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Dispute Resolution and Arbitration

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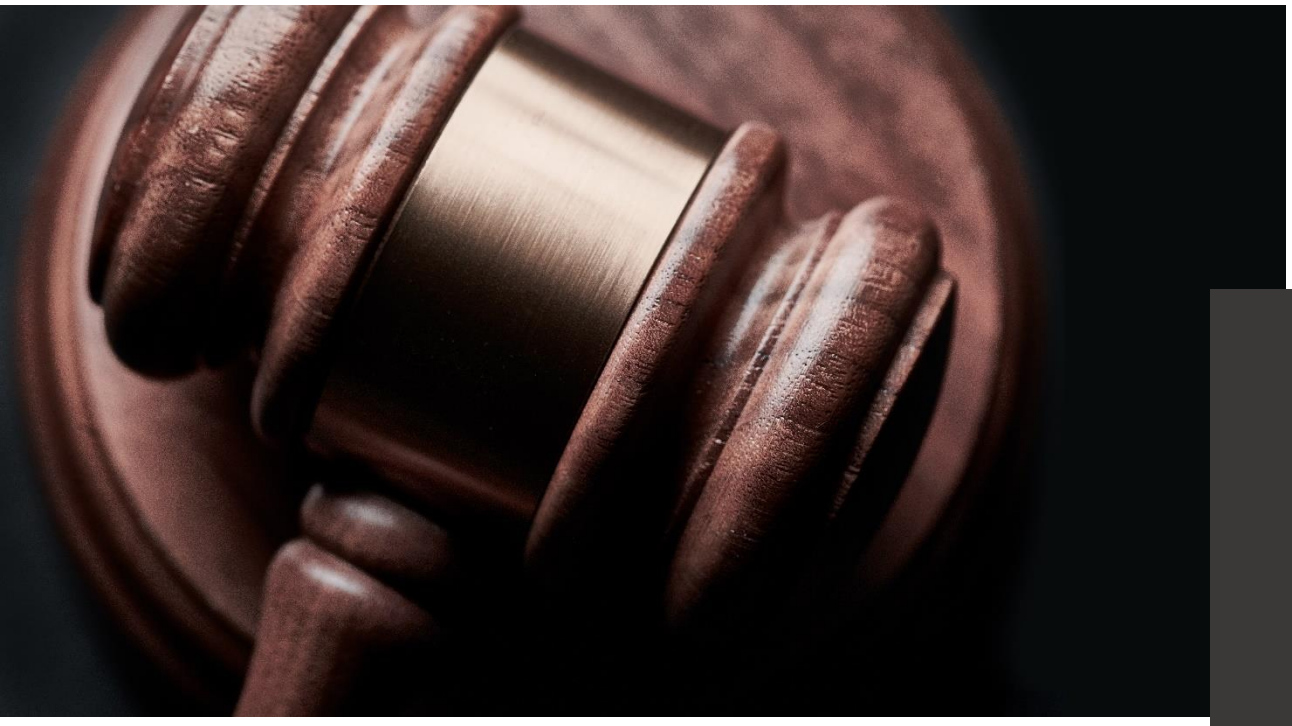
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Medima LLC v. Balasore Alloys Ltd

AP/267/2021

Background facts

- An Award was granted in favor of Medima LLC (**Petitioner**) by the ICC in proceedings governed by British law with the seat of arbitration in London, UK. Subsequently, to protect the outstanding amount payable by Balasore Alloys Ltd (**Respondent**) under the said Award, the Petitioner filed a post-award application under Section 9 of the Arbitration and Conciliation Act, 1996 (**Act**) in the Calcutta High Court (**HC**).
- However, the Respondent called into question the maintainability of the application on the following grounds:
  - That as per the arbitration agreement between the parties, Section 9 of the Act was excluded.
  - Section 9 of the Act does not allow the grant of any form of interim relief in post-award scheme passed in a foreign arbitration.

Issues at hand?

