

A U.P. STATE INDUSTRIAL DEV.CORPN. LTD.

v.

MONSANTO MANUFACTURES (P) LTD. & ANR.

(Civil Appeal No.2731 of 2005)

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JANUARY 29, 2015

**[SUDHANSU JYOTI MUKHOPADHAYA AND V. GOPALA  
GOWDA, JJ.]**

C *Industrial Development – Government of Uttar Pradesh*  
acquired land and conveyed the same to appellant-U.P. State  
Industrial Development Corporation for setting up industrial  
area – Appellant-Corporation divided the land into plots for  
leasing the same to industrial units and executed lease deed  
D *in favour of respondents-Companies – Later appellant-*  
Corporation made allegation that respondents-companies'  
share holders transferred their company/their shares to new  
shareholders without the consent of appellant-Corporation,  
which amounted to transfer of interest, for which transfer levy  
E *is required to be deposited – Demand notices issued by the*  
appellant-Corporation challenged by the respondents-  
Companies in different writ petitions or suits which were  
allowed by the High Court – Justification – Held: On facts, by  
their alleged action, the respondents-Companies directly or  
F *indirectly transferred or parted with their interest/benefit under*  
their respective agreements in violation of the terms of the  
agreement and their lease deed and were thus liable to pay  
transfer fee –Appellant rightly issued notice demanding  
transfer fee from each of the respondents and there was no  
G *reason for the High Court to interfere with the same.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No.  
2731 of 2005

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From the Judgment and Order dated 11.05.2004 of the  
High Court of Judicature of Allahabad in Writ Petition No. 5094  
of 2000

WITH

C. A. Nos. 1310 of 2006 and C. A. Nos. 1318 and 1319  
of 2015

Rakesh Uttamchandra Upadhyay, Amar Deep Sharma  
for the Appellants.

S. K. Dubey, Pramod Kr. Sharma, K. V. Mohan, M. Datta,  
Angad Mehta, Arun Cathpalia, D. Bharat Kumar, Pradeep  
Kumar Bakshi, Sayooj Mohandas M., Mohd. Irshad Hanif, M.  
Z. Chaudhary, Aftab Ali Khan for the Respondents.

The Judgment of the Court was delivered by

1. Leave granted in SLP (C) No.16404 of 2006 and  
SLP(C) No.5838 of 2008.

2. The Government of Uttar Pradesh acquired land in  
various districts and conveyed the same to the appellant-U.P.  
State Industrial Development Corporation (hereinafter referred  
to as, 'the Corporation' for short) for the purpose of setting up  
industrial area. The Corporation thereafter divided the said  
land into plots for leasing the same to industrial units. The  
respondents-Companies, applied to the appellant-Corporation  
for grant of lease. On receiving part premium of the plot, the  
appellant executed an agreement for licence and later executed  
lease deed in favour of the respondents-Companies. Later  
the appellant-Corporation made an allegation that the  
respondents-companies' share holders transferred their  
company/their shares to new shareholders without the consent  
of appellant-Corporation, which amounted to transfer of  
interest, for which transfer levy is required to be deposited.

- A Demand notices were issued by the appellant-Corporation to the respondents-Companies. Those demand notices were challenged by the respondents-Companies in different writ petitions or suits which were allowed by the Division Bench of the High Court of Judicature at Allahabad by impugned judgments.

3. In the aforesaid cases the High Court held that unless the respondents-Companies transfer its right in the plot in question in favour of another legal entity, there is no question to apply clause 4(h) of the Agreement for licence. The High Court further held that mere change in shareholders or Directors, does not change legal entity of the Company and as such it continues unchanged.

- D 4. The questions that arise for our consideration in these appeals are:

- E (i) Whether by the alleged action the respondents-Companies directly or indirectly had transferred or parted with their interest/benefit under their respective agreements for licence.

- F (ii) Whether the respondents-Companies violated the terms as contained in Clause 4(h) of agreement and Clause 3(p) of their lease deed and

- (iii) Whether the respondents-Companies are liable to pay transfer fee for alleged transfer of its own interest.

