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THE NEWSLETTER

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UPDATE YOURSELF

Right to Medical Insurance under Article 21 of Indian Constitution

In the matter of ***M/s. United India Insurance Company Limited vs. Jai Prkash Tayal [RFA 610/2016 & CM Nos. 45832/2017 dated 26.2.2018]***, an appeal was filed by the appellant before the Hon'ble High Court of Delhi ("**Court**") against the order of trial court awarding medical claim to the respondent under the insurance policy for 'genetic disease'. In the instant case the issue that arose before the Court was, whether exclusion under the insurance policy of the 'genetic disorders' is valid and legal. As per the factual matrix of the present case, the respondent was suffering from a disease called 'Hypertrophic Obstructive Cardiomyopathy' and his claim for medical insurance was rejected by the appellant on the ground that the aforesaid disease falls within the ambit of exclusion clause of the insurance policy which includes genetic diseases. The Court held that the exclusionary list of the insurance policy is so long and broad that almost every ailment could be said to fall under the exclusion clause of the insurance policy and the exclusion of genetic disorders give too much freedom and arbitrary power to the insurance companies to reject genuine claims. The Court also observed that the exclusion of insurance claims in respect of genetic disorders creates a broad classification which is mixed with ambiguity and vagueness. Moreover, the Court viewed that since the term 'genetic disorder', is capable of countless interpretations, the differentiation is not intelligible and hence falls foul of Article 14 of the Constitution of India ("**Constitution**"). The Court further opined that unless and until there is a proper genetic test in accordance with a strict regulatory mechanism, and the cause of the disorder is attributable solely to a genetic condition, the classification is too broad. Concluding the same, the Court also held that the right to avail health insurance is an integral part of 'right to healthcare and the right to health' recognized under Article 21 of the Constitution, therefore, the broad exclusion of 'genetic disorders' is not merely a contractual issue between the parties, but also falls into the broader canvas of 'right to health' under Article 21 of the Constitution.

Grant of Bail Bond under Section 88 of the CrPC is a Judicial Discretion

The Hon'ble Supreme Court ("**Court**") in the case of ***Pankaj Jain vs. Union of India and Another [Criminal Appeal No.321 of 2018 decided on 23.02.2018]*** examined the issue as to whether the power granted to a court to take bond for appearance of a person under Section 88 of the Code of Criminal Procedure 1973 ("**CrPC**") is discretionary or not. In the instant case, the Hon'ble Special Judge, C.B.I. ("**SJ**") issued a non-bailable warrant and initiated proceedings under Section 82 and Section 83 of CrPC against the appellant. Pursuant to the warrant, the appellant filed

an application under Section 88 of CrPC before SJ for release on submission of bond. The SJ rejected the said application on the ground that the word 'may' used in Section 88 of the CrPC signifies that the power granted to a court to take bond is a matter of judicial discretion. Thereafter, the decision of SJ was challenged by the appellant before the Hon'ble High Court of Allahabad. The Hon'ble High Court of Allahabad dismissed the appeal by reiterating the reasoning of SJ. Thus, the appeal lied before the Court wherein the appellant challenged the decision of the Hon'ble High Court of Allahabad. Before the Court, the appellant contented that having not been arrested during the investigation when he appeared before SJ, it was obligatory on the part of the SJ to accept the bail bond under Section 88 of the CrPC and release the appellant forthwith. The appellant further contended that although Section 88 of the CrPC uses the word 'may' but the word 'may' has to be read as 'shall' causing an obligation on the court to release on bond those accused persons who have appeared on their own before the court for their volition. The Court in order to examine the aforesaid issue referred to Section 88 of the CrPC which states that when any person for whose appearance or arrest the officer presiding in any court is empowered to issue summons or warrant, is present in such court, **such officer may require such person to execute a bond**, with or without sureties, for his appearance in such court or any other court to which the case may be transferred for trial. Thus, after taking into consideration the provisions of Section 88 of CrPC, the Court held that as the present case is not one where the accused was a free agent whether to appear or not and also a non-bailable warrant was issued and proceedings were initiated under Section 82 and Section 83 of the CrPC therefore, the appellant is not entitled to take benefit of Section 88 of the CrPC. The Court further held that the word 'may' used in Section 88 of the CrPC confers discretionary power on the court to accept a bond from an accused for appearance.

