

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.07.2021

Date of decision: 04.08.2021

+ **W.P.(C) 6769/2020**

ORRIS INFRASTRUCTURE PRIVATE LIMITED Petitioner

Through: Mr.Vaibhav Gaggar, Ms.Sumedha Dang, Ms.Jyoti Taneja, Mr.Akash Chatterjee & Mr.Rohan Khatana, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Shashank Bajpai, Sr. Panel Counsel for UOI with Mrs.Shakun Sudha Shukla & Mr.Dhananjay Tewari, Advs.

Mr.Aditya Parolia & Ms.Aditi Sinha, Advs. for R-3 to R-6 & R-8 to R-11.

Mr.Piyush Singh & Ms.Nivedita Grover, Advs. for R-3.

Mr.Manoj Yadav & Mr.Shubham Chhalariya, Advs. for R-7.

Mr.Shaurya Sahay, Adv. for R-12.

Mr.Anurag Ojha, Adv. for R-13.

+ **W.P.(C) 6770/2020**

ORRIS INFRASTRUCTURE PRIVATE LIMITED Petitioner

Through: Mr.Vaibhav Gaggar, Ms.Sumedha Dang, Ms.Jyoti Taneja, Mr.Akash Chatterjee & Mr.Rohan Khatana, Advs.

versus

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..... Respondents

Through: Mr.Shashank Bajpai, Sr. Panel Counsel for UOI with Mrs.Shakun Sudha Shukla & Mr.Dhananjay Tewari, Advs.

Mr.Piyush Singh & Ms.Nivedita Grover, Advs. for R-3 & R-4.
Mr.Aditya Parolia & Ms.Aditi Sinha, Advs. for R-4.
Mr.Zafar Khurshid, Mr.Amit Singh Chauhan & Mr.Siddharth Agarwal, Advs. for R-3(a) & 3(b).
Mr.Shaurya Sahay, Adv. for R-12.
Mr.Anurag Ojha, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

REV. PET 9/2021 & CM APPL. 9166/2021 in W.P.(C) 6769/2020

REV. PET 8/2021 & CM APPL. 9726/2021 in W.P.(C) 6770/2020

1. These Review Application(s) have been filed by the writ petitioner seeking review/recall of the Order dated 03.11.2020 passed by this Court dismissing the writ petition(s) filed by the petitioner on the ground of availability of alternate efficacious remedy in form of a statutory appeal, and granting leave to the petitioner to avail of the same.
2. Before considering the submissions made in support of the Review Applications filed by the petitioner, brief background and chronology leading to the present Review Applications need to be noticed.
3. Writ Petition (Civil) No. 6769 of 2020 was filed praying for the following relief:

“(a) issue writ appropriate writ(s)/direction(s)/order(s) and set aside the order dated 20.07.2020 passed in CC No 3814 of 2017 in “Sanjay Gupta Vs. Three C Shelters Pvt. Ltd. & Anr” and the connected matters adjudicated vide the common order and judgment; and

Signature Not Verified

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By:SHALGO BATRA

WP(C) 6769/2020 & 6770/2020

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(b) As a consequence, pass appropriate direction(s)/order(s) to re-hear the matters de-novo for proper and just adjudication of the matters, with the bench comprising of a judicial member and;”

4. Similarly, Writ Petition (Civil) No. 6770 of 2020 prayed for the following relief:

“(a) issue writ appropriate writ(s)/direction(s)/order(s) and set aside the order dated 20.07.2020 passed in CC No 2009 of 2017 in “Manoj Aggarwal & Anr. Vs. Orris Infrastructure Pvt. Ltd. & Anr” and the connected matters adjudicated vide the common order and judgment; and

(b) As a consequence, pass appropriate direction(s)/order(s) to re-hear the matters de-novo for proper and just adjudication of the matters, with the bench comprising of a judicial member and;”

5. The petitioner was primarily aggrieved of the direction issued by the learned National Consumer Disputes Redressal Commission (hereinafter referred to as the ‘learned NCDRC’) directing refund of the amount deposited by the respondents/consumers/allottees of the project “Greenopolis” situated in Sector 89, Gurgaon being developed by the petitioner, alongwith interest at the rate of 6% / 9% per annum. Insofar as the Order in Consumer Case No. 2009 of 2017, titled **Manoj Aggarwal & Anr. v. Orris Infrastructure Pvt. Ltd. & Ors.**, which is challenged in W.P.(C) 6770 of 2020, is concerned, the direction of the learned NCDRC was to handover the physical possession of the flat complete in all

respects to the allottee till 30.09.2020 failing which the petitioner shall refund the amount deposited by the allottee alongwith interest.

6. The petitioner self-summarises the grounds on which the writ petition was premised in paragraph 14 of Review Application, as under:

“14. The Applicant has filed the said Writ Petition against the impugned judgment on several grounds, namely:

- (i) That a Technical Member has passed the order, thereby usurping the jurisdiction of a Judicial Member;*
- (ii) That the Ld. NCDRC had acted in contravention of the principle of comity of Tribunals as it ignored the specific and unambiguous request of the Ld. HRERA to not pass any order of refund as the same would put the entire project in jeopardy;*
- (iii) That there was a delay in the passing of the judgment as the same was reserved for over ten months and;*
- (iv) That the impugned judgment had been passed in contravention of the principles of natural justice.”*

7. Clearly, therefore, in the Writ Petition no ground was raised to the effect that with the coming into force of the Consumer Protection Act, 2019 (hereinafter referred to as the ‘Act of 2019’) and the simultaneous repeal of the Consumer Protection Act, 1986 (hereinafter referred to as the ‘Act of 1986’), the National Consumer Disputes Redressal Commission (hereinafter referred to as ‘NCDRC’) constituted under the Act of 1986 ceased to exist with effect from 20.07.2020 and therefore,

the impugned order(s) passed on 20.07.2020 were by an Authority which had ceased to exist.

