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SPECIFIC PERFORMANCE OF AN INADEQUATELY STAMPED AGREEMENT

*Mukherji Samrat.*¹

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Case : *AB Private Limited v. CD* ²

Subject : Stamp Duty

Keywords : Third party, interest, stamp duty.

1. AB (**Plaintiff**) approached CD (**Opposite Party**) for purchase of the suit property. CD agreed to sell the same on certain terms and conditions as stipulated in Agreement bearing on-judicial stamp paper of Rs 10/-.

The agreement was entered into and from time to time advances were paid to CD to the tune of Rs. xx against the total consideration of yy. AB as per the terms of the agreement prepared-

(1) requisition on title of the scheduled property and

(2) Deed of Conveyance for approval of BC.

Good relation prevailed between the parties and AB was eager to receive possession upon conveyance. After a span of 4 (four) years, CD all of a sudden revealed his intention to transfer the suit property to any third party other than AB. Hence, it gave rise to a cause of action for filing the Suit.

2. CD appeared in the Suit and filed a Written Objection and Written Statement. CD had taken the plea of the agreement being inadequately stamped and the Suit is barred by limitation and the Suit is bad for defect of parties.

The Defendant had taken resort under Section 23 of the Stamp Act, under Section 16 (c) of the Contract Act and Article 18 of the Limitation Act, Section 230A of the Income Tax Act and Section 40 of the Transfer of Property Act. The Defendant had specifically raised the issue of defect of parties as because the agreement was entered between AB and SR being a proprietorship concern of CD.

Since the Suit was filed against CD, the Defendant came up with a plea of defect of parties. The Defendant, CD, further took the plea under Section

² Case held in the Court of the Learned Civil Judge (Sr. Div.) at Sealdah.

47(A) of the Indian Stamp Act (as amended in 1998) and Section 49 of the Registration Act and resorted to decision (AIR 1929 PC 269). The Defendant further took the plea that the Suit was barred on the Specific Relief Act and also under Section 53(A) of the Transfer of Property Act.

3. AB during the course of argument submitted that the Suit is maintainable in its present form and it is not barred under Limitation Act as time was not essence of the Contract and as per the Agreement. AB had performed his part in entirety leaving CD to comply with its covenants.

Under the Agreement time to time AB has paid CD a substantial amount of money as advance, which CD had duly accepted without any demur and protest. The Learned Court upon hearing the submissions of both the parties at length came to the conclusion that the aspect as regards inadequate stamp duty cannot be raised at the interim stage as it will be evaluated at the time of evidence.

The Learned Court further observed that the Suit is not barred under Order 30 of the Code of Civil Procedure, wherein, the plea for defect of parties was not tenable at the interim stage and last but not the least the Suit was not barred by the Law of Limitation. The Learned Court also further observed that all the evidentiary value of the materials on record of the Suit will be taken up at the time of trial and hence an Order of Temporary Injunction restraining the defendant from alienating the suit property was passed till disposal of the Suit.

End of Document.

SIMPLIFIED EXIT SCHEME

Chowdhury Amarnath.³

Striking of names of Defunct Companies

[Issued by the ministry of Company Affairs, vide No. 17/78/2001 –CL-V. General Circular No. 02/2005 dated 28-01-2005]

Operation of the Scheme:

The Simplified Exit Scheme (SES) 2005 came into operation from 1.02.2005 and continued till 31.07.2005 (now extended to 31.08.2005)

1. Who can apply?

1.1 All defunct companies which are registered under the Companies Act 1956 can apply under this circular, except Section 25 Companies, subject to fulfillment of conditions laid down hereinafter.

1.2 More particularly the following companies are eligible to apply under this scheme:

1.2.1 Companies that did not carry out business at any time.

1.2.2 Companies that carried out some business activity but discontinued the same thereafter.

1.3 Provided that in case of Non-Banking Financial Company (NBFC) as defined under section 45-I (F) of the Reserve Bank of India (RBI) Act, 1934 :

1.3.1 If such NBFC is not registered with the RBI, it will be allowed to avail of this scheme only if it has not carried out any operation or commercial activity since incorporation.

