

(2017) 07 AP CK 0010
In the Andhra Pradesh High Court
Case No : 9007 of 2010

M/s.Sreenivasa Pharma Private Limited, And another	APPELLANT
Vs	
The Commissioner and Inspector General of Registration and Stamps,	RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

Companies Act, 1956, Section 391, Section 394 - Power to compromise or make arrangements with creditors and members. - Provisions for facilitating reconstruction and amalgamation of companies.

Citation : (2017) 07 AP CK 0010

Hon'ble Judges : A.Ramalingeswara Rao

Bench : SINGLE BENCH

Advocate : V.S.Raju, B.Narayana Reddy

Final Decision : Allowed

Judgement

1. Heard the learned Counsel for the petitioners and the learned Government Pleader appearing for the learned Advocate General.

2. The first petitioner company is a company incorporated under the Companies Act, 1956, and having its registered office at Plot No.66/B-2, Phase I, IDA, Jeedimetla, Hyderabad, 500055, and is a wholly owned subsidiary of the second petitioner company, M/s.SMS Pharmaceuticals Limited, a company incorporated under the Companies Act, 1956, and having its registered office at 417, Nilgiri, Aditya Enclave, Ameerpet, Hyderabad 500 038. The first petitioner filed Company Petition No.132 of 2007 connected with Company Application No.2195 of 2007 for sanction of the scheme of amalgamation as approved by the shareholders of the petitioner companies under Sections 391 and 394 of the Companies Act. The scheme of amalgamation was sanctioned on 19.06.2008. A copy of the sanctioned scheme was sent to the second respondent. The second respondent instead of registering the sanctioned scheme, sought clarification from the first respondent by letter dated 14.11.2008 followed by a reminder dated 04.03.2009

regarding applicability of stamp duty. The first respondent, by proceedings dated 20.03.2009, informed the second respondent that the stamp duty at 2% shall be chargeable as per Article 20(d) of Schedule I-A of the Indian Stamp Act, 1899, on the investment of 23,50,000 shares of Rs.10/- each allotted as fully paid up by way of bonus shares and 29,23,000 shares allotted for consideration other than cash, totally which amounts to 52,73,000 shares of Rs.10/- each i.e., to Rs.5,27,30,000/- in the case of amalgamation of the first petitioner company with the second petitioner company. The first petitioner company submitted a reply on 29.05.2009 and there was no positive action. The communication dated 20.03.2009 issued by the first respondent to the second respondent is challenged in the present Writ Petition.

3. A reading of the scheme of amalgamation with regard to consideration reads as follows:

8. Consideration

SPPL is a wholly owned subsidiary of SMSPL and the entire share capital is held by SMSPL and its nominees. Accordingly, there would be no issue of equity shares of SMPL to the shareholders of SPPL. Pursuant to the vesting of the undertaking in SPPL, the investment in the equity shares of SMSPL shall stand cancelled.

9. With effect from the appointed date and till transferor company is dissolved, it shall be deemed to have been carrying on its business for and on behalf of and in trust for the transferee company.

10. Upon the sanctioning of the scheme of amalgamation the authorized share capital of the transferor company be added to the authorized share capital of the transferee company. It is deemed that all the necessary requirements under the Act has been complied with by the transferee company.

11. Upon the scheme being sanctioned by the Honble Court under section 394 of the Act and on its becoming effective the transferor company shall be dissolved without going through the process of winding up with effect from the appointed date or such other date as may be fixed by the Court.

4. Thus, it is clear from the above scheme that there is no allotment of shares by the transferee company to the shareholders of the transferor company. Article 20(d) of Schedule I-A of the Indian Stamp Act, 1899, reads as follows:

20. Conveyance as defined by Section 2(10) not being a sale, charged under (No.47-A) or a transfer charged or exempted under (No.53).

(d) conveyance, so far as it relates to amalgamation or merger of companies under the order of High Court under Section 394 of the Companies Act, 1956. (Central Act 1 of 1956).

Two rupees for every one hundred rupees or part thereof of the market value of the property, which is the subject matter of such conveyance.

5. Explanation: For the purpose of the Clause (d) the market value of the property shall be deemed to be the amount of total value of the shares issued or allotted by the transferee company, either in exchange or otherwise, and the amount of consideration, if any, paid for such amalgamation or merger.

6. Provided that where an agreement to sell an immovable property is stamped with the ad valorem stamp required for a conveyance on sale under Article 47-A and a conveyance on sale in pursuance of such agreement is subsequently executed, the duty on such conveyance on sale shall be the duty payable under the article less the duty already paid under Article 47-A subject to a minimum of five rupees.

7. A reading of the above provision makes it clear that in case of amalgamation or merger of companies under the order of High Court under Section 394 of the Companies Act, which is treated as conveyance, the market value of the property, which is the subject matter of such conveyance, shall be taken into account. The market value of the property is explained in the explanation and it stated that the amount of the total value of the shares issued or allotted by the transferee company either in exchange or otherwise, and the amount of consideration, if any, paid for such amalgamation or merger is directed to be taken.

8. Though it is contended by the learned Government Pleader appearing for the learned Advocate General that there is transfer of property belonging to the transferor company to the transferee company, in view of the clear language employed by the Legislature treating the market value as the value of the shares issued or allotted, no other meaning can be given to the market value.

9. Hence, the impugned letter taking the total value of the shares of the transferor company for the purpose of conveyance, is not in consonance with the provisions of Article 20(d) of Schedule I-A of the Indian Stamp Act, 1899. Though at one point of time the transferor company is having shareholders having share value, consequent to the amalgamation, no shares were allotted to the shareholders of the transferor company and it cannot be said that there is market value which is liable for stamp duty.

10. The impugned order is, accordingly, set aside, and the Writ Petition is allowed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.