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

[7][(4-A) * * * *]

[8][(4-B) [9][The Board] may, by order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

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

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

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

(c) compelling the production of documents or other material objects producible as evidence and impounding the same;

(d) examining witnesses on oath;

(e) granting adjournments;

(f) reception of evidence on affidavits.

(4-D) Every Bench shall be deemed to be a Civil Court for the purposes of section 195 and [10][Chapter XXVI of the Code of Criminal Procedure, 1973] and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.]

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

---

7. Sub-sec. (4-A) Omitted by the Companies (Amendment) Act, 1988 (w.e.f. 31-5-1991) vide GSR dated 31-5-1991, the words "(4-A) The Board, with the previous approval of the Central Government may, by order in writing, authorize the chairman or any of its other members or its principal officer (whether known as secretary or by any other name) to exercise and discharge, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions as it may think fit; and every order made or act done in the exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board."
8. Sub-sections (4-B), (4-C) and (4-D) were added by Amendment Act 41 of 1974, s. 4 (w.e.f. 1-2-1975).
9. Subs. by the Companies (Amendment) Act, 1988 (w.e.f. 31-5-1991) *vide* GSR dated 31-5-1991 for the words "without prejudice to the provisions of sub-section (4-A), the Board, with the previous approval of the Central Government."
10. Subs. by Act 46 of 1977, s. 2 (w.e.f. 24-12-1977).
11. Subs. by the Companies (Amendment) Act, 1988 (w.e.f. 31-5-1991) *vide* GSR dated 31-5-1991, for "(5) The procedure of the Company Law Board shall be such as may be prescribed.
(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government."

[12][(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure.][13]

NOTES

Important Note

Substitution of CLB by NCLT and NCLAT by the Companies (Second Amendment) Act, 2002 [11 of 2003]

By virtue of the Companies (Second Amendment) Act, 2002 (11 of 2003), the CLB has been replaced by National Company Law Tribunal/National Company Law Appellate Tribunal. But the Law, Practice and Procedure as stated below will remain applicable till NCLT/NCLAT are brought into existence by Notification(s).

—**Editors**

Companies (Amendment) Act, 1963

The Board of Company Law Administration, referred to as Company Law Board, was established by the Companies (Amendment) Act, 1963 (*Vide G.S.R. No.* 866, dated 1-2-1964). The Statement of objects and reasons stated that "it is considered desirable, for the better and convenient administration of the Companies Act, to set up a Board to which will be entrusted most of the powers and functions of the Central Government under the Companies Act or other laws. The Board will function subject to the control of the Central Government in all matters." The object was further explained by the Finance Minister while introducing the Bill in the Lok Sabha, as follows:

"The Company Law Administration has been managed as a department with a Secretary. At the time the original amendment of the company law was undertaken about eight years ago, there was a question of a statutory commission or a statutory board, but on further consideration Government had suggested, and the House had approved it, that this was not necessary. Recently it has been felt that the administration of the company law should be carried on in the same manner as other administrative organisations in government, particularly in the Finance Ministry, by means of a Board. The Finance Ministry has experience of Boards functioning with regard to revenue matters where *quasi*-judicial powers are exercised by them, and it is felt that it will be better for two or more persons to deal with these matters than one person only. Naturally, policy considerations will come before the Secretary to Government, and it is the practice in the Finance Ministry that these considerations are disposed of not by one, but by more than one Secretary who deals with general economic policy.

The Board will also facilitate some additional work that the Company Law Administration might undertake, without prejudice to its own duties, namely, the question of control of stock exchanges. It is now being done by one Controller outside the Company Law Administration. The Administration itself is quite competent to deal with this matter, with one person to direct it from the top. So all these matters of convenience have made Government bring forward a proposal that the company law should be administered by a Board of not more than five persons, with a Chairman and that it should carry out the work delegated to it by Government. As I said, policy matters will be considered at

---

12. Subs. by the Companies (Amendment) Act, 1988 (w.e.f. 31-5-1991) *vide* GSR dated 31-5-1991, for "(5) The procedure of the Company Law Board shall be such as may be prescribed.
(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government."

13. The said procedure is regulated by the Company Law Board Regulations, 1991. For the text see, *Appendix* 3.

higher level where necessary; otherwise the Board will be fairly free to carry on the duties that have been delegated to it." (Lok Sabha Debates, dated 28th November, 1963, Vol. XXII, pages 2000-2001).

The Board was established to exercise and discharge such powers and functions conferred on the Central Government under this Act or any other law as may be delegated to it by that Government. Several powers and functions of the Central Government under S. 637 were delegated to the Board. (*Vide G.S.R. No.* 686, dated 4-5-1971, superseded by *G.S.R. No.* 443(E), dated 18-10-1972 and amended by *G.S.R. No.* 343 (E), dated 24-6-1975 and *G.S.R. No.* 477, dated 31-3-1978).

Companies (Amendment) Act, 1965

Sub-section (4A) was added with effect from 15th October, 1965. The objects of the changes was stated, thus: "The Act, as it stands, does not provide for delegation of powers by the Company Law Board to the officers of the Board. This creates administrative difficulties and causes unnecessary delays. This clause is intended to provide for such delegation with the approval of Government". (*Clause* 4 of the Bill).

Sub-section (4A) was omitted by the Companies (Amendment) Act, 1988.

Companies (Amendment) Act, 1974

Until 1st February, 1975, when the Companies (Amendment) Act, 1974 came into force, the Board functioned as a delegatee of the Central Government. By virtue of the aforesaid amendment certain powers hitherto exercised by the Courts under sections 17, 18, 19, 79, 141 and 186 were taken away from the Courts and the jurisdiction in regard thereto vested in the Board. Sub-sections (4-B), (4-C) and (4-D) were added by the Amendment Act of 1974 for the following reasons given by the Joint Committee of Parliament:—

"In view of the proposal to transfer to the Company Law Board some of the powers which were so long exercised by the Courts, the Committee feel that the strength of the Company Law Board might be raised to nine so that the matters in relation to which the powers of the Court are proposed to be transferred to the Company Law Board might be disposed of expeditiously by one or more Benches formed by the Board. In order to enable the Company Law Board to discharge its *quasi*-judicial functions, it is also necessary to clothe it with the powers of a civil court to enforce the attendance of witnesses and production of documents, etc. and also to provide for punishment for its contempt. The Committee also recommend that it should be ensured that persons having adequate legal qualifications and experience are appointed as members of the Company Law Board to discharge its *quasi*-judicial powers." (*Para* 19 of *Joint Committee Report*).

In the Notes on Clauses on the Companies (Amendment) Bill, 1974, it was stated, thus: "The Administrative Reforms Commission has recommended that the functions, which are now discharged by the courts under the Companies Act, 1956, may be reviewed and those which are essentially of an administrative nature may be transferred to the executive. This recommendation of the ARC has been examined and it is proposed to transfer some of the functions of the court of administrative nature to the Central Government."

The powers of the Court under sections 17, 18, 19, 79, 141 and 186 were conferred on the Company Law Board on the recommendation of the Joint Select Committee of Parliament, thus: "*Clauses 5, 9, 13 and 14.*—These clauses seek to transfer to the Central Government the powers to decide certain matters which are at present decided by the Courts. A point was raised before the Joint Committee that, since these powers are of a *quasi*-judicial nature, they should not be exercised by the Central Government. The Committee, therefore, feel that instead of conferring these powers on the Central Government, these powers should be conferred by the statute itself on the Company Law Board to enable it to exercise such powers *quasi*-judicially."

The powers and functions of the Board consisted of administrative powers flowing out of the delegation of the powers of the Central Government and *quasi*-judicial powers statutorily conferred under sections 17, 18, 19, 79, 141 and 186, by the Amendment Act of 1974. Thus, the Board exercised a dual role, primarily as a delegatee of the Central Government with limited statutory functions, then exercised by courts.

Under sub-section (6), the Board was subject to the control of Central Government, in the exercise of its powers and discharge of its functions. This was a serious limitation upon the independence and judicial character of the Board. The members of the Board consisted of Secretary, Addl. Secretary and Joint Secretaries to the Government of India as *ex-officio* members and the Board was not divorced from official bias in the discharge of its *quasi*-judicial functions.

Companies (Amendment) Act, 1988

Sachar Committee Recommendations.—Sachar Committee made the following recommendations while considering the administrative structure and procedure regarding the enforcement of the provisions of the Act: "There is also the strong feeling, expressed almost without any reservation, by all the organisations and individuals who had submitted their memoranda to the Committee or had appeared before it that there is a definite need for a *quasi*-judicial tribunal, independent of the executive authority of the Central Government, which should not only ensure that the Act is administered in a manner which gives the affected party a right to be heard but also see that the decisions are taken uninfluenced by executive considerations. In the circumstances, what needs to be ensured is an in-built system which combines the application of judicial mind with speed and administrative efficiency, first, in respect of those matters which are at present with the Central Government though delegated to the Company Law Board and, secondly, in respect of such matters as are statutorily with the Company Law Board.

"We, therefore, feel that appropriate solution would lie in statutorily constituting an independent *quasi*-judicial Company Law Board broadly on the lines of the Income-tax Appellate Tribunal, as provided in section 252 of the Income-tax Act, 1961 with Benches permanently located at different Regions, including Delhi, so that matters are heard at places not far removed from the offices of the companies. In order to see that the Company Law Board functions independently as a statutorily constituted Tribunal and is independent of the Department of Company Affairs, it would be necessary to frame rules for recruitment and conditions of service of the persons appointed as members of the Company Law Board by a Presidential notification under Article 309 of the Constitution of India, read with the relevant section of the Companies Act dealing with the constitution of the Company Law Board, as in the case of the Income-tax Appellate Tribunal. We are also anxious to see that suitable qualifications are prescribed for recruitment as members of the Company Law Board.

"Under rule 3(2)(ii) of the Income-tax Appellate Tribunal (Recruitment and Conditions of Service) Rules, 1963, the Assistant Commissioners of Income-tax, who are members of the Indian Revenue Service and who have served for at least three years as such are eligible to be appointed as accountant members. The rules also provide for induction of the members of the Central Legal Service as judicial members of the Tribunal. Besides, the rules also permit direct recruitment of practising lawyers and accountants or members of the Judicial Service. In the case of the Department of Company Affairs, there exists a specialised service, namely, the Central Company Law Service which has two distinct branches, the legal branch and the accounts branch and the members of this Service are persons drawn from the legal and the accounting profession. We feel that on the same analogy, members of this Service should be eligible to be appointed to the Company Law Board. In addition, provision may also be made for direct recruitment of members from the accounting and the legal professions.

"We would also recommend the modification of the existing provisions relating to the constitution and the function of the Company Law Board in the following manner:—

(a) The power to constitute the Company Law Board shall remain with the Central Government as at present, but the power to constitute the Regional Benches with permanent secretariat which we recommend for the purpose of administering the Act shall be with the Company Law Board.

(b) The Company Law Board alone shall have powers to frame the rules and procedures for the conduct of its business and the business of its Regional Benches.

(c) The Company Law Board including its Regional Benches shall have powers of the Court under the Code of Civil Procedure not only in respect of matters specified in the present sub-sections (4C) and (4D) of section 10E, but also in respect of the powers conferred upon it or the Regional Benches by the Act.

(d) The chairman of the Company Law Board shall ordinarily be one who is qualified to be appointed as a judicial member. He shall hold office until he attains the age of 65 years or until he has served for a period of five years as the Chairman of the Company Law Board, whichever is earlier. The other members of the Board must be persons having legal and accounting qualification, in addition to the experience of the working and administration of the Companies Act and allied statutes and of corporate sector.

(e) The present sub-section (6) of section 10E should be modified to provide that the Company Law Board or any of its Regional Benches, in exercise of their powers and discharge of their functions, shall not be subject to the control of the Central Government". (*Paras* 16.8 to 16.11 of the *Report*).

Companies (Amendment) Act, 1988

The changes made in section 10E, relating to the functioning etc. of the Company Law Board, are of great importance. Notes on clauses of the Bill stated that "clause 4 seeks to provide for the constitution of a Company Law Board which will exercise and discharge powers and functions conferred on it by the Act or under any other law. It also provides for the continued appointment by the Central Government of the existing chairman and members thereof. The qualifications and experience of the members will be provided in rules and the Board will, in the exercise of its functions, be guided by the principles of natural justice and will have power to regulate its own procedure".

By the Companies (Amendment) Act, 1988 (w.e.f. 31-5-1991) sub-sections (1) and (1A) have been substituted for the original sub-section (1) which read as follows:

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

Proviso to sub-sections (2) and (2A) have been inserted (w.e.f. 31-5-1991) by the Amendment Act, 1988.

Sub-section (4A) has been omitted and this sub-section previously read as follows:

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

Similarly, sub-sections (5) and (6) were also substituted by the Amendment Act, 1988, and the sub-sections originally read as follows:

"(5) The procedure of the Company Law Board shall be such as may be prescribed.

(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government."

Companies (Amendment) Act, 2000

The Amendment Act of 2000 conferred the following additional powers on the Company Law Board:

(i) order repayment of deposits of small depositors in case of default under section 58AA;

(ii) imposition of restrictions on incurring further liability where assets of the company are insufficient to discharge principal amount of debentures under section 117B(4);

(iii) Order redemption of debentures in case of default under section 117C(4).

Companies (Second Amendment) Act, 2002 [11 of 2003]

Modifications.—The wording of the section has been slightly changed to mark the transition of power from CLB to NCLT. The change is to the effect that the words 'conferred on it' have been substituted by the words "conferred on it before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003)".

Sub-section (1A) of this section has been amended by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide that the Company Law Board shall exercise its powers under section 10E till the commencement of the Act, 2002. Thereafter, these powers are exercisable by the Tribunal.

Section 10FA(1), inserted by the Second Amendment Act, 2002 (11 of 2003) provides that on the commencement of the Act, the CLB shall stand dissolved. Sub-section (3) thereof provides that all matters or proceedings pending before the CLB are to be transferred to the National Company Law Tribunal as and when it is constituted under the new section 10FB and disposed of by it. Clause (b) of section 651A inserted by the Second Amendment Act, 2002 (11 of 2003) further provides that any reference to the CLB in any other law, so far as it relates to the CLB, shall be construed as reference to the Tribunal. Notes on clauses read as under:

Notes on clauses.—This clause seeks to amend section 10E of the Companies Act, 1956. Under the existing provisions contained in the said section 10E, the Company Law Board exercises and discharges such powers and functions which are conferred on it under the Companies Act, 1956. The powers and functions of the Company Law Board are proposed to be conferred upon the Tribunal proposed to be constituted under new section 10FB which is proposed to be inserted by clause 6. It is, therefore, proposed to provide that the Company Law Board shall exercise and discharge such powers and functions before the commencement of the proposed legislation. The proposed amendment is of consequential nature. (*Clause* 3).

Formation of CLB and its powers and functions [Sub-sections (1) and (1A)]

The Amendment Act of 1988 established an independent Company Law Board to exercise the judicial and *quasi*-judicial functions hitherto exercised by the courts or the Central Government, besides the powers already statutorily vested in the Board by the Amendment Act of 1974. The Board was subject to the control of the Central Government. The Central Government was empowered to appoint Chairman and members of the Board and to frame rules to prescribe qualifications and experience of the members. [For text of the Rules refer *Appendix* 8]. The Board may regulate its own procedure and is to be guided by the principles of natural justice and has to act in its discretion.

The Company Law Board was constituted as per amended provisions of sub-section (1) by the Central Government w.e.f. 31st May 1991. [*vide* S.O. 364(E) dated 31-5-1991].

Simultaneously, the Government also **rescinded** the following rules: [*vide G.S.R.* 286(E), dated 31-5-1991].

(1) The Companies (Appeal to the Central Government) Rules, 1957.

(2) The Company Law Board (Procedure) Rules, 1964.

(3) The Company Law Board (Bench) Rules, 1975.

Exercise of delegated powers and functions [Sub-section (1A)]

Powers under the Companies Act, 1956.—Sub-section (1A) provides for exercise and discharge of such other powers and functions of the Central Government under the Companies Act or any other law, as may be conferred on it. Under section 637, the Central Government may delegate any of its powers or functions under the Act to such 'authority' as may be specified in the Notification. CLB being a *quasi*-judicial body, was an authority for purposes of section 637. Earlier, the powers and functions of the Central Government were delegated to the Company Law Board *vide Notification Nos.* GSR 443(E), dated 18-10-1972, GSR 343(E), dated 24-6-1975 and GSR 477(E), dated 31-3-1978. These notifications were rescinded (*vide GSR No.* 287(E), dated 31-5-1991), on the constitution of Company Law Board on that day. Thus, the Company Law Board is now not exercising any powers of the Central Government, as a delegatee.

However, in pursuance of the provisions of sub-section (1A), it is open to the Central Government to delegate any of its powers and functions under the Companies Act. In this context, reference may be invited to the case, *Alak Prakash Jain v. Union of India,* (1973) 43 Com Cases 68 (Cal), where it was held that the Central Government does not denude or divest itself of the power of direct interference, if such interference is called for in any case, and it cannot be said that the Government by virtue of delegation deprives itself of the overall power of control over the Company Law Board.

Constitution of Company Law Board [Sub-section (2)]

The Company Law Board can have a maximum strength of nine members. There is no stipulation for the minimum number which the CLB must have.

To maintain continuity of the existing Board, it has been provided in the proviso to sub-section (2) that the Central Government may continue the appointment of Chairman and other members of the Board functioning as such immediately before the commencement of the Amendment Act of 1988, for a period not exceeding 3 years.

Qualifications and experience of CLB members [Sub-section (2A)]

The member of the Company Law Board shall possess such qualifications and experience as prescribed by the Company Law Board (Qualifications, Experience and other Conditions of Service of Members) Rules, 1993 (w.e.f. 28-4-1993). For text of the rules refer *Appendix* 8.

The matter of qualifications of members is under the jurisdiction of the Central Administrative Tribunal. *Dr. A.K. Doshi v. Central Administrative Tribunal,* 2000 CLC 1428 (Del). In an appeal against this decision, *A.K. Doshi (Dr.) v. Union of India,* (2001) 4 SCC 43, it was held that it was wrong for the secretary of the appointment committee to add adverse comments about the recommended candidate while presenting the recommendation of the Selection Committee before the appointment committee. It was an impermissible interference in the process of selection. The non-appointment of the recommended candidate did not have the effect of bringing about automatic appointment of the next recommended candidate. The Supreme Court directed that the recommendation of the selection committee should be put before the appointment without any comments.

Constitutional validity of CLB

The constitutional validity of the Company Law Board and of some of the rules framed under it was in question in *V. Balachandran v. Union of India,* (1993) 76 Com Cases 67 (Mad). The court said that so long as the remedy of judicial review of the decisions of

Tribunals and Boards is available to the persons affected by their decisions, it cannot be said that the creation of such forums in place of courts is in any way unconstitutional or invalid. The right of appeal on questions of law has quite clearly been provided by s. 10F. Hence, both the sections, *viz.*, Ss. 10E and 10F are constitutionally valid. The court relied upon the observations in *S.P. Sampath Kumar v. Union of India,* AIR 1987 SC 386 and *Kalika Kuar v. State of Bihar,* (1990) 1 BLJR 51 (Pat). The yalidity of the prescribed qualifications under the Rules then in force was also found to be questionable. In consonance with the judgment, the Government subsequently framed new Rules namely: CLB (Qualifications, Experience and Other Conditions of Service of Members) Rules, 1993 published *vide* Notification GSR No. 388(E), dated 28-4-1993 (w.e.f. 28-4-1993), for the text see *Appendix* 8.

Eligibility of company secretaries for appointment as member of CLB

Department's Clarification.—"The members of the Institute of Company Secretaries of India, having 15 years working experience, including experience as "Secretary in wholetime practice" within the meaning of section 2(45A) of the Companies Act, 1956, read with section 2(2) of the Company Secretaries Act, 1980, ever since the Company Secretaries Act, 1980, came into force w.e.f. 1-1-1981, will be qualified for being considered for appointment as Member/CLB pursuant to the aforesaid rules. This would mean that experience prior to 1-1-1981 will not be as "Secretary in wholetime practice", but as company secretary." [*Department's Circular No.* 1/19/87-CL-V, dated 25-8-1989].

Validity of acts of Company Law Board [Sub-section (4)]

The purport of the sub-section is that an act of the Board shall not be called in question on the ground only of any defect in the constitution etc. of the Board. This means that acts of the Board can be questioned on other grounds such as acting *mala fide*, acting on the basis of untenable oral or documentary evidence, etc., and when an act of the Board is called in question on such other grounds, defects in the constitution or the existence of a vacancy in the Board etc., may also be urged as an additional ground. Section 635-A protects officers of the Government acting in good faith but the acts themselves are not protected by that section from being questioned as to their validity.

The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of constant threat of disciplinary proceedings. *Zunjarrao Bhikaji Nagarkar v. Union of India,* (1999) 7 SCC 409 : AIR 1999 SC 2881.

Constitution of Benches and their jurisdiction [Sub-section (4-B)]

The Board is empowered to form Benches for the exercise of powers and discharge the functions of the Board. The Board may, by an order, specify the jurisdiction and place of the sitting of each such Bench.

The Board has a Principal Bench at New Delhi. Besides there are four Regional Benches working at New Delhi, Mumbai, Calcutta and Chennai, The Principal Bench has jurisdiction all over the country.

Principal Bench.—Matters falling under sections 235, 237, 247, 248, 250, 388(b), 408 and 409 and matters falling under Chapter VI of Part VI of the Companies Act, 1956 and all other matters incidental thereto, shall be dealt with by Principal Bench by one or more members.

Additional Principal Bench.—Matters falling under sections 235, 237, 247, 248, 250, 388(b), 408 and 409 and matters falling under Chapter VI of Part VI of the Companies Act, 1956 and all other matters incidental thereto, shall be dealt with by Additional Principal Bench at Chennai by one or more members.

In terms of Regulations 4(4) of Company Law Board Regulations, 1991, interlocutory and miscellaneous applications may be heard and decided by a Bench consisting of a Single Member.

The jurisdiction of the Additional Principal Bench, Chennai shall be the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Union Territories of Pondicherry and Lakshadweep Islands.

Regional Benches.—Matters falling under sections 111, 111A, 269 and 634-A of the Companies Act, 1956 and all other matters incidental thereto, shall be dealt with by the Regional Benches at New Delhi, Chennai, Kolkata and Mumbai consisting of any one of those specified above.

Other matters falling under the Companies Act, 1956 and all other matters incidental thereto including interlocutory applications connected with matters referred above and also matters under section 45-QA of the Reserve Bank of India Act, 1934, shall be dealt with by a Single Member, sitting at the Regional Benches.

The Bench may, at its discretion, hold its sittings at any place in the territory of India.

Any bench or any group of Members may, if deemed necessary, instead of disposing the case himself/themselves, refer the matter to the Principal Bench for joint consultation and disposal. [*Order dt. 9-9-2002 [F. No. 10/25/91-CLB*].

Powers of CLB under Code of Civil Procedure [Sub-section (4-C)]

Every Bench constituted by the Board is vested with the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 in respect of the following matters:

(a) discovery and inspection of documents or other material objects producible as evidence; these are contained in Order XI of CPC;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses; these are contained in Order XVI of CPC;

(c) compelling the production of documents or other material objects producible as evidence and impounding the same; these are contained in Order XIII of CPC;

(d) examining witnesses on oath; these are contained in Order XVIII of CPC;

(e) granting adjournments; these are contained in Order XVII of CPC;

(f) reception of evidence on affidavit; these are contained in Order XIX of CPC.

It may be noted that although the Board exercises the powers of the Court in respect of the above matters, it is not a Court.

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides that all matters pending before Civil Courts would be transferred to the Special Court if they come within its powers. That provision would not apply to the matters pending before the CLB under S. 111 of the Companies Act, the reason being that the CLB is not a Civil Court. It has only been vested with the powers of a Civil Court for certain limited purposes. *Canara Bank v. Nuclear Power Corporation of India Ltd.*, (1995) 84 Com Cases 62 (CLB-Del). This view was **not accepted** on appeal by Supreme Court in *Canara Bank v. Nuclear Power Corporation of India Ltd.*, (1995) 84 Com Cases 70 (SC).

The powers mentioned in clauses (a) to (d) mentioned above are conferred by S. 131 of the Income-tax Act, 1961 on the Commissioner of Income-tax, and other officers of the Department and the case-law under that section can be usefully referred to. The expression "for the purposes of this Act" occurring in S. 131 and which is not in S. 10E(1) of the present Act, will not have the effect of enlarging the powers of the Bench and therefore powers conferred by the clauses will be exercisable only for the purposes of the Companies Act and not for any extraneous purposes.

The powers conferred by S. 10E(4C) can be exercised only by the Bench and not by any other person; that would be without jurisdiction. *Cf. Gopal Das Gupta v. Union of India,* (1971) 80 ITR 200 (Cal). Under Order XIII, rule 10, C.P.C. the civil court has powers to call for documents from other courts. As the Bench has the powers of a civil court, the Bench also becomes empowered to summon documents from other courts. *Cf.*

Jhabarmull Agarwalla v. Kashiram Agarwalla, (1969) 71 ITR 269 (Cal); *Ganpatrai Rawatmull v. Collector, Land Customs,* (1961) 42 ITR 107 (Cal).

The powers of the Bench can be exercised *suo motu*, and also at the instance of one of the parties to the dispute before it. In an income-tax case, it was held that it was the duty of the ITO to exercise his powers under S. 131(1) of the Income-tax Act, 1961 on request of the assessee to enable the latter to have access to or procure books and other materials required to support or explain the return made by the assessee; *EMC (Works) P. Ltd. v. ITO,* (1963) 49 ITR 650 (All); *Munnalal Murlidhar v. CIT,* (1971) 79 ITR 540 (All). The power of the Bench to summon witnesses is similar to the powers of a civil court. A witness who is summoned by the Bench has no right to be represented by an authorised representative. *Sarju Prasad Sharma v. ITO,* (1974) 93 ITR 36 (Cal).

Clause (c) of S. 10E(4C) empowers the Bench to "impound" documents. Under Order 13, Rule 8, the civil court has the power to impound documents and retain them in the custody of the court. Similarly, under S. 131(3) of the IT Act, 1961, the power to retain documents "for such period as they think fit" has also been conferred on the concerned officers. It will be seen that though the Bench has the power to impound documents, it has no power to retain them.

Clause (e) of S. 10E(4C) permits the Bench to grant adjournments. This power has not been curtailed by any restriction as in Order XIII of CPC, 1908. Under the Code, the civil court has power to grant adjournment if "sufficient cause" is shown; sub-rule (2) of Order XIII places further restriction on the powers of a civil court to grant adjournments. The power of the Bench, on the other hand, is unfettered.

It has been specifically provided in section 10FZA that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in CPC, 1908 but shall be guided by the principles of natural justice.

Applicability of Indian Evidence Act, 1872

A domestic tribunal is in general composed of laymen. It is not bound by rules of evidence; indeed it is probably ignorant of them. The members of the tribunal may have been discussing the matter for weeks with persons not present at the hearing, and there is no one even to warn them of the danger of acting on preconceived views. *Maclean v. Workers' Union,* (1929) 2 Ch 602. Section 1 of the Evidence Act does not make the Act applicable of its own force to proceedings before as Industrial Tribunal and an evidence inadmissible under the Evidence Act can also be relied upon in a domestic enquiry. *Fort William Jute Mills Co. Ltd. v. First Labour Court,* (1963) I LLJ 734 (Cal). Though the strict rules of the law of evidence are not to be applied, this does not mean that the proceedings can be held in an arbitrary manner. The rules of natural justice must still be applied. Ordinarily, there must be a personal hearing. If a person is entitled to show cause, he is entitled to a hearing and if he is entitled to a hearing, he must have the opportunity of being personally heard of, calling his own evidence and cross-examining any witness called by the prosecution.

Clause (f) empowers the Bench to receive evidence on affidavits. In *Nambiar A.K.K. v. Union of India,* AIR 1970 SC 652, the Supreme Court observed that affidavits should be verified. It was held that the importance of verification is to test the genuineness and authenticity of the allegations and also to make the deponent responsible for allegations—"In essence, verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence."

Where, however, the opposite party applies for summoning the witnesses for cross-examination whose affidavits have been received, and if they do not appear or are not summoned, their affidavits cannot be used in evidence. *Karedla Suryanarayan v. Sri Ram Das Motor Transport P. Ltd.,* (1995) 4 Comp LJ 269 (CLB—N. Delhi).

The Company Law Board has to act within the framework of the principles of natural justice and also in accordance with its own Regulations. Hence, the provision of the Evi-

dence Act and those of the Code of Civil Procedure do not apply to proceedings before the Company Law Board. *Rajinder Kumar Malhotra v. Harbans Lal Malhotra & Sons Ltd.*, (1996) 87 Com Cases 146 (CLB—N. Delhi).

Powers of CLB to impose conditions, etc. in the orders passed

Section 637A empowers the Company Law Board to impose such conditions, limitations or restrictions, as it may think fit while passing an order. In case of contravention of any such condition, etc., it may withdraw or rescind its order. See Notes under Section 637A.

Power to grant interim relief

The Supreme Court in *Morgan Stanley Mutual Funds v. Kartick Das*, (1994) 81 Comp Cas 318, 336 : (1994) 3 Comp LJ 27 (SC) laid down the following principles governing grant of *ex-parte* injunctions.

"As a principle, *ex parte* injunctions could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of *ex parte* injunctions are :

(*a*) whether irreparable or serious mischief will ensue to the plaintiff;

(*b*) whether the refusal of the *ex parte* injunction would involve greater injustice than the grant of it would involve;

(*c*) the court will also consider the time at which the plaintiff first had notice of the act complained of so that the making of the improper order against a party in his absence is prevented;

(*d*) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant the *ex parte* injunction;

(*e*) the court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application;

(*f*) even if granted, the *ex parte* injunction would be for a limited period of time; and

(*g*) general principles like *prima facie* case, balance of convenience and irreparable loss would also be considered by the court."

§ For further Notes on "Interim relief" see Notes under the heading "Interim relief" in S. 111 and also under the heading "Power to grant interim relief" in S. 403.

Enforcement of orders of Company Law Board

Any order made by the Board may be enforced in the same manner as if it was a decree made by a Civil Court in a suit before it, and the CLB may send it for execution to the Court within the local limits of whose jurisdiction (a) the registered office of the company is situated in case the order is against the company, or (b) the person concerned voluntarily resides or carries on business, in case the order is against any such person. See Notes under section 634A.

Enforcement of unsigned compromise order.—The petitioner was seeking an order for investigation of affairs. The company offered to purchase the shares of the petitioner. An agreement was reached and recorded by the Company Law Board. It became an order disposing of the petition for investigation. The settlement was not signed by the parties as required by the Civil Procedure Code. The Court said that this was only a technicality. The Civil Procedure Code was not applicable with all its technicalities. The compromise was, therefore, executable. *Kuki Leather P. Ltd. v. TNK Govindaraju Chettiar & Co.*, (2002) 110 Com Cases 474 (Mad).

Powers of Company Law Board under Cr PC and IPC [Sub-section (4-D)]

The Board shall be deemed to be a Civil Court for purposes of section 195 (contempt of lawful authority of public servants for offences against public justice and relating to

documents tendered in evidence) and Chapter XXVI (offences affecting the administration of justice) of the Code of Criminal Procedure, 1973.

Every proceeding before the Board shall be deemed to be a judicial proceeding within the meaning of section 193 (prescribing punishment for false evidence) and section 228 (prescribing punishment for insult or interruption to public servants sitting in judicial proceedings) and for purposes of section 196 (prescribing penalty for tendering false evidence) of Indian Penal Code.

Principles of natural justice [Sub-section (5)]

The requirement of natural justice would be read into statutory provisions unless excluded explicitly or by implication. *State Government Houseless Harijan Employees' Assn. v. State of Karnataka,* AIR 2001 SC 437 : (2001) 1 SCC 610. The doctrine of natural justice is synonymous with fairness. *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant,* (2001) 1 SCC 182 : AIR 2001 SC 24. The object of the doctrine is not only to promote justice but also to prevent miscarriage of justice (*Ibid*).

In the exercise of its powers and discharge of its functions, the Company Law Board shall be guided by the principles of natural justice. It is a well settled principle of administrative law that a *quasi*-judicial body should act according to the principles of natural justice. "Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action." *Maneka Gandhi v. Union of India,* AIR 1978 SC 597 (625), per BHAGWATI J. By developing the principles of natural justice, the courts have devised a kind of code of fair administrative procedure. H.W.R. WADE—ADMINISTRATIVE LAW 413 (5th Edn.). According to LORD MORRIS, "natural justice is but fairness writ large. *Furnell v. Whangarei High Schools Board,* (1973) AC 660, 697. "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules." *A.K. Kraipak v. Union of India,* AIR 1970 SC 150, 156, per HEGDE, J. But in the course of years, many more subsidiary rules came to be added to the rules of natural justice. These and many other rules are merely extensions or refinements of the two main principles which are the essential characteristics of natural justice and are the twin pillars supporting it, *i.e.*, no man shall be a judge in his own cause; and both sides shall be heard.

The requirements of natural justice vary with the varying constitution of the different *quasi*-judicial authorities and the statutory provisions under which they function. Hence, the question whether or not any rule of natural justice has been contravened in any particular case should be decided not under any pre-conceived notions, but in the light of the relevant statutory provisions, the constitution of the Tribunal and the circumstances of each case. *Suresh Koshy v. University of Kerala,* AIR 1969 SC 198. The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case. *Union of India v. P.K. Roy,* AIR 1968 SC 850, 858 : (1970) 1 LLJ 633, *per* RAMASWAMI, J.

The Supreme Court has emphasized in *K.L. Tripathi v. State Bank of India,* AIR 1984 SC 273 : (1984) 1 LLJ 2 that whether any particular principle of natural justice would be applicable to a particular situation, or the question whether there has been any infraction of the application of that principle, has to be judged on the facts and circumstances of each case. The basic requirements are that there must be fair play and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons .....The rules of natural justice are flexible and cannot be put on any rigid

formula" (*Ibid*) (JAIN AND JAIN, PRINCIPLES OF ADMINISTRATIVE LAW, SUPPLEMENT 1989 by M.P. Jain p. 24 of Supplement) (4th Edn., 1986).

"The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not to ensure just and fair decision. In recent years, the concept of *quasi*-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a *quasi*-judicial power." *Kraipak (A.K.) v. Union of India,* AIR 1970 SC 150 at 154 **followed** in *Baburao Vishwanath Mathpati v. State,* AIR 1996 Bom 227 at 241.

The requirement of natural justice can be excluded by statute. Where the statute does not do so or a statute gives this right by a specific provision, it cannot be taken away by the court on the ground of practical convenience. In this particular case, however the court found that price fixation was wholly an administrative matter and was in the nature of legislative action. Rules of natural justice were not applicable. *W.B. Electricity Regulatory Commission v. C.E.S.C. Ltd.,* AIR 2002 SC 3588.

The writ of *certiorari* will lie where a judicial or *quasi*-judicial authority has violated the principles of natural justice even though the authority has acted within its jurisdiction.

Given above is an outline of the principles affecting "natural justice" and " discretion" according to which the Company Law Board has to exercise its powers and discharge its functions. Detailed account of the subject can be had from JAIN AND JAIN, ADMINISTRATIVE LAW; WADE ON ADMINISTRATIVE LAW AND DE SMITH, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION.

Basic principles of natural justice

The two basic principles of natural justice are discussed below:

(a) ***Audi alteram partem rule***

This latin *maxim* means "hear the other side". Another rule rendering the same idea is *'audiatur et altera pars'* which means "no man should be condemned unheard". *Quasi*-judicial authority cannot make any decision adverse to any party without giving him an effective opportunity of meeting any relevant allegation against him. *Dhakeswari Cotton Mills v. CIT,* AIR 1955 SC 65. It requires that every person whose civil right is affected must have a reasonable notice of the case he has to meet. He must be furnished with the information upon which the action is based. *S.L. Kapoor v. Jagmohan,* AIR 1981 SC 136. He must have a reasonable opportunity of being heard in his defence or to meet the case against him. *State of M.P. v. Chintaman,* AIR 1961 SC 1623. He must also have the opportunity of adducing all relevant evidence on which he relies. *Union of India v. T.R. Verma,* AIR 1957 SC 882 : (1958) 2 LLJ 259.

The requirements of *audi alteram partem* rule are:

1. Notice.—A basic principle of natural justice is that before adjudication, the persons who are likely to be affected by the decision should be given notice. Any proceeding taken without notice would violate natural justice. *East India Commercial Co. v. Collector of Customs,* AIR 1962 SC 1893. The notice must give a reasonable opportunity to comply with its requirements. *CIT v. Bombay Trust Corp. Ltd.,* AIR 1936 PC 269. A notice which is vague is not a proper notice in law. The court's conscience must be satisfied that the individual had a fair chance to know the details of the action proposed to be taken against him. *Fedco Pvt. Ltd. v. Bilgrami S.N.,* AIR 1960 SC 415.

Absence of notice when only one conclusion could be drawn would not be vitiative of the action taken without notice. *Aligarh Muslim University v. Mansoor Ali Khan,* AIR 2000 SC 2783. Notice is not necessary when the consequences are already stated in the provision and, therefore, known, *Hyderabad Karnataka Education Society v. Registrar of Societies,* AIR 2000 SC 301. Non-compliance with principles of natural justice unless

causing prejudice, does not automatically entitle one to relief under Art. 226 of the Constitution. There has been gradual relaxation of the rigours of the rule of natural justice which is to be noticed in case law. There can be certain situations in which an order passed in violation of natural justice need not be set aside under Art. 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned. In *Ridge v. Baldwin,* (1963) 2 All ER 66 (HL) it was held that breach of principles of natural justice was in itself treated as prejudice and that no other "*de facto*" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in India. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed by the Supreme Court in several cases. Since in *K.L. Tripathi v. State Bank of India,* AIR 1984 SC 273 : (1984) 1 LLJ 2, the Supreme Court has consistently applied the principle of prejudice in several cases. The "useless formality" theory is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" there has been considerable debate on the application of that theory in other cases. In the ultimate analysis the applicability of the theory would depend on the facts of a particular case. *Aligarh Muslim University v. Mansoor Ali Khan,* AIR 2000 SC 2783. Before setting aside a sale on ground of defective proclamation (as in this case), it was held that it was necessary for the appropriate authority to give the highest bidder a notice and allow him a hearing as his rights would be adversely affected by the setting aside of the sale. *Piara Singh v. State of Punjab,* AIR 2000 SC 2352.

No notice was considered necessary for recovering from an employee overpaid house rent and city compensatory allowance. *State of Karnatka v. Manglore University Non-Teaching Employees Assn.,* AIR 2002 SC 1223.

The State Government while declaring the territorial area of Gram Sabha and establishing gram sabha does not exercise judicial or quasi judicial function. It is rather in the nature of a legislative power. Rules of natural justice are not attracted. Giving opportunity of hearing to residents was not necessary. *State of Punjab v. Tehal Singh,* AIR 2002 SC 533.

2. Hearing.—The requirement of the rule is that the parties whose civil rights are to be effected by a *quasi*-judicial authority must have a reasonable opportunity of being heard in their defence. "Stating it broadly and without intending it to be exhaustive..... rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witness examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them." *Union of India v. T.R. Verma,* AIR 1957 SC 882 : (1958) 2 LLJ 259. It is now well settled that a mere opportunity to explain the conduct is not sufficient and the applicant should have the opportunity to produce his defence. *Mukhtar Singh v. State,* AIR 1957 All 297. He should have fair opportunity to state his case and to meet the accusations made against him. He should have full opportunity to correct or contradict a relevant statement prejudicial to him. Whether a reasonable opportunity has been given in a particular case will depend on its own circumstances, there being no uniform formula or rigid rules for the purpose. The duty to offer a reasonable opportunity of being heard does not include any obligation to hear a party in person, *Union of India v. Jyoti Prakash,* AIR 1971 SC 1093 : (1971) 1 LLJ 256, or by a lawyer. *Mulchand Gulab Chand v. Mukund Shivram,* AIR 1952 Bom 296. Ordinarily, an opportunity of making a written representation against the proposed action will meet the requirement of natural justice, (*Jyoti Prakash* case, *supra*). Whether a personal hearing should be given or not will depend on the circumstances of each case. See further *Charanlal Sahu v. Union of India,* AIR 1990 SC 1480 : (1990) 1 SCC 613 where the Supreme Court in the matter of *Bhopal Gas* disaster said that where a statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person effected, a decision arrived at without hearing but providing post decisional hearing may also be good.

When the affected party requests the adjudicatory body to exercise its power to summon witness and documents to prove his defence, it would be a denial of natural justice to him if his request is not taken case of. *Sita Ram v. Union of India,* AIR 1967 Delhi 38. When the adjudicator lacks coercive power to compel attendance of witnesses and production of documents, it is enough if he takes evidence of such witnesses as are produced before him by the party affected. The adjudicator may help the party to secure the attendance of witnesses by issuing letters of request to them though in the absence of any legal provision to compel their attendance, they may or may not appear in answer thereto. *C.M.P. Co-op. Soc. v. State of M.P.,* AIR 1967 SC 1815.

Appearance of a lawyer is not claimable as a matter of right. But in a case where complicated questions of law and fact arise, where the evidence is elaborate and the party concerned may not be in a position to meet the situation himself effectively, denial of legal assistance may amount to a denial of natural justice. *Board of Trustees of the Port of Bombay v. D.R. Nadkarni,* AIR 1983 SC 109; *C.L. Subramaniam v. Collector of Customs,* AIR 1972 SC 2178.

