

THE NEWSLETTER

UPDATE YOURSELF

Detailed Analysis of Provisions of RERA

The Hon'ble Supreme Court of India by an order dated 04.09.2017 in transfer petition nos.1448-1456 of 2017 directed the High Court of Bombay ("HC") to take up the matter of all the writ petitions along with the other connected matters, if any, pending in the high courts. The HC in *Neelkamal Realtors Suburban Pvt. Ltd. and Others vs. Union of India [Writ Petition no. 2737 of 2017 dated 06.12.2017]*, while assessing Section 3 of Real Estate (Regulation and Development) Act, 2016 ("Act") found that the projects, which are already completed before or on the date the said section came into force, shall not be affected by the provisions of the Act therefore, the Act will have no impact on any right which has been vested or accrued by such projects. The HC further held that the Act shall apply after the project gets registered and thus, the application of the Act is prospective in nature. The HC in the instant case also decided on a couple of issues which are summarized as follows:

- a. On analysis of the relevant portion of Sections 6, 7 and 37 of the Act, the HC held that the Real Estate Regulating Authority ("Authority") can grant extension of time, over and above the stipulated period of one (1) year, to builder to complete the project in the cases which are not covered under Force Majeure (defined in Explanation to Section 6 of the Act). However, such grant of extension will depend upon the facts of each case.
- b. Regarding Section 18 (Return of amount and compensation) of the Act, the HC opined that in event of delay in handing over the possession, the interest would be calculated from the date mentioned in the agreement to sale and not from the time when the ongoing project is registered under the Act or any other time line.
- c. After scrutinizing Section 46 (Qualifications for appointment of chairpersons and members) of the Act, the HC was of the view that majority of the member of the Real Estate Appellate Tribunal ("Tribunal") must be judges or judicial officers. Also, a portion of Section 46(1)(b) which required the judicial members of the Tribunal to be a member of Indian Legal Service and holds the post of additional secretary of that service or any equivalent post, has been struck down by HC as the same is contrary to Section 45 of Act, Article 14 of the Constitution of India and the principles set down by the Apex Court in the case of *Madras Bar Association vs. Union of India [(2010) 11 SCC 1]*.
- d. In addition to the above, the HC has ruled that the penalties to be imposed under Chapter VIII of the Act read with Section 18(1), 18(2), 18(3), 40, 59, 60, 61, 63 and 64 of the Act are not retrospective in its operation merely because it relates to ongoing projects which get registered with the Authority. These provisions cannot be said to be violative of Articles 14, 19 (1)(g), 20(1) and 300-A of the Constitution of India.

Thus, the HC concluded that the Act strikes balance between rights and obligations of promoter



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and allottee(s). It is a beneficial legislation in the larger public interest occupying the field of regulatory nature which was absent in this country so far. HC held that Sections 3, 4, 5, 7 and 8 of the Act are required to be construed harmoniously as they impose reasonable restrictions on the promoter in larger public interest. Further, the HC upheld the constitutional validity of first proviso to section 3 (1), section 3(2)(a), explanation to section 3, section 4(2)(l)(C), section 4(2)(l)(D), section 5(3), first proviso to section 6, section 7,8,18,22,38,40,59,60,61,63,64 of the Act.