8. As noted hereinabove, this Court vide its Order dated 03.11.2020 dismissed the writ petition(s) on the ground of an alternate efficacious remedy in form of a statutory appeal being available to the petitioner. The Order records as under:

“ I have considered the submissions made by the learned counsels for the parties. Though there is no dispute on the proposition of law that the remedy under Article 226 of the Constitution of India being discretionary in nature, mere availability of an alternative remedy may not bar the same, specially where issues lack of jurisdiction and violation of Principles of Natural Justice are alleged, at the same time, it cannot be lost sight of the fact that in the present case a similar order was challenged by the petitioner by way of an appeal before the Supreme Court, which is the statutory remedy provided, and the same was dismissed by the Supreme Court. Though the learned counsel for the petitioner has submitted that some of the grounds raised in the present petitions were not raised before the Supreme Court, in my opinion, the above factor would be sufficient to relegate the petitioner to the alternative remedy provided by the Statute.”

9. The petitioner challenged the above order by way of an appeal, being LPA 364 of 2020, titled ***Orris Infrastructure Private Limited v. Union of India & Ors..*** However, the same was withdrawn by the petitioner with liberty to prefer a Review Petition before this Court. The relevant extract from the Order dated 01.12.2020 passed in the appeal is reproduced hereinbelow:

“ According to learned senior counsel for the appellant, the effect of enactment of the Consumer Protection Act, 2019 was not brought to the attention of the learned Single Judge. In view thereof, learned senior counsel appearing for the appellant is not pressing this Letters Patent Appeal at this stage with a request that liberty may be reserved with this appellant to prefer a review petition before the learned Single Judge of this Court in W.P.(C) 6769/2020.

Liberty, as stated hereinabove, is reserved with this appellant and this LPA is disposed of as withdrawn without entering into the merits of the case.”

10. Pursuant to this liberty granted, the present Review Applications were preferred by the applicant/petitioner.

11. The grounds urged by the petitioner in the Review Applications was primarily that Section 58 read with Section 67 of the Act of 2019 provides for a statutory remedy in form of an appeal only from orders wherein the value of the goods or services paid as consideration exceeds rupees ten crore. As in the consumer complaints filed by the respondents, the value of the flats did not exceed rupees ten crore, the remedy of appeal was not available to the petitioner. It was further urged that as the Act of 1986 stood repealed with effect from 20.07.2020 (also the date when the Impugned Order in the respective writ petitions were passed), the remedy of appeal under Section 23 of the Act of the 1986 Act was no longer available to the petitioner.

12. The ground of the Impugned Orders being passed by a technical/non-judicial Member; delay in passing of the Order by the learned NCDRC; and the effect of the order passed by the Haryana Real

Estate Regulatory Authority (hereinafter referred to as the 'HRERA'), was again sought to be re-agitated in the present Review Applications.

13. When the Review Applications were first listed, the learned counsel for the petitioner fairly submitted that the present Review Applications be confined only to the issue of non-availability of the remedy of an appeal with the promulgation of the Act of 2019. However, during the subsequent dates of hearing and at the time of making final arguments, the petitioner again sought to re-agitate the issue of the order passed by the HRERA and the effect thereof, claiming that some of the respondents/Complainants before the learned NCDRC were members of the Association on whose application the HRERA had passed directions to complete the flats and therefore, could not have maintained their complaints before the learned NCDRC.

14. I am, however, not inclined to revisit the said issue as it is not shown by the petitioner why this ground cannot be taken by the petitioner in the appeal that may be preferred by it against the Orders passed by the learned NCDRC. It is also not the case of the petitioner that all the respondents in the present petitions are members of Greenopolis Welfare Association on whose application the HRERA has passed orders. Therefore, the bar urged by the petitioner to the maintainability of the Consumer Complaints before the learned NCDRC cannot, admittedly apply to the respondents who were not members of the Association. In this regard reference may be had to the judgments of the Supreme Court in *Imperia Structures Ltd. v. Anil Patni & Anr.*, (2020) 10 SCC 783 and *IREO Grace Realtech Private Limited v. Abhishek Khanna & Ors.*,

(2021) 3 SCC 241, wherein it has been held that the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred to as the 'RERA') does not in any way bar the learned NCDRC or the Consumer Forum under the provisions of the Consumer Protection Act to entertain a complaint filed by a flat buyer. A choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the Consumer Protection Act or file an application under the RERA. Therefore, it cannot be said that there was a complete lack of jurisdiction in the learned NCDRC while passing the orders impugned in the writ petitions on the ground of the Association having invoked the jurisdiction of the HRERA. I must also note that, in fact, even the respondents who are members of the Greenopolis Welfare Association, have denied giving authority to the Association to pursue the remedy before the HRERA on their behalf. Such a defence cannot be adjudicated upon in a Writ Petition merely on affidavits of the parties. The grievance of the petitioner, therefore, can best be agitated in form of an appeal remedy provided under the Act.

15. As far as the availability of the remedy of appeal with the promulgation of the Act of 2019 is concerned, the same also stands decided by the Supreme Court in *Neena Aneja and Anr. v. Jai Prakash Associates Ltd.*, 2021 SCC OnLine SC 225, wherein the Supreme Court, considering the effect of repeal of the Act of 1986 by the Act of 2019, has held as under:

“C.23 Conclusion on the position of law

67.A litigant's vested right (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act.....

