SALE OF IMMOVABLE PROPERTY IN LIQUIDATION

Registration and Stamp Duty on the Sale Certificate

Note on law and procedure

1. Scope of this note

This note addresses a recurring practical difficulty in liquidation under the Insolvency and Bankruptcy Code, 2016: an auction purchaser is told that a sale certificate issued by the liquidator attracts neither registration charges nor stamp duty, yet the registering authority declines to act unless duty is paid. The note separates the questions that are commonly collapsed into one, sets out the correct procedure for placing the sale on the public record, identifies the point at which stamp duty in fact becomes payable, and then traces the sale process in liquidation from commencement to distribution.

2. Three distinct questions

Much of the confusion arises because three separate questions, arising under three separate statutes, are treated as one. They must be answered independently.

Question	Governing provision	Answer
Has title passed to the auction purchaser?	Auction law; Transfer of Property Act; IBC	Yes, on confirmation of the sale and receipt of the entire consideration. The certificate evidences a title that has already passed.
Must the sale certificate be registered?	Section 17(2)(xii), Registration Act, 1908	No. It is outside compulsory registration. A copy is filed under Section 89(4) in Book No. 1.
Is the sale certificate chargeable with stamp duty?	Article 16 of Schedule I, Maharashtra Stamp Act, 1958 (Article 18, Indian Stamp Act, 1899)	Yes. It is chargeable at the rate leviable on a conveyance under Article 25, on market value. Only the point of collection is deferred.

The critical point: there is no exemption from stamp duty. The Maharashtra Stamp Act does not exempt a certificate of sale; Article 16 expressly charges it at conveyance rates. What the courts have held is that duty is not exigible at the moment of issuance, and that the certificate is not compulsorily registrable. This is a deferral of the point of collection, coupled with a permanent exemption from compulsory registration. Advising a client that the transaction is duty-free is incorrect and will not survive the first mutation application.

3. Position under the Registration Act, 1908

1. Section 17(2)(xii) excludes from compulsory registration a certificate of sale granted to the purchaser of property sold by public auction by a civil or revenue officer.
2. Section 89(4) requires the officer granting the certificate to forward a copy to the registering officer within whose jurisdiction the property is situate, and the registering officer files it in Book No. 1.

3. Book No. 1 is the register of non-testamentary documents relating to immovable property. Once the copy is filed there, the transaction appears in index searches and in the encumbrance certificate. For the purpose of notice to the world, filing under Section 89(4) does the work that registration would otherwise do.
4. Non-registration does not affect the passing of title. Title vests on confirmation of the sale; the certificate is evidence of that title, not the instrument of transfer.

Authorities: B. Arvind Kumar v. Government of India, (2007) 5 SCC 745; M/s Esjaypee Impex Pvt. Ltd. v. Assistant General Manager, SBI, (2021) 11 SCC 537; State of Punjab v. M/s Ferrous Alloy Forgings Pvt. Ltd., 2024 INSC 890.

4. Position under the Stamp Act

Stamp duty attaches to the instrument, not to the transaction, and the charge under Article 16 is unqualified. What the Supreme Court has held is that so long as the sale certificate remains as it is, no duty is exigible; duty arises when the auction purchaser presents the original certificate for registration or uses it for some other purpose.

The mechanism that gives effect to this is found in the Stamp Act itself:

- Section 33 obliges every person in charge of a public office before whom an instrument is produced to impound it if it is not duly stamped.
- Section 34 renders an instrument not duly stamped inadmissible in evidence and incapable of being acted upon, until duty and penalty are paid.

The deferral therefore lasts only so long as the certificate is not produced anywhere. It ends when the purchaser:

- voluntarily presents it for registration under Section 18 of the Registration Act;
- produces it before a municipal or revenue authority in support of mutation;
- offers the property as security to a lender;
- effects an onward sale, where the buyer requires a duly stamped antecedent title chain; or
- files it in any proceeding to establish right or title.

The observation on "use for some other purpose" is not an addition by the High Court. It is drawn from the Supreme Court's own reasoning in Ferrous Alloy, which refers to the charging Articles of Schedule I and holds that duty arises when the certificate is presented for registration or otherwise used. It should be presented to clients as a timing rule, not as a source of uncertainty.

5. How the change of title is recorded

The question "how will title change at the registrar's office without registration" rests on a mistaken premise. The Sub-Registrar does not record ownership in any transaction. The Sub-Registrar maintains a register of documents. Ownership is reflected in a different set of records maintained by different authorities.

Step	What is done and by whom
Passing of title	By operation of law on confirmation of the sale and receipt of the full consideration. No further deed of transfer is required.

