

(2010) 04 SC CK 0082

In the Supreme Court Of India

Case No : Civil Appeal No's. 3305-3306 of 2010 (Arising out of SLP (C) No's. 26087-26088 of 2008)

Modern Industries

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Constitution of India, 1950 — Article 226
Conveyancing and Law of Property Act, 1881 — Section 24(8)
Employees Provident Funds and Miscellaneous Provisions Act, 19

Citation : AIR 2010 SC 1625 : (2010) 3 ALLMR 464 : (2010) 5 AWC 4461
Supp : (2010) 4 JT 10 : (2010) 5 SCC 44 : (2010) 4 SCR 560

Hon'ble Judges : R. V. Raveendran, J;R. M. Lodha, J

Bench : Division Bench

Advocate : Prashant Bhushan, Sumeet Sharma and Y. Raja Gopala Rao, for the Appellant; Ashwani Kumar Sunil Kumar Jain, Aneesh Mittal, K.P.S. Chani, Shibashish Misra and D.S. Mahra, for the Respondent

Final Decision : dismissed

Judgement

R.M. Lodha, J.—Leave granted.

2. Two main questions arise for consideration - first, as to the meaning of the expression, 'amount due from a buyer, together with the amount of interest' under Sub-section (1) of Section 6 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short, '1993 Act') and then, as to whether the Industry Facilitation Council (IFC) cannot go beyond the scope of interest on delayed payments upon the matter being referred to it by any party to dispute under Sub-section (2) of Section 6.

3. M/s. Modern Industries, Rourkela (for short, 'supplier') got an order from the Steel Authority of India Limited - Rourkela Steel Plant (for short, 'buyer') on January 15, 1983 for manufacture of Right Manipulator Side Guard. The order

value was Rs. 8.19 lakhs. Inter alia, the terms and conditions of the order were : (i) the job should be done exactly as specified in the drawings; (2) the alignment of bearing housings be made by the supplier and for this purpose, a spare shaft assembly would be issued against indemnity bond for checking the perfect alignment and free rotation of the shaft ; (3) the essentiality certificate would be issued by the buyer; (4) O.S.T./ T.O.T. 5% to be paid extra and (5) 90 per cent payment to be made against the proof of dispatch (R/R) and inspection certificate, balance 10 per cent payment would be made within thirty days after receipt of materials at site in good condition. It appears that initially buyer did not issue raw-materials but later on the buyer on May 28, 1985 agreed to supply the materials free of cost. The supplier also informed the buyer that the drawings were defective. According to the supplier, there was delay in supply of materials and removal of defects from drawings. The buyer ultimately extended the period of supplies till June 4, 1997. It is admitted case of the parties that supplies were made within extended period. The buyer ordered for release of Rs. 6,07, 493/- as an interim payment but deducted the balance payment of Rs. 2,11,506/- out of Rs. 8.19 lakhs of the original order as the cost of the supply of materials. The supplier, accordingly, raised a dispute in respect of balance payment together with interest on delayed payment before IFC u/s 6(2) of 1993 Act.

4. IFC took cognizance of the dispute referred to it by the supplier and issued notice to the buyer on September 21, 1999. On October 23, 1999, nobody appeared for buyer before IFC. However, IFC directed the buyer to settle the claims of the supplier within thirty days of receipt of the communication and gave an opportunity to submit their defence within ten days of receipt of the said communication and also depute a duly authorized officer to attend the proceedings. Vide its letter dated December 20, 1999, the buyer objected to the jurisdiction of IFC in dealing with the matter. It appears that on February 15, 2000, a representative of the buyer appeared before the IFC. On that date, the IFC again directed the buyer to settle the dispute amicably in the presence of Joint Director of Industries (Planning), Rourkela and also file its written statement regarding its outcome on March 24, 2000. On March 24, 2000, the representative of the buyer was not present before IFC nor any written statement was filed as directed on February 15, 2000. In the circumstances, IFC passed an ex-parte award against the buyer in the sum of Rs. 24,86,998/- with interest at the rate of 18 per cent being one-and-half times of Prime Lending Rate of the SBI compounded with monthly rests. IFC also directed that the interest would be payable with effect from September 24, 1997 (the date of last delivery, i.e., May 28, 1997 plus maximum 120 days of credit period) till the date of full payment.

