CLASS ACTION

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CLASS ACTION AS NOW PROPOSED:

1. A class action, a class suit, or a representative action is a form of lawsuit in which a large group of people collectively bring a claim to court and/or in which a group of defendants is being sued.

2. This is the new provision inserted under the Companies Act,2013. The Companies Act,2013 provides for class-action lawsuits, which can allow a large number of people with common interest in a matter to sue or be sued as a group. Sections 245 and 246 of the Act contain these provisions. Under these, class-action suits may be filed by investors if they are of the opinion that the affairs of the company are being conducted in a manner prejudicial to the interest of the company, its shareholders or depositors.

3. Class suits have several advantages, essentially the economics of aggregation. Presumably, class suits minimize litigation by avoiding multiple suits. The amount of compensation being claimed by each claimant may be too small to warrant individual pursuit.

CLASS ACTION IN OTHER COUNTRIES

1. Class action aimed at monetary settlements originated in the USA and is still predominantly a US phenomenon, though several European jurisdictions have, of late, enacted some provisions permitting class action.

2. Outside of USA, Australia is a country where securities class litigation is widely prevalent, as courts have held litigation funding by lawyers as permissible.

3. European jurisdictions allow class action to be pursued by consumer associations only and not by individuals. This has been considered reasonable as the objective is to restrict entrepreneurial pursuit by firms.

WHO ARE ENTITLED TO FILE CLASS ACTION

Section 245 has been put in the Chapter dealing with oppression and mismanagement which provide for class action. As per the said Section, the following shall be treated as requisite number of members or depositors for filing a suit under this Section:

Class of companies	Requisite number of members	Requisite number of Depositors
In case of companies limited by shares	At least 100 members or 10% of number of members whichever is lower or any member or members holding 10% of the issued share capital of the company	At least 100 depositors or 10% of total number of depositors whichever is lower or any depositor or depositors to whom the company owes 10% of total deposits
In case of company not having share capital	one-fifth of the total number of its members	Same as above .

APPLICATION TO TRIBUNAL

- The number of members who are eligible for the application to Tribunal in case of company having share capital shall be not less than 100 members of the company or shall not be less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed but subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

- The number of members eligible to file the application to the Tribunal in case of company not having share capital shall not be less than one-fifth of the total number of the members.

- The number of depositors eligible to file an application to the Tribunal shall not be less than 100 depositors or shall not be less than such percentage of the total number of depositors as may be prescribed, the lesser of the two, or any depositor or depositors to whom the company has to pay such percentage of total deposits of the company as may be prescribed.

FUNCTIONS OF TRIBUNAL

a) Whether the member or depositor is acting in good faith in making the application for seeking an order;

b) Any evidence before it as to the involvement of any person other than directors or officers of the company on the matters that the management or conduct of the affairs of the company is being conducted in a manner prejudicial to the interests of the company or its members or depositors.

c) Whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;

d) Any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;

e) Where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—

i. Authorized by the company before it occurs; or

ii. Ratified by the company after it occurs;

f) Where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

SECTION 397 & 398

(INVESTIGATION CANNOT BE ORDERED TO DIG OUT A CASE IN FAVOUR OF A PARTY – UNLESS CASE OF OPPRESSION AND MIS-MANAGEMENT IS FULLY ESTABLISHED).

The Division Bench of Calcutta High Court in the case of Mohta Bros (P) Ltd Vs. Calcutta Landing and Shipping Co Ltd MANU/WB/0108/1969 has held as under:-

- They are no authority for the proposition that, even though a petitioner fails to make out a case for a-statutory relief by setting out material facts in the pleading, yet the court should grant relief to the petitioner by directing an investigation, in the hope that the report of the investigation might disclose materials for further orders against the company, and in favour of the petitioner.

In our view, to hold that an investigation should be directed or relief ought to be granted to a petitioner, even though facts relating to mis-management, oppression, misappropriation and improper conduct have not been pleaded and proved, would open the door to grave injustice. It would enable a group of shareholders, having the requisite shareholding, to obtain an order for investigation into the affairs of the company, or other orders, on allegations which may subsequently turn out to be entirely unfounded. This, in our view, cannot and ought not to be done.

