

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 24.07.2012

+ **LPA 853/2011**

COLLECTOR OF STAMPS

... Appellant

versus

SE INVESTMENT LTD & ORS

... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Najmi Waziri with Ms Neha Kapoor Khanna

For the Respondent No.1 : Mr P. Nagesh

For the Respondent Nos.2&3 : Ms Maneesha Dhir with Ms Mithu Jain and
Ms Priya Singh

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 19156/2011(condonation of delay in filing the appeal)

The delay is condoned.

The application stands disposed of.

LPA 853/2011

1. This appeal is directed against the judgment dated 21.04.2011 delivered by a learned Single Judge of this Court in WP(C) 2393/2010. The only question that arises for consideration in this appeal is whether the learned Single Judge was right in holding that the Government of National Capital Territory of Delhi

cannot collect stamp duty on the increased authorized share capital under the Indian Stamp (Delhi Amendment) Act, 2007 (hereinafter referred to as 'the said Act'), in view of the fact that there is no specific entry in Schedule IA enabling the Collector of Stamps to collect stamp duty on the increase in the authorized share capital of a company.

2. The facts are as set out in the impugned judgment in paragraphs 2 and 3 thereof:-

“2. The Petitioner, a public limited company, was incorporated on 5th March 1992 with an authorized share capital comprising of ten thousand equity shares of Rs. 100/- each and ten thousand redeemable non-cumulative preferential shares of Rs. 100/- each. On 29th December 2008 the Petitioner increased its authorized share capital from Rs. 3.50 crores to Rs. 6 crores. Subsequently, by an order dated 9th October 2009 passed by this Court the authorized share capital was increased from Rs. 6 crores to Rs. 8.50 crores. The Petitioner paid stamp duty on the increase in the authorized share capital. On 15th January 2010, the Petitioner further increased its authorized share capital from Rs. 8.50 crores to Rs. 125 crores and filed e-Form-5 on 27th January 2010. On 13th March 2010 the Petitioner submitted an application to ROC for determination of stamp duty on the increase in authorized share capital. In particular Respondent No. 4 was requested to clarify whether as per Article 10 of the Schedule IA of the Indian Stamp (Delhi Amendment) Act, 2007 any additional stamp duty on increase in the authorized capital was payable. It is stated that on or about 17th March 2010 the ROC informed the Petitioner that in terms of Regulation 17 of the Companies Regulations 1956, the Form 5 dated 27th January 2010 filed by the Petitioner had been examined and kept pending on the ground that the company had not paid the stamp

duty on the Form 5 with reference to the increased authorized capital. The Petitioner was directed to file complete Form 67 in all respects by 15th April 2010. The Petitioner paid a sum of Rs. 58,25,000/- to the ROC as fees. The Petitioner was directed to pay the stamp duty on increase in the authorized share capital by 15th April 2010 failing which the e-Form 5 would be treated as invalid and would not be taken on record in terms of Regulation 17 of the Companies Regulations 1956. The Petitioner then wrote to the ROC on 4th March 2010 stating that there is no provision in the Delhi Stamp Act to pay the stamp duty on increase in the authorized share capital. However, the ROC insisted by e-mail dated 15th April 2010 that the Petitioner should file Form-67 in all respects and clarified that if the stamp duty is not paid by the Petitioner, the amount of Rs. 58,25,000/- deposited with the ROC will stand forfeited.

3. During the pendency of the writ petition an order dated 11th August 2010 was passed by Respondent No. 4, the operative portion of which reads as under:

“As per document submitted by the company it has been observed that the Authorized share capital of the company has been increased from 8.50 crores to Rs. 125 crores in the meeting of the Board of Directors held on 22nd December 2009. As per Article 10 (a) and (b) of Schedule IA of the Indian Stamp Act, 1899, stamp duty chargeable on the authorized capital of the company is 0.15% of the authorized share capital with a monetary ceiling of Rs. 25 lakhs. Thus, the stamp duty chargeable on the authorized share capital of Rs. 125 crore comes to Rs. 18,75,000/-. In case you have already paid the stamp duty on authorized share capital of Rs. 8.50 crore i.e. Rs.1,27,500/-, you are required to deposit the balance amount of stamp duty in the office of the Registrar of Companies as usual.”

