APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

1. MP-FE-504/MUM/2024 (Review)
MP-FE-196/MUM/2018 (Exem.)
MP-FE-197/MUM/2018 (Misc.)
MP-FE-198/MUM/2018 (Stay)
FPA-FE-50/MUM/2018
Shri Lalit Kumar Modi ... Appellant

2. MP-FE-505/MUM/2024 (Review)
MP-FE-199/MUM/2018 (Exem.)
MP-FE-200/MUM/2018 (Misc.)
MP-FE-201/MUM/2018 (Stay)
MP-FE-202/MUM/2018 (Exem.)
FPA-FE-51/MUM/2018
Shri Lalit Kumar Modi ... Appellant

3. MP-FE-506/MUM/2024 (Review)
MP-FE-203/MUM/2018 (Exem.)
MP-FE-204/MUM/2018 (Misc.)
MP-FE-205/MUM/2018 (Stay)
MP-FE-206/MUM/2018 (Exem.)
FPA-FE-52/MUM/2018
Shri Lalit Kumar Modi ... Appellant

4. MP-FE-507/MUM/2024 (Review)
MP-FE-207/MUM/2018 (Exem.)
MP-FE-208/MUM/2018 (Misc.)
MP-FE-209/MUM/2018 (Stay)
MP-FE-210/MUM/2018 (Exem.)
FPA-FE-53/MUM/2018
Shri Lalit Kumar Modi ... Appellant

5. MP-FE-508/MUM/2024 (Review)
MP-FE-211/MUM/2018 (Exem.)
MP-FE-212/MUM/2018 (Misc.)
MP-FE-213/MUM/2018 (Stay)
MP-FE-214/MUM/2018 (Exem.)
FPA-FE-54/MUM/2018
Shri Lalit Kumar Modi ... Appellant

6. MP-FE-509/MUM/2024 (Review)
MP-FE-215/MUM/2018 (Exem.)
MP-FE-216/MUM/2018 (Misc.)
MP-FE-217/MUM/2018 (Stay)
MP-FE-218/MUM/2018 (Exem.)
FPA-FE-55/MUM/2018
Shri Lalit Kumar Modi ... Appellant

7. MP-FE-510/MUM/2024 (Review)
MP-FE-224/MUM/2018 (Misc.)
MP-FE-225/MUM/2018(Exem.)
FPA-FE-56/MUM/2018
N. Srinivasan ... Appellant

8. MP-FE-511/MUM/2024 (Review)
MP-FE-244/MUM/2018 (Stay)
FPA-FE-57/MUM/2018
M P Pandove ... Appellant

9. MP-FE-512/MUM/2024 (Review)
MP-FE-251/MUM/2023 (Review)
MP-FE-251/MUM/2018 (Stay)
FPA-FE-61/MUM/2018
Board of Control for Cricket in India ... Appellant

10. MP-FE-513/MUM/2024 (Review)
MP-FE-193/MUM/2018 (Stay)
MP-FE-257/MUM/2018 (Stay)
FPA-FE-48/MUM/2018
State Bank of India ... Appellant

11. MP-FE-514/MUM/2024 (Review)
MP-FE-194/MUM/2018 (Stay)
MP-FE-195/MUM/2018 (Exem.)
MP-FE-258/MUM/2018 (Stay)
FPA-FE-49/MUM/2018
A.K. Nazeer Khan (Ex-Chief Manager) ... Appellant

Versus

The Directorate of Enforcement, Mumbai ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Mr. Swadeep S. Hora, Mr. Sahajveer Singh, Mr. Vaishnav Kumar, Mr. Amol Chitale, Mr. Sarthak Sharma, Mr. Nishit Agrawal, Ms. Kanishka Mittal, Mr. Karan Lahiri, Mr. Vikas Kr. Jha, Ms. Sakshi Malhotra, Mr. Aakash Aggarwal, Mr. Sanjay Jain, Mr. L.S. Shetty, Ms. Momata Bhattachrji, Ms. Harshita Sukhiya, Mr. Anukalp Jain, Advs.

For the Respondent : Mohd. Wasay Khan, Adv.

CORAM

JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN
SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER
16.07.2026

The batch of appeals have been filed to challenge the order dated 31.05.2018 passed by the Special Director of Enforcement imposing penalty on the appellants for contravention of different provisions of the Foreign Exchange Management Act (FEMA), 1999 (in short "the Act of 1999) and the Rules and Regulations made thereunder. The respondent

issued 12 Show Cause Notices in reference to different contraventions and for ready reference, the statements of Show Cause Notices and the contraventions involved therein are given hereunder:

Sections contravened	SCN I - Section 3(b) of FEMA, 1999 r/w Section 42(1) & (2) of FEMA, 1999. SCN II- Section 3(b) of FEMA, 1999 r/w Section 42(1) & (2) of FEMA, 1999. SCN III- Section 4 of FEMA, 1999 r/w Section 42(1) & (2) of FEMA, 1999. SCN IV - Section 4 r/w Section 9 of FEMA, 1999 and further r/w Regulation 4 and para 3 of schedule thereof of FEM (Foreign Currency Account by a Person Resident in India) Regulations, 2000 r/w Section 42(1) & 2) of FEMA, 1999. SCN V - Section 9 of FEMA, 1999 r/w Regulation 3 of FEM (Foreign Currency Account by a Person Resident in India) Regulations, 2000 and Section 4 of FEMA, 1999 r/w Section 42(1) & 2) of FEMA, 1999. SCN VI - Section 4 of FEMA, 1999 r/w Section 42(1) & (2) of FEMA, 1999 SCN VII - Section 6(3)(d) of FEMA, 1999 r/w Regulations 3&5 of FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000 r/w Section 42(1) & (2) of FEMA 1999. SCN VIII - Section 6 (3)(d) of FEMA. 1999 r/w Regulation 3 & 5 of FEM Borrowing or Lending in Foreign Exchange) Regulations, 2000 r/w Section 42(1) & (2) of FEMA, 1999 SCN IX- Section 8 & 10(6) FEMA, 1999 r/w clause (b) of Regulation 3 of FEM (Realisation, Repatriation & Surrender

	of Foreign Exchange) Regulations, 2000 r/w Section 42(1) & (2) of FEMA, 1999 SCN X - Section 8 of FEMA, 1999 r/w clause (a) of Regulation 3 of FEM (Realisation, Repatriation & Surrender of Foreign Exchange) Regulations, 2000 r/w Section 42(1) & (2) of FEMA, 1999 SCN XI- Sections 4 & 9 of FEMA, 1999 r/w Regulation 3 & 4 r/w para 1(2) & para 2 of Schedule thereto of FEM (Foreign Currency Accounts by Person Resident in India) Regulations, 2000 r/w Section 42(1) & (2) of FEMA, 1999 SCNXII- Section 10(4) r/w AD(MA Series) Circular No. 11 dated 16.05.2000 and Section 10(5) of FEMA, 1999 r/w Section 42(1) of FEMA, 1999.

2. The Show Cause Notices referred to above in reference to different contraventions of the Act of 1999 were issued on the following facts:

3. The respondent received a reliable information about contravention of the Act of 1999 and accordingly enquiries were initiated against foreign remittance in organizing of Indian Premier League (hereinafter referred to as "IPL") in South Africa by the Board of Control for Cricket in India (in short "BCCI"). The directions were issued to the BCCI for forwarding the relevant documents/details relating to the aforesaid. The BCCI vide its letters dated 04.07.2008, 07.08.2008 and 30.10.2009 furnished the required details and documents. The respondent called for further information and documents from the BCCI. On the scrutiny of various details

and documents received from BCCI and other sources, following facts were revealed:

> *"2.2 That in the Working Committee Meeting of the BCCI held on 13.09.2007, it was decided to launch the Indian Premier League (IPL), to be formed as a sub-committee of BCCI: that a Governing Council would be set up to deal with all matters related to the IPL: that Shri Lalit Kumar Modi, the then Vice President of BCCI was appointed as the Chairman of IPL: that in the Annual General Meeting of BCCI held on 28.09.2007, it was resolved that Shri N. Srinivasan, the then Hon. Secretary of BCCI would open and operate a new bank account in the name of BCCI-IPL: that in the Special General Meeting of the BCCI held on 16.12.2007, the rules and regulations of BCCI were amended, wherein it was decided that a Committee to administer the functioning of IPL would be appointed by the General Body of the Board; that the term of office of the members of the Committee would be for a period five years and would comprise of a Chairman, 4 members appointed by the Board, 3 ex-cricketers of repute, etc.; that the office bearers of the Board during their tenure would be the ex-officio members of the Committee; that the Special General Meeting also ratified the appointment of Shri Lalit Modi as the Chairman of IPL: that as per the Rules and Regulations of BCCI, the Hon, President, the Hon. Secretary, the Hon. Treasurer and the Hon. Jt. Secretary were the office bearers of BCCI who were responsible for the conduct of affairs of the BCCI.*
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> *2.3 That although the IPL Tournament was designed as a domestic cricketing event, with its first season launched in the year 2008, the 2nd season of the IPL in 2009 was held in South Africa on account of security reasons due to the general elections in the country, which coincided with the schedule of the IPL Tournament; that in the Working Committee meeting, the issue of shifting the venue of the Tournament out of India was deliberated and a final decision in the matter was left to Shri Shashank Manohar, the then Hon President of BCCI; that in the said meeting, Shri Lalit Modi requested the members to approve opening of an account abroad with a remittance of US $ 10 Mn. to take care of the expenses for staging of the IPL abroad; that BCCI deliberated on the legal implications involved in shifting of the Tournament, outside India, and it was specifically mentioned that*

for the purpose of holding the Tournament out of India, opening of a bank account would be necessary, for which, prior approval of the RBI would be required. This was revealed from the discussion in the Working Committee meeting held on 22.03.2009, which recorded the opinion of Shri Shashank Manohar, the then Hon. President of the BCCI that BCCI would open an account with 10 mn. USD abroad, after seeking clearance from RBI and that the account would be opened by the then Hon. Treasurer, Mr. M P. Pandove.

2.4 That the BCCI finally decided to shift the Tournament to South Africa; that the BCCI remitted huge amounts of foreign exchange from its accounts held in the State Bank of Travancore, Jaipur Branch, to the account of Cricket South Africa (CSA), without obtaining the required permission from the Reserve Bank of India. The preliminary enquiries in the matter also indicated that the BCCI did not open or operate any separate bank account independently in its name in South Africa, but got opened and operated a separate bank account in South Africa through CSA, in which the amounts transferred by BCCI to the account of CSA were finally credited: that the said account was a dedicated bank account opened for the sole purpose of meeting the expenditure incurred for the conduct of IPL-2 in South Africa: that for the conduct of IPL-2 in South Africa, BCCI-IPL had entered into Heads of Agreement dated 30.03.2009 with CSA; that as per the terms of the said Agreement, CSA was to open a dedicated bank account in the name of IPL-SA and that the remittances made by BCCI to the account of CSA would be transferred to this dedicated account to meet the expenditure to be incurred by CSA for the conduct of IPL-2 in South Africa: that necessary clauses were incorporated in the said Agreement to ensure that the BCCI enjoyed absolute control over the said dedicated account to be opened through CSA, thereby, the BCCI became the defacto operator of the said account.

2.5 It was revealed from the Minutes of the Governing Council Emergency meeting held on 22.03.2009 with the franchisees, prior to the shifting of IPL 2009 to South Africa that the issue of shifting of the IPL 2 Tournament outside India was discussed in detail in the said meeting and the Minutes of the said Meeting reads as under:-

"Chairman explained to the members that decision was taken in the emergent Working Committee of the BCCI that the IPL 2009 has to be moved out of India to UK or South Africa due to the Government's inability to provide security to the matches in India due to the workload during elections. It was also explained to the members that due to the shift of the Tournament outside India, additional expenditures for the Franchisees have to be borne by IPL. In this regard, the following decisions were taken:

→ Gates Revenue will be centrally managed by IPL and all the gates revenue will revert back to the Franchisees equally after deducting all ticketing expenses.

❖ Business class travel fare from India to SA/UK will be reimbursed subject to a maximum of 30 members of Players and support staff.

Additional costs for travel and hotel will be borne by IPL for the Franchisees due to shift.

There would be no concept of home and away games. The teams will be playing each other twice.

Loss of sponsorship/ticket venue and extra costs for Franchisee due to movement of the games from India to outside will be reimbursed on a case to case basis.

Stadium/Host Agreement will be signed by IPL with the respective board/stadiums. The cost of which will be borne by IPL.

The Chairman also stated that due to the shift of the Tournament, there will be an additional expense from the approved budget to the tune of Rs.100 crores. Members unanimously approved this and asked the Chairman to proceed with the proposal and shift the Tournament outside India since cancelling the Tournament is not an option."

2.6 The information collected further revealed that the BCCI entered into an Agreement with Cricket South Africa (CSA) on 30.03.2009 for hosting and staging of the IPL-2 Tournament in South Africa: that the said Agreement was signed by Shri N. Srinivasan, the then Honarary Secretary, on behalf of BCCI: that as per the said Agreement, the CSA was required to open and operate a dedicated bank account in the name of "IPL South Africa"; that the funds would be

deposited by BCCI into the Bank account of CSA from time to time and that CSA would transfer these funds into the bank account of IPL South Africa towards the anticipated and certain other IPL-related expenses; that the ticket revenue earned through BCCI-IPL was also to be deposited into this account; that no sums would be released from the said bank account, without the explicit written authorization by BCCI-IPL: that CSA was required to produce and maintain full and accurate accounting records of all the sums and other expenditure paid out for the Budgeted costs; that for the services and assistance to be rendered by CSA, the BCCI-IPL agreed to pay to CSA a fixed fee of US$30,00,000/ as service charges within 15 days of the last Match in 2009: that a further amount of US$25,00,000 was agreed to be paid within 7 days of signing of the Agreement: that as per the Terms of the said Agreement, CSA was to incorporate a wholly owned subsidiary called "IPL (SA) (PTY) Ltd" for incurring expenses for conducting the IPL matches, on behalf of BCCI.

2.7 That the preamble to the Agreement stated that the BCCI-IPL wished to stage 2009 IPL through the Republic of South Africa and wished the CSA to assist in this regard by providing the necessary stadia with all facilities and amenities appropriate for staging the IPL cricket matches and certain other related matters, subject to the terms and conditions set out in the said Agreement; that as per terms and conditions, the CSA was required inter alia to procure/ provide stadia for the exclusive use by the BCCI-IPL, for the purpose of staging the matches and the BCCI would be allowed an unrestricted and exclusive access to and use of all of the stadia. The Agreement enjoined on CSA to ensure that the BCCI was able to offer the sale of tickets for the whole of spectators viewing area at each stadium and for each match; that the CSA was further required to ensure that exterior and interior of each stadium should be provided or procured by CSA free and clear of all third parties or other branding of any kind whatsoever, that the CSA was also required to provide BCCI-IPL with all such other assistance as required in respect of IPL, including providing details of third party contractors who were to provide services to CSA in connection with cricket, such as ticketing agencies, concession operators, catering companies etc. and also to obtain any permits hits or licenses required; that the CSA was also required to meet the officials of BCCI-IPL as and when necessary

to assist BCCI-IPL in staging the IPL: that it was also acknowledged that BCCI-IPL owned the IPL, and they should retain ultimate control in relation to all the aspects of IPL, The CSA was to ensure that any third party (such as Stadium owners/operators) takes all such action in a timely fashion so as to enable BCCI-IPL to stage the Matches, contemplated by the Heads of Agreement.

2.8 It was also clarified in the aforesaid Agreement that CSA would not acquire any rights of any kind in relation to IPL and that the CSA were not entitled to grant or seek to grant to any third party any rights in respect of IPL or otherwise should exploit any rights of any kind in relation to the IPL. It was also stipulated that the revenue of any kind from any source in whatsoever nature in relation to the staging of IPL matches should accrue to and for the benefit of BCCI-IPL and its licensees and CSA would not have any rights in respect thereof. It was also stipulated under the Agreement that the CSA would open and operate a dedicated bank account in the name of IPL South Africa and monies would be deposited to the CSA bank account from time to time and CSA would transfer these funds into the bank account of IPL South Africa towards anticipated and certain other IPL related expenses; that the ticket revenue earned through BCCI-IPL ticketing partners would also be deposited in the said account. It was further provided that no sums could be released from the said bank account without the explicit written authorization by BCCI-IPL: that no sums would be made by CSA from this account otherwise than strictly in accordance with the above conditions, implying thereby that no sums would be debited from this dedicated bank account without explicit instructions/approval from BCCI-IPL.