1.3.2 If such NBFC is registered with RBI, it will be allowed to avail of this scheme if no objection from RBI to their availing the exit option under the scheme is obtained and enclosed along with the application.

1.4 Provided further that in case of Collective Investment Management Company as defined in regulation 2(1)(h) of Securities and Exchange Board of India (SEBI) Collective Investment Companies Regulations, 1999:

1.4.1 If such Collective Investment Management Company is not registered with SEBI, it will be allowed to avail of this scheme only if it has not carried out any commercial activity since its incorporation.

1.4.2 If such Collective Investment Management Company is registered with SEBI, it will be allowed to avail of this scheme if no objection from SEBI to their availing the exit option under the scheme is obtained and enclosed along with application.

1.5 Government Companies which have no assets and liabilities may also apply for strike off/removal of name under this scheme provided they comply with other prescribed requirements and submit an approval letter issued by the concerned administrative ministry.

2. How to apply?

2.1 A company desirous of getting its name struck off under this scheme can apply to the Registrar of Companies (ROC) concerned in the form prescribed under the scheme.

2.2 If a validly constituted Board of the Company is in existence, the application is to be supported by a Board Resolution to exit from the ROC.

2.3 The application should be signed by two directors of the Company which will include Managing Director or Whole time Director, if there is one.

2.4 In case of Companies where the number of directors is reduced below quorum fixed by the Act for a meeting of the Board, the continuing directors or directors may act for the purpose of increasing the number of directors to that fixed for quorum in terms of regulations 75 of Table A of Schedule I of the Companies Act 1956 or as per relevant articles of the Company.

2.5 Foreign nationals and Non resident Indians (NRI) may also apply adhering to the procedure laid down in sections 558 of the Companies Act 1956.

3. Affidavit and Indemnity

3.1 The application should be accompanied by an affidavit as mentioned in Para 2 sworn before a Magistrate/ Executive Magistrate / Oath Commissioner / Notary, to the effect that the Company has not carried on any business or the Company did some for a period upto the date (which should be specified) and then discontinued its

operation, as the case may be, and has no assets or liabilities. The draft of the affidavit is as per the draft given in the Circular.

3.2 The application should be further accompanied by an indemnity bond, duly notarized as per the draft given in the Circular, to the effect that should there be any liabilities on the Company, such liability will be met in full by the applicants, even after the name of the company is struck off the register of Companies.

4. Accounts:

4.1 In case of Companies which have not carried out any operations, business or commercial activity since their incorporation and have no financial information to furnish, a declaration by the applicants in the affidavit itself that the company has no assets or liabilities shall be sufficient and there shall be no need to attach separate audited financial statements. If however, such companies have been filing regular financial statement, they should file the financial statement for the latest year prepared upto a period which ended one month preceding the date of application.

4.2 Companies which discontinued their operations after having carried out the same for some period, should file audited financial statement under the Companies Act, 1956 for the period upto which they carried out business provided such business is of one accounting year or more. For a subsequent period, a statement of account as per the format prescribed in the Circular, for the latest year prepared upto a period which ended one month preceding the date of application should be enclosed. Where the period of operation is less than one accounting year, statement of account, as prescribed in the circular is to be enclosed. The application shall also give a declaration that the "Statement of Account" so submitted gives true and fair view of company's financial position specifying the reasons for non-submission of audited financial statement. However if companies wish to voluntarily file regular audited financial statement even for the subsequent period may so.

4.3 For the purpose of this circular, the expression financial statement means balance sheet and the profit and loss account required to be maintained as per the provisions of section 211 of the Companies Act 1956.