5. The ex-parte award passed against the buyer was kept in abeyance by IFC on May 6, 2000 for one month at the instance of the buyer to enable it to discuss and settle the matter with the supplier. However, no settlement took place between the parties and IFC on July 11, 2000 reiterated its ex- parte award dated March 24, 2000.

6. Two writ petitions came to be filed by the buyer before the High Court of Orissa. In the first writ petition, ex- parte award dated March 24, 2000 was challenged and in the other, award dated July 11, 2000 as well as ex-parte award dated March 24, 2000 was assailed. In both writ petitions, the buyer also challenged the validity of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings (Amendment) Act 1998 (for short, '1998 Amendment Act').

7. The Division Bench of the High Court vide its judgment dated February 18, 2008 allowed these writ petitions and quashed and set aside the awards dated March 24, 2000 and July 11, 2000. It is from this judgment that present appeals by special leave have arisen.

8. 1993 Act was sequel to a policy statement on small scale industries made by the Government in Parliament that suitable legislation would be brought to ensure prompt payment of money by buyers to the small industrial units. It was felt that inadequate working capital in a small scale and ancillary industrial undertaking was causing an endemic problem and such undertakings were very much affected. The Small Scale Industries Board - an apex advisory body on policies relating to small scale industrial units - also expressed its views that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. It was felt that the buyers, if required under law to pay interest, would refrain from withholding payments to small scale and ancillary industrial undertakings. With these objects and reasons, initially an Ordinance, namely, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992 was promulgated by the President on September 23, 1992 and then Bill was placed before both the Houses of Parliament and the said Bill having been passed, 1993 Act was enacted. The Preamble to the 1993 Act reads, 'An Act to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto'.

9. By 1998 Amendment Act, with effect from August 10, 1998, 1993 Act was amended whereby few new provisions were inserted and some existing provisions amended.

10. Section 2(c), (e) and (f) define "buyer", "small scale industrial undertaking" and "supplier" as follows:

Section 2.- Definitions. - In this Act, unless the context otherwise requires, -

(c) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

(e) "Small scale industrial undertaking" has the meaning assigned to it by Clause (j) of Section 3 of the Industries (Development and Regulation) Act, 1951 (65 of

1951);

(f) "supplier" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State (or Union territory and includes, -

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956).]

11. Section 3 fastens liability on buyer to make payment for the goods supplied or the services rendered by the supplier to him within the time mentioned therein. It reads:

Section 3.- Liability of buyer to make payment.--Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

12. Section 4 imposes a liability of interest upon the buyer on failure to make payment of the amount due to the supplier. Originally in 1993 Act, Section 4 was as follows:

Section 4.- Date from which and rate at which interest is payable.--Where any buyer fails to make payment of the amount to the supplier, as required u/s 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at such rate which is five per cent points above the floor rate for comparable lending.

Explanation.--For the purposes of this section, "floor rate for comparable lending" means the highest of the minimum lending rates charged by scheduled banks (not being co operative banks) on credit limits in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

After amendment in 1998, Section 4 reads:

Section 4.- Date from which and rate at which interest is payable.--Where any buyer fails to make payment of the amount to the supplier, as required u/s 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one- and-half time of Prime Lending Rate charged by the State Bank of India.

Explanation.--For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.

13. Section 5 imposes a liability on the buyer to pay compound interest. It reads:

Section 5.- Liability of buyer to pay compound interest.-- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly rests) at the rate mentioned in Section 4 on the amount due to the supplier.

14. The mode of recovery of amount due is provided in Section 6. Erstwhile Section 6 in 1993 Act read:

Section 6-. Recovery of amount due.--The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceedings under any law for the time being in force.

After amendment in 1998, Section 6 provides:

Section 6.- Recovery of amount due.--(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

(2) Notwithstanding anything contained in Sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that Sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act.

15. Section 7 provides that no appeal against any decree, award or other order will be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such court or, as the case may be, such authority.

