IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BEFORE: HON'BLE MR. JUSTICE HARISH TANDON
&
HON'BLE MR. JUSTICE KAUSIK CHANDA

APO 446 OF 2015
WITH
WP 933 OF 2013

In the matter of:
MAGEBA BRIDGE PRODUCTS LTD. & ANR.
-VS-
THE WEST BENGAL SMALL INDUSTRIES DEVELOPMENT CORPORTATION LTD.

Mr. Ratnanko Banerji,Sr. Adv.
Mr. Debnath Ghosh, Adv.
Mr. Sushovit Dutta Majumder,Adv.
Ms. Pubali Sinha Chowdhury,Adv.
... For the Appellant.

Mr.Jaydip Kar, Sr.Adv.
Mr.Kamal Kr. Chattopdhyay, Adv.
Mr. T.Ali,Adv.
... For the Respondent

Judgment On: **08.04.2021**

Harish Tandon, J.

Several issues were raised in the instant appeal touching upon the demand of premium by the respondent no.1 in granting the lease for 99 years in respect of the plot no. J-49 on acquisition of the interest by virtue of the sanction of the scheme of

amalgamation and the methodology of ascertaining such premium without giving the credit to the value of the structure to the extent of 30% despite having accepted in earlier demand.

The background of the litigation is required to be adumbrated before we embark upon the issues raised before us. In order to set up the industrial hub and its development within the State of West Bengal, the Government of West Bengal decided to let out the plots of land for industrial purposes to various intending industrialist.

One Arvind Fabrications Pvt. Ltd applied before the Government signifying its intention to take the plot of land on a long-term lease which was subsequently agreed upon and by virtue of a deed of lease dated 24th August 1973, the Governor of the State of West Bengal granted a lease in respect of plot no. J-49 in the industrial estate for a period of 99 years commencing from 1st day of January 1973, at an annual rent of the land reserved therein. The said lease deed contained a specific clause that the lessee shall not assign, underlet or part with possession of the demised

premises or any part thereof without first obtaining the written consent of the Government. However, the lessee was permitted to mortgage or otherwise charge or hypothecate the lease hold interest in the land to the Life Insurance Corporation of India or any bank or financial corporations but only for the purpose of raising or securing any loan or overdraft or other financial accommodation in connection with the business carried on by the lessee at the demised premises. The said lessee applied before the Registrar of Company for change of its name under Section 21 of the Companies Act 1956 which was duly granted with effect from 22nd December, 1987 and the second certificate of incorporation was issued by the Deputy Registrar of Companies, West Bengal, Kolkata.

In the meantime, by virtue of the several government orders the administrative control of the Industrial estate at Baltikuri comprising the said plot no. J-49 was transferred to the West Bengal State Industrial Development Corporation Limited, the respondent no.1 herein, since the name of the lessee was changed to Shree Fabrications Pvt. Ltd by an order of the Registrar of Companies. A further lease

deed was executed on 4th April, 2008 by the respondent no.1 in favour of the said Shree Fabrications Pvt. Ltd for the residuary period of the original deed of lease dated 24th August, 1973 containing the identical clause that the said Shree Fabrications Pvt. Ltd shall not assign, underlet or part with possession of the demised premises without obtaining the prior written consent of the respondent no.1. Subsequently, an agreement for assignment was executed between the Shree Fabrications Pvt. ltd and the METCO Group engineers Private Limited whereby and whereunder the said lessee assigned the residuary period of the lease infavour of the assignee i.e., METCO Group Engineers Pvt. Ltd in respect of the plot no. J-49 at Baltikuri. The said deed of assignment was executed on 19th June, 2008, on the same day two applications were made one by the assignor and the other by the assignee to the respondent no.1 seeking consent for assignment in terms of the clause embodied in the lease deed. By a letter dated 22nd May, 2009 the respondent no. 1 considered and allowed the prayer for assignments/ transfer of the plot no. J-49 at Baltikuri subject to the payment of Rs.

18,10,083 as transfer fees payable by demand draft/ pay order/ bankers cheque within thirty days from the issue of the said letter. It was further indicated that upon a payment of such transfer fees the assignee shall also pay the stamp duty, registration charges and the legal expenses involved for execution of the lease deed for such remaining period. The assignee thereafter caused the letter dated 19.06.2009 to the respondent no.1 requesting for revisitation of the transfer fees and extension of time to arrange for payment thereof.

