

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7496 OF 2023

Schaeffler India Ltd.]
(Formerly FAG Bearings India Ltd.)]
A company incorporated under the]
Companies Act, 1956, having its Registered]
office at 15th Floor, ASTP Amar Sadanand]
Tech Park Plot No.3, Baner, Pune-411045.] **...Petitioner**

Versus

- 1) Chief Controlling Revenue Authority,]
Pune, Maharashtra, having his office at]
the office of the Inspector General of]
Registration & Controller of Stamps,]
Pune, New Administration Building,]
Ground Floor, Opp. Council Hall, Pune-]
411 001]
- 2) Collector of Stamps (Enforcement-I)]
Mumbai, having his office at General]
Stamp Office, Ground floor, Old Custom]
House, Shahid Bhagat Singh Road, Fort,]
Mumbai 400 001]
- 3) State of Maharashtra]
through the]
Additional Government Pleader (A.S.)]
High Court, Bombay, having office at]
PWD Building, Ground floor,]
Dr. Kane Marg, Mumbai 400 032] **...Respondents**

Mr. Nikhil Sakhardande a/w Mr. Dhaval Shethia, Ms. Nafisa Khandeparkar, Ms. Mrudula Dixit i/b AZB & Partners, for the Petitioner.
Mr. O. A. Chandurkar, Addl GP a/w Ms. Tanu Bhatia, AGP, for the State.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : JANUARY 30th, 2026
PRONOUNCED ON : FEBRUARY 18th, 2026

JUDGMENT:

1. **Rule.** With consent, Rule made returnable forthwith and taken up for final disposal.
2. Vide judgment dated 20th January, 2026, this Court had allowed the Petition setting aside the impugned order dated 25th March, 2019 and 12th September, 2022. Subsequently, an Interim Application was moved seeking expunging of paragraphs 7, 13, 20, and 21 of the judgment dated 20th January, 2026. The paragraphs sought to be expunged recorded the submissions of Mr. Sakhardande, learned senior advocate for the Petitioner that the National Company Law Tribunal, Chennai (for short '**NLCT, Chennai**') order was lodged for adjudication in Chennai and stamp duty has been accordingly paid in Chennai and the findings of this Court on the said submissions.
3. This Court in earlier round of litigation had supported its findings by taking into consideration that the adjudicating authorities in Maharashtra cannot assess the stamp duty leviable on the NCLT, Chennai order as necessary stamp duty on the sanctioned order of NCLT Chennai Bench had already been paid. Though Mr. Sakhardande would submit that the said paragraphs are severable from the rest of the judgment, after hearing Mr. Sakhardande and learned AGP, this Court thought it fit to recall the order of 20th January, 2026 and hear the matter afresh. Accordingly, the order of 20th January, 2026 was recalled

and matter was heard afresh.

FACTUAL MATRIX:

4. Briefly stated the facts of the case are that by the impugned orders dated 12th September, 2022 and 25th March, 2019, the Respondent Nos 1 and 2 had assessed the stamp duty of Rs. 50,00,000/- on the instrument lodged for adjudication, which was the order of National Company Law Tribunal, Mumbai Bench (for short "**NCLT, Mumbai**") dated 8th October, 2018 sanctioning a composite scheme of amalgamation of INA Bearings 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.

5. The scheme of amalgamation proposed the transfer of entire business of LuK India and INA Bearings 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, Company Petition came to be filed before NCLT, Chennai Bench, which had the jurisdiction to sanction the scheme qua LuK India. NCLT, Chennai Bench sanctioned the scheme 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.

6. In pursuance thereof, the Petitioner lodged the order of sanction dated 8th October, 2018 for adjudication on 27th November, 2018 accompanied by an affidavit of the Company Secretary of the Petitioner setting out the necessary details of the sanctioned scheme, including the shares allotted and the share price along with all supporting documents. An interim order was passed on 19th January, 2019 for payment of stamp duty of Rs. 50,00,000/- and the final order was passed on 25th March, 2019 holding that the scheme consists 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 the impugned order dated 25th March, 2022 confirmed the Respondent No. 2's order dated 25th March, 2019. Hence, the present petition.

SUBMISSIONS:

7. Mr. Sakhardande would submit that Section 3 of the Stamp Act, 1958 contemplates payment of stamp duty on instrument and not the underlying transaction, which instrument in the present case is the order of NCLT Mumbai and not the scheme of amalgamation. He submits that the order of NCLT, Mumbai sanctioned one composite scheme of amalgamation and while doing so observed about the consideration payable to the share holders of both the transferor companies. He submits that the assessment of stamp duty on two underlying transactions of amalgamation would amount to the scheme of amalgamation being charged with stamp duty and not the instrument.