Where the right to be heard is specifically conferred by a statute, the court cannot take it away on the ground of practical convenience. *W.B. Electricity Regulatory Commission v. C.E.S.C. Ltd.,* AIR 2002 SC 3588. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the *audi alteram partem rule* could be imported. *Schedule Caste & Weaker Section Welfare Association v. State of Karnataka,* AIR 1991 SC 1117.

(b) *Nemo debet esse judex in propria suo causa rule*

Rules against bias.—This latin maxim is a rule against bias and means that no man shall be a judge in his own cause. In the words of BOWEN, L.J. : "Judges, like Ceaser's wife, should be above suspicion". The idea underlying the rule prohibiting a judge to adjudicate upon a case to which he is a party or in which he is interested has most salutary influence on the adjudicatory tribunals. LORD CRANWORTH L.C. said: ".....a judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias inducing him to lean to the one side rather than to the other. In ordinary cases it is just ground of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the strongest proof that he cannot be indifferent." *Ranger v. Great Western Railway Co.,* (1854) 5 HLC 72. It is well-settled that every member of a tribunal that is called upon to try issues in judicial or *quasi*-judicial proceedings must be able to act judicially; and it is of the essence of the judicial decision and judicial administration that judges should be able to act impartially, objectively and without bias. *Manaklal v. Dr. Prem Chand Singhvi,* AIR 1957 SC 425. The test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. (*Ibid*). The principle is not confined to Judges but extends to any authority vested with *quasi*-judicial functions.

Pecuniary interest, however small, would wholly disqualify a person from acting as a judge. *Manaklal v. Prem Chand,* AIR 1957 SC 425. Personal bias towards a party owing to relationship and the like the personal hostility to a party may equally disqualify a Judge. *A.K. Kraipak v. Union of India,* AIR 1970 SC 150.

In the case of official bias, the officer is not actuated by any personal ill-will. He is so imbued with the desire to promote the departmental policy that he becomes blind to the existence of the interest of the private individuals. Official bias is not tolerated by Courts even if it is sanctioned by statute. In this connection, the observations of SUBBA RAO, J. in *Gullapalli Nageswara Rao v. State of Andhra Pradesh,* AIR 1959 SC 1376 are noteworthy: "It is not out of place here to notice that in England the Parliament is supreme and, therefore, statutory law, however repugnant to the principles of natural justice, is

valid; whereas in India, the law made by Parliament or a State legislature should stand the test of fundamental rights declared in Part II of the Constitution."

A *quasi*-judicial body is not to be directed as to how it should decide a specific matter. "In the case of administrative or executive authorities, the Government could direct them to carry out their functions in a particulars manner. But the same cannot be said of a *quasi*-judicial authority. Although, the Government may have appointed it, may be paying it and may have the right to take disciplinary action against it in certain eventualities, yet, in the very nature of thing, where the rule of law prevails, it is not open to the Government to control the functioning of a *quasi*-judicial authority and to direct it to decide a particular matter before it in particular manner." *Ramamurthy Reddiar v. Chief Commissioner, Pondicherry,* AIR 1963 SC 1464. Where a tribunal consists of several members, bias on the part of one of the members is sufficient to vitiate the decision. *Narayana v. State of A.P.,* AIR 1958 AP 636. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board is bound to influence the others. More so if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. *G. Sarana v. Lucknow University,* AIR 1976 SC 2428.

The decision of a *quasi*-judicial authority must be based on materials before it and not on the findings or directions of any outside authority, however eminent it may be. *Rajagopala v. S.T.A.T.,* AIR 1964 SC 1573. This principle is violated even where the *quasi*-judicial tribunal feels that he cannot refuse to comply with the directions of an administrative superior except for reasons to be recorded. *New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd.,* AIR 1957 SC 232. It is a basic principle of judicial procedure that the person who hears must decide the case and not another person. *Gullapalli Nageswara Rao v. A.P.S.R.T.C.,* AIR 1959 SC 308. Hence, if an officer, who is bound under the law to give a personal hearing, is transferred, his successor-in-office cannot decide the matter without giving a fresh hearing, *Calcutta Tanneries (1944) Ltd. v. Commr. of I.T.,* AIR 1960 Cal 543.

Bias negates fairness and reasonableness and leads to arbitrariness and *mala fides*. Fairness is synonymous with reasonableness. Bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". Mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether, in fact, there was a bias or a *mala fide* move which resulted in the miscarriage of justice. *State of Punjab v. V.K. Khanna,* AIR 2001 SC 343.

The doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity since the law courts are to act fairly and reasonably in accordance with the law. Unreasonableness is opposed to the doctrine of fairness and reasonableness will have its play. *Tata Iron & Steel Co. Ltd. v. Union of India,* (2001) 2 SCC 41. There must be factual support for the allegations of *mala fides*. Mere use of word *mala fide* would not by itself make a petition entertainable. The court must scan factual aspect and come to its own conclusion. *State of U.P. v. Sahaguram Arya,* 2000 SCC (L&S) 1104 : (2000) 3 CLR 319 : (2000) 5 SLR 244; *Prabodh Sagar v. Punjab SEB,* AIR 2000 SC 1684 : (2000) 2 LLJ 1089.

Fair Procedure.—The doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. In *Ridge v. Baldwin,* (1963) 2 All ER 66 (HL), the doctrine was held to be incapable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances. A question arises as to who is a reasonable man. In India, a reasonable man cannot but be a common man similarly placed. *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant,* AIR 2001 SC 24.

3. Reasoned decisions.—Speaking orders.—An extension of the principle of natural justice requires a reasoned decision. A *quasi*-judicial tribunal must give reasons for its

order, *Siemens Engg. and Mfg. Co. v. Union of India,* AIR 1976 SC 1785; *R.B. Desai v. Union of India,* (1987) 3 Comp LJ 111 (Del), *Anil Kumar v. Presiding Officer,* AIR 1985 SC 1121; *Oranco Chemicals (P.) Ltd. v. Gwalior Rayon Silk Mfg. & Wvg. Co. Ltd.,* AIR 1987 SC 1564 or else, the supervisory jurisdiction of the superior Courts under Art. 136 or 226 or 227 of the Constitution will be rendered nugatory. *Harinagar Sugar Mills Ltd. v. Shyam Sunder,* (1961) 31 Com Cases 387 : AIR 1961 SC 1669; *Govindrao v. State of M.P.,* AIR 1965 SC 1222. This does not mean that such authority should write out a judgment, like that of a Court of law, but that it must give an outline of the process of reasoning by which it arrives at its decision, *Rama Vilas Service v. Chandrasekaran,* AIR 1965 SC 107, or that reasons must be recorded separately even where the order speaks for itself as regards the reasons which have led to it, *Board of Mining Exams. v. Ramjee,* AIR 1977 SC 965, or the impugned order merely concurs with a statutory report of another authority, which gives reasons, *Tara Chand v. Municipal Corporation of Delhi,* AIR 1977 SC 567 : 1977 (1) LLJ 331. Nor does it follow that, in the absence of any statutory requirement, a statutory tribunal must give its judgment in writing or that it must always give reasons for its decisions immediately with its pronouncement, *Maharashtra S.R.T.C. v. Balwant,* AIR 1969 SC 329. The adjudicator will have to give such reasons for his decision as may be regarded fair and legitimate by a reasonable man and thus it will minimize chances of irrelevant or extraneous considerations from entering his decisional process, and it will minimize chances of unconscious infiltration of personal bias or unfairness in the conclusion. Statement of reasons also gives satisfaction to the party against whom the decision is made. Justice should not only be done but should also seem to be done. An unreasoned decision may be just but may not appear to be so to the person affected. A reasoned decision, on the other hand, will have the appearance of justice. SUBBA RAO, J., in *M.P. Industries v. Union of India,* AIR 1966 SC 671. LORD DENNING in *Breen v. Amalgamated Engineering Union,* (1971) 1 All ER 1148: "Recording of reasons is the only visible safeguard against possible injustice and arbitrariness. Reasons, if given, substitute objectivity for subjectivity. Reasons, if recorded, indicate whether the adjudicatory or administrative authority has acted *bona fide* or otherwise." Cited in *Manab Kumar Mitra v. Orissa,* AIR 1997 Ori 52 at 54.

The faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders. *Bombay Oil Industries Pvt. Ltd. v. Union of India,* (1984) 55 Com Cases 356 : AIR 1984 SC 160. Reiterating the same thing in *S.N. Mukherjee v. Union of India,* AIR 1990 SC 1984, 1995 the Supreme Court said that a recording of reasons serves a statutory purpose, *e.g.*, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The court **followed** its own decision in *Raipur Development Authority v. Chokhamal Contractors,* AIR 1990 SC 1426.

In *Bombay Oil Industries P. Ltd. v. Union of India, supra,* the Supreme Court observed in the context of MRTP Act that "we must, however, impress upon the Government that while disposing of applications under sections 21, 22 and 23 of the Monopolies and Restrictive Trade Practices Act, 1969, it must give good reason in support of its order and not merely state its bald conclusion. The faith of the people in administrative tribunal can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders. The relevant material must be made available to the objectors because, without it, they cannot possibly meet the claim or contentions of the applications under sections 21, 22 and 23 of the MRTP Act. The refusal of the Government to furnish such material to the objectors can amount to a denial of a reasonable opportunity to the objectors to meet the applicant's case. And denial of a reasonable opportunity to meet the other man's case is denial of natural justice. On the question of the need to give reasons in support of the conclusions to which the Government has come, the authorities concerned may, with profit, see the Judgments of this Court in *Union of India v. Mohan Lal Capoor,* 1974 (1) SCR 797, *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India,* AIR 1976 SC 1785 and *Uma Charan v. State of Madhya Pradesh,* AIR 1981 SC 1915. Distinguishing this in *National Institute of Mental Health and Nuro Sciences v.*

K.K. Raman, AIR 1992 SC 1806, 1808 the Supreme Court held that where a selection committee is composed of men of high status who are unquestionably impartial and their function is also of administrative nature the court would not lightly interfere in the decision of the Committee and statement of reasons would not be necessary. The Court **followed** in this respect *R.S. Dass v. Union of India,* AIR 1987 SC 593. See further *Sarojini Ramaswami v. Union of India,* AIR 1992 SC 2219, 2265 where the court held that sufficient compliance with the requirement of natural justice was made when the enquiry committee afforded the full opportunity of hearing to the judge in question in respect of contesting the charges against him.

The giving of reasons in support of their conclusions by judicial and *quasi*-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is meant to prevent unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of infiltration of personal bias in the conclusion. Secondly, it is a well known principle that justice should not only been done but should also appear to have been done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Thirdly, it should be noted that an appeal generally lies from the decision of judicial and *quasi*-judicial authorities to the High Court and Supreme Court by special leave granted under article 136. A judgment which does not disclose the reasons, will be of little assistance to the court, *Woolcombers of India Ltd. v. Woolcombers Workers' Union,* AIR 1973 SC 2758.

When a statute itself requires reasons to be recorded for taking an action of a *quasi*-judicial character, the provision is treated as mandatory and the failure to record reasons would be fatal to the action taken. In *Verma (C.L.) v. State of M.P.,* AIR 1990 SC 463 the Supreme Court emphasised that a statutory rule would prevail over administrative instructions. See also *Neelima Misra v. Harinder Kaur Paintal,* AIR 1990 SC 1402, 1408 where the Supreme Court distinguishes administrative action from a *quasi*-judicial decision and prescribes the requirement of fairness in all cases.

The Supreme Court has also emphasised the need to give reasons for passing *ex-parte* orders of injunction. *Shiv Kumar Chadha v. Municipal Corporation of Delhi,* (1993) 3 SCC 161 : (1993) 3 SCR 522.

In *Shri Krishna Tiles & Potteries (Madras) P. Ltd. v. CLB,* (1979) 49 Com Cases 409 (Delhi), it was held that the functions of the Central Government or the Company Law Board under section 399(4) in granting an authorisation to a member to file a petition under section 397/398, is not *quasi*-judicial but purely administrative function. No prior notice or hearing need be given to the company before granting an authorisation, nor is there any need of granting authorisation supported by reasons.

"Shall act in its discretion" [Sub-section (5)]

Under sub-section (5), the Company Law Board in the exercise of its powers and the discharge of its functions shall be guided by the principles of natural justice and shall act in its discretion. 'Discretion' means when it is said that something is to be done within the discretion of the authorities and that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's* case (1598) 5 Co Rep 99B; according to law, and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself: *Wilson v. Rastall,* (1792), 4 Term Rep at p. 757; *Sharp v. Wakefield,* (1891) AC 173 HL, per LORD HALSBURY, L.C., at p. 179. Discretion when applied to a Court of Justice means 'sound discretion guided by law'. It must be governed by rules. It must not be arbitrary, vague and fanciful, but legal and regular. *State v. Veerapandy,* 1979 Cr LJ 455 (Mad). When such a discretionary power is invested in an authority, the authority would be bound to exercise that power, and the word 'may' conferring discretionary power has to be read as 'must', except in those cases where there are grounds for not exercising such power. *Mohmedmiya Mo-*

hamad Sadik v. State of Gujarat, (1975) 16 Guj LR 583. A discretion conferred on an authority by statute is intended to be exercised by that authority and no other unless otherwise intended by express words or by necessary implication. *Barium Chemicals Ltd. v. Company Law Board,* (1966) 36 Com Cases 639 : AIR 1967 SC 295 : (1966) 2 Comp LJ 151. Discretion must be exercised according to common sense and justice, and if there is no indication in the Act of the ground upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view of indicating the particular grooves in which the discretion should run. *EMMA Silver Mining Co. v. Grant,* (1879) 11 Ch D 918, 926, JESSEL M.R. But, as LORD BLACKBURN said as to the exercise of discretionary power by a court of equity, 'the discretion is not to be exercised according to the fancy of whoever is to exercise the jurisdiction of equity, but is a discretion to be exercised according to the rules which have been established by a long series of decisions'. *Doherty v. Allman,* (1878) 3 App Cas 709, 728. There is a duty to exercise the discretion conferred by the statute in every case in which those upon whom it is conferred are called upon to exercise it : they may not fetter their own powers by self-imposed rules, *R. v. Paddington and St. Marylebone Rent Tribunal,* (1949) 1 KB 666.

Manner of exercising discretion.—In construing a statute, we must always assume that the discretionary power conferred upon various authorities under the statute will be used properly and not in an arbitrary or capricious manner. When a discretion is given to an authority, the exercise of that discretion necessarily involves the application of mind and acting reasonably and with justice, which in turn necessarily involves the observance of natural justice which means that the other party must be heard before any adverse order is passed. *Namdeo Ragho Arote v. State of Maharashtra,* 1979 Mah LJ 363 (DB).

Even though an act done is ostensibly in execution of a statutory power and within its letter, it will nevertheless be held not to come within the power if done otherwise than honestly and within the spirit of the enactment. A discretion is to be 'regulated according to known rules of law', *Lee v. Bude & Torrington Junction Ry. Co.,* (1871) LR 6 CP 576, per WILLES J. at pp. 580, 581 and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet. 'It is true', said LORD GREEN M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation,* (1948) 1 KB 223, at p. 229 "the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether."

Scope of appellate court intervention.—It is well settled that where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even of law. *Amg Hussan Khan v. Sheo Baksh Singh,* (1885) 11 Cal 6 : 11 IA 237. The appellate court would normally not be justified in interfering with the exercise of discretion solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion had been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial judge. But if it appears to the appellate court that in exercising its discretion, the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach, then it

would certainly be open to the appellate court—and in many cases, it may be its duty—to interfere with the trial Court's exercise of discretion. In cases falling under this class, the exercise of discretion by the trial court is in law wrongful and improper and that would certainly justify and call for interference from the appellate court. These principles are well established." *Printers (Mysore) Private Limited v. P. Joseph,* AIR 1960 SC 1156.

Exercise of discretion on relevant grounds.— The authority should exercise its discretion on the relevant grounds and not on an irrelevant ground. *Ajantha Transport v. T.V.K. Transport,* AIR 1975 SC 123. Developing this point further in *Delhi Transport Corporation v. DTC Mazdoor Congress,* AIR 1991 SC 101, 204, 205 : (1991) 1 LLJ 395 the Supreme Court laid down: "In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See DICEY—"LAW OF THE CONSTITUTION"—10th Edn., Introduction cx). "Law has reached its finest moments", stated DOUGLAS J., in *United States v. Wunderlich,* (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler ..... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as LORD MANSFIELD stated it in classic terms in the case of *John Wilkies* "means should discretion be guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful," as followed in this Court in *Jaisinghani (S.G.) v. Union of India,* AIR 1967 SC 1427.

An administrative order is bad if it is issued without the authority considering the matter and forming an opinion thereon.

The exercise of a statutory discretion cannot be fettered by adopting a rigid policy or a mechanical rule. *Kesavan Bhaskaran v. State of Kerala,* AIR 1961 Ker 23. See also *State of U.P. v. Renusagar Power Company,* AIR 1988 SC 1737, 1758 : (1991) 70 Com Cases 127 where the Supreme Court considered the role which public interest can play in decision making by Government and its agencies.

An authority having statutory discretion not exercising it arises when the authority passes the order mechanically and without application of mind to the facts and circumstances of the case before it.

The following are discretionary powers of a *quasi*-judicial authority in which the court will not interfere unless the discretion has not been exercised reasonably and in accordance with the legal principles:

(a) granting adjournment

(b) summoning and enforcing the attendance of witnesses

(c) admission or refusal to admit document

(d) admission or rejection of secondary evidence

(e) direction for local investigation or enquiry

(f) addition of parties

(g) declarations and injunctions

(h) award or refusal of costs

(i) award or refusal of damages.

Jurisdiction.—An order of the Company Law Board which would be valid under other provisions of the Act would be within its jurisdiction. A petition was filed under s. 235 of the Companies Act for an order of investigation of the affairs of the respondent company.

The latter offered to purchase the petitioner's shares. This resulted in a compromise under which the company was directed to purchase the petitioner's shares. The order was held to be within jurisdiction. An order of this kind is covered by the CLB powers under s. 402. *Kuki Leather P. Ltd. v. TNK Govindaraju Chettiar & Co.*, (2002) 110 Com Cases 474 (Mad).

Company Law Board is not court for all purposes

Though certain powers of the court under the Civil Procedure Code have been vested in the CLB for certain purposes, that does not constitute the CLB as a civil court for all purposes. Accordingly, where a legislation constitutes special courts for certain purposes to the exclusion of all other courts, it would depend upon the context in which and the purposes for which the jurisdiction of other courts is excluded to see whether the jurisdiction of the CLB would be affected or not. The matter was under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, *ABN Amro Bank v. Indian Railways Finance Corporation Ltd.*, (1996) 85 Com Cases 689 (CLB); [the CLB ordered the bonds in question to be entered in the name of the purchaser]. The Company Law Board had held that its jurisdiction was not affected. On appeal to the High Court of Delhi, *ABN Amro Bank v. Indian Rly. Finance Corpn. Ltd.*, (1996) 85 Com Cases 716 (Del) the decision of the CLB was **reversed**. The High Court was of the view that the very purpose of the special courts was such that the jurisdiction of all courts and tribunals over the same subject matter was necessarily excluded. The court **followed** *Canara Bank v. Nuclear Power Corpn. of India Ltd.*, (1995) 84 Com Cases 70 (SC) where the Supreme Court had already adopted this view **reversing** *Canara Bank v. Nuclear Power Corpn. of India Ltd.*, (1995) 84 Com Cases 62 (CLB—Del). A similar decision namely, that the Company Law Board would have no jurisdiction in such cases (notified persons under the Act), was arrived at in *ANZ Grindlays Bank v. National Hydro Electric Power Corpn. Ltd.*, (1995) 82 Com Cases 747 (CLB—N.R.).

In *Shell Company of Australia v. Federal Commissioner of Taxation*, 1931 AC 275, LORD SANKEY L.C. observed that a body or Tribunal may be constituted entrusting them work of judicial character but they are not Courts in the accepted sense though they may possess some of the trappings of the Court. The phrase 'Trappings of the Court' suggested that the Tribunal may have many attributes which the Court possesses but still it will not be regarded as a Court. **Following** this passage, the Allahabad High Court in *Prakash Timbers v. Sushma Shingla*, AIR 1996 All 262 at 269 : (1997) 89 Com Cases 770 observed about the status of the Company Law Board as following: "Broadly speaking, the Company Law Board has trappings of a Court in the sense that it has to determine a matter placed before it judicially, give fair opportunity of hearing to the parties who may be affected by the order, to accept the evidence and also to order for inspection and discovery of documents compel the attendance of the witnesses and in the last, to pass a reasoned order which gives finality to its decision subject to the right of appeal to a party under section 10-F of the Act or such other legal remedy which is available under law to a party." [at p. 269] The court then considered scope, functions and special jurisdiction conferred on the CLB and concluded that the CLB can only be regarded as a tribunal and not a court. One of the practical effects is that, the order of a single judge in an Appeal under S. 10F against an order of CLB will be appealable by way of a special appeal under Rule 5 of the Chapter VIII of the Allahabad High Court Rules.

Procedure to be followed by Company Law Board [Sub-section (6)]

Sub-section (5), now omitted by the Amendment Act of 1988, provided that the procedure of Company Law Board was to be such as might be prescribed. The Central Government prescribed the Company Law Board (Procedure) Rules, 1964 for the conduct of business by the Board. Separately, the Central Government prescribed the Company Law Board (Bench) Rules, 1975 for dealing with petitions/applications under sections 17, 18, 19, 79, 141 and 186, consequent upon the powers of the Court under these sections conferred on the Board by the Amendment Act of 1974. The CLB (Bench) Rules, 1975 were

later amended to include matters under section 2A of MRTP Act, 1969 and references under section 22A(4)(c) of the Securities Contracts (Regulation) Act, 1956. These rules, prescribed by the Central Government *vide* its rule making power under section 642, have been rescinded by the Central Government (*vide* GSR No. 286(E), dated 31-5-1991). As per Amendment Act of 1988, the Board has the power to regulate its own procedure and the same cannot now be prescribed by the Central Government.

Accordingly, the Company Law Board has prescribed the Company Law Board Regulations, 1991 (w.e.f. 31-5-1991 *vide Notification No.* 291(E), dated 31-5-1991). The regulations lay down the procedure for the conduct of the business of the Board. The regulations also provide for the manner in which a petition/application has to be made to the Board, as also the documents to be attached with the petition. The fee payable has been prescribed in the Company Law Board (Fees on Applications and Petitions) Rules, 1991 framed by the Central Government. See *Appendix* 6.

The CLB has to act on the basis of the materials before it. *S. Swamiyappan v. Andipalyam Common Effluent Treatment Plant P. Ltd.*, (2002) 42 CLA 359 (CLB) : (2002) 38 SCL 58 : (2002) CLC 312.

Company Law Board Regulations, 1991

The Regulations prescribe the procedure for filing application or petition or making a reference to the Company Law Board under the provisions of the Companies Act, 1956. The salient provisions of the Regulations are given below:

Jurisdiction of Benches

§ For Notes on this subject see Notes under this section under the heading "Constitution of Benches and their Jurisdiction sub-section (4-B)"

Power of chairman to specify matters which may be dealt with by Bench.—(1) It shall be lawful for the chairman to provide that matters falling under sections 235, 237, 247, 248, 250, 388B, 408 and 409 and matters falling under Chapter VI of Part VI of the Act shall be dealt with by a Bench consisting of not less than two members including the chairman or the vice-chairman (which shall be known as the principal Bench).

(2) The principal Bench shall be at New Delhi but the principal Bench may sit at such places in India and at such time as may be most convenient to exercise of its powers and functions in India.

(3) It shall be lawful for the chairman to provide for matters falling under sections 111, 111A and 269 of the Act shall be dealt with by a Bench consisting of not less than two members. [*Amended by GSR No.* 433(E), dated 1-8-1997].

(4) All other mattors including interlocutory and miscellaneous applications connected with the matters falling under sub-regulations (1) and (3) of this Regulation may be heard and decided by a Bench consisting of a single member.

Ordinarily, the hearings of the cases before the Regional Benches are to be held at the place of their sittings at Calcutta, Madras, Bombay and Delhi. However, a regional Bench may hold its sitting at any other place within the region or at any other place outside the region, with the consent of the parties. [*Regulation* 7].

Transfer of case to Principal Bench.—The chairman is empowered to transfer any matter pending before any Regional Bench to the Principal Bench, for reasons to be recorded in writing. (*Regulation 4*). Such matters may relate to reliefs claimed in separate petitions under different provisions of law, pending before the Regional and Principal Bench. The object is to facilitate common hearing and speedy disposal of connected cases.

Language of the Bench.—The proceedings of a Bench shall be conducted in English or Hindi. Any matter contained in any language other than English or Hindi shall not be accepted by the Board unless the same is accompanied by a translation thereof in English or Hindi. [*Regulation 8*].

Sitting hours of the Bench.—Sitting hours of the Bench shall ordinarily be from 10.30 a.m. to 1.30 p.m. and from 2.30 p.m. to 4.30 p.m. on all working days. [*Regulation 9*].

Petition etc. to be in writing.—Every affidavit, application, reference or petition shall be written, typewritten, cyclostyled or printed, neatly and legibly on one side of the substantial paper of foolscap size in double space and separate sheets shall be stitched together and every page shall be consecutively numbered. [*Regulation 11*].

General heading.—The general heading in all proceedings, whether original or interlocutory, and of advertisements and notices, shall be as in Form No. 1 in Annexure-II. The format may be adopted to suit the circumstances of a particular case. [*Regulation 13*].

Procedure for filing petition.—The petition may either be presented by the petitioner in person or through authorised representative to the office of the Bench or be sent by registered post with acknowledgement due addressed to the Secretary, CLB (in respect of matters before the Principal Bench) or Bench Officer of the Bench concerned, as the case may be. [*Regulation 14(1)*]. The petition is required to be accompanied by the documents specified in Annexure III along with an index thereof [*Regulation 18*]. The petitioner shall serve a copy of the petition, reference or application on the respondent or respondents, as the case may be, and produce evidence of such service. [*Regulation 14(2)**].

A copy of the reference or petition other than a petition under sections 49, 79, 80A, 111, 111A, 113, 118, 144, 163, 188, 196, 219, 225, 284, 304 and 307 of the Companies Act shall be served upon the concerned Registrar of Companies and his acknowledgement is to be attached with the petition or reference, as the case may be. [*Regulation 14(3)*].

In case of a petition under section 17 by a company licensed under section 25 of the Act, the copy of the petition shall also be served upon the Regional Director.

In case of a petition or complaint under sections 235, 237, 250, 397, 398, 408 and 409 of the Companies Act, a copy thereof shall also be served upon the Central Government.

Every petition, other than an application under section 58A(9) or section 117C(4) or section 45QA(2) of the RBI Act, 1934, shall be accompanied by an affidavit verifying the same and sworn before the person specified in section 558. [*Regulation 14*].

Contents of petition.—Every petition, other than an application filed under section 58A(9) shall setforth the name of the Company, with its status, date of incorporation, the address of its registered office, authorised capital, paid-up capital with division of different classes of shares and terms of issue, if any, in the case of preference shares, main objects in brief for which the company was formed, present business activities of the company, and shall also setforth concisely under distinct heads the grounds for such petition and the nature of relief(s) prayed for. [*Regulation 16*].

Contents of interlocutory application.—An application filed subsequent to the filing of the petition applying for any interim order or direction shall, as far as possible, be in Form No. 2 in Annexure-II and shall be accompanied by an affidavit verifying the application. It shall not be necessary to present a separate application to seek an interim relief or direction, except for condonation of delay in filing the petition, if, in the original petition, the same is prayed for. [*Regulation 17*].

Appearance before the Bench.—Every party may appear before a Bench in person or through an authorised representative. A party may, in writing, authorise an Advocate or a Secretary-in-whole-time practice or a practising Chartered Accountant or practising Cost and Works Accountant, to function as a representative of such party. A company may appoint and authorise its Director or Company Secretary to appear, in its behalf, in any proceeding before the Bench. The Central Government the Regional Director or the Registrar may authorise an officer to appear in its behalf. [*Regulation 19*]. The party or

---

* As amended by CLB (Amendment) Regulation, 1992 *vide* GSR 492(E), dated 14-5-1992.

the authorised representative or the advocate can attest the documents accompanying the petition/reply/rejoinder. [*Regulation 18*].

Appearing before the Bench.—Regulation 19(2) provides that only an advocate or a secretary in whole-time practice or a practising Chartered Accountant or practising Cost and Works Accountant is entitled to function as an authorised representative of the party. A company may appoint or authorise its Director or Company Secretary to appear in its behalf, in any proceeding before the Bench. The Central Government, the Regional Director or the Registrar may authorise an officer to appear in its behalf. [*Regulation 19(2)*].

Filing of reply.—The respondents shall file the reply to the petition and the documents relied upon within such time as may be fixed by the Bench and shall be verified by way of an affidavit. [*Regulation 22*].

Filing of counter reply.—The petitioner may file the counter reply, if allowed by the Bench within such time as may be fixed by the Bench. [*Regulation 23*].

Format of 'Memorandum of Appearance' specified.— The Form of Memorandum of Appearance has been prescribed. For the purpose, see Form No. 5 in Annexure II to the Regulations. [*Regulation 18(3)*].

Non-appearance of party.—Where the petitioner does not appear at the hearing, the Bench may dismiss the petition for default and decide the matter *ex parte*. The Bench may set aside the order dismissing the petition, if sufficient cause is shown for his non-appearance on an application made within 30 days. However, where the case has been disposed of on merits, the decision shall not be recalled.

Where the respondent does not appear, the Bench may adjourn the hearing or decide the petition *ex parte*. The *ex parte* order can be set aside, if sufficient cause is shown, on an application made within 30 days. [*Regulation 26*].

Review.—Regulation 27 relating to review of its order by the Bench, on account of some mistake or error apparent on the face of the record, on an application made by the aggrieved party was omitted w.e.f. 14-5-1992. (Prior to the deletion of Regulation 27, in *Industrial Development Bank of India etc. v. Dunlop Investments Pvt. Ltd.*, (1992) 74 Com Cases 64 (CLB), the CLB observed that although the review-petitioners were not parties to the proceedings, the impugned order had affected their business dealings to some extent and, therefore, they should be considered to be an aggrieved party entitled to make a review petition under regulation 27. The review petition was held to be maintainable).

§ See also Notes under S. 10-F under the heading "Power of Review".

Substitution of legal representative.—In case of death of any party during the pendency of the proceedings, the legal representatives may apply within 30 days from the date of such death for being brought on record as necessary parties. Where no such application is made, the proceedings against the deceased party shall await. [*Regulation 28*].

Order of the Bench.—The order of the Bench shall be in writing and shall be signed by the Member(s) constituting the bench which pronounces the order. In case of difference of opinion amongst the members, the opinion of the majority shall prevail. Where the matter is heard by a Bench consisting of an even number of members and such members are divided equally in their opinion, the Chairman may either himself deal with the matter or nominate any other member to deal with the same.

A copy of every order shall be communicated to the parties free of cost. The parties may also obtain extra copy of the order or any document on payment of prescribed fee. The fee payable in terms of Regulations 29(4) and 30(2)/(3) of the Company Law Board Regulations, 1991, shall be Rs. 5 per page of any document, proceeding or order. [*Issued by the CLB vide Order under File No.* 1/10/88-CL/CLB Admn/90, dated 4-6-1991.] Any order of the Bench, deemed fit for publication, may be published by the Bench. [*Regulation 29*].

Inspection of records, etc.—The parties may inspect the records on payment of a fee of Rs. 10/- per day. A person who is not a party to the proceeding, may for sufficient reasons shown to the satisfaction of the Bench, obtain copies of the petition, etc. on payment of prescribed fee, after the final orders are passed. He has, however, no right to obtain copies of the exhibits put in evidence, (except with the consent of the person by whom they were produced or under the orders of the Bench) or to inspect the records. [*Regulation 30*].

Payment of fees.—Every petition shall be accompanied by the fee prescribed under the Company Law Board (Fees on Applications and Petitions) Rules, 1991. Fee is payable only by means of a bank draft (and not by challan) in favour of "Pay & Accounts Officer, Deptt. of Company Affairs". No fee is payable on a petition filed or reference made by the Registrar of Companies, Regional Director or by any officer on behalf of the Central Government or by a State Government or in respect of *suo motu* proceedings initiated by the Board. [*Regulation 34*].

Reference to CLB.—Any reference to the Board by the Registrar of Companies under section 621A of the Companies Act or any reference to the Board by the Central Government under sections 250, 269, 388-B and 408 of the Act shall be made by way of an application in Form No. 3 and shall be accompanied by documents mentioned in Annexure-III. [*Regulation 35*].

Application for repayment of deposits.—Applications under sub-section (9) of section 58A of the Act or S. 45QA of the Reserve Bank of India Act, 1934, shall be in Form No. 4 in Annexure II and shall be submitted in duplicate. [*Regulation 37* as amended by the Company Law Board (Amendment) Regulations, 1997 w.e.f. 1-8-1997 *vide GSR No.* 433(E), dated 1-8-1997].

Special Provisions relating to certain matters.—Apart from general provisions made in the Regulations, specific provisions have been made prescribing the procedure in case of a petition under section 17 [*Regulation 36*], application under section 58A(9) or S. 117C(4) by a depositor or debenture holder [*Regulation 37*] petition under section 407 [*Regulation 39*] and reference under section 621-A. [*Regulation 40*].

It may be noted that in case of petition under section 17, individual notices to creditors can be sent under certificate of posting. Regulation 36(9) also provide for passing orders, without hearing, in case there is no objector.

A petition under section 397/398 shall not be withdrawn without the leave of the Board and where the petition has been presented by a member or members authorised by the Central Government under sub-section (4) of section 399, notice of the application for leave to withdraw shall be given to the Central Government. [*Regulation 38*].

An intimation under section 58AA(1) or petition under section 117B(4) shall be filed in Form No. 1 in Annexure II. [*Regulation 42A*].

Enlargement of time.—The Bench may, in its discretion, enlarge the period fixed by or under these regulations or granted by a Bench for doing any act. An interlocutory application can be made for seeking the relief. [*Regulation 43*].

Inherent powers of the Bench.—The Bench may make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench. [*Regulation 44*]. This power is akin to the power of a civil court under section 151 of C.P.C.

Preparation of paper book.—The parties may be called upon to prepare a paper book after completion of the pleadings, if so deemed fit. [*Regulation 49*].

Dress for the members, for the authorised representatives and for the parties in person.—

(1) *For the members.*—The dress for the members will be suit with a tie or buttoned-up coat over a pant.

(2) *For the authorised representatives.*—An authorised representative who is a professional, shall appear before the Bench in his/her professional dress, if any, and if there is no such dress,—

(a) In the case of male, a suit with a tie or buttoned-up coat over a pant.

(b) In the case of female, in a saree or any other dress of a sober colour.

(3) *For parties in person.*—Parties appearing in person before the Company Law Board shall be properly dressed [*Regulation 50*]. [Inserted *vide GSR* 374(E), dated 2-5-1995.]

§ For text of the Company Law Board Regulations, 1991 refer *Appendix 3.*

Matter heard by three CLB members, decided by two [Regulation 4]

In accordance with the Regulation 4, it was held that a matter which was heard by three members could be decided by two of them when during the final stages of the hearing the third member could not be present because he ceased to be a member. *Rashmi Seth v. Chemon (India) P. Ltd.*, (1995) 82 Comp Cas 563 (CLB); *Solitaire Hotels P. Ltd., Re*, (1992) 3 Comp LJ 119 (CLB); *Daulat Makanmal Luthria v. Keshav S. Naik*, (1992) 3 Comp LJ 119 (CLB).

Powers and functions conferred on Company Law Board under the Companies Act

Note : This structure of powers will remain in existence till the CLB is replaced by National Company Law Tribunal and National Company Law Appellate Tribunal envisaged under Companies (Second Amendment) Act, 2002 (11 of 2003).

Section	Nature of power
17(2)	Alteration of memorandum of association so as to change the place of registered office from one State to another.
18(4)	Extension of time to file documents or for registration of alteration.
19	Revival of order in case documents are not filed in time.
43 (Proviso)	Grant of relief from consequences of default in complying with the conditions constituting a private company.
49(10)	Inspection of register of investments held in nominees' name, in case of refusal.
58A(9)	Failure to make repayment of deposits after maturity by non banking non financial companies.
58AA(1)-(3)	Failure to make repayment of deposits of small depositors.
79(2)	Issue of shares at a discount.
80A(1) (Proviso)	Consent for issue of further redeemable preference shares equal to the amount due on unredeemed preference shares.
111	Appeal against refusal to accept transfer shares etc. and to hear petitions for rectification of the register of members in respect of a private company or a public company under s. 43A.
111A	Transfer of shares in case of a public company.
113(1)	Extension of time for delivery of debenture certificate.
113(3)	Direction to make good defaults relating to issue of share certificates, etc.
117B(4)	Imposition of restriction on incurring further liabilities where assets are insufficient to discharge principal amount of debentures.
117C(4)	Order redemption of matured debentures.

Section	Nature of power
118(3)	Direction for copy of trust deed being given to debenture-holders, etc.
141(1)/(3)	Condonation of delay in registration of charges.
144(4)	Inspection of copies of instrument creating the charge and register of charges.
163(6)	Inspection of register of members and extract thereof being given to members etc.
167	Calling of annual general meeting.
186	Calling of extraordinary general meeting.
188(5)	Prohibit circulation of defamatory statement relating to members' resolution.
196(4)	Inspection of minutes books of general meeting by members and furnishing copies thereof.
219(4)	Direction for supply of copy of balance-sheet etc. to members, debenture-holders or depositors.
225(3) (Proviso)	Prohibit circulation etc. of defamatory representation of the retiring auditor.
235(2)	Declaring that an investigation into the affairs of a company ought to be ordered.
237(b)	Ordering investigation into the affairs of a company.
247(1A)	Declaring that the affairs of a company ought to be investigated as regards its membership.
248(1)	Requiring any person to give information as to persons having interest in a company.
250(1) (3) & (4)	Impose restrictions upon shares and debentures and restriction on their transfer in certain circumstances.
250(5)	Rescind its orders passed under section 250(1), (3) and (4).
269(8)/(9)	Declaring that contravention of requirements of Schedule XIII relating to appointment of managerial personnel has taken place.
284(4)	Prohibit circulation of defamatory representation of director, to be removed.
304(2)(b)	Inspection of register of directors by members etc.
307(9)	Inspection of Register of directors' shareholding.
388B to 388E (Chapter IV-A of Part-VI)	Decide reference made by Central Government against managerial personnel whether the person is fit and proper one to hold the office of director etc. and connected matters.
397 to 405 (Chapter VI of Part VI)	Relief in case of oppression and mismanagement and connected matters.
407(1)(b)	Grant of leave for appointment of Managing Director where agreement has been terminated by the CLB.
408(1), (2) & (5)	Order as to the necessity of appointment of Government directors and confirmation of change in Board of directors.
409(1)	Prevent change in Board of directors likely to affect company prejudicially.

Section	Nature of power
610(2)	Grant leave to issue process for compelling the production of any document kept by the Registrar.
614(1)	Direct the filing of documents with Registrar.
621A	Composition of certain offences, punishable with fine exceeding Rs. 50,000 (Where the maximum amount of fine which can be imposed does not exceed Rs. 50,000, the regional director is empowered to compound the offence).

Note: Apart from the powers and functions statutorily vested in the Company Law Board, it may exercise such other powers and functions under this Act *vide* section 637 or under any other law, as may be conferred on it by the Central Government.

Power of CLB under RBI Act, 1934

CLB has been conferred the power to order repayment of deposits accepted by a non-banking financial company (NBFC) under section 45QA(2) of RBI Act, 1934, inserted by the RBI (Amendment) Ordinance, 1997 (No. 2 of 1997) with effect from 9-1-1997, later replaced by the RBI (Amendment) Act, 1997 (No. 23 of 1997).

Press Note (No. 1 of 1997), dated 10-9-1997 by CLB.—By virtue of section 45QA of the Reserve Bank of India Act, 1934, the Company Law Board constituted under section 10E of the Companies Act, 1956, is now clothed with powers to order repayment of deposits accepted by a Non-Banking Financial Company (NBFC) in case of default in making the payment of principal amount and interest thereon.

Regulation 37 of the CLB Regulations, 1991, has accordingly been amended, *vide Notification No.* GSR 433(E), dated August 1, 1997. Applications for refund of deposits and interest thereon under section 45QA of the RBI Act, 1934, can be made in the prescribed Form No. 4 of the CLB Regulations, 1991, in duplicate, along with a fee of Rs. 50 by way of a demand draft/pay order in favour of the Pay and Accounts Officer, Department of Company Affairs to the Bench Officer, Company Law Board at New Delhi/Calcutta/Mumbai/Chennai, under whose jurisdiction the registered office of the defaulting company falls.

§ For the text of the RBI (Amendment) Act, 1997, see *Appendix* 59.

Relevant Rules and Regulations

The following rules and regulations have been framed relating to Company Law Board:

1. Company Law Board Regulations, 1991, See *Appendix* 3.
2. Company Law Board (Fees on Applications and Petitions) Rules, 1991, See *Appendix* 6.
3. Company Law Board (Qualifications, Experience and Other Conditions of Service of Members) Rules, 1993, See *Appendix* 8.
4. Offices of the Company Law Board Benches (Destruction of Records) Rules, 1980. See *Appendix* 31.

