



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3166 of 2016

Decided on: 01.12.2022

M/s Inox Air Products Pvt. Ltd.Petitioner.

Versus

State of H.P. and ors. ...Respondents.

Coram

The Hon’ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?¹ Yes .

For the petitioner : Mr. Manish Jain, Mr. Sunil Mohan Goel, Mr. Mayur Kanwar and Siddhant Jain, Advocates.

For the respondents : Mr. Narender Guleria, Addl. Advocate General with Ms. Savneel Jaswal, Deputy Advocate General.

Sandeep Sharma, Judge (Oral)

Being aggrieved and dissatisfied with communication dated 13.01.2016 (Annexure P-2), whereby request made by petitioner vide communication dated 22.05.2015, (Annexure P-7) seeking change in the name of the Company from “INOX AIR PRODUCTS LTD” to “INOX AIR PRODUCTS PRIVATE LIMITED” came to be rejected,

¹ Whether reporters of the local papers may be allowed to see the judgment?

petitioner-Company has approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein for following reliefs:-

“a) Issue a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the impugned order dated 13.01.2016, Annexure P-2.

b) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to record the name of the petitioner M/s Inox Air Products Pvt. Ltd in place of M/s Inox Air Products Ltd. in the revenue record as also all other relevant record of the State Govt.”

2. Precisely the facts, which are relevant for the adjudication of the present case are that M/s Superior Air Products Limited was granted permission for establishing industrial unit under S.118 of the Himachal Pradesh Tenancy and Land Reforms Act in 1994 to purchase land at Barotiwala, on which present the petitioner is operating, as is evident from letter dated 5.1.1995 (Annexure P-3). Management of M/s SAPL was taken over by M/s Inox Air Products Limited (IAPL) on 1.4.2000 and aforesaid Superior Air Products Limited was amalgamated with Inox Air Products Limited, pursuant to order dated 10.1.2002 passed by this Court in Company Petition No. 13 of 2001. Simultaneously, Superior Air Products Limited also filed an amalgamation

petition before the Bombay High Court under Ss. 391/394 of the Companies Act, which was allowed on 21.3.2002.

3. On 5.7.2002, Superior Air Products Limited submitted a request to the Tehsildar concerned for effecting change in the name of company in the revenue record, which was accordingly changed by the concerned revenue authority.

4. Record reveals that the petitioner company took steps for conversion from "Public Limited" to "Private Limited" and sought necessary permission from the Central Government, which was granted vide letter dated 11.4.2015 and a Certificate of Incorporation dated 11.4.2015 was issued by the Registrar of Companies Mumbai (Annexure P-6) and name of the petitioner was changed to "Inox Air Products Private Limited".

5. As per petitioner, after conversion of the petitioner from a "public limited" to "private limited" company, its management, corporate structure etc. remained the same, having no effect on its debts, liabilities or contractual obligations which would remain binding and in force.

6. Vide letter dated 22.5.2015 (Annexure P-7), the petitioner requested respondent No.3 to change the name of the company in its records and issue a fresh *fard*, consequent to change of petitioner from a "public limited" to "private

limited” company. It may be noted here that the petitioner also applied to various other departments like Income Tax Department, Central Excise Division, Directorate of Industries, Excise & Taxation Department etc, for change of its name. A new PAN was also issued by the Income Tax Department (Annexure P-8), in the name of new entity.

7. Vide letter dated 22.5.2015, respondent No.2 effected change of name of the petitioner company in its records and advised vide letter dated 6.6.2015 (Annexure P-9) to obtain other administrative and statutory approvals. On 30.6.2015, petitioner received a letter from Additional District Magistrate Solan regarding submission of LR-XIV form of both the companies, affidavits, recommendation of Department of Industries, original revenue papers and memorandum and article of association of M/s Inox Air Products Private Limited (Annexure P-10). Petitioner accordingly submitted all the required documents, except LR-XIV form vide letter dated 2.7.2015 (Annexure P-11). It was informed by the petitioner that since neither there was sale nor purchase of land of the company nor there was any change in the ownership and management as such, LR-XIV form was not required.

