

JUDGMENT SHEET**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT****Writ Petition No.40356 of 2019***M/s Popular Sugar Mills Limited**versus**District Collector, Sargodha & 2 others***JUDGMENT**

<i>Dates of hearing:</i>	21.09.2023, 19.10.2023 & 24.10.2023
<i>Petitioner by:</i>	<i>Dr. Muhammad Farogh Naseem, learned Senior-ASC and Mr. Haq Nawaz Chattha, learned ASC.</i>
<i>Respondent(s) by:</i>	<i>Ms. Samia Khalid, learned Additional Advocate General and Mr. Salman Asif Warraich, learned Assistant Advocate General with Ch. Rab Nawaz, Assistant Commissioner and Ijaz Ahmad, Tehsildar / Sub-Registrar Kot Momin.</i>

Sultan Tanvir Ahmad, J:- Through instant petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has made the following prayer:-

"In view of above, it is most respectfully prayed that the impugned order dated 10.06.2019 passed by the respondent may please be declared to be unlawful and be set-aside, and the respondent may please be directed to substitute / replace the present name of the company i.e., "Popular Sugar Mills Limited" instead of its old name "National Sugar Industries Limited" in the relevant record of the revenue department.

As ad an interim relief, the operation of the impugned order dated 10.06.2019 may please be suspended.

Any other relief which this honourable Court deems appropriate may also be granted.”

2. The facts, necessary for the decision of this petition, are that M/s National Sugar Industries Limited, incorporated in the year 1989, owns properties measuring 941-K 02-M and 12-K 11-M as further described in the petition (the ‘**properties**’). M/s National Sugar Industries Limited approached the Securities and Exchange Commission of Pakistan (**SECP**) under section 39 read with section 40 of the Companies Ordinance, 1984 (the ‘**Ordinance**’) for change of its name to Popular Sugar Mills Limited. The same was sanctioned by **SECP** vide certificate dated 13.11.2013. M/s Popular Sugar Mills Limited approached the concerned revenue officer for incorporating / reflecting the change of name in the revenue record on 25.01.2014. The request / application was turned down vide order dated 24.11.2016. M/s Popular Sugar Mills Limited approached this Court through Writ Petition No. 7059 of 2017, which was disposed of with the direction to re-decide the matter and order dated 24.11.2016 was *set-aside*. The application was once again turned down vide order dated 10.06.2019. The concluding paragraph of order dated 10.06.2019 reads as follows:-

“...But when a person / company needs to enter its name in column of ownership in revenue record of the concerned revenue estate then its entry is being made with registration of a mutation subject to payment of mutation fee as provided in section 46 of the Land Revenue Act, 1967. Therefore, it is not simply change of name of the companies as

pledged free of cost rather a transaction liable to payment of usual taxes on the recorded value in the revenue record of concerned revenue estate by entering a mutation. Hence the application of the petitioner for change of name of National Sugar Industries free of cost as Popular Sugar Mills Limited in revenue record is hereby declined to be devoid of any legal force. A copy of this order be sent to the Assistant Registrar (Writ) Hon'ble Lahore High Court Lahore for placing it before the Hon'ble Mr. Justice Shahid Jameel Khan, the Hon'ble Judge of Lahore High Court Lahore..."

3. Dr. Muhammad Farogh Naseem, learned Senior-ASC has submitted that the respondents have failed to understand the legal position that with the change of name of the company from "National Sugar Industries Limited" to "Popular Sugar Mills Limited", the legal status, rights and obligations of the company remained the same; that this aspect was appropriately examined vide order dated 21.09.2017 passed by this Court in Writ Petition No. 7059 of 2017 in the light of the relevant provisions of law and the order dated 24.11.2016 was *set-aside*, which has been ignored by the respondents; that since, no change of ownership is involved with the change of the name of a company, therefore, no duty or other charges related to transfer of the *properties* would be attracted to the facts and circumstances of the instant case; that the impugned order is liable to be *set-aside* on the ground that the *properties* of the company have not been transferred, it is merely a case of change of name of the company from "National Sugar Industries Limited" to "Popular Sugar Mills Limited", therefore, no duty / tax would be leviable in this case. Learned counsel for the petitioner, in course of arguments, has relied on various

