


Regulatory Alert

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Gujarat HC rules on various stamp duty issues relating to scheme of arrangement inter-alia holding that composite scheme is one single instrument, allowing set off of stamp duty paid in another state etc.

The Hon'ble Gujarat High Court ('High Court') in a recent ruling¹ dealt with several aspects under the Gujarat Stamp Act, 1958 ('the Act') wherein it held as under:

- A composite scheme of arrangement comprising of transfer of undertakings by way of demerger(s)/ slump sale and merger shall be treated as a single instrument for levying stamp duty.
- In view of Explanation III(c) in Article 20(d) of Schedule-I of the Act, scheme involving only unlisted companies, the market value of shares shall be deemed to be its face value, irrespective of whether the shares are being issued at premium.
- Stamp duty applicable as on the Appointed Date of the scheme is payable and not on the date of NCLT order.
- Stamp duty paid on the same instrument in another state, allowed to be set off against the stamp duty payable in Gujarat.
- 'Capital work in progress' cannot be considered as immovable property and shall not be subject to stamp duty levy.

¹ *Ambuja Cements Limited v Chief Controlling Revenue Authority (C/SR/1/2020)*



The High Court passed an order in eight connected matters since there were few common questions which were involved. The key issues which were dealt by the High Court are discussed below.

Issue 1 – Whether an order under Sections 230 to 232 of the Companies Act, 2013, sanctioning a composite scheme of arrangement, be considered as a single indivisible instrument or several distinct transactions within one document?

Facts and Background

- The Appellants entered into a composite scheme of arrangement involving transfer of undertakings by way of demerger(s)/ slump sale and merger which was sanctioned through an order by the National Company Law Tribunal ('NCLT').
- Section 5 of the Act states that an instrument containing several distinct matters or transactions shall be chargeable with the aggregate amount of the duties that would have been chargeable if the instruments relating to each such matter was executed separately.
- The Collector construed the composite scheme as involving multiple distinct transactions and accordingly levied stamp duty separately for each arrangement, resulting in the aggregate stamp duty demand more than the maximum amount (i.e. currently INR 25

Crores) prescribed under the Article 20(d) of Schedule-I of the Act.

Contention of the Appellants

- NCLT order sanctioned a single composite scheme and such instrument cannot be treated as covering separate transactions.
- NCLT order sanctioning the scheme becomes an 'instrument' and partakes the character of conveyance and such order cannot be separated.

Contention of the Revenue

- In view of the words 'distinct matters' or 'distinct transactions' under section 5 of the Act, the stamp duty should be charged as if separate instruments are executed for each separate transaction.
- The Revenue relied upon the Supreme Court ruling in case of *Coastal Gujarat Power Limited and others*² and several other judicial precedents and contended that the composite scheme results in multiple and distinct transactions, and thus, section 5 of the Act should apply. Accordingly, the stamp duty should be separately charged for each transaction.

Ruling of the High Court

- The High Court, after discussing the Supreme Court ruling in case of *Coastal Gujarat Power Limited* (supra), held that a composite scheme of arrangement cannot be segregated when the said arrangement was pursuant to a single composite order.

² *Chief Controlling Revenue Authority v Coastal Gujarat Power Limited and others* (Civil Appeal No. 6054 of 2015)



- The High Court held that treating a single composite scheme as distinct transactions and thereby demanding separate stamp duty would be in conflict with the true import and meaning of section 5 of the Act.

Issue 2 – Whether the premium on shares issued pursuant to the scheme can be included in the ‘market value of shares’ or can be regarded as consideration paid for the purpose of computation of stamp duty?

Facts and background

- Both the transferor and transferee, being unlisted companies, were involved in the composite scheme of arrangement, and the transferee company issued shares at a premium as consideration pursuant to the scheme.
- Explanation III(c) to Article 20(d) of the Schedule-I of the Act states that in case where both the transferee and transferor companies are unlisted companies, the face value of shares issued shall be deemed to be the market value of the share.
- Collector included the premium amount while determining the market value of the shares and computed the stamp duty on such value.

Contention of the Appellant

- Fiscal statutes are to be construed strictly, and the specific mechanism provided in the explanation should be followed for determining the market value of shares.
- The contention put forth by the Revenue that the premium is a ‘consideration’ other

than share is clearly an afterthought and it is evident that the expression ‘amount of consideration’ referred to in Article 20(d)(i) is separate and distinct from the ‘market value of share’.

- The Appellant further contended that unlike the Maharashtra Stamp Act, the Collector under the Act does not have the authority to determine the market value of shares.

