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In the Delhi High Court

Case No : CA No. 466 of 2008 in Company Petition No. 50 of 2003

Delhi Towers Ltd. APPELLANT

Vs

G.N.C.T. of Delhi RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Companies Act, 1956 — Section 391, 392, 393, 394, 394(1)
Constitution of India, 1950 — Article 13, 142, 246, 261(3), 372
General Clauses Act, 1897 — Section 3(60)
Government of India Act, 1935 — Section 94, 94(3)
Income Tax Act, 1961 — Section 269UA, 72A
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(6A)
Stamp Act, 1899 — Section 2(10), 2(14), 2(15), 70
Transfer of Property Act, 1882 — Section 5

Citation : (2010) 159 CompCas 129 : (2010) 103 SCL 447

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : P.V. Kapur, Deepak Diwan, Sumit Garg and Chetna Gulati, for the Appellant; Rohit Madan and Aditya Madan, for the Respondent

Judgement

Gita Mittal, J.—By this judgment I propose to decide an application being CA No. 466/2008 filed by the Delhi Towers Ltd. The applicant is aggrieved by refusal of the authorities of the Government of NCT of Delhi to accept the scheme of amalgamation approved by this Court in exercise of jurisdiction u/s 394 of the Companies Act, 1956 without payment of stamp duty.

2. Factual narration

2.1 The essential facts, necessary for the adjudication are noticed hereafter. Fifteen transferor companies incorporated under the provisions of the Companies Act, 1956, engaged in the business of real estate, proposed to merge with the "Delhi Towers Limited", also incorporated under the same statute (hereafter referred to as the transferee company/applicant). These transferor companies are stated to be hundred per cent subsidiaries of Delhi Towers Limited, the transferee company and were stated to be engaged in the same line of business.

2.2 In order to reap benefits from the integration of management activities ; reduction of overall administrative costs ; synergy of operations; improvement of business prospects and economies of scale with reduction of costs in the overall interest of business, these companies proposed a scheme of amalgamation whereby the undertakings of the transferor companies, would with effect from the transfer date, be transferred to and vest in the transferee company, pursuant to the provisions of Section 394 of the Companies Act, 1956.

2.3 Delhi Towers Limited (the transferee company) and Suraj Construction & Estates Pvt. Ltd. and one of the 15 transferor companies, were registered at Delhi and having their registered offices at Delhi.

Consequently, these sixteen companies had filed a Company Petition No. 50/2003 under Sections 391 and 394 of the Companies Act, 1951 seeking approval of a proposed scheme of merger of the transferor companies with the transferee company. The proposed scheme of amalgamation was approved by the court by an order passed on 19th March, 2003 after recording the statutory compliances.

2.4 The scheme of amalgamation is stated to have become effective on 28th March, 2003 on filing of the certified copy of the order with the Registrar of Companies, NCT of Delhi and Haryana.

In terms of para 2.1 of the Scheme of Amalgamation, all the "undertakings" of Suraj Construction & Estates Pvt. Ltd. and other 14-the Transferor Company, without further act, deed or thing, stood transferred to and vested in or are deemed to be transferred or vested in the Transferee Company with effect from the Transfer Date/appointed date i.e. w.e.f. 15th November, 2002 and the estate and interest of the transferor companies stood deemed to have been merged/ amalgamated with the Delhi Towers Ltd. Para 2.2 of the Scheme defines the term "undertakings(s) of the Transferor Companies" to include:

(i) All the properties, movable or immovable, real and personal, corporate and incorporeal, in possession, present and contingent of whatsoever nature and all rights, powers, licenses, quota rights, trade marks, cash and bank balances, benefits and privileges of the Transferor Companies as on the Transfer date.

(ii) All the liabilities, duties and obligations, including charges, liens and mortgages of the Transferor Companies as on the Transfer Date.

2.5 A prayer of the applicant for substituting a revised schedule relating to four of the transferor companies was granted on 19th March, 2008 whereby a correction of the order dated 26th March, 2003 was allowed and the corrected revised schedules were taken on record.

2.6 The applicant contends that upon the scheme becoming effective, it made an

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application to the Tehsildar, Vasant Vihar, Kapashera, New Delhi having jurisdiction over the properties of company, on 19th May, 2007 to effect mutation of the same in its records in favour of the transferee/applicant company.

Despite repeated requests, the Tehsildar of the Government of NCT of Delhi has not effected the mutation of the properties in favour of the transferee company under the Scheme of Amalgamation. It is urged, that the stamping authorities are not accepting the scheme of amalgamation without payment of stamp duty thereon.

The present application has been filed at the instance of the Delhi Towers Limited - the transferee company for this reason

Rival contentions

3. Contentions of the applicant

3.1 The primary contention of the applicant-transferee company is, that upon an order being passed by the company court approving the scheme of amalgamation/merger, the assets of the transferor companies vested in the transferee company by operation of law and that nothing further is required to be done. It has been urged at great length, that a scheme which is sanctioned in exercise of power under Sections 391 to 394 of the Companies Act, 1956 is not in the nature of an order accepting a compromise under Order 23 of the Code of Civil Procedure, but having regard to the statutory scheme, is something beyond. In this behalf, reliance is placed on the provisions of Section 394(4) of the Companies Act, 1956. The submission is that such scheme of amalgamation is not covered under the definition of "conveyance" under Sub-section 10 of Section 2 of the Indian Stamp Act, 1899 and therefore is not exigible to stamp duty.

In support of these submissions, Mr. P.V. Kapoor, learned senior counsel appearing for the applicant has placed reliance on the pronouncement of the Apex Court reported at AIR 1970 SC 1051 J.K. (Bombay) Private Limited v. New Kaiser-I-Hind Spinning & Weaving Company Limited and Ors. and the pronouncement of this Court reported at In Re: Telesound India Ltd., In Re: Telesound India Limited (Para 12). Reliance is also placed on judicial pronouncement reported at Hindustan Lever and Another Vs. State of Maharashtra and Another, J.K. (Bombay) P. Ltd. Vs. New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. and Others, AIR 2005 SC 2206 In Re: Telesound India Ltd., In Re: T.K. Lathika Vs. Seth Karsandas Jamnadas, Income Tax Officer, Tuticorin Vs. T.S. Devinath Nadar and Others, Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, Administrator of the Specified Undertaking of the Unit Trust of India and Another Vs. Garware Polyester Ltd., In Re: Hotline Hol Celdings Pvt. Ltd.; In Re: Fusebase India Pvt. Ltd.; In Re: Hotline International Pvt. Ltd.; In Re: Netillennium Technologies Pvt. Ltd.; In Re: Protek Components (India) Ltd.; In Re: Fusebase Eltoro Pvt. Ltd., Sadanand S. Varde and Others Vs. State of Maharashtra and Others, In Re: Putta Ranganayakulu and Others, The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, M.G. Desai

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and Another Vs. State of Bombay, M.G. Desai and Anr. v. State of Bombay; (1948) 18 Comp Cas (1) (Cal) Madhu Intra Limited and Another, VAI Automation Private Limited and Another and Stuti Developers Private Limited and Others Vs. Registrar of Companies and Others, (Cal) Madhu Intra Limited and Anr. v. Registrar of Companies and Ors.

3.2 A further submission is, that the legislative intent is apparent from the fact that Maharashtra, Gujarat, Karnataka, Rajasthan, Chattisgarh, Madhya Pradesh and Andhra Pradesh are the only seven states which have included the order approving a scheme of amalgamation passed u/s 394 of the Companies Act, 1956 in the definition of "conveyance".

3.3 It is pointed out, that under Sub-section 15 of Section 2 of the Indian Stamp Act, 1899, the legislature has specifically included a final order effecting a partition passed by the revenue authority or by the civil court and an award passed by the civil court directing partition under the definition of "instrument of partition". However, there is no mention of transfer of rights under a scheme of amalgamation propounded and approved under the provisions of Sections 391 - 394 of the Companies Act, 1956.

3.4 The primary submission on behalf of the petitioner is that the legislation has not included a transfer by an approved scheme of amalgamation u/s 391-394 of the Companies Act under the definition of either ''conveyance'' or ''instrument'' unlike the specific amendments including the same by some other states. The legislative intent therefore is to exclude them from the purview of stamping.

The contention of the applicant is that such an order has not been included in the definition of "Conveyance" in the Indian Stamp Act(applicable to the state of Delhi), and therefore is not chargeable to stamp duty for this reason as well.

3.5 It is urged on behalf of the petitioner, that the provisions of the Bombay Stamp Act have been amended to incorporate Clause (iv) in its Sub-section (g) of Section 2 whereby an approved scheme of amalgamation have been covered under the definition of conveyance. Consequently, the pronouncements relied upon by the respondents of the Supreme Court in Hindustan Lever and Anr. v. The State of Maharashtra and Anr. and Ruby Sales & Services Pvt. Ltd. concerned with construing the provisions of the ''Bombay Act'' can not even guide, let alone bind, adjudication in the present case.

3.6 The petitioner also places reliance on two notifications dated 16th January, 1937 and 25th December, 1937 to contend that an approved scheme of amalgamation would stand exempted from levy of stamp duty because of the remission granted by both these notifications.

4. Respondents contentions

4.1 It is contended that no amendment to the statutory provision is necessary and that the transfer of property upon approval of a scheme of amalgamation is covered under the existing definition of conveyance under the Indian Stamp Act

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and chargeable to stamp duty.

4.2 The Government of NCT of Delhi has filed a reply on record contending that the mutation proceedings cannot be proceeded with for the reason that the applicable stamp duty on the scheme of amalgamation has not yet been deposited. It has further been submitted that in similar cases, appropriate stamp duty has been charged from the incumbents seeking such transfer in the revenue records and that mutation can be effected only upon the applicant depositing stamp duty in accordance with law.

4.3 Mr. Aditya Madan, learned Counsel for the respondents has placed reliance on the pronouncements reported at Hindustan Lever and Another Vs. State of Maharashtra and Another, ; State of Maharashtra and Others Vs. M.S. Builders (Private) Limited and Another, . Li Taka Pharmaceuticals Ltd. Vs. State of Maharashtra and other, entitled the Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, in support of his contentions.

4.4 An objection based on legislative competence of the Parliament to legislate on the issue is taken. It is contended that in view of constitutional scheme of separation of powers, only the legislative assembly of Delhi is competent to legislate on the issue. For this reason the notification of 1937 have no application.

5. Statutory provisions

5.1 So far as the legislation in Delhi is concerned, there is no special enactment relating to stamp duty. The Indian Stamp Act, 1899 continues to hold the field.

5.2 "Conveyance" is statutorily defined under Sub-section 10 of Section 2 of the Indian Stamp Duty Act as follows:

2(10)"conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.

The expression "instrument" is defined under Sub-section 14 of Section 2 of the Indian Stamp Act, 1899 in the following manner:

"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded

5.3 It is noteworthy that the definition of ''conveyance'' u/s 2(g) of the Bombay Stamp Act came to be amended by a Maharashtra Act No. 27/1985 which was brought into force on 10th December, 1985.

5.4 Inasmuch as the several judicial pronouncements relied upon by both parties are in context of the statutory position under the Bombay Stamp Act, the unamended definition of the expression ''conveyance'' as against the amended definition thereunder deserves to be adverted to and reads as follows:

Unamended provision

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Amended provision

"2(g) "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos andpis not otherwise specifically provided for by Schedule 1;"

"(g) ''conveyance'' includes, -

(i) a conveyance on sale,

(ii) every instrument,

(iii) every decree or final order of any civil court,

(iv) every order made by the High Court u/s 394 of the Companies Act, in respect of amalgamation of companies;

by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any person, inter vivos, and which is not otherwise specifically provided for by Schedule I."

Section 2(g)(iv) of the Bombay Stamp Act thus specifically includes every order made u/s 394 of the Companies Act, 1956 in the definition of conveyance u/s 2(g) which thereupon is chargeable to stamp duty.

6. Nature and impact of an order approving a proposed scheme of amalgamation u/s 394 of the Companies Act

6.1 The first question which arises for consideration before this Court, is as to whether an order passed by the company court in exercise of jurisdiction u/s 394 of the Companies Act, 1956 approving a scheme of amalgamation proposed by the parties, is covered under the definition of "conveyance" under Sub-section 10 of Section 2 of the Indian Stamp Act, 1899 and therefore exigible to stamp duty.

6.2 In order to answer this question, a fundamental issue has been raised, that an order sanctioning a proposed scheme of amalgamation or arrangement u/s 394 of the Companies Act is not a conveyance or a transfer of property by an act of parties and that such an order of a sanction of the scheme results in the transfer of the property by operation of law. Mr. P.V. Kapur, learned senior counsel for the petitioner, submits that therefore such scheme would not be chargeable to stamp duty under the provisions of the Indian Stamp Act, 1899.

It is therefore first necessary to examine the nature and impact of an order passed u/s 394 of the Companies Act.

6.3 Sanction of the scheme of amalgamation is effected u/s 394 of the Companies Act, 1956 which provides as follows:

394. Provisions for facilitating reconstruction and amalgamation of companies

(1) Where an application is made to the [Tribunal] u/s 391 for the sanctioning of a compromise or arrangement proposed between a company and any such

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persons as are mentioned in that section, and it is shown to the [Tribunal]

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company");

the [Tribunal] 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; and

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order; that property shall be transferred to and vest in and those liabilities shall be transferred to and become the liabilities of the transferee company and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within [thirty] days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

If default is made in complying with this Sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [five hundred rupees].

