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**OFFICE OF THE COLLECTOR OF STAMPS
(GOVT. OF NCT OF DELHI)
DEPARTMENT OF REVENUE,
5, SHAMNATH MARG, DELHI-54**

In re : M/s. City Financial Consumer Finance India Ltd.
Regd. office : 3, LSC, Pushp Vihar, New Delhi.

Sub. : Evasion of payment of requisite stamp duty on the issue/allotment of shares.

1. Vide notice no. F.audit/stamp duty/shares/10/1969 dated 05-03-2013 a notice to show cause for non-payment of stamp duty chargeable on the equity shares, was issued to City Financial Consumer Finance India Ltd. (hereinafter referred as the company) calling upon them as to why prosecution may not be directed against the company under the Indian Stamp Act for evading payment of stamp duty.
2. In response thereof the company delivered a letter dated 15-03-2013 submitting therein that in response to similar notice in November, 2011 of the predecessor in office some documents were furnished copies of which were again submitted which included a covering letter received in the office on 11-11-2011 alongwith copies of (i) share certificate bearing no.29 dated 31-12-2008 evidencing allotment of shares to M/s. Associates Financial Services (Mauritius) LLC, of the value of Rs.3,87,31,85,000/-, (ii) certificate no.30 dated 19-03-2009 allotting shares to M/s. Associates Financial Services (Mauritius) LLC, valuing of Rs.1,55,74,69,920/-, (iii) certificate no.31 dated 25-06-2009 allotting shares to M/s. Associates Financial Services (Mauritius) LLC, valuing of Rs.1,41,91,25,010/- and (iv) certificate no.32 dated 27-11-2009 allotting shares to M/s. Associates Financial Services (Mauritius) LLC, valuing of Rs.2,88,53,79,060/-. So far as allotment of share vide certificate no.27 dated 29-03-2006 evidencing allotment of shares to M/s. Associate Financial Services (Mauritius) of the value of Rs.4,44,12,89,700/- and certificate no.28 dated 09-07-2007 evidencing allotment of shares to M/s. Associate Financial Services (Mauritius) of the value of Rs.4,08,67,44,200/- it was clarified by the company that photocopies of the share certificates are not traceable though, the particular, were mentioned as extract.

*Recd
m/s. City
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3. Further reply dated 19-03-2013 was furnished by the company submitting therein that since the company issued share certificates in the State of Haryana, it is liable to stamp duty in accordance with the provision of the law applicable in the State of Haryana and not as per the law applicable in Delhi where the registered office of the company is situated. It was the specific stand of the company that resolution pertaining to allotment of shares was passed in the meeting of Board held in Haryana. It was submitted that since in Haryana the stamp duty on share certificate is Rs.1/- per certificate hence, no violation of the act has been committed as revenue stamp of the denomination of Rs.1/- per certificate was affixed.
4. (Vide another letter dated 23-03-2013 the company also furnished legal opinion sought by it on this issue from Mr. Justice Mukul Mudgul, Former Chief Justice of Punjab & Haryana High Court.
5. Apart from direction of general nature dated 22-03-2013 from this office calling upon the company to file all the relevant documents, vide specific direction dated 23-04-2013, the company was directed to furnish the following documents :-
 - a) Register of members maintained under section 150 of the Companies Act.
 - b) Minutes of the meeting governing resolution for increase/issue of authorized/paid up capital and allotment of shares.
 - c) Duly stamped share certificates.
 - d) Certificate of the auditor/chartered accountant that requisite stamp duty was paid on the share capital/allotment of shares/issue of share certificates with proof of such payment.
6. As per section 3 of the Indian Stamp Act (hereinafter referred to as the Act) every instrument mentioned in the schedule is chargeable with the duty of the amount indicated therein as the proper duty. The duty is payable in accordance with section 10 of the Act by means of stamps indicated on the instrument. The term stamp has been defined under section 2(26) meaning thereby any mark, seal or endorsement and includes an adhesive or impressed stamp for the purpose of duty chargeable under the Act

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7. Article 19 of the schedule-IA of the Stamp Act (as applicable to Delhi) governs payment of proper duty on the instruments evidencing the right or title of the holder thereof or any other person to any share or stock in any incorporated company or body corporate or to become proprietor of share or stock of any such company or body. The proper stamp duty payable in all such instrument is Rs.1/- for every Rs.1000/- or part thereof of the value of the share or stocks.