Contention of the Revenue

- The Revenue contended that a meaningful interpretation must be given to the provision, and the ‘consideration’ including the premium component, should be considered when computing the stamp duty.
- Consideration for sale, in the hands of the shareholders includes premium on shares, hence premium amount has rightly been considered as part of consideration to be paid over the face value of shares.

Ruling of the High Court

- The High Court upheld the principle that taxing statutes should be strictly interpreted, particularly when the language used by the legislature is clear and unambiguous. It emphasized that there should be no scope for reading something into the entry which is not expressly mentioned in the statute.
- The High Court further held that including the term ‘premium’ as part of the ‘market value’ would amount to reading something into the provision that is not found in the statute.



- High Court held that the premium is not distinct from shares and cannot exist apart from the shares. Amount of consideration referred to under Article 20(d)(i) is separate and distinct from the 'market value of share'. Therefore, premium being a part of market value of the share, such premium cannot be treated as amount of consideration.
- The High Court concluded that the face value of the shares issued by the appellant should be considered as the market value, in accordance with Explanation III(c) to Article 20(d) of the Schedule-I of the Act.

Issue 3 – Whether the stamp duty which is applicable as on the appointed date or the date of execution, is payable?

Facts and Background

- The Appointed Date of the scheme was April 01, 2013, and the High Court had sanctioned the scheme on March 18, 2014.
- The maximum amount of stamp duty payable under Article 20(d) of the Act was increased from INR 10 Crores to INR 25 Crores through a notification dated May 15, 2013, which was after the Appointed Date of the scheme.
- The Appellant paid the stamp duty amount of INR 10 Crores, which was the maximum amount payable as on the Appointed Date, by way of a demand draft, and the same was accepted by the Collector.
- However, the Collector demanded additional stamp duty along with penalty

thereon stating that the maximum amount of stamp duty applicable is INR 25 Crores.

Contention of the Appellant

- The Appellant contended that even though the High Court sanctioned the scheme on March 18, 2014, the amount of stamp duty prevailing as on the Appointed Date should be considered.
- Appointed Date has to correlate with the chargeability of the stamp duty which is dependent on its execution. Therefore, Appointed Date should be construed as the date of execution for the purposes of computing the stamp duty once the scheme is approved by the NCLT, and therefore, any amendments to Article 20(d) of the Act that came into effect after the Appointed Date should not be applicable.

Contention of the Revenue

- Revenue contended that levy of stamp duty should be on the date of execution of the instrument and not on the Appointed Date mentioned in the scheme. Date of execution can be said to be the order of High Court dated March 18, 2014 which is after the date of amendment.
- Further, the date of execution is significant and not the Appointed Date mentioned in the Scheme for the purpose of chargeability.

Ruling of the High Court

- The High Court accepted the Appellant's contention and held that stamp duty prevailing on the Appointed Date shall be



applicable. Therefore, the maximum stamp duty payable by Appellant is INR 10 Crores.

Issue 4 – Whether the stamp duty paid in another state for a scheme involving immovable property situated in Gujarat, be considered for set-off when calculating the stamp duty payable in Gujarat?

Facts and Background

- NCLT, Principal Bench, New Delhi sanctioned the scheme of arrangement wherein immovable properties situated in Gujarat stood transferred to the Appellant. The registered office of the Appellant was in the state of Rajasthan.
- Section 19 of the Act provides for the set-off of stamp duty paid on the same instrument in another state against the stamp duty payable in Gujarat.
- The NCLT order, being the instrument, had suffered stamp duty of INR 25 Crores and surcharge of INR 5 Crores in the state of Rajasthan.
- The Collector in Gujarat adjudicated the application and demanded ~INR 30.18 Crores towards stamp duty. Further, the Collector did not give set off of the stamp duty paid by Appellant in the state of Rajasthan.

Contention of the Revenue

- The Revenue contended that the amount of stamp duty and surcharge paid in the State of Rajasthan does not constitute the 'amount of duty' as envisaged under section 19 of the Act.

Ruling of the High Court

- The High Court held that the stamp duty has been paid on the same instrument in the State of Rajasthan and the same ought to have been given set off as per section 19 of the Act at the time of computation of stamp duty chargeable in Gujarat on the same instrument.
- Further, held that stamp duty would be payable in Gujarat only if the amount of stamp duty chargeable in Gujarat is higher than the amount of stamp duty paid in other state(s) and the difference in stamp duty would be required to be paid in Gujarat.

