

**SECTION 434(1) (A) OF COMPANIES ACT, 2013: A CONUNDRUM OF RETROSPECTIVE  
APPLICATION ON PENDING PETITIONS TRANSFERRED FROM THE COMPANY LAW BOARD  
TO THE NATIONAL COMPANY LAW TRIBUNAL**

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ABSTRACT

*The enactment of Companies Act, 2013 reflects a significant shift in the Indian State's mind-set towards lesser government approvals and augmenting corporate governance in companies. The transition from the Companies Act, 1956 to the Companies Act, 2013 ["2013 Act"] has been marked by consolidation of company-related enactments into a unified legislation, and the creation of specialised authorities (National Company Law Tribunal ["NCLT"] and National Company Law Appellate Tribunal ["NCLAT"]) for the adjudication of disputes arising thereunder. Consequently, petitions under the repealed enactments that were pending before the Company Law Board ["CLB"] and other superseded judicial authorities under the repealed enactment were transferred to the NCLT under Section 434 of the 2013 Act. However, Section 434(1)(a) of the 2013 Act, which stipulates the transfer of such proceedings from the CLB to the NCLT has created uncertainty around the application of substantive law on these pending petitions so transferred. The contradictory opinions recorded by different benches of the NCLT and the NCLAT on the question whether the transferred petitions will be governed by the Companies Act, 1956 or the Companies Act, 2013 may adduce several implications to the parties to these petitions. In light of this uncertainty, this paper will focus on the question of alteration of substantive law due to transfer of pending petitions from the CLB to the NCLT under Section 434(1)(a) of the Act. Through reference to divergent opinions of the NCLT and the NCLAT, this paper will analyse contesting contentions and ramifications of retrospective application of the 2013 Act on proceedings transferred under Section 434(1)(a).*

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## I. INTRODUCTION

The enactment of the 2013 Act marked a watershed in Indian commercial law jurisprudence, consolidating the multiple legislations and the system of distinct adjudicatory bodies for different subject matters into one comprehensive structure.<sup>1</sup> It was introduced with multiple objectives, *viz.* to cater to the constantly evolving commercial environment, to minimise government approvals, strengthen shareholder's role in company affairs, and ensure better accountability and transparency on the part of the company towards its members. One of the significant reforms introduced by the new legislation is the establishment of the NCLT and the NCLAT to adjudicate disputes arising under the 2013 Act and a few other legislations.

The constitution of the NCLT as a single adjudicatory authority under the 2013 Act necessitated the transfer of matters pending before various bodies under the erstwhile Companies Act, 1956<sup>2</sup> [“1956 Act”] to the newly created NCLT. To effectuate such transfer, Section 434 of the 2013 Act governs instance(s) of transfer of these pending proceedings to the NCLT. It states that:

*“(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this Section referred to as the Company Law Board) constituted under sub-Section (1) of Section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act.”*<sup>3</sup> (Emphasis supplied)

Subsequently, a question of interpretation of the phrase ‘disposal of these matters, proceedings or cases *in accordance with provisions of this Act*’ arose before the NCLT and the NCLAT apropos the relevant substantive law applicable on these pending matters so transferred. In light of this phrase, the tribunals had to determine whether the transfer of these pending petitions would effectuate the applicability of the 2013 Act only on procedural law or on substantive law as well. While examining the question, the NCLT and the NCLAT have

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<sup>1</sup> Umakanth Varottil, *The Evolution of Corporate Law in Post-Colonial India: From Transparent to Autochthony*, NUS Law, Working Paper No. 2015/001 68 (2015), [http://law.nus.edu.sg/wps/pdfs/001\\_2015\\_Umakanth\\_Varottil.pdf](http://law.nus.edu.sg/wps/pdfs/001_2015_Umakanth_Varottil.pdf).

<sup>2</sup> The Companies Act, 1956, No. 1, Acts of Parliament, 1956 (India). [‘1956 Act’]

<sup>3</sup> The Companies Act, 2013; § 434(1)(a). [‘2013 Act’]

taken contrary stances. The arguments revolve around a conjoint reading of Section 465<sup>4</sup> of the 2013 Act and Section 6 of the General Clauses Act<sup>5</sup> (both are provisions on “Repeal & Savings”) on one side, and principles of statutory interpretation surrounding parliamentary intention and plain language on the other. Consequently, the divergent opinions noted by different benches of the NCLT and the NCLAT on this question have resulted in uncertainty over the correct legal stance. This has profound ramifications not only for the rights of persons concerned with these matters, but also in laying down an erroneous precedent for principles applicable to similar transfer issues under other legislations.

In light of this backdrop, it is imperative to examine the legal framework of the transfer stipulated in Section 434(1)(a) of the 2013 Act. Part I refers to different judgments of the NCLT and the NCLAT to highlight how their divergent opinions on the issue of applicable substantive law on pending transferred matters has created uncertainty over the correct legal stance. Part II analyses the sustainability of arguments raised in favour of applicability of the 2013 Act by the NCLAT. Part III argues for the application of the 1956 Act on the transferred petitions based on various principles of statutory interpretation. Part IV analyses the profound ramifications that the approach suggested by NCLAT might entail. The paper concludes with an opinion on the true application of substantive law on pending proceedings in contradiction to what has been observed by the NCLAT.

## II. SECTION 434(1)(A): A JUDICIAL DILEMMA BETWEEN THE NCLT AND THE NCLAT

### *A. NCLT’s Observations in Favour of the Applicability of 1956 Act*

Different benches of the NCLT observed that a petition that has been filed under provisions of the 1956 Act should continue to be adjudicated under those provisions. They rejected the modification of substantive law applicable on the pending transferred petitions on the ground that these petitions were presented before the adjudicatory bodies under the repealed act and regardless of language of Section 434(1)(a), the 2013 Act does not provide for alteration in substantive law after the repeal of earlier enactment.<sup>6</sup>

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<sup>4</sup> *Ibid* at § 465.

<sup>5</sup> General Clauses Act, 1897; § 6.

<sup>6</sup> *M/s. Ashok Commercial Enterprises v. Parekh Aluminex Limited*, 2017 SCC OnLine Bom 421; *Matter of M/s. Ingersoll-Rand International (India) Private Limited*, 2017 SCC OnLine NCLT 293; *Suhas Chakma v. South Asian Human Rights Documentation Centre Pvt. Ltd. & Ors.*, 2016 SCC OnLine NCLT 93; *Anil Kumar Poddar*

In the matter of *M/s. Ingersoll-Rand International (India) Private Limited*,<sup>7</sup> a transfer petition was filed under Section 621A of the 1956 Act before the erstwhile CLB. However, the provisions of Section 441 of the 2013 Act came into effect from 1<sup>st</sup> June 2016, i.e. the date on which this petition was transferred to the NCLT. But the NCLT refused to interpret Section 434(1)(a) as a provision to effect a change in substantive law applicable on this petition. A similar observation was made by the NCLT in *Suhas Chakma v. South Asian Human Rights Documentation Centre Pvt. Ltd.*,<sup>8</sup> where it held that since the petition was presented before the CLB on September 10, 2015 under Sections 397-403 of the 1956 Act, Sections 241-242 of the 2013 Act could not be applied after its transfer to the NCLT under Section 434(1)(a) of the 2013 Act.

