

OFFICE OF THE COLLECTOR OF STAMPS  
5, SHAMNATH MARG, DELHI

F. No. 1/920/RB/Div.Comm./HQ/2013/ 110-123 Dated: 14/07/14

In the matter of :

Show cause notice under the Indian Stamp Act regarding non-payment  
of stamp duty on the lease deed executed

**BETWEEN**

Delhi International Airport Pvt. Ltd. (DIAL)

**AND**

1. M/s. Lemon Tree Hotel Ltd.,  
Asset 6, Hospitality District Delhi Aerocity,  
IGI Airport, Delhi-110037
2. M/s. Wave Hospitality Pvt. Ltd.,  
E-969, Lower Ground Floor,  
Chitranjan Park, New Delhi-110019.
3. Hyacinth Hotels Pvt. Ltd.,  
B-6/17, Safdarjung Enclave, New Delhi-110029
4. M/s. Aria Hotels and Consultancy Services Pvt. Ltd.,  
6<sup>th</sup> Floor, Arya Tower, JW Merriott,  
New Delhi Aerocity Asset Area,  
4 Hospitality District Near IGI Airport, New Delhi-110037.
5. Interglobe Hotels Pvt. Ltd.,  
Central Wings, Ground Floor, Thapar House,  
124, Janpat New Delhi.
6. Caddee Hotels Pvt. Ltd.,  
Center Wing, Ground Floor, Thapar House,  
124, Janpath, Connaught Place, New Delhi
7. Bird Airport Hotels Pvt. Ltd.,  
E-9, Connaught House,  
Connaught Place, New Delhi



8. Bharti Reality Ltd.,  
Bharti Crescent, 1 Nelson Mandela Road,  
Vasant Kunj, Phase-II, New Delhi-110070
9. The Pride Hotel Ltd.,  
Asset 5A, Hospitality District Delhi Aerocity,  
IGI Airport, Delhi-110037
10. Juniper Hotels Pvt. Ltd.,  
Off Western Highway Santacruz (East),  
Mumbai-400055 (Maharashtra)
11. Sweta Estate Pvt. Ltd.,  
21/48, Malcha Marg,  
Diplomatic Enclave, New Delhi-110021.

### ORDER

By this common order the objections raised by the parties as against respective show cause notices issued on account of non-payment of stamp duty on the lease/sub-lease executed between them, are disposed off.

### BRIEF FACTS :

1. Based upon the information available on the MCA portal and also portal of Bombay Stock Exchange, National Stock Exchange and Information available in Public Domain, including the financial statement in the annual report for the financial year 2011-2012 and 2012-2013 of M/s. GMR Infrastructure Ltd. portrayed therein specifically that it has successfully able to lease land aggregating 45 acre out of total 5100 acre in Delhi Airport Aerocity, Delhi to various entities for the purpose of development, operation and maintenance of hospitality sites, different show cause notices for





non-payment of stamp duty under the Indian Stamp Act, 1899 as per the schedule-1A (applicable to Delhi) were issued to GMR Infrastructure Ltd. and other entities as mentioned in the memo of parties hereinabove.

2. In response thereof, GMR Infrastructure Ltd. clarified vide their letter dated 31-01-2014 that they are only one of the constituents of DIAL (Delhi International Airport Limited, a company incorporated under the Companies Act), and as such cannot be held liable, if any, as regard payment of stamp duty in view of the fact that the development agreement was executed between DIAL as an independent and corporate entity with other entities/companies.
3. The other companies/entities as mentioned in the memo of parties hereinabove also responded separately raising by and large common defence particularly challenging the locus standi of the Collector of Stamp in issuing the show cause notice in the absence of any agreement of lease ever produced before him or came to him in the discharge of his official functions. Based upon the reply and more particularly in view of para 16 of the identical replies filed by the parties mentioned at Sl. No. 1 to 7 above wherein it was recorded that the companies are ready, if so asked, to provide a detailed analysis including quotation of the same, a questionnaire was delivered to all of them as well as DIAL. Though the same was answered, the specific relevant queries were either answered in incomplete manner or altogether ignored/not answered. In view of the vague responses, more particularly when even the copy of the development agreement



executed by DIAL with the developers were intentionally concealed, the same was accessed from the alternate source i.e. Writ Petition (Civil) bearing title M/s. Hayacinth Hotels Pvt. Ltd. Vs. South Delhi Municipal Corporation & Govt. of NCT of Delhi whereby the notice under section 123, 124/126 of DMC, Act was challenged by some of the developers entities. The copy of the development agreement dated 25-05-2009 executed between DIAL and M/s. Hayacinth Hotels Pvt. Ltd. was therefore perused. From the said record it also came to the understanding that identical agreement, containing similar relevant terms and conditions have been executed by DIAL for the development of hospitality sites at Delhi Aerocity. It is pertinent to mention here that earlier the airport including its assets was being managed by Airport Authority of India under the Act of parliament. However, subsequently under the public private participation, the Airport Authority of India entered into a OMDA agreement with consortium of M/s. GMR Infrastructure Ltd. etc. for the purpose of development of Delhi Airport, which consortium subsequently converted into DIAL, a separate company/entity constituted under the Companies Act.

