

SUPREME COURT OF INDIA

Shanti Conductors(P) Ltd. Anr.

Vs.

Assam State Electricity Board & Ors.

C.A.No.8442-8443 of 2016

(V.Gopala Gowda and [Arun Mishra, JJ.,](#))

31.08.2016

JUDGMENT

V. Gopala Gowda, J.,

SLP (Civil)No.9924-9925 of 2013

1. Leave granted in all the Special Leave Petitions.
2. The present appeals were listed together as a common question of law arises in all of them for consideration before this Court.
3. For the sake of convenience, reference is made to the facts of the appeals arising out of SLP (C) Nos. 9924-9925 of 2013, which have been directed against the impugned final judgment and orders dated 20.11.2012 and 20.12.2012 passed in RFA No. 66 of 2000 and MC No. 3472 of 2012 respectively, by the Gauhati High Court at Guwahati. The facts of the case which are required to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief as under:

“On 31.03.1992, the respondent-Assam State Electricity Board (hereinafter referred to as the "Electricity Board") placed an order for supply of Aluminium Electrical Conductors from the appellants-M/s Shanti Conductors Pvt. Ltd. for a total consideration of Rs. 1.22 crores. The supplies were to be made between June and December, 1992. On 13.05.1992, another order was placed by the Electricity Board to M/s Shanti Conductors for the supply of various types of conductors for a total consideration of Rs. 32.49 lacs. The supplies of the aforesaid goods were to be made between January and February, 1993.”

4. On 23.09.1992, the President of India promulgated an ordinance, namely, the Interest on Delayed Payment to Small Scale Ancillary Industrial Undertakings Ordinance, 1992. Subsequently, on 02.04.1993, the Interest on Delayed Payment to Small Scale and Ancillary

Industrial Undertakings Act, 1993 (in short the "Act") was enacted and it was deemed to have come into force with effect from 23.09.1992.

5. Meanwhile, the supply of equipments under the aforesaid purchase orders was completed by M/s Shanti Conductors on 04.10.1993. On 05.03.1994, the entire payment of Rs. 2.15 crores against the aforesaid supply orders was received by M/s Shanti Conductors.

6. Subsequently, on 10.01.1997, M/s Shanti Conductors filed a suit for recovery of Rs.53.68 lacs on account of interest on delayed payments and future interest at the rate of 27% per annum on the decretal amount. The Electricity Board filed the written statement on 16.09.1998, inter-alia, raising the plea of limitation and contending that the Act is not applicable to the case of the appellant- M/s Shanti Conductors as the contract was concluded prior to the enactment of the Act. The Trial Court decreed the suit on 02.02.2000 for recovery of the amount of Rs. 51,60,507.42 with compound interest at the rate of 23.75% p.a. with monthly rests from the date of the suit till realization.

7. Aggrieved of the impugned judgment and order, the Electricity Board filed Regular First Appeal No. 66 of 2000 before the High Court of Gauhati. Vide order dated 18.10.2001, the Division Bench of the High Court referred the matter to the Full Bench. The Full Bench framed the following questions that needed to be answered:

“i) Whether the suit for recovery of mere interest under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 is maintainable?

ii) Whether in the present case the suit for recovery of Interest under the Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 would not be maintainable as the contract for supply of goods between the parties was entered into prior to enforcement of the Act, i.e. on 23.09.1992?

iii) Whether the suit for recovery of interest under the Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 would not be maintainable if a reservation is made by the supplier retaining to it the right to recovery interest under the Act when the payment(s) of the principal sum is/are accepted, though these may be made beyond the prescribed period?"

The Full Bench of the High Court vide judgment And order dated 05.03.2002 answered the reference in affirmative by holding that a suit for interest alone could be filed. It further held that the Act is applicable to contracts entered into prior to 23.09.1992, i.e. the date on which the Act came into force. It was further held that the interest under the Act would be calculated from 23.09.1992 till the payment is made to the supplier. Having answered the reference in the above terms, the matter was sent back to the Division Bench for consideration of the appeal on merits.

8. Accordingly, the matter was placed before the Division Bench for its consideration in accordance with the decision of the Full Bench of the High Court in the reference. The Electricity Board contended before the Division Bench that this Court in the case of *Purbanchal Cables & Conductors Pvt. Ltd. v. Assam State Electricity Board & Anr.*¹ has held that the Act is applicable only to the agreements entered into after 23.09.1992. Accordingly, in terms of the judgment of this Court in *Purbanchal Cables & Conductors Pvt. Ltd.* (supra), the Division Bench of the High Court vide judgment and order dated 20.11.2012 set aside the judgment of the Trial Court by allowing Regular First Appeal No. 66 of 2000.

9. Similarly, in the connected appeals also, the High Court had held in the impugned judgment and orders therein that the appellants are not entitled for the interest on the delayed payment as the contracts had been entered into prior to the commencement of the Act. Hence the present appeals.

10. We have heard Mr. M.H. Baig and Mr. Basava Prabhu S. Patil, learned senior counsel appearing on behalf of the appellants in the appeals arising out of SLP (C) Nos.9924-9925 of 2013 and SLP (C) No. 538 of 2016 and Mr. Ajit Kumar Sinha, learned senior counsel in appeal arising out of SLP (C) No. 15274 of 2013. We have also heard Mr. Vijay Hansaria, the learned senior counsel appearing on behalf of the Electricity Board.

11. Mr. M.H. Baig, the learned senior counsel submits that the respondents cannot claim a vested right in procedure, as the same is not a matter of right and can be taken away. The learned senior counsel places reliance on the three Judge Bench decision of this Court in the case of *State of U.P. v. Anand Swarup*². The learned senior counsel contends that the Act is applicable in respect of the contracts entered into by the Electricity Board with the appellants herein for supply of goods. Mr. Basava Prabhu Patil and Mr. Ajit Sinha, learned senior counsel appearing on behalf of some of the appellants contend that the usage of the words "transaction" and "supply order" as used by this Court in the case of *Assam Small Scale Industries Development Corporation Ltd. v. J.D. Pharmaceuticals*³ is not the correct test to be applied to determine whether the provisions of the Act are applicable to the contracts entered into prior to the coming of the Act into force. It is contended that this Court in the aforesaid case has referred to the said words without taking into consideration the Statement of Objects and Reasons of the Act and the parliamentary debates conducted while introducing the Bill before it was enacted. It is further contended that the same words were continued to be used in the case of *Shakti Tubes v. State of Bihar*⁴, wherein it was held as under:

"21. We have considered the aforesaid rival submissions. This Court in *Assam Small Scale Industries* case 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 of the CPC."

In the above case, it was held that an Act cannot be given retrospective effect. The learned senior counsel contend that what was however, not considered by this Court, is that though an Act may not be given retrospective effect, it can still have retroactive operation.

12. The learned senior counsel appearing on behalf of the appellants place strong reliance upon another judgment of this Court in the case of *Modern Industries v. Steel Authority of India Ltd.*⁵, wherein it was held as under:

"9. The 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 23-9-1992 and then the Bill was placed before both the Houses of Parliament and the said Bill having been passed, the 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."

This Court further held as under:

"23. The wholesome purpose and object behind the 1993 Act as amended in 1998 is to ensure that the 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..."

13. Further, reliance is placed on the decision of this Court in the case of Purbanchal Cables & Conductors Pvt. Ltd. (supra) wherein the date of "sale agreement" was considered to be crucial to determine the applicability of the Act as under:

"52 Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23-9-1992 and not any time prior."

It is contended that the term "sale agreement" is not defined in the Act and thus, cannot be a legal test for applicability of the Act."

14. It is further contended that if the term "sale agreement" is to be the legal test for the applicability of the Act, then the same would be inconsistent with the judgment of this Court in Assam Small Scale Industries Development Corporation Ltd. (supra) where the "sale agreement" was prior to the date of commencement of the Act yet the Court applied the "transaction" and "supply order" test and applied the provisions of the Act on such "transactions" and "supply orders" which were issued on or after the aforesaid date of commencement of the Act. If the "sale agreement" test as has been held in Purbanchal Cables & Conductors Pvt. Ltd. (supra) is applied, then the sellers in Assam Small Scale Industries Development Corporation Ltd. (supra) would not be entitled to higher rate of interest under the Act. It is further contended that if "sale agreement" is taken to be the legal test as to the applicability of the Act then the same would also be inconsistent with the decision of this Court in Modern Industries (supra), wherein after consideration of the Aims and Objects of the Act, it was held that interest is payable on "outstanding money" due from the buyer in case of default.

15. The learned senior counsel further draw our attention to the relevant statutory provisions of the Act, which are extracted as under:

"2(b)(ii)-the day of deemed acceptance means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

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:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.

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 under section 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.

6. 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 interest) at the rate mentioned in section 4 on the amount due to the supplier."

Mr. Basava Prabhu Patil, learned senior counsel contends that from a reading of Section 2(b) of the Act, it becomes clear that "appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. It is submitted that a careful reading of Section 2(b) along with Sections 3, 4 and 5 of the Act would show that a statutory right is conferred upon the suppliers for payment of interest on the delayed payments. Therefore, the provisions of the Act are retroactive in nature. The learned senior counsel further contends that the judgments of this Court sought to be relied upon by the learned senior counsel appearing on behalf of the Electricity Board have no application to the facts of the instant case, as in those cases two Judge Benches of this Court have not correctly examined the aforesaid statutory provisions of the Act while holding that the same is prospective in nature.

16. Mr. Ajit Kumar Sinha, learned senior counsel contends that the provisions of the Act are retroactive in nature and places reliance on the decision of the Bombay High Court in the case of *Kingfisher Airlines Ltd. v. CCI* ⁶ and the decision of this Court in the case of *State of Bombay v. Vishnu Ramchandra* ⁷, wherein it was held as under:

"There are, however, statutes which create Do new punishment, but authorise some action based on past conduct. To such statutes, if expressed in language showing retrospective operation, the principle is not applied. As Lord Coleridge, C. J., observed during the course of arguments in *Rex v. Birthwhistle*:

"Scores of Acts are retrospective, and may without express words be taken to be retrospective, since they are passed to supply a cure to an existing evil."

