

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION NO. 62 OF 2020

IN THE MATTER OF:

DAGADKHAN ASANGHATIT KAMGAR VIKAS

PARISHAD MAHARASHTRA,

... APPLICANT

VERSUS

STATE OF MAHARASHTRA & ORS.

...RESPONDENTS

INDEX

S. NO.	PARTICULARS	PAGE NO.
1	Written Submission on behalf of the Applicant	1-12
2	Annexure A-1 Copy of relevant pages of the order of the Hon'ble Calcutta High Court in its order dated 22.12.2015 in <i>M/S Jay Bee Properties Private Ltd. vs Sri Pawan Kumar Budhia & Others</i>	13-14

Through



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Dated:- 27.03.2023

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WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT

MOST RESPECTFULLY SHOWETH:

1. That the present Application is filed under Section 14 and 15 of the National Green Tribunal Act, 2010 raising substantial questions relating to environment and which affects the community at large arising out of illegal dumping of municipal solid waste earlier by the Wagholi Gram Panchayat and Pune Metropolitan Region Development Authority and now by the Pune Municipal Council on common land next to residential apartments and hutments of quarry workers at Wageshwarnagar in village Wagholi, Taluka Haweli, district Pune. It is submitted that the dumping on the said land is happening in violation of the Solid Waste Management Rules, 2016 and the directions of this Hon'ble Tribunal by judgment dated 22.12.2016 and subsequent orders mandating compliance in *Almitra H. Patel v. Union of India & Ors. (O.A 199 of 2014)*, as well as vide Order dated 12.07.2019 in *Compliance of Solid Waste Management Rules 2016 (O.A. 606 of 2018)*.
2. That the Hon'ble Tribunal in its Order dated 23.08.2021 considered the Pune Municipal Corporation as a necessary party in the above-titled Original Application because Wagholi village was included into the municipal area of the Pune Municipal Corporation vide the Notification of the Town Planning Department, Government of Maharashtra dated 30.06.2021. The Applicant impleaded the Pune Municipal Corporation as a party in I.A. No. 84/2021 (WZ) as Respondent No. 6 to the above-titled Original Application for violation of the Solid Waste Management Rules, 2016.

3. That this Hon'ble Tribunal vide its order dated 13.12.2022 in the Original Application directed the Applicant to make its pleadings and grounds specific regarding the authorization taken from the MPCB for dumping of waste and on the calculation of distance of buffer zone. That the Applicant filed Interim Application No. 21 of 2023 dated 19.01.2023 to amend the original pleadings to make averment with respect to not obtaining authorisation for dumping of solid waste at the site in question. That the Applicant also amended the Original Application by making specific statement with respect to non-obtaining of authorisation prior to dumping of the solid waste at the site in question by Gram Panchayat, Wagholi (Respondent No.4) or by Pune Municipal Corporation (Respondent No. 6) when the area was included in the Corporation.
4. That this Hon'ble Tribunal vide its Order dated 13.12.2022 also directed the following with regard to determining the responsibility for earlier violations committed during the period 08.04.2019 to June 2021 (time when Wagholi village was merged into the Pune Municipal Corporation (Respondent No. 6) vide Notification dated 30.06.2021 of Town Planning Department, Government of Maharashtra) with regard to the dumping of Municipal Solid Waste. The relevant portion of the Order dated 13.12.2022 is reproduced below:

*"10. From the reply affidavit Respondent No. 6, it appears that steps for clearing the legacy waste as well as MSW are being taken since the merger, **but the question arises as to who should be held responsible for the earlier violations** i.e. the violations committed during the period from 08.04.2019 to June 2021. It is apparent that the Gram Panchayat at Village Wagholi/Respondent No. 4 is no longer in existence because of its merger with the PMC, therefore, we are unable to give any finding as to whether the liabilities of Respondent No. 4 would devolve upon the succeeding body i.e. PMC or not. The learned Counsel for the Respondent No. 6 is directed to specify in this regard the clear position of law and*

other Respondents may also bring the position of law in this regard before this Tribunal including the Applicant so that we may pass appropriate order with regard to the realization of the compensation amount for earlier violations."

