
M/s Sozin Flora Pharma LLP Vs State Of Himachal Pradesh And Another**Civil Writ Petition No. 4019 Of 2020**

Court: High Court Of Himachal Pradesh**Date of Decision:** Jan. 7, 2021**Acts Referred:**

Himachal Pradesh Tenancy And Land Reforms Act, 1972 â€” Section 118#Limited Liability Partnership Act, 2008 â€” Section 45(1), 48, 55, 58, 58(1), 58(4), 58(4)(b)#Companies Act, 1956 â€” Section 21, 23, 391, 392, 393, 394, 394(2)#Indian Stamp Act, 1899 â€” Section 3#Indian Companies Act, 1913 â€” Section 4, 24, 35, 253, 253(1)(ii), 255, 256, 262, 263, 565 565(1)(b), 567, 568, 574, 575#Companies Act, 2013 â€” Section 2, 2(47)(iii),11#Registration Act, 1908 â€” Section 17

Hon'ble Judges: Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J**Bench:** Division Bench**Advocate:** Abhishek Sethi, Ashok Sharma, Vinod Thakur, Vikas Rathore, Shiv Pal Manhans, Seema Sharma, Bhupinder Thakur, Yudhvir Singh Thakur**Final Decision:** Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Upon conversion of the petitioner from Ã¢â‚¬Å“Partnership FirmÃ¢â‚¬Å“ to Ã¢â‚¬Å“Limited Liability PartnershipÃ¢â‚¬Å“, the respondents while granting permission

to reflect such change of name in the revenue record, directed it to deposit Stamp Duty and Registration Fee. The petitioner has challenged the

aforesaid direction in this writ petition.

2. Facts:-

2(i). Petitioner was registered as a Partnership Firm on 14.12.2005 in the office of Deputy Registrar of Firms, District Industries Centre, Nahan. The

registration was in the name and style of M/s Sozin Flora Pharma under the provisions of Indian Partnership Act.

2(ii). Essentiality Certificate was issued to the petitioner on 23.11.2005. Permission to purchase land measuring 16 Bigha 14 Biswa comprised in

Khewat/Khatoni No.346/443, Khasra No.136 situated at Mouza Moginand, Tehsil Nahan, District Sirmaur was granted to the petitioner by

respondent No.2 under Section 118 of H.P. Tenancy and Land Reforms Act, 1972 in March 2006. Stamp Duty and all other leviable charges in lieu of

this permission & purchase of land were paid by the petitioner. Eventually, production started in the unit.

2(iii). With intention to avail benefits of Limited Liability Partnership Act 2008, petitioner firm converted itself from ~~Å¢â,¬ËœFirmÅ¢â,¬â,,¢~~ to ~~Å¢â,¬ËœLimited Liability~~

~~PartnershipÅ¢â,¬â,,¢~~ (in short LLP) i.e. from ~~Å¢â,¬ËœM/s Sozin Flora PharmaÅ¢â,¬â,,¢~~ to ~~Å¢â,¬Ëœ M/s Sozin Flora Pharma LLPÅ¢â,¬â,,¢~~. The conversion was as per

Section 55 of LLP Act, which reads as under:-

~~Å, Å¢â,¬Å~~“55. Conversion from firm to limited liability partnership- A firm may convert into a limited liability partnership in accordance with the provisions

of this chapter and the Second Schedule.~~Å¢â,¬â€~~

Consequent thereupon, the Registrar Himachal Pradesh, Government of India, Ministry of Corporate Affairs, Chandigarh issued a ~~Å¢â,¬ËœCertificate of~~

Registration on Conversion~~Å¢â,¬â,,¢~~ to the petitioner on 25.10.2016, pursuant to Section 58(1) of the LLP Act.

2(iv). Subsequent to it~~Å¢â,¬â,,¢~~s conversion to LLP, the Essentiality Certificate was issued in favour of the petitioner by the Director of Industries,

Himachal Pradesh on 7.02.2017. The Essentiality Certificate mentioned that as a result of conversion, constitution of the petitioner underwent change.