‘Purpose Test’: A Crucial Factor to Determine the Nature of Subsidy

The Hon’ble Supreme Court (“Court”) in the case of *CIT-I, Kolhapur vs. Chaphalkar Brothers Pune [(2017) 88 taxmann.com 178 dated 07.12.2017]* had the occasion to adjudicate the issue pertaining to application of the ‘Purpose Test’ in determining the capital or revenue nature of subsidy. In the instant case, the assessee Chaphalkar Brothers Pune, was engaged in the business of operating multiplex theatre in Pune, Maharashtra. The Government of Maharashtra introduced a subsidy scheme in the form of exemption of entertainment duty for newly set up multiplex theatre complexes (“Subsidy Scheme”). The Subsidy Scheme was availed by the assessee and the same was treated as a capital receipt by the assessee. The assessing officer found that the Subsidy Scheme was to support the on-going activities of the multiplex and not for its construction and hence, was a revenue receipt. CIT(A) upheld the assessment order but ITAT reversed the order of the CIT(A). Thereafter, High Court of Bombay dismissed the revenue’s appeal and upheld ITAT order. Aggrieved by the said order, the revenue filed an appeal before the Court. The Court while deciding the said case, specifically relied upon its own judgments in the case of *Sahney Steel & Press Works Ltd v. CIT [(1997) 228 ITR 253]* and *CIT vs. Ponni Sugars and Chemicals Limited [(2008) 306 ITR 392]* wherein the Court held that “What is most important is the ‘Purpose Test’ that determines the character of the receipt in the hands of the assessee for which the subsidy is given. If the object of the Subsidy Scheme was to enable the assessee to run the business more profitably, the receipt is on revenue account. On the other hand, if the object of the assistance of subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt is of capital nature.” In light of the above, the Court observed that the object behind the Subsidy Scheme was to promote people to construct multiplex theatre complexes., thus, the idea behind the Subsidy Scheme in the form of exemption from entertainment duty is that it should go towards helping the industry to set up such highly capital intensive entertainment centres. Therefore, the Court held that as the aforesaid object of the Subsidy Scheme is clear and unequivocal, the said Subsidy Scheme is capital in nature.



SUBSIDIES

most important is the ‘Purpose Test’ that determines the character of the receipt in the hands of the assessee for which the subsidy is given. If the object of the Subsidy Scheme was to enable the assessee to run the business more profitably, the receipt is on revenue account. On the other hand, if the object of the assistance of subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt is of capital nature.” In light of the above, the Court observed that the object behind the Subsidy Scheme was to promote people to construct multiplex theatre complexes., thus, the idea behind the Subsidy Scheme in the form of exemption from entertainment duty is that it should go towards helping the industry to set up such highly capital intensive entertainment centres. Therefore, the Court held that as the aforesaid object of the Subsidy Scheme is clear and unequivocal, the said Subsidy Scheme is capital in nature.

Condonation of Delay Scheme, 2018

The Ministry of Corporate Affairs (“MCA”) in September, 2017 had identified 3,09,614 directors who were associated companies which failed to file their financial statements and annual returns in prescribed forms for a continuous period of 3 financial years commencing from 2013-14 to 2015-16 as per Section 164(2)(a) read with Section 167(1)(a) of the Companies Act, 2013 (“Act”). The MCA had barred the defaulter directors from accessing the online registry and placed the list of defaulting directors on its website. As a result of the same, various representations were received from the industry, defaulting companies and their directors, for providing the defaulting companies an opportunity to rectify their default. Thus, in exercise of the powers conferred under the provisions of Section 403, 459 and 460 of the Act, the Central Government *vide General Circular No. 16/2017 dated 29.12.2017*, with a view to provide defaulting companies an opportunity to make their default good, has come up with “Condonation of Delay Scheme, 2018 (“Scheme”). The Scheme

comes into force with effect from 01.01.2018 and remain in force upto 31.03.2018 (“**Prescribed Period**”). The Scheme will be applicable to all companies (except the companies struck off under Section 248(5) of the Act). The DIN of the concerned disqualified directors will be activated on temporary basis during the Prescribed Period in order to enable them to file the overdue financial statement and other related returns. A defaulting company shall file the overdue returns and forms in the prescribed e-forms after paying the statutory filing fee & additional fee payable as per of Section 403 of the Act r/w Companies (Registration Offices and fees) Rules, 2014. The defaulting companies after filing the overdue returns shall seek condonation of delay by filing form e-CODS (available on the website of the MCA w.e.f. 20.02.2018 or any other date as may be intimated by the MCA) on the MCA portal. The fee for filing this form is Rs. 30,000/- However, this scheme is without prejudice to action taken under Section 167(2) of the Act or any civil and/or criminal liabilities, if any, of such disqualified directors which arose during the period the said directors remained disqualified.

