

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

W.P.A No.- 2966 of 2024

SK. ABDUL SABIR & ASSOCIATES

vs.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Sakya Sen, Sr. Adv.,
Mr. Deep Nath Roy Chowdhury, Adv.
Mr. Dip Jyoti Chakraborty, Adv.
Mr. Satrajeet Sen
Mr. Bhaskar Dwivedi

For the Respondent : Mr. Samrat Sen, Sr. Adv.
Mr. Arindam Mandal, Adv.
Mr. Manali Ali

Judgment Reserved on : 28.01.2026

Judgment Delivered on : 09.02.2026

Judgment Uploaded on : 09.02.2026

Shampa Sarkar, J.

1. The question before this court is whether the instrument which has been styled as the Memorandum of Understanding (MOU) and which was tendered as an exhibit by the writ petitioner in Title Suit No. 70 of 2011, also dealt with transfer of landed property and whether the stamp duty assessed by the respondents was correct.
2. The order dated July 31, 2023, bearing number 1297-FT/O/IN-05/20 issued by the Additional Chief Secretary to the Government of West Bengal and Chief Controlling Revenue Authority Government of West

Bengal, passed in a reference under Section 56 of the Indian Stamp Act 1899 and the consequent order dated September 7, 2023, passed by the District Magistrate Hooghly, are under challenge before this court.

3. The facts narrated in the writ petition are discussed in a nutshell:-

- (a) The petitioner is a partnership firm constituted under the Partnership Act 1932. One M/s Nirmal and Navin Private Limited (hereinafter referred to as the 'company') had availed of credit facilities for the purpose of its cold storage business to the tune of Rs 6.10 crores from Hooghly District Central Co-operative Bank. The company approached the petitioner for financial help as it was allegedly struggling to repay the loan.
- (b) The petitioner agreed to take care of the financial liability of the company and the personal guarantee of its directors. Pursuant thereto, the MOU was executed on January 27, 2009. The petitioner was represented by Sheikh Abdul Sabir and one Mr. Gopal Agarwal represented the company. The MOU was executed with the objective of transferring control of the company and the right to manage and operate the cold storage. Clauses 2 and 4 of the MOU would indicate that a sum of Rs 5 lakhs was paid by the petitioner to Gopal Agarwal and his wife (both directors) as a consideration for transfer of the entire shareholding in the company. Consequently, the petitioner was inducted as a director in the company. On and from January 28, 2009, the petitioner had been looking after the management and operation of the cold

storage unit and also clearing the loans obtained by the company from the bank. On July 18, 2011, Gopal Agarwal refused to act in terms of the MOU and Title Suit No. 70 of 2011 was filed before the Learned Civil Judge, Junior Division, 2nd Court, Arambagh, Hooghly. The petitioner as plaintiff prayed for an order of injunction restraining Mr. Gopal Agarwal from entering into the premises of the cold storage without permission and for a permanent injunction restraining Gopal Agarwal from interfering with the running of the cold storage.

- (c) The application for temporary injunction was disposed of by the learned Civil Court, restraining the defendant from entering into the property without permission of the petitioner. The said order was challenged in a Misc. appeal which was registered as Misc. appeal No.13 of 2011 by Gopal. The appellate court was of the view that Gopal should not be restrained by an order of injunction from entering into the property, and as such, the order of injunction was modified by passing an order of status quo in respect of the property, till the disposal of the suit. The said order was challenged before the High Court in CO No.- 55 of 2011. The order of the learned appellate court was not interfered with by the High Court.
- (d) The MOU was impounded by the Civil Court and was forwarded to the Additional District Sub-Register Arambagh for appropriate steps. The trial court had passed the order when the PW 1 wanted to mark the MOU as an exhibit. The report of the ADSR, that is

the Respondent No. 5, dated September 13, 2019, was forwarded to the court and the same is quoted below:-

“GOVERNMENT OF WEST BENGAL
OFFICE OF THE ADDITIONAL DISTRICT SUB-REGISTRAR,
ARAMBAGH
PO+PS- ARAMBAGH, DIST- HOOGHLY
PIN- 712601

Memo No- 174 Dated- 13th September, 2019

To

The Sheristader,

Civil Judge (Jr. Divn.), 2nd Court, Arambagh,

Arambagh, Hooghly

Sub: Submission of Valuation Report in connection with Title Suit No. 70 of 2011

Ref: Your office No. 154 dated 07.09.2019

Respected Sir

With reference to the subject mentioned above, I would like to submit herewith system generated Market Value of the Cold Storage in connection with Title Suit No. 70 of 2011. Assessed Market Value and Total Stamp Duty and Registration Fees payable for registration of transfer is stated in the system generated e-Assessment Slip (Query No/Year 0606-0001474620/2019). Market Value has been assessed on the basis of the information provided vide your office No. 154 dated 7th September, 2019.

This is for your kind information and taking necessary action please.

