have fixed monetary value to attract Article 5(h)(A)(iv) under MSA, since stamp duty is payable on the instrument and not the transaction, as affirmed in ***SBI v. State of Maharashtra***[45].

67. It was further averred that the liability to pay stamp duty fell on the borrower i.e., Zee Group, as per Clause 2.10 of the agreement. According to Mr. Bhandari, this Clause is not to be construed to mean that Religare was to first pay the duty in Mumbai and then recover it from the Zee Group. It was instead a reimbursement covenant which fixes the ultimate burden on the borrowers and says nothing about the duty payable or under which enactment. The stamp duty of Rs. 100/- paid on 12.03.2014 was only anticipatory and pre-dated the execution, therefore it cannot fix the situs of execution or determine the statute.

68. With respect to the FST and applicability of Rs. 100/- duty, Mr. Bhandari maintained that the same was unimpeachable since it is evident from the record that the FST was struck out and hence, the loan agreement, by itself, did not record any monetary value.

69. **In rebuttal**, Mr. Tandon reiterated that chargeability arose at the time of first execution under MSA. Even otherwise, the agreement was first executed in Mumbai by Zee Group then taken to Delhi for execution by Religare and then brought back to Mumbai because loan was advanced

[45] **2016 SCC OnLine Bom 1273**

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in Mumbai. It was reiterated that the Zee Group availed the loan in Mumbai, all its authorized signatories are in Mumbai, the witness who signed the agreement was also in Mumbai, and the bank account where money is received is in Mumbai. Further, it was submitted that there is a stamp of Cosmos Co-op Bank Ltd. and franking on the agreement which clearly shows that Religare was amenable to the fact that the agreement was first executed in Mumbai.

70. With respect to the contention that Section 3 is the charging provision and Sections 17 and 18 are only machinery provisions, it was submitted that such a reading of the statute is incorrect. Sections 17 and 18 were invoked not to a certain chargeability, but to identify which statute is applicable on an instrument that is partly executed in Maharashtra and partly in Delhi since ISA is silent on this question.

71. According to Mr. Tandon, the attempt to distinguish ***Hazrami Gangaram (supra)*** is also misconceived. The said decision, in no ambiguous words, held that an instrument need not be valid in law before it becomes chargeable and that chargeability arises upon execution/signing of the instrument.

72. It was further submitted that the interpretation relied upon by Religare of "first executed" in the MSA is otiose; such an interpretation is impermissible as per ***Nathi Devi v. Radha Devi Gupta***[46] and ***Poppatlal***

[46] **(2005) 2 SCC 271**

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Shah v. State of Madras[47] and would also further the very mischief that the statute envisages to prevent since any transaction in Maharashtra could then evade stamp duty under MSA by arranging the last signature to be affixed outside the State.

73. The submission advanced on behalf of Religare that the franking dated 12.03.2014 was only anticipatory actually affirms the stance of Zee Group, inasmuch as Section 17 of MSA requires an instrument to be stamped before or at the time of execution and the said franking at Mumbai is in compliance of these terms. The aforesaid, according to Mr. Tandon, establishes that Religare was also amenable to the fact that stamp duty would be paid as per MSA. It was further contended that in view of the judgment of this Court dated 10.01.2022 and the subsequent orders passed by the Supreme Court, it was clear that the question of the applicable statute was categorically remitted by the Supreme Court to the Tribunal for fresh consideration and Religare having invited this determination without any demur, could not now plead patent illegality.

74. Mr. Tandon sought to reiterate that the loan agreement and the FST constitute a single instrument for an "amount agreed in the contract", which is chargeable under Section 24(1)(a) of MSA read with Article 5(h)(A)(iv)(b) of Schedule I.

[47] **AIR 1953 SC 274**

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75. It was argued that the finding of the Tribunal that the loan agreement did not ascertain a monetary value was incorrect in view of the various Clauses of the agreement, including but not limited to Clause Nos. 1.16, 1.18, 1.10, 1.2.8, 2.1, 2.3 and 2.10. Clause 1.2.8 provides that Schedules, sub-Schedules and Annexures to the loan Agreement shall form an integral part of this agreement. Clause 2.1 stipulates that the lender shall lend Facilities as per the FST and Clause 2.3 categorically states that the loan agreement is to be read with along with FST. Further, the attention of this Court was also drawn to Clause 28 which provides that the borrower accepts the terms and conditions of the loan agreement "&/or Schedule(s) of Terms relevant for the Facility". It was also submitted that there was a facility schedule in the loan booklet but since it was in a different format, it was struck out and a separate one was executed, which was executed on the same day as the loan agreement, i.e., 15.03.2014. It was further emphasized that Clause 2 of the FST itself provided that unless provided otherwise, the terms of the loan agreement were to be read as part and parcel of the FST.

ANALYSIS AND REASONING

(i) On Maintainability

76. I have heard the learned Senior Counsel appearing for the parties and perused the material on record.

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77. Before adverting to the controversy in question, it is apposite to first address the issue of maintainability.

78. Mr. Bhandari contended that the present Section 34 petitions ought to be dismissed since the impugned award was rendered in context of disposing of the Section 16 applications filed by the Zee Group; therefore, it cannot be challenged at this stage due to the statutory embargo under Section 16(5) and (6) of the Act. It was argued that every preliminary issue framed by the learned Arbitrator could be traced back to the Section 16 application, and that the Zee Group itself maintained that the said application remained pending. Mr. Bhandari further urged that by merely framing these questions as preliminary issues *vide* the procedural order dated 03.12.2024, the same could not alter their fundamental character as jurisdictional issues under Section 16 of the Act. Mr. Bhandari argued that it is well-settled that a conclusive finding on a jurisdictional issue remains a determination under Section 16 irrespective of the stage or manner of its adjudication and therefore, the bar under Section 16(5) and (6) squarely applies to the present case.

79. Mr. Tandon, on the other hand, refuted the aforesaid submissions and argued that the impugned award was amenable to challenge under Section 34 and the bar under Section 16 was not applicable since the issue of stamping was decided as a preliminary issue. It was argued that what is to be considered is the degree of finality of an issue and not the stage at which it is decided; if the learned Arbitrator disposes of an issue conclusively, inasmuch as it cannot be re-adjudicated and will not figure

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again in the final award, such a determination amounts to an "interim award".

80. Significantly, both parties have preferred their respective Section 34 objection petitions.

81. Before analysing the issue of maintainability arising in the present case, it would be apposite to examine the contours of the Arbitration and Conciliation Act, 1996, particularly the provisions governing the jurisdiction of an arbitral tribunal and the scope of a challenge of an interim award under Section 34.

82. Section 16 deals with the competence of an Arbitral Tribunal to rule on its own jurisdiction. For perusal, Section 16 is reproduced hereinbelow:

> *"16. Competence of arbitral tribunal to rule on its jurisdiction.—*
> *(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*
> *(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*
> *(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*
> *(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.*
> *(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.*
> *(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.*

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(5) The arbitral tribunal shall decide on a plea referred to in subsection (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34."

83. It is evident from a reading of Section 16(5) and (6) that if a plea under Section 16(2) or (3) is rejected, such an award can only be challenged under Section 34 after the final award is rendered by the Tribunal.

84. On the other hand, if a plea under Section 16(2) or (3) is accepted, the appeal would lie under Section 37(2)(a) of the Act since the mandate of the Tribunal would come to an end, the same is reproduced hereinbelow:

"37. Appealable orders.—
(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—
(a) refusing to refer the parties to arbitration under Section 8;
(b) granting or refusing to grant any measure under Section 9;
(c) setting aside or refusing to set aside an arbitral award under Section 34.
(2) Appeal shall also lie to a court from an order of the arbitral tribunal—
(a) accepting the plea referred to in sub-section (2) or subsection (3) of Section 16; or
(b) granting or refusing to grant an interim measure under Section 17.
(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

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85. Further, it is pertinent to note that Section 16, is expressly titled "Competence of arbitral tribunal to rule on its jurisdiction". The expression '*its jurisdiction'* assumes significance, as it is specifically confined to the arbitral tribunal's competence to determine its *own* jurisdiction. Therefore, from the title itself, it is clear that not every issue decided by an arbitral tribunal at a preliminary stage can necessarily be characterized as a determination under Section 16.

86. With respect to interim awards, Section 31(6) is relevant. It reads as follows:

> *"31. Form and contents of arbitral award.—*
>
> ***
>
> *(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award."*

87. Section 31(6) clearly provides the scope of an interim award, inasmuch as that an interim award can be (i) rendered *at any time* during the pendency of arbitral proceedings, (ii) with respect to *any matter* on which the Tribunal may make a *final award.*

88. Section 2(c) of the Act stipulates that an "arbitral award" includes within its ambit an interim award. It is trite that arbitral awards are amenable to challenge under Section 34 of the Act.

89. In view of the aforesaid, there can be no quarrel with the statutory framework that an "interim award" is deemed to be an "arbitral award"

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and that an "arbitral award" is amenable to challenge under Section 34. Further, with respect to jurisdictional challenges under Section 16 of the Act, when a plea under Section 16(2) and (3) is accepted, the same is assailable under Section 37(2)(a) and when such objection is rejected, the same is amenable to challenge under Section 34, however, such challenge must be preferred after the passing of the final award in view of Section 16(5) and (6). In the same breath, it cannot be ignored, that Section 16 specifically refers to the arbitral tribunal's competence to determine its own jurisdiction and not every issue decided by an arbitral tribunal at a preliminary stage would fall for determination under Section 16.

90. Therefore, the question of applicable stamp legislation can very well fall within the ambit of "any matter" under Section 31(6) with respect to which an arbitrator may make a final award "at any time" during the pendency of arbitration. The issue involved in the present case pertains to identifying the stamp legislation applicable to the underlying instruments. Such a determination does not amount to a ruling on the arbitral tribunal's own jurisdiction since whether MSA or ISA would apply, does not, in any way, affect the jurisdiction of the tribunal to continue with the arbitral proceedings before it.

91. Had the controversy concluded at this juncture, there would have been no occasion for further deliberation. However, the matter does not end here. The issue pertaining to maintainability here presents yet another facet which requires due consideration and cannot be left unaddressed.

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92. The Hon'ble Supreme Court in ***In Re: Interplay (supra)*** held that stamping was a jurisdictional issue. It was held that an arbitral tribunal possesses the authority to decide preliminary issues that affect its jurisdiction, including questions concerning the sufficiency of stamping. The relevant finding on this aspect reads as follows:

> *"125. In view of the above discussion, the issue that comes up for our consideration is whether an issue of stamping is a jurisdictional issue. Jurisdiction is generally defined as the power of a court or tribunal to hear and determine a cause, and to adjudicate or exercise any judicial power in relation to such cause.*
>
> *126. Section 35 of the Stamp Act mandates that an unstamped instrument cannot be acted upon unless it is duly stamped. The question is whether a tribunal can effectively exercise its jurisdiction to settle the claims between the parties until stamp duty is paid on the underlying instrument. In view of the decision of this Court in Uttarakhand Purv Sainik Kalyan Nigam Ltd (supra), the scope of an arbitral tribunal's authority is wide enough as to comprehend all preliminary issues affecting its jurisdiction, including the issue of sufficiency of stamping."*

93. Further, the Hon'ble Supreme Court in ***Tarini Prasad Mohanty v. Sunflag Iron & Steel Co. Ltd.***[48], reaffirmed that objections concerning the sufficiency of stamping fall within the competence of the arbitral tribunal under Section 16 of the Act. The Hon'ble Court reiterated that where an arbitral tribunal rejects a jurisdictional objection under Section 16 and continues with the proceedings, the aggrieved party must ordinarily await the final award before challenging such determination under Section 34, in accordance with Section 16 of the Act.

[48] **(2026) 268 Comp Cas 209**

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94. Thus, it can be gathered that in ***In Re: Interplay (supra)***, the Hon'ble Supreme Court held that stamping is a "*jurisdictional issue*", and that Section 16 empowers an Arbitral Tribunal to decide jurisdictional objections. Further, in ***Tarini Prasad Mohanty (supra)***, the Hon'ble Supreme Court dealt with a situation where an objection as to stamping had expressly been raised under Section 16 on the ground that the arbitration could not continue unless the agreements were properly stamped and the Hon'ble Supreme Court held that rejection of such a Section 16 objection was not ordinarily open to interference by invoking writ jurisdiction during pendency of arbitration, instead, the challenge must await the passing of a final award and may thereafter be raised under Section 34.

95. Therefore, an issue concerning stamping is treated as a jurisdictional objection falling within the Tribunal's competence under Section 16. Accordingly, the present matter, as a normal consequence, would not be maintainable. However, in my considered view, the issue is not as straightforward. It is pertinent to note that in the aforesaid decision, the objection as to stamping was raised under a Section 16 application and not as a preliminary issue.

96. Therefore, a facet to be examined in the instant case is that whether the determination regarding stamp duty can be classified as an interim award, given that ***In Re: Interplay (supra)*** calls it a jurisdictional issue.

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97. The answer to the above question is that the Hon'ble Supreme Court in ***In Re: Interplay (supra)*** has expressly held that stamping is a jurisdictional issue and that it is a curable defect. The Hon'ble Supreme Court observed that Section 35 of the Stamp Act prohibits the concerned authority from acting upon an instrument unless it is duly stamped, in which case a Tribunal may not effectively exercise its jurisdiction over such an insufficiently stamped instrument. Accordingly, the Tribunal's authority extends to deciding preliminary issues affecting its own jurisdiction, including the legal sufficiency of stamping.