(4) In this section

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(a) "property" includes property rights and powers of every description; and "liabilities" includes duties of every description; and

(b) "Transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

6.4 The nature of the proceedings for approval of a scheme of amalgamation under the Companies Act, 1956 are best described in a judgment of this Court reported at (1983) 53 Company Cases 926 (Delhi) In re: Telesound India Limited in the following terms:

12. Amalgamation of a company with another or an amalgamation of two companies to form a third is brought about by two parallel schemes of arrangements entered into between one company and its members and the other company and its members and the two separate arrangements bind all the members of the companies and the companies when sanctioned by the court. Amalgamation is, therefore, an absorption of one company into another or merger of both to form a third, which is not a mere act of the two companies or their members but is brought about by virtue of a statutory instrument and to that extent has statutory genesis and character, and to that extent it is distinguishable from a mere bilateral arrangement to merge or join in a common endeavor, an undertaking or enterprise J.K. (Bombay) P. Ltd. Vs. New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. and Others,]. Once the court sanctions the amalgamation, the amalgamation is made effective and binding by virtue of statutory power, inter alia, by the transferor to the transferee-company of the whole or any part of the undertaking, property rights and liabilities of the transferor-company by virtue of the provisions of s. 394 of the Act, which are intended to facilitate the process of amalgamation : Sailendra Kumar Ray v. Bank of Calcutta Ltd. [1948] 18 Comp Cas 1 (Cal). The expression "property" and "liabilities", which can be transferred on amalgamation, under s. 394(1) have been defined in very wide terms by Sub-section (4)(a) of that section, so as to include "rights and powers of every description" and "duties of every description" respectively. The expression "property" would, therefore, be wide enough to include rights under a contract, including a contract of tenancy. These are co-extensive with the property and right which the transferorcompany has in relation to its assets, but could not be wider than what the transferor-company was entitled to enjoy. The rights, property, as indeed the liabilities of the transferor-company, become the rights, property and liabilities of the transferee-company by virtue of the order of vesting made by the court consequent on amalgamation. It is neither an assignment of right or property, nor an assignment of property by the company. It is the transfer of rights, property and liabilities along with the company itself and it is only as a result of confusion of thought that it could be described as an assignment by the company to another person, which is independent and distinct from the company. Such a notion ignores the peculiar position of amalgamation in company law and its true legal

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incident. It is for historical reasons that the device of amalgamation was built into the company law for facilitating the merger of companies, inter alia, with a view to help restoration of sick units to health, better, more effective and economical management of the corporate sector to ensure continued production, increased employment avenues and generation of revenues. Section 72A of the I.T. Act is one of the incentives for this kind of absorption of one company into another. On amalgamation the transferor-company merges into the transferee-company shedding its corporate shell, but for all purposes remaining alive and thriving as part of the larger whole. In that sense the transferorcompany does not die either on amalgamation or on dissolution without winding-up under Sub-section (1) of Section 394. It is not wound up because it has merged into another. Winding-up is unnecessary. It is dissolved not because it has died, or ceased to exist, but because for all practical purposes, it has merged into another forming part of one corporate shell. The dissolution is the death of its independent corporate shell, because a company cannot have two shells. It is, therefore, dissolved because the independent shell or corporate name is superfluous. The company in its essence means its members, who compose it, the assets, property and rights that it had, its liabilities, its undertaking, business or other activity. It is not synonymous with the shell or name. On amalgamation and consequential dissolution all these attributes continue to live as part of a larger entity. The only part that dies is the shell and the name. It is unlike the death of a natural person and yet in a larger and deeper sense the same. It is unlike it, because a natural person, as ordinarily understood, does not survive the death in any physical form. The transferor-company, however, does survive, in that there is a continuity even after dissolution of its members, its assets, undertaking, etc. The estate of a natural person continues in the hands of the successor for a limited period. In a larger and a deeper sense even a natural person survives his physical death in the continuation of a being, which is supposed to merge in the wider cosmic whole. That, however, is an area of study of life after death, or what is sometimes described as life after life, where the process is of a different dimension and defies description and is, in any event, too deep and wide for the narrow compass of this judgment. The analogy, therefore, between the death of a natural person and dissolution without winding-up is inappropriate.

6.5 These observations were relied on by this Court in a recent judgment reported at 112 (2004) DLT 627 Hotline Hol Celdings Private Limited and Ors. wherein it was held as follows:

Amalgamation is, therefore, an absorption of one company into another or merger of both to form a third, which is not a mere act of the two companies or their members but is brought about by virtue of a statutory instrument and to that extent has statutory genesis and character, and to that extent it is distinguishable from a mere bilateral arrangement to merge or join in a common endeavor, an undertaking or enterprise.

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6.6 Placing reliance on these judicial pronouncements it is urged that the transfer of property is by operation of law and the respondents have no jurisdiction to claim stamp duty on such scheme of amalgamation approved by the company court.

6.7 It is urged that by virtue of the order sanctioning the scheme for amalgamation, nothing further is required to be done for the property to stand transferred to and vested in the transferee company. Learned senior counsel for the petitioner places strong reliance on the Division Bench pronouncement of the Calcutta High Court reported at Madhu Intra Limited and Another, VAI Automation Private Limited and Another and Stuti Developers Private Limited and Others Vs. Registrar of Companies and Others, . The Calcutta High Court was concerned with a challenge to an order directing payment of stamp duty on an order sanctioning the scheme of amalgamation u/s 394 of the Companies Act, 1956. In this behalf, the court had distinguished the judgments on the same issue of the Bombay High Court on the ground that they were based on the Bombay Stamp Act. This Stamp Act had been amended vide Maharashtra Act No. 27/1985 to include a scheme for amalgamation under the definition of ''conveyance''. It was further held that in any case such scheme would not be liable for stamp duty for the reason that transfer of assets was effected by the operation of law. In this regard, the Calcutta High Court had held that:

51. In the case of Bombay, the law has been amended so as to include orders made u/s 394 of the aforesaid Act within the definition of ''conveyance'' in the Bombay Stamp Act. The ratio of the decision in the Ruby Sales and Services Pvt. Ltd. (supra) case, cannot, also, in our view, be generally applied to all orders u/s 394 of the Companies Act, since the said decision was based on the consideration that the parties had themselves agreed on the basis of the consent decree that the order u/s 394 was to operate as a ''conveyance'' for transfer of the assets and liabilities of the transferor company to the transferee company. It should not be lost sight of that in the case of Ruby Sales and Services Pvt. Ltd. (supra), the learned Single Judge of the Bombay High Court, following a Full Bench decision of the same Court had come to the conclusion that an order u/s 394 was not liable to stamp-duty. The Division Bench took a contrary view on account of the fact that in the consent decree itself it had been indicated that the same was to operate as a ''conveyance''. It is in the said special facts of the case that the decision in Ruby Sales and Services Pvt. Ltd. (supra) was rendered by the Hon''ble Supreme Court.

52. xxx xxx xxx

Even if the order u/s 394 is to be taken to be a ''conveyance'' or an ''instrument'' the transfer of assets and liabilities effected thereby is purely by operation of law which on account of Section 2(d) of the Transfer of Property Act also excludes the operation of Section 6(e) thereto. Notwithstanding the definition of the expression ''instrument'' in Section 2(14) of the Indian Stamp Act, the unamended provisions of the Indian Stamp Act in relation to such definition and

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the definition of ''conveyance'' and/or ''instrument'' does not apply to an order u/s 394 of the Companies Act for the purpose of stamp-duty. We agree with the view expressed by the Division Bench of this Court in New Central Jute Mills Co. Ltd. (supra), that the transfer of assets and liabilities from the transferor company to the transferee company takes place by virtue of Sub-section (2) of Section 394, without any further act or deed.

53. We are, therefore, inclined to agree with the submissions made on behalf of the appellants in these appeals that the learned Company Judge erred in importing the concept of transfer as explained in the case of Ruby Sales and Services Pvt. Ltd. (supra) and Li Taka Pharmaceutical Ltd. (supra) to the case of amalgamation and/or compromise governed simply by the provisions of Sub-section (2) of Section 394 of the Companies Act, 1956. In our view, the transfer of assets and liabilities of the transferor company to the transferee company takes place on an order being made under Sub-section (1) of Section 394 by operation of Sub-section (2) thereof.

6.8 The petitioner places reliance on the observations of the Calcutta High Court in (1948) 18 Comp Cas (1) (Cal) entitled Sailendra Kumar Ray v. Bank of Calcutta Limited wherein it was held by the court, that in a situation of amalgamation, even if it can be said that there was a transfer of assets, the transfer was not by way of assignment but by the order of the court backed up by force of statutory provision and by operation of law.

6.9 Learned senior counsel for the petitioner has pointed out that a question arose in several cases before different courts in the context of the applicability of Chapter XX (C) of the Income Tax Act, 1961 to a transfer of assets taking place by virtue of operation of a scheme of amalgamation approved under the provisions of the Companies Act, 1956. In Sadanand S. Varde and Others Vs. State of Maharashtra and Others, ., a public interest litigation was filed by the petitioners who claimed to be deeply interested in environmental issues assailing construction and developmental activity being undertaken on the Bandra Land End on several issues. The petitioners assailed the amalgamation of the 6th and 9th respondent u/s 391 and 394 of the Companies Act pursuant to the sanction of the scheme of amalgamation vide company petition No. 442/1992 and 443/1992 by an order made on 3rd February, 1993 by the learned Company Judge of the Bombay High Court. The petitioner also contested application of Chapter XX (C) of the Income Tax to the amalgamation. Several earlier pronouncements including the decision of the Full Bench of the Madras High Court in Sahayanidhi Case reported at (1959) 20 Comp Cas 214; Tele Sound case (Supra); J.K. (Bombay) Private Limited (supra) inter alia were relied upon by the bench and it was finally held as follows:

...A scrutiny of the definitions of "apparent consideration" given in Clause (b) and "transfer" given in Clause (f) would unmistakably indicate that the transfers to which the provisions of Chapter XX-C are intended to apply, are only transfers under agreements or contractual transfers and not statutory transfers or

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transfers effected by orders of the court or by operation of law. In a situation of amalgamation, the transfer is not by way of sale, exchange, lease or rent so as to fall within Section 269UA. Further, the process by which the land in question stood vested in the transferee-company by virtue of the amalgamation order, would not answer the description of "immovable property" within the meaning of Clause (d)(ii), nor does it answer the description of "transfer" as defined in Clause (f)(ii) of Section 269UA of the Income Tax Act.

6.10 In view of the argument that approval of the scheme amounts to transfer by operation of law, it is also essential to understand the scope of enquiry and jurisdiction of the company court. In this regard, my attention has been drawn to the pronouncement of the Apex Court in Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., . wherein the court had laid down the broad contours of the jurisdiction of the Company Court and the permissible nature and extent of its enquiry before granting sanction to the scheme u/s 391 of the Companies Act as follows:

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 Sub-section (2).

3. That the meetings concerned of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the meetings concerned as contemplated by Section 391 Sub-section (1).

5. That all the requisite material contemplated by the proviso of Sub-section (2) of Section 391 of the Act is placed before the Court by the applicant concerned seeking sanction for such a scheme and the Court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not unconscionable, nor contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent.

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8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant

9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction. It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite, majority vote that has to be kept in view by the Court. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by the requisite majority. Consequently the Company Court''s jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392. Of course this section deals with post-sanction supervision. But the said provision itself clearly earmarks the field in which the sanction of the Court operates. The supervisor cannot ever be treated as the author or a policy-maker. Consequently the propriety and the merits of the compromise or arrangement have to be judged by the parties who as sui juris with their open eyes and fully informed about the pros and cons of the scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement.

6.11 In Hindustan Lever and Another Vs. State of Maharashtra and Another, a similar objection was raised by the appellants before the Supreme Court that stamp duty can be levied only on ''documents'' or ''instrument'' and that the scheme of amalgamation sanctioned by an order made by the court after judicial scrutiny would not be liable to be stamped in accordance with the provisions of the Bombay Stamp Act in its application in the state of Maharashtra. In this case, a challenge was also laid to the legislative competence of the State legislature to impose stamp duty on the order of amalgamation approved under the Companies Act, 1956. The court considered the principles underlying approval of a scheme of amalgamation brought out in the earlier pronouncement in Miheer H. Mafatlal (supra) and summed up as follows:

12. Two broad principles underlying a scheme of amalgamation which have been brought out in this judgment are:

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1. That the order passed by the Court amalgamating the company is based on a compromise or arrangement arrived at between the parties; and

2. That the jurisdiction of the company court while sanctioning the scheme is supervisory only, i.e., to observe that the procedure set out in the Act is met and complied with and that the proposed scheme of compromise or arrangement is not violative of any provision of law, unconscionable or contrary to public policy.

6.12 On the question being considered, the court held as follows:

18. It is difficult to subscribe the view propounded by the learned Counsels for the appellants. As stated earlier, the order of amalgamation is based on a compromise or an arrangement arrived at between the two companies. No individual living being owns the company. Each shareholder is the owner of the company to the extent of his share holding. By enacting Sections 391 - 394 a method has been devised to give effect to the will of the prescribed majority of shareholders/ creditors. Even in the absence of individual agreement by all the shareholders and creditors the decision of the majority prescribed in Section 391(2) binds all the creditors and the shareholders. The Scheme after being sanctioned by the Court binds all its creditors, members and shareholders including even those who were opposed to the scheme being sanctioned. It binds the company as well. While exercising its power in sanctioning the scheme of amalgamation, the Court is to satisfy itself that the provisions of statute have been complied with. That the class was fairly represented by those who attended the meeting and that the statutory majority was acting bona-fide and not in an oppressive manner. That the arrangement is such as which a prudent, intelligent or honest man or a member of class concerned and acting in respect of the interest might reasonably would take. While examining as to whether the majority was acting bona-fide the Court would satisfy itself to the effect that the affairs of the company were not being conducted in the manner prejudicial to the interest of its members or to public interest. The basic principle underlying such a situation is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties the same being that it should not be unfair, contrary to public policy and unconscionable or against the law.

6.13 On this issue, in Hindustan Lever and Anr. (supra) also placed reliance on an earlier decision reported at Hindustan Lever Employees'' Union Vs. Hindustan Lever Limited and others, wherein it had been held that Section 394 of the Companies Act casts an obligation on the court to be satisfied that the scheme of amalgamation or merger was not contrary to public interest; the basic principle of such satisfaction is none other than the broad and general principle inherent in any compromise or settlement entered into between the parties that it should not be unfair or contrary to public policy or unconscionable or that the scheme should not be a device to evade the law.

