HIGH COURT OF GUJARAT (*F.B.*)

ALEMBIC PHARMACEUTICALS LIMITED
Versus
CHIEF CONTROLLING REVENUE AUTHORITY

Date of Decision: 26 November 2013

Citation: 2013 LawSuit(Guj) 1800

Hon'ble Judges: Bhaskar Bhattacharya, V M Sahai, Ravi R Tripathi

Eq. Citations: 2014 3 GLR 2255, 2014 3 GLH 750, 2014 2 GCD 1329, 2014 35 GHJ 201, 2015 124 CLA 264

Case Type: Stamp Reference

Case No: 1 of 2012

Subject: Company

Editor's Note:
Gujarat Stamp Act, 1958 - Secs 2(g), 31, 54, 53(1-D) & Art 20(d) of Schedule-I - Companies Act, 1956 - Secs 391 to 394 - Question whether the order passed for demerging the applicant company from its parent company can be considered as reconstructing or amalgamated as per Art 20(d) of the said Act or not - Another question whether the applicant has to pay for the change of ownership as per sec 2(g) & art 20(d) of the stamp act or not - Held - Demerger of company amounts to reconstruction - Stamp duty payable on market value of shares allotted or issued & not on face value - Reference accordingly answered order of revenue authorities affirmed

Acts Referred:
Income Tax Act, 1961 Sec 45
Companies Act, 1956 Sec 392, Sec 393, Sec 391, Sec 394
Bombay Stamp Act, 1958 Sec 54(1A), Sec 2(g), Sec 31, Art 20(d)

Advocates: S N Soparkar, Nandish Chudgar, Nanavati Associates, Maithili Mehta

Cases Cited in (+): 1
Cases Referred in (+): 13

Bhaskar Bhattacharya, J.

[1] This is a Reference under Section 54[1A] of the Gujarat Stamp Act, 1958, by which the following four questions have been referred to this Court.

"[A] Whether the order passed by this Hon'ble High Court for demerging the applicant company from his parents company can be considered as reconstructing or amalgamated as per Article 20[d] of the said Act or not.

[B] Whether the applicant has to pay for the change of ownership as per Section 2[g] and Article 20[d] of the Stamp Act or not.

[C] Whether the deponent is entitled to take stamp duty on the share price of appointed date i.e. Rs. 50.05/- on the appointment date Transferor Company transferred the said share to the transferee company? The contention of the applicant is that the share was originally transferred to the transferee company for the face value of Rs. 2/- only or [sic; and not for] Rupees 50.05/-.

[D] Whether the deponent has to consider the market value [Rs.50.05/-] as per the statement of SEBI or face value [Rs. 2/-] i.e. on the date of appointment date i.e.1st April, 2010."

[2] Brief facts of the case may be narrated thus:

2.1 The applicant is Alembic Pharmaceuticals Limited, a company registered under the provisions of Companies Act, 1956 and having its office at Alembic Road, Vadodara [Gujarat] which made a demerger from the parent company known as Alembic Limited by virtue of the order passed by this High Court in Company Petition No. 152 of 2010 and Company Petition No. 153 of 2010 dated 21st March, 2011 under Section 394 of the Companies Act. Pursuant to such order, the transferor company transferred 13,35,15,914 equity shares to the transferee company. The appointed date of the transfer of the said shares of the transferee company was 1st April, 2010.

2.2 The applicant made an application to pay stamp duty regarding demerger instrument under Section 31 of the Bombay Stamp Act, 1958, now known as the Gujarat Stamp Act, [for short, "the said Act"] before the office of the Collector [Stamp] and Additional Superintendent of Stamp of Gandhinagar.

2.3 The Collector considered all the aspects and provisions of law and came to the conclusion that the applicant company is required to pay 1% of the conveyance deed in terms of Article 20[d] of Schedule-I of the said Act. The Collector opined that after the payment of Rs. 6,68,24,715/-, the stamp office would certify the order of demerger which had been carried out in accordance with Sections 391 and

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394 of the Companies Act, 1956 pursuant to the order of the High Court dated 21st March, 2011 passed in Company Petition No. 153 of 2011.

2.4 Being dissatisfied with the order passed by the Collector and the Additional Superintendent Stamp, Gandhinagar, Gujarat State, the applicant challenged the said order under Section 53[1-D] of the said Act before the Chief Controlling Revenue Authority [for short "CCRA"] by way of Appeal No. 20 of 2011.

2.5 In terms of the said demerger of the applicant company from its parent company, one share was additionally issued to the original share holders of Alembic Limited, i.e., the parent company.

2.6 The CCRA, after giving the opportunity of hearing and examining all the documents produced by the petitioner, passed an order dated 30th November, 2011 and confirmed the order passed by the Collector, which had been forwarded to the applicant on 12th December, 2011.

