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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2391 OF 2019

**John Distilleries Private Lilmited**,
(formerly known as John Distilleries Ltd.), a Company incorporated under the Companies Act, 1956, having its Manufacturing Unit at Chitali, Taluka Rahata, District Ahmednagar, Administrative Office at Andheri, Mumbai and registered office at 110. Pantharpalya, Mysore Road, Bangalore ... **Petitioners**

**Vs.**

1. **The State of Maharashtra**, through Principal Secretary, Home (State Excise) Department, Mantralaya, Mumbai – 400 032
2. **The Commissioner of State Excise**, Maharashtra State, Old Custom House, Mumbai – 400 023
3. **The Deputy Superintendent of State Excise**, i/c M/s. John Distilleries Pvt. Ltd., Chitali, Taluka Rahata, District Ahmednagar ... **Respondents**

Mr. Suraj Kaushik with Ms. Megha Jani i/by Mr. Vinayak Salokhe for the petitioners.

Mr. A.I. Patel, Additional G.P. with Smt. S.S. Jadhav, AGP for respondent Nos.1 to 3-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 22, 2026.

PRONOUNCED ON : JUNE 30, 2026

JUDGMENT:

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the order dated 23 August 2018. They have also questioned the earlier orders dated 6 May 2011 and 11 May 2011 passed by the respondents, on the basis of which the impugned order came to be passed.

2. The facts leading to the present petition, as stated by the petitioners, are these. A Scheme of Arrangement between the company earlier known as Chitali Distillery Limited and the petitioners was approved by this Court as well as the High Court of Karnataka under Sections 391 to 394 of the Companies Act, 1956. Under the approved scheme, Chitali Distillery Limited was merged with the petitioner company. Before the merger, Chitali Distillery Limited was wholly owned by the Government of Maharashtra, respondent No.1. The company was holding a licence in Form 'I' under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules and also a licence in Form 'PLL' for manufacture of potable liquor.

3. Around July 2008, the Government of Maharashtra invited tenders for disinvestment of Chitali Distillery Limited by selling its entire shareholding. The petitioners took part in the auction and became the highest bidder. They purchased the entire shareholding

of Chitali Distillery Limited under a Share Purchase Agreement dated 10 July 2008 by paying Rs.28,75,39,715.25. As a result, Chitali Distillery Limited became a wholly owned subsidiary of the petitioner company. Thereafter, a Scheme of Arrangement providing for amalgamation of the transferor companies with the transferee company was sanctioned by this Court. The relevant clauses of the Scheme read as under:

> "4.1 Subject to the provisions of this Scheme as specified hereinafter and with effect from the Appointed Date, the entire business and undertaking(s) of the Transferor Companies including all the debts, liabilities, duties and obligations of the Transferor Companies of every description and also including, without limitation, all the movable and immovable properties and assets (whether tangible or intangible) of the Transferor Companies comprising, amongst others, all furniture and fixtures, computers/data processing, office equipment, electrical installations, telephones, telex, facsimile and other communication facilities and business licenses, permits, authorizations, approvals, lease, tenancy rights, permissions, incentives, if any, and all other rights, patents, know-how, trademark, service mark, trade secret or other intellectual property rights, proprietary right, title, interest, contracts, consent, approvals and rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals, shall, under the provisions of Sections 391 to 394 of the Act, and pursuant to the orders of the High Courts sanctioning this Scheme and without further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date, be transferred and/or deemed to be transferred to and vested in the Transferee Company so as to become the properties, assets, rights, business, and undertaking(s) of the transferee

Company.

4.2 With effect from the Appointed Date all statutory licenses, permissions, approvals, or consents to carry on the operations of the Transferor Companies shall stand vested in or transferred to the Transferee Company without any further act or deed and shall be appropriately mutated by the statutory authorities concerned in favour of the Transferee Company upon the vesting and transfer of the undertaking of the Transferor Companies pursuant to this Scheme. The benefit of all statutory and regulatory permissions, factory licenses, environmental approvals and consents, sales tax registrations or other licenses and consents shall vest in and become available to the Transferee Company pursuant to this Scheme."

