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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA 513/2019 and CM 35355/2019 (stay)**

DELHI DEVELOPMENT AUTHORITY ..... Appellant

Through: Mr. Ajay Verma, Senior Standing Counsel for DDA along with Mr.Arun Birbal, Advocate.

versus

M/s. GILLETTE INDIA LIMITED ..... Respondent

Through: Mr.Abhinav Vasisht, Senior Advocate with Mr. Amitabh Chaturvedi, Mr.Satvik Varma, Mr.Tanveer Oberoi and Ms.Priya Singh, Advocates for R-1.

Mr Abhineet Gulati, Advocate for R-2.

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE TALWANT SINGH**

**O R D E R**

% **30.08.2019**

**Dr. S. Muralidhar, J.**:

1. This appeal by the Delhi Development Authority ('DDA') is directed against a judgment dated 9th May, 2019 passed by the learned Single Judge disposing of W.P.(C) No.7456/2013 filed by the Respondent Gillette India Limited ('GIL'). By the impugned judgment, the learned Single Judge has set aside the letter dated 15th April, 2013 read with letters dated 14th May, 2013 and 13th January, 2015 of the Appellant DDA, demanding from GIL

unearned increase in the sum of Rs.34,24,27,979/- for executing the Conveyance Deed in relation to a property at Plot No.E-31, Okhla Industrial Area, Phase-II, New Delhi (hereafter, 'the property in question'). The DDA has also been directed to refund to the Respondent Rs.3,94,57,027/- paid to the DDA by GIL in terms of an order dated 19th January, 2011 in W.P.(C) No.344/2011. Further, the DDA has been asked to compute the amount refundable to GIL, having regard to the decision of the DDA, as recorded in the order dated 26th July, 2012 passed in W.P.(C) No.7456/2013.

2. The facts in brief are that Sharpedge Limited, a company incorporated in India, acquired the property in question on 11th June, 1974 at an auction conducted by the DDA. Sharpedge Limited constructed an industrial building on the property in question, after obtaining necessary approvals for the building plans. Subsequently, on 5th July, 1978, a perpetual lease deed in respect of the property in question was registered in favour of Sharpedge Limited.

3. On 9th February, 1984, GIL, which was at that point in time known as Indian Shaving Products Limited ('ISPL'), acquired the entire shareholding of Sharpedge Limited. Thus, Sharpedge Limited became a wholly-owned subsidiary of ISPL.

4. On 9th August, 1989, the Board of Industrial Finance and Reconstruction ('BIFR') declared Sharpedge Limited as a sick company within the meaning of Section 3 (o) of the Sick Industrial Companies (Special Provisions) Act, 1985.

5. During the course of the proceedings before the BIFR, a rehabilitation scheme was prepared. As part of the scheme, the assets of Sharpedge Limited, including the property in question, with the building constructed thereon, vested with ISPL. On 15th May, 1992, ISPL requested DDA to effect the change in its records. In view of the transfer of the property in question from Sharpedge Limited to ISPL, DDA issued a demand notice dated 29th August 1995, calling upon ISPL to pay a sum of Rs.5,37,95,788/- as unearned increase, along with interest.

6. It was the contention of the ISPL that no unearned increase was payable since the transfer was pursuant to the rehabilitation scheme approved by BIFR. ISPL accordingly filed CWP No. 3489/1995 in this Court challenging the aforesaid demand notice dated 29th August, 1995 issued by the DDA.

7. Pursuant to an interim order passed in CWP No.3489/1995, ISPL deposited Rs.3.5 crores with the DDA on 13th February, 1996. Ultimately, CWP No.3489/1995 was dismissed by an order dated 5th October, 2010. Special Leave Petition No.19185/2001 filed by ISPL against the said order, was dismissed by the Supreme Court by an order dated 23rd November, 2001.

8. Meanwhile, ISPL changed its name to GIL. In December, 2001, GIL filed CM No.700/2001 in this Court for directions to the DDA to provide the basis for arriving at a figure of unearned increase and interest demanded by the aforementioned notice dated 29th August, 1995. The said application was disposed of by this Court on 19th April, 2002 directing the DDA to consider

and dispose of GIL's representation.

