

**LEX NEWSLETTER ZONE**

**Banking & Finance Bytes**

- ~ In cheque bounce cases there is no requirement that the complainant must declare his income so far as offences under section 138 of the Negotiable Instruments Act is concerned Introduction of Section 143A in the Negotiable Instruments Act, 1881.
- ~ Fair market value of the subject property is required in cases wherein execution proceedings are instituted by court for auction of property.
- ~ Amendment to FEM (Deposit) (Amendment) Regulations 2018 i.e FEMA 5(R)(1) and GSR No 1093(E) dated November 9, 2018 by the Reserve Bank of India.
- ~ Agricultural land is also included as a preferential right of heirs under Section 22 of the Hindu Succession Act.
- ~ State government should not act on the Amendment Act, if the same goes against the order of the Supreme Court.

✚ **In cheque bounce cases there is no requirement that the complainant must declare his income so far as offences under section 138 of the Negotiable Instruments Act is concerned <sup>1</sup>**

**-Vaidya, Associate.**

In a recent order of the High Court of Madhya Pradesh dated March 7, 2019 it was held that non filing of Income Tax Returns would not infer

<sup>1</sup>[https://www.livelaw.in/pdf\\_upload/pdf\\_upload-359293.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-359293.pdf)

that the Complainant did not have any source of income and that the same cannot be applied in the present matter relating to loan transaction. The Revisioner had defaulted in payment of loan amount to the Respondent/ Complainant. The facts of the case were such that the Revisioner availed loan of INR 10,00,000 from the Respondent/ Complainant and later issued a cheque for disbursement of the said amount. The Respondent upon encashing the cheque received a message stating that the said account has been blocked and upon notice to the Revisioner received a reply stating that the person has left the premises. Thereafter the Respondent/ Complainant filed a case before the trial judge under section 138 of the Negotiable Instruments Act to recover the loan amount and had obtained order in favour of him wherein the Trial Court by order directed the Revisioner to pay compensation of INR 12, 69, 000 to the Complainant. That upon appeal before the Appellate court the Revisioner's case was dismissed upholding the Trial Court's order. Subsequently the present Revisioner filed appeal before the Madhya Pradesh High Court wherein she had taken a stand that the Respondent/ Complainant did not file income tax returns hence it could be presumed that the Respondent/ Complainant did not have any income in the first place so as to provide loan amount to the Revisioner. The contention of the Revisioner was dismissed by the High Court stating that non filing of I T returns itself does not construe no source of income and that the Complainant did not file the same as per his statement due to the fact

that his income was not taxable thereby dismissed the claims of the Revisioner and directed him to pay Rs. 12, 69, 000/- (Rupees Twelve Lakhs Sixty Nine Thousand only) with 9 percent interest from the date of issuance of cheque till the date of delivery of the trial court order.

✚ **Fair market value of the subject property is required in cases wherein execution proceedings are instituted by court for auction of property<sup>2</sup>**

-Vaidya, Associate.

As per order dated March 27, 2019 by the High Court of Bombay in an execution application had clarified the market value of the property is the predetermined price fixed by them in order to receive bids in an auction for sale of the properties by the governmental bodies. As per the facts of the case, the property in subject matter of the dispute failed to be sold despite being auctioned thrice by the authorities. The decree holders offered a price of INR 15,30,00,000 and were required to deposit an amount of INR 5,40,00,000 and thereafter their bid was accepted. Upon completion of sale, the decree holders were to be issued sale confirmation certificate whereby the direction for registration was to be issued by the Stamp Duty Authorities to register the sale certificate but the Collector of Stamp Authorities valued the property at INR 15,30,00,000. It was observed before the Hon'ble High Court that the Collector of Stamp Authorities is required to determine the true market value of the property as laid down in the Maharashtra Stamp (determination of True Market Value of the Property) Rules 1995. Therefore the High court was of the view that the Collector has reason to believe that the amount mentioned in the instrument is incorrect and therefore can carry out an enquiry to determine the market value of the property as per the Market Value Rules. It was further held that if the final sale price, i.e., if the final bid, is

<sup>2</sup> [https://www.livelaw.in/pdf\\_upload/pdf\\_upload-359641.pdf](https://www.livelaw.in/pdf_upload/pdf_upload-359641.pdf)

higher than the valuation, then the final bid amount and not the valuation will be taken as the current market value for the purposes of stamp.

In cases, where there are multiple valuations obtained, then the highest of the valuations most recent, i.e., most proximate in time to the actual sale, should be taken as the current market value.

✚ **Amendment to FEM (Deposit) (Amendment) Regulations 2018 i.e FEMA 5(R)(1) and GSR No 1093(E) dated November 9, 2018 by the Reserve Bank of India<sup>3</sup>**

-Akshay Ramesh, Associate.

On March 29, 2019, the Reserve Bank of India ("RBI"), amended the FEM (Deposit) (Amendment) Regulations 2018 i.e FEMA and GSR No 1093(E) dated November 9, 2018 wherein the authorised dealers were given the right to allow a Foreign Portfolio Investor ("FPI") and a Foreign Venture Capital Investor ("FVCI"), registered with the Securities Board of India ("SEBI") to open and maintain a non-interest bearing foreign currency account for the purpose of making investment in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, as amended from time to time.

