
STAMP DUTY FOR ALTERATION IN SHARE CAPITAL OF A COMPANY

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An Article of Association (**AoA**) constitutes a very imperative document in relation to a Company, incorporated under the Companies Act. The former as well the present Companies Act, expressly authorize alteration in the Articles of Association. Section 14 of the Companies Act 2013 allows alteration in the AoA by a Special Resolution. The AoA, inter alia, also specifies the power of the company to alter its share capital. Thus, at any point, a Company intends to increase its share capital, the first step is to amend the AoA if it does not permit any increase in the Share Capital.

As per the provisions of Section 61 of Companies Act, 2013, a company can alter its Memorandum of Association (**MoA**) only if authorized by its AoA. Every alteration in the AoA for authorizing the increase in Share capital or the Increase in the Share Capital by altering the MoA, needs to be notified to the Registrar of Companies (**RoC**). As per Rule 15 of Companies (Share Capital & Debentures) Rules, 2014 If a company alters its share capital or increases the share capital by conversion of debentures the notice of such alteration, increase or redemption shall be filed by the company with the Registrar in Form No. SH-7 along with the fee. Thus, a question arises that whether Form SH-7 is an instrument under the Stamp Act.

Recently, the Hon'ble Supreme Court in State of Maharashtra vs. National Organic Chemical Industries Ltd (2024) held that a Form submitted to the RoC does not satisfy the requisites of an Instrument and thus, outside the purview of payment of Stamp duty. Any Stamp Duty, if at all, is payable only on the AoA, which are within the Ambit of Instrument and explicitly stated in the Schedule. In the above case, the court held that any stamp duty to be levied on the increase in share Capital shall depend upon the Wordings concomitant with the AoA in the Schedule. If the Schedule in the Stamp Act provides any of the three grounds - the Company has no share capital or nominal share capital or increased share capital in relation to AoA, then

the increase in Share Capital shall be subject to Stamp duty. (The above case was based on Bombay Stamp Act, 1958)

Another major point of law that arises in the present preposition is the Limit imposed on the payment of Stamp Duty. Thus, if the Stamp Act provides that the maximum stamp duty to be paid on the AoA or its alteration is subjected to a limit, does the limit apply in each increase. The court stated that if the maximum stamp duty to be paid under the Stamp Act is satisfied in any subsequent increase, the Company is under no obligation to pay a Stamp Duty for each subsequent Increase.

The court upheld the precedent laid down in *Collector of Stamps v. Se Investment Ltd.* (2012) wherein it was held that each increase in authorised share capital will be chargeable to stamp duty only subject to the inclusion of “increased share capital” in the charging provision.

As laid down in *CWT v. Ellis Bridge Gymkhana* (1997), 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, following this judgement, if the Section does specify multiple increase in Share Capital, the Same shall be within the Purview of Stamp duty, subject to any maximum limit.

In the Companies Act 1956 it was explicitly provided in Section 94 that any alteration in the Share Capital does not require the confirmation of the Court. Thus, though an order of the court providing for amalgamation of two companies was held to be an instrument in *Hindustan Lever v. State of Maharashtra* (2003), the same shall not be valid for the form submitted to the RoC.

Section 14 of the Companies Act, 2013 provides that any alteration in the AoA, shall be valid as if it were originally stated in the AoA. Thus, the Form submitted to the RoC cannot be held as an amendment to the AoA, since the amendment would have the same validity as being originally incorporated. It has been held in *New Egerton Woollen Mills, in re, 1899 (SCC OnLine All 22)*, that any document notifying any change in the AoA was not a AoA, or AoA 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, 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 AoA, but expressly declares that they are to be deemed regulations of the same validity as if they had been contained in the AoA. Thus, any such document does not fall within the ambit of Instrument and thus is not subject to Stamp Duty.

Further in case of conflict between two laws it is a settled position of law that, 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. Thus, the AoA which is chargeable to Stamp Duty 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 AoA, and the special will override the general.

The relation between increase in Share Capital and Stamp Duty is subject to one more dilemma, the former being governed by a Central law and the later by a state law. Thus, much depends on the wordings of the State Legislature. Thus, if the State Law provides for increase in share capital under AoA, within its Schedule as a ground, the same shall be subject to Stamp duty. However, it shall be the AoA and not the Form to be submitted to the RoC, that shall be subjected to Stamp Duty.

However, the preposition can be looked from another angle. What if the AoA provides for the alteration of Share Capital in its very formation and not by subsequent alteration. In this case, as per the Companies Act, there shall be no liability to pay any stamp duty as the MoA will not be considered as a new MoA, but original MoA for which stamp duty has been already paid.