Step	What is done and by whom
Public record of the transaction	The liquidator forwards a copy of the sale certificate to the Sub-Registrar under Section 89(4); the Sub-Registrar files it in Book No. 1. The original remains with the purchaser.
Ownership records	Property Card or City Survey records, 7/12 extract, land revenue records, municipal property tax records, or society records, as applicable. The purchaser applies to each such authority with the NCLT order, the sale certificate and proof of the Book No. 1 filing.

The procedural error that defeats the exemption

In most failed attempts, the purchaser walks into the Sub-Registrar's office holding the original certificate and asks that it be taken on record. That act is itself a presentation of the instrument, and duty crystallises at once.

The correct course is that the copy travels from the liquidator to the registering officer, under a covering letter that invokes Section 17(2)(xii) read with Section 89(4) and encloses the NCLT order and the sale confirmation. The purchaser presents nothing and retains the original. Where the registering officer declines, the remedy is a writ petition; the Supreme Court has upheld the exercise of writ jurisdiction in precisely this situation, and has issued a mandamus to the registering authority to receive and file the copy.

6. Valuation, when duty does become payable

Article 16 charges duty on market value, and the Collector is not bound by the figure stated in the instrument. In a public auction conducted after a valuation has been obtained, the Bombay High Court has laid down that where the final bid exceeds the valuation the bid amount is the market value, and where the bid is at or below the valuation the valuation is taken; where there are several valuations, the most recent and highest is taken. This is a substantial argument against a demand computed mechanically on the ready reckoner rate.

Practical advice to a purchaser should therefore be to provide for the duty in the acquisition cost, and to treat the judicial position as protection against a demand at the time of issuance rather than as a permanent saving.

7. The sale process in liquidation

Phase 1 — Commencement

- Liquidation order under Section 33; liquidator appointed under Section 34.
- Public announcement under Regulation 12 in Form B; claims within thirty days.
- Verification and determination of claims under Regulations 27 to 30; list of stakeholders under Regulation 31.

Phase 2 — Constituting the liquidation estate

- Liquidation estate under Section 36; assets excluded under Section 36(4), including third party assets and trust property.

- Election by the secured creditor under Section 52 read with Regulation 21A, to relinquish the security interest to the estate or to stand outside and realise it, subject to contribution towards insolvency resolution process and liquidation costs and to the obligations under Sections 52(8) and 53. This determines what the liquidator is competent to sell.
- Asset memorandum under Regulation 34; valuation by two registered valuers under Regulation 35, subject to the permitted use of the resolution process valuations.

Phase 3 — Mode and manner of sale

- Consultation with the Stakeholders' Consultation Committee under Regulation 31A on the marketing strategy, the mode of sale and the reserve price; the liquidator must record reasons where he proceeds contrary to the advice received.
- Modes under Regulation 32: asset by asset; in a slump sale; a set of assets collectively; assets in parcels; the corporate debtor as a going concern; and the business or businesses of the corporate debtor as a going concern.
- Regulation 32A requires the going concern route to be attempted first where the committee of creditors had so recommended, within the prescribed period.

Phase 4 — Conduct of sale

- Regulation 33 read with Schedule I: sale by electronic auction is the default. Private sale is permissible only in the circumstances specified in Schedule I, and not to a related party without leave.
- Public notice for the period prescribed in Schedule I, in an English and a regional language daily of wide circulation, together with publication on the designated platform and websites.
- Sale is on an "as is where is, as is what is, whatever there is and without recourse" basis; earnest money deposit and bid increments as per the terms of sale.
- On a failed auction, the reserve price may be reduced within the limit prescribed in Schedule I, in consultation with the Stakeholders' Consultation Committee.

Phase 5 — Completion of sale

- The successful bidder pays the balance consideration within the period prescribed in Schedule I; delayed payment carries interest at the prescribed rate, and default results in forfeiture.
- On receipt of the entire consideration the sale stands completed, the liquidator issues the certificate of sale or sale deed, and the assets are delivered in the manner specified in the terms of sale.
- The liquidator forwards a copy of the certificate to the Sub-Registrar under Section 89(4). The purchaser then applies for mutation in the relevant ownership records.

Phase 6 — Distribution and closure

- Distribution of proceeds under Section 53 within the period prescribed by Regulation 42; unclaimed amounts to the Corporate Liquidation Account under Regulation 46.
- Final report under Regulation 45 and order of dissolution under Section 54.

8. Drafting and practice points

5. Seek an express direction from the Adjudicating Authority, in the application for confirmation of sale, that the asset vests in the purchaser free of prior encumbrances, attachments and claims, and directing the registering, revenue and municipal authorities to give effect to the sale certificate and to effect mutation. Section 238 supported by a specific direction converts a matter of persuasion into a matter of compliance. Section 32A assists where the impediment arises from an attachment under criminal law.
6. Provide in the terms of the electronic auction that stamp duty, registration charges and all statutory levies, if and when payable, are to the account of the purchaser, and that the liquidator's obligation is discharged on issue of the sale certificate and the filing of a copy under Section 89(4). Silence on this point is a frequent source of post-sale litigation.
7. Ensure that the copy under Section 89(4) is transmitted by the liquidator and not tendered by the purchaser, and that the covering letter records the statutory basis. Retain the acknowledgement.
8. Where the registering officer refuses, do not pay under protest as a first response. Ask for the refusal in writing, and consider a writ petition; a payment made and later sought to be refunded is a considerably harder case.
9. Advise the purchaser in writing that the duty is deferred and not extinguished, and that it will fall due on registration, mutation, mortgage or onward sale.

