REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9515 of 2018
(ARISING OUT OF SLP (CIVIL) NO.13913 OF 2018)

M/S SHRIRAM EPC LIMITED …APPELLANT

VERSUS

RIOGLASS SOLAR SA …RESPONDENT

J U D G M E N T

R.F. NARIMAN, J.

1. Leave granted.

2. The present appeal arises from the judgment of a Single Judge of the High Court of Judicature at Madras, dated 09.02.2017, in which a petition filed to enforce a foreign award was allowed. Several grounds were taken before the learned single Judge. We are concerned with only one ground that has been argued before us, namely, that as the award has not been stamped, it cannot be enforced under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996 (**"1996 Act"**).

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Reason:

3. The brief facts that are necessary for determination of the present controversy are as follows:

3.1. An ICC award was delivered in London on 12.02.2015 by Mr. Christopher Style QC in the following terms:

> "**363**. After consideration of all the factual and legal submissions which have been presented to me and for the reasons set out in full above, I award, declare and adjudge as follows:
>
> (1) I declare that I have no jurisdiction over the Second and Third Respondents.
>
> (2) I declare that Rioglass is not obliged to issue a Performance Bank Guarantee as provided for in clause 6 of the Agreement, as amended by Amendment No.1.
>
> (3) I declare that Rioglass is entitled to sell as scrap the mirrors that it holds in storage in relation to Delivery Four.
>
> (4) I declare that Shriram acted in breach of the Agreement in the respects set out above.
>
> (5) I order Shriram to pay Rioglass €4,366,598.70, consisting of damages amounting to €4,151,570.52 and interest amounting to €215,028.18."

3.2. Objections dated 21.07.2015 under Section 34 of the Arbitration and Conciliation Act, 1996 were filed by the Appellant which were dismissed on 27.09.2016, stating that a petition under Section 34 would not be maintainable as against a foreign award, citing this Court's judgment in **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.**, (2012) 9 SCC 552. Meanwhile, the Respondent filed a petition under Section 47 of the 1996 Act, dated 05.08.2015, to enforce the said award. As stated hereinabove, all objections to the said award were rejected by the learned Single Judge on 09.02.2017. An appeal to the Division Bench resulted in an Order dated 14.03.2018, stating that in view of Section 50 of the 1996 Act,

the said appeal would not be maintainable. This is how the present SLP has been filed against the decision of the learned Single Judge.

4. Shri K.V. Viswanathan, learned senior advocate, appearing on behalf of the Appellant, has submitted before us, that given the provisions of the Indian Stamp Act, 1899, it is clear that a foreign award would be covered by the said Act. This being so, and stamp duty not having been paid, the said foreign award cannot be enforced. He relied strongly on a judgment of the Punjab and Haryana High Court reported in **Gujrals Co. v. M.A. Morris**, AIR 1962 P&H 167. According to him, the contrary judgments of the Delhi High Court reported in **Naval Gent Maritime Ltd. v. Shivanath Rai Harnarain (I) Ltd.**, (2009) 163 DLT 391, and the Madhya Pradesh High Court judgment reported in **Narayan Trading Co. v. Abcom Trading Pvt. Ltd.**, (2013) 2 MP LJ 252, are incorrect. According to the learned senior advocate, the Delhi High Court judgment is really a judgment on registration of a foreign award, even though it purports to speak about stamp duty payable. The judgment of the Madhya Pradesh High Court, on the other hand, is not correct in stating that a foreign award would not be included within the term “award” under Schedule I of the Indian Stamp Act, 1899. He relied upon the Gujarat High Court judgment reported in **Orient Middle East Lines Ltd., Bombay and Anr. v. Brace Transport Corporation of Monrovia and Ors.**, AIR 1986 Guj 62, which stated that Article III of the New York Convention would make it clear that stamp duty, being in the nature of fees or charges for recognition and

enforcement of a foreign award, can be enforced in accordance with the rules of procedure of the territory in which the award is sought to be enforced. This being so, the New York Convention itself recognizes that foreign awards may have to bear stamp duty for enforcement in the country in which they are sought to be enforced. He further relied upon the 194th Law Commission Report, which had suggested changes insofar as stamp duty is concerned in Part II of the 1996 Act.