- Whether the arbitration agreement in the present case, providing for the substantive, curial as well as the law governing the arbitration agreement to be governed by British law, can be seen as 'an agreement to the contrary' under the proviso to Section 2(2) of the Act?
- Whether Section 9 of the Act can be made applicable to a foreign award made under the Rules of the International Chamber of Commerce in arbitration proceedings governed by British law with the seat of arbitration in London?

Decision of the Court

- At the outset, the HC discussed the 246th Report of the Law Commission which recommended a wider scope of Indian jurisdiction relating to arbitration seat outside India and, consequently, the successful insertion of proviso to Section 2 by the Amendment Act of 2016. HC referred to the decision of the Supreme Court (**SC**) in *PASL Wind Solutions v. GE Power Conversion India*[1] wherein the proviso to Section 2(2) was analyzed to be relevant for interim orders in a foreign-seated arbitration where the assets were located in India.
- HC also perused *Heligo Charters Pvt Ltd v Aircon Feibars*[2], *Big Charter Pvt Ltd v. Ezen Aviation Pty Ltd*[3] & *Raffles Design International v Educomp Professional Education*[4] wherein the need to obtain interim relief under Section 9 was acknowledged. HC advanced that to prove that the agreement between the parties lies within the purview of 'an agreement to the contrary' under the proviso to Section 2(2) of the Act, the opponent party must prove the prima facie intention to not subject the arbitration agreement to the application of Section 9 of the Act. HC further clarified that the absence of the word 'express' in the proviso cannot be interpreted so as to include an implied agreement within its boundaries and, therefore, the agreement must transparently express terms that the parties intend to exclude the operation of Section 9 from the purview of the said arbitration agreement. Therefore, HC answered the first issue in negative and in favor of the Petitioner.
- With regards to the second issue, the HC highlighted the language of proviso '... and an arbitral award made or to be made ...' in Section 2(2) and arrived at the conclusion that Section 9 would apply in a post-award scenario when the seat of arbitration is outside India. Furthermore, the Court advanced that an award-holder of an arbitration which took place outside India would be left hopeless if interim measures are not granted in relation to the assets of the award-debtor which are located in India. HC cited *Bhatia International v. Bulk Trading S.A*[5] wherein the SC referred to Article 23.2 of the ICC Rules which were then in force and held that Section 9 would be applicable to International Commercial Arbitrations which take place outside India.
- Additionally, the HC applied the rule of harmonious construction after taking in account SC's decision in *J.K. Cotton Spinning and Weaving Mills Co Ltd v. State of Uttar Pradesh*[6] and submitted that the last intention of the legislature in the present case would be to empower the courts to pass interim measures in a foreign seated arbitration post-award. In the light of the above, HC answered the second issue in affirmative.

Our view

HC's decision that Section 9 of the Act will apply to foreign arbitration unless the intention to exclude it is crystal clear in the arbitration agreement is noteworthy, as it captures the essence of the legislative intent of implementation of the arbitration and aligns with the position of law previously laid down by SC in *PASL Wind Solutions*. HC's decision remarkably erases all the ambiguity pertaining to the absence of the word 'express' in the proviso to Section 2(2) of the Act and clarifies the position of law with respect to the remedy available in India to the award-holder in a foreign seated arbitration.