Indeed, in that case which arose under the Married Women (Maintenance in Case of Desertion) Act, 1886, the Act was held retrospective without express words. It was said:

"It was intended to cure an existing evil and to afford to married women a remedy for desertion, whether such desertion took place before the passing of the Act or not."

Another principle which also applies is that an Act designed to protect the public against acts of a harmful character may be construed retrospectively, if the language admits such an interpretation, even though it may equally have a prospective meaning." The said principle was reiterated more recently by this Court in the case of *State of Maharashtra v. Krishnarao Dudhappa Shinde*⁸.

17. The learned senior counsel also places reliance on the meaning of the words "retroactive" and "retroactive inference", which have been defined in Black's Law Dictionary (Sixth Edn.) as under :-

"Retroactive- Process of acting with reference to past occurrences. Retroactive inference- The inferring of a previous fact from present conditions by trier of facts."

18. The learned senior counsel further contends that the observations made in *Purbanchal Cables & Conductors Pvt. Ltd.* (supra) are clearly contradictory to the decision of this Court in the case of *Assam Small Scale Industries Development Corporation Ltd.* (supra). The relevant paragraph of *Purbanchal Cables* (supra) reads as under:

"53. On a careful perusal of the judgment of this Court in *Assam Small Scale Industries*, we find that even the question regarding the applicability of the Act to contracts concluded prior to coming into force of the Act is no longer *res integra*. This question is answered by this Court in *Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals* as under: (SCC p. 36, paras 37-38)

"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."

This Court in the abovesaid case held that any substantial law can only be applied prospectively unless retrospective operation is clearly made out in the language of the statute. It was further held that only a procedural or declaratory law operates retrospectively when there is no vested right in the procedure. Therefore, the learned senior counsel submits that none of the cases referred to above have actually examined whether the provisions of the Act are retroactive in nature or not.

19. The learned senior counsel further submits that the suit for interest alone is maintainable, as held by this Court in the case of *Modern Industries* (supra) as under:

"45. 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.

46. We approve the view of Gauhati High Court in *Assam State Electricity Board* that word 'together' in Section 6(1) would mean 'along with' or "as well as". Seen thus, the action under Section 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...."

20. The learned senior counsel further refers to the decision of this Court in the case of *Purbanchal Cables & Conductors Pvt. Ltd.* (supra) and submits that in the case, the correct factual and legal position as laid down in the case of *Assam Small Scale Industries Development Corporation* (supra) has not been appreciated. Therefore, the suit filed by the first appellant in respect of the interest cannot be held as barred by *res judicata*. In support of this contention, the learned senior counsel places strong reliance on the decision of this Court in *Sushil Kumar Mehta v. Gobind Ram Bohra*⁹, wherein it was held as under:

" a pure question of a law unrelated to facts which are the basis or foundation of a right, cannot be deemed to be a matter in issue. The principle of *res judicata* is a facet of procedure but not of substantive law. The decision on an issue of law founded

on fact in issue would operate as res judicata. But when the law has since the earlier decision had been altered by a competent authority or when the earlier decision declares a transaction to be valid despite prohibition by law it does not operate as res judicata. Thus a question of jurisdiction of a Court or of a procedure or a pure question of law unrelated to the right of the parties founded purely on question of fact in the previous suit is not res judicata in the subsequent suit. A question relating to jurisdiction of a Court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a Court."

The learned senior counsel further places reliance on the three Judge Bench decision of this Court in the case of *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*¹⁰, wherein it was held as under;

"...But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue."

21. On the issue of limitation, the learned senior counsel places reliance upon Section 19 and Article 25 of the Limitation Act, 1963 and also places reliance on the decision of the Bombay High Court in the case of *Angel Infin Pvt. Ltd. v. M/s Echjay Industries Ltd.*¹¹, wherein it was held as under:

"Applying the above observations of the Apex Court, one has to look to Section 19 of the Act and read the expression "debt" appearing therein along with the articles in the Schedule to the Limitation Act. The Articles provide for different periods of limitation for different types of debts. They also provide different dates from which the period of limitation begins to run. A glance at the said Schedule would show that there are large variety of debts as for example, for Seamen's Wages, for price of Goods sold and supplied, for price of Lodging, for hire of Animals or Vehicles or price of Trees or growing Crops, for price of work done, for money lent under an agreement, for money lent without an agreement, for money received by the Defendants for Plaintiffs use, for interest on monies lent, for amounts due under Bills

of Exchange, Promissory Notes etc. This will show that Article 25 refers to only the debt of interest, while Article 19 refers to the debt of loan. Since there are various types of debts provided under the schedule with different periods of limitation and different dates from which the limitation begins to run, the Parliament in Section 19 of the said Limitation Act, 1963 has advisedly used the generic expression "debt". This debt may be of one type or another type, but the payment on account of one type of debt cannot extend the period of limitation for another type of debt. Debt could be either for principal loan amount or it could be for interest."

The learned senior counsel contends that in the instant case, the suit has been filed within the period of limitation as the last payment was made by the buyer on 05.03.1994, and Money Suit 21/97 was filed in March 1997. The period of limitation would start running from then only.

22. The learned senior counsel further submits that the present appeal is maintainable even in light of the withdrawal of SLP (C) No. 12217 of 2001 in the case of *M/s Trusses & Towers (P) Ltd. v. Assam State Electricity Board and Anr.* on 06.08.2001. It was stated therein that there was an error in the judgment of the High Court. Accordingly, the petitioner therein filed Review Petition No. 75 of 2001 before the High Court of Gauhati. The High Court on 19.03.2013 passed an order in the said Review Petition allowing only 9% simple interest per annum. Aggrieved of the said judgment and order, *M/s Trusses & Towers Pvt. Ltd.* filed SLP (C) No. 15274 of 2013 on 10.04.2013. The learned senior counsel places reliance on the decision of this Court in the case of *Sushil Kumar Sen v. State of Bihar*¹², wherein it was held as under:

"2. It is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one... "

The learned senior counsel further places reliance on the decision of this Court in the case of *DS Steel (Pvt.) Ltd. v. State of Rajasthan & Ors.*¹³, wherein it was held as under:

" 25. Different situations may arise in relation to review petitions filed before a court or tribunal.

25.1. One of the situations could be where the review application is allowed, the decree or order passed by the court or tribunal is vacated and the appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law."

23. On the other hand, Mr. Vijay Hansaria, learned senior counsel appearing on behalf of the Electricity Board places strong reliance upon the judgment of this Court in the case of Purbanchal Cables & Conductors Pvt. Ltd. (supra) and contends that it is well settled position of law that the Act has no retrospective application. Therefore, the suit in the instant case which has been filed for claiming interest alone is not maintainable. The learned senior counsel further contends that the suit is barred by limitation. It is submitted that the last date of supply was 04.10.1993. Thus, the period of limitation for recovery of amount of Rs.53.68 lakhs, which is the amount due towards the interest on delayed payments and the future interest @ 27% expired on 03.10.1996.

24. The learned senior counsel further contends that the case of the first appellant is not maintainable not only on the question of limitation but also in view of the decision of this Court in the case of Purbanchal Cables & Conductors Pvt. Ltd. (supra) wherein the appellant was also a party. In that case, this Court while dismissing the appeal reiterated the legal principle that the provisions of the Act do not have retrospective effect. The learned senior counsel contends that the said judgment between the appellant and the respondent-Board is binding on the appellant. Therefore, the same issue cannot be re-agitated in this appeal as the decision of this Court in the case of Purbanchal Cables & Conductors Pvt. Ltd. (supra) operates as res judicata.

25. We have heard the learned senior counsel appearing on behalf of the parties. With reference to the aforesaid rival legal contentions the following questions of law would arise for consideration:

“i) Whether provisions of the Act are retroactive in nature?

ii) Whether non consideration of this aspect of the matter renders the decisions of this Court in Modern Industries (supra) and Purbanchal Cables & Conductors Pvt. Ltd. (supra) as sub silentio?

iii) Whether the judgment rendered in Purbanchal Cables & Conductors Pvt. Ltd. (supra) operates as res judicata in the instant case?

iv) Whether the suit filed by the appellants is barred by limitation?

v) Whether the appeal against the review in the connected matter in Civil Appeal @ SLP (C) No.15274 of 2013 (M/s Trusses & Towers Pvt. Ltd.) I maintainable?

vi) What order? Answer to Point nos. 1 and 2”

26. In my considered view after considering the rival legal submissions and judgments of this Court referred to supra, issue Nos. 1 and 2 are required to be answered in favour of the appellants for the following reasons: At the outset, it would be necessary to advert to the statement of the objects and reasons of the Act, the relevant parts of which read as under:

" A policy statement on small scale industries was made by the Government in Parliament. It was stated at that time that suitable legislation would be brought to ensure prompt payment of money by buyers to the small industrial units.

2. Inadequate working capital in a small scale or an ancillary industrial undertaking causes serious and endemic problems affecting the health of such undertakings. Industries in this sector have also been demanding that adequate measures be taken in this regard. The Small Scale Industries Board, which is an apex advisory body on policies relating to small scale industrial units with representatives from all the States, governmental bodies and the industrial sector, also expressed this view. It was, therefore, felt 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. The buyers, if required under law to pay interest, would refrain from withholding payment to small scale and ancillary industrial undertakings. Before examining the decisions of this Court in which the provisions of the Act have been interpreted, it would be useful to advert to the provisions themselves and understand the scheme of the Act.

Section 2(b) of the Act defines 'appointed day' as under:

"b) "Appointed day, means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Explanation- For the purposes of this clause, -

(i) ' The day of acceptance ' means, -

(a) The day of the actual delivery of goods or the rendering of services;
Or

(b) Where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the

rendering of services, the day on which such objection is removed by the supplier;

(ii) 'The day of deemed acceptance' means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

(emphasis laid by this Court)

At this stage, it is also important to examine Sections 3 and 4 of the Act, which provide for liability of the supplier to make payment, and the date from which such interest is payable. They read as under:

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.

