

(2012) 11 BOM CK 0135

In the Bombay High Court

Case No : Company Appeal (Lodging) No. 28 of 2012 Along With Company Application (Lodging) No. 28 of 2012 in CLB Company Application No. 275 of 2012 in CLB Company Petition No. 62 of 2009

Arunachalam Muthu

APPELLANT

Vs

Nafan BV and Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 12, 18, 25, 5
Civil Procedure Code, 1908 (CPC) — Section 151, 9
Companies Act, 1956 — Section 10E, 10E(1), 10E(1A), 10E(2), 10E(3)
Constitution of India, 1950 — Article 225
Criminal Procedure Code, 1973 (CrPC) — Section 195, 196
Foreign Exchange Management Act, 1999 — Section 34, 35
Government of India Act, 1915 — Section 108, 108(2)
Income Tax Act, 1961 — Section 252(5), 255
Monopolies and Restrictive Trade Practices Act, 1969 — Section 2A
Penal Code, 1860 (IPC) — Section 193, 228
Trade Marks Act, 1999 — Section 91

Citation : (2013) 2 ALLMR 127 : (2013) 115 CLA 252 : (2013) 179 CompCas 249 : (2013) 119 SCL 434

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : Janak Dwarkadas, Along with Mr. N.H. Seervai, Mr. Sharan Jagtiani, Mr. Rohan Rajadhyaksha, Mr. Chirag Kamdar, Mr. Gerald Misquitta, instructed by M/s. Mahendra Patil and Associates, for the Appellant; F.E. De'vetre , Along with Mr. Virag Tulzapurkar , Mr. Arun Siwach, Vaibhav Mishra and Mr. Omar Ahmad, instructed by M/s. Amarchand and Mangaldas and Suresh A. Shroff and Co., for Respondent No. 1, Mr. Dara Zaiwalla , along with Mr. Alok Patel, instructed by M/s. Eastley Lam and Co., for Respondent No. 2, Mr. Aspi Chinoy , instructed by M/s. Eastley Lam and co., for Respondent Nos. 3 and 4, Mr. Mayur Khandeparkar along with Ms. Nidhi Shetye, instructed by M/s. Kanga and Co. and Mr. D.J. Khambata , along with Mr. Rohaan Cama, instructed by M/s. Beni and Co., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Kathawalla, J.—The Appellant has filed the above Appeal u/s 10F of the Companies Act, 1956 ("the Act") impugning the order dated 31st May 2012 passed by the Chairman, Company Law Board ("CLB"). By the said order, the Chairman, CLB has rejected Company Application No. 275 of 2012 moved by the Appellant under Regulation 4 and Regulation 44 of the Company Law Board Regulations, 1991 ("the CLB Regulations"). The said Application (which was made to the Chairman and not to the Principal Bench of the CLB) was for the following main reliefs:

(a) The above captioned Company petition be transferred to the Southern Bench of the Hon''ble Company Law Board for hearing to be completed before the Hon''ble Company Law Board Member Shri Kanthi Narahari on the already agreed dates or any other mutually convenient dates;

(b) In the alternative, the Hon''ble Company Law Board Member Shri Kanthi Narahari be permitted to preside over the Hon''ble Company Law Board, Western Bench for the limited purpose of completing the hearing in the above captioned Company petition on the already agreed dates or any other mutually convenient dates;

The following questions of law arise in the above Appeal which is taken up for hearing and final disposal:

(a) Whether the impugned order is amenable to challenge u/s 10F of the Act?

(b) Whether the Chairman of the CLB has the power under the Act and the CLB Regulations to grant either of the reliefs prayed for in the Company Application by the Appellant?

(c) Whether the impugned order amounts to an abdication or fettering of jurisdiction in a case where such power ought to have been exercised?

(d) Whether the impugned order is perverse, arbitrary, unsustainable in law and therefore deserves to be set aside?

2. Some relevant facts which have led to the filing of the above Company Application by the Appellant before the Chairman, CLB are set out hereunder:

2.1 Respondent No. 1 (Original Petitioner) filed Company Petition No. 62 of 2009 under Sections 397 and 398 of the Act before the CLB, Western Region Bench, Mumbai inter alia against the Appellant (Original Respondent No. 2) seeking various reliefs. The final hearing of Company Petition No. 62 of 2009 was expedited by an order of this Court dated 15th January 2010 with a direction that the Company Law Board should conclude the hearing by 15th May 2010, which was subsequently extended to 31st July 2010. Company Petition No. 62 of 2009 was heard by the learned Member Shri Kanthi Narahari for a period of 23 days (full and half days) approximately spanning over two years. During this period, a total of about 16 volumes of affidavits and documents were filed by the parties. Detailed notes/written submissions were tendered by the Appellant and

Respondent Nos. 3 and 4 during the course of their arguments in reply. In the course of Respondent No. 1/original Petitioner's rejoinder arguments, at least 19 notes and 30 additional cases were tendered by the Respondent No. 1/original petitioner. A few additional notes had been tendered by the Appellant and Respondent Nos. 3 and 4 during the arguments in sur-rejoinder as well. About 90 hours of judicial time was spent in hearing Company Petition No. 62 of 2009. According to the Appellant, prior to 4th May 2012, the hearing of Company Petition No. 62 of 2009 had reached the stage of arguments of sur-rejoinder which had already begun. All that remained was one and half days of arguments in sur-rejoinder and one day of arguments in sur-sur-rejoinder for which dates were also fixed i.e. 16th and 17th July 2012.

2.2 However, on 4th May 2012, the learned Member of the Western Region Bench Shri Kanthi Narahari was transferred to the Southern Region Bench at Chennai with effect from 7th May 2012. It will not be out of place to mention here that though the Appellant has stated that only two and half days were required by the Advocates for the respective parties to conclude the final hearing of the Petition, upon perusal of the roznama this Court has noted that as far back as on 7th July 2011, the learned Member of the CLB Shri Kanthi Narahari had passed the following order:

Adjournment request was made on behalf of the petitioner on health grounds. The respondents opposed the same. Even though the Learned Counsel for the petitioner and the respondents, have argued the matter extensively on various dates and requested the Bench to accommodate four more days for further arguments. In spite of the fact that this Bench is overburdened with the hearings, however, the Bench accommodated the counsel for advancing their arguments on four days. Therefore, the matter was fixed for four days for hearing i.e. on 10th, 11th, 20th and 21st July, 2011. The petitioners now sought adjournment on the health grounds and requested the Bench to take up the matter as it is fixed on 20th & 21st July, 2011. No further dates will be given to the parties except the above dates and the Counsel shall confine their arguments for two hours each i.e. the petitioners and the respondents. If for any reason the Counsel not able to complete their arguments, the Bench will reserve the matter for orders.

Despite such a strong, clear and specific order, the parties have thereafter argued the matter for almost a span of one year i.e. on 20th July, 2011, 21st July, 2011, 19th September 2011, 22nd September 2011, 8th November 2011, 14th March 2012, 15th March 2012 and 26th April 2012.

2.3 In view of the transfer of Shri Kanthi Narahari to the Southern Region Bench at Chennai on 7th May 2012, as set out hereinabove, the Appellant filed Company Application No. 275 of 2012 before the Chairman, CLB, to transfer Company Petition No. 62 of 2009 to the learned Member Shri Kanthi Narahari to the Southern Bench of the CLB, for hearing or in the alternative to permit Shri Kanthi Narahari to preside over the CLB, Western Bench, for the limited purpose

of completing the hearing on the dates assigned or on any other mutually convenient dates. The said application was mentioned before the Chairman, CLB on 22nd May 2012, when the learned Chairman, CLB passed the following order:

C.A. No. 275/2012 mentioned. Counsel appearing for the Petitioner/non-applicant accepts notice and prays for time to file response. Pleadings be completed before the next date of hearing. List for hearing on 31.5.2012 at 3.30 p.m.

Thereafter the parties filed their respective affidavits and counter affidavits in the said Company Application No. 272 of 2012. In the said affidavits both sides attempted to blame each other for the delay caused, despite the matter being expedited by this Court and directed to be heard by July, 2010.

2.4 The Learned Chairman, CLB heard the parties on the reliefs sought in the above Company Application No. 275 of 2012 and rejected the same by his order dated 31st May 2012. As set out hereinabove, being aggrieved by the said order of the Chairman, CLB, the Appellant has filed the above Appeal impugning the said order u/s 10F of the Act.

3. As set out hereinabove, the first question of law which arises in the present appeal is whether the impugned order is amenable to challenge u/s 10F of the Act. It is now well settled that in order to determine whether an order is a judicial order or a quasi-judicial order, the test is whether there is a lis or contest between two contending parties making rival claims and a statutory authority is required to adjudicate upon the rival contentions. The decision of the Hon'ble Supreme Court in the case of Indian National Congress (I) Vs. Institute of Social Welfare and Others, is relevant in this regard wherein the Hon'ble Supreme Court observed as follows:

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforesaid decisions are these:

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a lis before a statutory authority, the authority would be a quasi-judicial authority if it is required to act judicially.

26. Coming to the second argument of learned counsel for the respondents, it is true that mere presence of one or two attributes of quasi-judicial authority would not make an administrative act as a quasi-judicial act. In some case, an

administrative authority may determine question of fact before arriving at a decision which may affect the right of an appellant but such decision would not be a quasi-judicial act. It is a different thing that in some cases, fair play may demand affording of an opportunity to the claimant whose right is going to be affected by the act of the administrative authority, still such an administrative authority would not be a quasi-judicial authority.

27. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority

The above decision is referred to by the Hon''ble Supreme Court in the case of Dr. Manju Varma Vs. State of U.P. and Others, . In the said decision, the Hon''ble Supreme Court concluded that where, by a detailed and reasoned order, the Chief Justice heard the parties and directed a transfer, then in those circumstances there can be no doubt that the order of the Chief Justice was, if not judicial, at least quasi-judicial. In the instant case, the judicial/quasi-judicial character of the impugned order is established by the fact that the Company Application invoked, inter alia, Regulation 44 of the CLB Regulations, which is the inherent power of the CLB. The exercise or refusal to exercise this power - or any other power to transfer a matter or constitute a Special Bench under the Act or CLB Regulations - on an application by a party, would require the Learned Chairman to act judicially. In fact, prior to the impugned order, by order dated 22nd May 2012, the Learned Chairman directed the parties "to complete pleadings" which itself is an indication that the Learned Chairman was acting judicially or quasi-judicially when deciding the Company Application. The impugned order passed in the present case therefore clearly satisfies the test laid down by the Hon''ble Supreme Court in the above mentioned two cases i.e. Indian National Congress (I) vs. Institute of Social Welfare and others (supra) and Manju Varma (Dr.) vs. State of U.P. and others (supra) and is in fact of judicial/quasi-judicial character and therefore amenable to Appeal u/s 10F of the Act.

4. There is one more reason why the impugned order must be held to be appealable u/s 10F of the Act. The impugned order does raise substantial questions of law, inter alia, as to whether the Learned Chairman of the CLB in the facts of the present case as mentioned above, has validly exercised his discretion and jurisdiction. The decision of the Hon''ble Supreme Court in the case of Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, considered the scope of an appeal under the FEMA Act under an appeal provision that is in pari materia to Section 10F of the Act. The 1 Hon''ble Supreme Court laid down the position as to the right to appeal, wherein it observes as under:

19. The word "any" in this context would mean "all". We are of this opinion in

view of the fact that this section confers a right of appeal on any person aggrieved. A right of appeal, it is well settled, is a creature of statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by statute, as it is barred here u/s 34 of FEMA, is an inherent right (See Section 9 of the Civil Procedure Code) but a right of appeal is always conferred by a statute. While conferring such right a statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise.

20. u/s 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from "any" "order or "decision" of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word "any" would mean "all"

Section 10F of the Act uses identical language and provides that "any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies (Second Amendment) Act, 2002 may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order..." It is therefore clear that the ambit of Section 10F of the Act, by analogy, would include an appeal against any order, irrespective of its nature, so long as the test of a "question of law" being raised, is met.

5. In the circumstances, I hold that the impugned order is amenable to Appeal u/s 10F of the Act.

6. As regards the second question of law raised herein viz. whether the Chairman of the CLB has power under the Act and the CLB Regulations to grant either of the reliefs prayed for in the Company Application by the Appellant, extensive arguments were advanced on behalf of the Appellant, the Respondent No. 1 and the Respondent No. 8. Before setting out in brief the submissions advanced by the Learned Senior Advocates appearing for the parties, for the purpose of convenience, it would be appropriate to reproduce certain provisions of the Act as well as the CLB Regulations which have been repeatedly referred to by the respective Learned Senior Advocates appearing for the parties. The same are as follows:

I. Provisions under the Companies Act, 1956:

10E. Constitution of Board of Company Law Administration

(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.

(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, before the commencement of the Companies (Second Amendment) Act, 2002 by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it before the commencement of the Companies (Second Amendment) Act, 2002 by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.

(2) The Company Law Board shall consist of such number of members, not exceeding nine, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette:

Provided that the Central Government may, by notification in the Official Gazette, continue the appointment of the Chairman or any other member of the Company Law Board functioning as such immediately before the commencement of the Companies (Amendment) Act, 1988, as the Chairman or any other member of the Company Law Board, after such commencement for such period not exceeding three years as may be specified in the notification.

(2A) The members of the Company Law Board shall possess such qualifications and experience as may be prescribed.