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- 4.4 A company shall not be allowed to avail of this scheme in case of any prosecution for non-compoundable offence is pending against the Company. The Company shall declare pending litigation against the Company. However in respect of companies which are involved in compoundable offences under the Companies Act, 1956, the Company will be allowed to avail of the scheme only if the Company files a compounding application first and then applies under this scheme.
- 4.5 The purpose of this scheme is to allow eligible companies to avail of this opportunity to exit from the Registrar of Companies after fulfilling the requirements laid down in the Circular. No penal action would be initiated against the Company availing this scheme from the date of filing of the application for simplified exit. After the Scheme ends, the ministry would take necessary penal action under the Companies Act 1956 against such defunct companies which have not availed of this opportunity and have not complied with the provisions of the Companies Act 1956 or are not filing documents with ROC in a timely manner.
- 4.6 The applicant Company under this scheme would be deemed to be struck off from the Register of Companies from the date of issue of Order/ Notification by the ROC.
- 4.7 An application shall be accompanied with a fee of Rs 3000/- (Rupee three thousand).

End.

HINDU LAW DERELICT AND NEW INHERITANCE LAWS

Roy Santanu⁴

Question: Mr. X is the Karta of a Hindu Undivided Family (HUF). The HUF has ancestral properties. X has three adult sons. Mr. X's wife is also alive. If all the male coparceners decide to partition the property, will Mr. X's wife also get share in the HUF property?

Suggestions:

1. Mr. X being the Karta of a HUF will be governed by the Hindu Succession Act, 1956 (HSA).
2. Firstly it has to be determined that whether the ancestral property

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- contains the whole of the dwelling house or not. If the dwelling house is a part of the ancestral property then such property shall be separated into two parts:
- 2.1 The first part containing the dwelling house only and,
 - 2.2 The second part is the remaining property except the dwelling house.
3. If the ancestral property contains the whole of the dwelling house or has a part then the partition of the dwelling house shall be as follows:
- 3.1 According to section 23 of the HSA the partition of the property shall be with the consent of the three adult sons claiming partition of their dwelling house.
 - 3.2 After approval of the claim for partition Mr. X's wife will get a share of the HUF property as specified in Class I of the Schedule of the HSA.
4. If the ancestral property does not contain a dwelling house then Mr. X's wife can claim for partition under the Hindu Women's Rights to Property Act, 1937 and will get a share of the HUF property as specified in Class I of the Schedule of the HSA.

Legal Developments:

1. The Rajya Sabha on Tuesday, 16th August, 2005, has passed a legislation which provides for giving Hindu women equal rights in inheritance of property. The new law will be unanimously applicable in the country. At present, such a law exist only in five states, together with Kerala, Karnataka, Tamil Nadu, Andhra Pradesh and Maharashtra.
2. The Hindu Succession (Amendment) Bill, 2004, stirred by the law minister H R Bhardwaj, proposes to eradicate discrimination contained in Section 6 of the Hindu Succession Act, 1956 by providing equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have.
3. The Bill received overpowering support from the members who, felt that women have been discriminated over the years. It was passed by voice vote with members terming the move a much needed one to put daughters at par with sons in the family.

4. According to the statement of objects and reasons attached to the Hindu Succession (Amendment) Bill, 2004, Section 23 of the Act disentitled a female heir to ask for partition with respect to a dwelling house wholly occupied by a joint family until male heirs chose to divide their respective shares therein. *The Bill also proposed to omit the section to remove disability on female heirs.*⁵
5. The above proposal for amending it was given by the Law Commission in its 174th Report. The Bill also states that the Act has laid down a uniform and comprehensive system of inheritance.

End.

A DOCUMENTARY ON THE MAJOR ISSUES RELATING TO THE CONCEPT OF STAKEHOLDER AND THE EFFECT THIS HAS ON THE DEVELOPMENT OF GOVERNANCE IN THE UNITED STATES AND JAPAN.

Roy Santanu⁶

Introduction:

Stakeholder comes from the word 'stake'. A stake is an interest or a share in an undertaking or a claim.⁷ Traditionally commentators state that there were two stakeholders – Primary and Secondary stakeholders.⁸ Primary stakeholders had a formal, official or contractual relationship, and all the other stakeholder relationship in an organization were secondary stakeholders.

During the early twentieth century organizations used to adopt Taylor's Principles

⁵ Speech by H R Bharadwaj, law minister.

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⁷ Carroll Archie B. and Buchholtz Ann K. (University of Georgia), *Business & Society – Ethics and stakeholder management* (Fourth ed. 2000, South-Western College Publishing) Ch.3, p.65.