2.7 The applicant, being dissatisfied with the order passed by CCRA, preferred an application under Section 54[1-A] of the said Act with the following prayer:

"Your Lordship may be pleased to draw up a statement of the case being Appeal No. 20 of 2011, and refer the same to the Hon'ble High Court of Gujarat, as provided under Section 54[1- A] of the Bombay Stamp Act, 1958 in the interest of justice".

[3] In order to appreciate the points involved in this Reference, it will be profitable to refer to the provision contained in Article 20[d] of Schedule-I of the said Act which is quoted below along with the explanations applicable to all the sub-articles to Article 20:

Description of instrument: Proper Stamp duty: CONVEYANCE so far as it relates to reconstruction or amalgamation of companies by an order of the High Court under section 394 of the Companies Act 1956. Subject to maximum of twenty five crores rupees-

[i] an amount equal to 1 per cent of the aggregate amount comprising of the market value of share issued or allotted in exchange of or otherwise, or the face value of such shares, whichever is higher and the amount of consideration, if any, paid for such amalgamation, or

[ii] an amount equal to 1 per cent of the true market value of the immovable property situated in the State of Gujarat of the transferor company whichever is higher."

[Explanation 1] For the purpose of this Article and subject to sub-item (a) of item (ii) of clause (f) of article 45 an agreement to sell an immovable Property or an irrevocable power of attorney shall, in case of transfer of possession of such property before, at the time of, or after the execution of such agreement or power of attorney, be deemed to be a conveyance and the stamp duty thereon shall be chargeable accordingly:-

Provided that the provisions of section 32-A shall apply mutatis mutandis to such agreement or power of attorney as are applicable to a conveyance: Provided further that where subsequently a conveyance is executed in pursuance of such agreement of sale, or an irrevocable power of attorney, the stamp duty, if any, already paid and recovered on the agreement of sale or an irrevocable power of attorney which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance. [Explanation-II] For the purpose of this Article, the expression "premises" means any land or building or part of a building including any flat, apartment, tenement, shop or warehouse therein and includes:- [i]. gardens, grounds and outhouses, if any, pertaining to such building or part of a building, and [ii]. Any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. [explanation-III].

For the purpose of clause (d) the market value of share- (a). in relation to the transferee company, whose shares are listed and quoted for trading on a Stock Exchange, means the market value of shares as on the appointed date mentioned in the scheme of amalgamation, or when the appointed date is not so fixed the date of order of the High Court, (b). in relation to the transferee company, whose shares are not listed or listed but not quoted for trading on a Stock Exchange means the market value of the share issued or allotted with reference to the market value of share of the transferor company. [c]. Where the transferee company and the transferor company whose shares are not listed or listed but not quoted for trading on a Stock Exchange means the face value of the share issue for allotted with reference to the face value of the share of the transferee company.

[4] Mr. S.N. Soparkar, the learned Senior Advocate appearing on behalf of the applicant, has, at the very outset, conceded that by virtue of the order of the High Court under Section 391 of the Companies Act, the transfer of interest was one of demerger and the same comes within the expression "reconstruction" within the meaning of the said Act and, therefore, falls within the charging part of Article 20(d) of Schedule-I of the said Act. Mr. Soparkar, in this connection, makes threefold alternative submissions.

4.1 The first branch of argument of Mr. Soparkar is that under the main provision [de hors the explanation], there are two parameters for quantifying the stamp duty payable. The first applies only to amalgamation and, therefore, the only parameter for demerger is the second one.

4.2 Mr. Soparkar contends that if a view is taken that both the parameters must be applied, then, the very quantification provision and the consequential levy would fail, and therefore, it should be held that there could be no levy of stamp duty on demerger. In this connection, Mr. Soparkar has placed strong reliance upon two Supreme Court decisions; one in the case of C.I.T. v. B.C. SRINIVASA SETTY, 1981 128 ITR 294 and the second in the case of PNB FINANCE LTD. v. CIT, 2008 307 ITR 260 .

4.3 The second branch of submission made by Mr. Soparkar is that the only way to uphold the levy of stamp duty on demerger is by holding that only the second parameter would be applicable in case of demerger and for that purpose, the phrase "whichever is higher" be treated as otiose in case of demerger. Therefore, according to Mr. Soparkar, the only parameter for demerger is the second one and it would not be possible to treat the phrase "for such amalgamation" as otiose, as otherwise, the court would be legislating by making an entry of a taxing statute applicable to a transaction [demerger] which legislature has not provided. In support of such contention, Mr. Soparkar has relied upon the two decisions of the Supreme Court; one in the case of UNION OF INDIA & ANR. vs HANSOLI DEVI & ORS., 2002 AIR(SC) 3240 and in the case of THE LABOUR CONTRACT CO-OP. SOCIETY vs. DIRECTOR OF MINES AND GEOLOGY, HYDERABAD, 1993 AIR(SC) 147.