Transitional provision

In respect of the powers conferred on the Board, which were earlier exercised by the Courts, section 68 of the Companies (Amendment) Act, 1988 provided that the pending proceedings may be continued and disposed of by the courts concerned. However, in case of any pending proceeding before the CLB by virtue of any notification issued by the Central Government it shall, unless such matter or proceeding would be heard by the Company Law Board after such commencement, be heard and disposed of by the Central Government.

Destruction of Records in the Offices of CLB Benches

The Government has promulgated "The Offices of the Company Law Board Benches (Destruction of Records) Rules, 1980".

§ For the text of the Rules, see *Appendix* 31.

[14][**S. 10F. Appeals against the orders of the Company Law Board.**—*Any person aggrieved by any decision or order of the Company Law Board* [15][made before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003)] *may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:*

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.]

NOTES

Important Note

Substitution of CLB by NCLT and NCLAT by the Companies (Second Amendment) Act, 2002 (11 of 2003)

By virtue of the Companies (Second Amendment) Act, 2002 (11 of 2003), the CLB has been replaced by National Company Law Tribunal/National Company Law Appellate Tribunal. One of the effects of the amendment is a change in the Appeal system. After the enforcement of the amendment, Appeals will be from the decisions of NCLT before the NCLAT and from there before the Supreme Court. Thus the High Courts have been eliminated from the Appeal System. But the Law, Practice and Procedure as stated below will remain applicable to CLB proceedings till NCLT/NCLAT are brought into existence by Notifications. The principles of law stated here will apply to the working of Tribunals also.

—Editors

Companies (Amendment) Act, 1988

The Companies (Amendment) Act, 1988 has provided, for the first time, a right of appeal to an aggrieved party. The appeal lies to the High Court only on any question of law. In other words, the decision of the Company Law Board on any question of fact is final.

An identical provision exists in section 256 of the Income Tax Act, 1961. It likewise provides for a reference to the High Court from the Appellate Tribunal on any question of law arising out of such order. The judicial precedents in relation to reference under the Income Tax Act would be of some guidance as to whether or not any order of the Company Law Board involves a question of law and, hence, is appealable.

Companies (Second Amendment) Act, 2002 (11 of 2003)

Modifications.—Orders or decisions of the Tribunal are appealable to the Appellate Tribunal under section 10FQ inserted by the Second Amendment Act, 2002 (11 of 2003). Appeal against any decision or order passed by CLB before its dissolution as provided under section 10FA are to lie before the High Court in terms of section 10F. Notes on clauses read as under:

Notes on clauses.—This clause seeks to amend the provisions of section 10F of the Companies Act, 1956 to provide that appeal against any decision or order of the Company Law Board made before the commencement of Companies (Amendment) Act, 2001

---

14. Ins. new s. 10F by the Companies (Amendment) Act, 1988, s. 5, (w.e.f. 31-5-1991) *vide* GSR dated 31-5-1991.
15. **Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 4.**

shall lie with the High Court. The proposed amendment is of consequential nature. (*Clause 4*).

§ See also Notes under Sec. 10FA.

Nature of jurisdiction

Appeal under S. 10F can be entertained by the High Court only on the Original Side and not on the Appellate Side. Appeal under S. 10F is liable to be heard by the Company Court on the Original Side as a "Company Matter" till the appropriate rules are made. Such appeals cannot be presented in the form of a petition. They will have to be presented in the form of Memorandum of Appeal formulating questions of law arising out of the Order impugned. The practice followed so far is not in accordance with law. But the pending matters cannot be dismissed for this defect in the form in view of the prevailing practice and the parties can be allowed to make appropriate amendments. *Minoo H. Mody v. Hemant D. Vakil,* AIR 1994 Bom 39, 42, 43 : (1997) 89 Com Cases 456.

No inherent right of appeal

A right of appeal is not a natural or inherent right and does not exist and cannot be assumed unless expressly conferred by statute or rules having force of statute *Ganga Bai v. Vijay Kumar,* AIR 1974 SC 1126. There was no provision for filing an appeal against the orders passed by the Company Law Board, either in respect of the powers under sections 17, 18, 19, 79, 141 and 186 or in respect of the powers delegated by the Central Government. Section 10F, inserted by the Amendment Act of 1988, now provides that an aggrieved person can file an appeal against any decision or order of the Company Law Board before the High Court, on any question of law. The order or decision of the Board on any question of fact will be final and will not be appealable.

Limitation period for filing appeal

The appeal lies to the High Court within 60 days from the date of communication of the order of the CLB. The limitation period can be further extended upto 60 days if the Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

Under section 5 of Limitation Act, 1963, an appeal may be admitted after the prescribed period, if the appellant satisfies the Court that he had sufficient cause for not being able to prefer the appeal in time. These provisions are imbibed in the proviso to section 10F and the appellant cannot seek remedy under section 5 of the Limitation Act for preferring the appeal beyond 120 days. Nonetheless, a party may avail the writ jurisdiction of the High Court under Article 226 of the Constitution of India, on the facts of a particular case.

"Sufficient cause"

In *Dinabandhu Sahu v. Jadumoni, Mangaraj,* AIR 1954 SC 411, the Supreme Court **approved** of the *dicta* in *Krishna v. Chathappan,* ILR (1889) 17 Mad 269 (FB), that 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of *bona fides* is imputable to the appellant. If sufficient cause is shown, the court has to exercise its discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is whether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of each case must be examined to see whether they fall within or without the terms of this general rule. *Brij Inder Singh v. Kanshi Ram,* ILR (1918) 45 Cal 94.

What is sufficient cause cannot be described with certainty for the reasons that facts on which questions may arise may not be identical. What may be sufficient cause in one case may be otherwise in another. What is of essence is whether it was an act of prudent or reasonable man. But the expression 'sufficient cause' receives a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable. *Shakuntala v. Kuntal,* AIR 1969 SC 575. Sufficient cause seems to mean not

only those circumstances which the law expressly recognises as extending the time, but also such circumstances as are not expressly recognised but which may appear to the court to be reasonable looking into all the facts of the case. *Kichilappa v. Ramanujan,* ILR (1910) 25 Mad 166. Though the strike was called off, the conditions prevailing in the office were abnormal—delay condoned. *State v. Daulat Ram,* AIR 1981 HP 71. Where the delay in preferring appeal was due to routine and leisurely inter-departmental consultations of the appellant insurance company, delay should not be condoned. *National Insurance v. Manoranjan,* AIR 1986 Ori 212. Where the appellant suffering from low blood pressure was medically advised not to move, and if he does not move, he acts in good faith. There is 'sufficient cause'. *Hisaria Plastic Products v. Commissioner of Sales Tax,* AIR 1980 All 185. Counsel initially advised for filing revision and realising mistake, the revision was withdrawn and an appeal was preferred. Mistaken advice cannot be considered as sufficient cause. *Babaram v. Devindar,* AIR 1981 Del 14. *Bona fide* mistake in preferring appeal within time has been held to be a sufficient cause. *State v. Harchand,* 1976 Cr LJ 1850. When a party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, he must establish that because of some event or circumstances arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. *Ajit v. State,* AIR 1981 SC 733. Each day's delay after expiry of Limitation is to be explained. *Balaram v. Sarathi,* AIR 1988 Ori 10.

"Any person aggrieved"

Under section 10F an appeal can be filed only by an aggrieved person and not where an order causes no prejudice to the appellant. A party or person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights. CORPUS JURIS SECUNDUM, Vol. IV, p. 356. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something. *Adi Pherozshah Gandhi v. H.M. Seervai,* AIR 1971 SC 385.

An aggrieved party is one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The word 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation—P. RAMANATHA AIYER LAW LEXICON, p. 78 (2nd Edn., Reprint 2003).

A person against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand, would be an "aggrieved person". Not every person who has suffered some disappointment or whose expectations have not been realised as a result of the decision or order can claim to be an " aggrieved person". *Official Receiver v. Chellappa Chettiar,* AIR 1951 Mad 935 (FB). See also *Bar Council of Maharashtra v. M.V. Dabholkar,* AIR 1975 SC 2092; *M.S. Jain v. State of Haryana,* AIR 1977 SC 276.

Where a shareholder of a company had been deprived from exercising his legal right under s. 621 read with s. 621A, against an order of the CLB concerning the company, it was held that he could be called to be a person aggrieved. His appeal under s. 10F would, therefore, be maintainable. *VLS Finance Ltd. v. Union of India,* (2003) 48 SCL 742 : (2004) 58 CLA 105 (Delhi).

"Appeal against any decision or order"

Where in a petition against oppression and mismanagement in the context of a company with two directors only, one of whom was absenting and was, therefore, removed and replaced by another director, the CLB nevertheless ordered the management to be carried on by the original two directors and this without reference or opportunity to the new director, it was held that the rights of the new director were affected by the order in violation of natural justice. The order was accordingly not justified. The Court said that the words "any decision or order" included orders which did not finally decide the rights

of the parties. Hence, the appeal was maintainable. *Gharib Ram Sharma v. Daulat Ram Kashyab,* (1994) 80 Com Cases 267 (Raj).

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board. *Cf. Kantilal Shah v. CC,* 1982 ELT 902 (Cal). The expression is wide enough to include interlocutory orders passed by the Board. *Cf. M.S. Naina v. CC,* 1975 Tax LR 1351 (Cal).

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to the CLB for appointment of an administrator for prevention of mismanagement under s. 398 and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The Court refused to dismiss it summarily but ordered that if an administrator was appointed by the CLB, fourteen days time should be given to any aggrieved party to prefer an appeal against that order. *Thakur Savadikar & Co. (P.) Ltd. v. S.S. Thakur,* (1996) 23 Corpt LA 170 (Bom).

An order of the CLB in a matter for reference to arbitration under s. 8 of the Arbitration and Concilliation Act, 1986 is not appelable in view of the fact that sec. 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and then order of reference is not one of those matters. *Hind Samachar Ltd. Re,* (2002) 4 Comp LJ 1 (P&H); *Sudarshan Chopra v. Vijay Kumar Chopra,* (2002) 4 Comp LJ 1 : (2002) 51 CLA 182 (P&H).

"Arising out of such order"—effect

The meaning of this phrase was explained in *CIT v. Scindia Steam Navigation Co. Ltd.,* AIR 1961 SC 1633 : (1961) 42 ITR 589 at p. 611. After a consideration of the case law on the subject the Supreme Court set out the following principles as to when the question of law can be said to arise out of the order of the Tribunal.

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

The phrase "arising out of" in S. 10F would include questions of law arising out of facts as found by the CLB. *Nupur Mitra v. Basubani P. Ltd.,* (1999) 35 CLA 97 (Cal).

Question of law and fact

An appeal lies to the High Court under this section on any question of law arising from any decision or order of the Company Law Board. A finding of fact recorded by the CLB is final and is therefore not appealable. The jurisdiction of the High Court in appeal is expressly confined to the determination of any question of law. It follows that a finding of fact cannot be reversed by the High Court.

The Privy Council had laid down in a number of cases which have been followed by the Supreme Court that even an erroneous finding of fact is not appealable. *Durga Chowdhrani v. Jawahir Singh,* (1891) 17 IA 122; *Pattabhiramaswamy v. Hanumayya,* AIR 1959 SC 57; *Sinha Ramanuja Jeer v. Ranga Ramanuja Jeer,* AIR 1961 SC 1720. The mere fact that the High Court would have come to a different conclusion on the facts also does not make the matter appealable. *Mattulal v. Radhey Lal,* AIR 1974 SC 1596;

Gappulal v. Thakurji Shreeji Dwarkadhishji, AIR 1969 SC 1291. However, an appeal lies even on a question of fact if it can be shown that some material evidence was disregarded or the court misdirected itself in dealing with evidence or finding of fact has no evidence to support itself or is supported by irrelevant evidence or where there was refusal to consider evidence. *Bachan Singh v. Dhian Das,* AIR 1974 SC 703; *Midnapur Zamindari Co. v. Uma Charan Mandal,* AIR 1923 PC 187; *Gosto Bihari De v. Purna Chandra De,* 1948 AC 219.

It has been held that the question whether a transaction is benami, *Meenakshi Mills v. CIT,* AIR 1957 SC 49; or fictitious, *Parasnath Thakur v. Mohani Dasi,* AIR 1959 SC 1204; or *bona fide, Ganga Bishnu Swaika v. Calcutta Pinjrapole Society,* AIR 1968 SC 615; or vitiated by undue influence, *Laxmian v. Chikkamma,* (1969) 1 Mys LJ 307 or whether there was reasonable and probable cause for prosecution *Subbarayudu P. v. Bysani Venkat Karasayya,* AIR 1968 AP 61 are no doubt matters of facts but they are appealable. An appeal also lies where there is substantial error or defect in procedure and where the finding of fact is not final or specific or is ambiguous. The following observation of their Lodships of the Privy Council in *Nafar Chandra Pal v. Shukur,* (1918) 45 IA 183 at 187 deserves to be cited "Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is necessarily a question of law, so also the question of admissibility of evidence and the question whether any evidence has been offered, on one side or the other; but the question whether the fact has been proved, when evidence for and against has been properly admitted, is necessarily a pure question of fact."

A finding of a fact without any evidence to support it or if it is otherwise perverse, is a question of law. A decision as to the legal effect of a finding of fact is a question of law. The interpretation of a statute or document is a question of law. See *Meenakshi Mills Co. Ltd. v. CIT,* AIR 1957 SC 49; *Trivedi (S.M.) v. CIT (No. 1),* (1981) 128 ITR 265 (MP). A finding of fact based on proven facts is not a question of law. A finding that requirements of s. 84 for issuing duplicate certificates were not fulfilled was held to be a finding of fact. *Shoes Specialities Ltd. v. Tracstar Investments Ltd.,* (1997) 88 Com Cases 471 (Mad—DB). Questions of interpretation of documents including the company's articles are questions of law. An appeal in such a case cannot be dismissed at the threshold. *Maharashtra Power Development Corpn. Ltd. v. Dabhal Power Co.,* (2003) 56 CLA 263 (2003) 48 SCL 180 : (2003) 117 Com Cases 506 : 2004 CLC 9 (Bom). The Court followed the decision of the Supreme Court in *Chunilal Mehta v. C.S.&M Co. Ltd.,* AIR 1962 SC 1314, where the "Court held that a question of interpretation of a document is a question of law. The appeal also involves several other questions of law. The appeal cannot, therefore, be dismissed at the threshold, though the findings which are pure findings of facts, cannot be assailed in the appeal."

A finding of fact based upon no evidence or upon surmises, conjectures and assumptions, amounts to a finding without evidence. It becomes a question of law. An appeal would lie against such a finding under s. 10F. *Scientific Instruments Co. Ltd. v. Rajendra Prasad Gupta,* (1999) 34 CLA 36 (All).

The Supreme Court has observed that a substantial question of law is one which is of general public importance or which directly and substantially affects the rights of the parties and which has not been finally settled by the Supreme Court. *Sir Chunni Lal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.,* AIR 1962 SC 1314. The soundness of conclusions drawn from facts is a question of law. *Ram Gopal v. Shamskhaton,* (1893) 19 IA 228 (PC). A finding on a mixed question of fact and law is a question of law. *Meenakshi Mills v. CIT,* AIR 1957 SC 49. A failure to appreciate and determine the question of fact to be tried is a question of law. *Sheikh Rahmat Ilahi v. Mohammed Hayat Khan,* AIR 1943 PC 208; *Damusa v. Abdul Samad,* AIR 1919 PC 29.

The section requires that the question of law arising out of the order of the Tribunal (CLB) has to be referred to the High Court. As to what is a question of law is a question that is impossible to answer with precision. However, the Supreme Court has laid down

tests to determine when a question of law will arise. In *Meenakshi Mills Co. Ltd. v. CIT,* AIR 1957 SC 49 at 65, after consideration of the existing case law, the following four principles were set out:

(1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the Court under Section 66(1). [IT Act, 1922].

(2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final its decision as to the legal effect of those findings is a question of law which can be reviewed by the Court.

(3) A finding on a question of fact is open to attack under S. 66(1) [IT Act, 1922], as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact.

A finding on a question of fact may also result in a question of law if the Tribunal's finding is without evidence or based on irrelevant material or on suspicions. Similarly if the finding of the Tribunal is so perverse or unreasonable that no person acting judicially and properly instructed as to the relevant law could have arrived at such a conclusion, a question of law would arise. *S.M. Trivedi v. CIT,* 128 ITR 265, 269 (M.P.). A question does not cease to be a question of law merely because it has arisen in earlier cases. *D.B. Madan v. CIT,* (1992) Suppt. (2) SCC 143 : (1991) 92 ITR 344. If a question framed by the applicant is not proper, the Tribunal has jurisdiction to frame the correct question involved. *CCE & C v. Indian Metal & Ferro Alloys Ltd.,* 1992 (61) ELT 425 (Ori).

A person who was not a party to the original proceeding or who was only a *pro forma* party can prefer an appeal with the leave of the court and such leave is liberally granted if he would be prejudicially affected by the judgment or the judgment would constitute a *res judicata* against him. *Jatan Kanwar Golcha v. Golcha Properties (P.) Ltd. (In liquidation),* AIR 1971 SC 374 : (1971) 41 Com Cases 230. The right of appeal can be exercised by the aggrieved party himself or in case of his death by his legal representative. *Adi Pherozshah Gandhi v. H.M. Seervai,* AIR 1971 SC 385.

Where there is an appeal on a pure question of law which is untrammelled by any question of fact and which goes to the root of the jurisdiction, a new argument or objection, not raised earlier, may be allowed for the first time in appeal, but not so when the question is a mixed question of law and fact, *Vasant Kumar Radhakisan Vora v. Board of Trustees of the Port of Bombay,* AIR 1991 SC 14, 26.

An order of the Tribunal must be read by the Court as a whole in order to determine whether it gives rise to a question of law. *Homi Jehangir Gheesta v. CIT,* (1961) 41 ITR 135 (SC). The expression "any question of law arising out of such order" would cover a question raised before, but not dealt with by the Tribunal. *Estate of Late A. Chettiar v. CIT,* (1969) 72 ITR 403 (SC).

A question of law arising out of the findings in the judgment of the Companies Tribunal (since abolished) was allowed to be raised for the first time in an appeal under sec. 10-D(1)(b) of the Companies Act, 1956 [*omitted*] although that question of law had neither been raised before nor dealt with by the Tribunal in its judgment or order. *Metal Press Works Ltd. v. Ram Prasad Kayan,* (1967-68) 72 CWN 594, 599 (Cal).

In an appeal against a CLB order, it was found that the order was passed in a manner unknown to law and also in an arbitrary manner and the findings were not only perverse and also unknown to the adjudicatory process of the land, there being an error apparent on the face of the order. The appeal was held to be maintainable the subject-matter of the order and its manner constituted a question of law. *Sri Ramdas Motor Transport Ltd. v. Karedla Suryanarayana,* (2002) 36 SCL 361 (AP).

It has been held that questions relating to maintainability of a petition cannot be regarded as a pure question of law in all cases. In this case maintainability depended upon the fact whether the petitioners were the members of the company. Thus it was a mixed question of law and fact. The order of the CLB that the matter of maintainability would be decided not as a separate issue but alongwith the merits was not an order on a pure question of law and was therefore not appealable. *Saroj Goenka v. Nariman Point Building Services and Trading Pvt. Ltd.*, (1997) 90 Com Cases 205, 211 (Mad—DB).

A question (late notice of meeting) which was not raised before CLB and, therefore, not decided by it, cannot be regarded as a question of law for appeal purposes. Even otherwise the petitioner did not suffer any loss because he attended the meeting even if the notice was late. Here the notice of meeting was not short and that the petitioner had not been able to produce support of the requisite number to demand a poll. These were held to be findings of fact and, therefore, not appealable. *Mohd. Jafar v. Nahar Industrial Enterprises Ltd.*, (1998) 93 Com Cases 717 : (1997) 4 Comp LJ 201 (Del).

The High Court is not entitled to reappraise the evidence produced before the CLB. The CLB had recorded findings on the basis of evidence laid before it that share capital had been increased that shares were allotted to various allottees of one of the appellants, two of the appellants were included in the Board of directors and the respondent was removed from his office as director. These findings were held to be a matter of fact. There could be no appeal against it. *Micromeritics Engineers P. Ltd. v. S. Manusamy*, (2002) 50 CLA 245 : (2002) 38 SCL 846 (Mad). The court also observed in this case that the validity or genuineness of a certain resolution is a fine question of fact.

A company appealed against the directions of the CLB for refund of deposits contending that the directions were unworkable. This was held to be not a question of law and, therefore, the appeal was not maintainable. *United Western Bank Ltd. v. CLB.*, (2001) 107 Com Cases 63 (Kant).

No appeal was admitted against an interlocutory order for appointment of an administrator in a petition for prevention of oppression and mismanagement in a company. The order of the Company Law Board was also found to be not perverse for the purpose of warranting any interference. *C. Sri Hari Rao v. Sri Ram Das Motor Transport P. Ltd.*, (1999) 97 Com Cases 685 : (1999) 1 Comp LJ 280 (AP).

Where a finding of fact is erroneous or perverse, the court can entertain an appeal against such a finding because appreciation of evidence is a question of law. The power of the court under s. 10F is similar to its power under s. 100 of the Code of Civil Procedure. The court followed the decision of the Supreme Court in *Manulal v. Radhey Lal*, AIR 1974 SC 1596 to the effect that the jurisdiction of the court does not extend to entertaining appeal on a question of fact unless it could be shown that there was an error of law in arriving at it or was based on no evidence at all or was arbitrary or unreasonable. The Board (CLB) had erred in recording a finding of facts which were not pleaded and in rejecting uncontroverted statements.

In respect of the inherent powers of the Company Law Board under Regulation 44 of the CLB Regulations, the court said that the provision has been reproduced *mutatis mutandis* from s. 151 of the Civil Procedure Code. There are two separate bases for exercise of this inherent power, namely, the ends of justice, and prevention of abuse of process. The court cited the decision of the Madras High Court in *Subramaniam v. Sundaram*, AIR 1963 Mad 217 where it was emphasised that the discretion of the court, under its inherent powers to adjust the rights of the parties on the basis of events happening after institution of proceedings is well recognised and commonly accepted as a rule of justice, equity and good conscience. It may even become the duty of the court to take notice of subsequent events lest it may fail to do justice between the parties. *Rajendra Kumar Malhotra v. Harbanslal Malhotra & Sons. Ltd.*, (1999) 34 CLA 360 (Cal).

The Company Law Board has to examine the fact whether complicated questions of title, forgery, fabrication, etc., are involved or not and refer the parties to a civil suit only

after such examination; otherwise its decision is liable to be set aside. The High Court would, in such a case, direct the CLB to re-examine the matter. *T.G. Veera Prasad v. Sree Rayalaseema Alkalies & Allied Chemicals Ltd.*, (1999) 98 Com Cases 806 : (1999) 20 SCL 419 : (2000) 5 Comp LJ 168 (AP).

No appeal on finding of fact even if appellate court might have differed

There can be no appeal on a finding of fact even if the circumstances are such that the appellate court would have come to a different conclusion on the facts. In order to put an end to the family duel in the company, the Company Law Board ordered the riyal factions to make their bids for the purchase of the other faction's shares. The faction whose bid was lower was directed to sell the shares to the other faction at the latter's bid price. During the intervening period the Board of directors was reconstituted so as to include the members of both the factions. The High Court did not interfere in this factual solution of the problem adopted by the Company Law Board. *Chand Mall Pincha v. Hathi Mall Pincha,* (1999) 95 Com Cases 368 : (1999) 2 Comp LJ 108 : (1998) 31 CLA 451 : (1999) 20 SCL 384 (Gau). In another case between the same parties, *Chand Mal Pincha v. Hathimal Pincha,* (1999) 20 SCL 54 (Gau) it was held that no appeal would lie against orders.

Where the finding of the Company Law Board was that the petitioner was fully aware of the impugned dealings, the respondent furnished all the particulars of the dealings and that no ground for investigation was made out, the court would not be justified in interfering with the orders. *Boiron v. SBL P. Ltd.*, (1999) 33 CLA 51 : (1998) 16 SCL 578 (Del).

In a petition for prevention of oppression and mismanagement the finding of the CLB was that the petition was not maintainable because prerequisite conditions and eligibility criteria were not satisfied. The court found that the finding was based on evidence on records and, therefore, refused to interfere in the finding. The court said that under s. 10F investigation into a question of fact is not permissible even where additional evidence is tendered to question the finding of fact. *J.P. Srivastava and Sons (Rampur) P. Ltd. v. Gwalior Sugar Co. Ltd.*, 2000 CLC 1792 (MP).

Joinder of parties, Question of law

In a petition for relief against oppression, the Company Law Board ordered the impleading as a party a multinational company which was considered necessary for examining whether the company's effort at securing equity participation of the foreign collaborator could be justified or not or whether it would be oppressive of some of the present members. Such order, being a question of law, was held to be appealable. But otherwise the order was not perverse so as to demand any interference. *Gillette International v. R.K. Malhotra,* (1998) 31 CLA 73 (Cal).

Appeal against consent orders

Under section 96(3) of the Code of Civil Procedure, no appeal shall lie from a decree passed by a court with the consent of parties. This gives effect to the principle that a judgment by consent acts as an estoppel. A consent decree can be set aside only on the ground which would invalidate an agreement such as misrepresentation, fraud or mistake. This can only be done by a suit and a consent decree cannot be set aside by an appeal for review.

An appeal was held to be maintainable to challenge the jurisdiction of the CLB to pass consent orders. *Prakash Timber P. Ltd. v. Sushma Shingla (Smt.),* AIR 1995 All 320. The court cannot interfere in the terms of a consent order unless both parties give their consent for any modification. The CLB does not have the power of reviewing its own orders under the existing provisions of the Companies Act. *Paulose (M.V.) v. City Hospital P. Ltd.*, (1998) 15 SCL 49 : (1998) 28 CLA 46 (CLB—N. Del). A dispute as to shareholding pattern was resolved by the CLB by consent order under agreement of the parties. There was no grievance as to the genuineness of consent. The order could not be interfered with in appeal. *Subhash Mohan Dev v. Santosh Mohan Dev,* 2000 CLC 1151 : (2001) 104 Com Cases 404 (Gau).

Appeal under S. 22A(6) of SCRA.—An appeal to the High Court lies against a decision of the Company Law Board under section 22A(6) of the Securities Contracts Regulation Act, 1956. *Kinetic Engineering Ltd. v. Unit Trust of India,* (1995) 84 Com Cases 910 : AIR 1995 Bom 194. [The aforecited section 22A has since been repealed].

Power of Review

The Company Law Board does not have the power of review. *Gopal Krishna Sengupta v. Hindustan Construction Co. Ltd.,* (2002) 112 Com Cas 166 : (2002) 51 CLA 116 (CLB). It is, however, open to the CLB to exercise its inherent powers and to make such orders as may seem necessary to meet the ends of justice and to prevent abusive use of the process by its Benches. When the party who has to implement a consent order fails to do so, the aggrieved party can approach the CLB with a prayer that its orders be implemented. The CLB exercised powers under s. 403 and Regulations 43 and 44 of the CLB Regulations and directed that the implementation of the consent order be postponed till the findings of the Kerala High Court about the voting rights of the two block of shares, which was sub-judice before the court, came to be known. *M.V. Paulose v. City Hospital P. Ltd.,* (1999) 96 Com Cases 588 : (1998) 15 SCL 49 : (1998) 28 CLA 46 (CLB—PB).

The Company Law Board cannot review its own order under which a petition was dismissed as withdrawn. The CLB may, however, use its inherent power for this purpose in exceptional cases. In this case the parties lost time in launching proceedings before a special court after withdrawing from the Company Law Board still subsequently to learn that the special court had no jurisdiction. The Company Law Board exercised its inherent power and ordered restoration of the proceedings before it. The Board observed that this power is not to be exercised where there is an alternative remedy, or right of appeal, or it would conflict with any provision of law or there is no chance of failure or miscarriage of justice. *Shree Cement Ltd. v. Power Grid Corpn. Ltd.,* (1998) 4 Comp LJ 148 : (1999) 93 Com Cases 854 : (1998) 30 CLA 241 : (1998) 17 SCL 122 (CLB—NB).

In *United India Insurance v. Rajendra Singh,* (2000) 37 CLA 405 at 409 : AIR 2000 SC 1165 : (2000) 3 SCC 581, the Supreme Court observed : "We have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a siutation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimesnion as would affect the very basis of the claims." *Pushpa Katoch v. Manu Maharani Hotels Ltd.,* (2001) 44 CLA 254 : (2001) 34 SCL 298 : (2001) 4 Comp LJ 413 (CLB—PB—ND). The Company Law Board has power to review and recall its orders which have been wangled through fraud or misrepresentation. But in the present case none of the findings in the orders were based on the alleged forged or fabricated postal receipt. Hence, the request for review was not accepted. Otherwise there is no power of review. *Dheepa Rajappa v. A Sivasubramanian,* (2002) 47 CLA 25 (CLB).

Writ and special appeal jurisdiction of High Courts and Supreme Court

It may be noted that even though a right of appeal to the High Court is provided by s. 10F, a writ petition under Arts. 226, 227 against the order of the Company Law Board continues to be maintainable; for example if the CLB acts in violation of natural justice, or in improper exercise of its jurisdiction. The order and actions of a *quasi*-judicial authority like Company Law Board are reviewable in writ jurisdiction under Articles 32 and 226 of the Constitution and in superintendent jurisdiction under Article 227 and special appeal jurisdiction under Article 136 of the Constitution. The writ jurisdiction of the Supreme Court under Article 32 of the Constitution can be invoked for enforcing the 'fundamental rights' while the jurisdiction of the High Court under Article 226 can be invoked not only for enforcing 'fundamental rights' but 'for any other purposes' as well. *State of Orissa v. Madan Gopal Rungta,* AIR 1952 SC 12. The phrase 'for any other purpose' used in Article 226 of the Constitution is to be understood to mean 'for any other purpose for which any of the writs would, according to the well established principles,

issue', *Carlsbad Mineral Water Manufacturing Co. Ltd. v. H.M. Jagtiani,* AIR 1952 Cal 315. An aggrieved party can also invoke the jurisdiction of Supreme Court by way of special leave to appeal under Article 136 against any order passed by a Court or Tribunal.

Where a legislation provides an effective remedy by way of appeal, there a writ petition cannot lie, only an appeal would lie. Thus, it was held that a decision of the Company Law Board under sections 397 and 398 was not open to challenge by means of a writ. An appeal would lie against the decision on all questions of law but not on questions of fact. *Bhankerpur Simbhaoli Beverages P. Ltd. v. Stridwell Leathers P. Ltd.,* (1995) 82 Com Cases 836 (Mad).

It is, however, a well-known part of knowledge on the subject that a writ would lie for rectification of procedural errors.

A finding of fact by a statutory tribunal is not reviewable by the High Court under Article 226, except where the finding is on a preliminary question upon which the jurisdiction of the tribunal depends, *State of M.P. v. Jadav (D.K.),* AIR 1968 SC 1186 or where that finding of the Tribunal is so perverse that no reasonable tribunal could arrive at such finding, *Kartar Singh v. Union of India,* (1967) SC dt. 18-10-1967; or violative of natural justice, (*Supra*). On a question of law, the High Court may interfere if there is an error apparent on the face of the record, but not otherwise, *Chokalingam v. Manickavasagam,* AIR 1974 SC 104.

Provisions conferring jurisdiction on Tribunals [CLB] to be strictly construed

Provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed—*Kasturi & Sons v. Salivateswaran,* AIR 1958 SC 507 pp. 510, 511; *Upper Doab Sugar Mills v. Shahdara (Delhi); Saharanpur Light Railway,* AIR 1963 SC 217. Hence, provisions in the Companies Act conferring jurisdiction on the Company Law Board have to be strictly construed.

P&H High Court Rules.—Under the above-mentioned Rules appeals from orders of Company Law Board are to be laid for admission before a Division Bench and then an appeal has to be disposed of by a company judge. The court suggested that there is need for amendment of the Rules. *Baljit Kaur Vohra v. Dr. Vikramjit Singh Vohra,* (2003) 115 Com Cases 194 (P&H).

Limited jurisdiction on questions of law.—The jurisdiction of the High Court on appeal against decisions of the Company Law Board is confined to questions of law. In the exercise of such limited jurisdiction the High Court cannot go into the questions of the validity of transfers of shares which require consideration of evidence including examination of witnesses. The Company Law Board had not discussed the question of transfer nor given any decision on it. The transferor companies were also not there before the CLB, they were also not there before the court. It was difficult for the court to exercise the jurisdiction at the request of a third party which would in effect be a futile exercise. *Gordon Woodroffe & Co. Ltd. UK v. Gordon Woodroffe Ltd.,* (1999) 97 Com Cases 582 : (1999) 1 Comp LJ 243 : (1999) 20 SCL 429 : (2001) 42 CLA 39 (Mad).

Availability of Judicial review

In reference to the question raised in *V. Balachandran v. Union of India,* (1993) 76 Com Cases 67 (Mad) as to whether the provisions of sections 10E and 10F were valid, the Madras High Court, upholding their validity, observed that so long as the help of the doctrine of judicial review is available to the person affected by the decisions of Tribunals and Boards, it cannot be said that the mechanism of the Tribunal and Board in lieu of the courts is in any way unconstitutional or invalid. The court found that, apart from s. 10F specially providing for appeal against the decisions of CLB, writ jurisdiction under Articles 32 and 226 of the Constitution was also available. The court relied on the observations in *S.P. Sampath Kumar v. Union of India,* AIR 1987 SC 386 and *Kalika Kuar v.*

State of Bihar, (1990) 1 BLJR 51 (Pat). For limits and scope of the doctrine of judicial review see *Tata Cellular v. Union of India*, AIR 1996 SC 11.

Judicial review is not concerned with the correctness of the decision. It is confined to the examination of the decision-making process. The established principles of law and rules of natural justice and fairness must have been followed. The review court cannot substitute its judgment for that of the administrative authority. *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759 : AIR 1999 SC 625.

When exercising the power of judicial review, the courts have to see that the authority acts within the scope of its powers and, if discretion is conferred on the authority, it exercises the same in a reasonable manner keeping in view the object which the statute seeks to achieve. *CBDT v. Oberoi Hotels (India) (P) Ltd.*, (1998) 4 SCC 552 : AIR 1998 SC 1666.

Territorial Jurisdiction of High Court for appeal against CLB decisions

The High Court of Delhi took the view in its decision in *Bhankerpur Simbhaoli Beverages P. Ltd. v. Company Law Board*, (1994) 79 Com Cases 131 (Delhi) that an appeal against the decision of the Company Law Board would lie to the High Court within whose jurisdiction the decision of the Board was rendered and even if the registered office of the company was at Madras, if the decision of the Board was rendered by its principal Bench at Delhi, an appeal would lie to the High Court at Delhi. But this decision was **reversed** by the Supreme Court. The matter before the Supreme Court was *Stridewell Leathers P. Ltd. v. Bhankerpur Simbhaoli Beverages P. Ltd.*, (1994) 79 Com Cases 139 : AIR 1994 SC 1. J.S. VERMA J. noted that the amendments of 1988 transferred the High Court jurisdiction in respect of certain matters to the Company Law Board and transformed the High Court into Court of Appeal from the decisions of the Company Law Board. The learned judge was of the opinion that the expression "the High Court" as used in s. 10F should be taken to mean "the court" as this expression is used in s. 10(1)(*a*). The absence of any indication in the amendment to suggest any change or substitution of the appellate forum is a pointer in the direction that the same continued unaltered and the expression "the High Court" instead of "the court" was used in s. 10F for the reason that the concerned High Court continued to be the forum of appeal notwithstanding transfer of the original jurisdiction from the concerned High Court to the Company Law Board. The forum of appeal indicated in section 10F is a definite forum determined by the provisions of the Act and not by the Regulations framed by the Company Law Board under section 10E(6) or the place of its sitting under the Regulations. The learned judge concluded by saying that the expression "the High Court" in section 10F means the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate as indicated in section 2(11) read with section 10(1)(*a*) and not the High Court having jurisdiction in relation to the place where the concerned Bench of the Company Law Board sits.

Appeal before single judge and Division Bench.—The Calcutta High Court has held that appeals from orders of the Company Law Board are to be heard by the Company Judge of the High Court sitting singly, and not by a Division Bench. This jurisdiction is different from appeals in winding up matters. *Tin Plates Dealers Association P. Ltd. v. Satish Chandra Sanwalka*, (2002) 108 Com Cases 295 (Cal). No appeal from the order of a single judge Bench was allowed before a Division Bench. (Vide the amendment of CPC w.e.f. 1-7-2002 by the addition of s. 100A). *Bhenoy C. Dembla v. Prem Kutir P. Ltd.*, (2003) 47 SCL 372 : (2003) 47 SCL 372 (Bom). This amendment will not prevent appeal to Division Bench where a special provision exists for such appeals. An appeal lies under section 483 to a Division Bench where there is an order of a Company Judge in appeal against an order of the Company Law Board in a case relating to prevention of oppression and mis-management because the CLB has to consider desirability or otherwise of winding up. Such appeal is not barred by section 100A of CPC,1908. *Maharashtra*

Power Development Corpn. Ltd. v. Dabhol Power Company, (2003) 117 Com Cases 651 : (2004) CLC 72 (Bom—DB).

Jurisdiction for review.—In *Bank of India v. Company Law Board,* (2001) 32 SCL 612 : (2000) CLC 2225 (Mad), it was held that a review petition against a scheme framed by CLB (Chennai) under s. 45QA, RBI Act, in respect of a company having registered office at Bangalore, could be entertained only by the Karnataka High Court and not the Madras High Court. The court **followed** *Stridewell Leathers P. Ltd. v. Bhankerpur Simbhaoli Beverages P. Ltd.,* (1994) 79 Com Cases 139 : (1993) 3 Comp LJ 405 : AIR 1994 SC 1 : (1993) 12 CLA 151 (SC).

[16][*S. 10FA. **Dissolution of Company Law Board.**—(1) On and from the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003), the Board of Company Law Administration constituted under sub-section (1) of section 10E shall stand dissolved.*

(2) On the dissolution of the Company Law Board, the persons appointed as Chairman, Vice-Chairman and members and officers and other employees of that Board and holding office as such immediately before such commencement shall vacate their respective offices and no such Chairman, Vice-Chairman and member and officer and other employee shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service:

Provided that every officer or other employee, who has been, immediately before the dissolution of the Company Law Board, appointed on deputation basis to that Board shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer and other employee of the Company Law Board employed on regular basis by that Board, shall become, on and from the dissolution of the Board, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if the rights in relation to that Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee employed in the Company Law Board, to the Central Government shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal (including the Tribunal under this Act) or other authority:

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Company Law Board to the credit of such provident fund, super-

16. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 5.

annuation fund, welfare fund or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed.

(3) All matters or proceedings or cases pending before the Company Law Board on or before the constitution of the Tribunal under section 10FB, shall, on such constitution, stand transferred to the National Company Law Tribunal and the said Tribunal shall dispose of such cases in accordance with the provisions of this Act].

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) and provides for dissolution of the Company Law Board consequent upon setting up the National Company Law Tribunal under section 10FB of the Act. The Notes on Clauses of the Bill stated, thus:

Notes on clauses.—This clause seeks to insert a new section 10FA in the Companies Act, 1956 to provide for dissolution of the Company Law Board as the National Company Law Tribunal is proposed to be constituted under that Act. The Chairman, Vice-Chairman and Members of the Company Law Board shall cease to function from the date the National Company Law Tribunal is constituted. The officers and other employees appointed on deputation basis shall be reverted to their parent cadre. Further, the officers and other employees of the Company Law Board employed on regular basis by that Board shall become the officers and employees of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to them if the rights in relation to that Board had not been transferred to, and vested in, the Central Government and shall continue to do so until and unless their employment in the Central Government is duly terminated or until their remuneration, terms and conditions of employment are duly altered by that Government. It is further provided that all matters or proceedings or cases pending before the Company Law Board on or before the constitution of the National Company Law Tribunal shall, on its constitution, stand transferred to the National Company Law Tribunal. (*Clause* 5 of the Companies (Amendment) Bill, 2001).

Clause 5 of the Bill provides that the Board of Company Law Administration constituted under sub-section (1) of Section 10E of the Companies Act shall stand dissolved. (Financial Memorandum of the Companies (Amendment) Bill, 2001).

Memorandum of delegated legislation.—Clause 5 of the Bill seeks to insert new section 10FA of the Act relating to dissolution of the Company Law Board on and from the commencement of the Companies (Amendment) Act, 2001. It provides that on the dissolution of the Company Law Board, the monies standing to the credit of Provident Fund, superannuation, welfare or other fund of the officers and other employees of the Board shall stand transferred to the Central Government and the same shall be dealt with by that Government in such manner as may be prescribed by rules. (Memorandum regarding delegated legislation of the Companies (Amendment) Bill, 2001)."

Pending proceedings and Cases

As per sub-section (3) of this section, all matters pending before CLB shall stand transferred to the newly constituted Tribunal for disposal.

