

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS.8442-8443 Of 2016****M/S. SHANTI CONDUCTORS (P) LTD. & ANR. . . APPELLANT(S)****VERSUS****ASSAM STATE ELECTRICITY BOARD & ORS. . . RESPONDENT(S)****WITH****CIVIL APPEAL NO.8445 Of 2016****M/S. TRUSSES AND TOWERS (P) LTD. . . APPELLANT(S)****VERSUS****ASSAM STATE ELECTRICITY BOARD & Anr. . . RESPONDENT(S)****WITH****CIVIL APPEAL NO.8448 Of 2016****ASSAM STATE ELECTRICITY BOARD & Anr. . . APPELLANT(S)****VERSUS****M/S. TRUSSES AND TOWERS (P) LTD. . . RESPONDENT(S)**

WITH

CIVIL APPEAL NO.8450 Of 2016

M/S. BRAHMPUTRA CONCRETE PIPE INDUSTRIES ...APPELLANT(S)

VERSUS

ASSAM STATE ELECTRICITY BOARD

...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed questioning judgment of Gauhati High Court by which judgment Regular First Appeal filed by the Assam State Electricity Board has been allowed setting aside the judgment and decree passed by trial court in favour of appellants in original suit proceedings. It shall be sufficient to notice the pleadings in C.A. Nos. 8442-8443 of 2016 for deciding the common questions of law involved in all these appeals. The facts and pleadings in other appeals shall also be briefly noticed.

C.A.Nos.8442-8443 of 2016**(M/s. Shanti Conductors (P) Ltd. & Anr. vs. Assam State Electricity Board & Ors.)**

2. The appellant is a Private Limited Company which has been registered as a Small Scale Industrial Unit for manufacturing electrical conductors and/or wires at Kokrajhar, Assam. On 31.03.1992, the respondent-Assam State Electricity Board placed an order for supply of Aluminium Electrical Conductors from the appellants-M/s Shanti Conductors Pvt. Ltd. for a total consideration of Rs. 1.22 crores. The supplies were to be made between June and December, 1992. On 13.05.1992, another order was placed by the Electricity Board to M/s Shanti Conductors for the supply of various types of conductors for a total consideration of Rs. 32.49 lacs. The supplies of the aforesaid goods were to be made between January and February, 1993. On 23.09.1992, the President of India promulgated an ordinance, namely, the Interest on Delayed Payment to Small Scale Ancillary Industrial Undertakings Ordinance, 1992. Subsequently, on 02.04.1993, the Interest on Delayed Payment to Small Scale and Ancillary Industrial

Undertakings Act, 1993 (in short the "Act") was enacted and it was deemed to have come into force with effect from 23.09.1992. Meanwhile, the supply of equipments under the aforesaid purchase orders was completed by M/s Shanti Conductors on 04.10.1993. On 05.03.1994, the entire payment of Rs. 2.15 crores against the aforesaid supply orders was received by M/s Shanti Conductors.

3. On 10.01.1997, M/s. Shanti Conductors filed a suit for recovery of Rs.53.68 lakhs claiming interest on delayed payments. The Assam Electricity Board (hereinafter referred to as the "Board") filed its written statement raising the plea of limitation and contending that the Act is not applicable to the case of the appellant as the contract was concluded prior to enactment of Act, 1993. The trial court decreed the suit on 02.02.2000 for recovery of the amount of Rs.51,60,507.42 with compound interest at the rate of 23.75% p.a. The Board filed the Regular First Appeal No.66 of 2000 before the High Court of Gauhati. The Division Bench of the High court while hearing the RFA being of the view that certain important issues arise

for consideration, referred the matter to the Full Bench. The Full Bench framed following questions of law:

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

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

iii) Whether the suit for recovery of interest under the Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 would not be maintainable if no reservation is made by the supplier retaining to it the right to recovery interest under the Act when the payment(s) of the principal sum is/are accepted, though these may be made beyond the prescribed period?"

4. The Full Bench of the High Court vide its judgment dated 05.03.2002 answered the reference holding that a suit for interest could be filed. It further held that Act, 1993 is also applicable to contracts entered into

prior to 23.09.1992. It held that interest under the Act would be calculated from 23.09.1992 till the payment is made to the supplier. The Board filed an appeal against the judgment of the Full Bench dated 05.03.2002 in this Court being C.A. NO.2351 of 2003 (Assam State Electricity Board and others vs. Shanti Conductors Private Limited and another). The appeal filed by the Board was heard along with another C.A.No.2348 of 2003(Purbanchal Cables and Conductors Private Limited vs. Assam State Electricity Board and another). A two-Judge Bench of this Court decided both the appeals vide common judgment dated 10.07.2012 which judgment is reported in **(2012) 7 SCC 462 (Purbanchal Cables and Conductors Private Limited vs. Assam State Electricity Board and another)**. The two-Judge Bench relying on earlier judgments of this Court held that suit for recovery of interest alone under the Act, 1993 is maintainable. It further held that the Act, 1993 has no retrospective application. It further held that the supplier has an accrued right to claim a higher rate of interest in terms of the Act only with regard to sale

agreements entered after the date of the commencement of the Act i.e. 23.09.1992. After judgment of this Court dated 10.07.2012 RFA No.66 of 2000 was decided by the Division Bench vide its judgment dated 20.11.2012. The Division Bench of the Gauhati High Court by the impugned judgment has allowed the appeal of the Board. The Division Bench following judgment of this Court in **Purbanchal Cables and Conductors Private Limited** held that Act, 1993 would not apply to a contract entered prior to the enforcement of the Act, 1993. The contract between the parties being prior to the enforcement of the Act, the appeal filed by the Board was thus allowed setting aside the judgment and decree of the trial court. A subsequent order dated 20.12.2012 was also passed by the Division Bench directing the refund of amount of Rs.38,03,381/-. Aggrieved by both the judgments dated 20.11.2012 and 20.12.2012 passed by the Division Bench of the Gauhati High Court, Civil Appeal Nos.8442-8443 of 2016 have been filed by the appellants.

C.A.No.8445 of 2016 (M/s. Trusses and Towers (P) Ltd. V Assam State Electricity Board and Anr.)

5. The Board placed two orders dated 17.02.1992 and 17.03.1992 with the appellant for supply of pre-stressed cement concrete poles. Written contract dated 10.06.1992 was entered between the parties. Poles were supplied by the appellant to the Board during the period 30.03.1992 to 30.09.1992. Payments were also made between 23.04.1993 to 08.10.1993. The appellant filed suit on 16.05.1994 against the Board seeking decree of Rs.16,55,623/- with interest towards the amount of delayed payment as per Act, 1993. The trial court vide its judgment dated 15.06.1995 decreed the suit. The Board filed Regular First Appeal against the judgment of the trial court. On 05.04.2001, the High Court allowed the Regular First Appeal filed by the Board. The High Court held that all the bills raised by the appellant were cleared by the Board prior to commencement of Act, 1993. Further, the appellant having received the principal amount could not sue for interest. There was nothing on record to indicate that

the appellant has received the amount in question under protest. The appellant filed SLP(C)No.12217/2001 against the judgment of the High court dated 05.04.2001. By following order the SLP was permitted to be withdrawn by this Court:

“Learned counsel for the petitioner seeks leave to withdraw the special leave petition. He states that he will move the High Court in review stating that it has erred in recording that "all the bills were paid and cleared earlier to the commencement of the Act." The special leave petition is dismissed as withdrawn accordingly.”