⁸ Carroll A., *Business and Society: Ethics and Stakeholder Management* (1993, South-Western Publishing, Cincinnati) 62.

of Scientific Management⁹ approach, which involved tight policy decisions, division of responsibilities, efficiency related to job description and division of labour. Elton Mayo¹⁰ dealt with organizational structures and came up with more complex management theories relating to human relation at work, human needs and motivation through self development.

Konosuke Matsushita (Japanese Industrialist) challenged the Western model by stating “*We are going to win and the industrial West is going to lose out ...*” Matsushita followed the *Kaizen* formula where there is continuous improvement through challenges, rules and norms. Also they learned from failures and invented new ways of working.¹¹ Japan’s step towards industrial growth may be due to the reputation of the firm, product quality, customer satisfaction and employee loyalty.

W Edward Deming (American academic) during the 1990’s brought the trend of improvement in product quality in companies.¹² This was a significant step towards globalization. IBM’s success story has been due to effective employee and management development as a result of employee training, knowledge and performance.¹³

In 1994 an organization¹⁴ came-up with the scheme of classifying stakeholders into core, strategic and environmental stakeholders. The core and strategic stakeholders are those groups that are essential and vital to the organization. Environmental stakeholders are the remaining stakeholders in a company who are not core and strategic stakeholders.

So let us find out that, is the concept of stakeholder model in an organization necessary?

Thomas Donaldson and Lee Preston¹⁵ developed three values of stakeholder model in a firm. Firstly they state that it is ‘*descriptive*’,

⁹ Taylor F, *Principles of Scientific Management* (1911, Harper and Row, New York).

¹⁰ Mayo E, *The Human Problems of Industrial Civilisation* (1933, Macmillan New York).

¹¹ Matsushita K, *The Matsushita Perspective – A Business Philosophy Handbook* (PHP Institute Inc., Tokyo & New York) Part I&II.

¹² Oakland J. S, *Total Quality Management: Text with Cases* (1996, Butterworth-Heinemann, Oxford).

¹³ Lollins J. C. and Porras I. J, *Build to Last: Successful Habits of Visionary Companies* (1995, Century, Random House, London).

¹⁴ “The Toronto Conference: Reflections on stakeholder theory” [1994 Second Toronto Conference on Stakeholder Theory] (April, 1994) 33(1) *Business and Society* 82-131.

¹⁵ Donaldson Thomas and Preston Lee, “The stakeholder theory of the corporation: Concepts, Evidence, Implications” (1995) 20(1) *Academy of Management Review* 65-91.

which gives an idea of the corporation. It deals with the nature of the organization,¹⁶ the methods managers consider,¹⁷ how the firm works with corporate constituencies¹⁸ and how corporations are controlled.¹⁹ It deals with the associations that are related to the commercial world.

Some recent U.S. Court decisions have damaged the so-called “*Business Judgement Rule*”, which was inclined towards the monetary benefits of the stockholders. In *Unocal Corp. v. Mesa Petroleum Co.*²⁰ and *Unitrin, Inc. v. American General Corp.*²¹ the Delaware Courts required directors to show that a ‘reasonable’ risk persisted before aggressive intimidating takeover offers. In *CTS Corp. v. Dynamics Corp. of America*²² the Supreme Court of the United States held, “... *condition acquisition of control of a corporation on approval of a majority of the pre-existing disinterested shareholders.*” (Indiana Statute). This reasonableness coupled with the impact of a takeover gave rise to the trend towards stakeholder laws in United States. Even if the Corporate Governance model in Japan exists within a strongly linked and consistent set of stakeholders, the concept of stakeholder laws were unfolded.

Secondly stakeholder model is ‘*instrumental*’, because it gives good management practices and aims at growth and financial stability of the organization. Kotter and Haskett²³ states that “... *all managers care strongly about people who have a stake in the business – customers, employees, stockholders, suppliers, etc.*” Kotter and Haskett also observed that successful organizations like Hewlett-Packard and Dayton Hudson – even though different – have a stakeholders’ perception. For example a paper and packaging industry can be weighed down by an environmentalist for its extensive production which led to destruction of the Tropical Rain forest. Kevin Gibson²⁴ is of the view that, stakeholder is an individual or group with power to be a threat or benefit.

