

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15746 OF 2024

Bharti Airtel Ltd.

....Petitioner

-Versus-

The Chief Controlling Revenue Authority
and others

....Respondents

Mr. Amit Jamsandekar *with Mr. Amit Khairwar, Mr. P. Dhande, Ms. Swati Chandan and Ms. Archita Gharat i/b Link Legal, for the Petitioner.*

Mrs. M. S. Bane with Mr. Aditya Deolekar, AGP for Respondent-State.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 7 MAY 2025.

JUDGMENT PRONOUNCED ON : 9 MAY 2025.

JUDGMENT :

1) The Petition is filed challenging order dated 2 August 2024 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune (CCRA) by which Appeal No. 4 of 2023 preferred by the Petitioner has been rejected and order dated 14 November 2022 passed by the Collector of Stamps assessing the stamp duty at Rs.7,38,99,000/- has been confirmed.

2) Petitioner is engaged *inter alia* in the business of providing telecommunication services in the country, including mobile, telephone services, high speed data, enterprise services etc. under the brand name 'Airtel'. It has been duly licensed under provisions of Section 4 of the Indian Telegraph Act, 1885 for providing telecom services in the specified license service areas and as such exercises power of a Telecom Authority under Section 4 of the Indian Telegraph Act. Tata Teleservices (Maharashtra) Limited (TTML) is a Company incorporated under the provisions of the Companies Act, 1956 and was also engaged in the business of providing telecommunication services in the State of Maharashtra.

3) A Scheme of Arrangement for demerger of consumer mobile business of TTML into the Petitioner as a going concern was entered as per mutual understanding between the shareholders of two Companies (**Scheme of Arrangement**). The Scheme of Arrangement was prepared after seeking of the valuation of consumer mobile business of TTML and accordingly share entitlement ratio was decided as approved by the shareholders of both the Companies. Company Petition (CAA) No. 3596 of 2018 was filed before the National Company Law Tribunal, Mumbai Branch (**NCLT, Mumbai**) seeking sanction of Scheme of Arrangement. The Scheme was sanctioned by NCLT, Mumbai vide order dated 4 December 2018. Simultaneously Petitioner also filed Company Application before NCLT, Delhi seeking sanction to the Scheme of Arrangement. By order dated 30 January 2019 NCLT, Delhi sanctioned the Scheme of Arrangement. TTML thereafter filed

Miscellaneous Application No.1907 of 2019 in Company Petition No.3596 of 2018 before the NCLT, Mumbai for fixing an appointed date for the Scheme of Arrangement to take effect. By order dated 12 June 2019 the application was allowed and the date for Scheme of Arrangement was fixed as 1 July 2019. NCLT, Mumbai also directed TTML to lodge certified copy of the order allowing Scheme of Arrangement and the sanctioned scheme with the Collector of Stamps, Mumbai, within 60 days. Accordingly, application was made by TTML to the office of Collector of Stamps on 19 August 2019 lodging the Scheme of Arrangement and sought necessary orders for adjudication of stamp duty payable under Section 31 of the Maharashtra Stamp Act, 1958 (**Stamp Act**). Petitioner and TTML submitted the documents requisitioned by the Collector of Stamps particularly the valuation report and recommendations of share entitlement ratio for proposed demerger of consumer mobile business of TTML prepared by the firm of Chartered Accountants, S.R. Batliboi & Co. LLP and Walker Chandio & Co. LLP.

4) By letter dated 24 August 2022, the Collector of Stamps conveyed that the Scheme of Arrangement would be chargeable under Article 25 (da) of the Schedule to the Stamp Act and that the stamp duty was determined at Rs. 7,38,99,000/-. Petitioner was granted liberty to file representation against levy of stamp duty and market value of shares within 30 days. Petitioner accordingly submitted a representation jointly with TTML on 23 September 2022 seeking rectification in the ascertained stamp duty. The hearing was scheduled on 4 October 2022, which was attended by

the officials of Petitioner and TTML. Further hearing was held on 4 November 2022. The Collector of Stamps proceeded to pass order under Sections 31 and 32 of the Stamp Act holding that the Scheme of Arrangement would be chargeable under Section 25(da) of the Stamp Act and attracts the stamp duty of Rs.7,38,99,000/- at the rate of 0.7% market value taken as net worth of Rs. 1055.70 crores of the to the demerged company. Petitioner was accordingly ordered to pay stamp duty of Rs. 7,38,99,000/- within 60 days on payment of which order was to be certified under Section 32 of the Stamp Act.