Cost of Residential House Purchased is the Entire Cost of House and Also Includes Cost of Furniture

Section 54 of the Income Tax Act, 1961 ("**Act**") states that capital gain arising on sale of long term capital asset being residential house will not be included in the scope of total income if the amount of capital gain has been invested in purchase/construction of new residential house. Recently, in the matter of ***Rajat B Mehta vs. ITO [[2018] 90 taxmann.com 176 (Ahmedabad) dated 09.02.2018]***, a question arose before Hon'ble ITAT Ahmadabad ("**ITAT**") that where there are two separate agreements for purchase of house property and purchase of furniture, then in such cases, whether assessee's claim under Section 54 of the Act will be allowed for both purchase of house property and purchase of furniture. The facts of the case are such that assessee sold his house and earned a LTCG of Rs.1.89 crores. Out of the said total LTCG earned, the assessee invested Rs.78 lakhs in another house property (Rs.60 lakhs was with respect to contract for purchase of house property and Rs.18 lakhs was with respect to contract for purchase of furniture in the said house property). The assessing officer was of the opinion that expenses incurred on buying furniture i.e. Rs.18 lakhs cannot be treated as expenses incurred for making the house habitable and thus, held that the payment made under the separate agreement for purchase of furniture and fixtures is entirely on standalone basis and independent of the purchase of the house and therefore, the revenue was right in declining the claim of the assessee for deduction under Section 54 of the Act to the extent of Rs.18 lakh. The assessee appealed against the order of the assessing officer before CIT(A) where the said order upheld. On appeal to ITAT, the ITAT on perusal of facts and circumstances observed that agreement to sell for the house property was entered for total Rs.78 lakhs and

in furtherance of said agreement to sell, two separate documents were executed. Thus, it is quite clear that actual consideration for purchase of house property was Rs.78 lakhs ("**Consideration**") and the splitting of consideration is an artificial arrangement. The ITAT further observed that whatever may be the cause for splitting of Consideration, such splitting of Consideration has no bearing on *de facto* consideration for purchase of house property. Furthermore, the ITAT examined the meaning of expression *'cost of residential house so purchased'* used in Section 54 of the Act and stated that the said expression does not necessarily mean cost of civil construction alone. A residential house may have many other things, other than civil construction and including things like furniture and fixtures, electronic items, as its integral part and may also be on sale as an integral deal. If these things are integral part of the house being purchased, the cost of house has to essentially include the cost of these things as well. In such circumstances, what is to be treated as cost of the residential house is the entire cost of house. Accordingly, the cost of the residential house has to be treated as Rs.78 lakhs. Also, the assessee did not have any choice about buying or not buying the furniture at the assigned values, as irrespective of the purchases of the furniture also, the assessee was under an obligation to pay the same amount of Rs.78 lakhs as evident from agreement to sell. Accordingly, ITAT passed judgement in favour of assessee and allowed the claim of Assessee under Section 54 of the Act for the amount of Rs.18 lakh also.