6. The appellant filed Review Application No.75 of 2001. The High Court vide its order dated 19.03.2013 partly allowed the review petition to the extent that the appellant was held to be entitled to interest at the rate of 9% per annum for the period of delayed payment.

The appellant aggrieved by the said judgment has filed C.A.No.8445 of 2016.

C.A.No.8448 of 2016(Assam State Electricity Board and Anr. vs.Trusses and Towers (P) Ltd.)

7. The above appeal has been filed by the Board against the order in Review Petition No.75 of 2001 filed by M/s. Trusses & Towers (P) Ltd. by which order the High Court has partly allowed the review petition to the extent that the appellant was held to be entitled to interest at the rate of 9% p.a. as noted above. The Board aggrieved by the grant of interest of 9% p.a. has come up in this appeal.

C.A.No.8450 of 2016(M/s. Brahmaputra Concrete Pipe Industries vs. Assam State Electricity Board)

8. The Board placed two supply orders dated 17.02.1992 & 17.03.1992 for pre-stressed cement concrete poles to the appellant. The payment to the tune of Rs.23,04,585.90 was withheld by the Board, principal amount, however, was started making payment with effect from 23.04.1993 and the whole sum was paid upto 18.12.1993. The appellant filed Money Suit No.32/1996 for recovery of sum of Rs.10,03,466.23 with interest. The Civil Judge has decreed the Suit No.32/1996 by

order dated 30.09.2002 for an amount of Rs.5,46,233.14 with interest and costs. Board filed RFA No.78 of 2003 against the judgment of the trial court. The High Court vide judgment dated 12.02.2005 allowed the appeal filed by the Board and dismissed the suit filed by the appellant. The High Court relied on the judgment of the **Purbanchal Cables and Conductors (P) Ltd.** held that there is no applicability of Act, 1993 with regard to transaction which took place prior to 23.09.1992. Against the judgment dated 12.02.1015. appeal NO.8448/2016 has been filed.

9. We have heard Shri Ajit Kumar Sinha, Shri Basava Prabhu S. Patil and Shri Navaniti Prasad Singh, learned senior counsel appearing for the appellants. Shri Vijay Hansaris, learned senior counsel has appeared for Assam State Electricity Board.

10. All these appeals were heard by a two-Judge Bench of this Court consisting of Justice V. Gopala Gowda and Justice Arun Mishra. Both Hon'ble Judges of the Bench delivered separate opinion dated 31.08.2016. In

paragraph 28 of the judgment following questions of law have been noticed:

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

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

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

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

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

vi) What order?”

11. Dealing with Sections 3, 4, 5 of Act,1993 following opinion was expressed by Justice Gowda:

“44.The Act was enacted in order to provide a boost to the small scale and ancillary industries, which were suffering as a result of irregular and delayed payments. A perusal of the statement of objects and reasons of the Act, the relevant portion of which has been extracted supra, makes it clear that the small scale industries were suffering as a result of

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

45. At the cost of repetition, Section 4 of the Act is extracted hereunder:

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

(emphasis supplied)

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

46.Further, even on the issue of retrospectivity, what was required to be examined by this Court in the aforesaid cases was whether by reading the relevant statutory provisions Sections 3, 4, 5 and 6 of the Act, a vested statutory right is conferred. As I have already held that aforesaid provisions of the Act are retroactive in nature therefore, non-consideration of this aspect in Purbanchal Cables & Conductors Pvt. Ltd. (supra) and cases mentioned therein, renders the said

judgment sub silentio on this question. The contention advanced by Mr. Vijay Hansaria, learned senior counsel appearing on behalf of the Electricity Board in this regard cannot be accepted."

12. It was further observed that this Court in **Purbanchal Cables and Conductors (P) Ltd.** did not consider the important aspect of the matter as to whether provisions of the Act are retroactive or not. Issue No.1 and 2 were answered in favour of the appellant. Other issues were also answered in favour of the appellant. In paragraphs 56 and 57, the appeals were allowed by Justice Gowda in the following manner:

"56. For the reasons stated supra, I answer the points framed in these appeals in favour of the appellants as stated above. The appeals are accordingly allowed. All pending applications are disposed of.

57. In the Civil Appeals arising out of SLP (C) Nos. 9924-9925 of 2013, vide order dated 17.02.2015, the appellants M/s Shanti Conductors were directed to pay an amount of Rs.38,70,000/- back to the respondents. The respondents shall refund the amount to the appellants with 9% interest per annum within six weeks from the date of receipt of the copy of this Order."

13. Another Hon'ble Judge, Justice Arun Mishra who

delivered separate opinion disagreed with the opinion of Justice Gowda. While disagreeing with the opinion of Justice Gowda following was held in paragraphs 77, 78, 79 and 80:

"77. In view of the aforesaid catena of decisions of this Court, it has to be held that the Act of 1993 cannot be said to be retrospective in operation or having retroactive operation. The question stands answered affirmatively beyond pale of doubt and the decisions are binding on a Co-ordinate Bench. It cannot be said that the decisions are sub silentio or per incuriam in any manner whatsoever and, in my opinion, it is not open to the Co-ordinate Bench to take a different opinion. There is no confusion with respect to meaning of transaction, supply order and agreement. This Court while deciding aforesaid cases was not in oblivion of aims and objects of beneficial legislation, considered same and it has Page 104 104 affirmatively pronounced on all the aspects. Hence, I find no scope to dwell further into the same arena to declare the various judgments to be sub silentio, per incuriam or not laying down the law correctly.

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

79. In the case of appellant M/s. Shanti Conductors (P) Ltd. itself decided along with Purbanchal Cables (supra) aforesaid findings have been recorded by this Court while remanding the case to the High Court for decision on merits as an appeal arising of same lis was pending before the High Court and the High Court has rightly followed the decisions in Purbanchal Cables & Conductors (supra) decided along with M/s. Shanti Conductors (P) Ltd. The finding recorded by this Court in the remand order is final and binding on the appellant- M/s. Shanti Conductors (P) Ltd. They cannot question the same again in the instant appeals. Page 105
105

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

14. In view of the divergent opinion expressed by learned Judges constituting the Bench the matter has been placed before this three-Judge Bench.

15. Shri Ajit Kumar Sinha, learned senior counsel for the appellant in his submission referred to and relied on the opinion of Hon'ble Judge allowing the appeal. He submits that the Act, 1993 was enacted as beneficial legislation to protect the small scale industries. The Act, 1993 focused on supplies and the date of the

agreement for supply has no relevance. The Act applies and protect the suppliers in the event supplies have been effected subsequent to Act, 1993. Learned counsel submits that even if the orders for supply were issued prior to 23.09.1992 some of the supplies have been made after the Act. The provisions of the Act are applicable and the appellant was clearly entitled for interest on delayed payment. He submits that the contrary view expressed by this Court in **Purbanchal Cables and Conductors Private Limited** judgment does not correctly interpret the provisions of the Act, 1993. He submits that what is relevant is amount due to the suppliers and in event the amount due to supplier is subsequent to Act, 1993 the liability to pay interest on delayed payment accrues and is fastened on the buyer.

