

(2018) 07 CAL CK 0044
In the Calcutta High Court
Case No : Writ PetitionNo. 26288 (W) of 2016

Gopi Vallabh Solutions Pvt. Ltd And Another APPELLANT
Vs
State Of West Bengal And Others RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Companies Act, 1956 — Section 21, 22, 23, 23(1), 23(3)
Constitution Of India, 1950 — Article 12, 226

Citation : (2018) 07 CAL CK 0044

Hon'ble Judges : PROTİK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : P.C. Sen, Raj Ratna Sen, Ritabrata Mitra, A.P. Gomes, Akriti Jain, Debolina Dey, Sushovan Sengupta, Srilekha Bhattacharyya

Final Decision : Allowed

Judgement

PROTİK PRAKASH BANERJEE, J.

1. This petition under Article 226 of the Constitution of India reminds us with a most ponderous voice, that there is a lot in a name. BnKe Solutions

Private Limited, as the writ petitioner used to be called, does not smell as sweet to the respondents particularly the respondent no. 5 by any other

name, even if duly changed.

2. The writ petitioners challenge Annexure P/20 dated July 7, 2015 by which a demand was made by the respondents no.1 to 5 for deposit of

permission fees for transfer/sub-lease of the sub-leasehold of the writ petitioner no.1 and a further memo as in Annexure P/27 dated May 16, 2016 by

which the demand was reiterated by the respondents. Both these demands were made because the writ petitioner no.1 duly changed its name from

BNKe Solutions Private Limited to the present name of the writ petitioner no.1,

Gopi Vallabh Solutions Pvt. Ltd. The representations made by the writ petitioner against the first memo were not disposed of by a reasoned order but the demand was reiterated apparently on legal advice which sought to go into the articles of association of the petitioner no.1 before change of its name and after change of its name, without there being any allegation at any time that there was any change in the composition of the shareholders to use the notion of legal entity to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.

3. The facts of the case as relevant, would show that the writ petitioner used to be called BNKe Solutions Private Limited. It has its registered office at Infinity Tower"1, 4th Floor, Plot A-3, Block GP, Sector-V, Salt Lake City, Kolkata " 700091. While thus named, it took on sub-lease from the respondent no. 6 around 1.12 acres of land at Block EP and GP in Sector"V, Bidhannagar as described more fully in the (first) schedule to the duly registered deed of sub lease dated July 22, 2005 for a premium/salami of Rs.41,44,000/- and ground rent for a period of 60 years, for establishing Information Technology/Information Technology Enabled Services industry thereon. In the deed of sub-lease the definition of the sub-lessee was inclusive and included its successors, administrators and assigns. The land itself had been leased to the respondent no. 6 by the respondent no. 1, by virtue of a deed of lease dated January 19, 1987 which by virtue of Clause 2(vii) allowed such sub-lease. The writ petitioner " while still operating under its former name " took possession of its subleasehold, paid the full consideration/salami, and duly obtained mutation of its name in the records of the respondent no. 1 in the department concerned, and paid all fees and did all things which the law and the contract between the parties, where one of the parties was "State" within the meaning of Article 12 of the Constitution of India, required it to do.

4. Thereafter, the writ petitioner duly changed its name under the provisions of Section 21 of the then Companies Act, 1956 from Bnk e Solutions Private Limited to its present name. Afresh certificate of incorporation was issued by the Registrar of Companies West Bengal, on March 12, 2012 which is conclusive proof of all the statutory requirements having been duly performed by the writ petitioner, including the accordance by the Central

Government of approval.

5. Two provisions of the Companies Act, 1956 are required to be considered to appreciate the effect of the said duly effected change of the name of

a company incorporated under the Companies Act, 1956. These are sections 21 and 23. â??Section 21 - Change of name by company: A company

may, by special resolution and with the approval of the Central Government signified in writing change its name:

[Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the

deletion there from, of the word ""Private"", consequent on the conversion in accordance with the provisions of this Act of a public company into a

private company or of a private company into a public company. Section 23 - Registration of change of name and effect thereof:

(1) Where a company changes its name in pursuance of section 21 or 22, theRegistrar shall enter the new name on the register in the place of the

former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be

complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum ofassociation of the company.

