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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.12.2025

% Judgment delivered on: 30.03.2026

\+ LPA 1185/2024, CM APPL. 71163/2024 & CM APPL. 75920/2024

PUTZMEISTER CONCRETE PUMPS GMBH AND ANR
...Appellants

Through: Mr.Jayant Mehta, Sr. Adv. with Mr.Rohin Dubey, Mr.Sagar Chawla and Ms.Mansvini Jain, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr.Mukul Singh, CGSC with Ms.Ira Singh and Mr.Aryan Dhaka, Advs. for UOI.
Mr.Shyam Mehta, Sr. Adv. with Mr.Rishi Agrawala, Mr.Rajesh Vaidya, Mr.Gaurav Goel, Mr.Aditya Bapat, Mr.Abhay Agnihotri and Mr.Abhishek Anand, Advs. for R-5 to R-7.
Mr.Zoheb Hossain, SPC for ED with Mr.Vivek Gurnami, Panel Counsel along with Mr.Kartik Sabharwal, Mr.Pransal Tripathi and Mr.Chinmay Anand Panigrahi, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

CHALLENGE

1. The instant *intra-Court* appeal seeks exception to the judgment and order dated 29.10.2024 passed by the learned Single Judge whereby, *W.P.(C) 8148/2010* instituted by respondent no.5-Putzmeister India Private Limited (*hereinafter referred to as the* '**PIP'**), has been disposed of with certain directions, with a further stipulation that there shall not be any stay or injunction on operation of the *ex-post facto* approval till newly constituted Committee takes appropriate decision on the proposal of appellant no.1-Putzmeister Concrete Pumps GmbH (*hereinafter referred to as the* '**PCP'**) whereby, *ex-post facto* approval of the respondent no.2 was sought under Press Note-1 (2005 Series) for investment made by it in appellant no.2-Putzmeister Concrete Machines Private Limited, (*hereinafter referred to as the* '**PCM'**)

DETAILS OF PARTIES

SERIAL NO.	PARTIES IN THE CAUSE TITLE	DESCRIPTION
1.	Appellant no.1- Putzmeister Concrete Pumps GmbH (**PCP**)	A German Company incorporated in Germany, having its registered office at Max Eyth-Stasse 10, 72631 Aichtal, Germany.

		This Company is said to be engaged in manufacture and supplies of concrete pumps of different sizes, tunnel machines, industrial pumps, mortar machines and professional high-pressure cleaners. It is also said to be engaged in developing, manufacturing and selling high-tech service focus machines to serve clients worldwide.
2.	Appellant no.2-Putzmeister Concrete Machines Private Limited (**PCM**)	A Company incorporated and registered under the provisions of Companies Act, 1956, having its registered office at Plot No. N-4, Phase IV, Verna Industrial Estate, Verna, Salcete, Goa. Appellant no.1 holds 99.99% of the shareholding of appellant no.2 and rest of 0.01% of the shareholding of appellant no.2 is held by Stabau GMBC, Germany which is an associate company of appellant no.1.
3.	Respondent no.1-Union of India	Respondent no.1 has been arrayed in the appeal through Secretary, Ministry of Commerce and Industry, the Department of Industrial Policy and Promotion, Udyog Bhavan, New Delhi.
4.	Respondent no.2-Union of	Respondent no.2 has been arrayed through Secretary,

	India	Ministry of Finance, Department of Economic Affairs, FIPB Unit, North Block, New Delhi.
5.	Respondent no.3-The Reserve Bank of India	
6.	Respondent no.4-Directorate of Enforcement, Government of India	
7.	Respondent no.5-Putzmeister India Private Limited (**PIP**)	A Company incorporated and registered under the provisions of Companies Act, 1956 having its registered office at Plot No.190, 191 Kundaim Industrial Estate, Kundaim, Goa. 76% of the issues, subscribed and paid up share capital of this Company is held by respondent no.6 and 7. Appellant no.1 earlier held 24% issued, subscribed and paid up share capital of this Company, which is said to have been subsequently transferred by appellant no.1 to a third party.
8.	Respondent no.6- Milind Sadashiv Bhabhade	Managing Director of respondent no.5.
9.	Respondent no.7-Ashok Vidyanand Dikshit	Director of respondent no.5.

BACKGROUND FACTS

2. On 19.12.1997, appellant no.1-PCP, with a view to manufacture certain types of pumps in India, entered into a Joint Venture Agreement (*hereinafter referred to as the* '**JVA-I'**) with respondent nos.6 and 7. JVA-I provided for *inter alia* supply of technology for manufacturing certain pumps/products of appellant no.1-PCP. The agreement further provided that appellant no.1-PCP shall subscribe to 24% of the capital of a Joint Venture Company, which was to be formed.

3. On 19.12.1997 itself, a License Production Agreement was also entered into between appellant no.1-PCP and respondent nos. 6 and 7, making provisions for technology in respect of some products of appellant no.1-PCP**.** This agreement was executed for entering into the license of manufacturing and marketing of some products of appellant no.1-PCP in India. It also stipulated provision for supply of technology for the licensed production and marketing of licensed products.

4. Pursuant to JVA-I, a Joint Venture Company in the name of respondent no.5-PIP was incorporated on 23.01.1998. In accordance with JVA-I, respondent nos.6 and 7 subscribed to 76% of the shares of respondent no.1 and appellant no.1-PCP subscribed to 24% of its shares.

5. Another JVA was entered into between appellant no.1-PCP and respondent nos. 6 and 7 on 04.11.2004 (*hereinafter referred to as the* '**JVA-II'**). As per JVA-II, certain changes were to be given effect to in the scheme of the Joint Venture already in existence in the form of respondent no.5-PIP,

which included reorganisation of the share capital, according to which, shareholding of appellant no.1-PCP in respondent no.5-PIP would be 65% and shareholding of respondent nos. 6 and 7 in this Company would be 35%. JVA-II also provided that the Board of Directors of respondent no.5-PIP will comprise of 5 Directors with 3 Directors to be nominated by appellant no.1-PCP and 2 Directors to be nominated by respondent nos.6 and 7.

6. Appellant No.2-PCM was incorporated on 14.06.2005 having its registered office at Goa. Appellant No.1 holds 99.99% shareholding of appellant No.2 and rest of 0.01% of its shareholding is held by Stabau GMBH, Germany.

7. On 23.06.2005, appellant no.1-PCP issued three notices. The first notice was issued by appellant no.1-PCP, expressing its intention to withdraw from JVA-II. The second notice was issued where appellant no.1-PCP expressed its intention to withdraw from the Licensed Production Agreement, and the third notice expressed its intention to terminate the right to use under the Licensed Production Agreement.

8. Appellant no.1-PCP, thereafter, made an investment of Rs.25,62,000/- in appellant no.2-PCM by subscribing to its entire share capital. Subsequently, appellant no.1-PCM subscribed further shares of appellant no.2-PCM. The total investment made by appellant no.1-PCP in appellant no.2-PCM between 22.07.2005 and 01.08.2009 is said to be Rs.55,41,01,810/-.

9. At the time when appellant no.1-PCP made foreign investment in appellant no.2-PCM, Form FC-GPR was filed on 08.08.2005 for remittance under the automatic route of investment and it is the case of the respondent no.5-PIP that while furnishing this Form, a false declaration was made that appellant no.1-PCP did not have any previous Joint Venture or Technical Collaboration/Trademark Agreement in the same or allied field.

10. Respondent no.5-PIP is said to have raised its grievances to various authorities of the respondent nos. 1, 2 and 3 in relation to the investment made by appellant no.1-PCP in appellant no.2-PCM, which, according to respondent no.5-PIP, was in violation of the guidelines contained in Press Note-1 and 3 (2005 Series) issued by Respondent No.1 and accordingly, respondent no.5-PIP requested the authorities to take action against the appellants.

11. At this juncture, we may note that the Department of Industrial Policy and Promotion, Ministry of Industry, Government of India, had issued Press Note-18 (1998 Series) on 14.12.1998, embodying guidelines pertaining to approval of foreign/technical collaboration under the automatic route with previous ventures/tie-ups in India. The Press Note-18 (1998 Series) is quoted here under:

> *"1. The Government have reviewed the present Guidelines relating to approval of foreign/technical collaborations under the automatic route and after careful consideration it has been decided that foreign financial/technical collaboration with previous ventures/tie-up in India would be subjected to the following guidelines:*
>
> > *I. Automatic route for FDI and/or technology collaboration would not be available to those who have or had any previous*

joint venture or technology transfer/trade-mark agreement in the same or allied field in India. RBI, therefore, have to stipulate necessary declaration before applications for the automatic route are taken on record.

II. Investors of Technology to the suppliers of the above category therefore will have to necessarily seek the FIPB/PAB approval route for joint ventures or the technology transfer agreements (including trade-mark) giving detailed circumstances in which they find it necessary to set-up a new joint venture/enter into new technology transfer (including trade-mark).

III. The onus is clearly on such investor/technology suppliers to provide the requisite justification as also proof to the satisfaction of FIPB/PAB that the new proposal would not in any way jeopardise the interests of the existing joint venture or technology/trade-mark partner or other stakeholders. It will be at the sole discretion of FIPB/PAB to either approve the application with or without conditions or reject in toto duly recording the reasons for doing so.

2. The above procedure will form part of the approval procedures contained in the "Manual on Industrial Policy & Procedures In India" published by SIA, Ministry of Industries, Government of India, which shall stand clarified accordingly in respect of foreign/technical collaborators with previous joint ventures/tie-up in India."

12. The Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, Government of India, reviewed the guidelines notified *vide* Press No-18 (1998 Series) and issued Press Note-1 (2005 Series) on 12.01.2005, which contains new guidelines for approval of foreign/technical collaborations under the automatic route with previous ventures/tie-ups in India. Press Note-1 (2005 Series) is quoted here under:

"1. ...

2. New proposal for foreign investment/technical collaboration would henceforth be allowed under the automatic route, subject to sectoral policies, as per the following guidelines:

i) Prior approval of the Government would be required only in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement in the 'same' field. The onus to provide requisite justification as also proof to the satisfaction of the Government that the new proposal would or would not in any way jeopardise the interests of the existing joint venture or technology/ trademark partner or other stakeholders would lie equally on the foreign investor/ technology supplier and the Indian partner.

ii) Even in cases where the foreign investor has a joint venture or technology transfer/ trademark agreement in the 'same' field prior approval of the Government will not be required in the following cases:

a. Investments to be made by Venture Capital Funds registered with the Security and Exchange Board of India (SEBI); or
b. where in the existing joint-venture investment by either of the parties is less than 3%; or
c. where the existing venture/ collaboration is defunct or sick.

iii) In so far as joint ventures to be entered into after the date of this Press Note are concerned, the joint venture agreement may embody a 'conflict of interest' clause to safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the 'same' field of economic activity.

3. …"

13. Thereafter, Press Note-3 (2005 Series) was issued by the Government of India on 15.05.2005, containing certain clarifications regarding guidelines pertaining to approval of foreign/technical collaborations under the automatic route with previous ventures/tie-ups in India. Press Note-3 (2005 Series) is extracted herein below:

"Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion
(Secretariat for Industrial Assistance)

PRESS NOTE NO. 3 (2005 SERIES)

Subject: Clarification regarding Guidelines pertaining to approval of foreign/technical collaborations under the automatic route with previous ventures/tie-ups in India.