(3) One of the members shall be appointed by the Central Government to be the Chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

(4A) Omitted by the Companies (Amendment) Act, 1988 with effect from 31-5-1991.

(4B) The Board may, by order in writing, form one or more Benches from among its members and authorize each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) discovery and inspection of documents or other material objects producible as evidence;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

- (c) compelling the production of documents or other material objects producible as evidence and impounding the same;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence on affidavits.

(4D) Every Bench shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860), and for the purpose of Section 196 of that Code.

(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this Section, the Company Law Board shall have power to regulate its own procedure.

II. CLB Regulations, 1991 :

2. Definitions.-(1) In these regulations, unless the context otherwise requires._

....

(e) "Bench" means a Bench of the Board and includes the principal Bench (Additional Principal Bench) and a member sitting singly;

...

(g) "Board" means the Board of Company Law Administration, constituted u/s 10E of the Act;

...

(1) "Chairman" means Chairman of the Board;

...

(m) "Member" means a member (whether judicial or technical) of the Board and includes the Chairman and Vice Chairman.

...

3. Composition of Benches of the Board.-(1) Subject to regulation 4, every Bench of the Board formed under subsection (4B) of Section 10E may consist of one or more members.

(2) The order of the Chairman forming any Bench shall specify therein the powers which shall be exercised and functions which shall be discharged by the

Bench.

3. The Chairman shall, in relation to each bench formed specify the member of the Bench before whom every matter requiring decision of the Board (not being a matter affecting the final disposal of the petition) shall be placed for orders and in the absence of the member so specified every such matter shall be placed before any other member of the Bench who is present.

4. Power of the Chairman to specify matters which may be dealt with by a Bench.-(1) It shall be lawful for the Chairman to provide that matters falling under Sections 247, 250, 269 and 388B of the Act and u/s 2A of the Monopolies and Restrictive Trade Practice Act, 1969 (54 of 1969) shall be dealt with by the Principal Bench consisting of one or more Members.

(2) The Principal Bench shall be at New Delhi but it may sit at any other place in India at its discretion or at the joint request of all the parties.

(3) It shall be lawful for the Chairman to provide that matters falling under all other sections of the Act shall be dealt with by Regional Benches, namely, New Delhi Bench, Chennai Bench, Kolkata Bench and Mumbai Bench, consisting of one or more Members.

Provided that matters pending before the Principal Bench and Additional Principal Bench as on 1st day of April, 2008 shall continue to be disposed of in the name of Principal Bench and Additional principal Bench respectively.

Provided further that notwithstanding anything contained in regulation 7, it shall be lawful for the Chairman to transfer any matter pending before the Regional Benches to the Principal Bench either at the joint request of all the parties or for other reasons to be recorded in writing.

...

7. Jurisdiction of the Bench.-(1) All proceedings, other than the proceedings before the Principal Bench under regulation 4, shall be instituted before the Bench within whose jurisdiction the registered office of the Company is situated.

(2) The States or Union-territories falling under the geographical jurisdiction of the Regional benches shall be as provided in Annexure-I.

(3) The Regional Benches shall ordinarily have their sittings at Kolkata, Mumbai, Chennai and New Delhi:

Provided that the Bench may, at their discretion, hold sittings in any other city or town falling within their respective geographical jurisdiction or any other place outside their jurisdiction with the consent of the parties."

...

44. Saving of inherent power of the Bench._ Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make

such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

7. Mr. Janak Dwarkadas, the Learned Senior Advocate appearing for the Appellant, has first submitted that the Learned Chairman of the CLB has the power to transfer matters between Regional Benches of the CLB u/s 10E(4B) of the Act. He has submitted that Section 10E(4B) of the Act is essentially a power to allocate work or matters to the different Benches that constitute the CLB. The language would plainly include within its scope the power to transfer a matter or a class of matters and is not restricted to general administrative orders or notifications for constituting the various Benches and indicating therein the class of matters to be dealt with by such Benches. According to him, the exercise and discharge of powers and functions by a Bench pursuant to an authorisation or order by the Board through the Learned Chairman may in a given case be referable to the discharge of the Boards power and function to hear and decide a specific matter transferred to such Bench. He submitted that the hearing and decision of a specific matter would form part of the CLB's powers and functions. He therefore submitted that the said Section cannot be read so restrictively to suggest that the allocation of work, authorisation of the powers and functions to be exercised and discharged must be part of the very same order constituting the various Benches of the CLB. Such a restrictive and technical interpretation would run counter to the fundamental nature of the power conferred by that Section and overlooks the fact that under the CLB Regulations, even after the constitution of Benches, the Learned Chairman is empowered to determine the matters to be dealt with by the Regional Benches, without necessarily having to alter the formation or constitution of Regional Benches. He submitted that therefore Section 10E(4B) of the Act must be read to mean that in a given case the Learned Chairman has the power to pass an order, which would pertain only to transfer of a matter without anything more. Referring to Section 10E(5) of the Act which provides, inter alia, that the powers and functions of the CLB under the Act are required to be exercised in accordance with the "principles of natural justice", the Learned Senior Counsel submitted that on a fair, proper and contextual interpretation of the relevant language of Section 10E(4B) of the Act, it is clear that an order under that Section may be in relation to the hearing of a transferred matter by a Regional Bench, which would also be a power and function of the CLB.

8. Mr. Dwarkadas next submitted that the above submissions pertaining to interpretation of Section 10E(4B) of the Act are in fact buttressed by the recent notification of 4th May 2012. Paragraph 2 of the order dated 4th May 2012 reads thus:

2. Matters in which upon conclusion of final hearing orders have been reserved by the Members under transfer vide office order of even number dated 30/4/2012, such Members would pass orders in such matters at their new place of posting after due notice to the parties

It is submitted that on a reading of paragraph 2 of the said order, it is apparent that matters in which hearings have been concluded and orders were reserved have been, in effect, transferred by the Learned Chairman of the CLB from the Bench in which they were heard to the Bench where the Member who heard the matter is currently sitting. It is submitted that since these transfers have stated to have been effected by the Learned Chairman of the CLB pursuant to the power granted by Section 10E(4B) of the Act, it is clear that the power to "transfer" matters from one Bench to another Bench is within the power given by Section 10E(4B) of the Act to the Learned Chairman of the CLB to decide the "powers and functions" of each Bench. It is therefore submitted that since it is permissible for the Learned Chairman of the CLB to effect the aforesaid transfers of the said matters from one Bench of the CLB to another, it would obviously also be within the implicit and inherent powers of the Learned Chairman of the CLB to transfer an individual matter from one Bench of the CLB to another upon application by one or more of the parties thereto.

9. Mr. Dwarkadas has, referring to Regulation 3 (2) of the CLB Regulations which provides that "the order of the Chairman forming any Bench shall specify therein the powers which shall be exercised and functions which shall be discharged by the Bench", submitted that the plain language of the aforesaid Regulation would establish that the Learned Chairman has the power to grant prayer (b) of the Company Application for the formation or constitution of a Western Region Bench comprising of Shri Kanthi Narahari for completing the hearing of the matter. Independent of this submission, Mr. Dwarkadas has submitted that the power to grant either of the prayers of the Company Application is also to be found in Regulation 44 of the CLB Regulations. The CLB which would include the Chairman of the CLB, is possessed of "inherent powers" to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of law. In support of this submission, he has relied on the decision of a Division Bench of the Punjab & Haryana High Court in *Devi Dass Gopal Krishan Vs. The State of Punjab*, wherein it is held that where a controlling authority has been given the power to superintend the administering and functioning of certain other authorities, the power to transfer matters between the said authorities is "inherent and implicit" in the power of the controlling authority. The Court held that the exercise of such a power is sufficiently guided and controlled by the statutory purpose of the statute, which in that case was the convenient and efficient assessment and collection of tax, consistent with the reasonable convenience of the assessee. It is submitted that in the said decision the High Court expressly rejected the contention that the controlling authority had no power to transfer matters unless the same was specifically conferred by the statute. It is submitted that there are several matters in which the Learned Chairman of the CLB has passed orders transferring the matters from one Bench of the CLB to another Bench, either with the consent of the parties or upon application by one of the parties. Matters which have been transferred as such are continuing before the respective Regional Benches to which they have been

transferred and would be vitally affected if this Court were to come to the conclusion that there is no inherent and/or implicit power in the learned Chairman of the CLB to transfer matters from one Bench to another.

10. Mr. Dwarkadas next submitted that the second proviso to Regulation 4 of the CLB Regulations is not a provision that deals with transfer of matters and does not impinge upon the power of the Learned Chairman of the CLB to transfer a matter from one Bench to another Bench in exercise of powers u/s 10E(4B) of the Act or under Regulation 44 of the CLB Regulations. He has submitted that on a reading of Regulations 4 and 7 of the CLB Regulations, the Principal Bench would have jurisdiction only to "deal with" matters pertaining to Sections 247, 250, 269 and 388B of the Act. The jurisdiction to deal with all other matters (including matters under Sections 397 and 398 of the Act) would necessarily be with the respective Regional Benches. He has submitted that therefore it is in this context that the first proviso to Regulation 4 of the CLB Regulations provides that "matters pending before the Principal Bench and Additional Principal bench as on 1st day of April, 2008 shall continue to be disposed of in the name of Principal Bench and Additional Principal Bench respectively". In other words, even if the power under Regulation 4 (3) of the CLB Regulations has been exercised, and all matters arising under provisions other than Sections 247, 250, 269 and 388B of the Act are required to be "dealt with" by the Regional Benches, the first proviso creates an exception with regard to matters which are pending before the Principal Bench and Additional Principal Bench as on 1st April 2008 and allows them to continue before the Principal Bench and Additional Principal Bench. He has submitted that similarly the second proviso to Regulation 4 of the CLB Regulations provides that notwithstanding anything contained in Regulation 7, it shall be lawful for the Chairman to transfer any matter pending before the Regional Benches to the Principal Bench..." If the power given to the Learned Chairman of the CLB under Regulation 4 (1) and 4 (3) of the CLB Regulations is exercised, as it has been under the present order of 4th May 2012, the matters pending before the Regional Benches would necessarily be matters arising under provisions other than Sections 247, 250, 269 and 388B of the Act. He therefore submitted that the purport of the said second proviso to Regulation 4 of the CLB Regulations is only to clarify that even if all matters other than those arising under Sections 247, 250, 269 and 388B of the Act are to be "dealt with" by the Regional Benches and not by the Principal Bench, it shall be lawful for the Principal bench to deal with a matter not arising under the provisions which it is supposed to deal with, if the same is transferred to it by the Learned Chairman of the CLB.

11. Mr. Dwarkadas has relied on the decision of this Court in C.R.H. Readymoney Ltd. and Others Vs. State of Bombay, and the decision of the Hon"ble Supreme Court in Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd., and submitted that no negative import can be implied from the words "it shall be lawful" used in the second proviso to Regulation 4 (3) of the CLB Regulations. It is submitted that the purport of the second proviso to Regulation 4 (3) of the CLB

Regulations is meant to get over an order, if any, passed under Regulation 4 (3) of the CLB Regulations by which only the Regional Benches could "deal with" matters falling under all other sections of the Act other than those arising under Sections 247, 250, 269 and 388B of the Act. It does not carry the negative import of depriving the Learned Chairman of the CLB of his inherent power or power u/s 10E(4B) of the Act to allocate work which would include the power to transfer matters from one Regional Bench to another Regional Bench, more so when there is no express bar from doing so. Mr. Dwarkadas has therefore submitted that strictly without prejudice to his above submissions and in the alternative if this Court were to come to the conclusion that the second proviso to Regulation 4 of the CLB Regulations does provide for a positive power of transfer to the Learned Chairman of the CLB to transfer matters from the Regional benches to the Principal Bench, it would be incorrect to proceed on the footing that the second proviso to Regulation 4 is the sole repository of the power of transfer available with the Learned Chairman of the CLB to transfer matters. The power to transfer matters from one Bench to another is within the implicit and inherent powers of the Learned Chairman of the CLB and therefore the same would not be restricted in any way by the second proviso to Regulation 4 of the CLB Regulations providing for a limited power of transfer.

12. Relying on the decision of the Hon''ble Supreme Court in *Tanusree Basu and Others Vs. Ishani Prasad Basu and Others*, , Mr. Dwarkadas has submitted that it is settled law that despite Order 39 of the Code of Civil Procedure, 1908 ("CPC"), providing for the circumstances in which the Court may grant interim injunctions, the Court nevertheless has the inherent power u/s 151 of the CPC to grant interim injunctions in circumstances not covered by Order 39 of the CPC. Mr. Dwarkadas has therefore drawn an analogy and submitted that merely because the second proviso to Regulation 4 of the CLB Regulations provides for transferring matters from the Regional Benches to the Principal Bench, it does not ipso facto mean that the power to transfer matters from one Regional Bench to another Regional Bench is excluded from the inherent powers of the Learned Chairman of the CLB.

13. Mr. Chinoy, the Learned Senior Advocate appearing for Respondent Nos. 3 and 4, submitted that the power to transfer matters from one Bench to another is within the implicit and inherent powers of the Learned Chairman of the CLB and the said power is in no way limited by the second proviso to Regulation 4 of the CLB Regulations. He submitted that the contesting Respondents have not considered the true import of Regulation 4 and the proviso thereto and Regulation 7 of the CLB Regulations. He has submitted that the Chairman who is undisputedly the head of the CLB enjoys the power of superintendence and does not require any delegation of power.