8. On 31.7.2015, petitioner was directed by the Additional District Magistrate to submit LR-XIV form and affidavits of

both the companies (Annexure P-12). Again vide letter dated 3.8.2015 (Annexure P-13), petitioner while replying to letter dated 31.7.2015, clarified that there was no sale or purchase of land by the company and there was no change in ownership and management and only name of the company had been changed, that too, after approval from the Central Government, after issuance of a fresh Certificate of Incorporation.

9. Subsequently, petitioner vide letter dated 13.10.2015 (Annexure P-14) sought clarification from respondent No.1 on the issue, who clarified vide letter dated 13.1.2016 (Annexure P-2) that a proprietor/partnership firm and a company are two separate legal entities and in such a situation if a company applies for change in its name, then it is clear cut case of transfer of property, which will attract provisions of S.118 of the Act *ibid* as also the Stamp Act, 1899. In the aforesaid background, petitioner has approached this Court in the instant proceedings seeking reliefs reproduced hereinabove.

10. Pursuant to notice issued in the instant proceedings, respondents have filed reply, wherein facts as noted herein above, have not been disputed, rather stand admitted. However, respondents have opposed the prayer made on behalf of the petitioner on the ground that a company and a

proprietorship firm are two separate legal entities, as such are liable to pay stamp duty before change of its name in the revenue records.

11. Mr. Narender Guleria, learned Additional Advocate General, while inviting attention of this Court to instructions dated 16.02.2012 (Annexure P-15), issued by Department of Revenue, Government of Himachal Pradesh argued that when the name of a company is changed with the approval of Registrar of the Companies and no transaction/sale of property takes place, in that case, company is not liable to pay any stamp duty, but in case proprietorship is changed to a partnership Firm then party seeking change in the name of the company, is liable to pay the stamp duty. Since in the case at hand, name of the company has been changed from M/s Inox Air Products Limited to M/s Inox Air Products Private Limited, it is liable to pay stamp duty, as has been clarified, vide Annexure P-2.

12. Mr. Manish Jain, learned Advocate duly assisted by Mr. Sunil Mohan Goel, Advocate, appearing for the petitioner, while refuting the aforesaid submissions made on behalf of learned Additional Advocate General vehemently argued that a bare perusal of instructions pressed into service by learned

Additional Advocate General itself suggests that when only name of a company is changed with the approval of Registrar of Companies, in terms of Ss.20 and 23 of the Companies Act, and no sale/transaction of property takes place, then the company seeking change in name is not required to pay any stamp duty. While inviting attention of this Court to judgment dated 20.04.2022, passed by Division Bench of this Court in **CWP No. 4394 of 2021**, titled **JSTI Transformers Pvt. Ltd. Vs. State of Himachal Pradesh**, learned counsel representing the petitioner argued that issue, sought to be adjudicated in the instant petition, is no more *res integra*, rather stands duly adjudicated by Division Bench in the judgment referred hereinabove.

13. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that the question, which needs determination in the case at hand is, “whether the petitioner company, pursuant to order of amalgamation passed by Bombay High Court, permitting it to change its name from “M/s Inox Air Products Ltd.” to “M/s Inox Air Products Private Ltd.” is liable to pay stamp duty on account of sale, purchase transfer, if any, of the premises owned/possessed by aforesaid company having amalgamated into another company, in view of specific law

laid by Division Bench of this Court in **JSTI Transformers Pvt. Ltd.(Supra)?”**

14. This Court finds that aforesaid question has been elaborately dealt with by Division Bench, while passing the judgment, wherein undersigned was also one of the coauthor.

15. Before ascertaining the rival submissions made by the parties, it would be apt to take notice of instructions dated 16.02.2012, Annexure P-15, which reads as under:-

Clarification regarding name change by Companies/firms

No. Rev. B.F.(10)-154/2009
Government of Himachal Pradesh
Department of Revenue

From

Principal Secretary-cum-F.C. (Revenue) to
the Government of Himachal Pradesh.

To

1. The inspector General of Registration SDA Complex, Shimla-09, Himachal Pradesh.
2. All the Deputy Commissioners in Himachal Pradesh.
3. All the Tehsildars/Naib Tehsildars, in Himachal Pradesh.