5) Petitioner preferred Appeal before the CCRA under provisions of Section 53(1A) of the Stamp Act against the order dated 14 November 2022. During pendency of the Appeal, Petitioner offered to pay stamp duty of Rs. 1,86,70,450/- calculated on the basis of market value of immovable property of TTML, which was higher than 0.7% of market value of the shares of Rs.23,75,081.90/-. The Collector of Stamps issued notice dated 21 December 2023 calling upon the Petitioner to pay ascertained stamp duty of Rs.7,38,99,000/- alongwith interest of Rs.8,12,88,900/-. Since Appeal of the Petitioner was not being heard and decided, it filed Writ Petition No.11074 of 2022 in this Court, which was disposed of by order dated 10 January 2024 directing CCRA to decide Petitioner's Appeal within eight weeks. Petitioner was directed to deposit sum of Rs.1,86,70,450/- with the Collector of Stamps without prejudice to its rights and contentions. During pendency of the Appeal, Respondents were directed not to recover any further amount from the Petitioner. It appears that the Petitioner made

deposit of amount of Rs.1,86,70,450/- with Collector of Stamps on 18 January 2024.

6) CCRA conducted hearings on 17 January 2024 and 24 January 2024 which was attended by the representatives of the Petitioner, who also filed written submissions before CCRA. By order dated 2 August 2024, the Appeal preferred by the Petitioner has been dismissed by the CCRA confirming the order passed by the Collector of Stamps dated 14 November 2022. The CCRA held that the stamp duty payable on the Scheme of Arrangement was Rs.7,38,99,000/- calling upon Petitioner to pay the deficit amount of stamp duty within seven days, failing which interest was threatened to be levied. Order dated 2 August 2024 passed by CCRA is subject matter of challenge in the present Petition. On 9 September 2024, Collector of Stamps issued letter to the Petitioner calling it upon to pay deficit amount of Rs. 5,52,28,550/- within seven days of receipt of the judgment.

7) Mr. Jamsandekar, the learned counsel appearing for Petitioner would submit that the Collector of Stamps and CCRA have grossly erred in levying stamp duty on erroneously computed enterprise value of customer mobile business unit of TTML at Rs. 1055.70 crores. He would submit that both the authorities have completely ignored that TTML had gross debt of Rs. 950 crores, which was deducted from the enterprise value of Rs. 1055.70 crores by the Chartered Accountant and the actual value of shares of TTML was indicated in the report as Rs.105.70 crores. He would

submit that the Collector of Stamps has erroneously treated enterprise value of consumer mobile business of TTML as equivalent to market value of the shares issued/allotted. That the Respondents have disregarded the basic principles of arriving at net worth of an entity by setting off the liability against the enterprise value. That the gross debt of Rs. 950.00 crores was clearly shown in the valuation report prepared by the Chartered Accountant and the same ought to have been deducted from the enterprise value of Rs. 1055.70 crores and that thus the correct market value of the shares was Rs.105.70 crores after deducting the gross debts of TTML from the enterprise value. He would submit that the Respondents could not have selectively accepted the report of Chartered Accountants only for the purpose of considering the enterprise value of by ignoring the gross debt of TTML. He would submit that the two companies have arrived at equity value of per share after deducting the gross debt of TTML from the enterprise value and accordingly the Scheme of Arrangement seeks to allot one share of Petitioner against 2,014 equity shares of TTML. That the Scheme of Arrangement must be considered as a whole and the Respondents have erred in selectively taking into consideration the enterprise value of TTML's consumer mobile business.

8) Mr. Jamsandekar would submit that under provisions of Article 25(da) of the Stamp Act, the stamp duty is payable either at the rate of 5% of market value of immovable property transferred by demerged company to the resulting company or at the rate of 0.7% of aggregate of market value of shares issued or allotted in exchange and the amount of consideration paid, whichever is

higher. That since the amount representing 0.7% of the value of shares of Petitioner issued and allotted to the shareholders of TTML is less than 5% of market value of immovable properties of TTML, the correct stamp duty payable on the Scheme of Arrangement would be Rs.1,86,70,450/-.

9) Mr. Jamsandekar would rely upon judgment of this Court in Li Taka Pharmaceuticals Ltd. and another Versus. The State of Maharashtra and others¹ in support of his contention that assets and liabilities of the transferor company cannot be separately considered for the purpose of levy of stamp duty as what is transferred is a going concern by taking into consideration both assets as well as liabilities of a company.

10) Mr. Jamsandekar would further submit that the Scheme of Arrangement has been accepted by NCLT and it is beyond the jurisdiction of Collector of Stamps and CCRA to sit in appeal over the order passed by the NCLT by giving a different meaning to the Scheme of Arrangement than the one given by NCLT. That therefore Respondents do not have any jurisdiction or authority to go beyond the valuation arrived at by standard accounting principles as approved by the shareholders of the concerned companies and also by the NCLT. Mr. Jamsandekar would accordingly pray for setting aside of the impugned orders passed by Collector of Stamps and CCRA.

