United Commercial Bank Ltd. Vs Director, Enforcement Directorate

Court: Calcutta High Court

Date of Decision: July 10, 1978

Acts Referred: Adjudication Proceedings and Appeal Rules â€" Rule 3(3)
Foreign Exchange Control Act, 1973 â€" Section 1, 28, 28(3)
Foreign Exchange Regulation Act, 1947 â€" Section 10, 12(2), 13, 17, 18(1)
Foreign Exchange Regulation Act, 1973 â€" Section 51
General Clauses Act, 1897 â€" Section 6

Citation: (1978) 1 CALLT 128 : (1978) 2 ILR (Cal) 17

Hon'ble Judges: D.C. Chakravorti, J; Anil K. Sen, J

Bench: Division Bench

Advocate: R.C. Deb, Siddhartha Sankar Roy, D.P. Gupta, Biswarup Gupta, R.N. Bajoria, S.S. Khanna, R.K. Khanna, S. Pal, Promode Khaitan and Padam Khaitan, for the Appellant;N.C. Chakrabarti and R.N. Das, for the Respondent

Final Decision: Allowed

Judgement

Anil K. Sen, J.
These are the two appeals under Clause 15 of the Letters Patent directed against the judgment and raider dated February

18, 1977, passed by a learned single Judge of this Court. By the judgment and order under appeal the learned Judge dismissed two writ petitions

and discharged two Rules issued thereon. Those two writ petitions which were heard together were preferred by the present Appellants

challenging therein two adjudication proceedings initiated by the Special Director, Enforcement Directorate, respectively u/s 23D of the Foreign

Exchange Regulation Act, 1947 and Section 51 of the Foreign Exchange Regulation Act, 1973, based on more or less identical allegations. Facts

which led to the initiation of such proceedings may shortly be set out as hereunder.

2. United Commercial Bank Ltd. (hereinafter referred to as the said bank), Appellant in one of these appeals, is a company incorporated under the

Companies Act and at the material time in the year 1966 was carrying on banking business as one of the scheduled banks of India until it was

nationalised on June 19, 1969. The said bank was also an authorised dealer within the meaning of, the Foreign Exchange Regulation Act, 1947,

(hereinafter referred to as the said Act) duly authorised by the Reserve Bank to deal in foreign exchange. The said bank had extensive foreign

exchange business and in course of such business it had dealings with a large number of constituents. Hindustan Motors Ltd. (hereinafter referred

to as Hindustan Motors), Appellant in the other appeal, was one of such constituents of the said bank at the material time. Hindustan Motors was

manufacturing commercial vehicles, namely, Bed ford Trucks in collaboration with M/s. Vauxhall Motors Ltd. London. For its manufacturing

process, the said Hindustan Motors used to import components, parts and machineries from their collaborators and also raw materials like steel

etc., from an agent at London, namely, East India Produce Company Ltd. (hereinafter referred to as EIP) against valid import licence for

importation of varied goods issued by the Government. The agency in favour of EIP had the sanction of the Reserve Bank of India. Bills against

such importation for the price of the goods so imported were being cleared through the said bank.

3. In course of such transaction, Hindustan Motors approached the said bank in the last week of May 1966 with a request to book a forward

exchange contract for sale of sterling for imports to be made in course of the next six months against valid import licence. According to the said

bank, the relevant papers and documents being placed before them by Hindustan Motors, they were satisfied that Hindustan Motors was asking

for a forward exchange contract for sale of sterling to cover imports to be made against a valid import licence and that the importer had already

placed firm orders with their collaborators and EIP which had been accepted by them. In such circumstances, they entered into a foreign exchange

contract No. 130/66 for sale of sterling to the extent of Rs. 1.25 crores equivalent to Ã¯Â¿Â½ 9,32,617 within next six months from the date of the

contract, viz., June 4, 1966. In that contract the rate for the conversion that was agreed to was the rate authorised by the Reserve Bank for such

forward contracts, viz., Shilling 1.5-29/32 = Re. 1. In order to cover the said contract, the said bank, on that very day entered into a contract with

the Reserve Bank of India for forward purchase of Ã¯Â¿Â½ 7,00,000 to be delivered within six months from that date and the said bank further made

ready purchase of Ã¯Â¿Â½ 1,32,000 from other banks.

