2024 INSC 319

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.3851 OF 2023**

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA ...APPELLANT (S)**

**VERSUS**

**SATYANARAYAN BANKATLAL MALU & ORS. ...RESPONDENT (S)**

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**J U D G M E N T**

**B.R. GAVAI, J.**

## I. FACTUAL BACKGROUND

**1.** This appeal challenges the judgement and order dated 14th February 2022, passed by the learned Single Judge of the High Court of Judicature at Bombay in Writ Petition No.2592 of 2021,

thereby allowing the petition filed by Satyanarayan Bankatlal Malu and Ramesh Satyanarayan Malu, the Ex-Directors of M/s.

SBM Paper Mills Pvt. Ltd. (hereinafter referred to as 'the Respondents') challenging the order dated 17th March 2021 passed by the learned Additional Sessions Judge, 58th Court in Special Case No.853 of 2020 ('learned Sessions Judge' for short). The learned Sessions Judge had directed issuance of process against the Respondents on account of a Complaint filed by the Insolvency and Bankruptcy Board of India (hereinafter referred to as 'the Appellant-Board') under Section 236 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Sections 190, 193 and 200 of the Code of Criminal Procedure, 1973 ("Cr.P.C.) for the offences punishable under Section 73(a) and Section 235A of the Code.

**2.** The facts in brief, giving rise to the present appeal are as under:

**2.1** M/s. SBM Paper Mills Private Limited (hereinafter referred to as "the Corporate Debtor") filed a petition on 4th September 2017 under Section 10 of the Code for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") of itself vide CP/1362/I&BC/NCLT/MB/MAH/2017. The

National Company Law Tribunal, Mumbai Bench (hereinafter referred to as "the NCLT") vide order dated 17th October 2017, admitted the Petition and directed the moratorium to commence as prescribed under Section 14 of the Code and directed certain statutory steps to be taken as a consequence thereof. Vide the said order, the NCLT also appointed Mr. Amit Poddar as the Interim Resolution Professional (hereinafter referred to as "RP") to carry out the functions as prescribed under the provisions of the Code.

**2.2** In the meanwhile, Mr. Satyanarayan Malu, i.e., the Respondent/Ex-Director of the Corporate Debtor filed an application being M.A. No. 1396/2018 before the NCLT under Section 12A of the Code for the withdrawal of the aforesaid petition under Section 10 in light of a One Time Settlement ("OTS" for short) entered into with the sole Financial Creditor, i.e., Allahabad Bank. On the other hand, the RP had also filed an application being M.A. No. 827/2018 for the approval of the Resolution Plan. The NCLT vide order dated 20th December 2018 allowed the M.A. No. 1396/2018 filed by the Respondent while

observing the consent for withdrawal of the petition by the sole Financial Creditor vide letter dated 27th November 2018.

**2.3** However, on account of non-compliance of the terms of the OTS by the Respondents, the NCLT issued a Show-Cause Notice against them vide order dated 11th March 2019. The NCLT further found it to be a fit case to propose the prosecution of the Respondents vide order dated 20th August 2019 while hearing an application filed by the sole Financial Creditor being M.A. 494 and 495 of 2019 thereby seeking prosecution of the Respondents.

**2.4** Thereafter, on 22nd September 2020, the Appellant-Board filed a Complaint against the Respondents before the Sessions Judge in Special Case No. 853/2020 under the aforementioned provisions and for offences punishable under Section 73(a) and 235A of the Code for the non-compliance of the terms of the OTS and for not having filed the M.A. 1396/2018 under Section 12A of the Code through the RP. The Sessions Judge vide Order dated 17th March 2021 directed issuance of process against the Respondents and further directed them to be summoned on the next date of hearing.

**2.5** Being aggrieved thereby, the Respondents filed a Writ Petition No. 2592 of 2021 before the High Court of Judicature at Bombay, praying for the quashing and setting aside of the order dated 17th March 2021 passed by the Sessions Judge for the want of jurisdiction. The High Court vide impugned judgement and order dated 14th February 2022 allowed the Writ Petition No. 2592 of 2021 filed by the Respondents.

**2.6** Hence, this Appeal.

## II. SUBMISSIONS

**3.** We have heard Shri S.V. Raju, learned Additional Solicitor General of India ("ASG" for short) appearing for the Appellant-Board and Shri Amir Arsiwala, Advocate on Record, appearing for the Respondents/Ex-Directors of the Corporate Debtor.

**4.** Shri S.V. Raju, learned ASG submitted that the learned Single Judge of the High Court has grossly erred in quashing the proceedings. Shri Raju submitted that the learned Single Judge of the High Court has grossly erred in holding that, in view of the Companies (Amendment) Act, 2017 (which came into effect from 7th May 2018), only the offences committed under the Companies

Act can be tried by Special Court consisting of Sessions Judge or Additional Sessions Judge. He submitted that the reasoning given by the learned Single Judge that the offences other than the Companies Act cannot be tried by the Special Court consisting of Sessions Judge or Additional Sessions Judge is totally in ignorance of the provisions of sub-section (1) of Section 236 of the Code.

**5.** Learned ASG submitted that sub-section (1) of Section 236 of the Code provides that the offences under the Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013. He submits that the legislative intent is clear. There is no general reference to the provisions of the Companies Act. He submits that what has been done by sub-section (1) of Section 236 of the Code is that the offences punishable under the Code are required to be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

**6.** Shri Raju further submitted that the legislative intent is clear. A specific provision of the Companies Act, 2013 has been

incorporated in sub-section (1) of Section 236 of the Code. It is submitted that, if the legislative intent was that of legislation by reference, then a general reference could have been made in sub-section (1) of Section 236 of the Code to Chapter XXVIII of the Companies Act. Learned ASG therefore submitted that, if the reference made to the Special Court established under Chapter XXVIII of the Companies Act, 2013 is held to be legislation by incorporation, then the subsequent amendments to the Companies Act, 2013 would not be applicable to the Code. He submitted that since the Code has come into effect on 28th May, 2016, the provisions of Section 435, as it existed in Chapter XXVIII of the Companies Act, 2013 then, would only be applicable. Learned ASG in this respect refers to the judgments of this Court in the cases of ***Bolani Ores Ltd. vs State of Orissa***[1] ***and Mahindra and Mahindra Ltd. vs Union of India and another***[2].

