

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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WRIT PETITION NO.3455 of 2023

JADEED FEEDS INDUSTRIES (Pvt.) LIMITED

versus

BOARD OF REVENUE, PUNJAB and others

JUDGMENT

Date of hearing: **24.10.2024**

Petitioner by: M/s Muhammad Ilyas Sheikh and
Muhammad Kashif, Advocates.

Respondents by: Mr. Khalid Ishaq, Advocate
General, Punjab.
Malik Amjad Ali, Additional
Advocate General, Punjab.

MIRZA VIOAS RAUF, J. Jadeed Feeds Industries (Pvt.) Limited (hereinafter referred to as "Petitioner-Company") emerged as a single unit from an order dated 29th June, 2020 passed in pursuance to a petition under Sections 279 to 282 read with Section 285 of the Companies Act, 2017 (hereinafter referred to as "Act, 2017"), moved jointly by the "Petitioner-Company" along with its two sister companies, for sanctioning of Scheme of Merger and rearrangement between them. The grouse of the "Petitioner-Company" now stems from letter dated 13th April, 2023, whereby Chief Inspector of Stamps, Board of Revenue, Punjab (respondent No.1) directed all the Deputy Commissioners in the Punjab not to transfer the assets of the companies without payment of stamp duty/mutation fee etc; at the time of mutation or registration of merger of companies.

2. To comprehend the matter in controversy on better terms, it would be apposite to first have a resume of facts. The "Petitioner-Company", alongwith two other companies namely Jadeed Farms (Pvt.) Limited and Jadeed GP Farms (Pvt.) Limited, was initially incorporated in different times under the erstwhile Companies Ordinance, 1984 (hereinafter referred to as "Ordinance, 1984") with the Securities Exchange Commission of Pakistan (hereinafter referred to as "S.E.C.P."). All the three companies proposed Scheme of Arrangement in terms of Sections 279 to 282 and 285 of the "Act, 2017". By virtue of said Scheme of Arrangement, the entire undertaking comprising of all the assets, liabilities and obligations of latter two companies shall, as of the effective date, stand merged with, transferred to, vested in, and be assumed by the "Petitioner-Company". The Scheme of Arrangement was duly approved by the Board of Directors of all the three companies and ultimately shareholders/members of all the three companies unanimously approved the Scheme of Arrangement in their Extra-Ordinary General Meeting (hereinafter referred to as "E.O.G.M.") held on 17th December, 2019. This followed a joint merger application before this court bearing No.C.O.No.01/2020 which was allowed vide order dated 29th June, 2020. Feeling aggrieved from sub-para 'n' of the Scheme of Management, all the three companies filed R.A.No.01/2020, which was allowed vide order dated 02nd February, 2021 with a modification in original order. The grievance of the "Petitioner-Company" is that though in pursuance to said order it approached "S.E.C.P.", Islamabad, who de-incorporated aforementioned two companies and issued afresh incorporation certificate containing the enhanced paid-up capital/shareholding including all the assets/properties, liabilities and obligations in favour of the "Petitioner-Company" but when it approached the revenue officers of different Districts for incorporation of name of "Petitioner-Company" in the revenue record, some of them though acceded but others refused to entertain the request on the ground that respondent No.1 issued letter dated

13.04.2023, restraining them not to transfer the assets of the companies without payment of stamp duty/mutation fee etc; at the time of mutation or registration of merger.

3. This petition was admitted for regular hearing vide order dated 18th October, 2023, however later on a notice was issued to the learned Attorney General for Pakistan as well as Advocate General, Punjab in terms of order XXVIIA of the Code of Civil Procedure (V of 1908) vide order dated 25th March, 2024, which reads as under:-

"5. Apparently, there is a clear disparity in the relevant provisions of Companies Act 2017 and Stamp Act 1899. Furthermore, both the provisions require interpretation. In view thereof, learned Law Officer is directed to establish contact with the concerned quarter and after obtaining instructions in view of the question framed, assist the court. A notice in terms of Order XXVIIA of CPC be also issued to the learned Attorney General for Pakistan as well as learned Advocate General, Punjab, who shall assist the Court with regard to the matter in issue."

