



2025:DHC:9597-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement reserved on: 09.09.2025

Judgement delivered on: 01.11.2025

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LPA 724/2019 and CM APPL. 49513/2019

UNITED INDIA INSURANCE COMPANY LIMITED

.....Appellant

Through: Mr. Udayan Jain and Mr.
Ranjan Mishra, Advts.

versus

COMPETITION COMMISSION OF INDIA

.....Respondent

Through: Mr. Samar Bansal and Mr.
Vedant Kapur, Advts.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal has been preferred under Clause 10 of the Letters Patent, assailing the **Judgment dated 11.09.2019¹** passed by the learned Single Judge of this Court in W.P.(C) No. 1100/2019 titled *United India Insurance Company Limited v. Competition Commission of India*.

2. By the Impugned Judgment, the learned Single Judge dismissed the writ petition filed by the Appellant and upheld the Order dated

¹ Impugned Judgment



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06.12.2018 along with the Demand Notices dated 01.10.2015, 17.01.2017, and 14.12.2018, issued by the **Competition Commission of India**², thereby affirming the CCI's demand for interest on the monetary penalty imposed under Regulation 5 of the **Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011**³. The said penalty had originally been imposed by the CCI *vide* Order dated 10.07.2015 passed under Section 27 of the **Competition Act, 2002**⁴.

BRIEF FACTS:

3. On 04.09.2013, the CCI received an anonymous information alleging that the Appellant, in concert with three other public sector general insurance companies, had engaged in cartelization in relation to tenders floated by the State of Kerala under the health insurance schemes, *Rashtriya Swasthya Bima Yojna* and *Comprehensive Health Insurance Scheme*, thereby violating Section 3(3) of the Competition Act.
4. Upon seeking a response from the Appellant, the CCI, *vide* Order dated 12.02.2014, directed the **Director General**⁵ under Section 26(1) of the Competition Act to conduct an investigation into the matter.
5. The DG submitted his report on 03.02.2015, concluding that the concerned companies, including the Appellant, were guilty of “bid rigging” in contravention of Section 3(3) of the Competition Act.

² CCI

³ 2011 Regulations

⁴ Competition Act

⁵ DG



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6. After the companies filed their objections on 14.05.2015, and upon hearing them, the CCI, by Order dated 10.07.2015, passed under Section 27 of the Competition Act, held them guilty of contravention and imposed a penalty equivalent to 2% of their average turnover for the financial years 2010-11 to 2012-13. The penalty quantified in the case of the Appellant amounted to Rs. 156.62 crores.

7. Aggrieved thereby, the Appellant preferred Appeal No. 96/2015 before then learned **Competition Appellate Tribunal**⁶, which, by an Interim Order dated 05.10.2015, stayed the operation of the penalty order, subject to the Appellant depositing 10% of the penalty amount with the Registry of the learned COMPAT within four weeks, to be kept in a fixed deposit for six months in a Scheduled Bank.

8. In the meantime, by a demand notice dated 01.10.2015 (received on 07.10.2015), the CCI directed the Appellant to pay the full penalty within thirty days, failing which interest at 1.5% per month would accrue.

9. The Appellant, *vide* reply dated 13.10.2015, informed the CCI that the learned COMPAT had stayed the penalty subject to the deposit of 10% within four weeks, and the same would be duly complied with within the prescribed period.

10. In compliance with the learned COMPAT's Order dated 05.10.2015, the Appellant deposited 10% of the penalty amount on 15.10.2015, which is within the time granted.

11. By final Order dated 09.12.2016, the learned COMPAT partly allowed the Appeal, upholding the finding of contravention but

⁶ COMPAT



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substantially reducing the quantum of penalty to Rs. 1.56 crores, which the Appellant deposited on 04.01.2017.

12. Thereafter, the CCI issued a Demand Notice dated 17.01.2017, calling upon the Appellant to deposit Rs. 32.76 lakhs towards interest for an alleged delay of fourteen months in payment of the penalty, calculated under Regulation 5 of the 2011 Regulations.

13. The Appellant disputed the said Demand Notice and, by response dated 30.01.2017, contended that in view of the learned COMPAT's stay and subsequent modification of the penalty, no delay could be attributed to it, and therefore, it bore no liability to pay interest on the imposed penalty.

14. Meanwhile, on 06.03.2017, the CCI filed Civil Appeal No. 3342/2017 before the Hon'ble Supreme Court challenging the learned COMPAT's Order, which has been admitted and remains pending adjudication.

15. Subsequently, on 06.12.2018, the CCI passed an Order directing the Appellant to deposit Rs. 32.76 lakhs as interest, followed by a Recovery Notice dated 14.12.2018 calling for payment within fifteen days. While doing so, the CCI placed reliance on the decision of the NCLAT in *SCM Soilfert Ltd. v. Competition Commission of India*⁷, holding that liability to pay penalty and interest subsists notwithstanding the pendency of an appeal.

16. The Appellant challenged the CCI's Order dated 06.12.2018 and the Demand Notices dated 01.10.2015, 17.01.2017, and 14.12.2018 by way of a Writ Petition before this Court.

⁷ 2018 SCC OnLine NCLAT 462



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17. After considering the pleadings and submissions, the learned Single Judge, by the Impugned Judgment, dismissed the Writ Petition and upheld the CCI's demand for interest under Regulation 5 of the 2011 Regulations.