16. Mr. Prashant Bhushan, learned Counsel for the supplier urged that the IFC u/s 6(2) has jurisdiction to decide the dispute between supplier and buyer relating not only in respect of interest but also the principal amount payable by buyer to supplier. He submitted that the interpretation put by the High Court upon the provisions of 1993 Act is erroneous and that jurisdiction of IFC in resolving the dispute u/s 6(2) is not only confined to the dispute relating to interest but would also be available where there is dispute regarding the principal amount payable by the buyer to the supplier. He submitted that the High Court seriously erred in holding that the requirement of 'settled amount' between the supplier and buyer

is sine qua non for the applicability of 1993 Act.

17. On the other hand, Mr. Ashwani Kumar, learned senior counsel for the buyer submitted that findings of the High Court on the applicability of 1993 Act and the issue of jurisdiction of the IFC are meritorious in law for the reasons given in the judgment. He submitted that the entire scheme and structure of 1993 Act, including the Preamble and the Statement of Objects and Reasons when construed harmoniously, would show that Section 6(2) can only be invoked in cases of an existing determined, settled or admitted liability. He would submit that the use of word 'due' in Section 6 indicates that penal interest provisions in Sections 4 and 5 of 1993 Act get attracted where the principal amount payable is not in dispute, is settled or admitted or has been found by a competent forum to be 'due'. According to him, special law does not intend to substitute the regular procedure for determining a disputed liability where there is a bona fide dispute as to the amount due. He referred to the Blacks Law Dictionary, Stroud's Judicial Dictionary of Words and Phrases and Aiyer's Law Lexicon and also invited our attention to the decision of this Court in *State of Kerala and Ors Vs. V.R. Kalliyankutty and Anr*, in support of his argument that the expression 'amount due' in Section 6 pre-supposes an existing determined, settled or admitted liability. He would submit that the Preamble and the Statement of Objects and Reasons and the headings of Section can be referred to in determining the applicability and scope of a statutory enactment. In this regard, he relied upon decisions of this Court in *State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others*, , *Bonam Satyavathi v. Addala Raghavulu*, 1994 (Suppl) 2 SCC 556 , *Central Bank of India Vs. State of Kerala and Others*, and *Eastern Coalfields Ltd. Vs. Sanjay Transport Agency and Another*, .

18. Mr. Ashwani Kumar would also submit that 1993 Act even otherwise is not applicable to the present case as the contract pertaining to which the buyer has been saddled with a monetary liability was executed on January 15, 1983 and that 1993 Act came into effect much later. He relied upon two decisions of this Court, namely, *Assam Small Scale Ind. Dev. Corp. Ltd. and Others Vs. J.D. Pharmaceuticals and Another*, and *Shakti Tubes Ltd. Vs. State of Bihar and Others*, .

19. The wholesome purpose and object behind 1993 Act as amended in 1998 is to ensure that buyer promptly pays the amount due towards the goods supplied or the services rendered by the supplier. It also provides for payment of interest statutorily on the outstanding money in case of default. Section 3, accordingly, fastens liability upon the buyer to make payment for goods supplied or services rendered to the buyer on or before the date agreed upon in writing or before the appointed day and when there is no date agreed upon in writing, the appointed day shall not exceed 120 days from the day of acceptance. Section 4 fixes the rate of interest at one- and-half time of Prime Lending Rate charged by the SBI in case of default by the buyer in making payment of the amount to the supplier. The rate of interest fixed in Section 4 overrides any agreement between the

buyer and supplier to the contrary. Section 5 imposes a liability on the buyer to pay compound interest at the rate mentioned in Section 4 on the amount due to the supplier. Section 6 is a crucial provision. Sub-section (1) thereof provides that the amount due from buyer together with amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be recoverable by supplier from the buyer by way of a suit or other proceeding under any law for the time being in force. It thus provides for enforcement of right relating to recovery of amount due and the amount of interest which supplier may be entitled to in accordance with Sections 4 and 5. The mode of such enforcement is by way of suit or any other proceeding under any law for the time being in force. Sub-section (2), however, overrides the mode of enforcement of right provided in Sub-section (1) by enabling any party to a dispute to make a reference to the IFC for recovery of amount due together with amount of interest as provided in Sections 4 and 5. Once such dispute is referred, IFC acts as an arbitrator or conciliator and the provisions of Arbitration and Conciliation Act, 1996 get attracted as if the arbitration and conciliation were being conducted pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act. A plain reading of Section 6 would show that nature of dispute to be adjudicated by the IFC as an arbitrator or resolution thereof as a conciliator is in respect of the matters referred to in Sub-section (1), i.e., the amount due from a buyer together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5.

