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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3390 OF 2024

IDFC First Bank Limited ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

AND

WRIT PETITION NO. 3607 OF 2024

IDFC First Bank Limited ...Petitioner
Versus
The State of Maharashtra& Ors. ...Respondents

Mr. Prakash Shah, Sr. Adv. a/w Mr. Jas Sanghavi, Mihir Mehta, Mohit Raval and Vikas Poojary i/b PDS Legal for Petitioner.
Ms. Jyoti Chavan Addl. G.P. a/w Himanshu Takke, AGP for Respondent – State in Writ Petition No.3390 of 2024.
Ms. Jyoti Chavan Addl. G.P. a/w Amar Mishra, AGP for Respondent – State in Writ Petition No.3607 of 2024.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 07 MAY 2026

Oral Judgment (Per :- G. S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:

> "(a) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof be pleased to quash and set aside the impugned Order bearing Reference No. ZD270424057770B dated 26.04.2024 passed by the Respondent No. 3 (Exhibit "A");
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> (b) this Hon'ble Court be pleased to issue a Writ of Prohibition or a writ in the

> nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents by themselves, their subordinate, servants and agents from acting upon or taking any further proceedings in pursuance of and/or in furtherance of the impugned Order bearing Reference No.ZD270424057770B dated 26 April 2024 passed by the Respondent No.3 (Exhibit "A")."

3. The primary contention as urged on behalf of the petitioner is that the impugned order dated 26 April 2024 has been issued in the name of a non-existing entity, namely, Capital First Limited ("CFL"), for such reason, considering the well settled principles of law as laid down in several decisions, and more particularly, in the case of **Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited**[1], and recently followed by this Court in the case of **Vodafone Idea Limited (formerly known as Vodafone Mobile Services Limited) Vs. Union of India & Ors**[2]., the impugned order would be required to be quashed and set aside.

4. The relevant facts need to be noted: - By an order dated 12 December 2018 passed by the National Company Law Tribunal, Chennai, the scheme of amalgamation of CFL, Capital First Home Finance Ltd. and Capital First Securities Ltd. with the Petitioner came to be approved. Consequent thereto, an application for cancellation of registration of CFL was filed on 21 January 2019 and an order cancelling the registration came to be passed on 14 June 2019.

5. Respondent No.3, however issued a notice dated 4 January 2022 in Form GST ASMT-10 intimating certain discrepancies noticed in the scrutiny of returns of CFL and calling upon explanation in that regard. The Petitioner, in its reply

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1 [2019] 416 ITR 613 (SC)

2 2026 (5) TMI 162

dated 21 February 2022, denied the allegations of discrepancy and specifically informed the Respondents that CFL had already merged with the Petitioner and was no longer in existence.

6. Thereafter, an Intimation/Notice dated 10 February 2023 in Form GST DRC-01A came to be issued, to which the Petitioner submitted a detailed reply in Form DRC-01B on 10 March 2023 reiterating its earlier submissions. Respondent No.3 thereafter issued a notice dated 1 September 2023 in Form GST ADT-01 for conducting audit of books of accounts of CFL for the financial year 2018-19. The Petitioner sought time to submit, the requisite documents. By its email/letter dated 25 September 2023, furnished all documents as called upon by Respondent No.3.

7. On 11 October 2023 and 12 October 2023, Respondent No.3 again requested the Petitioner to furnish the documents for conducting the audit proceedings, despite the Petitioner communicating that the documents were already submitted on 25 September 2023. Further correspondence ensued between the parties, including Respondent No.3 calling upon the Petitioner to furnish the same set of documents as submitted during the audit proceedings for financial year 2017-18.

8. Thereafter, the Petitioner by its communications dated 27 October 2023 and 21 November 2023, reiterated that CFL had amalgamated with the Petitioner and that proceedings were initiated in regard to a non-existing entity which were void and non-est in law. The Petitioner also contended that despite repeated submissions, Respondent No.3 continued to seek additional documents alleging

insufficiency in the earlier submissions. On 28 November 2023, the Petitioner submitted an issue-wise reply and requested the Respondents either to initiate the audit proceedings against the amalgamated entity or alternatively transfer the proceedings to the jurisdictional officer of the amalgamated entity.