Dated; Shimla-171002, the 16th February, 2012

Subject:- Instructions for disposal of cases regarding change in name of the company.

Sir,

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 the 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'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 on 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 "A" changes its name to "B" which is not the name of a pre-existing company and name "A" 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 H.P. 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 the name has also been given effect to by this 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 herein the old name of Company and reference of order in compliance to which the name is changed.

Yours Faithfully

-Sd-

Principal Secretary (Revenue) to
the Government of Himachal Pradesh.

Endst.No. As above, Dated: Shimla-2 16th February, 2012

Copy forwarded for information and similar
necessary action to :-

1. *The Settlement Officer, Shimla/Kangra at Dharamshala, H.P.*
2. *All the Sub-Divisional Magistrates, in Himachal Pradesh.*
3. *The IRSA-cum-Tehsildar, Stamp Cell, H.P. Sectt. Shimla-02.*

-Sd-
Principal Secretary (Revenue) to
the Government of Himachal Pradesh

16. Bare perusal of aforesaid instructions, itself reveals that after passing of order of amalgamation by competent Court of law, company can seek change in its name in record of the Registrar of the Companies, who after verification of the record, would issue fresh Certificate of Incorporation in the name of new company. In the case at hand, company, which is seeking change of the name in revenue record was earlier being run as M/s Superior Air Products Limited at Barotiwala. In the year 1995, M/s Superior Air Products Limited was granted permission under Section 118 of the Act to construct premises at Barotiwla, but since aforesaid M/s Superior Air Products Ltd. was taken over by M/s Inox Air Products Ltd., change in revenue record was effected on the basis of change in the name thereby showing M/s Inox Air Products Ltd. as the owner of the property. It is an admitted position that M/s Superior Air Products Ltd. came to be amalgamated into M/s Inox Air Products Ltd. pursuant to order passed by Bombay High Court as well as this High Court in two separate Company Petitions. Though, after passing of order of

amalgamation, application submitted by petitioner seeking change in the name of company in revenue record as "M/s Inox Air Products Limited" was allowed but its prayer to change its name from "M/s Inox Air Products Ltd." to "M/s Inox Air Products Private Ltd." has been denied on the ground that there is change of ownership and management, whereas precise case of the petitioner-company is that neither the management nor the ownership has been changed.

17. Careful perusal of instructions dated 16.02.2012 clearly reveals that in case the name of a company is changed with the approval of Registrar of the Companies and no transaction/sale of property takes place, no stamp duty is chargeable from the Company seeking change in its name.

18. In the instant case, it is not the case of the respondents that while effecting change in the name of the company, sale/purchase, if any, of the property took place inter se two entities as detailed hereinabove rather, Certificate of Incorporation issued by Registrar of Companies in the name of "M/s Inox Air Products Private Limited" clearly reveals that there is only change of the name in terms of Ss.21 and 23 of Companies Act. Since no new entity, if any, has come into existence on account of proposed change in the name of

company coupled with the fact that there is no document available on record, if any, to show that sale-purchase of properties took place between two entities, as noticed above, action of the respondents, demanding stamp duty appears to be highly unjust and unreasonable.

19. At this stage, it would be apt to take note of the following para of judgment passed by Division Bench of this Court in *JSTI Transformer Pvt. Ltd. Vs. State of Himachal Pradesh* (supra).