20. What exactly is the meaning of words 'amount due from a buyer' which are followed by the expression 'together with the amount of interest' under Sub-section (1) of Section 6 of 1993 Act? Do these words mean an admitted sum due? Or do they mean the amount claimed to be due?

21. The meaning of the word 'due' has been explained in Webster Comprehensive Dictionary, (International Edition) as follows:

1. Owing and demandable; owed; especially, payable because of the arrival of the time set or agreed upon.

2. That should be rendered or given; justly claimable; appropriate.

22. Concise Oxford English Dictionary (10th Edition, Revised) explains 'due' as follows:

DUE 7. ...(of a person) at a point where something is owed or merited. required as a legal or moral obligation. 2 proper; appropriate....

-ORIGIN ME: from OFr. *deu* 'owed', based on L. *debitus* 'owed', from *debere* 'owe'

23. In Black's Law Dictionary (Eighth Edition), the word 'due' is explained:

adj. 1. Just, proper, regular, and reasonable (due care) (due notice). 2. Immediately enforceable (payment is due on delivery). 3. Owing or payable;

constituting a debt....

24. Wharton's Law Lexicon (Fourteenth Edition) makes the following comment with regard to word 'due':

anything owing. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

25. P. Ramanatha Aiyar in 'Law Lexicon'; 2nd Edition (Reprint 1997) explains the word 'due'; as a noun : an existing obligation; an indebtedness; a simple indebtedness without reference to the time of payment : a debt ascertained and fixed though payable in future; as an adjective : capable of being justly demanded; claimed as of right; owing and unpaid, remaining unpaid; payable; regular; formal; according to rule or form.

26. Jowitt's Dictionary of English Law; 2nd Edition (Vol. 1) defines 'due'; 'anything owing, that which one contracts to pay or perform to another. As applied to a sum of money, 'due' means either that it is owing or that it is payable; in other words, it may mean that the debt is payable at once or at a future time. It is a question of construction which of these two meanings the word 'due' bears in a given case'.

27. In Irish Land Commission v. Viscount Massereene and Ferrard (1904) 2 I.R. 1113, Gibson J. stated that word 'due' may mean immediately payable (its common signification), or a debt contracted, but payable in future. It was also highlighted that the interpretation of the word 'due' must be according to the reason and context of the statute.

28. In the case of Hibernian Bank v. Yourell (1919) 1 I.R. Ch. D. 310, O'Connor M.R. construed the word 'due' in Section 24(8) of the Conveyancing and Law of Property Act, 1881 as due and legally recoverable.

29. The expression 'amount due' occurring in different statutes has come up for consideration before this Court. In Govind Prasad Vs. R.G. Parsad and Others, , this Court while dealing with the expression 'amount due' occurring in the third proviso to Clause (i) of Sub-section (2) of Section 14 of H.P. Urban Rent Control Act, 1987, held that the expression 'amount due' in the context will mean the amount due on and up to the date of the order of eviction; it will take into account not merely the arrears of rent which gave cause of action to file a petition for eviction but will include the rent which accumulated during the pendency of the eviction petition as well.

30. A three-Judge Bench of this Court in V.R. Kalliyankutty (1999) 3 SCC 657 had an occasion to interpret the words 'amounts due' used in Section 71 of Kerala Revenue Recovery Act, 1968. Section 71 of Kerala Act provided thus:

Section 71.- Power of Government to declare the Act applicable to any institution.--The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of

this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery.

After referring to Wharton in Law Lexicon and Black's Law Dictionary, it was held that the words 'amounts due' in Section 71 did not include time barred debt. This Court, however, highlighted that in every case the exact meaning of the word 'due' will depend upon the context in which the word appears.