Issue 5 – Whether 'capital work in progress' is included under the definition of 'immovable property' under the Act for purpose of levying stamp duty?

Facts and Background

- The assets that were transferred to the Appellant pursuant to the scheme included certain capital work in progress, but the bifurcation of this asset was not provided to the Collector.
- In the absence of any break-up, the Collector treated the capital work in progress as immovable property and levied stamp duty.

Ruling of the High Court

- The High Court relied on decision of a coordinate bench in the case of *State of Gujarat v Aarti Industries Limited*³ and held that capital work in progress cannot be considered as an asset to be in

³ *State of Gujarat v Aarti Industries Limited (Letters Patent Appeal No.906 of 2021)*



existence for the purpose of levying stamp duty and hence, capital work in progress cannot be included in the definition of immovable property.

Dhruva Comments

- This is a welcome ruling which purports to provide clarity on several critical aspects relating to the stamp duty liability on scheme of arrangements as applicable to the state of Gujarat.
- It provides much needed clarity that the order sanctioning the composite scheme is a single instrument and all arrangements are inseparable, hence no distinct matters are involved, and maximum amount of stamp duty prescribed will not be qua each arrangement but for the entire composite scheme.
- However, it is pertinent to note that although the High Court discussed the ruling of the Hon'ble Supreme Court in case of Coastal Gujarat Power Limited and others (supra), it did not distinguish the said ruling.
- As regards the ruling that the premium on shares should not be considered in the market value of shares, it should be noted that this ruling is based on a specific explanation provided in the Act. However, similar provisions may not be present in other state stamp laws, such as the Maharashtra Stamp Act.
- The ruling also states that the maximum amount of stamp duty payable as of the appointed date should be considered, not

as of the date of the NCLT order. This could be useful for matters that are under adjudication under other state stamp acts, such as the Maharashtra Stamp Act. where recently, the maximum amount of stamp duty on schemes of arrangement has been increased from INR 25 Crores to INR 50 Crores.

- Further, the ruling on set-off of stamp duty paid in another state on the same instrument is very welcome. The set-off provisions are there in many state stamp duty laws. However, practically it has always been quite challenging to claim set-off of such stamp duty paid in another state. This ruling would definitely help practically in claiming set-off of stamp duty in such cases. It should also be noted that if the companies involved in the scheme of arrangement have a registered office in different states and there are more than one NCLT orders as a result, then this ruling may not be applicable. In such cases, basis the ruling of Hon'ble Bombay High Court in the case of Chief Controlling Revenue Authority v. Reliance Industries Limited⁴ stamp duty may be required to be paid in both states since there would be two separate NCLT orders (i.e. two instruments).
- The ruling further clarifies a more or less settled position that the capital work in progress is not immovable property. This could be relevant in case of restructuring of capital-intensive businesses.
- This ruling is in the context of provisions of the Act, however the principles laid

⁴ Chief Controlling Revenue Authority v Reliance Industries Limited [Civil Reference No 1 of 2007 in Writ Petition No 1293 of 2007 in Reference Application No 8 of 2005 (Bombay High Court)]



down under this ruling could be applied under other state stamp laws having similar provisions.

Contributors:

[Nitin Bohra \(Associate Partner\)](#)

[Ketan Sakhala \(Senior Associate\)](#)

[Nishit Baldia \(Senior Associate\)](#)

Hope you will find this alert useful. For any queries in relation to this alert, you can reach out to Dhruva Advisors LLP.



ADDRESSES

Mumbai

1101, One World Center, 11th floor,
Tower 2B, 841 Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad 380015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana 122002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
P.O. Box 127165
Dubai, UAE
Tel: +971 4 240 8477

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Punit Shah (Mumbai)

punit.shah@dhruvaadvisors.com

Mehul Bheda (Ahmedabad)

mehul.bheda@dhruvaadvisors.com

Sandeep Bhalla (Bengaluru)

sandeep.bhalla@dhruvaadvisors.com

Vaibhav Gupta (Delhi/NCR)

vaibhav.gupta@dhruvaadvisors.com

K. Venkatachalam (Pune)

k.venkatachalam@dhruvaadvisors.com

Aditya Hans (Kolkata)

aditya.hans@dhruvaadvisors.com

Mahip Gupta (Singapore)

mahip.gupta@dhruvaadvisors.com

Nimish Goel (Dubai)

nimish.goel@dhruvaadvisors.com

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Dhruva Advisors has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR Asia Tax Awards 2016.

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