4. June 4, 1966, was a Saturday and on June 6, 1966, the Indian rupee was de-valued. As a result of such devaluation before the banking hours

of the morning of June 6, 1966, an inspection was carried out at the said bank''s establishment by the officials of the Reserve Bank of India which

was followed by a special inspection by the Department of Banking Operation and Development of the Reserve Bank of India. It would appear

from the correspondence between the said bank and the Reserve Bank of India that at first some doubts were entertained as to whether the said

bank had entered into the aforesaid forward exchange contract for Ã¯Â¿Â½ 9,32,617 sterling with the Hindustan Motors, being their contract No.

130/66, after due verification of firm orders being placed by the Hindustan Motors and accepted by the sellers in terms of para. 3(ii) of Section

XXVIII of the Exchange Control Manual then in force. Explanations, clarifications, information''s and other particulars were sought for by the

Reserve Bank of India to satisfy itself that the aforesaid forward exchange contract No. 130/66 was entered into in a regular manner and pending

such satisfaction release of foreign currency against the said bank''s forward purchase of Ã¯Â¿Â½ 7,00,000 was held back. Ultimately, however, after

concluding its enquiries, the Reserve Bank of India by its letter dated December 22, 1966, released the sterling forward purchase by the said bank

when the Reserve Bank informed the said bank:

You have our permission to take delivery of Ã¯Â¿Â½ 7,00,000 under the captioned contract dated the 4th June, 1966, for the like amount.

According to the said bank, such release was made by the Reserve Bank when the said Reserve Bank on its own enquiries fully satisfied itself

about the regularity and bona fides of the bank''s forward exchange contract No. 130/66 with the Hindustan Motors.

5. Pending such enquiries by the Reserve Bank, the said bank had from time to time beginning from July 8, 1966, had to pay the bills against

importations made by Hindustan Motors covered by the aforesaid forward exchange contract No. 130/66. All such payments, however, were

made by the said bank not on the conversion rate as agreed to in the forward exchange contract No. 130/66, but at the new current rates

prevailing on the dates of such payment pending final decision of the Reserve Bank of India. Once, however, the Reserve Bank gave its decision

dated December 22, 1966, all the excess recoveries made by the said bank from the Hindustan Motors attributable to the difference between the

contract rate and the new rate were refunded and/or credited to the account of Hindustan Motors. Matters rested there until August 30, 1971,

when two of the high officials of the said bank were arrested by the Enforcement Directorate for alleged contravention of Section 4(2) and Section

22 of the said Act in respect of the said forward exchange contract No. 130/66. Those officials were ultimately discharged by the Chief

Presidency Magistrate on June 8, 1947, as the prosecution failed to put forward any charge whatsoever against them.

6. In the meantime, on November 3, 1972, the said bank was served with a show-cause notice by the Director of Enforcement calling upon the

bank to show-cause why adjudication proceedings u/s 23D of the said Act should not be held against them. This show-cause notice runs over 9

pages and is to be found at pp. 145 to 153 of the Paper Book. Looking at the substance, it appears that two-fold charges were put forward

against the bank. The first charge that was levelled against the bank is that the bank converted various amounts payable by Hindustan Motors

totalling Ã¯Â¿Â½ 9,32,221-17s-1d. in respect of import bills received by the bank and payable by Hindustan Motors during the period July 8, 1966, to

March 3, 1967, at the conversion rate of 1-5-29/32s = Re. 1 (that is, the forward rate) in terms of the forward exchange contract no 130/66

dated June 4, 1966 and not at the post-devaluation rate prevailing on the dates of actual conversion. Such conversion at a rate not the rate

prevailing on the date of conversion, it was claimed, had neither general nor special prior permission of the Reserve Bank of India. There was no

general permission since in entering into the forward exchange contract the bank had not duly fulfilled the terms and conditions specified in para. 3

of Section 28 of the Exchange Control Manual which constitutes prior approval of the Reserve Bank of India for forward sale of foreign currency.

It was alleged that the bank failed to fulfil those terms and conditions by failing to verify whether the forward exchange contract was being entered

into to cover importation against firm orders placed by Hindustan Motors and accepted by the sellers. There was no special prior permission of the

Reserve Bank for such conversion. Accordingly, it was claimed that the said bank had contravened the provisions of Section 4(2) of the said Act

when the bank allowed conversion at a rate not being the rate prevailing on the date of conversion. The second charge levelled against the said

bank was to the effect that the said bank effected forward purchase of Ã¯Â¿Â½ 7,00,000 from the Reserve Bank of India at the rate of 1-5-29/32s =

Re. 1 and got release of the said foreign exchange from the Reserve Bank inducing the bank to do so on the basis of misrepresentations and false

information"s furnished to the said bank. This in substance is the charge on which the Director of Enforcement proposed to hold an adjudication u/s

23 of the said Act.