“8. This Court in *M/s Fresenius Kabi Oncology Limited* (supra) was dealing with a case, where consequent upon request made by the petitioner to incorporate by way of change of its name in the record, respondent-State Authorities demanded a sum of Rs.1,04,21,508/- towards unearned increase /transfer charges on account of alleged violation of Clause 2(xi) of conveyance deed, where Pharma business of the Company, “Dabur India Limited” by way of merger, merged into the new entity, “Dabur Pharma Limited”. The respondent-Corporation changed the name of the allottee company i.e. “Dabur India Limited” to “Dabur Pharma Limited”, vide order dated 28.11.2003. Later on, petitioner-Company incorporated under the laws of Singapore, acquired 90.89% of total equity share capital of Dabur Pharma Limited on 11.8.2008. The management and control of Dabur Pharma Limited, therefore, came to be changed and its Board reconstituted with the nominee of the petitioner-company. The management of the Company i.e. Dabur Pharma Limited later on, decided to change its name from “Dabur Pharma Limited” to “Fresenius Kabi Oncology Limited” on 9.1.2009. The Registrar of Companies, NCT of Delhi allowed the change of name of the company from “Dabur Pharma Limited” to “Fresenius Kabi Oncology Limited” on 9.1.2009. It was against this backdrop that on 18.2.2009, petitioner submitted an application to the respondent-Corporation with a request to change the name of the allottee in respect of the plot in question and record its name in place of Allottee Company. The respondent-Corporation instead of making change in the name of the Company, raised a demand for Rs.1,04,21,508/-, vide letter dated 17.6.2009 towards the unearned increase /transfer charges and called upon the petitioner to remit the said amount to the Corporation within 30 days, so that the supplementary transfer deed qua the plot is executed in favour of the petitioner. This Court held that mere acquiring of equity share capital of ‘Dabur Pharma Limited’ by the petitioner Company does not amount to transfer, assignment or parting with the possession or any other rights of the allottee Company, neither with the plot in question nor structure in existence thereon. The acquiring of equity share capital of the allottee Company by the petitioner also does not contravene the conditions contained in Clause 2(xi) of the conveyance deed. In such circumstances, how a right to claim unearned increase/transfer charges

would have arisen in favour of the respondent is not understandable, held this Court.

9. The High Court of Calcutta in a similar dispute pertaining to petitioner herein itself, in Writ Petition No. 24788 (W) of 2010, titled M/s Fresenius Kabi Oncology Limited v. The State of West Bengal and others and its connected matter Writ Petition No. 26049(W) of 2014 titled M/s Fresenius Kabi Oncology Limited and another v. The State of West Bengal and another, held as under:

“8. Main case of the petitioners, however, is that change of the name of a company does not constitute transfer of leasehold right or any assets of the company. In this regard, Mr. Basu has relied on a judgment of the Supreme Court in the case of Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay (AIR 1955 SC 74), Kalipada Sinha Vs. Mahalaxmi Bank Ltd. (AIR 1966 Cal 585), W.H. Targett (India) Limited Vs. S. Ashraf reported in [2008(3) Cal LT 362] and an unreported judgment of this Court in W.P. No. 18668(W) of 2012 M/S. Din Chemicals and Coatings Pvt. Ltd & Anr. Vs. The State of West Bengal and Ors delivered on 5th October, 2012.

9. Mr. Susobhan Sengupta, learned counsel appeared on behalf of the State in this matter. His submission is that on change of equity shareholding pattern, bringing a new set of shareholders in the controlling position of the company in substance has resulted in transfer of ownership and control of the company, and such change should be treated to have resulted in transfer of assets of the company. According to him, the leasehold right was shifting from one entity to another, and for this reason transfer fee was payable. His submission is that this is a case where there is simultaneous transfer of assets including leasehold right from one entity to another along with change of name and in this regard he relied on a judgment of this Court delivered on 8th February 2012 in the case of in Re:- Emami Biotech Ltd. & Anr. [(2012)3 CHN 102] which is also a decision of an Hon'ble Single Judge of this Court.

10. In the case of Bacha F. Guzdar (supra), it has been held by the Hon'ble Supreme Court:-

“That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-avis the company was explained in the case of Chiranjitlal Chowdhuri v. The Union of India and Others [1950] S.C.R. 869, 904.). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that

dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act, 12th Ed., page 894, where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company."