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 under section 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 day 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)."

(emphasis laid by this Court)

Section 3 of the Act lays down the liability of the buyer to make payment before the appointed day, which, according to the definition in section 2, is the day after the expiry of 30 days from the delivery of the goods or the rendering of service. Section 4 of the Act provides the date from which the interest is payable. According to Section 4 of the Act, the liability on the buyer accrues from the appointed day. At the cost of repetition, as Section 2(b) of the Act makes explicitly clear, appointed day is the day following the expiry of thirty days from the date of acceptance, which is the day of delivery of goods or rendering of services. In my considered view, the language of the legislature could not have been more clearer than what has been explicitly made it very clear. It has clearly stated what the legislature had in contemplation at the time of

enactment of the Act as the focal date was the date of actual delivery of goods or the rendering of services, and not the date on which the transaction was entered into.

27. The interpretation of the provisions of the Act has been the subject matter of four recent decisions of this Court. Starting with the case of Assam Scale Industries Development Corporation Ltd (supra), wherein it was erroneously held that the Act came into force with effect from 23.09.1992 and therefore the provisions of the Act has no application to "transactions" which took place prior to that date. This Court in the said case adverted to the words "transaction" and "supply order" though they are not defined under Section 2 of the Act. This Court further did not take into consideration the statement of objects and reasons of the Act and the Parliamentary debates before the Act was enacted while arriving at the said conclusion regarding the applicability of the Act.

28. While the statement of objects and reasons and Parliamentary debates cannot be used to ascertain the meaning of the specific words of an enactment, it is well settled position of law laid down by various decisions of this Court that the same can be used to understand the general context in which the legislation Was passed by the Parliament, as well as the evil it sought to remedy. A constitution bench of this Court held in the case of *State of West Bengal v. Subodh Gopal Bose*¹⁴ as under:

"It is well settled by this court that the statement of objects and reasons is not admissible as an aid to the construction of a statute (See *Aswini Kumar Ghose v. Arabinda Bose*) and I am not, therefore, referring to it for the purpose of construing any part of the Act or of ascertaining the meaning of any word used in the Act but I am referring to it only for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extend and urgency of the evil which he sought to remedy."

The said principle of law was reiterated by a Seven-Judge Bench of this Court more recently in the case of *State of Gujarat v. Mrzapur Motl Kureshi Kasab Jamat*¹⁵ as under:

"Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to the statute, and the evil which the statute was sought to remedy. (See -Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edition, 2004, at p. 218). In *State of West Bengal v. Subodh Gopal Bose and Ors.*; the Constitution Bench was testing the constitutional validity of the legislation impugned therein. The Statement of Objects and Reasons was used by S.R. Das, J. for ascertaining the conditions prevalent at that time which led to the introduction of the Bill and the extent and urgency of the evil which was sought to be remedied, in addition to testing the reasonableness of the restrictions imposed by the impugned provision. In his opinion, it was indeed very unfortunate that the Statement of Objects and Reasons was not placed before the High Court which would have assisted the High Court in arriving at the right conclusion as to the reasonableness of the restriction imposed. *State of West Bengal v. Union of India* approved the use of

Statement of Objects and Reasons for the purpose of understanding the background and the antecedent state of affairs leading up to the legislation."

29. Again in the case of Shakti Tubes (supra) this Court continued to use the words "transaction" and "supply orders" as have been referred to in the case of Assam Small Scale Industries Development Corporation Ltd. (supra). It was held that the Act in question cannot be given retrospective effect. On this aspect, this Court observed as under:

"26. There is no dispute with regard to the fact that the Act in question is a welfare legislation which was enacted to protect the interest of the suppliers especially suppliers of the nature of a small scale industry. But, at the same time, the intention and the purpose of the Act cannot be lost sight of and the Act in question cannot be given a retrospective effect so long as such an intention is not clearly made out and derived from the Act itself."

(emphasis laid by this Court)

While the Court made this observation, it did not correctly appreciate the intention and purpose of the Act, which was to ensure that the small scale and ancillary industries do not suffer as a result of delay in payment of outstanding money in cases of default. This Court in the case of Modern Industries (supra), interpreted the scope of the Act as under:

" 9. The 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 23-9-1992 and then the Bill was placed before both the Houses of Parliament and the said Bill having been passed, the 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.

23. The wholesome purpose and object behind the 1993 Act as amended in 1998 is to ensure that the 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."

(emphasis laid by this Court)

In the said case, while it was held that the provisions of the Act are prospective in nature based on the decisions of this Court in the case of Assam Small Scale Industries Development Corporation Ltd. (supra) and Shakti Tubes (supra), it was observed that the said cases have no applicability to the facts of the case because while the contract had been entered into on 15.01.1983, there were alterations to it through the years, with the last alteration on 29.04.1995. Since the contract was last altered in 29.04.1995, the Act would be applicable to the facts of the case.

30. Thus, while the 'transaction', as understood from the meaning sought to be given to them in the judgments of Assam Small Scale Industries Development Corporation Ltd. (supra) and Shakti Tubes (supra) was entered into in that case prior to the Act coming into force, the Act was made applicable to it on the basis that the contract has been altered after the Act came into force. Essentially, what the decision in the case of Modern Industries ends up by introducing a new test for the applicability of the Act, that of 'date of contract alteration'. This Court in the case of Purbanchal Cables & Conductors Pvt. Ltd. (supra), has held as under:

"52... Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23-9-1992 and not any time prior."

The said conclusion of the two Judge Bench has been arrived at without noticing that the term "sale agreement" has not been defined in the Act and is not even a legal test for applicability of the Act. If a "sale agreement" is taken to be the legal test, the same would be inconsistent with the judgment of this Court in the case of Assam Small Scale Industries Development Corporation Ltd. (supra), wherein though the "sale agreement" was prior to the date of commencement of the Act, this Court held that it was the date of "transaction" and "supply order" test which applied as the transaction was entered into after the commencement of the Act, and if the "sale agreement" test is to be applied, then the seller in the said case would not be entitled to higher rate of interest under the Act.

31. Further if "sale agreement" is taken to be the legal test, the same would also be inconsistent with the decision of this Court in the case of Modern Industries (supra), wherein the test is neither of "transaction" nor "supply order", but that of "contract alteration". In the said case, the Act was deemed to apply even though the "transaction" had been entered into prior to the coming into force of the Act, the contract had been altered several times, and these alterations had happened after the Act had come into effect.

32. Therefore, there is a need to reconcile the aforesaid inconsistent legal tests for the applicability of the Act as laid down in the decisions of this Court in the four cases referred to supra.

33. As I have already discussed above, a cumulative reading of the definition clauses of Sections 2,3 and 4 of the Act as extracted supra leave absolutely no room for doubt that The test for applicability of the Act is not the date of transaction, or supply order, or contract alteration, but quite simply, the date of the delivery of goods or rendering of services. What is also interesting to note in this case at this stage is point no. 3 of the statement of objects and reasons appended to the Act, which reads as under:

"Since Parliament was not in session and circumstances existed which rendered it necessary to take immediate action, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992 (15 of 1992) was Promulgated by the President on the 23rd September, 1992."

(emphasis laid by this Court)

34. Further, Section 4 did not figure in the Act when it was originally passed. It was introduced by way of an amendment (Act 23 of 1998). The statement of objects and reasons of the Amendment Act reads as under:

"Though the Act has been in operation for a period of five years, the problem of delays in the payment of outstanding dues to the small scale industrial units continues unabated. There have been widespread discussions on the provisions of the Act among the various interest groups including the Departments of State Governments dealing with industries, banks and small industry associations. The general consensus emerged from such discussions is that certain amendments to the Act are necessary in order to make it more effective so that the aims and objectives of the Act are achieved."

It was in the backdrop of this introduction that Section 4 of the Act was inserted. The phraseology of the Section makes it amply clear that the liability of the buyer arises after the supply of the goods or rendering of services. Section 4 is just a reiteration of the legislative intent as to the applicability of the Act, which is in those cases where the supply of goods or rendering of services took place after the coming into force of the Act.

35. A cumulative reading of the aforesaid Sections of the Act shows that though a catena

of cases which have been extensively adverted to in the case of Purbanchal Cables & Conductors Pvt. Ltd. (supra) have held that the statutory provisions of the 1993 Act do not have retrospective operation, they have failed to consider the aforesaid statutory aspects in a proper perspective keeping in view the objects and reasons of the Act and the usage of the non obstante clause phrase in Section 4 of the Act which has been extracted supra.

36. The Act was enacted in order to provide a boost to the small scale and ancillary industries, which were suffering as a result of irregular and delayed payments. A perusal of the statement of objects and reasons of the Act, the relevant portion of which has been extracted supra, makes it clear that the small scale industries were suffering as a result of lack of working capital, which was affecting the economic health of such industries. Prompt payment on the outstanding money, it was felt, that was the need of the hour. In this context, the provisions of Sections 3, 4, 5 of the Act, assume significance. More so in light of the fact that in the definition clause of Section 2 of the Act, the legislature has not defined the words 'transaction' or 'supply order'. It chose to only give definition to the terms, inter alia, 'appointed day', 'buyer' and 'supplier'. Since the focus of the Act is on delayed payment, which is in consonance with the definition of the term 'appointed day' as well, there is no need to consider when the 'transaction' was entered into or the date of the 'supply order'. Section 3 of the Act clearly provides that the liability of the buyer to make payment accrues after the supplier supplies goods or renders any services to the buyer. Thus, what was envisaged by the legislature as delayed payment was payment of the outstanding money due to the supplier after the goods had been supplied, and after the date agreed upon or the date of deemed acceptance. A bare reading of the Section makes it clear that the date of entering into the agreement or the date of supply order were not in contemplation of the legislature at all. Thus, it is amply clear from a bare reading of Section 3 that for the purpose of the Act, it does not matter when the contract was entered into, as long as the supply of the goods was after the Act came into force on 23.09.1992. It is in that sense that the question of retrospective application of the Act does not arise at all. This is further supported by the use of the non obstante clause in Section 4 of the Act. At the cost of repetition, Section 4 of the Act is extracted hereunder:

"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 under section 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."

