IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7443 OF 2016

J. P. Morgan Securities India Pvt. Ltd.)
A company incorporated under the Companies)
Act, 1956 and a Non-Banking Financial)
Company registered with the Reserve Bank)
of India and having its registered office at J. P.)
Morgan Tower, Off, CST Road, Kalina,)
Santacruz (E), Mumbai – 400 098.) ...Petitioner

versus

1. The Chief Controlling Revenue Authority)
at Pune having address at Ground Floor,)
Opp. Vidhan Bhavan, Council Hall,)
New Administrative Building,)
Pune – 411 001,Maharashtra.)

2 The Superintendent of Stamps having address)
at General Stamp Office, Town Hall, Fort,)
Mumbai – 400 001.)

3 The Collector of Stamps)
having its address at)
General Stamp Office, Town Hall,)
Fort, Mumbai 400 001.) ...Respondents

Mr. Ashutosh Kumbhkoni, Senior Advocate along with Mr. Faisal Sayyed, Ms. Sneha Bhange, Mr. Rashid Boatwalla, Ms. Lipsa Unadkat and Mr. Siddharth Yewale i/b. Manilal Kher Ambalal and Co.,Advocates for the Petitioner.

Mr. Vineet Naik, Special Senior Advocate along with Mr. Sukand Kulkarni i/b. Mr. P.Kakade, GP and Mrs. V. S.Nimbalkar, AGP for all respondents.

SHUBHADA SHANKAR KADAM

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CORAM : R. M. JOSHI, J.

RESERVED ON : 29th AUGUST, 2024.

PRONOUNCED ON : 25th SEPTEMBER, 2024

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Judgment :

1. The petitioner being aggrieved by rejection of appeal under Section 53 (1A) of the Maharashtra Stamp Act 1958 (for short "the Stamps Act") by order dated 6th May 2016 passed by Chief Controlling Revenue Authority, Maharashtra State, Pune, has filed this petition.

2. The facts which led to filing of the petition can be narrated in brief as under :

2.1. Petitioner is a private limited company registered under the Companies Act, 1956. It is the case of the petitioner that J. P. Morgan Group in the United States of America (USA) announced its intent to acquire Bear Stearns Company INC which was also situated in the USA. J. P. Morgan Group acquired the said company in the USA. This has resulted in entire group being owned and controlled by J.P.Morgan Group.

Bear Stearns Financial Services (India) Private Limited (for short "BSFS") was a company incorporated under the Companies Act 1956 whose entire share holding was held by BS Group. Pursuant to the acquisition of BSFS in the USA and the resultant acquisition of the BS Group globally, the entire shareholding of said group came to be held by J.P.Morgan Group. It was decided to effect merger of BSFS with petitioner. A scheme of amalgamation was prepared, which provided for reduction of share capital of BSFS to Rs.1,00,000/- comprising of 10,000 equity shares of the face value of Rs.10/- each. The scheme specifically provided that the reduction

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of share capital was to take place prior to BSFS merging with the petitioner. In view thereof, the petitioner filed proceedings in this Court seeking sanction of scheme of amalgamation. By order dated 18th December 2009, this Court sanctioned the scheme. Pursuant thereto, the petitioner lodged the said order for adjudication under Section 31 of then prevailing Bombay Stamp Act 1958 with respondent No.3. Respondent No.2 issued demand notice dated 2nd June 2010 thereby demanding an amount of Rs.1,57,81,892/- towards stamp duty under Article 25(da) of the Stamp Act. The petitioner objected to the said demand on 24th June 2010 by filing written submissions. Respondent No.2 granted hearing to the petitioner on 29th July 2010 on demand notice and by passing order dated 16th October 2010 rejected the application for cancellation of the said demand notice. An appeal was preferred before Respondent No.1, which came to be rejected by passing an impugned order, hence, this petition.

3. Learned senior advocate appearing on behalf of the petitioner submits that in view of the scheme of merger approved by the High Court, the share capital of the transferor – Company was reduced to the extent of Rs.1,00,000/- i.e. 10,000/- shares of Rs.10 each. This according to him has occurred on appointed date. By referring to the provisions of the Stamp Act, more particularly, Article 25 thereof, it is submitted that the stamp duty applicable on the instrument of merger would be on the shares which were exchanged with transferee company. It is submitted that the

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stamp authorities committed an error in taking into consideration the valuation of the shares before appointed date. It is his submission that since the entire scheme was sanctioned by this Court and there was exemption granted from compliance of Section 100 of the Act before reduction of the share capital, now it does not stand to any justification as to why the document is stamped not on the reduced value of the share capital but on the valuation prior to the date of appointment. To support his submission, he placed reliance on the judgment of the Division Bench of this Court in the case of ***Li Taka Pharmaceuticals Ltd. And anr. Versus The State of Maharashtra and ors. 1996 SCC OnLine Bom 67***. He also drew attention of the Court to the order passed by this Court in respect of the merger scheme, to contend that there cannot be any interpretation of the clauses thereto, which would run contrary to the order of this Court sanctioning scheme of amalgamation.