¹ AIR 1997 Bom. 7

11) The Petition is opposed by Ms. Bane and Mr. Deolekar, the learned AGP appearing for Respondent-State. They would submit that the Collector of Stamps has ascertained the stamp duty payable on the Scheme of Arrangement after grant of due opportunity of hearing to the Petitioner. That the Collector of Stamps has applied his mind to all the relevant factors for the purpose of arriving at a finding that the networth of the demerged unit is Rs. 1055.70. crores. She would submit that under provisions of Section 25(da) of the Stamp Act, stamp duty is leviable on market value of the shares and consideration paid on Scheme for Arrangement. That therefore, the market value of TTML has rightly been taken as its net worth by the Collector of Stamps. That in Scheme of Arrangement, no details of debt are specified. That Petitioner has not submitted any document to demonstrate existence of any debt. That the CCRA has heard the Appeal preferred by the Petitioner and has confirmed the order passed by the Collector of Stamps. That no interference is warranted in the well-considered decisions of the Collector of Stamps and CCRA.

12) It is submitted on behalf of the Respondents that what is carried out by the Collector of Stamps is adjudicatory function. That while adjudicating the stamp duty payable, the Collector is empowered to have holistic reading of the entire Scheme of Arrangement with a view to find out the exact nature of transaction. That the Collector is entitled to arrive at market value of transaction, as well as consideration which has actually flown through the Scheme. That in the present case, while transferring consumer mobile business of TTML, the spectrum is also transferred. That

though spectrum also forms part of assets of TTML, the future license fees payable for such spectrum has erroneously been indicated in the valuation report as '*debts*' payable by TTML. That therefore the Collector of Stamps has rightly ignored the debts indicated in the valuation report. That license fees payable in respect of the transferred spectrum cannot constitute debt. It is submitted that in a Scheme of Arrangement, it is often not possible to find out the real transaction by adopting any straight jacket formula and that it is for the Adjudicating Authority to call for relevant information from the parties to arrive at the exact nature of transaction. It is submitted that the Collector of Stamps has properly appreciated the exact nature of transaction flowing through the Scheme of Arrangement and in absence of an element of perversity, there is no warrant for interference in the adjudicating authority's decision. They would pray for dismissal of the Petition.

13) Rival contentions of the parties now fall for my consideration.

14) The case involves demerger of Consumer Mobile Business of TTML/transferor company into Petitioner/transferee company as a going concern. Thus Petitioner has purchased the consumer mobile business of TTML. Towards the consideration of purchase of the consumer mobile business of TTML, Petitioner has issued its equity shares to the shareholders of TTML. The Scheme of Arrangement has been approved and sanctioned by NCLT, Mumbai vide order dated 4 December 2018. It appears that

Petitioner and TTML also applied before NCLT, Delhi seeking sanction to the Scheme of Arrangement and by order dated 30 January 2019, NCLT Delhi has also sanctioned the Scheme of Demerger. By further order dated 12 June 2019, NCLT, Mumbai fixed 1 July 2019 as the appointed date for Scheme of Arrangement amongst the Petitioner and TTML. TTML was directed to file certified copy of the order together with the Scheme of Arrangement with the concerned Registrar of the Companies. A direction was also issued for lodging of certified copy of the order alongwith the sanctioned Scheme of Arrangement to the concerned Collector of Stamps for the purpose of adjudication of stamp duty. In pursuance of the direction issued by NCLT, Mumbai on 12 June 2019, an application was made by TTML to the Collector of Stamps, which has been adjudicated vide order dated 14 November 2022. The Collector of Stamps has computed stamp duty payable on the Scheme of Arrangement at the rate of 0.7% of net worth of the demerged undertaking of consumer mobile business of TTML (Rs.1055,70,00,000/-) and accordingly has computed stamp duty at Rs.7,38,99,000/-.

15) Perusal of the order dated 14 November 2022 passed by the Collector of Stamps would indicate that the stamp duty is adjudicated under the provisions of Article 25(da) of the Stamp Act. Article-25(da) of the Stamp Act provides thus:

Description of Instrument	Proper Stamp Duty
1	2
(da) if relating to the order of the High Court under section 394 of the	10 per cent. of the aggregate of the market value of the shares issued or