1. The Government, vide Press Note 1 {2005 Series) dated 12.1.2005,notified fresh guidelines for approval of new proposals for foreign/technical collaboration under the automatic route with previous venture/tie up In India. According to these guidelines, prior approval of the Government would be required for new proposals for foreign Investment/technical collaboration, in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement in the same field in India.

2. The Government had, earlier vide Press Note 10 (1999 Series) notified the definition of "same field" as the 4-digit National Industrial Classification (NIC) 1987 Code. It is hereby reiterated that for the purposes of Press Note 1 (2005 Series), the definition of 'same' field would continue to be 4-digit NIC 1987 Code.

3. It is also clarified that proposals in the Information Technology sector, Investments by multinational financial institutions and in themining sector for same area/mineral were exempted from the application of Press Note 18 (1998 Series) vide Press Note 8 (2000), Press Note1(2001) and Press Note 2(2000) respectively. Investment proposals in these sectors would continue to be exempt from Press Note 1 (2005Series).

4. From para 2(i) of the guidelines notified vide Press Note 1 (2005Series), it is clear that prior Government approval for new proposals would be required only in cases where the foreign investor has an existing joint venture, technology transfer/trademark agreement in the 'same' field subject to provisions of para 2(ii) of the Press Note 1 (2005 Series).

5. For the purpose of avoiding any ambiguity it is reiterated that joint ventures, technology transfer/trademark agreements existing on the date of issue of the said Press Note i.e. 12.1.2005 would be treated as existing joint venture, technology transfer/ trademark agreement for the purposes of Press note 1 (2005 Series).

(signed)
(UMESH KUMAR)
Joint Secretary to the Government of India"

14. It is also noteworthy that Press Note-1 (2005 Series) clearly provided that where the foreign investor has an existing Joint Venture or technology

transfer/trademark agreement in the same field, prior approval of the Government would be required. It further provides that the onus to provide requisite justification, as also proof, to the satisfaction of the Government that the new proposal would or would not in any way jeopardise the interest of the existing Joint Venture or Technology/Trademark Partner or other stakeholders, would lie equally on the foreign investor/technology supplier and the Indian partner. Press Note-3 (2005 Series) issued by the Government of India clarified that for the purposes of Press Note-1 (2005 Series), the definition of 'same' field would continue to be 4-digit National Industrial Classification (NIC) 1987 Code and that joint ventures existing on 12.01.2005 i.e. the date of issue of Press Note 1, would be treated as existing joint venture for the purposes of Press Note 1.

15. On investment made by appellant no.1-PCP in appellant no.2-PCM the grievance raised before the authorities by respondent no.5-PIP was that such investment was in violation of the guidelines contained in Press Note-1 and Press Note-3 for the reason that no approval for such investment was sought by the appellants, though, in terms of the requirements of the guidelines contained in Press Note-1 and Press Note-3, the onus to provide requisite justification and the proof to the satisfaction of the Government of India that new proposal would or would not in any way jeopardise the interest of the existing Joint Venture (respondent no.5-PIP) would lie equally on both the appellants, the appellant no.1-PCP being the foreign investor and appellant no.2-PCM being its Indian Partner.

16. On investment made by appellant no.1-PCP in appellant no.2-PCM, the said information was sent to the Reserve Bank of India by the appellant no.2-PCM, which at that time was known as Dynajet Machinery India Private Limited, by means of the letter dated 08.08.2005, along with Form FC-GPR.

17. The information supplied to the Reserve Bank of India in Form FC-GPR contains a declaration to the effect that, 'Foreign equity (ies) other than individuals to whom we have issued shares does/do not have any previous joint venture or technical collaboration or trademark agreement in India in the same or allied field'. The relevant extract of the said declaration which forms part of Form FC-GPR is extracted herein below:

> "*We hereby declare that*
>
> *1. We have carefully followed the procedure for issue of shares as laid down under the Automatic Route as Indicated in the Notification No. FEMA 20/2000-RB dated 3rd May 2000.*
>
> *2. Foreign equity (ies) other than individuals) to whom we have issued shares does/do not have any previous joint venture of technical collaboration or trade mark agreement in Indie in the same or allied field.*
>
> *3. We don't require an Industrial Licence under the Industries (Development and Regulation) Act, 1951 or in terms of locational policy notified by the Government under the new Industrial Policy of 1991.*
>
> *4. We are an SSI unit & the investmentlimitof2414hasbeen observed, OR we are not an SSI unit, (Delete whichever is not applicable under signature).*
>
> *5. Our proposal is within the sectoral policy/cap permissible under the automatic route of RBI."*

18. Writ petitions bearing no. *W.P.(C) 5633-35/2006* were filled by respondent no.5-PIP and respondent no. 6 and 7, before this Court with a

prayer to direct respondent nos. 1 to 4 to take action against the appellant nos. 1 and 2 for violation of the guidelines contained in Press Note.1 and 3.

19. During pendency of the said writ petitions filed by respondent no.5 to 7, an order was passed on 02.04.2007 by respondent no.1 on the representation, which was preferred by respondent no.5-PIP, regarding violation of Press Note-1 (2005 Series) by appellants, wherein it was noticed that Press Note-1 (2005 Series) dated 12.01.2005 provided that new proposals for foreign investment/technical collaboration would require prior government approval in cases where foreign investor has, in India, an existing Joint Venture or technology transfer/trademark agreement in the same field.

20. It was also noted in the order/letter dated 02.04.2007 of the respondent no.1 that appellant no.1-PCP had two JVAs in India for the manufacture of construction machinery and equipment. The JVA-I expired on 19.12.2004, while the JVA-II was terminated on 23.06.2005. The order further stated that the termination of the second agreement is disputed by the Indian Joint Venture Partner (respondent no.5-PIP).

21. The order dated 02.04.2007 passed by the respondent no.1 also observed that both the agreements in India were for the activities identified as 'same' field under 4-digit NIC Code and that JVA-II was in force on 12.01.2005 and therefore, the department was of the opinion that a *prima facie* case of violation of Foreign Direct Investment Policy (*hereinafter referred to as the* '**FDI Policy'**) had occurred in appellant no.1-PCP, setting up a wholly owned subsidiary in India (appellant no.2-PCM) under the

automatic route while having an existing Joint Venture in India in the same field.

22. Order dated 02.04.2007 also observed that FDI Policy is incorporated under Schedule I of Foreign Exchange Management (Transfer or issue of security by a Person Resident outside India) Regulations, 2000 and accordingly, violation of FDI Policy amounts to violation of Foreign Exchange Management Act, 1999 (*hereinafter referred to as the* 'FEMA') and therefore, such violation is liable to action under the FEMA. The order/letter dated 02.04.2007 is addressed to the General Manager, Foreign Exchange Division, Central Office of the Reserve Bank of India, Mumbai and requests the Reserve Bank of India to take appropriate action under the provisions of FEMA in the light of the preliminary finding of the Department of Industrial Policy and Promotion on existence of a *prima facie* case of violation of Press Note-1 (2005 Series).

23. The appellants challenged the order dated 02.04.2007 passed by respondent no.1 by instituting the W.P(C) 3443/2007 before this Court, which was dismissed *vide* order dated 01.07.2008. In the said order dated 01.07.2008, this Court further observed that so far as, *W.P.(C) 5633-35/2006* are concerned, the issue raised therein had become academic.

24. The order dated 01.07.2008 passed by the learned Single Judge dismissing *W.P.(C) 3443/2008* was challenged by the appellants before a Division Bench of this Court by instituting the proceedings of *LPA 387/2008,* which was dismissed as withdrawn *vide* order of a Coordinate

Bench of this Court, dated 11.08.2009. The order dated 11.08.2009 passed in LPA 387/2008 is extracted here in below:

> "*After this appeal was heard for some time, Mr.Sundaram, learned senior counsel for the appellants, made a request that the appellants may be allowed to withdraw the Writ Petition (Civil) No.3443/2007 as well as the present LPA and permit the appellants to approach FIPB for appropriate reliefs. Mr.RajivNayar, learned senior counsel appearing for the respondents No.5 and 6, has no objection to the withdrawal of the writ petition and the appeal, but he maintains that the appellants having resorted to direct mode are not entitled in law to approach the FIPB. According to Mr. Sundaram, however, appellant has a right to apply to FIPB.*
>
> *In view of the prayer of the appellants, we allow the appellants to withdraw the writ petition and the appeal without expressing any view on the appellants? right to approach the FIPB for any reliefs. Needless to say that the application, if any, that may be made by the appellants to the FIPB, will bedealt with in accordance with law. As the writ petition has been withdrawn, the order of the learned single Judge stands set aside and the same will not be relied upon by either parties. The appeal stands dismissed as withdrawn. Interim stay stands vacated.*
>
> *Insofar as Writ Petition (Civil) No. 5633-34/2006 is concerned, the grievance in the petition was that the concerned authorities were not passing any order on the representation made by the respondent nos. 5 and 6. Since an order on the representation dated 2.4.2007 has been passed, the petition does not survive and the same is disposed of as such."*

25. It is noteworthy that the Division Bench of this Court, while passing the order dated 11.08.2009, allowed the appellants to withdraw the appeal as also the writ petition No. 3443/2007 without expressing any opinion on the rights of the appellants to approach the Foreign Investment Promotion Board (*hereinafter referred to as the* '**FIPB'**) for any relief(s). It was further observed that if any application is made by the appellants to the FIPB, the

same shall be dealt with in accordance with the law. The order further provided that since the writ petition itself was withdrawn, the order of the learned Single Judge passed in *W.P.(C) 3443/2007* dated 01.07.2008 stood set aside and the same would not be relied upon by either of the parties.

26. After dismissal of *LPA 387/2008* as withdrawn *vide* order dated 11.08.2009 passed by the Division Bench of this Court, respondent nos.5 to 7 wrote letters to the respondent no.1 as also to respondent no.3, requesting them to take action against the appellants for violation of the guidelines as contained in Press No.1 and 3 (2005 Series). On 28.08.2009, a letter was also written by respondent nos.5 to 7 to respondent no.2 not to entertain any application of the appellant no.1-PCP for approval of its investment with a further request that if any such application is made by appellant no.1-PCP seeking approval of its investment made in appellant no.2-PCM, no decision be taken on any such application without giving an opportunity of personal hearing to respondent nos.5 to 7.

27. It appears that in response to the aforesaid letter of respondent no.5 to 7, *vide* letter dated 04.09.2009 respondent no.2 sought certain particulars and information from respondent no.5-PIP informing it that the representation made by it shall be considered and also that it would be given an opportunity to make its submissions. Pursuant to the said letter dated 04.09.2009, respondent no.5-PIP is said to have furnished the details *vide* its letter dated 12.09.2009 with a request that if any application is made by the appellant no.1-PCP seeking approval of its investment, opportunity of hearing be provided to respondent no.5-PIP as well.