The petitioner applied to the Deputy Commissioner Sirmaur for changing its name in the revenue record from ~~Å¢â,¬ËœM/s Sozin Flora PharmaÅ¢â,¬â,,¢~~ to

~~Å¢â,¬ËœM/s Sozin Flora Pharma LLPÅ¢â,¬â,,¢~~. On 27.7.2017 the Deputy Commissioner sought clarification from respondent No.2 in this regard, citing non-

clarity with respect to applicability of para-5 of the State Government instructions dated 16.02.2012 to the case of petitioner. It will be appropriate to

reproduce hereinafter relevant extracts from the instructions dated 16.02.2012:-

~~Å, Å¢â,¬Å~~“Subject:- Instructions for disposal of cases regarding change in name of the Company.

I am directed to say that the matter with regard to registration of a transaction for mutation of land in revenue records pursuant to change in name of

Company has been under consideration of the department for quite some time.

2. Section 394 of the Companies Act, 1956 deals with the provision for facilitation and amalgamation of two or more Companies. The amalgamation

scheme, which is an agreement between the two or more Companies, is presented before the Court which passes appropriate order sanctioning the

compromise or arrangement. Under the scheme of amalgamation the whole or any part of the undertaking, the property or liability of any Company

concerned in the scheme is to be transferred to the other company. The amalgamation scheme, sanctioned by the Court, would be an instrument and

Stamp Duty is chargeable on such instrument unless the Hon~~Å¢â,¬â,,¢~~ble Court, while sanctioning a scheme, has directed under Section 394(2)of the

Companies Act, 1956 that on transfer of property on sanction of scheme of amalgamation under Section 391 to 394 no stamp duty shall be payable.

Where no such direction has been given by the Court while sanctioning scheme of amalgamation, then no such instrument, stamp duty shall be

chargeable.

3. In cases where merely the name of the company is changed with the approval of the Registrar of Companies in terms of Sections 21 and 23 of the

Companies Act, 1956, no transaction/sale of property takes place and only change in the name of the Company is sought to be recorded in the

revenue record, no stamp duty is chargeable.

4. For the purpose of this clarification, the change of name of a company will mean that an existing company with name ABC Pvt. Ltd. changes its name to

XYZ Pvt. Ltd. which is not the name of a pre-existing company and name ABC Pvt. Ltd. ceases to exist consequent to this change. It is also clarified that in case

assets are proposed to be transferred to a company or an existing company proposes to change its name to a pre-existing company, then it will

constitute transfer/merger and will normally constitute a transaction and will require registration after obtaining permission under the provisions of

Section 118 of the HP, Tenancy and Land Reforms Act, 1972.

5. In cases where the name change as per example given in para 4 above is approved by the Registrar of Companies and the change in name has also

been given effect to by the Director, Industries, the District Collector concerned will order to effect change in name in revenue record as per

procedure laid down in Chapter 8.52 (ii) of The Himachal Pradesh Land Records Manual and an entry in remarks column of revenue record

i.e. Jamabandi, shall be made with red ink giving therein the old name of Company and reference of order in compliance to which the name is

changed.

Circular dated 16.02.2012 also states that "no stamp duty or registration fee is payable in case of change of name of company." The clarification

sought by the Deputy Commissioner was provided by the State vide communication dated 20.08.2017. The permission to change the name of

petitioner Firm in the revenue record from M/s Sozin Flora Pharma Pvt. Ltd. to M/s Sozin Flora Pharma LLP was granted on the condition that

Stamp Duty and Registration fee shall be chargeable. Petitioner submitted representation to the respondent on 25.6.2019 against the imposition of

stamp duty and registration fee upon its conversion from Firm Pvt. Ltd. to LLP. The representation was rejected on 23.08.2019 with the

following reasons:-

"I am directed to refer to your letter dated 25.06.2019 on the subject cited above.

In this regard, it is informed that your case of change of name from Partnership to Limited Liability Partnership (LLP) has been

examined as per opinion of Law Department who has clarified that a partnership firm under the Indian Partnership Act, 1932 is not a distinct legal

entity apart from the partners constituting it and equally in law, the firm as such has no separate legal rights of its own in the partnership assets and

when one talks of the firm's assets all that is meant is property or assets in which all the partners have joint or common interest. However, contrary to

this a limited liability partnership (LLP) has separate legal entities as per law and is different from its shareholders/partners.