5. The facts leading to the cases are as follows:-

- G **Monsanto Manufactures Private Ltd.(A Company registered under the Companies Act, 1956)**

- H The respondent-Company applied to the appellant-Corporation for grant of lease of plot of land bearing no.38/1-

A situated in Sahibabad Industrial Area, Site No.4 of Tehsil A  
and District Ghaziabad admeasuring 14,533 square yards for  
the purpose of constructing an industrial unit. The appellant-  
Corporation after receiving part premium of the plot land  
executed an agreement for licence on 12<sup>th</sup> June, 1978 in favour  
of the respondent-Company. The possession of the land was B  
given on 12<sup>th</sup> June, 1978. After construction of the building of  
the factory, the respondent-Company and the appellant-  
Corporation executed a deed of lease on 5<sup>th</sup> September, 1979  
for a period of 90 years. Later, the appellant-Corporation vide C  
letter dated 12<sup>th</sup> April, 1994 asked the respondent-Company  
to provide the list of its Directors and shareholders duly certified  
by the Chartered Accountant. The same was furnished by the  
respondent-Company to the appellant-Corporation on 7<sup>th</sup> May,  
1994. According to the appellant-Corporation the respondent- D  
Company changed the Directors and shareholders without  
prior permission and consent of the appellant-Corporation and  
since the respondent-Company was purchased by the present  
Directors from the previous Directors. The appellant-  
Corporation by letter dated 27<sup>th</sup> May, 1994 asked for details E  
in order to take necessary action in accordance with the terms  
of the lease deed. The respondent-Company categorically  
denied the allegations levelled by the appellant-Corporation  
by their letter dated 27<sup>th</sup> September, 1994.

6. By letter dated 1<sup>st</sup> October, 1999 the appellant- F  
Corporation demanded Rs.25,51,781/- from respondent-  
Company towards transfer levy charges as the original  
shareholders of the respondent-Company transferred their  
entire shareholding and interest to the new shareholders and G  
there was change in the Directors of the respondent-Company.  
According to the appellant such change makes the shifting of  
the controlling interest of the respondent-Company and transfer  
levy for the same was demanded from the respondent-  
Company as per the rules of the Corporation. The Company H

- A submitted its reply vide letter dated 8<sup>th</sup> December, 1999 and reiterated its earlier stand to the effect that there is no breach of any terms of the lease deed as no transfer or assignment or sale of premises in question has been made. However, it was not accepted by the Corporation, who sent another reminder dated 13<sup>th</sup> January, 2000 asking the Company to pay a sum of Rs.25,51,781/- towards transfer levy charges.

- The aforesaid demand notice was challenged by the respondent-Company before the High Court of Allahabad which by impugned judgment dated 11<sup>th</sup> May, 2004 allowed the writ petition.

**U.P. Twiga Fiberglass Limited (A Company registered under the Companies Act, 1956)**

- D 7. The appellant-Corporation executed an agreement with respondent-Company followed by lease deed dated 27<sup>th</sup> May, 1977 by which the Corporation leased plot nos.9 and 23-A admeasuring approximately 1,10,926 square meters of land situated at Sikandrabad Industrial Area, District Bulandshahr, Uttar Pradesh to the respondent-Company. The lease was executed for 90 years. In the year 1994, the respondent-Company suffered heavy losses to the tune of Rs.42 crores. Therefore, the respondent-Company sold almost its entire shares including shares of its promoters and shares lying with financial institutions to a foreign company known as "Rotar India Ltd.". As entire shares of the respondent-Company transferred to Rotar India Ltd., the promoters of the said Company were replaced by new promoters/Directors.

- G 8. According to the appellant-Corporation, in view of the above disposal of controlling interest in the venture of the existing allottee, they were liable to pay transfer levy as per Clause 6(f) of the guidelines of the Corporation pertaining to reconstitution and transfer.

9. The Corporation vide its letter dated 26<sup>th</sup> April, 1995 requested the respondent-Company to supply list of new shareholders, list of new Directors and copies of Memorandum of Association and Articles of Association. However, it is alleged that respondent-Company neglected the same and refused to supply the documents. The appellant-Corporation thereafter vide letter dated 15<sup>th</sup> May, 1995 asked the respondent-Company to pay a sum of Rs.24,95,835/- towards transfer levy as there was disposal of controlling interest in the venture by the existing allottee. The said demand of transfer levy, according to appellant, was as per lease deed and guidelines of the Corporation pertaining to re-constitution and transfer.

