

Ref. No. MCHI/SEC/13-14/008

August 19, 2013

**Agenda for the Core Committee Meeting
On August 27, 2013 at 6.00 pm at MCHI-CREDAI Office**

1. To read and confirm the minutes of core committee meeting held on July 16, 2013.
(Annexure I, Page No. 2 to 4)
2. **Legal :**
Advice to be obtained from Shri Parimal Shroff whether MCHI-CREDAI should intervene in the Kohinoor SLP in Supreme Court.
3. Discuss regarding challenging the section 43 (CA) inserted by the finance act 2013.
(Annexure II, Page No. 5 to 8)
4. Wadhawa Developers would like to send invitations to members for their project "Panorama".
(Annexure III, Page No. 9)
5. Applications received for Task. (Annexure IV, Page No. 10 to 11)
6. To consider and confirm membership of Shri K. V. Satyamurti
(Annexure V, Page No. 12 to 16)
7. To serve vegetarian food only at the time of MCHI-CREDAI's function.
8. Any other matter with permission of Chair.

For **MCHI-CREDAI**

Sd/-
Nainesh Shah
Hon. Secretary

MINUTES

Name of the Meeting	Monthly Core Committee Meeting							
Meeting Chaired by	Shri. Vimal Shah, President, MCHI-CREDAI							
Meeting Conducted by	Shri. Nainesh Shah, Hon. Secretary, MCHI-CREDAI							
Date of the Meeting	Tuesday, July 16, 2013			Time of the Meeting		6:00 pm		
Venue of the Meeting	MCHI-CREDAI –Meeting Room No. 1							
Total Committee Members (18)	No. of Member Present	10	No. of Members Absent	1	Leave Granted to	7	Guest Attended	-
Member Present	1. Shri. Vimal Shah, President 2. Shri. Mayur Shah, Vice President 3. Shri Deepak Goradia, Vice President 4. Shri. Boman Irani, Vice Presidentt 5. Shri Nainesh Shah, Hon. Secretary 6. Shri. Harish Patel, Hon. Joint Secretary 7. Shri Sandeep Runwal, Hon. Joint Secretary 8. Shri Bandish Ajmera, Hon. Joint Secretary 9. Shri Mukesh Patel, Hon. Joint Treasurer 10. Shri Jagdish Ahuja, Co-ordinator							
Leave of Absence Granted to	1. Shri Dharmesh Jain, Vice President 2. Shri. Nayan Shah, Vice Presidents 3. Shri. Sukhraj Nahar, Hon. Treasurer 4. Shri Ashok Mohanani, Hon. Joint Secretary 5. Shri Lakshman Bhagtani, Joint Treasurer 6. Shri Rasesh Kanakia, Co-ordinator 7. Shri Pujit Aggarwal, Co-ordinator							
Name of Members Absent	1. Shri. Parag Munot, Co-ordinator							
Guest Attended	-							
Name of the officials from MCHI-CREDAI	1. Shri S. S. Hussain 2. Shri Ashok Lulla 3. Shri C. P. Goyal 4. Shri Avadhoot Rane 5. Mrs. Shehnaaz Khambata							