Refund of Sales Tax is Permitted Subsequent to Reduction in Sale Prices under Rajasthan Sales Tax Act

The Division Bench of the Hon'ble Supreme Court of India ("**Court**") in the case of ***M/s Universal Cylinders Limited vs. The Commercial Taxes Officer, [Civil Appeal No. 2432 of 2018 decided on 23.02.2018]***, while putting an end to a long debatable issue, observed that the sales tax assessee are entitled to get the refund of the excess tax paid on provisional sale price if the price reduces subsequently *vide* a government order. The facts of the instant case were that the Appellant, being a supplier and manufacturer of LPG cylinders was supplying LPG cylinders to Government owned companies like IOCL, BPCL, etc. at the price stipulated by Government. The said prices were later fixed for a particular period. at a later point of time. Pending the finalisation of price, the sales tax was deposited with the Sales Tax Department by the Appellant based on provisional sale price. Later, such price was reduced by the Government which resulted into a reduction of sales tax liability as well of the appellant. As a result, Thereafter, the Appellant approached the Sales Tax Department to demand the refund of sales tax paid on the differential amount of price but the Sales Tax Department rejected the claim on the ground that there is no provision under the Rajasthan Sales Tax Act, 1994 ("**Act**") for reducing or refunding the amount of tax once the amount of tax has been paid. Addressing this issue, the Court observed that on a bare perusal reading of Section 2(39) of the Act, which defines "sale price", it is clearly indicated that sale price it is the price which is either paid or payable to a dealer as consideration for the sale. The definition itself makes it clear that any sum by way of any discount or rebate according to the prevailing trade practice shall be deducted and should all not be included in the sale price. The Court further also noted that the agreement between the Appellant and IOCL itself stated that the price fixed was provisional, subject to finalization by the Government. Upon the finalization of sale price by the Government, the appellant received only the reduced price, and the excess payment made by IOCL was adjusted by them for future payments. The Court also took into consideration the fact that price fixation was not under the control of the Appellant. Thus, based on the above observations, it was held that only the amount actually received by the Appellant, after deduction of discount, can be included in the turnover and therefore, the appellant is legally entitled to get the refund of the sales tax paid on the excess amount.

File Noting by a Junior Officer is a Public Information

The Hon'ble High Court of Delhi ("**Court**") in the case of ***Paras Nath Singh vs. Union of India [W.P.(C) 7845 of 2013 decided on 12.02.2018]*** examined the issue as to whether the file noting by a junior officer is a public information under Right to Information Act, 2005 ("**Act**"). In the instant matter, the petitioner had filed an application before Public Information Officer ("**PIO**") under the Act seeking certain information including the certified copy of a report sent by the then Governor of Karnataka to the Union Home Ministry relating to the political situation in the State of Karnataka and for imposing President's Rule in the State of Karnataka ("**Report**"). The petitioner had also sought information regarding action taken by the Government of India on the Report and also the file noting in respect of the Report. The PIO rejected the application of the petitioner and denied the information sought by the petitioner. The petitioner filed an appeal before the First Appellate Authority ("**FAA**") against the order of PIO, which upheld the decision of PIO. The petitioner challenged the decision of FAA by filling an appeal before Central Information Commission ("**CIC**"), which was rejected at later stage. During the pendency of the appeal before CIC, the petitioner filed another application before Central Public Information Officer ("**CPIO**") seeking information related to complete details of file noting, the daily progress made in the case, etc. ("**Application**"). CPIO rejected the Application on the ground that the information sought under the Application was exempted from disclosure as per Section 8 of the Act. The decision of CPIO was challenged by the petitioner by filing an appeal before FAA, which dismissed the appeal by reiterating the decision of CPIO. The petitioner filed second appeal against the decision of FAA before CIC, which again rejected the appeal by stating that the file noting prepared by a junior officer as sought by the petitioner in the Application is a part of the file which is an official record of such junior officer's observations and impressions meant for his immediate superiors. Such information assumes the character of information supplied by a third party and therefore, any decision to disclose the information has to be completed in terms of provision of Section 11 of the Act. Thereafter, the petitioner filed an appeal before the Court challenging the decision of CIC.The Court in order to decide the aforesaid issues referred to Section 8 and Section 11 of the Act. The Court observed that noting made by a junior officer for use by his superiors is not a third party information and therefore, does not require compliance of Section 11 of the Act. Any noting made in the official records of the government is information belonging to the concerned government. The question whether the information relates to a third party is to be determined by the nature of the information and not its source. The government is not a natural person and all information contained in the official records of the government is generated by individuals or other entities. Thus, the noting or information generated by an employee during his employment cannot be treated as relating to a third party. Thus, the Court held that the information related to Report sought by the petitioner may be classified as secret or confidential but the file noting by a junior officer cannot be considered secret or confidential and thus, Application filed by the petitioner shall be allowed and PIO should to take action accordingly.