18. Aggrieved by the Impugned Judgment, the Appellant has preferred the present Appeal.

SUBMISSIONS OF THE APPELLANT:

19. Learned counsel for the Appellant would contend that the Impugned Judgment, rendered by the learned Single Judge is contrary to law, as it overlooks the true scope and intent of the 2011 Regulations and fails to appreciate their proper application.

20. It would be submitted by the learned counsel for the Appellant that the Appellant had fully complied with the Interim Order of the learned COMPAT by depositing 10% of the penalty amount, and upon disposal of the appeal on 09.12.2016, the penalty was substantially reduced from Rs. 156.62 crores to Rs. 1.56 crores. Learned counsel for the Appellant would further submit that the Appellant, acting promptly and in good faith, deposited the reduced amount on 04.01.2017, and therefore, there was neither any default nor delay in payment within the meaning of Regulations 3 and 5 of the 2011 Regulations, and consequently, the Demand Notices dated 17.01.2017 and 14.12.2018 claiming interest are wholly unsustainable.

21. Learned counsel for the Appellant would argue that liability to pay penalty arises only upon service of a valid Demand Notice under Regulation 3, and that interest under Regulation 5 can be levied only if the amount remains unpaid beyond the prescribed period; however, the Demand Notice dated 01.10.2015, though issued under Regulation



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3, was served on 07.10.2015, after the learned COMPAT had stayed the operation of the CCI's Order dated 10.07.2015, and thus became *non est* and inapplicable. It would further be submitted that since the original order was subsequently modified and superseded by COMPAT's final Order dated 09.12.2016, no interest could be levied retrospectively or for any period prior to that order.

22. It would further be contended by the learned counsel for the Appellant that the CCI's Order dated 10.07.2015 stood merged with the learned COMPAT's final Order dated 09.12.2016, and hence computation of interest from the date of the original order was legally untenable. It would also be submitted that the period during which the stay remained in force could not be treated as delay on the part of the Appellant, since the CCI's order itself was under suspension during that time. In this regard, reliance would be placed by the learned counsel for the Appellant on the principles laid down in *Kunhayammed v. State of Kerala*⁸ and *Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*⁹, which affirm that once a superior forum modifies or supersedes an order, the original ceases to operate independently.

23. Learned counsel for the Appellant would also distinguish the precedents relied upon by the learned Single Judge, such as *State of Rajasthan v. J.K. Synthetics Ltd.*¹⁰ and *Kanoria Chemicals and Industries Ltd. v. U.P. SEB*¹¹, on the ground that in those cases, the liability to pay interest had arisen either statutorily or contractually prior to the grant of any stay or appellate interference. In contrast, in

⁸ (2000) 6 SCC 359

⁹ (2019) 4 SCC 376

¹⁰ (2011) 12 SCC 518

¹¹ (1997) 5 SCC 772



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the present case, such liability could have arisen only upon the service of a valid demand notice, which never occurred during the subsistence of stay granted by the learned COMPAT. It would further be submitted that in those cases, the writ petitions were dismissed and the Courts specifically directed restitution to the prior position, while in the present case, the appeal was allowed in part and the penalty substantially reduced, thereby distinguishing the factual and legal context.

24. Learned counsel for the Appellant would also distinguish the decision of the NCLAT in *SCM Soilfert Ltd. (supra)*, contending that the facts there were materially different since the appeal was dismissed up to the Hon'ble Supreme Court and the penalty imposed by the CCI was upheld in full. In contrast, herein, the Appellant's penalty was substantially reduced and the modified amount was deposited without delay. It would further be submitted that because no reduction occurred in *SCM Soilfert Ltd. (supra)*, the learned NCLAT had no occasion to consider the second proviso to Regulation 5, and therefore, the said decision cannot be applied to the facts of the present case.

SUBMISSIONS OF THE RESPONDENT/ CCI:

25. Learned counsel for the Respondent would submit that the power to recover interest on delayed payment of a monetary penalty arises directly from Regulation 5 of the 2011 Regulations, which provides that if an enterprise fails to pay the penalty within the period specified in the order, it shall be liable to pay simple interest at 1.5% per month for the duration of the delay, and therefore, the statutory obligation to pay interest is independent of any other proceedings.



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26. It would be argued by the learned counsel for the Respondent that the interim stay granted by the learned COMPAT on 05.10.2015 did not extinguish or suspend the statutory liability to pay interest on the penalty, as the stay merely deferred the payment of the principal amount pending adjudication and could not eliminate or postpone the eventual obligation to pay interest on the delayed penalty, particularly since the stay was vacated upon the final disposal of the appeal.

27. Learned counsel for the Respondent would further contend that a merger of orders does not nullify the liability to pay interest on a modified penalty, and while the learned COMPAT's Order dated 09.12.2016 merged with the CCI's Order of 10.07.2015, it upheld the substantive finding of contravention under Section 3(3) of the Competition Act and merely reduced the quantum of penalty on equitable grounds, thereby leaving the penalty order operative in substance and the liability to pay interest on any delayed payment intact to the extent the order was affirmed.

