IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 104 OF 2019

IN

CHAMBER SUMMONS NO. 55 OF 2009

IN

EXECUTION APPLICATION NO. 329 OF 1997

IN

ARBITRATION PETITION NO.112 OF 1997

WITH

NOTICE OF MOTION NO. 428 OF 2019

WITH

NOTICE OF MOTION NO. 162 OF 2019

Central Depository Services (India) Ltd. ....*Appellant*

: Versus :

Rajendra Yeshwant Shah and Ors. ....*Respondents*

WITH

APPEAL NO. 109 OF 2019

IN

CHAMBER SUMMONS NO. 55 OF 2009

IN

EXECUTION APPLICATION NO. 329 OF 1997

IN

ARBITRATION PETITION NO.112 OF 1997

WITH

INTERIM APPLICATION (L) NO. 32757 OF 2022

WITH

NOTICE OF MOTION NO. 200 OF 2019

WITH

INTERIM APPLICATION (L) NO. 32757 OF 2022

Amu Shares and Securities Limited ....*Appellant*

: Versus :

Rajendra Yeshwant Shah and Ors. ....*Respondents*

Mr.Venkatesh Dhond, Senior Advocate *with Mr. Rohan Kadam, Mr. Vaibhav Singh, Ms. Radhika Indapurkar, Mr. Rahil Shah and Mr. Pranav Chandhoke i/by. Veritas Legal, for the Appellant in Appeal No. 104 of 2019.*

Mr. M.M. Vashi, Senior Advocate *with Mr. Ankur Jain i/by. Mr. Ram Singh for Appellant in Appeal No.109 of 2019.*

Mr. Rohaan Cama *i/by. Mr. Mehul A. Shah for Respondent Nos.1 to 3 in both the Appeals.*

CORAM : ALOK ARADHE, CJ. &

SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 4 AUGUST 2025.

JUDGMENT PRONOUNCED ON : 12 AUGUST 2025.

JUDGMENT : *(Per Sandeep V. Marne, J.)*

1) These Appeals are filed challenging the order dated 9 January 2019 passed by the Single Judge of this Court in Chamber Summons No.55/2009 filed in Execution Application No. 329/1997. By the impugned order, the learned Single Judge has *inter-alia* directed the Appellants to handover the amount of Rs. 1,79,62,131.56/- to a private Receiver. The learned Single Judge has further directed the Appellant-Central Depository Services (India) Ltd. **(CDSL)** to transfer and deposit with the Receiver all shares lying in the Demat Account of Late Ashok Bimal Ghosh as on 6 May 2005 together with all the benefits thereon. Respondent No.7-CDSL as well as Respondent No.1-Amu Shares & Securities Ltd. **(Amu)** are aggrieved by the order dated 9 January 2019 and have filed Appeal No.104/2019 and Appeal No.109/2019 respectively.

FACTS

2) Brief facts leading to filing of the appeals are as under: Mr. Yashwant N. Shah secured Award dated 16 January 1987 from the Bombay Stock Exchange Arbitration Panel (Award No.79/1997) against Mr. Ashok Bimal Ghosh for principal sum of Rs.3,58,29,000/-. Ashok Bimal Ghosh challenged BSE Award in Arbitration Petition No. 127/1997 under Section 30 of the Arbitration Act, 1940 **(Act of 1940)**. On the other hand, Yashwant Shah applied for a judgment and decree in terms of the Award

vide Arbitration Petition No. 112/1997 filed under Section 17 of the Act of 1940. On 29 September 1997, the Single Judge of this Court dismissed Arbitration Petition No.127/1997 filed by Ashok Bimal Ghosh and confirmed the Award as a decree of the Court. Ashok Bimal Ghosh was directed and ordered to pay a sum of Rs. 3,58,29,000/- alongwith interest at the rate of 18% p.a. Yashwant Shah filed Execution Application No. 329/1997 for execution of the decree dated 29 September 1997. Though Ashok Bimal Ghosh had filed Appeal No.63/1998 against the order of the learned Single Judge, apparently no stay was granted therein. In the meantime, Yashwant Shah also obtained decree dated 24 January 2000 in pursuance of a separate award against Ms. Lily Ghosh (wife of Ashok Bimal Gosh) in Arbitration Petition No. 410/1999 for the principal sum of Rs.34,51,570.50/- with interest. It appears that Lily Gosh was declared insolvent in Insolvency Petition No. 23/2002 taken out by the Award Holders vide order dated 14 December 2004.

3) Yashwant Shah passed away and Respondent Nos. 1 to 3, who are his legal heirs, filed Chamber Summons No.534/2005 in Execution Application No. 329/1997 against Ashok Bimal Ghosh (Respondent No.1 therein), one ABG Securities Pvt. Ltd (Respondent No.3 therein), LANS Communication (Respondent No.4 therein), Ashok Film and Finance (Respondent No.5 therein) and Lily Agro Products (Respondent No.6 therein) in which an *ad-interim* order was passed dated 6 May 2005 restraining Respondent Nos.1 and 3 to 6 therein from transferring, selling, alienating or encumbering any

property of Respondent Nos.1, 3 to 6 or from creating any third party rights in any of the properties and assets of Respondent Nos.1 to 6 including those shown in Schedule-IV to VIII appended to the Chamber Summons. Schedule-VIII described all shares held in physical and Demat form with NSDL and CDSL in the name of Respondent Nos.1 and 3 to 6. The advocate of Respondent Nos.1 to 3 (heirs of Yashwant Shah) wrote to CDSL on 1 June 2005 communicating the factum of passing of award against ABG Securities Pvt. Ltd. **(ABG Securities)** and well as Court's order of *ad-interim* injunction and requested CDSL to act on the same. On 10 June 2005, the CDSL replied to the advocate's letter informing him that CDSL had taken note of the order and were in the process of giving effect thereto. On 6 July 2005, advocate of Shahs forwarded compilation of documents to the advocate of Amu Securities in which copy of *ad-interim* order dated 1 June 2005 was annexed. The advocate of Shahs also wrote to CDSL on 16 August 2005 about order dated 19 December 2004 passed in Insolvency Petition, as well as order dated 6 May 2005 passed in Chamber Summons No.534/2005.

4) In April 2006, Ashok Bimal Ghosh passed away. In Appeal No.63/1998 filed by Ashok Bimal Ghosh, consent terms were entered into under which Shah received amount of Rs.8,23,59,900/- as against the then outstanding dues of Rs.9,62,87,588/- (*inclusive of interest as on 4 February 2007*). The Appeal was accordingly disposed of in accordance with the consent terms on 15 March 2007. On 26 April 2007 and 21 June 2007, the advocate of Shah's wrote to their advocate's

seeking details of share status of ABG Securities for the period between 1 April 2002 to 30 April 2007. Similar enquiry was also made with CDSL vide letter dated 7 May 2007 and 21 June 2007. In reply dated 6 July 2006, CDSL informed that it had found the accounts of Ashok Bimal Ghosh and ABG Securities based on the address and the transaction statements of Demat account were supplied to the advocate of Shah's who in the meantime had become a private receiver, wrote to CDSL on 30 July 2007 and 4 August 2007 requesting for account details and copies of further documents. The CDSL furnished the requisite documents on 9 August 2007.

5) In the above background, the private Receiver wrote to CDSL on 20 September 2007 informing it that an injunction had been passed against Ashok Bimal Ghosh and ABG Securities and that the shares from their accounts were transferred in breach of injunction. The Receiver called upon CDSL to deposit shares transferred out of Ashok Bimal Ghosh's account as well as sought further transaction details. The Advocate of CDSL replied to the private Receiver on 1 October 2007 that it was not party to any of the proceedings and no order was passed against it directing it to freeze the Demat account. On 10 December 2007, a private Receiver raised a claim of joint and several liability of CDSL and Amu Securities in respect of transferred shares from the account of ABG Securities. Thereafter, certain correspondence took place between the parties.

6) Respondent Nos.1 to 3 took out Chamber Summons No. 55/2009 *inter-alia* seeking direction for bringing back shares transferred out of the accounts of ABG Securities or in the alternative to bring to the Court monetary value of shares transferred out of the account of ABG Securities. The learned Single Judge has passed order dated 9 January 2019 in Chamber Summons No. 55/2009 directing *inter-alia* the Appellants to pay to the private Receiver a sum of Rs.1,79,62,131.56/- representing monetary value of shares transferred out of the Demat Account of ABG Securities. Aggrieved by the order dated 9 January 2019, CDSL and Amu have filed the present Appeals.

SUBMISSIONS

7) Mr. Dhond, the learned senior advocate appearing for CDSL would first canvass submissions about maintainability of the Appeals under Clause-XV (5) of the Letters Patent. He would submit that the impugned order has been passed in the execution proceedings of decree dated 29 September 1997 under Section 17 of the Act of 1940. That once decree is made, the Award ceased to have any independent character or legal status and therefore it cannot be contended that the Award is put in execution. What is sought to be executed is a decree under the provisions of the Code of Civil Procedure, 1908 (**the Code).** That there is a marked difference in the statutory schemes of the Act of 1940 and the Arbitration and Conciliation Act, 1996 (**Act of 1996)**. That under the Act of 1996, the Award has an independent character and status, and under Section 36 whereof, the Award can be enforced

in accordance with the Code in the same manner as if it is a decree. That the Act of 1996 postulates execution of the Award without there being any need to obtain a decree. That the Act of 1996 introduces a deeming fiction by providing that Award can be enforced in the same manner as a decree. That therefore execution of Award under the Act of 1996 is a proceeding arising under that Act and that therefore right to Appeal arising out of such proceedings would necessarily be under the Act of 1996 and would be governed by the provisions of Section 37.

8) Mr. Dhond would further submit that the distinction between execution of an Award under the Act of 1996 *vis-à-vis* the Act of 1940 was noticed by the Division Bench of this Court in ***Jet Airways (India) Ltd. Versus. Subrata Roy Sahara and others***[1] in which it has been recognized that an Appeal under Clause-XV of the Letters Patent would lie where the proceedings for execution lie under the Code. That the impugned order is a final adjudication of CDSL's liability to restore the *status-quo* and since it has the 'trappings of finality', the Appeal would lie under Clause XV of the Letters Patent as held by the Apex Court in ***Shah Babulal Khimji Versus. Jayaben D. Kania and another***[2].

9) So far as the merits of the impugned order are concerned, Mr. Dhond would submit that the learned Single Judge was exercising jurisdiction under Section 47 of the Code, which conferred jurisdiction only over the parties to the suit and their

1 2011 SCC OnLine Bom 1379

2 (1981) 4 SCC 8

representatives. That the Executing Court cannot go beyond the decree. That it was impermissible to pass any order against CDSL, who was not a party either to arbitration proceedings or even to the execution proceedings. That the Court in execution could not implead a new Judgment Debtor as the same would amount to going beyond the decree. That fixing liability against CDSL goes beyond the jurisdiction of the Executing Court as a question not arising between the parties to the suit is sought to be decided.

10) Mr. Dhond would further submit that the learned Single Judge could not have taken recourse to inherent powers under Section 151 of the Code when other remedies in the form of Section 36 read with Order XXI Rule 32 were available. That it is settled law that inherent powers of the Court are not to be used for the benefit of a litigant who has a remedy under the Code. Reliance in this regard is placed on judgments in ***State of Uttar Pradesh and others Versus. Roshan Singh (Dead) by LRS. and another***[3] and ***Vinod Seth Versus. Devinder Bajaj and another***[4]**.**

11) Mr. Dhond would further submit that an order to restore *status-quo ante* pursuant to a breach of an injunction can be ordered only against a party to that injunction and not a stranger to the action. That there was no injunction directing CDSL to freeze the accounts and therefore the question of holding CDSL liable to breach did not arise. That an injunction operates in *personam* and against the persons named in the writ and it does

3 (2008) 2 SCC 488
4 (2010) 8 SCC 1

not take effect against persons who are not party to the proceedings. That the learned Single Judge erred in holding that CDSL had aided and abetted the breach by the Judgment Debtor. That the legal concept of aiding and abetting a breach relates to liability for criminal contempt. On the other hand, the person against whom order is passed is liable for civil contempt. That the distinction is borne out by judgment of the Apex Court in ***Sita Ram Versus. Balbir alias Bali***[5]**.** That aiding and abetting by a stranger does not tantamount to disobeying an injunction which only operates against a party. That even for an action of criminal contempt to lie, there was a high burden of proof which is required to be discharged by leading of evidence.

