

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 7496 OF 2023

Schaeffler India Limited

...Petitioner

vs.

Chief Controlling Revenue Authority and Ors.

...Respondents

Mr. Nikhil Sakhardande a/w Mr. Dhaval Shethia, Ms. Nafisa Khandeparkar, Ms. Mrudula Dixit i/b AZB and Partners, for the Petitioner.

Mr. O. A. Chandurkar, a/w Ms. Tanu Bhatia, AGP for the Respondent Nos. 1, 2 and 5.

CORAM : SHARMILA U. DESHMUKH. J.

RESERVED ON : JANUARY 07, 2026

PRONOUNCED ON : JANUARY 20, 2026

JUDGMENT:

1. **Rule.** With consent, Rule made returnable forthwith and taken up for final disposal.

2. The present petition impugns the order dated 12.09.2022 and 25.03.2019 passed by the Respondent Nos. 1 and 2 assessing the stamp duty of Rs. 50,00,000/-. The instrument lodged for adjudication was the order of National Company Law Tribunal, Mumbai Bench (for short "**NCLT**") dated 8th October, 2018 sanctioning a composite scheme of amalgamation of INA Bearing India Private Limited (for short "**INA**

Bearing”) and LuK India Private Limited (for short “**LuK India**”) with the Petitioner Company under the provisions of Section 230 to 232 of the Companies Act, 2013.

3. Under the scheme of amalgamation, the entire business of LuK India and INA Bearings was to be transferred to the Petitioner as a ‘going concern’, in consideration whereof the Petitioner was to issue equity shares to the shareholders of INA Bearings and LuK India priced at INR 5,853 per share. As LuK India was based in Hosur, Tamil Nadu, it filed a Company Petition before NCLT, Chennai Bench seeking sanction of the scheme, which was sanctioned by NCLT, Chennai Bench vide order dated 13th June, 2018. The Petitioner and INA Bearings being located in Maharashtra filed similar Company Petition before NCLT, Mumbai Bench, which sanctioned the scheme vide order dated 8th October, 2018. The order of 8th October, 2018 of the NCLT, Mumbai bench directed lodging of the certified copy of the order alongwith the copy of the Scheme for adjudication.

4. In pursuance thereof, the Petitioner lodged the order dated 8th October, 2018 for adjudication on 27.11.2018 accompanied by an affidavit of the Company Secretary of the Petitioner setting out the necessary details in respect of the scheme sanctioned by National

Company Law Tribunal including the shares allotted and the share price along with all supporting documents. An interim order was passed on 19.01.2019 for payment of stamp duty of Rs. 50,00,000/- and the final order was issued on 25.03.2019 holding that the scheme consisting of two different transactions and stamp duty was to be paid separately. The order relied upon the stamp duty notification dated 6th May, 2002, which capped the maximum duty payable at Rs. 25,00,00,000/- and accordingly, the stamp duty was adjudicated at Rs. 50,00,00,000/- considering the instrument to comprise of two different transactions. Being aggrieved by the order, the Petitioner filed an appeal before the Respondent No. 1 under Section 53 (1A) of the Maharashtra Stamp Act, 1958 (for short "**Stamp Act, 1958**") and by the impugned order dated 25.03.2022 confirmed the Respondent No. 2 order dated 25.03.2019. Hence, the present petition.

5. Mr. Sakhardande, learned senior advocate appearing for the Petitioner would submit that the imposition of stamp duty of Rs. 50,00,00,000/- is contrary to Article 25 (da) of Schedule I of the Stamp Act, 1958 as the 2002 notification capped the maximum duty chargeable under the said Article at Rs. 25,00,00,000/-. He would submit that under Section 3 of the Stamp Act, 1958, stamp duty is payable on the instrument and not on the underlying transaction. He

submits that the instrument in the present case is the order of NCLT, Mumbai Bench and not the scheme of amalgamation. He submits that the authorities have erroneously applied Section 5 of the Stamp Act, 1958, which speaks of an instrument which comprises of several distinct matters or transaction. He submits that the order of NCLT, Mumbai Bench sanctioned one composite scheme of amalgamation which order is chargeable with stamp duty. He would submit that the scheme of the Stamp Act is based on chargeability on instrument and not on transactions, is drawing support from the decision of this Court in **Chief Controlling Revenue Authority, Pune And Anr. vs Reliance Industries Limited, Mumbai And Anr**¹. He submits that in identical facts, the Gujarat High Court in the case of **Ambuja Cement Limited vs Chief Controlling Revenue Authority**² has considered the issue as to whether the order of the High Court sanctioning a single composite scheme of arrangement is not a single indivisible instrument that is not comprising or relating to several distinct matters as contemplated by Section 5 of the Stamp Act, 1958 considering that the instrument would be the order of the High Court and not the scheme sanctioned by the order. He points out that the Gujarat High Court has held that treating the transaction as distinct transaction and demanding separate stamp duty is in conflict with true import and meaning of Section 5 of Stamp Act,

1 2016 SCC Online Bom 1428

2 C/SR/1/2020 decided on 10/02/2023 by Gujarat High Court

1958.