5. Learned counsel appearing on behalf of the Respondent, on the other hand, relied strongly upon the judgment of the Delhi High Court as well as the Madhya Pradesh High Court referred to hereinabove. According to the learned counsel, the expression “award” which occurs in Schedule I of the Indian Stamp Act, 1899 applies only to a domestic award and not a foreign award. He relied on the fact that the Indian Stamp Act was enacted in 1899, in which “award” has never been enlarged so as to include foreign awards after the Arbitration (Protocol and Convention) Act, 1937 and/or the Foreign Awards (Recognition and Enforcement) Act, 1961 were enacted. Also, according to the learned counsel, the only requirement for the enforcement of a foreign award is laid down in Section 47 of the Act, which does not require the award to be stamped. A without prejudice argument was also made that under Section 48(2)(b), even if a foreign award were required to be stamped, but is not stamped, enforcement of such award would not be contrary to the fundamental policy of Indian law.

6. Having heard learned counsel for the parties, it is important to first set out the relevant provisions of the Indian Stamp Act, 1899. Section 1 of the Indian Stamp Act, 1899 as it originally stood, reads as follows:

> "**1. Short title, extent, and commencement.**—(1) This Act may be called the Indian Stamp Act, 1899.
>
> (2) It extends to the whole of British India inclusive of Upper Burma, British Baluchistan, the Santal Parganas, and the Pargana of Spiti; and
>
> (3) It shall come into force on the first day of July 1899."

Section 2(14) defines "instrument" as follows:

> "**2. Definitions.**—
>
> xxx xxx xxx
>
> (14) "**Instrument**" includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished, or recorded:"

"Instruments chargeable with duty" are dealt with by Section 3. Section 3 states 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 that Schedule as the proper duty therefore, respectively, that is to say—
>
> (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;
>
> (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

(c) every instrument (other than a bill 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—

(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 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 Merchant Shipping Act, 1894, or under Act 19 of 1938, or the Indian Registration of Ships Act, 1841 (10 of 1841) as amended by subsequent Acts.

(3) any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

Explanation.—For the purposes of this clause, the expressions "Developer", "Special Economic Zone" and "Unit" shall have meanings respectively assigned to them in clause (g), (za) and (zc) of section 2 of the Special Economic Zones Act, 2005."

Under Sections 33 and 35, instruments that are not duly stamped in accordance with the provisions of the Act are inadmissible in evidence, and any such instrument which is not duly stamped is liable to be impounded as provided in Section 33 of the Act. Item No.12 of Schedule I of the Indian Stamp Act, 1899 reads as follows:

Description of Instrument	*Proper Stamp-duty*

"12. **AWARD**, that is to say, any decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court in

the course of a suit.—

(*a*) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1000;	The same duty as a bond (No. 15) for such amount.
(*b*) in any other case.	Five rupees.

Exemption

Award under the Bombay District Municipal Act, 1873 (Bom. Act 6 of 1873), Section 81, or the Bombay Hereditary Offices Act, 1874 (Bom. Act 3 of 1874), Section 18."

7. The main bone of contention in the present appeal is whether the expression "award" would include a foreign award.

8. In order to determine this question, it is important to see the state of the law insofar as arbitration is concerned in the year of the Indian Stamp Act, 1899. At this point of time, there were two sets of laws dealing with arbitration. The first was contained in the Code of Civil Procedure, 1882. In Part V, Chapter XXXVII spoke of reference to arbitration. Under Sections 506 to 522 of the Code of Civil Procedure, 1882, parties to a suit may apply for an order of reference to arbitration, in which case, the arbitrator or umpire, as the case may be, may deliver an award which ultimately may be enforced by a judgment which is to be according to the award and a decree to follow. By Sections 523 to 526, agreements to refer disputes to arbitration may be filed in Court, and awards delivered thereon. Needless to add, the Civil Procedure

Code, 1882 applied to British India.

9. Close on the heels of the Indian Stamp Act, 1899, comes the Indian Arbitration Act, 1899. As per Section 1(2) of this Act, this Act also extended to the whole of British India, but Section 2 made it clear that the Act will apply only in cases where the subject matter submitted to arbitration, if it were the subject of a suit, could be instituted in a Presidency Town. Section 2 of this Act states as follows:

> "**2. Application.**—Subject to the provisions of section 23, this Act shall apply only in cases where, if the subject-matter submitted to arbitration were the subject of a suit, the suit could, whether with leave or otherwise, be instituted in a Presidency-town:
>
> Provided that the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, declare this Act applicable in any other local area as if it were a Presidency-town."