10. Being aggrieved the respondent-Company filed suit bearing No.876 of 1996 before Civil Judge, Bulandshahr seeking permanent injunction and praying for restraining the appellant-Company from claiming any amount as transfer levy. The appellant filed written statement and contested the suit.

11. The Civil Judge, Bulandshahr vide judgment and decree dated 23<sup>rd</sup> January, 1999 allowed the suit and directed the appellant-Corporation not to charge transfer levy from the respondent-Company. The Civil Judge, held that the respondent-Company is a legal person and disposal of its majority shares in the name of a foreign Company namely Rotar India Ltd. does not change the legal status of the Company and therefore, there is no transfer.

12. The appellant-Corporation being dissatisfied with the aforesaid order filed Civil Appeal No.45 of 1999 in the Court of District Judge, Bulandshahr which was dismissed vide order dated 15<sup>th</sup> July, 2000. Thereafter, the appellant-Corporation filed Second Appeal No.1425 of 2000 before the High Court of Judicature at Allahabad and the same dismissed by impugned judgment dated 24<sup>th</sup> October, 2005.



**A M/s Enrich Engineering Works Pvt. Ltd.(A Company registered under the Companies Act, 1956)**

B 13. One M/s Tyres & Tubes Co. Pvt. Ltd. having its registered office at Scooters India Ltd. Premises, Sarojini Nagar, PO Lucknow through its Directors Shri S.Sounderarajan s/o of late Shri S. Srinivasan applied to appellant-Corporation for allotment of plots of land. After agreement which was followed by lease deed dated 21<sup>st</sup> December, 1976 the appellant-Corporation allotted industrial plot no.A-4 and A-5 admeasuring approximately 40,489 square yards and 8.36 square yards respectively situated at site no.2, Rai Bareilly, Uttar Pradesh to M/s Tyres & Tubes Company Pvt. Ltd. The lease was for 90 years. M/s Tyres & Tubes Co. Pvt. Ltd. suffered heavy losses and pursuant to its winding up, Allahabad High Court vide judgment and order dated 9<sup>th</sup> January, 1996 appointed Official Liquidator. The Official Liquidator sold the properties of M/s Tyres & Tube Co. Pvt. Ltd. including right and interest on the land in question to respondent M/s Enrich Engineering Pvt. Ltd. The said sale was affirmed by the Allahabad High Court vide order dated 9<sup>th</sup> February, 2000. Pursuant to the order of the Allahabad High Court dated 10<sup>th</sup> September, 2003 the Official Liquidator issued sale certificate dated 12<sup>th</sup> March, 2004 in favour of respondent-Company.

F 14. The appellant-Corporation was not a party in the winding up proceedings nor was any notice issued to the appellant-Corporation by the Official Liquidator. On knowing about transfer of the rights of the original allottee- M/s Tyres & Tubes Co. Pvt. Ltd., the appellant-Corporation demanded transfer levy amounting to Rs.3,80,621.25/- from respondent-Company. According to the appellant, such demand was made from the respondent-Company, as the said company had purchased M/s Tyres & Tubes Co. Pvt. Ltd., with all its assets and liabilities.

15. Against the demand, respondent-Company preferred a writ petition being Civil Misc. Writ Petition No.56982 of 2005 before the Allahabad High Court which was allowed by the impugned judgment dated 27<sup>th</sup> April, 2006. The demand notice was set aside by the High Court in view of judgment rendered in another similar case.

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**M/s Super Tannery (India) Ltd.(A Company registered under the Companies Act, 1956)**