11. The same principle was followed in the case of Din Chemicals & Coatings Pvt. Ltd. (supra), and it has been held in this decisions:-

"Let me now consider as to how far the principle laid down in the said decision of the Hon'ble Supreme Court is applicable to the facts of the instant case. I have already indicated above that the case which was before the Hon'ble Supreme Court was a case of amalgamation of the two companies which is not the case before this Court. In case of amalgamation of two companies the transferor company loses its existence and all the property, rights, powers of every description including all leases and tenancy right, industrial, import and all other licences, of the transferor company without any further act or deed are transferred and vested or deemed to be transferred or vested in favour of the transferee company. Thus, in case of amalgamation no doubt the lease-hold interest of the transferor company stands transferred in favour of transferee company but the such transfer is not contemplated in case of transfer of share by the shareholder of the company to the stranger purchasers of such shares, as it was held in Mrs. Bacha F. Guzdar, Bombay vs. Commissioner of Income Tax, Bombay (supra) by the Hon'ble Supreme Court that a shareholder who buys share does not buy any interest in the property of the company which is a juristic person entirely distinct from shareholders. It was further held therein that the true position of a shareholder in a company is that on buying shares he becomes entitled to participate in the profit of the company as and when the company declares, subject to articles of association, that the profits or any portion thereof would be distributed by way of dividends amongst the shareholders. It was further held therein that he has further a right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole. In the present case, it is nobody's case that the company was wound up and the assets of the wound up company which were left over after winding up of the said company was transferred by the promoter shareholder in favour of the stranger purchaser. As such, by following the aforesaid decision of the Hon'ble Supreme Court as well as of this Hon'ble Court, this Court has no hesitation to hold that with the transfer of the share by the promoter shareholder to the present shareholder, namely the transferees of such share, the lease hold interest of the company was not transferred from the promoter shareholder to the present shareholder of the said

company. The petitioner-company which obtained the said lease from the Government, still remains the lessee of the said plot of land and its leasehold interest in the said plot of land remains unaffected by transfer of share by the promoter shareholders to the present holders. As such, this Court holds that the restrictive clause regarding transfer of the lease hold interest of the lessee in favour of a stranger, sub-lessee or assignee, does not attract in the present case and as a result, the demand for transfer fees for recognizing the alleged transfer of leasehold interest from the erstwhile shareholders of the said company to the present shareholder, is absolutely illegal and unlawful and as such, that part of such demand, which was made by the concerned authority in the impugned order and/or letter as aforesaid, stands quashed."

15. So far as these two petitions are concerned, Dabur Pharma Limited became lessee of the land in question through arrangement approved by this Court. Leasehold right of Dabur Pharma Limited has been recognized by the State authorities. On 11th August, 2008 the majority holding of Dabur Pharma Limited was transferred to the parent company of the petitioner. Whatever transfer had taken place was at that point of time between the two entities. The consequential act of change of corporate name of the company is sought to be treated as transfer of leasehold right of the company, and transfer fee is sought to be charged on that incident or event. This, in my opinion is not permissible. To borrow the terminology from the fiscal jurisprudence, what is being subjected to transfer fee is the incidence of change of name of the company. Such a situation cannot come within the ambit of the expression "transfer of leasehold right", as stipulated in the notification of 18th December, 2007. The ratio of the judgment of this Court in the case of Emami Biotech Ltd. is not applicable in the facts of this case, as transfer fee is not being charged on any instrument of transfer, but on the basis of request for recordal of change of corporate name. It has not been argued by the State that the very act of transfer of equity-holding of the promoter group gives rise to the obligation of the company to pay transfer fee."

10. Similar issue again arose before this Court in Reckitt Benckiser (India) Private Limited (supra). In that case, petitioner was initially incorporated as a public limited company by the name of M/s Reckitt & Colman of India on 5.7.1951. Subsequently, it got its name changed to Reckitt Benckiser (India) Limited on 18.12.2000. Thereafter, the name of the petitioner-company was again changed to Reckitt Benckiser (India) Private Limited on 13.5.2015, vide certificate of incorporation issued by the Registrar of Companies, NCT of Delhi and NCT of Haryana. This lastly named company, which was a public limited company, had acquired a piece of land i.e. industrial plot measuring 7-14 bigha entered in Khewat/Khatauni Nos. 39 min/64 min, bearing Khasra No. 449/2, situated in village Nandpur, BH No. 170, Pargana Dharampur, Tehsil Nalagarh, District Solan, Himachal Pradesh together with the factory building measuring 46000 square feet vide sale deed dated 24.2.2006. The respondent-State approved the sale of the land and building, while granting permission in favour of the petitioner under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 vide letter dated 7.12.2005. The change of the name was carried out consequent upon conversion of the petitioner from a public limited company to a private limited company in accordance with the provisions of Section 13 of the Companies Act. Accordingly, the petitioner made an application to the respondents for change of name of the petitioner from "Reckitt