12) Mr. Dhond would further submit that CDSL has not acted willfully or maliciously and had made sincere efforts to assist the Decree Holder as well as private Receiver. That CDSL caused a computer search of 'Ashok Bimal Ghosh' and 'ABG Securities Pvt. Ltd.'. That at that time, CDSL's system executed only exact match queries and therefore the search in the name of 'ABG Securities Pvt. Ltd.' did not yield any results. That CDSL has filed application under Order XLI Rule 27 of the Code to take additional evidence on record in the form of search logs to prove that searches were carried out. That since CDSL has acted *bonafidely*, no liability can be fastened against it. That in any case, there is no statutory duty owed by CDSL to Shah's. He would place reliance on Sections 10(2) and 10(3) of the Depositories Act in support of the contention that depository does not enjoy any

5 (2017) 2 SCC 456

rights in respect of any securities held by it and all liabilities in respect of the securities are owed by the beneficial owner.

13) Lastly, it is submitted by Mr. Dhond that shares worth Rs.70.66 lakhs were transferred before CDSL was apprised of the injunction. That therefore CDSL cannot be held liable for bringing the entire sum of Rs.1.80 crores and without prejudice to the other contentions, he would submit that the impugned order deserves to be modified to this extent.

14) Mr. Vashi, the learned Senior Advocate appearing for Amu would adopt the submissions of Mr. Dhond in respect of maintainability of the Appeal. Additionally, he would submit that though Amu was party to the application in which *ad-interim* injunction was granted, neither any relief was sought nor the same was granted against Amu. That Amu is just a broker and cannot be held liable in absence of any injunction being granted against it. That there is no garnishee order passed against Amu. That the Chamber Summons in which *ad-interim* injunction was granted was subsequently withdrawn. Mr. Vashi would submit that the advocate of Amu did not inform Amu about the exact nature of *ad-interim* injunction. That in any case, no order was passed against Amu. That Amu had a debit balance against ABG Securities and had a lien over the shares against the said debit balance. That Amu has *bonafidely* recovered the amount by selling shares in the account of ABG Securities which was due to it from ABG Securities. That Amu has produced the entire evidence of bills, vouchers to prove the debit balance. That the learned Single

Judge has erred in holding that mere creation of dispute of debit balance by the Decree Holder was a reason enough to direct Amu to bring back the amount of Rs.1.79 crores to the Court. Mr. Vashi would rely upon judgment of the Apex Court in ***Sundaram Finance Limited Represented by J. Thilak, Senior Manager (Legal) Versus. Abdul Samad and another***[6] in support of the contention that even under the 1996 Act, an Appeal against an order passed by a Court executing the decree is maintainable. Mr. Vashi would accordingly pray for setting aside the impugned order.

15) Mr. Cama, the learned counsel appearing for Respondent Nos.1 to 3 in both the Appeals would submit that the Appeal's filed under Clause-XV of the Letters Patent are not maintainable. That the impugned order has been passed in proceedings initiated under the Act of 1940, which is a complete Code in itself and that therefore an Appeal could only be filed in accordance with the provisions of Section 39 thereof. That Section 39 of the Act of 1940 does not provide for remedy of appeal against the impugned order. That the Act of 1940 is a complete self-contained code for all matters arising out of arbitration proceedings right till enforcement of the Award. In support, he would rely upon the judgments in ***Union of India Versus. The Mohindra Supply Co.***[7], ***Jet Airways (India) Limited*** (supra) and ***Fuerst Day Lawson Ltd. Versus. Jindal Exports Limited***[8]. That execution proceedings are continuation of the original arbitration proceedings/suit. That therefore the order passed in

6 (2018) 3 SCC 622
7 AIR 1962 SC 256
8 (2011) 8 SCC 333

the Chamber Summons becomes an order passed under or pursuant to the Act of 1940.

16) Mr. Cama would further submit that even if the impugned order is treated as the one passed under the Code in execution, the Code applies to the Act of 1940 only by virtue of Section 41 thereof. That therefore the orders passed in execution proceedings are orders passed under Section 41 of the Act of 1940 and not under the Code. That the provisions of the Code for execution are incorporated in the Act of 1940 by virtue of Section 41 and that therefore every order passed in execution would be an order passed under Section 41 and not under the general law of the Code. In support, he would rely upon judgment of the Delhi High Court in ***Union of India and Ors. Versus. N. K. Pvt. Ltd. and Anr***[9]**.** He would rely upon judgment of the Apex Court in ***Union of India and others Versus. Aradhana Trading Co. and others***[10] in support of his contention that every order passed even after conversion of award into decree is still referable to Section 41 of the Act of 1940 and that therefore Appeal can be filed only if such order is appealable under Section 39.

17) On the merits of the impugned order, Mr. Cama would submit that the learned Single Judge has exercised discretion while passing a detailed and exhaustive order after considering all the material on record and in absence of an element of perversity, this Court would not be justified in interfering with the same.

9 AIR 1972 Delhi 202
10 (2002) 4 SCC 447

Reliance is placed on judgment of the Apex Court in ***Wander Ltd. and another Versus. Antox India P. Ltd.***[11]**.** He would further submit that CDSL and Amu cannot seek to escape the consequences of their conduct in actively aiding transfer of shares from the account of ABG Securities under the pretext of CDSL not being party to the proceedings and absence of any specific order being passed against Amu. Amu was impleaded as a party to the Chamber Summons in which *ad-interim* injunction was granted and it had full knowledge about the same. That Amu still violated the *ad-interim* injunction by letting sale of shares in the account of ABG Securities. That the learned Single Judge, after considering the material on record, has recorded a finding that Amu is actually a front for Ashok Bimal Ghosh/his legal heirs. That therefore the act of sale of shares is done by Amu in connivance with Ashok Bimal Ghosh/his legal heirs. That to make things worse, the transactions indicate that Amu has sold the shares to itself. That therefore the detailed analysis made by the learned Single Judge holding Amu responsible for siphoning off shares in breach of order of injunction does not warrant any interference by this Court.

18) Mr. Cama would further submit that the learned Single Judge, after appreciating the material on record, has arrived at a finding that both CDSL as well as Amu have knowingly and willfully acted in breach of an order of injunction passed by this Court. That the Courts have followed consistent judicial policy of reversion of *status-quo* after arriving at a finding that there is willful breach of order of injunction. That merely because such

11 1990 (Supp) SCC 727

breach is committed by a third party is not an answer and technical arguments cannot be permitted to be raised for the purpose of avoiding consequences arising out of breach of injunction order. That there was no other way to bring back the shares siphoned off and therefore the learned Single Judge has rightly directed maintenance of *status-quo ante* by making an order for deposit of amount of Rs.1.79 crores. That though Respondent Nos.1 to 3 could also have taken out contempt proceedings, the same would provide no relief to them and that therefore the order of deposit of money has rightly been made by the learned Single Judge. That as of now, the direction only envisages bringing the money to the Court and entitlement of the parties to the same would ultimately be decided in pending execution proceedings. That CDSL is otherwise under obligation under its bye-laws to obey the injunction order. That CDSL'S bye-laws provide for obligation to recover the monies from depository participants if there is a breach of injunction order giving rise to liability on the CDSL.

19) Mr. Cama would then deal with the defence sought to be raised by CDSL of its inability to search the exact amount of ABG Securities by taking us through the entire correspondence between the parties. He would submit that there is an express admission on the part of CDSL that it was able to search the relevant accounts of ABG Securities and Ashok Bimal Ghosh on the basis of their address. That therefore searching of accounts was easily possible before the shares were transferred. That therefore CDSL is fully responsible for breach of order of

injunction passed by this Court as it has willfully failed to comply with the same.

20) So far as liability of Amu is concerned, Mr. Cama would submit that it had never set up a case of holding any lien over the shares of ABG Securities and the said pretext was set up only at the time of hearing of the Chamber Summons. That an artificial liability of ABG Securities was created for the purpose of selling of shares in breach of *ad-interim* injunction. That Amu has refused to grant inspection of the relevant records. That the Court has therefore rightly refused to believe the case of existence of lien. He would rely on the judgment in ***Z. Ltd. Versus. A-Z and AA-LL***[12] in support of the contention that even a third party breaching injunction can be held liable. On above broad submissions, Mr. Cama would pray for dismissal of both the Appeals.

REASONS AND ANALYSIS

21) The Appeals are filed under Clause XV of the Letters Patent challenging the order dated 9 January 2019 passed by Single Judge of this Court in Chamber Summons filed in Execution proceedings. Respondent Nos. 1 to 3 have questioned maintainability of the present appeals on the ground that the order dated 9 January 2019 is not included in the list of appealable orders under Section 39 of the Act of 1940. It would therefore be necessary to first deal with the issue of maintainability of the present appeals.

12 [1982] 1 Lloyd's Rep. 240

MAINTAINABILITY OF APPEALS UNDER CLAUSE XV OF THE LETTERS PATENT

22) Respondent Nos. 1 to 3 have filed Execution Application No. 329 of 1997 for execution of the decree made in pursuance of the award dated 16 January 1997 under provisions of Section 17 of the Act of 1940.

23) Section 17 of the Act of 1940 provides for pronouncement of judgment according to the award, and judgment so pronounced becomes a decree. Section 17 of the Act of 1940 provides thus:

> **17. Judgment in terms of award.-**
>
> Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

24) In the present case, after the award was made on 16 January 1997, the same was challenged by Ashok Bimal Ghosh under Section 30 of the Act of 1940 by filing Arbitration Petition No. 127 of 1997. On the other hand, Arbitration Petition No. 112 of 1997 was filed by the Claimant under Section 17 of the Act for pronouncement of judgment. By order dated 29 September 1997, this Court dismissed Arbitration Petition No. 127 of 1997 filed by

Ashok Bimal Ghosh and confirmed the award as a decree by ordering Ashok Bimal Ghosh to pay sum of Rs. 3,58,29,000/- with interest at the rate of 18% per annum. This is how a judgment was pronounced in terms of the award dated 16 January 1997, which became a decree under provisions of Section 17 of the Act of 1940.

25) The Act of 1940 did not contain any specific provision for enforcement of the arbitral award. Therefore, the decree made in accordance with provisions of Section 17 of the Act of 1940 became executable before the Execution Court. Respondent Nos. 1 to 3 accordingly filed Execution Application No. 329 of 1997 for execution of the decree dated 29 September 1997 made under provisions of Section 17 of the Act of 1940. In that Execution Application, Chamber Summons No. 534 of 2005 was filed, in which *ad-interim* injunction was granted on 6 May 2005 restraining Respondent Nos. 1, 3 to 6 therein from transferring, selling, alienating and encumbering *inter alia* the shares described in Schedule VIII in the physical and Demat forms with NSDL and CDSL in the name of Respondent Nos. 1, 3 to 6. Since shares in the account of ABG Securities were transferred after passing of *ad-interim* injunction dated 6 May 2005, Chamber Summons No. 55 of 2009 was filed by Respondent Nos. 1 to 3 seeking a direction either for bringing back the transferred shares or to deposit in the Court the value of the transferred shares. The impugned order dated 9 January 2019 has been passed in Chamber Summons No. 55 of 2009.