Further, in *Anil Kumar Poddar v. Prime Focus Ltd.*,<sup>9</sup> the NCLT observed that the interpretation of Section 434(1)(a) should be done as per its object. Section 434 of the 2013 Act is merely to effectuate the transfer of pending petitions from the CLB to the NCLT, whereas, Repeal & Savings has been provided for under Section 465 of the 2013 Act. Therefore, Section 434 cannot be used to argue that a repealed act cannot be applied on pending dispute post transfer to the NCLT. Moreover, the 2013 Act does not rule out the general application of Section 6 of the General Clauses Act.<sup>10</sup> Thus a legal recognition of the abovementioned argument would be inconsistent with Section 6 of the General Clauses Act, which saves legal proceedings pending before the repeal of old enactment and provides for application of repealed enactment on the same.<sup>11</sup>

In yet another instance, the NCLT elaborated on the retrospective application of the provisions dealing with substantive laws.<sup>12</sup> The petition was filed before the CLB under Sections 397-398 of the 1956 Act. When it was argued that it should be dealt with under the 2013 Act post its transfer to the NCLT, the NCLT observed that it is a well-settled principle of interpretation that provisions dealing with substantive rights of parties cannot be retrospectively altered unless the statute expressly provides for it. Therefore, the 2013 Act must

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v. Prime Focus Ltd. & Ors., [2017] 200 CompCas 64; Ace Oilfield Supply Inc. & Ors. v. Tools International Services Pvt. Ltd. & Ors, T.C.P. No. 44/397-398/2015.

<sup>7</sup> Matter of *M/S. Ingersoll-Rand International (India) Private Limited*, 2017 SCC OnLine NCLT 293.

<sup>8</sup> *Suhas Chakma v. South Asian Human Rights Documentation Centre Pvt. Ltd. & Ors.*, 2016 SCC OnLine NCLT 93.

<sup>9</sup> *Anil Kumar Poddar v. Prime Focus Ltd. & Ors.*, [2017] 200 CompCas 64.

<sup>10</sup> 2013 Act, *supra* note 4, § 465(3).

<sup>11</sup> General Clauses, *supra* note 6, § 6(e).

<sup>12</sup> *Ace Oilfield Supply Inc. & Ors. v. Tools International Services Pvt. Ltd. & Ors*, T.C.P. No. 44/397-398/2015.

be presumed to be prospectively applied unless retrospective operation is provided by express words or necessary implication.

*B. NCLAT's Observations in Favour of the 2013 Act*

On the other hand, the NCLAT resorted to the plain language rule to determine whether the 1956 or the 2013 Act should apply on pending transferred matters. In the case of *BSE Ltd. v. Ricoh Company Ltd.*,<sup>13</sup> the NCLAT observed that though it was dealing with a petition filed under repealed enactment before the CLB, statutory language expressly provides for its disposal as per the 2013 Act. A bare reading of Section 434(1)(a) proves that the Parliament intended disposal of such transferred matters under provisions of the 2013 Act. A similar observation was also made in *Upper India Steel Manufacturing and Engineering Co. Ltd. v. Gurlal Singh Grewal*.<sup>14</sup>

Further, in *Re: Engineering & Construction India Private Limited*,<sup>15</sup> the NCLT observed that besides the aforementioned reason, petitions transferred to the NCLT should be disposed as per the 2013 Act, because the NCLT is a creature of the 2013 Act and, thus, its powers cannot transgress beyond its provisions. Accordingly, it observed that since the NCLT has been created by the 2013 Act, it has jurisdiction to determine matters only within provisions of the 2013 Act, and not the 1956 Act. Moreover, it observed that the 1956 Act stands repealed for these petitions post their transfer to the NCLT.<sup>16</sup>

The aforementioned judgments of different benches of the NCLT and the NCLAT highlight judicial disagreement on a significant question of the relevant substantive law applicable for transferred pending matters. This disagreement has left this complex question unsettled as despite the NCLAT's observations, different benches of the NCLT still continue to decide petitions on the basis of the 1956 Act rather than the 2013 Act. The next section analyses the arguments from both sides.

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<sup>13</sup> *BSE v. Ricoh*, 2017 SCC OnLine NCLAT 12.

<sup>14</sup> *Upper India Steel Manufacturing and Engineering Co. Ltd. & Ors. v. Gurlal Singh Grewal & Ors*, 2017 SCC OnLine NCLAT 339.

<sup>15</sup> *Re: Engineering & Construction India Private Limited*, Company Petition No. 766/2016 & Company Application (Main) No. 106/2016, Principal Bench, NCLT.

<sup>16</sup> *Re: R.S. Livemedia Private Limited and Ors.*, Company Petition No. 912/2016 & Company Application (Main) No. 117/2016, Principal Bench, NCLT.

### III. 1956 ACT OR 2013 ACT: ANALYSIS OF THE NCLAT'S ARGUMENTS FOR RETROSPECTIVE APPLICATION OF THE 2013 ACT

The NCLAT provided two arguments in favour of retrospective operation of the 2013 Act on transferred petitions. *First*, that NCLT, though being a specie of the 2013 Act, can still adjudicate a petition beyond the scope of the 2013 Act. *Second*, that plain language cannot be resorted to for interpretation of an ambiguous provision. This section critically analyses both of these arguments. With respect to the first argument, the NCLAT's observation to the effect that the NCLT can only adjudicate within the contours of the 2013 Act, and that the 1956 Act stands repealed for these petitions, is misplaced due to following reasons:

#### *A. Applications May Have Been Filed Before the NCLT under the 1956 Act when Corresponding Provisions of the 2013 Act were Not Notified.*

The NCLT was constituted on June 1, 2016.<sup>17</sup> Previously, the CLB admitted all matters related to disputes on Companies Act. Accordingly, unless the CLB was formally dissolved and replaced with the NCLT, the disputes continued to be adjudicated before the CLB. Thereby, the constitution of the NCLT resulted in transfer of all disputes pending before the CLB to the NCLT.<sup>18</sup>