28. Appellant no.1-PCP filed an application/proposal dated 06.10.2009, to respondent no.2 seeking grant of *ex-post facto* approval for the investment made by it in appellant no.2-PCM. The said proposal dated 06.10.2009 was furnished to respondent no.5-PIP by respondent no.2 *vide* its letter dated 16.10.2009 with a request to furnish its comments on the said proposal to the respondent no.2. Pursuant to the said letter dated 16.10.2009, respondent no.5-PIP gave its reply *vide* its letter dated 23.10.2009 and requested for giving opportunity of a personal hearing. *Vide* letter dated 03.11.2009, Department of Heavy Industry (AEI Section) of the Ministry of Heavy Industries and Public Enterprises, requested respondent no.5-PIP to furnish certain information. It is the case of respondent no.5-PIP that complete comments on its behalf were furnished on the proposal of the appellants seeking *ex-post facto* approval of its investments, *vide* letter dated 20.11.2009 and *vide* letter dated 04.11.2009 and the letter dated 03.11.2009 of the Ministry of Heavy Industries and Public Enterprises was also replied.

29. Thereafter, *vide* letter dated 01.01.2010, respondent no.2 required respondent no.5-PIP to make a presentation of its case before the then Director, FIPB, on 05.01.2010. In pursuance of the said letter, respondent nos. 5 to 7 met with the Director, FIPB on 05.01.2010 and presented their case in respect of the proposal made by appellant no.1-PCP seeking *ex-post facto* approval of its investment.

30. The proposal submitted by appellant no.1-PCP seeking *ex-post facto* approval of its investment was kept on the agenda of the meeting of the FIPB held on 18.01.2010; however, it was deferred. In the said meeting,

certain directions were given for the constitution of a Committee under the Chairmanship of the Additional Secretary, Department of Economic Affairs, for examining the rival submissions of the parties and for submitting its recommendations to the FIPB. Pursuant to this decision of the FIPB dated 18.01.2010, an Office Memorandum dated 16.02.2010 was issued by the Ministry of Finance, Department of Economic Affairs stipulating therein that a meeting had been fixed with Ms. L.M. Vas, Additional Secretary, Department of Economic Affairs, to enable the rival parties to present their case.

31. The said Committee comprised of the Ms. L.M. Vas, Additional Secretary, Department of Economic Affairs as its Chairman, Mr. Govind Mohan, Joint Secretary, Department of Economic Affairs, (I and I), Mr. Prabodh Saxena, Director (FIPB), Mr. P.K. Bagga, Officer on Special Duty (CM&I), Mr. Deepak Narain, Director, Department of Industrial Policy and Promotion and Mr. Sushil Lakra, Industrial Advisor, Department of Heavy Industry.

32. On 17.03.2010, the said Committee met under the Chairmanship of Ms. L.M. Vas, Additional Secretary, Department of Economic Affairs, and gave an opportunity of hearing to respondent no.5-PIP as also to appellant no.1-PCP in respect of the proposal of appellant no.1-PCP seeking *ex-post facto* approval of its investment made in appellant no.2-PCM. The written submissions were also submitted by respondent no.5-PIP and the appellant no.1-PCP to the Committee.

33. It is also on record that some opinion of the Department of Legal Affairs, Ministry of Law and Justice, Government of India was furnished on 31.05.2010, which stated that *ex-post facto* approval under Press Note-1 (2005 Series) can be given. Respondent no.2 *vide* its letter dated 11.06.2010 requested respondent no.5-PIP to provide certain information regarding the figures relating to production, capacity utilisation, sales, profit after tax and market share year-wise for the years 2001 to 2008. Certain information was also sought by Mr.Sushil Lakra, Industrial Advisor, Department of Heavy Industry, Ministry of Industry and Public Enterprises, Government of India, from respondent no.5-PIP *vide* his letter dated 16.06.2010. The information asked for was provided to respondent no.2 by respondent no.5-PIP *vide* its letter dated 19.06.2010 and to Mr.Sushil Lakra, *vide* letter dated 05.07.2010.

34. It is also on record that on 19.07.2010 an opinion was furnished by Mr.Sushil Lakra, Industrial Advisor, Department of Heavy Industry, Ministry of Industry and Public Enterprises, Government of India to the effect that there was jeopardy to the interest of respondent nos.5 to 7 on account of appellant no.1-PCP having set up appellant no.2-PCM as its wholly owned subsidiary.

35. *Vide* Office Memorandum dated 29.07.2010, the constitution of the Committee, earlier constituted under the Chairmanship of Ms. L.M. Vas, Additional Secretary to examine the rival contentions of the parties in respect of the proposal received from appellant no.1-PCP, was changed and it was provided therein that Mr.Bimal Julkha, Director General, will be the Chairman of the meetings of the Committee.

36. The third meeting of the Committee was held on 04.08.2010, and as per information given by the Department of Economic Affairs, Ministry of Finance, under the Right to Information Act, 2005 *vide* letter dated 02.11.2010, the said meeting was attended by Mr.Bimal Julkha, Director General, Director of Currency, in the rank of Additional Secretary, Mr. Govind Mohan, Joint Secretary, Department of Economic Affairs, (I and I), Mr. P.K. Bagga, Officer on Special Duty (CM&I), Mr. Deepak Narain, Director, Department of Industrial Policy and Promotion and Mr. Sushil Lakra, Industrial Advisor, Department of Heavy Industry. Thus, apart from Ms. L.M. Vas, Additional Secretary, Department of Economic Affairs who headed the said Committee earlier, another member of the earlier Committee, namely, Mr. Prabodh Saxena, Director (FIPB), was not part of the Committee which held its meeting on 04.08.2010.

37. The reconstituted Committee headed by Mr. Bimal Julkha in its meeting dated 04.08.2010, made a recommendation for the grant of *ex-post facto* approval. The opinion of the Committee expressed *vide* decision taken in its meeting held on 04.08.2010 is on record, which is extracted herein below:

> ""***Record of Discussions at the 3rd Meeting of the Committee held on August 4, 2010 at4.00 pm under the Chairmanship of DG -DoC in Room 166 D, North Block***
>
> ***Subject : In the matter of the FIPB proposal of Putzmeister Concrete Pumps GmbH, Germany (PG) seeking post facto approval of FIPB for having set up a new WOS which attracted Press Note 1 (2005).***
>
> ***Committee formed as per the directions of the FIPB in its 149th Meeting on January18, 2010***

Background

1. The proposal from M/s. Putzmeister Concrete Pumps GmbH, Germany (PG)for ex-post-facto approval for setting up of new WoS (without obtaining NoC from the existing Indian JV partner), was considered in the FIPB Meeting held on January 18, 2010 and was deferred. Since the proposal attracted Press Note 1 (2005 series) (now clause 4.2.2.2 of Circular 1 of 2010 of the Consolidated FDI policy),prior FIPB approval was required. While considering the proposal, the Board directed that a Committee under the Chairmanship of AS (EA) which include the representatives from DIPP, DEA and AMs concerned, may examine the rival contentions of the two parties and submit its recommendations to the Board.

2. The 1st meeting of the Committee was held on March 17, 2010 in which contentions of both the parties were heard. Since the Indian JV partner viz., Putzmeister India Private Limited (PI) inter-alia questioned the authority of FIPB to give ex-post-facto approval; the proposal was referred to Department of Legal Affairs(DLA). DHI was also requested to give a view based on an analysis of the relevant data if it could be established as to whether 'jeopardy' was caused to the Indian partner by the setting up of WOs by PG at the material time.

3. In the 2nd meeting held on June 11, 2010 DLA opined that FIPB has the power to grant ex-post-facto approval, and FIPB has granted such approvals earlier also. During the deliberations, while discussing the comments dated March 23, 2010 received from D/HI that the proposal "does not seem to have any jeopardy", the Committee felt that a deeper analysis is needed on the issue. As directed, relevant information was obtained and forwarded to D/HI for reexamination.

4. The 3rd Meeting of the Committee, reconstituted with the charge of FIPB matters being entrusted to DG DoC, Shri Bimal Julka, took place as recorded hereunder."

Proceedings of the 3rd Meeting

"5. It was recalled that In the 2nd meeting, DHI had been ·directed to carry out a deeper analysis of both entities from 2000-01 to 2007-08 in respect of production figures, capacity utilisation, sales, profit after tax and market share to support its recommendation. It was also observed that

post 2007-08, the global meltdown came as an aberration and the data may not present the correct picture.

6. DHI's comments dated 19.07.2010 were then discussed. While rioting the detailed work, it was observed however that DHI had in fact concentrated in the present analysis on the post 2007-08 years in respect of the Indian company PI and the new WOS of PG. In this analysis DHI had observed that during the years 2008-09 and2009-10, the- existing Indian company PI has had a decline in production, capacity utilisation, market share and sales and concluded based on this data (2008-09 and2009-10) that the Indian company has suffered jeopardy. This was quite the opposite view to that communicated by DHI earlier by their OM dated March 23, 2010 and while DHI had been requested to substantiate their earlier findings with a deeper analysis, DHI had instead analysed the later period. Since the last two years are clearly an aberration in the whole business environment, it would not be correct to base any decision on the statistics of this period especially as the new WOS was formed before this period.

7. Based on the tabular comparison of the statistics for the two companies as collated by DHI, it was observed that the Indian unit had started with a minimal capacity of 12 units /year in 2000-01 which increased to 48 units /year in 2002-03when the investment level reached Rs 26.72 lacs. Since then the Indian unit PI has been able to increase its capacity to 240 units per year in 2006-07 and up to 600 units in 2009-10. During this period, the investment has also gone up from Rs. 26.72 lacs to approx Rs 160lacs till 2008-09 (figures for the latest year are not available). Sales have shown a steady growth from Rs 2.16 crore in 2000-01 to Rs 49 crores in 2007-08 at which stage the market share also went up to 10.04%. There has thus been a healthy growth till 2007-08, and thereafter the growth has slowed down but it needs to be recalled that at that time, the general economic situation was in a severe downturn.

8. The new WOS was set up by PG in 2006-07 and the investment In 2007-08was Rs 7.09 crores, the capacity being 500 Units/year. This investment has now gone up to nearly Rs 48 crores in 2009-10 with a capacity of 1000 Units/year. Sales In 2009-10 had gone up to Rs 78 Crores, the PAT figures were not available, but till the previous year (2008-09) the unit had incurred a loss of Rs 8 crores approx.

9. The following conclusions are evident.

9.1 The existing unit which was an SSI unit had a very modest beginning and obviously benefitted from the technology collaboration during the period 1997-2004.

9.2 Thereafter in the revised negotiations, when the first round of Technology agreement with the foreign collaborator expired in November 2004, the two could not reach an agreement when the latter wished to invest more up to 65% from the then extant 24%,and increase capacity. The two actually parted ways in July, 2005 in an acrimonious fashion.

9.3 Thus, though technically there was a JV in existence on January 12, 2005 and PN 1 (2005) was attracted, as correctly observed by DIPP (in 2007), there was little cooperation between the two on the ground. At this stage, the foreign investor having terminated the JV, then appears to have "taken the law into his own hands" and decided that his case did not attract PN1 and set up a WOS without prior FIPB approval and thus a violation of PN1 took place. To be fair, at that stage even if an NOC had been asked for by the foreign investor, it would probably not have been forthcoming.

9.4 At the present juncture, 5 years later, it is difficult to determine if jeopardy would have been caused as one needs to set the clock back. But by all accounts, the Indian unit has geared itself up, increased capacity and sales and did not collapse approved ab initio, i.e. if it is proved that the setting up of the WOS caused jeopardy, then along with compounding, the unit set up would have to be wound up. However if as in the present case, considering that no jeopardy has been caused and perhaps only better competition and choice exists for the Indian consumer, the considered opinion of the committee is that the FIPB can accord due approval post fact subject to compounding of the violation with RBI.

