) The vs . on 27 July, 2010

IN THE COURT OF Ms. VEENA RANI METROPOLITAN MAGISTRATE
PATIALA HOUSE COURTS, NEW DELHI.
IN RE:CC No. 478 of 2007
P.S.– Sarojini Nagar.

Mrs. Yogita W/o Sh. Durgesh Mishra
D/o Dr. R.K. Upadhaya, R/o F–75,
Ansari Nagar, New Delhi .....Aggrieved/complaina

Vs.

1. Sh. Durgesh Mishra S/o Ajay Kumar Mishra
2. Ajay Kumar Mishra
3. Mrs. Lakshmi Mishra W/o Sh. Ajay Kumar Mishra
   All R/o 75, Gali No:4, Guru Ram Dass Nagar,
   Laxmi Nagar, Delhi–92 .....Respondents.

Complaint under the Protection of women from Domestic Violence Act, 2005 THE JUDGMENT

1) The applicant□aggrieved Mrs. Yogita has filed the present application under S.12 of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) on 14.12.2007. By way of this petition the following orders have been sought :

i. The orders u/s 18 of PWDV Act, 2005 thereby prohibiting the respondents form communicating with the applicant herein in way;

ii. The residence orders u/s 19 of PWDV Act, 2005 thereby directing the respondents to provide the applicant with the same level of residence as enjoyed by her when she lived with Ms. Yogita Vs. Sh. Durgesh Mishra etc. the respondent No.1;

iii. The monetary relief of Rs. Rs.25,000 per month u/s 20 of Act, 2005; iv. The litigation cost of Rs.10,000/□v. The compensation and damages of Rs.10 Lakh u/s 22 of Act, 2005; vi. The directions to the respondents to return the stridhan of the applicant to her. In case the said stridhan and articles are not returned the applicant has sought an additional compensation of Rs.12 Lacs;

vii. The directions to the respondents to allow the continued custody of the child with the applicant;

viii. The order prohibiting the respondents from committing acts of domestic violence and repeating the same as mentioned above;

ix. Such interim order or orders as deemed fit just and proper in the circumstances of the case.

2) The facts in brief are that the marriage of the applicant□aggrieved Mrs. Yogita and the respondent□husband took place on 30.11.2001 at PTS Baraat Ghar, Malviya Nagar, New Delhi according to the Hindu Rites & Rituals. The dowry articles were given to the respondents which was kept by them.

The respondents were however not happy with the quantity of the dowry articles. The demands for Ms. Yogita Vs. Sh. Durgesh Mishra etc. dowry kept on pouring from the respondents side and some of the demands were met by the father of the applicant. A son was born to the couple in October 2002. The respondents turned the said occasion to an another opportunity for demanding more dowry from the applicant's parents. The applicant was not treated well and she turned anemic. The applicant was threatened with serious physical injuries in case the demands were not met. It was due to the intervention of the common friends that the respondent assured the applicant that he would keep her well. A letter of apology was written by the respondent□husband and the Annexure□ P1 has been exhibited as Ex. CW□1/1. The apology of the respondent No.1 turned out to be hollow one and the sais respondent resumed to treat the applicant with cruelty and abuse.

3) The applicant was compelled to file various cases against the respondents which are :

i. FIR No.392/2003, under Section 498□A/406 IPC, registered at Police Station Defense Colony.(this FIR was quashed by the Hon'ble Delhi High Court on 19.01.2004) ii. FIR No. 840 / 2006 u/s 323, 34, 406, 498□A, 506 of IPC(this FIR was again lodged due to the continued abuses);

iii. Case under s.125 Cr.P.C.

4) A case for the custody of the child was also filed by the respondent No.1 which is pending before the Guardianship Court. In the case the respondent No.1 had admitted that he is in a sound financial condition. The copy of the said petition is annexed as Annexure□P2 and has been exhibited Ex.

CW□1/2.

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5) The applicant□aggrieved has also mentioned that on 16.06.2003 when she was at her parents' house the respondent No.1 had visited and made a demand of Rs.1,00,000/□on the pretext of his starting new business. On refusal the respondent turned aggressive and assaulted the applicant and her parents. The respondent No.1 refused to take the applicant back till his demands were fulfilled. The applicant and her parents were threatened and were told that the respondents had relations with the local Politian. Subsequently, the applicant was served with a legal notice dated 29.06.2003 to which she replied vide reply dated 10.07.2003 and the copy of the same Annexure P□3 exhibited

as Ex.CW-1/3. The applicant-aggrieved had filed the list of dowry articles before the CAW Cell which is Annexure-P4 and has been exhibited as Ex.CW-1/4.

6) An FIR No.392/2003, under Section 498-A/406 IPC, registered at Police Station Defence Colony was registered against the respondents who were grated anticipatory bail subject to the condition that an amount of Rs.50,000/- was paid by them to the applicant-aggrieved. The said amount was paid to the applicant. However, the respondent sought the compromise of the matter and were able to convince the applicant. Subsequently, the applicant returned to her matrimonial house on 19.09.2003. Meanwhile , the respondent No.1 had filed CRL.M.C. 5133/2003 before the Hon'ble Delhi High Court seeking the quashing of the FIR No. 392 of 2003 in which the applicant was successfully persuaded to give statement in favour of the respondent No.1. Consequently, the FIR No.392/2003, under Section 498-A/406 IPC, registered at Police Station Defence Colony was quashed vide order dated 19.01.2004. However, the things would not improve for the applicant herein and she was again abused and mistreated by the respondents. The amount of Rs.50,000/- which paid during the anticipatory-bail proceedings was again asked to be returned to the respondents herein. Certain dowry articles were also retuned by the applicant herein to the respondents. The amount of Ms. Yogita Vs. Sh. Durgesh Mishra etc. Rs.50,000/- was received by the applicant herein from her father vide receipt annexed as Annexure P-5A.

7) The applicant herein did what the respondents wanted her to do in order to save her marriage. However, It turned out that the respondents had cleverly staged the compromise in order to get out of the criminal proceedings i.e. FIR No. 392/2003. The whole exercise was done in order have the said FIR quashed and when it was eventually quashed the respondents resumed to inflict abuses and violence on the applicant.

8) The applicant and the respondent No.1 were blessed with another son on 02.12.2004. The respondents would not allow the applicant to meet with her elder son. The applicant herein would another mental torture that the respondent is interested in marrying a lady name M. Punam Maheshwari a business associate of the respondent No.1. The applicant objected to the said relationship and suffered multiple physical injuries in the hands of the respondent No.1. The respondents would starve the applicant. On 06.10.2006 came to the applicant and asked for more money for the business of respondent No.1. On refusal the applicant was beaten by iron rode and an attempt was made to burn her by pouring the kerosene oil. The knob of the LPG gas cylinder was turned on. The applicant ran out of the house to rescue herself and reached the public road. Meanwhile, the mother-in-law of the applicant came and snatched the baby which the applicant was carrying. Before the applicant could have had recourse to the police authorities the respondent No.1 called the PCR van so that a false case could be registered against the applicant. By now the applicant had received much physical injuries leading to the swelling in the left forearm and the wrist. The police arrived but would not listen to the applicant. No FIR was registered against the applicant. On 07.10.2006 the applicant gave a complaint Ms. Yogita Vs. Sh. Durgesh Mishra etc. in writing to the police narrating the incidence. The applicant was sent for a medical check-up on 07.10.2006. The younger child's custody was restored to the applicant and she was sent to AIIMS for her medical check-up on 11.10.2006 where she was treated. The medical reports are annexed as Annexure P-6 and the copy of the same have been exhibited as Ex. CW-1/6. Meanwhile the parents

of the applicant□aggrieved pursued the matter with the senior police officer and got the FIR No. 840 / 2006 u/s 323, 34, 406, 498□A, 506 of IPC registered against the respondents. However, the police did not do much investigations into the matter. Neither the amount of Rs.50,000/□was recovered nor the stridhan articles were restored to the applicant herein. The recovery of the amount of Rs.50,000/□ The FIR etc. are Annexure□P□7(colly).

9) The respondent is said to admitted that he has sound financial position. The said respondent is said to be owning movable as well as immovable properties. The applicant herein has sought various prayers in her main application u/s 12 of the PWDV Act,2005. The applicant got herself examined as CW□1 and has tendered evidence by way of the affidavit and has exhibited various documents.

10) The respondents filed a reply and denied the allegations of domestic violence. It was also stated that the respondent No.1 has been disowned by his parents (R□2 & R□3) and that he had no property movable or immovable in his name. However, the respondents were proceeded ex□parte on 15.04.2009. No evidence was lead by the said respondents.

11) At the very onset I need to address one necessary issue - the admissibility of documents. The applicant□aggrieved has not exhibited the original documents. The aspect is technical still Ms. Yogita Vs. Sh. Durgesh Mishra etc. required to be decided as the same relates to the admissibility of evidence. In the present case the applicant□aggrieved has exhibited the photocopies of various the documents in her favour. The general law is that the photocopies are not primary evidence.

12) At this juncture, Ss. 61, 62 and 63 of the Evidence Act need to be looked into. S.61 lays down that contents of the documents may be proved either by primary or by secondary evidence. This Section is based upon the principal that "best evidence" in the possession or power of the party must be produced. What the best evidence is, depends upon facts and circumstances of each case. Generally speaking, the original document is the best evidence. The contents of every written paper are, according to the ordinary and well established rules of evidence, required to be proved by the original document, and by that alone, if the document is in existence. It is, therefore, necessary that when a document is produced as primary or secondary evidence, it will have to be proved in the manner laid down in Sections 67 to 73 of the Evidence Act. (see AIR 2008 BOMBAY 81 "Bank of India v. Allibhoy Mohammed" BOMBAY HIGH COURT). Truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e. by the evidence of person who can vouch for the truth of the facts in issue as held by the Apex Court in Ramji Dayawala and Sons Pvt. Ltd v. Invest Import, A.I.R. 1981, S.C. 2085. Person with knowledge must be examined. Every document should first be started by some proof before the person who disputed that document can in any way be considered as proved because it's genuineness is not disputed by the opposite party. Documents do not prove themselves.

13) Let me now deal with the photo copies of the documents filed on record. S.63 of the Evidence Act provides for the leading of secondary evidence. Secondary evidence cannot be accepted without Ms. Yogita Vs. Sh. Durgesh Mishra etc. sufficient reason being given for non production of the original. The loss of original document must be shown in order to lead secondary evidence. Secondary evidence of the document can be allowed to be lead only where original is proved to have existed but

was lost or misplaced (see AIR 1973 Bom

66. Filmistan Private Ltd. Co. v. The Municipal Corporation for Greater Bombay). The document unless shown to have been compared with original one, mere copy of the document does not become secondary evidence. The person giving oral evidence who accounts for the contents must have himself seen the original document and not a mere copy. "Seen" here will obviously mean "read". A person who proposes to testify the contents of a document, either by copy or otherwise, must have read it. The contents of private documents may be proved as secondary evidence by any witness who has in fact read them. The secondary evidence is required to be proved in the same manner in which primary evidence. S. 65 of the Evidence Act provides that in each type of cases secondary evidence relating to the document may be given. This Section enumerates the certain exceptional cases in which secondary evidence is admissible. Secondary evidence is of the contents which cannot be admitted without the production of document in such a manner within one or the other of the cases as provided for in the Section. The prior permission of the Court required to be taken for producing secondary evidence of the documents on the grounds that original documents were lost. To sum up, when anybody wants to lead secondary evidence, two things are required to be proved; there must be evidence of the existence of the original documents and there must be evidence of their loss.

14) In the present case no permission to lead secondary evidence was obtained by the applicant herein. As per the order sheet when the evidence by way of affidavit was filed on 15.04.2009 by the applicant herein it was nowhere stated that the originals were seen and returned. As far as the exhibits CW□1/2 to CW□/6 are concerned, the exhibited documents cannot be said to be primary evidence Ms. Yogita Vs. Sh. Durgesh Mishra etc. since they are mere photo copies. No evidence is on record to show that at any time in the past, original documents were in existence and that they are lost. The secondary evidence of the contents of document is generally inadmissible until non production of the original is first accounted for, so as to bring it within one or the other category of the cases provided for in S. 65.

15) Now the question is whether or not the photocopies should be admitted as evidence. In this regard I rely upon an authority of the Hon'ble Supreme Court in the cases of Narbada Devi Gupta v. Birendra Kumar Jaiswal (2003) 8 SCC 745 : (AIR 2004 SC 175) and R. V. E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V. P. Temple, (2003) 8 SCC 752 : (AIR 2003 SC 4548). In the later case the Supreme Court has pointed out two different classes of 'objections' by observing as under :□

"..... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:

> i. an objection that the document which is sought to be proved is itself inadmissible in evidence, and ii. where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.
>
> In the first case, merely because a document has been marked as "an exhibit", an Ms. Yogita Vs. Sh. Durgesh Mishra etc. objection as to its admissibility is not excluded

and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons, firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there, and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior Court."

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16) In the present case the respondents have been participating in the proceedings from 15.12.2007 till 15.04.2009. The evidence by way of Affidavit was rendered on 15.09.2008. It therefore very relevant to consider that the said respondents were proceeded ex□parte long after the evidence by way of the affidavit was rendered. Not only that, the order sheet dated 28.01.2009 reveals that the respondents were represented and that they had sought time to cross□examine the applicant herein. The only unconvincing inference that could be drawn from the above circumstance is that the respondents had ample opportunity to raise objections to the admissibility of the exhibited documents. The ratio of Narbada Devi Gupta case (2003) 8 SCC 745) and that of R. V. E. Venkatachala Gounder case [(2003) 8 SCC 752] comes to the rescue of the applicant herein.

17) The other reason for this court to admit the photocopies is that the said documents are not creating any right in favour of any party but only recording something. Such documents are admissible in evidence. This view is supported by an authority of the Hon'ble Bombay high court "Tex India v. Punjab and Sind Bank" reported in AIR 2003 BOMBAY 444. Keeping the above□ dimensioned authorities in mind I am not hesitant to hold that in the interest of justice the

documents exhibited as CW□1/2 to CW□1/7 are admitted as evidence.

18) However, the document exhibited as Ex.CW□1/1 stated to be the apology of the respondent□ husband and hand□written by the said respondent is held not admissible for the reason that no writing can be received in evidence as a genuine one until it has been proved to be in the writing of a particular person. The production of the document purporting to have been signed or written by a certain person is no evidence of its authorship. A writing, by itself, is not evidence of the one thing or the other. Proof, therefore, has to be given of the handwriting. A writing, by itself, is evidence of nothing, and therefore is not, unless accompanied by proof of some sort, admissible as evidence. For Ms. Yogita Vs. Sh. Durgesh Mishra etc. the above□said reason the Ex.CW□1/1 is excluded.

19) In Sait Tarajee Khimchand v. Yamarti Satyam, AIR 1971 SC 1865, the Hon'ble Supreme Court has very categorically held that mere marking of an exhibit does not dispense with the proof of documents. To the similar effect is the decision in Thagiram Borah v. State of Assam, AIR 1980 Gau 59 and in Punjab National Bank v. Britannia Industries Ltd., 2002 (3) Civil Law Times

517. Now that the Ex. CW□1/2 to CW□7 have been admitted as an evidence the same does not dispense with the burden of proving them. The said evidence needs to be now be evaluated.

20) Before coming to the merits of the case it is necessary to examine the historical background of the said Act, the objects and reasons for the said enactment and the provisions contained therein. This Act was actually enacted with a view to implement the General Recommendation No. XII (1989) of The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). India is a signatory to CEDAW, having accepted and ratified it in June 1993. Article 16 of the said Convention, which deals with measures to eliminate discrimination against women in matters relating to marriage and family relations, reads as follows :

> "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women :
>
> (a) The same right to enter into marriage;
>
> (b) The same right freely to choose spouse and to enter into marriage only with their Ms. Yogita Vs. Sh. Durgesh Mishra etc. free and full consent;
>
> (c) The same rights and responsibilities during marriage and at its dissolution;
>
> (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
>
> (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable

them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

21) The PWDV Act, 2005 has been based on the Beijing Declaration which was build on consensus and Ms. Yogita Vs. Sh. Durgesh Mishra etc. progress made at various United Nations conferences and summits □on women in Nairobi in 1985, on children in New York in 1990, on environment and development in Rio de Janeiro in 1992, on human rights in Vienna in 1993, on population and development in Cairo in 1994 and on social development in Copenhagen in 1995 with the objectives of achieving equality, development and peace. The focus is on equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declarationon the Right to Development. It was recognized that women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision□making process and access to power, are fundamental for the achievement of equality, development and peace.

22) The need was felt that there ought to be equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their wellbeing and that of their families as well as to the consolidation of democracy. It was further recognized that reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment. Very intriguingly it was also observed in at the Beijing Declaration that Local, national, regional and global peace is attainable and is inextricably linked with the advancement of women, who are a fundamental force for leadership, conflict resolution and the promotion of lasting peace at all levels. The men were sought to be encouraged to participate fully in all actions towards equality and to promote women's economic independence. The Strategic objective was to revise national laws and administrative practices to ensure women's equal rights and access to economic resources. The Ms. Yogita Vs. Sh. Durgesh Mishra etc. national governments were expected to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies. It was in this background that India responded by enacting various laws

and the PWDV Act, 2005 happens to be the most recent one.

23) The first three paragraphs of the statement of object and reasons under which the Bill No. 116 of 2005 for passing the act was placed before the Parliament, are as under (published in the Gazette of India Extraordinary Part II Section 2 page 22 dated 22nd August, 2005) :□I. "Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

II. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498□A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety. III. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society."

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24) The PWDV Act,2005 was challenged in a case Aruna Parmod Shah v. Union of India reported in 2008(3) R.C.R.(Criminal) 191. The ground was that the PWDV Act, 2005 provided protection only to women and not to men. The DB of the Hon'ble Delhi Court while upholding the vires of the PWDV Act,2005 held:

> "Domestic violence is a worldwide phenomenon and has been discussed in international fora, including the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination Against women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence , but such cases would be few and far between, thus not requiring or justifying the protection of Parliament."

25) CHAPTER IV of the PWDV Act, 2005 deals with the PROCEDURE FOR OBTAINING ORDERS OF RELIEFS. The provision of S.12 of the said Act empowers the Magistrate to deal with the application under S.12 of the PWDV Act, 2005 and is worded thus:

Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or Ms. Yogita Vs. Sh. Durgesh Mishra etc. more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court. (5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

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26) The provision of S.12 of the PWDV Act, 2005 speaks of 'one or more reliefs under this Act' which refers further to the other provisions providing various reliefs. The applicant herein has sought various reliefs mentioned in the provisions from S.18 to S.22 of the said Act. For granting such relief under S.12 PWDV Act, 2005 it is essential to first see whether 'domestic violence' has been perpetuated. The PWDV Act, 2005 defines domestic violence in S.3 (Ch. II) thus:

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it —

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing

physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

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(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and Ms. Yogita Vs. Sh. Durgesh Mishra etc.

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

27) The definition of 'domestic violence' is widespread and overlaps with the definition of 'cruelty' as provided under S.498-A IPC. Therefore, a demand of dowry would both be a penal offence as well as a domestic violence. The prescription provided under the IPC is the 'imprisonment' up-to three years whereas under the PWDV Act, 2005 the remedy provided is more of civil in nature. It was observed by the HON'BLE MADHYA PRADESH HIGH COURT in "Ajay Kant v. Alka Sharma"

> reported in 2008 CRI. L. J. 264 that basically the act has been passed to provide the civil remedy against domestic violence to the women. However, as provided by Sections 27 and 28 of the Act, a Judicial Magistrate of the first class or the Metropolitan Magistrate has been empowered to grant a protection order and other orders and to try the offence under the Act. Vide Section 28 of the Act, it is mentioned that save as otherwise provided in this Act, all proceedings under Ss. 12, 18, 19, 20, 21, 22 and 23 and the offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973, Vide sub-sections 3 and 4 of Section 19, it is also provided that a Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence and such order shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly, Chapter VIII of Cr. P.C. dealt with security for keeping peace and for good behavior which runs from Sections 106 to 124. In Ms. Yogita Vs. Sh. Durgesh Mishra etc. these Sections, it is provided that for keeping the peace and maintaining good behavior, a person can be directed by a Magistrate to execute a bond with or without sureties and in case of non-compliance of such order, that person can be detained into custody. Section 31 of the Act provides penalty for breach of protection order passed by the Magistrate, which is punishable as an offence.
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> 28) We therefore find that though the PWDV Act, 2005 primarily addresses a civil remedy, the procedure adopted is that of the criminal procedure. That is not unusual as the provision of S.125 Cr.P.C. too, operates in the same fashion. The civil remedy under the PWDV Act, 2005 ranges from providing damages to injunctions. The said act does not provide for the punishment such as imprisonment or fine etc. The PWDV Act, 2005 also does not define 'domestic violence' as a new 'offence' altogether.

It is a different matter that S.31 PWDV Act, 2005 does prescribe breach of protection order by respondent as a cognizable offence.

29) The provision of S.3(a) & (b) relates to the 'dangers' to the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person. The provision of S.3(c) relates to the threat to the aggrieved person by any conduct as mentioned in S.3(a) or S.3 (b). Therefore not only the actual harassment is covered but any act, omission or commission or conduct of the respondent having the effect of causing such a harassment shall constitute domestic violence. The terms like 'dowry' are also included in the definition. Here I would like to point out one more intricacy as far as the illegal demand (of dowry is concerned). The term 'dowry' has not been used in the provision of S.498-A I.P.C. but S.3 of the PWDV Act, 2005 does use the term 'dowry'. Another intricacy relates to the fabric of the offence inasmuch as the S.498-A I.P.C. being a criminal offence needs evidence Ms. Yogita Vs. Sh. Durgesh Mishra etc. beyond the reasonable doubt whereas under S.3 PWDV Act,2005 the illegal demand may be proved by merely indicating the effect of any act, omission or commission or conduct of the respondent. The civil remedy of 'dowry' as the 'domestic violence' under the PWDV Act,2005 is thus differentiated from the criminal justice of 'illegal demand' under the I.P.C. It is also for the said reason that any decision under the PWDV Act vis-a-vis 'dowry' ought not affect the decision given under the criminal proceedings such as S.498-A I.P.C.

30) The 'domestic violence' is drafted to have included physical abuse, sexual abuse, verbal & emotional abuse and economic abuse. As far as the evidence of the perpetration of 'domestic violence' in the present case concerned the same has to be gauged in terms of the principles of legal proof. The applicant-aggrieved herein has averred physical violence against her. The applicant-aggrieved had filed the list of dowry articles before the CAW Cell which is annexed as Annexure-P4 and has been exhibited as Ex.CW-1/4. The complaints were made from time to the police. The particular incidence of 06.10.2006 has been narrated in detail by the applicant where she was beaten up. The applicant ran out of the house to rescue herself and reached the public road. Meanwhile, the mother-in-law of the applicant came and snatched the baby which the applicant was carrying. Before the applicant could have had recourse to the police authorities the respondent No.1 called the PCR van so that a false case could be registered against the applicant. By now the applicant had received much physical injuries leading to the swelling in the left forearm and the wrist. The police arrived but would not listen to the applicant. No FIR was registered against the applicant. On 07.10.2006 the applicant gave a complaint in writing to the police narrating the incidence. The applicant was sent for a medical check-up on 07.10.2006. The younger child's custody was restored to the applicant and she was sent to AIIMS for her medical check-up on 11.10.2006 where she was treated. Meanwhile the parents of the applicant-aggrieved pursued the matter with the senior police officer Ms. Yogita Vs. Sh. Durgesh Mishra etc. and got the FIR No. 840 / 2006 u/s 323, 34, 406, 498-A, 506 of IPC registered against the respondents. The medical reports are annexed as Annexure P-6 and the copy of the same have been exhibited as Ex. CW-1/6. The said medical report reflects that the injuries were due to 'assault by the husband'. That goes to say that the applicant while reporting the matter to the doctor gave the information that it is her husband who did it. The sais stand was not changed even in the averments made in her application under S.12 of PWDV, Act 2005 which was filed on 14.12.2007. The evidence seems credible and trustworthy.

31) Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) has laid down certain rules regarding the burden of proof. The above principles have been duly incorporated in the

provisions of S.101 and s.102 of the Indian Evidence Act, 1872. Two essential rules are :

> "(1) the facts alleged as the basis of any legal inference must be clearly proved connected with the factum probandum;
>
> (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability."

32) The given segment of evidence encompasses the incidence particularly the one which had occurred on 06.10.2006. The legal burden to introduce the said segment of evidence was on the applicant. She did it. The mere introducing was not enough for her to have a decision. A fair support of documents was required. The applicant did that as well. The issue of domestic violence became very much alive and relevant in order to attract judicial deliberations. It was fairly established that the domestic violence happened. The next step was to demolish the case put by the applicant. This could only have been done through the cross□examination. The opportunity was indeed granted to the Ms. Yogita Vs. Sh. Durgesh Mishra etc. respondents but they never availed it. The applicant herein discharged her burden and the respondent did not offer any evidence to counter or negate the evidence of the applicant. This is how the applicant succeeded in establishing the fact dated 06.10.2006 and the series of facts thereafter. The narrated incidence depicts act or conduct (of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved herein) and is supported by the documents and has been clearly established by her in her evidence.

33) As far as the sexual abuse is concerned the ingredients as per S.3 PWDV Act, 2005 includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. The applicant□aggrieved herein has not made any averments of that sort.

34) As far as "verbal and emotional abuse" abuses are concerned the applicant□aggrieved herein has narrated incidences when she was insulted and ridiculed for bringing less dowry. The applicant was tricked to give a favorable statement during the proceedings to have the FIR No. 392 of 2003 quashed. The FIR instituted by her were quashed. However, the respondents again resumed to torture her. As a matter of fact the incident dated 06.01.2006 occurred when the FIR No.392 of 2003 were already quashed and the applicant was hoping a happy marital life. There is something intriguing about the terms 'verbal' & 'emotional' being used together. The term 'verbal' typifies a louder abuse - in tone. The 'emotional' abuse on the other hand is more characterized by 'silence'. However both sorts of such abuses are mutually co□existing and the learned legislatures were sharp enough to use the combination of 'verbal and 'emotional' together. In the present case it is not denied by the respondents that the applicant□abused is living separately from the respondents. Living separately:

Ms. Yogita Vs. Sh. Durgesh Mishra etc. either by choice or by compulsion, is an emotional abuse. Another aspect of the emotional abuse happens to be the relationship of respondent No.1 with Ms. Punam. I therefore hold that the emotional abuse stands established so far it relates to the inflicting of the physical violence which resulted in the physical injuries sustained by the applicant.

35) As far as the economic abuse is concerned it would be relevant to state that this is the sort of abuse which is the most prevalent. According to a research "Abuse in Intimate Relationships : Defining the Multiple Dimensions and Terms. National Violence Against Women Prevention" by Vera E. Mouradian, PhD. Batterers control victims' finances to prevent them from accessing resources, working or maintaining control of earnings, achieving self□sufficiency, and gaining financial independence. In another report "The Battered Women's Justice Project, Civil Office" by Christine Thomas (Staff Attorney, BWJP Civil Office, June 2004) it has been observed:

> "Because economic dependence and severe financial stress on abused women can so acutely impact a survivor's choice to stay or leave an abusive relationship and because economic abuse by batterers is often an aspect of the power and control over their lives, stronger legal advocacy for economic safety and restitution is important to the economic empowerment of battered women and the goal of assuring that women may live free of violence and oppression by their intimate partners. The economic relief available through a protection order may be an essential temporary mechanism to ensure safety and promote economic justice for the survivor."

36) The above□mentioned report also stated that effective strategies to end violence against women must include strong measures that promote economic security and restitution for survivors. Many women Ms. Yogita Vs. Sh. Durgesh Mishra etc. are compelled to stay in abusive relationships or return to their batterers because of financial constraints and economic concerns. Moreover, protection order proceedings are an appropriate and necessary venue to address the economic injustice that often characterizes domestic violence. It is pertinent to acknowledge that even in the most developed countries like the USA there are strong economic provisions for the women. For instance, child support and/or temporary spousal maintenance awards are specifically authorized by most state statutes; typically, these forms of emergency financial support to survivors and their children can be obtained in protection order proceedings.

37) The PWDV Act,2005 is a legislation aimed at strengthening the economic independence of a woman and therefore includes the aspect 'financial deprivation to the women' in the category of 'economic abuse'. Economic abuse can manifest itself in many different ways, and abusers can victimize their partners even after they have left the abusive relationship. The PWDV Act, 2005, has perceived that a woman needs 'economic' contribution from her husband in the light of 'domestic violence'. The said Act is law which provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. In the present case it is not disputed that the child is being brought up by the applicant□aggrieved single handedly and any economic deprivation to the child (in which the applicant is certainly interested) is the economic deprivation of the applicant.

38) In the present case there happens to be the most elaborated averment with in regard to 'stridhan' of the applicant□aggrieved. It has been deposed by CW□1 that all the articles have not been returned to her. When the FIR No.392/2003, under Section 498□A/406 IPC, was registered at Police Station Defence Colony the Sessions Court had granted the anticipatory bail to the accused on

the condition Ms. Yogita Vs. Sh. Durgesh Mishra etc. that Rs.50,000/□would be given to the applicant herein. The amount of Rs.50,000/□was returned by the applicant herein to the respondents to improve the relations. The applicant herein did what the respondents wanted her to do in order to save her marriage. The issue of the wrongful retaining of Stridhan and the amount of Rs.50,000/□is certainly an economic abuse if proved. The sort of evidence that was required was the examination of the father who purportedly played part in returning the money to the respondents. That has not been done. The sole evidence that we have is the averment of the applicant. Certain dowry articles were also allegedly retuned by the applicant herein to the respondents. The amount of Rs.50,000/□was received by the applicant herein from her father vide receipt annexed as Annexure P□5A. It is relevant to hold that the receipt that is being mentioned of is the one which was issued by the applicant and not the respondent. Moreover, the said receipt has not been exhibited and proved. The applicant herein has not been able to discharge that initial burden of establishing the particular fact of giving the The amount of Rs.50,000/□to the respondents. The economic abuse regarding the stridhan and the amount of Rs.50,000/□is not established.

THE RELIEF SOUGHT u/s 19 of the PWDV Act,2005

39) The provision of S.19 essentially deals with the Residence orders:

> "(1) While disposing of an application under sub□section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order □
>
> (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
>
> (b) directing the respondent to remove himself from the shared household;
>
> Ms. Yogita Vs. Sh. Durgesh Mishra etc.
>
> (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
>
> (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
>
> (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
>
> (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. (4) An order under sub□section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly. (5) While passing an order under sub□section (1), sub□section (2) or sub□section (3), the court Ms. Yogita Vs. Sh. Durgesh Mishra etc. may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub□section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in□charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order. (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to."

40) The relief(s) u/s 19 PWDV which have been sought the applicant herein are :

i. The residence orders u/s 19 of PWDV Act, 2005 thereby directing the respondents to provide the applicant with the same level of residence as enjoyed by her when she lived with the respondent No.1;

ii. The directions to the respondents to return the stridhan of the applicant to her. In case the said stridhan and articles are not returned the applicant has sought an additional compensation of Rs.12 Lacs;

41) The S. 19(1) (f) PWDV Act, 2005 provides that on being satisfied that domestic violence has been perpetrated on the aggrieved woman the magistrate may direct the respondent to secure same level of Ms. Yogita Vs. Sh. Durgesh Mishra etc. alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require. There is no doubt that the said provision is aims at securing a shelter over the head of a woman either in the shared household or elsewhere. The responsibility to do so is fastened on the

respondents.

42) The kind of proof that was required on part of the applicant was the proof of the level of accommodation that she had enjoyed in the shared household. There happens to be no cogent evidence with that regard. An inference can only by drawn from the overall financial position of the respondents. The mere averments would show that the respondents are enjoying a comfortable life style. The provision of S.19(6) empowers the magistrate to impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

43) It is pertinent to see that even before the advent of the Act, the right of a wife to reside in the matrimonial home, was recognized as part of her right to maintenance, in so far as Hindus are concerned. In para□12 of its judgment in B.P. Achala Anand v. S. Appi Reddy and Another, 2005(3) SCC 313, the Supreme Court laid down the law on the point as follows :

"A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause Ms. Yogita Vs. Sh. Durgesh Mishra etc. she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a Will to defeat such a right. (See Mulla : Principles of Hindu Law, Vol. I, 18th Edn., 2001, paras 554 and 555). The right has come to be statutorily recognised with the enactment of the Hindu Adoptions and Maintenance Act, 1956. Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoptions and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term "wife" includes a divorced wife."

44) In the paragraph No. 17 of the petition filed by the respondentohusband it has been admitted that the respondent herein had a sound financial background. The applicant herein cannot be expected to stay in her father's house indefinitely. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him.

45) In the present case it has already been held that the domestic violence stands established by the applicant particularly with respect to the incidence of physical injuries inflicted upon her body on 06.10.2006. That is sufficient reason for her to stay in a separate residence. I therefore direct the respondents to pay a monthly rent of Rs.10,000/□(Rupees Ten Thousand) so that the applicant could arrange for her accommodation.

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

46) The facts relating to the 'stridhan' articles essentially involve the factum of 'possession' of the movable articles. The expression "possession" is a legal term and its proof varies with the nature of property under the scrutiny of the courts and it can be proved by credible oral evidence as well. The expression "Evidence" has been defined under Section 3 of the Evidence Act which means and includes all statements which Courts permit or require to be made before it by witnesses in relation to matters of fact under inquiry such statements are called oral evidence. The testimony of a reliable witnesses about the possession cannot be brushed aside by giving superficial treatment or by ignoring it. The Courts are required to weigh to the oral testimony adduced by the parties and its ignorance would be treated to be fatal. In abundant caution, it is held that Courts while analysing oral statements of the witnesses are required to keep in view the statements of those witnesses who had deposed the acts of possession leading to an inference about possession of a party according to the nature of the property under consideration in preference to the statements of the witnesses who had stated only about possession simpliciter without stating any act of possession in favour of one party or other. (see AIR 1997 RAJ. 230 "Kanti Lal v. Shanti Devi").

47) Although the applicant herein has filed the list of dowry articles before the CAW Cell which is Annexure□P4 and has been exhibited as Ex.CW□1/4. However, the mere list would not prove the possession. The handing over of the dowry articles is that segment of fact which should have been brought out clearly by the applicant herein. In the Indian culture the actual delivery of the possession of the dowry articles is done either by the father/son or by any concerned person who could even be a relative. A bride sits pretty in the marriage while the arrangements etc. are made. She only has an idea what she would take in her matrimonial house. That is to say that she does not have the best knowledge of what she carries. The actual knowledge could only be provided by the father / brother / relative etc. who handed the possession. It is for this reason that when a list of dowry articles is Ms. Yogita Vs. Sh. Durgesh Mishra etc. prepared the same ought to be signed and countersigned by the giver and the taker. I can understand that this could appear a bit awkward at the time of the marriage but the courts can come to definite conclusion only after being satisfied of the 'possession' by one evidence or the other. Even the oral testimonies of the persons would do. It is for this reason that I am skeptic of relying solely on the oral testimony of the applicant herein. The sole oral evidence of the applicant (CW□1) is not able preponderate the probability.

48) There happens to be other difficulty in granting the relief of the recovery of the 'stridhan'. The recovery has to be specific and so has to be evidence otherwise great difficulty arises in implementing the same. The applicant has not been able to adduce that precise evidence which could lead her to have the said relief. The ration in the judgment AIR 1997 RAJ. 230 "Kanti Lal v. Shanti Devi" could not come to the rescue of the applicant. The rigors of the legal proof ought be undergone in order to establish a particular fact. The prayer of the applicant with respect to the restoring of the stridhan articles is declined.

49) However, I would caution myself in commenting more on the aspect of 'stridhan' a criminal proceeding' is also pending u/s 406 IPC. I have only held on the basis of the requirements of the PWDV Act, 2005.

THE RELIEF SOUGHT u/s 20 of the PWDV Act,2005

50) Now I come to the monetary relief(s) to the applicant aggrieved. The scheme of the PWDV Act, 2005 does provide for the interim monthly relief as well as the compensation & monetary damages to the said applicant. According to S.20 of the PWDV Act, 2005:

Ms. Yogita Vs. Sh. Durgesh Mishra etc. (1) While disposing of an application under sub section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force. (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. (4) The Magistrate shall send a copy of the order for monetary relief made under sub section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the Ms. Yogita Vs. Sh. Durgesh Mishra etc. period specified in the order under sub section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

51) The provision of S.20 PWDV Act,2005 deals with the monetary relief. It speaks of "monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence." The monetary relief under S.20 thus takes adequate care of the reality that an aggrieved woman may have to bring up the children on her own. However, the provision is characterized by two relevant factors:

i. the expenses incurred and ;

ii. the losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence.

52) The losses as prescribed include the loss of earnings; the medical expenses; the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person. The evidence that was required on part of the applicant was to establish that the appropriate facts with respect to the losses as mentioned under S.20 PWDV Act, 2005. The applicant had merely averred Ms. Yogita Vs. Sh. Durgesh Mishra etc. and deposed the financial status of the respondents. The said provision is based on specific reimbursement rather than general monetary maintenance. The applicant has sought Rs. Rs.25,000 per month and the following prayer(s) which apparently fall under S.20 PWDV Act, 2005 and the litigation cost of Rs.10,000/□

53) There can be no doubt that S.20(3) empowers the to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

Therefore the piece of evidence that would be required on part of the applicant herein in order establish the monetary claim under S.20 is the elaboration of the expenses required and the loses suffered. The only loss averred is that of Rs.10,000/□on the litigation. As far as the monthly monetary relief is concerned the principle is that the sum so granted must be reasonable and consistent with the standard of living to which the aggrieved person is accustomed. In Bhagwan v. Kamla Devi (AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The applicant has admitted that she is getting some maintenance under S.125 Cr.P.C. According to S.20 PWDV Act, 2005 the magistrate may still grant an additional maintenance depending on the facts of the case. The applicant has asked for Rs.25,000/□per month

54) The term `maintenance' is defined in Black's Law Dictionary, (6th Edn. pp.953□54) thus; "The furnishing by one person to another, for his or her support, of the means of living, or food, clothing, shelter, etc., particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child or husband and wife'`. For computing maintenance the following test have been laid down by the Hon'ble Supreme Court in Jasbir Kaur Sehgal v. District Judge, Dehradun and Ors., 1997 (7) SCC 7, wherein it has been observed that "No set formula can be laid for fixing the amount of maintenance. It has, in the very Ms. Yogita Vs. Sh. Durgesh Mishra etc. nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

55) Considering the facts of the case I am inclined to grant a monthly maintenance of Rs.10,000/□ (Rupees Five Thousand) per month from the date of order after deducting the amount paid to the applicant under the other litigations.

THE RELIEF SOUGHT u/s 22 of the PWDV Act,2005

56) Compensation to the victims of the crime is laso covered under S.357 of the Cr.P.C. In awarding compensation, it is necessary for the Court to decide if the case is a fit one in which compensation deserves to be awarded. If the Court is convinced that compensation should be paid, then quantum of compensation is to be determined by taking into consideration the nature of the crime, the injury suffered and the capacity of the convict to pay compensation etc. It goes without saying that the amount of compensation has to be reasonable, which the person concerned is able to pay. If the accused is not in a position to pay the compensation to the injured or his dependents to which they are held to be entitled to, there could be no reason for the Court to direct such compensation. (Sarwan Singh and Ors. Vs. St. of Punjab AIR 1978 SC 1525 : 2 (1978) 4 SCC 111 Ms. Yogita Vs. Sh. Durgesh Mishra etc.

57) In Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Anr. [(2007) 6 SCC 528] explaining the scope and the purpose of imposition of fine and/or grant of compensation, it was observed that the purpose of imposition of fine and/ or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other, factors enumerated out of the same; but S.357(3) does not impose any such limitation and power there□under should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a Judge.

58) As far as the monetary relief under S.22 PWDV Act, 2005 is concerned the same deals with compensatory orders and says:"In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent."

59) The compensation provided under S.22 is a onetime payment in addition to the payment (monthly or lump□sum) granted under S.20 of the PWDV Act,2005. The scheme of the said act covers the aspect of human agony and also uses the terminology of 'damages' which is usually used in the Indian Contract Act, 1872. However, the commercial transactions under the contractual obligations give little significance to the human agony. For instance the illustration (n) appended Ms. Yogita Vs. Sh. Durgesh Mishra etc. to S.73 of the Indian Contract Act, 1972 says: "A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day; B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined.

A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment."

60) The human agony of a trader being ruined by the untimely payment of money from his debtor attracts no more remedy than the mere principle amount along with the interest. In the commercial transaction the damages must have been arisen naturally in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. The provision under S.22 PWDV Act, 2005 though speaks of 'damages' and 'compensation', there happens to be a human touch to it. The said human touch is further strengthened by the fact that no statutory device has been provided in order to gauge the said damage. It is even more human that the provision of S.20 of the PWDV Act, 2005 which is guided by the loss of earning etc. Now the question is what amount is deserved by the applicant in the present case in the circumstances where in particular the emotional & economical abuses stand reasonable established.

61) The statute PWDV Act,2005 uses two terms together i.e. 'compensation' and 'damages' and by using two terms together the legislators have imported the concept of compensatory damages and the punitive damages which could deter the respondent from committing a similar action in the future. The ingredients of the measure of such compensation & damages are roughly enumerated as in terms of: the injuries, including mental torture and emotional distress. There is however no test provided. How can the mental torture and the emotional distress be proved? It has been held in AIR 1973 Delhi 200 that it may safely be stated that any conduct of the husband which causes disgrace to the wife or subjects her to a course of annoyance and indignity amounts to legal cruelty. Proof beyond Ms. Yogita Vs. Sh. Durgesh Mishra etc. reasonable doubt is not postulated where human relationship is involved and eye-witnesses are difficult to obtain. Similar proposition was laid down in Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121. As far as 'emotional distress' is concerned the said terminology is more akin to torts. While granting damages there are 'mitigation rules' whereas in 'emotional distress' there happens to be no mitigation rules particularly when one is dealing with the human relations out of matrimony and the likes. By combining 'damages' with 'emotional distress' the provision of S.22 of the PWDV Act, 2005 thus seems to have enunciated the concept of 'matrimonial tort'. Courts have awarded damages for emotional distress primarily when the 'physical injury' has resulted and not otherwise. Originally at common law, a plaintiff could not recover for physical injury from fright alone absent an impact even though the defendant was shown to have operated a railroad negligently (shock without impact). In an English case Victorian Railways Commissioners v. Coultas [(1888) 13 AC 222] a woman was barred from recovery due to shock despite suffering a miscarriage. Even with intentional conduct, absent material damage, claims for emotional harm were similarly barred. "Mental pain or anxiety, the law cannot value, and does not pretend to redress, when the unlawful act causes that alone. Courts had been reluctant to accept a tort for emotional harm for fear of opening a "wide door"

> to frivolous claims. [Mitchell v. Rochester Railway Co. 151 NY 107 (1896)]. The idea that shock without impact would be a bar to recovery was first questioned at the Queen's Bench in Pugh v. London etc. Railroad Co.([1896] 2 QB 248.)

62) The PWDV Act, 2005 has added 'mental torture' thereby clarifying that 'mental injury' is as much the part of 'emotional distress'. The definition of 'emotional distress' is thus expanded under the PWDV Act, 2005. This expanded definition finds great support from the recently developed concept of Intentional infliction of emotional distress (IIED) which is a tort that results in extreme emotional distress. Some jurisdictions refer to it as the tort of outrage.

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63) In matrimonial cases the very domestic violence would cause mental distress whether physical abuse is inflicted or not. The physical abuse would add to emotional distress. The PWDV Act, 2005 addresses such emotional distress by providing for the damages to the aggrieved woman. The measure of the damages could well be done by the general principles of applying test of directness while not relying too much upon the remote possibilities even if human agony is considered. Compensation can assist women to deal with the aftermath of violence at both a practical and symbolic level. The applicant□aggrieved has been able to establish the physical abuse and has sought Rs.10 Lakh as compensation and damages. After going through the whole evidence and the overall circumstances I am inclined to grant the damages and compensation of Rs.1 Lakh to the applicant□aggrieved.

THE RELIEF SOUGHT u/s 21 of the PWDV Act,2005

64) The applicant is having the custody of the child. There also happens to be a Guardianship case pending. In that view the custody of the child shall remain with the applicant herein subject to any order / direction etc. of the concerned Guardianship Court.

65) In view of the whole case the following relief(s) under S.18 of the PWDV Act,2005 is granted to the applicant and the respondents are restrained from :

i. committing any act of domestic violence;

ii. aiding or abetting in the commission of acts of domestic violence;

iii. causing violence to the dependants, other relatives or any person who give t

person assistance from domestic violence;

66) The relief under S.19 of the PWDV Act,2005 : The respondents shall jointly & severally pay Rs.10,000/□(Rupees Ten Thousand) per month towards the rent of the separate residence for the applicant herein;

67) The relief under S.20 of the PWDV Act,2005 is granted to the applicant and the respondents are directed to Rs.10,000/□(Rupees Fifteen Thousand) per month after adjusting any amount paid to the applicant in any other litigation.

68) The Relief under S.21 of the PWDV Act,2005: the custody of the child shall remain with the applicant herein subject to any order / direction etc. of the concerned Guardianship Court.

69) The Relief(s) under S.22 of the PWDV Act,2005: The respondents shall jointly & severally pay Rs.1,00,000/□(Rupees One Lakh) as damages to the applicant.

70) The other relief(s) sought are declined. The present case is disposed of in the terms as above□ said.

71) The file be consigned to the record room.

Announced in the open court on 27th July, 2010.

(VEENA RANI)
METROPOLITAN MAGISTRATE: SOUTH DELHI

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

) The vs . on 27 July, 2010

IN THE COURT OF Ms. VEENA RANI METROPOLITAN MAGISTRATE
PATIALA HOUSE COURTS, NEW DELHI.
IN RE:CC No. 478 of 2007
P.S.– Sarojini Nagar.

Mrs. Yogita W/o Sh. Durgesh Mishra
D/o Dr. R.K. Upadhaya, R/o F–75,
Ansari Nagar, New Delhi .....Aggrieved/complaina

Vs.

1. Sh. Durgesh Mishra S/o Ajay Kumar Mishra
2. Ajay Kumar Mishra
3. Mrs. Lakshmi Mishra W/o Sh. Ajay Kumar Mishra
   All R/o 75, Gali No:4, Guru Ram Dass Nagar,
   Laxmi Nagar, Delhi–92 .....Respondents.

Complaint under the Protection of women from Domestic Violence Act, 2005 THE JUDGMENT

1) The applicant□aggrieved Mrs. Yogita has filed the present application under S.12 of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) on 14.12.2007. By way of this petition the following orders have been sought :

i. The orders u/s 18 of PWDV Act, 2005 thereby prohibiting the respondents form communicating with the applicant herein in way;

ii. The residence orders u/s 19 of PWDV Act, 2005 thereby directing the respondents to provide the applicant with the same level of residence as enjoyed by her when she lived with Ms. Yogita Vs. Sh. Durgesh Mishra etc. the respondent No.1;

iii. The monetary relief of Rs. Rs.25,000 per month u/s 20 of Act, 2005; iv. The litigation cost of Rs.10,000/□v. The compensation and damages of Rs.10 Lakh u/s 22 of Act, 2005; vi. The directions to the respondents to return the stridhan of the applicant to her. In case the said stridhan and articles are not returned the applicant has sought an additional compensation of Rs.12 Lacs;

vii. The directions to the respondents to allow the continued custody of the child with the applicant;

viii. The order prohibiting the respondents from committing acts of domestic violence and repeating the same as mentioned above;

ix. Such interim order or orders as deemed fit just and proper in the circumstances of the case.

2) The facts in brief are that the marriage of the applicant□aggrieved Mrs. Yogita and the respondent□husband took place on 30.11.2001 at PTS Baraat Ghar, Malviya Nagar, New Delhi according to the Hindu Rites & Rituals. The dowry articles were given to the respondents which was kept by them.

The respondents were however not happy with the quantity of the dowry articles. The demands for Ms. Yogita Vs. Sh. Durgesh Mishra etc. dowry kept on pouring from the respondents side and some of the demands were met by the father of the applicant. A son was born to the couple in October 2002. The respondents turned the said occasion to an another opportunity for demanding more dowry from the applicant's parents. The applicant was not treated well and she turned anemic. The applicant was threatened with serious physical injuries in case the demands were not met. It was due to the intervention of the common friends that the respondent assured the applicant that he would keep her well. A letter of apology was written by the respondent□husband and the Annexure□ P1 has been exhibited as Ex. CW□1/1. The apology of the respondent No.1 turned out to be hollow one and the sais respondent resumed to treat the applicant with cruelty and abuse.

3) The applicant was compelled to file various cases against the respondents which are :

i. FIR No.392/2003, under Section 498□A/406 IPC, registered at Police Station Defense Colony.(this FIR was quashed by the Hon'ble Delhi High Court on 19.01.2004) ii. FIR No. 840 / 2006 u/s 323, 34, 406, 498□A, 506 of IPC(this FIR was again lodged due to the continued abuses);

iii. Case under s.125 Cr.P.C.

4) A case for the custody of the child was also filed by the respondent No.1 which is pending before the Guardianship Court. In the case the respondent No.1 had admitted that he is in a sound financial condition. The copy of the said petition is annexed as Annexure□P2 and has been exhibited Ex.

CW□1/2.

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

5) The applicant□aggrieved has also mentioned that on 16.06.2003 when she was at her parents' house the respondent No.1 had visited and made a demand of Rs.1,00,000/□on the pretext of his starting new business. On refusal the respondent turned aggressive and assaulted the applicant and her parents. The respondent No.1 refused to take the applicant back till his demands were fulfilled. The applicant and her parents were threatened and were told that the respondents had relations with the local Politian. Subsequently, the applicant was served with a legal notice dated 29.06.2003 to which she replied vide reply dated 10.07.2003 and the copy of the same Annexure P□3 exhibited

as Ex.CW-1/3. The applicant-aggrieved had filed the list of dowry articles before the CAW Cell which is Annexure-P4 and has been exhibited as Ex.CW-1/4.

6) An FIR No.392/2003, under Section 498-A/406 IPC, registered at Police Station Defence Colony was registered against the respondents who were grated anticipatory bail subject to the condition that an amount of Rs.50,000/- was paid by them to the applicant-aggrieved. The said amount was paid to the applicant. However, the respondent sought the compromise of the matter and were able to convince the applicant. Subsequently, the applicant returned to her matrimonial house on 19.09.2003. Meanwhile , the respondent No.1 had filed CRL.M.C. 5133/2003 before the Hon'ble Delhi High Court seeking the quashing of the FIR No. 392 of 2003 in which the applicant was successfully persuaded to give statement in favour of the respondent No.1. Consequently, the FIR No.392/2003, under Section 498-A/406 IPC, registered at Police Station Defence Colony was quashed vide order dated 19.01.2004. However, the things would not improve for the applicant herein and she was again abused and mistreated by the respondents. The amount of Rs.50,000/- which paid during the anticipatory-bail proceedings was again asked to be returned to the respondents herein. Certain dowry articles were also retuned by the applicant herein to the respondents. The amount of Ms. Yogita Vs. Sh. Durgesh Mishra etc. Rs.50,000/- was received by the applicant herein from her father vide receipt annexed as Annexure P-5A.

7) The applicant herein did what the respondents wanted her to do in order to save her marriage. However, It turned out that the respondents had cleverly staged the compromise in order to get out of the criminal proceedings i.e. FIR No. 392/2003. The whole exercise was done in order have the said FIR quashed and when it was eventually quashed the respondents resumed to inflict abuses and violence on the applicant.

8) The applicant and the respondent No.1 were blessed with another son on 02.12.2004. The respondents would not allow the applicant to meet with her elder son. The applicant herein would another mental torture that the respondent is interested in marrying a lady name M. Punam Maheshwari a business associate of the respondent No.1. The applicant objected to the said relationship and suffered multiple physical injuries in the hands of the respondent No.1. The respondents would starve the applicant. On 06.10.2006 came to the applicant and asked for more money for the business of respondent No.1. On refusal the applicant was beaten by iron rode and an attempt was made to burn her by pouring the kerosene oil. The knob of the LPG gas cylinder was turned on. The applicant ran out of the house to rescue herself and reached the public road. Meanwhile, the mother-in-law of the applicant came and snatched the baby which the applicant was carrying. Before the applicant could have had recourse to the police authorities the respondent No.1 called the PCR van so that a false case could be registered against the applicant. By now the applicant had received much physical injuries leading to the swelling in the left forearm and the wrist. The police arrived but would not listen to the applicant. No FIR was registered against the applicant. On 07.10.2006 the applicant gave a complaint Ms. Yogita Vs. Sh. Durgesh Mishra etc. in writing to the police narrating the incidence. The applicant was sent for a medical check-up on 07.10.2006. The younger child's custody was restored to the applicant and she was sent to AIIMS for her medical check-up on 11.10.2006 where she was treated. The medical reports are annexed as Annexure P-6 and the copy of the same have been exhibited as Ex. CW-1/6. Meanwhile the parents

of the applicant□aggrieved pursued the matter with the senior police officer and got the FIR No. 840 / 2006 u/s 323, 34, 406, 498□A, 506 of IPC registered against the respondents. However, the police did not do much investigations into the matter. Neither the amount of Rs.50,000/□was recovered nor the stridhan articles were restored to the applicant herein. The recovery of the amount of Rs.50,000/□ The FIR etc. are Annexure□P□7(colly).

9) The respondent is said to admitted that he has sound financial position. The said respondent is said to be owning movable as well as immovable properties. The applicant herein has sought various prayers in her main application u/s 12 of the PWDV Act,2005. The applicant got herself examined as CW□1 and has tendered evidence by way of the affidavit and has exhibited various documents.

10) The respondents filed a reply and denied the allegations of domestic violence. It was also stated that the respondent No.1 has been disowned by his parents (R□2 & R□3) and that he had no property movable or immovable in his name. However, the respondents were proceeded ex□parte on 15.04.2009. No evidence was lead by the said respondents.

11) At the very onset I need to address one necessary issue - the admissibility of documents. The applicant□aggrieved has not exhibited the original documents. The aspect is technical still Ms. Yogita Vs. Sh. Durgesh Mishra etc. required to be decided as the same relates to the admissibility of evidence. In the present case the applicant□aggrieved has exhibited the photocopies of various the documents in her favour. The general law is that the photocopies are not primary evidence.

12) At this juncture, Ss. 61, 62 and 63 of the Evidence Act need to be looked into. S.61 lays down that contents of the documents may be proved either by primary or by secondary evidence. This Section is based upon the principal that "best evidence" in the possession or power of the party must be produced. What the best evidence is, depends upon facts and circumstances of each case. Generally speaking, the original document is the best evidence. The contents of every written paper are, according to the ordinary and well established rules of evidence, required to be proved by the original document, and by that alone, if the document is in existence. It is, therefore, necessary that when a document is produced as primary or secondary evidence, it will have to be proved in the manner laid down in Sections 67 to 73 of the Evidence Act. (see AIR 2008 BOMBAY 81 "Bank of India v. Allibhoy Mohammed" BOMBAY HIGH COURT). Truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e. by the evidence of person who can vouch for the truth of the facts in issue as held by the Apex Court in Ramji Dayawala and Sons Pvt. Ltd v. Invest Import, A.I.R. 1981, S.C. 2085. Person with knowledge must be examined. Every document should first be started by some proof before the person who disputed that document can in any way be considered as proved because it's genuineness is not disputed by the opposite party. Documents do not prove themselves.

13) Let me now deal with the photo copies of the documents filed on record. S.63 of the Evidence Act provides for the leading of secondary evidence. Secondary evidence cannot be accepted without Ms. Yogita Vs. Sh. Durgesh Mishra etc. sufficient reason being given for non production of the original. The loss of original document must be shown in order to lead secondary evidence. Secondary evidence of the document can be allowed to be lead only where original is proved to have existed but

was lost or misplaced (see AIR 1973 Bom

66. Filmistan Private Ltd. Co. v. The Municipal Corporation for Greater Bombay). The document unless shown to have been compared with original one, mere copy of the document does not become secondary evidence. The person giving oral evidence who accounts for the contents must have himself seen the original document and not a mere copy. "Seen" here will obviously mean "read". A person who proposes to testify the contents of a document, either by copy or otherwise, must have read it. The contents of private documents may be proved as secondary evidence by any witness who has in fact read them. The secondary evidence is required to be proved in the same manner in which primary evidence. S. 65 of the Evidence Act provides that in each type of cases secondary evidence relating to the document may be given. This Section enumerates the certain exceptional cases in which secondary evidence is admissible. Secondary evidence is of the contents which cannot be admitted without the production of document in such a manner within one or the other of the cases as provided for in the Section. The prior permission of the Court required to be taken for producing secondary evidence of the documents on the grounds that original documents were lost. To sum up, when anybody wants to lead secondary evidence, two things are required to be proved; there must be evidence of the existence of the original documents and there must be evidence of their loss.

14) In the present case no permission to lead secondary evidence was obtained by the applicant herein. As per the order sheet when the evidence by way of affidavit was filed on 15.04.2009 by the applicant herein it was nowhere stated that the originals were seen and returned. As far as the exhibits CW□1/2 to CW□/6 are concerned, the exhibited documents cannot be said to be primary evidence Ms. Yogita Vs. Sh. Durgesh Mishra etc. since they are mere photo copies. No evidence is on record to show that at any time in the past, original documents were in existence and that they are lost. The secondary evidence of the contents of document is generally inadmissible until non production of the original is first accounted for, so as to bring it within one or the other category of the cases provided for in S. 65.

15) Now the question is whether or not the photocopies should be admitted as evidence. In this regard I rely upon an authority of the Hon'ble Supreme Court in the cases of Narbada Devi Gupta v. Birendra Kumar Jaiswal (2003) 8 SCC 745 : (AIR 2004 SC 175) and R. V. E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V. P. Temple, (2003) 8 SCC 752 : (AIR 2003 SC 4548). In the later case the Supreme Court has pointed out two different classes of 'objections' by observing as under :□

"..... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:

> i. an objection that the document which is sought to be proved is itself inadmissible in evidence, and ii. where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.
>
> In the first case, merely because a document has been marked as "an exhibit", an Ms. Yogita Vs. Sh. Durgesh Mishra etc. objection as to its admissibility is not excluded

and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons, firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there, and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior Court."

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

16) In the present case the respondents have been participating in the proceedings from 15.12.2007 till 15.04.2009. The evidence by way of Affidavit was rendered on 15.09.2008. It therefore very relevant to consider that the said respondents were proceeded ex□parte long after the evidence by way of the affidavit was rendered. Not only that, the order sheet dated 28.01.2009 reveals that the respondents were represented and that they had sought time to cross□examine the applicant herein. The only unconvincing inference that could be drawn from the above circumstance is that the respondents had ample opportunity to raise objections to the admissibility of the exhibited documents. The ratio of Narbada Devi Gupta case (2003) 8 SCC 745) and that of R. V. E. Venkatachala Gounder case [(2003) 8 SCC 752] comes to the rescue of the applicant herein.

17) The other reason for this court to admit the photocopies is that the said documents are not creating any right in favour of any party but only recording something. Such documents are admissible in evidence. This view is supported by an authority of the Hon'ble Bombay high court "Tex India v. Punjab and Sind Bank" reported in AIR 2003 BOMBAY 444. Keeping the above□ dimensioned authorities in mind I am not hesitant to hold that in the interest of justice the

documents exhibited as CW□1/2 to CW□1/7 are admitted as evidence.

18) However, the document exhibited as Ex.CW□1/1 stated to be the apology of the respondent□ husband and hand□written by the said respondent is held not admissible for the reason that no writing can be received in evidence as a genuine one until it has been proved to be in the writing of a particular person. The production of the document purporting to have been signed or written by a certain person is no evidence of its authorship. A writing, by itself, is not evidence of the one thing or the other. Proof, therefore, has to be given of the handwriting. A writing, by itself, is evidence of nothing, and therefore is not, unless accompanied by proof of some sort, admissible as evidence. For Ms. Yogita Vs. Sh. Durgesh Mishra etc. the above□said reason the Ex.CW□1/1 is excluded.

19) In Sait Tarajee Khimchand v. Yamarti Satyam, AIR 1971 SC 1865, the Hon'ble Supreme Court has very categorically held that mere marking of an exhibit does not dispense with the proof of documents. To the similar effect is the decision in Thagiram Borah v. State of Assam, AIR 1980 Gau 59 and in Punjab National Bank v. Britannia Industries Ltd., 2002 (3) Civil Law Times

517. Now that the Ex. CW□1/2 to CW□7 have been admitted as an evidence the same does not dispense with the burden of proving them. The said evidence needs to be now be evaluated.

20) Before coming to the merits of the case it is necessary to examine the historical background of the said Act, the objects and reasons for the said enactment and the provisions contained therein. This Act was actually enacted with a view to implement the General Recommendation No. XII (1989) of The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). India is a signatory to CEDAW, having accepted and ratified it in June 1993. Article 16 of the said Convention, which deals with measures to eliminate discrimination against women in matters relating to marriage and family relations, reads as follows :

> "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women :
>
> (a) The same right to enter into marriage;
>
> (b) The same right freely to choose spouse and to enter into marriage only with their Ms. Yogita Vs. Sh. Durgesh Mishra etc. free and full consent;
>
> (c) The same rights and responsibilities during marriage and at its dissolution;
>
> (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
>
> (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable

them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."

21) The PWDV Act, 2005 has been based on the Beijing Declaration which was build on consensus and Ms. Yogita Vs. Sh. Durgesh Mishra etc. progress made at various United Nations conferences and summits □on women in Nairobi in 1985, on children in New York in 1990, on environment and development in Rio de Janeiro in 1992, on human rights in Vienna in 1993, on population and development in Cairo in 1994 and on social development in Copenhagen in 1995 with the objectives of achieving equality, development and peace. The focus is on equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declarationon the Right to Development. It was recognized that women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision□making process and access to power, are fundamental for the achievement of equality, development and peace.

22) The need was felt that there ought to be equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their wellbeing and that of their families as well as to the consolidation of democracy. It was further recognized that reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment. Very intriguingly it was also observed in at the Beijing Declaration that Local, national, regional and global peace is attainable and is inextricably linked with the advancement of women, who are a fundamental force for leadership, conflict resolution and the promotion of lasting peace at all levels. The men were sought to be encouraged to participate fully in all actions towards equality and to promote women's economic independence. The Strategic objective was to revise national laws and administrative practices to ensure women's equal rights and access to economic resources. The Ms. Yogita Vs. Sh. Durgesh Mishra etc. national governments were expected to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies. It was in this background that India responded by enacting various laws

and the PWDV Act, 2005 happens to be the most recent one.

23) The first three paragraphs of the statement of object and reasons under which the Bill No. 116 of 2005 for passing the act was placed before the Parliament, are as under (published in the Gazette of India Extraordinary Part II Section 2 page 22 dated 22nd August, 2005) :□I. "Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

II. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498□A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety. III. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society."

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

24) The PWDV Act,2005 was challenged in a case Aruna Parmod Shah v. Union of India reported in 2008(3) R.C.R.(Criminal) 191. The ground was that the PWDV Act, 2005 provided protection only to women and not to men. The DB of the Hon'ble Delhi Court while upholding the vires of the PWDV Act,2005 held:

> "Domestic violence is a worldwide phenomenon and has been discussed in international fora, including the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination Against women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence , but such cases would be few and far between, thus not requiring or justifying the protection of Parliament."

25) CHAPTER IV of the PWDV Act, 2005 deals with the PROCEDURE FOR OBTAINING ORDERS OF RELIEFS. The provision of S.12 of the said Act empowers the Magistrate to deal with the application under S.12 of the PWDV Act, 2005 and is worded thus:

Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or Ms. Yogita Vs. Sh. Durgesh Mishra etc. more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court. (5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

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26) The provision of S.12 of the PWDV Act, 2005 speaks of 'one or more reliefs under this Act' which refers further to the other provisions providing various reliefs. The applicant herein has sought various reliefs mentioned in the provisions from S.18 to S.22 of the said Act. For granting such relief under S.12 PWDV Act, 2005 it is essential to first see whether 'domestic violence' has been perpetuated. The PWDV Act, 2005 defines domestic violence in S.3 (Ch. II) thus:

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it —

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing

physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

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(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and Ms. Yogita Vs. Sh. Durgesh Mishra etc.