[1] (1974) 2 SCC 777
[2] (1979) 2 SCC 529

**7.** Learned ASG further submits that the Code has been held to be a complete Code in itself in a catena of judgments of this Court. In this respect, he relied on the judgments of this Court in the cases of ***Ebix Singapore Private Limited vs Committee of Creditors of Educomp Solutions Limited and another***[3], ***Embassy Property Developments Private Limited vs State of Karnataka and others***[4], and ***Bharti Airtel Ltd. and another vs Vijaykumar V. Iyer and others***[5].

**8.** Learned ASG submits that, if a statute is a complete Code in itself, then normally a reference to the provisions of the prior statute referred to in a subsequent statute would only have a restrictive operation. In such a case, it would be a 'legislation by incorporation' and not a 'legislation by reference'. In this respect, he relied on the judgments of this Court in the case of ***Girnar Traders (3) vs. State of Maharashtra and others***[6].

**9.** Learned ASG further submits that the Statement of Objects and Reasons (SOR) to the Companies (Amendment) Act, 2017,

[3] (2022) 2 SCC 401
[4] (2020) 13 SCC 308
[5] 2024 SCC OnLine SC 4
[6] (2011) 3 SCC 1

amending the Companies Act, 2013 clearly shows that the amendment is for the purposes of restricting only to the Companies Act and not for any other purpose. He therefore submits that the finding of the learned Single Judge of the High Court that in view of the Companies (Amendment) Act, 2017, the Special Court consisting of Sessions Judge or Additional Sessions Judge will not have the jurisdiction to entertain the complaint in question is totally erroneous.

**10.** Learned ASG submits that, in any event, the learned Single Judge of the High Court has erred in quashing the complaint. It is submitted that, in the event the learned Single Judge found that the Special Court consisting of Sessions Judge or Additional Sessions Judge did not have jurisdiction and it is the Special Court of Metropolitan Magistrate or Judicial Magistrate First Class which has jurisdiction, then it should have returned the complaint for presentation of the same before the competent court having jurisdiction.

**11.** Shri Amir Arsiwala, learned Advocate on Record appearing for the Respondents raises a preliminary objection. He submits

that the point with regard to 'legislation by incorporation' was not argued before the learned Single Judge of the High Court and therefore the said contention cannot be permitted to be raised for the first time in this Court.

**12.** Shri Arsiwala submits that the judgment of this Court in the case of ***Bolani Ores Ltd.*** (supra) would not be applicable in the facts of the present case inasmuch as, in the said case what was incorporated in the subsequent statute was a definition of 'motor vehicles' as found in the earlier statute i.e. Motor Vehicles Act, 1939. It is therefore submitted that, the definition cannot be in a state of flux subject to the mercy of amendments to the Central Act.

**13.** Similarly, he submits that the judgment of this Court in the case of ***Mahindra and Mahindra Ltd.*** (supra) would not be applicable to the facts of the present case inasmuch as, in the said case what was referred in Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 was a right to file an appeal on any of the grounds mentioned in Section 100 of the Code of Civil procedure, 1908 ("CPC" for short). He submitted that in the

said case, this Court was considering a provision which provided a substantive right to file an appeal. As such, a reference to Section 100 of the CPC was held amounting to be an 'incorporation' as the substantive right of appeal could not be left at the mercy of subsequent amendments to the CPC.

**14.** Insofar as the judgment of this Court in the case of ***Girnar Traders*** (supra) is concerned, learned counsel submits that rather than the said judgment supporting the case of the Appellant-Board, if the test laid down in the said case is applied to the facts of the present case, it will lead to a conclusion that the present case is that of 'legislation by reference'.

**15.** Relying on the judgments of this Court in the cases of ***Collector of Customs, Madras vs Nathella Sampathu Chetty and Anr.***[7], ***New Central Jute Mills Co. Ltd. vs. Assistant Collector of Central Excise, Allahabad & Ors.***[8], ***and Ujagar Prints and others vs Union of India and others***[9], he submits that what has to be taken into consideration is the plain language

[7] (1962) 3 SCR 786
[8] (1970) 2 SCC 820
[9] (1989) 3 SCC 488

used by the legislation in the statute to which a reference is made by the subsequent statute. Learned counsel submits that in the present case, a general reference is made to Chapter XXVIII of the Companies Act. It is therefore submitted that, since a general reference is made, the present case would not be a case of 'legislation by incorporation' but would be a case of 'legislation by reference'.

**16.** Learned counsel submits that in any case, the Respondents Nos.1 and 2 have a good case on merits. He submits that the learned Single Judge of the High Court has not considered the merits of the matter and in the event this Court holds that the learned Single Judge was not justified in quashing the proceedings, the matter be remitted to the learned Single Judge of the High Court for deciding it afresh on merits.

**17.** Shri Vikas Mehta, learned Advocate on Record for the Appellant-Board, in rejoinder, reiterated the submissions made by Shri S.V. Raju, learned ASG. He submits that the legislative intent is clear. If the legislature wanted to take out the offences punishable under the Code from the ambit of Chapter XXVIII of

the Companies Act, 2013, nothing prevented it from making an amendment to the Code itself.

## III. CONSIDERATION OF STATUTORY PROVISIONS

**18.** For considering the rival submissions, it will be necessary to refer to Section 236(1) of the Code, which reads thus:

> **236. Trial of offences by Special Court**.—(1) Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), offences under of this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013 (18 of 2013).