(Emphasis Supplied)

5. That the Applicant is filing these written submissions in order to clarify on the position of law whether the Wagholi Gram Panchayat (Respondent No.4) or the Pune Municipal Corporation (Respondent No. 6) will be liable for the earlier violations with regard to the dumping of Municipal Solid Waste after the inclusion of Wagholi village into the ambit of the Respondent No. 6.

THAT THE RESPONDENT NO. 6 SHALL BE LIABLE FOR ALL THE VIOLATIONS PRIOR TO THE MERGER OF WAGHOLI VILLAGE INTO RESPONDENT NO.6

6. It is submitted that the Wagholi Gram Panchayat (Respondent No. 4) ceased to be in existence as the area of Wagholi village was merged into the Pune Municipal Corporation (Respondent No. 6) on 30.06.2021.
7. That as per the general laws governing merger between two corporate entities, wherein one entity ceases to be in existence, the title in a property transfers from the transferor to the transferee with all the conditions, unless any of the condition is freed from the scheme of amalgamation or transfer. This was held by the Hon'ble Calcutta High Court vide its order dated 22.12.2015 *in M/S Jay Bee Properties Private Ltd. vs Sri Pawan Kumar Budhia & Others* [2015 SCC Online Cal 10066]. The relevant portion of the order is reproduced below:

"17. The approach to the issue ought to be more wholesome than by tailoring the act of transfer to fit a few words in the provision that may not be applicable at all. That an order sanctioning a scheme of amalgamation or arrangement operates in rem does not imply that it binds the world unconditionally or amounts to an absolute declaration of title in every case. Just as the grant of probate of a

*Will does not declare the testator's title to any property covered by the Will, an order sanctioning a scheme of amalgamation or arrangement does not amount to an imprimatur of the title in any property claimed by the transferor and intended to be transferred to the transferee by virtue of the scheme, unless the order sanctioning the scheme expressly provides so. **Again, Section 394(2) of the Act of 1956 recognises such a situation: that a property passes from the transferor to the transferee with all attendant conditions unless the order sanctioning the scheme directs any charge or condition to be freed. But when a scheme of amalgamation or arrangement is sanctioned and the title of the transferor in any property is not in doubt, it passes on to the transferee company by virtue of the order of sanction without any further formality - not being in the nature of a duty or obligation - being required to be complied with. An order sanctioning a scheme of amalgamation or arrangement has been judicially recognised as a single-window clearance.***

(Emphasis Supplied)

A true copy of the order of the Hon'ble Calcutta High Court in its order dated 22.12.2015 in ***M/S Jay Bee Properties Private Ltd. vs Sri Pawan Kumar Budhia & Others*** is annexed herewith as Annexure-1.

8. It submitted that the Respondent No. 4 is not in existence after the merger of Wagholi village into the Respondent No. 6 and that the entire area of the Wagholi village along with the responsibilities under the Solid Waste Management Rules, 2016 relating to dumping of solid waste on the landfill site is now with the Respondent No. 6 which is the urban local body responsible for the implementation of Solid Waste Management Rules, 2016, in the said area. Therefore, the responsibility of the earlier violations with regard to the area of the Wagholi village

and the concerned landfill site and dumping of waste prior to the merger will also fall with the Respondent No. 6.