(3) The change of name shall not affect any rights or obligations of the company,or render defective any legal proceedings by or against it; and any

legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the

company by its new name.â??

6. Therefore, the statute makes it amply clear that the change of name of a company, if duly made as above, shall not affect any rights of the

company. Therefore, the change of the name of the writ petitioner from BNK e Solutions Private Limited to Gopi Vallabh Solutions Pvt. Ltd. did not

affect its rights, including its rights as a sub-lessee of the said sub-leasehold, in any way.

7. In fact, that is why when the respondent no. 6 by a registered deed of declaration dated July 18, 2012 effected some changes in the original deed of

sub-lease dated July 22, 2005, including by incorporating some more covenants than the original deed of sub-lease had, and used the former name of

the writ petitioner, it did not affect the property rights and continued to bind the writ petitioner, by whatever name called. While this deed of

rectification reiterated that the writ petitioner shall use the space for which the land was allotted to â??themâ?? and that in addition â??theyâ?? will also

use the built up space for â??theirâ? own IT/ITES business, â??However, the sub-lessee may sub-let/sub-lease the surplus built up space of the

building of the premises for using other IT/ ITES and Electronics unit only on pervious written consent of the Sub-Lessor but the space shall not be

used for other purposes.â??

8. Of more moment, for the purpose of the present litigation, is the clause which was inserted for payment of permission fees. It reads as follows: -

â??The Sub-lessee hereby agreed to pay required permission fees to the Sub-lessor for letting out the surplus built up space for setting up IT/ITES

and Electronics industries only. The Sub-Lessee also agreed to pay other fees payable to Urban Development Department and the Sub-Lessor for

transfer/assignment of leasehold right partly or fully of the lease hold premises as mentioned in the Schedule.â??

9. Thereafter, documents annexed to the writ petition show that the petitioner sought permission to transfer/assign/sub-let part of the building

constructed by it to different entities, and the writ petitioner duly paid permission and other fees. The respondent no. 6 also accepted that the writ

petitioner under its changed name had the right to do so, and in fact by a letter dated November 18, 2013, among others, in case of one such proposed

assignee, wrote to the respondent no. 4 seeking its consent for the writ petitioner to execute an appropriate deed of assignment. Very significantly, in

the first sentence of the second paragraph of the said letter, the respondent no. 6, qua Sub-Lessor admitted as follows: - â??We would like to draw

your attention that the Corporation executed a sub-lease deed dated 22nd July, 2005 in favour of M/s BNK e Solutions Pvt. Ltd. (Now known as Gopi

Vallabh Solutions Pvt. Ltd)â?. Therefore, the respondent no. 6 conducted itself, not just towards the writ petitioner, but to towards the public at large,

that the writ petitioner, by whatever name called, was the sub-lessee in respect of the said sub-leasehold, and permission fees was payable by it to the

urban development department of the respondent no. 1, only if the writ petitioner assigned it to a third party.

10. At this stage, suddenly, and I do not know why or under which provision of which law in India, the respondent no. 5, an officious Additional

Secretary to the Government of West Bengal who was in office in October 2014, wrote a letter dated October 29, 2014 to the writ petitioner,

narrating the facts relating to the sub-lease in the name of the writ petitioner under its former name, and also admitting that mutation in the records of

the respondent no. 1 had been made of the name of the writ petitioner in its erstwhile name but, a propos the proposal of the writ petitioner to transfer

a part of the built up space under its sub-leasehold to third parties, he intimated to the writ petitioner

“Now I am directed to request you to state as to whether the change in the name of M/s BNKe Solutions Private Limited has been regularized by

way of mutation/submission of Deed of Rectification duly confirmed by the Government. It is also to be confirmed if any Deed of Rectification

between WBEIDCL and M/s Gopi Vallabh Solutions Pvt. Ltd. has been executed and registered with the approval of the Government.”