**4.** According to the petitioners, a reading of the above orders along with the Scheme of Arrangement shows that after the scheme was approved by this Court and the High Court of Karnataka, all movable and immovable properties, assets, licences, permits, approvals, authorisations and every other right belonging to Chitali Distillery Limited automatically stood transferred to and vested in the petitioners. No separate document or further act was required for such transfer. The petitioners further contend that from the appointed date, namely 1 October 2010 at 9.00 a.m., all statutory licences, permissions and approvals held by Chitali Distillery Limited also stood vested in the petitioners. According to them, the concerned authorities were only required to record the change in their records after the transfer of the undertaking.

**5.** After the petitioners purchased the shares of Chitali Distillery Limited, respondent No.1, by letter dated 11 June 2009, informed respondent No.2 that there was no transfer of the 'PLL' and 'I'

licences as contemplated under the Bombay Prohibition (Privileges Fees) Rules, 1954. It was only a transfer of shares of the company. Therefore, according to respondent No.1, there was no need to recover privilege fees under Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954.

6. Thereafter, respondent No.2, by letter dated 20 July 2009, informed Chitali Distillery Limited that the Government of Maharashtra had already clarified by its letter dated 11 June 2009 that since there was no transfer of the licences from one name to another, there was no question of recovering privilege fees under Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954.

7. On the appointed date, namely 1 October 2010, Chitali Distillery Limited was holding three valid licences apart from its plant, machinery, furniture, fixtures and land. Those licences, which were later changed in the name of the petitioners, were as follows:

a) license in form 'I' for distillation of spirit from molasses base raw material granted under the provisions of the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules 1966;

b) license in form 'PLL' for manufacture of potable liquor i.e., IMFL issued under the provisions of the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules 1966;

c) license in form DS-I for denaturation of the rectified spirit and for sale of denatured spirit issued under the provisions of the Bombay Denatured Spirit Rules, 1959.

8. After the Company Petition was allowed and the Scheme of Arrangement came into effect, all the licences, plant and machinery stood vested in the petitioner company. The petitioners, therefore, by application dated 22 March 2011 requested the respondents to change the name in those licences from M/s. Chitali Distillery Ltd. to M/s. John Distilleries Pvt. Ltd.

9. The application dated 22 March 2011 was submitted before respondent No.2 through the Superintendent of State Excise, Ahmednagar. By letter dated 25 March 2011, the Superintendent forwarded the application to respondent No.2 for necessary action.

10. After considering the application dated 22 March 2011, respondent No.2, by letter dated 7 May 2011, informed the petitioners that the Government of Maharashtra had, by order dated 6 May 2011, granted permission to change the name from M/s. Chitali Distillery Ltd. to M/s. John Distilleries Pvt. Ltd. However, the permission was made subject to certain conditions. One of the conditions was that under Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954, where a licence is transferred from one name to another, the fee payable would be five times the licence fee for grant or renewal, whichever was higher. On that basis, respondent No.2 demanded payment of Rs.1,21,78,500/-, being five times the licence fee of Rs.24,35,700/-.

11. By another letter dated 11 May 2011, respondent No.2 further called upon the petitioners to pay Rs.29,28,000/- for transfer of the Form 'I' licence from the name of M/s. Chitali

Distillery Ltd. to M/s. John Distilleries Pvt. Ltd., being five times the renewal fee of Rs.5,85,600/-. The petitioners were also directed to pay Rs.10,000/- towards transfer of the DS-I licence issued under the Bombay Denatured Spirit Rules, 1959. Before the amendment made by Notification dated 7 July 2010, Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954 read as follows:

> "5. **Fees for transfer of a license from one name to another**.- The fee payable by any licensee for the privilege of having he transfer of his license from one name to another shall be the same as the fee chargeable for the grant or renewal or continuance of the license, whichever is higher.
>
> Provided that, the provisions of this rule shall not apply to cases regarding transfer of licenses due to admission or withdrawal of partner or partners in F.L. I and F.L. II licenses granted under the Bombay Foreign Liquor Rules, 1953 and C.L. II and C.L. III licenses granted under the Maharashtra Country Liquor Rules, 1973."