**19.** It can thus be seen that Section 236(1) of the Code begins with a non-obstante clause. It provides that the offences under the Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013. Chapter XXVIII of the Companies Act, 2013 deals with 'Special Courts'.

**20.** For appreciating the rival submissions, it will also be necessary to refer to Section 435 of the Companies Act, 2013, as it was originally enacted; Section 435 after the amendment in 2015 by the Companies (Amendment) Act, 2015, which came into effect from 29th May 2015 (hereinafter referred to as "the 2015

Amendment"); and Section 435 as it existed after the amendment by the Companies (Amendment) Act, 2017 with effect from 7th May 2018 (hereinafter referred to as "the 2018 Amendment"), which reads thus:

**Section 435 (originally enacted)**

> "435. *Establishment of Special Courts*.—(1) The Central Government may, for the purpose of providing speedy trial of offences punishable under this Act, by notification, establish or designate as many Special Courts as may be necessary.
>
> (2) A Special Court shall consist of a Single Judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
>
> (3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge."

**Section 435 (after the 2015 Amendment)**

> "435. *Establishment of Special Courts*.—(1) The Central Government may, for the purpose of providing speedy trial of offences punishable under this Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as may be necessary.

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

(2) A Special Court shall consist of a Single Judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge."

**Section 435 (after the 2018 Amendment)**

"**435. Establishment of Special Courts**.—(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, except under section 452, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of—

(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and

(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government

> with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working."

**21.** It could thus be seen that as per Section 435(3) of the Companies Act, 2013, as it existed on the date on which the Code came into effect (i.e. after the 2015 Amendment), a person to be qualified for appointment as a Judge of a Special Court was required to hold office of a Sessions Judge or an Additional Sessions Judge immediately before his appointment as a Judge of a Special Court.

**22.** After Section 435 of the Companies Act, 2013 suffered an amendment in the year 2015 by the 2015 Amendment (Act No. 21 of 2015), with effect from 29th May, 2015, sub-section (1) thereof provided that the Central Government may, for the purpose of providing speedy trial of offences punishable under the said Act with imprisonment of two years or more, by notification, establish or designate as many Special Courts as may be necessary. It further provided that all other offences shall be tried either by a Metropolitan Magistrate or a Judicial

Magistrate of the First Class having jurisdiction to try any offence under the said Act or under any previous company law; meaning thereby, the offences under the Companies Act punishable with imprisonment of two years or more were to be tried by Special Courts comprising of Sessions Judge or Additional Sessions Judge, whereas all other offences punishable with imprisonment of less than two years, were to be tried by the Courts of Metropolitan Magistrate or Judicial Magistrate First Class having jurisdiction to try such offences. Insofar as sub-sections (2) and (3) are concerned, there was no change and as such, for being a person to be eligible for appointment as a Judge of a Special Court it was necessary that he occupied the office of a Sessions Judge or an Additional Sessions Judge prior to his appointment.

**23.** Another amendment to Section 435 of the Companies Act, 2013 was effected by the Companies (Amendment) Act, 2017 (i.e. Act No. 1 of 2018), with effect from 7th May, 2018. Vide the said amendment, two classes of Special Courts were constituted. Firstly, a Special Court presided by a single judge holding office as Session Judge or Additional Session Judge, in case of offences

punishable with imprisonment of two years or more under the Companies Act, 2013; and the second being presided by a Metropolitan Magistrate or a Judicial Magistrate of the First Class in the case of other offences, i.e., offences punishable with imprisonment of less than two years.

**24.** It is thus clear that Section 435 of the Companies Act, 2013 as it originally existed, provided for only one class of Special Courts i.e. a person holding office of a Sessions Judge or an Additional Sessions Judge and all offences under the Companies Act, 2013 were required to be tried by such Special Courts. The 2015 Amendment to Section 435 also provided for only one class of Special Courts i.e. a person holding the rank of a Sessions Judge or an Additional Sessions Judge. The change that was brought out was that, only offences punishable under the Companies Act, 2013 with imprisonment of two years or more were to be tried by the Special Courts, whereas all other offences i.e. offences punishable with imprisonment of less than two years were to be tried by the jurisdictional Metropolitan Magistrate or the Judicial Magistrate of the First Class. By the 2018

Amendment, two classes of Special Courts were established. The first class of Special Courts comprised of an officer holding the office as Sessions Judge or Additional Sessions Judge, whereas the second class of Special Courts comprised of Metropolitan Magistrate or a Judicial Magistrate of the First Class. The offences punishable under the Companies Act with imprisonment of two years or more were required to be tried by a Special Court comprising of Sessions Judge or Additional Sessions Judge, whereas all other offences i.e. the offences punishable with imprisonment of less than two years were to be tried by a Special Court comprising of Metropolitan Magistrate or the Judicial Magistrate of the First Class.

**25.** The question that requires to be considered is, as to whether the Special Court under the Code would be as provided under Section 435 of the Companies Act as it existed at the time when the Code came into effect, or it would be as provided under Section 435 of the Companies Act after the 2018 Amendment. The answer to that question would depend upon as to whether the reference to 'Special Court established under Chapter XXVIII

of the Companies Act, 2013' in Section 236(1) of the Code is a 'legislation by incorporation' or a 'legislation by reference'. If it is held that it is a 'legislation by incorporation', then the subsequent amendments would not have any effect on the Code and the Special Court would continue to be as provided under Section 435 of the Companies Act, as it existed when the Code came into effect. Per contra, if it is held that it is a 'legislation by reference' then the subsequent amendments would also be applicable to the Code and the Special Courts would be as provided under Section 435 of the Companies Act after its amendment by the 2018 Amendment.