16. The Act was brought by an Ordinance. The Act applies on amount due not for any previous period prior to Act, 1993 but subsequent to enforcement of the Act, 1993. The Act, 1993 has prospective application and it is not the case of the appellant that Act has any retrospective operation.

Shri Patil adopting the arguments of Shri Sinha, further submits that withdrawal of SLP (C)No.12217 of 2001 by the appellant shall not preclude the appellant from challenging the subsequent order dated 19.03.2013 passed by the Gauhati High Court which has given a fresh cause of action.

17. Shri Navaniti Prasad Singh submits that Act, 1993 was enacted for prompt payments of money by buyers and to statutorily ensure by mandatory provisions for payment of interest on the outstanding money, in case of default. He submits that payment of interest even on commercial transactions was a concept already contained in several statutory provisions. By the Act, 1993 nothing new was done except payment of interest on delayed payment was ensured to deter the buyer from withholding amount of suppliers.

18. Shri Vijay Hansaria, learned senior counsel for Board submits that two-Judge Bench of this Court in **Purbanchal Cables and Conductors (P) Ltd.** has correctly interpreted provisions of Act, 1993. The Act has no

application when contract to supply was entered prior to enforcement of the Act, 1993. He submits that suit filed by Shanti Conductors was barred by time. According to the case of the appellant the amount became due on 04.10.1993, the limitation will start running from 04.11.1993 and suit having not been filed within three years suit was barred by limitation. He submits that benefit of the Act, 1993 cannot be allowed to the appellant. He further submits that the appellant was bound by the judgment of this Court in **Purbanchal Cables and Conductors (P) Ltd.** since by the said judgment dated 10.07.2012 the appeal filed by the Board in which Shanti Conductors was also respondent has been decided. The appellants are bound by the judgment dated 10.07.2012 and what has been held in the said judgment cannot be questioned by the appellant the judgment being binding inter-parties.

19. He further submits that admittedly the entire principal amount stood paid to the appellant by 04.10.1993 hence suit for only interest was not maintainable.

20. Shri Hansaria submits that judgments of this Court in **Assam Small Scale Industries Development Corp. Ltd. and others vs. J.D. Pharmaceuticals and another, (2005) 13 SCC 19, Shakti Tubes Ltd. vs. State of Bihar and others, (2009) 7 SCC 673, Modern Industries vs. Steel Authority of India Limited, (2010) 5 SCC 44**, as well as judgment of this Court in **Purbanchal Cables and Conductors Private Limited (supra)** having held that Act has no applicability with regard to contracts entered into prior to enforcement of Act, the said law which is a settled law for a quite long time need not be unsettled by this Court. In view of the judgment of this Court in **Purbanchal Cables**, the appeal of the appellant has rightly been dismissed by the Gauhati High Court.

21. Replying the submission of Shri Patil, Shri Hansaria submits that when the SLP by this Court was dismissed on 06.08.2001 against the judgment of the High Court dated 05.04.2001 allowing the appeal of the Board, this Court having not granted further liberty it

is not open for the appellant to file the appeal against the impugned judgment deciding review petition.

22. Shri Hansaria further submits that the Board has also filed appeal against the order of the High Court deciding the review petition wherein the High Court has granted 9% interest. Shri Hansaria lastly submitted that the interest if any can be claimed by the appellant only till the date they receive the final payment.

23. In the rejoinder, Shri A.K. Sinha has refuted the submissions of Shri Hansaria. He submits that the judgment of this Court in **Purbanchal Cables** cannot operate as res judicata, since appeal which was decided on 10.07.2012 was only against the reference of the Full Bench. The Full Bench having only answered the legal questions, the appeal in the High Court being still pending and there being no decision in appeal the principle of merger shall not be attracted. Shri Sinha, however, submits that the suit was not barred by limitation. The last payment made to the appellant

being on 05.03.1994, the suit filed by the appellant on 10.01.1997 was well within limitation.

24. Shri Patil in rejoinder submits that the order passed in the review petition being an order partly allowing the review petition the appeal filed by the appellant is on separate cause of action and the earlier order passed by this Court on 06.08.2001 shall not come in the way of deciding the appeal on merits.

25. Learned counsel for the parties have relied on various judgments of this Court which shall be referred to while considering the submissions of the parties.

26. We have considered the submissions of the learned counsel for the parties and have perused the divergent opinion dated 31.08.2016 given by two Hon'ble Judges of this Court in C.A.Nos.8442-8443 of 2016.

27. From the submissions of the learned counsel for the parties and pleadings on record we need to answer the following questions in these appeals:

(1) Whether Act, 1993 is not applicable when the

contract for supply was entered between the parties prior to enforcement of the Act i.e. 23.09.1992 ?

- (2) Whether in the event it is found that Act is applicable also with regard to contract entered prior to Act, 1993 in pursuance of which contract, supplies were made after the enforcement of Act, 1993, the Act, 1993 can be said to have retrospective operation ?
- (3) Whether money suit by M/s. Shanti Conductors was barred by limitation ?
- (4) Whether judgment of this Court in Purbanchal Cables dated 31.08.2016 by which appeal of M/s. Shanti Conductors was also dismissed is binding between the parties i.e. M/s. Shanti Conductors and Assam Electricity Board and the appellant cannot be allowed to question the said judgment in these appeals ?
- (5) Whether the suit filed by the appellants for recovery of only interest when admittedly entire principal amount was paid prior to filing of the suit can be said to be maintainable ?
- (6) Whether appeal filed by M/s Trusses and

Towers Pvt. Ltd. challenging the review judgment dated 19.03.2003 cannot be entertained since no liberty was granted by this Court in SLP(C)No.12217 of 2001 when the SLP filed against the main judgment of the High court dated 05.04.2001 was dismissed as withdrawn ?

- (7) Whether the High court while considering the Review petition no.75 of 2001 M/s Trusses & Towers Pvt. Ltd. even after expressing that Act, 1993 is not applicable could have allowed 9% interest to the plaintiff?

28. Before we consider the issues which have arisen in these appeals it is necessary to notice the provisions of the Act, 1993. In the Parliament, the Government of India made a policy statement on small scale industries. It was also announced that suitable legislation would be brought to ensure prompt payment of money by buyers to the small industrial units. An Ordinance, namely, the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Ordinance, 1992 was promulgated by the President on

23.09.1993. To replace the Ordinance, The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 was introduced in the Parliament. The Statement of Objects and Reasons of the Act throws considerable light on the prevalent situation and the remedial measures which was sought **in the legislation.** In the Statement of Objects and reasons following was observed:

"2. Inadequate working capital in a small scale or an ancillary industrial undertakings causes serious and endemic problems affecting the health of such undertaking. Industries in this sector have also been demanding that adequate measures be taken in this regard. The Small Scale Industries Board, which is an apex advisory body on policies relating to small scale industrial units with representatives from all the States, governmental bodies and the industrial sector, also expressed this view. It was, therefore, felt that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payments of interest on the outstanding money, in case of default, should be made. The buyers, if required under law to pay interest, would refrain from withholding payments to small scale and ancillary industrial undertakings."

29. Act, 1993 is a special legislation. Section 2 of the Act provides definitions, its clause (b) defined

the "appointed day" in the following manner:

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

30. Sections 3 to 6 of the Act, 1993 are as follows:

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

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

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

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

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

Section 6. Recovery of amount due.-

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

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

31. Section 3 creates a statutory liability of buyer to make payment. The statutory liability is to the effect that where any supplier supplies any goods to any buyer, the buyer shall make payment, therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. The statutory liability has been fastened on the buyer to make payment in the following manner:

- (i) on or before the date agreed upon between him and on the supplier in writing, or
- (ii) where there is no agreement in this behalf before the appointed day.