Therefore, the change of a partnership firm into limited liability partnership (LLP) amounts to change of legal rights and liabilities and as such the

Stamp Duty is chargeable on such conversion under Section 3 of the Indian Stamp Act, 1899.

2(v). Aggrieved against levy of stamp duty and registration charges consequent upon its conversion from Partnership Firm to LLP, petitioner

has moved the instant writ petition for following substantive prayers:-

i. Issue a writ in the nature of Certiorari or any other writ/direction quashing/setting aside Order bearing Memo No.Rev.B.F.(10)-207/2017

Government of Himachal Pradesh Department of Revenue dated 28.8.2017 passed by respondent No.2 (Annexure P-8), in so far as it foists the

condition to pay Stamp Duty & Registration Fee u/s 3 of the Indian Stamp Act, 1899 while granting permission for change of name in revenue

record from M/s Sozin Flore Pharma to M/s Sozin Flora Pharma LLP.

ii. issue a writ in the nature of Certiorari or any other writ/direction quashing/setting aside Order bearing Memo No.Rev.B.F.(10)-207/2017-III

Government of Himachal Pradesh Department of Revenue dated 23.08.2019 passed by respondent No.2 (Annexure P-10) whereby Representation

dated 25.06.2019 (Annexure P-9) preferred by the petitioner against Order dated 28.8.2017 (Annexure P-8) was dismissed and the levy of Stamp

Duty & Registration Fee u/s 3 of the Indian Stamp Act, 1899 foisted vide Order dated 28.08.2017 (Annexure P-8) was upheld;

viii Stay the operation of the impugned orders (Annexures P-8 & P-

10) in so far as they foist the condition to pay Stamp Duty & Registration Fee u/s 3 of the Indian Stamp Act, 1899 consequent upon the

permission to change of name in revenue record from M/s Sozin Flora Pharma to M/s Sozin Flora Pharma LLP.

3. Contentions:-

Learned counsel for the petitioner contended that under the provisions of the Limited Liability Partnership Act, there is automatic vesting of all assets

of erstwhile Partnership Firm in the converted LLP. On such conversion, neither the legal entity of the petitioner firm has undergone any change nor

there is any change in the constitution of the petitioner. Therefore, stamp duty and the registration charges are not payable by the petitioner.

On the behalf of the State, it was contended that Partnership Firm under the Indian Partnership Act does not enjoy a distinct legal entity apart from

that of the partners constituting it. However, LLP has a separate legal entity and is different from its constituent partners. Therefore, conversion of

partnership firm into LLP amounts to change of legal rights and liabilities. Accordingly, stamp duty and registration fee is chargeable on such

conversion.

4. Observations:-

4(i)(a). First and foremost, nature and concept of conversion of a partnership firm to a Limited Liability Partnership, is to be seen. Reference in this

regard can be made to Section 58 of the Limited Liability Partnership Act, relevant portion whereof reads as under:-

“58. Registration and effect of conversion.

(1) to (3) “(1) A partnership firm, which is a partnership firm, may, with the consent of all the partners, be converted into a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of

registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, -

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights,

privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company,

as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar

of Companies, as the case may be.

4(i)(b). Upon conversion, all tangible and intangible assets of a registered partnership firm shall get automatically transferred to and shall vest in the

limited liability partnership. The transfer and vestment of property of erstwhile partnership firm in favour of a converted LLP is statutory. Bombay

High Court in Commissioner of Income-Tax vs Texspin Engg. & Mfg., (2003) 180 CTR Bom 497, while dealing with a case where partnership firm

was being treated as a company under the statutory provisions of the Companies Act, held that when a firm is treated as a company, there is no

conveyance of the property executable in favour of the Limited Company. The vesting of property of firm in the Limited Company was not incidental

to a transfer but statutory. Therefore, there was no question of capital gain. Relevant extracts from para 6 of the judgment are as under:-