2.9 That the Agreement further provided that "as consideration for the provision by CSA of its services and assistance in connection with IPL- the BCCI- IPL shall pay to CSA a fixed fee of US $ 3,000,000/- (the "Fee") which shall be payable within 15 days of the last Match in 2009; that the Agreement was executed between BCCI and CSA for the services to be rendered by CSA, for which, CSA was to receive payment of US $ 30,00,000/- and it was made to enable BCCI to transfer funds to CSA for further onward transfer of the amount to a dedicated bank account of "IPL South Africa" which was to be opened pursuant to the Agreement dated 30.03.2009. The

BCCI thus ensured control over the dedicated bank account to be opened by CSA in South Africa by incorporating certain specific clauses in the Agreement that no sums would be released from the said bank account without explicit written authorization by BCCI-IPL. Although the Agreement at para 3 (a) referred to certain budgeted expenses attached as Schedule 2, the said Schedule 2 was left blank and no budgeting whatsoever was done.

2.10 The information gathered further revealed that the BCCI was maintaining bank accounts with the State Bank of Travancore, Jaipur Branch: that during the period from 31.03.2009 to 10,08,2009, the BCCI remitted amounts totaling US$ 3,95,00,000/ (equivalent to Rs.194,89,30,000,00/-) to CSA in connection with the IPL-2 Tournament: that amount of ZAR 7,61,48,959 equivalent to USD 1,03,62,799.42 was also remitted on 27.08.2010, by the BCCI towards the balance and final payment of expenses for IPL 2009; that the total amount transferred to CSA thus came to USD4,98,62,799.42 (approx. ZAR 36,64,06,809) equivalent to Rs.243,45,30,781/-; that a total sum of ZAR 31,02,75,530.61/- was expended during the Tour nament, while the total remittances made to CSA was approx. ZAR 36,64,06,809/-; that besides, the BCCI received revenues from ticket sales amounting to ZAR 38,285,677/- and VAT refund of ZAR 26,978,923/- (Total ZAR 65,264,600/- equivalent to US $ 89,34,040) that the BCCI failed to take suitable steps to repatriate the said amount to India. i.e. within 90 days from the conclusion. of IPL matches, on 24th May, 2009; that the BCCI 08.09:2010; and May, 2009; that the BCCI repatriated this amount only on and that an amount of ZAR 9,31,567/- accrued to the account of "Pouring Rights" were not repatriated to India.

2.11 In order to ascertain the nature and manner of the transactions entered into between the BCCI and CSA pursuant to the Agreement dated 30.3.2009, further details and documents were sought from the BCCI by, ED, Mumbai vide letter dated 26.04.2010. The BCCI vide its letter dated (i) 09.05.2010, (ii) 29.07.2010, (iii) 16.08.2010, (iv) 21.01.2011 (v) 03.02.2011 (vi) 25.06.2011, furnished various details and documents in respect of the conduct of IPL-2 Tournament in South Africa. Similarly, further details and documents were sought from the State Bank of Travancore, Jaipur Branch with regard to the remittances made by BCCI to CSA from their A/cs

maintained with the branch and the same were provided by the Bank, vide its letter dated 06.09.2010".

4. The facts given above pertains to the IPL Tournament conducted in South Africa in the year 2009 on account of security reasons due to General Election in the country. It was pursuant to a decision taken by the Working Committee for shifting the venue of tournament out of India. The final decision in the matter was left on Shri Shashank Manohar**,** the then President of BCCI. After a decision to shift the tournament to South Africa, the issue of transmission of the remittance was discussed. It was decided to transfer the funds with the approval of the RBI to a bank account in South Africa. However, the BCCI did not open and operate a dedicated bank account in its own name. It opened a separate bank account in the name of Cricket South Africa (CSA). The said account was to be a dedicated bank account opened for the sole purpose of meeting with the expenses for the IPL in South Africa. In pursuance to the decision of the Committee, CSA was to open a dedicated bank account in the name of IPL-SA. The remittance made by the BCCI to the account of CSA was to be transferred to the dedicated account to meet the expenditure to be incurred by CSA. The transfer of the funds from India to South Africa has been taken to be in contravention of the Act of 1999 and the different Regulations. Accordingly, after Show Cause Notice and reply, the impugned

order was passed imposing following penalties in reference to different Show Cause Notices:

Sl.No.	SCN No.	Name of the Noticee	Penalty Imposed (Rs.)
1.	T-4/16-B/SDE/R/2011 (SCN I)	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 50,00,00,000 2) 5,00,00,000 3) 5,00,00,000 4) 5,00,00,000
2.	T-4/16-B/SDE/R/2011 (SCN V)	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 10,00,00,000 2) 2,00,00,000 3) 2,00,00,000 4) 1,50,00,000
3.	T-4/16-B/SDE/R/2011 (SCN VI)	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 10,00,00,000 2) 2,50,00,000 3) 2,50,00,000 4) 2,00,00,000
4.	T-4/16-B/SDE/R/2011 (SCN VII)	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 3,00,00,000 2) 10,00,000 3) 40,00,000 4) 10,00,000
5.	T-4/16-B/SDE/R/2011 (SCN VIII)	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 4,00,00,000 2) - 3) 50,00,000 4) 50,00,000
6.	T-4/16-B/SDE/R/2011 (SCN IX))	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 4,00,00,000 2) 1,00,00,000 3) 1,00,00,000 4) 50,00,000
7.	T-4/16-B/SDE/R/2011 (SCN X))	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 66,54,000 2) 5,00,000 3) 3,00,000 4) 2,00,000
8.	T-4/16-B/SDE/R/2011 (SCN XI))	1) BCCI 2) Shri Lalit Kumar Modi 3) Shri N. Srinivasan 4) Shri M.P. Pandove	1) 1,00,00,000 2) - 3) 10,00,000 4) 10,00,000
9.	T-4/16-B/SDE/R/2011 (SCN XII)	1) State Bank of Travancore 2) Shri A.K. Nazeer Khan	1) 7,00,00,000 2) 10,00,000

5. The penalties were imposed finding contravention of the provisions of the Act of 1999 and the Regulations made thereunder. It was for remittance of foreign exchange outside India without the approval of the RBI and accordingly assigning role to each of the appellants, the respondent determined contravention of the provisions of the Act of 1999. The main charge was in regard to the transfer of foreign exchange of US$ 4,98,62,799.42 equivalent to Rs.243,45,30,781, to a person resident outside India without prior approval of the RBI. The officials of the BCCI were also charged under Section 42(1) and (2) of the Act of 1999. The respondent found that remittance referred to above was made

by BCCI to CSA in terms of the conditions stipulated under "Head of Agreement" dated 30.03.2009, executed between BCCI and CSA where BCCI was obligated to make remittance to CSA to meet the expenses to be incurred by the CSA for the IPL in South Africa. It was for the service to be rendered by CSA in conducting IPL in South Africa. The remittance aforesaid has been taken to be towards "Capital Account Transaction". However, it is claimed by the appellants to be A "Current Account Transaction". The respondent did not accept the plea taken by the appellants to treat the remittance to a person outside India under "Current Account Transaction". The penalty was accordingly imposed for contravention of different provisions of the Act of 1999 and Regulations to which a challenge has been made by the appellants.

Arguments of counsel for the appellants:

6. The counsel appearing for different appellants made separate arguments and for convenience, it would be relevant to refer their respective arguments:

Submissions of the appellant State Bank of India

7. The counsel submitted that the appellant acted in the capacity of an Authorized Dealer under Sections 2(c) and 10 of the Act of 1999. The first set of remittance request from BCCI was under cover of two letters bearing printed date 28.03.2009 (hand-corrected to 31.03.2009). It was received at SBI's Jaipur Branch and processed strictly in accordance with the

provisions of the Act of 1999 and the FEMA (Current Account Transactions) Rules, 2000 (in short “the Current Account Rules of 2000”). The remittances in question were processed only after receipt of duly filled Form A-2 applications and certificate of Chartered Accountant certifying the permissibility of the transactions under FEMA.

8. The counsel for the Appellant stated that even assuming arguendo that any contravention occurred at the end of the remitter, Section 10(6) of FEMA protects the "Authorised Dealer" once diligence is exercised. There is no material to show that SBI had knowledge of any alleged violation. The request for remittance was accompanied with Form A2 and CA Certificate. The Service Agreement had been furnished at the commencement of the transactions. Accordingly, SBI discharged its statutory obligations as an "Authorised Person" under Sections 2(c) and 10 read with Section 10(5) of the Act. SBI made itself "reasonably satisfied" that the remittances were for legitimate purposes, as mandated under Section 10(5) of FEMA. SBI regularly filed R- Returns with the Reserve Bank of India for monitoring foreign exchange transactions. No objection was ever raised by RBI in respect of any of the transactions. Any subsequent deviation, if at all, in utilization of funds cannot be attributed to SBI in view of Section 10(6) of FEMA.

9. The counsel for the Appellant further stated that remittances were reported to the Reserve Bank of India

through statutory R-Returns within prescribed timelines. No objection or deficiency was ever communicated by RBI.

10. The counsel for the Appellant further stated that the Forms A-2 dated 31.03.2009 for USD 1,000,000 and USD 7,000,000 were complete in all respects and supported by the Service Agreement dated 30.03.2009 executed between the Board of Control for Cricket in India ("BCCI") and Cricket South Africa ("CSA"). There was no discrepancy, alteration, or deficiency in the documentation.

11. The counsel for the Appellant submitted that the Service Agreement dated 30.03.2009 executed between BCCI and Cricket South Africa provided for payment of service fees in US Dollars. It was for the IPL tournament to end on 24.05.2009 The remittances on 10.08.2009 and 27.08.2010 (though bearing a printed date of 26.08.2010) were processed only after the official confirmed it. The said request for USD 103,62,799.42 was accompanied by Form A2 dated 27.08.2010; and CA Certificate dated 27.08.2010.

12. The counsel for the Appellant further submitted that the transactions were current account transactions within the meaning of Section 2(j) read with Section 5 of the Act of 1999 and the Current Account Rules of 2000 and not a "Capital Account Transaction" under Section 2(e) read with Section 5 of the Act of 1999 and the Current Account Rules of 2000, being payments for services for national sports. Prior approval of RBI was not required by the BCCI, being a national sports

body. It was exempt from prior approval requirements. The impugned order proceeds on presumptions rather than the evidence and fasten the liability retrospectively, which is impermissible in penal proceedings.

Submissions of appellant Shri A.K. Nazeer Khan

13. The learned counsel submitted that the Appellant was serving as Chief Manager of SBI at the relevant time and processed the remittances in the ordinary course of banking business. The appellant relied upon duly certified Forms A-2 and CA Certificates and ensured that documentation was complete before processing the transactions. There is no allegation or finding that he derived any personal benefit or acted with mala fides.

14. The learned counsel for the Appellant stated that section 42 of FEMA requires proof of consent, connivance, or negligence. The impugned order does not record any specific act attributable to the Appellant demonstrating such elements. The "Vicarious liability" cannot be inferred merely from designation. In the absence of primary contravention by SBI, no derivative liability can survive against the Appellant.

Submissions of appellant Shri N. Srinivasan

15. The counsel for Shri N. Srinivasan submitted that the Appellant was President of BCCI at the relevant time. The impugned order invokes Section 42 of FEMA on the premise that BCCI is a "company". It was stated that BCCI is a society registered under the Tamil Nadu Societies Registration Act and

is not a body corporate or company within the meaning of Section 42. Section 42 which applies only to a "company". The explanation thereto defines "company" to mean a body corporate and includes a firm or other associations of individuals. BCCI is an association of associations; no individual is a direct member thereof. It is settled law that a society registered under the Societies Registrations Act is not a corporate body. The counsel also submitted that the Penal provisions must be strictly construed. In absence of clear statutory inclusion, Section 42 could not have been extended by analogy.

16. The counsel for the Appellant further submitted that the Bombay High Court in ***Shashank Manohar v. Union of India and Anr.*** (Writ Petition No. 5305 of 2013) held BCCI to be a "person" under Section 2(u) of FEMA. However, being a "person" does not automatically render to be a "company" for the purpose of Section 42. The counsel for the Appellant stated that there is no finding that the Appellant personally authorised or directed the alleged contravention with requisite mens rea.

17. The counsel for the Appellant also submitted that the impugned order fails to establish that the Appellant was in charge of and responsible for the conduct of business in relation to the alleged FEMA violation in the manner contemplated under Section 42.

Submissions of appellant BCCI

Transactions between BCCI and CSA are Current Account Transactions.

18. The learned counsel for the BCCI submitted that the transactions between the Board of Control for Cricket in India (BCCI/Appellant) and Cricket South Africa (CSA) were purely in the nature of Current Account Transactions undertaken pursuant to a valid, lawful, and subsisting "Heads of Agreement" dated 30 March 2009. These transactions were not capital account transactions. The Current account transactions are defined under Section 2(j) of the Foreign Exchange Management Act, 1999 (FEMA) and are expressly permitted under Section 5 thereof, read with the Foreign Exchange Management (Current Account Transaction) Rules, 2000. Consequently, no prior permission from the Reserve Bank of India (RBI) was required.

19. Section 2(j) of FEMA defines a "Current Account Transaction" as a transaction other than a capital account transaction and, without prejudice to the generality of the foregoing, includes payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.

20. `The "Heads of Agreement" clearly demonstrates that CSA was rendering services in relation to hosting IPL-2 in South Africa, and the payments made by BCCI had a direct nexus with such services. Therefore, the remittances were falling

squarely within the category of “current account transactions” and not “capital account transactions”. After the conclusion of the Tournament on 24.05.2009, the BCCI remitted an amount of US$10,362,799.42 from the EEFC Account of the BCCI on 27.08.2010.

21. Without prejudice to the above, for any transaction to qualify as a “Capital Account Transaction” under Section 2(e) read with Section 6 of FEMA, the remittance must be for acquiring or bringing into existence an asset or advantage of enduring benefit to the business of the remitter. No such circumstance existed in the present case. There are no allegations in the Complaint, nor any documentary evidence on record to show that BCCI acquired any asset or enduring business advantage from the impugned transactions. The transactions carried out by an entity in the regular course of its business are “Capital Account Transactions” within the meaning of Section 2(j), which is an inclusive and broad definition. Holding cricket tournaments, including T-20 events such as IPL, forms one of the core objects of BCCI, which exists for promoting and developing the standards and quality of cricket in India. Therefore, expenditure incurred for organizing the tournament and revenue generated therefrom are revenue/current account transactions.

22. It is submitted that Show Cause Notice No. 1 issued by the Directorate of Enforcement contained no allegation whatsoever that the transactions undertaken by BCCI

constituted “capital account transactions”. It was only in the Order-in-Original dated 31.05.2018 that the Adjudicating Authority, for the first time, characterized the transactions as “capital account transactions”. Such a finding travels beyond the scope of the Show Cause Notice and has caused grave prejudice to BCCI by denying an effective opportunity to respond and explain the true nature of the transactions. This course of action is impermissible in law and contrary to settled principles laid down by the Hon'ble Supreme Court in ***Tarlochan Dev Sharma v. State of Punjab and Godrej Industries Ltd. v. CCE*** reported in (2008) 17 SCC 471. It has been held that grounds not stated in the show cause notice cannot subsequently form the basis of an adverse order.

