

(2008) 11 CAL CK 0025

Calcutta High Court

Case No: W.P.L.R.T 785 of 2007

Birla Tea Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 5, 2008**Acts Referred:**

- Companies Act, 1956 - Section 391, 394, 394(2)

Hon'ble Judges: Prasenjit Mandal, J; Kalyan Jyoti Sengupta, J**Bench:** Division Bench**Advocate:** Mukul Lahiri and Mr. Abubdyo Lahiri, for the Appellant; Prasenjit Basu and Mr. Ziaul Islam, for the Respondent

Judgement

1. This application is at the instance of Birla Tea Limited which is new name of a company then known as North Tukvar Tea Company Limited. The said North Tukvar Tea Company Limited, in its turn, was a transferee of the right, title and interest of unexpired period of leasehold interest in respect of Tea Garden known as Sungma Tea Estate. The original lessee was Sungma Tea Limited Company of this lease for a period of 30 years from 1970, then on an application made under sections 391 and 394 of the Companies Act, 1956, the said Sungma Tea Company Limited being the original lessee stood amalgamated with North Tukvar Tea Company Limited.

2. The scheme of amalgamation was placed before the Court by both the companies, namely, transferor and transferee and the same was accepted by the Court. The copy of the scheme of amalgamation has been annexed to this application and we suggest that all the rights and liabilities have been transferred unto and in favour of said North Tukvar Tea Company being the Transferee Company. The effect of amalgamation by the Court order is very clear in the scheme itself as well as in section 394 of the Companies Act. The effect is that Sungma Tea Co. Ltd., ceased to be the lessee and in its stead and place, North Tukvar Tea Co. Ltd., became the transferee lessee. The aforesaid factual aspect has not been denied and disputed by any body else. Subsequently, the name of North Tukvar Tea Co.

Ltd., was changed and the first applicant changed the status of the said company. Change of the name under the law does not loose the corporate character and entity and it remains as it is.

3. After order of amalgamation followed by change of name, the first applicant started enjoying the leasehold interest and manufacturing tea in the said garden. In the year 2000 the period of leasehold expired by efflux of time.

4. Now the question has come for renewal of the lease. The applicants claim that renewal should be granted as a matter of course and without making any payment whatsoever towards the premium as has been demanded by the State Government by virtue of Rule 1(b) of the West Bengal Estate Acquisition Rules, 1954 which has been framed under the provision of Estate Acquisition Act.

5. Considering the condition and situation of the tea garden, the government in stead of demanding Rs.15,000/- per hector has demanded Rs.9,000/- per hector allowing a rebate of 40% on Rs. 15,000/- as a premium and thereby a hopping amount of Rs.21 lakhs and odd has been calculated to be the correct amount of premium and to be paid by 28 equal annual instalment.

6. The aforesaid decision was challenged before the learned Tribunal contending that it is not a transfer. Firstly, even if it is transfer, such a transfer cannot come within the purview of Rule 1(b) of the aforesaid Rules. The learned Tribunal was not convinced with the stand taken before it by the first applicant. Hence, the decision taken by the Collector as well as the Government has been upheld by the learned Tribunal. Impugning the aforesaid judgment, the present application has been taken out.

7. The facts are more or less admitted. Only question remains here whether the Government is entitled to demand selami treating the aforesaid transmission of interest by the order of amalgamation of the Court being a transfer of the lease within the meaning of Rule 1(b) or not.

8. Mr. Lahiri submits that effect of the amalgamation is no doubt an order of transfer by operation of law and if any transfer is effected by operation of law, it cannot be said to be a voluntary one. According to him, the import of the word "transfer" in the said Rule 1(b) must be a voluntary one. His alternative argument is that there is no transfer in the legal sense actually the original lease is continuing. Order of amalgamation has no impact as far as the continuance and existence of the lease is concerned which was granted in the name of Sungma Tea Co. Ltd. In support of his submission he has relied upon a decision of learned single Judge reported in [In Re: Areva T and D India Limited](#),

9. We have gone through the judgment, and found that the learned single Judge considered this aspect. We feel that the learned Judge nowhere held the effect of the order of amalgamation rather it has been observed taking note of the provision

of section 394 of the Companies Act, 1956 that the effect of order of amalgamation is vesting of the rights and liabilities of the transferor company unto the transferee. So we are unable to accept the contention of Mr. Lahiri that there is no transfer in any sense as section 394 of the said Act destroys his argument, section 394(2) is quoted hereunder:

"Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect."