Amidst the pendency of the prayer for review/revisitation of the transfer fees for extension of time to make the payments thereof, an application was made on 26th June, 2009 before the High Court at Calcutta to sanction a scheme of amalgamation between the said assignee company and the present appellant. The said scheme provides that all the assets and the properties, rights, entitlement and interest of the transferor company would vest with the transferee company i.e., the present appellant on and from the appointed date i.e., 1st November, 2007. It is pertinent to record that before such scheme of amalgamation got

sanctioned from this court the METCO Group Engineers Pvt. Ltd deposited the said transfer fee on 2nd July, 2009 with the respondent no.1 in respect of plot no. J-49. The respondent no.1 in turn issued a letter dated 29.07.2009 to METCO Group Engineers Pvt. Ltd granting permissive possession of the said shed for a period of thirty days subject to the execution and registration of the lease deed. While the execution and registration of the further lease deed was pending, the application for sanction of the scheme for amalgamation was allowed by this Court on 26th June, 2009 and the certified copy thereof was obtained on 31st July, 2009. Despite having deposited the transfer fees as demanded by the respondent no.1, a reply was given by the respondent no. 1 giving the break up of the details of the said amount charged as the transfer fees wherefrom it appears that the 30% of the total value of the transfer fees was deducted therefrom as the lessee i.e., the transferor got ownership of the said shed. It was for the first time indicated in the said reply that the said METCO Group Engineers Pvt. Ltd shall be entitled to have the lease for a period of 99 years instead of the residuary period

of the lease. The present appellant thereafter issued a letter dated 31st August, 2009 to the respondent no.1 disclosing the sanction of the scheme of the amalgamation by this Court with a request to take note of such changes.

The said letter though relied upon by the present appellant on its meaningful reading appears to have been restricted to the other sheds baring the shed no. J-49 which is the subject matter of dispute in the instant appeal. Be that as it may, subsequently the respondent no.1 demanded the list of the present share-holders and the share holding pattern of the present appellant which was duly replied to. Upon compliance of all the requisitions having made suddenly a letter dated 31st May 2011, was given to the present appellant demanding a transfer fees of Rs.33,65,721/- in respect of the shed no. J-49 from the said METCO Group in favour of the present appellant.

The aforesaid demand is the substratum of the instant litigation and the writ petition came to be filed challenging the various letters in which the demands

were raised. The Single Bench dismissed the writ petition as the claim raised by the present appellant does not stand both on fact as well as on law.

The learned Advocate appearing for the appellant submits that after the application for sanctioning the scheme of amalgamation is allowed by the High Court the transferor company merged with the transferee company and such act being by operation of law the respondent no.1 cannot charge the transfer fees. In other words, it is sought to be contended that the merger of the transferor company with the transferee company by operation of law neither tantamounts to assignment nor transfer and therefore no transfer fees can be levied for the same. It is further contended that while determining the transfer fees the methodology adopted by the respondent no.1 would evince that the 30% of the total amount was allowed to be deducted as the ownership of the shed remained with the lessee which did not appear to have taken note of in the subsequent demand raised by the respondent no.1. It is further contended that the application seeking permission to transfer was pending on the date of the sanction of the scheme and therefore what was

transferred under such scheme is the application seeking a permission to transfer and not the transfer of the lease itself; therefore, the charging of any amount on a contemplated transfer of the lease or the shed is not permissible and placed reliance upon a Division bench judgment of this Court in ***Castron Technologies Limited-Vs- Castron Mining Limited*** reported in ***2013 (5) CHN 553***.

Per contra the learned Advocate appearing for the respondent no.1 submits that there was a prohibition of assignment of the lease reserved in the lease deed without the prior permission of the respondent no.1. Since the respondent no.1 has permitted the transfer and demanded the fees for such transfer, it cannot be questioned in the writ jurisdiction. It is vehemently submitted that the petitioner accepted and paid the transfer fees in respect of the other sheds held by the lessee, even after the scheme of amalgamation was sanctioned by this court and having accepted such a position, he cannot take a rebound and challenge the demand of the transfer fees in respect of the present plot/shed. It is further submitted that even if the scheme of amalgamation is sanctioned by the High

Court, it does not erase the concept of transfer of the immovable property vis-à-vis the lessor. It is further contended that, in fact, more than 30% amount out of the total transfer fees so determined has been deducted and therefore the contention that the same has not been considered is not legally sustainable. It is however contended that the Single Bench have taken note of such fact and rejected the contention of the present appellant by giving proper reasons thereof which doesnot require any interference in the instant appeal.

The state has a negligible role as they adopt the stand of the respondent no.1 in its entirety and it would be a mere repetition of the submissions advanced by the State.