98. However, the question arising in the present controversy is not one concerning the sufficiency of stamp duty paid on the instrument or the Tribunal's own competence to continue exercising its powers. Rather, the issue turns on a much narrower and anterior aspect i.e. which legislation would be applicable to the underlying instruments in the first place.

99. Having delved deeper into the controversy at hand, this Court is of the view that the abovementioned issue is purely a question of law, only confined to the determination as to which statute would be applicable i.e. MSA or ISA. According to this Court, this issue has nothing to do with the Tribunal's own jurisdiction or its competence to deal with the matter under Section 16 of the Act.

100. To read ***In Re: Interplay (supra)*** as laying down that every substantive question of law arising from a stamping issue is necessarily a jurisdictional objection, would, in my view, be erroneous. Distinction has

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to be drawn between issues which are finally adjudicated as a preliminary issue and an objection which goes to the root of a Tribunal's jurisdiction.

101. Even in ***Tarini Prasad Mohanty (supra)***, the objection regarding stamping knocked at the door of the Tribunal's own jurisdiction i.e., whether the Tribunal had the jurisdiction to proceed with the arbitration at all. In contrast, the question in the present case boils down to whether MSA or ISA applies to the loan agreements. It does not challenge the Tribunal's own jurisdiction since neither conclusion to this question would terminate the mandate of the Tribunal.

102. More recently, the Hon'ble Supreme Court in ***MCM Worldwide (supra)*** affirmed ***IFFCO (supra)*** and observed that if an issue is decided in a manner that it will not *"figure for consideration again before arbitrator and would, therefore, not be dealt with again in the final award"* passed by the arbitrator, such an award would be an interim award amenable to challenge under Section 34. It was delineated as follows:

> *"5. While so, at the stage of framing of issues by the learned Arbitrator, the respondent filed an application under Order VII, Rule 11 of the Civil Procedure Code, 1908, seeking rejection of the appellant's claim petition on the ground that its claims were barred by limitation. However, the learned Arbitrator dismissed the application on merits, by order dated 16.04.2022. Assailing the said order, the respondent filed OMP (Comm.) No. 24 of 2022, an application under Section 34 of the Arbitration Act, before the learned District Judge (Comm.), South-East, Saket Courts, New Delhi. The application was rejected by the learned District Judge on 11.11.2022, holding that the said order was not amenable to challenge under Section 34 of the Arbitration Act. The respondent assailed this order before the Delhi High Court in FAO (Comm.) No. 50 of 2023. The High Court dismissed the same on*

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24.02.2023 ***but granted liberty to the respondent to file an application before the learned Arbitrator under Section 16 of the Arbitration Act****.*

6. Pursuant to such liberty, the respondent filed an application before the learned Arbitrator under Section 16 of the Arbitration Act with the following prayer:—

> *'Dismiss the present statement of claim as the same is not maintainable since the Ld. Sole Arbitrator does not possess jurisdiction to entertain the same due to barred by limitation.'*

This application was dismissed by the learned Arbitrator on 19.05.2023*. Aggrieved thereby, the respondent again filed an application under Section 34 of the Arbitration Act in OMP (Comm.) No. 64 of 2023 before the learned District Judge (Commercial Court-01), South-East, Saket Courts, New Delhi. Significantly, the appellant raised the issue of maintainability of this application under Section 34 of the Arbitration Act against an order passed under Section 16 thereof. The specific contention of the appellant was that, in the scheme of the Arbitration Act, an order rejecting the contention that the arbitrator lacked jurisdiction could only be assailed after the award was made by the arbitrator, upon conclusion of the arbitral proceedings, and not prior thereto. While so, the respondent placed reliance on the decision of this Court in Indian Farmers Fertilizer Cooperative Limited v. Bhadra Products*[49] *and the appellant conceded, on the strength thereof, that the application under Section 34 of the Arbitration Act was maintainable.*

***

8. Having given our earnest consideration to the matter, we are of the opinion that neither the learned District Judge nor the Division Bench were correct in entertaining the matters brought before them, i.e., under Section 34 and, thereafter, under Section 37, of the Arbitration Act. In this regard, we may note that Section 16 of the Arbitration Act is titled 'Competence of arbitral tribunal to rule on its jurisdiction' and Section 16(1) provides that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement. Section 16(2) states that a plea that the arbitral tribunal does not have jurisdiction should be raised not later than the submission of the statement of defence, but a party would not be precluded from raising such a plea merely because he has appointed or participated in the appointment of the arbitrator. Section 16(3) states that a plea that the arbitral tribunal is exceeding the scope

[49] **(2018) 2 SCC 534 : (2018) 2 SCC (Civ) 208**

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of its authority should be raised as soon as the matter alleged to be beyond the scope of such authority is raised during the arbitral proceedings. Section 16(4) stipulates that, in either of the cases referred to in Section 16(2) or (3), the arbitral tribunal may admit a later plea, if it considers the delay justified. ***Section 16(5) categorically mandates that once the arbitral tribunal decides on a plea raised under Section 16(2) or (3) and where the arbitral tribunal rejects such plea, it shall continue with the arbitral proceedings and make an arbitral award.*** *Section 16(6) states that the party aggrieved by such an arbitral award may then make an application for setting it aside in accordance with Section 34 of the Arbitration Act. It is also relevant to note that Section 37 of the Arbitration Act, titled 'Appealable orders', provides for an appeal being filed only in the event an arbitrator upholds the plea of lack of jurisdiction under Section 16(2) or (3), i.e., where the arbitrator puts an end to the arbitration proceedings by accepting the plea that he/she has no jurisdiction to proceed further.*

***

12. We may note that this Court specifically held that a decision of the arbitrator on limitation, taken up as a preliminary issue, would amount to an interim award which would be amenable to challenge under Section 34 of the Arbitration Act. ***This is logical as that issue, once it stands decided, would no longer figure for consideration before the arbitrator and would, therefore, not be dealt with again in the final award that would be passed by the arbitrator. Unless such decision is treated as an interim award, there would be no scope for the party aggrieved thereby to challenge the correctness thereof****.*

13. However, ***if an arbitrator deals with the very same issue of limitation on an application filed under Section 16 of the Arbitration Act, on the ground that the arbitrator lacks jurisdiction on that count, it would be traceable to Section 16(2) of the Arbitration Act and if the arbitrator rejects that plea, Sections 16(5) and Section 16(6) would apply****. In that situation, there is no option for the party aggrieved by the decision of the arbitrator upon the application filed under Section 16 except to wait till the conclusion of the arbitral proceedings and then raise that issue by way of an application under Section 34 against the final award.*

14. Though the final award, even in this situation, would not focus upon the issue of limitation as it already stood decided by the rejection of the application filed under Section 16(2) of the Arbitration Act, the scheme of Section 16 and, more particularly, Sections 16(5) and 16(6), would keep the issue alive and enable the party aggrieved to challenge the validity of the rejection order under Section 16 at the final stage, even after the passing of the final award.

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15. ***However, the scheme of Sections 16(5) and 16(6) would not apply if the arbitrator deals with limitation as a preliminary issue and makes a decision thereon in favour of the claimant.*** *That is the reason why this Court observed that, in such a situation, the drill of Sections 16(5) and 16(6) would not have to be followed. This Court went on to observe that even such interim awards should be made amenable to challenge under Section 34 of the Arbitration Act after the passing of the final award, instead of going in for 'piecemeal' challenges.*

16. The exclusion of an order passed by an arbitrator under Section 16(2), rejecting the plea of lack of jurisdiction is, therefore, manifest from the aforestated observations of this Court, but this decision has now been misunderstood to imply that, even the rejection of a plea under Section 16(2) of the Arbitration Act must be treated as an interim award and the same can be subjected to challenge under Section 34 of the Arbitration Act. This understanding on the part of the learned District Judge, which seems to have found favour with the Division Bench of the Delhi High Court, is erroneous and unsustainable. Accepting such a construction would do violence to the very scheme of the Arbitration Act and render Section 37(2) thereof superfluous, as it is only an order accepting the plea of lack of jurisdiction under Section 16(2) or (3) that is amenable to appeal directly, without going through the process under Section 34 thereof. This crucial aspect of the matter was entirely lost sight of.

17. On the above analysis, the respondent was not entitled to file an application under Section 34 of the Arbitration Act against the order dated 19.05.2023 passed by the learned Arbitrator rejecting its plea of lack of jurisdiction on the ground of limitation. As the said application was not even maintainable, the question of an appeal under Section 37 of the Arbitration Act being entertained against the decision passed thereon did not arise. The Delhi High Court erred in overlooking this crucial aspect and in deciding the appeal on merits. The judgment dated 08.05.2025 passed by the Division Bench of the Delhi High Court in FAO (Comm.) No. 83 of 2024 is, accordingly, set aside. It would be open to the respondent to test the validity of the order dated 19.05.2023 passed by the learned Arbitrator only after passing of the final award and if the situation so warrants, by way of an application under Section 34 of the Arbitration Act."

(emphasis supplied)

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103. Thus, it was reasoned that once a preliminary issue is decided finally, it cannot be re-adjudicated by the Tribunal in the final award. Therefore, unless such decision is treated as an interim award, the aggrieved party will not have a forum to challenge such decision.

104. The Court also explained that if the same issue is taken up under the garb of a Section 16 application, the machinery under Section 16 would be triggered and accordingly, the decision would either be assailed under Section 37 or Section 34 after passing of the final award and that such decision cannot be construed as an interim award.

105. In the present case, the Zee Group filed their Section 16 applications before the predecessor Arbitrator seeking the following prayers:

> *"a. reject the Statement of Claim dated 30th May 2019 as there exist no valid arbitration agreement between the Claimant and Respondent No.1; or*
>
> *b. in the alternative, the Claimant be asked to pay the adequate stamp duty on the Loan Agreement dated 15th March 2014 and the said Agreement be ordered to forthwith impounded by the Stamp authorities unless the stamp duty is not paid as per Article 5(h)(iv)(b) of the Maharashtra Stamp Act, 1958;*
>
> *c. pass an Order awaiting costs in favour of Respondent No.1; and*
>
> *pass any such other/further Order(s)/directions as this Hon'ble Tribunal may deem fit in the interest of justice, equity and fair play"*

106. On 22.10.2020, the learned Arbitrator allowed prayer (b) of the application and adjourned the proceedings *sine die.*

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107. The learned Arbitrator's decision was thereafter assailed under Section 37(2)(a) before this Court and subsequently, an SLP was filed. On 22.04.2022, the Hon'ble Supreme Court dismissed the SLP and observed that the question of impounding can only be decided when the original agreements are furnished.

108. Thereafter, in view of the miscellaneous applications filed by the Zee Group, on 20.05.2022, the Hon'ble Supreme Court clarified the aforesaid Order as follows:

> *"In furtherance of our earlier order dated 22.04.2022, it is observed and it goes without saying that as and when the original document is produced before the learned Arbitrator, the question whether the document is to be impounded or not is to be considered. The Arbitrator has to take a call on whether the original document produced is on a proper stamp duty or not. The same is to be considered in accordance with law and on its own merits.*
>
> *With this, the applications stand disposed of."*

109. Therefore, it was directed that once the original document is produced before the learned Arbitrator, the Arbitrator shall take a call on whether the original is to be impounded or not.

110. Another batch of miscellaneous applications were filed by Zee Group with the specific prayer seeking a conclusive finding on whether ISA or MSA will apply. The Supreme Court by Order dated 19.09.2022 dismissed these applications and clarified that the question as to whether MSA or ISA is applicable shall also be decided by the learned Arbitrator.

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111. Accordingly, the matter was remanded to the learned Arbitrator for this particular issue.

112. The predecessor Arbitrator recused herself and thereafter another Arbitrator entered upon reference. The successor Arbitrator framed four preliminary issues, out of which it gave reasoning only for Issue Nos. 3 and 4. The issues so framed are as follows:

> *"ISSUES:*
> *i. Whether the Arbitration proceeding is maintainable?*
> *ii. Whether Application under Section 16 of the Arbitration and Conciliation Act, 1996 filed by the Respondent stands disposed off?*
> *iii. Whether The Maharashtra Stamp Act, 1958 is applicable or The Indian Stamp Act, 1899 is applicable to the Loan Agreement in question?*
> *iv. Whether the Loan Agreement in question (Original is on record) has properly been stamped or not?"*

113. With respect to Issue No. 2, the Arbitrator returned the following finding:

> ***"Re: Issue No . (ii)***
> *81. Further, in view of the fact that the arbitration proceedings are maintainable, it is not necessary to decide whether the application under Section 16 of the Arbitration and Conciliation, 1996 was disposed off or not."*

114. It is evident from a plain reading of the above that the learned Arbitrator was conscious of the fact that the Section 16 application was not being decided.

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115. Accordingly, upon a conjoint reading of the statute, the relevant precedents and the facts and circumstances of the present case, I am of the considered view that it is in light of the abovementioned orders of the Hon'ble Supreme Court that the learned Arbitrator framed the four preliminary issues and not in furtherance of the Section 16 applications filed by the Zee Group. It is also significant to note the learned Arbitrator's finding under Issue No. 2, whereby the learned Arbitrator deemed it fit to not decide whether the Section 16 applications were disposed of or not.

116. It is pertinent to note that the scope of the remand was limited to the question of the applicable stamp law and the adequacy of stamp duty thereof.