8. He submits that the issue is no longer *res integra* and stands decided in **Chief Controlling Revenue Authority, Pune And Another vs Reliance Industries Limited, Mumbai And Another**¹. He submits that the decision holds that the scheme of Stamp Act, 1958 is based on chargeability of instrument and not on transactions and it is immaterial whether it is pertaining to one and same transaction. He submits that applying the principle of law laid down in the said decision to the present case, it is immaterial whether the order of NCLT, Mumbai pertains to one transaction or different transactions, even accepting without prejudice, the contention that NCLT, Mumbai while passing the order has considered the consideration payable to the second

1 2016 SCC Onl Bom 1428

transferor company LuK India Private Limited (for short "**LuK India**"). He submits that the decision of the Gujarat High Court in the case of **Ambuja Cement Limited vs Chief Controlling Revenue Authority**² covers the issue in hand and even if the same is not binding has persuasive value. He submits that the Gujarat High Court in a detailed decision has held that treating the transaction as a distinct transaction and demanding separate stamp duty is in conflict with the true import and meaning of Section 5 of Stamp Act, 1958. He submits that in the present case, it is a precise application of Section 5 of the Stamp Act, 1958 which has led to the stamp duty being levied on the underlying transactions as two distinct transactions ignoring settled principle of law that it is the instrument which is chargeable.

9. *Per contra*, learned AGP has drawn attention of this Court to Section 5 of the Stamp Act, 1958 as well as order of NCLT, Mumbai to contend that NCLT, Mumbai had considered the composite scheme which included the amalgamation of INA Bearing with the Petitioner company as well as the amalgamation of LuK India with the Petitioner company, and therefore, the same constituted two different transactions. He submits that having accepted that the order of NCLT, Chennai was not lodged for adjudication at Chennai, and no stamp duty has been paid in Chennai, the impugned order rightly holds that there is no payment of stamp duty on the merging of second transferor

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

company. He has taken this Court through the provisions of Section 2(g) (iv) of the Stamp Act, 1958 to contend that by reason of order of NCLT Mumbai, the order of NCLT, Chennai has been brought in Maharashtra State and order of sanction by NCLT, Mumbai is based on order of NCLT, Chennai.

10. Upon query by this Court as to whether in such event, if the stamp duty would have been paid on the order of NCLT, Chennai, the Petitioner herein would be entitled to rebate under Section 19 of Stamp Act, 1958, learned AGP submits that Section 19 would apply and the Petitioners would be entitled for rebate. He submits that the Petitioner's registered office is in Maharashtra and as the implementation of the scheme is in Maharashtra, it would give jurisdiction to the Maharashtra stamp authorities to levy stamp duty on NCLT, Chennai order.

11. In rejoinder, Mr. Sakhardande would submit that Section 232 of the Companies Act, 2013 permits amalgamation of multiple companies and Mumbai authorities would not have jurisdiction to assess stamp duty on NCLT, Chennai order.

REASONS AND ANALYSIS:

12. The core issue which arises for consideration is as regards applicability of Section 5 of the Stamp Act, 1958 to the order of NCLT sanctioning the scheme of amalgamation under the statutory provisions of Section 230 to 232 of the Companies Act, 2013. Section 232 of the

Companies Act, 2013 governs the merger and amalgamation of company and permits compromise or arrangement which would involve merger or amalgamation of any two or more companies.

13. Section 2(g)(iv) of Stamp Act, 1958 provides that the order of NCLT passed under Section 230 to 234 of the Companies Act, 2013 is conveyance by which property is transferred. Section 3 of the Stamp Act, 1958 specifies the instruments 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. 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) makes a mention of order of NCLT in respect of amalgamation, mergers etc. Conjoint reading of Section 2(g)(iv) with Article 25(da) gives a clear indication that the statutory provisions of Stamp Act, 1958 recognizes that it is the order of NCLT, which is chargeable with duty.

14. The Respondent No. 1 has observed that the assessment has been done by the Respondent No 2 by considering that in present case, two different transferor companies had filed petition before NCLT, Mumbai, however the Tribunal in both the Petitions has passed common order

and as there is amalgamation of the Petitioner with two transferor companies, the same constitutes separate and distinct transactions under Section 5 of Stamp Act, 1958, which was correct application. It holds that even if the order of NCLT, Mumbai is one order, by the scheme of amalgamation, two different companies are amalgamated with the Petitioner Company and even if for technical reasons or to restrict the arguments one order is passed, the assessment is required to be done by applying Section 5 of the Stamp Act, 1958.

15. The impugned order is flawed as there is factual error in as much as it proceeds on the basis that there were two company petitions filed by NCLT, Mumbai and common order was passed in separate company petitions for technical reason and for restricting arguments. It erroneously holds that as per the scheme of amalgamation there are two different transferor companies amalgamating with the Petitioner company and constitutes two different transactions. The impugned order is also legally unsustainable as it assesses the stamp duty payable on the underlying transaction and not the order of NCLT, Mumbai which is the instrument to be assessed for purpose of stamp duty.

16. 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

petitions 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 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.

17. Learned AGP would support the impugned order by contending that the NCLT, Chennai order has been brought in Mumbai by reason of the observations in NCLT, Mumbai order as regards the consideration

and transfer of shares to shareholders of LuK India. The impugned order does not record any such finding which proceeds on an erroneous basis that two petitions were filed in NCLT, Mumbai and common order was passed. What is lodged for adjudication is the NCLT, Mumbai order and it is the order of sanction of NCLT, Mumbai which constitutes the instrument for purpose of assessment of stamp duty. It is the NCLT, Mumbai order which originated in Mumbai and was lodged for adjudication.