NO CONTINGENT LIABILITY WAS INCURRED

23. The Adjudicating Authority erroneously held that BCCI had incurred a contingent liability merely because no formal budget had been prepared. The occurrence of IPL-2 was certain and had been conclusively decided in advance. What remained uncertain was only the precise quantum of expenditure to be incurred. This uncertainty arose solely because of the sudden shifting of IPL-2 to South Africa, which left limited time for BCCI to prepare a detailed budget. The impugned order does not provide any particulars of the alleged contingent liability. It does not identify the contingency or specify the triggering event upon which such liability was dependent. Mere uncertainty regarding the quantum of

expenditure does not convert an accrued business liability into a contingent liability, nor does it transform the transaction into a "capital account transaction". There is no statutory requirement under FEMA that a budget must exist for a transaction to qualify as a "Current Account Transaction".

TRANSACTION DATED 27 AUGUST 2010 WAS A CURRENT ACCOUNT TRANSACTION

24. The audit of BCCI's accounts for the financial year 2009-10 was completed only on 20 August 2010. Accordingly, a final payment of USD 10,363,799 (INR 48,56,00,781) was made by BCCI to CSA on 27 August 2010 towards the liability that had already accrued.

25. The record itself shows that the payment was made towards the balance and final payment of expenses in relation to IPL-2009. Therefore, the payment was not contingent in nature but represented discharge of an existing liability. Further, the remittance dated 27 August 2010 was made from BCCI's Exchange Earners' Foreign Currency (EEFC) account. Under Rule 6(1) of the Current Account Transaction Rules, 2000 drawals made out of funds held in an EEFC account are exempted from any requirement of prior approval from the Central Government or RBI.

IMPUGNED ORDER VIOLATES SECTION 16 OF FEMA READ WITH RULE 4 OF THE ADJUDICATION RULES

26. BCCI was not granted a reasonable opportunity of being heard as mandated under Section 16(1) of FEMA. A call notice dated 24 April 2018 fixed a "last and final" hearing for 7 May 2018. However, the said notice was received by BCCI only on 30 April 2018, which was a holiday in Maharashtra. Effectively, BCCI was given only three working days to prepare its defence, collect documents, file evidence, and address eleven Show Cause Notices. Such limited time cannot constitute a real or reasonable opportunity of hearing.

27. The alleged contraventions were not properly explained to BCCI as required under Rule 4(4) of the Foreign Exchange Management (Adjudication, Proceedings and Appeal) Rules, 2000.

28. BCCI was also denied an opportunity to produce documents and file evidence as contemplated under Rule 4(5) of the Rules. Its application seeking supply of documents and materials referred to in the Complaint was rejected without justification. Similarly, BCCI's request for cross-examination of persons whose statements were relied upon in the Complaint was rejected, despite the statements being used against BCCI.

29. The impugned order is unreasoned and contrary to Rule 4(9) of the Rules, as it fails to provide reasons for rejecting BCCI's request for documents as well as its request for adjournment of the hearing dated 7 May 2018. Further, Section 16(6) of FEMA requires disposal of complaints within one year from receipt. In the present case, the complaint

remained pending for nearly six and a half years before the impugned order was passed.

ADJUDICATION PROCEEDINGS WERE ARBITRARY AND VIOLATIVE OF NATURAL JUSTICE

30. The Adjudicating Authority travelled beyond the scope of Show Cause Notice No. 1 and the Complaint while passing the impugned order. Neither the Complaint nor any of the eleven Show Cause Notices alleged that the transactions were "Capital Account Transactions" or that BCCI had incurred a contingent liability. Indeed, none of the notices even used the expression "Capital Account Transaction". Consequently, BCCI had no occasion to meet such allegations either in reply or during oral submissions.

31. Likewise, the allegation that BCCI delayed repatriation of ticket sale revenue was never part of Show Cause Notice No. IX. This allegation was raised for the first time in the impugned order itself. BCCI was thus denied its statutory right to respond.

32. The proceedings were also conducted in a discriminatory and non-uniform manner vis-à-vis co-noticees. While one co-noticee was granted cross- examination of certain witnesses, BCCI was denied the same relief. Certain co-noticees were further granted an additional opportunity of hearing after the so-called final date, whereas BCCI was denied similar treatment.

FACTUAL INACCURACIES IN THE IMPUGNED ORDER

33. The Adjudicating Authority wrongly held that BCCI had opened and maintained the "CSA Pty Ltd - IPL SA" bank account in South Africa and had made payments directly to third-party vendors there. In fact, no subsidiary or bank account in the name of IPL (SA) Pty Ltd belonging to BCCI existed in South Africa. The account in question was opened and operated by CSA. Under the CSA Hosting Agreement, BCCI had no control over debits or credits in that account. BCCI merely had a contractual right to approve and audit expenses incurred by CSA to ensure that no unnecessary expenditure is incurred. All payments to third-party vendors in South Africa were made directly by CSA.

34. The Adjudicating Authority further erred in treating the transactions as "borrowing" or "lending" under Section 6(3)(d) of FEMA. There is no evidence on record of any loan or borrowing arrangement between BCCI and CSA. No loan agreement existed. Mere debit and credit entries in books of accounts cannot establish borrowing. The indebtedness without advancement of money in return for a promise of repayment does not constitute a loan.

35. The amount shown in BCCI's books as payable to CSA as on 31 March 2010 represented only the net amount after adjustment against sums receivable from CSA from ticket sales. The actual amount payable to CSA was INR 48,56,00,781, which was duly remitted.

NO DELAY IN REPATRIATION OF TICKET REVENUE OR POURING RIGHTS REVENUE

36. No allegation regarding delayed repatriation of ticket revenue formed part of Show Cause Notice No. IX. Such allegation was introduced only in the impugned order. In any event, CSA had withheld payment of ticketing revenue due to pending settlement of amounts payable by BCCI to CSA. The right to claim such ticket revenue crystallized only after final settlement on 27 August 2010, whereafter the amount was repatriated. Similarly, revenue from Pouring Rights had in fact been repatriated to India. There existed a dispute between CSA and the stadium owners in South Africa concerning such rights. BCCI took all necessary steps and eventually succeeded in repatriating the said revenue. Mere delay in repatriation, without more, is insufficient to attract penalty.

WITHOUT PREJUDICE, PENALTY OUGHT TO BE REDUCED OR NOT LEVIED

37. Assuming without admitting that any technical contravention of FEMA occurred, the same was inadvertent and without dishonest or questionable motive. A mere breach of statutory obligation does not automatically justify penalty. To impose penalty, it must be shown that BCCI acted deliberately in defiance of law, dishonestly, contumaciously, or with conscious intent to defeat the law.

38. The following mitigating factors deserve consideration:

1. No document in the Complaint establishes bad faith or deliberate non- compliance by BCCI.

2. All transactions were routed through formal banking channels with the knowledge and satisfaction of the Authorized Dealer bank.

3. BCCI fully cooperated with the Enforcement Directorate during investigation and adjudication.

4. BCCI is a non-profit society, and its revenues are used solely for promotion of cricket and welfare of players.

5. There is no allegation of siphoning or diversion of funds.

6. Any lapse, if at all, arose from ignorance of regulatory requirements rather than mala fide intent.

7. BCCI brought substantial foreign exchange into India, including approximately INR 335 crores from broadcast/media rights and INR 26.79 crores from sale of tickets arising from IPL-2.

In these circumstances, no penalty ought to be imposed, or alternatively, any penalty imposed deserves substantial reduction.

Submissions of appellant Lalit Modi

Background of Proceedings.

39. Learned counsel for the appellant submitted that on 16.11.2011, the Enforcement Directorate filed a complaint alleging contraventions of various provisions of the Foreign Exchange Management Act, 1999 ("FEMA") by Board of

Control for Cricket in India (CBCCT) Pursuant to the said complaint, twelve Show Cause Notices were issued. Out of these, eleven notices were issued to BCCI and individuals associated with BCCI, while the twelfth notice was issued to the Authorised Dealer of BCCI, namely State Bank of India and its Chief Manager.

40. The adjudication proceedings culminated in the impugned order dated 31.05.2018. By the said order, out of the eleven Show Cause Notices, penalties. were imposed upon the Appellant in six matters, aggregating to Rs. 10,65,00,000/- Aggrieved by the imposition of penalties in these six notices, the Appellant, Lalit Modi, has preferred six separate appeals before this Tribunal.

41. No penalty was imposed upon the Appellant in Show Cause Notice No. 8, which related to remittances made by BCCI after the suspension of the Appellant on 26.04.2010. Likewise, no penalty was imposed in Show Cause Notice No. 11. These instances themselves indicate that transactions undertaken after the Appellant's suspension were outside his control and responsibility. Remittances Made by BCCI Were Current Account Transactions and not Capital Account Transactions.

42. The impugned order proceeds on a fundamentally erroneous premise by treating remittances made by BCCI to Cricket South Africa ("CSA") as “capital account transactions” instead of “current account transactions”. The learned

Adjudicating Authority held that the remittances constituted a "contingent liability" and, solely on that basis, classified them as “capital account transactions”. This conclusion is ex facie unsustainable and contrary to law.

43. The remittances made by BCCI to CSA cannot, by any stretch of imagination, be regarded as contingent liabilities. A contingent liability is one that may or may not arise depending upon the occurrence of an uncertain future event. Where the future event is certain and concluded, the liability cannot be described as contingent.

44. In the present case, the holding of the second season of the Indian Premier League 2009 in South Africa between 10.04.2009 and 24.05.2009 was a definite and concluded event. Under the agreement executed between BCCI and CSA on 30.03.2009, the arrangement was on a cost-plus-fee basis, and liabilities arising therefrom were definite and accrued. The first remittance itself was made on 31.03.2009, after execution of the agreement through the Authorised Dealer with approval of the then Honorary Secretary, N. Srinivasan. A liability does not become contingent merely because its precise quantification or final settlement was to occur at a later date.

45. The Hon'ble Supreme Court in ***Bharat Earth Movers v. CIT*** reported in 2000 (6) SCC 645 has held as under:

> “*The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be*

certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain".

46. Accordingly, in the present case, conducting IPL in South Africa was a certain event giving rise to definite liabilities. Only the final quantification remained to be settled later. Therefore, the finding of the Adjudicating Authority that the remittances represented contingent liability, and hence capital account transactions, is wholly erroneous.

47. Once the transactions are correctly appreciated as current account transactions, they squarely fall within the permissive framework of Section 5 of FEMA, under which all current account transactions are permissible except those specifically restricted by the Central Government under the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

48. It is not even the case of the Respondent that any of the remittances made by BCCI to CSA were prohibited or restricted under the said Rules. All remittances were routed through an Authorised Dealer, which itself confirmed that the transactions were permissible and did not require prior approval of the Reserve Bank of India. Therefore, the very foundation of the impugned finding collapses.

49. The Appellant stood suspended from BCCI-IPL on 26.04.2010. Consequently, he cannot be made liable for any act, omission, or liability arising thereafter. Any remittances made after his suspension, including the last remittance dated 27.08.2010, had no connection whatsoever with the Appellant, and no liability can be attributed to him for actions taken after his removal.

50. The Appellant was never an office bearer of BCCI. Under the Memorandum and Rules of BCCI. The term "Office Bearer" is specifically defined to include only the President, Honorary Secretary, Honorary Joint Secretary, and Honorary Treasurer. Admittedly, the Appellant never held any of these positions.

51. The Appellant was only the Chairman of the IPL Sub-Committee, which was one among several sub-committees of BCCI, such as finance, legal, and office bearers under the BCCI Rules committees. This position does not fall within the defined category of office bearers under the BCCI Rules.

52. Since the Appellant was not an office bearer, to do the management, governance, or conduct of BCCI's affair for statutory compliance, including FEMA compliance, he could not have been made responsible by reason of his chairmanship of a sub-committee. Even the impugned order does not record any finding that the Appellant was an office bearer of BCCI.

No Financial Powers - No Role in Remittances

53. The Appellant had no financial powers whatsoever. He had no authority to operate BCCI bank accounts, no power to sign cheques, and no role authorising or effecting foreign exchange remittances. He neither had the duty nor authority to seek, obtain, or ensure regulatory approvals under FEMA.

54. All financial decisions and statutory compliances were admittedly within the exclusive domain of the Secretary and Treasurer of BCCI. The remittances from BCCI to CSA were made through the Treasurer and the Authorised Dealer upon authorisation of the Secretary. Further, the last remittance was made on 27.08.2010, whereas the Appellant had already been suspended on 26.04.2010. Therefore, he had no role, control, or involvement in any remittance made thereafter.

Liability Sought Only Through Section 42(1)

55. The Respondent has sought to proceed against the Appellant only by invoking vicarious liability under Section 42(1) of FEMA. Having invoked that provision, the Respondent is strictly bound by its statutory ingredients and limitations.

Mandatory Ingredients Not Satisfied

56. For attracting vicarious liability under Section 42(1), it is mandatory to record a finding that the person concerned was, at the relevant time, both "in charge of" and "responsible to" the company for the conduct of its business. In absence of a clear and categorical finding on these twin requirements, no vicarious liability can be fastened in law.

No Such Finding Against the Appellant

57. In the present case, the impugned order contains no finding that the Appellant was in charge of, or responsible to, for conduct of BCCI's business.

58. On the contrary, the impugned order itself records that under BCCI Rules only the President, Secretary, Treasurer, and Joint Secretary were responsible office bearers. It further records that compliance with FEMA requirements was the responsibility of the Secretary and Treasurer. It is also acknowledged that all financial decisions concerning IPL, including approvals and disbursement of funds were taken by N. Srinivasan. These findings clearly exclude the Appellant from the scope of Section 42(1).

59. Despite the above findings, liability has been imposed merely on the premise that the IPL Chairman held an important position and exercised control over IPL affairs in South Africa. Such reasoning is wholly alien to Section 42(1). Supervisory involvement in IPL matters cannot substitute the statutory requirement of being in charge of, and responsible for, the business of BCCI itself. There is no finding that the Appellant had financial powers, authority over bank accounts, or any role in foreign exchange remittances or regulatory approvals.

Supreme Court Law on Vicarious Liability

60. The Hon'ble Supreme Court has consistently held that vicarious liability cannot be presumed merely from designation. In ***Susela Padmavathy Amma v. Bharti Airtel***

Ltd. reported in 2024 (12) SCC 1) the Court reiterated that even a Director is not automatically responsible for day-to-day affairs of a company. Liability can arise only where specific allegations exist and established that the person was in charge of and responsible for the conduct of business. Similar principles were laid down in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*** reported in (2005) 8 SCC 89; ***K.K. Ahuja v. V.K. Vora*** reported in (2009) 10 SCC 48 and ***National Small Industries Corpn. Ltd. v. Harmeet Singh*** reported in (2010)3 SCC 330.

Foundation of Liability Entirely Absent

61. Accordingly, the very foundation for fastening vicarious liability under Section 42(1) upon the Appellant is absent. The impugned order imposes liability in a manner wholly dehors the statutory requirement.

Violation of Principles of Natural Justice

62. The Appellant submits that the entire adjudication proceedings stand vitiated due to gross violation of principles of natural justice and non-compliance with the mandatory provisions of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000.

Violation of Rule 4

63. `At the very threshold, there was a clear violation of Rule 4. At no stage did the Adjudicating Authority explain to the Appellant the precise contraventions alleged against him or specify the exact statutory provisions under which such

contraventions were said to arise. Failure to communicate the exact nature of charges strikes at the very root of the adjudication proceedings.

Violation of Rule 5 and Denial of Defence Rights

64. There was further violation of Rule 5, which safeguards the right of a noticee to lead defence evidence. The Appellant was denied the opportunity to cross-examine an official of the Reserve Bank of India whose opinion had been relied upon by the Enforcement Directorate on incomplete and incorrect facts regarding an alleged entity said to be IPL-SA Pty Ltd., which was non-existent. The request to summon the concerned RBI official was rejected without cogent reasons.

65. The Appellant was also prevented from placing on record the affidavit of a defence witness whose testimony was directly relevant to the Appellant's role in BCCI and the applicability of Section 42(1) of FEMA. Thus, his statutory right to adduce defence evidence was extinguished.

66. Further, copies of replies filed by the principal noticee BCCI, the Authorised Dealer, and other noticees were denied to the Appellant, despite the fact that proceedings against him were based only on alleged vicarious liability. Such denial amounts to complete violation of natural justice and renders the entire adjudication proceedings unsustainable in law.