117. By the impugned award, the learned Arbitrator only gave reasoning pertaining to Issue Nos. 3 and 4. It was held that MSA was applicable and that the stamp duty was sufficient as per Article 5(h) B, therefore, there arose no question of impounding the agreements.

118. Therefore, in light of the ratio in ***IFFCO (supra)*** and ***MCM Worldwide (supra)***, such determination of preliminary issues framed amounts to an interim award under Section 31(6) of the Act as it finally decides an issue *inter se* the parties and would not be revisited at the stage of final award. Therefore, it must be challenged under Section 34 of the Act.

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119. Accordingly, in the opinion of this Court, the present batch of cross-objection petitions filed under Section 34 of the Act are maintainable.

120. Now we shall delve into the merits of the matter at hand.

(ii) <u>On Merits: MSA or ISA?</u>

121. At the outset, I deem it fit to delineate the well settled principles pertaining to stamp duty. In this regard, the Supreme Court in ***S.N. Mathur v. Board of Revenue***[50] succinctly held as follows:

> *"12. The principles relating to charging stamp duty are well settled. They are:*
>
> *(i) The object of the Stamp Act is generation of revenue. It is therefore a fiscal enactment and has to be interpreted accordingly.*
>
> *(ii)* ***Stamp duty is levied with reference to the instrument and not in regard to the transaction****, unless otherwise specifically provided in the Act.*
>
> *(iii)* ***Stamp duty is determined with reference to the substance of the transaction as embodied in the instrument and not with reference to the title, caption or nomenclature of the instrument****.*
>
> *(iv) For classification of an instrument, that is, to determine whether an instrument comes within a particular description in an article in the Schedule to the Act, the instrument should be read and construed as a whole.*
>
> *(v) Where an instrument falls under two or more descriptions in the Schedule to the Act, the instrument shall be chargeable with only one duty, that is the highest of the duties applicable to the different description. But where an instrument relates to several distinct matters, it shall be chargeable with the aggregate amount of duties to which separate instruments would be chargeable.*
>
> *Merely because an instrument answers the definition of a "trust deed" it does not cease to be a settlement deed for the purpose of stamp duty, if it answers the definition of "settlement" also. It is well settled that all*

[50] **(2009) 13 SCC 301**

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trusts are not settlements, and all settlements are not trusts, but a deed of trust can also be a deed of settlement."

(emphasis supplied)

122. Further, to determine the applicable stamp law i.e. MSA or ISA, in case when an instrument is executed by different parties in different States, this Court shall first examine the relevant provisions of both statutes to ascertain whether they adequately address such a situation.

123. In case no statutory guidance is found, this Court shall refer to relevant judicial precedents to ascertain the relevant framework or mechanism to be applied. However, in the absence of any statutory provisions or binding judicial precedents, this Court may be constraint to refer to established principles of statutory interpretation.

124. I shall proceed with the contours of both the statutes in light of the aforesaid.

Overview of ISA and MSA

125. The ISA is a Central legislation pertaining to stamp duty and falls in Entry No. 91 to the Union List under Schedule VII of the Constitution of India[51]. It is a fiscal statute pertaining to levy of tax in the form of stamp duty on instruments recording transactions.

[51] "91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts."

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126. Article 268 of our Constitution provides that stamp duty falling under the Union List shall by levied by the Centre but shall be collected by the States in the event that stamp duty is levied in a State and not a Union Territory.

127. Stamp duty also finds place in Entry No. 63 to the State List[52] and Entry No. 44 to the Concurrent List[53] under the Schedule VII of the Constitution of India.

128. In view thereof, States have amended the ISA for its application in the respective State or passed its own State legislation for levy of stamp duty, which thereby forms part of the revenue of that State.

129. Being a fiscal statute, undoubtedly, ISA (and the respective State amendments) must be construed strictly. Under the ISA, the taxable event is the creation ("execution") of an instrument within the meaning of the Act; it is this instrument that becomes chargeable to stamp duty and not the transaction.

130. The dispute at hand requires this Court to delve into ISA and MSA both. Therefore, I deem it relevant to reproduce the provisions of both statutes in a tabular form hereinbelow for ease of reference:

[52] "63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty."
[53] "44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty."

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ISA	MSA
1. Short title, extent and commencement.—(*1*) This Act may be called the Indian Stamp Act, 1899. (*2*) It extends to the whole of India: Provided that it shall not apply to the territories which, immediately before the 1st November, 1956, were comprised in Part B States] (excluding the State of Jammu and Kashmir) except to the extent to which the provisions of this Act relate to rates of stamp-duty in respect of the documents specified in Entry 91 of List I in the Seventh Schedule to the Constitution. (*3*) It shall come into force on the first day of July, 1899.	**1. Short title, extent and commencement.**— (1) This Act may be called the Maharashtra Stamp Act. (2) It extends to the whole of the State of Maharashtra. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, direct.
2. Definitions.— (6) "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 instrument, chargeable under the law in force in India when such instrument was executed or, where several persons executed the instrument at different times, first executed	**2. Definitions.**— (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
(11) **"duly stamped"**, as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India	(h) **"duly stamped"** as applied to an instrument means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the state

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(*12*) **"executed"** and **"execution"** used with reference to instruments, mean "signed" and "signature" and includes attribution of electronic record within the meaning of section 11 of the Information Technology Act, 2000 (21 of 2000)	(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
(*14*) **"instrument"** includes— (*a*) every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; (*b*) a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and (*c*) any other document mentioned in Schedule I, but does not include such instruments as may be specified by the Government, by notification in the Official Gazette.	(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 ; Explanation.—The term "document" also includes any electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000
3. Instruments 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 that Schedule as the proper duty therefore respectively, that is to say—	**3. Instruments 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—

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(*a*) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;	(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 ;
(*b*) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and	(b) every instrument mentioned in Schedule I, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State:
(*c*) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:	
Provided that no duty shall be chargeable in respect of—	Provided that a copy or extract, whether certified to be a true copy or not and whether a fascimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule I if the proper duty payable on such original instrument is not paid:
(*1*) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;	Provided further that no duty shall be chargeable in respect of—
(*2*) any instrument for the sale, transfer or other disposition, either absolutely or byway of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the	(1) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be

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Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts.	liable to pay the duty chargeable in respect of such instrument or where the Government has undertaken to bear the expenses towards the payment of the duty. (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or Merchant Shipping Act, 1958
17. Instruments executed in India.— All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.	**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 on the next working day following the day of execution: Provided that the clearance list described in Article 19, 20, 21, 22 or 23 of Schedule I may be stamped by an officer authorised by the State Government by rules made under this Act, if such clearance list is submitted for stamping by the clearing house of an Association in accordance with its rules and bye-laws with the requisite amount of stamp duty, within two months from the date of its execution.
18. Instruments other than bills and notes executed out of India.—	**18. Instruments executed out of State.—**

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(1) Every instrument chargeable with duty executed only out of India and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in India. (2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.	(1) Every instrument chargeable with duty executed only out of this State may be stamped within three months after it has been first received in this State. (2) Where any such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the State Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

131. A cumulative reading of relevant provisions of both statutes reveals that Section 2 sets out various definitions of terms employed throughout these statutes, whereas Section 3 is the charging provision specifying the kind of instruments that attract stamp duty. The rate or quantum of the duty is prescribed under the respective Schedules appended to the statutes. An instrument not mentioned in these Schedules is not liable to be stamped. Further, the question as to when such instruments ought to be stamped is answered by Sections 17 and 18 of these statutes.

132. In particular, Section 18 of both Acts provides the method for stamping instruments executed outside the territory wherein the statute is applicable. Accordingly, this provision pertains to instruments executed outside India and Maharashtra under ISA and MSA respectively.

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133. The most rudimentary yet crucial aspect is the chargeability of an instrument. Chargeability, in simple terms, is whether an instrument is legally amenable to stamp duty under the applicable legislation. An instrument is said to attract stamp duty when it is executed (signed)[54].

134. While the ISA and MSA adopt an identical meaning of the words "execution" and "executed". This meaning is, however, distinct from their common understanding. Both statutes restrict the meaning of "execution" and "executed" to merely mean "sign" or "signature". The definition does not stipulate any other qualification whatsoever; that is to say, there is no explicit specification as to how many persons must sign an instrument in order for it to be considered as "executed" to attract stamp duty under Section 3.

135. In other words, the "chargeable event" for levy of stamp duty on an instrument is its execution, which is nothing but affixing signatures to the instrument. However, whether signature of a single party to a multilateral agreement is sufficient to attract stamp duty remains a question that falls for determination before this Court.

136. In the quest to find an answer to this question, let us begin by analysing the relevant provisions of the MSA.

MSA

[54] Vijay v. Union of India, **(2023) 17 SCC 455**

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137. At the outset, an instrument is said to be "duly stamped" under MSA if it bears an "adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the State"[55].

138. Section 2(d) defines "chargeable" as follows:

> *"(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****"*
>
> ***(emphasis supplied)***

139. It is evident from the above that an instrument would be chargeable under the Act in force at the time of its execution. This definition is *pari materia* to the definition under the ISA, save that the former uses the term "State" and the latter employs the term "India".

140. This provision clarifies which law applies for determining "chargeability" and for this purpose, it uses execution of an instrument as the point of reference. It cannot be said that this provision squarely answers the question "when is an instrument chargeable"; which is more appropriately answered by Sections 17 and 18.

141. Briefly stated, Section 2(d) defines the scope of "chargeable" with respect to instruments executed at different points in time. Specifically, if

[55] Section 2(h) of MSA

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an instrument was executed or first executed after the MSA came into force, it would be chargeable under the MSA. Conversely, if an instrument was executed before the MSA came into force, it would be governed by the stamp legislation in effect at that relevant time.

142. Therefore, Section 2(d) identifies the statute governing an instrument's chargeability with reference to the "time of execution".

143. Section 3, being the charging provision, is highly relevant to this discourse. This Court is of the view that Section 3 is the singular provision that sheds light upon this otherwise dense thicket of statutory uncertainty. It is reproduced as follows:

> *"3. Instruments 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;*
>
> *(b) every instrument mentioned in Schedule I, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State:*
>
> *Provided that a copy or extract, whether certified to be a true copy or not and whether a fascimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule I if the proper duty payable on such original instrument is not paid:*
>
> *Provided further that no duty shall be chargeable in respect of—*

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> *(1) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument or where the Government has undertaken to bear the expenses towards the payment of the duty.*
>
> *(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or Merchant Shipping Act, 1958"*
>
> *(emphasis supplied)*

144. As understood, Section 3 is the charging provision that determines when an instrument becomes liable to stamp duty under the MSA. Section 3 identifies two scenarios in which an instrument becomes chargeable to stamp duty in Maharashtra.

145. Section 3(a) simply stipulates that instruments executed in Maharashtra shall be stamped as per MSA. Whereas Section 3(b) provides that instruments executed outside Maharashtra will attract MSA if: (i) it pertains to any property in the State or any matter or a thing done or to be done in the State, and (ii) is received in Maharashtra.

146. Notably, to invoke Section 3(b), it is evident from the use of the word "and" that both the conditions (i) and (ii) ought to be met.

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147. Upon a cumulative reading of the provisions of the MSA, it seems to be that Section 3 is confined to identifying the circumstances in which an instrument becomes qualified for duty to be attracted under the MSA.

148. However, in view of this Court, Section 3 of the MSA does not prescribe a conclusive rule for determining which State legislation shall conclusively govern an instrument executed by different parties in different States.

149. Notably, the expression "*not having been previously executed by any person*" qualifies the class of instruments attracting chargeability under Sections 3(a) and 3(b). However, it does not constitute an independent or exclusive provision determining which stamp legislation would follow if an instrument were signed by different parties in different States.

150. I say so because Section 3(b) itself imposes the chargeability of instruments executed outside Maharashtra, subject to the prescribed territorial connection and receipt within the State. Section 19 further recognizes the possibility of stamp duty already having been paid under another applicable law.

151. Thus, upon a holistic reading of MSA and keeping in mind the nexus between the ISA and MSA, it is clear that the MSA does not treat the place of first execution as the sole answer for determining applicability of the legislation. The reason being that MSA itself contemplates an instrument to be executed in one State and thereafter being received in Maharashtra,

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wherein it shall again attract stamp duty. Therefore, if the place of first execution was the sole determinative factor as to which State legislation would apply, there would be no room for this additional charging mechanism.

152. The use of the phrase "*not having been previously executed by any person"* in this provision falls short of a determinative answer as to how many signatures would constitute "executed" or "execution" with respect to a multilateral agreement.

153. Consequently, the question of which State legislation governs the stamp duty of an instrument executed by different parties in different States cannot be conclusively answered merely by referring to the words "*not having been previously executed by any person*" in Section 3. The applicability of each relevant State legislation must be examined with reference to its respective charging provisions.

154. Thus, having gone through the relevant provisions of the MSA, this Court is of the view that although MSA answers when the MSA itself will be applicable, however, it does not answer which statute will apply when different parties execute an instrument in different States.

155. Accordingly, since this Court does not find a definitive resolution to the present controversy within the provisions of MSA, it is necessary to examine the provisions of the ISA, to ascertain if they offer any further clarity.

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ISA

156. At the outset, it must be candidly stated that an examination of the relevant provisions of the ISA reveals that they, too, fail to provide a definitive answer to the question in controversy.

157. In these circumstances, I shall briefly proceed to analyse the relevant provisions of ISA and demonstrate why they as well fail to guide this Court in the present discourse.