26) The issue of maintainability of the present appeals needs to be decided in the light of controversy as to whether the impugned order is passed in execution proceedings filed under the Code or in proceedings filed under the Act of 1940. Resolution of this controversy is necessary on account of provisions of Section 39 of the Act of 1940, which provides for filing an appeal only against orders enumerated in that Section. Section 39 of the Act of 1940 provides thus:

> **39. Appealable orders:**
>
> (1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order :-
>
> An order –
>
> (i) superseding an arbitration;
> (ii) on an award stated in the form of a special case ;
> (iii) modifying or correcting an award;
> (iv) filing or refusing to file an arbitration agreement;
> (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
> (vi) setting aside or refusing to set aside an award :
>
> Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.
>
> (2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

27) According to the Respondent Nos. 1 to 3, the impugned order dated 9 January 2019 cannot be treated as an order passed in proceedings initiated under the Code. On the other hand, it is the contention of the Appellants that the impugned order has been passed in execution proceedings filed under Section 47 read with Order XXI of the Court and that

therefore Appeal under Clause XV of the Letters Patent is maintainable. Before proceeding further, it would be necessary to observe that at the outset that Respondent Nos. 1 to 3 do not dispute the position that if the impugned order dated 9 January 2019 is treated to be have been passed under the provisions of the Code alone, appeal under provisions of Clause XV of the Letters Patent would be maintainable in view of judgment of the Apex Court in ***Shah Babulal Khimji*** (supra). In that judgment, the Apex Court has held that every interlocutory order which has the traits and trappings of *'finality'* would be appellable under Clause XV of the Letters Patent, notwithstanding whether such order is appealable under Order XLIII Rule 1 or not. Qua the issue of restoration of status quo, the impugned order has the traits and trapping of 'finality' and therefore if the Order is held to have been passed under the provisions of the Code, the Appeals would be maintainable. However, since the impugned order is held to have been passed under the Act of 1940, since the same is not appealable under Section 39 thereof, the Appeals would become non-maintainable. In the light of this position, the only issue that needs resolution is whether the impugned order is passed under the provisions of the Act of 1940 or under the provisions of the Code.

28) In support of the contention that the impugned order has been passed under the provisions of the Act of 1940, reliance is placed by Respondent Nos. 1 to 3 on provisions of Section 41 thereof which provides thus :-

41. Procedure and powers of Court:

Subject to the provisions of this Act and of rules made there under -

(a) the provisions of Code of Civil Procedure, 1908 (5 of 1908) shall apply to all proceedings before the Court, and to all appeals, under this Act, and
(b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court:

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

29) Thus, under Section 41 of the Act of 1940, the provisions of the Code apply to all proceedings before the Court and to all appeals under the Act. It is therefore contended on behalf of the award holders that an award made under the provisions of the Act of 1940 can be enforced by filing proceedings in accordance with provisions of Section 41 of the Act.

30) As observed above, the Act of 1940 does not contain any specific provision for enforcement or execution of the award. The award becomes a judgment and decree under provisions of Section 17 of the Act of 1940, which then becomes executable. It is the contention of Respondent Nos. 1 to 3 that the proceedings filed for execution of decree made in terms of Section 17 of the Act of 1940 is also a proceeding within the meaning of Section 41 of the Act of 1940.

31) For deciding the issue at hand, it would also be necessary to take into consideration the scheme under the Act of 1996, which has replaced the Act of 1940. Under the Act of 1996, an award made thereunder has an independent character and status and the same is not required to be converted into a judgment or decree. This is why the Act of 1996 does not contain any provision for pronouncement of judgment or making of a decree by a Court in pursuance of the award, as was the case under Section 17 of the Act of 1940. On the other hand, the Act of 1996 makes a direct provision for enforcement of the award under Section 36, which provides thus:

> **36. Enforcement.—**
>
> (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.
>
> (2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.
>
> (3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:
>
> Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908):
> Provided further that where the Court is satisfied that a prima facie case is made out

> (a) that the arbitration agreement or contract which is the basis of the award; or
> (b) the making of the award,
> was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.
>
> Explanation.- For the removal of doubts it is hereby clarified that the above proviso shall apply to all Court cases arising out of or in relation to arbitral proceedings irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).

32) Thus, the statutory scheme of 1996 Act is such that an award made by the Arbitrator can be directly enforced by filing proceedings under Section 36 of the said Act. Section 36 thus confers a substantive remedy for the enforcement of an award in the Act of 1996 at itself.

33) Section 36 of the Act of 1996 creates a deeming fiction by providing for the enforcement of an award in accordance with the provisions of the Code, in the same manner as if it were a decree of the Court. Thus, the award does not become a decree under Section 36 of the Act of 1996, but is to be merely treated as a decree for the limited purpose of enforcement in accordance with provisions of the Code.

34) There is, thus, a marked difference between the schemes of the Act of 1940 and the Act of 1996 with respect to the status and character of the award, for its enforcement. An award becomes a decree under Section 17 of the Act whereas under the Act of 1996, the award never assumes character of a decree and

continues to retain its independent character and status as an award. To paraphrase, under the Act of 1940, an award loses its character as an award and transforms into a decree upon passing an order under Section 17 whereas under the Act of 1996, an award never loses its character or status and continues to remain as an award, even when it is sought to be enforced under Section 36.

35) This broad distinction between the statutory schemes of 1940 Act and 1996 Act has been dealt with by a Division Bench of this Court in ***Jet Airways (India) Limited*** (supra) in which the issue for determination was formulated in paragraph 9 of the judgment as under:

> 9. It is necessary to decide whether the impugned order passed by the Learned Single Judge is an order passed in proceedings under section 36 of the Arbitration and Conciliation Act, 1996 or an order passed in proceedings under the Code of Civil Procedure, 1908. For determining the question about maintainability of these Appeals in proper perspective, we deem it fit to note certain relevant provisions of the Arbitration and Conciliation Act, 1996 (1996 Act), Letters Patent of the High Court, Bombay, Code of Civil Procedure, 1908, and Arbitration Act 1940 (the 1940 Act).

36) The Division Bench thereafter formulated further three core issues in paragraph 15 of the judgment as under:

> 15. For considering whether the aforesaid submissions deserve acceptance or not 3 core issues have to be determined namely-
>
> A. Whether the proceedings under section 36 of the 1996 Act are proceedings under the Code of Civil Procedure, 1908 ?
>
> B. Whether the provisions of clause 15 of the Letters Patent are applicable to the impugned Judgment and Order and whether

applicability of clause 15 has been impliedly excluded by section 37 of the 1996 Act or by the amendment of section 2(2), 47 by Act 104 of 1976 amending the Code?

C. Whether the Judgment of the Supreme Court in the case of Fuerst Day Lawson (supra) is an authority which is applicable only in respect of a foreign award covered by Part II of the 1996 Act or whether the ratio of the said Judgment is a binding precedent even in respect of proceedings under part I of the 1996 Act or the same is *obiter dicta*?

37) The Division Bench thereafter decided the issue of nature of proceedings under Section 36 of the Act of 1996 by comparing the provisions of the Act of 1940 and held as under:

A. Nature of proceedings under section 36 of the 1996 Act.

(a) Section 36 of the 1996 Act uses the words "*the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908)* ***in the same manner as if it were a Decree of a court.***" In fact section 17 of the 1940 Act does not make an arbitration award a decree of the court even though Chapter II of the said Act dealt with the arbitration without intervention of a court. Section 30 of 1940 Act provides for filing a petition for setting aside an award and in that context section 17 provided that when the time for filing a petition under section 30 of that Act had expired or when the petition filed for setting aside the award has been dismissed, the court shall proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall fallow. **Thus the 1940 Act clearly provided for a decree being passed by the Court. There is fundamental difference in the provisions of section 36 of the 1996 Act and section 17 of the 1940 Act only in this regard.**

(b) The words "as if it were a decree of the court" used in section 36 have already been interpreted by the Supreme Court in Paramjeet Singh Patheja vs. ICDS Ltd. MANU/SC/4798/2006 : (2006) 13 SCC 322. In that case, an award under 1996 Act was passed on 26/6/2000 and on the strength of the said award an insolvency notice was issued under section 9(2) of the Presidency Towns Insolvency Act, 1909. Section 9(2) of the said 1909 Act provides that a debtor commits an act of insolvency if a creditor who has obtained a "decree or order" against him for the payment of money issues him a notice in the prescribed form to pay the amount and the debtor fails to do so within the time specified in the notice. This issue was referred to a Division Bench. The Division Bench answered the reference in the affirmative on 19.03.2003 and held that an award is a "decree" for the purpose of section 9 of the

Insolvency Act and that an insolvency notice may therefore be issued on the basis of an award passed by an arbitrator. Against this order this order the SLP was filed. In this context the observations of the Supreme Court in paragraph-12 read thus :

> "12. The substantial questions of law of paramount important to be decided by this Court are :
>
> *(i) Whether an arbitration award is a "decree" for the purpose of Section 9 of the Presidency Towns Insolvency Act, 1909?*
>
> *(ii) Whether an insolvency notice can be issued under Section 9(2) of the Presidency Towns Insolvency Act, 1909 on the basis of an arbitration award ?*
>
> The conclusions can be seen in paragraphs 21, 23, 28, 29, 42 and 43 which read thus :
>
> 21. The words 'Court', 'adjudication' and 'suit' conclusively show that only a Court can pass a decree and that too only in suit commenced by a plaint and after adjudication of a dispute by a judgment pronounced by the Court. It is obvious that an arbitrator is not a Court, an arbitration is not an adjudication and, therefore, an award is not a decree.
>
> 23. The words 'decision' and 'Civil Court' unambiguously rule out an award by arbitrators.
>
> 28. It is settled by decisions of this Court that the words 'as if' in fact show the distinction between two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created.
>
> 42. The words "as if" demonstrate that award and decree or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central.
>
> 43. For the foregoing discussions we hold :
>
> i) That no insolvency notice can be issued under Section 9(2) of the Presidency Towns Insolvency Act, 1909 on the basis of an Arbitration Award;
>
> ii) That execution proceedings in respect of the award cannot be proceeded with in view of the statutory stay under Section 22 of the SICA Act. As such, no insolvency notice is liable to be issued against the appellant.

iii) Insolvency Notice cannot be issued on an Arbitration Award.

iv) An arbitration award is neither a decree nor an Order for payment within the meaning of Section 9(2). The expression "decree" in the Court Fees Act, 1870 is liable to be construed with reference to its definition in the CPC and held that there are essential conditions for a "decree".

(a) that the adjudication must be given in a suit.

(b) That the suit must start with a plaint and culminate in a decree, and

(c) That the adjudication must be formal and final and must be given by a civil or revenue court.

An award does not satisfy any of the requirements of a decree. It is not rendered in a suit nor is an arbitral proceeding commenced by the institution of a plaint.

(v) A legal fiction ought not to be extended beyond its legitimate field. As such, an award rendered under the provisions of the Arbitration Act, 1996 cannot be construed to be a "decree" for the purpose of Section 9(2) of the Insolvency Act.

(vi) An insolvency notice should be in strict compliance with the requirements in Section 9(3) and the Rules made thereunder.

(vii) It is a well-established rule that a provision must be construed in a manner which would give effect to its purpose and to cure the mischief in the light of which it was enacted. The object of Section 22, in protecting guarantors from legal proceedings pending a reference to BIFR of the principal debtor, is to ensure that a scheme for rehabilitation would not be defeated by isolated proceedings adopted against the guarantors of a sick company. To achieve that purpose, it is imperative that the expression "suit" in Section 22 be given its plain meaning, namely any proceedings adopted for realization of a right vested in a party by law. This would clearly include arbitration proceedings.

(viii) In any event, award which is incapable of execution and cannot form the basis of an insolvency notice.