9. It is also submitted that with respect to the State of Maharashtra, the Applicant could not find provisions in the Maharashtra Municipal Corporation Act, 1949 or the Maharashtra Village Panchayats Act, 1959 regarding the responsibilities that existed prior to the merger of the village area into the area of municipal corporation, however, such a provision exists for other states and reference is being made to Section 302 of the Karnataka Panchayati Raj Act, 1993 by way of instance. It is submitted that Respondent No. 6 should be held liable for the past violations which existed prior to the merging of Wagholi village in PMC by way of instance as in State of Karnataka. This is because Section 302 of the Karnataka Panchayati Raj Act, 1993, states the following:

"302. Consequences of absorption of part of a panchayat area or an area within the limits of a district or taluk into a larger urban area etc.-

(1) If during the term of office of a member of a Grama Panchayat or Taluk Panchayat or Zilla Panchayat, any area within the limits of a panchayat area, Taluk or district being a whole area comprised in a territorial constituency represented by such member is included in, any larger urban area, smaller urban area or transitional area or if such area within the limits of a panchayat area of Taluk is converted into a smaller urban area or transitional area (hereinafter referred to as other local area) notwithstanding anything contrary contained in this Act, or any other law for the time being in force, the following consequences shall ensue with effect from the date of such inclusion, or conversion namely:-

...

(c) the rights and liabilities of the Zilla Panchayat, Taluk Panchayat or Grama Panchayat in respect of civil and

criminal proceedings, contracts and other matters or things (Including arrears of taxes, fees, cess and rates) arising in, or relating to the part of the area included in, or converted into the other local area shall vest in the local authority of the other local area and such rights and liabilities may be enforced by or against such local authority under the relevant law governing the local authority or the rules, bye laws and orders made thereunder.

(Emphasis Supplied)

Therefore, the same effect of shifting of rights and liabilities of the Wagholi Gram Panchayat (Respondent No. 4) should ensue in case of inclusion of the Wagholi village into the larger urban area of the Pune Municipal Corporation (Respondent No. 6).

THE LOCAL BODIES OF WAGHOLI HAVE NOT OBTAINED AUTHORISATION FROM THE RESPONDENT NO. 2 TO DUMP SOLID WASTE AT THE SITE IN CONCERN.

10. It is submitted that as per Rules 15(y) of the Solid Waste Management Rules, 2016, the local authorities are required to obtain authorization from the State Pollution Control Board for dumping waste, if the volume of waste exceeds five metric tonnes per day including sanitary landfills. That in the present matter approximately 40-45 tonnes of waste per day has been dumped by the Panchayat and now is being dumped by the Respondent No.6, which is larger than the given capacity of 5 metric tonnes. Therefore, earlier Respondent No. 4 and after the merger Respondent No. 6 was responsible for making an application in Form-I for grant of authorization for setting up waste processing, treatment or disposal facility, if the volume of waste is exceeding five metric tonnes per day. However, no such application was made and authorization obtained by the Respondent No. 4 from Respondent No. 2 under the SWM Rules, 2016 for using the land for waste disposal. After the inclusion of Wagholi village into the ambit of Respondent No. 6, even Respondent No.6 did not obtain authorization from Respondent No.2.

Therefore, such dumping of waste at the common landfill site at Gatt No. 1419 (earlier Gatt No. 2405) at Village Wagholi, Taluka Haveli, Pune, Respondent Nos. 4 and 6 is unauthorized and is in violation of Rule 15(y) of SWM Rules, 2016.

11. That Rule 22 of the Solid Waste Management Rules, 2016 provides for the timeline of 3 years from the date of notification of SWM Rules, 2016 for creation of the necessary infrastructure for implementation of the Rules by the local bodies and other concerned authorities. The Solid Waste Management Rules, 2016 were notified on 08.04.2016. Hence, more than 3 years have passed since the Notification of the Rules as on the date of filing of the Original Application but still Respondent No. 4 and now Respondent No. 6 has not set up the common sanitary landfill facilities in compliance with the Rules.
12. That the violation of the Solid Waste Management Rules, 2016 is also in violation of the Environment (Protection) Act, 1986 as these Rules have been made by the central Government in exercise of its powers conferred by Section 3, 6 and 25 of the Environment (Protection) Act, 1986.

