REPORTABLE

2024 INSC 270

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8821 OF 2011

STATE OF MAHARASHTRA & ANR. ...APPELLANT(S)

Versus

NATIONAL ORGANIC CHEMICAL INDUSTRIES LTD. ...RESPONDENT(S)

J U D G M E N T

SUDHANSHU DHULIA, J.

1. The State of Maharashtra is in appeal before us challenging the order of the Division Bench of Bombay High Court dated 18.08.2009, which has allowed the writ petition of the respondent, while setting aside the order of the Deputy Superintendent of Stamps, Maharashtra (appellant no.2).

We have heard learned counsel Mr. Aniruddha Joshi for the appellants and learned senior counsel Ms. Madhavi Divan for the respondents.

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Reason:

National Organic Chemical India Ltd. (respondent) was incorporated with an initial share capital of Rs.36 crores. In 1992

it increased its share capital to Rs. 600 crores and accordingly paid a stamp duty of Rs.1,12,80,000/- as per Article 10 of Schedule-I of the Bombay Stamp Act, 1958 (hereinafter "Stamp Act"). At that time, the provision read as under:

1	2
Description of Instrument	Proper Stamp Duty
10. ARTICLES OF ASSOCIATION OF A COMPANY – Where the Company has no share capital or nominal share capital or increased share capital.	One thousand rupees for every rupees 5,00,000 or part thereof.

The State of Maharashtra (appellant no.1) on 02.08.1994 amended Article 10 and introduced a maximum cap of Rs.25 lakhs on stamp duty which would be payable by a company. The amending notification is reproduced below in part:

> *"In exercise of the powers conferred by clause (a) of Section 9 of the Bombay Stamp Act, 1958 (Born. LX of 1958), the Government of Maharashtra, having satisfied that it is necessary to do so in the public interest, hereby reduces, with effect from the 1st August, 1994, the maximum duty chargeable on Article of Association of a Company under Article 10 of Schedule-I to the said Act, to Rs. Twenty Five Lakhs."*

Subsequently, the respondent passed a resolution for a further increase in its share capital to Rs.1,200 crores and paid Rs. 25 lakhs as stamp duty when it filed its Notice in Form No.5,[1] pursuant to Section 97 of the Companies Act, 1956 (hereinafter "Companies Act"). However, according to the respondent this was done inadvertently as it was soon realised that stamp duty was not liable to be paid by them since the maximum stamp duty which was of Rs. 25 lakhs payable on Articles of Association as per the provisions of the Stamp Act, had already been paid by them in 1992. Consequently, the respondent wrote a letter to appellant no.2 seeking a refund of the payment of Stamp Duty of Rs. 25 lakhs.

This request was turned down by appellant no.2, vide Order dated 20.01.1998 where it was stated that whenever the authorised share capital of a company is increased, stamp duty is payable on each such occasion at the time of filing of Form No. 5 and it is not a one time measure. Aggrieved, the respondent filed a writ petition before the Bombay High Court challenging the

[1] Form No. 5 of the Companies (Central Government's) General Rules & Forms, 1965 is the prescribed form of notice, which has to be sent under Section 97 of the Companies Act.

aforesaid order and seeking refund of Stamp Duty of Rs. 25 lakhs with interest, paid by them inadvertently.

The Bombay High Court, after hearing the parties, concluded that Form No.5 is not an instrument as defined by Section 2 of the Stamp Act and that stamp duty can only be charged on Articles of Association, where the maximum duty (Rs.25 Lakhs), payable as per the amendment has already been paid by the respondent. The High Court allowed the writ petition and directed the appellants to refund Stamp Duty of Rs.25 lakhs along with interest @ 6% per annum.

3. Learned counsel for the appellants submits that a company increases its share capital by sending a notice in Form No.5 as per Section 97 of the Companies Act. Thus, he contends that every time a company increases its share capital, it is a separate taxing event and stamp duty is liable to be paid irrespective of whether the maximum amount payable under the section has previously been paid.

The learned counsel further relies on Section 14A of the Stamp Act to contend that any material or substantial alteration in the character of an instrument requires a fresh stamp duty according to its altered character.

Finally, it is also contended that the maximum cap or upper ceiling of Rs. 25 lakhs was introduced after the payment of Stamp Duty of Rs.1,12,80,000/-. Therefore, the stamp duty paid earlier cannot be taken into consideration in any case.