“6. Now, in the present case, it is argued on behalf of the department before the Tribunal, for the first time, that in this

case, on vesting of the properties of the erstwhile Firm in the Limited Company, there was a transfer of capital assets and, therefore, it was

chargeable to income-tax under the head “Capital gains” as, on such vesting, there was extinguishment of all right, title and interest in the capital

assets qua the Firm. We do not find any merit in this argument. In the present case, we are concerned with a Partnership Firm being treated as a

company under the statutory provisions of Part IX of the Companies Act. In such cases, the Company succeeds the Firm. Generally, in the case of a

transfer of a capital asset, two important ingredients are : existence of a party and a counterparty and, secondly, incoming consideration qua the

transferor. In our view, when a Firm is treated as a Company, the said two conditions are not attracted. There is no conveyance of the property

executable in favour of the Limited Company. It is no doubt true that all properties of the Firm vests in the Limited Company on the Firm being treated

as a Company under Part IX of the Companies Act, but that vesting is not consequent or incidental to a transfer. It is a statutory vesting of properties

in the Company as the Firm is treated as a Limited Company. On vesting of all the properties statutorily in the Company, the cloak given to the Firm is

replaced by a different cloak and the same Firm is now treated as a Company, after a given date. In the circumstances, in our view, there is no

transfer of a capital asset as contemplated by Section 45(1) of the Act. Even assuming for the sake of argument that there is a transfer of a capital

asset under Section 45(1) because of the definition of the word "transfer" in Section 2(47)(iii), even then we are of the view that liability to pay

capital gains would not arise because Section 45(1) is required to be read with Section 48, which provides for mode of

computation.

Reference in this regard can also be made to a judgment of Andhra Pradesh High Court in Vali Pattabhirama Rao and another Versus Sri Ramanuja

Ginning and Rice Factory (P.) Ltd. and others, AIR 1984 AP 176. The Court was considering a situation where a previous firm was converted into

company under the provisions of Companies Act. The Court held that there was statutory vesting of title of all the property of the previous firm in the

newly incorporated company, therefore, there was no need for any separate conveyance. The relevant para from the judgment reads as under:-

"18. We have already held that the partnership firm in which the original lessee is partner was legally constituted, and the firm continues to be

lawful and the properties belonging to all the partners have become the properties of the firm. The question is whether the property of the said firm

had vested in the first defendant company when the firm was registered under the provisions of the Indian Companies Act, 1913. For that it is

necessary to notice the terms of section 263 of the Indian Companies Act, 1913, that corresponds to section 575 of the present Companies Act, 1956.

Section 263 reads as follows:

S. 263. All property, movable and immovable, including all interests and rights in, to and out of the property, movable and immovable, and including

obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this part, shall, on

registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

The word "company" occurring in section 263 is not a company registered under the Act. It is used in the sense of a group, assembly or

association of persons. In fact, throughout the Act the word "company" was used in several sections in the general sense of association of persons. In

fact, section 11 of the present Companies Act (section 4 of the previous Act) itself which enacted the prohibition of associations exceeding certain

members for carrying on trade starts with saying that no company or association or partnership consisting of more than ten members shall be formed.

Section 253 of the previous Act corresponds to section 565 of the present Act. Section 565(1) (b) of the present Act corresponds to section 253(1) (ii)

of the 1913 Act, which permits any company otherwise duly constituted according to law consisting of seven or more members to be registered as a

company. A partnership must be one such. This is made clear by the provisions of section 255 of the 1913 Act (present Act section 567) and section

256 of the 1913 Act (present Act section 568) where under a deed of partnership has to be filed before the Registrar before seeking the registration.