6. Learned AGP has taken this Court through the provisions of Section 5 of the Stamp Act, 1958 to contend that in the present case, there are two different entities which are merging into one entity which is evident from the order of NCLT, Mumbai. He submits that NCLT, Chennai sanctioned the scheme of amalgamation on 13.06.2018 and the second scheme was sanctioned by NCLT, Mumbai which was subject matter of adjudication. He submits that in the present case, the order of NCLT, Mumbai relies upon order of NCLT Chennai and the consideration of the Scheme is also for acquiring the assets of LuK which is a second transferor Company.

7. Mr. Sakhardande, in rejoinder would submit, on instructions, that the NCLT, Chennai order was lodged for adjudication in Chennai and the stamp duty has been accordingly paid in Chennai.

REASONS AND CONCLUSION :-

8. The core issue which arises for consideration is as regards the applicability of Section 5 of the Stamp Act, 1958 to an order of NCLT sanctioning the Scheme of Amalgamation under the statutory provisions of Section 230 to 232 of the Companies Act, 2013. There is

no dispute about the applicability of the notification of the year 2002 which capped the stamp duty at Rs 25,00,000/.

9. Section 3 of the Stamp Act, 1958 provides for instruments to be chargeable with the amount of duty indicated in Schedule I. Section 2(l) defines instrument to include every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. The provisions of Article 25 (da) of Schedule I of the Stamp Act, 1958 governs the stamp duty payable on the order of National Company Law Tribunal passed under Section 230 to 234 of the Companies Act, 2013 in respect of the amalgamation, merger, demerger, arrangement or reconstruction of companies. Article 25(da) refers to the order of NCLT in respect of amalgamation, mergers etc which is an indicator that the statutory provisions of Stamp Act, 1958 recognizes that it is the order of NCLT, which is chargeable with duty.

10. The proposed scheme was a composite scheme of amalgamation of two companies i.e. INA Bearings and LuK India with the Petitioner company. As NCLT, Mumbai had no jurisdiction over LuK India which was situated within the jurisdiction of NCLT, Chennai Bench, there were two applications filed seeking sanction: one with NCLT, Mumbai which had jurisdiction over INA Bearings and the Petitioner Company and the other

application was filed with NCLT, Chennai having jurisdiction over LuK India. The sanction was sought from NCLT, Mumbai and Chennai Bench to the same composite scheme. NCLT, Mumbai noted that similar application was filed with NCLT, Chennai in respect of LuK India which has been sanctioned on 13th June, 2018. NCLT, Mumbai Bench considered the arrangement proposed by the scheme and opined that the scheme of merger by absorption appears to be fair and reasonable. In clause (a) of paragraph 9 of order dated 8th October, 2018, NCLT, Mumbai directed that all assets and liabilities of the 1st Transferor Company i.e. INA Bearing shall be transferred to and become the liabilities and duties of the transferee company. In clause (c) of paragraph 9, NCLT, Mumbai ordered for issuance of shares in the transferee company to the share holders of INA Bearings and LuK India. The order of NCLT, Chennai Bench dated 13th June, 2018 notes that under the proposed scheme, the Petitioner Company is to issue and allot the shares to shareholders of LuK India, which was also noted in the order of NCLT, Mumbai Bench.

11. Learned AGP has pointed out the observations of NCLT Mumbai Bench as regards the consideration by way of shares to be issued to the share holders of INA India and LuK India in the order of NCLT, Mumbai to contend that by the order of NCLT Mumbai Bench, there has been

merger of two different companies into one company and hence the applicability of Section 5 of Stamp Act, 1958. Section 5 of Stamp Act, 1958 reads as under:

"5. Instruments relating to several distinct matters:- Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act."