**12.** By Notification dated 7 July 2010, Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954 was amended. The amended Rule reads as under:

> "5. **Fees for the transfer of license from one name to another** - (a) the fee payable by any licensee for the privilege of having the transfer of his license in Form 'CL-1' under the Maharashtra Country Liquor Rules 1973, 'PLI' or 'I' under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, from one name to another shall be five times of the fees chargeable for grant or renewal or continuance of such license, whichever is higher.
>
> (b) the fee payable by any licensee for the privilege of having the transfer of his license in Form 'CL-IlI' under the Maharashtra Country Liquor Rules 1973, 'FL-Il' or 'FL-III'

under the Bombay Foreign Liquor Rules, 1953, shall be as follows :-

| | | |
|---|---|---|
| (i) | in the area of Municipal Corporation of Mumbai, New Mumbai, Thane, Bhiwandi, Mira Bhayandar, Virar-Vasai, Kalyan-Dombivali and Pune | Five times of the fee chargeable for grant or renewal or continuance of such license, whichever is higher |
| (ii) | in the area of other Municipal Corporations (excluding those mentioned in clause (i) above) and all Municipal Councils | Five times of the fee chargeable for grant or renewal or continuance of such license, whichever is higher |
| (iii) | In all other areas (excluding those mentioned in clause (i) and (ii) | Four times of the fee chargeable for grant or renewal or continuance of such license, whichever is higher |

(c) the fee payable by any licensee for the privilege of having the transfer of any license other than those mentioned in clauses (a) and (b) shall be same as the fee chargeable for the grant or renewal or continuance of the license, whichever is higher."

**13.** According to the petitioners, on the relevant date the transfer fee payable for the DS-I licence was only Rs.2,000/-. Therefore, the demand of Rs.10,000/- made by the respondents was not in accordance with the applicable Rules.

**14.** Pursuant to the orders dated 6 May 2011 and 11 May 2011, respondent No.2 directed the petitioners to pay Rs.1,21,78,500/- and Rs.29,38,010/-, making a total demand of Rs.1,51,16,510/-. According to the petitioners, instead of demanding such amount,

only Rs.10/- was payable as amendment fee under Rule 8.

**15.** Being aggrieved by the above demands, the petitioners filed an appeal under Section 137 of the Bombay Prohibition Act before the Minister of State Excise in March 2012. The appeal was heard on 30 May 2012. Thereafter, the revision proceedings were heard on 13 June 2018. By order dated 23 August 2018, the Minister dismissed the appeal and confirmed the orders passed by respondent No.2, the Commissioner of State Excise.

**16.** Mr. Kaushik, learned Advocate appearing for the petitioners, submits that Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954 deals with transfer of a licence from one name to another. According to him, the Rule clearly says that the fee is payable by the "licensee" for getting the licence transferred. In case of licences in Form CL-I under the Maharashtra Country Liquor Rules, 1973 and licences in Forms 'PLL' and 'I' under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966, the amount payable is five times the fee chargeable for grant, renewal or continuance of the licence, whichever is higher. He submits that there is no dispute that, till the names were changed, the licences continued to stand in the name of M/s. Chitali Distillery Ltd. Therefore, M/s. Chitali Distillery Ltd. remained the licensee. According to him, even if it is assumed, without admitting, that such transfer fee was payable, the liability could only be of M/s. Chitali Distillery Ltd., which was wholly owned by respondent No.1, namely the Government of Maharashtra. He submits that the petitioners could not have been asked to pay that amount.

17. Learned counsel further submits that there is one more important aspect. Even assuming, without admitting, that the petitioners were liable to pay transfer fees for changing the licences from the name of M/s. Chitali Distillery Ltd. to the name of the petitioners, the relevant date would be 10 July 2008, when the Share Purchase Agreement was executed. According to him, the petitioners acquired the company and its licences under that agreement. Therefore, if any transfer fee was payable, it had to be determined according to Rule 5 as it stood on the date of the Share Purchase Agreement. At that time, Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954 read as follows:

> "5. Fees for transfer of a license from one name another. - The fee payable by any licensee for the privilege of having he transfer of his license from one name to another shall be the same as the fee chargeable for the grant or renewal or continuance of the license, whichever is higher."

18. He submits that, therefore, even on the respondents' own case, the petitioners could at the highest be asked to pay only the normal fee payable for grant, renewal or continuance of the licence. According to him, there was no provision at that time requiring payment of five times the licence fee.