LOCATION OF ILLEGAL DUMPING OF SOLID WASTE AT THE SITE IN QUESTION IS IN VIOLATION OF SITING CRITERIA AND BUFFER ZONE CRITERIA OF SOLID WASTE MANAGEMENT RULES, 2016

13. That the Respondent Nos. 3, 4 and Respondent No. 6, after the inclusion of Wagholi village into PMC, have been dumping unsegregated waste collected from village Wagholi on the common land at Gatt No. 1419 (previously Gatt no. 2405) at village Wagholi in violation of prescribed criteria for selection of Sanitary Landfill as per of the Solid Waste Management Rules, 2016 Schedule I (A) (vii) which states:

"(vii) The landfill site shall be 100 meter away from river, 200 meter from a pond, 200 meter from Highways, Habitations, Public Parks and water supply wells and 20 km away from Airports or Airbase."

14. That as per the Rule 11(l) of the MSW Rules, 2016 the local bodies have the duty to notify the buffer zone for the solid waste processing and disposal facilities of

more than five tons per day in consultation with the State Pollution Control Board. Furthermore, Schedule I (A) (ix) mandated that 'A buffer zone of no development shall be maintained around solid waste processing and disposal facility, exceeding five tonnes per day of installed capacity'. As per the "*Clarification on Buffer Zone Guidelines*" issued by the CPCB, the buffer zone distance or separation distance is measured from the tip of the core of the SWM facility processing boundary of sensitive receptors such as habitation etc. The distance as per these guidelines is a minimum of 200 metres and it has been specified as 200 metres from highways, habitations, public parks, and at least 20 kms from airport or airbase. It is submitted that the following table elucidates the distance of the Landfill from listed particulars, as calculated from the tip of the core of the waste management facility to boundary walls of the following structures and nearest habitation present:

Particular	Distance from dump
1. Government School	200-250 metres
2. Private Residential Apartments	Less than 50 metres
3. Workers hutments	Less than 10 metres
4. Pune Airport	Less than 5 kilometres

That the core of the waste management facility has been described in Figure 1 titled 'Depicts activity boundary, green belt and separation distance' of the Guideline titled 'Recommended Provisions of the Buffer Zone' on page 43, Annexure A-3 titled "*Clarification on Buffer Zone Guidelines*" issued by CPCB' dated

15.04.2019. The said diagram has been reproduced below:

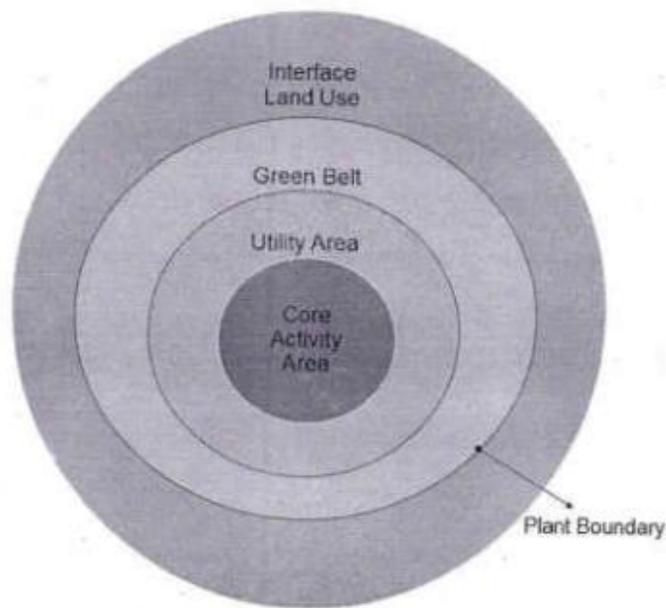


Figure 1 Depicts activity boundary, green belt and separation distance

15. That the Site Visit Report uploaded on the website of this Hon'ble Tribunal dated 16.08.2021 by the Joint Committee, constituted by this Hon'ble Tribunal vide its order dated 29.09.2020, also recorded that the MSW site at Gatt No. 1419 in Wagholi Gram Panchayat is not approved by site selection committee of District Collector, Pune and that the site is in between the residential area and that adjacent to the site at North and East side is slum area and in other side there are residential buildings.

