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AMENDMENTS TO MAHARASHTRA STAMP ACT: AN EFFORT TO INCREASE REVENUE

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The Government of Maharashtra (GoM) has by the Maharashtra Stamp (Amendment and Validation) Ordinance 2021 (Ordinance) amended Section 5 (Instruments Relating to Distinct Matters), Article 6 (Agreement Relating to Deposit of Title Deeds, Pawn, Pledge or Hypothecation) and Article 40 (Mortgage Deed) of Schedule I of the Maharashtra Stamp Act, 1958 (Maharashtra Stamp Act). The Ordinance has been specifically promulgated to clarify and reinforce the judgment of the Hon'ble Supreme Court of India in the matter of *Chief Controlling Revenue Authority v Coastal Gujarat Power Limited (Civil Appeal No. 6054 of 2015)* dated 11 August 2015 (Coastal Gujarat Judgment) and is in continuation of the circular issued by the Office of the Inspector General of Registration and Controller of Stamps of the Government of Maharashtra dated 28 September 2015 (GoM Circular).

To reiterate, in the Coastal Gujarat Judgment, the Hon'ble Supreme Court of India interpreted the expressions 'distinct matters' and 'distinct transactions' as appearing in Article 5 of the Gujarat Stamp Act, 1958 (Gujarat Stamp Act) and had effectively laid down the principle to look through the underlying transactions to determine the stamp duty incidence.

The GoM Circular was issued to the relevant registration authorities in the state of Maharashtra to inform them of the Coastal Gujarat Judgment and advise them to collect appropriate stamp duty in cases where beneficiaries are consortium of banks under a mortgage deed.

The key amendments to the Maharashtra Stamp Act brought about by the Ordinance are as follows:

- *Amendment to Section 5:* The Ordinance has inserted the expression 'or transactions' after 'several distinct matters' as appearing in Section 5 of the Maharashtra Stamp Act. The Bombay High Court in the matter of *Navi Mumbai SEZ Private Limited v The State of Maharashtra & Ors (Writ Petition No. 8014 of 2019)* held that the phrase 'distinct matters' is equivalent to the phrase 'distinct transactions'. The amendments brought about by the Ordinance are clarificatory in nature but bring to finality the GoM Circular which was being implemented in an ad hoc manner across the state. This amendment is applicable with retrospective effect and is deemed to be effective since 11 August 2015 (the date of the Coastal Gujarat Judgment). With this amendment, Section 5 of the Maharashtra Stamp Act is in line with Section 5 of the Gujarat Stamp Act - both states are now looking to stamp the underlying transactions instead of the instrument especially in the case of mortgage for multiple beneficiaries.
- *Amendment to Article 6 of Schedule I:* The Ordinance has increased the stamp duty payable on an agreement relating to deposit of title deeds, pawn, pledge or

hypothecation where the amount secured exceeds INR 5 lakh from '0.2%' to '0.3%' subject to the existing cap of INR 10 lakhs. This has been done by amending column (2) of Article 6(1)(b) and Article 6(2)(b). The slight increase in the percentage may not have any material impact for securing amounts of higher loans, since the stamp duty is anyway capped at INR 10 lakhs. Further, sub-clause (3) has been inserted to Article 6 to provide for a stamp duty of INR 500 for an instrument of additional security if executed under Article 6 and if full stamp duty has been paid on the primary security. Accordingly, any instrument providing for additional security in the form of hypothecation or equitable mortgage shall be stamped for nominal amount of INR 500 if full stamp duty i.e., upto INR 10 lakhs has been paid on the principal instrument. This amendment has effectively aligned Article 6(3) of the Maharashtra Stamp Act to Article 40(c) of the Maharashtra Stamp Act, which stipulated nominal stamp duty for mortgage deed for additional security or collateral.

- *Amendment to Article 40(b) of Schedule I:* The Ordinance has reduced the stamp duty on a mortgage deed (not being, *inter alia*, an agreement relating to deposit of title deeds, pawn, pledge or hypothecation (under Article 6)), where possession of the subject property is not given or agreed to be given from '0.5%' to '0.3%' subject to the existing cap of INR 10 lakhs. Again, the slight decrease in the percentage may not have any material impact for securing amounts of higher loans, since the stamp duty is anyway capped at INR 10 lakhs.
- *Validation of Proceedings:* Clause 4 of the Ordinance specifically validates any actions initiated under the existing Section 5 and Articles 6 and 40 in Schedule I of the Maharashtra Stamp Act. Further, no suit is maintainable for refund of the stamp duty levied or collected.

Conclusion

The GoM Circular which directed the registration authorities to implement the Coastal Gujarat Judgment in the state of Maharashtra was being implemented in an ad hoc manner in the state and was also challenged in the *Navi Mumbai SEZ Private Limited v The State of Maharashtra & Ors (Writ Petition No. 8014 of 2019)*. The Ordinance has removed all confusion, if any, on the applicability of the Coastal Gujarat Judgment in the state of Maharashtra. However, as the Ordinance has been introduced with retrospective effect dating as far back as 11 August 2015 (the date of the Coastal Gujarat Judgment), it is now to be seen how the GoM will apply the Ordinance and whether the past transactions covered by the Ordinance would also be re-examined especially where the mortgage documents have been adjudicated in compliance with applicable law. The Ordinance and specifically the amendment to Section 5 of the Maharashtra Act may be viewed as a step taken by GoM to increase the revenue of the state which already has some of highest stamp duty rates in the country.

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