Benckiser (India) Limited to "Reckitt Benckiser (India) Private Limited" in the revenue record pertaining to the land in question. The respondents recommended the case of the petitioner for permission to transfer the land alongwith assets in the name of M/s Reckitt Benckiser (India) Private Limited, however, subject to payment of stamp duty and registration fee on its value merely on account of addition of words, "Private" in its name. This Court held that the change in the name of the company was made with the approval of the Registrar of the Companies though even such approval was also not required as per the proviso to Section 13(2) of the Act, where the only change in the name of the company is either deletion therefrom or addition thereto the word 'private', consequent upon conversion of any one class of Companies to another class in accordance with the provisions contained under the Act. Section 13(3) provides that as and when there is any change in the name of the company under sub-Section 3, the Registrar shall enter the new name in the Register of the Company and issue fresh certificate of registration with new name. Section 13(2) made it crystal clear that no new company was ever created as a result of the change of its name and it is the case of mere addition of word 'private' to its name. Relying upon aforesaid instructions/clarification dated 16.2.2012 issued by the respondent-State, this Court held that respondents erroneously concluded that there is transfer of assets and property by the Company.

11. 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. It would be profitable to reproduce para-6 of the aforesaid judgment hereinbelow.

"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....."

12. Similar issue came up before 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, wherein 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. It was held that 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. The Court therefore held 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.

13. The above judgment was quoted with approval by the Supreme Court in Jai Narain Parasrampur (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."

14. The Supreme Court while considering the effect of conversion of partnership firm into a company under Part IX of the Companies Act in Commissioner of Income Tax, Udaipur Versus M/s. Chetak Enterprises Pvt. Ltd., AIR 2020 SC 4305, 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.”

15. In M/s Sozin Flora Pharma LLP (supra), similar dispute arose in context of conversion of petitioner from ‘Partnership Firm’ to ‘Limited Liability Partnership’. Petitioner approached the respondents for effecting the change of its name in the revenue record with regard to certain land but the respondents, while granting permission to reflect such change, directed the petitioner to deposit the stamp duty and registration fee. This court relying upon the aforesaid instructions dated 16.2.2012, in para-5 held as under:

“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."

20. While placing reliance on various judgments passed by this Court as well as other Constitutional Courts, the Division Bench has categorically held in the judgment supra that 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. However, while making aforesaid observations, Division Bench has further held that transfer of assets of a 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. If it is so, no stamp duty can be charged merely on account of change of the name of the company.

21. The Co-ordinate Bench of this Court in **Sozin Flora Pharma LLP Vs. State of Himachal Pradesh and another**, which otherwise has been taken note in **JSTI Transformer Pvt. Ltd.** (Supra), while dealing with similar facts and circumstances, where partnership Firm became a private limited liability partnership, categorically held that the stamp duty /registration fee cannot be levied upon conversion of partnership firm to a limited liability partnership firm. If it is so, no permission, if any, under Section 118 of H.P. Tenancy and Land Reforms Act, 1972 is required for change of name in the revenue documents from “M/s Inox Air Products Ltd.” to “M/s Inox Air Products Private Ltd.”

22. Consequently, in view of the detailed discussion made hereinabove, this Court finds merit in the petition and the same is allowed. Impugned order dated 13.1.2016, Annexure P-2 is quashed and set aside. Respondents are directed to consider the request of the petitioner-company to effect change of name of petitioner company as “M/s Inox Air Products Private Limited”, without insisting upon payment of stamp duty.

Since petitioner-company is embroiled in litigation since 2016, this court hopes and trusts that the needful in terms of this order shall be done expeditiously, preferably within four weeks.

23. In the aforesaid terms, present petition is disposed of alongwith pending applications, if any.

1st December, 2022
(sushma)

(Sandeep Sharma)
Judge