(2008) 07 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 284 of 2008 and M.P. No''s. 2 and 3 of 2008

T.T. Krishnamachari and Co. APPELLANT

Vs

Joint Sub-registrar-I and Another RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Companies Act, 1956 — Section 394, 394(1), 394(2)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18, 18(4), 18(6A), 19(3)
Stamp Act, 1899 — Section 2(14), 2(2), 3

Citation : (2008) 144 CompCas 708 : (2009) 2 MLJ 245

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : Muthukumarasamy and Shivakumar, for the Appellant; P. Muthukumar, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—Though the miscellaneous petitions are listed today, by consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a registered partnership firm. One T.T.K. Textiles Ltd., purchased the property bearing door Nos. 3 and 4, Cathedral Road,

Chennai, measuring three grounds and 1,220 sq.ft. comprised in R. S. No. 1592/3, Block No. 32, Mylapore Division, by means of a sale deed

dated July 7, 1992, registered as document No. 4339 of 1972 at the office of the District Registrar, Madras.

3. The said TTK Textiles Ltd., became sick and was therefore, referred to the Board for Industrial and Financial Reconstruction (in short ""the

BIFR"") under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short ""the SICA""). The operating agency, namely, the Bank of Baroda proposed a scheme for arrangement and compromise for approval and sanction of the BIFR u/s 18 of the SICA. In exercise

of its powers u/s 18(4) read with Section 19(3) of the SICA, the BIFR vide order dated January 15, 2001, sanctioned the scheme for

rehabilitation of the said company. Yet another company, by name, ""TTK Prestige Ltd."" was one of the specified lenders to the sick company and

under the said scheme, the above property including other properties specified in the sanctioned scheme owned by the said sick company vest with

the said ""TTK Prestige Ltd."" without any further act, deed, etc., with effect from March 1, 1999.

4. A perusal of the sanctioned scheme, Clause 9(a) would go to show the following:

9(a) On and with effect from the appointed date the properties specified in Schedule 1(a), 1(b), 1(c), 1(d) and 1(3) hereto shall, without any

further act, deed, levies or duties stand transferred to and be vested in TTK Prestige Ltd., a specified lender.

5. Subsequently, the petitioner who is a partnership firm purchased the said property for a total sale consideration of Rs. 6,00,00,000 (rupees six

crores only) from TTK Prestige Ltd., by means of a registered sale deed dated September 5, 2007. Though it is stated that the property was

purchased for six crores, since the sub-registrar assessed the market value of the property at Rs. 7,05,53,000, necessary stamp duty was paid and

registration charges were also paid.

6. Subsequently, the first respondent by his proceedings in Pa. Mu. No. 17266/1-2/2007 dated December 11, 2007, called upon the petitioner to

pay a sum of Rs. 56,44,240 towards stamp duty and Rs. 260 towards penalty, besides one per cent, of the same towards registration charges.

The said order is under challenge in this writ petition.

7. In the counter filed by the first respondent, it has been stated that when the petitioner presented the sale deed dated September 5, 2007, he also

presented a document dated July 31, 2007, showing transfer of the property from TTK Textiles Ltd., to TTK Prestige Ltd. In respect of the said

document no stamp duty was paid. It is further stated that since the said document transfers the title from TTK Textiles Ltd., to TTK Prestige Ltd.,

namely, the vendor of the petitioner, the said document should have been levied with stamp duty and registration charges. Since the same was not

done, the first respondent has issued the impugned notice making demand from the petitioner to pay the stamp duty in respect of the said document

dated July 31, 2007, together with penalty and registration charges.

8. Learned senior Counsel appearing for the petitioner would submit that the document dated July 31, 2007, cannot be construed to be an

instrument as defined in Section 2(14) of the Indian Stamp Act and so, there is no question of paying any stamp duty or registration charge. He

would submit that there is no transfer of title effected under the document dated July 31, 2007, as contended in the counter. He would further

submit that the vendor of the petitioner became the owner of the property on account of Clause 9(a) of the sanctioned scheme under the provisions

of the SICA. As per Section 18(6A) of the SICA, the title stood transferred automatically in the name of the vendor of the petitioner and thus, no

document was executed by TTK Textiles Ltd., in favour of the vendor of the petitioner thereby transferring the title. He would rely on a judgment

of a Division Bench of Kolkatta High Court in Madhu Intra Ltd. v. Registrar of Co.''s [2006] 130 Comp Cas 510.

9. The learned Additional Government Pleader appearing for the respondents would submit that any document transferring title to property of

value more than Rs. 100 should be levied with stamp duty under the provisions of the Indian Stamp Act. He would further submit that since the

vendor of the petitioner got title transferred, by virtue of the document dated July 31, 2007, the said document should be construed to be an

instrument as defined in Section 2(2) of the Indian Stamp Act, 1899 and so, the demand notice impugned in this writ petition is perfectly valid

which does not require any interference at the hands of this court at all.

10. I have considered the rival submissions.

Before adverting to the other issues raised by the rival parties, let me now refer to the definition of an ""instrument"" as found in Section 2(14) of the

Indian Stamp Act, 1899:

(14) Instrument.- ''Instrument'' includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended,

extinguished or recorded;

11. A plain reading of this provision would go to indicate that every document evidencing transfer of any right or liability is an instrument and such

an instrument if falls within the ambit of Section 3 of the Indian Stamp Act, is chargeable with stamp duty.