28. Learned counsel for the Respondent would also submit that the CCI's actions were fully supported by judicial precedents, including *J.K. Synthetics Ltd. (supra)*, *Kanoria Chemicals (supra)*, and *SCM Soilfert Ltd. (supra)*, which establish that the grant of an interim stay does not absolve the beneficiary from the obligation to pay interest on the amount withheld, unless the final Order expressly provides otherwise, and therefore, the CCI's demand for interest in the present case is legally sustainable.

ANALYSIS:

29. We have heard the learned counsel for both parties at considerable length, carefully examined the Impugned Judgment,



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scrutinized the pleadings and documents placed on record in the present appeal, and also taken into account the written submissions filed by the respective parties.

30. At the outset, we deem it apposite to extract the relevant portion of the Impugned Judgment, which reads as follows:

“Reasons and Conclusion

26. At the outset, it is relevant to refer to Regulation 5 of the Recovery Regulations, which reads as under: -

“Interest on penalty.

5. If the amount specified in any demand notice is not paid within the period specified by the Commission, the enterprise concerned shall be liable to pay simple interest at one and one half per cent, for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid:

Provided that the Commission may reduce or waive the amount of interest payable by the enterprise concerned if it is satisfied that default in the payment of such amount was due to circumstances beyond the control of the enterprise concerned:

Provided further that where as a result of an order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be the amount of penalty payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded in accordance with regulation 14.”

27. It is clear from the plain reading of the said Regulation that simple interest at the rate of one and one half per cent for every month, or part of the month, commencing from the date immediately after expiry of the period mentioned in the demand notice, is payable. The contention that since the order passed by CCI had been stayed, there was no delay in making the penalties, is unsustainable. The said issue is no longer res integra. In the *State of Rajasthan and Anr. v. J.K. Synthetics Limited* (*supra*), the Supreme Court had examined several other decisions and had authoritatively reiterated the position that wherever an interim order or stay is granted, the beneficiary of the interim order is bound to pay interest on the amount withheld or not paid by virtue of the interim order unless the final order indicates otherwise. The relevant extract of the said decision is set out below: -



19. We may refer to the decisions of this Court that have categorically laid down about the liability to pay interest for the period of stay when the stay is ultimately vacated.

20. In *Kanoria Chemicals and Industries Ltd. v. U.P. SEB* : [(1997) 5 SCC 772] this Court held that grant of stay of a notification revising the electricity charges does not have the effect of relieving the consumer of its obligation to pay interest (or late payment surcharge) on the amount withheld by them by reason of the interim stay, if and when the writ petitions are dismissed ultimately. The said principle was based on the following reasoning: (SCC pp. 779-80, para 11)

“11. ... Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply—which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law. ... It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. (emphasis in original)

Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered



by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon when both the enhancement and the late payment surcharge are provided by the same notification—the operation of which was stayed.”

The above principles have been followed and reiterated by this Court in **Rajasthan Housing Board v. Krishna Kumari** - (2005) 13 SCC 151 and **Nava Bharat Ferro Alloys Ltd. v. Transmission Corpn. of A.P. Ltd.** - (2011) 1 SCC 216.

21. The same question was considered by this Court, when examining the constitutional validity of Rule 64-A in South Eastern Coalfields. This Court held that Rule 64-A providing for payment of interest at the rate of 24% per annum, was valid. In that case also, it was contended before this Court that non-payment of the increased amount of royalty was protected by the interim orders of the High Court and therefore, they should not be held liable for payment of interest so long as the money was withheld under the protective umbrella of the interim orders. It was further contended that merely because the writ petition was finally dismissed, it does not follow that the interim order becomes vitiated or erroneous, as it may still be a perfectly justified interim order. It was further argued that as they had shown their bona fides by paying the difference in royalty immediately after the validity of the Notification dated 17-2-1992 was upheld, they could not be made liable to pay interest. All these contentions were rejected by this Court on the ground that the principle of restitution was a complete answer to the said submissions.

22. This Court held (*South Eastern Coalfields case* [(2003) 8 SCC 648], SCC p. 663, para 26)

“26. ... The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a



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final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.”

23. It is therefore evident that whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order. Where the statute or contract specifies the rate of interest, usually interest will have to be paid at such rate. Even where there is no statutory or contractual provision for payment of interest, the court will have to direct the payment of interest at a reasonable rate, by way of restitution, while vacating the order of interim stay, or dismissing the writ petition, unless there are special reasons for not doing so. Any other interpretation would encourage unscrupulous debtors to file writ petitions challenging the revision in tariffs/rates and make attempts to obtain interim orders of stay. If the obligation to make restitution by paying appropriate interest on the withheld amount is not strictly enforced, the loser will end up with a



financial benefit by resorting to unjust litigation and the winner will end up as the loser financially for no fault of his. Be that as it may.”

28. It is material to note that the CCI had found the petitioner to be falling foul of Section 3 of the Act. This finding was not disturbed by COMPAT. The COMPAT had merely reduced the penalty and had modified CCI’s order dated 10.07.2015 to that extent. Such modification would, obviously, relate back to CCI’s order, that is, the order dated 10.07.2015. The contention that the order of CCI had merged with the order passed by COMPAT is correct. However, the COMPAT order reaffirmed CCI’s decision to levy penalty and that decision, having been sustained, cannot be considered as inoperative or non-existent for the period during which it was suspended on account of the stay order. The said stay order having been lifted, the CCI’s order imposing penalty, albeit to a reduced extent, would require to be enforced.