14. Mr. De''vetre, Learned Senior Advocate appearing for Respondent No. 1, has first submitted that Section 10E(4B) is contained in a part of the Act headed "Constitution of Board of Company Law Administration". That provision deals only

with the Constitution of the Board and formation of the Benches of the Board. It does not at all deal with the power to transfer matters. The only provision for "transfer" of any matters is to be found in the second proviso to Regulation 4 (3) of the CLB Regulations. The said proviso expressly sets out the power of the Chairman to transfer any matter pending before any Regional Bench. The intent is plainly and unambiguously expressed. Relying on the decision of the Hon'ble Supreme Court in *Ansal Properties and Industries Ltd. Vs. State of Haryana and Another*, , it is submitted on behalf of Respondent No. 1 that it is settled law that the Court cannot read anything into a statutory provision, which is plain and unambiguous and if the language of the enactment is clear and unambiguous, it would not be proper for the Courts to add any words thereto and evolve some legislative intent, not found in the statute.

15. Mr. De'vetre has further submitted that the Appellant's reliance on Regulation 44 of the CLB Regulations is misplaced. Regulation 44 of the CLB Regulations relates to inherent powers of the "Bench" and does not provide for inherent powers of the Chairman. The "inherent powers" under Regulation 44 of the CLB Regulations do not cover cases of "transfer" of matters by the Chairman. If the Appellant's contention on the applicability of Regulation 44 of the CLB Regulations were to be accepted as correct, viz. that by reason of Regulation 44 of the CLB Regulations, every "Bench" has the inherent power to transfer matters, it would mean that every Member of every "Bench" would have "inherent power" to transfer matters from/to any Regional Bench, including itself, to/from another Regional Bench, which is plainly untenable. It is true that the Chairman is also a "Member" of the Bench, but in deciding matters relating to transfer of matters, he acts not as a member of any Bench, but in his independent and individual capacity as Chairman of the Board. Thus the order is not that of any "Bench". In dealing with the matter, the Chairman does not sit as the "Principal Bench" or as a member of any "Regional Bench".

16. Mr. De'vetre has submitted that but for the second proviso to Regulation 4 (3) of the CLB Regulations, there was no right or authority in the Chairman to transfer matters, not even an "inherent power" to transfer matters pending before the Regional bench to the Principal Bench. The position cannot be any different in regard to the Chairman's power to transfer any matter pending before a Regional Bench to another Regional Bench. Mr. De'vetre has submitted that the second proviso to Regulation 4 (3) of the CLB Regulations is an express provision relating to the power of transfer. There being no other provision authorizing the transfer, the Court cannot add to the Chairman's power of transfer. The implied prohibition in the CLB Regulations cannot be defeated by an interpretative process or by recourse to inherent powers. Mr. De'vetre has relied on the decision of the Hon'ble Supreme Court in *Arjun Singh vs. Mohindra Kumar and others* AIR 1964 SC 993 and also certain other decisions wherein it is inter alia held that the inherent power of the Court cannot override the express provisions of the law. Mr. De'vetre has submitted that reading into the second proviso of Regulation 4 (3) of the CLB Regulations, an inherent power to transfer

a matter pending before one Regional bench to another would stultify the scheme of Regulation 4 read with Regulation 7 of the CLB Regulations. The inherent power of the Court cannot be invoked to nullify a statutory provision. Mr. De'vetre submitted that hearing of Company Petition No. 62 of 2009 by the same Member Shri Kanthi Narahari would entail reconstitution of Benches of the Board. Regulation 7 of the CLB Regulations fixes the jurisdiction of each bench (dependent on the location of the registered office). The present Member, Southern Bench, CLB has no jurisdiction to hear matters instituted before the Western Region bench under Regulation 7 of the CLB Regulations. He can hear the matter only if he was a Member of the Western Region Bench. No such application was made by the Appellant. The question of granting either of the two reliefs to the Appellant therefore does not arise.

17. Mr. De'vetre has further submitted that the Appellant has relied on certain touring orders dated 17th May 2012, 14th June 2012 and 13th July 2012 passed by the CLB. The first two orders dated 17th May 2012 and 14th June 2012 were issued to grant leave to Shri Amalesh Bandopadhyay (Member, CLB, Kolkata Bench). Consequently, Shri B.S.V. Prakash Kumar (Member, CLB, New Delhi Bench) was temporarily (for a period of 11 days and 25 days respectively) assigned an additional charge of the Kolkata Bench. The third order dated 13th July 2012 was issued to grant leave of absence to Shri A.K. Tripathi, Member (Judicial), Mumbai Bench. Consequently, matters relating to Mumbai Bench that were within Shri Tripathi's jurisdiction, were temporarily (i.e. for a period of 12 days) ordered to be heard by Member (Technical), Mumbai Bench, Smt. Vimala Yadav. Mr. De'vetre submitted that these orders cannot become the basis of assigning or conferring any alleged power or jurisdiction upon the Chairman. Notwithstanding and without prejudice to the said contention, he submits that all three orders relied upon have been passed "by the order of the Company Law Board and not Chairman, CLB". The Chairman's name does not feature in any of the three orders sought to be relied upon. This only strengthens the Respondent No. 1's contention that the power to constitute Benches u/s 10E(4B) of the Act lies with the CLB and not Chairman, CLB in his individual capacity who has limited powers under Regulation 4 of the CLB Regulations. Admittedly, the application of the Appellant was to the Chairman, CLB in his capacity as the Chairman and not to him as a "Member" or "representative" of the CLB. Without prejudice to the above submissions, Mr. De'vetre has submitted that the reasoning behind passing the first two orders (i.e. orders dated 17th May 2012 and 14th June 2012) was that Shri Bandopadhyay is the only Member in the Kolkata Bench. It was thus necessary to allow another member to take temporary additional charge of the Kolkata Bench to enable parties to be able to apply for urgent ad-interim reliefs during that period. Assuming (whilst denying) that there is any such power, the same has never been resorted to merely accommodate a single matter and even the Appellant has failed to demonstrate a single such instance where Benches have been reconstituted to accommodate a single matter. Further, in the instant case there are two members in the Mumbai

Bench who are available to hear and dispose of the Company petition. As regards the third order dated 13th July 2012, the CLB had assigned the matters belonging to Mumbai Bench Member Shri Tripathi to another Member (Smt. Yadav) of the Mumbai Bench itself. No Member from any other Bench or jurisdiction was assigned those matters or the additional charge. Mr. De'vetre has therefore submitted that assuming that the Chairman of the CLB has the power to re-constitute Benches u/s 10E(4B) of the Act giving Shri Kanthi Narahari (Member, CLB, Chennai Bench) an additional charge of the Mumbai Bench, to specifically hear this matter alone (being prayer (b) sought for by the Appellant), the same would disrupt the entire working of the Chennai Bench, and such disruption would be merely to accommodate this matter. This would be completely contrary to the scope and scheme with which the said "touring" orders sought to be relied upon by the Appellant were passed by the CLB.

18. Mr. Khambata, the Learned Senior Advocate appearing for Respondent No. 8, has submitted that the Chairman, CLB has no power to grant the reliefs prayed for. Relying on the decision of the Hon'ble Supreme Court in *The Member, Board of Revenue Vs. Arthur Paul Benthall*, *B.R. Enterprises Vs. State of U.P. and Others*, and the decision of this Court in *Maharana Jaywantsinhji Ranmalsinhji Thakore Saheb of Sanand Vs. The State of Bombay*, Mr. Khambata submitted that where a statute uses different expressions they mean different things. The Act and the CLB Regulations make a clear distinction between the three entities i.e. the Chairman, the Bench and the Company Law Board, although in a given case the same person may wear more than one hat. He has submitted that this distinction is apparent from a mere reading of Section 10E of the Act. He has submitted that the CLB Regulations which were made by the CLB, that is to say all the members, by virtue of the power conferred u/s 10E(6) of the Act also maintain this distinction. Mr. Khambata has submitted that the power in law to form a Bench and to authorise such Bench to discharge the powers and functions of the CLB, as may be specified, is exclusively that of the CLB as provided in Section 10E of the Act. The power to transfer matters is part of the power of the Company Law Board to regulate its own procedure. However, the CLB itself has by virtue of the CLB Regulations delegated the exercise of some of its powers to its Chairman under Regulations 3 and 4 of the CLB Regulations. The Chairman cannot have direct recourse to the powers of the CLB over and above what is delegated to him under the CLB Regulations. It is submitted that the powers conferred upon the Chairman under Regulations 3 and 4 of the CLB Regulations are conferred upon him as Chairman and not as a Bench of the CLB. Relying on the decisions of the Hon'ble Supreme Court in *Rasid Javed and Others Vs. State of U.P. and Another etc. etc.*, and *District Collector, Chittoor and Others Vs. Chittoor District Groundnut Traders Association and Others*, Mr. Khambata has submitted that it is well settled that the powers of a delegate cannot be expanded to anything beyond the scope and terms of the delegation. If any order is framed in excess of the powers delegated, such order would be illegal and void. No such order can be passed relying upon the general powers. Mr.

Khambata has submitted that it is untenable in law to contend either that the delegation of powers under Regulations 3 and 4 of the CLB Regulations is merely clarificatory or that some undefined and indeterminate "inherent powers" vest in the Chairman of the CLB by virtue of Regulation 44 of the CLB Regulations.

19. Mr. Khambata has submitted that Regulation 44 of the CLB Regulations pertains to inherent powers of the Benches. Therefore, there is no question of attributing the inherent powers referred to in Regulation 44 of the CLB Regulations to either the Chairman or the Vice-Chairman when they act as such. The provisions of Regulation 44 of the CLB Regulation by themselves cannot confer any new power (independent of the Company Law Board) in the Chairman, who acts exclusively as a delegate of powers from the CLB. Mr. Khambata has submitted that in any event a Bench will enjoy inherent powers only in respect of such matters as validly lie before it. A Regional Bench has no power to pass any orders in exercise of its inherent powers that go beyond the jurisdiction of that Regional Bench. Hence one Regional Bench cannot direct another Regional Bench to do anything or to hear any matter.

20. Mr. Khambata has submitted that Regulation 7 (1) of the CLB Regulations provides that all proceedings, other than the proceedings before the Principal Bench under Regulation 4, shall be instituted before the Bench within whose jurisdiction the registered office of the Company is situated. He submits that this is the mandate of the CLB as a whole and the manner in which the CLB has chosen to regulate its own procedure as provided by Section 10E(6) of the Act. Nothing in the CLB Regulations can ever be read as authorizing any organ of the CLB, including the Chairman or any Bench to depart from the clear mandate of Regulation 7 (1) of the CLB Regulations. The power delegated to the Chairman is to transfer matters before the Regional benches only to the Principal Bench, since any other transfer inter se between Regional Benches would violate the mandate of Regulation 7 (1) of the CLB Regulations.

21. Relying on the decision of the Hon'ble Supreme Court in *Arjun Singh vs. Mohindra Kumar & Ors.* (supra), Mr. Khambata has without prejudice to the aforesaid submissions, submitted that it is also well settled that inherent powers cannot be used to negate specific provisions covering the field of their exercise. Regulation 4 of the CLB Regulations deals with the field of transfer of matters pending before any Regional Bench. Regulation 4 (second proviso) of the CLB Regulations cannot be rendered nugatory or meaningless by resorting to some alleged inherent powers of the Chairman based on Regulation 44 of the CLB Regulations, to permit transfer of matters other than those permitted by Regulation 4 of the CLB Regulations. Mr. Khambata has therefore submitted that prayer clause (a) of Company Application No. 275 of 2012 is directly contrary to Regulation 7 (1) of the CLB Regulations and the Chairman has no power to make such a transfer, since the registered office of Respondent No. 2 is in Mumbai and the Southern Region Bench can never have jurisdiction in respect of any matter concerning it. As regards prayer clause (b), Mr. Khambata has submitted that the

Chairman has no power to empower the Southern Region Bench to hear matters instituted before the Western Region Bench. The Chairman would have to pass a fresh order modifying the provisions of his previous order dated 4th May 2012, whereby he would have had to appoint Shri Kanthi Narahari as a Member of the Western Region Bench. No such application was made by the Appellant. Prayer clause (b) too therefore seeks a relief that the Chairman could not have granted under the provisions of the CLB Regulations.

22. Mr. Dwarkadas, Learned Senior Advocate appearing for the Appellant, in rejoinder has submitted that prior to the Amending Act of 1988 (with effect from 31st May 1991), the CLB was a delegate of the Central Government by virtue of Section 637 of the Act. Section 10E(4A) was introduced into the Act (with effect from 15th October 1965) which reads as under:

(4A) The Board, with the previous approval of the Central Government, may, by an order in writing authorise the Chairman or any of its other members or its principal officer (whether known as Secretary or by any other name) to exercise and discharge, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions as it may think fit; and every order made or act done in the exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

Under this provision, the Chairman could only exercise such powers as were delegated to the Chairman with the previous approval of the Central Government. Section 10E(1), as it stood then, read as under:

(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1963 (53 of 1963) the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration to exercise and discharge such powers and functions conferred on the Central Government by or under this Act or any other law as may be delegated to it by the Government.

In 1991, by reason of the Amending Act of 1988, Section 10E(1) was amended and read as under:

As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.

Further, Section 10E(1A) was inserted and read as under:

The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it before the commencement of the Companies (Second Amendment) Act, 2002, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it before the commencement of the Companies (Second Amendment) Act, 2002 by the

Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.