16. The appellant-Corporation entered into an agreement dated 10<sup>th</sup> October, 1990 with one M/s Super Agro Tech Ltd. for setting up of specialty paper unit in industrial plot nos.A-9 and A-10 admeasuring approximately 45,080/- square meters in Industrial Area Unnao Site-2. No right whatsoever in regard to transfer of said plots were given to the licensee M/s Super Agro Tech Ltd. The possession of the said plots was handed over on 25<sup>th</sup> January, 1991 and subsequently lease was also executed. M/s Super Agro Tech Ltd. thereafter did not set up any specialty paper unit and no investment was made. According to the appellant-Corporation said licensee M/s Super Agro Tech Ltd. with a view to enrich itself started amalgamation proceeding with the new company namely M/s Super Tannery (India) Ltd.-respondent herein. The said amalgamation was a mutual understanding between M/s Super Agro Tech Ltd. and M/s Super Tannery (India) Ltd. The Allahabad High Court vide order dated 9<sup>th</sup> May, 1997 sanctioned the amalgamation in Company Petition No.32 of 1997. Though the land belongs to the appellant-Corporation, it was not made a party to the said petition. According to the appellant-Corporation, the amalgamation does not create any right whatsoever on respondent-M/s Super Tannery (India) Ltd. over industrial plots in question and the said two plots cannot be legally transferred to the new Company i.e. M/s Super Tannery (India) Ltd.

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- A 17. The respondent-Super Tannery (India) Ltd. made an application for the transfer of the said industrial plot. On such request, the appellant-Corporation demanded transfer levy from M/s Super Tannery (India) Ltd. for transfer of the said industrial plot. However, no amount was deposited. The
- B Corporation by notice dated 3<sup>rd</sup> November, 2001 demanded a sum of Rs.34,23,954.51/- as on that date from M/s Super Tannery (India) Ltd. towards transfer levy. The aforesaid notice was challenged by the respondent-M/s Super Tannery (India) Ltd. by filing a writ petition being Civil Misc. Writ Petition
- C No.18535 of 2002 before Allahabad High Court and the same was allowed, by the impugned judgment dated 22<sup>nd</sup> August, 2007 following the decision rendered in another case.

**Case wise stand of the parties and finding of this Court.**

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**Monsanto Manufactures Private Ltd.**

18. Learned counsel for the appellant-Corporation submitted that the respondent-Company has violated Clause
- E 3(p) of lease deed dated 5<sup>th</sup> September, 1979 entered into between the said Company and appellant-Corporation inasmuch as its "Memorandum of Association" and "Article of Association" were altered without the written consent of Lessor i.e. appellant-Corporation. In view of the same the appellant-
- F Corporation has the right to determine the said lease deed dated 5<sup>th</sup> September, 1979.

19. On the other hand, according to counsel for the respondent as the Company has got separate legal status and the Corporation has allotted the industrial plot to it by name
- G and not in the name of its Directors, the Directors being only officials working on behalf of the Company, mere change of names of Directors or shareholders does not in any way or manner affect the legality or status of the respondent-Company.
- H It was further contended that change of names of Directors,

shareholders duly done within the purview of the Companies Act, 1956, does not affect the legal status of the respondent-Company and much less there has been any transfer of the site by the Company to any other individual person. A

20. For deciding the issue involved in the present case it is necessary to refer certain clauses of licence agreement, lease deed and guidelines issued by the appellant-Corporation which are common in all the cases. B

21. Clause 4(h) of the licence agreement prohibits licensee's acts to directly or indirectly transfer, assignment, sale, encumber or part with its interest under the benefit of the said Agreement without previous consent in writing of the Grantor, relevant portion of which reads as follows: C

*"4(h). That the Licence will not directly or indirectly transfer, assign, sell, encumber or part with its interest under or the benefit of this Agreement or any part thereof in any manner whatsoever without the previous consent in writing of the Grantor and it shall be open to the Grantor to refuse such consent or grant the same subject to such conditions as may be laid down by the Grantor in the behalf."* D E

22. Sub-Clause (p) of Clause 3 of lease deed also prohibits any alteration in the Memorandum and Articles of Association or in its capital structure without the written consent of the Lessor, relevant portion of which reads as follows: F

*"3(p) That the Lessee being a registered partnership firm declares, affirms and undertakes that during the subsistence of the terms of this agreement, the said partnership shall not be dissolved, reconstituted or wound up, and/or dealt with in any way which may jeopardize the rights and interests of the Lessor in the* G H

A *matter of this lease, nor shall its constitution be altered in any manner otherwise written consent of the Lessor, first and obtained, and it shall not stand dissolved on the death or insolvency of any of its partners;*

B *OR*

*The Lessee being an individual or sole proprietor of a firm, shall not allow any person(s) as partner(s) with him without the prior written consent of the Lessor,*