The 2013 Act empowered the Union Government to enforce different provisions of the 2013 Act on dates as it may appoint.<sup>19</sup> Consequently, while 98 sections of the Act were enforced on 12 September 2013,<sup>20</sup> the remaining subject matters continued to be dealt under the provisions of the 1956 Act. Accordingly, due to different dates of enforcement for different provisions, certain provisions of the 2013 Act were notified before the constitution of the NCLT and some were notified after. Though the 2013 Act has not formally repealed the 1956 Act as Section 465 has not yet been notified, provisions of the 1956 Act for which corresponding provisions in the 2013 Act have been notified stand repealed by implication.<sup>21</sup> Accordingly, matters with corresponding provisions in the 2013 Act that were not notified until or after the constitution of the NCLT continued to be governed by the 1956 Act. All disputes initiated after 1 June 2016 would be filed before the NCLT, but they were to be filed under

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<sup>17</sup> Ministry of Corporate Affairs, Constitution of NCLT & NCLAT, S.O. 1932(E) (June 1, 2016). ['S.O. 1932(E)']

<sup>18</sup> 2013 Act, *supra* note 4, § 434(1) (a).

<sup>19</sup> *Ibid*, § 1(3).

<sup>20</sup> *Companies Act*, *supra* note 2.

<sup>21</sup> 3 CR DATTA, COMPANY LAW, 3.2306-3.2307 (7<sup>th</sup> ed. 2016).

provisions of the 1956 Act for matters whose corresponding provisions in the 2013 Act were not yet notified.<sup>22</sup> For instance, Section 48 of the 2013 Act which deals with variation of shareholder's rights was enforced with effect from 15 December 2016.<sup>23</sup> Accordingly, its corresponding provision, i.e. Sections 106 and 107 of the 1956 Act continued to be in operation till 15 December 2016.<sup>24</sup> Since the NCLT was constituted on 1 June 2016, it continued to admit and adjudicate variation of shareholder's rights cases under sections 106 and 107 of the 1956 Act after dissolution of the CLB. Moreover, since the 2013 Act does not provide authority to the NCLT to impose an interim stay on these proceedings till provision of the 2013 Act is notified, the NCLT would have had to adjudicate these petitions on basis of the 1956 Act, even though it is a specie of the 2013 Act.

*B. Rule 64 of the NCLT Rules*

Rule 64 provides that where an action that arose under provisions of the 1956 Act is pending before the CLB, it shall stand transferred to the NCLT on the date of its constitution.<sup>25</sup> Moreover, it provides that such matters shall be transferred to the NCLT as if the case had been originally filed therein on the date upon which it was actually filed before the CLB. Accordingly, Parliament created a legal fiction with the effect of designating the NCLT as the original place for filing of application. However, the law to be applied by the NCLT on such matters has been stated to be as was in force on the 'date upon which it was actually filed in the CLB'.<sup>26</sup> Accordingly, Rule 64 makes no provision for application of only the 2013 Act on transferred matters, and as such it cannot be argued that the NCLT cannot apply the 1956 Act in these matters.

*C. Applications Filed Before the CLB under the 1956 Act Transferred to the NCLT May Not Have Corresponding Provision(s) in the 2013 Act*

There are certain provisions in the 1956 act which have no corresponding provisions in the 2013 Act. Thus, if the argument that the NCLT can only adjudicate as per the 2013 Act is accepted, it would mean that such pending matters would have to be left undecided post transfer

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<sup>22</sup> *Ibid.*

<sup>23</sup> Ministry of Corporate Affairs, Notification of Certain Sections of Companies Act, 2013, S.O. 3677(E) (December 7, 2016). ['S.O. 3677(E)']

<sup>24</sup> See *State of Madhya Pradesh v. Kedia Leather and Liquor Ltd.*, AIR 2003 SC 3236.

<sup>25</sup> The National Company Law Tribunal Rules, G.S.R. 716(E) Rule 64 (2016).

<sup>26</sup> *Ibid.*

to the NCLT merely because they have no corresponding provision in the 2013 Act. Since nothing has been expressed in the 2013 Act to that effect, it can be stated that the NCLT would have to adjudicate these pending disputes under provisions of the 1956 Act. For instance, there are no corresponding provisions in the 2013 Act for sections 55A, 203, 269(7), (8), (9), (10), 388B, 408, 409, and 614 of the 1956 Act.<sup>27</sup> Consequently, for disputes arising thereunder cannot be left undecided post their transfer to the NCLT, and it would have to decide them as per the 1956 Act.

*D. Applications Filed Before the CLB under the 1956 Act Prior to 1 June 2016 and Transferred to the NCLT Without any Notified Corresponding Provision in the 2013 Act*

In this case, the petition would have been filed before the CLB before the constitution of the NCLT. But since all provisions of the 2013 Act were not notified till the date of transfer of the pending petitions to the NCLT,<sup>28</sup> provisions of the 1956 Act still stood valid until corresponding provisions of the 2013 Act were notified.<sup>29</sup> Thus, the NCLT would have to continue to adjudicate these pending cases according to the 1956 Act until provisions of the 2013 Act were notified. For instance, while disputes were filed under sections 100-105 of the 1956 Act before the CLB, the constitution of the NCLT resulted in transfer of pending proceedings to the the NCLT. However, the NCLT would only have had to continue adjudicating these pending matters on basis of the 1956 Act, as the relevant corresponding provision i.e. section 66 was not notified until 15 December 2016.<sup>30</sup>

*E. Statutory Language of Section 434(1)(c)*

It is a basic principle of statutory interpretation that a provision of a statute can be interpreted through the interpretation of other provisions of the same statute, as far as possible, as a statute needs to be read as a whole.<sup>31</sup> Further, a clause by clause reading of a provision has been observed as a cardinal principle to interpret the scope and legislative intention of a specific

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<sup>27</sup> DATTA, *supra* note 22, at 3.2307.

<sup>28</sup> PRACHI MANEKAR WAZALWAR, NATIONAL COMPANY LAW TRIBUNAL AND NATIONAL COMPANY LAW APPELLATE TRIBUNAL: LAW, PRACTICE, AND PROCEDURE 38 (3<sup>rd</sup> ed. 2017).

<sup>29</sup> See, *Municipal Council, v. T.J. Joseph*, AIR 1963 SC 1561.

<sup>30</sup> S.O. 3677(E), *supra* note 24.