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E Legislative intentment underlying Section 107 of the Act of 2019

76. Section 107(1) of the Act of 2019 repeals the Act of 1986. In *State of Rajasthan v. Mangilal Pindwal* [(1996) 5 SCC 60], this Court accepted the principle that the effect of a repeal, in the absence of a savings clause or a general savings statute, is that "a statute is obliterated" subject to the exception that it exists in respect of transactions past and closed. Section 107 (2) has saved "the previous operation" of any repealed enactment or "anything duly done or suffered thereunder to the extent that it is not inconsistent with the provisions of the new legislation". Finally, Section 107(3) indicates that the mention of particular matters in sub-Section (2) will not prejudice or affect the general application of Section 6 of the General Clauses Act.

77. Section 6 of the General Clauses Act provides governing principles with regard to the impact of the repeal of a central statute or regulation. These governing principles are to apply, "unless a different intention appears". Clause (c) of Section 6 *inter alia* stipulates that a repeal would not affect "any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed". The right to pursue a validly instituted consumer complaint under the Act of 1986 is a right which has accrued under the law which was repealed. Clause (e) of Section 6 stipulates that the repeal will not affect, inter alia, any "legal proceeding or remedy" in respect of any such right...as aforesaid". Any such legal proceedings may be continued as if the repealing legislation had not been passed. Clause (c) of Section 6 has the effect

of preserving the right which has accrued. Clause (e) ensures that a legal proceeding which has been initiated to protect or enforce "such right" will not be affected and that it can be continued as if the repealing legislation has not been enacted. The expression such a right in clause (e) evidently means the right which has been adverted to in clause (c). The plain consequence of clause (c) and clause (e), when read together is two fold : first, the right which has accrued on the date of the institution of the consumer complaint under the Act of 1986 (the repealing law) is preserved; and second, the enforcement of the right through the instrument of a legal proceeding or remedy will not be affected by the repeal.

(Emphasis supplied)

16. Reading of the above would clearly show the Supreme Court, considering Section 107 of the Act of 2019 and Section 6 of the General Clauses Act, 1897, has held that the pending proceedings under the Act of 1986 create a vested right, including the right to an appeal, in favour of a litigant. Such a right would be enforced under the provisions of the Act of 1986 and does not efface by the repeal of the said Act or with the promulgation of the Act of 2019.

17. Faced with the above judgment, the learned counsel for the petitioner submitted that the said judgment has failed to consider the distinction in the language of Section 45 vis-à-vis Section 56 of the Act of 2019. He submits that by a Notification dated 15.07.2020, *inter alia* Sections 53 and 107 of the Act of 2019, were brought into force. The effect of the same would be that the Act of 1986 stood repealed and the forums established thereunder, including the learned NCDRC, ceased to exist. He submits that Section 53 of the Act of 2019 empowers the

Central Government to establish, by way of a notification, a National Consumer Disputes Redressal Commission to be known as the National Commission. Such notification was issued only on 11.01.2021 and therefore, between 20.07.2020 and 11.01.2021, there was no National Commission and the impugned order passed on 20.07.2020 was by an authority no longer in existence. He submits that even under Section 6 of the General Clauses Act, 1897, the learned NCDRC under the Act of 1986 would cease to exist with effect from midnight of 20.07.2020.

18. In support of his submission, he places reliance on the judgments of the Supreme Court in *Harish Chandra v. State of Madhya Pradesh*, AIR 1965 SC 932; *Garikapati Veeraya v. N. Subbiah Choudhry & Ors.*, AIR 1957 SC 540; and *State of Odisha & Anr. v. Anup Kumar Senapati & Anr.*, (2019) 19 SCC 626.

19. The learned counsels for the respondents, on the other hand, submit that the Supreme Court in *Neena Aneja* (supra) has considered and rejected the arguments now made by the learned counsel for the petitioner. They further rely upon the judgment dated 04.05.2021 passed by the learned Single Judge of the Punjab & Haryana High Court in Civil Writ Petition No. 9202 of 2021, titled *M/s Orris Infrastructure Private Limited v. National Consumer Dispute Redressal Commission & Ors.*, filed by the petitioner itself, rejecting similar arguments of the petitioner. They submit that though the said judgment has been challenged by the petitioner in an appeal, being LPA 486 of 2021 (O&M), there is no order of stay granted in favour of the petitioner in the said appeal.

20. I have considered the submissions made by the learned counsels for the parties.

21. At the outset, I must note that similar arguments, as now being raised by the petitioner, have been duly considered and rejected by the Supreme Court in its judgment in *Neena Aneja* (supra). It is pertinent therefore, to quote the relevant extracts from the said judgment as under:

“B Submissions

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B.2 Submissions of the respondent

A. Mr. Krishnan Venugopal, learned Senior Counsel appearing on behalf of the respondent, supported the reasoning of the NCDRC and urged the following submissions:

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- (ix) The Act of 2019 abolished the old hierarchy of fora under the Act of 1986 and established adjudicatory fora afresh. The case pending before one of the fora governed by the Act of 1986 ceases to be pending because the Act of 2019 has, by its repeal, abolished the existing adjudicatory bodies. Sections 28, 42 and 53 established new adjudicatory bodies afresh under the Act of 2019. This is evident from the provisions of Section 31, 45 and 56 under which judicial personnel of the erstwhile fora were permitted to continue under the Act of 2019;
- (x) *The Act of 2019 indicates a contrary intent within the meaning of Section 6 of the General Clauses Act; and*