19. Learned counsel further submits that respondent No.2, the Commissioner of State Excise, by letter dated 11 May 2011, directed the petitioners to pay Rs.1,21,78,500/-, being five times the licence fee of Rs.24,35,700/- for transfer of the 'PLL' licence, and Rs.29,28,000/- for transfer of the licence in Form 'I'. He submits that, in compliance with the said demand, the petitioners paid the required amounts under different challans for transfer of

the licences, the details of which are as follows:

| Sr. No. | Category of license | Date of Payment | Amount (Rs.) |
|---|---|---|---|
| 1. | PLL | 26 May 2011 | 1,21,78,500 |
| 2. | 'I' | 26 May 2011 | 29,28,000/- |
| 3. | RS-II | 26 May 2011 | 70,000/- |
| 4. | DS-I | 26 May 2011 | 10,000/- |
| 5. | M-II | 26 May 2011 | 10,000/- |
| | **Total :** | | **1,51,96,500** |

**20.** He, therefore, prayed that the writ petition be allowed.

**21.** Mr. Patel, Additional G.P. on behalf of the respondents submit that license in Form I and PLL are granted by the State Government and DS-I license is granted by the Commissioner and M-I is granted by the Collector. The Bombay Prohibition (Privileges Fees) Rules, 1954 provides for recovery of fees for transfer of license from one name to another. Under Rule 5 of the said Rule, the fees for transfer of license from one name to another is five times the fees chargeable for grant, renewal, or continuance of such license whichever is higher. He submits that as per clause II and III of the Share sale/purchase agreement dated 10 July 2008, M/s. Chitali Distillery Limited has license from the competent authority for manufacture of rectified sprit, extra neutral alcohol, country liquor, Indian Made Foreign Liquor, absolute alcohol, and as per clause 6(c) the purchaser shall not sale/transfer the said equity share to a third party for at least two years from the date of transfer of share. Since only shares were only transferred, no transfer fee was recovered as per letter dated 13 March 2009 of

the State Government.

**22.** He submits that M/s. Chitali Distillery Limited by letter dated 22 March 2011, which is almost after 2 years of Share sale/purchase agreement, requested for change in the name from M/s. Chitali Distillery Limited to the petitioners name, which amounts to transfer of license from one to another. He submits that this Court and High Court of Karnataka had sanction de-merger of Companies. However, that does not mean transfer fee as applicable under the Maharashtra Prohibition Act, 1949 which is an independent Act is not to recovered under the said Act. He submits that the petitioner is liable to pay privilege as provided under the Rules of 1954 for transfer of license from M/s. Chitali Distillery Limited to the petitioner company. Further, there is no fundamental right to deal in liquor business, and it is a privilege granted by the State Government. Thus, the Government can charge fees for privilege granted to the petitioner for transfer of license, which the petitioner has already paid. He, therefore, prayed that the writ petition be dismissed.

**23.** Learned Advocate for the petitioners, therefore, submitted that the impugned orders cannot be sustained in law. He, therefore, prayed that the writ petition be allowed.

**24.** On the other hand, Mr. Patel, learned Additional Government Pleader appearing for the respondents, opposed the petition. He submitted that the licence in Form 'I' and the 'PLL' licence are granted by the State Government, the DS-I licence is granted by the Commissioner, and the M-I licence is granted by the Collector.

He submitted that the Bombay Prohibition (Privileges Fees) Rules, 1954 specifically provide for recovery of fees whenever a licence is transferred from one name to another. According to Rule 5 of the said Rules, the fee payable for such transfer is five times the fee chargeable for grant, renewal or continuance of the licence, whichever is higher. He further submitted that Clauses II and III of the Share Sale/Purchase Agreement dated 10 July 2008 show that M/s. Chitali Distillery Limited was holding licences issued by the competent authority for manufacture of rectified spirit, extra neutral alcohol, country liquor, Indian Made Foreign Liquor and absolute alcohol. He also pointed out that under Clause 6(c) of the agreement, the purchaser was not permitted to sell or transfer the equity shares to any third party for a period of two years from the date of transfer. According to him, in the year 2008 there was only a transfer of shares of the company and there was no transfer of licences. Therefore, no transfer fee was recovered at that stage, as clarified by the State Government in its letter dated 13 March 2009.