Thanking you,

Yours faithfully
ADSR, Arambagh
Addl District Sub-Registrar, Arambagh”



95

**Government of West Bengal
Directorate of Registration & Stamp Revenue
e-Assessment Slip**

Query No / Year	0606-1000238552/2019	Office where deed will be registered
Query Date	15/11/2019 3:33:38 PM	A.D.S.R. ARAMBAG, District: Hooghly
Applicant Name, Address & Other Details	Taimur Malick, Arambagh, Thana : Arambag, District : Hooghly, WEST BENGAL, Mobile No. : 9084633853, Status : Seller/Executant	
Transaction	Additional Transaction	
[0101] Sale, Sale Document	[4206] Other than Immovable Property, Declaration [No of Declaration : 1], [4308] Other than Immovable Property, Sale [Rs : 17,22,734/-], [4308] Other than Immovable Property, Agreement [No of Agreement : 1]	
Set Forth value	Market Value	
Rs. 19/-	Rs. 17,52,74,595/-	
Total Stamp Duty Payable(SD)	Total Registration Fee Payable	
Rs. 1,08,32,650/- (Article:23)	Rs. 17,05,890/- (Article:A(1), E, A(1), E)	
Mutation Fee Payable	Expected date of Presentation of Deed	Amount of Stamp Duty to be Paid by Non-Judicial Stamp
Rs. 27,300/-		
Remarks		

Land Details :

District: Hooghly, P.S.: Arambag, Gram Panchayat: HARINKHOLA-3, Mouza: Dakshin Rasulpur, J. No: 132, Pin Code : 712413

Sch. No	Plot Number	Khatian Number	Land Proposed	Use ROR	Area of Land	Set Forth Value (In Rs.)	Market Value (In Rs.)	Other Details
L1	LR-1766 (RS-1769)	LR-322/1	Cold Storage	Cold Storage	2.7 Acre	1/-	2,22,17,004/-	Property is on Road Adjacent to Metal Road.
L2	LR-1769/1805	LR-322/1	Cold Storage	Cold Storage	3 Dec	1/-	2,46,505/-	Property is on Road Adjacent to Metal Road.
L3	RS-1770	RS-594	Cold Storage	Shall	53 Dec	1/-	43,61,115/-	Property is on Road Adjacent to Metal Road.
L4	RS-1771	RS-595	Cold Storage	Shall	53 Dec	1/-	43,61,115/-	Property is on Road Adjacent to Metal Road.
TOTAL :					579Dec	4/-	311,86,090/-	
Grand Total :					579Dec	4/-	311,86,090/-	

AS-1 of 5

Query No: 0606-1000238552 of 2019, Printed
On: Nov 15 2019 4:37:14, Generated from
Registration office.

Addl. Dist. Sub-Registrar
Arambagh

15/11/19

- (e) The stamp duty assessed was Rs. 1,06,02,650. The decision was challenged by the petitioner by filing WP No. 23886 of 2019. By an order dated December 20, 2021, the High Court disposed of WPA 23886 of 2019 by directing the collector to consider the matter within a specific time and to pass a reasoned order. The order passed in the writ petition is quoted below:-

“Pursuant to the order dated 19th November, 2014 passed by the learned Civil Judge (Junior Division), 2nd Court, Arambag in Title Suit No.70 of 2011, the ADSR, Arambag has communicated to the Civil Judge (Junior Division), 2nd Court, Arambag regarding the valuation of a certain Memorandum of Understanding. The sum payable by the petitioner was assessed at Rs.1,06,02,650/- in terms of Article 23 of the Indian Stamp Act.

The petitioner is aggrieved by the valuation of the ADSR, Arambag, which appears to have been extracted from computer as e-Assessment Slip. It appears from the record that the Collector, Hooghly was directed by the Civil Judge (Junior Division), 2nd Court, Arambag to effect the valuation.

Since the direction was on the Collector and even otherwise the latter is the next highest authority above the ADSR, Arambag, the Collector shall consider the matter within a period of one month from the date of receipt of a copy of this order and a reasoned order may be passed on the valuation of the Memorandum of Understanding after giving hearing to all the concerned parties and/or their legal representatives and communicate the order to the Civil Judge (Junior Division), 2nd Court, Arambag.

With the aforesaid observations, the writ petition is disposed of.”

- (f) By an order dated February 22, 2022, the District Magistrate Hooghly and Collector, disposed of the matter by holding that the valuation of the property was to be assessed as per Article 5(d) which was equivalent to Article 23 under Schedule 1A of the

Stamp Act. It was observed that, the said MOU not only dealt with transfer of shares, but also transfer of the cold storage along with the landed property. The relevant portions of the decision is quoted below:-

“Whereas, after careful perusal of the MOU dated 27.01.2009 it appears that it has been specifically mentioned in the said MOU that will be transfer of Cold Storage Unit of M/S Nirmal & Navin (P) Ltd. including the landed property there within mortgaged to Hooghly District Central Co-operative Bank Ltd. which tantamount to Agreement to sale as per provision of Transfer of Property Act, 1882 and attracts Article 5(d) of Schedule 1A of the Indian Stamp Act, 1899.

AND

Whereas, it also transpired from the MOU dated 27.01.2009 that there is no specific mention of number of Equity/Preference along with the Book value /Face Value share of the M/S Nirmal & Navin Pvt. Ltd. which is to be transferred to the intending buyer. So, it does not attract Article 62 of the Indian Stamp Act,

Hence, I District Magistrate, Hooghly dispose of this case with an observation that the valuation of MOU will be done as per Article 5 (d) same as article 23 under schedule 1A of the Indian Stamp Act, 1899 on the ground that there will be a transfer of Cold Storage Unit along with the landed property. The petitioner is liable to pay the stamp duty as per valuation under Article 23 of the Indian Stamp Act, 1899

Thus, the case is disposed of.”