29. The interest on such penalty being a statutory levy is required to be paid.

30. The contention that the demand notice dated 01.10.2015 was illegal, is unpersuasive. COMPAT had stayed the operation of the order passed by CCI; it had not obliterated the same. By virtue of the said order, the petitioner was not obliged to immediately pay penalty subject to depositing 10% of the said amount. The petitioner availed the benefit of the said order. However, on vacation of the stay, the order passed by CCI as well as the consequential demand notice became operative, albeit, to a reduced extent. Plainly, the petitioner is required to pay interest on the delayed payment.

31. In view of the above, the petition is unmerited and is, accordingly, dismissed. The pending application is disposed of.”

31. From the above discussion and the extracted portion of the learned Single Judge’s analysis, it is evident that the conclusion reached therein is primarily founded upon the interpretation of Regulation 5 of the 2011 Regulations, and upon the application of the principles enunciated by the Hon’ble Supreme Court in ***J.K. Synthetics Ltd.*** (*supra*), which emphasizes the obligation to pay interest on sums withheld under an interim stay once such stay is vacated.

32. Before delving into the factual matrix of the present case, it is pertinent to note the relevant provisions of the 2011 Regulations,



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which have been promulgated in the exercise of powers conferred under Section 64(2)(g), read with Sections 36 and 39(1) of the Competition Act. Section 36 empowers the Commission to regulate its own procedure, while Section 39(1) provides that if a person fails to pay any monetary penalty imposed on him under the Competition Act, the CCI shall proceed to recover such penalty in such manner as may be specified by the Regulations. The relevant provisions of the 2011 Regulations are extracted hereinbelow for reference:

“(c) “**demand notice**” means a notice issued by the Commission to an enterprise from whom any penalty is recoverable under the Act;

(e) “**enterprise in default**” means an enterprise which has not paid the penalty imposed on it within the stipulated time despite the demand notice duly served upon;

(g) “**penalty**” means a monetary penalty or fine or any other sum imposed by the Commission and realisable under the Act;

3. Issuance of demand notice. (1) Where a penalty has been imposed on an enterprise by the Commission, the Secretary shall issue a demand notice as set out in Form I appended to these regulations and shall serve it through the recovery officer, to the enterprise concerned after expiry of the period specified for the purpose in the order of imposition of penalty by the Commission at its last address known to the Commission and in the case of a joint account to all the joint holders of such account at their last addresses known to the Commission.

(2) A demand notice issued under sub-regulation (1) shall provide a time of thirty days from the date of service of the demand notice to the enterprise concerned to deposit the penalty in the manner specified in the said notice:

Provided that where the Commission has any reason to believe that it will be detrimental if the full period of thirty days aforesaid is allowed, it may direct the enterprise concerned that the sum specified in the demand notice shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by the Commission in the demand notice.

(3) Upon receipt of demand notice the enterprise shall pay the penalty, through challan as set out in Form II appended to these regulations, in favour of Pay & Accounts Officer (PAO), Ministry of Corporate Affairs, Head No. 1475.00.105.05, Sub-Head-05 – ‘Penalties imposed by Competition Commission of India’.

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(4) One copy of the challan shall be submitted by the enterprise to the recovery officer immediately but not later than seven days of the payment and the recovery officer shall make an entry in the penalty recovery register to the same effect.

(5) The Commission may, at any time, rectify any clerical or arithmetical mistake made in the demand notice.

5. Interest on penalty. If the amount specified in any demand notice is not paid within the period specified by the Commission, the enterprise concerned shall be liable to pay simple interest at one and one half per cent, for every month or part of a month comprised in the period commencing from the day immediately after the expiry of the period mentioned in demand notice and ending with the day on which the penalty is paid:

Provided that the Commission may reduce or waive the amount of interest payable by the enterprise concerned if it is satisfied that default in the payment of such amount was due to circumstances beyond the control of the enterprise concerned:

Provided further that where as a result of an order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be the amount of penalty payable has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded in accordance with regulation 14.

14. Refund of excess penalty. (1) Where by any order of the Competition Appellate Tribunal or the High Court or the Supreme Court of India, as the case may be, it has been held,— that the enterprise is not liable to pay any penalty or liable to pay penalty less than the amount mentioned in any order or notice, the demand notice or the recovery certificate shall be withdrawn or modified and the amount of penalty, if paid, shall be refunded.

(2) In case of a refund, the Secretary shall issue a refund order for such amount, under his signature and seal.”

33. A bare perusal of Regulation 3 makes it clear that when the CCI imposes a monetary penalty on an enterprise, it issues a formal demand notice through a recovery officer as set out in Form I, after the time allowed in the penalty order has expired. The enterprise is generally given 30 days from the date of receiving the notice to pay the penalty in the prescribed manner. It is pertinent to note that Regulation 3(2) makes abundantly clear that the 30-day period shall



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commence “*from the date of service of the demand notice to the enterprise*”.

34. However, if the CCI considers that granting the full 30 days may be detrimental, it can shorten this period and direct earlier payment. The enterprise must pay the penalty through a challan as set out in Form II and submit a copy of it to the recovery officer within seven days of payment, who records the transaction in the penalty recovery register. The CCI also retains the power to correct any clerical or calculation error in the demand notice.