10. Accordingly this Report can be placed before the FIPB at its next meeting."

38. The opinion of the Committee was considered by FIPB in its 150th meeting held on 10.09.2010 and on deliberations on the opinion of the Committee, it was found by the FIPB that *ex-post facto* approval to the proposal of appellant no.1-PCP for its investment in appellant no.2 can be

given subject to compounding by Reserve Bank of India for violation of the conditions of Press Note-1 (2005 Series). Accordingly, the FIPB recommended the proposal for approval subject to the said condition of compounding by the Reserve Bank of India.

39. Respondent no.2, thereafter, granted *ex-post facto* approval of the Government of India to the proposal of appellant no.1-PCP on 29.09.2010 subject to compliance with the pricing guidelines and compounding by the Reserve Bank of India for investment in appellant no.2-PCM. It was also provided in the order dated 29.09.2010 that any non-compliance with the approval letter shall be viewed strictly by the Government and that the Government reserved its right, in its own discretion, to revoke the approval or modify its terms and conditions and/or initiate action on account of non-compliance.

40. Respondent no.2, thereafter, by amendment no.1 made on 10.11.2010, made certain changes in Clauses 1 and 8 of the approval letter/order dated 29.09.2010. The only change made was that in Clause 1, the name and address of the foreign collaborator, which was wrongly mentioned in the order dated 29.09.2010 as M/s Purzmeister Concrete Pumps GmbH was changed to M/s Putzmeister Concrete Machines Private Limited (PCM). By the said amendment dated 10.11.2010, Clause 8 of the approval letter/order dated 29.09.2010 was also corrected. The corrections made in Clauses 1 and 8 is as under:

Clause 8 of the approved letter dated 29.09.2010	*Amended Clause 8 vide amendment dated 10.11.2010*

Clause 1- Name and address of foreign M/s Purzmeister Concrete Pumps GmbH	*Clause 1- Name and address of the foreign collaborator M/s Putzmeister Concrete Machines Pvt Ltd.*
Clause 8 The approval is subject to the condition that the foreign collaborator/Investor has no existing joint venture or technology transfer/trademark agreement in the same field as per Press Note 1 of 2005 Series (now para 4.2.2. of Circular No. 1 of 2010 of the Consolidated FDI Policy) for which approval is granted. If this is not so, you shall not take steps to implement the project but submit the details to the FIPB Unit.	*Clause 8 of the FC approval dated 29.9.2010* *The approval is subject to the condition that the foreign collaborator/Investor has no existing joint venture or technology transfer/trademark agreement in the same field as per Press Note 1 of 2005 series (now para 4.2.2 of Circular No 2 of 2010 of the Consolidated FDI Policy) for which approval is granted. If this is not so, you shall not take steps to implement the project but submit the details to the FIPB unit. However, this is not applicable to the erstwhile Indian Partners (Mr.Milind S Bhadbhade and Mr Ashok V Dikshit) since there is no jeopardy to the erstwhile Indian partners.*

41. Appellant no.1-PCP applied for compounding of the contravention as per the approval order dated 29.09.2010. Respondent no.5 to 7 filed *W.P.(C) 8148/2010* challenging the approval order dated 29.09.2010 as amended *vide* amendment dated 10.11.2010. In the said writ petition, on 06.12.2010, learned Single Judge passed an interim order providing therein that any steps which may be taken pursuant to the approval dated 29.09.2010, shall be subject to result of the said writ petition.

42. The Reserve Bank of India *vide* its letter dated 03.05.2011 refused to compound the contravention of appellant no.1-PCP considering the pendency of *W.P.(C) 8148/2010* at the relevant point of time. In the writ petition, the learned Single Judge on 15.01.2014 passed an order whereby

the earlier interim order dated 06.12.2010, which provided that any steps taken by appellant no.1-PCP shall be subject to the outcome of the writ petition, was continued. The interim order dated 15.01.2014 was challenged by respondent no.5 to 7 by filing SLP (C) 12284/2014, which was disposed of by means of the order dated 12.01.2016, observing that looking to the facts of the case, it was hoped that this Court shall decide the *W.P.(C) 8148/2010* as expeditiously as possible. *W.P.(C) 8148/2010* wherein *ex-post facto* approval dated 29.09.2010 as amended *vide* amendment dated 10.11.2010 was under challenge, has been dismissed by the judgment and order dated 29.10.2024 that is under challenge herein.

ARGUMENTS ON BEHALF OF THE APPELLANTS

43. Impeaching the impugned judgment and order dated 29.10.2025 passed by learned Single Judge, whereby a direction has been given for constitution of a new Committee to hear afresh the proposal dated 06.10.2009 moved by the appellants for grant of *ex-post facto* approval under Press Note-1 (2005 Series), it has been vehemently argued by learned senior counsel representing the appellants that the conclusion arrived at by learned Single Judge that the process adopted by the Committee appointed by FIPB while considering grant of *ex-post facto* approval was violative of principles of natural justice, is erroneous and unsustainable.

44. Learned senior counsel representing the appellants Sh. Jayant Mehta has argued that the approval accorded to the investment made by appellant no.1 in appellant no.2, *ex-post facto, vide* letter dated 29.09.2010 has to be understood in the wake of the fact that by issuing Press Note-1 (2005

Series), the Government of India had liberalised the regulations for foreign investment and provided that no prior government approval will be necessary where the previous Joint Venture is sick or defunct. It is also the case, as set up on behalf of the appellants, that the Joint Venture Agreements between appellant no.1 and respondent no. 6 and 7, pursuant to which the Joint Venture company – respondent no. 5 was formed, was terminated by appellant no.1 on 23.06.2005 and therefore, upon termination of the Joint Venture Agreement – II, there was no existing Joint Venture between appellant no.1 and respondent nos. 6 and 7. In this view, the submission is that the Press Note-1 (2005 Series) did not apply to appellant no.1 on and from 23.06.2005, and therefore, no prior approval of the government was required. In support of this argument, Sh. Jayant Mehta has cited a judgment of a Division Bench of this Court in ***B.Q.R. Systems India Pvt. Ltd. v. Union of India, 2012 (127) DRJ 266 (DB).***

45. It has also been contended on behalf of the appellants that the Joint Venture Agreements were determinable in nature which allowed a party to terminate the agreement for convenience, upon notice to the other party. He further states that the modalities for exit from the Joint Venture require transfer of shares and that the determining party does not require consent of the other party for determination. He has further argued that only because JVA-II prescribes certain modalities for exit from respondent no.5, it would not make JVA-II non-determinable. In support of this submission, reliance has been placed on behalf of the appellants on ***(i) Indian Oil Corporation v. Amritsar Gas Service, 1991 (1) SCC 530, (ii) Rajasthan Breweries Limited v. The Stroh Brewery Company 2000 (55) DRJ (DB) page 74-76 and (iii)***

K.S. Manjunath v. Moorasavirappa 2025 INSC 1298. His submission in this regard is that a joint venture is in the nature of a partnership, and any agreement to form a partnership or to continue in it, cannot be enforced.

46. Sh. Jayant Mehta has further submitted that the contention that since the appellants applied for compounding and therefore, they have accepted violation of Press Note - 1 (2005 Series) and hence are precluded from submitting that Press Note does not apply in this case, is not correct for the reason that the application seeking approval made by the appellants to FIPB had stated that the proposal seeking *ex-post facto* approval was sought without prejudice to the *bona fide* contention of the appellants that provisions of Press Note-1 (2005 Series) are not attracted to the investment made by the appellant no.1 and appellant no.2.

47. In respect of the letter/order dated 02.04.2007, wherein respondent no.2 has *prima facie* held that it is a case of violation of the guidelines contained in Press Note-1 (2005 Series), it has been contended on behalf of the appellants that it is erroneous. Elaborating further, it has been argued that the letter dated 02.04.2007 states that on the date of issue of Press Note-1 (2005 Series) i.e. on 12.01.2005, the Joint Venture – respondent no.5 was in existence, which is untenable for the reason that as per the judgment in ***B.Q.R. Systems (supra),*** what is relevant is the date of investment and not the date of issue of Press Note-1 (2005 Series) to evaluate "existence of a Joint Venture".

48. He has also highlighted the finding recorded by the learned Single Judge in the impugned judgment and order wherein it has been specifically

held that *ex-post facto* approval was well reasoned, yet the learned Single Judge has directed reconsideration of the proposal for the grant of *ex-post facto* approval moved by appellant no.1, which is contradictory.

49. Regarding the finding given by learned Single Judge in the impugned judgment and order to the effect that process by which *ex post* facto approval was granted, was violative of principles of natural justice, it has been argued on behalf of the appellants that said finding has been given by learned Single Judge solely on the basis that Chairperson of the Committee was changed, however, it is crucial to note that rest of the Committee remained the same.

50. Emphasising vehemently on the case set up on behalf of the appellants challenging the finding recorded by the learned Single Judge in the impugned judgment and order that the process which led to passing of the order dated 29.09.2010 was erroneous for want of observance of principles of natural justice, it has been argued that the learned Single Judge has erroneously invoked the principle of "one who hears must decide" for the reason that such a principle does not have any application to administrative considerations, especially in case of institutional hearings, keeping in view the fact that this was not a hearing entrusted by any statutory provision to any particular officer. Reliance in this regard has been placed by Sh. Jayant Mehta on ***Ossein and Gelatine Manufacturers' Assn. v. Modi Alkalies and Chemicals Ltd., (1989) 4 SCC 264*** and ***Kalinga Mining Corpn. v. Union of India, (2013) 5 SCC 252.***

51. It is also the argument of Sh. Jayant Mehta that several written

representations to the Committee on more than 18 different occasions were made by the respondent nos.5 to 7 when the proposal submitted by appellant no.1 for grant of *ex-post facto* approval was being considered and as such the respondent nos. 5 to 7 cannot complain of violation of principles of natural justice in the course of consideration of the said application. His submission is that the opportunity was not only provided to the respondent nos. 5 to 7, but it was availed of as well by them.

52. Drawing our attention to the Minutes of Meeting of the Committee held on 04.08.2010, it has been submitted on behalf of the appellants that all the objections raised by respondent nos. 5 to 7 were considered in detail and were dealt with by the Committee in the said meeting and it is only after detailed consideration that the Committee recommended to the FIPB to accord *ex-post facto* approval to the proposal of the appellant no.1.

53. It is also the submission of Sh. Jayant Mehta that FIPB is only a recommendatory body and the Committee formed by it was only to consider the application and report to the FIPB. He further states that neither the FIPB nor the Committee perform any *quasi-judicial* or judicial functions and that the recommendation made by FIPB dated 10.09.2010 clearly shows that the Board applied its own mind in making the recommendation for approval of the proposal of the appellant no. 1 seeking *ex-post facto* approval to the investment made by it in the appellant no.2.

54. Our attention on behalf of the appellants has also been drawn to the stand taken by the Union of India before the learned Single Judge, according to which approval of foreign investment is a policy making function and

therefore, interference in such a decision by the learned Single Judge was impermissible. Laying emphasis on the judgment rendered in ***Jay Ushin Ltd. v. Foreign Investment Promotion Board and Ors,*** decided on 27.04.2010 (W.P.(C) 2136/2008), it has been contended that FIPB approval is a matter of policy and hence recommendation for grant of such approval could not be faulted specially when such a recommendation in the instant case was made by FIPB considering all relevant aspects of the matter.