6.14 In para 9, the Apex Court clearly held as follows:

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9. Section 394 provides that application and order of amalgamation u/s 394 is based on compromise or arrangement which has been proposed for the purpose of amalgamation of two or more companies. The amalgamation scheme, which is an agreement between the companies is presented before the Court and the Court passes an appropriate order sanctioning the compromise or arrangement. The foundation or the basis for passing an order of amalgamation is agreement between two or more companies. Under the Scheme of amalgamation, the whole or any part of the undertaking, properties or liability of any company concerned in the scheme is to be transferred to the other company. The company whose property is transferred would be the transferor company and the company to whom property is transferred would be considered as the transferee company. The scheme of amalgamation has its genesis in an agreement between the prescribed majority of shareholders and creditors of the transferor company with the prescribed majority of shareholders and creditors of the transferee company. The intended transfer is a voluntary act of the contracting parties. The transfer has all the trappings of a sale. The transfer is effected by an order of the Court. The proposed compromise or arrangement is subject to verification by the Court as provided therein. First is that the scheme of compromise or arrangement proposed for the purposes of amalgamation or in connection therewith, shall not be sanctioned unless the Court has received a report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interest of its Members or to public interest and; secondly that the order of resolution of transfer of company shall not be made unless official liquidator on scrutiny of the books and papers of the Company makes a report to the Court that the affairs of the company had not been conducted in a manner prejudicial to the interest of its members or to public interest.

6.15 My attention is also drawn by learned senior counsel for the petitioner to the provisions of Section 18(6A) of the Sick Industrial Company (Special Provision) Act, 1985 (`SICA'' for brevity) which is in pari materia with the provisions of Section 391 of the Companies Act, 1956. Section 18(6A) is to the following effect:

18 (6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

Thus the Board of Industrial & Financial Reconstruction is empowered to pass an order approving a scheme for transfer of property or liability of any company or

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passing in favour of the sick industrial company. The statutory provision stipulates that from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to and vested in and the liability shall become the liability of such other company or person or as the case may be.

6.16 This statutory provision has fallen for consideration before the High Court of Madras in the pronouncement reported at T.T. Krishnamachari and Co. Vs. Joint Sub-registrar-I and Another, It was held by the court that there is automatic transfer and vestiture of title in favour of the said company and so no more document or deed is required to be executed. The court also observed that the SICA does not provide for execution of any such deed, chargeable with stamp duty. Placing reliance on the pronouncement of the Division Bench of the Calcutta High Court reported at Madhu Intra Limited and Another, VAI Automation Private Limited and Another and Stuti Developers Private Limited and Others Vs. Registrar of Companies and Others, ., the Madras High Court held as follows:

14. Section 18(6A) of the Sick Industrial Companies (Special Provisions) Act, 1985 reads as follows:

Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in and the liability shall become the liability of such other company or person or, as the case may be, the sick industrial company.

15. A close reading of the above provision would go to indicate that the BIFR has got such power to pass an order approving the scheme and as soon as such an order is passed by the BIFR, the property shall stand transferred and vested in the company in whose favour the scheme provides for such transfer. Thus, transfer of title in favour of TTK Prestige Ltd., has been effected, by operation of law as per Section 18(6A) of the SICA. There is automatic transfer and vestiture of title in favour of the said company and so there is no more document or deed required to be executed. The SICA does not provide for execution of any such deed chargeable with stamp duty.

16. While dealing with Section 394(1) and (2) of the Companies Act and Section 2(14) of the Indian Stamp Act, a Division Bench of the Kolkatta High Court in Madhu Intra Ltd. v. Registrar of Co.''s [2006] 130 Comp Cas 510, has held that any transfer of assets and liabilities of the transferor company to the transferee company made u/s 394(1) and (2) of the Companies Act, by means of an amalgamation is not chargeable with any stamp duty as the said transaction does not fall within the ambit of Section 2(14) of the Indian Stamp Act.

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20. Both in the case of amalgamation under the Companies Act, as well as in the case of any scheme under the BIFR, the transfer is not effected on the act of parties, but it is by operation of law. It is an involuntary transfer which takes place as soon as the statutory authority, namely, the BIFR passes the order.

6.17 As noted by the Madras High Court, on this aspect the Bombay High Court had taken a different view. The scheme of the Companies Act, 1956 also shows transfer of assets and liabilities on effectuation of a scheme of amalgamation consequent upon its approval has no element of compulsion. The scheme is proposed voluntarily. It is based on the consent and wishes of the majority of the members and creditors. The objection and intendment of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 has no parity with purpose of Section 392-394 the Companies Act, 1956.

As noticed above, the Supreme Court has in clear terms held that the scheme for amalgamation involves no adjudication and is based on consent without any nuance or element of compulsion. The principles laid down by the Apex Court as noticed above would bind the adjudication by this Court.

6.18 Mr. P.V. Kapoor, learned senior counsel appearing for the petitioners has urged at great length that the judgment of the Apex Court in Hindustan Lever (supra) has not taken into consideration the principles of law laid down by the Supreme Court in its earlier pronouncement in J.K. (Bombay) Pvt. Ltd. v. New Kaiser-I-Hind Spinning & Weaving Co. Ltd. which was by a larger Bench.

6.19 In this pronouncement of the Apex Court reported at J.K. (Bombay) P. Ltd. Vs. New Kaiser-I-Hind Spg. and Wvg. Co. Ltd. and Others, the Apex Court laid down the applicable principles thus:

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The principle is that a scheme sanctioned by the court does not operate as a mere agreement between the parties; it becomes binding on the company, the creditors and the shareholders and has statutory force, and therefore, the joint-debtor could not invoke the principle of accord and satisfaction. By virtue of the provisions of Section 391 of the Act, a scheme is statutorily binding even on creditors and shareholders who dissented from or are opposed to its being sanctioned. It has statutory force in that sense and therefore cannot be altered except with the sanction of the court even if the shareholders and the creditors acquiesce in such alteration (cf. Premila Devi v. Peoples Bank). The effect of the scheme is " to supply by recourse to the procedure thereby prescribed the absence of that individual agreement by every member of the class to be bound by the scheme which would otherwise be necessary to give it validity " (Palmer''s Company Law, 20th Ed., page 664). Sub-section (2) of Section 391 of the Act allows the decision of the majority prescribed therein to bind the minority of creditors and shareholders and it is for that reason that a scheme is said to have statutory operation and cannot be varied by the shareholders or the creditors unless such variation is sanctioned by the court.

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6.20 I find that in J.K. (Bombay) Pvt. Ltd. v. New Kaiser-I-Hind Spinning & Weaving Co. Ltd. (supra), also it was held that a scheme is statutorily binding even on creditors and shareholders who dissented from or oppose the same being sanctioned and that it had statutory force only in that sense. It was also observed that the scheme could not be altered except with the sanction of the court even if the shareholders and creditors acquiesce in such alteration. It was for this limited reason that the court observed that the scheme would be said to have statutory operation.

6.21 Placing reliance on the principles laid down in the above case on the scope of the proceedings u/s 391 of the Companies Act, 1956, in para 32 of the pronouncement reported at Administrator of the Specified Undertaking of the Unit Trust of India and Another Vs. Garware Polyester Ltd., the Supreme Court held that the court, would not grant sanction to a proposed scheme only because the same reflects the will of the majority of the creditors or a class of them but it must consider all aspects of the matter so as to arrive at a finding that the scheme is fair, just and reasonable and does not contravene public policy or any statutory provision. The Supreme Court held that such care and caution is required to be exercised by all courts including the civil courts in terms of Rule 1 of the Order XXIII, of the CPC (hereafter referred to as `CPC''). This pronouncement also does not state that there is any adjudication by the court on the merits or demerits of the proposed scheme and only emphasises the limited scope of the enquiry by the court.

6.22 I am unable to find any conflict between the consideration by the Apex Court in the Hindustan Lever case and the prior judgments so far as the scope and ambit of the consideration by a court of a scheme for amalgamation or arrangement between the two companies u/s 391 and 394 of the Companies Act, 1956 is concerned. The clear principles which emerge from the judicial precedents cited before me are that the proposed scheme is a voluntary act of the parties (companies) without any compulsion, statutory or otherwise at all. The scheme when approved by the majority of members and creditors, binds the minority dissenters as well. The court exercises only a supervisory jurisdiction while examining the same. No element of adjudication is involved in the order of approval.

6.23 Despite a close scrutiny of the case law before this Court, I do not find any judicial precedents that have held that the court is empowered to consider the merits of the terms on which the scheme for amalgamation has been proposed by the consenting parties. On the contrary statutory provisions mandate and judicial precedents have held that even a modification suggested by the court is required to have the approval of the shareholders and the creditors before it can be incorporated in the scheme. No adjudication is involved. The role of the court is merely supervisory within the contours of the broad parameters noticed hereinabove without ruling on the merits of the schemes placed before the court and its consideration is confined to the issue that the scheme was not violative of

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the principles of law, public policy and, was not opposed to public interest.

There is nothing to denigrate from the basic and primary fact that the order of the court is based on the consent of the parties. The most relevant factor is the undisputable reality that the transfer of property is not an involuntary act of the parties, i.e. the companies involved. The order of approval of the scheme results in amalgamation and absorption of the assets and liabilities of the transferor company with those of the transferee company which includes Immovable property.

7. Whether transfer of property by an order of the court or by operation of law is exigible to stamp duty?

7.1 Even if the contention of the petitioner were to be accepted and it were to be held that the order of approval of a scheme of amalgamation u/s 394 is not an order simplicitor of transfer of property by an act of parties but is an order after judicial scrutiny and that it bears the imprimatur of the court; the moot question is whether such approved scheme stands on a special footing, is exempted from the legal consequences of transfer of property and that it cannot be subjected to stamp duty. The applicants'' submission is that an order of a court cannot be subjected to scrutiny or interference by the revenue authorities.

7.2 In General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., the court was concerned with a petition by a landlord seeking eviction of a tenant company on the ground of subletting. The question raised was as to whether the amalgamation amounted to a transfer of the tenant company''s rights under the lease by way of subletting. The court came to a conclusion that the order of amalgamation had been made on the basis of a petition filed by the transferor company and therefore was not involuntary. It was held to be a voluntary act by agreement between the parties.

The Apex Court therefore held that it had to be concluded that there was a transfer of tenancy interest on account of the scheme of amalgamation in utter contravention of the provisions of the Rent Act and the terms and conditions of the rent agreement between the landlord and the General Radio and Appliances Pvt. Ltd.

7.3 Mr. Aditya Madan, learned Counsel representing the Government of NCT of Delhi has placed reliance on several judgments wherein the same principle has been reiterated.

My attention is drawn to the judgment reported at EL Forge Limited Vs. State Industries Promotion Corporation of Tamil Nadu Ltd., wherein the Madras High Court rejected the petitioner''s contention that the amalgamation of two companies by the court''s order had merely merged the assets of the two companies and hence there was no transfer of any right in land in favour of the petitioner''s company.

7.4 The question of chargeability of stamp duty also stands squarely answered.

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It is noteworthy, that in its discussion in the Hindustan Lever (supra), the Apex Court observed in para 19 that orders passed by courts have been subjected to levy of stamp duty in several situations. The court considered its earlier pronouncement in Purshotam H. Jadye and Others Vs. V.B. Potdar, wherein it was held that the expression ''instrument'' would include an award made by the Industrial Tribunal. Reliance was also placed on (1891) XXIII QBD 579 The Commissioner of Inland Revenue v. G. Angus & Co. and Anr. wherein it was held that the term ''conveyance on sale'' includes every instrument and every decree or order of any court or of any commissioners, whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser or any other person on his behalf or on his directions. It was further held herein that the thing which is liable to stamp duty is the ''instrument'' and it is not a transaction of purchase and sale which is struck at.

7.5 The Apex Court also referred to (1971) 1 All.E.R. 135 Sun Alliance Insurance Ltd. v. Inland Revenue Commissioners wherein it was held that an order of the court was liable to stamp duty as it resulted in transferring the property and that the order passed by any court which results in transfer of property would be an instrument as it includes every document. Upon a detailed consideration of the law on this issue, the Court held thus:

19. Orders passed by the Court resulting in transferring the rights in property have been subjected to levy of stamp duty in several situations. It is there from the date of the inception of the Indian Stamp Act 1899. Section 2(m) of the Indian Stamp Act 1899 defines "instrument of partition" to mean any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition. This provision specifically provide that any final order effecting partition by any Court, Revenue Authority or award made by the Arbitrator directing partition would be an instrument of partition.

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27. Section 394(2) of the Companies Act 1956 provides that the properties and liabilities of the transferor company stand transferred to the transferee company by virtue of an order of court....

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30. A document creating or transferring a right is an instrument. Can it be said that an order effectuating the transfer is a document? The answer has been given in the affirmative by this in Court in Haji Sk. Subhan Vs. Madhorao, wherein it was held that the question is whether the word "document" includes a decree of the Court. It was held that there was no good reason why a decree of the court when it affects the proprietary rights and is in relation to them should not be included in this expression. This question more pointedly arose before this Court in Ruby Sales and services (P) Ltd., (supra) . In that case in a suit for

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specific performance the property was conveyed to the vendee by a consent decree. The question arose whether the consent decree is an instrument and liable to be stamped. The consent decree contained a recital to the effect that "this decree does operate as the conveyance from the defendants in favour of the plaintiffs in respect of the said property more particularly described in exhibit A to the plaint." The Court held that:

11. there is no particular pleasure in merely going by the label but which is decisive is by the terms of the document. It is clear from the terms of the consent decree that it is also an "instrument" under which title has been passed over to the appellant/plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs.

The aforesaid decree was based on an agreement between the parties. So is the case with an order u/s 394 of the Companies Act which is also based on an agreement between the transferor company and the transferee company.

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32. In view of the aforesaid discussion, we hold that the order passed by the Court u/s 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 State Legislature would have the jurisdiction to levy stamp duty under Entry 44, List III of the seventh Schedule of the Constitution of India and prescribe rates of stamp duty under Entry 63, List II.