4.4 According to the third branch of submission, if the above two propositions are rejected, in that event, of the above three rules for computation, the second one could not apply to the scheme of demerger. In other words, according to Mr. Soparkar, under the first parameter, the levy is on the market value of the share issued or allotted. The second rule of computation applies only in case of amalgamation and if in the parent provision, the phrase "for such amalgamation" is ignored, then, correspondingly, the second rule of computation also needs to be ignored. Mr. Soparkar contends that the transferee company alone allots the shares. It is the value of its shares which is relevant for the purpose of determining the consideration for transfer of the assets from the transferor company. According to Mr. Soparkar, in case of demerger, the value of the shares of the transferor company is wholly irrelevant. Mr. Soparkar asserts that stamp duty is a tax on the transfer of an asset and it is to be levied on the market value of such asset. Such market value, Mr. Soparkar continues, can be determined by the value of the asset transferred [second parameter] or the consideration paid [first parameter]. Mr.

Soparkar maintains that the market value of the shares of the transferor company is wholly irrelevant for this purpose.

4.5 Lastly, Mr. Soparkar contends that an explanation, by way of computation rule, cannot go beyond the parent provision of levy, viz. the parameter. In support of such submission, Mr. Soparkar has relied upon a decision of the Supreme Court in the case of S. SUNDARAM PILLAI vs. V.R. PATTABIRAMAN, 1985 AIR(SC) 582.

[5] Ms. Maithili Mehta, the learned Assistant Government Pleader, appearing on behalf of the State-respondent, has, however, opposed the aforesaid contentions of Mr. Soparkar and her submissions may be summed up thus:

5.1 The issue involved in the present matter is that Alembic Limited, a Company registered under the provisions of the Companies Act, 1956 being the demerged company herein as per the order of this High Court passed in the Company Petition No. 153 of 2010 demerged from Alembic Pharma, an undertaking of Alembic Limited. As a result, the transferor company transferred 13,35,15,914 equity shares to the transferee company, being Alembic Pharma Limited on the appointed date which is 1st April, 2010. In light of the said order of this High Court in Company Petition No. 153 of 2010, the applicant made an application for payment of stamp duty on the ground that the scheme approved by this High Court was an arrangement of demerger. The said application was made before the Additional Superintendent of Stamp, under Section 31 of the said Act. The Collector, Stamp, considered all the provisions of law and came to the conclusion that the applicant company would be liable to pay stamp duty under Article 20[d] of the said Act and thus, would be liable to pay stamp duty for an amount of Rs. 06,68,24,715/- on the order of this High Court sanctioning the scheme of arrangement dated 21st March, 2011.

5.2 Ms. Mehta submits that according to the contention of the applicant and its written submissions produced before the CCRA challenging the order of the Collector dated 20th May, 2011, the case of the applicant is that of demerger and not of amalgamation and therefore, Article 20[d] would not apply and thus, it would not be liable to pay stamp duty as adjudicated by the Collector amounting to Rs. 06,68,24,715/-, being 1% of total amount of market value of shares allotted or transferred. The Chief Controlling Revenue Authority, by its order dated 30th November, 2011 held that the said agreement being in the nature of reconstruction, Article 20[d] of the said Act would be applicable and also held that the explanation III[b] of Article 20[d] would apply in the present scenario. It is in the light of the said order of the Chief Controlling Revenue Authority, Ms. Mehta continues, an application was made by the applicant herein under Section 54[A] of

the said Act, for drawing the statement for Reference, referring the matter to this High Court in light of the provisions of Section 54 of the said Act.

5.3 Ms. Mehta submits that the question which is required to be considered by this Court is whether the scheme of arrangement between Alembic Limited, the demerged company and Alembic Pharma Limited, the resulting company, is an agreement of demerger or an agreement of reconstruction under Sections 391 to 394 of the Companies Act to which Article 20[d] of Schedule-I of the said Act would apply wherein, 1% of stamp duty is prescribed to be levied. Ms. Mehta submits that the explanation III[b] would also have its applicability and this legal aspect is required to be examined by this Court in light of the order passed by the Company Court in Company Petition No. 152 of 2010 dated 24th January, 2011.

5.4 Ms. Mehta submits that if this Court first considers the order passed by this High Court dated 24th January, 2011, it would be clear that though the scheme may be in the nature of demerger, it is basically for the purpose of reconstruction of share capital of Alembic Limited which means that to appreciate the order of the Court dated 24th January, 2011, it would be necessary for this Court to also consider the principles of merger, demerger, amalgamation, reconstruction and/or reorganization. The said principles, Ms. Mehta continues, would also be necessary for the purpose of appreciating the issue involved in the present reference. Ms. Mehta points out that Section 391 of the Companies Act deals with power to compromise or make arrangement with the creditors and members and the scope of this section is that it deals with the right of the company to enter into a compromise or arrangement: [a] Between itself and its creditors or any class of them, and, [b] Between itself and its members or any class of them.