Section 4 of the said Act states as follows:

> "**4. Definitions.**—In this Act, unless there is anything repugnant in the subject or context,-
>
> (*a*) "the Court" means, in the Presidency-towns, the High Court, and, elsewhere, the Court of the District Judge; and
>
> *(b)* "submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not."

Section 11 then states:

> "**11. Award to be signed and filed.**—(1) When the arbitrators

> or umpire have made their award, they shall sign it, and shall give notice to the parties of the making and signing thereof, and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.
>
> (2) The arbitrators or umpire shall at the request of any party to the submission or any person claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award, or a signed copy of it, to be filed in the Court; and notice of the filing shall be given to the parties by the arbitrators or umpire.
>
> (3) Where the arbitrators or umpire state a special case under section 10, clause (b), the Court shall deliver its opinion thereon; and such opinion shall be added to, and shall form part of, the award."

Section 15, which is important, states as follows:

> "**15. Award when filed to be enforceable as a decree.**—(1) An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside), be enforceable as if it were a decree of the Court.
>
> (2) An award may be conditional or in the alternative."

10. On a reading of the aforesaid provisions of these Acts, it becomes clear that the only "award" that is referred to in the Indian Stamp Act, 1899 is an award that is made in the territory of British India provided that such award is not made pursuant to a reference made by an order of the Court in the course of a suit. At this point in time, it is important to note that there were several princely states in India governed by sovereign rulers which had their own laws. Arbitration laws, if any, in the aforesaid princely states, if they were to culminate in awards, would not be "awards" under either the Civil

Procedure Code, 1882 or the Indian Arbitration Act, 1899. They would therefore be foreign awards insofar as British India is concerned. An award made in a princely state, or in a foreign country, if enforced by means of a suit in British India, would not be covered by the expression "award" contained in Item 12 of Schedule I of the Indian Stamp Act, 1899. Only awards which are decisions in writing by an arbitrator or umpire, made in British India, on a reference made otherwise than by an order of the Court in the course of a suit would be included.

11. This position continued even when the Code of Civil Procedure, 1908 contained a Second Schedule, which substituted the arbitration provisions contained in the Code of Civil Procedure, 1882. Here again, under the Second Schedule, parties to a suit may apply for an order of reference to arbitration and an award would follow. Section 16 of the Second Schedule is important, and states as follows:

> "**16. Judgment to be according to award.**— (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.
>
> (2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except insofar as the decree is in excess of, or not in accordance with, the award."

Under Sections 20 and 21, arbitration without the intervention of a Court is referred to, and awards delivered in such cases are to be incorporated in a

judgment by a Court, after which a decree is to follow, which decree then becomes enforceable.

12. Next in line, chronologically speaking, is the Arbitration (Protocol and Convention) Act, 1937, in which, certain foreign awards governed by the Geneva Convention of 1923 were to be recognized and enforced in signatory countries, India being one. In this Act, "foreign award" is defined as follows:

> "**2. Interpretation.**—In this Act "foreign award" means an award on differences relating to matters considered as commercial under the law in force in India, made after the 28th day of July, 1924,—
>
> (*a*) in pursuance of an agreement for arbitration to which the Protocol set forth in the First Schedule applies;
>
> (*b*) between persons of whom one is subject to the jurisdiction of some one of such powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of the powers aforesaid; and
>
> (*c*) in one of such territories as the Central Government being satisfied that reciprocal provisions have been may by like notification, declare to be territories to which the said convention applies,
>
> and for the purposes of this Act an award shall not be deemed to be final if any proceedings for the purposes of contesting the validity of the award are pending in the country in which it was made."

13. The Arbitration Act, 1940 then came into force, repealing both the Arbitration Act, 1899 as well as the Second Schedule to the Code of Civil Procedure, 1908. This Act, under Section 1(2), extended to the whole of India

except the State of Jammu and Kashmir. Under this Act, “award” was defined as follows:

> “**2. Definitions.**—
>
> xxx xxx xxx
>
> (*b*) “award” means an arbitration award;”

Under this Act, Chapter II dealt with arbitration without the intervention of a Court. Section 17 is important, and is set out as follows:

> “**17. Judgment is terms of award.**— Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.”

Under Chapter III, arbitration with intervention of a Court where there is no suit pending is dealt with, and in Chapter IV, arbitration which arises in references from suits is dealt with. This Act, like its predecessors, also applied only to awards that were made first in British India, and later in the territory of India except the State of Jammu and Kashmir.