judgments including cases titled “Asghar Ali versus P. K. Shahani and 2 others”(1992 CLC 2282), “Habib Safe Deposit Vault (Pvt.) Ltd. versus Province of Sindh through Secretary, Ministry of Revenue and 2 others”(2015 PTD 1863), “Bhoruka Engineering Inds. Ltd. versus The Deputy Commissioner of Income Tax”(ITA No. 120 of 2011), “Reckitt Benckiser (India) Private Limited versus State of H.P. and Ors.”(CWP No. 1293 of 2019), “Inox Air Products Pvt. Ltd. versus State of H.P. and Ors.”(CWP No. 3166 of 2016), “Bacha F. Guzdar versus Commissioner of Income Tax, Bombay.”(Civil Appeal No. 104 of 1953) and “Cyrus Cowasjee and 2 others versus Karachi Metropolitan Corporation through Administrator, Karachi”(PLD 2022 Sindh 106).

4. Mr. Salman Asif Warraich, learned Assistant Advocate General has raised following three objections:

- (i) The *properties* are under mortgage charge of Pak Brunei Investment Company Limited and without redemption of the charge inclusion of new name in revenue record is not permissible;
- (ii) The petitioner has alternate remedy available to him by assailing the impugned order before revenue hierarchy and this petition, therefore, is not maintainable; and
- (iii) The change to the new name of the company and the transaction in question falls under section 42 of the Land Revenue Act, 1967 (the ‘*Act*’), which attracts fee as given in section 46 of the *Act*.

5. Heard. The available documents have been perused.

6. The principle that limited company is an artificial legal person, distinct from its shareholders or directors, having separate legal personality was established in case titled “Aron Salomon (Pauper) Vs. A. Salomon and Company Limited” (**1897 AC 22, HL**) and then firmly affirmed by the Privy Council in “Lee vs. Lee's Air Farming Ltd.” (**1960 3 All E.R = 1961 AC 12, PC**). The Calcutta High Court in case titled “State of West Bengal and Ors. versus Gopi Vallabh Solutions Private Limited and Ors.” (**CAN 6652 of 2018 in MAT 869 of 2018**) in this regard observed that even all the shareholders jointly cannot be said to be the company in which they are shareholders and its change in name does not bring into existence a new person, which as such cannot be construed as transfer of interest in the land owned or obtained on lease by the company. The relevant paragraph reads as follows:-

10. On the other hand, the decisions cited by the respondents/writ petitioners being MANU/WB/0113/1966: (2005) 128 Company Cases 996 (SCC), AIR 1966 Cal. 585 (DB and (1986) 60 Company Cases 707 (DB) clearly goes on to show that change in name under the provisions of Section 21 of the Companies Act, 1956 does not bring into existence a totally different company and, as such, there can be no transfer of the interest in the plot of land under the sub lease which entitles the appellants to claim permission fees. The change in name prayed for by the respondent No. 1/writ petitioner is merely a rectification of the lease deed which does not even attract payment of stamp duty as in lease. Stamp duty at best can be claimed as of deed of rectification.

11. It is correct that a company is a juristic entity separate from its share holders. The company functions of itself through its board of directors while the share holders are only entitled to participate in the elections and receive dividend. All the share holders jointly

cannot be said to be the company as defined under Section 3 of the Companies Act, 1956. The share holders are also free to transfer their shares at will, however, of course subject to statutory restrictions and compliance. Even with the entire transfer of share holding the company continues to exist by its name and is liable for any breach of the agreements entered into by it. The old company after its change in name under the provisions of Section 21 of the Companies Act, 1956 continues to exist in the new name with all its aspect and liabilities. In the instant case, even if the transfer of entire share holding of BNK had been transferred in 2009 it did not amount to a new company coming into existence which is different from BNK, in fact BNK continued to be liable as a sub lessee even after transfer of its entire share holding. Any action as to breach of any covenant of the sub lessee ought to have been brought against BNK till its change in name irrespective of who held what shares of and in the said BNK.

12. We have also considered the Memorandum of Articles of Association of BNK and GVSPL and have found that there is virtually no change between the two which could have created a doubt in our mind that BNK and GVSPL are different companies. This is also not a case where the corporate veil has to be lifted to probe into or hold transfer of the lease hold interest with the transfer of shares.”