55. Reliance has also been placed behalf of the appellants on the following judgments to support the argument that government possesses the authority to grant *ex-post facto* approval:-

(i) ***LIC v. Escorts Ltd., (1986) 1 SCC 264***

(ii) Cruz City 1 Mauritius Holdings v. United Limited 2017 SCC OnLine Del 7810

(iii) Vijay Karia and Ors v. Prysmian Cavi E Sisteni SRL and Ors (2020) 11 SCC 1

(iv) D Swamy v. Karantaka State Pollution Control Board and Ors 2022 SCC OnLine SC 1278

(v) Veritas (India) Ltd. v. Union of India 2023 SCC OnLine De 2580

56. Lastly, Sh. Jayant Mehta has submitted that instant litigation is nothing but a vendetta and an attempt on the part of respondent nos. 5 to 7 to misuse the proceedings to destroy competition as appellant no.2 is a duly incorporated company and has been operating to serve the Indian economy.

57. On these counts, it has been submitted that the appeal deserves to be

allowed and the impugned judgment and order passed by the learned Single Judge is liable to be set aside.

ARGUMENTS ON BEHALF OF RESPONDENT NO. 5 TO 7

58. Sh. Shyam Mehta, learned senior counsel representing the respondent nos. 5 to 7 has vehemently opposed the instant appeal and has submitted that in the facts and circumstances of the case, the judgment rendered by the learned Single Judge, which is under challenge herein, does not call for any interference in this appeal, which is liable to be dismissed.

59. Sh. Shyam Mehta has argued that the grant of *ex-post facto* approval to the proposal of the Appellant no.1-PCP for foreign investment, by the FIPB/Government causes serious prejudice and results in adverse civil consequences either to the Indian partner or to the foreign investor and as such appropriate hearing is required to be given by FIPB/Government of India to the parties before taking any such decision on any such proposal. It has further been argued on behalf of respondent nos. 5 to 7 that the recommendation of the Committee made on 04.08.2010, was in violation of principles of natural justice for the reason that the Committee which made the decision/recommendation was not the same, rather it was different from the Committee which had heard the parties. In this regard, it has been stated that two members of the Committee, namely, Ms. L.M. Vas, Additional Secretary, Department of Economic Affairs, who was the Chairperson of the Committee and Sh.Pramod Saxena, Director (FIPB), were removed from the Committee and substituted by one Mr.Bimal Julka, Director General, Directorate of Currency. It has been stated that the reconstituted Committee

ought to have heard the respondent nos. 5 to 7 before taking a decision. On behalf of respondent nos. 5 to 7, it has also been argued that respondent nos. 5 to 7 ought to have been heard by the reconstituted Committee also for the reason that various material gathered after the hearing was granted to the parties by the first Committee on 17.03.2010, have been considered and relied upon by the reconstituted Committee while making the recommendation on 04.08.2010.

60. Sh. Shyam Mehta, in this regard, has referred to the opinion of the Department of Legal Affairs, where it was opined that it was permissible to grant *ex-post facto* approval. He has also referred to the opinion of the Department of Heavy Industry, wherein it was expressed that the interests of respondent no. 5 were jeopardised by appellant no. 1 setting up appellant no. 2. He has submitted that both these opinions were gathered after 17.03.2010 when the hearing was provided to the parties by the first Committee; however, though these opinions have been taken into consideration by the reconstituted Committee as also by FIPB, however, the respondent nos. 5 to 7 were never confronted with these opinions, which, according to Sh. Shyam Mehta, amounts to violation of principles of natural justice.

61. It has also been argued that the recommendation made by FIPB is without reasons, and it has accepted the recommendations of the Committee without actually considering or analysing the same, and hence the recommendation of FIPB suffers from the vice of the non-application of mind.

62. On behalf of respondent no. 5 to 7, Sh. Mehta has contended that the

Minutes of Meeting of the Committee dated 04.08.2010 are based on a wholly erroneous premise. In this regard, it has been stated by Sh. Mehta that the Committee in its meeting dated 04.08.2010 has observed that after the term of JVA-I expired in November 2004, parties could not arrive at a fresh agreement, which is incorrect for the reason that admittedly a fresh agreement was executed by the parties on 04.11.2004, i.e. JVA-II.

63. Our attention has also been drawn to the observation made in the Minutes of Meeting of the Committee dated 04.08.2010 to the effect that respondent nos. 6 and 7 set up another company i.e. M/s. Aquarius Engineers Pvt. Ltd. with technology from a competing Korean company in the same field, which fact according Sh. Mehta has not been correctly recorded for the reason that M/s. Aquarius Engineers Pvt. Ltd. has been in existence since August 1997, and has been carrying on a business completely different from that of the respondent no. 5, which was only marketing and sales of concrete pumps of appellant no. 1. It is, thus, the submission on behalf of the respondent nos. 5 to 7 that M/s. Aquarius Engineers Pvt. Ltd. at no point in time manufactured concrete pumps, which is primarily the business of respondent no. 5.

64. On the aforesaid grounds, it has been argued by Sh. Shyam Mehta, that decision of the Committee as well as that of the FIPB violates the Wednesbury principle of reasonableness inasmuch as that these bodies, for arriving at their decisions, had taken into account irrelevant considerations, whereas they failed to consider relevant matters.

65. Regarding the grant of *ex-post facto* approval to foreign direct

investment made by appellant no.1, it has been argued on behalf of respondent nos. 5 to 7 that such *ex-post facto* approval is not legally permissible for the reason that Press Note-1 (2005 Series) requires prior approval of the government and not *ex-post facto* approval. He has also stated that even the Foreign Exchange Management (Transfer of Issue of Security by a person resident outside India) Regulations, 2000 require such prior permission and therefore, prior permission is a statutory requirement which is mandatory. It is, thus, submitted that it was not permissible to grant *ex-post facto* approval considering the object behind the guidelines embodied in Press Note-1 (2005 Series).

66. Drawing our attention to the language in which Press Note-1 (2005 Series) is couched, Sh. Mehta has argued that jeopardy to the interest of the existing Joint Venture was to be considered before granting approval and accordingly, the Committee as also the FIPB were required to consider the issue of jeopardy caused to the interest of respondent nos. 5 to 7 as in July, 2005 when investment in appellant no. 2 was made by appellant no.1. It has been submitted that the Committee as also FIPB completely misdirected themselves and entered into an irrelevant inquiry with regard to performance of respondent nos. 5 to 7 after July 2005, and the benefits of FDI by the appellant no.1 to the Indian economy and the consumer. According to Sh. Mehta, these considerations are alien in the context of the nature of inquiry which is required to be made before grant of approval in terms of the provisions contained in Press Note-1 (2005 Series).

67. Sh. Mehta has also argued that neither JVA-II nor License Production

Agreement are terminable by a mere notice, which is clear from the terms of JVA-II and the License Production Agreement and further that in the facts of the case, it cannot be said that the existing Joint Venture, i.e. respondent no. 5 was defunct at the time appellant no. 1 had made investment in appellant no.2. In this regard, it has been argued that the words "defunct" and "sick" must be read and construed together and accordingly, they contemplate a situation when the Joint Venture/Collaboration ceases to exist either by mutual agreement of the partners of Joint Venture or by operation of law. His argument in this regard is that these words do not cover a situation where a Joint Venture/Collaboration Agreement is unilaterally terminated by one of the parties. According to Sh. Mehta, if such unilateral termination is considered as rendering the Joint Venture/Collaboration defunct, it would defeat the very purpose and object of the Press Note-1 (2005 Series), which is to protect the interest of the Indian Joint Venture partner.

68. Refuting the submission made by Sh. Jayant Mehta, learned senior counsel representing the appellants on the basis of the judgment in ***B.Q.R. Systems India (P) Ltd. (supra)***, it has been contended on behalf of respondent no. 5 by Sh. Shyam Mehta, learned senior counsel that the said judgment is not applicable here because the transaction in question was a licence agreement, and not a Joint Venture or Technology Transfer or Trademark Agreement. He has also stated that in ***B.Q.R. Systems India (P) Ltd. (supra)***, the licence agreement was terminable in nature and it was the admitted position that the said agreement had been terminated. He has also stated that in the said case this Court had concluded that the agreement

involved in the said matter could not be specifically enforced and since none of the aforesaid aspects are present in the instant case, the reliance placed on behalf of the appellants on ***B.Q.R. Systems India (P) Ltd. (supra)*** is misplaced. He has also argued that the submission on behalf of the appellants that the Joint Venture, in the instant case, was not in existence in July 2005 when the appellant no.1 invested in appellant no.2, is erroneous and does not improve the case of the appellants for the reason that the words "existing Joint Venture" occurring in Press Note-1 (2005 Series) means Joint Venture that was in existence on the date of issuance of the said Press Note-1 (2005 Series), i.e. 12.01.2005 which has been clarified in no uncertain terms by Press Note – 3 (2005 Series), dated 15.03.2005.

69. Sh. Shyam Mehta, on the proposition that the principles of natural justice apply to even administrative action resulting in civil consequences, has relied on the following judgments:-

(i) ***State Bank of India v. Rajesh Agarwal, (2023) 6 SCC 1,***

(ii) ***IDBI Bank v. Gaurav Goel, 2025 SCC OnLine Del 935,***

(iii) ***Excise Commr. vs. Mysore Sales, (2024) 9 SCC 415, and***

(iv) ***A.K. Kraipak v. Union of India, 1969 (2) SCC 262.***

70. On the principle that "he who hears must decide" reliance has been placed on behalf of respondent no. 5 to 7 on the following judgments:-

(i) ***Gullapalli Nageswara Rao v. A.P. State Road Transport Corpn., AIR 1959 SC 308***

(ii) ***Hyundai Rotem v. Delhi Metro Rail, 2015 SCC OnLine Del 13531, and***

(iii) ***UOI v. Shiv Raj, (2014) 6 SCC 564.***

71. In support of this submission that if a statute provides for prior approval, *ex-post facto* will be impermissible, the following judgments have been cited by Sh. Shyam Mehta, learned senior counsel:-

(i) ***LIC v. Escorts Ltd., (1986) 1 SCC 264,***

(ii) ***Asha Rani Gupta v. Ravindra Memorial, 2024 SCC OnLine Del 7143,***

(iii) ***A. Chowgule and Company v. Goa Foundation, (2008) 12 SCC 646,***

(iv) ***Union of India v. Vinod Kumar, (1996) 10 SCC 78, and***

(v) ***Behari Kunj Sahkari Avas Samiti v. State of Uttar Pradesh & Ors., (2008) 12 SCC 306.***

72. Sh. Mehta has also argued that once a prayer or application is made for compounding of any contravention, it amounts to acceptance of violation. In support of this submission, he has placed reliance on ***JVL Agro Industries Ltd. v. Union of India, (2014) SCC Online All 12456***. Thus, Sh. Shyam Mehta, appearing for respondent nos. 5 to 7, has, while defending the judgment and order passed by the learned Single Judge whereby direction has been issued to decide the proposal afresh submitted by the appellants seeking *ex-post facto* approval of FDI, urged that since the appeal does not bear any force, it may be dismissed.