4. Perusal of the record including OMDA (Operation Management Development Agreement) available on the official portal of Airport Authority of India and the Developer Agreement between DIAL and Developers shows that :-
  - (i) The Airport Authority of India (hereinafter referred as AAI), an authority constituted under the Airport Authority of India Act, 1994 and responsible for the development, operation and maintenance





of airport in India, in pursuance of OMDA executed and registered a lease deed dated 25-04-2006 in respect of land belonging to Airport Authority of India in favour of The Delhi International Airport Pvt. Ltd. (hereinafter referred as DIAL), (a Company incorporated under the Companies Act). By this lease deed, The Airport Authority of India granted to DIAL among other, the right to operate, maintain, develop, design, construct, upgrade, modernize, finance and manage the airport as per the terms settled in the lease deed.

- (ii) The lease was granted initially for a period of 30 years. The DIAL was conferred the rights and liberty to construct, erect, renovate, repair, alter or otherwise deal with the Demised Premises of AAI and any structure or structures standing thereon or to be constructed and to carry out any modification as deem fit. The DIAL was made liable to pay all taxes, levies, duties, fees, license fee and other charges payable in respect of the demise premises or the structure to be constructed thereon, which may be levied by any government authority, local authority etc. The DIAL was further obliged not to assign, sub-lease, license, sub-license mortgage, pledge or transfer or encumber the lease deed or any rights there under and/or the demised premises to any third party other then as provided under the OMDA (assignment). However, prior to granting any sub-lease, license, sub-license or any other third party right, the DIAL was to ensure that the same shall be subject to terms and conditions set forth in the lease deed including the right of reversion.



(iii) An OMDA i.e. Operation, Management and Development Agreement dated 04-04-2006 was earlier executed between AAI and DIAL. Clause 8.5.7 under the heading sub-contracting, sub-leasing and licensing is relevant by which the AAI recognized the right of JVC i.e. DIAL to sub-lease and license any part of the Airport site to third parties for the purpose of performance of its obligation. It is clarified that DIAL is J.V. Consisting of various constituent including GMR Infrastructure Ltd.

(iv) Exercising its right vide clause mentioned hereinabove, DIAL entered into agreement with the parties mentioned in the memo hereinabove whereby different parts of the demise premises were transferred for the purpose of construction and development. Admittedly no stamp duty was paid nor any such agreement was presented for registration either by DIAL or by the sub-lessee/developers. It is in the said back drop, different show cause notices were issued, against which the parties raised various objections particularly the jurisdiction of the Collector of Stamps seeking production of the original lease/license agreement. Apart from the preliminary objection, it was also the common stand of the parties that the agreement is merely a license deed thus not governed by the Stamp Act.

5. In view of the common objections raised as regard the jurisdiction and the interpretation of the instrument, the following issues fell for consideration.





- i) Whether the Collector of Stamps has jurisdiction to direct production of original instrument to determine and adjudicate the stamp duty chargeable under the Stamp Act.
- ii) Whether the instrument styled as license deed is chargeable to stamp duty.
- iii) What action/steps are available to the Revenue in case of non-production of original instrument even though the evasion of stamp duty may be writ large on the face.

**Finding on issue no.(i) :**

It is the common stand by the parties that the Collector of Stamps has no jurisdiction to call for and summon the original instrument. Reliance is placed on the following judgment :- (a) Ashok Kamal Capital Builders Vs. State, 2009 (162) DLT 196, (b) Kotak Mahindra Bank Ltd. Vs. Yogesh Baveja, 2013 (202) DLT 266, & (c) ICICI Bank of Maharashtra, 1999 (5) SCC 708. It is argued by the counsel for the parties that the law is no more *res-integra* in view of the above said judgments where the courts have consistently interpreted the term "instrument" as defined under section 2(14) of the Stamp Act as original instrument and not its copy. It is contended that a copy or secondary evidence of the original documents is not an instrument within the meaning of the Act. It is thus urged that it is only on production of the original instrument that deficiency to the stamp duty or/and penalty can be paid to validate the same. It is further argued that unlike other states, under the Stamp Act applicable to Delhi no such power vest on the authority to compel production of an original document from a party to impound the same or levy penalty on failure to produce the original or for imposition of penalty on the basis of copy of an instrument. Relying upon Supreme Court