35. Regulation 5 of the 2011 Regulations provides that if an enterprise does not pay the amount mentioned in the demand notice within the time allowed by the CCI, it must pay simple interest at the rate of 1.5% per month on the unpaid amount. This interest is calculated from the day after the payment deadline until the day the penalty is actually paid.

36. However, the CCI has the power to reduce or waive this interest if it is convinced that the delay happened due to reasons beyond the enterprise’s control. Furthermore, if a higher court, like the Appellate Tribunal, High Court, or Supreme Court, later reduces the penalty amount, the interest will also be reduced in proportion. If the enterprise has already paid more interest than required, the excess amount will be refunded in accordance with Regulation 14.

37. Regulation 14 provides that if a higher court, such as the Appellate Tribunal, High Court, or the Supreme Court, decides that the enterprise either does not have to pay any penalty or has to pay a smaller penalty than what was originally ordered or mentioned in a demand notice, then the CCI must withdraw or revise that demand



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notice or recovery certificate accordingly. This means that the CCI cannot continue to demand payment of the higher or incorrect amount once the court has reduced or cancelled it; rather, the CCI has to withdraw the earlier notice and issue a fresh one, if any recovery remains due.

38. Needless to say, the said regulation also affirms that if the enterprise has already paid the penalty that is later found to be excessive or unnecessary, the CCI must return the extra or full amount that was paid. In such cases, the Secretary of the CCI will issue a formal refund order, bearing his signature and the official seal, to ensure the refund is properly recorded and authorized.

39. Similarly, there are other provisions in the 2011 Regulations that provide, for instance, the issuance of recovery certificates in case of default, the functioning of the Recovery Officer, maintenance of the Penalty Recovery Register, modes of recovery, and references by the CCI to the Income-tax authority for the purpose of recovery.

40. Now turning to the facts of the present case, from the record, it is evident that there are certain undisputed facts, *for instance*:

- (a) The learned COMPAT imposed a penalty upon the Appellant by Order dated 10.07.2015 amounting to Rs. 156.62 crores.
- (b) Impugning this Order, the Appellant approached the learned COMPAT, which on 05.10.2015 stayed the operation of the penalty Order dated 10.07.2015, subject to the Appellant depositing 10% of the penalty amount with the Registry of the learned COMPAT within four weeks.



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- (c) The Appellant complied with the said direction on 15.10.2015, i.e., within the prescribed period, thereby continuing the operation of the stay in favour of the Appellant.
- (d) The Appellant received on 07.10.2015 the CCI's demand notice dated 01.10.2015, which was issued after the Interim Order dated 05.10.2015.
- (e) By the final Order dated 09.12.2016, the learned COMPAT partly allowed the appeal, upholding the finding of contravention but substantially reducing the quantum of penalty from Rs. 156.62 crores to Rs. 1.56 crores, which the Appellant deposited on 04.01.2017, without waiting for the issuance of any revised demand notice in terms of Regulation 14.
- (f) The CCI, after issuing the demand notice dated 01.10.2015, did not take any further action for about 14 months, until 17.01.2017, and revived the recovery proceedings only after the Appellant had already deposited the modified penalty amount.

41. As noted earlier, Regulation 3(2) categorically provides that the 30-day period for payment shall begin "*from the date of service of the demand notice to the enterprise*". Further, Regulation 2(1)(c) defines a "*demand notice*" as a notice issued by the CCI to an enterprise "*from whom any penalty is recoverable under the Competition Act*".

42. In the present case, the Appellant received the demand notice dated 01.10.2015 on 07.10.2015. However, prior to such service, the learned COMPAT had already, by its interim order dated 05.10.2015, stayed the operation of the penalty order dated 10.07.2015, subject to the deposit of 10% of the penalty amount, a condition that the Appellant duly complied with within the prescribed time. The effect of



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this stay was that the CCI's penalty order ceased to be enforceable during its subsistence, and no recovery proceedings could lawfully be pursued. Therefore, when the notice was served, there was no subsisting "*penalty recoverable*" from the Appellant in the eyes of law.

43. In these circumstances, the demand notice issued by the CCI during the period of stay cannot be considered a valid or operative "*demand notice*" as defined under Regulation 2(1)(c). The demand notice dated 01.10.2015 itself specifies that its operation would commence from the date of its receipt. Resultantly, as on the date when the demand notice came to be received by the Appellant herein, due to the operation of the stay, it was rendered, literally, a "dead letter".

44. Once the notice itself is rendered in-operative, the question of default in payment does not arise. Regulation 5 of the 2011 Regulations, providing for the imposition of interest "*if the amount specified in the demand notice is not paid within the period specified by the Commission*", can operate only when a valid demand notice has been served in respect of a recoverable penalty. Where the demand notice itself is rendered inoperable due to the subsisting stay, the statutory premise for triggering Regulation 5 subsides.

45. Accordingly, the levy of interest on the basis of the demand notice dated 01.10.2015 is contrary to both the letter and spirit of the 2011 Regulations. The CCI could not have invoked Regulation 5 for the purpose of imposing penalty, without the triggering event having come into play. To hold otherwise would not only offend the principle of legality but also penalize the Appellant for having acted strictly in



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compliance with the interim protection granted by a competent appellate authority.