4. Learned senior advocate, special counsel for the respondents opposed the said contention by referring to the amendment caused to the Article 25 of Stamp Act in the year 2001. It is his submission that prior to the amendment and incorporation of sub-clause (ii), the face value of the shares of transferor company was required to be taken into consideration. It is his submission that post-amendment, the shares issued or allotted in exchange or otherwise has been defined i.e. number of shares of transferor company accounted as per exchange ratio as on appointed date. It is his submission that the statute which permits Government to

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collect revenue is required to be interpreted in favour of collection of revenue. It is his submission that it is immaterial as to the notional value determined by transferor and transferee company in respect of their equity shares and any such understanding between parties would have no bearing on the State's right to stamp the document of amalgamation on the value of shares accounted. According to him, the valuation report submitted by the petitioner itself is sufficient to indicate that there is no error committed by authority in considering the valuation for the purpose of imposing stamp duty.

5. There is no dispute about the fact that there was a scheme submitted for the amalgamation of BSFS with the petitioner company such scheme was presented before this Court for sanction. This Court by passing order dated 18th December 2009 has sanctioned the scheme. Undeniably the reduction of share capital of transferor company was permitted by dispensing procedure laid down under Section 100 of the Act. As per the approved scheme, the appointed date was 1st April 2009, whereas effective date was the last day of the dates on which the conditions and matters referred into clause d(6) of the scheme occurs or have been fulfilled or waived. The transfer and vesting of the undertaking was subject to the reduction of capital upon coming into effect of this scheme and w.e.f. the appointed date. It is thus clear that as on the appointed date, the share capital of the transferor company was reduced to Rs.1,00,000/- i.e. 10,000/- shares of Rs.10/- each. Now question arises

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as to whether the stamp duty would be applicable on the basis of this value, which has been notionally brought down or to consider actual value of shares which were accounted for.

6. At this stage, it would be relevant to take note of Article 25 of the Stamp Act, the relevant part of which reads thus :

Description of Instrument	***Proper Stamp Duty***
****25**. CONVEYANCE (not being a transfer charged or exempted under Article 59)-*	
….	
(da) If relating to the order of the High Court under section 394 of the Companies Act, 1956 or the order of the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 or 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) or 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 and every order made by the Board for Industrial Companies (Special Provisions)Act, 1985, in respect of sanction of Scheme specified therein or every order made by the National Company Law Tribunal under section 31 of the Insolvency Bankruptcy Code, 2016, in respect of approval of resolution plan.	*10 per cent of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such amalgamation;* *Provided that, the amount of duty, chargeable under this clause shall not exceed-* *(I) an amount equal to 5 percent of the true market value of the immovable property located within the State of Maharashtra of the transferor company; or* *(ii) an amount equal to 0.7 per cent, of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid, for such amalgamation, whichever is higher;* *Provided further that, in case of reconstruction or demerger the duty chargeable shall not exceed,—* *(i) an amount equal to 45 per cent.] of the true market value of the immovable property located within the State of Maharashtra transferred by the Demerging* *Company to the Resulting Company; or* *(ii) an amount equal to 0.7 per centum of the aggregate of the market value of the*

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shares issued or allotted to the Resulting Company and the amount of consideration paid for such demerger, whichever is higher.]

Exemption

Assignment of copyright under the Copyright
Act, 1957 (IXV of 1957).

Explanation I -For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred] to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of section 32A shall apply mutatis mutandis to such agreement shich is de mutato be a conveyance as aforesaid, as they apply to a conveyance under that section:

Provided further that, where subsequenty a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale Which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.]

'Provided also that where proper stamp duty is paid on a registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed without any modification then such a conveyance shall be treated as other instrument under section 4 and the duty of one hundred rupees shall be charged.]

*[Explanation II * * *]*

Explanation III.—[(i)] For the purposes of clause (da) the market value of shares,-

(a) in relation to the transferee company, whose shares are listed and quoted for trading on a stock exchange, means the market value of shares as on the appointed day mentioned in the Scheme of Amalgamation or when appointed day

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is not so fixed, the date of order of the High Court; and
(b) in relation to the transferee company, whose shares are not listed/or listed but not quoted for trading on a stock exchange, means the market value of the shares issued or allotted with reference to the market value of the shares of the transferor company or as determined by the Collector after giving the transferee company an opportunity of being heard.
(ii) For the purposes of clause (da), the number of shares issued or allotted in exchange or otherwise shall mean, the number of shares of the transferor company accounted as per exchange ratio as on appointed date.

