

NEWSLETTER

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Payment of stamp duty in case of scheme of arrangement

Petitioner: Chief Controlling Revenue Authority and Anr	Court: High Court of Bombay
Respondent: Reliance Industries Limited and Anr	Date Of Judgment: March 31, 2016
	Case No: WRIT PETITION NO.1293 OF 2007 IN REFERENCE APPLICATION NO.8 OF 2005

The Bombay High Court in a recent judgment has held that orders in case of a scheme of arrangement under Section 391 to 394 of the Companies Act, 1956 involving different High Courts in multiple States, are separate instruments in themselves. Therefore, stamp duty would be payable on all the orders and therefore, without the benefit of remission, rebate or set-off. Relying on the judgment of the Supreme Court of India in *Hindustan Lever v State of Maharashtra*², the Bombay High Court reiterated the following principles relating to stamp duty:

- Stamp duty is charged on an 'instrument' and not on the 'transaction' effected by the 'instrument'
- If a transaction is not supported by the execution of an instrument, there cannot be a liability to pay stamp duty.
- Although two orders of two different high courts are pertaining to the same scheme, they are independent and different instruments and cannot be said to be the same document. Since the scheme of stamp duty laws pertain to chargeability of instruments, it is immaterial whether it pertains to one and the same transaction
- The order sanctioning the scheme of arrangement is the chargeable instrument under stamp duty laws and not the scheme.

- Orders passed by different high courts sanctioning the scheme of arrangement do not constitute several instruments used in a single transaction and the benefit of section 4 of Bombay Stamp Act will not be available.

Relevant period to decide vicarious liability of the Director

Appellant: Mrs. Lata Pramod Dave Vs. Respondents: M/s. Mode Export Private Limited	Court: High Court of Bombay Date Of Judgment: March 17, 2016 Case No: CRIMINAL WRIT PETITION NO.3188 OF 2014
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The Hon'ble Bombay High Court in this case has held that the relevant period for deciding the vicarious liability of the Director for the act committed by the Company is not only when the cheque was dishonoured, but also when the disputed transaction was entered into, and from time to time thereafter, for instance, at the time of issuance of the cheque in question, presentation of said cheque in Bank etc.

The Court further observed that, "The offence under Section 138 of Negotiable Instruments Act ("Act") may get completed only on expiration of fifteen days from the receipt of the statutory demand notice. However, it consists of various acts and constituents that give rise to the commission of offence. Some of those acts are the disputed transaction, the issuance of the cheque, the dishonour of the cheque by the Bank and, lastly, the issuance of notice. The dates of all these acts are relevant, as these acts cannot be separated from one another. It is the combination of all these acts which together constitutes and gives rise to the commission of the offence under the said Section 138 of the Act. Therefore, if the relevant date for attracting vicarious liability of the Director under Section 141 of the Negotiable Instruments Act is, "at the time the offence was committed", then, as the offence of Section 138 of Negotiable Instruments Act comprises all these essential acts, majority

of the acts, like the transaction in question and issuance of cheques have to be taken into account.

Territorial jurisdiction for dishonour of cheque – explained

<p>Appellant: Brijendra Enterprise Vs. Respondents: State of Gujarat and another</p>	<p>Court: HIGH COURT OF GUJARAT AT AHMEDABAD Date Of Judgment: March 30, 2016 Case No: CRIMINAL MISC.APPLICATION No. 13062 of 2011</p>
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The Hon'ble High Court of Gujarat has explained with illustrations, the principles relating to the changes brought in by virtue of Negotiable Instruments (Amendment) Act, 2015 relating to the Territorial Jurisdiction to file Complaints of Dishonor of Cheques, in the manner as follows:

- a. when the cheque is delivered for collection 'through an account', the complaint is to be filed before the Court where the branch of the bank is situated, where the payee or the holder in due course 'maintains his account' and,
- b. When the cheque is presented for payment 'over the counter', the complaint is to be filed before the Court where the 'drawer maintains his account'.
- c. once a complaint for dishonour of the cheque is filed in one particular Court at a particular place, then later on if there is any other cheque of the same party (drawer) which has also dishonoured, then all such subsequent complaints for dishonour of the cheques against the same drawer will also have to be filed in the same Court (even if the person presents them in some bank in some other city or area). This would ensure that the drawer of the cheques is not harassed by filing multiple complaints for dishonour at different places.