In order to understand exact situation in this case the scheme of amalgamation has to be referred to. The scheme of amalgamation has been annexed at page 40. Clause 1 Part-II of the same read as follows:

"With effect from the Effective Date, the Undertaking of the Transferor Company shall, without further act or deed, be transferred to and vest in and shall be deemed to have been transferred to and vested in the Transferee Company pursuant to section 394(2) of the Act. subject however, to all charges, liens, mortgages. if any, affecting the same or any part thereof."

10. Therefore, without any shadow of doubt we are of the view that scheme of amalgamation as approved by the learned Company Court has to be accepted.

11. Now it is urged by Mr. Lahiri that it is in real sense transfer by operation of law and not a voluntary one. In support of his contention he has relied on a judgment of this Court reported in 18 CC 1 (Sailendra Kumar Ray & Anr. v. The Bank of Calcutta Ltd.,). In our view the judgment rendered in that case cannot be a good law in view of the recent pronouncement of the Supreme Court in the case of [Hindustan Lever and Another Vs. State of Maharashtra and Another](#), The Supreme Court has settled the position of law that the scheme of amalgamation has its genesis in an agreement with the prescribed majority of shareholders and creditors. The intended transfer is a voluntary act of contracting parties. The transfer is effected by an order of the Court.

12. It may be or may not be true that this kind of transfer, according to us, is voluntary one as both the companies jointly decided to effect transfer of their own volition. Involuntary transfer is a forcible transfer where any unwilling or recalcitrant owner or vendor does not want to sell the property. In that case, the Court passes order some times ignoring the objection of the owner. This kind of order of sale is involuntary, as it is done by the Court but the element of transfer does not loose its character. It is true that when Courts accept any compromise, it becomes the order of the Court and may have the effect of operation of law. But it cannot be contended that it is not a transfer at all or whether voluntary or involuntary transaction is a

transfer.

13. The Supreme Court in Hindustan Lever case (supra) while observing transfer of interest by way of amalgamation being a private deal asked the parties concerned to pay necessary stamp duty treating the same to be voluntary transfer. Then Mr. Lahiri contends that since it is an order of Court and the same was by operation of law. It cannot be said to be a transfer within the meaning of Rule 1(b), we cannot endorse his argument for the simple reason that the legislature has made it clear in which cases transfer can be exempted from payment of selami. Transfer takes place in various ways, namely, by way of inter vivos, by devolution, viz., testamentary and intestate succession. The legislature has intended clearly that all sorts of transfer except in case of inheritance the premium is payable on the expiry of transfer lease. Therefore, upon careful reading of the same, we are to interpret the aforesaid rule meaningfully when the express word has been used for excluding inheritance, implied other types of transfer is to be brought within the purview of the said Rule. Therefore, transfer of all description is covered by the aforesaid Rules. We accordingly hold that the decision on the meaning of transfer by the learned Tribunal is correct. We uphold the same and we do not find any reason to interfere with the same.

14. It appears that the Government has decided to allow the applicants to pay the selami by 28 equal annual instalments.

15. Considering the facts and circumstances of this case, we direct the Joint Secretary concerned to consider on production of the necessary document and upon hearing the applicants whether the said selami as determined by the Government be paid by more than 28 instalment and whether any moratorium period can be granted for payment of selami or any instalment for this purpose. It would be open for the first applicant to produce its audited balance sheet showing its financial condition. The Joint Secretary shall consider the financial condition of the company then pass suitable order for payment of selami. However, we do not mean by this order that earlier 28 instalment would be reduced.

16. The application is, thus, disposed of with the aforesaid discussion.

17. There will be no order as to costs.

18. This consideration shall be made within a period of eight weeks from the date of communication.