



APAC NEWSLETTER
Legal, Compliance and ESG

12 April 2022

Dear Readers,

We bring to your reading and attention following topics:

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A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa, Company Secretary & Head Compliance

Reserve Bank of India (“RBI”) clarifies on the mode of receipt of complaints under Reserve Bank – Integrated Ombudsman Scheme, 2021 (RB-IOS) Date of Press release: March 09, 2022

RBI, vide its press release dated March 09, 2022, has clarified that it has not authorized any third party to assist in the redressal of grievances of the central bank’s regulated firms, as alleged in messages distributed through some areas of social media.

RBI has laid down a cost-free grievance redressal mechanism under RB-IOS which does not involve payment of fees or charges in any form or manner. Customers having grievances against REs (Regulating entities) for deficiency in services, which is not redressed satisfactorily or in a timely manner by the Res, can directly lodge their complaint on the Complaint Management System (CMS) portal (<https://cms.rbi.org.in>) or by e-mail at crpc@rbi.org.in or in physical mode at the ‘Centralised Receipt and Processing Centre’ (CRPC) set up at RBI, 4th Floor, Sector 17, Chandigarh – 160017.

Further, the Complainants having queries on RB-IOS or desiring information relating to their complaints lodged through the above methods can reach the Contact Centre of RBI in Hindi, English, and nine regional languages (Bengali, Gujarati, Kannada, Odia, Malayalam, Marathi, Punjabi, Tamil and Telugu).

The status of complaints can also be tracked on the CMS portal.

B. SUCCESSION LAW EXPLAINED

~ Kiran Thakur, Manager- Legal

What is the Indian Succession Act?

The Hindu Succession Act, 1956 is an Act of the Parliament of India enacted to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act lays down a uniform and comprehensive system of inheritance and succession into one Act.

Succession Law in India-

Laws of Succession relate to legal principles of distribution of assets of a deceased individual. These include the order in which one person in preference of any or one person after another or any one person in particular share with any other person succeeds to the property/estate of the deceased person..

The laws of succession can broadly be divided in two parts, firstly, where deceased has left behind a valid and enforceable 'Will'; and secondly, where a person died without leaving behind such 'Will'

a) Wills and essential requirements of Valid Will-

Will is a written document showing the desire of a deceased person regarding distribution of his estate. If the Will is found to be valid and enforceable, the estate of the deceased would be distributed in accordance with the same.

Will can be made by any person capable of entering into an Agreement. Minors or a person under effect of intoxication or any other influence such as coercion, fraud, bout of illness which takes away his free will or ability to understand effect of his action, cannot make Will, while such state continues.

Indian Succession Act, 1925 governing Wills has not prescribed any particular format or technical requirement. The essential requirements are:

It should be written in a manner that the intention of the writer (called Testator) becomes clear. It should be signed by the Testator and attested by two witnesses. Attestation is more than signing the Will. It means signing a document for a particular purpose, the purpose being to testify to the signature of the executant. It is not necessary that the attesting witness should know the contents of the Will. Those who cannot sign (illiterate or due to illness) can put their thumb impression. Signature should be at the bottom / end to show it is put to give effect to whatever appears above / before that signature. Witnesses should be independent persons and not beneficiaries under the Will. If any dispositions have been made in their / their wife's favour, such disposition would be void. However, his signing as witness would be valid No technical term or format has been prescribed in the Act. Further, Wills need not be made on stamp paper.

Registration of Wills

Mere registration of Wills is not proof of the testamentary capacity of the Testator. Conversely, if a Will is not registered, it does not make it improbable that Will was executed. Similarly, registration of a Will though not required under law is only a price of evidence of the execution. It cannot take the place/role of due attestation of by two witnesses as required under Section 63(3) of Indian Succession Act.

Probate:

Probate is basically 'proving of Will' or 'establishing validity of the Will'. Probate is only required under jurisdiction of High courts of erstwhile presidency towns, namely Mumbai, Kolkata and Chennai. In other places, probate is not necessary, except for properties situated within jurisdiction of Mumbai, Kolkata and Chennai.

For obtaining probate, Executor of the Will shall make suitable Petition stating:

- He is named Executor in the Will
- The date and time of the testator's death
- That the document enclosed is last Will of the Testator
- That the Will has been properly signed and witnessed
- The amount of assets likely to come to the Petitioner's hand
- That the Court has the jurisdiction based on domicile of Testator or some immovable property being situate therein.