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- B. The sum and substance of the submissions which were urged by Mr. Krishnan Venugopal, learned Senior Counsel is that where a law provides for a change in forum, this is treated as a matter of procedure and not of substance. The Act of 2019 is not a legislation merely enhancing the limits of the pecuniary jurisdiction by an amendment to the Act of 1986. On the contrary, the Act of 2019 is a completely new law, which abolished the hierarchy of tribunals under the erstwhile Act of 1986 and created a new adjudicatory hierarchy. As a matter of interpretation, the Act of 2019 clearly indicates an intention to the contrary as a result of which pending proceedings will not continue before the forums which existed under the Act of 1986. In other words, the limits of pecuniary jurisdiction which have been defined under the Act of 2019 will apply to all pending actions and a transfer of existing cases would be required in those cases where the jurisdiction to entertain the complaint lies within the pecuniary limits of the newly established forum. In support of his submissions, Mr. Venugopal relied on a line of precedent which would be discussed while analyzing the rival contentions.*

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E Legislative intendment underlying Section 107 of the Act of 2019

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*78. Having stated the above position, we need to harmonize it with the principle that the right to a forum is not an accrued right, as discussed in **Part C** of this judgement. Simply put, while Section 6(e) of the General Clauses Act protects the pending legal proceedings for the enforcement of an accrued right from the effect of a repeal, this does not mean that the legal*

proceedings at a particular forum are saved from the effects from the repeal. The question whether the pending legal proceedings are required to be transferred to the newly created forum by virtue of the repeal would still persist. As discussed, this Court in *New India Assurance (supra)* [*New India Assurance Company Limited v. Smt. Shanti Mishra*, (1975) 2 SCC 840] and *Maria Christina (supra)* [*Maria Cristina De Souza v. Amria Zurana Pereira Pinto*, (1979) 1 SCC 92] has held that forum is a matter pertaining to procedural law and therefore the litigant has to pursue the legal proceedings at the forum created by the repealing act, unless a contrary intention appears. This principle would also apply to pending proceedings, as observed in *Ramesh Kumar Soni (supra)* [*Ramesh Kumar Soni v. State of Maharashtra*, (2013) 14 SCC 696], *Hitendra Kumar Thakur (supra)* [*Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602] and *Sudhir G Angur (supra)* [*Sudhir G Angur v. M Sanjeev*, (2006) 1 SCC 141]. In this backdrop, what is relevant to ascertain is whether a contrary intent to the general rule of retrospectivity has been expressed under the Act of 2019 to continue the proceedings at the older forum.

79. Now, in considering the expression of intent in the repealing enactment in the present case, it is apparent that there is no express language indicating that all pending cases would stand transferred to the fora created by the Act of 2019 by applying its newly prescribed pecuniary limits. In deducing whether there is a contrary intent, the legislative scheme and procedural history may provide a relevant insight into the intention of the legislature.

80. The Act of 2019, as indicated by its long title, is enacted to provide “for protection of the interests of consumers”. The Statement of Objects and Reasons took note of the tardy disposal of cases under the erstwhile legislation. Thus, the necessity of inducing speed in disposal was to protect the rights and interests of consumers. The

Act of 2019 has taken note of the evolution of consumer markets by the proliferation of products and services in light of global supply chains, e-commerce and international trade. New markets have provided a wider range of access to consumers. But at the same time, consumers are vulnerable to exploitation through unfair and unethical business practices. The Act has sought to address “the myriad and constantly emerging vulnerabilities of the consumers”. The recurring theme in the new legislation is the protection of consumers which is sought to be strengthened by procedural interventions such as strengthening class actions and introducing mediation as an alternate forum of dispute resolution.

81. In this backdrop, something specific in terms of statutory language – either express words or words indicative of a necessary intendment would have been required for mandating the transfer of pending cases. One can imagine the serious hardship that would be caused to the consumers, if cases which have been already instituted before the NCDRC were required to be transferred to the SCDRCs as a result of the alteration of pecuniary limits by the Act of 2019. A consumer who has engaged legal counsel at the headquarters of the NCDRC would have to undertake a fresh round of legal representation before the SCDRC incurring expense and engendering uncertainty in obtaining access to justice. Likewise, where complaints have been instituted before the SCDRC, a transfer of proceedings would require consumers to obtain legal representation before the District Commission if cases were to be transferred. Such a course of action would have a detrimental impact on the rights of consumers. Many consumers may not have the wherewithal or the resources to undertake a fresh burden of finding legal counsel to represent them in the new forum to which their cases would stand transferred.

82. It would be difficult to attribute to Parliament, whose purpose in enacting the Act of

2019 was to protect and support consumers with an intent that would lead to financial hardship, uncertainty and expense in the conduct of consumer litigation. Ironically, the objection which has been raised in the present case to the continued exercise of jurisdiction by the NCDRC in regard to the consumer complaint filed by the appellant is by the developer who is the respondent herein. It is a developer who opposed the continuation of the proceedings before the NCDRC on the ground that under the new consumer legislation the pecuniary limits of the jurisdiction exercisable by the NCDRC have been enhanced and the complaint filed by the appellant which was validly instituted under the erstwhile law should be transferred to the SCDRC. Such a course of action will result in thousands of cases being transferred across the country, from the NCDRC to the SCDRCs and from the SCDRCs to the District Commission.