46. The learned Single Judge, in the Impugned Judgment, while examining the effect of the stay Order dated 05.10.2015 and the final Order dated 09.12.2016, held that the order of the CCI had merged with the order passed by COMPAT. However, the learned Single Judge further held that the COMPAT's order reaffirmed the CCI's decision to levy penalty and that such decision, having been sustained, could not be considered inoperative or non-existent for the period during which it was suspended by virtue of the stay order. According to the learned Judge, once the stay stood vacated, the CCI's order imposing penalty, though reduced in quantum, required enforcement.

47. This finding, however, necessarily raises the central question as to the correct application of the doctrine of merger in the facts of the present case, specifically, whether the CCI's Penalty Order dated 10.07.2015 stood merged into the final order dated 09.12.2016 passed by the learned COMPAT, which substantially reduced the penalty. The further question that arises is whether the doctrine of merger applies, then to what extent it operates in this context.

48. The applicability and scope of the doctrine of merger have been comprehensively settled by the Hon'ble Supreme Court through a catena of judgments, notably the three-Judge Bench in *Kunhayammed* (*supra*), which was subsequently affirmed by another three-Judge Bench in *Khoday Distilleries* (*supra*). The relevant portion of *Khoday Distilleries* (*supra*) is reproduced hereunder:

“23. After elaborate discourse on almost all the aspects, the Court gave its conclusions and also summed up the legal position from paras 39 to 44. We reproduce the same hereunder:
(*Kunhayammed v. State of Kerala*, (2000) 6 SCC 359, SCC pp.



382-84)

“39. We have catalogued and dealt with all the available decisions of this Court brought to our notice on the point at issue. It is clear that as amongst the several two-Judge Bench decisions there is a conflict of opinion and needs to be set at rest. The source of power conferring binding efficacy on decisions of this Court is not uniform in all such decisions. Reference is found having been made to (i) Article 141 of the Constitution, (ii) doctrine of merger, (iii) res judicata, and (iv) rule of discipline flowing from this Court being the highest court of the land.

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (v) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expressions often employed by this Court while disposing of such petitions are — “heard and dismissed”, “dismissed”, “dismissed as barred by time” and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the meritworthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say “dismissed on merits”. Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition



does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the



absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See *Corpus Juris Secundum*, Vol. LVII, pp. 1067-68.)

43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.

44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment, decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of the petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing



special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

24. Having noted the aforesaid two judgments and particularly the fact that the earlier judgment in **Abbai Maligai Partnership Firm v. K. Santhakumaran, (1998) 7 SCC 386** is duly taken cognizance of and explained in the latter judgment, we are of the view that there is no conflict insofar as ratio of the two cases is concerned. Moreover, **Abbai Maligai Partnership Firm v. K. Santhakumaran, (1998) 7 SCC 386** was decided on its peculiar facts, with no discussion on any principle of law, whereas **Kunhayammed v. State of Kerala, (2000) 6 SCC 359** is an elaborate discourse based on well-accepted propositions of law which are applicable for such an issue. We are, therefore, of the view that detailed judgment in **Kunhayammed v. State of Kerala, (2000) 6 SCC 359** lays down the correct law and there is no need to refer the cases to larger Bench, as was contended by the counsel for the appellant.

25. While taking this view, we may also point out that even in **K.**



Rajamouli v. A.V.K.N. Swamy, (2001) 5 SCC 37 this Court took note of both these judgments and explained the principle of res judicata in the following manner: (SCC p. 41, para 4)

“4. Following the decision in **Kunhayammed v. State of Kerala, (2000) 6 SCC 359** we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the review petition provided the review petition was filed prior to filing of special leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be an abuse of the process of the law. We are in agreement with the view taken in **Abbai Maligai Partnership Firm v. K. Santhakumaran, (1998) 7 SCC 386** that if the High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as an affront to the order of the Supreme Court. But this is not the case here. In the present case, the review petition was filed well within time and since the review petition was not being decided by the High Court, the appellant filed the special leave petition against the main judgment of the High Court. We, therefore, overrule the preliminary objection of the counsel for the respondent and hold that this appeal arising out of the special leave petition is maintainable.”

26. From a cumulative reading of the various judgments, we sum up the legal position as under:

26.1. The conclusions rendered by the three-Judge Bench of this Court in **Kunhayammed v. State of Kerala, (2000) 6 SCC 359** and summed up in para 44 are affirmed and reiterated.

26.2. We reiterate the conclusions relevant for these cases as under: (**Kunhayammed v. State of Kerala, (2000) 6 SCC 359**, SCC p. 384)

“(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the



order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

26.3. Once we hold that the law laid down in *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359 is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359.”

(emphasis supplied)

49. Similarly, another three-Judge Bench of the Hon’ble Supreme Court in *Vishnu Vardhan v. State of U.P.*¹² examined the doctrine of merger by relying upon the earlier judgments. The relevant excerpt of the judgment of *Vishnu Vardhan* (*supra*) is produced herein below:

“MERGER

91. Since arguments in extenso were advanced on the aspect of non-applicability/applicability of the doctrine of merger, we need



to notice what it means, how this Court has applied it or declined to apply it to the cases before it, and finally how relevant it is to the present exercise.