<sup>31</sup> *Queen v. Eduljee Byramjee, Queen v. Eduljee Byramjee*, (1846) 3 MIA 468, (PC); *State of Punjab v. Balbir Singh*, AIR 1994 SC 1872.

provision within a statute.<sup>32</sup> This rule helps determine the intention of the legislature in framing the language of a statute and, thereby, interpret the meaning of a statute.<sup>33</sup> Applying this rule to Section 434 of the 2013 Act, it may be observed that section 434(1)(a) & 434(1)(c) form part of same provision and deal with issue of ‘transfer of certain pending proceedings’<sup>34</sup> from one body to the NCLT. These two sub-clauses deal with pending matters to be transferred to the NCLT from different authorities. However, this doesn’t justify that the NCLT’s authority under both clauses differs to the extent that for cases transferred from a High Court or District Courts, it can adjudicate as per the 1956 Act; while for those transferred from the CLB, it cannot. Further, from the language of sub-clause (c) of section 434(1) authorising the NCLT to adjudicate certain cases on basis of the 1956 Act, it may be inferred that the Parliament never intended to bar the NCLT to adjudicate cases as per the 1956 Act in any circumstance. Thereby, there is scope for the NCLT to adjudicate as per the 1956 Act since it has not been explicitly barred.

*F. Plain Language Rule Cannot be Applied for the Interpretation of an Ambiguous Provision.*

The golden rule of statutory interpretation is that when the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, then the courts are bound to give effect to that meaning, irrespective of consequences.<sup>35</sup> Per contra, ambiguity means doubtfulness or uncertainty of meaning or intention.<sup>36</sup> If in a particular context, words convey varying meanings to different judges, they are ambiguous.<sup>37</sup> Consequently, an evidently ambiguous provision cannot be interpreted through the plain language rule until its real legislative intent is clarified by courts.

The phrase “*in accordance with the provisions of this act,*” as in section 434(1)(a) of the 2013 Act is *prima facie* ambiguous, as it is silent on whether the provisions of the 2013 Act should be applied only for procedural purposes or for the purpose of adjudication of rights

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<sup>32</sup> Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd., AIR 1987 SC 1023.

<sup>33</sup> State of Uttar Pradesh v. Vijay Anand Maharaj, AIR 1963 SC 946.

<sup>34</sup> See, 2013 Act, *supra* note 4, Chapter Heading: § 434.

<sup>35</sup> Om Prakash Gupta v. Dig Vijendrapal Gupta, AIR 1982 SC 1230; Union of India v. Hansoli Devi, AIR 2002 SC 3240; Thakur Amar Singhji v. State of Rajasthan, AIR 1955 SC 504; Croxford v. Universal Insurance Co. Ltd., (1963) AII ER 151; State of Jharkhand v. Govind Singh, AIR 2005 SC 294; Natha Devi v. Radha Devi Gupta, AIR 2005 SC 648; Gurudev datt VKSS Maryaditt v. State of Maharashtra, AIR 2001 SC 1980.

<sup>36</sup> BRYAN A. GARNER, BLACK’S LAW DICTIONARY 93(9<sup>th</sup> ed. 2009).

<sup>37</sup> Kirkness v. John Hudson & Co. Ltd, [1955] AC 696.

and liabilities as well. Moreover, the disagreement between the NCLT and the NCLAT on this question further substantiates its ambiguous nature. Due to the existence of ambiguity, the plain language rule cannot be applied to the instant phrase.

Thus, the NCLAT's reasoning that the NCLT cannot adjudicate matters under 2013 Act is misplaced and requires reconsideration. The next part relies on basic principles of statutory interpretation to show how the reasoning of the NCLAT is misplaced.

#### IV. 1956 ACT OR 2013 ACT: ANALYSIS OF ARGUMENTS FOR APPLICATION OF THE 1956 ACT

Although the Parliament enacted Section 434(1)(a) of the 2013 Act only to effectuate the transfer of matters pending before the CLB to the NCLT, it has been interpreted to have an effect of altering the relevant substantive law on matters so transferred.<sup>38</sup> Rules of statutory interpretation may help in determining the relevant substantive law applicable to these matters.

##### A. Section 6 of the General Clauses Act 'Saves' Pending Matters

The repeal of an enactment is governed by Section 6 of the General Clauses Act, which states the consequences that follow,<sup>39</sup> unless the statute expresses a different intention. Additionally, even in cases where the repeal of an enactment is followed by a new legislation, Section 6 is applicable unless the new legislation manifests an intention incompatible with, in conflict with, or in contradiction to Section 6 through its 'savings' provision.<sup>40</sup> The principle behind Section 6 of the General Clauses Act is that all provisions of the repealed legislation would continue to be in force for purposes of enforcing the liability incurred when the Acts were in force and any investigation, legal proceeding, or remedy may be instituted, continued

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<sup>38</sup> Upper India Steel Manufacturing and Engineering Co. Ltd. & Ors. v. Gurlal Singh Grewal & Ors, 2017 SCC OnLine NCLAT 339; BSE v. Ricoh, 2017 SCC OnLine NCLAT 12.

<sup>39</sup> General Clauses, *supra* note 6:

*“Unless a different intention appears, the repeal shall not-*

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

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

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

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

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

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

<sup>40</sup> Ramesh Chandra v. State, AIR 1994 Ori 187.

or enforced as if the Acts had not expired.<sup>41</sup> If the relevant section of the 2013 Act was in force when the transaction was effected, then any subsequent repeal of the statute would not affect the merits, rights, or liabilities of the parties as on the date of the transaction.<sup>42</sup> That means that a repeal will not affect any investigation, legal proceedings, or remedy in respect of any liability, penalty, or punishment so repealed or anything done thereunder.<sup>43</sup> Thus, the relevant question to determine if the provisions of the new Act would apply to an Act commenced under a repealed Act is not whether the new Act expressly keeps alive old rights and liabilities<sup>44</sup> but whether it manifests an intention to destroy them.<sup>45</sup>

Further, there is a presumption against a retrospective operation if, when so operated, it would prejudicially affect the legality of past transactions.<sup>46</sup> In regard to retrospective operation of a statute, the golden rule of construction is that it cannot be so construed as to have an effect of altering the law applicable to pending litigation at the time when the enactment was passed,<sup>47</sup> unless the new statute shows a clear intention<sup>48</sup> to vary such rights.<sup>49</sup>

Under the 2013 Act, Section 465 (not notified hitherto) has been incorporated by the Parliament as a ‘Repeal & Savings’ provision.<sup>50</sup> Though the section has not been enforced, it is relevant in determining the intended scope of these provisions. Section 465(3) of the 2013 Act precisely states that specific provisions of Section 465(2) would not prejudice the general application of Section 6 of the General Clauses Act to the effect of repeal of the 1956 Act.<sup>51</sup> Thus, Section 465 allows general application of Section 6 of General Clauses Act to ‘Repeal & Savings’ under the 2013 Act. Hence, the repeal of the 1956 Act shall not affect any legal proceeding pending for acts or offences *ante* to the 2013 Act, which will continue to be governed by the 1956 Act,<sup>52</sup> as nothing to the contrary has been expressed in the 2013 Act.