The authorised dealers may open only one Non-Resident Ordinary ("NRO") Account for a citizen of Bangladesh or Pakistan, belonging to minority communities in those countries, namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, residing in India and who has been granted a Long Term Visa ("LTV") by the Central Government. The account will be converted to a resident account once such a person becomes a citizen of India within the

<sup>3</sup><https://www.livemint.com/Companies/QK3GfXmcLUUpZA8PJvNomJ/Lok-Sabha-passes-IBC-amendments-in-relief-to-home-buyers.html>

meaning of the Citizenship Act, 1955. This account can also be opened if such person has applied for LTV which is under consideration of the Central Government, in which case, the account will be opened for a period of six months and may be renewed at six monthly intervals subject to the condition that the individual holds a valid visa and valid residential permit issued by Foreigner Registration Office ("FRO")/ Foreigner Regional Registration Office ("FRRO") concerned. The opening of such NRO accounts will be subject to reporting of the details of the accounts opened by the concerned Authorised bank, to the Ministry of Home Affairs on a quarterly basis. The report shall contain details of (i) name/s of the individual/s; (ii) date of arrival in India; (iii) Passport No. and place/country of issue; (iv) Residential Permit/Long Term Visa reference and date & place of issue; (v) name of the FRO/FRRO concerned; (vi) complete address and contact number of the branch where the bank account is being maintained. The Head Office of the AD bank shall furnish the above details on a quarterly basis to the Under Secretary (Foreigners), Ministry of Home Affairs, NDCC-II Building, Jai Singh Road, New Delhi – 110 001. AD banks are advised to ensure strict compliance to these instructions.

It has further stated that SNRR accounts cannot be held for more than 7 years. It has now been decided that SNRR accounts opened by person resident outside India may remain operative beyond the stipulated period of seven years with RBI approval. Further, the restriction of seven years will not be applicable to SNRR accounts opened by person resident outside India who are registered with SEBI and wish to make investment in India in accordance with Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, as amended from time to time.

The notification also stated that Escrow Accounts can be opened by residents and non-residents for acquisition/transfer of capital instruments/convertible notes and can also be funded by guarantee(s)

✦ **Agricultural land is also included as a preferential right of heirs under Section 22 of the Hindu Succession Act.<sup>4</sup>**

-Akshay Ramesh, Associate.

The Supreme Court held that the preferential right given to an heir of a Hindu under Section 22 of the Hindu Succession Act is applicable even if the property in question is an agricultural land. The Himachal Pradesh High Court had held that Section 22 does not exclude interest in agricultural land and that the heir has preferential right over such land. This judgement was impugned before the Apex court in Babu Ram vs. Santokh Singh.

Section 22 provides that when an interest in any immovable property of an intestate devolves upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

The Apex Court bench noted that the matter relating to succession to an interest in agricultural lands is occupied only by Section 22 of the Hindu Succession Act insofar as State of Himachal Pradesh is concerned. It also observed that, with the deletion of Section 4(2) of the Act, now there is no exception to the applicability of Section 22 of the Act. The Section 4(2), which provided that provisions of the Act would not apply in cases inter alia of devolution of tenancy rights in respect of agricultural holdings, stands repealed.

The court said that if the source of title or interest in agricultural land of heirs, is purely

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<sup>4</sup><http://lobis.nic.in/dhir/dhc/VSA/judgement/09-07-2018/VSA09072018CRLA9652016.pdf>

through the succession conferred by the provisions of the Act, the manner in which said right can be exercised has also been specified in the very same legislation. The bench said:

"When the Parliament thought of conferring the rights of succession in respect of various properties including agricultural holdings, it put a qualification on the right to transfer to an outsider and gave preferential rights to the other heirs with a designed object. Under the Shastrik Law, the interest of a coparcener would devolve by principles of survivorship to which an exception was made by virtue of Section 6 of the Act. If the conditions stipulated in Section 6 were satisfied, the devolution of such interest of the deceased would not go by survivorship but in accordance with the provisions of the Act. Since the right itself in certain cases was created for the first time by the provisions of the Act, it was thought fit to put a qualification so that the properties belonging to the family would be held within the family, to the extent possible and no outsider would easily be planted in the family properties. In our view, it is with this objective that a preferential right was conferred upon the remaining heirs, in case any of the heirs was desirous of transferring his interest in the property that he received by way of succession under the Act."

The bench also over-ruled decisions of the High court by virtue of an illustration on how right of pre-emption would work.

Three persons, who are unrelated to each other, had jointly purchased an agricultural holding, where after one of them wished to dispose of his interest. The normal principle of pre-emption may apply in the matter and any of the other joint holders could pre-empt the sale in accordance with rights conferred in that behalf by appropriate State legislation.

If those three persons were real brothers or sisters and had jointly purchased an agricultural

holding, investing their own funds, again like the above scenario, the right of pre-emption will have to be purely in accordance with the relevant provisions of the State legislation.

However, the very same three persons in illustration had inherited an agricultural holding and one of them was desirous of disposing of his or her interest in the holding, the principles of Section 22 of the Act would step in.

✦ **State government should not act on the Amendment Act, if the same goes against the order of the Supreme Court.<sup>5</sup>**

**-Akshay Ramesh, Associate.**

The Apex Court had passed an order permitting the construction in the forest area and Punjab Land Preservation Act, 1900 region. However, the State of Haryana has made certain amendments in Punjab Land Preservation Act, 1900, in order to get rid of the said order. The Court criticized the government and ordered that the government shall not act on the amendment act against the order of the government, even if the amended act is passed in the legislative bodies of the state.

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<sup>5</sup><https://www.livelaw.in/top-stories/sc-asks-haryana-govt-not-to-act-under-plpa-amendment-143296>

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