5.5 By referring to the Law of Lexicon 1997 Edition, Ms. Mehta contends that the term 'reconstruction' means "a reconstruction normally involves the transfer of company's undertaking or part of it to new company which is going to carry on substantially the same business as the business transferred to it".

5.6 According to Ms. Mehta, Section 391 of the Companies Act deals with the right of the companies to enter into a compromise or arrangement which covers reconstruction, merger, demerger and spinning of a unit by a company and the arrangement contemplated under Section 391 also includes reorganization of share capital of a company. Ms. Mehta submits that it is further necessary to consider that Section 391 is a complete code by itself and once a scheme of compromise or arrangement falls squarely within four corners of the said section, it can be sanctioned. Ms. Mehta contends that the arrangement under Section 391 includes amalgamation.

5.7 By way of illustration, Ms. Mehta contends that Merger/amalgamation under the law is generally referred to as business combination in accounting parlance and in common parlance amalgamation and demerger are distinguished based on whether "A" acquires "B" is referred as amalgamation, whether "A" & "B" being equals merged into "C" is referred to as mergers. Thus, according to Ms. Mehta, it would be necessary for the Court to appreciate the meaning of reconstruction and/or reorganization. Generally, Ms. Mehta continues, the expression 'reconstruction, reorganization or scheme or arrangement' is used where only one company is involved and the rights of its shareholders and/or creditors are varied. By relying upon the Halsbury's Law of England, 4th Edition, Vol.7, paragraph 1539, page 855, Ms. Mehta contends that neither reconstruction nor amalgamation has a precise legal meaning but where an undertaking is being carried on by a company and is in substance transferred not to outsider but to another company consisting substantially of the same shareholders with a view to it being continued by the transferee company is reconstruction and the object of reconstruction is usually to reorganize capital or to compound with creditors or to effect economy.

5.8 Ms. Mehta contends that this Court should appreciate the scheme of arrangement between Alembic Limited, the demerged company and Alembic Pharma Company, the resulting company and it would be very clear that as mentioned by this High Court, it is a scheme of reorganization of share capital under Sections 391 to 394 of the Companies Act. According to Ms. Mehta, the wordings itself in the said scheme mention that "it is a composite scheme of arrangement provides for demerger/spin off of the pharmaceutical undertaking of Alembic Limited as going concern to Alembic Pharma Limited and consequentially, reconstruction of its share capital pursuant to Section 391 to 394". Ms. Mehta submits that it would also be necessary for this Court to consider the reasons and objects of the scheme of arrangement being clause B and also to consider Clause 4, transfer of undertaking, as well as clauses 13 to 15 and on perusing the said scheme, it appears that it would fall within the scope of reconstruction for the reason that the very purpose of the said scheme is for reorganization of its share capital. Ms. Mehta points out that for every one share of Alembic Limited, one more additional share of Alembic Pharmaceutical Limited is issued to all the shareholders of Alembic Limited and hence, the shareholders will continue to hold their shareholding in Alembic Limited and will be given additional share of Alembic Pharma Limited. This is very indicative of the fact that this agreement is merely an agreement of reconstruction for reorganizing of its share capital. In view of what is mentioned hereinabove, Ms. Mehta submits that it is very clear that the provisions of Article 20[d] of Schedule-I of the said Act would be attracted to the case of the

applicant and the explanation III[b] would apply whereby, the applicant would be liable to pay 1% of stamp duty which would amount to Rs. 6,68,24,715/-.

5.9 To test the submissions as mentioned above, according to Ms. Mehta, it would be necessary to consider the provision of Section 394 of the Companies Act, which clearly mentions that where an application is made to the Tribunal under Section 391 of the Companies Act for sanctioning of compromise or arrangement proposed between a company and any such persons as are mentioned in that section and if it is shown to the Tribunal that: [a] the compromise or arrangement has been proposed for the purpose of or in connection with the scheme for reconstruction of any company or amalgamation of two or more companies, and [b] that under the scheme, the whole or in part of the undertaking property or liabilities of a company concerned in the scheme is to be transferred to another company, the Tribunal may, either by an order sanctioning the compromise or arrangement or by a subsequent order make provisions for all or in 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 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 [Tribunal] 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.