In response to notice, learned Advocate General, Punjab is in attendance today but the learned Attorney General for Pakistan is not available on account of his pre-occupation before Supreme Court of Pakistan, There is, however, a consensus amongst all in attendance that in view of proposition involved in this petition, it can be proceeded and decided without learned Attorney General for Pakistan. In this backdrop, I have heard learned counsel for the "Petitioner-Company" as well as learned Advocate General, Punjab.

4. Mr. Muhammad Ilyas Sheikh, Advocate, learned counsel for the "Petitioner-Company" submitted that in terms of Scheme of Management sanctioned by this Court, only name of the "Petitioner-Company" is to be substituted in place of other two companies, which does not involve any transaction of sale requiring registration. Learned counsel added that the revenue officers concerned have only to give effect to the order of this Court whereby merger was approved. Emphasized that no stamp duty is leviable upon the "Petitioner-Company" in the circumstances and the impugned circular/letter is illegal and unlawful. While making

reference to Sub-Section (5) of Section 282 of the “Act, 2017”, learned counsel contended that the provisions of Stamp Act, 1899 cannot be given effect in preference thereof. Learned counsel to this effect has also made reference to Article 143 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance has been placed on TOTAL PARCO PAKISTAN LTD. AND TOTAL OIL PAKISTAN (PVT.) LTD: In the matter of Judicial Companies Miscellaneous No.29 of 2015, decided on 28th September, 2022 (2023 CLD 241) and DIVISIONAL SUPERINTENDENT, QUETTA POSTAL DIVISION and others versus MUHAMMAD IBRAHIM and others (2022 SCMR 292).

5. Contrary to the submission of learned counsel for the “Petitioner-Company”, Mr. Khalid Ishaq, learned Advocate General, Punjab submitted that Section 12 of the “Act, 2017” specially deals with the change of name of the company whereas “Petitioner-Company” has emerged as a separate entity with the merger of three independent companies. Learned Advocate General, Punjab contended that levy of stamp duty is a provincial subject by all means and in terms of Article 27-A of the First Schedule to the Stamp Act, 1899, the “Petitioner-Company” is liable to pay stamp duty. Learned Law Officer has also pointed out certain distinctive features in the relevant laws of the province of Sindh and Punjab. It is argued with vehemence by the learned Advocate General, Punjab that judgment in FATIMA SUGAR MILLS LIMITED through Company Secretary and others: In the matter of C.O.No.10 of 2012, decided on 16th March, 2015 (PLD 2015 Lahore 632) clinches the issue. Learned Law Officer submitted that the scope of Article 143 of the Constitution of the Islamic Republic of Pakistan, 1973 has been misconstrued by the learned counsel for the “Petitioner-Company”.

6. Heard. Record perused.

7. It is an admitted position on the record that the “Petitioner-Company” has emerged on the scene as a sole entity by the merger of three independent companies. The term “merger” is

nowhere defined either in the “Act, 2017” or the Stamp Act, 1899 (hereinafter referred to as “Act,1899”). The literal meaning of “merger” is, however, given in various law dictionaries in the following manner:-

The **Black’s Law Dictionary** describes the meaning of “Merger” as under:-

“**merger.** (18c) 1. The act or an instance of combining or uniting. 2. *Contracts.* The substitution of a superior form of contract for an inferior form, as when a written contract supersedes all oral agreements and prior understandings. See INTEGRATION (2).

“Where two parties have made a simple contract for any purpose, and afterwards have entered into an identical engagement by deed, the simple contract is *merged* in the deed and becomes extinct. This extinction of a lesser in a higher security, like the extinction of a lesser in a greater interest in lands, is called *merger.*” *William R. Anson, Principles of Law of Contract 85 (Arthur L. Corbin ed., 3d Am. Ed.1919).*”

Oxford, Advanced Learner’s Dictionary portrays the meaning of “Merger” as under:-

“**merger.** the act of joining two or more organizations or businesses into one: a merger between the two banks – our proposed merger with the university.”

Cambridge Dictionary articulates the meaning of “Merger” as under:-

“**merger.** an occasion when two or more companies join together: She’s an attorney who advises companies about mergers and takeovers. The merger of these two companies would create the world’s biggest accounting firm.”

Whereas, **Webster’s Dictionary** explains the meaning as under:-

“**merger.** a statutory combination of two or more corporations by the transfer of the properties to one surviving corporation. 2. any combination of two or more business enterprises into a single enterprise. 3. An act or instance of merging.”