By the same Act, Section 10E(4A) which read as above was also expressly omitted and Section 10E(4B) was introduced which read as under:

The Board may, by an order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order, and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

23. As a result of the aforesaid amendments, the CLB was no longer a delegate of the Central Government except to the limited extent provided for in Section 10E(1A) of the Act and could exercise and discharge such powers and functions as were conferred upon it by the Act. The question therefore of the powers and functions of the Board being delegated by the Central Government to the Board and further delegated to the Chairman of the CLB did not arise. Simultaneously with the constitution of the Board, u/s 10E(1), the Board was conferred with the jurisdiction to exercise and discharge such powers and functions which may be conferred upon it by the Act. The Companies Act was also amended to confer on the Board the powers of the Company Court under the Act, inter alia, under Sections 111, 397 and 398 of the Act. Thus the CLB was effectively a substitute of the Company Court with regard to certain powers and functions under the Act.

24. Mr. Dwarkadas has submitted that it is thus established that the Board is not a delegate of the Central Government. The question that arises is-What is the meaning to be given to the expression "the Board" as appearing in Section 10E(1) of the Act? The expression has not been defined under the Act. However, a conjoint reading of the provisions in Section 10E(1) to (5) would indicate that the Board consists of such number of members not exceeding nine, as the Central Government deems fit to be appointed by notification in the Official Gazette. Section 10E(3) of the Act provides that one of the members shall be appointed as the Chairman of the CLB. Mr. Dwarkadas has submitted that the purpose and object behind Section 10E(3) of the Act namely to appoint one of the members as Chairman of the CLB can only mean that the function of forming Benches and authorising each such bench to exercise and discharge such of the Board's functions as may be specified by an order in writing can only refer to the Chairman exercising the power of the Board. There is no question of either the Board as constituted u/s 10E(1) of the Act or of the Chairman appointed u/s 10E(3) of the Act being delegated by the Central Government or by any other authority to exercise and discharge any powers and functions as may be specified by the Act absent a specific delegation in that behalf by the Central Government. Mr. Dwarkadas has submitted that the appointment of the Chairman u/s 10E(3) of the Act ipso facto confers powers of superintendence upon the Chairman with respect to the functioning of the CLB. The fact that such

is the nature of the power of the Chairman is clear from Section 10E(3) and (4B) of the Act read with Regulations 3 and 4 of the CLB Regulations which have been framed u/s 10E(6) of the Act. Mr. Dwarkadas has submitted that the expression "the Board" u/s 10E(4B) of the Act, must be interpreted reasonably and in accordance with common sense, for giving effect and meaning to Section 10E(4B) of the Act read as a whole. If Respondent No. 8 is correct in its submission, it would mean that the power conferred on the Board u/s 10E(4B) of the Act of forming Benches and authorising each such Bench to exercise and discharge such functions of the Board as may be specified, would have to be an order of all the members constituting the Board. This would lead to a wholly absurd situation where unanimity of all the Members of the Board would have to be obtained in the matter of constituting Benches and allocating work. It is submitted that the argument of Respondent No. 8 does place an unreasonable meaning on the expression "Board" in Section 10E(4B) of the Act and does not explain what would happen if there is no consensus amongst all the Members of the Board in the matter of constituting Benches and authorising such Benches to discharge the powers and functions of the Board.

25. Mr. Dwarkadas has submitted that looking to the scheme of Section 10E read as a whole, it is clear that for the purpose of exercising powers u/s 10E(4B) of the Act, the Board acts through the Chairman of the Board appointed u/s 10E(3) of the Act. He submits that this is the only reasonable meaning to be given to the expression "the Board". He submits that if the expression "Board" as it appears in Section 10E(4B) is given any other meaning than the Board acting through the Chairman, a conflict would arise inasmuch as the same power u/s 10E(4B) of the Act and Regulation 3 (2) of the CLB Regulations for constitution of Benches and allocating work would be exercised by two different repositories i.e. the Board other than the Chairman u/s 10E(4B) of the Act and the Chairman under Regulation 3 of the CLB Regulations.

26. Mr. Dwarkadas has further submitted in his rejoinder that now it is well settled that once the power is conferred upon any person, such as the Chairman of the CLB or the Chief Justice of the High Court or the Supreme Court, the head of the Institution does not require any further delegation from the Institution to which he belongs. In fact, he is as much a part of the Institution as any other member of the Institution, save and except that he has the power of superintendence. He has submitted that therefore the argument that the Chairman can only exercise such powers as are expressed in the CLB Regulations is incorrect. In support of his contention that the Chairman is therefore the administrative head of the CLB and his position is akin to the Chief Justice of any High Court or the Supreme Court who is regarded as the master of the roster, Mr. Dwarkadas has relied on the decision of the Hon"ble Supreme Court in the case of State of Rajasthan Vs. Prakash Chand and Others, and the judgments dealt with therein. Mr. Dwarkadas thus submitted that on a parity of reasoning it is clear that the Chairman of the CLB who is akin to the Chief Justice of a High Court exercises, by the very nature of his functions and status, the power to

allocate work and constitute Benches of the CLB. Mr. Dwarkadas has also relied on the decision of a Division Bench of the Madras High Court in *The President, Income Tax Appellate Tribunal vs. Mr. A. Kalyanasundaram* Judgment dated 29th September 2005 of the Division Bench of Madras High Court in WP No. 25484 of 2005 etc. in which the Madras High Court has equated the position of the President of the ITAT with that of the Chief Justice of a High Court.

27. Mr. Dwarkadas has in his rejoinder submitted that Regulation 44 of the CLB Regulations is a saving clause. What Regulation 44 of the CLB Regulations does is to save the inherent power of the Bench to make such orders as may be necessary to secure the ends of justice. The argument that the word "Bench" in Regulation 44 of the CLB Regulations must be interpreted differently from the word "Chairman" and the word "Board" appearing in the Regulations overlooks that Regulation 2 which is the definition clause, opens with the words "in these Regulations unless the context otherwise requires". Thus where the expression "Bench" includes a "Member" and the word "Member" includes the "Chairman", it would mean that the saving of the inherent powers in the Bench, contextually would include the saving of the Chairman's powers as the master of the roster i.e. in charge of the administrative functions of the Board. It is therefore submitted that the argument of the Respondents that the inherent power of transfer would be available to every member of the Bench would be to read the definitions out of context, which is impermissible.

28. Mr. Dwarkadas has also relied on Rule 4 of the Income Tax Appellate Tribunal Rules, 1963, which reads as under:

4. (1) A Bench shall hear and determine such appeals and applications made under the Act as the President may by general or special order direct.

(2) Where there are two or more Benches of the Tribunal working at any headquarters, the President or, in his absence, the Senior Vice-President/Vice-President of the concerned zone or, in his absence, the senior most member of the station present at the headquarters may transfer an appeal or an application from any one of such Benches to any other.

Mr. Dwarkadas has submitted that in exercise of the power conferred by Rule 4 (1) read with Section 255 of the income tax Act, 1961, the President of the income tax Appellate Tribunal has constituted 48 Benches falling in nine different geographical zones. The President has in exercise of the power of allocation of work conferred by Rule 4 (1) of the ITAT Rules has in fact routinely transferred matters from one zone to another. Mr. Dwarkadas has produced some of the orders passed by the President of the income tax Appellate Tribunal. Mr. Dwarkadas has submitted that by virtue of the power conferred upon the President u/s 252(5) of the income tax Act, 1961, the President has delegated certain powers to the Vice-President of the ITAT which include inter alia the power to transfer any appeal or application filed before any Bench within a Zone to any other Bench within the same Zone. Thus whereas the delegated powers of

the Senior Vice-President and the Vice-President are limited to intra-zone transfers (contemplated by Rule 4 (2) of the ITAT Rules) the powers of the President under Rule 4 (1) is much wider and includes the power to transfer matters inter zone i.e. from a Bench in one Zone to a Bench in another Zone.

29. Mr. Dwarkadas has submitted that further orders have also been passed by the Registrar of the ITAT, which have been issued with the approval of the President of the ITAT, by which certain members appointed to a particular Bench of a particular Zone have been deputed "on tour" to hear matters for a particular number of days, whilst on tour, of another Bench in a different Zone. Mr. Dwarkadas has therefore submitted that the argument of the Respondents that unless and until a Bench is reconstituted and a member is appointed as a member of the reconstituted Bench it would not be appropriate for such a member to hear and dispose of a matter filed before another Regional Bench is not a correct reading of the Act or of the CLB Regulations.

30. Mr. Khambata, Learned Senior Advocate appearing for Respondent No. 8, has submitted that the office of the Chief Justice is an institution predating the Government of India Act, 1915, the Government of India Act, 1935 and the Constitution of India. Section 108(2) of the Government of India Act, 1915 expressly vested power in the Chief Justice of the High Court akin to the master of the roster. He submitted that the recitals to the Letters Patent provided that it was an act for establishing High Courts, each of which shall consist of a Chief Justice. Clause 8 of the Letters Patent authorised and empowered the Chief Justice to make appointments as "shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court". Mr. Khambata submitted that Article 225 of the Constitution of India saves the jurisdiction of the then existing High Courts, and the respective powers of the Judges therein in relation to administration of justice, as also the power to make rules of the Court and to regulate the sittings of the Court and of members sitting alone or in Division Benches. Clearly the aforesaid power in respect of administrative matters, which is exercised by the Chief Justice, is a power which predated the Constitution and hence that power was expressly saved in the Constitution of India. It is in that light of the matter, given the long-standing exercise of such powers that it is said that the powers exercised by the Chief Justice vest in him by the very nature of his position.

31. Mr. Khambata submitted that the Chairman of the CLB is a creature of statute, whose powers are circumscribed by Section 10E of the Act and by the CLB Regulations. Hence, the Chairman is bound to exercise his power within the four corners of the CLB Regulations. Relying on the decision of the Hon'ble Supreme Court in *Transcore Vs. Union of India (UOI)* and Another, Mr. Khambata submitted that the power of the Chairman being confined to the provisions of the Regulations, no action could have been taken by him contrary to or inconsistent therewith. Mr. Khambata submitted that it is obvious that if it was intended to invest any power in the Chairman aside from those expressly delegated to him,

the same would have been expressly provided for by the statute framers. In the present case, there is nothing in the CLB Regulations as would indicate any intention that the Chairman was intended to be vested with any powers, aside from those expressly delegated to him under Regulations 3 and 4 of the CLB Regulations. Mr. Khambata therefore submitted that the position of the Chairman of the CLB is therefore not akin to that of the Chief Justice of a High Court.

32. Mr. Khambata further submitted that as already held in *Manju Verma vs. State of U.P* (supra), the power of the Chief Justice to transfer a case from one territorial jurisdiction to another is distinct from his power to frame a roster to determine the distribution of judicial work in the High Court. In that case, the Chief Justice of the Allahabad High Court had express power under Clause 14 of the United Provinces High Courts (Amalgamation) Order, 1948 to transfer matters from cases in specified areas of U.P. to Allahabad (similar to the second proviso to Regulation 4 (3) of the CLB Regulations 1991). Mr. Khambata therefore submitted that the transfer of matters inter-jurisdictionally, apart from the Principal bench, not being part of the power to frame the roster has to be expressly conferred on the Chairman. In the absence of any express power, the Chairman cannot claim such a power. Mr. Khambata submitted that the judgment of the Madras High Court in *President, Income Tax Appellate Tribunal v. A. Kalyanasundaram* (supra) compares the President of the ITAT to the Chief Justice of a High Court only in the context of the Income Tax Act which expressly conferred the power of constitution of Benches upon the President. Mr. Khambata further submitted that if the Chairman enjoyed inherent powers of superintendence, as claimed by the Appellant, then ipso facto there would have been no need for Regulations 3 and 4 of the CLB Regulations vesting power in the Chairman. The express stipulation/vesting of power in the Chairman by the said Regulations make it clear that there is no supervening or inherent power of superintendence vested in the Chairman. Mr. Khambata has also submitted that the argument that it will be impractical if only the entire CLB and not the Chairman is held to have the power to transfer cases from one Regional Bench to another Regional Bench is misconceived. He submitted that even assuming that the Chairman of the CLB has powers similar to those of the Chief Justice of the High Court, he nevertheless cannot act contrary to Regulation 7. Mr. Khambata also submitted that the interpretation of the provisions of law relating to the powers of the Chairman cannot be determined on the basis of any previous orders that may have been issued.

33. I have considered the submissions advanced by the Learned Senior Advocates appearing for the parties as regards the aforestated question of law viz. whether the Chairman of the CLB has the power under the Act and the CLB Regulations to grant either of the reliefs prayed for by the Appellant in the Company Application?. As submitted on behalf of the contesting Respondents, the clear cut and demarcated position of the three entities that are referred to in the Act and the CLB Regulations and relevant for the purpose of deciding the issue in hand are the following:

(i) The Board of Company Law Administration constituted u/s 10E(1) of the Act ("the Company Law Board") and also defined under Regulation 2 (1) (g) of the CLB Regulations - the Company Law Board consists of all the members appointed to it by the Central Government by Notification in the Official Gazette u/s 10E(2) of the Act.

(ii) The Chairman of the Company Law Board who is defined by Regulation 2 (1) (I) to be the Chairman of the Board i.e. the Company Law Board; and

(iii) Bench of the Company Law Board-"Bench" is defined under Regulation 2 (1) (e) as meaning a Bench of the Board and includes the Principal Bench, the Additional Principal Bench and a member sitting singly.

