

(2024) 02 MP CK 0048

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13492 Of 2019

Mahle Engine Components India Private

APPELLANT

Vs

Madhya Pradesh Board Of Revenue And Others

RESPONDENT

Date of Decision : 15-02-2024

Acts Referred:

Indian Stamp Act, 1899 — Article 25

Companies Act, 1956 — Section 16, 94, 391, 392, 393, 394

Indian Stamp Act, 1899 — Section 56

Citation : (2024) 02 MP CK 0048

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Akshay Sapre, Tarun Kushwah

Final Decision : Allowed

Judgement

Vivek Rusia, J

1. The petitioner has filed the present Writ Petition being aggrieved by the order dated 21.09.2016 passed by the Collector and the order dated 22.08.2018 passed by the Board of Revenue, Gwalior, and the collector of stamps.

2. The Petitioner is a company incorporated under the Companies Act, 1956 (Now 2013) having its registered office at Plot No.9,10,11, Sector 3 Industrial Area, Kheda, Pithampur, District Dhar. Vide resolution dated 01.07.2019 passed by the Board of Directors, Mr. Syed Mohammad Aun has been authorized to file this Writ Petition.

3. The petitioner (hereinafter referred to as the Transferee company) along with its other group company MAHLE IPL Limited (hereinafter referred to as 'the Transferor Company') having its registered office within the State of Tamil Nadu decided to carry out a restructuring of the group for simplification of their structure and control and prepared Scheme of Amalgamation with the petitioner (hereinafter referred to as 'Transferee Company'). In this regard, Company

Petition No.22/2014 under Section 391 to 394 of the Companies Act, 1956 was filed by the Transferee company for approval of the Scheme of Amalgamation. Vide order dated 28.11.2014 final order was passed by the Company Judge. Similarly, the Transferor Company has also filed Company Petition No.301 of 2014 before the Court of Judicature at Madras under Section 391 to 394 of the Companies Act. Vide order dated 11.12.2014, approval was granted for the Scheme of Amalgamation.

4. According to the Transferee company under the Scheme of Amalgamation as part of the consideration, one fully paid up equity share of Rs.10 each of the Transferee company is to be issued and allotted against every 3.0116 fully paid equity shares of Rs. 10 each to Directors of Transferor Company. As per the valuation report dated 10.03.2014 submitted by MZSK & Associates, the market value of the Transferee company share was estimated at Rs.266.40. Accordingly, 34,60,349 number of shares having a value of Rs.92,18,36,973.60 were issued by the Transferee company to the shareholders of the Transferor Company. It is further submitted by the Transferee company that the Transferor Company did not own any immovable property located within the State of Madhya Pradesh, thus no immovable property located within the State of Madhya Pradesh was transferred to the Transferee company under the Scheme of Amalgamation. After the order passed by this Court as well as the High Court of Madras, the petitioner submitted an application on 15.01.2015 before the Collector seeking adjudication about the payment of the stamp duty Deed of Amalgamation. Vide order dated 21.09.2016, the Collector of Stamp directed the petitioner to pay the stamp duty of Rs.6,98,32,399/-alongwith penalty of Rs.1,00,000/- as 5% of the total value of the immovable property of the Transferor company located in the State of Tamilnadu.

5. Being aggrieved by the aforesaid order, the petitioner/ the Transferee company filed an application for review on 22.11.2016, thereafter when no order was passed, a Revision was preferred under Section 56 of the Stamp Act before the Board of Revenue. Vide impugned order dated 02.08.2021, the Revenue Board dismissed the Revision and upheld the order of Collector, hence, this Writ Petition before this Court.

6. Shri Akshay Sapre, learned counsel for the Transferee company submits that the Collector, as well as the Board of Revenue, have failed to consider the provision of proviso (a) of Article 25 of Stamp Act which says that 5% of the market value of the immovable property transferred under the Scheme of Amalgamation which is located within the State of Madhya Pradesh or 0.5% of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such transfer whichever is higher, hence, under the Scheme of Amalgamation when no immovable property located within the State of Madhya Pradesh was transferred to the Transferee company, therefore, stamp duty @ 5 % of market value is not liable to be imposed. The petitioner is ready to pay 0.5 of the aggregate of the market value

of the shares issued or allotted in exchange to the Transferor Company, hence impugned orders are liable to be set aside. It is further submitted that the Collector, Stamp has wrongly imposed the penalty as the petitioner itself filed an application for assessment of stamp duty for payment.

7. The learned Government Advocate argued in support of the impugned orders and prayed for the dismissal of this petition.

Appreciation and conclusion

8. Article 25 of the Stamp Act says that stamp duty @ 5% of the market value of the property which is the subject matter of conveyance or the amount of consideration set forth therein, whichever is higher is liable to be paid on Deed of Amalgamation as conveyance. The learned the Board of Revenue failed to appreciate that if the immovable property transferred is located within the State of Madhya Pradesh then only stamp duty @ 5% of the market value is liable to be paid and if not then stamp duty @ an amount equal to 0.5 of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such transfer whichever is higher will be paid by the Transferee company.