(NECESSARY INGRIDIENTS OF SECTION 397,399 SO AS TO WARRANT GRANT OF RELIEF UNDER SECTION 402):

- The Supreme Court in the case of P Ratnakumar Vs. T V Chandran 1994(79) Company Cases 213 has observed that "Mismanagement under Section 398 comes into play only when either the acts of mismanagement or its consequences are continuing till the date of filing of the petition or there is an anticipation of such events taking place in immediate future in case the present management is allowed to continue".

(NECESSARY INGREDIENTS OF SECTION 397)

The Madras High Court in the case of S Seetharaman & others Vs. Stick Fast Chemicals (P) Ltd MANU/TN/0111/1996

- Relief may be granted under section 397 of the Act only against the continuous acts on the part of the majority shareholders oppressive to the minority. Some isolated and illegal act do not amount to oppression.

Denial of the right of inspection or other rights of a shareholder or failure to comply with formalities required in the matter of giving notice of a general body meeting or refusal to declare more than a moderate rate of dividend even though the profits earned justified a higher rate of dividend cannot taken by themselves amount to oppression. Denial to shareholders of access to the books is not oppression because there is adequate remedy against such denial in the Act. Merely because the petitioner who had a substantial shareholding was excluded from management, it cannot be said that there was oppression against a shareholder.

PERSISTENT AND CONTINUOUS ACTS ARE MUST

The Kerala High Court in the matter of P Ratnkumar v. T.V. Chandran [1994] 79 Comp Cas 213 : [1994] 1 Comp LJ 469, held:

- That nature of oppression is to be tested in the context of cause for winding up. Complainant must establish persistent and persisting course of unjust conduct. Isolated acts of controlling shareholders cannot be used as a ground for taking action under Section 397. There must be continued oppression over a period of time. Closed affairs and past conduct are not encompassed in the section.

(MERE ILLEGAL AND UNLAWFUL ACTS NOT ENOUGH)

If an action of the director is illegal or invalid or unlawful the shareholder may take appropriate action in a court of law challenging the validity of such action, but a petition under section 397 or 398 is not an appropriate remedy for that purpose (see Hungerford Investment Trust Ltd. v. Turner Morrision and Co. Ltd. ILR [1972] Cal 286).

(MERE VIOLATION OF COMPANIES ACT IN PASSING BOARD RESOLUTION IS NOT SUFFICIENT TO WARRANT ACTION UNDER SECTION 397)

The Hon'ble Gujarat High Court in Mohanlal Ganpatram and Anr. v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. and Ors., MANU/GJ/0003/1964 : (1964)0GLR804 stated the law as under:-

- "It may be that a resolution may be passed by the Directors which is perfectly legal in the sense that it does not contravene any provision of law,

and yet it may be oppressive to the minority shareholders or prejudicial to the interests of the Company. Such a resolution can certainly be struck down by the Court under Section 397 or 398. Equally a converse case can happen. A resolution may be passed by the Board of Directors which may in the passing contravene a provision of law, but it may be very much in the interests of the Company and of the shareholders..."

GROUND EQUAL TO WINDING UP MUST BE SET UP AND PROVED.

The Supreme Court of India in the case of Hanuman Prasad Bagri Vs. Bagress Cereals (P) Ltd MANU/SC/0204/2001 has held as under:-

- Section 397(2) of the Act provides that an order could be made on an application made under sub-section (1) if the court is of the opinion - (1) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members;

and (2) that the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, and (3) that the winding up order would unfairly prejudice the applicants. No case appears to have been made out that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members.

Therefore, we have to pay our attention only to the aspect that the winding up of the company would unfairly prejudice the members of the company who have the grievance and are the applicants before the court and that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. In order to be successful on this ground,

the Petitioners have to make out a case for winding up of the company on just and equitable grounds. If the facts fall short of the case set out for winding up on just and equitable grounds no relief can be granted to the Petitioners. On the other hand the party resisting the winding up can demonstrate that there are neither just nor equitable grounds for winding up and an order for winding up would be unjust and unfair to them. On these tests, the Division Bench examined the matter before it.