7. Perusal of above provision indicates that prior to the amendment to the Act, 32 of 2005 w.e.f. 7.5.2005., the number of shares issued or allotted in exchange or otherwise was given literal meaning, i.e. actual allotted shares. Thus, prior to the amendment in relation to the transferee company, whose shares are listed and quoted for trading on stock exchange, means the market value of the shares as on the appointed day mentioned in the scheme of amalgamation or when appointed date is not so fixed, the date of order of the High Court. Clause (b) further provided that in case of a transferee company, whose shares are not listed/ or listed but not quoted for trading on a stock exchange, the market value of the same is shares issued or allotted with reference to the market value of the shares of the transferor company or as determined by the Collector.

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8. Pertinently, this position in respect of Article 25(da) has materially changed with introduction of clause (ii). For the purpose of clause (da), the number of shares issued or allotted in exchange or otherwise is defined to mean, the number of shares of the transferor company **accounted as per exchange ratio as on appointed date.** The basic difference, which has occurred in the said provision with inclusion of clause (ii), is that earlier in relation to the shares of the transferee company, the calculation of the market value and consequent stamp duty was considered. Whereas, after the amendment, the number of shares of the transferor company **accounted as per exchange ratio is required to be considered.** The amendment caused to Article 25(da) will have to be given due weightage and meaning intended by the Legislature.

9. On behalf of petitioner, reliance is placed on judgment in case of ***Li Taka Pharmaceuticals ltd. and anr. (supra)*** and reference is made to paragraphs 32 to 34, which reads thus :

> *32. In our view, it would be a question of fact what stamp duty would be payable by the party on an amalgamation scheme. It is not to be forgotten that by amalgamation scheme, what is transferred is a going concern and not assets and liabilities separately. As a going concern, what is the value of the property is to be taken into consideration. Normally, that would be reflected in an amalgamation scheme by the shares allotted to the shareholders of the transferor company. It cannot be said that the assets are separately transferred and liabilities are separately transferred by the amalgamation scheme. As such, by amalgamation scheme, virtually, a transferee company in effect purchases the transferor company for a specified sum which is paid in terms of the shares of the transferee company to the share-holders of the transferor company. For this purpose, what is to be kept in mind is that by sanctioning the amalgamation scheme, the Court is sanctioning not transfer of the assets or liabilities separately but the going concern is transferred which is valued at a particular amount*

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and that valuation would be on the basis of share exchange ratio. Therefore, it would be difficult for us to accept the contention of the learned Advocate General that while assessing the amalgamation document, the stamp authority is entitled to recover stamp duty on the following two components separately:—

(a) Market value of shares (predetermined as per Exchange Ratio or the one prevailing on the day the Scheme of Amalgamation comes into operation, as the case may be) of the transferee company allotted to the share-holders of the transferor company and any other form in which net amount of consideration is paid; and

(b) The liabilities of transferor company which are being transferred to and are going to become liabilities of the transferee company. (Liabilities are also certified).

33. This contention is devoid of any substance because by the scheme of amalgamation, what is transferred is assets minus liabilities and there is no question of any transfer of these two components of a going concern separately. Further, this submission would be contrary to the meaning of the word "conveyance" as provided under S. 2(g)(iv). Section 2(g)(iv) itself provides that every order made by the High Court in respect of amalgamation of a company by which property, whether movable or immovable, or any estate or interest in property is transferred to or vested in any other person. By the amalgamation scheme, the assets and liabilities are not separately transferred but the interest in a going concern is transferred. In this view of the matter, we hold that normally in a case of amalgamation of a scheme sanctioned by the High Court, its consideration under Art. 25(1) should be based on its valuation arrived at on the basis of shares allotted by the transferee company to the transferor company. In the case of Hindustan Lever Ltd. (1994 Supp (1) SCC 1 : AIR 1994 SC 834) (supra) at the time of making valuation of the share exchange ratio, the Court itself took into consideration the valuation report based on three well-known methods viz., (i)the net worth method, (ii) the market value methods, and (iii) the earning method. It is also established that quotation of shares in the share market provides larger reliable index of the assets of the company.