4. On the other hand, learned senior counsel for the respondent submits that it is only the Articles of Association of a company which are chargeable to Stamp Duty under Article 10. Form No.5 which is being contended by the appellants to be a separate instrument, is completely alien to the Stamp Act as it serves a very limited purpose of giving notice to the Registrar that a company has increased its share capital beyond the authorised share capital.

She would further submit that increase in the share capital of a company does not materially or substantially alter the character of the Articles of Association so as to fall within Section 14A of the Stamp Act. She refers to Section 31 of the Companies Act to submit that any alterations made to the Articles of Association are valid and are to be taken as if originally contained therein.

Finally, she relies on a catena of judgements to contend that fiscal statutes have to be construed strictly and in case of any

ambiguity in the charging provision, the same has to be resolved against the Department.

5. Let us now examine the relevant provisions of the Stamp Act. Section 3 of the Stamp Act provides that *inter alia* stamp duty is payable on instruments which are executed in the State of Maharashtra and the duty payable is the amount indicated in Schedule-I of the Stamp Act. The definition of instrument is provided under Section 2(l) of the Stamp Act, which is reproduced below:

> *"(l) instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt."*

6. The first question that we now have to answer is whether the notice sent to the Registrar in Form No.5 is an "instrument" as defined under Section 2(l).

Learned counsel for the appellants contends that Form No.5 records or purports to record the right or extension of the right of a company to increase its share capital as recorded in its Articles

of Association and thus falls within the definition of an "instrument".

Share capital of a company refers to the amount invested in the company for it to carry out its operations while Articles of Association contain the prescribed rules and regulations that a company adopts for its internal management.[2] When a company is incorporated it has to present certain documents, including its Articles of Association, to the Registrar under Section 33 of the Companies Act and if the Registrar is satisfied that all necessary requirements have been complied with, he then registers the documents submitted. This is because of the implication that provisions contained in the articles amount to a public notice to all those who deal with the company.

7. Section 2(2) of the Companies Act *inter alia* defines "articles" as the Articles of Association of a company as originally framed or as altered from time to time. A company is empowered to alter its Articles of Association by passing a special resolution in the manner provided in Section 31 of the Companies Act, which states that:

[2] Section 26 of the Companies Act, 1956.

> ***"31. Alteration of articles by special resolution.—*** *(1) Subject to the provisions of this Act and to the conditions contained in its memorandum a company may, by special resolution, alter its articles:*
>
> *Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.*
>
> *(2) Any alteration so made shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution.*
>
> *(2-A) …*
>
> *(3) …"*
>
> *(emphasis supplied)*

Any alteration in the share capital of a limited company is provided under Section 94 of the Companies Act, which reads as under:

> ***"94. Power of limited company to alter its share capital.—*** *(1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may—*
>
> *(a) increase its share capital by such amount as it thinks expedient by issuing new shares;*
>
> *(b) …*
>
> *(c) …*
>
> *(d) …*
>
> *(e) …*
>
> *(2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.*

(3) …"

(emphasis supplied)

A perusal of Section 94 of the Companies Act shows that a company is empowered to increase its share capital, by such amount as it thinks expedient, by passing a resolution in a general meeting. It is pertinent to note that no approval or confirmation by the Court is required to exercise this power.

Once a resolution for authorising increase in share capital has been passed in terms of Section 94 of the Companies Act, a notice is required to be sent by the company in Form No.5 to the Registrar, pursuant to Section 97 of the Companies Act. The provision is reproduced below:

> ***"97. Notice of increase of share capital or of members.—*** *(1) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the authorised capital, and where a company, not being a company limited by shares, has increased the number of its members beyond the registered number, it shall file with the Registrar, notice of the increase of capital or of members within thirty days after the passing of the resolution authorising the increase; and the Registrar shall record the increase and also make any alterations which may be necessary in the company's memorandum or articles or both.*
>
> *(2) …*
> *(3) …"*
>
> *(emphasis supplied)*

A perusal of the provisions referred above shows that it is the Registrar who is the custodian of the articles of a company and not the company. Thus, when a company has to alter the same or modify its share capital as recorded therein, it has to pass a resolution and file its Form No. 5. The relevant portion of Form No.5 is reproduced below:

> *"Notice is hereby given –*
>
> *1…*
>
> *2. In accordance with Section 97 of the Companies Act, 1956, that by ordinary resolution / special resolution of the company dated the day of _____*
>
> *(i) the authorised share capital of the company has been increased by the addition thereto of the sum of Rs. _____ beyond the present authorised capital of Rs. _____.*
>
> *(ii)…*
>
> *3…*
>
> *4…"*