[1][PART I-B

NATIONAL COMPANY LAW TRIBUNAL

[1][*S. 10FB. Constitution of National Company Law Tribunal.—The Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the National Company Law Tribunal to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Part IB has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003). It provides for the constitution of the National Company Law Tribunal and lays down its composition and powers etc. The notes on clauses of the Bill stated thus:

Notes on Clause.—This clause seeks to insert new sections 10FB, 10FC, 10FD, 10FE, 10FF, 10FG, 10FH, 10FI, 10FJ, 10FK, 10FL, 10FM, 10FN, 10FO, 10FP, 10FQ, 10FR, 10FS, 10FT, 10FU, 10FV, 10FW, 10FX, 10FY, 10FZ, 10FZA, 10G, 10GA, 10GAA, 10GB, 10GC, 10GD, 10GE and 10GF in the Companies Act, 1956 relating to Tribunal and Appellate Tribunal. It is proposed to provide for the constitution of National Company Law Tribunal which shall exercise and discharge powers and functions conferred on it by the Companies Act, 1956 or under any other law. The Tribunal shall consist of a President and such number of Judicial and Technical Members not exceeding sixty-two who shall be appointed by the Central Government by notification in the Official Gazette. The President of the Tribunal, who is, or has been, or is qualified to be a Judge of High Court, shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee. The qualifications for appointment of Judicial and Technical Members of the Tribunal shall be such as specified in section 10FD. The term of office of the President shall be sixty-seven years and for any other Member it shall be sixty-five years or three years from the date on which he enters upon office, whichever is earlier. The President shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government and the President shall have authority to delegate such powers to any other Member or any other officer of the Tribunal subject to certain conditions. The President of the Tribunal shall be paid such salary and allowances as admissible, and other terms and conditions as applicable, to a Judge of a High Court in case a sitting High Court Judge is appointed as the President. The Salary and allowances and other terms and conditions of service of the President other than a sitting Judge of a High Court and Members shall be such as may be prescribed by the Central Government. The senior-most Member or any other Member of the Tribunal shall act as the President in certain circumstances like death, resignation, or otherwise. The President or a Member may resign his office by giving notice in writing. The Central Government may, in consultation with the Chief Justice of India, remove from office the President or any Member of the Tribunal who has been adjudged an insolvent, convicted of an offence, become physically or mentally incapable, has acquired financial or other

1. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

interest prejudicial to his functions as President or Member. The Central Government shall also have power to remove the President or a Member on the ground of proved misbehaviour or incapacity after an inquiry made in this behalf. The salaries and allowances and other conditions of service of officers and other employees of the Tribunal shall be such as may be prescribed by the Central Government. It also provides that Benches shall be constituted by the President of the Tribunal with two Members out of whom one shall be a Technical member and the other a Judicial Member and such Bench shall be presided by the Judicial Member. It shall also be competent for the President to constitute a Bench consisting of a single Member. It is further provided that at least ten Special Benches consisting of three or more members one of whom shall be a Judicial Member and other two Members shall be those appointed under clauses (*a*) to (*f*) of sub-section (*3*) of section 10FD and clause (*g*) or clause (*h*) of sub-section (*3*) of that section shall be constituted for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies. The Tribunal shall pass such orders as it thinks fit after an opportunity of being heard is given to the parties concerned. The Tribunal may, within two years from the date of orders, amend any order to rectify apparent mistake on the record if it is brought to the notice of the Tribunal by the parties. The Tribunal shall have power to review its own orders. The Tribunal may by special or general order delegate its powers to any Member or officer or other employee of the Tribunal. The Tribunal shall have power to seek assistance in writing of the Chief Metropolitan Magistrate or the District Magistrate to take into custody or under its control all property, effects and actionable claims of a sick industrial company.

Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal in such form and accompanied by such fee as may be prescribed. The Appellate Tribunal shall pass an order after giving parties to the appeal an opportunity of being heard.

The Central Government shall by notification in the Official Gazette constitute the National Company Law Appellate Tribunal which shall consist of a Chairperson and not more than two Members. The Chairperson of the Appellate Tribunal shall be a person who is, or has been, a Judge of the Supreme Court or Chief Justice of a High Court. A Member of the Appellate Tribunal shall be a person who is qualified for appointment as a Judicial Member of the Tribunal and other Member shall be a person of ability, integrity and standing having special knowledge and professional experience of not less than twenty years in science, technology, economics, banking, industry, law, etc. It further provides that the senior most Member or any other Member of the Appellate Tribunal shall act as the Chairperson in certain circumstances like death, resignation, or otherwise. The term of office of the Chairperson shall be seventy years and for any other Member it shall be sixty-seven years or three years from the date he enters upon office, whichever is earlier. It provides that the Chairperson or a Member shall resign his office by giving notice in writing. The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member of the Appellate Tribunal who has been adjudged an insolvent, convicted of an offence, become physically or mentally incapable, has acquired financial or other interest prejudicial to his functions as such Chairperson or Member. The Central Government shall also have power to remove the Chairperson or a member on the ground of proved misbehaviour or incapacity after an enquiry made in this behalf. The Chairperson of the Appellate Tribunal shall be paid salary equivalent to that of a Judge of the Supreme Court and a Member shall be paid salary equivalent to that of a Judge of a High Court. The other terms and conditions of service of the Chairperson and members shall be such as may be prescribed by the Central Government. The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed on the recommendation of a Selection Committee specified in the proposed section 10FX. The Chairperson, Members, officers and other employees of the Appellate Tribunal, the President, Members, officers and other employees of the Tribunal shall be deemed to be public servants.

No suit, prosecution or other legal proceeding shall lie against the Appellate Tribunal or its Chairperson, Member, officer or other employee of the Appellate Tribunal, or against the Tribunal, its President, the Appellate Tribunal of its Member, officer or employees or operating against or liquidator or any person authorised by the Appellate Tribunal or the Tribunal for any action which is in good faith done or intended to be done in pursuance of this Act. The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. The Appellate Tribunal shall have power to punish for contempt. The Central Government shall provide such officers and other employees to the Appellate Tribunal as that Government may think fit. The salaries and allowances and other terms and conditions of service of such officers and employees shall be prescribed by the Central Government. The appellant or applicant may appear either in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners to present its or his case before the Tribunal or the Appellate Tribunal. The provisions of the Limitation Act, 1963 shall apply to an appeal preferred to the Appellate Tribunal. It is also provided that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order. (*Clause* 6 of the Companies (Amendment) Bill, 2001).

Recommendations of Justice Eradi Committee.—The whole issue of law relating to insolvency of companies should be viewed not only on the basis of existing provisions of Part-VII of the Companies Act, 1956 but also other relevant laws having a bearing on the subject, such as Sick Industrial Companies (Special Provisions) Act, 1985, (SICA), Recovery of Debts due to Banks and Financial Institutions, 1993, UNCITRAL Model Law on Cross Border Insolvency approved by United Nations and International Monetary Fund report on "Orderly and effective Insolvency Procedures". The Committee, therefore, recommends that the provisions of Part VII of the Companies Act, 1956, be amended to include the provisions for setting up of a National Tribunal which will have,—

(a) the jurisdiction and power being presently exercised by the Company Law Board under the Companies Act, 1956;

(b) the power to consider rehabilitation and revival of companies—a mandate presently entrusted to BIFR/AAFIR under SICA;

(c) the jurisdiction and power relating to winding up of companies presently vested in the High Courts.

In view of above recommendations Article 323B of the Constitution of India should be amended to set up National Tribunal. SICA should be repealed and the Companies Act, 1956 be amended to include care of sick companies. (*Para 7.1*).

Statement of objects and reasons appended to Companies (Amendment) Bill, 2001.—A National Company Law Tribunal will be set up. The powers and jurisdiction presently being exercised by various bodies, *viz.*, Company Law Board or Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction or High Courts will now be consolidated and entrusted to the Tribunal. Thus, multiplicity of litigation before various courts or *quasi*-judicial bodies or forums regarding revival or rehabilitation or merger or amalgation or winding up will be avoided as all these matters will be heard and decided by the proposed National Company Law Tribunal. [*Para 3(i)*].

Power under other enactments.—Section 651A inserted by the Second Amendment Act, 2002 further provides that "unless the context requires otherwise, any reference to the Company Law Board *in any other law*, so far as it relates to the Company Law Board, shall be construed as the Tribunal under this Act.' [*vide* clause (*b*)].

Powers have been conferred on the CLB in relation to certain matters under the MRTP Act (now repealed) and the RBI Act. Such powers will henceforth be exercisable by the Tribunal.

Winding up of Insurance Companies.—The Companies (Second Amendment) Act, 2002 (11 of 2003) has amended the Insurance Act, 1938 to provide that an insurance company shall be wound up by the Tribunal instead of the Court [*vide* clause 121 read with the Schedule to the Companies (Amendment Bill, 2001].

Exclusive jurisdiction of Tribunal in winding up matters.—Clause (a) of section 651A inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) provides that any reference relating to winding up of a company by court or High Court in any other law, except the Banking Regulation Act, 1949, shall be construed as winding up by the Tribunal in accordance with the provisions of this Act.

Constitution and Powers of Tribunal.—The Companies (Second Amendment) Act, 2002 (11 of 2003) has established an independent Tribunal with powers and jurisdiction hitherto exercised by the Courts and the Company Law Board under the Act. The Tribunal has also been conferred the powers of the BIFR and AAIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 (since repealed).

The powers and functions of the NCL Tribunal under the Act are as under:

Section No.	Power of NCLT
Sec. 58A(9)	To direct the company to make repayment of the matured deposits
Sec. 58AA(1)	Intimation of default made by the company in repayment of small deposits or part thereof or any interest thereupon
Sec. 80A(1) (proviso)	Redemption of irredemptible preference shares;
Sec. 100 to 104	Reduction of share capital;
Sec. 107	Rights of dissentient shareholders to have variation cancelled;
Sec. 111	Power to refuse registration and appeal against refusal;
Sec. 111A	Rectification of register on transfer;
Sec. 117C(4)	Redemption of debentures forthwith by payment of principal and interest;
Sec. 186	Calling an extraordinary general meeting;
Sec. 203	Power to restrain persons from managing companies (Court or NCLT);
Sec. 235	Investigation of the affairs of a company;
Sec. 236	Application by members to be supported by evidence;
Sec. 237(b)	Investigation of company's affairs in other cases;
Sec. 241(2)(dd)	Inspectors report;
Sec. 243	Application for winding up of a company or an order u/s 397or 398;
Sec. 247	Investigation of ownership of company;
Sec. 250	Imposition of restriction on shares & debentures;
Sec. 251	Saving for legal advisers & bankers;
Sec. 269(8)	Issue of notice to managing/whole-time director/manager to comply with the requirements of Schedule XIII;

Section No.	Power of NCLT
Sec. 318(3)(d)	Compensation for loss of office to managing/whole-time director/manager;
Sec. 388-B	Reference of cases against managerial personnel;
Sec. 388-C	Interim order in connection with cases u/s 388-B;
Sec. 388-D	Findings in connection with cases u/s 388-B;
Sec. 388-E	Power of CG to remove managerial personnel on the basis of findings in connection with cases u/s 388-B;
Sec. 391	Power to compromise or make arrangements with creditors & members;
Sec. 392	Power to enforce compromises & arrangements;
Sec. 394	Provisions for facilitating reconstruction & amalgamation of companies;
Sec. 394A	Notice to be given to CG for application u/s 391 & 394;
Sec. 395	Power & duty to acquire shares of shareholders dissenting from scheme or contract approved by majority;
Sec. 396(3A)	Preferring an appeal from assessment of compensation made by prescribed authority;
Sec. 397	Application for relief in cases of oppression;
Sec. 398	Application for relief in cases of mismanagement;
Sec. 400	Notice to be given to CG of applications u/s 397,398;
Sec. 401	Right of CG to apply u/s 397,398;
Sec. 402	Power on application u/s 397,938;
Sec. 403	Interim order;
Sec. 404	Effect of alteration of memorandum or articles of company by order u/s 397,398
Sec. 405	Addition of respondents to application u/s 397,398;
Sec. 407	Consequences of termination of modification of certain agreements;
Sec. 408	Power to prevent oppression or mismanagement;
Sec. 409	Power to prevent change in Board of Directors likely to affect company prejudicially;
Sec. 410	Appointment of advisory committee;
Sec. 424	Application of sections 421 to 423 to receivers & managers;
Sec. 424A	Reference by Sick Industrial Company for revival and rehabilitation;
Sec. 424B	Inquiry into working of Sick Industrial Companies
Sec. 424C	Power to make suitable order on complision of inquiry;
Sec. 424D	Power to sanction the scheme of revival and rehabilitation of Sick Industrial Companies
Sec. 424E	Rehabilitation by giving financial assistance;

Section No.	Power of NCLT
Sec. 424F	Arrangement for continuing operations, etc., during inquiry
Sec. 424G	Winding up of sick industrial company
Sec. 424H	Power to prepare complete inventory through the operating agency;
Sec. 424I	Directions not to dispose of assets;
Sec. 424J	Power to call for periodic information;
Sec. 424K	Power to direct repayment restoration money or property or any part they of, etc. by way of compensation in the respect of the misapplication, retainer, misfesance of breach of trust
Sec. 425	Modes of winding up;
Sec. 426	Liability as contributories of present and past members;
Sec. 427	Obligations of directors & managers whose liability is unlimited;
Sec. 433	Circumstances in which company may be wound up;
Sec. 434(1)(b)	Company when deemed unable to pay its debts (Court or NCLT);
Sec. 434(1)(c)	Company when deemed unable to pay its debts;
Sec. 439	Provisions as to applications for winding up;
Sec. 440	Right to present winding up petition where company is being wound up voluntarily;
Sec. 441	Commencement of winding up;
Sec. 443	Powers on hearing petition;
Sec. 444	Order for winding up;
Sec. 446	Suits stayed on winding up order;
Sec. 448	Appointment of Official liquidator;
Sec. 450	Appointment & powers of provisional liquidator;
Sec. 451	General provisions as to liquidators;
Sec. 453	Receiver not to be appointed of assets with liquidator;
Sec. 454	Statement of affairs to be made to Official Liquidator;
Sec. 456	Custody of company's property;
Sec. 457	Powers of liquidator;
Sec. 458	Discretion of liquidator;
Sec. 458A	Exclusion of certain time in computing periods of limitation;
Sec. 459	Provision for legal assistance to liquidator;
Sec. 460	Exercise & control of liquidator's powers;
Sec. 461	Books to be kept by liquidator;
Sec. 462	Audit of liquidator's accounts;
Sec. 463	Control of CG over liquidators;
Sec. 464	Appointment & composition of committee of inspection;
Sec. 465	Constitution & proceedings of committee of inspection;
Sec. 466	Power to stay winding up;

Section No.	Power of NCLT
Sec. 467	Settlement of list of contributories & application of assets;
Sec. 468	Delivery of property to liquidator;
Sec. 469	Payment of debts due by contributory & extent of set off;
Sec. 470	Power to make calls;
Sec. 471	Payment into bank of moneys due to company;
Sec. 472	Moneys & securities paid into Bank to be subject to order;
Sec. 473	Order on contributory to be conclusive evidence;
Sec. 474	Power to exclude creditors not proving in time;
Sec. 475	Adjustment of rights of contribuories;
Sec. 476	Power to order costs;
Sec. 478	Power to order public examination of promoters, directors etc.
Sec. 479	Power to arrest absconding contributory;
Sec. 480	Saving of existing powers;
Sec. 481	Dissolution of company;
Sec. 490	Power of company to appoint & fix remuneration of liquidators;
Sec. 492	Power to fill vacancy in office of liquidator;
Sec. 494	Power of liquidator to accept shares etc., as consideration for sale of property of company;
Sec. 497	Final meeting and dissolution;
Sec. 502	Appointment of liquidator;
Sec. 503	Appointment of committee of inspection;
Sec. 504	Fixing of liquidator's remuneration;
Sec. 506	Power to fill vacancy in office of liquidator;
Sec. 507	Application of section 494 to a creditors' voluntary winding up;
Sec. 509	Final meeting & dissolution;
Sec. 511-A	Application of section 454 to voluntary winding up;
Sec. 512	Powers and duties of liquidator in voluntary winding up;
Sec. 515	Power to appoint & remove liquidator in voluntary winding up;
Sec. 517	Arrangement when binding on company & creditors;
Sec. 518	Power to apply to have questions determined or powers exercised;
Sec. 519	Application of liquidator for public examination of promoters, directors, etc.
Sec. 531	Fraudulent preference;
Sec. 531-A	Avoidance of voluntary transfer;
Sec. 533	Liabilities & rights of certain fraudulently preferred persons;
Sec. 534	Effect of floating charge;
Sec. 535	Disclaimer of onerous property in case of a company which is being wound up;
Sec. 536	Avoidance of transfers etc., after commencement of winding up;

Section No.	Power of NCLT
Sec. 537	Avoidance of certain attachments, executions, etc., in winding up;
Sec. 538	Offences by officers of companies in liquidation;
Sec. 540	Penalty for frauds by officers;
Sec. 541	Liability where proper accounts not kept;
Sec. 542	Liability for fraudulent conduct of business;
Sec. 543	Power to assess damages against delinquent directors, etc.
Sec. 544	Liability u/s 542 & 543 to extend to partners or directors in firm or company;
Sec. 545	Prosecution of delinquent officers & members of company;
Sec. 546	Liquidator to exercise certain powers subject to sanction;
Sec. 547	Notification that a company is in liquidation;
Sec. 549	Inspection of books & papers by creditors & contributories;
Sec. 550	Disposal of books & papers of company
Sec. 551	Information as to pending liquidations;
Sec. 553	Voluntary liquidator to make payments into Scheduled Bank;
Sec. 555	Unpaid dividends & undistributed assets to be paid into the Companies Liquidation Account;
Sec. 556	Enforcement of duty of liquidator to make returns;
Sec. 557	Meetings to ascertain wishes of creditors or contributories;
Sec. 558	Before whom affidavit may be sworn;
Sec. 559	Power to declare dissolution of company void;
Sec. 560	Power of Registrar to strike defunct company off register;
Sec. 581	Suits stayed on winding-up order;
Sec. 581ZP(3)	Appeal to NCLJ against the order of ROC striking off the name of Producer Company;
Sec. 582	Meaning of unregistered company;
Sec. 583	Winding up of unregistered company;
Sec. 587	Suits etc., stayed on winding up order;
Sec. 588	Directions as to property in certain cases;
Sec. 589	Provisions of Part cumulative;
Sec. 610	Inspection, production & evidence of documents kept by Registrar;
Sec. 614	Enforcement of duty of company to make returns, etc., to Registrar.
Sec. 626	Application of fines;
Sec. 632	Power to require limited company to give security for costs;
Sec. 635	Enforcement of orders
Sec. 635-B	Protection of employees during investigation by Inspectors or pendency of proceeding in certain cases;
Sec. 637	A-Power to accord approval etc., subject to conditions & to prescribe fees on applications;
Sec. 640-A	Exclusion of time required in obtaining copies of orders;
Schedule XI	Form in which section 539 to 544 are to apply to cases where an application is made u/s 397, 398;

[2][***S. 10FC. Composition of Tribunal.***—*The Tribunal shall consist of a President and such number of judicial and Technical Members not exceeding sixty-two, as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide that the Tribunal shall consist of a President and not more than 62 Judicial and Technical members.

Notes on clauses.—The Tribunal shall consist of a President and such number of Judicial and Technical Members not exceeding sixty-two who shall be appointed by the Central Government by Notification in the Official Gazette [*Clause 6 of the Companies (Amendment) Bill*, 2001].

Scope of section.—The National Company Law Tribunal (Tribunal) will have a President, and a maximum of 62 other members who will be judicial/technical members. They will be appointed by the Central Government on the recommendtion of Selection Committee consisting of persons set out in section 10FX. For the eligibility and qualification for appointment as President and as judicial or technical members, see section 10FD.

The maximum number of 62 members has been specified taking into consideration that the Tribunal shall work through Benches, each consisting of three or more members, which will deal with the matters relating to revival or reconstruction or rehabilitation or winding up of companies. [*See sec. 10FL(2)*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB *ante*.

[2][***S. 10FD. Qualifications for appointment of President and Members.***—*(1) The Central Government shall appoint a person who has been, or is qualified to be, a Judge of a High Court as the President of the Tribunal.*

(2) A person shall not be qualified for appointment as Judicial Member unless he—

(a) has, for at least fifteen years, held a judicial office in the territory of India; or

(b) has, for at least ten years been an advocate of a High Court, or has partly held judicial office and has been partly in practice as an advocate for a total period of fifteen years; or

(c) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a member of the Indian Company Law Service (Legal Branch) in Senior Administrative Grade in that service]; or

(d) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government (including at least three years of service as a Member of the Indian Legal Service in Grade I of that service).

---

2. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

(3) A person shall not be qualified for appointment as Technical Member unless he—

(a) has held for at least fifteen years a Group 'A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service (Accounts Branch) in Senior Administrative Grade in that service]; or

(b) is, or has been, a Joint Secretary to the Government of India under the Central Staffing Scheme, or any other post under the Central Government or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India for at least five years and has adequate knowledge of, and experience in, dealing with problems relating to company law; or

(c) is, or has been, for at least fifteen years in practice as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or

(d) is, or has been, for at least fifteen years in practice as a cost accountant under the Costs and Works Accountants Act, 1959 (23 of 1959); or

(e) is, or has been, for at least fifteen years working experience as a Secretary in whole-time practice as defined in clause (45A) of section 2 of this Act and is a member of the Institute of the Companies Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980); or

(f) is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, science, technology, economics, banking, industry, law, matters relating to industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would be in the opinion of the Central Government useful to the Tribunal; or

(g) is, or has been, a Presiding Officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947); or

(h) is a person having special knowledge of, and experience of not less than fifteen years in, the matters relating to labour.

Explanation.—For the purposes of this Part,—

(i) "Judicial Member" means a Member of the Tribunal appointed as such under sub-section (2) of section 10FD and includes the President of the Tribunal;

(ii) "Technical Member" means a Member of the Tribunal appointed as such under sub-section (3) of section 10FD.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for qualifications and experience of persons for appointment as the President and Members of the Tribunal.

Notes on clauses.—The President of the Tribunal, who is, or has been or is qualified to be a Judge of High Court, shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee. The qualifications for appointment of Judicial and Technical Members of the Tribunal shall be such as are specified in section 10FD [*Clause 6 of the Companies (Amendment) Bill, 2001*].

Scope of section.—While the President shall be of the status of a Judge of the High Court, the Members will be drawn from Judicial service and other services as specified apart from practicing Chartered Accountants, Cost Accountants and Company Secretaries. Since the Tribunal has also been conferred with the powers for revival and rehabilitation of sick industrial companies, Presiding Officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 or any person having special knowledge and experience in matters relating to labour laws would as well be eligible to be appointed as Members of the Tribunal.

Section 10FL provides for Benches of the Tribunal to be constituted by the President.

§ For a full view of Notes on Clauses of the Bill refer to Notes under section 10FB *ante*.

[3][***S. 10FE. Term of office of President and Members.***—*The President and every other Member of the Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office but shall be eligible for re-appointment:*

Provided that no President or other Member shall hold office as such after he has attained,—

(a) in the case of the President, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years.

Provided further that the President or other Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide tenure of the President and the members of the Tribunal.

Tenure of office.—Sec. 10FE lays down the tenure of office of the President and members of the Tribunal. The appointment can be only for a period of three years. The 3-years period will be reckoned from the date of assumption of office. He will be eligible for reappointment. Such reappointment cannot exceed 3 years. A person who has attained the age of 67 years is not eligible to be appointed or continue as President of the Tribunal. The outer age limit for members is 65 years.

---

3. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

If the three-year period overlaps the specified age limit, the appointment or re-appointment will have to be restricted to the period up to the attainment of the age limit.

Retention of lien with parent cadre.—The President or Member can retain his lien with his parent cadre [*Second Proviso*].

§ For a full view of Notes on Clauses of the Bill, refer Notes under section 10FB *ante*.

[4][*S. 10FF. Financial and administrative powers of Member Administration.—The Central Government shall designate any Judicial Member or Technical Member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules which may be made by the Central Government:*

Provided that the Member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the Tribunal subject to the condition that such officer shall, while exercising such delegated powers, continue to act under the direction, superintendence and control of the Member Administration.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for financial and administrative powers of Member Administration.

Notes on clauses.—The President shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government and the President shall have authority to delegate such powers to any other Member or any other officer of the Tribunal subject to certain conditions. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

Section 10FF, as enacted, does not reflect the above position. Instead, it empowers the Central Government to designate a member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules prescribed by the Central Government. The Member Administration has the authority to delegate these powers to an officer of the Tribunal. The delegate has to act under the direction, superintendence and control of the Member Administration.

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB *ante*.

[4][*S. 10FG. Salary, allowances and other terms and conditions of service of President and other Members.—The salary and allowances and other terms and conditions of service of the President and other Members of the Tribunal shall be such as may be prescribed:*

Provided that neither the salary and allowances nor the other terms and conditions of service of the President and other Members shall be varied to their disadvantage after their appointment.

---

4. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for the salary, allowances and other terms and conditions of the President and Members, as may be prescribed by Rules by the Central Government.

Notes on clauses.—The President of the Tribunal shall be paid such salary and allowances as admissible, and other terms and conditions as applicable, to a Judge of a High Court in case a sitting High Court Judge is appointed as the President. The salary and allowances and other terms and conditions of service of the President other than a sitting Judge of a High Court and Members shall be such as may be prescribed by the Central Government. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

Prohibition on variation of salary, etc.—The proviso to this section prohibits variation of salary, terms of service, etc., after appointment as President or member, to his disadvantage.

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante*.

[5][***S. 10FH. Vacancy in Tribunal.***—*(1) In the event of the occurrence of any vacancy in the office of the President of the Tribunal by reason of his death, resignation or otherwise, the senior-most Member shall act as the President of the Tribunal until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.*

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Members of the Tribunal, as the Central Government, may, by notification, authorise in this behalf, shall discharge the functions of the President until the date on which the President resumes his duties.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the President or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for the manner of filling the vacancy in the office of the President and the members of the Tribunal. In the event of any vacancy in the office of the President of the Tribunal, the senior most Member shall act as the President of the Tribunal till a new President is appointed. In case of temporary disability of the President to discharge his functions, the senior most member or one of the members as may be authorised by the Central Government may discharge the functions of the President.

Notes on clauses.—The senior most member or any other member of the Tribunal shall act as President in certain circumstances like death or resignation, or otherwise. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante*.

---

5. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

[6][*S. 10FI. Resignation of President and Member.—The President or a Member of the Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:*

Provided that the President or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of the term of office, whichever is the earliest.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for the manner, of resignation by the President or a Member of the Tribunal.

Notes on clauses.—The President or member may resign his office by giving notice in writing [*Clause 6 of the Companies (Amendment Bill, 2001*].

When resignation becomes effective.—The resignation of the President or member becomes effective from the date of acceptance of the resignation. Until it is accepted, he will continue to function as President or member, subject to the earliest occurrence of any of the three following:

(a) expiry of 3 months from the date of receipt of the notice of resignation; or

(b) appointment of a successor; or

(c) expiry of the term of office.

§ For a full view of Notes on Clauses of the Bill, refer to notes under section 10FB, *ante*.

[6][*S. 10FJ. Removal and suspension of President or Member.—(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the President or any Member of the Tribunal, who—*

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member of the Tribunal; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member of the Tribunal; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that no such President or a Member shall be removed on any of the grounds specified in clauses (b) to (e) without giving him reasonable opportunity of being heard in respect of those charges.

---

6. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

(2) The President or a Member of the Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such President or a Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the President or Member of the Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the President or a Member referred to in sub-section (2).

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for the circumstances in which the President and any Member of the Tribunal may be removed or suspended by the Central Government, *albeit* in consultation with the Chief Justice of India. In cases of proved misbehaviour or incapacity, removal can be ordered by the Central Government after inquiry by a Judge of the Supreme Court.

Notes on clauses.—The Central Government may, in consultation with the Chief Justice of India, remove from office the President or any Member of the Tribunal who has been adjudged an insolvent, convicted of an offence involving moral turpitude, become physically or mentally incapable, has acquired financial or other interest prejudicial to his functions as President or Member. The Central Government shall also have power to remove the President or a Member on the ground of proved misbehaviour or incapacity after an inquiry made in this behalf. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

Grounds for removal of President or member [sub-sec. (1)].—Sub-section (1) lays down five grounds for removal of the President or a Member:

(a) insolvency;

(b) conviction for an offence involving moral turpitude;

(c) physical or mental incapacity;

(d) acquisition of such financial interest as is prejudicial to his functioning;

(e) abuse of position.

The President and Members of the Tribunal are appointed by the Central Government on the recommendation of the Selection Committee chaired by the Chief Justice of India or his nominee [Sec. 10FX(1)]. Their removal has, therefore, to be in consultation with the Chief Justice of India.

Insolvency and moral turpitude [Clauses (a) and (b)].—In case of insolvency, the person in question should have been adjudged as insolvent. In case of moral turpitude, the person should have been convicted for an offence which in the opinion of the Central Government involves moral turpitude. The fact that proceedings are pending before the court in respect of any of these two matters does not warrant removal of the person concerned from his office.

§ For a detailed commentary on the subject "what is moral turpitude" see Notes under section 267, *post*.

Conflict of interest and duty and abuse of functions.—As for the ground of conflict of interest and duty is concerned, it may also be noted that sub-section (5) of section 10FX requires the Selection Committee to ensure that the incumbent does not have financial or other interest which is likely to prejudicially affect his functions.

Opportunity of being heard.—Except in the case of insolvency, the person charged on any of the other four grounds must be given an opportunity of being heard in respect of the charges. [*Sub-sec. (1), proviso*].

Misbehaviour or incapacity [Sub-sections (2) and (4)].—An inquiry is to be conducted by a Judge of the Supreme Court where a person is charged with misbehaviour or incapacity. Only if the charge is proved after the inquiry, can the person be removed from his office. The investigation has to be conducted in accordance with the Rules prescribed by the Central Government in this behalf.

Suspension from office of president or member [Sub-section (3)].—President or a member can be suspended from office only on the grounds of misbehaviour or incapacity. The suspension can operate from the time of reference for inquiry to the Supreme Court Judge into the alleged misbehaviour or incapacity under sub-section (2), up to the date of Central Government's order on the report of the Supreme Court Judge.

[7][*S. 10FK. Officers and employees of Tribunal.—(1) The Central Government shall provide the Tribunal with such officers and other employees as it may deem fit.*

(2) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Member Administration.

(3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for the appointment of the staff of the Tribunal.

Notes on clauses.—The salaries and allowances and other conditions of service of officers and other employees of the Tribunal shall be such as may be prescribed by the Central Government. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

The officers and employees shall discharge their functions under the general superintendence of the Member Administration designated as such under section 10FF.

§ For a full view of the Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante*.

[7][*S. 10FL. Benches of Tribunal.—(1) Subject to the provisions of this section, the powers of the Tribunal may be exercised by Benches, constituted by the President of the Tribunal, out of which one shall be a Judicial Member and another shall be a Technical Member referred to in clauses (a) to (f) of sub-section (3) of section 10FD:*

Provided that it shall be competent for the Members authorised in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction,

---

7. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

powers and authority of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President of the Tribunal may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member of the Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President of the Tribunal or, as the case may be, referred to him for transfer to such Bench as the President may deem fit.

(2) The President of the Tribunal shall, for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies, constitute one or more Special Benches consisting of three or more Members, each of whom shall necessarily be a Judicial Member, a Technical Member appointed under any of the clauses (a) to (f) of sub-section (3) of section 10FD, and a Member appointed under clause (g) or clause (h) of sub-section (3) of section 10FD.

Provided that in case a Special Bench passes an order in respect of a company to be wound up, the winding up proceedings of such company may be conducted by a Bench consisting of a single Member.

(3) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members of the Tribunal who have heard the case, including those who first heard it.

(4) There shall be constituted, such number of Benches, as may be notified by the Central Government.

(5) In addition to the other Benches, there shall be a Principal Bench at New Delhi presided over by the President of the Tribunal.

(6) The Principal Bench of the Tribunal shall have powers of transfer of proceedings from any Bench to another Bench of the Tribunal in the event of inability of any Bench from hearing any such proceedings for any reason:

Provided that no transfer of any proceedings shall be made under this sub-section except after recording the reasons for so doing in writing.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for constitution of the Benches of the Tribunal by the President.

Notes on clauses.—This section provides that Benches shall be constituted by the President of the Tribunal with two Members out of whom one shall be a Technical member and the other a Judicial Member and such Bench shall be presided over by the Judicial Member. It shall also be competent for the President to constitute a Bench consisting of a single Member. It is further provided that at least ten Special Benches consisting of three or more Members one of whom shall be a Judicial Member and other two Members shall be those appointed under clauses (a) to (f) of sub-section (3) of section 10FD and clause (g) or clause (h) of sub-section (3) of that section, shall be constituted for the dis-

posal of any case relating to rehabilitation, restructuring or winding up of the companies. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante*.

Section 10FL inserted by the Second Amendment Act, 2002 deals with constitution of Benches of the Tribunal.

Constitution of Benches.—The President of the Tribunal is empowered to constitute Benches for exercising the powers of the Tribunal. This section provides for constitution of a Single Bench, a Double Bench, a Special Bench and a Principal Bench.

Single member Bench [Sub-section (1) first proviso].—The single Bench constituted by the President will exercise powers and authority as the President may specify by general or special order.

Transfer to larger Bench [Sub-section (1), second proviso].—The President can transfer a matter before the single Bench to a larger Bench of two or more members, if the single member is of the view that the nature of the matters requires consideration by a larger Bench.

Two-member Bench [Sub-section (1)].—Each two-member Bench must have a judicial member and a technical member. The technical member must not be a person appointed as member representing labour interests in terms of clause (g) or (h) of section 10FD(3).

Special Benches [Sub-section (2)].—The Statement of Objects and Reasons appended to the Companies (Amendment) Bill, 2001 states thus:

> "(*iii*) The Tribunal shall work through Benches. There shall be ten special Benches which will deal with the matters relating to revival or reconstruction or rehabilitation or winding up of companies.
>
> (*iv*) This will reduce the entire process which is presently taking several years in winding up of companies to about two years or so.
>
> (*v*) Stripping of assets of sick companies will be avoided." [*Para 3(iii)(iv) & (v)*].

Composition of Special Bench.—There will be one or more Special Benches, each consisting of three or more members. Each Special Bench will have one Judicial member and two Technical members, one of whom shall be the technical member appointed as such under clause (g) or (h) of section 10FD(3) to represent labour interest.

Functions of Special Bench.—The Special Bench will dispose of cases relating to rehabilitation, restructuring or winding up of companies. The powers relating to compromises, arrangements and reconstructions which were hitherto with the Court under sections 391-396, the powers relating to revival and rehabilitation of sick industrial companies which were exercised by BIFR under SICA (*repealed*) and the powers of the court relating to winding up of companies, will henceforth be within the jurisdiction of the Special Bench.

If the Special Bench orders winding up of a company, the winding up proceedings may be conducted by a Single Member Bench [*Proviso to sub-section (2)*].

Tribunal's decision [sub-section (3)].—A matter before the Tribunal shall be decided according to the majority opinion. In case of difference of opinion among the members, the opinion of the majority shall prevail.

Divided opinion of members.—If the members are divided and there is no majority, they are required to state the points of disagreement and refer the matter to the President. The President, in turn, has to refer these points to one or more members other than those who originally considered the matter. The differences will be settled according to the *majority view* of the members who heard the case, *including those who first heard it.*

The expression 'including those who first heard it', shows that the member who considers the points of disagreement the second time has to agree with one or the other view of the members who heard them first, so as to arrive at a decision of the matter by majority.

President's power to hear second time.—Sub-section (3) requires the President to refer the points of difference to *other* members, that is, other than those who heard it first. This does not preclude the President from hearing the points of difference himself, if he was not one of the members who heard the matter first.

Number of Benches [Sub-section (4) read with sub-section (1)].—Sub-section (1) empowers the President to constitute Benches of the Tribunal subject to the provisions of this section. Under sub-section (4), the Central Government is empowered to notify the number of Benches. The President can, therefore, constitute only such number of Benches as are notified by the Central Government.

Principal Bench [Sub-section (5)].—The Principal Bench will be located at New Delhi. It shall be presided over by the President. The President has the power under sub-section (1) to specify the matters which may be dealt with by the Principal Bench.

Principal Bench's power to transfer proceedings [Sub-section (6)].—If any Bench is unable to hear the proceedings for any reason, the Principal Bench has the power to transfer such proceedings to another Bench which has jurisdiction over the matter. In effect, transfer to another Bench will be the transfer to a re-constituted Bench. For instance, if a member of the Bench before which the proceedings commenced is incapacitated from hearing the matter because of, say, conflict of interest and duty, the Bench has to be re-constituted and the matter transferred to the re-constituted Bench.

Reasons for transfer.—The Principal Bench has to record in writing the reasons for transfer of any proceedings from one Bench to another.

[8][*S. 10FM. Order of Tribunal.—(1) The Tribunal may, after giving the parties to any proceeding before it, an opportunity of being heard, pass such orders thereon as it thinks fit.*

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the parties.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003). It provides that the Tribunal may pass the orders after giving the parties an opportunity of being heard. It is also provided that any mistake in the order passed by the Tribunal, which is apparent from the record, may be corrected within 2 years from the date of the order. A copy of every order passed by the Tribunal is required to be sent to all the parties concerned.

Notes on clauses.—The Tribunal shall pass such orders as it thinks fit alter an opportunity of being heard is given to the parties concerned. The Tribunal may, within two years from the date of orders, amend any order to rectify apparent mistake on the record and shall be bound to do so if it is brought to the notice of the Tribunal by the parties. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

---

8. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante*.

Hearing before the Tribunal [Sub-section (1)]

Order XX Rule 1 of the Code of Civil Procedure, 1908, *inter alia*, provides that the Court shall pronounce judgement in open court after the case has been heard. An opportunity of being heard being given to the parties to the proceedings before the Court before passing any order is *sine qua non* of the principles of natural justice.

It was specifically provided in section 10E(5) that the Company Law Board (since dissolved) shall be guided by the principles of natural justice and shall act in its discretion in the discharge of its powers and functions. These principles equally apply to the Tribunal and Appellate Tribunal, which are also *quasi*-judicial authorities, in terms of section 10FZA(1).

§ See Notes under section 10E under the heads "Principles of natural justice" and "shall act in its discretion".

§ See also Notes under the head "Company Law Board is not Court for all purposes" under section 10E, which are relevant in respect of the Tribunal and Appellate Tribunal also.

Rectification of Tribunal's order [Sub-section (2)].—The Tribunal has been empowered to amend its order on any proceeding before it, subject to the following conditions:

(a) The amendment can be made only for rectifying any mistake apparent from the record.

(b) The power to amend can be exercised within two years from the date of the order.

(c) The mistake has to be rectified if it is brought to the notice of the Tribunal by the parties.

Mistake apparent on face of record.—Mistake or error must be such which is apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence. The power to rectify or amend the order is exercised to remove the mistake without disturbing its finality. *Lily Thomas v. Union of India,* AIR 2000 SC 1650, 1665. The Supreme Court cited its earlier decisions in this regard and observed : "Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa v. Nagappa,* AIR 1954 SC 440 this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Ahmad Ishaque,* AIR 1955 SC 233 it was held (para 23): '..... It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear cut rule by which the boundary between the two classes of errors could be demarcated. *Pathak* for the first respondent contended on the strength of certain observations of CHAGLA, C.J., in *Batuk K. Vyas v. Surat Borough Municipality,* AIR 1953 Bom 133 R that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.'"

[9][*S. 10FN. Power to review.—The Tribunal shall have power to review its own orders.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to prescribe that the Tribunal shall have the power to review its own orders.

Notes on clauses.—The Tribunal shall have power to review its own orders. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante.*

Right to seek review.—This section confers a general power of review on the Tribunal, in addition to its review power under the specific circumstances mentioned in sub-section (4) of section 424C.

It expressly confers the right on a person to ask for a review of an earlier order made by the Tribunal.

Powers of Civil Court vested in Tribunal.—Clause (f) of sub-section (2) of section 10FZA provides that in reviewing its decisions, the Tribunal or the Appellate Tribunal, as the case may be, has the same powers as are vested in a civil court under the CPC in this behalf.

In civil cases, review lies on any of the ground specified in O. 47, Rule 1 of the Code of Civil Procedure which provides:

"Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which, no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes.

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on accdount of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

Under O. 40, Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40, Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

While section 10FM(2) empowers the Tribunal to rectify accidental or inadvertent mistake, section 10FN empowers the Tribunal to correct mis-carriage of justice or any manifest wrong which has been done.

The Supreme Court in *Tata Cellular v. Union of India,* (1994) 4 JT (SC) 532 : (1994 AIR SCW 3344), while dealing with the scope of judicial review in contractual matters, said as under:—"The duty of the Court is to confine itself to the question of legality. Its concern should be:

1. whether a decision-making authority exceeded its powers?

---

9. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

2. committed an error of law,
3. committed a breach of the rules of natural justice.
4. reached a decision which no reasonable Tribunal would have reached, or
5. abused its powers."

An order made by the Tribunal may be amended or revoked in appropriate circumstances, e.g., where there is a material change in the situation which was the basic foundation of the Tribunal's order. It, however, does not permit a *de-novo* hearing. See *Delhi Pipe Dealers Association v. Indian Tube Company Ltd.*, (1975) Tax LR 2035 (MRTPC) and *Mahendra & Mahendra Ltd. v. Union of India*, AIR 1979 SC 798 in the context of the power of the MRTP Commission under section 13(2) of the MRTP ACT, 1969.

[10][*S. 10FO. Delegation of powers.—The Tribunal may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be specified in the order, to any Member or officer or other employee of the Tribunal or other person authorised by the Tribunal to manage any industrial company or industrial undertaking or any operating agency, such powers and duties under this Act as it may deem necessary.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for delegation of powers of the Tribunal to any member or officer or employee of the Tribunal to manage any industrial company/undertaking or any operating agency.

Notes on clauses.—The Tribunal may, by special or general order, delegate its power to any Member, or officer or other employee of the Tribunal. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

§ For full view of Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante*.

