

Corporate & Commercial

Monthly Newsletter
April 2025

Table of Contents

- Interplay of Section 17 (2) of Indian Registration Act, 1877 with Section 3 read with Schedule I of Indian Stamp Act, 1899
- Proposed Amendments Widening the Scope of Fast-Track Mergers

Interplay of Section 17 (2) of Indian Registration Act, 1877 with Section 3 read with Schedule I of Indian Stamp Act, 1899

The Supreme Court of India, in **Arun Rameshchand Arya vs. Parul Singh [Transfer Petition(Civil) No(S). 875 Of 2024]**, held that a woman is not liable to pay stamp duty on the share of the flat relinquished by her husband as part of a divorce settlement. The judgment distinguishable on facts has obliterated the distinctive boundary of operation of two distinctive statute, namely the Indian Stamp Act 1899 and Registration Act 1908, emanating from the “**Principle of Distinct Spheres of Operations**” from the perspective of implication of Indian Stamp Act 1899 juxtaposed with Section 17 (2) of the Registration Act 1908. The provision in part is extracted for ease of reference, below:

“17. Documents of which registration is compulsory.—
(1) The ...
(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—
 ...
(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]”...

The Supreme Court interpreted this provision in light of **Mukesh vs. State of M.P., 2024 SCC OnLine SC 3832**, holding that:

“6. Now, we have to examine whether the exclusive title of the flat-in-question can be transferred in the name of the respondent-wife without requiring her to pay the stamp duty. In this regard, we may refer to the judgment of this Court in Mukesh v. The State of Madhya Pradesh & Anr., wherein, while interpreting Section 17(2)(vi) of the Registration Act, 1908, it was held that the exemption from payment of registration fees pursuant to decree or order of the Court is provided under Section 17(2)(vi) of the Registration Act, 1908 with the exception that if the compromise involves immovable property other than the property for which the decree is prayed for, such property would not be covered and would require registration. Manifestly, the flat-in-question is the subject matter of the compromise and as a consequence, it forms part of the proceedings before this Court. Hence, the exclusion provided by Section 17(2)(vi) of the Registration Act, 1908 will apply.”

It would be relevant to extract a part of the judgment to clarify the aspect of exclusion from Registration.

“7. The exemption for decree or order of the Court is covered under section 17(2)(vi) of the Act, 1908 with a rider. Under the said provision, any decree or order of a Court (except the decree or order expressed to be made on compromise and comprising immovable property other than that which is the subject-matter of the suit or proceedings) would not require compulsory registration. Section 17(2)(vi) carves out the distinction between the property which forms subject-matter of the suit and the

property that was not the subject-matter of the suit, but for which a compromise has been arrived at. It would be relevant to point out that the provision permitting the compromise between the parties to include in the compromise decree, the subject matter not forming part of the suit property was introduced with effect from 01.02.1977. Prior to that, the compromise decree can be passed only with respect to properties or subject matter of suit. If a compromise decree involves immovable property other than the property for which a decree is prayed for, such a property would not be exempted and would require registration. This condition or the exclusion clause was introduced in the Registration Act, 1908 by Act 21 of 1929 by substituting for “and any award”. To avail the exemption from the mandate of compulsory registration of documents conveying immovable property of a value of more than Rs 100/-, the compromise decree arrived must be only in respect of the property that is the subject-matter of the suit.”.

With regard to incidence of stamp duty, it would be relevant to extract a part of the judgment

“13. In respect of the issue relating to payment of stamp duty for mutation of the subject land, it is the specific plea of the appellant that “consent decrees” / “decrees” are not chargeable with “stamp duty” under the Indian Stamp Act, 1899. Section 3 of the Indian Stamp Act, 1899 provides the instruments which are chargeable with duty it is apparent that stamp duty is not chargeable on an order/decrees of the Court as the same do not fall within the documents mentioned in Schedule I or I-A read with Section 3 of the Indian Stamp Act, 1899. Though the Collector of Stamps determined the stamp duty for the subject land as per Article 22 of Schedule IA of the Indian Stamp Act, 1899, which states about conveyance, in this case, we have already held that the compromise decree does not fall under the instruments mentioned in the Schedule and that it only asserts the pre-existing rights.”

Therefore stamp duty will not be levied on instruments or decrees which are not expressly mentioned in Schedule I of the Indian Stamp Act, 1899. Section 3 of the Act lays down the foundational basis for chargeability of stamp duty, and it categorically states that:

“3. Instruments chargeable with duty—Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule...”