Companies Act, 1956 or the order of the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 or confirmation issued by the Central Government under sub-section (3) of section 233 of the Companies Act, 2013 in respect of the amalgamation, merger, demerger, arrangement or reconstruction of companies (including subsidiaries of parent company) or order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 in respect of amalgamation or reconstruction of Banking Companies 2[and every order made by the Board for Industrial and Financial Reconstruction under section 18 or 19 of the Sick Industrial Companies (Special Provisions) Act, 1985, in respect of sanction of Scheme specified therein or every order made by the National Company Law Tribunal under section 31 of the Insolvency and Bankruptcy Code, 2016, in respect of approval of resolution plan.	allotted in exchange or otherwise and the amount of consideration paid for such amalgamation : Provided that, the amount of duty, chargeable under this clause shall not exceed, (i) an amount equal to 5 per cent of the true market value of the immovable property located within the State of Maharashtra of the transferor company; or (ii) an amount equal to 0.7 per cent, of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid, for such amalgamation, whichever is higher: Provided further that, in case of reconstruction or demerger the duty chargeable shall not exceed- (i) an amount equal to 5 per cent of the true market value of the immovable property located within the State of Maharashtra transferred by the Demerging Company to the Resulting Company; or (ii) an amount equal to 0.7 per centum of the aggregate of the market value of the shares issued or allotted to the Resulting Company and the amount of consideration paid for such demerger, whichever is higher.
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16) Thus, under the provisions of Article-25(da) of the Stamp Act, the normal stamp duty payable on Scheme of Arrangement is 10% of aggregate market value of the shares issued or allotted in exchange or otherwise and amount of consideration paid for such amalgamation. However, as per the first Proviso, the amount of duty chargeable under the Article 25(da) cannot exceed (i) an amount equal to 5% of true market value of immovable property located within the State of Maharashtra of the transferor company, or (ii) the amount equal to 0.7% of the aggregate market value of shares issued or allotted in exchange plus the amount of consideration paid for such amalgamation, whichever is higher. Thus, under the first Proviso to Article-25(da) of the Stamp Act, one needs to undertake the exercise of finding out whether the true market value of properties of transferor company located within the State is higher than the aggregate of market value of shares issue/allotted in exchange plus the amount of consideration paid. If the amount in former eventuality is higher then 5% stamp duty is payable on market value of immovable properties of transferor company. If on the other hand, the amount under the latter eventuality is higher, stamp duty equal to 0.7% is payable on aggregate of market value of shares issued/allotted in exchange plus the amount of consideration paid. In the present case, the Collector of Stamps has found the true market value of immovable properties of TTML located in State of Maharashtra was Rs.37,34,09,000/-. The 5% stamp duty thereon is computed at Rs.1,86,70,450/-. The Collector of Stamps also took into consideration the net worth of demerged undertaking of consumer mobile business unit of TTML at Rs.1055,70,00,000/- and the same

was considered to be the market value for assessment. Accordingly, stamp duty at the rate of 0.7% on amount of Rs.1055,70,00,000/- is arrived at Rs.7,38,99,000/-.

17) Since the stamp duty payable at the rate of 0.7% on net worth of demerged unit of TTML is found to be higher (Rs.7,38,99,000/-) than the stamp duty at the rate of 5% on true market value of immovable properties of TTML located in the State of Maharashtra (Rs.1,86,70,450/-), the Collector of Stamps has directed payment of stamp duty of Rs.7,38,99,000/- on the Scheme of Arrangement.

18) During the course of hearing of the Petition, initially the debate between the learned counsel was with regard to the consideration of amount of Rs.1055.70 crores as the market value of shares of TTML for the purpose of application of Article-25(da)(ii) of the Stamp Act. According to the Petitioner, from the enterprise value of consumer mobile unit of TTML of Rs.1055.70 crores, the amount of gross debt of Rs. 950 crores is required to be deducted and the true market value of shares is required to be considered as Rs.105.70 crores.

19) In the light of the contention raised by the Petitioner and TTML for deduction of debt amount from the enterprise value for the purpose of adjudication of stamp duty, the Collector of Stamps framed following issues in para-4 of the order :

4) After scrutinization of written say of applicant and various documents submitted, the main issue raised are as follows -

A) Whether the gross debt of Rs. 9,50,00,00,000/- is liable to deduct/ minus from the Total demerged entity of Rs. 10,55,70,00,000/-

B) If yes then what should be the stamp duty to be paid.

20) Issue (A) about deduction of gross debt of Rs. 950 crores from enterprise value of Rs.1055.70 crores has been answered in the negative by the Collector of Stamps by recording following reasons :

i) As per the sanctioned NCLT Order, the proposed scheme provides for the transfer by the way of a demerger of the demerged Undertaking of the petitioner company to the transferee company.

ii) Hence the certified copy of Demerged Undertaking value of consumer mobile Business of Tata Teleservices (Maharashtra) Limited as on appointed date (01/07/2019) by authorised C.A. was called for. Accordingly Deputy General Manager of corporate legal submitted the S.R.Batliboi & Co.LLP Firms report of value of demerged undertaking of TTML'S CMB Unit on date. 01/08/2022.

iii) The said report states the Enterprise value of TTML'S CMB Unit is 10,557 million. It is admitted during the hearing that, the Enterprise value is derived after considering all liabilities of the company. Hence there is no need to reconsider the points raised on demand notice dated 24/08/2022.