5.10 According to Ms. Mehta, if the said section is perused, it would be very clear that Section 394 of the Companies Act is inclusive of an application made under Section 391 of the Companies Act which means that Article 20[d] would apply to the applicant. To be clearer, Ms. Mehta proceeded, Section 391 of the Companies Act deals with power to compromise or make an arrangement and as mentioned

above, demerger being a form of an arrangement under Section 391, the application made under Section 391 is to be sanctioned by the Tribunal under Section 394. Therefore, according to Ms. Mehta, assuming for the sake of argument but not admitting, even if the case of the applicant is accepted, the arrangement of demerger which is proposed to be made under Section 391 of the Companies Act would also be covered under Section 394 of the Companies Act and the present scheme as ordered by this High Court, if accepted in full being a scheme of demerger, it is a scheme of arrangement under Sections 391 to 394 of the Companies Act, and therefore, the contention of the applicant that the present scheme is a demerger scheme and, thus, the provisions of Article 20[d] of the Bombay Act does not hold good, is not tenable in law. The word 'arrangement' used in Section 391 of the Companies Act, according to Ms. Mehta, is of wide import and includes reconstruction of share capital by the consolidation of different class of shares or division of shares. Ms. Mehta relies upon a decision of the High Court of Calcutta in the case of Hindustan Commercial Bank v. Hindustan General Electric Corporation, 1960 AIR(Cal) 637 wherein the said aspect is reflected.

5.11 Ms. Mehta further contended that in order to appreciate the concept and meaning of demerger, the Finance Act, 1999 is required to be considered wherein, Clause 19[AA] deals with the meaning of 'demerge'. In pursuance of clause 19AA, it would be necessary to appreciate clause 19AAA dealing with the definition of 'demerged company' which means the company whose undertaking is transferred in terms of demerger to the resultant company. Ms. Mehta further contends that it is also necessary for this Court to take into consideration clause 41[A] which defines 'resulting company' meaning one or more companies to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking issues shares to the shareholders of the demerged company and includes any authority or body or local authority or a public sector company or a company established, constituted or formed as a result of demerger.

5.12 Ms. Mehta contends that if the abovementioned facts are read together, it is very clear that demerger is a kind of arrangement or reconstruction which has roots in Sections 391 to 394 of the Companies Act, 1956. According to Ms. Mehta it is very clear that it is nothing but a reconstruction for the purpose of reorganization of it's paid up capital. In other words, it would mean an arrangement and/or reconstruction and therefore also, the provision of Article 20[d] and explanation III[b] of the said Act would apply to the case of the applicant herein.

5.13 Ms. Mehta thus submitted that in view of the legal provisions and the judgments as well as the foregoing submissions made by her on behalf of the

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respondent authority, the Reference should be answered in favour of the respondent authorities by this Court.

[6] After hearing the learned counsel for the parties and after going through the materials on record, we find that according to the provisions contained in Article 20[d] of Schedule-I of the said Act, stamp duty is payable on conveyance so far as it relates to reconstruction or amalgamation of the companies by an order of the High Court under Section 394 of the Companies Act and appropriate stamp duty is also referred to in the said Article. According to Section 2(g) of the said Act, the word Conveyance includes among others, iv) every order made by High Court under Section 394 of the Companies Act, 1956 in respect of reconstruction or amalgamation of Companies. Prior to Gujarat Act no. 19 of 2001 with effect from 1st September, 2001, the relevant words were amalgamation of companies which were substituted by the phrase "reconstruction or amalgamation of Companies". Similarly, clause 20(d) was substituted by Gujarat Act No. 5 of 2002 with effect from April 1, 2004 making it applicable to reconstruction or amalgamation of companies by an order of the High Court under Section 394 of the Companies Act, 1956. Thus, the object of the above amendments is to fix the stamp duty on conveyance resulting from an order under Section 394 of the Companies Act in case of either amalgamation or reconstruction.

[7] In the case before us, there is no dispute that there has been demerger of the parent company into two companies and we find substance in the contention of Ms. Mehta, the learned Advocate appearing on behalf of the State that demerger comes within the purview of the word 'reconstruction' and the present case is not one of amalgamation of two companies. Therefore, on the basis of the aforesaid Article, we propose to consider what will be the proper stamp duty payable in the case before us, where the case is one of demerger or reconstruction of a company.

[8] We, at the same time, do not find substance in the contention of Mr.Soparkar that in case of demerger or reconstruction, the first clause of the Article cannot be applicable because the first clause speaks of only amalgamation and there is no reference of any reconstruction and that consequently, it necessarily follows that only a parameter of reconstruction or demerger as provided in the Article 20[d] of Schedule-I is the second one and in such a case, the phrase 'whichever is higher' appearing after the second clause should be held to be otiose in case of demerger.