16. **Apart from the above binding precedent even on an independent consideration of the provisions of the 1940 Act and 1996 Act, the conclusion is inevitable that proceedings under 36 are not proceedings under the Code.** As noted above, the Arbitration Act 1940 (10 of 1940) amended section 104 of the Code and sub clause (a) to (f) of sub-section 1 of section 104 of the Code, which all dealt with arbitration proceedings, were deleted. The legislative intent was thus very clear that the Code will not deal with any matter in relation to the arbitration and precisely for this reason the legislative intent would be clear namely that the arbitration proceedings and all proceedings arising therefrom will be governed only by the Arbitration Act, 1940 which has been repealed and replaced by 1996 Act. **The Supreme Court has already interpreted the words "as if it was a decree of the court" which clearly shows that only the procedure for enforcement of a decree passed by the Civil Court is to be utilised for enforcement of an award and, merely on that ground, the said proceedings do not become proceedings under the Code. In our opinion, they continue to be proceedings under the 1996 Act.** In fact section 19 of the 1996 Act also makes it clear that the provisions of the Code do not apply to the arbitration proceedings. **This is a departure from the 1940 Act in as much as under section 41 of the said Act it was provided that subject to the provisions of 1940 Act the provisions of the Code shall apply to all proceedings before the Court under that Act and to all appeals under that Act.** Such a provision is completely absent in the 1996 Act and this is one more indication that the proceedings under 1996 Act even for implementation of award cannot be considered to be proceedings under the Code. **Even section 41 of the 1940 Act has been construed by the Supreme Court in the case of Union of India vs. Mohinder Supply Company (supra) and State of West Bengal vs. Gauranglal Chaterji (supra) & it is held that the said provision is subject to the limitation contained in section 39 of the 1940 Act.** For all the aforesaid reasons, we have no hesitation in holding that nature of proceedings before the learned Single Judge were proceedings under the 1996 Act and not proceedings under the Code.

CONCLUSION RE-POINT NO. 1

19. In view of the aforesaid clear and binding pronouncement of law it has to be held that the proceedings initiated by the appellants and the respondents before the learned Single Judge were proceedings under section 36 of the 1996 Act and cannot be held to be proceedings of execution under section 47 or order 21 of the Code of Civil Procedure, 1908.

> 28. In our opinion, since we have reached a conclusion that the proceedings under section 36 of the 1996 Act are not proceedings under the Code, this issue really becomes academic. However, if our first conclusion on point No. 1 were that the proceedings under section 36 are proceedings under the Code of Civil Procedure, 1908; then considering the nature of proceedings and adjudication done by the learned Single Judge which is a subject matter of the present appeals, would certainly be a "judgment" under clause 15 of the Letters Patent of High Court, Bombay. In that eventuality, present appeals would have been maintainable since the proceedings before the Ld. Single Judge were original proceedings and as held by the Constitution Bench majority view in P.S.Sathappan (Supra), since there is no express bar u/s. 104(1) of the Code or in section 100A as amended following the ratio in the case of P.S. Sathappan (Supra) and the Judgment of this Court in Laxman Bala Surve (Supra) and of the Supreme Court in Shah Babulal Khimji (supra), it would have been required to be held that appeals were maintainable. However, in view of our conclusion on Point No. 1 and Point No. 2(a) recorded above, as we have held that the proceedings before the Ld. Single Judge were proceedings under the Special Law i.e. 1996 Act, our ultimate conclusion about maintainability does not change.
>
> *(emphasis added)*

38) The Division Bench, upon comparing the provisions of Section 36 of the Act of 1996 and Section 17 of the Act of 1940, held that the Act of 1940 clearly provided for a decree being passed by the Court, which is not the case under the provisions of the Act of 1996. This Court further concluded that the proceedings under Section 36 of the Act of 1996 cannot be treated as proceedings under the Code, but there is a fundamental difference in the provisions of the Act of 1940, which provided for passing of a decree by the Court on an award. Therefore, in ***Jet Airways (India) Limited***, this Court held that proceedings initiated for enforcement of an award under Section 36 of the Act of 1996 cannot be treated as proceedings for execution under Section 47 or Order XXI of the Code.

39) Both the sides have relied on judgment in ***Jet Airways (India) Limited*** in support of their respective pleas for treating the execution proceedings as filed under the Code or under the Act of 1940. The Division Bench in ***Jet Airways (India) Limited,*** though has made reference to the provisions of the Act of 1940, the issue before it was not about maintainability of appeal against order passed in execution proceedings filed for execution of award made under the Act of 1940. The Division Bench has decided only the issue of nature of proceedings filed for execution of award under Section 36 of the Act of 1996 and has held that the same cannot be treated as the proceedings filed under the Code. However, since a comparative analysis of the two Acts is made by the Division Bench, both the sides have placed reliance on the judgment. Mr. Cama has particularly relied on observations in Para 16 of the judgment where the Division Bench has discussed the departure made by the Act of 1996 about non-applicability of provisions of the Code under Section 9 thereof as against applicability of the provisions of the Code under Section 41 of the Act of 1940. Then it is sought to be contended that Section 41 of the Act of 1940 has been construed by the Supreme Court in the case of ***Union of India vs. Mohinder Supply Company*** (supra) and that it is held that the said provision is subject to the limitation contained in section 39 of the 1940 Act. In our view however, the above findings do not assist the case that Mr. Cama seeks to canvass. Undoubtedly the provisions of the Code applied to the arbitral proceedings under the Act of 1940, but they applied only till the award is converted into a decree. Once the decree is made

under Section 17 of the Act of 1940, the provisions of that Act no longer apply, and the proceedings get transferred out of sphere of that Act. This is discussed in greater detail in the latter part of the judgment.

40) On the other hand, Mr. Dhond has relied on the observations in ***Jet Airways (India) Limited*** holding that the Act of 1940 clearly provided for a decree being passed by the Court and that there is fundamental difference in the provisions of section 36 of the 1996 Act and section 17 of the 1940 Act only in this regard. In our view, for deciding the issue at hand, the judgment in ***Jet Airways (India) Limited*** can only be used for recognition of fundamental difference between the scheme of the two enactments where conversion of award into a decree for being put in execution was provided under the Act of 1940 as opposed to enforcement of the award itself (without any provision for conversion into a decree) under the Act of 1940.

41) As observed above, the Act of 1940, after making a provision for conversion of an award into a decree, did not contain any other provision, under which such decree is to be executed. Therefore, a party seeking enforcement of an award made under the Act of 1940 had no option but to first apply for pronouncement of a judgment under Section 17 and for decree in terms of the said judgment and thereafter apply for execution of the decree. The award holder could not file proceedings under Section 41 for enforcement of award. The award was unenforceable unless converted into a judgment and decree. Once

a decree is made under Section 17, no further remedy is provided within the framework of the Act of 1940 and the decree holder had no option but to initiate proceedings under Section 47 read with Order XXI of the Code. As against this, an award holder can file proceedings for enforcement of award by exercising remedy under the 1996 Act itself and it is not necessary for the award holder to scout for remedy outside the said Act. Therefore, the proceedings initiated for execution of a decree made under Section 17 of the Act of 1940 will have to be treated as proceedings initiated under Section 47 read with Order XXI of the Code.

42) Provisions of Section 41 of the Act of 1940 make provisions of the Code applicable to all proceedings before a Court. The true purport of Section 41 is to govern the procedure applicable to proceedings filed under the Act before a Court. Therefore, till the proceedings remain within the ambit of the Act of 1940, Section 41 would control the procedure of those proceedings by applying the provisions of the Code thereto. However, provisions of Section 41 cannot be used in a reverse manner to bring back proceedings filed under the Code within the sphere of the Act of 1940.

43) Therefore, mere application of provisions of the Code to proceedings before the Court under Section 41 of the Act of 1940 would not convert the execution proceedings initiated under the Code as the proceedings filed under the Act of 1940. Section 41 would have application only to all proceedings before the Court

up to making of an order under Section 17 of the Act of 1940. Once an order under Section 17 is made, the proceedings would terminate under the Act of 1940. The remedy for execution of the decree will necessarily have to be traced under Section 47 read with Order XXI of the Code on account of absence of any provision in the Act 1940. Section 41 is not a standalone provision empowering the Executing Court to enforce an award unlike the provisions of Section 36 of the Act of 1996. Therefore, provisions of Section 41 of the Act of 1940 cannot be relied upon for the purpose of deciding the nature of proceedings filed for execution of a decree made under Section 17 as proceedings filed under the Act of 1940.

44) The position that Section 36 of the Act of 1996 creates a mere fiction and the Award passed under the Act of 1996 is not a decree of a Court is emphasized by the Apex Court in ***Sundaram Finance Ltd.*** (supra). The issue before the Apex Court was about jurisdiction of the Court enforcing Award under Section 36 of the 1996 Act. In case before the Apex Court, the Executing Court had returned the execution application on the ground of lack of jurisdiction directing the Appellant to obtain transfer of the decree from the Court in Tamil Nadu and then apply for execution of the decree in the Trial Court at Morena. There was divergence of legal opinions by different High Courts on the issue as to whether the Award under the Act of 1996 is required to be first filed in the Court having jurisdiction over arbitration proceedings for execution and then to obtain transfer of decree or whether an Award can straightaway be filed and executed in the Court where

the assets are located. In view of divergence of views, direct Appeal was filed before the Apex Court. The Apex Court held that enforcement of an Award through its execution can be sought anywhere in the country where the same can be executed and that there is no requirement for obtaining a transfer of the decree from the Court which has jurisdiction over the arbitration proceedings. While answering the above issue, the Apex Court made following observations in paras-14 and 19 :

> 14. We would now like to refer to the provisions of the said Act, more specifically Section 36(1), which deals with the enforcement of the award:
>
> > "36. Enforcement. – (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 to 1908), in the same manner as if it were a decree of the court."
>
> The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said code in the same manner as if it were a decree. It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the arbitral tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code.
>
> 19. The Madras High Court in Kotak Mahindra Bank Ltd. v. Sivakama Sundari, 2011 SCC Online Mad 1290 referred to Section 46 of the said Code, which spoke of precepts but stopped at that. In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the Court, which passes the decree where an execution application has to be filed at the first

> instance. An award under Section 36 of the said Act, is equated to a decree of the Court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the arbitral tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the Court within whose jurisdiction the arbitral award was passed should be taken to be the Court, which passed the decree. The said Act actually transcends all territorial barriers.

Thus, the Apex Court, after noticing the provisions of Section 36 of the Act of 1996 has held that Section 36 only creates enforcement mechanism which is akin to enforcement of a decree, but the Award itself is not a decree of Civil Court. It has further held that Award under Section 36 of the Act is equated to a decree of the Court for the purposes of execution and only for that purpose. It is otherwise not a decree for any other purposes. The Apex Court recognised the principle that Section 36 creates a legal fiction by providing for enforcement of award as if it is a decree.

45) Mr. Cama has strenuously relied on the judgment in ***Union of India Versus. Aradhana Trading Co.*** (supra), in which the issue before the Apex Court was about the maintainability of an appeal under Section 39 of the Act of 1940, against an order made by the Court under Order IX Rule 13 of the Code, refusing to recall an *ex-parte* order passed under Section 17 of the Act of 1940. In that case, after making of an award, the same was filed by the Arbitrator before the Calcutta High Court, which issued notices to the Appellants. Appellants failed to file any objections against the

award. In absence of appearance on behalf of the Appellants, the High Court passed a decree in terms of award under Section 17, making the same rule of the Court. Appellant thereafter moved an application for recall of an order passed under Section 17 to explain its absence. The said application was filed under provisions of Order IX Rule 13 of the Code which was dismissed by the learned Single Judge of the High Court. Against that order, appeal was preferred before the Division Bench under provisions of Section 39 of the Act of 1940. The appeal was dismissed by the Division Bench as not maintainable. In the light of this position, the issue before the Apex Court was whether an appeal against order passed by a Single Judge refusing to set aside *ex-parte* order under Order IX Rule 13 of the Code was appealable under Section 39 of the Act of 1940. The Apex Court referred to its decision in ***Union of India Versus. Mohindra Supply Co.*** (supra) and held as under:

> 9. …. In Union of India Vs Mohindra Supply Company MANU/SC/0004/1961 : [1962]3SCR497 : [1962]3SCR497 , a decision by a Bench of Four Judges, held that Section 39 applies to the appeals to superior courts as well as to intra-court against the decree passed in terms of the award but against the order passed in appeal, a Letters Patent Appeal was held to be barred under sub-section (2) of Section 39 of the Arbitration Act according to which no second appeal lies against an order passed under Section 39(1) of the Act. It was further held that in view of the said provision, appeal under Section 100 CPC was also prohibited. We, however, find that so far as this case is concerned, it stands on a different footing since in the present case it is not a further appeal or a second appeal but an appeal against an order passed by the learned Single Judge under Order IX Rule 13 CPC. It would however be relevant for the purpose that restriction on appeal under Section 39 of Arbitration Act shall be applicable to appeals under any provision of law, may be CPC or Letters Patent.