Submissions on behalf of the respondent:

1**. Failure of the Authorised Dealer to Exercise Due Diligence**

67. It was submitted that State Bank of India, being the Authorized Dealer, failed to exercise the degree of due diligence required under law while processing the impugned foreign remittances. The learned Adjudicating Authority, after considering the submissions advanced on behalf of the Appellants, rightly concluded that the Bank failed to properly examine the bona fides of the transactions undertaken by Board of Control for Cricket in India ("BCCI"). The Bank acted in casual and negligent manner in permitting remittances without exercising the caution, scrutiny, and vigilance expected from an Authorised Dealer under FEMA.

2. Transfer Instructions Issued Even Before Execution of Agreement

68. It was submitted that the record clearly reflects that even prior to execution of the agreement dated 30.03.2009, Shri Pandove had already submitted two transfer instructions to State Bank of Travancore on 28.03.2009 for telegraphic transfer of US$ 80,00,000. The said amount was proposed to be remitted through two separate transfers of US$ 70,00,000 and US$ 10,00,000 respectively.

This clearly establishes that the process of remitting funds from BCCI to Cricket South Africa ("CSA") had commenced even before the agreement was finalised and executed.

3. Agreement Operative Only During Tournament Period

69. It was submitted that under Clause 5(a) of the “Heads of Agreement”, the agreement was operative only for the duration

of the tournament i.e. from 18.04.2009 to 24.05.2009. Accordingly, any remittance made beyond the stipulated contractual period would fall outside the agreed terms and timeline of the contract. Therefore, remittances made after expiry of the tournament period cannot automatically be treated as transactions covered by the said agreement.

4. Remittances Received After Tournament Period

70. It was submitted that two remittance requests were received by State Bank of India after 24.05.2009, namely on 10.08.2009 and 27.08.2010. These dates clearly demonstrate that the remittances were sought well after the contractual and tournament period. These circumstances establish that the said transactions were not "current account transactions" but were in the nature of "capital account transactions".

71. It was further submitted that there existed apparent inconsistencies in the stated purpose of remittances as mentioned in the A-2 Forms and in the separate transaction instructions submitted by BCCI. These discrepancies either went unnoticed or were ignored by the Bank and its officials while processing the remittances. Had such inconsistencies been detected and properly questioned at the relevant time, the Bank could have restrained BCCI from effecting the remittances. It is further submitted that none of the A-2 Forms submitted by BCCI in relation to these remittances were accompanied by supporting documents such as invoices, vouchers, or any documentary material justifying the

remittances sought. Instead, only vague and general descriptions such as "IPL-2009 Tournament Expenses", "Operational Fee", and "Cost for Hosting IPL 2009" were mentioned as the purpose of remittance in the relevant forms. Such vague descriptions ought to have prompted further scrutiny by the Bank.

6. Responsibility of Shri A.K. Nazeer Khan

72. It was submitted that A.K. Nazeer Khan, being the then Chief Manager, was the person responsible for the conduct of the Bank's affairs in relation to the subject transactions at the relevant time. This stands admitted by the Appellant in his statement before the Department. As the officer handling these remittances, it was his primary duty to secure adequate supporting documents, verify the nature of the remittances, and satisfy himself regarding their legality and permissibility before allowing the transactions. His failure to do so amounts to dereliction of duty.

7. Contradictory Explanation Given in Statement

73. It was further submitted that while explaining the remittance of USD 1,03,62,799.42 (ZAR 7,61,48,959) made from the EEFC Account No. 57027644400 of BCCI, Shri A.K. Nazeer Khan, in his statement dated 10.12.2010, stated that the said remittance was made to CSA on the instructions of BCCI towards "the balance and final payment of expenses in IPL 2009." However, the corresponding A-2 Forms described the purpose of the remittance differently, namely as

"Operational Fee and Cost for Hosting IPL 2009." It is therefore submitted that there exists a clear contradiction between the purpose stated in the official A-2 Forms and the explanation subsequently given by Shri A.K. Nazeer Khan in his statement. It is, therefore, prayed that this Hon'ble Tribunal may be pleased to dismiss the appeals filed by the Appellants.

N. Srinivasan

74. It was submitted that the learned Adjudicating Authority has dealt extensively with the status of Board of Control for Cricket in India ("BCCI") as a company in the adjudication order. The letters dated 09.11.2015 and 19.11.2015 issued by the Adjudicating Authority to all noticees, the objection raised on behalf of the noticees that BCCI was a society registered under the Tamil Nadu Societies Registration Act, 1975, and was an association of associations, and therefore Sections 42(1) and 42(2) of FEMA were inapplicable-was specifically rejected.

75. The Adjudicating Authority observed that the order passed by the Hon'ble Bombay High Court in the case ***Shashank Manohar*** (supra) had clarified the issue and made it clear that BCCI was required to be treated as a company for the purposes of FEMA proceedings.

76. It is necessary to note that the Hon'ble Bombay High Court, while dealing with the said issue, observed that it would be too narrow and artificial to contend that proceedings against BCCI were not maintainable merely because BCCI was

not a company, firm, or association of persons, but an association of associations. The Court referred to the definition of "person" under Section 2(u) of FEMA, which is inclusive in nature and covers individuals, companies, firms, associations of persons, bodies of individuals, and every artificial juridical person. Accordingly, the Hon'ble Court held that both BCCI as well as the IPL Governing Council fall within the meaning of "person" under Section 2(u) of FEMA. Therefore, BCCI is amenable to proceedings under FEMA, and the objections raised in that regard are wholly untenable.

77. It was submitted that so far as the persons responsible for BCCI are concerned, the Appellant, N. Srinivasan, was serving as the Honorary Secretary of BCCI at the time of the alleged contraventions. The records of the case clearly establish that the “Heads of Agreement” dated 30.03.2009, which formed the very basis upon which remittances were made by BCCI to Cricket South Africa ("CSA"), was signed by Shri N. Srinivasan in his official capacity as the then Secretary of BCCI. This itself demonstrates his active involvement, responsibility, and authority in relation to the transactions in question.

78. It was further revealed from the statements of Shri Prasana Kannan, who was then Manager, Business Commercial IPL, and Shri Sunder Raman, who was then Chief Operating Officer of IPL, that all invoices, bills, vouchers, and other payment documents relating to vendors and individuals in South Africa were finally verified and approved by Shri N.

Srinivasan. It was also revealed that Shri N. Srinivasan played a crucial and decisive role in the finalisation of the agreement with CSA, which was ultimately signed by him as Secretary of BCCI. Further, Shri M.P. Pandove, in his statement before the Department, stated that instructions for making payments to CSA were received by him from the then Secretary of BCCI, namely Shri N. Srinivasan, and it was upon such instructions that funds were remitted to CSA. These facts clearly indicate that the Appellant was directly involved in the financial and operational decisions concerning the impugned remittances.

79. The learned counsel for Shri M.P. Pandove further stated that pursuant to decisions of the IPL Governing Council and Working Committee, BCCI transferred funds on the strength of authorisation of the IPL Chairman and approval of the Honorary Secretary. Thus, while certain decisions may have originated from committees, the actual execution of remittances required approval from the Appellant in his capacity as Honorary Secretary.

80. The remittances made by BCCI to CSA were ultimately effected only after final approval and direction from the then Honorary Secretary, Shri N. Srinivasan. It was also revealed during investigation that the Honorary Secretary was the final authority so far as financial dealings of BCCI were concerned. Since IPL was only a sub-committee of BCCI, the Honorary Secretary exercised the powers vested in him while authorising and approving all remittances to CSA. Therefore, the Appellant

cannot disassociate himself from the transactions in question, as the evidence on record shows that he exercised effective authority and control over the financial decisions connected with IPL-02 in South Africa.

81. The Working Committee had taken a decision to open a separate bank account in South Africa in the name of BCCI for carrying out all transactions relating to the conduct of IPL-02 in South Africa through that account. However, no steps were taken by Shri N. Srinivasan to implement the said decision of the Emergent Working Committee. Instead, he chose to enter into an agreement with CSA under which an alternate mechanism was devised, whereby an account in the name of IPL-SA was opened through CSA, and all IPL-related transactions were to be routed through the said designated account. The relevant clauses were deliberately incorporated in the agreement to ensure that BCCI exercised complete and absolute control over the operation of the said account.

82. This conduct demonstrates that the Appellant was fully aware of the financial arrangements, actively structured the mechanism for routing funds, and exercised authority over the manner in which IPL transactions in South Africa were to be conducted.

M.P. Pandove

83. It was submitted that the allegation of the appellant that no opportunity of hearing was granted is wholly misconceived, misleading, and contrary to the record. The learned

Adjudicating Authority afforded the Appellant repeated and adequate opportunities of hearing while strictly following the procedure prescribed under the provisions of the Foreign Exchange Management Act, 1999 ("FEMA") and the applicable rules. The proceedings were conducted fairly, and the Appellant was given sufficient opportunity to present his defence through counsel as well as through written submissions.

84. The allegation of the Appellant that the call notice dated 24.04.2018 was the first personal hearing granted in the matter is entirely false, misleading, and untenable.

85. The record shows that a call notice dated 06.06.2013 had already been issued to the Appellant fixing the matter for personal hearing on 19.06.2013. In response thereto, a letter dated 18.06.2013 was received from the Appellant's Advocates seeking adjournment of the scheduled hearing which was granted.

86. Another call notice dated 15.04.2015 was issued to the Appellant fixing the matter for personal hearing on 15.06.2015. On the said date, Advocates from M/s Beri & Co. appeared on behalf of the Appellant before the Adjudicating Authority sought an adjournment in order to file a further reply to all the Show Cause Notices. Considering the request made by the Appellant's counsel, the next date of hearing was fixed for 29.07.2015. This itself shows that adequate

accommodation and procedural fairness were extended to the Appellant.

87. The written submissions were then filed on behalf of the Appellant on 20.07.2015. Thereafter, on the next date of hearing, namely 29.07.2015, Advocates from M/s Beri & Co., Mumbai again appeared before the Adjudicating Authority and undertook to file additional written submissions by 04.08.2015. Accordingly, the Appellant was not only granted oral hearing but was also repeatedly permitted to supplement his case through written pleadings.

88. The written submissions dated 04.08.2015 were thereafter filed by the Advocates for the Appellant. Subsequently, by letter dated 09.11.2015, the Adjudicating Authority issued a communication to the noticees dealing with and clarifying the objections raised in the Appellant's two written submissions dated 20.07.2015 and 04.08.2015. This demonstrates that the objections raised by the Appellant were not ignored, but were specifically considered and answered by the Authority.

89. A fresh call notice dated 12.05.2017 was issued, fixing the matter for personal hearing before the Adjudicating Authority on 02.06.2017. In response thereto, a letter dated 26.05.2017 was received from the Appellant, Shri M.P. Pandove, seeking adjournment of the hearing. Accordingly, the next date of hearing was fixed for 27.07.2017.

90. Again, in response to the said notice, a letter dated 27.07.2017 was received from M/s Beri & Co., Advocates, seeking further adjournment on account of certain developments in a Writ Petition filed by two other noticees before the Madras High Court. Thus, even in 2017, hearings were fixed but adjournments were sought by the Appellant himself.

91. Another call notice dated 24.04.2018 was issued to all noticees, including the Appellant, fixing the matter for final hearing on 07.05.2018. In the said notice, the Appellant was also informed that the Hon'ble Bombay High Court, by order dated 30.01.2018, had directed the Adjudicating Authority to conclude the adjudication proceedings on or before 31.05.2018. Therefore, the hearing scheduled for 07.05.2018 was in compliance with judicial directions and was not the first hearing in the matter.

92. It was also submitted that a joint hearing of all noticees was held on 07.05.2018 before the Adjudicating Authority. On behalf of the Appellant, Mr. Mustafa Doctor, learned Senior Counsel, along with Mr. Murari Madekar and Mr. Sachin Kudalkar, Advocates instructed by M/s Madekar & Co., appeared and advanced submissions during the personal hearing. Thus, the Appellant was effectively represented by senior and experienced legal counsel.

93. It was further submitted that after conclusion of the personal hearing held on 07.05.2018, a letter dated

08.05.2018 was received from the Advocates for the Appellant stating that detailed written submissions would be filed within one week. Thereafter, detailed written submissions dated 15.05.2018 were duly filed on behalf of the Appellant. This clearly demonstrates that even after oral hearing, further opportunity was granted to place detailed submissions on record.

94. In view of the foregoing facts, it is evident that the call notice dated 24.04.2018 fixing hearing on 07.05.2018 was not the first personal hearing, as falsely alleged by the Appellant. The Appellant was granted multiple opportunities of personal hearing spread over several years and had also filed multiple written submissions during the course of proceedings. Accordingly, the contention that only one hearing was granted is misleading, factually incorrect, and devoid of merit.

95. It was submitted that the Appellant's contention that no opportunity was granted for inspection of original records is equally misconceived and untenable. This issue was raised for the first time by the learned Senior Counsel for the Appellant, Mr. Mustafa Doctor, through an application dated 07.05.2018 during the course of personal hearing, seeking inspection of certain documents. It was also stated that an earlier request had been made by letter dated 04.05.2018.

96. The Adjudicating Authority informed learned counsel that the said request had been duly examined and it was found that the complaint, along with copies of all relied-upon

documents, had already been furnished to the Appellant long back. In these circumstances, a request seeking inspection of the same documents after an unexplained delay of approximately seven years was found to be unjustified and was therefore rejected.

97. It was further submitted that the charges against the Appellant were fully explained to learned counsel, and learned counsel was granted complete opportunity to argue the matter, which he did at length.

98. In view of the above, it was submitted that the Appellant had been duly informed of the charges and had also been supplied copies of the relevant documents. Therefore, the allegation that documents were not made available for inspection is wholly misconceived and unsustainable.

99. With regard to the imposition of penalty, the learned Adjudicating Authority imposed penalty upon the Appellant only after considering all evidence available on record and after granting every opportunity to explain the alleged contraventions of FEMA provisions. However, despite such opportunities, the Appellant failed to furnish any satisfactory explanation regarding the violations.

100. The appellant, being the Honorary Treasurer of Board of Control for Cricket in India at the relevant point of time, was directly responsible for and actively involved in the financial affairs connected with the conduct of IPL- 02 held in South Africa. The Appellant was therefore the person responsible for,

and in charge of, the relevant financial matters at the time when the alleged contraventions took place.

BCCI

Transactions Between BCCI and CSA were Not "Current Account Transactions" as contended by the Appellant

101. It was submitted that the Appellant, Board of Control for Cricket in India ("BCCI"), had contended that the subject remittances made to Cricket South Africa ("CSA") were in the nature of current account transactions and, therefore, required no prior permission from the Reserve Bank of India ("RBI"). On that basis, the Appellant claimed that the charges alleged under FEMA should fail. Those contentions were specifically considered and categorically rejected by the learned Adjudicating Authority. The Authority held that the remittances in question:

a) were not supported by any approved budget at the time of execution of the Heads of Agreement;

b) were open-ended, indeterminate, and contingent in nature; and

c) continued even after the conclusion of IPL-02. Accordingly, the plea of the Appellant was rightly rejected.

102. It was submitted that at the time of signing the agreement, no approved or fixed budget existed with respect to the expenditure proposed to be incurred. In the absence of any approved budget, the quantum of expenditure remained unrestricted, uncertain, and discretionary. Such an

arrangement created contingent liabilities outside India and therefore squarely falls within the definition of capital account transactions under Section 2(e) of FEMA.

103. The facts on record clearly establish that the subject remittances were not backed by any budgeting exercise and were sent as advances, to be adjusted later on the basis of future appropriation of bills, vouchers, records, and other documents. The remittances were made under eight separate instalments. However, no supporting evidence was produced by BCCI before the Authorised Dealer to correlate any specific remittance with any identified head of expenditure. Despite this, all remittances were declared under a general description such as "Operational Fee & Cost for Hosting IPL 2009."

104. It was submitted that the remittances were therefore contingent liabilities, as no real- time assessment of expenses was undertaken, nor were supporting records furnished to the Authorised Dealer before the remittances were effected.