- (g) The said order was assailed in WPA NO. 18967 of 2022. By an order dated September 30, 2022, the High Court disposed of WPA No.18967 of 2022, by granting liberty to the petitioner to take recourse under Article 56 of the Indian Stamp Act 1899. By an order dated July 31, 2023, the Additional Chief Secretary and Chief Controlling Revenue Authority Government of West Bengal held that the instrument dated January 27, 2009, which formed the subject matter of inquiry before him, not only dealt with the transfer of shares, but also with the transfer of cold storage unit

and landed property. On the basis of the order of the Additional Chief Secretary and Chief Controlling Revenue Authority Government of West Bengal, the District Magistrate passed an order on September 7, 2023, holding that the valuation of the MOU was to be done as per Article 23 under Schedule 1 A of the Stamp Act. This led to the filing of the writ petition.

(h) The firm also instituted a proceeding under Sections 397 and 398 of the Companies Act, 1956 before the Company Law Board Kolkata Bench, which was dismissed.

4. Mr. Sakya Sen, learned Senior Advocate for the petitioner, submitted that the MOU should be read as a whole and the clauses should be harmoniously construed. A sentence from here and there should not be extracted, to interpret the nature of the instrument. Upon the petitioner agreeing to take over the financial liability of the company and repay the loan of Rs. 6.10 crores, the MOU was executed. The objective of the MOU was to transfer the control of the company, i.e., the shareholding and the right to manage and operate the cold storage. A conjoint reading of clauses 2 and 4 of the MOU would indicate that a sum of Rs.5 lakhs was paid by the petitioner to Gopal Agarwal and his wife as consideration for transfer of their entire shareholding of the company. The MOU implied that the transfer was only with regard to the shares, control, management and operations. The same did not involve transfer of the landed property belonging to the cold storage. The landed property did not change hands, but it remained with the company. The MOU was erroneously valued as a

deed of conveyance of immovable property, and as such an exorbitant amount of stamp duty was assessed and claimed to be payable by the petitioner.

5. He further submitted that the shareholders Gopal, and his wife had no right and interest in the property. They were merely directors. The transfer of shares could not be construed as transfer of assets of the company. The company was the sole owner of the property and assets, including the land and was a juristic person. The true position of the petitioner as the shareholder, upon buying the shares was that of an investor. The petitioner was entitled to the profits of the company if and when dividends were declared, subject to of course, the Articles of Association specifying how the profits or any portion thereof should be distributed as dividends among the share holders. The petitioner, as a shareholder, had no right in the assets. Controverting the submissions made on behalf of the State, Mr. Sen submitted that the cold storage was mortgaged to the bank. The petitioner agreed to take care of the financial liability of the company. As a result, the MOU was executed with the object of transferring the shareholding, control and right to manage the cold storage unit of the company. The assets of the company were not transferred to the petitioner. The assets remained with the company.
6. The contention of the State that only 18% of the shareholding was transferred to the petitioner, was vehemently denied by Mr. Sen. He submitted that, the MOU did not indicate that in lieu of Rs. 5 lakhs, only 18% of the shareholding had been transferred. The order of the

Company Law Board (hereinafter referred to as CLB) would indicate that the petitioner was aggrieved because 82% of the shares had not been transferred in terms of the MOU. Referring to clause 3 of the MOU, it was urged before this court that the MOU clearly provided that the said property, meaning thereby, the cold storage would be handed over to the petitioner on and from January 20, 2009, only for the purpose of starting the operations of the potato cold storage. Pursuant to the said MOU, the petitioner was handed over the mortgaged unit in order to manage the same on a day-to-day basis, in consideration whereof the petitioner agreed to repay the loan of Rs.6.10 crores taken by the company. Transfer of any interest in the property of the company had not been contemplated. The MOU could not be treated as a conveyance, by which the assets of the company had been transferred. Neither was the petitioner a purchaser of the cold storage unit, nor was the company a vendor, transferring the entire unit. The MOU was restricted to transfer of shares by Gopal and his wife and did not include transfer of any interest in the immovable property. The cold storage unit continued to be under the ownership of the company.

7. It was submitted that the MOU should be impounded only under Article 62 (a) of Schedule I of the Indian Stamp Act. Section 2(10) of the Stamp Act defined conveyance. It included conveyance on sale and every instrument by which property, whether movable or immovable, was transferred inter vivos, which was not otherwise specifically provided for by Schedule I. Thus, transfer of the management and

control of the cold storage would not fall within the definition of conveyance and would not attract the stamp duty as decided by the authorities.

8. The suit also proceeded on the basis that the petitioner had the right to manage the operations of the cold storage. The petitioner, as a shareholder and manager of the cold storage, filed the suit only to restrain Gopal Agarwal from interfering with the day-to-day running of the cold storage, on the ground that Gopal had failed to fulfil his obligations under the MOU and did not act in terms of the MOU.
9. ***Bacha F. Guzdar vs Commissioner of Income Tax, Bombay*** reported in **(1954) 2 SCC 563**, was relied upon in support of the contention that, a shareholder acquired a right to participate in the profits of the company, but did not acquire any interest in the assets of the company. The company was a juristic person and distinct from the shareholders. It was the company which owned the property and not the shareholders. There was nothing in the Indian law to warrant an assumption that a shareholder who had purchased the shares had actually purchased any interest in the property of the company. The company as a juristic person was entirely distinct in its identity from the shareholders.
10. ***Purna Investment Ltd. vs Bank of India Ltd. and Ors.*** reported in **1982 SCC Online Cal 296** was relied upon in support of the contention that, the true position of a shareholder upon buying shares was that of an investor who became entitled to participate in

the profits of the company in which he held shares. He did not have any right to the assets as a whole.