**25.** Learned Additional Government Pleader further submitted that only by letter dated 22 March 2011, nearly two years after execution of the Share Sale/Purchase Agreement, M/s. Chitali Distillery Limited requested that the licences be changed from its name to the name of the petitioner company. According to him, this request amounted to transfer of the licences from one name to another and, therefore, the transfer fee became payable. He submitted that although this Court and the High Court of Karnataka had approved the scheme of demerger and

amalgamation, that by itself did not exempt the petitioners from payment of fees under the Maharashtra Prohibition Act, 1949. According to him, the provisions of the Maharashtra Prohibition Act operate independently and the transfer fee prescribed under that Act was still required to be paid. He submitted that the petitioners were, therefore, liable to pay the privilege fee prescribed under the Bombay Prohibition (Privileges Fees) Rules, 1954 for transfer of the licences from M/s. Chitali Distillery Limited to the petitioner company. He further argued that no person has a fundamental right to carry on liquor business, since dealing in liquor is only a privilege granted by the State. Therefore, the State Government is entitled to recover the prescribed fee for granting such privilege. He pointed out that the petitioners have already paid the demanded amount. On these grounds, he prayed that the writ petition be dismissed.

REASONS AND ANALYSIS:

**26.** I have carefully considered the submissions made on behalf of both sides. I have also gone through the documents placed on record, the relevant provisions of the Bombay Prohibition (Privileges Fees) Rules, 1954 and the impugned orders. After reading the entire record, it appears that basic facts are not in dispute between the parties. It is not disputed that the petitioners purchased the shareholding of M/s. Chitali Distillery Ltd. It is also not in dispute that the Scheme of Arrangement came to be sanctioned by the Company Courts. It is not disputed that the licences, which were standing in the name of M/s. Chitali Distillery Ltd., were sought to be entered in the name of the petitioners.

Thus, these facts have reached finality and there is no necessity to examine them. In my view, the dispute starts when the petitioners approached the Excise Department by making an application for changing the name in the licences. Therefore, the issue before this Court is not whether the share purchase was valid or whether the Scheme of Arrangement was correctly sanctioned. Those issues already stand concluded. The real question is a different one. What is required to be examined is whether the request made by the petitioners for recording the licences in their own name amounts to transfer of licences within the meaning of Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954.

**27.** The first submission made on behalf of the petitioners is that Rule 5 makes the "licensee" liable for payment of transfer fees. According to the petitioners, till the licences were changed in the records of the Excise Department, M/s. Chitali Distillery Ltd. continued to remain the licensee. Therefore, according to them, even if Rule 5 was applicable, the liability to pay transfer fees could be of M/s. Chitali Distillery Ltd. and not of the petitioners. At first reading, this submission appears to have some force because Rule 5 uses the word "licensee". However, at the same time, one word in a provision cannot be read by ignoring the remaining part of the Rule. The Rule has to be read as a whole so that its meaning can be understood. Rule 5 is dealing with the privilege of obtaining transfer of the licence from one name to another. Therefore, the event under the Rule is the transfer. In the present case it was the petitioners who submitted the application dated 22 March 2011 requesting that the licences should be recorded in

their own name. It is because of this request that the Excise authorities were required to consider transfer of the licences and decide under what conditions such transfer could be permitted. Once the petitioners sought the benefit arising out of transfer of the licences, it becomes difficult to hold that they had no concern with the consequences attached to that transfer. Merely because till the order was passed the licences continued in the name of M/s. Chitali Distillery Ltd., it cannot mean that the petitioners had no liability regarding the statutory fees. If such interpretation is accepted, then in every person seeking transfer may avoid payment of fees only because the licence continued in somebody else's name till the transfer order was passed. Such interpretation does not appear to be consistent with the object of Rule 5. The Rule appears to contemplate payment of fees when a person seeks the privilege of transfer. Therefore, in my opinion it is not sufficient to invalidate the impugned demand. The question of liability under Rule 5 cannot be decided by looking at the name mentioned in the licence. The person seeking transfer of that licence becomes relevant while examining the applicability of the Rule.

**28.** The next submission made by the petitioners relates to the point of time from which Rule 5 is required to be applied. According to them, the relevant date is 10 July 2008, when the Share Purchase Agreement was executed. It is their case that after execution of the Share Purchase Agreement, the rights arising out of that transaction had accrued in their favour. Therefore, if any transfer fee was payable, it should have been determined