## IV. CONSIDERATION OF PRECEDENTS

**26.** A Constitution Bench of this Court in the case of ***Collector of Customs, Madras vs Nathella Sampathu Chetty and Anr.*** (supra) has considered the distinction between 'legislation by reference' and 'legislation by incorporation'. It will be apposite to refer to the following observations of this Court in the said case:

> "……To consider that the decision of the Privy Council has any relevance to the construction of the legal effect of the terms of Section 23-A of

the Foreign Exchange Regulation Act is to ignore the distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched. In the case, however, of a reference or a citation of one enactment by another without incorporation, the effect of a repeal of the one "referred to" is that set out in Section 8(1) of the General clauses Act:

> "8. (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears: be construed as references to the provision so re-enacted."

On the other hand, the effect of incorporation is as stated by Brett, L.J. in *Clarke* v. *Bradlaugh* [1881 8 QBD 63] :

> "Where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second."

This is analogous to, though not identical with the principle embodied in Section 6-A of the General Clauses Act enacted to define the effect of repeals effected by repealing and amending Acts which runs in these terms:

> "6-A. Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."
>
> We say "not identical" because in the class of cases contemplated by Section 6-A of the General clauses Act, the function of the incorporating legislation is almost wholly to effect the incorporation and when that is accomplished, they die as it were a natural death which is formally effected by their repeal. In cases, however, dealt with by Brett, L.J. the legislation from which provisions are absorbed continue to retain their efficacy and usefulness and their independent operation even after the incorporation is effected."

**27.** It could thus be seen that the effect of incorporation means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched. However, in the case of a reference or a citation of the provisions of one enactment into another without incorporation, the amendment or repeal of the provisions

of the said Act referred to in a subsequent Act will also bear the effect of the amendment or repeal of the said provisions.

**28.** In the case of ***Bolani Ores Ltd.*** (supra), this Court was considering the question as to what would be the effect of amendment of the definition of 'motor vehicles' for the purposes of Bihar and Orissa Motor Vehicles Taxation Act, 1930 (for short "the Orissa Taxation Act"). The Orissa Taxation Act had adopted the definition of 'motor vehicles' as provided in the Motor Vehicles Act, 1939 for the purposes of taxation. The definition at the time of adoption brought the motor vehicle under the ambit of the said definition. It excluded the 'motor vehicles' used solely upon the premises of the owner. However, the said enactment suffered an amendment in the year 1956 and specifically excluded vehicles of special type adapted for use only in a factory or in any other enclosed premises. It was sought to be urged on behalf of the State of Orissa that the definition of 'motor vehicles' as adopted in Section 2(c) of the Orissa Taxation Act was not the definition by 'incorporation' but a definition by 'reference' and therefore

amendment to the said definition would also be applicable for the purposes of taxation under the Orissa Taxation Act.

**29.** Rejecting the said contention and referring to various earlier judgments, this Court observed thus:

> "**29.** The question then remains as to whether these vehicles though registrable under the Act are motor vehicles for the purpose of the Taxation Act. ***It has already been pointed out that before the amendment vehicles used solely upon the premises of the owner, though they may be mechanically propelled vehicles adapted for use upon roads were excluded from the definition of 'motor vehicle'. If this definition which excludes them is the one which is incorporated by reference underSection 2(c) of the Taxation Act, then no tax is leviable on these vehicles under the Taxation Act***. Shri Tarkunde for the State of Orissa contends that the definition of 'motor vehicle' in Section 2(*c*) of the Taxation Act is not a definition by incorporation but only a definition by reference, and as such the meaning of 'motor vehicle' for the purpose of Section 2(*c*) of the Taxation Act would be the same as defined from time to time under Section 2(18) of the Act. In ascertaining the intention of the legislature in adopting the method of merely referring to the definition

of 'motor vehicle' under the Act for the purpose of the Taxation Act, we have to keep in mind its purpose and intendment as also that of the Motor Vehicles Act. We have already stated what these purposes are and having regard to them the registration of a motor vehicle does not automatically make it liable for taxation under the Taxation Act. The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57 List II of the Seventh Schedule read with Article 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry

57 of List II is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed. This very concept is embodied in the provisions of Section 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicle is not using the roads and it is declared that it will not use the roads for any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable. If this be the purpose and object of the Taxation Act, when the motor vehicle is defined under Section 2(*c*) of the Taxation Act as having the same meaning as in the Motor Vehicles Act, 1939, then the intention of the Legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act as then existing, namely, in 1943, as if that definition was bodily written into Section 2(*c*) of the Taxation Act. ***If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943, incorporating the definition of 'motor***

***vehicle' referred to the definition of 'motor vehicle' under the Act as then existing, the effect of this legislative method would, in our view, amount to an incorporation by reference of the provisions of Section 2(18) of the Act in Section 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of 'motor vehicle' in Section 2(c) of the Taxation Act. This is a well-accepted interpretation both in this country as well as in England which has to a large extent influenced our law.*** This view is further reinforced by the use of the word 'has' in the expression "has the same meaning as in the Motor Vehicles Act, 1939" in Section 2(*c*) of the Taxation Act, which would perhaps further justify the assumption that the Legislature had intended to incorporate the definition under the Act as it then existed and not as it may exist from time to time. This method of drafting which adopts incorporation by reference to another Act whatever may have been its historical justification in England in this country does not exhibit an activists draftsmanship which would have adopted the method of providing its own definition. Where two Acts are complimentary or interconnected, legislation by reference may be an easier method because a definition given in the one Act may be

made to do as the definition in the other Act both of which being enacted by the same Legislature. At any rate, Lord Esher, M.R. dealing with legislation by incorporation, in *In re. Wood's Estate* [(1886) 31 Ch D 607] said at p. 615:

> "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have these clauses in the later Act, you have no occasion to refer to the former Act at all."

The observations in *Clarke* v. *Bradlaugh* [(1881) 8 QBD 63 607] are also to the same effect. Brett, L.J. in that case had said at p. 69:

> "... there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second."