11. I know, the respondent no. 5 sounded like a Vorgon bureaucrat when he wrote such an ignorant letter, contending that for change of name of

company in the records of the respondent no. 1 a separate rectification deed was to be executed and registered, but I resist the temptation to write an

epic on this tragedy, since to my mind this is more bathetic than pathetic. I will content myself with only one observation “I would have thought that

the law is well settled that by a change of name of a company under the provisions of the Companies Act, 1956, which is contemporaneously

considered to be a change and not a transfer of one company to another, there is no change of legal personality and therefore there is no requirement

to rectify any deed to effect mutation of the changed name in the records of rights or land records.

12. Pursuant hereto correspondence continued between the respondent no. 5 and the writ petitioner. The writ petitioner continued to stress that the

change of name was duly made and certificate was duly issued by the Registrar of Companies while reiterating its prayer that mutation of the name of

the writ petition as it stood after March 12, 2012 be effected in the records of the respondent no. 1 in the Urban Land Department. The writ petitioner,

on oral request from the respondent no. 5, appears to have supplied its certificate of incorporation once again, showing the change of name and the

memorandum and articles both in its original name and the new name. These are all annexed to the writ petition.

13. Once these were submitted, the respondent no. 2 suddenly intimated that the respondent no. 1 had decided that the change of name in the sub

lease deed results in change of leasehold right from one company to a new one. A new sub lease deed requires to be executed to incorporate the

name change in the sub lease deed, even while accepting that the name of the writ petitioner company had been changed with the approval of the

Registrar of the Companies, though no prior permission of the Urban Development Department had been obtained.

14. Needless to mention, the Companies Act, 1956 under which the name of the writ petitioner was changed was not only a central statute, it was

made in a field of legislation covered under List I of the 7th Schedule, and neither Section 21 nor Section 23 thereof required any approval, prior or

otherwise of any agency or department of the federating State, being the respondent no. 1.

15. Thus, on the basis of these decisions which on their face were alien to Indian law and were in fact, taken in ignorance of law, a demand was made

as if under the contract, for Rs.3 lakhs per cottah for according permission for change of name of the company as the sub-lessee of the plot in

question and for further processing fees for mutation, also quite a hefty amount. This was by the letter dated July 7, 2015 as in Annexure P/20

to the writ petition, and the writ petitioner by a representation narrated the above facts briefly by their letter dated July 27, 2015 (Annexure

P/21), including that change of name does not bring into existence of a new company, and sought that such demand be recalled and/or

rescinded in view of the fact that the clauses/notifications, were not applicable to the case. The respondent no. 2, on behalf of the respondent no. 1, by

a memo dated August 25, 2015 (Annexure P/22) forwarded the documents to the respondent no. 6 to nonetheless take necessary action in

terms of the notifications which the writ petitioner had contended were not applicable, and thereafter the respondent no. 6 apparently took some

opinion from learned advocates which were forwarded to the respondent no. 1 whereafter the respondent no. 2 by a letter dated March 18, 2018,

sought a certificate from a renowned chartered accountant as to whether the Memorandum and Articles of the writ petitioner while it had been

known under its former name and its subsequently changed name, were identical or not. Such certificate was issued by the chartered accountant

which is also annexed to the writ petition. Thereafter, by a letter dated May 16, 2016, the respondent no. 2 alleged that on scrutiny of the

Memorandum and Articles of Association of the writ petitioner as it was known prior to the change in its name and the present name, it transpires

that the Articles of Association of the two companies are not the same. Structural changes between the companies have also been noticed after the

name change. Evidently, this is not an issue of mere change of name of the company; but the formation of a separate company in place of the existing

one. On such a finding in the letter dated May 16, 2016 as in Annexure P/27, the respondent no. 2 requested "in effect demanded" that

the requisite permission fee according to the letter of the respondents' letter dated July 7, 2015 be deposited for "transfer of sub-leasehold

right" in respect of the plot in question to the writ petitioner in its present name from the writ petitioner under its former name.

16. It was not specified in the letter dated May 16, 2016 exactly what structural changes had occurred and how a company whose name had changed

but there had neither been an amalgamation or merger or spin-off or demerger, could suddenly have become a new company, merely because the

name had been duly changed under Sections 21 and 23 of the Act of 1956 as they stood and perhaps even the controlling shareholding had changed.

