



## The Viewpoint

# Delhi High Court ends uncertainty of stamp duty on mergers involving wholly-owned subsidiaries

*The Delhi High Court's judgment in Ambuja Cements Ltd v. Collector of Stamps, Delhi brings much-needed clarity to the stamp duty implications of such mergers in Delhi.*



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## Law in brief

The general principle with regard to stamp duty is that duty is determined with reference to the instrument and not with respect to the transaction. With regard to the imposition of stamp duty on schemes of arrangement and amalgamation sanctioned by the High Courts / National Company Law Tribunal ("NCLT") (as the case maybe), there was a considerable ambiguity in relation to the same, due to the absence of a specific entry in the Indian Stamp Act 1899 as applicable to certain States. However, the Supreme Court in [\*Hindustan Lever\*](#)

*vs State of Maharashtra (AIR 2004 SC 326)* settled this ambiguity by observing that the amalgamation scheme sanctioned by the Court would be an "instrument", with respect to the Maharashtra Stamp Act, 1958. This principle has since been applied to other stamp duty provisions across various States, where schemes sanctioned by the Court are now treated as "instruments" subject to stamp duty.

While some States have amended their laws to explicitly include court-sanctioned schemes under "conveyance," the Indian Stamp Act, 1899, and some State laws, like Delhi, have not updated the definition of "conveyance" to include mergers / demergers. This has led to inconsistencies in applying stamp duty on orders sanctioning such merger / demerger across different jurisdictions.

## **Stamp duty on mergers in Delhi: Delhi Towers judgment**

The Delhi High Court, relying on *Hindustan Lever vs State of Maharashtra*, held in *Delhi Towers Ltd vs. GNCT of Delhi ([2010] 159 CompCas 129 (Delhi))*, that an order of the High Court approving a scheme of amalgamation would be subject to stamp duty even in the absence of an express inclusion of such orders within the definition of "conveyance".

## **Stamp duty on specific mergers: 1937 Central Government notification**

While the judicial decisions have provided necessary clarity in relation to the treatment of mergers for imposition of stamp duty, Notification no. 13 dated December 25, 1937 issued by the Central Government ("1937 Notification"), however, provides for the exemption of stamp duty in cases of wholly owned subsidiary merging into its holding company and cases similar to the same. The 1937 Notification provides for three cases, which are exempted from the imposition of stamp duty -

*"...(i) where at least 90 per cent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or*

*(ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other: or*

*(iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company..."*

## **Ambiguity in relation to the adoption of 1937 Notification by various States**

There is considerable ambiguity regarding the adoption of the 1937 Notification, as some States have neither explicitly adopted nor repealed it. For example, Haryana has enacted merger provisions under the conveyance article and imposed stamp duty on mergers and repealed the 1937 Notification, while States like Rajasthan and Gujarat have enacted their own Stamp Acts, thereby repealing all prior notifications not covered under their specific Stamp Acts. In contrast, Uttarakhand and Uttar Pradesh have neither addressed mergers specifically nor enacted a State Stamp Act, leaving the applicability of the 1937 Notification unclear.

While judicial scrutiny, particularly the *Delhi Towers Ltd* judgment, has supported its applicability, the Lieutenant Governor of the National Capital Territory of Delhi vide its notification No. F.1(423)/ Regn.Br./ HQ/ Div.Com./ 10 dated June 1, 2011 withdrew an earlier form of the 1937 Notification dated Notification No.1 dated January 16, 1937 which was already superseded by the 1937 Notification. Therefore, due to the ambiguity in the applicability of the 1937 Notification, the Delhi's stamp authorities have erroneously sought to impose stamp duty on mergers involving a wholly owned subsidiary (WOS) merging into its parent company. However, in such mergers, no new shares are issued by the WOS; instead, the shares held by the parent company are cancelled. Despite this, the revenue authorities attempted to levy stamp duty on the value of cancelled shares, which has no legal basis under the 1937 Notification.

## **Recent decision by the Delhi High Court: Ambuja Cements Ltd v. Collector of Stamps, Delhi**

On November 6, 2024, the [Delhi High Court](#) in the case of [\*Ambuja Cements Ltd v. Collector of Stamps, Delhi \(W.P. \(C\) 5638/2014 and CM Appl. 13964/2014\*](#) ("**Ambuja Cements Judgment**") upheld the enforceability of the 1937 Notification in Delhi, ruling that a merger between two wholly owned subsidiaries of a common parent company falls within its scope and is, therefore, exempt from stamp duty.

The factual matrix involved a merger of Ambuja Cements India Private Limited ("**ACIPL**") - a 100 per cent subsidiary of Holderind Investments Ltd., Mauritius ("**Holderind**") which held 55 per cent shares of ACIPL directly and the remaining 45 per cent shares were held by Holcim (India) Private Limited ("**Holcim**") - with Holcim (a wholly owned subsidiary of Holderind).

ACIPL did not have any immovable property at that time and the only movable property held by ACIPL was its shareholding in ACC Limited ("**ACC**") and Ambuja Cements Limited ("**ACL**") in dematerialized form. Upon approval of the merger, Holcim issued 353,84,08,355 equity shares to the shareholders of ACIPL in accordance with the share exchange ratio and ACIPL was dissolved without winding up. The board of directors also authorized issuance of share certificate bearing no.12 to Holderind.

The Collector of Stamps, Delhi had issued notices in 2014 seeking stamp duty payment on the merger order and the issuance of shares, but the Delhi High Court quashed this contention, affirming that the merger was covered under the 1937 Notification and therefore exempt from stamp duty.

This matter has been pending adjudication since 2014, and until recently, the Collector of Stamps had not acted on stamp duty matters involving mergers of a wholly owned subsidiary with its parent company, likely due to the ongoing legal uncertainty surrounding the enforceability of the 1937 Notification in Delhi.

## Impact and Implication

The rationale behind the 1937 Notification is sound - when a WOS merges with its parent or two WOS of the same parent merge with each other, there is no material change in the parent company's financial position. This is because the WOS's financials are already consolidated in the parent's books. Further, in the case of a WOS merging into its parent, no specific consideration is payable, which further justifies the exemption from stamp duty. This principle is also recognised in the Income Tax Act, 1961, where Section 47 clarifies that transfers between a parent company and its wholly owned subsidiary (or vice versa) are not regarded as transfers (subject to certain conditions).

The *Ambuja Cements Judgment* brings much-needed clarity to the stamp duty implications of such mergers in Delhi. Prior to this judgment, the lack of a clear adoption or repeal of the 1937 Notification in Delhi left mergers involving WOSs at the discretion of the stamp authorities, who erroneously sought to levy stamp duty on mergers involving WOSs by imposing duty on the value of the shares cancelled in the merger, a practice that lacked any legal basis. However, with the Delhi High Court's judgment explicitly upholding the 1937 Notification, the matter has now been conclusively resolved. Any merger falling within the scope of the 1937 Notification will now be exempt from stamp duty in Delhi, thus eliminating the previous uncertainty and ensuring greater clarity for mergers of WOSs with their parent companies.

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Stamp duty

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Stamp Duty on Mergers

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