- d. All criminal complaints for dishonour of cheques pending as on 15.06.2015 in different Courts in India would be transferred to the Court having jurisdiction over the place where the bank of the payee is located. In case of multiple complaints, then all such complaints would be transferred to the Court having jurisdiction to try the first case.
- e. The Court further added that the words “otherwise through an account” in S. 142(2) (b) would mean that the cheque is presented for payment over the counter.
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Second Appeal – Substantial question of law

Petitioner: Raghavendra Swamy Mutt Vs. Respondent: Uttaradi Mutt	Court: SUPREME COURT OF INDIA Date Of Judgment: 10 February, 2016 Case No: Civil Appeal No.3190 Of 2016 (Arising Out Of S.L.P. (Civil) No. 6662 Of 2016)
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The Supreme Court in this case has held that, solely because the Court has the jurisdiction to pass an ex parte interim order, it does not empower it not to formulate the substantial question of law for the purpose of admission, defer the date of admission and pass an order of stay or grant an interim relief. That is not the scheme of CPC after its amendment in 1976 and that is not the tenor of judicial precedents. The Court observed that an appeal under Section 100 of the CPC is required to be admitted only on substantial questions of law and cannot be formal admission like an appeal under Section 96 of the CPC. For passing an ex parte order the Court has to keep in mind the postulates provided under Rule 5 (3) of Order XLI and the language under Section 100 CPC. The Court further said “It is because formulation of substantial question of law enables the High Court to entertain an appeal and thereafter proceed to pass an order and at that juncture, needless to say, the Court has the jurisdiction to pass an interim order subject to the language employed in

Order XLI Rule 5(3). It is clear as day that the High Court cannot admit a second appeal without examining whether it raises any substantial question of law for admission and thereafter, it is obliged to formulate the substantial question of law.

Guidelines to protect Good Samaritans, who help road accident victims

Petitioner: Savelife Foundation & Anr. Vs. Respondent: Union of India & Anr	Court: SUPREME COURT OF INDIA Date Of Judgment: March 16, 2016 Case No: WRIT PETITION (C) NO.235 OF 2012
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Taking into account two notifications issued by the Ministry of Road Transport and Highways, the Supreme Court Bench, after making minor changes, has approved the following guidelines issued by the Central Government to protect Good Samaritans, who help road accident victims, from being hassled or harassed at hospitals, police stations or courts:

- a. Guidelines to be followed by hospitals, police and all other authorities for the protection of Good Samaritans
- b. Standard Operating Procedure for the examination of Good Samaritans by the Police or during trial and here by issue the following standard operating procedure

The Court further observed that the court should not normally insist on appearance of Good Samaritans as that causes delay, expenses and inconvenience. The concerned court should exercise the power to appoint the Commission for examination of Good Samaritans in accordance with the provisions contained in section 284 of the Code of Criminal Procedure, 1973 suo motu or on an application moved for that purpose, unless for the reasons to be recorded personal presence of Good Samaritan in court is considered necessary." The Court has directed that the Guidelines shall be enforced as binding till appropriate legislative provisions to this effect are made.

Legal Updates

- The Ministry of Corporate Affairs has relaxed the additional fee payable on e-forms which are due for filing by companies between 25th March 2016 to 30th April 2016 as one time waiver of additional fee and it is also clarified to stakeholders that if such due e-forms are filed after 10.05.2016, no such relaxation shall be allowed [General Circular No. 03/2016 dated 19-April-2016].
- The Ministry of Corporate Affairs issued general instructions for preparation of Balance Sheet and statement of profit and loss of a company and made it part of Schedule III [Notification dated 06-April-2016].
- The Reserve Bank of India has modified format of Form ODI (Overseas Direct Investment) [RBI//2015-16/374 A.P. (DIR Series) Circular No.62 dated 13-April-2016].
- The Reserve Bank of India has clarified that keeping deposits with an Indian company by person's resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly. [RBI/2015-16/371 A.P. (DIR Series) Circular No.59 13-April-2016].

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