CONDONATION
OF DELAY



Land Owner/Investors having Area/Revenue Share in Real Estate Project to be Treated as Promoter

The Maharashtra Real Estate Regulatory Authority (“**Authority**”) vide its circular bearing No. MahaRERA/Secy/File No. 27/538/2017 dated 04.12.2017, clarified that individuals/organizations like land owners or investors, by which the said individuals/organizations are entitled to a share of total revenue generated from sale of the apartments or share of total area developed for sale which are also marketed and/or sold by such individuals/organizations, would fall within the definition of “promoter” for the purpose of the Real Estate Regulation and Development Act, 2016 (“**Act**”). The Circular further clarified that such individuals/organizations shall be jointly liable for the functions and responsibilities specified in the Act in the same manner as the promoter who actually obtains building permissions and carries out construction. Also, such individuals/organizations who fall within the meaning of “promoter” on account of being landowners or investors, shall be specified, as such, at the time of registration with the Authority. In addition to it, written agreement between promoters which clearly specifies and details the rights and shares of each promoter should be uploaded on Authority’s website along with other details for public viewing. Landowner promoter and investor promoter should also submit declaration in Form B of Maharashtra Real Estate (Regulation and Development)(Registration of Real Estate Projects, Registration of Real Estate Agents, rates of interest and disclosure on website) Rules, 2017 and each such landowner promoter or investor promoter, who is entitled to a share of total area developed, should open separate bank account to deposit 70% of the sale proceeds realized from the allottee(s) of their share.



Right to Dignity As Mother is A Fundamental Right

The Hon’ble High Court of Kerala (“**Court**”) in *Mini. K.T. vs. Senior Divisional Manager, Life Insurance Corporation of India and Others [WP(C).No. 22007 of 2012 (A) dated 20.12.2017]* delivered a progressive judgment on the dilemma of a woman to choose between motherhood and employment and held that dignity as a mother is a fundamental right of every woman and service regulations should not be detrimental to the same. In the instant case, the petitioner was terminated from the service on the grounds of her long absence from service as she had to look after her child who was suffering from mild autism. The Court stated that “no service



regulations can stand in the way of a woman for claiming protection of her fundamental right of dignity as a mother". The judgment is path leading a in the current context of patriarchy domination at work place as the Court held that an employer generally may not have any legal obligation to be concerned over an employee's private matters, however, motherhood is an exception as this private interest is protected as fundamental right. The Court further held that even though motherhood is an option it should not be considered second to any other interest of women. The Court emphasized on the role and importance of mother since the inception of civilization and the need to bring the change in modern times. In light of the same, court held that a mother cannot be asked to choose between motherhood and employment as it would be in derogation of her fundamental and human rights. Further, to bring the judgment into force, the Court has suggested that a new legislation should come into effect to protect employees against discrimination at workplace due to their family responsibilities. A copy of the same has been directed to be delivered to various governmental agencies, law commission and concerned ministry.

Louboutin's Red Sole is Now a Well-Known Mark

The Hon'ble Delhi High Court ("Court") in the case of *Christian Louboutin vs. Pawan Kumar* [CS(COMM) 714/2016] decided on 12.12.2017, has accorded the status of a well know mark to the 'Red Sole' trademark ("Trademark") which was inspired by nail polish and is a prominent characteristic of the high-end luxury sky heel stilettos manufactured by famous French designer Christian Louboutin. The dispute arose on account of usage of the Trademark by the defendant(s) who are in the business of selling woman's shoes and accessories and are carrying out their business in Delhi. The plaintiff in the instant case contended that the shoe with a red sole clearly identifies the product of the plaintiff and distinguishes it from the goods of other persons. The plaintiff further contended that it is a registered owner of the Trademark in several countries including India. The plaintiff also adduced evidence like international registrations to substantiate its claim that its trademark is distinctive and well-known. Upon consideration of the contention(s) of both the parties involved in the case, the Court observed that the plaintiff's Trademark enjoys trans-border reputation in India. The goodwill and renowned reputation of the Trademark has spilled over into India from various countries around the world and consumers are well aware of this goodwill and reputation even before the plaintiff's Trademark was first formally launched in India. Further, the Court held that from the evidence presented and considering the large consumer base of the plaintiff's products under the Trademark, it can be construed that the Trademark has acquired the status of well-known marks as per the Trademark Act, 1999. Therefore, the Court held that the defendants were dealing in counterfeit Christian Louboutin shoes and thus, granted a permanent injunction restraining the defendants from manufacturing, selling, marketing and advertising foot-wears with the Trademark. Also, while granting the relief of damages the Court observed that the defendants were carrying on the business in the infringing goods for at least fifteen (15) months. In light of the aforesaid, the Court also awarded punitive damages to the tune of Rs.1,00,05,000/- as well as cost of proceedings to the Plaintiff.