As indicated above, several questions have been raised touching upon the incidents of the amalgamation having allowed by the High Court and the methodology of determining the transfer fees and not permitting the deductions while demanding the transfer fees in respect of the first incident of transfer.

It admits no ambiguity that the lease is an incident of transfer of enjoyment of the immovable property in view of section of 105 of the Transfer of Property Act. The undisputed facts as narrated hereinabove are explicit, clear and expounded the real estate of affairs concerning the dealing of the demised premises. Neither in the writ petition nor before us an issue is raised whether the respondent no.1 was within its competence to charge the fees for the permission to be granted but it hovers around the incident of the scheme of amalgamation having sanctioned by the High Court and the manner in which the determination of the transfer fees having made. A distinction has to be drawn between an involuntary transfer and the voluntary transfer. In the former case there is no element of act of the parties as such transfer is affected by operation of law. On the other hand, in the case of later situation if by act of parties, the incident of transfer can be visualized and seen with certainty whether such transfer vis-à-vis the lessor remained binding is a question to be answered.

In case of ***General Radio & Appliances Co. Ltd. & Ors.-Vs- M.A Khader (Dead) By Lrs.*** reported in

1986 (2) SCC 656. The apex court has held that the vesting of the immovable property of the transferor company with the transferee company by virtue of the scheme of amalgamation having sanctioned by the High Court attracts the element of transfer vis-à-vis the lessor, despite the fact that the transferor company loses its legal entity or existence.

Both the transferor company and the transferee company voluntarily approached the court seeking sanction of the scheme of amalgamation on the basis of an agreement having entered into in this regard and by no stretch of imagination, the lessor can be said to be a part thereof. It is certainly a voluntary act of the parties choosing the amalgamation and seeking the sanction by the Court competent in this regard. It is definitely a case of voluntary transfer and not involuntary transfer and therefore even the scheme of amalgamation is allowed by the High Court it does not bind the lessor who may not choose the transferee company to be its lessee. Since the lessee have demanded the transfer fees for granting such permission, the competence thereof has not been a center of debate in the instant case. The transferee

company cannot raise any objection thereto simplicitor on the ground that the incident of amalgamation is an involuntary transfer.

An interesting point is raised that what was transferred was the application seeking permission to transfer and not the transfer of the demised premises or the lease which is required to be considered in the perspective of the Division Bench judgment relied upon the appellants in case of ***Castron Technologies*** (supra). The aforesaid case relates to a coalmine and the mining lease having granted in favour of the Castron Technologies belonging to Agarwalla family. Pursuant to an agreement amongst the members of the family, the lease of the coal mine was granted in favour of the Castron Technologies Ltd with stipulation that and the directors thereof would assign and transfer the same in favour of the Castron Mining ltd. Pursuant to the said agreement, an application for sanction of the scheme for amalgamation of the Castron Technologies Ltd with the Castron Mining Ltd was filed on 08.03.2002. however, the mining lease was executed in favour of the Castron Technologies Ltd on 18, June 2002 and the scheme for

amalgamation was subsequently sanctioned on 13/05/2003. The said scheme of amalgamation indicated the appointed date as 31st of October 2001. After the sanction of the said scheme, an application for recall was taken out and an argument was advanced therein that even after the sanction of the scheme, the mining lease was not transferred in favour of the transferee company as at the relevant point of time, the application seeking permission to transfer of the mining lease was pending and therefore what was intended to be transferred under the scheme is the application and not the mining lease itself. The argument was centered around on the scope of recalling the scheme of amalgamation sanctioned by the court at the behest of the transferor company and while answering the same the Division Bench held:-

"29. In the present case the Scheme of Arrangement was jointly submitted before the Company Court for necessary orders in March 2002. Under the Scheme the parties agreed that the C.M.L would be entitled to pursue and derive the benefit of applications submitted by C.T.L for the grant of a mining lease upon the Scheme

being made effective. The mining lease was granted in favour of C.T.L on 18th June 2002, and was registered in favour of C.T.L on 1st July 2002. Notices were addressed to the Ministry of Coal, Government of India as also to the Government of Jharkhand in January 2003, indicating that an application had been filed in this Court for confirming the scheme of Arrangement between the parties herein whereby the mining division of C.T.L was being transferred to C.M.L on 28th April, 2003 the Central Government informed the Court that it had no objection to the Scheme. The Scheme was sanctioned by this Court only thereafter, on 13th May 2003, a deed of rectification has also been executed in June 2009 changing the name of the lessee on the mining lease to C.M.L.