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<sup>41</sup> Amadalavalasa Co-operative Agricultural and Industrial Society Ltd. v. UOI, AIR 1976 SC 958.

<sup>42</sup> Sundra Bai v. Manohar, AIR 1993 Bom. 262; SidheswarSahu v. Additional District Judge, Cuttack, (2003) 8 I.L.D. 240.

<sup>43</sup> L. VenkateshNaik v. Assistant Collector, Special Customs Preventive Division, Kozikode, AIR 1992 Ker. 383.

<sup>44</sup> Brihan Maharashtra Sugar Syndicate Ltd. v. JanardanRamchandra Kulkarni &Ors., AIR 1960 SC 794; T.S. Baliah v. T.S Rengachari, AIR 1969 SC 701.

<sup>45</sup> State of Punjab v. Mohar Singh, [1955] 1 S.C.R. 893.

<sup>46</sup> Krushna Chandra v. Commissioner of Endowments, AIR 1976 Ori 52.

<sup>47</sup> Sankar Kumar Bhattar v. Tehsildar-cum-Revenue Officer, Basta, AIR 1976 Ori 103.

<sup>48</sup> Income Tax Officer, Tuticorin v. TS Devinatha Nadar, AIR 1968 SC 623.

<sup>49</sup> KatikaraChintamani Dora v. GuatreddiAnnamanaidu, AIR 1974 SC 1069.

<sup>50</sup> 2013 Act, *supra* note 4, § 465.

<sup>51</sup> *Ibid*, §465(3).

<sup>52</sup> Anil Kumar Poddar v. Prime Focus Ltd. & Ors., [2017] 200 CompCas 64.

Moreover, as the 2013 Act does not make any express provision regarding retrospective operation of the 2013 Act, it cannot be presumed so herein.

Additionally, Section 434(1)(a) of the 2013 Act states the all the proceedings so transferred from the CLB to the NCLT shall be disposed of “*in accordance with the provisions of this act.*” The aforementioned phrase is fraught with uncertainty as it is not clear whether it refers to the applicability of the 2013 Act only for the procedural facet of the proceedings or the substantive portion as well. It is also a rule now firmly established<sup>53</sup> that the intention of the legislature must be found by reading the statute as a whole.<sup>54</sup> Hence, by construing section 434(1)(a) in light of section 465(3), it may be inferred that the phrase refers to the application of the 2013 Act only for procedural purposes and not for the substantive law applicable to the transferred proceedings.

#### *B. Specific Provision Assumes Validity over a General Provision*

Section 434(1)(a) of the 2013 Act provides for the transfer of cases from the CLB to the NCLT, and Section 465 is a provision solely dedicated to deal with the repeal of enactments and savings. Under the rules of statutory interpretation,<sup>55</sup> where there is a general provision which, if applied in its entirety, would neutralise a specific or special provision dealing with the same subject matter, the specific provision must be read as a proviso to the general provision, and the general provision, insofar as it is inconsistent with the specific provision, must be deemed not to apply<sup>56</sup>. Herein, Section 465 is specifically dealing with ‘Repeal & Savings’, whereas, Section 434 is only to effectuate the instance of transfer. Accordingly, a conjoint reference to Sections 434 and 465 manifest an intention that section 434 was never meant for retrospective application of substantive law under the 2013 Act on pending matters transferred from the CLB to the NCLT. Section 465(3) unequivocally states that the stipulations in sub-section (2) will not be held to prejudice the general application of Section 6 of the General Clauses Act, thereby implying that the provisions of the 2013 Act will not be applicable to proceedings pending under the 1956 Act, and the same shall be governed and disposed of in accordance with the provisions of the 1956 Act. Consequently, Section 465,

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<sup>53</sup> *Philips India Ltd. v. Labour Court*, (1985) 3 SCC 103; *Osmania University Teachers Association v. State of A.P.*, AIR 1987 SC 2034.

<sup>54</sup> *Captain Subhash Kumar v. The Principal Officer, Mercantile Marine Deptt.*, AIR 1991 SC 1632.

<sup>55</sup> *Mangilal v. State of Rajasthan*, 1997 AIHC 1892 (Raj).

<sup>56</sup> *Taylor v. Oldham Corpn.*, 4 Ch D 395; *Goodwin v. Phillips*, 7 CLR 1; *Charity Commission, State of Maharashtra, Bombay v. Shanti Devi Lalchand Trust*, AOR 1990 Bom 189; *Antaryami Patna v. State of Orissa*, 1993 Cr Lj 1908.

being a specific provision incorporated into the 2013 Act as a ‘savings’ provision, would prevail over Section 434 that was only to facilitate the process of transfer.

### C. Reference to the Heading of the Provision

It is a settled rule<sup>57</sup> of interpretation that the section heading can be relied upon to clear any doubt or ambiguity in the interpretation of the provision<sup>58</sup> and to discern the legislative intent<sup>59</sup>. The heading might be treated as preambles to the provisions following them<sup>60</sup> and may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject matter dealt with by the enactment underneath.<sup>61</sup> The title prefixed to Section 434 of the 2013 Act reads as, “*Transfer of certain pending proceedings.*” An apparent reference to its title demonstrates that the provision seeks to provide for only transfer of proceedings from forums that existed in the erstwhile 1956 Act to the NCLT as established by the 2013 Act, and doesn’t intend to suggest the repeal of the 1956 Act or operation of the 2013 Act on transferred matters.

Having discussed how the various principles of statutory interpretation support the applicability of the 1956 Act, the next part highlights how application of the 2013 Act is prejudicial to the interests of the various stakeholders at different stages of proceedings.

## V. MISPLACED INTERPRETATION OF BASIC PRINCIPLES: RETROSPECTIVE OPERATION OF THE 2013 ACT IS PREJUDICIAL TO PARTIES

Accepting NCLAT’s argument in favour of retrospective operation of the 2013 Act on pending transferred proceedings as a valid principle of law would have two implications. *First*, it would result in retrospective modification of substantive rights of parties concerned with disputes filed under the 1956 Act when the 2013 Act does not expressly provide for such

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<sup>57</sup> *Hammer Smith & City Ry. v. Brand*, (1869) LR 4 HLC 171; *Ingils v. Robertson*, (1898) AC 616 (HL); *Toronto Corporation v. Toronto Ry.*, (1907) AC 315(PC); *Martins v. Fowler*, (1926) AC 746 (PC); *Qualter Hall & Co. Ltd. v. Board of Trade*, (1961) 3 All ER 389 (CA); *Bhinka v. Charan Singh*, AIR 1959 SC 960; *Director of Public Prosecutions v. Schildkamp*, (1969) 3 All ER 1640 (HL).