No details were given of how the two articles and memoranda of association were not the same. The letter dated July 7, 2015 was even better in the

sense that it did not even consider these things but merely proceeded on the basis that a change of name of a company, duly made, required change in

the sub-lease deed and that this resulted in change of the leasehold right from one company to another. Nothing was alleged in the letters aforesaid

that this was done to justify any wrong, defeat any provision of law or defraud the creditors of the writ petitioner in its former name or was illegal.

17. I am tempted to name the firm of learned advocates as also the Learned counsel" which appear from the records annexed to the writ petition

" who gave to the respondent no. 6 the "legal opinion" on which the decision of the respondents no.1 to 5 depended but out of courtesy, I

refrain from doing so. The respondent no. 6 while acting as "State" would be well advised to choose its experts more carefully in the future.

18. The writ petition was instituted challenging the above memoranda as in Annexures P/20 dated July 7, 2015 and P/27 dated May 16,

2016 basically on the above grounds. Naturally, grounds have been taken of violation of the Section 23 of the Act of 1956 by the respondent

authorities and of their acts being arbitrary and not in terms of any notification which is applicable in the facts of the case.

19. No Affidavit-in-Opposition has been affirmed by any of the respondents except the respondent no. 4. The said Affidavit-in-Opposition affirmed by

the respondent no. 4 solely for himself does not show authorization by any of the other respondents, including the respondent no. 1 or the respondent

no. 6. Therefore, despite opportunity the other respondents including the two villains of the piece, the persons who were the respondents No.2 and 5 in

2015-2016, have not used any Affidavit-in-Opposition to deny the allegations contained in the writ petition, and have therefore admitted the contentions

of the writ petitioner.

20. I could have decided the writ petition on the basis of this admission alone, had it not been my duty to decide the matter on merits, so that such

people in such high positions of power with unmatched ignorance of the law, are not allowed to oppress citizens and businesses in West Bengal â

which I say with much regret are few and far between in this land forsaken by industrialists and perhaps will continue to be so unless such

bureaucrats are weeded out and put to pasture â"and thus I now consider what the respondent no. 4 has alleged about the merits of the matter, such

as they are.

21. At paragraph 32 of the Affidavit-in-Opposition affirmed by the respondent no. 4, the differences in the Articles of Association between BNK e

Solutions Pvt. Ltd. and Gopi Vallabh Solutions Private Limited, - though it is the same company before and after due change of name - which are

alleged to exist, have been summarized. I will let the respondent no. 4's own words try and supply in an ex post facto affidavit, the fatal

deficiencies in the memoranda impugned: -

âI also say there are many differences between Articles of Association of the two companies:

i) The sub heading and clause 2 PRELIMINARY in two companies are found to be different. Several new sub-clause in Gopi Vallabh Solution have

been introduced which were not present in BNKE Solutions. ii) The clause CAPITAL in the Articles of two companies are found to be different.

iii) In the heading CAPITAL in Gopi Vallabh Solutions the minimum paid up share capital of the company has been mentioned to be Rs. 100,1007-

similar is not the situation in case of BNKE Solutions. There is also provision of raising additional funds.

iv) The clause "DIVIDENDS" in two companies are found to be not similar.

v) The provision of BOARD OF DIRECTORS are also not similar in two companies in Articles.

vi) In Gopi Vallabh Solutions, There is provisions of insurance of equity shares.

vii) DACL, NB Group occurring in Gopi Vallabh Solutions were found in BNKE\ Solutions.

22. Even without considering the spelling mistakes in the Affidavit-inOpposition, none of these can be found in either the Memo dated July 7, 2015 or

May 16, 2016. They were never communicated even in this scanty detail, to the writ petitioner. The writ petitioner never had an opportunity of dealing

with these allegations when the respondents had, even after receiving the certificate of the chartered accountant that the two memoranda and articles

were the same/identical, issued the memo as in Annexure "P/27". Their representation before that, as against the memo as in Annexure

"P/20" was therefore never considered and disposed of with a speaking order dealing with the points that they had raised, whether by way of

Annexure "P/20" or Annexure "P/27". Thus, the Affidavit-in-Opposition has sought to supply a gross violation of the basic principles of

natural justice being the absence of a speaking order, albeit by trying to supply reasons based on facts which were already on record.