7. A similar show cause notice was issued on April 3, 1974, by the Director of Enforcement on Hindustan Motors Ltd. based on allegations similar

to those made against the said bank in respect of the first of the two charges as above, calling upon Hindustan Motors to show cause why

appropriate adjudication proceedings should not be held against them for their contravening Section 4 of the said Act and thereby rendering

themselves liable to be proceeded against u/s 23(1)(a) of the said Act.

8. The said bank and Hindustan Motors showed cause. In showing cause they raised a defence that the allegations made in the respective show-

cause notice do not make out any case of contravention of Section 4(2) of the said Act or any other contravention in respect of which an

adjudication as proposed could be held. That objection was overruled by the Director of Enforcement, the adjudicating authority, who made an

order under Rule 3(3) of the Adjudication Proceedings and Appeal Rules in each of the cases directing the proceedings to be held. Thereupon the

said bank and Hindustan Motors moved two independent writ petitions in this Court challenging the very jurisdiction of the adjudicating authority to

hold any adjudication proceeding as proposed on the allegations made in the respective show-cause notices.

9. The very same objection was raised before the learned trial Judge by the Petitioners. It was contended that the show-cause notices on the face

of them do not disclose any contravention of Section 4(2) of the Act for which an adjudication u/s 23D as proposed can be held in accordance

with law. It was contended on their behalf that when the conversion was effected at a rate or more precisely at a forward exchange rate authorised

by the Reserve Bank for the time being, there was no contravention of Section 4. It was further contended that the charge as framed was based

upon a misconception since the conversion being at the authorised rate, no question of taking permission from the Reserve Bank, either general or

special, did arise. In initiating the proceedings, it was wrongly assumed that conversion though made at an authorised rate would constitute violation

of Section 4, if it be made without the permission of the Reserve Bank. The learned Judge in the trial Court took the view that when on the charges

levelled the forward exchange contract had been entered into without fulfilling the conditions laid down in Section 28 of the Manual, the contract

becomes void so also the rate agreed between the parties in such contract. Such being the position, the actual conversion should have been made

not at the rate so agreed though the same may be the authorised rate for forward exchange contract but should have been made at the post-

devaluation rate prevalent during the period June 8, 1966, to March 3, 1967. The Petitioners not having done so nor having obtained any previous

general or special permission of the Reserve Bank to do it otherwise, it cannot be said that the show-cause notices do not prima facie disclose any

contravention of Section 4(2) of the Act. In that view, the learned Judge discharged the Rules. Feeling aggrieved, the Petitioners have preferred the

present appeals.

9. Mr. Gupta, appearing on behalf of the said bank, in one of these appeals has strongly contended that of the two charges levelled against the

bank the second one does not constitute contravention of any of the provisions referred to in Section 23(1)(a) of the said Act so that there can be

no adjudication proceeding thereon u/s 23D. So far as the first charge is concerned, according to Mr. Gupta, the adjudicating authority can assume

jurisdiction only if the allegations constitute contravention of Section 4(2) of the said Act as claimed in the show-cause notice but not otherwise.

But according to Mr. Gupta, on the face of the allegations made in the show-cause memo when it appears that the said bank allowed conversion at

a rate agreed to between the parties in terms of a forward exchange contract and that rate was the authorised rate of the Reserve Bank for a six

month forward sale on the date the contract was entered into, there can be no contravention of Section 4(2) which only forbids entering into any

transaction providing for conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other

than the rates for the time authorized by the Reserve Bank. According to Mr. Gupta, no question of any previous special or general permission

from the Reserve Bank arises since the transaction that was entered into provided for conversion at a rate for the time being authorised by the

Reserve Bank of India. Any deviation from that rate might have required any such permission but where there was no such deviation any

permission is wholly unnecessary. According to Mr. Gupta, even assuming for a moment that the said bank in entering into the disputed forward

exchange contract had not strictly complied with the regulations incorporated in Section 28 of the Exchange Control Manual by entering into such a

contract without being properly satisfied that Hindustan Motors had placed firm orders for the imports for which the contract for forward sale was

being entered into, such contravention may otherwise be punishable under the Act but certainly does not constitute contravention of Section 4(2) of

the Act authorising an adjudication proceeding u/s 23. According to Mr. Gupta, the only obligation which can be said to have been imposed by

Section 4 is to see that all transactions which provide for conversion is at a rate for the time being authorised by tie Reserve Bank. Reserve Bank

under para. 13 of Section 1 of the Exchange Control Manual authorised that

(a) the rates of exchange governing transactions in or relating to sterling shall be those published by the Foreign Exchange Dealers'' Association of

India.