9. Respondent No.3, however, proceeded to issue an Audit Report dated 8 December 2023 in Form GST ADT-02 alleging eighteen discrepancies/observations against CFL. This was followed by a notice dated 17 December 2023 in Form GST DRC-01A intimating tax liability. Respondent No.3 also fixed a personal hearing on 19 December 2023, which according to the Petitioner was duly attended, and a detailed reply along with supporting documents came to be submitted.

10. In the aforesaid backdrop a Show Cause Notice dated 30 December 2023 in Form GST DRC-01 came to be issued alleging seventeen parameters against CFL. The Petitioner, by its detailed reply dated 29 January 2024, reiterated that CFL itself was no longer in existence due to its amalgamation with the Petitioner. The authorised representative of the Petitioner attended the personal hearings held on 1 February 2024, 27 February 2024, 12 March 2024 and 16 April 2024 and reiterated the previous submissions and thereafter additional submissions also came to be filed on 20 February 2024 and 15 March 2024.

11. Despite the above position and despite repeated intimations furnished to the Respondents that CFL was a non-existent entity, petitioner contended that Respondent No.3 proceeded to pass the order dated 26 April 2024 in Form GST DRC-07 bearing No. ZD270424057770B ("impugned order"), whereby

demands for CGST and MGST of Rs.4,40,15,285/- each and demand for IGST of Rs.1,45,31,099/- along with interest and penalty came to be confirmed against CFL. It is in these circumstances that the Petitioner has approached this Court under Article 226 of the Constitution of India praying for appropriate reliefs.

Analysis

12. Having heard learned counsel for the parties and having perused the record, we are of the opinion that there is much substance in the contentions as urged on behalf of the petitioner. We find that the show cause notice dated 30 December 2023 and 29 January 2024 were issued to the non-existing entity, namely, Capital First Limited (CFL).

13. Considering the principles of law as laid down by the Supreme Court in Maruti Suzuki India Limited (supra), when the National Company Law Tribunal, Chennai, had approved the scheme of amalgamation on 12 December 2018, whereby the amalgamation of CFL, Capital First Home Finance Limited and Capital first Securities Limited ("three companies") with the petitioners stood approved, the legal consequence of CFL ceasing to exist was brought about.

14. Further, an application for cancellation of registration of CFL was also filed subsequently, and order for cancellation was passed on 21 January 2019 and 14 June 2019. Thus, the legal existence of the company which had stood amalgamated under the orders of the NCLT thereon were required to be recognized.

15. It also appears to us that the respondents were fully aware that the CFL was

no longer in existence, however, completely discarding the said position as placed on record, on a misplaced reliance on the provisions of Section 87 of the CGST Act the impugned order has been passed.

16. In the very context in hand, Mr. Prakash Shah learned senior counsel for the petitioner, has rightly placed reliance on the decision of this Court in **Vodafone Idea Limited** (supra), in our opinion, are squarely applicable, insofar as, the present proceedings are concerned wherein, considering the decision in Maruti Suzuki (supra), other relevant decisions, as also considering the provisions of Section 87, the Court read as under: -

> "8. The Petitioner had also contended that in regard to the legal effect brought about by the order passed by the NCLT sanctioning the scheme of amalgamation, the amalgamating entities ceased to exist upon such merger. Thus, the present case would squarely be governed by the principles of law laid down by the Supreme Court in Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd. (supra). The relevant paragraphs of the said decision read thus:
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> 19. While assessing the merits of the rival submissions, it is necessary at the outset to advert to certain significant facets of the present case:
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> (i) Firstly, the income which is sought to be subjected to the charge of tax for AY 2012-13 is the income of the erstwhile entity (SPIL) prior to amalgamation. This is on account of a transfer pricing addition of Rs. 78.97 crores;
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> (ii) Secondly, under the approved scheme of amalgamation, the transferee has assumed the liabilities of the transferor company, including tax liabilities;
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> (iii) Thirdly, the consequence of the scheme of amalgamation approved under Section 394 of the Companies Act 1956 is that the amalgamating company ceased to exist. In Saraswati Industrial Syndicate Ltd., (supra) the principle has been formulated by this Court in the following observations:
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> "5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the

transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See: Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation.