¹⁶ Brenner S. N. and Cochran P., “The stakeholder theory of the firm: Implications for business and society theory and research” (1991) *Paper presented at the annual meeting of the International Association for Business and Society, Sandance, UT.*

¹⁷ Brenner S. N. and Molander E.A., “Is the ethics of business changing?” (1977) 58(1) *Harvard Business Review* 54-65.

¹⁸ Wang J. and Dewhirst H. D., “Board of Directors and stakeholder orientation” (1992) 11 *Journal of Business Ethics* 115-123.

¹⁹ Halal W. E., “The new management: Business and social institutions in the information age” (1990) 2(2) *Business in the Contemporary World* 41-54.

²⁰ *Unocal Corp. v. Mesa Petroleum Co.* [1985] Del. Supr. 493 A. 2d 946.

²¹ *Unitrin, Inc. v. American General Corp.* [1995] Del. 651 A. 2d 1361.

²² *CTS Corp. v. Dynamics Corp. of America* [1987] U.S. Supr. 481, 69, 87.

²³ Kotter J. and Haskett J., “Corporate culture and performance” (1992) *New York: Free Press* 59.

²⁴ Gibson Kevin, “The Moral Basis of Stakeholder Theory” (August 2000) 26(3) *Journal of Business Ethics* 245-257, 245.

According to Goodpaster²⁵ “*strategic thinking leads to the elimination of ethics in favour of prudence.*” Goodpaster’s view is true to certain extent when I come across one of the worst industrial accidents in the history of North America – Valdez²⁶ tanker crash in Alaska. Lack of emergency services, risk information exposures, training, management policy (to reduce cost EXXON reduced tanker crews), business practices (Captain of tanker being intoxicated – most unethical behaviour), and many other factors led to the environmental disaster by EXXON.²⁷ Bligh Reef had the highest number of birds and mammals.²⁸ After the crash environmentalist Daw Lawn²⁹ states that “*What surprised me most was the silence.*” EXXON still continues to do good business even today, in spite of ethical miscalculations in the past.

The reconciliation thesis³⁰ holds a contrary view to that of Goodpaster. It states that firms can run well with ethics. Let us take for example the Tylenol Crisis³¹ case, where Johnson & Johnson took out 31 million bottles of Tylenol capsules from the market. This was done in order to trace the bottles where someone has contaminated cyanide. Seven people died of poisoning before the cleaning action could be launched. Johnson & Johnson had to spend \$50 million to save their good will of the company. This is how being ethical saved Johnson & Johnson’s reputation.

Lastly, stakeholder model is ‘*normative*’, for the reason stakeholders’ are acknowledged by their significant contribution to the organization.

To be continued in the next issue...

²⁵ Goodpaster K. and Holloran T., “In Defence of a Paradox” (October 1994) 4(4) *Business Ethics Quarterly* 428.

²⁶ Miller Pamela A. (Artic Connections 3/99), “EXXON VALDEZ OIL SPILL: Ten Years Later” [Technical Background Paper] *Alaska Wilderness League* – Web-link: http://articircle.uconn.edu/SEEJ/Alaska/miller2.htm#_edn10

²⁷ PricewaterhouseCoopers, “Crisis Management: be prepared” (26/04/2002) – Web-link: <http://www.excelior.pwcglobal.com/knowledge/article.asp?artID=992>

²⁸ “Exxon Valdez oil spill: the aftermath” – Web-link: http://nj.essortment.com/exxonvaldezoil_regp.htm

²⁹ Alaska Department of Environmental Conservation, (April 1989).

³⁰ Gibson Kevin, “The Moral Basis of Stakeholder Theory” (August 2000) 26(3) *Journal of Business Ethics* 246.

³¹ Tamara Kaplan (The Pennsylvania State University), “The Tylenol crisis: How Effective Public Relations Saved Johnson & Johnson” – Web-link: <http://www.personal.psu.edu/users/w/x/wxk116/tylenol/crisis.html>