11. ***Limmer Asphalte Paving Company Limited vs Commioners of Inland Revenue*** reported in ***(1872) LR 7 Exch. 211***, was relied upon in support of the contention that, in order to determine the stamp duty chargeable upon an instrument, the legal rule was that the real and true meaning of the instrument should be ascertained. The description given in the instrument by the parties was immaterial. Whether the subject matter of the conveyance was the property or the shares, should be construed from the words imported in the instrument itself.
12. ***The Madras Refineries Ltd. vs The Chief Controlling Revenue Authority, Board of Revenue, Madras*** reported in ***(1977) 2 SCC 308*** was also relied upon on a similar proposition.
13. Mr. Sakya Sen further referred to Section 48 of the Companies Act in support of the contention that, without a resolution of the board of directors authorizing conveyance of landed property of the company, the same could not have been transferred in favour of the petitioner by Gopal Agarwal. Gopal Agarwal could not sell the land/assets of the company without a resolution of the Board. Thus, the true intention and purport of the execution of the MOU was to transfer the shares of Gopal and his wife, and hand over possession of the cold storage to the petitioner, so that the petitioner could run and operate the cold storage business on a day-to-day basis.

14. Reference was made to the decision of ***Rajendra Nath Dutta and Ors. vs Shibendra Nath Mukherjee and Ors.*** reported in **1981 SCC Online Cal 229**, in support of the contention that, the company is a juristic person and neither the shareholders nor the directors can individually sue in their name, for the wrongs done to the company. Thus, the suit was filed against Gopal, other individuals and the bank, but not against the company.
15. ***Pankaj Paliwal vs Vian Infrastructure Ltd. and Ors.*** reported in **2018 SCC Online Del 12704** was relied upon in support of the contention that the company could only act on the authorization received from the board of directors while directing sale of an immovable property.
16. He submitted that in the present case, neither the MOU nor any other documentary evidence were indicative of the fact that the board of directors had authorized Gopal to cause sale of the property and assets, including landed property of the cold storage in favour of the petitioner. Hence, Mr. Sen submitted that the stamp duty payable would be in respect of transfer of shares alone.
17. Mr. Samrat Sen, learned senior Advocate for the respondents submitted that what transpired between Gopal and the petitioner was immaterial, in the assessment of the stamp duty. He submitted that, the Stamp Act was a fiscal statute which had been enacted to secure revenue for the state by collecting proper stamp duty on instruments specified in the Schedules thereto. Section 3 of the Stamp Act was the charging section and it provided that the instruments specified in the

Schedule with certain exceptions were chargeable to stamp duty at the amount indicated in the Schedule itself. Thus, stamp duty was payable on the instruments chargeable with duty as mentioned in Schedule 1 A of the Stamp Act (as per the West Bengal Amendment). Section 2(14) of the Stamp Act defined an instrument, which included any document by which a right or liability was, or purported to be created, transferred, limited, extended, extinguished or recorded.

18. Clauses 1, 2 and 4 of the MOU would clearly indicate that not only the shares of the company, but also the landed property which was mortgaged to the bank was transferred in favour of the petitioner. He submitted that a deed of conveyance or an instrument could comprise of one distinct transfer or a series of transfers. It was open to the parties to enter into one composite instrument incorporating distinct matters, each of which was chargeable to stamp duty in terms of Schedule 1 A of the Stamp Act, read with Section 5 of the Act. Section 6 of the Stamp Act also contemplated circumstances when the instrument fell within two or more of the descriptions in the Schedule. In such circumstances, the duties chargeable thereunder being different, the instrument would be chargeable with the highest of the duties. Section 5 and Section 6 of the Stamp Act were referred to in great detail.

19. He further submitted that if the instrument dealt with distinct matters and the aggregate of stamp duty payable on such matters had not been paid, it was impermissible in law to split the transaction into two transactions, to render the instrument valid for one of the several

matters. The instrument as a whole became inadmissible in evidence if it was not stamped on the aggregate. Reference was made to Section 2(11), read with Section 35 of the Stamp Act in support of the contention that, if the MOU was not duly stamped, the same was inadmissible in evidence. In the instance case, sale of shares of a corporate entity and sale of immovable property were distinct matters. The MOU accordingly comprised of distinct matters and the aggregate of the stamp duty was to be assessed on the instrument.

20. The legislative intent behind enacting Section 5 was to ensure, that no party to an instrument escaped payment of full duty chargeable on it, with impunity. Such legislative intent was bound to be defeated in case a party was permitted to make use of an instrument according to its particular needs or exigencies of the situation without fully complying with the provisions of the Act and making payment of the aggregate stamp duty on all the distinct matters which were comprised in the instrument.