DISCUSSION AND ANALYSIS

73. On the basis of the pleadings available on record and the respective submissions made by the learned counsel for the parties, two issues emerge for our consideration and decision which are: (i) as to whether decision of the Government on the proposal submitted by the appellant no.1-PCP

seeking *ex post facto* approval to the investment made by the appellant no.1-PCP in appellant no.2-PCM is in the nature of policy decision and, in case, such decision is a policy decision, what would be the possible scope of interference by this Court in proceedings instituted under Article 226 of the Constitution of India?, and (ii) In the facts of the instant case, what steps would constitute fulfilment of the requirement of observance of the principle of natural justice and as to whether while taking the decision granting *ex post facto* approval to the investment made by the appellant no.1-PCP, requirements leading to the observance of the principle of natural justice were met?

74. Adverting to the first issue as culled out above, we may first note the provisions of Press Note-1 (2005 Series) which is in relation to foreign investment under the automatic route. The said guidelines clearly state that prior approval of the Government will not be required in all cases; it would rather be required only in cases where foreign investor has an existing Joint Venture in the same "field". The guidelines also provide that the onus would be equally on the foreign investor and the Indian partner to provide the requisite justification and the proof, to the satisfaction of the Government that the new proposal would or would not in any way jeopardise the interests of the existing Joint Venture.

75. This is clear from a bare perusal of Clause 2(i) of Press Note-1 (2005 Series), which is extracted hereinbelow:-

> *"2. New proposal for foreign investment/technical collaboration would henceforth be allowed under the automatic route, subject to sectoral policies, as per the following guidelines:*

(i) Prior approval of the Government would be required only in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement in the 'same' field. The onus to provide requisite justification as also proof to the satisfaction of the Government that the new proposal would or would not in any way jeopardise the interests of the existing joint venture or technology/ trademark partner or other stakeholders would lie equally on the foreign investor/ technology supplier and the Indian partner."

76. If we compare the provisions of the guidelines contained in Press Note-1 (2005 Series) with the provisions of the guidelines embodied in Press Note-18 (1998 Series), what we find is that automatic route for foreign investment was not available earlier to those entities which had any previous Joint Venture in the same or allied field in India. Earlier, such category of entities would have to necessarily seek the FIPB-PAB approval route for investment in Joint Venture under automatic route. Clause 1(I) & (II) of Press Note-18 (1998 Series) is extracted herein below:-

"1. The Government have reviewed the present Guidelines relating to approval of foreign/technical collaborations under the automatic route and after careful consideration it has been decided that foreign financial/technical collaboration with previous ventures/tie-up in India would be subjected to the following guidelines:

I. Automatic route for FDI and/or technology collaboration would not be available to those who have or had any previous joint venture or technology transfer/trade-mark agreement in the same or allied field in India. RBI, therefore, have to stipulate necessary declaration before applications for the automatic route are taken on record.

II. Investors of Technology to the suppliers of the above category therefore will have to necessarily seek the FIPB/PAB approval route for joint ventures or the technology transfer agreements (including trade-mark) giving detailed circumstances in which they find it necessary to set-up a new joint venture/enter into new technology transfer (including trade-mark).

III. The onus is clearly on such investor/technology suppliers to provide the requisite justification as also proof to the satisfaction of FIPB/PAB

that the new proposal would not in any way jeopardise the interests of the existing joint venture or technology/trade-mark partner or other stakeholders. It will be at the sole discretion of FIPB/PAB to either approve the application with or without conditions or reject in toto duly recording the reasons for doing so.

2. The above procedure will form part of the approval procedures contained in the "Manual on Industrial Policy & Procedures In India" published by SIA, Ministry of Industries, Government of India, which shall stand clarified accordingly in respect of foreign/technical collaborators with previous joint ventures/tie-up in India."

77. Thus, it is apparent that while issuing the guidelines contained in Press Note-1 (2005 Series), the government permitted the automatic route of foreign investment even in a situation where the foreign investor has an existing Joint Venture. Such investment, as per the said provision, however, is permitted only with the prior approval of the Government. Whereas, the guidelines prescribed in Press Note-18 (1998 Series) did not permit any automatic route for foreign investment where the foreign investors had any previous Joint Venture in the same field, rather such investment was permissible only under FIPB-PAB approval route.

78. If we closely scrutinise the guidelines contained in Press Note-18 (1998 Series) and those contained in Press Note-1 (2005 Series) and compare the two, what we find is that the Press Note-1 (2005 Series) effected a departure from the earlier guidelines contained in Press Note-18 (1998 Series) and the departure is that Press Note-1 (2005 Series) permits foreign investment by a foreign investors in an existing Joint Venture with the prior approval of the government under automatic route whereas the earlier policy contained in Press Note-18 (1998 Series) did not permit any such foreign investment in an Indian partner under the automatic route even

with the approval of the Government. Press Note-18 (1998 Series) only permitted FIPB-PAB approval route for investment in Joint Venture. Thus, what can safely be observed is that the departure from 1998 policy by issuing Press Note-1 (2005 Series) aimed at ease of doing business by foreign investors in India by permitting foreign investment in a Joint Venture where an Indian entity is a partner, under the automatic route, albeit with the approval of the Government.

79. What we also notice from a perusal of Press Note-1 (2005 Series) is that the inquiry by the Government for according approval to foreign investment under the automatic route relates to determination of the point as to whether new proposal would or would not, in any way, jeopardise the interests of the existing Joint Venture. On satisfaction that the proposed investment by a foreign entity under the automatic route would not jeopardise the interests of the existing Joint Venture in the same field, the government is to grant its approval to such investment being sought to be made by a foreign entity under the automatic route.

80. Thus, what essentially is to be seen while considering any issue relating to approval of the Government in such cases is as to whether the proposed foreign investment is putting the interest of the existing Joint Venture in jeopardy or not. This is the limited scope of scrutiny or inquiry by the Government while considering any request for approval under Press Note-1 (2005 Series).

81. What is apparent from the subject on which Press Note-1 (2005 Series) was issued by the Department of Industrial Policy and Promotion,

Ministry of Commerce and Industry, Government of India, is that the said press note contains guidelines, and guidelines issued by the Government necessarily reflect Government policies and, therefore, in our considered opinion any decision on the issue of approval of the Government in terms of Press Note-1 (2005 Series) will be a policy decision.

82. It is a trite law that the scope of interference by the Courts in proceedings under Article 226 of the Constitution of India to such policy decisions is very limited, and such decisions are not capable of being substituted by any opinion in this respect which may be formed by the Courts. The decision in respect of approval in terms of Press Note-1 (2005 Series) cannot, by any stretch of imagination, be termed to be either judicial or *quasi-judicial* and, therefore, the Government while taking such decision also does not exercise any judicial or *quasi-judicial* authority or power.

83. In the instant case, the decision dated 29.09.2010 of the Government according its *ex post facto* approval to the proposal made by appellant no.1-PCP to its investment made in appellant no.2-PCM was taken on the recommendation made by FIPB on 10.09.2010 which made its recommendations considering the opinion of the Committee expressed in its decision taken in its meeting held on 04.08.2010. Having regard to the nature of decision required to be taken by the Government for approval to direct investment in terms of Press Note-1 (2005 Series) read with Press Note-3 (2005 Series), which we have held to be in the nature of policy decision, we are of the considered opinion that interference in such decisions in writ jurisdiction has to be restricted to violation of any constitutional

provision or Fundamental Rights or in case such decision is absolutely arbitrary or if it suffers from any element of malice.

Contention in this regard that such a decision has to be tested on the *Wednesbury* principle is not acceptable for the simple reason that such a decision is in the nature of a policy decision. In this regard, we may refer to the decision of this Court in ***Jay Ushin Limited (supra)***, wherein the learned Single Judge after discussing the provisions of Press Note-1 (2005 Series) has observed that the guidelines contained therein cannot be read as General Protectionist Policy of the Central Government and further that the Court is not expected to dictate to the Government of India the policy in granting FIPB approval and that this is entirely outside the scope of powers of this Court under Article 226 of the Constitution of India. We quote, with the approval, paragraph 14 of the said judgment by Single Judge ***Jay Ushin Limited (supra)***, which reads as under:-

> *"**14.** Any other interpretation of the requirement of Press Note No.1 (2005 Series) would imply that this Court is reading into that policy document something which does not flow from a plain reading of it. Incidentally, Press Note No.3 (2005 Series) only reiterates the Press No.1 (2005 Series). JUL is in effect asking this Court to read Press Note 1 as a general protectionist policy of the central government. This it is plainly not. This Court is not expected to dictate to the Government of India the policy in granting FIPB approvals. That is entirely outside the scope of the powers of this Court under Article 226 of the Constitution."*

84. The learned Single Judge in the impugned judgment and order dated 29.10.2024 has given an unambiguous finding that, "it cannot be said that *ex post facto* approval dated 29.09.2010 was granted without any reason, although those reasons may not be specifically mentioned in the approval

dated 29.09.2010". The learned Single Judge has also observed that *ex post facto* approval was the result of deliberations made in FIPB on the basis of the opinion expressed by the Committee constituted by the said Board to examine rival contentions of the parties. We thus conclude that granting approval to the proposal of the appellant no.1-PCP seeking *ex post facto* approval to its investment made in appellant no.2-PCM by the respondent no.2 *vide* its order dated 29.09.2010 is a policy decision and unless and until the Court comes to the conclusion that such approval has been accorded by the Government without a finding that the investment made would, in any way, jeopardise the interest of the respondent no.5 – the existing Joint Venture, it will be difficult for the Court to interfere with such decision. The decision of the Government dated 29.09.2010 is based on the recommendations dated 10.09.2010 made by the FIPB, wherein on deliberation and consideration of the opinion of the Committee, dated 04.08.2010, it has been found and accordingly opined that, *"it is difficult to determine if jeopardy would have been caused"*. Thus, in our view, the nature of inquiry required to be made before granting approval in terms of the requirement of Press Note-1 (2005 Series) in the instant case was made, and it has been found therein that the foreign investment in respect of which approval was sought would not jeopardise the interest of the existing Joint Venture i.e. respondent no.5.

85. The issue no.(i) is decided thus, for per the above-mentioned reasons.

86. Coming to the issue no.(ii), we now need to examine whether there has been violation of the principle of natural justice in the facts of the instant

case. As has been held by the Hon'ble Supreme Court in ***Keshav Mills Co. Ltd. v. Union of India, (1973) 1 SCC 380***, principles of natural justice cannot be put in any straitjacket formula. The extent of opportunity of putting forth its case by a party to an issue, depends on the nature of the inquiry or proceedings under which such issue is determined or decided. Primarily, the principles of natural justice has two ingredients, firstly, no one should be condemned unheard and secondly, no one can be the judge of his own cause. So far as the first ingredient is concerned, if any decision, even by an administrative authority, is likely to cause some serious civil consequences to a party, such a party is entitled to be given an opportunity of presenting its case. Opportunity of presentation of a case by a party in any proceedings may assume various forms, such as (i) opportunity of making a written representation, (ii) opportunity of being personally heard, (iii) opportunity of being represented by a legal expert or a counsel and (iv) opportunity of post-decisional hearing, etc.

87. As to what would constitute fulfilment of the requirement of observance of principles of natural justice in a particular situation or case depends on the nature of the proceedings to which a party is subjected to. It is needless to observe that the opportunity of making representation and putting forth its case to a party, even by providing an opportunity of personal hearing, is a necessary requirement in any judicial or *quasi-judicial* proceedings. However, as far as administrative proceedings are concerned, depending on the nature of proceedings, the requirement of observance of principles of natural justice would be met in some cases by merely providing an opportunity to put forth a case by a party by making a written

representation and in some other cases such requirement would get fulfilled also by providing opportunity of personal hearing.