14. In 1961, after the New York Convention of 1958, the Foreign Awards (Recognition and Enforcement) Act, 1961, came into force to recognize and enforce New York Convention Awards. Here again, such awards were referred to as “foreign awards” in Section 2 thereof which defines foreign

awards as follows:

> "**2. Definition.**—In this Act, unless the context otherwise requires, "foreign award" means an award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—
>
> (*a*) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the Schedule applies; and
>
> (*b*) in one of such territories as the Central Government being satisfied that reciprocal provisions have been made, may, by notification in the official Gazette, declare to be territories to which the said Convention applies."

15. As is well-known, the present Arbitration and Conciliation Act, 1996 then came into force and repealed the Arbitration (Protocol and Convention) Act, 1937, The Arbitration Act, 1940, and the Foreign Awards (Recognition and Enforcement) Act, 1961 bringing, with certain important changes, domestic awards within Part I, foreign awards relatable to the New York Convention within Chapter I of Part II, and foreign awards relatable to the Geneva Convention within Chapter II of Part II. In the present Act, under Section 2(1)(c), "arbitral award" is defined as follows:

> "**2. Definitions.**—(1) In this Part, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (*c*) "arbitral award" includes an interim award;"

Section 44 in Chapter I of Part II defines a New York Convention award as follows:

> "**44. Definition.**—In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—
>
> (*a*) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and
>
> (*b*) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies."

Section 53 in Chapter II of Part II defines a Geneva Convention award as follows:

> "**53. Interpretation.**—In this Chapter "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—
>
> (*a*) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and
>
> (*b*) between persons of whom one is subject to the jurisdiction of some one of such powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the powers aforesaid, and
>
> (*c*) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies,
>
> and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made."

The other important sections which have a bearing on the controversy before us are as follows:

> "**46. When foreign award binding.**—Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set-off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.
>
> **47. Evidence.**—(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the Court—
>
> (*a*) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
>
> (*b*) the original agreement for arbitration or a duly certified copy thereof; and
>
> (*c*) such evidence as may be necessary to prove that the award is a foreign award.
>
> (2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.
>
> *Explanation*.— In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court."
>
> xxx xxx xxx
>
> "**49. Enforcement of foreign awards.**—Where the Court is

> satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court."

16. It will thus be seen that "award" under Item 12 of Schedule I of the Indian Stamp Act, 1899 has remained unchanged till date. As has been held by us hereinabove, in 1899, this "award" would refer only to a decision in writing by an arbitrator or umpire in a reference not made by an order of the Court in the course of a suit. This would apply only to such award made at the time in British India, and today, after the amendment of Section 1(2) of the Indian Stamp Act, 1899 by Act 43 of 1955, to awards made in the whole of India except the State of Jammu and Kashmir. This being the case, we are of the view that the expression "award" has never included a foreign award from the very inception till date. Consequently, a foreign award not being includible in Schedule I of the Indian Stamp Act, 1899, is not liable for stamp duty. Shri Viswanathan also relied upon the Tamil Nadu Amendment of the Indian Stamp Act, 1899. The Tamil Nadu Amendment contains the identical definition of "award" as given in Item 12 thereof. The only difference is in the figures contained for stamp duty. Consequently, this does not take the matter very much further.

17. Shri Viswanathan then argued, based on **Senior Electric Inspector and Ors. v. Laxminarayan Chopra and Anr.**, (1962) 3 SCR 146, that an Act must be construed as on date, despite the fact that the definition contained in an old Act may not literally fit the bill. We are afraid that this judgment is

wholly distinguishable in that, in the aforesaid case, the definition of "telegraph line" in the Indian Telegraph Act, 1885, was construed as being wide enough to include electric lines used for the purpose of wireless telegraph. This Court held that in a modern progressive society, it would be unreasonable to confine the intention of the legislature to the meaning attributable to a word used at the time the law was made, and, unless a contrary intention appeared, an interpretation should be given to the words used in the statute to take in new facts and situations, if such words are capable of comprehending them. As stated hereinabove, this judgment is wholly distinguishable in that, given the factual scenario of 1899, and the fact that foreign awards existed even then, in princely states as well as foreign countries, no new fact situation has arisen subsequently in order to apply the *ratio* of the said judgment. Further, we must not forget that the Indian Stamp Act, 1899 is a fiscal statute which must be construed literally. Any ambiguity in the said statute would enure to the benefit of the assessee who has to pay stamp duty. This being the case, Shri Viswanathan's argument based on the aforesaid judgment, must be rejected.