10. Now, in the present case, it has been pointed out by Mr. Gupta that when the bank on June 4, 1966, entered into the disputed transaction with

the Hindustan Motors providing for conversion of Indian currency into Ã¯Â¿Â½ sterling on any date within six months from that date, such conversion

was agreed to be made at the rate of 1.5-29/32s. = Re. 1 which was the rate for the time being published by the Foreign Exchange Dealers''

Association of India for forward sales between 1 to 6 months and therefore, it cannot be said that there had been any violation of Section 4.

According to Mr. Gupta, the learned Judge in the trial Court failed to appreciate that when Section 4 speaks of a transaction, it only speaks of

factual transaction irrespective of whether it is otherwise invalid on other grounds. According to Mr. Gupta, if a person enters into a transaction in

due compliance with the requirements of Section 4, he cannot be hauled up for contravention of Section 4 only because subsequently it transpires

that that transaction is found to be illegal or void for some other reason as for example if it is subsequently found that one of the parties to such a

transaction being a minor could not have lawfully entered into a contract. Therefore, according to Mr. Gupta, the learned Judge in the trial Court

went wrong in thinking that when on the other allegations levelled in the show-cause memo contravention of Section 28(3) of the Manual had been

alleged such contravention would render the entire transaction void so that the conversion though made at an authorised rate would be in violation

of Section 4(2) of the Act because that rate would not avail because of invalidity of the contract on the other ground. He has strongly assailed the

correctness of the view taken by the learned Judge in the trial Court.

11. Mr. Ray appearing on behalf of the Appellant Hindustan Motors has adopted the arguments of Mr. Gupta, Mr. Ray has further pointed out

that Section 28 of the Manual really constitutes a part of the instructions issued by the Reserve Bank u/s 3(3) of the said Act and contravention of

an instruction can never constitute the foundation for any adjudication contemplated by Section 23D.

12. In contesting both the appeals, Mr. Chakrabarty appearing on behalf of the Respondents has contended that Section 4 of the said Act

authorises contracts at ready rates only and if it is to be at forward rates it must necessarily be with the special or general permission of the Reserve

Bank. In the present case, the impugned forward exchange contract having been entered into without any such permission from the Reserve Bank

there has been a violation of Section 4(2) of the said Act. Secondly, it has been contended by Mr. Chakrabarty that when Section 4(2) speaks of

a transaction it necessarily contemplates a valid transaction but where, as in the present case, the transaction is a forward exchange contract which

had not been entered into in due compliance with the requirements of Section 28(3) of the Manual, that transaction must be deemed to be invalid

and void and therefore, conversion at the rate specified in such contract and not at the prevailing rate would constitute breach of Section 4(2) of

the said Act. Thirdly, it has been contended by Mr. Chakrabarty that even if the allegations constitute violation of any direction or instruction issued

by the Reserve Bank u/s 3 of the said Act, such violation can be the subject-matter of adjudication by the adjudicating authority in view of the

extended scope of such adjudication under the provisions of the new Foreign Exchange Control Act, 1973. Reference is made to Section 51 of

the new Act which corresponds to Section 23 of the old Act of 1947 with this modification that under the new provision the authority to adjudicate

is not limited to contravention as in the old Act. According to Mr. Chakravarty, Section 51 being procedural provision can have retrospective

operation and can very well be availed of for adjudicating contraventions made prior thereto. Apart from the aforesaid three substantial objections

raised by Mr. Chakrabarty, he has raised a few technical objections. According to Mr. Chakrabarty in view of the inordinate delay incurred by the

Petitioners in moving this Court and in view of their conduct of submitting to the jurisdiction of the adjudicating authority they should not be allowed

to claim any relief from this Court in the manner proposed. Next, according to Mr. Chakrabarty, Reserve Bank being a necessary party and not

having been made a party to the present proceedings the writ petitions should not be entertained in the absence of the Reserve Bank. Lastly, it has

been contended by Mr. Chakrabarty that since the Petitioners have an alternative remedy under the Act, the writ petitions are not maintainable.