8. The appellants have relied on ***Hindustan Lever*** *v.* ***State of Maharashtra*****, (2004) 9 SCC 438**, and would submit that Form No.5 is an instrument. In this case, the question whether an order passed by the Court (under Section 394 read with Section 391 of the Companies Act), sanctioning a scheme of amalgamation of two companies is an instrument within the meaning of Section 2(l) of the Stamp Act, was answered in the affirmative. It was observed

that the Court passes the order of sanction based on the arrangement arrived at between the parties and thereby affects transfer of assets and liabilities between them, which binds all. This is what was said:

> *"32. In view of the aforesaid discussion, we hold that the order passed by the Court under Section 394 of the Companies Act is based upon the compromise between two or more companies. Function of the court while sanctioning the compromise or arrangement is limited to oversee that the compromise or arrangement arrived at is lawful and that the affairs of the company were not conducted in a manner prejudicial to the interest of its members or to public interest, that is to say, it should not be unfair or contrary to public policy or unconscionable. Once these things are satisfied the scheme has to be sanctioned as per the compromise arrived at between the parties. It is an instrument which transfers the properties and would fall within the definition of Section 2(1) of the Bombay Stamp Act which includes every document by which any right or liability is transferred…"*

The above judgment nowhere states that Form No. 5 is an instrument. The reliance of the appellant here, on the above judgment, seems to be misconceived. An order of the Court sanctioning a scheme of amalgamation cannot be equated to Form No. 5. Any increase in the share capital by a company is neither required to be confirmed by the Court in view of Section 94(2), nor

does the Registrar exercise any discretion, provided Form No. 5 is duly filled.

On the other hand, learned senior counsel for the respondent has relied on ***New Egerton Woollen Mills, In re,*** **1899 SCC OnLine All 22,** where the Allahabad High Court was faced with a similar question; as to whether stamp duty is payable on the document whereby alterations were made to Articles of Association. A Full Bench of the High Court (in the context of the Indian Companies Act, 1882) answered in the negative with the following reasoning:

> *"... we are satisfied that the document which was submitted to the Registrar of Joint Stock Companies was submitted to him under s. 79 to be recorded by him, and not, as he states, for registration. The document was not new articles of association, or articles of association at all within the meaning of the Indian Companies Act. It was a copy of the special resolution passed by the company, notifying to the Registrar, and through him to the world concerned, that the regulations of the company, which were covered by the resolution, would be the regulations by which the company would in future be bound. These regulations, even though they were new regulations to the exclusion of all the existing regulations of the company, are, by the second paragraph of s. 76, to be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association. The law does not say that they are to be deemed articles of association, but expressly declares that they are to be deemed*

regulations of the same validity as if they had been contained in the articles of association. The document which has been forwarded to us is certainly not one which falls within art. 8 of sch. I of the Stamp Act of 1879, and is not liable to stamp-duty as provided by that article."

9. We agree with the view taken by the Allahabad High Court. Filing of Form No. 5 is only a method prescribed, whereby "notice" of increase in share capital or of members of a company has to be sent to the Registrar, within 30 days of passing of such resolution. The Registrar then has to record such increase in share capital or members, and carry out the necessary alterations in the articles. Stamp Duty is affixed on Form No. 5 as a matter of practical convenience because a company itself cannot carry out the alterations and record the increase in share capital in its Articles of Association. It is only the articles which are an instrument within the meaning of Section 2(l) of the Stamp Act and accordingly have been mentioned in Article 10 of Schedule-I of the Stamp Act.

10. Counsel for the appellants, however, contends that increase in the share capital of the respondent from Rs. 600 crores to Rs.1,200 crores, materially alters the character of the instrument, i.e., Articles of Association. As such, it requires a fresh stamp

according to its altered character and needs to be charged as a separate instrument.

On the other hand, learned senior counsel for the respondent refers to Section 31(2) of the Companies Act, which provides that any alteration of the articles shall, subject to the provisions of this Act, be valid as if it were originally in the articles. She further submits that whether an instrument has been materially altered or not is a question of fact and the appellants have neither taken this plea while rejecting the request for the refund, nor before the High Court.

11. It is a settled position of law that in case of conflict between two laws, the general law must give way to the special law. A conjoined reading of the Stamp Act and the Companies Act would show that while the former governs the payment of stamp duty for all manner of instruments, the latter deals with all aspects relating to companies and other similar associations.