Sr. No. Agenda	DISCUSSION & DECISION
1	Legal Matters:
a.	Writ Petition No. 1387 of 2013 on CRZ matter will come up for hearing on July 18, 2013 before the Hon'ble Division Bench comprising of Hon'ble Justice V. M. Kanade & K. R. Shriram.
b.	Writ Petition (Lodg.) No. 1719 of 2013 on Heritage Matter will come up for hearing on July 22, 2013 before Hon'ble Division Bench comprising of Hon'ble Justice Vazifdar and Justice M. S. Sonak.
c.	<p>The issue regarding technical committee w.r.t Hi-rise approval formed by Govt. without following the procedure as laid down under MRTP Act 1966, Core Committee decided that instead of obtaining opinion through Shri Rahul Dwarkadas, the note should be forwarded to Shri Parimal Shroff for opinion as it is advisable to file Writ Petition.- task owner Vimal Shah assisted by Mayur shah & chedda mam from secretariat</p> <p>Legal charges as negotiated & fixed with rahul Dwarkadas to be sent by mr goyal to vimal shah along with charges taken by parimal Shroff sofar – vimal shah will try & negotiate a preferred rate since its an association work</p>
2.	Liaison :
a.	<p>Meeting held with Shri Sanjeev Anaokar, Deputy Chief Engineer (City) on July 5, 2013. The above meeting was attended by Shri Deepak Goradia, Shri Mayur Shah in Dy. CE (City) Byculla Office. Mr. Deepak Goradia informed that Dy. CE suggested that developers shall come personally instead of Architects and discuss the issue personally once in a month.</p>
b.	<p>Meeting held with Mr. Ujwal Uke, IAS Principal Secretary, Women & Child Development on July 9, 2013 to open crèches at construction sites in Mumbai. The above meeting was attended by Shri Avadhoot Rane, General Manager (Liaison) to discuss the issues related to the creation of crèches at various construction sites in Mumbai. The CEO informed the Members that necessary action is already initiated and request letter already addressed to all the Members of MCHI-CREDAI. ATR to be submitted before next meet</p>
c.	<p>Mr. Vimal Shah also suggested that arrange a separate meeting especially with Hon'ble Chief Secretary to discuss pending issues of MOFA, Royalty Excavation, Automatic NA and ULC. He also added that Mr. Sandeep Runwal and Mr. Avadhoot Rane will look in the matter Housing Regulatory Bill 2013 follow up at Mantralaya.</p>
3.	To discuss the Agenda, Notice, Nomination Form for election of 31st AGM and the related documents.
	Notes about the Agenda items and the name of Shri Rajni Ajmera to be approved as Returning Officer for the election of Managing Committee Members, were submitting and discussed. Approval to be received, including minute to minute programme.
4	Office Memorandum dated June 27, 2013 published by Ministry of Environment & Forest, Government of India.
	Mr. Deepak Goradia and Mr. Mayur Shah informed that to send this office memorandum to all members of MCHI-CREDAI asap with covering note.

Sr. No. Agenda	DISCUSSION & DECISION
5	Review Applications received from Members & Youth Members for Task. Email from Dr. Prakash Kubchandani
	CEO suggested that he will meet Mr. Kubchandani personally in MCHI-CREDAI office and will listen to his issue.
6	Review Legal Fund Rs. 1,00,000/- received. And the amount to be collected / received from other members.
	It has been decided by Hon. Secretary that all members shall pay legal fund of Rs.1,00,000/- as soon as possible to MCHI-CREDAI Office
8	Any other matter with the permission of the chair.
	No other matter came to the chair.

The meeting ended with thanks to the chair.

Sd/-
Nainesh Shah
Hon. Secretary

Annexure – II (Point no. 3 as per agenda)Page No. 5 to 8

Date: 13-08-2013

To
The Chairman
Maharashtra Chamber of Housing Industry
Mumbai

Dear Sir

Sub: Write up on Challenging Constitutional Validity of newly inserted section 43CA of the Income Tax Act

Please refer to our earlier correspondence, wherein we had stated that **challenge to constitutional validity to the provision of section 50C of the IT Act, 1961** has failed in Bombay High Court as well as Madras High Court. The decisions were also mailed to you. Section 50C is applicable to the cases where land or building transferred is held as capital asset. However, the provision of section 43CA deals with the cases where land or buildings held as stock-in-trade. In this respect, Section 43CA stands on a different footing.

Finance Act 2013, vide insertion of section 43CA, has adopted the concept of deemed sales consideration being stamp duty value, on the transactions of land or building held as stock in trade, in cases when actual sale price of inventory is less than stamp duty value. Section 43CA also provides for a safeguard that in case stamp duty valuation is considered to be higher than the prevailing market value of stock sold, the Assessing officer may refer to the Departmental Valuation Officer (DVO) to ascertain market value of property sold. Market value so ascertained by the DVO on reference, if found to be less than stamp duty valuation, shall be substituted as deemed sale consideration.