105. The dates of remittances are also significant. As per the record, remittances totalling US$ 3,55,00,000 were made in six instalments between 31.03.2009 and 23.05.2009. Thereafter, an additional remittance of US$ 40,00,000 was made on 10.08.2009, followed by another remittance of US$ 1,03,62,799.42 on 27.08.2010.

106. It was further submitted that even before execution of the Heads of Agreement with CSA on 30.03.2009, Shri M.P. Pandove, then Honorary Treasurer of BCCI, had submitted two

transfer instructions to State Bank of Travancore on 28.03.2009 for telegraphic transfer of a total sum of US$ 80,00,000 through two separate remittances of US$ 70,00,000 and US$ 10,00,000.

107. This clearly demonstrates that BCCI had already commenced the process of transferring funds to CSA even prior to formal execution of the agreement.

108. It was further submitted that the remittances of US$ 40,00,000 on 10.08.2009 and US$ 1,03,62,799.42 on 27.08.2010 were made after conclusion of IPL-02 in South Africa. The final remittance was made after a delay of approximately fifteen months without any justification whatsoever.

109. It was submitted that under Clause 5(a), the agreement was to remain in force only during the IPL tournament period, namely from 18.04.2009 to 24.05.2009. The facts clearly establish that there was no consistent pattern, discipline, or procedure followed by BCCI while making remittances to CSA. The remittances were not in conformity with the terms and conditions of the agreement itself.

110. The agreement dated 30.03.2009 between BCCI and CSA was not a genuine commercial agreement for trade or services creating mutual rights and obligations. It was rather created as a mechanism designed to circumvent the provisions of FEMA in relation to foreign exchange transferred by BCCI to

CSA and to lend an appearance of legitimacy to such remittances.

111. Under the agreement, BCCI was required to make payment of US$ 30,00,000 to CSA as a fixed fee towards service charges within fifteen days of the last match of IPL-2009. However, no remittance corresponding to such fixed service fee was separately made.

112. Similarly, under Clause 4(c) of the agreement, BCCI was required to pay US$ 25,00,000 to CSA within seven days of signing the agreement for meeting expenses of IPL-02. Yet, the remittance details do not disclose any specific remittance made in compliance with this stipulation. These facts clearly indicate that the remittances actually made were not in tune with the contractual obligations contained in the agreement. Instead, BCCI arbitrarily remitted an aggregate amount of US$ 4,98,62,799.42 (equivalent to Rs. 243,45,30,781) during the period from 31.03.2009 to 27.08.2010 without disclosing the true purpose of remittances.

113. It is also that while seeking remittance through the Bank, BCCI did not disclose to the Authorised Dealer that the amounts were not for any goods or services corresponding to the value remitted, but were meant for crediting amounts into Account No. 001640267 in the name of Cricket (SA) Pty Ltd.

114. It is pertinent to note that BCCI was fully aware of the legal requirement to open a separate bank account in its own

name in South Africa only with prior approval of RBI for meeting expenditure relating to IPL-02.

115. This fact is evident from the minutes of the Emergent Working Committee meeting held on 22.03.2009, wherein a proposal was made by Lalit Modi for opening an account of US$ 10 million to meet IPL expenses abroad. In response, Shashank Manohar stated that such account would be opened only after obtaining clearance from RBI and that it would be operated by the Honorary Treasurer Shri M.P. Pandove.

116. Thus, BCCI and its officials were fully conscious of the legal necessity of RBI approval. Despite such knowledge, BCCI chose to route funds through an account operated through CSA while retaining de facto control over it. The agreement specifically provided that no payment could be made from that account without explicit instructions from BCCI.

117. The BCCI exercised effective and de facto control over the said account, including authority over debits, approval of vendors, supervision of expenditure, and reconciliation of accounts. This demonstrates that the account functioned substantially under BCCI's control despite not being opened in its own name with RBI approval.

118. It was further submitted that the transaction dated 27.08.2010 cannot by any standard be classified as a “Capital Account Transaction”, as contended by the Appellant. The remittance was made after a delay of approximately fifteen months from the conclusion of IPL-02, whereas the agreement

itself had come to an end on 24.05.2009. No explanation or justification has been furnished by the Appellant for such extraordinary delay.

119. In view of the above facts and findings, the contention of BCCI that the remittances were current account transactions is contrary to the record, contrary to the findings of the Adjudicating Authority, and untenable in law. The appeal is therefore liable to be dismissed.

120. It was submitted that the Appellant's contention that no opportunity of hearing was granted is wholly misconceived and misleading. The learned Adjudicating Authority granted every opportunity of hearing in accordance with FEMA provisions. A call notice dated 06.06.2013 was issued to BCCI fixing the matter for hearing on 19.06.2013. In response, a letter dated 17.06.2013 was received from the Appellant's Advocates, seeking adjournment. Another call notice dated 15.04.2015 fixed hearing on 15.06.2015. Advocates for the Appellant appeared and sought adjournment for filing replies to all Show Cause Notices. Upon request, the next date was fixed as 29.07.2015.

121. On 29.07.2015, the Advocates along with their Chartered Accountant appeared and undertook to file a `Note' on Arguments by 04.08.2015, which was duly filed. Thereafter, by communication dated 19.11.2015, the Adjudicating Authority responded to and clarified each objection raised in the written note. A fresh call notice dated 26.04.2017 fixed hearing on

01.06.2017. By letter dated 26.05.2017, M/s Cyril Amarchand Mangaldas sought adjournment for eight weeks due to change in management of BCCI following orders of the Hon'ble Supreme Court. The matter was then fixed on 27.07.2017, but further adjournment was sought due to developments in writ proceedings before the Madras High Court. Another call notice dated 24.04.2018 fixed the matter for final hearing on 07.05.2018. BCCI was also informed that the Hon'ble Bombay High Court had directed conclusion of the proceedings by 31.05.2018.

122. Learned Senior Counsel submitted that two letters dated 04.05.2018 had been sent seeking short adjournment and supply of documents. These applications were examined and rightly rejected, as all relied-upon documents had already been supplied earlier and no sufficient ground for adjournment existed. The contention that no opportunity was given to inspect original records is also misconceived. The issue was raised only through an application dated 04.05.2018 at a belated stage after long delay. The Appellant was fully informed of the charges and had already received copies of relevant documents. Therefore, the allegation regarding non- supply of documents or denial of inspection is untenable.

Case of Lalit Modi

123. The Appellant, Lalit Modi, was the chief architect behind the organization and conduct of IPL-2 in South Africa. It is an

admitted position that the very concept of the Indian Premier League was the brainchild of the Appellant.

124. The Appellant himself placed the proposal before the Working Committee of Board of Control for Cricket in India ("BCCI") in its meeting held on 13.09.2007 for approval to launch the IPL. In the said meeting, it was resolved that a Governing Council would be constituted to deal with all matters relating to IPL. In the same meeting, the constitution of the Governing Council was approved, and it was decided that all decisions would be taken by majority vote of the Council. In the event of equality of votes, the Chairman of IPL would have a casting vote. It is submitted that at the relevant time, the Appellant was the Chairman of IPL and also one of the Vice- Presidents of BCCI.

125. It was submitted that the facts disclosed by officials of BCCI clearly demonstrate that the Appellant held a highly responsible and controlling position in relation to the conduct of IPL in South Africa. The Appellant was involved in processing remittances, bills, vouchers, and invoices raised by vendors in South Africa. He also exercised control over the remittances made by BCCI to Cricket South Africa ("CSA") against such bills and invoices. These facts establish that the Appellant was deeply involved in the operational and financial arrangements concerning IPL-2.

126. The Appellant's contention that he was not an office bearer of BCCI stands negated by his own conduct and role in

the transactions. The Appellant personally held discussions with officials of CSA before execution of the agreement between BCCI and CSA. He remained at the forefront of the organization in South Africa. In fact, the Appellant travelled to South Africa and participated in negotiations with CSA along with other BCCI officials for holding the tournament there. These facts have also emerged from statements recorded from various office bearers and officials.

127. Shri Prasanna Kannan, in his statement before the Department, stated that all decisions regarding appointment of vendors and approval of invoices were taken by Shri Lalit Modi and thereafter sent to him for further processing and payment. He further stated that vendors used to negotiate and finalise the scope of services and cost of services with Shri Lalit Modi. Thereafter, the Appellant would either approve the same or send communications on the basis of which payments were processed. Such communications were often transmitted through e-mails to the concerned parties. This clearly indicates that the Appellant exercised substantial control over expenditure decisions and payment approvals.

128. The records reveal that the Appellant was the final authority in approving bills and vouchers raised by vendors and other entities, against which various remittances were made by BCCI to the account of CSA for onward transfer into the dedicated bank account opened in the name of IPL-SA. Further, the Appellant held discussions with CSA officials

before signing of the agreement dated 30.03.2009, and the agreement itself contained specific clauses regarding opening of a dedicated bank account in the name of IPL-SA. Thus, it is apparent that the opening of the IPL-SA account was an act done in pursuance of the agreement, and the Appellant was fully aware of and involved in the opening as well as operation of the said account.

129. The very fact that the agreement was signed after consultations held by the Appellant with CSA officials and other BCCI office bearers lends further support to the conclusion that the terms and conditions of the agreement carried the approval of the Appellant. This confirms that the Appellant was fully aware of the mode of funding adopted, namely that the dedicated IPL-SA account was to be funded through remittances made by BCCI into another account of CSA. The extent of supervision and control exercised by the Appellant in processing bills, vouchers, invoices, and their eventual payment from funds deposited in the dedicated account is evident from the statements of Shri Prasanna Kannan and Shri Sunder Raman.

130. It is also observed that the dedicated account was opened after Shri Lalit Modi held meetings with CSA officials and after the agreement between BCCI and CSA was executed. Under clauses (c), (d), (e), and (f) of paragraph 4 of the agreement, the account structure was such as to enable BCCI to exercise de facto control over the account, which was in violation of

FEMA. It is pertinent to note that the Appellant was fully aware of the legal requirement for opening a separate bank account in BCCI's own name in South Africa only after obtaining approval from the Reserve Bank of India for meeting expenditure connected with IPL-2.

131. This fact is evident from the minutes of the Emergent Working Committee meeting of BCCI held on 22.03.2009, wherein Shri Lalit Modi requested approval for opening an account of US$ 10 million to meet expenses for staging IPL abroad. In response, Shri Shashank Manohar stated that such account would be opened after obtaining RBI clearance and would be operated by the Honorary Treasurer Shri M.P. Pandove.

132. Thus, the necessity of obtaining RBI approval for opening an overseas account was a well-known fact to the Appellant at the time the subject remittances were made to CSA.

133. In view of the above facts, it is respectfully submitted that the learned Adjudicating Authority rightly invoked Section 42(1) of FEMA in respect of the violations committed by BCCI. The adjudication order discusses in detail the responsibility and role of the Appellant in the findings recorded therein. Despite full opportunity, the Appellant failed to furnish any satisfactory explanation for the FEMA contraventions.

134. It was further submitted that the adjudication proceedings were conducted fully in consonance with the provisions of FEMA and due process of law was followed

throughout. The Appellant was granted ample opportunity to place replies on record and was also heard at length before the Adjudicating Authority. These facts are borne out from the official record of proceedings.

135. The request made by the Appellant for cross-examination was accepted by the Adjudicating Authority in respect of the complainant. With regard to other persons sought to be examined, the Advocates appearing for the Appellant were informed that the matter would be examined and an appropriate decision would be communicated. It was further submitted that as many as nine persons were permitted to be cross-examined by the Appellant. So far as the tenth person, namely Shri Ajay Kumar, an official of the Reserve Bank of India, is concerned, he was not a witness in the proceedings. Therefore, the request for his cross-examination was rightly rejected by the Adjudicating Authority.

136. The principles of natural justice were duly followed in the present case. The allegations raised by the Appellant regarding denial of fair opportunity are wholly devoid of merit. It is further submitted that the Appellant's contention that the impugned transactions constituted "Current Account Transactions" has already been examined and dealt with in the appeal preferred by Board of Control for Cricket in India. For the sake of brevity, the same submissions are not repeated herein. In view of the foregoing, the penalty imposed upon the Appellant is fully in consonance with and proportionate to the

provisions of FEMA. It is therefore most respectfully prayed that the present appeals filed by the Board of Control for Cricket in India be dismissed.

Findings of the Tribunal:

137. We have considered the rival submissions of the parties and scanned the record carefully.

138. The brief facts pertaining to the case have been referred in the initial paras while referring to the rival submissions of the parties. To appreciate the arguments for consideration of the rival submissions, it would be relevant to quote certain provisions of the Act of 1999 and different Regulations. Accordingly, we may quote Section 2(c), 2(e), 2(j), 5,6,10 and 42 of the Act of 1999 which are reproduced hereunder:

> *"2 (c) **"authorised person"** means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;*
>
> *(e) **"capital account transaction"** means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;*
>
> *(j) "**current account transaction**" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—*
>
> > *(i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,*

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

3. ***Dealing in foreign exchange, etc****.—Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—*

(a) xxxxx

(b) make any payment to or for the credit of any person resident outside India in any manner;

4. ***Holding of foreign exchange, etc****.—Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.*

5. ***Current account transactions****. —Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction:*

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

6. ***Capital account transactions.—****(1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.*

(2) The Reserve Bank may, in consultation with the Central Government, specify—

(a) any class or classes of capital account transactions, involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions:

(c) any conditions which may be placed on such transactions;

Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

(a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions; and

(c) any conditions which may be placed on such transactions.

*(3) ***Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations prohibit, restrict or regulate the following:—***

(a) to (c) x x x

(d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;

*[***Sub-section (3) omitted by Act 20 of 2015 w.e.f. 15.10.2019, vide S.O. 3715€, dated 15th October, 2019]***

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or

property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

(7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank".

8. ***Realisation and repatriation of foreign exchange.—*** *Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.*

9. ***Exemption from realisation and repatriation in certain cases****.—The provisions of sections 4 and 8 shall not apply to the following, namely:—*

(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;

(b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;

(d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

*10. **Authorised person**.—(1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.*

(2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.

(3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that—

(a) it is in public interest so to do; or

(b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder:

Provided that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a

reasonable opportunity of making a representation in the matter.

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

(5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

(6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction 8 or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

42. ***Contravention by companies****.—(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section— (i) "company" means any body corporate and includes a firm or other association of individuals; and (ii) "director", in relation to a firm, means a partner in the firm".

Schedule-II of FEMA (Current Account Transactions) Rules of 2000 is also quoted hereunder along with Rules 3 to 6 of the Rules of 2000:

TRANSACTIONS WHICH REQUIRE PRIOR APPROVAL OF THE CENTRAL GOVERNMENT ***[Substituted by G.S.R. 512(E), dated 27-7-2005, for "See rule 4"]*** **[see Rule 4)]**

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required

1. CulturalTours	Ministry of Human Resources Development, (Department of Education and Culture)
2. [Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings *[Substituted by S.O. 301(E), dated 30-3-2001]*	Ministry of Finance, (Department of Economic Affairs]
3. Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, (Chartering Wing)
4. Payment of import [through ocean transport] *[Inserted by G.S.R. 849(E), dated 27-10-2003]*by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b.and f.a.s. basis)	Ministry of Surface Transport, (Chartering Wing)
5. Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
6. [Remittance of hiring charges of transponders by - *[Inserted by G.S.R. 608(E), dated 13-9-2004]*	
(a) TV Channels	Ministry of Information and Broadcasting
(b) Internet Service providers	Ministry of Communication and Information Technology]
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
[* * *] *[Omitted by Notification No. G.S.R. 382 (E) dated 5.5.2010 (w.e.f. 16.12.2009)]*	[* * *] *[Omitted by Notification No. G.S.R. 382 (E) dated 5.5.2010 (w.e.f. 16.12.2009)]*
9. Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies, if the amount involved exceeds US $ 100,000.	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
[* * *] *[Item 10 omitted by G.S.R. 608(E), dated 13-9-2004]*	
11. Remittance for membership of P& I Club	Ministry of Finance, (Insurance Division).