[9] In our opinion, Article 20(d) speaks of a conveyance necessitating pursuant to an order passed under Section 394 of the Companies Act whether it is one of amalgamation or reconstruction and as pointed out above, in the definition of conveyance in Section 2(g) of the said Act, the word "reconstruction" has been subsequently added before the word "amalgamation". Thus, the object of the

legislature was to cover under Article 20(d) both "amalgamation" and the "reconstruction", although originally the word "reconstruction" was absent before the word "amalgamation". If we accept the interpretation suggested by Mr. Soparkar, it will lead to an absurdity inasmuch as in that event, we are to hold that the legislature did not specify any stamp duty in the case of reconstruction although the case of reconstruction has been specifically mentioned by way of amendment. We are unable to accept the suggestion that the phrase "whichever is higher" appearing after clause (ii) should be treated to be otiose for considering the case of reconstruction. On the other hand, if we read in the words "or reconstruction" after the words "for such amalgamation" appearing in clause (i), there will be no difficulty in giving effect to the real intention of the legislature. In this connection, we rather propose to rely upon the following observations of the Supreme Court in paragraph 4 of the judgment in the case of UNION OF INDIA & ANR. vs. HANSOLI DEVI & ORS., 2002 AIR(SC) 3240, relied upon by Mr. Soparkar, as regards wellsettled principles of the interpretation of the Statute:

> "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."
>
> It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson and Co. Ltd., 1955 2 AllER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that "a provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning." It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghose v. Arabinda Bose, 1953 SCR 1 had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway Light Heat and Power Co. v.

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Vandray, 1920 AIR(PC) 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective."

[10] Therefore, in the case before us, unless we read in or add the words "or reconstruction" after the words "for such amalgamation" in the clause (i), on a literal construction being given to the existing provisions, a part of the provisions viz. in the cases of computation of stamp duty for reconstruction of a company, the provision becomes unworkable or meaningless.

[11] Mr. Soparkar also relied upon a decision of the Supreme Court in the case of The Labour Contract Co-operative Society, Palikur v. Director of Mines and Geology, Hyderabad and others , where the Supreme Court was considering the provision contained in 12(4) of the A.P. Minor Mineral Concession Rules, 1966 which is quoted below:

"(4) In case where the quarry lease holders fail to apply for renewal of the lease of the areas within ninety days before the expiry of the lease held by them, as required under subrule (2) of Rule 13, fresh application for grant of quarry lease, in respect of those areas, will be entertained thirty days before the expiry of the lease:"

11.1 In the above context, the Supreme Court made the following observations:

"We have heard the counsel for the parties on the interpretation to be placed upon the above Rules. The presence of the word "within" in Rule 12(4) has given room for some avoidable controversy. The said word appears to have crept into the sub-rule incautiously. The said word ('within') is not used either in sub-rule (2) of Rule 13 or for that matter in the latter portion of Rule 12(4). It must be noticed that the first half of Rule 12(4) ("In case where ....under sub-rule (2) of Rule 13") expressly refers to Rule 13(2) and says that if no application is made there under

> others can apply. The said words cannot and can never mean anything different than what is provided by Rule 13(2). It is for this reason that we say the word "within" therein is inappropriate and ought to be ignored. The Rule-Making authority would be well advised to delete the same."

[12] We do not appreciate how the said decision can be of any help to the client of Mr. Soparkar; on the other hand, it recognizes the wellsettled principles that in some extreme circumstances, even there may be mistake of drafting in the legislative provisions and in such a situation, it is permissible for the court to delete a word in order to give effect to the legislative intention. We have already pointed out that even for giving effect to the legislative intent a word can also be added if the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Thus, the said decision is of no avail to the petitioner.

[13] At this stage, we also propose to discuss two other decisions of the Supreme Court cited by Mr. Soparkar.

[14] In the case of Commissioner of Income-tax, Bangalore v. B. C. Srinivasa Setty, 1981 128 ITR 294 , the Supreme Court was considering the question whether the goodwill generated in a newly commenced business can be described as an "asset" within the terms of S. 45 of the Income Tax Act and therefore, whether its transfer is subject to income-tax under the head "capital gains". While answering such question in the negative, the Supreme Court made the following observations:

> "Section 45 charges the profits or gains arising from the transfer of a capital asset to income-tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings S. 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head, "Capital gains". Section 45 is a charging section. For the purpose of imposing the charge, Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by Section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by S. 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income-tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the

computation provisions in each case bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code.

When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head."

14.1 By relying upon the above observations, Mr. Soparkar tried to impress upon us that having regard to the absence of the provisions of reconstruction in the computation provisions, one would be driven to conclude that while a certain situation seems to fall within the charging section there is no scheme of computation for quantifying it. As pointed out by the Supreme Court in the above case, ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. We are, therefore, unable to accept such extreme contention of Mr. Soparkar in the facts of the present case in view of the amendment of the charging provision introducing the word "reconstruction" before the word "amalgamation" and in our view, it is a fit case of reading in the words "or reconstruction" after the phrase "such amalgamation" to give effect to the legislative intent, more so, having regard to the Explanation added to the said provision. The above decision thus supports the interpretation we propose to adopt in the facts of the present case.