88. So far as the instant case is concerned, as already observed above, any decision regarding approval in respect of foreign investment made by a foreign entity under the automatic route in terms of guidelines embodied in Press Note-1 (2005 Series) is in the nature of a policy decision, therefore, in our opinion, greater latitude ought to be given to the Government. We have already observed that what all is required to be scrutinised and seen by the Government while considering any proposal for approval for foreign investment under the automatic route in terms of Press Note-1 (2005 Series), is as to whether the proposed foreign investment is causing any jeopardy to the interest of the existing Joint Venture. It is primarily for the satisfaction of the Government that the new proposal would or would not jeopardise the interests of the existing Joint Venture. Having regard to such nature of inquiry or proceedings that may be required to be conducted for considering any proposal for approval of foreign investment under automatic route as per Press Note-1 (2005 Series), in our opinion, written representation expressing its views and stating its case by the existing Joint Venture would suffice to meet the requirement of principles of natural justice, though in the instant case the Committee constituted by FIPB not only entertained various representations made by the existing Joint Venture – respondent no.5 but also solicited various information from it from time to time and further, even provided opportunity of personal hearing as well.

89. We may also note that under Press Note-1 (2005 Series), neither the Committee constituted by the FIPB nor the FIPB itself is required to consider such a proposal seeking approval for foreign investment under the automatic route; rather, such approval is to be accorded by the Government. The Government in this case has taken the decision dated 29.09.2010 as amended on 10.11.2010 on the recommendations of FIPB, which took its decision taking into account the opinion of the Committee besides considering other relevant factors. The FIPB and the Committee, in our opinion, acted only in aid of the Government to take the decision on the proposal submitted by the appellant no. 1-PCP seeking *ex post facto* approval to its investment made in appellant no.2-PCM.

90. It is not in dispute that the representations made and information submitted by the existing Joint Venture – respondent no.5 were considered by the Committee as also by the FIPB in their respective decisions. The Committee had even provided opportunity of hearing to the respondent no.5 before taking a final decision expressing its opinion submitted to FIPB and, therefore, we have no hesitation to conclude that having regard to the nature of inquiry or proceedings to be drawn for considering any proposal for according approval under Press Note-1 (2005 Series) the requirement of observance of principles of natural justice in the facts and circumstances of the instant case, were duly met.

91. It has vehemently been argued on behalf of the respondent nos.5 to 7 that the Committee which had heard them did not take the decision on 04.08.2010, rather decision was taken by reconstituted committee, and,

therefore, on the principle of *"he who hears must decide"*, any decision of the Government of India based on the recommendations of the FIPB, which in turn is based on the opinion of the Committee, cannot be sustained in the eyes of law.

92. Admittedly the constitution of the Committee which provided opportunity of personal hearing to the existing Joint Venture in its meeting held on 17.03.2010 was altered and the Chairperson of the earlier Committee i.e. Ms.L.M.Vas, Additional Secretary, Department of Economic Affairs was replaced by Mr.Bimal Julka, Director General, Directorate of Currency (DEA), who chaired the meeting held on 04.08.2010, that made the recommendations for giving approval of the appellant no.1-PCP. Name of Mr.Pramod Saxena, Director, Department of Economic Affairs, who was part of the meeting of the Committee held on 17.03.2010 also did not appear in the records of the meeting dated 04.08.2010. On this count, it has been argued by Sh.Shyam Mehta, representing the respondent nos.5 to 7 that the Committee, which had heard the existing Joint Venture, did not take the decision and, therefore, such a decision cannot be said to be lawful. Reliance in this regard has been placed on behalf of the respondent nos.5 to 7 on ***Gullapalli Nageswara Rao (supra)***.

93. In the said case, which was a writ petition filed under Article 32 of the Constitution of India, what was challenged was the provisions of Chapter IV-A of the Motor Vehicles Act as amended by Act 100 of 1956, and further, the scheme framed under the said Act was also challenged. One of the grounds taken for the challenge in the said matter was that while the Act

and the Rules imposed a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules imposed the duty on the Secretary to hear and the Chief Minister to decide. It is in the context of the said statutory scheme that the Hon'ble Supreme Court observed in the said case that such divided responsibility is destructive of the concept of judicial hearing and further that such a procedure defeats the objects of personal hearing. The Hon'ble Supreme Court further observed that personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear his doubts during the course of arguments and it also enables the party appearing to persuade the authority by reasoned arguments to accept his point of view.

94. Such observations by Supreme Court in ***Gullapalli Nageswara Rao (supra)*** regarding divided responsibility of conducting the proceedings under the statutory scheme discussed in the said judgment, in our opinion, does not have any application to the facts of the present case for the simple reason that the nature of proceedings in the said matter were statutorily provided and were judicial or at least *quasi-judicial*, whereas nature of the proceedings to be drawn for the purposes of according approval to any proposal for foreign investment through automatic route is neither judicial nor *quasi-judicial*, it is rather administrative in nature which leads to a policy decision. Thus, the difference in the nature of proceedings in ***Gullapalli Nageswara Rao (supra)*** and in the proceedings drawn for according approval to foreign investment under automatic route persuades us to observe this ***Gullapalli Nageswara Rao (supra)*** does not have any application to the facts of the present case.

95. Reliance placed by learned senior counsel for the respondent nos.5 to 7 on a coordinate Bench judgment of this Court in ***Hyundai Rotem (supra)*** also does not come to his rescue. The said judgment refers to the judgment of Hon'ble Supreme Court in ***Gullapalli Nageswara Rao (supra)*** and proceeds to observe that one authority hearing and another authority passing the order defeats the very purpose of personal hearing as the party concerned in the said case lost an opportunity to try and persuade the competent authority to accept its contentions. The Court further observed that the procedure followed in the said matter was wholly contrary to the principles of natural justice. However, we may note that in ***Hyundai Rotem (supra)*** what was under challenge was a letter blacklisting the appellant–company. The facts in the said case were that the party concerned was blacklisted on 10.08.2015 and prior to that on 16.06.2015, a show-cause notice was issued seeking explanation as to why action may not be taken for certain defaults. In pursuance of an order passed in an earlier writ petition hearing was given to the parties concerned by a Committee comprising of two Directors and one General Manager of the respondent in the said case, whereas the order of blacklisting dated 10.08.2015 was passed by the Executive Director and it is in the background of these facts that it was pleaded that functionaries that had given a hearing to the parties concerned had not passed the order of blacklisting, rather the order was passed by another authority and, therefore, such order of blacklisting was contrary to the law laid down by the Hon'ble Supreme Court in ***Gullapalli Nageswara Rao (supra)*.**

96. The issue in ***Hyundai Rotem (supra)*** was, thus, in relation to blacklisting of a firm which has very serious civil consequences. Hon'ble

Supreme Court in ***Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105***, has observed that blacklisting of a firm or contractor virtually amounts to civil death and, therefore, principles of natural justice are applicable with full force. Blacklisting amounts to a complete bar on providing services, thus resulting in civil death, whereas in the instant case, opinion expressed by the Committee, dated 04.08.2010 records that the Indian unit has geared up and has increased capacity and sales and did not collapse, which does not have the same effect of resulting in civil death. In addition, in the instant case, the nature of proceedings that were drawn for considering any proposal of approval of foreign investment under automatic route in terms of Press Note-1 (2005 Series), in our opinion, cannot be equated with the proceedings which ought to be drawn in case of proposed action of blacklisting of a firm or a contractor. Therefore, the reliance placed by learned senior counsel representing the respondent nos.5 to 7 of ***Hyundai Rotem (supra)*** is also misplaced.

97. Sh.Shyam Mehta has also referred to the judgments in ***State Bank of India (supra)***, ***IDBI Bank (supra)***, ***Excise Commissioner (supra)***, ***A.K.Kraipak (supra)*** to stress the argument that if any administrative action results in civil consequences parties are entitled to be provided with the evidence collected against it or in its favour and the opportunity to deal with the same should also be given.

98. So far as the proposition laid down in the aforesaid judgments is concerned, there cannot be any quarrel, however what we find in the instant case is that so far as the transactions between the appellant no.1-PCP and the

respondent no.5-PIP are concerned, all the necessary documents were in the notice and knowledge of both these parties. Sh.Shyam Mehta has raised an issue that the opinion of the Department of Legal Affairs stated that it was permissible to grant *ex post facto* approval, and copy of this opinion was not provided to the respondent no.5-PIP during the course of the proceedings. He has also taken exception to not being provided the opinion of the Department of Heavy Industries to the respondent no.5, according to which the interest of respondent no.5-PIP were jeopardised by the appellant no.1-PCP setting up appellant no.2-PCM.

99. In this regard, we may state that in the course of making any administrative decision of the nature as is required, on a proposal seeking approval of foreign investment under the automatic route in terms of Press Note-1 (2005 Series), opinions are generally sought inter-departmentally by the Government and, therefore, opinion given by the Department of Legal Affairs which stated that it was permissible to grant *ex post facto* approval need not be necessarily provided for the reason that it is for the consumption of the decision making authority. As far as the opinion of the Department of Heavy Industry is concerned, the said opinion was also sought by the Finance Department (respondent no.2) of the Government of India only in aid of arriving at a correct decision and such opinion, in our view would not form such document or material with which the respondent no.5-PIP ought to have been necessarily confronted with.

100. The submission as made by learned senior counsel for the respondent nos.5 to 7 that once the appellants made application for compounding of the

contravention of the guidelines contained in Press Note-1 (2005 Series), it would amount to acceptance of the contravention, in our opinion, is not available in the facts of the present case for the reason that the application seeking approval made by the appellants had clearly stated that application was made without prejudice to their *bona fide* contention that the provisions of Press Note-1 (2005 Series) were not attracted to the investment already made in the appellant no.2-PCM by accessing the automatic route. It is also to be seen that the application for compounding was made by the appellants only in terms of the conditions as contained in the order of approval dated 29.09.2010 and not otherwise. In this view of the matter, such a submission that presenting an application for compounding, in the instant case, would amount to acceptance of contravention, is not tenable.

101. The judgments cited by Sh.Shyam Mehta in support of his argument that when the statute provide for prior approval, *ex post facto* approval is impermissible, in our opinion will have no application in the instant case for the reason that all these judgments namely ***LIC v. Escorts (supra)***, ***Asha Rani Gupta v. Ravindra Memorial (supra)***, ***A.Chowgule & Company v. Goa Foundation (supra)***, ***Union of India v. Vinod Kumar (supra)*** and ***Behari Kunj v. State of U.P. (supra)*** related to some requirement either under an Act of the Legislature or statutory rules framed under some statutory enactments whereas the approval of the Central Government in the instant case under Press Note-1 (2005 Series) for foreign investment through automatic route is required under guidelines which do not appear to have emanated from any parliamentary enactment or statutory rules.

102. ***Asha Rani Gupta v. Ravindra Memorial (supra) (supra)*** was a case where Section 8(2) of the Delhi School Education Act and Rule 120(2) of the Delhi School Education Rules specifically required prior approval of the Director of Education that was statutorily mandated, before passing any order of dismissal or removal from service of an employee of a school. It is in the context of the statutory mandate contained in Section 8(2) of the Delhi School Education Act and Rule 120(2) of the Rules framed under the said legislative enactment that the Court observed that in such a case, *ex post facto* approval cannot replace prior approval of any action.