158. While the earlier Indian Stamp Act of 1879 (Act I of 1879) defined "chargeability" as it is defined today, it did not stipulate what "executed" or "execution" meant.

159. Notably, this definition was introduced for the first time in the ISA, 1899. This definition has been borrowed from Section 122(1) of the English Stamp Act, 1891[56].

160. Accordingly, Section 2(12) of the ISA also defines "execution" and "executed" to mean "signed" and "signature". Further, Section 17 requires instruments chargeable with duty (executed within India) to be stamped *before* or *at* the time of execution. Section 18 requires instruments

[56] "The expressions " executed " and " execution," with reference to instruments not under seal, mean signed and signature"

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executed outside India but received in India to be stamped within three months of being received in India.

161. Therefore, since these provisions of ISA are *pari materia* to that of MSA, they are riddled with the same limitations as laid out in the foregoing discussion. The ISA as well does not answer the question as to how many signatures to a multilateral instrument would render an instrument to be "executed" and as to which State legislation shall apply if multiple contracting parties sign the instrument in different States.

162. Having delineated the scheme of ISA and MSA, I shall proceed to certain relevant judicial authorities.

The Tapestry of Judicial Precedents

163. At this stage, I deem it relevant to reiterate that ISA and MSA are fiscal statutes enacted to secure revenue for the State. Accordingly, they must be construed strictly and in due regard to their purpose[57].

164. The Hon'ble Supreme Court much rightly cautioned that these statutes are not meant to "*arm a litigant with a weapon of technicality to meet the case of his opponent*"[58].

[57]; Hameed Joharan v. Abdul Salam, **(2001) 7 SCC 573;** In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, **2023 SCC OnLine SC 1666**

[58] Hindustan Steel Ltd. v. Dilip Construction Co., **(1969) 1 SCC 597**

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165. More recently, seven Judges of the Hon'ble Supreme Court in ***In Re: Interplay (supra)*** have reiterated that stamp duty shall not be an obstacle at the nascent stage of the arbitral process i.e., the Section 8 and 11 stages.

166. It was held that non-stamping or inadequate stamping is a curable defect. It was reasoned that the Parliament was aware of the Stamp Act when it enacted the Arbitration Act and yet the Parliament in its wisdom chose to not provide that an arbitration agreement ought to be duly stamped. The Apex Court invoked *inter alia* the principle of severability and the effect of the *competence-competence* doctrine to hold the following:

> *"235.3. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists;*
>
> *235.4. Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal;"*

167. Accordingly, this Court is mindful that the issue of stamping falls within the domain of the learned Arbitrator and that this Court must not interfere merely because another view is plausible.

168. This Court is also mindful that while interpreting statutes, if two interpretations are plausible, courts must give effect to the legislative intent and reject any interpretation which will defeat the basic intent of the

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legislation. Courts must also take into consideration the entirety of the statute[59].

169. A Full Bench of the Hon'ble Supreme Court in ***New Central Jute Mills Co. Ltd. v. State of W.B.***[60] considered the question that whether an instrument pertaining to property in West Bengal and bearing the stamp of West Bengal is liable to be stamped in Uttar Pradesh on account of it being executed in Uttar Pradesh.

170. This decision pertains to a mortgaged deed executed in Uttar Pradesh but pertaining to property in West Bengal, where the deed was received thereafter for registration. This deed was stamped as per rates applicable in West Bengal, but the Supreme Court held that the officers in Uttar Pradesh were bound to hold that the deed was not adequately stamped as per laws in Uttar Pradesh. It was reasoned as follows:

> *"9. There cannot be any doubt that when it becomes necessary for any public officer of a State – using that word to mean an officer in charge of a public office – to decide whether an instrument is or is not "duly stamped" the law has to apply is the Indian Stamp Act in the light of the appropriate modifications made by the State Legislature. So, when the Uttar Pradesh public officers had to decide in the present case whether the original mortgage deed was or was not "duly stamped" they had to examine for the purpose the Indian Stamp Act as it stood after its amendment by the Uttar Pradesh Legislature. Section 3 of the Stamp Act creates a liability for stamp duty. Section 3 after its amendment by the U.P. legislature stands thus:*
>
> > *"3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty*

[59] CIT v. Hindustan Bulk Carriers, **(2003) 3 SCC 57**; In Re: Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, **2023 SCC OnLine SC 1666**

[60] **1963 SCC OnLine SC 201**

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of the amount indicated in that Schedule as the property duty therefor, respectively, that is to say:-

(a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in the States on or after the first day of July, 1899;

(b) every bill of exchange (payable otherwise then on demand) or promissory note drawn or made of the States on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in the States; and

(c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule which, not having been previously executed by any person, is executed out of the States on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the States and is received in the States:-

Provided that except as otherwise expressly provided in this Act, and notwithstanding anything contained in clauses (a), (b) and (c) of this section or in Schedule I or I-A the following instruments shall subject to the exemptions contained in Schedule I-A or I-B be chargeable with duty of the amount indicated in Schedule I-A or I-B as the proper duty therefor respectively, that is to say-

(aa) every instrument mentioned in Schedule I-A or I-B which not having been previously executed by any person was executed in Uttar Pradesh-

(aa) every instrument mentioned in Schedule I-A or I-B which not having been previously executed by any person was executed in Uttar Pradesh-

(i) in the case of instruments mentioned in Schedule I-A on or after the date on which the U.P. Stamp (Amendment) Act, 1948, came into force, and

(ii) in the case of instruments mentioned in Schedule I-B on or after the date on which the U.P. Stamp (Amendment) Act, 1952, comes into force

(bb) every instrument mentioned in Schedule I-A or I-B which not having been previously executed by any person, was executed out of Uttar Pradesh-

(i) in the case of instruments mentioned in Schedule I-A, on or after the date on which the U.P. Stamp (Amendment) Act, 1948 came into force and

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(ii) In the case of instruments mentioned in Schedule I-B on or after the date the U.P. Stamp (Amendment) Act, 1952 comes into force, and relates to any property situated, or to any matter or thing done or to be done in Uttar Pradesh and is received in Uttar Pradesh:

Provided also that no duty shall be chargeable in respect of

(1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest share or property of or in any shop or vessel registered under the Merchant Shipping Act, 1894, or under Article 19 of 1838, or, the Indian Registration of Ships Act, 11841, (10 of 1841), as amended by subsequent Acts."

10. Another important change in the legal position was effected by framing rules under the Act. While Section 74empowers the State Government to make rules relating to the sale of stamps, Section 75 empowers the Government generally to make rules "to carry out generally the purposes of the Act". Section 76 provides that all rules made under the Act shall be published in the Official Gazette and on such publication shall have effect as if enacted by the act. Of the rules framed by the Uttar Pradesh Government it is necessary to consider in the present case Rule 3 which is in these words:

"3. Except as otherwise provided by the Stamp Act or by these rules-

(i) all duties with which an instrument is chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamp issued by the Government for the purposes of the Act, and

(ii) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument shall not be used for an instrument of any other kind.

(2) There shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable namely:

(a) impressed stamps overprinted with the words "Uttar Pradesh" or the letters "U.P.", and

(b) adhesive stamps overprinted with the letters "U.P.",

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Provided that the payment of stamp duty on instruments, executed in any part of British India other than Uttar Pradesh and governed by Section 19-A of the said Act, as amended in its application to the Uttar Pradesh, may be indicated by such stamps as may be prescribed for use in that part to the extent of the duty payable there, the additional duty, if any chargeable in the Uttar Pradesh being paid by means of stamps prescribed in this rule. Sub-rule (2) of this rule shall take effect from 1st April, 1942:

Provided further that all impressed and adhesive stamps for indicating the payment of duty with which instruments are chargeable and which are not overprinted with words "Uttar Pradesh" or "U.P." respectively, shall be consumed or exchanged at the treasuries in Uttar Pradesh, provided that they are undamaged and unpolished, with overprinted stamps of the name and denomination and description before 1st April 1942, after which date the use or exchange of impressed and adhesive stamps not so overprinted, shall not be permissible, except to the extent indicated in the first proviso."

The effect of Section 76 already mentioned above is that this rule operates as a part of the Stamp Act. In deciding whether the instrument had been duly stamped or not the public officer had to consider not only the provisions of the Act but also the provisions of the rules. The position that confronted the officers may be summarised thus : The document had been executed in Uttar Pradesh. So, it became liable to pay duty under Section 3(aa) of the Act as amended in Uttar Pradesh. Rule 3 required that the liability had to be discharged by using stamps overprinted with the words "Uttar Pradesh" or "U.P." The instrument did in fact bear stamps overprinted with the words "West Bengal" and not with the words "Uttar Pradesh" or "U.P." The public officer was therefore bound to hold that it had not been stamped in accordance with the law in force in Uttar Pradesh.

11. On behalf of the petitioner it is urged that even so the officer should have held that the document was duly stamped. Reliance is placed for this contention on the definition of the words "duly stamped" in Section (2)(ii) of the Act. The definition runs thus:

> *"duly stamped" as applied to an instrument means that the instrument bears an adhesive or impressed stamp or not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India"*

Leaving out of consideration for the present, the question of what should be the proper amount of the stamp, it is necessary to consider whether when the officer found that the stamp had not been affixed or used "in accordance with the law for the time being in force in Uttar Pradesh:

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he was entitled to say also that the stamp had not been affixed or used in accordance with the law for the time being in force in "India". It is pointed out that like the Uttar Pradesh legislature the Bengal legislature had also amended the stamp law and framed its own rules. The amendment of Section 3 in Bengal was by the addition of a proviso in these words:

> *"Provided that, except as otherwise expressly provided in this Act, and notwithstanding anything contained in Clause(a), (b) or (c) of this section or in Schedule 1, the amount indicated in Schedule 1-A to this Act shall, subject to the exemptions contained in that Schedule, be the duty chargeable under this Act on the following instruments, mentioned in clauses (aa) and (bb) of this proviso as the proper duty therefor respectively.*
>
> > *(aa) every instrument, mentioned in Schedule 1-A as chargeable with duty under that Schedule, which, not having been previously executed by any person, is executed by any person, is executed in Bengal on or after the first day of April 1922; and*
> >
> > *(bb) every instrument mentioned in Schedule 1-A, as chargeable with duty under that Schedule, which, not having been previously executed by any person, is executed out of Bengal on or after the first day of April, 1922, and relates to any property situated, or to any matter or thing done or to be done in Bengal, and is received in Bengal."*

The Bengal Government also framed rules under Section 76 which were duly published in the Gazette and on such publication became part of the Act. Rule 3 of these rules, as it now stands requires that the duty payable must be paid by means of stamps overprinted with the words "West Bengal". The instrument in the present case is mentioned in Schedule 1-A of the Stamp Act as in force in West Bengal and though executed out of West Bengal it relates to property situated in West Bengal and was for the purposes of registration received in West Bengal. It was therefore chargeable under Section 3(bb) of the Stamp Act as in force in Bengal. This duty was paid by stamps overprinted with the words "West Bengal" in accordance with the stamp rules in force in West Bengal. On behalf of the petitioner it is urged that the stamp law in force in West Bengal was as much a law in force in India as the stamp law in Uttar Pradesh is the law in force in India. It is argued that in deciding whether an instrument is "duly stamped" within the meaning of the Stamp Act it was necessary for the officer in Uttar Pradesh to ascertain the law in other parts of India also in order to decide whether or not "stamp" has been affixed or used in accordance with the law for the time being in force in India.

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13. The problem is therefore reduced to this: Where an officer in Uttar Pradesh finds that an instrument has not been stamped in accordance with the law in force in Uttar Pradesh, how is he to proceed? It is easy to see that similar problems may arise before public officers of other States. Thus, an officer in Bihar who has to decide whether a particular instrument has been duly stamped, may find that it has been stamped in accordance with the law in force in Madras but not in accordance with the law in force in Bihar. Should he hold that the instrument has been duly stamped, in such circumstances?

14. Primarily, the liability of an instrument to stamp duty arises on execution. Execution in India itself made the instrument liable to stamp duty under Section 3(a) as it stood before the amendment. Under Section 3(c) execution out of India, where the instrument relates to property situated or any matter or thing done or to be done in India together with the further fact that the instrument is received in India, made the instrument chargeable with duty. In amending the Stamp Act what the State legislatures substantially did was to treat the particular State as equivalent to India. Thus, after the amendment by the U.P. legislature the position in law is that execution of an instrument in Uttar Pradesh is made the primary dutiable event and liability to stamp duty arises on such execution. Apart from that, liability also arises where the instrument though executed out of Uttar Pradesh relates to property situated or any matter or thing done or to be done in Uttar Pradesh and is received in Uttar Pradesh. It may be mentioned that the changes in the law made by the other State legislatures are exactly similar.

15. It is clear that in many cases the only one liability viz. the liability on execution of the document will arise. After the amendment of the Act the liability can no longer be said to arise generally in India but must be held to arise in the particular State where the instrument is executed. It stands to reason that liability having arisen in a particular State it cannot be held to be discharged in accordance with the law in force in India unless it is discharged in accordance with the law of the State where it arises. In other words, where the only liability of an instrument to stamp duty is the execution in Uttar Pradesh it must bear stamps of the amount and description in accordance with the law of the State concerned – the law including not only the Act but also the rules framed under the Act.

16. Some complications arise in the cases where both the liabilities arise – i.e. where the instrument is executed in one State but is related to property situated in or to things done or to be done in another State and is received in the second State. In these cases the liability to stamp duty arises first under the stamp law of the first State on account of the

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execution in the State; a second liability arises under the law of the second State when the instrument is received in that second State."