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

27) The definition of 'domestic violence' is widespread and overlaps with the definition of 'cruelty' as provided under S.498-A IPC. Therefore, a demand of dowry would both be a penal offence as well as a domestic violence. The prescription provided under the IPC is the 'imprisonment' up-to three years whereas under the PWDV Act, 2005 the remedy provided is more of civil in nature. It was observed by the HON'BLE MADHYA PRADESH HIGH COURT in "Ajay Kant v. Alka Sharma"

> reported in 2008 CRI. L. J. 264 that basically the act has been passed to provide the civil remedy against domestic violence to the women. However, as provided by Sections 27 and 28 of the Act, a Judicial Magistrate of the first class or the Metropolitan Magistrate has been empowered to grant a protection order and other orders and to try the offence under the Act. Vide Section 28 of the Act, it is mentioned that save as otherwise provided in this Act, all proceedings under Ss. 12, 18, 19, 20, 21, 22 and 23 and the offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973, Vide sub-sections 3 and 4 of Section 19, it is also provided that a Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence and such order shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly, Chapter VIII of Cr. P.C. dealt with security for keeping peace and for good behavior which runs from Sections 106 to 124. In Ms. Yogita Vs. Sh. Durgesh Mishra etc. these Sections, it is provided that for keeping the peace and maintaining good behavior, a person can be directed by a Magistrate to execute a bond with or without sureties and in case of non-compliance of such order, that person can be detained into custody. Section 31 of the Act provides penalty for breach of protection order passed by the Magistrate, which is punishable as an offence.
>
> 28) We therefore find that though the PWDV Act, 2005 primarily addresses a civil remedy, the procedure adopted is that of the criminal procedure. That is not unusual as the provision of S.125 Cr.P.C. too, operates in the same fashion. The civil remedy under the PWDV Act, 2005 ranges from providing damages to injunctions. The said act does not provide for the punishment such as imprisonment or fine etc. The PWDV Act, 2005 also does not define 'domestic violence' as a new 'offence' altogether.

It is a different matter that S.31 PWDV Act, 2005 does prescribe breach of protection order by respondent as a cognizable offence.

29) The provision of S.3(a) & (b) relates to the 'dangers' to the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person. The provision of S.3(c) relates to the threat to the aggrieved person by any conduct as mentioned in S.3(a) or S.3 (b). Therefore not only the actual harassment is covered but any act, omission or commission or conduct of the respondent having the effect of causing such a harassment shall constitute domestic violence. The terms like 'dowry' are also included in the definition. Here I would like to point out one more intricacy as far as the illegal demand (of dowry is concerned). The term 'dowry' has not been used in the provision of S.498-A I.P.C. but S.3 of the PWDV Act, 2005 does use the term 'dowry'. Another intricacy relates to the fabric of the offence inasmuch as the S.498-A I.P.C. being a criminal offence needs evidence Ms. Yogita Vs. Sh. Durgesh Mishra etc. beyond the reasonable doubt whereas under S.3 PWDV Act,2005 the illegal demand may be proved by merely indicating the effect of any act, omission or commission or conduct of the respondent. The civil remedy of 'dowry' as the 'domestic violence' under the PWDV Act,2005 is thus differentiated from the criminal justice of 'illegal demand' under the I.P.C. It is also for the said reason that any decision under the PWDV Act vis-a-vis 'dowry' ought not affect the decision given under the criminal proceedings such as S.498-A I.P.C.

30) The 'domestic violence' is drafted to have included physical abuse, sexual abuse, verbal & emotional abuse and economic abuse. As far as the evidence of the perpetration of 'domestic violence' in the present case concerned the same has to be gauged in terms of the principles of legal proof. The applicant-aggrieved herein has averred physical violence against her. The applicant-aggrieved had filed the list of dowry articles before the CAW Cell which is annexed as Annexure-P4 and has been exhibited as Ex.CW-1/4. The complaints were made from time to the police. The particular incidence of 06.10.2006 has been narrated in detail by the applicant where she was beaten up. The applicant ran out of the house to rescue herself and reached the public road. Meanwhile, the mother-in-law of the applicant came and snatched the baby which the applicant was carrying. Before the applicant could have had recourse to the police authorities the respondent No.1 called the PCR van so that a false case could be registered against the applicant. By now the applicant had received much physical injuries leading to the swelling in the left forearm and the wrist. The police arrived but would not listen to the applicant. No FIR was registered against the applicant. On 07.10.2006 the applicant gave a complaint in writing to the police narrating the incidence. The applicant was sent for a medical check-up on 07.10.2006. The younger child's custody was restored to the applicant and she was sent to AIIMS for her medical check-up on 11.10.2006 where she was treated. Meanwhile the parents of the applicant-aggrieved pursued the matter with the senior police officer Ms. Yogita Vs. Sh. Durgesh Mishra etc. and got the FIR No. 840 / 2006 u/s 323, 34, 406, 498-A, 506 of IPC registered against the respondents. The medical reports are annexed as Annexure P-6 and the copy of the same have been exhibited as Ex. CW-1/6. The said medical report reflects that the injuries were due to 'assault by the husband'. That goes to say that the applicant while reporting the matter to the doctor gave the information that it is her husband who did it. The sais stand was not changed even in the averments made in her application under S.12 of PWDV, Act 2005 which was filed on 14.12.2007. The evidence seems credible and trustworthy.

31) Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) has laid down certain rules regarding the burden of proof. The above principles have been duly incorporated in the

provisions of S.101 and s.102 of the Indian Evidence Act, 1872. Two essential rules are :

> "(1) the facts alleged as the basis of any legal inference must be clearly proved connected with the factum probandum;
>
> (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability."

32) The given segment of evidence encompasses the incidence particularly the one which had occurred on 06.10.2006. The legal burden to introduce the said segment of evidence was on the applicant. She did it. The mere introducing was not enough for her to have a decision. A fair support of documents was required. The applicant did that as well. The issue of domestic violence became very much alive and relevant in order to attract judicial deliberations. It was fairly established that the domestic violence happened. The next step was to demolish the case put by the applicant. This could only have been done through the cross□examination. The opportunity was indeed granted to the Ms. Yogita Vs. Sh. Durgesh Mishra etc. respondents but they never availed it. The applicant herein discharged her burden and the respondent did not offer any evidence to counter or negate the evidence of the applicant. This is how the applicant succeeded in establishing the fact dated 06.10.2006 and the series of facts thereafter. The narrated incidence depicts act or conduct (of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved herein) and is supported by the documents and has been clearly established by her in her evidence.

33) As far as the sexual abuse is concerned the ingredients as per S.3 PWDV Act, 2005 includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. The applicant□aggrieved herein has not made any averments of that sort.

34) As far as "verbal and emotional abuse" abuses are concerned the applicant□aggrieved herein has narrated incidences when she was insulted and ridiculed for bringing less dowry. The applicant was tricked to give a favorable statement during the proceedings to have the FIR No. 392 of 2003 quashed. The FIR instituted by her were quashed. However, the respondents again resumed to torture her. As a matter of fact the incident dated 06.01.2006 occurred when the FIR No.392 of 2003 were already quashed and the applicant was hoping a happy marital life. There is something intriguing about the terms 'verbal' & 'emotional' being used together. The term 'verbal' typifies a louder abuse - in tone. The 'emotional' abuse on the other hand is more characterized by 'silence'. However both sorts of such abuses are mutually co□existing and the learned legislatures were sharp enough to use the combination of 'verbal and 'emotional' together. In the present case it is not denied by the respondents that the applicant□abused is living separately from the respondents. Living separately:

Ms. Yogita Vs. Sh. Durgesh Mishra etc. either by choice or by compulsion, is an emotional abuse. Another aspect of the emotional abuse happens to be the relationship of respondent No.1 with Ms. Punam. I therefore hold that the emotional abuse stands established so far it relates to the inflicting of the physical violence which resulted in the physical injuries sustained by the applicant.

35) As far as the economic abuse is concerned it would be relevant to state that this is the sort of abuse which is the most prevalent. According to a research "Abuse in Intimate Relationships : Defining the Multiple Dimensions and Terms. National Violence Against Women Prevention" by Vera E. Mouradian, PhD. Batterers control victims' finances to prevent them from accessing resources, working or maintaining control of earnings, achieving self□sufficiency, and gaining financial independence. In another report "The Battered Women's Justice Project, Civil Office" by Christine Thomas (Staff Attorney, BWJP Civil Office, June 2004) it has been observed:

> "Because economic dependence and severe financial stress on abused women can so acutely impact a survivor's choice to stay or leave an abusive relationship and because economic abuse by batterers is often an aspect of the power and control over their lives, stronger legal advocacy for economic safety and restitution is important to the economic empowerment of battered women and the goal of assuring that women may live free of violence and oppression by their intimate partners. The economic relief available through a protection order may be an essential temporary mechanism to ensure safety and promote economic justice for the survivor."

36) The above□mentioned report also stated that effective strategies to end violence against women must include strong measures that promote economic security and restitution for survivors. Many women Ms. Yogita Vs. Sh. Durgesh Mishra etc. are compelled to stay in abusive relationships or return to their batterers because of financial constraints and economic concerns. Moreover, protection order proceedings are an appropriate and necessary venue to address the economic injustice that often characterizes domestic violence. It is pertinent to acknowledge that even in the most developed countries like the USA there are strong economic provisions for the women. For instance, child support and/or temporary spousal maintenance awards are specifically authorized by most state statutes; typically, these forms of emergency financial support to survivors and their children can be obtained in protection order proceedings.

37) The PWDV Act,2005 is a legislation aimed at strengthening the economic independence of a woman and therefore includes the aspect 'financial deprivation to the women' in the category of 'economic abuse'. Economic abuse can manifest itself in many different ways, and abusers can victimize their partners even after they have left the abusive relationship. The PWDV Act, 2005, has perceived that a woman needs 'economic' contribution from her husband in the light of 'domestic violence'. The said Act is law which provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. In the present case it is not disputed that the child is being brought up by the applicant□aggrieved single handedly and any economic deprivation to the child (in which the applicant is certainly interested) is the economic deprivation of the applicant.

38) In the present case there happens to be the most elaborated averment with in regard to 'stridhan' of the applicant□aggrieved. It has been deposed by CW□1 that all the articles have not been returned to her. When the FIR No.392/2003, under Section 498□A/406 IPC, was registered at Police Station Defence Colony the Sessions Court had granted the anticipatory bail to the accused on

the condition Ms. Yogita Vs. Sh. Durgesh Mishra etc. that Rs.50,000/□would be given to the applicant herein. The amount of Rs.50,000/□was returned by the applicant herein to the respondents to improve the relations. The applicant herein did what the respondents wanted her to do in order to save her marriage. The issue of the wrongful retaining of Stridhan and the amount of Rs.50,000/□is certainly an economic abuse if proved. The sort of evidence that was required was the examination of the father who purportedly played part in returning the money to the respondents. That has not been done. The sole evidence that we have is the averment of the applicant. Certain dowry articles were also allegedly retuned by the applicant herein to the respondents. The amount of Rs.50,000/□was received by the applicant herein from her father vide receipt annexed as Annexure P□5A. It is relevant to hold that the receipt that is being mentioned of is the one which was issued by the applicant and not the respondent. Moreover, the said receipt has not been exhibited and proved. The applicant herein has not been able to discharge that initial burden of establishing the particular fact of giving the The amount of Rs.50,000/□to the respondents. The economic abuse regarding the stridhan and the amount of Rs.50,000/□is not established.

THE RELIEF SOUGHT u/s 19 of the PWDV Act,2005

39) The provision of S.19 essentially deals with the Residence orders:

> "(1) While disposing of an application under sub□section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order □
>
> (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
>
> (b) directing the respondent to remove himself from the shared household;
>
> Ms. Yogita Vs. Sh. Durgesh Mishra etc.
>
> (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
>
> (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
>
> (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
>
> (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. (4) An order under sub□section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly. (5) While passing an order under sub□section (1), sub□section (2) or sub□section (3), the court Ms. Yogita Vs. Sh. Durgesh Mishra etc. may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub□section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in□charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order. (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to."

40) The relief(s) u/s 19 PWDV which have been sought the applicant herein are :

i. The residence orders u/s 19 of PWDV Act, 2005 thereby directing the respondents to provide the applicant with the same level of residence as enjoyed by her when she lived with the respondent No.1;

ii. The directions to the respondents to return the stridhan of the applicant to her. In case the said stridhan and articles are not returned the applicant has sought an additional compensation of Rs.12 Lacs;

41) The S. 19(1) (f) PWDV Act, 2005 provides that on being satisfied that domestic violence has been perpetrated on the aggrieved woman the magistrate may direct the respondent to secure same level of Ms. Yogita Vs. Sh. Durgesh Mishra etc. alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require. There is no doubt that the said provision is aims at securing a shelter over the head of a woman either in the shared household or elsewhere. The responsibility to do so is fastened on the

respondents.

42) The kind of proof that was required on part of the applicant was the proof of the level of accommodation that she had enjoyed in the shared household. There happens to be no cogent evidence with that regard. An inference can only by drawn from the overall financial position of the respondents. The mere averments would show that the respondents are enjoying a comfortable life style. The provision of S.19(6) empowers the magistrate to impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

43) It is pertinent to see that even before the advent of the Act, the right of a wife to reside in the matrimonial home, was recognized as part of her right to maintenance, in so far as Hindus are concerned. In para□12 of its judgment in B.P. Achala Anand v. S. Appi Reddy and Another, 2005(3) SCC 313, the Supreme Court laid down the law on the point as follows :

"A Hindu wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause Ms. Yogita Vs. Sh. Durgesh Mishra etc. she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a Will to defeat such a right. (See Mulla : Principles of Hindu Law, Vol. I, 18th Edn., 2001, paras 554 and 555). The right has come to be statutorily recognised with the enactment of the Hindu Adoptions and Maintenance Act, 1956. Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of Section 3 of the Hindu Adoptions and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance the term "wife" includes a divorced wife."

44) In the paragraph No. 17 of the petition filed by the respondentohusband it has been admitted that the respondent herein had a sound financial background. The applicant herein cannot be expected to stay in her father's house indefinitely. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him.

45) In the present case it has already been held that the domestic violence stands established by the applicant particularly with respect to the incidence of physical injuries inflicted upon her body on 06.10.2006. That is sufficient reason for her to stay in a separate residence. I therefore direct the respondents to pay a monthly rent of Rs.10,000/□(Rupees Ten Thousand) so that the applicant could arrange for her accommodation.

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

46) The facts relating to the 'stridhan' articles essentially involve the factum of 'possession' of the movable articles. The expression "possession" is a legal term and its proof varies with the nature of property under the scrutiny of the courts and it can be proved by credible oral evidence as well. The expression "Evidence" has been defined under Section 3 of the Evidence Act which means and includes all statements which Courts permit or require to be made before it by witnesses in relation to matters of fact under inquiry such statements are called oral evidence. The testimony of a reliable witnesses about the possession cannot be brushed aside by giving superficial treatment or by ignoring it. The Courts are required to weigh to the oral testimony adduced by the parties and its ignorance would be treated to be fatal. In abundant caution, it is held that Courts while analysing oral statements of the witnesses are required to keep in view the statements of those witnesses who had deposed the acts of possession leading to an inference about possession of a party according to the nature of the property under consideration in preference to the statements of the witnesses who had stated only about possession simpliciter without stating any act of possession in favour of one party or other. (see AIR 1997 RAJ. 230 "Kanti Lal v. Shanti Devi").

47) Although the applicant herein has filed the list of dowry articles before the CAW Cell which is Annexure□P4 and has been exhibited as Ex.CW□1/4. However, the mere list would not prove the possession. The handing over of the dowry articles is that segment of fact which should have been brought out clearly by the applicant herein. In the Indian culture the actual delivery of the possession of the dowry articles is done either by the father/son or by any concerned person who could even be a relative. A bride sits pretty in the marriage while the arrangements etc. are made. She only has an idea what she would take in her matrimonial house. That is to say that she does not have the best knowledge of what she carries. The actual knowledge could only be provided by the father / brother / relative etc. who handed the possession. It is for this reason that when a list of dowry articles is Ms. Yogita Vs. Sh. Durgesh Mishra etc. prepared the same ought to be signed and countersigned by the giver and the taker. I can understand that this could appear a bit awkward at the time of the marriage but the courts can come to definite conclusion only after being satisfied of the 'possession' by one evidence or the other. Even the oral testimonies of the persons would do. It is for this reason that I am skeptic of relying solely on the oral testimony of the applicant herein. The sole oral evidence of the applicant (CW□1) is not able preponderate the probability.

48) There happens to be other difficulty in granting the relief of the recovery of the 'stridhan'. The recovery has to be specific and so has to be evidence otherwise great difficulty arises in implementing the same. The applicant has not been able to adduce that precise evidence which could lead her to have the said relief. The ration in the judgment AIR 1997 RAJ. 230 "Kanti Lal v. Shanti Devi" could not come to the rescue of the applicant. The rigors of the legal proof ought be undergone in order to establish a particular fact. The prayer of the applicant with respect to the restoring of the stridhan articles is declined.

49) However, I would caution myself in commenting more on the aspect of 'stridhan' a criminal proceeding' is also pending u/s 406 IPC. I have only held on the basis of the requirements of the PWDV Act, 2005.

THE RELIEF SOUGHT u/s 20 of the PWDV Act,2005

50) Now I come to the monetary relief(s) to the applicant aggrieved. The scheme of the PWDV Act, 2005 does provide for the interim monthly relief as well as the compensation & monetary damages to the said applicant. According to S.20 of the PWDV Act, 2005:

Ms. Yogita Vs. Sh. Durgesh Mishra etc. (1) While disposing of an application under sub section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force. (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. (4) The Magistrate shall send a copy of the order for monetary relief made under sub section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the Ms. Yogita Vs. Sh. Durgesh Mishra etc. period specified in the order under sub section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

51) The provision of S.20 PWDV Act,2005 deals with the monetary relief. It speaks of "monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence." The monetary relief under S.20 thus takes adequate care of the reality that an aggrieved woman may have to bring up the children on her own. However, the provision is characterized by two relevant factors:

i. the expenses incurred and ;

ii. the losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence.

52) The losses as prescribed include the loss of earnings; the medical expenses; the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person. The evidence that was required on part of the applicant was to establish that the appropriate facts with respect to the losses as mentioned under S.20 PWDV Act, 2005. The applicant had merely averred Ms. Yogita Vs. Sh. Durgesh Mishra etc. and deposed the financial status of the respondents. The said provision is based on specific reimbursement rather than general monetary maintenance. The applicant has sought Rs. Rs.25,000 per month and the following prayer(s) which apparently fall under S.20 PWDV Act, 2005 and the litigation cost of Rs.10,000/□

53) There can be no doubt that S.20(3) empowers the to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

Therefore the piece of evidence that would be required on part of the applicant herein in order establish the monetary claim under S.20 is the elaboration of the expenses required and the loses suffered. The only loss averred is that of Rs.10,000/□on the litigation. As far as the monthly monetary relief is concerned the principle is that the sum so granted must be reasonable and consistent with the standard of living to which the aggrieved person is accustomed. In Bhagwan v. Kamla Devi (AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The applicant has admitted that she is getting some maintenance under S.125 Cr.P.C. According to S.20 PWDV Act, 2005 the magistrate may still grant an additional maintenance depending on the facts of the case. The applicant has asked for Rs.25,000/□per month

54) The term `maintenance' is defined in Black's Law Dictionary, (6th Edn. pp.953□54) thus; "The furnishing by one person to another, for his or her support, of the means of living, or food, clothing, shelter, etc., particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child or husband and wife'`. For computing maintenance the following test have been laid down by the Hon'ble Supreme Court in Jasbir Kaur Sehgal v. District Judge, Dehradun and Ors., 1997 (7) SCC 7, wherein it has been observed that "No set formula can be laid for fixing the amount of maintenance. It has, in the very Ms. Yogita Vs. Sh. Durgesh Mishra etc. nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

55) Considering the facts of the case I am inclined to grant a monthly maintenance of Rs.10,000/□ (Rupees Five Thousand) per month from the date of order after deducting the amount paid to the applicant under the other litigations.

THE RELIEF SOUGHT u/s 22 of the PWDV Act,2005

56) Compensation to the victims of the crime is laso covered under S.357 of the Cr.P.C. In awarding compensation, it is necessary for the Court to decide if the case is a fit one in which compensation deserves to be awarded. If the Court is convinced that compensation should be paid, then quantum of compensation is to be determined by taking into consideration the nature of the crime, the injury suffered and the capacity of the convict to pay compensation etc. It goes without saying that the amount of compensation has to be reasonable, which the person concerned is able to pay. If the accused is not in a position to pay the compensation to the injured or his dependents to which they are held to be entitled to, there could be no reason for the Court to direct such compensation. (Sarwan Singh and Ors. Vs. St. of Punjab AIR 1978 SC 1525 : 2 (1978) 4 SCC 111 Ms. Yogita Vs. Sh. Durgesh Mishra etc.

57) In Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Anr. [(2007) 6 SCC 528] explaining the scope and the purpose of imposition of fine and/or grant of compensation, it was observed that the purpose of imposition of fine and/ or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other, factors enumerated out of the same; but S.357(3) does not impose any such limitation and power there□under should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a Judge.

58) As far as the monetary relief under S.22 PWDV Act, 2005 is concerned the same deals with compensatory orders and says:"In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent."

59) The compensation provided under S.22 is a onetime payment in addition to the payment (monthly or lump□sum) granted under S.20 of the PWDV Act,2005. The scheme of the said act covers the aspect of human agony and also uses the terminology of 'damages' which is usually used in the Indian Contract Act, 1872. However, the commercial transactions under the contractual obligations give little significance to the human agony. For instance the illustration (n) appended Ms. Yogita Vs. Sh. Durgesh Mishra etc. to S.73 of the Indian Contract Act, 1972 says: "A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day; B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined.

A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment."

60) The human agony of a trader being ruined by the untimely payment of money from his debtor attracts no more remedy than the mere principle amount along with the interest. In the commercial transaction the damages must have been arisen naturally in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. The provision under S.22 PWDV Act, 2005 though speaks of 'damages' and 'compensation', there happens to be a human touch to it. The said human touch is further strengthened by the fact that no statutory device has been provided in order to gauge the said damage. It is even more human that the provision of S.20 of the PWDV Act, 2005 which is guided by the loss of earning etc. Now the question is what amount is deserved by the applicant in the present case in the circumstances where in particular the emotional & economical abuses stand reasonable established.

61) The statute PWDV Act,2005 uses two terms together i.e. 'compensation' and 'damages' and by using two terms together the legislators have imported the concept of compensatory damages and the punitive damages which could deter the respondent from committing a similar action in the future. The ingredients of the measure of such compensation & damages are roughly enumerated as in terms of: the injuries, including mental torture and emotional distress. There is however no test provided. How can the mental torture and the emotional distress be proved? It has been held in AIR 1973 Delhi 200 that it may safely be stated that any conduct of the husband which causes disgrace to the wife or subjects her to a course of annoyance and indignity amounts to legal cruelty. Proof beyond Ms. Yogita Vs. Sh. Durgesh Mishra etc. reasonable doubt is not postulated where human relationship is involved and eye-witnesses are difficult to obtain. Similar proposition was laid down in Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121. As far as 'emotional distress' is concerned the said terminology is more akin to torts. While granting damages there are 'mitigation rules' whereas in 'emotional distress' there happens to be no mitigation rules particularly when one is dealing with the human relations out of matrimony and the likes. By combining 'damages' with 'emotional distress' the provision of S.22 of the PWDV Act, 2005 thus seems to have enunciated the concept of 'matrimonial tort'. Courts have awarded damages for emotional distress primarily when the 'physical injury' has resulted and not otherwise. Originally at common law, a plaintiff could not recover for physical injury from fright alone absent an impact even though the defendant was shown to have operated a railroad negligently (shock without impact). In an English case Victorian Railways Commissioners v. Coultas [(1888) 13 AC 222] a woman was barred from recovery due to shock despite suffering a miscarriage. Even with intentional conduct, absent material damage, claims for emotional harm were similarly barred. "Mental pain or anxiety, the law cannot value, and does not pretend to redress, when the unlawful act causes that alone. Courts had been reluctant to accept a tort for emotional harm for fear of opening a "wide door"

> to frivolous claims. [Mitchell v. Rochester Railway Co. 151 NY 107 (1896)]. The idea that shock without impact would be a bar to recovery was first questioned at the Queen's Bench in Pugh v. London etc. Railroad Co.([1896] 2 QB 248.)

62) The PWDV Act, 2005 has added 'mental torture' thereby clarifying that 'mental injury' is as much the part of 'emotional distress'. The definition of 'emotional distress' is thus expanded under the PWDV Act, 2005. This expanded definition finds great support from the recently developed concept of Intentional infliction of emotional distress (IIED) which is a tort that results in extreme emotional distress. Some jurisdictions refer to it as the tort of outrage.

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

63) In matrimonial cases the very domestic violence would cause mental distress whether physical abuse is inflicted or not. The physical abuse would add to emotional distress. The PWDV Act, 2005 addresses such emotional distress by providing for the damages to the aggrieved woman. The measure of the damages could well be done by the general principles of applying test of directness while not relying too much upon the remote possibilities even if human agony is considered. Compensation can assist women to deal with the aftermath of violence at both a practical and symbolic level. The applicant□aggrieved has been able to establish the physical abuse and has sought Rs.10 Lakh as compensation and damages. After going through the whole evidence and the overall circumstances I am inclined to grant the damages and compensation of Rs.1 Lakh to the applicant□aggrieved.

THE RELIEF SOUGHT u/s 21 of the PWDV Act,2005

64) The applicant is having the custody of the child. There also happens to be a Guardianship case pending. In that view the custody of the child shall remain with the applicant herein subject to any order / direction etc. of the concerned Guardianship Court.

65) In view of the whole case the following relief(s) under S.18 of the PWDV Act,2005 is granted to the applicant and the respondents are restrained from :

i. committing any act of domestic violence;

ii. aiding or abetting in the commission of acts of domestic violence;

iii. causing violence to the dependants, other relatives or any person who give t

person assistance from domestic violence;

66) The relief under S.19 of the PWDV Act,2005 : The respondents shall jointly & severally pay Rs.10,000/□(Rupees Ten Thousand) per month towards the rent of the separate residence for the applicant herein;

67) The relief under S.20 of the PWDV Act,2005 is granted to the applicant and the respondents are directed to Rs.10,000/□(Rupees Fifteen Thousand) per month after adjusting any amount paid to the applicant in any other litigation.

68) The Relief under S.21 of the PWDV Act,2005: the custody of the child shall remain with the applicant herein subject to any order / direction etc. of the concerned Guardianship Court.

69) The Relief(s) under S.22 of the PWDV Act,2005: The respondents shall jointly & severally pay Rs.1,00,000/□(Rupees One Lakh) as damages to the applicant.

70) The other relief(s) sought are declined. The present case is disposed of in the terms as above□ said.

71) The file be consigned to the record room.

Announced in the open court on 27th July, 2010.

(VEENA RANI)
METROPOLITAN MAGISTRATE: SOUTH DELHI

Ms. Yogita Vs. Sh. Durgesh Mishra etc.

Acme Housing India Pvt. Ltd. vs Union Of India & Ors. on 29 January, 2024

Author: Manmohan

Bench: Dinesh Kumar Sharma, Manmohan

$~
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 7743/2019

RECKITT BENCKISER INDIA PRIVATE LIMITED ..... Petitioner
Through: Mr. P. Chidambaram, Senior Advocate with Mr. R. Jawahar Lal, Mr. Siddhar Bawa Mr. Anuj Garg, Mr. Mohit Sharma and Ms. Harshita Advocates.
Mr.Amar Dave, Amicus Curiae with Mr. Vikramaditya Bhaskar, Advocate.

versus

UNION OF INDIA THROUGH: ITS SECRETARY & ORS.
..... Resp
Through: Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.
Mr.Asheesh Jain, CGSC with Mr. Gaur Kumar Advocate for R-1
Mr.Farman Ali, Advocate with Ms.Ush and Mr.Krishan Kumar, Advocates for &3

+ W.P.(C) 10999/2018
M/S PYRAMID INFRATECH PRIVATE LIMITED ..... Petitioner
Through: Mr.Abhishek A Rastogi, Rastogi, Ms. Meenal So Singh. Advs.

Versus

UNION OF INDIA & ORS. .....
Through: Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya Rai, Mr.

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Signing Date:29.01.2024 18:24:48

W.P.(C) 7743/2019 & other connected matters

Kartik Sabharwal and Advocates for NAA and

Mr. Aditya Singla, SSC
Sharma, Advocate for R
Ms. Pratima N. Lakra,
Ms.Vanya Bajaj and Mr.
Baweja, Advocates for
Mr. Vinod Diwakar, CGS
Mr. Olson Nair, Advoca

\+ W.P.(C) 12444/2018

MASCOT BUILDCON PRIVATE LIMITED .....

Through: Mr.Aseem Mehrotra, Adv

Versus

NATIONAL ANTI-PROFITEERING AUTHORITY & ORS.

..... Respondents

Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Farman Ali, SPC wit
Farooqui, Advocate for

\+ W.P.(C) 12647/2018

LIFESTYLE INTERNATIONAL PVT. LTD. .....

Through: Mr. Tarun Gulati, Sr.
Mr.Sparsh Bhargava wit
Farsaiya, Advocate.

Versus

UNION OF INDIA & ORS. ....

Through Mr. Anurag Ahluwalia,
Mr.Milind Nagpal Advoc
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 13194/2018

SHARMA TRADING COMPANY .

Through: Mr. Naresh Thacker, Mr
Visalaksh, Mr. Udit Ja

Tater, Mr. Saurabh Dug
Mr. Ajitesh Dayal Sing

Versus

UNION OF INDIA & ORS. .....

Through: Mr. Anurag Ahluwalia,
Mr.Milind Nagpal Advoc
Ms.Aakanksha Kaul, Adv
Ms.Versha Singh and Mr
Ms. Rhea, Advocates fo
Mr.Zoheb Hossain, Sr.S
with Mr.Vivek Gurnani,
Mr. Sanjeev Menon, Ms.
Advocates for NAA/DGAP

\+ W.P.(C) 378/2019

HINDUSTAN UNILEVER LIMITED ...

Through: Mr.Ajay Bhargava, Ms.V
and Mr.Nikitha Shenoy,

W.P.(C) 7743/2019 & other connected matters

Versus

UNION OF INDIA & ORS. ...

Through: Mr. Vikrant N. Goyal,
Mr.Nitin Chandra and M
Advocates for UOI.
Mr.Harish Vaidyanathan
with Mr.Srish Kumar Mi
Mehlawat and Mr.Alexan
Paikaday, Advocates.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 1418/2019 & CM APPL. No.6501/2019

M/S J.P. & SONS THROUGH:
SHRI ANKIT KHANDELWAL, PROPRIETOR ..... Petit

Through: Mr.Ajay Bhargava, Ms.Vanita Bharg
Mr.Aseem Chaturvedi and Mr.Sahil
Siddiqui, Advs.

Versus

NATIONAL ANTI- PROFITEERING AUTHORITY THROUGH: ITS SECRETARY & ORS. ..... Respondents

Through: Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach, Ms. Abhipriya, Mr.Vivek Gaurav, Ms.S Aneja and Ms.Manisha, Advocates for NAA and DGAP.
Mr. Kamal Sawhney,, Mr. Deepak Thackur, Ms. Aakansha Wadhwani, Advocates for R-4.

\+ W.P.(C) 1655/2019

M/S EXCEL RASAYAN PRIVATE LIMITED ..... Petitioner

Through: Mr.Abhishek A Rastogi, Ms. Pooja M. Rastogi, Ms. Meenal Songire & Mr. A Singh, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ravi Prakash, CGSC with Ms. Ast Khandelwal, Advocates for
Ms.Akanksha Kaul, Advocate with Ms. Versha Singh Advs for UOI.
Mr.Gyanendra Singh, Advocate.
Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.

\+ W.P.(C) 2347/2019

JUBILANT FOODWORKS LTD. & ANR. ..... Petitioners

Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Ravi Prakash, CGSC Khandelwal, Advocates
Mr.Bhagvan Swarup Shuk
Mr.R.R.Mishra, Advocat
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 3759/2019
MASCOT BUILDCON PRIVATE LTD. .
Through: Mr.Aseem Mehrotra, Adv

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Harish Vaidyanathan
Mr. Srish Kumar Mishra
Mr. Sagar Mehlawat and
Mr. Alexander
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 4213/2019
ABBOTT HEALTHCARE PRIVATE LIMITED
& ANR. ..... Petitioner
Through: Mr.Ajay Bhargava, Ms.Vanita Bhargava
and Ms. Nikhitha Shenoy, Advs.

Versus
UNION OF INDIA & ORS. ....
Through: Mr.Ripu Daman Bhardwaj
Mr. Kushagra Kumar, Ad
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

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SINGH RAWAT

W.P.(C) 7743/2019 & other connected matters

Signing Date:29.01.2024
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Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 5558/2019 & CM APPL.No.24368/2019
UNICHARM INDIA PVT. LTD. ..... Petitioner

Through: Mr.Rupender Sinhmar, Mr.Prahlad Sing
Mr.K. Gurumurthy, Advs.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ravi Prakash, CGS
Khandelwal, Advocates
Mr. Anurag Ahluwalia,
Mr.Milind Nagpal Advoc
Mr.Farman Ali Magrey w
Jamnal and Mr.Krishan
for R-2 & 3.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8162/2019

AFFINITI ENTERPRISES .....
Through: Mr. R. Jawahar Lal, Mr
Mr. Anuj Garg, Mr. Moh
Harshita, Advocates.

Versus

UNION OF INDIA THROUGH: ITS SECRETARY & ORS.
..... Respo
Through: Mr.Abhay Prakash Sahay, CGSC, Ms.
Mannu Singh, Mr.Kunal Dha
Ms.Swayamprabha, Advs for UOI.

W.P.(C) 7743/2019 & other connected matters

Mr. Ravi Chawla, St.
with Mr. Avneesh Kumar
Advocate.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 7910/2019 & CM APPL.No.32779/2019
SALARPURIA REAL ESTATE PVT. LTD ..... Petition
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. A
Singh, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC wit
Mr Saksham Sethi, GP, Mr. Sarvan Ku
Advocate for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 7911/2019
SATTVA DEVELOPERS PVT. LTD ..... Petitioner
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Advs
Versus

UNION OF INDIA & ORS. .....
Through: Mr. Manish Mohan, CGSC
Devendra Kumar, Advoca

Mr.Abhay Prakash Saha
Mannu Singh, Mr.
Ms.Swayamprabha, Advs
Mr.Gyanendra Singh, Ad
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8078/2019
M/S SATYA ENTERPRISES
Through: Mr.Sumit K Batra
Khurana, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Sushil Kumar Pandey
Neha Yadav, Mr. Kuldee
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Satyakam, ASC with

Kashuyap,Adocate for G
Mr. Ashish Verma and M
Moulik, Advocates

\+ W.P.(C) 9053/2019

UNICHARM INDIA PVT. LTD ....

Through: Mr.Rupender Sinhmar, M
Advs.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ....

Through: Mr. Ravi Prakash, CGSC
Khandelwal, Advocates
Mr.Farman Ali with Ms.
Mr.Krishan Kumar, Advo
3.

\+ W.P.(C) 11253/2019 & CM APPL. No.46337/2019

LIFESTYLE INTERNATIONAL PVT. LTD. ..... Petitione

Through: Mr. Tarun Gulati, Sr. Advocate with
Mr.Sparsh Bhargava with Ms.Ishita
farsaiya, Advocate.

Versus

UNION OF INDIA & ORS. ...

Through: Mr. Viraj R. Datar, Sr
Nitish Chaudhary, Advo
R-1 present-in-person.
Mr. Rajesh Kumar with
Advocates for UOI.
Mr.Apoorv Kurup,
Mr.Shivansh Dwivedi, A
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12355/2019

PARAMOUNT, PROPBUILD PVT. LTD. ..... Petitioner

Through: Mr.Abhishek Choudhary, Advocate.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ...

Through: Mr.Ruchir Mishra, Mr.
Ms. Reba Jena Mishra a
Shukla, Advocates for
Mr.Bhagwan Swaroop Shu
Mr.Sarvan Kumar Shukla
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12717/2019

BHARTIYA CITY DEVELOPERS PVT LTD ..... Petiti

Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. A
Singh, Advs

Versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Vikram Jetly CGSC and Ms.Shreya
Jetly, Adv. for UOI
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 12847/2019 & CM APPL.No.52474/2019

RAMPRASTHA PROMOTERS AND DEVELOPERS PVT. LTD.
..... Petit

Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ..

Through: Mr. Vikram Jetly CGSC
Jetly, Adv. for UOI.
Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn

UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for
Mr.Jatin Puniyani, GP

\+ W.P.(C) 969/2020 & CM APPL.5342/2020

NESTLE INDIA LTD. & ANR. ..
Through: Mr. V. Lakshmikumaran,
Sachdev, Mr. Yogendra
Mr.Agrim Arora, Advoca

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Kirtiman Singh, CG
Noor, Mr. Varun Rajawa
Mehra and Ms.Vidhi Jai
UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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SINGH RAWAT
W.P.(C) 7743/2019 & other connected matters
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\+ W.P.(C) 1171/2020
IFB INDUSTRIES LTD, ..
Through: Mr. S. Ganesh, Senior
U.A. Rana and Mr. Hima
Advocates

Versus

NATIONAL ANTI-PROFITEERING AUTHORITY & ANR.
..... Respo
Through: Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach,
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.S
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.
Mr. Dev P Bhardwaj and Mr. Sarthak

Anand, Advoctates for UOI

\+ W.P.(C) 1406/2020 & CM APPL. No.4879/2020
M/S FRIENDS LAND DEVELOPERS ...
Through: Mr.Prakash Kumar, Adv.

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Rajesh Kumar with
Advocates for UOI.
Ms.Sonia Sharma, Advoc
Purva Chugh, Advocate
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Advs for
Mr.Jatin Puniyani, GP
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

W.P.(C) 7743/2019 & other connected matters

Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 1780/2020
JOHNSON & JOHNSON PVT.LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.
Versus

UNION OF INDIA & ORS. ...
Through: Mr. Vikram Jetly CGSC
Jetly, Adv. for UOI/R-
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar wit
Mehrotra, Adv. & Ms. K
for R-4.

\+ W.P.(C) 2083/2020 & CM APPL.No.7369/2020
FUSION BUILDTECH PVT LTD ..
Through: Mr.Abhishek A Rastogi,
Rastogi, Ms. Meenal So

Singh, Advs

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Rajesh Kumar with
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

W.P.(C) 7743/2019 & other connected matters

Mr. Aman Malik, Advoc
3/NAA.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for

\+ W.P.(C) 2084/2020 & CM APPL. No.7371/2020

ASTER INFRAHOME PVT LTD ..... Petitioner

Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Adv

Versus

UNION OF INDIA & ORS. .....

Through: Mr. Rajesh Kumar with
Advocates for UOI.

Mr.Samir Malik, Adv. f
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for

\+ W.P.(C) 2445/2020

MIS SARVPRIYA SECURITIES PVT. LTD ....

Through: Mr.Puneet Agrawal, Adv
Mr.Prem Kandpal, Mr.Ke
Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Aman Malik, Advoca
3/NAA.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

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W.P.(C) 7743/2019 & other connected matters
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Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 2490/2020

JOHNSON & JOHNSON PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.
Versus

UNION OF INDIA & ORS. ....
Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 2742/2020 & CM APPL. No.9552/2020
ACME HOUSING INDIA PVT. LTD. ..
Through: Mr.Prateek Bansal, Adv

Versus

UNION OF INDIA & ORS. .....
Through: Mr.Samir Malik, Advoca
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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\+ W.P.(C) 3737/2020

PHIILIPS INDIA LIMITED. .....
Through: Mr.Shashank Shekhar wi
Rajkonwar, Advs.

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Vipul Agrawal with
Naushad, Jr.Standing C
Ms.Shakshi Sherwal, Ad
Revenue.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for
Ms. Mansie Jain, Adv f
Mr.Jatin Puniyani, GP

\+ W.P.(C) 3910/2020
MACROTECH DEVELOPERS LTD. (FORMERLY KNOWN AS M/S
LODHA DEVELOPERS LTD.) & ANR ..... Petitioners
Through: Mr. Kamal Sawhney, Mr.Deepak Thackur
and Ms. Aakansha Wadhwani, Advocates

Versus

UNION OF INDIA & ORS ....
Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

Mr.Vikramaditya Bhask
Mr.Amar Dave, Amicus C
Vikramaditya Bhaskar,

\+ W.P.(C) 3911/2020
M/S NANI RESORTS AND FLORICULTURE PVT. LTD.

Through: Mr.Puneet Agrawal, Adv
Mr.Prem Kandpal, Mr.Ke
Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Rajeev K Panday, AA
Roy, Mr. P. Srinivasan
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for
Mr. Abhishek Saket, Ad

\+ W.P.(C) 4131/2020
MS. SAMSONITE SOUTH ASIA PVT. LTD ..... Petitioner
Through: Mr. Rohan Shah, Adv.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC
Mr. Gaurav Kumar Advoc
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.

Ms. Abhipriya, Mr.Viv
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv.

\+ W.P.(C) 4345/2020

RECKITT BENCKISER INDIA PRIVATE LIMITED ..... Petitioner
Through: Mr. P. Chidambaram, Senior Advocate
with Mr. R. Jawahar Lal, Mr. Siddha
Bawa Mr. Anuj Garg, Mr. Mohit Sharm
and Ms. Harshita Advs.
versus

UNION OF INDIA AND ORS & ORS. ..... Respondents
Through: Mr.Asheesh Jain, CGSC with
Mr. Gaurav Kumar, Ms.Ankita Kedia a
Ms.Ria Khanna, Advocates for R-1.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 4348/2020

APEX MEADOWS PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ..... R
Through: Ms. Neha Malik, Adv. f DGAP.

Mr. M. Rambabu, Ms. P Mr.N.Eswara Rao, Advs. Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 4375/2020

M/S PATANJALI AYURVED LTD ..... Petitioner
Through: Mr. Priyadarshi Manish, Mrs. Anjali Manish, Mr.Saksham Garg and Ms.Anki Advs.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 4516/2020

MCNROE CONSUMER PRODUCTS PVT. LTD. ..... Petitioner
Through: Mr.Tarun Gulati, Sr.Advocate with Mr. Kumar Visalaksh, Mr. Udit Jain, Mr. Arihant Tater, Mr. Saurabh Dugar and Ajitesh Dayal Singh, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Mr.Farman Ali with Ms. Mr.Krishan Kumar, Advo

\+ W.P.(C) 4607/2020

AFFINITI ENTERPRISES .....

Through: Mr. R. Jawahar Lal, Mr
Mr. Anuj Garg, Mr. Moh
Harshita, Advs.

Versus

UNION OF INDIA & ORS. ....

Through: Mr.Farman Ali with Ms.
Mr.Krishan Kumar, Advo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr. Ravi Chawla, St. C
with Mr. Avneesh Kumar
Advocate

\+ W.P.(C) 4824/2020 & CM APPL.No.2183/2021

M/S CILANTRO DINERS PVT. LTD ..... Petitioner

Through: Mr.Nikhil Gupta, Mr. Vipin Upadhyay
Mr. Prince Nagpal and Mr. Rochit
Abhishek, Advocates

Versus

UNION OF INDIA & ORS. ....

Through: Mr.Farman Ali with Ms.
Mr.Krishan Kumar, Advo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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SINGH RAWAT
W.P.(C) 7743/2019 & other connected matters
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Mr.Rony John, Mr.Piyu
Mr.Arshdeep Singh and
Advocates for R-2 and

+ W.P.(C) 4957/2020

WHIRLPOOL OF INDIA LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.
Versus

UNION OF INDIA & ORS. ....
Through: Mr.Farman Ali with Ms. Mr.Krishan Kumar, Advo Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Ms. Sonu Bhatnagar, Sr with Ms. Venus Mehrotr Kanak Grover, Adv. for

+ W.P.(C) 5347/2020 & CM APPL. No.23558/2020

GAURSONS REALTECH PVT LTD ..... Petitioner
Through: Mr. Monish Panda, Advocate with Mr.Mrinal Bharat Ram and Mr. Gaurav Dabas, Advocates.
Versus

UNION OF INDIA & ORS. .....
Through: Mr.Bhagwan Swarup Shuk Mr. Sarvan Kumar and M Advocates for UOI.
Mr.Farmaan Ali with Ms Mr.Krishan Kumar, Advo

Mr. Zoheb Hossain, Sa
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 5798/2020

RAMPRASTHA PROMOTERS AND DEVELOPERS PVT. LTD. .....
Through: Mr.Puneet Agrawal, Advocate with Mr.Prem Kandpal, Mr.Ketan Jain and

Mr.Chetan Kumar Shukla Advocates..

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Anil Soni, CGSC for UOI with Mr Devvrat Yadav, Advocate.
Ms. Sonu Bhatnagar with Ms. Nishta Mittal and Ms. Monica Benjamin, Adv R-2 to 6, 8 & 7.
Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.
Ms.Akanksha Kaul, Advocate with Ms. Versha Singh Advs for UOI.
Ms. Alpana Singh & Mr. P. Pandey, Advocates for R-3

\+ W.P.(C) 5979/2020 & CM APPL. No.21655/2020

EMAAR MGF LAND LTD ...

Through: Mr. V. Lakshmikumaran, Sachdev, Mr. Yogendra Mr.Agrim Arora, Advoca

Versus

UNION OF INDIA & ORS. ...

Through: Mr. Ravi Prakash, CGSC Khandelwal, Advocate f Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Mr. Parangat Pandey an Singh, Advocates for R Mr. Satish Kumar, Sr.

\+ W.P.(C) 6671/2020

GAURAV SHARMA FOOD INDUSTRIES ..... Petitioner

Through: Mr. Nikhil Gupta, Mr. Vipin Upadh Mr. Prince Nagpal & Mr. Rochit, Advocates

Versus

UNION OF INDIA & ORS. ...

Through: Mr.Vivek Goyal, Advoca Sharma, Advocate and M Advocates for R-1.

Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 7412/2020 & CM APPL. No.24800/2020

SAMSUNG INDIA ELECTRONICS PVT LTD ..... Petitioner
Through: Mr. Tushar Jaswal, Mr. Rahul Sateeja
Mr.Pranav Bansal and Mr. Sanyam
Agarwal, Advs.

Versus

UNION OF INDIA & ORS. ...
Through: Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 7736/2020
M/S PRASAD MEDIA CORPORATION PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.
Versus
UNION OF INDIA & ORS. ..... Respondents
Through: Ms.Aakanksha Kaul, Advocate with
Ms.Versha Singh and Mr.Aman Sahani
Ms. Rhea, Advocates for UOI.
Ms. Sonu Bhatnagar, Sr. Standing Co
with Ms. Venus Mehrotra, Adv. & Ms.
Kanak Grover, Adv. for R-4.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 8229/2020
LITECON INDUSTRIES PVT.LTD. ..... Petition

Through: Mr. Kumar Visalaksh with Mr. Udit Ja
Mr. Arihant Tater, Mr. Saurabh Duga
Mr. Ajitesh Dayal Singh, Advocates.

Versus

UNION OF INDIA & ORS. ...
Through: Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI
Mr. Vipul Agrawal with
Naushad, Jr.Standing C
Shairwal and Mr.Vaibha
Revenue.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8751/2020 & CM APPL.No.28192/2020
M/S SIGNATURE BUILDERS PVT. LTD. ..... Petitioner
Through: Mr.Puneet Agrawal, with Mr.Prem
Kandpal, Mr.Ketan Jain and Mr.Chetan
Kumar Shukla Advocates..

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Harish Vaidyanathan
with Mr.Srish Kumar Mi
Mehlawat, Ms. Manpreet
Mr.Alexander Mathai Pa
for UOI.
Ms. Sonu Bhatnagar,Ms.
Adv. & Ms. Kanak Grove
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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+ W.P.(C) 9146/2020 & CM APPL. No.29630/2020

LITE BITE TRAVELS FOODS PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ...
Through: Mr.Satish Kumar, Sr.st
Ms.Vaishali Goyal and
Advocates for R-1.
Mr.Ashwini Chawla, Adv
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 9931/2020

M/S NIRALA PROJECT PVT LTD. ..... Petitioner
Through: Mr.Puneet Agrawal, Advocate with Mr.Prem Kandpal, Mr.Ketan Jain and Mr.Chetan Kumar Shukla Advocates.

Versus

UNION OF INDIA & ORS. .....
Through: Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI
Ms. Aakanksha Kaul, Ad
Ms. Neha Malik, Adv. f

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W.P.(C) 7743/2019 & other connected matters

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+ W.P.(C) 9934/2020 & CM APPL. Nos.31623-24/2020

M/S S3 BUILDWELL LLP .....
Through: Mr.Puneet Agrawal, Adv
Mr.Prem Kandpal, Mr.Ke
Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA & ORS. ....
Through: Ms.Aakanksha Kaul, Mr.

Mr.Aaman Sahani, Advoc
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 9935/2020 & CM APPL. Nos.31625-26/2020

M/S JMK HOLDINGS PVT LTD. ..... Petitioner
Through: Mr.Prem Kandpal, Advocate
Mr.Ketan Jain and Mr.Chetan Kumar
Shukla Advocates.
Versus

UNION OF INDIA & ORS. ....
Through: Ms.Aakanksha Kaul, Adv
Ms.Versha Singh and Mr
Ms. Rhea, Advocates fo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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\+ W.P.(C) 10901/2020 & CM APPL. 34162-34163/2020

S.C. JOHNSON PRODUCTS PVT. LTD. ..... Petitioner
Through: Mr.Rajat Bose with Mr.Ankit Sachde
and Ms. Shohini Bhattacharya, Advs

Versus

UNION OF INDIA, THROUGH ITS SECRETARY & ORS.
..... Respondents
Through: Ms.Nidhi Raman, CGSC with Mr.Zubin
Singh and Mr. Debar Chan De, Advoca
for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

+ W.P.(C) 10932/2020 & CM APPLs..34237-34238/2020 AND 8172/2

M/S EMAAR MGF LAND LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Ravi Prakash, CGSC Ali, Mr.Manas Tripathi Shivkumar, Advocate fo Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Ms.Neha Malik, Advocat

W.P.(C) 7743/2019 & other connected matters

Mr. Satish Kumar, Sr. for respondent No.3.
Ms. Neha Malik, Adv. f DGAP.

+ W.P.(C) 990/2021

M/S BPTP LTD. ...
Through: Mr.Kishore Kunal and M & Mr. Anuj Kumar, Advs

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC Mr. Gaurav Kumar, Advo Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Ms. Sonu Bhatnagar, Sr with Ms. Venus Mehrotr Kanak Grover, Adv. for

+ W.P.(C) 997/2021 & CM No.2721/2021

M/S MAN REALTY LTD & ANR. ..... Petitioners
Through: Mr. V. Lakshimkumaran, Mr. Karan

Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 1357/2021

M/S INFINITI RETAIL LTD ..... Petitioner
Through: Mr.Rohan Shah, Mr.Mihir Deshmukh,
Mr.Rajat Mittal, Mr. Jay Gandhi an
Megha, Advocates.

Versus

UNION OF INDIA AND ORS. ..... Respondent
Through: Mr. Dev. P. Bhardwaj, CGSC for UOI
Mr. Sachin Singh and Ms. Chaahat
Khanna, Advs.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garac
Ms. Abhipriya, Mr.Vivek Gaurav, Ms
Aneja and Ms.Manisha, Advocates fo
NAA and DGAP.

\+ W.P.(C) 1366/2021

M/S TATA STARBUCKS PRIVATE LIMITED ..... Petitioner
Through: Mr. Rohan Shah, Advocate

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Rohan Shah, Mr. S.
Sahasranaman and Mr. S
Advocates for UOI
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 1593/2021 & CM APPL. No.4529/2021

RAYMOND CONSUMER CARE LTD. ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Ms.Amrita Prakash, CGS Ashwani Mehta, Advocat Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 1765/2021

M/S LE REVE .....
Through: Mr.Nikhil Gupta, Mr.Vi Mr. Prince Nagpal and Abhishek, Advs.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Rishabh Sahu with M Advs. for UOI.
Mr.Ashwini Chawla, Adv Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 1766/2021

NEEVA FOODS PVT. LTD .....

Through: Mr.Nikhil Gupta, Mr.Vi
Mr. Prince Nagpal
Abhishek, Advs.

Versus

UNION OF INDIA & ORS. .....
Through: Mr. Aditya Dewan, Advo
Mr.Zoheb Hossain, Sr.S
with Mr.Vivek Gurnani,
Mr. Sanjeev Menon, Ms.
Advocates for NAA/DGAP

\+ W.P.(C) 1852/2021 & CM Nos.5359/2021, 29026-29027/2021

M/S SUBWAY SYSTEMS INDIA PVT LTD ..... Petitioner
Through: Mr. Abshishek A. Rastogi and Mr.Prat
Prava Saha, Advocates.
Versus

UNION OF INDIA & ORS. ...
Through: Mr.Satya Ranjan
Mr.Kautilya Birat, Adv
Mr.Zoheb Hossain, Sr.S
with Mr.Vivek Gurnani,
Mr. Sanjeev Menon, Ms.
Advocates for NAA/DGAP

\+ W.P.(C) 1951/2021 & CM APPL. Nos.5705-06/2021

M/S SUB WEST RESTAURANTS LLP ..... Petitioner
Through: Mr.Abhishek A Rastogi, Adv.

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Anshuman, Sr.Panel
Piyush Ahluwalia, Advo
Mr.Aditya Dewan, Advs.
Ms. Sonu Bhatnagar wit
Mehrotra, Adv. & Ms. K
for R-4.
Ms.Talish Ray, Adv.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 2440/2021

BONNE SANTE ..... Petitioner

Through: Mr.Nikhil Gupta, Mr.Vi
Mr. Prince Nagpal and
Abhishek, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Pratima N. Lakra,
Ms.Vanya Bajaj and Mr.
Baweja, Advocates for
Mr.Rony John, Mr.Piyus
Mr.Arshdeep Singh and
Advocates for R-2 and

+ W.P.(C) 2676/2021 & CM APPL.7906-07/2021

HORIZON PROJECTS PRIVATE LIMITED ..... Petitioner

Through: Mr. Kumar Visalaksh with Mr. Udit Ja
Mr. Arihant Tater, Mr. Saurabh Dugar
Mr. Ajitesh Dayal Singh, Advocates.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ... Respondents

Through: Mr. Rajesh Kumar with
Advocates for UOI.
Mr.Parangat Pandey and
Singh, Advocates for R

+ W.P.(C) 2785/2021 & CM APPL.8368/2021

SAMSUNG INDIA ELECTRONICS PVT LTD ..... Petitioner

Through: Mr. Sujit Ghosh, Mr. Mannat Waraich,
Mr. Ashray Behura and Ms.Ananya
Goswami, Advs.

Versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 2897/2021

ITC LIMITED & ANR. .....
Through: Mr. K.S. Suresh, Advoc
Aggarwal, Advocate.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ravi Prakash, CGSC
Khandelwal, Advocate f
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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W.P.(C) 7743/2019 & other connected matters

\+ W.P.(C) 2970/2021

M/S DRA AADITHYA PROJECTS PVT. LTD. ..... Petitioner
Through: Mr. Monish Panda with Mr.Mrinal Bhar
Ram and Mr. Gaurav Dabas, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Manish Mohan, CGSC
Mr.Devendra Kumar, Adv
Mr. Sameer Vashisht, A
with Ms. Sanjana Nangi
Mr. Yunus Malik, Adv.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 3254/2021

GILLETTE INDIA LTD ...
Through: Mr. V. Lakshmikumaran,
Sachdev, Mr. Yogendra
Mr.Agrim Arora, Advoca

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC
Mr. Gaurav Kumar Advoc

\+ W.P.(C) 3306/2021

PROCTER AND GAMBLE HOME PRODUCTS PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

W.P.(C) 7743/2019 & other connected matters

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ripu Daman Bhardwa
Mr. Kushagra Kumar, Ad
Mr.Vivek Goyal, CGSC w
Sharma, Adv. for UOI.
Mr.Zoheb Hossain, Sr.S
with Mr.Vivek Gurnani,
Mr. Sanjeev Menon, Ms.
Advocates for NAA/DGAP

\+ W.P.(C) 3327/2021

PROCTER AND GAMBLE HYGIENE AND HEALTH CARE LTD
..... Pet
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

versus

UNION OF INDIA & ORS.
Through: Mr.Vivek Goyal, Advoca
Sharma, Advocate and M
Advocates for R-1.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 3508/2021 & CM APPL. Nos.25152-53/2021

M/S ALTON BUILDTECH INDIA PVT LTD ..... Petiti
Through: Ms.Ruby Singh Ahuja, Ms. Kritika Sachdeva, Mr. Vishal Gehrana and Mr. Jappanpreet Hora, Advocates

versus

UNION OF INDIA & ORS.

Through: Ms. Pratima N. Lakra, Ms.Vanya Bajaj and Mr. Baweja, Advocates for Mr. Vinod Diwakar, CGS Kumar Singh and Mr.Ols UOI.
Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 3867/2021

M/S ELECTRONICS MART INDIA LTD ..... Petitione

Through: Mr.Nikhil Gupta, Mr.Vipin Upadhayay, Mr. Prince Nagpal and Mr.Rochit Abhishek, Advs.

Versus

UNION OF INDIA & ORS.

Through: Mr.Farman Ali, Advocat Kumar and Ms.Usha Jamn UOI.
Mr. Ripu Daman Bhardwa UOI
Mr. Yunus Malik, Adv.
Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

W.P.(C) 7743/2019 & other connected matters

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\+ W.P.(C) 4600/2021

INOX LEISURE LIMITED. ...

Through: Mr. Kumar Visalaksh wi Mr. Arihant Tater, Mr. Mr. Ajitesh Dayal Sing

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Ripu Daman Bhardwa
Mr. Kushagra Kumar, Ad
Mr.Bhagwan Swaroop Shu
Mr.Sarvan Kumar and Mr
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 4789/2021

M/S MANAS VIHAR SAHAKARI AWAS SAMITI LTD. ..... Petitioner

Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Adv

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Ripu Daman Bhardwa
Mr. Kushagra Kumar, Ad
Mr.Bhagwan Swaroop Shu
Mr. Sarvan Kumar and M
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

Aneja and Ms.Manisha,
NAA and DGAP.
Mr. Manas Bhatnagar, A

\+ W.P.(C) 4794/2021 & CM APPL. 14802/2021

YELLOW SUN RESTAURANTS PRIVATE LIMITED ..... Petitioner

Through: Mr. Nikhil Gupta, Mr. Vipin Upadhyay
Mr. Prince Nagpal & Mr. Rochit,
Advocates.

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Ajay Kumar Pandey,
with Mr.Piyush Mishra,

Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 6337/2021 & CM APPL.19960/2021

M/S PURI CONSTRUCTION PVT. LTD. ..... Petition
Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.
Versus

UNION OF INDIA & ORS. ...
Through: Mr. Kunal Sharma, Sr.
with Mr. Shubhendu Bha
Mr.Apoorv Kurup, CGSC
Shivansu Dwivedi and M
Advocates for R-1
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.

W.P.(C) 7743/2019 & other connected matters

Ms. Abhipriya, Mr.Viv
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12471/2021 & CM APPL.No.39234/2021

SOUTHWINDS PROJECTS LLP ..... Petitioner
Through: Mr.Kunal Vajani with Mr.Kunal Mimani,
Mr.Kartikey Bhatt and Mr.Gaurav Katr
Advs.
Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC
Mr. Gaurav Kumar Advoc
Mr.Aman Malik, Advocat
Mr.Aditya Singla, Sr.
R-4.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 14666/2021 & CM APPL.46201-46203/2021

ANAND RATHI

Through: Mr.Abhishek A Rastogi, Rastogi, Ms. Meenal So Singh, Advs

Versus

UNION OF INDIA & ORS.

Through: Mr. Ravi Prakash, CGSC Khandelwal, Advocate f

Mr.Aman Malik, Mr.Vij and Ms.Shubhi Bhardwaj and DGAP
Mr.Yunus Malik, Advoca DGAP.

\+ W.P.(C) 6983/2022 & CM APPL.21405/2022

WTC NOIDA DEVELOPEMENT COMPANY PRIVATE LIMITED ..... Peti

Through: Mr.Preetesh Kapur, Sr.Advocate with Shaunak Kashyap, Mr. Balasubramanian R. Iyer and Mr. Kanav Agarwal and Ms. Muskan Yadav, Advocates.

Versus

UNION OF INDIA & ORS.

Through: Ms. Archana Surve, Adv Mr. Ravi Prakash, CGSC Archana Surve, Mr. Vin Ahlawat, Advocates for Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 7781/2022 & CM APPL.23831/2022

SAMSUNG INDIA ELECTRONICS PVT LTD ..... Petit

Through: Mr. Sujit Ghosh with Ms. Mannat Wara Mr. Ashray Behrua and Ms.Ananya

Goswami, Advocates.

Versus

UNION OF INDIA & ORS.

Through: Mr. Rakesh Kumar, CGSC
Advocate for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8705/2022 & CM APPLs.26239-26240/2022

M/S TATA PLAY LIMITED

Through: Mr. Rohan Shah with Mr
Raichandani, Mr. Deepa
Advocates.

Versus

UNION OF INDIA & ORS.

Through: Mr.Abhishek Saket, Adv
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12533/2022 & CM APPL. Nos.37949-37950/2022

LICHFL CARE HOMES LIMITED ..... Petiti

Through: Mr. Pratyush Prava Saha, Advocate.

versus

UNION OF INDIA & ORS.

Through: Mr.Kamal Kant Jha, SPC
Singh, Advocate for R-
Mr.Abhishek Saket, Adv
Mr.K.K.Jha, SPC for R-

Mr. Zoheb Hossain, Sa

Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar wit
Mittal and Ms. Monica
R-5& 6.
Mr.Varun Sharma, Advoc
complainant.
Ms. Sharmila Upadhyay,
Pandey and Mr. Pawan U
for R-4.

\+ W.P.(C) 12557/2022 & CM APPL.Nos.38027-38028/2022

L OREAL INDIA PRIVATE LIMITED ..... Petitio
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ..
Through: Ms. Uma Prasuna Bachu,
Ms.Poonam, GP for R-1.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12573/2022 & CM APPLs.38062-38063/2022

M/S SWATI REALTY
Through: Mr.Abhishek A Rastogi,
Rastogi, Ms. Meenal So
Singh, Adv

Versus

UNION OF INDIA & ORS. ..
Through: Mr. Sandeep Vishnu, Ad
Ms. Suruchi Suri, Advo
Mr.Mayur, Advocate for

Ms. Sonu Bhatnagar wit
Mittal and Ms. Monica
R-5& 6
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12639/2022 & CM APPLs.38309-38310/2022 & 39263/202

M/S PERFECT BUILDWELL PVT LTD ..... Petitioner
Through: Mr. Krishna Mohan K Menon and
Ms. Parul Sachdeva, Advocate.

Versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Ravi Prakash, CGSC
Mr.Abhishek Khanna, Advocate for R-
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

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\+ W.P.(C) 12797/2022 & CM APPLs.38922-38924/2022

VASAVI AND GP INFRA LLP ..... Petitio
Through: Mr.Krishna Dev Jagarlamudi, Advocate
with Mr.N.Sai Vinod, Advocate.

Versus

UNION OF INDIA & ORS. ..
Through: Mr.Jatin, Sr.Panel
Ms.Chetanaya Puri, Adv
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar wit
Mittal and Ms. Monica
R-4

\+ W.P.(C) 13657/2022 & CM APPLs.41646-41647/2022

M/S DLF LIMITED

Through: Mr. V. Lakshmikumaran, Arora, Mr. Yogendra, M and Mr. Sumit Khadaria

Versus

UNION OF INDIA & ORS.

Through: Mr.Asheesh Jain, CGSC Mr. Gaurav Kumar, Advo R-1.
Mr. Vipul Agrwal, Adv.
Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

Mr.Satish Kumar, Sr.S Counsel with Ms.Vaisha Advocates for R-5.

\+ W.P.(C) 13715/2022 & CM APPLs.41879/2022, 45056/2022 and 45505/2022

NY CINEMAS LLP .

Through: Mr. Raj Shekhar Rao, S Mr.Rituraj H. Gurjar w Chadha, Mr. Sreekar Ae Ganjoo, Advocates.