(emphasis laid by this Court)

The use of the non obstante clause before the term "agreement" also makes it clear that once the money becomes due, which is after the supply of the goods and rendering services, the buyer is liable to pay the statutory interest on the delayed payment to the supplier no matter what is contained in the agreement between the buyer and the supplier.

37. Further, even on the issue of retrospectivity, what was required to be examined by this Court in the aforesaid cases was whether by reading the relevant statutory provisions Sections 3, 4, 5 and 6 of the Act, a vested statutory right is conferred. As I have already held that aforesaid provisions of the Act are retroactive in nature therefore, non-consideration of this aspect in Purbanchal Cables & Conductors Pvt. Ltd. (supra) and cases mentioned therein, renders the said judgment sub silentio on this question. The contention advanced by Mr. Vijay Hansaria, learned senior counsel appearing on behalf of the Electricity Board in this regard cannot be accepted. The learned senior counsel places reliance on the decisions of this Court in the case of *State of U.P. & Anr. v. Synthetics And Chemicals Ltd. & Anr.*¹⁶, as well as *Arnit Das v. State of Bihar*¹⁷ in support of the proposition that taking note of the hierarchical character of judicial system in India, it is of paramount importance that law declared by this Court be certain, clear and consistent. The said proposition of law cannot be doubted at all. But the question required to be examined in Purbanchal Cables & Conductors Pvt. Ltd. (supra) was non-consideration of the relevant statutory provisions of the Act adverted to above and interpreting the same for the purpose of examining as to whether the provisions of the Act would be retroactive in nature and confer a statutory right on the supplier. Non-consideration of the said provisions in a proper perspective would render the abovesaid judgment per incuriam, as held by this Court in *State of U.P. & Anr. v. Synthetics And Chemicals Ltd. & Anr.* (supra), wherein it was held as under:

"39. But the problem has arisen due to the conclusion in the case of Synthetic and Chemicals. The question was if the State legislature could levy vend fee or excise duty on industrial alcohol. The bench answered the question in the negative as industrial alcohol being unfit for human consumption the State legislation was incompetent to levy any duty of excise either under Entry 51 or Entry 8 of List II of the Seventh Schedule. While doing so the bench recorded the conclusion extracted earlier. It was not preceded by any discussion. No reason or rationale could be found in the order. This gives rise to an important question if the conclusion is law declared under Article 141 of the Constitution or it is per incuriam and is liable to be ignored.

40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratum. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is Avoided and ignored if it is rendered, 'in ignoratum of a statute or other binding authority'. (*Young v. Bristol Aeroplane Co. Ltd.*). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In *Jaisri Sahu v. Rajdewan Dubey* this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding."

Further, the cases referred to in the decision of this Court in the case of Purbanchal Cables & Conductors Pvt. Ltd. (supra) on the issue of prospectivity have no bearing to the facts of the

instant case. In one of the decisions cited in *Purbanchal Cables & Conductors Pvt. Ltd.* (supra), which is the decision of this Court in the case of *Zile Singh v. State of Haryana*¹⁸, a three judge bench of this Court held as under:

"It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova Constitution futuris formam imponere debet non praeteritis' -- a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole."

(emphasis laid by this Court)

Since a reading of the statement of objects and reasons of the Act makes it very clear that the Act has been enacted for the benefit of the small scale and ancillary industries at large, the decision in the case of *Purbanchal Cables & Conductors Pvt. Ltd.* (supra) does not correctly lay down the position of law with respect to the nature of the Act and its effect on its prospectivity as well.

38. In my considered view, *Purbanchal Cables & Conductors Pvt. Ltd.* (supra) and other decisions of this Court referred to supra did not consider the important aspect of the matter namely as to whether the provisions of the Act are retroactive or not? They merely held that the provisions of the Act have no retrospective effect. Thus, the judgments have been rendered sub silentio on this aspect. Therefore, point Nos. 1 and 2 are answered in favour of the appellant-suppliers.

Answers to Point Nos. 3,4 and 5:

39. The contention raised by Mr. Vijay Hansaria, the learned senior counsel appearing on behalf of the Electricity Board on the question of res judicata is wholly untenable in law. The substantial question that was in issue in the case of *Purbanchal Cables & Conductors Pvt. Ltd.* (supra), this Court was not concerned with the issues that arose in *Assam Small Scale Industries Development Corporation Ltd.* (supra), the findings of which have been extracted supra. This Court was only concerned with maintainability of a suit with regard to the interest on the basis of the statutory provisions of the Act, in relation to those agreements which had been entered into prior to coming into force of the Act. The issue of whether an appellant is entitled to prefer a claim on the interest as provided under Section 4 was not the issue decided in *Purbanchal Cables & Conductors Pvt. Ltd.* (supra). Therefore, the decision

in the same cannot be said to operate as res judicata. The material and substantial issue with regard to legal contention was not framed and answered, therefore, it does not operate as res judicata.

40. On the question of limitation, I answer the same in favour of the appellants by placing reliance on Section 19 read with Article 25 of the Limitation Act, 1963, which have been extracted as hereunder:

” 19. Effect of payment on account of debt or of interest on legacy - Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by the person making the payment. Explanation - For the purposes of this section, -

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent of produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a court.

25. Acquisition of easement by prescription –

(1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption and for twenty years, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, watercourse, use of other easement shall be absolute and indefeasible.

(2) Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(3) Where property over which a right is claimed under sub-section (1) belongs to the Government that sub-section shall be read as if for the words "twenty years" the words "thirty years" were substituted.

Explanation - Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of

an obstruction by the act of some person other than the claimant and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made."

41. Taking into consideration the supply order against the actual supply of the goods with payment made, the last payment was made on 05.03.1994. Thus, time began to run from that date. Taking into consideration the fact that the date of the institution of the suit is 10.01.1997, the suit has been filed within the period of limitation as prescribed in the Limitation Act. Though on this aspect of the matter no finding has been recorded either by the Trial Court or by the High Court, I answer the question in favour of the appellants.

42. In view of the judgments of this Court referred to supra, upon which strong reliance has been placed by Mr. Ajit Sinha, the learned senior counsel, on the question of maintainability of the appeal filed by M/S Trussees & Towers Pvt. Ltd questioning the correctness of the judgment and order passed in the Review Petition, we hold the same to be maintainable in law.

Answer to Point no. 6:

43. For the reasons stated supra, I answer the points framed in these appeals in favour of the appellants as stated above. The appeals are accordingly allowed. All pending applications are disposed of. In the Civil Appeals arising out of SLP (C) Nos. 9924-9925 of 2013, vide order dated 17.02.2015, the appellants M/s Shanti Conductors were directed to pay an amount of Rs.38,70,000/- back to the respondents. The respondents shall refund the amount to the appellants with 9% interest per annum within six weeks from the date of receipt of the copy of this Order.

JUDGMENT

Arun Misiira, J.,

44. Leave granted.

45. I have gone through the draft judgment written by my learned Brother. However, I find myself respectfully unable to agree with the opinion expressed therein for the reasons mentioned hereinafter.

46. It is not in dispute that the Assam State Electricity Board had placed supply orders on 31.3.1992 and 13.5.1992 and the Act called "The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993" (hereinafter referred to as "the Act of 1993") came into force with effect from 23.9.1992. The supply was completed on 4.10.1993. On 5.3.1994 last payment had been made. Suit for recovery of interest amounting to Rs.53.68 lacs was filed on 10.1.1997.

47. My learned Brother has held that the decisions in *Purbanchal Cables & Conductors Pvt. Ltd. v. Assam State Electricity Board & Anr.* (2012) 7 SCC 462, *Assam Small Scale Industries Development Corporation Ltd. & Ors. v. J.D. Pharmaceuticals & Anr.* (2005) 13 SCC 19 and *Shakti Tubes v. State of Bihar & Ors.* (2009) 7 SCC 673 etc. have not been correctly decided, therefore are per incuriam and sub silentio. The Act has retroactive operation. It has also been opined that the decision in *Purbanchal Cables* (supra) decided along with *Shanti Conductors* does not operate as res judicata.

48. It is apparent from the name of the Act itself that the same is to provide interest on delayed payments to small scale and ancillary industrial undertakings. The Act has as many as 11 sections. Section 1 deals with the extent of operation and date of its commencement. The Act came into force on 23rd day of September, 1992. 'Appointed day' has been defined in section 2(b) and 'buyer' in section 2(c). Both the definitions are extracted hereunder :

“2(b) "appointed day” means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;

Explanation,- For the purposes of this clause, -

(i) 'the day of acceptance' means, -

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

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

49. Section 3 deals with the liability of buyer to make payment. Payment has to be made by the buyer before the appointed day if there is no agreement to the contrary in writing between the buyer and supplier. Section 3 is extracted hereunder :

“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 therefor 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:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.”

50. Section 4 deals with the date from which and rate at which interest is payable. It is provided in section 4 itself that in case payment is not made in terms of section 3 notwithstanding any agreement to the contrary or any law for the time being in force, the buyer shall be liable to pay interest from the appointed day or from the date immediately following the date agreed to, at one-and-half time of Prime Lending Rate charged by the State Bank of India which is available to the best borrowers of the bank. Section 4 is extracted hereunder :

“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 under section 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.”

51. Section 5 contains a non-obstante clause with regard to agreement to the contrary or any law for the time being in force in case buyer fails to pay before the appointed day. The buyer shall be liable to pay compound interest, with monthly interest, at the rate mentioned in section 4. Section 5 is extracted hereunder :

“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 interest) at the rate mentioned in section 4 on the amount due to the supplier.”