Persons to whom powers and duties may be delegated.—The Tribunal may delegate its powers only to the following persons:—

(a) a member of the Tribunal;

(b) an officer of the Tribunal;

(c) an employee of the Tribunal;

(d) a person authorised by the Tribunal to manage any industrial company or industrial undertaking;

(e) an operating agency.

No other person or authority can be delegated any power of the Tribunal.

Manner of delegation.—The Tribunal may delegate its powers and duties either by a general or a specific order. The order of delegation may specify conditions and limitations subject to which the delegatee may act.

Powers of the Tribunal which may be delegated.—The Tribunal may delegate such of its powers as may be deemed fit and necessary under the circumstances. It may not delegate its judicial or *quasi*-judicial powers under Part VIA but it may delegate its powers of an administrative nature. It may be noted that under section 27 of SICA, 1985

---

10. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

(since repealed) certain powers and duties of BIFR could not be delegated by it. However, no exception has been made in this behalf in section 10FO.

[11][*S. 10FP. Power to seek assistance of Chief Metropolitan Magistrate and District Magistrate.—(1) The Tribunal or any operating agency, on being directed by the Tribunal may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other document of such sick industrial company, be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall, on such request being made to him,—*

(a) take possession of such property, books of account or other documents; and

(b) cause the same to be entrusted to the Tribunal or the operating agency.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—The Tribunal shall have power to seek assistance in writing of the Chief Metropolitan Magistrate or the District Magistrate to take into custody or under its control all property, effects and actionable claims of a sick industrial company. [*Clause 6 of the Companies (Amendment) Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB, *ante*.

Scope of section.—This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to enable the Tribunal or any operating agency to seek the assistance of the Chief Metropolitan Magistrate (CMM) or the District Magistrate (DM) for taking possession of property, books and papers of a sick industrial company as defined in section 2(46AA). Section 29 of SICA contained similar provisions enabling BIFR or the operating agency to seek Magistrate's assistance.

The provisions of this section have to be understood as a sufficient authorisation in favour of such Magistrates who are appointed under Section 17(1) and Section 20 of the Code of Criminal Procedure, 1973.

This section is similar to Section 456(1A) of the Act and Section 45–S of the Banking Regulation Act, 1949 which empowers the liquidator to seek the help of Magistrate for the same purpose in respect of a company or a banking company, respectively under liquidation.

---

11. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

Effects and actionable Claims

"Actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief , whether such debt or beneficial interest be existent, accruing, conditional or contingent. *The Law Lexicon* by P. RAMANATHAN AIYER, 1997 Edn., p. 42.

The expression "effects" primarily refers to movables; but in any particular context it may refer to immovables also : *John Agabog v. James Golder,* AIR 1927 PC 151. In the context of this section, which is meant to facilitate taking into custody or control by the Tribunal or an operating agency of the property, effects etc. belonging to a sick company, the term "effects" would justifiably be understood in a wider sense to include both movables and immovables.

The expression "actionable claim" is defined in Section 3 of the Transfer of Property Act, 1882. But the said definition holds good only for the purpose of that Act. It has been held that a claim is not actionable unless it is a claim in respect of a cause of action which has already matured and which, subject to procedure, may be enforced by a suit. *Shib Lal v. Azmatullah,* ILR 18 All 265 : 53 MLJ 71. Then again, an actionable claim is a claim which the Civil Courts recognize as affording grounds for relief whether a suit for its enforcement is or is not actually pending or likely to become necessary : *Rathnasami vs. Subramanya,* ILR 11 (Mad) 56.

Authorisation in favour of CMM or DM [Sub-section (2)]

Sub-section (2) provides that on a request being made by the Tribunal or the operating agency, the CMM or the DM, as the case may be, may take necessary steps to take possession of the property, books of account and other documents of the sick company for being entrusted to the Tribunal or the operating agency. It also allows the use of force, if need be by the CMM or DM, for the aforesaid purpose.

Procedure to be adopted by Magistrates

Section 10FP does not itself lay down any specific procedure for the Magistrate to follow for taking possession of the property etc. Sub-section (2) empowers the Magistrate to adopt such steps as may be necessary in his opinion. Thus, the Magistrate has full discretion in the matter. By implication, this means that the Magistrate has to exercise his discretion judiciously and take only such steps as are necessary for the purpose in view, but not more than that. The section specifically empowers the Magistrate also to use such force as may be necessary in the circumstances of the particular case.

Whether or not the Magistrate has to give a notice to the person in possession or control of such property is a moot point. While Section 456(1A) of the Act specifically requires the Magistrate to give a notice, both Section 10FB of the Act and Section 45–S of the Banking Regulation Act are silent as regards notice. It appears that the matter regarding notice would be in the discretion of the Magistrate. This is so, as the Magistrate is empowered to take such steps only as may be necessary in his opinion. If in the circumstances of a particular case, a mere notice may facilitate getting possession of the property, such notice should be given. But if the giving of such notice is likely to defeat or delay the taking over of the possession, the Magistrate would be right in not giving such notice. Thus whether or not the notice is to be given is within the Magistrate's discretion and which he has to exercise judiciously.

It is again in the Magistrate's discretion to give a hearing to the concerned party in response to a notice or otherwise. He would be well advised to hear the party unless, as stated above, it is likely to defeat or delay the taking over of the possession.

Use of force would include breaking open a lock : In re *Indo Burma Wood Products,* AIR 1968 Cal 198.

Seizure of money

Can the Magistrate, pursuant to Section 10FP, seize money in the possession of other party which is alleged to belong to the company and further alleged to have been retained or misappropriated by such other party?

Section 10FP authorises the Magistrate to take possession of property, books of account and other documents. Property in normal commercial parlance includes money. But property would not include money. Contrasting the present Section with Section 424K (misfeasance proceedings), it would be observed that while Section 424K specifically refers to money (in addition to property), Section 10FP does not. Secondly, money does not bear any signs of identification and hence ownership of particular money is always difficult of determination. Then again, money loses its attribute of ownership when it is mixed or merged with other monies. In view of these considerations, in the matter of invoking Section 10FP, it would be difficult to identify particular money, lying in the possession of any person, as belonging to the concerned company. Based on this analysis, it could be argued that Section 10FP does not empower the Magistrate to seize any money from the custody or possession of any person on the ground that it belongs to the concerned company, unless the company's ownership can be traced to the money in the possession of such person. In *Textile Traders v. State,* AIR 1960 All 405, which was a case arising under Section 94 of the Criminal Procedure Code (which empowers a Magistrate to authorise a police officer *inter alia* to take possession of stolen property), it was held that once stolen money passes into the hands of a debtor of the thief and the money becomes unidentifiable, there can be no question of it being seized by the police officer. On the same analogy what can be seized under Section 10FP is property or money in specie.

The aforementioned view gets support from the English case: *SBA Properties Ltd. v. Cradock,* 1967 (2) All ER 610 : 1967 (1) WLR 716. In this case while interpreting Section 169 of the English Companies Act, 1948, which is similar to Section 244 of the Companies Act, 1956, it was held that the power of the Secretary of State to sue to recover property of the company was confined to property which was recoverable in specie. The said Section 244 of the Act, it may be noted, empowers the Central Government to itself bring proceeding in the name of a company (whose affairs have been investigated) for recovery of its property which has been misapplied or wrongfully retained.

Judicial scrutiny barred [Sub-section (3)]

Sub-section (3) keeps the act of the Magistrate, which is done under the section, out of the purview of judicial scrutiny. Even if the Magistrate has taken any steps which seem to be more than necessary for achieving the purpose stated in sub-section (1), no action lies against him in any Court. Sub-section (3) makes it abundantly clear, having used the words 'on any ground whatsoever'.

[1][PART I-C

APPELLATE TRIBUNAL

[1][*S. 10FQ. Appeal from order of Tribunal.—(1) Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal.*

(2) No appeal shall lie to the Appellate Tribunal from an order or decision made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1), shall be filed within a period of forty-five days from the date on which a copy of the order or decision made by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from not filing the appeal in time.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Tribunal shall, after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal in such form and accompanied by such fee as may be prescribed. The Appellate Tribunal shall pass an order after giving parties to the appeal an opportunity of being heard. [*Clause 6 of Amendment Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill refer to Notes under section 10FB, *ante*.

Scope of Section

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for the right of an aggrieved party to prefer an appeal. The appeal lies to the Appellate Tribunal against any order or decision of the Tribunal, except when it is a consent order. The appeal, which can be filed within 45 days from the date of the receipt of the Tribunal's order or decision, shall be in such form and accompanied by such fee, as may be prescribed.

---

1. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

Under section 10F, appeal could lie to the High Court only on any question of law arising out of the Company Law Board's order within 60 days from the date of receipt of order or decision of the Company Law Board. High Court was, however, empowered to allow filing of appeal within a further period not exceeding 60 days. In contrast under section 10FQ, appeal lies against an order or decision of the Tribunal to the Appellate Tribunal constituted under section 10FR on any question of law and/or fact. Appeal could now be filed even after 45 days of the order or decision of the Tribunal, subject to the satisfaction of the Appellate Tribunal that the appellant was prevented by sufficient cause from not filing the appeal in time.

Right of Appeal [sub-section (1)]

A right of appeal is not a natural or inherent right and does not exist and cannot be assumed, unless expressly conferred by statute or rules having force of statute. *Ganga Bai v. Vijay Kumar*, AIR 1974 SC 1126. Sub-section (1) entitles an aggrieved person to file an appeal against any order or decision of the Tribunal before the Appellate Tribunal. The Appellate Tribunal is entitled to decide any question of law or fact arising out of the order or decision of the Tribunal.

"Any person aggrieved" [Sub-section (1)]

Under section 10FQ an appeal can be filed only by an aggrieved person and not where an order causes no prejudice to the appellant. A party or person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights. CORPUS JURIS SECUNDUM, Vol. IV, p. 356. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something. *Adi Pherozshah Gandhi v. H.M. Seervai*, AIR 1971 SC 385.

An aggrieved party is one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The word 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation—P. RAMANATHA AIYERS *Law Lexicon*, p. 78 (2nd Edn., Reprint 2001).

A person against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand, would be an "aggrieved person". Not every person who has suffered some disappointment or whose expectations have not been realised as a result of the decision or order can claim to be an " aggrieved person". *Official Receiver v. Chellappa Chettiar*, AIR 1951 Mad 935 (FB). See also *Bar Council of Maharashtra v. M.V. Dabholkar*, AIR 1975 SC 2092; *M.S. Jain v. State of Haryana*, AIR 1977 SC 276.

"Appeal from an order or decision" [Sub-section (2)]

Where in a petition against oppression and mismanagement in the context of a company with two directors only, one of whom was absenting and was, therefore, removed and replaced by another director, the Company Law Board nevertheless ordered the management to be carried on by the original two directors and this without reference or opportunity to the new director, it was held that the rights of the new director were affected by the order in violation of natural justice. The order was accordingly not justified. The Court said that the words "any decision or order" included orders which did not finally decide the rights of the parties. Hence, the appeal was maintainable. *Gharib Ram Sharma v. Daulat Ram Kashyab*, (1994) 80 Com Cases 267 (Raj).

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board. *Cf. Kantilal Shah v. CC*, 1982 ELT 902 (Cal). The expression is wide enough to include interlocutory orders passed by the Board. *Cf. M.S. Naina v. CC*, 1975 Tax LR 1351 (Cal).

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to the Company Law Board for appointment of an administrator for prevention of mismanagement under s. 398 and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The Court refused to dismiss it summarily but ordered that if an administrator was appointed by the Company Law Board, fourteen days time should be given to any aggrieved party to prefer an appeal against that order. *Thakur Savadikar & Co. (P.) Ltd. v. S.S. Thakur,* (1996) 23 Corpt LA 170 (Bom).

An order of the CLB in a matter for reference to arbitration under s. 8 of the Arbitration and Concilliation Act, 1996 is not appealable in view of the fact that the sec. 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and the order of reference is not one of those matters. *Hind Samachar Ltd. Re,* (2002) 4 Comp LJ 1 (P&H); *Sudarshan Chopra v. Vijay Kumar Chopra,* (2002) 4 Comp LJ 1 : (2002) 51 CLA 182 (P&H).

Appeal against consent orders [Sub-Sec. (2)]

No appeal shall lie to the Appellate Tribunal from any order or decision of the Tribunal made with the consent of parties before it.

Under section 96(3) of the Code of Civil Procedure, no appeal shall lie from a decree passed by a court with the consent of parties. This gives effect to the principle that a judgment by consent acts as an estoppel. A consent decree can be set aside only on the ground which would invalidate an agreement such as misrepresentation, fraud or mistake. This can only be done by a suit and a consent decree cannot be set aside by an appeal or review.

An appeal was held to be maintainable under certain circumstances to challenge the jurisdiction of the CLB to pass consent orders. *Prakash Timber P. Ltd. v. Sushma Shingla (Smt.),* AIR 1995 All 320. The court cannot interfere in the terms of a consent order unless both parties give their consent for any modification. The CLB did not have the power of reviewing its own orders under the existing provisions of the Companies Act. *Paulose (M.V.) v. City Hospital P. Ltd.,* (1998) 15 SCL 49 : (1998) 28 CLA 46 (CLB—N. Del).

A dispute as to shareholding pattern was resolved by the CLB by consent order under agreement of the parties. There was no grievance as to the genuineness of consent. The order could not be interfered with in appeal. *Subhash Mohan Dev v. Santosh Mohan Dev,* 2000 CLC 1151 (Gau).

§ See also Notes under section 10GF, *post.*

Limitation period for filing appeal [sub-section (3)]

The appeal lies to the Appellate Tribunal within 45 days from the date of communication of the order of the Tribunal. The limitation period can be further extended if the Appellate Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

Under section 5 of Limitation Act, 1963, an appeal may be admitted after the prescribed period, if the appellant satisfies the Court that he had sufficient cause for not being able to prefer the appeal in time. These provisions are imbibed in the proviso to subsection (3) and the appellant can seek remedy under section 5 of the Limitation Act for preferring the appeal beyond 45 days. For this purpose, section 10GE specifically provides that the provisions of the Limitation Act, 1963 shall apply to an appeal made to the Appellate Tribunal.

Sufficient cause.—The proviso to S. 10FQ(3) empowers the Appellate Authority to entertain an appeal after the time limit of 45 days has expired. For this purpose, the appellant has to convince the Appellate Authority that he was prevented by sufficient cause from filing the appeal within 45 days.

What is sufficient cause is a question of fact in each case *Devarlinga v. Puttasivami,* AIR 1955 Mys 133. While considering a similar provision in the Limitation Law which gave the Court power to condone delay on sufficient cause being shown, the Privy Council, in *Brij Indar Singh v. Kanshi Ram,* (1917) I.L.R. 45 Cal 94 quoted with approval the following observation of the Full Bench in *Karim Baksh v. Daulat Ram,* 1888 Punj Re 183, namely—"All that the section requires in express terms is sufficient cause for not presenting the appeal within the prescribed period. If such can be shown, the Court may in its discretion, which is of course a judicial and not an arbitrary discretion, admit the appeal."

The Court has full discretion to refuse extension of time. *Shamzadi Begam v. Alak Nath,* 1935 ILR 57 All 983. A party is not entitled to extension as a matter of right even though sufficient cause is shown. Diligence of the party or its ***bona fides*** may fall for consideration, *Ramlal v. Rewa Coalfields,* (1961) 2 SCJ 556.

It is difficult to define precisely the meaning of the words "sufficient cause" and to do so would be to crystallize into a rigid definition that judicial power and discretion which the legislature has for the best of all reasons left undetermined and unfettered. *Manchester E.B. Society, Re,* (1883) 24 Ch.D. 488; *Union of India v. Shree Ram Kunwar,* AIR 1958 Punj 365 and *Sunder Lal v. Bhanwar Lal,* AIR 1984 Raj 74.

The words "sufficient cause" should be construed liberally so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable to the appellant. *Dinabandhu Sahu v. Jadumoni Mangaraj,* AIR 1954 SC 411. In considering the cause, *bona fides* of the party have to be taken into account. *Patraji v. Radhika,* AIR 1934 Oudh 10. Ignorance of law was held to be no sufficient cause *Kesharibai v. Bai Lilavati,* AIR 1963 Guj 119. But forgetfulness of lawyers was regarded as sufficient cause. *Ramcharita Singh v. Nagendra,* 64 CWN 233. Similarly *bona fide* mistake was treated as sufficient cause. *State of Assam v. Haaji Habib,* ILR 1951 Assam 252. Absence on military duty was accepted as sufficient cause. *Hranga v. Nui,* AIR 1959 Assam 7. Excuse signifies a factor beyond control of party. *Ashutosh Bhadra v. Jatindra,* AIR 1954 Cal 238.

Government as such is not entitled to any special consideration under Section 5 of the Limitation Act. *Emperor v. Shiva Adar,* (1907) 9 Bom LR 893.

In *Sheikh Palat v. Sarwan Sahu,* (1918) 55 IC 271 it was held that a party ought not to wait until the last day, though it was held in a later case that there can be no such rule and a litigant is not debarred from claiming the benefit of this section if otherwise entitled to it. *Ramlal v. Rewa Coalfields Ltd.,* (1961) 2 SCJ 556. But negligence, carelessness or want of means at the time on the part of the appellant cannot be a sufficient cause, *Jamanadas v. Bibi Aishan,* AIR 1929 SC 206.

A mere plea of the appellant's illness is not a sufficient cause. *S.M. Ally v. Maung San Nyein,* ILR (1936) 14 Rang 155, unless its nature is such as to afford a reasonable excuse, *Maho v. Shamrao,* 1942 Nag. LJ 311.

The Supreme Court in *Collector, Land Acquisition, Anantnag v. Katiji,* AIR 1987 SC 1353 : (1987) 62 Com Cases 370 observing that the Courts should adopt a liberal approach in the matter, highlighted the reasons for adopting such approach:

1. Refusing to condone delay can result in a meritorious matter being thrown out of the very threshold and cause of justice being defeated.
2. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.
3. Judiciary is respected not because of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

In *Girdhar Lal v. Appellate Authority,* (1998) 94 Com Cases 225 (Del) where the High Court upheld Appellate Authority's refusal to condone the delay in filing appeal from

BIFR's order on the ground that that would cause prejudice to opposite party and would also create difficulties in setting the clock back.

If sufficient cause is shown, the court has to exercise its discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is whether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of each case must be examined to see whether they fall within or without the terms of this general rule. *Brij Inder Singh v. Kanshi Ram,* ILR (1918) 45 Cal 94.

What is sufficient cause cannot be described with certainty for the reasons that facts on which questions may arise may not be identical. What may be sufficient cause in one case may be otherwise in another. What is of essence is whether it was an act of a prudent or reasonable man. But the expression 'sufficient cause' receives a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable. *Shakuntala v. Kuntal,* AIR 1969 SC 575. Sufficient cause seems to mean not only those circumstances which the law expressly recognises as extending the time, but also such circumstances as are not expressly recognised but which may appear to the court to be reasonable looking into all the facts of the case. *Kichilappa v. Ramanujan,* ILR (1910) 25 Mad 166. Where the strike in the office was called off, but conditions still remained abnormal, it was held that the delay was to be condoned, *State v. Daulat Ram,* AIR 1981 HP 71. Where the delay in preferring appeal was due to routine and leisurely inter-departmental consultations of the appellant insurance company, delay was not condoned. *National Insurance v. Manoranjan,* AIR 1986 Ori 212. Where the appellant suffering from low blood pressure was medically advised not to move, and if he did not move, he acted in good faith. There was 'sufficient cause'. *Hisaria Plastic Products v. Commissioner of Sales Tax,* AIR 1980 All 185. Where the counsel initially advised for filing revision and realising mistake, the revision was withdrawn and an appeal was preferred. The mistaken advice could not be considered as sufficient cause. *Babaram v. Devindar,* AIR 1981 Del 14. When a party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, he must establish that because of some event or circumstances arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. *Ajit v. State,* AIR 1981 SC 733. Each and every day's delay after expiry of Limitation is to be explained. *Balaram v. Sarathi,* AIR 1988 Ori 10.

§ For general principles refer to Order 22 Rule 9 of Code of Civil Procedure and Section 5 of the Limitation Act, 1963.

Opportunity to be heard [Sub-section (4)]

The requirement of the rule of natural justice is that the parties whose civil rights are to be effected by a *quasi*-judicial authority must have a reasonable opportunity of being heard in their defence. "Stating it broadly and without intending it to be exhaustive..... rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witness examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them." *Union of India v. T.R. Verma,* AIR 1957 SC 882. It is now well settled that a mere opportunity to explain the conduct is not sufficient and the applicant should have the opportunity to produce his defence. *Mukhtar Singh v. State,* AIR 1957 All 297. He should have fair opportunity to state his case and to meet the accusations made against him. He should have full opportunity to correct or contradict a relevant statement prejudicial to him. Whether a reasonable opportunity has been given in a particular case will depend on its own circumstances, there being no uniform formula or rigid rules for the purpose. The duty to offer a reasonable opportunity of being heard does not include any obligation to hear a party in person, *Union of India v. Jyoti Prakash,* AIR 1971 SC 1093, or by a lawyer. *Mulchand Gulab Chand v. Mukund Shivram,* AIR 1952 Bom 296. Ordinarily, an opportunity of making a written representation against the

proposed action will meet the requirement of natural justice, (*Jyoti Prakash* case, *supra*). Whether a personal hearing should be given or not will depend on the circumstances of each case. See further *Charanlal Sahu v. Union of India,* AIR 1990 SC 1480 where the Supreme Court in the matter of *Bhopal Gas* disaster said that where a statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected, a decision arrived at without hearing but providing post decisional hearing may also be good.

When the affected party requests the adjudicatory body to exercise its power to summon witness and documents to prove his defence, it would be a denial of natural justice to him if his request is not taken care of. *Sita Ram v. Union of India,* AIR 1967 Delhi 38. When the adjudicator lacks coercive power to compel attendance of witnesses and production of documents, it is enough if he takes evidence of such witnesses as are produced before him by the party affected. The adjudicator may help the party to secure the attendance of witnesses by issuing letters of request to them though in the absence of any legal provision to compel their attendance, they may or may not appear to answer thereto. *C.M.P. Co-op. Soc. v. State of M.P.,* AIR 1967 SC 1815.

Appearance of a lawyer is not claimable as a matter of right. But in a case where complicated questions of law and fact arise, where the evidence is elaborate and the party concerned may not be in a position to meet the situation himself effectively, denial of legal assistance may amount to a denial of natural justice. *Board of Trustees of the Port of Bombay v. D.R. Nadkarni,* AIR 1983 SC 109; *C.L. Subramaniam v. Collector of Customs,* AIR 1972 SC 2178.

Where the right to be heard is specifically conferred by a statute, the court cannot take it away on the ground of practical convenience. *W.B. Electricity Regulatory Commission v. C.E.S.C. Ltd.,* AIR 2002 SC 3588. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the *audi alteram partem rule* could be imported. *Schedule Caste & Weaker Section Welfare Association v. State of Karnataka,* AIR 1991 SC 1117.

Communication of Appellate Tribunal's order [sub-section (4)]

The Appellate Tribunal may pass order after hearing the parties. The Appellate Tribunal may (i) confirm, or (ii) modify, or (iii) set aside the order of the Tribunal appealed against by the Appellant. Strangely enough, the Appellate Tribunal has no power to remand back the matter to the Tribunal for consideration afresh. Such power was available to AAIFR under section 25(2) of SICA, 1985 (*since repealed*).

Provisions conferring jurisdiction on Tribunals to be strictly construed.—Provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed—*Kasturi & Sons v. Salivateswaran,* AIR 1958 SC 507 pp. 510, 511; *Upper Doab Sugar Mills v. Shahdara (Delhi); Saharanpur Light Railway,* AIR 1963 SC 217.

Copies of order to be sent to parties [Sub-section (5)].—Order of the Appellate Tribunal is required to be sent to the Tribunal and the parties by the Registry.

Disposal of Appeal in six months [sub-section (6)]

It is expected from the Appellate Authority to decide the appeal finally, preferably within six months from the date of receipt of appeal. The period for disposal of the appeal has been prescribed to avoid delay in the orders passed by the Tribunal and/or Appellate Tribunal, particularly in matters relating to revival and rehabilitation of sick industrial companies.

The provisions made in sub-section (6) are not mandatory but are directory in nature.

[2][***S. 10FR. Constitution of Appellate Tribunal.***—*(1) The Central Government shall, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, an Appellate Tribunal to be called the "National Company Law Appellate Tribunal" consisting of a Chairperson and not more than two Members, to be appointed by that Government, for hearing appeals against the orders of the Tribunal under this Act.*

(2) The Chairperson of the Appellate Tribunal shall be a person who has been, a Judge of the Supreme Court or the Chief Justice of a High Court.

(3) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, science, technology, economics, banking, industry, law, matters relating to labour, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would be in the opinion of the Central Government useful to the Appellate Tribunal.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for constitution of the Appellate Tribunal for hearing appeals against the orders of the Tribunal under the Act.

It also lays down the composition of the Appellate Tribunal and the eligibility and qualifications of its members.

Notes on clauses.—The Central Government shall by notification in the Official Gazette constitute the National Company Law Appellate Tribunal which shall consist of a Chairperson and not more than two Members. The Chairperson of the Appellate Tribunal shall be a person who is, or has been, a Judge of the Supreme Court or Chief Justice of a High Court. A Member of the Appellate Tribunal shall be a person who is qualified for appointment as a Judicial Member of the Tribunal and other Member shall be a person of ability, integrity and standing having special knowledge and professional experience of not less than twenty years in science, technology, economics, banking, industry, law, etc. [*Clause 6 of (Amendment) Bill, 2001*]

Constitution of Appellate Tribunal.—Section 10FR provides for the constitution of the National Company Law Appellate Tribunal (Appellate Tribunal). Central Government has been empowered to constitute the Appellate Tribunal consisting of a Chairperson and not more than 2 Members. The Chairperson has to be a sitting or retired Judge of the Supreme Court or Chief Justice of any High Court. Out of the remaining 2 members, one shall be a Judicial Member and the other a Technical Member. The Appellate Tribunal will hear appeals against the order or decision of the Tribunal under this Act.

Scope of Appellate Tribunal's powers

The Appellate Tribunal will be constituted for hearing appeals against the orders of the Tribunal. No other function has been entrusted to the Appellate Tribunal and it can only act on appeal being preferred to it and not *suo moto*, unlike the High Court or the Supreme Court, or even the Tribunal, *vide* section 424B(1)(b). Thus, the Appellate Tribunal does not exercise any inherent or original jurisdiction but only the appellate jurisdiction.

In the exercise of its appellate jurisdiction, the Appellate Tribunal can confirm, modify or set aside any order of the Tribunal appealed against, *vide* section 10FQ(4).

---

2. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

The Appellate Tribunal, being the final authority on facts, is enjoined and it is incumbent upon it to appreciate the evidence, consider the reasoning of the primary authority and assign its own reasons as to why it disagrees with the reasons and findings of the primary authority. Unless adequate reasons are given, merely because it is an appellate authority, it cannot brush aside the reasoning or findings, recorded by the primary authority. *State of West Bengal v. Atul Kishore Shaw*, AIR 1990 SC 2205.

[3][*S. 10FS. Vacancy in Appellate Tribunal etc.—(1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.*

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Member of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for filling of vacancies in the Appellate Tribunal.

Notes on clauses.—Section 10FS provides that the senior most Member or any other Member of the Appellate Tribunal shall act as the Chairperson in certain circumstances like death, resignation, or otherwise. [*Clause 6 of Amendment Bill, 2001*].

Senior Most Member to officiate for vacancy in office of Chairperson [Sub-section (1)]

This sub-section provides that on the occurance of any vacancy in the office of Chairperson by reason of his death, resignation or otherwise, the senior most member would act as the chairperson upto the appointment of the new Chairperson. The officiating arrangement would continue untill the date on which a new Chairperson is appointed in accordance with the provisions of the Act.

Inability of Chairman to discharge his functions [Sub-section (2)]

When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause either the senior most member may officiate in his place or the Central Government may by notification declare that the other member shall officiate to discharge the functions of the Chairperson untill the date on which the Chairperson resumes his duties.

---

3. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

Appointment of new Chajrperson or member

Where the vacancy is due to any other reason than temporary absence, whether it is that in the office of Chairperson or any other member, the Central Government has to appoint another person to fill the vacancy in accordance with the provisions of the Act. The proceedings will be continued from the stage on which the vacancy is filled.

[4][*S. 10FT. Term of office of Chairperson and Members.—The Chairperson or a member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years:*

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of seventy years;

(b) in the case of any other Member, the age of sixty-seven years.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003).

Term of office

The term of office of all the members including the Chairperson has been declared to be for three years from the date on which a particular member enters upon his office. They can be reappointed for another term of three years.

Age limit.—The Chairperson has been allowed the age of seventy years and any other member can go only upto the age of sixty seven years.

Thus the maximum duration of tenure can be six years subject to the age limit.

§ For Notes on Clauses refer to Notes under section 10FB, *ante.*

[4][*S. 10FU. Resignation of Chairperson and Members.—The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:*

Provided that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Section 10FU has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003). It deals with resignation of Chairperson or Member of Appellate Tribunal.

Notice of resignation to be in writing.—The notice of resignation has to be in writing and addressed to the Central Government.

---

4. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

Effective date of resignation [Proviso].—The resignation does not become effective from the date of notice of resignation. The proviso to this section lays down four time periods. The effective date will be the earliest date on which any of the following eventualities occur:

(i) date of acceptance; or

(ii) expiry of 3 months from the date of *receipt* of the notice by the Central Government; or

(iii) assumption of office by the successor appointed to fill the vacancy caused by resignation; or

(iv) expiry of the term of office.

Sub-section (3) of section 10FX requires the Central Government to make a reference to the Selection Committee within one month from the date of occurrence of vacancy caused by resignation. The Central Government can initiate appropriate action to fill up the vacancy on receipt of the notice of resignation.

[5][*S. 10FV. **Removal and suspension of Chairperson and Members of Appellate Tribunal.**—(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member of the Appellate Tribunal, who—*

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such Chairperson or Member of the Appellate Tribunal; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

(2) The Chairperson or a Member of the Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or a Member referred to in sub-section (2).

---

5. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for removal and suspension of Chairperson and Members of Appellate Tribunal under certain circumstances.

Notes on clauses.—The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member of the Appellate Tribunal who has been adjudged an insolvent, convicted of an office, become physically or mentally incapable, has acquired financial or other interest prejudicial to his functions as such Chairperson or Member. The Central Government shall also have power to remove the Chairperson or a member on the ground of proved misbehaviour or incapacity after an inquiry is made in this behalf. [*See Notes of Clause 6 of the Amendment Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB.

[6][*S. 10FW. Salary, allowances and other terms and conditions of service of Chairperson and Members.—(1) The salary and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed.*

(2) The salary, allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall not be varied to their disadvantage after appointment.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—The Chairperson of the Appellate Tribunal shall be paid salary equivalent to that of a Judge of the Supreme Court and a Member shall be paid salary equivalent to that of a Judge of a High Court. The other terms and conditions of service of the Chairperson and members shall be such as may be prescribed by the Central Government. [*See Notes on Clause 6 of the Amendment Bill, 2001*]

§ For a full view of Notes on Clauses of the Bill refer to Notes under section 10FB, *ante*.

Salary, terms and conditions of service, etc., will be prescribed by the Central Government.

[6][*S. 10FX. Selection Committee.—(1) The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of—*

(a) Chief Justice of India or his nominee.....	*Chairperson;*
(b) Secretary in the Ministry of Finance and Company Affairs.....	*Member;*
(c) Secretary in the Ministry of Labour.....	*Member;*
(d) Secretary in the Ministry of Law and Justice (Department of Legal Affairs or Legislative Department).....	*Member;*

6. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

(e) Secretary in the Ministry of Finance and Company Affairs (Department of Company Affairs)..... Member.

(2) The Joint Secretary in the Ministry or Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.

(3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal and six months before the superannuation or end of tenure of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, make a reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall recommend within one month a panel of three names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, the Selection Committee shall satisfy itself that such person does not have financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal or President or Member of the Tribunal, as the case may be.

(6) No appointment of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed on the recommendation of a Selection Committee specified in the proposed section 10FX. [*Notes on clause 6 of the Companies (Amendment) Bill, 2001*]

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB.

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide for constitution of the Selection Committee to recommend appointment of the Chairperson and Members of the Appellate Tribunal, and President and Members of the Tribunal.

The Selection Committee shall consist of Chief Justice of India or his nominee as Chairperson and 4 Secretaries to the Government of India as Members.

[7][*S. 10FY. Chairperson, etc., to be public servants.*—*The Chairperson, Members, officers and other employees of the Appellate Tribunal and the President, Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide that Chairperson, and Members of Appellate Tribunal, President and

---

7. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

Members of the Tribunal and the officers and other employees of the same shall be deemed to be public servants under section 21 of I.P.C.

Notes on clauses.—The Chairperson, Members, officers and other employees of the Appellate Tribunal, the President, Members, officers and other employees of the Tribunal shall be deemed to be public servants. [*Notes on Clause 6 of Company (Amendment) Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB.

Scope of section 21 of IPC

Section 21 of the Indian Penal Code, 1860 specifies various categories or descriptions of persons who would be covered by the expression 'public servant'. The purpose of this provision is to make Chapter IX of the Code applicable to persons mentioned in this section.

§ For a detailed Commentary on s. 21 of IPC refer "RATANLAL DHIRAJLAL – INDIAN PENAL CODE, 29th Edn., 2004.

[8][*S. 10FZ. **Protection of action taken in good faith.**—No suit, prosecution or other legal proceedings shall lie against the Appellate Tribunal or its Chairperson, Member, officer or other employee or against the Tribunal, its President, Member, officer or other employee or operating agency or liquidator or any other person authorised by the Appellate Tribunal or the Tribunal in the discharge of any function under this Act for any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—No suit, prosecution or other legal proceeding shall lie against the Appellate Tribunal or its Chairperson, Member, officer or other employee of the Appellate Tribunal, or against the Tribunal, its President, the Appellate Tribunal or its Member, officer or employees or operating agency or liquidator or any person authorised by the Appellate Tribunal or the Tribunal for any action which is in good faith done or intended to be done in pursuance of this Act. [*Clause 6 of (Second Amendment) Bill, 2001*].

§ For a full view of Notes on Clauses of the Bill, refer to Notes under section 10FB.

Immunity against action taken in good faith

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) which provides immunity against any suit, prosecution or other Legal proceedings, to—

(a) Appellate Tribunal, its Chairperson, Members, officers and employees; or
(b) Tribunal, its President, Members, officers or other employees; or
(c) Operating Agency; or
(d) Liquidator; or
(e) any other person authorised by Appellate Tribunal or Tribunal to discharge any function under the Act.

Acts done in Good Faith

The position is thus stated in G.P. SINGH PRINCIPLES OF STATUTORY INTERPRETATION, p. 910 (9th Edn., 2004). Section 52 of the Indian Penal Code, 1860 and section 2(h) of the Limitation Act, 1963 also define 'good faith'. Within the definitions under these statutes

---

8. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

absence of 'due care and attention' is destructive of good faith; whereas, as defined in the General Clauses Act, 'good faith' may exist in spite of negligence. *N. Subramania Aiyar v. Official Receiver,* AIR 1951 SC 1, p. 10; *Madhav Rao v. Ramkrishna,* AIR 1958 SC 767; *Harbhajan Singh v. State of Punjab,* AIR 1966 SC 97. The latter definition is thus equitable and more reasonable and recognises as good law, what is after all good sense, that "careless man is not dishonest man and no amount of argument will prove that he is one[9] But when a person is aware of possible harm and acts in spite of it, his action is reckless and in the eye of law *mala fide. Municipality of Bhiwandy and Nizampur v. Kailash Sizing Works,* AIR 1975 SC 529, p. 531 : (1974) 2 SCC 596.

Extent of immunity

Section 10FZ provides (to the extent it is relevant) that no suit or other legal proceeding shall lie against the Tribunal, the Appellate Tribunal etc., for anything which in "good faith" is done or intended to be done in pursuance of this Act. Thus, the emphasis is on good faith on the part of the concerned authority or person. Section 3(22) of the General Clauses Act defines "good faith" by stating that a thing shall be deemed to be done in good faith when it is in fact done honestly, whether it is done negligently or not. In the light of this definition, if an officer of the Tribunal has acted honestly, he shall be deemed to have acted in good faith even though there is some element of negligence in his action. However, the degree of negligence should not be such as to raise a doubt whether he has in fact acted honestly. Thus, deliberate negligence may reflect on that person's honesty; negligence, so long as it is not gross or deliberate, would not militate against his honesty.

The scope of immunity needs to be clearly appreciated. Firstly, the immunity is available only in respect of acts performed (or intended to be performed) by the concerned person in the discharge of his functions as such (or anything in relation thereto); and therefore if he does something which his function does not require him to do, the immunity under Section 10FZ may not be available. Secondly, the act or omission on his part should be in good faith as explained above. Absence of either, or both, of the factors would deprive him of the immunity contemplated by this provision.

Exemption from actual proceeding

In view of Section 10FZ, it might perhaps be believed that the immunity afforded by this provision relieves the concerned person from being proceeded against. It is, however, to be understood that Section 10FZ does not by itself absolve the person from being prosecuted or otherwise proceeded against. The immunity from proceeding against or, prosecution etc. has to be extended by the Court, if good faith on the part of the concerned person is established. This is so because, if any aggrieved person proceeds against any officer of the Tribunal for anything done or intended to be done by him in such capacity, the onus of proving good faith on his part is cast on such officer; the question of discharging such onus could, however, arise only during the course of the prosecution or other legal proceeding filed against such officer. Therefore, the bar i.e. "no suit or other legal proceeding shall lie" could only be construed to mean that if such officer has acted in good faith, he shall not incur any obligation or liability which can be enforced in a suit, prosecution or other legal proceeding and if such proceeding is filed, it has to be dismissed by the Court. Thus, it is not correct to assume that no legal proceeding can be filed or initiated at all against him.

While suit refers to civil proceeding, the expression "other legal proceeding" covers all other legal processes (including prosecution), irrespective of their nature and forum in which it is launched.

---

9. WINFIELD : *Text Book of Law of Torts,* 7th Edition, p. 559; proposition deducted from *Derry v. Peek,* (1889) 14 AC 337. **See Further** *Goodman v. Harvey,* (1836) 4A & E 876.

[10][*S. 10FZA. Procedure and powers of Tribunal and Appellate Tribunal.*—*(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.*

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

---

10. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section provides that—

(i) the Tribunal and Appellate Tribunal can regulate their own procedure;

(ii) they have same powers as are vested in a Civil Court under the CPC, 1908 in certain matters;

(iii) orders passed by them are enforceable in the same manner as a Court's decree;

(iv) proceedings before them are deemed to be judicial proceedings within the meaning of Ss. 193 (Punishment for false evidence) and s. 228 (Interruption or insult) and for the purpose of s. 196 (using evidence known to be false) of IPC;

(v) they are deemed to be civil court for the purposes of S. 195 and Chapter XXVI of Cr.P.C. 1973 for Contempt of Court.

Notes on clauses.—The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. [*Clause 6 of the Companies (Second Amendment) Bill, 2001*].

§ For a full view of the Notes on Clauses of the Bill refer to Notes under section 10FB, *ante*.

Procedure to be followed by Tribunal and Appellate Tribunal [Sub-section (1)]

These Tribunals have been empowered to regulate their own procedure within the framework of the provisions of the Act. This was necessary because they are not bound by the procedure prescribed by the Civil Procedure Code, 1908. Sub-section (1) specifically requires that they shall be guided in the conduct of their business by the principles of natural justice.

Principles of Natural Justice [Sub-section (1)]

Note : This study was prepared in reference to the Company Law Board and would be equally applicable to the National Company Law Tribunals in respect of their functioning as and when they are constituted.

The requirement of natural justice would be read into statutory provisions unless excluded explicitly or by implication. *State Government Houseless Harijan Employees' Assn. v. State of Karnataka,* AIR 2001 SC 437 : (2001) 1 SCC 610. The doctrine of natural justice is synonymous with fairness. *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant,* (2001) 1 SCC 182 : AIR 2001 SC 24. The object of the doctrine is not only to promote justice but also to prevent miscarriage of justice (*Ibid*).

In the exercise of its powers and discharge of its functions, the Tribunal and Appellate Tribunal shall be guided by the principles of natural justice. It is a well settled principle of administrative law that a *quasi*-judicial body should act according to the principles of natural justice. "Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action." *Maneka Gandhi v. Union of India,* AIR 1978 SC 597 (625), per BHAGWATI J. By developing the principles of natural justice, the courts have devised a kind of code of fair administrative procedure. H.W.R. WADE—ADMINISTRATIVE LAW 413 (5th Edn.). According to LORD MORRIS, "natural justice is but fairness writ large. *Furnell v. Whangarei High Schools Board,* (1973) AC 660, 697. "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included just two rules." *A.K. Kraipak v. Union of India,* AIR 1970 SC 150, 156, per HEGDE, J. But in the course of years, many more subsidiary rules

came to be added to the rules of natural justice. These and many other rules are merely extensions or refinements of the two main principles which are the essential characteristics of natural justice and are the twin pillars supporting it, *i.e.*, no man shall be a judge in his own cause; and both sides shall be heard.