Laureate Buildwell Pvt Ltd v. Charanjeet Singh

Civil Appeal No. 7042 of 2019

Background facts

- Madhabi Venkatraman (**Original Allottee**) applied for allotment of a residential flat which was to be developed by the builder, Laureate Buildwell Pvt Ltd (**Appellant**). The original allottee paid the registration amount of INR 7,00,000 and further deposit of INR 32,33,657 out of the total sale consideration of INR 2,47,29,405. Thereafter, Appellant issued an allotment letter which stated that the possession of the flat would be handed over to the original allottee within 36 months of the issue of allotment letter, i.e., on or before October 15, 2015. Accordingly, the original allottee made payment of the first 7 instalments to the tune of INR 1,55,89,329 to the Appellant (**Paid Amount**).
- However, when the original allottee observed the slow pace of construction of the flat, she decided to sell the flat to a subsequent purchaser, Mr. Charanjeet Singh (**Respondent**), who was given assurance that the possession of the flat would be delivered on time. Accordingly, the original allottee and the Respondent agreed that the Respondent would pay an advance of INR 1,00,000 to the original allottee and the balance money out of the paid amount would be payable to the original allottee on or before October 15, 2015. It was also agreed that the Respondent would pay the outstanding instalments payable to the Appellant after transfer of flat to him.
- Since the possession was not delivered by October 2015, the Respondent did not make any further payments to the original allottee. Upon assurance from the Appellant that the possession would be delivered by June 2016, the Respondent entered into an agreement of sale with the original allottee.

[1] 2021 SCC Online SC 331
[2] 2018 SCC Online Bom 1388
[3] 2020 SCC Online Del 1713
[4] 2016 SCC Online Del 5521
[5] (2002) 4 SCC 105
[6] AIR 1961 SC 1170

- Thereafter, the original allottee requested the Appellant to transfer the flat in favor of the Respondent to which the Respondent submitted an undertaking to this effect. Subsequently, the Appellant issued an endorsement letter dated May 09, 2016, to the Respondent and confirmed receipt of payment of INR 1,93,70,883. However, the Respondent soon found out that the possession of the flat could not be delivered till the end of 2017. Hence, the Respondent sought refund of INR 1,93,70,883 with interest at 24% p.a. and thereby issued a legal notice to the Appellant. Ignoring the same, the Appellant demanded payment for further instalments. When the Respondent refused to pay the instalments, the Appellant threatened to cancel the deal and forfeit the amounts already paid.
- Aggrieved by the above-mentioned circumstances, the Respondent approached the National Consumer Disputes Redressal Commission (**NCDRC**) seeking directions to the Appellant to refund INR 1,93,70,883 with 24% interest along with compensation and litigation expenses. The NCDRC held that a flat purchaser cannot be made to wait indefinitely for seeking possession in light of SC's decision in *Kolkata West International City Pvt Ltd v. Devasis Rudra*[7]. The NCDRC noticed that though the promised date of delivery was way back in the year 2015, even as on date, the tower is far from completion. Hence, it directed the Appellant to refund the amount so far deposited with interest at 10% p.a. from the respective dates of deposit till the date of realization together with the cost of INR 25,000.
- Aggrieved by the ruling of NCDRC, the Appellant filed an Appeal before the SC.

Issue at hand?

- Whether a subsequent purchaser of a flat from the original allottee in an under-construction project stands on the same footing as the original purchaser and is entitled to same rights and relief?