171. Therefore, the Court recognized that the liability to stamp would first arise in the State where the instrument is executed. The Court further acknowledged that after respective State amendments, a second liability would arise where an instrument executed in one State pertains *"to property situated or any matter or thing done or to be done"* in another State. Accordingly, the Court held that liability in such cases must be discharged in the following manner:

> *"17. How is the liability to be discharged? Has it to be discharged in accordance with the law in force in the State where execution takes place or in accordance with the law in force in the State where the second dutiable event viz. the receipt in the second State occurred? Obviously, an officer, of the first State may reasonably think that it is the law of his State which must prevail and so even if the document has been stamped in accordance with the law of the other State he may ignore that stamping as not done in accordance with the law in India and proceed to demand that it must bear stamps in accordance with the law of his State. It was to avoid the hardships that may conceivably result from such a situation that the legislatures of different States enacted Section 19-A of the Stamp Act. This section of the Uttar Pradesh Act runs thus:*
>
> > *"19. A "Where any instrument has become chargeable in any part of the States other than the Uttar Pradesh with duty under this Act or under any other law for the time being in force in any part of the States and thereafter becomes, chargeable with a higher rate of duty in the Uttar Pradesh under clause (bb) of the first proviso to Section 3, then,*
> >
> > *(i) notwithstanding anything contained in the first proviso to Section 3 the amount of duty chargeable on such instrument shall be the amount chargeable on it under Schedule 1-A, or Schedule 1-B, less the amount of duty, if any, already paid on it in the States; and*

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> *(ii) in addition to the stamps, if any, already affixed thereto, such instrument shall be stamped with the stamps necessary for the payment of the amount of duty chargeable on it under (1) in the same manner and at the same time and by the same persons as though such instrument were an instrument received in the States for the first time at the time when it becomes chargeable with the higher duty."*
>
> *18. Therefore, where the rate of duty in Uttar Pradesh for an instrument which becomes chargeable for stamp duty as mentioned above, (i.e., an instrument executed out of Uttar Pradesh and relating to property situated or to any matter or thing done or to be done in Uttar Pradesh) with a higher rate of duty in Uttar Pradesh than in West Bengal, only the excess has to be paid in Uttar Pradesh and it is only this excess which requires to be paid in Uttar Pradesh stamps. (Vide Rule 3 of the Uttar Pradesh Rules)."*

172. It is also to be noted that in ***New Central Jute Mills (supra)***, the controversy before the Hon'ble Supreme Court proceeded upon the admitted execution of a complete and chargeable mortgage instrument within the State of Uttar Pradesh, and the principal question therein was whether such instrument could be regarded as duly stamped notwithstanding that the stamp affixed thereto had been issued by the State of West Bengal and not Uttar Pradesh. The Court, in that context, recognised execution as the primary dutiable event. However, the judgment did not examine the anterior question of what constitutes execution where an instrument, by its very character and terms, requires signatures from multiple parties in multiple States before it can acquire the character necessary for chargeability.

173. Moving forward, three Judges of the Madras High Court in ***Chief Controlling Revenue Authority Madras v. Canara Industrial and***

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Banking Syndicate Ltd.[61] answered a question highly relevant to this discourse, i.e., "*whether instruments in general are to be stamped on execution notwithstanding that other conditions which validate the transfer of rights which the instruments purport to make are not present?*". The Court answered the reference in the following manner:

> *"An interesting decision on this aspect is (Firm) Shamdin v. Collector, Amritsar [(1936) I.L.R. 17 Lah. 223; AIR 1936 Lah 449]. During the course of the judgment of the Special Bench the learned Judges observed, wish reference to the definition in S. 2 (12) at page 451:*
>
> > *"……the intention of the new clause was to make it clear at that time a document becomes executed so as to be chargeable with stamp duty under S. 3 of the Act……for the purpose of the Stamp Act, the clause makes all documents which are chargeable with duty, when executed, chargeable as soon as they are signed by the executant."*
>
> *With respect, we may point out that the words "by the executant" occurring in this passage, are a distinct addition to the definition in S. 2 (12) and, hence, not warranted.* ***If 'executed' means 'signed', and "execution" means "signature" it is clearly that this will include the signatures of all persons, who were required by a character of the document to sign in the document, in order to give that document effect according to law. We have no doubt, therefore, that if a document is of such a character that both parties to the document should sign it, to constitute it a binding agreement between them it should contain the signatures of both; similarly, if it had to be signed by two other attestors, in order to make it legal, this will also be necessarily part of the definition.*** *But once a document it complete in execution in sense, and the effective words of disposition are there, immediately transferring rights by the very virtue of the document, the question of its subsequent registration is a distinct matter altogether, and the document is certainly liable to stamp duty with reference to the relevant Article of the Stamp Act, since execution is complete."*
>
> ***(emphasis supplied)***

[61] **1967 SCC OnLine Mad 102**

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174. The aforesaid matter pertained to a conveyance deed, and it was contended by the Respondent therein that since the instrument was not registered, it was not a valid conveyance and hence, could not be liable to stamp duty. In view of Sections 2(6), 3(a) and 17, the Court accepted the proposition that stamp law envisages a document liable to stamp duty at the time of its execution, which may be prior to its registration.

175. The Court referred to the decision in ***Shamdin v. Collector, Amritsar***[62], which held that instruments become chargeable as soon as they are "signed by the executant". The Court specifically rejected this and held that "by the executant" is nowhere found under Section 2(12). Accordingly, the Court clarified that the signatures of all persons who, by the very nature of the instrument, are required to sign it, would constitute "execution" under Section 2(12). This may even include witnesses.

176. On the other hand, five Judges of the Andhra Pradesh High Court in ***Hazrami Gangaram v. Kamlabai***[63] arrived at a different conclusion from the Madras High Court Bench. The Court was seized with the question that whether the document in question was a mortgage deed within the meaning of Section 2(17) of the Stamp Act or not. The Bench held that signing of the instrument is the sole formality required to give rise to chargeability and no other steps such as delivery or registration of the instrument or

[62] **(1936) I.L.R. 17 Lah. 223; AIR 1936 Lah 449**
[63] **A.I.R. 1968 A.P. 213**

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attestation by witnesses is required to attract stamp duty. It was held as follows:

> *"11. Under section 2(6) of the Stamp Act "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 instrument, chargeable under the law in force in India when such instrument was executed or, where several persons executed the instrument at different times, first executed.* ***"It maybe noticed" that according to this definition, what is chargeable is what is liable to duty at the time of execution.*** *Under section 2(12) "Executed" and "execution" used with reference to instruments, means "signed" and "signature."* ***A reading of these two definitions of "Chargeable" and "Executed" under sections 2(6) and 2(12) of the Stamp Act would make it clear that an instrument is chargeable with duty as soon as it is signed by the executant.*** *Under the Stamp Act of 1879, there was no definition of the terms "executed" or "execution" and it was held in Bkatoanji Harbhum v. Devji Punja [(1895) I.L.R. 19 Bom. 635.] , that a hundi was duly stamped if the stamp was affixed and cancelled at the time of delivery, but* ***under the present Act, liability to stamp the instrument would be at the time of signing it, so that it is clear that once the instrument is signed or executed, no other formality fequired*** *(sic)* ***to give legal validity to the instrument under the general law such as delivery or attestation by witnesses is necessary to make the instrument liable to stamp duty under the Stamp Act.***
>
> *12. The word "Instrument" under section 2(14) of the Stamp Act is defined to include "every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded." Under this definition, what is made liable to duty is the document which satisfies the requirements of section 2(14).* ***The test is whether the document creates or purports to create a right, and every such instrument as defined under section 2(17) would be liable to stamp duty at the time of execution i.e., at the time when it is signed,*** *because the crucial time as to when a document is liable to stamp duty is undoubtedly the date of execution, i.e., the date on which it is signed and nothing else.* ***To hold that an instrument must be a valid instrument under law before it is liable to stamp duty would be to ignore the requirements of the definition or to make them otiose.*** *That this is not so is further demonstrated by some of the other provisions of the Stamp Act. Under section 13 cf (sic) the Stamp Act, every instrument written on a stamped paper shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument and under section 14, no second*

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instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written. . Section 15 of the Stamp Act says that every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

13. The time at which an instrument executed in India should be stamped is specifically provided for under section 17 which states that "all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution". ***In view of this requirement, a document not signed is clearly not liable to stamp duty.*** *It is interesting to note that in Burma, formal documents written on palm leaves are by custom treated as completed documents and admitted in evidence though not signed. But under section 2(12) being unsigned, such documents will not be liable to stamp duty as they are not executed. Thus it has been held by a Full Bench of the Burma Chief Court in Re the Application of Chet Po [(1914) 22 I.C. 75.] , that an instrument chargeable with stamp duty on being executed is not liable to duty until it is signed, although this fact does not necessarily imply that the unsigned document is incomplete for the purpose for which it was drawn up. Again in Maung Po Din v. Maung Po Nyein [(1922) 66 I.C. 360.] , it was observed that unsigned Burmese instruments made since the Indian Stamp Act of 1899 came into force cannot be treated as executed for the purpose of the Stamp Law. In Shams Din v. The Collector, Amritsa [(1936) I.L.R. 17 Lah. 223.] , a special Bench of the Lahore High Court consisting of Addison, Goldstream and Abdul Rashid, JJ., explained that before section 2(12) of the Stamp Act was enacted, there was no such provision in the Stamp Act and the intention of the new clause was to make it clear at what time a document became executed so as to be chargeable with stamp duty under section 3 of the Stamp Act. At page 228, Goldstream, J., delivering the judgment of Bench said:*

> *"Signature alone will not, in all cases, complete the execution of a document for the purpose of giving it legal validity, for instance, a will may not be legally executed until it is duly attested by witnesses, a Hundi is not executed until it is delivered (see Bhawanji Harbhum v. Devji Punja [(1895) I.L.R. 19 Bom. 635.] , but for the purpose of the Stamp Act the clause msikes (sic) all documents which are chargeable with duty when executed, chargeable as soon as they are signed by the executant."*

14. It may, however, be noticed that the definition in section 2(12) does not give an indication as to when the document is complete. ***Take for instance a contract which is complete when the last party signs it,***

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though in some cases it may be a valid agreement with only one signature. But for the requirement of the Stamp Act, the document must be stamped before or at the time of execution, viz., at the time when it is signed, and not necessarily when the agreement is completed or the document is validly executed. *Under the aforesaid provision of section 17 the question has also arisen as to whether the stamping and execution are part of the same transaction making it permissible to stamp the instrument immediately after the execution or whether it should be stamped before the execution. The Madras High Court in Surij Mull v. Hudson [(1901) I.L.R. 24 Mad. 259.] , held that it is sufficient if stamping and execution are part of the same transaction so that it is permissible to stamp it immediately after the execution. But the Bombay High Court in Rohini v. A.I. Fernandes [AIR 1956 Bom 421.] distinguished the Madras decision on facts and differing from the ratio in that, case has held that a promissory note stamped after execution was not duly stamped under section 17 of the Stamp Act. What is meant by the expression "at the time of execution" in section 17 has been considered by their Lordships of the Privy Council under section 19 of the Zanzibar Stamp decree, which is in pari materia with section 17 of the Act, in M. Takim & Co. v. Fazal Kassam Velji [L.R. (1955) A.C. 617.] . After citing and considering the decision in In re Tinnel Mining Co. (Pool's case) [L.R. (1887) 35 Ch. D. 579.] their Lordships of the Privy Council observed at page 626:*

> *"The provision, as to the meaning of execution is 'unless the context otherwise requires'. The word 'at' in the phrase 'at or before' in the proviso to section 19 cannot mean simultaneously with signing, and must therefore cover a reasonable time after signing."*

***

18. Sections 62 to 69 provides for various penalties for transgressing the provisions of the Act, one of which is penalty for executing instruments not duly stamped. ***The definitions and the terms of every section of the Stamp Act indicate clearly that an instrument need not be valid in law or meet the requirements of law as a valid document, before it is chargeable to stamp duty under the Act.*** *It is chargeable to stamp duty before or at the time of its being signed or executed.* ***It is not necessary that it must be attested, or registered when such registration is an essential requirement for validity of the document. In our opinion, there is not the slightest indication in any of the provisions of the Stamp Act to lend support to the contention that a document must be validly executed either under the provisions of the Transfer of Property Act or under the Registration Act or, for that matter, under any other provision of law, before it is chargeable to stamp duty.*** *As*

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rightly pointed out by the learned Government Pleader, Mr. Sambasiva Rao, the admissibility of a document or instrument is dealt, with both under section'35 of the Stamp Act as well as under section 49 of the Registration Act. While the Stamp Act prohibits instruments chargeable with duty from being admitted in evidence unless such instruments are duly stamped, the Registration Act prohibits receipt of unregistered documents which are required by section 17 of that Act or any of the provisions of the Transfer, of Property Act to be registered. The admissibility of a document or instrument has been dealt with both by the Stamp Act as well as the Registration Act to achieve their respective purposes. It cannot, therefore, be said that the determination of the question as to what is a completed document or at what point of time a document should be stamped has to be considered with reference to any Act other than the Stamp Act."