according to Rule 5 on that date. According to the petitioners, the Rule then in force required payment of the normal licence fee and there was no provision requiring payment of five times the licence fee. This submission requires consideration because the sequence of events assumes importance in the present matter. It is true that the Share Purchase Agreement was executed before Rule 5 came to be amended. It is also true that after transfer of shares, the State Government took the stand that there was transfer of shares and not transfer of licences and therefore privilege fees were not recoverable. That position also finds place in the correspondence available on record. However, that is not sufficient to conclude the controversy. It is important to notice that at the stage when the shares were transferred, no request was made for changing the licences from one name to another. Consequently, there was no occasion for the authorities to examine the matter under Rule 5 at that time. The authorities proceeded on the basis that the ownership of shares had changed and therefore no privilege fees were payable. The position changed after the petitioners submitted an application dated 22 March 2011 requesting that the licences should thereafter stand in their own name. In my opinion, this application cannot be treated as merely a continuation of the share transaction. It gave rise to a statutory exercise under the Excise law. The question regarding levy of transfer fees arose because of application and not because of the transfer of shares. Therefore, the relevant date for considering applicability of Rule 5 cannot remain 10 July 2008. The request for transfer of licences was made in March 2011. By that time the amended Rule 5 had

come into operation. Consequently, the statutory authority was required to examine the petitioners' request according to the law prevailing on the date when such request was made. The transfer of shares and the transfer of licences, though connected, are not the same event. Both have separate consequences and are governed by different provisions. Therefore, because the shares were purchased in the year 2008, it cannot follow that the unamended Rule would continue to govern a request for transfer of licences made three years thereafter. For these reasons, this submission also cannot be accepted in the manner suggested by the petitioners.

29. Learned counsel for the petitioners has further placed reliance upon the Scheme of Arrangement sanctioned by this Court and the High Court of Karnataka. According to him, the Scheme provides that from the appointed date all assets, properties, rights, licences, permissions, approvals and statutory benefits of M/s. Chitali Distillery Ltd. stood vested in the petitioner company without requiring any further document. It is therefore submitted that after the Scheme became effective, the authorities were required to make consequential changes in their records and nothing further remained to be done. According to the petitioners, once the Company Courts sanctioned the Scheme, the authorities could not insist upon payment of transfer fees merely because the name in the licences was required to be changed. This submission has force to the extent that the Scheme provides for vesting of all statutory licences and other rights in favour of the petitioner company. It also requires the concerned authorities to make

necessary changes in their records. Therefore, there is no dispute regarding the effect of the sanctioned Scheme. However, another aspect also requires consideration. The Scheme of Arrangement derives its authority under the Companies Act. On the other hand, recovery of privilege fees is governed by the Maharashtra Prohibition Act and the Bombay Prohibition (Privileges Fees) Rules, 1954. Both these provisions operate in different fields and for different purposes. The Scheme determines the manner in which the rights and liabilities of company become vested in another company. It does not deal with exemption from fees payable under another enactment unless there is a specific provision to that effect. No such provision has been shown before this Court. If the contention of the petitioners is accepted, it would amount to holding that once a Company Court sanctions a Scheme, every liability arising under another enactment also comes to an end. Such consequence cannot be accepted unless the statute provides so. The sanction granted by the Company Court binds the parties regarding transfer contemplated under the Scheme. However, it cannot take away the powers vested in another authority under an independent enactment. Therefore, though the licences stood vested in the petitioners by operation of the sanctioned Scheme and the respondents were bound to recognise such vesting, the consequences flowing from the Maharashtra Prohibition Act and the Rules framed thereunder did not disappear. In other words, the Scheme establishes that the petitioners became entitled to the licences. However, it does not establish that they also became free from complying with

obligation attached to those licences under the Excise law. Therefore, while the Scheme supports the petitioners on the question of vesting of licences, it does not decide the issue regarding liability to pay privilege fees under Rule 5. That issue is still required to be examined by considering the provisions of the Maharashtra Prohibition Act and the Rules framed.

**30.** The respondents have submitted that doing liquor business is not a fundamental right and it is a privilege which the State may grant according to law. In my view, this legal position is settled and there is no dispute on this aspect. No person can insist that because he wants to manufacture or sell liquor, the Government is bound to permit him to do so. The State has power to regulate such business and while granting such privilege it can impose conditions and also recover fees. Therefore, to that extent, the submission made on behalf of the respondents deserves acceptance. It cannot be said that the respondents have no authority to recover privilege fees. However, that is not sufficient to uphold demand raised by the authority. Merely because the State has power over liquor business, it does not follow that amount demanded by the authority becomes legal. Even while exercising such power, the authority has to act within the limits of the statute. It cannot go beyond the Rule or recover an amount which the Rule does not permit. The power to recover fees comes from the statute and therefore that power is also controlled by the statute. If the Rule prescribes a particular fee, then that fee can be recovered. If the Rule requires fulfilment of conditions, those conditions have to be complied with. Therefore, though the State