(MERE VIOLATION OF LEGAL AND CONTRACTUAL RIGHT IS NOT ENOUGH – REMEDY LIES WITH CIVIL COURT ANDNOT CLB – NOW NCLT)

The Hon'ble Supreme Court in the case of Sangramsinh P Gaekwad Vs. Shantadevi P Gaekwad AIR 2005 SC 809 has held as under:-

- 191. It has to be borne in mind that when a complaint is made as regard violation of statutory or contractual right, the shareholder may initiate a proceeding in a civil court but a proceeding under Section 397 of the Act would be maintainable only when an extraordinary situation is brought to the notice of the court keeping in view of the wide and far-reaching power of the court in relation to the affairs of the company.

In this situation, it is necessary that the alleged illegality in the conduct of the majority shareholders is pleaded and proved with sufficient clarity and precision. If the pleadings and/ or the evidence adduced in the proceedings remains unsatisfactory to arrive at a definite conclusion of oppression or mis-management, the petition must be rejected.

- **In India,** the members or depositors can claim the damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm and also each partner of the audit firm shall be held liable who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

If these members are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors then these members can file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

SECTION 245 (1) OF THE COMPANIES ACT, 2013

(a): To restrain the company from committing an act which is ultra vires the Articles or Memorandum of the company;

The Full Bench of Karnatak high Court in the case of Karnataka Sugar Workers Federation Vs. State of Karnataka MANU/KA/0222/2003 has observed as under:-

- The expression "ultra vires" consists of two words: "ultra" and "vires". "Ultra" means beyond and "vires" means powers. Thus the expression **ultra vires means** an act done outside the scope of the conferred power.

The Division Bench of Gujarat high Court in the case of PH Parmar Vs. State of Gujarat MANU/GJ/0129/2003 has observed as under:-

Ultra vires is a Latin phrase, which means, beyond power; transcending authority and is frequently employed in relation to Acts or enactments of the authority or Legislature in excess of their constitutional or statutory rights or jurisdictional sweep. Thus, **ultra vires means** an act performed without any legal authority to act and action beyond the scope of the powers of the decision making authority and beyond the scope of legal sanction.

The Division Bench of Delhi High Court in the case of Infrastrucre Leasing & Finance Services Ltd Vs. Commissioner of Value Added Taxes MANU/DE/0902/2010, while defining 'Ultra-vires" has observes as under:-

The expression "ultra vires" consists of two words: "ultra" and "vires". "Ultra" means beyond and "vires" means powers. Thus the expression **ultra vires means** an act done outside the scope of the conferred power.

ACTS ULTRA-VIRES THE PROVISIONS OF OBJECT CLAUSE:

The Company Law board in the case of Priyanka Overseas (P) Ltd Vs. Pashupatri Fabrics Limited MANU/CL/0070/2005, while dealing with the issue of acts beyond the purview of memorandum of association" has held as under:-

Any act which ultra vires its memorandum is not a procedural irregularity but null and void ab-initio and is incapable of being cured even if all the shareholders desire to ratify the same.

BENEFITS ARISING OUT ULTRA-VIRES CONTRACT:

The Division Bench of Madras High Court in the case of S Sivashanmugham Vs. Butterfly Marketting (P) Ltd MANU/TN/0389/1999, while dealing with the issue of benefits gained by the party, in pursuance of contract which is ultra-vires, has held as under:-

"Ultra vires doctrine" is one, as rightly observed by Gower at page 171 is meant to protect the company against itself so as to safeguard its members and its creditors.

We prima facie are of the view that the third party may not take advantage of this doctrine in order to avoid the performance of the obligations voluntarily undertaken with full opportunity to know the extent of the company's power before entering into the transaction. It is however not necessary for us to decide that question in this case as we have found that the provisions contained in the memorandum of association are sufficiently wide enough to enable the company to enter into partnership with the defendant in the suit.