(emphasis supplied)

177. Thus, the principal issue before the Bench was regarding a document purporting to create a mortgage and whether it had to satisfy other formalities such as registration before attracting stamp duty. Therefore, what the Court held was that an instrument need not be "valid" under the Transfer of Property Act or the Contract Act or Registration Act etc., in order to attract stamp duty. Simply put, legal validity under another legislation would not be a prerequisite to attract liability under the Stamp Act.

178. A Division Bench of the High Court of Kerala considered the two aforesaid decisions in ***Manohar Kammath* v. *Ram Mohan Kammath***[64] and found itself in agreement with the Madras High Court, by holding as follows:

[64] **1992 (2) KLT 714: AIR 1992 Ker 128: 1991 SCC OnLine Ker 98**

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"13. The definition of the words "executed" and "execution" has been taken from Section 122(1) of the English Stamp Act. In an old decision reported in ILR 19 Bombay 635 (Bhavaji Harbum v. Devi Punja), Farran, J. observed thus: "executed" means completed and the term "execution" when applied to a document is the last act or series of acts which completes it. It might be defined as a formal completion. Thus, execution of deeds is the signing, sealing and delivery of them in the presence of witnesses. Execution of a will includes attestation. In each class of instruments we have to consider when the instrument is formally complete.

14. ***The definition of executed and execution in a way restricts and confines it to mean signed, and signature. It is possible to say that it may include the signature of all persons, who are required by the character of the document to sign in the document. This we say because there may be cases where both parties have to sign in the document, and if one of the parties alone has signed, it will be difficult for us to hold that the document is executed.*** *This is important because the chargeability of stamp duty depends upon execution of the document. It is also perhaps possible to hold in this context that if a document had to be signed by attesting witnesses in order to make it a valid execution of the document the signatures of the attesting witnesses are also to be necessary to treat the document as an instrument, executed falling within the definition of that category of instruments, chargeable with stamp duty.* ***But, once a document is complete in execution in the sense that all persons required to be signed in the document have signed, then at once, the chargeability under the Stamp Act is attracted****. A liability to stamp duty is brought down upon the instrument with reference to the relevant articles as soon as it is executed. We give emphasis to this aspect of the matter, for the reason that the liability to stamp duty is the cause for holding that the instrument is not properly stamped, and the* ***liability commences and continues as soon as the instrument is executed. Perhaps, the instrument may not be valid in law for other reasons, Nevertheless, it attracts the liability for stamp duty, when the execution of it is completed."***

(emphasis supplied)

179. The Division Bench referred to ***Canara Bank (supra)*** in the following manner:

"21. The Full Bench decision reported in AIR 1969 Mad 1[65] *definitely restricted the scope and application of the ratio of the decision reported in AIR 1953 Mad 764*[66]*.* ***The Full Bench considered the import of the definition executed. It said, a document has to be considered as chargeable to stamp duty, when it is executed, which term executed itself has to be interpreted in the light of the definition embodied in Section 2(12). It also said under Section 2(12), executed means signed and execution means signature; so it is clear that this will include the signatures of all persons, who are required by the character of the document to sign in the document, in order to give that document effect according to law. Further the Full Bench said, if a document is of such a character that both parties to the document should sign it to constitute it a binding agreement between them, it should contain the signatures of both; similarly if it had to be signed by two attesters in order to make it legal, this will also be necessarily part of the definition.*** *After saying so, the Full Bench held that once a document is complete in execution with the above requirements and the effective words of disposition are there, immediately transferring rights by the very virtue of the document, the question of its subsequent registration is a distinct matter altogether and the document is certainly liable to stamp duty with reference to the relevant articles of the Stamp Act, since execution is complete. The Full Bench made it clear that though registration is necessary under the law, to give legal effect to the document (we would use the term enforceability of the document), it is not merely a power of the executant to register the document, the party to which the interest is conveyed can also have it compulsorily registered. Obviously, the category under which an instrument falls cannot be affected by the mere absence of registration, if the document is otherwise fully dispositive in character and duly executed. Obviously from what we have adverted to above, the Full Bench AIR 1969 Mad 1 has given importance to the execution of the document, which will transfer the property or the right contemplated under the instrument in question. But, considering the definition of execution in the Stamp Act, the Full Bench was prepared, we would say, to extend the scope of the definition executed and execution to include the signing or the signatures of not only the parties, but also the attesters, if the document requires attestation.* ***But, the Full Bench decision of the Andhra Pradesh High Court did not go to this extent.*** *The Andhra Pradesh High Court said that the decision reported in AIR 1953 Mad 764 is not good law.*

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[65] Chief Controlling Revenue Authority Madras v. Canara Industrial and Banking Syndicate Ltd., **1967 SCC OnLine Mad 102**

[66] Crompton Engineering Co. Madras Ltd. v. Chief Controller Revenue Authority, Madras, **(1953) 1 M.L.J. 620(F.B.)**

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22. We may also refer to the decision reported in AIR 1963 SC 1307 (New Central Jute Mills v. State of West Bengal) wherein the Supreme Court has said that "primarily, the liability of an instrument to stamp duty arises on execution". We may also refer to the following observations of the learned Judges in the decision reported in AIR 1969 Mad 1, with reference to the earlier Full Bench decision of the same court (AIR 1953 Mad 764).

> *"The real question is, did the case in AIR 1953 Mad 764 (FB) purport to decide that, even though a document is otherwise complete as a conveyance, or a deed of mortgage and the recitals therein fully transfer the relevant rights in the property, it is still not liable to stamp duty, either as a conveyance or as a deed of mortgage, purely because it has not been registered."*

True, the Full Bench (AIR 1953 Mad 764) observed at the end of the judgment that "The very difference between the definition of an agreement in Sec. 2(14) and a mortgage deed in Section 2(17) should show that the transfer provided for in Sec. 2(17) is a transfer valid in law, to make a document liable to stamp duty as a mortgage deed, it is not enough if the document purports to effect a transfer. It must transfer". This observation of course, would indicate that a purported transfer without satisfying the legal requirements will not attract the liability of stamp duty. It will be an erroneous understanding and interpretation of the judgment based on a truncated portion of the judgment not taking into account the various features of the document in question adverted to by the Full Bench and further, we have to hold that if what is stated in the quote above is the ratio of the decision and the dicta laid down in that decision; we respectfully disagree."

(emphasis supplied)

180. Thereafter, the Division Bench referred to ***Hazrami Gangaram (supra)*** as follows:

> *"24. Now we shall advert to the decision reported in AIR 1968 AP 213 (Hazrami Gangaram v. Kamlabai). This is a Full Bench decision consisting of five judges — P. Jaganmohan Reddy, C.J., Basi Reddy, Chandrasekhara Sastry, Anantanarayana Ayyar and Krishna Rao, JJ. This was also a case of a document which was purported to be a mortgage. There was some controversy as regards the real character of the document. In short, what was considered on this aspect of the matter was whether the document was a mortgage within the meaning of section 2(17) of the Act. After referring to the relevant provisions of the*

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Stamp Act and also the Transfer of Property Act and the Registration Act, the court said for the purpose of the Stamp Act, the crucial time for determining whether an instrument chargeable with duty and is duly stamped or not is before or at the time of its execution, and no other formalities under any law need be satisfied. In considering this question, the court further said, there is no warrant for the importation of the requirements of either of the Transfer of Property Act or the Registration Act to construe documents or instruments under the Stamp Act as the latter Act itself specifically defines the terms used therein. It is pertinent to quote the following passage from this decision.

> *"To hold that an instrument must be a valid one under law before it is liable to stamp duty will be to ignore the requirements of the definition or to make them otiose. Further, if the document required registration for legal validity before it can be considered whether it is liable for stamp duty or not, then the Registrar cannot impound it before registration, though he is so authorised under S. 33 and under S. 35 unless an instrument is duly stamped, it cannot be registered or received in evidence. In other words, the definition and the terms of every section of the Act indicate clearly that an instrument need not be valid in law or meet the requirements of law as a valid document before it is chargeable to stamp duty under the Act."*

25. ***We are of opinion, when the Full Bench of the Andhra Pradesh High Court said that an instrument need not be valid in law or meet the requirements of law as a valid document, only indicates that it is not a document of a particular category or character, which is enforceable in law. We say so, because if a document is per se invalid, on account of the fact that it has not been properly executed, it cannot be said that even though it is not a valid document in law, stamp duty has to be paid. When a document is executed and that document requires further formalities to be complied with, like registration for making it an enforceable document, it cannot be said that it is not a valid document, for the purpose of stamp duty. A document can be a valid document, but it may not be an enforceable document. All valid documents at all times, may not be enforceable. Nevertheless, they may retain the character or be included in the category of the document in question and perhaps, continue to be a valid document.*** *It is informative to note that in Burma, formal documents written on palm leaves are by custom treated as completed documents and admitted in evidence, though not signed. But under Section 2(12) being unsigned, such documents will not be liable to stamp duty as they are not executed. Thus it has been held by a Full Bench of the Burma Chief Court in In re. Chet Po. 22 Ind Cas 75 : AIR 1914 Law Bur 219 (FB)*

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that an instrument chargeable with stamp duty on being executed is not liable to duty until it is signed, although this fact does not necessarily imply that the unsigned document is incomplete for the purpose for which it was drawn up. Again in AIR 1936 Lah 449 (Shams Din v. Collector, Amritsar) a special bench of the Lahore High Court held that the intention behind the definition given under Section 2(12) of the Stamp Act was to make it clear at what time, a document became executed so as to be chargeable with stamp duty under Section 3 of the Stamp Act. Coldstream, J. delivering the judgment of the Bench said at page Lah. 451:—

> *"Signature alone will not, in all cases, complete the execution of a document for the purpose of giving it legal validity, for instance a will may not be legally executed until it is duly attested by witnesses, a Hundi is not executed until it is delivered (See (1895) ILR 19 Bom 635), but for the purpose of Stamp Act, the clause makes all documents which are chargeable as soon as they are signed by the executant.""*

(emphasis supplied)

181. Therefore, the Division Bench understood ***Hazrami Gangaram (supra)*** in its true perspective and in the context of the question it answered. The Court construed the decision in a manner that avoids doing violence to the statutory scheme of the Stamp Act.

182. The Bench carved out a clear distinction between the execution, validity, and enforceability of an instrument. It was observed that when the Andhra Pradesh Bench held that an instrument need not be valid in law in order to attract stamp duty, the same is not to be understood literally. The Division Bench clarified that ***Hazrami Gangaram (supra)*** merely held that an instrument need not satisfy additional statutory formalities in law such as registration, to attract stamp duty; in other words, an instrument does not have to be legally enforceable to be exigible to stamp duty. The key observation made in ***Manohar Kammath (supra)*** is as follows:

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> *"...because if a document is per se invalid, on account of the fact that it has not been properly executed, it cannot be said that even though it is not a valid document in law, stamp duty has to be paid."*

183. In ***Himachal Futuristic Communications Ltd. v. State of Rajasthan***[67], the Division Bench of the Rajasthan High Court examined the territorial limitations on the imposition of stamp duty under Section 3 of the Rajasthan Stamp Act, 1998[68] (Section 3 of the Rajasthan Stamp Act, 1998 is *pari materia* to MSA), in the context of an amalgamation sanctioned outside Rajasthan, involving certain immovable properties situated within the State of Rajasthan.

184. The Court distinguished between instruments executed within the State under Section 3(a) and instruments executed outside the State under Section 3(b), holding that the latter could attract stamp duty only upon satisfaction of the prescribed territorial requirements. The Court further held that Rajasthan could impose stamp duty with reference to the immovable properties situated within its territory but could not extend the charge to the value of shares issued pursuant to the amalgamation, which lacked the requisite territorial connection with Rajasthan. It was observed as follows:

> *"28. Literal interpretation of the provision contained in Section 3(b) of the Stamp Act of 1998, on its fair and reasonable construction, would clearly mean that an instrument mentioned in the Schedule, executed outside the State of Rajasthan, would be chargeable with duty when it*

[67] Special Appeal (Writ) No. 1063/2019, decided on 29.07.2022; **2022 SCC OnLine Raj 1183**
[68] Act 14 of 1999

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bears a territorial nexus. It is not that every instrument as specified in the Schedule appended to the Stamp Act of 1998, executed outside the State, becomes chargeable to stamp duty, but only those relating to any property situated in the State or relating to any matter or thing done or to be done in the State and received in the State.

***

34. Applying the aforesaid test as laid down by the Hon'ble Supreme Court, a plain reading of Section 3(b) of the Stamp Act of 1998 reveals that every instrument mentioned in the Schedule appended to the Stamp Act of 1998, which is executed out of the State, is chargeable with stamp duty under the Stamp Act of 1998, a State legislation, when it relates to any property situated, or to any matter or thing done or to be done in the State and is received in the State. Therefore, the provision clearly provides for the taxing event, which makes an instrument, though executed out of the State of Rajasthan, chargeable with stamp duty under the State legislation, i.e. the Stamp Act of 1998. The taxing event, in view of expression, "relates to any property situate, or to any matter or thing done or to be done in the State and is received in the State" bears connection in the nature of territorial nexus. In the absence of aforesaid legal requirement under Section 3 of the Stamp Act of 1998, an instrument as defined under the Stamp Act of 1998 even though as a conveyance and mentioned in the Schedule appended to the Stamp Act of 1998, could not be subjected to stamp duty. Further, if the first legal requirement under expression, i.e., "relates to any property situate, or to any matter or thing done or to be done in the State", is absent, even if it is received in the State, it may not be chargeable with stamp duty under the State legislation, i.e., the Rajasthan Stamp Act, 1998. Therefore, it is not enough that the instrument is a conveyance as covered by entry at Serial No. 21 in the Schedule appended to the Stamp Act of 1998, but it must bear territorial nexus as required under sub-section (b) of Section 3 of the Stamp Act of 1998, if the instrument happens to be an instrument executed out of the State.