No Trademark Protection to words 'BOOKMY' in 'BOOKMYSHOW'

The Hon'ble High Court of Delhi ("Court") in the case of *Bigtree Entertainment Pvt Ltd . vs. Brain Seed Sportainment Pvt Ltd & Another* (decided on 13.12.2017) dismissed the application filed by Bigtree Entertainment Private Limited ("Plaintiff") for granting injunction against Brain Seed Sportainment Pvt Ltd & Another ("Defendant") to restrain the Defendant from

using the domain name bookmysports.com. The Defendant was engaged in operating a website under the name of www.bookmysports.com, an online platform used for booking sporting venues and other sporting facilities. The dispute arose as the Plaintiff contended that it has secured registration of “BOOKMYSHOW” wordmarks and logos under Classes 41 (education, entertainment and training) and 42 (technology and software services) under the Trademark Act, 1999. Though, the Plaintiff had applied for registration of the word ‘BOOKMY’, it did not separately possess any trademark over these words. Further, it was also contended by the Plaintiff that the Defendant’s mark was deceptively similar to Plaintiff’s own mark, and that thus the Defendant was liable to mislead consumers by creating an impression that the defendant was associated itself with the Plaintiff and thereby cause damage to its goodwill and reputation which it had acquired over years. The argument of the Plaintiff rested on the basis that the usage of the words ‘book’, ‘my’ and ‘Show’ together in the specified arrangement made the entire word ‘BOOKMYSHOW’ a distinct word distinguishing the products of the Plaintiff. Therefore, the use of impugned trademark by the Defendants amounted to infringement and passing off of the plaintiff’s trademarks. The Defendant on the contrary in opposition to the arguments raised by the Plaintiff raised a contention that the words ‘BOOKMY’ were not distinctive, but were descriptive in nature. The Defendant further argued that, the prefix ‘BOOKMY’ was not a coined or inventive word demanding separate legal protection under the trademark laws but a descriptive word which could be used by business. In support of its arguments the Defendant led evidences of the websites operating in similar fields as the Plaintiff, which have been using the words BOOKMY, prior or subsequent to the Plaintiff. Upon consideration of the contentions of both the parties involved in the instant case, the Court held that: (i) existence of domain names using the prefix BOOKMY, both prior and subsequent to the Plaintiff’s mark, indicated that the prefix was descriptive; (ii) the words BOOKMY is not an arbitrary coupling of words, but rather a phrase describing the particular activity that the Plaintiff and others are engaged in. The Court, with respect to the prefix: “BOOKMY” stated that “it is instead an apt description of a business that is involved in the booking of a particular thing for its consumers, whether it is a concert, a movie, or a sports facility”; and (iii) Defendant had led evidence suggesting that the prefix “BOOKMY” was in use by other companies, and the Plaintiffs had not led evidence to show that “BOOKMY” is only associated to the Plaintiff’s trademark. Further, the Plaintiff was unable to prove that the prefix had obtained distinctiveness or a secondary meaning, in order to accord it protection. Therefore, the Court concluded that term “BOOKMY” is descriptive and accordingly dismissed the application.


