
**CASE COMMENT ON *HINDUSTHAN LEVER & ANR V/S
STATE OF MAHARASHTRA & ANR: THE LEGAL VALIDITY
OF THE STAMP DUTY LEVIED ON THE COURT ORDER
SANCTIONING M&A DEALS***

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Introduction

Stamp duty is one of the crucial taxes levied by the government of India during the execution of various documents or instruments specified in the Indian Stamp Act 1899, or the stamps act enacted by the various state legislatures as the case may be. The key principle governing the computation of the stamp duty is the nature of the instrument or document involved in relevant transactions and the stamp duties accordingly.

The legal framework with reference to the stamp duty regime in India traces their ultimate source from the Constitution of India itself. The 7th schedule of the constitutions demarcates the various fields in which states and union legislature can enact upon or both, and the stamp duty matters is broadly included in the all the three lists (Entry 91 of Union List, Entry 63 of state list and Entry 44 of the Concurrent list). However, the matters relating to the computation of the stamp duty has been one of the often-contested taxation matters. There have been several instances in which the various High courts and even supreme court of India has came up with various judgements in resolution to various legal disputes arising from the computation and applicability of the stamp duty in various transactions through instruments or documents.

Considering the market potential and presence earned by the Mergers and Acquisition deals in the last three decades in India, the disputes arising from such M&A deals has been equally evolving over the years and the taxation dispute has been one of the crucial among them. Fortunately, several disputes have been conclusively decided and resolved by the various judgements pronounced by various courts across the country including landmark judgements from various High courts of the state and the apex court, supreme court of India.

The legal challenge raised by one of the parties of an amalgamation deal announced in 1992, questioned the validity of a state specific stamp duty act and its provision levying stamp duty

over an order of court sanctioning the amalgamation scheme has been deliberated and decided conclusively in the *Hindustan Lever & Anr V/s State of Maharashtra & Anr.*

Facts

On 19-3-1993, a scheme of amalgamation was formulated and approved by the respective boards of the Tata Oil Mills Co. Ltd (Transferor company) and Hindustan Lever Ltd. (Transferee company). In compliance with the mandatory approval requirement, both the companies has submitted their respective board approved amalgamation scheme before the concerned High court according to the Companies Act, 1956¹, on 3-3-1993 the High Court has approved the submitted scheme on amalgamation with certain modification through an order passed by a single bench judge.

Several attempt has been made to appeal against the aforesaid single bench judgement, from an appeal filed at the Division bench and it was rejected and thereupon a Special leave petition has been filed in the Supreme court against the Division bench judgement, it was also dismissed on 24-10-1994.² After receiving approval on the order of amalgamation received from the High court on 24-11-1994, and on submission of the certified copies of the order, the Registrar of the companies, Maharashtra issued a Certificate on the amalgamation of the above parties.

However, the real dispute concerning the matters was raised when a humungous amount sought as Stamp duty by the concerned authorities from the parties of the amalgamation in pursuant to the order of amalgamation passed under the section 394 of the Companies act, 1956³, and aggrieved by sought amount and concerned section 2 g (4) of the Bombay Stamp Act, 1958 (Herein after referred as 'Stamp Act'), the Hindustan Lever Ltd (HLL) filed a writ petition in the Bombay High Court challenging the constitutional validity of the relevant provision of the Stamp act⁴, however, the division bench has dismissed the petition and also upheld the validity of the section 2 g (4) of the Stamp Act, and in a final resort the HLL approached Supreme through an appeal against the Division bench judgement of the Bombay high court praying the same legal issues challenging the validity of the relevant provision of the Stamps act.

Legal Issue Raised

¹ The Companies Act, 1956, S 391, Act No 1, Parliament of India

² Hindustan Lever Employees' Union Vs. Hindustan Lever Ltd. & Ors., 1995 Suppl. (1) SCC 499.

³ The Companies Act, S 94, Act No 1, Parliament of India

⁴ The Bombay Stamps Act, 1958, S 2(g), Act No 60, State of Maharashtra

The key legal contentions raised by the appellant HLL before the Hon'ble court are as the following: -

- 1) The legality of levying stamp duty in pursuance to the Bombay Stamps Act,1958, on an order of amalgamation under section 394 read with section 391 of the companies Act,1956,
- 2) The legislative competency of a state legislature in imposing stamp duty on an order of amalgamation passed by a competent court.

Relevant Sections

1. **Section. 391.**⁵*Where a compromise or arrangement is proposed between (a) company and its creditors or any class of them; or (b) between a company and its members or any class of them; the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.*
2. **Section. 394**⁶*.Where an application is made to the Court under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the court, the court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:*
 - (i) *the transfer to the transferee-company of the whole or any part of the undertaking, property or liabilities of any transferor-company;*
 - (ii) *the allotment or appropriation by the transferee-company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;*
 - (iii) *the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company;*
 - (iv) *the dissolution, without winding up, of any transferor-company;*
 - (v) *the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;*
 - (vi) *and such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.*
3. **Section 2 g ((iv)**⁷
In this act, unless there is anything repugnant to in the subject or context,

⁵ The Companies Act,1956, S 391, Act No 1, Parliament of India

⁶ The Companies Act,1956, S 394, Act No 1, Parliament of India

⁷ The Bombay Stamp Act,1958, S.2g(iv), Act No 1958., State of Maharashtra

“Conveyance” Includes –

(iv) every order made by the High Court under section 394 of the Companies Act, 1956 or every order made by the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 or every confirmation issued by the Central Government under sub-section (3) of section 233 of the Companies Act, 2013, in respect of the amalgamation, merger, demerger, arrangement or reconstruction of companies (including subsidiaries of parent company) ; and every order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 in respect of amalgamation or reconstruction of Banking Companies.