The requirements of natural justice vary with the varying constitution of the different *quasi*-judicial authorities and the statutory provisions under which they function. Hence, the question whether or not any rule of natural justice has been contravened in any particular case should be decided not under any pre-conceived notions, but in the light of the relevant statutory provisions, the constitution of the Tribunal and the circumstances of each case. *Suresh Koshy v. University of Kerala,* AIR 1969 SC 198. The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case. *Union of India v. P.K. Roy,* AIR 1968 SC 850, 858, *per* RAMASWAMI, J.

The Supreme Court has emphasized in *K.L. Tripathi v. State Bank of India,* AIR 1984 SC 274 that whether any particular principle of natural justice would be applicable to a particular situation, or the question whether there has been any infraction of the application of that principle, has to be judged on the facts and circumstances of each case. The basic requirements are that there must be fair play and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons .....The rules of natural justice are flexible and cannot be put on any rigid formula" (*Ibid*) (JAIN AND JAIN, PRINCIPLES OF ADMINISTRATIVE LAW, SUPPLEMENT 1989 by M.P. Jain p. 24 of Supplement) (4th Edn., 1986).

"The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not to ensure just and fair decision. In recent years, the concept of *quasi*-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a *quasi*-judicial power." *Kraipak (A.K.) v. Union of India,* AIR 1970 SC 150 at 154 **followed** in *Baburao Vishwanath Mathpati v. State,* AIR 1996 Bom 227 at 241.

The requirement of natural justice can be excluded by statute. Where the statute does not do so or a statute give this right by a specific provision, it cannot be taken away by the court on the ground of practical convenience. In this particular case, however the court found that price fixation was wholly an administrative matter and was in the nature of legislative action, Rules of natural justice were not applicable. *W.B. Electricity Regulatory Commission v. C.E.S.C. Ltd.,* AIR 2002 SC 3588.

The writ of *certiorari* will lie where a judicial or *quasi*-judicial authority has violated the principles of natural justice even though the authority has acted within its jurisdiction.

Given above is an outline of the principles affecting "natural justice" and " discretion" according to which the Company Law Board has to exercise its powers and discharge its functions. Detailed account of the subject can be had from JAIN AND JAIN, ADMINISTRATIVE LAW; WADE ON ADMINISTRATIVE LAW AND DE SMITH, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION.

Basic principles of natural justice

The two basic principles of natural justice are discussed below:

(a) *Audi alteram partem rule*

This latin *maxim* means "hear the other side". Another rule rendering the same idea is *'audiatur et altera pars'* which means "no man should be condemned unheard". *Quasi*-judicial authority cannot make any decision adverse to any party without giving him an

effective opportunity of meeting any relevant allegation against him. *Dhakeswari Cotton Mills v. CIT,* AIR 1955 SC 65. It requires that every person whose civil right is affected must have a reasonable notice of the case he has to meet. He must be furnished with the information upon which the action is based. *S.L. Kapoor v. Jagmohan,* AIR 1981 SC 136. He must have a reasonable opportunity of being heard in his defence or to meet the case against him. *State of M.P. v. Chintaman,* AIR 1961 SC 1623. He must also have the opportunity of adducing all relevant evidence on which he relies. *Union of India v. T.R. Verma,* AIR 1957 SC 882.

The requirements of *audi alteram partem* rule are:

1. Notice.—A basic principle of natural justice is that before adjudication, the persons who are likely to be affected by the decision should be given notice. Any proceeding taken without notice would violate natural justice. *East India Commercial Co. v. Collector of Customs,* AIR 1962 SC 1893. The notice must give a reasonable opportunity to comply with its requirements. *CIT v. Bombay Trust Corp. Ltd.,* AIR 1936 PC 269. A notice which is vague is not a proper notice in law. The court's conscience must be satisfied that the individual had a fair chance to know the details of the action proposed to be taken against him. *Fedco Pvt. Ltd. v. Bilgrami S.N.,* AIR 1960 SC 415.

Absence of notice when only one conclusion could be drawn would not be vitiative of the action taken without notice. *Aligarh Muslim University v. Mansoor Ali Khan,* AIR 2000 SC 2783. Notice is not necessary when the consequences are already stated in the provision and, therefore, known, *Hyderabad Karnataka Education Society v. Registrar of Societies,* AIR 2000 SC 301. Non-compliance with principles of natural justice unless causing prejudice, does not automatically entitle one to relief under Art. 226 of the Constitution. There has been gradual relaxation of the rigours of the rule of natural justice which is to be noticed in case law. There can be certain situations in which an order passed in violation of natural justice need not be set aside under Art. 226 of the Constitution of India. For example, where no prejudice is caused to the person concefned. In *Ridge v. Baldwin,* (1963) 2 All ER 66 (HL) it was held that breach of principles of natural justice was in itself treated as prejudice and that no other "*de facto*" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in India. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed by the Supreme Court in several cases. Since in *K.L. Tripathi v. State Bank of India,* AIR 1984 SC 273, the Supreme Court has consistently applied the principle of prejudice in several cases. The "useless formality" theory is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" there has been considerable debate on the application of that theory in other cases. In the ultimate analysis the applicability of the theory would depend on the facts of a particular case. *Aligarh Muslim University v. Mansoor Ali Khan,* AIR 2000 SC 2783. Before setting aside a sale on ground of defective proclamation (as in this case), it was necessary for the appropriate authority to give the highest bidder a notice and allow him a hearing as his rights would be adversely affected by the setting aside of the sale. *Piara Singh v. State of Punjab,* AIR 2000 SC 2352.

No notice was considered necessary for recovering from an employee overpaid house rent and city compensatory allowance. *State of Karnatka v. Manglore University Non-Teaching Employees Assn.,* AIR 2002 SC 1223.

The State Government while declaring the territorial area of Gram Sabha and establishing Gram Sabha does not exercise judicial or quasi judicial function. It is rather in the nature of a legislative power. Rules of natural justice are not attracted. Opportunity of hearing to residents was not necessary. *State of Punjab v. Tehal Singh,* AIR 2002 SC 533.

2. Hearing.—The requirement of the rule is that the parties whose civil rights are to be effected by a *quasi*-judicial authority must have a reasonable opportunity of being heard in their defence. "Stating it broadly and without intending it to be exhaustive..... rules of natural justice require that a party should have the opportunity of adducing all relevant

evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witness examined by that party, and that no materials should be relied on against him without he being given an opportunity of explaining them." *Union of India v. T.R. Verma,* AIR 1957 SC 882. It is now well settled that a mere opportunity to explain the conduct is not sufficient and the applicant should have the opportunity to produce his defence. *Mukhtar Singh v. State,* AIR 1957 All 297. He should have fair opportunity to state his case and to meet the accusations made against him. He should have full opportunity to correct or contradict a relevant statement prejudicial to him. Whether a reasonable opportunity has been given in a particular case will depend on its own circumstances, there being no uniform formula or rigid rules for the purpose. The duty to offer a reasonable opportunity of being heard does not include any obligation to hear a party in person, *Union of India v. Jyoti Prakash,* AIR 1971 SC 1093, or by a lawyer. *Mulchand Gulab Chand v. Mukund Shivram,* AIR 1952 Bom 296. Ordinarily, an opportunity of making a written representation against the proposed action will meet the requirement of natural justice, (*Jyoti Prakash* case, *supra*). Whether a personal hearing should be given or not will depend on the circumstances of each case. See further *Charanlal Sahu v. Union of India,* AIR 1990 SC 1480 where the Supreme Court in the matter of Bhopal Gas disaster said that where a statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person effected, a decision arrived at without hearing but providing post decisional hearing may also be good.

When the affected party requests the adjudicatory body to exercise its power to summon witness and documents to prove his defence, it would be a denial of natural justice to him if his request is not acted upon. *Sita Ram v. Union of India,* AIR 1967 Delhi 38. When the adjudicator lacks coercive power to compel attendance of witnesses and production of documents, it is enough if he takes evidence of such witnesses as are produced before him by the party affected. The adjudicator may help the party to secure the attendance of witnesses by issuing letters of request to them though in the absence of any legal provision to compel their attendance, they may or may not appear in answer thereto. *C.M.P. Co-op. Soc. v. State of M.P.,* AIR 1967 SC 1815.

Appearance of a lawyer is not claimable as a matter of right. But in a case where complicated questions of law and fact arise, where the evidence is elaborate and the party concerned may not be in a position to meet the situation himself effectively, denial of legal assistance may amount to a denial of natural justice. *Board of Trustees of the Port of Bombay v. D.R. Nadkarni,* AIR 1983 SC 109; *C.L. Subramaniam v. Collector of Customs,* AIR 1972 SC 2178.

Where the right to be heard is specifically conferred by a statute, the court cannot take it away on the ground of practical convenience. *W.B. Electricity Regulatory Commission v. C.E.S.C. Ltd.,* AIR 2002 SC 3588. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the *audi alteram partem rule* could be imported. *Schedule Caste & Weaker Section Welfare Association v. State of Karnataka,* AIR 1991 SC 1117.

(b) ***Nemo debet esse judex in propria suo causa rule***

Rules against bias.—This latin maxim is a rule against bias and means that no man shall be a judge in his own cause. In the words of BOWEN, L.J. : "Judges, like Ceaser's wife, should be above suspicion". The idea underlying the rule prohibiting a judge to adjudicate upon a case to which he is a party or in which he is interested has most salutary influence on the adjudicatory tribunals. LORD CRANWORTH L.C. said: ".....a judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias inducing him to lean to the one side rather than to the other. In ordinary cases it is just ground of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the strongest proof that he cannot be indifferent." *Ranger v. Great Western Railway Co.,* (1854) 5 HLC 72. It is well-settled that every member of a tribunal that is called upon to try issues in judicial or *quasi-*

judicial proceedings must be able to act judicially; and it is of the essence of the judicial decision and judicial administration that judges should be able to act impartially, objectively and without bias. *Manaklal v. Dr. Prem Chand Singhvi,* AIR 1957 SC 425. The test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. (*Ibid*). The principle is not confined to Judges but extends to any authority vested with *quasi*-judicial functions.

Pecuniary interest, however small, would wholly disqualify a person from acting as a judge. *Manaklal v. Prem Chand,* AIR 1957 SC 425. Personal bias towards a party owing to relationship and the like the personal hostility to a party may equally disqualify a Judge. *A.K. Kraipak v. Union of India,* AIR 1970 SC 150.

In the case of official bias, the officer is not actuated by any personal ill-will. He is so imbued with the desire to promote the departmental policy that he becomes blind to the existence of the interest of the private individuals. Official bias is not tolerated by Courts even if it is sanctioned by statute. In this connection, the observations of SUBBA RAO, J. in *Gullapalli Nageswara Rao v. State of Andhra Pradesh,* AIR 1959 SC 1376 are noteworthy: "It is not out of place here to notice that in England the Parliament is supreme and, therefore, statutory law, however repugnant to the principles of natural justice, is valid; whereas in India, the law made by Parliament or a State legislature should stand the test of fundamental rights declared in Part II of the Constitution."

A *quasi*-judicial body is not to be directed as to how it should decide a specific matter. "In the case of administrative or executive authorities, the Government could direct them to carry out their functions in a particular manner. But the same cannot be said of a *quasi*-judicial authority. Although, the Government may have appointed it, may be paying it and may have the right to take disciplinary action against it in certain eventualities, yet, in the very nature of thing, where the rule of law prevails, it is not open to the Government to control the functioning of a *quasi*-judicial authority and to direct it to decide a particular matter before it in particular manner." *Ramamurthy Reddiar v. Chief Commissioner, Pondicherry,* AIR 1963 SC 1464. Where a tribunal consists of several members, bias on the part of one of the members is sufficient to vitiate the decision. *Narayana v. State of A.P.,* AIR 1958 AP 636. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board is bound to influence the others. More so if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. *G. Sarana v. Lucknow University,* AIR 1976 SC 2428.

The decision of a *quasi*-judicial authority must be based on materials before it and not on the findings or directions of any outside authority, however eminent it may be. *Rajagopala v. S.T.A.T.,* AIR 1964 SC 1573. This principle is violated even where the *quasi*-judicial tribunal feels that he cannot refuse to comply with the directions of an administrative superior except for reasons to be recorded. *New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd.,* AIR 1957 SC 232. It is a basic principle of judicial procedure that the person who hears must decide the case and not another person. *Gullapalli Nageswara Rao v. A.P.S.R.T.C.,* AIR 1959 SC 308. Hence, if an officer, who is bound under the law to give a personal hearing, is transferred, his successor-in-office cannot decide the matter without giving a fresh hearing, *Calcutta Tanneries (1944) Ltd. v. Commr. of I.T.,* AIR 1960 Cal 543.

Bias negates fairness and reasonableness and leads to arbitrariness and *mala fides*. Fairness is synonymous with reasonableness. Bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". Mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether, in fact, there was a bias or a *mala fide* move which resulted in the miscarriage of justice. *State of Punjab v. V.K. Khanna,* AIR 2001 SC 343.

The doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity since the law courts are to act fairly and reasonably in accordance with the law. Unreasonableness is opposed to the doctrine of fairness and reasonableness will have its play. *Tata Iron & Steel Co. Ltd. v. Union of India,* (2001) 2 SCC 41. There must be factual support for the allegations of *mala fides.* Mere use of word *mala fide* would not by itself make a petition entertainable. The court must scan factual aspect and come to its own conclusion. *State of U.P. v. Sahaguram Arya,* 2000 SCC (L&S) 1104 : (2000) 3 CLR 319 : (2000) 5 SLR 244; *Prabodh Sagar v. Punjab SEB,* AIR 2000 SC 1684 : (2000) 2 LLJ 1089.

Fair in Procedure.—The doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. In *Ridge v. Baldwin,* (1963) 2 All ER 66 (HL), the doctrine was held to be incapable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances. A question arises as to who is a reasonable man. In India, a reasonable man cannot but be a common man similarly placed. *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant,* AIR 2001 SC 24.

3. Reasoned decisions.—Speaking orders.—An extension of the principle of natural justice requires a reasoned decision. A *quasi*-judicial tribunal must give reasons for its order, *Siemens Engg. and Mfg. Co. v. Union of India,* AIR 1976 SC 1785; *R.B. Desai v. Union of India,* (1987) 3 Comp LJ 111 (Del), *Anil Kumar v. Residing Officer,* AIR 1985 SC 1121; *Oranco Chemicals (P.) Ltd. v. Gwalior Rayon Silk Mfg. & Wvg. Co. Ltd.,* AIR 1987 SC 1564 or else, the supervisory jurisdiction of the superior Courts under Art. 136 or 226 or 227 of the Constitution will be rendered nugatory. *Harinagar Sugar Mills Ltd. v. Shyam Sunder,* (1961) 31 Com Cases 387 : AIR 1961 SC 1669; *Govindrao v. State of M.P.,* AIR 1965 SC 1222. This does not mean that such authority should write out a judgment, like that of a Court of law, but that it must give an outline of the process of reasoning by which it arrives at its decision, *Rama Vilas Service v. Chandrasekaran,* AIR 1965 SC 107, or that reasons must be recorded separately even where the order speaks for itself as regards the reasons which have led to it, *Board of Mining Exams. v. Ramjee,* AIR 1977 SC 965, or the impugned order merely concurs with a statutory report of another authority, which gives reasons, *Tara Chand v. Municipal Corporation of Delhi,* AIR 1977 SC 567. Nor does it follow that, in the absence of any statutory requirement, a statutory tribunal must give its judgment in writing or that it must always give reasons for its decisions immediately with its pronouncement, *Maharashtra S.R.T.C. v. Balwant,* AIR 1969 SC 329. The adjudicator will have to give such reasons for his decision as may be regarded fair and legitimate by a reasonable man and thus it will minimize chances of irrelevant or extraneous considerations from entering his decisional process, and it will minimize chances of unconscious infiltration of personal bias or unfairness in the conclusion. Statement of reasons also gives satisfaction to the party against whom the decision is made. Justice should not only be done but should also seem to be done. An unreasoned decision may be just but may not appear to be so to the person affected. A reasoned decision, on the other hand, will have the appearance of justice. SUBBA RAO, J., in *M.P. Industries v. Union of India,* AIR 1966 SC 671. LORD DENNING in *Breen v. Amalgamated Engineering Union,* (1971) 1 All ER 1148: "Recording of reasons is the only visible safeguard against possible injustice and arbitrariness. Reasons, if given, substitute objectivity for subjectivity. Reasons, if recorded, indicate whether the adjudicatory or administrative authority has acted *bona fide* or otherwise." Cited in *Manab Kumar Mitra v. Orissa,* AIR 1997 Ori 52 at 54.

The faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders. *Bombay Oil Industries Pvt. Ltd. v. Union of India,* (1984) 55 Com Cases 356 (SC). Reiterating the same thing in *S.N. Mukherjee v. Union of India,* AIR 1990 SC 1984, 1995 the Supreme Court said that a recording of reasons serves a statutory purpose, *e.g.*, it excludes chances of arbitrariness and assures a degree of fairness in the process of decision making. The

court **followed** its own decision in *Raipur Development Authority v. Chokhamal Contractors*, AIR 1990 SC 1426.

In *Bombay Oil Industries P. Ltd. v. Union of India, supra,* the Supreme Court observed in the context of MRTP Act that "we must, however, impress upon the Government that while disposing of applications under sections 21, 22 and 23 of the Monopolies and Restrictive Trade Practices Act, 1969, it must give good reason in support of its order and not merely state its bald conclusion. The faith of the people in administrative tribunal can be sustained only if the tribunals act fairly and dispose of the matters before them by well considered orders. The relevant material must be made available to the objectors because, without it, they cannot possibly meet the claim or contentions of the applicant under sections 21, 22 and 23 of the MRTP Act. The refusal of the Government to furnish such material to the objectors can amount to a denial of a reasonable opportunity to the objectors to meet the applicant's case. And denial of a reasonable opportunity to meet the other man's case is denial of natural justice. On the question of the need to give reasons in support of the conclusions to which the Government has come, the authorities concerned may, with profit, see the Judgments of Supreme Court in *Union of India v. Mohan Lal Capoor*, 1974 (1) SCR 797, *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India*, AIR 1976 SC 1785 and *Uma Charan v. State of Madhya Pradesh*, AIR 1981 SC 1915. Distinguishing this in *National Institute of Mental Health and Nuro Sciences v. K.K. Raman*, AIR 1992 SC 1806, 1808 the Supreme Court held that where a selection committee is composed of men of high status who are unquestionably impartial and their function is also of administrative nature the court would not lightly interfere in the decision of the Committee and statement of reasons would not be necessary. The Court **followed** in this respect *R.S. Das v. Union of India*, AIR 1987 SC 593. See further *Sarjoni Ramaswami v. Union of India*, AIR 1992 SC 2219, 2265 where the court held that sufficient compliance with the requirement of natural justice was made when the enquiry committee afforded the full opportunity of hearing to the judge in question in respect of contesting the charges against him.

The giving of reasons in support of their conclusions by judicial and *quasi*-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is meant to prevent unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of infiltration of personal bias in the conclusion. Secondly, it is a well known principle that justice should not only been done but should also appear to have been done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Thirdly, it should be noted that an appeal generally lies from the decision of judicial and *quasi*-judicial authorities to the High Court and Supreme Court by special leave granted under article 136. A judgment which does not disclose the reasons, will be of little assistance to the court, *Woolcombers of India Ltd. v. Woolcombers Workers' Union*, AIR 1973 SC 2758.

When a statute itself requires reasons to be recorded for taking an action of a *quasi*-judicial character, the provision is treated as mandatory and the failure to record reasons would be fatal to the action taken. In *Verma (C.L.) v. State of M.P.*, AIR 1990 SC 463 the Supreme Court emphasised that a statutory rule would prevail over administrative instructions. See also *Neelima Misra v. Harinder Kaur Paintal*, AIR 1990 SC 1402, 1408 where the Supreme Court distinguishes administrative action from a *quasi*-judicial decision and prescribes the requirement of fairness in all cases.

The Supreme Court has also emphasised the need to give reasons for passing *ex-parte* orders of injunction. *Shiv Kumar Chadha v. Municipal Corporation of Delhi*, (1993) 3 SCC 161 : (1993) 3 SCR 522.

In *Shri Krishna Tiles & Potteries (Madras) P. Ltd. v. CLB*, (1979) 49 Com Cases 409 (Delhi), it was held that the functions of the Central Government or the Company Law Board under section 399(4) in granting an authorisation to a member to file a petition

under section 397/398, is not *quasi*-judicial but purely administrative function. No prior notice or hearing need be given to the company before granting an authorisation, nor is there any need of granting authorisation supported by reasons.

Shall act in its discretion

The Tribunal/Appellate Tribunal in the exercise of its powers and the discharge of its functions shall be guided by the principles of natural justice and shall act in its discretion. 'Discretion' means when it is said that something is to be done within the discretion of the authorities and that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's* case (1598) 5 Co Rep 99B; according to law, and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself: *Wilson v. Rastall,* (1792), 4 Term Rep at p. 757; *Sharp v. Wakefield,* (1891) AC 173 HL, per LORD HALSBURY, L.C., at p. 179. Discretion when applied to a Court of Justice means 'sound discretion guided by law'. It must be governed by rules. It must not be arbitrary, vague and fanciful, but legal and regular. *State v. Veerapandy,* 1979 Cr LJ 455 (Mad). When such a discretionary power is invested in an authority, the authority would be bound to exercise that power, and the word 'may' conferring discretionary power has to be read as 'must', except in those cases where there are grounds for not exercising such power. *Mohmedmiya Mohamad Sadik v. State of Gujarat,* (1975) 16 Guj LR 583. A discretion conferred on an authority by statute is intended to be exercised by that authority and no other unless otherwise intended by express words or by necessary implication. *Barium Chemicals Ltd. v. Company Law Board,* (1966) 36 Com Cases 639 : AIR 1967 SC 295. Discretion must be exercised according to common sense and justice, and if there is no indication in the Act of the ground upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view of indicating the particular grooves in which the discretion should run. *EMMA Silver Mining Co. v. Grant,* (1879) 11 Ch D 918, 926, JESSEL M.R. But, as LORD BLACKBURN said as to the exercise of discretionary power by a court of equity, 'the discretion is not to be exercised according to the fancy of whoever is to exercise the jurisdiction of equity, but is a discretion to be exercised according to the rules which have been established by a long series of decisions'. *Doherty v. Allman,* (1878) 3 App Cas 709, 728. There is a duty to exercise the discretion conferred by the statute in every case in which those upon whom it is conferred are called upon to exercise it : they may not fetter their own powers by self-imposed rules, *R. v. Paddington and St. Marylebone Rent Tribunal,* (1949) 1 KB 666.

Manner of exercising discretion.—In construing a statute, we must always assume that the discretionary power conferred upon various authorities under the statute will be used properly and not in an arbitrary or capricious manner. When a discretion is given to an authority, the exercise of that discretion necessarily involves the application of mind and acting reasonably and with justice, which in turn necessarily involves the observance of natural justice which means that the other party must be heard before any adverse order is passed. *Namdeo Ragho Arote v. State of Maharashtra,* 1979 Mah LJ 363 (DB).

Even though an act done is ostensibly in execution of a statutory power and within its letter, it will nevertheless be held not to come within the power if done otherwise than honestly and within the spirit of the enactment. A discretion is to be 'regulated according to known rules of law', *Lee v. Bude & Torrington Junction Ry. Co.,* (1871) LR 6 CP 576, per WILLES J. at pp. 580, 581 and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet. 'It is true', said LORD GREEN M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation,* (1948) 1 KB 223, at p. 229 "the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct

himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether."

Scope of appellate court intervention.—It is well settled that where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even of law. *Amg Hussan Khan v. Sheo Baksh Singh,* (1885) 11 Cal 6 : 11 IA 237. The appellate court would normally not be justified in interfering with the exercise of discretion solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion had been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial judge. But if it appears to the appellate court that in exercising its discretion, the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach, then it would certainly be open to the appellate court—and in many cases, it may be its duty—to interfere with the trial Court's exercise of discretion. In cases falling under this class, the exercise of discretion by the trial court is in law wrongful and improper and that would certainly justify and call for interference from the appellate court. These principles are well established." *Printers (Mysore) Private Limited v. P. Joseph,* AIR 1960 SC 1156.

Exercise of discretion on relevant grounds.— The authority should exercise its discretion on the relevant grounds and not on an irrelevant ground. *Ajantha Transport v. T.V.K. Transport,* AIR 1975 SC 123. Developing this point further in *Delhi Transport Corporation v. DTC Mazdoor Congress,* AIR 1991 SC 101, 204, 205 the Supreme Court laid down: "In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See DICEY—"LAW OF THE CONSTITUTION"—10th Edn., Introduction cx). "Law has reached its finest moments", stated DOUGLAS J., in *United States v. Wunderlich,* (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler ..... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as LORD MANSFIELD stated it in classic terms in the case of *John Wilkies* "means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful," as followed in this Court in *Jaisinghani (S.G.) v. Union of India,* AIR 1967 SC 1427.

An administrative order is bad if it is issued without the authority considering the matter and forming an opinion thereon.

The exercise of a statutory discretion cannot be fettered by adopting a rigid policy or a mechanical rule. *Kesavan Bhaskaran v. State of Kerala,* AIR 1961 Ker 23. See also *State of U.P. v. Renusagar Power Company,* AIR 1988 SC 1737, 1758 : (1991) 70 Com Cases 127 where the Supreme Court considered the role which public interest can play in decision making by Government and its agencies.

An authority having statutory discretion not exercising it arises when the authority passes the order mechanically and without application of mind to the facts and circumstances of the case before it.

The following are discretionary powers of a *quasi*-judicial authority in which the court will not interfere unless the discretion has not been exercised reasonably and in accordance with the legal principles:

(a) granting adjournment

(b) summoning and enforcing the attendance of witnesses

(c) admission or refusal to admit document

(d) admission or rejection of secondary evidence

(e) direction for local investigation or enquiry

(f) addition of parties

(g) declarations and injunctions

(h) award or refusal of costs

(i) award or refusal of damages.

Jurisdiction.—An order of the Company Law Board [may be applicable upon Tribunals also] which would be valid under other provisions of the Act would be within its jurisdiction. A petition was filed under s. 235 of the Companies Act 1956 for an order of investigation of the affairs of the respondent company. The latter offered to purchase the petitioner's shares. This resulted in a compromise under which the company was directed to purchase the petitioner's shares. The order was held to be within jurisdiction. An order of this kind is covered by the CLB powers under s. 402. *Kuki Leather P. Ltd. v. TNK Govindaraju Chettiar & Co.*, (2002) 110 Com Cases 474 (Mad).

Company Law Board is not court for all purposes

Though certain powers of the court under the Civil Procedure Code have been vested in the CLB for certain purposes, that does not constitute the CLB as a civil court for all purposes. Accordingly, where a legislation constitutes special courts for certain purposes to the exclusion of all other courts, it would depend upon the context in which and the purposes for which the jurisdiction of other courts is excluded to see whether the jurisdiction of the CLB would be affected or not. The matter was under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, *ABN Amro Bank v. Indian Railways Finance Corporation Ltd.*, (1996) 85 Com Cases 689 (CLB); [the CLB ordered the bonds in question to be entered in the name of the purchaser]. The Company Law Board had held that its jurisdiction was not affected. On appeal to the High Court of Delhi, *ABN Amro Bank v. Indian Rly. Finance Corpn. Ltd.*, (1996) 85 Com Cases 716 (Del) the decision of the CLB was **reversed**. The High Court was of the view that the very purpose of the special courts was such that the jurisdiction of all courts and tribunals over the same subject matter was necessarily excluded. The court **followed** *Canara Bank v. Nuclear Power Corpn. of India Ltd.*, (1995) 84 Com Cases 70 (SC) where the Supreme Court had already adopted this view **reversing** *Canara Bank v. Nuclear Power Corpn. of India Ltd.*, (1995) 84 Com Cases 62 (CLB—Del). A similar decision namely, that the Company Law Board would have no jurisdiction in such cases (notified persons under the Act), was arrived at in *ANZ Grindlays Bank v. National Hydro Electric Power Corpn. Ltd.*, (1995) 82 Com Cases 747 (CLB—N.R.).

In *Shell Company of Australia v. Federal Commissioner of Taxation*, 1931 AC 275, LORD SANKEY L.C. observed that a body or Tribunal may be constituted entrusting them work of judicial character but they are not Courts in the accepted sense though they may with possess some of the trappings of the Court. The phrase 'Trappings of the Court' suggested that the Tribunal may have many attributes which the Court possesses but still it will not be regarded as a Court. **Following** this passage, the Allahabad High Court in *Prakash Timbers v. Sushma Shingla*, AIR 1996 All 262 at 269 : (1997) 89 Com Cases 770 observed about the status of the Company Law Board as following: "Broadly speaking, the Company Law Board has trappings of a Court in the sense that it has to deter-

mine a matter placed before it judicially, give fair opportunity of hearing to the parties who may be affected by the order, to accept the evidence and also to order for inspection and discovery of documents compel the attendance of the witnesses and in the last, to pass a reasoned order which gives finality to its decision subject to the right of appeal to a party under section 10-F of the Act or such other legal remedy which is available under law to a party." [at p. 269] The Court then considered scope, functions and special jurisdiction conferred on the CLB and concluded that the CLB can only be regarded as a tribunal and not a Court. One of the practical effects is that, the order of a single judge in an Appeal under S. 10F against an order of CLB will be appealable by way of a special appeal under Rule 5 of the Chapter VIII of the Allahabad High Court Rules.

Procedural Powers of Tribunal and Appellate Tribunal under CPC

Every Bench constituted by the Board is vested with the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 in respect of the following matters. Section 10ZA sub-section (2) deals with the powers as under:

(a) summoning and enforcing the attendance of any person and examining him on oath; [Section 27 to 32 and Orders V and XVI]

(b) requiring the discovery and production of documents; [Section 30 and Orders XI and XIII]

(c) receiving evidence on affidavits; [Section 30(c) and Order XXIX]

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office; [Order XIII and XVI]

(e) issuing commissions for the examination of witnesses or documents; [Ss. 75, 76 and 77 and Order XXVI]

(f) reviewing its decisions; [S. 114 and Order XLVII]

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government."

It may be noted that although the Tribunal exercises the powers of the Court in respect of the above matters, it is not a Court.

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides that all matters pending before Civil Courts would be transferred to the Special Court if they come within its powers. That provision would not apply to the matters pending before the CLB [Now Tribunal] under S. 111 of the Companies Act, 1956 the reason being that the CLB [Now Tribunal] is not a Civil Court. It has only been vested with the powers of a Civil Court for certain limited purposes. *Canara Bank v. Nuclear Power Corporation of India Ltd.*, (1995) 84 Com Cases 62 (CLB-Del). This view was **not accepted** on appeal by Supreme Court in *Canara Bank v. Nuclear Power Corporation of India Ltd.*, (1995) 84 Com Cases 70 (SC).

The powers mentioned in clauses (a) to (d) mentioned above are conferred by S. 131 of the Income-tax Act, 1961 on the Commissioner of Income-tax, and other officers of the Department and the case-law under that section can be usefully referred to. The expression "for the purposes of this Act" occurring in S. 131 and which is not in S. 10E(1) of the present Act, will not have the effect of enlarging the powers of the Bench and therefore powers conferred by the clauses will be exercisable only for the purposes of the Companies Act and not for any extraneous purposes.

The powers conferred by S. 10E(4C) can be exercised only by the Bench and not by any other person; that would be without jurisdiction. *Cf. Gopal Das Gupta v. Union of India*, (1971) 80 ITR 200 (Cal). Under Order XIII, rule 10, C.P.C. the civil court has

powers to call for documents from other courts. As the Bench has the powers of a civil court, the Bench also becomes empowered to summon documents from other courts. *Cf. Jhabarmull Agarwalla v. Kashiram Agarwalla,* (1969) 71 ITR 269 (Cal); *Ganpatrai Rawatmull v. Collector, Land Customs,* (1961) 42 ITR 107 (Cal).

The powers of the Bench can be exercised *suo motu*, and also at the instance of one of the parties to the dispute before it. In an income-tax case, it was held that it was the duty of the ITO to exercise his powers under S. 131(1) of the Income-tax Act, 1961 on request of the assessee to enable the latter to have access to or procure books and other materials required to support or explain the return made by the assessee; *EMC (Works) P. Ltd. v. ITO,* (1963) 49 ITR 650 (All); *Munnalal Murlidhar v. CIT,* (1971) 79 ITR 540 (All). The power of the Bench to summon witnesses is similar to the powers of a civil court. A witness who is summoned by the Bench has no right to be represented by an authorised representative. *Sarju Prasad Sharma v. ITO,* (1974) 93 ITR 36 (Cal).

Clause (c) of S. 10E(4C) empowers the Bench to "impound" documents. Under Order 13, Rule 8, the civil court has the power to impound documents and retain them in the custody of the court. Similarly, under S. 131(3) of the IT Act, 1961, the power to retain documents "for such period as they think fit" has also been conferred on the concerned officers. It will be seen that though the Bench has the power to impound documents, it has no power to retain them.

Clause (e) of S. 10E(4C) permits the Bench to grant adjournments. This power has not been curtailed by any restriction as in Order XIII of CPC, 1908. Under the Code, the civil court has power to grant adjournment if "sufficient cause" is shown; sub-rule (2) of Order XIII places further restriction on the powers of a civil court to grant adjournments. The power of the Bench, on the other hand, is unfettered.

It has been specifically provided in section 10FZA that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in CPC, 1908 but shall be guided by the principles of natural justice.

Applicability of Indian Evidence Act, 1872

A domestic tribunal is in general composed of laymen. It is not bound by rules of evidence; indeed it is probably ignorant of them. The members of the tribunal may have been discussing the matter for weeks with persons not present at the hearing, and there is no one even to warn them of the danger of acting on preconceived views. *Maclean v. Workers' Union,* (1929) 2 Ch 602. Section 1 of the Evidence Act does not make the Act applicable of its own force to proceedings before as Industrial Tribunal and an evidence inadmissible under the Evidence Act can also be relied upon in a domestic enquiry. *Fort William Jute Mills Co. Ltd. v. First Labour Court,* (1963) I LLJ 734 (Cal). Though the strict rules of the law of evidence are not to be applied, this does not mean that the proceedings can be held in an arbitrary manner. The rules of natural justice must still be applied. Ordinarily, there must be a personal hearing. If a person is entitled to show cause, he is entitled to a hearing and if he is entitled to a hearing, he must have the opportunity of being personally heard of, calling his own evidence and cross-examining any witness called by the prosecution.

Clause (f) empowers the Bench to receive evidence on affidavits. In *Nambiar A.K.K. v. Union of India,* AIR 1970 SC 652, the Supreme Court observed that affidavits should be verified. It was held that the importance of verification is to test the genuineness and authenticity of the allegations and also to make the deponent responsible for allegations—"In essence, verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence."

Where, however, the opposite party applies for summoning the witnesses for cross-examination whose affidavits have been received, and if they do not appear or are not summoned, their affidavits cannot be used in evidence. *Karedla Suryanarayan v. Sri Ram Das Motor Transport P. Ltd.,* (1995) 4 Comp LJ 269 (CLB—N. Delhi).

The Company Law Board [Now Tribunal] has to act within the framework of the principles of natural justice and also in accordance with its own Regulations. Hence, the provision of the Evidence Act and those of the Code of Civil Procedure do not apply to proceedings before the Company Law Board [Now Tribunal]. *Rajinder Kumar Malhotra v. Harbans Lal Malhotra & Sons Ltd.*, (1996) 87 Com Cases 146 (CLB—N. Delhi).

Powers of Tribunal to impose conditions, etc. in the orders passed

Section 637A empowers the Tribunal to impose such conditions, limitations or restrictions, as it may think fit while passing an order. In case of contravention of any such condition, etc., it may withdraw or rescind its order. See Notes under Section 637A.

Power to grant interim relief

The Supreme Court in *Morgan Stanley Mutual Funds v. Kartick Das*, (1994) 81 Comp Cas 318, 336 : (1994) 3 Comp LJ 27 (SC) laid down the following principles governing grant of *ex-parte* injunctions.

"As a principle, *ex parte* injunctions could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of *ex parte* injunctions are :

(*a*) whether irreparable or serious mischief will ensue to the plaintiff;

(*b*) whether the refusal of the *ex parte* injunction would involve greater injustice than the grant of it would involve;

(*c*) the court will also consider the time at which the plaintiff first had notice of the act complained of so that the making of the improper order against a party in his absence is prevented;

(*d*) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant the *ex parte* injunction;

(*e*) the court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application;

(*f*) even if granted, the *ex parte* injunction would be for a limited period of time; and

(*g*) general principles like *prima facie* case, balance of convenience and irreparable loss would also be considered by the court."

§ For further Notes on "Interim relief" see Notes under the heading "Interim relief" in S. 111 and also under the heading "Power to grant interim relief" in S. 403.

Enforcement of orders of Tribunal [Sub-section (3)]

Any order made by the Tribunal may be enforced in the same manner as if it was a decree made by a Civil Court in a suit before it, and the Tribunal either enforce the order itself or may send it for execution to the Court within the local limits of whose jurisdiction (a) the registered office of the company is situated in case the order is against the company, or (b) the person concerned voluntarily resides or carries on business, in case the order is against any such person. See Notes under section 634A.

Enforcement of unsigned compromise order.—The petitioner was seeking an order for investigation of affairs. The company offered to purchase the shares of the petitioner. An agreement was reached and recorded by the Company Law Board [Now Tribunal]. It became an order disposing of the petition for investigation. The settlement was not signed by the parties as required by the Civil Procedure Code. The Court said that this was only a technicality. The Civil Procedure Code was not applicable with all its technicalities. The compromise was, therefore, executable. *Kuki Leather P. Ltd. v. TNK Govindaraju Chettiar & Co.*, (2002) 110 Com Cases 474 (Mad).

Powers of Tribunal under Cr PC and IPC [Sub-section (4)]

The Tribunal shall be deemed to be a Civil Court for purposes of section 195 (contempt of lawful authority of public servants for offences against public justice and relating to

documents tendered in evidence) and Chapter XXVI (offences affecting the administration of justice) of the Code of Criminal Procedure, 1973.

Every proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 (prescribing punishment for false evidence) and section 228 (prescribing punishment for insult or interruption to public servants sitting in judicial proceedings) and for purposes of section 196 (prescribing penalty for tendering false evidence) of Indian Penal Code.

[11][*S. 10G. **Power to punish for contempt.**—The Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise, for this purpose under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have the effect subject to modifications that—*

(a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such law officers as the Central Government may specify in this behalf.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—The Appellate Tribunal shall have power to punish for contempt. [*Notes on Clause 6 of the Companies (Second Amendment) Bill, 2001*].

§ For full view of the Notes on Clauses of Bill, refer under S. 10FB, *ante*.

Scope of section.—This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide the Appellate Tribunal with power to punish for its contempt. This power serves the purpose of acting as a deterrant against erring parties and thereby to ensure compliance of the orders of Appellate Tribunal. No such power was enjoyed by BIFR and CLB. The Tribunal also does not enjoy such power.

[11][*S. 10GA. **Staff of Appellate Tribunal.**—(1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.*

(2) The officers and other employees of the Appellate Tribunal shall dis-charge their functions under the general superintendence of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) in regard to the staff of Appellate Tribunal to be provided by the Central Government and the terms and conditions of their service. The staff shall discharge their duties under the supervision and control of the Chairperson.

---

11. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003); s. 6.

Notes on clauses.—The Central Government shall provide such officers and other employees to the Appellate Tribunal as that Government may think fit. The salaries and allowances and other terms and conditions of service of such officers and employees shall be prescribed by the Central Government. [*Clause 6 of the Amendment Bill, 2001*].

§ For a full view of Notes on Clauses see under S. 10FB, *ante*.

[12][***S. 10GB. Civil Court not to have jurisdiction.***—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) in order to provide for two main matters. *One* of them is that no civil court is to have any jurisdiction to entertain any suit or proceeding in respect of any matter vested in the Tribunal or Appellate Tribunal for its determination. The *Second* is that no injunction is to be granted by any court or other authority in respect of any action taken or proposed to be taken in exercise of powers conferred on the Tribunal or Appellate Tribunal. This would be so in respect of all powers whether conferred by the Companies Act or by any other law for the time being in force.

The new section 647A also inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) provides for transfer of winding up proceedings to the Tribunal. This section provides that all proceedings, including those relating to arbitration, compromise arrangement, reconstructions and winding up pending before the enforcement of the companies (Second Amendment) Act, 2002 (11 of 2003) before any District Court or High Court under the Companies Act, Insurance Act, 1938 or any other law for the time being in force are to be transferred to the Tribunal. The Tribunal may proceed with the matter either *de novo* or from the stage at which the proceeding was transferred before it.

Pending cases of winding up subject to supervision of the court will continue to be under the supervision of that court and dealt with as if the Second Amendment Act, 2002 has not been passed. [Sec. 647A, proviso]. This mode of winding up has been abolished by the Second Amendment Act, 2002.

Winding up of banking companies will remain within the jurisdiction of Courts as before.

Appeals against orders passed by the CLB before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003) will continue to lie before the High Courts.

Position under (now repealed) Sick Industrial Companies (Special Provisions) Act, 1985

Section 10GB adopts, with certain changes, the provisions of section 26 of Sick Industrial Companies (Special Provisions) Act, 1985 (since repealed) which read as follows:

> "**S. 26. Bar of jurisdiction.**—No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other

12. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Ouster of civil court's jurisdiction, barring of suits

The Code of Civil Procedure, 1908, states, in s. 9 that the (civil) Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. Accordingly, though ordinarily the proper forum for judicial scrutiny is the civil court, Section 9 itself contemplates suits of a civil nature which would fall outside the civil court's jurisdiction. But even when a Tribunal is set up by any special Act, the civil court can still adjudicate on the issue as to whether that Tribunal has acted within its jurisdiction. But where the matter is clearly within the specified jurisdiction the civil court then cannot weigh the evidence laid before such Tribunal to come to a conclusion different from the one reached by the Tribunal.

