



May 2023

## **Delhi High Court mandates timeline for revenue to complete adjudication of stamp duty**

In the recent decision of *Uno Minda Limited v. Deputy Commissioner, Revenue Department*,<sup>1</sup> the Hon'ble High Court of Delhi (the "Delhi HC") laid down time limits within which adjudication of stamp duty under Section 31 of the Indian Stamp Act, 1899 (as amended by the Indian Stamp (Delhi Amendment) Act, 2001) ("Delhi Stamp Act") must be completed. Placing reliance on the Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011 ("Delhi Act, 2011"), the Delhi HC observed that a "reasonable time ought to be fixed in order to enable the parties to have some certainty as to the stamp duty payable". Accordingly, the Delhi HC directed that the Collector of Stamps (the "Collector") must adjudicate the stamp duty payable and communicate the same to parties within 30 (thirty) days. The Delhi HC also held that: (a) the adjudication may be completed in a period of 3 (three) months if it involves some complexity or extraordinary circumstances; and (b) this timeline must operate until a specific entry fixing the time limit for adjudication of stamp duty is added in the Delhi Act, 2011 by the Government of NCT of Delhi.

### **Brief Facts**

The Delhi HC was dealing with 2 (two) writ petitions seeking directions to the Collector for adjudicating the stamp duty payable in their respective cases. The first writ<sup>2</sup> concerned adjudication of stamp duty in relation to a scheme of amalgamation that had been sanctioned by the National Company Law Tribunal in 2021, while the second<sup>3</sup> concerned stamp duty payable on issuance of share certificates following conversion of debentures in 2022.

In both the writs, the petitioners had applied for adjudication for stamp duty under Section 31 of the Delhi Stamp Act since Schedule 1-A did not provide any specific entry fixing the stamp duty for the concerned instruments. The determination of stamp duty had not been communicated to the petitioners, despite the applications for adjudication having been pending for more than a year.

### **Analysis and findings**

The Delhi HC observed that:

1. Under Section 32 of the Delhi Stamp Act, an instrument executed in India that was chargeable with stamp duty was required to be brought before the Collector within a month of its execution. However, there is no provision fixing the time within which the Collector is required to actually adjudicate the stamp duty payable.

<sup>1</sup> Judgment dated April 24, 2023 reported as 2023:DHC:3094.

<sup>2</sup> Writ Petition (Civil) 5148/2023.

<sup>3</sup> Writ Petition (Civil) 5160/2023.

2. Various statutes prescribe time limits within which an instrument of transfer is required to be registered. For instance, under Section 56 of the Companies Act, 2013, a company is required to register a transfer of shares and complete delivery thereof within 2 (two) months from the date of allotment. However, such registration cannot take place unless the instrument of transfer is *inter alia* duly stamped.
3. The need for obtaining citizen-related services in a time bound manner is recognised under the Delhi Act, 2011, which provides for time limits within which various government departments/ organisations are required to provide their services. As per Section 3 read with Entry 331 of the Schedule, the Revenue Department is required to complete registration of documents within 15 (fifteen) days from receipt of the requisite application. As such, there is an expectation for a citizen to obtain time bound delivery of services.
4. Activities of individuals and companies are dependent upon various documents, instruments of transfer, etc. Where the applicable stamp duty is not predetermined under the Delhi Stamp Act, the first step for these individuals and companies would be to apply for adjudication under Section 31.
5. Stamp duty is an important source of revenue for the government and unnecessary delay in adjudication would not be in the public interest.

Having regard to the above, the Delhi HC decided in favour of the petitioners and held that:

1. The Delhi Act, 2011 must be implemented in letter as well as spirit and a time limit would be required to be followed by the Collector for adjudication of stamp duty.
2. The Collector shall adjudicate the stamp duty payable and communicate the same to parties within 30 (thirty) days of receipt of application. If any complexity or extraordinary circumstances are involved in the adjudication, the same may be completed within a maximum period of 3 (three) months from the date of the adjudication application.
3. The timeline fixed by the Delhi HC shall remain operative till a specific entry fixing the time limit for adjudication of stamp duty is added in the Schedule to the Delhi Act, 2011.

## JSA Comment

The Delhi HC's decision is undoubtedly a welcome move. Delays in adjudication of stamp duty constitute a perennial problem – in the absence of any mandatory time period within which the adjudication is to be completed, Revenue Departments of different states in the past have taken anywhere between 1(one)<sup>4</sup> to 20(twenty)<sup>5</sup> years for passing orders of adjudication under Section 31. For more complex instruments, such as orders sanctioning schemes of arrangement, the situation is equally, if not more, stark. As per our own experience, the Revenue Department of the Government of Delhi has – in some cases – taken nearly 3 (three) years for determining and communicating the stamp duty payable on sanctioned schemes of arrangement.<sup>6</sup> The time-consuming nature of stamp duty adjudication was also recently decried before the Hon'ble Supreme Court by the *amicus* in *NN Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*<sup>7</sup>

Such a situation not only torments private parties, whose commercial activities suffer delay due to no fault of their own, but also adversely impacts the public exchequer. Each year, the Comptroller and Auditor General (CAG)

<sup>4</sup> See *Shobha Shreshtha v. Govt. of National Capital Territory of Delhi*, (2015) 217 DLT 220; *Nestor Builders & Developers Pvt. Ltd. v. State of Maharashtra*, (2015) 6 Bom CR 190.

<sup>5</sup> See *Tardeo Properties Private Ltd. v. State of Maharashtra*, 2015 SCC OnLine Bom 6544.

<sup>6</sup> Historically, there has been debate as to whether stamp duty would be payable on schemes of arrangement. While several states (such as Karnataka, Maharashtra, and West Bengal) included specific entries in their respective stamp laws to address this confusion, no such amendment has been made in the Delhi Stamp Act. However, since the decision of the Delhi HC in the case of *Delhi Towers Ltd. v. GNCT of Delhi*, (2009) 165 DLT 418, it stands settled that orders sanctioning schemes of arrangement which have the impact of transferring the assets, properties and liabilities of a transferor to a transferee are exigible to stamp duty.

<sup>7</sup> 2023 SCC OnLine SC 495. However, the Hon'ble Supreme Court was not impressed with the argument that adjudication of stamp duty payable is a time-consuming affair and went on to hold that stamp duty is required to be paid even on arbitration agreements.

Departments of various states report losses of crores of rupees owing to delays and lapses in levy and collection of stamp duty.

In this backdrop, we feel that the decision of the Delhi HC is a much-needed step in the right direction. It realigns the provisions of an archaic law with the practical realities of the present, and in doing so, provides redress to private entities as well as the State. It may be apposite to add a sanguine hope that the prescribed timelines are duly complied with, and that the same may also be implemented in the stamp laws of other states.

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