32. 'Appointed day' as defined in Section 2(b) means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Thus, statutory liability to make payment accrues to buyer as per Section 3, it is relevant to notice the event contemplated under

Section 3 is "where any supplier supplies any goods or renders any services to any buyer". **The incidence of liability is supply of goods or rendering any service.** The Act is clearly prospective in nature and shall govern the incidence of supply and rendering service which happens after enforcement of the Act i.e. 23.09.1992.

33. The second part of Section 3 is "buyer shall make payment". Obviously, question of payment shall arise only after supply of goods or rendering any service. Thus, by virtue of Section 3, both the incidents i.e. supply or service on the one hand and payment on the other has to be after the enforcement of Act, 1993. Statutory provision of Section 3 further creates statutory liability to make payment on the agreed day in writing between the buyers and the supplier and if there is no agreement then before appointed day. The fact that agreement in writing between buyer and supplier for supply and payment is prior to the enforcement of the Act is neither relevant nor material, what is material is that supply and services

had to be after the enforcement of the Act, only then the liability of payment shall accrue.

34. We have already noticed that the purpose and object of legislation was prompt payments of money by buyer which has been statutorily ensured in Act, 1993 by containing mandatory provisions of payment of interest.

35. Section 4 which deals with date from which and rate at which interest is payable. The liability to make payment of the amount to the supplier only arises when any buyer fails to make payment as required under Section 3.

36. Section 4 further provides "notwithstanding anything contained in any agreement between the buyer and the supplier or any law for the time being in force", thus, even if the agreement between the buyer and the supplier contains clause that no interest on late payment shall be made the liability to pay interest is fastened by virtue of Section 4 disregarding any contract to the contrary. Whether the contract between buyer and supplier is prior to

enforcement of Act, 1993 is also neither relevant nor material and the material is that buyer fails to make payment to supplier as required under Section 3. The liability to pay interest thus arises when the payment is not made as per Section 3.

37. The liability to make payment under Section 3 and the liability to pay interest under Section 4 is not dependent on date of agreement between the parties to make supply. When the question of supply and payment are incidents contemplated under the Act which have to take place after the enforcement of the Act the day of agreement between the parties has no relevance in so far as statutory liability under the Act is concerned.

38. There are several two-Judge Benches judgments of this Court where provisions of Act, 1993 especially Sections 3 and 4 have been interpreted. We now refer to judgments of this Court which have considered the above provisions. The first judgment which has been noticed is **Assam Small Scale Industries Development Corp. Ltd. and others vs. J.D. Pharmaceuticals and**

another, (2005) 13 SCC 19. This Court in the above judgment laid down that Act, 1993 will not apply to transactions which took place prior to enforcement of the Act. Following was laid down in paragraphs 37 and 38:

"37. We have held hereinbefore that Clause 8 of the terms and conditions relate to the payments of balance 10%. It is not in dispute that the plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect with effect from 23.9.1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, sl. Nos.1 to 26 (referred to in penultimate para of the Trial Court Judgment), that is supply orders between 5.6.1991 to 28.7.1992, were prior to the date of 1993 Act coming into force. Only the transactions at sl. no. 27 to 71 (that is supply orders between 22.10.1992 to 19.6.1993). will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June, 1991 and 23.9.1992. The Trial Court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate

of 23% upto June, 1991 and 23.5% thereafter."

39. The word 'transaction' used in the above judgment has to include the supply, in the event word transaction is understood as supply there cannot be any quarrel with the proposition that Act will not apply with regard to supply made prior to the Act.

40. The next judgment of this Court is **Shakti Tubes Ltd. vs. State of Bihar and others, (2009) 7 SCC 673.**

In the said case, Shakti Tubes had filed a suit for payment of interest. In the above case, supply orders were placed by the State of Bihar on 16.07.1992, reliance on Act, 1993 was placed by the appellant. It was also noticed in the said case that earlier supply order dated 16.07.1992 was materially altered and substituted by a fresh supply order issued on 18.03.1993. Referring to the judgment of this Court in **Assam Small Scale Industries case**, two-Judge Bench held that ratio of aforesaid decision is clearly applicable. In paragraphs 17, 18 and 19 following was laid down:

"17. In the light of the said facts in Assam Small Scale Industries case, it was recorded in paragraph 37 of the judgment that while the Act came into effect from 23rd September, 1992, the supply orders were placed only in respect of Serial Nos. 1 to 26 immediately and before coming into effect of the Act and rest of the supply orders namely, supply orders at Serial Nos. 27 to 71 were placed between 22.10.1992 to 19.06.1993 which were subsequent to the date when the Act came into force. In that context, it was clearly recorded in the judgment that the Act will have no application to the transactions that took place prior to the commencement of the Act. In the next sentence the Court made it clear as to what is referred to and understood by the expression "transaction" when it clearly stated that out of 71 transactions, Serial Nos. 1 to 26, i.e. supply orders between 05.06.1991 to 28.07.1992 being prior to 23rd September, 1992 when the Act came into force, higher interest as envisaged under Sections 4 and 5 of the Act cannot be paid and demanded in respect of the said supply orders/transactions. It was also made clear that the transactions at Serial Nos. 27 to 71 only i.e. supply orders between 22.10.1992 to 19.06.1993, would attract the provisions of the Act. therefore, those supply orders which were issued by the Corporation between 22.10.1992 to 19.06.1993 were held to be the transactions which would be entitled to get the benefit of the provisions of the Act.

18. In our considered opinion, the ratio of the aforesaid decision in Assam Small Scale Industries case is clearly applicable and would squarely govern the facts of the

present case as well. The said decision was rendered by this Court after appreciating the entire facts as also all the relevant laws on the issue and, therefore, we do not find any reason to take a different view than what was taken by this Court in the aforesaid judgment. Thus, we respectfully agree with the aforesaid decision of this Court which is found to be rightly arrived at after appreciating all the facts and circumstances of the case.

19. Now coming to the facts of the present case we find that there is no dispute with regard to the fact that the supply order was placed with the respondents on 16.07.1992 for supply of the pipes which date is admittedly prior to the date on which this Act came into effect. "

41. The Bench further referring to earlier judgment of this Court in **Assam Small Scale Industries** observed that the use of expression 'transaction' was only for supply order. In paragraph 21 following was laid down:

"21. We have considered the aforesaid rival submissions. This Court in Assam Small Scale Industries case has finally set at rest the issue raised by stating that as to what is to be considered relevant is the date of supply order placed by the respondents and when this Court used the expression "transaction" it only meant a supply order. The Court made it explicitly clear in paragraph 37 of the judgment which we had already extracted above. In our

considered opinion there is no ambiguity in the aforesaid judgment passed by this Court. The intent and the purpose of the Act, as made in paragraph 37 of the judgment, are quite clear and apparent. When this Court said "transaction" it meant initiation of the transaction i.e. placing of the supply orders and not the completion of the transactions which would be completed only when the payment is made. therefore, the submission made by the learned senior counsel appearing for the appellant-plaintiff fails ."