13. We have carefully considered the rival contentions raised before us. In our view, the substantial issue which needs to be determined is as to

whether the two show-cause notices at all make out any case for adjudication u/s 23 of the said Act. u/s 23D, the adjudicating authority has the

jurisdiction to hold an enquiry for adjudging u/s 23 whether any person has committed any contravention referred to in Section 23(1) of the said

Act. Section 23 speaks of contravention of Sections 4, 5, 9, 10, 12(2), 17, 18A, 18B or of any rule, direction or order made thereunder. On the

show-cause notices on which the impugned adjudication proceedings had been initiated what is alleged to have been contravened by the

Appellant/Petitioners is Section 4(2) of the said Act and not any of the other provisions referred to in Section 23. Section 4 provides as follows:

Except with the previous general or special permission of the Reserve Bank, no person, whether an authorised dealer or otherwise, shall enter into

any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of

exchange other than the rates for the time being authorised by the Reserve Bank.

There is no dispute that Reserve Bank''s authorisation of the rates for such conversion is to be found in para. 13 of Section 1 of the Manual which

is in following terms:

Section 4(2) of the Foreign Exchange Regulation Act, 1947, lays down that all transactions in foreign exchange shall be done at rates for the time

being authorised by the Reserve Bank. In pursuance of the above provision, the Reserve Bank of India has authorised that (a) rates of exchange

governing transactions in or relating to sterling shall be those published by the Foreign Exchange Dealers'' Association of India;

(b) the rates in respect of other currencies may be fixed by authorised dealers on the basis of market conditions subject to spot transactions being

done at or between the rates ruling in the London Foreign Exchange market and,

(c) the terms and conditions laid down by the Foreign Exchange Dealers'' Association of India for transacting foreign exchange business shall

govern all business transacted by authorised dealers.

14. In the present case, the exchange being in relation to sterling was effected at the rate published by the Foreign Exchange Dealers'' Association

of India. There is no dispute that the Foreign Exchange Dealers'' Association of India publishes from time to time different rates for different

transaction. Such Association publishes one rate for immediate conversion called ready rate and another for conversion at any time within 6

following months and vet another rate for conversion at any time beyond 6 but within 12 following months called forward rates. It is also not in

dispute that on the day the said bank entered into the forward exchange contract with the Hindustan Motors agreeing to convert Indian currency

into sterling at any time within 6 months following the date of contract, it did so at the rate of Re. 1 = 1.5-29/32s, a rate published on that date by

the Foreign Exchange Dealers'' Association of India to be the rate for such forward exchange and as such authorised by the Reserve Bank. These

facts not being in dispute and being apparent on the show-cause notices the question is, can it be said that the Appellant/Petitioners in the present

case in entering into such a forward exchange contract agreeing to convert Indian currency into sterling at the forward rate so published by the

Foreign Exchange Dealers'' Association of India and subsequently having converted rupee into sterling at the rate so agreed, did commit any

violation of Section 4(2) of the said Act as alleged.

15. We have set out Section 4 hereinbefore. In our view that provision enjoins that none shall enter into any transaction which provides for

conversion of Indian currency into foreign currency or vice vena at the rates of exchange other than the authorised rates. Such a prohibition in its

turn, however, is subject to a proviso that one can enter into such a transaction if it is so done with previous general or special permission of the

Reserve Bank. Therefore in a case where the transaction provides for conversion at authorised rates there arises no necessity of obtaining

permission in any manner from the Reserve Bank. We are, therefore, unable to accept the contention of Mr. Chakrabarty that in all cases where

the transaction provides for conversion at a rate other than ready rate for immediate conversion, the transaction must be entered into only with the

previous general or special permission of the Reserve Bank. In our view Mr. Gupta is well justified in his criticism of the show-cause notice to the

effect that it is based on a fundamental misconception. On the said show-cause notice the allegation made is that the fulfilment of the conditions

specified in Section 28 of the Manual constitutes the foundation for the general approval by the Reserve Bank and when in the present case such

conditions had not been fulfilled, there was no prior general permission of the Reserve Bank and when there was no special permission, the

transaction though made at the forward rate published by the Foreign Exchange Dealers'' Association constitutes contravention of Section 4. Such

a position is not sustainable for the simple reason that the transaction being made at an authorised rate obtaining prior permission from the Reserve

Bank in any form is not called for and absence of such permission does not render the transaction so made as being in contravention of Section 4.