 The logo for 'book my show' features the words 'book' and 'show' in a grey, sans-serif font. The word 'my' is positioned between them, enclosed within a red, stylized shape that resembles a book cover or a speech bubble.

Treatment of GST Supply of Artwork

The Central Board of Excise and Customs (CBEC) *vide* **Circular No. 22/22/2017-GST dated 21.12.2017** (Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries–Reg.), has clarified that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work from the gallery. It has further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition or display and therefore, the same shall not be construed as a supply. It is only when the buyer selects a particular art work which is being displayed at the gallery, that the actual supply takes place and GST as applicable would be payable at the time of such supply.



QUICK TAKEAWAYS

- The Government of India, *vide Notification No. 74/2017-Central Tax dated 29.12.2017* has notified the e-way bills becoming effective from 01.02.2018 all over India as an integral part of GST implementation.
- The Delhi High Court in the case of *Smriti Madam Kansagra vs. Perry Kansagra [C.M. APPL. 42790/2017 & 42791/2017 dated 11.12.2017]*, held that a mediation report should only contain one sentence and nothing more, in order to maintain the confidentiality of proceedings.
- The Food Safety and Standards Authority of India recently released guidelines on food recall by food business operators pursuant to the Food Safety and Standards (Food Recall Procedure) Regulations, 2017.
- The Central Government of India has re-registered IPRS as a copyright society, under Section 33(3) of the Copyright Act, 1957.
- Securities and Exchange Board of India *vide Circular no. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated 06.10.2017*, has issued guidelines regarding categorization and rationalization of Mutual Fund Schemes.
- The Finance Ministry has notified 31.03.2018 as the deadline for linking Aadhaar and PAN with bank accounts *vide Notification No. 10/2017 dated 13.12.2017*.
- The Hon'ble Supreme Court of India in the case of *Toyota Jidosha Kabushiki Kaisha vs. M/s. Prius Auto Industries Ltd & Ors. [CIVIL APPEAL NOs.5375-5377 OF 2017 dated 14.12.2017]* held that international brand should establish that it had enjoyed goodwill and reputation within Indian jurisdiction to sustain an action for trademark infringement.
- Ministry of Commerce & Industry, in exercise of the powers conferred by Section 159 of the Patents Act, 1970 (39 of 1970), *vide its Notification no. G.S.R. 1472(E) dated 01.12.2017* issued the Patents (Amendment) Rules, 2017 to further amend the Patents Rules, 2003.
- The Muslim Women (Protection Of Rights On Marriage) Bill, 2017 passed in Lok Sabha. The Rajya Sabha may pass this bill in upcoming Budget Session.
- In exercise of the powers conferred by Section 164 of the Central Goods and Services Tax Act, 2017, the Central Government made further amendment in the Central Goods and Services Tax Rules, 2017. By this amendment Format of FORM GSTR-01(Monthly return of outputs), FORM RFD-01 and FORM RFD-01-A has been changed.' filed by any party.
- Hon'ble National Consumer Disputes Redressal Commission in the case of *Kaushal Kishore Awasthi vs. Balwant Singh Thakur (Civil Appeal No. 15540 of 2017 dated 11.12.2017)* held that no cure/no success while doing in-vitro fertilization surgery is not negligence and fastening the liability on the treating doctor is not justified.
- The Hon'ble Apex Court in case of *Federation of Hotel And Restaurant Associations of India vs. Union Of India And Ors dated 11.12.2017*, while dealing with the issue of hotels/restaurants to sell bottled water above MRP, held that the provisions of the Standards of Weights and Measures Act, 1976, the Standards of Weights and Measures (Enforcement) Act, 1985 and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 are not applicable to services rendered in the premises of hotels/restaurants.
- The Ministry of Corporate Affairs *vide Notification dated 07.12.2017* notified the Companies (cost records and audit) Amendment Rules, 2017. The amended rules have brought changes in the Forms CRA-1, 2, 3 and inserted the definition of Indian Accounting Standards to be effective from 01.04.2016.
- The Hon'ble Supreme Court in *Madan Mohan vs. State of Rajasthan and Ors. [S.L.P.(Crl.) No.8030 of 2017 dated 14.12.2017]* observed that no superior court in hierarchical jurisdiction can issue direction/mandamus to any subordinate court commanding them to pass a particular order on any application filed by any party.