18. In **Chief Controlling Revenue Authority, Pune And Another vs Reliance Industries Limited, Mumbai And Another (supra)**, the Hon'ble Full Bench was considering a similar situation where by order of Gujarat High Court and Bombay High Court, the same scheme of amalgamation came to be sanctioned. The order from both the High Courts as one of the companies was situated within the jurisdiction of Gujarat State, stamp duty was paid in the State of Gujarat on the order passed by the High Court of Gujarat and the order of Bombay High Court was lodged for adjudication. Considering that the sum of Rs. 10,00,00,000/- was already paid in the State of Gujarat on the order passed by Gujarat High Court, the Company sought remission/deduction/set off in the payment of stamp duty to the extent of Rs. 10,00,00,000/- which came to be rejected. Before the Hon'ble full bench one of the issues which was referred was as under :

"(4) Whether for the purpose of section 19 of the Act the scheme/compromise/arrangement between the two Companies must be constructed as document executed outside the state on which the stamp duty is legally levied, demanded and paid in another State?"

19. The Hon'ble full bench held in paragraph 21 and 31 as under :

"21. Although the two orders of two different high Courts are pertaining to 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 instrument and not on transactions, it is immaterial whether it is pertaining to one and the same transaction. The duty is attracted on the instrument and not on transaction.

31. Therefore the contentions of the respondents that the Scheme of Amalgamation would be an instrument within the meaning of Section 2(l) of this aid Act is not legally sustainable. The Scheme of Amalgamation by itself cannot and does not result in transferring the property. It is the order of the Court that sanctions such a Scheme of Amalgamation results in transferring the property and it is therefore this Order alone would be an 'instrument' as defined by the said Act on which stamp duty is chargeable. Therefore the contentions of the respondents that the parties were liable to pay stamp duty on the sanctioned Scheme read with the two Orders is not correct and cannot be accepted."

20. The Hon'ble Full Bench was considering an identical fact situation as the rebate was sought on the ground that the order of Gujarat High Court is to be construed as instrument brought in this State. The Hon'ble High Court negated the contention and held that even if there are two orders pertaining to the same scheme, in essence, the orders are independent different instruments and cannot be said to be same document when the two orders are based on two different petitions by two different companies. It held that it is immaterial whether it is

pertaining to one and same transaction as the duty is attracted on the instrument and not the transaction. In effect, it was held that it is not permissible to look into the underlying transaction for assessing the stamp duty.

21. The issue no. 4 was answered as under:

“Basically a scheme/comprises/arrangement between two companies is never a document chargeable to stamp duty whether such document is executed in the state or outside the state of Maharashtra. Moreover, in view of the conclusions above Section 19 of the Stamp Act, 1958 in any event, has no application whatsoever.”

22. The said decision is sufficient answer to the contention raised by learned AGP. The impugned order by applying Section 5 of Stamp Act, 1958 seeks to assess the underlying transaction which is impermissible as it is the order of NCLT, Mumbai which constitutes the instrument. Applying the enunciation of law by Hon’ble Full Bench, it is immaterial whether the scheme of amalgamation pertains to amalgamation of one company or of two companies in one company. It is the order of sanction of scheme which constitutes conveyance. Further, the consequence of accepting the contention that order of NCLT, Chennai is instrument executed outside the State and brought within the State would result in applying Section 19 of Stamp Act, 1958, a course specifically negated by the Hon’ble Full Bench.

23. 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. The application of Section 5 requires going into the underlying transaction which cannot be done in respect of order of sanction of scheme.

24. 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 transferrer 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 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 or amounts to bringing the order of NCLT, Chennai in this State.

25. **In Ambuja Cements Limited vs Chief Controlling Revenue Authority (supra)**, the Gujarat High Court was considering the 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?”

26. 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 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.”

3 AIR 1956 SC 35

27. 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.

28. Even accepting that the order of sanction of scheme of NCLT Chennai bench has not been lodged for adjudication in Chennai and there is no payment of stamp duty, the stamp authorities in Mumbai would not have the jurisdiction to assess the stamp duty on the NCLT, Chennai order as it is not an order which is originating in Maharashtra. The provisions of Section 19 envisages an instrument executed outside State in respect of the property in the State and subsequently received in the State of Maharashtra. As the order of the NCLT, Chennai bench has not been received in Maharashtra, the mere reference to the same in the NCLT Mumbai order would not amount to that instrument of NCLT Chennai being brought in the State of Maharashtra. Whether the duty has been paid on the NCLT Chennai order is an issue to be considered by the concerned authorities in Chennai and the same is immaterial for the purpose of assessing the stamp duty on the order of NCLT, Mumbai bench.

29. 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 vs Chief Controlling Revenue Authority (supra)**, such reconstruction cannot be *inter se* segregated.

30. In light of the above, the impugned orders dated 25th March, 2019 and 12th September, 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%p.a. till payment of realization.

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

32. In view of the same, nothing survives for consideration in the Interim Application. The Interim Applications stands disposed of.

(SHARMILA U. DESHMUKH, J.)