52. Section 6 deals with recovery of amount payable under sections 4 and 5 which is recoverable by way of a suit or other proceeding under any law for the time being in force. Section 7 of the Act contains the provision with respect to appeal. The buyer-appellant has to deposit 75 per cent of the amount in terms of the decree, award or, other order in the appeal. Same is a condition precedent for entertainment of the appeal. Section 7A and 7B deal with establishment of Industry Facilitation Council and its composition. Section 7C requires the State Government to lay before the State Legislature every notification and rule made by the

State Government after it is issued or made. Section 8 requires a buyer in case of audit to specify the amount together with the interest in his annual statement of accounts as remains unpaid to any supplier at the end of each accounting year. Section 9 provides that interest not to be allowed as deduction from income of a buyer under the provisions of Income Tax Act. The Act has the overriding effect over other laws as provided in section 10. Section 11 contains the provisions with respect to repeal and saving.

53. It is apparent from the provisions of the Act noticed above that none of the provisions in the various sections indicates that the Act is retrospective in operation in any manner whatsoever. On the contrary, the Act requires payment to be made by a buyer before the appointed day that is the day following immediately after the expiry of 30 days from the date of acceptance or the deemed acceptance of the delivery of the goods or services. The day of acceptance means day of actual delivery of goods or rendering of service or where buyer has objected within 30 days, the day on which such objection is removed by the supplier. Where no objection is raised in writing by the buyer regarding acceptance of goods or services within 30 days, the appointed day would be counted from the day on which actual delivery of goods had been made or rendering of services. These provisions are not capable of being put into retrospective operation. The provisions of requirement of making the payment before the appointed day, raising of objection within 30 days and deemed acceptance are not capable of being put into retrospective operation. Section 3 deals with respect to liability of the buyer to make the payment with reference to appointed day. The payment has to be made on or before the date agreed upon between the buyer and supplier in writing or where there is no agreement, before the appointed day. The proviso further bars the agreement to extend the payment beyond 120 days from the day of acceptance or the day of deemed acceptance. Thus the provisions contained in section 3 also are prospective in nature. None of the provisions at all speak of the existing liability/agreement as on the date of commencement of the Act. Section 4 deals with the date from which and the rate at which interest is payable. A bare reading of the same leaves no iota of doubt that the Act is prospective in nature and the higher interest rate is applicable only on failure to make the payment as envisaged by the Act under section 3. If the buyer fails to make the payment as required under section 3, the liability to make the payment with interest arises. Section 4 contains non-obstante clause and overrides agreement or any other law to the contrary. A conjoint reading of the provisions of appointed day, sections 3 and 4 makes it clear that the Act is prospective in operation. It has no retrospective operation or retroactive operation. The Act does not contain any provision with respect to the existing agreements as on the date of commencement of the Act that would be governed by the provisions in force at the relevant time. The Act does not have the effect of invalidating prior agreements. The liability to make the payment of higher interest cannot operate retrospectively. The provisions of the Act are capable of being complied with prospectively that is from the date on which Ordinance initially came into force i.e. 23.9.1992 from which date the Act has been given effect. There is absolutely no indication in the Act that it has retrospective operation or retroactive operation. Taking note of the various provisions of the Act, it is apparent that the Act of 1993 is not retrospective in operation.

54. In ‘Principles of Statutory Interpretation 14th Edn. by Justice G.P. Singh revised by Justice A.K.Patnaik, on the basis of due consideration of catena of judicial decisions, following discussion has been made at page 580, para 2(a)(ii) with respect to retrospectivity of a statute :

“2. RETROSPECTIVE OPERATION (a) General principles

(i) xxx xxx xxx

(ii) Statutes dealing with substantive rights.- It is cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. There is a presumption of prospectivity articulated in the legal maxim ‘nova constitutio futuris formam imponere debet non praeteritis’ , i.e. ‘a new law ought to regulate what is to follow, not the past’ , and this presumption operates unless shown to the contrary by express provision in the statute or is otherwise discernible by necessary implication. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is “deemed to be prospective only - “nova constitutio futuris formam imponere debet non praeteritis’ . In the words of LORD BLANESBURG, “provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.” “Every statute, it has been said” , observed LOPES, L.J., “which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.”

55. The Act of 1993 contains no provision which it can be said to be expressly or by necessary implication of retrospective operation. The Act has the effect of overriding the laws and the agreements, thus would not affect the law and the agreements which prevailed before coming into force of the Act. As transaction/agreement is valid when made, it cannot be invalidated by subsequent prohibition or provision.

56. This Court in Assam Small Scale Industries Development Corporation Ltd. (supra) has considered the applicability of the Act of 1993 and has laid down thus :

“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.

39. xxx xxx xxx

40. We, therefore, are of the opinion that in relation to the transactions made prior to coming into force of the said Act, simple interest at the rate of 9% per annum, which was the bank rate at the relevant time, shall be payable both prior to date of filing of the suit and pendente lite and as future interest in terms of Section 34 of the Code of Civil Procedure. Interest, however, will be payable in terms of the provisions of the 1993 Act (compound interest at the rate of 23.5% per annum) in relation to the transactions made after coming into force of the Act, both in respect of interest payable up to the date of institution of the suit and pendente lite and till realisation. The judgment and decree to that extent requires to be modified. It is directed accordingly.”

This Court has clearly laid down that when payments are not made in terms of section 3, section 4 would apply. The Act came into force w.e.f. 23.9.1992 and would not apply to transactions which took place prior to that date and interest at the rate of 23 per cent was disallowed on the transactions ‘entered’ into between June, 1991 and 23.9.1992.

57. In *Shakti Tubes* (supra) again, the question whether the Act is prospective or retrospective, came up for consideration before a Division Bench of this Court. Supply orders were made on 16.7.1992. Decree for payment of interest was passed at the rate of 24 per cent in terms of the Act of 1993. This Court held that the Act is prospective and is not applicable to cases where supply orders were placed before the date of commencement of the Act. Therefore, it was held that the provisions of section 34 CPC would be applicable. The Court has consciously held after elaborate consideration of the provisions that the Act is applicable with reference from the date of initiation of the transaction, that is when the supply order was made and not with reference to date of completion of the transaction. This Court has also explained the term ‘transaction’ used in *Assam Small Scale Industries'* case (supra) to mean date of supply order. This Court has also considered retrospective applicability of ‘welfare legislation’. This Court has followed the decision in *Assam Small Scale Industries's* case (supra) and has laid down in *Shakti Tubes* (supra) thus :

“17. In the light of the said facts in Assam Small Scale Industries case (2005) 13 SCC 19, it was recorded in para 37 of the judgment that while the Act came into effect from 23-9-1992, the supply orders were placed only in respect of Sl. Nos. 1 to 26 immediately and before coming into effect of the Act and rest of the supply orders, namely, supply orders at Sl. Nos. 27 to 71 were placed between 22-10-1992 to 19-6-1993 which were subsequent to the date when the Act came into force. In that context, it was clearly recorded in the judgment that the Act will have no application to the transactions that took place prior to the commencement of the Act. In the next sentence the court made it clear as to what is referred to and understood by the expression “transaction” when it clearly stated that out of 71 transactions, Sl. Nos. 1 to 26 i.e. supply orders between 5-6-1991 to 28-7-1992 being prior to 23-9-1992 when the Act came into force, higher interest as envisaged under Sections 4 and 5 of the Act cannot be paid and demanded in respect of the said supply orders/transactions. It was also made clear that the transactions at Sl. Nos. 27 to 71 only i.e. supply orders between 22-10-1992 to 19-6-1993, would attract the provisions of the Act. Therefore, those supply orders which were issued by the Corporation between 22-10-1992 to 19-6-1993 were held to be the transactions which would be entitled to get the benefit of the provisions of the Act.

58. In our considered opinion, the ratio of the aforesaid decision in Assam Small Scale Industries case (supra) 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.

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59. Being faced with the aforesaid situation, the learned Senior Counsel appearing for the appellant-plaintiff sought to submit before us that the decision of this Court in Assam Small Scale Industries case (supra) refers to the expression “transactions” . According to him, the transactions would be complete only when the appellant-plaintiff made the supply and since the supply was made in the instant case after coming into force of the Act, the appellant-plaintiff would be entitled to the benefit of Sections 4 and 5 of the Act. Refuting the aforesaid submission, the learned Senior Counsel appearing for the respondents submitted that the aforesaid contention is completely misplaced. He pointed out that if such a meaning, as sought to be given by the learned Senior Counsel appearing for the appellant-plaintiff, is accepted that would lead to giving benefit of the provisions of the Act to unscrupulous suppliers who, in order to get the benefit of the Act, would postpone the delivery of the goods on one pretext or the other.

60. We have considered the aforesaid rival submissions. This Court in Assam Small Scale Industries case (supra) 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.

61. 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.

62. At one stage, the learned Senior Counsel appearing for the appellant-plaintiff submitted that the Act in question is a beneficial legislation and, therefore, a liberal interpretation and wider meaning is to be given to such a beneficial and welfare legislation so as to protect the interest of the supplier who is being kept on a higher pedestal by giving a higher benefit in the Act.

63. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

“13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. [The aforesaid] rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—*nova constitutio futuris formam imponere debet non praeteritis*—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p. 440).”

64. In *Zile Singh v. State of Haryana* (Supra) at p. 9, this Court observed as follows: (SCC pp. 9-10, paras 15-16)

“15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by

express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied;

(iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is *Attorney General v. Pougett* (1816) 2 Price 381 : 146 ER 130 (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but Thomson, C.B., in giving judgment for the Attorney General, said: (ER p. 134) 'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act: but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;' (Price at p. 392)"

26. There is no dispute with regard to the fact that the Act in question is a welfare legislation which was enacted to protect the interest of the suppliers especially suppliers of the nature of a small-scale industry. But, at the same time, the intention and the purpose of the Act cannot be lost sight of and the Act in question cannot be given a retrospective effect so long as such an intention is not clearly made out and derived from the Act itself."

15. The case of appellant - M/s. Shanti Conductors Pvt. Ltd. arose out of same lis which was decided along with *Purbanchal Cables* (supra) in which a Division Bench of this Court has similarly answered the questions involved conclusively before remanding the matter to High Court for deciding the appeals. The factual background of M/s. Shanti Conductors (P) Ltd. case has been duly considered by this Court. It is apparent from the judgment that this Court has dealt with appeals filed by both the appellants and with respect to retrospective operation of the Act

has laid down thus :

“Retrospective operation of the Act

65. The fundamental rule of construction is the same for all statutes whether fiscal or otherwise. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather from any notion. To arrive at the real meaning, it is always necessary to get an exact conception, scope and object of the whole Act.

