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## **Supreme Court holds that stamp duty is not payable on every increase in the authorized capital of a company if the prescribed maximum duty is already paid**

The Supreme Court of India (“**Supreme Court**”) in its recent judgement *State of Maharashtra & Anr., Vs National Organic Chemical Industries Limited*<sup>1</sup>, has held that once the maximum duty payable on the authorised share capital of a company is paid, as prescribed under the relevant stamp laws, no additional duty is payable for subsequent increase in the share capital, unless the law specifically requires payment of additional stamp duty. The Supreme Court further clarified that the form filed with the registrar of companies (“**RoC**”), notifying the increase in the authorised share capital of a company is not an instrument for the purpose of levying stamp duty. This judgement of the Supreme Court is significant since it settles the law that, if the state laws do not expressly provide for stamping every increase in the authorized capital, then no additional duty is payable for increase in the authorized capital, if the maximum prescribed duty has been paid earlier.

### **Brief Facts**

In 1992, National Organic Chemical Industries Limited (“**NOCIL**”) paid a stamp duty of INR 1,12,80,000 (Indian Rupees one crore twelve lakh eighty thousand) after it increased its share capital from INR 36,00,00,000 (Indian Rupees thirty-six crore) to INR 600,00,00,000 (Indian Rupees six hundred crore) under the Bombay Stamp Act, 1958 (“**Stamp Act**”)². In 1994, the State of Maharashtra amended³ the Stamp Act, introducing a cap of INR 25,00,000 (Indian Rupees twenty-five lakh) for companies increasing the authorised share capital. NOCIL subsequently increased its authorised share capital to INR 1,200 crore (Indian Rupees one thousand two hundred crore) inadvertently paying INR 25,00,000 (Indian Rupees twenty-five lakh) as stamp duty. NOCIL had also filed Form No.5⁴ with the RoC as required under the Companies Act, 1956 (“**CA 1956**”). NOCIL sought refund which was rejected by the Deputy Superintendent of Stamps. NOCIL challenged this before the Bombay High Court which allowed the writ petition and directed the State of Maharashtra to refund the stamp duty plus interest. Against the said order, the State of Maharashtra and Deputy Superintendent of Stamps preferred an appeal before the Supreme Court.

<sup>1</sup> Judgement dated April 5, 2024 in Civil Appeal No.8821 of 2011.

<sup>2</sup> The stamp duty payable on articles of association at that point in time was INR 1000 (Indian Rupees five thousand) for every INR 5,00,000 (Indian Rupees five lakh) or part thereof.

<sup>3</sup> The amendment to Article 10 of Schedule-I of the Stamp Act was introduced vide notification dated August 2, 1994.

<sup>4</sup> Form No. 5 of the Companies (Central Government’s) General Rules & Forms, 1965 is the prescribed form of notice, which has to be sent under Section 97 of the CA 1956. Under Section 64 of the Companies Act, 2013 read along with Rule 15 of the Companies (Share Capital and Debentures) Rules 2014, there is a requirement for the company to notify the RoC in Form SH-7 regarding the increase in the authorized share capital of the company.

## Contentions

The State of Maharashtra contended that the stamp duty was payable every time a company increased its share capital and filed Form No.5<sup>5</sup> with the RoC. The State of Maharashtra further contended that the instrument liable to tax is Form No. 5 filed for increase in authorised capital. Section 14A of the Stamp Act was relied upon to contend that any material or substantial alteration in the character of an instrument requires a fresh stamp duty according to its altered character. It was further contended that the stamp duty paid earlier cannot be taken into consideration since the earlier payment was made in 1992 and the amendment imposing a cap on duty payable was introduced subsequently, in 1994.

NOCIL contended that the stamp duty was only payable on the article of association (“**AoA**”), which alone is the instrument referred to Article 10 of Schedule-I of the Stamp Act; and the filing of Form No. 5 to the RoC was merely to notify the increase in share capital, and the form is not an instrument under the Stamp Act. It was further contended that increase in the share capital of a company does not materially or substantially alter the character of the AoA in order to fall within Section 14A of the Stamp Act. Reliance was placed on Section 31 of the CA 1956 to contend that any alterations made to the AoA are valid and are to be taken as if originally contained therein.

## Decision of the Supreme Court

The Supreme Court by relying on the view taken by Allahabad High Court in *New Egerton Wollen Mills*<sup>6</sup>, held that filing of Form No. 5 is only for intimating the RoC about the increase in the share capital. The instrument as per Section 2(1) of the Stamp Act, that is liable to be assessed for stamp duty is the AoA as mentioned in Article 10 of Schedule-I of the Stamp Act.

The Supreme Court while dealing with the interplay between Section 14A of the Stamp Act and Section 31 of the CA 1956, held that CA 1956 being a special law and Stamp Act being a general law with regard to AoA, the special law will override the general law, in case of conflict. The Supreme Court clarified that in terms of Section 31 of the CA 1956, any increase in the share capital of the company shall be valid as if it were originally there when the AoA was first stamped; and that the amended AoA cannot be considered as a fresh instrument.

In view of the above and considering that the resolution to increase the authorised capital was passed by NOCIL after the amendment in 1994 was introduced, the Supreme Court held that stamp duty paid by NOCIL on the AoA in 1992 will have to be taken into account, while calculating the duty payable on the increased authorised capital. The Supreme Court further held that no additional duty is payable by NOCIL on the increased authorised capital, since the maximum duty payable under the Stamp Act had already been paid. Consequently, the Supreme Court dismissed the appeal; and directed the State of Maharashtra to refund the stamp duty with interest.

## Conclusion

The judgement reiterates the position of law that taxing / fiscal statutes must be interpreted strictly. The judgement also affirms the proposition that a codified law overrides common practices, in as much as, it is clarified that the practice of stamping Form No. 5 does not make it an instrument and the actual instrument liable to be assessed for duty is the AoA as stated in Article 10 of Schedule 1 to the Stamp Act.

Subject to the state specific laws, the benefit based on this judgement can be availed by the companies not only for mere increase in authorized capital, but also during restructuring such as mergers.

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<sup>6</sup> 1899 SCC Online All 22

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