has authority to regulate liquor business, such authority cannot be exercised independent of the provisions. Thus, the respondents are right in contending that privilege fees are recoverable under the Rules. At the same time, the petitioners are also justified in contending that such recovery must satisfy the provisions of the Rule. Therefore, the real issue is whether the particular demand raised against the petitioners is one which Rule 5 permits and whether demand is in accordance with the statutory provisions. Unless these requirements are satisfied, referring to the State's privilege over liquor business would not make the impugned demand legal.

**31.** The respondents have placed reliance upon the application dated 22 March 2011 submitted by the petitioners. In my opinion, this document assumes importance while deciding the controversy. The sequence of events shows that till that date, the petitioners had acquired the shares of M/s. Chitali Distillery Ltd. and the Scheme of Arrangement had become effective, the licences continued in the name of M/s. Chitali Distillery Ltd. Thereafter, the petitioners approached the Excise authorities and requested that the licences should be recorded in their name. Thus, the process for transfer of the licences did not begin because of action taken by the respondents. It started because the petitioners made such request. Once such application was submitted, the authorities were required to examine it according to the provisions governing transfer of licences. They could not ignore the application or change the records without considering the relevant Rules. Therefore, merely because the respondents examined the

petitioners' request under Rule 5, it cannot be said that they acted without authority. In fact, had the authorities ignored the provisions while deciding the application, such action could have been questioned. Therefore, the invocation of Rule 5 while considering the application dated 22 March 2011 cannot be held to be illegal.

**32.** So far as the separate demand of Rs.10,000/- towards transfer of the DS-I licence is concerned, in my opinion this issue stands on a different footing. The petitioners have contended that under the statutory provisions, the prescribed transfer fee for the DS-I licence was only Rs.2,000/- and not Rs.10,000/- as demanded by the respondents. This submission is based upon the Rules governing that licence. The respondents, while supporting the demand, have relied upon Rule 5 and the concept of privilege fees. However, they have not pointed out any statutory provision specifically authorising recovery of Rs.10,000/- towards transfer of the DS-I licence. It is well settled that where the statute prescribes a fee, the authority cannot recover any amount beyond what is authorised by that statute. The authority to levy fees has to be found in the statutory provision. Therefore, unless the Rule permits recovery of a higher amount, such demand cannot be sustained merely because the authority considers recovery to be proper. No provision has been shown before this Court authorising recovery of Rs.10,000/- for transfer of the DS-I licence. Therefore, this part of the demand cannot be sustained. If the applicable Rule prescribed transfer fee of Rs.2,000/-, then the respondents were required to restrict their recovery to that amount.

**33.** In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The writ petition is partly allowed;

(ii) The order dated 23 August 2018 passed by the Minister of State Excise confirming the orders dated 6 May 2011 and 11 May 2011 is partly quashed and set aside only to the extent it confirms the demand of Rs.10,000/- towards transfer of the DS-I licence;

(iii) It is held that the respondents were justified in invoking Rule 5 of the Bombay Prohibition (Privileges Fees) Rules, 1954 while considering the petitioners' application dated 22 March 2011 for transfer of the licences in Forms 'PLL' and 'I'. The challenge to the levy of privilege fees in respect of those licences is rejected;

(iv) The demand of Rs.10,000/- towards transfer of the DS-I licence is declared to be unsustainable. The respondents shall recover only such transfer fee as was legally payable under the applicable statutory Rules governing the DS-I licence on the relevant date;

(v) If the petitioners have already paid any amount towards transfer of the DS-I licence in excess of the amount legally payable under the applicable Rules, the excess amount shall be refunded to the petitioners within a period of eight weeks from the date of uploading of this judgment. In the alternative, if permissible in law and if the petitioners so request within two weeks, the respondents may adjust the

excess amount against any future statutory dues payable by the petitioners;

(vi) Rule is made partly absolute in the above terms;

(vii) In the facts and circumstances of the case, there shall be no order as to costs.

(viii) Pending interim applications, if any, stand disposed of.

(AMIT BORKAR, J.)