Decision of the Court

- At the outset, SC observed that upon issue of the endorsement letter by the Appellant, the Respondent stepped into the shoes of the original allottee and became entitled to the same treatment, rights and relief that the original allottee would have been entitled to. The purchaser thus corresponds as a 'Consumer' and is entitled to move any forum under the Consumer Protection Act, 1986.
- SC noted that at times, original allottees seek funding from banks or financial institutions to finance their flat by mortgaging the property and in most cases, they have to start repaying instalments towards loan and interest after a certain period of time, even before the flats are ready. Therefore, if real estate projects are allowed to be prolonged for an indefinite period, it would have serious economic repercussions upon such original allottees. Hence, at times, the original allottees prefer to look for purchasers who are ready to step into their shoes and thus, the subsequent purchasers take over the obligations of the original allottee including payment of balance instalments.
- Referring to various decisions, SC noted that the objective with which the Consumer Protection Act, 1986 was laid down, was to address complaints of consumers and provide a forum for their quick redressal, thus providing better protection of consumers interests.
- SC overruled its previous rulings in *HUDA v. Raje Ram*[8] and *Wing Commander Arifur Rahman Khan & Anr v. DLF Southern Homes Pvt Ltd*[9], wherein it held that when the allottee in a housing project transfers his or her rights in favor of another, such a third party cannot claim equities to the same extent as the original allottee, especially as regards a claim for interest. In this regard, the SC opined that the per se bar to the relief of interest on refund cannot be considered good law.
- SC further observed that in instances where a purchaser who has stepped into the shoes of the original allottee of a housing project in which the builder has not honored its commitment to deliver the flat within a stipulated time, it cannot be said that the purchaser would not expect the performance of builder's obligation within a reasonable time. Such a conclusion would be arbitrary, provided large number of buyers might be waiting for possession of the promised flats, and thus, they are entitled to reliefs as provided under the Consumer Protection Act, 1986.
- SC noted that a purchaser while purchasing a flat has in his mind a reasonable timeframe for delay in possession of flat, of which he has knowledge of even while making the purchase, but even when such timeframe gets exceeded, the purchaser claims refund on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be molded. Hence, it would be unfair to assume that the purchaser had knowledge of the delay.
- In view of the aforesaid, SC modified the order passed by NCDRC and directed the Appellant to refund the principal amounts with interest at 9% per annum from the date the Appellant acquired knowledge of the transfer or acknowledged it.

Our view

This judgment makes it crystal clear that the subsequent flat buyers or purchasers have the same rights as original allottees. In our opinion, this decision essentially brings a major relief to homebuyers who purchased flats from original allottees but were not delivered the possession on the ground of no privity of contract and/or other flimsy reason by the Developer, who are already in default. Considering the objective of the Consumer Protection Act, 1986, the SC has rightly held that the principle of equity is equally applicable on both the original allottee as well as the subsequent purchaser who purchased a flat from the original allottee, stepping into the shoes of an original allottee of a housing project and is entitled to claim interest on the refund of earnest money from the builder, in cases of indefinite delay in delivery of possession of the flat.

[7] (2019) CPJ 29 (SC)
[8] 2008 (17) SCC 407
[9] 2020 SCC Online 667 (SC)

South-eastern Coalfields Ltd & Ors v. S. Kumar's Associate AKM (JV)

Civil Appeal No. 4358 of 2016

Background facts

- In the present case, South-eastern Coalfields Ltd (**Appellant No. 1**) appointed S. Kumar's Associate AKM (**Respondent**) for the work of hiring Heavy Earth Moving Machinery. Thereafter, a Letter of Intent (**LoI**) was issued, based on which the Respondent commenced the work. However, the work was suspended by the Respondent owing to circumstances which led to the termination of contract by the Appellants and getting it executed by another contractor at the risk and cost of the Respondent under Clause 9.0 of the General Terms & Conditions of the Notice Inviting Tenders (**NIT**). Furthermore, the Appellants via a recovery letter also sought from the Respondent, the differential amount in the contract value between the Respondent and the new contractor.
- In response to this, the Respondent filed a Writ Petition under Articles 226 & 227 of the Constitution of India in the Chhattisgarh High Court (**HC**) seeking withdrawal of the termination letter and the recovery order. HC concluded that the order of termination and forfeiture of the bid security were flawless, but the differential amount sought by the Appellants was held to be irrecoverable.
- The Appellants filed a Special Leave Petition in SC against the above order and a stay was granted till further orders.

Issues at hand?

- Whether the LoI issued by the Appellants served as a binding contract?
- Whether mobilization at site by the Respondent would amount to a concluding contract inter se the parties?