<sup>58</sup> *Toronto Corporation v. Toronto Ry. Co.*, (1907) AC 315 (PC), referred to in *Ralph George Cariton, Re*, (1945) 1 All ER 559.

<sup>59</sup> *N.C. Dhondial v. Union of India*, AIR 2004 SC 1272.

<sup>60</sup> *Martins v. Fowler*, (1926) AC 746.

<sup>61</sup> *Raichurmatham Prabhakar & Anr. v. Rawatmal Dugar*, (2004) 4 SCC 766.

consequences. *Second*, it would imply retrospective operation of a provision from date of transfer proceedings pending under it and not from date of its enforcement.

*A. Modification of Substantive Rights Existing as per the 1956 Act in Disputes Filed Under the 1956 Act*

The application of the 2013 Act on pending matters transferred from the CLB to the NCLT would be inconsistent with the principle of rights crystallised under the 1956 Act, under which disputes were initially filed before the CLB.<sup>62</sup> Every provision that takes away or impairs vested rights acquired under existing provisions, creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already incurred under an earlier provision must be presumed not to be applicable on matters pending under the repealed provision.<sup>63</sup> Where a legislation does not clearly provide for application of new rights or obliteration of an already existing right from a substantive provision of a statute, its application on existing matters cannot be presumed.<sup>64</sup> Since there is no such expression in the 2013 Act, mere instance of transfer of pending matters from the CLB to the NCLT is not sufficient to apply new provisions altering the rights under which pending disputes were initially filed.

For instance, the language of the following provisions in the 2013 Act have been so altered *vis-à-vis* provisions of the 1956 Act that application of the 2013 Act on transferred matters would result in retrospective modification of rights of parties even when there is no such expression in the 2013 Act expressly providing for it.

1. Petition for Mismanagement

Under the 1956 Act, Section 397 provided for relief in cases of oppression wherein the affairs of a company that are prejudicial to public interest or oppressive to member(s) may be brought before the Tribunal (here, the NCLT & the NCLAT) on ground of oppression. Accordingly, the Tribunal could pass any order if it was of opinion that company's affairs were indeed prejudicial to public interest or oppressive to member(s) and that though these grounds were sufficient to wind up the company on just and equitable grounds, yet such winding up

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<sup>62</sup>Ramvilas Bajaj vs Ashok Kumar, 2007 (4) ALT 348.

<sup>63</sup>Amireddi Raja Gopala Rao v. Amireddi Sitharamamma, AIR 1965 SC 1970; *See*, General Clauses, *supra* note 6.

<sup>64</sup>*Bourke v. Nutt*, (1894) 1 QB 725.

would prejudice these member(s).<sup>65</sup> Similarly, Section 398 provided for application to the Tribunal for relief in cases of mismanagement. It provided a right to members to approach the Tribunal when affairs of the company are being conducted in a prejudicial manner to public interest or to interest of company, or that a material change in management or control of company would be likely to cause company's affairs to be conducted in a manner prejudicial to public interest or interest of the company.<sup>66</sup>

However, the 2013 Act consolidated these provisions under Sections 241 and 242 as 'Oppression and Mismanagement.' This consolidation modified the grounds for filing application under oppression or mismanagement. Section 241 seeks to cover aspects of both oppression as well as mismanagement whereby members of a company may approach the Tribunal with an application that affairs of the company 'have been' or 'are being' conducted in a manner prejudicial to public interest or the interest of the company, or prejudicial or oppressive to member(s) of the company.<sup>67</sup> Further, they may also approach the Tribunal where a material change in control or management of the company would be likely to result in the company's affairs being prejudicial to interests of members or a class of members, and the Tribunal has the power to pass orders to end such conduct.<sup>68</sup>

Accordingly, illustratively speaking, the following disputes filed under the 1956 Act would be affected by application of the 2013 Act subsequent to their transfer to the NCLT:

*a) Powers of Tribunal to provide relief for 'preventing' mismanagement*

Section 241(1)(b) was modified to obliterate the aspects of 'use of powers by the Tribunal for *prevention* of conduct of affairs of company causing mismanagement' as provided under Section 398. Section 398(1)(b) allowed the Tribunal to take actions in order to end or prevent 'matters complained of or apprehended' as mismanagement of the company. The removal of this phrase in the 2013 Act and retrospective operation of the 2013 Act on pending matters transferred from the CLB to the NCLT would prejudice the rights of applicants who approached the tribunal to invoke its powers of prevention of mismanagement in company affairs.

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<sup>65</sup>1956 Act, *supra* note 3, § 397(1).

<sup>66</sup>*Ibid*, § 398(1).

<sup>67</sup>2013 Act, *supra* note 4, § 241(1)(a).

<sup>68</sup>*Ibid*, § 241(1)(b).

*b) Additional ground of 'winding up on just and equitable cause' to be proved by petitioner for claiming relief in mismanagement from NCLT*

Under Section 242, obtaining relief of mismanagement requires the applicant to prove that affairs of a company are either prejudicial to the interests of public or members of the company, or oppressive to members. Additionally, it must be proved that these grounds are sufficient for 'winding up of the company on just and equitable grounds', and yet such winding up order would prejudice interests of these member(s).<sup>69</sup> Under the 1956 Act, the test of 'winding up on just and equitable grounds' had to be proved only for cases of oppression. Consequently, this modification resulting in an additional ground to be proved for relief of mismanagement would prejudice the rights of those who filed their petition before the enforcement of Section 242, due to its retrospective operation to their petition subsequent to its transfer from the CLB to the NCLT.<sup>70</sup>

*c) Transfer of power to grant waiver to file petitions from Central Government to the NCLT under the 2013 Act*

Additionally, under Section 399 of the 1956 Act, the Central Government had the authority to grant waiver to an applicant(s) who could not satisfy the minimum eligibility criteria under section 399(1).<sup>71</sup> With the enforcement of Section 244, this authority has been provided to the NCLT. If it is accepted that pending petitions transferred from the CLB to the NCLT would only have to be decided as per the 2013 Act, the authority of the Central Government to grant a waiver under the 1956 Act becomes unclear since the 2013 Act does not provide for validity of waivers granted under the erstwhile legislation.

## 2. Disputes Related to Further Issue of Share Capital under Section 62 of the 2013 Act (Corresponding to Sections 81 & 94 of the 1956 Act):

Under the 1956 Act, Section 81 provided conditions required to be complied with by all non-private<sup>72</sup> companies for further issue of share capital at any time after two years from formation of the company, or one year from allotment of shares made by the company for the

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<sup>69</sup>*Ibid*, § 242(1) (b).

<sup>70</sup>*Ibid*, § 434(1) (a).

<sup>71</sup>1956 Act, *supra* note 3, § 399(4).

