

Shaping up the Stamp law: Far reaching amendments proposed to a century-old legislation

Vinod Kothari & Payel Jain
Vinod Kothari & Company
vinod@vinodkothari.com
payel@vinodkothari.com

Indian Stamp Act, 1899 is one of the oldest legislations of India running from British times. It has been amended several times since its enactment however no comprehensive revision has been attempted. The Law Commission in its 67th Report has emphasized the need to revise the Stamp legislation in India and several of its recommendations have been given effect to in the proposed bill. Besides, the Bill incorporates the experience of Maharashtra, arguably the most aggressive State in the country in revenue realization under stamp laws, in administering its stamp law.

Major proposals in the Amendment Bill:

Amended definition of Conveyance to include High Court Order: All court-ordered amalgamations, mergers, demergers to be subjected to duty

For uniform application of the Stamp law on order of the High Court under section 391 of the Act, the definition of “Conveyance” under the Stamp Act is proposed to be amended to include the order of the High Court u/s 391.

The proposed amendment, if enacted, will put to rest the long-drawn debate on stampability of Court Orders. The Delhi High Court relying on the judgment of the Apex Court in *Hindustan Lever & Anr. vs. State of Maharashtra & Anr.* (2004) 9 SCC 438 in a recent case, *Delhi Towers Ltd v. G.N.C.T. Of Delhi* (Date of decision: December 2009) has held that an order under section 391 of the Act is stampable. Stamp duty being state subject, different High Courts, have adjudicated the issue differently. The outcome was there no uniformity as to cost of restructuring which greatly differed from one state to another.

The Note on Clauses states thus:

“The definition of “conveyance” has been amended to include in its scope every such decree or final order of a court or revenue authority and any order of the Tribunal or in High Court sanctioning the scheme of reconstruction of companies including the banking companies, by which property is transferred between living persons. Also an explanation is added in order to make, the transfer of property by a co-owner to another co-owner, chargeable with the duty of conveyance.”

In a recent case, the Calcutta High Court has held that the arrangement between members of a family effected through 391-394 route is the nature of partition and has levied duty applicable on partition. However, the proposed amendment has clearly laid down the law in this respect and a rate of duty as high as five percent will henceforth be levied on any High Court orders.

The amendment will adversely impact the restructuring, specially in case of small companies and groups concerns, thereby making the 391-394 route expensive. On the other hand, it is surely going to enhance the state revenue.

Lease transactions brought under duty

Lease of movable property is also proposed to be made stampable by insertion of lease of movable property in the definition of Lease under clause 16. The definition is proposed to be made wider by including an “agreement to lease” also within the scope of definition of lease. Accordingly, all leases of movable property will now attract stamp duty applicable at the same rates as those for immovable property. Notably, the rates of duty, for a lease upto 5 years, is 2% of average annual rentals.

Many Indian corporates, particularly, MNCs, source cars, IT equipment, furniture, etc on lease. All these will have to suffer hefty rates of duty. Presently, most of them suffer stamp duty of only Rs 10 to Rs 100.

Basis of stamp duty – from agreement value to market value: Concept of Market Value omnipresent in the proposed amendment

Market value has been defined to mean - in relation to any property which is the subject matter of an instrument, means the price which such property would fetch or would have fetched if sold in open market on the date of execution of such instrument as determined in such manner and by such authority specified in this Act or rules made thereunder or the consideration stated in the instrument whichever is higher

A new clause has been inserted (clause 27-A) empowering the state government to fix and revise market value guidelines periodically. The computation of duty based on consideration in the Act is sought to be replaced by applying market value.

Property sales under Power of Attorney to attract duty

In several states, a convenient device for people to avoid stamp duty on property sales was to provide possession of the property under a power of attorney. Typically, this power would also include a power to sell the property.

Now, the definition of “power of attorney” is proposed to be amended to make it clear that every instrument by which a person, except a legal practitioner is authorized to appear on behalf of the Principal in any proceeding before any court, tribunal or authority is a power of attorney, and will be stamped at the same rate as applicable on a conveyance.

Imprisonment for failure to execute documents with proper stamps

On a single day in our country, there may be lakhs of stampable documents being executed and quite obviously not all documents are executed with proper payment of stamp duty. For instance, if you are signing on a office voucher taking reimbursement of a conveyance expense of Rs 1000, you need to put a revenue stamp, and failure to put that amounts to an offence of unstamping or understamping.