***

30.(sic) If Section 3 of the Stamp Act of 1998 providing for chargeability to duty is interpreted as held by the learned Single Judge and argued by learned Additional Advocate General appearing on behalf of the State, then an instrument, which is executed outside the State of Rajasthan, the taxing event having no territorial nexus, would also become chargeable to stamp duty in the State of Rajasthan. Such an interpretation would

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render otiose the expression, "relates to any property situate, or to any matter or thing done or to be done in the State", which would be against one of the most cardinal principles of interpretation of statutes, ***for****, such an interpretation would be based on rejection of words and expressions consciously used by the legislature. Secondly, such an interpretation would do serious violation to another cardinal principle that the legislative intention is to be primarily gathered from the language of the statute. Thirdly, such an interpretation would render the State legislation itself unconstitutional because it would also be in excess of legislative powers conferred under Article 245 of the Constitution of India, which clearly provides that the Legislature of State may make laws for whole area or any part of the State. We have noticed hereinabove that in the three decisions, i.e., State of Bombay v. R.M.D. Chamarbaugwala (supra), Tata Iron & Steel Co. Ltd. v. State of Bihar (supra) and Hoechst Pharmaceuticals Ltd.v. State of Bihar (supra), territorial nexus theory was applied in relation to fiscal legislations. Therefore, an interpretation, which saves the constitutionality of the provision, has to be preferred and not the one, which renders the provision unconstitutional.*

44. It is well settled that various entries in three lists of Seventh Schedule of the Constitution of India are not "powers" of legislation, but "fields" of legislation. Article 245 of the Constitution of India provides for extent of laws made by the Parliament and by the Legislatures of States. It is well settled that taxation is considered to be a distinct matter for the purposes of legislative competence. There is distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power as also taxation in a separate group. Hence, the power to tax cannot be deduced from a general legislative entry as an ancillary power. It is, thus, clear that an interpretation giving wide sweep of legislative power to the State legislature, so as to levy stamp duty on instruments executed outside the State even when it does not relate to any taxing event having any territorial nexus within the State, would be violative of Article 245 of the Constitution of India."

185. The Court emphasised that the taxing power of a State Legislature is constitutionally circumscribed and necessarily requires a real and legally

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sufficient nexus between the subject of taxation and the taxing State. It was also held that a tax may not be imposed unless the language imposing such levy is unambiguous. The Court placed reliance on *inter alia* ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company***[69] wherein the Supreme Court held as follows:

> *"55. There is abundant jurisprudential justification for this. In the governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assesee may warrant visualising different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the Revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue, the aforesaid conclusions are*

[69] **(2018) 9 SCC 1**

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expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view."

The Legal Position Emerging from the aforesaid Judicial Authorities and the Relevant Statutes

186. Having examined the relevant judicial authorities on the issue, this Court is unable to find a single binding precedent establishing that when multiple parties execute a single instrument across different States, the State where the first signature is affixed must exclusively supply the governing stamp law. Equally, there is no binding authority holding that the State where the final necessary signature is appended must apply.

187. Instead, what emerges from an analysis of the existing jurisprudence is that while "execution" refers to "sign" or "signature", the precise requirements constituting such "execution" must depend upon the inherent character of the instrument itself. Further, it is also clear that an instrument executed in one State may subsequently attract stamp duty in another State.

188. Consequently, the applicable State law cannot be determined without paying heed to the entirety of a situation as the question may involve more than one taxing States.

189. Coming to the statute, at the first blush, Section 3 of the MSA read with the definition of "execution" under Section 2(i) of the MSA, may suggest that an instrument becomes chargeable as soon as it is signed.

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However, the position becomes considerably more complex where an instrument is required to be executed by multiple parties, particularly when those parties sign it at different times and/or in different jurisdictions. The provisions under MSA refer to an instrument having not been previously executed by any person and distinguish between instruments executed within and outside Maharashtra. However, they do not specifically address a situation where a multilateral instrument is signed by multiple parties in different States, nor do they clearly explain how the applicable stamp duty is to be determined in such circumstances.

190. Notably, Section 3 of MSA merely states that where an instrument has not been previously executed, stamp duty becomes payable at the time of its execution in the State. Thus, in the considered view of this Court, the question in the present matter remains unresolved i.e. what constitutes "executed" or "execution" in case of a multilateral instrument when different parties sign it in different States.

191. In these circumstances, an important question of interpretation of statute arises as to whether it would it be lawful and equitable to treat the affixation of the first signature on a multi-party instrument as the decisive factor for determining the applicable stamp law.

192. Before adopting a construction of Section 3 that elevates the first signature on an instrument to a decisive factor, the Court must carefully evaluate the anomalous or problematic consequences that may flow from such an application.

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193. To appreciate the implications of adopting such an interpretation, it has to be kept in mind that the ISA is a pre-independence statute, which was enacted on 27 January 1899 and came into force on 1 July 1899. Its original legislative framework was developed at a time when the execution of legal instruments predominantly involved physical documents and handwritten signatures.

194. It should also be noticed that Section 3 of the ISA contains the expression "*not having been previously executed by any person*". This expression appears in both Sections 3(a) and 3(b). Interestingly, an identical wording existed in Section 5(a) and Section 5(c) of the Indian Stamp Act, 1879 (Act I of 1879) as well, which was carried forward to the ISA of 1899 in force today.

195. Thus, the legislative tenet underlying the said expression is demonstrably at the very least 147-years old. That is to say, it predates electronic documents, digital signatures and modern electronic execution mechanisms by more than a century.

196. It is pertinent to bear in mind that at the time when the Stamp Act was originally enacted more than a century ago, the legislature could hardly have envisaged a situation where an instrument could be transmitted from one geographical location to another, within the same day by electronic means or otherwise. It would have been almost impossible at

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that time that the very same instrument could be executed by different parties at two geographically distant locations on the same day.

197. Thus, in the context of contemporary commercial transactions, attaching the liability of stamp duty conclusively to the place of first signature can lead to some difficult consequences.

198. Needless to state, instruments nowadays are increasingly executed electronically by parties situated in different States.

199. In the present digital economy, parties are no longer required to be physically present at a common location for execution of an instrument. An agreement may be negotiated and/or finalised entirely within one State, while a contracting party may electronically sign the same instrument from another State merely because of temporary travel or incidental presence. This Court is of the considered opinion that if the geographical location of the first physical signature is treated as conclusively determining the applicable State legislation of a particular State, the consequence would be that liability of stamp duty could vary solely according to the accidental location of the first signatory to a multilateral agreement.

200. Furthermore, another critical aspect warrants consideration; in cases of electronic execution, the physical location of a signatory may not necessarily be ascertainable from instrument itself.

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201. This difficulty is particularly apparent in the event an instrument is required to be executed by multiple parties across different jurisdictions. In such circumstances, the question of whether fixation of the first signature constitutes the definitive execution of a chargeable instrument cannot be evaded merely by referring to the expression "not having been previously executed by any person" in Section 3 of the MSA. Instead, that phrase must be interpreted in alignment with the broader statutory framework with due regard to the specific character of the instrument in question.

202. The Supreme Court in ***State of Punjab v. Amritsar Beverages Ltd.***[70], recognised the necessity of interpreting existing statutory provisions in light of technological developments and the legal difficulties arising from electronic records. Such an approach is particularly relevant where legislation formulated in an earlier technological environment is sought to be applied in the modern digital era.

203. The expression "*not having been previously executed by any person*" cannot, merely by reference to the geographical location of the first electronic signature, be treated as deciding factor for determining the applicable stamp law for a multilateral instrument to be signed in other jurisdiction(s) as well.

[70] **(2006) 7 SCC 607**

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204. This Court is of the considered view that the traditional understanding of "execution", developed in an era when instruments were ordinarily prepared, stamped and signed in physical form, cannot be mechanically applied to modern digital transactions without examining the consequences of such an interpretation.

Doctrine of Territorial Nexus: The Resultant Legal Position

205. The Doctrine of Territorial Nexus emanates from Article 245 of the Constitution of India. It governs the territorial limits of legislative competence and requires a sufficient connection or nexus between the subject matter of legislation and the legislating State.

206. This Doctrine is well established and admits of no dispute.

207. In this regard, Stjepan Gadžo explains that the territorial nexus principle requires a qualifying connection between the State exercising its taxing authority and the taxable subject or object, thereby providing a jurisdictional foundation for the exercise of its fiscal sovereignty[71].

208. The Doctrine also assumes significance in stamp law, which is nothing but another of form of fiscal levy. Under certain circumstances, a State may seek to impose fiscal liability upon persons, property or transactions situated partly or wholly beyond its territorial boundaries.

[71] The Principle of 'Nexus' or 'Genuine Link' as a Keystone of International Income Tax Law: A Reappraisal (2018) 46(3) Intertax 194–209.

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This Doctrine gives teeth to the premise that a mere territorial connection i.e. geographical location where the first signature is affixed, does not necessarily constitute a legally sufficient nexus. This distinction is of significance in today's increasingly globalised world, where a single legal arrangement may give rise to incidental geographical connections with multiple jurisdictions.

209. The Hon'ble Supreme Court in ***State of Bombay v. R.M.D. Chamarbaugwala***[72] laid down two essential conditions for establishing sufficient territorial nexus. It was held that firstly, the connection between the taxing State and the subject of taxation must be real and not illusory; and secondly, the liability sought to be imposed must be pertinent to that connection. The relevant excerpt is as thus:

> *"35. The next point urged by the petitioners is that under Articles 245 and 246 the Legislature of a State can only make a law for the State or any part thereof and consequently the legislature overstepped the limits of its legislative field when by the impugned Act it purported to affect men residing and carrying on business outside the State. It is submitted that there is no sufficient territorial nexus between the State and the activities of the petitioners who are not in the State. The doctrine of territorial nexus is well established and there is no dispute as to the principles. As enunciated by the learned counsel for the petitioners, if there is a territorial nexus between the person sought to be charged and the State seeking to tax him the taxing statute may be upheld. Sufficiency of the territorial connection involves a consideration of two elements, namely,* ***(a) the connection must be real and not illusory and (b) the liability sought to be imposed must be pertinent to that connection****. It is conceded* ***that it is of no importance on the question of validity that the liability imposed is or may be altogether disproportionate to the***

[72] **(1957) 1 SCC 600**

> ***territorial connection. In other words, if the connection is sufficient in the sense mentioned above, the extent of such connection affects merely the policy and not the validity of the legislation****. Keeping these principles in mind we have to ascertain if in the case before us there was sufficient territorial nexus to entitle the Bombay Legislature to make the impugned law."*
>
> ***(emphasis supplied)***

210. Thus, the Doctrine requires a scrutiny of the relationship between the taxing State and the subject matter of taxation, and not mere existence of geographical connection with an incidental signature. Consequently, since territorial nexus remains an essential pre-requisite, whether a signature first affixed to a multilateral instrument constitutes a sufficient territorial connection, must be assessed in light of the precise chargeable event prescribed by the relevant stamp legislation.

211. The mere physical presence of one contracting party within a State may not conclusively constitute a deciding factor for imposing stamp duty upon an otherwise wholly foreign instrument.

212. Bearing in mind ***S.N. Mathur (supra)*** and ***R.M.D. Chamarbaugwala (supra)***, the applicable stamp legislation in cases where different parties execute an instrument in different States must therefore be determined by reference to the "substance of the transaction as embodied in the instrument", rather than the geographical location of execution.

213. The *raison d'être* is that territorial jurisdiction to impose taxation should ordinarily be founded upon a real and meaningful connection

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between the stamping State and the instrument sought to be stamped, whereas execution may separately serve as the event determining when such liability crystallizes.

Applicability to the Facts of the Present Case

214. At this stage, I deem it fit to refer to the reasoning adopted by the learned Arbitrator with respect to the question as to whether MSA or ISA shall apply. It is reproduced as follows:

> *"41. From the Loan Agreement(s) dated 15.03.2014, the following facts emerge:*
>
> *i. The Loan Agreement(s) do not quantify any specific amount.*
>
> *ii. The Respondent No. 1 of each case signed their respective Loan Agreement(s), on 15.03.2014. It contains signature of Common Witness, Mr. Datta. The Place of signature is at Mumbai.*
>
> *iii. The Loan Agreement(s) bears stamp Duty of Rs. 100/-(Rupees Hundred Only) each of Maharashtra.*
>
> *iv. The Loan Agreement(s) bears stamp Duty of Rs. 100/-(Rupees Hundred Only) of State of Maharashtra.*
>
> *v. Authorised signatory of Religare Finvest Limited (Claimant) signed on same day, i.e., 15.03.2014. The place of signature is at New Delhi. One Grijesh Kumar is being shown as Witness of the Claimant in all Loan Agreement(s).*
>
> *42. From the aforesaid facts, the Tribunal holds that Loan Agreement(s) dated 15.03.2014, were 'first signed' by Respondent No. 1 of each case at Mumbai. Thereafter, the Loan Agreement(s), were taken by the representatives of the Claimant to New Delhi. The Claimant*

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signed the Loan Agreement(s), in presence of their witness at New Delhi.