21. Mr. Samrat Sen relied on the following decisions in support of his contentions:-

- (a) ***Hindustan Lever and another vs. State of Maharashtra and Anr.*** reported in **(2004) 9 SCC 438**
- (b) ***Tamil Nadu Generation and Distribution Corporation Limited vs CSEPD-TRISHE Consortium*** reported in **(2017) 4 SCC 318**
- (c) ***Chief Controlling Revenue Authority vs Coastal Gujarat Power Limited and Ors.*** reported in **(2015) 10 SCC 700.**

- (d) ***Satya Vijay vs State of U.P. and Ors.*** reported in **2012 SCC Online ALL 670**
- (e) ***Residents Welfare Association, Noida vs State of Uttar Pradesh and Ors.*** reported in **(2009) 14 SCC 716**
- (f) ***The Member, Board of Revenue vs Arthur Paul Benthall*** reported in **1955 SCC Online SC 4**
- (g) ***Pusapati Sudhakar vs Koppu Venkata Prabhakara Rao*** reported in **2005 SCC Online AP 479.**

22. In ***Pusapati Sudhakar (supra)***, the High Court of Andhra Pradesh held as follows:-

“9. In *Kasturi Lal v. Bharat Finance Co.* (1 supra), a Division Bench of Jammu and Kashmir High Court held that if an instrument dealt with distinct matters, and the aggregate of stamp dutypayable on such matters is not paid, it is impermissible to split the transactions to render the instrument, valid for one of the matters. It was observed that the instrument becomes inadmissible in evidence, as a whole, if it was not stamped on the aggregate. For arriving at this conclusion, reference was made to sub-section (11) of Section 2 of the Act, which defines the expression “duly stamped”, as well as the expression “distinct matter”, occurring in Section 5. The judgment of the Madras High Court in *S.R.M.S.T. Narayana Chettiar v. The Kaleeswarar Mills Ltd.*, (2) AIR 1952 Mad. 515 was relied upon. The relevant portion of the judgment in *Kasturi Lal's case* (1 supra), reads as under:

“The instrument has to be read as a whole and treated as a single instrument for the purposes of stamp duty. Furthermore, ‘distinct matter’ in Section 5 connotes a transaction to achieve a distinct object, and does not include a matter which is merely accessory or ancillary to such object. The entire document has to be read as a whole to find out its dominant object. It necessarily follows that an instrument comprising distinct matters, which does not bear the aggregate amount of duty chargeable for each such matter, cannot be said to be duly stamped within the meaning of Section 2 (11), and consequently cannot be admitted in evidence for any purpose u/s.35, including the purpose to prove that matter on which the duty chargeable stands already paid. The principal object behind enacting Section 35 is to ensure, that no party to an instrument-escapes payment of full

duty chargeable on it with impunity. This object is bound to be defeated in case a party is permitted to make use of an instrument according to its needs or exigencies of situation without fully complying with the provisions of the Act”.

10. It was held by the Jammu and Kashmir High Court that it is impermissible to split a document, which comprises of distinct matters and to validate it for the limited purpose of one such matters. However, it did not deal with the question as to what character such a document would partake, in the context of payment of deficit stamp duty with penalty, under proviso (a) to Section 35. In fact, such a contention does not appear to have been advanced before it. The question before it was, as to whether the instrument, as it stood, was admissible in evidence, under Section 35 and not whether the defect could have been cured under the provisions of the Act.

11. As observed earlier, the defect as to stamp duty on a promissory note cannot be cured and thereby, it becomes inadmissible in evidence. However, it needs to be noted that once the instrument evidences more transactions, or matters than one, it assumes a character, which is distinct, from either, of such transactions. The non-availability of the facility of payment of deficit stamp duty is only in respect of three categories of instruments viz., an instrument, chargeable with a duty, not exceeding 10 paise, a bill of exchange, or promissory note. Such facility is available for rest of categories of instruments. An instrument, which relates to several distinct matters, certainly falls into the residuary category. The result is that, though there is no escape from the obligation to pay the aggregate of the stamp duty on the distinct matters witnessed by the instrument, falling under Section 5 of the Act, the facility of curing the defect by paying the deficit duty with penalty is very much available for it. Though in not so many terms; this is what the trial Court did. Hence, no exception can be taken to the order under revision.”

23. In ***Chief Controlling Revenue Authority (supra)***, the Hon’ble Apex Court held as follows:-

“29. When several matters are contained in one instrument, what stamp is payable thereon in England has been dealt with and *Halsbury's Law of England*, 4th Edn., Vol. 44, para 613 at p. 399 is quoted hereinbelow:

*“613. Instrument relating to several matters.—*Except where there is statutory provision to the contrary, an instrument containing or relating to several distinct matters is to be separately charged, as if it were a separate instrument, with stamp duty in respect of each of the matters, and an instrument made for any

consideration in respect of which it is chargeable with ad valorem duty, and also for any further or other valuable consideration, is separately chargeable, as if it were a separate instrument, in respect of each of the consideration.”

24. In the decision of **Satya Vijay (supra)**, the Allahabad High Court held as follows:-

“9. Indian Stamp Act, 1899 is a statute of a fiscal nature. It has been enacted to secure revenue for the State by collecting proper stamp duty on certain classes of instruments as specified. Section 3 of the Act is the charging section and provides that the instruments specified in Schedule of the Act with certain exceptions are chargeable to stamp duty of the amount indicated in the Schedule of the Act itself.

* * *

* * *

24. Evidentially, the instrument is a lease deed for a period of 3 years and since it contains a condition for extension of the lease after 3 years, it is also an instrument creating right and liabilities inter se the parties in respect of the land in future. In that sense, it becomes an agreement to let after 3 years which would be subject to the payment of stamp duty in accordance with Article 35 of Schedule 1-B of Act.

25. In this view of the matter, the instrument in question is a composite document of lease and an agreement to let.

26. Section 5 of the Act stipulates that where a single instrument comprises of distinct instruments chargeable to stamp duty, aggregate amount of stamp duty would be chargeable/payable in respect of all such instruments which are part of it. It means that in the instant case on the instrument of lease and agreement to let aggregate amount of stamp duty would be payable.