Decision of the Court

- At the outset, SC noted that the stipulations in the LoI including submission of the security Deposit or signing of the Integrity Pact were not fulfilled except that the Respondent mobilized the equipment at site, handing over of the site and the date of commencement of work was fixed. Thus, SC ironed out that the case revolves around the lone question that whether the mobilization at site by the Respondent would amount to a concluding contract inter se the parties.
- With regard to this, SC referred to the law laid down in *Dresser Rand S.A. v. Bindal Agro Chem Ltd & Anr*[10] and *Rajasthan Coop Dairy Federation Ltd v. Maha Laxmi Mingrate Marketing Service (P) Ltd*[11] and endorsed that that an LoI merely pinpoints future intention of the parties to execute a contract and is not intended to chain either party ultimately to enter into a contract. The SC highlighted that a crystal-clear intention from the bare perusal of the terms, is the key ingredient to be examined and the totality of the circumstances have to be considered in cases of present character.
- SC underscored Clause 29.2 in the tender that the notification of award will constitute the formation of the contract 'subject only' to furnishing of the Security Deposit, undoubtedly rendering it as a condition precedent. Moreover, SC analyzed the judgement referred by the Appellants in *Jawahar Lal Burman v. Union of India*[12] and emphasized that the present LoI explicitly mentions that failure to submit the Security Deposit will lead to cancellation of 'award' and not contract. Thus, based on the nature and intention of the contract, SC concluded that the requirement of security deposit was a condition precedent, thus there was no concluding contract. SC upheld the impugned order that the only remedy available to the Appellants is forfeiting the bid security amount and therefore, the stay on the refund of the amount deposited by the Respondent was lifted.
- In the light of the above, SC answered both the issues in negative and dismissed the appeals.

Our view

SC's decision solidifies beyond a shadow of doubt that a Letter of Intent is not a binding contract unless such an intention is plain from its terms. SC's decision also clarifies that an LoI can be interpreted as a binding contract because the same hinges on the intention which must be evident from its terms.

[10] (2006) 1 SCC 751
[11] (1996) 10 SCC 405
[12] (1962) 3 SCR 769

The Commandant v. Commissioner of Central GST, Excise, Customs, Udaipur

Service Tax Appeal No. 52122 of 2016

Background facts

- The Appellant is the Commandant of the Home Guards in the State of Rajasthan created under the Rajasthan Home Guards Act, 1963 for bridging the requirement of reserved police force required to maintain public safety, protection of persons and property and maintenance of law and order. The Home Guards department is a part of Ministry of Home Affairs, Government of Rajasthan and are called out by the Police Department for maintenance of law and order. The Appellant also provides security to various Government departments and firms and charges some amounts.
- The Revenue opined that that the provision for providing security and collecting consideration therefrom amounts to rendering 'security agency service' as per Section 65(105)(w) of the Finance Act, 1994 read with Section 65(94).
- In terms of the aforesaid, proceedings were initiated before the Respondent Commissioner and by way of an Order dated December 12, 2014, the said matter was decided against the Appellant. (**Impugned Order**)
- Aggrieved by the Impugned Order, the Appellant filed the captioned Service Tax Appeal before the CESTAT.

Issue at hand?

- Whether Service Tax would be applicable in the services provided by the Home Guards department?