16. That the dumping of waste in present matter is in violation of the order dated 22.12.2016 in *O.A 199 of 2014, Almitra H. Patel v Union of India* of this Hon'ble Tribunal which stated the requirement of proper identification of buffer zone:

"8. It shall be mandatory to provide for a buffer zone around plants and landfill sites whether they are geographically integrated or are located separately. The buffer zone necessarily need not be of 500 meters wherever there is a land constraint. The purpose of the buffer zone should be to segregate the plant by means of a green belt from surrounding areas so as to prevent and control pollution, besides, the site of the project should be horticulturally beautified. This should be decided by the authorities concerned and the Rules are silent with regard to extent of buffer zone. However, the Urban Development

Manual provides for the same. Hence, we hold that this provision is not mandatory, but is directory. We make it clear that buffer zone and green belt are essential and their extent would have to be decided on a case to case basis."

17. That the said land where unabated dumping is being carried out is not recorded in land records for the purpose of dumping waste but has been recorded as a 'cremation ground' in the revenue record. The said land comprises of 2 acres at Gat No. 2405.
18. That it is submitted that Respondent No. 4 has failed in its duty of identification of proper landfill site as per Rule 11 (f) of the Solid Waste Management Rules, 2016, prior to the merger of the village and even Respondent No. 6 has failed to identify proper landfill site. Rule 11(f) mandates that there must be identification and allocation of suitable land to the local bodies within one year for setting up of processing and disposal facilities for solid wastes.
19. That furthermore, Respondent No. 5 is also responsible for such identification as per Rule 12(a) which states that there must be 'facilitation of identification and allocation of suitable land as per clause (f) of rules 11 for setting up solid waste processing and disposal facilities to local authorities in his district....within one year from the date of notification of the 2016 Rules.' That therefore even Respondent No. 5 is also responsible for violation of Solid Waste Management Rules, 2016.

UNSEGREGATED DUMPING BEING UNDERTAKEN IN VIOLATION OF THE SOLID WASTE MANAGEMENT RULES 2016:

20. It is submitted that the present dumping of unsegregated waste is in violation of the provisions of Rules 15(b) and 15(g) of the Solid Waste Management Rules, 2016. Rule 15(b) places the responsibility on the local authorities, earlier Respondent No. 4 and after the merger of Wagholi village into PMC, Respondent No. 6, to arrange for door to door collection of segregated solid waste from all households including slums and informal settlements, commercial, institutional and other nonresidential premises such as multi-storage buildings, large commercial

complexes, malls, housing complexes. Rule 15 (g) places the responsibility on local authorities to direct waste generators not to litter and to segregate the waste at source as prescribed under the rules and hand over the segregated waste to authorised the waste pickers or waste collectors authorised by the local body. However, there is no waste segregation before dumping the waste on landfill site.

21. That Respondent No. 4 and Respondent No. 6, after the merger of Wagholi village into the ambit of Respondent No. 6 are in violation of the Order dated 22.12.2016 in the case of *O.A 199 of 2014 Almitra H. Patel v Union of India and Ors*, wherein this Hon'ble Tribunal has mandated that the waste must be scientifically segregated at the landfill sites as follows:

"16. The deposited non-biodegradable and inert waste or such waste now brought to land fill sites should be definitely and scientifically segregated and to be used for filling up of appropriate areas and for construction of roads and embankments in all road projects all over the country..."