27. In the above legal scenario, the instrument in question would be subject to aggregate stamp duty for the first 3 years as a lease under Article 35(a)(ii) of Schedule 1-B of the Act and as an agreement to let for the next 6 years in accordance with Article 35(a)(iii) of the Act. The authorities below have erred in subjecting it to a flat rate of stamp duty under Article 35(a)(iii) of Schedule 1-B of the Act.

28. In this legal sense, the period of lease or the period of extended lease loses all significance and wherever in a lease there is stipulation either for renewal or extension of lease on the expiry of the initial period of lease, it would be a composite instrument of lease and agreement to let both of which are chargeable to stamp duty under Article 35 of Schedule 1-B of the Act.”

25. In the decision of ***Hindustan Lever (supra)***, the Hon'ble Apex Court held as follows:-

“44. Under the Bombay Stamp Act conveyance includes any instrument by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, *inter vivos*. The words “inter vivos” have not been defined in the Act or in the General Clauses Act. The meaning assigned to the words “inter vivos” in the *Black's Law Dictionary*, 6th Edn., is:

“Between the living; from one living person to another. Where property passes by conveyance, the transaction is said to be *inter vivos*, to distinguish it from a case of succession or devise. So an ordinary gift from one person to another is called a ‘gift *inter vivos*’....”

45. It was contended that since the transaction was not between “living beings” the same was not “inter vivos” as the transfer of property had not taken place between living beings. We do not agree. “Transfer of property” has been defined in Section 5 of the Transfer of Property Act, 1882 to mean an act by which a living person conveys property, in present or in future to one or more other living persons. Company or association or body of individuals, whether incorporated or not, have been included amongst “living person” in this section. It clearly brings out that a company can effect transfer of property. The words “inter vivos” in the context of Section 394 of the Companies Act would include within their meaning also a transfer between two “juristic persons” or a transfer to which a “juristic person” is one of the parties. The transaction between a minor or a person of unsound mind with the other person would not be recognised in law, though the same is between two living beings, as they are not juristic persons in the eye of the law who can by mutual consent enter in a contract or transfer the property. The company would be a juristic person created artificially in the eye of the law capable of owning and transferring the property. Method of transfer is provided in law. One of the methods prescribed is dissolution of the transferor company by merger in the transferee company along with all its assets and liabilities. Where any property passes by conveyance, the transaction would be said to be inter vivos as distinguished from a case of succession or devise.”

26. In the decision of **Prasad Technology Park (P) Ltd. vs Sub-Registrar and Ors.** reported in **(2006) 1 SCC 473**, the Hon'ble Apex Court held as follows:-

“12. Section 2(1)(j) of the Act defines “instrument” to mean:

“2. (1)(j) ‘Instrument’ includes every document and record created or maintained in or by an electronic storage and retrieval device or media by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;”

13. Execution of an instrument which would attract payment of stamp duty in terms of Article 5(d) of the Act must involve transfer of the property or otherwise a right or liability may inter alia be created, transferred, etc., as envisaged in Section 3 thereof. Once it is held that the supplementary agreement is neither a deed of lease nor a deed of sale within the meaning of Section 105 or Section 54 of the Transfer of Property Act, as the case may be, Article 5(d) of the Schedule to the Act will have no application. If Article 5(d) has no application, indisputably the residuary clause contained in Article 5(i) would have. The appellant admittedly paid the stamp duty in terms thereof.

14. It is now well settled that for the purpose of levy of stamp duty, the real and true meaning of the instrument must be ascertained. (See Madras Refineries Ltd. v. Chief Controlling Revenue Authority, Board of Revenue [(1977) 2 SCC 308] .)”

27. Reliance was further placed on the decision of **Prasad Technology (supra)**. The Hon'ble Apex Court held as follows:-

“40. Before we part with this aspect of the matter, that is to say, whether the document/instrument was in fact a deed of assignment or an outright sale, we must also keep in mind that the nomenclature to the document of assignment cannot be said to be a determining factor in deciding whether a particular deed or document was a lease or a deed of assignment.

41. In Madras Refineries Ltd. v. Board of Revenue [(1977) 2 SCC 308 : AIR 1977 SC 500] it was held that in order to decide whether a particular document is a lease or a deed of assignment, one has to look at the substance of the deed of assignment to the document and not the nomenclature. Therefore, it must be held that no importance can be given to the nomenclature of the document. Although some of the members of the Association had termed the document as a deed of sale or transfer-cum-sale deed instead of as a deed of assignment, it

remains as a deed of assignment as has been noted above by us.”

28. On the issue of assessment of stamp duty in respect of the subject MOU, Mr. Sen submitted that the instrument comprised of two distinct matters, (a) Transfer/Agreement to transfer the Cold Storage Unit of the company including the landed properties at a consideration of Rs. 6.10 crore. (b) Transfer/Agreement to transfer the shares of the company in favour of the said firm at a consideration of Rs. 5 lakhs. The aforesaid two transfers were separate. The same instrument comprised of two severable independent and distinct matters.

29. The transfer/intended transfer of the cold storage unit along with the landed property would be evident from clauses 1, 3 and 9 of the instrument.