**30.** In *Secretary of State for India in Council* v. *Hindusthan Cooperative Insurance Society Ltd.* [AIR 1931 PC 149 : 132 IC 748 : LR 58 IA 259] the Privy Council was considering a case where the incorporation effected in the statute viz. the Calcutta Improvement Trust Act, 1911 — referred to by their Lordships as the

"Local Act" — was in express terms and in the form illustrated by 54 and 55 Vict., Ch. 19. The "Local Act" in dealing with the acquisition of land for the purposes designated by it, made provision for the acquisition under the Land Acquisition Act, and the provisions of the Land Acquisition Act were subjected to numerous modifications which were set out in the Schedule, so that in effect the "Local Act" was held to be the enactment of a Special Law for the acquisition of land for the special purpose. It was in the context of these and several other provisions which pointed to the absorption of certain of the provisions of the Land Acquisition Act into the "Local Act" with vital modifications that Privy Council observed at p. 266:

> "But Their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the Local Act of 1911. It was not part of the Land Acquisition Act when the Local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made

to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor again, does Act 19 of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the Local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt."

It was further observed at p. 267:

"In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in *Craies on Statute Law*, 3rd Edn. pp. 349-50. This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India .... The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its off-spring survives in the incorporating Act. Though no

such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country.

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

This Court in the *Collector of Customs, Madras* v. *Nathella SampathuChetty* [AIR 1962 SC 316 : (1962) 3 SCR 786, 830-833 : (1962) 1 Cr LJ 364] considered the Privy Council decision in the *Hindustan Cooperative Insurance Society Ltd*. and distinguished that case and held the principle inapplicable to the facts of that case.

**31.** In *State of Bihar* v. *S.K. Roy* [AIR 1966 SC 1995 : 1966 Supp SCR 259 : (1966) 2 LLJ 759] this Court was considering the definition of "employer" in Section 2(*e*) of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, where that expression was defined to mean "the owner of a coal mine as defined in clause (*g*) of Section 3 of the Indian Mines Act, 1923". The Indian

Mines Act, 1923, had been repealed and substituted by the Mines Act, 1952 (Act 35 of 1952). In the latter Act the word "owner" had been defined in clause (1) of Section 2. The question was whether by virtue of Section 8 of the General Clauses Act, the definition of the word "employer" in clause (*e*) of Section 2 of the Coal Mines Provident Fund and Bonus Schemes Act should be construed with reference to the definition of the word, "owner" in clause (1) of Section 2 of Act 35 of 1952, which repealed the earlier Act and re-enacted it. It may be mentioned that according to Section 2(1) of Act 35 of 1952 the word "owner", when used in relation to a mine, means "any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver…." The expression "coal mine" is separately defined in clause (*b*) of Section 2 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948. Ramaswami, **J.** speaking for the Court observed at p. 261:

> "As a matter of construction it must be held that all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to a coal mine will come within the scope and ambit of the definition only when they belong to the coal mine. In other words,

the word or occurring before the expression 'belonging to a coal mine' in the main definition has to be read to mean 'and'."

This case, as well as the decision in *New Central Jute Mills Co. Ltd.* v. *Assistant Collector of Central Excise, Allahabad* [(1970) 2 SCC 820 : (1971) 2 SCR 92] are distinguishable on the facts and legislation which this Court was considering. In the *New Central Jute Mills Co. Ltd. case*, the Privy Council decision in the *Hindusthan Cooperative Insurance Society Ltd. case* was referred to and distinguished. It is, however, contended by the learned Solicitor General that both in *Nathella Sampathu Chetty case* as well as the *New Central Jute Mills Co. Ltd. case* this Court was considering the effects of the two Acts which were made by Parliament by Central legislation and it is, therefore, not strictly a case of incorporation because the Central Legislature is deemed to have, while making the latter enactment, kept in view the provisions of the former Act. In our view this may not be conclusive.

**32.** In *Ram Sarup* v. *Munshi* [AIR 1963 SC 553 : (1963) 3 SCR 858] a judgment of the Bench of five Judges of this Court held that the repeal of the Punjab Alienation of Land Act, 1900, had no effect on the continued operation of the Punjab Pre-

emption Act, 1913, and that the expression "agricultural land" in the later Act had to be read as if the definition of the Alienation of Land Act had been bodily transposed into it. After referring to the observations of Brett, **L.J.** in *Clarke case*, Rajagopala Ayyangar, **J.** speaking for the Court observed at pp. 868-69:

> "Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated.
>
> * * *
>
> In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it."

The above decision of this Court is more in point and supports our conclusion. In our view, the intention of Parliament for modifying the Motor Vehicles Act has no relevance in determining the intention of the Orissa Legislature in enacting the Taxation Act."

[Emphasis supplied]

**30.** It is thus clear that this Court found that, if the vehicles do not use the roads, notwithstanding that they are registered under the Motor Vehicles Act, they cannot be taxed under the Orissa Taxation Act. This Court held that the intention of the Legislature could not have been anything but to incorporate only the definition in the Motor Vehicles Act, as it existed in 1943, as if that definition was bodily written into Section 2(*c*) of the Orissa Taxation Act. It further held that, if the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943, incorporating the definition of 'motor vehicle' referred to the definition of 'motor vehicle' under the Motor Vehicles Act, as it existed at the time of enactment of the subsequent Act; the effect of this legislative method would amount to an incorporation by reference to the provisions of Section 2(18) of the Motor Vehicles Act in Section 2(*c*) of the Orissa Taxation Act. It was further held that, any subsequent amendment in the Motor Vehicles Act or a total repeal of the Motor Vehicles Act under a fresh legislation on that topic would also not affect the definition of 'motor vehicle' in Section 2(*c*) of the Orissa Taxation Act.

**31.** This Court unequivocally held that the intention of Parliament for modifying the Motor Vehicles Act had no relevance in determining the intention of the Orissa Legislature in enacting the Orissa Taxation Act. This Court held that the dumpers and rockers, which were used by the miners in their premises though registrable under the Motor Vehicles Act were not taxable under the Orissa Taxation Act as long as they were working solely within the premises of the respective owners.