Versus

UNION OF INDIA & ORS. .

Through: Mr. Sushil Kumar Pande Yadav, Mr. Kuldeep Sin UOI.
Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Mr. Anurag Ojha, Sr.St with Mr. Vipul Kumar, respondent No.3 & 4.
Ms.Sonu Bhatnagar with Narain, Ms.Venus Ms.Nishtha Mittal, Adv

\+ W.P.(C) 14835/2022

M/S AIRMID REAL ESTATE LTD. ..... Petitione
Through: Mr.Kishore Kunal and Ms.Ankita Prak
& Mr. Anuj Kumar, Advocates.

versus

UNION OF INDIA & ORS.
Through: Mr.Sushil Kumar Pandey
UOI.
Mr.Rajesh Kumar,
Ms.Ramneet Kaur, Advoc
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 15169/2022
GELENMARK PHARMACEUTICAL
LIMITED AND ANR ..... Petition
Through: Mr. Rohan Shah, Advocate.
Versus

UNION OF INDIA AND ORS ..... Respo
Through: Mr.Sushil Kumar Pandey with Mr.Kuld
Singh, Advocates for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 15172/2022

BARBEQUE NATION HOSPITALITY LTD ..... Petitio
Through: Mr. Srinivas Kotni, Mr.Akshay Kumar,
Mr.Anirudh Ramanathan, Mr. Safal Seth
Mr. Rishabh Dev Dixit, Advocates.

Versus

W.P.(C) 7743/2019 & other connected matters

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UNION OF INDIA AND ORS ..... Respo

Through: Mr.Sushil Kumar Pandey with Mr.Kuld
Singh, Advocates for UOI.
Mr.Rakesh Kumar, CGSC with Mr.Sunil
Advocate for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 15240/2022, CM APPLs.47193-47195/2022, 42515/2023

PRESCON REALTORS AND INFRASTRUCTURES
PRIVATE LIMITED ..... Pet

Through: Mr. Tushar Jaswal, Mr. Rahul Sateej
Mr.Pranav Bansal and Mr. Sanyam
Agarwal, Advs.

Versus

UNION OF INDIA & ORS.

Through: Mr.Vijay Joshi, Adv. f
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Anurag Ojha, Sr.Sta
Mr. Vipul Kumar, Advoc
Ms. Anushree Narain, S
with Ms. Simran Kumari
GST.

\+ W.P.(C) 16890/2022 & CM APPLs. 53510-53512/2022

BHAGWATI INFRA

Through: Mr.Bharat Rai Chandani
Mr.Deepak Kumar Khokha

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W.P.(C) 7743/2019 & other connected matters

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Versus

UNION OF INDIA & ORS.

Through: Mr. Chiranjeev Kumar,
Sachdeva, Advocates fo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.

Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 17073/2022 & CM APPL. 54098/2022

ALLERGAN HEALTHCARE INDIA PVT. LTD. ..... Petitioner
Through: Mr.Sparsh Bhargava, Ms. Ishita Farsau
Mr. Apoorv Shukla, Ms. Prabhleen Kaur
Ms.Vaushika Tanjeja and Mr. Purseth
Kanan, Advocate.

Versus

UNION OF INDIA & ORS. ..
Through: Mr.Jatin Singh, SPC fo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 15289/2022 & CM APPL.Nos.47442-47443/2022

ANUTONE ACOUSTICS LIMITED ..... Peti
Through: Mr. Rajsekhar Rao, Sr. Adv. with
Mr. Prateek K Chadha, Mr. Ruturaj Gur
Ms. Pragya Ganjoo, Ms. Kamini and Mr.
Sreekar Aechuri, Advocates

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS.
Through: Mr. V. Lakshmikumaran,
Advocate for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 16178/2022 & CM APPL. 38836/2023

ARIHANT SUPERSTRUCTURES LTD. ..... Petitio
Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.

Versus

UNION OF INDIA & ORS.
Through: Mr.Jatin Singh, SPC fo
Mr. Manish Kumar, Sr.
Counsel.
Ms. Anushree Narain an
Kumari, Advocates for
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 16266/2022 &. C.M.Nos.50925-50926/2022

PRASU INFRABUILD PVT LTD ..... Petit
Through: Mr.Tarun Jain, Advocate with Mr.Divy
Singh, Advocate.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS.
Through: Mr.Sanjay Kumar. SPC f
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Sumit Gaur, Advocat
12, 13, 14 & 15.

\+ W.P.(C) 16734/2022 & CM APPLs.52794-52795/2022

M/S NANDI INFRATECH PVT LTD ..... Appell
Through: Mr.Sandeep Chilana, Advocate with
Mr.Rastogi, Ms. Anjali Jain, Mr. Ab
Tanveer, Ms. Kannopriya Gupta, Ms.
Jagriti, Mr. Priyojeet Chatterjee &
Snehil Sharma, Advocates

Versus

UNION OF INDIA AND ORS ..... Respond
Through: Ms. Anushree Narain and Ms.Simran
Kumari, Advocates for GST.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach

Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 16935/2022 & CM APPL.53667/2022

NEW WORLD REALTY LLP ..... Petitioner
Through: Mr. Kumar Visalaksh, Mr. Udit Jain Mr
Arihant Tater and Mr.Ajitesh Dayal Si
Advocates.
Versus

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W.P.(C) 7743/2019 & other connected matters
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UNION OF INDIA AND ORS ..... Responden
Through: Mr. Sushil Raaja, SPC for UOI
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 17010/2022 & CM APPL.53925/2022

WADHWA REALTY PVT LTD. ..... Petitioner
Through: Mr. Kumar Visalaksh, Mr. Udit Jain and
Mr.Ajitesh Dayal Singh, Advocates

Versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Neeraj, SPC with Mr. Vedansh An
Ms.Sahaj Garg and Mr. Rudhra Paliwa
Advs for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 246/2023 & CM APPL.Nos.939-940/2023

M/S BHARTIYA URBAN PVT LTD. (FORMERLY, BHARTIYA CITY
DEVELOPERS PVT LTD.) ..... Petitio
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Advs.

Versus

UNION OF INDIA AND ORS ..... Respo
Through: Mr.Gigi C.George with Mr.Dheeraj Si
Advocates for R-1/UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 3866/2023 & CM APPL. 15035/2023

ATS HOMES PVT. LTD. ..
Through: Mr.Puneet Agrawal, Adv
Mr.Prem Kandpal, Mr.Ke
Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA AND ORS ..... Responden
Through: Mr. Anshuman and Mr. Piyush Ahluwal
Advocates for R1/UOI
Ms. Anushree Narain, Standing Couns
for GST/R-2 with Ms. Simran Kumari,
Advocate.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 11180/2023 & CM APPLs. 43445-43446/2023

M/S ATS TOWNSHIP PVT. LTD. ..... Petition
Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.

Versus

UNION OF INDIA AND ORS ..... Responde
Through: Mr. Ravi Prakash, CGSC with Ms.Astu

Khandelwal, Adv. for R-I (UOI).
Mr. Naginder Benipal, SPC with Mr.
Siwach and Ms. Harithi Kambri,
Advocates for UOI.
Ms. Anushree Narain, Standing Couns
with M s. simran Kumari, Advocate f
2, (CBIC).
Mr. S.V. Tyagi & Mr. Shivam Tyagi,
for R-2.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 11910/2023

PAREENA INFRASTRUCTURE PVT. LTD. ..... Petitione
Through: Mr.Vineet Bhatia, Advocate
Mr.Aamnaya Jagannath Mishra, Ms.Nidh
Aggarwal, Ms.Jyoti Verma and Mr.Bipi
Punia, Advocates.
Versus

UNION OF INDIA AND ORS ..... Responden
Through: Mr. Ravi Prakash, CGSC with Ms. Ast
Khandelwal, Advocate for
Mr. Virender Pratap Singh Charak,
Ms.Shubhra Parashar, Mr. Yash Hari
& Ms. Vidya Mishra, Advocates for U
Ms. Anushree Narain, Standing Couns
with Ms. Simran Kumari, Advocate fo
2, (CBIC).
Mr. S.V. Tyagi & Mr. Shivam Tyagi,
for R-2.

Mr. Zoheb Hossain, Sa
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Gigi C George and
Advocates for UOI.

\+ W.P.(C) 14681/2023 & C.M.No.58468/2023

M/S ADHIRAJ CONSTRUCTIONS PVT. LTD. ..... Petition
Through: Mr.Bharat Raichandani with Mr.Deepa

Kumar Khokhar, Advocates.

Versus

UNION OF INDIA ...

Through: Mr. Ravi Prakash, CGSC
Khandelwal, Advocate f
Mr. Sushil Raaja, Advo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

Reserved on : 21s

% Date of Decision : 29

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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ACKNOWLEDGEMENT.....

TO SUM UP .....

Signature Not Verified
Digitally Signed By:JASWANT SINGH RAWAT

W.P.(C) 7743/2019 & other connected matters

Signing Date:29.01.2024 18:24:48

JUDGMENT

MANMOHAN, ACJ:

THE CHALLENGE

1. Present writ petitions have been filed challenging the constitutional validity of Section 171 of the Central Good and Services Tax Act, 2017 (for short 'Act, 2017') and Rules 122, 124, 126, 127, 129, 133 and 134 of the Central Good and Services Tax Rules, 2017 (for short 'Rules, 2017') as well as legality of the notices proposing imposition or orders imposing penalty issued by the National Anti-Profiteering Authority ('NAA') under Section 122 of the Act, 2017 read with Rule 133(3)(d) of the Rules, 2017 and the final orders passed by NAA, whereby the petitioners, who are companies running diverse businesses ranging from hospitality, Fast-Moving Consumer Goods ('FMCG') to real estate, have been directed in accordance with Section 171 of Act, 2017, to pass on the commensurate benefit of reduction in the rate of tax or the Input Tax Credit to its consumers / recipients along with interest.

2. Learned counsel for the parties prayed that this Court may first decide the plea of constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017. They stated that only in the event this Court were to uphold the constitutional validity of the aforesaid Section and Rules, would the need to examine the matters on merits arise.

3. Accepting the suggestion of the learned counsel for the parties, this Court proceeded to hear the issue of constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017. The said provisions are reproduced hereinbelow:-

W.P.(C) 7743/2019 & other connected matters 18:24:48 Section 171 "171. Anti-profiteering measure (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

[(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation. -- For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.] Rule 122

122.Constitution of the Authority.- The Authority shall consist of,-

(a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and (b) four Technical Members who are or have been Commissioners of State tax or central tax [for at least one year] or have held an equivalent post under the existing law, to be nominated by the Council. Rule 124

124. Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority:-

W.P.(C) 7743/2019 & other connected matters 18:24:48 (1) The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.

(2) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay: Provided that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs. 2,25,000 reduced by the amount of pension.

[(3) The Technical Member shall be paid a monthly salary and other allowances and benefits as are admissible to him when holding an equivalent Group 'A' post in the Government of India: Provided that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary equal to his last drawn salary reduced by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government.] (4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty- five years, whichever is earlier and shall be eligible for reappointment:

Provided that [a] person shall not be selected as the Chairman, if he has attained the age of sixty-two years. [Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Chairman at any time.] (5) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he

attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment:

Provided that [a] person shall not be selected as a Technical Member if he has attained the age of sixty-two years. [Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time.] Rule 126

126. Power to determine the methodology and procedure The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

W.P.(C) 7743/2019 & other connected matters 18:24:48 Rule 127

127. Duties of the Authority.

It shall be the duty of the Authority,-

(i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;

(ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;

(iii) to order,--
(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount orrecovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

[(iv) to furnish a performance report to the Council by the tenth [day] of the close of each quarter.] Rule 129

129. Initiation and conduct of proceedings.-(1)Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of [Anti-profiteering] for a detailed investigation.

(2) The Director General of [Anti-profiteering] shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices. (3)The Director General of [Anti-profiteering] shall, before initiation of the investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely:-

(a) the description of the goods or services in respect of which the proceedings have been initiated;

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(b) summary of the statement of facts on which the allegations are based; and

(c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply. (4)The Director General of [Anti-profiteering] may also issue notices to such other persons as deemed fit for a fair enquiry into the matter. (5)The Director General of [Anti-profiteering] shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6)The Director General of [Anti-profiteering] shall complete the investigation within a period of [six] months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing [as may be allowed by the Authority] and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

Rule 133

133. Order of the Authority.

(1) The Authority shall, within a period of [six] months from the date of the receipt of the report from the Director General of [Anti-profiteering] determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties. [(2A) The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under

sub-rule (6) of rule 129 during the process of determination under sub-rule (1).] [(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order -

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

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(c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause[along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of deposit of such amount] in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, "concerned State" means the State [or Union Territory] in respect of which the Authority passes an order.] [(4) If the report of the Director General of [Anti-profiteering] referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of [Anti-profiteering] to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.] [(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.]"

Rule 134

134. Decision to be taken by the majority.- (1) A minimum of three members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote."

W.P.(C) 7743/2019 & other connected matters 18:24:48 ARGUMENTS ON BEHALF OF THE PETITIONERS

4. Mr. P. Chidambaram, Mr. S. Ganesh, Mr. Tarun Gulati, Mr. Chinmoy Pradip Sharma and Mr.Pritesh Kapoor, learned Senior counsel as well as Mr. V. Lakshmikumaran, Mr. Monish Panda, Mr. Rohan Shah, Mr. Abhishek A. Rastogi, Mr. Tushar Jarwal, Mr. Sparsh Bhargava, Mr. Puneet Aggarwal, Mr. Sujit Ghosh, Mr. K. S. Suresh, Mr. Nikhil Gupta, Mr. Shashank Shekhar and Mr. Priyadarshi Manish, learned counsel addressed arguments on behalf of the petitioners.

5. Learned counsel for the petitioners submitted that Section 171(1) of the Act, 2017 and the Rules 126, 127 and 133 of the Rules, 2017 framed thereunder are unconstitutional as they are beyond the legislative competence of Parliament. They submitted that the impugned provisions do not fall within the law-making power of Parliament under Article 246A of the Constitution of India.

6. Some of the learned counsel for the petitioners submitted that the anti- profiteering provision, as provided under Section 171 of the Act, 2017, is in the nature of a tax or financial exaction. They submitted that a tax can be levied from a subject only if there is a specific and unequivocal provision in the parent statute authorising such an exaction. According to them, such a financial exaction cannot be made lawfully by a subordinate legislation, when there is no empowering provision in the parent statute. In support of their submissions, they relied on the decisions of the Supreme Court in Ahmedabad Urban Development Authority v. Sharakumar Jayantikumar Pasawala, (1992) 3 SCC 285 and V.V.S. Sugars v. Govt. of A.P., (1999) 4 SCC 192.

7. Learned counsel for the petitioners further submitted that the impugned Section and Rules suffer from vice of excessive delegation as they delegate essential legislative functions to the Government. Additionally, they submitted W.P.(C) 7743/2019 & other connected matters 18:24:48 that the impugned provisions are ambiguous, arbitrary, violative of Article 14 and confer excessive powers on NAA to determine profiteering as no guidelines and/or legislative policy for the exercise of such powers by the authority so constituted have been laid down in the statute. They submitted that the failure to provide clear statutory guidance for exercise of powers by NAA in the formulation of such methodology amounts to "delegation of essential legislative function" as these formulations were essential and therefore, the same should have been stipulated by the Legislature. They submitted that it is settled law that the legislative authority cannot be delegated under a statute without appropriate guidelines or safeguards. In support of their submissions, they relied on the judgment of the Supreme Court in Ramesh Birch vs. Union of India, 1989 Supp SCC 430.

8. They submitted that it is settled law that delegatus non potest delegare which essentially means that a delegatee cannot further delegate unless expressly or impliedly authorized. They contended that the Legislature vide Section 171 of the Act, 2017 delegated the authority to determine/prescribe powers and functions of NAA to the Executive i.e. the Government of India. They submitted that the Government of India by way of Rule 126 of the Rules, 2017, contrary to the legislative mandate contained in Section 171 of the Act, 2017, further delegated the power to NAA to determine the methodology and procedure for determining whether the reduction in taxes or the benefit of Input Tax Credit had been passed on to the recipients. They stated that even NAA did not issue any guidelines as to how to determine profiteering. In support of their submission, they relied on the judgment of the Supreme Court in Barium Chemicals Ltd. & Ors. v Company Law Board & Ors. [AIR 1967 SC 295].

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9. They submitted that the term 'commensurate' is not defined in the Act, 2017 and the expression 'profiteering' in Section 171 is dependent upon the scope and meaning of the phrase 'commensurate reduction in the price'. According to them, as a result of this circular reasoning, NAA had complete and unfettered discretion to determine the extent of profiteering. They pointed out that the definition of profiteering inserted by way of amendment (that came into force only on 01st January, 2020) is vague and uncertain as to how the amount of profiteering or commensurate reduction in price has to be determined and therefore, the same is ex facie arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. They pointed out that even NAA, in the orders passed by it, had not been consistent in its interpretation of the term "commensurate reduction".

10. They stated that without stipulating the specifics of the methodology to be adopted to determine profiteering, the petitioners could not have been asked to reduce prices. They contrasted the lack of guidelines in Section 171 of the Act, 2017 with Section 9A of the Customs Tariff Act, 1975 which lays down the broad guidelines on the basis of which the extent of dumping and anti-dumping duty is to be quantified and Section 19(3) of the Competition Act, 2002, which lays down the factors to be taken into consideration while determining whether an agreement has an appreciable adverse effect. They stated that in the absence of any guidelines, NAA had acted arbitrarily as is evident from the varied approaches taken by it while adjudicating cases of entities belonging to the same industry and dealing with similar products.

11. Learned counsel for the petitioners emphasised that the formula used by the respondents, for instance, for real estate companies during the course of investigation/adjudication, had not been notified. They stated that the W.P.(C) 7743/2019 & other connected matters 18:24:48 methodology adopted by NAA and the Director General of Anti-Profiteering ('DGAP') to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services Tax and post-Goods and Services Tax period. To drive home the point that the methodology adopted by the respondents was flawed, the learned counsel for the petitioners gave an illustration of the contrasting results one would get after calculating the amount profiteered/required to be passed on in case of two identical real estate projects being developed by Developers A & B with the only difference being the advance payment

received by them prior to the Goods and Services Tax Regime. They stated that assuming that two Developers (A & B) commenced construction of the two identical projects (having hundred flats of rupees one crore each) in 2017 and the projects were executed at an identical pace with identical inputs and with Developer A receiving sixty per cent of the amount (total sale price of the project) as advance during the pre-Goods and Services Tax period, Developer B receiving only twenty per cent as advance during that period, with all other factors being identical (like the credit availed/available during the pre-Goods and Services Tax period), the credit to turnover ratio for the two projects would vary drastically depending on the time when the payments from the customers were received. According to the petitioners, if the methodology adopted by NAA /DGAP is to be accepted, Developer A would be required to pass on 15% benefit to the flat- buyers and Developer B who received 80% of the payment/amount post-Goods and Services Tax receive would be required to pass no benefit to the flat-buyers. A graphical representation of the same, as furnished by the petitioners, is as follows:

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12. They stated that it is for this reason, the percentage of credit to turnover ratio (in Goods and Services Tax regime) had varied from 0.2% (in Vatika Limited, Case No. 64/2019) to 20.98% (in Emaar MGF Land Ltd, Case No. 26/2020) in the orders passed by NAA.

13. Learned counsel for the petitioners in Writ Petition No. 13657/2022 pointed out that DLF calculated the total savings on account of introduction of Goods and Services Tax for each project. He stated that the total savings/benefits were then divided by total area to arrive at the per square feet benefit to be passed on to each flat buyer. He stated that as a result the flat-buyers with equal area received equal benefit. In contrast to this, he pointed out that the NAA/DGAP calculated the benefit by comparison of ratios as explained above and then computed the profiteered amount as a percentage of consideration received from each flat-buyer in the Goods and Services Tax regime. Therefore, as per NAA/DGAP, similarly placed flat-buyers received inconsistent benefits. For the project Camellias, the benefits computed by both NAA/DGAP & DLF are tabulated below:

W.P.(C) 7743/2019 & other connected matters 18:24:48 DLF- PROJECT (Camellilas)
S. Customer Unit Area of unit Percentage Amount Benefit No. Number of benefit Computed by passed on by computed by DGAP petitioner DGAP

1. Gopal CM405A 7361 Sq.Ft. 1.18% 83,274 4,88,500 Chopra

2. Rachna CM504A 7361 Sq.Ft. 1.18% 83,450 4,88,500 Sawhney

3. Rachna CM505A 7361 Sq.Ft. 1.18% 83,450 4,88,500 Sawhney

4. Anil Sarin CM510A 7361 Sq.Ft. 1.18% 99,874 4,88,500

5. S J Rubber CM504B 7361 Sq.Ft. 1.18% 83,265 4,88,500 Industries Ltd.

6. Splendid CM419A 7361 Sq.Ft. 1.18% 11,328 4,88,500 Residences Pvt. Ltd.

7. Rachna CM503B 7361 Sq.Ft. 1.18% 83,450 4,88,500 Sawhney

8. Vineet CM418B 7361 Sq.Ft. 1.18% 2,30,148 4,88,500 Kanwar

9. Vishal Swara CM516B 7361 Sq.Ft. 1.18% 1,47,047 4,88,500

10. Sanjeev CM819B 9419 Sq.Ft. 1.18% 10,01,928 6,25,139 Aggarwal

11. Mohan CM804B 9419 Sq.Ft. 1.18% 20,66,050 6,25,139 Agarwal

12. Deep Kalra CM818B 9419 Sq.Ft. 1.18% 33,72,998 6,25,139

13. Action CM602A 9419 Sq.Ft. 1.18% 34,356 6,25,139 Construction Equipment Ltd.

14. They also submitted that determination of profiteering can be made at different levels such as entity level, Stock Keeping Unit (hereinafter referred to as 'SKU') level, product level, customer level etc. Hence, an assessee intending to W.P.(C) 7743/2019 & other connected matters 18:24:48 comply with the law has no way of ensuring whether its methodology is in compliance with Section 171(1) of the Act, 2017 or not.

15. Learned counsel for the petitioners also submitted that the operation of Section 171 of the Act, 2017 amounted to price-fixing and is therefore violative of Articles 19(1)(g) and 300A of the Constitution. They submitted that according to NAA's interpretation of Section 171 of the Act, 2017, once any of the events contemplated in Section 171 of the Act, 2017 occurs, i.e. either there is reduction in tax rate or benefit of Input Tax Credit is availed, then the price of the product must be adjusted to (a) the extent of the tax reduced and/or (b) the extent of increase in the credit availability. They stated that there is no clarity on adjustments allowed on account of rise either in input costs or in customs duty on import of inputs, supply and demand conditions and other factors which impact pricing. They submitted that Section 171 of the Act, 2017, to the extent it eliminates all factors from consideration in price fixation, other than the rate of tax and credit availability, was clearly excessive, disproportionate and unwarranted.

16. They pointed out that similar anti-profiteering provisions had been introduced in Australia (in 2000) and in Malaysia (in 2015) to ensure that the benefit of reduction of tax rate was passed on to the recipients. They stated that the provisions so introduced prescribed clear policy guidelines before imposing the restrictive conditions.

17. They stated that when Australia implemented the Goods and Services Tax replacing the erstwhile Wholesale Sales Tax, the Australian Competition and

Consumer Commission ('ACCC') was entrusted with the responsibility to oversee pricing responses to the introduction of Goods and Services Tax for a period of three years between 1999 and 2002. They stated that Section 75AU of W.P.(C) 7743/2019 & other connected matters 18:24:48 the Trade Practices Act, 1974 which prohibited price exploitation in relation to the New tax System provided that factors such as increase in supplier's input costs, supply and demand conditions and other relevant factors shall be taken into consideration while determining price exploitation. They further stated that Section 75AV(1) of the aforesaid Act provided that the ACCC must formulate detailed guidelines to explain when prices may be regarded to be in contravention of the price exploitation provision. They stated that the ACCC had framed detailed guidelines in July, 1999 which were later revised in March, 2000 after taking inputs from all stakeholders. It was pointed out that the fundamental principle laid down in the aforesaid guidelines was based on a 'net dollar margin rule'. According to them, the said guidelines enumerated all the relevant factors to be taken into consideration for price adjustments and provided for considering the increase in procurement cost and additional costs due to the tax change. They stated that it also allowed averaging the impact of taxes and costs across goods or services under specific circumstances.

18. While referring to the Goods and Services Tax system introduced in Malaysia, they stated that the Anti- Profiteering measures had been incorporated under the Price Control and Anti-Profiteering Act, 2011 to control prices of goods, charges of services and to prohibit unreasonably high profiteering by suppliers. They stated that making unreasonably high profit was an offence under Section 14 of the said Act. They further stated that Section 15 of the said Act provided that the Minister shall prescribe the mechanism to determine whether the profit is unreasonably high considering different conditions and taking into consideration factors such as: tax imposition, suppliers' cost, supply and demand conditions and other relevant matters in relation or price of goods and services W.P.(C) 7743/2019 & other connected matters 18:24:48 etc. It was pointed out that detailed guidelines were laid down under the Regulations issued in 2014 and 2016.

19. Learned counsel for the petitioners further submitted that Section 171 of the Act, 2017 is manifestly arbitrary and unreasonable, as it does not fix a period of time during which the reduced prices of the goods and services had to be maintained. They emphasised that the time-frame for which an assessee could be subject to the discipline of Section 171 of the Act, 2017 has been left undefined and open-ended. According to them, this indefinite obligation hinders the petitioners' right to trade and commerce and hence, the same is violative of Articles 14 and 19(1)(g) of the Constitution of India.

20. They further stated that price reduction is not the only method by which commensurate benefit can be passed on to the recipient. They stated that an increase in the volume or weight of the product being sold for the same price is an equally

effective and legal way of commensurately reducing the price of the product. They stated that mandating price reduction as the only way to pass the commensurate benefit to the recipient is manifestly arbitrary and unreasonable.

21. Learned counsel for the petitioner in W.P.(C) 12557/2022, M/s. L'Oreal India Pvt. Ltd., stated that in the FMCG industry, for low priced products, since the resultant reduction in price is often miniscule, it was not feasible to pass on the benefit because of the restriction in the Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011 that require the prices of the goods to be rounded off to the nearest fifty paisa. In support of his contention, he referred to the following table:

W.P.(C) 7743/2019 & other connected matters 18:24:48 Original MRP Price 18% GST Ideal revised MRP exclusive of MRP suggested by 28% GST Respondent 5 3.90625/- 0.703125/- 4.609375/- 4.5/-

4 3.125/- 0.5625/- 3.6874/- 3.5/-

3 2.34375/- 0.421875/- 2.765625/- 3/-

2 1.5625/- 0.28125/- 1.84375/- 2/-

22. Therefore, according to him, there is a legal impossibility in reducing the Maximum Retail Price ('MRP'). As a result he stated that some of the companies had passed on the commensurate benefit by way of increasing the grammage. He pointed out that NAA vide order dated 24th December, 2018 passed in Ankit Kumar Bajoria vs. M/s Hindustan Unilever Ltd., Case No.20/2018, had accepted the practice of increasing grammage. However, this practice had not been accepted as a mode of passing on commensurate benefit by NAA in subsequent orders.

23. Learned counsel for the petitioners pointed out that there is no provision of appeal against the orders passed by NAA. They submitted that the absence of a provision to appeal means that there is no judicial oversight over the decisions of NAA and indicates that there is a presumption that the findings of NAA are infallible. They submitted that Tribunals and Authorities which exercise functions similar to NAA have a robust appellate mechanism. They submitted that lack of a provision to appeal against the findings of NAA makes the Act, 2017 unconstitutional.

24. They submitted that Rule 124 of Rules, 2017 to the extent it deals with appointment and terms and conditions of service of the Chairman and Members W.P.(C) 7743/2019 & other connected matters 18:24:48 of NAA is not in consonance with Article 50 of the Constitution of India as there is scope for governmental interference in the functioning of NAA.

25. Learned counsel for the petitioners submitted that NAA essentially determines the rights of those complainants who filed complaints and determines liabilities of the tax assessees against whom such an application/complaint is made / received. Therefore, according to them, since the exercise of power by NAA is a quasi-judicial function, the absence of a judicial member in the constitution of NAA renders Section 171 of the Act, 2017 and Rule 122 of the Rules, 2017 illegal and void. In support of their submissions, they relied on the decision of the Supreme Court in Madras Bar Association v. Union of India, (2015) 8 SCC 583, Madras Bar Association v. Union of India, (2010) 11 SCC 1 and L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.

26. They further submitted that in case of equality of votes amongst the members of NAA, the Chairperson has a second or casting vote, which renders Rule 134(2) illegal and unconstitutional.

27. Learned counsel for the petitioner in W.P.(C) 12647/2018 stated that the report issued by DGAP and the order passed by NAA in its case were barred by limitation as provided under Rule 133 of the Rules, 2017. He submitted that Rule 133 uses the word "shall" and thus mandates that NAA must determine and pass an order within a period of three months (prior to amendment dated 28th June, 2019) from date of receipt of the report from DGAP. He further submitted that the procedure that has been prescribed under the Rule 129(6) ought to have been strictly followed by the DGAP while investigating other products. He pointed out that in the case of the petitioner in W.P.(C) 12647/2018, Rule 129(6) of the Rules, 2017 as on 25th September, 2018 (the date on which NAA passed its order directing the DGAP to conduct investigation on the amount allegedly profiteered W.P.(C) 7743/2019 & other connected matters 18:24:48 by the petitioner) or 30th October, 2018 (the date when the notice was issued by DGAP) mandatorily provided that DGAP was required to complete its investigation within three months. However, the report was submitted on 30th September, 2019 which is beyond the prescribed limitation period and thus, the same was without jurisdiction. He submitted that at the time the proceedings were initiated by NAA, Rule 129(6) of the Rules, 2017 mandated that the DGAP "shall" submit its report to NAA within three months which could be further extended to six months. Such time period was subsequently extended to six months vide Notification No. 31/2019 dated 28th June, 2019 which could be further extended to nine months. However, the impugned order is barred by limitation even if period is taken as six months as applicable from 28th June, 2019.

28. Learned counsel for the petitioners submitted that under Rule 133(3) of the Rules, 2017, NAA does not have any power or authority in law to pass an order in relation to any product, other than the product against which complaint has been received by the authorities. They submitted that till 28th June, 2019 (when Rule 133(5) was enacted), NAA had no powers to direct investigation in respect of any product, other than the product complained of. However, with effect from 28th June, 2019, Rule 133(5) was introduced, whereby for the first time, NAA was statutorily empowered in the course of the proceedings before it, to direct the DGAP, to conduct an investigation in relation to

products, other than the product complained of. They submitted that as a result of the amendment, the power to expand the scope of the investigation vests only with NAA and not with DGAP. They pointed out that in many cases, DGAP had on its own expanded the scope of the investigation to other products, which according to them, is without jurisdiction and ultra vires the provisions of the Act, 2017 and Rules, 2017.

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29. Learned counsel for the petitioners submitted that the levy of penalty and interest cannot be ordered in the absence of corresponding specific substantive provisions under the Act, 2017. They submitted that the consequences of the breach of Section 171 of Act, 2017 should have been provided for in the first instance in the Act, 2017 itself and such wide and uncontrolled powers could not have been conferred on NAA under Rules 127 and 133 of Rules, 2017. In support of their submission, they relied upon the judgments of the Supreme Court in Indian Carbon Limited v. State of Assam (1997) 6 SCC 479 and Shree Bhagwati Steel Rolling Mills v. CCE 2015 (326) E.L.T. 209 (SC).

30. They stated that the petitioners have been issued show cause notices directing them to explain why penalty prescribed under Section 171(3A) of the Act, 2017 read with Rule 133 (3) (d) of the Rules, 2017 should not be imposed upon them. They, however, submitted that Section 171 (3A) has been inserted in the Act, 2017 under Section 112 of the Finance Act, 2019 which came into force only from 01st January, 2020 and so penalty under the aforesaid Section could not have been imposed on the petitioners retrospectively.

31. Learned senior counsel for the petitioner in W.P.(C) 1171/2020 submitted that on a plain reading of Section 171(1) with Section 2(108) of the Act, 2017, it is clear that it applies to a reduction in the rate of Goods and Services Tax levied on a particular commodity or a grant of Input Tax Credit under the Act, 2017. He stated that the term 'tax on any supply of goods or services' and Input Tax Credit in Section 171 do not refer to any tax levied prior to 1st July, 2017 or to any Input Tax Credit granted under any such prior statute. Therefore, according to him, Section 171(1) of the Act, 2017 does not contemplate a comparison of the taxes levied after the introduction of the Act, 2017 with a basket of distinct indirect taxes applicable on goods and services before the operation of the Act. He stated W.P.(C) 7743/2019 & other connected matters 18:24:48 that the indirect taxes levied on goods and services prior to July, 2017 by the States such as the VAT/Sales-tax, Octroi duty and Entry tax varied widely from State to State and often from area to area within a State. He stated that as a result, it is impossible to make any meaningful comparison between the rates of the pre- Goods and Services Tax taxes with the rates of tax levied under the Goods and Services Tax regime.

32. According to him, Section 171 of the Act, 2017 only permits a comparison between two single rates and not a comparison between one single tax rate (Goods and Services Tax) and a basket or combination of several other tax rates (pre-Goods and Services Tax indirect taxes). He submitted that Sections 2(62) and 2(63) of the Act, 2017 make it clear that the benefit of Input Tax Credits referred to in Section 171(1) are the Input Tax Credit granted under the Act, 2017 and not the Input Tax Credits granted under the Central Excise Act, the Service- Tax statute or the Sales-tax Acts. He further submitted that Section 9 of the Act, 2017 which provides for the levy of 'a tax called the

central goods and services tax on all intra-State supplies of goods or services or both...' uses the same language as Section 171 and therefore Section 171 refers only to a reduction in the rate of tax levied / referred to under Section 9 of the Act, 2017.

33. Learned senior counsel for the petitioners in W.P.(C) 2897/2021, submitted that in a contract made after the reduction in the tax rate has come into effect, the parties are free to agree on any price. In support of his submission, he relied on Section 64-A of the Sale of Goods Act, which reads as under:-

> "64A. In contracts of sale, amount of increased or decreased taxes to be added or deducted.--
>
> (1) Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of W.P.(C) 7743/2019 & other connected matters 18:24:48 any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax-paid where tax was chargeable at that time,--
>
> (a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition; and
>
> (b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.
>
> (2) The provisions of sub-section (1) apply to the following taxes, namely:--
>
> (a) any duty of customs or excise on goods;
>
> (b) any tax on the sale or purchase of goods."

34. Learned counsel for the petitioner in W.P.(C) 2785/2021 submitted that as per Section 171(2) read with Section 2(80) of the Act, 2017, the authority (empowered to examine whether there has been commensurate reduction in price) has to be constituted by way of a duly gazetted notification and as per Section 166 of the Act, 2017, such notification has to be laid before the Parliament. He stated that contrary to these requirements, NAA had been constituted vide an administrative order No.343/2017 dated 28th November, 2017. He stated that Rule 122 of the Rules, 2017 has been notified and gazetted vide Notification No. 10/2017-Central Tax dated 28th June, 2017, which, at

first blush, suggests that NAA had been constituted thereunder. However, on a closer analysis, it is clear that the said Rule cannot be said to be the fountainhead of constitution of NAA as Rule 122 essentially provides for composition of NAA and not for the constitution of NAA, even though the heading of the Rule is couched to suggest that the same apparently constitutes NAA. He submitted that if the said Rule W.P.(C) 7743/2019 & other connected matters 18:24:48 (which was notified on 28th June, 2017) was indeed the fountainhead of constitution of NAA, the same would go against the very understanding of the respondents as recorded in the 35th and 45th Goods and Services Tax Council Minutes of Meeting as well as the Memo dated 09th September, 2019 of the Department of Revenue, Ministry of Finance, wherein it has been specifically observed that NAA had been constituted vide an office order dated 28th November, 2017.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

35. Mr. Zoheb Hossain, learned counsel appearing on behalf of the Respondent-authorities, prefaced his submissions by stating that Parliament introduced the Act, 2017 in order to simplify and harmonise the indirect taxes regime in the country by eliminating the multiplicity of taxes that were levied on the same supply system as a result of which there was a cascading effect.

36. According to him, the "anti-profiteering" measures were introduced in the Goods and Services Tax regime in order to provide for a mechanism to ensure that the full benefits of input tax credits and reduced Goods and Services Tax rates flow to the consumers who bear the burden of tax and to prevent the suppliers from appropriating these benefits for themselves. He contended that anti-profiteering provisions under the Act, 2017 and the Rules, 2017 have been brought into force in the interest of consumer welfare and so any interpretation of the same must be in favour of the consumer.

37. He stated that the provisions essentially create a substantive restriction on the suppliers from appropriating the benefits of the Goods and Services Tax regime which may either be in the form of reduction in the tax rate effected pursuant to a decision of the Goods and Services Tax Council or in the form of W.P.(C) 7743/2019 & other connected matters 18:24:48 benefit of Input Tax Credit which was unavailable under the earlier regime. He stated that correspondingly a substantive right has been created in favour of consumers to receive the benefit of reduction in rates and benefit of Input Tax Credit. He stated that in considering the constitutional vires of such a provision, the larger public welfare intended to accrue from the provision ought to be taken into consideration. He relied upon the decision of the Supreme Court in Pioneer Urban Land and Infrastructure Ltd. vs. Union of India, (2019) 8 SCC 416, wherein the Supreme Court examined a challenge to the amendments to the Insolvency and Bankruptcy Code, 2016. He stated that in the aforesaid case the fact that the impugned provisions were part of a beneficial legislation was treated as an important factor in order to uphold the provisions.

38. He further submitted that Section 171 of the Act, 2017 has been enacted in furtherance of the goals of redistributive justice contained in the Directive Principles of State policy in Articles 38, 39(b) and 39(c) of the Constitution of India. The relevant portion of Articles 38, 39(b) and 39(c) are reproduced hereinbelow:-

> "Article 38 - State to secure a social order for the promotion of welfare of the people (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Article 39 - Certain principles of policy to be followed by the State The State shall, in particular, direct its policy towards securing-- ...

(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

> (emphasis supplied) W.P.(C) 7743/2019 & other connected matters 18:24:48

39. He submitted that the scope of judicial review in a fiscal statute is fairly limited as laid down by the Supreme Court in multiple judgments such as State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 and R. K. Garg v. Union of India, 1981 (4) SCC 675.

40. He further submitted that Article 246A of the Constitution of India empowers the Legislature to make laws 'with respect to' Goods and Services Tax. Article 246A of the Constitution reads as under:-

> "246A. Special provision with respect to goods and services tax.--
>
> (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
>
> (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.--The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

41. He submitted that the impugned Section 171 of the Act, 2017 does not violate Article 246A of the Constitution of India as the said Section is not a taxing provision but is only meant to ensure that the sacrifice of tax revenue by the Central and State Governments for the welfare of the consumer is passed on to them by the supplier.

42. He stated that the reduction of the tax burden and elimination of the cascading effect of taxes were important objectives behind the introduction of the Goods and Services Tax and so the impugned Section 171 of the Act, 2017 is very much a provision 'with respect to' Goods and Services Tax and, therefore, Section 171 of the Act, 2017 falls well within the ambit of law-making powers of the Parliament and the State legislatures. He further submitted that it is a well W.P.(C) 7743/2019 & other connected matters 18:24:48 settled principle that in the field of taxation, the legislature enjoys a greater latitude for classification as has been noted by the Supreme Court in various cases [See: Steelworth Ltd. vs. State of Assam [1962] Supp (2) SCR 589]; Gopal Narain vs. State of U.P. [AIR 1964 SC 370]; Ganga Sugar Corp. Ltd. vs. State of U.P. [(1980) 1 SCC 223].

43. Countering the submissions of the Petitioners that Section 171 of the Act, 2017 suffers from the vice of excessive delegation, Mr. Zoheb Hossain, learned counsel, submitted that no essential legislative function has been delegated by the Legislature to NAA by way of Section 171 of the Act, 2017. He stated that Section 171 of the Act, 2017 is very clear when it states that any reduction in the rate of tax or the benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in prices, that is to say that every person who is a recipient of goods or services has to get the benefit. He further stated that it cannot be said that Section 171 of the Act, 2017 does not provide method and procedure for determining profiteering as it clearly stipulates that 'any reduction' in the rate of tax on 'any supply of goods or services' or the benefit of input tax credit shall be passed on to the recipient by way of 'commensurate reduction in prices'.

44. He emphatically denied that the word 'commensurate' as used in Section 171 of the Act, 2017 has no clear and definite meaning. He referred to the Cambridge Dictionary where the word 'commensurate' is defined as 'in a correct and suitable amount compared to something else; suitable in amount or quality compared to something else; matching in degree'. Thus, according to him, Section 171 lays down a clear legislative policy and hence, no essential legislative function has been delegated. He submitted that the Courts have consistently held that after laying down the broad legislative policy, the minutiae can always be left W.P.(C) 7743/2019 & other connected matters 18:24:48 to be decided by way of a subordinate legislation (See: Lohia Machines Ltd. vs. Union of India, (1985) 2 SCC 197, Pt. Banarsi Das Bhanot vs. State of Madhya Pradesh, AIR 1958 SC 909, Sita Ram Bishambher Dayal vs. State of U.P. (1972) 4 SCC 485). He further stated that it is well settled that the question whether any particular legislation suffers from excessive delegation, has to be determined by the Court having regard to the subject matter, the scheme, the provisions of the statute including its preamble and the background on which the statute is enacted. In support of his contentions, he relied upon the decision of the Supreme Court in Bhatnagars & Co. Ltd. vs. Union of India, AIR 1957 SC 478 and Mohmedalli and Ors. vs. Union of India and Ors., AIR 1964 SC 980.

45. He further submitted that power of NAA to determine procedure and methodology flows from Section 171 of the Act, 2017 itself which empowers the Authority to examine whether Input Tax Credits availed by any registered person or the reduction in the tax rate on the goods or services had actually resulted in commensurate reduction in the price of such goods or services. He stated that the rule-making powers of the Central Government as prescribed in sub section (2) of Section 171 of the Act, 2017 as well as Section 164 of the Act, 2017 empower the Central Government to prescribe the powers and functions of the authority as well as to prescribe a Rule conferring the Authority with

the power to determine the methodology for determining whether the benefits of Goods and Services Tax rate reductions and Input Tax Credits have been passed on. According to him, it is in this background that the power to prescribe the powers and functions of NAA was delegated to the Central Government by the Section. He, therefore, submitted that the principle delegatus non potest delegare is not applicable to the present batch of matters.

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46. He stated that Section 171(3) of the Act, 2017 duly provides that the Authority shall exercise such powers and discharge such functions as may be prescribed. Accordingly, he stated that the Goods and Services Tax Council which is a federal, constitutional body, comprising all the Finance Ministers of all the States and UTs and the Union Finance Minister, in its due wisdom, and the Central and the State Governments have framed Rules 127 and 133 which prescribe the functions and powers of the Authority. He pointed out that these rules have been framed under the provisions of Section 164 of the Act, 2017 which also has sanction of the Parliament and the State Legislatures. Therefore, since the functions and powers to be exercised by the Authority have been approved by competent legislatures, the same are legal and binding on the Petitioners. In support of his submissions, he relied on the decision of the Supreme Court in M.K. Papiah vs. Excise Commr. (1975) 1 SCC 492.

47. Mr. Zoheb Hossain, learned counsel stated that even if the petitioners' contention that no methodology for calculating the profiteered amount had been prescribed is accepted, then also the said Section will not be rendered unconstitutional because as per Rule 126 of the Rules, 2017, NAA has been empowered to determine the said methodology. He pointed out that the Rule does not stipulate that NAA must necessarily determine the methodology and procedure to compute profiteering as it merely stipulates that the authority 'may' determine the methodology and procedure for such computation. He stated that substantive provision of Section 171 of the Act, 2017 provides sufficient guidance to the NAA to determine the methodology on a case to case basis depending on the peculiar facts of each case and the nature of the industry and its peculiarities.

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48. Additionally he stated that no uniform calculation method can be prescribed because the computation of commensurate reduction in prices is purely a mathematical exercise and would vary from SKU to SKU or unit to unit or service to service and hence for determining the quantum of benefit as the extent of profiteering has to be arrived at on a case to case basis, by adopting suitable method based on the nature and facts of each case. He further stated that NAA in exercise of the powers conferred under Rule 126 of the Central Goods and Services Tax has notified the "National Anti-Profiteering Authority:

> Methodology and Procedure, 2018" dated 28th March, 2018 which contains the methodology and procedure for determination as to whether the reduction in the rate of tax on supply of goods or services or the benefit of Input Tax Credit has been passed on by the registered person to the recipient by way of commensurate

reduction in prices.

49. In the context of the real estate sector, he stated that in cases where completion certificate had not been issued prior to 01st July, 2017 and the supply of service by the developer continued past 01st July, 2017, the supplier got the benefit of Input Tax Credits under the Goods and Services Tax regime. That being the case, there is no reason why a supplier ought not to be required to pass on the benefit of Input Tax Credits under the Goods and Services Tax regime, with respect to the remaining supply. According to him, a plain reading of Section 171 of the Act, 2017 would require such developers to pass on the benefit of Input Tax Credits.

50. He stated that Section 171 of the Act, 2017 when it uses the term 'any supply' refers to each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of tax reduction by any supplier is not allowed. Hence, according to him, this benefit has to be calculated for the SKU of W.P.(C) 7743/2019 & other connected matters 18:24:48 every product and has to be passed on to every buyer of such SKU. These benefits, he stated cannot be passed on at the entity/organization/branch/invoice/ product/business vertical level as they have to be passed on to each and every buyer at each SKU/unit/service level by treating them equally. Additionally, he stated that the language of the impugned provisions does not provide flexibility to adopt any other mode for transferring benefit of reduction in tax rate and benefit of Input Tax Credit. He, thus, stated that the Methodology & Procedure for passing on the benefits and for computation of the profiteered amount has been duly prescribed in Section 171 of the Act, 2017 itself and hence, it is not required to be prescribed separately.

51. He stated that in the case of reduction in the rate of tax, the quantum of benefit would depend upon the pre reduction base price of the product which is required to be maintained during the post rate reduction period on which the reduced rate of tax is required to be charged which would result in reduction in the price. According to him, the new MRP is required to be declared by affixing additional sticker or stamping or online printing in terms of letter No. WM/10(31)/2017 dated 16th November, 2017 issued by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

52. While dealing with the argument of the Petitioners that it is legally impossible to pass on the benefits of the reduction of rate of tax in cases of low priced products in the FMCG industry, Mr.Zoheb Hossain, learned counsel, submitted that the Rules 2(m) and 6(1)(e) of Legal Metrology (Packaged Commodities) Rules, 2011 (as amended from time to time) provide guidance to the suppliers on how the MRP of the products is to be rounded off. The relevant portion of the aforesaid Rules are reproduced as hereinunder:-

> W.P.(C) 7743/2019 & other connected matters 18:24:48 "Legal Metrology (Packaged Commodities) Rules, 2011 dated 7th March, 2011 as enacted with effect from 1st April, 2011:
>
> "2. Definitions:-

.....

(m) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the consumer and the price shall be printed on the package in the manner given below; 'Maximum or Max. retail price Rs/ .....inclusive of all taxes or in the form MRP Rs/ .....incl., of all taxes after taking into account the fraction of less than fifty paisa to be rounded off to the preceding rupees and fraction of above 50 paise and up to 95 paise to the rounded off to fifty paise;

xxx xxx xxx

6. Declarations to be made on every package. -

(1) Every package shall bear thereon or on the label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to -

....

(e) the retail sale price of the package; Provided that for packages containing alcoholic beverages or spirituous liquor, the State Excise Laws and the rules made there under shall be applicable within the State in which it is manufactured and where the state excise laws and rules made there under do not provide for declaration of retail sale price, the provisions of these rules shall apply."

Legal Metrology (Packaged Commodities) Rules, 2011 as amended by the Legal Metrology (Packaged Commodities) Amendment Rules, 2017 with effect from 1st January, 2018:

2. Definitions:-

'(m) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the consumer inclusive of all taxes;';

xxx xxx

4. In the said rules, in rule 6,-

(d) in clause (e), after the words "the retail sale price of the package;", the following words and figures shall be inserted, namely:- "shall clearly indicate that it is the maximum retail price inclusive of all taxes and the price in rupees and paise be rounded off to the nearest rupee or 50 paise; ....."

53. He agreed with the contention of the petitioners that in some cases, commercial factors might necessitate an increase in price despite reduction in rate W.P.(C) 7743/2019 & other connected matters 18:24:48 of tax or availability of benefit of Input Tax Credits. However, he stated that the prices must not be increased to appropriate the benefit of the reduced tax rate or benefit of

additional Input Tax Credit that accrues to the Petitioners. According to him, if the supplier never passed on the benefit of such reduced tax rate or Input Tax Credit by way of a commensurate reduction in prices of the goods or services, by increasing the base price of such goods or services, he would be depriving the recipients of the benefits of the reduction of tax rates or Input Tax Credits. Hence, he stated that if the supplier when increasing the base prices of the goods or services does not account for the (commensurate) reduction of prices as a result of the reduction of the tax rates or benefit of the Input Tax Credits, the supplier would be said to be profiteering under Section 171 of the Act, 2017. He, however, stated that NAA as well as this Court ought to be cautious of attempts of entities to justify suspicious increase in base prices contemporaneous with the reduction in tax rates or accruing of benefits of Input Tax Credits, under the garb of other commercial factors. According to him, the Courts and implementing authorities must be vigilant about devices designed for avoidance and must seek to adopt interpretations of the provisions that are least prone to resulting in avoidance. He referred to the judgment in McDowell & Co. Ltd. v. CTO, (1985) 3 SCC 230 where it has been held that "the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it" and that "it is up to the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the W.P.(C) 7743/2019 & other connected matters 18:24:48 existing legislation with the aid of "emerging" techniques of interpretation." He submitted that although the aforesaid findings were made in the context of tax avoidance, they would apply with equal force in the context of any beneficial legislation.

54. Mr. Zoheb Hossain, learned counsel further stated that reference made by the petitioners to guidelines under other laws and to certain foreign laws, is irrelevant to the issue of the constitutional validity of Section 171 of the Act, 2017 as validity has to be determined on its own merits.

55. He further stated that according to petitioners' own submissions the anti- profiteering provisions introduced in Australia and Malaysia were essentially price control mechanisms as the legislation enacted in Australia was aimed at prohibiting 'price exploitation' and the Act enacted in Malaysia was aimed at prohibiting manufacturers from 'making unreasonably high profits'.

56. He stated that Section 171 of the Act, 2017 is not a price-fixing provision as was sought to be asserted by the Petitioners. He submitted that Section 171 of the Act, 2017 only concerns itself with the indirect-tax component of the price of goods and services and does not impinge upon the freedom of suppliers to fix prices of their goods and services keeping in view relevant commercial and economic factors. He stated that the impugned section in pith and substance is a provision pertaining to the Goods and Services Tax and through its enactment the Parliament sought to ensure that the businesses pass on the benefits granted by the Government in term of reduction of tax rate and availability of Input Tax Credit to the consumers and does not seek to interfere with the right to trade by fixing the price at which the goods and services ought to be supplied. He pointed out that the impugned provision applies irrespective of the price of the goods or services. He stated

that it cannot be said that a law which forbids recovery of W.P.(C) 7743/2019 & other connected matters 18:24:48 Goods and Services Tax at a rate higher than that applicable on the goods and services and which forbids suppliers from recovering Input Taxes from the recipients where credits are obtained on such Input Taxes, amounts to price- control or price-fixing.

57. He further submitted that even if Section 171 of the Act, 2017 is presumed to be a price-fixing legislation, it would not render the Section violative of Article 19(1)(g) of the Constitution of India. He submitted that the Supreme Court in several cases such as Diwan General and Sugar Mills Pvt. Ltd. & Ors. vs. Union of India, AIR (1959) SC 626; Union of India vs. Cynamide India Ltd., (1987) 2 SCC 720 where price fixing orders had been challenged, had upheld such orders by examining whether the orders take into account relevant factors/considerations.

58. He submitted that there is no legal principle on the basis of which the petitioners can contend that the mere absence of a time period, up to which reduced prices are required to be maintained, would render the provision unconstitutional.

59. He submitted that recently, a three-Judge Bench of the Supreme Court in Madras Bar Association v. Union of India & Anr., (2021) SCC OnLine SC 463, while considering the challenge to the vires of Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 and Sections 184 and 186(2) of the Finance Act, 2017 as amended by the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, held that "the apprehensions of misuse of a statutory provision is not a ground to declare the provisions of a statute as void."

60. Mr. Zoheb Hossain, learned counsel, submitted that for an appeal to be maintainable, it must have its genesis in the authority of law [See: M. Ramnarain W.P.(C) 7743/2019 & other connected matters 18:24:48 (P) Ltd. v. State Trading Corpn. of India Ltd. [(1983) 3 SCC 75 and Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad (1999) 4 SCC 468]. He submitted that the principle of "appeal being a statutory right and no party having a right to file appeal except in accordance with the prescribed procedure" is now well settled as held by the Supreme Court in CCI v. SAIL, (2010) 10 SCC 744. According to him, the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In the absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.

61. He stated that Section 171(2) of the Act, 2017 lays down the role of NAA which is to examine whether Input Tax Credit availed by any registered person and/or the reduction in tax rates have actually resulted in a commensurate reduction in the price of goods or services supplied by him and the duties of NAA have been further elaborated upon in Rule 127 of the Rules, 2017. He further stated that from a perusal of the aforesaid provision, it is clear that the functions of NAA are in the nature of a fact-finding exercise. He submitted that even if it is assumed that the Authority undertakes an exercise which determines the rights and liabilities of registered persons under the Act, the contention of the Petitioners that the absence of a judicial member in NAA renders the authority unconstitutional is not tenable as there is no universal principle that every quasi- judicial authority at every level must have a judicial member. According to him, such a requirement would

not only be wholly impractical but also be legally suspect. He stated that the judgments which have been relied upon by the petitioners follow a uniform principle that whenever a judicial tribunal is intended to replace or supplant the High Court with respect to judicial power which was W.P.(C) 7743/2019 & other connected matters 18:24:48 hitherto vested in or exercised by Courts, such Tribunals must be manned by judicial members in addition to technical members who have specialized knowledge or expertise in a given field. In support of his submissions, he relied on the judgments of the Supreme Court in Union of India vs. R. Gandhi, (2010) 11 SCC 1, Rojer Mathews vs. South Indian Bank, (2019) SCC OnLine SC 1456. He stated: (a) the NAA did not replace or substitute any function which Courts were exercising hitherto; (b) it performs quasi-judicial functions but cannot be equated with a judicial tribunal; (c) it performs its functions in a fair and reasonable manner in accordance with the Act but does not have the trappings of a Court and (d) absence of a judicial member does not render the constitution of the NAA unconstitutional or legally invalid.

62. He further stated that there are several statutory bodies that exercise quasi- judicial functions, but are not required to have judicial members. For example, Section 4(1) of the Securities and Exchange Board of India Act, 1992 which provides for the composition of the Securities and Exchange Board of India ('SEBI'), does not necessarily require the presence of Judicial Members in SEBI. He pointed out that the fact that the SEBI inter-alia performs judicial functions has been recognized by the Supreme Court in Clariant International Ltd. & Anr. vs. Securities and Exchange Board of India (2004) 8 SCC 524. Similarly, he stated that Telecom Regulatory Authority of India, Medical Council of India, Institute of Chartered Accountants of India and the Assessing Officers, CIT (Appeals), Dispute Resolution Panel under the Income Tax Act perform quasi- judicial functions but there is no requirement that such members must possess either a law degree or have had judicial experience.

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63. He submitted that a casting vote in the hands of the chairperson is a fair and reasonable manner of deciding a tie in votes and is commonly provided for in several laws.

64. He stated that NAA has been constituted as per the provisions of Rule 122 of the Rules, 2017. The Rules, 2017, including Rule 122, have been duly notified by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs vide Notification No. 3/2017- Central Tax dated 19th June, 2017 and published in the Gazette of India- Extraordinary vide G.S.R. No. 610(E) on the same date and hence NAA has been duly constituted by a Notification as required under Section 171(2) of the Act, 2017. The above notification dated 19th June, 2017 was laid before the Lok Sabha on 11th August, 2017 and before the Rajya Sabha on 08th August, 2017 as required by Section 166 of the Act, 2017.

65. He submitted that in the absence of an express provision to the effect that anti-profiteering proceedings would abate if time-lines are not strictly adhered to, and if the time-lines are read to be mandatory, it would result in gross injustice to the consumers who would be left remediless on account of no fault of theirs.

66. Further, in the absence of anything to the contrary in the amendment or the amended provision, on a plain reading of the provision, the amended/extended time-period for passing of an order would apply to all pending and future proceedings before NAA. He submitted that the time-frames provided in the anti- profiteering provisions are merely directory in nature and not mandatory.

67. Mr. Zoheb Hossain, learned counsel, stated that Section 171 of the Act, 2017 is widely worded and does not limit the scope of examination to only the goods and services in respect of which a complaint is received by the authorities. He submitted that Rule 129 of the Rules, 2017, which provides for the scope of W.P.(C) 7743/2019 & other connected matters 18:24:48 powers of the DGAP, uses the words 'any supply of goods or services' and so the scope of powers of DGAP is very wide.

68. He stated that the contention of the petitioners that there was no mechanism for recovery of the alleged profiteered amount under Section 171 of the Act, 2017 overlooks Rule 133(3)(b) of the Rules, 2017 prescribed under Section 171(3) of the Act, 2017 which empowers NAA to order a supplier to return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent [18%] from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned including interest, as the case may be.

69. Mr. Zoheb Hossain, learned counsel, submitted that the judgments of Supreme Court in Indian Carbon Ltd. Vs. State of Assam, (1997) 6 SCC 479 and Shree Bhagwati Steel Rolling Mills vs. CCE (2016) 3 SCC 643 etc. relied upon by the petitioners were delivered in the context of considering the question of whether interest can be levied for delayed payment of tax and whether penalty can be imposed for non-payment of tax under a Rule where the Statute does not authorize the same.

70. He submitted that by virtue of Rule 133(3)(d) of the Rules, 2017, NAA was already vested with the powers to impose penalties even before Section 171(3A) came into force. According to him, Section 171(3A) of the Act, 2017 is therefore merely clarificatory in nature. He further submitted that in the absence of a power to impose penalties, there would be no consequence arising out of the violation of Section 171(1) of the Act, 2017 by suppliers and consequently, there would be no deterrence against non-compliance.

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71. Even otherwise, he stated that show cause notices initiating penalty proceedings in relation to violation of Section 171(1) prior to the coming into force of Section 171(3A) of the Act, 2017, have been withdrawn by NAA and penalty proceedings in all such cases are not being pressed and so this issue has become infructuous. Insofar as the objection regarding levy of interest is concerned, he submitted that the object of the anti-profiteering measures provided in Section 171 of the Act, 2017 is to ensure that the Input Tax Credits availed by any registered person or the reduction in tax rate result in a commensurate reduction in the price of goods or services or both supplied by him and as a result, the benefit of the same passed on to the recipients. He stated that the profiteered amount includes the benefit of reduction in taxes or Input Tax Credits which was required to be passed on by

way of reduction in prices as well as the tax thereon which the consumer is forced to pay as a result of the non-reduction of prices as required under Section 171(1) of the Act, 2017. He emphasised that had the supplier passed on the benefit of reduction in tax rates or Input Tax Credit by way of reduction in prices, the consumer would not have been required to pay the additional Goods and Services Tax.

72. Mr. Zoheb Hossain submitted that without prejudice to the fact that each and every Act of NAA is well reasoned and justified and can be defended to the satisfaction of this Court as and when the same are taken up case-wise, the case- specific submissions of the petitioners have no bearing whatsoever while considering the constitutional vires of Section 171 of the Act, 2017 and Rules contained in Chapter XV of the Rules, 2017.

W.P.(C) 7743/2019 & other connected matters 18:24:48 ARGUMENTS ON BEHALF OF THE LEARNED AMICUS CURIAE

73. Mr. Amar Dave, learned Amicus Curiae stated that the cardinal objective with which the Goods and Services Tax had been introduced was inter alia to ensure an efficient and robust indirect taxing system.

74. He contended that a perusal of the reports and the discussions preceding the introduction of Goods and Services Tax regime clearly indicated that the impact on prices of various goods and services had been factored in as a necessary consequence of the shift over to the Goods and Services Tax regime.

75. He pointed out that the report of the Comptroller and Auditor General of India ('CAG') of June, 2010 dealt with the manner in which the Value Added Tax ('VAT') was implemented in India and accordingly threw light on the lessons for transition to Goods and Services Tax. One of the elements covered in the said report was the impact that VAT had on prices of goods. The report found that the white paper at the time of introduction of VAT was sanguine that implementation of VAT would bring down the prices of goods due to rationalisation of tax rates and abolition of cascading effect of tax in the legacy systems. However, on the examination and analysis of a small data survey, the CAG found that the manufacturers did not reduce the maximum retail prices after introduction of VAT even when there had been a substantial reduction in tax rates. It was, therefore, found that despite introduction of VAT and reduction in the tax rates, the benefits ensuing from such reduction were not passed on to the consumers by the manufacturers and the dealer networks across the VAT chain had enriched themselves at the cost of the common man. The report highlighted these aspects as those to be borne in mind at the time of considering the shift over to the Goods and Services Tax regime and to ensure mechanism for the purposes W.P.(C) 7743/2019 & other connected matters 18:24:48 of passing on the benefit of tax rationalisation to the ultimate common man.

76. He stated that similarly, another report of the taskforce on Goods and Services Tax i.e. the 13th Finance Commission Report of 15th December, 2009 comprehensively dealt with minute aspects of the contemplated Goods and Services Tax ecosystem and various elements of such switchover. In its introduction, the report contemplated inter alia that the prevailing indirect tax system both at the

Central and the State level included high import tariffs, excise duties and turnover tax on domestic goods and services having cascading effects, leading to a distorted structure of production, consumption and exports and this problem could be effectively addressed by shifting the tax burden from production and trade to final consumption. The report highlighted the implications of the switchover to Goods and Services Tax and the benefits that would entail from such a switchover. He pointed out that para 7.22 of the said report specifically recorded that the benefit to the poor from the implementation of Goods and Services Tax would flow from two sources, first through increase in the income levels and second through reduction in prices of goods consumed by them. It was specifically observed that the proposed switchover to the flawless Goods and Services Tax system should therefore be viewed as a pro-poor system and not regressive. The report further specifically went into the implications of the proposed switchover to Goods and Services Tax on various products and sectors including prices of the goods.

77. He further stated that the Report of the Select Committee (presented to the Rajya Sabha on 22nd July, 2015) dealt with the issues of transition to Goods and Services Tax and the same dealt with inter alia issues of consumer benefit that would arise on account of the transition and related aspects.

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78. Learned Amicus Curiae contended that the discussions at the time of the introduction of the Goods and Services Tax Bill in the Lok Sabha and the Rajya Sabha with regard to Section 171 of the Act, 2017 left no room for doubt that the said measure was introduced as a consumer benefit measure in order to ensure that the past experiences of the stakeholders retaining the benefit of tax reductions due to lack of legal mechanism is not repeated at the time of the switchover to Goods and Services Tax regime.

79. He submitted that Section 171 of the Act, 2017 is a stand-alone provision and provides for all the parameters which act as navigational tools while applying the said provision. He submitted that the pre-requisites for triggering the provision are specifically provided therein and the consequence of the section is also specifically provided for. He submitted that the beneficiary of the contemplated benefit provided under the provision is clearly specified, and therefore, all critical aspects of its applicability and workability stand embedded in the section itself.

80. Learned Amicus Curiae stated that by its very nature, Section 171 of the Act, 2017 provides for an inherent assumption that the reduction of tax rate or the benefit of Input Tax Credit under the Goods and Services Tax mechanism specifically requires, as a consequence thereof, a commensurate reduction in price. He stated that the contention that Section 171 of the Act, 2017 amounts to price regulation is not correct as the provision has been inserted to ensure specifically that the consequential effect of the tax rate must enure to the benefit of the consumer. The very foundation of the same is based on the concept that when the tax rate undergoes a reduction under the Goods and Services Tax regime, it obviously must translate into price reduction. He submitted that if there is a variation (which can be justified by the supplier) of other factors such as any W.P.(C) 7743/2019 & other connected matters 18:24:48 costs necessitating the setting off of such reduction of price, the

inherent presumption is a rebuttable presumption.