9. The Scheme of Amalgamation is on record as Annexure P/6, according to which MAHLE IPL LIMITED is the Transferor Company or Amalgamating Company and petitioner Mahle Engine Components India Private Limited means MECI is the Transferee Company or Amalgamated Company. The share capital of the Transferor Company is mentioned in clause 3.1 and the share capital of the petitioner the Transferee Company is mentioned in clause 3.2 of the Scheme of Amalgamation. As per clause 5.1 of the Scheme of Amalgamation with effect from the appointed date and upon the scheme becoming effective, the entire business and whole of the undertaking of MIPL including all the properties and assets, present or future or contingent or of whatsoever nature be transferred or deemed to be transferred to and vested with petitioner sanctioned by High Court under the provision of 391 and 394 of the Companies Act. Clause 6 deals with the consideration which says that upon the Scheme becoming effective and upon an amalgamation of MIPL with MECI in terms of this Scheme, MECI i.e. Transferee Company shall without application or deed, issue and allot equity shares, credited as fully paid up, to the shareholders of MIPL i.e. Transferor Company in the following proportion:

"01 (one) fully paid up equity shares of Rs.10 each of MECI shall be issued and allotted against every 3.0116 fully paid up equity shares of Rs.10 each of MIPL held by such shareholder of MIPL".

[10] Clause 14 Scheme of Amalgamation deals with reorganization of the capital. Clause 14 of the Scheme of Amalgamation is reproduced below:-

14.1 Upon the occurrence of the Effective Date, the authorized share capital of the Amalgamating Company divided into 13,000,000 equity shares of Rs.10/-

each and 2,000,000 preference share of Rs.10/- each shall be added to the authorized share capital of the Amalgamated Company, and consequently the authorized share capital of the Amalgamated Company shall stand enhanced to 25,000,000 equity shares of Rs.10/- and 2,000,000 preference shares of Rs.10/- each.

The statutory fee already discharged by the Amalgamating Company with the concerned Registrar of Companies under the Companies Act, 1956 and Stamp Duty Authority in connection with their authorized share capital of the Amalgamating Company, constituting of 13,000,000 equity shares of Rs.10/- each and 2,000,000 preference shares of Rs.10/- each, would be for all purposes deemed to have been discharged by the Amalgamated Company.

Accordingly, the words and figures in Clause V of the Memorandum of Association of the Amalgamated Company shall stand modified as stated below:

" The authorized share capital of the company is Rs.27,00,00,000

(Rupees Twenty Seven Crores Only) divided into 2,50,00,000 (Two Crore and Fifty Lakh Only) Equity Shares of Rs.10/- (Rupees Ten Only) each and 20,00,000 (Twenty Lakh only) 0% Fully and Compulsorily Convertible Preference Shares of Rs.10/- (Rupees Ten Only) each with powers to divide the shares in the capital for the time being into several classes and to attach hereto respectively such preferential, qualified or special rights on conditions as may be determined by or in accordance with Articles of association of the company for the time being and to vary, modify or abrogate any such rights, privileges or conditions in such manner as may be permitted by the Companies Act, 1956 or provided by the Articles of Association of the company for the time being."

14.2 It is hereby clarified that for the purpose of this Clause 14.1 above, the consent of the shareholders to the Scheme shall be deemed to be sufficient for the purposes of effecting this amendment and no further resolution under Section 16, Section 94 or any other applicable provisions of the Act would required to be separately passed or filings be required to be made with any authority.

14.3 If the merger of Authorized Share Capital of the Amalgamating Company with the Authorized Share Capital of Amalgamating Company as envisaged in the clause 14.1 and 14.2 above is not implemented for any reasons, the Board of Directors of the Amalgamated Company shall have the authority to make any decision relating to the quantum and manner of increase in the Authorized share Capital of the Amalgamated Company.

14.4 The Amalgamated Company shall file the requisite forms with the Registrar of Companies with regard to alteration of its authorized share capital, pursuant to this Scheme."

Upon the occurrence of the effective date, the authorized share of the Amalgamating Company i.e.MIPL divided into 13,000,000 equity shares of

Rs.10/-each and 2,000,000 preference shares of Rs.10/- each shall be added to the authorized share of the petitioner's company which shall enhance of the Transferee company's company to 25,000,000 equity shares of Rs.10/- each and 2,000,000 preference shares of Rs.10/-each, therefore,13,000,000 equity shares @ Rs.10/-transferred to the transferee company by virtue of amalgamation, thus as per the proviso of Article 25, 0.5 % of the aggregate of the market value of the shares issued or allotted in exchange is liable to be computed and payable by the Transferee company.

10. The Registrar of Stamp has held that shares of Rs.15 crore were merged and accordingly the stamp duty @ 0.5% comes to 7.5 lakhs but charged the stamp duty @ 5% of the immovable property acquired without examining the provision of the law that as per first part of the proviso stamp duty, @5% of the market value of the property is liable to be paid only when the property is situated within State of Madhya Pradesh. The Board of Revenue has wrongly upheld the order for payment of stamp duty of Rs.6,96,32,399/- with a penalty treating it to be 0.5% of Rs15 crores share transferred to the petitioner's factually incorrect company.

11. In view of the above, order dated 31.09.2016 and 02.08.2018 are hereby set aside. The matter is remitted back to the Collector of Stamp to examine first whether any immovable property situated within the State of Madhya Pradesh was transferred under the Scheme of Amalgamation to the Transferee company and if not then no stamp duty is liable to be paid on the basis of market value of the property, then the Transferee company would be liable to pay stamp duty @ 0.5% of the share value Rs.92,18,36,973.60.

Thus Writ Petition is allowed.No order as to cost. Certified copy as per rules.