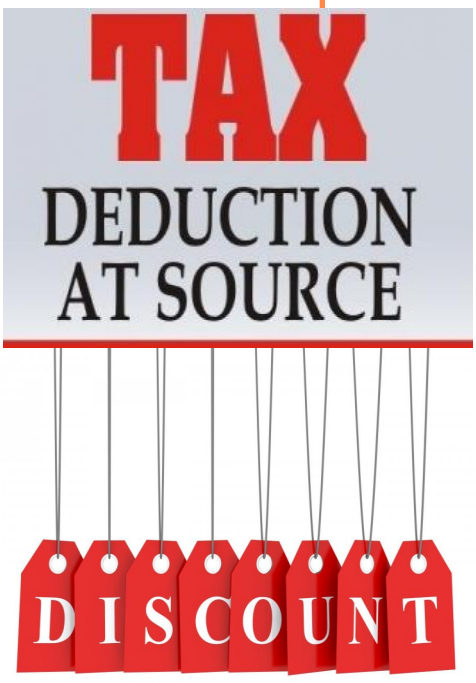
Apex Court Directed the Election Candidates to Disclose their Source of Income

In the landmark judgment of ***Lok Prahari vs. Union of India [Writ Petition (C) No. 784 of 2015] dated 16.02.2018]***, the Hon'ble Supreme Court of India ("**Court**"), while appreciating that a fair electoral process is the backbone of a democratic institution held that in order to increase transparency in electoral process, the candidates contesting election and their associates (family members

and relatives) are required to disclose their source of income in Form 26, which is the nomination form prescribed under Rule 4A of Conduct of Election Rules, 1961 ("**Rules**"). To give effect to the judgment, the Court directed the Election Commission to make suitable changes in the Rules and the nomination form. Earlier, the candidates were only required to reveal their income in the said form and not the source. Further, to strengthen the purity and integrity of the electoral process in a democratic structure, the Court held that non-disclosure of assets and source of income would amount to *undue influence* - a corrupt practice under Section 123(2) of Representative of People's Act, 1951, which is also a ground for disqualification of the candidate from contesting elections. Moreover, to enable and empower the citizen to take an informed decision while voting in polls, the Court also directed the government to put in place a permanent mechanism to collect the data of the legislator's wealth and place it in public domain. The Court also observed that if there is disproportionate increase in the wealth of the legislators or his/her associates without bearing any relationship to their known source of income, then the only logical interference that can be drawn is that there is some abuse of the legislator's constitutional office and eventually it may constitute as an offence under the anti-corruption law. Hence, this judgement is an applaudable effort intended to curb gross accumulation of wealth by law-makers.

No requirement of TDS on Cash/Trade Discount

In the case of ***EPCOS India (P.) Ltd. vs. Income-Tax Officer, Ward-11(1), Kolkata [[2018] 90 taxmann.com 190 (Kolkata - Trib.) dated 02.02.2018]***, the question of argument before the Hon'ble ITAT was that whether discount offered by the seller to its customers was liable for tax deduction at source ("**TDS**") under Section 194H of the Income Tax Act, 1961 ("**Act**") considering the same as commission expenses. Brief facts of the said case are that the assessee was a company engaged in the business of manufacturing and sale of soft ferrite components, DC and AC capacitors, etc. The assessee claimed the expenses under the head of 'trade discount and cash discount' for the discounts which were given by it to its customers on account of purchase of bulk quantity of goods by its customers. In order to answer the said question, the Hon'ble ITAT discussed the meaning of commission or brokerage under Section 194H of the Act. The Hon'ble ITAT observed that as per the meaning of "*commission/ brokerage*" given in the explanation to Section 194H of the Act, commission/brokerage means payment made by a person acting on behalf of another person for services rendered or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities. However, in the instant case, the assessee was supplying goods to the dealers (it's customers) on principal to principal basis and thus, there was no relationship between the assessee and its customers as that of principal and agents. In view of above observation, the Hon'ble ITAT held that the amount of discount offered by the assessee to its customers/dealers cannot be termed as commission within the meaning of "commission/brokerage" under Section 194H of the Act and therefore, the liability to deduct TDS on the amount of discount offered by the seller does not arise.