8. Perusal of the law pertaining to stamp duty, some of which indicated hereinabove shows that stamp duty is payable only on the instrument, which in the present case is the share certificate. The specific stand of the company is that since the Board has passed the resolution pertaining to allotment of shares in the State of Haryana and not at the place of its registered office in Delhi hence, the duty is payable only as per the law applicable in Haryana. It is their further stand that the certificates of share were issued at Haryana to the allottee hence, the rates of stamp duty applicable in Delhi are not attracted.

9. (As the stamp duty is payable only on the instrument hence, the place where the resolution by the Board of Director is passed is not relevant. When the Board of a registered company passes a resolution at any place for allotment of shares, the instrument i.e. a share certificate is not in existence. The instrument of share certificate came into existence only when in terms with resolution, the application for allotment of share is allowed followed by entry in the register of members on payment of consideration. It is only thereafter, the share certificate is prepared and its particulars are entered in the register of allotment of shares which is again maintained only at the registered office. When the necessary particulars of the share certificate are entered in the register of allotment of share, the share certificates is ready to be issued/delivered but not before signed by the authorized officer under the common seal of the company. The common seal of the company is maintained only at the registered office. Any share certificate issued without the common seal of the company is an incomplete instrument. Hence, the place at which the instrument i.e. share certificate is executed is the place where statutory formalities are completed which could be possible at the registered office of the company where such statutory records are prepared, maintained and entered into in terms with the provisions of the Companies Act, 1956 before delivering the certificate to the allottee. Certain records are required to be maintained and kept only at the registered office, which include the

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register of member, register of allotment of share and register of share certificate. Hence, the place of the meeting of the Board allotting share has no relevance so far as the instrument of share certificate and the payment of stamp duty on the execution of the share certificate is concerned.

10. Even though the company has produced photocopies of share certificates bearing no.29 to 32 at the foot of which written 'given under the common seal of the company at Gurgaon (Haryana) this 31st day of Dec.-2008 & 19.03.09 & 25.06.09', the authenticity of the same is doubtful in as much as there is no common seal appearing on the certificate. That apart, on the top of the alleged share certificates, alongwith the name of the company the address is mentioned as 3, LSC, Pushp Vihar, New Delhi. No such particular address of Haryana is appearing anywhere on the face of the certificate. Despite general and specific direction, the company has not produced any copy of the resolution pertaining to allotment of shares to M/s. Associates Financial Services (Mauritius) LLC, governing share certificate no.27 to 32. The company is bound to maintain its records particularly for atleast eight years as per section 209 of the Companies Act. Still the records of relevant Board resolution have not been produced. It is interesting to note that even though such records are mandatorily required to be maintained, it is the stand of the company that copies of share certificate no.27 & 28 evidencing allotment of share to M/s. Associate Financial Services are not traceable.

11. Hence, I am of this prima-facie view that the company M/s. City Financial Consumer Finance India Ltd., having its registered office : 3, LSC, Pushp Vihar, New Delhi has indulged in evasion of stamp duty to the value of Rs. 973515899/- calculated at the rate of Rs.1/- per thousand on the aggregate value of the shares certificate bearing no.27 to 32 as per the value mentioned therein consolidated value of which is Rs. 9735159/- and thus liable to be prosecuted under the section 62 of the Indian Stamp Act. In terms with section 70 of the said Act, I hereby accord sanction to prosecute the company, Managing Director and all its other Directors existing as well as those Directors appointed during the relevant period between 2007 to 2009.