23. The allegations in that sole Affidavit-in-Opposition of the respondent no. 4 has been dealt with in the Affidavit-in-Reply filed by the writ

petitioners.

24. Let me now examine what these so-called details in paragraph 32 of the said Affidavit-in-Opposition actually say. They may at best be relied upon

by the respondent no. 4 to allege that there was a change in the shareholding pattern, and that the majority of the shareholders changed. In fact, that is

what the respondents have argued "that by reason of the change in the Articles and Memorandum of Association of the writ petitioner, now a

company having its registered office in Gurgaon controls the writ petitioner and has changed its name. However, it is not denied that the same

business is being carried on by the writ petitioner under the same corporate façade. To enable the Court to even a writ court to lift the

corporate veil, certain allegations of fact are required to be made, and are required to be made not recklessly, but with sufficient materials.

25. What the law requires to be alleged in order to allow a court to lift the corporate veil, or even pierce it, is laid down in authoritative precedents

cited on behalf of the respondents by Mr. Sengupta.

i) New Horizons Limited and Another v. Union of India and Others, reported in (1995) 1 SCC 478. This was a case involving a joint venture

which the Hon'ble Supreme Court was ultimately pleased to hold that the foreign company which had a substantial holding in the company was a mere

shareholder. Their Lordships were pleased at paragraph 27 of the report, to hold expressly as follows: -

"The conclusion would not be different even if the matter is approached purely from the legal standpoint. It cannot be disputed that, in law, a

company is a legal entity distinct from its members. It was so laid down by the House of Lords in 1897 in the leading case of Salomon v. Salomon &

Co. [1897 AC 22 : (1895-9) All ER Rep 33] Ever since this decision has been followed by the courts in England as well as in this country. But there

have been inroads in the doctrine of corporate personality propounded in the said decision by statutory provisions as well as by judicial

pronouncements. By the process, commonly described as "lifting the veil", the law either goes behind the corporate personality to the individual

members or ignores the separate personality of each company in favour of the economic entity constituted by a group of associated companies. This

course is adopted when it is found that the principle of corporate personality is too flagrantly opposed to justice, convenience or the interest of the

Revenue. (See : Gower's Principles of Modern Company Law, 4th Edn., p. 112.) This concept, which is described as "piercing the veil" in the

United States, has been thus put by Sanborn, J. in US v. Milwaukee Refrigerator Transit Co. [(1905) 142 Fed 247, 255] :

"When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the

corporation as an association of persons.â??

I have referred to the above judgement to show that none of the conditions for lifting of the corporate veil quoted by the Hon'ble Supreme Court with

approval has been even alleged to exist in the present case whether in the sole Affidavit-in-Reply by one of the respondents affirmed for himself, or

from the records produced including the impugned memoranda. Neither public convenience is alleged to be defeated, nor wrong justified, nor crime

defended here. Therefore, there can be no question of lifting the corporate veil and treating the writ petitioner as an association of persons, including

the new major shareholder, which is a separate corporate entity. Therefore, the tests of where the company resides or where its domicile, are

inapplicable since the first condition of lifting the façade neither exists nor is alleged to exist. This judgement, cited by Mr. Sengupta, goes against the

respondents and shows how flimsy its case is, and if this was relied upon by the Learned advocates in the facts of this case, who advised the

respondents including the respondent no. 1 and the respondent no. 6, I can only rue the wrong advice on which the respondents have acted.