7.6 Mr. P.V. Kapur, learned Counsel for the petitioner, has sought to draw a distinction before this Court that the judgment in Hindustan Lever''s case was rendered in its peculiar facts and legal situation having regard to the applicable statute in Maharashtra or other states and cannot govern adjudication in the instant case. It is contended that there are no statutory provisions in the Indian Stamp Act, 1899 applicable to Delhi which are in pari materia to Section 2(g)(iv) of the Bombay Stamp Act. It is also emphasised that the Bombay Stamp Act, 1985 is not in pari materia and therefore the judgments which decide issues relating to this enactment would have no application to the instant case.

7.7 There can be no dispute with the well settled principle that a judicial precedent requires to be considered in the light of the issues which were before the court passing the judgment. It also needs no elaboration that statutes which are not in pari-materia cannot be compared.

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8. Inclusive definition clauses- interpretation

8.1 In view of the distinction being drawn on behalf of the petitioners, it become essential to consider the statutory definitions before proceeding further .

8.2 Section 2(10) of the Indian Stamp Act, 1899 contains an inclusive definition of ''conveyance''. Interpretation of an inclusive definition clause in statutes has fallen for consideration in several cases before the courts. In the instant case, these can usefully be adverted to for construing the effect of the amendment to include a scheme of amalgamation under the definition in the Bombay Stamp Act.

8.3 The expression "includes" appearing in statutory provisions has come up for interpretation repeatedly. It has been explained that the word "included" is generally used in the interpretation clause to enlarge the meaning of the words so as to make them to comprehend not only such things as they signify according to their natural import but also the things they are declared in the interpretation clause to be included. (Ref: (1899) AC 99, 105 Dilworth v. Commission of Stamps).

8.4 In Amin Shariff Vs. Emperor, , it was stated that the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or repugnance or inconsistency with the rest of the statute, in which case, the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, repugnance and inconsistency, but no further. (Beal''s Cardinal Rules of Legal Interpretation, 3rd Edn., p.343, et. Seq.)

8.5 The decision of the Supreme Court in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, rendered in the context of Sub-section 2 of Section 10(5) of the Income Tax provides another instance of an inclusive definition of the word ''plant''. On this provision, in para 6 of the judgment, the Supreme Court observed the impact of the use of the expression "includes" in a definition clause by the legislature as follows:

The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. The word ''include'' is also susceptible of other constructions which it is unnecessary to go into.

8.6 Explaining the reason and the implication of inclusive definition, the Apex Court thus was of the view that the word ''include'' is used to amplify the meaning while removing a possible doubt.

8.7 In the decision of the Supreme Court reported at State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., it was held that an amendment which is by way of a clarification of an earlier ambiguous provision, can be a useful aid in construing the earlier provision, even though such an amendment is not given a retrospective effect.

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8.8 The legal position was summarized by the Supreme Court in Karnataka Power Transmission Corpn. and Another Vs. Ashok Iron Works Pvt. Ltd., and it was stated that the inclusive definition by the legislation is used for the following purpose:

...(one) to enlarge the meaning of words or phrases so as to take in the ordinary popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (two) to include meaning about which there might be some dispute; (three) to bring under one nomenclature all transactions possessing certain similar features but going under different names.

8.9 From the above, it is evident that a legislative omission to mention a subject or item in an inclusive definition does not tantamount to legislative exclusion or exemption from applicability of the statutory provisions.

8.10 So far as the amendment and inclusion of Clause (iv) in Section 2(g) of the Bombay Stamp Act is concerned, the impact of the specific inclusion of the scheme of amalgamation in the Act has been considered in several judicial precedents. The principles noticed heretofore with regard to the effect of the word "inclusive" have been applied. The principles laid down in these pronouncements usefully deserve to be adverted to before proceeding further.

8.11 A question arose before the court in the judgment of the Bombay High Court reported at State of Maharashtra and Others Vs. M.S. Builders (Private) Limited and Another, as to whether a consent decree whereby title to Immovable property is conveyed, falls under the definition of ''conveyance'' u/s 2(g) of the Bombay Stamp Act, 1958 or such consent decree falls outside the ambit and scope of the definition of ''conveyance'' under the Act.

The argument on behalf of the writ petitioner was that the amendment had introduced new provisions by substitution.

8.12 In para 15 of its pronouncement, the Division Bench of the Bombay High Court has clearly held that the amendment introduced to Section 2(g) of the Bombay Stamp Act was merely declaratory and not a remedial one. It was also held that the consent decree which fulfills all requisites of transferring right, title and interest under it in favour of the respondents, is an instrument u/s 2(g) of the Act which would be chargeable to stamp duty under entry 25 of Schedule 1 of the Act.

On such interpretation of the amendment, it was held that consent decrees which had been passed prior to coming into force of the amendment, were covered under the unamended Section 2(g) and were chargeable to stamp duty.

8.13 The Division Bench of the Bombay High Court placed reliance on two pronouncements of the Supreme Court reported at Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, and State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, on interpretation of inclusive or explanatory statutory provisions and accepted the submission that the amendment

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incorporated by the Maharashtra Act No. 27/1985 to the definition of "conveyance" in Section 2(g) is by way of a clarification and effectuated only in order to clarify what was accepted in the provisions as they existed prior to the amendment. The amendment therefore was by way of clarification of an ambiguous provision.

8.14 There is yet another aspect of this matter. Section 2(g) of the Bombay Stamp Act defines the expression "conveyance" as including an instrument by which there is transfer of right, title and interest in Immovable property. ''Instrument'' stands defined u/s 2(i) of the Act which is another inclusive definition and opens with the words that ''instrument includes every document...."

8.15 In M.S. Builders Pvt. Ltd. (supra), an argument was laid before the court by the respondents that the decree put a seal of the court on the position existing in law as to the legal status of the respondents; that it formally expresses such rights; that wherever the legislature intended to include a final order of the civil court to be covered under the provisions of the act, it had specifically provided so. In this behalf, it was argued that ''instrument of partition'' in Section 2(m) of the Bombay Stamp Act was specifically included by the legislature; and that there was no statutory provision including a consent decree within the scope of ''conveyance'' as defined u/s 2(g) of the Act or by the definition of the word ''instrument''. It is noteworthy that the Division Bench rejected all these contentions after a detailed consideration.

8.16 In the judgment reported at Ruby Sales and Services (P) Ltd. and Another Vs. State of Maharashtra and Others, the Supreme Court was considering the inclusion of a consent decree within the definition of the ''conveyance'' u/s 2(g) or within the definition of ''instrument'' as defined u/s 2(l) of the Bombay Stamp Act. The court observed that Clause (iii) of Section 2(g) which included every decree or final order of any civil court within the definition of ''conveyance'', had been introduced only out of abundant caution and it does not mean that the consent decree was not otherwise covered by the definition in Section 2(g) or Section 2(l) of the Stamp Act. It was held by the Supreme Court that it was clear from the consent decree that it also falls within the definition of ''instrument'' under which title has passed over to the appellants/plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs. It was observed by the Apex Court that the position became clear that the consent decree falls under the definition of both "conveyance" and "instrument". Such position was held to exist even prior to the statutory amendment to the Bombay Stamp Act.

8.17 It was observed by the Apex Court that that the statutory amendment was made out of abundant caution and it did not mean that a consent decree was not otherwise covered. In paras 11, 14 and 15 of the judgment, the court noticed the submission on behalf of the appellant and observed thereon as follows:

11. There is no particular pleasure in merely going by the label but what is

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decisive is by the terms of the document. It is clear from the terms of the consent decree that it is also an "instrument" under which title has been passed over to the appellants/plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs.

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14. Mr. Ganesh, learned Counsel for the appellant, submitted that it is only by the amendment that with effect from December, 10, 1985 the decree passed by the court has been for the first time introduced in the definition of "conveyance" and the said amendment does not refer to be by way of clarification or declaration of that position. It was thus submitted that prior to amendment the consent decree was not included in the definitions of "conveyance" and "instrument". The High Court proceeded on the footing that he 1985 Amendment was clarificatory and declaratory.

15. As we have noticed earlier the definitions of "conveyance" and "instrument" start with the expression "includes" which shows that the definitions are very wide. It appears to us that the amendment was made out of abundant caution and it does not mean that the consent decree was not otherwise covered by the definitions given in Section 2(g) or 2(l) of the Act. As stated earlier it depends on the terms thereof. Merely because an agreement is put in the shape of a consent decree it does not change the contents of the document. It remains an agreement and it is subject to all rights and liabilities which any agreement may suffer. Having a stamp of court affixed will not change the nature of the document. A compromise decree does not stand on a higher footing than the agreement which preceded it. A consent decree is a mere creature of the agreement on which it is founded and is liable to be set aside on any of the grounds which will invalidate the agreement.

8.18 In Li Taka Pharmaceuticals Ltd. Vs. State of Maharashtra and other, on this very aspect the Bombay High Court had ruled as follows:

4. Clause (g)(iii), which is added by the Maharashtra Act No. 27 of 1985 which has come into operation from December 10, 1985, provides that conveyance includes every decree or final order of any civil court. Clause (g)(iv) is added by the Maharashtra Act No. 17 of 1993 which has come into operation from April 1, 1993. Before appreciating the contentions raised, it would be appropriate to state that even prior to amendment, a conveyance would include every instrument by which the property is transferred to or vested in any other person inter vivos. Under Clause (g)(ii), conveyance included every instrument by which whether movable or immovable property or asset or interest in any property is transferred to or vested in any other person, inter vivos, and which is not otherwise specifically provided. By adding Section 2(g)(iii), it is made clear that "every instrument" would include a consent decree or final order of any civil court.

8.19 The Supreme Court and High Court of Bombay have held that the amendment to the Bombay Stamp Act by the Maharashtra Act No. 27/1985 was

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only with a view to set at rest any doubts and to clarify and explicitly state what was already included in the unamended definition of conveyance. The definition of ''conveyance'' in the Act was an inclusive definition. The amendments were held to be merely declaratory and by way of a clarification and that the same were not any new statutory provision.

There can therefore be no manner of doubt, that even if the legislature had not effected the amendment and included the clause in Sub-section (g) of Section 2 of the Bombay Stamp Act, it made no difference to the legal issue at all. A scheme of amalgamation approved by a court in exercise of jurisdiction under the Companies Act, 1956 and given effect to thereafter, where under property is conveyed from one company to another, is covered within the unamended definition of the term ''conveyance'' in the Bombay Stamp Act as well.

The same would therefore be exigible to stamp duty u/s 3 of the Indian Stamp Act.

8.20 I have noticed hereinabove, the construction placed by the Supreme Court of India as well as the Bombay High Court. It has authoritatively held that the amendment to the inclusive definition of ''conveyance'' in the Bombay Stamp Act by virtue of the Maharashtra Act No. 27/1985 (Amendment), made no impact to the substantive provisions and was really in the nature of a clarification to the existing provisions. This being the legal position, it certainly cannot be contended that merely because some of the judicial precedents cited before this Court arise out of the Bombay Stamp Act, 1985, the clear legal principles laid in such pronouncements would have no application to the instant case.

8.21 The very reasoning noticed hereinabove applies to the present consideration. Merely because the legislature has not amended the existing statutory provision as applicable to Delhi to specifically include transfer of property under an order approving a scheme of amalgamation in the definition of conveyance, it is of no consequence at all. The same does not amount to exclusion from applicability of the Indian Stamp Act and chargeability to stamp duty thereon. The statutory definition of "conveyance" under Sub-section 10 of Section 2 is an inclusive definition of wide import which cannot be confined to specific instruments mentioned in the statute.

8.22 The contention on behalf of the petitioner that the failure of the legislature to specifically include the order sanctioning a scheme of amalgamation in the definition of "instrument" or "conveyance" in the Indian Stamp Act manifests an intent to exclude it from applicability of the statutory provisions, is therefore devoid of legal merit and has to be rejected.

8.23 The salutary principle pressed into service by learned senior counsel appearing for the petitioner to the effect that fiscal statutes have to be strictly construed needs no elaboration. Placing reliance on the principles laid down in Income Tax Officer, Tuticorin Vs. T.S. Devinath Nadar and Others, it was urged that the language of a statute imposing a tax duty or charge has to receive a

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strict construction in the sense that there is no room for any intendment and regard must be had to the clear meaning of the words. Where the meaning of the statute is in doubt, it must be construed in favour of the subject, however much within the spirit of the law, the case might otherwise appear to be; but a fair and reasonable construction must be given to the language used without leaning to one side or the other. If the interpretation of a fiscal enactment is in doubt, the subject cannot be taxed unless he comes within the later of the law and the argument that he falls within the spirit of the law cannot avail the department.

8.24 Placing reliance on the principles in Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi,) has been urged that there can be no dispute that the stamp duty is a tax and that hardship is not relevant in construing taxing statutes which are to be considered strictly. As often said, there is no equity in a tax.

There can be no dispute with these propositions. However no issue of hardship arises in the present case.

8.25 So far as the definition clauses are concerned, there is another reason why an approved scheme of amalgamation would be exigible to stamp duty. It is noteworthy, that the definition of instrument u/s 2(l) of the Bombay Stamp Act, 1958 was not amended by the Maharashtra Act 17 of 1993 and is similar to the definition u/s 2(14) of the Indian Stamp Act.

8.26 In its judgment reported at Li Taka Pharmaceuticals Ltd. Vs. State of Maharashtra and other, . the Bombay High Court had answered the issue in the following manner:

8. Further, u/s 2(l) of the Bombay Stamp Act, the word "instrument" is defined to mean 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 shares, debenture, proxy and receipt. Therefore, the amalgamation scheme sanctioned by the court would be an instrument within the meaning of Section 2(l). The said instrument is on the basis of agreement or arrangement between two or more companies. By the said instrument, properties are transferred.