In the case at hand, we are concerned with an instrument which is chargeable to Stamp Duty and finds its origin in the Companies Act. The various provisions of the Companies Act provide the purpose and scope of the instrument. Thus, it has to be said that the Companies Act is the special law and the Stamp

Act is the general law with regards to Articles of Association, and the special will override the general.

12. A Division Bench of the High Court of Madras in ***M. Swaminathan*** *v.* ***Chairman and Managing Director*****, 1987 SCC OnLine Mad 438** discussed Section 31(2) of the Companies Act and made the following observations:

> *"The section cannot be understood to mean that any alteration made in the Articles of Association would have retrospective effect as if it was there from the inception of the Articles of Association. The section is intended only to confer validity on the alteration made to the Articles. It is only for the limited purpose of making the alteration valid it is to be treated as if it was originally in the Articles. It is seen from Sec. 29 and 30 of the Companies Act, that certain formalities are prescribed for Articles of Association. Unless the requirements of Ss. 29 and 30 are satisfied, the Articles of Association will not be valid in law. If the same formalities are to be gone through whenever any alteration is made, it may lead to several difficulties."*

Section 31(2) was thus introduced with the intention to confer validity on any alterations to the articles as if they were originally contained therein. Therefore, any increase in the share capital of the company also shall be valid as if it were originally there when the Articles of Association were first stamped. As discussed by the Allahabad High Court in ***New Egerton Woollen***

Mills, In re, (supra) there is no concept of a company having new Articles of Association. Thus, Section 14A of the Stamp Act would not be of any help to the appellants.

13. We may here add that the Legislature has specifically mentioned Articles of Association in Article 10 of Schedule-I of the Stamp Act, where stamp duty is to be charged *inter alia* on increase in the share capital of a company. Thus, in spite of Section 31(2) of the Companies Act stamp duty will be payable on increased share capital. This is however subject to the maximum, i.e., Rs. 25 lakhs which we shall refer to in a while.

If there is no specific provision for charging the increase, then no stamp duty is payable for any increase in the share capital of a company. In order to clarify, we may refer to a decision of the Delhi High Court in ***S.E. Investments Ltd.*** *v.* ***Union of India, 2011 SCC OnLine Del 1867***. In Delhi, the charging provision of the Indian Stamp (Delhi Amendment) Act, 2007 which was under consideration of the High Court was as follows:

10	ARTICLES OF ASSOCIATION OF A COMPANY:-	
	(a) When the authorized capital of the company does not exceed one lac	0.15% of the Authorized share capital with a monetary ceiling of Rs. 25 Lakhs.

	(b) In other cases	0.15% of the Authorized share capital with a monetary ceiling of Rs. 25 Lakhs.

The Single Judge of the High Court[3] observed that other State Legislatures have included a specific provision for levy of stamp duty on increase in authorised share capital and held as follows:

> *"13. In the absence of a specific provision that permits the levy of stamp duty on the increase in authorized share capital, it would not be open to the Respondents to insist upon the Petitioner having to pay stamp duty for the increased authorized share capital. The fact that the Petitioner earlier paid stamp duty when the authorized share capital was increased to Rs. 8.5 crores cannot act as an estoppel against the Petitioner."*

14. The second question is whether the maximum cap on stamp duty is applicable every time there is an increase in the share capital or it is a one-time measure. It is an admitted fact that when the respondent increased its share capital from Rs. 36 crores to Rs. 600 crores it paid a stamp duty of Rs.1,12,80,000/- and at

[3] The judgement of the Single Judge was upheld by the Division Bench in *Collector of Stamps v. Se Investment Ltd.*, 2012 SCC OnLine Del 3857.

that time there was no provision for a maximum cap or upper ceiling on the amount payable.

On 02.08.1994, the State Legislature amended Article 10 of Schedule-I of the Stamp Act and the amended provision, which was applicable when the respondent passed a resolution to increase its authorised share capital to Rs. 1200 crores, is reproduced below:

1	2
Description of Instrument	Proper Stamp Duty
10. ARTICLES OF ASSOCIATION OF A COMPANY – Where the Company has no share capital or nominal share capital or increased share capital.	One thousand rupees for every rupees 5,00,000 or part thereof, subject to a maximum of Rs.25,00,000.

15. The appellant has relied on **Collector of *Stamps*** *v.* ***Se Investment Ltd., 2012 SCC OnLine Del 3857*** to contend that each increase in authorised share capital will be chargeable to stamp duty in Maharashtra due to the inclusion of "increased share capital" in the charging provision and hence, respondent has rightfully paid Rs. 25 lakhs (for the subsequent increase from

Rs.600 crores to Rs.1200 crores) as stamp duty in view of the maximum cap.