The term “merger” is thus analogous and akin to amalgamation and absorption.

8. Adverting to the core issue as to whether in case of merger of two or more companies into one, any stamp duty can be levied/claimed for incorporation of mutation in the revenue record in

favour of such company. Before embarking upon the moot point, it would be advantageous to first have a recourse to the relevant law on the subject. As already observed the "Petitioner-Company" came into existence as a sole entity in terms of Scheme of Arrangement, sanctioned and approved by way of order dated 29th June, 2020 passed in C.O.No.01/2020. For the ease of reference, same is reproduced below:-

"8. None of the stakeholders, creditors, shareholders of petitioner No.1, petitioner No.2 and petitioner No.3 and other interested parties have come forward and raised any objection to the Scheme of Merger. This petition is, thus, allowed and the Scheme of Merger is hereby sanctioned which shall form part of this order as Schedule 'A'. The Scheme shall take effect in accordance with section 282(3) of the Act. In consequence thereof, it is further ordered in terms of section 282 of the Companies Act, 2017 as follows:

- a) With effect from 1.7.2019 the scheme of arrangement as prayed and approved by the E.O.G.M dated 17.12.2019 and 27.02.2020, the assets, liabilities, rights and obligations of petitioners No.2 and 3 shall stand rearranged and resultantly merged into petitioner No.1. With effect from 1.7.2019, the petitioner No.1 shall be the acquiring company of petitioners No.2 and 3 and shall retain all the assets, liabilities, duties and obligations of petitioners No.2 and 3 w.e.f 1.7.2019.
- b) The shareholders of petitioners No.2 and 3 shall transfer their shares to petitioner No.1 against the issuance of shares by petitioner No.1 on the approved swap rates.
- c) Under Section 282(3) of the Companies Act, 2017, it is directed to transfer and to vest in the Petitioner No.1 the whole undertaking, assets, properties, liabilities, rights, benefits, powers, privileges, licenses, contracts of each of the Petitioners No.2 and Petitioner No.3, as more particularly described in the Scheme for Arrangement as set forth in Annexure "D".
- d) Under section 282(3)(b) of the Companies Act, 2017 the Petitioner No.1 shall issue at par, in aggregate, 152,340,981 ordinary share of Rs. 10/- each, credited as fully paid up of the

aggregate nominal value of Rs. 1,523,409,810/- and to allot the said shares to the JFL shareholders (as defined under Scheme of Arrangement) in the manner provided under the Scheme of Arrangement.

- e) Under Section 282(3)(b) of the Companies Act, 2017, the Petitioner No.1 shall issue at par, in aggregate, 30,982,500 ordinary shares of Rs.10/- each, credited as fully paid up of the aggregate nominal value of Rs.309,825,000/- and shall allot the said shares to the JGPFL Shareholders (as defined under the Scheme of Arrangement) in the manner provided under the Scheme of Arrangement.
- f) Under Section 282(3)(f) of the Companies Act, 2017 all share certificates/shares issued by the Petitioner No.2 in favour of its shareholders, shall stand cancelled in the manner stipulated under the Scheme of Arrangement.
- g) Under section 282(3)(f) of the Companies Act, 2017, all share certificates/ shares issued by the Petitioner No.3 in favour of its shareholders shall stand cancelled in the manner stipulated under the scheme of Arrangement.
- h) To give effect to the Scheme of Arrangement, including but not limited to, orders whereby all assets, business, undertaking, properties, rights and liabilities of the Petitioners No.2 and 3 shall stand transferred to and shall stand vested in the Petitioner No.1 and similarly, all liabilities and duties of the petitioners No.2 and 3 shall be assumed by and vested in the Petitioner No.1 w.e.f 1.7.2019 as defined under the Scheme of Arrangement, being the start of business on 01.07.2019.
- i) Under Section 282(3)(c) of the Companies Act, 2017 it is directed that all suits, appeals, arbitration, governmental investigations and other legal proceedings instituted by or against the Petitioners No.2 and 3, and any judgments, orders or directions passed in respect of the Petitioners No.2 and 3, shall be treated as suits, appeals and legal proceedings by or against the Petitioner No.1, and judgments, orders and directions passed in respect of the petitioners No.2 and 3 may be continued, prosecuted and