"3. **Prohibition on drawal of Foreign Exchange** - Drawal of foreign exchange by any person for the following purpose is prohibited, namely :

(a) a transaction specified in the Schedule I; or

(b) a travel to Nepal and / or Bhutan; or

(c) a transaction with a person resident in Nepal or Bhutan;

Provided that the prohibition in clause (c) may be exempted by RBI subject to such term and conditions as it may consider necessary to stipulate by special or general order.

4. **Prior approval of Govt. of India** - No person shall draw foreign exchange for a transaction included in the Schedule II without prior approval of the Government of India:

Provided that this Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

5. Prior approval of Reserve Bank.-Every drawal of foreign exchange for transactions included in Schedule III shall be governed as provided therein :

Provided that this rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

6. (1) Nothing contained in rule 4 or rule 5 shall apply to drawal made out of funds held in Exchange Earners' Foreign Currency (EEFC) account of the remitter.

(2) Notwithstanding anything contained in sub-rule (1), restrictions imposed under rule 4 or rule 5 shall continue to apply where the drawal of foreign exchange from the Exchange Earners Foreign Currency (EEFC) account is for the purpose specified in items 10 and 11 of Schedule II, or item 3, 4, 11, 16 & 17 Schedule III, as the case may be".

139. The relevant provisions of the Act have been quoted to find out as to whether a case advanced by the appellants is made out for challenge to the order passed by the Special Director of Enforcement imposing penalty on the appellants for contravention of Section 4 r/w Section 9 of the Act of 1999 r/w Regulations 3 and 4 and Para 3 of the Schedule of FEM

(Foreign Currency Account by a Person Resident in India) Regulations, 2000. It is also of Section 6 of the Act of 1999 r/w Regulations 3&5 of FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000 r/w Section 42 and 6 of the Act of 1999. It is even for Section 8 & 10 of the Act of 1999 r/w Regulation 3 of FEM (Realisation, Repatriation & Surrender of Foreign Exchange) Regulations, 2000 r/w Section 42 of the Act of 1999. The reference of relevant provisions applied in the present matter has been given to crystalize the issue in reference to all the arguments raised by both the sides and before we analyze the rival submissions, it would be relevant to refer brief facts of the case.

140. It is a case where the BCCI is taken to be an association by the appellants having registration under the Societies Act. BCCI was organizing IPL tournaments and first IPL was conducted in the year 2008 while the second IPL was organized out of the country due to the general election and for the security reasons. It was shifted to South Africa and for that an Agreement was executed with the Cricket Association of South Africa and accordingly the IPL in the year 2009 was conducted in South Africa. To organize the tournament, the remittance of foreign currency was alleged to have been made in contravention of the Act of 1999 and the Rules and Regulations made thereunder. The remittance out of India was made without prior approval of the RBI and accordingly taking aforesaid to be the main issue coupled with the

ancillaries, the penalty for the contravention of different provisions of the Act and Rules was imposed upon the appellants. Aggrieved by the aforesaid, these appeals have been preferred.

141. The learned counsel for the appellants submitted that no contravention of any of the provisions of the Act or Rules has been made while huge penalty has been imposed on the appellants. The reference of facts pertaining to the agreement dated 30.03.2009 between the Cricket of South Africa (CSA) and the BCCI was given. After the agreement entered between the two parties to organize IPL, 2009 at South Africa, the remittance was made in a separate account opened in South Africa. It was a dedicated account of IPL, South Africa and accordingly, the remittance made by the BCCI in the account of CSA was to be transferred to a dedicated account for IPL South Africa. According to the appellants, prior approval of the RBI was not required in terms of the provisions of the Act of 1999 and FEMA (Current Account Transaction) Rules, 2000. It was for the reason that the remittance was not for "Capital Account Transaction" but was for "Current Account Transaction".

142. The condition to make out a case under "Current Account Transaction" was stipulated under the Heads of Agreement dated 30.03.2009. The respondent, however, treated the remittance under the head of "Capital Account Transaction" and accordingly, penalty was imposed in absence

of prior approval of the RBI for remittance. The issue for our decision would be as to whether Heads of Agreement dated 30.03.2009 would fall under the "Capital Account Transaction" or the "Current Account Transaction" though according to the appellants, the show cause notice caused to them was without a specific allegation that the remittance would fall under the "Capital Account Transaction" and not the "Current Account Transaction" and, therefore, an argument was raised that without a notice, the Special Director could not have passed an order for which no hearing was provided to the appellants. The issue aforesaid would also be considered; however, we would be dealing with the first issue and the issue connected with it would be dealt with subsequently but has been referred for the purpose of clarity.

143. The allegations of contravention exist against the State Bank of India and its officer also. It has been defended not only applying the arguments raised by all the appellants but in reference to Section 2(c) and Section 10(6) of the Act of 1999 also. It is in the case of appellant State Bank of India alone. However, the arguments raised by the bank would also be dealt with separately but first we would analyze the common issues raised by the appellants.

144. The first common issue is as to whether remittance of foreign exchange was towards the "Capital Account Transaction" or "Current Account Transaction". For the analysis of the issues, we may refer to the relevant provisions

of Section 5 and 6 of the Act of 1999 so as the agreement between the BCCI and CSA to find out the nature of the agreement. Sections 5 and 6 of the Act have been quoted earlier. Section 5 permits any person to sell or draw foreign exchange to or from an authorised person, if such sale or drawal is for current account transaction. The proviso to Section 5 allows Central Government to impose reasonable restrictions on current account transactions in consultation with the RBI.

145. Section 6 of Capital account transactions provides that a person may sell or draw foreign exchange to or from an authorised person for a capital account transaction. It is subject to sub-section (2) of Section 6. Sub-section (2) of Section 6 refers to the class or classes of capital account transactions and the limit up to which foreign exchange shall be admissible for such transactions, etc. The rules for Current Account Transaction were framed separately in the year 2000 and has been referred by the counsel for the parties. Rule 3 of FEM (Current Account Transaction) Rules of 2000 refers to the prohibited transactions which are given under Schedule-1 and to certain countries named therein. It is, however, made subject to exemption by the RBI. Rule 4 mandates that no person shall draw foreign exchange for a transaction without approval of the Govt. of India. Rule 4 does not talk about the RBI but of the Govt. of India. Proviso, however, excludes payments made out of the funds from Foreign Currency

Account (RFC). Rule 5 of the Rules of 2000 requires prior approval for drawl of foreign exchange of the transactions given under Schedule-III. The proviso, however, excludes if the payment is made from the account of a remitter. Rule 6 of the Rules of 2000 referred to the exclusion of the applicability of Rules 4 and 5, if the drawls are made from the funds held in Exchange Earners Foreign Currency (EEFC) account. However, sub-rule (2) explains that notwithstanding anything contained in sub-rule (1), restriction imposed under Rules 4 and 5 shall continue to apply where the drawl of foreign exchange from the EEFC account is for the purpose specified in Items 11 and 12 of the Schedule or the Item 3,4,11,16 and 17. The case of the appellants to fall under entry 9 to the Schedule-II being an International/National body. Thus, it was submitted that the remittance did not warrant a prior approval even of the Central Government.

146. To analyze the issue, we are required to refer the definitions of "Capital Account Transaction" so as the "Current Account Transaction". Both the definitions have been quoted earlier. The Capital Account Transaction covers the transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6. The Current Account Transaction may be other than the Capital Account Transaction and would include both

the categories of payments. It may be payments in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business. The framework of the Agreement entered into between the BCCI and Cricket South Africa is thus required to be analyzed to find out whether it would fall within the definition of "Capital Account Transaction" or "Current Account Transaction". The relevant clauses of the Agreement are quoted hereunder:

> "***These heads of agreement are entered into between CRICKET SOUTH AFRICA (CSA) and THE BOARD OF CONTROL FOR CRICKET IN INDIA for and on behalf of its separate Sub-Committee Unit known as The Indian Premier League (BCCI-IPL).***
>
> Whereas BCCI-IPL wishes to merge the 2009 Indian Premium League Tournament (IPL and each match forming part of IPL being a 'Match" in the Republic of South Africa and wishes CSA to assist it in this regard by providing the necessary stadia and certain other related matters and CSA is prepared to provide such assistance on the following terms and conditions.
>
> **IT IS AGREED as follows:**
>
> 1. ***Provision of Stadia etc.***
>
> *(a) CSA shall throughout the term procure and/or provide the Stadia referred to in schedule 1. (the "Stadia" and each one being a "Stadium" for the exclusive use by BCCI -IPL throughout the term (as defined below and meaning on both all Match days and all non-match days) in staging each Match forming part of the IPL and otherwise in connection with the operation and staging of IPL in general (the current list and schedule of which forms part of schedule (1) but which may be amended by BCCI-IPL from time to time. As part of this obligation CSA shall ensure that no one events or matches of any kind will be staged at any of the Stadia during the term.*

(b) CSA shall ensure that all times throughout the term BCCI-IPL and all third parties acting on his behalf its relation to IPL shall (subject only as provided above in relation to the Pre-Existing Events) be allowed unrestricted and exclusive access to and use of all of the Stadia for the purpose of staging IPL and as part of this obligation CSA shall, subject only as provided below in paragraphs, ensure that BCCI-IPL is able throughout the term and without any restriction of any kind whatsoever to offer for sale tickets for the whole of the spectator viewing area at each stadium and for each match (including each and every seat, spectator stand, hospitality box or other such facility each such stadium.

*(c) It is acknowledged that certain third parties are entitled to be offered the right to occupy certain hospitality boxes for events within the stadia. In this regard, BCCI-IPL shall after having sold/used such amount of such hospitality boxes for its own purposes (which CSA shall ensure does not cause BCCI-IPL to suffer any claim, costs, damages or losses) offer such third parties the first right (on the same terms as are being offered to either potential purchasers) to purchase the right to occupy such boxes for all (and not some only) of the matches to be staged at each relevant stadium but if such third parties do not want to purchase this right for all such matches then such first right shall lapse and such third parties shall enjoy no presential rights in respect of such boxes. In audi**,** the parties shall discuss and agree the extent to which any CSA VIP invitees will be entitled to occupy part of the presential suite at each stadium for any matches.*

(d) CSA shall ensure that throughout the term the entirety of the exterior ……. Each stadium to all be provided by CSA free and clear of all third party ….

Usually be included and provided in connection with the staging of international cricket events at each Stadium including without limitation:

. a wicket and outfield of international standard (including the maintenance and preparation thereof)

. all necessary cricket- related facilities which shall be required in connection with each Match. For example sight screens (tri-vision), scoreboards, big screens, equipment for displaying third umpire decision, team dug-outs, floodlighting, pitch covers, rolliers etc…

. all necessary media-related facilities such as fully-equipped press centre, commentary booths etc which in each case have all necessary facilities, utilities and services.
. all necessary practice facilities including sufficient practice cricket nets (which shall have wickets of sufficient quality and associated net bowlers of sufficient ability) etc.
. a press box manager and media centre manager
. all available stadium retailing opportunities.
. all catering and other concessions and outlets.
. use of all available leisure facilities to enable the TV production and broadcast of all matches (via any media) to the standard required by BCCI-IPL. (being at least as good as an ODI) including a production control room, generators, cameras gantries and position etc..
. all necessary services and utilises such as electricity and water together with all necessary rooms and office space for the operation of IPL(anti-doping rooms, office space for BCCI-IPL etc)
. the provision of adequate and suitable drinks and any necessary catering for player and match officials.
. all necessary (suitable qualified and experienced) personnel in relation to the staging of each match at each stadium including stewards, security staff, anti-doping chaperones, scores, team and match official liason officers, ball boys, operators, groundsmen (to ensure the quality of the wicket, outfield and practice wickets(nets), gate entry staff, any necessary emergency service staff etc..
. all necessary medical and other emergency service for use by players, spectators and any other third party at each stadium together with at least three ambulances at each match.
. dedicated and suitably qualified and experienced support staff to assist BCCI-IPL (who shall work with and under the supervision of the venue manager, tournment directors, security/ firms and other third parties appointed by BCCI-IPL) including a stadium executive an accreditation executive, security manager and a medical manager.

(e) CSA shall ensure that the Stadia have all necessary licence and permits in connection with the

staging of each match are… with the requirements all applicable …… in respect of all health and safely requirements. In addition, CSA shall throughout the term take out or maintain all such insurance) as would be required by law and / or otherwise normally taken out in connection with the staging of a matches and the IPL in general (whether on match days or otherwise during the term) and shall name BCCI-IPC and each IPL franchisee as a named party on such policies of insurance.

(f) CSA shall be responsible for ensuring the safety and security of each person within the Stadium on the day of each March and shall ensure that the third parties contracted by it to carry out the same shall work and co-operate with any security personnal appointed by BCI-IPL.

(g) CSA shall ensure that all of the personnel to be made available by it in connection with these Head of Agreement (including those persons referred to in paragraph (c) above have adequate experience of the Stadium at which they will provide their respective services and shall work with and comply with the reasonable directions of BCCI-IPL and third parties appointed by BCCI-IPL in relation to IPL.

(h) CSA shall ensure that each stadia and the other services and facilities to be provided by it under these Heads of Agreement are of international quality and such standard as would be expected of an ODI.

2. Other Assistance/ Obligations.

(a) *CSA shall upon request provided BCCI-IPL with all such other assistance as it shall require in respect of IPL including details of third party contractors who provide services to CSA in connection with cricket (such as ticketing agencies, concession operators, catering companies etc) And the obtaining of any necessary permits or licences.*

(b) *CSA shall meet with BCCI-IPL as and when necessary to assist BCCI-IPL to stage the IPL, it being acknowledged that BCCI-IPL owns IPL and shall retain ultimate control in relation to all aspects of IPL. CSA shall ensure that any third party (such as Stadium owner/ operators) takes all such action in a timely fashion as shall enable BCCI-IPL to 2 stage the Matches as contemplated by these Heads of Agreement.*

3. Rights

(a) *CSA acknowledge and agrees that all rights of any kind in relation to IPL being to BCCI-IPL including without limitation all commercial rights such as sponsorship rights, media rights, hospitality, merchandising and licensing rights (in some cases being the subject of licence arrangements) and that CSA shall not acquire any rights of any kind in relation to IPL.*

(b) *All revenue of any kind and from any source whatsoever in relation to the staging of IPL and each Match shall accrue to the benefit of BCCI-IPL and its licenses and CSA shall have no rights of any kind in respect thereof.*

4. Budget

(a) *As consideration for the provision by CSA of its services and assistance in connection with IPL-BCCI-IPL shall pay to CSA a fixed fee of US $3,000,000 (the "Fee") which shall be payable within 15 days of the last of Match in 2009. In addition to the Fee BCCI-IPL shall in accordance with paragraph (c) below pay those costs and expenses in relation to IPL which are set out in the budget attached as Schedule (2) to these Heads of Agreement (the" IPL Budget" and "Budgeted" shall be construed accordingly)*

(b) *If BCCI-IPL is obliged to deduct any withholding tax from the fee or any other sum payable by it under theses Heads of Agreement then it shall be entitled to make such deduction and shall as soon as practicable provide CSA with a certificate of deduction in respect of such withholding tax from the relevant authority. All costs to be incurred by CSA in performing its obligations under these Heads of Agreement shall be included in the FEE and the IPL Budget such that no other payments shall be due from BCCI-IPL to CSA in Connection with IPL.*

(c) *BCCI-IPL shall pay CSA USD 2,500,000 within 7 days of signature of these heads of agreement to enable the budgeted costs to be paid by CSA (such sum being the parties estimate of the anticipated Budgeted costs to be borne by CSA in providing the services under these Heads of Agreement). All such expenditure to be incurred by CSA in relation*

to the budgeted costs and the payment of all costs, expenses and invoices for which BCCI-IPL is to be responsible under these Heads of Agreement must be carried out strictly in accordance with these Heads of Agreement and the Budget and any increase or decrease in the Budgeted costs shall require the agreement of both parties.