34. Hence, we accept the contention of the learned counsel for the petitioners that valuation under Art. 25(1) of the Stamp Act on the instrument of the amalgamation scheme sanctioned by the Court, after due verification, is to be determined by the stamp authority only on the basis of the price of the shares allotted to the transferor company or other consideration, if paid, but and not by separately valuing the assets and the liabilities."

With utmost respect, this judgment deals with the provision of

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Article 25(da) prior to Maharashtra Act 32 of 2005, whereby the amendment by clause (ii) came to be introduced. At the relevant time, what was relevant for consideration is market value of share allotted by transferee company as on appointed date. This position has changed considerably, as the meaning given to such number of shares issued or allotted is the number of shares of transferor company accounted as per exchange ratio. As such, this judgment has no bearing on present case and would not help petitioner to support its contention.

10. The quantum of capital to be considered therefore is limited to the number of shares accounted as per exchange ratio on appointed date; as provided in Clause (ii). It is therefore necessary to see what is quantum / number of shares of transferor company on appointed date. Record indicates that a petition was moved under Section 100 and 101 of Companies Act seeking dispensation of procedure to be followed for reduction of share capital. This petition is filed on 8th June 2016 and order came to be passed thereon thereafter. As per Section 100, the reduction of share capital is said to have been done on passing of resolution, which in this case would be treated as order of this Court, of dispensation of the said procedure. Thus it cannot be said that on appointed date pursuant to resolution of transferor company, the share capital of this company is reduced. Therefore, on the appointed date full share capital of the transferor company was accounted on per exchange ratio.

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11. At this stage, it would be relevant to take note of the valuation report submitted by Ernst and Young, which indicate as under :

> *"We have been informed by the Management of BSFSI that in the scheme of merger, there will also be a proposal (under section 100 of the Companies Act, 1956) for reduction of the share capital of the transferor company (BSFSI) immediately prior to it merging with the transferee company (JPMSI). As at the appointed date, before reduction of the share capital, based on unaudited provisional financial statements, the transferor company had Rs. 1960.48 million as equity share capital, Rs. 103.7 million as the accumulated profits and general reserve and Rs. 126.7 million as the special reserve. BSFSI proposes to reduce the share capital (by reducing the number of shares or BSFSI) and profits of the company pursuant to the capital reduction process to Rs. 0.1 million (with a corresponding reduction in cash/bank/liquid balance). As a result, at the time of the merger, BSFSI will have Rs.126./million of special reserve and (Rs.0.1 million) of equity share capital, which will be transferred to the transferee company. Also, at the time of the merger, both BSFSI and JPMSI are owned Ms. 100% by same ultimate parent company i.e.JP Morgan Chase & Co, USA, as informed to us by the Management of the Companies."*

12. The valuation report thus in no uncertain terms states that before merger of transferor company (BSFSI) with transferee company (JPMSI), as on appointed date, transferor company had 1960.48 million as equity share capital. In terms of valuation report, the shares of transferor company accounted are worth Rs.1960.48 million equity share i.e. Rs.11.5/-each.

13. In the light of the aforestated facts as well as the provisions of the Stamp Act, if the notice issued by the Superintendent of Stamps and order passed by Collector of Stamps are considered, then, both the

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authorities have held that the number of shares allotted is 196048333 @ Rs. 11.5/- with market value of Rs.225,45,55,830/- and the stamp duty applicable thereon is @ 0.7% in view of Article 25(da)(ii) cannot be faulted with. Similarly, the observations made by the Superintendent of Stamps that the reduction of share capital need not be considered, will have to be read in the context of the amendment to Article 25(da) by incorporation of clause (ii). In the circumstances, this Court finds no perversity in the order passed by these authorities whereby, the petitioner was directed to pay stamp duty of Rs.1,57,81,892/- within 60 days from the date of receipt of the notice issued by the Superintendent of Stamps and in failure thereto, to attract the penalty of 2% per annum on deficit stamp duty as per provisions of Section 31 (2) of the Stamps Act.

14. As a result of the above discussion, petition deserves to be dismissed as the same sans merit. Accordingly, the petition stands dismissed.

(R. M. JOSHI, J.)

15. After pronouncement of the judgment, learned counsel for the petitioner seeks stay of the order for a period of twelve weeks to approach the Hon'ble Supreme Court.

16. Learned counsel for the respondents opposes the said request on the ground that the State is denied the revenue and this Court has on merit rejected the petition.

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17. The stay to the impugned order is in force since 2016. Even if the petitioner fails in a challenge to this order, the petitioner would liable to pay penalty/interest in accordance with law and as such no prejudice will cause to the respondents, if the order is stayed. Hence, there shall be stayed to this order for a period of eight weeks from today.

(R. M. JOSHI, J.)

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