Hon'ble Supreme Court in K Laxmanan vs Thekkayil Padmini & Ors (2009 AIR SCW 10) held that burden of proof is on propounder. He has to prove legality & genuineness of Will by proving absence of suspicious circumstances, testamentary capacity and signature of testator.

b) Intestate succession:

Succession of the person dying without leaving a valid and enforceable Will, is called Intestate Succession. Principles of distribution of assets in this regard are based on personal laws applicable to Deceased.

Where a person makes a Will for some of the properties only and leaves out balance, or where Will is not found valid for whatever reason, such balance property shall devolve in accordance with principles of Intestate succession. Laws of Intestate Succession are different for Hindu, Muslims and Christians and the same will be covered in the next Legal News Letter.

C. CASE LAW ON STAMP DUTY OF ARBITRATION

~ Jayesh Gupta, Manager- Legal

STAMP DUTY ON ARBITRATION AGREEMENT TO BE DECIDED BASIS PLACE OF 'EXECUTION'

The Hon'ble High Court of Delhi ("HC") in batch matters of Religare Finvest Limited ("**Appellant**") Vs. Asian Satellite Broadcast Private Limited and Ors. Arb. A. (Comm.) 6/2021 vide order dated 10th January 2022 has held that for a document to be amenable to Maharashtra Stamp Act ("MSA") it has to be executed within the territorial boundaries of the state of Maharashtra in terms of sections 2(d) and 2(i) of MSA.

The brief facts of the case are that:

- 1) In 2014 seven companies forming part of the Zee Group of Companies ("**Zee Group**") approached the Appellant herein to avail loan facilities for investment, pursuant to which separate loan agreements were entered into between the Appellant and the group companies.
- 2) On failure of repayment of debt by Zee Group the Appellant invoked arbitration clause contained in the loan agreement and consequently an arbitrator was appointed.
- 3) Zee Group challenged the scope of proceedings and jurisdiction of the Arbitrator under Section 16 of the Arbitration & Conciliation Act 1996 ("the Act"). It was inter-alia contended that, as the loan agreements were first executed in Mumbai, they should have been stamped in accordance with the MSA.
- 4) The Appellant contested the application raising several jurisdictional objections and on merits contended that the loan agreements are duly stamped as per Article 5(c) of Schedule I-A of the Indian Stamp Act, 1899 ("ISA").
- 5) The Arbitrator passed an order, accepting the plea of Zee Group. However, instead of terminating the proceedings, they were adjourned sine die, observing that if the Appellant wishes to continue with its claim, it should take the original loan agreement to the Collector of Stamp, Maharashtra – who will, within three months, determine the Stamp Duty payable on the same, including penalty, if any, in terms of the MSA.

6) The Appellant filed an appeal under section 37(2)(a) of the Act on the contention that

(a) There is no legal impediment on the enforceability of an arbitration agreement pending payment of Stamp Duty on the substantive contract; and

(b) Section 1(2) of MSA restricts its applicability only to the State of Maharashtra. In the facts of the present case, the following distinguishing features emerge:- (i) the Loan Agreements were executed by the lender i.e., Appellant, in Delhi; (ii) they are being enforced in Delhi; and (iii) they had been duly stamped under Article 5(c) of Schedule I-A of ISA, as applicable to Delhi.

7) Zee Group however argued that both the parties were on the fact that loan agreements were first signed and executed by the Zee Companies in Maharashtra. Thus, the parties clearly understood that the Loan Agreements were to be stamped in accordance with the MSA.

The HC held that the 'doctrine of severability' of the arbitration clause, invoked by the Appellant, cannot be misconstrued to mean that in arbitration proceedings, the question of insufficiency of stamp duty has to be ignored altogether. Non payment or deficiency in stamp duty may not invalidate the loan agreements, but certainly, this shortcoming renders such documents to be inadmissible in evidence and liable to be impounded, till the time requisite stamp duty is paid, this is jurisdictional issue, and has been correctly entertained and decided by the learned Arbitrator as a preliminary issue under Section 16 of the Act.

The HC concluded that "19. Thus, the signatures of only Zee Group Companies on their respective Loan Agreements did not give such documents any legality or validity under the law, until they were also signed by Religare's representatives. That event, concededly, occurred at a later date, and in Delhi. At that stage, the agreements became "instruments" amenable to stamp duty. Thus, the incident of "execution"/"executed" occurred at Delhi, and not Mumbai."