

**GOVERNMENT OF THE NCT OF DELHI  
OFFICE OF THE DIVISIONAL COMMISSIONER: DELHI  
5-SHAM NATH MARG: DELHI-110054**

F.10(10820)/COS(HQ)/CD / 11367

DATE: 22/1/2014

Present: Ms. Ritu Mahajan, Authorized Representative on behalf of Taraspan Solutions Private Limited

Taraspan Solutions Private Limited having its registered office at 4<sup>th</sup> Floor, Rectangle No. 1, behind Marriot Hotel, Saket Commercial Complex, D-4 Saket, New Delhi-110017 filed an application for payment of stamp duty on the merger order of the Hon'ble High Court of Delhi dated August 28, 2012 in C.P. No. 282 of 2012 allowing the scheme of amalgamation between Taraspan Solutions Private Limited ("Transferor Company") and Petan Communications Private Limited ("Transferee Company"). Transferee Company has changed its name from Petan Communications Private Limited to Taraspan Solutions Private Limited pursuant to scheme of merger.

As per the scheme of merger, Transferee Company shall issue 20,384,834 fully paid up equity shares of Rs. 10 each to the equity shareholders of Transferor Company as full and final consideration for merging Transferor Company into Transferee Company.

The company in the written submission filed before me contended that:

- (i) *The appointed date as mentioned in the scheme of Amalgamation duly approved by the Hon'ble High Court of Delhi for the Amalgamation is 01 April 2012. Since both the companies are unlisted hence the marketable value can't be ascertained however the book values of the equity shares are Rs.10/- each. The Valuation of equity shares of both the companies, since the Foreign Direct Investment is involved was done on the basis of Discounted Cash Flow method as prescribed by Reserve Bank of India, Copy of valuation is enclosed as "Annexure-D"*
- (ii) *The Transfer Company doesn't hold any immovable property situated at any place in India or outside India, schedule of properties annexed to the Hon'ble Delhi High Court order is enclosed for your reference as "Annexure-F"*

*Received  
Nitin Aggarwal  
22-01-2014*

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 has been 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.

So far as the valuation of the scheme of amalgamation is concerned on the instrument of the amalgamation scheme sanctioned by the court, after due verification is to be determined by the stamp authority only on the basis of the price of the shares allotted to the shareholders of the transferor company or other consideration, if paid, but not by separately valuing the assets and the liabilities. Thus, the calculation of stamp duty should typically be based on the shareholders of the transferor company and that valuation would be on the basis of share exchange ratio of shares and not by valuing the assets and liabilities separately. The basis and principle of determination of applicable stamp duty is the valuation of share allotted and issued by the transferee company. Taraspan to the shareholders of the transferor company, Petan Communications Pvt, Ltd.,.

As per the Delhi Tower Judgment, in the case of amalgamation of companies, for the purpose of stamp duty, what is liable to stamp duty is the 'instrument' and not a transaction of purchase and sale which is struck at para 7.4 of the Delhi Tower Judgment.





The abovementioned judgment further provides that the amalgamation scheme sanctioned by the court and the order would be an 'instrument' within the meaning of section 2(i) of Indian Stamp Act. By the said instrument the properties are transferred from the transferor company to the transferee company, the basis of which is the compromise or arrangement arrived at between the two companies (para 8.27 and 8.31 of the Delhi Tower Judgment).

In the absence of any specific provision providing stamp duty on amalgamation/merger in the Stamp Act as applicable to Delhi and follow the ratio given in Delhi Tower Judgement and treat the Amalgamation Order as an "instrument of conveyance" for purpose of Entry 23 of Schedule 1-A as applicable to Delhi, then the value to be taken into account for purposes of computing the stamp duty should be the amount set forth in the instrument (i.e. the Amalgamation Order in the present case) as required under the said Article 23, and in my considered view that for the purpose of calculating the stamp duty to be paid on the amalgamation order should be instant merger, stamp duty is payable on consideration amount of Rs. 203,848,340 which has been given by Transferee Company to the shareholders of Transferor company by issuing 20,384,834 fully paid up equity shares of Rs. 10 each.

I accordingly ordered that the SD on the merger order is payable @ 3 % on the total amount of Rs. 203,848,340/- which comes out to be Rs. 61,15,450/-. The Transferee Company is therefore directed to pay the aforesaid stamp duty within 15 days of the date of order failing which the same shall be recovered as land revenue.

I further held that with respect to the stamp duty on the new 2038834 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.

I Further the effective date of merger order 4<sup>th</sup> Oct. 2012 & the application for payment of stamp duty on the merger order was filed on 28<sup>th</sup> May 2013.

In my view and in the facts of the instant merger, stamp duty is payable on consideration amount of Rs. 203,848,340 which has been given by Transferee Company to the shareholders of Transferor Company by issuing 20,384,834 fully paid up equity shares of Rs. 10 each.



In view of the above, the stamp duty payable on the aforesaid merger order comes to Rs. 61,15,450.2 i.e. @ 3% on Rs. 203,848,340. The Transferee Company is, therefore, directed to pay the stamp of Rs. 61,15,450.2 within 15 days.

Further, the effective date of merger was 4<sup>th</sup> Oct. 2012 & copy of order received to the company on 6.12.2012. The application for payment of stamp duty on the merger order was filed on May 28, 2013 which is delayed. The Company admitted the same.

On account of delay, the Company is liable for penalty u/s 40 of Indian Stamp Act. the representative of the Company contended that it is a loss making concern\* & delay occurred due to non awareness as duty on merger is a new concept.

In view of the submissions, I am taken a lenient view & imposing penalty of Rs.1,00,000/-

The Company is directed to pay Stamp duty of Rs. 61,15,450.2/- alongwith penalty to Rs. 1,00,000/- within 15 days, failing which the same shall be recovered as land revenue.

List for 7.2.2014 for compliance.



(LALIT MOHAN)  
COLLECTOR OF STAMPS (HQ)

Received order  
Ritu Mahajan  
22/01/2014.

Challan Received  
Ritu Mahajan  
22/01/2014