

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

F.10/Misc(Merger)/CD-(HQ)/CD/2279

DATE: 13/08/14

**ORDER**

Present: Mr. Pankaj Jain, Mr. D.R. Arya and Mr. S.K. Ajmani, Authorized Representatives on behalf of Action Construction Equipments Private Limited.

By this order the objection raised by the party against the notice 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. Action Construction Equipments Private Limited filed a form 21, vide SRNO. B41883422 dated 25 June, 2012 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, a notice dated 25 April, 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 & furnish 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'ble High Court of Delhi for the scheme of amalgamation of M/s. ACE Steelfab Pvt. Ltd. (Transferor company) with M/s. Action Construction Equipments Private Limited (Transferee company).



4. As per the scheme of arrangement, Hon'ble High Court of Delhi issued an order of merger dated 25 May, 2012 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 60,55,000 equity shares with the face value of Rs. 10 each (fair value of Rs. 40.39) fully paid up to the equity shareholders of Transferor Company, in the ratio of 24.22:1 (for every 1 equity share held by the shareholders in the Transferor Company, 24.22 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. 40.39 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, if any, must have been cancelled. Pursuant to scheme of merger, Transferee Company has issued 60,55,000, fully paid up equity shares of Rs. 10 each at fair value of Rs. 40.39 to the equity shareholders of Transferor Company as full and final consideration of the merger and vesting of merged Transferor Company into Transferee Company.

**Company, in its written submission dated 24 June, 2014 contended that:**

1. Stamp duty law applicable to NCT of Delhi does not prescribe specific manner of levy of stamp duty on scheme of merger approved by High Court u/s 394 of Companies Act, 1956("Act")
2. Judgement of Delhi Tower Limited cited by undersigned office as basis for charging stamp duty on merger order deals with specific issue of exemption from payment of stamp duty under the notification dated 25 December, 1937.





3. Stamp duty law applicable to NCT of Delhi does not prescribe specific method for valuation of consideration of merger.
4. Transferor Company was not holding any immovable property in NCT of Delhi.
5. There is no mechanism under the Stamp Law to calculate the stamp duty payable on merger order.

**Further representative Mr. Pankaj Jain in his oral submission, contended that:**

1. To determine consideration value for vesting Transferor Company into Transferee Company, the fair value of the Transferor Company must be valued at Rs. 11,11,38,754/- as whole, which is lowest one among the other values. Accordingly, stamp duty must be charged on consideration value of Rs. 11,11,38,754/- instead of Rs. 24,45,92,643.42/-

**Basis of Charging stamp Duty on Order of Merger:**

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 (30) – "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.

So far as the valuation of the scheme of amalgamation is concerned on the instrument of the amalgamation scheme sanctioned by the court, after due verification is to be 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.

**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.**

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).

The written contentions by the Company in its letter dated 24 June, 2014 have already been responded by undersigned office under the heading "basis of charge for stamp duty on merger order" as above.

**Finding on the oral contention 1 raised by the representative of Company**





The contention of the Transferee Company stating that stamp duty must be charged on consideration value of Rs. 11,11,38,754/- instead of Rs. 24,45,92,643.42/- is not correct and the reasons are as under:

1. The Hon'ble Delhi High Court approved the share exchange ratio of 24.22:1 (*means the Transferee Company shall issue 24.22 equity shares to the shareholders of Transferor Company for every 1 equity share held in Transferor Company as consideration for vesting Transferor Company into Transferee Company*) between the Transferor Company and Transferee on the basis of Valuation Report submitted with Court in which the aforesaid share exchange ratio was suggested.
2. The valuation report given by M/s Rahul Bansal & Company, Chartered Accountants valued the Transferor and Transferee Company with 3 different methods and recommended the share exchange ratio of 24.22:1 to High Court for vesting Transferor Company into Transferee Company. Further, said share exchange ratio was derived on the basis that Transferor Company was valued at Rs. 24,45,92,643.42/- and Transferee Company was valued at Rs. 375,19,76,909/- which is evident from at page number 16 of valuation report.
3. Since the Hon'ble Delhi High Court adopted the share exchange ratio 24.22:1 considering the value of Transferor Company as Rs. 24,45,92,643.42/- therefore stamp duty shall also be calculated @3% on 24,45,92,643.42/- which comes to Rs. 73,37,779.29/-
4. Oral contention of Mr. Pankaj Jain, to treat the consideration of merger as Rs. 11,11,38,754/- has no basis, in view aforesaid grounds.

### **Stamp duty**

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. 24,45,92,643.42 which has been given by Transferee Company to the shareholders of Transferor company by issuing 60,55,000 fully paid up equity shares at market value of Rs.40.39.

**I accordingly order that the stamp duty on the merger order is payable @3% on the total amount of Rs. 24,45,92,643.42 /- which comes out to be Rs. 73,37,779.29/-. The Transferee Company is therefore directed to pay the aforesaid stamp duty within 15 days of the date of order failing which the same shall be recovered as land revenue.**

I further hold that with respect to the stamp duty on the new 60,55,000 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.

I further note that the effective date of merger order was 25 June, 2012 and application for payment of stamp duty on the merger order was filed on 12 June, 2014 subsequent to Audit Notice issued by this office dated 25 April, 2014.

The Company is directed to pay Stamp duty of Rs. 73,37,779.29/- alongwith penalty to Rs. 40,000/- within 15 days, failing which the same shall be recovered as land revenue.

  
(LALIT MOHAN)



COLLECTOR OF STAMPS (HQ)