(d) *CSA shall produce and maintain full and accurate accounting records in relation to all sums and others expenditure paid out for the Budgeted costs. CSA shall permit BCCI-IPL and its professional advisors at any time (both during and after the Term) upon 5 years notice, to audit CSA's records in relations to all expenditure paid out of the Budget.*

(e) *CSA shall open and operate a dedicated bank account in the name of IPL South Africa Monies will be deposited to CSA Bank Account from time to time and CSA will transfer these funds into IPL South-Africa towards anticipated certain other IPL-related expenses. The ticket revenue earned through BCCI-IPC ticketing partners will also be deposited to this account. No sums shall be released from said bank account without explicit written authorisation by BCCI-IPL. CSA shall maintain books of account/ statements separately for the payments made on this account after explicit instructions from BCCI-IPL. No sums shall be made by CSA from this account otherwise than strictly in accordance with this paragraph. BCCI-IPL will not reimburse any expenditure made by CSA from this account without explicit authorisation from BCCI-IPL.*

(f) *CSA shall produce and maintain full and accurate accounting records in relation to all sums and other expenditure out of the above-mentioned bank account. CSA shall permit BCCI-IPL and its professional advisors at any time(both during and after the Term) upon 5 days' notice to audit CSA;s records in relation to all expenditure paid out on instructions from BCCI-IPL.*

5. Term

(a) *These Heads of Agreement shall take effect upon their signature and shall remain in force throughout the IPL (currently anticipated to be from*

18th April until 24th May 2009) and comprising all IPL League, play-off and final matches) (the term).

6. General

(a) These Heads of Agreement shall constitute a legally binding agreement between the parties.

(b) Neither party may assign or transfer these Heads of Agreement to any third party but CSA acknowledges that BCII-IPL shall use third party representatives and contractors connection with the staging of IPL and CSA agrees to work with the same.

(c) Each party shall keep the existence of these Heads of Agreement and their contents strictly confidential.

(d) CSA shall indemnify BCCI-IPL from and against any damages or cost incurred by BCCI-IPL (or its representatives) which results from any breach by CSA of these Heads of Agreement.

(e) These Heads of Agreement shall be governed by and constructed in accordance with India Law and any dispute arises in connection with them shall be decided by Arbitration in Mumbai, India".

147. The quoted clauses of the Agreement reveal no provision for alteration of assets or liabilities, including contingent liabilities, outside India of person resident in India. Rather, clauses indicate an agreement to obtain services to conduct IPL tournament outside India for the first time. The type of service to be provided by CSA had been referred which includes the arrangement of Stadia during the period of tournament. There is no element of transfer of ownership or any interest for the arrangement of Stadia or any other arrangement. Clause 4 (a) rather enforces that BCCI would pay consideration for the services and assistance in connection with IPL and for that a fixed fee of US 30 Lakhs Dollars is to be paid to CSA in addition to the costs and expenses in relation to IPL. The payment structure was fixed

towards service coupled with the reimbursement of budgetary operational expenses. The entire agreement does not cover any condition to fall in the definition of "Capital Account Transaction", rather is indicative towards service to fall under Clause (i) of definition of Current Account Transaction given under Section 2(j) of the Agreement.

148. The respondent has taken it to be a case of Capital Account Transaction mainly on the ground that the amount to be incurred for the tournament was not fixed or determined and thus it remained contingent to fall in the definition of Capital Account Transaction. The argument aforesaid has been contested by the appellant giving relevant facts of the case. It was submitted that due to the general election in the country, a decision was taken to shift the tournament to South Africa. It was all of a sudden but with determination to pay the amount on different heads for the services to be provided by the CSA which included the arrangement of Stadia, sale of tickets and other facilities, etc. Merely for the reason that a definite reference of the amount was not given would not make agreement to be of a nature of contingent liability. The respondent was expected to take a holistic view in reference to the terms of the agreement to find out whether it would fall in the definition of Capital Account Transaction or the Current Account Transaction.

149. We may make a reference of the judgment of the Apex Court in the case of ***M/s J.P. Builders & Anr. Vs. Ramadas***

Rao & Anr. reported in (2011) 1 SCC 429 where the issue was similar to what has been raised in this case. The agreement/contract therein was for contingent liability or not has been decided. The finding was recorded by the Apex Court while referring to Chapter III of the Indian Contract Act, 1872 which deals with Contingent Contracts and is quoted hereunder:

> *"A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.*
>
> *The enforcement of contracts contingent on an event happening. – It would remain contingent if the happening is not certain i.e. it may take place or it may not. But where the event is certain with specified clauses, to embark upon, the issues of service and the expenses to be borne by the parties, it cannot be said to be a case of contingent agreement for creating contingent liability".*

If the facts of the case are looked into minutely, IPL tournament was conducted in South Africa in terms of the agreement and, therefore, happening was not contingent. It is with further arrangement for extension of the service by the CSA for smooth organization of the tournament which included arrangement of Stadia, tickets, its distribution and all other ancillary services to conduct the IPL. It is coupled with the fact that in terms of the agreement, tournament took place within the scheduled time. It was with the payment towards service extended by the CSA. There was no element of alternation of assets or liabilities including contingent liabilities of a person resident in India, rather agreement was

not making reference about the assets and liabilities of the parties i.e. BCCI, rather it agreed to bear the expenses towards the services to be rendered by the CSA holding IPL in the year 2009.

150. The respondent, however, took it to be a case of contingent liability because remittance was made from time to time and there was no certainty even within the BCCI as to how much amount would be incurred. It is with the statement that remittance of totaling USD 3.55 Crores was made in instalments from 31.03.209 to 23.05.2009. The additional remittance of USD 40 Lakhs was made on 10.08.2009 followed by other remittances of USD 1,03,62,799.52 on 27.08.2010. The mere payment in the instalment within the period of agreement cannot make it to be a case of contingent liability, when service and event were not contingent, rather it was spelt out in the agreement for holding of the IPL tournament in South Africa. The services were taken largely to arrange all the fixtures to conduct the tournament which was mainly to arrange Stadia, tickets and other arrangements which includes sale of tickets by Cricket South Africa. Therefore, so far as the remittance made between the period of agreement in terms of the clauses referred in the earlier paras are concerned, they were towards the services rendered by the CSA.

151. The argument of the respondent was even in reference to the expenses under the head of "Operational Fee & Cost for

Hosting IPL 2009." It is submitted that no supporting evidence was produced by BCCI before the Authorized Dealer to corelate any specific remittance with identified head of expenditure. The remittances were declared under a general description such as "Operational Fee & Cost for Hosting IPL 2009." The finding has been recorded in ignorance of the fact that remittance was made from time to time on expenses towards services and was under one head. It was in terms of the agreement which gave broadline of the service and even the liability of a party to bear the expenses. The remittance towards the expenses for service would not fall in the definition of capital account transaction merely for the reason that no procedure was alleged to have been followed by the BCCI while making remittance to CSA. The expenses were incurred by the CSA and accounted for remittance. The evidence for it was submitted but ignored only for the reason that it was not given at the time of request for remittance to the authorized dealer. The perusal of the facts on record does not fortify the argument raised by the respondent. The argument of the respondent that agreement was a piece of document to avoid compliance of the Act of 1999 cannot be accepted not only looking to the nature of the agreement, but the circumstances requiring BCCI to shift the tournament all of sudden outside the country. The expenses were borne by the BCCI as per the agreement from time to time and it cannot be said to be towards the contingent liability. It is not only for

the reason that services were specified in the agreement for holding IPL tournament outside the country. The fact, further remains that payment of fixed amount of USD 3 million to the CSA for the service is also indicative of the fact to fall under the definition of "Current Account Transaction".

152. Any payment due in connection with foreign trade, other current business, services, short-term banking and credit facilities in the ordinary course of business falls under the definition of "Current Account Transaction" and, therefore, only when the authorized dealer made the remittance with the information to the RBI, no objection towards the remittance was raised by the RBI in reference to the alleged contravention of the Act of 1999. Thus, we are of the opinion that the case in hand has been wrongly taken to fall under "capital account transaction". The finding aforesaid is, however, for the period specified in the agreement i.e. the transaction between 31.03.2009 to 31.05.2009. The foreign remittance for the subsequent period would be dealt with separately.

153. The co-related issue to the first issue is even the date of agreement and the request for foreign remittance before it. The respondent has made serious allegations for a direction for remittance of foreign exchange prior to the agreement dated 30.03.2009. A direction for the remittance is alleged to have been made by the BCCI on 28.02.2009 itself. We find that the foreign remittance was made from the date of agreement. It may be that the request for foreign remittance

may have been made in anticipation of the agreement but it did not culminate in reality. In fact, the respondent has failed to show any foreign remittance before the period of agreement. Therefore, the allegation for remittance before the date of agreement is not made out.

154. The respondent has referred to the facts of the case to frame it within the definition of "Capital Account Transaction". It is on the ground that no budget was prepared or attached to Schedule-2 under "heads of agreement" and the amount was paid from time to time. It is sufficient to prove a case of contingent liability. It is with the further submission that Schedule-2 of the agreement was left blank and no budgeting whatsoever was done. It is coupled with reference of the statement of Mr. M.P. Pandove that no budgeting was done because there was no time left for preparation of the same. The case taken up by the respondent to frame it to fall within the definition of "Capital Account Transaction" was even in reference to the payments made from time to time. The aforesaid was in view of the payments in 8 trenches and no supporting evidence was produced by BCCI to co-relate those remittances. In fact, the remittance by the BCCI to CSA was contingent and no real time assessment was made.

155. The argument aforesaid has been contested by the appellants. It is submitted that the destination for holding IPL tournament has to be shifted from India to South Africa all of a sudden due to security reasons on account of Parliamentary

Election. The agreement, however, specified all the heads of expenses towards the service and, in fact, if the facts of the case are taken up, IPL tournament was successfully conducted in South Africa and all the remittances were made, as described in the agreement and thus it cannot be said to be a case of contingent liability.

156. We have considered the submissions aforesaid and find that if, in a given case, the payment towards the service was made from time to time and that too without budgeting, then, according to the respondent, it would fall in the definition of "Capital Account Transaction". We are unable to accept the argument advanced by the respondent. It is for the reason that the definition of "Capital Account Transaction" under Section 2(e) of the Act of 1999 covers all transactions which alters the assets or liabilities, including contingent liabilities, outside India. The transaction involved in the present matter does not fall within the definition of "Capital Account Transaction" because it has not altered the assets or liabilities of the person resident in India which includes even the contingent liability. There is no element of "alteration" of assets or liability, including contingent liability of BCCI. In fact, there was no reason to hold it to be a case of contingent liability, when the agreement between the BCCI and CSA disclosed about the services to be rendered by the CSA and for that remittance to be made by the BCCI. Due to service rendered by the CSA, remittance was made by the BCCI within

the period of the agreement though it was subsequently also, but the issue in reference to the aforesaid would be considered separately. However, we do not find that merely because there was absence of budgeting or the payments towards the expenses were made from time to time, it would become the case of alteration of contingent liability. The finding of the authority below holding it to be a case of "Capital Account Transaction" cannot be accepted towards the remittance made within the period of agreement, and accordingly, we cause interference in the impugned order to that extent.

157. The finding aforesaid would deal with the case of individuals with subjected penalty in regard to the first issue treating it to be a case of "Capital Account Transaction", thus the remittance without permission of the RBI was taken in contravention of the provisions of the Act of 1999. However, at this stage, it is again reiterated that the respondent was expected to make distinction between the contingent liability and contingent event or action for payment. Where the event or action is certain towards the service and the expenses to be borne by the parties, it cannot be said to be a case of contingent liability. The finding, however, would be to the show cause notice No.1 only. However, for the clarity, it is necessary to add that the allegation regarding the payment of remittance beyond the period of agreement would be considered and dealt with separately and thereby the finding in reference to show cause notice No.1 is to be taken towards

the remittance during the period of agreement and not beyond that and rather for it separate finding would be recorded for the show cause notice referred to above.

Show Cause Notice No.II to IV

158. The Show Cause Notice No. II and III has been covered by the authority below by the order in reference to the Show Cause Notice No.I. It is finding similar charges framed against the BCCI and others in the Show Cause Notice No.I. The authority below did not record separate finding to the charges to avoid duplication. Therefore, no separate penalty in reference to the Show Cause Notice No. II exists.

159. So far as the Show Cause Notice No. III is concerned, the competent authority found that the charge in the Show Cause Notice No.1 is involving the same allegation and against the same entity and accordingly it did not find reasons to pass separate order to the Show Cause Notice No.III.

160. So far as the Show Cause Notice No. IV is concerned, it was again found to be covered by the Show Cause Notice No. I and taking it to be nothing but duplication of charge, the competent authority did not proceed with the charge alleged in the Show Cause Notice No.IV.

161. It is necessary to clarify that Charge No. IV was, in fact, considered while dealing with the Show Cause Notice No.VIII. The finding in reference to the facts given in Show Cause Notice No.IV were taken into consideration and finding was recorded on it. In fact, the allegation levelled in the Show

Cause Notice No.IV with its contents had been dealt with while dealing with the Show Cause Notice No.VIII. It is apparently clear from the fact that while recording finding to the Show Cause Notice No. VIII, the reference of the contents of the Show Cause Notice No.IV has been given. The authority below had referred to the facts and allegations different than contents in the Show Cause Notice No.VIII while concluding the issue and accordingly the allegations in pursuance to the Show Cause Notice No.IV may be read in the order passed by us in reference to the Show Cause Notice No. VIII to avoid confusion.

162. The order in reference to the Show Cause Notice No.VIII has been given by the authority below. However, it is while dealing with the allegation made in the Show Cause Notice No.IV. The fact aforesaid has also been clarified in this order. The Show Cause Notice in original was for contravention of Section 6(3)(d) of the Act of 1999 and Regulations 3 and 5 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 for a sum of US$60,00,143 equivalent to Rs.30,00,07,150/-. The issue aforesaid has not been dealt with, rather the allegations made in the Show Cause Notice No. VIII have not been dealt with while passing the order and accordingly we would be passing the order in reference to the finding recorded by the authority below to the Show Cause Notice No.VIII though the reference of provision has been given correctly in

the order but the decision thereupon its reference to the contents of the Show Cause Notice No.IV.

Show Cause Notice No.V

163. The show cause notice No.V is for the contravention of Section 9 of the Act of 1999 by the BCCI. It is read with Regulation 3 of Foreign Exchange Management (Foreign Currency Account by a Person Resident of India) Regulations, 2000 and Section 4 of the Act of 1999 for opening and maintaining Bank Account No.420948619 in the name of IPL (SA) Pvt. Ltd. with Standard Bank of South Africa. In the said account, an amount of Rs.203,38,50,000/- was remitted without permission of the RBI.

164. The allegation aforesaid was contested by the appellant on the ground that there was no account in the name of IPL (SA) Pvt. Ltd. It is coupled with the fact that a dedicated account was opened to facilitate the accounting system. The BCCI is not engaged only to organize the IPL but their functions were multi-dimensional and, therefore, for the expenses towards service, separate account was opened from where the transfer of amount was made to the CSA. It is said to be in contravention of the provisions of the Act of 1999 only for the reason that the BCCI was having absolute control on the dedicated bank account without realizing the purpose of opening of dedicated bank account and to fall under Section 9(e) of the Act of 1999. The perusal of the order otherwise shows that even, according to the authority below, the

dedicated account got opened and operated by the BCCI through the medium of CSA for the purpose of meeting the expenses incurred for the IPL tournament, without subjecting themselves to an audit or scrutiny by any Indian Authorities. The respondent have made the issue unnecessarily without showing how opening of a dedicated account to meet with the expenses of CSA towards the service rendered for IPL tournament was in contravention of the provisions of the Act of 1999 and regulations. The exemption under Section 9(e) has been ignored. The authority even ignored that payment towards service would fall in the definition of "Current Account Transaction". The finding in reference to it is thus interfered and set aside.