EFFECTS OF ULTRA-VIRES ACT: IMPLICATION THEREOF:

The Constitution Bench of Hon'ble Supreme Court in the case of Dr A L Mudalia Vs. Life Insurance Corporation of India MANU/SC/0062/1962 has observed as under:-

Where a Company does an act which is ultra vires, no legal relationship or effect ensues therefrom. Such an act is absolutely void and cannot be ratified even if all the shareholders agree. Re. Birkback Permanent Benefit Building Society [1912] 2 Ch. 183. The payment made pursuant to the resolution was therefore unauthorised and the trustees acquired no right to the amount paid by the Directors to the trust.

22. The only question which remains to be considered is whether the appellants were personally liable to refund the amount paid to them. Appellants 2 and 4 were at the material time Directors of the Company and they took part in the meeting held under the Chairmanship of the fourth appellant in which the resolution, which we have held ultra vires, was passed. As office bearers of the Company who were responsible for passing the resolution ultra vires the Company, they will be personally liable to make good the amount belonging to the Company which was unlawfully disbursed in pursuance of the resolution

(b): To restrain the company from committing breach of any provision of the company's Memorandum or Articles;

ACTION ULTRA-VIRES TO COMPANIES ACT OR ARTICLES OF ASSOCIATION OF A COMPANY

The Madras High Court in the case of Vivek Goenka v. Manoj Sonthalia (1995) 5 Comp LJ 253 (Mad): (1995) 83 Comp Cas 897 (Mad), the court will not interfere with the day-to-day functions, management and administration of a company unless it is established that the decisions taken by the board are **ultra vires** of the Companies Act or articles of association of the company.

©)To declare a resolution altering the Memorandum or Articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;

(d) To restrain the company and its directors from acting on such resolution;

The Delhi High Court in the case of Green Delhi BQS Ltd Vs. DTC MANU/DE/0980/2010 has held as under:-

In India, in relation to functioning of companies, it was held Ref. A. Lakshmanaswami Mudaliar v. LIC of India **MANU/SC/0062/1962** : AIR 1963 SC 1185 that where a particular activity has not been provided for in the Memorandum of Association, the directors cannot seek recourse to the Articles of Association to imply that such business falls within its objects.

SCOPE OF MEMORANDUM OF ASSOCIATION OF A CO.

The Division Bench of Kerala High Court in the case of Commissioner of Income Tax Vs. Palikkal Medical Foundation (P) Ltd MANU/KE/0087/1993"

The memorandum of association of a company is the constitution or charter of the company defining its objects. Its purpose is to enable the shareholders,

creditors and those dealing with the company to know what is the company's permitted range of enterprise (See Cotman v. Brougham [1918-19] ER 265 ; [1918] AC 514. However, it cannot be said that the objects clause conclusively proves the activities of the company (see Lakshminarayan Ram Gopal and Son Ltd. v. Government of Hyderabad MANU/SC/0089/1954 : [1954]25ITR449(SC) and Bengal and Assam, Investors Ltd. v. CIT MANU/SC/0133/1965 : [1966]59ITR547(SC) .

Section 13 of the Companies Act requires the company to specify clearly the main objects of the company to be pursued by the company and objects incidental or ancillary to the attainment of the main objects as well as other objects not included as main objects or incidental or ancillary objects. Incidental or ancillary objects are those which have a reasonably proximate connection with the main objects (see Dr. A. Lakshmanaswami Mudaliar v. LIC of India [1963] 33 Comp Cas 420 ; 1 Comp LJ 248 ; **MANU/SC/0062/1962** : AIR1963SC1185).

38. It was also settled by this judgment that only where the terms of the memorandum are ambiguous or silent, it has to be read along with the articles and that the articles cannot override the memorandum or extend its scope. In this case, there is no conflict between the memorandum and articles.

SUPPRESSION OF MATERIAL FACT DIS-ENTITLE PETITION TO CLAIM RELIEF.