81. He submitted that the concept of Section 171 of the Act, 2017 is based on consumer welfare and equity. He contended that it is also the spirit of the constitutional provisions that no entity can be permitted to collect any tax (in any direct or indirect manner or by any implicit representation to that effect) except by the authority of law. Hence, when in spite of the reduction in the applicable tax rate, consequential reduction of the actual price does not take place and the amount is retained by the supplier, it would qualify as an unjust enrichment at the cost of the recipient who is the otherwise beneficiary of the reduction of the tax rate.

82. He stated that any indirect manner of passing on the benefit like 'Diwali Dhamaka' or cross-subsidisation would be interfering with the right of the recipient to get the direct benefit. According to him, such an indirect method to pass the benefit is not contemplated under the express provisions and is also not in sync with the right of the recipient to get the actual benefit of the change in the tax rate. He stated that no such indirect method to pass on the benefit can be read-into the provision when the same is consciously not provided for therein thereby establishing/cementing the right of the recipient/consumer to get the benefit by way of commensurate reduction of the price itself.

83. Learned Amicus Curiae submitted that under the scheme of the Act, 2017, it is contemplated that the Central Government on the recommendations of the Goods and Services Tax Council (a constitutional body formed under the provisions of Article 279A of the Constitution of India) may constitute an Authority or empower an existing Authority constituted under any law for the purpose of examining whether benefit has actually been passed on to the W.P.(C) 7743/2019 & other connected matters 18:24:48 recipients as contemplated under Section 171 of the Act, 2017. He pointed out that Chapter XV of the Rules deals with the subject of anti-profiteering and inter- alia provides the different layers of fact-finding examination that have to be undertaken with respect to the actual passing of benefit contemplated under Section 171 of the Act, 2017. According to him, it is clear from the said Rules that the same contemplates constitution of Standing Committee and Screening Committee at different levels. Further, under the scheme of the Rules, it is provided that the Standing Committee shall within a stipulated time frame after following the process prescribed therein determine whether there is any prima facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax or the benefit of Input Tax Credit or the benefit of Input Tax Credit has, in fact, not been passed on to the recipient. He stated that the scheme of the Rules therefore contemplates that such application(s) from the interested parties shall be first examined by the State level Screening Committee if they pertain to issues local in nature and subsequently be forwarded to the Standing Committee for action. Further, when the Standing Committee reaches a prima facie conclusion, it shall refer the matter to the DGAP for a detailed investigation. Rule 129 of the Rules, 2017 provides for a comprehensive mechanism which the DGAP is required to follow once the matter is forwarded to it. Once the report of the DGAP is forwarded to the Authority, the Rules provide for the mechanism in which the Authority is to undertake the exercise of further considerations and reaching its final conclusions. Thus, according to him, the perusal of the said Scheme under the Rules, 2017 therefore clearly establishes a fact-finding mechanism at different levels culminating in the final determination of the matter by

the Authority.

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84. He submitted that in view of the purely fact-based nature of the exercise and the different levels contemplated for such findings under the Rules the contention that there is lack of appropriate redressal measures under the Scheme of Anti-Profiteering measures in the Goods and Services Tax framework is clearly negated.

85. Learned Amicus Curiae submitted that there is no question of any unbridled powers being conferred on the authority which is entrusted with the obligation of ensuring the compliance of the said provision as enough guidance emanates from the parent provision itself. He contended that all the factors such as the nature of the exercise to be carried out; the objective sought to be achieved by the said exercise; the incorporation of all critical elements which are to guide any such exercise in the section itself; the nature of the authority contemplated and tasked to carry out the functions; the period monitoring of the same by the Goods and Services Tax Council etc. are to be considered when dealing with the subject matter.

COURT'S REASONING PRINCIPLES FOR ADJUDICATING THE CONSTITUTIONALITY OF AN ENACTMENT

86. This Court is of the view that the principles for adjudicating the constitutionality of an enactment are well settled. Though they have been succinctly set out in a number of judgments, yet this Court considers it appropriate to reiterate them.

87. A Statute can be declared as unconstitutional only if the Petitioners make out a case that the Legislature did not have the legislative competence to pass such a Statute or that the provisions of the Statute violate the Fundamental Rights W.P.(C) 7743/2019 & other connected matters 18:24:48 guaranteed under Part-III of the Constitution of India or that the Legislature concerned has abdicated its essential legislative function or that the impugned provision is arbitrary, unreasonable or vague in any manner. D.D. Basu in Shorter Constitution of India (16th Edn., 2021) has enumerated the grounds on which a law may be declared to be unconstitutional as follows:-

> (i) Contravention of any fundamental right, specified in Part III of the Constitution.
>
> (ii) Legislating on a subject which is not assigned to the relevant legislature by the distribution of powers made by the Seventh Schedule, read with the connected articles.
>
> (iii) Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a legislature e.g. Article 301.
>
> (iv) In the case of a State law, it will be invalid insofar as it seeks to operate beyond the boundaries of the State.

> (v) That the legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body.

88. It must also be kept in mind that there is always a presumption in favour of constitutionality of an enactment and the burden to show that there has been a clear transgression of constitutional principles is upon the person who attacks such an enactment. Whenever constitutionality of a provision is challenged on the ground that it infringes a fundamental right, the direct and inevitable effect/consequence of the legislation has to be taken into account. The Supreme Court in Namit Sharma vs. Union of India, (2013) 1 SCC 745 has held as under:-

> "20. Dealing with the matter of closure of slaughterhouses in Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat [(2008) 5 SCC 33] , the Court while noticing its earlier judgment Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] , introduced a rule for exercise of such jurisdiction by the courts stating that the court should exercise judicial restraint while judging the constitutional validity of the statute or even that of a delegated legislation and it is only when there is clear violation of a W.P.(C) 7743/2019 & other connected matters 18:24:48 constitutional provision beyond reasonable doubt that the court should declare a provision to be unconstitutional....."

(emphasis supplied) COURTS' APPROACH WHILE DEALING WITH TAX OR ECONOMIC LAWS

89. Further, the Courts have consistently held that the laws relating to economic activities have to be viewed with greater latitude than laws touching civil rights and that the Legislature has to be allowed some play in the joints because it has to deal with complex problems. The Supreme Court in its recent judgment in Union of India vs. VKC Footsteps India (P) Ltd., 2021 SCC OnLine SC 706 has reiterated the approach that the Courts have to adopt while dealing with tax or economic regulations. The relevant portion of the said judgment is reproduced hereinbelow:-

> "135. While we are alive to the anomalies of the formula, an anomaly per se cannot result in the invalidation of a fiscal rule which has been framed in exercise of the power of delegated legislation. In R.K. Garg [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , P.N. Bhagwati, J. (as the learned Chief Justice then was) speaking for the Constitution Bench underscored the importance of the rationale for viewing laws relating to economic activities with greater latitude than laws touching civil rights. The Court held : (SCC pp. 690- 91, para 8) "8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in

the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [Morey v. Doud, 1957 SCC OnLine US SC 105 : 1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J., said in his inimitable style:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, W.P.(C) 7743/2019 & other connected matters 18:24:48 the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events -- self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability. The Court must always remember that 'legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry'; 'that exact wisdom and nice adaption of remedy are not always possible' and that 'judgment is largely a prophecy based on meagre and uninterpreted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secy. of Agriculture v. Central Roig Refining Co. [Secy. of Agriculture v. Central Roig Refining Co., 1950 SCC OnLine US SC 14 : 94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.""

(emphasis supplied) ACT, 2017 MARKS A PARADIGM SHIFT IN THE FIELD OF INDIRECT TAXES

90. This Court is of the view that the Act, 2017 not only simplifies and harmonises the indirect tax regime in the country, but it also marks a paradigm shift in the manner in which they are enacted, levied and collected in India.

91. The Act, 2017 primarily intends to provide a common national market for Goods and Services as reflected in its moto 'One Nation One Tax'. It is a consumer-centric Act, as it eliminates the levy of multiple taxes, avoids any cascading tax effect, streamlines the credit mechanism by weeding out distortions W.P.(C) 7743/2019 & other connected matters 18:24:48 in the supply chains and ensures a smooth pass-through and transparent mechanism for levying tax. This is apparent from the Statement of Objects and Reasons of the Act, 2017. The same is reproduced hereinbelow:-

> "Presently, the Central Government levies tax on, manufacture of certain goods in the form of Central Excise duty, provision of certain services in the form of service tax, inter-State sale of goods in the form of Central Sales tax. Similarly, the State Governments levy tax on and on retail sales in the form of value added tax, entry of goods in the State in the form of entry tax, luxury tax and purchase tax, etc. Accordingly, there is multiplicity of taxes which are being levied on the same supply chain.
>
> 2. The present tax system on goods and services is facing certain difficulties as under--
>
> (i) there is cascading of taxes as taxes levied by the Central Government are not available as set off against the taxes being levied by the State Governments;
>
> (ii) certain taxes levied by State Governments are not allowed as set off for payment of other taxes being levied by them;
>
> (iii) the variety of Value Added Tax Laws in the country with disparate tax rates and dissimilar tax practices divides the country into separate economic spheres; and
>
> (iv) the creation of tariff and non-tariff barriers such as octroi, entry tax, check posts, etc., hinder the free flow of trade throughout the country. Besides that, the large number of taxes create high compliance cost for the taxpayers in the form of number of returns, payments, etc.
>
> 3. In view of the aforesaid difficulties, all the above mentioned taxes are proposed to be subsumed in a single tax called the goods and services tax which will be levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level. So, any tax that is presently being levied by the Central Government or the State Governments on the supply of goods or services is going to be converged in goods and services tax which is proposed to be a dual levy where the Central Government will levy and collect tax in the form of central goods and services tax and the State Government will levy and collect tax in

the form of state goods and services tax on intra-State supply of goods or services or both.

4. In view of the above, it has become necessary to have a Central legislation, namely the Central Goods and Services Tax Bill, 2017. The proposed legislation will confer power upon the Central Government for levying goods and services tax on the supply of goods or services or both which takes place within a State. The proposed legislation will simplify and harmonise the indirect tax regime in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and industry more competitive, domestically as well as internationally. Due to the seamless transfer of input tax credit from one W.P.(C) 7743/2019 & other connected matters 18:24:48 stage to another in the chain of value addition, there is an in-built mechanism in the design of goods and services tax that would incentivise tax compliance by taxpayers. The proposed goods and services tax will broaden the tax base, and result in better tax compliance due to a robust information technology infrastructure.

5. The Central Goods and Services Tax Bill, 2017, inter alia, provides for the following, namely:--

(a) to levy tax on all intra-State supplies of goods or services or both except supply of alcoholic liquor for human consumption at a rate to be notified, not exceeding twenty per cent. as recommended by the Goods and Services Tax Council (the Council);

(b) to broad base the input tax credit by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business;

(c) to impose obligation on electronic commerce operators to collect tax at source, at such rate not exceeding one per cent. of net value of taxable supplies, out of payments to suppliers supplying goods or services through their portals;

(d) to provide for self-assessment of the taxes payable by the registered person;

(e) to provide for conduct of audit of registered persons in order to verify compliance with the provisions of the Act;

(f) to provide for recovery of arrears of tax using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person;

(g) to provide for powers of inspection, search, seizure and arrest to the officers;

(h) to establish the Goods and Services Tax Appellate Tribunal by the Central Government for hearing appeals against the orders passed by the Appellate Authority

or the Revisional Authority;

(i) to make provision for penalties for contravention of the provisions of the proposed Legislation;

(j) to provide for an anti-profiteering clause in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers; and

(k) to provide for elaborate transitional provisions for smooth transition of existing taxpayers to goods and services tax regime.

6. The Notes on clauses explain in detail the various provisions contained in the Central Goods and Services Tax Bill, 2017.

7. The Bill seeks to achieve the above objectives."

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92. From the aforesaid, it is apparent that the Act, 2017 levies a single tax on the supply of goods or services on the value addition at each stage of the supply chain from purchase of raw materials, manufacture of product or import, till the finished good reaches the hands of the consumer. This is best illustrated by the following example:-

Stages Actions Price+Tax=cost Cost/ Total Tax@10% Total Addition only on price addition st 1 Purchase of raw - 2000 2000 200 2200 material by manufacturer 2nd Sold finished goods to 2000+200=2200 500 2700 50 2750 wholesaler (raw material to finished goods) 3rd Purchase of finished 2700+50=2750 400 3150 40 3190 goods by Trader 4th Purchase of finished 3150+40=3190 300 3490 30 3520 goods by actual consumer Total 3200 320 3520

93. The Goods and Service Tax is a destination-based tax and is levied at the point of consumption. Accordingly, the taxes get accumulated with the original price and due to the effect of Input Tax Credit, the cascading effect i.e. tax on tax is removed. This is best illustrated by the following example:-

W.P.(C) 7743/2019 & other connected matters 18:24:48 OLD SYSTEM GOODS AND SERVICES TAX SYSTEM MANUFACTURING COST OF CAR MANUFACTURING COST OF CAR 250,000 250,000 ADD: PROFIT @20% 50,000 ADD: PROFIT @20% 50,000 TOTAL COST 300,000 TOTAL COST 300,000 ADD: EXCISE DUTY @10% 30,000 ADD: EXCISE DUTY @10% NA 0 COST AFTER TAX 3,30,000 COST AFTER TAX 3,00,000 COST TO CUSTOMER 3,63,000 300,000 ADD:GOODS And SERVICES TAX @ 20% 60000 COST TO CUSTOMER 3,60,000

94. Consequently, the intent of the Act, 2017 is to provide a common national market, boost productivity, increase competitiveness, broaden the tax base and make India a manufacturing hub.

SECTION 171 MANDATES THAT TAX FOREGONE HAS TO BE PASSED ON AS A COMMENSURATE REDUCTION IN PRICE.

95. As rightly pointed out by the learned Amicus Curiae, the introduction of the system of Goods and Services Tax was preceded by a comprehensive examination of the subject by different committees and the reports of such committees had been factored in while finalizing the framework of the Goods and Services Tax.

96. An area of concern identified in the said reports was that though with the doing away of multiplicity and cascading of taxes, the prices of goods and services would come down, yet would this benefit, if any, be passed on to the consumer by the manufacturers and sellers. To ensure that the benefit is passed on, an anti-profiteering provision in the form of Section 171 of the Act, 2017, was introduced.

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97. Section 171 of the Act, 2017 mandates that the suppliers shall pass on the benefit of reduction of the rate of Goods and Services Tax or Input Tax Credits by way of commensurate reduction in prices to the recipient. Section 171 deals with amounts that the Central and State Governments have foregone from the public exchequer in favour of the consumers. This Court is of the view that the amounts foregone from the public exchequer in favour of the consumers cannot be appropriated by the manufacturers, traders, distributors etc. To allow them to do so would amount to unjust enrichment. Consequently, when the Goods and Services Tax rate gets reduced or the benefit of input tax credit, becomes available as a necessary consequence the final price paid by the recipient obviously requires to be reduced. In the absence of such anti-profiteering provisions, there would be no legal obligation to pass on the benefit of the Goods and Services Tax regime and, consequently, the intended objective of reducing overall tax rates and mitigating the cascading effect would not be achieved.

98. The expression 'profiteered' has been defined in the Explanation to Section 171 of the Act, 2017 to mean 'the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both'. According to Collins English Dictionary - Complete and Unabridged, 12th Edition 2014, the word 'commensurate' means "1. having the same extent or duration; 2. corresponding in degree, amount, or size; proportionate; 3. able to be measured by a common standard; commensurable." The word 'commensurate' has been used in several judgments of the Supreme Court for laying down yardsticks in different contexts, from determining the rightfulness of the posting of a public servant, to assessing the correctness of criminal sentencing and calculating maintenance amounts W.P.(C) 7743/2019 & other connected matters 18:24:48 indicating that the Courts too have a clear and definite understanding of this word. [See: P.K. Chinnasamy v. Govt. of T.N., (1987) 4 SCC 601; Centre for PIL v. Housing & Urban

Development Corpn. Ltd., (2017) 3 SCC 605; Dinesh v. State of Rajasthan, (2006) 3 SCC 771; Vimala (K.) v. Veeraswamy (K.), (1991) 2 SCC 375].

99. The obligation of effecting/making a "commensurate" reduction in prices, as mentioned hereinabove, is relevant to the underlying objective of the Goods and Services Tax regime which is to ensure that suppliers pass on the benefits of reduction in the rate of tax and Input Tax Credit to the consumers, especially since the Goods and Services Tax is a consumption-based tax (as adopted in India) and the recipient (consumer) practically pays the taxes which are included in the final price. Section 171 of the Act, 2017, therefore, is not to be looked at as a price control measure but is to be seen to be directly connected with the objectives of the Goods and Services Tax regime. Consequently, the word 'commensurate' in Section 171 of the Act, 2017 means that whatever actual saving arises due to the reduction in rates of tax or the benefit of the Input Tax Credit, in rupee and paisa terms, must be reflected as equal or near about reduction in price . In other words, tax foregone by the authorities has to be passed on to the consumer as commensurate reduction in price.

100. Accordingly, Section 171 of the Act, 2017 has been enacted, in public interest, with the consumer welfare objective of ensuring that suppliers pass on the benefit of Input Tax Credits and reduction of rate of Goods and Services Tax to the consumers. The Section does this by firstly creating a substantive obligation under sub-section (1) requiring manufacturers / suppliers to pass on benefits of Input Tax Credits and/or reduction in rate of tax by way of commensurate reduction in prices to the recipients. The said Section further W.P.(C) 7743/2019 & other connected matters 18:24:48 enables the establishment of an Authority to determine whether Suppliers have passed on the benefits of Input Tax Credits and reduction of the tax rates, and to exercise such other powers and functions as may be prescribed.

101. This Court is in agreement with the submission of the Respondents that the objective behind Section 171 is directly relatable to the Directive Principles of State Policy contained in Article 38(1) of the Constitution which requires the State to strive to secure a social order in which justice, social, economic and political shall inform all institutions of the national life and Articles 39(b) and (c) of the Constitution which require the State to direct its policy towards ensuring that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

102. To summarise, Section 171 of the Act, 2017 mandates that whatever is saved in tax must be reduced in price. Section 171 of the Act, 2017 incorporates the principle of unjust enrichment. Accordingly, it has a flavor of consumer welfare regulatory measure, as it seeks to achieve the primary objective behind the Goods and Services Tax regime i.e. to overcome the cascading effect of indirect taxes and to reduce the tax burden on the final consumer. Consequently, the judgments of Ahmedabad Urban Development Authority (supra), Indian Carbon Limited (supra), V.V.S. Sugars (supra) and Shree Bhagwati Steel Rolling Mills v. CCE (supra), relied on by the Petitioners, are not applicable as they deal with the validity of delegated authority imposing tax/fee or charging interest on delayed payment of tax in the absence of empowering provision in the statute.

W.P.(C) 7743/2019 & other connected matters 18:24:48 SECTION 171 FALLS WITHIN THE LAW-MAKING POWER OF THE PARLIAMENT UNDER ARTICLE 246A

103. Article 246A of the Constitution of India defines the source of power as well as the field of legislation (with respect to goods and services tax) obviating the need to refer to the Seventh Schedule of the Constitution. Article 246A is available to both the Parliament and the State Legislatures. The said Article embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence. However, the Parliament has the exclusive power to enact Goods and Services Tax legislation where the supply of goods or services takes place in the course of inter-State trade or commerce. The Supreme Court in Union of India vs. VKC Footsteps India (P) Ltd. (supra) has held, 'The One Hundred and First Amendment to the Constitution is a watershed moment in the evolution of cooperative federalism'.

104. Article 246A of the Constitution of India empowers the Parliament and Legislatures to make laws 'with respect to' goods and services tax. This expression is similar to that used in Article 246 which empowers the Parliament and State Legislatures to make laws 'with respect to' the various subject-matters enumerated in the Seventh Schedule. The Supreme Court has consistently held that the expression 'with respect to' is of wide amplitude and thus, the law making power with regard to Goods and Services Tax includes all ancillary, incidental and necessary matters. In Welfare Association, A.R.P., Maharashtra Vs. Ranjit P. Gohil, (2003) 9 SCC 358, the Supreme Court has held as under:-

> "28. The fountain source of legislative power exercised by Parliament or the State Legislatures is not Schedule 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three lists are fields of legislation. The Constitution-makers purposely used general and W.P.(C) 7743/2019 & other connected matters 18:24:48 comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest- possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another list.
>
> 29. In every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act and to find out if the matter

> comes substantially within an item in the list. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power (see the Constitution Bench decision in Chaturbhai M. Patel v. Union of India [AIR 1960 SC 424 : (1960) 2 SCR 362])."

(emphasis supplied)

105. In R.S. Joshi, Sales Tax Officer, Gujarat & Ors. vs. Ajit Mills Limited & Anr., (1977) 4 SCC 98, a Seven-Judge Bench of the Supreme Court clearly held that providing for measures dealing with aspects of unjustly retained amounts as tax in the concerned statute were necessary / ancillary aspects connected with the subject of taxation. The relevant portion of the said judgment is reproduced hereinbelow:-

> "13. Bearing in mind the quintessential aspects of the rival contentions, let us stop and take stock. The facts of the case are plain. The professed object of the law is clear. The motive of the legislature is irrelevant to castigate an Act as a colourable device. The interdict on public mischief and the insurance of consumer interests against likely, albeit, unwitting or "ex abundanti cautela" excesses in the working of a statute are not merely an ancillary power but surely a necessary obligation of a social welfare state. One potent prohibitory process for this consummation is to penalize the trader by casting a no-fault or absolute liability W.P.(C) 7743/2019 & other connected matters 18:24:48 to "cough up" to the State the total "unjust" takings snapped up and retained by him "by way of tax" where tax is not so due from him, apart from other punitive impositions to deter and to sober the merchants whose arts of dealing with customers may include "many a little makes a mickle'. If these steps in reasoning have the necessary nexus with the power to tax under Entry 54 List II, it passes one's comprehension how the impugned legislation can be denounced as exceeding legislative competence or as a "colourable device" or as "supplementary, not complementary'. But this is precisely what the High Court has done, calling to its aid passages culled from the rulings of this Court and curiously distinguishing an earlier Division Bench decision of that very Court -- a procedure which, moderately expressed, does not accord with comity, discipline and the rule of law. The puzzle is how minds trained to objectify law can reach fiercely opposing conclusions.
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> xxx xxx xxx
>
> 24. In a developing country, with the mass of the people illiterate and below the poverty line, and most of the commodities concerned constitute their daily requirements, we see sufficient nexus between the power to tax and the incidental power to protect purchasers from being subjected to an unlawful burden. Social

> justice clauses, integrally connected with the taxing provisions, cannot be viewed as a mere device or wanting in incidentality. Nor are we impressed with the contention turning on the dealer being an agent (or not) of the State vis-a-vis sales tax ; and why should the State suspect when it obligates itself to return the moneys to the purchasers? We do not think it is more feasible for ordinary buyers to recover from the common run of dealers small sums than from Government. We expect a sensitive government not to bluff but to hand back. So, we largely disagree with Ashoka while we generally agree with Abdul Quader. We must mention that the question as to whether an amount which is illegally collected as sales tax can be forfeited did not arise for consideration in Ashoka.
>
> 25. We may conclude with the thought that Parliament and the State legislatures will make haste to inaugurate viable public interest litigation procedures cutting costs and delays. After all, the reality of rights is their actual enjoyment by the citizen and not a theoretical set of magnificent grants. "An acre in Middlesex', said Macaulay, "is better than a principality in Utopia'. Added Prof. Schwartz : "A legal system that works to serve the community is better than the academic conceptions of a bevy of Platonic guardians unresponsive to public needs."

(emphasis supplied)

106. Keeping in view the aforesaid, this Court is of the view that the anti- profiteering mechanism as incorporated in Section 171 of the Act, 2017 is in the exercise of the Parliament's power to legislate on ancillary and necessary aspects/matters of Goods and Services Tax apart from being a social welfare W.P.(C) 7743/2019 & other connected matters 18:24:48 measure as it amplifies and extends the earlier concept of barring persons to undertake exercise of collecting monies from the consumers by false representation.

107. Consequently, this Court is of the view that Section 171 of the Act, 2017 falls within the law-making power of the Parliament under Article 246A of the Constitution dealing with the ancillary and necessary aspects of Goods and Services Tax and is not beyond the legislative competence of the Parliament.

SECTION 171 LAYS OUT A CLEAR LEGISLATIVE POLICY AND DOES NOT DELEGATE ANY ESSENTIAL LEGISLATIVE FUNCTION

108. This Court is of the view that Section 171 of the Act 2017 is a complete code in itself and it does not suffer from any ambiguity or arbitrariness. Section 171 of the Act 2017 sets out the function, duty, responsibility and power of NAA with exactitude. It stipulates that the pre-conditions for applicability of the provision are either the event of reduction in rate of tax or the availability of benefit of input tax credit (resulting in such reduction). Once the said pre- requisites/conditions exist, the direct consequence contemplated i.e. reduction of the price must follow. Therefore, if before such reduction of rate of taxes or benefit of Input Tax Credit, the price paid by the recipient inclusive of the applicable tax at the relevant time was a particular amount, then on account of the

reduction of the tax rate or the benefit of the Input Tax Credit, there has to be reduction in the subject price. Further, the reduction in the tax rate or the benefit of Input Tax Credit which is mandated to be passed on to the recipient is a matter of right for the recipient and consequentially, the price reduction must be commensurate to such benefit. For instance, when the Goods and Services Tax rate on a service of Rs.100 is 28%, the MRP of the service at which it is sold to W.P.(C) 7743/2019 & other connected matters 18:24:48 the consumer is Rs.128. When the Goods and Services Tax rate is reduced by the Government from 28% to 18%, the provision requires that this reduction in Goods and Services Tax rate should be reflected in the price of the service and the benefit from such reduction of tax rate should be passed on to the consumers by way of commensurate reduction in the price. As a result, the new MRP of the service should be Rs.118.

109. In Re The Delhi Laws Act AIR (1951) SC 332, while answering the question of what is an essential legislative function, the Supreme Court held that "the essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy."

110. Keeping in view the aforesaid mandate of law, it is apparent that Section 171 of the Act, 2017 lays out a clear legislative policy. This Court is of the view that the necessary navigational tools, guidelines as well as checks and balances have been incorporated in the provision itself to guide any authority tasked with ensuring its workability. Consequently, Section 171 of the Act 2017 neither delegates any essential legislative function nor violates Article 14 of the Constitution of India.

111. As per Section 171(2), the Central Government may, on recommendations of the Council, by notification, constitute an Authority to examine whether Input Tax Credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services. Section 171(3) of the Act, 2017 stipulates that the Authority i.e. NAA W.P.(C) 7743/2019 & other connected matters 18:24:48 shall exercise such powers and discharge such function as may be prescribed. It is in exercise of this power that the Central Government has enacted Rule 126 of the Rules, 2017 empowering NAA to determine the methodology and procedure for determining whether the benefit has been passed on to the recipient by way of commensurate reduction in prices. Consequently, on a conjoint reading of Sections 171(2) and 171(3) of the Act, 2017, it is evident that the powers conferred on NAA by the Central Government under Rule 126 of the Rules, 2017 were intended by the Legislature to be exercised by the NAA itself. In fact, in exercise of its powers under Rule 126 of the Rules, 2017, NAA has issued the 'National Anti-Profiteering Authority: Methodology and Procedure, 2018' dated 28th March, 2018.

112. The Supreme Court in Sahni Silk Mills (P) Ltd. v. ESI Corpn., (1994) 5 SCC 346 while discussing the maxim of delegatus non potest delegare has held that, "The basic principle behind the aforesaid maxim is that "a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negatived by any contrary indications found in the language, scope or object of the statute". (Vide John Willis, "Delegatus non potest delegare, (1943) 21 Can. Bar Rev. 257, 259)". Therefore, the

principle of delegatus non potest delegare is not applicable to the present batch of matters.

113. Further, Section 166 of the Act, 2017 provides that every rule made by the Government in exercise of its powers under Section 164 of the Act, 2017 shall be laid before each house of the Parliament and that if both Houses agree to make any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case maybe.

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114. The Supreme Court in D.S. Grewal v. State of Punjab 1958 SCC OnLine SC 9 in respect of a similar provision in the All-India Services Act, 1951 has observed as follows:

> " At the same time Parliament took care to see that these rules were laid on the table of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal or amendment on a motion made by Parliament during the session in which they are so laid. This makes it perfectly clear that Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate."

(emphasis supplied) [

115. Consequently, the Executive by framing Rule 126 of the Rules, 2017 has in no manner encroached upon the jurisdiction of the Parliament. The Petitioners, throughout the hearing of the case, have repeatedly pointed out that the NAA has adopted varied approaches with regard to entities dealing with similar products in identical circumstances. If that is the case, then, it may make the orders passed by NAA bad, but would not invalidate either Section 171 or the Rules framed thereunder. Further, as the substantive mandate under Section 171(1) is itself a sound guiding principle for the framing of Rules and the functioning of NAA, the argument that Rule 126 suffers from excessive delegation is untenable in law.

IMPUGNED PROVISIONS ARE NOT A PRICE FIXING MECHANISM. THEY DO NOT VIOLATE EITHER ARTICLE 19(1)(g) OR ARTICLE 300A OF THE CONSTITUTION

116. Section 171 of the Act, 2017 does not violate Article 19(1)(g) of the Constitution of India, as it is not a price-fixing mechanism. As rightly pointed out by the learned counsel for the Respondents, Section 171 of the Act, 2017 only relates to the indirect-tax component of the price of goods and services and does not impinge upon the freedom of suppliers to fix their own prices keeping in view W.P.(C) 7743/2019 & other connected matters 18:24:48 relevant commercial and economic factors. This Court is in agreement with the learned Amicus Curiae that Section 171 of the Act, 2017 is solely focused on ensuring that the consequential benefit of reduction of the rate of tax by the Government reaches the recipient.

117. The contention of the petitioners that the fundamental presumption under Section 171 that every tax reduction must result in 'price reduction' is not correct. The use of the expression 'shall' in Section 171 of the Act, 2017 means that the supplier is required to pass on the benefit of the reduced tax rate and the benefit of Input Tax Credit, and that such passing on is to be carried out only by way of commensurate reduction of price of the goods or services. Accordingly, costing and market-related factors are irrelevant for NAA, as it is only required to examine whether or not there is any reduction in tax rate or benefit of accruing Input Tax Credits and if so whether the same has been passed on by way of commensurate reduction of prices. The NAA is not concerned with the price determined by a supplier, for the supply of particular goods or services, exclusive of the GST or Input Tax Credit component. The supplier is at liberty to set his base prices and vary them in accordance with the relevant commercial and economic factors or any applicable laws. Consequently, NAA is only mandated to ensure that the benefit of reduced rates of taxes and Input Tax Credit is passed on. NAA cannot force the petitioners to sell their goods or services at reduced prices.

118. This Court is of the view that the manufacturer/supplier despite reduction on rate of tax or benefit of Input Tax Credits can raise the prices based on commercial factors, as long as the same is not a pretense. During the hearing, Mr. Zoheb Hossain, learned counsel, conceded (as recorded earlier) that in some cases, commercial factors might necessitate an increase in price despite reduction in rate of tax or increase in availability of benefit of Input Tax Credits.

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119. This Court is in agreement with the submission of learned Amicus Curiae that if there is any variation on account of other factors, such as any costs necessitating the setting off of such reduction of price, the same needs to be justified by the supplier. The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under Section 171 of the Act, 2017.

120. This Court is further of the view that the present batch of matters deals with amounts that the Revenue had foregone in favour of the consumers which however had been either wrongfully appropriated by the petitioners/suppliers and/or used in their business and/or used for cross-subsidisation and/or passed off as a special discount to the dealer or the consumer. Therefore, there cannot be any proprietary interest of the suppliers in such amount which the Government has foregone in favour of consumers by way of reduction in taxes and no legal or constitutional right can be asserted thereunder.

121. Clearly, Section 171 of the Act, 2017 has been incorporated with the intent of creating a framework that ensures that the benefit reaches the ultimate consumer. There cannot be any room for allowing unjust retention of benefit of reduction in rate of tax or benefit of input tax credit with the manufacturer/supplier/distributor. The reliance placed by the petitioners on the judgment of CIT vs. B.C. Srinivasa Setty (1981) 2 SCC 460 and CCE vs. Larsen & Toubro Ltd. (2016) 1 SCC 170, is

completely misconceived as both these judgments were passed specifically in the context of levy of taxes. As held hereinabove, Section 171 of the Act, 2017 does not levy any tax on supplies and W.P.(C) 7743/2019 & other connected matters 18:24:48 hence these judgments do not apply to the present batch of matters. Consequently, the impugned provisions are not a price fixing mechanism and they do not violate either Article 19(1)(g) or Article 14 or Article 300A of the Constitution of India.

REFERENCE TO ANTI-PROFITEERING PROVISIONS OF AUSTRALIA AND MALAYSIA IS MISCONCEIVED

122. The reference to Anti-profiteering provisions under the Australian Trade Practices Act by the petitioners is misplaced as pointed out by the learned counsel for the Respondents and as according to the petitioner's own submissions, the Australian Act prohibits 'price exploitation' in relation to the New Tax System i.e. that the Act by its nature regulates prices. This is different from Section 171 of the Act, 2017 which only requires the suppliers to pass on the benefit of tax reduction and Input Tax Credit to the recipients of the goods and services. The 'price' aspect comes into play in the context of Section 171 of the Act, 2017 only when it comes to the manner in which the principal obligation of passing on benefits as aforesaid, is to be carried out i.e., by way of commensurate reduction of prices. Consequently, in the case of Section 171, there is no intent of any over- riding regulation on 'price exploitation' like in the case of the Australian Trade Practices Act referred to by the petitioners.

123. Similarly, the reference made by the petitioners to the Malaysian Price Control and Anti-Profiteering Act, 2011 is also misplaced as the said Act, according to the petitioner's own submission, prohibits suppliers from 'making unreasonably high profit'. By its very nature, the Malaysian Act controls pricing unlike Section 171 of the Act, 2017 which does not seek to regulate the pricing of the goods and services or the profits of the suppliers. Consequently, the reference to Anti-Profiteering provisions of Australia and Malaysia is misconceived.

W.P.(C) 7743/2019 & other connected matters 18:24:48 NO FIXED/UNIFORM METHOD OR MATHEMATICAL FORMULA CAN BE LAID DOWN FOR DETERMINING PROFITEERING

124. This Court is of the view that no fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of the profiteered amount has to be computed by taking into account the relevant and peculiar facts of each case. There is 'no one size that fits all' formula or method that can be prescribed in the present batch of matters. Consequently, NAA has to determine the appropriate methodology on a case to case basis keeping in view the peculiar facts and circumstances of each case.

125. It is also well-established that where a power exists to prescribe a procedure and such power has not been exercised, the implementing authorities are at liberty to determine and adopt such procedure as they may deem fit subject to the same being fair and reasonable. In Dhanjibhai Ramjibhai vs. State of Gujarat (1985) 2 SCC 5, the Supreme Court has held, "...Merely because

procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted.". In Chairman & MD, BPL Ltd. vs. S.P. Gururaja and Ors., (2003) 8 SCC 567, the Supreme Court has held, "....Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of Article 14 of the Constitution of India."

126. Consequently, Rule 126 of the Rules, 2017 to the extent it grants flexibility to NAA to determine the methodology and procedure to decide whether reduction W.P.(C) 7743/2019 & other connected matters 18:24:48 in rate of tax or benefit of Input Tax Credit has been passed on or not to the recipient is reasonable and legal. Moreover, as per Rule 126 NAA 'may determine' the methodology and not 'prescribe' it. The substantive provision i.e. Section 171 of the Act, 2017 itself provides sufficient guidance to NAA to determine the methodology on a case by case basis depending upon peculiar facts of each case and the nature of the industry and its peculiarities. Consequently, so long as the methodology determined by NAA is fair and reasonable, the petitioners cannot raise the objection that the specifics of the methodology adopted are not prescribed.

127. Since considerable emphasis was laid by learned counsel for the Petitioners on the methodology adopted by NAA to determine commensurate reduction qua real estate industry, this Court deems it appropriate to deal with the same at some length. With the introduction of the Goods and Services Tax scheme/regime, the availability of Input Tax Credit against various goods and services used in construction has increased or Input Tax Credit was available against more goods and services then before this resulted in a decrease in the cost of the builders as they now had more Input Tax Credit available to be set off against Goods and Services Tax paid by them in the Goods and Services Tax regime as compared to before and the same was not required to be collected from the consumers.

128. There is no dispute with regard to the methodology to be adopted in the following four scenarios:-

> a. If the flat was completely constructed in the pre-Goods and Services Tax period i.e. before 01st July, 2017 and if it was purchased by making upfront payment of the whole price in the pre-Goods and Services Tax period no benefit of Input Tax Credit would be required to be passed on as the price will include W.P.(C) 7743/2019 & other connected matters 18:24:48 the cost of taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax period viz. Central Excise Duty, Entry Tax etc. b. If the construction of the flat had started in the pre-Goods and Services Tax period and continued/completed in the post-Goods and Services Tax period and a buyer purchased the flat by making full upfront payment in the post-Goods and Services Tax period he is entitled to the benefit of Input Tax Credit on the material which has been purchased in respect of this flat during the post-Goods and Services Tax period and on which benefit of Input Tax Credit has been availed by the builder. The builder has to reduce the price commensurately and pass on the benefit. c. If the construction of the flat is started in the pre-Goods and Services Tax period and its

> construction was continued in the post-Goods and Services Tax period and it was purchased by the consumer by paying the full amount of price upfront in the pre-Goods and Services Tax period, the buyer is entitled to claim benefit of Input Tax Credit on the taxes paid on the construction material purchased by the builder in the post-Goods and Services Tax period during which he has been given benefit of Input Tax Credit on the taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax and cost of such taxes has been built in the price of the flat by the builder.
>
> d. If the flat is constructed in the post-Goods and Services Tax period and it is purchased after construction being complete by making upfront payment of the full price, no benefit of Input Tax W.P.(C) 7743/2019 & other connected matters 18:24:48 Credit would be available as the price of the flat would have been fixed after taking into account the Input Tax Credit which has become available to the builder in the post-Goods and Services Tax period and which was not available to him in the pre-Goods and Services Tax.

129. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services and Tax and post- Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the Input Tax Credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the accrual of Input Tax Credit is not related to the amount collected from the buyers. This Court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and Tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The Court, while hearing the present batch of matters on merits, shall take the aforesaid direction/interpretation into account.

W.P.(C) 7743/2019 & other connected matters 18:24:48 IT IS THE PREROGATIVE OF THE LEGISLATURE TO DECIDE HOW THE BENEFIT IS TO BE PASSED ON TO THE CONSUMERS

130. It is settled law that it is the prerogative of the Legislature to decide the manner as to how the reduction in rate of tax or the benefit of Input Tax Credit is to be passed on to the consumer. In Dr.Ashwani Kumar vs. Union of India, (2020) 13 SCC 585, the Supreme court has held as under:-

> "11. The legislature as an elected and representative body enacts laws to give effect to and fulfil democratic aspirations of the people. The procedures applied are designed

> to give careful thought and consideration to wide and divergent interests, voices and all shades of opinion from different social and political groups. Legislature functions as a deliberative and representative body. It is directly accountable and answerable to the electorate and citizens of this country. This representativeness and principle of accountability is what gives legitimacy to the legislations and laws made by Parliament or the State Legislatures. Article 245 of the Constitution empowers Parliament and the State Legislatures to enact laws for the whole or a part of the territory of India, and for the whole or a part of the State respectively, after due debate and discussion in Parliament/the State Assembly."

(emphasis supplied)

131. In the present instance, the legislative mandate is that reduction of the tax rate or the benefit of Input Tax Credit must not only be reflected in reduction of prices but it must also reach the recipient of the goods or services. Such a mandate cannot be tampered with by the supplier by substituting the benefit in the form of reduction of actual price with any other form such as increase in volume or weight or by supply of additional or free material or festival discount like 'Diwali Dhamaka' or cross-subsidisation.

132. Further, the requirement that the benefit of the rate reduction and Input Tax Credit reach the final consumer by way of 'cash in hand' through commensurate reduction in prices, cannot be said to be manifestly arbitrary. No fundamental or other rights of any of the petitioners are being affected in any manner by W.P.(C) 7743/2019 & other connected matters 18:24:48 requiring that the benefit in reduction of tax rate or Input Tax Credits, be passed on to the recipients by way of commensurate reduction in prices.

133. This Court is in agreement with the submission of Mr. Zoheb Hossain, learned counsel for the Respondents, that the benefit of tax reduction has to be passed on at the level of each supply of SKU to each buyer and in case it is not passed on, the profiteered amount has to be calculated on each SKU.

134. The contention of the learned counsel for the Petitioners that it is legally impossible to pass on the benefits by reducing the price of goods in cases of low priced products is untenable in law. As pointed out by Mr.Zoheb Hossain, learned counsel for the Respondents, the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 are applicable. In cases for period prior to 31st December, 2017, the erstwhile Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011 which provided detailed instructions for rounding off of the MRP would be applicable. Similarly, Rule 6(1)(e) of the above Rules as amended in 2017 with effect from 01st January, 2018 to 31st March, 2022 provides that the retail price of the package shall clearly indicate that it is the MRP inclusive of all taxes and the price in rupees and paise be rounded off to the nearest rupee or 50 paise would be applicable. Consequently, there would be no legal impossibility in reducing the MRP even in such cases. There is nothing inconsistent in Section 171 with such rounding off.

ACT 2017 RIGHTLY DOES NOT FIX A TIME PERIOD DURING WHICH PRICE-REDUCTION HAS TO BE OFFERED

135. This Court is in agreement with the submissions of the respondents and the learned Amicus Curiae that bearing in mind the very nature of the Act, 2017, it is not proper or feasible to contemplate any specific period of time for application of W.P.(C) 7743/2019 & other connected matters 18:24:48 the reduced price, as the same has to take effect so long as the direct relation between the reduction of tax rate or the benefit of Input Tax Credits exists and there is no other factor effecting/countering the same. If, conceptually, the reduction of tax rate has taken place on a specified date and there are no justified variations in the cost price or other factors for offsetting such reduction in the prices for a particular period of time, clearly for that period a reduced price must govern the transaction. This Court is of the view that providing for a particular period of time for operation of the provisions would be not be in conformity with the scheme and intent of the Act, 2017 itself.

SECTION 64A OF SALE OF GOODS ACT IS NOT APPLICABLE TO THE OBLIGATION UNDER SECTION 171

136. This Court is in agreement with the submission of learned counsel for the Respondents that Section 64A of Sale of Goods Act, 1930 has no applicability to the obligation under Section 171 of the Act, 2017 as the former only confers a discretion on the buyer to reduce the contract price to the extent of reduction in taxes, whereas Section 171 imposes a positive obligation on the supplier to make a commensurate reduction in the price when the Government reduces the rate of tax. Therefore there is no inconsistency between the two laws.

137. Moreover, the CGST/SGST Acts, 2017 are independent Acts and there is no provision under these Acts that tax reduction ordered under these Acts would be subject to the provisions of Sale of Goods Act, 1930 or the Indian Contract Act, 1872. Tax reduction is given by sacrificing tax revenue and hence the Governments are legally competent to direct the suppliers to pass on the benefit of such tax reduction to the consumers after its notification. Any contract made in violation of public policy of passing on the benefit would be void. Consequently, W.P.(C) 7743/2019 & other connected matters 18:24:48 all contracts (a) whether they are pending to be performed or (b) executed after tax reduction and/or (c) have already been concluded before tax reduction, have to implemented keeping in view the mandate enshrined in Section 171 of the Act, 2017.

A STATUTORY PROVISION CANNOT BE STRUCK DOWN ON THE GROUND OF POSSIBILITY OF ABUSE

138. During the course of hearing, learned counsel for the petitioners advanced a number of hypothetical situations to suggest that there is a possibility of abuse of Section 171 of the Act, 2017. However, it is settled law that Acts and their provisions are not to be declared unconstitutional on the fanciful theory that power would be exercised in an unrealistic fashion or in a vacuum or on the ground that there is an apprehension of misuse of statutory provision or possibility of abuse of power. It must be presumed, unless the contrary is proved, that administration and application of a

particular law would be done "not with an evil eye and unequal hand". Some of the relevant Supreme Court judgments are reproduced hereinbelow:-

> A. In Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay & Ors., (1974) 2 SCC 402 it has been held as under:-
>
> "15.....The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary civil court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking W.P.(C) 7743/2019 & other connected matters 18:24:48 proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary civil court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers case."

(emphasis supplied) B. In Collector of Customs v. Nathella Sampathu Chetty, 1962 SCC OnLine SC 30 , the Supreme Court has held as under:-

> "34....This Court has held in numerous rulings, to which it is unnecessary to refer, that the possibility of the abuse of the powers under the provisions contained in any statute is no ground for declaring the provision to be unreasonable or void. *** The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as

> being unreasonable cannot be saved by its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so judged it passes the test of reasonableness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Constitution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. In saying this we are not to be understood as laying down that a law which might operate, harshly but still be constitutionally valid should be operated always with harshness or that reasonableness and justness ought not to guide the actual administration of such laws."

(emphasis supplied) W.P.(C) 7743/2019 & other connected matters 18:24:48 C. In Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, a nine Judge Bench of the Supreme Court while considering the validity of provisions of the Central Excise and Customs Law (Amendment) Act, 1991 has held as under:-

> "88.....It is equally well-settled that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding the provision procedurally or substantively unreasonable. In Collector of Customs v. Nathella Sampathu Chetty [(1962) 3 SCR 786 : AIR 1962 SC 316] , this Court observed:
>
> "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity." It was said in State of Rajasthan v. Union of India [(1977) 3 SCC 592 : (1978) 1 SCR 1] (SCR at p. 77), "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief". (Also see Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282] (SCR at p. 1030)."

(emphasis supplied) TO NOT COMPARE TAXES LEVIED AFTER THE INTRODUCTION OF THE ACT, 2017 WITH A BASKET OF DISTINCT INDIRECT TAXES APPLICABLE BEFORE THE OPERATION OF THE ACT WOULD GO AGAINST THE INTENT AND OBJECTIVE OF ACT, 2017.

139. Prior to coming into force of the Act, 2017, several taxes were levied on goods and services by the Central Government (such as Central Excise tax, Service tax, Central Sales tax etc.) and by the State Government (such as Value Added tax, Luxury tax, Purchase tax etc.). There was multiplicity of taxes as they were levied on the same supply system. This had a cascading effect as there was no provision for set off. The Hon'ble Prime Minister at the launch of Goods and Services Tax stated "If we take into consideration the 29 states, the 7 Union Territories, the 7 taxes of the Centre and the 8 taxes of the States, and several different taxes for different commodities, the number of taxes sum up to a figure W.P.(C) 7743/2019 & other connected matters 18:24:48 of 500! Today all those taxes

will be shred off to have ONE NATION, ONE TAX right from Ganganagar to Itanagar and from Leh to Lakshdweep".

140. Additionally, a plethora of non-tariff barriers like octroi, entry tax, check posts etc. hindered free flow of trade throughout the country and this entailed a high compliance cost for taxpayers. The Act, 2017 has subsumed the earlier catena of indirect taxes (Central as well as State indirect taxes), inasmuch as, it levies a single tax on the supply of goods and services. Consequently, the submission of learned senior counsel for the Petitioner in W.P.(C) 1171/2020 that Section 171(1) of the Act, 2017 does not contemplate a comparison of the taxes levied after the introduction of the Act, 2017 with a basket of distinct indirect taxes applicable on goods and services before the operation of the Act goes against the grain, intent and object of the Act, 2017.

THERE IS NO VESTED RIGHT OF APPEAL AND AN APPEAL IS A CREATURE OF THE STATUTE

141. As discussed earlier, Rule 129 of the Rules, 2017 provides for a comprehensive mechanism for initiation and conduct of proceedings relating to anti-profiteering. The conscious provisioning of different layers of examination which, in the first place, is purely fact-based clearly demonstrates that appropriate precautions and redressal measures are provided for in the Scheme of the Act, 2017 read with the Rules, 2017 in connection therewith on the subject of Anti- Profiteering. Consequently, there is no basis for contending that unbrindled powers have been given to the Authority or that there is a lack of appropriate redressal mechanism under the Scheme.

142. In any event, it is well settled that there is no vested right of appeal and an appeal is a creature of the Statute. Right of appeal is neither a natural nor an inherent right vested in a party. It is a substantive statutory right regulated by the W.P.(C) 7743/2019 & other connected matters 18:24:48 Statute creating it. To provide for an appeal or not under a Statute is a pure question of legislative policy (See: Kondiba Dagadu Kadam v. Savitribai Sopan Gujar (1999) 3 SCC 722 and Kashmir Singh v. Harnam Singh (2008) 12 SCC

796).

143. If Legislature chooses not to provide for a right to appeal against an order of the authority that itself cannot be a ground to declare an enactment as unconstitutional. This Court in Wing Commander Shyam Naithani vs. Union of India and Ors., W.P.(C) 6483/2021 & connected matters, 2022 SCC OnLine Del 769 has held as under:

> "40. However, this Court would like to clarify that a right to appeal is a creation of Statute and it cannot be claimed as a matter of right. The right to appeal has to exist. It cannot be created by acquiescence of the parties or by the order of the Court. It is neither a natural nor an inherent right attached to the litigant being a substantive, statutory right. [See: United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Kondiba Dagdu Kodam v. Savitribai Sopan Gujar, AIR 1999 SC 2213; and UP Power Corporation Ltd. v. Virenddra Lal, (2013) 10 SCC 39]. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can

be conferred only by the legislature as conferring jurisdiction upon a Court or Authority, is a legislative function..."

(emphasis supplied)

144. Further, the decisions of NAA are subject to judicial review under Article 226 before the jurisdictional High Courts as is evident from the fact that several petitions have been filed before this Court challenging orders of the NAA. This shows that the affected parties are exercising their right to seek remedies under Article 226 against orders of NAA.

145. Consequently, a robust mechanism in conformity with the constitutional requirements is in place for dealing with grievances of breach of Section 171(1) of the Act, 2017 and hence, it cannot be said that there is no judicial oversight over the decisions of NAA [See: CCI v. SAIL (supra), Shiv Shakti Coop. Housing Society v. Swaraj Developers, (2003) 6 SCC 659].

W.P.(C) 7743/2019 & other connected matters 18:24:48 THERE IS NO REQUIREMENT OF JUDICIAL MEMBER IN NAA

146. By its very nature, Section 171(1) of the Act, 2017 clearly lays down the express issues which need to be examined by the Authority and this examination is in the nature of a fact-finding exercise. Therefore, the mandate of the Authority is very specific in nature and is akin to a fact-finding exercise. This Court is of the opinion that NAA is primarily a fact-finding body which is required to investigate whether suppliers have passed on the benefit to their recipients by way of reduced prices as mandated by Section 171 of the Act, 2017. On examining the role and duties of NAA under Section 171(2) of the Act, 2017 and Rule 127 of the Rules, 2017, it is apparent that NAA performs functions that are to be discharged by domain experts.

147. Even otherwise NAA has not assumed any jurisdiction which was hitherto being exercised by the High Court or any other judicial body, and so, the principle that there must be a judicial member in quasi-judicial entities as laid down in the decisions relied upon by the petitioners does not apply in the present batch of matters.

148. In the case of Namit Sharma vs. Union of India (2013) 1 SCC 745, the Supreme Court considered the question of the requirement of a judicial member for performing the functions and exercising the powers of the Chief Information Commissioner. The Supreme Court initially held that the Information Commission and the Central Information Commissioners perform judicial functions possessing the essential attributes and trappings of a court and hence, it must have judicial members. However, while deciding the review petition filed by the Union of India, the Supreme Court in its judgment reported as Union of India vs. Namit Sharma (2013) 10 SCC 359 has held that "the powers exercised W.P.(C) 7743/2019 & other connected matters 18:24:48 by the Information Commissions under the Act were not earlier vested in the High Court or subordinate court or any other court and are not in any case judicial powers and therefore the legislature need not provide for appointment of judicial members in the Information Commission."

149. Similarly, statutory bodies like TRAI, Medical Council of India, Institute of Chartered Accountant of India etc., perform quasi-judicial functions but do not have judicial members. Furthermore, Assessing Officers, CIT(Appeals) and the Dispute Resolution Panel under the Income Tax Act, 1961 all perform quasi- judicial functions but there is no requirement that such members must possess either a law degree or have judicial experience. Consequently, this Court is of the view that there is no requirement for a judicial member in NAA.

150. While this Court is in agreement with the submission of the Petitioners that the provision of a second or casting vote to the Chairman in the event of a tie/equality of votes as was given in Rule 134(2) of the Rules, 2017 is impermissible, yet as the Respondents have stated that the said provision has never been used, this Court does not deem it necessary to delve into a detailed discussion of the same.

151. Additionally, the Petitioners have challenged the validity of the constitution of the NAA on account of absence of a gazette notification as allegedly required under Section 171(2) of the Act, 2017. This Court is of the opinion that this issue does not affect the constitutional validity of the impugned section which is presently under consideration and so this issue is not being dealt with in the present judgment.

W.P.(C) 7743/2019 & other connected matters 18:24:48 RULE 124 IS IN CONSONANCE WITH ARTICLE 50. THERE IS NO SCOPE FOR GOVERNMENTAL INTERFERENCE IN FUNCTIONS EXERCISED BY NAA

152. This Court is of the view that Rule 124 of the Rules, 2017 is in consonance with Article 50 of the Constitution, inasmuch as, selection to NAA is made on the recommendation by a Selection Committee constituted by the Goods and Services Tax Council which is a constitutional body. Similarly the services of the Chairperson and members of NAA can be terminated only with the approval of the Chairman of the Goods and Services Tax Council. Consequently, the members of NAA are free to carry out their function as they deem fit and there is no scope whatsoever for any Governmental interference in the functions exercised by NAA.

RULE 133 TO THE EXTENT IT PROVIDES FOR LEVY OF INTEREST AND PENALTY IS WITHIN THE RULE MAKING POWER OF THE CENTRAL GOVERNMENT

153. This Court is of the view that Section 171 of the Act, 2017 is broad enough to empower the Central Government to prescribe penalty and interest to ensure that the suppliers are deterred from pocketing the benefits meant for the consumers when taxes are foregone by the Government. Merely empowering NAA to direct returning of the amounts so pocketed by the supplier/registered person would not have a sufficient deterrent effect on deviant behavior unless interest and penalty are levied to prevent such actions from taking place in the first place. The width and amplitude of Section 171 by which the authority is empowered to ensure that reduction in tax rate or the Input Tax Credit availed results in commensurate reduction in the price of goods or services clearly encompasses within it the power to ensure that such conduct which leads to profiteering does not take place.

W.P.(C) 7743/2019 & other connected matters 18:24:48

154. Section 164 of the Act, 2017 gives power to the Government to make rules for carrying out provisions of the Act and in particular to provide for penalty. Section 164 of the Act, 2017 is reproduced hereinbelow:-

> "164. Power of Government to make rules (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
>
> (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
>
> (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees."

155. Accordingly, Rule 133(3)(b)&(d) of the Rules, 2017 which empower the authority to levy interest @ 18% from the date of collection of the higher amount till the date of the return of such amount as well as imposition of penalty are intra vires and within the Rule making power of the Central Government.

156. Moreover, as pointed out by Mr. Zoheb Hossain, the show cause notices initiating penalty proceedings in relation to violation of Section 171(1) prior to the coming into force of Section 171(3A), have been withdrawn by NAA and penalty proceedings in all such cases are not being pressed. Consequently, this issue has become infructuous.

W.P.(C) 7743/2019 & other connected matters 18:24:48 GOODS AND SERVICES TAX COLLECTED ON THE ADDITIONAL REALIZATION HAS RIGHTLY BEEN INCLUDED IN THE PROFITEERED AMOUNT

157. Both the Central as well as the State Government had no intent of collecting additional Goods and Services Tax on the higher price as they had sacrificed their revenue in favour of the buyer. By compelling the buyers to pay the additional Goods and Services Tax on a higher price, the supplier has not only defeated the intent of the Governments but has also acted against the interest of the consumer and therefore, the Goods and Services Tax collected by him on the additional realization has rightly been included in the profiteered amount.

TIME LIMIT FOR FURNISHING OF REPORT BY DGAP IS DIRECTORY AND NOT MANDATORY

158. In some cases, the Petitioners have pointed out that the timelines as provided in the Rules, 2017 have not been followed. They further contended that as a result, the proceedings are vitiated. However, it is important to note that the Rules, 2017 do not provide any consequences in case the time limits provided thereunder lapse. As held earlier, the anti-profiteering provisions in the Act, 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The Courts have consistently held that beneficial legislation must receive liberal construction that favors the consumer and promotes the intent and objective of the Act. That being the scenario, it cannot be said that the proceedings as a whole abate on lapse of time limit of furnishing of report by DGAP. The Supreme Court in P.T. Rajan Vs. T.P.M. Sahir and Ors. (2003) 8 SCC 498 has held that "It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed W.P.(C) 7743/2019 & other connected matters 18:24:48 therefore, the same would be directory and not mandatory." and that "a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused." Consequently, the time limit provided for furnishing of report by DGAP is directory in nature and not mandatory.

EXPANSION OF INVESTIGATION BEYOND THE SCOPE OF THE COMPLAINT IS NOT ULTRA VIRES THE STATUTE

159. Section 171 of the Act, 2017 is widely worded and does not limit the scope of examination to only goods and services in respect of which a complaint is received. The scope of powers of the DGAP is provided for in Rule 129 of the Rules, 2017. From a reading of the said Rule especially the expression 'any supply of goods or services' used in sub-rule (2) of Rule 129, it is apparent that the scope of the DGAP's powers is very wide and is not limited to the goods or services in relation to which a Complaint is received. The word 'any' includes within its scope 'some' as well as 'all'.

160. In any event, the ignorance of the consumer or lack of information or surrounding complexity in the supply chain cannot be permitted to defeat the objective of a consumer welfare regulatory measure and it is in this light that the subject provision is required to be construed.

161. In the context of similar powers of investigation exercised by the Director General under the Competition Act, 2002, the Supreme Court in Excel Crop Care Ltd. vs. Competition Commission of India, (2017) 8 SCC 47, has held that the Director General would be well within its powers to investigate and report on matters not covered by the complaint or the reference order of the Commission, and an interpretation to the contrary would render the entire purpose of investigation nugatory. The High Court of Delhi in Cadila Healthcare Ltd. & W.P.(C) 7743/2019 & other connected matters 18:24:48 Anr. vs. CCI & Ors., (2018) SCCOnline Del 11229, relying on the judgment of the Supreme Court in Excel Crop Care (supra) has clarified in express terms that the scope of investigation by the Director General is not restricted to the matter stated in the Complaint and includes other allied as well as unenumerated matters. Consequently, the expansion of investigation or proceedings beyond the scope of the complaint is not ultra vires the statute.

ACKNOWLEDGMENT

162. Before parting with the present batch of matters, this Court places on record its appreciation for the assistance rendered by all the learned counsel, who appeared, in particular, Mr. Amar Dave, learned Amicus Curiae, Mr. V. Lakshmikumaran and Mr. Zoheb Hossain, Advocates as they filed not only multiple written submissions but also ensured that hearing in the present batch of matters (exceeding 100 cases) was conducted in an orderly and proper manner.

TO SUM UP

163. Keeping in view the aforesaid conclusions, the constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017 is upheld. This Court clarifies that it is possible that there may be cases of arbitrary exercise of power under the anti-profiteering mechanism by enlarging the scope of the proceedings beyond the jurisdiction or on account of not considering the genuine basis of variations in other factors such as cost escalations on account of which the reduction stands offset, skewed input credit situations etc. However, the remedy for the same is to set aside such orders on merits. What will be struck down in such cases will not be the provision itself which invests such power on the concerned authority but the erroneous application of the power.

W.P.(C) 7743/2019 & other connected matters 18:24:48

164. List the matters before the Division Bench-I for appropriate directions on 8th February, 2024.

ACTING CHIEF JUSTICE DINESH KUMAR SHARMA, J JANUARY 29, 2024 KA/AS/js/TS
W.P.(C) 7743/2019 & other connected matters 18:24:48

Affiniti Enterprises vs Union Of India & Ors. on 29 January, 2024

Author: Manmohan

Bench: Dinesh Kumar Sharma, Manmohan

$~
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 7743/2019

RECKITT BENCKISER INDIA PRIVATE LIMITED ..... Petitioner
Through: Mr. P. Chidambaram, Senior Advocate with Mr. R. Jawahar Lal, Mr. Siddhar Bawa Mr. Anuj Garg, Mr. Mohit Sharma and Ms. Harshita Advocates.
Mr.Amar Dave, Amicus Curiae with Mr. Vikramaditya Bhaskar, Advocate.

versus

UNION OF INDIA THROUGH: ITS SECRETARY & ORS.
..... Resp
Through: Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.
Mr.Asheesh Jain, CGSC with Mr. Gaur Kumar Advocate for R-1
Mr.Farman Ali, Advocate with Ms.Ush and Mr.Krishan Kumar, Advocates for &3

+ W.P.(C) 10999/2018
M/S PYRAMID INFRATECH PRIVATE LIMITED ..... Petitioner
Through: Mr.Abhishek A Rastogi, Rastogi, Ms. Meenal So Singh. Advs.

Versus

UNION OF INDIA & ORS. .....
Through: Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya Rai, Mr.

Signature Not Verified
Digitally Signed By:JASWANT SINGH RAWAT
Signing Date:29.01.2024 18:24:48

W.P.(C) 7743/2019 & other connected matters

Kartik Sabharwal and Advocates for NAA and Mr. Aditya Singla, SSC Sharma, Advocate for R

Ms. Pratima N. Lakra,
Ms.Vanya Bajaj and Mr.
Baweja, Advocates for
Mr. Vinod Diwakar, CGS
Mr. Olson Nair, Advoca

\+ W.P.(C) 12444/2018

MASCOT BUILDCON PRIVATE LIMITED .....
Through: Mr.Aseem Mehrotra, Adv

Versus

NATIONAL ANTI-PROFITEERING AUTHORITY & ORS.
..... Respondents
Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Farman Ali, SPC wit
Farooqui, Advocate for

\+ W.P.(C) 12647/2018

LIFESTYLE INTERNATIONAL PVT. LTD. .....
Through: Mr. Tarun Gulati, Sr.
Mr.Sparsh Bhargava wit
Farsaiya, Advocate.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ....
Through Mr. Anurag Ahluwalia,
Mr.Milind Nagpal Advoc
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 13194/2018
SHARMA TRADING COMPANY .
Through: Mr. Naresh Thacker, Mr
Visalaksh, Mr. Udit Ja
Tater, Mr. Saurabh Dug
Mr. Ajitesh Dayal Sing

Versus

UNION OF INDIA & ORS. .....

Through: Mr. Anurag Ahluwalia, Mr.Milind Nagpal Advoc Ms.Aakanksha Kaul, Adv Ms.Versha Singh and Mr Ms. Rhea, Advocates fo Mr.Zoheb Hossain, Sr.S with Mr.Vivek Gurnani, Mr. Sanjeev Menon, Ms. Advocates for NAA/DGAP

\+ W.P.(C) 378/2019

HINDUSTAN UNILEVER LIMITED ...

Through: Mr.Ajay Bhargava, Ms.V and Mr.Nikitha Shenoy,

W.P.(C) 7743/2019 & other connected matters

Versus

UNION OF INDIA & ORS. ...

Through: Mr. Vikrant N. Goyal, Mr.Nitin Chandra and M Advocates for UOI. Mr.Harish Vaidyanathan with Mr.Srish Kumar Mi Mehlawat and Mr.Alexan Paikaday, Advocates. Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 1418/2019 & CM APPL. No.6501/2019

M/S J.P. & SONS THROUGH:
SHRI ANKIT KHANDELWAL, PROPRIETOR ..... Petit

Through: Mr.Ajay Bhargava, Ms.Vanita Bharg Mr.Aseem Chaturvedi and Mr.Sahil Siddiqui, Advs.