13. The question which thus remains to be considered is as to whether an order passed on an application making the prayer like one which could be referable to Order IX, Rule 13 CPC would be appealable or not. Such an application could be made by virtue of Section 41 of the Arbitration Act. An order under Order IX, Rule 13 CPC is appealable under Order 43, clause (c) read with Section 104 CPC. In the case of National Sewing Thread Co. Ltd. (supra), a decision by a Bench of Three Hon'ble Judges, the matter related to Trade Marks Act Section 76(1) of which provided for an appeal against a decision of the Registrar under the Act to the High Court but no further provision in regard to the procedure to be applied was made. An appeal against the order of the Registrar was decided by a learned Single Judge of the High Court against which a Letters Patent Appeal was filed which was held to be maintainable even though no such provision of further appeal was made under the Trade Marks Act. As indicated earlier the Court in the above-noted case has relied upon certain decision and held as follows:

> "Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized at such of the appellate jurisdiction conferred by section 76 it has to exercise jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a Single Judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

In view of what has been held above a Court while exercising power by virtue of Section 41 of the Arbitration Act shall have all other related powers of the ordinary civil court subject to the constraints contained in the special Act itself. Normally, an appeal would be maintainable but there are two constrains as provided under the Special Act, namely, it should not be a second appeal as provided under sub-section (2) of Section 39 of the Act which position is also clear in the case of Mohindra Supply Company (supra) where it was held that the second appeal under Section 100 CPC or under the Letters Patent against an appellate order was barred by virtue of sub-section (2) of Section 39. Here we find that there is yet another constraint as provided under sub- section (1) of Section 39 of the Arbitration Act itself and it is emphatic too when it says that appeal shall lie against the orders indicated in the provision and from no other order. Section 41 of the Arbitration Act makes the provisions of CPC applicable subject to the provisions of the Arbitration Act and the

rules framed thereunder. Therefore, the nature of an order against which an appeal may lie must conform to the nature of the order as enumerated under sub-section (1) of Section 39 of the Arbitration Act. If it does not amount to such an order as enumerated under sub-section (1) of Section 39, the prohibition as contained in this sub-section "(against no other order") itself, would become operative, subject to which alone provisions of CPC apply under Section 41 of the Act. In the facts of the present case we find that an order refusing to recall an order passed by the court will not amount to refusal to set aside the award under clause (vi) of sub-section (1) of Section 39 of the Arbitration Act as no objections to set aside the award have ever been filed with or without application for condonation of delay, challenging the award. Admittedly, the appellant did not file any appeal against the order dated 27.1.1998. In these circumstances and in view of the provisions of the Arbitration Act, the decision in the case of National Sewing Thread Co. Ltd. (supra) shall also not be applicable as in the Trade Marks Act with which the court was dealing, did not have any provision like the one contained in sub- section (1) of Section 39 of the Arbitration Act restricting the right of appeal only in respect of certain nature of orders and prohibiting appeal against any other order whatsoever. Therefore, in the case of National Sewing Thread Co. Ltd. (supra) it was held that where a provision for appeal was made under Section 76(1) of the Trade Marks Act to the High Court, with nothing more, the other provisions relating to exercise of that jurisdiction by the High Court would be applicable. The case of National Sewing Thread Co. Ltd. (supra) is thus based on different provisions and is clearly distinguishable. The case in hand is covered by the decisions in the cases of Neeilkantha (supra) and Mohindra Supply Co. both decided by Bench of four Judges which do not seem to have been noticed in other judgments.

46) In our view, the judgment of the Apex Court in ***Aradhana Trading Co.*** offers little assistance to the issue involved in the present case. The issue before the Apex Court was about maintainability of an appeal under Section 39 of the Act of 1940, against an order passed in application seeking recall of an *ex-parte* decree. Thus, what was sought by the Appellant was recall of an order made under Section 17 of the Act of 1940. In that sense, the proceedings had not traveled beyond the scope of the Act of 1940

and remained within its sphere. If the learned Single Judge was to allow the application for recall of the *ex-parte* order, proceedings under Section 17 of the Act would have revived. Thus, the application filed by the appellants was for revival of proceedings under Section 17 of the Act and therefore even though provisions of Order IX Rule 13 of the Code were sought to be invoked, the order made in that application still remained within the purview of proceedings under the Act of 1940. Since the said order was not appealable under Section 39 of the Act, the appeal was held to be not maintainable. In the present case, an application filed by Respondent Nos. 1 to 3 is after the Section 17 stage is crossed and the proceedings have traveled outside the scope of the Act of 1940. In our view, therefore, the judgment of the Apex Court in ***Aradhana Trading Co.*** would have no application to the issue involved at hand.

47) Mr. Cama has contended that the Act of 1940 is a complete code in itself and that therefore every order made relating to an award including execution proceedings, would be proceeded under the Act of 1940 and not under the provisions of the Code. Reliance is placed on the judgment of the Apex Court in ***Union of India Versus. Mohindra Supply Co.*** (supra) in which it is held as under:

> The Arbitration Act which is consolidating and amending act, being substantially in the form of a quote relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals.

48) The above observations are made in the light of facts of the case in which a Second Appeal was sought to be filed against order passed by a Single Judge of the High Court under provisions of Section 39 of the Act of 1940, dismissing an appeal challenging the order of the Subordinate Judge, First Class, Delhi, refusing to set aside the award. The issue before the Apex Court was whether a Second Appeal was maintainable under the Act of 1940 against an order made under Section 39 of the Act. It is in the light of this issue that the above quoted observations are made. The judgment in ***Mohindra Supply Co.*** therefore does not provide any assistance for deciding the issue at hand.

49) Mr. Cama has also relied upon the judgment of the Apex Court in ***Fuerst Day Lawson Limited*** (supra) in which it is held that an order which is not appealable under the Act of 1996 are not open to Letters Patent Appeal. There can be no debate about this position that if the impugned order was to be passed in proceedings under the Act of 1940 and was not appealable under Section 39, the present appeals would not have been made maintainable under Clause XV of the Letters Patent. However, since the impugned order is passed in proceedings filed under the provisions of the Code, the appeals would be maintainable under Clause XV of the Letters Patent.

50) Reliance is placed by Mr. Cama on the judgment of Delhi High Court in ***Union of India Versus. N. K. Pvt. Ltd.*** (supra) in which again the issue involved was about maintainability of an

appeal under the Letters Patent against an order passed in proceedings under the Act of 1940, which otherwise are not appealable under Section 39 of the Act. The judgment therefore provides no assistance for deciding the issue at hand.

51) The conspectus of the above discussion is that the proceedings for execution of a decree made under Section 17 of the Act of 1940 are traceable to the provisions of Section 47 read with Order XXI of the Code and the same are not proceedings under the Act of 1940. Thus, any order passed in those proceedings would be an order made under the Code. Therefore, provisions of Section 39 of the Act of 1940 would not be applicable to such an order. If the order passed in proceedings filed under the Code have the traits and trappings of finality an appeal under provisions of Clause XV of Letters Patent would lie before a Division Bench of this Court.

52) Since the impugned order dated 9 January 2019 has been passed in proceedings filed for execution of a decree made under Section 17 of the Act of 1940, the same will have to be treated as an order passed in proceedings filed under the Code. As the said order has the traits and trappings of final adjudication on the Appellants' liability to restore *status quo*, the present appeals filed under Clause XV of the Letters Patent are held to be maintainable.

MERITS OF THE APPEALS

53) Appellant-CDSL, has contended that it has never been a party to any of the proceedings initiated either by the original claimant or by his legal heirs. There is no dispute to the position that CDSL was not a party to the arbitral proceedings. It is not impleaded as a party even in Execution Application No. 329 of 1997. It is not the case of Respondent Nos. 1 to 3 that the decree made in terms of the arbitral award is executable against CDSL. CDSL was not even impleaded in Chamber Summons No. 534 of 2005, in which an order of *ad-interim* injunction dated 6 May 2005 was passed. CDSL was impleaded for the first time by Respondent Nos. 1 to 3 in Chamber Summons No. 55 of 2009. On the other hand, Amu was impleaded as a Respondent in Chamber Summons No. 534 of 2005.

54) It would be necessary to refer to the *ad-interim* injunction order passed by the learned Single Judge on 6 May 2005 in Chamber Summons No. 534 of 2005. The order reads thus :-

> Put up for further orders on 13th June,2005. Ad-interim order in terms of prayer clause (h). It is clarified that so far as Schedule VI is concerned, this order operates only in relation to the accounts at Item nos.3, 4 and 5 of Schedule VI. It is further clarified that this order does not extend to the d-mat account of Respondent no.2 mentioned in Schedule VIII.
> Ad-interim order in terms of prayer clause (j).

55) Prayer Clauses (h) and (j) of Chamber Summons No. 534 of 2005 were as under:-

> (h) that Respondent Nos. 1, 3 to 6 are their servants, agents/aliases be directed by an Order and injunction of this Hon'ble Court restraining them from transferring, selling,

alienating, encumbering any property of Respondent Nos. 1, 3 to 6 or from Creating any third party rights in any of the properties and assets of Respondent Nos. 1 to 6 including those shown in Schedule IV to VIII hereto;

(j) that Respondent Nos. 1 be directed by an Order and injunction of this Hon'ble Court restraining him from transferring, selling, alienating, encumbering or creating any third party rights in Respondent No.1's flat No.105 "C" Wing, Jhaveri Complex Co-op Housing Society Ltd, 123/124 Bhabhola Chulna Road, Vasai (W), Dist. Thane, Maharashtra;

56) Schedule No. VI to the Chamber Summons was as under :-

SCHEDULE – VI
HDFC Bank Ltd.
Fort Branch,
Manekji Wadia Bldg.,
Nanik Motwani Marg,
Mumbai 400 001.

Sr. No.	Account Name	Account No.	Recent Balance (10.01.2005 to 15.01.2005) (Rs.)	Authorised Signatories	Account Opening Date	Customer ID
1.	Lily A. Ghosh	0601330009355	.00	1. Lily A. Ghosh 2. Ashok B. Ghosh		
2.	Lily A. Ghosh	0601330014759	4,051.92	1. Lily A. Ghosh 2. Ashok B. Ghosh	24.03.2003	4075865
3.	Ashok B. Ghosh	0601000156019	.00	1. Lily A. Ghosh 2. Ashok B. Ghosh		3755619
4.	LANS Communication (sole proprietorship of Ashok B. Ghosh)	0602000026744	10,000.00	1. Ashok B. Ghosh	21.02.2004	5538638
5.	ABG Securities Pvt. Limited	0600340013566	1,30,699.82		(Company formed on 12.02.2004)	

57) Thus, order dated 6 May 2005 restrained Ashok Bimal Ghosh, ABG Securities, Lans Communication, Ashok Film and Finance and Lily Agro Products (Respondent Nos. 1 and 3 to 6) in Chamber Summons No. 534 of 2005 from transferring, selling, alienating or encumbering the shares in the accounts reflected in Schedule VI. Item 5 of the Schedule VI was in respect of the Demat Account of ABG Securities. Amu was impleaded as Respondent No. 9 to Chamber Summons No. 534 of 2005, however, the *ad-interim* injunction dated 6 May 2005 did not apply to Amu. In breach of the injunction order dated 6 May 2005, it appears that the shares in the Demat Account of ABG Securities were transferred. It is on this basis that Respondent Nos. 1 to 3 have alleged violation of the injunction and accordingly filed Chamber Summons No. 55 of 2009. In that Chamber Summons, prayer clauses (a) and (f)(i) read thus:

> **(a)** That Respondent Nos. 1 and 7 or such of them as this Hon'ble Court holds liable be ordered and directed to
>
> (i) deposit with Mr. Amol V Doijode, Receiver, within a period of four weeks, in his Demat Account, DPID No. IN300685 Client ID 10536714, all the shares transferred out of the Demat Account of Respondent No. 9, DPID 12016200, Client ID 00000785, after the passing of the Injunction Order on May 6, 2005 in Ch/s. 534/2005 Particulars whereof are at Schedule "V"hereto together with all the benefits thereon interalia, bonus shares, split shares, rights shares, dividends etc., issued by the Companies after the date of transfer;
> OR
>
> (ii) in the alternate to (a)(i) above, handover to Mr. Amol V. Doijode, Receiver within a period of four weeks, the monetary value of the said shares which were transferred after the passing of the Injunction Order on May 6, 2005 in Ch/s. 534/2005, Rs. 470,25,060.12, along with interest thereon @ 18% p.a. from September 20, 2007, till payment or realization as per the particulars of the claim shown in Schedule "VI" hereto;

(f) Respondent No. 7 be directed to :

(i) transfer and deposit with Mr. Amol V Doijode, Receiver, in his Demat Account, DPID No IN300685, Client ID 10536714, within a period of two weeks, all the shares lying in the demat account of Late Ashok Bimal Ghosh being DPID 12016200 Client ID 00000504, as of May 6, 2005, together with all the benefits thereon, interalia, bonus shares and split shares, issued by the Companies thereon;

58) The learned Single Judge in the impugned order dated 9 January 2019 has held both CDSL as well as Amu responsible for the breach of the order of *ad-interim* injunction and has accordingly made Chamber Summons No. 55 of 2009 absolute in terms of prayer clause (a)(ii) for the amount of Rs. 1,79,62,131.56/- as well as in terms of prayer clause f(i). Both CDSL as well as Amu have challenged the order dated 9 January 2019 contending that they were neither bound by the order of *ad-interim* injunction nor have they violated the same and that therefore the learned Single Judge could not have made an order directing them to bring to the Court an amount of Rs. 1,79,62,131.56/-.