66. In *Zile Singh v. State of Haryana* (2004) 8 SCC 1 this Court observed that there were four relevant factors which needed to be considered while considering whether a statute applied prospectively or retrospectively: (SCC p. 9, para 15)

“15. ... Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated.”

67. The general scope of the Act has been discussed above. The remedy sought to be applied by the Act is made clear in the Statement of Objects and Reasons, in which, it is stated that due to the delayed payments by buyers to the small-scale industries, their working capital was being affected, causing great harm to the small-scale industries in general. This Act was passed by Parliament to impose a heavy interest on the buyers who delayed the payments of the small-scale industries, in order to deter the buyers from delaying the payments after accepting the supplies made by the suppliers.

68. The policy statement of the Ministry of Micro, Small and Medium Enterprises dated 6-8-1991, reads:

“3. (3.4) A beginning has been made towards solving the problem of delayed payments to small industries by setting up of ‘factoring’ services through Small Industries Development Bank of India (SIDBI). Network of such services would be set up throughout the country and operated through commercial banks. A suitable legislation will be introduced to ensure prompt payment of small industries’ bills.”

69. Keeping in view the above object, the Act was enacted by Parliament. Before such enactment, it is required to examine rights of the supplier qua the buyer prior to the commencement of the Act. In case of delayed payment, the supplier, prior to the commencement of the Act, was required to file a suit for the payment of the principal amount, and could claim interest along with the principal amount. The supplier could avail of the same under Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), Section 61 of the Sale of Goods Act, 1930 and Section 3 of the Interest Act, 1978.

70. In other words, the supplier whose payment was delayed by the buyer prior to the commencement of the Act, could file a suit for payment of the principal amount along with the interest. The supplier, thus, had the vested right to claim the principal amount along with interest thereon in case of a delay in payment by the buyer and it was the discretion of the court to award this interest.

71. The court has the discretion to award interest along with the principal amount and the same is clear from the use of the word “may” in all the three provisions cited above.

Section 34 CPC is the main provision under which interest could be awarded by the court and Section 61 of the Sale of Goods Act, 1930 is an offshoot of Section 34 CPC. Section 3 of the Interest Act, 1978 also makes the Interest Act subject to the provision of Section 34 CPC. Hence, we can safely deduce that the interest awarded is a discretion exercised by the court, on the principal amount claimed, in case of a suit for recovery of payment by the supplier if such payment is delayed by the buyer.

72. With the commencement of the Act, a new vested right exists with the supplier, that being, if there is delay in payment after the acceptance of the goods by the buyer, the supplier can file a suit for claiming interest at a higher rate, as prescribed by the Act. This position has been approved by this Court in *Modern Industries* (2010) 5 SCC 44. If a suit for interest simpliciter is maintainable as held by this Court in *Modern Industries* (supra), then a new liability qua the buyer is created with the commencement of the Act giving a vested right to the supplier in case of delayed payment. In other words, if there is a delayed payment by the buyer, then a right to claim a higher rate of interest as prescribed by the Act accrues to the supplier.

73. The phrase “vested right” has been defined by this Court in *Bibi Sayeeda v. State of Bihar* (1996) 9 SCC 516 as: (SCC p. 527, para 17)

“17. The word ‘vested’ is defined in Black’ s Law Dictionary (6th Edn.) at p. 1563 as:

‘Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.’ Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster’ s Comprehensive Dictionary (International Edn.) at p. 1397 ‘vested’ is defined as:

‘[L]aw held by a tenure subject to no contingency complete; established by law as a permanent right; vested interests.’ ”

74. A statute creating vested rights is a substantive statute. This Court, in *Dhenkanal Minor Irrigation Division v. N.C. Budharaj* (2001) 2 SCC 721, opined: (SCC p. 742, para 23)

“23. ... ‘Substantive law’ , is that part of the law which creates, defines and regulates rights in contrast to what is called adjective or remedial law which provides the method of enforcing rights. Decisions, including the one in *Jena case*¹³ while advertent to the question of substantive law has chosen to indicate by way of illustration laws such as Sale of Goods Act, 1930 [Section 61(2)], Negotiable Instruments Act, 1881 (Section 80), etc. The provisions of the Interest Act, 1839, which prescribe the general law of interest and become applicable in the absence of any contractual or other statutory provisions specially dealing with the subject, would also answer the description of substantive law.”

75. In *Thirumalai Chemicals Ltd. v. Union of India* (2011) 6 SCC 739 this Court comparing substantial law with procedural law, stated: (SCC pp. 748-49, paras 23-24)

“23. Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation.

24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.”

76. In *Shyam Sunder v. Ram Kumar*(*Supra*), a Constitution Bench of this Court discussing the scope and ambit of a declaratory law has observed: (SCC p. 49, para 39)

“39. Lastly, it was contended on behalf of the appellants that the amending Act whereby new Section 15 of the Act has been substituted is declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word ‘declaration’ in an Act explaining what was the law

before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective. Conversely where a statute uses the word ‘declaratory’, the words so used may not be sufficient to hold that the statute is a declaratory Act as words may be used in order to bring into effect new law.”

77. In *Katikara Chintamani Dora v. Guntreddi Annamanaidu* (1974) 1 SCC 567 this Court held: (SCC p. 582, para 50)

“50. It is well settled that ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was begun unless the new statute shows a clear intention to vary such rights (Maxwell on Interpretation of Statutes, 12th Edn. 220). That is to say, ‘in the absence of anything in the Act, to say that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed’ .”

78. In *Govind Das v. ITO* (Supra) this Court speaking through PN. Bhagwati, J. (as he then was) held:

(SCC p. 914, para 11)

“11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.”

79. In *Jose Da Costa v. Bascora Sadasiva Sinai Narcornim* (1976) 2 SCC 917 this Court held: (SCC p. 925, para 31)

“31. Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well-established principles. The first is that ‘... while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have

retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.’ (See *Delhi Cloth and General Mills Co. Ltd. v. CIT* (1926-27) 54 IA 421, IA p. 425.) The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit. There are two exceptions to the application of this rule viz. (1) when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect and (2) when the court to which appeal lay at the commencement of the suit stands abolished (see *Garikapati Veeraya v. N. Subbiah Choudhry* AIR 1957 SC 540 and *Colonial Sugar Refining Co. Ltd. v. Irving* 1905 AC 369 : (1904-07) All ER Rep Ext 1620 [PC]).”

80. In *K. Kapen Chako v. Provident Investment Co. (P) Ltd.* (1977) 1 SCC 593 this Court discussing the dicta of the English courts on the aspect of retrospectivity observed: (SCC pp. 602-03, paras 37-39)

“37. A statute has to be looked into for the general scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of the law is to be considered and also the legislative changes contemplated by the statute. Words not requiring retrospective operation so as to affect an existing statutory provision prejudicially ought not be so construed. It is a well-recognised rule that statute should be interpreted if possible so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding, the prima facie construction of the Act is that it is not to be retrospective. (See *Gardner v. Lucas* (1878) 3 AC 582 (HL)).

38. In *Moon v. Durden* (1848) 2 Ex 22 : 154 ER 389 a question arose as to whether Section 18 of the Gaming Act, 1845 which came into effect in August 1845 was retrospective so as to defeat an action which had been commenced in June 1845. The relevant section provided that no suit shall be brought or maintained for recovering any such sum of money alleged to have been won upon a wager. It was held that it was not retrospective. Parke, B. said: (ER p. 398)

‘It seems a strong thing to hold, that the legislature could have meant that a party, who, under a contract made prior to the Act, had as perfect a title to recover a sum of money, as he had to any of his personal property, should be totally deprived of it without compensation.’

39. Again in *Smithies v. National Assn. of Operative Plasterers* (1909) 1 KB 310, Section 4 of the Trade Disputes Act, 1906 which enacted that an action for tort against a trade union shall not be entertained by any court was held not to prevent the

courts from hearing and giving judgment in actions of that kind begun before the passing of the Act. It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. But there is an exception to this rule, namely, where enactments merely affect procedure and do not extend to rights of action. See *Suche (Joseph) & Co. Ltd., In re* (1875) 1 Ch D 48. If the legislature forms a new procedure alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties it will be held to apply *prima facie* to all actions, pending as well as future.”

81. In *Dahiben v. VasANJI Kevalbha* 1995 Supp (2) SCC 295 this Court held: (SCC pp. 299-300, para 12)

“12. As the amendment in question is not to a procedural law, it may be stated that the settled principle of interpretation, where substantive law is amended, is that the same does not operate retrospectively unless it is either expressly provided or the same follows by necessary implication. Lest it be thought that a vested right cannot be taken away at all by retrospective legislation, reference may be made to *Rafiquennessa v. Lal Bahadur Chetri* AIR 1964 SC 1511 where it was stated that even where vested rights are affected, legislature is competent to take away the same by means of retrospective legislation; and retrospectivity can be inferred even by necessary implication.”

82. In *Zile Singh v. State of Haryana* (2004) 8 SCC 1 this Court examined the various authorities on statutory interpretation and concluded: (SCC pp. 8-9, paras 13-14)

“13. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only – ‘*nova constitutio futuris formam imponere debet non praeteritis*’ – a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p. 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes.. In determining, therefore, the nature of the Act, regard must be had to the

substance rather than to the form. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).”

84. In *State of Punjab v. Bhajan Kaur* (2008) 12 SCC 112 this Court held: (SCC p. 116, para 9)

“9. A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law.”

85. There is no doubt about the fact that the Act is a substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure.

86. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23-9-1992 and not any time prior.”