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10. Re : Contention (a):

Mr. Andhyarujina vehemently submitted that if court decrees and instruments are included and considered as conveyances, then, the result would be a startling one and that every order passed by this Court or the Supreme Court or the civil court would be subject to interference by the Revenue authorities and would not be admissible u/s 34 of the Bombay Stamps Act unless it is duly stamped. The consequence would be that there will be inroads in judicial orders passed by the

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courts. He contended that once the court passes an order or a decree, it is required to be implemented or executed and its execution or implementation cannot be subjected to payment of duty. He further pointed out that this would be in direct violation of Article 142 of the Constitution which provides that every decree or order passed by the Supreme Court shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament.

11. In our view, it is difficult to accept the contention that inclusion of a court''s order or compromise decree or amalgamation scheme for subjecting it to the stamp duty would lead to startling results. It should be noted that this is not for the first time that orders passed by the court are subjected to levy of stamp duty. It is there from the date of the inception of the Indian Stamp Act, 1899. Section 2(m) defines "instrument of partition" to mean any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any civil court and an award by an arbitrator directing partition. This section specifically provides that any final order effecting partition passed by the civil court, revenue authority and an award passed by the arbitrator directing a partition would be an instrument of partition. Further, similar contentions were considered by the Queen''s Bench Division in the case of IRC v. G. Angus and Co. [1889] 23 QBD 579, 582 with regard to Section 70 of the Stamp Act, 1870, which gives the interpretation to be placed upon the expression "conveyance on sale", in the following language:

The term ''conveyance on sale'' includes every instrument and every decree or order of any court or of any Commissioners, whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser or any other person on his behalf or by his direction.

12. In that case, the court observed that the first thing to be noticed is, that the thing which is made liable to the duty is an "instrument". If a contract of purchase and sale, or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case is not within the section, and no tax is imposed. It is not the transaction of purchase and sale which is struck at; it is the instrument whereby the purchase and sale are effected which is struck at. The court further observed that it is the instrument whereby any property upon the sale thereof is legally or equitably transferred and the taxation is confined to the instrument whereby the property is transferred.

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15. Learned Counsel further contended that the jurisdiction of levy stamp duty is in respect of a document or an instrument and, therefore, an order or decree of the court cannot be termed an instrument or a document unless it ratifies the act of the parties. As discussed above, the foundation of an order Section 394 of the

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Companies Act is a compromise or arrangement between two or more companies and it involves transfer of assets and liabilities of one company to the other company. The proviso to Sub-section (1) of Section 394 provides that the court can sanction the scheme if the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. The transfer of the assets of a transferorcompany is based upon the compromise and while sanctioning the scheme the court is not substituting or changing the compromise or arrangement. It only verifies whether it is a lawful act and is in accordance with the prescribed procedure.

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20. xxxx The Legislature is not making any direct or indirect inroads into the judicial powers. It has only provided that if an instrument including an order passed by the court transfers movable or immovable property, then on the same instrument, stamp duty as provided under the Act is required to be paid. This cannot be stated to be in any manner making direct inroads into the judicial function of this Court or of the Supreme Court. It cannot be said that Article 261(3) of the Constitution, which provides that final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law, is violated. This article itself provides that it could be executed anywhere within the territory according to law and law includes law which prescribes payment of stamp duty on such instrument if it transfers or conveys movable or immovable property.

8.27 The issue of chargeability of the approved scheme of amalgamation to stamp duty in the light of the statutory scheme, provisions and amendments and the definition of the expression ''instrument'' u/s 2(l) of the Bombay Stamp Act, 1958 was also considered in Hindustan Lever (supra). The principles laid down by the Apex Court int his regard read as follows:

15. This definition of ''instrument'' is not amended by the Maharashtra Act of 17 of 1993. The word "instrument" is defined to mean, every document by which any right or liability is or purports to be created transferred, limited, extended, extinguished or recorded, but does not include bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of shares, debenture proxy and receipt. The recital in the scheme of amalgamation as well as the order of the High Court u/s 394 of the Companies Act, declares, that upon such order of High Court the undertaking of the transferor company shall stand transferred to the transferee company with all its movable, immovable and tangible assets to the transferee company without any further act or deed. Sub-section 3 of Section 394 provides that the certified copy of the Order of the Court has to be presented before the Registrar of companies within 30 days for registration. And in default any officer of the company, who is in default, becomes liable to be punished and fined, which may extend up to Rs. 500/-. Section 391(3) provides that an order made by the court under Sub-section (2) of Section 391 shall not have effect till a certified copy of the order

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has been filed with the Registrar. On presentation of the certified copy of order, the Registrar of the Company certifies that the transferor company stands amalgamated with the transferee company along with all its assets and liabilities. Thus the amalgamation scheme sanctioned by the Court would be an "instrument" within the meaning of Section 2(i). By the said """instrument" the properties are transferred from the transferor company to the transferee company, the basis of which is the compromise or arrangement arrived at between the two companies.

8.28 It is well settled, that a document creating or transferring a right in Immovable property is an ''instrument''. Before this Court, it was stated by Mr. P.V. Kapoor, learned senior counsel for the petitioner, that he does not dispute that a scheme of amalgamation which was placed before the court and stands approved u/s 391 to 394 of the Companies Act, 1956 would be covered under the definition of ''instrument'' as contained in Sub-section 14 of Section 2.

For this reason as well it would be chargeable to stamp duty.

8.29 In Hindustan Lever and Anr. v. State of Maharashtra and Anr., the Apex Court observed that in Ruby Sales & Services Pvt. Ltd. (supra) the court was of the opinion that the consent decree which purports to convey the title in the property was an instrument liable for stamp duty at all times and it was only by way of abundant caution that the legislature had included the consent decree in the definition of the word ''conveyance'' under the Bombay Stamp Act.

8.30 A distinction is drawn by the learned Counsel for the petitioners to the effect that Ruby Sales & Services Pvt. Ltd. (supra) related to a consent decree where the terms of settlement stated that the same would be treated as the conveyance. This aspect also stands considered in Hindustan Lever and Anr. v. State of Maharashtra and Anr. Placing reliance on its earlier pronouncements on this very issue in the context of consent decrees, the Apex Court answered the question as follows:

30. A document creating or transferring a right is an instrument. Can it be said that an order effectuating the transfer is a document? The answer has been given in the affirmative by this in Court in Haji Sk. Subhan Vs. Madhorao, wherein it was held that the question is whether the word "document" includes a decree of the Court. It was held that there was no good reason why a decree of the court when it affects the proprietary rights and is in relation to them should not be included in this expression. This question more pointedly arose before this Court in Ruby Sales and services (P) Ltd., (supra) . In that case in a suit for specific performance the property was conveyed to the vendee by a consent decree. The question arose whether the consent decree is an instrument and liable to be stamped. The consent decree contained a recital to the effect that "this decree does operate as the conveyance from the defendants in favour of the plaintiffs in respect of the said property more particularly described in exhibit A to the plaint." The Court held that "there is no particular pleasure in merely

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going by the label but which is decisive is by the terms of the document. It is clear from the terms of the consent decree that it is also an "instrument" under which title has been passed over to the appellant/plaintiffs. It is a live document transferring the property in dispute from the defendants to the plaintiffs." The aforesaid decree was based on an agreement between the parties. So is the case with an order u/s 394 of the Companies Act which is also based on an agreement between the transferor company and the transferee company.

8.31 In Hindustan Lever (supra), it was further held that an order passed by the court u/s 394 of the Companies Act is based upon a compromise between two or more companies. The scheme has to be sanctioned by the court as per the compromise arrived at between the parties if the same is lawful and the Company Court is satisfied that the affairs of the company were not conducted in a manner prejudicial to the interests of its members or to public interest, that is to say, it should not be unfair or contrary to public policy or unconscionable. It has been unequivocally held that the same is an instrument which transfers the properties.

9. To conclude

9.1 The pronouncement of the Apex Court in Hindustan Lever and Anr. v. State of Maharashtra and Anr. (supra) was not placed before the Calcutta High Court which considered Madhu Intra Limited and Anr. v. Registrar of Companies and Ors. In addition thereto, the discussion of the impact of the amendment to the definition of the term ''conveyance'' in the Bombay Stamp Act in Hindustan Lever and Anr. v. State of Maharashtra and Anr.; Li Taka Pharmaceutical Ltd. and Ruby Sales & Services Pvt. Ltd. (supra) was also not brought to the notice of the court. The Apex Court has held that amendment to the Bombay Stamp Act was merely on account of abundant caution.

9.2 The consistent view of the Supreme Court is that the scheme of amalgamation was already covered under the definition of conveyance under the unamended Act. Such submission was not made before the learned Bench of the Calcutta High Court in Madhu Intra (supra) and unfortunately the findings of the courts oo the same also not placed before the Bench in Madhu Intra Limited. The pronouncements of the Apex Court on these aspects bind this Court and would guide the adjudication in the present case.

9.3 From a bare reading of the statutory provisions and the judicial pronouncements noticed above, it is apparent that it is the "instrument whereby property is legally and equitably transferred" which is made liable for payment of stamp duty. Section 394(2) of the Companies Act, 1956 provides that the properties and liabilities of the transferor company stand transferred to the transferee company by virtue of the order of the court. The statute does not provide any exception to the definition of "instrument" or "conveyance". Orders passed by the court resulting in transferring the right of the property have been subjected to levy of stamp duty in several situations noted hereinabove.

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9.4 It is noteworthy that there would be several instances of transfer of interest in Immovable property by operation of law. Grants and transfer of land or of any interest therein are effected under the Government Grants Act, 1895 on behalf of the Government. There is allotment and conveyance of Immovable property by lease as well as sale by the Delhi Development Authority under the Delhi Development Act, 1957. Transfer of property on effectuation of a scheme of amalgamation after its acceptance by the approval by the court is not a transfer by any statutory prescription. If the contention on behalf of the applicant was to be accepted, the result would be that the instruments by which conveyances in such instances were effected would not be chargeable to stamp duty.

9.5 From the above discussion, it is evident that every contention raised by the applicants herein was similar in terms of the contentions raised before the Apex Court in Hindustan Lever and Anr. v. State of Maharashtra is rejected. The Apex Court has pointed out that merely because a scheme for amalgamation requires approval by court, it makes no difference at all to its real nature. It is nothing better than and remains a compromise or settlement. From the above discussion, the most important principle which emerges is that it would be immaterial for chargeability to stamp duty that approval and effectuation of the scheme or arrangement required court intervention by way of the necessary approval.

9.6 Thus for the purposes of imposition of stamp duty, it would immaterial as to whether the conveyance was by operation of law, statutory operation, or by virtue of a private contract between parties. Exemption has to be by specific statutory provision.

9.7 The order approving the scheme for amalgamation passed by the Company Court in exercise of jurisdiction under Sub-section 2 of Section 394 which have the impact of transferring of all assets and liabilities including the property of the transferor company to the transferee company would be therefore exigible to stamp duty under the Indian Stamp Duty Act.

10. Transfer of property under an approved scheme of amalgamation is not an inter vivos transfer of interest u/s 5 of the Transfer of Property Act and therefore not covered under the Sub-section 10 of Section 2 of the Stamp Duty Act defining conveyance?

10.1 Mr. P.V. Kapoor, learned senior counsel for the petitioner has laid great emphasis on the submission that in order to be covered under the definition of conveyance under Sub-section 10 of Section 2 of the Indian Stamp Act, the transfer of interest has to be ''intervivos''. It has been extensively urged that inter-vivos is restricted to only ''living persons''.

Learned senior counsel for the petitioner submits that so far as the transaction involving transfer of assets from one company to another on an amalgamation of the assets and liabilities of one company with another u/s 394 of the Companies Act, 1956 is concerned, the same is not a transfer between living persons and

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therefore is not a transfer "inter vivos".

10.2 In order to buttress the above noted submissions, Mr. Kapur, learned senior counsel has also placed reliance on the amendment effected to Section 5 of the Transfer of Property Act, 1882 which was amended by Section 6 of Act 20 of 1929.

10.3 By virtue of Section 6 of the Amending Act 20 of 1929, the description of a "living person" in Section 5 was specifically amended to include a company and the legislature also clearly stipulated that the provisions of Section 5 as amended should not effect any law for the time being in force relating to transfer of property to or by companies, associations or body of individuals. Upon amendment the provision reads thus:

5. Transfer of property defined

In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act. In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

10.4 Learned senior counsel for the applicant has submitted that as a result of the legislative prescription, the special law in force relating to transfer of property by companies under the Companies Act, 1956 is not impacted by the provisions of the general law in Transfer of Property Act, 1882 and a transfer of assets and liabilities, by virtue of the sanction of a scheme u/s 394 of the Companies Act, 1956 would therefore not attract the applicability of the provisions of Transfer of Property Act, 1882.

10.5 It is noteworthy, that the expression "inter vivos" is not statutorily defined in the Indian Stamp Act, 1899 or in any other statutory provision. This expression would therefore derive its meaning from the meaning given to it in common parlance which is to be found in several dictionaries.

10.6 Learned senior counsel for the applicant has pointed out in the judgment reported at T.K. Lathika Vs. Seth Karsandas Jamnadas, . In para 16, the Supreme Court has placed reliance on the definition of the expression "inter vivos" given in the Black''s Law Dictionary while deciding on the question as to whether a moratorium of one year on filing of an eviction petition by a transferee landlord would apply to a tenanted premises which were gifted by the original landlord to his daughter who was thereby a transferee landlord. It was held that:

16. Assuming that Ext. A.1 has created a new lease after terminating the erstwhile lease, the difficulty is that the grip of the ban contained in the third proviso would still continue to foreclose the landlord from filing the petition for a period of one year from the new lease deed. This is because "the landlord''s right

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to recover possession" would then arise under that instrument of lease, which would also be a transfer inter vivos as envisaged in the third proviso. In Black''s Law Dictionary the expression inter vivos is given the following meaning:

Between the living; from one living person to another. Where property passes by conveyance, the transaction is said to be inter vivos, to distinguish it from a case of succession or devise.