BURNING OF WASTE ON LANDFILL SITE IS CAUSING HEALTH HAZARDS:

22. It is submitted that Respondent No. 2 have failed in their duty to ensure the safe handling and disposal of the domestic hazardous waste as per Rule 16(5) of the Solid Waste Management Rules, 2016 as all the waste generated is either burnt or dumped in an unsegregated manner.

23. That Rule 15(g) places the responsibility on the local authority, which earlier was Respondent No.4 and after the merger of Wagholi village into that the Panchayat was Respondent No. 6, to "*direct waste generators not to...burn or burry waste on streets, open public spaces, drains, waste bodies and to segregate the waste at source as prescribed under the rules..*" However, both the Respondents have failed to do the same as per Rule 15(g) of Solid Waste Management Rules, 2016 which has resulted into poor air quality of the area.

24. That furthermore open burning of waste is in violation of the Order dated 22.12.2016 of this Hon'ble Tribunal in the case of *O.A 199 of 2014 Almitra H. Patel v Union of India and Ors* as follows:

*"20. We specifically direct that **there shall be complete prohibition on open burning of waste on lands, including at landfill sites.** For **each such incident** or default, violators including the project proponent, concessionaire, ULB, any person or body responsible for such burning, shall be **liable to pay environmental compensation of Rs. 5,000/- (Rs. Five Thousand only) in case of simple burning, while Rs. 25,000/- (Rs. Twenty Five Thousand only) in case of bulk waste burning.** Environmental compensation shall be recovered as arrears of land revenue by the competent authority in accordance with law.*

(Emphasis Supplied)

Therefore, the Respondent No. 4 and thereafter, Respondent No. 6, after inclusion of village Wagholi into the municipal area of the PMC, are responsible to make payments as per the abovementioned compensation regime.

Thus, in light of the above, the prayers in the Original Application should be allowed by this Hon'ble Tribunal.

Through



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Dated:- 27.03.2023

APO No. 227 of 2014

Jay Bee Properties Private Limited v. Pawan Kumar Budhia

**2015 SCC OnLine Cal 10066 : (2016) 199 Comp Cas 398 : (2016) 4 Cal LT 32 :
(2016) 135 CLA 342 : (2016) 4 CHN 594**

In the High Court of Calcutta
(BEFORE SANJIB BANERJEE, J.)

M/s. Jay Bee Properties Private Limited & Others
v.

Sri. Pawan Kumar Budhia & Others

For the Appellants: Mr. Joy Saha, Adv., Mr. Suvadeep Saha, Adv., Mr. Sudhakar Prasad, Adv., Mr. P. Basu, Adv.

For the Respondents: Mr. Ratnanko Banerji, Sr. Adv., Mr. Aniruddha Roy, Adv., Mr. Prantik Garai, Adv.

APO No. 227 of 2014

With

ACO No. 119 of 2014

Decided on December 22, 2015

The Judgment of the Court was delivered by

SANJIB BANERJEE, J.:— The question of law raised is so trivial that the appeal under Section 10F of the Companies Act, 1956 does not call for a judgment; a two-page order dictated in five minutes would have sufficed. It is the other aspect of the matter that needs to be recognised and highlighted, particularly in the light of the back-breaking numbers of pending cases of every description in courts and tribunals.

2. The appeal is at the behest of the company in respect whereof a petition under Sections 397 and 398 of the Companies Act, 1956 has been launched in 2009 before the Company Law Board, complaining of oppression and mismanagement by the management of such company. The order appealed against is one of May 23, 2014 on the application by the company and its management for vacating an ex parte ad interim order of August 20, 2009. The appellants maintain that since the names of the petitioners before the CLB did not figure in the company's register of members, the petitioners lacked the qualification under Section 399 of the said Act of 1956 to launch any proceedings complaining of oppression or mismanagement in the affairs of the company. The appellants insist that notwithstanding the petitioners before the CLB asserting in the relevant petition that the second petitioner controlled 50 per cent of the undisputed paid up capital in the company, since the second petitioner's claim to such shareholding was by virtue of orders passed on two successive schemes of amalgamation without such petitioner before the CLB having its name recorded in the company's register of members, the relevant petitioner's claim as to its shareholding in the company had to be altogether disregarded.