- enforced by or against the petitioner No.1 accordingly.
- j) An order that all books of accounts and other documents which would before the Effective Date have been the evidence in respect of any matter for or against the Petitioners No.2 and 3 shall be admissible in evidence in respect of the same matter for and against petitioner No.1.
- k) Under Section 282(3)(d) of the Companies Act, 2017 the petitioner No.2 shall stand dissolved without winding up.
- l) The authorized share capital of the petitioners No.2 and 3 shall be merged and combined with the Petitioner No.1's authorized share capital without any performance of any further acts and deeds of payment of any costs, and further declare that the authorized share capital of the petitioner No.1 post amalgamation shall be Rs.4,000,000,000/- divided into 400,000,000 ordinary shares of Rs. 10/- each.
- m) Petitioner No.1 shall within 30 days after the date of issuance of certified copy of this order, cause such certified copy of this order to be delivered to the Registrar of Companies for registration.
- n) Petitioner No.1 shall deposit the requisite stamp paper in the office within three weeks in lieu of the transfer of the Manufacturing Undertaking in terms of the law laid down in judgment reported as "FATIMA SUGAR MILLS LIMITED through Company Secretary and others" (PLD 2015 Lahore 632).
- o) This Court order shall be published in the official gazette of Pakistan and the publication report shall be submitted in this court within fortnight."

(Underlining supplied for emphasis)

9. Feeling offended from clause 'n', the "Petitioner-Company" filed R.A.No.01/2020, which was allowed vide order dated 02.02.2021 by modifying the order under review to the following effect:-

"2. The applicants merely seek the review of the above portion of the order dated 29.06.2020. We have heard

the learned counsel for the applicants and agree that the order passed by learned Single Judge to the extent set out above does not take into account the subsequent events by which the judgment referred to by the learned Single Judge has no application. Moreover, it would indeed bind the office if a reference was made to the judgment of the learned Single Judge which was passed by interpreting the provisions of section 284 of the repealed Companies Ordinance, 1984 and the present Companies Act, 2017 is materially different from the provisions which were sought to be interpreted in *Fatima Sugar Mills Ltd.* case. Therefore, it would have been appropriate for the learned Single Judge to merely mention that the stamp duty shall only be deposited if found due under the law. We therefore accept this application by reviewing the order passed by the learned Single Judge to the extent of the extract reproduced above. (Clause n) of the order under review shall be read as follows:-

The petitioner No.1 shall deposit the stamp duty if it is required by law.

(Underlining supplied for emphasis)

10. The "Petitioner-Company" then approached the revenue officers concerned where the immovable assets of the companies were located to incorporate the name of the "Petitioner-Company" in the revenue record and to sanction the mutations. It would not be out of context to mention here that in some of the Districts, mutations were accordingly sanctioned in favour of the "Petitioner-Company" but in the meanwhile, with the circulation of impugned letter, rest of the revenue officers refused to sanction the mutations without payment, of requisite stamp duty, which prompted the "Petitioner-Company" to file this constitutional petition.

11. In order to consolidate and amend the law relating to stamps, "Act, 1899" was promulgated on 27th January, 1899. For the purpose of capturing the matter in controversy effectively, it would be advantageous to first have a glimpse of relevant provisions embodied in "Act, 1899". Sub-Section (6) of Section 2 defines "chargeable" in the following words:-

"2. Definitions.-In this Act, unless there is something repugnant in the subject or context-

.....

.....

.....

(6) "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act, and, as applied to any other instruments chargeable under the law in force in [Pakistan] when such instrument was executed or, where several persons executed the instrument at different times, first executed."

The words "executed" and "execution" find their meaning in Sub-Section (12) of Section 2, which reads as under:-

"(12) "executed" and "execution", used with reference to instruments, mean "signed" and "signature":

Whereas word "instrument" is defined in Sub-Section (14) of Section 2, in the following way:-

"(14) "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded [and includes any instrument executed in electronic form]:"

From the bare perusal of the above definition of "instrument", it becomes manifestly clear that it includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded and also includes any instrument executed in electronic form.