3. Article 10 of Schedule IA to the said Act reads as under:-

10.	<u>ARTICLES OF ASSOCIATION OF A COMPANY:-</u>	
	(a) When the authorized capital of the company does not exceed one lac	0.15% of the Authorized share capital with a monetary ceiling of ₹ 25 Lakhs.
	(b) In other cases	

On a plain reading of the said Article, it does appear to us that there is some deficiency in the way it is worded. This is so because there are two situations provided in the said Article 10. The first being ‘when the authorized share capital of the company does not exceed ₹ 1 lac’ and the second being ‘in other cases’. The latter refers to those cases where the authorized share capital of the company exceeds ₹ 1 lac. The stamp duty payable on the Articles of Association of a company in the first case has been shown as 0.15% of the authorized share capital with a monetary ceiling of ₹ 25 lacs. In the second case, that is, in other cases, the column is blank. However, it presumably applies to both the cases, that is, when the authorized share capital of the company does not exceed ₹ 1 lac as also in other cases. Read in that way, the said Article would be given a purposive meaning and that is how the said Article or a provision of the said statute ought to be read. Consequently, we take it to mean that whatever be the authorized share capital of the company, the stamp duty payable on the Articles

of Association of a company would be 0.15% of the authorized share capital, subject to a monetary ceiling of ₹ 25 lacs.

4. In this case, we find that initially when the Articles of Association of the company in question were registered with the Registrar of Companies, the authorized share capital was ₹ 10 lacs in 1992 and the appropriate stamp duty of ₹ 1500/- was paid thereon, which was computed on the basis of 0.15% of the authorized share capital. Subsequently, from time to time, there has been increase in the authorized share capital of the company. It is only on the last occasion when the authorized share capital of the company was increased from ₹ 8.5 crores to ₹ 125 crores that the issue with regard to Form 5 referred to above arose.

5. We find that the learned Single Judge has correctly appreciated the factual position as also the law on the subject. He concluded that there was no provision for charging stamp duty on the increase in the authorized share capital. He further concluded that the statute authorizing the levy of stamp duty is in the nature of a fiscal statute inasmuch as it provides for involuntary exaction of money and this cannot be done except by the authority of law as provided in Article 265 of the Constitution. The learned Single Judge further observed that the provisions of a fiscal statute admit of strict construction and in the absence of

an express provision in the Act permitting levy of stamp duty on the increase in the authorized share capital, it would not be possible to legally sustain the impugned demand on the increase in the authorized share capital of a company. It was also pointed out that the legislatures in Rajasthan and Madhya Pradesh and a few other States, being aware of the fact that a specific statutory provision would be necessary to impose stamp duty on the increase in the authorized share capital, have accordingly amended the said Schedule IA of the Act and have provided for levy of stamp duty on the increase in the authorized share capital.

6. In fact, when we closely examine the said Form No.5, we find that the Form itself at the end specifically mentions that the provision of Stamp Act is applicable for original share capital and not for increase in the authorized capital. Furthermore, wherever stamp duty is intended to be charged, like in the States of Bihar, Andhra Pradesh, Madhya Pradesh, separate Articles have been incorporated in the Stamp Acts of their respective States to make provision for the same.

7. Unfortunately, insofar as Delhi is concerned, such an Article is absent which would authorize imposition of stamp duty on increase in the authorized share capital. If the Government of NCT of Delhi wishes to impose stamp duty

on the increase in the authorized share capital, it has to do so by amending Schedule IA and by introducing a specific Article in that regard.

8. In view of the foregoing, we see no reason to interfere with the well reasoned conclusion in the impugned judgment. The appeal is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 24, 2012
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