30. Clause 1 provided that the company had agreed to "transfer" the Cold Storage Unit and the landed property for a consideration of Rs. 6.10 crore. Clause 3 provided that pursuant to the instrument, the said property was to be "handed over" to the said partnership firm. In other words, the instrument was in the nature of a conveyance within the meaning of Section 2(10) of the Stamp Act and, if not a conveyance which evinced transfer of property, at least an agreement for sale. The substance of the instrument related to an actual transfer of property which had taken place by virtue of the document itself. The claims in the suit were as if the petitioner had acquired title in the cold storage with the landed property. Whether or not the Court interpreted the transaction relating to transfer of the Cold Storage Unit and the landed

property as a conveyance or as an agreement for sale, the ultimate result would be that the stamp duty payable on the instrument would be the same i.e. as that of a conveyance. Stamp duty payable on an agreement for sale was as per Entry 5(d) of Schedule IA, which provided that stamp duty payable on an agreement for sale was the same as that of a conveyance.

31. From clauses 2 and 4 of the instrument, it would appear that the shares of the company were to be transferred in favour of the said partnership firm at an agreed consideration of Rs. 5 lakh. The stamp duty payable on such transaction was as per Entry 5(b)(ii) of Schedule 1A of the Stamp Act.

32. Mr Samrat Sen submitted that, pursuant to the agreement for transfer of shares, the partnership firm had become one of the shareholders of the company holding 18% of the shares of the said company. According to the case made out before the Ld. Company Law Board, the said company had an authorized share capital of Rs.35 lakh with a paid-up share capital of Rs. 34 lakh which was divided into 34,000 shares of Rs. 10.00 each. Pursuant to the aforesaid share purchase agreement (forming part of the instrument) the said partnership held 6,050 shares out of the 34,000 equity shares which constituted 18% of the total issued, paid up and subscribed share capital of the said company This would appear from paragraphs (ii), (iii), (vii) and (viii) of the order dated September 24, 2013 passed by the Company Law Board, Kolkata Bench.

33. Accordingly, as per the case made out by the writ petitioner itself, the acquisition of the aforesaid shares by it in the said company had not made it the sole shareholder or even a majority shareholder in the said company.

34. Moreover, even if it had become the majority shareholder, merely by purchase of the shares or by acquisition of the shares in terms of the MOU, the said firm i.e. the writ petitioner would not have been entitled to acquire any interest, far less any separate or independent interest in the cold storage unit and the landed property of the said company. Thus, the petitioner also understood itself to be the owner of the cold storage and the landed property and thus filed the suit for permanent injunction against Gopal, his men and the bank. The outstanding dues of the bank had also been partially paid by the petitioner when the suit was filed.

35. Mr. Sen submitted that the proposition of law propounded in ***Bacha F. Guzdar(supra)*** supported the case of the State, inasmuch as, the transaction between the petitioner and Gopal was not limited to buying and selling of shares, but the parties deemed it fit to enter into a MOU which was a deed of conveyance or a deed of sale, so that the petitioner could get an independent and separate interest in the landed property as also in the cold storage unit which was distinct from just being a shareholder. Paragraph 6 of the writ petition was relied upon in support of such contention.

36. Submissions of the parties have been considered. Paragraph 6 of the writ petition is quoted below:

“6. The petitioner states that by way of the Memorandum of Understanding dated 27th January, 2009, Mr. Gopal Agarwal, the then Director of the Company, agreed to transfer the cold storage unit of M/s. Nirmal & Navin Pvt. Ltd. situated at Dakshin Rasulpur, Hooghly, Pin-712416 on the Main road of Arambagh Tarkeshwar Highway. It was also decided that the cold storage unit of M/s Nirmal & Navin Pvt. Ltd. including the landed property which was mortgaged to Hooghly District Central Cooperative Bank Ltd. at Arambagh Branch, if required, would be transferred to the nominated personnel of the petitioner, subject to the approval of the bank, for the consideration value of the outstanding bank loan, amounting to six crores and ten lakhs approximately on the date of execution of the Memorandum of Understanding as per information received by the petitioner from the bank.”

37. Section 2(14) of the Stamp Act is quoted below:-

“(14) Instrument.— “instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.”

38. By way of a Memorandum of Understanding dated 27th January, 2009, Mr. Gopal Agarwal, the then Director of the Company, agreed to transfer the cold storage unit of M/s.Nirmal & Navin Pvt. Ltd. situated at Dakshin Rasulpur, Hooghly, Pin-712416 on the main road of Arambagh Tarkeshwar Highway. It was also decided that the cold storage unit of M/s Nirmal & Navin Pvt. Ltd. including the landed property which was mortgaged to Hooghly District Central Cooperative Bank Ltd, at Arambagh Branch, if required, would be transferred to the nominated personnel of the petitioner, subject to the approval of the bank, for the consideration value of the outstanding bank loan, amounting to 6.10 crores approximately, on the date of execution of the Memorandum of Understanding as per information received by the petitioner from the bank.

39. It appears that the petitioner had asserted that Gopal Agarwal had agreed to transfer the cold storage unit including the landed property which was mortgaged to Hooghly District Central Cooperative Bank to the petitioner. The relevant paragraphs of the MoU are quoted below:-

“1. That the second party has agreed to transfer the Cold Storage Unit of M/s Nirmal & Navin (P) Ltd. situated at Vill and PO Dakshin Rasulpur, dist Hooghly, Pin- 712416, West Bengal, on the main road of Arambagh Tarkeshwar Highway including the landed property there within, mortgaged to Hooghly District Central Co-operative Bank Ltd. at Arambagh Branch, to the nominated personnel of the First Party, subject to approval of the Bank, for the consideration value of the outstanding Bank Loan, currently amounting to approximately Rs.6.10 crores (Rupees Six Crores Ten Lakhs Only) as per information received by the First party from the bankers.