(ii) The second case relied upon by Mr. Sengupta is the State of Uttar Pradesh and Othersâ?"vâ?"Renusagar Power Co. and Others reported in

(1988) 4 SCC 59. This was a case where the Hon'ble Supreme Court was concerned with a case where Hindalco had brought into existence the

agency of the Respondent power company for the express purpose of avoiding takeover of the power station by the appellant Stateâ??s Electricity

Board and where the said power company was trying to avoid the liability to pay electricity duty by alleging that both the persons generating and

consuming the energy were one and the same and therefore a different and lower liability to pay duty was involved. In that case, the Hon'ble Supreme

Court was pleased to hold that the generation of power by the power company ought to be held to have been done by Hindalco from its own source of

generation and affirmed the findings that the corporate veil would be lifted. So, in effect, the veil was lifted to give a benefit to the company which had

established the power company â?" it was not lifted by the Government and in fact, the governmentâ??s not lifting of the veil in such a case had

been held to be an error on the part of the government at paragraph 69 of the report. It was a decision which was taken, clearly on the peculiar facts

of the case, and because the Hon'ble Supreme Court made it clear that in view of the various judgements, corporate veil had become more and more

transparent. It had not been pleased to hold that the veil had been perpetually stripped or removed. I would respectfully follow the judgement of the

Hon'ble Supreme Court to ensure that where no cause has been made out to lift the veil, I shall let the veil of modesty and corporate identity remain.

26. Mr. Sengupta, Learned Advocate for the State, fairly submitted that he could not improve upon the records which the respondent no. 4 had relied

upon and could not supply the omission on the part of the other respondents to use an Affidavit-in-Opposition despite chance having been given on

May 5, 2017 to do so, so far as the facts were concerned. He submitted fairly that all there was, on which he was arguing for lifting of the veil, was

contained in paragraph 32 of the respondent no. 4's Affidavit-in-Opposition, as extracted above. As I have already held above while discussing

the precedents cited by Mr. Sengupta, none of the facts alleged by the respondent no. 4 or apparent from the records disclosed, are sufficient to allow

me to lift the corporate veil.

27. Though the above discussion should have amply demonstrated the reasons for my decision which shall follow, for the sake of completeness, I must

also refer to the decisions cited on behalf of the writ petitioner by Mr. Sen, Learned Senior Advocate. He has relied upon: -

(i) First, a Bench decision of this Court, in the case of Kalipada Sinha's Mahalaxmi Bank Ltd, reported AIR 1966 Calcutta 585, where, at

paragraph 4, the Hon'ble Division Bench inter alia interpreted the provisions of Section 23(3) of the Companies Act, 1956, in the following terms: -

"Sub-section (3) lays down that the change of name shall not affect any rights or obligations of the company or render defective any legal

proceedings by or against it, and any legal proceedings, which might have been continued or commenced by or against the company by its former

name be continued by or against the company by its new name. This makes it abundantly clear that as the alteration is only in the name and not the

identity and the statute itself grants the right to continue an existing proceeding by the old company in its new name." (emphasis supplied).

(ii) The second was another Bench decision, in the case of Pioneer Protective Glass Fibre P. Ltd.'s Fibre Glass Pilkington Ltd. reported in

(1986) 60 Company Cases 707 (Cal). There, the Hon'ble Division Bench, after distinguishing the judgement in Malhati Tea Syndicate

Ltd.â?"vâ?"Revenue Officer, Jalpaiguri, reported in (1973) 43 Company Cases 337 (Cal) on the ground that it did not consider an earlier judgment of

the Hon'ble Supreme Court in Garikapati Veerrayyaâ?"vâ?"N. Subbiah Choudhury, reported in AIR 1957 SC 540, was pleased to hold, inter alia, as

follows: -

â??Section 23 of the Act appears mainly to be a ministerial section and lays down the procedure for recording of the change of name. A fresh

certificate of incorporation is no doubt issued, but the same is only for the purpose of recording the alteration in the name. The effect of the issue of

the new certificate as provided in Sub-section (1) of Section 23 is to render the change of name complete and effective and nothing more. The section

does not provide or imply that on the issue of the new certificate, the company as it existed will stand dissolved and a new company will come into

existence. Sub-section (3) of Section 23 provides that change of name will not affect any right or obligation of the company and that legal proceedings

in the old name will not be rendered defective but will be continued by or against the company in its new name. The expression used in the section is

â??the companyâ?? and not â??old companyâ??, or â??new companyâ??, or â??dissolved companyâ??. There are further indications that in spite

of a change of name, the entity continues. For the above reasons, we hold that on a change of its name, a company does not stand dissolved nor any

new company comes into existence.â?? (emphasis supplied).