42. The Court further held that there was neither any alteration of the contract nor novation of the contract in paragraph 31 which is to the following effect:

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

43. Next judgment we notice is **Modern Industries vs. Steel Authority of India Limited, (2010) 5 SCC 44.** Noticing the purpose and object of the Act, 1993

following was observed in paragraph 23:

"23. The wholesome purpose and object behind 1993 Act as amended in 1998 is to ensure that buyer promptly pays the amount due towards the goods supplied or the services rendered by the supplier. It also provides for payment of interest statutorily on the outstanding money in case of default. Section 3, accordingly, fastens liability upon the buyer to make payment for goods supplied or services rendered to the buyer on or before the date agreed upon in writing or before the appointed day and when there is no date agreed upon in writing, the appointed day shall not exceed 120 days from the day of acceptance. "

44. The Court had also considered one of the submissions that the suit for recovery of mere interest under Act, 1993 is not maintainable. The Bench answered the issue by holding that the suit even for interest is also maintainable. Following was laid down in paragraphs 45-46:

"45. It is true that word 'together' ordinarily means conjointly or simultaneously but this ordinary meaning put upon the said word may not be apt in the context of Section 6. Can it be said that the action contemplated in Section 6 by way of suit or any other legal proceeding under Sub-section (1) or by making reference to IFC under Sub-section (2) is maintainable only if it is for

recovery of principal sum along with interest as per Sections 4 and 5 and not for interest alone? The answer has to be in negative.

46. We approve the view of Gauhati High Court in Assam State Electricity Board (2002) 2 GLR 550 that word 'together' in Section 6(1) would mean 'alongwith' or 'as well as'. Seen thus, the action under Section 6(2) could be maintained for recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered. In our opinion, under Section 6(2) action by way of reference to IFC cannot be restricted to a claim for recovery of interest due under Sections 4 and 5 only in cases of an existing determined, settled or admitted liability. IFC has competence to determine the amount due for goods supplied or services rendered in cases where the liability is disputed by the buyer. Construction put upon Section 6(2) by learned senior counsel for the buyer does not deserve to be accepted as it will not be in conformity with the intention, object and purpose of 1993 Act. Preamble to 1993 Act, upon which strong reliance has been placed by learned senior counsel, does not persuade us to hold otherwise. It is so because Preamble may not exactly correspond with the enactment; the enactment may go beyond Preamble.

45. In the above case also the contract was entered on 15.01.1993 but the contract was subsequently altered.

Last alteration being on 29.04.1995 hence the Bench repelled the submission that Act, 1993 was not applicable.

46. Now we come to the judgment of this Court in **Purbanchal Cables and Conductors Private Limited (supra)** which is a judgment on which reliance has been placed by the High Court while allowing the appeal of the Board. Learned counsel for the Board has also placed heavy reliance on the said judgment.

47. In the above case, Board placed order dated 31.03.1992 for delivery of goods on 16.09.1992. Further, supplies were made between 25.9.1992 and 30.03.1993. Entire supply was completed on 12.10.1993 entire payment was received by October, 1993. The supplier instituted money suit for payment of interest on delayed payment under Act, 1993. The issues to be answered have been noted in paragraph 10 of the judgment which is to the following effect:

"10.The issues that are required to be answered by us in these appeals are whether a suit for interest along is maintainable under the provisions of the Act, and whether the Act would be applicable to contracts

that have been concluded prior to the commencement of the Act. In other words, we are required to examine whether the Act would apply to those contracts which were entered into prior to the commencement of the Act but supplies were effected after the Act came into force."

48. On the question of maintainability of the suit for interest, the Bench held that the supplier may file suit only for a higher rate of interest on delayed payment made by the buyer from the commencement of the Act. The Bench held that Act, 1993 being a substantive law it shall operate prospectively. In paragraph 51 following has been laid down:

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

49. The Court further held that Act, 1993 shall be applicable only for sale agreements after the date of

the commencement of the Act and not any time prior.

Following was laid down in paragraph 52:

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

50. The Bench also expressly rejected the submission of the learned counsel appearing for the supplier that the earlier judgments of this Court in **Assam Small Scale Industries and Shakti Tubes** need consideration. On question of limitation of the suit no final opinion was expressed. The appeals were ultimately dismissed by the Bench.

Issue NO.1

51. The judgment of this Court in **Purbanchal Cables and Conductors Pvt. Ltd** relying on **Assam Small Scale Industries and Shakti Tubes** had laid down that Act,

1993 cannot be made applicable with regard to sale agreements which were entered into prior to the enforcement of the Act and Act can be invoked only for the sale agreements which were entered after the enforcement of the Act. Although attempt was made in **Purbanchal Cables** to get judgment in **Assam Small Scale Industries and Shakti Tubes** reconsidered but co-ordinate Bench in **Purbanchal Cables** has refused to permit any such reconsideration. The matter now having been referred to this three-Judge Bench we have to consider and answer as to whether the above interpretation of Act, 1993 as given is in consonance with the statutory scheme.

52. We have noticed above that the **incidence of applicability** of the liability under the Act is **supply of goods or rendering of service**. In event the supply of goods and rendering of services is subsequent to Act, can liability to pay interest on delayed payment be denied on the ground that agreement in pursuance of which supplies were made were entered prior to enforcement of the Act? Entering into an agreement

being not expressly or impliedly referred to in the statutory scheme as an incident for fastening of the liability, making the date of agreement as date for imposition of liability does not conform to the statutory scheme. This can be illustrated by taking an example. There are two small scale industries who received orders for supply of materials. 'A' received such orders prior to the enforcement of the Act and 'B' received the order after the enforcement of the Act. Both supplied the goods subsequent to enforcement of the Act and became entitled to receive payment after the supply, on or before the day agreed upon between the supplier and buyer or before the appointed day. Payments were not made both to A and B as required by Section 3. Can the buyer who has received supplies from supplier A escape from his statutory liability to make payment of interest under Section 3 read with Section 4 ? The answer has to be **No**. Two suppliers who supply goods after the enforcement of the Act, become entitled to receive payment after the enforcement of the Act one supplier cannot be denied the benefit of the statutory

protection on the pretext that agreement in his case was entered prior to enforcement of the Act. When the date of agreement is not referred as material or incidence for fastening the liability, by no judicial interpretation the said date can be treated as a date for fastening of the liability. The Act, 1993 being beneficial legislation enacted to protect small scale industries and statutorily ensure by mandatory provision for payment of interest on the outstanding money, accepting the interpretation as put by learned counsel for the Board that the day of agreement has to be subsequent to the enforcement of the Act, the entire beneficial protection of the Act shall be defeated. The existence of statutory liability depends on the statutory factors as enumerated in Section 3 and Section 4 of the Act, 1993. Factor for liability to make payment under Section 3 being the supplier supplies any goods or renders services to the buyer, the liability of buyer cannot be denied on the ground that agreement entered between the parties for supply was prior to Act, 1993. To hold that liability of

buyer for payment shall arise only when agreement for supply was entered subsequent to enforcement of the Act, it shall be adding words to Section 3 which is not permissible under principles of statutory construction. We, thus, are of the view that judgments in **Purbanchal Cables and Conductors (supra)**, **Assam Small Scale Industries and Shakti Tubes** which held that Act, 1993 shall be applicable only when the agreement to sale/contract was entered prior/subsequent to the enforcement of the Act, does not lay down the correct law. We accept the submission of learned counsel for the appellants that even if agreement of sale is entered prior to enforcement of the Act, liability to make payment under Section 3 and liability to make payment of interest under Section 4 shall arise if supplies are made subsequent to the enforcement of the Act.