34. As held by the Hon''ble Supreme Court in its decisions in *The Member, Board of Revenue vs. Arthur Paul Benthall* (supra), *B.R. Enterprises vs. State of U.P. & Ors.* (supra) and the decision of this Court in *Maharana Jaywantsinhji Ranmalsinhji Thakore Saheb of Sanand vs. The State of Bombay* (supra), where a statute uses different expressions they mean different things. Such distinction is also clearly brought out in Section 10E of the Act as follows:

(i) The CLB is constituted and empowered by the provisions of Section 10E;

(ii) Section 10E(4B) empowers only the CLB, that is to say all the members of the Company Law Board appointed by the Central Government by Notification as provided in Section 10E(2) of the Act. The powers conferred by Section 10E(4B) are not conferred on any one or more members of the CLB nor on the Chairman or Vice-Chairman of the CLB nor even on any Bench of the CLB;

(iii) Benches of the CLB are separately and independently referred to in Section 10E(4C) and (4D), apart from the reference in sub-section (4B) itself.

35. As set out hereinabove, the power in law to form a Bench and to authorize such bench to discharge the powers and functions of the CLB as may be specified is exclusively that of the CLB as a whole as provided in Section 10E(4B). Section 10E(6) vests power in the CLB as a whole to regulate its own procedure. Transfer of matters and hearing of them by particular Benches or Members are obviously matters relating to the procedure of the CLB. These matters could very well be regulated by the CLB acting as a whole. Such regulation has in fact been made by the CLB acting as a body in the form of the CLB Regulations. The CLB Regulations, inter alia provide for delegation to the Chairman of the CLB of the powers of the CLB for formation of Benches, and specification of powers and discharge of functions by the respective Benches and their members and transfer of matters pending before any Bench. These delegated powers are the following:

(i) Formation of Bench and specification of the powers and functions to be discharged by that Bench [Regulation 3 (2)];

(ii) Specification of the Member of the Bench before whom every matter should be placed for orders and the Member before whom the matter should be placed

in default of the first named Member [Regulation 3 (3)];

(iii) Specification by the Chairman of the matters falling within Regulation 4 (1) to be dealt with by the Principal Bench [Regulation 4 (1)];

(iv) Specification by the Chairman of matters falling under Regulation 4 (3) to be dealt with by Regional Benches [Regulation 4 (3)];

(v) The power to transfer any matter pending before the Regional benches to the Principal Bench [second proviso to Regulation 4 (3)].

36. A reading of Regulation 3 of the CLB Regulations makes it clear beyond any doubt that the Chairman of the CLB is empowered by the Board to constitute the Benches of the Board as per the composition of Benches prescribed u/s 10E(4B) of the Act. Regulation 3 (3) of the CLB Regulations empowers the Chairman to specify the Member of the Bench before whom every matter requiring decision by the Board shall be placed for orders and in the absence of such Member so specified every such matter shall be placed before any other member of the Bench who is present. Thus Regulation 3 (3) of the CLB Regulations delegates the power of intra Bench allocation of matters to the Chairman i.e. transfer of a matter from one Member of a Bench to another Member of a Bench but not inter Bench transfer i.e. from one Member of the Bench to a Member of another Bench. Regulation 4 empowers the Chairman to provide that matters falling under Sections 247, 250, 269 and 388B of the Act and u/s 2A of the Monopolies and Restrictive Trade Practice Act, 1969 shall be dealt with by the Principal Bench consisting of one or more Members. Therefore matters arising out of the Sections set out in Regulation 4 may be dealt with only by the Principal Bench consisting of one or more members of the CLB which shall be at New Delhi as provided in Regulation 4 (2) of the CLB Regulations. Regulation 4 (3) of the CLB Regulations provides that matters falling under all other sections of the Act [i.e. matters falling under Sections other than those set out in Regulation 4 (1)], shall be dealt with by Regional benches, namely, New Delhi Bench, Chennai Bench, Kolkata Bench and Mumbai Bench, consisting of one or more Members. Since Regulation 4 came to be substituted by the CLB Amendment Regulations vide GSR 185 (E) dated 17th March, 2008 w.e.f. 1st April, 2008, it was provided in proviso (1) to Regulation 4 (3) that the matters pending before the Principal Bench and Additional Principal Bench as on 1st day of April 2008 shall continue to be disposed of by the Principal Bench and Additional Principal Bench respectively. In other words, the matters not falling under the Sections set out in Regulation 4 (1) and which were required to be dealt with by the Regional Benches under Regulation 4 (3) were allowed by the first proviso to Regulation 4 (3) to be continued and disposed of by the Principal Bench and Additional Principal Bench, in the event of such matters being pending before the Principal Bench as on 1st April, 2008. By proviso (2) to Regulation 4 (3), it was provided that notwithstanding anything contained in Regulation (7), the Chairman could transfer any matter pending before the Regional benches to the Principal Bench either at the joint request of all the parties or for other reasons to be recorded in

writing. Regulation 7 (1) of the CLB Regulations provides as follows:

7. Jurisdiction of the Bench-(1) All proceedings, other than the proceedings before the Principal bench under Regulation 4, shall be instituted before the Bench within whose jurisdiction the registered office of the Company is situated

In view of this Regulation, none of the proceedings other than the proceedings under Regulation 4 (1) and Regulation 4 (3) of the CLB Regulations could have been dealt with by the Principal Bench. All other proceedings are required to be instituted before and consequently to be heard by the respective Benches within whose jurisdiction the registered offices of Companies are situated. To this rule, the only exception is carved out in the second proviso to Regulation 4 (3), which contains the non obstante clause i.e. "Notwithstanding anything contained in Regulation 7". This exception empowers the Chairman to transfer any matter from the Regional Benches to the Principal Bench. Thus the power delegated to the Chairman is the power to transfer matters before the Regional Benches only to the Principal Bench since any other transfer inter se between Regional Benches would otherwise violate the mandate of Regulation 7 (1), and this is not the power that the Company Law Board has delegated to the Chairman.

37. Thus the subject of "power to transfer" has been expressly and exhaustively provided in and limited by the second proviso to Regulation 4 (3) of the CLB Regulations. The Chairman cannot have direct recourse to the powers of the CLB over and above what is delegated to him under the CLB Regulations. The Appellant's contention based on the judicial interpretation of the words "it shall be lawful..." in the second proviso of Regulation 4 (3), also tends to support the Respondents' above contention. According to the Appellant, "it shall be lawful" means "providing as lawful what would not be legal without the said provision" or "merely making that legal and possible which there would otherwise be no right or authority to do". Thus, but for the second proviso to Regulation 4 (3), there was no right or authority in the Chairman to transfer matters, not even an "inherent power" to transfer matters pending before the Regional Bench to the Principal Bench. The position cannot be any different with regard to the Chairman's power to transfer any matter pending before a Regional Bench to another Regional Bench.

38. The Appellant has also contended that the Chairman has inherent powers under Regulation 44 of the CLB Regulations and that the Chairman can exercise his inherent powers and transfer a matter from one Regional Bench to another. What Regulation 44 does is to save the inherent power of the "Bench" to make such orders as may be necessary for the ends of justice. It is argued on behalf of the Appellant that the word "Bench" in Regulation 44 of the CLB Regulations must be interpreted differently and held to cover the "Chairman" acting as such since the context so requires. The Appellant points out that the definition clause opens with the words "in these regulations unless the context otherwise requires". Thus, where the expression "Bench" includes a Member and the word Member includes the Chairman, it would mean that the saving of the inherent

powers in the Bench contextually would include the saving of the Chairman's powers as the master of the roster i.e. in charge of the administrative functions of the Board.

39. As discussed hereinabove, "Chairman", "Bench" and "Company Law Board" are three different and distinct entities and the distinction is apparent in Section 10E of the Act as analysed hereinabove. The CLB Regulations were made by the CLB, that is to say, by its Members acting as a body by virtue of the powers conferred u/s 10E(6) of the Act and they also maintain this distinction.

(i) Regulations 3 and 4 refer to the Chairman viz. The Chairman of the Company Law Board as such and not to the Principal Bench of the CLB of which the Chairman may or may not be a Member or of which the Chairman may even be the only Member;

(ii) Regulation 4 (2), for example, separately refers to the Principal Bench and Regulation 4 (3) also separately refers to Regional Benches both as distinguished from the Chairman of the CLB;

(iii) Regulation 2 (1) (e) includes within the meaning of the word "Bench" even a Member sitting singly. This only means that a Bench need not be constituted of two or more Members but can be validly constituted even of one member whether it be the Principal Bench or a Regional bench. The fact that the definition of "Bench" includes a Member sitting singly does not in any manner dilute the clear distinction made in the Act as well as under the CLB Regulations between the Chairman of the CLB on the one hand and the Benches of the CLB including even the Principal Bench on the other;

(iv) Regulation 2 (1) (m) clarifies that the term "member" includes the Chairman and Vice-Chairman. This is because a Bench may consist exclusively of one member viz. the Chairman of the CLB;

(v) The CLB Regulations make a distinction between the Chairman acting as such and Benches, even if constituted of the Chairman as the sole or as one of the members;

(vi) Consequently the reference to the inherent powers of the Bench in Regulation 44 must necessarily be a reference to the inherent powers of each bench which could either be the Principal Bench or the Regional Benches, which are empowered to hear any particular matter, which in turn may include the Chairman acting as the sole or one of the Members of the Principal Bench but cannot be a reference to the powers of the Chairman of the CLB exercised as such Chairman.

40. As correctly submitted on behalf of the contesting Respondents, Section 10E(4B) deems that any Bench duly constituted, in exercising and discharging powers and functions is deemed to exercise the powers and functions of the CLB and any order made or act done by such a Bench shall be deemed to be the order or act of the CLB. There is no similar provision in the Act or the CLB

Regulations in respect of the powers/functions/acts/orders of the Chairman or of the Vice-Chairman acting as such. There is therefore no question of attributing the inherent powers referred to in Regulation 44 to either the Chairman or the Vice-Chairman when they act as such. The fact that the Chairman or the Vice-Chairman may also form part of a Bench including even the Principal Bench does not affect this clear position. As further submitted on behalf of the contesting Respondents, resorting to the inherency of powers of any organ of the CLB (assuming that any such powers exist) is completely unjustified since the CLB Regulations merely regulate the procedure by which the CLB operates. The provisions of Regulation 44 by themselves cannot confer any new power (independent of the CLB) in the Chairman who acts exclusively as a delegate of powers from the CLB. In any event, even a Bench will enjoy inherent powers only in respect of such matters as validly lie before it. A Regional Bench has no power to pass any order in exercise of its inherent powers that go beyond the jurisdiction of that Regional Bench. Hence one Regional Bench cannot direct another Regional Bench to do anything or to hear a matter. Similarly a Regional Bench cannot direct that a matter before it be transferred to another Regional bench for hearing nor can it transfer a matter pending before another Regional Bench to itself for hearing. This is because inherent powers cannot transcend jurisdiction.

41. Mr. Dwarkadas has, relying on the decision of Punjab & Haryana High Court in *Devi Das Gopal Krishnan's* case (supra), argued that the Chairman of the CLB can transfer matters from one Regional Bench to another under his power as a controlling authority to superintend the administering and the functioning of the CLB including the Regional Benches. Unlike the case of *Devi Das Gopal Krishnan* (supra) where, under the Punjab General Sales Tax Act, 1948, the Excise and Taxation Commissioner was the final controlling authority and was empowered to superintend the administrative and collection of leviable tax, there is no general controlling authority or power to superintend vested in the Chairman of the CLB under the Act. The powers of CLB as a body to fix the roster and assign work to the individual members have been delegated to the Chairman under the CLB Regulations. There is no general delegation to superintend the work of the respective Benches or Members to the Chairman beyond the aforesaid express delegation and as discussed herein, the Chairman must act within such express delegation. The ratio of the decision of *Devi Das Gopal Krishnan's* case is thus not applicable in the instant case.

42. The other submission of Mr. Dwarkadas, based on the decision of *Tanushee Basu's* case (Supra), that the Chairman could pass an order of transfer from one Regional Bench to another on the basis of his inherent powers on the analogy of Section 151 of the CPC also deserves to be rejected in the light of what is discussed above. Even if there might be inherent powers to do so with the CLB acting as a body, such power unless delegated to the Chairman cannot be exercised by him as explained above.

43. As observed hereinabove, Section 10E(4B) does not vest any power in the Chairman. The powers u/s 10E(4B) vest exclusively in the Board, which Board pursuant to its powers u/s 10E(6) of the Act has regulated its own procedure and in so doing has delegated some of the powers to the Chairman. If the Chairman enjoyed inherent powers of superintendence, as claimed by the Appellant, then ipso facto there would be no need for Regulation 3 and Regulation 4 vesting power in the Chairman. The very fact that the above Regulations expressly stipulate/vest power in the Chairman make it clear that there is no supervening or inherent power of superintendence vested in the Chairman. It is therefore clear that the extent of powers vested in the Chairman of the CLB are specified in Regulation 3 and Regulation 4, and aside from those powers, the Chairman has not been vested with or been delegated with any other powers.

44. Further, in the light of the above discussion, the other submission of Mr. Dwarkadas about the Board not being the delegate of the Central Government need not be considered, as we are not concerned here with the Board's powers, whether as a delegate or otherwise, but with the powers of the Chairman as an express delegate of the Board. The question of what is meant by the expression "Board" has been addressed herein separately and the submissions made in regard hereto cannot be accepted for the reasons stated.