Hence, a partnership which was treated as a company for the purposes of the Companies Act can be registered under Part 8 of the previous Act

(Part 9 of the present Act) and the vesting is provided by section 263 of the 1913 Act (section 575 of the present Act). The provision is mandatory

and there will be statutory vesting in the corporation so incorporated under the provisions of the Companies Act. The Registrar is bound to give a

certificate of registration under section 262 (present section 574) which is a conclusive proof of incorporation, vide section 35 of the present Act that

corresponds to section 24 of the previous Act. Hence, it is clear that no conveyance is necessary when a partnership is converted and registered as a

company. However, it is not possible to acquire such title statutorily under this section if the previous firm purports to convey title to the company in

which event a separate deed of conveyance is necessary. Thus, we hold that if the constitution of the partnership firm is changed into that of a

company by registering it under Part 9 of the present Act (Part 8 of the previous Act), there shall be statutory vesting of title of all the property of the

previous firm in the newly incorporated company without any need for a separate conveyance. A similar view was taken in *Ramasundari Ray v.*

Syamendra Lal Ray, ILR [1947] 2 Calcutta 1. D.W. 2 deposed that in 1920 the partnership was converted into a private limited company and filed the

articles of association, exhibit B-54. This evidence stood uncontradicted. In fact, the plaintiffs and their predecessors-in-title treated the first defendant

as successor-in-interest of the previous firm and hence we are of the opinion that the leasehold interest that has become firm's property by virtue of

the original lessee bringing into the firm has vested in the first defendant company after its registration.

The above judgment was quoted with approval by the Hon'ble Apex Court in *Jai Narain Parasrampuriah (Dead) and others Versus Pushpa Devi*

Saraf and others, (2006) 7 SCC 756, in following manner:-

"26. The said decision has been followed by a Division Bench of the Andhra Pradesh High Court in *Vali Pattabhirama Rao v. Sri Ramanuja*

Ginning & Rice Factory (P) Ltd. wherein it was held: (AIR pp. 184-85)

“Thus we hold that if the constitution of the partnership firm is changed into that of a company by registering it under Part 9 of present Act (Part 8

of previous Act), there shall be statutory vesting of title of all the property of the previous firm in the newly incorporated company without any need

for a separate conveyance.”

In Commissioner of Income Tax, Udaipur Versus M/s. Chetak Enterprises Pvt. Ltd., AIR 2020 SC 430,5 Hon’ble Apex Court while considering

the effect of conversion of partnership firm into a company under Part IX of the Companies Act, held that on statutory vesting all properties of the

firm, in law, vest in the company and the firm is succeeded by the company. Para 7 of the judgment reads as under:-

“7. The question is: what is the effect of conversion of partnership firm into a company under Part IX of the Companies Act? That can be

discerned from Section 575 of the Companies Act, which reads thus:

“575. Vesting of property on registration. All property, movable and immovable (including actionable claims), belonging to or vested in a company

at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all

the estate and interest of the company therein.”

It is manifest that all properties, movable and immovable (including actionable claims) belonging to or vested in a company at the date of its registration

would vest in the company as incorporated under the Act. In other words, the property acquired by a promoter can be claimed by the company after

its incorporation without any need for conveyance on account of statutory vesting. On such statutory vesting, all the properties of the firm, in law, vest

in the company and the firm is succeeded by the company. The firm ceases to exist and assumes the status of a company after its registration as a

company.”

In view of provisions of Section 58(4)(b) of the Limited Liability Partnership Act, consequent upon conversion of firm to limited liability partnership,

there is automatic vesting/transfer of all assets of firm to the LLP. Sub-section (4) of Section 58 of LLP Act starts with non-obstante clause

“Notwithstanding anything contained in any other law for the time being in force.”. Therefore, principles of statutory vesting of properties will

apply to the instant case as well.

4(ii)(a). Next arises the question about necessity of execution of an instrument upon conversion of a partnership firm to limited liability partnership. In

the judgments cited above, it has been held that no separate conveyance or instrument of transfer etc. is required to be executed in cases of statutory

vesting. LLP is required to notify the concerned authority about the conversion. After the conversion, firm getting converted into LLP does not remain

in existence. Clauses 7 and 9 of The Second Schedule relating to Section 55 of LLP Act provide as under:-

7. Effect of registration.- On and from the date of registration specified in the certificate of registration issued under paragraph 5,-

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable and immovable) property as well as intangible property vested in the firm, all assets, interests, rights, privileges, liabilities,

obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership

without further assurance, act or deed; and

(c) the firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 (9 of 1932) removed from the records

maintained under that Act.