9. On 29th October, 2002, DDA issued a letter demanding from GIL a sum of Rs.28,00,096/- towards interest.

10. On 1st October, 2005, GIL issued letters to various stock exchanges informing them about the merger of Aquarium Acquisition Corporation ('AAC'), a wholly-owned subsidiary of Proctor & Gamble, USA ('P&G, USA') with Gillette Company, USA ('TGC'). At the relevant time, TGC had a substantial shareholding in GIL. On 10th June, 2006, TGC transferred its right, title and interest in GIL i.e. a total of 41.02% shareholding to P&G, Netherlands without consideration. Since the transfer was within the group, GIL did not consider this to be an open offer under the SEBI (Substantial Acquisition of Shares &, Takeovers) Regulations, 1997.

11. On 4th May, 2007, DDA issued another demand letter to GIL, calling upon it to deposit Rs.2,22,13,177/- as interest on unearned increase, ground rent up to 14th July, 2007 and interest thereon. This was in relation to the transfer of the property in question from Sharpedge Limited to GIL. GIL thereafter deposited a sum of Rs.2,15,75,884/-with DDA.

12. On 29th June, 2007, GIL filed an application with the DDA, seeking to convert the property in question from leasehold to freehold. GIL deposited with the DDA, a sum of Rs.1,38,97,257/- for the said purpose.

13. On 5th September, 2007, DDA advised GIL to deposit Rs.6,37,293/- towards ground rent. On 17th / 18th January, 2008, DDA raised a full and

final demand in the sum of Rs.3,94,57,027/- towards interest on unearned increase. This demand was reiterated separately on 7th April, 2008.

14. On 29th May, 2008, DDA rejected the application filed by the GIL seeking conversion of the property in question from leasehold to freehold. The reason for this was the non-payment of the interest on unearned increase by GIL. On 10th May, 2010, DDA informed GIL that its application for restoration of the conversion application dated 11th February, 2010 could only be acted upon by the DDA after payment of the demanded dues.

15. Aggrieved by the above decision conveyed to it, GIL filed W.P.(C) No.344/2011 challenging the demand of interest on unearned increase and seeking restoration of the conversion application.

16. During the course of the hearing of the above application, on 19th January, 2011, GIL stated that it would pay Rs.3,94,57,027/- towards interest on unearned increase within a period of two weeks, under protest. The order dated 19th January, 2011 passed by the learned Single Judge noted the above submissions and directed DDA to consider and decide the conversion application and reconcile its accounts keeping in mind GIL's challenge, within a period of four weeks.

17. GIL states that it deposited the above sum on 27th January, 2011. On 26th May, 2011, learned counsel for GIL found that as per the records with the DDA, it had issued a letter dated 30th March, 2011 demanding Rs.45,99,596/- as the difference in conversion charges calculated on the basis of the conversion rates of 2010-11 and not those prevailing in 2007-08.

DDA also demanded interest at Rs.13,876/-. GIL stated that it had not received the above communication. On 23rd June, 2011, GIL paid a sum of Rs.46,13,472/-, as demanded by the letter dated 30th March, 2011, under protest. In August, 2011, GIL submitted more documents, composition fees of Rs.81,233/-, additional interest of Rs.2,07,235/- for the period 1st April to 23rd June, 2011, under protest. GIL also requested DDA to issue a 'no-dues certificate'. On 13th April, 2012, DDA called upon GIL to submit a Board Resolution, authorizing Mr Amit Vyas to represent GIL in the conversion process.

18. Alleging non-compliance of the binding directions of this Court, GIL filed a contempt petition (CCP No.331/2012) in this Court. When the said petition was first heard on 21st May, 2012, counsel appearing for the DDA, assured the Court that as soon as GIL submits the necessary documents as required by the DDA's letter dated 18th May 2012, the conveyance deed would be executed and registered by the DDA. On 21st June, 2012, GIL paid stamp duty amounting to Rs.11,09,815/- and submitted three copies of duly filled and stamped conveyance deeds, along with attested copies of the Memorandum and Articles of Association of GIL.

19. On 21st May, 2012, the learned Single Judge passed an order, directing DDA to decide GIL's representation regarding the conversion charges. On 26th July 2012, DDA decided GIL's representation to drop the demand of Rs.3,94,57,027/- towards interest on unearned increase. In the contempt petition, DDA filed an affidavit contending that since GIL had been acquired by the P&G, the same amounted to 'change of ownership' and

attracted levy of unearned increase. GIL, on the other hand, contended that the merger did not amount to a change of ownership of the property in question.