31. In Maharashtra State Co-operative Bank Ltd. Vs. The Assistant Provident Fund Commissioner, , before a three-Judge Bench of this Court interpretation of the expression 'any amount due from an employer' used in Section 11(2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 came up for consideration. Section 11(2) of the said Act is as follows:

Section 11.- Priority of payment of contributions over other debts.--(I) Where any employer is adjudicated insolvent or, being a company, an order for winding up is made, the amount due--

(a) * * * * *(b) * * * * * (2) Without prejudice to the provisions of Sub-section (1), if any amount is due from an employer whether in respect of the employee's contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts.

While interpreting the said expression 'any amount due from an employer', this Court referred to Section 11(2) besides the other provisions of the said Act, namely, Sections 7A, 7Q, 14B and 15(2) and held that the said expression cannot be accorded restricted meaning confining it to the amount determined u/s 7A or the contribution payable u/s 8. This is what this Court said:

67. The expression "any amount due from an employer" appearing in Sub-section (2) of Section 11 has to be interpreted keeping in view the object of the Act and other provisions contained therein including Sub-section (1) of Section 11 and Sections 7A, 7Q, 14B and 15(2) which provide for determination of the dues payable by the employer, liability of the employer to pay interest in case the payment of the amount due is delayed and also pay damages, if there is default in making contribution to the Fund. If any amount payable by the employer becomes due and the same is not paid within the stipulated time, then the employer is required to pay interest in terms of the mandate of Section 7Q. Likewise, default on the employer's part to pay any contribution to the Fund can visit him with the consequence of levy of damages.

68. As mentioned earlier, Sub-section (2) was inserted in Section 11 by Amendment Act 40 of 1973 with a view to ensure that payment of provident fund dues of the workers are not defeated by the prior claims of the secured and/or of the unsecured creditors. While enacting Sub-section (2), the legislature was

conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable u/s 14B and accumulations required to be transferred u/s 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression "any amount due from the employer" and confine it to the amount determined u/s 7A or the contribution payable u/s 8.

69. If interest payable by the employer u/s 7Q and damages leviable u/s 14 (sic Section 14B) are excluded from the ambit of expression "any amount due from an employer", every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the authorities concerned to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to other debts. Any such interpretation would frustrate the object of introducing the deeming provision and non obstante clause in Section 11(2). Therefore, it is not possible to agree with the learned Senior Counsel for the appellant Bank that the amount of interest payable u/s 7Q and damages leviable u/s 14B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act.

32. In *Assam State Electricity Board and Ors. v. Shanti Conductors Pvt. Ltd. and Anr.* (2002) 2 GLR 550, inter-alia, the question that fell for consideration before the Full Bench of Gauhati High Court was as to whether the suit for recovery of a mere interest under 1993 Act is maintainable. The argument on behalf of the appellant therein was that no suit merely for the recovery of the interest under 1993 Act is maintainable under the provisions of Section 6. It was contended that both principal sum and the interest on delayed payment simultaneously must co-exist for maintaining a suit u/s 6 of the 1993 Act.

33. The Full Bench held that the suit is maintainable for recovery of the outstanding principal amount, if any, along with the interest on delayed payments as calculated under Sections 4 and 5 of the 1993 Act. It said:

The opening words of Section 6(1) "the amount due from the buyer, together with the amount of interest....." can only mean that the principal sum due from the buyer as well as or along with the amount of interest calculated under the provisions of the Act, are recoverable. The word 'together' here would mean 'as well as' or 'alongwith'. This cannot mean that the principal sum must be due on the date of the filing of the suits. The suits are maintainable for recovery of the outstanding, principal amount, if any, along with the amount of interest on the delayed payments as calculated under Sections 4 and 5 of the Act. We are unable to agree with that if the principal sum is not due, no suit would lie for the recovery of the interest on the delayed payments, which might have already accrued. If such an interpretation is given the very object of enacting the Act would be frustrated. The Act had been enforced to see that small scale industries get the payment regarding supply made by them within the prescribed period