C *OR*

D *The Lessee being a Company shall not make or attempt to make any alterations, whatsoever in the provisions of its Memorandum and Articles of Association or in its capital structure without the written consent of the Lessor, first had and obtained, and the Lessee hereby undertakes to get registered the prescribed particulars of the charge hereunder created with Registrar of Joint Stock Companies under Section 126 of Companies Act, 1956, within stipulated period.*

E *While granting its consent as aforesaid the Lessor may require the successor in interest of the Lessee to enter into a binding contract with the Lessor to abide by and faithfully carry out the terms, conditions, stipulations, provisos and agreements herein contained or such other terms and conditions as the Lessor may, in its discretion, impose including the payment by the successor-in-interest such additional premium and/or enhanced rent as the Lessor may in its discretion think proper. In the even of breach of this condition the agreement shall be determined at the discretion of the Lessor.*

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*Provided that the right to determine this agreement under this clause will not be exercised if the industry at the premises has been financed by the State Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India, or the U.P. Financial Corporation or Pradeshia Industrial and Investment Corporation of Uttar Pradesh or any scheduled bank (including the State Bank of India) and the said financing body or bodies mentioned above decide to take over possession or sell, or lease or assign the mortgaged assets in exercise vesting in it or them by virtue of the deeds or deed executed in its or their favour by the Lessee as provided herein above, or under any law for the time being in force."*

23. The Corporation has issued guidelines for transfer/re-construction in respect of the plots in the industrial area of the Corporation. Clause 6.01(E) of the said guidelines prescribes Transfer Levy and Clause 6.01(F) defines transfer. The aforesaid provisions reads as follows:

*"6.01(E) Transfer Levy – per sq.m. @ 5% to 15% of the rate of premium in fast moving areas and 2.5% to 7.5% of the current premium in slow moving areas prevailing on the date of issuance of transfer approval letter will be changed as applicable. While calculating the transfer levy the locational charges of a particular plot will not be considered and only basic premium will be taken into account.*

*6.01(F) Transfer – Means disposal of controlling interest in the venture by the existing allottee. In the case of reconstitution, the existing allottee retains controlling interest except in case, where interest is transferred to family members as defined in 6.3(iv)(a) below or where there is change in the constitution of the*

A        *allottee due to inheritance, succession or operation of law."*

24. In the present case the entire shareholding of Goyal family headed by Mr. Amar Nath Goyal in the said company was transferred to the Mehta-Lamba Family. The entire list of shareholders, Managing Director and Board of Directors was provided by Monsanto to the appellant-Corporation vide letter dated 7.5.1994. The record shows that the original subscribers of shares were members of Goyal family and the entire shareholding was transferred to Mehta-Lamba family. Therefore, the original subscribers of shares of respondent No. 1 Company were totally changed.

25. The "Memorandum of Association" of a company limited by shares mandatorily prescribes in "Table-B" (**Table-B of 1956 Act and Table-A of 2013 Act deals with Company Limited by shares**) of the Companies Act mandatorily prescribed that the names, addresses, description, occupation of subscribers shall be given in Memorandum of Association. In this case as the original subscribers of shares were changed in 1994, there was material alteration in the "Memorandum of Association" of respondent no. 1 Company.

26. It was also contended that there was an alteration in "Articles of Association" of respondent no. 1 Company as well. The last column of "Articles of Association" also mandatorily provides for giving names, addresses and description of subscribers. In this case, the subscribers of shares has been completely changed from the Goyal Family to Mehta-Lamba Family and hence there was material alteration of "Articles of Association" of the respondent no. 1 Company.

27. In this case, the ownership of a huge Industrial plot measuring 14,533 sq. ft. in the prestigious and economically affluent area of Sahibabad (Ghaziabad) has been transferred

from Goyal family to the Mehta-Lamba family for material financial gains, by adopting clever means that too without taking written consent of the Lessor i.e. appellant-Corporation. There are many instances/examples in which the lessee gets allotment of huge industrial plots and thereafter sells the same for huge monetary gains. This adversely affects the aims and objectives of appellant-Corporation i.e. the planned development of industrial areas in the State of Uttar Pradesh. The Hon'ble High Court ought not to have interfered in the matter looking into the public interest involved and Clause 3(p) of the lease deed.