18. We now come to some of the judgments referred to by counsel for the parties. The *Punjab and Haryana High Court judgment* (supra), strongly relied upon by Shri Viswanathan, referred to and relied upon Section 3(c) of the Indian Stamp Act, 1899, and held that an instrument mentioned in the Schedule which is executed out of India, being a foreign award, would relate

to a matter or thing done or not to be done in India, and that, therefore, stamp duty would be payable on such an award. It is important to note that this judgment does not refer to the definition of “award” in Item 12 of Schedule I at all. For this reason alone, this judgment cannot take us very much further, as it is clear that a foreign award, as has been held by us, is not contained within the expression “award” in Item 12 of Schedule I and is, therefore, not an “instrument” which is taxable under Section 3(c) of the Indian Stamp Act, 1899.

19. The *Delhi High Court judgment* (supra), strongly relied upon by learned counsel appearing on behalf of the Respondent also does not take us very much further. As has been rightly pointed out by Shri Viswanathan, the said judgment refers to the definition of “foreign award” contained in the 1996 Act, but then goes on to rely upon a Supreme Court judgment, stating that such foreign award would not require registration as it can be enforced as a decree. It further went on to rely upon the Supreme Court judgment in **M. Anasuya Devi and Anr. v. M. Manik Reddy and Ors.**, (2003) 8 SCC 565, to state that the Court, while deciding enforceability of a foreign award under Sections 47 and 48, cannot hold the award non-enforceable on the ground of it being unstamped. This also, strictly speaking, is incorrect, as *M. Anasuya* (supra) merely stated, in the context of a domestic award, that the question as to whether an award is required to be stamped would be relevant only at the enforcement stage under Section 36 of the 1996 Act and not at the stage

of challenge, which is governed by Section 34 of the 1996 Act. We cannot forget that there is no challenge stage so far as a foreign award is concerned – so long as none of the grounds in Section 48 are attracted, the award becomes enforceable as a decree. The stage of enforceability, therefore, has arisen in these cases, and it cannot be said that the *ratio* of *M. Anasuya* (supra) would apply so that stamp duty would become payable only at some subsequent stage. This judgment is equally incorrect in stating that **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.**, (2001) 6 SCC 356, would apply. One sentence in *Fuerst Day Lawson* (supra) reads, "[T]he only difference as found is that while under the Foreign Awards Act a decree follows, under the new Act the foreign award is already stamped as the decree." This sentence does not lead to the conclusion, following the judgment in **Thyssen Stahlunion GMBH v. Steel Authority of India Ltd.**, (1999) 9 SCC 334, that under the 1996 Act, a foreign award is considered to be stamped already. All that this sentence means is that the foreign award is to be regarded as a decree. The expression "stamped" means "regarded". This judgment also does not carry us much further.

20. On the other hand, the *Madhya Pradesh High Court judgment* (supra) hits nearer home. This judgment, in paragraph 12 thereof, states why foreign awards do not have to suffer stamp duty in the following terms:

> "**12.** The Law on Arbitration in India was substantially contained in three enactments namely, The Arbitration Act, 1940, The

> Arbitration (Protocol and Convention) Act, 1937 and The Foreign Awards (Recognition and Enforcement) Act, 1961. It was widely felt the 1940 Act, which contains the General Law of Arbitration, has become outdated. The Arbitration and Conciliation Act, 1996 came in force to consolidate and amend the Law relating to Domestic Arbitrations, International Commercial Arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, commission on international trade in short (UNCITRAL) Model Law and Rules. Apart from other object, the object of the Act is to provide that every final arbitral award is enforced in the same manner as if it were a decree of the Court. While Arbitration and Conciliation Act, 1996 was enforced, no amendment was made in the definition of award given in the Indian Stamp Act. Similarly, the Schedule which lays down the stamp duty payable on award was not amended by including the foreign award. It appears that law makers while enforcing the Arbitration and Conciliation Act, 1996 was of the view that foreign award shall be enforceable as if it were a decree of the Court, no amendment was brought either in the definition of award or in the Schedule relating to payment of stamp duty on award. Since the definition of award given at Entry No. 11 of the Schedule of the Indian Stamp Act does not cover the foreign award and one of the objects to enforce the new Act was to enforce final award as if it was a decree and keeping in view the law laid down by the Hon'ble Apex Court in the matter of *Fuerst Day Lawson Ltd.* (supra), wherein the Hon'ble Supreme Court has held that under the new Act the foreign award is already stamped as decree, this Court is of the view that the petition filed by the petitioner has no merits and deserves to be dismissed. In view of this, the petition filed by the petitioner is disposed of holding that foreign award is already stamped and is enforceable as decree."