When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgam Having heard learned counsel for the parties and having perused the record, we are of the opinion that there is much substances in the contentions as urged on behalf of the petitioner. We find that the proceedings of the show cause notice dated 30 December 2023 and 29 January 2024 were issued to the non-existing entity, namely, the Capital First Limited (CFL). Considering the principles law in the decision of the Supreme Court in Maruti Suzuki India Limited (supra) and in view of the fact that the National Company for Tribunal, Chennai, approved the scheme of amalgamation on 12 December 2018, whereby, the amalgamation of CFL, Capital First Home Finance Limited and Capital first Securities Limited ("three companies") with the petitioners stood approved. This would cannot stop at this as an application for cancellation of registration of CFL was also filed subsequently and order for cancellation was passed on 21 January 2019 also on 14 June 2019. Thus, clearly the legal existence of the company which had stood amalgamated under the orders of the NCLT thereon be recognized. Considering the principles of law as laid down by the Supreme Court in Maruti Suzuki India Limited (supra), it also appears to us that the respondents fully aware the fact that CFL is no longer in existence, and completely discarding the position on record which came to be issued leading to the passing of the impugned order. Also in our opinion, there is clearly a misplaced reliance on the provisions of Section 87 of the CGST Act.

In the very context in hand, Mr. Prakash Shah has rightly placed reliance on the decision of this Court in Vodafone Idea Limited (supra), wherein, considering the decision in Maruti Suzuki (supra) and other decisions as also considering the provisions of Section 87, the Court had made the following observations which in our opinion are correctly applicable, insofar as, the present proceedings are concerned: ating company loses its entity."

(iv) Fourthly, upon the amalgamating company ceasing to exist, it cannot be regarded as a person under Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated or an order of assessment passed;

(v) Fifthly, a notice under Section 143 (2) was issued on 26 September 2013 to the amalgamating company, SPIL, which was followed by a notice to it under Section 142(1);

(vi) Sixthly, prior to the date on which the jurisdictional notice under Section 143 (2) was issued, the scheme of amalgamation had been approved on 29 January 2013 by the High Court of Delhi under the Companies Act 1956 with effect from 1 April 2012;

> (vii) Seventhly, the assessing officer assumed jurisdiction to make an assessment in pursuance of the notice under Section 143 (2). The notice was issued in the name of the amalgamating company in spite of the fact that on 2 April 2013, the amalgamated company MSIL had addressed a communication to the assessing officer intimating the fact of amalgamation. In the above conspectus of the facts, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio.
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> ……..
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> 33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment (supra) on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment (supra)."

9. A Coordinate Bench of this Court in Reliance Industries Limited v. P. L. Roongta (supra), as noted above, has also categorically held that despite the Assessing Officer having been informed that the amalgamating company had ceased to exist pursuant to the scheme of amalgamation, any proceedings initiated against such a non-existent entity are void ab initio.

10. We are further of the view that the provisions of Section 87 of the CGST Act are not applicable to the facts of the case, inasmuch as the conditions/ingredients stipulated therein are not attracted/applicable to the facts of the present case. For ease of reference, the provisions of Section 87 of the CGST Act are reproduced below:-

> 87. Liability in case of amalgamation or merger of companies.— (1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
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> (2) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.

11. On a plain reading of the aforesaid provisions, it is clear that the same is applicable on fulfillment of the below mentioned conditions/ingredients:-

i. When two or more companies have amalgamated or merged in pursuance of an order of court or of a tribunal or otherwise, and the order of amalgamation or merger is to take effect from a date earlier to the date of order of amalgamation or merger, and if in that intervening period, the two companies have supplied or received any goods or services or both to or from each other, then such transaction of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they will be liable to pay tax accordingly.

ii. The two companies which have amalgamated/merged will be treated as distinct companies for the period upto the date of the order and the registration certificate of the said companies would stand cancelled from the date of the order of amalgamation/merger.