The scope of an exclusion clause or an ouster clause has been explained by the Judicial Committee of Privy Council by LORD THANKERTON in these words : "It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if the jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure". *Secretary of State v. Mask & Co.,* AIR 1940 PC 105, 110; see also *Union of India v. Tarachand Gupta & Bros.,* AIR 1971 SC 1558. *Wigman Electrical Engineering Industries P. Ltd. v. UOI,* 1992 (61) ELT 447 (Guj); *ACCE v. Light roofings Ltd.,* 1993 (67) ELT 454 (Mad).

Following this, in *Abdul Waheed v. Bhawani,* 1966 SCN 90, the Supreme Court observed that it is well settled that a statute ousting the jurisdiction of a civil court must be strictly construed. Accordingly, in terms of Section 26 of the present Act (SICA 1985, now *repealed*), matters which strictly and exclusively fell within the jurisdiction of the BIFR or the Appellate Authority could alone be adjudicated by them, leaving the jurisdiction of civil courts untouched in respect of other areas. In the result, matters falling outside the purview of BIFR or the Appellate Authority could be agitated before the civil courts in accordance with general civil laws.

A Constitution Bench of the Supreme Court in *Dulabhai v. State of M.P.,* AIR 1969 SC 78, laid down the following seven principles to be applied for deciding whether a suit is barred under Section 9 CPC, [at pp. 89, 90]:

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provision of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as *ultra vires* cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of *certiorari* may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. *Dhulabhai v. State of Madhya Pradesh,* AIR 1969 SC 78, 79, 89-90; **followed** in *Union of India v. Shri Shadi Lal Sugar & General Mills Ltd.,* 1981 ELT 210 (All); *Kamla Mills v. Bombay State,* AIR 1965 SC 1942; *Wigman Electrical Engineering Industries P. Ltd. v. UOI,* 1992 (61) ELT 447 (Guj).

The Delhi High Court had occasion to apply these principles in *ICICI v. Parasrampuria Synthetics Ltd.,* (1998) 17 SCL 51 : (1998) 2 Comp LJ 69 : (1998) 28 CLA 141 (Del). The Court declared that Section 26 of the SICA did not debar the Court from deciding on the validity or otherwise of a resolution passed by a company to make reference to the BIFR under Section 15, and if the resolution was bad in law, the Court had jurisdiction to grant injunction restraining the company from making such reference. However, on the facts of the case, the Court refused to grant such injunction. In the appeal preferred by the ICICI against the single judge's refusal to issue the injunction, it was contended on behalf of ICICI that the reference claimed to be pending before the BIFR could not be considered to have come into existence because it was based on a fraudulent Board resolution. In an appeal against this order, the Supreme Court observed that the operating agency, had submitted its report that the company did not fall within the definition of sick industrial company in Section 3(1)(o). It was therefore, appropriate that the BIFR should itself consider this finding and pass appropriate orders. To enable the BIFR to do so, the appeal was adjourned. It would thus be observed that the Supreme Court is of the view that it is the BIFR (and not a court) which was the proper tribunal to decide whether a reference (under section 15) was based on statements of accounts validly and properly complied. And if they were not so compiled, the reference based on such accounts could be adjudged by the BIFR as bad in law.

In *Patheja Bros. Forging and Stampings v. ICICI Ltd.*, 2000 CLC 1492 : (2000) 4 Comp LJ 9 (SC), it has been held that so long as the matter relating to a Sick Industrial Company remains pending before BIFR/AAIFR, the protection under section 22 of SICA, 1985 [*Now Repealed*] would continue and the exclusive nature of jurisdiction given to BIFR/AAIFR is absolute.

Before the insertion of section 10GB by the Second Amendment Act, 2002, the Jurisdiction of civil courts was expressly excluded in matters relating to winding up of Companies under the Act. In other company matters, Courts had taken different views in the past. This is shown by the state of cases discussed under the following headings:

IMPORTANT NOTE

Curtailment of Civil Court Jurisdiction : Companies (Second Amendment) Act, 2002 (11 of 2003).—The Civil Courts have been deprived of their jurisdiction to a very large extent by the Companies (Second Amendment) Act, 2002 (11 of 2003). New Forums, namely "National Company Law Tribunal and National Company Law Appellate Tribunal" have been formed to take over the complete jurisdiction of the Company Law Board and to a very large extent that of the Civil Courts and High Courts. Now only a few points of jurisdiction on company matters will survive with Civil Courts/High Courts.

The experience gained from Court decisions on matters which now stand transferred to the new Forum (NCLT/NCLAT) and which is reflected by a large number of Court decisions detailed in the commentary on the section will remain a useful accumulation of knowledge on the subject of company law because the decisions of the new forum may go under the appeal processes upto the Supreme Court and there the same principles will be of great guidance. The whole commentary has been retained here for that useful purpose.

—Editors

Jurisdiction of Civil Courts

Under section 9 of the Code of Civil Procedure, 1908, the Civil Courts have jurisdiction to try all suits of civil nature, except where their jurisdiction has been specifically excluded. Therefore, the Civil Courts alone will have jurisdiction to decide the rights of parties in disputes arising under the Companies Act except where their jurisdiction has been expressly excluded, as in matters relating to winding up. See *Hirendra Bhadra v. Triton Engineering Co. P. Ltd.*, (1975-76) 80 CWN 242; **followed** in *Vithal Rao Narayan Rao Patil v. Maharashtra State Seed Corpn. Ltd.*, (1990) 68 Com Cases 608, 610 (Bom). In this case a director received a letter from the managing director intimating him that he had ceased to be a director from a particular date. When this was challenged by filing a civil suit it was held that the civil court had no jurisdiction to try the suit. See also *Panipat Woollen & General Mills Co. Ltd. v. Kaushik*, (1969) 39 Com Cases 249 (P&H) **applied** in *Prakasam (R.) v. Sree Narayana Dharma Paripalna Yogam*, (1980) 50 Com Cases 611 (Ker); *Avanti Explosive P. Ltd. v. Principal Subordinate Judge*, (1987) 62 Com Cases, 301 (AP); *Tej Prakash S Dangi v. Coromandal Pharmaceuticals Ltd.*, (1997) 89 Com Cases 270 : (1997) 26 CLA 116 (AP); [On Appeal the Full Bench in *K. Venkat Rao v. Rockwool (India) Ltd.*, (2002) 108 Com Cases 494 : (2002) 1 Comp LJ 519 : (2001) 46 CLA 243 (AP—FB) held that the director was entitled to go before the Company Court.] *Maharaja Exports v. Apparels Export Promotion Council*, (1986) 60 Com Cases 353 (Del); *Nawabshah Electric Supply Co. Ltd. v. Hariram S. Ahuja*, (1946) 16 Com Cases 204, 205 (Sind). (A dispute between the managing agent and the company). Indeed, there is no provision in the Companies Act, which gives the company court exclusive jurisdiction in all company matters. *Mylavarapu Ramakrishna Rao v. Mothey Krishna Rao*, (1947) 17 Com Cases 63 at 68 (Mad); *Marturi Umamaheshwara Rao v. Pendyla Venkatrayudu*, (1970) 40 Com Cases 751 (AP); *Marikar Motors v. Ravikumar (M.I.)* (1982) 52 Com Cases 362 (Ker).

A writ petition was not allowed where it seemed that the only purpose was to circumvent the orders already passed or that might be passed by the High Court in a company petition. The matter was pending before the High Court under s. 155 for rectification of the register of members. A company petition of this kind was a bar for institution of any civil proceeding in respect of the same matter. *Indian Fruits Ltd. v. Mantrad Pvt. Ltd.*, (1993) 12 CLA 117 (AP).

Matters over which civil suit can be filed[13].—The principles regarding exclusion of jurisdiction of civil courts were explained in *Dhulabhai v. State of M.P.*, AIR 1969 SC 78 which was **followed** in *Union of India v. Tara Chand Gupta*, AIR 1971 SC 1558. Thus, it has become clear to the extent of the following points that a civil suit can be filed :

(a) to challenge the election of a director. *Niranjan Singh v. Edward Ganj Public Welfare Association Ltd.*, (1977) 47 Com Cases 285 (P&H); **Affirmed** in *Sub-nom, Niranjan Singh v. Edward Ganj Public Welfare Assn. Ltd.*, (1981) 51 Com Cases 475 (P&H—DB);

(b) to challange the appointment and removal of directors, *Prakash Roadlines Ltd. v. Vijay Kumar Narang*, (1995) 83 Com Cases 569; For **contra** see *K. Venkat*

13. The powers of the court henceforth will be exercised by 'National Company Law Tribunal'/'National Company Law Appellate Tribunal' constituted under sections 10FB and 10FR.

Rao v. Rockwool India Ltd., (2002) 108 Com Cases 494 : 92002) 46 CLA 243 (AP—FB).

(c) to implement the election of a person as a director. *T.L. Arora v. Ganga Ram Agarwal*, (1988) 63 Com Cases 736 and 739 (Del); *Sati Nath Mukherjee v. Suresh Chandra Roy*, (1941) 11 Com Cases 203 (Cal); *Panipat Woollen and General Mills Co. v. R.L. Kaushik*, (1969) 39 Com Cases 249 (P&H). The suit can be filed even when the same matter is pending before the Company Law Board under section 408, *T.L. Arora v. Ganga Ram Agarwal*, (1987) 1 Comp LJ 241 (Del), for a review of authorities and elaborate discussion of this subject, see *Patan Devi v. Harihar Prasad*, 1978 Tax LR 2292 (All);

(d) to direct the erstwhile managing director to file accounts. *Thiruvallu var Velanmai Kazhagam P. Ltd. v. M.K. Seethai Achi*, (1988) 64 Com Cases 305 (Mad);

(e) for a declaration that a meeting was illegal, *Ravinder Kumar Jain v. Punjab Registered (Iron & Steel) Stockholders Association Ltd.*, (1978) 48 Com Cases 401 (P&H);

(f) restraining consideration of agenda item of a meeting. *Oriental Benefit and Deposit Society Ltd. v. Bharat Kumar K. Shah*, (2001) 103 Com Cases 947 : (2001) 30 SCL 246 (Mad—DB).

(g) to challenge the validity of a notice calling a meeting *Niranjan Singh v. Edward Ganj Public Welfare Association Ltd.*, (1977) 47 Com Cases 285 (P&H). The Kerala High Court has held that the validity of an annual general meeting can be questioned only in a civil suit; the company court has no jurisdiction to grant relief in such matters. *Prakasam (R.) v. Sree Narayana Dharma Paripalna Yogam*, (1980) 50 Com Cases 611 (Ker);

(h) to decide matters arising out of an underwriting agreement. *Orissa State Financial Corporation Ltd. v. Kalinga Textiles Ltd.*, ILR (1973) Cut 38 (Ori);

(i) suit for refund of subscription money [*Vatsa Industries Ltd. v. Shankerlal Saraf* (1996) 87 Com Cases 918 (SC)];

(j) suits relating to the validity of forfeiture of shares. In this case notice of forfeiture was published in a newspaper and the validity of the same was under question. Such a matter could not go to a Company Court or CLB. *Tej Prakash S. Dangi v. Coromandal Pharmaceuticals Ltd.*, (1997) 89 Com Cases 270 (AP). The Full Bench **disapproved** this view and held that the director in question was entitled to go before the Company Court. *K. Venkat Rao v. Rockwool (India) Ltd.*, (2002) 108 Com Cases 494 : (2002) 1 Comp LJ 519 : (2001) 46 CLA (AP—FB).

(k) to save the company from two warring factions among the directors. *Jayanthi R. Padukone (Mrs.) v. I.C.D.S. Ltd.*, AIR 1994 Ker 354.

(l) to adjudicate disputes relating to issue of duplicate share certificates. Over this point no machinery has been provided by the Companies Act. *Inter Sales v. Reliance Industries Ltd.*, (1999) 35 CLA 370 (Cal).

Exclusion of jurisdiction of civil court.—In *Vithalrao Narayanrao Patil v. Maharashtra State Seeds Corporation Ltd.*, (1990) 68 Com Cases 608 (Bom), **following** *Hirendra Bhadra v. Triton, Eng. Co. (P.) Ltd.*, (1975-76) 80 CWN 242, it was held that except where jurisdiction has been specifically conferred on the District Courts by the Central Government, the High Court by virtue of this section is the proper court to entertain any dispute in respect of the affairs of a company. Accordingly the court of the Civil Judge has no jurisdiction to entertain a suit filed by a director challenging his removal. With respect, this view seems to be incorrect. The jurisdiction under this section is conferred upon the High Court only where the Act provides a specific remedy, as for example, winding up proceedings. Where no specific remedy is provided, as under section

284, the proper remedy is a suit which has to be filed in the appropriate court, which may be a court subordinate to the High Court.

In *Santosh Poddar v. Kamal Kumar Poddar,* (1992) 3 BCR 310 (Bom—DB), a Division Bench of the Bombay High Court **overruled** *Vithalrao* case and **disagreed** with the Calcutta decision. The Court said that there is no ouster of the jurisdiction of a Civil Court in all cases where the provisions of the Companies Act may be attracted. It is only in respect of those proceedings which are expressly contemplated under the Companies Act under any specific provision that the Court which is referred to in that section would be the special Court, namely the High Court or the notified District Court. In all other cases ordinarily Civil Courts would continue to have jurisdiction. Case law discussed. To the the same effect is *Maheshwari (K.K.) v. Rockhard Building Materials Ltd.,* (1993) 12 Corpt LA 14 (AP).

However, the case of *Vithalrao Narayanrao Patil,* (*supra*) was **followed** by Andhra Pradesh High Court in *Nizamabad Corn Products P. Ltd. v. Vasudev Dalia,* (1992) 3 ALT 303, 305 (AP) so as to hold that Civil Court has no jurisdiction in such matters. In this case, a director who was removed was seeking an injunction declaring that the resolution passed at the AGM for his removal was not valid. The court refused to help him in the matter and **followed** its own decision in *Golden Wine Agencies v. Venedela Distilleries (P.) Limited,* AIR 1984 AP 274 in which it was held that the relief in the form of temporary mandatory injunction cannot be granted unless the plaintiff shows a clear right and a case of necessity and of extreme hardship and that the Court should exercise its jurisdiction of granting temporary mandatory injunction with greatest possible care and in cases where the remedy of damages is inadequate in the interests of justice.

The precise result of the network of the provisions is still not clear. The Act tries to distribute the jurisdiction as to company matters among the Central Government, Company Law Board, the company court and the ordinary civil courts. Whether a particular matter relating to a company falls within one jurisdiction or the other continues to be productive of confusion and litigation. In an attempt to straighten up the matter, the Kerala High Court has observed that unless a particular matter is specified in the Act to be dealt with by the company court, it cannot exercise jurisdiction merely because it is also a matter which relates to a company. Section 10 does not purport to invest the company court with jurisdiction over every matter arising under the Act. *Rajendra Menon (No. 2) v. Cochin Stock Exchange Ltd.,* (1990) 69 Com Cases 256, 258 (Ker—DB) **affirming,** *Rajendra Menon (No. 1) v. Cochin Stock Exchange Ltd.,* (1990) 69 Com Cases 231 (Ker).

The exclusion of jurisdiction of civil courts is not to be readily inferred and such exclusion must either be "explicitly expressed or clearly implied. G.P. SINGH, PRINCIPLES OF STATUTORY INTERPRETATION, Chapter 9 (9th edn., 2004).

Jurisdiction for questioning appointment and removal of directors

In *Avanthi Explosives (P.) Ltd. v. Principal Subordinate Judge,* (1987) 62 Com Cases 301 (AP), a civil suit was filed involving disqualification of the director of a company. The question was whether the suit was maintainable. Justice M. JAGANNATHA RAO, held that when the case deals with an individual right then the suit filed by him is maintainable. There may be some regulatory provisions in the Act but from this, it cannot be inferred that the general right of suit is taken away. Accordingly a suit for declaration that the plaintiff is and continues to be the managing director of the company, that the board meeting is null and void and for injunction to restrain the respondents from interfering with the office of the plaintiff as a managing director is maintainable. In *M.G. Kadali v. A. Krishna,* ILR (1990) Kar 3446, a learned Judge of the Karnataka High Court also took a similar view. A suit questioning the rejection of nomination paper by the management of the company was held to be maintainable. The learned Judge observed [at page 3465] that no particular provision of the Act barred the jurisdiction of the civil court from entertaining a suit for granting the reliefs of the nature sought for in the case.

The fact that civil courts are not deprived of the jurisdictions of all matters covered by the Act is clear from: (1) *Karnal Distillery Co. Ltd. v. Ladli Prashad Jaiswal,* AIR 1960

Punj 655, and (2) *Public Passenger Service Ltd., Chidambaram v. M.A. Khadar,* (1966) 36 Com Cases 1 : AIR 1966 SC 489. After a due consideration of these authorities, the Karnataka High Court in *Prakash Roadlines Ltd. v. Vijay Kumar Narang,* (1995) 83 Com Cases 569 (Kar) came to the conclusion that sections 257 and 284 regulate the exercise of the power to appoint and remove directors. No particular provision of the Act creates a specific jurisdiction to enforce such rights exclusively. Therefore it remains a matter for the jurisdiction of the Civil Courts.

In *British India Corporation Ltd. v. Robert Menzies,* (1936) 6 Com Cases 250 : AIR 1936 All 568 a Bench of Allahabad High Court held that the Company Judge alone has jurisdiction to enforce compliance with the provisions of the Companies Act, though such power is not expressly conferred on the Judge by the provisions of the Act. It was also held that the Company Judge may issue a mandatory injunction to ensure compliance with the mandatory provisions of the Act, even though the proceedings are of a summary nature. It was a case where the shareholder filed an application before the company for a copy of the register of members which was denied and therefore he moved the company court. The court said that there was no particular remedy provided under the Act and therefore it should be assumed that such a remedy is available and that the company court had jurisdiction. The court was not considering the exclusiveness of the jurisdiction anywhere. The court was not concerned in the said case whether the ordinary court had juridiction or not. The High Court observed that it is a fundamental principle of legal administration that where the law requires something to be done, there must be in existence a court that can directly order it to be done.

In *Hirendra Bhadra v. Triton Engineering Co. Ltd.,* (1975-76) 80 CWN 242 (Cal), it was held that the court of Munsiff had no jurisdiction to entertain the suit which was filed to enforce the resolution of the Board of directors and to declare that the defendant had vacated or deemed to have vacated the office of the director of the plaintiff company consequent upon the resolution. The learned Judge of the Calcutta High Court held that in view of Section 10 of the Act mainly the High Courts had jurisdiction with regard to the matters under the Act and in certain cases the district court may have jurisdiction, but not the Munsiff court. The court held that the matters alleged in the suit were matters under the Act and therefore only the court under the Act had jurisdiction to entertain the suit. This was **followed** by a learned Judge of the Bombay High Court in *Vithalrao Narayanrao Patil v. Maharashtra State Seeds Corporation Ltd.,* (1990) 68 Com Cases 608 (Bom). However, the judgment in *Vithalrao* case was in effect **overruled** in *Santosh Poddar v. Kamal Kumar Poddar,* (1992) 3 BCR 310 (Bom). See also *Prakasam (R.) v. Sree Narayana Dharma Paripalana Yogam,* (1980) 50 Com Cases 611 (Ker); *Prakash Roadlines Ltd. v. Vijayakumar Narang,* (1995) 1 Comp LJ 195 (Karn); *Jayanthi R. Padukone (Mrs.) v. I.C.D.S. Ltd.,* (1995) 1 Comp LJ 178 (Karn); and *Rajendra Menon (No. 2) v. Cochin Stock Exchange Ltd.,* (1990) 69 Com Cases 256 : (1995) 1 Comp LJ 573 (Ker).

This line of cases was **followed** by the Madras High Court in *Radhakrishnan (K.) v. Thirumani Asphalts & Felts P. Ltd.,* (1997) 13 SCL 169 : (1997) 27 Corpt LA 78: (1997) 91 Com Cases 31 (Mad) so as to hold that the question of automatic vacation of office by a director by reason of non attendance was within the jurisdiction of ordinary civil courts. The court, therefore, had the power to examine the background of the automatic vacation and to declare that the director continued to be in office because the groundwork for the application of s. 283(1) was not made out. The court did not agree with the decisions in *Vithalrao Narayanrao Patil v. Maharashtra State Seeds Corpn. Ltd.,* (1990) 68 Com Cases 608, **overruled** as noted above and *Nizambad Corn Products P. Ltd. v. Vasudev Dalia,* (1992) 3 ALT 303 (AP). The Full Bench of Andhra High Court **did not agree** with the above view of the Madras High Court in *K. Venkat Rao v. Rockwood (India) Ltd.,* (2002) 108 Com Cases 494 : (2002) 1 Comp LJ 519 : (2001) 46 CLA 243 (AP—FB).

In connection with the right of shareholders to elect directors and to remove them, proceedings involving identical issues were instituted both before a civil court and before the Company Law Board. The question was whether the cases should be transferred to the

Company Law Board. The court took it to be settled law that civil courts can entertain matters and deal with the same in relation to the rights of individual shareholders. If the suits are transferred, it will result in ousting the jurisdiction of the civil courts. Hence, there was no scope or justification to direct the transfer of suits to be heard and decided by the Company Law Board. *Prakash Roadlines Ltd. v. Sudarshan Kumar Manchanda,* (1995) 1 Comp LJ 208 (Kant).

Shareholders have the right to move the court for the purpose of saving their company from being victimised by warring factions. A *prima facie* case was made out to restrain the company from removing the chairman and managing director. The board of directors was told by the court that proper course would be to call a general meeting and proceed further according to the wishes of the shareholders. In forming a *prima facie* opinion about the issue of an injunction, the court said that when the court is called upon to appreciate the contentions of the parties through pleadings and documents only, it is all the more necessary to consider each and every circumstance pertaining to the situation. *Jayanthi R. Padukone (Mrs.) v. ICDS Ltd.,* AIR 1994 Kant 354 : (1999) 96 Com Cases 86.

Relief of declaration that a meeting of directors and resolutions passed at it are invalid, is a matter of common law and, therefore, a civil court has jurisdiction over such matters. The meeting of the Board of directors was called at a time when certain directors were absent and the specific purpose was to take advantage of that fact for passing certain resolutions. This was a fraudulent purpose which vitiated the meeting. *T.M. Paul (Dr.) v. City Hospital P. Ltd.,* (1999) 97 Com Cases 216 : (1999) 39 CLA 164 (2000) 2 Comp LJ 84 (Ker). The court also held that transactions which have already been concluded, and which while in process could have supported a petition under sections 397-398, can be questioned in a civil suit.

The Bombay High Court has expressed the opinion in *Khetan Industries P. Ltd. v. Manju Ravindra Prasad Khetan,* AIR 1995 Bom 43 that a civil court has no jurisdiction to interfere with the internal management of companies in matters like appointment and removal of directors. The court felt that the Companies Act has laid down an elaborate and detailed procedure for dealing with such matters. The court said that the Bombay High Court was the principal civil court for Bombay for the purpose of proceedings for removal of trustees of a private trust under Chapter VII of the Trust Act and on that analogy no civil suit would lie for removal of directors of a private limited company.

Jurisdiction in matter of Company Deposits.—Where for the purpose of making a term deposit with a company a cheque was given at Bombay and was encashed by the company through its account also at Bombay and further still the refund cheques, which were dishonoured and became the cause of litigation, were also on a Bombay bank, but the deposit receipts carried the remark: "subject to Anand (Gujarat) Jurisdiction", it was held that this remark was of a unilateral nature and, therefore, it did not have the effect of ousting the jurisdiction of the competent courts and so the Bombay courts had jurisdiction to entertain proceedings arising out of the dishonour of the cheques. *R.S.D.V. Finance Co. P. Ltd. v. Shree Vallabh Glass Works Ltd.,* (1993) 78 Com Cases 640 (SC). The court further held that when under a State legislation (Bombay Relief Undertakings (Special Provisions) Act, 1955, as applied to Gujarat) an undertaking is declared "relief undertaking," it will not operate to stay proceedings against the properties of the company outside that State.

Jurisdiction of Company Court *vis-a-vis* Debt Recovery Tribunal.—In *Allahabad Bank v. Canara Bank,* (2000) 2 Comp LJ 170 : (2000) 101 Com Cases 64 (SC), it has been held that the Debt Recovery Tribunal has exclusive jurisdiction to deal with all matters for pursuing, filing, enforcing and conducting proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and leave of winding up of court under section 446 is not required to proceed against the debtor company.

§ For further details see Notes under section 446 under the heading "Proceedings under Debt Recovery Tribunal".

Jurisdiction over the Societies Registration Act.—In the case of the Societies Registration Act under which non-profit charitable institutions, social clubs, etc., may be reg-

istered, instead of under section 25 of the Companies Act, the general principles governing the rights of members are the same as in the case of shareholders or members of a company and the jurisdiction of the ordinary civil court to interfere in the internal management of the society is the same as in the case of companies. For a discussion of this subject and a review of the authorities thereon, see *Krishnaswami v. South India Film Chamber of Commerce,* AIR 1969 Mad 42.

Jurisdiction for foreign proceedings.—In *Barclays Bank Plc. v. Horman,* (1993) BCLC 680 (Ch D and CA), the holding company was in liquidation in London. Its subsidiary in USA was disposed of to pay a bank debt there. The question was whether, if that payment constituted a fraudulent preference, the issue should be tried in England or USA. The court said that the following principles were relevant in deciding the question :

1. If the only issue is whether the English or the foreign court was the more appropriate forum, the question should normally be decided by the foreign court on the principle of *forum non convenient.*
2. If exceptionally the English court decided that the action before the foreign court would be vexatious or oppressive and that the English court is the natural forum, it can properly grant an injunction restraining the action in the foreign court.
3. In deciding whether the action is vexatious or oppressive account must be taken of the possible injustice to the defendant if the injunction is not granted and the possible injustice to the plaintiff if it is granted.

It was held on the facts that the judge directed himself properly and correctly that there was a connecting factor with the United States which made it proper for the proceedings to be brought there.

Jurisdiction of Consumer Forum and MRTP Commission [*Now abolished*] and their power to provide interim relief

Investor is not consumer.—The Supreme Court in its decision in *Arvind Gupta (Dr.) v. SEBI,* (1994) 81 Com Cases 318 (SC); *Morgan Stanley Mutual Fund v. Kartick Das,* (1994) 81 Com Cases 318 (SC) has laid down that a prospective investor is not a consumer within the meaning of s. 2(1)(d) of the Consumer Protection Act, 1986 because neither an application for allotment of shares can be regarded as goods nor issue of shares can be regarded as a trade in shares and, therefore, consumer protection forums do not have jurisdiction over this matter and further that such forums do not have any power to grant an interim relief or even an *ad interim* relief. Issue of shares being not a trade in shares, it cannot be questioned under the category of unfair trade practices within the meaning of s. 2(1)(r) of the Consumer Protection Act, 1986. As a matter of guidance the Court emphasised the principle which the judicial and *quasi*-judicial authorities must bear in mind in granting *ex parte* injunctions in areas connected with the functioning of the capital market. See also *Director General (Investigation and Registration) v. Deepak Fertilizers and Petrochemicals Corpn. Ltd.,* (1994) 81 Com Cases 342 (MRTPC-FB) where also it was held that issue of shares or debentures is not a trade nor a dealing in goods or services **affirmed** by the Supreme Court in *R.D. Goyal v. Reliance Industries Ltd.,* (2003) 113 Com Cases 1 (SC). *Hindustan Lever Employees' Union v. Hindustan Lever Ltd.,* AIR 1995 SC 470 : (1995) 83 Com Cases 30.

As a matter of further guidance it should be noted that the definition of the word 'goods' as it appeared in MTRP Act, 1969 was amended by the Amendment Act of 1991 with effect from 27-9-1991 so as to provide that goods would include 'shares and stock' including issue of shares before allotment. Thus matters relating to unfair and restrictive trade practices in respect of allotment of shares and stock can go before the M.R.T.P. Commission.

One of the effects of this amendment is the decision of Union Territory, Consumer Commission at Chandigarh in *Indian Acrylics Ltd. v. Rajni Goyal,* (1997) 14 SCL 93 (UTCDRC-Chd). The Commission held that shares are a marketable commodity and therefore a purchaser of shares who has filed with the company his application for transfer with payment of transfer fee

has paid service charges and is therefore entitled to proceed against the company under the Consumer Protection Act, 1986, S. 2(1)(d) for any deficiency in service.

Inordinate delay in issue of shares to a debenture-holder exercising her option to convert debentures into shares and further harrasment by infructuous and irrelevant queries amounts to an untrade practice and therefore a complaint would lie before MRTP Commission under s. 36-A of the MRTP Act, 1969. The availability of a remedy under the Companies Act, would be no bar to the MRTP Commission. *Pushpa Rani Sharma v. ICICI,* (1997) 27 Corpt LA 87 (MRTPC).

No Consumer Forum jurisdiction over winding up matters.—It has been held by the Madras High Court that a Consumer Forum has no jurisdiction to consider claims of creditors against a Company which is being wound up under the Companies Act. Any other Court than the winding up Court can consider the matters of such a company only when permitted by the winding up Court under s. 446. This is so because the whole property of the company becomes vested under s. 456 in the winding up court and therefore its disposal can only be with the sanction of that Court. *Sudarshan Chits India (Ltd.) v. Official Liquidator, High Court of Kerala,* (1992) 1 Comp LJ 34, 37 (Mad).

Family companies and jurisdiction of family courts.—Where all of the shareholders in a company were members of the same family and the husband and wife pursuing divorce proceedings, it was held that issues relating to share ownership in that company and its ultimate control could quite properly be dealt with by the Family Division. There is no need to try to limit the jurisdiction of the Family Division by holding that corporate matters are the sole concern of the Companies Court—*Poon v. Poon,* (1994) 2 FCR 777.

Jurisdiction of Securities Appellate Tribunal.—The Tribunal has been constituted by the Central Government to hear appeals under s. 15T of the SEBI Act, 1992 [*GSR* 425(E), dated 28-7-1997].

§ For text of SEBI Appellate Tribunal (Procedure) Rules, 2000 see *Appendix* 153.

Jurisdiction for Investor Guidance, Grievances, and Complaints.—The Securities and Exchange Board of India has been receiving investor complaints against companies and other intermediaries in the capital market. While complaints against intermediaries differ widely in nature, complaints against companies can be standardised. SEBI has evolved an investor complaint format. If investors give complaint in this format, it will be easier to process their complaints. The process of grievance redressal can be speeded up. Specimen copies of this investor complaint format will be available at all offices of SEBI in Mumbai, Delhi, Calcutta and Chennai, all stock exchanges and SEBI recognised investor associations.

§ For the text of the format of complaint and addresses of the Forum, see *Appendix* 234.

Investor Grievance Redressal—Decentralisation

SEBI's Press Release, dated 16-9-1997.—SEBI has been, as a part of performing its statutorily assigned function of investor protection, attending to the grievances of the investors in the securities market. Many investors do come down to the office of SEBI at its Head Office in Mumbai to personally lodge their complaints or to follow-up the matter. This creates avoidable hardships for outstation investors.

In order to mitigate the difficulties of the investors in approaching the Investor Grievance Redressal and Guidance Division of SEBI at its Head Office, Mumbai, it has since been decided to delegate the work relating to attending to investor grievances to the Regional Offices of SEBI at Calcutta, Chennai and New Delhi.

Investors in securities market are hereby advised to forward their grievances against listed companies to the particular Regional Office of SEBI within whose territorial jurisdiction the registered offices of the companies are located. Any follow-up on the matter may also be taken up with this particular Regional Office of SEBI. The territorial jurisdiction of each of the Regional Office is given below:

REGION	TERRITORIAL JURISDICTION	ADDRESS OF SEBI OFFICES
NORTH	Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttar Pradesh, Chandigarh Delhi and Uttaranchal	Block No. 1, Rajendra Bhavan, Rajendra Place Dist. Centre, New Delhi-110 008 Tel. : 25732313, 25739784 Fax : 011-25768992
EAST	Assam, Bihar, Manipur, Meghalaya, Nagaland, Orissa, West Bengal, Arunachal Pradesh, Mizoram, Tripura and Jharkhand	FMC, Fortuna, 5th Floor, 234/3A, AJC Bose Road, Calcutta-700 020 Tel. : 22402435, 22406105, 22801219, 22801220, 22801423 Fax : 033-22404307
SOUTH	Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Pondicherry	3rd Floor, D'Monte Building No. 32, D'Monte Colony, TTK Road, Alwarpet, Chennai-600 018 Tel. : 4971791 to 95, 4971797 Fax : 044-4971796
WEST	Gujarat, Maharashtra, Madhya Pradesh, Dadra and Nagar Haveli Goa and Chattisgarh	Earnest House, 14th/15th Floor, 194, Nariman Point, Mumbai-400 021 Tel. : 22850441-50, 22880944-47 Fax : 022-22870746, 22856002

Investor to approach RBI for Complaints regarding NBFCs

Press Release, dt. 30-3-2001.—Union Government has taken effective steps to expeditiously redress investor grievances in the Securities and Exchange Board of India (SEBI). Under the new measures, disposal of investors' grievances and relevant powers have been delegated to SEBI for expeditious settlement of investors complaints relating to listed companies. The time-limit for disposal of such grievances has been reduced from 120 days to 90 days.

Moreover, the Department of Company Affairs has advised the investors to approach the Reserve Bank of India for complaints concerning non-banking finance companies.

Power of Court to grant interim relief

§ For a discussion on the power of courts to grant interim relief see Notes under section 403, *post.*

Writ Jurisdiction remains unaffected

Under Art. 226 of the Constitution, the High Courts have power to issue certain writs. This jurisdiction would normally be beyond legislative control, but the circumstances in which the remedy under Article 226 would be available can perhaps be regulated by statutory provisions. It is however beyond doubt that the remedy under Article 226 cannot be excluded altogether. Thus, even where an enactment sets up a special tribunal and gives a degree of finality to its decisions, Article 226 would still afford a remedy where such decisions are based on improper exercise of jurisdiction or arise from manifest fraud.

Article 226 is not being one of those provisions of the Constitution which can be changed by ordinary legislation. The remedy under Article 226 cannot be curtailed or taken away by any legislation which does not amount to Constitutional amendment. *Kerala Education Bill, Re,* AIR 1958 SC 956; *Prem Sagar v. Standard Oil Co., Re,* AIR 1965 SC 111 and *S.P. Sampath Kumar v. Union of India,* AIR 1987 SC 386. Any law which

seeks to take away or restrict the jurisdiction of the High Courts under Article 226 has been held void and the High Court can exercise the jurisdiction free from any fetters. *Durgashankar v. Raghuraj,* AIR 1954 SC 520 and *Rajkrushna v. Binod,* 1954 SCR 913. Even where a statutory provision bars the jurisdiction of Courts generally, it will not have the effect of excluding the operation of Article 226 and Article 32. *Union of India v. Narasimhalu,* (1970) 2 SCR 145; *Duraah Committee v. Hussain,* AIR 1961 SC 1402 and *S.P. Sampath Kumar v. Union of India, (Supra).*

In the result, Section 26 (SICA) not be read as barring the remedy under Article 226 and, in deserving cases, the High Court could intervene by issue of an appropriate writ under that Article. Article 227 could also be invoked.

State of Orissa v. Madangopal, AIR 1952 SC 12 showed that the High Court's writ jurisdiction is larger than Supreme Court's writ jurisdiction by virtue of the words "for any other purpose" occurring at the end of Article. 226(1) which are conspicuous by their absence from Article 32. No doubt, Supreme Court can also issue a writ for any other purpose but only if this power is conferred on it by a specific legislation as contemplated in Article 139.

The High Court can issue writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights. *Calcutta Gas Co. v. State of West Bengal,* AIR 1962 SC 1044.

This state of authorities shows that inspite of the exclusion clause viz. section 10GB, certain matters would remain amenable to writ jurisdiction. When any party is aggrieved by any order of this tribunal, it would be advisable to invoke High Court's writ jurisdiction, rather than rushing to the Supreme Court straightaway.

Grounds for Court's intervention

Where an authority is created by a special statute [SICA, now repealed] to adjudicate mainly on question of fact, their determination on such facts would be binding even on the Courts of law. This concept was given effect to in Section 26 of that Act by specifically barring the jurisdiction of civil courts. This bar was not absolute and it did not take away the writ jurisdiction of the High Courts and the Supreme Court and the special leave jurisdiction of the Supreme Court. A decision of the Supreme Court refers to some of the circumstances in which the High Court (or the Supreme Court) can intervene in the matter which is in the exclusive jurisdiction of a *quasi*-judicial tribunal. *State of West Bengal v. Atul Krishna Shaw,* AIR 1990 SC 2205. This case arose under West Bengal Estates Acquisition Act, 1954 which specifically excluded land used for pisciculture from its purview. The Settlement Officer held that no fishery existed on the disputed plots. This finding was based on sufficient and reliable evidence. The Tribunal (Addl. Dist. Judge) set up by that Act as the appellate authority set aside the above finding. The writ petition filed by the State against the decision of the Tribunal was dismissed by the High Court *in limine* without assigning any reasons. On the State preferring an appeal by special leave under Art. 136 of the Constitution, the Supreme Court came to the conclusion that while the Settlement Officer's award was supported by adequate and reliable evidence, the Appellate Tribunal's finding was based on either no evidence or beset with surmises and conjectures. The Supreme Court accordingly ruled that this was a fit case for interference by the High Court or the Supreme Court. The Supreme Court stated :

"It is indisputably true that it is a *quasi*-judicial proceeding. If the appellate authority had appreciated the evidence on record and recorded the finding of fact, those findings are binding on this Court or the High Court. By process of judicial review, we cannot appreciate the evidence and record our own finding of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would, on given facts and circumstances, come to the conclusion reached by the appellate authority on the basis of the evidence on record, certainly this Court would oversee whether the finding recorded by the appellate authority is based on no evidence or beset with surmises or conjectures."

In sum, if the decision of the *quasi*-judicial authority is based not on any reliable evidence but on mere conjectures and surmises, or if it is arbitrary, the Court may intervene even though its normal jurisdiction is specifically barred.

Reference can also be made to *Prag Ice & Oil Mills v. Union of India,* AIR 1978 SC 1296 : (1978) 3 SCC 459, which was a case of fixation by the Central Government of the price of mustard oil under Section 3 of the Essential Commodities Act. The principles which emerged from that case is, to quote the words of the celebrated Constitutional jurist, DR. DURGA DAS BASU, as follows: "When determination of a matter is committed by the Legislature to the Government or other expert body, it would be wrong for the Court to examine each and every minute detail pertaining to that determination. The Court may intervene only if the determination is patently arbitrary, discriminatory or irrelevant to the policy laid down by the Legislature". (DR. BASU'S SHORTER CONSTITUTION, p. 180 (13th Edn., 2001).

In *Bennett, Coleman & Co. Ltd. v. AAIFR,* AIR 1996 Del 172, the Delhi High Court's writ jurisdiction was invoked for setting aside a certain order of the Appellate Authority. While dismissing the writ petitions, the learned judges observed that they were not sitting in appeal against the AA's order and their jurisdiction was limited to see if the AA's order was within the four corners of the Act. They no doubt exercise judicial review over administrative and *quasi*-judicial authorities. The High Court further pointed out in *Cellular v. Union of India,* AIR 1996 SC 11 at p. 26, that the guidelines laid down by the Supreme Court have to be followed by the Courts while dealing with the scope of judicial review in contractual matters. These principles will also apply to the judicial review over administrative and *quasi*-judicial authorities. Briefly stated, the principles are : The Court has to confine itself to the question of legality and its concern should be:

(1) whether the authority exceeded its powers

(2) committed error of law,

(3) violated any rule of natural justice,

(4) reached a decision which no reasonable Tribunal would have reached, and

(5) abused its powers.

In *A.R.C. Cement Ltd. v. AAIFR,* AIR 1998 Del 359, the Operating Agency, being the expert body scrutinised the technical, financial and other issues pertaining to the sick company and came to the conclusion that the company could not be revived. The BIFR and AA under SICA (now repealed) came to the same conclusion. On the matter being agitated in a writ petition before the High Court, it was held that the Court could neither sit in judgement nor scrutinise the figures on which BIFR and AA had drawn their inferences. Where an expert body has scrutinised the matter, weighed and considered it, even if a different conclusion may be possible, the Court would not exercise its powers.

One more circumstance in which the writ jurisdiction can be invoked is when *quasi*-judicial authority fails or neglects to take any action it is required to take under an Act. To give an illustration, if the BIFR ignored to take cognisance of a reference filed by a sick company in terms of Section 15, (SICA repealed) which thereby deprived the company of the benefits arising from invoking the jurisdiction. In such a situation, the company could pray for issue of a writ of mandamus to the BIFR directing it to perform its duty under the relevant provisions of the Act.

