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

+ **W.P.(C) 6231/2013 and CM APPL. 9164/2017**

C & S ELECTRIC LTD.

..... Petitioner

Through: Mr K. Datta, Advocate.

versus

COMMISSIONER OF INDUSTRIES & ANR Respondents

Through: Mr Abhinav Singh and Mohd. Kaisar
Ansari, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.02.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 11.10.2013 issued by respondent no. 2 (DSIDC Maintenance Services), *inter alia*, stating that the petitioner is obliged to pay 50% of the unearned increase for mutation/transfer of the property bearing No. 222, Okhla Industrial Estate, Ph-III, New Delhi – 100020 (hereafter 'the Property').

2. The petitioner is a company and states that there is no transfer of the property or any significant change in its shareholding warranting the imposition of unearned increase.

3. Briefly stated, the relevant facts necessary to address the aforesaid controversy are as under:

3.1 The property was allotted to M/s Control and Switchgear Company, a

partnership firm constituted by three individuals of a family. A perpetual lease deed dated 10.08.1970 was also executed in favour of the said firm.

3.2 On 25.06.1971, the said partnership firm – M/s Control and Switchgear Company – was converted into a private limited company – M/s Control & Switchgear Co. Pvt. Ltd (the petitioner herein and hereafter ‘the company’). All the three partners of the erstwhile firm became shareholders of the said company with their respective shareholding being in the same proportion as their capital in the erstwhile firm.

3.3 In view of the change in the constitution of the lessee (from a firm to a company), the company applied for waiver of the unearned increase in respect of the plot in question. The said request was acceded to and the levy of unearned increase was waived by a communication dated 11.05.1973. Thereafter, sometime in January 1974, a supplementary lease deed was also executed in favour of the company.

3.4 In the year 1988, the turnover of the company exceeded ₹25 crores and by virtue of Section 43A of the Companies Act, 1956 (as was in force), the company became a deemed public company. Accordingly, its name was subsequently changed from Control and Switchgear Co. Private Limited to Control and Switchgear Limited.

4. The company’s name was again changed on 03.12.2008 to C&S Electric Ltd. Sometime in the year 2008-09, the company propounded a scheme of merger and amalgamation under Section 391-394 of the Companies Act, 1956. In terms of the said scheme, two other group companies, namely, C & S Contractors Ltd. and C & S Protection and

Controls Ltd. were amalgamated with the company. The shares of the company were largely held by the promoters. As a result of the said merger, 0.71% of the total shareholding of the company was issued to shareholders other than initial shareholders of the company. In addition, 1.47% of the total shareholding of the company was allotted to another company namely, M/s Neeru Holdings Pvt. Ltd., which the petitioner asserts were also held by the same set of family members.

5. On 14.07.2008, the company allotted 3,36,984 shares to a private equity investor – GE Equity International, Mauritius. The said shares constituted 9.52% of the diluted shareholding of the company. As a result of this equity dilution, an aggregate 10.23% of the outstanding shareholding capital of the company was held by persons other than the family members of the promoters. On 20.03.2009, the company applied for conversion of the leasehold plot into freehold. Since it is the company's case that there was no change in the identity of the allottee, it claimed remission of 40% of the conversion charges in terms of the policy in force.

6. It is stated that although the company pursued with its application, the same was not taken up in an expeditious manner. On or about 28.09.2012, the company received a communication from respondent no.2, calling upon it to pay a sum of ₹46,80,733/- as surcharge. Admittedly, the said surcharge is payable only if the original allottee had parted with the possession of the property, which was not so in this case. Aggrieved by the same, the company preferred this petition.

7. While the petition is pending, the company received the impugned

letter dated 11.10.2013 whereby the demand of surcharge was withdrawn. However, a fresh demand for 50% unearned increase was raised. Aggrieved by the same, the company sought to amend the present petition to impugn the said letter.

8. The principal issue involved in this petition is whether a change in shareholding of a company amounts to transfer of the property in question.

9. The issue whether a change in the shareholding warrants imposition of unearned increase was considered by the Coordinate Bench of this Court in *M/s K.G. Electronics Pvt. Ltd. v. DSIIDC Ltd: W.P. (C) 2324 of 2013*, wherein it was held that the guidelines in question do not provide for the payment of unearned increase in case of transfer of shares in a company and, therefore, the respondents are not entitled to claim unearned increase. It is relevant to note that in that case, the original promoters had divested 42.36% of the total outstanding share capital, out of which a substantial part was towards their respective spouses. The Court noted that 28.248% of the shares transferred by the promoters were held by non-family members. Indisputably, the petitioner's case is on a better footing as only 10.23% of the shareholding is held by persons other than the original promoters.

10. It is also relevant to note that the aforesaid decision clearly rested on the principle that change in the shareholding of a company would not amount to transfer of its assets. It is relevant to note that the aforesaid decision was carried on in an appeal by the respondents before the Division Bench of this Court in LPA 391 of 2014 captioned *Delhi State Industrial & Infrastructure Development Corporation Ltd. v. M/s. K.G. Electronics Pvt.*

Ltd. & Anr. The said appeal was rejected by a judgment dated 07.11.2014. In its decision, the Division Bench had also referred to the decision of the Constitution Bench of the Supreme Court in **Mrs. Bacha F. Guzdar v. Commissioner of Income Tax: (1955) AIR SC 74**, wherein the Supreme Court had authoritatively held that the identity of the company was not the same as that of its shareholders and, consequently, the dividends declared by the company out of agricultural income in the company's hands were not in the nature of agricultural income in the hands of its shareholders.

11. In view of the above settled law, the demand for unearned increase by the respondent is unsustainable, as there is no transfer of the property in question. The impugned communication is, accordingly, set aside.

12. The respondents are directed to process the petitioner's application for conversion of the plot in question as expeditiously as possible and, preferably, within a period of eight weeks from today. The amount deposited by the petitioner with the Registrar of this Court in terms of the interim order dated 30.09.2013, is directed to be refunded to the petitioner.

13. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

FEBRUARY 22, 2019
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