21) Thus, the Collector of Stamps has held that while determining the enterprise value of TTML's consumer mobile business unit of Rs.1055.70 crores, all liabilities of TTML were taken into consideration. This finding is shown to have been recorded upon alleged admission given by the Petitioner and TTML. Therefore, the Collector of Stamps decided not to deduct the alleged figure of gross debt of Rs.950 crores from enterprise value.

22) From the reasonings adopted by the Collector of Stamps, it is apparent that she has taken into consideration, the net worth of demerged undertaking of consumer mobile unit of TTML of Rs.1055.70 crores as a market value for assessment. This is further clear from the following findings:

Further, Vide letter of this office the applicant was called to submit the Demerged Undertaking Value of Consumer Mobile Business of Demerged Company as on appointed date duly certified by C.A. Naw via letter dated 01/08/2022 Company has submitted the Valuation Report prepared /signed by SR. Batliboi & Co. LLP C.A. (Sanjay Vij) & also Walker Chandiok & Co.LLP. C.A. (Per Shashishekhar Chaugule) in which The Net Worth of demerged undertaking of CNB Unit of Demerged Company is Rs. 10557 Mn. i.e.- Rs. 10557000000/- Same is Considered as a market value for assesment.

23) The Collector of Stamps has thus proceeded to determine the stamp duty payable on the Scheme of Arrangement on the net worth of demerged undertaking of consumer mobile business unit of TTML. While doing so, it has relied upon joint valuation report of M/s. S. R. Baltiboy & Co. LLP and Walker Chandiok & Co. LLP dated 19 December 2017. It appears that Petitioner had appointed Walker Chandiok & Co. LLP as its valuer and TTML has appointed M/s. S.R. Baltiboy & Co. LLP as its valuer. Both the valuers have submitted joint valuation report for the purpose of determining the Share Entitlement Ratio to be placed before the Board of Directors of both the Companies. Both the valuers apparently worked independently. They calculated valuation of Consumer Mobile Business of TTML by using Comparable Companies' Market/Transaction Multiple (CCM)

method whereas the method of Market Price (**MP**) was adopted for valuing the Petitioner since its shares were well traded. The Valuers recommended following share entitlement ratio for the proposed transaction by indicating range as under :

In light of the above, and on a consideration of all the relevant factors and circumstances as discussed and outlined hereinabove, we recommend that the Share Entitlement Ratio for the Proposed Transaction should be anywhere in the following range:

- Lower Range: 1 equity share of BAL of INR 5 each fully paid up for every 5,964 shares of TTML of INR 10 each fully paid up (refer Table A below)
- Upper Range: 1 equity share of BAL of INR 5 each fully paid up for every 1,575 shares of TTML of INR 10 each fully paid up (refer Table B below)

24) Both the Valuers independently determined equity value of TTML's consumer mobile business unit per equity share of TTML as under :

Annexure 1: SRBC's computation of Equity value of TTML's CMB Unit per equity share of TTML

<i>CURRENCY INR mn</i>	Notes	Weight (%)	CMB of TTML	CMB of TTML
			Lower Range	Upper Range
Trading multiple				
Enterprise value based on EV/Revenue multiple	1	100%	9,426	10,557
Enterprise Value			9,426	10,557
Less: gross debt			(9,500)	(9,500)
Equity Value			-	1,057
Equity Value in INR per share			-	0.54

Note 1: Enterprise Valuation of TTML's CMB unit based on EV/Revenue multiple

Currency INR mn	Value-Lower Range	Value-Upper Range
EV/Revenue multiple		
Chosen multiple	1.25	1.40
Revenue-TTML's CMB Unit – FY18 estimate	7,541	7,541
Enterprise Value of TTML's CMB Unit	9,426	10,557

Annexure 2: WCC's computation of Equity value of TTML's CMB Unit per equity share of TTML

CURRENCY INR mn	Notes	Weight (%)	CMB of TTML	CMB of TTML
			Lower Range	Upper Range
Trading multiple				
Enterprise value based on EV/Revenue multiple	1	100%	9,669	10,139
Enterprise Value			9,669	10,139
Less: gross debt			(9,500)	(9,500)
Equity Value			169	639
Equity Value in INR per share			0.09	0.33

Note 1: Enterprise Valuation of TTML's CMB unit based on EV/Revenue multiple

Currency INR mn	Value-Lower Range	Value-Upper Range
EV/Revenue multiple		
Chosen multiple	1.28	1.34
Revenue-TTML's CMB Unit – FY18 estimate	7,541	7,541
Enterprise Value of TTML's CMB Unit	9,669	10,139