In S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors. MANU/SC/0236/2004 : AIR2004SC2421 ,

The Supreme Court has accepted the principle that the suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it.

But the suppressed fact must be a material one in the sense that had it not been suppressed, it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken.

The similar view was echoed by the Supreme Court in the case of Oswal Fats and Oils Ltd. v. Additional Commissioner (Administration) MANU/SC/0216/2010 : (2010) 4 SCC 728 where it has been held that "It is settled law that a person who approaches the court for grant of relief, equitable or otherwise,' is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case.

In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person or ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person".

RECALL OF ORDERS OF TRIBUNALS/FORUMS/CLB

- The Supreme Court in the case of United India Insurance Co. Ltd. v. Rajendra Singh 2000 100 Comp Cas 705; MANU/SC/0180/2000 : has held that " we have no doubt that the remedy to move for recalling the order on the basis of newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim"

The Supreme Court in the case of S.P. Chengalvaraya Naidu v. Jagannath MANU/SC/0192/1994 : AIR1994SC853 has held as under:-

- The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely.

We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of litigation.... A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. The judgment or decree obtained by practicing fraud is nullity in law.

- Further, the Supreme Court once again in the case of A.V. Papayya Sastry v. Government of A.P. MANU/SC/1214/2007:AIR2007SC1546 reiterated that even a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. If this is the fate of even a judgment of a Court obtained by fraud, it is needless to point out that a Will, executed out of a fraudulent intent to defraud the creditor, cannot also be taken to be valid in the eye of law.

Further, the Supreme Court in the case of Ram Chandra Singh v. Savitri Devi MANU/SC/0802/2003 : (2003)8SCC319 has held that "a collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio"

LIMITATION ACT DOES NOT APPLY:

- We are, however, on a more fundamental issue with regard to the very applicability of the Limitation Act, to the proceedings before the Company Law Board. We had occasion to deal with this matter at great length very recently in A. V. Sampat, Official Liquidator v. Dunlop India Ltd. [1996] 87 Comp Cas 398 (**CLB**).

In this case, we have relied on certain decisions of the Supreme Court in the context of the applicability of the Limitation Act, namely, Nityanand M. Joshi v. Life Insurance Corporation of India, MANU/SC/0320/1969 : AIR 1970 SC 209 and Town Municipal Council, Athani v. Presiding Officer, Labour Court, MANU/SC/0331/1969 : AIR 1969 SC 1335, and came to the conclusion that the Company Law Board is not a court for the purpose of the Limitation Act and as such the limitation under Article 137 of the Limitation Act, 1963, does not apply to the proceedings before us. Accordingly, we hold that, the petition is not hit by the limitation prescribed under the Limitation Act, 19&3.

(e): To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;

(f): To restrain the company from taking action contrary to any resolution passed by the members;

(g) To claim damages or compensation or demand any other suitable action from or against:-

i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part,

ii) the auditor including audit firm of the company for any improper, mis-leading statement of particulars made in the audit report or for any fraudulent, unlawful or wrongful act or conduct; or

iii) any expert or advisor or consultant or any other person for any incorrect or mis-leading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;

What is meant by "Compensation"

According to Concise Oxford English Dictionary, tenth edition, published by Oxford University Press, **compensation means** something awarded to compensate for loss, suffering, or injury. Something that compensates for an undesirable state of affairs. "**Compensation**" **means** anything given to make the equivalent as has been held in the case of **State of Gujarat v. Shantilal Mangaldas and Ors.** MANU/SC/0063/1969 = AIR 1969 SC 634, **Tata Iron and Steel Co. Ltd. v. Union of India and Ors.** AIR 2000 SC 3706; Ghaziabad Development Authority Vs. Balbir Singh MANU/SC/0282/2004 and **H.U.D.A v. Raj Singh Rana**, AIR 2008 SC 3035.

The Rajasthan High Court in the case of Rajpal Singh Vs. Gopi Singh MANU/RH/0569/2013 has define "compensation" to mean as follows:-

- It is settled position of law that just compensation means adequate compensation which is fair and equitable, on the proved facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to the award of compensation. It should neither be niggard, nor a windfall or bonanza to the claimants.