12. Chapter II of the "Act, 1899" deals with stamp duties and Section 3 signifies "instruments chargeable with duty", which is reproduced below for ready reference and convenience:-

"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 therefor respectively, that is to say-

- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in [Pakistan] on or after the first day of July, 1899;
- (b) every bill of exchange [payable otherwise than on demand] [*] or promissory note drawn or made out of [Pakistan] on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in [Pakistan]; and
- (c) every instrument (other than a bill of exchange, [*] or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of [Pakistan] on or after that day, relates to any property situate, or to any matter or thing done or to be done, in [Pakistan] and is received in [Pakistan]:

Provided that no duty shall be chargeable in respect of-

- (1) any instrument executed by, or on behalf of, or in favour of, [the Government] in cases where, but for this exemption, [the Government] would be liable to pay the duty chargeable in respect of such instrument;
- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts."

(Underlining supplied for emphasis)

Thus, in terms of Section 3, every "instrument" becomes "chargeable" with stamp duty of the amount indicated in Schedule I, unless exempted. Article 27-A of First Schedule of the "Act, 1899" was previously not the part of the Schedule but it was inserted through the Punjab Finance Act, 2008, which brought the decree,

rule of the court or an order of the court based on mutual consent of the parties in cases involving transfer of an immovable property including sale, exchange, gift or mortgage, declaring or conferring a right in, or title to, an immovable property, within ambit of an instrument chargeable to stamp duty.

13. The question as to whether transfer of an immovable property in pursuance to merger/amalgamation of the companies becomes chargeable to stamp duty came under discussion in *Fatima Sugar Case* (*supra*) and this Court after having threadbare discussion held as under:-

31. In view of the aforesaid discussion, it is declared that

- (a) the order passed by the Court under section 284 of the Companies Ordinance is founded on the consent of the shareholders of two or more companies and that the role of this Court while sanctioning the compromise or arrangement is restricted to oversee that the compromise or arrangement arrived at is lawful and is not prejudicial to the interest of its members. Once the Court is satisfied with these prerequisites, the scheme is liable to be sanctioned as per the consent given to the scheme by the shareholders of the companies.
- (b) the order passed by the Court sanctioning a scheme under section 284 of the Companies Ordinance is an instrument in terms of section 2(14) of the Stamp Act and falls within the purview of Article 27-A of the First Schedule to the Stamp Act.
- (c) the order passed by this Court sanctioning a scheme under section 284 of the Companies Ordinance is also a conveyance within the purview section 2(10) of the Stamp Act insofar as it does not involve transfer of immovable property.
- (d) the orders sanctioning the schemes of arrangement/amalgamation of the petitioner Companies in C.O. No.10/2012, C.O. No.25/2013 and C.O. No.18/2012 are liable to stamp duty on the terms mentioned above."

(Underlining supplied for emphasis)

14. So far as contention of learned counsel for the "Petitioner-Company" that by virtue of Sub-Section (5) of Section 282 of the "Act, 2017", no stamp duty is payable despite the provisions contained in the "Act, 1899"; suffice to observe that prior to the "Act, 2017", there was "Ordinance, 1984" but it was repealed through Section 509 of the "Act, 2017". It is however noticed that provisions of Section 279 of the "Act, 2017", which deals with compromise with creditors and members, are identical and *pari materia* with Section 284 of the "Ordinance, 1984" so is the case of Section 282 of the "Act, 2017" and Section 287 of the "Ordinance, 1984". This, thus, leaves no cavil to hold that the order sanctioning the merger of the company is an "instrument" for all intent and purposes in the light of the "Act, 1899" and the principles laid down in Fatima Sugar Case (*Supra*) are equally applicable to the order of the merger passed under the "Act, 2017".

15. In order to understand the true scope and import of Sub-Section (5) of Section 282 of the "Act, 2017", it would be apt to reproduce the same, which reads as under:-

"282. Powers of Commission to facilitate reconstruction or amalgamation of companies.-(1)

Where an application is made to the Commission under section 279 to sanction a compromise or arrangement and it is shown that---

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.....

(5). Notwithstanding anything contained in the Stamp Act, 1899 (II of 1899) or any other law for the time being in force, no stamp duty shall be payable on transfer to the transferee company of the whole or any part of the undertaking and of the property of any transferor company as a result of sanctioning by the Commission, any compromise or arrangement under this Part:

Provided that this sub-section (5) shall, in respect of the companies having registered office within the jurisdiction of---

- (a) the Islamabad Capital Territory, be applicable at once; and
- (b) the Provinces, be applicable upon notification or legislation by the respective Provincial Governments."