59) We first proceed to examine the challenge raised by the CDSL to the impugned order dated 9 January 2019.

CDSL's APPEAL NO.104 OF 2019

60) CDSL is one of the two depositories in India, the other being National Securities Depository Limited (NSDL). CDSL claims that it has 581 Depository Participants, which include

several banks. According to CDSL, there are 16.11 crore Demat account holders for 581 Depository Participants. CDSL, thus sits at the top of the pyramid, whose base is in excess of 16 crore Demat accounts.

61) As observed above, CDSL has never been a party to any of the proceedings up to filing of Chamber Summons No. 55 of 2009. The decree made in pursuance to the arbitral award is neither binding nor executable against CDSL. CDSL is a complete stranger to the transaction between the contesting parties and has been drawn in the proceedings on account of allegation of breach of order of *ad-interim* injunction dated 6 May 2005 by transfer of shares from the Demat account of ABG Securities. Respondent Nos. 1 to 3 believe that CDSL has participated in breach of *ad-interim* injunction dated 6 May 2005, which is a reason why it was sought to be made liable for bringing back the amount of Rs. 1,79,62,131.56/-. CDSL had raised following submissions before the learned Single Judge, which are captured in paragraph 26 of the impugned order:

> 26. Mr. Purohit submitted that:
> (A) Applicants are seeking to execute the decree against CDSL;
> (B) Section 47 of the Code of Civil Procedure, 1908 (CPC) governs the application, and cannot apply to CDSL;
> (C) Order XXI of CPC only provides for payment in three situations none of which is contemplated in the present chamber summons, and there is no provision in CPC for passing an order against CDSL to restore the status quo ante;
> (D) CDSL could not freeze the account of ABG as there was no specific order against CDSL; the injunction was in personam against Ghosh, Lily and ABG;
> (E) There is no obligation on CDSL, in law, to freeze the account; CDSL may choose to do so but it is their entitlement entirely;

(F) CDSL could not locate the account of ABG in its system as it was written as "ABG Securities Pvt. Ltd." and in their system it was recorded as "ABG Securities Private Limited";
(G) CDSL is an innocent third party and the present Application effectively seeks damages against CDSL which cannot be done by way of the present proceedings.

62) The learned Single Judge has, however, rejected CDSL's contention that it is impermissible to execute the decree against CDSL and that in absence of a provision in the Code, to make an order against CDSL to restore *status quo ante* by invoking the inherent power under Section 151 of the Code. The learned Single Judge has held that the Court has inherent powers under Section 151 of the Code to restore things to the former condition if a party has acted in breach of an injunction. The learned Single Judge relied upon the judgments in ***Municipal Corporation, Shirdi Versus. Sau. Sonia Devidas Patil***[13] and ***Vidya Charan Shukla Versus. Tamil Nadu Olympic Association***[14] and held in paragraph Nos. 28, 29, 30 and 31 as under:

28 These contentions of Shri Purohit in my view are misconceived as applicants are not seeking, by prayer clause (a), to execute the decree against CDSL or to ask CDSL to pay money to applicants. Applicants are simply seeking an order from this Court that the transfers having been permitted to be done by CDSL in breach of the orders of the Court and in violation of the statutory provisions, Byelaws and Agreement between CDSL and Amu having statutory force, this Court, in exercise of its inherent powers, as per the law laid down in the various judgments referred to and relied upon by Shri Cama, ought to undo the wrong and restore the parties to the position that they were prior to the order of injunction.

Applicants are not seeking any orders of execution of the decree against CDSL but are simply seeking consequential orders to bring back the shares sold/transferred in breach of the said order and

13 2009 (2) ALL MR 847
14 AIR 1991 Mad 323 (Full Bench)

thereby restore the parties to the position they were in, prior to the transfers being done in breach of said order.

29 The entire contention of Shri Purohit that Section 47 of CPC governs the application and cannot apply to CSDL proceeds on the incorrect basis that the order seeking restoration of the status quo ante falls under Section 47 of CPC. **As held in various judgments as referred earlier, this Court has an inherent power, regardless of any other provisions in law, to restore things to their former condition if a party has acted in breach of an injunction.** This is both under Section 151 of CPC and also as a matter of judicial policy. A party may not even take out a Contempt Petition or resort to any other provision of law; the Court which passed the order ought to simply exercise its inherent power to ensure that its order is not stultified or set at naught. Judgments referred to above and particularly those of ***Municipal Council Shirdi*** (Supra) and ***Vidhya Charan Shukla*** (Supra) clarify the above position.

Paragraph 12 of the ***Municipal Council Shirdi*** (Supra) reads as under :

> *12. The pleading of the **party** has to be considered and understood in its proper perspective. This Court and Supreme Court has held that mofussil pleading has to be construed liberally. Para 6 (B) of the prayer clause specifically makes a prayer that if **defendants no.1 to 3** succeed in carrying out the construction of the road legally, in that circumstances said work (construction of the road) and said action should be removed and plaintiff be permitted to enjoy the property peacefully. This pleading is in vernacular. I read the plaint from para (1) till last prayer in para 6(C). If the plaint as a whole is read and appreciated, in my view, adequate and sufficient pleading is made by the plaintiff seeking mandatory injunction and/or direction. In the case in hand, both the Courts are concurrent on the point that temporary injunction was issued by the Court. The Courts have referred to various dates right from the date of filing of the suit and even couple of months before it. The Courts have referred the report of the Commissioner. The Courts have also appreciated the short span of time within which the defendant no.2 could complete the construction work of the road in defiance of the temporary injunction granted by the Civil Court. The conduct of the defendants carrying out and completing the construction work in defiance of temporary injunction granted by the Court, has been taken cognizance by the First Appellate Court referring to the pleading, i.e., para 6(B) and has quashed and set aside the judgment and decree passed by the Trial Court. It is unfortunate that the Trial Court did not read the plaint especially para nos.6(A), (B) and (C) in its proper perspective. **The parties cannot be permitted to flout the orders of the Civil Court, if such instances are brought to the notice of the Court and Court has restored the possession on the date of filing of the suit, said order cannot be said to be perverse.***

In my view, a party to the litigation, cannot be allowed to take an unfair advantage by committing breach of an interim order passed by the Civil Court and escape the consequences thereof. Wrong committed by the party disobeying the order of the Civil Court should not be allowed to continue or perpetuate such wrong as a precedent. Such disregard of the order of the Civil Court should not be permitted to hold good. Such disobedience, if brought to the notice of the Court, what is the duty of the Court? A party suffering breach of injunction order may or may not resort to provision laid down under Order 39, Rule 2(A) of the Code of Civil Procedure. Such party may or may not file or take out contempt petition in accordance with the provisions of law. However, the Civil Court seized with hearing of such lis always can resort to Section 151 of the Code of Civil Procedure. Imposition of punishment or consequences of order passed under Order 39, Rule 2(A) of Civil Procedure Code and/or order passed by the competent Court under the provisions of Contempt of Courts Act, 1971 would be altogether different aspect of the matter. Citizens/litigants who approaches to the Civil Court for adjudication of alleged rights is/are basically interested in seeking remedy/decree/order from the competent Civil Court. Primarily he has concern with relief of Civil nature in his favour from the Civil Court upon adjudication of rights. The Civil Court, therefore, is duty bound, to exercise inherent powers under Section 151 of the Code for setting wrong at naught. This is because it is of high importance that orders of the Court should be obeyed. Thus, in my view, on principle those who defy a prohibition imposed ought not to be able to get away with the fruits of their defiance. If act of the disobedience were to let it go as such, it would defeat the ends of justice and prevalent public policy. When the Court intends a particular state of affair to exist while it is in seizin of lis, that state of affair is not only required to be maintained, but it is presumed to exist till the same Court orders otherwise or Superior Court orders otherwise. The Court, in these circumstances, has the duty and also right to treat such disobedient act as having not taken place at all for its purposes. In my view, these inherent powers u/s. 151 of the Code of Civil Procedure are wide and are not subject to any limitation. To put it in other words, it can be stated that where in violation of stay order or injunction against a party, something has been done in disobedience, it shall be the duty of the Court as a policy to set the wrong, right and not allow the perpetuation of the wrong. In my view, the inherent powers will not only be available in such case, but it is bound to be exercise in that manner in the interest of justice. Even apart from the Section 151 of Civil Procedure Code, in my view, as a matter of judicial policy, the Courts should guard against itself being stultified. In the circumstances like this it cannot be held that Court is powerless to undoing a wrong done in disobedience of Court orders. However, in the case on hand the First Appellate Court has exercised such power under Section 151 of the Code. This exercise, therefore, cannot be said to be arbitrary, absurd or perverse.

Paragraph 46 of ***Vidhya Charan Shukla*** (Supra) reads as under :

> *46. We can see thus clearly that the Courts in India invariably accepted the law applied in England and found (1)* ***a party to the suit*** *if he had notice or knowledge of the order of the Court and (2)* ***a third party or a stranger, if he had aided or abetted the violation with notice or knowledge of the order of injunction guilty of civil contempt and otherwise found a*** *(third party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order of direction, if ii is found in the instant suit that Sri Shukla was directly or indirectly a party defendant in the suit and the order of the learned single Judge was directed to his conduct also and he violated the order after notice or knowledge, he shall be guilty of civil contempt.* ***He can still be found guilty of civil contempt if he is found to have aided and abetted the violation of the order of the Court. Even otherwise it is found that he obstructed or attempted to obstruct the implementation of the Court's injunction/direction, he may be found guilty of criminal contempt provided he had the notice or the knowledge of the order of the Court.*** *It will be only after a determination of the nature of the disobedience that it will be possible for the Court to say whether the procedure applied to a civil contempt shall be applied to the contempt proceeding in his case or the procedure applied to a criminal contempt will be applied to it. In the former case, the learned single Judge shall be competent to proceed. In the latter case, it shall be before a Division Bench and subject to such conditions as are envisaged under the Contempt of Courts Act, 1971. We have however no hesitation, in view of the principles of law noticed by us that this Court's power as the Court of Record will extend not only to the determination of the contempt but also the determination whether on the allegations brought before it, a civil contempt is made out or a criminal contempt is made out and instead of any action of committal for contempt, the Court should make any such order which would be in the administration of justice or not. We 'have already noticed that there are provisions in Order XXXIX Rule 2A of the Code of Civil Procedure as a remedy for the violation of temporary or interim injunction.* ***Besides what is contemplated under Order XXXIX Rule 2A of the Code of Civil Procedure, Courts have found another source of power in Section 151 of the Code of Civil Procedure and if that is also ignored for a moment, this Court's power as a Court of Record and a Court of Special jurisdiction is preserved under Articles 215 and 225 of the Constitution of India. There have been cases before several Courts in which when faced with situations that some order or direction was violated and the violation resulted in grave and serious injury, the Courts took the view that the Code of Civil Procedure is not exhaustive. There are cases which say that if remedy to do justice is not provided for in the Code or any other Act, the High Court must not fold its hands and allow injustice to be done.***

