

ISSUE OF STAMP DUTY AND REBATE ON THE SCHEME OF AMALGAMATION

The Bombay High Court (“**HC**”), in its recent judgement in the case of *The Chief Controlling Revenue Authority and Ors. Vs. Reliance Industries Limited and Ors.*¹ (“**RIL Case**”), has ruled that an order passed by the jurisdictional HC sanctioning the scheme of amalgamation (“**Scheme**”) under Section 394 of the Companies Act, 1956 (“**the Act**”) is an instrument chargeable to stamp duty as per the provisions of the Bombay Stamp Act, 1958 (“**Stamp Act**”) and not the Scheme settled by 2 (two) companies under Section 391 read with 394 of the Act. Only after the order is passed by the jurisdictional HC, the Scheme becomes operational and effects the transfer and vesting of property. Accordingly, if the registered offices of the companies involved in the Scheme are situated in different states and the Scheme is required to be approved by 2 (two) different HC, then the order passed by each jurisdictional HC would be the instrument chargeable to stamp duty in the respective states.

Another issue decided by the Bombay HC in the RIL Case was whether in a scheme of compromise or arrangement under Section 391 and 394 of the Act where the registered office of 2 (two) companies are situated in 2 (two) different States, the company in Maharashtra is entitled for rebate under Section 19 of the Stamp Act in respect of stamp duty paid on the said Scheme in another state. In relation to the said issue, the Bombay HC ruled that no rebate would be available under Section 19 of the Stamp Act as the order passed by the Bombay HC was passed in Mumbai and executed in Mumbai itself. Accordingly, the essential ingredients of Section 19 of the Stamp Act were not fulfilled in order to avail rebate in Mumbai against the stamp duty paid on the HC order in the other state.

The aforesaid rulings of the Bombay HC would have a significant impact on restructuring costs for companies located in various states of India, especially where the Bombay jurisdiction is also involved, and would also influence the historical views taken by the companies on rebate/credit of stamp duty across states.

In light of the above, it may be observed that while the ruling of Bombay HC may not be binding throughout the territory of India, the same will have persuasive value before other HC and authorities in other states wherein a similar issue is brought.

In case of any clarifications, please feel free to contact:

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¹ Civil Reference No. 1 of 2007 in Writ Petition No. 1293 of 2007 in Reference Application No. 8 of 2005, decided on March 31, 2016