Show Cause Notice No.VI

165. The show cause notice No.VI was for transfer of an amount of ZAR 33,08,690.55 to various persons in South Africa without permission of the RBI. The issue raised in Show Cause Notice No.VI is nothing but seems to be the repetition of allegations otherwise framed and decided by the competent authority while addressing show cause notice No. I and V. For the sake of clarity, we would make a reference and the finding recorded to show cause notice No.I and V where we did not find remittance of the foreign exchange towards the service to CSA within the period of agreement to be under "Capital Account Transaction" and, therefore, the finding pursuant to Show Cause Notice No.VI cannot stand, rather we

cover it by the finding to the Show Cause Notice No.I and V. Section 9(e) of the Act of 1999 has been ignored which provides exemption of Section 4 of the Act in case of acquisition of foreign exchange for service.

Show Cause Notice No.VII

166. Show Cause Notice No.VII is again repetition of the same allegation as has been taken by the respondent in reference to the Show Cause Notice No.I. The respondent, however, separately alleged contravention of Section 6(3)(d) of the Act of 1999 read with Regulations 3 and 5 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 for borrowing Foreign Exchange amounting to US$60,00,143/-. The allegation of borrowing and lending has been framed in view of the fact that CSA incurred expenses and was thereupon paid by the BCCI, therefore, to fall in the category of lending and borrowing. The fact on record shows that CSA being service provider had incurred certain expenses on immediate basis and for smooth conduct of IPL in South Africa. The amount paid by the CSA was reimbursed by the BCCI. The aforesaid arrangement cannot be said to be a case of lending, rather the amount paid initially by the CSA was reimbursed and otherwise in case of a lending or borrowing, it remains generally under loan agreement with an element of interest, which is missing in this case. We further find a contradictory finding by the authority below in view of the fact that at one place the finding has been recorded

that whenever amount is to be transferred to CSA from the dedicated account, it should be backed by corresponding transfer of remittance made by the BCCI which, in fact, has been ignored by the competent authority. The finding is that the agreement was not providing any loan agreement between the CSA and BCCI or there was any transaction in the nature of interest payment between CSA and BCCI to make out allegation of loan or borrowing. The finding aforesaid is contrary to the facts on record. It cannot be said to be a case of contravention of the Act of 1999 and Regulations made thereunder. We are unable to accept the finding recorded by the competent authority to be a case of borrowing and lending, rather we cause interference in the finding recorded therein.

Show Cause Notice No.VIII

167. The order in reference to the Show Cause Notice No.VIII has been given by the authority below. However, it is while dealing with the allegation made in the Show Cause Notice No.IV. The fact aforesaid has also been clarified in Para 92 of this order. The Show Cause Notice in original was for contravention of Section 6(3)(d) of the Act of 1999 and Regulations 3 and 5 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 for a sum of US$60,00,143 equivalent to Rs.30,00,07,150/-. The issue aforesaid has not been dealt with, rather the allegations made in the Show Cause Notice No. VIII have not been dealt with while passing the order and accordingly we

would be passing the order in reference to the finding recorded by the authority below to the Show Cause Notice No.VIII though the reference of provision has been given correctly in the order but the decision thereupon its reference to the contents of the Show Cause Notice No.IV.

168. It is alleged that an amount of Rs.44,15,99,200/- was paid to CSA without permission of the RBI. The aforesaid amount was linked to the final remittance on 27.08.2010. It was by way of transfer from the EEFC account No.0016440267 maintained with SBI, Jaipur. It is not in dispute that an amount equivalent to Rs.48,56,00,781/- was remitted to CSA on 27.08.2010 which is beyond the period of agreement. The amount aforesaid was, however, transferred from EEFC account. The issue would be as to whether the payment from EEFC account was permissible in the present case. Before we address the issue aforesaid, it would be necessary to take up a factual issue. The excess amount taken by the respondent is for a sum of Rs.44,15,99,200/-. It is in view of the fact that even if the remittance was permissible from EEFC account, it could have been for Rs.4,40,01,581. It is shown as due amount in books of accounts. As against the aforesaid amount, remittance was made for the higher amount without giving any justification or even the basis. The aforesaid factual issue would be relevant while concluding as to whether the payment from the EEFC account was permissible in the case or not and if it is

permissible, then to what extent. To analyze the issue, we may refer to the Regulations 3 to 6 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Rule 3 prohibits on drawl of foreign exchange for certain purpose specified therein. Rule 4 requires prior approval of Govt. of India for drawl of the foreign exchange for a transaction included in Schedule-II. It is, however, subject to proviso if the payment is made by the remitter from Resident Foreign Currency (RFC) account. We may further refer to Rule 6 of the Rules, 2000 which eliminate the condition of Rules 4 and 5, if drawl is made out of the exchange under Exchange Earners' Foreign Currency (EEFC) Account. However, it should be other than the entry specified at No.10 and 11 of Schedule-II and entry 3,4,11 and 16 of Schedule-III.

169. It is not in dispute that the subsequent remittances were made from the EEFC account of the BCCI, which is permissible as per Rules 6 of the Rules of 2000 without approval of the RBI and even the Govt. of India in view of the fact that the BCCI comes under entry 9 to Schedule-II as it is an international/state level sports body. Schedule-II has been quoted earlier. In the light of the aforesaid, remittance from the EEFC account could not have been taken to be in contravention of the Rules of 2000. The fact, however, remains that the remittance should have been in consonance to the agreement between the parties and if the facts of this case are taken into consideration, the permissible remittance

from EEFC account was of Rs.4,40,01,581/- and thereby there was an excess remittance of Rs.44,15,99,200/- which is in contravention of the provisions of the Act of 1999 and Rules of 2000. The competent authority thus correctly examined the issue to find out as to what was the amount shown towards the current liability under the head of the amount paid to CSA. The due amount in the books of account was of a sum of Rs.4,40,01,581/-. The penalty imposed in reference to show cause notice No. (VIII) (which should have been Show Cause Notice No. (IV) is for the amount in excess of the amount shown in the books of accounts and thereby the penalty of Rs.4 Crores on the BCCI needs no interference.

170. On Shri Lalit Modi, there was no penalty in reference to show cause notice No.VIII as he was suspended by the time remittance was made. The role of Shri N. Srinivasan in reference to Show Cause Notice No.VIII has been examined with the role of Shri M.P. Pandove where the penalty of Rs.50 lakhs has been imposed on both the individuals. They were found to be in-charge and responsible to conduct business of BCCI in the capacity of the Secretary and the Treasurer. We do not find any illegality in imposing the penalty on them in pursuance to the show cause notice (XIII) rather (IV) and to that extent, the impugned order is not interfered.

Show Cause Notice No.IX

171. In the Show Cause Notice No. IX, the BCCI was charged for contravention of Section 8 of the Act of 1999 read with

Section 10(6) and clause (b) of Regulation 3 of Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2000. It is for their alleged failure to repatriate the proceeds out of the sale of tickets amounting to ZAR 3,82,85,677/- within the stipulated time and otherwise utilized the same for making payments in South Africa.

172. The counsel for the appellant defended the allegation and submitted that the proceeds out of sale of tickets was credited by CSA in their account, which got mingled with other funds related to IPL and, therefore, it took some time to extend the proceeds out of sale of tickets for repatriation. It finally happened in August, 2010 when ZAR 3,82,85,677/- was repatriated. Thus, allegation is incorrect on the face of it.

173. We have considered the submission and find that the amount out of sale of tickets was repatriated in the account of BCCI with the delay. It is said to be on account of mingling of the accounts with others and furthermore for settlement of certain issues with CSA. It resulted in making final payment to CSA on 27.08.2010 and thereupon repatriation of the amount out of sale of tickets.

174. The aforesaid fact has not been accepted by the authority below in absence of any document and proper explanation of delay of more than a year and imposed penalty for contravention of Section 10(6) of the Act of 1999 along with the Regulations, 2000. The reason for delay has been

attributed on account of dispute and that account was mingled with others. It has been discarded by the authority below. The facts on record do not make out a case in favour of the appellant in regard to the delay of more than a year in repatriation. It is said to have happened in August, 2010 while the agreement ended in May, 2009 itself. The settlement of account does not justify delay of 15 months. It is not of few days to justify the delay. A case of contravention of Section 8 of the Act of 1999 is made out and we decide the issue against the appellant. However, the penalty of Rs.4 Crores imposed on the BCCI is too excessive because repatriation of the amount has taken place and accordingly it is reduced to Rs.1 Crore.

175. The penalty has been imposed even on Shri Lalit Kumar Modi in ignorance of his position and even suspension. He was not in-charge of the affairs and otherwise he has been framed in the case without any material showing his responsibility. The penalty imposed on Shri Lalit Kumar Modi is wholly erroneous is thus interfered.

176. So far as the penalty imposed on Shri N. Srinivasan and Shri M.P. Pandove being the Secretary and Treasurer is concerned, we find a case is made out against them being the in-charge of the affairs. However, the penalty imposed on them is again excessive and thus it is reduced from Rs.1 Crore to Rs.10 Lakhs on Shri N. Srinivasan and Rs.50 Lakhs is substituted by Rs.5 Lakhs in the case of Shri M.P. Pandove. The issue is concluded with the aforesaid.

Show Cause Notice No.X

177. Show Cause Notice No.X was against the BCCI for contravention of Section 8 of the Act of 1999 read with Regulation 3 of the Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2000. It is alleging failure of the BCCI to take reasonable steps to repatriate the revenue from "pouring rights" amounting to ZAR 9,31,567 equivalent to Rs.66.54.050/-. The amount of "pouring rights" could not be realized in absence of any explicit arrangement between the BCCI and CSA coupled with the convention and established practice to pay the amount of "pouring rights" to the beverage companies sold the beverages in the stadium belonging to the stadium owners. The claim of BCCI received stiff resistance from the stadium owners and despite their resistance, BCCI had taken all reasonable steps to recover and repatriate the amount representing the "pouring rights" though in terms of the agreement and otherwise "pouring rights" neither "accrued" to BCCI nor was "due" to the BCCI in terms of the agreement.

178. The argument of appellant has not been accepted by the competent authority on the ground that no reasonable efforts were made to realize the amount towards "pouring rights". No records could be produced by the BCCI to show any efforts by them in realizing and repatriating the amount representing the "pouring rights" or delayed repatriation of the "pouring rights".

However, the authority below failed to take note of the agreement where no arrangement was made enabling the BCCI to claim the amount of "pouring rights" as a right. They tried to get the amount but on account of convention, it was to be given to the stadium owners. The finding of the authority below is wholly perverse, as it has been recorded in ignorance of the terms of agreement entered between the BCCI and CSA and without even dealing with the issue as to whether the amount towards "pouring rights" was due and receivable by the BCCI so as to allege contravention. We according set aside the order passed in pursuance to Show Cause Notice No.X and thereby interfere in the penalty.

Show Cause Notice No.XI

179. Show Cause Notice No. XI was given for contravention of Section 9 of the Act of 1999 and Regulation 3&4 read with para 1(2) and para 2 Schedule II of Foreign Exchange Management (Foreign Currency Account by a Person resident in India) Regulations, 2000. It is for crediting an amount of Rs.41,72,19,671.70 in the EEFC account with State Bank of Travancore, Jaipur. According to the appellant BCCI, the regulation permits credit into EEFC account of all foreign exchange earnings. As per the agreement, CSA was bound to pay BCCI an amount equivalent to the revenues out of the sale of tickets and VAT refund. It was remitted by BCCI on 27.08.2010 and USD 89,34,040 was credited in EEFC account out of the sale of tickets and VAT refund.

180. The authority below has not accepted the argument of the learned counsel for the appellant mainly on the ground that it did not represent permissible credits as stipulated under para 1(2) and para (2) of Schedule-II to Regulations, 2000. It was also on the ground that BCC made payment of an amount of US$103,62,799.42 on 27.08.2010 and immediately credit of the amount of US$89,34,040 was made on 08.09.2010. The authority below had mixed two different remittances, one made by BCCI and other made by CSA to BCCI out of sale of tickets and VAT refund. The payment by the BCCI was towards operational fee and cost for hosting IPL and had shown the purpose of remittance as "towards balance and final payment of expenses of IPL 2009". This has been taken to be in contradiction. It seems that the authority below was totally confused and, therefore, mixed two different issues. There was no reason to hold that the amount received in the EEFC account does not represent a bona fide transaction. The finding aforesaid is perverse and erroneous on the face of it. The credit of the amount was in terms of the agreement where BCCI was entitled to receive the amount out of sale of tickets and VAT refund. In view of the above, the allegation for receipt of foreign currency by the BCCI in terms of the agreement could not have been taken to be in contravention of the provisions of the Act of 1999 and regulations made thereunder. It is coupled with the fact

that the respondent and the authority below have made the case hyper technical in regard to the final payment made by the BCCI for settlement of account though it was after lapse of few months but the elaborate reason for it has been given by the appellants. The respondent, however, taken that it was not in consonance to the agreement and contradiction in the stand taken by the appellants. At one place, it was shown to be the payments towards "balance and final payment of expenses in IPL 2009" and at another place, payments shown towards "operational fee and cast" for hosting IPL. If the heads are minutely looked into, it does not show contradiction, rather remain in consonance to the agreement for final payment of expenses in hosting IPL by CSA. We, therefore, cause interference in the finding in reference to the Show Cause Notice No.11 and set aside the penalty imposed thereto.

Show Cause Notice No.XII

181. Show Cause Notice No. XII was mainly given to the State Bank of Travancore, Jaipur later merged with SBI along with other Show Cause Notices but Show Cause Notice No.XII is in particular against Shri A.K. Nazeer Khan, the then Chief Manager of State Bank of Travancore, Jaipur. It was for remittance of the foreign exchange by the authorized dealer without prior approval of the RBI treating it to be a case of "Current Account Transaction". We have already decided the issue holding it to be a case of "Current

Account Transaction" and not "Capital Account Transaction". Thus, remittance by the authorized dealer without permission of the RBI cannot be said to be in contravention of the Act of 1999 because no approval or permission by the RBI was required. It is, therefore, only when the authorized dealer informed about the remittance to the RBI, no objection to it was made at any time by the RBI. Thus, the finding in reference to Show Cause Notice No.XII along with the penalty is interfered. At this stage, we may refer to the argument of the learned counsel for the bank about certain safeguards to the authorized dealer when they act bona fide. We find a case is made out even within the framework of Section 10 (5) of the Act of 1999 and other provisions permitting safeguard to the authorized dealer. In this case, the authorized dealer made remittance in reference to Form A-2 and certificate of Chartered Accountant when agreement between the two parties was executed. Remittance was not made prior to the date of agreement. Therefore, the impugned order in reference to the Show Cause Notice No.XII is set aside.

Common Issue:

182. The appellants have raised common issue about violation of principles of natural justice and the procedure rules alleging that proper opportunity of hearing was not provided to them. It was after making reference of the dates fixed for hearing leaving hardly few days to prepare

the case and even denial of opportunity to cross examine. Those arguments were not pressed during the course of oral hearing but have been taken up in the written submissions. It has been well defended by the respondent after referring several dates of hearing by the respondent. The last date of hearing was fixed in pursuance to the directions of the Bombay High Court and, therefore, it was not open for the respondent to deviate from the order and otherwise for appellant to raise an issue of denial of proper opportunity of hearing de hors the directions of the Bombay High Court. In fact, the appellants have raised an issue of delay in disposing of the show cause notice and at the same time alleging that proper opportunity of hearing was not given because the matter was taken up quickly for final hearing. Such a contradictory statement cannot be accepted and otherwise the facts on record clearly demonstrate that the appellants were given proper opportunity of hearing and for that even opportunity of cross examination to the extent the witness was relevant, eliminating those were not relevant such as the officers of RBI, etc. Thus, the issue in regard to the denial of opportunity of hearing cannot be accepted and otherwise it was not pressed during the course of oral hearing but has been dealt with because it is taken up in the written arguments which has been well defended by the respondent.

183. In the result, we maintain the order of the authority below in reference to Show Cause No.VIII (on contents of Show Cause Notice No. IV) with reduction of the penalty amount to Show Cause Notice No.IX. However, the finding and the penalty imposed in reference to other Show Cause Notices are interfered and set aside. The appeals are partly allowed with the aforesaid.

(Justice Munishwar Nath Bhandari)
Chairman

(Rajesh Malhotra)
Member

New Delhi,
16.07.2026
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