(Underlining supplied for emphasis)

From the bare perusal of above referred provision of law, more specifically, the proviso (b), it is manifestly clear that the benefit of said provision can only be extended if the Province concerned issued a notification or made legislation to this effect, which is not the case here. Needless to observe that proviso to Section 282(5) of the "Act, 2017" is very instructive as regards its applicability with particular reference to the jurisdiction in which registered office of the company is situated under Clause (a) of the proviso with respect to the companies having registered offices in Islamabad Capital Territory, the provision of Section 282(5) has been made applicable at once, however, for the companies having registered offices in the Provinces, the applicability of provision in question is subject to the condition of issuance of notification regarding exemption from stamp duty by the provincial governments or legislation by the provinces to this effect.

16. There is yet another important aspect which goes to the root of the case and for the said purpose, this Court has to revert back to the constitutional history of law relating to stamp duty. Initially, under the Government of India Act, 1935 (hereinafter referred to as "Act, 1935), as amended by the Indian Independence Act, 1947, the subject of stamp duty was part of the Concurrent Legislative List-List III-(Entry 13). The rates of such stamp duty with respect to the limitations laid down by Section 100(2) of the "Act, 1935", however, were vested with both, the Federal and the Provincial Legislatures by way of Federal Legislative List-List-I-(Entry-57) and Provincial Legislative List-List-II-(Entry 51) respectively. Later on with the establishment of Province of West Pakistan, by virtue West Pakistan Act, 1955, the then provincial government of the Punjab amended the application of the "Act, 1899" as applicable in the

Punjab by way of the Stamp (Punjab Amendment) Act, 1954 and introduced Schedule 1-A to the "Act, 1899". The Punjab Stamp Act, 1954, thus, had the effect of repealing the Indian Stamp (West Punjab Amendment) Act, 1948. In the Constitution of 1956, the subject of stamp duty was listed as Item 73 in the Provincial List as "Stamp Duty", including stamp duty on negotiable instruments and insurance policy. In the same manner, Item 90 of the Provincial List stated that the "rates of stamp duty in respect of documents other than those specified in the provisions of Federal List with regard to the rates of stamp duty". A conjunctive reading of above had the effect of implying that the stamp duty, including the rates of such duty, vested with the province, except for only those documents under the Federal List on which the rates of stamp duty were specified. The Stamp (West Pakistan Amendment) Ordinance, 1959, however, further amended the scope of the "Act, 1899" and extended it to the whole of Province of West Pakistan, save for the territories under the Federation and other specified areas. Consequently, the Punjab Amendment Act, 1954 was repealed with the promulgation of Constitution of 1962 despite the centralization of legislative powers, the subject of stamp duty remained in the domain of provincial legislature. In the year 1969, Schedule-I to the "Act, 1899" was substituted through Section 6 of the West Pakistan Finance Ordinance, 1969 in terms whereof all the provinces including province of the Punjab have their respective Schedule-I to the "Act, 1899" since then. With the enactment of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as "the Constitution"), legislative domains of the Federal and concurrent legislative lists were defined by Articles 141 and 142 of "the Constitution". Clause (c) of Article 142 of "the Constitution" provided for residuary matters falling in neither the Federal nor the concurrent Legislative Lists and Provincial Assemblies enjoyed exclusive jurisdiction to legislate upon residuary matters. The subject of stamp duty was not listed, either in the Federal or Concurrent List, hence, 18th amendment to "the Constitution" whereby the Concurrent

Legislative List was omitted, has no bearing or effect on the subject of stamp duty and as such subject of stamp duty and the power to legislate with respect to the same are vested with the Provincial Assemblies. Since the promulgation of "the Constitution", the Province of the Punjab, through various amendments introduced in Schedule-I, has changed/varied the said Schedule and rates of stamp duty. The said amendments include Stamp (Punjab Amendment) Act, 1973, Punjab Finance Act, 1992, Punjab Finance Act, 1996, Punjab Finance Act, 2008, Punjab Act VI of 2010, Punjab Finance Act, 2016 and Punjab Finance Act, 2018. The latest in series is The Stamp (Amendment) Act, 2021, which was passed by the Provincial Assembly of the Punjab, introducing material changes in the existing "Act, 1899".