30 The judgments relied upon by Shri Purohit on the aspect of Section 47 are clearly inapplicable. Firstly, neither of them deals with a situation similar to the present one where a sale/transfer was done in

> breach of an injunction order and was permitted to be done by a party despite knowledge of the injunction. Further, the said judgments were not dealing with the aspects covered in the various judgments cited by applicants, which squarely apply to the case at hand.
>
> 31 The contention of Shri Purohit that Order 21 of the Code of Civil Procedure only provides for payment in 3 situations etc., proceeds on the erroneous assumption that applicants are seeking a direction for payment against CDSL in execution or by way of executing the decree against CDSL. As stated above, as per prayer clause (a) the application only seeks that the parties be restored to the status quo prevailing on the date of the order and does not in any manner seek a direction for payment against CDSL by way of execution of the decree. Once the shares or the monetary value thereof with accrued benefits/interest, is restored, applicants may then take appropriate steps in execution, as permissible in law.
>
> *(emphasis and underlining added)*

63) It thus appears that, the learned Single Judge has invoked inherent power under Section 151 by treating CDSL as a party acting in breach of the injunction. This is clear from the finding recorded in paragraph 29 of the impugned order in which it is held that:

> "...Court has an inherent power, regardless of any other provisions in law, to restore things to their former condition **if a party has acted** in breach of an injunction".
>
> *(emphasis and underlining added)*

64) The judgment in ***Municipal Corporation, Shirdi*** (supra) applies to a situation where a 'party' to litigation commits breach of injunction. The judgment in ***Vidya Charan Shukla*** (supra) also covers the liability of a third-party or stranger committing breach of the injunction order by aiding and abetting such breach, who can be held responsible for civil or criminal contempt. However, for a third party to be held responsible for breach of an injunction

order, the Court must arrive at a finding of aiding and abetment by such third party and knowledge that it is committing breach of the injunction order.

65) It is well settled principle that an Executing Court exercising jurisdiction under Section 47 read with Order XXI of the Code, in ordinary course, can make order only against parties to the suit and their representatives. The Executing Court cannot go beyond the decree and extend its scope so as to cover third parties by making them virtually the judgment debtors. Section 47 of the Code defines Court's jurisdiction and confines it to adjudicating only questions between parties to the suit and relating to the execution, discharge or satisfaction of the decree. In this jurisdiction, interim reliefs can only be granted in aid of final relief and such interim reliefs would ordinarily lie only against parties to the suit. However, there is an exception to this rule where an Executing Court can reach its arms *qua* a third party who is found to have aided and abetted violation of its order so as to frustrate execution of the decree. It would be too far-fetched to hold that under no circumstances, an Executing Court can touch a third party who has actively breached the order of injunction with the intention of aiding the Judgment Debtor in frustrating the decree. In a given case, Executing Court may be justified in catching hold of even a third party who has acted in connivance with the Judgment Debtor in frustrating the execution proceedings.

66) Since CDSL is a third party to the proceedings, which was not impleaded even in the Chamber Summons in which the

ad interim injunction was granted, it became necessary for Respondent Nos. 1 to 3 to demonstrate that it actively aided and abetted breach of the ad interim injunction.

67) The advocate of Respondent Nos. 1 to 3 had communicated the order of *ad interim* injunction to CDSL, which position is undisputed. CDSL however raised a defence that it made *bonafide* attempts to implement the order of injunction. The learned Single Judge has however rejected this defence by recording in paragraph Nos. 46 and 47 of the impugned order as under:

> **46** The contention of CDSL that it could not locate the account of ABG in its system as it was written as "ABG Securities Pvt. Ltd." and the system had it as "ABG Securities Private Limited" and there are parties with multiple accounts and freezing an account on the basis of inaccurate name would have disastrous consequences are all untenable. Firstly, CDSL claims in its letter addressed to the Receiver on 6th July 2007 that it located the account details of ABG through ABG's address of Shreyas Building. This very same address had been given in the letter dated 1st June 2005 enclosing the said order, and therefore, there is no basis or cogent explanation as to why CDSL could not have found the same at that time.
>
> **47** Further, in its reply letter dated 10th June 2005 CDSL at no point stated that it could not locate the demat account of ABG, due to the purported mismatch of the words "Pvt. Ltd.", or otherwise. On the contrary CDSL stated that it was in the process of giving effect to the order in respect of the respective demat accounts. It is rather unbelievable that a party would not take the minimum effort of searching for ABG's name both as "Pvt. Ltd." and "Private Limited", when searching for the same more so when there is an order of the Court. "Pvt. Ltd." is too commonly used a term for CDSL to contend that they did not think to search for ABG's name with "Pvt. Ltd." and "Private Limited". As stated earlier, in its own letter addressed on 9th August 2007, CDSL has referred to ABG as "ABG Securities Pvt. Ltd." (emphasis supplied)

68) CDSL thus took the defence that it made effort of searching ABG's account by entering "Pvt. Ltd" and that the search did not yield any result. The learned Single Judge, however, refused to believe the said defence by holding that when a search was made in the context and order made by the Court, it was CDSL's duty to search for ABG's name both as "Pvt. Ltd" and "Private Limited". In our view, CDSL is a total stranger to the transaction between the parties. It is not the case of Respondent Nos. 1 to 3 that CDSL has colluded with the Judgment Debtors or knowingly assisted them. As observed above, CDSL sits at the top of the pyramid comprising of 16 crore plus Demat accounts through 581 Depository Participants. In that view of the matter, it is difficult to believe that CDSL had any intention/motive in breaching the order of *ad-interim* injunction made by this Court. No doubt, the Court was empowered to exercise its inherent powers under Section 151 of the Code even *qua* a third party who aids or abets violation of injunction. However, the learned Single Judge has not recorded any finding that CDSL has aided or abetted the Judgment Debtors in committing breach of injunction order.

69) CDSL has never been party to any of the proceedings and is sought to be roped in for the first time in Chamber Summons No.55 of 2009. The shares in the concerned Demat account belonged to ABG Securities and could be ordered to be sold by the Executing Court towards satisfaction of liability of the Judgment Debtor under the decree made on award passed in arbitration proceedings. If there is a transfer of shares from the

account of ABG Securities, ordinarily the said account holder needs to be held liable for bringing back the amount/shares. However, what is done by the learned Single Judge is to substitute the Judgment Debtor with a new Judgment Debtor in the form of CDSL. It is complained by the CDSL that such a course of action amounts to going beyond the decree and extending its scope by added a new Judgment Debtor to the decree. As observed above, in a rare case where the Court has found that a third party has acted in connivance with the Judgment Debtor in frustrating the decree, the Executing Court may exercise inherent powers or any other powers under the Code to hold such third party responsible for the breaches and make necessary directions against it. Adding a new Judgment Debtor to the decree by making it liable to bring back to the Court monetary value of the transferred shares is a drastic order, which cannot be passed in ordinary course. It would require an extraordinary circumstance where the Court notices that there is active participation by the third party in frustrating execution of the decree by the third party with full knowledge of what exactly it is doing. Mere act of negligence of a third party, which may result in frustrating execution of decree is not enough for holding a third party responsible for restoration of *status quo ante*. Therefore, even if the Executing Court is satisfied that a third party is found responsible for transfer of ABG's shares, that finding alone would be insufficient to make an order against third party making it responsible to discharge obligations of the Judgment Debtor. To adopt such a course of action, there must be extreme degree of *mens rea* where the third party is found to have actively connived with the Judgment Debtor in siphoning off the

Judgment Debtor's property by sale of which the decree could be satisfied.

70) In the present case, there is neither any material to indicate nor any finding is recorded by the learned Single Judge that CDSL has travelled to such an extent of committing active breach of order of *ad-interim* injunction by conniving with the Judgment Debtor. Respondent Nos.1 to 3 themselves do not contend that CDSL has connived with the Judgment Debtors. Their allegation essentially seeks to depict gross negligent act of CDSL in not conducting proper search by blocking the transactions in Demat account of ABG Securities. True it is that CDSL ought to have been careful enough in ensuring compliance with the order of *ad-interim* injunction. Its defence of making an endeavour to search the Demat Account of ABG Securities by entering into search engine the words 'Pvt. Ltd.' is not found favour with the learned Single Judge. However, this would only mean that CDSL has acted negligently in not walking enough distance by conducting proper search by entering into the words 'Private Limited' into its search engine. However, this conduct, by no stretch of imagination, would amount to connivance with the Judgment Debtor in actively aiding breach of *ad-interim* order of temporary injunction. There was no reason for CDSL to do so. In our view therefore the case does not pass the muster for holding CDSL responsible for actively aiding and abetting violation of *ad-interim* injunction by conniving with the Judgment Debtors. Therefore, the long arms of the Executing Court cannot reach

CDSL which has been total stranger to the proceedings between the rival parties.

71) In our view, therefore CDSL cannot be held responsible for bringing back the amount of Rs. 1,79,62,131.56/-.

AMU'S APPEAL NO. 109 OF 2019

72) Amu was impleaded as a party Respondent to Chamber Summons No. 534 of 2005 and was made aware of the order of *ad-interim* injunction. Amu has however taken two defences, (in addition to few more), that it was not aware of the order dated 6 May 2005 by the Advocate and in any case, the order dated 6 May 2005 was not directed against Amu. The exact defences raised by Amu before the learned Single Judge have been captured in paragraph 53 of the impugned order :-

> 53 Shri Jain submitted that :
> (A) Though a party to the order dated 6th May 2005, Amu was not aware of the order passed and was not informed correctly about the order by its Advocate.
> (B) There was no order against Amu and therefore, Amu is not liable to ensure compliance thereof or for a breach thereof.
> (C) ABG had a debit balance and therefore Amu was entitled to sell the shares and appropriate proceeds in exercise of a stockbroker's lien under the Bombay Stock Exchange Byelaws, notwithstanding the injunction.
> (D) Amu's contentions that assuming Amu had violated the injunction, no useful purpose would be served in making it bring back the shares or the value thereof, if eventually Amu would be entitled to appropriate all the shares in exercise of the lien.

(E) The present proceedings be treated as garnishee proceedings and Amu would be treated as a garnishee who is entitled to adjust against the claim stated to be owing by it.
(F) ABG is being proceeded against pursuant to execution of the order of 6th May 2005 and lifting of the corporate veil of ABG by the order dated 7th December 2005 which order of 7th December 2005 was not continued on 27th January 2009 (page 562) as the said order dated 7th December 2005 has not been further extended, there can be no execution against ABG in respect of the order dated 06.05.2005.
(G) Amu is an independent stockbroker acting on an arm's length basis and not at the behest of Ghosh.

73) The learned Single Judge has rejected the defence of its Advocate not informing the order of *ad interim* injunction to Amu. The defence was rather bizarre and goes against the principle that the knowledge acquired by party's advocate about the order becomes knowledge by the party as well. The defence appears to have been taken to somehow escape the liability arising out of active aiding in violation of the injunction order, which act of Amu is being discussed separately. We are therefore in agreement with the finding of fact recorded by the learned Single Judge in rejecting Amu's defence of failure to inform order dated 6 May 2005 by its Advocate.

74) So far as objection that the order dated 6 May 2005 was not made against Amu, ordinarily the findings recorded by us *qua* CDSL could have applied for Amu also. However, the learned Single Judge has recorded specific findings which indicate that Amu was closely associated with the Judgment Debtors and has acted in active participation in defeating the order of injunction. We proceed to examine correctness of those findings.