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84. The above data indicates that as on 31 October 2019, 21,216 cases were pending before the NCDRC and 1,25,156 cases were pending before the SCDRC. Many of these cases would have to be transferred if the view which the developer propounds is upheld. This will seriously dislocate the interests of consumers in a manner which defeats the object of the legislation, which is to protect and promote their welfare. Clear words indicative of either an express intent or an intent by necessary implication would be necessary to achieve this result. The Act of 2019 contains no such indication. The transitional provisions contained in Sections 31, 45 and 56 expressly indicate that the adjudicatory personnel who were functioning as Members of the District Commission, SCDRC and NCDRC under the erstwhile legislation shall continue to hold office under the new legislation. Such provisions are necessary because persons appointed to the consumer fora under the Act of 1986 would have otherwise demitted office on the repeal of the

legislation. The legislature cannot be attributed to be remiss in not explicitly providing for transfer of pending cases according to the new pecuniary limits set up for the fora established by the new law, were that to be its intention. The omission, when contextualized against the statutory scheme, portends a contrary intention to protect pending proceedings through Section 107(2) of the Act of 2019. This intention appears likely, particularly in light of previous decisions of the NCDRC which had interpreted amendments that enhanced pecuniary jurisdiction, with prospective effect. The NCDRC, in Southfield Paints and Chemicals Pvt. Ltd. v. New India Assurance Co. Ltd. [Consumer Case No. 286 of 2000 (NCDRC)] construed amending Act 62 of 2002 by which the pecuniary limits of jurisdiction were enhanced with effect from 15 March 2003 as prospective by relying on its earlier decision in Premier Automobiles Ltd. v. Dr. Manoj Ramachandran [Revision Petition Nos. 400 to 402 of 1993 (NCDRC)], where the NCDRC held that the amendments enhancing the pecuniary jurisdiction are prospective in nature [albeit on a reliance of the principle in Dhadi Sahu (supra)] [Commissioner of Income Tax, Orissa v. Dhadi Sahu, 1994 Supp (1) SCC 257]. Parliament would be conscious of this governing principle and yet chose not to alter it in its application to the consumer fora.

85. *It is accepted, that in defining the jurisdiction of the District Commission, Section 34 of the Act of 2019 entrusts the jurisdiction to “entertain” complaints. A similar provision is contained in Section 47 and Section 58 in regard to the SCDRC and NCDRC. The expression “entertain” has been considered in a two judge Bench decision of this Court in Hindusthan Commercial Bank Ltd. v. Punnu Sahu (Dead) Through Legal Representatives [(1971) 3 SCC 124], in the context of the provisions of Order XXI Rule 90 of the CPC. The Court has accepted that the expression “entertain” means to adjudicate upon or proceed to consider on merits. In Nusli*

Neville (*supra*), while considering the provisions of Section 9A of the CPC as inserted by a Maharashtra Amendment, a two judge Bench followed the exposition in *Hindusthan Commercial Bank* (*supra*). Undoubtedly, the expression “entertain” has been construed in the context of Section 9A of the Code of Civil Procedure, as amended in Maharashtra, by a three judge Bench of this Court in *Nusli Wadia* (*supra*) to mean “to adjudicate upon or to proceed to consider on merits”. Sections 34, 47 and 58 similarly indicate that the respective consumer fora can entertain complaints within the pecuniary limits of their jurisdiction. These provisions will undoubtedly apply to complaints which were instituted after the Act of 2019 came into force. However, the mere use of the word “entertain” in defining jurisdiction is not sufficient to counteract the overwhelming legislative intention to ensure consumer welfare and deliberately not provide for a provision for transfer of pending proceedings in the Act of 2019 or under Section 106 of the Act of 2019 which is a power to remove difficulties for a period of two years after the commencement of the Act of 2019.

86. For the above reasons, we have come to the conclusion that proceedings instituted before the commencement of the Act of 2019 on 20 July 2020 would continue before the fora corresponding to those under the Act of 1986 (the National Commission, State Commissions and District Commissions) and not be transferred in terms of the pecuniary jurisdiction set for the fora established under the Act of 2019. While allowing the appeals, we issue the following directions:

- (i) The impugned judgment and order of the NCDRC dated 30 July 2020 and the review order dated 5 October 2020, directing a previously instituted consumer case under the Act of 1986 to be filed before the appropriate forum in terms of the pecuniary limits set under the Act of 2019, shall stand set aside;

- (ii) As a consequence of (i) above, the National Commission shall continue hearing the consumer case instituted by the appellants;
- (iii) All proceedings instituted before 20 July 2020 under the Act of 1986 shall continue to be heard by the fora corresponding to those designated under the Act of 1986 as explained above and not be transferred in terms of the new pecuniary limits established under the Act of 2019; and
- (iv) *The respondent shall bear the costs of the appellant quantified at Rupees Two lakhs which shall be payable within four weeks."*

(Emphasis supplied)

22. A reading of the above would clearly show that the Supreme Court not only considered the effect of Section 107 of the Act of 2019 and Section 6 of the General Clauses Act, 1897, but also specifically considered the 'Transitional Provisions' contained in Section(s) 31, 45 and 56 of the Act of 2019 to hold that the members of the District Commission, the State Consumer Disputes Redressal Commission and the NCDRC under the erstwhile legislation continued to hold office under the new legislation and all proceedings instituted before 20.07.2020 under the Act of 1986 shall continue to be heard by the fora corresponding to those designated under the Act of 1986.

23. Though in my opinion the submission made by the learned counsel for the petitioner must rest with the above pronouncement of the Supreme Court in the case of *Neena Aneja* (supra), I shall, even otherwise, deal with the submissions made by the learned counsel for the petitioner.