(Underlining is added)

7. This Court in case titled “Hira Textile Mills Ltd. through Director versus Executive District Officer (Revenue), Kasur and 4 others” (2009 CLD 839) has already adopted the view that a company having acted under sections 39 & 40 of the *Ordinance* did not contemplate transfer of any property and reached to the following conclusion:-

“As is clear from the contents of this petition that the petitioner company has not ventured or undertaken any exercise violating the exceptions contained in section 17(2) because no transfer of immovable property has

taken place, the identity of the petitioner is same, therefore, it falls within the exception of section 17 of the Registration Act, as such it is not required to get any sale-deed registered. It also is equally clear that the petitioner company acted under sections 39 and 40 of the Companies Ordinance, 1984, which do not contemplate transfer of any property.”

(Emphasis Supplied)

8. The effect of change in name of corporate entities, under section 40 of *Ordinance*, has also been examined by the Honourable Sindh High Court in case titled “Salfi Textile Mills Limited and another versus City District Government of Karachi through D.C.O. and another” (**2013 CLD 2120**). It will be beneficial to reproduce relevant extract from this judgment, which reads as follows:-

“...A company incorporated under the Companies Ordinance, 1984 is permitted to change its name in accordance with the provisions of section 39 ibid; which inter alia require a special resolution with the approval of the Registrar of the Companies in writing bringing the change of its name. The effect of such change in the name of corporate entity is dealt with in section 40 of the Ordinance 1984; whenever a special resolution is passed by Company with the concurrence of the Registrar of the Companies, such change in name of the Company is to be recorded in the Register of the Company in place of its former name and a fresh certificate of incorporation with new name is issued. On issuance of Certificate of Incorporation with altered or new name, the process of change of name of a corporate entity is complete. Whenever name of a company is changed in accordance with section 39 ibid, the company that has changed its name is mandated to continue use of its former name along with its new name side by side for a period of one year from the date of issuance of such altered certificate of incorporation. Change in the name of a Company does not affect any right or obligation of the company nor render

defective or any legal proceeding by or against the company nor rights and interest of creditors and or other persons dealing with the company in any manner are prejudiced, legal proceedings, contract and or transaction as the case may be continued or commenced and or executed and enforced against the company by its former name or by its new name and for all practical purposes change of name does not affect or bring about the change of management and/or transfer of management change in name does not bring into being a new legal entity it remains the same entity merely with a new identity. (See section 40 of the Companies Ordinance, 1984).

(Emphasis supplied)

9. During the pendency of this petition respondent No. 1 approached Board of Revenue (the '*Board*') for its ruling on the subject. Vide ruling No. 1780-2021/0554-LR-I dated 28.01.2022 (the '*ruling*') the *Board* reached to the opinion that the transaction is a sale. Section 39 of the *Ordinance* permits to change name of a company by special resolution and with the approval of the Registrar. In the present case, the permission was granted by the Registrar and certificate dated 13.11.2013 was issued in terms of Section 40(1) of the *Ordinance*. The affect of such change is given in Section 40(3) of the *Ordinance* (the then applicable provision) that reads as under:-

"The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against the company by its former name may be continued by or commenced against the company by its new name."

(Emphasis Supplied)

A reading of above reflects that change of name does not affect any right or obligation of a company. The

affect by change of name on the rights and obligations of any company remained unchanged in the current legislation on the subject and it has been adopted as such in Section 13(3) of the Companies Act, 2017. The stance of learned Assistant Advocate General in view of mortgage charge or lien of Pak Brunei Investment Company, is clearly based on misconception of law. He apparently ignored that the rights and liabilities or obligation remains unaffected by change of name from National Sugar Industries Limited to Popular Sugar Mills Limited. It is also not denied by the learned law officer that the alleged mortgage charge is on the *properties* and if that is the case then even in cases of sale, the mortgage charge always travels with the concerned property. Even otherwise, a certificate dated 15.01.2014 of Pak Brunei Investment Company Limited is appended with this petition, stating that it has no objection to the change of name. The arguments based on charge of the Investment Company are, therefore, rejected.

