



• Adv.(CA.) Nipun Singhvi



• Adv. Mayur Jugtawat

Advocate are practicing advocates at Gujarat High court, Tribunals and Supreme Court

Under-Stamping leads to Insolvency Rejection

Introduction

Insolvency and Bankruptcy Code, 2016 (“IB CODE”) has been developing day by day bringing developments and different interpretations to the provisions of the Code. Though the Code has been time and again held to be overriding legislation yet many issues have evolved over time.

Initially when the Code was enforced , Hon’ble Supreme Court in its landmark judgment of *Innovative Industries v. ICICI Bank* [\[2017\] ibclaw.in 02 SC](#), held that *the moment Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.*

However, over the period of 4 years, the law has been amended via Ordinances to curb the loopholes

and also to unleash the intention behind the enactment. It has been amended so extensively by Ordinance followed by the amending Act. The Code has undergone changes like applicability of Limitation Act- which otherwise were allowed as not being time barred, inclusion of homebuyers as financial creditors, prohibiting the erring defaulters from re-purchasing the company, Settlement of parties pre and post-admission ; Liberalizing timelines which otherwise were very strict to name a few.

The evolving interpretation of *Stamp duty on instruments* has become the emerging issue wherein fate of Section 7 application to get rejected or admitted is to be seen.

As we experience Section 7 of the Code, which is enabling provision for Financial Creditor to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, it is always tricky for Corporate Debtor to find defense as the Hon'ble Adjudicating Authority judges only two parameters one of debt-default and another of complete application in all respects.

This article attempts to analyse the legal issue of insufficiency in stamp duty impacting validity of the financial contract. One such interesting decision delivered by NCLT, Chandigarh in the matter of ***Edelweiss Asset Reconstruction Company Limited v. M/s Winsome Yarns Ltd (2020)*** [ibclaw.in 147 NCLT \("Winsome"\)](https://www.ibclaw.in/147-NCLT-Winsome/).

Brief facts and Order given by Tribunal

Assignment agreement was entered into between Punjab National Bank (Assignor) and Edelweiss Asset Reconstruction Company Limited (Assignee) (EARCL) with respect to debt and securities of M/s Winsome Yarns Limited (Corporate Debtor). Through assignment agreement, EARCL acquired rights of Punjab National Bank over the Corporate Debtor.

During the course of hearing, one of the contentions taken by Corporate Debtor stated that the assignment deed was insufficiently stamped thereby does not bear any legal validity before the court of law. Stamp duty on various instruments is governed by The Indian Stamp Act, 1899. The objective of the legislation is to make the instrument legally valid and authentic.

In this specific case, office of the Joint Sub-registrar Cum Naib Tehsildar, Mullanpur Dhakkan (Ludhiana) confirmed that the stamp duty paid by EARCL was inadequately paid and ordered to pay Rs. 1,45,85,000/- as remaining amount of stamp duty. In view of the same restraint order was passed by the Chief Controlling Revenue Authority cum Financial Commissioner (Revenue) Chandigarh, Punjab stating that;

...That EARCL has wrongly placed reliance on the purported assignment deed dated 10.2.2015 to project the requisite locus-standi in order to prefer an insolvency petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 bearing C.P. No. (IB) 291 Chd/ CHD/2018 before the Hon'ble National Company law Tribunal, Chandigarh ("NCLT") and is misrepresenting itself as the Financial Creditor of the Plaintiff."...

The concerned authority was of the view that no party can take benefit of the document which is insufficiently stamped and therefore pronounced a restraint order which was duly considered by the Adjudicating Authority. The concerned revenue authority placed reliance on Section 35 of Indian Stamp Act, 1899 which produced here in below'

35. *Instruments not duly stamped inadmissible in evidence, etc.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that—*

(a) any such instrument 65 [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

Tribunal also placed reliance on *SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited*, (2011) 14 Supreme Court Cases 66 and *Garware Wall Ropes Limited Vs. Coastal Marine Constructions and Engineering Limited*, (2019) 4 Supreme Court Cases 2019 or in *Chilakuri Gangulappa Vs. Revenue Divisional Officer, Madanpalle*, Decided on 14.03.2001, Case No. Appeal (Civil) 1800 of 2001 and another, wherein Supreme Court of India while holding that an insufficiently stamped instrument cannot be relied upon for any purpose, however, observed that the concerned court has to follow the procedure provided under the Indian Stamp Act, 1899 for impounding the instrument before permitting a party to enforce the said insufficiently stamped instrument. This observation of the Apex court was not adopted by the Tribunal stating that Adjudicating Authority under the summary procedure provided under the Code cannot adopt such a procedure which is applicable to regular courts of law.

Therefore, as per the provisions discussed above, the assignment deed becomes non-est in the eyes of law and therefore the application was rejected holding EARCL cannot be considered as Financial Creditor as per Section 5(8) of IB Code, 2016.

Contrary View by NCLT, Mumbai

A contrary order given by NCLT in the matter of *L & T Infrastructure Finance Company Limited v. Maharashtra Vidyut Nigam Private Limited (CP (I&B) 593/NCLT/MB/2018)* and *Benett Property Holdings Company Limited v. Brick Eagle Affordable Housing Advisory LLP.(CP (IB) - 1267/I&B/MB/2019)* (“**Mumbai Bench**”)

The above matters deal with the common issue wherein stamp duty was already paid by the Corporate Debtor in Delhi and the contention taken by Corporate Debtor was such that since the execution took place in Maharashtra, stamp duty applicable in Maharashtra State must be paid as per Section 19 of Maharashtra Stamp Act. The challenge made by Corporate Debtor went in vain as the arguments were not considered to be viable as in both the cases variable nature of stamp duty did not stand before the tribunal as a ground for rejection Section 7 application.