Versus

NATIONAL ANTI- PROFITEERING AUTHORITY THROUGH: ITS SECRETARY & ORS. ..... Respondents

Through: Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach, Ms. Abhipriya, Mr.Vivek Gaurav, Ms.S Aneja and Ms.Manisha, Advocates for NAA and DGAP.
Mr. Kamal Sawhney,, Mr. Deepak Thackur, Ms. Aakansha Wadhwani, Advocates for R-4.

W.P.(C) 7743/2019 & other connected matters

\+ W.P.(C) 1655/2019

M/S EXCEL RASAYAN PRIVATE LIMITED ..... Petitioner
Through: Mr.Abhishek A Rastogi, Ms. Pooja M. Rastogi, Ms. Meenal Songire & Mr. A Singh, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Ravi Prakash, CGSC with Ms. Ast Khandelwal, Advocates for Ms.Akanksha Kaul, Advocate with Ms. Versha Singh Advs for UOI.
Mr.Gyanendra Singh, Advocate.
Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.

\+ W.P.(C) 2347/2019

JUBILANT FOODWORKS LTD. & ANR. ..... Petitioners
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ravi Prakash, CGSC Khandelwal, Advocates Mr.Bhagvan Swarup Shuk Mr.R.R.Mishra, Advocat Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive

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W.P.(C) 7743/2019 & other connected matters
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Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 3759/2019
MASCOT BUILDCON PRIVATE LTD. .
Through: Mr.Aseem Mehrotra, Adv

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Harish Vaidyanathan
Mr. Srish Kumar Mishra
Mr. Sagar Mehlawat and
Mr. Alexander
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 4213/2019
ABBOTT HEALTHCARE PRIVATE LIMITED
& ANR. ..... Petitioner
Through: Mr.Ajay Bhargava, Ms.Vanita Bhargava
and Ms. Nikhitha Shenoy, Advs.

Versus
UNION OF INDIA & ORS. ....
Through: Mr.Ripu Daman Bhardwaj
Mr. Kushagra Kumar, Ad
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

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Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 5558/2019 & CM APPL.No.24368/2019
UNICHARM INDIA PVT. LTD. ..... Petitioner
Through: Mr.Rupender Sinhmar, Mr.Prahlad Sing
Mr.K. Gurumurthy, Advs.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ravi Prakash, CGS
Khandelwal, Advocates
Mr. Anurag Ahluwalia,
Mr.Milind Nagpal Advoc
Mr.Farman Ali Magrey w
Jamnal and Mr.Krishan
for R-2 & 3.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8162/2019

AFFINITI ENTERPRISES .....
Through: Mr. R. Jawahar Lal, Mr
Mr. Anuj Garg, Mr. Moh
Harshita, Advocates.

Versus

UNION OF INDIA THROUGH: ITS SECRETARY & ORS.
..... Respo
Through: Mr.Abhay Prakash Sahay, CGSC, Ms.
Mannu Singh, Mr.Kunal Dha
Ms.Swayamprabha, Advs for UOI.

W.P.(C) 7743/2019 & other connected matters

Mr. Ravi Chawla, St.
with Mr. Avneesh Kumar
Advocate.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 7910/2019 & CM APPL.No.32779/2019
SALARPURIA REAL ESTATE PVT. LTD ..... Petition
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. A
Singh, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Bhagwan Swarup Shukla, CGSC wit
Mr Saksham Sethi, GP, Mr. Sarvan Ku

Advocate for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 7911/2019
SATTVA DEVELOPERS PVT. LTD ..... Petitioner
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Advs
Versus

UNION OF INDIA & ORS. .....
Through: Mr. Manish Mohan, CGSC
Devendra Kumar, Advoca

W.P.(C) 7743/2019 & other connected matters

Mr.Abhay Prakash Saha
Mannu Singh, Mr.
Ms.Swayamprabha, Advs
Mr.Gyanendra Singh, Ad
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8078/2019
M/S SATYA ENTERPRISES
Through: Mr.Sumit K Batra
Khurana, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Sushil Kumar Pandey
Neha Yadav, Mr. Kuldee
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Satyakam, ASC with
Kashuyap,Adocate for G
Mr. Ashish Verma and M

Moulik, Advocates

\+ W.P.(C) 9053/2019

UNICHARM INDIA PVT. LTD ....

Through: Mr.Rupender Sinhmar, M
Advs.

Versus

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W.P.(C) 7743/2019 & other connected matters

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UNION OF INDIA & ORS. ....

Through: Mr. Ravi Prakash, CGSC
Khandelwal, Advocates
Mr.Farman Ali with Ms.
Mr.Krishan Kumar, Advo
3.

\+ W.P.(C) 11253/2019 & CM APPL. No.46337/2019

LIFESTYLE INTERNATIONAL PVT. LTD. ..... Petitione

Through: Mr. Tarun Gulati, Sr. Advocate with
Mr.Sparsh Bhargava with Ms.Ishita
farsaiya, Advocate.

Versus

UNION OF INDIA & ORS. ...

Through: Mr. Viraj R. Datar, Sr
Nitish Chaudhary, Advo
R-1 present-in-person.
Mr. Rajesh Kumar with
Advocates for UOI.
Mr.Apoorv Kurup,
Mr.Shivansh Dwivedi, A
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12355/2019

PARAMOUNT, PROPBUILD PVT. LTD. ..... Petitioner

Through: Mr.Abhishek Choudhary, Advocate.

Versus

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W.P.(C) 7743/2019 & other connected matters

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UNION OF INDIA & ORS. ...

Through: Mr.Ruchir Mishra, Mr.
Ms. Reba Jena Mishra a
Shukla, Advocates for
Mr.Bhagwan Swaroop Shu
Mr.Sarvan Kumar Shukla
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12717/2019

BHARTIYA CITY DEVELOPERS PVT LTD ..... Petiti

Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. A
Singh, Advs

Versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Vikram Jetly CGSC and Ms.Shreya
Jetly, Adv. for UOI
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 12847/2019 & CM APPL.No.52474/2019

RAMPRASTHA PROMOTERS AND DEVELOPERS PVT. LTD.
..... Petit

Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.

Versus

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W.P.(C) 7743/2019 & other connected matters

Signing Date:29.01.2024
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UNION OF INDIA & ORS. ..

Through: Mr. Vikram Jetly CGSC
Jetly, Adv. for UOI.
Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI.
Mr. Zoheb Hossain, San

Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for
Mr.Jatin Puniyani, GP

\+ W.P.(C) 969/2020 & CM APPL.5342/2020

NESTLE INDIA LTD. & ANR. ..

Through: Mr. V. Lakshmikumaran,
Sachdev, Mr. Yogendra
Mr.Agrim Arora, Advoca

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Kirtiman Singh, CG
Noor, Mr. Varun Rajawa
Mehra and Ms.Vidhi Jai
UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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W.P.(C) 7743/2019 & other connected matters

\+ W.P.(C) 1171/2020

IFB INDUSTRIES LTD, ..

Through: Mr. S. Ganesh, Senior
U.A. Rana and Mr. Hima
Advocates

Versus

NATIONAL ANTI-PROFITEERING AUTHORITY & ANR.

..... Respo

Through: Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach,
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.S
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.
Mr. Dev P Bhardwaj and Mr. Sarthak
Anand, Advoctates for UOI

+ W.P.(C) 1406/2020 & CM APPL. No.4879/2020
M/S FRIENDS LAND DEVELOPERS ...
Through: Mr.Prakash Kumar, Adv.

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Rajesh Kumar with
Advocates for UOI.
Ms.Sonia Sharma, Advoc
Purva Chugh, Advocate
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Advs for
Mr.Jatin Puniyani, GP
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 1780/2020
JOHNSON & JOHNSON PVT.LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Vikram Jetly CGSC
Jetly, Adv. for UOI/R-
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar wit
Mehrotra, Adv. & Ms. K
for R-4.

+ W.P.(C) 2083/2020 & CM APPL.No.7369/2020
FUSION BUILDTECH PVT LTD ..
Through: Mr.Abhishek A Rastogi,
Rastogi, Ms. Meenal So
Singh, Advs

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Rajesh Kumar with
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

Mr. Aman Malik, Advoc
3/NAA.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for

\+ W.P.(C) 2084/2020 & CM APPL. No.7371/2020
ASTER INFRAHOME PVT LTD ..... Petitioner
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Adv

Versus

UNION OF INDIA & ORS. .....
Through: Mr. Rajesh Kumar with
Advocates for UOI.

Mr.Samir Malik, Adv. f
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for

\+ W.P.(C) 2445/2020
MIS SARVPRIYA SECURITIES PVT. LTD ....
Through: Mr.Puneet Agrawal, Adv
Mr.Prem Kandpal, Mr.Ke
Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Aman Malik, Advoca
3/NAA.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

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Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 2490/2020

JOHNSON & JOHNSON PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.
Versus

UNION OF INDIA & ORS. ....
Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 2742/2020 & CM APPL. No.9552/2020
ACME HOUSING INDIA PVT. LTD. ..
Through: Mr.Prateek Bansal, Adv

Versus

UNION OF INDIA & ORS. .....
Through: Mr.Samir Malik, Advoca
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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W.P.(C) 7743/2019 & other connected matters
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\+ W.P.(C) 3737/2020

PHIILIPS INDIA LIMITED. .....
Through: Mr.Shashank Shekhar wi
Rajkonwar, Advs.

Versus

UNION OF INDIA & ORS. ...

Through: Mr. Vipul Agrawal with
Naushad, Jr.Standing C
Ms.Shakshi Sherwal, Ad
Revenue.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for
Ms. Mansie Jain, Adv f
Mr.Jatin Puniyani, GP

\+ W.P.(C) 3910/2020
MACROTECH DEVELOPERS LTD. (FORMERLY KNOWN AS M/S
LODHA DEVELOPERS LTD.) & ANR ..... Petitioners
Through: Mr. Kamal Sawhney, Mr.Deepak Thackur
and Ms. Aakansha Wadhwani, Advocates

Versus

UNION OF INDIA & ORS ....
Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

W.P.(C) 7743/2019 & other connected matters

Mr.Vikramaditya Bhask
Mr.Amar Dave, Amicus C
Vikramaditya Bhaskar,

\+ W.P.(C) 3911/2020
M/S NANI RESORTS AND FLORICULTURE PVT. LTD.

Through: Mr.Puneet Agrawal, Adv
Mr.Prem Kandpal, Mr.Ke
Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

Mr.Rajeev K Panday, AA
Roy, Mr. P. Srinivasan
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv. for
Mr. Abhishek Saket, Ad

\+ W.P.(C) 4131/2020

MS. SAMSONITE SOUTH ASIA PVT. LTD ..... Petitioner
Through: Mr. Rohan Shah, Adv.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC
Mr. Gaurav Kumar Advoc
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.

W.P.(C) 7743/2019 & other connected matters

Ms. Abhipriya, Mr.Viv
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar, Sr
with Ms. Venus Mehrotr
Kanak Grover, Adv.

\+ W.P.(C) 4345/2020

RECKITT BENCKISER INDIA PRIVATE LIMITED ..... Petitioner
Through: Mr. P. Chidambaram, Senior Advocate
with Mr. R. Jawahar Lal, Mr. Siddha
Bawa Mr. Anuj Garg, Mr. Mohit Sharm
and Ms. Harshita Advs.
versus

UNION OF INDIA AND ORS & ORS. ..... Respondents
Through: Mr.Asheesh Jain, CGSC with
Mr. Gaurav Kumar, Ms.Ankita Kedia a
Ms.Ria Khanna, Advocates for R-1.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 4348/2020

APEX MEADOWS PVT LTD ..... Petitioner

Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ..... R

Through: Ms. Neha Malik, Adv. f DGAP.

Mr. M. Rambabu, Ms. P Mr.N.Eswara Rao, Advs. Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 4375/2020

M/S PATANJALI AYURVED LTD ..... Petitioner

Through: Mr. Priyadarshi Manish, Mrs. Anjali Manish, Mr.Saksham Garg and Ms.Anki Advs.

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 4516/2020

MCNROE CONSUMER PRODUCTS PVT. LTD. ..... Petitioner

Through: Mr.Tarun Gulati, Sr.Advocate with Mr. Kumar Visalaksh, Mr. Udit Jain, Mr. Arihant Tater, Mr. Saurabh Dugar and Ajitesh Dayal Singh, Advocates.

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Mr.Farman Ali with Ms. Mr.Krishan Kumar, Advo

W.P.(C) 7743/2019 & other connected matters

\+ W.P.(C) 4607/2020

AFFINITI ENTERPRISES .....

Through: Mr. R. Jawahar Lal, Mr
Mr. Anuj Garg, Mr. Moh
Harshita, Advs.

Versus

UNION OF INDIA & ORS. ....

Through: Mr.Farman Ali with Ms.
Mr.Krishan Kumar, Advo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr. Ravi Chawla, St. C
with Mr. Avneesh Kumar
Advocate

\+ W.P.(C) 4824/2020 & CM APPL.No.2183/2021

M/S CILANTRO DINERS PVT. LTD ..... Petitioner

Through: Mr.Nikhil Gupta, Mr. Vipin Upadhyay
Mr. Prince Nagpal and Mr. Rochit
Abhishek, Advocates

Versus

UNION OF INDIA & ORS. ....

Through: Mr.Farman Ali with Ms.
Mr.Krishan Kumar, Advo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

W.P.(C) 7743/2019 & other connected matters

Mr.Rony John, Mr.Piyu
Mr.Arshdeep Singh and
Advocates for R-2 and

\+ W.P.(C) 4957/2020

WHIRLPOOL OF INDIA LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.
Versus

UNION OF INDIA & ORS. ....
Through: Mr.Farman Ali with Ms. Mr.Krishan Kumar, Advo Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Ms. Sonu Bhatnagar, Sr with Ms. Venus Mehrotr Kanak Grover, Adv. for

\+ W.P.(C) 5347/2020 & CM APPL. No.23558/2020

GAURSONS REALTECH PVT LTD ..... Petitioner
Through: Mr. Monish Panda, Advocate with Mr.Mrinal Bharat Ram and Mr. Gaurav Dabas, Advocates.
Versus

UNION OF INDIA & ORS. .....
Through: Mr.Bhagwan Swarup Shuk Mr. Sarvan Kumar and M Advocates for UOI.
Mr.Farmaan Ali with Ms Mr.Krishan Kumar, Advo

Mr. Zoheb Hossain, Sa
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 5798/2020

RAMPRASTHA PROMOTERS AND DEVELOPERS PVT. LTD. .....
Through: Mr.Puneet Agrawal, Advocate with Mr.Prem Kandpal, Mr.Ketan Jain and Mr.Chetan Kumar Shukla Advocates..
Versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Anil Soni, CGSC for UOI with Mr Devvrat Yadav, Advocate.
Ms. Sonu Bhatnagar with Ms. Nishta Mittal and Ms. Monica Benjamin, Adv R-2 to 6, 8 & 7.
Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.
Ms.Akanksha Kaul, Advocate with Ms. Versha Singh Advs for UOI.
Ms. Alpana Singh & Mr. P. Pandey, Advocates for R-3

\+ W.P.(C) 5979/2020 & CM APPL. No.21655/2020

EMAAR MGF LAND LTD ...
Through: Mr. V. Lakshmikumaran, Sachdev, Mr. Yogendra Mr.Agrim Arora, Advoca

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ...
Through: Mr. Ravi Prakash, CGSC Khandelwal, Advocate f Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Mr. Parangat Pandey an Singh, Advocates for R Mr. Satish Kumar, Sr.

\+ W.P.(C) 6671/2020
GAURAV SHARMA FOOD INDUSTRIES ..... Petitioner
Through: Mr. Nikhil Gupta, Mr. Vipin Upadh Mr. Prince Nagpal & Mr. Rochit, Advocates

Versus

UNION OF INDIA & ORS. ...
Through: Mr.Vivek Goyal, Advoca Sharma, Advocate and M Advocates for R-1.
Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr.

Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 7412/2020 & CM APPL. No.24800/2020

SAMSUNG INDIA ELECTRONICS PVT LTD ..... Petitioner
Through: Mr. Tushar Jaswal, Mr. Rahul Sateeja
Mr.Pranav Bansal and Mr. Sanyam
Agarwal, Advs.

Versus

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SINGH RAWAT
W.P.(C) 7743/2019 & other connected matters
Signing Date:29.01.2024
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UNION OF INDIA & ORS. ...
Through: Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 7736/2020
M/S PRASAD MEDIA CORPORATION PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.
Versus
UNION OF INDIA & ORS. ..... Respondents
Through: Ms.Aakanksha Kaul, Advocate with
Ms.Versha Singh and Mr.Aman Sahani
Ms. Rhea, Advocates for UOI.
Ms. Sonu Bhatnagar, Sr. Standing Co
with Ms. Venus Mehrotra, Adv. & Ms.
Kanak Grover, Adv. for R-4.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 8229/2020
LITECON INDUSTRIES PVT.LTD. ..... Petition
Through: Mr. Kumar Visalaksh with Mr. Udit Ja
Mr. Arihant Tater, Mr. Saurabh Duga

Mr. Ajitesh Dayal Singh, Advocates.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ...

Through: Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI
Mr. Vipul Agrawal with
Naushad, Jr.Standing C
Shairwal and Mr.Vaibha
Revenue.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8751/2020 & CM APPL.No.28192/2020

M/S SIGNATURE BUILDERS PVT. LTD. ..... Petitioner

Through: Mr.Puneet Agrawal, with Mr.Prem
Kandpal, Mr.Ketan Jain and Mr.Chetan
Kumar Shukla Advocates..

Versus

UNION OF INDIA & ORS. ....

Through: Mr.Harish Vaidyanathan
with Mr.Srish Kumar Mi
Mehlawat, Ms. Manpreet
Mr.Alexander Mathai Pa
for UOI.
Ms. Sonu Bhatnagar,Ms.
Adv. & Ms. Kanak Grove
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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W.P.(C) 7743/2019 & other connected matters

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\+ W.P.(C) 9146/2020 & CM APPL. No.29630/2020

LITE BITE TRAVELS FOODS PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ...
Through: Mr.Satish Kumar, Sr.st Ms.Vaishali Goyal and Advocates for R-1. Mr.Ashwini Chawla, Adv Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 9931/2020

M/S NIRALA PROJECT PVT LTD. ..... Petitioner
Through: Mr.Puneet Agrawal, Advocate with Mr.Prem Kandpal, Mr.Ketan Jain and Mr.Chetan Kumar Shukla Advocates.

Versus

UNION OF INDIA & ORS. .....
Through: Mr.Farman Ali, Advocat Kumar and Ms.Usha Jamn UOI
Ms. Aakanksha Kaul, Ad
Ms. Neha Malik, Adv. f

\+ W.P.(C) 9934/2020 & CM APPL. Nos.31623-24/2020

M/S S3 BUILDWELL LLP .....
Through: Mr.Puneet Agrawal, Adv Mr.Prem Kandpal, Mr.Ke Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA & ORS. ....
Through: Ms.Aakanksha Kaul, Mr. Mr.Aaman Sahani, Advoc Mr. Zoheb Hossain, San

Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 9935/2020 & CM APPL. Nos.31625-26/2020

M/S JMK HOLDINGS PVT LTD. ..... Petitioner
Through: Mr.Prem Kandpal, Advocate
Mr.Ketan Jain and Mr.Chetan Kumar
Shukla Advocates.
Versus

UNION OF INDIA & ORS. ....
Through: Ms.Aakanksha Kaul, Adv
Ms.Versha Singh and Mr
Ms. Rhea, Advocates fo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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+ W.P.(C) 10901/2020 & CM APPL. 34162-34163/2020

S.C. JOHNSON PRODUCTS PVT. LTD. ..... Petitioner
Through: Mr.Rajat Bose with Mr.Ankit Sachde
and Ms. Shohini Bhattacharya, Advs

Versus

UNION OF INDIA, THROUGH ITS SECRETARY & ORS.
..... Respondents
Through: Ms.Nidhi Raman, CGSC with Mr.Zubin
Singh and Mr. Debar Chan De, Advoca
for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

+ W.P.(C) 10932/2020 & CM APPLs..34237-34238/2020 AND 8172/2

M/S EMAAR MGF LAND LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Ravi Prakash, CGSC Ali, Mr.Manas Tripathi Shivkumar, Advocate fo Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Ms.Neha Malik, Advocat

Mr. Satish Kumar, Sr. for respondent No.3.
Ms. Neha Malik, Adv. f DGAP.

\+ W.P.(C) 990/2021

M/S BPTP LTD. ...
Through: Mr.Kishore Kunal and M & Mr. Anuj Kumar, Advs

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC Mr. Gaurav Kumar, Advo Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Ms. Sonu Bhatnagar, Sr with Ms. Venus Mehrotr Kanak Grover, Adv. for

\+ W.P.(C) 997/2021 & CM No.2721/2021

M/S MAN REALTY LTD & ANR. ..... Petitioners
Through: Mr. V. Lakshimkumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....

Through: Mr.Farman Ali, Advocat
Kumar and Ms.Usha Jamn
UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

W.P.(C) 7743/2019 & other connected matters

Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 1357/2021

M/S INFINITI RETAIL LTD ..... Petitioner

Through: Mr.Rohan Shah, Mr.Mihir Deshmukh,
Mr.Rajat Mittal, Mr. Jay Gandhi an
Megha, Advocates.

Versus

UNION OF INDIA AND ORS. ..... Respondent

Through: Mr. Dev. P. Bhardwaj, CGSC for UOI
Mr. Sachin Singh and Ms. Chaahat
Khanna, Advs.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garac
Ms. Abhipriya, Mr.Vivek Gaurav, Ms
Aneja and Ms.Manisha, Advocates fo
NAA and DGAP.

\+ W.P.(C) 1366/2021

M/S TATA STARBUCKS PRIVATE LIMITED ..... Petitioner

Through: Mr. Rohan Shah, Advocate

Versus

UNION OF INDIA & ORS. ....

Through: Mr. Rohan Shah, Mr. S.
Sahasranaman and Mr. S
Advocates for UOI
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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\+ W.P.(C) 1593/2021 & CM APPL. No.4529/2021

RAYMOND CONSUMER CARE LTD. ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Ms.Amrita Prakash, CGS Ashwani Mehta, Advocat Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 1765/2021

M/S LE REVE .....
Through: Mr.Nikhil Gupta, Mr.Vi Mr. Prince Nagpal and Abhishek, Advs.

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Rishabh Sahu with M Advs. for UOI.
Mr.Ashwini Chawla, Adv Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

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\+ W.P.(C) 1766/2021

NEEVA FOODS PVT. LTD .....
Through: Mr.Nikhil Gupta, Mr.Vi Mr. Prince Nagpal

Abhishek, Advs.

Versus

UNION OF INDIA & ORS. .....
Through: Mr. Aditya Dewan, Advo
Mr.Zoheb Hossain, Sr.S
with Mr.Vivek Gurnani,
Mr. Sanjeev Menon, Ms.
Advocates for NAA/DGAP

\+ W.P.(C) 1852/2021 & CM Nos.5359/2021, 29026-29027/2021

M/S SUBWAY SYSTEMS INDIA PVT LTD ..... Petitioner
Through: Mr. Abshishek A. Rastogi and Mr.Prat
Prava Saha, Advocates.
Versus

UNION OF INDIA & ORS. ...
Through: Mr.Satya Ranjan
Mr.Kautilya Birat, Adv
Mr.Zoheb Hossain, Sr.S
with Mr.Vivek Gurnani,
Mr. Sanjeev Menon, Ms.
Advocates for NAA/DGAP

\+ W.P.(C) 1951/2021 & CM APPL. Nos.5705-06/2021

M/S SUB WEST RESTAURANTS LLP ..... Petitioner
Through: Mr.Abhishek A Rastogi, Adv.

Versus

UNION OF INDIA & ORS. ...
Through: Mr. Anshuman, Sr.Panel
Piyush Ahluwalia, Advo
Mr.Aditya Dewan, Advs.
Ms. Sonu Bhatnagar wit
Mehrotra, Adv. & Ms. K
for R-4.
Ms.Talish Ray, Adv.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 2440/2021

BONNE SANTE ..... Through: Mr.Nikhil Gupta, Mr.Vi Mr. Prince Nagpal and Abhishek, Advs.

Versus

UNION OF INDIA & ORS. .... Through: Ms. Pratima N. Lakra, Ms.Vanya Bajaj and Mr. Baweja, Advocates for Mr.Rony John, Mr.Piyus Mr.Arshdeep Singh and Advocates for R-2 and

\+ W.P.(C) 2676/2021 & CM APPL.7906-07/2021

HORIZON PROJECTS PRIVATE LIMITED ..... Petitioner Through: Mr. Kumar Visalaksh with Mr. Udit Ja Mr. Arihant Tater, Mr. Saurabh Dugar Mr. Ajitesh Dayal Singh, Advocates.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS. ... Through: Mr. Rajesh Kumar with Advocates for UOI. Mr.Parangat Pandey and Singh, Advocates for R

\+ W.P.(C) 2785/2021 & CM APPL.8368/2021

SAMSUNG INDIA ELECTRONICS PVT LTD ..... Petitioner Through: Mr. Sujit Ghosh, Mr. Mannat Waraich, Mr. Ashray Behura and Ms.Ananya Goswami, Advs.

Versus

UNION OF INDIA & ORS. .... Through: Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 2897/2021

ITC LIMITED & ANR. ..... Through: Mr. K.S. Suresh, Advoc

Aggarwal, Advocate.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ravi Prakash, CGSC
Khandelwal, Advocate f
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 2970/2021

M/S DRA AADITHYA PROJECTS PVT. LTD. ..... Petitioner
Through: Mr. Monish Panda with Mr.Mrinal Bhar
Ram and Mr. Gaurav Dabas, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Manish Mohan, CGSC
Mr.Devendra Kumar, Adv
Mr. Sameer Vashisht, A
with Ms. Sanjana Nangi
Mr. Yunus Malik, Adv.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 3254/2021

GILLETTE INDIA LTD ...
Through: Mr. V. Lakshmikumaran,
Sachdev, Mr. Yogendra
Mr.Agrim Arora, Advoca

Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC
Mr. Gaurav Kumar Advoc

\+ W.P.(C) 3306/2021

PROCTER AND GAMBLE HOME PRODUCTS PVT LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ripu Daman Bhardwa
Mr. Kushagra Kumar, Ad
Mr.Vivek Goyal, CGSC w
Sharma, Adv. for UOI.
Mr.Zoheb Hossain, Sr.S
with Mr.Vivek Gurnani,
Mr. Sanjeev Menon, Ms.
Advocates for NAA/DGAP

\+ W.P.(C) 3327/2021

PROCTER AND GAMBLE HYGIENE AND HEALTH CARE LTD
..... Pet
Through: Mr. V. Lakshmikumaran, Mr. Karan Sachdev, Mr. Yogendra Aldak with Mr.Agrim Arora, Advocates.

versus

UNION OF INDIA & ORS.
Through: Mr.Vivek Goyal, Advoca
Sharma, Advocate and M
Advocates for R-1.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 3508/2021 & CM APPL. Nos.25152-53/2021

M/S ALTON BUILDTECH INDIA PVT LTD ..... Petiti
Through: Ms.Ruby Singh Ahuja, Ms. Kritika Sachdeva, Mr. Vishal Gehrana and Mr. Jappanpreet Hora, Advocates

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versus

UNION OF INDIA & ORS.
Through: Ms. Pratima N. Lakra, Ms.Vanya Bajaj and Mr. Baweja, Advocates for Mr. Vinod Diwakar, CGS Kumar Singh and Mr.Ols UOI.
Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 3867/2021

M/S ELECTRONICS MART INDIA LTD ..... Petitione
Through: Mr.Nikhil Gupta, Mr.Vipin Upadhayay, Mr. Prince Nagpal and Mr.Rochit Abhishek, Advs.
Versus

UNION OF INDIA & ORS.
Through: Mr.Farman Ali, Advocat Kumar and Ms.Usha Jamn UOI.
Mr. Ripu Daman Bhardwa UOI
Mr. Yunus Malik, Adv.
Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

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\+ W.P.(C) 4600/2021

INOX LEISURE LIMITED. ...
Through: Mr. Kumar Visalaksh wi Mr. Arihant Tater, Mr. Mr. Ajitesh Dayal Sing

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ripu Daman Bhardwa
Mr. Kushagra Kumar, Ad
Mr.Bhagwan Swaroop Shu
Mr.Sarvan Kumar and Mr
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 4789/2021

M/S MANAS VIHAR SAHAKARI AWAS SAMITI LTD. ..... Petitioner
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Adv
Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ripu Daman Bhardwa
Mr. Kushagra Kumar, Ad
Mr.Bhagwan Swaroop Shu
Mr. Sarvan Kumar and M
Advocates for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

Aneja and Ms.Manisha,
NAA and DGAP.
Mr. Manas Bhatnagar, A

\+ W.P.(C) 4794/2021 & CM APPL. 14802/2021

YELLOW SUN RESTAURANTS PRIVATE LIMITED ..... Petitioner
Through: Mr. Nikhil Gupta, Mr. Vipin Upadhyay
Mr. Prince Nagpal & Mr. Rochit,
Advocates.

Versus

UNION OF INDIA & ORS. ....
Through: Mr. Ajay Kumar Pandey,
with Mr.Piyush Mishra,
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.

Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 6337/2021 & CM APPL.19960/2021

M/S PURI CONSTRUCTION PVT. LTD. ..... Petition
Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.
Versus

UNION OF INDIA & ORS. ...
Through: Mr. Kunal Sharma, Sr.
with Mr. Shubhendu Bha
Mr.Apoorv Kurup, CGSC
Shivansu Dwivedi and M
Advocates for R-1
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.

W.P.(C) 7743/2019 & other connected matters

Ms. Abhipriya, Mr.Viv
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 12471/2021 & CM APPL.No.39234/2021

SOUTHWINDS PROJECTS LLP ..... Petitioner
Through: Mr.Kunal Vajani with Mr.Kunal Mimani,
Mr.Kartikey Bhatt and Mr.Gaurav Katr
Advs.
Versus

UNION OF INDIA & ORS. ....
Through: Mr.Asheesh Jain, CGSC
Mr. Gaurav Kumar Advoc
Mr.Aman Malik, Advocat
Mr.Aditya Singla, Sr.
R-4.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 14666/2021 & CM APPL.46201-46203/2021

ANAND RATHI

Through: Mr.Abhishek A Rastogi, Rastogi, Ms. Meenal So Singh, Advs

Versus

UNION OF INDIA & ORS.
Through: Mr. Ravi Prakash, CGSC Khandelwal, Advocate f

Mr.Aman Malik, Mr.Vij and Ms.Shubhi Bhardwaj and DGAP
Mr.Yunus Malik, Advoca DGAP.

\+ W.P.(C) 6983/2022 & CM APPL.21405/2022

WTC NOIDA DEVELOPEMENT COMPANY PRIVATE LIMITED ..... Peti
Through: Mr.Preetesh Kapur, Sr.Advocate with Shaunak Kashyap,
Mr. Balasubramanian R. Iyer and Mr. Kanav Agarwal and Ms. Muskan Yadav, Advocates.
Versus

UNION OF INDIA & ORS.
Through: Ms. Archana Surve, Adv
Mr. Ravi Prakash, CGSC
Archana Surve, Mr. Vin Ahlawat, Advocates for
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.

\+ W.P.(C) 7781/2022 & CM APPL.23831/2022

SAMSUNG INDIA ELECTRONICS PVT LTD ..... Petit
Through: Mr. Sujit Ghosh with Ms. Mannat Wara
Mr. Ashray Behrua and Ms.Ananya Goswami, Advocates.

Versus

UNION OF INDIA & ORS.

Through: Mr. Rakesh Kumar, CGSC
Advocate for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 8705/2022 & CM APPLs.26239-26240/2022

M/S TATA PLAY LIMITED

Through: Mr. Rohan Shah with Mr
Raichandani, Mr. Deepa
Advocates.

Versus

UNION OF INDIA & ORS.

Through: Mr.Abhishek Saket, Adv
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12533/2022 & CM APPL. Nos.37949-37950/2022

LICHFL CARE HOMES LIMITED ..... Petiti

Through: Mr. Pratyush Prava Saha, Advocate.

versus

UNION OF INDIA & ORS.

Through: Mr.Kamal Kant Jha, SPC
Singh, Advocate for R-
Mr.Abhishek Saket, Adv
Mr.K.K.Jha, SPC for R-

Mr. Zoheb Hossain, Sa
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive

Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar wit
Mittal and Ms. Monica
R-5& 6.
Mr.Varun Sharma, Advoc
complainant.
Ms. Sharmila Upadhyay,
Pandey and Mr. Pawan U
for R-4.

\+ W.P.(C) 12557/2022 & CM APPL.Nos.38027-38028/2022

L OREAL INDIA PRIVATE LIMITED ..... Petitio
Through: Mr. V. Lakshmikumaran, Mr. Karan
Sachdev, Mr. Yogendra Aldak with
Mr.Agrim Arora, Advocates.

Versus

UNION OF INDIA & ORS. ..
Through: Ms. Uma Prasuna Bachu,
Ms.Poonam, GP for R-1.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 12573/2022 & CM APPLs.38062-38063/2022

M/S SWATI REALTY
Through: Mr.Abhishek A Rastogi,
Rastogi, Ms. Meenal So
Singh, Adv

Versus

UNION OF INDIA & ORS. ..
Through: Mr. Sandeep Vishnu, Ad
Ms. Suruchi Suri, Advo
Mr.Mayur, Advocate for
Ms. Sonu Bhatnagar wit
Mittal and Ms. Monica

R-5& 6
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

+ W.P.(C) 12639/2022 & CM APPLs.38309-38310/2022 & 39263/202

M/S PERFECT BUILDWELL PVT LTD ..... Petitioner
Through: Mr. Krishna Mohan K Menon and
Ms. Parul Sachdeva, Advocate.

Versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Ravi Prakash, CGSC
Mr.Abhishek Khanna, Advocate for R-
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

+ W.P.(C) 12797/2022 & CM APPLs.38922-38924/2022

VASAVI AND GP INFRA LLP ..... Petitio
Through: Mr.Krishna Dev Jagarlamudi, Advocate
with Mr.N.Sai Vinod, Advocate.

Versus

UNION OF INDIA & ORS. ..
Through: Mr.Jatin, Sr.Panel
Ms.Chetanaya Puri, Adv
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Sonu Bhatnagar wit
Mittal and Ms. Monica
R-4

+ W.P.(C) 13657/2022 & CM APPLs.41646-41647/2022

M/S DLF LIMITED
Through: Mr. V. Lakshmikumaran,

Arora, Mr. Yogendra, M
and Mr. Sumit Khadaria

Versus

UNION OF INDIA & ORS.
Through: Mr.Asheesh Jain, CGSC
Mr. Gaurav Kumar, Advo
R-1.
Mr. Vipul Agrwal, Adv.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

W.P.(C) 7743/2019 & other connected matters

Mr.Satish Kumar, Sr.S
Counsel with Ms.Vaisha
Advocates for R-5.

\+ W.P.(C) 13715/2022 & CM APPLs.41879/2022, 45056/2022 and 45505/2022

NY CINEMAS LLP .
Through: Mr. Raj Shekhar Rao, S
Mr.Rituraj H. Gurjar w
Chadha, Mr. Sreekar Ae
Ganjoo, Advocates.

Versus

UNION OF INDIA & ORS. .
Through: Mr. Sushil Kumar Pande
Yadav, Mr. Kuldeep Sin
UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr. Anurag Ojha, Sr.St
with Mr. Vipul Kumar,
respondent No.3 & 4.
Ms.Sonu Bhatnagar with
Narain, Ms.Venus
Ms.Nishtha Mittal, Adv

\+ W.P.(C) 14835/2022

M/S AIRMID REAL ESTATE LTD. ..... Petitione

Through: Mr.Kishore Kunal and Ms.Ankita Prak
& Mr. Anuj Kumar, Advocates.

versus

UNION OF INDIA & ORS.
Through: Mr.Sushil Kumar Pandey
UOI.
Mr.Rajesh Kumar,
Ms.Ramneet Kaur, Advoc
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

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LIMITED AND ANR ..... Petition
Through: Mr. Rohan Shah, Advocate.
Versus

UNION OF INDIA AND ORS ..... Respo
Through: Mr.Sushil Kumar Pandey with Mr.Kuld
Singh, Advocates for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

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Through: Mr. Srinivas Kotni, Mr.Akshay Kumar,
Mr.Anirudh Ramanathan, Mr. Safal Seth
Mr. Rishabh Dev Dixit, Advocates.

Versus

W.P.(C) 7743/2019 & other connected matters

18:24:48

UNION OF INDIA AND ORS ..... Respo

Through: Mr.Sushil Kumar Pandey with Mr.Kuld Singh, Advocates for UOI.
Mr.Rakesh Kumar, CGSC with Mr.Sunil Advocate for UOI.
Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.

\+ W.P.(C) 15240/2022, CM APPLs.47193-47195/2022, 42515/2023

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Through: Mr. Tushar Jaswal, Mr. Rahul Sateej Mr.Pranav Bansal and Mr. Sanyam Agarwal, Advs.

Versus

UNION OF INDIA & ORS.

Through: Mr.Vijay Joshi, Adv. f Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha, NAA and DGAP.
Mr.Anurag Ojha, Sr.Sta Mr. Vipul Kumar, Advoc Ms. Anushree Narain, S with Ms. Simran Kumari GST.

\+ W.P.(C) 16890/2022 & CM APPLs. 53510-53512/2022

BHAGWATI INFRA

Through: Mr.Bharat Rai Chandani Mr.Deepak Kumar Khokha

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Signing Date:29.01.2024
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W.P.(C) 7743/2019 & other connected matters

Versus

UNION OF INDIA & ORS.

Through: Mr. Chiranjeev Kumar, Sachdeva, Advocates fo Mr. Zoheb Hossain, San Mr.Vivek Gurnani, Mr. Ms. Abhipriya, Mr.Vive Aneja and Ms.Manisha,

NAA and DGAP.

\+ W.P.(C) 17073/2022 & CM APPL. 54098/2022

ALLERGAN HEALTHCARE INDIA PVT. LTD. ..... Petitioner
Through: Mr.Sparsh Bhargava, Ms. Ishita Farsau
Mr. Apoorv Shukla, Ms. Prabhleen Kaur
Ms.Vaushika Tanjeja and Mr. Purseth
Kanan, Advocate.

Versus

UNION OF INDIA & ORS. ..
Through: Mr.Jatin Singh, SPC fo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 15289/2022 & CM APPL.Nos.47442-47443/2022

ANUTONE ACOUSTICS LIMITED ..... Peti
Through: Mr. Rajsekhar Rao, Sr. Adv. with
Mr. Prateek K Chadha, Mr. Ruturaj Gur
Ms. Pragya Ganjoo, Ms. Kamini and Mr.
Sreekar Aechuri, Advocates

Versus

UNION OF INDIA & ORS.
Through: Mr. V. Lakshmikumaran,
Advocate for UOI.
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 16178/2022 & CM APPL. 38836/2023

ARIHANT SUPERSTRUCTURES LTD. ..... Petitio
Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.

Versus

UNION OF INDIA & ORS.
Through: Mr.Jatin Singh, SPC fo
Mr. Manish Kumar, Sr.
Counsel.
Ms. Anushree Narain an
Kumari, Advocates for
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

\+ W.P.(C) 16266/2022 &. C.M.Nos.50925-50926/2022

PRASU INFRABUILD PVT LTD ..... Petit
Through: Mr.Tarun Jain, Advocate with Mr.Divy
Singh, Advocate.

Versus

W.P.(C) 7743/2019 & other connected matters

UNION OF INDIA & ORS.
Through: Mr.Sanjay Kumar. SPC f
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Mr.Sumit Gaur, Advocat
12, 13, 14 & 15.

\+ W.P.(C) 16734/2022 & CM APPLs.52794-52795/2022

M/S NANDI INFRATECH PVT LTD ..... Appell
Through: Mr.Sandeep Chilana, Advocate with
Mr.Rastogi, Ms. Anjali Jain, Mr. Ab
Tanveer, Ms. Kannopriya Gupta, Ms.
Jagriti, Mr. Priyojeet Chatterjee &
Snehil Sharma, Advocates
Versus

UNION OF INDIA AND ORS ..... Respond
Through: Ms. Anushree Narain and Ms.Simran
Kumari, Advocates for GST.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for

NAA and DGAP.

\+ W.P.(C) 16935/2022 & CM APPL.53667/2022

NEW WORLD REALTY LLP ..... Petitioner
Through: Mr. Kumar Visalaksh, Mr. Udit Jain Mr
Arihant Tater and Mr.Ajitesh Dayal Si
Advocates.
Versus

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UNION OF INDIA AND ORS ..... Responden
Through: Mr. Sushil Raaja, SPC for UOI
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 17010/2022 & CM APPL.53925/2022

WADHWA REALTY PVT LTD. ..... Petitioner
Through: Mr. Kumar Visalaksh, Mr. Udit Jain and
Mr.Ajitesh Dayal Singh, Advocates

Versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Neeraj, SPC with Mr. Vedansh An
Ms.Sahaj Garg and Mr. Rudhra Paliwa
Advs for UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 246/2023 & CM APPL.Nos.939-940/2023

M/S BHARTIYA URBAN PVT LTD. (FORMERLY, BHARTIYA CITY
DEVELOPERS PVT LTD.) ..... Petitio
Through: Mr.Abhishek A Rastogi, Ms. Pooja M.
Rastogi, Ms. Meenal Songire & Mr. Aj
Singh, Advs.

Versus

UNION OF INDIA AND ORS ..... Respo
Through: Mr.Gigi C.George with Mr.Dheeraj Si
Advocates for R-1/UOI.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 3866/2023 & CM APPL. 15035/2023

ATS HOMES PVT. LTD. ..
Through: Mr.Puneet Agrawal, Adv
Mr.Prem Kandpal, Mr.Ke
Mr.Chetan Kumar Shukla

Versus

UNION OF INDIA AND ORS ..... Responden
Through: Mr. Anshuman and Mr. Piyush Ahluwal
Advocates for R1/UOI
Ms. Anushree Narain, Standing Couns
for GST/R-2 with Ms. Simran Kumari,
Advocate.
Mr. Zoheb Hossain, Sanjeev Menon,
Mr.Vivek Gurnani, Mr. Kavish Garach
Ms. Abhipriya, Mr.Vivek Gaurav, Ms.
Aneja and Ms.Manisha, Advocates for
NAA and DGAP.

\+ W.P.(C) 11180/2023 & CM APPLs. 43445-43446/2023

M/S ATS TOWNSHIP PVT. LTD. ..... Petition
Through: Mr.Puneet Agrawal, Advocate with
Mr.Prem Kandpal, Mr.Ketan Jain and
Mr.Chetan Kumar Shukla Advocates.

Versus

UNION OF INDIA AND ORS ..... Responde
Through: Mr. Ravi Prakash, CGSC with Ms.Astu
Khandelwal, Adv. for R-I (UOI).
Mr. Naginder Benipal, SPC with Mr.

Siwach and Ms. Harithi Kambri, Advocates for UOI.
Ms. Anushree Narain, Standing Couns with M s. simran Kumari, Advocate f 2, (CBIC).
Mr. S.V. Tyagi & Mr. Shivam Tyagi, for R-2.
Mr. Zoheb Hossain, Sanjeev Menon, Mr.Vivek Gurnani, Mr. Kavish Garach Ms. Abhipriya, Mr.Vivek Gaurav, Ms. Aneja and Ms.Manisha, Advocates for NAA and DGAP.

\+ W.P.(C) 11910/2023

PAREENA INFRASTRUCTURE PVT. LTD. ..... Petitione
Through: Mr.Vineet Bhatia, Advocate Mr.Aamnaya Jagannath Mishra, Ms.Nidh Aggarwal, Ms.Jyoti Verma and Mr.Bipi Punia, Advocates.
Versus

UNION OF INDIA AND ORS ..... Responden
Through: Mr. Ravi Prakash, CGSC with Ms. Ast Khandelwal, Advocate for Mr. Virender Pratap Singh Charak, Ms.Shubhra Parashar, Mr. Yash Hari & Ms. Vidya Mishra, Advocates for U Ms. Anushree Narain, Standing Couns with Ms. Simran Kumari, Advocate fo 2, (CBIC).
Mr. S.V. Tyagi & Mr. Shivam Tyagi, for R-2.

Mr. Zoheb Hossain, Sa
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.
Ms. Gigi C George and
Advocates for UOI.

\+ W.P.(C) 14681/2023 & C.M.No.58468/2023

M/S ADHIRAJ CONSTRUCTIONS PVT. LTD. ..... Petition
Through: Mr.Bharat Raichandani with Mr.Deepa Kumar Khokhar, Advocates.

Versus

UNION OF INDIA ...

Through: Mr. Ravi Prakash, CGSC
Khandelwal, Advocate f
Mr. Sushil Raaja, Advo
Mr. Zoheb Hossain, San
Mr.Vivek Gurnani, Mr.
Ms. Abhipriya, Mr.Vive
Aneja and Ms.Manisha,
NAA and DGAP.

Reserved on : 21s
% Date of Decision : 29

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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ACKNOWLEDGEMENT.....

TO SUM UP .....

Signature Not Verified
Digitally Signed By:JASWANT SINGH RAWAT
Signing Date:29.01.2024 18:24:48

W.P.(C) 7743/2019 & other connected matters

JUDGMENT

MANMOHAN, ACJ:

THE CHALLENGE

1. Present writ petitions have been filed challenging the constitutional validity of Section 171 of the Central Good and Services Tax Act, 2017 (for short 'Act, 2017') and Rules 122, 124, 126, 127, 129, 133 and 134 of the Central Good and Services Tax Rules, 2017 (for short 'Rules, 2017') as well as legality of the notices proposing imposition or orders imposing penalty issued by the National Anti-Profiteering Authority ('NAA') under Section 122 of the Act, 2017 read with Rule 133(3)(d) of the Rules, 2017 and the final orders passed by NAA, whereby the petitioners, who are companies running diverse businesses ranging from hospitality, Fast-Moving Consumer Goods ('FMCG') to real estate, have been directed in accordance with Section 171 of Act, 2017, to pass on the commensurate benefit of reduction in the rate of tax or the Input Tax Credit to its consumers / recipients along with interest.

2. Learned counsel for the parties prayed that this Court may first decide the plea of constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017. They stated that only in the event this Court were to uphold the constitutional validity of the aforesaid Section and Rules, would the need to examine the matters on merits arise.

3. Accepting the suggestion of the learned counsel for the parties, this Court proceeded to hear the issue of constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017. The said provisions are reproduced hereinbelow:-

W.P.(C) 7743/2019 & other connected matters 18:24:48 Section 171 "171. Anti-profiteering measure (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

[(3A) Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

> Explanation. -- For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.] Rule 122
>
> 122.Constitution of the Authority.- The Authority shall consist of,-

(a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and (b) four Technical Members who are or have been Commissioners of State tax or central tax [for at least one year] or have held an equivalent post under the existing law, to be nominated by the Council. Rule 124

124. Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority:-

> W.P.(C) 7743/2019 & other connected matters 18:24:48 (1) The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.
>
> (2) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay: Provided that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs. 2,25,000 reduced by the amount of pension.

[(3) The Technical Member shall be paid a monthly salary and other allowances and benefits as are admissible to him when holding an equivalent Group 'A' post in the Government of India: Provided that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary equal to his last drawn salary reduced by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government.] (4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty- five years, whichever is earlier and shall be eligible for reappointment:

> Provided that [a] person shall not be selected as the Chairman, if he has attained the age of sixty-two years. [Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Chairman at any time.] (5) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment:

Provided that [a] person shall not be selected as a Technical Member if he has attained the age of sixty-two years. [Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time.] Rule 126

126. Power to determine the methodology and procedure The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

W.P.(C) 7743/2019 & other connected matters 18:24:48 Rule 127

127. Duties of the Authority.

It shall be the duty of the Authority,-

(i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;

(ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;

(iii) to order,--
(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount orrecovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

[(iv) to furnish a performance report to the Council by the tenth [day] of the close of each quarter.] Rule 129

129. Initiation and conduct of proceedings.-(1)Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of

[Anti-profiteering] for a detailed investigation.

(2) The Director General of [Anti-profiteering] shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices. (3)The Director General of [Anti-profiteering] shall, before initiation of the investigation, issue a notice to the interested parties containing, inter alia, information on the following, namely:-

> (a) the description of the goods or services in respect of which the proceedings have been initiated;

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(b) summary of the statement of facts on which the allegations are based; and

(c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply. (4)The Director General of [Anti-profiteering] may also issue notices to such other persons as deemed fit for a fair enquiry into the matter. (5)The Director General of [Anti-profiteering] shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

(6)The Director General of [Anti-profiteering] shall complete the investigation within a period of [six] months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing [as may be allowed by the Authority] and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

Rule 133

133. Order of the Authority.

(1) The Authority shall, within a period of [six] months from the date of the receipt of the report from the Director General of [Anti-profiteering] determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties. [(2A) The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1).] [(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order -

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

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(c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause[along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of deposit of such amount] in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

Explanation: For the purpose of this sub-rule, the expression, "concerned State" means the State [or Union Territory] in respect of which the Authority passes an order.] [(4) If the report of the Director General of [Anti-profiteering] referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of [Anti-profiteering] to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.] [(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.]"

Rule 134

134. Decision to be taken by the majority.- (1) A minimum of three members of the Authority shall constitute quorum at its meetings.

(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote."

W.P.(C) 7743/2019 & other connected matters 18:24:48 ARGUMENTS ON BEHALF OF THE PETITIONERS

4. Mr. P. Chidambaram, Mr. S. Ganesh, Mr. Tarun Gulati, Mr. Chinmoy Pradip Sharma and Mr.Pritesh Kapoor, learned Senior counsel as well as Mr. V. Lakshmikumaran, Mr. Monish Panda, Mr. Rohan Shah, Mr. Abhishek A. Rastogi, Mr. Tushar Jarwal, Mr. Sparsh Bhargava, Mr. Puneet Aggarwal, Mr. Sujit Ghosh, Mr. K. S. Suresh, Mr. Nikhil Gupta, Mr. Shashank Shekhar and Mr. Priyadarshi Manish, learned counsel addressed arguments on behalf of the petitioners.

5. Learned counsel for the petitioners submitted that Section 171(1) of the Act, 2017 and the Rules 126, 127 and 133 of the Rules, 2017 framed thereunder are unconstitutional as they are beyond the legislative competence of Parliament. They submitted that the impugned provisions do not fall within the law-making power of Parliament under Article 246A of the Constitution of India.

6. Some of the learned counsel for the petitioners submitted that the anti- profiteering provision, as provided under Section 171 of the Act, 2017, is in the nature of a tax or financial exaction. They submitted that a tax can be levied from a subject only if there is a specific and unequivocal provision in the parent statute authorising such an exaction. According to them, such a financial exaction cannot be made lawfully by a subordinate legislation, when there is no empowering provision in the parent statute. In support of their submissions, they relied on the decisions of the Supreme Court in Ahmedabad Urban Development Authority v. Sharakumar Jayantikumar Pasawala, (1992) 3 SCC 285 and V.V.S. Sugars v. Govt. of A.P., (1999) 4 SCC 192.

7. Learned counsel for the petitioners further submitted that the impugned Section and Rules suffer from vice of excessive delegation as they delegate essential legislative functions to the Government. Additionally, they submitted W.P.(C) 7743/2019 & other connected matters 18:24:48 that the impugned provisions are ambiguous, arbitrary, violative of Article 14 and confer excessive powers on NAA to determine profiteering as no guidelines and/or legislative policy for the exercise of such powers by the authority so constituted have been laid down in the statute. They submitted that the failure to provide clear statutory guidance for exercise of powers by NAA in the formulation of such methodology amounts to "delegation of essential legislative function" as these formulations were essential and therefore, the same should have been stipulated by the Legislature. They submitted that it is settled law that the legislative authority cannot be delegated under a statute without appropriate guidelines or safeguards. In support of their submissions, they relied on the judgment of the Supreme Court in Ramesh Birch vs. Union of India, 1989 Supp SCC 430.

8. They submitted that it is settled law that delegatus non potest delegare which essentially means that a delegatee cannot further delegate unless expressly or impliedly authorized. They contended that the Legislature vide Section 171 of the Act, 2017 delegated the authority to determine/prescribe powers and functions of NAA to the Executive i.e. the Government of India. They submitted that the

Government of India by way of Rule 126 of the Rules, 2017, contrary to the legislative mandate contained in Section 171 of the Act, 2017, further delegated the power to NAA to determine the methodology and procedure for determining whether the reduction in taxes or the benefit of Input Tax Credit had been passed on to the recipients. They stated that even NAA did not issue any guidelines as to how to determine profiteering. In support of their submission, they relied on the judgment of the Supreme Court in Barium Chemicals Ltd. & Ors. v Company Law Board & Ors. [AIR 1967 SC 295].

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9. They submitted that the term 'commensurate' is not defined in the Act, 2017 and the expression 'profiteering' in Section 171 is dependent upon the scope and meaning of the phrase 'commensurate reduction in the price'. According to them, as a result of this circular reasoning, NAA had complete and unfettered discretion to determine the extent of profiteering. They pointed out that the definition of profiteering inserted by way of amendment (that came into force only on 01st January, 2020) is vague and uncertain as to how the amount of profiteering or commensurate reduction in price has to be determined and therefore, the same is ex facie arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. They pointed out that even NAA, in the orders passed by it, had not been consistent in its interpretation of the term "commensurate reduction".

10. They stated that without stipulating the specifics of the methodology to be adopted to determine profiteering, the petitioners could not have been asked to reduce prices. They contrasted the lack of guidelines in Section 171 of the Act, 2017 with Section 9A of the Customs Tariff Act, 1975 which lays down the broad guidelines on the basis of which the extent of dumping and anti-dumping duty is to be quantified and Section 19(3) of the Competition Act, 2002, which lays down the factors to be taken into consideration while determining whether an agreement has an appreciable adverse effect. They stated that in the absence of any guidelines, NAA had acted arbitrarily as is evident from the varied approaches taken by it while adjudicating cases of entities belonging to the same industry and dealing with similar products.

11. Learned counsel for the petitioners emphasised that the formula used by the respondents, for instance, for real estate companies during the course of investigation/adjudication, had not been notified. They stated that the W.P.(C) 7743/2019 & other connected matters 18:24:48 methodology adopted by NAA and the Director General of Anti-Profiteering ('DGAP') to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services Tax and post-Goods and Services Tax period. To drive home the point that the methodology adopted by the respondents was flawed, the learned counsel for the petitioners gave an illustration of the contrasting results one would get after calculating the amount profiteered/required to be passed on in case of two identical real estate projects being developed by Developers A & B with the only difference being the advance payment received by them prior to the Goods and Services Tax Regime. They stated that assuming that two Developers (A & B) commenced construction of the two identical projects (having hundred flats of rupees one crore each) in 2017 and the projects were executed at an identical pace with identical inputs and with Developer A receiving sixty per cent of the amount (total sale price of the project) as

advance during the pre-Goods and Services Tax period, Developer B receiving only twenty per cent as advance during that period, with all other factors being identical (like the credit availed/available during the pre-Goods and Services Tax period), the credit to turnover ratio for the two projects would vary drastically depending on the time when the payments from the customers were received. According to the petitioners, if the methodology adopted by NAA /DGAP is to be accepted, Developer A would be required to pass on 15% benefit to the flat- buyers and Developer B who received 80% of the payment/amount post-Goods and Services Tax receive would be required to pass no benefit to the flat-buyers. A graphical representation of the same, as furnished by the petitioners, is as follows:

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12. They stated that it is for this reason, the percentage of credit to turnover ratio (in Goods and Services Tax regime) had varied from 0.2% (in Vatika Limited, Case No. 64/2019) to 20.98% (in Emaar MGF Land Ltd, Case No. 26/2020) in the orders passed by NAA.

13. Learned counsel for the petitioners in Writ Petition No. 13657/2022 pointed out that DLF calculated the total savings on account of introduction of Goods and Services Tax for each project. He stated that the total savings/benefits were then divided by total area to arrive at the per square feet benefit to be passed on to each flat buyer. He stated that as a result the flat-buyers with equal area received equal benefit. In contrast to this, he pointed out that the NAA/DGAP calculated the benefit by comparison of ratios as explained above and then computed the profiteered amount as a percentage of consideration received from each flat-buyer in the Goods and Services Tax regime. Therefore, as per NAA/DGAP, similarly placed flat-buyers received inconsistent benefits. For the project Camellias, the benefits computed by both NAA/DGAP & DLF are tabulated below:

W.P.(C) 7743/2019 & other connected matters 18:24:48 DLF- PROJECT (Camellilas)
S. Customer Unit Area of unit Percentage Amount Benefit No. Number of benefit
Computed by passed on by computed by DGAP petitioner DGAP

1. Gopal CM405A 7361 Sq.Ft. 1.18% 83,274 4,88,500 Chopra

2. Rachna CM504A 7361 Sq.Ft. 1.18% 83,450 4,88,500 Sawhney

3. Rachna CM505A 7361 Sq.Ft. 1.18% 83,450 4,88,500 Sawhney

4. Anil Sarin CM510A 7361 Sq.Ft. 1.18% 99,874 4,88,500

5. S J Rubber CM504B 7361 Sq.Ft. 1.18% 83,265 4,88,500 Industries Ltd.

6. Splendid CM419A 7361 Sq.Ft. 1.18% 11,328 4,88,500 Residences Pvt. Ltd.

7. Rachna CM503B 7361 Sq.Ft. 1.18% 83,450 4,88,500 Sawhney

8. Vineet CM418B 7361 Sq.Ft. 1.18% 2,30,148 4,88,500 Kanwar

9. Vishal Swara CM516B 7361 Sq.Ft. 1.18% 1,47,047 4,88,500

10. Sanjeev CM819B 9419 Sq.Ft. 1.18% 10,01,928 6,25,139 Aggarwal

11. Mohan CM804B 9419 Sq.Ft. 1.18% 20,66,050 6,25,139 Agarwal

12. Deep Kalra CM818B 9419 Sq.Ft. 1.18% 33,72,998 6,25,139

13. Action CM602A 9419 Sq.Ft. 1.18% 34,356 6,25,139 Construction Equipment Ltd.

14. They also submitted that determination of profiteering can be made at different levels such as entity level, Stock Keeping Unit (hereinafter referred to as 'SKU') level, product level, customer level etc. Hence, an assessee intending to W.P.(C) 7743/2019 & other connected matters 18:24:48 comply with the law has no way of ensuring whether its methodology is in compliance with Section 171(1) of the Act, 2017 or not.

15. Learned counsel for the petitioners also submitted that the operation of Section 171 of the Act, 2017 amounted to price-fixing and is therefore violative of Articles 19(1)(g) and 300A of the Constitution. They submitted that according to NAA's interpretation of Section 171 of the Act, 2017, once any of the events contemplated in Section 171 of the Act, 2017 occurs, i.e. either there is reduction in tax rate or benefit of Input Tax Credit is availed, then the price of the product must be adjusted to (a) the extent of the tax reduced and/or (b) the extent of increase in the credit availability. They stated that there is no clarity on adjustments allowed on account of rise either in input costs or in customs duty on import of inputs, supply and demand conditions and other factors which impact pricing. They submitted that Section 171 of the Act, 2017, to the extent it eliminates all factors from consideration in price fixation, other than the rate of tax and credit availability, was clearly excessive, disproportionate and unwarranted.

16. They pointed out that similar anti-profiteering provisions had been introduced in Australia (in 2000) and in Malaysia (in 2015) to ensure that the benefit of reduction of tax rate was passed on to the recipients. They stated that the provisions so introduced prescribed clear policy guidelines before imposing the restrictive conditions.

17. They stated that when Australia implemented the Goods and Services Tax replacing the erstwhile Wholesale Sales Tax, the Australian Competition and Consumer Commission ('ACCC') was entrusted with the responsibility to oversee pricing responses to the introduction of Goods and Services Tax for a period of three years between 1999 and 2002. They stated that Section 75AU of W.P.(C) 7743/2019 & other connected matters 18:24:48 the Trade Practices Act, 1974 which prohibited

price exploitation in relation to the New tax System provided that factors such as increase in supplier's input costs, supply and demand conditions and other relevant factors shall be taken into consideration while determining price exploitation. They further stated that Section 75AV(1) of the aforesaid Act provided that the ACCC must formulate detailed guidelines to explain when prices may be regarded to be in contravention of the price exploitation provision. They stated that the ACCC had framed detailed guidelines in July, 1999 which were later revised in March, 2000 after taking inputs from all stakeholders. It was pointed out that the fundamental principle laid down in the aforesaid guidelines was based on a 'net dollar margin rule'. According to them, the said guidelines enumerated all the relevant factors to be taken into consideration for price adjustments and provided for considering the increase in procurement cost and additional costs due to the tax change. They stated that it also allowed averaging the impact of taxes and costs across goods or services under specific circumstances.

18. While referring to the Goods and Services Tax system introduced in Malaysia, they stated that the Anti- Profiteering measures had been incorporated under the Price Control and Anti-Profiteering Act, 2011 to control prices of goods, charges of services and to prohibit unreasonably high profiteering by suppliers. They stated that making unreasonably high profit was an offence under Section 14 of the said Act. They further stated that Section 15 of the said Act provided that the Minister shall prescribe the mechanism to determine whether the profit is unreasonably high considering different conditions and taking into consideration factors such as: tax imposition, suppliers' cost, supply and demand conditions and other relevant matters in relation or price of goods and services W.P.(C) 7743/2019 & other connected matters 18:24:48 etc. It was pointed out that detailed guidelines were laid down under the Regulations issued in 2014 and 2016.

19. Learned counsel for the petitioners further submitted that Section 171 of the Act, 2017 is manifestly arbitrary and unreasonable, as it does not fix a period of time during which the reduced prices of the goods and services had to be maintained. They emphasised that the time-frame for which an assessee could be subject to the discipline of Section 171 of the Act, 2017 has been left undefined and open-ended. According to them, this indefinite obligation hinders the petitioners' right to trade and commerce and hence, the same is violative of Articles 14 and 19(1)(g) of the Constitution of India.

20. They further stated that price reduction is not the only method by which commensurate benefit can be passed on to the recipient. They stated that an increase in the volume or weight of the product being sold for the same price is an equally effective and legal way of commensurately reducing the price of the product. They stated that mandating price reduction as the only way to pass the commensurate benefit to the recipient is manifestly arbitrary and unreasonable.

21. Learned counsel for the petitioner in W.P.(C) 12557/2022, M/s. L'Oreal India Pvt. Ltd., stated that in the FMCG industry, for low priced products, since the resultant reduction in price is often miniscule, it was not feasible to pass on the benefit because of the restriction in the Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011 that require the prices of the goods to be rounded off to the nearest fifty paisa. In support of his contention, he referred to the following table:

W.P.(C) 7743/2019 & other connected matters 18:24:48 Original MRP Price 18% GST Ideal revised MRP exclusive of MRP suggested by 28% GST Respondent 5 3.90625/- 0.703125/- 4.609375/- 4.5/-

4 3.125/- 0.5625/- 3.6874/- 3.5/-

3 2.34375/- 0.421875/- 2.765625/- 3/-

2 1.5625/- 0.28125/- 1.84375/- 2/-

22. Therefore, according to him, there is a legal impossibility in reducing the Maximum Retail Price ('MRP'). As a result he stated that some of the companies had passed on the commensurate benefit by way of increasing the grammage. He pointed out that NAA vide order dated 24th December, 2018 passed in Ankit Kumar Bajoria vs. M/s Hindustan Unilever Ltd., Case No.20/2018, had accepted the practice of increasing grammage. However, this practice had not been accepted as a mode of passing on commensurate benefit by NAA in subsequent orders.

23. Learned counsel for the petitioners pointed out that there is no provision of appeal against the orders passed by NAA. They submitted that the absence of a provision to appeal means that there is no judicial oversight over the decisions of NAA and indicates that there is a presumption that the findings of NAA are infallible. They submitted that Tribunals and Authorities which exercise functions similar to NAA have a robust appellate mechanism. They submitted that lack of a provision to appeal against the findings of NAA makes the Act, 2017 unconstitutional.

24. They submitted that Rule 124 of Rules, 2017 to the extent it deals with appointment and terms and conditions of service of the Chairman and Members W.P.(C) 7743/2019 & other connected matters 18:24:48 of NAA is not in consonance with Article 50 of the Constitution of India as there is scope for governmental interference in the functioning of NAA.