60. The question is whether Section 17 and 18 of Maharashtra Stamp Act, 1958, will be applicable in the present case in absence of any similar provision under the Indian Stamp Act, 1899.

61. The provisions of Indian Stamp Act, 1899, applies to whole of India. The rates of stamp duty are prescribed in the Indian Stamp Act, 1899, in respect of instruments specified in Entry 91 of the List I - Union List, in the Seventh Schedule to the Constitution of India, as under:

SEVENTH SCHEDULE
(Article 246)
List I–Union List

1. *** **** **** **** ****

91. Rates of stamp duty, in respect of bills of exchange, cheques, promissory notes, bills of lading, letter of credit, policies of insurance, transfer of shares, debentures, proxies, and receipts."

62. Entry 63 of the List II State List, in the Seventh Schedule to the Constitution of India empowers the State fix the rates of stamp duty in respect of documents other than those in the provisions of List 1- Union List, which is as follows:

SEVENTH SCHEDULE
(Article 246)
List I–Union List

1. *** **** **** **** ****

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty."

63. The Maharashtra Stamp Act, 1958, has been enacted by the State in exercise of its powers conferred under Entry 63 of the List II - State List, in respect of the documents not covered by Indian Stamp Act, 1899.
64. The Schedule I of the Maharashtra Stamp Act, 1958, contains the list of documents and instruments not covered by the Indian Stamp Act, 1899, on which duty is to be levied.

65. The instrument/Loan Agreement(s) in question relates to: "creation of obligation, right and interest". It is not covered under any

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of the articles of the Schedule 1-A of the Indian Stamp Act, 1899 (as applicable to State of Delhi).

66. Entry 91 of List 1 Union List, do not provide for rates of stamp duty, in respect of instruments, relates to: "creation of obligation, right and interest. For the said reason, the State of Maharashtra in exercise of powers conferred by Entry 63 of List-II-State List, has fixed the rates of stamp duty in respect of instruments creating obligation, right and interest.

67. The Indian Stamp Act, 1899, is also silent on the question with respect to stamp duty payable on instruments executed in one State and the other State.

68. For the said reason, in exercise of powers conferred by Entry 63 of List II State List, the State of Maharashtra has made specific provisions with respect to 'Instruments Executed in the State' (Section 17) and 'Instruments Executed out of the State' (Section 18).

69. Indian Stamp Act, 1899, governs the law of 'stamp duty payable in India', which is a general law. Whereas, Section 17 and 18 of the Maharashtra Stamp Act, 1958, governs specific stamp duty payable on the instrument executed in one State, the State of Maharashtra and executed outside the State of Maharashtra.

70. Schedule 1-A of Indian Stamp Act, 1899, governs rates of stamp duty payable on the instrument, in respect of bills of exchange, cheque, promissory notes, bills of lading, letter of credit, policies of insurance, transfer of shares, debentures, proxies, in respect of receipts, which are general in nature.

71. On the other hand, Schedule 1 of the Maharashtra Stamp Act, 1958, relates to rates of stamp duty in respect of documents, other than those provided in provisions of List I- Union List.

72. In view of the aforesaid position of law, the Tribunal holds that the rates of stamp duty payable on Loan Agreement(s) dated 15.03.2014, executed in the State of Maharashtra and the State of Delhi, will be governed by Section 17 and Section 18 read with Schedule 1 of Maharashtra Stamp Act, 1958, in absence of any such provisions in the Indian Stamp Act, 1899."

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215. The learned Arbitrator held that the MSA would apply on the loan agreements. In arriving at this conclusion, the learned Arbitrator observed that the loan agreements were first signed in Mumbai and subsequently signed in New Delhi. It was reasoned that ISA applied to the whole of India and prescribed rates of stamp duty for instruments specified under Entry 91 of List I (Union List) in the VII Schedule to the Constitution of India and that by Entry 63 of List II (State List), the State legislature was empowered to fix rates of stamp duty for all other instruments. It was thus observed that loan agreements did not fall under the Union List. Upon noting that loan agreements do not fall under the Union List, the learned Arbitrator invoked the principle of *generalia specialibus non derogant* to hold that that ISA is a general law and does not provide for situations wherein instruments were executed across different States. Consequently, because the MSA specifically addresses such a situation under Sections 17 and 18, the learned Arbitrator concluded that the State legislation must prevail.

216. In the present case, it appears from the record that the loan agreements dated 15.03.2014 were signed by the Zee Group in Mumbai. Thereafter, they were signed by Religare in New Delhi on 15.03.2014. Each of these agreements bore stamp duty of Rs. 100/- as per MSA. It is further made out that Religare deposited further stamp duty of Rs. 1000/- as per ISA on each agreement.

217. In view of the foregoing discussion, this Court is not in agreement with the finding of the learned Arbitrator that the loan agreements are

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chargeable under the MSA, This Court also does not subscribe to the learned Arbitrator's reasoning that the said agreements do not quantify a specific amount. In this regard, the findings of the learned Arbitrator are as follows:

> *"43. Risk Disclosure Document-Loan Against Securities (LAS)', seen and signed by the representatives of each of the Respondent No. 1, shows inherent risk associated with the borrowing, where the value of loan/finance amount is denoted by value of securities forming part of the percentage of margin required to be maintained by the parties. No specific loan amount has been shown therein. The example shown therein shows the manner in which 20% of margin of 'Loan Against Securities' will be calculated, as under:*
>
> *48. The Facility Schedule of Terms Loan Against Securities (LAS)' were sought by the Respondent No. 1 of each case from time to time. The 'Facility Schedule of Terms Loan Against Securities (LAS)' are for different amount, signed on different dates after the execution of the Loan Agreement(s).*
>
> *49. Facility Schedule of Terms Loan Against Securities (LAS)' were executed after the Loan Agreement(s) were signed between the parties, is evident from the following facts:*
>
> *49.1.* ***WIDESCREEN HOLDINGS PRIVATE LIMITED-****First 'Facility Schedule of Terms' was signed by the parties on 20.03.2014 and the amount of Facility was up to 40,00,00,000/- (Rupees Forty Crores Only), as apparent from the Opening Paragraph:-*
>
> > *"The Facility Schedule of Terms is executed on 20th day of March 2014 (hereinafter referred to as "the Facility Schedule of Terms") by and between Widescreen Holdings Pvt. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") pursuant to the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Borrower and the Lender."*
>
> *49.2. Another Facility Schedule of Terms was executed by the parties on 30.03.2015, known as 'Renewal Facility Amount for Rs. 40,00,00,000/- (Rupees Forty Crores Only), as under:*

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"The Facility Schedule of Terms is executed on 30th day of March 2015 (hereinafter referred to as "the Facility Schedule of Terms") by and between Widescreen Holdings Pvt. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") in connection with renewal of the Loan facility (hereinafter referred to as "the Facility") availed by the Borrower from the Lender under the terms of the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Parties.

49.3. KONTI INFRAPOWER & MULTIVENTURES PRIVATE LIMITED *(Formerly known as Continental Drug Company Private Limited)- The Facility Schedule of Terms' was signed by the parties on 15.03.2014. The amount of Facility was up to Rs. 50,00,00,000/- (Rupees Fifty Crores Only), as apparent from the Opening Paragraph:-*

"The Facility Schedule of Terms is executed on 15th day of March 2014 (hereinafter referred to as "the Facility Schedule of Terms") by and between Continental Drug Co. Pvt. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") pursuant to the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Borrower and the Lender."

49.4. Another Facility Schedule of Terms was executed by the parties on 30.03.2015, known as 'Renewal Facility Amount for Rs. 50,00,00,000/- (Rupees Fifty Crores Only), as under:-

"The Facility Schedule of Terms is executed on 30th day of March 2015 (hereinafter referred to as "the Facility Schedule of Terms") by and between Continental Drug Co. Pvt. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") in connection with renewal of the Loan facility (hereinafter referred to as "the Facility") availed by the Borrower from the Lender under the terms of the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Parties."

49.5. EDISONS INFRAPOWER & MULTIVENTURES PRIVATE LIMITED *(Formerly known as Edisons Utility Works Private Limited) The 'Facility Schedule of Terms' was signed by the parties on 15.03.2014 and the amount of Facility was up to Rs. 50,00,00,000/- (Rupees Fifty Crores Only), as apparent from the Opening Paragraph:-*

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"The Facility Schedule of Terms is executed on 15th day of March 2014 (hereinafter referred to as "the Facility Schedule of Terms") by and between Edisons Utility Works Pvt. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") pursuant to the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Borrower and the Lender."

49.6. Another Facility Schedule of Terms was executed by the parties on 30.03.2015, known as 'Renewal Facility Amount' for Rs. 50,00,00,000/- (Rupees Fifty Crores Only), as under:-

"The Facility Schedule of Terms is executed on 30th day of March 2015 (hereinafter referred to as "the Facility Schedule of Terms") by and between Fdisons Utility Works Pvt. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") in. connection with renewal of the Loan facility (hereinafter referred to as "the Facility") availed by the Borrower from the Lender under the terms of the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Parties."

49.7. ASIAN SATELLITE BROADCAST PRIVATE LIMITED

The Facility Schedule of Terms' was signed by the parties on 15.03.2014 and the amount of Facility was up to 10,00,00,000/-(Rupees Ten Crores Only), as apparent from the Opening Paragraph:-

"The Facility Schedule of Terms is executed on 15th day of March 2014 (hereinafter referred to as "the Facility Schedule of Terms") by and between Asian Satellite Broadcast Put. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") pursuant to the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Borrower and the Lender."

49.8. Another Facility Schedule of Terms was executed by the parties on 30.03.2015, known as 'Renewal Facility Amount for Rs. 10,00,00,000/- as under:

"The Facility Schedule of Terms is executed on 30th day of March 2015 (hereinafter referred to as "the Facility Schedule of Terms") by and between Asian Satellite Broadcast Put. Ltd. (hereinafter referred to as "the Borrower") and Religare Finvest Limited (hereinafter referred to as "the Lender") in connection

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> *with renewal of the Loan facility (hereinafter referred to as "the Facility") availed by the Borrower from the Lender under the terms of the loan agreement dated 15.03.2014 (hereinafter referred to as "the Agreement") executed between the Parties."*
>
> *50. The Facility Schedule of Terms, executed as referred and accepted above is different than the 1-page format contained in the booklet of Loan Against Securities."*

218. It appears from the record that the FST did indeed stipulate the loan amounts, which is also observed by the learned Arbitrator. However, the learned Arbitrator overlooked the terms of the loan agreement which provided that the FST was to be read as part and parcel of the loan agreements, thus, amounting to ignoring of vital evidence.

219. Clause 1.1.6 of the agreement provides that FST pertains to the facility availed by a borrower and the schedule for such facility granted from time to time. Therefore, it acknowledges that FST may be executed from time to time. Clause 2.1 clarifies that the borrower agrees to borrow the amount as per the FST. Clause 2.3 further clarifies that the terms and conditions of the loan shall be read along with the "concerned Facility Documents (which includes the relevant Schedule of Terms and Security Documents)".

220. The learned Arbitrator proceeds on a mere technicality in this respect by observing that the FST which were actually executed were different from the one-page format contained in the loan booklet. Such a technical approach, in the opinion of this Court, completely rewrites the commercial bargain *inter se* the parties without any warrant and ignores

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the vital contractual arrangement going to the root of the controversy between the parties.

221. For completeness, this Court deems it apposite to advert to Section 3(b) read with Section 18 of the MSA as well. It was argued that in the event this Court does not find that Section 3(a) of the MSA is attracted, it shall also consider that a copy of the loan agreements was received in Mumbai, thereby attracting chargeability under MSA by virtue of Section 3(b) read with Section 18.

222. Applying the doctrine of territorial nexus, as enunciated by the Supreme Court in ***R.M.D. Chamarbaugwala (supra***), the territorial connection between the stamping State and the instrument must be real and not illusory, and that the liability imposed must be pertinent to such connection.

223. Thereafter, applying this principle to the facts of the present case, this Court is of the view that Delhi possessed the requisite territorial nexus, as the loan agreements came to be executed after they were signed by all contracting parties i.e., upon their execution by Religare (lender) in Delhi. Although the borrowers had initially appended their signatures in Mumbai, in the considered opinion of this Court, such signatures do not, by themselves, constitute the completed chargeable instruments without execution of the instrument by the lender. Accordingly, the requisite connection between the taxable event and the taxing jurisdiction arose in Delhi.

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224. Having said so, this Court is mindful of its circumscribed jurisdiction under Section 34 of the Arbitration and Conciliation Act of 1996. However, in the present case, since the question as to which stamp legislation is applicable to the loan agreements goes to the root of the matter, this Court deems it fit to intervene.

225. Therefore, in light of the foregoing discussion and considering the scheme of MSA and ISA and the discussion above, the loan agreements dated 15.03.2014 are held to be "executed" in Delhi. A logical corollary would be that the loan agreements are liable to be stamped as per ISA, as applicable in NCT of Delhi.

226. Accordingly, the impugned arbitral award dated 28.02.2026 is set aside.

227. The petitions bearing Nos. OMP(COMM) Nos. 323/2026, 327/2026, 328/2026 and 331/2026 filed by Religare are allowed in the aforesaid terms. The petitions being OMP(COMM) Nos. 253/2026, 254/2026, 255/2026 and 256/2026 filed by the Zee Group are dismissed.

228. Pending applications, if any, stand disposed of. No order as to costs.

OM PRAKASH SHUKLA, J

NOVEMBER 2, 2026/pa

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