24. Section 107 of the Act of 2019 reads as under:

“107. Repeal and savings.—(1) *The Consumer Protection Act, 1986 (68 of 1986) is hereby repealed.*

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.”

25. The above provision is also to be read along with Section 6 of the General Clauses Act, 1897 which is reproduced hereinunder:

“6. Effect of repeal.— *Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid:

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

26. As held by the Supreme Court, the effect of Section 107(3) of the Act of 2019 read with Section 6 of the General Clauses Act, 1897 is that the right to pursue a validly instituted consumer complaint under the Act of 1986 is a right which has accrued under the law which was repealed. Any such legal proceedings may be continued as if the repealing legislation had not been passed. The Supreme Court in *Neena Aneja* (supra) observed as under:

“77. ...The plain consequence of clause (c) and clause (e), when read together is twofold: first, the right which has accrued on the date of the institution of the consumer complaint under the Act of 1986 (the repealing law) is preserved; and second, the enforcement of the right through the instrument of a legal proceeding or remedy will not be affected by the repeal.”

27. As far as the fora is concerned, the Supreme Court, considering the Statement of Objects and Reasons of the Act of 2019; the legislative scheme; and the procedural history, held that a complaint instituted under the Act of 1986 shall continue to be heard by the fora corresponding to those designated under the said Act. This is the effect also flowing from

Section(s) 31, 45 and 56 of the Act of 2019, which are reproduced hereinunder:

“31. Transitional provision.— Any person appointed as President or, as the case may be, a member of the District Commission immediately before the commencement of this Act shall hold office as such as President or, as the case may be, as member till the completion of his term for which he has been appointed.

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45. Transitional provision.— Any person appointed as President or, as the case may be, a member of the State Commission immediately before the commencement of this Act shall hold office as such, as President or member, as the case may be, till the completion of his term.

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56. Transitional provision.— The President and every other member appointed immediately before the commencement of section 177 of the Finance Act, 2017 (7 of 2017) shall continue to be governed by the provisions of the Consumer Protection Act, 1986 and the rules made thereunder as if this Act had not come into force.”

28. Though the learned counsel for the petitioner vehemently submits that the difference in the provision of Sections 31 and 45 on one hand vis-à-vis Section 56 on the other would lead to a conclusion that while the President and the members of the District Commission and the State Commission would continue to hold office even after the repeal of the Act of 1986, the same would not be the position with respect to the President and the members of the learned NCDRC, in my opinion, the same is only trying to find a distinction when none exists. The intent of Section 56 is the same as Sections 31 and 45 of the Act of 2019. This is

more evident when these two provisions are read with Section 28 ('Establishment of District Consumer Disputes Redressal Commission'), Section 42 ('Establishment of State Consumer Disputes Redressal Commission'), and Section 53 ('Establishment of National Consumer Disputes Redressal Commission'). This is also the effect of Section 107(2) and 107(3) of the Act of 2019 as there is nothing inconsistent in the establishment of these *fora* in the Act of 2019 to the Act of 1986. This is also evident from the Notification dated 11.01.2021 on which reliance has been placed by the petitioner itself. The same is reproduced hereinbelow:

“ S.O. 106(E).— In exercise of the powers conferred by sub-section (1) of Section 53 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government hereby establishes a National Consumer Disputes Redressal Commission to be known as the National Commission.

2. The President and every other member of the National Commission appointed immediately before the commencement of the Consumer Protection Act, 2019 shall continue to hold office as the President and Member of the National Commission as provided in section 56 of the said Act.”

(Emphasis supplied)

29. Another thing to be noticed here is that the Act of 2019 is both repealing and re-enacting the law relating to the protection of consumers and for the establishment of authorities for timely and effective administration and settlement of consumers' disputes and therefore, provisions of Section 24 of the General Clauses Act, 1897 are applicable.

30. Section 24 of the General Clause Act, 1897 provides as under:

“24. Continuation of orders, etc., issued under enactments repealed and re-enacted.— Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.”

31. In ***State of Punjab v. Harnek Singh***, (2002) 3 SCC 481, considering the effect of repeal of the Prevention of Corruption Act, 1947 by the Prevention of Corruption Act, 1988, the Supreme Court held as under:

“ 16. The words “anything duly done or suffered thereunder” used in clause (b) of Section 6 [General Clauses Act, 1897] are often used by the legislature in saving clause which is intended to provide that unless a different intention appears, the repeal of an Act would not affect anything duly done or suffered thereunder. This Court in Hasan Nurani Malak v. S.M. Ismail,

Asstt. Charity Commr., Nagpur [AIR 1967 SC 1742] has held that the object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the things done before a particular date from which the repeal of such a pre-existing law takes effect. In Universal Imports Agency v. Chief Controller of Imports and Exports [AIR 1961 SC 41 : (1961) 1 SCR 305] this Court while construing the words “things done” held that a proper interpretation of the expression “things done” was comprehensive enough to take in not only the things done but also the effect of the legal consequence flowing therefrom.

17. Section 24 of the General Clauses Act deals with the effect of repeal and re-enactment of an Act and the object of the section is to preserve the continuity of the notifications, orders, schemes, rules or bye-laws made or issued under the repealed Act unless they are shown to be inconsistent with the provisions of the re-enacted statute.

