O/o Inspector General of Registration,
Chennai – 600 028.

CIRCULAR

No.49282/P1/2018 dated 20.11.2018

Sub: Indian Stamp Act, 1899 – Transfer of property taking place under Companies Act – stamp duty – leviable – clarification – reg.

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The Companies Act, 2013 provides for formulating scheme for merger, amalgamation or reconstruction of companies and the same is filed with the competent authorities functioning under the said Act. Previously such schemes were sanctioned by High Court under the provisions contained in Companies Act, 1956. After the inception of the Companies Act, 2013, such schemes are filed with the competent authorities empowered under the later Act. Such schemes also provide for transfer of property from one company to another company and the same is presented by the companies for registration before the concerned Sub Registrar.

2) It has come to notice that registering officers are having doubt as to whether such schemes sanctioned by High Court or filed with the Authorities functioning under companies Act which are presented before the registering officer would attract stamp duty under the Indian Stamp Act, 1899. The primary point to be addressed in this regard is whether scheme sanctioned by court/filed with competent authority is an 'instrument' within the meaning of section 2(14) of the Indian Stamp Act, 1899 read with section 2(10) and Article 23 of the Indian Stamp Act, 1899. In this regard legal position

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stated in various judgments is brought to the notice of the registering officers;

(a) Hon'ble Supreme Court of India in 'Hindustan Lever & Anr Vs State of Maharashtra & Anr' ((2004) 9 SCC 438) have held that order passed by High Court relating to transfer of property between two or more companies under the provisions of Companies Act will very well fall within the inclusive definition provided for 'Conveyance' under Stamp Law and consequently such court orders become leviable with stamp duty. In the said verdict various questions of law have been discussed in detail.

The basic questions that arise for consideration in such cases and the portions of said verdict relevant to these questions are depicted as follows:

Whether order passed by the Court under Section 394 of the Companies Act which is based upon the compromise between two or more companies can be construed as Conveyance.	*".....It is an instrument which transfers the properties and would fall within the definition of Section 2 (1) of the Bombay Stamp Act which includes every document by which any right or liability is transferred....."*
Whether in absence of a provision similar to section 2(g) of the Bombay Stamp Act, (which includes a decree in the definition of 'Conveyance'), High court order under section 394 can be construed as 'Conveyance'	*"..... It clearly shows that the Court* was of the opinion that consent decree which purports to convey the title in the property was in an instrument liable for stamp duty at all times and <u>it was only by way of abundant caution that the Legislature had included the consent decree in the definition of the word "conveyance".</u>* *In view of the aforesaid discussion, we hold that the order passed by the Court under Section 394 of the Companies Act is based upon the compromise between*

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	two or more companies....." *Ruby Sales and Services (P) Ltd. & Anr. Vs. State of Maharashtra & Ors., 1994 (1) SCC 531
Whether a decree can be construed as Conveyance only if it is based on consent of parties.	*It was held to be an instrument because it had the effect of conveying the title and not because it was a consent decree. Once this definition is kept in view it would be clear that consent or no consent when the decree or order of the Court purports to transfer title in the property, it becomes an instrument.*
Whether transfer between companies under Companies Act can be considered to be *'inter vivos'*, .i.e., between two living beings, so as to be construed as a 'Conveyance'	*It was contended that since the transaction was not between the 'living beings' the same was not "inter vivos" as the transfer of property had not taken place between the living beings. We do not agree. "Transfer of Property" has been defined in Section 5 of the Transfer of Property Act, 1882 to mean an act by which a living person conveys property, in present or in future to one more other living persons. Company or association or body of individual, whether incorporated or not, have been included amongst the "living person" in this Section. It clearly brings out that a company can effect transfer of property. The word "inter vivos" in the context of Section 394 of the Companies Act would include within its meaning also a transfer between two "juristic persons" or a transfer to which a 'juristic person' is one of the parties.*

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Thus from the law laid down in and by the above Supreme court order, it is clear that any court order resulting in transfer of property between two companies under the aegis of Company Law will fall under residue Article 23 of the Indian Stamp Act, 1899 viz., 'Conveyance '.

(b) The High Court of Calcutta in Gemini Silk Ltd Vs Gemini Overseas Ltd (MANU/WB/0215/2002:2003 (53) CLA 328 (Cal) held that :-

"an order sanctioning a scheme of reconstruction amalgamation under Section 394 is covered by the definition of the words 'conveyance' and 'instrument' under the Indian Stamp Act and therefore liable to stamp duty. I therefore direct that the Registrar of Companies shall not take on record an order sanctioning a scheme until the same has been duly stamped."

(c) In the case of Delhi Towers Ltd Vs G.N.C.T of Delhi in CA No. 466/2008 in Company Petition No. 50/2003 reported in [2010]159CompCas129(Delhi), it was held by the High Court of Delhi as under:-

"8.21 The very reasoning noticed hereinabove applies to the present consideration. Merely because the legislature has not amended the existing statutory provision as applicable to Delhi to specifically include transfer of property under an order approving a scheme of amalgamation in the definition of conveyance, it is of no consequence at all. The same does not amount to exclusion from applicability of the Indian Stamp Act and chargeability to stamp duty thereon. The statutory definition of "conveyance" under Sub-section 10 of Section 2

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is an inclusive definition of wide import which cannot be confined to specific instruments mentioned in the statute."

3) Thus the aforesaid judicial pronouncements lead to the following conclusions:

(i) Scheme of arrangements submitted by companies and sanctioned by High Court / registered by competent authorities evidencing transfer of property are classifiable under Article 23 of the Indian Stamp Act, 1899.

(ii) Consequently such instruments / copy of instrument when presented for registration shall not be registered unless it is unequivocally evident that original instrument is duly stamped.

(iii) If such instrument is found to be not duly stamped, the instrument presented shall be returned to the Presentant, by clearly explaining the aforesaid legal position through a check slip, and also requiring the presentant to produce evidence as to the duly stamping of the original instrument.

20/11/2018

Inspector General of Registration

To
All Registering Officers.
All Deputy Inspector General of Registration.
All District Registrars (Admin).

Copy to
1. Senior PA to Hon'ble Minister for Commercial Taxes and Registration Department.
2. Principal Secretary to Government, Commercial Taxes and Registration Department.

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