Annexure A — Model covering letter under Section 89(4)

To be issued by the liquidator on the liquidation stationery of the corporate debtor. Adapt to the facts.

To,

The Sub-Registrar of Assurances,

[ ]

Subject: Filing of copy of certificate of sale in Book No. 1 under Section 89(4) of the Registration Act, 1908 — [name of corporate debtor] (in liquidation) — property at [ ]

Sir/Madam,

1. By order dated [ ] passed by the Hon'ble National Company Law Tribunal, [Bench], in [case number], [name of corporate debtor] was directed to be liquidated under Section 33 of the Insolvency and Bankruptcy Code, 2016, and the undersigned was appointed as the liquidator. A copy of the order is enclosed.

2. In exercise of the powers under Section 35(1)(f) of the Code read with Regulation 32 and Regulation 33 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the immovable property more particularly described in the Schedule hereto was sold by public electronic auction held on [ ]. The entire sale consideration has been received and the sale stands completed.

3. A certificate of sale dated [ ] has accordingly been issued in favour of [name of purchaser]. The certificate is not compulsorily registrable, being covered by Section 17(2)(xii) of the Registration Act, 1908.

4. In terms of Section 89(4) of the Registration Act, 1908, a true copy of the certificate of sale is forwarded herewith for filing in Book No. 1 maintained by your office. It is requested that the copy be so filed and an acknowledgement be issued to the undersigned.

Enclosures: (i) order of the Adjudicating Authority; (ii) true copy of the certificate of sale; (iii) schedule of property; (iv) [order confirming sale, if separately passed].

Yours faithfully,

Liquidator, [name of corporate debtor] (in liquidation)

IBBI Registration No. [ ] | AFA valid up to [ ]

Annexure B — Model prayer clause before the Adjudicating Authority

For inclusion in the application seeking confirmation of sale or consequential directions.

The Applicant therefore prays that this Hon'ble Tribunal may be pleased to:

(a) confirm the sale of the immovable property described in the Schedule hereto in favour of [name of purchaser] for a consideration of Rs. [ ], the entire consideration having been received;

(b) declare that upon such confirmation the said property stands transferred to and vests in the purchaser free from all prior encumbrances, charges, liens, attachments, demands and claims of whatsoever nature, save as expressly disclosed in the terms of sale;

(c) direct that the certificate of sale issued by the Liquidator shall be sufficient evidence of the title of the purchaser, and that in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908, the Sub-Registrar of Assurances, [ ], shall receive the copy of the certificate forwarded by the Liquidator and file the same in Book No. 1, without insisting upon registration of the certificate;

(d) direct the [revenue authority / municipal corporation / competent authority], [ ], to effect mutation of the said property in the name of the purchaser in its records on the strength of the certificate of sale and the orders of this Hon'ble Tribunal, and to update the property card, assessment records and other records accordingly;

(e) grant such further and other reliefs as the nature and circumstances of the case may require.

Annexure C — Key authorities

Authority	Proposition
B. Arvind Kumar v. Government of India, (2007) 5 SCC 745	On confirmation of an auction sale the sale becomes absolute; the certificate of sale is evidence of title; no further deed of transfer or registration is required.
M/s Esjaypee Impex Pvt. Ltd. v. Assistant General Manager, SBI, (2021) 11 SCC 537	The authorised officer is to hand over the certificate to the purchaser and forward a copy to the registering authority for filing in Book No. 1; mandamus issued accordingly.
State of Punjab v. M/s Ferrous Alloy Forgings Pvt. Ltd., 2024 INSC 890	A sale certificate issued on confirmation of an auction sale is not compulsorily registrable so long as it remains as it is; filing under Section 89(4) suffices; stamp duty arises when the purchaser presents it for registration or uses it for some other purpose.
Article 16 read with Article 25, Schedule I, Maharashtra Stamp Act, 1958	A certificate of sale granted to a purchaser of property sold by public auction is chargeable with the duty leviable on a conveyance, on the market value of the property.
Sections 33 and 34, Stamp Act	An instrument not duly stamped, when produced before any person in charge of a public office, is to be impounded and cannot be acted upon until duty and penalty are paid.

For information and educational purposes only. Positions under State stamp legislation vary and the applicable regulations are amended from time to time; the provisions cited should be verified against the text in force before reliance.