45. As pointed out by the contesting Respondents that in statutes where the Chairman/President of the Tribunal is intended to exercise power to transfer cases from one Bench to another, the said power is expressly provided for in the statute. Some illustrations in this regard are given hereunder:

(i) Sections 5, 12, 18 and 25 of the Administrative Tribunals Act, 1985, and in particular Sections 12 and 25 which read as follows:

12. FINANCIAL AND ADMINISTRATIVE POWER OF THE CHAIRMAN.-

The Chairman shall exercise such financial and administrative power over the Benches as may be vested in him under the Rules made by the appropriate government;

(2) The appropriate government may designate one or more Members to be the Vice-Chairman or, as the case may be, Vice-Chairman thereof and the Members so designated shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

25. POWER OF CHAIRMAN TO TRANSFER CASES FROM ONE BENCH TO ANOTHER.

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

(ii) Section 91 of the Trade Marks Act, 1999:

96. Power of Chairman to transfer cases from one Bench to another._ On the application of any of the parties and after notice to the parties and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

(iii) Section 64 in The Delhi Rent Act, 1995.

64. Power of Chairman to transfer cases from one Bench to another._ On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

46. In any event, it is also well settled that the inherent powers cannot be used to negate specific provisions covering the field of their exercise. In *Arjun Singh vs. Mohindra Kumar and others* AIR 1964 SC 993, the Hon''ble Supreme Court held thus:

19. ... it is common ground that the inherent power of the court cannot override the express provision of the law. In other words, if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates....

47. The second proviso to Regulation 4 (3) is an express provision relating to the power of transfer. The power to transfer any matter pending before a Regional bench only authorises the Chairman to transfer any matter pending before the Regional benches to the Principal Bench. There is an implied prohibition against the transfer from one Regional Bench to another. This is in view of Regulation 7 (1) as well. There being no other provision authorising transfer, the Court cannot add to the Chairman's power of transfer. Regulation 4 (second proviso) cannot be rendered nugatory or meaningless by resort to some alleged inherent powers of the Chairman based on Regulation 44 to permit transfers of matters other than those permitted by Regulation 4. The argument of impracticability of certain previous orders passed by the CLB cannot be the basis for interpreting a provision of a statute.

48. The Learned Senior Advocates appearing for the parties have also advanced lengthy submissions on the issue as to whether the position and powers of the Chairman, CLB are akin to that of the Chief Justice of a High Court. As submitted on behalf of the contesting Respondents, the Office of the Chief Justice is an institution predating the Government of India Act, 1915, the Government of India Act, 1935 and the Constitution of India. Section 108(2) of the Government

of India Act, 1915 expressly vested power in the Chief Justice of the High Court akin to the master of the roster. The Learned Senior Counsel appearing for Respondent No. 8 submitted that the recitals to the Letters Patent provided that it was an act for establishing High Courts, each of which shall consist of a Chief Justice. Clause 8 of the Letters Patent authorised and empowered the Chief Justice to make appointments as "shall be found necessary for the administration of justice, and the due execution of all the powers and authorities granted and committed to the said High Court" by the Letters Patent. Article 225 of the Constitution of India saves the jurisdiction of the then existing High Courts, and the respective powers of the Judges therein in relation to administration of justice in the Courts, as also the power to make rules for the Court and to regulate the sittings of the Court and of members sitting alone or in Division Benches. Clearly the aforesaid power in respect of administrative matters, which is exercised by the Chief Justice, is a power which predated the Constitution and hence that power was expressly saved in the Constitution of India. It is in that light of the matter that it is said that the powers exercised by the Chief Justice inhere in him by the very nature of his position, given the longstanding exercise of such powers. In *The Mayavaram Financial Corporation Limited Mayiladuturai Vs. The Registrar of Chits, Pondicherry*, the Full Bench of the Madras High Court noted the statutory and constitutional basis for the exercise of power by the Chief Justice and held as under:

8... It is thus clear from the judgment of the Supreme Court's rule making power under S. 108 of the Government of India Act, 1915 read with the corresponding provision in the Government of India Act, 1935 and under Art. 225 of the Constitution of India remained unaffected and so is the power of the Hon"ble the Chief Justice to decide who amongst the Judges be assigned the work as a Judge sitting alone or a Judge sitting in a Division Bench of two or three Judges.

The Chairman of the CLB is a creature of statute, whose powers are circumscribed by Section 10E of the Act and by the CLB Regulations. Hence, the Chairman is bound to exercise his power within the four corners of Section 10E and the CLB Regulations. As the power vested in the Chairman is clearly stipulated in the said Regulations, the Chairman can only act within the ambit of the Regulations to exercise the powers delegated to him. The power of the Chairman being confined to the provisions of the Regulations, no action could have been taken by him contrary to or inconsistent therewith. It is settled that where a person or authority is a creature of statute, the said person/authority is bound by the Rules and provisions unless the Act or Rules provide to the contrary. In the present case there is nothing in the CLB Regulations as would indicate any intention that the Chairman was intended to be vested with any powers aside those from expressly delegated to him under Regulations 3 and 4 of the CLB Regulations. It therefore cannot be said that the position of the Chairman of the CLB is akin to that of the Chief Justice of a High Court.

49. As held in *Manju Varma vs. State of U.P (supra)*, the power of the Chief Justice to transfer a matter from one territorial jurisdiction to another is distinct from his power to frame a roster to determine the distribution of judicial work in the High Court. In that case the Chief Justice of the Allahabad High Court had express power under Clause 14 of the United Provinces High Courts (Amalgamation) Order, 1948, to transfer matters from specified areas of U.P. to Allahabad, which is similar to the second proviso to Regulation 4 (3) of the CLB Regulations. The transfer of matters inter-jurisdictionally, apart from the Principal Bench, not being part of the power to frame the roster, has to be expressly conferred on the Chairman. In the absence of any express power, the Chairman cannot claim such a power. The Judgment of the Madras High Court in *The President, Income Tax Appellate Tribunal vs. A. Kalyanasundaram (supra)* compares the President of the ITAT to the Chief Justice of a High Court only in the context of the Income Tax Act, which expressly conferred the power of constitution of Benches upon the President.

50. Even if we proceed on the basis that the Chairman of the CLB has similar powers to those of the Chief Justice of the High Court, the Chairman cannot exercise powers contrary to Regulation 7 which places an embargo on a matter being heard before any Regional Bench other than the Regional Bench within whose territorial jurisdiction the Registered Office of the Company is situated. It is well settled that the inherent powers referred to in a rule made under a Statute cannot provide a justification for committing breach of the provisions of the statute under which the Rule was made. In the present case, Regulation 7 embodies a prohibition placed by the CLB on any Regional Bench hearing a matter in respect of a Company not having its registered office within the territorial jurisdiction of that Regional Bench. The only exception to this is the second proviso to Regulation 4 which permits the Chairman to transfer any matter pending before any of the Regional Benches to the Principal Bench. The Chairman cannot rely upon any alleged inherent power to direct a transfer to be made from one Regional Bench to another Regional Bench in contravention of the said embargo under Regulation 7. The inherent powers arise within jurisdiction. They cannot be used to create a jurisdiction. The Chairman cannot in the exercise of any purported inherent power, vest jurisdiction in a Regional Bench, which in the light of the express provisions of Regulation 7 it does not possess. In view of the aforesaid reasoning, I am of the view that the Chairman, CLB has no power and/or jurisdiction to grant prayer (a) of the Company Application viz. to transfer Company petition No. 62 of 2009 from the Western Region Bench to the Southern Region Bench.

51. In prayer clause (b), the Appellant has in the alternative prayed that the Hon"ble CLB Member Shri Kanthi Narahari be permitted to preside over the Hon"ble CLB, Western Bench for the limited purpose of completing the hearing of Company Petition No. 62 of 2009, on the already agreed dates or any other mutually convenient dates. u/s 10E of the Act read with Regulation 3 of the CLB Regulations, the Chairman of the CLB certainly has the power to form any Bench

and specify therein the powers and functions which shall be exercised/discharged by such Bench. What is sought by the Appellant through prayer clause (b) is nothing but formation of a Bench presided by Kanthi Narahari at the Western Region, with a specification/direction to dispose of Company Petition No. 62 of 2009. The Chairman, CLB certainly has the power to accede to this request of the Appellant, as sought to be made in the said prayer clause (b). I am therefore of the view that the Chairman, CLB has the power and jurisdiction to grant the prayer sought in the alternative i.e. prayer clause (b). Prayer clauses (c) and (d) are consequential prayers and need not be commented upon.

52. The third and the fourth questions of law which need to be addressed are:

Whether the impugned order amounts to an abdication or fettering of discretion/ jurisdiction in a case where such power ought to have been exercised? and

Whether the impugned order is perverse, arbitrary, unsustainable in law and therefore deserves to be set aside?

Both the questions are together dealt with hereinafter.

53. It appears that the contesting Respondents have at the time of making submissions before the Chairman - CLB have not pressed the contention that the Chairman - CLB has no powers under the Act or the CLB Regulations to grant either of the reliefs sought in Company Application No. 275 of 2012. The Learned Chairman of the CLB has therefore without going into the question as to whether he has the power and jurisdiction to grant prayer clauses (a) and/or (b) sought in Company Application No. 275 of 2012, has after hearing the parties on merits rejected the reliefs sought by the Appellant and dismissed the Company Application. The order passed by the Chairman, CLB which is impugned by way of the present Appeal is reproduced hereunder:

Arguments heard on CA No. 275/2012 filed under Regulations 4 & 44 of the Company Law Board Regulation 1991 which seeks following directions:-

(a) The above captioned Company Petition be transferred to the Southern Bench of the Company Law Board for hearing to be completed before the Company Law Board Member Shri Kanthi Narahari on the already agreed dates or any other mutually convenient dates;

(b) In the alternative, the Company Law Board Member Shri Kanthi Narahari be permitted to preside over the Company Law Board, Western Bench for the limited purpose of completing the hearing in the above captioned company petition on the already agreed dates or any other mutually convenient dates;

(c) In addition to prayer (a), it be ordered and directed that the records and proceedings of Company petition 62 of 2009 be transferred to Chennai and the parties be directed to bear the cost in relation to the same if deemed necessary;

(d) In addition to prayer clause ii, if deemed necessary, the parties be directed to equally bear the costs in relation to the travel of the Learned Member from

Chennai to Mumbai for completion of the hearing of Company Petition 62 of 2009;

(e) For such further and other reliefs as the Principal Bench may deem fit in the facts and circumstances of the case.

In exercise of the power conferred on me by Section 10E(4B) and Regulation 4 of the Company Law Board Regulation, 1991 an administrative order dated 04.05.2012 regarding Constitution of Benches has already been passed by me. The said order provides in para 2 as under:-

Matter in which upon conclusion of final hearing orders have been reserved by the Members under transfer vide office order of even number dated 30.4.2012, such Members would pass orders in such matters at their new place of posting after due notice to the parties.

Merely because C.P. No. 62/2009 is part heard and hearing is at closing stage an exception ought not to be carved out for this matter alone as it would be creating a precedent and similar applications in all such matters would start pouring in from all Benches causing not only the disruption of work in the Benches as the Member would be required to visit other Benches to complete hearing in part heard matters. If part heard matters are transferred to a Bench where the Member, before whom hearing was part heard, is posted it would cause inconvenience to the parties as the parties would be required to travel distances to appear before other Benches in which the Member before whom the matter was part heard is posted. I have enquired from the Benches and I am told that such part heard matters are many.

A perusal of para 10 of CA No. 275/2012 shows that while the arguments for the Petitioner's side were concluded in four hearings, the Respondents took eleven hearings to complete their arguments. Then after completion of the arguments of the Petitioner in rejoinder in another four hearings, the Respondents again took three more hearings for arguments in sur rejoinder. What is even more surprising is that the matter has now been listed on 16th, 17th and 25th July 2012 for arguments in sur sur-rejoinder. This kind of procedure is unknown and I am unable to understand why after hearing arguments in rejoinder further opportunity for arguments in sur rejoinder and thereafter more opportunity for arguments in sur sur-rejoinder should have been granted by the Member. Be that as it may applicant/Respondents are also, to a great extent, responsible for the delay caused in conclusion of hearing in C.P. No. 62/2009. Granting any of the reliefs as prayed would therefore militate against the administrative order dated 4.5.2012 and create a precedent whereby a chaotic situation would arise in all Benches if in all such matters on the basis of such a precedent applications start pouring in. I therefore decline to grant the prayers in CA No. 275/2012 which is accordingly dismissed.

The present Member, Western Regional Bench, Mumbai would be well advised to hear arguments de-novo in C.P. No. 62/2009 in such a manner that hearing concludes before 31.8.2012.

Sd/- (Justice D.R. Deshmukh) Chairman.