and in case of delay in payments the interest would be at a much higher rate (1 1/2 times of lending rate charged by the State Bank of India). The obligation of payment of higher interest under the Act is mandatory. Sections 4 and 5 of the Act of 1993 contain a non-obstante clause i.e. "Notwithstanding any thing contained in any agreement between the buyer and the supplier". In other words, the parties to the contract cannot even contract out of the provisions of the 1993 Act. Even if such provision that interest under the Act on delay meant would not be chargeable is incorporated in the contract, Sections 4 and 5 of the Act of 1993 would still prevail as the very wording of these sections indicate. Take for instance that the buyer has not paid the outstanding amount of the supply by the due date. After much delay he offers the outstanding amount of the supply to the supplier. If the argument of the learned Counsel for the appellant is to be accepted, then, if the supplier accepts entire amount he would be losing, his right to recover the amount of interest on the delayed payment under the Act. Therefore, he would have to refuse to accept the amount of payment and then file a suit for recovery of the principal amount and the interest on the delayed payment under the Act. The Act does not create any embargo against supplier not to accept principal amount at any stage and thereafter file a suit for the recovery or realization of the interest only on the delayed payments under the Act.

34. The word 'due' has variety of meanings, in different context it may have different meanings. In its narrowest meaning, the word 'due' may import a fixed and settled obligation or liability. In a wider context the amount can be said to be 'due', which may be recovered by action. The amount that can be claimed as 'due' and recoverable by an action may sometimes be also covered by the expression 'due'. The expression 'amount due from a buyer' followed by the expression 'together with the amount of interest' under Sub-section (1) of Section 6 of 1993 Act must be interpreted keeping the purpose and object of 1993 Act and its provisions, particularly Sections 3, 4 and 5 in mind. This expression does not deserve to be given a restricted meaning as that would defeat the whole purpose and object of 1993 Act. Sub-section (1) of Section 6 provides that the amount due from buyer together with amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be recoverable by the supplier from the buyer by way of suit or other proceeding under any law for the time being in force. If the argument of senior counsel for the buyer is accepted, that would mean that where the buyer has raised some dispute in respect of goods supplied or services rendered by the supplier or disputed his liability to make payment then the supplier shall have to first pursue his remedy for recovery of amount due towards goods supplied or services rendered under regular procedure and after the amount due is adjudicated, initiate action for recovery of amount of interest which he may be entitled to in accordance with Sections 4 and 5 by pursuing remedy under Sub-section (2) of Section 6. We are afraid the scheme of Section 6 of 1993 Act read with Sections 3, 4 and 5 does not envisage multiple proceedings as canvassed. Rather, whole

idea of Section 6 is to provide single window to the supplier for redressal of his grievance where the buyer has not made payment for goods supplied or services rendered in its entirety or part of it or such payment has not been made within time prescribed in Section 3 for whatever reason and/or for recovery of interest as per Sections 6 for such default. It is for this reason that Sub-section (1) of Section 6 provides that 'amount due from the buyer together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5' shall be recoverable by the supplier from buyer by way of a suit or other legal proceeding. Sub-section (2) of Section 6 talks of a dispute being referred to IFC in respect of the matters referred to in Sub-section (1), i.e. the dispute concerning amount due from a buyer for goods supplied or services rendered by the supplier to buyer and the amount of interest to which supplier has become entitled under Sections 4 and 5. It is true that word 'together' ordinarily means conjointly or simultaneously but this ordinary meaning put upon the said word may not be apt in the context of Section 6. Can it be said that the action contemplated in Section 6 by way of suit or any other legal proceeding under Sub-section (1) or by making reference to IFC under Sub-section (2) is maintainable only if it is for recovery of principal sum along with interest as per Sections 4 and 5 and not for interest alone? The answer has to be in negative. We approve the view of Gauhati High Court in Assam State Electricity Board (2002) 2 GLR 550 that word 'together' in Section 6(1) would mean 'alongwith' or 'as well as'. Seen thus, the action u/s 6(2) could be maintained for recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered. In our opinion, u/s 6(2) action by way of reference to IFC cannot be restricted to a claim for recovery of interest due under Sections 4 and 5 only in cases of an existing determined, settled or admitted liability. IFC has competence to determine the amount due for goods supplied or services rendered in cases where the liability is disputed by the buyer. Construction put upon Section 6(2) by learned senior counsel for the buyer does not deserve to be accepted as it will not be in conformity with the intention, object and purpose of 1993 Act. Preamble to 1993 Act, upon which strong reliance has been placed by learned senior counsel, does not persuade us to hold otherwise. It is so because Preamble may not exactly correspond with the enactment; the enactment may go beyond Preamble.