Issue No.2

53. In all the judgments of this Court referred above, it has been held that Act, 1993 is not retrospective. It is not even contended before us by any of the

parties that the Act, 1993 is retrospective in operation. Judgments of this Court as noticed above rightly hold that Act, 1993 is not retrospective.

54. The opinion of Justice Gowda dated 31.08.2016 although holds that Act is not retrospective but he holds the Act retroactive. The word retroactive has been defined in Black's Law Dictionary in the following words:

"Retroactive.adj.(17C) (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. -Also termed retrospective. Cf. Prospective (1).-retroact,vb."

55. Two-Judge Bench of this Court in **State Bank's Staff Union (Madras Circle) vs. Union of India and ors., (2005) 7 SCC 584**, had occasion to examine the concept of retroactive and retrospective. In paragraphs 20 and 21 of the judgment following has been laid down:

"20. Judicial Dictionary (13th Edn.) K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used, with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting

procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transaction or considerations already past.

21. In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "retroactive" and "retrospective" have been defined as follows at page 4124 Vol.4)

"Retroactive- Acting backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. - Also termed retrospective. (Black, 7th Edn. 1999)

'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity', consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity', occurs when a new rule of law is applied to an act or transaction in the process of completion.... The foundation of these concepts is the distinction between completed and pending transactions...."

(T.C. Hartley, The Foundations of European

Community Law 129 (1981).

* * *

Retrospective- Looking back; contemplating what is past.

Having operation from a past time.

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general however the Courts regards as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects even if for the future only the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time and antecedents to its passing. (Vol.44 Halsbury's Laws of England, Fourth Edition, page 570 para 921) "

56. Further in **Jay Mahakali Rolling Mills vs. Union of India and others, 2007 (12) SCC 198**, explaining the retroactive and retrospective following has been laid down:

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts

occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

57. Retroactivity in the context of the statute consists application of new rule of law to an Act or transaction which has been completed before the Rule was promulgated.

58. In the present case the liability of buyer to make payment and day from which payment and interest become payable under Section 3 and 4 does not relate on any event which took place prior to Act, 1993, it is not even necessary for us to say that Act, 1993 is retroactive in operation. The Act, 1993 is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31.08.2016 of one of the Hon'ble Judges holding that the Act, 1993 as retroactive.

Issue No.3

Whether money suit no.21 of 1997 filed by appellant is

barred by time is one of the issues which has been raised before us.

59. From the pleadings on the record it transpires that two supply orders dated 31.03.1992 and 13.05.1992 was issued to the appellant for supply of conductors. In the Plaint, the appellant had given the details of date of supply orders and date when supply was made on different stores. The supplies made by the appellant were both before enforcement of the Act i.e. 23.09.1992 and after the enforcement of the Act.

60. In view of the discussions as made above only the supplies received after 23.09.1992 are relevant for purposes of 1993 Act. As per pleadings on the record entire supplies by the appellant was completed on 04.10.1993. Details of the payment has also been given in the plaint which indicate that last payment dated 05.03.1994 was received. Paragraph 24 of the plaint gives the details of cause of action for the suit which states that cause of action for the suit arose on 31.03.1992 and thereafter on different date last date being mentioned in paragraph 24 was 05.10.1993 and each

date subsequent thereafter. With regard to limitation there is specific pleading in paragraph 21 of the plaint which is to the following effect: -

"21. That the transaction between the plaintiffs and the defendants are duly maintained by the plaintiffs in the Books of Accounts like ledger, Sale Register etc. which are kept in the usual course of the business of the plaintiffs and those accounts between the plaintiffs and the defendants are in continuity and the interest payable by the defendants to the plaintiffs are carried over till date. As such the suit of the plaintiff's is in within time. Apart from that the provisions of the Limitation Act does not apply in view of the provisions contained in the Act, 1993 as because the Act of 1993 is having overriding effect over the Limitation Act and all other Acts."

61. Written statement was filed by the defendants in which written statement in paragraph 4 of the statement plea was taken that suit is barred by limitation. Trial Court in its judgment dated 02.02.2000 has noticed the issues which were framed, one of the issues i.e. Issue no.2 was "whether the issue was barred by the

limitation." The entire discussion of issue no.2 by the Trial Court is to the following effect: -

"Issue No.2: -

The supply order placed by the defendant no.2 was exhibited as Exts-6 and 7 by the plaintiff. The goods were supplied vide challans which were exhibited as Exts-8 to 37 and 69 to 71 and 73. The delivery commenced on 21.06.92 and ended on 23.03.93. The bills were raised vide Exts-38 to 55 and Ext-60 to 68. The plaintiff had not denied about the receipt of the bill amount. The bill Exxt-55 was raised on 02.01.93 and the bill Ex-68 was raised on 18.12.93. This is a case under the provision of the interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act and Section 10 of the said gives over-riding effect as follows:-

"10. Over-riding effect:- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

So, Section 10 has taken away the plea of limitation in such type of cases. So issue no.2 is also decided in favour of the plaintiff."

62. The Trial Court held that by virtue of Section 10

of Act, 1993 plea of limitation is taken away and the suit is not barred by the limitation. The Division Bench of the High Court in RFA No. 66 of 2000 filed by the defendant had made a reference to the full bench. Full Bench in its order dated 05.03.2002 has not considered or decided the question of limitation.

63. Against the judgment dated 05.03.2002 of Full Bench of High Court answering the reference, the Assam State Electricity Board had filed appeal in this court being Civil Appeal No. 2351 of 2003. This Court decided Civil Appeal No.2351 of 2003 along with Civil Appeal No. 2348 of 2003 on 10.07.2002 which judgment is **Purbanchal Cables and Conductors (P) Ltd. (Supra)**. This Court in paragraph 31 has noticed the submission of learned Counsel for the State Electricity Board that suits filed by both the suppliers were barred by time but this Court did not express any opinion. Paragraph 31 of the judgment is to the following effect: -

"31. Though the learned Senior Counsel would state that the suits filed by both the suppliers in the present batch of appeals were barred by limitation. We do not intend to

express our view on the issue, since some of the appeals filed by the suppliers are still pending before the High Court. Any observation that we may make would certainly affect the interest of both the parties since that issue is yet to be decided by the High Court."