KNOWLEDGE CENTRE

FAQs on Limited Liability Partnership Act, 2008

Q.1. What is the relevant law for governance of a Limited Liability Partnership (“LLP”)?

In India, an LLP is governed through the Limited Liability Partnership Act, 2008 (“Act”) and the relevant rules made thereunder.

Q.2. How many minimum and maximum partners are required to incorporate an LLP?

As per the Act, minimum 2 partners are required to incorporate an LLP, however, there is no restriction on maximum number of partners in an LLP.

Q.3. Who can become a partner in an LLP?

In accordance with the Act, any individual or body corporate can become a partner in an LLP.

Q.4. Is there any difference between a partnership firm and an LLP?

Unlike a partnership firm, an LLP is a body corporate and a separate legal entity from its partners. Hence, the liability of partners of an LLP is separate and restricted to their contribution and any partner shall not be liable for an unauthorized act of other partner.

Q.5 Which regulatory body governs the LLP in India?

Similar to a company, the governing body for an LLP is also the Ministry of Corporate Affairs (MCA), Government of India. Therefore, all matters related to incorporation, filings, etc. of an LLP is under the regulatory regime of the MCA.

Q.6. Who can become a designated partner of an LLP?

A designated partner is entrusted with the management of an LLP, which is similar to the role of director in a company. Every LLP shall require atleast 2 designated partners, who shall be individuals and at least one of them shall be a resident of India. Where any partner is a body corporate in an LLP, any individual nominee on behalf of such body corporate can act as a designated partner.

Further, to become a designated partner in an LLP, a designated partner is required to procure designated partner identification number.

Q.7. Is there any requirement for an LLP to have a registered office?

Every LLP shall have a registered office to which all communications and notices may be addressed and received.

Q.8. What is the basis to govern the relationship between the partners of an LLP?

The relationship between the partners of an LLP is governed by the limited liability partnership agreement (“Agreement”) executed between the partners, including the mutual rights and liabilities between the partners. If case any matter between the partners is not mentioned in the Agreement, same shall be governed by First Schedule of the Act.

Q.9. In which form a partner can bring a contribution in an LLP?

A partner of an LLP can bring his contribution in the form of tangible, intangible, movable and immovable property. Further, the monetary value of contribution made by a partner in an LLP shall be accounted and disclosed in the accounts the LLP.

Q.10. What is the difference between an LLP and a company?

A basic difference between an LLP and a company lies in that the internal governance structure of a company is regulated by statute (i.e. Companies Act, 2013) whereas for an LLP it would be by a contractual agreement between partners. An LLP has more flexibility and lesser compliances as compared to a company.

EDITORIAL

STAMPING OF TRAVELLING INSTRUMENTS

- By *Adv. Arpita Gupta, Senior Associate*

Stamp Duty plays a very important role while executing an instrument. A duly stamped document is considered to be a proper and legal document and as such acquires evidentiary value and can be admitted as evidence in court of law. A document not properly stamped as per the relevant state stamp laws, loses its evidentiary value and is not admissible as evidence by the court. Thus, analysing and calculating the quantum of stamp duty payable on a document becomes a crucial matter. Apart from this, there exist various other issues related to payment of stamp duty which require adequate consideration. One of such issue and question that arises in the mind of a reasonable man with respect to payment of stamp duty is that when an instrument duly stamped in a particular state travels from that state to another state, then in such a scenario whether such instrument (“**Travelling Instrument**”) is liable to be stamped again in the receiving state.