92. As per Black's Law Dictionary (10th Edition), 'merger' means "the act or an instance of combining or uniting; Civil Procedure. the effect of a judgment for the plaintiff, which absorbs any claim that was the subject of the lawsuit into the judgment, so that the plaintiff's rights are confined to enforcing the judgment".

93. A brief overview of English law on the doctrine of merger by judgment reveals that when an action prevails, the cause of action, along with all attendant rights emanating from it, merge into the judgment and thereby stand extinguished.

94. To trace the origin of the doctrine of merger in English law, we must journey back to the nineteenth century. Almost two centuries ago, the Court of Exchequer Chamber, in the case of *King v. Hoare*⁶⁷, articulated the following principles:

If there be a breach of contract, or wrong done, or any other cause of action by one against another, and judgment be recovered in a court of record, the judgment is a bar to the original cause of action, because it is thereby reduced to a certainty, and the object of the suit attained, so far as it can be at that stage; and it would be useless and vexatious to subject the defendant to another suit for the purpose of obtaining the same result. Hence the legal maxim, 'transit in rem judicatam'—the cause of action is changed into matter of record, which is of a higher nature, and the inferior remedy is merged in the higher.

95. Similarly, in *Kendall v. Hamilton*⁶⁸, the House of Lords, endorsing the decision in Hoare (supra), stated thus:

The doctrine of merger is quite intelligible. Where a security of one kind or nature has been superseded by another of a higher kind or nature, it is reasonable to insist that the party seeking redress should rest only upon the latter. So when what was once a mere right of action has become a judgment of a court of record, the judgment is a bar to the original cause of action.

96. In *Virgin Atlantic Airways Ltd. v. Zodiac Seats UK Ltd.*⁶⁹, the Supreme Court of the United Kingdom, summarised the doctrine of merger as follows:

17. [...] [Merger] treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as 'of a higher nature' and therefore as superseding the underlying cause of action: see *King v. Hoare* [...].



97. Perhaps one of the earliest Indian decisions exploring the doctrine of merger is that of the *High Court of Bombay in Commissioner of Income-Tax v. Tejaji Farasram Kharawalla*⁷⁰ wherein a Division Bench held thus:

It is a well-established principle of law that when an appeal is provided from a decision of a Tribunal and the appeal Court after hearing the appeal passes an order, the order of the original Court ceases to exist and is merged in the order of the appeal Court and although the appeal Court may merely confirm the order of the trial Court, the order that stands and is operative is not the order of the trial Court but the order of the appeal Court.

98. A three-Judge Bench of this Court in *Natvarlal Punjabhai v. Dadubhai Manubhai*⁷¹, laid down that the English doctrine of merger, while it might have influenced certain judicial pronouncements in our country, it essentially has no relevance to a Hindu widow's estate.

99. In *State of Madras v. Madurai Mills Co. Ltd.*⁷², another three-Judge Bench observed that the application of the doctrine of merger depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. It was observed thus:

5. [...] But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal on revision, there is a fusion of merger of two orders irrespective of the subject matter of the appellate or revisional order and scope of the appeal or revision contemplated by the particular statute.

100. The question arising for decision before a Constitution Bench of five-Judges of this Court in *Collector of Customs, Calcutta v. East India Commercial Co. Ltd.*⁷³ was whether the order of the original authority merged in the order of the Appellate Authority even where the Appellate Authority merely dismissed the appeal without any modification of the order of the original authority. Answering the question posed before it, the Bench observed thus:

4. [...] It is obvious that when an appeal is made, the Appellate Authority can do one of three things, namely, (i) it may reverse the order under appeal, (ii) it may modify that order, and (iii) it may merely dismiss the appeal and thus confirm the order without any modification. It is not disputed that in the first two cases where the order of the original authority is either reversed or modified it is the order of the Appellate Authority which is the operative order and if the High Court has no jurisdiction to issue a writ to the Appellate



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Authority it cannot issue a writ to the original authority. The question therefore is whether there is any difference between these two cases and the third case where the Appellate Authority dismisses the appeal and thus confirms the order of the original authority. It seems to us that on principle it is difficult to draw a distinction between the first two kinds of orders passed by the Appellate Authority and the third kind of order passed by it. In all these three cases after the Appellate Authority has disposed of the appeal, the operative order is the order of the Appellate Authority whether it has reversed the original order or modified it or confirmed it. In law, the appellate order of confirmation is quite as efficacious as an operative order as an appellate order of reversal or modification.

(emphasis supplied)

50. The settled legal position emerging from the above authoritative pronouncements is that where an order of a court, tribunal, or authority is subjected to appellate or revisional scrutiny, and the superior forum either reverses, modifies, or affirms that order, the subordinate order merges into the decision of the superior forum. The latter order alone survives and becomes operative and enforceable in the eyes of law.

51. These judgments also make clear that an appellate authority, when exercising such jurisdiction, may take one of three courses that is (i) reverse the impugned order; (ii) modify it; or (iii) dismiss the appeal, thereby affirming the original order. There exists no rational distinction between these three outcomes. Whether the appellate forum reverses, modifies, or affirms the order, the ultimate legal effect remains identical; upon such disposal, it is the appellate order alone that subsists as the operative and enforceable determination. In essence, an appellate order of affirmation carries the same legal efficacy as one of reversal or modification.