12. These conditions, to our mind, are only in respect of the intervening period from the date on which the order takes effect till the date of the order, and in no way affect or give the Department the authority to issue a show-cause notice on a non-existent entity post merger/amalgamation. This in view of the fact that post merger/amalgamation the merged entity has no status in the eyes of law, and therefore no proceedings can be initiated against it. We are therefore inclined to reject the submissions made on behalf of Respondent No. 2 that the provisions of Section 87 of the CGST Act are applicable to the facts of the present case.

13. Considering the facts of the present case, we are of the opinion that the conditions/ingredients of Section 87 of the CGST Act cannot be invoked to carry forward the proceedings as contemplated in the show-cause notice dated 1st August 2024. The show-cause notice itself having been issued without jurisdiction, the proceedings stand vitiated and are rendered void ab initio, as held in Reliance Industries Limited v. P. L. Roongta (supra).

14. We are in agreement with Mr. Shroff and also find support in the decision of the Delhi High Court in HCL Infosystems Ltd. v. Commissioner of State Tax and Another3, wherein, while interpreting Section 87 of the CGST Act, the following observations were made: :-

"16. As is manifest from the above, Section 87 essentially seeks to preserve and identify the transactions which may have occurred between two or more companies which ultimately amalgamate and merge. In order to fix the liabilities that would accrue under the CGST Act and to avoid a contention being raised that the Amalgamating Company and transactions undertaken with it would no longer, be subject to tax, the Legislature, ex abundanti cautela, has come to place Section 87 on the statute book and which bids us to bear in mind that notwithstanding an order of amalgamation or a scheme of merger coming to be approved, for the purposes of the CGST Act, the two entities would be treated as a distinct companies for the period up to the date of the order of the competent court or tribunal approving the scheme and the registration certificate of the companies being cancelled.

17. We thus find ourselves unable to read Section 87 as enabling the respondents to either continue to place a non-existent entity on notice or for that matter to pass an order of assessment referable to Section 13 against such an entity. In fact, in terms of Section 87, the liabilities of the non-existent company would in any case stand transposed to be borne by the amalgamated entity. This is, therefore, not a case where the Revenue would stand to lose or

be deprived of their right to subject transactions to tax.

18. In our considered opinion, the principles that we had identified in International Hospital albeit in the context of the IT Act would equally apply to the CGST Act."

15. In light of the above discussion, we are of the opinion that the Petition needs to succeed. It is accordingly allowed in terms of prayer clause (a)."

(emphasis supplied)

17. It is thus clear that considering the indisputed facts in relation to the amalgamation and the legal consequence which are brought about on the existence of the erstwhile entity CFL, there is no doubt that the same was a non-existent entity. No proceedings qua the said entity could be adopted against the petitioner.

18. In the light of the above discussion, in our opinion, the petition needs to succeed. It is accordingly allowed in terms of prayer clause (a).

19. Needless to observe that we have not examined any other issue.

20. All contentions of the petitioner as also the department in relation to any other steps which may be required to be taken in law are expressly kept open.

21. Rule is made absolute in the aforesaid terms. No costs.

WRIT PETITION NO. 3607 OF 2024

22. Rule. Rule made returnable forthwith. Respondents waives service. By consent of the parties, heard finally.

23. Mr. Prakash Shah, learned senior advocate appearing for the petitioner, has advanced submissions similar to those recorded by us in the aforesaid judgment

rendered by us in Writ Petition No.3390 of 2024. He submits that this petition also stands squarely covered by the aforesaid decision, except for the fact that the dates of the show cause notice and the impugned order would differ. Ms.Chavan would not disagree.

24. Having perused the record, we are of the opinion that this petition would be required to be allowed in the similar terms as the aforesaid petition, (Writ Petition No.3390 of 2024).

25. Accordingly, rule is made absolute in terms of prayer clause (a). No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)

Kiran Kawre