The Three Member Bench of Hon'ble Supreme Court in the case of Lata Wadhwa Vs. State of Bihar and Tata Iron & Steel Co Ltd MANU/SC/0456/2001 with following facts, has held as under :-.

FACTS:

- It was also stated that out of the 60 persons, who died, 55 were either employees or relations of employees of the Tata Iron and Steel Company and similarly, out of 113 persons injured, 91 were either employees or their relations. Smt. Lata Wadhwa, the petitioner No. 1, lost her both the children, a boy and a girl and her parents. Her husband was an employee of the company. It was alleged in the writ petition that the State of Bihar had been colluding with the company and there has been total inaction on the part of the State in taking appropriate action against the negligent officers for whose negligence, the tragedy occurred.

The State in its counter affidavit, however denied the allegations made and further averred that inquiries had been conducted by a Committee constituted by the Government of Bihar, Department of Labour, Employment and Training and report was submitted to the company, indicating the negligence of the personnel and on that basis, criminal prosecution had been launched.

DECISION

a) Deceased Earning Member: Damages are awarded on the basis of financial loss and the financial loss is assessed in the same way, as prospective loss of earnings. A practical approach to the calculation of the damages has been stated by Lord Wright, in a passage which is frequently quoted, in **Davies vs. Powell Duffryn Associated Collieries Ltd. [1942] All ER 657,** to the following effect:-

"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump-sum by taking a certain number of years' purchase."

b) House-wife: So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied,

but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000/- per annum in cases of some and Rs. 10,000/- for others, appears to us to be grossly low. But even in the absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3,000/- per month and Rs. 36,000/- per annum.

This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs. 36,000/- and thereafter applying the multiplier, as has been applied already, and so far as the conventional amount is concerned, the same should be Rs. 50,000/- instead of Rs. 25,000/- given under the Report. So far as the elderly ladies are concerned, in the age group of 62 to 72, the value of services rendered has been taken at Rs. 10,000/- per annum and multiplier applied is eight.

Though, the multiplier applies is correct, but the values of services rendered at Rs. 10,000/- per annum, cannot be held to be just and, we, therefore, enhance the same to Rs. 20,000/- per annum. In their case, therefore, the total amount of compensation should be re-determined, taking the value of services rendered at Rs. 20,000/- per annum and then after applying the multiplier, as already applied and thereafter adding Rs. 50,000/- towards the conventional figure.

C) Children: So far as the award of compensation in case of children are concerned, Shri Justice Chandrachud, has divided them into two groups, first group between the age group of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs. 50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs. 25,000/- has been added and as such to the heirs of the 14 children,

a consolidated sum of Rs. 75,000-/ each, has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children, who died on the fateful day and having found their contribution to the family at Rs. 12,000/- per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs. 25,000/- has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs. 1,57,000/- each.

LOSS OF PROFIT:

In Dwaraka Das v. State of Madhya Pradesh and Anr. MANU/SC/0088/1999 : AIR 1999 SC 1031, it was held that a claim by a contractor for recovery of amount as damages as expected profit out of contract cannot be disallowed on ground that there was no proof that he suffered actual loss to the extent of amount claimed on account of breach of contract.

30. In A.T. Brij Paul Singh and Ors. v. State of Gujarat MANU/SC/0081/1984 : AIR 1984 SC 1703, while interpreting the provisions of Section 73 of the Indian Contract Act, 1972, this Court held that damages can be claimed by a contractor where the government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract,

the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. The claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was further observed that what would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid.

LOSSES & DAMAGES:

The Constitution Bench of the Supreme Court in Fateh Chand Vs. Balkishan Dass MANU/SC/0258/1963 : AIR 1963 SC 1405 laying down that even where penalty within the meaning of Section 74 of the Indian Contract Act is stipulated for breach, without proving the loss the same cannot be recovered.