16. Assuming the substantive allegations made in the show-cause notices to be all true, let us now consider whether they otherwise constitute

violation of Section 4(2) of the said Act. Such allegations are that the Appellant/Petitioners as between them entered into a forward exchange

contract without the said bank fulfilling their obligations u/s 28(3) of the Manual. The question to be considered is as to whether contravention of

Section 28(3) of the Manual leads to or results in contravention of Section 4 or any of the Section specified in Section 23(1) of the said Act.

Paragraph 3 of Section 28, of the Manual provides that forward sales of foreign currencies may be made by authorised dealers without prior

approval of the Reserve Bank against import of merchandise, but such sales must be made in accordance with instructions set out in the other

clause of that paragraph. The material clause provides that contracts for forward sales against imports may be entered into only if (a) the Applicant

holds a valid import licence with an exchange control copy covering the proposed import or the import is covered by an open general licence and

(b) either a letter of credit covering the proposed import has been opened or a firm order has been placed and accepted by the seller. On the

show cause notices in the present case, the allegation is that the said bank in entering into the forward contract with the other Appellant/Petitioner

did not satisfy itself to the effect that either a letter of credit covering the proposed import had been opened or a firm order had been placed by

Hindustan Motors and accepted by their sellers. In other words, the allegation is that in entering into the forward contract there has been a

contravention of para. 3 Clause (ii)(b) of Section 28 of the Manual. On a plain reading of Section 4 of the said Act and Section 28(3) of the

Manual, it appears clear to us that the requirements prescribed by the instructions incorporated in Section 28 are not the requirements of Section

4. Section 4 speaks of authorisation of the rate of exchange and of a general or special permission in case of transactions providing conversion at a

rate other than the rate so authorised. Section 28 of the Manual covers a different field altogether. We have already found that to the extent the

show-cause notices proceed on the basis that fulfilment of the requirements of Section 28 of the Manual constitutes a general permission

contemplated by Section 4 is concerned, such notices are based on an erroneous idea about the legal position. Firstly, the question of general or

special permission does not arise at all since the transaction itself provided for conversion at the authorised rate. Secondly, Section 28 itself docs

not specify that fulfilment of the requirements thereof constitutes any general permission of the Reserve Bank. Section 28 obviously was meant for

other purposes and comes under either Section 3(3) or Section 20(3) of the said Act. Contravention of these provisions may constitute

independent offences resulting in independent liabilities, but that does not constitute violation of Section 4(2) of the said Act or any of the

provisions specified in Section 23(1) of the said Act which can authorise an adjudication u/s 23D : Union of India (UOI) and Others Vs. Rai

Bahadur Shreeram Durga Prasad (P) Ltd. and Others, . Therefore, we are of the opinion that even if there had been a violation of Section 28(3) in

the matter of entering into the forward contract between the Appellant-Petitioners in the present case, that does not amount to violation of Section

4.

17. The only other issue that remains to be considered is as to whether because of such contravention of Section 28(3) the forward contract itself

must fail and the entire transaction must be construed to be so void that conversion of Indian currency into sterling on subsequent dates not being at

the rate prevailing on the date of conversion but being at a rate as agreed between the parties on the basis of such a forward contract would

constitute violation of Section 4(2) of the said Act. The learned Judge in the trial Court appears to have taken the view that the forward contract

itself becomes void and as such, there could be no legal authority for the bank to effect the exchange at the rate so agreed and not at the rate

prevailing on the date of conversion. According to the learned Judge, the actual conversion, therefore, becomes one at a rate not authorised u/s 4.

The same is the contention of Mr. Chakrabarty in support of the show-cause notices. We are, however, unable to agree with the learned Judge in

the trial Court on this point. Section 23(1) imposes a criminal liability when it provides that any person contravening Section 4 shall not only be

liable to such penalty as specified in Clause (a) that may be adjudged by the Director of Enforcement, but shall, upon conviction by a Court, be

punishable with imprisonment for a term which may extend to 2 years or with fine or with both. Such a provision, in our view, must be strictly

construed. When Section 4(2) provides that no person shall enter into any transaction which provides for conversion of Indian currency into

foreign currency or foreign currency into Indian currency at rates of exchange other than the authorised rate, none should contravene the

prohibition imposed by this provision in the transactions they enter into. That prohibition only relates to the rate and is irrespective of the transaction

being otherwise valid or invalid. In our view it is not permissible to impose collaterally a criminal liability u/s 23(1) by pleading that the, transaction

itself being otherwise invalid though it provided for conversion at the authorised rate, such rate would not be of any, avail and the transaction must

be construed to be one at the rate so agreed. In our view the only point which arises for consideration on a charge of the present nature is to find

out whether in entering into the transaction, otherwise valid or invalid, there had been any conversion at a rate other than the authorised rate so that

only in a case where there is a conversion at a rate other than the authorised rate the person concerned may be charged for having contravened

Section 4(2) of the Act.