64. After the judgment of this Court dated 10.07.2012 when the matters went back to the High Court, Division Bench decided the RFA 66 of 2000 by impugned judgment dated 20.11.2012. The Division Bench in the impugned judgment has noticed the issues in paragraph 5 of the judgment and submissions on the limitations. In paragraph 22, the submissions on behalf of the Assam State Electricity Board have been noticed whereas the reply given by the learned counsel for the appellant has been noticed in paragraph 22, 24, 25 & 26 of the judgment which are as follows: -

"22. Yet another ground of challenge, advanced at the time of hearing of this appeal, by Mr. Das, learned Senior counsel, is that the learned trial Court has wrongly held that the suit was not barred by limitation and, in this regard, reference made by the learned trial Court to Section 10 of 1993 Act is

wholly erroneous in as much as Section 10 merely lays down that provisions of 1993 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

24. As regards the question as to whether 1993 Act would apply to the contract at hand and whether the suit was barred by limitation. Mr. AK Sinha, learned Senior counsel, has pointed out that it is not in dispute that the payment of the dues of the plaintiffs-respondents was made by ASEB as late as 05.03.1994 and, in such circumstances, the period of limitation started, in the present case, with effect from 05.03.1994 and the suit, having been instituted on 10.01.1997, it is clear, submits Mr. A.K. Sinha, that the suit deserved to be treated as a suit instituted within the period of limitation. This apart, it is the submission of Mr. Sinha, learned Senior Counsel, that on 06.09.1994, Assam Conductors Manufacturers Association had filed a writ petition, which gave rise to Civil Rule No. 1531 of 1993 on behalf of its five named members of the Association, which included M/s Shanti Conductors, (i.e. the plaintiff in the present suit), and the High Court, vide its order, dated 06.09.1994, directed the writ petitioner to move the Civil Court for realization of the dues of its members, whereupon the Association,

immediately, filed Writ Appeal No.474 of 1994, which was finally dismissed on 28.08.1997.

25. In such a situation, as indicated above, section 14(2) of the Limitation Act, 1963, is, according to Mr. Sinha, of great relevance in as much as Section 14(2) of the Limitation Act, 1963, provides that in computing the period of limitation for any suit, the time during which the applicant had been prosecuting with due diligence another civil proceeding, the said period has to be excluded. Under Section 2(a) of the Limitation Act, 1963, points out Mr. Sinha, an applicant includes:(I) petitioner; and (II) a person from or through whom an applicant derives his right to apply. Thus, even assuming that the Limitation Act, 1963, applies, then also, the period during which the writ petition and the writ appeal of the said Association was pending on behalf of, amongst others, M/s Shanti Conductors, the said period, contends Mr. Sinha, deserves to be excluded under the provisions of Section 14(2) of the Limitation Act and, thus, the suit was, reiterates Mr. Sinha, within time.

26. Above all, points out Mr. Sinha, learned Senior counsel, that the appellants, in the present appeal, have not challenged the learned trial Court's decision on the issue of limitation. In this regard,

taking the Court through the memorandum of appeal, which the appellants have preferred, Mr. Sinha, Learned Senior counsel, has pointed out that the memorandum of appeal is wholly silent and does not raise or challenge the learned trial Court's decision on the issue of limitation. Furthermore, points out Mr. Sinha, the Full Bench, while deciding the reference, has clearly observed, in its decision that the suit was, admittedly, within three years of the last payment made by the appellant Board. The observations of the Full Bench read as follows: -

"The suit was admittedly within 3 years of the last payment made by the appellant Board."

65. It is thus clear that the Division Bench although noticed the submissions of both the parties on the question as to whether the suit was barred by limitation or not but Division Bench allowed the appeal on the ground that supply orders having been issued prior to enforcement of the Act. Act 1993 is not applicable. The Division Bench did not return any finding as to whether the suit was barred by the limitation or not. The submission that suit has barred by limitation has been pressed before us.

66. Shri Hansaria submits that according to the own case of the appellant supplies was completed on 04.10.1993, hence, as per Section 4 of the 1993 Act amount and interest shall become due after one month i.e. w.e.f. 04.11.1993. Suit having not been filed within 3 years from 04.11.1993 was clearly barred by time.

67. The Trial court has held that suit is not barred by time relying on Section 10 of 1993 Act. Section 10 of the 1993 Act is as follows: -

"10. Overriding effect: - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

68. Plaintiff themselves in the plaint as noted above has pleaded that limitation will not apply by virtue of Section 10 which submission was accepted by the Trial Court. The provision of Section 10 of 1993 Act gives overriding effect to "the provisions of Act

notwithstanding anything inconsistent herewith contained in any other law for the time being in force". The overriding effect was given to the provisions of the Act which were contained in the Act. Section 10 provided that overriding effect is given to the provisions of the Act over any inconsistent law for the time being in force. It simply meant that if there is anything inconsistent in any other law to the provisions of the Act, the provisions of the Act shall prevail and override any inconsistent law. For example, when Section 4 requires payment of interest at particular rate on delayed payment the said rate shall have overriding effect to rate of interest provided in any other law.

69. Further, as per Section 7 no appeal can be filed against the decree or other order passed regarding recovery of amount due without depositing 75 % of the amount. Thus in a suit if a decree is passed on amount due of interest appeal has to be entertained after depositing 75% or as per any other order passed by the Court. Normal right of appeal shall be overridden by

virtue of Section 7 of 1993 Act. The Trial Court fell in error in reading overriding effect given in Section 10 to the Limitation Act also. There is no provision in 1993 Act pertaining to limitation, the provision of Limitation Act pertaining to filing suit shall continue to operate there being nothing contrary or overriding under 1993 Act. Section 10 will operate only with regard to expressed provisions contained in 1993 Act which shall be given overriding effect but reading Section 10 to the effect that it shall override Limitation Act is not correct interpretation of Section 10 and Trial Court fell in error in relying on Section 10 in holding that Limitation Act will not apply.

70. We thus are of the view that Limitation Act, 1963 is fully applicable with regard to money suit filed by the appellant hence, the question of limitation has to be answered as per Limitation Act 1963. The limitation for suit for recovery of interest under 1993 Act is a suit of nature which shall be covered by Part X Article 113 of the Schedule which is to the following effect: -

*" PART X-SUITS FOR WHICH THERE IS NO
PRESCRIBED PERIOD*

113. Any suit for	Three	When the
which no period	years	right to
of limitation is		sue
provided		accrues
elsewhere in this		
Schedule"		

71. The period for commencement of limitation for filing suit under Article 113 begins "when the right to sue accrues". We have now to find out as to when the right to sue accrues to the plaintiff as per 1993 Act. Section 4 of 1993 Act deals with date from and rate at which interest is payable. Section 4 contains expression that where "any buyer fails to make any payment of the amount to the supplier as required under Section 3.....be liable to pay interest to the supplier on that amount on the appointed day or as the case may be from the date immediately following the date agreed upon.....". There is no agreed date of payment between the parties as is clear from both the supplies orders which are on the record. Thus, the payment shall become due from the appointed day. Appointed day has been

defined in Section 2(d) to be "the day following immediately after the expiry of period of 30 days from the date of acceptance or the day of deemed acceptance of any goods or any service from any buyer or supplier." It is pleaded by the appellant that last supply was completed on 04.10.1993. Thus, appointed day will be 04.11.1993. Thus when the payment was not made on 04.11.1993 with regard to amount due, the interest as per Section 4, the limitation for filing the suit will start running.

72. We have already held that Act shall apply with regard to supplies made after the date of enforcement of Act i.e. 23.03.1992. Last supply being received on 04.10.1993 at least from 04.11.1993, if not earlier, the amount of interest under Section 4 shall become due.

73. Shri Sinha has submitted that last payment having been made on 05.03.1994 suit filed within 3 years and suit being filed on 10.01.1997 was within 3 years from 05.03.1994 and hence was well within time. He submits

that last payment being on 05.03.1994 the refusal to pay has to be treated from that day only and thereafter suit could be filed within three years.

