

**OFFICE OF THE DIVISIONAL COMMISSIONER: DELHI
GOVERNMENT OF THE NCT OF DELHI
5-SHAM NATH MARG: DELHI-110054**

F.10/Misc(Merger)/COS(HQ)/CD/153

DATE: 07/08/2014

ORDER

Present: Mr. Neeraj Bansal, Authorized Representative & Mr. Sandeep Grover, Advocate on behalf of Holcim (India) Private Limited.

By this order the objections raised by the party against the notice dated 20.3.2014 issued on account of non- payment of stamp duty on amalgamation scheme approved by the Hon'ble High Court of Delhi is disposed off.

The brief facts of the case are summarized as under:-

1. Based upon the routine scrutiny of information available on the MCA portal, it has come to notice that M/s. Holcim (India) Private Limited filed a form 21, vide SRNO. B26545426 dated for registration of the Hon'ble High Court of Delhi order to the Registrar of Companies, Delhi & Haryana for giving effect of Amalgamation & has not paid stamp duty on the instrument. Accordingly, a notice dated 20th March, 2014 was issued to the company to furnish details regarding scheme with supporting documents.
2. In response to the notice, the representative of the company appeared & furnished the documents as requisitioned.
3. As per documents, a petition under section 391 & 394 of the companies Act, 1956 was filed by company seeking sanction of the Hon'le High Court of Delhi for the scheme of amalgamation of M/s. Ambuja Cement Pvt. Ltd. (Transferor company) with M/s. Holcim (India) Pvt. Ltd. (Transferee company).
4. As per the scheme of arrangement, Hon'ble High Court of Delhi issued an order of merger dated 14 November, 2011 approving scheme of merger between Transferee Company and Transferor Company which was registered with the Registrar of Companies, NCT of Delhi & Haryana. Pursuant to the scheme of merger, Transferee Company issued 3,538,408,355 equity shares with the face value of Rs. 10 each (marked



value of Rs. 20.61) fully paid up to the equity shareholders of Transferor Company, in the ratio of 10,000,000:69,714,548 (for every 1 equity share held by the shareholders in the Transferor Company, 6.9714,548 equity shares of the Transferee Company is issued to the shareholders of the Transferor Company pursuant to the merger). The value of per equity share of the Transferee Company as on appointed date was Rs. 20.61927 which was considered by Hon'ble Court while sanctioning the aforesaid share exchange ratio. Pursuant to scheme of merger, shares held by Transferee Company in the Transferor Company were cancelled. Pursuant to scheme of merger, Transferee Company has issued 3,538,408,355 fully paid up equity shares of Rs. 10 each at a value of Rs. 20.61927 to the equity shareholders of Transferor Company as full and final consideration of the merger and vesting of merged Transferor Company into Transferee Company.

5. The company in the written submission filed before me, contended that:

- (i) Pursuant to scheme of merger, there is no transfer of moveable and immoveable assets from Transferor Company to Transferee Company, except shares held by Transferor Company in other companies have been transferred to Transferee Company. Hence, stamp duty is payable only on transfer of shares between Transferor and Transferee Company under Entry No. 62 of Schedule-I to the Indian Stamp Act, 1899 (Act) which is exempted under section 8A of Act as transfer of shares was took place in dematerialized mode.
- (ii) Pursuant to the scheme approved by the Hon'ble High Court of Delhi, no fixed assets, both movable and immovable, were transferred from ACIPL to the Company. Accordingly, the question of payment of stamp duty under the head of 'Conveyance' on the order passed by the Hon'ble Court of Delhi does not arise.
- (iii) Subsequent to furnishing documents in compliance of note, the representative of the Company vide its written submission took stand that Collector of Stamp has not justification to call for & summon record.



Reliance is placed on Ashok Kamal Capital Builders Vs. & Ars. (162) 2009 DLT 396.

6. Basis of Charging stamp Duty on Order of Merger are detailed as under:

- (i) As per the judgment of the Hon'ble Delhi High Court in Delhi Towers Limited Case that in the absence of any specific entry in the Stamp Schedule as applicable to Delhi, definition of Conveyance in the India Stamp Act covers the activity of amalgamation of two or more companies and therefore, same entry as applicable to Conveyance i.e. entry 23 of Schedule 1-A would be applicable to the order of amalgamation. The term conveyance has been defined in the Stamp Act as under "-

"Section 2 (10) – "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I."

Entry 23 of Schedule 1-A as applicable to Delhi provides that stamp duty on conveyance would be chargeable at the rate of 3% of the consideration amount set forth in the instrument. Therefore, the rate at which stamp duty to be charged on the amalgamation order passed in Delhi should be 3% in the absence of any specific Entry in this respect.

- (ii) **As per the Delhi Tower Judgment, in the case of amalgamation of companies, for the purpose of stamp duty, what is liable to stamp duty is the 'instrument' and not a transaction of purchase and sale which is struck at para 7.4 of the Delhi Tower Judgment.**

- (iii) The abovementioned judgment further provides that the amalgamation scheme sanctioned by the court and the order would be an 'instrument' within the meaning of section 2(i) of Indian Stamp Act. By the said instrument the properties are transferred from the transferor company



to the transferee company, the basis of which is the compromise or arrangement arrived at between the two companies (para 8.27 and 8.31 of the Delhi Tower Judgment).