25) There is not much difference between the equity value determined by both the Valuers. The enterprise value was taken by TTML's borrower as Rs.1055.70 crores whereas the same was taken by Petitioner's borrower at Rs.10,139 crores. Both the valuers were *ad-idem* that the gross debt of TTML was Rs. 950 crores. Thus, S.R. Baltiboy & Co. LLP (*Petitioner's Valuer*) indicated equity value of

consumer mobile business unit of TTML at Rs. 105.7 crores whereas as per the valuer of TTML, the same was Rs. 63.9 crores. Based on the equity value so determined, the equity value of per share of TTML was indicated at INR 0.54 by Petitioner's Valuer and INR 0.33 by TTML's Valuer. Based on equity value per share of TTML, recommendation was made for issuance of shares of Petitioner to the equity shareholders of TTML.

26) After the valuation report was placed before the Board of Directors, the final scheme of allocation of shares of Petitioner, shareholders of TTML, it was agreed in para-6.1 of the scheme as under :

6.1. Upon Part C of this Scheme becoming effective and in consideration of vesting of the Demerged Undertaking of the Transferor Company in the Transferee Company in terms of this Scheme, the Transferee Company shall, without any further application, act or deed, issue and allot:

(A) 1 (one) BAL Equity Share to TTML Equity Holders on the Record Date for every 2,014 (two thousand fourteen) TTML Equity Shares each held in TTML on the Record Date; and.

(B) 10 (Ten) BAL RPS to all (and not each) TTML RPS Holders in proportion to their holding of TTML RPS on the Record Date.

27) The value of issued and allotted shares of Petitioner under the Scheme of Arrangement has constituted the consideration for the Scheme.

28) Considering the provisions of Article-25(da)(ii) of the Stamp Act, the Collector ought to have determined the market value of shares issued and allotted in exchange by the Petitioner. However, the order passed by the Collector of Stamp does not indicate that any attempt is made for computing the stamp duty on the basis of the market value of shares of Petitioner issued and allotted in exchange to the equity shareholders of TTML. Instead, the Collector of Stamps seems to have erroneously concentrated on '*enterprise value*' or '*net worth*' of consumer mobile business unit of TTML while computing the stamp duty chargeable on Scheme of Arrangement. Perusal of Article-25(da)(ii) would indicate that the same does not recognise the concept of computation of stamp duty on the basis of enterprise value or net worth of the demerged undertaking. The computation needs to be done on the basis of market value of shares issued and allotted in exchange plus the actual consideration paid under the Scheme. In the present case, it appears that no separate consideration is paid under the Scheme of Arrangement and the value of shares of the Petitioner issued and allotted to TTML actually forms consideration paid under the Scheme. The Collector of Stamps appears to have erroneously computed 0.7% stamp duty on '*enterprise value*' or '*net worth*' of consumer mobile business unit of TTML.

29) From the application filed by TTML before the Collector of Stamps, following details of consideration were indicated :

8. Consideration Part

	Ratio					
	Transferor Co.	Transferor Co.	No. of Paid up Shares of Transferor Co.	No. of Shares to be allotted by transferee Co. to the shareholders of transferor Co.	Price of each Share of the Transferee Co. As on appointed Date	Total Market Value of Shares to be allotted by transferee co. to shareholders of transferor co.
1)	2,014 equity shares of Rs. 10/- each	1 equity share of Rs. 5/- each	195,49,27,727 fully paid up equity shares of Rs. 10/- each	970,668 equity shares of face value 5 each	Rs. 348.50 per share as per NSE closing	Rs. 338,277,798
2)	20,18,00,000 RPS of Rs. 100/- each	10 RPS of Rs. 100/- each	20,18,00,000 RPS of Rs. 100/-each	10 fully paid-up redeemable, non-participating, non-cumulative preference shares of face value ₹100 each.	Rs. 100/- each	Rs. 1,000/-

30) Thus, from the information revealed in the application, it appears that Rs.9,70,668/- equity shares of Petitioner (*Transferee/Resultant Company*) were allotted to the shareholders of TTML. The market value of each share as on the appointed date was Rs.348.50/- and accordingly the total market value of shares issued and allotted by Petitioner to shareholders of TTML is Rs.33,82,77,798/-. Additionally, the value of Rs. 1,000/- was indicated in respect of valuation of redeemable preference shares to the shareholders of TTML.