17. Since all the provinces, being constitutionally competent, are dealing with the subject of stamp duty independently, so there are different Schedule(s) to the "Act, 1899", which are enforced in the respective Provinces and a different Schedule-I is exclusively applicable to the territories/area, which are not part of any of the Provinces, including the Islamabad Capital Territory. It would not be out of context to mention here that Schedule-I, enforced by the Federation is exclusively applicable to the Islamabad Capital Territory. There is no Federal Stamp Law in the field. These Provincial and Federal Schedules exist separately and mutually exclusive in their operation. This arrangement itself reflects the legislative scope and powers of the Provinces and the Parliament in terms of Clause (c) of Article 142 of "the Constitution" hence the subject of levying stamp duty falls squarely and exclusively within legislative competence of the Provincial Assemblies. The stamp duty, being a provincial subject and scheme of distribution of legislative powers between Federation and Provinces, as ordained in Article 142 of "the Constitution" in particular its Clause (d), the overriding effect of the provisions of Sub-Section (5) of Section 282 of the "Act, 2017" or exemption from payment of stamp duty with

respect to transfers under the Scheme of Mergers is limited to the extent of Islamabad Capital Territory. Since under Article 142(d) of "the Constitution", the Parliament has exclusive powers to make laws with respect to all matters pertaining to such areas in the Federation, which are not included in any province, the overriding effect over the requirement of stamp duty within Islamabad Capital Territory through Section 282(5) of the "Act, 2017" could be given by the Parliament as has been done through the proviso (a) to Section 282(5). However, through proviso (b) to Section 282(5) of the "Act, 2017", the constitutional mandate and competence of the Provinces to levy stamp duty on transfers through sanctioned schemes of merger have been recognized. In view thereof, when the Government of the Punjab has neither issued any notification of exemption from payment of stamp duty under Section 9 of the "Act, 1899", remitting the duties in question, nor the Province has made any amendment to the existing law, the stamp duties on transfer of immoveable properties within the territory of the Province of the Punjab are payable in order to act upon and authenticate the sanctioned schemes of merger/amalgamation.

18. There can be no cavil to this legal proposition that in case of inconsistency between Federal and Provincial law, former will prevail but for the said purpose one has to understand the theme of Article 143 of "the Constitution". For the purpose of convenience and reference, same is reproduce below:-

"143. [Inconsistency between Federal and Provincial Law.-- If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora (Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.]".

(underlining supplied for emphasis)

It clearly manifests from the bare reading of above provision that the principle embodied therein would apply when there occurs some inconsistency in the provincial statute as compared to Federal Law regarding which latter is competent to enact. As already observed, stamp duty for all intent and purpose is provincial subject. This was the reason that through proviso (b) of Sub-Section (5) of Section 282 of the "Act, 2017", the applicability of the Section 282 was made conditional to issuance of notification or legislation by the respective provincial governments.

19. In the wake of above discussion, when contention of learned counsel for the "Petitioner-Company", that in terms of Article 143 of "the Constitution" in case of any inconsistency between the Federal and Provincial law, former will prevail, is taken into consideration, no other inference can be drawn except that such contention is highly ill-founded and misconceived. While adverting to the contention, of learned counsel for the "Petitioner-Company", rested highly on Total Parco Pakistan Limited Case (supra), it is observed that the First Schedule of the "Act, 1899" applicable in the Province of Sindh does not have any entry similar and akin to Article 27-A of Schedule-I, of the "Act, 1899", as is enforced in the Province of the Punjab. Moreover, the said judgment is founded on entirely different facts and does not deal with stamp duty on transfer of immoveable property rather it deals with some transfer fee. So far as claim of the "Petitioner-Company" that through Scheme of Management, a merger has taken place, which does not amount to transfer of any right or title and it is only change of name of the company in the relevant record; suffice to observe that Section 12 of the "Act, 2017" specifically deals with the issue of change of name by a company and the case of the "Petitioner-Company" is clearly beyond the scope of said provision. Needless to reiterate that through merger, assets and liabilities of the companies previously existing, stands transferred in the name of the "Petitioner-Company" and as

such, it clearly falls within the ambit of Article 27-A, Schedule-I of the “Act, 1899”.

20. The nutshell of above noted threadbare discussion is that the instant petition is devoid of any merits and resultantly, it is **dismissed**, with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Sajjad

PKS

Dictated: 31.10.2024

Signed: 07.11.2024

Announced in open Court on 07.11.2024

JUDGE

Approved for reporting

JUDGE