74. Article 113 as noted above provides for "time from which period begins as when the right to sue accrues". 1993 Act Section 4 creates statutory liability to pay interest from the day as mentioned in Section 4 the liability to pay is fastened on buyer. The amount become due as soon as liability to pay arises. Section 6 also uses the word "amount due from buyer". The amount due is amount which is liable to be paid by buyer under Section 4. Thus the fact that last payment was made on 05.03.1994 cannot be treated as period for beginning of the limitation and on that ground it cannot be held that suit was within time.

75. Shri Sinha had made an alternative submission that plaintiff was entitled for the benefit under section 14 of limitation Act. Since a W.P.No. giving rise to Civil Rule No.1531 of 1993 on behalf of five main members of the Associations i.e. Assam Conductors Manufacture

Association was filed in the High Court which on 06.09.1994 directed the petitioner to move to Civil Court for realization of the dues of its member, hence the period during which the writ was pending has to be given benefit. According to pleading in paragraph 24, the Writ Petition was filed by Assam Conductors Manufacture Association. M/s Shanti Conductor(P) Ltd. and another, is a different entity than the Association.

76. We thus are of the view that benefit of the Section 14 cannot be claimed by the plaintiff in the facts of the present case. We, thus in view of the foregoing discussion come to the conclusion that suit filed by the plaintiff being Money Suit No. 21 of 1997 was barred by time.

Issue No.4

77. While deciding Issue No.3 we having held that Money Suit filed by the appellant was barred by time, it is not necessary to express any opinion on the above issue.

Issue No. 5

78. The question as to whether suit filed only for interest is maintainable has been considered in detail by this Court. In paragraph 17, following has been laid down in ***Purbanchal Cables (Supra)*** :-

"17. The decision of the Full Bench of the Gauhati High Court which has been approved by this Court in Modern Industries is impugned before us in one of the appeals. Since a Division Bench of this Court has already approved the dictum of the Full Bench of the High Court with regard to the maintainability of a suit only for interest that question is no longer res integra. Therefore, the suppliers may file a suit only for a higher rate of interest on delayed payments made by the buyer from the commencement of the Act."

79. Section 6 of the 1993 Act provides that "the amount due from the buyer, together with amount of interest calculated in accordance with provision of Section 4 and 5 shall be recoverable". Section 6 uses the expression "together with the amount of interest with the amount due from the buyer." The interpretation put by learned counsel for the Board is that proceeding for

recovery of interest can be undertaken only when any amount is due. He submits that amount due used in Section 6 is Principal amount. In event we accept the interpretation put by counsel for the Board, then buyer will very easily get away from payment of interest only after making payment of Principal amount. This interpretation shall defeat very purposes of 1993 Act. It is well settled that provisions of Act has to be interpreted in the manner so as to advance the object of the Act. We thus fully approve the view taken by this Court in ***Purbanchal Cables (Supra)*** that suit by supplier for recovery of only interest is maintainable.

Issue No.6

80. The submission of the counsel to the board is that since against the judgment of Gauhati High Court dated 15.04.2001, S.L.P. No.12217 of 2001 filed by M/s Trusses & Towers was withdrawn without obtaining the liberty, Civil Appeal No. 8445 of 2016 is not maintainable challenging the Review Order and judgment dated 19.03.2003. In the Order passed by this Court on 06.08.2001, this Court had noticed the submission of

the appellant that appellant shall move the High Court in review stating that it has committed error in recording that "all the bills were paid earlier to the commencement of this act". In the Review Petition, the review has been partly allowed by allowing interest @ 9% against which the appeal has been filed. A perusal of the Review judgment indicates that High Court has not returned any finding that all the bills were not paid earlier to the commencement of the Act.

81. A perusal of Division Bench judgment of High Court indicates that High Court proceed on the presumption that even if 1993 Act is not applicable the entitlement of the plaintiff could be considered in equity. When the liberty to file review was obtained on the ground as noticed in the Order the review judgment can be questioned on the ground on which review was permitted.

82. The Division Bench judgment does not indicate that it proceeds on the ground as contended by the appellant and noticed by this Court on 06.08.2001. The interest

of 9% was allowed on the premise that 1993 Act is not applicable and said interest is allowed on equity relying on an earlier judgment on this court in **Assam Small Scale Industry Development Corporation and others versus G.D. Pharmaceuticals and others, 2005(13) SCC 19**. We thus are of the view that present appeal challenging the review judgment cannot be entertained. The ground on which the appellant can challenge the review judgment can be the ground on which liberty was obtained to file review. We thus hold that Civil Appeal No. 8445 of 2016 is not maintainable.

Issue No.7

Whether the High court while considering the Review Petition No.75 of 2001 (M/s Trusses & Towers Pvt. Ltd.) even after expressing that Act 1993 is not applicable could have allowed 9% interest to the plaintiff?

83. The High Court in its judgment dated 19.03.2013 allowed interest @ 9% per annum for the period of delayed payment. Even if Act 1993 is not applicable, the Court can very well exercise its jurisdiction to award interest. In **Assam Small Scale Industry**

Development Corporation and others versus G.D. pharmaceuticals and others (Supra), this Court in paragraph 40 while considering the claim of the respondent in a suit filed for recovery of interest under 1993 Act has allowed 9% interest with respect to the transaction made prior to coming into force of the 1993 Act. Paragraph 40 is to the following effect: -

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

84. High Court did not commit any error in awarding 9% interest to plaintiff respondent. We thus did not find any error in the judgment dated 19.03.2013 allowing partly the review application filed by the plaintiff.

Civil Appeal No. 8450 of 2016

85. Now, we come to Civil Appeal No. 8450 of 2016. The appellant has filed Money Suit No. 32 of 1996 for recovery of a sum of Rs. 10,34,065.23 p. and Rs. 23,738.49 p. being the outstanding against the bills for supply made and amount of security deposited and amount of Rs.10,10,326.74 p. being the amount of delayed interest. The suit was decreed by the learned Civil Judge (Senior Division) vide its judgment and order dated 30.09.2002 for recovery of Rs. 5,46,233.14 p. as on 18.12.93 from the date of enforcement of the Act, 1993 and future interest on the decretal amount @ 6% simple interest per annum with effect from 19.12.1993. Appeal was filed by the respondent in the High Court being RFA No. 78 of 2003, which has been

allowed on 12.02.2015 setting aside the decree for recovery of the amount and interest but maintaining the claim of refund of security deposit to the tune of Rs. 23,738.49 with 9% interest. The High Court following the judgment of this Court in **Purbanchal Cables and Conductors Pvt. Ltd. (supra)** held that with regard to transaction, which had taken place prior to 23.09.1992, the 1993 Act is not applicable. The appellants have appealed against the judgment of High Court dated 20.02.2015. The pleading on the record does not indicate that any supply was made by the appellant subsequent to enforcement of the 1993 Act. We have already held that the mere fact that supply orders were issued prior to enforcement of the Act does not deny the applicability of the 1993 Act, in event, supply has been made after the enforcement of the Act. There being nothing on record to come to the conclusion that any supply was made after the enforcement of the Act so as to enable the appellant to claim interest under Section 3 read with Section 4 of the 1993 Act, we are of the view that judgment of the High Court does not

need any interference in this appeal.

86. Intervention applications are not entertained.

87. In result, all the appeals are dismissed.

.....J.
(A. K. SIKRI)

.....J.
(ASHOK BHUSHAN)

.....J.
(S.ABDUL NAZEER)

NEW DELHI,
JANUARY 23, 2019