2. That an amount of Rs. 5.00 lakhs (Rupees Five Lakhs Only) is being paid to the Second party by the First Party through the account payee cheque vide No. 010705 payable to Mr. Gopal Agarwal and 010706 payable to Mrs. Kusum Agarwal towards the consideration for the transfer of shares of Nirmal & Navin Pvt. Ltd.

3. That the said property of M/s. Nirmal and Navin Pvt. Ltd. located at Dakshin Rasulpur (formerly known as M.P. Cold storage) will be handed over to the First Party by the Second Party on 28 January 2009, to start operations for the authorized use of the Unit as a Potato Cold Storage.

4. That the Second Party will make the documentation formalities regarding the transfer of shares and the ROC formalities to the nominated personnel of the First Party and strive to complete the same within two weeks within Legal and Company law rules and regulations.

* * *

* * *

9. That the bank liabilities of approximately Rs. 6,10,00,000 (Rupees Six Crores Ten Lakhs Only) will be henceforth transferred on account of the First Party and the second party will have no further liability for the same.”

40. Thus, a harmonious reading of the said clauses clearly indicate that not only the shares of Gopal and his wife, but the cold storage unit along with the land were agreed to be transferred to the petitioner

and the petitioner had the obligation to pay off the dues of the bank and release the cold storage unit including the assets and landed property from the mortgage. Thus, the first contention of Mr. Sakya Sen that the true meaning and purport of the MoU should be understood in order to assess the stamp duty payable, is accepted by the court. The conclusion is that the spirit and meaning of the MOU was not only to transfer the shares, but also the landed property and assets. Section 3, 5 and 6 of the Stamp Act are quoted below:-

“3. Instruments chargeable with duty. —Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say— (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in 6 [India] on or after the first day of July, 1899; (b) every bill of exchange 7 [payable otherwise than on demand] 8 *** or promissory note drawn or made out of 6 [India] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in 6 [India]; and (c) every instrument (other than a bill of exchange, 8 ***or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of 6 [India] on or after that day, relates to any property situate, or to any matter or thing done or to be done, in 6 [India] and is received in 6 [India]: Provided that no duty shall be chargeable in respect of— (1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument; (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts.

5. Instruments relating to several distinct matters. — Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties

with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

6. Instruments coming within several descriptions in Schedule I. — Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties: Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.”

41. The contentions of the state are justified in terms of the above sections. The order of the Additional Chief Secretary is quoted below:-

“From : The Additional Chief Secretary to the Government of West Bengal

&

Chief Controlling Revenue Authority, Government of West Bengal

To : The District Magistrate & Collector, Hooghly,
Treasury Building, 2nd Floor, P.O. - Chinsurah,
Dist. - Hooghly, PIN-712 101.

Sub : His Memo No. 262/RM dated 07.02.2023 with respect to the reference under Section 56 of the Indian Stamp Act, 1899, in connection with WPA 18967 of 2022 (Sk. Abdul Sabir & Associates -Vs- The State of West Bengal & Others). The matter referred to u/s 56 of the Indian Stamp Act, 1899, has been duly considered in light of the documents presented and the submissions made before me on 10.04.2023 by the representatives of Sk. Abdul Sabir & Associates.

It transpires on scrutiny of the documents available that the Memorandum of Understanding (MOU) dated 27.01.2009 not only deals with the transfer of shares, but also with the transfer of the cold storage unit and landed property of M/s Nirmal & Navin (P) Ltd., situated at Vill. & P.O. - Dakshin Rasulpur, Dist. - Hooghly, West Bengal, on the main Road of Arambag Tarakeshwar Highway. This is evident from clause (1) of the MOU. In addition, the financial assets of the second party of the MOU are also subject to transfer, as mentioned in clause (10).

Therefore, the MOU is not limited to the transfer of shares, but also includes the transfer of landed properties and assets.

Accordingly, I am of the considered view that Article 23 of the Indian Stamp Act, 1899, should be applicable for ascertaining the valuation of the instrument in question.”

42. In the order of the CLB it has been recorded that the petitioner Sk. Abdul Sabir and others who had filed C.P. No. 751 of 2011 had admitted to have shares 6050 number of shares constituting 18% of the total issued and paid up capital of the company, and claimed the remaining 82%. Thus, by owning 18% of the paid up and subscribed share capital of the company, the petitioner could not have instituted the suit for permanent injunction against Gopal, restraining him from entering into the property. The petitioner had treated itself and understood itself as owner of the cold storage and landed property and that is why had prayed for a permanent injunction against Gopal restraining him from entering into the property from which the cold storage was running. Thus, the orders impugned before this Court do not call for interference. The authorities applied the relevant provisions of the Indian Stamp Act, and arrived at the conclusion that the instrument provided for transfer of shares and transfer of land.
43. The alleged absence of a board resolution authorizing Gopal to transfer the assets of the company can at best make the petitioner's title defective. However, the valuation of the instrument has to be made on the basis of what was sought to be conveyed by the said instrument.
44. The writ petition is dismissed.
45. There shall be no order as to costs.

46. Parties are to act on the basis of the server copy of this judgment.

Urgent Photostat certified copies, if applied for, be supplied to the respective parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)