Thus Section 43CA presumes that a developer will always sell its stock at or above market value and stamp duty value represents the market value. In effect, whenever the sales recorded in the books does not correspond to the stamp duty value, it shall be presumed that there is undisclosed consideration in cash and the same should be brought to tax as per abovementioned provisions of section 43CA.

Area wise fixation of value for stamp duty purpose is always a subject matter of dispute. The stamp duty authorities never clarify how the market price of particular area is fixed & when and for what reasons valuation is increased. In many cases stamp duty valuation of particular area is revised more than two times in the year. Taking such value as deemed sale consideration does impose undue tax burden on developers in case their sale price is below stamp duty value. Whether a person be taxed on a consideration which he has not at all received. By taxing Income at artificial price whether government is putting unreasonable restriction on smooth conduct of real estate business.

Whether validity of the provision of section 43CA can be constitutionally challenged?

There is always a presumption in favour of the constitutional validity of a statute and the burden is on the person who attacks it to show that there has been a clear transgression of constitutional rights.

In order that any law imposing tax is to be held as constitutionally invalid, it must firstly be examined whether the legislature that passed the law was competent to pass it or not. Secondly, since a taxing statute is a law for the purpose of article 13, its validity can also be challenged on the ground that it contravenes any of the fundamental rights guaranteed by Part III of the Constitution.

The newly inserted section 43CA should be constitutionally challenged on following grounds:

Unreasonable restriction on Right to carry on trade, business as provided in Art. 19(1)(g)

Article 19(1)(g) of the Constitution of India guarantees the fundamental right to practice any profession, or to carry on any occupation, trade or business. If any law curbs the right to carry on any business in a manner which can be termed as unreasonable, the law can be constitutionally challenged.

Section 43CA taxes builders in case they do not sell their stock at stamp duty value/market value. It presumes that a developer will always sell its stock at or above market value and when it does not record sale of its stock at or above its market value, this section presumes that he has taken part consideration in cash, which is undisclosed and hence remains untaxed. It is to impose a tax on this undisclosed amount that a provision of the kind, contained in Section 43CA, is required and originates.

This is a bizarre assumption by the legislature enacting such a provision. This is not how business is conducted. There could be numerous occasions on which a businessman is compelled to sell his inventory below market value, with full awareness of the fact that he is selling below market value. It is a pure commercial decision of when to sell and at what price. Few instances where the businessman may decide to sell its stock below market value are enumerated below:

Suppose a builder has huge stock of constructed area. He may take a business decision to off load a portion of his inventory below prevailing market price or ready reckoner value. But because of newly inserted Section 43CA, he shall not be able to do so unless he bears the extra tax on deemed consideration which he has not even earned !!! And buyers too shall suffer the brunt of the tax, as per Section 56, on purchase of a flat in the above situation and shall prefer not to purchase the same.

Suppose a developer has huge borrowings at a very high rate of interest. For him, absorbing the interest burden may not be possible after a point of time and he takes a commercial decision to sell off a sizable portion of stock at less than actual market value to ease his interest burden. This is very common situation. But he shall not be able to do so now because of Section 43CA and Section 56.

Sec 43CA along with Sec 56 delivers a double punch to the developer, as the proceeds of a distress sale is low to start with, and the same is further reduced because of the additional burden of tax under Section 43CA, which in this case taxes on income which has never even been earned. Even the reference to DVO shall not serve any purpose, as he has not been empowered to arrive at the value in the context of a distress sale. The law just directs him to state the market value of transacted inventory, which of course is higher than the actual realised value, and the developer opting for distress sale, shall have no further recourse. These kind of provisions interfere with the commercial decision making process of the developer on a perennial basis, and imposes unreasonable restriction on them to carry on their business freely. For instance, in today's scenario,

lots of developers are going through a very bad financial situation. This is the time when many of them will have to resort to sale below market value or they shall perish under load of interest on their market borrowings. Section 43CA poses a serious hazard to the well being of the developer community and may compel many of them to shut down their businesses. This is in direct conflict to the fundamental right to do business under Article 19(1)(g).