12. The provisions of Section 5 of the Stamp Act, 1958 applies, where one instrument relates to several distinct matters of transactions which cannot be blended into one or cannot be conceived as merely parts of one aggregate. It applies where the instrument comprises of several distinct matters, though may be of same category and where Section 5 applies, each of the instruments dealing with each of the matter would be chargeable under the Stamp Act, 1958 by the aggregate amount of stamp duty in respect of all such instruments.

13. The composite scheme was considered by NCLT, Mumbai Bench for ascertaining whether the same was fair and reasonable. In that context, the consideration in respect of the share holders of the second transferer company i.e LuK India was noted. A similar exercise was carried out by NCLT, Chennai which also noted the consideration of issuance of shares to share holders of LuK India by the Petitioner Company. The whole exercise was carried out in order to ensure that

the scheme is fair and reasonable. The observations of NCLT, Mumbai as regards the consideration in respect of amalgamation of LuK India does not constitute a distinct transaction within the meaning of Section 5 of the Stamp Act, 1958. Mr. Sakhardande, on instructions, has submitted that the order of NCLT, Chennai Bench was lodged for adjudication in Chennai and the stamp duty has been paid on the said order.

14. The instrument on which stamp duty is chargeable is the order of NCLT, Mumbai Bench. In **Chief Controlling Revenue Authority, Pune And Anr. vs Reliance Industries Limited, Mumbai And Anr (supra)**, the issues referred to the Hon'ble Full Bench of this Court arose out of proceedings filed by the Respondent Company therein seeking remission/setback/deduction on the stamp duty paid on the order sanctioning scheme of amalgamation as the same scheme was sanctioned by the Bombay High Court and Gujarat High Court and stamp duty was accordingly paid on the order of Gujarat High Court. In that case there were two applications filed : one by the transferor Company in the Gujarat High Court and other by the transferee Company in Bombay High Court seeking sanction of the same scheme. One of the issues which was considered by the Hon'ble Full Bench was whether the scheme of arrangement between the parties which has been sanctioned by the Court is the instrument or the order of the Court

sanctioning the scheme is the instrument. The Hon'ble Full Bench held in paragraph 20 and 21 as under:

"20. The Order dated 7-6-2002 as stated earlier would be the instrument and that was executed in Mumbai i.e. in Maharashtra. As per Section 3 every instrument executed in State of Maharashtra is chargeable to duty. The Order dated 7-6-2002 whereby assets of respondent No 2 transferor company are transferred to the respondent No 1-Transferee company, is the instrument upon conjoint reading of section 2(g), (1) and 3 of the Bombay Stamp Act. As per the Scheme of the said Act, instrument is chargeable to duty and not the transaction and therefore even if the Scheme may be the same i.e. the transaction being the same, if the scheme is given effect by a document signed in State of Maharashtra it is chargeable to duty as per rates provided in Schedule I. As per the Scheme of the Act, the taxable event is the execution of the instrument and not the transactions. If a transaction is not supported by execution of an instrument, there can not be a liability to pay duty. Therefore essentially the duty is leviable on the instrument and not the transactions. Although the Scheme may be same, the order dated 7-6-2002 being the conveyance and it being an instrument signed in State of Maharashtra, the same is chargeable to duty as far as State of Maharashtra is concerned.

21. Although the two orders of two different high Courts are pertaining to the same scheme they are independently different instruments and can not be said to be same document especially when the two orders of different high Courts are upon two different petitions by two different companies. When the scheme of the said Act is based on chargeability on the instrument and not on the transaction, it is immaterial whether it is pertaining to one and the same transaction. The duty is attracted on the instrument and not on transaction."

15. The Hon'ble Full Bench also held that the provisions of Section 19 of the Stamp Act, 1958 governing the amount of stamp duty payable on instruments executed out of State and subsequently received in State providing for deduction of the stamp duty already paid would have no applicability.

16. ***In Ambuja Cements Limited vs Chief Controlling Revenue Authority*** (supra), the Gujarat High Court was considering stamp references made by the Chief Controlling Revenue Authority of Gujarat State in respect of stamp duty payable on scheme of amalgamation. One of questions considered was as under:

"46. Assuming that an order of the High Court under Section 232 of Companies Act, 1956 sanctioning a single composite scheme of arrangement, albeit between multiple companies, is an instrument comprising or relating to several distinct matters or distinct transactions, whether as per Article 20(d) of Schedule I to the Stamp Duty Act, stamp duty chargeable on such an order would not be calculated on the aggregate of amount pertaining to each of such distinct matters and is subjected to a maximum cap of Rs 25 Crores?"