Decision of the Authority

- At the outset, the Revenue submitted that that the term 'security agency service' as per Section 65(105)(w) of the Finance Act, 1994 read with Section 65(94), covers any person engaged in the business of rendering the services relating to the security and, therefore, the Appellant is covered by this definition.
- Prior to May 1, 2006, the term 'security agency' covered only 'commercial concerns' engaged in the business of rendering services relating to security. After May 1, 2006 'any person' who provides security services gets covered under the terms security agency service. It is the case of the Revenue that the expression 'any person' includes the government or local authority and, therefore, the Appellant has to pay service tax. It was further stated that if a sovereign or public authority provides a service which is not in the nature of statutory activity, the same must be taken into consideration and service tax is leviable as per the clarification issued by the Central Board of Excise & Customs vide Circular No. 96/7/2007-ST dated August 23, 2007.
- The Appellant, on the other hand stated that the term 'person' does not include the Government or Governmental entities and, therefore, they are not covered by the definition of security agency and no service tax can be charged from them for providing 'security agency service'.
- Further, it was stated that the issue at hand is no longer res integra and an identical matter was decided by the CESTAT in the case of *Deputy Commissioner of Police, Jodhpur v. Commissioner of Central Excise & Service Tax & Ors, Jaipur-II*[13]. The Revenue's appeal against this order was dismissed by SC in Civil Appeal Diary No. 24355 of 2017[14].
- After taking the arguments of both parties into consideration, the CESTAT echoed the submissions advanced by the Appellant and stated that the term 'person' appearing in the definition must be construed to be a natural person and will not include the State or its officers or the posts created under a statute as held by SC the case of *West Bengal v. Union of India*[15].
- Further it was held that since State cannot be a person, it cannot be a 'security agency' and resultantly no service tax under the head of 'security agency service' can be charged on the amounts collected by the Police or Home Guards or any officers of the Government for providing security.
- Lastly, reliance was placed upon the decision in the matter of *Deputy Commissioner of Police, Jodhpur* (supra), which decision had reached finality since it was upheld by SC, it was held that the present case is squarely covered by the said decision. Accordingly, the CESTAT held that the Appellant was not liable to pay service tax and allowed the appeal, thereby setting aside the impugned Order.

Our view

Considering the fact that the department of Home Guards is an agency of the State established under the Rajasthan Home Guards Act, 1963, by no stretch of imagination could the same be considered as a 'person' engaged in the business of providing security services. Accordingly, the CESTAT has rightly held that service tax cannot be levied on the department of Home Guards for providing security services since the same is in furtherance of its statutory duties.

[13] (2017 (48) STR 275 (Tri.-Del.)
[14] 2018 (11) GSTL J133 (SC)
[15] AIR 1963 SC 124

Emerald Court Co-operative Housing Society Ltd

GOA/GAAR/1 of 2020-21

Background facts

- Emerald Court Co-operative Housing Society Ltd (**Applicant**) is a registered entity under GST and provides services to its members in the form of facilities or benefits, like security, cleaning, repairs, water, common electricity etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc. The Applicant raises monthly bills on its members which consist of 2 parts, one is Property Tax on which GST is not being charged and another is Maintenance Charges on which GST is being charged.
- Accordingly, the Applicant sought an advance ruling on the chargeability of GST on such transactions since there could be no sale by the Co-operative Housing Societies (**CHS**) to their own permanent members, for doctrine of mutuality would come into play.
- To elaborate, CHS treated itself as the agent of the permanent members in entirety and advanced the stand that no consideration passed for the services rendered by the society to its members and there was only reimbursement of the amount by the members and therefore no GST could be levied.

Issue at hand?

- Whether the Applicant is liable to pay GST on the Maintenance Charges collected from members of its society?