35. In *Secur Industries Ltd. v. Godrej & Boyce Mfg. Co. Limited and Anr.* : (2004) 3 SCC 447, this Court observed that Sub-section (2) of Section 6 expressly incorporates the provisions of the Arbitration and Conciliation Act, 1996 and it further creates a legal fiction whereby disputes referred to IFC are to be deemed to have been made pursuant to an arbitration agreement as defined in Sub-section (1) of Section 7 of that Act. There is, thus, no reason as to why IFC, which acts as an Arbitrator or Conciliator under the provisions of Arbitration and Conciliation Act, 1996, cannot deal with the dispute concerning principal amount due to the supplier for the goods supplied or services rendered.

36. The High Court, in the impugned order, however, held that expression 'amount due from a buyer' would be amount admitted to be due in its plain and natural meaning and when admitted due amount is not paid by the buyer, the provisions of Sections 3 to 6 along with other provisions of 1993 Act would be applicable. In the opinion of High Court since the buyer has alleged breach of contract by the supplier, there was no amount admitted to be due or settled amount and, therefore, there was no question of delayed payment and reference of the dispute to the IFC under Sub-section (2) of Section 6 was without jurisdiction. The High Court in the impugned order held thus:

16. Therefore, the said matter before the IFC would be limited to the amount due from the buyer together with amount of interest calculated only in accordance with the provisions of Sections 4 and 5 of the Act. Section 4 applies only when Section 3 is applied. Therefore, the ultimate focus in the Act is on Section 3 as already discussed above. Section 3 speaks about the settled amount and not the amount which may be calculated according to the calculations of the supplier disputed by the buyer or where there is dispute regarding delayed supply causing loss to the buyer or defective supply of the materials. Therefore "the amount due from a buyer would be interpreted in its plain and natural manner i.e. amount admitted to be due" and when it is not paid by the buyer, the provisions of Section 3 to 6 along with other provisions of the Act would be applicable.

17. In the instant case, the buyer i.e. the petitioner has alleged that the supply was not made by the opposite party No. 2 in time and there was delay in supply of materials which caused loss to the petitioner and by the time of supply of materials, technology has already been changed. Therefore, in nutshell, the petitioner has alleged breach of contract by opposite party No. 2 and therefore, in case of allegation of breach of contract, it cannot be said that there is any amount admitted to be due or settled amount. Hence, there is no question of delayed payment and referring the dispute to the IFC under the provisions of Sub-section 2 of the Section 6, to our mind, would be without jurisdiction.

37. We find it difficult to accept the reasoning of the High Court. The interpretation put by the High Court upon the expression 'amount due from the buyer' is fallacious for the reasons indicated above which we need not respect.

38. Now, the submission of learned senior counsel for the buyer with regard to the applicability of the 1993 Act to the present case may be considered. His argument is that 1993 Act is not applicable to the present case as contract was entered into on January 15, 1983 and 1993 Act came into effect on September 23, 1992. The argument does not appeal us for more than one reason. In the first place, this contention was not raised before the High Court; it is canvassed before us for the first time. Secondly, and more importantly, from the available material, it transpires that although the initial contract was entered into between the parties in January 1983 but it got altered from time to time in view of negotiations between the parties about supply of raw-materials by the buyer free of cost; the defect in drawings and assignment of additional works and last of

such alteration was on April 29, 1995.

39. That 1993 Act is prospective in operation is settled by two decisions of this Court. In *Assam Small Scale Industries Development Corporation Ltd. and Ors.* (2005) 13 SCC 19, this Court held:

37. We have held hereinbefore that Clause 8 of the terms and conditions relates to the payments of balance 10%. It is not in dispute that the plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect from 23-9-1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, Sl. Nos. 1 to 26 (referred to in the penultimate para of the trial court judgment), that is supply orders between 5-6-1991 to 28-7-1992, were prior to the date of the 1993 Act coming into force. Only the transactions at Sl. Nos. 27 to 71 (that is supply orders between 22-10-1992 to 19-6-1993), will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June 1991 and 23-9-1992. The trial court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% up to June 1991 and 23.5% thereafter.