What is Market Value?

The price, at which the businessman sells his stock to a customer, is the market value. Section 43CA challenges this eternal rule of ascertaining market value and further imposes an external price, which is the Stamp duty valuation in this case, as 'Market Value'. Market value is determined by buyers and sellers in an open market and is subject to constant changes depending on the market forces whereas Ready Reckoner Values decided for the purpose of Stamp duty are prices determined by the regulatory authorities which can never be the same as market rates in an open market. Imposing such an external price for taxing business is improper and is against the spirit of free business. Section 43CA imposes an unreasonable restriction on free trade of developers, thus violating article 19(1)(g) of the Constitution of India.

In several areas, the ready reckoner rate, being basis of stamp duty value, is kept at levels considerably higher than the actual rates at which properties are being transacted in the area. In such cases, reference to valuation officer may not be of much help, as guidelines prescribed for valuation may not allow him to value the property below Stamp duty valuation. Further, this is not the case of sale of one flat or one office as compared to cases of capital asset governed by sec 50C, rather it is a case of sale of hundreds of properties held as stock in trade by developers. In one project itself, a developer sells different flats at different rates depending on various factors like flooring, location etc. It will be a cumbersome job for the developers to approach DVO's office for each and every flat and convince him of market value of each property separately. This is impractical and shall act as an unreasonable restriction to conduct business freely.

Investor's book flats in good number and take letters of allotment for the bookings. They do not enter into agreement instantly. Such bookings, more often than not, fund the construction cost of a project, as well as reduce the marketing risk of developer. In these cases, there could be considerable time gap between the date of Letter of allotment and date of final Agreement for sale. However, as sec 43CA provides for stamp duty value on date of 'Agreement', the department may not accept the stamp duty valuation as on the date of issue of Letter of allotment and instead may adopt the stamp duty valuation as on the date of Agreement for sale, which could be considerably higher as compared to stamp duty valuation on the date of issuance of the Letter of allotment. Builders sell a sizable portion of their under-construction areas to investors vide Letters of Allotment. However, sec 43CA renders this business model as unworkable. This may upset the entire business model of developers and thus infringes upon the freedom to do business in a manner convenient to the construction industry.

Investors book flats as early as at the launch of a construction project. The pre-launch price is always fixed below the ongoing market price of ready properties in the area, to attract investors. Applicability of Sec 43CA will result in unjustified comparisons of under construction flats with ready flats, as it will be akin to comparing an apple with an orange. This is unfair.

Thus Section 43CA read with Section 56 obstructs free trade for developers and investors. It proposes to tax an income which has never been earned and is thus fictitious in nature and is ultra vires the Constitution and beyond the parliament's scope. Parliament can tax an Income and not something, which cannot be termed as 'Income'. A businessman **cannot** be forced to sell its inventory at or above market value. It is his fundamental right to carry on its business in the manner he deems fit.

Section 50 C is held valid by Bombay High court. However Section 50 C does not deal with business but with capital asset. The provision of section 43CA deals with land or building held as stock-in-trade and sold. Article 19(1)(g) of Constitution of India guarantees freedom to do business in India. Hence 43CA is subject to scrutiny of constitutional validity vis-a-vis Article 19 and stands on different footing viz a viz section 50C.

Section 43CA, beyond doubt, curbs freedom to conduct business, imposes unreasonable restriction and intends to tax something which actually has not been earned by a business.

