



DSK Legal Knowledge Center

Updates on

- **Miscellaneous Updates**

MISCELLANEOUS UPDATES

A. **India Chapter of The International Comparative Legal Guide To: Corporate Recovery & Insolvency 2009**

Our Partners, Raksha Kothari and Sajit Suvarna have contributed towards the India chapter of The International Comparative Legal Guide to: Corporate Recovery & Insolvency 2009. This guide is available free to access on:

http://www.iclg.co.uk/index.php?area=4&kh_publications_id=101

The electronic version of the guide may be accessed by following the link:

http://www.iclg.co.uk/index.php?area=4&show_chapter=2950&focus=1&kh_publications_id=105

The Chapter discusses, *inter alia*, the issues arising when a company is in financial difficulties, the formal and informal recourses available to a company in financial difficulties and the rights of the creditors under such circumstances.

B. **Suraj Lamp and Industries (P) Ltd through DIR v. State of Haryana and Anr¹.**

The Supreme Court recently made some harsh observations about the transfer of property through execution of agreement of sale, general power of attorney and a will (“**SA/GPA/Will Sale**”), a devious device, and has initiated reforms through an

¹ MANU/SC/1021/2009

order. The issues inter alia, which arose in this case are as under:

Facts-

One Ramnath and his family members sold two and half acres of land in Wazirabad village, Gurgaon to the petitioner by means of SA/GPA/Will in the year 1991 for a consideration of Rs. 716,695. The petitioner verbally agreed to sell a part of the property measuring one acre to one Dharamvir Yadav for Rs. 6,000,000 in December 1996. Dharamvir Yadav, and his son Mohit Yadav, instead of proceeding with the transaction with the petitioner, directly got in touch with Ramanath and his family members and in 1997 got a GPA in favour of Dharamvir Yadav in regard to the entire two and half acres and illegally cancelled the earlier GPA in favour of petitioner. The director of the petitioner, S.K. Chandak, confronted Dharamvir Yadav in the year 1999 on this behalf. Dharamvir Yadav issued a cheque for Rs. 1,000,000 towards part payment but the said cheque was dishonoured necessitating a complaint under Section 138 of the Negotiable Instrument Act, being filed against Dharamvir Yadav which is pending in a criminal court at Patiala House, New Delhi.

The Supreme Court was of the view that matter involves an issue whose seriousness is underestimated. The SA/GPA/Will Sale was adopted to overcome the restrictions/prohibitions in terms of allotment and the rules of allotment of Delhi Development Authority (“**DDA**”) governing the allotment of flats, a method evolved by lawyers and document writers in Delhi.

The Delhi High Court, in a few cases, has accepted such SA/GPA/Will Sale as creating an `interest' in the DDA flat which was so `transferred' and consequently, protected such interest of the purchaser by issuing injunctions or decrees preventing the vendor from further dealing with the property. This led to a general impression the SA/GPA/Will Sale was a valid recognized mode of transfer.

Issue-

Avoidance of execution and registration of deeds of conveyance on receiving full consideration as the mode of transfer of freehold immovable property by adopting a practice of SA/GPA/Will Sale.

Order-

The Supreme Court deprecated all processes that interfered with regular transfers under deeds of conveyance properly stamped, registered and recorded and was of the view that the situation warrants special measures. It has, thus, asked the Solicitor General and the chief secretaries/revenue secretaries of Delhi, Punjab, Haryana, Uttar Pradesh and Maharashtra for the views of the respective state governments in respect of such transactions and the steps that have been taken and/or proposed to be taken by the respective states to deal with the chaotic situation and confusion arising from such transactions.

The Supreme Court has also ordered to list the matter in the last week of August, 2009.

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