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22. There is no dispute that when an Act is repealed but re-enacted, it is almost inevitable that there will be some time lag between the re-enacted statute coming into force and regulations being framed under the re-enacted statute. In Chief Inspector of Mines v. Karam Chand Thapar [AIR 1961 SC 838 : (1961) 2 Cri LJ 1] this Court observed that: (AIR pp. 843-44, para 13)

“However efficient the rule-making authority may be it is impossible to avoid some hiatus between the coming into force of the re-enacted statute and the simultaneous repeal of the old Act and the making of regulations. Often, the time lag would be considerable. It is conceivable that any legislature, in providing that regulations made under its statute will have effect as if enacted in the Act, could have

intended by those words to say that if ever the Act is repealed and re-enacted (as is more than likely to happen sooner or later), the regulations will have no existence for the purpose of the re-enacted statute, and thus the re-enacted statute, for some time at least, will be in many respects, a dead letter. The answer must be in the negative. Whatever the purpose be which induced the draftsmen to adopt this legislative form as regards the rules and regulations that they will have effect 'as if enacted in the Act', it will be strange indeed if the result of the language used, be that by becoming part of the Act, they would stand repealed, when the Act is repealed. One can be certain that that could not have been the intention of the legislature. It is satisfactory that the words used do not produce that result."

23. We do not find any force in the submission of the learned counsel appearing for the respondents that as reference made in sub-section (2) of Section 30 of the 1988 Act is only to Section 6 of the General Clauses Act, the other provisions of the said Act are not applicable for the purposes of deciding the controversy with respect to the notifications issued under the 1947 Act. We are further of the opinion that the High Court committed a mistake of law by holding that as notifications have not expressly been saved by Section 30 of the Act, those would not enure or survive to govern any investigation done or legal proceedings instituted in respect of the cases registered under the 1988 Act. There is no dispute that the 1988 Act is both repealing and re-enacting the law relating to prevention of corruption to which the provisions of Section 24 of the General Clauses Act are specifically applicable. It appears that as Section 6 of the General Clauses Act applies to repealed enactments, the legislature in its wisdom thought it proper to make the same specifically applicable in the 1988 Act also which is a repealing and re-enacted statute. Reference to Section 6 of the

General Clauses Act in sub-section (1) of Section 30 has been made to avoid any confusion or misunderstanding regarding the effect of repeal with regard to actions taken under the repealed Act. If the legislature had intended not to apply the provisions of Section 24 of the General Clauses Act to the 1988 Act, it would have specifically so provided under the enacted law. In the light of the fact that Section 24 of the General Clauses Act is specifically applicable to the repealing and re-enacting statute, its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. Accepting the contention of the learned counsel for the respondents would render the provisions of the 1988 Act redundant inasmuch as appointments, notifications, orders, schemes, rules, bye-laws made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof.

24. There is no substance in the arguments of the learned counsel appearing for the respondents that the provisions made in the two enactments were inconsistent and sub-section (2) of Section 30 would not save the notifications issued under the 1947 Act. The consistency, referred to in sub-section (2) of Section 30 is with respect to acts done in pursuance of the repealed Act and thus restricted it to such provisions of the Acts which come for interpretation of the court and not the whole of the scheme of the enactment. It has been conceded before us that there is no inconsistency between Section 5-A of the 1947 Act and Section 17 of the 1988 Act and provisions of the General Clauses Act would be applicable and with the aid of sub-section (2) of Section 30 anything done or any action taken or purported to have been done or taken in pursuance of the 1947 Act be deemed to have been done or taken under or in pursuance of the corresponding provision of

the 1988 Act. For that purpose, the 1988 Act, by fiction, shall be deemed to have been in force at the time when the aforesaid notifications were issued under the then prevalent corresponding law. Otherwise also there does not appear any inconsistency between the two enactments except that the scope and field covered by the 1988 Act has been widened and enlarged. Both the enactments deal with the same subject-matter i.e. corruption amongst the public servants and make provision to deal with such a menace.”

32. The above judgment applies with full force to the present case and therefore, until the notification is issued under Section 53 of the Act of 2019, the appointments made under Section 9 and 23 of the Act of 1986 would continue.

33. Even otherwise, keeping in view the legislative intent of the Act of 2019, it would never have been envisaged that there would be a vacuum insofar as the Consumer forum is concerned between 20.07.2020 (when the Act of 2019 was enforced) and 11.01.2021 (when the learned NCDRC was constituted).

34. The learned Single Judge of the Punjab and Haryana High Court in his judgment dated 04.05.2021 (supra) has also rejected similar arguments of the petitioner, observing as under:

“6. This Bench has considered the submissions and proceeds to carefully examine the same. To begin with and before entering into deliberation, it is significant to notice the relevant statutory provisions involved. Hence, Section 53 and 107 of the new Act are extracted as under: -

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7. On a plain reading of Section 53, it is apparent that the new Act envisages the

establishment of the NCDRC to be known as the National Consumer Disputes Redressal Commission. Still further, Sub-Section 1 of Section 107 of the new Act provides that the 1983 Act shall stand repealed on the enforcement of Section 107. Section 107 came to be enforced w.e.f. 20.07.2020 vide a notification dated 15.07.2020, which is extracted as under:-

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9. *From a careful reading of Sub-Section 2 of Section 107 of the new Act, it is observed that the aforesaid provision begins with a non-obstante clause. In other words, this provision has been given an overriding effect and as such, overrides Sub-Section 1 of Section 107 of the new Act with respect to the cases covered under the former. However, Sub-Section 2 does not incorporate within its scope the entire range of cases. What has been provided in Sub-Section 2 is that notwithstanding such repeal, anything done or any action purported to have been taken under the repealed Act which is not inconsistent with the provisions of the new Act, shall be deemed to have been saved and done under the provisions of the new Act.*

10. *However, for adjudicating in the facts of the present case, there is a significant safeguard given in Sub-Section 3 of Section 107 of the new Act which provides for the general application of Section 6 of the General Clauses Act, 1897 (hereinafter referred to as "the 1897 Act"). Therefore, it becomes important to examine Section 6 of the 1897 Act, which is extracted as under:-*

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11. *On a careful reading of Section 6 of the 1897 Act, it becomes apparent that the answer to the question which arises for determination lies in the aforesaid provision. Clause (e) of Section 6 provides that the repeal of any enactment, unless a different intention appears, shall not affect any*

investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment under the repealed Act. Further, it is provided that any legal proceedings instituted, continued or enforced shall continue as if the repealing Act had not been passed.