10. Now coming to the next argument of Mr. Salman Asif Warrach, learned Assistant Advocate General, regarding section 46 of the *Act*. This provision of the *Act* permits the *Board* to fix the scale of fees for *an entry in any record or register* under Chapter 11 of the *Act*. The respondents have relied on section 42 of the *Act* in order to convince that the change in name of the company in revenue record constitutes an entry, as contemplated in the above provision. The relevant part of section 42 of the *Act* is as follows:-

42. Making of that part of periodical records which relates to land-owners.-

(1) *Subject to the other provisions of this Chapter, a person acquiring by inheritance, purchase, mortgage, gift, or otherwise, any right in an estate as a land-owner, or a tenant for a fixed term exceeding one year, shall, within three months from the date of such acquisition, report his acquisition of right to the Patwari of the estate, who shall-*

- (a) *record such report in the Roznamcha to be maintained in the prescribed manner;*
- (b) *furnish a copy of the report so recorded, free of cost, to the person making the report; and*
- (c) *send a copy of the report, within a week of its receipt by him, to the [office of the Union Administration] within which the estate is situated.*

Language of the above provision reflects that the same is applicable on *acquiring of any right as land-owner or a tenant*. The words “*a person*” in section 42 of the *Act* further clarifies that the legislature has envisaged the acquisition of any right or interest as land-owner or a tenant from one person to another. The dispute in this case arose when the request was made to the revenue department to incorporate the change in name of the company from “National Sugar Industries Limited” to “Popular Sugar Mills Limited”, which was already permitted by the Registrar of the Companies, under sections 39 and 40 of the *Ordinance*. It is already discussed in the preceding paragraphs that mere change of name does not change the legal status of a company or its distinct personality and the said change entails no difference to rights or obligations.

11. It will not be out place to observe here that the “distinct status of a company” or its “separate legal

personality” is subject to exceptions. The same can disregard when this shelter is claimed as a mere sham or just for the purpose of avoidance of tax. I have repeatedly asked the respondents on various dates of hearing if the request to incorporate new name of the company or any transaction behind it is colorable or unreal or sham and if it has been done for just avoidance of any tax but the learned Law Officers, the Assistant Commissioner and the representatives of the revenue department have not adopted this stance.

12. Now coming to the argument of respondent-side as to maintainability of this petition as well as the availability of alternate remedy. Ms. Samia Khalid and Mr. Salman Asif have relied upon cases titled “Administrator, Thal Development through EACO Bhakkar and others versus Ali Muhammad” (**2012 SCMR 730**), “Ghulam Sarwar versus National Bank of Pakistan and others” (**2007 CLD 530**) and “Collector of Customs, Lahore and others versus Universal Gateway Trading Corporation and another” (**2005 SCMR 37**). It is stated that appeal before the relevant Commissioner should have been filed. However, I am of the opinion that highest revenue authority i.e. the *Board* has already been approached by respondent No. 1 and the *Board* has already given the *ruling*. The Commissioner concerned in view of the *ruling* can hardly reach to any different conclusion, thus, the alternate remedy indicated before me is not equally effectual. Reference can be made to cases titled “Dr. Abdul Nabi, Professor, Department of Chemistry, University of Balochistan, Sariab Road, Quetta versus Executive Officer, Cantonment Board, Quetta” (**2023**

SCMR 1267) and “Haji Noorwar Jan versus Senior Member, Board of Revenue, N.W.F.P. Peshawar and 4 others” (**PLD 1991 Supreme Court 531**). The Honourable Supreme Court of Pakistan in “Dr. Abdul Nabi case (*supra*) has held as under:-

“10. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression “adequate remedy” signifies an effectual, accessible, advantageous and expeditious remedy which should also be remedium juris i.e. more convenient, beneficial and effective. To effectively bar the jurisdiction of the High Court under Article 199 of the Constitution, the remedy available under the law must be able to accomplish the same purpose which is sought to be achieved through a writ petition...”

(Underlining is added)

13. For what has been discussed above, I am of the opinion that application or request to incorporate change of name is not a sale as observed by the Deputy Commissioner / respondent No. 1, therefore, the order dated 10.06.2019 is *set-aside*.

14. Allowed in above terms.

**(Sultan Tanvir Ahmad)
Judge**

Announced in open Court on 05.12.2023.

Approved for Reporting

*Iqbal**

Judge