The usage of the word “shall” denotes a mandatory imposition of duty only on those instruments specifically enumerated in the Schedule. This statutory command underscores the “**Rule of Strict Interpretation**” in fiscal statutes - meaning that if an instrument is not expressly listed or does not fall within the contours of Schedule I or I-A, no duty can be levied.

Proposed amendments widening the scope of fast-track mergers

On April 4, 2025, the Ministry of Corporate Affairs (MCA), released a notification proposing amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Rules) and the proposed draft amendments, "Amendments", in line with the proposals presented by the Union Finance Minister of India during announcement in Budget 2025-26 on expanding the scope and simplifying the procedure for fast-track mergers under Companies Act, 2013 (Act) and the Rules. The Ministry has invited suggestions/comments on the proposed Amendments from stakeholders until May 5, 2025. In light of this notification, in this article, we will examine the existing structure pertaining to fast-track mergers and the proposed Amendments.

The mechanism of fast-track mergers was enforced and became effective in 2016, in India, in order to bypass the taxing and tedious merger procedure under the existing NCLT route. This mechanism permits merger transactions between the following class of companies without the requirement of obtaining NCLT approval: (i) two or more small companies; (ii) a holding company and its wholly-owned subsidiary company; (iii) two or more start-up companies; and (iv) one or more start-up company with one or more small company. The procedure of fast-track mergers is governed under Section 233 of the Act and Rule 25 of the Rules.

In September 2024, the MCA widened the scope of fast-track mergers by way of introduction of Rule 25A(5) under the Rules which included inbound mergers between a transferor foreign holding company and its Indian wholly owned subsidiary within the ambit of Section 233, subject to the compliance with the procedure set out under Section 233 of the Act and the following additional conditions: (i) both the companies obtaining prior approval of the Reserve Bank of India, subject to applicable exclusions (if any) under the Foreign Exchange Management (Cross Border Merger) Regulations, 2018; (ii) the Indian wholly-owned subsidiary; and (ii) in the event that the foreign parent is incorporated in a jurisdiction which shares its land border with India, then, at the stage of submitting fast-track merger application under Section 233, the Indian wholly-owned subsidiary filing a declaration in accordance with the necessary approval requirements under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

In light of the above existing mechanism, the Amendments now propose to further widen the scope of fast-track mergers and include the following additional classes of companies under the ambit of Section 233 of the Act and its corresponding Rules:

1. Merger between unlisted companies:
Mergers between two or more unlisted companies (those which have reasonable debt exposure and no default in repayment thereto, however, excluding Section 8 companies), are sought to be included, provided that every company involved in the merger mechanism meets the following criteria as on a day, not more than 30 days before the date of notice referred to in Section 233(1)(a): (i) each of the involved company's borrowings from banks, financial institutions, or any other body corporate is less than INR 50,00,00,000 (Indian Rupees Fifty Crore); and (ii) each of the companies has no default in repayment of such borrowings.

Additionally, a certificate from the company's auditor confirming compliance with these conditions is required to be attached with the application made by the company(ies) under Section 233(2).

2. Merger between holding company and its unlisted subsidiary(ies):
Mergers between a holding company (listed or unlisted) and one or more of its unlisted subsidiary(ies) are now proposed to be covered under the ambit of Section 233.
3. Subsidiary companies of the holding company:
Mergers between one or more subsidiaries of the same holding company are proposed to be included, provided that the transferor company(ies) are not listed entities.
4. Foreign holding company and Indian wholly-owned subsidiary:

The above discussed Rule 25A(5) i.e., inbound merger of a transferor foreign company with its Indian wholly owned subsidiary is also proposed to be included within the ambit of Rule 25 to make the said rule self-contained.

The proposed Amendments are in line with the budget announcement intending to widen the scope of fast-track mergers. The intention to fast-track the process will bolster the ongoing trend of reverse flipping with many entities looking to integrate back, and internalise their base in India, ahead of their IPO (likely) plans. One of the first entities to leverage this mechanism and fast-track its reverse flip is Dream Sports, parent entity of Sporta Technologies Private Limited (brand name; Dream 11), which recently moved its domicile back to India from Delaware, United States of America. While the proposed Amendments aim to permit more classes of companies to bypass the NCLT process making reverse flip transactions more appealing, fast track merger mechanism comes with its own set of challenges in relation to statutory approvals in the fast-track process acting as greater hurdles as opposed to the traditional tribunal driven process and accordingly, entities should weigh different factors and take a comprehensive view before choosing its mechanism.

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