54. The Learned Senior Advocate appearing for the Appellant, relying on the observation in the impugned order that "...Granting any of the reliefs as prayed would therefore militate against the administrative order dated 4.5.2012 and create a precedent whereby a chaotic situation would arise in all Benches if in all such matters on the basis of such a precedent applications start pouring in...", has submitted that the Learned Chairman of the CLB has abdicated and fettered his jurisdiction and power to transfer the Company Petition No. 62 of 2009 and has for extraneous reasons refused to invoke/exercise his discretion and powers which ought to have been exercised in favour of the Appellant. It is submitted that the Learned Chairman has also based his refusal to exercise his power on the basis that by so doing the same would run contrary to the Administrative Order dated 4th May 2012. Relying on the decision of the Hon'ble Supreme Court in U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others, , it is submitted that the finding of the Learned Chairman is clearly contrary to the well settled position of law that an authority in which a discretionary power is vested cannot by a self-imposed policy, curtail or abdicate the discretion which it is required to exercise on a case by case basis. It is submitted that the Learned Chairman is required in law to consider the said Application in light of the relevant facts and circumstances arising therein and after applying his mind to the merits of the same, exercise his discretion on that basis. The Learned Senior Advocate for the Appellant has submitted that in rejecting the said application, the Learned Chairman has given distinct and separate reasons for rejecting the two prayers made by the Appellant in the said application which are as follows:

(i) In relation to prayer (b) the learned Chairman observed that "merely because C.P. No. 62/2009 is part heard and hearing is at closing stage an exception ought not to be carved out for this matter alone as it would be creating a precedent and similar applications in all such matters would start pouring in from all Benches causing not only the disruption of work in the Benches as the Member would be required to visit other Benches to complete hearing in part heard matter"

(ii) In relation to prayer (a), the learned Chairman observed that "If part heard matters are transferred to a Bench where the Member, before whom hearing was part heard, is posted it would cause inconvenience to the parties as the parties would be required to travel distances to appear before other Benches in which the Member before whom the matter was part heard is posted. I have enquired from the Benches and I am told that such part heard matters are many.

The Learned Senior Advocate appearing for the Appellant submitted that the mere fact that a precedent could be created by allowing the said application cannot be a legal, valid or just reason to deny the same. It is submitted that the Learned Chairman committed an error by treating every part heard Company petition on an equal footing in this regard with Company Petition No. 62 of 2009.

It is submitted that substantial judicial time and effort of 23 days has been spent in finally hearing Company Petition No. 62 of 2009 and substantial legal costs have also been incurred by the parties thereto. There are clear and compelling reasons why the reliefs sought in the application ought to be granted. It is also submitted that the Learned Chairman has grossly erred in finding that inconvenience would be caused to the parties if Company Petition No. 62 of 2009 were to be transferred from the Western Region Bench at Mumbai to the Southern Region Bench at Chennai, inasmuch as they would be required to travel distances to appear before the Southern Region Bench of the CLB. It is submitted that the Respondents have even on earlier occasions arranged for Senior Counsel to travel from New Delhi and Calcutta to appear in Mumbai before the Western Region Bench of CLB. Therefore, no hardship would be caused to the parties or their Counsel to travel to Chennai instead of Mumbai. It is submitted that the learned Member has also erred in finding fault with the Appellant qua the earlier prolonged hearings before the learned Member Shri Kanthi Narahari then presiding over the Western Region Bench. It is submitted that the Learned Chairman has grossly erred in the impugned order by holding that the Appellant was responsible "to a great extent" for the delay in the proceedings. It is therefore submitted that the Learned Chairman has abdicated and fettered his jurisdiction and powers by not granting the reliefs as sought by the Appellant, and the relief sought for in the said Application has been rejected on the basis of perverse finding of fact and therefore the impugned order is liable to be quashed and the Company Application be allowed.

55. It is submitted on behalf of the Appellant that the last sentence of the fourth paragraph of the impugned order which reads "I have enquired from the Benches and I am told that such part heard matters are many" is not an independent reason given in support of the rejection of the Company Application. On a proper reading of the impugned order, it is clear that the reasons in support of the impugned order are to be found in the preceding part of the same (fourth) paragraph and in the subsequent paragraph. This sentence is a mere general factual statement and even if read with any of the other reasons in the impugned order, does not save the same from being unsustainable and perverse. Further this sentence refers to part heard matters generally and even if taken as an isolated reason for the refusal of the Company Application, the same would not save the impugned order as the entire submission of the Appellant is that the present matter was not just another part heard matter and for the purpose of transfer of a matter all part heard matters cannot be treated alike. It is submitted that if the Learned Chairman by the expression "such part heard matters" was referring to matters similarly placed as the present one, then a proper exercise of discretion would require that all such cases be transferred, assuming any such application is made by the parties in those cases.

56. The Learned Senior Advocate appearing for the Appellant has relied on the decision of the Hon"ble Supreme Court in the case of Ascu Arch Timber Protection Ltd. Vs. Commissioner of C. Ex., Calcutta, and has submitted that the

impugned order ought not to be sustained even if it is based on some relevant considerations since it is also based on several irrelevant considerations. It is submitted that it would be legally impermissible to sustain the impugned order even on the footing that the Learned Chairman has based his refusal to grant the reliefs sought in the said application on some relevant considerations.

57. Mr. De'vetre, Learned Senior Advocate appearing for Respondent No. 1, has submitted that the Chairman has exercised his discretion on rational, relevant, reasonable and germane considerations. The Learned Chairman of the CLB has given several reasons for declining to grant the reliefs prayed for. Each of these reasons is independent and objective. It cannot be gainsaid that the Chairman is concerned with the proper working of the Tribunal, in the interest of the larger litigating public. Private/individual interest must yield to broader considerations, namely interests of the litigating public and general efficient functioning of the Tribunal and its Benches. Once the Chairman comes to the conclusion that granting the transfer application as prayed for, would inevitably result in disrupting the working of even one Bench, that by itself would be sufficient justification for rejection of the application. It is submitted that the Chairman has also noted objectively that he inquired from the Benches and learnt that there are many "such" part heard matters. This is an additional and independent reason for the exercise of his discretion to reject the application. In addition, the Chairman has also taken into account the relevant circumstance that the previous hearings of the matter have been considerably delayed and spread over a great length of time i.e. over a period of two years. It is submitted that delay of this length after the commencement of arguments must be viewed in the light of the Hon'ble Supreme Court's view in regard to an analogous situation of delay in pronouncement of judgment after conclusion of arguments. In the case of Anil Rai Vs. State of Bihar, , the Hon'ble Supreme Court has held that where judgment has not been pronounced for six months after it was reserved, a party would be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the case and make it over to any other Bench for fresh arguments. It is submitted that though the said guidelines may not apply directly in a case like the present one, it cannot be lost sight of that in the present case where admittedly the opening arguments of Respondent No. 1 were concluded in August 2010 and the rejoinder arguments of Respondent No. 1 were concluded in November 2011, it would not be in the interest of justice that the Respondent be put to the disadvantage of judgment being delivered long after the close of their opening/rejoinder arguments. Mr. De'vetre submitted that taking into consideration the aspect of delay in the hearings, is hardly an irrelevant consideration. It cannot be said that the exercise of the discretion is perverse. It is submitted that the Chairman has exercised discretion reasonably and in a judicial manner. The view of the Chairman is more than reasonably possible based on the material before him. There is no question of the Chairman having fettered his discretion by general considerations. The considerations and materials taken into account by the Chairman are all germane and relevant.

58. Relying on the decision of the Hon''ble Supreme Court in *Wander Ltd. and Another Vs. Antox India P. Ltd.*, , Mr. De''vetre submitted that the Hon''ble Supreme Court has noted that the Appellate Court had fallen into error by misdirecting itself in regard to the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. Mr. De''vetre has relied on the decision of a Constitution Bench of the Hon''ble Supreme Court in *State of Orissa Vs. Bidyabhusan Mohapatra*, and has submitted that the Appellate Court in exercise of its appellate powers is entitled to uphold and sustain an order on any ground including a ground that may have been decided against the Respondent in Appeal. If any one of the grounds set out for the exercise of discretion is valid and proper, the Appellate Court will sustain the order. On the same proposition, Mr. De''vetre has drawn support from the decision of the Hon''ble Supreme Court in *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, and in the case of *Zora Singh*, .

59. Mr. De''vetre has further submitted that no litigant is entitled to have his matter adjudicated or heard by the Member of the Bench of his choice or subject to his convenience. In *M/s. Moonshine Films Pvt. Ltd. vs. Rajesh Patil and 6 in O.J. Appeal No. 51 of 2011*, a Division Bench of the Gujarat High Court, by order dated 22nd July 2011, dismissed an appeal u/s 10F against an order of the Chairman of the CLB, which ordered that the matter be heard by the Principal Bench. Mr. De''vetre therefore submitted that the learned Member of the CLB has by refusing to grant any reliefs in favour of the Appellant, neither abdicated/abandoned his discretionary powers nor has he given any findings which can be treated as perverse. However, Mr. De''vetre has submitted that his clients are willing to have the matter heard before any member of the Western Region Bench (including the Chairman) where the matter is pending or before the Principal Bench with an assurance to conclude its arguments in opening and rejoinder within a maximum of such number of working days as this Court deems reasonable.

60. Mr. Khambata, the Learned Senior Advocate appearing for Respondent No. 8 has adopted the arguments advanced on behalf of Respondent No. 1. In addition, he has submitted that it is well settled that an administrative authority can always lay down certain guidelines which aid in the exercise of its discretionary power in individual cases. Such norms or rules by which an administrative authority regulates the exercise of its discretion are not fetters but rather safeguards against the arbitrary exercise of discretion. He has submitted that even in the judgment cited on behalf of the Appellant viz. *U.P. State Road Transport Corporation & another vs. Mohd. Ismail & Ors.* (supra), the Hon''ble Supreme Court has held that the conferment of discretionary power upon an authority does not confer any vested right in any person for the exercise of such discretion (Para 11). The Hon''ble Supreme Court also held that whereas statutory discretion could not be fettered by self-created rules or policy, it is open to an authority to which discretion has been entrusted to lay down the norms or

rules to regulate exercise of such discretion (Para 13). The Hon"ble Supreme Court itself noticed that there are two factors which are relevant. Firstly, that discretion has to be exercised within the constraint of efficiency and effectiveness. Secondly, that discretion must be exercised according to rules of reason and justice and not according to private opinion (Para 15). These factors in fact support the framing of norms or rules regulating the exercise of the Chairman's discretion.

61. Referring to the decision of the Hon"ble Supreme Court in Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others, , relied upon by the Learned Senior Advocate for the Appellant in support of his contention that the impugned order is perverse and therefore the question of law arises, Mr. Khambata submitted that the contention is misconceived since the Hon"ble Supreme Court itself clarifies in paragraph 36 that perversity arises if a finding of fact "is based on no evidence". It is only then that the perversity of such finding itself becomes a question of law. This can hardly apply in the present case since the impugned order is based on material to support it.

62. Mr. Khambata has further submitted that even one good ground out of several is enough to sustain the order. He submitted that the judgment in Ascu Arch Timber Protection Ltd. vs. Commissioner of Central Excise, Calcutta, (supra) is that of two Judges of the Supreme Court and it can clearly not be said to have overruled the principles laid down in State of Orissa & Ors. vs. Bidyabhushan Mohapatra's case (Constitution Bench) or in State of Maharashtra vs. B.K. Takkamore's case (3 Judges). He submitted that the judgment in Ascu Arch Timber Protection Ltd. vs. Commissioner of Central Excise, Calcutta (supra) does not concern the issue at hand before this Court but is on a totally different issue, namely, that where a conclusion is reached in an order based on impermissible evidence, it is not possible to dissect the evidence to determine whether the order was influenced by impermissible evidence or not.

63. Lastly Mr. Khambata has submitted that the impugned order is a reasonable and possible view. The Chairman's view is not an impossible one. Some play in the joints has to be allowed to the Chairman. The Chairman is in a unique position and has the advantage of knowing the problems faced by all the Benches in their respective working and also the status of part heard matters. A conclusion reached by him that granting the reliefs as prayed for will cause chaos and disruption of work is one that is entitled to deference and cannot be called perverse. There is no allegation of any lack of bona fides against the Chairman. It is therefore submitted by Mr. Khambata that the Appeal filed by the Appellant be dismissed.

64. Before I consider the merits of the controversy in this regard, at the outset it may be noted that so far as the alternative prayer, i.e. prayer (b), is concerned the power of the Chairman invoked therefor is essentially an administrative power and the correctness or otherwise of its exercise must be tested having regard to the administrative considerations applied by the Chairman for the order

thereon. The following discussion shows that the order is just and proper having regard to the considerations so applied. Even as regards prayer (a), though I have already held that the power to grant the same does not vest in the Chairman, even assuming that such power vests in the Chairman, the decision or order of the Chairman on prayer (a) also can be sustained on the basis indicated in the following discussion.

65. The order impugned in this Appeal is reproduced in paragraph 51 above. A perusal of the said order shows that though the Respondent No. 1 has in its affidavit filed before the CLB in Company Application No. 275 of 2012 submitted that the Chairman of the CLB does not possess powers/jurisdiction to decide the reliefs sought by the said Application, the said Respondent has not pressed the said argument before the Chairman of the CLB and the Chairman of the CLB has therefore proceeded to decide the prayer sought by the Appellant in Company Application No. 275 of 2012 on merits. From the impugned order it is clear that the Chairman of the CLB has in his order, after setting out the reliefs sought by the Appellant, at the outset recorded that by his Administrative Order dated 4th May 2012 he has directed that "matter in which upon conclusion of final hearing orders have been reserved by the Members under transfer vide office order of even number dated 30th April 2012, such Members would pass orders in such matters at their new place of posting after due notice to the parties". Therefore, by the said order the Chairman of the CLB has allowed the Members of the Bench to pass orders in matters where the hearing has been concluded prior to the transfer of such Member, at their new place of posting, after due notice to the parties. The Learned Chairman has thereafter observed that merely because Company Petition No. 62 of 2009 is part-heard and hearing is at the closing stage, an exception ought not to be carved out for this matter alone as it would be creating a precedent and similar applications in all such matters would start pouring in from all Benches causing disruption in the working of the Benches, as the Member would be required to visit other Benches to complete hearing in part-heard matters, and if part-heard matters are transferred to a Bench where the Member before whom hearing was part-heard is posted, it would cause inconvenience to the parties as the parties would be required to travel distances to appear before other Benches in which the Member before whom the matter was part-heard is posted.