**32.** In the case of ***Mahindra and Mahindra Ltd.*** (supra), Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 ("MRTP Act, 1969" for short) provided that any person aggrieved by an order made by the Commission under Section 13 may prefer an appeal to the Supreme Court on 'one or more of the grounds specified in Section 100 of the CPC'. Section 100 of the CPC at the time of the incorporation of the MRTP Act specified three grounds on which a second appeal could be brought to the High Court and one of the grounds was that the decision appealed against was contrary to law. However, by the Code of Civil Procedure (Amendment) Act, 1976 with effect from February

1, 1977, it was provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. It was sought to be argued that substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and therefore the reference in Section 55 of the MRTP Act, 1969 to Section 100 of CPC must be construed as reference to the new Section 100 and the appeal would be tenable only on ground specified in the new Section 100 of CPC i.e., on a substantial question of law.

**33.** Rejecting the said contention, this Court observed thus:

> "**8.** The first question that arises for consideration on the preliminary objection of the respondents is as to what is the true scope and ambit of an appeal under Section 55. That section provides inter alia that any person aggrieved by an order made by the Commission under Section 13 may prefer an appeal to this Court on "one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908". Now at the date when Section 55 was enacted, namely, December 27, 1969, being the date of coming into force of the Act, Section 100 of the Code of Civil Procedure specified three grounds on which a second appeal could be brought to the High Court and one of these grounds was that the decision appealed against

was contrary to law. It was sufficient under Section 100 as it stood then that there should be a question of law in order to attract the jurisdiction of the High Court in second appeal and, therefore, if the reference in Section 55 were to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. But subsequent to the enactment of Section 55, Section 100 of the Code of Civil Procedure was substituted by a new section by Section 37 of the Code of Civil Procedure (Amendment) Act, 1976 with effect from February 1, 1977 and the new Section 100 provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. The three grounds on which a second appeal could lie under the former Section 100 were abrogated and in their place only one ground was substituted which was a highly stringent ground, namely, that there should be a substantial question of law. This was the new Section 100 which was in force on the date when the present appeal was preferred by the appellant and the argument of the respondents was that the maintainability of the appeal was, therefore, required to be judged by reference to the ground specified in the new Section 100 and the appeal could be entertained only if there was a substantial question of law. The respondents leaned heavily on Section 8(1) of the General Clauses Act, 1897 which provides:

> "Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

and contended that the substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and, therefore, on an application of the rule of interpretation enacted in Section 8(1), the reference in Section 55 to Section 100 must be construed as reference to the new Section 100 and the appeal could be maintained only on ground specified in the new Section 100, that is, on a substantial question of law. We do not think this contention is well founded. ***It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation. Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the***

***provision repealed is required to be construed as reference to the provision as re-enacted.*** Such was the case in *Collector of Customs* v. *Nathella Sampathu Chetty* [AIR 1962 SC 316 : (1962) 3 SCR 786] and *New Central Jute Mills Co. Ltd*. v. *Assistant Collector of Central Excise* [(1970) 2 SCC 820 : AIR 1971 SC 454 : (1971) 2 SCR 92]. ***But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it.*** Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. ***Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute.*** Lord Esher, M.R., while dealing with legislation in incorporation in *In re Wood's Estate* [(1886) 31 Ch D 607] pointed out at p. 615:

> "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

Lord Justice Brett, also observed to the same effect in *Clarke* v. *Bradlough* [(1881) 8 QBD 63, 69] :

> "…. there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second."



This was the rule applied by the Judicial Committee of the Privy Council in *Secretary of State for India in Council* v. *Hindustan Cooperative Insurance Society Ltd*. [58 IA 259] The Judicial Committee pointed out in this case that the provisions of the Land Acquisition Act, 1894 having been incorporated in the Calcutta Improvement Act, 1911 and become an integral part of it, the subsequent amendment of the Land Acquisition Act, 1894 by the addition of sub-section (2) in Section 26 had no effect on the Calcutta Improvement Act, 1911 and could not be read into it. Sir George

Lowndes delivering the opinion of the Judicial Committee observed at p. 267:

> "In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in Craies on *Statute Law*, 3rd Edn. pp. 349, 350 ... The independent existence of the two Acts is, therefore, recognised; despite the death of the parent Act, its offspring survives in the incorporating Act.
>
> It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

So also in *Ram Sarup* v. *Munshi* [AIR 1963 SC 553 : (1963) 3 SCR 858] it was held by this Court that since the definition of "agricultural land" in the Punjab Alienation of Land Act, 1900 was bodily incorporated in the Punjab Pre-emption Act, 1913, the repeal of the former Act had no effect on the continued operation of the latter. Rajagopala Ayyangar, J., speaking for the Court observed at p. 868-69 of the Report:

> "Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated.
>
> In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act, 1900, had been bodily transposed into it."

The decision of this Court in *Bolani Ores Ltd*. v. *State of Orissa* [(1974) 2 SCC 777 : AIR 1975 SC 17 : (1975) 2 SCR 138] also proceeded on the same principle. There the question arose in regard to the interpretation of Section 2(*c*) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (hereinafter referred to as "the Taxation Act"). This section when enacted adopted the definition of "motor vehicle" contained in Section 2(18) of the Motor Vehicles Act, 1939. Subsequently, Section 2(18) was amended by Act 100 of 1956 but no corresponding amendment was made in the definition contained in Section 2(*c*) of the Taxation Act. The argument advanced before the Court was that the definition in Section 2(*c*) of the Taxation

Act was not a definition by incorporation but only a definition by reference and the meaning of "motor vehicle" in Section 2(*c*) must, therefore, be taken to be the same as defined from time to time in Section 2(18) of the Motor Vehicles Act, 1939. This argument was negatived by the Court and it was held that this was a case of incorporation and not reference and the definition in Section 2(18) of the Motor Vehicles Act, 1939 as then existing was incorporated in Section 2(*c*) of the Taxation Act and neither repeal of the Motor Vehicles Act, 1939 nor any amendment in it would affect the definition of "motor vehicle" in Section 2(*c*) of the Taxation Act. ***It is, therefore, clear that if there is mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, Section 8(1) would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute. The question is to which category the present case belongs.***"

[Emphasis supplied]

**34.** This Court therefore held that if there was mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, Section 8(1) of the General Clauses Act would apply and the reference would be construed as a reference to the provision in the former statute, as may be in force from time to time. However, if a provision of one statute was incorporated in another statute, then any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute.