The Bill proposes a rigorous imprisonment for a term which shall not be less than one month but which may extend to six months along with fine which may extend to ten thousand rupees for as menial an offence as failure to pay proper duty. If enacted, these penal provisions would mean undue hardship on the parties, for in most case, failure to put proper stamps may be unintentional and even if such an offence is committed intentionally to evade duties, any penalty over and above the pecuniary fines seems to be unjust. We have long forgotten the key principle that fiscal statutes need to provide for monetary penalty – it cannot be equated with a murder or rape to require imprisonment. The prisons of the country cannot even accommodate hardcore criminals – filling them up with offenders of stamp duty will be undue burden on the jailers.

Move over Securities Transactions Tax – here we have a new tax on stock market transactions: Tax on “record” of securities transactions:

Maharashtra has been imposing this duty for quite a while, but its legality has not been put to serious test. The key principle of stamp law is that where there is an instrument (that is, document), there may be stamp duty. But as the duty is not a tax on the transaction, there can be no duty where there is no instrument.

The question becomes prominent in case of stock market “contract notes”, the flow of which is as follows. The transaction is mostly verbal – an investor wants to buy securities and instructs the broker to keep a tab and buy it when the prices are opportune. Commonly, there is no written instruction. The brokers buys the securities and send a contract note mostly these days in electronic form. There is no “instrument” at any stage. Maharashtra, being one of the states having its own stamp law, imposed duty on these transactions, making the record of these transactions liable to stamp duty.

Now, the stamp law is sought to be amended to take a cue from Maharashtra. Record of Transaction, (transaction being electronic or otherwise) effected by a trading member through stock exchange or an association has been included within the purview of “Instrument”. Under this article duty has been levied on record of transactions relating to sale and purchase of securities, futures and options trading and forward trading. This would mean every single instruction, even if given over the phone and every transaction effected in the stock market would become stampable.

The rate of duty is 0.01%, or Rs 10000 per transaction, which ever is lower. If the volume of transactions on the stock markets. If the turnover of shares alone at the BSE adds to about Rs 2000 crores on any trading day, this would mean a state revenue of Rs 20 lacs per day, or Rs 500 crores per annum. Add to this the volume of derivatives, bonds, government securities, and so on.

There are several complicated questions on this duty. The question arises as to where the so called record will be deemed to have been executed- the place where the stock exchanges are located, in short, Maharashtra?

Needless to mention, this would amount to generating tremendous amount of revenue for the state of Maharashtra and may lead to regional disparity on collection of stamps, keeping in view the volume of trading taking place at the BSE and NSE on a daily basis.

Increase in duty to the extent of 1500 times on registration of Articles of Association.

The Government has found a very lucrative tool for generating revenue by increasing the duty levied on the Articles of Association of a company by approximately 1500 times. The maximum duty that can be levied on Articles has been proposed to be made Rupees Five Lakhs. The calculation of duty payable has been linked to the authorized capital of the company. It is pertinent to note here that in the existing set up, companies are required to pay fees based on the amount of authorized capital. The word “nominal or increased share capital” in Article 10 under Schedule I implies that stamp duty will also be payable uniformly on increase in authorized share capital which was, at present, only payable in Bihar, Madhya Pradesh, Chhattisgarh, Gujarat and Goa. Article The proposed duty on AOA is surely an additional burden on Corporate India.

Other important amendments proposed:

- The charging section, section 3 has been proposed to be amended by insertion of a proviso that the duty will be recoverable on the basis of copy of an instrument, in case the duty is not paid on the original instrument.
- An Instrument not duly stamped is inadmissible in evidence. Where an instrument is drawn on stamp paper, it shall be deemed to be duly stamped if the stamp paper has been purchased in the name of one of the contracting party. To settle the conflict between various judicial pronouncements, it has been proposed to make compulsory that in case of instrument being written on stamp paper, the stamp paper should be essentially purchased on the name of one of the parties to the instrument. It implies that stamp paper purchased in the name of Advocates will not be capable of being used by the contracting parties.
- Clause 47-A has been inserted to deal with cases where the instruments on which duty is paid is undervalued. The Note on Clauses sets out the intention behind proposing the said clause and is read as under:

“It provides the method to be taken recourse to in the event of instrument of transfer stands undervalued. Its object is to neutralise the effect of undervaluation of the immovable property conveyed under registered

instruments. It fills the lacuna which was found by the Supreme Court in Himalyan House Co. Ltd. v. CCRA AIR 1972 (899). It empowers the Collector to deal with those cases where the parties by arrangement deliberately undervalue the property with a view to defraud the government of the legitimate revenue by way of stamp duty.”