Decision of the Authority

- The Applicant contended that as per Section 7(1) (a) of the CGST Act, 'supply' is an inclusive definition, so it is possible to argue that anything, even if not mentioned specifically in Section 7, can be treated as 'supply'. But as per *ejusdem generis*, when a limited list of specific things also includes a more general class, that the scope of that more general class shall be limited to other items more like the specific items in the list.
- Further it was stated that the various High Courts of the country in the cases of *Sports Club of Gujarat Ltd* and *Ranchi Club Ltd* have held Service Tax levy to be illegal on the principle of mutuality. In Calcutta Club Ltd. case, the SC observed that there is absence of consideration between club and its members, as consideration is a must and should pass from one person to another. Applying the same in the present case, the definition of business cannot fasten GST liability on a club rendering service to its members as there is no consideration.
- Lastly, the Applicant submitted that Section 7(1A) of CGST Act, Schedule II only classifies the transaction as supply of goods or services and does not deem it to be supply. Schedule II does not cover any incorporated clubs or associations and therefore cannot fasten GST Liability on a club or association. In view of the same, charging of GST by CHS's to its members is totally unfair and beyond the actual concept of charging GST in business activities.
- On the other hand, the Revenue Department submitted that CHS are covered by the definition of business as per Section 2(17) of MGST/CGST Act. Therefore, they are duly bound to obtain registration if other conditions are fulfilled. Moreover, Section 7 read with Schedule I and II shows that in case of related persons and distinct persons, the activity is supply even if no consideration passes from supplier to recipient.
- Further, taking a cue from the principle mentioned in the *Bhuwalka Steel Industries Ltd*[16], considering the deeming fiction provided in Section 15(1) and explanation thereof, as well as Schedule I in respect of related persons, the Revenue Department stated that CHS (whether incorporated or unincorporated) and its members are liable to be treated as distinct or independent entities for the purpose of taxation under MGST Act. Therefore, the principle of mutuality may not have any impact as far as levy of GST under MGST Act with regards to supply of goods and services made by Co-operative Housing Society to its members is concerned.
- The Revenue Department also drew an inference from the facts and provisions of the MGST Act and the CGST Act and stated that the transaction of supply of services by Co-Op Housing Society to its members covered by the transaction taking place between 'related persons' as provided in Section 15 of MGST/CGST Act-2017. By express provisions in terms of definitions of 'business' and 'person' as provided in Section 2 of MGST Act /CGST Act. the housing society is required to obtain registration and pay GST in case of supply of Goods/services to members or non-members, as the case may be.

Our view

Taking into consideration the recent amendment to Section 7 of the CGST Act, the AAR treated the CHS and its members as *distinct entities*. If not the first, then this is one of the first rulings on the subject matter since the said amendment came into force. CHS's shall now have to collect and pay GST on amounts received against Maintenance Charges from their members as it would be termed as a consideration received for the supply of goods and services. Nonetheless, this provision would only be applicable in the event the Maintenance Charges exceed INR 7,500 per month. It is also pertinent to note that since smaller CHS's with an annual turnover of less than INR 20,00,000 do not need to register themselves, they would resultantly not have to comply with the GST obligations/provisions.

[16] (2017 5 SCC 598)

- The AAR took into consideration the submissions and contentions put forth by the Applicant as well as the Revenue Department and observed that there were a lot of litigations initiated by clubs/associations/ societies on this issue, earlier. It was stated that the newly added Sub Clause (aa) to Section 7(1)(a) of the CGST Act, which received the assent of the President of India on the March 28, 2021 settled the issue of principles of mutuality in cases of CHS's like the Applicant.
- In view of the above, the AAR held that the Applicant society and its members are distinct persons and the amounts received by the Applicant against Maintenance Charges from its members are nothing but consideration received for supply of goods/services as a separate entity. The principle of mutuality, which was cited by the Applicant to support its contention that GST is not leviable on the Maintenance Charges collected by them from its members, is not applicable in view of the amended Section 7 of the CGST Act, 2017.
- The Applicant CHS was accordingly held liable to pay GST on Maintenance Charges collected from its members, if the monthly subscription or contribution charged from the members is more than INR 7,500 per month.