66. The Learned Chairman of CLB has also recorded that he has enquired from the Benches and he is told that "such part-heard matters are many". The Learned Chairman of the CLB has therefore applied his mind to the reliefs sought by the parties, as also made enquiries with the Benches about the pending part-heard matters and noted that such part-heard matters are many. The Learned Chairman has thereafter taken a decision that the reliefs sought by the Appellant should not be allowed because such applications, if allowed, would disrupt the work of the Benches where the Member is presently posted. Without considering whether he has the power to transfer a matter from one Regional Bench to another, the Learned Chairman of the CLB has also taken a view that asking a

Member to hear matters which have been partly heard by him at the Bench where he was earlier posted would cause inconvenience to the parties.

67. Having considered the aforesaid order of the Learned Chairman of the CLB, I do not find the reasoning given by the Learned Chairman of the CLB perverse as alleged, nor am I of the view that the Chairman has fettered the discretion granted to him under the Act or the CLB Regulations to decide such an application. As submitted by the contesting Respondents, it cannot be gainsaid that the Chairman is concerned with the proper functioning of the Tribunal, in the interests of the larger litigating public. Private/individual interests must yield to broader considerations of interests of the litigating public and general efficient functioning of the Tribunal and its Benches. In fact the power of formation of Benches and assigning matters to them is essentially an administrative exercise and whilst carrying it out, these are the most important considerations, which the Chairman is bound to take into account. The Chairman has in his observations, as recorded hereinabove, considered the effect of permitting transfers of "such" part heard matters and has concluded that the effect would be to disrupt the working of the Benches. In addition to the above considerations, the Chairman has noted objectively that he enquired from the Benches and learnt that there are many such part heard matters. There is no reason to doubt the correctness or bona fides of Chairman's statement in the said order. The Chairman having taken a decision based on objective facts ascertained by him cannot be told that he should allow all such part heard matters to be transferred and heard by the transferred members at their new place of posting, as suggested by the Appellant.

68. The Learned Chairman of the CLB has in the subsequent paragraph of his order recorded that a perusal of paragraph 10 of Company Application No. 275 of 2012 shows that while the arguments for the Petitioners side were concluded in four hearings, the Respondent (i.e. the Appellant herein) took 11 hearings to complete his arguments. Again, after completion of the arguments of the Petitioner in-rejoinder which took another four hearings, the Respondent (the Appellant herein) again took three more hearings for arguments in sur-rejoinder. The Learned Chairman of the CLB has further recorded that what is even more surprising is that the matter has been listed on 16th, 17th and 25th July 2012 for arguments in sur-sur-rejoinder. The Chairman of the CLB has therefore recorded that this kind of procedure is unknown and he is unable to understand why after hearing arguments in sur-rejoinder, more opportunity for arguments in sur-sur-rejoinder should have been granted by the Member. The Learned Chairman of the CLB has recorded that "be that as it may, Applicant/Respondents are also to a great extent responsible for the delay caused in conclusion of hearing in Company Petition No. 62 of 2009". I see no perversity in what the Learned Chairman has recorded. The Learned Chairman has lamented qua the method in which the matter which was expedited by the High Court and directed to be heard and decided by July 2010 has proceeded before Shri Kanthi Narahari, Member Western Region Bench for a period of two years. The Learned Chairman

of the CLB has therefore dismissed the Company Application filed by the Appellant by recording that granting any of the reliefs as prayed for would militate against the administrative order dated 4th May 2012 i.e. the order allowing a Member under transfer to pass orders in matters finally concluded whilst sitting at the earlier Bench, at their new place of posting after due notice to the parties, and would create a precedent whereby a chaotic situation would arise in all Benches, if in all such matters on the basis of such a precedent applications start pouring in. The Learned Chairman of the CLB has therefore taken a view that it is not possible for him to allow an application seeking directions against a Member to leave his new place of posting for some time and to go to his old place of posting and hear part-heard matters or to sit at his new place of posting and hear matters which were partly heard by him at his earlier place of posting as such an order would create a precedent where a chaotic situation would arise in all the Benches. In my view, such reasoning of the learned Chairman of the CLB again can neither be treated as perverse nor can it be held that the Chairman has fettered his discretion. The Learned Chairman has, in my view, exercised his discretion reasonably and in a proper manner. The view of the Chairman is more than reasonably possible based on the material before him. There is no question of the Chairman having fettered his discretion by general considerations. The considerations and material taken into account by the Chairman are all germane and relevant. The discretion exercised by the Chairman cannot be interfered with, even if the Appellate Court comes to the conclusion that it would have arrived at a different conclusion from that of the Chairman.

69. The Hon'ble Supreme Court in *Wander Ltd. and another vs. Antox India P. Ltd.* (supra) noted that the appellate court had fallen into error by misdirecting itself in regard to the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order. In paragraph 14 of the said decision, the Hon'ble Apex Court held thus:

The Appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner, the fact that the appellate court would

have taken a different view may not justify interference with the trial court's exercise of discretion.

70. The Learned Senior Advocate appearing for the Appellant has submitted that the impugned order ought not to be sustained even if it is based on some relevant considerations since it is also based on several irrelevant considerations. In support of this contention, the Appellant has relied on the decision of the Hon''ble Supreme Court in *Ascu Arch Timber Protection Ltd. vs. Commissioner of Central Excise* (supra) wherein the Hon''ble Supreme Court has relied upon its earlier decision in *Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay*, , and held as follows:

The learned Attorney-General frankly conceded that it could not be denied that to a certain extent the Tribunal had drawn upon its own imagination and had made use of a number of surmises and conjectures in reaching its result. He, however, contended that eliminating the irrelevant material employed by the Tribunal in arriving at its conclusion, there was sufficient material on which the finding of fact could be supported. In our opinion, this contention is not well founded. It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby as issue of law arises.

71. In the case of *Dhirajlal Girdharilal vs. the Commissioner of income tax, Bombay* (supra), the question before the ITAT was whether on the facts and circumstances of the case, the assessee was doing business in shares in the Accounting Year or whether there is any material on record on the basis of which it could be held that the assessee was doing business in shares in the Accounting Year. The Tribunal answered the aforestated questions in the affirmative. The Learned Attorney General appearing before the Hon''ble Supreme Court conceded that it could not be denied that to a certain extent the Tribunal had drawn upon its own imagination and had made use of a number of surmises and conjectures in reaching its result. He however contended that eliminating the irrelevant material employed by the Tribunal in arriving at its conclusion, there was sufficient material on which the finding of fact could be supported. In view of such gross facts, the Hon''ble Supreme Court opined that the contention of the Attorney General was not well founded and when a Court of fact acts on material partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding and therefore such a finding was vitiated because of the use of inadmissible material and thereby an issue of law arises.

72. The above decision of the Hon''ble Supreme Court was followed in *Ascu Arch Timber Protection Ltd. vs. Commissioner of Central Excise, Calcutta* (supra). In that case, the question which arose before the Collector was whether wood when passed through a process by Ascu and then impregnated with their own

preservatives brings into existence "densified wood". The Collector held in favour of the assessee and held that densified wood had not come into existence. The Collector also held in favour of two other parties who were Respondent Nos. 2 and 3 in the Civil Appeals filed before him. The Department filed three Appeals before the Tribunal. The Tribunal took up all the Appeals together and passed a common order. In passing a common order, the Tribunal also relied on two test reports which pertained to samples taken from the other two parties and came to the conclusion that densified wood had been manufactured. Ascu filed a Civil Appeal challenging the order of the Tribunal and also filed a Rectification Application before the Tribunal on the basis that there was an error apparent on the face of the record. By a majority it was held by the Tribunal that as the test reports pertaining to the other two parties were also relied upon for arriving at a finding against Ascu, there was an error apparent on the face of the record. As the Tribunal had set aside its earlier order, the Appeal stood disposed of as infructuous. Against that order, an Appeal was filed before the Hon"ble Supreme Court. The Hon"ble Supreme Court by judgment in the case of CCE vs. Ascu Ltd. (2003) 9 SCC 23 has held that in effect the Tribunal had reviewed its own order. It was held that the Tribunal had no power to review. The Hon"ble Supreme Court thus set aside the order reviewing the earlier order and the Appeals were revived by the Hon"ble Supreme Court. After hearing the parties, the Hon"ble Supreme Court was of the view that the Tribunal has, in considering the three Appeals, used materials which pertain to one party to arrive at a finding against another party which the Tribunal could not have done. It was submitted before the Hon"ble Supreme Court that even if the test reports pertaining to the other parties, which were included in the order of the Tribunal, discloses that there is sufficient material to arrive at the conclusion that Ascu is manufacturing densified wood. This argument was not accepted by the Hon"ble Supreme Court on the ground that the Tribunal had itself set aside its order, inter alia on the ground that they strongly relied on material which they could not have relied upon. It is in these facts and circumstances that the Hon"ble Supreme Court relying on the observations of its decision in Dhirajlal Girdharilal vs. Commissioner of income tax, Bombay (supra) proceeded to set aside the order of the Tribunal and remitted the matter back to the Tribunal. The facts and circumstances in which the Hon"ble Supreme Court made the aforesaid observations in Dhirajlal Girdharilal vs. Commissioner of income tax, Bombay (supra) and which was followed in the case of Ascu Arch Timber Protection Ltd. vs. Commissioner of Central Excise, Calcutta (supra) are incomparable with facts of the present case and the observations/reasoning of the Learned Chairman of the CLB. Firstly, I am of the view that none of the reasons given by the Learned Chairman of the CLB can be treated as irrelevant and assuming that some of the reasons given in the impugned order by the Chairman of the CLB are not relevant or are irrelevant, the decision of the Hon"ble Supreme Court in Dhirajlal Girdharilal vs. Commissioner of income tax, Bombay (supra) and Ascu Arch Timber Protection Ltd. vs. Commissioner of Central Excise, Calcutta (supra) would not be applicable.

73. The Learned Senior Advocates appearing for the contesting Respondents have correctly relied on the decisions of the Hon''ble Supreme Court in the case of State of Orissa and others vs. Bidyabhusan Mohapatra (supra), State of Maharashtra vs. B.K. Takkamore (supra) and Zora Singh vs. J.M. Tandon & Ors. (supra). In State of Orissa & Ors. vs. Bidyabhushan Mohapatra (supra), a Constitution Bench of the Hon''ble Supreme Court in the context of an order passed in disciplinary proceedings on various grounds sustained it, although some of the grounds were found to be unsustainable. In that case, the High Court had set aside the order of dismissal and remanded the matter to the Governor for re-consideration on the question of punishment. The Hon''ble Supreme Court set aside this order of the High Court explaining the position thus:

9 The High court was of the opinion that the findings on two of the heads under charge (1) could not be sustained, because in arriving at the findings, the Tribunal had violated rules of natural justice..... If the order of dismissal was based on the findings on charges 1 (a) and 1 (e) alone, the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal... If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable", the order of the Governor... was final..... Therefore, if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction...to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice...

74. In State of Maharashtra vs. B.K. Takkamore (supra), the Hon''ble Supreme Court has upheld the order of suspension of a Municipality, holding that even if one of the two grounds was valid, the order in its entirety could not be set aside. After considering the judgments in Dhirajlal Girdharilal vs. Commissioner of income tax, Bombay (supra), which is the basis of the judgment cited by the Appellant in Ascu Arch Timber Protection Ltd. vs. Commissioner of Central Excise, Calcutta (supra) and State of Orissa & Ors. vs. Bidyabhushan Mohapatra (supra), in paragraph 15, the Hon''ble Supreme Court held thus:

15. The principle underlying these decisions appears to be this. An administrative or quasi judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be

non-existent or irrelevant, can be sustained if the Court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision.

75. In *Zora Singh vs. J.M. Tandon and others* (supra), the Hon'ble Supreme Court held in para 10 as under:

...The second contention also was rejected, and in our view rightly. The High Court was right in holding that even if there were, amongst the reasons given by the Commissioner, some which were extraneous, if the rest were relevant and could be considered sufficient, the Commissioner's conclusions would not be vitiated. The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence...

76. The Learned Senior Advocate appearing for the Appellant has tried to distinguish the above decisions of the Hon'ble Supreme Court by alleging that the Chairman's decision is based on subjective satisfaction and if some of the reasons relied on turn out to be extraneous or otherwise unsustainable, the decision would be vitiated as it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. In my view, the Chairman's decision is certainly not based on subjective satisfaction or on reasons which are otherwise unsustainable. In any event, even assuming that some reasons given by the Learned Chairman are not relevant whilst exercising his discretion in the matter, only one reason of the Learned Chairman namely that he has made enquiries with the Benches and has been informed that there are many such pending part heard matters and that in such circumstances if orders as sought are passed, it would create a chaotic situation at Benches, is enough for this Court to come to the conclusion that the Chairman could have passed the same order, that is dismissal of the Company Application on that ground alone. In view thereof, both question Nos. 3 and 4 are answered in the negative. The Company Appeal and the Company Application are, therefore, dismissed. The Company Law Board, Mumbai Bench, shall commence hearing of Company Petition No. 62 of 2009 and pass a final order on or before 31st March 2013.