9. Pending proceedings.- All proceedings by or against the firm which are pending in any Court or Tribunal or before any authority on the date of

registration may be continued, completed or enforced by or against the limited liability partnership.

Second Schedule ensures continuity of the firm after its dissolution and conversion to LLP. The words "shall be transferred to-shall vest" in the

LLP Act are to be read harmoniously to give it purposive interpretation in tune with the object and provisions of the Act. The transfer of assets is only

by way of statutory vesting requiring no other separate instrument of transfer. There is automatic vesting and divesting. Thus, no further act or deed is

required. This is also evidenced by Clause 7(b) of Second Schedule (extracted above).

4(ii)(b). Section 3 of the Indian Stamp Act pertains to charging stamp duty on certain instruments. The section starts with following words:-

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

Section 3 of the Indian Stamp Act talks about the instruments, which are chargeable with duties. Once there is no instrument of transfer of assets of

erstwhile partnership firm to LLP, then question of payment of stamp duty and registration charges on it does not arise.

In this regard, it will be profitable to refer to a judgment passed by this Court in CWP No.1293 of 2019, titled Reckitt Benckiser (India) Private

Limited Versus State of H.P. & Another, decided on 29th February, 2020. In that case, name of petitioner (therein) was changed from public limited

company to a private limited company in accordance with the provisions of Companies Act. Subsequent to change of name, the petitioner therein

intended to transfer its assets and for that purpose, it moved an application for reflecting change of its name in the revenue record. The approval was

granted by the State, but subject to the condition of payment of stamp duty and registration fee on account of addition of word "Private" in its

name. The question before the Court was whether on such change of name of the Company, transfer of its immovable property takes place, which is

chargeable to stamp duty and registration fee or not. Noticing the instructions of respondent No.2, dated 16.02.2012 (already extracted above), the

provisions of the Act and facts, it was held that mere change of name of company not accompanied by any transfer of assets would not warrant

payment of stamp duty or registration charges. It was also observed that there being no instrument of transfer of assets and property in existence,

therefore, there was no question of any instrument requiring compulsory registration. The Court thus concluded that for these reasons, change of

name of the company does not entail payment of stamp duty and registration fee. Relevant paras from the judgment are extracted hereinafter:-

“16) The stand of the respondents that the present is not a case of mere change of name and rather a case of conversion of public limited company

to private limited company, hence stamp duty is chargeable under Section 3 of the Indian Stamp Act, 1899 though has been taken by the respondents-

State to make an attempt just to mislead this Court and confuse the whole issue, however, unsuccessfully. Section 3 of the Stamp Act speaks about

the instruments, which are chargeable with duties, subject to the exemptions contained in Schedule-I. The instrument referred to herein and also

Schedule-I, nowhere show that on mere addition of word “private” in the name of a company without transfer of its assets and liability, is an

instrument, which is chargeable thereunder. So far as the Registration Act is concerned, only that instrument is chargeable, which needs registration.

17) In the case in hand, land and building remained with the petitioner-company, even after addition of word “private” to its name. Therefore,

there is no question of existence of an instrument of transfer of its assets and property and the compulsory registration thereof. The respondents

though have made an attempt to draw the distinction between a public limited and private limited company from its definition finds mentioned in

Section 2 of the Companies Act, 2013 and has canvassed that two companies are quite different and distinct. However, learned Senior Additional

Advocate General has failed to satisfy this Court about the justifiability of such distinction drawn and how the addition of word “private” in the

name of the petitioner company amounts to transfer of its assets and liability and consequently levying of stamp duty and Registration charges. The

respondent-State rather seems to have taken such stand in reply filed to the writ petition merely for rejection.

18) It is worth mentioning that the circular dated 16.2.2012 Annexure P-2 clearly distinguishes between cases pertaining to change of name simpliciter

under the provisions of Companies Act 1956 and for that matter Companies Act 2013 and those with transfer of assets. The second category of cases

cover transaction like merger, demerger and amalgamation etc., which involve two separate entities and transfer of assets from one entity to another.