Territorial jurisdiction of High Court to issue writ

In a situation where a party aggrieved by the decision or order of a *quasi*-judicial authority wishes to invoke the writ jurisdiction of the High Court, a question may also territorial jurisdiction to issue a writ. A quotation of this kind arose in *D.R.M. Steel Industries v. BIFR,* AIR 1996 Cal 54: (1998) 93 Com Cas 667. The contention raised before the Calcutta High Court was that it had no territorial jurisdiction to entertain the writ petition, and that such jurisdiction belonged either to the Delhi High Court under whose jurisdiction the BIFR was situated or the Bombay High Court under whose jurisdiction the factory of the sick company was situated. The Calcutta High Court negatived this contention by pointing out that in the writ application, what was challenged was the order of the BIFR rejecting the sick company's reference under Section 15 (of repealed SICA). This reference was made from the company's registered office in Calcutta which was situated in the territorial jurisdiction of the Calcutta High Court. The company had a legal right to make a reference to the BIFR, and since the BIFR had rejected the reference,

such right of the company was infringed at its registered office, and hence the Calcutta High Court could entertain the writ petition. In *Everest Coal Co. v. Coal Controller*, (1986) 90 CWN 438 (Cal), it was held that for the purpose of deciding which court has jurisdiction to entertain a writ petition, the correct test would be to find out whether by reason of the impugned order the petitioner is likely to suffer loss or injury within the territorial limits of the court in question.

Can writ lie without exhausting right of appeal

It is fairly well settled that the remedy provided by a writ is virtually the remedy of the last resort. Before moving a writ application, the applicant is required to exhaust the alternative remedy, if any, available to him.

In *D.R.M. Steel Industries v. BIFR*, AIR 1996 Cal 54: (1998) 93 Com Cas 667 (Cal), it was held that the theory of exhaustion of alternative remedy was accepted more as a matter of public policy than a rule, and that the existence of alternative remedy was never treated as an absolute bar for moving a writ application, especially in the matter of the writ of certiorari and when the impugned order is bad because of lack of jurisdiction or being in violation of the principles of natural justice. The Court **relied** upon *S.T.O. Navgaon v. T. & F. Corpn., Tikamgarh,* AIR 1973 SC 2350 and *State of U.P. v. Indian Hume Pipe,* AIR 1977 SC 1132. When a party seeks to file a writ without exhausting the remedy of appeal, he would be hard put to convincing the writ Court in regard to the existence and nature of circumstances which forced him to directly invoke the writ jurisdiction, rather than seek the redressal of his grievances at the hands of the Appellate Authority.

Writ petition during pendency of proceeding

As a general proposition, it can be said that if a sick company itself invoked the jurisdiction of an appellate authority, the company could not take recourse to the writ remedy before an appellate authority final order is available. *Rashid v. ITO Commn.*, AIR 1954 SC 207. This would not however bar the writ remedy of any other party where, say, e.g. that the authority has no jurisdiction to entertain the matter. *Union of India v. Varma,* AIR 1957 SC 882. This would also be the case where the e.g. that the authority proceeding has been initiated not by the sick company but by some other party. In such a situation, even the company itself may take recourse to the writ remedy where authority had no legal jurisdiction to hear the matter, and it is not necessary for the company to wait and see whether the authority would dismiss the matter on the ground of its lack of jurisdiction. Normally, however, the writ remedy would not be available against an interim order of a statutory authority, unless such order causes or is likely to cause irreparable damage to any party making it impossible or difficult for such party to obtain restitution for such damage.

[14][*S. 10GC. Vacancy in Tribunal or Appellate Tribunal not to invalidate acts or proceedings.—No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Tribunal or the Appellate Tribunal, as the case may be.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section was inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to afford protection for acts and proceedings of the Tribunal and the Appellate Tribunal from being questioned merely on account of any vacancy or defect in the constitution of the Tribunal and Appellate Tribunal.

§ For Notes on Clauses of the Bill, refer to Notes under section 10FB.

---

14. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

Validity of acts of Tribunal

The purport of the section is that an act of the Tribunal shall not be called in question on the ground only of any defect in the constitution etc. of the Tribunal. This means that acts of the Tribunal can be questioned on other grounds such as acting *mala fide*, acting on the basis of untenable oral or documentary evidence, etc., and when an act of the Tribunal is called in question on such other grounds, defects in the constitution or the existence of a vacancy in the Tribunal etc., may also be urged as an additional ground. Section 635-A protects officers of the Government acting in good faith but the acts themselves are not protected by that section from being questioned as to their validity.

The entire system of administrative adjudication under which *quasi*-judicial powers are conferred on administrative authorities would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of constant threat of disciplinary proceedings. *Zunjarrao Bhikaji Nagarkar v. Union of India,* (1999) 7 SCC 409 : AIR 1999 SC 2881.

Invalidation of proceedings

This section embodies a wholesome principle of not making proceedings before the Tribunal and Appellate Tribunal vulnerable because of any defect which may not be attributable to any action (or omission) on their part. In the absence of this provision, the proceedings would have been laid open to challenge on the ground of any defect in their constitution, howsoever, minor or technical it might be.

This section is apparently based on the doctrine of *de facto* office which finds expression in *Gokarjau v. State of A.P*, AIR 1981 SC 1473. In that case, Supreme Court ruled that when the title of a person holding an office for the time being is found to be defective, the acts done by him, while holding that office, shall be deemed to be as valid as though he was holding the office *de jure*, that is to say without any defect in his title.

Scope of protection

It may be mentioned that notwithstanding the wide amplitude of this provision, it would be proper to restrict it to situations where the vacancy or defect has arisen without the knowledge of the competent authorities.

It is very clear from this section that the act or proceedings of the Tribunal and Appellate Tribunal are saved against a vacancy or defect in their constitution. Such an act or proceeding is not immune from challenge on other grounds, such as, discrimination arbitrariness, improper procedure and the like.

[15][*S. 10GD. Right to legal representation.—The applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.*

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Companies Sec-

15. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

retaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—The applicant or the appellate may appear either in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners to present its or his case before the Tribunal or the Appellate Tribunal. [*Clause 6 of the Amendment Bill, 2001*].

§ For full view of Notes on Clauses refer to Notes under section 10FB.

Scope of section.—This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide that the applicant (before the Tribunal) and the Appellant (before the Appellate Tribunal) may appear in person or through his/its representative who may be a legal practitioner or a practising Chartered Accountant, Company Secretary or Cost Accountant or an officer (in case of a company).

Regulation 19 of CLB Regulations, 1991 contained provisions providing for representation on behalf of every party, as follows:

"19. Rights of a party to appear before the Bench.—(1) Every party may appear before a Bench in person or through an authorised representative.

(2) A party may, in writing, authorise an Advocate or a Secretary-in-whole-time practice or a practising Chartered Accountant or practising Cost and Works Accountant, to function as a representative of such party. A company may appoint and authorise its Director or Company Secretary to appear, in its behalf, in any proceeding before the Bench. The Central Government, the Regional Director or the Registrar may authorise an officer to appear in its behalf."

[16][*S. 10GE. Limitation.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an appeal made to the Appellate Tribunal.*

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) to provide that provisions of the Limitation Act, 1963 shall apply to an appeal preferred before the Appellate Tribunal.

Notes on clauses.—The provisions of the Limitation Act, 1963 shall apply to an appeal preferred to the Appellate Tribunal. [see *Notes on Clause 6 of the Companies (Amendment) Bill, 2001*].

Scope of section

This section is relevant for purposes of proviso to section 10FQ(3) under which the Appellate Tribunal has been empowered to entertain appeal against the order or decision

---

16. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

of the Tribunal after the expiry of 45 days from the date of order. The delay in filing the appeal is required to be explained with reasons for delay under section 5 of the Limitation Act, 1963.

[17][***S. 10GF. Appeal to Supreme Court.***—*Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order:*

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.]

NOTES

Companies (Second Amendment) Act, 2002 [11 of 2003]

Notes on clauses.—Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order. [*Clause 6 of the Amendment Bill, 2001*]

§ For full view of Notes on Clauses, refer to Notes under section 10FB, *ante*.

This section has been inserted by the Companies (Second Amendment) Act, 2002 (11 of 2003) providing for an appeal to the Supreme Court of India against a decision or order of the Appellate Tribunal.

Limitation period for filing appeal

The appeal lies to the Supreme Court within 60 days from the date of communication of the order of the Appellate Tribunal. The limitation period can be further extended up to 60 days if the Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal. In computing the 60 days period, the time required in obtaining the copy of the order or decision of the Appellate Tribunal has to be excluded. The 'date of communication of the decision or order' connotes the date of receipt of the order, and not the date on which it has been posted, nor the date of its despatch to the concerned parties.

Under section 5 of Limitation Act, 1963, an appeal may be admitted after the prescribed period, if the appellant satisfies the Court that he had sufficient cause for not being able to prefer the appeal in time. These provisions are imbibed in the proviso to section 10GF and the appellant cannot seek remedy under section 5 of the Limitation Act for preferring the appeal beyond 120 days.

Nonetheless, a party may avail the writ jurisdiction of the Supreme Court under Article 32 of the Constitution of India, on the facts of a particular case.

§ Also refer to Notes under section 10FC.

"Sufficient cause"

In *Dinabandhu Sahu v. Jadumoni, Mangaraj*, AIR 1954 SC 411, the Supreme Court approved of the *dicta* in *Krishna v. Chathappan*, ILR (1889) 17 Mad 269 (FB), that 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of *bona fides* is imputable to the appellant. If sufficient cause is shown, the court has to exercise its discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is whether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of

17. Ins. by the Companies (Second Amendment) Act, 2002 (11 of 2003), s. 6.

each case must be examined to see whether they fall within or without the terms of this general rule. *Brij Inder Singh v. KanshiRam,* ILR (1918) 45 Cal 94.

What is sufficient cause cannot be described with certainty for the reasons that facts on which questions may arise may not be identical. What may be sufficient cause in one case may be otherwise in another. What is of essence is whether it was an act of prudent or reasonable man. But the expression 'sufficient cause' receives a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable. *Shakuntala v. Kuntal,* AIR 1969 SC 575. Sufficient cause seems to mean not only those circumstances which the law expressly recognises as extending the time, but also such circumstances as are not expressly recognised but which may appear to the court to be reasonable looking into all the facts of the case. *Kichilappa v. Ramanujan,* ILR (1910) 25 Mad 166. Though the strike was called off, the conditions prevailing in the office were abnormal—delay condoned. *State v. Daulat Ram,* AIR 1981 HP 71. Where the delay in preferring appeal was due to routine and leisurely inter-departmental consultations of the appellant insurance company, delay should not be condoned. *National Insurance v. Manoranjan,* AIR 1986 Ori 212. Where the appellant suffering from low blood pressure was medically advised not to move, and if he does not move, he acts in good faith. There is 'sufficient cause'. *Hisaria Plastic Products v. Commissioner of Sales Tax,* AIR 1980 All 185. Counsel initially advised for filing revision and realising mistake, the revision was withdrawn and an appeal was preferred. Mistaken advice cannot be considered as sufficient cause. *Babaram v. Devindar,* AIR 1981 Del 14. *Bona fide* mistake in preferring appeal within time has been held to be a sufficient cause. *State v. Harchand,* 1976 Cr LJ 1850. When a party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, he must establish that because of some event or circumstances arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. *Ajit v. State,* AIR 1981 SC 733. Each day's delay after expiry of Limitation is to be explained. *Balaram v. Sarathi,* AIR 1988 Ori 10.

"Any person aggrieved"

An appeal can be filed only by an aggrieved person and not where an order causes no prejudice to the appellant. A party or person is said to be aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights. CORPUS JURIS SECUNDUM, Vol. IV, p. 356. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something. *Adi Pherozshah Gandhi v. H.M. Seervai,* AIR 1971 SC 385.

An aggrieved party is one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The word 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation—P. RAMANATHA AIYER LAW LEXICON, p. 78 (2nd Edn., Reprint 2002).

A person against whom a decision has been pronounced which has wrongfully refused him something which he had a right to demand, would be an "aggrieved person". Not every person who has suffered some disappointment or whose expectations have not been realised as a result of the decision or order can claim to be an " aggrieved person". *Official Receiver v. Chellappa Chettiar,* AIR 1951 Mad 935 (FB). See also *Bar Council of Maharashtra v. M.V. Dabholkar,* AIR 1975 SC 2092; *M.S. Jain v. State of Haryana,* AIR 1977 SC 276.

"Appeal against any decision or order"

Where in a petition against oppression and mismanagement in the context of a company with two directors only, one of whom was absenting and was, therefore, removed and replaced by another director, the CLB (now Tribunal) nevertheless ordered the management to be carried on by the original two directors and this without reference or op-

portunity to the new director, it was held that the rights of the new director were affected by the order in violation of natural justice. The order was accordingly not justified. The Court said that the words "any decision or order" included orders which did not finally decide the rights of the parties. Hence, the appeal was maintainable. *Gharib Ram Sharma v. Daulat Ram Kashyab,* (1994) 80 Com Cases 267 (Raj).

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board (now Tribunal). *Cf. Kantilal Shah v. CC,* 1982 ELT 902 (Cal). The expression is wide enough to include interlocutory orders passed by the Board. *Cf. M.S. Naina v. CC,* 1975 Tax LR 1351 (Cal).

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to the CLB (now Tribunal) for appointment of an administrator for prevention of mismanagement under s. 398 and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court (now Supreme Court) against this order also. The Court refused to dismiss it summarily but ordered that if an administrator was appointed by the CLB, (now Tribunal) fourteen days time should be given to any aggrieved party to prefer an appeal against that order. *Thakur Savadikar & Co. (P.) Ltd. v. S.S. Thakur,* (1996) 23 Corpt LA 170 (Bom).

An order of the CLB (now Tribunal) in a matter for reference to arbitration under s. 8 of the Arbitration and Concilliation Act, 1986 is not appelable in view of the fact that the sec. 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and then order of reference is not one of those matters. *Hind Samachar Ltd. Re,* (2002) 4 Comp LJ 1 (P&H); *Sudarshan Chopra v. Vijay Kumar Chopra,* (2002) 4 Comp LJ 1 : (2002) 51 CLA 182 (P&H).

Question of law and fact

Under section 10F, appeal could be filed against an order of Company Law Board before the High Court only on any question of law. Under section 10FQ, there is no constraint before the Appellate Authority which may decide any question of law or facts arising out of an order of the Tribunal.

Under the new regime up to the stage of Appellate authority the distinction between questions of fact and those of law has been dispensed with. But an appeal from decision of the Appellate Tribunal to the Supreme Court would lie only on a question of law. The following rulings are relevant for showing the distinction between questions of law and of fact.

Question of law—"Arising out of such order".—The meaning of this phrase was explained in *CIT v. Scindia Steam Navigation Co. Ltd.,* AIR 1961 SC 1633 : (1961) 42 ITR 589 at p. 611. After a consideration of the case law on the subject the Supreme Court set out the following principles as to when the question of law can be said to arise out of the order of the Tribunal.

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

The phrase "arising out of" would include questions of law arising out of facts as found by the CLB (now Tribunal). *Nupur Mitra v. Basubani P. Ltd.*, (1999) 35 CLA 97 (Cal).

Distinction between—Questions of law and fact.—An appeal lies to the Supreme Court under this section on any question of law arising from any decision or order of the NCLAT. A finding of fact recorded by the Tribunal is final and is, therefore, not appealable. The jurisdiction of the Supreme Court in appeal is expressly confined to the determination of any question of law. It follows that a finding of fact cannot be reversed by the Supreme Court. Under the new provisions an appeal lies from the decision of a Tribunal to the Appellate Tribunal on all questions whether of fact or of law.

The Privy Council had laid down in a number of cases which have been followed by the Supreme Court that even an erroneous finding of fact is not appealable. *Durga Chowdhrani v. Jawahir Singh,* (1891) 17 IA 122; *Pattabhiramaswamy v. Hanumayya,* AIR 1959 SC 57; *Sinha Ramanuja Jeer v. Ranga Ramanuja Jeer,* AIR 1961 SC 1720. The mere fact that the High Court would have come to a different conclusion on the facts also does not make the matter appealable. *Mattulal v. Radhey Lal,* AIR 1974 SC 1596; *Gappulal v. Thakurji Shreeji Dwarkadhishji,* AIR 1969 SC 1291. However, an appeal lies even on a question of fact if it can be shown that some material evidence was disregarded or the court misdirected itself in dealing with evidence or finding of fact has no evidence to support itself or is supported by irrelevant evidence or where there was refusal to consider evidence. *Bachan Singh v. Dhian Das,* AIR 1974 SC 703; *Midnapur Zamindari Co. v. Uma Charan Mandal,* AIR 1923 PC 187; *Gosto Bihari De v. Purna Chandra De,* 1948 AC 219.

It has been held that the question whether a transaction is benami, *Meenakshi Mills v. CIT,* AIR 1957 SC 49; or fictitious, *Parasnath Thakur v. Mohani Dasi,* AIR 1959 SC 1204; or *bona fide*, *Ganga Bishnu Swaika v. Calcutta Pinjrapole Society,* AIR 1968 SC 615; or vitiated by undue influence, *Laxmian v. Chikkamma,* (1969) 1 Mys LJ 307 or whether there was reasonable and probable cause for prosecution *Subbarayudu P. v. Bysani Venkat Karasayya,* AIR 1968 AP 61 are no doubt matters of facts but they are appealable. An appeal also lies where there is substantial error or defect in procedure and where the finding of fact is not final or specific or is ambiguous. The following observation of their Lodships of the Privy Council in *Nafar Chandra Pal v. Shukur,* (1918) 45 IA 183 at 187 deserves to be cited "Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is necessarily a question of law, so also the question of admissibility of evidence and the question whether any evidence has been offered, on one side or the other; but the question whether the fact has been proved, when evidence for and against has been properly admitted, is necessarily a pure question of fact."

A finding of a fact without any evidence to support it or if it is otherwise perverse, is a question of law. A decision as to the legal effect of a finding of fact is a question of law. The interpretation of a statute or document is a question of law. See *Meenakshi Mills Co. Ltd. v. CIT,* AIR 1957 SC 49; *Trivedi (S.M.) v. CIT (No. 1),* (1981) 128 ITR 265 (MP). A finding of fact based on proven facts is not a question of law. A finding that requirements of s. 84 for issuing duplicate certificates were not fulfilled was held to be a finding of fact. *Shoes Specialities Ltd. v. Tracstar Investments Ltd.,* (1997) 88 Com Cases 471 (Mad—DB).

A finding of fact based upon no evidence or upon surmises, conjectures and assumptions, amounts to a finding without evidence. It becomes a question of law. An appeal would lie against such a finding. *Scientific Instruments Co. Ltd. v. Rajendra Prasad Gupta,* (1999) 34 CLA 36 (All).

The Supreme Court has observed that a substantial question of law is one which is of general public importance or which directly and substantially affects the rights of the parties and which has not been finally settled by the Supreme Court. *Sir Chunni Lal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.,* AIR 1962 SC 1314. The sound-

ness of conclusions drawn from facts is a question of law. *Ram Gopal v. Shamskhaton,* (1893) 19 IA 228 (PC). A finding on a mixed question of fact and law is a question of law. *Meenakshi Mills v. CIT,* AIR 1957 SC 49. A failure to appreciate and determine the question of fact to be tried is a question of law. *Sheikh Rahmat Ilahi v. Mohammed Hayat Khan,* AIR 1943 PC 208; *Damusa v. Abdul Samad,* AIR 1919 PC 29.

The section requires that the question of law arising out of the order of the Appellate Tribunal has to be referred to the Supreme Court. As to what is a question of law is a question that is impossible to answer with precision. However, the Supreme Court has laid down tests to determine when a question of law will arise. In *Meenakshi Mills Co. Ltd. v. CIT,* AIR 1957 SC 49 at 65, after consideration of the existing case law, the following four principles were set out:

(1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the Court under Section 66(1). [IT Act, 1922].

(2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final its decision as to the legal effect of those findings is a question of law which can be reviewed by the Court.

(3) A finding on a question of fact is open to attack under S. 66(1) [IT Act, 1922], as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact.

A finding on a question of fact may also result in a question of law if the Tribunal's finding is without evidence or based on irrelevant material or on suspicions. Similarly if the finding of the Tribunal is so perverse or unreasonable that no person acting judicially and properly instructed as to the relevant law could have arrived at such a conclusion, a question of law would arise. *S.M. Trivedi v. CIT,* 128 ITR 265, 269 (M.P.). A question does not cease to be a question of law merely because it has arisen in earlier cases. *D.B. Madan v. CIT,* (1992) Suppt. (2) SCC 143 : (1991) 92 ITR 344. If a question framed by the applicant is not proper, the Tribunal has jurisdiction to frame the correct question involved. *CCE & C v. Indian Metal & Ferro Alloys Ltd.,* 1992 (61) ELT 425 (Ori).

A person who was not a party to the original proceeding or who was only a *pro forma* party can prefer an appeal with the leave of the court and such leave is liberally granted if he would be prejudicially affected by the judgment or the judgment would constitute a *res judicata* against him. *Jatan Kanwar Golcha v. Golcha Properties (P.) Ltd. (In liquidation),* AIR 1971 SC 374 : (1971) 41 Com Cases 230. The right of appeal can be exercised by the aggrieved party himself or in case of his death by his legal representative. *Adi Pherozshah Gandhi v. H.M. Seervai,* AIR 1971 SC 385.

Where there is an appeal on a pure question of law which is untrammelled by any question of fact and which goes to the root of the jurisdiction, a new argument or objection, not raised earlier, may be allowed for the first time in appeal, but not so when the question is a mixed question of law and fact, *Vasant Kumar Radhakisan Vora v. Board of Trustees of the Port of Bombay,* AIR 1991 SC 14, 26.

An order of the Tribunal must be read by the Court as a whole in order to determine whether it gives rise to a question of law. *Homi Jehangir Gheesta v. CIT,* (1961) 41 ITR 135 (SC). The expression "any question of law arising out of such order" would cover a question raised before, but not dealt with by the Tribunal. *Estate of Late A. Chettiar v. CIT,* (1969) 72 ITR 403 (SC).

A question of law arising out of the findings in the judgment of the Companies Tribunal (*since abolished*) was allowed to be raised for the first time in an appeal under sec. 10-D(1)(b) of the Companies Act, 1956 [*omitted*] although that question of law had nei-

ther been raised before nor dealt with by the Tribunal in its judgment or order. *Metal Press Works Ltd. v. Ram Prasad Kayan,* (1967-68) 72 CWN 594, 599 (Cal).

In an appeal against a CLB (now Tribunal) order, it was found that the order was passed in a manner unknown to law and also in an arbitrary manner and the findings were not only perverse and also unknown to the adjudicatory process of the land, there being an error apparent on the face of the order. The appeal was held to be maintainable the subject-matter of the order and its manner constituted a question of law. *Sri Ramdas Motor Transport Ltd. v. Karedla Suryanarayana,* (2002) 36 SCL 361 (AP).

It has been held that questions relating to maintainability of a petition cannot be regarded as a pure question of law in all cases. In this case maintainability depended upon the fact whether the petitioners were the members of the company. Thus it was a mixed question of law and fact. The order of the CLB (now Tribunal) that the matter of maintainability would be decided not as a separate issue but alongwith the merits was not an order on a pure question of law and was therefore not appealable. *Saroj Goenka v. Nariman Point Building Services and Trading Pvt. Ltd.,* (1997) 90 Com Cases 205, 211 (Mad—DB).

A question (late notice of meeting) which was not raised before CLB (now Tribunal) and, therefore, not decided by it, cannot be regarded as a question of law for appeal purposes. Even otherwise the petitioner did not suffer any loss because he attended the meeting even if the notice was late. Here the notice of meeting was not short and that the petitioner had not been able to produce support of the requisite number to demand a poll. These were held to be findings of fact and, therefore, not appealable. *Mohd. Jafar v. Nahar Industrial Enterprises Ltd.,* (1998) 93 Com Cases 717 : (1997) 4 Comp LJ 201 (Del).

The High Court is not entitled to reappraise the evidence produced before the CLB (now Tribunal). The CLB (now Tribunal) had recorded findings on the basis of evidence laid before it that share capital had been increased that shares were allotted to various allottees of one of the appellants, two of the appellants were included in the Board of directors and the respondent was removed from his office as director. These findings were held to be a matter of fact. There could be no appeal against it. *Micromeritics Engineers P. Ltd. v. S. Manusamy,* (2002) 50 CLA 285 : (2002) 38 SCL 846 (Mad). The court also observed in this case that the validity or genuineness of a certain resolution is a fine question of fact.

A company appealed against the directions of the CLB (now Tribunal) for refund of deposits contending that the directions were unworkable. This was held to be not a question of law and, therefore, the appeal was not maintainable. *United Western Bank Ltd. v. CLB.,* (2001) 107 Com Cases 63 (Kant).

No appeal was admitted against an interlocutory order for appointment of an administrator in a petition for prevention of oppression and mismanagement in a company. The order of the Company Law Board [now Tribunal] was also found to be not perverse for the purpose of warranting any interference. *C. Sri Hari Rao v. Sri Ram Das Motor Transport P. Ltd.,* (1999) 97 Com Cases 685 : (1999) 1 Comp LJ 280 (AP).

Where a finding of fact is erroneous or perverse, the court can entertain an appeal against such a finding because appreciation of evidence is a question of law. The power of the court under s. 10F is similar to its power under s. 100 of the Code of Civil Procedure. The court **followed** the decision of the Supreme Court in *Manulal v. Radhey Lal,* AIR 1974 SC 1596 to the effect that the jurisdiction of the court does not extend to entertaining appeal on a question of fact unless it could be shown that there was an error of law in arriving at it or was based on no evidence at all or was arbitrary or unreasonable. The Board (CLB) (now Tribunal) had erred in recording a finding of facts which were not pleaded and in rejecting uncontroverted statements.

In respect of the inherent powers of the Company Law Board (now Tribunal) under Regulation 44 of the CLB Regulations, (not applicable to Tribunal) the court said that the

provision has been reproduced *mutatis mutandis* from s. 151 of the Civil Procedure Code. There are two separate bases for exercise of this inherent power, namely, the ends of justice, and prevention of abuse of process. The court cited the decision of the Madras High Court in *Subramaniam v. Sundaram,* AIR 1963 Mad 217 where it was emphasised that the discretion of the court, under its inherent powers to adjust the rights of the parties on the basis of events happening after institution of proceedings is well recognised and commonly accepted as a rule of justice, equity and good conscience. It may even become the duty of the court to take notice of subsequent events lest it may fail to do justice between the parties. *Rajendra Kumar Malhotra v. Harbanslal Malhotra & Sons. Ltd.,* (1999) 34 CLA 360 (Cal).

The Company Law Board (now Tribunal) has to examine the fact whether complicated questions of title, forgery, fabrication, etc., are involved or not and refer the parties to a civil suit only after such examination, otherwise its decision is liable to be set aside. The High Court would, in such a case, direct the CLB (now Tribunal) to re-examine the matter. *T.G. Veera Prasad v. Sree Rayalaseema Alkalies & Allied Chemicals Ltd.,* (1999) 98 Com Cases 806 : (1999) 20 SCL 419 : (2000) 5 Comp LJ 168 (AP). This is not applicable to Tribunal or Appellate Tribunal because the Tribunal has now to decide all questions, however complicated they may be, the jurisdiction of the civil courts being barred.

No appeal on finding of fact even if appellate court might have differed

There can be no appeal on a finding of fact even if the circumstances are such that the appellate court would have come to a different conclusion on the facts. In order to put an end to the family duel in the company, the Company Law Board (now Tribunal) ordered the rival factions to make their bids for the purchase of the other faction's shares. The faction whose bid was lower was directed to sell the shares to the other faction at the latter's bid price. During the intervening period the Board of directors was reconstituted so as to include the members of both the factions. The High Court (now Supreme Court) did not interfere in this factual solution of the problem adopted by the Company Law Board (now Tribunal). *Chand Mall Pincha v. Hathi Mall Pincha,* (1999) 95 Com Cases 368 : (1999) 2 Comp LJ 108 : (1998) 31 CLA 451 : (1999) 20 SCL 384 (Gau). In another case between the same parties, *Chand Mal Pincha v. Hathimal Pincha,* (1999) 20 SCL 54 (Gau) it was held that no appeal would lie against orders.

Where the finding of the Company Law Board (now Tribunal) was that the petitioner was fully aware of the impugned dealings, the respondent furnished all the particulars of the dealings and that no ground for investigation was made out, the court would not be justified in interfering with the orders. *Boiron v. SBL P. Ltd.,* (1999) 33 CLA 51 : (1998) 16 SCL 578 (Del).

In a petition for prevention of oppression and mismanagement the finding of the CLB (now Tribunal) was that the petition was not maintainable because prerequisite conditions and eligibility criteria were not satisfied. The court found that the finding was based on evidence on records and, therefore, refused to interfere in the finding. The court said that under s. 10F investigation into a question of fact is not permissible even where additional evidence is tendered to question the finding of fact. *J.P. Srivastava and Sons (Rampur) P. Ltd. v. Gwalior Sugar Co. Ltd.,* 2000 CLC 1792 (MP).

Joinder of parties, question of law.—In a petition for relief against oppression, the Company Law Board (now Tribunal) ordered the impleading as a party a multinational company which was considered necessary for examining whether the company's effort at securing equity participation of the foreign collaborator could be justified or not or whether it would be oppressive of some of the present members. Such order, being a question of law, was held to be appealable. But otherwise the order was not perverse so as to demand any interference. *Gillette International v. R.K. Malhotra,* (1998) 31 CLA 73 (Cal).

Jurisdiction limited to questions of law.—The jurisdiction of the High Court (now Supreme Court) on appeal against decisions of the Company Law Board (now Tribunal) is confined to questions of law. In the exercise of such limited jurisdiction the High Court could not go into the questions of the validity of transfers of shares which required consideration of evidence including examination of witnesses. The Company Law Board had not discussed the question of transfer nor given any decision on it. The transferor companies were also not there before the CLB, they were also not there before the court. It was difficult for the court to exercise the jurisdiction at the request of a third party which would in effect have been a futile exercise. *Gordon Woodroffe & Co. Ltd. UK v. Gordon Woodroffe Ltd.*, (1999) 97 Com Cases 582 : (1999) 1 Comp LJ 243 : (1999) 20 SCL 429 : (2001) 42 CLA 39 (Mad).

Appeal against consent orders

Under section 96(3) of the Code of Civil Procedure, no appeal shall lie from a decree passed by a court with the consent of parties. This gives effect to the principle that a judgment by consent acts as an estoppel. A consent decree can be set aside only on the ground which would invalidate an agreement such as misrepresentation, fraud or mistake. This can only be done by a suit and a consent decree cannot be set aside by an appeal for review.

An appeal was held to be maintainable to challenge the jurisdiction of the CLB (now Tribunal) to pass consent orders. *Prakash Timber P. Ltd. v. Sushma Shingla (Smt.),* AIR 1995 All 320. The court cannot interfere in the terms of a consent order unless both parties give their consent for any modification. The CLB did not have the power of reviewing its own orders under the existing provisions of the Companies Act. *Paulose (M.V.) v. City Hospital P. Ltd.*, (1998) 15 SCL 49 : (1998) 28 CLA 46 (CLB—N. Del)[18]. A dispute as to shareholding pattern was resolved by the CLB (now Tribunal) by consent order under agreement of the parties. There was no grievance as to the genuineness of consent. The order could not be interfered with in appeal. *Subhash Mohan Dev v. Santosh Mohan Dev*, 2000 CLC 1151 : (2001) 104 Com Cases 404 (Gau).

Appeal under S. 22A(6) of SCRA.—An appeal to the High Court lies against a decision of the Company Law Board under section 22A(6) of the Securities Contracts Regulation Act, 1956. *Kinetic Engineering Ltd. v. Unit Trust of India,* (1995) 84 Com Cases 910 : AIR 1995 Bom 194. [The aforecited section 22A has since been repealed].

Power of Review[18]

The Company Law Board did not have the power of review. It was, however, open to the CLB to exercise its inherent powers and to make such orders as might seem necessary to meet the ends of justice and to prevent abusive use of the process by its Benches. When the party who had to implement a consent order failed to do so, the aggrieved party could approach the CLB with a prayer that its orders be implemented. The CLB exercised powers under s. 403 and Regulations 43 and 44 of the CLB Regulations and directed that the implementation of the consent order be postponed till the findings of the Kerala High Court about the voting rights of the two block of shares, which was sub-judice before the court, came to be known. *M.V. Paulose v. City Hospital P. Ltd.*, (1999) 96 Com Cases 588 : (1998) 15 SCL 49 : (1998) 28 CLA 46 (CLB—PB).

The Company Law Board could not review its own order under which a petition was dismissed as withdrawn. The CLB might, however, use its inherent power for this purpose in exceptional cases. In this case the parties lost time in launching proceedings before a special court after withdrawing from the Company Law Board still subsequently to learn that the special court had no jurisdiction. The Company Law Board exercised its

---

18. **Tribunals' power to review their decisions.**—Section 10FN, brought in by the Second Amendment Act, 2002 (11 of 2003) has conferred on the Tribunal the power to review its own decisions. Apart from this section 10FZA which regulates the procedure and powers of Tribunals and Appellate Tribunals confers on them the power to review their own decisions.

inherent power and ordered restoration of the proceedings before it. The Board observed that this power was not to be exercised where there was an alternative remedy, or right of appeal, or it would conflict with any provision of law or there was no chance of failure or miscarriage of justice. *Shree Cement Ltd. v. Power Grid Corpn. Ltd.,* (1998) 4 Comp LJ 148 : (1999) 93 Com Cases 854 : (1998) 30 CLA 241 : (1998) 17 SCL 122 (CLB—NB).

In *United India Insurance v. Rajendra Singh,* (2000) 37 CLA 405 at 409 : AIR 2000 SC 1165 : (2000) 3 SCC 581, the Supreme Court observed : "We have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a siutation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimesnion as would affect the very basis of the claims." *Pushpa Katoch v. Manu Maharani Hotels Ltd.,* (2001) 44 CLA 254 : (2001) 34 SCL 298 : (2001) 4 Comp LJ 413 (CLB—PB—ND). The Company Law Board had power to review and recall its orders which had been wangled through fraud or misrepresentation. But in the present case none of the findings in the orders were based on the alleged forged or fabricated postal receipt. Hence, the request for review was not accepted. Otherwise there was no power of review. *Dheepa Rajappa v. A Sivasubramanian,* (2002) 47 CLA 25 (CLB).

Note : The Tribunal has now the power to review its own orders under section 10FN.

Writ Jurisdiction of Supreme Court and High Courts and special leave petition

Though a right of appeal to the High Court was provided by s. 10F, a writ petition under Arts. 226, 227 against the order of the Company Law Board continued to be maintainable; for example if the CLB acted in violation of natural justice, or in improper exercise of its jurisdiction. The order and actions of a *quasi*-judicial authority like Company Law Board (now Tribunal) are reviewable in writ jurisdiction under Articles 32 and 226 of the Constitution and in superintendent jurisdiction under Article 227 and special appeal jurisdiction under Article 136 of the Constitution. The writ jurisdiction of the Supreme Court under Article 32 of the Constitution can be invoked for enforcing the 'fundamental rights' while the jurisdiction of the High Court under Article 226 can be invoked not only for enforcing 'fundamental rights' but 'for any other purposes' as well. *State of Orissa v. Madan Gopal Rungta,* AIR 1952 SC 12. The phrase 'for any other purpose' used in Article 226 of the Constitution is to be understood to mean 'for any other purpose for which any of the writs would, according to the well established principles, issue', *Carlsbad Mineral Water Manufacturing Co. Ltd. v. H.M. Jagtiani,* AIR 1952 Cal 315. An aggrieved party can also invoke the jurisdiction of Supreme Court by way of special leave to appeal under Article 136 against any order passed by a Court or Tribunal.

Where a legislation provides an effective remedy by way of appeal, there a writ petition cannot lie, only an appeal would lie. Thus, it was held that a decision of the Company Law Board (now Tribunal) under sections 397 and 398 was not open to challenge by means of a writ. An appeal would lie against the decision on all questions of law but not on questions of fact. *Bhankerpur Simbhaoli Beverages P. Ltd. v. Stridwell Leathers P. Ltd.,* (1995) 82 Com Cases 836 (Mad).

It is, however, a well-known part of knowledge on the subject that a writ would lie for rectification of procedural errors.

A finding of fact by a statutory tribunal is not reviewable by the High Court under Article 226, except where the finding is on a preliminary question upon which the jurisdiction of the Tribunal depends, *State of M.P. v. Jadav (D.K.),* AIR 1968 SC 1186 or where that finding of the Tribunal is so perverse that no reasonable Tribunal could arrive at such finding, *Kartar Singh v. Union of India,* (1967) SC dt. 18-10-1967; or violative of natural justice, (*Supra*). On a question of law, the High Court may interfere if there is an error apparent on the face of the record, but not otherwise, *Chokalingam v. Manickavasagam,* AIR 1974 SC 104.

Provisions conferring jurisdiction on Tribunals to be strictly construed

Provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed—*Kasturi & Sons v. Salivateswaran,* AIR 1958 SC 507 pp. 510, 511; *Upper Doab Sugar Mills v. Shahdara (Delhi); Saharanpur Light Railway,* AIR 1963 SC 217. Hence, provisions in the Companies Act conferring jurisdiction on the Company Law Board (now Tribunal) have to be strictly construed.

Availability of Judicial review (ousting of civil court jurisdiction)

In reference to the question raised in *V. Balachandran v. Union of India,* (1993) 76 Com Cases 67 (Mad) as to whether the provisions of sections 10E and 10F were valid, the Madras High Court, upholding their validity, observed that so long as the help of the doctrine of judicial review is available to the person affected by the decisions of Tribunals and Boards, it cannot be said that the mechanism of the Tribunal and Board in lieu of the courts is in any way unconstitutional or invalid. The court found that, apart from s. 10F specially providing for appeal against the decisions of CLB, writ jurisdiction under Articles 32 and 226 of the Constitution was also available. The court **relied** on the observations in *S.P. Sampath Kumar v. Union of India,* AIR 1987 SC 386 and *Kalika Kuar v. State of Bihar,* (1990) 1 BLJR 51 (Pat). For limits and scope of the doctrine of judicial review see *Tata Cellular v. Union of India,* AIR 1996 SC 11.

Judicial review is not concerned with the correctness of the decision. It is confined to the examination of the decision-making process. The established principles of law and rules of natural justice and fairness must have been followed. The review court cannot substitute its judgment for that of the administrative authority. *Apparel Export Promotion Council v. A.K. Chopra,* (1999) 1 SCC 759 : AIR 1999 SC 625.

When exercising the power of judicial review, the courts have to see that the authority acts within the scope of its powers and, if discretion is conferred on the authority, it exercises the same in a reasonable manner keeping in view the object which the statute seeks to achieve. *CBDT v. Oberoi Hotels (India) (P) Ltd.,* (1998) 4 SCC 552 : AIR 1998 SC 1666.

Territorial Jurisdiction of High Court for appeal against CLB decisions

Note : The Companies (Second Amendment) Act, 2002 (11 of 2003) has abolished the system of appeals to the High Court. Appeals can now be filed directly to the Supreme Court from a decision of the Appellate Tribunal. But writ jurisdiction of the High Courts would remain open. The present notes are relevant for that purpose]

The High Court of Delhi took the view in its decision in *Bhankerpur Simbhaoli Beverages P. Ltd. v. Company Law Board,* (1994) 79 Com Cases 131 (Delhi) that an appeal against the decision of the Company Law Board would lie to the High Court within whose jurisdiction the decision of the Board was rendered and even if the registered office of the company was at Madras, if the decision of the Board was rendered by its Principal Bench at Delhi, an appeal could lie to the High Court at Delhi. But this decision was **reversed** by the Supreme Court. The matter before the Supreme Court was *Stridewell Leathers P. Ltd. v. Bhankerpur Simbhaoli Beverages P. Ltd.,* (1994) 79 Com Cases 139 : AIR 1994 SC 1. J.S. VERMA J. noted that the amendments of 1988 transferred the High Court jurisdiction in respect of certain matters to the Company Law Board and transformed the High Court into Court of Appeal from the decisions of the Company Law Board. The learned judge was of the opinion that the expression "the High Court" as used in s. 10F should be taken to mean "the court" as this expression is used in s. 10(1)(*a*). The absence of any indication in the amendment to suggest any change or substitution of the appellate forum is a pointer in the direction that the same continued unaltered and the expression "the High Court" instead of "the court" was used in s. 10F for the reason that the concerned High Court continued to be the forum of appeal notwithstanding transfer of the original jurisdiction from the concerned High Court to the Company Law Board. The forum of appeal indicated in section 10F is a definite forum determined by the provisions of the Act and not by the Regulations framed by the Company Law Board under section 10E(6) or the place of its sitting under the Regulations. The learned judge concluded by

saying that the expression "the High Court" in section 10F meant the High Court having jurisdiction in relation to the place at which the registered office of the company concerned was situate as indicated in section 2(11) read with section 10(1)(*a*) and not the High Court having jurisdiction in relation to the place where the concerned Bench of the Company Law Board sat.

Appeal before single judge.—The Calcutta High Court held that appeals from orders of the Company Law Board were to be heard by the Company Judge of the High Court sitting singly, and not by a Division Bench. This jurisdiction is different from appeals in winding up matters. *Tin Plates Dealers Association P. Ltd. v. Satish Chandra Sanwalka,* (2002) 108 Com Cases 295 (Cal).

Jurisdiction for review.—In *Bank of India v. Company Law Board,* (2001) 32 SCL 612 : (2000) CLC 2225 (Mad), it was held that a review petition against a scheme framed by CLB (Chennai) under s. 45QA, RBI Act, in respect of a company having registered office at Bangalore, could be entertained only by the Karnataka High Court and not the Madras High Court. The court **followed** *Stridewell Leathers P. Ltd. v. Bhankerpur Simbhaoli Beverages P. Ltd.,* (1994) 79 Com Cases 139 : (1993) 3 Comp LJ 405 : AIR 1994 SC 1 : (1993) 12 CLA 151 (SC).