The Division Bench of Delhi High Court in the case of DDA Vs. Krishna Construction Co MANU/DE/3727/2011 has observed as under:-

- *It has not been noted that there was no evidence to support the quantification of the claim as sought to be justified towards damages on account of idle T&P, labour and overheads etc. Principle of mitigation of loss has not been dealt with.*

The Division Bench has held that actual proof or evidence is required in order to claim the amount on account of idle plant, machinery, labor and other items of overheads.

The Hon'ble Supreme Court in the case of Oil & Natural Gas Corporation Ltd Vs. Saw Pipes Limited MANU/SC/0314/2003, in a landmark judgment, while dealing with Section 73 and 74 of Indian Contract Act, has observed as under:-

- Under **Section** 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it.

This **Section** is to be read with **Section** 74, which deals with penalty stipulated in the contract, inter alia [relevant for the present case] provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled,

whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. **Section** 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. therefore, the emphasis is on reasonable compensation.

Take for illustration construction of a road or a bridge. If there is delay in completing the construction of road or bridge within stipulated time, then it would be difficult to prove how much loss is suffered by the Society/State. Similarly in the present case, delay took place in deployment of rigs and on that basis actual production of gas from platform B-121 had to be changed.

It is undoubtedly true that the witness has stated that redeployment plan was made keeping in mind several constraints including shortage of casing pipes. Arbitral Tribunal, therefore, took into consideration the aforesaid statement volunteered by the witness that shortage of casing pipes was only one of the several reasons and not the only reason which led to change in deployment of plan or redeployment of rigs Trident-II platform B-121. In our view, in such a contract,

it would be difficult to prove exact loss or damage which the parties suffer because of the breach thereof. In such a situation, if the parties have pre-estimated such loss after clear understanding, it would be totally unjustified to arrive at the conclusion that party who has committed breach of the contract is not liable to pay compensation. It would be against the specific provisions of **Section** 73 and 74 of the Indian Contract Act. There was nothing on record that compensation contemplated by the parties was in any way unreasonable. It has been specifically mentioned that it was an agreed genuine pre-estimate of damages duly agreed by the parties.

It was also mentioned that the liquidated damages are not by way of penalty. It was also provided in the contract that such damages are to be recovered by the purchaser from the bills for payment of the cost of material submitted by the contractor. No evidence is led by the claimant to establish that stipulated condition was by way of penalty or the compensation contemplated was, in any way, unreasonable. There was no reason for the tribunal not to rely upon the clear and unambiguous terms of agreement stipulating pre-estimate damages because of delay in supply of goods. Further, while extending the time for delivery of the goods, respondent was informed that it would be required to pay stipulated damages.

(h) To seek any other remedy as the Tribunal may deem fit;

Section 245(5)

If the Tribunal admits an application, then the Tribunal shall also have regard to the following things:

(a). Public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;

(b). All similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side.

©. Two class action applications for the same cause of action shall not be allowed;

(d). The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.

ORDER TO BE BINDING

Section 245(6)

The order passed by the Tribunal shall be binding on the company, binding on all of its members, binding on depositors, binding on auditors and audit firm, it shall be binding on expert or consultant or advisor or any other person associated with company

PUNISHMENT

Section 245(7)

The company which fails to comply with an order passed by the Tribunal shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

FRIVOLOUS APPLICATIONS

Section 245(8)

If the application filed before Tribunal is found to be frivolous or vexatious, it shall for reasons to be recorded in writing, reject the application and make the order that the applicant shall pay to the opposite party such cost, not exceeding Rs 1 lakh, as may be specified in the order.

Section 245(9) The provisions of class action are not applicable to Banking Company.

- Section 246: The provisions of Section 337 to 341 shall apply, mutatis-mutandis, in relation to an application made to the Tribunal under Section 241 or Section 245.

Section 337: Penalty for frauds by officers;

Section 338: Where improper accounts are kept;

Section 339, Liability for fraudulent conduct of business:

Section 340 Power of Tribunal to assess damages against delinquent directors; etc;

Section 341: Where a declaration under Section 339 or any other under Section 340 is made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under Section 339, or pass an order under Section 340, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.