**U.P. Twiga Fiberglass Limited**

28. Similar submissions as made in the above case were made by the learned counsel for the appellant in the present case also. It was contended that the respondent-U.P. Twiga Fiberglass Ltd. has violated Clause 3(p) of lease deed dated 27<sup>th</sup> May, 1977 entered between the said company and appellant-Corporation inasmuch as its "Memorandum of Association", "Articles of Association" and capital structure were altered without the written consent of Lessor appellant-Corporation and in view of the same, the appellant-Corporation has the right to determine the said lease deed dated 27<sup>th</sup> May, 1977.

29. Per contra, according to the respondent, the aforesaid contention(s) are fallacious, misconceived and untenable. Learned counsel for the respondent made the following submissions:

i) The Lease-Deed dated 27<sup>th</sup> May, 1977 has been executed by the respondent-company, in the capacity of a "lessee". Consequently, the provisions of the Lease-Deed obligate the Lessee/the Company and not its shareholder(s);



A ii) The Lease-Deed contains no clause whatsoever, that authorises such levy of transfer-fee, nor does it prohibit any change in the share-holding of the respondent-company. Even otherwise, such change in share-holding was committed with the express consent and approval of the petitioner;

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C iii) Law recognises a categorical distinction between a Company and its share-holders, who have otherwise no right whatsoever on the assets of a company. Reliance was placed on Constitution Bench decision in ***Bachã F. Guzdar, Bombay vs. Commissioner of Income Tax, Bombay, AIR 1955 SC 74***, which observed as follows:

D "A share-holder 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".

And

E "the Company is a juristic person and is distinct from the share-holders. It is the Company which owns the property and not the share-holders".

F iv) In a relationship between the Lessor and a Lessee, it is the Lease-Deed which is paramount and whose contents are binding on the parties.

G v) A unilateral guideline issued by the Lessor cannot be held applicable or binding to a lessee. On the face of the lease deed, such guideline has no binding force. Further, change in share-holding was admittedly done with the express consent/approval of the appellant; and

H vi) Any fee, penalty, compensation, damages or transfer charges to be claimed by the lessor from the lessee must

necessarily be provided in the lease-deed. Otherwise, such fee, penalty, compensation, damages or transfer charges being beyond the terms of the Lease-Deed cannot be sought or claimed by the Lessor; Thus the levy of transfer-fee as sought and claimed by the appellant is illegal, misconceived and untenable, being beyond the terms of the lease deed. It is not a transfer in law, since transfer in share-holding does not amount to any transfer in the Company's assets, immovable or otherwise. It is equally not a transfer in fact, since the provisions of the Lease-Deed do not recognise/nor prohibit any such transfer.

vii) The Guidelines and in particular Clause 6.01(F) is not applicable in the present case as there has been no "disposal of controlling interest in the venture by an existing allottee". Undoubtedly, the respondent-company is the "existing allottee" and the respondent-company has not disposed its "controlling interest in the venture". In other words, there is no transfer even upon a literal construction of the Guidelines.

30. It is not in dispute that the appellant-Corporation on 27<sup>th</sup> May, 1977 allotted huge plot measuring 1,10,926 sq. mtrs. to respondent no. 1 Company in the industrial area, Sikandarabad, Bulandshehar on nominal amount. The respondent no. 1 clearly admitted that it had a huge debt of Rs.13,14,00,000/- the different financial institutions and, therefore, it sold shares of company, its own shares, shares of promoters and shares of financial institutions to the foreign company, namely, "M/s Rotar Ltd."

31. The appellant-Corporation in written statement filed in Suit No. 876/1996 clearly and categorically mentioned that the shares of original promoters were transferred in the name of new promoters of foreign company and therefore, the

- A appellant-Corporation demanded list of new shareholders and Memorandum and "Articles of Association" of the Company. The change of original promoters shares to the new promoters means the subscribers of shares were changed and, therefore, there is material change in the "Memorandum of Association"
- B and "Articles of Association" of the Company.

32. The appellant-Corporation clearly brought on record that there is change in "Capital Structure" of the company and the "Capital structure" in common parlance means "debt-equity ratio". In this case admittedly there a huge amount of Rs. 13,14,00,000/- was funded by the foreign company, i.e. "M/s Rotar Ltd." towards settling the debt. In this background the appellant alleged that there is change in "debt-equity ratio" resulting alteration in the "capital structure" of the company.