Revenue Laws are rarely struck down as constitutionally invalid

It may be noted that a revenue law or its provision is rarely struck down by courts as unconstitutional. The Apex Court, in number of cases, held that Courts should observe self restraint in declaring invalidity of revenue law.

In State of Gujarat vs. ShriAmbica Mills Ltd. (1974) 3 SCR 760: AIR 1974 SC 1300, Mathew J. said:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature, after all, has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events—self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

Though revenue laws are rarely struck down by the Courts as unconstitutional, and any challenge to section 43 CA may meet similar fate, however an honest attempt to challenge it, is essential.

Without raising much of hope amongst the builder fraternity on any positive outcome of the constitutional writ, it is strongly suggested that the constitutional validity of Section 43CA as well as relevant portion of Section 56 taxing buyers be challenged. In- depth research and thorough preparation shall be required to make any such attempt a success.

Regards

Naresh Jain (LLB,CA)

From: "Srinivasan" <sgopalan@wadhvadevelopers.com>
Date: 19 August 2013 11:31:34 AM IST
To: <naineshshah@terraformrealty.com>
Cc: <navin@wadhvadevelopers.com>, <ritwik.gajendra@wadhvadevelopers.com>, "Nitin Pande" <nitin.pandey@wadhvadevelopers.com>, <siddharth.bhatia@wadhvadevelopers.com>, "Manali Satam" <manali.satam@wadhvadevelopers.com>
Subject: Invitations from MCHI

Dear Nainesh,

We are launching our signature project, "Panorama" a part of The Address. Panorama apartments are exclusive and ultra-luxurious, specially designed for the elite few. These are unlike any other apartment in the city. The biggest and most famous stars of Astrology and Numerology will be present at Panorama, to meet our clients and interact with them on a one on one session.


We want to showcase these signature apartments at "Panorama" to selected few regional developers who have their presence or operate around central suburbs. We are arranging a special preview of this project along with an opportunity to interact with these stars at Panorama.

We would like MCHI to send out these invitations (Direct Mailer) on our behalf. The courier charges will be borne by us. Kindly let us know the procedure to go about this.

Warm Regards,

Srini

Annexure – IV (Point no. 5 as per agenda)Page No. 10 to 11

Subject	Task selection for MCHI Youth Wing
From	Kunal Kataria
To	MCHI
Cc	JSK Jaising Uncle
Sent	Saturday, August 17, 2013 5:08 PM
Attachments	 Task selection ...

Please refer the attachment which has my chosen task and sub-departments marked in red.
I've chosen **Department of Urban Development**.

The sub-departments I've chosen in there are:

Policy implementation



DCR implementation

Mumbai DP plan

MMR DP plan

Affordable Housing

Regards,
Kunal K.Kataria

Subject	Selections, and try and assign the Task Committee of your choice
From	Anand Mane
To	secretariat
Sent	Monday, August 19, 2013 12:29 PM
Attachments	 Final Task Owners (1...  ANAND RAJENDR...

Dear Sir ,

Firstly I would like to thank you for giving me the opportunity to work with the task owners . I had applied for the task of the Mantralaya department . I would like to know why I wasn't granted that , My skills can be more apt for this task . My father has a good rapport in Mantralaya and the current CM and a lot of Ministers are from my Native Place . I would like you to please assign me the Mantralaya task , I Will also continue with the stamp duty and registration as an additional task .

Regards,


Anand Mane



Corporate and Head Office

Email – mail@manedevelopers.com

Tel No: 022 24175535/36/37 Fax No: 022 24143307

Subject	FW: Selections, and try and assign the Task Committee of your choice
From	Anand Mane
To	secretariat
Sent	Friday, June 21, 2013 5:44 PM
Attachments	 Final Task Owners (1...

Various Tasks (MAIN DEPARTMENTS)	SUB DEPARTMENTS	Name of Task Owner	Youth Wing Member & Other Member
Mantralaya	Chief Minister's Office	Dharmesh Jain & Sandeep Runwal	Anand Mane