

Unstamped arbitration agreements enforceable, rules 7-judge Supreme Court bench

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Synopsis

Setting aside the April verdict, the larger seven-judge bench led by Chief Justice DY Chandrachud ruled that agreements that are not stamped or insufficiently stamped are not rendered void or void ab initio or unenforceable if arbitration agreement prima facie exists between parties.



Overruling its earlier April judgment that ruled to the contrary, a seven-judge [Supreme Court](#) Constitution bench on Wednesday unanimously held that unstamped [arbitration](#) agreements are legally enforceable and any arbitration clause in an unstamped or insufficiently stamped agreement is also enforceable and such a defect is

curable and does not render the contract invalid.

By 3:2, the majority verdict on April 25 had ruled that an arbitration clause is void and not enforceable in law if the agreement is unstamped or insufficiently stamped. It had held that an [arbitration agreement](#) cannot be separated from the main contract, and if stamp duty was not paid properly on the main contract, the arbitration clause is also invalid. The ruling raised concerns about potential delays in arbitrator appointments and clashed with India's pro-arbitration stance.

Setting aside the April verdict, the larger seven-judge bench led by Chief Justice [DY Chandrachud](#) ruled that agreements that are not stamped or insufficiently stamped are not rendered void or void ab initio or unenforceable if arbitration agreement prima facie exists between parties. The apex court held that the issue of unstamping cannot be gone into at the stage of Section 8 or Section 11 (at the start of arbitral proceedings) as it goes against the rationale of the law.

According to the judgment, the agreements without the proper stamping were not automatically void or unenforceable as – they just couldn't be used as evidence, but it is a curable defect in the law.

Parties who have entered into an arbitration agreement will be relegated to an arbitration after examining the prima facie existence of an arbitration agreement. The arbitrator is competent to decide on all issues of jurisdiction including the enforceability of the substantive rights basis the validity/admissibility of an unstamped document.

“Courts may only examine whether an arbitration agreement exists on the basis of a prima facie standard of review. The nature of objections to the jurisdiction of an arbitral tribunal on the basis that stamp duty has not been paid cannot be decided on a prima facie basis,” the top court said, adding that any such scrutiny by courts at the threshold will defeat the legislative intent underlying the Arbitration Act.

Legal experts welcomed the judgment as a “historic and the fastest ever curative verdict” that will not only boost the arbitration ecosystem of India, but will promote India as an international arbitration hub.

“By removing the cloud over the uncertainty that the previous judgment had ushered in, the judgment has not only upheld the legislative intent of the Arbitration Act but also the salutary doctrines of party autonomy, separability as well as the doctrine of kompetenz by approving arbitrators’ power to decide upon their jurisdiction, as also simultaneously balancing the interests of the exchequer,” Kunal Vajani, joint managing partner at law firm Fox & Mandal, said, adding that “a progressive unanimous as well as a candid concurring judgment, which puts to rest a retrograde controversies.”

Ateev Mathur, Partner, SNG & Partners, said that the judgment "gives a complete clarity. It would result in a smooth arbitration process without judicial intervention on issues of stamping at the stage of Section 8 or Section 11. Arbitrations would now not be stalled on the issue of non-stamping of the underlying contract."

"The April ruling was causing confusion amongst the litigants thinking of invoking arbitration; matters where arbitration had been invoked and proceedings were underway, it hit a roadblock as" Alipak Banerjee, leader, International Dispute Resolution and Investigations Practice at the Nishith Desai Associates said, adding that the Wednesday's ruling had given better clarity and will go a long way in promoting India as an international arbitration hub.

The Wednesday's judgement came on a curative petition moved against the April judgment. The issue was referred to the larger bench in September due to its "larger ramifications and consequences" and "limitless uncertainty in the area of arbitration" triggered by its earlier divergent views on the enforceability of arbitration clauses contained in unstamped or insufficiently stamped agreements.