**35.** In the case of ***Girnar Traders (3)*** (supra), this Court was considering the question, as to whether the provisions of the Land Acquisition Act, 1894, with particular reference to Section 11-A, can be read into and treated as part of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act, 1966" for short) on the principle of either 'legislation by reference' or 'legislation by incorporation'?

**36.** It will be relevant to refer to the following observations of this Court in the said case:

"**86.** At the very outset, we may notice that in the preceding paragraphs of the judgment, we have specifically held that the MRTP Act is a self-contained code. Once such finding is recorded, application of either of the doctrines i.e. "legislation by reference" or "legislation by incorporation", would lose their significance particularly when the two Acts can coexist and operate without conflict.

**87.** However, since this aspect was argued by the learned counsel appearing for the parties at great length, we will proceed to discuss the merit or otherwise of this contention without prejudice to the above findings and as an alternative plea. These principles have been applied by the courts for a considerable period now. ***When there is general reference in the Act in question to some earlier Act but there is no specific mention of the provisions of the former Act, then it is clearly considered as legislation by reference. In the case of legislation by reference, the amending laws of the former Act would normally become applicable to the later Act; but, when the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of***

***the later Act. This principle is generally called legislation by incorporation.*** General reference, ordinarily, will imply exclusion of specific reference and this is precisely the fine line of distinction between these two doctrines. Both are referential legislations, one merely by way of reference and the other by incorporation. It, normally, will depend on the language used in the later law and other relevant considerations. While the principle of legislation by incorporation has well-defined exceptions, the law enunciated as of now provides for no exceptions to the principle of legislation by reference. Furthermore, despite strict application of doctrine of incorporation, it may still not operate in certain legislations and such legislation may fall within one of the stated exceptions.

**xxx xxx xxx**

**121.** These are the few examples and principles stated by this Court dealing with both the doctrines of legislation by incorporation as well as by reference. Normally, when it is by reference or citation, the amendment to the earlier law is accepted to be applicable to the later law while in the case of incorporation, the subsequent amendments to the earlier law are irrelevant for application to the subsequent law unless it falls in the

exceptions stated by this Court in *M.V. Narasimhan case* [*State of M.P.* v. *M.V. Narasimhan*, (1975) 2 SCC 377 : 1975 SCC (Cri) 589] . It could well be said that even where there is legislation by reference, the Court needs to apply its mind as to what effect the subsequent amendments to the earlier law would have on the application of the later law. The objective of all these principles of interpretation and their application is to ensure that both the Acts operate in harmony and the object of the principal statute is not defeated by such incorporation. Courts have made attempts to clarify this distinction by reference to various established canons. But still there are certain grey areas which may require the court to consider other angles of interpretation.

**122.** In *Maharashtra SRTC* [(2003) 4 SCC 200] the Court was considering the provisions of the MRTP Act as well as the provisions of the Land Acquisition Act. The Court finally took the view by adopting the principle stated in *U.P. Avas Evam Vikas Parishad* [(1998) 2 SCC 467] and held that there is nothing in the MRTP Act which precludes the adoption of the construction that the provisions of the Land Acquisition Act as amended by Central Act 68 of 1984, relating to award of compensation would apply with full vigour to the acquisition of land under the MRTP Act, as otherwise it

would be hit by invidious discrimination and palpable arbitrariness and consequently invite the wrath of Article 14 of the Constitution. While referring to the principle stated in *Hindusthan Coop. Insurance Society Ltd.* [(1930-31) 58 IA 259 : AIR 1931 PC 149] and clarifying the distinction between the two doctrines, the Court declined to apply any specific doctrine and primarily based its view on the plea of discrimination but still observed: (*Maharashtra SRTC case* [(2003) 4 SCC 200] , SCC p. 208, para 11)

> "*11*. … The fact that no clear-cut guidelines or distinguishing features have been spelt out to ascertain whether it belongs to one or the other category makes the task of identification difficult. The semantics associated with interpretation play their role to a limited extent. Ultimately, it is a matter of probe into legislative intention and/or taking an insight into the working of the enactment if one or the other view is adopted. The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end. The distinction often pales into insignificance with the exceptions enveloping the main rule."

> **123.** ***In the case in hand, it is clear that both these Acts are self-contained codes within themselves. The State Legislature while enacting the MRTP Act has referred to the specific sections of the Land Acquisition Act in the provisions of the State Act. None of the sections require application of the provisions of the Land Acquisition Act generally or mutatis mutandis. On the contrary, there is a specific reference to certain sections and/or content/language of the section of the Land Acquisition Act in the provisions of the MRTP Act.***"
>
> [Emphasis supplied]

**37.** This Court has held that once a finding is recorded that an Act is a self-contained code, then the application of either of the doctrines i.e. "legislation by reference" or "legislation by incorporation" would lose their significance particularly when the two Acts can coexist and operate without conflict.

**38.** This Court further held that, in case of general reference in the Act in question to an earlier Act but there being no specific mention of the provisions of the former Act, then it would clearly be considered as 'legislation by reference'. In such a case, the amending laws of the former Act would become applicable to the

later Act. However, when the provisions of an Act are specifically referred and incorporated in the later statute, then those provisions alone are applicable and the amending provisions of the former Act would not become part of the later Act.