<sup>72</sup>*Ibid*, § 81(3).

first time subsequent to its formation.<sup>73</sup> Where further issue of shares occurs in the aforementioned circumstances, a public company has to further issue shares to members existing as on the date of offer through a notice specifying the number of shares to be issued and the number of days for which the offer stands valid.<sup>74</sup> However, under the 2013 Act, Section 62 was modified it such that all companies, irrespective of the time when the further issue of shares is undertaken by them, must comply with the conditions.<sup>75</sup> Herein, existing members, as on the date of offer, have been provided a pre-emptory right to subscribe to further shares before invitations for subscription are sent to non-members.

Consequently, illustratively speaking, the following disputes would be affected due to the retrospective operation of Section 62 on pending transferred matters that were before the CLB under section 81:

*a) Interpretation regarding cut-off date under Section 81(1)*

A petition may have been raised against a company for non-compliance with Section 81(1) pertaining to the cut-off dates mentioned therein. Accordingly, retrospective operation of Section 62 of the 2013 Act on such matters, which obliterates the impact of these cut-off dates, would prejudice the rights of a company that had rightly not complied with the procedure mentioned.

*b) Issues of offer of subscription to further issue of share capital to persons other than those mentioned under section 81(1)*

Moreover, Section 81 may also be invoked by certain members of a company with respect to the issue of further capital to persons other than existing members. These issues involve the interpretation and application of Section 81(1A)(b) which allows a company to offer the option to subscribe to further issue of shares to ‘other persons’ similar to the manner they are offered to existing members, even if a special resolution is not passed in a general meeting to that effect.<sup>76</sup> Consequently, retrospective application of Section 62 on this petition subsequent to its transfer to the NCLT would prejudice rights of the company as well as of

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<sup>73</sup>*Ibid*, § 81(1).

<sup>74</sup>*Ibid*, § 81(1) (a) & (b).

<sup>75</sup>2013 Act, *supra* note 4, § 62.

<sup>76</sup>1956 Act, *supra* note 3, § 81(1) (b).

those ‘other’ persons since the provision authorising the issue of further capital to the other persons under Section 81(1A)(b) has been removed from the 2013 Act.

### 3. Petition for Misstatements in Prospectus of a Company Incorporated Outside India under Sections 391 & 392 of the 2013 Act (Corresponding to Sections 607 of the 1956 Act)

The liability of a company incorporated outside India with respect to misstatement or fraudulent inducement in a prospectus issued by it for inviting Indian investors to subscribe to its securities was covered under Sections 603-608 of the 1956 Act.<sup>77</sup> Under the 2013 Act, Sections 391 and 392 cover such liability.<sup>78</sup> Earlier, Section 607 of the 1956 Act provided only for civil liability for misstatements in a prospectus by foreign companies. However, the 2013 Act incorporated a modification providing for the application of Sections 34 to 36 on foreign companies as if they were incorporated in India,<sup>79</sup> with the effect of imposing criminal liability on foreign companies who have made misstatements in their prospectuses. Such modification with retrospective effect would impose an additional criminal liability<sup>80</sup> on companies whose cause of action arose prior to the enforcement of the new provision.<sup>81</sup> Such operation would be inconsistent with cardinal principle of legal jurisprudence that no criminal liability can be retrospectively imposed and prejudice the rights of companies against whom petitions were filed under Section 607 before they were transferred to the NCLT.<sup>82</sup>

### 4. Resolutions Requiring Special Notice

Under the 1956 Act, when certain members wished to introduce a resolution, they were required to give a notice of intention to move a resolution to the company not less than fourteen days before the meeting at which such resolution was to be moved.<sup>83</sup> Under the 2013 Act, on the other hand, such notice may be sent only by members holding not less than 1% of total voting power, or holding shares whose aggregate sum does not exceed five lakh rupees.<sup>84</sup> For instance, a petition might involve a dispute related to the removal of a director, initiated by a

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<sup>77</sup>*Ibid*, §§ 603-608.

<sup>78</sup>2013 Act, *supra* note 4, §§ 391, 392.

<sup>79</sup>*Ibid*, § 391.

<sup>80</sup>General Clauses, *supra* note 6.

<sup>81</sup>INDIA CONST.art. 20, cl 1.

<sup>82</sup>*Ibid*; Collector of Central Excise, Ahmedabad v. Orient Fabrics Pvt. Ltd., (2004) 1 SCC 597; JK Cotton Spinning & Weaving Mills Ltd. v. Union of India, 1988 SCC (Tax) 26; Collector of Customs, Bombay v. East Punjab Traders, (1998) 9 SCC 115.

<sup>83</sup>1956 Act, *supra* note 3, § 190.

<sup>84</sup>2013 Act, *supra* note 4, § 115.

notice under the 1956 Act. However, retrospective application of the 2013 Act post its transfer to the NCLT would alter the eligibility of members to send a notice of their intention to move a resolution for removing a director of the company. Since the eligibility criterion of notice will be altered with a petition transfer, it would put the notice itself under a questionable character. This would not only prejudice the rights of members who sent that notice under Section 190 of the 2013 Act but also invalidate the removal of a director that might have been valid under the erstwhile 1956 Act.

5. Right of Transferor or Other Person to File an Appeal Against Refusal of Company to Register the Transfer of Shares.

Under the 1956 Act, section 111 provided for the right of a ‘transferor, transferee, or other person who gave intimation of transmission of shares by operation of law’ to file an appeal before the Tribunal against a company’s refusal to register the transfer or transmission of shares, or for its failure to send notice of its decision to the persons concerned.<sup>85</sup> However, under the 2013 Act, only a transferee has been authorised to file an appeal only against the refusal by a company to register the transfer or transmission of shares.<sup>86</sup>

Accordingly, retrospective operation of the 2013 Act would obliterate the right of a ‘transferor or the other person who gave intimation of the transmission by operation of law’<sup>87</sup> to approach the Tribunal for refusal of a company to register the transfer of their shares or for sending them notices for its such decision within the period specified under the 2013 Act. Moreover, it would also prejudice right of a transferee to approach the Tribunal against failure of a company to send them notices regarding its decision not to register such transfer or transmission of shares. This would even render pending petitions infructuous.

6. Filing a Petition Against a Company for Failure to Comply with Section 190 of the 2013 Act.

Under the 1956 Act, Section 302 obliged ‘every’ company to disclose to members the nature of concern or interests of director of the company in contract or variation in contract of employment of manager of the company, if such interest or concern existed.<sup>88</sup> Accordingly, a

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<sup>85</sup>1956 Act, *supra* note 3, § 111(2).

<sup>86</sup>2013 Act, *supra* note 4, § 58(3).