For the purpose of this Article and for sake of convenience and relevancy, the above issue is analysed in the light of the provisions of Rajasthan Stamp Act, 1998 (“**Act**”). Pursuant to the same, Section 3(b) of the Act being the charging section, provides that where an instrument chargeable under Schedule to the Act which has been executed outside State of Rajasthan, is brought into the State of Rajasthan and relates to any property situated or to any matter or thing done or to be done in the State of Rajasthan, then such instrument is chargeable with stamp duty of such amount as indicated in the Schedule to the Act. The relevant portion of the said section has been reproduced herein below for ready reference:

“Section 3. Instrument chargeable with duty

Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in the 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 the State on or after the date of commencement of this Act;

(b) every instrument mentioned in that Schedule, 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 the State and is received in the State:

.....”

(Emphasis supplied)

It is significant to note that provisions analogous to Section 3(b) of the Act are also provided/contained in Indian Stamp Act, 1899 (Delhi), Maharashtra Stamp Act, 1958, Gujarat Stamp Act, 1958 and other state stamp laws (“**Charging Section**”). Thus, to understand the scope of the Charging Section, analysis of the following case laws becomes necessary:

1. The Hon’ble Supreme Court in the case of *New Central Jute Mills Co. Ltd. and Ors. vs. The State of West Bengal and Ors. [AIR 1963 SC 1307]* held that when an instrument already executed in one state is (i) received in second state; **and** (ii) related to property situated or any matter of thing done or to be done in such second state, then such instrument is chargeable with duty in the second state as the liability to pay stamp duty arises.
2. In *Antifriction Bearings Corporation Limited & another vs. State of Maharashtra & others [(2000) 102 CompCas 127 (Bom)]*, the Hon’ble High Court of Bombay observed that when something is done in another state pursuant to an instrument executed in some other state, then such transaction becomes a chargeable transaction under the stamp laws of such another state.

3. The Hon'ble High Court of Bombay in the case of *L & T Finance Limited vs. Saumya Mining Ltd. [2014 (5) BomCR 448]*, while extending the scope of the Charging Section, observed that even if the Travelling Instrument is travelling into another state as an evidence, then also stamp duty is payable on the Travelling Instrument as per another state's stamp laws.
4. Further, while interpreting the Charging Section, the Hon'ble Debts Recovery Appellate Tribunal, Mumbai in case of *State Bank of Saurashtra vs. N.C.K. Sons Export [III (2004) BC 244]* held that the phrase "relating to any property situated" cannot be read in isolation from the phrase "or to any matter or thing done or to be done in this State". Furthermore, the Hon'ble Tribunal held that even if a copy of a Travelling Instrument is received in another state, then such copy is also liable to be stamped in another state.

Therefore, from the above discussion, it can be construed that:

1. In order to stamp the Travelling Instrument in another state following conditions are to be fulfilled ("Conditions Precedent"):
 - The Travelling Instrument is received in another state i.e. the Travelling Instrument is brought into such state; and
 - The Travelling Instrument is related to any property situated, or to any matter or thing done or to be done, in such state.
2. If any of the Conditions Precedent is not fulfilled, the Travelling Instrument is not liable to be stamped in another state.
3. If the Travelling Instrument is received in another state just to be presented as evidence in a matter adjudicated in another state, then also such Travelling Instrument is liable to be stamped in such state. The said observation can be supported by referring to Section 39 of the Act, which states that if an instrument is not stamped properly in accordance with the provisions of the Act, the said instrument cannot be admitted in evidence for any purpose by any person having authority to receive evidence.

Now, once the Travelling Instrument becomes liable to be stamped as per the Charging Section, the Travelling Instrument is to be stamped with the differential between the amount already paid on the Travelling Instrument and the stamp duty liable to be leviable on the Travelling Instrument as per the Act (Section 20 of the Act). Further, such differential stamp duty levied on the Travelling Instrument is liable to be paid within three (3) months from the date on which the Travelling Instrument was first received in the State of Rajasthan (Section 18 of the Act). At this point, it is important to consider that the law related to amount of stamp duty payable on the Travelling Instrument and the time period within which such stamp duty needs to be paid on the Travelling Instrument as specified herein above in Section 20 and Section 18 of the Act respectively, is same for all the other state stamp laws as well.

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