10.7 My attention has been drawn to the pronouncement of a Full Bench of the Madras High Court reported at AIR 1973 Mad. 1 Chief Controlling Revenue Authority Board of Revenue, Madras Vs. R. Thirthalu, n support of the contention that the expression ''conveyance'' under Sub-section 10 of Section 2 of the Indian Stamp Act, 1899 includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter-vivos and which is not otherwise specifically provided for in Schedule 1. It was held that though the definition is an inclusive one, it was clear that the essence of conveyance is transfer of property or an interest therein, whether movable or immovable, and the transfer should be inter-vivos. It is not necessary that a document should always use the word ''transfer or assign'' in order to constitute such a transaction. Whether there is a transfer will depend upon the words of a disposition. If a person says in a document that he had delivered possession of the property and thereby also he constituted the property delivered as the property of the other person, and at the same time, he also declares that in view of it, he had divested himself of his title and he would no longer be entitled to the property, the process of transfer is complete. Transfer means vesting of title in one and divesting title from the other who gives up the title. Whether there is a transfer, will have to be inferred from the intention expressed by the words used in the document.

In this case, mere affidavits conveying title to properties in favour of the company and divesting title in the deponents were held to constitute a transfer and a conveyance within the meaning of Sub-section 10 of Section 2 and hence chargeable to stamp duty under Entry 23 of Schedule 1 of the Indian Stamp Act, 1899.

10.8 A similar submission arose for consideration before the Bombay High Court in State of Maharashtra and Others Vs. M.S. Builders (Private) Limited and Another, In this pronouncement, it was observed that a consent decree is a document by which right or liability is purported to be created and transferred in the praesenti. It takes effect instantaneously and its operation is not postponed to a later point in time and has been held to be covered under the definition of instrument u/s 2(l) of the Bombay Stamp Act. So far as the persons between whom it takes effect is concerned, in para 14 of the judgment, it was held that it is a live document and taking effect between persons who may be natural or artificial, who are alive at the relevant time, which would make the transaction or transfer ''inter-vivos''. It was held that this would be well within the inclusive part of the definition of ''conveyance'' and ''instrument'' as they existed prior to 1985

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and are sufficient and substantial enough, to take in its form and forceful grip the ''consent decree'', albeit brought about by a use, or even abuse of the process of law.

10.9 In para 45 of the pronouncement in Hindustan Lever''s case (supra), on this issue the court clearly observed as follows :60

45. It was contended that since the transaction was not between the ''living beings'', the same was not "inter vivos" as the transfer of property had not taken place between the living beings. We do not agree. "Transfer of Property" has been defined in Section 5 of the Transfer of Property Act 1882 to mean an act by which a living person conveys property, in present or in future to one more other living persons. Company or association or body of individual, whether incorporated or not, have been included amongst the "living person" in this Section. It clearly brings out that a company can effect transfer of property. The word "inter vivos" in the context of Section 394 of the Companies Act would include within its meaning also a transfer between two "juristic persons" or a transfer to which a ''juristic person'' is one of the parties. The transaction between a minor or a person of unsound mind with the other person would not be recognised in law, though the same is between two living beings, as they are not juristic persons in the eyes of law who can by mutual consent enter in a contract or transfer the property. The company would be juristic person created artificially in the eyes of law capable of owning and transferring the property. Method of transfer is provided in law. One of the methods prescribed is dissolution of the transferor company by merger in the transferee company along with all its assets and liabilities. Where any property passes by conveyance, the transaction would be said to be inter vivos as distinguished from a case of succession or device.

10.10 It is necessary to bear in mind that transfer of property can be by several modes. It includes transfer of property by way of a sale, lease, gift which are between living persons and takes place in praesenti. There may also be a testamentary bequest resulting in transfer of rights in property which takes place after the demise of a person. Thus, the words ''inter vivos'' as occurring in Sub-section 10 of Section 2 of the Indian Stamp Act, 1899 refer to a transfer of properties other than those which may be in the nature of a bequest by a deceased. Such a transfer would include one between two juristic persons or a transfer to which ''the juristic person is one of the parties''.

10.11 I find that so far as the expression inter-vivos and the interpretation of the definition of ''conveyance'' in Sub-section 10 of Section 2 is concerned, the reference is to a ''living person''. There is nothing in any dictionary or in any judicial pronouncement or legal literature whereby such living person has to be restricted to only a natural person and would not include a juristic entity or an artificial person.

10.12 It therefore has to be held that a transfer inter-vivos would include a

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transfer in praesenti between persons who are in existence at the time of the transfer. Such person would take into its ambit not only natural persons but artificial persons including juristic persons. A company incorporated under the provisions of the Companies Act, 1956 is a juristic person created artificially in the eyes of law which admittedly is owning and transferring the property.

10.13 Accordingly, it is held that an approved scheme of amalgamation amounts to a transfer inter-vivos between two companies who were juristic persons in existence at the time of passing of the order and sanctioning of the scheme whereby right, title and interest in the Immovable property of the transferor company are transferred to the transferee company. The transfer takes place in the present and is not postponed to any later date and is covered under the definition of conveyance under Sub-section 10 of Section 2 of the Stamp Act

11. No valuation of property transferred and basis for assessment

11.1 Learned senior counsel for the petitioner has also contended that that even if it were to be held that there is a transfer of right, title and interest in Immovable property, there is no basis for arriving at a valuation of the same for the purposes of assessment of the amount of stamp duty payable.

11.2 So far as the valuation of the scheme of amalgamation is concerned, this issue has also been considered and stands authoritatively decided. In Li Taka Pharmaceutical Ltd. (supra) reliance was placed on a pronouncement of the Bombay High Court reported at State of Maharashtra and Others Vs. M.S. Builders (Private) Limited and Another, wherein a division Bench of the court considered an instrument under which there was a transfer of 5 shares of a cooperative society by which one of the incidents of membership of the said society was to occupy a specific office premises in the same building. The court had held that this document of transfer of shares was a conveyance of property chargeable with stamp duty under Article 25(b)(i) of the Bombay Stamp Act as amended in 1985 on the basis of the market value of the said property. The court observed that in effect, along with the transfer of shares, the document incorporated a conveyance of property. On the aspect of what stamp duty would be payable on an amalgamation scheme, the Court held as follows ;

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 the 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 an 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 shareholders of the transferor-company. For

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this purpose, what is to be kept in mind is that by sanctioning the amalgamation scheme, the court is sanctioning not a transfer of the assets or liabilities separately but the going concern is transferred which is valued at a particular amount and that valuation would be on the basis of share exchange ratio....

33. ...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 Article 25(1) of Schedule I to the Stamp Act should be based on its valuation arrived at on the basis of shares allotted by the transferee-company to the transferorcompany. In the case of Hindustan Lever Employee''s Union v. Hindustan Lever Ltd. [1995] 83 Comp Cas 30 (SC) 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 method, and (iii) the earning method. It is also established that the quotation of shares in the share market provides a larger reliable index of the assets of the company.

34. Hence, we accept the contention of learned Counsel for the petitioners that valuation under Article 25(1) of Schedule I 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 transferorcompany or other consideration, if paid, but not by separately valuing the assets and the liabilities.

11.3 On the aspect of valuation, in Hindustan Lever v. State of Maharashtra (supra), the Apex Court held thus:

28. The transfer of assets and liabilities takes effect by an order of the Court. The order also provides for passing of consideration from the transferee company to the shareholders of the transferor company. The consideration for sale in a transaction like this is the shares. The share exchange ratio is decided on the basis of number of factors including the value of net assets of the transferor and transferee company. To arrive at this figure of net assets the liabilities have to be set off against the gross value of the assets. The share value is fixed. The properties belong to the company and the company belongs to the shareholders. Once the shareholders of the transferee company receive the consideration it would be deemed as if the owner has received the consideration.

In view of the above discussion, the submission that conveyance of property under a scheme of amalgamation is not capable of valuation is unacceptable.

12. Notification No. 1 dated 16th of January, 1937 and the notification No. 13 dated the 25th of December, 1937.

12.1 During the course of hearings, learned senior counsel appearing for the petitioner has placed reliance on two notifications bearing No. 1 dated 16th January, 1937 and the notification No. 13 dated 25th of December, 1937. Placing reliance on these two notifications and the provisions of the Constitution of India as enacted, as well as the Indian Independence Act, 1947, it is urged that these

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notifications are applicable even on date and that the applicant would, by virtue of the benefit available under these notifications, be entitled to remission of stamp duty on the transfer of the property which takes place by virtue of the approval of the scheme of amalgamation.

12.2 On the other hand, Mr. Aditya Madan, learned Counsel representing the Government of NCT of Delhi, has submitted that the two notifications not having been accepted by the legislative assembly of the Government of National Capital Territory of Delhi would stand repealed. It is further contended that the notifications do not apply to an amalgamation effected u/s 394 of the Companies Act, 1956 whereby the transferor company ceases to exist after the transfer of property.

12.3 The first notification placed before this Court reads as follows:

Notification No. 1 dated the 16th January, 1937.

No. 1 - In exercise of the powers conferred by Clause (a) of Section 9 of the Indian Stamp Act, 1899 (II of 1899), the Governor General in Council is pleased to remit the stamp duty chargeable under articles 23 and 62 of Schedule I to the said Act on instruments evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act, 1913, in cases

(i) where at least 90 per cent of the issued share capital of the transferee company is in the beneficial ownership of the transferor company, or,

(ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent of the issued share capital of the other, or

(iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company.

Provided that in each case a certificate is obtained by the parties from the officer appointed in this behalf by the local Government concerned that the conditions above prescribed are fulfilled.

12.4 This notification is stated to have been superseded by a subsequent notification bearing No. 13 which is dated 25th of December, 1937. The copy of the notification placed before the court reads as follows:

No. 13. dated the 25th of December, 1937

-In exercise of the powers conferred by Clause (a) of Section 9 of the Indian Stamp Act, 1899 (II of 1899), and in supersession of all previous notifications issued from time to time under the said clause of the said section in so far as they relate to the Province of Delhi (hereinafter referred to as the said Province) except the notification of the Government of India in the Finance Department (Central Revenue) No. 6 - Stamps, dated the 14th August, 1937, the Central

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Government is pleased to reduce, to the extent set forth in each case, the duties chargeable in the said Province under the said Act in respect of the instruments hereinafter described under Nos. 4, 15, 30, 39, 40 [43, 49, 56 and 57] and to remit the duties so chargeable in respect of instruments of the other classes hereinafter described:

xxx xxx K. OTHER DOCUMENTS

xxx xxx

55. Instrument evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act, 1913, in a case where (i) at least 90 per cent. F the issues share capital of the transferee company is in the beneficial ownership of the transferor company, or, (ii) where the transfer takes place between a parent company and a subsidiary company one of which is the beneficial owner of not less than 90 per cent. Of the issued share capital of the other, or (iii) where the transfer takes place between two subsidiary companies of each of which not less than 90 per cent of the share capital is in the beneficial ownership of a common parent company:

Provided that a certificate is obtained by the parties to the instrument from the officer appointed in this behalf by the Chief Commissioner of Delhi that the conditions above prescribed are fulfilled.

It is noteworthy that this notification relates specifically to the then province of Delhi.

12.5 Delhi occupies a unique position and was one among the union territories listed in the Constitution. Part VIII of the Constitution is concerned with the provisions regarding union territories. Special provisions for some of the union territories have been made in Article 239. By virtue of the amendment of 1991, Article 239AA was incorporated to make special provisions with regard to Delhi which was renamed as the National Capital Territory as a result thereof.

12.6 By virtue of the Constitution (Sixty Ninth Amendment) Act, 1991 (w.e.f. 1st of February, 1992) a special provision by way of Article 239AA was incorporated in Part VIII of the Constitution whereby, special provisions with respect to Delhi were made. Delhi was renamed as the National Capital Territory as a result thereof. The relevant portion thereof reads as follows:

239AA : Special Provisions with respect to Delhi

(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991 the Union Territory of Delhi shall be called the National Capital Territory) and the administrator thereof appointed under Article 239 shall be designated as the Lieutenant Governor.

(2) (a) There shall be a Legislative Assembly for the National Capital Territory of Delhi and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

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(3) (a) Subject to the provisions of the Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State of List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1,2, and 18 of the State List and Entries 44, 65 and 66 of that List in so far as they relate to the said Entries 1, 2, and 18.

(b) Nothing in Sub-clause (a) shall derogate from the powers of Parliament under this constitution to make laws with respect to any matter for a Union Territory or any part thereof.

12.7 Article 239AA specifically states that it is subject to other constitutional provisions. So far as the conferment of legislative power is concerned, the same is to be found in Article 239AA(3). While Sub-clause 3(a) is concerned with the conferment of power on the legislative assembly, sub Clause (b) specifically states that the powers of the legislative assembly shall not derogate from the powers of the Parliament to make laws with respect to any matter for a union territory or part thereof.

12.8 The constitutionally recognised superiority of the legislative competence of the Parliament is also set out in Sub-clause (c) of Article 239AA(3) which provides that, if any provision of law made by the legislative assembly with respect to any matter is repugnant to any provision of a law made by the Parliament with respect to that matter, whether passed before or after the law made by the legislative assembly, or of an earlier law, then the law made by the Parliament or such earlier law shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void. The second proviso to Sub-clause (3) of Article 239AA also provides that nothing in the sub-clause shall prevent the Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislative assembly.

12.9 It is also necessary to examine Article 246 of the Constitution so far as the legislative competence of the Parliament is concerned which reads as follows:

246. Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)

(4) Parliament has power to make laws with respect to any matter for any part of

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the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

Sub-clause 4 of Article 246 of the Constitution of India, therefore empowers the parliament to make laws with respect to any matter for any part of the territory of India not included in a state, notwithstanding that such matter is enumerated in the state list.

Legislation in respect of the Union Territory would be such matter. These constitutional provisions thus set out in clear terms the legislative competence of the Parliament to legislate with respect to Delhi.

12.10 In exercise of powers under Article 239AA of the Constitution, the Parliament passed the Government of National Capital Territory of Delhi Act, 1991 which also took effect from the 1st of February, 1992. This by itself would show that the Delhi Legislature is subordinate to the Parliament.