[Handwritten Signature]
8/8/2017

COLLECTOR OF STAMPS
(Govt. of NCT of Delhi)

**GOVERNMENT OF THE NCT OF DELHI
OFFICE OF THE DIVISIONAL COMMISSIONER: DELHI
5-SHAM NATH MARG: DELHI-11054**

F.10(11755)/COS(HQ)/CD | 9292

DATE: 26/9

Present: Mr. Milan Vora, CA, of the company.

Vide this order I shall determine and adjudicate the application filed by M/S. Go Airlines Private limited having its registered office at 33, Lawrance Road Industrial Area, New Delhi – 110 035 for stamp duty payable on the algamation/ merger of the companies namely Botanium Ltd. and Go Air Lines India Ltd. Both of the above said companies filed a company petition before the Company Judge, Delhi High Court Delhi seeking sanction of scheme of amalgamation of M/s. Botanium Ltd. to M/s. Go Air Lines India Ltd. The scheme of amalgamation is considered as an instrument and considering the transfer of the company /concern as conveyance, stamp duty @ 3% is payable on the value of the consideration.

The Ld. High Court of Delhi approved the scheme of amalgamation and as per the law, since stamp duty is payable on the valuation the same is to be adjudicated.

It is submitted by the representative of Go Air Lines India Ltd. that 7,60,100 shares have been allotted by the transferee company i.e. M/s. Go Air Lines India Ltd. to the share holders of the transferor company M/s. Botanium Ltd. Strong reliance is placed on the certificate of the Chartered Accountant issued by M/s. Bansi S. Mehta & Co., Mumbai bare perusal of which reflect that the net worth value of M/s. Botanium Ltd. was Rs.54,88,58,800/- while the value per equity share determined as Rs.722/- as on the appointed date. In other words the value of the going concern determined as per the certificate is Rs.54,88,58,800/-, to be passed to the transferee company M/s. Go Air Lines India Ltd.

transferee company has agreed to issue 7,60,100 shares. It is submitted that the value of each share of Go Air Lines India Ltd. on the appointed day was rupees (-)64.73 only. It is thus the case of the applicant/transferee company that they were into loss having no positive net worth value on the appointed date. It is submitted by them that even though the share value of the transferee company on the appointed date was rupees -64.73 per equity share, they are taking the face value of Rs.10/- as the value per equity share thus the total value according to them comes to Rs.76,01,000/- on which the duty payable is worked out to be Rs.2,28,030/-, which they are agreeable to pay. The applicant relies upon the case titled Delhi Tower Ltd. Vs. NCT of Delhi, which according to them is based upon Supreme Court judgment in the case Hindustan Lever Ltd. Vs. State of Maharashtra. In nut shell it is the argument of the applicant that it is not the value of the transferor company determined as on the appointed date but the value the transferee company has agreed to pay should be taken into consideration. Since, the transferee company was into losses having value of their per capita share of rupees -64.73 and they having agreed to issue shares numbering 7,60,100 to the share holders of the transferor company as per the scheme approved by the court, it is that value which should be taken in to consideration. As, the per capita share of the transferee company was only rupees -64.73, taking the face value of the share as Rs.10/- the total value comes to 76,01,000/-. It is their submission that the calculation of stamp duty should be based on the shares allotted and issued by the transferee company to the share holders of the transferor company and the valuation would be on the basis of share exchange ratio and not by valuing the assets and liabilities separately.

As per the judgment of the Hon'ble Delhi High Court in Delhi Towers Limited Case that in the absence of any specific entry in the Stamp Schedule as applicable to Delhi, definition of Conveyance in the India Stamp Act covers the activity of amalgamation of two or more companies and therefore, same entry as applicable to Conveyance i.e. entry 23 of Schedule 1-A would be applicable to the order of amalgamation. The term "conveyance" as defined in the Stamp Act as under:-

"Section 2 (10) – "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I:"

Entry 23 of Schedule 1-A as applicable to Delhi provides that stamp duty on conveyance would be chargeable at the rate of 3% of the consideration amount set forth in the instrument. Therefore, the rate at which stamp duty to be charged on the amalgamation order passed in Delhi should be 3% in the absence of any specific Entry in this respect.