25. Learned counsel for the petitioners submitted that NAA essentially determines the rights of those complainants who filed complaints and determines liabilities of the tax assessees against whom such an application/complaint is made / received. Therefore, according to them, since the exercise of power by NAA is a quasi-judicial function, the absence of a judicial member in the constitution of NAA renders Section

171 of the Act, 2017 and Rule 122 of the Rules, 2017 illegal and void. In support of their submissions, they relied on the decision of the Supreme Court in Madras Bar Association v. Union of India, (2015) 8 SCC 583, Madras Bar Association v. Union of India, (2010) 11 SCC 1 and L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.

26. They further submitted that in case of equality of votes amongst the members of NAA, the Chairperson has a second or casting vote, which renders Rule 134(2) illegal and unconstitutional.

27. Learned counsel for the petitioner in W.P.(C) 12647/2018 stated that the report issued by DGAP and the order passed by NAA in its case were barred by limitation as provided under Rule 133 of the Rules, 2017. He submitted that Rule 133 uses the word "shall" and thus mandates that NAA must determine and pass an order within a period of three months (prior to amendment dated 28th June, 2019) from date of receipt of the report from DGAP. He further submitted that the procedure that has been prescribed under the Rule 129(6) ought to have been strictly followed by the DGAP while investigating other products. He pointed out that in the case of the petitioner in W.P.(C) 12647/2018, Rule 129(6) of the Rules, 2017 as on 25th September, 2018 (the date on which NAA passed its order directing the DGAP to conduct investigation on the amount allegedly profiteered W.P.(C) 7743/2019 & other connected matters 18:24:48 by the petitioner) or 30th October, 2018 (the date when the notice was issued by DGAP) mandatorily provided that DGAP was required to complete its investigation within three months. However, the report was submitted on 30th September, 2019 which is beyond the prescribed limitation period and thus, the same was without jurisdiction. He submitted that at the time the proceedings were initiated by NAA, Rule 129(6) of the Rules, 2017 mandated that the DGAP "shall" submit its report to NAA within three months which could be further extended to six months. Such time period was subsequently extended to six months vide Notification No. 31/2019 dated 28th June, 2019 which could be further extended to nine months. However, the impugned order is barred by limitation even if period is taken as six months as applicable from 28th June, 2019.

28. Learned counsel for the petitioners submitted that under Rule 133(3) of the Rules, 2017, NAA does not have any power or authority in law to pass an order in relation to any product, other than the product against which complaint has been received by the authorities. They submitted that till 28th June, 2019 (when Rule 133(5) was enacted), NAA had no powers to direct investigation in respect of any product, other than the product complained of. However, with effect from 28th June, 2019, Rule 133(5) was introduced, whereby for the first time, NAA was statutorily empowered in the course of the proceedings before it, to direct the DGAP, to conduct an investigation in relation to products, other than the product complained of. They submitted that as a result of the amendment, the power to expand the scope of the investigation vests only with NAA and not with DGAP. They pointed out that in many cases, DGAP had on its own expanded the scope of the investigation to other products, which according to them, is without jurisdiction and ultra vires the provisions of the Act, 2017 and Rules, 2017.

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29. Learned counsel for the petitioners submitted that the levy of penalty and interest cannot be ordered in the absence of corresponding specific substantive provisions under the Act, 2017. They submitted that the consequences of the breach of Section 171 of Act, 2017 should have been provided for in the first instance in the Act, 2017 itself and such wide and uncontrolled powers could not have been conferred on NAA under Rules 127 and 133 of Rules, 2017. In support of their submission, they relied upon the judgments of the Supreme Court in Indian Carbon Limited v. State of Assam (1997) 6 SCC 479 and Shree Bhagwati Steel Rolling Mills v. CCE 2015 (326) E.L.T. 209 (SC).

30. They stated that the petitioners have been issued show cause notices directing them to explain why penalty prescribed under Section 171(3A) of the Act, 2017 read with Rule 133 (3) (d) of the Rules, 2017 should not be imposed upon them. They, however, submitted that Section 171 (3A) has been inserted in the Act, 2017 under Section 112 of the Finance Act, 2019 which came into force only from 01st January, 2020 and so penalty under the aforesaid Section could not have been imposed on the petitioners retrospectively.

31. Learned senior counsel for the petitioner in W.P.(C) 1171/2020 submitted that on a plain reading of Section 171(1) with Section 2(108) of the Act, 2017, it is clear that it applies to a reduction in the rate of Goods and Services Tax levied on a particular commodity or a grant of Input Tax Credit under the Act, 2017. He stated that the term 'tax on any supply of goods or services' and Input Tax Credit in Section 171 do not refer to any tax levied prior to 1st July, 2017 or to any Input Tax Credit granted under any such prior statute. Therefore, according to him, Section 171(1) of the Act, 2017 does not contemplate a comparison of the taxes levied after the introduction of the Act, 2017 with a basket of distinct indirect taxes applicable on goods and services before the operation of the Act. He stated W.P.(C) 7743/2019 & other connected matters 18:24:48 that the indirect taxes levied on goods and services prior to July, 2017 by the States such as the VAT/Sales-tax, Octroi duty and Entry tax varied widely from State to State and often from area to area within a State. He stated that as a result, it is impossible to make any meaningful comparison between the rates of the pre- Goods and Services Tax taxes with the rates of tax levied under the Goods and Services Tax regime.

32. According to him, Section 171 of the Act, 2017 only permits a comparison between two single rates and not a comparison between one single tax rate (Goods and Services Tax) and a basket or combination of several other tax rates (pre-Goods and Services Tax indirect taxes). He submitted that Sections 2(62) and 2(63) of the Act, 2017 make it clear that the benefit of Input Tax Credits referred to in Section 171(1) are the Input Tax Credit granted under the Act, 2017 and not the Input Tax Credits granted under the Central Excise Act, the Service- Tax statute or the Sales-tax Acts. He further submitted that Section 9 of the Act, 2017 which provides for the levy of 'a tax called the central goods and services tax on all intra-State supplies of goods or services or both...' uses the same language as Section 171 and therefore Section 171 refers only to a reduction in the rate of tax levied / referred to under Section 9 of the Act, 2017.

33. Learned senior counsel for the petitioners in W.P.(C) 2897/2021, submitted that in a contract made after the reduction in the tax rate has come into effect, the parties are free to agree on any

price. In support of his submission, he relied on Section 64-A of the Sale of Goods Act, which reads as under:-

> "64A. In contracts of sale, amount of increased or decreased taxes to be added or deducted.--
>
> (1) Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of W.P.(C) 7743/2019 & other connected matters 18:24:48 any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax-paid where tax was chargeable at that time,--
>
> (a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition; and
>
> (b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.
>
> (2) The provisions of sub-section (1) apply to the following taxes, namely:--
>
> (a) any duty of customs or excise on goods;
>
> (b) any tax on the sale or purchase of goods."

34. Learned counsel for the petitioner in W.P.(C) 2785/2021 submitted that as per Section 171(2) read with Section 2(80) of the Act, 2017, the authority (empowered to examine whether there has been commensurate reduction in price) has to be constituted by way of a duly gazetted notification and as per Section 166 of the Act, 2017, such notification has to be laid before the Parliament. He stated that contrary to these requirements, NAA had been constituted vide an administrative order No.343/2017 dated 28th November, 2017. He stated that Rule 122 of the Rules, 2017 has been notified and gazetted vide Notification No. 10/2017-Central Tax dated 28th June, 2017, which, at first blush, suggests that NAA had been constituted thereunder. However, on a closer analysis, it is clear that the said Rule cannot be said to be the fountainhead of constitution of NAA as Rule 122 essentially provides for composition of NAA and not for the constitution of NAA, even though the heading of the Rule is couched to suggest that the same apparently constitutes NAA. He submitted that if the said Rule W.P.(C) 7743/2019 & other connected matters 18:24:48 (which was notified on 28th June, 2017) was indeed the fountainhead of constitution of NAA, the same would go against

the very understanding of the respondents as recorded in the 35th and 45th Goods and Services Tax Council Minutes of Meeting as well as the Memo dated 09th September, 2019 of the Department of Revenue, Ministry of Finance, wherein it has been specifically observed that NAA had been constituted vide an office order dated 28th November, 2017.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

35. Mr. Zoheb Hossain, learned counsel appearing on behalf of the Respondent-authorities, prefaced his submissions by stating that Parliament introduced the Act, 2017 in order to simplify and harmonise the indirect taxes regime in the country by eliminating the multiplicity of taxes that were levied on the same supply system as a result of which there was a cascading effect.

36. According to him, the "anti-profiteering" measures were introduced in the Goods and Services Tax regime in order to provide for a mechanism to ensure that the full benefits of input tax credits and reduced Goods and Services Tax rates flow to the consumers who bear the burden of tax and to prevent the suppliers from appropriating these benefits for themselves. He contended that anti-profiteering provisions under the Act, 2017 and the Rules, 2017 have been brought into force in the interest of consumer welfare and so any interpretation of the same must be in favour of the consumer.

37. He stated that the provisions essentially create a substantive restriction on the suppliers from appropriating the benefits of the Goods and Services Tax regime which may either be in the form of reduction in the tax rate effected pursuant to a decision of the Goods and Services Tax Council or in the form of W.P.(C) 7743/2019 & other connected matters 18:24:48 benefit of Input Tax Credit which was unavailable under the earlier regime. He stated that correspondingly a substantive right has been created in favour of consumers to receive the benefit of reduction in rates and benefit of Input Tax Credit. He stated that in considering the constitutional vires of such a provision, the larger public welfare intended to accrue from the provision ought to be taken into consideration. He relied upon the decision of the Supreme Court in Pioneer Urban Land and Infrastructure Ltd. vs. Union of India, (2019) 8 SCC 416, wherein the Supreme Court examined a challenge to the amendments to the Insolvency and Bankruptcy Code, 2016. He stated that in the aforesaid case the fact that the impugned provisions were part of a beneficial legislation was treated as an important factor in order to uphold the provisions.

38. He further submitted that Section 171 of the Act, 2017 has been enacted in furtherance of the goals of redistributive justice contained in the Directive Principles of State policy in Articles 38, 39(b) and 39(c) of the Constitution of India. The relevant portion of Articles 38, 39(b) and 39(c) are reproduced hereinbelow:-

> "Article 38 - State to secure a social order for the promotion of welfare of the people
> (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Article 39 - Certain principles of policy to be followed by the State The State shall, in particular, direct its policy towards securing-- ...

(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

(emphasis supplied) W.P.(C) 7743/2019 & other connected matters 18:24:48

39. He submitted that the scope of judicial review in a fiscal statute is fairly limited as laid down by the Supreme Court in multiple judgments such as State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 and R. K. Garg v. Union of India, 1981 (4) SCC 675.

40. He further submitted that Article 246A of the Constitution of India empowers the Legislature to make laws 'with respect to' Goods and Services Tax. Article 246A of the Constitution reads as under:-

"246A. Special provision with respect to goods and services tax.--

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.--The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

41. He submitted that the impugned Section 171 of the Act, 2017 does not violate Article 246A of the Constitution of India as the said Section is not a taxing provision but is only meant to ensure that the sacrifice of tax revenue by the Central and State Governments for the welfare of the consumer is passed on to them by the supplier.

42. He stated that the reduction of the tax burden and elimination of the cascading effect of taxes were important objectives behind the introduction of the Goods and Services Tax and so the impugned Section 171 of the Act, 2017 is very much a provision 'with respect to' Goods and Services Tax and, therefore, Section 171 of the Act, 2017 falls well within the ambit of law-making powers of the Parliament and the State legislatures. He further submitted that it is a well W.P.(C) 7743/2019 & other connected matters 18:24:48 settled principle that in the field of taxation, the legislature enjoys

a greater latitude for classification as has been noted by the Supreme Court in various cases [See: Steelworth Ltd. vs. State of Assam [1962] Supp (2) SCR 589]; Gopal Narain vs. State of U.P. [AIR 1964 SC 370]; Ganga Sugar Corp. Ltd. vs. State of U.P. [(1980) 1 SCC 223].

43. Countering the submissions of the Petitioners that Section 171 of the Act, 2017 suffers from the vice of excessive delegation, Mr. Zoheb Hossain, learned counsel, submitted that no essential legislative function has been delegated by the Legislature to NAA by way of Section 171 of the Act, 2017. He stated that Section 171 of the Act, 2017 is very clear when it states that any reduction in the rate of tax or the benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in prices, that is to say that every person who is a recipient of goods or services has to get the benefit. He further stated that it cannot be said that Section 171 of the Act, 2017 does not provide method and procedure for determining profiteering as it clearly stipulates that 'any reduction' in the rate of tax on 'any supply of goods or services' or the benefit of input tax credit shall be passed on to the recipient by way of 'commensurate reduction in prices'.

44. He emphatically denied that the word 'commensurate' as used in Section 171 of the Act, 2017 has no clear and definite meaning. He referred to the Cambridge Dictionary where the word 'commensurate' is defined as 'in a correct and suitable amount compared to something else; suitable in amount or quality compared to something else; matching in degree'. Thus, according to him, Section 171 lays down a clear legislative policy and hence, no essential legislative function has been delegated. He submitted that the Courts have consistently held that after laying down the broad legislative policy, the minutiae can always be left W.P.(C) 7743/2019 & other connected matters 18:24:48 to be decided by way of a subordinate legislation (See: Lohia Machines Ltd. vs. Union of India, (1985) 2 SCC 197, Pt. Banarsi Das Bhanot vs. State of Madhya Pradesh, AIR 1958 SC 909, Sita Ram Bishambher Dayal vs. State of U.P. (1972) 4 SCC 485). He further stated that it is well settled that the question whether any particular legislation suffers from excessive delegation, has to be determined by the Court having regard to the subject matter, the scheme, the provisions of the statute including its preamble and the background on which the statute is enacted. In support of his contentions, he relied upon the decision of the Supreme Court in Bhatnagars & Co. Ltd. vs. Union of India, AIR 1957 SC 478 and Mohmedalli and Ors. vs. Union of India and Ors., AIR 1964 SC 980.

45. He further submitted that power of NAA to determine procedure and methodology flows from Section 171 of the Act, 2017 itself which empowers the Authority to examine whether Input Tax Credits availed by any registered person or the reduction in the tax rate on the goods or services had actually resulted in commensurate reduction in the price of such goods or services. He stated that the rule-making powers of the Central Government as prescribed in sub section (2) of Section 171 of the Act, 2017 as well as Section 164 of the Act, 2017 empower the Central Government to prescribe the powers and functions of the authority as well as to prescribe a Rule conferring the Authority with the power to determine the methodology for determining whether the benefits of Goods and Services Tax rate reductions and Input Tax Credits have been passed on. According to him, it is in this background that the power to prescribe the powers and functions of NAA was delegated to the Central Government by the Section. He, therefore, submitted that the principle delegatus non potest delegare is not applicable to the present batch of matters.

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46. He stated that Section 171(3) of the Act, 2017 duly provides that the Authority shall exercise such powers and discharge such functions as may be prescribed. Accordingly, he stated that the Goods and Services Tax Council which is a federal, constitutional body, comprising all the Finance Ministers of all the States and UTs and the Union Finance Minister, in its due wisdom, and the Central and the State Governments have framed Rules 127 and 133 which prescribe the functions and powers of the Authority. He pointed out that these rules have been framed under the provisions of Section 164 of the Act, 2017 which also has sanction of the Parliament and the State Legislatures. Therefore, since the functions and powers to be exercised by the Authority have been approved by competent legislatures, the same are legal and binding on the Petitioners. In support of his submissions, he relied on the decision of the Supreme Court in M.K. Papiah vs. Excise Commr. (1975) 1 SCC 492.

47. Mr. Zoheb Hossain, learned counsel stated that even if the petitioners' contention that no methodology for calculating the profiteered amount had been prescribed is accepted, then also the said Section will not be rendered unconstitutional because as per Rule 126 of the Rules, 2017, NAA has been empowered to determine the said methodology. He pointed out that the Rule does not stipulate that NAA must necessarily determine the methodology and procedure to compute profiteering as it merely stipulates that the authority 'may' determine the methodology and procedure for such computation. He stated that substantive provision of Section 171 of the Act, 2017 provides sufficient guidance to the NAA to determine the methodology on a case to case basis depending on the peculiar facts of each case and the nature of the industry and its peculiarities.

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48. Additionally he stated that no uniform calculation method can be prescribed because the computation of commensurate reduction in prices is purely a mathematical exercise and would vary from SKU to SKU or unit to unit or service to service and hence for determining the quantum of benefit as the extent of profiteering has to be arrived at on a case to case basis, by adopting suitable method based on the nature and facts of each case. He further stated that NAA in exercise of the powers conferred under Rule 126 of the Central Goods and Services Tax has notified the "National Anti-Profiteering Authority:

> Methodology and Procedure, 2018" dated 28th March, 2018 which contains the methodology and procedure for determination as to whether the reduction in the rate of tax on supply of goods or services or the benefit of Input Tax Credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

49. In the context of the real estate sector, he stated that in cases where completion certificate had not been issued prior to 01st July, 2017 and the supply of service by the developer continued past 01st July, 2017, the supplier got the benefit of Input Tax Credits under the Goods and Services Tax regime. That being the case, there is no reason why a supplier ought not to be required to pass on

the benefit of Input Tax Credits under the Goods and Services Tax regime, with respect to the remaining supply. According to him, a plain reading of Section 171 of the Act, 2017 would require such developers to pass on the benefit of Input Tax Credits.

50. He stated that Section 171 of the Act, 2017 when it uses the term 'any supply' refers to each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of tax reduction by any supplier is not allowed. Hence, according to him, this benefit has to be calculated for the SKU of W.P.(C) 7743/2019 & other connected matters 18:24:48 every product and has to be passed on to every buyer of such SKU. These benefits, he stated cannot be passed on at the entity/organization/branch/invoice/ product/business vertical level as they have to be passed on to each and every buyer at each SKU/unit/service level by treating them equally. Additionally, he stated that the language of the impugned provisions does not provide flexibility to adopt any other mode for transferring benefit of reduction in tax rate and benefit of Input Tax Credit. He, thus, stated that the Methodology & Procedure for passing on the benefits and for computation of the profiteered amount has been duly prescribed in Section 171 of the Act, 2017 itself and hence, it is not required to be prescribed separately.

51. He stated that in the case of reduction in the rate of tax, the quantum of benefit would depend upon the pre reduction base price of the product which is required to be maintained during the post rate reduction period on which the reduced rate of tax is required to be charged which would result in reduction in the price. According to him, the new MRP is required to be declared by affixing additional sticker or stamping or online printing in terms of letter No. WM/10(31)/2017 dated 16th November, 2017 issued by the Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

52. While dealing with the argument of the Petitioners that it is legally impossible to pass on the benefits of the reduction of rate of tax in cases of low priced products in the FMCG industry, Mr.Zoheb Hossain, learned counsel, submitted that the Rules 2(m) and 6(1)(e) of Legal Metrology (Packaged Commodities) Rules, 2011 (as amended from time to time) provide guidance to the suppliers on how the MRP of the products is to be rounded off. The relevant portion of the aforesaid Rules are reproduced as hereinunder:-

> W.P.(C) 7743/2019 & other connected matters 18:24:48 "Legal Metrology (Packaged Commodities) Rules, 2011 dated 7th March, 2011 as enacted with effect from 1st April, 2011:
>
> "2. Definitions:-
>
> .....
>
> (m) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the consumer and the price shall be printed on the package in the manner given below; 'Maximum or Max. retail price Rs/ .....inclusive of all taxes or in the form MRP Rs/ .....incl., of all taxes after taking into account

the fraction of less than fifty paisa to be rounded off to the preceding rupees and fraction of above 50 paise and up to 95 paise to the rounded off to fifty paise;

xxx xxx xxx

6. Declarations to be made on every package. -

(1) Every package shall bear thereon or on the label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to -

....

(e) the retail sale price of the package; Provided that for packages containing alcoholic beverages or spirituous liquor, the State Excise Laws and the rules made there under shall be applicable within the State in which it is manufactured and where the state excise laws and rules made there under do not provide for declaration of retail sale price, the provisions of these rules shall apply."

Legal Metrology (Packaged Commodities) Rules, 2011 as amended by the Legal Metrology (Packaged Commodities) Amendment Rules, 2017 with effect from 1st January, 2018:

2. Definitions:-

'(m) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the consumer inclusive of all taxes;';

xxx xxx

4. In the said rules, in rule 6,-

(d) in clause (e), after the words "the retail sale price of the package;", the following words and figures shall be inserted, namely:- "shall clearly indicate that it is the maximum retail price inclusive of all taxes and the price in rupees and paise be rounded off to the nearest rupee or 50 paise; ....."

53. He agreed with the contention of the petitioners that in some cases, commercial factors might necessitate an increase in price despite reduction in rate W.P.(C) 7743/2019 & other connected matters 18:24:48 of tax or availability of benefit of Input Tax Credits. However, he stated that the prices must not be increased to appropriate the benefit of the reduced tax rate or benefit of additional Input Tax Credit that accrues to the Petitioners. According to him, if the supplier never passed on the benefit of such reduced tax rate or Input Tax Credit by way of a commensurate reduction in prices of the goods or services, by increasing the base price of such goods or services, he would be depriving the recipients of the benefits of the reduction of tax rates or Input Tax Credits. Hence, he stated that if the supplier when increasing the base prices of the goods or services does not account for the (commensurate) reduction of prices as a result of the reduction of the tax rates

or benefit of the Input Tax Credits, the supplier would be said to be profiteering under Section 171 of the Act, 2017. He, however, stated that NAA as well as this Court ought to be cautious of attempts of entities to justify suspicious increase in base prices contemporaneous with the reduction in tax rates or accruing of benefits of Input Tax Credits, under the garb of other commercial factors. According to him, the Courts and implementing authorities must be vigilant about devices designed for avoidance and must seek to adopt interpretations of the provisions that are least prone to resulting in avoidance. He referred to the judgment in McDowell & Co. Ltd. v. CTO, (1985) 3 SCC 230 where it has been held that "the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it" and that "it is up to the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the W.P.(C) 7743/2019 & other connected matters 18:24:48 existing legislation with the aid of "emerging" techniques of interpretation." He submitted that although the aforesaid findings were made in the context of tax avoidance, they would apply with equal force in the context of any beneficial legislation.

54. Mr. Zoheb Hossain, learned counsel further stated that reference made by the petitioners to guidelines under other laws and to certain foreign laws, is irrelevant to the issue of the constitutional validity of Section 171 of the Act, 2017 as validity has to be determined on its own merits.

55. He further stated that according to petitioners' own submissions the anti- profiteering provisions introduced in Australia and Malaysia were essentially price control mechanisms as the legislation enacted in Australia was aimed at prohibiting 'price exploitation' and the Act enacted in Malaysia was aimed at prohibiting manufacturers from 'making unreasonably high profits'.

56. He stated that Section 171 of the Act, 2017 is not a price-fixing provision as was sought to be asserted by the Petitioners. He submitted that Section 171 of the Act, 2017 only concerns itself with the indirect-tax component of the price of goods and services and does not impinge upon the freedom of suppliers to fix prices of their goods and services keeping in view relevant commercial and economic factors. He stated that the impugned section in pith and substance is a provision pertaining to the Goods and Services Tax and through its enactment the Parliament sought to ensure that the businesses pass on the benefits granted by the Government in term of reduction of tax rate and availability of Input Tax Credit to the consumers and does not seek to interfere with the right to trade by fixing the price at which the goods and services ought to be supplied. He pointed out that the impugned provision applies irrespective of the price of the goods or services. He stated that it cannot be said that a law which forbids recovery of W.P.(C) 7743/2019 & other connected matters 18:24:48 Goods and Services Tax at a rate higher than that applicable on the goods and services and which forbids suppliers from recovering Input Taxes from the recipients where credits are obtained on such Input Taxes, amounts to price- control or price-fixing.

57. He further submitted that even if Section 171 of the Act, 2017 is presumed to be a price-fixing legislation, it would not render the Section violative of Article 19(1)(g) of the Constitution of India. He submitted that the Supreme Court in several cases such as Diwan General and Sugar Mills Pvt. Ltd. & Ors. vs. Union of India, AIR (1959) SC 626; Union of India vs. Cynamide India Ltd., (1987) 2 SCC 720 where price fixing orders had been challenged, had upheld such orders by examining whether the orders take into account relevant factors/considerations.

58. He submitted that there is no legal principle on the basis of which the petitioners can contend that the mere absence of a time period, up to which reduced prices are required to be maintained, would render the provision unconstitutional.

59. He submitted that recently, a three-Judge Bench of the Supreme Court in Madras Bar Association v. Union of India & Anr., (2021) SCC OnLine SC 463, while considering the challenge to the vires of Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 and Sections 184 and 186(2) of the Finance Act, 2017 as amended by the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, held that "the apprehensions of misuse of a statutory provision is not a ground to declare the provisions of a statute as void."

60. Mr. Zoheb Hossain, learned counsel, submitted that for an appeal to be maintainable, it must have its genesis in the authority of law [See: M. Ramnarain W.P.(C) 7743/2019 & other connected matters 18:24:48 (P) Ltd. v. State Trading Corpn. of India Ltd. [(1983) 3 SCC 75 and Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad (1999) 4 SCC 468]. He submitted that the principle of "appeal being a statutory right and no party having a right to file appeal except in accordance with the prescribed procedure" is now well settled as held by the Supreme Court in CCI v. SAIL, (2010) 10 SCC 744. According to him, the right to appeal is not a right which can be assumed by logical analysis much less by exercise of inherent jurisdiction. It essentially should be provided by the law in force. In the absence of any specific provision creating a right in a party to file an appeal, such right can neither be assumed nor inferred in favour of the party.

61. He stated that Section 171(2) of the Act, 2017 lays down the role of NAA which is to examine whether Input Tax Credit availed by any registered person and/or the reduction in tax rates have actually resulted in a commensurate reduction in the price of goods or services supplied by him and the duties of NAA have been further elaborated upon in Rule 127 of the Rules, 2017. He further stated that from a perusal of the aforesaid provision, it is clear that the functions of NAA are in the nature of a fact-finding exercise. He submitted that even if it is assumed that the Authority undertakes an exercise which determines the rights and liabilities of registered persons under the Act, the contention of the Petitioners that the absence of a judicial member in NAA renders the authority unconstitutional is not tenable as there is no universal principle that every quasi- judicial authority at every level must have a judicial member. According to him, such a requirement would not only be wholly impractical but also be legally suspect. He stated that the judgments which have been relied upon by the petitioners follow a uniform principle that whenever a judicial tribunal is intended to replace or supplant the High Court with respect to judicial power which was W.P.(C) 7743/2019 & other connected matters 18:24:48 hitherto vested in or exercised by Courts, such Tribunals must be manned by judicial members in addition to technical members who have

specialized knowledge or expertise in a given field. In support of his submissions, he relied on the judgments of the Supreme Court in Union of India vs. R. Gandhi, (2010) 11 SCC 1, Rojer Mathews vs. South Indian Bank, (2019) SCC OnLine SC 1456. He stated: (a) the NAA did not replace or substitute any function which Courts were exercising hitherto; (b) it performs quasi-judicial functions but cannot be equated with a judicial tribunal; (c) it performs its functions in a fair and reasonable manner in accordance with the Act but does not have the trappings of a Court and (d) absence of a judicial member does not render the constitution of the NAA unconstitutional or legally invalid.

62. He further stated that there are several statutory bodies that exercise quasi- judicial functions, but are not required to have judicial members. For example, Section 4(1) of the Securities and Exchange Board of India Act, 1992 which provides for the composition of the Securities and Exchange Board of India ('SEBI'), does not necessarily require the presence of Judicial Members in SEBI. He pointed out that the fact that the SEBI inter-alia performs judicial functions has been recognized by the Supreme Court in Clariant International Ltd. & Anr. vs. Securities and Exchange Board of India (2004) 8 SCC 524. Similarly, he stated that Telecom Regulatory Authority of India, Medical Council of India, Institute of Chartered Accountants of India and the Assessing Officers, CIT (Appeals), Dispute Resolution Panel under the Income Tax Act perform quasi- judicial functions but there is no requirement that such members must possess either a law degree or have had judicial experience.

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63. He submitted that a casting vote in the hands of the chairperson is a fair and reasonable manner of deciding a tie in votes and is commonly provided for in several laws.

64. He stated that NAA has been constituted as per the provisions of Rule 122 of the Rules, 2017. The Rules, 2017, including Rule 122, have been duly notified by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs vide Notification No. 3/2017- Central Tax dated 19th June, 2017 and published in the Gazette of India- Extraordinary vide G.S.R. No. 610(E) on the same date and hence NAA has been duly constituted by a Notification as required under Section 171(2) of the Act, 2017. The above notification dated 19th June, 2017 was laid before the Lok Sabha on 11th August, 2017 and before the Rajya Sabha on 08th August, 2017 as required by Section 166 of the Act, 2017.

65. He submitted that in the absence of an express provision to the effect that anti-profiteering proceedings would abate if time-lines are not strictly adhered to, and if the time-lines are read to be mandatory, it would result in gross injustice to the consumers who would be left remediless on account of no fault of theirs.

66. Further, in the absence of anything to the contrary in the amendment or the amended provision, on a plain reading of the provision, the amended/extended time-period for passing of an order would apply to all pending and future proceedings before NAA. He submitted that the time-frames provided in the anti- profiteering provisions are merely directory in nature and not mandatory.

67. Mr. Zoheb Hossain, learned counsel, stated that Section 171 of the Act, 2017 is widely worded and does not limit the scope of examination to only the goods and services in respect of which a complaint is received by the authorities. He submitted that Rule 129 of the Rules, 2017, which provides for the scope of W.P.(C) 7743/2019 & other connected matters 18:24:48 powers of the DGAP, uses the words 'any supply of goods or services' and so the scope of powers of DGAP is very wide.

68. He stated that the contention of the petitioners that there was no mechanism for recovery of the alleged profiteered amount under Section 171 of the Act, 2017 overlooks Rule 133(3)(b) of the Rules, 2017 prescribed under Section 171(3) of the Act, 2017 which empowers NAA to order a supplier to return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent [18%] from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned including interest, as the case may be.

69. Mr. Zoheb Hossain, learned counsel, submitted that the judgments of Supreme Court in Indian Carbon Ltd. Vs. State of Assam, (1997) 6 SCC 479 and Shree Bhagwati Steel Rolling Mills vs. CCE (2016) 3 SCC 643 etc. relied upon by the petitioners were delivered in the context of considering the question of whether interest can be levied for delayed payment of tax and whether penalty can be imposed for non-payment of tax under a Rule where the Statute does not authorize the same.

70. He submitted that by virtue of Rule 133(3)(d) of the Rules, 2017, NAA was already vested with the powers to impose penalties even before Section 171(3A) came into force. According to him, Section 171(3A) of the Act, 2017 is therefore merely clarificatory in nature. He further submitted that in the absence of a power to impose penalties, there would be no consequence arising out of the violation of Section 171(1) of the Act, 2017 by suppliers and consequently, there would be no deterrence against non-compliance.

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71. Even otherwise, he stated that show cause notices initiating penalty proceedings in relation to violation of Section 171(1) prior to the coming into force of Section 171(3A) of the Act, 2017, have been withdrawn by NAA and penalty proceedings in all such cases are not being pressed and so this issue has become infructuous. Insofar as the objection regarding levy of interest is concerned, he submitted that the object of the anti-profiteering measures provided in Section 171 of the Act, 2017 is to ensure that the Input Tax Credits availed by any registered person or the reduction in tax rate result in a commensurate reduction in the price of goods or services or both supplied by him and as a result, the benefit of the same passed on to the recipients. He stated that the profiteered amount includes the benefit of reduction in taxes or Input Tax Credits which was required to be passed on by way of reduction in prices as well as the tax thereon which the consumer is forced to pay as a result of the non-reduction of prices as required under Section 171(1) of the Act, 2017. He emphasised that had the supplier passed on the benefit of reduction in tax rates or Input Tax Credit by way of reduction in prices, the consumer would not have been required to pay the additional Goods and Services Tax.

72. Mr. Zoheb Hossain submitted that without prejudice to the fact that each and every Act of NAA is well reasoned and justified and can be defended to the satisfaction of this Court as and when the same are taken up case-wise, the case- specific submissions of the petitioners have no bearing whatsoever while considering the constitutional vires of Section 171 of the Act, 2017 and Rules contained in Chapter XV of the Rules, 2017.

W.P.(C) 7743/2019 & other connected matters 18:24:48 ARGUMENTS ON BEHALF OF THE LEARNED AMICUS CURIAE

73. Mr. Amar Dave, learned Amicus Curiae stated that the cardinal objective with which the Goods and Services Tax had been introduced was inter alia to ensure an efficient and robust indirect taxing system.

74. He contended that a perusal of the reports and the discussions preceding the introduction of Goods and Services Tax regime clearly indicated that the impact on prices of various goods and services had been factored in as a necessary consequence of the shift over to the Goods and Services Tax regime.

75. He pointed out that the report of the Comptroller and Auditor General of India ('CAG') of June, 2010 dealt with the manner in which the Value Added Tax ('VAT') was implemented in India and accordingly threw light on the lessons for transition to Goods and Services Tax. One of the elements covered in the said report was the impact that VAT had on prices of goods. The report found that the white paper at the time of introduction of VAT was sanguine that implementation of VAT would bring down the prices of goods due to rationalisation of tax rates and abolition of cascading effect of tax in the legacy systems. However, on the examination and analysis of a small data survey, the CAG found that the manufacturers did not reduce the maximum retail prices after introduction of VAT even when there had been a substantial reduction in tax rates. It was, therefore, found that despite introduction of VAT and reduction in the tax rates, the benefits ensuing from such reduction were not passed on to the consumers by the manufacturers and the dealer networks across the VAT chain had enriched themselves at the cost of the common man. The report highlighted these aspects as those to be borne in mind at the time of considering the shift over to the Goods and Services Tax regime and to ensure mechanism for the purposes W.P.(C) 7743/2019 & other connected matters 18:24:48 of passing on the benefit of tax rationalisation to the ultimate common man.

76. He stated that similarly, another report of the taskforce on Goods and Services Tax i.e. the 13th Finance Commission Report of 15th December, 2009 comprehensively dealt with minute aspects of the contemplated Goods and Services Tax ecosystem and various elements of such switchover. In its introduction, the report contemplated inter alia that the prevailing indirect tax system both at the Central and the State level included high import tariffs, excise duties and turnover tax on domestic goods and services having cascading effects, leading to a distorted structure of production, consumption and exports and this problem could be effectively addressed by shifting the tax burden from production and trade to final consumption. The report highlighted the implications of the switchover to Goods and Services Tax and the benefits that would entail from such a switchover. He pointed out that para 7.22 of the said report specifically recorded that the benefit to the poor from

the implementation of Goods and Services Tax would flow from two sources, first through increase in the income levels and second through reduction in prices of goods consumed by them. It was specifically observed that the proposed switchover to the flawless Goods and Services Tax system should therefore be viewed as a pro-poor system and not regressive. The report further specifically went into the implications of the proposed switchover to Goods and Services Tax on various products and sectors including prices of the goods.

77. He further stated that the Report of the Select Committee (presented to the Rajya Sabha on 22nd July, 2015) dealt with the issues of transition to Goods and Services Tax and the same dealt with inter alia issues of consumer benefit that would arise on account of the transition and related aspects.

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78. Learned Amicus Curiae contended that the discussions at the time of the introduction of the Goods and Services Tax Bill in the Lok Sabha and the Rajya Sabha with regard to Section 171 of the Act, 2017 left no room for doubt that the said measure was introduced as a consumer benefit measure in order to ensure that the past experiences of the stakeholders retaining the benefit of tax reductions due to lack of legal mechanism is not repeated at the time of the switchover to Goods and Services Tax regime.

79. He submitted that Section 171 of the Act, 2017 is a stand-alone provision and provides for all the parameters which act as navigational tools while applying the said provision. He submitted that the pre-requisites for triggering the provision are specifically provided therein and the consequence of the section is also specifically provided for. He submitted that the beneficiary of the contemplated benefit provided under the provision is clearly specified, and therefore, all critical aspects of its applicability and workability stand embedded in the section itself.

80. Learned Amicus Curiae stated that by its very nature, Section 171 of the Act, 2017 provides for an inherent assumption that the reduction of tax rate or the benefit of Input Tax Credit under the Goods and Services Tax mechanism specifically requires, as a consequence thereof, a commensurate reduction in price. He stated that the contention that Section 171 of the Act, 2017 amounts to price regulation is not correct as the provision has been inserted to ensure specifically that the consequential effect of the tax rate must enure to the benefit of the consumer. The very foundation of the same is based on the concept that when the tax rate undergoes a reduction under the Goods and Services Tax regime, it obviously must translate into price reduction. He submitted that if there is a variation (which can be justified by the supplier) of other factors such as any W.P.(C) 7743/2019 & other connected matters 18:24:48 costs necessitating the setting off of such reduction of price, the inherent presumption is a rebuttable presumption.

81. He submitted that the concept of Section 171 of the Act, 2017 is based on consumer welfare and equity. He contended that it is also the spirit of the constitutional provisions that no entity can be permitted to collect any tax (in any direct or indirect manner or by any implicit representation to that effect) except by the authority of law. Hence, when in spite of the reduction in the applicable tax

rate, consequential reduction of the actual price does not take place and the amount is retained by the supplier, it would qualify as an unjust enrichment at the cost of the recipient who is the otherwise beneficiary of the reduction of the tax rate.

82. He stated that any indirect manner of passing on the benefit like 'Diwali Dhamaka' or cross-subsidisation would be interfering with the right of the recipient to get the direct benefit. According to him, such an indirect method to pass the benefit is not contemplated under the express provisions and is also not in sync with the right of the recipient to get the actual benefit of the change in the tax rate. He stated that no such indirect method to pass on the benefit can be read-into the provision when the same is consciously not provided for therein thereby establishing/cementing the right of the recipient/consumer to get the benefit by way of commensurate reduction of the price itself.

83. Learned Amicus Curiae submitted that under the scheme of the Act, 2017, it is contemplated that the Central Government on the recommendations of the Goods and Services Tax Council (a constitutional body formed under the provisions of Article 279A of the Constitution of India) may constitute an Authority or empower an existing Authority constituted under any law for the purpose of examining whether benefit has actually been passed on to the W.P.(C) 7743/2019 & other connected matters 18:24:48 recipients as contemplated under Section 171 of the Act, 2017. He pointed out that Chapter XV of the Rules deals with the subject of anti-profiteering and inter- alia provides the different layers of fact-finding examination that have to be undertaken with respect to the actual passing of benefit contemplated under Section 171 of the Act, 2017. According to him, it is clear from the said Rules that the same contemplates constitution of Standing Committee and Screening Committee at different levels. Further, under the scheme of the Rules, it is provided that the Standing Committee shall within a stipulated time frame after following the process prescribed therein determine whether there is any prima facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax or the benefit of Input Tax Credit or the benefit of Input Tax Credit has, in fact, not been passed on to the recipient. He stated that the scheme of the Rules therefore contemplates that such application(s) from the interested parties shall be first examined by the State level Screening Committee if they pertain to issues local in nature and subsequently be forwarded to the Standing Committee for action. Further, when the Standing Committee reaches a prima facie conclusion, it shall refer the matter to the DGAP for a detailed investigation. Rule 129 of the Rules, 2017 provides for a comprehensive mechanism which the DGAP is required to follow once the matter is forwarded to it. Once the report of the DGAP is forwarded to the Authority, the Rules provide for the mechanism in which the Authority is to undertake the exercise of further considerations and reaching its final conclusions. Thus, according to him, the perusal of the said Scheme under the Rules, 2017 therefore clearly establishes a fact-finding mechanism at different levels culminating in the final determination of the matter by the Authority.

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84. He submitted that in view of the purely fact-based nature of the exercise and the different levels contemplated for such findings under the Rules the contention that there is lack of appropriate

redressal measures under the Scheme of Anti-Profiteering measures in the Goods and Services Tax framework is clearly negated.

85. Learned Amicus Curiae submitted that there is no question of any unbridled powers being conferred on the authority which is entrusted with the obligation of ensuring the compliance of the said provision as enough guidance emanates from the parent provision itself. He contended that all the factors such as the nature of the exercise to be carried out; the objective sought to be achieved by the said exercise; the incorporation of all critical elements which are to guide any such exercise in the section itself; the nature of the authority contemplated and tasked to carry out the functions; the period monitoring of the same by the Goods and Services Tax Council etc. are to be considered when dealing with the subject matter.

COURT'S REASONING PRINCIPLES FOR ADJUDICATING THE CONSTITUTIONALITY OF AN ENACTMENT

86. This Court is of the view that the principles for adjudicating the constitutionality of an enactment are well settled. Though they have been succinctly set out in a number of judgments, yet this Court considers it appropriate to reiterate them.

87. A Statute can be declared as unconstitutional only if the Petitioners make out a case that the Legislature did not have the legislative competence to pass such a Statute or that the provisions of the Statute violate the Fundamental Rights W.P.(C) 7743/2019 & other connected matters 18:24:48 guaranteed under Part-III of the Constitution of India or that the Legislature concerned has abdicated its essential legislative function or that the impugned provision is arbitrary, unreasonable or vague in any manner. D.D. Basu in Shorter Constitution of India (16th Edn., 2021) has enumerated the grounds on which a law may be declared to be unconstitutional as follows:-

> (i) Contravention of any fundamental right, specified in Part III of the Constitution.
>
> (ii) Legislating on a subject which is not assigned to the relevant legislature by the distribution of powers made by the Seventh Schedule, read with the connected articles.
>
> (iii) Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a legislature e.g. Article 301.
>
> (iv) In the case of a State law, it will be invalid insofar as it seeks to operate beyond the boundaries of the State.
>
> (v) That the legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body.

88. It must also be kept in mind that there is always a presumption in favour of constitutionality of an enactment and the burden to show that there has been a clear transgression of constitutional principles is upon the person who attacks such an enactment. Whenever constitutionality of a provision is challenged on the ground that it infringes a fundamental right, the direct and inevitable effect/consequence of the legislation has to be taken into account. The Supreme Court in Namit Sharma vs. Union of India, (2013) 1 SCC 745 has held as under:-

> "20. Dealing with the matter of closure of slaughterhouses in Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat [(2008) 5 SCC 33] , the Court while noticing its earlier judgment Govt. of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] , introduced a rule for exercise of such jurisdiction by the courts stating that the court should exercise judicial restraint while judging the constitutional validity of the statute or even that of a delegated legislation and it is only when there is clear violation of a W.P.(C) 7743/2019 & other connected matters 18:24:48 constitutional provision beyond reasonable doubt that the court should declare a provision to be unconstitutional....."

(emphasis supplied) COURTS' APPROACH WHILE DEALING WITH TAX OR ECONOMIC LAWS

89. Further, the Courts have consistently held that the laws relating to economic activities have to be viewed with greater latitude than laws touching civil rights and that the Legislature has to be allowed some play in the joints because it has to deal with complex problems. The Supreme Court in its recent judgment in Union of India vs. VKC Footsteps India (P) Ltd., 2021 SCC OnLine SC 706 has reiterated the approach that the Courts have to adopt while dealing with tax or economic regulations. The relevant portion of the said judgment is reproduced hereinbelow:-

> "135. While we are alive to the anomalies of the formula, an anomaly per se cannot result in the invalidation of a fiscal rule which has been framed in exercise of the power of delegated legislation. In R.K. Garg [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , P.N. Bhagwati, J. (as the learned Chief Justice then was) speaking for the Constitution Bench underscored the importance of the rationale for viewing laws relating to economic activities with greater latitude than laws touching civil rights. The Court held : (SCC pp. 690- 91, para 8) "8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [Morey v. Doud,

1957 SCC OnLine US SC 105 : 1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J., said in his inimitable style:

> In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, W.P.(C) 7743/2019 & other connected matters 18:24:48 the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events -- self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability. The Court must always remember that 'legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry'; 'that exact wisdom and nice adaption of remedy are not always possible' and that 'judgment is largely a prophecy based on meagre and uninterpreted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secy. of Agriculture v. Central Roig Refining Co. [Secy. of Agriculture v. Central Roig Refining Co., 1950 SCC OnLine US SC 14 : 94 L Ed 381 : 338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.""

(emphasis supplied) ACT, 2017 MARKS A PARADIGM SHIFT IN THE FIELD OF INDIRECT TAXES

90. This Court is of the view that the Act, 2017 not only simplifies and harmonises the indirect tax regime in the country, but it also marks a paradigm shift in the manner in which they are enacted, levied and collected in India.

91. The Act, 2017 primarily intends to provide a common national market for Goods and Services as reflected in its moto 'One Nation One Tax'. It is a consumer-centric Act, as it eliminates the levy of multiple taxes, avoids any cascading tax effect, streamlines the credit mechanism by weeding out distortions W.P.(C) 7743/2019 & other connected matters 18:24:48 in the supply chains and ensures a smooth pass-through and transparent mechanism for levying tax. This is apparent from the Statement of Objects and Reasons of the Act, 2017. The same is reproduced hereinbelow:-

> "Presently, the Central Government levies tax on, manufacture of certain goods in the form of Central Excise duty, provision of certain services in the form of service tax, inter-State sale of goods in the form of Central Sales tax. Similarly, the State Governments levy tax on and on retail sales in the form of value added tax, entry of goods in the State in the form of entry tax, luxury tax and purchase tax, etc. Accordingly, there is multiplicity of taxes which are being levied on the same supply chain.
>
> 2. The present tax system on goods and services is facing certain difficulties as under--
>
> (i) there is cascading of taxes as taxes levied by the Central Government are not available as set off against the taxes being levied by the State Governments;
>
> (ii) certain taxes levied by State Governments are not allowed as set off for payment of other taxes being levied by them;
>
> (iii) the variety of Value Added Tax Laws in the country with disparate tax rates and dissimilar tax practices divides the country into separate economic spheres; and
>
> (iv) the creation of tariff and non-tariff barriers such as octroi, entry tax, check posts, etc., hinder the free flow of trade throughout the country. Besides that, the large number of taxes create high compliance cost for the taxpayers in the form of number of returns, payments, etc.
>
> 3. In view of the aforesaid difficulties, all the above mentioned taxes are proposed to be subsumed in a single tax called the goods and services tax which will be levied on supply of goods or services or both at each stage of supply chain starting from manufacture or import and till the last retail level. So, any tax that is presently being levied by the Central Government or the State Governments on the supply of goods or services is going to be converged in goods and services tax which is proposed to be a dual levy where the Central Government will levy and collect tax in the form of central goods and services tax and the State Government will levy and collect tax in the form of state goods and services tax on intra-State supply of goods or services or both.

4. In view of the above, it has become necessary to have a Central legislation, namely the Central Goods and Services Tax Bill, 2017. The proposed legislation will confer power upon the Central Government for levying goods and services tax on the supply of goods or services or both which takes place within a State. The proposed legislation will simplify and harmonise the indirect tax regime in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and industry more competitive, domestically as well as internationally. Due to the seamless transfer of input tax credit from one W.P.(C) 7743/2019 & other connected matters 18:24:48 stage to another in the chain of value addition, there is an in-built mechanism in the design of goods and services tax that would incentivise tax compliance by taxpayers. The proposed goods and services tax will broaden the tax base, and result in better tax compliance due to a robust information technology infrastructure.

5. The Central Goods and Services Tax Bill, 2017, inter alia, provides for the following, namely:--

(a) to levy tax on all intra-State supplies of goods or services or both except supply of alcoholic liquor for human consumption at a rate to be notified, not exceeding twenty per cent. as recommended by the Goods and Services Tax Council (the Council);

(b) to broad base the input tax credit by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business;

(c) to impose obligation on electronic commerce operators to collect tax at source, at such rate not exceeding one per cent. of net value of taxable supplies, out of payments to suppliers supplying goods or services through their portals;

(d) to provide for self-assessment of the taxes payable by the registered person;

(e) to provide for conduct of audit of registered persons in order to verify compliance with the provisions of the Act;

(f) to provide for recovery of arrears of tax using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person;

(g) to provide for powers of inspection, search, seizure and arrest to the officers;

(h) to establish the Goods and Services Tax Appellate Tribunal by the Central Government for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority;

(i) to make provision for penalties for contravention of the provisions of the proposed Legislation;

(j) to provide for an anti-profiteering clause in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers; and

(k) to provide for elaborate transitional provisions for smooth transition of existing taxpayers to goods and services tax regime.

6. The Notes on clauses explain in detail the various provisions contained in the Central Goods and Services Tax Bill, 2017.

7. The Bill seeks to achieve the above objectives."

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92. From the aforesaid, it is apparent that the Act, 2017 levies a single tax on the supply of goods or services on the value addition at each stage of the supply chain from purchase of raw materials, manufacture of product or import, till the finished good reaches the hands of the consumer. This is best illustrated by the following example:-

Stages Actions Price+Tax=cost Cost/ Total Tax@10% Total Addition only on price addition st 1 Purchase of raw - 2000 2000 200 2200 material by manufacturer 2nd Sold finished goods to 2000+200=2200 500 2700 50 2750 wholesaler (raw material to finished goods) 3rd Purchase of finished 2700+50=2750 400 3150 40 3190 goods by Trader 4th Purchase of finished 3150+40=3190 300 3490 30 3520 goods by actual consumer Total 3200 320 3520

93. The Goods and Service Tax is a destination-based tax and is levied at the point of consumption. Accordingly, the taxes get accumulated with the original price and due to the effect of Input Tax Credit, the cascading effect i.e. tax on tax is removed. This is best illustrated by the following example:-

W.P.(C) 7743/2019 & other connected matters 18:24:48 OLD SYSTEM GOODS AND SERVICES TAX SYSTEM MANUFACTURING COST OF CAR MANUFACTURING COST OF CAR 250,000 250,000 ADD: PROFIT @20% 50,000 ADD: PROFIT @20% 50,000 TOTAL COST 300,000 TOTAL COST 300,000 ADD: EXCISE DUTY @10% 30,000 ADD: EXCISE DUTY @10% NA 0 COST AFTER TAX 3,30,000 COST AFTER TAX 3,00,000 COST TO CUSTOMER 3,63,000 300,000 ADD:GOODS And SERVICES TAX @ 20% 60000 COST TO CUSTOMER 3,60,000

94. Consequently, the intent of the Act, 2017 is to provide a common national market, boost productivity, increase competitiveness, broaden the tax base and make India a manufacturing hub.

SECTION 171 MANDATES THAT TAX FOREGONE HAS TO BE PASSED ON AS A COMMENSURATE REDUCTION IN PRICE.

95. As rightly pointed out by the learned Amicus Curiae, the introduction of the system of Goods and Services Tax was preceded by a comprehensive examination of the subject by different committees and the reports of such committees had been factored in while finalizing the framework of the Goods and Services Tax.

96. An area of concern identified in the said reports was that though with the doing away of multiplicity and cascading of taxes, the prices of goods and services would come down, yet would this benefit, if any, be passed on to the consumer by the manufacturers and sellers. To ensure that the benefit is passed on, an anti-profiteering provision in the form of Section 171 of the Act, 2017, was introduced.

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97. Section 171 of the Act, 2017 mandates that the suppliers shall pass on the benefit of reduction of the rate of Goods and Services Tax or Input Tax Credits by way of commensurate reduction in prices to the recipient. Section 171 deals with amounts that the Central and State Governments have foregone from the public exchequer in favour of the consumers. This Court is of the view that the amounts foregone from the public exchequer in favour of the consumers cannot be appropriated by the manufacturers, traders, distributors etc. To allow them to do so would amount to unjust enrichment. Consequently, when the Goods and Services Tax rate gets reduced or the benefit of input tax credit, becomes available as a necessary consequence the final price paid by the recipient obviously requires to be reduced. In the absence of such anti-profiteering provisions, there would be no legal obligation to pass on the benefit of the Goods and Services Tax regime and, consequently, the intended objective of reducing overall tax rates and mitigating the cascading effect would not be achieved.

98. The expression 'profiteered' has been defined in the Explanation to Section 171 of the Act, 2017 to mean 'the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both'. According to Collins English Dictionary - Complete and Unabridged, 12th Edition 2014, the word 'commensurate' means "1. having the same extent or duration; 2. corresponding in degree, amount, or size; proportionate; 3. able to be measured by a common standard; commensurable." The word 'commensurate' has been used in several judgments of the Supreme Court for laying down yardsticks in different contexts, from determining the rightfulness of the posting of a public servant, to assessing the correctness of criminal sentencing and calculating maintenance amounts W.P.(C) 7743/2019 & other connected matters 18:24:48 indicating that the Courts too have a clear and definite understanding of this word. [See: P.K. Chinnasamy v. Govt. of T.N., (1987) 4 SCC 601; Centre for PIL v. Housing & Urban Development Corpn. Ltd., (2017) 3 SCC 605; Dinesh v. State of Rajasthan, (2006) 3 SCC 771; Vimala (K.) v. Veeraswamy (K.), (1991) 2 SCC 375].

99. The obligation of effecting/making a "commensurate" reduction in prices, as mentioned hereinabove, is relevant to the underlying objective of the Goods and Services Tax regime which is to ensure that suppliers pass on the benefits of reduction in the rate of tax and Input Tax Credit to the consumers, especially since the Goods and Services Tax is a consumption-based tax (as adopted in India) and the recipient (consumer) practically pays the taxes which are included in the final price. Section 171 of the Act, 2017, therefore, is not to be looked at as a price control measure but is to be seen to be directly connected with the objectives of the Goods and Services Tax regime. Consequently, the word 'commensurate' in Section 171 of the Act, 2017 means that whatever actual saving arises due to the reduction in rates of tax or the benefit of the Input Tax Credit, in rupee and paisa terms, must be reflected as equal or near about reduction in price . In other words, tax foregone by the authorities has to be passed on to the consumer as commensurate reduction in price.

100. Accordingly, Section 171 of the Act, 2017 has been enacted, in public interest, with the consumer welfare objective of ensuring that suppliers pass on the benefit of Input Tax Credits and reduction of rate of Goods and Services Tax to the consumers. The Section does this by firstly creating a substantive obligation under sub-section (1) requiring manufacturers / suppliers to pass on benefits of Input Tax Credits and/or reduction in rate of tax by way of commensurate reduction in prices to the recipients. The said Section further W.P.(C) 7743/2019 & other connected matters 18:24:48 enables the establishment of an Authority to determine whether Suppliers have passed on the benefits of Input Tax Credits and reduction of the tax rates, and to exercise such other powers and functions as may be prescribed.

101. This Court is in agreement with the submission of the Respondents that the objective behind Section 171 is directly relatable to the Directive Principles of State Policy contained in Article 38(1) of the Constitution which requires the State to strive to secure a social order in which justice, social, economic and political shall inform all institutions of the national life and Articles 39(b) and (c) of the Constitution which require the State to direct its policy towards ensuring that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

102. To summarise, Section 171 of the Act, 2017 mandates that whatever is saved in tax must be reduced in price. Section 171 of the Act, 2017 incorporates the principle of unjust enrichment. Accordingly, it has a flavor of consumer welfare regulatory measure, as it seeks to achieve the primary objective behind the Goods and Services Tax regime i.e. to overcome the cascading effect of indirect taxes and to reduce the tax burden on the final consumer. Consequently, the judgments of Ahmedabad Urban Development Authority (supra), Indian Carbon Limited (supra), V.V.S. Sugars (supra) and Shree Bhagwati Steel Rolling Mills v. CCE (supra), relied on by the Petitioners, are not applicable as they deal with the validity of delegated authority imposing tax/fee or charging interest on delayed payment of tax in the absence of empowering provision in the statute.

W.P.(C) 7743/2019 & other connected matters 18:24:48 SECTION 171 FALLS WITHIN THE LAW-MAKING POWER OF THE PARLIAMENT UNDER ARTICLE 246A

103. Article 246A of the Constitution of India defines the source of power as well as the field of legislation (with respect to goods and services tax) obviating the need to refer to the Seventh Schedule of the Constitution. Article 246A is available to both the Parliament and the State Legislatures. The said Article embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence. However, the Parliament has the exclusive power to enact Goods and Services Tax legislation where the supply of goods or services takes place in the course of inter-State trade or commerce. The Supreme Court in Union of India vs. VKC Footsteps India (P) Ltd. (supra) has held, 'The One Hundred and First Amendment to the Constitution is a watershed moment in the evolution of cooperative federalism'.

104. Article 246A of the Constitution of India empowers the Parliament and Legislatures to make laws 'with respect to' goods and services tax. This expression is similar to that used in Article 246 which empowers the Parliament and State Legislatures to make laws 'with respect to' the various subject-matters enumerated in the Seventh Schedule. The Supreme Court has consistently held that the expression 'with respect to' is of wide amplitude and thus, the law making power with regard to Goods and Services Tax includes all ancillary, incidental and necessary matters. In Welfare Association, A.R.P., Maharashtra Vs. Ranjit P. Gohil, (2003) 9 SCC 358, the Supreme Court has held as under:-

> "28. The fountain source of legislative power exercised by Parliament or the State Legislatures is not Schedule 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three lists are fields of legislation. The Constitution-makers purposely used general and W.P.(C) 7743/2019 & other connected matters 18:24:48 comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest- possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another list.
>
> 29. In every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within an item in the list. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its

> true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power (see the Constitution Bench decision in Chaturbhai M. Patel v. Union of India [AIR 1960 SC 424 : (1960) 2 SCR 362])."

(emphasis supplied)

105. In R.S. Joshi, Sales Tax Officer, Gujarat & Ors. vs. Ajit Mills Limited & Anr., (1977) 4 SCC 98, a Seven-Judge Bench of the Supreme Court clearly held that providing for measures dealing with aspects of unjustly retained amounts as tax in the concerned statute were necessary / ancillary aspects connected with the subject of taxation. The relevant portion of the said judgment is reproduced hereinbelow:-

> "13. Bearing in mind the quintessential aspects of the rival contentions, let us stop and take stock. The facts of the case are plain. The professed object of the law is clear. The motive of the legislature is irrelevant to castigate an Act as a colourable device. The interdict on public mischief and the insurance of consumer interests against likely, albeit, unwitting or "ex abundanti cautela" excesses in the working of a statute are not merely an ancillary power but surely a necessary obligation of a social welfare state. One potent prohibitory process for this consummation is to penalize the trader by casting a no-fault or absolute liability W.P.(C) 7743/2019 & other connected matters 18:24:48 to "cough up" to the State the total "unjust" takings snapped up and retained by him "by way of tax" where tax is not so due from him, apart from other punitive impositions to deter and to sober the merchants whose arts of dealing with customers may include "many a little makes a mickle'. If these steps in reasoning have the necessary nexus with the power to tax under Entry 54 List II, it passes one's comprehension how the impugned legislation can be denounced as exceeding legislative competence or as a "colourable device" or as "supplementary, not complementary'. But this is precisely what the High Court has done, calling to its aid passages culled from the rulings of this Court and curiously distinguishing an earlier Division Bench decision of that very Court -- a procedure which, moderately expressed, does not accord with comity, discipline and the rule of law. The puzzle is how minds trained to objectify law can reach fiercely opposing conclusions.
>
> xxx xxx xxx
>
> 24. In a developing country, with the mass of the people illiterate and below the poverty line, and most of the commodities concerned constitute their daily requirements, we see sufficient nexus between the power to tax and the incidental power to protect purchasers from being subjected to an unlawful burden. Social justice clauses, integrally connected with the taxing provisions, cannot be viewed as a mere device or wanting in incidentality. Nor are we impressed with the contention turning on the dealer being an agent (or not) of the State vis-a-vis sales tax ; and why

> should the State suspect when it obligates itself to return the moneys to the purchasers? We do not think it is more feasible for ordinary buyers to recover from the common run of dealers small sums than from Government. We expect a sensitive government not to bluff but to hand back. So, we largely disagree with Ashoka while we generally agree with Abdul Quader. We must mention that the question as to whether an amount which is illegally collected as sales tax can be forfeited did not arise for consideration in Ashoka.
>
> 25. We may conclude with the thought that Parliament and the State legislatures will make haste to inaugurate viable public interest litigation procedures cutting costs and delays. After all, the reality of rights is their actual enjoyment by the citizen and not a theoretical set of magnificent grants. "An acre in Middlesex', said Macaulay, "is better than a principality in Utopia'. Added Prof. Schwartz : "A legal system that works to serve the community is better than the academic conceptions of a bevy of Platonic guardians unresponsive to public needs."

(emphasis supplied)

106. Keeping in view the aforesaid, this Court is of the view that the anti- profiteering mechanism as incorporated in Section 171 of the Act, 2017 is in the exercise of the Parliament's power to legislate on ancillary and necessary aspects/matters of Goods and Services Tax apart from being a social welfare W.P.(C) 7743/2019 & other connected matters 18:24:48 measure as it amplifies and extends the earlier concept of barring persons to undertake exercise of collecting monies from the consumers by false representation.

107. Consequently, this Court is of the view that Section 171 of the Act, 2017 falls within the law-making power of the Parliament under Article 246A of the Constitution dealing with the ancillary and necessary aspects of Goods and Services Tax and is not beyond the legislative competence of the Parliament.

SECTION 171 LAYS OUT A CLEAR LEGISLATIVE POLICY AND DOES NOT DELEGATE ANY ESSENTIAL LEGISLATIVE FUNCTION

108. This Court is of the view that Section 171 of the Act 2017 is a complete code in itself and it does not suffer from any ambiguity or arbitrariness. Section 171 of the Act 2017 sets out the function, duty, responsibility and power of NAA with exactitude. It stipulates that the pre-conditions for applicability of the provision are either the event of reduction in rate of tax or the availability of benefit of input tax credit (resulting in such reduction). Once the said pre- requisites/conditions exist, the direct consequence contemplated i.e. reduction of the price must follow. Therefore, if before such reduction of rate of taxes or benefit of Input Tax Credit, the price paid by the recipient inclusive of the applicable tax at the relevant time was a particular amount, then on account of the reduction of the tax rate or the benefit of the Input Tax Credit, there has to be reduction in the subject price. Further, the reduction in the tax rate or the benefit of Input Tax Credit which is mandated to be passed on to the recipient is a matter of right for the recipient and consequentially,

the price reduction must be commensurate to such benefit. For instance, when the Goods and Services Tax rate on a service of Rs.100 is 28%, the MRP of the service at which it is sold to W.P.(C) 7743/2019 & other connected matters 18:24:48 the consumer is Rs.128. When the Goods and Services Tax rate is reduced by the Government from 28% to 18%, the provision requires that this reduction in Goods and Services Tax rate should be reflected in the price of the service and the benefit from such reduction of tax rate should be passed on to the consumers by way of commensurate reduction in the price. As a result, the new MRP of the service should be Rs.118.

109. In Re The Delhi Laws Act AIR (1951) SC 332, while answering the question of what is an essential legislative function, the Supreme Court held that "the essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy."

110. Keeping in view the aforesaid mandate of law, it is apparent that Section 171 of the Act, 2017 lays out a clear legislative policy. This Court is of the view that the necessary navigational tools, guidelines as well as checks and balances have been incorporated in the provision itself to guide any authority tasked with ensuring its workability. Consequently, Section 171 of the Act 2017 neither delegates any essential legislative function nor violates Article 14 of the Constitution of India.

111. As per Section 171(2), the Central Government may, on recommendations of the Council, by notification, constitute an Authority to examine whether Input Tax Credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services. Section 171(3) of the Act, 2017 stipulates that the Authority i.e. NAA W.P.(C) 7743/2019 & other connected matters 18:24:48 shall exercise such powers and discharge such function as may be prescribed. It is in exercise of this power that the Central Government has enacted Rule 126 of the Rules, 2017 empowering NAA to determine the methodology and procedure for determining whether the benefit has been passed on to the recipient by way of commensurate reduction in prices. Consequently, on a conjoint reading of Sections 171(2) and 171(3) of the Act, 2017, it is evident that the powers conferred on NAA by the Central Government under Rule 126 of the Rules, 2017 were intended by the Legislature to be exercised by the NAA itself. In fact, in exercise of its powers under Rule 126 of the Rules, 2017, NAA has issued the 'National Anti-Profiteering Authority: Methodology and Procedure, 2018' dated 28th March, 2018.

112. The Supreme Court in Sahni Silk Mills (P) Ltd. v. ESI Corpn., (1994) 5 SCC 346 while discussing the maxim of delegatus non potest delegare has held that, "The basic principle behind the aforesaid maxim is that "a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negatived by any contrary indications found in the language, scope or object of the statute". (Vide John Willis, "Delegatus non potest delegare, (1943) 21 Can. Bar Rev. 257, 259)". Therefore, the principle of delegatus non potest delegare is not applicable to the present batch of matters.