12.11 The Government of National Capital Territory of Delhi Act, 1991 was enacted to supplement the provisions of the Constitution relating to the legislative assembly and council of ministers for the National Capital Territory of Delhi and for matters connected therewith or incidental thereto. The statement of objects and reasons for the Bill which was proposed makes a reference to the then proposed Article 239AA and stated that under the new Article 239AA proposed to be inserted by the Constitution (Seventy-Fourth Amendment) Bill, 1991, a legislative Assembly and Council of Ministers will be established for the National Territory. Clause (7)(a) of the said article provides that the Parliament may by law make provisions for giving effect to, or supplementing the provisions contained in that article, and for all matters incidental or consequential thereto. In pursuance of the said clause, this Bill sought to make necessary provisions in respect of the Legislative Assembly and its functioning on the lines of the provisions made in respect of a Legislative Assembly of a State with suitable modifications.

The bill received the assent of the President on 2nd January, 1992 and made provisions for constitution of the Legislative assembly and its procedure; the exemption of property of the Union from taxation; restrictions on laws passed by Legislative Assembly; special provisions as to financial bills and other bills, sanctions, financial statements, accounts, rules of procedure etc. It provides for delimitation of constituencies and also contains provisions relating to Lieutenant Governors and Ministers.

12.12 An issue as to the supremacy of the Legislative Assembly of Delhi over the Parliament and the impact of the afore noticed constitutional provisions fell for consideration before the Constitution Bench of nine Judges of the Supreme Court. In New Delhi Municipal Committee Vs. State of Punjab, etc. etc., , the court held that the Parliament would be in a position of superiority in hierarchy qua the Delhi Legislative Assembly. In this regard, in para 10 of its judgment, the Constitution Bench had construed the implication of provisions of Section 239AA

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vis-a-vis the Government of National Capital Territory of Delhi Act in some detail and held as follows:

By the Constitution Sixty-Ninth (Amendment) Act, 1991, Article 239AA was introduced in Part VIII of the Constitution. This article renamed the Union Territory of Delhi as the "National Capital Territory of Delhi" and provided that there shall be a Legislative Assembly for such National Capital Territory. The Legislative Assembly so created was empowered by Clause (3) of the said article

to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List insofar as any such matter is applicable to Union Territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List insofar as they relate to the said Entries 1, 2 and 18.

Clause (3) further provided that the power conferred upon the Legislative Assembly of Delhi by the said article shall not derogate from the powers of Parliament "to make laws with respect to any matter for a Union Territory or any part thereof". It further provided that in the case of repugnancy, the law made by Parliament shall prevail, whether the parliamentary law is earlier or later to the law made by the Delhi Legislative Assembly. Parliament is also empowered to amend, vary or repeal any law made by the Legislative Assembly. Article 239AA came into force with effect from 1.2.1992. Pursuant to the article, Parliament enacted the Government of National Capital Territory of Delhi Act, 1991. It is not only provided for constitution of a Legislative Assembly but also its powers as contemplated by Article 239AA. This Act too came into force on 1.2.1992. The subordinate status of the Delhi Legislature is too obvious to merit any emphasis.

12.13 A question with regard to the competence of the Lieutenant Governor to issue a notification in exercise of powers conferred under Sub-section 1 of Section 19 of the Punjab Courts Act, 1918 as extended to the National Capital Territory of Delhi relating to division of the national capital territory into different civil districts without such notification being deliberated upon by the Legislative Assembly of Delhi was raised before the Apex Court. By a judgment reported at Delhi Bar Association (Regd.) Vs. Union of India (UOI) and Others, , the Apex Court was called upon to consider the impact of enactment of the Government of National Capital Territory of Delhi Act, 1991 with regard to the continuing application of the Punjab Courts Act, 1919 to Delhi. The notification which was issued by the Lieutenant Governor specified that it was issued in exercise of the powers conferred under Sub-section 1 of Section 19 of the Punjab Courts Act, 1918 as extended to the National Capital Territory of Delhi, dividing it into nine civil districts. The Apex Court held that the enforcement of the Government of National Capital Territory of Delhi Act, 1991 from 1st February, 1992 does not hinder the continuing application of the Punjab Courts Act, 1918 to Delhi. The notification issued on 28th June, 2000 itself mentioned that the Punjab Courts Act, 1918 was extended to the National Capital Territory of Delhi. It was held that in the absence of any provisions in the Government of National Capital

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Territory of Delhi Act or in the absence of any other notification, order or legislation, the Punjab Courts Act, 1918 had continuous application to Delhi alongwith the laws made by the Delhi Legislative Assembly. Placing reliance on the principles laid down in Mithan Lal Vs. The State of Delhi and Another, it was held that though the Punjab Courts Act was only extended to Delhi, it has the status of a central legislation specifically enacted for Delhi. The Apex Court held that on extension of the applicability of the Act of 1918 to the Union Territory of Delhi, it becomes a Central enactment or an Act of the Parliament as it is made in exercise of powers of the Parliament to legislate for the Union Territory of Delhi by virtue of Clause 4 of Article 246 of the Constitution. Therefore, this Act of 1918 assumes the position of a central legislation enacted specifically for Delhi and is the law operative in the National Capital Territory (''NCT'' of Delhi hereafter). The Apex Court further held that any legislation passed by the State Legislative Assembly is always subordinate to the laws of the Parliament, whether passed prior to or after the enactment of the Central legislation and that Article 239AA(3b) and (c) limited the power of the state legislature. In this regard, it was held as follows:

52. The power to legislate to the Legislative Assembly of Delhi shall not supersede the powers of Parliament to make laws with respect to any matter for Union Territory or any part thereof. If any provision made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case the law made by Parliament or such earlier law shall prevail and the law made by the Legislative Assembly shall, to the extent of repugnancy, be void. The Punjab Courts Act, 1918, being the central legislation, will have the primacy over any legislation made by the Delhi Legislative Assembly on the subject and even if the Delhi Legislative Assembly has a power to make law on the subject which is covered under the impugned notification, Section 19 of the Punjab Courts Act, 1918 shall prevail on the subject and a notification issued thereunder shall not be invalidated merely because the subject matter also falls within the Concurrent List.

12.14 From the above, it is apparent that the power of the Parliament to legislate under Article 245 of the Constitution in respect of Union Territories is not denuded or derogated by the provisions of Article 239AA or any other provisions of the Constitution, and the Parliament has the legislative competency to legislate with regard to any subject so far as the National Capital Territory of Delhi is concerned.

I therefore find force in the submission that by virtue of the powers conferred in Article 239AA (3)b) and 246(4), the Parliament has the legislative competence to enact laws applicable to Delhi.

12.15 An objection is also raised on behalf of the respondents with regard to the legislative competency of the Central Government to legislate on the issue based

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on the separation of powers by virtue of the lists under the 7th Schedule of the Constitution of India.

12.16 A submission has been made by learned Counsel for the Government of NCT of Delhi that the notification not having been adapted by the appropriate Government does not have any legal force or binding. Mr. Madan, learned Counsel for the respondent has placed strong reliance on the Adaptation of Laws Order 1950, the relevant portion provides as follows:

Adaptation of existing Central Laws.

3. As from the appointed day, the existing Central laws mentioned in the Schedule to this order shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to the adaptation and modifications directed by those Schedules on if it is so directed shall stand repealed....

12.17 It is further contended that after the coming into force of the Constitution of India, amendments have been effected to Section 9(1) of the Indian Stamp Act, 1899 (vide A.O. 1950) which reads as follows:

9. Power to reduce, remit or compound duties - [(1)] [The Government] may, by rule, or order published in the Official Gazette,

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of [the territories under its administration], the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, by or in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties [of policies of insurance and] in the case of issues by any incorporated company or other body corporate [or of transfers (where there is a single transferee, whether incorporated or not)] of debentures, bonds or other marketable securities.

[(2) In this section, the expression "the Government" means,

(a) in relation to stamp-duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp-duty chargeable under this Act and falling within entry 96 of List I in the Seventh Schedule to the Constitution, the Central Government;

(b) save as aforesaid, the State Government.]

12.18 The argument is that in view of Section 9 of the Indian Stamp Act, 1899 as amended after the Adaptation of Laws Order of 1950, the Central Government has the authority to reduce or remit stamp duty only in respect of the documents mentioned in Clause (a) of Sub-section 2 of Section 9 and that a Scheme of

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Amalgamation sanctioned by the court does not fall within its purview. Reliance is placed on the observations of the Supreme Court in Hindustan Lever and Anr. v. State of Maharashtra and Anr. (supra) and it is urged by the respondents that only the state legislature would have the power to reduce or remit the stamp duty. The further submission is that in view of the amendments to Section 9 of the Indian Stamp Act, 1899, so far as the reduction or remission, of the stamp duty chargeable on any instrument whether prospectively or retrospectively is concerned, it rests in the Government who may do so by a rule or order published in the official gazette. Mr. Madan has urged that the power of the Central Government to so reduce or remit is confined to the instruments mentioned in Clause (a) of Sub-section 2 of Section 9 and is confined to a particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, by or in favour of any members of such class.

A scheme of amalgamation sanctioned by the court is not covered under Clause (a) of Sub-section 2 of Section 9. As such, the jurisdiction to reduce or remit stamp duties in respect of such an instrument and document is specifically vested in the State Government under Sub-clause (b) of Sub-section 2 of Section 9.

12.19 It would be useful also to consider the three entries referred to during the course of arguments. Learned Counsel for the respondents has relied on Entry 91 of List I and Entry 63 of list II, while learned senior counsel for the petitioner has placed reliance on Entry 44 of List III. These entries read as follows:

Entry 91 of List I

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

Entry 63 of List II

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

Entry 44 of List III

44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

12.20 The power to prescribe the rate of stamp duty is thus divided between the exclusive jurisdiction of the Union, as specified in Entry 91 of List I and the State Government stands empowered to legislate with regard to other instruments under Entry 63 of List II.

Entry 91 of List I confines the power of the Centre to legislate rates of stamp duty in respect of bills of exchange, promissory notes, cheques etc. (Ref Hindustan Lever and Another Vs. State of Maharashtra and Another, . Entry 63 of

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List II empowers the state legislature to prescribe rates of stamp duty in respect of documents other than those specified in the provisions of List I.

Entry 44 of List III empowers the State legislature to provide for stamp duties other than duties or fees collected by means of judicial stamps. Stamp duty under Entry 44 of List III is levied on the instruments and the measure is the valuation of the property transferred.

12.21 In Hindustan Lever v. State of Maharashtra and Ors. (supra), a question was raised with regard to the legislative competence of the Maharashtra legislature to effect the amendment to the Bombay Stamp Act and considered by the Apex Court.

The observations of the Apex Court while rejecting the challenge to the legislative competence of the Maharashtra legislature to amend the definition of ''conveyance'' and include sub- Clause (iv) to Sub-section (g) of Section 2 are also important and deserve to be considered in extenso and reads as follows:

43. It was next contended that provisions of Section 2(g)(iv) read with Section 34 of the Bombay Stamp Act which provides that the instrument not duly stamped would be inadmissible in evidence are repugnant to Section 394 of the Companies Act and that the State Legislation cannot be prevail over the provisions of the Companies Act. It was also contended that in the guise of the stamp duty the State Legislature is in reality imposing a tax on the amalgamation of the companies and has therefore encroached on the field of the Parliament under Entry 43, List I of the Constitution. We do not find any substance in this submission as well. Stamp duty is levied on the instrument and the measure is the valuation of the property transferred. There is no question of encroachment on the field of Parliament under Entry 43. List I of the Constitution which empowers the Union to make laws re: incorporation, regulation winding up of trading corporation including banks insurances and finance corporations but not including corporative societies. The follow up legislation under Entry 43 List I is totally different from the levy of stamp duty and of prescribing rate of stamp duty on such documents. The Bombay Stamp Act does not provide for any Legislation with regard to incorporation, regulation and winding up of corporations. It only levies the stamp duty and prescribes the rate of stamp duty in respect of documents by compromise or arrangement.

12.22 The submissions made by learned Counsel for the respondent fail to consider the material distinction between the legislative competence of the Legislative Assembly of the State of Maharashtra viz a viz the position of the Delhi Legislative Assembly. It also fails to consider the constitutional conferment of a special status upon the National Capital Region of Delhi and the supremacy of the Parliament under Article 239AA(3b) and Article 246(4) to legislate on all matters concerning Delhi. These two factors render the observations of the Apex Court in Hindustan Lever (supra) on the issue of the legislative competency of the state government with regard to the subject matter inapplicable to the issue

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under examination in the present case.

12.23 Section 3(60)(c) of the General Clauses Act, 1897 also lays down, that so far as Union Territories are concerned, the expression ''State Government'' means the ''Central Government''. The expression so occurring in Section 9 of the Stamp Act, in the context of union territories including Delhi, has also to be so construed and would mean the Central Government.

12.24 The notification dated 16th of January, 1937 was enacted by the Governor General in Council. Sub-section 8 of Section 3 of the General Clauses Act, 1897 defines the expression ''Central Government'' in relation to anything done before the commencement of the Constitution, to mean the Governor General or the Governor General in Council.

The notification dated 16th of January, 1937 would thus be covered by this definition and is to be treated as a notification issued by the Central Government.

12.25 This notification stands superseded by the notification No. 13 dated the 25th of December, 1937 which has been issued by the Central Government.

13. Pre-Constitution notification - whether still applicable and binding

13.1 The issue which now remains to be considered, is whether this notification of 1937 being a pre-constitution notification is applicable and binding.

13.2 Article 372 of the Constitution of India is concerned with continuance in force of existing laws and their adaptation as on the date of the coming into force of the Constitution. Sub-clause 1 of Article 372 provides, that notwithstanding the repeal by the Constitution of the enactments referred to in Article 395, but subject to the other provisions of the Constitution, all laws in force in the territory of India, immediately after the commencement of the Constitution shall continue to be in force therein, until altered or repealed or amended by a competent legislature or any other competent authority. Sub-clause 2 provides that for the purposes of bringing the provision of any law in force in the Territory of India into accord with the provisions of the Constitution, the President may by order make such adaptations and modifications in such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, from such date as may be specified in the order, have effect subject to the adaptations and modifications so made and any such adaptation or modification shall not be questioned in any court of law.