75) The shares in the Demat account of ABG Securities have been sold by Amu. Amu raised a defence that it had a debit balance in the account of ABG Securities and was, therefore, entitled to sell the shares and appropriate the proceeds. This defence is rejected by the learned Single Judge by holding in paragraph 66 to 73 as under:

> Court's views on Shri Jain's submissions – Paragraph 53 (C) and (D):
>
> 66 In my view, these contentions are unacceptable. I say this because at no point of time in the present pleadings or in the last 13 years has Amu ever expressly asserted any lien. It is only stated that there was a purported debit balance and that Amu was authorized by a purported letter of Ghosh and ABG, copies whereof are at Exhibit 2 and Exhibit 3 to the affidavit in reply dated 15th June 2009 of one Arvind M. Shah, to retain the sale proceeds of the shares for further adjustments. If indeed, Amu had a lien in law which it was entitled to assert, no such letters would have been required. This clearly shows that Amu has never asserted a lien. Further, even assuming for a moment that Amu had a right of lien and/or the right to sell the shares, the same could never have been permitted in breach of the said order of injunction. The very minimum that would have been required was for Amu to come before this Court and seek modification or vacation of the said order. I have to note, Shri Jain, in fairness agreed that Amu should have approached the Court for clarification or leave to sell and appropriate. Instead Amu has indulged ABG in speculation of sale and purchase of shares after the said order, as evident from the figures at page 17 of Amu's chart dated 10th December 2018. For ease of reference, the Chart is reproduced herein below :
>
> STATEMENT OF AMU'S DUES RECOVERABLE FROM ABG SECURITIES PRIVATE LIMITED

Opening Balance as on the date of the injunction, i.e., 6.5.05	-49,51,535.89	Page 362 (Ledger Account) & Page 351 (Correspondence)
Speculation Transactions	-92,77,874.65	See Statement (INTRA DAY SQUARE OFF TRANSACTIONS)
Purchase Amount	-1,22,29,803.40	See Statement (DELIVERTY PURCHASE TRANSACTIONS)
Total Sale Amount	2,42,25,715.78	See Statement (DELIVERY

		SALE TRANSACTIONS)
Expenses Amount	-6,96,984.78	See the Statement hereunder
Cheque received from ABG Securities	10,00,000.00	Page 367 (Ledger Account) (towards the bottom)
Closing Balance at the very end	-19,30,482.94	Page 367 (Ledger Account) & Page 351 (Correspondence)

SERVICE TAX	10,381.25
STAMP DUTY (MAHARASHTRA GOVERNMENT)	84,686.88
SECURITIES TRANSACTION TAX (STT) GOVERNMENT OF INDIA	4,32,178.84
TRANSACTION TAX (BOMBAY STOCK EXCHANGE)	1,69,737.81
TOTAL EXPENSES	6,96,984.78

67 Having failed to apply for modification or vacation and having actively permitted the share transfers in breach of the injunction, it does not lie with a defaulting party to contend before this Court that there is no major prejudice caused by the sale/transfer and that the breach ought to be excused. All the judgments cited by applicants speak of the majesty of the Court not being permitted to be diluted by a person acting in breach of the order. It is unstateable for a party who commits/permits the breach to say that no material difference would have occurred if the order had been complied with and therefore the breach, done intentionally and with full knowledge of the consequences, ought to be ignored. The reliance of Amu's Advocates on the judgment of Ghanshyam Sarda (Supra) is misplaced. The Apex Court has simply exercised a discretion on the facts and circumstances of that case as opposed to the brazen manner in which the injunction has been violated by ABG/Amu.

68 In every case, where a party claiming to be a secured creditor (as Amu purports to be) seeks to raise an attachment or restraint on the property secured to it, the party must come before the Court and seek lifting/modification of the order of injunction. To not insist on the same and to permit a party to be excused from complying with the order of this Court would result in misuse as parties would at their ipse dixit decide whether or not to comply with orders of the Court.

69 It is to avoid this very malaise that the Hon'ble Supreme Court and the High Courts have held that as a matter of judicial policy the orders

of a Court cannot be permitted to be breached or stultified. Whether any actual benefit is served from restoring the status quo ante or not is entirely irrelevant and cannot possibly be a factor relied upon by the defaulting party to justify its breach and avoid the consequence of having to restore the status quo ante.

70 Once the shares/value thereof are brought back, and if Amu seeks to withdraw the same, it will be open to applicants to resist the same by urging, inter alia, that Amu could never have claimed a lien on the said shares as Amu was in fact barred by law from dealing with the said shares.

71 On the facts and merits of the claim for lien in the present case, even assuming Amu had a lien which they could have exercised, to what extent Amu may be permitted to retain the benefit from the shares sold/transferred has to be ascertained. I have considered in detail the chart that Shri Jain tendered with a compilation on 10th December 2018. Prima Facie, it appears, shares transferred out of ABG's CDSL demat account after the injunction order dated 6th May 2005 were valued at Rs.1,79,62,131.56 as on the date of their respective transfer as per Schedule V to the chamber summons or Rs.2,42,25,715.78 as per page 17 of Amu's chart dated 10th December 2018. Amu's purported balance upon which they could arguably contend that they had a lien was Rs.49,51,535.89 (Amu's ledger) being the purported closing balance as on the date of the injunction. Under no circumstances, can it be suggested that even after the injunction, Amu was entitled to continue to sell and buy shares for ABG, permit ABG to indulge in speculation, rack up a huge purported loss and thereafter claim appropriation of lien of the entire purported loss from the shares sold/transferred in breach of the injunction.

72 It is crucial that the said shares be brought back with accrued benefits or their monetary value along with interest thereon from 2005. It is nowhere proved by Amu that in fact there was a debit balance of Rs.49,51,535.89/-. The accounts relied upon by Amu have no supporting material, nor are they audited or certified accounts. They are simply Amu's internal ledger which is under their sole control. Once the shares are brought back, Amu will have to first establish and prove the existence and veracity of such purported debit balance. In para 13(f) of applicants' affidavit in rejoinder dated 31st July 2009, it has been stated that Amu refused to furnish the particulars of the entries in its accounts and refused to furnish copies of the documents pertaining to entries in the said accounts (including copies of bills and journal vouchers) and an adverse inference should be and ought to be drawn against Amu. In reply, Amu in its Affidavit in surrejoinder dated 6 th November 2009 in para 23, has inter alia stated that Amu is not bound to furnish any particulars of the entries in its accounts or copies of the documents pertaining to entries in the said accounts.

> Applicants have specifically disputed the veracity of Amu's purported ledger account.
>
> 73 Pertinently, Amu had never asserted any right of lien in respect of the said shares at the time of passing of the said order dated 6th May 2005, though present through their Advocate. At no point in the ensuing 13 years has Amu ever asserted a claim or filed proceedings against ABG and/or Ghosh in respect of the purported debit balance it claims it still has. Amu's conduct could be viewed with suspicious collusion with Ghosh. Amu only started dealing with ABG in June 2004 after service on May 11, 2004 of the earlier chamber summons no.754 of 2004; ABG is clearly a front for Ghosh, against whom the BSE Award was passed and execution was pending.

76) In the present case, Amu has not acted as a mere stockbroker by acting on instructions of the demat account holder. It has sold the shares itself for satisfaction of alleged amount due to it. It appears that transactions of buying and selling shares for ABG Securities continued after passing of order of injunction and ABG Securities was permitted to indulge in speculation for the purpose of racking up a huge purported loss and thereafter Amu raised claim for appropriation of lien of the entire purported loss by selling shares in the Demat account of ABG Securities.

77) The learned Single Judge has recorded an emphatic finding that Amu was actually acting in aid of Ghosh/ABG Securities and not in exercise of lien, which is evident from the fact that Amu also purchased shares during the relevant period. To make things worse for Amu, the learned Single Judge has held in paragraph 83 of the order that Amu was otherwise closely associated with Ghosh and always acted at the behest of Ghosh. The findings recorded in paragraph 83 of the order reads thus:

83 Amu has represented as if it is an innocent arm's length stockbroker dealing for its constituent and therefore should not be liable for breach of the order. This is untenable as evident from the following :

(i) Amu is an entity which was closely connected with and acting at the behest of Ghosh. This observation is based only on the admitted facts from Amu's own affidavits;

(ii) Amu has admitted that Ghosh was a signatory on the bank account for respondent nos. 4 to 6 herein, which are entities of Amu's directors, i.e., respondent nos.2 and 3 herein;

(iii) Respondent nos.2 and 3, who were Amu's Directors, had appointed Ghosh as a consultant and for this purported consultancy had given Ghosh, inter alia, luxurious flats at Anand Niwas, A Road Churchgate, and thereafter at Shreyas Building, Nariman Point to live in, for free, for which Amu was the licensee and was paying significant rent;

(iv) Amu made payment of Rs.8,26,643/ to the Official Assignee of this Court, on 16th December 2005, on behalf of Lily who was declared insolvent; and

(v) Amu has at Ghosh/ABG's behest carried out huge transactions after the injunction order.

78) Correctness of the above findings is not seriously disputed before us. Thus, Amu appears to be closely associated with Gosh family and its entities. The act of Amu selling the shares in the demat account of ABG securities therefore needs to be viewed from the close association of Amu with the Judgment Debtors. Amu has apparently permitted Ghosh and ABG Securities to indulge in speculation for carrying out huge transactions after the injunction order solely for the purpose of creation of liability/debit for discharge of which the shares are shown to have been sold. Thus, Amu cannot be put on the same pedestal as that of CDSL.

79) While absolving CDSL of responsibility to pay to the Receiver the amount as directed by the learned Single Judge, this Court has recorded a finding that CDSL's acts do not constitute active aiding or abetting of violation of *ad-interim* injunction in connivance with the Judgment Debtor. However, we are unable to record same findings *qua* Amu on account of connection established between Amu and Judgment Debtors by the learned Single Judge which would bear out motive on the part of Amu to frustrate the order of *ad-interim* injunction. Unlike CDSL, Amu had every reason to act in connivance with the Judgment Debtor to frustrate the execution proceedings. The learned Single Judge, upon perusal of the material before it, has rejected the defence of Amu's lien on share of ABG Securities. The defence of lien, to our mind, does not appear to be not a *bonafide* one. The learned Single Judge has also examined the manner in which liability was created by indulging into speculating activities solely for the purpose of enabling sale of shares by Amu to frustrate the decree. Though, Mr.Cama has strenuously contended and has also taken us through some of the documents to indicate that Amu sold shares of ABG Securities to itself, we do not find any finding to that effect being recorded by the learned Single Judge. As of now, Amu is directed to merely bring back the specified amount before the Court and the exact role played by Amu in the entire transaction can be subjected to further scrutiny during the course of decision of execution proceedings.

80) Thus, there are atleast two distinguishing factors between CDSL and Amu. Firstly, Amu was a party to the

Chamber Summons in which *ad interim* order was passed. The purpose of its impleadment was to ensure obedience with the order that would be passed in the Chamber Summons. It was made aware of the exact dispute between the parties and cannot feign ignorance. The actions of Amu in selling the ABG's shares needs to be understood in the light of acquisition of knowledge by it about the proceedings. Secondly, Amu is not a total stranger and is found to be closely associated with judgment debtors. It therefore had every reason to assist the judgment debtors in commission of breach of the injunction order.

81) The Executing Court therefore is justified in extending its long arm and make Amu bring back the money of sold shares. We are, therefore, not inclined to grant any relief in the appeal preferred by Amu.

82) Thus, the impugned order deserves interference only in CDSL's appeal and no relief deserves to be granted in Amu's favour. Consequently, we proceed to pass the following order:

i. Appeal No. 104 of 2019 filed by CDSL is allowed and order dated 9 January 2019 passed in Chamber Summons No. 55 of 2009 is set aside only *qua* CDSL.

ii. Appeal No. 109 of 2019 filed by Amu is dismissed and order dated 9 January 2019 *qua* Amu is upheld.

83) With the above directions, both the appeals are disposed of.

[SANDEEP V. MARNE, J.] [CHIEF JUSTICE]

NEETA SHAILESH SAWANT

Digitally signed by NEETA SHAILESH SAWANT
Date: 2025.08.12 19:41:10 +0530