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52. Applying the above principle to the present case, it is evident that the doctrine of merger squarely applies. The learned COMPAT, *vide* its final order dated 09.12.2016, partially modified the CCI's Penalty Order dated 10.07.2015. Consequently, the latter stood absorbed into and replaced by the appellate decision, which alone survived as the binding and operative order. This interpretation finds further support in Regulation 14 of the 2011 Regulations, which mandates that when a higher forum, such as the Appellate Tribunal, reduces the quantum of penalty, the CCI is required to revise or withdraw its earlier demand notice or recovery certificate, and issue a fresh demand notice in conformity with the modified penalty.

53. In the present case, the Appellant had already discharged the penalty liability in full as per the quantum determined in the COMPAT's final order by making payment on 04.01.2017, and that too before any fresh demand notice was issued. Hence, the question of payment of any interest on such penalty does not arise. Once the CCI's original order merged into the appellate decision, and the modified penalty was fully satisfied, there remained no independent subsistence of the original demand or any liability accruing therefrom.

54. We now turn to the applicability of the judgment in ***J.K. Synthetics Ltd.*** (*supra*), relied upon extensively by the CCI and the learned Single Judge. That decision, in turn, was based on ***Kanoria Chemicals*** (*supra*), and subsequently relied upon by the learned NCLAT in ***SCM Soilfert Ltd.*** (*supra*), which became the basis for the CCI's Order dated 06.12.2018 imposing interest on the penalty.

55. With respect, ***J.K. Synthetics Ltd.*** (*supra*) is clearly distinguishable and therefore inapplicable to the present case. In that



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matter, *inter alia*, interest on the penalty had already begun to accrue because the stay, though initially granted, was later vacated. Consequently, the party could not claim the benefit of the stay. By contrast, in the present case, no interest on the penalty ever commenced, as the Appellant had secured a stay from the learned COMPAT, which remained in force when the demand notice was served. In any event, the trigger for imposition of interest, in the said case, was based on the statutory provision which provided for such payment of interest from the date specified by the Government for the payment of Royalty, rent etc. and was not contingent upon an independent and separate “Demand Notice” as is the case herein.

56. Regulation 5 of the 2011 Regulations unambiguously provides that the 30-day period for payment and any consequent interest commences only upon service of a valid demand notice. Here, the Demand Notice dated 01.10.2015 was served during the subsistence of the stay and was therefore invalid. As a result, no interest could lawfully arise.

57. This distinction is further underscored by the fact that the learned COMPAT ultimately reduced the penalty drastically, from Rs. 156.62 crores to Rs. 1.56 crores. Any interest calculated on the original demand would have been based on an amount that was never sustainable on appeal. For the same reasons, the other judgments cited by the CCI are similarly inapplicable.

58. We also take note of the fact that acceptance of the CCI’s assertion would lead to an absurd and unjust result in the present case. An appellant, despite complying with the stay and depositing the required portion of the penalty with the appellate forum, would face



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an impossible choice, that is, either pay the full penalty immediately, thereby defeating the purpose of the stay, or leave the penalty unpaid and incur interest. Such a situation would impose a disproportionate and inequitable burden, undermining the very objective of interim relief.

59. It would be manifestly unjust to permit interest to accrue on an original demand that was invalid at the time of service and was subsequently reduced in the final order of the appeal. Doing so would penalize the Appellant for following the lawful directions of the learned COMPAT and for seeking relief through proper legal channels. This would not only frustrate the remedial purpose of interim orders but also contravene the express mandate of the 2011 Regulations.

60. The 2011 Regulations establish a detailed and structured framework for the recovery of dues in the event of non-payment within the prescribed period. If the CCI's assertion were correct, as it believes, it would have been incumbent upon the CCI to initiate recovery proceedings immediately after expiry of the period given in the alleged demand notice dated 01.10.2015. Yet, the record shows that the CCI took no steps in this regard and remained inactive until the final decision of the learned COMPAT on 09.12.2016.

61. By that time, the Appellant had already deposited the substantially reduced penalty amount, in accordance with the final Order of the learned COMPAT. This inaction by the CCI demonstrates a clear acknowledgment, at least implicitly, that it was not entitled to recover the penalty or claim interest during the subsistence of the stay. The subsequent volte-face by the CCI, seeking



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interest despite its prior inaction and the partial allowance of the Appeal by the learned COMPAT, is therefore, arbitrary, unjust and unfair.

DECISION:

62. In view of the foregoing analysis and reasoning, the appeal is allowed. The Order dated 06.12.2018, as well as the Demand Notices dated 01.10.2015, 17.01.2017, and 14.12.2018 issued by the CCI, insofar as they impose or affirm any liability to pay interest on the monetary penalty under Regulation 5 of the 2011 Regulations, are unsustainable in law and are therefore quashed.

63. Consequent to this conclusion, the Impugned Judgment dated 11.09.2019, passed by the learned Single Judge, which upheld the said Order and Demand Notices, stands set aside.

64. The Appellant is thus absolved from any liability to pay interest on the penalty under the said regulations.

65. The present Appeal, along with pending application(s), if any, is disposed of in the above terms.

66. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 01, 2025/sm/kr