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33. There is larger public interest involved in incorporating alteration in "Capital Structure" in Clause 3(p) of the lease deed. There are many instances where the company takes loan from third parties on the security and land and structure allotted to them in lease, keeping in dark the lessor which amounts to incurring liabilities on the property without the knowledge of the lessor. In this case also there was huge amount of debt on the company as it took loan on land and building/factory from different financial institutions. Therefore,
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- F there is public interest involved for which consent of lessor was necessary.

**M/s Enrich Engineering Works Pvt. Ltd**

- G 34. In this case also similar submission has been made by the parties.

35. It is not in dispute that the huge plot of about 40, 489 & 8.35 sq. yards in the industrial area of Rai Bareilly (U.P.) was allotted by appellant-Corporation to M/s Tyres and Tubes
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Company Pvt. Ltd. As the said company suffered heavy losses, on 9.1.1996 the company Judge of Allahabad High Court appointed Official Liquidator and perused High Court's Order on 12.3.2004 the said company was sold to M/s Enrich Engineering Works Pvt. Ltd., by the Official Liquidator.

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36. Learned counsel for the respondent submitted that it was a case of reconstitution and therefore payment of transfer fee does not arise. However, such submission can not be accepted in view of Clause 6.01(E) & (F) of the guidelines. The fact that there is a change of hand of the asset including the land in question by transfer. Therefore, the respondent is liable to pay transfer fee.

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**M/s Super Tannery (India) Ltd.**

37. Learned counsel for the appellant submitted that the huge plot of 45080 sq. mtrs. in Kanpur was allotted to M/s Supre Ago Tech Ltd. for establishing and running a "Specialty Paper Industry". In this case, only a "License Agreement" dated 10.10.1990 was executed by UPSIDC and the admitted fact on record is that no lease deed was executed by UPSIDC with M/s Super Agro Tech. Ltd.

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38. In view of the above, M/s Super Agro Tech Ltd. was merely a licensee and as per the license agreement dated 10.10.1990 it had no authority whatsoever to transfer the said industrial land to M/s Super Tannery (I) Ltd.

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39. On the other hand, according to the learned counsel for the respondents, due to various constraints over head costs and financial hardship company became non viable and the major production activities was not feasible to run the company. In order to avoid the future problem a scheme of amalgamation was prepared as per the provisions of the Companies Act, seeking amalgamation under Chapter V of the Companies

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A Act. A joint application was filed before the Allahabad High Court. The High Court vide order dated 9.5.1997 allowed the petition for amalgamation and sanctioned the scheme of amalgamation and ordered that M/s Super Agro will be merged into M/s Super Tannery (India) Ltd.

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40. In the present case it has not been denied that respondent company M/s Super Tannery (India) Ltd. and the other company Super Agro Tech. Ltd. are family held companies of the same family having common Directors/

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Promoters. Pursuant to the order of amalgamation by the High Court the plot of land in question namely A-9, A-10, Industrial Area Unnao Site-II which was allotted to Super Agro Tech. Ltd. became the asset of the respondent company M/s Super Tannery (India) Ltd. As per Amalgamation Scheme, all the

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property, rights and power of Super Agro Tech. Ltd., having its office at 184/170, Jajmau Kanpur was *transferred* without further act or deed to M/s Super Tannery (India) Ltd. Thus it is clear that by the order of the Court the premises in question was transferred in favour of the other Company.

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41. In view of the aforesaid facts as noticed in each case, we hold that the appellant rightly issued notice demanding transfer fee from each of the respondents and there was no reason for the High Court to interfere with the same.

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42. For the reason aforesaid, we set aside the impugned judgments dated 11<sup>th</sup> May, 2004 in C.W.P.No.5094 of 2000, 24<sup>th</sup> October, 2005 in Second Appeal No.1425 of 2000, 27<sup>th</sup> April, 2006 in Civil Misc.W.P.No.56982 of 2005 and 22<sup>nd</sup> August, 2007 in C.M. Writ Petition No.18535 of 2002 passed by the High Court of Judicature at Allahabad and allow the appeals.

G