18. So far we have considered the principal allegations made in the respective two show-cause notices which are common to both. There are

certain additional allegations against the Appellant bank. It has been alleged that the bank in its turn made a forward purchase of Ã¯Â¿Â½ 7,00,000

from the Reserve Bank and had that sterling released by the Reserve Bank on certain misrepresentations. In our view the prohibition u/s 4(2)

cannot, on its own terms, have any application to transactions with Reserve Bank in whom lies the entire control including the right to relax the very

prohibition incorporated therein. Nor has it been alleged that in making such purchase the said bank had adopted any unauthorised rate of

conversion. Therefore, by making the forward purchase from the Reserve Bank, the said bank cannot be said to have violated Section 4(2) of the

said Act nor is it so alleged in the show-cause notices. The real grievance is, however, on the score that the said bank had such sterling released on

misrepresentations made to the Reserve Bank. Such alleged misconduct on the part of the said bank, however, does not constitute contravention

of any of the provisions specified in Section 23(1) and as such cannot be the subject-matter of any adjudication u/s 23D of the said Act.

19. Next we proceed to consider the third point raised by Mr. Chakrabarti. Relying on the provisions of the Foreign Exchange Regulation Act,

1973, (hereinafter referred to as the "1973 Act"). Mr. Chakravarti contends that, even if the allegation incorporated in the show-cause notices

make out infringement not of Section 4(2) but of Section 3(3) of the said Act (i.e., Act of 1947), such infringement can be adjudicated by the

Director of Enforcement in view of the extension of field of adjudication by such a Director under the new Act. Obviously Mr. Chakravarti relies

on Section 51 of the 1973 Act which corresponds to Section 23D of the said Act. Section 51 has undoubtedly extended the field of adjudication.

Unlike Section 23, the right to adjudicate is no longer limited to the contravention of a few specified provisions of the Act but extends to cover

contraventions of all, the provisions of the Act barring only Sections 13, 18(1) and 19. To be more precise the Director of Enforcement has been

conferred the jurisdiction to adjudicate contravention of Section 6(4) of the new Act which corresponds to Section 3(3) of the said Act. Since the

new Act has come into effect Mr. Chakravarti contends that Section 51 merely providing for the procedure can be given retrospective effect, so

that even if the contravention alleged in the show-cause notices constitute contravention of Section 3(3) that can now be adjudicated by the

Director of Enforcement. It is difficult, however, to accept this contention of Mr. Chakravarti. The new Act, that is, the 1973 Act is not an

amending Act and does not propose to amend the old Act, so that it can be said to amend the procedural part with retrospective effect. It repeals

the old Act subject to the savings u/s 6 of the General Clauses Act and Section 81 of the 1973 Act. Such saving provisions may save the liability

incurred by the Appellant-Petitioners and may save the right to initiate appropriate proceedings under the old Act for enforcement of such

liabilities. u/s 81 the pending proceedings may as well be proceeded with as if initiated under the corresponding provisions of the new Act, But

these saving provisions do not extend the jurisdiction of the Director of Enforcement to adjudicate any contravention of a provision of the old Act

which was not capable of such adjudication by him. Section 51 of the 1973 Act provides that the adjudicating authority can hold an adjudication in

respect of contravention of any of the provisions of this Act, that is, the 1973 Act. Here the Appellant-Petitioners cannot be said to have

contravened any of the provisions of 1973 Act, because the Act was not there when the contravention alleged had been committed. An

adjudication proceeding initiated u/s 23D can no doubt be continued u/s 51 in view of Section 81, but that presupposes that such a proceeding

was competently initiated u/s 23D. A proceeding which could not have been initiated u/s 23D cannot be continued u/s 51. Moreover when in both

the cases the only charge levelled against the Appellants is contravention of Section 4(2) of the 1947 Act and one of these proceedings too was

initiated u/s 23D, there is no scope for a contention of the nature put forward by Mr. Chakravarti.

20. So far as the other technical objections raised by Mr. Chakravarti are concerned, we find little substance in them. Though, according to Mr.