<sup>87</sup>1956 Act, *supra* note 3, § 111(2).

<sup>88</sup>*Ibid.*, § 302(1), (2).

member could approach the Tribunal in cases of non-compliance. However, under the 2013 Act, this provision has not only obliterated the nature of disclosure earlier required to be made by a company but also exempted private companies from complying.<sup>89</sup> Accordingly, a retrospective operation of the 2013 Act on petitions filed under Section 302 would make such proceedings redundant. These sections demonstrate that a retrospective operation of the 2013 Act on pending proceedings on mere instance of transfer from the CLB to the NCLT would be inconsistent with the well settled principle that rights existing as on the date of filing of petition can be modified only when a modified provision expressly provides for it. Since no such express provision exists in the 2013 Act, such alteration in substantive law would prejudice those rights of parties that existed at the instance of filing of a petition.

*B. Enforcement of Modified Provisions for Transfer of Pending Petitions.*

The NCLT's constitution under the 2013 Act sparked a debate on alteration of substantive laws applicable on pending petitions transferred from the CLB. While the NCLT's predecessor continued to adjudicate pending matters under the 1956 Act even after enforcement of corresponding provisions of the 2013 Act,<sup>90</sup> no such claim of retrospective operation of the 2013 Act was raised. The same was raised only after pending matters had to be transferred from the CLB to the NCLT under Section 434(1)(a) of the 2013 Act. This argument defies the ideal construct wherein the retrospectivity should operate from the date of enforcement of the provision under the 2013 Act, and not on the date of transfer of the proceedings pending under earlier provision. Consequently, a retrospective operation at such instance would be contrary to well-established principles of statutory interpretation. For instance, following provisions of the 2013 Act were notified before the date of constitution of the NCLT but the CLB continued adjudication of pending matters under the 1956 Act:

1. Section 58

Section 58 of the 2013 Act was notified on 12 September 2013.<sup>91</sup> Accordingly, the CLB was authorised to continue adjudicating petitions that arose out of its erstwhile corresponding section 111 of the 1956 Act as well as accept fresh petitions under the newly enforced section

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<sup>89</sup>2013 Act, *supra* note 4, § 190.

<sup>90</sup>Ministry of Corporate Affairs, Enforcement of certain provisions of Companies Act, 2013, S.O. 2754(E) (September 12, 2013). ['S.O. 2754(E)']; Enforcement of certain provisions of Companies Act, 2013, S.O. 902 (E) (March 26, 2014). ['March 26'].

<sup>91</sup>S.O. 2754(E), *supra* note 131.

58 of the 2013 Act. The enforcement of corresponding provision of the 2013 Act did not affect continuance of petitions earlier filed under section 111 of the 1956 Act, because there was no provision for retrospective operation of the 2013 Act on a petition filed under section 111 of the 1956 Act. Consequently, it can be inferred that the instance of implied repeal of section 111 by enforcement of section 58 had no impact on pending proceedings. However, argument of retrospective operation of Section 58 of the 2013 Act came to be raised only after transfer of pending petitions from the CLB to the NCLT under section 434(1)(a).

## 2. Section 62

Similarly, since Section 62 was notified on 1 April 2014,<sup>92</sup> matters that were filed under the 1956 Act continued as they were even after the enforcement of corresponding provisions of the 2013 Act. Consequently, when Section 62 was not sought to be retrospectively applied on applications pending under Section 81 of the 1956 Act after its enforcement, it cannot be so argued merely on instance of their transfer from the CLB to the NCLT.

The similar argument for no retrospective operation on an instance of ‘transfer’ of pending petitions from the CLB to the NCLT may also be applied to Section 115 (corresponding to Section 190 of the 1956 Act),<sup>93</sup> Section 190 (corresponding to Section 302 of the 1956 Act),<sup>94</sup> and Section 391 (corresponding to Section 607 of the 1956 Act)<sup>95</sup>. Accordingly, it may be argued that the Parliament had no intention of ensuring adjudication of pending petitions filed under the 1956 Act as per the 2013 Act on their transfer from the CLB to the NCLT because of the fact that even implied repeal of the provisions of the 1956 Act did not affect pending proceedings. A retrospective operation of certain provisions impliedly repealing an earlier provision can be applied on pending proceedings from ‘date of their enforcement’<sup>96</sup> and not from an instance of transfer of proceedings from one authority to other.

Hence, it can be inferred that accepting ‘transfer-date’ based retrospective operation of provisions of an Act would not only prejudice substantive rights of parties to petitions pending under repealed enactment but also set precedential standards inconsistent with well- settled

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<sup>92</sup>March 26, *supra* note 131.

<sup>93</sup>2013 Act, *supra* note 4, § 115 (notified on April 1, 2014).

<sup>94</sup>*Ibid*, § 190.

<sup>95</sup>*Ibid* § 391.

<sup>96</sup>*Commissioner of Income Tax v. Venkateshwara Hatcheries*, AIR 1999 SC 1225.

principles of law regarding retrospective operation of statutory provisions after repeal of earlier enactments.

## VI. CONCLUSION

The disagreement and lack of cohesion between the different benches of the NCLT and the NCLAT apropos to their stance on the applicable law for adjudicating proceedings transferred from the CLB to the NCLT is baffling. The NCLAT's reckoning that plain language rule should be applied to interpret section 434(1)(a) of the 2013 Act is without any merit as it defies the basic tenets of statutory interpretation, since the plain language rule ought not be applied in case of ambiguities. Additionally, the reasoning that NCLT is authorised to only adjudicate as per the 2013 Act is not legally sound.

If the NCLAT's position is adopted, it would result in far reaching ramifications on proceedings pending adjudication. There would be substantial modification of the rights of parties crystallised at the time of filing of the petition. Moreover, an acceptance of this position would create an unprecedented situation in relation to transfer of petitions wherein setting up a specific authority is observed as justification for retrospective alteration of applicable substantive law, unlike in other cases where the repeal of law marks such alteration.

Though it has been vehemently argued that the Parliament intended to apply the 1956 Act, there are factors indicating the alternative which are highly persuasive and convincing. The basis for this persuasion stems from Section 465(3) of the 2013 Act which stipulates the general applicability of Section 6 of the General Clauses Act. Section 6 states that pending legal proceedings will not be affected by annulment of law under which the cause of action for such litigation arose. Thus, it implies the applicability of the 1956 Act on transferred proceedings in the immediate matrix. Further, the title of Section 434 of the 2013 Act suggests that the provision is aimed at only stipulating and facilitating the transfer of cases from various judicial forums to the NCLT, and doesn't intend to provide or deal with the operation of the 2013 Act in any way. Thereby, it implies that the provision intends to deal with only procedural aspects of transfer contrary to what has been observed by the NCLAT.