4. Section 2(1)⁸

“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;

Key Arguments Raised by Appellants

- The counsel appeared for the appellants contented that the order passed by a competent in pursuance of Section 394 of CA,1956, is not at all an order/decreed passed by court affecting the transfer of property subsequent to the act of the parties, instead, it is an order passed by the court after judicial scrutiny. According to the Stamps Act, stamp duty can be levied on the ‘Documents’ or ‘Instruments’, and any order in pursuance of the section 394 of the CA,1956 sanctioning Merger or Amalgamation scheme by the Court is mere a Judicial pronouncement and is not a ‘Document’ or ‘Instrument’.
- The appellants further argued that the, transfer of immovable properties is an “involuntary transfer” in nature effected in consequence of the merger or amalgamation scheme sanctioned by the court and therefore, such involuntary transfers are not liable to stamp duties.

Analysis of Judgement

While considering the question on the legality of levying duty on an order passed by court in pursuance of section 394⁹, the court have considerably relied on various erstwhile decided case laws decided by the same court.

Court has relied on principles laid in the *Miheer H Maftala Vs Maftalal Industries Ltd.*¹⁰ in interpreting the role of court in sanctioning any merger or amalgamation scheme its nature and

⁸ The Bombay Stamp Act,1958, S.2(1), Act No 1958., State of Maharashtra

⁹ Companies Act,1956, Section 394, Act No 1, Parliament of India

¹⁰ <https://main.sci.gov.in/judgment/judis/15118.pdf>

subsequent affect. The court has laid down that, order passed by a court in pursuance of the section 394, is based on a compromise or arrangement arrived between the parties and the nature of the role of court in such pronouncement of the order is mere supervisory only. The court further refers to its own erstwhile judgements in *H Jadve and Ors Vs. V.B Podar*, 1966(2) SCR 353, to substantiate on how certain order passed by a court qualifies to become an Instrument and thereby eligible for levying stamp on it, with special reference on the instance of how an award passed by Industrial tribunal would could under the ambit of an 'instrument'.

To decide on the question on whether stamp duty is leviable on the Court order sanctioning mergers or amalgamation scheme, court has invoked the judgement pronounced in the *Sun Alliance Insurance Ltd. Vs Inland Revenue Commissioners*, 1971(1), All England Law reports 135, which held that the court orders effects for the transfer of property and therefore stamp is leviable on such orders. To a further extent, while responding to contention raised by the appellants that whether a decree by a court can be considered as an Instrument or document, the court has relied on its Judgement in *Haji S. K Subhan Vs. Madhoroa*, AIR SC 1230, which answered affirmatively on the same above raised question.

Considering the aforementioned judgments and interpretations, the Court has conclusively decided that order passed by court under section 394 sanctioning a merger or amalgamation scheme is an instrument which is creating or transferring any interest or liabilities and thereby liable for levying stamp duty according to the relevant applicable statutes.

Another legal issue raised was regarding the competency of the state legislature to impose duty on an instrument. While deciding the legal issue and arguments put forth by appellant on the same point, the court has considerably interpreted the article 246¹¹ and the separation of powers demarcated in the seventh schedule of the constitution. The court held that, while examining the legislative competencies of a legislature with regard to particular enactments with reference to entries in various lists, it is necessary to examine the pith and substance of such legislations are to be keenly focused to decide upon their competency.

The court has further clarified that the duty was levied on the execution of the instrument and not merely on the transfer of the immovable properties and thereby state legislature is competent to determine the stamp duty by charging as a fixed one or ad-valorem. The court has relied on the judgement *Himalaya House Co. Ltd Vs. The Chief Controlling Revenue*

¹¹ Constitution of India, Article 246

Authority, &Anr. AIR 1972 SCC 899, and held that, the concerned state legislatures are open to lay down the basis for computing duty on the conveyances, it shall not be according to their consideration or value, but it shall be the market value of the property which is involved in such conveyances.

Considering the aforesaid circumstances, references from the erstwhile judgements, and beneficial interpretation of the statutes and articles, the supreme court has conclusively decided that the Section 2g(iv) of the stamps act, Vis-à-vis section 394 of the CA,1956, is not in anyway repugnant and State legislature is completely competent to levy duty on the order of the court on the sanction of the merger and amalgamation scheme submitted by the concerned parties in pursuance to section 391 of the CA,1956.

Conclusion

According to the existing legal framework in India dealing with the mergers/amalgamations schemes , they are primarily subject to the approval of the High court according to the erstwhile act¹²,and according to the current Companies Act,2013, the authority for approval regime has been transferred to the newly introduced National Company Law Tribunal(NCLT).Upon receiving approval on M&A schemes presented before authority, through an order passed by the concerned authorities, such orders are liable to pay stamp duty according to the relevant applicable state or union stamp duty acts as the case may be.

Considering the ongoing M&A boom existing in India in last two decades, the role and relevance of above discussed judgement in,*Hindustan Lever & Anr V/s State of Maharashtra & Anr*, is highly significant. The judgement has considerably cleared the stance on the legislative reason behind levying stamp duty on such orders sanctioning M&A deals from the concerned courts or tribunals. However, according the existing legal frameworks the existence of different rate of stamp duty in different states across India is still a considerable hindrance in ease of executing such M&A deals and a unified stamp duty regime would be the most amicable solution to facilitate smooth existence of M&A market in India.

¹² Companies Act,1956