The Stamp Act authorises involuntary exaction of money and is in the nature of a fiscal statute, which has to be interpreted strictly. This Court in ***CWT*** *v.* ***Ellis Bridge Gymkhana,*** **(1998) 1 SCC 384** held as under:

> *"5. The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all."*

Thus, even though "increased share capital" is a part of Article 10, which column it has been placed in assumes importance. Column 1 of the Schedule describes the instrument on which stamp duty is to be levied whereas Column 2 prescribes the stamp duty payable.

Column 1 has to be construed as describing three situations or contingencies relating to Articles of Association, i.e., "where the company has no share capital or nominal share capital or increased share capital". In cases where a company has no share capital it would have to pay no stamp duty and if a company is

submitting its articles for the first time, stamp duty would be calculated as per the nominal share capital. The effect of adding "increased share capital" is that stamp duty will be charged on subsequent increases in the authorised share capital, subject to the maximum cap. In other words, the ceiling of Rs. 25 lakhs in Column 2 is applicable on Articles of Association and the increased share capital therein, not on every increase individually. In case stamp duty equivalent to or more than the cap has already been paid, no further stamp duty can be levied. For a better understanding, let us consider a hypothetical example:

SHARE CAPITAL OF A COMPANY	STAMP DUTY PAYABLE	STAMP DUTY TO BE ACTUALLY PAID DUE TO CAP	TOTAL STAMP DUTY
50 crores	10 lakhs	10 lakhs	10 lakhs
100 crores	10 lakhs	10 lakhs	20 lakhs
150 crores	10 lakhs	5 lakhs	25 lakhs
200 crores	10 lakhs	Nil	25 lakhs

16. The fact that the maximum cap of Rs.25 lakhs would be applicable as a one-time measure and not on each subsequent increase in the share capital of a company is fortified directly by the Maharashtra Stamp (Amendment) Act, 2015 which amended

the charging section for Articles of Association i.e., Article 10 of the Stamp Act. The Section as it stands now is reproduced below:

1	2
Description of Instrument	Proper Stamp Duty
10. ARTICLES OF ASSOCIATION OF A COMPANY – Where the Company has no share capital or nominal share capital or increased share capital.	[0.2 per cent. on share capital or **increased share capital**, as the case may be] subject to a maximum of Rs.50,00,000.

The effect of the 2015 amendment is that "increased share capital" has also been added in Column 2 and proper stamp duty shall be calculated, for either of the three situations, as per the share capital or increased share capital. This means that the cap will now be applicable on each individual increase.

17. A reference can also be made to the provisions of Stamp Duty Acts of a few other States where Articles of Association are chargeable:

STATE	Description of Instrument	Proper Stamp Duty
Gujarat	7. Alteration of Articles of Association of a Company under the Companies Act,	A sum equal to the duty that would have been leviable under Article 12 as though the company's

	2013 (18 of 2013), in consequence of increase of the company's share capital; instrument of– Exemption…	nominal share capital had been when the company was formed, equal to the total share capital so increased, less the sum already paid under Article 12.
	Art. 12. Articles of Association of a Company.— Where the Company has no share capital or nominal share capital.	Subject to maximum of five lakhs rupees, fifty paise for every hundred rupees or part thereof.
Madhya Pradesh	11. Articles of Association of a Company– (a) where the company has no share capital (b) where the company has nominal share capital or increased share capital	 Five thousand rupees. 0.15% of such nominal or increased share capital, subject to a minimum of five thousand rupees and a maximum of twenty five lakh rupees.

18. We also do not agree with the appellant that stamp duty paid before the amendment cannot be taken into account. It is true that the amendment does not have retrospective effect, however since the instrument 'Articles of Association' remains the same and the increase was initiated by the respondent after the cap was

introduced, the duty already paid on the same very instrument will have to be considered. It is not a fresh instrument which has been brought to be stamped, but only the increase in share capital in the original document, which has been specifically made chargeable by the Legislation.

19. For the reasons stated above, we dismiss this civil appeal and uphold the order of the High Court of Bombay. Accordingly, we direct the appellants to refund Rs. 25 lakhs paid by the respondent along with interest @ 6% per annum. Let the needful be done within 6 weeks from today.

20. Interim order(s) shall stand vacated. Pending application(s), if any, shall stand disposed of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[PRASANNA B. VARALE]

New Delhi.
April 05, 2024.