13.3 In this behalf, the observations of the Apex Court in John Vallamattom and Another Vs. Union of India (UOI), can usefully be adverted to and reproduced as follows:

18. It is neither in doubt nor in dispute that Clause 1 of Article 13 of the Constitution of India in no uncertain terms states that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III there, shall, to the

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extent of such inconsistency, be void. Keeping in view the fact that the Act is a pre- constitution enactment, the question as regards its constitutionality will, therefore, have to be judged as being law in force at the commencement of the Constitution of India [See Keshavan Madhava Menon Vs. The State of Bombay, By reason of Clause 1 of Article 13 of the Constitution of India, in the event, it be held that the provision is unconstitutional the same having regard to the prospective nature would be void only with effect from the commencement of the Constitution. Article 372 of the Constitution of India per force does not make a pre-constitution statutory provision to be constitutional. It merely makes a provision for the applicability and enforceability of pre-constitution laws subject of course to the provisions of the Constitution and until they are altered, repealed or amended by a competent legislature or other competent authorities.

13.4 In view of the provisions of Article 372, this notification of 1937 would be a law in force as on the date of the Constitution coming into force.

13.5 It is an admitted position that the notification of 1937 has not been superseded by any law made either by the Parliament or by the state government. Learned Counsel for the Government of NCT of Delhi has not pointed out any amendment to the provisions of the Stamp Act which would have the impact of amending/revoking or repealing the notification of 1937.

13.6 The question thus which is required to be considered is as to whether the notification dated 25th of December, 1937 would lapse on the coming into force of the constitutional provisions unless specific legislation was enacted adopting or adapting the same. This issue is not res integra and stands authoritatively answered by the Apex Court in several judicial pronouncements. In the judgment reported at The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, the Apex Court has occasion to consider a similar contention and on the effect of Article 372, had held thus:

13. The contention does not appear to us to be sound. A complete reply to this argument is furnished, in our opinion, by the provisions of Clauses (1) and (2) of Article 372 of the Constitution. Article 372 runs as follows:

372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

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Thus Clause (1) of the article provides for continuance, in force, of the existing laws notwithstanding the repeal by the Constitution of the enactments mentioned in Article 395 and Clause (2) provides for their adaptation with a view to bring them into accord with the provisions of the Constitution. The Government of India Act, 1935, undoubtedly stands repealed by Article 395 of the Constitution, but laws made thereunder which were in existence immediately before the commencement of the Constitution would continue under Article 372(1) and could be adapted under the second clause of that article. Mr. Chatterjee argues that Article 372 has no application to the present case inasmuch as the order made by the Central Government u/s 94(3) of the Government of India Act could not be regarded as "a law in force" within the meaning of Article 372. A distinction is sought to be made by the learned Counsel between an "existing law" as defined in Article 366(10) and a "law in force" and it is argued that though an "order" can come within the definition of "existing law", it cannot be included within the expression "law in force" as used in Article 372. It is argued next that even if the word "law" is wide enough to include an order, that order must be a legislative and not a mere executive order promulgated by an administrative authority, and in support of this contention the learned Counsel has relied on a number of cases decided by the Privy Council and the different High Courts in India.

14. The first point does not impress us much and we do not think that there is any material difference between "an existing law" and "a law in force". Quite apart from Article 366(10) of the Constitution, the expression "Indian law" has itself been defined in Section 3(29) of the General Clauses Act as meaning any Act, ordinance, regulation, rule, order, or bye-law which before the commencement of the Constitution had the force of law in any province of India or part thereof. In our opinion, the words "law in force" as used in Article 372 are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law. We agree with Mr. Chatterjee that an order must be a legislative and not an executive order before it can come within the definition of law. We do not agree with him however that the order made by the Governor-General in the present case u/s 94(3) of the Government of India Act is a mere executive order. Part IV of the Government of India Act, 1935, which begins with Section 94, deals with Chief Commissioners'' Provinces and Sub-section (3) lays down how a Chief Commissioner''s Province shall be administered. It provides that it shall be administered by the Governor-General acting through a Chief Commissioner to such extent as he thinks fit. An order made by the Governor-General u/s 94(3) investing the Chief Commissioner with the authority to administer a province is really in the nature of a legislative provision which defines the rights and powers of the Chief Commissioner in respect to that province. In our opinion such an order comes within the purview of Article 372 of the Constitution and being "a law in force" immediately before the commencement of the Constitution would continue to be in force under Clause (1) of the article. Agreeably to this view it must also be held that such

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order is capable of adaptation to bring it in accord with the Constitutional provisions under Clause (2) of Article 372 and this is precisely what has been done by the Adaptation of Laws Order, 1950. Paragraph 26 of the Order runs as follows:

Where any rule, order or other instrument was in force under any provision of the Government of India Act, 1935, or under any Act amending or supplementing that Act, immediately before the appointed day, and such provisions is re-enacted with or without modifications in the Constitution, the said rule, order or instrument shall, so far as applicable, remain in force with the necessary modifications as from the appointed day as if it were a rule, order or instrument of the appropriate kind duly made by the appropriate authority under the said provision of the Constitution, and may be varied or revoked accordingly.

13.7 A similar contention on behalf of the petitioner was rejected by the Apex Court in the pronouncement of the Apex Court reported at M.G. Desai and Another Vs. State of Bombay, holding that:

15. There is no substance in the contention that in the absence of adaptations which the President of India is competent to make under Clause 2 of Article 372, the Bhor State Ordinance lapsed. By Clause 2 of Article 372, the President is authorised to adapt existing laws; but the application of the existing laws is not conditioned by the making of adaptations or modifications in that law by the President.

13.8 A pronouncement of the High Court of Andhra Pradesh which throws valuable light on this issue is reported at In Re: Putta Ranganayakulu and Others, High Court held thus:

10. The Supreme Court in The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, considered the scope of Explanation I. There, it was argued that the Government of India Act stood repealed by Article 395 of the Constitution and, therefore, an order issued under S. 94(3), Government of India Act would not possibly be operative after the inauguration of the Constitution nor could it be regarded as an order made under Article 239 of the Constitution.

After negativing the contention that the order issued under that Act was not a "law in force" within the meaning of Article 372, their Lordships observed at page 31 that an order made u/s 94(3), Government of India Act conferring certain powers on the Chief Commissioner was really in the nature of a legislative provision, which defines his powers in respect of the province and, therefore, being a "law in force" immediately before the commencement of the Constitution would continue to be in force under Clause (1) of the Article.

11. This decision, therefore, is clear authority for the position that, even though the Government of India Act was repealed, the laws made under that Act continue to be in force after the Constitution under Article 372(1). If so, a fortiori, the rules made by the High Court in exercise of the powers conferred

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under the Letters Patent, which have not been repealed, would certainly continue to be in force.

13.9 The binding legal principle laid down in the above precedents thus is that applicability of a pre-constitution law is not conditional upon the making of an adaptation or a modification in the post-constitution law for its continued applicability. A pre- constitution law also does not require a specific adoption as has been urged on behalf of the respondent herein. Repeal thereof however has to be specific.

13.10 The submissions made by learned Counsel for the respondent must fail for another reason. Explanation I of Article 372 explains that the expression ''law in force'' shall include a law passed or made by a legislature or ''other competent authority'' in the territory of India before the commencement of the Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas. It is clearly evident therefrom that so far as a pre-constitution law is concerned, the legislative competence of the law making authority is not required to be tested on the touchstone of the Constitutional provisions or the assignment or delegation or the separation of powers provided thereunder. An objection to the legislative competence of the law making authority has to be examined on the legislative competence and assignment of authority and power at the time the law/ notification was made.

Before me, it is not the submission of learned Counsel for the respondent that the notifications of 1937 are bad for legislative incompetence.

13.11 So far as the Government of NCT of Delhi is concerned, it has been held hereinabove that the Central Government has the legislative competence to legislate on the issue of stamp duty. No legislation by the State Government with regard to the rate of stamp duty on the instrument in question has been pointed out.

14. Notifications of 1937 do not apply to an order of approval made under Companies Act, 1956

14.1 It was lastly submitted that the notification dated 16th January, 1937 and 25th December, 1937 refers to the Indian Companies Act of 1913 and would not apply to a scheme of amalgamation which has been approved by this Court in exercise of jurisdiction under the Companies Act, 1956.

14.2 This submission fails to take into consideration the provisions of Section 649 of the Companies Act, 1956 which provided that:

649. Construction of references to former enactments in documents: Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment in this Act.

So far as the references to Companies Act, 1913 in the notification in question

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therefore would not be of any consequence, so far as applicability of the notification to the scheme of amalgamation in question is concerned.

14.3 The notification No. 13 dated 25th of December, 1937 has been made by the Central Government and supersedes the notification No. 1 dated 16th of January, 1937. It is existing prior to the Constitution and in view of the provisions of Article 372 of the Constitution would continue in force.

15. Objection that upon amalgamation, the transferor company ceases to exist

15.1 Another argument was laid before this Court by the respondent that the exemption granted under the notification dated 25th December, 1937 would not apply to a scheme of amalgamation for the reason that upon giving effect to the scheme of amalgamation the transferor company gets wound up and ceases to exist. This submission is also to be noticed only for the sake of rejection. The dissolution and winding up of the transferor company takes place only after transfer of all assets and liabilities to the transferee company in terms of the scheme of amalgamation. The transferor as well as transferee companies are actually existing at the time of transfer.

15.2 So far as the submission that the question of the transfer has ceasing through exist upon effectuation of the scheme of amalgamation is concerned, this submission fails to take into consideration the impact of the amalgamation. This Court in re: Telesound India Limited (supra) and Hotline Hol Celdings Private Limited and Ors. (supra) has clearly held that upon giving effect to a scheme for amalgamation, there is no winding up of the transferor company. On the contrary, the effect is of absorption of one company into another or merger into a larger third. It has been compared to shelling of a corporate shell by the transferor company which merges into the transferee company. For all practical purposes, the transferor company remains alive and thrive as part of the larger whole.

15.3 Mr. P.V. Kapur, learned senior counsel for the petitioner has drawn my attention to para 1(1.1) & Para 2 of the scheme of amalgamation which points out that as per the approved scheme, the effective date for the scheme is the date when the order approving the scheme is filed with the Registrar of Companies. The scheme has notified the appointed date as 15th November, 2002. Para 2.11 of the scheme states that the transferor company stands dissolved on the effective date. The transfer of assets is to be effected on the appointed date when the companies are in existence and effective.

15.4 Learned senior counsel for the petitioner has drawn my attention to a pronouncement of this Court reported at 1997 VI AD (Delhi) 981 Sandy Estates Ltd. v. Landbase India Ltd. wherein the question as to whether stamp duty is leviable on a transfer of assets by a scheme of amalgamation proposed between a hundred per cent owned subsidiary company with its parent company. The applicant before this Court had placed reliance on the notification dated 16th January, 1937. The court held as follows:

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18. My attention has also been drawn by the counsel appearing for the petitioners to the contents of a notification on 16.1.1937 and published in the Gazette of India 1937 as Part I Page 78. Under the said notification, it was notified that in exercise of the powers conferred by Clause A of Section 9 of the Indian Stamp Act, the Governor General in Council was pleased to remit the stamp duty chargeable under Articles 23 and 62 of Schedule I to the said Act on instruments evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act including where the transfer takes place between a parent company and a subsidiary company, one of which is the beneficial owner of not less than 90% of the issued share capital of the other. In view of the contents of the aforesaid notification, even if it is assumed that the provisions of Articles 23 or 62 of Schedule I of the said Act are attracted to the facts of the present cases, yet in view of remission granted to a case where transfer takes place between a parent company and a subsidiary company, one of which is the beneficial owner of not less than 90% of the issued share capital of the other, no stamp duty would be leviable on such instrument conveying-transfer of property between such companies.

19. In view of the aforesaid remission granted, no stamp duty would be leviable in any case to the transfer of assets between the transferor and the transferee companies when the transferor company is a 100% subsidiary of the transferee company which is the parent company....

It would appear that the notification dated 25th of December, 1937 was not placed before the Bench.

15.5 It was also asserted that the eighteen transferor companies were wholly owned subsidiary companies of the transferee company and the main asset of the companies was land. The amalgamation involved a transfer of all assets and liabilities of the transferor companies with the transferee company. So far as valuation is concerned, it is argued that the transferor company is a hundred percent subsidiary of transferee company and there is no consideration for the amalgamation. For this reason, it is contended that if it were to be held that stamp duty was payable, the calculation thereof is not possible.

15.6 So far as this argument based on valuation is concerned, the same stands rejected by the Apex Court by a detailed reasoning noticed hereinabove in Hindustan Lever case (Supra).

15.7 The scheme of amalgamation stands accepted by the court. I find that even the order dated 19th March, 2008 also records that the transferor companies were hundred per cent subsidiaries of the transferee company. In view of the requirement of item 55 of the notification dated 25th December, 1937 requires a certificate to be produced by the parties to the instrument that the conditions prescribed in the instant case are fulfilled. In the given facts, the same would appear to be a technicality and there should be no difficulty in obtaining such certificate. Compliance with the requirement of the notification cannot be waived.

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16. Finding

16.1. The objections raised by learned Counsel for the respondent to the applicability of the notification are therefore legally untenable and cannot be sustained.

16.2 It is held that the notification dated 25th of December, 1937 is applicable and binding.

17. Result

17.1 As a result, subject to the petitioner satisfying the above condition described in item 55 of the notification dated 25th December, 1937 the stamp duty chargeable on the approved scheme of amalgamation would stand remitted in terms thereof.

The concerned authorities shall ensure that proceedings in the matter are concluded and an appropriate order passed within four weeks.

This application is allowed to the above extent and terms.

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