[15] In the case of P.N.B Finance vs. CIT , the Supreme Court, considering the same provision of Section 45 of the Income Tax Act, pointed out that as regards applicability of Section 45 was concerned three tests are required to be applied. The first test is that the charging section and the computation provisions are inextricably linked. The charging section and the computation provisions together constituted an integrated code. Therefore, where the computation provisions cannot apply, it is evident that such a case was not intended to fall within the charging section. That section contemplates that any surplus accruing on transfer of capital assets is chargeable to tax in the

previous year in which transfer took place. In that case, transfer took place on 18-7-1969 whereas the assessment year was 1970-71. We have already pointed out that in the case before us, there is no scope of holding that the case of reconstruction does not fall within the charging section when by way of amendment, the cases of reconstruction has been brought within purview of Article 20(d). The legislative pattern discernible in this Statute is also against such a conclusion as held by the Supreme Court in the case of Commissioner of Income-tax, Bangalore, v. B. C. Srinivasa Setty . We, therefore, find that the above decision also does not help Mr. Soparkar in any way.

[16] In this connection, although we find substance in the contention of Mr. Soparkar that in the case of reconstruction of a company, it is the transferee company which allots the shares and it is the value of its shares which is primarily relevant for the purpose of determining the consideration for transfer of the assets from the transferor company, at the same time, we cannot lose sight of the fact that the legislature is also within its province to enact in a taxing statute a provision compelling payment of a minimum amount of Stamp duty in a given transaction and in the process, if it decides that in case of either amalgamation or reconstruction, the minimum stamp duty payable should be at least 1% of the true market value of the immovable property situated in the State of the transferor company, the same cannot be interfered at the instance of a High court unless it offends any other statutory provisions or is arbitrary. As it appears from the subsequent amendment with effect from March 15, 2013, there has been further amendment in the selfsame statute that the maximum stamp duty, at any rate, will not exceed twenty five crore rupees which was earlier fixed at Rs. 10 Crore. Thus, the legislature is free to fix both maximum and minimum amount of stamp duty in a given type of transaction.

[17] We, however, agree with Mr.Soparkar that an Explanation added to a particular provision cannot go beyond the parent provision of levy, namely, the parameter. But in the case before us, if we read in the phrase "or reconstruction" after the phrase "for such amalgamation" appearing in the main Article, none of three explanations in clause (III) goes beyond the parent provision. The Explanation (a) merely points out the date on which the market value of the share is to be determined. Clause (b) explains the method of deciding the market value in relation to the shares of the transferee company whose shares are not listed or listed but not quoted for the trading on a stock exchange. Similarly, explanation (c) refers to the mode of valuation in the situation where the transferee company and the transferor company whose shares are not listed or listed but not quoted for trading on a stock exchange. The above three explanations, thus, in no way infringe the main provision of the Statute.

[18] In this connection, we may profitably refer to and rely upon the following observations of the Supreme Court in the case of S. SUNDARAM PILLAI vs. V.R.

PATTABIRAMAN, 1985 AIR(SC) 582 relied upon by Mr. Soparkar:

"45. We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in 'Interpretation of Statutes' while dwelling on the various aspect of an Explanation observes as follows:

"(a) The object of an explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute." (P. 329)

46. Swarup in 'Legislation and Interpretation' very aptly sums up the scope and effect of an Explanation thus:

"Sometimes an explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain......... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa." (Pp. 297-298)

47. Bindra in 'Interpretation of Statutes' (5th Edn.) at page 67 states thus :

"An explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an explanation only explains and does not expand or add to the scope of the original section.... The purpose of an explanation is, however, not to limit the scope of the main provision.... The construction of the explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An 'explanation' must be interpreted according to its own tenor."

48. The principles laid down by the aforesaid authors are fully supported by various authorities of this Court. To quote only a few, in Burmah Shell Oil Storage and

Distributing Co. of India Ltd. v. Commercial Tax Officer, 1961 AIR(SC) 315, a Constitution Bench decision, Hidayatullah, J. speaking for the Court, observed thus :

"Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain cl. (1) (a) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles."

49. In Bihta Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar, 1967 1 SCR 848) this Court observed thus:

"The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section."

50. In Hiralal Rattanlal s case, 1973 AIR(SC) 1034 , this Court observed thus:

"On the basis, of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the legislature named that provision as an Explanation. "

51. In Dattatraya Govind Mahajan v. State of Maharashtra, 1977 AIR(SC) 915, Bhagwati, J. observed thus:

"It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it.......... Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations."

52. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

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(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same"

18.1 We, consequently, find that the interpretation proposed by us in no way suggests that any of the Explanations (III) breaches any of the substantive provisions of the said Act.