21. The reasoning contained in paragraph 12 has our approval, short of the reasoning contained following *Fuerst Day Lawson* (supra) which, as we have already stated above, did not indicate that foreign awards can never suffer stamp duty.

22. The other judgment heavily relied upon by Shri Viswanathan, namely

the *Gujarat High Court judgment* (supra), merely refers to Article III of the New York Convention to state that so far as procedural aspects relatable to foreign awards are concerned, we must go by the Code of Civil Procedure, and going by the Code of Civil Procedure, the Court at Bhavnagar would have no jurisdiction to enforce the foreign award in the facts of that case. Since Article III of the New York Convention is strongly relied upon by Shri Viswanathan, we need to set it out. It states:

> "**Article III**
>
> Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards."

23. There is no doubt whatsoever that if stamp duties are leviable in India on foreign awards, the imposition should not be substantially more onerous than the stamp duty that is imposed on recognition or enforcement of domestic arbitral awards. For the said Article to apply, stamp duty must first be leviable on a foreign award, which, as we have held earlier in this judgment, is not the case. Equally, reliance upon the 194th Law Commission of India Report, insofar as stamp duty on domestic awards is concerned, would again have little bearing, given our finding that under the present state of the law, foreign awards are not liable to stamp duty under the Indian Stamp Act, 1899.

24. An argument was made by learned counsel for the Respondent that Section 47 of the Act requires three things and only three things to be produced before the Court for enforcement of a foreign award, and that therefore, stamp duty not being one of the three things required, cannot ever be levied. We are afraid that this again is an extreme argument. All that Section 47 deals with is production before the Court of proof of the fact that a foreign award is sought to be enforced. In no manner does Section 47 interdict the payment of stamp duty if it is otherwise payable in law. This argument must thus be rejected. Equally, the argument that under Section 48(2)(b), even if stamp duty is payable on a foreign award, it would not be contrary to the public policy of India, must be rejected. The fundamental policy of Indian law, as has been held in **Renusagar Power Co. Ltd. v. General Electric Co.,** 1994 Supp (1) SCC 644, and followed in **Associate Builders v. Delhi Development Authority**, (2015) 3 SCC 49, makes it clear that if a statute like the Foreign Exchange Regulation Act, 1973 dealing with the economy of the country is concerned, it would certainly come within the expression “fundamental policy of Indian law”. The Indian Stamp Act, 1899, being a fiscal statute levying stamp duty on instruments, is also an Act which deals with the economy of India, and would, on a parity of reasoning, be an Act reflecting the fundamental policy of Indian law. This argument on behalf of the Respondent must also, therefore, be rejected.

25. We, therefore, hold that the learned Single Judge of the Madras High

Court is correct, and the fact that a foreign award has not borne stamp duty under the Indian Stamp Act, 1899 would not render it unenforceable for the reasons given in our judgment. The appeal accordingly stands dismissed.

……..…….. J.
(R. F. Nariman)

…..…….. J.
(Indu Malhotra)

New Delhi.
September 13, 2018.

ITEM No. 1501 Court No. 9 SECTION XII
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 9515 of 2018
(Arising out of SLP (Civil) No. 13913 of 2018)

M/S. SHRIRAM EPC LIMITED Appellant(s)

VERSUS

RIOGLASS SOLAR SA Respondent(s)

Date : 13.09.2018 This matter was called on for pronouncement of judgment today.

For Appellant(s) Mr. Snehasish Mukherjee, Adv.

For Respondent(s) Mr. Hiroo Advani, Adv.
Mr. Divyakant Lahoti, Adv.
Mr. Shashank Garg, Adv.
Ms. Amrita Grover, Adv.
Mr. Parikshit Ahuja, Adv.
Mr. Tariq Khan, Adv.

Hon'ble Mr. Justice Rohtinton Fali Nariman pronounced the judgment of the Bench comprising His Lordship and Hon'ble Ms. Justice Indu Malhotra.

Leave granted

The appeal is dismissed in terms of the signed reportable judgment.

Pending applications, if any, shall stand disposed of.

(Shashi Sareen) (Tapan Kumar Chakraborty)
AR-cum-PS Branch Officer
(Signed reportable judgment is placed on the file)