**39.** This Court in the case of ***Girnar Traders*** (supra) held that, if the legislature intended to apply the provisions of the Land Acquisition Act generally and wanted to make a general reference, it could have said that the provisions of the Land Acquisition Act would be applicable to the MRTP Act, 1966. This Court observed that such expression was conspicuous by its very absence. This Court held that both these Acts i.e. Land Acquisition Act and the MRTP Act, 1966 are self-contained codes within themselves. This Court observed that the State Legislature while enacting the MRTP Act, 1966 has referred to the specific sections of the Land Acquisition Act in the provisions of the State Act. This Court further observed that none of the sections require application of the provisions of the Land Acquisition Act generally or *mutatis mutandis*. On the contrary, there was a specific reference to certain sections and/or content/language of the

section of the Land Acquisition Act in the provisions of the MRTP Act, 1966.

**40.** It will also be relevant to note that this Court in a catena of cases has held that the Code is a self-contained Code. Reference in this respect could be made to the following judgments of this Cout:

(i) ***Innoventive Industries Limited vs ICICI Bank and another***[10];

(ii) ***Principal Commissioner of Income Tax vs Monnet Ispat and Energy Limited***[11];

(iii) ***E.S. Krishnamurthy and others vs Bharath Hi-Tech Builders Private Limited***[12];

(iv) ***Pratap Technocrats Private Limited and others vs Monitoring Committee of Reliance Infratel Limited and another***[13];

[10] (2018) 1 SCC 407
[11] (2018) 18 SCC 786
[12] (2022) 3 SCC 161
[13] (2021) 10 SCC 623

(v) ***V. Nagarajan vs. SKS Ispat and Power Limited and others***[14];

(vi) ***Embassy Property Developments Private Limited vs State of Karnataka and others*** (supra); and

(vii) ***Bharti Airtel Ltd. and another vs Vijaykumar V. Iyer and others*** (supra).

## V. CONCLUSION

**41.** Applying these legal principles, we will have to analyze the provisions of Section 236(1) of the Code. Under Section 236(1) of the Code, reference is "offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013".

**42.** It can thus be seen that the reference is not general but specific. The reference is only to the fact that the offences under the Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act.

**43.** Applying the principle as laid down by this Court in various judgments, since the reference is specific and not general, it will

[14] (2022) 2 SCC 244

have to be held that the present case is a case of 'legislation by incorporation' and not a case of 'legislation by reference'. The effect would be that the provision with regard to Special Court has been bodily lifted from Section 435 of the Companies Act, 2013 and incorporated in Section 236(1) of the Code. In other words, the provision of Section 435 of the Companies Act, 2013 with regard to Special Court would become a part of Section 236(1) of the Code as on the date of its enactment. If that be so, any amendment to Section 435 of the Companies Act, 2013, after the date on which the Code came into effect would not have any effect on the provisions of Section 236(1) of the Code. The Special Court at that point of time only consists of a person who was qualified to be a Sessions Judge or an Additional Sessions Judge.

**44.** It is further to be noted that the Code has also suffered two subsequent amendments i.e. the 2015 Amendment and the 2018 Amendment. If the legislative intent was to give effect to the subsequent amendments in the Companies Act to Section 236(1) of the Code, nothing prevented the legislature from amending Section 236(1) of the Code. The legislature having not done that,

the provision with regard to the reference in Section 236(1) of the Code pertaining to Special Court as mentioned in Section 435 of the Companies Act, 2013 stood frozen as on the date of enactment of the Code. As such, the learned Judge of the High Court has erred in holding that in view of the subsequent amendment, the offences under the Code shall be tried only by a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

**45.** We further find that the reasoning of the learned single judge of the High Court that in view of the 2018 Amendment only the offences under the Companies Act would be tried by a Special Court of Sessions Judge or Additional Sessions Judge and all other offences including under the Code shall be tried by a Metropolitan Magistrate or a Judicial Magistrate of the First Class is untenable. For a moment, even if it is held that the reference in Section 236(1) of the Code is a 'legislation by reference' and not 'legislation by incorporation', still the offences punishable under the Code having imprisonment of two years or more will have to be tried by a Special Court presided by a

Sessions Judge or an Additional Sessions Judge. Whereas the offences having punishment of less than two years will have to be tried by a Special Court presided by a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

**46.** In any case, the learned single Judge of the High Court has grossly erred in quashing the complaint only on the ground that it was filed before a Special Court presided by a Sessions Judges. At the most, the learned single judge of the High Court could have directed the complaint to be withdrawn and presented before the appropriate court having jurisdiction.

**47.** Shri Amir Arsiwala, learned Advocate-on-record for the respondent Nos.1 and 2, had submitted that in the event this Court holds that the Special Courts presided by a Sessions Judge or an Additional Sessions Judge will have jurisdiction to try the complaint under the Code, this Court should remand the matter to the High Court for deciding the matter afresh on merits. It is submitted that the respondents have a good case on merits and there has been no adjudication on merits of the matter.

**48.** In the result, we allow the appeal. The impugned judgment and order dated 14th February 2022, passed by the learned Single Judge of the High Court of Judicature at Bombay in Writ Petition No.2592 of 2021 is quashed and set aside. It is held that the Special Court presided by a Sessions Judge or an Additional Sessions Judge will have jurisdiction to try the complaint under the Code. However, since the learned single judge of the High Court has not considered the merits of the matter, the matter is remitted to the learned single judge of the High Court for considering the petition of the respondents afresh on merits.

**49.** We place on record our deep appreciation for the valuable assistance rendered by Shri S.V. Raju, learned ASG as well as Shri Amir Arsiwala and Shri Vikas Mehta, learned counsel for the appearing parties.

**.....J.**
**[B.R. GAVAI]**

**.....J.**
**[SANDEEP MEHTA]**

**NEW DELHI;**
**APRIL 19, 2024**