I have considered the argument of the applicant and have also gone through the judgment cited. In my considered opinion the argument addressed by the applicant though look fancy but not convincing. It is trite law that the transferor company is treated as a going concern and therefore its shares have to be valued in accordance with the principles as laid down under the law. According to me it is the said value of the transferor company as on the appointed date which is material and one of the important factor. I have the occasion to examine the judgment of the Hon'ble Supreme Court on the aspect of valuation in Hindustan Lever Vs. State of Maharashtra. In such cases the transfer of assets and liability takes effect by an order of the court as against some value/consideration. It is held in Hindustan Lever case that the valuation of a running company is determined on the basis of number of factors including the value of net assets of transferor and transferee company for which the liabilities have to be set off against the gross value of the assets. In my considered opinion it is against this value the share exchange ratio is fixed by evaluating both the companies on this settled formula or by any other equivalent formula determining the net assets value of the respective companies. The ultimate purpose and object is that the value of consideration arrived so by the transferor company is passed on to its share holder who have agreed to be allotted the share equity of the transferee company having equivalent value. Once the share holders received the consideration it would be deemed as if the owner has received the consideration as against transfer of his assets/properties. To my

net assets value of both the companies i.e. transferor and transferee as indicated in Hindustan Lever case.

In this unique case, a company running into losses having negative net worth value and per capita share worth rupees -64.73 is purchasing a healthy company having net worth/asset value of Rs.54,88,58,800/- bearing per capita share value of Rs.722/- equity share. It has no real capacity to pay the value of transferor company and is paying only a nominal value of Rs.10/- per share as against the share of Rs.772/- per equity of the transferor company. In legal/corporate parlance, it is stated to be 'reverse merger'. In the present case, despite major disparity between the net asset value of both the companies, the share exchange ratio stated is 1:1. By accepting the arrangement/scheme of amalgamation, perhaps the transferee company would be squaring up its losses and enhancing its own net worth, which was negative before the amalgamation/arrangement. Even though the adequacy of the consideration passed on or likely to pass to the seller/transferor may not be the subject matter of the state, the state is concerned with respect to the stamp duty payable to it in terms with fair valuation of the property transferred or likely to be transferred to the purchaser/transferee. A person may indulge into charity by transferring his property at a nominal value or even may transfer by gift his property, the duty is payable on the value of the consideration passed to the transferee/purchaser and not what the seller/transferor has received or would be receiving. The valuation certificate clearly shows the valuation of the transferor company as on the appointed date which has been determined in accordance with the principle laid down by the Hon'ble Supreme Court in Hindustan Lever case. It is at the said value that the going concern M/s. Botanium Ltd. is transferred under the scheme to the transferee company M/s. Go Air Lines India Ltd. The said value is Rs.54,88,58,800/-. Hence, the stamp duty is payable @ 3% on this valuation and not on the negative valuation or nominal valuation as sought by the applicant. I accordingly ordered that the SD on the merger order is payable @ 3 % on the total amount of Rs.54,88,58,800, which comes out to be Rs. 1,64,65,770/-.

The Transferee Company is therefore directed to pay the aforesaid stamp duty

I further held that with respect to the stamp duty on the new 7,60,100 equity shares of the Transferee Company, the Company shall pay SD as shown in accordance with the provisions of Entry 19 of Schedule 1-A as applicable in Delhi.

Further the effective date of merger order was 30/11/12 & the application for payment of stamp duty on the merger order was filed on 18/07/2013, which is delayed as such the Company is liable for penalty u/s 40 of Indian Stamp Act.

On the part of delay, the company submitted that there is no awareness amongst the Company about the Stamp Duty on the merger order being no specific entry in Schedule 1-A of Indian Stamp Act (applicable in Delhi) and the company has no intention to evade duty as it suo-moto file application inspite of the fact , that it is a loss making company accordingly taking a lenient view I impose penalty of Rs. 1000/- only on the company . The company is directed to pay the penalty amount also within 30 days.

Delhi
Dated :


Collector of Stamp,
New Delhi