17. The Hon'ble Full Bench considered the various provisions including Section 5 of the Stamp Act. It noted the decision of the Hon'ble Apex Court in ***The Member, Board of Revenue vs Arthus Paul Benthall***³, where the Hon'ble Apex Court had held that if a number of persons join in executing one instrument, and there is community of interest between them in the subject matter comprised therein, it will be chargeable with a single duty. It held in paragraph 112 as under:

"112. As such treating the said transaction as distinct transaction and thereby demand separate stamp duty appears to be in conflict with the true import and meaning of Section 5 of the Stamp Act. A conjoint reading of the principals enunciated in the afore-mentioned cases by the Hon'ble Apex Court, we are of the opinion that neither the scheme of amalgamation or reconstruction sanction by Company Court in exercise of the powers vested under Section 394 of the Companies Act, 1956 or Section 232 (2013 Act) can be brought within the sweep of Section 5. if such

3 AIR 1956 SC 35

interpretation were to be accepted, it would run counter to the literal meaning of fiscal statute and as such reference will have to be answered against the Revenue and in favour of the Subject."

18. This Court is in agreement with the decision of the Gujarat High Court as regards the non applicability of Section 5 of the Stamp Act, 1958 to the order of sanction to the scheme of amalgamation.

19. Article 25(da) of Schedule I of the Stamp Act, 1958 assesses the stamp duty payable on the order of sanction of scheme of amalgamation on the basis of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such amalgamation subject to cap of an amount equal to 5% of the true market value of the immoveable property located within the State of Maharashtra of the transferor company or an amount equal to 0.7% of the aggregate of market value of share issued or allotted in exchange or otherwise and the amount of consideration paid, for such amalgamation, whichever is higher. In the present case, the consideration are the shares which are allotted by the Petitioner Company to the share holders of the transferor companies.

20. If the reasoning of the impugned order, that there are two different companies merging with another company and stamp duty is

leviable on the second merging company i.e LuK India is accepted, it would amount to the scheme of amalgamation being assessed to stamp duty and not the order of sanction of NCLT, Mumbai Bench which is the instrument chargeable to stamp duty. For assessing the stamp duty *qua* LuK India, the market value of the shares issued to the share holders of LuK India will have to be considered and consequently, it would be the transaction which would be assessed for purpose of stamp duty, which has been negated by the Hon'ble Full Bench in **Reliance Industries Limited (supra)**. There is yet another reason why the adjudicating authorities in Maharashtra cannot assess the stamp duty leviable on the merging of LuK India with the Petitioner as necessary stamp duty on the sanction order of NCLT, Chennai Bench has already been paid. It would then be open for Petitioner to seek recourse to Section 19 of the Stamp Act, 1958 and claim remission/ setback/ deduction on the stamp duty already paid in Chennai, a course specifically negated by the Hon'ble Full Bench in **Reliance Industries Limited (supra)**.

21. The impugned order assessing the stamp duty on the transactions of merger with INA Bearings and LuK India by considering the two transactions as separate and distinct transactions is clearly erroneous in view of the settled legal position. The impugned order seeks to levy the

stamp duty on the transaction by segregating the transactions into two different transactions : one of amalgamation of INA Bearings with Petitioner and other of LuK India with the Petitioner. As held by the Hon'ble Gujarat High Court in ***Ambuja Cements Limited (supra)***, such reconstruction cannot be *inter se* segregated. That apart, it has been submitted before this Court that stamp duty has been paid on the order of NCLT, Chennai. Thus, the finding in the impugned order that stamp duty would not be levied on the other merging company is unsustainable.

22. In light of the above, the impugned order dated 25.03.2019 and 12.09.2022 are hereby quashed and set aside. The Petitioners are liable to pay stamp duty on the instrument being the order of National Company Law Tribunal, Mumbai dated 8th October, 2018 under the provisions of Article 25 (da) of the Stamp Act, 1958 with the cap of Rs. 25,00,00,000/-. As the amount has already been paid under protest by the Petitioner, the Respondent Nos. 1 and 2 to refund the excess stamp duty of Rs. 25,00,00,000/- within a period of 8 weeks from the date of uploading of this order on the website. In the event, the amount is not refunded within the period of 8 weeks, the same to carry interest at the rate of 6% per annum till payment of realization.

23. The Petition is allowed in the above terms. Rule is made absolute.

(SHARMILA U. DESHMUKH, J.)