20. On 15th April, 2013, GIL had received a demand letter calling upon it to pay a sum of Rs.34,24,27,979/- for the reason of merger of GIL with the P&G since October, 2005. Aggrieved by the said demand, the GIL filed W.P.(C) No.7456/2013. By a letter dated 14th May, 2013 DDA provided GIL the basis for the aforementioned demand.

21. The question that arose for consideration was whether any unearned increase was payable by GIL as a result of the merger of AC with TGC or the transfer of TGC's shareholding in GIL to P&G Netherlands. The DDA basically relied on clauses 4 and 5 of the perpetual lease deed dated 5th July, 1978 to argue that as a result of the above transfers, in effect, it was the property in question of GIL that stood transferred to P&G Netherlands.

22. As rightly noted by the learned Single Judge, in respect of the merger of Sharpedge Limited with ISPL, there indeed was a transfer of the property in question to ISPL and as a result thereof GIL has paid the unearned increase to the DDA. The present demand has been occasioned not by any transfer of the property in question from GIL to any other entity but by the shareholding of GIL undergoing a change with TGC transferring 41.02% of its shareholding in GIL to P&G Netherlands. The fact remains that GIL as an entity continues to hold the property in question. Merely because there is a dilution of the share capital of TGC in GIL by the transfer of such shares

to P&G Netherlands, there is no transfer of the assets of GIL in favour of anyone else.

23. Mr. Ajay Verma, learned Counsel for the DDA sought to place reliance on the decision of Supreme Court in ***DDA v. Nalwa Sons Investment Ltd. 260 (2019) DLT 364 (SC)*** to argue that GIL was liable to pay the unearned increase. A perusal of the said judgment reveals that it was a case of demerger of an entity into several smaller entities. The ownership of the asset in question did change from one entity to the other. That is what attracted the clause concerning unearned increase. The said decision is of no assistance to the Appellant, since the factual situation here is different. The entity that holds the asset i.e. GIL continues to do so, notwithstanding that TGC has transferred 41.02% of the shares held by it in GIL in favour of P&G Netherlands. Consequently, this Court concurs with the learned Single Judge that the fundamental premise on which DDA has proceeded to demand unearned increase from GIL, that there was a transfer of the property in question from GIL to P&G Netherlands, is erroneous.

24. GIL had deposited Rs.3,94,57,027/- with the DDA under protest pursuant to the order of this Court. The learned Single Judge has referred to the order passed by the DDA on 26th July, 2012 in compliance with the order dated 21st May 2012 passed in Contempt Case (Civil) No. 331 of 2012. DDA accepted that the demand for Rs.3,94,57,027/- towards interest on the balance amount of the unearned increase 'is not logical and thus may be withdrawn.'

25. Mr. Verma pointed to the other part of the said decision where the DDA

decided to seek interest at a reasonable rate as may be decided by the High Court on the outstanding amount of Rs.2,15,95,884/-, which according to the DDA, GIL ought to have paid along with the payment of unearned increase on 13th February 1996.

26. The said submission cannot be accepted for the reason noted by the learned Single Judge as under:

> "The said amount includes an amount of Rs.1,98,55,228/- as the interest payable on the unearned increase upto 31.08.1995 and further interest of Rs.28,00,096/- on the aforesaid amount of interest for the period from 01.09.1995 to 13.02.1996. As against the aforesaid amount, the petitioner has paid a sum of Rs.10,59,440/- on 13.02.1996, leaving a balance amount of Rs.2,l5,95,884/- which, according to DDA, was payable on 15.02.1996. Out of the aforesaid amount, the petitioner paid a sum of Rs.2,15,75,884/-on 01.06.2007, leaving a balance of Rs.20,000/-. Thus, admittedly, the petitioner has not only paid interest on the unearned increase as demanded but the said amount also includes an element of interest on the interest so computed till 13.02.1996."

27. Consequently, the demand of any further interest by the DDA does not appear to be justified.

28. For the aforementioned reasons, the Court finds no error having been committed by the learned Single Judge in the impugned judgment that calls for interference.

29. The appeal is accordingly dismissed. The pending application is also dismissed.

**CM 35357/2019 (delay)**

30. For the reasons explained therein this application is allowed and the delay in filing the appeal is condoned.

**S.MURALIDHAR, J.**

**TALWANT SINGH, J.**

**AUGUST 30, 2019**

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