(iii) The laset cas relied upon by Mr. Sen, perhaps clinches the issue without there being any scope of dispute by the respondents. This is the case of

Prasad Technology Park P. Ltd.â?"vâ?"Sub-Registrar and Others reported in (2005) 128 Company Cases 996 (SC), and there the Hon'ble Supreme

Court was faced with a similar fact situation where the changed name of a company was to be substituted in a lease deed where none of the

conditions of the lease was being changed except that a restriction contained n the deed was changed. At page 1001 of the report, their Lordships of

the Hon'ble Supreme Court were pleased to hold in express terms as follows:

â??Only because the name of the company was changed, the same would not mean that a fresh transaction took place. Having regard to the change

in the name of the company, the appellant's name was sought to be substituted in the original agreement. The period of the lease, the quantum of the premium paid and the other terms and conditions remained unaltered, except the restriction contained in clause 2(q) of the said deed, was removed. By reason of mere change of user from carrying on one business to another, it is trite, a fresh transaction does not take place and further by reason of mere change in the name of the company, Prasad Garments P. Ltd. the erstwhile lessee also cannot be held to have transferred its leasehold interest in favour of the appellant herein. (emphasis supplied).

28. In such view of the matter, I am gratified to find that what I thought at paragraph 11 of this judgement was the settled law, is in fact the settled law, in the facts of this case. This is in view of the decisions of both the Hon'ble Supreme Court and the Bench decisions of this Hon'ble court, applicable to the facts of this case, which I must follow.

29. Accordingly, both Annexures P/20 and P/27 which treat a due change in the name of a company incorporated under the Companies Act, 1956 to be a creation of a new entity or at the very least, a reason for lifting the corporate identity to see the manner in which the shareholders have changed, are bad in law and arbitrary and illegal and contrary to the law of the land and thus public policy and show non-application of mind to the matters of record, and they are so unreasonable that no reasonable man on the face of the same facts could have come to the same conclusion. Thus, they are also perverse within the meaning of law. They are therefore quashed. Furthermore, any attempt to treat the writ petitioner under its old name and the changed name as two different entities would be bad in law and wholly without jurisdiction and in violation of Section 23 of the Companies Act, 1956 as interpreted authoritatively and must be struck down and quashed. As a consequence, any demand made by the respondents or any of them or those claiming there under to obtain permission fees for any fresh deed of rectification to change the name of the sub-lessee in the deed of sub-lease or rectification deed of 2005 or 2012 to the changed name of the writ petitioner or as processing fees for mutation of the said changed name, must be held to be equally without jurisdiction and impermissible on the part of the respondents or any of them. Accordingly, the

respondents and each of them, including the respondents No.1, 2, 3, 4 and 5 and each of them, are commanded to record the change of name of

BNKe Solutions Private Limited to the changed name of the writ petitioner, Gopi Vallabh Solutions Private Limited (the petitioner no.1) without

payment of any permission fee, as demanded in Annexures P/20 and P/27 dated July 7, 2015 and May 16, 2016 respectively or any like

decision, whether in the records of the Urban Development Department of the respondent no. 1, or in the records of the respondent no. 6, or

anywhere else, including in the deeds of sub-lease and deeds of rectification, and the deed of rectification or declaration if required to be executed to

give effect to the aforesaid, shall be treated as a simple deed of declaration which shall not be levied with stamp duty or registration charges as a

conveyance but only as a declaration of a change of name which had occurred on March 3, 2012 and which is being brought on record.

30. The writ petition is allowed to the above extent. There shall, however, be no order as to costs.

(PROTIK PRAKASH BANERJEE, J.)

Later:

The writ petitioners' learned Advocates are given liberty to communicate the second last paragraph of the order and the respondents are directed

to act on the communication of the gist.