18.2 Applying the aforesaid principle to the facts of the present case, we find that Article 20(d) of Schedule-I of the said Act according to our above interpretation provides that (1). an amount equal to 1% of the aggregate amount comprising of the value of the market value of shares issued or allotted in exchange of or otherwise, or of the face value of such shares, whichever is higher and the amount of consideration, if any, paid for the amalgamation or the reconstruction, as the case may be, is to be determined by taking aid of the Explanations, and, (2). also an amount of 1% of the market value of immovable property of the transferor situated in the State of Gujarat is to be determined, and the higher amount between (1) and (2) above subject to maximum of Rs. 10 crore as it then stood is the amount of the Stamp duty payable. It appears that the authorities below by taking aid of the Explanation III held that on the appointed date viz. April 1, 2010, the value of the share was Rs. 50.05 and thus, the total market value of the shares was determined at Rs. 6,68,24,71,496/- and 1% stamp duty was decided to be recovered. The plea of face value of Rs.2/- per share was rightly rejected. The amount arrived at on the basis of clause (i) of Article 20(d) being higher than clause (ii), the former was rightly accepted.

[19] It appears that the aforesaid exercise was rightly undertaken by the authorities below and they have correctly relied upon the Explanation III[b] and thus, the order impugned is required to be affirmed.

[20] We, therefore, dispose of this Reference by answering the questions in the following manner:-

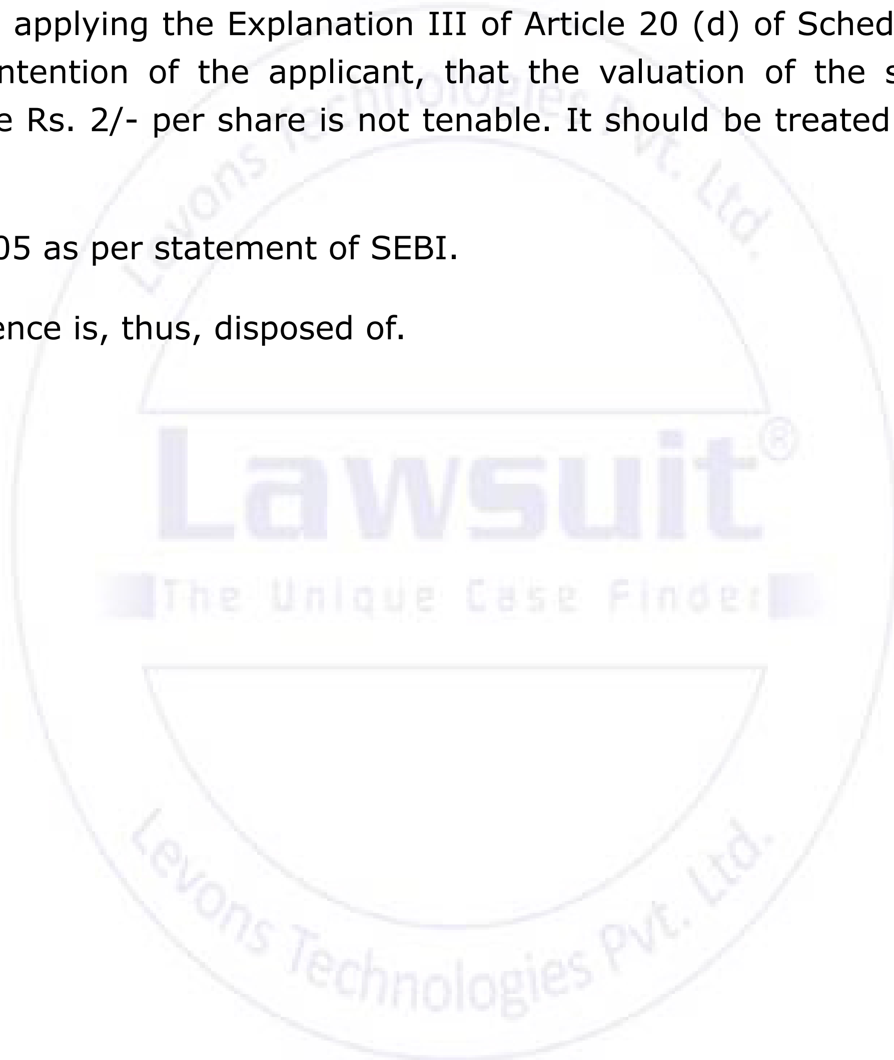
[A]. Demerger amounts to reconstruction as per Article 20 [d] of Schedule-I of the said Act.

[B]. YES. The applicant is required to pay for the change of ownership as per Section 2[g] and Article 20[d] of Schedule-I of the said Act as indicated by us above.

[C]. YES, by applying the Explanation III of Article 20 (d) of Schedule-I of the said Act. The contention of the applicant, that the valuation of the share should be treated to be Rs. 2/- per share is not tenable. It should be treated to be Rs. 50.05 per share.

[D]. Rs. 50.05 as per statement of SEBI.

[21] The Reference is, thus, disposed of.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