- The time limit for entertaining application for refund of stamps has been extended from six months to one year.

Major changes in the Schedule regarding rate of duty:

| Description of Instrument | Proposed stamp duty | Existing stamp duty |
|---|---|--|
| ACKNOWLEDGEMENT, of a debt exceeding five thousand rupees | Ten rupees | Twenty paise |
| ADMINISTRATION-BOND | Five hundred rupees | Same as duty applicable on bond |
| Affidavit | Ten rupees | Rupees ten |
| Agreement relating to deposit of title deed, pawn, pledge or hypothecation | A significant change is Agreement of Hypothecation has been proposed to be included in the Article following the recommendation of the Law Commission of India. | |
| For deposit of title deeds where such deposit is made by way of security for repayment of money/loan | 0.25 percent of the amount secured by such deed, subject to a maximum of five lakh rupees. | |
| For pledge, prawn or hypothecation of movable property where such deposit is made by way of security for repayment of money/loan | 0.25 percent of the amount secured by such deed, subject to a maximum of five lakh rupees. | Rupees ten for every Rs.1,000 or part thereof, of the amount of loan |
| <ul style="list-style-type: none"> • If loan repayable on demand or after three months • If loan repayable not more than three months | Half of above | Half of above |
| For wider import, an | | |

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| <p>explanation has been added to include any note, writing etc chargeable with duty under the article in cases where no agreement to deposit of title deeds is executed, to safeguard the government revenue. However, letter of hypothecation accompanying a bill of exchange has been exempted.</p> | | |
| Appointment in execution of power | One hundred rupees | Rupees fifty |
| <p>Articles of Association of a company</p> <ul style="list-style-type: none"> • Where the company has no share capital • Where the company has nominal capital or increased share capital | <p>One thousand rupees</p> <p>0.15 percent of such nominal or increased share capital subject to a minimum of one thousand rupees and a maximum of five lakh rupees</p> | Maximum of three hundred rupees |
| <p>Conveyance</p> <p>(No separate rate of duty for order of the High Court u/s 391 of the Act has been proposed)</p> | A flat rate of duty of five percent has been proposed. | Six percent of market value in case the market value does not exceed rupees twenty five lakhs, and seven percent in other cases |
| Lease | <p>The Article has been restructured to rationalize the duty payable on lease</p> <p>Separate rate of duty specified for lease of movable property</p> | |
| Letter of Allotment of Shares | Ten rupees | Sixty paise |
| Letter of Credit | Ten rupees | One rupee |
| Letter of Guarantee (newly inserted) | Five hundred rupees | |
| <p>Memorandum of Association of a company</p> <ul style="list-style-type: none"> • If accompanied by AOA • If not so | Five hundred rupees | <p>Rupees sixty</p> <p>Rupees two hundred if the</p> |

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| accompanied | Same as in Article 10 | nominal capital does not exceed one lakh of rupees and rupees three hundred if the nominal capital exceeds one lakh of rupees |
| Mortgage Deed | 0.5 percent of the amount secured by such deed, subject to a maximum of ten lakhs | Same as conveyance for a consideration equal to amount secured by such deed |
| Partition | Two percent of the amount of the market value of the separated share or shares of the property. | Half percent of market value |
| Power of Attorney | Duty of conveyance has been made chargeable on power of attorneys given without consideration, authorizing the agent to permanently alienate any immovable property, when the attorney is given for a period of more than one year. A duty of five hundred rupees has been prescribed for such power if it is given for a period of one year or less. | |
| Share warrant | As applicable on conveyance | One and half times of conveyance |
| Transfer <ul style="list-style-type: none"> • Of shares • Of debenture | 25 paise for every hundred rupees 50 paise for every hundred rupees | |
| Trust <ul style="list-style-type: none"> • Declaration of- where there is disposition of property • In any other case • Revocation | Two percent of market value of property settled Five hundred rupees Five hundred rupees | |