16. This Court in *Purbanchal Cables* (supra) has also taken note of earlier decisions of *Assam Small Scale Industries’* case (supra) and *Shakti Tubes* (supra) and after referring to them has rejected the submission that the Court in *Assam Small Scale Industries* (supra) did not consider and decide the issue whether the Act would apply to those supply orders placed prior to commencement of the Act and the supply being made after commencement of the Act. This Court has held that :

“55. *Assam Small Scale Industries* (2005) 13 SCC 19 has been followed in *Rampur Fertiliser Ltd.* (2009) 12 SCC 324 as well as *Modern Industries* (2010) 5 SCC 44. Therefore, we cannot agree with the submission that this Court in *Assam Small Scale Industries Development Corpn. Case* (2005) 13 SCC 19 did not specifically consider and decide the issue of whether the Act would apply to such of those contracts executed prior to the commencement of the Act but the supplies being made after the commencement of the Act.”

17. This Court in the case of Purbanchal Cables (*supra*) has also considered the effect of the binding precedent and sub silentio ruling since it was urged that Assam Small Scale Industries case (*supra*) and Shakti Tubes (*supra*) did not lay down the law correctly. This Court has rejected the submission thus :

“Binding precedent or sub silentio ruling

87. However, the learned Senior Counsel appearing for the suppliers, Shri Rakesh Dwivedi and Shri Sunil Gupta would contend that the decision of this Court is not a binding precedent.

88. Shri Rakesh Dwivedi, learned Senior Counsel would submit that the decisions of this Court in Assam Small Scale Industries (2005) 13 SCC 19 and Shakti Tubes (2009) 7 SCC 673 regarding the prospective operation of the Act were not law declared under Article 141, as the points under consideration in those cases were different from the issues raised in these appeals. He would further submit that the question about operation of the Act for contracts concluded prior to 23-9-1992 was not even a question, which came up for consideration before the Court and was not even argued by the learned counsel appearing in that matter, and hence would not form a part of the ratio of the decision. He would further submit that the question was answered without adequately considering the provisions of the beneficial legislation and therefore, it cannot be treated as a binding precedent.

89. Shri Sunil Gupta, learned Senior Counsel while adopting the argument advanced by Shri Dwivedi on this issue, would submit that there are two exceptions to the doctrine of precedent, namely, *per incuriam* and *sub silentio*. It was on the strength of the latter that Shri Gupta would submit that the decisions of this Court in Assam Small Scale Industries (2005) 13 SCC 19 and Shakti Tubes (2009) 7 SCC 673 cannot be considered as precedents. The learned Senior Counsel would state that a decision would not apply as a precedent when the court has failed to consider the objects and purpose of the Act in question and also certain previous judgments of this Court. He would further contend that the aforesaid judgments suffer from the *sub silentio* principle being rendered without full and adequate arguments on the issue. The learned Senior Counsel would also state that the Court did not look at the issue from the viewpoint canvassed presently.

90. The learned Senior Counsel would rely on the decision of this Court in *MCD v. Gurnam Kaur* (1989) 1 SCC 101. This Court has held: (SCC pp. 110-11, paras 11-12)

“11. Pronouncements of law, which are not part of the *ratio decidendi* are classed as *obiter dicta* and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das case* [WPs Nos. 981-82 of 1984 decided on 29.3.1985 (SC)] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to

uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words: A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided Point B in his favour; but Point B was not argued or considered by the court. In such circumstances, although Point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on Point B. Point B is said to pass sub silentio.

12. In *Gerard v. Worth of Paris Ltd.* (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* (1941) 1 KB 675 : (1941) 2 All ER 11 (CA), the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided 'without argument, without reference to the crucial words of the rule, and without any citation of authority', it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

91. In *State of U.P. v. Synthetics and Chemicals Ltd.* (1991) 4 SCC 139, His Lordship R.M. Sahai, J., in his concurring judgment set out the principles of per incuriam and sub silentio and has held thus: (SCC pp. 162-63, paras 40-41)

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratum. English courts have developed this principle in relaxation of

the rule of stare decisis. The ‘quodable in law’ is avoided and ignored if it is rendered, ‘in ignoratum of a statute or other binding authority’ . (Young v. Bristol Aeroplane Co. Ltd. 1944 KB 718 : (1944) 2 All ER 293 (CA) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey AIR 1962 SC 83 this Court while pointing out the procedure to be followed when conflicting decisions are placed before a Bench, extracted a passage from Halsbury’ s Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub silentio. ‘A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.’ (Salmond on Jurisprudence, 12th Edn., p. 153). In Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675 : (1941) 2 All ER 11 (CA) the Court did not feel bound by earlier decision as it was rendered ‘without any argument, without reference to the crucial words of the rule and without any citation of the authority’ . It was approved by this Court in MCD v. Gurnam Kaur (1989) 1 SCC 101. The Bench held that, ‘precedents sub silentio and without argument are of no moment’ . The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. UT of Pondicherry AIR 1967 SC 1480 it was observed, ‘it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein’ . Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.”

92. In Arnit Das (1) v. State of Bihar (2000) 5 SCC 488 this Court held: (SCC p. 498, para 20)

“20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical

sense when a particular point of law was not consciously determined. (See State of U.P. v. Synthetics & Chemicals Ltd. (1991) 4 SCC 139, SCC para 41.)”

92. In Tika Ram v. State of U.P. (2009) 10 SCC 689 it was held: (SCC pp. 740-41, para 104)

“104. We do not think that the law laid down in these cases would apply to the present situation. In all these cases, it has been basically held that a Supreme Court decision does not become a precedent unless a question is directly raised and considered therein, so also it does not become a law declared unless the question is actually decided upon. We need not take stock of all these cases and we indeed have no quarrel with the propositions settled therein.”

93. Though the submissions made by Shri Rakesh Dwivedi and Shri Sunil Gupta, learned Senior Counsel seem attractive at the first blush, we are of the view, they lack merit. In Assam Small Scale Industries (2005) 13 SCC 19, the question of retrospective operation of the Act or whether past contracts were governed by the Act, was argued by the learned Senior Counsel appearing for the respondent. In the said judgment this Court has observed: (SCC p. 30, para 19)

“19. ... The 1993 Act, it was submitted, being also a beneficent statute, the same should be construed liberally. The Act, Mr Chowdhury would argue, will thus, have a retrospective effect.”

94. Further, in Shakti Tubes Ltd. (2009) 7 SCC 673, this issue was canvassed by the learned counsel, due to which, this Court referred to the precedent in Assam Small Scale Industries (2005) 13 SCC 19. The argument on this point has been noted thus: (Shakti Tubes Ltd. case (2009) 7 SCC 673, SCC pp. 676-77, paras 9-11)

“9. According to the appellant-plaintiff, the said interest has been claimed by the appellant-plaintiff since it is entitled to so claim in terms of the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as ‘the Act’). Mr G.C. Bharuka, learned Senior Counsel appearing for the appellant-plaintiff drew our attention to the provisions of the Act and to the decision of this Court in Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals (2005) 13 SCC 19. In support of his contention that the transaction in the instant case came to an end with the appellant-plaintiff supplying the goods after coming into force of the Act he has taken us through the relevant sections of the Act as also the Statements of Objects and Reasons of the Act. According to him, the appellant-plaintiff is entitled to be paid in terms of the provisions of the Act.

10. Mr Bharuka contended that the earlier supply order which was issued on 16-7-1992 came to be materially altered and substituted by a fresh supply order issued on

18-3-1993 by which date the aforesaid Act had already been enforced and therefore, the appellant-plaintiff was entitled to claim interest at a higher rate as envisaged in Sections 4 and 5 of the said Act.

11. Mr Dinesh Dwivedi, learned Senior Counsel appearing for the respondents strongly refuted the aforesaid submissions made by the learned Senior Counsel appearing for the appellant-plaintiff on the ground that the supply order was issued in the instant case on 16-7-1992 and therefore, in terms of and in line with the decision of this Court in Assam Small Scale Industries case (supra) the appellant-plaintiff was entitled to be paid interest only at the rate of 9% per annum and not at a higher rate as contended by the appellant-plaintiff.”

95. This Court in Shakti Tubes Ltd. (2009) 7 SCC 673 expressly rejected the argument of the learned Senior Counsel appearing for the appellant in that case, that the Act should be given retrospective effect because it was a beneficial legislation, in paras 24 to 26, which have been set out below: (SCC pp. 681-83)

“24. Generally, an Act should always be regarded as prospective in nature unless the legislature has clearly intended the provisions of the said Act to be made applicable with retrospective effect.

‘ 13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. [The aforesaid] rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only—nova constitutio futuris formam imponere debet non praeteritis—a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440).’ (Zile Singh case (2004) 8 SCC 1, SCC pp. 8-9, para 13)

25. x x x x x

26. x x x x x”

96. In Rampur Fertiliser Ltd. (2009) 12 SCC 324 this Court again examined the entire scheme of the Act before following the dicta of this Court in Assam Small Scale Industries (2005) 13 SCC 19. Even in Modern Industries (2010) 5 SCC 44 this Court did not differ from the dicta of this Court in Assam Small Scale Industries (supra) and Shakti Tubes (2009) 7 SCC 673.”

It has been held in *Shakti Tubes (supra)* that in *Rampur Fertiliser Ltd. v. Vigyan Chemicals Industries* (2009) 12 SCC 324, this Court has examined the entire scheme of the Act and has followed the decision in *Assam Small Scale Industries' case (supra)*. In *Modern Industries v. Steel Authority of India Ltd.* (2010) 5 SCC 44, this Court has also not differed from the same. This Court has also considered the binding value of the precedent on Co-ordinate Bench and made elaborate discussion. Plea for reconsideration of decision in *Assam Small Scale Industries Development Corporation Ltd. (supra)* was also rejected by a Division Bench of this Court in *Shakti Tubes (supra)*.

18. The Court in *Purbanchal Cables (supra)* has referred to large number of decisions and made the following discussion with respect to binding value of the precedent :

“Binding value of a precedent

97. Chandrachud, C.J., speaking for the Constitution Bench, held: (SCC p. 393, para 40)

“40. It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of long standing should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis.”

98. In *Union of India v. Raghubir Singh* (1989) 2 SCC 754, this Court held: (SCC p. 766, paras 8-9)

“8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.

