IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.521 OF 2011

Jik Industries Ltd. ... Petitioners
v/s
Union of India and others ... Respondents

Mr S.S. Patwardhan with Ms Jayashri Jani i/b Mr Sudhakar Lakhani for Petitioners.
Mr Anil Singh, ASG with Mr J.S. Saluja and Mr M.S. Bhardwaj for Respondent Nos.1 and 2.
Mr D.A. Nalawade, GP for Respondent No.3.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

DATE : 28TH SEPTEMBER 2015

***P.C.*:-**

1. The two prayers in this Petition are that this Court should issue writ of mandamus or any other writ, order or direction in the nature of mandamus and after calling upon the records and proceedings of the Form No.2, Form No.5, Form No.61 and Form No.65 filed by the Petitioners before the Respondent No.2 under the control of Respondent No.1. It should direct the Respondents to

permit the increase in authorised share capital of the Petitioner Company as per the orders passed by BIFR dated 5th March 2007 and 26th August 2008 without the payment of the requisite fees. The other prayer is to set aside the communication which is an e-mail dated 24th April 2011.

2. As far as second prayer is concerned, it relates to Respondent No.3 – State of Maharashtra, through the Principal Secretary, Revenue Ministry, Mantralaya, Mumbai 400 020.

3. The Respondent Nos.1 and 2 are exercising powers under the Indian Companies Act 1956 as amended from time to time whereas the Respondent No.3 exercises powers under the Maharashtra Stamp Act 1958 and particularly section 9 thereof.

4. The two prayers in the Petition concern two different authorities. As far as the Registrar of Companies and the Ministry of Corporate Affairs, Government of India is concerned, there is certain concession or waiver claimed and of registration fees.

5. As far as that issue is concerned, Mr Anil Singh, learned Additional Solicitor General appearing on behalf of the Respondent Nos.1 and 2 states that in pursuance of the proceedings before the BIFR certain orders are to be passed. The Respondent Nos.2 and 2 would take a decision within a period of three months from today and communicate the same to the Petitioners. The decision will be taken after due consideration of all materials relevant to the issue including the statements and averments made in this Writ Petition and the Annexures thereto pertaining to Respondent Nos.1 and 2. We accept the statements made by the learned Additional Solicitor General appearing for Respondent Nos.1 and 2 and direct that within a period of three months from today, the requisite decision be taken and duly communicated to the Petitioners.

6. As far as the State of Maharashtra is concerned, our attention is invited to the Maharashtra Stamp Act 1958. Our attention is also invited to the Schedule I thereto wherein there is a description of the instrument and the proper stamp duty payable. In

that regard, we have been shown article 10 of the schedule which reads as under :-

Description of Instrument	Proper Stamp Duty
10. Articles of Association of a Company - (where the Company has no share capital) or nominal share capital or increased share capital	(0.2 per cent on share capital or increased share capital) as the case may be) (subject to a maximum of Rs.50,00,000/-)

7. Mr Patwardhan, learned counsel appearing for the Petitioners submits that this is possibly the instrument which the State has in contemplation and in mind and which attracts stamp duty at 0.2% on share capital or increased share capital as the case may be subject to a maximum of Rs.50,00,000/-.

8. Our attention is invited to section 9 of the Maharashtra Stamp Act 1958 and which reads thus :-

> "9. Power to reduce, remit or compound duties :-
> The State Government, (if satisfied that it is necessary to do so in the public interest) may, by rule or order published in the Official Gazette -
>
> (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the State the duties with which any instruments or any particular class of instruments or any of the instruments belonging to such class, or any instruments when executed by or in

> favour of any particular class of person, or by or in favour of any members of such class, are chargeable, and
>
> (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of bonds or marketable secuities other than debentures. ”

9. Upon perusal thereof, it is apparent that the State Government has been conferred with power by the Legislature to either reduce, remit or compound duties on the necessary satisfaction being reached viz. that it is required to be done in public interest. The second requirement according to the learned Government Pleader Mr Nalawade is that the State Government has to be approached and after it records the requisite satisfaction, it may by rule or order published in the Official Gazette, take an appropriate decision and in terms of section 9(a) and (b). However, till date, no such application has been made by the Petitioners.

10. In the first instance, there was considerable debate and argument as to whether the BIFR prepared and sanctioned the Scheme within the meaning of section 18 of the Sick Industrial Companies (Special Provisions) Act 1985, the representative of the

State was present or not and whether the Scheme was duly circulated and brought to the notice of the State Government. However, after taking instructions, Mr Patwardhan states that the Petitioners would make an application referring to the State's power under section 9 and invoke the same specifically so as to claim remission or compounding of the proper stamp duty on the instrument in question.

11. If such an application is made to the Government and addressed to the Principal Secretary, Revenue Department, Government of Maharashtra, the same shall be duly considered on its own merits and in accordance with law and a decision taken thereon. Such a decision shall be taken and duly communicated to the Petitioners within a period of three months from the date of receipt of such application.

12. Once the Authorities have agreed in the aforesaid terms, then we need not decide any wider question or controversy. We keep the same open to be gone into in an appropriate case or

state. We dispose off the Petition by accepting the statement of the learned Additional Solicitor General and in terms of the directions issued to the State of Maharashtra above. There will no order as to costs. The State Government shall also take into consideration the Petition before us and the averments and statements therein, so also contents of all the annexures.

(B.P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI J.)** **

** **CERTIFICATE**
Certified to be a true and correct copy of the original signed Judgment/Order.