Ripudaman Singh v. Tikka Maheshwar Chand

Civil Appeal No. 2336 of 2021 arising out of SLP (Civil) No. 4035 of 2017

Background facts

- The parties herein are the sons of late Vijendra Singh. The Appellant filed a suit for possession in the year 1978 disputing the Will dated December 04, 1958, executed in favor of the Defendant. The Appellant claimed half share of the land as described in the plaint. During the pendency of suit, a Decree was passed on the basis of compromise arrived at between the parties (**Decree**).
- In pursuance of the aforesaid Decree, the Appellant sought a mutation of the 1/2 share of the land vesting to him which was allowed by the Naib Tehsildar on February 10, 1983. However, an Appeal against the said mutation was disposed of with a direction to Naib Tehsildar to decide the mutation afresh as the mutation was sanctioned without granting any opportunity of being heard to the Defendant.
- Thereafter, the Appellant thereafter an Appeal before the Divisional Commissioner, which was dismissed on the ground that the Decree, in the absence of registration, is against the provisions of the Registration Act, 1908. (**Act**)
- Subsequently, the Appellant filed a Suit for Declaration challenging the aforesaid Order passed by the Divisional Commissioner. The said Suit was dismissed by the learned Sub Judge, 1st Class, Hamirpur on November 20, 2002. However, the Appeal preferred by the Appellant was allowed by the Ld. District Judge, Hamirpur on August 19, 2004. The said Order was under challenge in the Second Appeal before the High Court (**HC**).
- Vide an Order dated October 28, 2006, HC set aside the Judgment and Decree passed by the First Appellate Court and the Suit was dismissed on the ground that the land even though being subject-matter of compromise, was not the subject-matter of the Suit and therefore the Decree required registration under Section 17(2)(vi) of the Act. (**Impugned Judgment and Decree**). Accordingly, the Appeal was allowed and the suit for declaration challenging the orders passed in mutation proceedings was dismissed.
- The Appellant filed the present Civil Appeal challenging the Impugned Judgment and Decree passed by HC.

Issue at hand?

- Whether a compromise decree in respect of land which is not the subject-matter of suit but is part of the settlement between the family members requires compulsory registration in terms of Section 17(2)(vi) of the Act?

Decision of the Court

- At the outset, SC inspected the provisions of clause (v) and (vi) of sub-clause 2 of Section 17 of the Act and held that the impugned Judgment and Decree passed by HC is erroneous and cannot be sustained in law. SC remarked that as an heir of deceased, the Appellant had a right in his estate. Therefore, it was not a new right being created for the first time when the parties entered into a compromise before the Civil Court but rather a pre-existing right in the property was recognized by way of settlement in court proceedings.
- Further SC stated that that compromise decree can be passed even if the subject-matter of the agreement, compromise of satisfaction is not the same as the subject-matter of the suit in terms of the provisions of Order XXIII Rule 3 of the Code of Civil Procedure, 1908. Therefore, the compromise decree entered into between the parties in respect of land which was not the subject matter of the suit is valid and is thus a legal settlement.

- It was observed that if a document is sought to be enforced which is not recognized by a decree, the provision of Section 17 (2) (v) of the Act would be applicable. However, where the decree has been passed in respect of family property, Section 17 (2)(vi) of the Act would be applicable. The principle is based on the fact that family settlement only declares the rights which are already possessed by the parties.
- With regards to the sole issue framed, SC relied upon its decision in the matter of ***Bhoop Singh v. Ram Singh Major & Ors***[17] whereby it was held that a decree or order including compromise decree creating new right, title or interest in praesenti in immovable property of value of INR 100 or above is compulsory for registration. It was not the case any pre-existing right but right that has been created by the decree alone. This court explained both the situation, where a part has pre-existing right and where no such right exists. In the former situation where the decree holder has a pre-existing right in the property, it was found that decree does not require registration.
- Basis its decision in the matter of ***Bhoop Singh*** (supra), SC found that the impugned judgment and Decree holding that the decree requires compulsory registration is erroneous in law. SC further remarked that the compromise was between the two brothers consequent to death of their father and no right was being created in praesenti for the first time, thus not requiring compulsory registration.
- Accordingly, the Appeal was allowed and the Suit was decreed.

Our view

Section 17 of the Act entails compulsory registration for certain documents and Section 49 of the Act provides the effect of non-registration of documents which are required to be registered i.e. such a document cannot legally affect any immovable property comprised therein, or be received as evidence of any transaction affecting such property. In a case like the present, where a compromise decree in respect of a land/ property which is part of a settlement between family members but not the subject matter of the suit, would logically not require registration under the Act since there is a pre-existing right of a person/entity in the land/property which has been recognized by way of the settlement being effectuated. Accordingly, in our view, SC's decision in the present case is a sound/logical one and has cleared the ambiguity surrounding the subject matter.

[17] (1995) 5 SCC 709

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