12. In this case, therefore, it is to be seen as to whether there is any document evidencing such transfer of title or any other right in respect of these

properties executed by TTK Textiles Ltd., in favour of TTK Prestige Ltd., namely, the vendor of the petitioner. If there had been any such

document, it goes with no semblance of doubt that such document is an instrument falling within the definition of Section 2(14) of the Indian Stamp

Act, 1899, chargeable with stamp duty. But no such document has been executed by the erstwhile owner namely TTK Textiles Ltd., in favour of

TTK Prestige Ltd., at all.

13. TTK Prestige Ltd., namely, the vendor of the petitioner became the owner of the property by virtue of the scheme approved by the BIFR. As

extracted in paragraph No. 4 of this judgment, as per Clause 9(a) of the scheme, the properties specified in Schedule 1(a), 1(b), 1(c), 1(d) and

1(3) of the scheme shall, without any further act, deed, levies or duties stand transferred to and be vested in TTK Prestige Ltd. The property in

question is described in Schedule 1(a). If Clause 9(a) of the approved scheme is closely scrutinised, it will bring light that on the approval of the

said scheme and passing of an appropriate order by the BIFR, the property automatically stands transferred and vested in TTK Prestige Ltd. The

scheme further shows that it does not require any further act, deed, levies or duties, etc.

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. The ratio laid down by the

Division Bench is as follows (page 525):

We agree with the view expressed by the Division Bench of this court in New Central Jute Mills Co. Ltd. Vs. Rivers Steam Navigation Co. Ltd.

and Others, , 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.

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 cases of Ruby Sales and Services (P) Ltd. and Another Vs. State of Maharashtra and Others,

and Li Taka Pharmaceuticals Ltd. Vs. State of Maharashtra and other, , 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.

The judgment and order of the learned company judge in the case of Gemini Silk Ltd. v. Gemini Overseas Ltd. [2003] 114 Comp Cas 92 (Cal)

and the directions contained therein are accordingly set aside and the Department is directed to draw up and complete the orders passed u/s

394(1) of the Companies Act, 1956, as if the judgment of the learned company judge in Gemini Silk Ltd. v. Gemini Overseas Ltd. [2003] 114

Comp Cas 92 (Cal), had not intervened. In the event any orders u/s 394(1) have been stamped consequent upon the decision rendered in the case

of Gemini Silk Ltd. v. Gemini Overseas Ltd. [2003] 114 Comp Cas 92 , the parties will be entitled to apply for and to obtain refund of such stamp

duty, in accordance with law.

17. Section 394(2) of the Companies Act reads as follows:

(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.

18. A close comparison of the above two provision and Section 18(6A) of the SICA would indicate that these two provisions are in pari materia.

As held by the Division Bench of the Kolkatta High Court, in the matter of transfer effected by virtue of an amalgamation order made u/s 394(2) of

the Companies Act, there is no instrument executed which is chargeable with stamp duty.

19. The Division Bench in the above judgment, had to deal with the definition of the term ""conveyance"" as defined in the Transfer of Property Act,

1882. The Division Bench has held that when the property of an erstwhile company stands vested in another company on account of amalgamation

of the two companies, there is no conveyance of property and so, the order amalgamating the two companies u/s 394 of the Companies Act,

would not amount to conveyance at all so as to require execution of any instrument chargeable with stamp duty. The Division Bench has held that

such transfer in the case of amalgamation does not take place on the act of parties and instead, such transfer takes place automatically by operation of law.

20. Similarly, when a scheme is approved by the BIFR, as I have already held, the properties of the erstwhile company automatically stands

transferred and vested in the company in whose favour the scheme is issued by operation of law. 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. Any other document which is

executed subsequent to the said order does not transfer the title from the erstwhile owner of the company to the other company. The ratio laid

down by the Kolkatta High Court sparely applies to this case.

21. As I have held supra, since transfer of the property was effected in favour of TTK Prestige Ltd., by operation of law which is an involuntary

act, as soon as order was made by the BIFR u/s 18(6A) approving the scheme, there is no question of executing any other instrument chargeable

with stamp duty. In the impugned notice, a document dated July 31, 2007, has been referred to as an instrument as if the property was transferred

in the name of the vendor of the petitioner by means of the said document.

22. The said stand taken by the respondents is not at all legally sustainable. Even if it is true that there was some document executed on July 31,

2007, since it did not transfer title in favour of the vendor of the petitioner as transfer of title had already been effected by virtue of the scheme

order, there is no question of collecting any stamp duty, penalty and registration charges for the said document. Thus, the impugned notice is highly

misconceived and the same thereafter, requires to be quashed.

23. In the result, the writ petition is allowed and the impugned proceedings of the first respondent dated December 11, 2007, made in 17266 of

2007 and the order dated September 28, 2007, made in 12977 of 2007 issued by the second respondent to the first respondent are quashed. No

costs. Consequently, connected miscellaneous petitions are closed.