Annexure P-2 clearly postulates that no stamp duty or registration fee is payable in a case of change of name of the Company. In the case in hand

since no transfer of assets occurred on account of change of the name of the petitioner Company, hence neither stamp duty nor registration charges is

payable on such change of name of the petitioner and its name is required to be entered in the revenue record pertaining to the land and building in

question. The respondents, therefore, are under an obligation to update the entries in the revenue record pertaining to the land with the new name of

the petitioner Company by addition of word "private" without payment of any stamp duty and registration charges.

The registration fee is payable on an instrument compulsorily registerable under Section 17 of the Registration Act. Once there is no transfer of

immovable property under an instrument, then the question of compulsory registration of that non-existent instrument and payment of stamp duty on it

is not warranted. Neither the stamp duty nor the registration fee, therefore, is payable in such circumstances.

4(iii). Another facet to be determined is whether conversion of firm to LLP involves change in constitution. Conversion of petitioner-firm to LLP is

admittedly without any consideration. Neither any sale deed nor any conveyance deed has been executed. Transfer of assets of erstwhile partnership

firm to LLP is by operation of law. Conversion to LLP is normally undertaken for restructuring exercises. One of the object of Limited Liability

Partnership Act is to view it as an alternative corporate business vehicle providing the benefits of limited liability, while allowing its members the

flexibility of organizing their internal structure as a partnership, based on a mutually arrived agreement. Owing to flexibility in its structure and

operation, LLP has been considered a suitable vehicle for small enterprises. Petitioner firm's legal entity is not changed after conversion. Only the

identity of the petitioner firm as a legal entity gets changed without any change in the constitution of petitioner - firm.

4(iv). Reliance placed by the respondent-State on the judgment passed by the Hon'ble Supreme Court in *Delhi Development Authority v. Nalwa*

Sons Investment Ltd. and Another, 2019 SCC Online SC 58,6 is misplaced as the controversy involved in that case did not pertain to conversion of a

partnership firm to a Limited Liability Partnership. The question involved before the Hon'ble Apex Court in that case was "if the original lessee

(respondent No.1, a public limited company) in respect of the plot given on lease by the appellant, transfers the same to another public limited

company, albeit an alter ego of the former, consequent to an order of arrangement and demerger passed by the Company Judge, then whether it is

liable to pay 50% unearned increase (UEI) on the market value of the plot to the appellant (lessor).

5. Conclusion:-

From the above discussion, following conclusions are drawn:-

5(a). Upon conversion of a registered partnership firm to an LLP under the provisions of the Limited Liability Partnership Act, all movable and

immovable properties of erstwhile registered partnership firm, automatically vest in the converted LLP by operation of Section 58(4)(b) of the Limited

Liability Partnership Act.

5(b). The transfer of assets of firm to the LLP is by operation of law. Being statutory transfer, no separate conveyance/instrument is required to be

executed for transfer of assets.

5(c). Since there is no instrument of transfer of assets of the erstwhile partnership firm to the limited liability partnership, the question of payment of

stamp duty and registration charges does not arise as these are chargeable only on the instruments indicated in Section 3 of the Indian Stamp Act and

Section 17 of the Indian Registration Act.

5(d). Partnership firm's legal entity after conversion to limited liability partnership does not change. Only the identity of the firm as a legal entity

changes. Such conversion or change in the name does not amount to change in the constitution of partnership firm.

5(e). Stamp duty and registration fee cannot be levied upon conversion of a partnership firm to LLP. Therefore, permission under Section 118 of the

H.P. Tenancy and Land Reforms Act for recording such change of name in the revenue documents, i.e. M/s Sozin Flora Pharma to M/s Sozin Flora

Pharma LLP cannot be made dependent upon deposit of stamp duty and registration fee.

For the foregoing discussion, we allow the instant writ petition. The impugned Annexures P-8, dated 28.08.2017 and P-10 dated 23.08.2019, insofar

they direct the petitioner to deposit the stamp duty and registration fee consequent upon change of its name from M/s Sozin Flora Pharma to M/s

Sozin Flora Pharma LLP, are quashed and set aside. The respondents are directed to enter the name of the petitioner as M/s Sozin Flora Pharma

LLP in the revenue record within a period of four weeks from today.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.