Chakravarti, the Appellant-Petitioners are guilty of inordinate delay in moving this Court, we do not find any real delay based on the Appellants''

laches. In the case of the bank the show-cause notice is dated January 3, 1972. Cause being shown on February 16, 1974, the adjudicating

authority made an order under Rule 3(3) of the Adjudication Proceedings and Appeal Rules on August 3, 1974 and the Appellant bank moved

this Court immediately thereafter on August 19, 1974. In the other case the show-cause notice was issued on April 3, 1974. Cause being shown

on January 7, 1975, the order under Rule 3(3) as above was made on January 3, 1976 and this Court was moved immediately thereafter on

January 15, 1976. In either of these cases, the Appellant-Petitioners could not have moved this Court without first raising the objection as to non-

maintainability of the adjudication proceeding before the adjudicating authority under Rule 3(3). It is only when the adjudicating authority overruled

their objection and expressed the opinion that the proceeding should be held that they could move this Court. There was no delay in moving this

Court since after the adjudicating authority''s order made under Rule 3(3). Some time may have lapsed between issue of the show-cause notice

and the cause being shown, but that was due to the inspection of voluminous documents prayed for and granted from time to time. Such time

having been granted by the adjudicating authority, Mr. Chakravarti cannot now make a grievance over it. Moreover, on our findings when the

adjudication proceedings are wholly beyond the jurisdiction of the adjudicating authority, it would not be just and proper to allow such proceedings

to continue only on the ground of delay. The next objection raised by Mr. Chakravarti is that the Appellant-Petitioners having submitted to the

jurisdiction by filing defences to the show-cause notices, they cannot any longer challenge the jurisdiction of the adjudicating authority. In our view,

such an objection should be overruled because when the adjudicating authority inherently lacks jurisdiction--the allegations not constituting any

contravention of Section 4--no amount of consent could confer upon the said authority the necessary jurisdiction to hold such an adjudication.

Moreover, the Appellants never submitted to the jurisdiction of the adjudicating authority which will be apparent on the causes shown by them.

They specifically raised an objection to the maintainability of such an adjudication proceeding and in showing cause reserved their right to challenge

the authority''s jurisdiction to proceed with the proceeding. Under the Adjudication Proceedings and Appeal Rules, they were entitled if not

obliged to raise such an objection at the first instance before the adjudicating authority and invite his decision thereon and by doing so they cannot

be said to have submitted to the jurisdiction of that authority to hold the adjudication even if the same is otherwise without jurisdiction. Mr.

Chakravarti''s next objection is that in the absence of the Reserve Bank as a party to the present proceedings in this Court such proceedings are

not maintainable. In our view, the Reserve Bank is not a necessary party. What have been challenged are the adjudication proceedings sought to

be held by the adjudicating authority. Merely because the directions or the authorisation alleged to have been infringed are those issued by the

Reserve Bank, the said bank does not become a necessary party. Such direction or authorisation is not the subject-matter of challenge. What is

challenged is that the infringement alleged does not constitute contravention of Section 4(2) of the said Act. Last objection raised by Mr.

Chakravarti is that an alternative remedy bars the proceedings initiated in this Court. But he has failed to show us any remedy for the relief claimed

in the writ petition. The fact that the Appellant-Petitioners have a right of appeal against the final order that may be passed by the adjudicating

authority cannot, in our view, be considered to be an alternative remedy, The Appellant-Petitioners are challenging the maintainability of the

proceedings on the ground that the adjudicating authority had no jurisdiction on the face of the show-cause notices to initiate the adjudication

proceedings. They raised that objection before the adjudicating authority under Rule 3(3) of the Adjudication Proceedings and Appeal Rules but

the same was overruled. Law does not provide for any other remedy for annulling such a proceeding initiated without jurisdiction. It is no remedy

for them that they must now suffer the proceedings and raise the same issue once more in preferring an appeal against the final order that may be

passed against them because the relief they claim is that they should not be made to suffer a proceeding in the hands of an authority patently, having

no jurisdiction to initiate or hold the same.

21. In the result, on our findings made hereinbefore, it must be held that the impugned adjudication proceedings are wholly beyond the jurisdiction

of the adjudicating authority. Appeals, therefore, succeed and are allowed. The judgment and order as passed by the learned trial Judge in both

cases are set aside. The respective writ petitions are allowed and the two adjudication proceedings impugned in the two Rules are set aside. There

will be no order for costs.

B.C. Chakravorti, J.

22. I agree.