31) It is not that the Collector of Stamps has totally ignored the figures of value of shares of Petitioner allotted to the shareholders of TTML. She has taken into consideration the said figures as under:

Market Value of Equity Shares :

	No of Shares Allotted		Rate per Share		Market Value
Equity	970669		349.55		339297412

Market Value of Preference Shares :

	No of Shares Allotted		Rate per Share		Market Value
Equity	10		100		1000

32) There appears to be some difference between the market value of shares issued and allotted by Petitioner to the shareholders of TTML as the market value of each share was indicated at Rs.349.55/- as per the information revealed before the Competent Authority. Thus, the market value of shares of the Petitioner issued and allotted to the equity shareholders of TTML was taken as Rs.33,92,97,412/- plus Rs.1,000/- = Rs.33,92,98,412/-. The 0.7% of stamp duty payable on the said market value of shares would be Rs.23,75,088/-. Thus, as per Article-25(da)(ii), the stamp duty payable at the rate of 0.7% of aggregate market value of shares issued and allotted in exchange plus amount of consideration paid for amalgamation would be Rs.23,75,088/-.

33) In my view, the Collector of Stamps has grossly erred in adjudicating the stamp duty payable on Scheme of Arrangement by taking into consideration net worth of demerged undertaking of consumer mobile business unit of TTML. Article 25(da)(ii) does not contemplate levy of stamp duty on net worth of the demerged undertaking. In that view of the matter, the Collector of Stamps could not have assumed that market value of shares issued/allotted within the meaning of Article 25(da)(ii) would be net worth of the demerged undertaking.

34) It is sought to be contended on behalf of Respondents that while performing adjudicatory function, it is for the Collector of Stamps to discover the true nature of transaction. That for performing such adjudicatory function, various documents and information can be requisitioned by the Adjudicating Authority as it is impossible to fit all transactions into a straitjacket formula. Though Adjudicating Authority has necessary jurisdiction to ascertain the exact transaction between the parties flowing through a Scheme of Arrangement, it does not mean that it can give a complete go-by to the prescribed manner of levy of stamp duty under Article-25(da)(ii). Once the Legislature has mandated that the stamp duty leviable on a Scheme of Arrangement must be determined on market value of shares issued/allotted in exchange plus amount of consideration paid, it would be beyond the jurisdiction of the Adjudicating Authority to determine the stamp duty payable on any other basis. Mere vesting of jurisdiction in the Adjudicating Authority to ascertain true nature of transaction

flowing out of Scheme of Arrangement would not mean that it can compute the stamp duty by adopting its own basis. The basis on which stamp duty is to be levied has been prescribed in the statute and the Adjudicating Authority cannot travel beyond the contours of the methodology prescribed in Article-25(da)(ii). It cannot employ different basis for determining stamp duty leviable on a particular instrument.

35) It is sought to be contended *albeit* through oral submissions that the Adjudicating Authority has taken into hidden consideration the amount of consideration paid under the Scheme of Arrangement as mere issuance/allotment of shares cannot alone form the entire consideration for the Scheme. It is sought to be contended that what is ultimately taken over by the Petitioner is consumer mobile business of TTML which was valued at Rs.1055.70 crores and that therefore the stamp duty has rightly been levied on said value of the demerged undertaking. However, upon being questioned as to how networth of demerged undertaking can be made basis for levy of stamp duty under Article 25(da)(ii), Mr. Deolekar, has submitted that while discovering the real consideration paid for the transaction, it is lawful for the Adjudicating Authority to take into consideration the value of demerged undertaking which gets transferred and merged with the Transferee Company. There are multiple reasons for rejection of this contention sought to be raised on behalf of the Respondents. Firstly, the order of Collector of Stamps does not even record a finding that there was any hidden consideration in the Scheme of Arrangement sanctioned by NCLT and that the Collector of Stamps discovered

such hidden consideration for levy of stamp duty. The order passed by the Collector of Stamps nowhere records that amount of Rs.1055.70 crores or any other amount is the consideration paid under the Scheme of Arrangement. In absence of any finding being recorded by the Collector about any particular constituting consideration paid under the Scheme, it is difficult for this Court to accept the contention sought to be advanced on behalf of the Respondents. Secondly, the CCRA again has not recorded any finding about there being any hidden consideration under the Scheme or discovery thereof by the Collector of Stamps. Thirdly and more importantly, Respondents have filed Affidavit-in-Reply, in which again there is no averment that there was any hidden consideration for the transaction which has been discovered by the Collector of Stamps. It is therefore not possible to accept the oral submissions advanced across the bar that the amount of Rs.1055.70 crores constitutes consideration paid under the Scheme of Arrangement.

36) It is also sought to be argued, again through oral submissions unsupported by any pleadings, that license fees payable in respect of spectrum has been erroneously reflected as gross debts in the valuation report. It is submitted that Petitioner has acquired license of 2G Spectrum which would be exploited throughout the territory of Mumbai and Maharashtra for next several years and that therefore the license fees payable to the Government towards use of spectrum cannot constitute debt for determining valuation of TTML. Again, this reason of erroneous

reflection of spectrum license fees as debts is nowhere to be found in the impugned orders passed by the Collector of Stamps and CCRA. This ground is not even pleaded in the Affidavit-in-Reply. Therefore, the oral submission sought to be advanced in this regard deserves outright rejection.