Moreover, the tribunal was of the view that the stamp duty was purchased by Corporate Debtor as per Section 29 of Stamp Act and therefore Corporate Debtor has no right to raise the objection of insufficient stamp duty. Also, Maharashtra Stamp Act equally prescribes stamp duty of Rs. 100 as payable on letter of guarantee, hence no differential amount of chargeable duty to be collected. However, the law requires indulgence of appellate authorities to settle the law where the situation of different stamp duty arises and whether such situation amounts to insufficient stamp duty.

Though the above cases have different sets of facts and circumstances, the issue of stamp duty shall

now be open for debate and put to rest by Apex court in times to come.

Analysis and Comparison

The above two orders have different sets of facts and circumstances. Winsome's case involved an order by revenue authority which determined that EARCL cannot be considered as Financial Creditor. It appears that revenue authority acted beyond the jurisdiction to decide *locus standi* of EARCL before NCLT. The only job of revenue authority was to find out whether the deed has been insufficiently stamped. The observation made by the revenue authority created persuasive deduction which further led to dismissal of the case on the ground of non-maintainability. However, the root of the case went into decide stand of EARCL as financial creditor under Section 7 of the Code and due to unenforceable nature of the agreement, the petition was rejected by the tribunal. In such cases, the onus of proving documents as invalid is on the person who is challenging the said document.

The second set of case laws belong to Mumbai bench wherein circumstances differ. Here, it is pertinent to note that the Deed of Guarantee was executed at New Delhi and sufficient stamp duty of Rs.400/- has been paid on it as is also reflected on the said document. Also, the Deed of Guarantee was silent on whom the obligation lies to pay the stamp duty. Therefore, according to Section 29 of The Indian Stamp Act, 1899 wherein it is mentioned that it is for the one executing the instrument to pay the stamp duty, and here, in this matter, it was the Corporate Debtor who was to pay the Stamp Duty because he had executed the said Deed of Guarantee which was in question before this Bench.

In addition, in the cases where stamp duty is equally chargeable; in and outside the state, there will be no differential amount of chargeable duty to be collected. In such scenarios, the contention of Corporate Debtor shall remain vacant. Also, in all three cases, tribunals did not rely upon the judgment of Supreme Court stating the reasons for non-applicability. The issue with respect to insufficient stamp duty requires urgent attention of legislature else in the times to come it shall open "Pandora's box".

Conclusion

The above set of case laws represents two different perceptions for same ground of defense. It is rightly said that the proceedings before Adjudicating Authority are summary in nature however the Tribunal is granted power of Civil Court for proceedings under IB Code as per Section 424 of the Companies Act, 2013 via amendment of 15.11.2016. The issue of agreement being insufficiently stamped is a civil dispute and therefore it shall be interesting to see the debate over tribunal jurisdiction and scope. It shall again be matter of debate that the under stamping has been seen in most of the big ticket size cases. Another aspect is that Supreme Court in the matter of *Chief Controlling Revenue Authority v. Coastal Gujarat Power Ltd (Civil Appeal No. 6054 of 2015 arising out of S.L.P. (C) No. 32319 of 2013)* held that in case of multiple lenders the stamp duty has to be paid as per transaction involved and not instrument wise. The lenders have been following the practice of paying stamp duty on instrument rather than on transactions with each lenders by making a trustee agreement, however the practice and law are different and therefore this burning issue of under-stamping may get coupled with evidence under IB Code to bane the financial creditors.

Disclaimer: The Opinions expressed in this article are that of the author(s). The facts and opinions expressed here do not reflect the views of IBC Laws (<http://www.ibclaw.in>). The entire contents of this document have been prepared on the basis of the information existing at the time of the preparation. The author(s) and IBC Laws (<http://www.ibclaw.in>) do not take responsibility of the same. Postings on this blog are for informational purposes only. Nothing herein shall be deemed or construed to constitute legal or investment advice. Discussions on, or arising out of this, blog between contributors and other persons shall not create any attorney-client relationship.

[Article Dashboard](#)

[Join WhatsApp Channel](#)

[Subscribe Now](#)

[Corporate Plan](#)

[Dashboard/OnePage](#)

[Case Laws Portal](#)

[Bare Acts/Legal Contents](#)

[IBC Commentary](#)

[Arbitration Portal](#)

[Case Citation](#)

[Weekly Bulletins](#)

[Articles](#)

[e-Journals](#)

[Annual Case Digest](#)

[Testimonials](#)

Follow for daily updates:

-  [Facebook](#)
-  [LinkedIn](#)
-  [Telegram](#)
-  [X](#)
-  [WhatsApp](#)
-  [YouTube](#)

[Download Mobile App](#)

[Subscribe Daily Email Newsletter](#)

- - -

Disclaimer: While every effort is made to avoid any mistake or omission, this document including case-summary/brief about the decision/ add. info/headnote/ judgment/order/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this document. The authenticity of this text must be verified from the original source. Read more [here](#).