40. *Assam Small Scale Industries Development Corporation Ltd. and Ors.* (2005) 13 SCC 19 has been followed recently by this Court in the case of *Shakti Tubes Ltd. Vs. State of Bihar and Others*, . In *Shakti Tubes Ltd. Vs. State of Bihar and Others*, , this Court said:

18. In our considered opinion, the ratio of the aforesaid decision in *Assam Small Scale Ind. Dev. Corp. Ltd. and Others Vs. J.D. Pharmaceuticals and Another*, , is clearly applicable and would squarely govern the facts of the present case as well. The said decision was rendered by this Court after appreciating the entire facts as also all the relevant laws on the issue and therefore, we do not find any reason to take a different view than what was taken by this Court in the aforesaid judgment. Thus, we respectfully agree with the aforesaid decision of this Court which is found to be rightly arrived at after appreciating all the facts and circumstances of the case.

21. We have considered the aforesaid rival submissions. This Court in *Assam Small Scale Ind. Dev. Corp. Ltd. and Others Vs. J.D. Pharmaceuticals and Another*, has finally set at rest the issue raised by stating that as to what is to be considered relevant is the date of supply order placed by the respondents and when this Court used the expression "transaction" it only meant a supply order. The Court made it explicitly clear in para 37 of the judgment which we have already extracted above. In our considered opinion there is no ambiguity in the aforesaid judgment passed by this Court. The intent and the purpose of the Act,

as made in para 37 of the judgment, are quite clear and apparent. When this Court said "transaction" it meant initiation of the transaction i.e. placing of the supply orders and not the completion of the transactions which would be completed only when the payment is made. Therefore, the submission made by the learned Senior Counsel appearing for the appellant-plaintiff fails.

22. Consequently, we hold that the supply order having been placed herein prior to the coming into force of the Act, any supply made pursuant to the said supply orders would be governed not by the provisions of the Act but by the provisions of Section 34 CPC.

31. Even otherwise, we are of the considered view that there was neither any alteration of the contract nor any novation of the contract in the present case. The correspondence between the parties clearly disclosed that after the respondents issued the supply order, the appellant-plaintiff did not supply the pipes in terms of the supply order and it urged mainly for the increase in the price of the goods. Subsequently, they relied upon the price escalation clause and asked for increase in the price of pipes.

41. These two decisions, however, do not help the case of the buyer for what we have indicated above viz., that in the present case the original contract got altered from time to time and it was last altered on April 29, 1995. By that time, 1993 Act had already come into force.

42. Lastly, it was submitted by learned senior counsel for the respondents that IFC's award was delivered ex-parte and no reasons have been given in support thereof; the award does not reflect any application of mind. He would submit that if appeals are allowed and award is sustained that would cause grave prejudice to the buyer inasmuch as the original contract was for a sum of Rs. 8.19 lakhs, out of which Rs. 6.07 lakhs have already been paid in July, 1997 and goods worth balance amount were given to the supplier and yet buyer is saddled with the liability for an amount of Rs. 24,86,998/- with interest at the rate of 18 per cent compounded with monthly rests from September 24, 1997 which may run into crores of rupees. The situation in which the buyer has been placed is their own creation. They chose not to contest the claim of the supplier before IFC on merits. No written statement was filed despite opportunity granted by IFC. The buyer did not challenge nor disputed diverse claims made by the supplier (including additional work) before IFC. Even before the High Court, no submission seems to have been made on merits of the award at all. In the circumstances, the buyer does not deserve any indulgence from this Court. Pertinently, though 1993 Act provides a statutory remedy of appeal against the award but the buyer did not avail of the statutory remedy and instead challenged the award passed by IFC before High Court in extraordinary jurisdiction under Article 226 of the Constitution bypassing statutory remedy which, in our view, was not justified.

43. The result is that appeals are allowed and impugned judgment dated

February 18, 2008 passed by the High Court is set aside. Parties shall bear their own costs.