113. Further, Section 166 of the Act, 2017 provides that every rule made by the Government in exercise of its powers under Section 164 of the Act, 2017 shall be laid before each house of the Parliament and that if both Houses agree to make any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case maybe.

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114. The Supreme Court in D.S. Grewal v. State of Punjab 1958 SCC OnLine SC 9 in respect of a similar provision in the All-India Services Act, 1951 has observed as follows:

> " At the same time Parliament took care to see that these rules were laid on the table of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal or amendment on a motion made by Parliament during the session in which they are so laid. This makes it perfectly clear that Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate."

(emphasis supplied) [

115. Consequently, the Executive by framing Rule 126 of the Rules, 2017 has in no manner encroached upon the jurisdiction of the Parliament. The Petitioners, throughout the hearing of the case, have repeatedly pointed out that the NAA has adopted varied approaches with regard to entities dealing with similar products in identical circumstances. If that is the case, then, it may make the orders passed by NAA bad, but would not invalidate either Section 171 or the Rules framed thereunder. Further, as the substantive mandate under Section 171(1) is itself a sound guiding principle for the framing of Rules and the functioning of NAA, the argument that Rule 126 suffers from excessive delegation is untenable in law.

IMPUGNED PROVISIONS ARE NOT A PRICE FIXING MECHANISM. THEY DO NOT VIOLATE EITHER ARTICLE 19(1)(g) OR ARTICLE 300A OF THE CONSTITUTION

116. Section 171 of the Act, 2017 does not violate Article 19(1)(g) of the Constitution of India, as it is not a price-fixing mechanism. As rightly pointed out by the learned counsel for the Respondents, Section 171 of the Act, 2017 only relates to the indirect-tax component of the price of goods and services and does not impinge upon the freedom of suppliers to fix their own prices keeping in view W.P.(C) 7743/2019 & other connected matters 18:24:48 relevant commercial and economic factors. This Court is in agreement with the learned Amicus Curiae that Section 171 of the Act, 2017 is solely focused on ensuring that the consequential benefit of reduction of the rate of tax by the Government reaches the recipient.

117. The contention of the petitioners that the fundamental presumption under Section 171 that every tax reduction must result in 'price reduction' is not correct. The use of the expression 'shall' in Section 171 of the Act, 2017 means that the supplier is required to pass on the benefit of the reduced

tax rate and the benefit of Input Tax Credit, and that such passing on is to be carried out only by way of commensurate reduction of price of the goods or services. Accordingly, costing and market-related factors are irrelevant for NAA, as it is only required to examine whether or not there is any reduction in tax rate or benefit of accruing Input Tax Credits and if so whether the same has been passed on by way of commensurate reduction of prices. The NAA is not concerned with the price determined by a supplier, for the supply of particular goods or services, exclusive of the GST or Input Tax Credit component. The supplier is at liberty to set his base prices and vary them in accordance with the relevant commercial and economic factors or any applicable laws. Consequently, NAA is only mandated to ensure that the benefit of reduced rates of taxes and Input Tax Credit is passed on. NAA cannot force the petitioners to sell their goods or services at reduced prices.

118. This Court is of the view that the manufacturer/supplier despite reduction on rate of tax or benefit of Input Tax Credits can raise the prices based on commercial factors, as long as the same is not a pretense. During the hearing, Mr. Zoheb Hossain, learned counsel, conceded (as recorded earlier) that in some cases, commercial factors might necessitate an increase in price despite reduction in rate of tax or increase in availability of benefit of Input Tax Credits.

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119. This Court is in agreement with the submission of learned Amicus Curiae that if there is any variation on account of other factors, such as any costs necessitating the setting off of such reduction of price, the same needs to be justified by the supplier. The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under Section 171 of the Act, 2017.

120. This Court is further of the view that the present batch of matters deals with amounts that the Revenue had foregone in favour of the consumers which however had been either wrongfully appropriated by the petitioners/suppliers and/or used in their business and/or used for cross-subsidisation and/or passed off as a special discount to the dealer or the consumer. Therefore, there cannot be any proprietary interest of the suppliers in such amount which the Government has foregone in favour of consumers by way of reduction in taxes and no legal or constitutional right can be asserted thereunder.

121. Clearly, Section 171 of the Act, 2017 has been incorporated with the intent of creating a framework that ensures that the benefit reaches the ultimate consumer. There cannot be any room for allowing unjust retention of benefit of reduction in rate of tax or benefit of input tax credit with the manufacturer/supplier/distributor. The reliance placed by the petitioners on the judgment of CIT vs. B.C. Srinivasa Setty (1981) 2 SCC 460 and CCE vs. Larsen & Toubro Ltd. (2016) 1 SCC 170, is completely misconceived as both these judgments were passed specifically in the context of levy of taxes. As held hereinabove, Section 171 of the Act, 2017 does not levy any tax on supplies and W.P.(C) 7743/2019 & other connected matters 18:24:48 hence these judgments do not apply to the

present batch of matters. Consequently, the impugned provisions are not a price fixing mechanism and they do not violate either Article 19(1)(g) or Article 14 or Article 300A of the Constitution of India.

REFERENCE TO ANTI-PROFITEERING PROVISIONS OF AUSTRALIA AND MALAYSIA IS MISCONCEIVED

122. The reference to Anti-profiteering provisions under the Australian Trade Practices Act by the petitioners is misplaced as pointed out by the learned counsel for the Respondents and as according to the petitioner's own submissions, the Australian Act prohibits 'price exploitation' in relation to the New Tax System i.e. that the Act by its nature regulates prices. This is different from Section 171 of the Act, 2017 which only requires the suppliers to pass on the benefit of tax reduction and Input Tax Credit to the recipients of the goods and services. The 'price' aspect comes into play in the context of Section 171 of the Act, 2017 only when it comes to the manner in which the principal obligation of passing on benefits as aforesaid, is to be carried out i.e., by way of commensurate reduction of prices. Consequently, in the case of Section 171, there is no intent of any over- riding regulation on 'price exploitation' like in the case of the Australian Trade Practices Act referred to by the petitioners.

123. Similarly, the reference made by the petitioners to the Malaysian Price Control and Anti-Profiteering Act, 2011 is also misplaced as the said Act, according to the petitioner's own submission, prohibits suppliers from 'making unreasonably high profit'. By its very nature, the Malaysian Act controls pricing unlike Section 171 of the Act, 2017 which does not seek to regulate the pricing of the goods and services or the profits of the suppliers. Consequently, the reference to Anti-Profiteering provisions of Australia and Malaysia is misconceived.

W.P.(C) 7743/2019 & other connected matters 18:24:48 NO FIXED/UNIFORM METHOD OR MATHEMATICAL FORMULA CAN BE LAID DOWN FOR DETERMINING PROFITEERING

124. This Court is of the view that no fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of the profiteered amount has to be computed by taking into account the relevant and peculiar facts of each case. There is 'no one size that fits all' formula or method that can be prescribed in the present batch of matters. Consequently, NAA has to determine the appropriate methodology on a case to case basis keeping in view the peculiar facts and circumstances of each case.

125. It is also well-established that where a power exists to prescribe a procedure and such power has not been exercised, the implementing authorities are at liberty to determine and adopt such procedure as they may deem fit subject to the same being fair and reasonable. In Dhanjibhai Ramjibhai vs. State of Gujarat (1985) 2 SCC 5, the Supreme Court has held, "...Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted.". In Chairman & MD, BPL Ltd. vs. S.P. Gururaja and

Ors., (2003) 8 SCC 567, the Supreme Court has held, "....Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of Article 14 of the Constitution of India."

126. Consequently, Rule 126 of the Rules, 2017 to the extent it grants flexibility to NAA to determine the methodology and procedure to decide whether reduction W.P.(C) 7743/2019 & other connected matters 18:24:48 in rate of tax or benefit of Input Tax Credit has been passed on or not to the recipient is reasonable and legal. Moreover, as per Rule 126 NAA 'may determine' the methodology and not 'prescribe' it. The substantive provision i.e. Section 171 of the Act, 2017 itself provides sufficient guidance to NAA to determine the methodology on a case by case basis depending upon peculiar facts of each case and the nature of the industry and its peculiarities. Consequently, so long as the methodology determined by NAA is fair and reasonable, the petitioners cannot raise the objection that the specifics of the methodology adopted are not prescribed.

127. Since considerable emphasis was laid by learned counsel for the Petitioners on the methodology adopted by NAA to determine commensurate reduction qua real estate industry, this Court deems it appropriate to deal with the same at some length. With the introduction of the Goods and Services Tax scheme/regime, the availability of Input Tax Credit against various goods and services used in construction has increased or Input Tax Credit was available against more goods and services then before this resulted in a decrease in the cost of the builders as they now had more Input Tax Credit available to be set off against Goods and Services Tax paid by them in the Goods and Services Tax regime as compared to before and the same was not required to be collected from the consumers.

128. There is no dispute with regard to the methodology to be adopted in the following four scenarios:-

> a. If the flat was completely constructed in the pre-Goods and Services Tax period i.e. before 01st July, 2017 and if it was purchased by making upfront payment of the whole price in the pre-Goods and Services Tax period no benefit of Input Tax Credit would be required to be passed on as the price will include W.P.(C) 7743/2019 & other connected matters 18:24:48 the cost of taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax period viz. Central Excise Duty, Entry Tax etc. b. If the construction of the flat had started in the pre-Goods and Services Tax period and continued/completed in the post-Goods and Services Tax period and a buyer purchased the flat by making full upfront payment in the post-Goods and Services Tax period he is entitled to the benefit of Input Tax Credit on the material which has been purchased in respect of this flat during the post-Goods and Services Tax period and on which benefit of Input Tax Credit has been availed by the builder. The builder has to reduce the price commensurately and pass on the benefit. c. If the construction of the flat is started in the pre-Goods and Services Tax period and its construction was continued in the post-Goods and Services Tax period and it was purchased by the consumer by paying the full amount of price upfront in the pre-Goods and Services Tax period, the buyer is entitled to claim benefit of Input Tax

> Credit on the taxes paid on the construction material purchased by the builder in the post-Goods and Services Tax period during which he has been given benefit of Input Tax Credit on the taxes on which Input Tax Credit was not available in the pre-Goods and Services Tax and cost of such taxes has been built in the price of the flat by the builder.
>
> d. If the flat is constructed in the post-Goods and Services Tax period and it is purchased after construction being complete by making upfront payment of the full price, no benefit of Input Tax W.P.(C) 7743/2019 & other connected matters 18:24:48 Credit would be available as the price of the flat would have been fixed after taking into account the Input Tax Credit which has become available to the builder in the post-Goods and Services Tax period and which was not available to him in the pre-Goods and Services Tax.

129. However, this Court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of Input Tax Credit to turnover under the pre-Goods and Services and Tax and post- Goods and Services and Tax period. This Court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the Input Tax Credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the accrual of Input Tax Credit is not related to the amount collected from the buyers. This Court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of Goods and Services and Tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The Court, while hearing the present batch of matters on merits, shall take the aforesaid direction/interpretation into account.

W.P.(C) 7743/2019 & other connected matters 18:24:48 IT IS THE PREROGATIVE OF THE LEGISLATURE TO DECIDE HOW THE BENEFIT IS TO BE PASSED ON TO THE CONSUMERS

130. It is settled law that it is the prerogative of the Legislature to decide the manner as to how the reduction in rate of tax or the benefit of Input Tax Credit is to be passed on to the consumer. In Dr.Ashwani Kumar vs. Union of India, (2020) 13 SCC 585, the Supreme court has held as under:-

> "11. The legislature as an elected and representative body enacts laws to give effect to and fulfil democratic aspirations of the people. The procedures applied are designed to give careful thought and consideration to wide and divergent interests, voices and all shades of opinion from different social and political groups. Legislature functions as a deliberative and representative body. It is directly accountable and answerable to

> the electorate and citizens of this country. This representativeness and principle of accountability is what gives legitimacy to the legislations and laws made by Parliament or the State Legislatures. Article 245 of the Constitution empowers Parliament and the State Legislatures to enact laws for the whole or a part of the territory of India, and for the whole or a part of the State respectively, after due debate and discussion in Parliament/the State Assembly."

(emphasis supplied)

131. In the present instance, the legislative mandate is that reduction of the tax rate or the benefit of Input Tax Credit must not only be reflected in reduction of prices but it must also reach the recipient of the goods or services. Such a mandate cannot be tampered with by the supplier by substituting the benefit in the form of reduction of actual price with any other form such as increase in volume or weight or by supply of additional or free material or festival discount like 'Diwali Dhamaka' or cross-subsidisation.

132. Further, the requirement that the benefit of the rate reduction and Input Tax Credit reach the final consumer by way of 'cash in hand' through commensurate reduction in prices, cannot be said to be manifestly arbitrary. No fundamental or other rights of any of the petitioners are being affected in any manner by W.P.(C) 7743/2019 & other connected matters 18:24:48 requiring that the benefit in reduction of tax rate or Input Tax Credits, be passed on to the recipients by way of commensurate reduction in prices.

133. This Court is in agreement with the submission of Mr. Zoheb Hossain, learned counsel for the Respondents, that the benefit of tax reduction has to be passed on at the level of each supply of SKU to each buyer and in case it is not passed on, the profiteered amount has to be calculated on each SKU.

134. The contention of the learned counsel for the Petitioners that it is legally impossible to pass on the benefits by reducing the price of goods in cases of low priced products is untenable in law. As pointed out by Mr.Zoheb Hossain, learned counsel for the Respondents, the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 are applicable. In cases for period prior to 31st December, 2017, the erstwhile Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011 which provided detailed instructions for rounding off of the MRP would be applicable. Similarly, Rule 6(1)(e) of the above Rules as amended in 2017 with effect from 01st January, 2018 to 31st March, 2022 provides that the retail price of the package shall clearly indicate that it is the MRP inclusive of all taxes and the price in rupees and paise be rounded off to the nearest rupee or 50 paise would be applicable. Consequently, there would be no legal impossibility in reducing the MRP even in such cases. There is nothing inconsistent in Section 171 with such rounding off.

ACT 2017 RIGHTLY DOES NOT FIX A TIME PERIOD DURING WHICH PRICE-REDUCTION HAS TO BE OFFERED

135. This Court is in agreement with the submissions of the respondents and the learned Amicus Curiae that bearing in mind the very nature of the Act, 2017, it is not proper or feasible to contemplate any specific period of time for application of W.P.(C) 7743/2019 & other connected matters 18:24:48 the reduced price, as the same has to take effect so long as the direct relation between the reduction of tax rate or the benefit of Input Tax Credits exists and there is no other factor effecting/countering the same. If, conceptually, the reduction of tax rate has taken place on a specified date and there are no justified variations in the cost price or other factors for offsetting such reduction in the prices for a particular period of time, clearly for that period a reduced price must govern the transaction. This Court is of the view that providing for a particular period of time for operation of the provisions would be not be in conformity with the scheme and intent of the Act, 2017 itself.

SECTION 64A OF SALE OF GOODS ACT IS NOT APPLICABLE TO THE OBLIGATION UNDER SECTION 171

136. This Court is in agreement with the submission of learned counsel for the Respondents that Section 64A of Sale of Goods Act, 1930 has no applicability to the obligation under Section 171 of the Act, 2017 as the former only confers a discretion on the buyer to reduce the contract price to the extent of reduction in taxes, whereas Section 171 imposes a positive obligation on the supplier to make a commensurate reduction in the price when the Government reduces the rate of tax. Therefore there is no inconsistency between the two laws.

137. Moreover, the CGST/SGST Acts, 2017 are independent Acts and there is no provision under these Acts that tax reduction ordered under these Acts would be subject to the provisions of Sale of Goods Act, 1930 or the Indian Contract Act, 1872. Tax reduction is given by sacrificing tax revenue and hence the Governments are legally competent to direct the suppliers to pass on the benefit of such tax reduction to the consumers after its notification. Any contract made in violation of public policy of passing on the benefit would be void. Consequently, W.P.(C) 7743/2019 & other connected matters 18:24:48 all contracts (a) whether they are pending to be performed or (b) executed after tax reduction and/or (c) have already been concluded before tax reduction, have to implemented keeping in view the mandate enshrined in Section 171 of the Act, 2017.

A STATUTORY PROVISION CANNOT BE STRUCK DOWN ON THE GROUND OF POSSIBILITY OF ABUSE

138. During the course of hearing, learned counsel for the petitioners advanced a number of hypothetical situations to suggest that there is a possibility of abuse of Section 171 of the Act, 2017. However, it is settled law that Acts and their provisions are not to be declared unconstitutional on the fanciful theory that power would be exercised in an unrealistic fashion or in a vacuum or on the ground that there is an apprehension of misuse of statutory provision or possibility of abuse of power. It must be presumed, unless the contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand". Some of the relevant Supreme Court judgments are reproduced hereinbelow:-

A. In Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay & Ors., (1974) 2 SCC 402 it has been held as under:-

> "15.....The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary civil court. Even normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking W.P.(C) 7743/2019 & other connected matters 18:24:48 proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary civil court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may be possible but is very improbable. And if there is discrimination in actual practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers case."

(emphasis supplied) B. In Collector of Customs v. Nathella Sampathu Chetty, 1962 SCC OnLine SC 30 , the Supreme Court has held as under:-

> "34....This Court has held in numerous rulings, to which it is unnecessary to refer, that the possibility of the abuse of the powers under the provisions contained in any statute is no ground for declaring the provision to be unreasonable or void. *** The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. If so

> judged it passes the test of reasonableness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Constitution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. In saying this we are not to be understood as laying down that a law which might operate, harshly but still be constitutionally valid should be operated always with harshness or that reasonableness and justness ought not to guide the actual administration of such laws."

(emphasis supplied) W.P.(C) 7743/2019 & other connected matters 18:24:48 C. In Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, a nine Judge Bench of the Supreme Court while considering the validity of provisions of the Central Excise and Customs Law (Amendment) Act, 1991 has held as under:-

> "88.....It is equally well-settled that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding the provision procedurally or substantively unreasonable. In Collector of Customs v. Nathella Sampathu Chetty [(1962) 3 SCR 786 : AIR 1962 SC 316] , this Court observed:
>
> "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity." It was said in State of Rajasthan v. Union of India [(1977) 3 SCC 592 : (1978) 1 SCR 1] (SCR at p. 77), "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief". (Also see Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282] (SCR at p. 1030)."

(emphasis supplied) TO NOT COMPARE TAXES LEVIED AFTER THE INTRODUCTION OF THE ACT, 2017 WITH A BASKET OF DISTINCT INDIRECT TAXES APPLICABLE BEFORE THE OPERATION OF THE ACT WOULD GO AGAINST THE INTENT AND OBJECTIVE OF ACT, 2017.

139. Prior to coming into force of the Act, 2017, several taxes were levied on goods and services by the Central Government (such as Central Excise tax, Service tax, Central Sales tax etc.) and by the State Government (such as Value Added tax, Luxury tax, Purchase tax etc.). There was multiplicity of taxes as they were levied on the same supply system. This had a cascading effect as there was no provision for set off. The Hon'ble Prime Minister at the launch of Goods and Services Tax stated "If we take into consideration the 29 states, the 7 Union Territories, the 7 taxes of the Centre and the 8 taxes of the States, and several different taxes for different commodities, the number of taxes sum up to a figure W.P.(C) 7743/2019 & other connected matters 18:24:48 of 500! Today all those taxes will be shred off to have ONE NATION, ONE TAX right from Ganganagar to Itanagar and from Leh to Lakshdweep".

140. Additionally, a plethora of non-tariff barriers like octroi, entry tax, check posts etc. hindered free flow of trade throughout the country and this entailed a high compliance cost for taxpayers. The Act, 2017 has subsumed the earlier catena of indirect taxes (Central as well as State indirect taxes), inasmuch as, it levies a single tax on the supply of goods and services. Consequently, the submission of learned senior counsel for the Petitioner in W.P.(C) 1171/2020 that Section 171(1) of the Act, 2017 does not contemplate a comparison of the taxes levied after the introduction of the Act, 2017 with a basket of distinct indirect taxes applicable on goods and services before the operation of the Act goes against the grain, intent and object of the Act, 2017.

THERE IS NO VESTED RIGHT OF APPEAL AND AN APPEAL IS A CREATURE OF THE STATUTE

141. As discussed earlier, Rule 129 of the Rules, 2017 provides for a comprehensive mechanism for initiation and conduct of proceedings relating to anti-profiteering. The conscious provisioning of different layers of examination which, in the first place, is purely fact-based clearly demonstrates that appropriate precautions and redressal measures are provided for in the Scheme of the Act, 2017 read with the Rules, 2017 in connection therewith on the subject of Anti- Profiteering. Consequently, there is no basis for contending that unbrindled powers have been given to the Authority or that there is a lack of appropriate redressal mechanism under the Scheme.

142. In any event, it is well settled that there is no vested right of appeal and an appeal is a creature of the Statute. Right of appeal is neither a natural nor an inherent right vested in a party. It is a substantive statutory right regulated by the W.P.(C) 7743/2019 & other connected matters 18:24:48 Statute creating it. To provide for an appeal or not under a Statute is a pure question of legislative policy (See: Kondiba Dagadu Kadam v. Savitribai Sopan Gujar (1999) 3 SCC 722 and Kashmir Singh v. Harnam Singh (2008) 12 SCC

796).

143. If Legislature chooses not to provide for a right to appeal against an order of the authority that itself cannot be a ground to declare an enactment as unconstitutional. This Court in Wing Commander Shyam Naithani vs. Union of India and Ors., W.P.(C) 6483/2021 & connected matters, 2022 SCC OnLine Del 769 has held as under:

> "40. However, this Court would like to clarify that a right to appeal is a creation of Statute and it cannot be claimed as a matter of right. The right to appeal has to exist. It cannot be created by acquiescence of the parties or by the order of the Court. It is neither a natural nor an inherent right attached to the litigant being a substantive, statutory right. [See: United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Kondiba Dagdu Kodam v. Savitribai Sopan Gujar, AIR 1999 SC 2213; and UP Power Corporation Ltd. v. Virenddra Lal, (2013) 10 SCC 39]. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature as conferring jurisdiction upon a Court or Authority, is a legislative function..."

(emphasis supplied)

144. Further, the decisions of NAA are subject to judicial review under Article 226 before the jurisdictional High Courts as is evident from the fact that several petitions have been filed before this Court challenging orders of the NAA. This shows that the affected parties are exercising their right to seek remedies under Article 226 against orders of NAA.

145. Consequently, a robust mechanism in conformity with the constitutional requirements is in place for dealing with grievances of breach of Section 171(1) of the Act, 2017 and hence, it cannot be said that there is no judicial oversight over the decisions of NAA [See: CCI v. SAIL (supra), Shiv Shakti Coop. Housing Society v. Swaraj Developers, (2003) 6 SCC 659].

W.P.(C) 7743/2019 & other connected matters 18:24:48 THERE IS NO REQUIREMENT OF JUDICIAL MEMBER IN NAA

146. By its very nature, Section 171(1) of the Act, 2017 clearly lays down the express issues which need to be examined by the Authority and this examination is in the nature of a fact-finding exercise. Therefore, the mandate of the Authority is very specific in nature and is akin to a fact-finding exercise. This Court is of the opinion that NAA is primarily a fact-finding body which is required to investigate whether suppliers have passed on the benefit to their recipients by way of reduced prices as mandated by Section 171 of the Act, 2017. On examining the role and duties of NAA under Section 171(2) of the Act, 2017 and Rule 127 of the Rules, 2017, it is apparent that NAA performs functions that are to be discharged by domain experts.

147. Even otherwise NAA has not assumed any jurisdiction which was hitherto being exercised by the High Court or any other judicial body, and so, the principle that there must be a judicial member in quasi-judicial entities as laid down in the decisions relied upon by the petitioners does not apply in the present batch of matters.

148. In the case of Namit Sharma vs. Union of India (2013) 1 SCC 745, the Supreme Court considered the question of the requirement of a judicial member for performing the functions and exercising the powers of the Chief Information Commissioner. The Supreme Court initially held that the Information Commission and the Central Information Commissioners perform judicial functions possessing the essential attributes and trappings of a court and hence, it must have judicial members. However, while deciding the review petition filed by the Union of India, the Supreme Court in its judgment reported as Union of India vs. Namit Sharma (2013) 10 SCC 359 has held that "the powers exercised W.P.(C) 7743/2019 & other connected matters 18:24:48 by the Information Commissions under the Act were not earlier vested in the High Court or subordinate court or any other court and are not in any case judicial powers and therefore the legislature need not provide for appointment of judicial members in the Information Commission."

149. Similarly, statutory bodies like TRAI, Medical Council of India, Institute of Chartered Accountant of India etc., perform quasi-judicial functions but do not have judicial members. Furthermore, Assessing Officers, CIT(Appeals) and the Dispute Resolution Panel under the Income

Tax Act, 1961 all perform quasi- judicial functions but there is no requirement that such members must possess either a law degree or have judicial experience. Consequently, this Court is of the view that there is no requirement for a judicial member in NAA.

150. While this Court is in agreement with the submission of the Petitioners that the provision of a second or casting vote to the Chairman in the event of a tie/equality of votes as was given in Rule 134(2) of the Rules, 2017 is impermissible, yet as the Respondents have stated that the said provision has never been used, this Court does not deem it necessary to delve into a detailed discussion of the same.

151. Additionally, the Petitioners have challenged the validity of the constitution of the NAA on account of absence of a gazette notification as allegedly required under Section 171(2) of the Act, 2017. This Court is of the opinion that this issue does not affect the constitutional validity of the impugned section which is presently under consideration and so this issue is not being dealt with in the present judgment.

W.P.(C) 7743/2019 & other connected matters 18:24:48 RULE 124 IS IN CONSONANCE WITH ARTICLE 50. THERE IS NO SCOPE FOR GOVERNMENTAL INTERFERENCE IN FUNCTIONS EXERCISED BY NAA

152. This Court is of the view that Rule 124 of the Rules, 2017 is in consonance with Article 50 of the Constitution, inasmuch as, selection to NAA is made on the recommendation by a Selection Committee constituted by the Goods and Services Tax Council which is a constitutional body. Similarly the services of the Chairperson and members of NAA can be terminated only with the approval of the Chairman of the Goods and Services Tax Council. Consequently, the members of NAA are free to carry out their function as they deem fit and there is no scope whatsoever for any Governmental interference in the functions exercised by NAA.

RULE 133 TO THE EXTENT IT PROVIDES FOR LEVY OF INTEREST AND PENALTY IS WITHIN THE RULE MAKING POWER OF THE CENTRAL GOVERNMENT

153. This Court is of the view that Section 171 of the Act, 2017 is broad enough to empower the Central Government to prescribe penalty and interest to ensure that the suppliers are deterred from pocketing the benefits meant for the consumers when taxes are foregone by the Government. Merely empowering NAA to direct returning of the amounts so pocketed by the supplier/registered person would not have a sufficient deterrent effect on deviant behavior unless interest and penalty are levied to prevent such actions from taking place in the first place. The width and amplitude of Section 171 by which the authority is empowered to ensure that reduction in tax rate or the Input Tax Credit availed results in commensurate reduction in the price of goods or services clearly encompasses within it the power to ensure that such conduct which leads to profiteering does not take place.

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154. Section 164 of the Act, 2017 gives power to the Government to make rules for carrying out provisions of the Act and in particular to provide for penalty. Section 164 of the Act, 2017 is reproduced hereinbelow:-

> "164. Power of Government to make rules (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
>
> (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
>
> (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees."

155. Accordingly, Rule 133(3)(b)&(d) of the Rules, 2017 which empower the authority to levy interest @ 18% from the date of collection of the higher amount till the date of the return of such amount as well as imposition of penalty are intra vires and within the Rule making power of the Central Government.

156. Moreover, as pointed out by Mr. Zoheb Hossain, the show cause notices initiating penalty proceedings in relation to violation of Section 171(1) prior to the coming into force of Section 171(3A), have been withdrawn by NAA and penalty proceedings in all such cases are not being pressed. Consequently, this issue has become infructuous.

W.P.(C) 7743/2019 & other connected matters 18:24:48 GOODS AND SERVICES TAX COLLECTED ON THE ADDITIONAL REALIZATION HAS RIGHTLY BEEN INCLUDED IN THE PROFITEERED AMOUNT

157. Both the Central as well as the State Government had no intent of collecting additional Goods and Services Tax on the higher price as they had sacrificed their revenue in favour of the buyer. By compelling the buyers to pay the additional Goods and Services Tax on a higher price, the supplier has not only defeated the intent of the Governments but has also acted against the interest of the consumer and therefore, the Goods and Services Tax collected by him on the additional realization has rightly been included in the profiteered amount.

TIME LIMIT FOR FURNISHING OF REPORT BY DGAP IS DIRECTORY AND NOT MANDATORY

158. In some cases, the Petitioners have pointed out that the timelines as provided in the Rules, 2017 have not been followed. They further contended that as a result, the proceedings are vitiated. However, it is important to note that the Rules, 2017 do not provide any consequences in case the time limits provided thereunder lapse. As held earlier, the anti-profiteering provisions in the Act, 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The Courts have consistently held that beneficial legislation must receive liberal construction that favors the consumer and promotes the intent and objective of the Act. That being the scenario, it cannot be said that the proceedings as a whole abate on lapse of time limit of furnishing of report by DGAP. The Supreme Court in P.T. Rajan Vs. T.P.M. Sahir and Ors. (2003) 8 SCC 498 has held that "It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed W.P.(C) 7743/2019 & other connected matters 18:24:48 therefore, the same would be directory and not mandatory." and that "a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused." Consequently, the time limit provided for furnishing of report by DGAP is directory in nature and not mandatory.

EXPANSION OF INVESTIGATION BEYOND THE SCOPE OF THE COMPLAINT IS NOT ULTRA VIRES THE STATUTE

159. Section 171 of the Act, 2017 is widely worded and does not limit the scope of examination to only goods and services in respect of which a complaint is received. The scope of powers of the DGAP is provided for in Rule 129 of the Rules, 2017. From a reading of the said Rule especially the expression 'any supply of goods or services' used in sub-rule (2) of Rule 129, it is apparent that the scope of the DGAP's powers is very wide and is not limited to the goods or services in relation to which a Complaint is received. The word 'any' includes within its scope 'some' as well as 'all'.

160. In any event, the ignorance of the consumer or lack of information or surrounding complexity in the supply chain cannot be permitted to defeat the objective of a consumer welfare regulatory measure and it is in this light that the subject provision is required to be construed.

161. In the context of similar powers of investigation exercised by the Director General under the Competition Act, 2002, the Supreme Court in Excel Crop Care Ltd. vs. Competition Commission of India, (2017) 8 SCC 47, has held that the Director General would be well within its powers to investigate and report on matters not covered by the complaint or the reference order of the Commission, and an interpretation to the contrary would render the entire purpose of investigation nugatory. The High Court of Delhi in Cadila Healthcare Ltd. & W.P.(C) 7743/2019 & other connected matters 18:24:48 Anr. vs. CCI & Ors., (2018) SCCOnline Del 11229, relying on the judgment of the Supreme Court in Excel Crop Care (supra) has clarified in express terms that the scope of investigation by the Director General is not restricted to the matter stated in the Complaint and includes other allied as well as unenumerated matters. Consequently, the expansion of investigation or proceedings beyond the scope of the complaint is not ultra vires the statute.

ACKNOWLEDGMENT

162. Before parting with the present batch of matters, this Court places on record its appreciation for the assistance rendered by all the learned counsel, who appeared, in particular, Mr. Amar Dave, learned Amicus Curiae, Mr. V. Lakshmikumaran and Mr. Zoheb Hossain, Advocates as they filed not only multiple written submissions but also ensured that hearing in the present batch of matters (exceeding 100 cases) was conducted in an orderly and proper manner.

TO SUM UP

163. Keeping in view the aforesaid conclusions, the constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017 is upheld. This Court clarifies that it is possible that there may be cases of arbitrary exercise of power under the anti-profiteering mechanism by enlarging the scope of the proceedings beyond the jurisdiction or on account of not considering the genuine basis of variations in other factors such as cost escalations on account of which the reduction stands offset, skewed input credit situations etc. However, the remedy for the same is to set aside such orders on merits. What will be struck down in such cases will not be the provision itself which invests such power on the concerned authority but the erroneous application of the power.

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164. List the matters before the Division Bench-I for appropriate directions on 8th February, 2024.

ACTING CHIEF JUSTICE DINESH KUMAR SHARMA, J JANUARY 29, 2024 KA/AS/js/TS
W.P.(C) 7743/2019 & other connected matters 18:24:48

Air India Statutory Corporation vs United Labour Union & Ors on 6 November, 1996

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L. Hansaria, S.B. Majmudar

PETITIONER:
AIR INDIA STATUTORY CORPORATION.

Vs.

RESPONDENT:
UNITED LABOUR UNION & ORS.

DATE OF JUDGMENT: 06/11/1996

BENCH:
K. RAMASWAMY, B.L. HANSARIA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

THE 6TH DAY OF DECEMBER, 1996.

Present :

Hon'ble Mr. Justice K. Ramaswamy Hon'ble Mr. Justice B.L. Hansaria Hon'ble Mr. Justice S.B. Majmudar Ashok Deasai, Attorney General, T.R. Andhyarujuna, Solicitor General, P.P. Malhotra, Ms. Indira Jaising, K.K. Singhvi, Sr. Advs., M.D. Sisodia, K. Swamy, Lalit Bhasin, Ms. Nina Gupta, Ms. Kiran Bhardwaj, Vineet Kr., Ms. Ethel Pereira, Ms. Ritu Makkar, P.P. Singh, G. Nagesware Reddy, C.V.S. Rao Ms. Anil Katiyar, Ms. Anita Shenoi, Sanjay Parikh, B.N. Singhvi, Sanjay Singhvi, Anil K. Gupta, Ms. Pushpa Singhvi, T. Sridharan, P.K. Malhotra, S.R. Bhat, Brig Bhushan, R.N. Keshwani, and Ms. C. Ramamurthy, and A.K. Sanghi, Advs. with them for the appearing parties.

J U D G M E N T S The following Judgments of the Court were delivered"

WITH CIVIL APPEAL NOS. 15536-37, 15532-15534 OF 1996 (Arising out of SLP (C) Nos. 7418-19/92 and 12353-55/95) J U D G M E N T K. Ramaswamy, J.

Leave granted.

These appeals by special leave arise form the judgment of the Division Bench of the Bombay High Court dated April 28, 1992 made in Appeal No. 146 of 1990 and batch. The facts in appeal arising out of S.L.P. 7417/92, are sufficient to decide the questions of law that have arisen in these appeals. The appellant initially was a statutory authority under International Airport Authority of India Act. 1971 (for short, 'IAAI Act') and on its repeal by the Airports Authority of India Act, 1994 was amalgamated with National Airport Authority (for short, the 'NAA') under single nomenclature, namely, IAAI. The IAAI is now reconstituted as a company under Companies Act, 1956.

The appellants engaged, as contract labour the respondent union's members, for sweeping, cleaning dusting and watching of the building owned ad occupied by the appellant. The Contract Labour (Regulation and Abolition) Act, 1970 (for Short, the 'Act') regulates registration of the establishment of principal employer, the contractor engaging and supplying the contract labour in every establishment i which 20 or more workmen are employed o ay day of the preceding 12 months as contract labour. The appellant had obtained on September 20,1971 a certificate of registration form Regional Labour Commissioner (Central) under the Act. The Central Government, exercising the power under Section 10 of the Act, on the basis of recommendation and in consultation with the Central Advisory Board constituted under Section 10(1) of the Act, issued a notification on December 9,1976 prohibiting "employment of contract labour on and from December 9,1976 for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government". However, the said prohibition was not apply to "outside cleaning and other maintenance operations of multi- storeyed building where such cleaning or maintenance cannot be carried out expect with specialised experience." It would appear that Regional Labour Commissioner(Central) Bombay by letter dated January 20,1972 informed the appellant that the State Government is the appropriate Government under the Act. Therefore, by proceedings dated May 22, 1973 the Regional Labour Commissioner (Central) had revoked the registration. By Amendment Act 46 of 1982, the Industrial Disputes Act, 1947 (for short, the 'ID Act') was made applicable to the appellant and was brought on statute book specifying the appellant as one of the industries in relation to which the Central Government is the appropriate Government and the appellant has been carrying on its business "by or under its authority" with effect form August 21,1982. The Act was amended bringing within its ambit the Central Government as appropriate Government by amendment Act 14 of 1986 with effect

from January 28,1986.

Since the appellant did not abolish the contract system and failed to enforce the notification of the Government of India dated December 9,1976, the respondents came to file writ petitions for direction to the appellant to enforce forthwith the aforesaid notification abolishing the contract labour system in the aforesaid services and to direct the appellant to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the building owned or occupied by the appellant-establishment, with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights/benefits, monetary or otherwise, The writ petition was allowed by the leaned single judge on November 16,1989 directing that all contract workers be regularised as employees of the appellant from the date of filing of the writ petition. Preceding thereto, on November 15, 1989, the Government of India referred to the Central Advisory Board known as While Committee under section 10(1), which recommended to the Central Government not to abolish the contract labour system in the aforesaid services. Under the impugned judgment dated April 3,1992, the learned judges of the Division Bench dismissed the appeal. Similar was the fate of other appeals. Thus these appeals by special leave.

Shri Ashok Desai, the learned Attorney General, Shri Andhyarujina, the learned Solicitor General, Appearing for Union of India and the appellant respectively, contended that the term "appropriate Government" under section 2 (1)(a) of the Act, as on December 9, 1976, was the State Government. The appellant was not carrying on the business as an agent of the Central Government nor the Central Government was its principal. This Court, in Heavy Engineering Majdoor Union v. The State of Bihar & Ors. [(1969) 3 SCR 995 (for short, the "Heavy Engineering case"], had interpreted the phrase "the appropriate Government" and held that the Central Government was not the appropriate Government under the ID Act. The ratio therein was followed in Hindustan Aeronautics Ltd. v. The Workmen & Ors. [(1975) 4 SCC 679] and Rashtriya Mill Mazdoor Sangh v. Model Mills Nagpur & Anr. [1984 Supp. SCC 443] and food Corp. of India Workers' Union v. Food Corp. Of India & Ors.[(1985) 2 SCC 294], It is thus firmly settled law that the appropriate Government until the Act was amended with effect from January 28,1986. Therefore, the view of the High Court that the appropriate Government is the Central Government is not correct in law. The learned Attorney General Further argued that the interpretation of this Court in Heavy Engineering case has stood the test of time and the parties have settled the transaction its basis. It would, therefore, not be correct to upset that interpretation. The learned Solicitor General contended that the notification published by the Central Government under Section 10 of the Act on December 9, 1976 was without jurisdiction. The Advisory Board independently should consider whether the contract labour in each of the aforestated services should be abolished taking into consideration the perennial nature of the work, the requirement of number of employees in the respective specified services in the establishment of the

appellant.

The Advisory Board had not adverted to the prescribed criteria of Section 10 (2) of the appellant's establishment. Mohile Committee after detailed examination, had recommended to the Central Government not to abolish the contract labour system in the aforesaid services. It was contended that the notification dated December 9, 1976 is without authority of law or, at any rate, is clearly illegal and so the direction by the High Court to enforce the offending notification is not correct in law. It was come into force from January 28, 1986, the Central Government being the appropriate Government, had accepted the recommendation of Mohile Committee of not abolishing the contract labour system. The notification dated December 9, 1976 no longer remained valid for enforcement. The High Court, therefore was not right in directing the appellant to enforce the notification. Alternatively, it was contended that even assuming that the notification is valid and enforceable, it would be effective only from January, 1986. However, by abolition of contract labour system, the workmen would not automatically became the employees of the appellant. In Dena Nath and Ors. [(1992) 1 SCC 695], this court had held that the High Court, in exercise of its power under Article 226, has o power to direct absorption of the contract labour as its direct employees. The impugned judgment was expressly disapproved in Dena Nath's case. Therefore, its legality has been knocked off its bottom. It was further contended that the Act, on abolition of the contract labour system, does not envisage to c r ea t e direct relationship between the principal employer and the contract labour. The erstwhile contract labour have to seek and obtain industrial award under the ID Act by virtue of which the appellant would be entitled to satisfy the Industrial Court that there was no need to absorb all the contract labour but only smaller number is required as regular employees. On recording finding in that behalf, the industrial court would make his award which would be enforceable by the workmen. This court in Gujarat Electricity Board v. Hind Mazdoor Sabha & Ors. [(1995) 5 SCC 27] had pointed out the lacuna in the act and given directions of the manner in which the industrial action has to be take on abolition of the contract labour system. The High Court, therefore, was not right in its direction that the workmen require to be absorbed in the respective service of the establishment of the appellant. it is also contented that the appellant, though initially was a statutory Corporation under the IAAI Act, on its abolition and constitution as a company, is entitled to regulate its own affairs on business principal and the direction for absorption would lead to further losses in which it is being run. The learned Solicitor General has, therefore, submitted a scheme under which its subsidiary, namely, Air Cargo Corporation would take the workmen ad absorb them into service, subject to the above regulation. It has to consider as to how many of the contract labour require to be absorbed. Prescription of qualification for appointment was necessary; the principle of reservation adopted by the Central Government requires to be followed; their names require to be called from Employment Exchange. The workmen should be absorbed o the principle of "last come first go" subject to their fitness, qualifications and probation etc. Shri K.K. Singhvi and Mrs. Indira Jai Singh, learned senior counsel and A.K. Gupta, learned counsel for the respondents, contended that the appellant is an industry carrying on its business of Air Transport Services. Prior to the IAAI Act, it was under the control of Civil Aviation Department, Government of India; after the IAAI Act, the appellant has been carrying on its industry by or under the authority of the Central Government. The relevant provisions in the IAAI Act would establish the deep and pervasive control the Central Government has over the functions of the appellant. Whether the appellant is an industry carrying on business by, or under the authority of the Central Government, must be

determined keeping in view the language of the statute that gave birth to the Corporation, and the nature of functions under the IAAI act and the control the Central Government is exercising over the working of the industry of the appellant to indicate that right form its inception the appellant has been carrying on its business, by or under the authority of the Central Government. Rightly understanding that legal position, the Central Government had referred the matter to the Central Advisory Board under Section 10(1) of the Act and on the basis of its report had issued the notification dated December 9,1976 abolishing the contract labour system in the aforestated services. Therefore, it is valid in law. The Bench in Heavy Engineering case narrowly construed the meaning of the phrase "the appropriate Government" placing reliance on the common law doctrine of "principle and agent". The public law interpretation is the appropriate principle of construction of the phrase "the appropriate Government". In view of internal evidence provided in the IAAI Act ad the nature of the business carried on by the appellant by or under the control of the Central Government, the appropriate Government is none other than the Central Government. In particular, after the development of law of "other authority" or "instrumentality of the State" under Article 12 of the Constitution, the ratio in Heavy Engineering case is no longer good law. In Hindustan Aeronautics Ltd. and Food Corp of India cases, this court had not independently, laid any legal preposition. Food Corporation of India case was considered with reference to the regional warehouses of the FCI situated in different States and in this functional perspective, this court came to the conclusion that the appropriate Government would be the State Government.

This Court in Sukhdev Singh & Ors. v. Bhagatram Sardar Singh & Anr. [(1975) 3 SCR 619]; R.D. Shetty v. Airport Authority & Ors. [(1979) 3 SCR 1014]; Managing Director, U.P. Warehousing Corporation & Anr. v. V.N. Vajapayee [(1980) 2 SCR 733]; Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc. [(1981) 2 SCR 79] - wealth of authorities - had held that settled legal position would lend aid to interpret the phrase "appropriate Government" in public law interpretation; under the Act the Central Government is the appropriate Government to take a decision under section 10 of the Act to abolish the contract labour system. It is further contended that the central Government, after notifying abolition of contract labour system is devoid of power under section 10(1) to appoint another Advisory Board to Consider whether or not to abolish the same contract labour system in the aforesaid services in the establishments of the appellant. The recommendation of the Mohile Committee and the resultant second notification were, therefore, without authority of law. The two Judge Benches in Dena Nath and Gujarat Electricity Board's cases have not correctly interpreted the law. After abolition of the contract labour system, if the principle employer omits to abide by the law and fails to absorb the labour worked in the establishments of the appellant on regular basis, the workmen have no option but to seek judicial redress under Article 226 of the Constitution. Judicial Review being the basis feature of the Constitution, the High Court is to have the notification enforced. The citizen has a fundamental right to seek redressal of their legal injury by judicial process to enforce his rights in the proceedings under Article 226. The High Court, therefore, was right to dwell into the question and to give the impugned direction in the judgment. The workmen have a fundamental right to life. Meaningful right to life springs from continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life. When they were engaged as contract labour and were continuously working in the establishments of the appellant, to make their right to social and economic justice meaningful and effective, they are required to be continuously engaged as contract labour so long as the work is available in the establishment. When

work is of perennial nature and on abolition of contract labour system, they are entitled, per force, to be absorbed labour system, they are entitled, per force, to be absorbed on regular basis transposing their erstwhile contractual status into that of an employer - employee relationship so as to continue to eke out their livelihood by working under the employer and be entitled to receive salary prescribed to that post. Thereby, they became entitled to be absorbed without ay hiatus with effect from the date of abolition. If any action is needed to be taken thereafter against the employee, it should be only in accordance with either the statutory rules or the ID Act, if applicable. In either event, the right to absorption assures to the workmen the right to livelihood as economic empowerment, right to social justice and right to dignity of person which are the concomitants of social democracy. These facets of constitutional rights guaranteed to the workmen as their Fundamental Rights should be kept in view in interpreting the expression "appropriate Government enjoined under Section 10(1) of the Act and other regulatory provisions in relation to the employment of the workmen. Therefore, the view in Dena Nath's case is not correct is law and requires to be overruled.

There is no hiatus in the operation of the Act on abolition of the contract labour system under Section 10. The object and purpose of the Act are twofold. As long as the work in an industry is not perennial, the Act regulates the conditions of the workmen employed through the contractor registered under the Act. The services of the workmen are channelised through the contractor. The principle employer is required to submit the number of workmen needed for employment in its establishment who are supplied by the contractor, an intermediary; but the primary responsibility lies upon the principle employer to abide by law; the violation thereof visits with penal consequences. The Act regulates systematic operation. Wages to the contract labour should be paid under the direct supervision of the principle employer. The principle employer is enjoined to compel the contractor to pay over the wages and on his failure, the principle employer should pay and recover it from the contractor/intermediary. The principle employer alone is required to provide safety, health and other amenities to ensure health and safe working conditions in the establishment of the principle employer. This would clearly indicate the pervasive control the principle employer has over the contract labour employed through intermediary and regulation of the work by the workmen during the period of service. On advice by the Board that the work is of perennial nature etc, and on being satisfied of the conditions specified under Section 10(2), the appropriate Government takes a decision to abolish the contract labour and have the decision published by a notification. It results in abolition of the contract labour. Consequently, the linkage of intermediary/contractor is removed from the operational structure under the Act. It creates direct connection between the principle employer and the workmen. There is no escape route for the principle employer to avoid workmen because it needs their services and the workmen are not meant to be kept in the lurch. The words "principal employer" do indicate that the intermediary/contractor is merely a supplier of labour to the principal employer. On effacement of the contractor by abolition of the contract labour system, a direct relationship between the principal employer and the workmen stands knitted. Thereby the workman becomes an employee of the principal employer and it relates back to the date of engagement as a contract labour. The details of the workmen, the requirement of the work force, duration of the work etc, are regulated under the Act and the Rules. The Act, the Rules and statutory forms do furnish internal and unimpeachable evidence obviating the need to have industrial adjudication; much less there arises any dispute.

There is no machinery for workmen under the ID Act to seek any industrial adjudication. if any industrial adjudication is to be sought, it would be only by a recognised union in the establishment of the appellants who are unlikely to espouse their dispute. Therefore, the methodology suggested in Gujarat Electricity Board's case, by another bench of two Judges, apart from being unworkable and incongruous, is not correct in law. On abolition of the contract labour, the principle employer is left with no right but duty to enforce the notification, absorb the workmen working in the establishment on contract basis transposing them as its regular employee with all consequential rights and duties attached to a post on which the workmen working directly under the appellant was entitled or liable. The Act gave no option to pick and choose the employees at the whim of the principal employer. The view of the High Court, therefore, is correct to the extent that the notification should be enforced with effect from date of abolition, namely, December 9,1976. The subsequent amendment with effect from January 28,1986 is only a recognition of ad superimposition of preexisting legal responsibility of the Central Government as the appropriate Government. It does not come into being only from the date the amendment came into force. Consequently, the workmen, namely, the members of the respondent-Union must be declared to be the employees with effect from the respective dates on which they were discharging their duties in the respective services of the appellant's establishment either as Sweeper, Duster, Cleaner, Watchman etc. The view, therefore, of the High Court to the extent that they should be absorbed with effect from the date of the judgment of the learned single Judge, is not correct in law. Therefore, to do complete justice, direction may be given to absorb the workmen with effect from the date abolition, i.e. December 9, 1976 under Article 142 of the Constitution.

The respective contentions would give rise to the following questions:

1. What is the meaning of the word "appropriate Government under Section 2(1) (a) of the Act,

2. Whether the view taken in Heavy Engineering case is correct in law?

3. Whether on abolition the contract labour are entitled to be absorbed; if so, from what date ?

4. Whether the High Court under Article 226 has power to direct their absorption; if so, from what date ?

5. Whether it is necessary to make a reference under Section 10 of the ID Act for adjudication of dispute qua absorption of the contract labour?

6. Whether the view taken by this Court in Dena Nath and Gujarat State Electricity Board's case is correct in law ?

7. Whether the workmen have got a right for absorption and, if so, what is the remedy for enforcement ?

Section 2 (1) (a) of the Act defines "appropriate Government" to mean-

""(1) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (Act 14 of 1947), is the Central Government, the Central Government;

""(2) in relation to any other establishment, the Government of the State in which that other establishment is situated."

Prior to the Amendment Act 14 of 1986, the definition was as under :

"2 (1) (a) "Appropriate Government"

means-

(1) in relation to -

(i) any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or

(ii) any establishment of any railway, Cantonment Board, Major port, mine or oil-field, or

(iii) any establishment of a banking or insurance company, the Central Government,
(2) in relation to any other establishment the Government of the State in which that other establishment is situate."

Section 2(a)(i) of the ID Act defines "appropriate Government" thus :"... Unless there is anything repugnant in the subject or context, "appropriate Government" means, in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company for concerning any such controlled industry as may be specified in this behalf by the Central Government..." and India Airlines and Air India Corporation established under Section 3 of the Air Corporation Act 1953 are enumerated industries under Amendment Act 46 of 1982 which came into force with effect from 21.8.1984.

In Heavy Engineering case (supra), industrial dispute was referred under Section 10 of the ID Act by the State Government of Bihar to the Industrial Tribunal for its adjudication. The competency of the State Government was questioned by the Mazdoor Union contending that the appropriate government to refer the dispute was the Central government. The High Court negatived the contention and had upheld the validity of reference, On appeal, a Bench of two Judges had held that the words "under authority of" means pursuant to the authority, such as an agent or a servant's acts under or pursuant to the authority of its principal or master. The Heavy Engineering Company cannot be said to be carrying on its business pursuant to the authority of the Central Government. Placing reliance on common law interpretation, the Bench was of the opinion that the company

derived its powers and functions from its Memorandum ad Articles of Association. Though the entire share capital was contributed by the Central Government and all the shares were held by the President and officers of the Central Government were in-charge of the management, it did not make any difference. The company and the share holders are distinct entities. The fact that the President of India and certain officers hold all its shares did not make the company an agent either of the President or of the Central Government. The power to decide how the company should function ; the power to appoint Directors and the power to determine the wages all salaries payable by the company to its employees, were all derived form the Memorandum of company and Articles of Association of the Company and not by the reason of the Company being the agent of the Central Government. The learned judges came to that conclusion on the basic of concessions and on private law of principal and agent and as regards a company registered under the Companies Act, on the basic of the power of internal management. In Hindustan Aeronautics Ltd. case (supra), learned judges merely followed the ratio of Heavy Engineering case. It further concluded that the enumeration of certain statutory Corporations in the definition would indicate that those enumerated Corporations would come within the definition of the "appropriate Government"

> without any further discussion. In Rashtriya Mill Mazdoor Sangh's case, a Bench of three judges, while interpreting Section 32 (iv) of the Payment of Bonus Act, considered the purpose of the expression "under the authority of any department of the Central Government for purpose of payment of bonus". The meaning and scope of the expression "industry carried on by or under the authority of any department of the Central Government", was examined and it was held that the industrial undertaking retains its identity, personality and status unchanged though in its management, the Central Government exercised the power to give a direction under section 16 and the management is subjected to regulatory control. It is seen that the above decision was reached in the context in which the payment of bonus was to be determined and paid to the employees by the department. In Food Corporation of India's case (supra), a Bench of two Judges was to consider whether regional office of the Food Corporation of India and the warehouses etc. were an "establishment" within the meaning of Section 2(i)(e) of the Act and whether FCI is an industry carried on by or under the authority of the Central Government. Following the aforesaid three decisions, it was held that a bare reading of the definition under the Act means inter alia any place, any industry, trade, business, manufacture, warehouse, godown or the place set up by the corporation where its business is carried on. Though for the purpose of industrial disputes the Central Government is an appropriate Government in relation to Food Corporation of India, its establishment at various places is not under the control of the Government of India. Therefore, appropriate Government under the Industrial Disputes Act is the state Government. In that behalf, the learned Judges, undoubtedly, relied upon Heavy Engineering case. It would thus be seen that the construction adopted on the phrase "appropriate Government"

under the ID Act was considered with reference to its functional efficacy. The Heavy Engineering case, as held earlier, had proceeded on common law principles and the concession by the counsel.

As noted, the appellant, to start with, was a statutory authority but pending appeal in this court, due to change in law and in order to be in tune with open economy, it became a company registered under the Companies Act. To consider its sweep on the effect of Heavy Engineering case on the interpretation of the phrase 'appropriate Government', it would be necessary to recapitulate the Preamble, Fundamental Rights (Part III) and Directive Principle (Part IV) - trinity setting out the conscience of the Constitution deriving from the source "We, the people", a charter to establish an egalitarian social order in which social and economic justice with dignity of person and equality of status and opportunity, are assured to every citizen in a socialist democratic Bharat Republic. The Constitution, the Supreme law heralds to achieve the above goals under the rule of law. Life of law is not logic but is one of experience, Constitution provides an enduring instrument, designed to meet the changing needs of each succeeding generation altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the Constitution. So too, the legal redressal within the said parameters. The words in the Constitution or in an Act are but a framework of the concept which may change more than words themselves consistent with the march of law. Constitutional issues require interpretation broadly not by play of words or without the acceptance of the line of their growth, Preamble of the Constitution, as its integral part, is people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual enterpreneur. It seeks to achieve a public purpose, i.e., regulated conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual interest can, therefore, no longer stem the forward flowing tide and must, of necessity, give way to the broader public purpose of establishing social and economic democracy in which every workmen realises socio- economic justice assured in the preamble, Articles 14,15 and 21 and the Directive Principles of the Constitution.

The founding fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in Chapters III and IV for a democratic way of life to every one in Bharat Republic, the State under Article 38 is enjoined strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavour to eliminate the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, Article 39(a) provides that the State shall direct its policies towards securing the citizens, men and women equally, the right to an adequate means of livelihood; clause (d) provides for equal pay for equal work for both men and women; clause (e) provides to secure the health and strength of workers. Articles 41 provides that within the limits of its economic capacity and development, the state shall make effective provision to secure the right to work as fundamental with just and human conditions of work by suitable legislation or economic organisation or in any other way in which the worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen. The poor, the workman and common man can secure and realise economic and social freedom only through the right to work and right to adequate means of livelihood, to just and human conditions of work, to a living wage, a decent standard of life. education and leisure. To them, these are fundamental facets of life. Article 43A, brought by 42nd

Constitution (Amendment) Act, 1976 enjoins upon the State to secure by suitable legislation or in any other way, the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Article 46 gives a positive mandate to promote economic and educational interest of the weaker sections of the people. Correspondingly, Article 51A imposes fundamental duties on every citizen to develop the scientific temper, humanism and to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. To make these rights meaningful to workmen and meaningful right to life a reality to workmen, shift of judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the community. Article 39A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. Courts are sentinal in the quivive of the rights of the people, in particular the poor. The judicial function of a Court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian of the society in establishing the egalitarian social order. Therefore, the concepts engrafted in the statute require interpretation from that perspectives, without doing violence to the language. Such an interpretation would elongate the spirit and purpose of the Constitution and make the aforesaid rights to the workmen a reality lest establishment of an egalitarian social order would be frustrated and Constitutional goal defeated.

Keeping this broad spectrum in view, let us consider whether the interpretation given in Heavy Engineering case is consistent with the scheme and spirit of the Constitution. In Rajasthan State Electricity Board, Jaipur v. Mohan Lal & Ors. [(1967) 3 SCR 377, a Constitution Bench, composing the learned judges who formed the Bench in Heavy Engineering case, considered the issue interpretation and Bhargava, J. speaking on behalf of the majority, had held that "other authority" within the meaning of Article 12 of the Constitution need no necessarily be an authority to perform governmental functions. The expression 'other authority' is wide enough to include within it every authority created by a statute on which powers are conferred to carry out governmental functions or the "functions under the control of the Government". It is not necessary that some of powers conferred be Governmental sovereign function to carry on commercial activities. Since the State is empowered under Articles 19 (1) (g) and 298 to carry on any trade or business, it was held that Rajasthan State Electricity Board was "other authority" under Article 12 of the Constitution. The significance of the observation is that an authority under the control of the State need not carry on Governmental functions. It can carry on commercial activities. At this juncture, it is relevant keep at the back of our mind, which was not brought to the attention of the Bench which decided Heavy Engineering case, that Article 19(2) of the Constitution grants to the State, by clause

(ii) thereof, monopoly to carry on, by the State or by a Corporation owned or controlled by the State, any trade, business, industry or service whether to the execlusion, complete or partial, of citizens or otherwise. The narrow interpretation strips the State of its monopolistic power to exclude citizens from the field of any activity, to carry on any trade, business, industry or service, total or partial. A reverse trend which would deflect the constitutional perspective was set in motion by the same Bench in Praga tools Corporation v. C.V. Imanual [(1969) 3 SCR 773] decided on February

19,1969,24 days prior to the date of decision in Heavy Engineering case; in which it was held in main that writ under Article 226 would not lie against a company incorporated under Companies Act and the declaration that dismissal of the workmen was illegal, given by the High Court was set aside. But the operation of the above ratio was put to stop by the Constitution Bench decision in Sukhdev Singh & Ors. v. Bhagat Ram & Anr. [(1975) 3 SCR 619]. In that behalf, the interpretation given by Mathew, J. in a separate but concurrent judgment is of vital significance taking away the State action from the clutches of moribund common law jurisprudence; it set on foot forward march under public law interpretation. Mathew, J. had held that the concept of State had undergone drastic change. It cannot be conceived of simply as a cohesive machinery yielding the thunderbolt of authority. The State is a service Corporation. It acts only thorough its instrumentalities or agencies of natural and juridical person. There is a distinction between State action and private action. There is nothing strange in the notion of the State acting through a Corporation and making it an agency or instrumentality of the State with an advent of the welfare State. The framework of the civil service administration became increasingly insufficient for handling new tasks which were often of a specialised and highly technical character. Development of policy of public administration, through separate Corporations which would operate largely according to business principles and separately accountable though under the Memorandum of Association or Articles of Association become the arm of the Government. Though their employees are not civil servants, it being a public authority and State Corporation, therefore, is subject to control of the Government. The public corporation, being a corporation of the State, is subject to the constitutional limitation as the State itself. The governing power, wherever located, must be subject to the fundamental constitutional limitations. The Court, therefore, had laid the test to see whether the Corporation is an agency or instrumentality of the Government to carry on business for the benefit of public. Thus, the ratio in Praga Tools case, no writ would lie against the Corporation is not a statutory body, as it is not a authority, it is an instrumentality of the State.

In R.D. Shetty v. International Airport Authority of India & Ors. [(1979) 3 SCR 1014], this Court had held that due to expansion of welfare and social service functions, the State increasingly controls material and economical resources in the society involving large scale industrial and commercial activities with their executive functions affecting the lives of the people. It regulates and dispenses special services and provides large number of benefits. When the Government deals with the public, it cannot act arbitrarily. Where a corporation is an instrumentality or agency of the Government, it would be subject to the same constitutional or public law limitation as the Government. The limitations of the action by the Government must apply equally when such action are dealt with by Corporation having instrumentality element with public and they cannot act arbitrarily, Such a functioning cannot enter into relationship with any person it likes at its sweet will. Its action must be in conformity with some principle which meets the test of reason and relevance. Therefore, the distinction between a statutory corporation and the company incorporated under the Companies Act was obliterated.

In Managing Director, U.P. Warehousing Corpn. v. V.N. Vajpayee [(1980) 2 SCR 773], Chinnappa Reddy, J. in this separate but concurrent judgment laid down the relevant principles. The Government establishes and manges large number of industries and institutions which have become biggest employer and there is no good reason why the Government should not be bound to observe

the equality clause of the Constitution in a matter of employment and its dealings with its employees; why the Corporation set up or owned by the Government would not equally be bound and why instead such Corporation would become citadels of patronage and arbitrary action. Such a distinction perhaps would mock at the Constitution and the people; some element of public employment is all that is necessary to take the employee beyond the reach of rule which denies him the protection of Articles 14 and 16. Independence and integrity of the employees in the public sector should be secured as much as the independence and integrity of the Civil servants. it was, therefore, held that a writ would lie against the warehousing corporation.

In Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc. [(1961) 2 SCR 79], a Constitution Bench was to consider whether a Society registered under the J & K Societies Registration Act would be a State under Article 12 of the Constitution amenable to the reach of the writ jurisdiction. The Constitution Bench laid the following tests to determine whether the entity is an instrumentality or agency of the State : (1) if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency or Government ; (2) where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation being impregnated with governmental character; (3) it must also be relevant factor whether the corporation enjoys monopoly status which is State conferred of State protected; (4) existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (5) if the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as a instrumentality or agency of Government ; (6) specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference of the corporation being an instrumentality or agency of Government. In Delhi Transport Corporation v. D.T.C. Mazdoor Corpn.[AIR 1991 SC 101], it was held that the State has a deep and pervasive control over the functioning of the society and, therefore, is an agency of the state. In Som Prakash Rekhi v. Union of India & Ors. [(1981) 2 SCR 111], it was held that the settled position in law is that any authority under the control of the Government of India comes within the definition of a State. Burmashell oil Co, was held to be an instrumentality of the State though it was a Government company. The authority in administrative law is a body having jurisdiction in certain matters of public nature. Therefore, the ability conferred upon a person by a law is to alter his case own will directed to that end. The rights; duties and liabilities or other legal relations, either of himself or other person must be present to make a person an authority. When the person is an agent or functions on behalf of the State, as an instrumentality, the exericse of the power is public. Sometimes, the test id formulated by asking whether corporation was formed by or under the statute. The true test is not how it is founded in legal personality but when it is created, apart from discharging public function or doing business as the proxy of the State, whether there is an element of ability in it to effect the relations by virtue of power vested in it by law. In that case, it was held that the above tests were satisfied and the company was directed to pay full pension.