QUICK TAKEAWAYS

- In a meeting held on 24.02.2018, group of State Finance Minister on GST Network (GoM) has decided to re-implement E-way bill mechanism from 01.04.2018 for inter-state movement of good.
- The Ministry of Corporate Affairs *vide* Notification dated 05.02.2018 directed that the provisions of Accounting Standard - 22 or Indian Accounting Standard - 12 relating to deferred tax asset or deferred tax liability shall not apply on certain Government Companies.
- CBDT *vide* letter bearing ***F.NO.173/14/2018-ITA.I, dated 06.02.2018*** has directed to take no coercive measure to recover the outstanding demand in case of 'Start Up' companies if additions have been made by the AO under Section 56(2)(viib) of the Income Tax Act, 1961 after modifying/ rejecting the valuation so furnished under Rule 11UA(2) of Income Tax Rules, 1962.
- The Hon'ble High Court of Allahabad in the case of ***N.C.M.L. Industries Ltd. through Director and another vs. Debts Recovery Tribunal, Lucknow and others [Misc. Single No. 20026 of 2017, decided on 06.02.2018]*** has held that taking "symbolic possession" or issuance of possession notice, meeting with any resistance, cannot be treated as "measure" taken u/s 13(4) of SARFAESI Act, 2002 and, therefore, the borrower at that stage cannot file an application u/s 17(1) of SARFAESI before DRT.
- The CBDT vide notification ***F. No. 370149/20/2018-TPL dated 04.02.2018*** has issued a detailed FAQ which addresses numerous questions relating to the method of calculation of long-term capital gains, the cost of acquisition, the fair market value, availability of inflation index, TDS obligations etc.
- Unique Identification Authority of India *vide* press note dated 10.02.2018 stated that no essential service or benefit like medical facility, school admission or ration through PDS can be denied for want of the biometric national ID.
- The Central Government *vide* ***Circular No.32/06/2018-GST dated 12.02.2018*** has clarified that fees paid by litigants in the Consumer Disputes Redressal Commissions is not subject to GST.
- The Hon'ble Supreme Court in the case of ***Sundaram Finance Limited vs. Abdul Samad & Anr. [Civil Appeal No.1650 of 2018, decided on 15.02.2018]***, ruled that an arbitral award can straightaway be filed and executed in the Court where the assets are located, without first obtaining a transfer of decree from the Court which would have jurisdiction over the arbitral proceedings.
- The Central Board of Direct Taxes has notified the revised Double Taxation Avoidance Agreement (DTAA) between India and Kenya.
- SEBI *vide* its circular no. ***SEBI/HO/CFD/CMD/CIR/P/43/2018 dated 22.02.2018*** has now allowed additional methods that may be used by a listed entity to achieve compliance with the minimum public shareholding requirements.
- Reserve Bank of India has recently issued vide notification Ref. CEPD. PRS. No. 3590 /13.01.004/2017-18 dated 23.02.2018, Ombudsman Scheme for Non-Banking Financial Companies, 2018 for the purpose of establishing a suitable mechanism for receiving and addressing customer complaints.
- The High Court of Rajasthan in the case of ***Kuldeep Singh Meena vs. State of Rajasthan [D.B. Civil Writs No. 17080/2017, decided on 20.02.2018],*** held that that the Special Marriage Act, 1954 does not contemplate sending of notices to the residence of those intending to marry under the Act.
- The Ministry of Corporate Affairs vide gazette notification dated 21.02.2018 has issued Companies (Removal of Difficulties) Order, 2018 to remove difficulties regarding removal of directors under Section 169 of the Companies Act, 2013.
- In a meeting held on 24.02.2018, group of State Finance Minister on GST Network (GoM) has decided to re-implement E-way bill mechanism from 01.04.2018 for inter-state movement of good.
- The Central Board of Direct Taxes (CBDT), on 12.02.2018, issued an advisory for conducting E-Assessment proceedings.