3. The inane question of law that arises in this appeal is whether a transferee company can cite the shareholding of a transferor company in a third company, upon the sanction of a scheme of amalgamation, as requisite qualification under Section 399 of the said Act of 1956 to institute proceedings under Section 397 or Section 398 of the said Act of 1956 against the third company.

4. In order to attach a modicum of seriousness and confer a degree of respectability to the question so that a negative answer thereto may even be considered, the

“transmitted by operation of law.”

16. It does not appear appropriate to regard the transfer of shares in a third company sanctioned by an order under Sections 391 and 394 of the Act of 1956 as a transmission by operation of law. There is no need to dilute the finality of an order under Section 394 of the Act of 1956 by taking recourse to the excuse under the second proviso to Section 108(1) thereof. The concept of transmission of shares is more appropriately covered in Section 109A and 109B of the Act of 1956. Though such provisions are recent entrants in the statute in 1998 and the expression “transmitted by operation of law” in the second provision to Section 108(1) of the Act of 1956 cannot be seen to take colour therefrom, original Section 111 of the Act of 1956, prior to the Companies (Amendment), 1988 becoming effective on May 31, 1991, carried the expression “transmission by operation of law” in the sense of making it distinct from transfer of shares also covered by the same provision.

17. The approach to the issue ought to be more wholesome than by tailoring the act of transfer to fit a few words in the provision that may not be applicable at all. That an order sanctioning a scheme of amalgamation or arrangement operates *in rem* does not imply that it binds the world unconditionally or amounts to an absolute declaration of title in every case. Just as the grant of probate of a Will does not declare the testator's title to any property covered by the Will, an order sanctioning a scheme of amalgamation or arrangement does not amount to an imprimatur of the title in any property claimed by the transferor and intended to be transferred to the transferee by virtue of the scheme, unless the order sanctioning the scheme expressly provides so. Again, Section 394(2) of the Act of 1956 recognises such a situation: that a property passes from the transferor to the transferee with all attendant conditions unless the order sanctioning the scheme directs any charge or condition to be freed. But when a scheme of amalgamation or arrangement is sanctioned and the title of the transferor in any property is not in doubt, it passes on to the transferee company by virtue of the order of sanction without any further formality - not being in the nature of a duty or obligation - being required to be complied with. An order sanctioning a scheme of amalgamation or arrangement has been judicially recognised as a single-window clearance.

18. Section 108(1) is, in essence, a statutory protective shield for the company whose shares are involved in the transfer. That such provision is couched in a negative instruction to the company cannot detract from its purpose. The transfer of any shares in a company amounts to property in such shares passing from one to another. Ideally, the company cannot have any interest in who its shareholders are or who sells the shares in the company to whom, subject to the requirements in the company's articles of association. But in as much as the transfer of shares from one to another involves the passing of property or title, the company can have complete indemnity in a dispute qua title if it registers a transfer in accordance with the mandate of the provision. The company's action in registering a transfer can only be called into question if it has acted in derogation of such mandate.

19. Section 394 of the Act of 1956, on the other hand, recognises that when an order thereunder “provides for the transfer of any property ..., then, by virtue of the order, that property shall be transferred to and vest in ... the transferee company ...”. Ordinarily, the passing of the property in any share in a company is not complete qua the company unless it is registered. The passing of the property from a transferor company to a transferee company under a scheme of amalgamation or arrangement is complete upon the order sanctioning the scheme and takes effect after the order is filed with the registrar of companies. By virtue of the extraordinary transfer recognised in Section 394(2) of the Act of 1956, the compliance with Section 108(1) thereof becomes redundant. In any event, the negative mandate in Section 108(1) of the Act