In Manmohan Singh Jaitla v. Commissioner. Union Territory of Chandigarh & Ors. [(1984) supp. SCC 540], it was held that an educational institution receiving 952 of the grant-in-aid from the Government is "other authority"

under Article 12 of the Constitution. It was, therefore, held that the termination of the service without enquiry was without jurisdiction. Dismissal from service without enquiry was declared illegal under Article 226. In P.K. Ramachandra Iyer & Ors. v. Union of India & Ors. [(1984) 2 SCC 141], ICAR, a Society registered under the Societies Registration Act, was held an adjunct of the Government of India. Its budged was voted as part of the budget of the Ministry of Agriculture. It was held that it was the State under Article 12 and was amenable to jurisdiction under Article 32 of the Constitution. The Project and Equipment Corporation of India which is subsidiary owned by State Trading Corporation was held by this Court in A.L. Kalra v. Project and Equipment Corpn. of India Ltd. [(1984) 3 SCR 316], to be an agency of the Government within the meaning of Article 12 of the Constitution of India. In Central Inland Water Transport Corpn. Ltd. & Anr. v. Brojonath Ganguly & Anr. [(1986) 3 SCR 156], a Government Company incorporated under Companies Act was held to be an instrumentality or agency. In this case, this court construed the Fundamental rights under Articles 14 to 17, the Director Principle under Article 38,41 and 42, the Preamble of the Constitution and held that the River Steam Navigation Co. Ltd, was carrying on the same business as the corporation was doing. A scheme of arrangement was entered into between the corporation and the company. They were managed by the board of Directors appointed and removable by the Central Government. It was, therefore, held that it was an agency or instrumentality of the State under Article 12. In that behalf this court pointed out that the trade of business activity of the State constitutes public enterprise; the structural forms in which the Government operates in the field of public enterprises are many and varied. They may consist of governmental department, statutory body, statutory corporation of government companies etc.; immunities and privileges possessed by bodies so set up by the Government under Article 298 are subject to Fundamental Rights and Directive Principles to further the State policy. For the purpose of Article 12, the Court must see necessarily through corporate veil to ascertain behind the veil the face of instrumentality or agency of the State has assumed the garb of a governmental company, as defined in Section 3(7) of the Companies Act, it does not follow thereby that it ceases to be an instrumentality or agency of the State. Applying the above test, it was held that Inland Water Transport Corporation was State.

When its correctness was doubted and its reference to the Constitution Bench was made in Delhi Transport Corpn. case (supra), while holding that Delhi Road Transport Authority was an instrumentality of the State, it was held that employment is not a bounty from the State nor can it survival be at their mercy. Income is the Foundation of any Fundamental Rights. Work is the sole source of income. The right to work become as much fundamental as right to life. Law as a social machinery requires to remove the existing imbalances and to further the progress serving the needs of the Socialist Democratic Republic under the rule of law. Prevailing social conditions and actualities of the life are to be taken into account to adjudge the dispute and to see whether the interpretation would submerge the purpose of the Society.

In Lucknow Development Authority v. M.K. Gupta [(1984) 1 SCC 243], the question was whether a Government Authority is amenable to the regulation of Consumer Protection Act. It was held in paragraph 5 and 6 that a Government or a semi-Government body or local authority are amenable to the Act as much as any other private body rendering similar service. This is a service to the society and they are amenable to public accountability for health and growth of society, housing construction or building activities, by private or statutory body rendering service within the meaning of Section 2(0) of the said Act. In Star Enterprises & Ors. v. C.I.D.C. of Maharashtra Ltd. [(1990) 3 SCR 280], it was held that the State or its instrumentality entering into commercial field must act in consonance with the rule of law. In paragraph 10, it was held the judicial review of administrative action has become expansive and its scope is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded, State activity too is becoming fast perversive as the State has descended into the commercial field and joint public sector undertaking has grown up. The State action must be justified by judicial review, by opening up of the public law interpretation. Accordingly, it was held that the action of company registered under the Companies Act was amenable to judicial review.

In LIC of India & Anr. v. Consumer Eduction & Research Centre & Ors. [(1995) 5 SCC 482], it was held that in the contractual field of State action, the State must act justly, fairly and reasonably in public interest commensurate with the constitutional conscience and socio- economic justice; insurance policies of LIC, terms and conditions prescribed therein involve public element. It was. therefore, held in para 23 at page 498 that every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public power or action hedged with public element that becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element, to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions. They must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. At page 501 in para 28 it was held that though the dispute may fall within the domain of contractual obligation, it would not relieve the State etc, of its obligation to comply with the basic requirements of Article

14. To this extent, the obligation is of public character, invariably in every case, irrespective of there being any other right or obligation. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State etc, in any of its actions.

In G.B. Mahajan & Ors. v. Jalgaon Municipal Council & Ors. [(1991) 3 SCC 91 at 109, para 38], it was held that in interpretation of the test of reasonableness in

Administrative law, the words "void" and "voidable" found in private law area are amenable to public law situations and "carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words 'reasonable' or reasonableness etc." In Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers [(1992) 1 SCC 534 at 553, para 20] the private law principle of fraud and collusion in section 17 of the Contract Act was applied to public law remedy and it was held "that fraud in public law is not the same as fraud in private law. Nor can the ingredient, which has established fraud and commercial transaction be of assistance in determining fraud in administrative law. It has been aptly observed in Khwaja vs. Secretary of State for the Home Department & Ors. [(1983) 1 All. E.R. 765] that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation to the statutory law". In Khwaja's case (supra), it was held "despite the wealth of authority on the subject, there is nowhere to be found in the relevant judgments (perhaps because none was thought necessary) a definitive exposition of the reasons why a person who has obtained leave to enter by fraud is an illegal entrant. To say that the fraud 'vitiates' the leave or that the leave is not 'in accordance with the Act' is, with respect, to state a conclusion without explaining the steps by which it is reached. Since we are here concerned with purely statutory law, I think there are dangers in introducing maxims of the common law as to the effect of fraud on common law transaction and still greater dangers in seeking to apply the concepts of 'void and voidable'. In a number of recent cases in your Lordships' House, it has been pointed out that these transplants from the field of contract do not readily take root in the field of public law. This is well illustrated in the judgement of the Court of Appeal in the instant case of Khawaja [1982] 1 WLR 625 at 630; of [1982] 2 All ER 523, at 527, where Donaldson LJ spoke of the appellant's leave to enter as being 'voidable ab initio', which I find, with respect, an impossibly difficult legal category to comprehend". Thus, the limitations in private law were lifted and public law interpretation of fraud was enlarged.

It must be remembered that the Constitution adopted mixed economy and control over the industry in its establishment, working and production of goods and services. After recent liberalised free economy private and multi- national entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large scale industrial productions. Even some of the public Corporation are thrown open to the private national and multi-national investments. It is axiomatic, whether or not industry is controlled by Government or public Corporations by statutory form or administrative clutch or private agents, juristic persons, Corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitation in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the fundamental rights enshrined in the Constitution. The word 'control', therefore, requires to be

interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.

From the above discussion, the following principles would emerge:

[1] The constitution of the Corporation or instrumentality or agency or corporation aggregate or Corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.

[2] If it is a statutory Corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

[3] In commercial activities carried on by a Corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19 [2], it is an instrumentality or agency of the State. [4] The State is a service Corporation. It acts through its instrumentalities, agencies or persons natural or juridical.

[5] The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles. [6] The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law principles and limitations.

[7] Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.

[8] The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.

[9] Functions of an instrumentality, agency or person are of public importance following public interest element. [10] The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, memorandum of association or bye-laws or articles of association.

[11] The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers men and women, adequate means

of livelihood, the security for payment of living wages, reasonable conditions of word, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen. [12] Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

[13] If the exercise of the power is arbitrary, unjust and unfair, and public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

It must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations and all their actions ****** satisfy the basic law requirements of Article 14. The public law interpretation is the basic tools of interpretation in that behalf relegating common law principles to purely private law field.

From this perspective and on deeper consideration, we are of the considered view that the two-judge Bench in Heavy Engineering case narrowly interpreted the words "appropriate Government" on the common law principles which no longer bear any relevance when it is tested on the anvil of Article

14. It is true that in Hindustan Machine Tool's R.D. Shetty's and Food Corporation of India cases the ratio of Heavy Engineering case formed the foundation. In Hindustan Machine Tool's case, there was no independent consideration except repetition and approval of the ratio in Heavy Engineering case. It is to reiterate that Heavy Engineering case is based on concession. In R.B. Shetty's case, the need to dwelve indepth into this aspect did not arise but reference was make to the premise of private law interpretation which was relegated to and had given place to constitutional perspectives of Article 14 which is consistent with the view we have stated above. In Food Corporation of India's case, the Bench proceeded primarily on the within the jurisdiction of different State Governments which led it to conclude that the appropriate Government would be the State Government.

In the light of the above principles and discussions, we have no hesitation to hold that the appropriate Government is the Central Government from the inception of the Act. The notification published under Section 10 on December 9,1976, therefore, was in exercise of its power as appropriate Government. So it is valid in law. The learned Solicitor General is not right in contending that the relevant factors for abolition of the contract labour system in the establishment of the appellant was not before the Central Advisory Board before its recommendation to abolish the contact labour system in the establishment of the appellant. The learned Attorney General has placed before us the minutes of the Board which do show the unmistakable material furnished do

indicated that the work in all the establishments including those of the appellants, is of perennial nature satisfying all the tests engrafted in Section 10(2) of the Act. Accordingly, on finding the work to be of perennial nature, it had recommended and the Central Government had considered and accepted the recommendation to abolish the contract labour system in the aforesaid services. Having abolished it, the Central Government was denuded of its power under Section 10(1) to again appoint insofar as the above services of the Mohile Committee to go once over into the self-same question and the recommendation s of the latter not to abolish the contract labour system in the above services and the acceptance thereof by the Central Government are without any legal base and, therefore, non est. The next crucial question for consideration is: whether the High Court was right in directing enforcement of the notification dated December 9,1976 issued by the Central Government ? Before adverting to that aspect, it is necessary to consider the relevant provisions of the Act.

The Constitutionality of the Act was challenged in M/s. Gammon India Ltd. & Ors. v. Union of India & Ors. [(1974) 1 SCC 596] on the touchstone of the Fundamental Rights given by Articles 14.15,19(1)(g) and of Article 265. The Constitution Bench elaborately considered the provisions of the Act and had held that the Act in Section 10 empower the Government to prohibit employment of contract labour. The Government, under that Section, has to apply its mind to various factors, before publishing the notification in the official Gazette prohibiting employment of contract labour in any process, operation or other work in any establishment. The words " other work in any establishment"

> were held to be important. The work in the establishment will be apparent from Section 10 (2) of the Act as incidental or necessary to the industry, trade, business, manufacture or occupation that is carried on in the establishment. The Government before notifying prohibition of contract labour work which is carried on in the establishment, will consider whether the work is of a perennial nature in that establishment or work is done ordinarily through regular workmen in that establishment. The words "work of an establishment" which are used in defining workmen as contract labour being employed in connected with the work of an establishment indicate that the work of the establishment there is the same as word in the establishment contemplated by Section 10 of the Act. The contractor under takes to produce a given result for the establishment through contract labour. He supplies contract labour for any work of the establishment. The entire site is the establishment and belongs to the principal employer who has a right of supervision and control; he is the owner of the premises and the end product and from whom the contract labour receives its payment either directly or through a contractor. It is the place where the establishment intends to carry on its business, trade, industry, manufacture, occupation after the construction is complete. Accordingly, the constutionality of the Act was upheld.
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> The appalling conditions of contract labour who are victims of exploitation have been engaging the attention of various committees for a long tie and in furtherance of the recommendations, the Act was enacted to benefit, as a welfare measures, viz.,

provisions for canteens rest room, facilities for supply of drinking water, latrines, urinals, first aid facilities and amenities for the dignity of human labour, are in larger interests of the community. Legislature is the best judge to determine what is needed as the appropriate condition for employment of contract labour. The legislature is guided by the needs of the general public in determining the reasonableness of such requirements under the Act and the rules made thereunder. Suffice it would, for the purpose of this case, to concentrate on the definition of "contract labour" under Section 2(b), "contractor" under Section 2(c), "establishment" under Section 2(e), "principal employer"

under Section 2 (g), "wages" under Section 2 (h) and of "workman" under Section 2 (i) Under Section 2 (c), "contractor" in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour of who supples contract labour for any work of the establishment and includes a sub-contractor.

"Establishment", under Section 2(e), means any office of department of government of a local authority, or any place where any industry, trade, business, manufacture or occupation is carried on. "Principal employer", under Section 2(g), means, in relation to any office or department of the Government or a local authority, as the case may be may specify in this behalf; and in a factory, it means the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named; in a mine, it means the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named; and in any other establishment, any person responsible for the supervision and control of the establishment, is the principal employer. "Workman", under Section 2 (i), means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person categorised in clauses (a) to (e) which are not relevant for the purpose of this case.

Every principal employer of an establishment under the Act is enjoined under Section 7 to apply for registration and have it registered thereunder. The registration is subject to the revocation under Section 8 on fulfilment of certain conditions enumerated therein. The effect of non- registration is enumerated in Section 9 in the mandatory language that no principal employer shall employ contract labour in the establishment af ter the specified period. Section 12 enjoins similar obligations on the contractor for registration, with mandatory language, that from the appropriate date, no contractor to whom the Act applies, hall undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the licensing officer.

Licence is grated under Section 13 and revocation, suspension and amendment thereof have been provided, in Section 14 with which we are not concerned in this case. The welfare measures mandated in Chapter V be complied with by every establishment. Under Section 21, every principal employer shall nominate his representative to be present at the time of disbursement of wages by the contractor and the contractor should be responsible for payment of wages to every such workman. Representative of the principal employer should ensure and certify that wages was paid in the prescribed manner. In case of default committed by the contractor in paying wages within the prescribed period or for short payment , the principal employer period or for short payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the recover the amount so paid from the contractor either by deduction form any amount payable to the contractor under any contract or as a debt payable by the contractor.

Section 10 prohibits employment of contract labour with a non obstante clause. The appropriate Government, after consultation with the Central Advisory Board or, as the case may be, State Board Prohibit, by notification published in the official Gazette, employment of contract labour in any establishment. Before issue of any such notification, the appropriate Government is enjoined to have regard to the conditions of work and benefits provided for the contract labour in the establishment and other relevant factors, such as -(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture of occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and

(d) whether it is sufficient to employ considerable number of whole-time workmen. Section 20 makes it mandatory to provide the amenities of welfare and health facilities enjoined in Sections 16 and 19. The expenses incurred in that behalf may be recovered, by the principal employer, from the contractor. The penalty for non-compliance is provide in Sections 23 and 24 of the Act. Offences by companies are dealt with under Section 25. For the prosecution of non-cognisable offences, complaint is to be laid with previous sanction of the Inspector in writing.

Section 27 prescribes limitation for laying prosecution.

Rules have been prescribed in that behalf for effective enforcement of the Act. Forms and terms and conditions of licence have been prescribed in Rules 21 to 25. Chapter V of the Central Rules deals with welfare and health of the contract labour. Chapter VI deals with payment of wages to the workmen and the manner of payment has also been provided therein. Form III referred to in Rule

18 (3) envisages, among others, name and address of the contractor, nature of work in which contract labour is to be employed on any day, maximum number of contract labour to be employed on any date, probable duration of employment of contract labour etc. The licence issued in Form IV under Rule 21(1) indicates the particulars envisaged in Forms III. Form XIII under Rule 75 requires information as to the list of workmen employed by the contractor and also to be specified, the name and surname of the workmen, Sl. No., age and sex, father's/husband's name, nature of employment, designation, permanent home address of the workmen, date of commencement of employment, signature/thumb impression of workmen, date of termination. Certificate of completion of the work has been provided in form XV as per Rule 77, Forms XVII as per Rule 78 (1) (a) (i) is Register of wages and provides the particulars, apart from other details, number of days worked, units of work done, daily-rate of wages/piece rate etc. Register of wages-cum-Muster Roll is prescribed in Form XVIII referred to in Rule 78 (i) (a) (i) and requires details in particular as to daily attendance, units worked, designation/nature of work, total attendance, units of work done, overtime wages etc. It would thus be seen that before the Central or State Advisory Board advises the appropriate Government under Section 10(1) on the issue whether or not to abolish the contractor labour system, it has before it all the relevant factual material and the appropriate Government after the receipt and consideration of the recommendations and the material and then takes decision.

The pivotal question for consideration is : on abolition of the contract labour by publication of a notification in the Gazette under sub-section (1) of Section 10, what would be the consequences ? It is seen that so long as the contract labour system continues, the principal employer is enjoined to ensure payment of wages to the contract labour and to provide all other amenities envisaged under the Act and the Rules including provisions for food, potable water, health and safety and failure thereof visits with penal consequences.

The 42nd Constitution (Amendment) Act, 1976, brought explicitly in the Preamble socialist and secular concepts in sovereign democratic republic of Bharat with effect form January 3,1977. The Preamble was held as part of Constitution in His Holiness Kesavananda Bharati Sripadagalavaru vs. State of Kerala [1973 Supp. SCR 1]. The provisions of the Constitution including Fundamental Rights are alterable but the result thereof should be consistent with the basic foundation and the basic structure of the Constitution. Republican and democratic form of Government, secular character of the Constitution, separation of powers, dignity and freedom to the individual are basic features and foundations easily discernible, not only from the Preamble but the whole scheme of the Constitution. In S.R. Bommai vs. Union of India [(1994) 3 SCC 1], it was held that Preamble of the Constitution is the basic feature. Either prior to 42nd Constitution (Amendmet) Act, or thereafter, though the word "socialist" was not expressly brought out separately in the main parts of the Constitution, i.e., in the Chapters on Fundamental Rights or the Directive Principles, its seed- beds are right to participation in public offices, right to seek consideration for appointment to an office or post; right to life and right to equality which would amplify the roots of socialism in democratic form of Government; right to equality of status and of opportunity, right to equal access to public places and right to freedoms, protective discrimination, abolition of untouchability, its practice in any form an constitutional offence, as guaranteed in Part III & IV i.e., Fundamental Rights and Directive Principles which to every citizen are Fundamental Rights. In Minerva Mills Ltd. & Ors. vs. Union of India & Ors. [(1981 (1) SCR 206 = AIR 1980 SC 1789], the Constitution Bench had held

that the Fundamental Rights and the Directive Principles are two wheels of the chariot in establishing the egalitarian social order. Right to life enshrined in Article 21 means something more than survival of animal existence. It would include the right to live with human dignity [vide Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors. (AIR 1981 SC 746 para 3); Olga Tellis vs. Bombay Municipal Corporation vs. D.T.C. Mazdoor Congress [AIR 1991 SC 101 para 223,234 and 259 = (1991) supp. 1 SCC 600]. Right to means of livelihood and the right to dignity, right to health, right to potable water, right to pollution free environment and right to life. Social justice has been held to be Fundamental right in consumer Eduction and Research Centre vs. Union of India [(1995) 3 SCC 42 = 1995 (1) SCALE 354 at 375]. The Directive Principles in our Constitution are fore-runners of the U.N.O. Convention on Right to Development as inalienable human right and every persons and all people are entitled to participate in, contribute to and enjoy economic, social cultural and political development in which all human right, fundamental freedoms would be fully realised. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need for fuller responsibility for the human rights, fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfilment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are imbedded, as stated earlier, as integral part of our Constitution in the Directive Principles. Therefore , the Directive Principles now stand elevated to inelienable fundamental human rights. Even they are justiciable by themselves. Social and economic democracy is the foundation for stable political democracy. To make them a way of life in the Indian polity, law as a social engineer, is to create just social order, remove the inequalities in social and economic life and socio-economic disabilities with which people are languishing; and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in our civilised democratic set up so that every individual would strive constantly to rise t higher levels. Dr. Ambedkar, in his closing speech in the Constituent Assembly on November 25, 1949, had lucidly elucidated the meaning of social and political democracy. He stated that it means a way of life which recognised liberty, equality and franternity as the principles of life. They form an integral union. One cannot divorce from the other; otherwise it would defeat the very purpose of democracy. Without equality, liberty would produce supremacy of the few over the many equality without liberty would kill the initiative to improve the individual`s excellence, political equality without socio-economic equality would run the rusk of democratic institutions to suffer a set back. Therefore, for establishment of just social order in which social and economic democracy would be a way of life inequalities in income should be removed and every endeavour be made to eliminate inequalities in status through the rule of law.

> "Socialism" brought into the preamble and its sweep elaborately was considered by this Court in several judgments. It was held that the meaning of the word "socialism" in the Preamble of the Constitution was expressly brought in the Constitution to establish an egalitarian social order through rule of law as its basis structure. In Minerva Mills Ltd. case, the Constitution Bench had considered the meaning of the word "socialism" to crystalise a socialistic state securing to its people socio-economic justice by interplay of the Fundamental rights and the Directive Principles. In D.S.

Nakara & Ors. v. Union of India [(1983) 2 SCR 165], another Constitution Bench had held that the democratic socialism achieves socio- economic revolution to end poverty, ignorance, disease and inequality of opportunity. The basic framework of socialism was held to provide security from cradle to grave. The less equipped person shall be assured to decent minimum standard of life to prevent exploitation in any form, equitable distribution of national cake and to push the disadvantaged to the upper ladder of life. It was further held that the Preamble directs the centers of power, the Legislative, Executive and Judiciary, to strive to shift up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society which is a long march; but during the journey to the fulfilment of goal, every State action, whenever taken, must be directed and must be so interpreted as to take the society towards that goal. Dr. V.K.R.V Rao, one of the eminent economists of India in his "Indian Socialism - retrospect and prospect" has stated that equitable distribution of the income and maximisation of the production is the object of socialism under the Constitution to solve the problems of umemployment, low income and mass poverty and to bring about a significant improvement in the national standard of living. he also stated that to bring about socialism, deliberate and purposive action on the part of the State, in regard to production as sell as distribution and the necessary savings, investment, use of human skills and use of science and technology should be brought about. Changes in property relations, taxation, public expenditure, education and the social services are necessary to make a socialist State under the Constitution, a reality. It must also bring about, apart from distribution of income, full employment as also increase in the production. In State of Karnataka v. Shri Ranganatha Reddy & Anr. [(1978) 1 SCR 641], a Bench of nine judges of this Court, considering the nationalisation of the contract carriages, had held that the aim of socialism is the distribution of the material resources of the community in such a way as to subserve the commonhood. The principle embodied in Article 39(b) of the Constitution is one of the essential directives to bring about the distribution of the material resources. It would give full play to the distributive justice. It fulfills the basic purpose of re-structuring the economic order. Article 39(b), therefore, has a social mission. it embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserve the common good. In Sanjeev Coke Manufacturing Co. v. Bharat Cooking Coal Ltd. & Anr. [(1983) 1 SCR 1000], another Constitution Bench interpreted the word "socialism"

and Article 39(b) of the Constitution and had held that the broad egalitarian principle of economic justice was implicit in every Directive Principle. The law was designed to promote broader egalitarian social goals to do economic justice for all. The object of nationalisation of mining was to distribute nation's resources. In State of Tamil Nadu etc. v. L. Abu Kavur Bai & Ors. etc. [(1984) 1 SCR 725], the same interpretation was given by another Constitution Bench upholding nationalisation of State Carriages and Contract Carriages (Acquisition) Act. Therefore, all State actions should be such to make socio-economic democracy with liberty, equality and fraternity, a reality to all the people through democratic socialism under the rule of law.

In Consumer Education & Research Centre & Ors. v. Union of India & Ors. [(1995) 3 SCC 42], a Bench of three Judges (to which one of us, K. Ramaswamy, J., was a member) had to consider whether right to health of workers in the Asbestos industries is a fundamental right and whether the management was bound to provide the same? In that context, considering right to life under Article 21, its meaning, scope and content, this Court had held that the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression "life" assured in Article 21, does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure.

Right to health and medical care to protect health and vigour, while in service or after retirement, was held a fundamental right of a worker under Article 21, read with Articles 39(e), 41,43,48 - A and all related constitutional provisions and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. The right to health of a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which the worker would lead a life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards, due to indigence for bread-winning for himself and his dependents, should not be at the cost of the health and vigour of the workman.

The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and livable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and kames it richer. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher the egalitarian social, economic and political democracy. Social justice, equality and dignity of persons are cornerstones of social democracy. The concept of "social justice" which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relive the poor etc. From handicaps, penury to ward off distress and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilised living while sharing according to their capacity, social and cultural heritage.

In a developing society like ours, steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc, to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard which keeps changing, depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc, are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embads equality to flavour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. it was accordingly held that right to social justice and right to health were held to be Fundamental Rights. The management was directed to provide health insurance during service and at least 15 years after retirement and periodical tests protecting the health of the workmen.

In LIC of India & Anr. v. Consumer Education & Research Centre & Ors. [(1995) 5 SCC 482], considering the Life Insurance Corporation's right to fix the rates of premium, this court had held that the authorities or private persons or industry are bound by the directives contained in Part IV and the Fundamental Rights in Part III and the Preamble of the Constitution. The right to carry on trade is subject to the directives contained in the Constitution, the Universal Declaration of Human Rights, European Convention of Social, Economic and Cultural Rights and the Convention on Right to Development for Social Economic Justice. Social security is a facet of socio-economic justice to the people and a means to livelihood. In Murlidhar Dayandeo Kesekar V. Vishwanath Pandu Barde & Anr.[1995 supp (2) SCC 549] (to which two of us, K. Ramasway, and B.L. Hansaria JJ., were members), the question arose; whether the alienation of the lands assigned to Scheduled Tribes was valid in law ? In that context considering the Preamble, the Directive Principles and the Fundamental Rights including the right to life, this court had held that economic empowerment and social justice are Fundamental Rights to the tribes. The basic aim to the welfare State is the attainment of substantial degree of social, economic and political equalities and to achieve self-expression in his work as a citizen, leisure and social justice. The distinguishing characteristic of the welfare State is the assumption by community acting through the State and as its responsibilities to provide the means, whereby all its members can reach minimum standard of economic security, civilised living, capacity to secure social status and culture to keep good health. The welfare State, therefore, should take positive measure to assist the community at large to act in collective responsibility towards its member and should take positive measure to assist them to achieve the above. It was, therefore, held thus:

> "Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of the society, in

particular, Scheduled Castes i.e. Dalits and the Scheduled Tries i.e. Tribes and to protect them from "all forms of exploitations". Many a day have come and gone after 26.1.1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.

Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and Tribes to fulfill the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-

caste, creed, religion, race, language and sex. Equality of opportunity and State thereby would become the bedrocks for social integration. Economic empowerment thereby is the foundation of make equality of status, dignity to person and equal opportunity a truism. The core of the commitment of the Constitution of the social revolution through rule of law lies in effectuation of the fundamental right directive principles as supplementary and complementary to each other. The Preamble, fundamental rights and directive principles - the trinity - are the conscience of the Constitution.

Political democracy has to be stable. Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the Dalits and Tribes and to distribute material resources of the community to them for common welfare etc".

It was accordingly held that right to economic empowerment is a fundamental right. The alienation of assigned land without permission of competent authority was held void.

In R. Chandevarappa and Ors. v. State of Karnataka and Ors. [(1995) 6 SCC 309] (to which two of us, K. Ramaswamy and B.L. Hansaria, JJ., were members) this Court was to consider whether the alienation of Government lands allotted to the Scheduled Castes was in violation of the Constitutional objectives under Article 39(b) and 46. It was held that economic empowerment to the Dalits, Tribes and the poor as a part of distributive justice is a Fundamental Right; assignment of the land to them under Article 39(b) was to provide socio-economic justice to the Scheduled Castes. The alienation of the land, therefore, was held to be in violation of the Constitutional objectives. It was held thus:

"In fact, the cumulative effect of social and economic legislation is to specify the basic structure.

Moreover, the social system shapes the wants and aspirations and its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy.

Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes.

The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Article 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly refusal to permit alienation is to effectuate the constitutional policy. the alienation was declared to be void under sections 23 of the Contract Act being violative of the constitutional scheme of economic empowerment of accord equality of status, dignity of persons and economic empowerment."

It was further held that providing adequate means of livelihood for all the citizens and the distribution of the material resources of the community for common welfare, enable the poor, the dalits and the tribes, to fulfill the basic needs to bring about the fundamental change in the structure of the Indian society. Equality of opportunity and status would thereby become the bedrocks for social integration. Economic empowerment is, therefore, a basic human right and fundamental right as apart of right to life to make political democracy stable. Socio-economic democracy must take strong route and become a way of life. The state, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and the tribes and distribute material resources of the community to them for common welfare. Justice is an attribute of human conduct and rule of law is indispensable foundation to establish socio-economic justice. The doctrine of political economy must include interpretation for the public good which is based on justice that would guide the people when questions of economic and social policy are under consideration. In Peerless General Finance and Investment Co. Ltd. & Anr. v. Reserve Bank of India [(1992) 2 SCC 343 at 389 para 55], this court had held that stability of the political democracy hinges upon socio- economic democracy. Right to development is one of the important facets of basic human rights. Right to self-interest is inherent in right to life. Mahatma Gandhiji, the Father of Nation said that "every human being has a right to live and, therefore, to find the wherewithal to feed himself and where necessary to clothe and house himself". In D.K. Yadav v. J.M.A. Industries Ltd. [(1993) 3 SCC 259], the question was whether the workman for absence in service for 7 days can be removed without an enquiry. In that context a bench of three judges had held thus:

> "Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious contents of dignity of person would be reduced to animal existence. When right to life is interpreted in the light of the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness".

In Dalmia Cement (Bharat) Ltd. & Anr. vs. Union of India & Ors. etc. [JT 1996 (4) SC 555], a Bench of three judges (to which one of us, K. Ramaswamy, J., was a member) was to consider the constitutionality of Jute Packing Material Act, 1987. The law was made to protect the agriculturists cultivating jute and jute products. In that context if was held thus:

"thus agriculturists have fundamental rights to social justice and economic empowerment.

The Preamble of the Constitution is the epitome of the basic structure built in the Constitution guaranteeing justice - social, economic and political - equality of status and of opportunity with dignity of person and fraternity.

To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and Directive Principles of State Policy (for short, 'Directives') in Chapter IV of the Constitution delineated the socio-economic justice. The word justice envision in the Preamble is used in broad spectrum to harmonise individual right with the general welfare of the society. The Constitution is the supreme law. The purpose of law is realisation of justice whose content and scope vary depending upon the prevailing social environment. Every social and economic change causes change in the law. In a democracy governed by rule of law, it is not possible to change the legal basis of socio-

economic life of the community without bringing about corresponding change in the law. In interpretation of the Constitution and the law, endeavour needs to be made to harmonise the individual interest with the paramount interest of the community keeping pace with the realities of every changing social and economic life of the community envisaged in the Constitution. Justice in the Preamble implies equality consistent with the competing demands between distributive justice with those of cumulative justice. Justice aims to promote the general well-being of the community as well as individual's excellence. The principal end of society is to protect the enjoyment of the rights of the individuals subject to social order, well-

being and morality. Establishment of priorities of liberties is a political judgment.

Law is the foundation on which the potential of the society stands.

Law is an instrument for society stands. Law is an instrument for social change as also defender for social change.

Social justice is the comprehensive form to remove social imbalances by law harmonising the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The idea of economic justice is to make equality of status meaningful and the life worth living at its best removing inequality of opportunity and of status - social, economic and political.

Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment.

Justice, liberty, equality and fraternity are supreme constitutional values to establish the egalitarian social, economic and political democracy, Social justice, equality and dignity of person are cornerstones of social democracy. Social justice consist of diverse principles essential for the orderly growth and development of personality of every citizen.

Justice is its facet, a dynamic device to mitigate the sufferings of the disadvantaged and to eliminate handicaps so as to elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but it an essential part of complex social change to relieve the poor etc. From handicaps, penury, to ward the off from distress and to make their lives livable for greater good of the society at large. Social justice, therefore, gives substantial degree of social, economic and political equality, which is the constitutional right of every citizen. In para 19, it was further elaborated that social justice is one of the disciplines of justice which relates to the society. What is due cannot be ascertained by absolute standard which keeps changing depending upon the time, place and circumstances.

The constitutional concern of social justice, as an elastic continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc, are languishing. It aims to secure dignity of their person. It is the duty of the State of accord justice to all members of the society in all facts of human activity. The concept of social justice embeds equality to flavour and enlivens practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in result.

Social and economic justice in the context of our Indian Constitution must, therefore, be understood in a comprehensive sense go remove every inequality to all citizens in social as well as economic activities and in every part of life. Economic justice means the abolition of those economic conditions which ultimately result in the inequality of economic values between men. It means to establish a democratic way of life built upon socio-economic structure of the society to make the rule of law dynamic.

The Fundamental Rights and the Directive are, therefore, harmoniously be interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the Court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., Social and economic justices provided in the Directives and the Preamble. The Fundamental Rights

and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.

Social justice, therefore, forms the basis of progressive stability in the society and human progress.

Economic justice means abolishing such economic conditions which remove the inequality of economic value between man and man, concentration of wealth and means of production in the hands of a few and are detrimental to the vast.

Law, therefore, must seek to serve as a flexible instrument of socio-

economic adjustment to bring about peaceful socio-economic revolution under rule of law. The Constitution, the fundamental supreme lex distributes the sovereign power between the Executive, the Legislature and the Judiciary. The Court, therefore, must strive to give harmonious interpretation to propel forward march and progress towards establishing an egalitarian social order."

The validity of the Act was accordingly upheld. It is already seen that in D.T.C's case (supra), this Court had held that right to life to a workman would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition and mercy of the employer. Income is the foundation to enjoy many Fundamental right and when work is the source of income, the right to work would become as such a fundamental right. Fundamental Right can ill-afford to be consigned to the limbo of undefined premises and uncertain application. In Bandhu Mukti Morcha vs. Union of India [(1984) 3 SCC 161], this Court had held that the right to life with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the people. In Olga Tellis's case, this court had held that the right to livelihood is an important facet of the right to life . Deprivation of the means of livelihood would denude the life itself. In C.E.S.C Ltd. & Ors. vs. S.C. Bose & Ors. [(1992) 1 SCC 441], it was held that the right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. The right to live with human dignity at least with minimum sustenance and shelter and all those rights and aspects of life which would o to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21. In life Insurances Corporation case, a Bench of two Judge had held that right to economic equality is a fundamental right. In Dalmia Cement Bharat Ltd. case, right to economic justice was held to be a fundamental right. Right to shelter was held to be a fundamental right in Olga Tellis's case; P.G. Gupta vs. State of Gujarat & ors, [(1995) Supp.(2) SCC 182]; M/s. Shantisar Builders vs. Narayan Khimlal Totame & Ors. [(1990) 1 SCC 520]; Chameli Singh & ors. vs. State of U.P. & Anr. [(1996) 2 SCC 549] etc. It would, thus, be seen that all essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is means to development and source to earn livelihood. thought, right to employment cannot, as a right, be claimed but after the

appointment to a post or an office, be it under the State, its agency instrumentality, jurisdic person or private interpreneur it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. The democracy offers to everyone as doer, an exerter and developer and enjoyer of his human capacities, as stated by Justice K.K. Mathew, in his "The Right to Equality and Property under the Indian Constitution" at page 47-48. These exercises of human capacity require access to the material resources and also continuous and sufficient intake of material means to maintain human energy. Lack of access to the material resources is an impediment to the development of human personality. This impediment, as a lack of access to means of labour, if we take labour i its broadest sense of human resources, requires removal only under the rule of law. To the workmen, right to employment is the property, source of livelihood and dignity of person an means of enjoy life, health and leisure. Equality, as a principle of justice, governs leisure, the distribution of material resources including right to employment. Private property ownership has always required special justifications and qualifications to reconcile the institution with the public interest. It requires to thrive and, at the same time, be responsive to social weal and welfare. St. Thomas Acquinas, in his "Selected Political Writings" (1948 Edn.) at page 169, has stated that the private rights and public needs are to be balanced to meet the public interest "the common possession of things is to be attributed to natural law, not in the sense that natural law decrees that all things are to be held in common and that there is to be no private possession, but in the sense that there is no distinction of property on the grounds of natural law, but only by human agreement, and this pertains to positive law, as we have already shown. Thus, private property is not opposed to natural law, but is an addition to it, devised by human reasons. If, however, there is such urgent and evident necessity that there is clearly an immediate need to necessary sustenance, if, for example, a person is in immediate danger of physical privation, and there is no other way of satisfying his need, then he may take what is necessary from another person's goods, either openly or by stealth. Nor is this strictly speaking fraud or robbery." Property is a social institution based upon an economic need in a society organised through division of labour, as propounded by Dean Rosco Pound in his "An Introduction to Philosophy of law" (1954 Edn.) page 125, at

129. M.R. Cohen in his "Property and Sovereignty" [13 Cornell Law Quarterly page 8 at 12 had stated that " the principle of freedom of personality certainly cannot justify a legal order wherein a few can, by virtue of their legal monopoly over necessities, compel others to work under degrading and brutalizing condition." If there is no property or of one does not derive fruits and means of one's labour, no one would have any incentive to labour in the broader sense, Social progress receives set back without equality of status, fraternity would not be maximised. Edward Kent in his "Property, Power and Authority", Prof. Herald Laski in his "Congress Socialist" dated April 11, 1936, had stated that "those who know the normal life of the poor will realise enough that without economic security, liberty is not worth living". Brooklyn Law Review page 541 at 547 has stated that "In modern translation, public officers and others who promulgate polices designed to increase unemployment or to deny or diminish benefits to the poor are accountable for the consequences to free human personality." It would, thus, be clear that in a socialist democracy governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment to the labour, would all harmoneously be blended to serve larger social

interest and public purpose.

Mahatma Gandhiji, the Father of the Nation, in his book "Socialism of my concept", has said thus:

> "To a people famishing and idle, the only acceptable form in which God can dare appear is work and promise of food as wages. God created man to work for his food, and said that those who ate without work were thieves. Eighty per cent of India are compulsory thieves half the year. Is it any wonder if India has become one vast prison?"

Again, he stressed:

> No one has ever suggested that grinding pauperism can lead to anything else than moral degradation. Every human being has a right to live and, therefore, to find the wherewithal to feed himself and, where necessary, to clothe and society the securing of one's livelihood should be, and is found to be the easiest thing in the world. Indeed, the test of orderliness in a country is not the number of millionaires it owns, but the absence of starvation among its masses.
>
> Working for economic equality means abolishing the eternal conflict between capital and labour. it means the levelling down of the few rich in whose hands is concentrated the bulk of the nations's wealth on the one hand, and the levelling up of the semi-staved, naked millions of the other. A non-violent system of Government is clearly an impossibility so long as the wide gulf between the rich and the hungry millions persists. The contrast between the palaces of new Delhi and the miserable hovels of the poor labouring class nearby, cannot last tone day in free India in which the poor will enjoy the same power as the richest in the land. A violent and bloody revolution is a certainty one day, unless there is voluntary abdication of riches and the power that riches give a sharing them for the common good".
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> Pandit Jawahar Lal Nehru, the architect of social and economic planned democracy, in this "Independence and After That" (Collection of Speeches 1946-49) Publication Division, Government of India 1949 Edn, at page 28, had stated that social equality in the widest sense and equality of opportunity for every one, every man and woman must have the opportunity to develop to the best of his or her ability. However, Merit must come from ability and hard work and not because of cast of birth or riches. Social equality would develop the sense of fraternity among the members of a social groups where each would consider the other as his equal, no higher or lower. A society, which does not treat each of its members as equals, forfeits its right to being called a democracy. All are equal partners in the freedom. Every one of our ninety four hundred million people must have equal right to opportunities and blessings that freedom of India has to offer. To bring freedom in a comprehensive sense to the common man, material resources and opportunity for appointment be made available to secure socio-economic empowerment which would ensure justice and

fullness of life to workmen, i.e., every man and woman. In "Beyond Justice"

by Agnes Heller at page 80, the distribution of material goods, he had stated on distributive justice thus:

"The distribution of material goods had always been of concern in images and theories of justice, but, even when the issue was given the highest importances, it was subjected to and understood within a general theory of justice, and addressed within the framework of a complete socio-political concept of justice. As we have seen, in the prophetic concept of justice the misery of the poor called for dividne retribution, since alleviating misery was believed to be a matter not of optional charity but of moral duty, To neglect this duty was to sin, to breach the divine laws. Plato proposed the abolition of private property for the caste of guardians in order to make the Republic as a whole just.

Aristotle, who coined the term 'distributive justice', recommended a relative equality of wealth -

neither too much nor too little, but 'medium wealth' - as a condition of the good life of the good citizen and the good city.

Even Roussseau., the most egalitarian philosopher in respect of distribution, subjected the solution of this problems to the general patterns of an socio-

political concept of justice.

Locke did not completely break with this longstanding tradition either. As we have seen, he contributed to the emergence of the concept' retributive justice' rather than 'distributive justice. However, he had already presented a sophisticated theory legitimizing inequality in property owner ship, a theory deriving property from work. I have mentioned that Locke did not support the idea 'to each according to his entitlement', for he but 'entitlement' into the 'to each category, whereas the 'according to category was defined by 'work' (mixing work and nature).

But Locke never claimed that entitlement was the main issue, let alone the only issue of justice.

Humane is undoubtedly the founding father of that branch of socio -

political justice now called 'distributive'. He even claimed that property and property alone is the subject matter of justice. He asserted too that retribution (negative sanctions) in the suspension of justice for the sake of social utility: 'When any man, vein in political society, renders himself by his crimes, obnoxious of the public, he is punished by the law in his goods and person; that is, the ordinary rules of justice are,

with regard to him suspended for a moment.

Humane also deduced justice from 'public utility'. Inequality in property ownership is just because it is useful. We can imagine two cases - and extreme cases- where property (inequality in property ownership) qua justice loses its social usefulness: the situation of absolute abundance and the situation of absolute scarcity. In the former, property is useless, redundant because, if all needs can be satisfied, we are beyond justice. In the latter situation property rules are violable, thus justice must be be suspended. Yet we live in a situation of limited abundance (or limited scarcity).

This is Humane the concept 'justice' reduces to the idea 'to reach according to his property entitlement'; all other uses of the notion 'justice' are seen as relating to the 'suspension of justice') although the term 'equity' can remain relevant in these other contexts). Humane, an extremely sincere man, did not shirk from facing proposal alien to his own. He stated, nature is so liberal to mankind, that. were all her presents equally divided among the species, and improved by art and industry, every individual would enjoy all the necessaries, and even most of the comforts of life. It must also be confessed, that, wherever we depart from this equality, we rob the poor of more satisfaction than we add to the rich."

Justice K.K. Mathew in his "Democracy Equality and Freedom" at page 55 has, therefore, stated that the singlemost important problem in constitutional law for years to come in this court will be how to implement the Directive Principles and at the same time give full play to the Fundamental Right. It is only by implementing the Directive Principle that distributive justice will be achieved in the society. Justice, as Aristotle said, "is the bond of men in society" and "States without justice" are, as St. Augustine said, "robber-bands".

In Keshvanand Bharti's case, Jaganmohan Reddy, J. had held that "what is emplicit in the Constitution is that there is a duty one the courts to interpret the Constitution and the laws to further the Directive Principles which under Article 37 are fundamental in the governance of the country". The majority had held in favour of the way for the implementation of the Directive Principles under rule of law. Justice Palekar, in particular had laid emphasis on social and economic justice to make fundamental Rights a reality.

Coming to the meaning of "regulation" under the Act, in Blacks law Dictionary (sixth edition) at page 1286 the word "regulation" is defined as "the act of regulating; a rule or order prescribed for management or government; a regulating principle; a precept. Rule or order prescribed by superior or competent authority relating to action of those under its control". In Corpus Juris Secunderon (Vol.76) at page 612, the power to regulate carries with it full power or the thing subject to regulation and in the absence of restrictive words, the power must be regarded as plenary or the interest of public. it has been held to contemplate or employ the continued existence of the subject matter. In "Craise on Statute Law" (7th Edition) at page 258, it is stated that if the legislation enables something to be done, it gives power at the same time "by necessary implication, to do

everything which is indispensable for the purpose of carrying out the purposes in view". In D.K.V. Prasada Rao & Ors. vs. The Government of Andhra Pradesh represented by its secretary, Home Department Secretariat Buildings, Andhra Pradesh Hyderabad & Anr. [(1983) 2 AWR 344 - AIR 1984 AP], a Division Bench of the Andhra Pradesh High Court, (to which one of us, K. Ramaswamy, J., was a member) had to consider the question elaborately whether the power to regulate cinematograph Act and Andhra Pradesh Cinematograph Regulation would include power to fix rates of admission under the cinema/theaters. Though there was no specific power under the Act or the Regulation to fix rates of admission, it was held at page 360 that "power to regulate would include power to fix the rate of admission into the cinema/theaters". Lord Justice hale of England about three centuries ago in his treatise "De Portibus Moris" reported in Harg law tracts 78 had stated that "when the private property is affected with a public interest, it ceases to be "juris privati" only and it becomes clothed with a public interest when used in a manner to make it of public consequence and affect the community at large; and so using it, the owner grants to the public an interest in that use, and must submit to be controlled by the public for common good". This Statement was quoted with approval by the Supreme court of United States of America in 1876 in leading judgment, munn vs the people of Illinois [94 US 115]. Justice whaite dealing with question whether the legislature can fix the rates for storage of grains in private warehouses by a statue of 1871 when its interpretation had come up for consideration of right to property and its enjoyment and of the public interest, it was held that "under such circumstances it is difficult to see why, if the common carrier or the miller, or the ferrymen or the innkeeper or the wharfinger or the baker, or the cartmen, or the chakney-coachman, pursues a public employment and exercise "a sort of public office," these plaintiffs in error do not. They stand, to use again the language of their counsel, in the very "gateway of commerce," and take toll from all who pass. Their business "most certainly tends to be a common charge and has become a thing of public interest and use." Therein, there is a specific observation which is apposite to the facts in this case. It was held that the statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel the owners to grant the public an interest in their property, but the Act declares their obligations, if they use it in the particular manner. It is immaterial whether the plaintiffs therein had built their warehouses and established their business before the regulation was made. It was held that after, the regulation has come into force, they are enjoined to abide by the regulation to carry on the business. This Court had approved the ratio in Prasadrao's case; when it was followed by Karnataka High Court against which an appeal came to be filed and the power to regulate rates of admission into cinema/theaters was upheld by this court.

In Horatio J. Olcott vs. County Board of Supervisors of Fond Du Lac County [21 L. Ed. 382 at 388], the Supreme Court of united states of America had held that whether the railroad is a private or a public one, the ownership thereof is not material that the owners may be private company but they are compellable to permit the public to use their works in the manner in which such work can be used. In John D. Graham, Commissioner, Department of Public Welfare, State of Arizona vs. Carmen Richardson etc. [29 L.Ed. 2nd 534], the question was whether the respondent alien in Arizona will be denied of welfare benefits offending 14th Amendment to the American Constitution. Interpreting 14th Amendment, the Supreme court of united states of America had held that the word "person" in the context of welfare measures encompasses lawfully resident aliens as well as citizen of the United States and both citizen and alien are entitled to the equal protection of the laws

of the state in which they reside. The power to deny the welfare benefit was negated by judicial pronouncement. In Grace Marsh vs. State of Alabama [90 L.Ed. 265], when the appellant was distributing pamphlets in privately owned colony, be was convicted of the offence of trespass on albama Statute. On writ of certiorary, the Supreme Court of United States of America deciding the right to pass and repass and the right of freedom of expression and equality under 14th amendment, had held by majority that the corporate's right to control the inhabitants of the colony is subject to regulation but the ownership does not always mean absolute denomination. The more an owner, for his advantage, opens up his property in use by public in general, the more do his right become circumscribed by statutory and constitutional rights of those who use it. The conviction was in violation of Ist and 14th Amendment. In Republic Aviation Corporation vs. National Labour Relations Board [324 US 793 = 89 L.Ed. 1372], the owner of privately held bridges, ferries, turnpikes and railroads etc. may operate them as freely as a farmer does his farm, but when it operated privately to benefit the public, their operation is essentially a public function. It was subject to State regulation. The Supreme court, therefore, had held that when the rights of the private owners and the constitutional rights requires interpretation, the balance has to be struck and the court would, mindful of the Fact that the right to exercise liberties safeguarded by the Constitution lies at the foundation of free government by free men, in all cases weigh the circumstances and appraise the reasons in support of the regulations of the rights etc. It was accordingly held that for interpretation of the rights, it is but the duty of the Court to weigh the balance and to consider the case in the dropback. In Georgia Railroad & Banking Co. vs. James M. Smith [128 US 377 = 32 L.Ed. 174], it was held that in the absence of any provision in the charter, legislature has power to prescribe rates when the property is put to public use and the statue was held to be constitutional. German Aliance Insurance Co. vs. IKL Lews [58 L.Ed. 1011 = 233 US 387], per majority it was held that a business may be as far as affected with a public interest as to permit legislative regulation of its rates and charges, although no public trust is imposed upon the property and although public way not have a legal right to demand and receive service.

It is true that in Dena Nath's case, a Bench of two judges was to consider the question whether or not the persons appointed as contract labour in violation of section 7 and 12 of the Act should be deemed to be direct employees of the principal employer. The Bench on literal consideration of the provisions, had concluded that the act merely regulates condition s of service of the workmen employed by a contractor and engaged by the principal employer. On abolition of such contract labour altogether by the appropriate Government nether the Act nor the rules provide that labour should be directly absorbed by the principal employer. It was, therefore, concluded that the High Court exercising the power under Article 226 of the Constitution cannot give direction for absorption. True, Court cannot enquire into and decide the question whether employment of contract labour in any process operation or any other work in establishment should be abolished or not and it is for the appropriate Government to decide it. The Act does not provide total abolition of the contract labour system under the Act. The Act regulates contract labour system to prevent exploitation of the contract labour. The Preamble of the Act furnishes the key to its scope and operation. The Act regulates not only employment of contract labour in the establishment covered under the act and its abolition in certain circumstances covered under section 10 (2) but also "matters connection therewith". The phrase "matters connected therewith" gives clue to the intention of the Act. WE have already examined in detain the operation of the provisions of the Act

obviating the need to reiterate the same once over. The enforcement of the provisions to establish canteen in every establishment under Section 16 is to supply food to the workmen at the subsidised rates as it is a right to food, a basic human right. Similarly, the provision in Section 17 to provide rest rooms to the workmen is a right to leisure enshrined in Article 43 of the Constitution. Supply of wholesome drinking water, establishment of latrine and urinals as enjoined under Section 18 are part of basic human right to health assured under Article 39 and right to just and human conditions of work assured under Article 42. All of them are fundamental human rights to the workmen and are facets of right to life guaranteed under Article 21. When the principal employer is enjoined to ensure those rights and payment of wages while the contract labour system is under regulation, the question arises whether after abolition of the contract labour system that workmen should be left in a lurch denuding them of the means of livelihood and the enjoyment of the basic fundamental rights provided while the contract labour system is regulated under the Act? The Advisory Committee constituted under section 10(1) requires to consider whether the process, operation and other work is incidental to or necessary for the industry,, trade, business, manufacture or occupation that is carried on in the establishment, whether it is of perennial nature, that is to say, whether it is substantive duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment, whether it is done ordinarily through regular workmen in the establishment or an establishment similar thereto, whether it is sufficient to employ considerable number of whole time workmen. Upon consideration of these facts and recommendation for abolition was made by the advisory Board, the appropriate Government examines the question and takes a decision in that behalf. The explanation to Section 10 (2) provides that when any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final. It would thus give indication that on the abolition of the contract labour system by publication of the notification in the official Gazette, the necessary concomitant is that the whole time workmen are required for carrying on the process, operation or other work being done in the industry, trade, business, manufacture or occupation in that establishment. When the condition of the work which is of perennial nature etc., as envisaged in sub-section (2) of Section 10, thus are satisfied, the continuance of contract labour stands prohibited and abolished. The concomitant result would be that source of regular employment became open.

What would be the consequence that ensure from abolition is the question? It is true that we find no express provision in the Act declaring the contract labour working in the establishment of the principal employer in the particular service to be the direct employees of the principal employer. Does the Act intend to deny the workmen to continue to work under the Act or does it intend to denude him of the benefit or permanent employment and if so, what would be the remedy available to him. The phrase "matters connected therewith" in the Preamble would furnish the consequence of abolition of contract labour. In this behalf, the Gujarat Electricity Board case, attempted, by interpretation, to fill in the gap but it also fell shout of full play and got beset with insurmountable difficulties in its working which were not brought to the attention of the Bench. With due respect, such scheme is not within the spirit of the Act. As seen, the object is to regulate the contract labour so long as the contract labour is not perennial. The labour is required to be paid the prescribed wages and are provided with other welfare benefits envisaged under the Act under direct supervision of the principal employer. The violation visits with penal consequences. Similarly, when the appropriate Government finds that the employment is of perennial nature etc, contract system

stand abolished, thereby, it intended that if the workmen were performing the duties of the post which were found to be of perennial nature on par with regular service, they also require to be regularised. The Act did not intend to denude them of their sources of livelihood and means of development, throwing them out from employment. as held earlier, it is a socio-economic welfare legislation. Right to socio-economic justice and empowerment are constitutional rights. right to means of livelihood is also constitutional right. Right to facilities and opportunities are only part of and means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood. The Division Bench in Dena Nath's case has taken too narrow a view on technical consideration without keeping at the back of the mind the constitutional animations and the spirit of the provisions and the object which the Act seeks to achieve. The operation so the Act is structured on an unbuilt procedure leaving no escape route. Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen. Gujarat Electricity's case, being of the co-ordinate Bench, appears to have softened the rough edges of Dena Nath's radio. The object of the Act is to prevent exploitation of labour. Section 7 and section 12 enjoin the principal employer and the contractor to register under the Act, to supply the number of labour required by the principal employer through the contractor; to regulate their payment of wages and conditions of serve and to provide welfare amenities, during subsistance of the contract labour. The failure to get the principal employer and the contractor registered under the Act visits with penal consequences under the Act. The object, thereby, is to ensure continuity of work to the workmen in strict compliance of law. The conditions of the labour are not left at the whim and fancy of the principal employer. He is bound under the Act to regulate and ensure payment of the full wages, and also to provide all the amenities enjoined under Section 16 to 19 of the Act and the rules made thereunder. On abolition of contract labour, the intermediary, i.e., contractor, is removed from the field and direct linkage between labour and principal employer is established. Thereby, the principal employer's obligation to absorb them arises. The right of the employee for absorption gets ripened and fructified. If the interpretation in Dena Nath's case is given acceptance, it would be an open field for the principal employer to freely flout the provisions of the Act and engage workmen in defiance of the Act and adopt the principle of hire and fire making it possible to exploit the appalling conditions in which the workmen are placed. The object of the Act, thereby gets rudely shattered and the object of the Act easily defeated. Statutory obligations of holding valid licence by the principal employer under Section 7 and by the contract under Section 12 is to ensure compliance of the law. Dena Nath's ratio falls foul of the constitutional goals of the trinity; they are free launchers to exploit the workmen. The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1), the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the prohibition of the employer to commit breach of the provisions of the act and to put an end to exploitation of the labour and to deter him from acting in violation of constitutional right of the workmen to his decent standard of life, living, wages, right to health etc. The founding fathers placed no limitation or fetters on the power of the High Court

under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as reach injustice wherever it is found. The court as sentinal in the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions. The right to judicial review is no a basic structure of the Constitution by catena of decisions of this Court starting from Indira Gandhi vs. Raj Narayan [AIR 1975 SC 2299] and Bommai's case. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court would properly mould the relief and grant the same in accordance with law.

The public law remedy given by 'Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalished and became obliterated. In L.I.C. v. Escort Ltd. & Ors. [(1986) 1 SCC 264 at 344]. this Court in paragraph 102 and pointed out that the difficulty will lie in demarcating the frontier between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact situation that his court held that there was no need to state reasons when the management of the shareholders buy resolution reached the decision. This court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitation as held in M.C. Mehta & Ors. v. Union of India & Ors.[(1987) 1 SCC 395].

The legal right of an individual may be founded upon a contract or a statue or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority need to fall in the realm of public law-be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in Calcutta Gas Co. Ltd. v. State of West Bengal [Air 1961 SC 1044, para 5] that if the legal right of a Manager of company is denuded on the basis of recommendation by the Board of Management of the company, it would give him right to enforce his right by filling a writ petition under Article 226 of the Constitution. In Mulchand v. State of M.P. [AIR 1968 SC 1218], this court had held that even though the contract was void due to non-compliance of Article 229, still direction could be given for payment of the amount on the doctrine of restitution under Section 70 of the Act, since the had derived benefit under the void contract. The same view was reiterated in State of West Bengal v. V.K.

Mandal & SOrs. [AIR 1962 SC 779 of 789] and in New Marine Coal Co. Ltd, v. Union of India [(1964) 2 SCR 859]. In Gujarat State Financial Corporation. v. Lotus Hotel [(1983) 3 SCC 370], a direction was issued a to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel. In Mahabir Auto Store v. Indian Oil Corporation. [(1990) 3 SCC 752], contractual obligation were enforced under public law remedy of Article 226 against the instrumentality of the State. In Shreelekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212] contractual obligations were enforced when public law element was involved, Same Judicial approach is adopted in other jurisdictions, namely, the House of Lords in Gillic v. West Norfolk and Wisbech Area health Authority [(1986) AC 112] wherein the House of Lords held that though the claim of the plaintiff was negatived but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in Dr. Roy v. Kensinstone and Chelsea Family Practioners Committee [(1992) IAC 624], the House of Lords reiterated that though a matter of private law is enforceable by ordinary actions, a court also is free from the constraints of judicial review and that public law remedy is available when the remuneration of Dr. Roy was sought to be curtailed. In L.I.C. v. Consumer Education and Research Centre & Ors. [(1995) 5 SCC 482], this court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated.

In write petitions filed under Article 32 of the Constitution of India, the petitioners, in R.K. Panda vs. Steel Authority of India & Ors. [(1994) 5 SCC 304], contended that they had been working in Rourkela plant of the Steel authority of India for period ranging between 10 and 20 years as contract labour. The employment was of perennial nature. The non-regularisation defeated their right to a job. The change of contractors under the terms of the agreement will not have any effect o their continuing as a contract labour of the predecessor contractors. The respondent contended that due to modernisation of the industry, the contract labour are likely to be retrenched. The were prepared to allow the contract labour to retire on voluntary basis or to be absorbed for local employment. A Bench of three judges of this court had held that the contract labour were continuing the employment of the respondent for last 10 years, in spite of change of contractors, and hence they were directed to b e absorbed as regular employees. On such absorption, their inter se seniority be determined, department or job-wise, on the basis of continuous employment; regular wags will be payable only for the period subsequent to absorption and not for the period prior thereto. Such of those contract labour is respect of whom the rate of wages have not been fixed, the minimum, rate of wages would be payable to such workmen of the wages of the regular employees. The establishment was further directed to pay the wages. If the staff is found in excess of the requirement, the direction for regularisation would not stand in their way to reached the workmen in accordance with law. If there arises any dispute as regards the identification of the contract labour to be absorbed, the Chief Labour Commissioner, Central Government, on evidence, would go into that question. The retrenched employees shall also be entitled to the benefit of the decision. The 10 years period mentioned by the Court would count to calculate retrenchment benefits. This also of there being no report by the Advisory Board under section 10(2) and no prohibition under section 10(1), the Act was enforced and this Court directed to absorb them within the guidelines laid down in the judgment. This ratio also is an authority for the proposition that the jurisdiction of the court under Article 32, pari materia with Article 226 which is much a wider than Article 32 " for any other

purpose" under which suitable directions are required to have given based on factual background. Therein the need to examine the correctness of Dena Nath's radio did not arise nor is it a case of abolition of contract labour. So, its reference appears to be as a statement if laying the law in Dena Nath's case.

Prior to the Act came into force, in The standard- Vacuum Refining Co. of India vs. Its Workmen & Ors. [(1960 3 SCR 466], a Bench of three judges of this court had held that the contract labour, on reference under section 10 of the ID Act was required to be regularised, after the industrial disputes was adjudicated, under section 2(k) of the ID Act. Since workmen had substantial interest in the dispute, it was held that the direction issued b the Tribunal that the contract labour should be abolished was held just in the circumstances of the case and should be abolished was held just in the circumstances of the case\and should to be interfered with. In other words, this court upheld the jurisdiction of Tribunal after deciding the dispute as an industrial dispute and gage direction to abolish the contract labour. The Power of the Court is not fettered by the absence of any statutory prohibition.

In Security Guards Board for Greater Bombay and Thane District vs. Security & Personnel Service Pvt. Ltd. & Ors. [(1987) 3 SCC 413], the question as regards absorption of security guards employed in any factory or establishment etc. under Maharashtra Private Security Guards (Regulation of Employment and welfare) Act, 1981 had come up for consideration. It was held that the exemption under Section 23 is in regard to the security guards employed in the factory or establishment or in any class or classes of fabricating factory's establishment. The co-relationship of the security guards of classes of security guards who may be exempted for the operation of the Act is with the factory or establishment sin which they work and not with agency or agent through and by whom they were employed. In other words., the ratio of that case is that it is not material as to through which contractor the employee came to be appointed or such labour came to be engaged in the establishment concerned. The direct relationship would emerge after the abolition of the contract labour. In Sankar Mukherjee & Ors. vs. Union of India & Ors. [AIR 1990 SC 532], the State Government exercising the power under Section 10 of the Act prohibited employment of contract labour in cleaning and stacking and other allied jobs in the brick department. Loading and unloading of bricks from wagons and trucks was not abolished. Writ petition under Article 32 of the Constitution of India was filed. A Bench of three judges of this court had held that the act requires to be construed liberally so as to effectuate the object of the act. The bricks transportation to the factory, loading and unloading are continuous process; therefore, all the jobs are incidental to or allied to each other. All the workmen performing these jobs were to be treated alike. Loading and unlading job and the other jobs were of perennial nature. There fore, there was no justification to exclude the job of loading and unloading of bricks from wagons and trucks from the purview of the notification dated February 9, 1980. Thus, this Court had given direction to abolish the contract labour system and to absorb the employees working in loading and unloading the bricks which is of perennial nature. In National Federation of Railway Porters, Vendors & Bearers vs. Union of India & Ors. [(1995) 3 SCC 152], a Bench of two judges to which one of us (K. Ramaswamy, J.) was a member, was to consider whether the Railway Parcel Porters working in the different railway stations were contract labour for several years, when they filed write petition, the Central Assistant Labour commissioner was directed to enquire and find out whether the job is of a permanent and

perennial nature and whether the petitioners were working for a long period. On receipt of the report, with findings in favour of favour of workers, the Bench had directed the Railway Administration to Regularise them into the service. This case also is an authority for the proposition that in an appropriate case the Court can give suitable directions to the competent authority, namely, central labour Commissioner to enquire and submit a report. The perennial nature of the work and other related aspect are required to be complied with before directions are given under of Section 10(1) and 10(2) of the Act. On receipt of the report, the Court could mould the relief in an appropriate manner to meet the given situation. In Praga Tools case, this Court held that mandamus may be issued to enforce duties and positive obligation of a public nature even though the persons or the authorities are not public officials or authorities. The same view was laid in Anadi Mukta v. V.R. Rudani [(1989) 2 SCC 691] and Unni Krishna v. State of A.P. [(1993) 1 SCC 645]. In Comptroller & Auditor General of India v. K.S. Jagannathan [(1986) 2 SCC 679], this court held that a mandamus would be issued to implement Directive Principles when Government have adopted them. They are under public obligations to give preferential treatment implementing the rule of reservation under Articles 14 and 16 (1) and (4) of the Constitution. In L.I.C. case, directions were issued to frame policies accessible to common man.

Thus, we hold that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under section 10 (1) of the Act, in a proper case, the court as sentinal in the qui vive is required to direct the appropriate authority to act in accordance with law and submit a report to the court and based thereon proper relief should be granted.

It is true that learned counsel for the appellant had given alternative proposal, but after going through its contents, were are of the view that the proposal would defeat, more often than not, the purpose of the Act and keep the workmen at the whim of the establishment. The request of the learned Solicitor General that the management may be left with that discretion so as to absorb the workmen cannot be accepted. In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant. Though there exists no specific scale of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like class 'D' employees. There is no impediment in the way of the appellants to absorb them in the last grade, namely, grade IV employees on regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employees working on the job etc. That would be the indicia to absorb the employees on regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employes working on the job etc. That would be the indicia to absorb the employees on regular basis in the respective services in the establishment. Therefore, the date of engagement will be the criteria to determine their inter se seniority. In case, there would be any need for retrenchment of any excess staff, necessarily, the principle of "last come, first go" should be applied subject to his reappointment as and when the vacancy arises.

Therefore, there is no impediment in the way of the appellants to adopt the above procedure. The award proceedings as suggested in Gujarat Electricity Board case are beset with several incongruities and obstacles in the way of the contract labour for immediate absorption. Since, the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their cause for reference under section 10 of the ID Act. The workmen, who no abolition of contract labour system have no right to seek reference under section of 10 of ID Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at by for absorption. it would be difficult for them to work out their right. Moreover, it is a trade and time-consuming process and years would role by. Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compelling the workman at the mercy of the principal employer. Considered from this pragmatic perspective, with due respect to the learned judges, the remedy valuable assistance given by all the learned counsel in the appeals.

The appeals are accordingly dismissed, but in the circumstances, without costs.