9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court.”

99. In *Krishena Kumar v. Union of India* (1990) 4 SCC 207, this Court observed: (SCC p. 233, para 33)

“33. *Stare decisis et non quieta movere*. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it.”

100. In *Mishri Lal v. Dharendra Nath* (1999) 4 SCC 11 this Court held: (SCC p. 18, para 13)

“13. ... It is further to be noted that *Meharban Singh* case (1969) 3 SCC 542 came to be decided as early as 1970 and has been followed for the last three decades in the State of Madhya Pradesh and innumerable number of matters have been dealt with on the basis thereof and in the event, a different view is expressed today, so far as this specific legislation is concerned, it would unsettle the situation in the State of Madhya Pradesh and it is on this score also that reliance on the doctrine of ‘*stare decisis*’ may be apposite. While it is true that the doctrine has no statutory sanction and the same is based on a rule of convenience and expediency and as also on ‘public policy’ but in our view, the doctrine should and ought always to be strictly adhered to by the courts of law to subserve the ends of justice.”

101. In *Central Board of Dawoodi Bohra Community v. State of Maharashtra* (2005) 2 SCC 673, a Constitution Bench of this Court held: (SCC p. 680, para 8)

“8. In *Raghubir Singh* case (1989) 2 SCC 754 Pathak, C.J. pointed out that in order to promote consistency and certainty in the law laid down by the superior court the ideal condition would be that the entire court should sit in all cases to decide questions of law, as is done by the Supreme Court of the United States. Yet, His Lordship noticed, that having regard to the volume of work demanding the attention of the Supreme Court of India, it has been found necessary as a general rule of practice and convenience that the court should sit in divisions consisting of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relating thereto and by such other considerations which the Chief Justice, in whom such authority devolves by

convention, may find most appropriate. The Constitution Bench reaffirmed the doctrine of binding precedents as it has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs.”

102. In *Shanker Raju v. Union of India* (2011) 2 SCC 132 this Court observed: (SCC p. 139, para 10)

“10. It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quieta movere, which means ‘to stand by decisions and not to disturb what is settled’. Lord Coke aptly described this in his classic English version as ‘those things which have been so often adjudged ought to rest in peace’. The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.”

(emphasis in original)

103. In *Fida Hussain v. Moradabad Development Authority* (2011) 12 SCC 615 this Court held: (SCC p. 622, para 15)

“15. Having carefully considered the submissions of the learned Senior Counsel Shri Varma, we are of the view that the judgment in *Gafar case* (2007) 7 SCC 614 does not require reconsideration by this Court. In *Gafar case* (supra) this Court had meticulously examined all the legal contentions canvassed by the parties to the lis and had come to the conclusion that the High Court has not committed any error which warrants interference. In the present appeals, the challenge is for the compensation assessed for the lands notified and acquired under the same notification pertaining to the same villages. Therefore, it would not be proper for us to take a different view, on the ground that what was considered by this Court was on a different fact situation. This view of ours is fortified by the judgment of this Court in *Ballabhadras Mathurdas Lakhani v. Municipal Committee, Malkapur* (1970) 2 SCC 267, wherein it was held that a decision of this Court is binding when the same question is raised again before this Court, and reconsideration cannot be pleaded on the ground that relevant provisions, etc. were not considered by the Court in the former case.”

104. Judicial discipline demands that a decision of a Division Bench of two Judges should be followed by another Division Bench of two Judges and this has been stated time and again by this Court. In *Raghubir Singh* (1989) 2 SCC 754, a Constitution Bench of this Court speaking through R.S. Pathak, C.J. held: (SCC p. 778, para 28)

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“28. We are of the opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court.”

105. In *Union of India v. Paras Laminates (P) Ltd.* (1990) 4 SCC 453 this Court has observed: (SCC pp. 457-58, para 9)

“9. It is true that a Bench of two members must not lightly disregard the decision of another Bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger Bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. Classification of particular goods adopted in earlier decisions must not be lightly disregarded in subsequent decisions, lest such judicial inconsistency should shake public confidence in the administration of justice.”

106. Shri Vijay Hansaria, learned Senior Counsel contends that a case for referring the matter to a larger Bench though is pleaded by the learned Senior Counsel, Shri Rakesh Dwivedi, this Court ought to test the same by the parameters laid down by this Court in *CIT v. Saheli Leasing and Industries Ltd.* (2010) 6 SCC 384 to find out whether the matter deserves to be referred to a larger Bench.

107. In *Saheli Leasing (supra)*, this Court held: (SCC p. 393, para 29)

“29. (x) In order to enable the court to refer any case to a larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view.”

108. The Constitution Bench of this Court in *Keshav Mills Co. Ltd. v. CIT*, AIR 1965 SC 1636 crystallised the position with regard to what the Court should do when a plea for consideration of an earlier judgment is made. It was held: (AIR p. 1644, para 23)

“23. ... When it is urged that the view already taken by this Court should be reviewed and revised it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides

questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the court in dealing with the question of reviewing and revising its earlier decisions. It would always depend on several relevant considerations:—What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions.”

109. We are in full agreement with the view expressed in *Keshav Mills* case (1965) 2 SCR 908. The learned Senior Counsel Shri Rakesh Dwivedi has not been able to make out a case for reconsideration of the decision of this Court in *Assam Small Scale Industries* (2005) 13 SCC 19. In fact, a plea for reconsideration of the same was rejected by a Division Bench of this Court in *Shakti Tubes* (2009) 7 SCC 673. We are unable to agree with the argument of Shri Dwivedi and Shri Gupta that the provisions of the Act were not considered in its entirety. In fact, the entire scheme of the Act has been considered in *Rampur Fertiliser* (2009) 12 SCC 324 and specific answer to the issue under consideration was answered.”

It is apparent from aforesaid discussion that the decision of a Co-ordinate Bench is binding and there has to be consistency and settled principle should not be unsettled as laid down in *Raghubir Singh* (supra) and other decisions referred to above. Judicial discipline demands that a decision of the Division Bench of this Court should be followed by another Bench of two Judges.

“19. In *Modern Industries* (supra), a Division Bench of this Court has also held that the Act of 1993 is prospective in operation is settled by two decisions of this Court in *Assam Small Scale Industries*’ case (supra) and *Shakti Tubes* (supra). This Court

has observed that since the earlier contract got altered from time to time, it was last altered on 29.4.1995. By that time Act of 1993 had already come into force. Hence the date of alteration in the agreement was held to be material for the applicability of the provisions of the Act. In Rampur Fertiliser Ltd. (supra), a Division Bench of this Court has held that the provisions of the Act of 1993 are prospective. The Court considered various provisions contained in sections 1, 3, 4, 5 and 10 of the Act. This Court followed the decision in Assam Small Scale Industries' case and has laid down thus :

“14. It was held in Assam Small Scale Industries Development Corpn. Ltd. (1987) 3 SCC 80 that the provisions of the Act are applicable only with prospective effect. Paras 37 and 38 of the said case which deal with the scope of the applicability of the Act are reproduced hereunder : (SCC p. 36)

“37. x x x x x

38. x x x x x”

In view of the ratio of the aforesaid decision the scope of the present appeal is very limited for it is already laid down by this Court that the Act, namely, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 came into effect from 23-9-1992. Therefore, the said Act would have no application and would not apply to transactions which took place prior to the aforesaid date. In the case in hand the transaction which was the subject-matter of the suit took place prior to 23-9-1992. This position is clear for the suit itself was filed on 31-10-1991 and therefore cause of action for filing the suit has to be prior in point of time.”

20. In view of the aforesaid catena of decisions of this Court, it has to be held that the Act of 1993 cannot be said to be retrospective in operation or having retroactive operation. The question stands answered affirmatively beyond pale of doubt and the decisions are binding on a Co-ordinate Bench. It cannot be said that the decisions are sub silentio or per incuriam in any manner whatsoever and, in my opinion, it is not open to the Co-ordinate Bench to take a different opinion. There is no confusion with respect to meaning of transaction, supply order and agreement. This Court while deciding aforesaid cases was not in oblivion of aims and objects of beneficial legislation, considered same and it has affirmatively pronounced on all the aspects. Hence, I find no scope to dwell further into the same arena to declare the various judgments to be sub silentio, per incuriam or not laying down the law correctly.

21. Even otherwise, on merits, in my opinion, considering the scheme of the Act, various provisions of the Act it cannot be said to have retrospective operation or retroactive operation and where a supply order has been placed before the date of commencement of the Act, that is before 23.9.1992, the beneficial provisions of the Act regarding higher interest would not be applicable.

22. In the case of appellant M/s. Shanti Conductors (P) Ltd. itself decided along with Purbanchal Cables (supra) aforesaid findings have been recorded by this Court while remanding the case to the High Court for decision on merits as an appeal arising of same lis was pending before the High Court and the High Court has rightly followed the decisions in Purbanchal Cables & Conductors (supra) decided along with M/s. Shanti Conductors (P) Ltd. The finding recorded by this Court in the remand order is final and binding on the appellant- M/s. Shanti Conductors (P) Ltd. They cannot question the same again in the instant appeals.

23. In view of the aforesaid discussion, the appeals have no merit and the same deserve dismissal and are hereby dismissed. No costs.”

Judgment Referred.

¹(2012) 7 SCC 0462

²(1974) 1 SCC 0042

³(2005) 13 SCC 0019

⁴(2009) 7 SCC 0673

⁵(2010) 5 SCC 0044

⁶(2011) (100) CLA (Bom.)

⁷AIR 1961 SC 0307

⁸(2009) 4 SCC 0219

⁹(1990) 1 SCC 0193

¹⁰(1970) 1 SCC 0613

¹¹(2007) 4 Mh.L.J. 0618

¹²(1975) 1 SCC 0774

¹³(2012) 6 SCC 0782

¹⁴AIR 1954 SC 0092

¹⁵(2005) 8 SCC 0534

¹⁶(1991) 4 SCC 0139

¹⁷(2000) 5 SCC 0488

¹⁸(2004) 8 SCC 0001