12. *The effect of Sub-Section 3 of Section 107 of the new Act and Section 6 of the 1897 Act has been profoundly explained by the Hon'ble Supreme Court in para 76 and 77, passed in **Neena Aneja and Another v. Jai Prakash Associates Ltd.** 2021 SCC Online SC 225, which are extracted as under: -*

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13. *No doubt, in the aforesaid case, the Hon'ble Supreme Court examined the question in the context of a complaint instituted on 18.06.2020, which was dismissed vide an order dated 30.07.2020 on the ground that the pecuniary jurisdiction of the NCDRC as the per new Act is minimum ₹.10,00,00,000/-. After interpreting the relevant provisions, the Court held that the proceedings instituted under the old Act shall continue to be governed by the provisions of the old Act itself and the NCDRC erred in dismissing the complaint.*

14. *Keeping in view the interpretation laid down in relation to the effect of repeal on the pending complaints in para 76 and 77 of the judgment in **Neena Aneja** (supra), no further elaboration is required. It is, therefore, held that in the pending complaints, the orders passed by the NCDRC after 15.07.2020 but before 11.01.2021 shall not be Coram Non Judice as they stand saved in view of Sub-Section 3 of Section 107 of the new Act read with Section 6 of The General Clauses Act, 1897. Hence, the writ petition is dismissed in limine."*

35. The judgment in ***Harish Chandra*** (supra) relied upon by the learned counsel for the petitioner, considered whether the conviction of the appellant therein for contravention of the Indian Iron & Steel (Scrap Control) Order, 1943 could sustain or whether what governed the appellant therein was the notification issued under the Madhya Bharat Iron, Steel and Scrap (Production, Procurement and Distribution) Control Order, 1949. The Supreme Court, in fact, found that with the extension of the Indian Scrap Order, 1943 to Madhya Bharat by a notification of the Government of India dated September 12, 1950, the Madhya Bharat Scrap Order ceased to operate as the two could not co-exist. It was further held that the repeal of the Madhya Bharat Scrap Order was without a saving and therefore, notification issued thereunder also stood repealed. The said judgment can have no application to the facts of the present case because of the saving clause contained in sub-section (2) and (3) of Section 107 in the Act of 2019.

36. The judgment of ***Garikapati Veeraya*** (supra) need not detain me as what is being relied upon by the learned counsel for the petitioner is the minority opinion of Justice T.L. Venkatarama Aiyar. This judgment has also been considered in detail by the Supreme Court in ***Neena Aneja*** (supra) and in fact, contrary to what the learned counsel for the petitioner submitted, the Supreme Court has observed that “*the decision in Garikapati (supra) is the locus classicus on subject of the substantive right of appeal vis-a-vis pending proceedings.....The Constitution Bench clarified that the right of appeal is a vested right which cannot be taken*

away, absent a statutory enactment to the effect. It was also clarified that the right to appeal would vest, once the suit is instituted.”

37. As far as the judgment in **Anup Kumar Senapati** (supra), the Supreme Court held that what is unaffected by the repeal of a statute and by operation of the General Clauses Act, 1897 is a right acquired or accrued and not mere hope or expectation of or liberty to apply for acquiring a right. In the present case, the consumer complaints having been filed prior to the repeal of the Act of 1986, a vested right accrued in favour of the Complaints to prosecute such complaint and therefore, the judgment is of no avail to the petitioner.

38. In view of the above, I find no merit in the submission made by the petitioner to the effect that the learned NCDRC ceased to exist from the midnight of 20.07.2020 and the order passed by the learned NCDRC on 20.07.2020 is by an authority *coram non judice*.

39. I must also express dismay at the reluctance of the petitioner to avail of the statutory remedy of appeal on one ground or the other and, in fact, improving upon its case and coming up with new submissions at different stages of these proceedings, as has been highlighted hereinabove. This is in spite of the judgment of the Supreme Court in **Cicily Kallarackal v. Vehicle Factor**, (2012) 8 SCC 524, and the order dated 12.03.2021 passed by the Supreme Court in S.L.P. (Civil) No. 4127 of 2021, titled **Mehra Bal Chikitsalaya Evam Navjat Shishu I.C.U v. Manoj Upadhyay & Ors.**, holding that petition against the Order passed by the learned NCDRC, the remedy would lie in form of an appeal and not a writ.

40. The petitioner by way of the Writ Petition(s) and the present Review Application(s) has dragged the respondents/Complainants into non-maintainable protracted litigation thereby adding to their misery. The petitioner must therefore, be also burdened with costs for the present applications.

41. In view of the above, I find no merit in the present Review Applications. The same are dismissed. The petitioner shall pay a cost of ₹50,000/- (Rupees fifty thousand) to each of the contesting respondents who have entered appearance before this Court in the present proceedings.

NAVIN CHAWLA, J.

AUGUST 04, 2021/rv/P/U.