30. We are of the view that the application for the mining lease was transferred and not the mining lease itself. Such a transfer did not require the sanction of the government. It is only if a mining lease is to be transferred that a prior sanction is required. Admittedly, the Scheme was

sanctioned with effect from 31st October 2001, when there was no mining lease in favour of C.T.L. Therefore, the inevitable inference is that the application for the mining lease was transferred under the Scheme."

The aforesaid observation came in the light of the argument advanced before us that such transfer offends the provision contained in Rule 37 of the Mineral Concessions Rules and therefore once the mischief is shown there is no impediment to recall the scheme of amalgamation. In the backdrop of the said perspective, the aforesaid observations were made which in our view has no nexus to the present dispute arisen in the instant case.

Even though the application seeking permission to transfer was pending as on the date when the scheme was sanctioned by the high Court yet the moot question which is required to be considered is whether the order sanctioning the scheme of amalgamation would still bind the lessor.

In ***General Radio*** (supra) the Apex court has held that the scheme of amalgamation though binds the

parties thereto but once they come vis-à-vis the lessor it is treated as an incident of transfer. It is immaterial whether the permission was granted for transfer of the demised premises or the application for demised premises. What is relevant is how the lessor perceived such incident ? It is a uniform stand of the parties that such permission was sought for transfer of the demised premises and if the respondent no.1 had demanded the transfer fees it was within the realm of their domain which the appellant cannot question. Each incident of transfer attracts the transfer fees whether the earlier permission was pending or not. The moment an application seeking permission to transfer of the demised premises in favour of the METCO was made it is a separate incident of transfer and the respondent no.1 has treated the same and determined the transfer fees which has been admittedly deposited by such outgoing transferor company. We do not find any justification in the stand of the appellant that by virtue of the scheme of amalgamation having sanctioned by the high court such fees which have been deposited by outgoing company i.e., a transferor company would inure to the

benefit of the transferee company under the scheme of amalgamation.

On the plea of determining the transfer fees in favour of the respondent no.1 from the transferor company a point has been raised that the manner in which the deductions are made or disallowed is required to be revisited. The respondent no.1 have given a detailed calculation and agreed to grant a fresh lease for 99 years which is obviously more than the residuary period of the original lease given to Arvind.

However, we noticed from the said calculation that there is no deduction of 30% out of the total determination of the lease premium has been provided though the transfer fees deposited by the transferor company in respect of a first incident of transfer has been given a due credit thereof. It is within the realm of the decision of the lessor either permitting the deduction of the amount already received on the first incident of transfer or not to give such deduction. The respondent no.1 is a statutory authority and if they have decided a thing to be done in a particular manner it is difficult on their part to wriggle out of the same.

The calculation sheet appearing at Page 310 of the first volume of the paper book indicates that the amount already deposited by the METCO for the first incident of transfer has been given a due credit and deducted from the total amount of the premium so determined for effecting the transfer and it is not open for the respondent no.1 to take a different stand. It is sought to be contended at the bar that the same may not be a correct stand taken by the respondent no.1 and such deduction could not have been given. If the statutory authority have taken a conscious decision and given a due credit of the amount already deposited in absence of any explanation or clarification in this regard such decision cannot be whittled down merely on the basis of the submissions made at the bar. The statutory authority have adopted a particular methodology in calculating the lease premium and if they have allowed a deduction to the tune of 30% on account of the shed, it must act uniformly and cannot take a different approach.

The uniformity in the decision is the hallmark of the decision-making process. Once the deduction to the tune of 30 % was allowed at the time of charging

the transfer fees on the first incident of transfer, the same benefit should be extended at the time of the second incident of transfer. The administrative authority cannot act whimsically, capriciously and/or arbitrarily but must treat all persons equally.

We therefore, cannot agree with the finding of the Single bench that once the amount of transfer fees deposited on the first incident of transfer has been allowed to be deducted at the time of determination of the lease premium/ transfer fee on the second incident of the transfer is more than the 30% of the total amount, the appellant is required to pay the entire amount so demanded.

The order of the Single judge is modified to the extent that the appellant is entitled to a deduction to the tune of 30% of the total amount so determined for lease premium/ the transfer fees even after the respondent no.1 have allowed the deduction of the transfer fees already paid by the METCO on the incident of first transfer.

The respondent no1 is directed to recalculate the amount based on such calculation after giving credit

to the amount already deposited for the first transfer and deducting 30% from the total amount of the premium so calculated.

The appeal is thus disposed of.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,

(Kausik Chanda, J.) ***(Harish Tandon, J.)***