7. (i) Finding on the contentions 1&2 raised by the Company as mentioned in para 5(i) & 5(ii) above.

The contention of the Transferee Company stating that only shares have been transferred pursuant to order of merger and intending to render the merger as merely transfer of shares between two entities is not correct and the reasons are as under:

1. Under merger, an undertaking/ Transferor Company is merged as a whole and what is transferred is a going concern and not assets and liabilities separately. accordingly, the shares individually are not transferred from the Transferor Company to the Transferee Company but the entire Transferor Company is transferred as a going concern.

2. The shares held by the Transferor Company as investment in other companies, is only an asset of the Transferor Company. Pursuant to this subject scheme of merger sanctioned, not only the assets of the Transferor Company are transferred but also the liabilities, claims, rights, pending litigations etc are all transferred and the consideration to be paid pursuant to the merger is determined not only considering the value the shares that the Transferor Company holds as investment in other companies but all the assets and liabilities and all other factors taken together.

3. It is settled law that in case of a merger what is chargeable to stamp duty is the merger order as an 'instrument' and not the assets and liabilities individually. The stamp duty on merger is payable on the shares issued to the shareholders of the Transferor Company or any other consideration, if paid.

4. If the Transferor Company had to transfer its investment into shares which are held in dematerialized form, it could have very well done



that by following the share transfer process as mentioned under the Companies Act, 1956 instead of following the entire scheme of merger but in the present case no such process was being followed for the transfer of shares.

5. Considering the view contended by the company in its written submission, stamp duty at the rate of 3% on merger would never be charged on the merger order as an 'instrument' and each and every asset needs to be adjudicated independently and then stamp duty needs to be calculated on each and every asset. This is against the legally accepted principle laid down in various judicial precedents.

7. (ii)

Findings on contention number 3 raised by the Company

As regard to contention number 3, it is trite law that the Revenue Authorities is competent to carry out reasonable enquiry within the parameter of law governing the subject. In the present case, in order to adjudicate the correct valuation of the stamp duty payables, the Collector of Stamp directed the applicant in his own interest to supply certain documents, which the applicant complied without raising any objection as it was also in his own interest to do so to facilitate the proper evaluation of duty. After having then so, the applicant is under estoppels from raising the objection.

8.1 So far the valuation on the instrument of the amalgamation scheme sanctioned by the court is concurred it is to determined by the stamp authority only on the basis of the price of the shares allotted to the shareholders of the transferor company or other consideration, if paid, but not by separately valuing the assets and the liabilities.

Thus, the calculation of stamp duty should typically be based on the shareholders of the transferor company and that valuation would be on the basis of share exchange ratio of shares and not by valuing the assets and liabilities separately. The basis and principle of



determination of applicable stamp duty is the valuation of share allotted and issued by the transferee company.

- 8.2 In the absence of any specific provision providing stamp duty on amalgamation/merger in the Stamp Act as applicable to Delhi and follow the ratio given in Delhi Tower Judgment and treat the Amalgamation Order as an "instrument of conveyance" for purpose of Entry 23 of Schedule 1-A as applicable to Delhi, then the value to be taken into account for purposes of computing the stamp duty should be the amount set forth in the instrument (i.e. the Amalgamation Order in the present case) as required under the said Article 23, and in my considered view that for the purpose of calculating the stamp duty to be paid on the amalgamation order should be instant merger, stamp duty is payable on consideration amount of Rs. 72,959,397,242 which has been given by Transferee Company to the shareholders of Transferor company by issuing 3,538,408,355 fully paid up equity shares of Rs. 10 each at market value of Rs.20.61927.

9. **I accordingly order that the stamp duty on the merger order is payable @3% on the total amount of Rs. 72,959,397,242/- which comes out to be Rs.2,188,781,917.26/-. The Transferee Company is therefore directed to pay the aforesaid stamp duty within 30 days of the date of order failing which the same shall be recovered as land revenue.**

10. I further hold that with respect to the stamp duty on the new 3,538,408,355 equity shares of the Transferee Company, the Company shall pay stamp duty as shown in accordance with the provisions of Entry 19 of Schedule 1-A as applicable in Delhi.


11. I further note that the effective date of merger order was 6th January, 2012 application for payment of stamp duty on the merger order was filed on 21st May, 2014 subsequent to Notice issued by this office dated 20 March, 2014. The Company is required to adjudicate or pay

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stamp duty within a period of 01 month, which it failed to do so. In view of that the company is liable for penalty under the provisions of the Indian Stamp Act. on account of delay of more than 2 years, I impose penalty of **Rs.69 Crore.**

12. The Company is directed to pay Stamp duty of Rs. **Rs.2,188,781,917.26/-** alongwith penalty to **Rs.69 Crore** within 30 days, falling which the same shall be recovered as arrear^d land revenue.


7/8/2014
(LALIT MOHAN)
COLLECTOR OF STAMPS (HQ)