KNOWLEDGE CENTRE

MCQs on Limited Liability Partnership Act, 2008

Q. 1. Which is the governing law for an LLP?

a. Companies Act, 2013
b. Limited Liability Partnership Act, 2008
c. Indian Partnership Act, 1932
d. Companies Act, 1956

Q. 2. Which authority regulates the LLP?

a. Ministry of Commerce and Industry
b. Ministry of Finance
c. Ministry of Corporate Affairs
d. Ministry of Limited Liability Partnership

Q. 3. Minimum and maximum numbers of partners required for an LLP?

a. Min. 1 and max. 2
b. Min. 2 and max. 2
c. Min. 3 and max.6
d. Min. 2 and no restriction on max

Q. 4. Minimum number of designated partner in an LLP?

a. 2
b. 3
c. 1
d. Not required

Q. 5. Who can act as a designated partner in an LLP?

a. Any person
b. Only body corporate
c. Only a natural individual person
d. Any business entity

Q. 6. Who is allowed to convert into an LLP?

a. Listed company
b. Trust
c. Society
d. Partnership firm, private company and unlisted public company

Q. 7. Is it necessary to execute the LLP agreement for an LLP?

a. Yes
b. No
c. At the choice of partners
d. Not prescribed anywhere

Q. 8. Which schedule governs the matters not given in the LLP agreement?

a. Schedule I
b. Schedule III
c. Schedule II
d. Schedule IV

Q. 9. Which kind of LLP can receive foreign direct investment ("FDI")?

a. Companies Act, 2013
b. Limited Liability Partnership Act, 2008
c. Indian Partnership Act, 1932
d. Companies Act, 1956

Q. 10.What kind of trust becomes partner in an LLP?

a. All trusts
b. No trust
c. All trust through their trustee
d. SEBI registered trusts through their body corporate trustee

Ans: 1-b, 2-c, 3-d, 4-a, 5-c, 6-d, 7-a, 8-a, 9-c, 10-d.

EDITORIAL

Enforceability of an Unregistered Development Agreement

-By *Neha Vijayvargi, Advocate*

The purpose of the Registration Act, 1908 ("**Act**") is basically to provide information to people, who may deal with any kind of property, as to the nature and extent of rights, persons may have affecting that property. Further, one of the other objectives of the Act, is to give solemnity of form and legal importance to certain classes of documents by directing their registration so that such documents may afterwards be available as record for the obligations which exist with regards to that property. Part III of the Act lays down provisions for registerable documents and Section 17(1) (a) to (e) under Part III of the Act prescribes the list of documents, of which registration is compulsory. For the purpose of this article, we restrict our current discussion to the issue that whether the registration of a development agreement is compulsory or not. Before attempting to answer this question, it is pertinent to understand the nature of a development agreement. A development agreement is a contractual understanding recording the rights and obligations of land owner and the developer with respect to the development of any land. A development agreement may be formed on various models. But what is important to note is that a development agreement *prima-facie* operates to create some right in favour of the developer in respect of the land. In view of the afore stated, this article attempts to analyse the enforceability of an unregistered development agreement wherein there is an immediate transfer of rights in favour of the developer for undertaking development and implementation of the project. Foremost, for the purpose of current discussion, it is imperative to look into Section 17(1)(b) of the Act which provides for compulsory registration of some instruments, which read as follows:

> "*... (b) other* ***non-testamentary instruments*** *which* ***purport or operate*** *to* ***create, declare, assign, limit or extinguish****, whether in present or in future, any right, title or interest, whether vested or contingent,* ***of the value of one hundred rupees, and upwards****, to or in* ***immovable property****…*"

Perusal of Section 17(1)(b) of the Act shows that there are several essentials for a type of instrument to be compulsorily registered under the provisions of the Act. The first essential for the applicability of Section 17(1)(b) of the Act is that the instrument must be 'non-testamentary' in nature. The meaning of 'non-testamentary' is not defined in the Act, however, various courts have attempted to define the same. In the matter of ***Thakur Umrao Singh vs. Thakur Lachman Singh, (13 CL.J. 519),*** the term 'non-testamentary instruments' is defined as 'a document which is plainly intended to be operative immediately and to be final and irrevocable is a non-testamentary instrument'. Moreover, to understand the meaning of 'instrument' given in Section 17(1)(b) of the Act, reference can be sought from Section 2 (14) of the Indian Stamp Act, 1899, which says that 'instrument' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Keeping in view the aforesaid explanation of non-testamentary instrument and the nature of a development agreement, it can be inferred that the development agreement is a non-testamentary instrument as it creates some sort of right in an immovable property in favour of the developer. Since, the development agreement is a non-testamentary instrument, the second essential of Section 17(1)(b) of the Act is that such instrument must 'purport or operate' to create, declare, assign, limit or extinguish any right title or interest in the immovable property. The term 'purport' means profess expressly on its face and the word 'operate' means to produce the result, or have the effect. The word 'operate' mentioned in the phrase 'purport or operate' also refers to the immediate intention of the instrument. The third essential

for applicability of Section 17(1)(b) of the Act is that such non-testamentary instrument must 'create, declare, assign, limit or extinguish any right, title or interest in the immovable property'. Each of the word 'right, title and interest' as appearing in Section 17(1)(b) of the Act, has a different significance. A right is an interest, which confers an advantage or benefit upon the person having it and creates capacity in form of privileges, liberties or power in the person having rights. Generally, a development agreement purports to transfer some sort of rights/interest and entitlements in favour of the developer in respect of development of the project on any land. The fourth essential for the applicability of Section 17(1)(b) of the Act is that the 'right, title or interest in an immovable property shall be of the value of Rs. 100/- or more', meaning thereby that the right so created in favour of the developer shall be of a value of Rs. 100 or more which is generally the case in a development agreement.

Keeping in view the abovementioned discussion and the nature of the development agreement, it is clear that a development agreement is compulsorily register able instrument as per Section 17(1)(b) of the Act. Additionally, Section 23 of the Act also prescribes that every document other than a WILL shall be presented for registration to the proper officer, within 4 months from the date of its execution. Further, Section 49 of the Act lays down that in the event any document being a compulsorily registerable document under the provisions of Section 17(1)(b) of the Act is not registered, than such document shall not (i) affect any immovable property comprised therein, (ii) confer any power to adopt, or (iii) be received as evidence of any transaction affecting such property or conferring such power. Section 17(1)(b) read with Section 49 of the Act makes it evident that any document/instrument by which any kind of right, title or interest is created or extinguished, in any immovable property of value more than Rs. 100/- or more, requires compulsory registration, failing which, the power conferred or the transaction so contemplated under the document/instrument cannot be received as evidence in a court of law. Accordingly, it could be inferred that the development agreement, which essentially creates some right to or in the immovable property of the land owner in favour of the developer is a compulsorily registerable document as per Section 17(1)(b) of the Act and in the absence of its registration, the development agreement may not be received as evidence in a court of law and consequently, the development agreement may not be enforceable in a court of law.

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