37) It is well settled position of law that validity of orders passed by the administrative and quasi-judicial authorities must be tested on the touchstone of reasons recorded in the order. It is not permissible to supplement reasons by filing Affidavits before the Court. The law in this regard is by Constitution Bench judgment of the Apex Court in Mohinder Singh Gill and another Versus. The Chief Election Commissioner, New Delhi and others². In that view of the matter, it is impermissible to supplement reasons through Affidavit-in-Reply, which are not to be found in the impugned orders. However, even in the Affidavit-in-Reply, Respondents have failed to plead the reasons of hidden consideration paid in the transaction or spectrum license fees being erroneously treated as debts payable by TTML. It however appears that the Respondents have pleaded in the Affidavit-in-Reply that '*I say that the Petitioner has not submitted any document to show that there is debts which are mentioned in the report are in existence*'. This reason is not recorded in the impugned orders of Collector of Stamps or CCR and the same could not have been supplemented in the form of Affidavit. Even, if this bar is to be momentarily ignored, the above pleading runs counter to the orally argued case of spectrum license fees not constituting debt of TTML. The oral arguments are canvassed after

² (1978) 1 SCC 405.

taking support from document in the form of sanctioned Scheme and reflection of figures of spectrum license fees payable to the Government therein. The Respondents are thus well aware of the exact document on the basis of which, the figure of debt stems out. However, in the Affidavit-in-Reply a bald averment is made that no document is produced to demonstrate existence of any debts.

38) Even otherwise, the oral submission of Mr. Deolekar about spectrum license fees incapable of being treated as debt is completely misplaced. The Scheme of Arrangement is a commercial decision taken by the shareholders of both the companies, who have accepted the position that TTML had liability to pay Rs. 950 crores to the Government of India towards spectrum license fees. Schedule-1 to the Scheme shows that several amounts were already due and payable towards the spectrum fees and some amounts may be payable in future. Considering the liability of TTML to pay spectrum fees, the companies have treated the actual enterprise value of customer mobile business of TTML as Rs. 105.7 crores and accordingly 1 share of Petitioner (trading at Rs. 349.55 on the relevant day) against 2014 shares of TTML. Thus 2014 shares of TTML are valued at only Rs. 349.55. The allotment of shares to shareholders of TTML is decided after taking into consideration that the actual worth of TTML was only 105.7 crores considering the huge liability to pay spectrum license fees to the Government. The Collector of Stamps cannot sit in appeal over this commercial wisdom of shareholders of both the companies and which is accepted by the NCLT and assume that TTML was actually worth more than what is accepted by the shareholders and NCLT. In my

view, the oral submissions made about error in reflection of spectrum license fees as debts, which are unsupported by reasons in impugned orders or even by pleadings deserve outright rejection.

39) In my view, therefore the Collector of Stamps has grossly erred in computing the stamp duty leviable on the Scheme of Arrangement by taking into consideration 'net worth' of consumer mobile business unit of TTML. The Collector ought to have computed stamp duty payable on aggregate market value of shares issued and allotted in exchange plus consideration paid for the transaction. Since no separate consideration is paid under the Scheme, the value of shares allotted by the Petitioner to the equity shareholders of TTML would alone form the entire consideration for the Scheme.

40) Despite availability of figures of market value of shares issued and allotted by the Petitioner in exchange, the Collector erroneously proceeded to determine stamp duty payable on the basis of net worth of TTML's consumer mobile business. The order passed by the Collector of Stamps is thus unsustainable and liable to be set aside.

41) As observed above, higher of the amount determined under clauses-(i) or (ii) of the first Proviso to Article 25(da) is payable. In the present case, the amount of stamp duty payable under clause-(i), *(5% of true market value of immovable properties located in the State of Maharashtra)* is found to be higher

(Rs.1,86,70,450/-) than the stamp duty payable under clause-(ii). Therefore, the correct amount of stamp duty payable under the Scheme of Arrangement would be Rs.1,86,70,450/- which has already been paid by the Petitioner.

42) The petition accordingly succeeds, and I proceed to pass the following order:

(I) Order dated 14 November 2022 passed by the Collector of Stamps, as well as order dated 2 August 2024 passed by the CCRA are set aside.

(II) It is held that the amount of stamp duty payable on the Scheme of Arrangement is Rs.1,86,70,450/-.

43) With the above directions, the petition is **allowed**. There shall be no order as to costs.

NEETA
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(SANDEEP V. MARNE, J.)