103. ***Union of India v. Vinod Kumar (supra)*** was also a case where proviso appended to Section 5D(7)(a) of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 required prior approval of the Central Government, in case, Central Board was of the opinion that it was necessary to make a departure from certain rules or orders in respect of any of the maters. Thus, in the said case as well, it was mandated by the Act of Parliament to seek prior approval, and in this context, it was laid down that *ex post facto* approval is not an approval which can be equated with prior approval and, therefore, such approval is not tenable in law.

104. ***Behari Kunj v. State of U.P. (supra),*** where sub-section (2) of Section 10 of the Administration of Evacuee Property Act, 1950 mandated that for the purposes of preserving and maintaining the evacuee property, there can be a transfer or sale; however, no such action can be taken without prior or previous approval of the Custodian General. It is in the context of the said statutory mandate of the Act that the Hon'ble Supreme Court

observed that the expression "previous approval" would mean that approval of the Custodian General is to be taken first before any transfer or sale can be effected.

105. So far as the judgment in ***LIC v. Escorts (supra)*** is concerned, the question which was examined there was as to whether Reserve Bank of India had the power or authority to give ex-post facto permission under Section 29 (1) (b) of the Foreign Exchange Regulation Act, 1973 for the purchase of shares in India by a company not incorporated in India or whether such permission had necessarily to be previous permission. The Hon'ble Supreme Court discussed the scheme of the said Act and gave a finding that the word "permission" occurring in Section 29(1) of the said Act was not qualified by the work "previous". The Court also went on to consider the object of Foreign Exchange Regulation Act, 1973 which according to the judgment was to earn, conserve, regulate and store foreign exchange and, therefore, it was held that what was necessary in the facts of the said case was that permission of Reserve Bank of India should be obtained at some stage for the purchase of share of non-resident companies. Paragraphs 61 to 63 of the judgment in ***LIC v. Escorts (supra)*** is extracted herein below:-

> *"**61**. From what has been narrated above, one of the principal questions to be considered is seen to be whether the Reserve Bank of India had the power or authority to give ex post facto permission under Section 29(1)(b) of the Foreign Exchange Regulation Act for the purchase of shares in India by a company not incorporated in India or whether such permission had necessarily to be "previous" permission.*
>
> ***62.** We do not propose to refer to any dictionary to find out the meaning of the word "permission", whether the word is comprehensive enough to*

include subsequent permission. We will only refer to what Sir Shah Sulaiman, C.J. said in Shakir Hussain v. Chandoo Lal [AIR 1931 All 567] :

"Ordinarily the difference between approval and permission is that in the first the act holds good until disapproved, while in the other case, it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous act."

63. *We have already extracted Section 29(1) and we notice that the expression used is "general or special permission of the Reserve Bank of India" and that the expression is not qualified by the word "previous" or "prior". While we are conscious that the word "prior" or "previous" may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29(1). On the other hand, the indications are all to the contrary. We find, on a perusal of the several, different sections of the very Act, that the Parliament has not been unmindful of the need to clearly express its intention by using the expression "previous permission" whenever it was thought that "previous permission" was necessary. In Sections 27(1) and 30, we find that the expression "permission" is qualified by the word "previous" and in Sections 8(1), 8(2) and 31, the expression "general or special permission" is qualified by the word "previous", whereas in Sections 13(2), 19(1), 19(4), 20, 21(3), 24, 25, 28(1) and 29, the expressions "permission" and "general or special permission" remain unqualified. The distinction made by Parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes. The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act. The significance of the use of the qualifying word in one provision and its non-use in another provision may not be disregarded. In our view, the Parliament deliberately avoided the qualifying word previous in Section 29(1) so as to invest the Reserve Bank of India with a certain degree of elasticity in the matter of granting permission to non-resident companies to purchase shares in Indian companies. The object of the Foreign Exchange Regulation Act, as already explained by us, undoubtedly, is to earn, conserve, regulate and store foreign exchange. The entire scheme and*

design of the Act is directed towards that end. Originally the Foreign Exchange Regulation Act, 1947 was enacted as a temporary measure, but it was placed permanently on the Statute Book by the Amendment Act of 1957. The Statement of Objects and Reasons of the 1957 Amendment Act expressly stated, "India still continues to be short of foreign exchange and it is necessary to ensure that our foreign exchange resources are conserved in the national interest". In 1973, the old Act was repealed and replaced by the Foreign Exchange Regulation Act, 1973, the long title of which reads:"An Act to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency and bullion, for the conservation of foreign exchange resources of the country and the proper utilisation thereof in the interest of the economic development of the country." We have already referred to Section 76 which emphasises that every permission or licence granted by the Central Government or the Reserve Bank of India should be animated by a desire to conserve the foreign exchange resources of the country. The Foreign Exchange Regulation Act is, therefore, clearly a statute enacted in the national economic interest. When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest. If the legislation is viewed and construed from that perspective, as indeed it is imperative that we do, we find no difficulty in interpreting "permission" to mean "permission", previous or subsequent, and we find no justification whatsoever for limiting the expression "permission" to "previous previous'" only. In our view, what is necessary is that the permission of the Reserve Bank of India should be obtained at some stage for the purchase of shares by non-resident companies."

106. As regards the judgment in ***A.Chowgule & Company v. Goa Foundation (supra)*** cited by learned senior counsel representing the respondent nos.5 to 7, we may note that the said case also dealt with Section 2 of Forest (Conservation) Act, 1980, which required that no State

Government or any other Authority shall make any order as specified in Section 2 except with the prior approval of the Central Government. The Supreme Court discussed the provisions of Section 2 of the said Act and Rule 4, 5 and 6 of the Rules framed thereunder, which required that every State Government seeking approval under Section 2 of the Act, shall submit a proposal to the Central Government in the prescribed form and Rule 6 stipulated that the proposal should be examined by the Committee appointed under Rule 2A. It was in the context of the statutory scheme of the Forest (Conservation) Act, 1980, and the rules framed thereunder which mandated the State Government to seek prior approval of the Central Government for passing orders mentioned in Section 2, that the Supreme Court held that in the absence of prior approval any order made under Section 2 of the said Act would not be lawful.

107. Thus, all the judgments cited are based on statutory mandates either prescribed by a legislative enactment or by statutory rules framed under such enactments, whereas in the instant case the proposal for approval made by appellant no.1-PCP for making for an investment under automatic route was sought in terms of the requirement of the guidelines embodied in Press Note-1 (2005 Series) which, as observed above, do not appear to emanate from any legislative enactment. Therefore, in our opinion, the judgments cited by learned counsel for respondent nos. 5 to 7 in this regard do not improve his case.

108. The decision regarding approval for making foreign investment through automatic route in case of an existing joint venture as required

under Press Note-1 (2005 Series) is to be taken by the Government. As a matter of fact, such decisions, as noted by authors M.P. Jain and S.N. Jain in their seminal work on Principles of Administrative Law, Chapter X Principles of Natural Justice or Fairness, Volume 1, Eighth Edition, Pages 81-82, are termed as Administrative Decisions. The authors have observed that Government is an impersonal entity and can function through officers and further that it may be that a decision of complex issues needs expertise, specialisation, opinions and perspective of a number of staff members. The authors have also observed that the decision maker is not identified or individualized, as the decision stands in the name of concerned organisation or institution. It has also been observed by the authors that in the area of administrative adjudication, some decisions are made personally by identifying administrators or a small group of officials who take responsibility for the same but this is not always the case and, at times, decision may be the end-product of institutions and institutional processes rather than that of one designated person. The relevant observations of the authors in the book are extracted hereunder:

> *"12. INSTITUTIONAL DECISIONS*
>
> *An institutional decision negates the doctrine "One who decides must hear." Decisions are 'institutional' because the decision as a whole is that of the concerned department as an administrative entity rather than the personal decision of any designated officer individually. In an institutional decision, no one individual officer hears the party personally and decides the case himself as a judge does. Usually, one official hears the party concerned; he may take the decision in the name of the government if he is authorised to do so. If not so authorised, he submits the record of hearing to the higher officer for his taking the decision, again, in the name of the government. A situation of institutional decision comes into existence when the decision making power is conferred on an institution, such as, government, or a department, or a Minister, and not on a designated official specifically. For example, when decision-making power is*

conferred by law on a Minister, it does not mean that the Minister himself personally applies his mind to the matter and arrives at a decision. What it means is that the decision is arrived at either by the Minister himself, or by some one else in his department for whom the Minister is constitutionally responsible.

Several reasons give rise to the system of institutional decisions. Government is an impersonal entity and can function only through officers. A Minister is a busy person and cannot take each and every decision himself. It may be that a decision of complex issues needs the expertise, specialization, opinions and perspective of a number of staff members. From the point of view of the affected person, such a decision suffers from two main drawbacks: (1) the authorship of such a decision within the concerned department may not be known to the affected person as it is reached by the cumulative application of minds by several officials in the concerned department. The decision-maker is not identified or individualized as the decision stands in the name of the concerned organization or the institution. The decision thus suffers from anonymity. (2) There occurs a division in the decision-making process: while one official may hear another may decide. In the area of administrative adjudication, some decisions are made personally by identified administrators, or a small group of officials who take responsibility for the same. But this is not always the case and, at times, a decision may be the end-product of institutions and institutional processes rather than that of one designated person.

The procedure of institutional decision-making is essentially different from the judicial decision-making in which the judge personally hears, applies his own discretion and decides the matter; he is appointed to adjudicate upon disputes between parties and his decision is personal; he himself presides at the trial; he hears the evidence, watches the demeanour of witnesses, draws his own conclusions as to the credit-worthiness of the witnesses, himself hears the arguments of the concerned parties, then decides and writes his reasons for the decision. All materials which form the basis of the decision are presented in open Court so that every one knows them. There is one more point of difference between judicial and institutional decisions, viz., the routine departmental procedure, notings on the file etc., by various officials go on as usual before the final decision is arrived at, and this, to some extent, even compromises the rule, discussed earlier,66 that no material should be used against a person without giving him an opportunity to rebut the same. Much of the notings and views expressed on the file concerned by various officials, as the file moves from one official to another within the department before it reaches the stage where final decision is formally taken, may never come to the notice of the affected person, and he would never get a chance to rebut the

same. A decision by a department differs from the decision by a designated official, body or tribunal created exclusively for adjudication, for while in the latter case the discretion exercised and the views taken are of the specified authority itself, in the former case, the decision is that of the department as a whole and represents the cumulative wisdom of a number of anonymous officials through whose hands the file of the case may pass, and in this sense it is institutional and not a personal or an individual decision of one person."

109. A Division Bench of Madhya Pradesh High Court in ***Indore Textiles Limited and Another v. Union of India and Another***, 1983 MPLJ 41 (1982 SCC OnLine MP 137) has referred to the third edition of the afore-mentioned book by Jain & Jain and has observed that there is no breach of natural justice if investigation or hearing part is done by an official or a committee and the final decision is taken by the Minister after going through the report of the officer concerned and the evidence and material collected by him. The said judgment is authored by Chief Justice G.P. Singh, (as his lordship then was). The judgment refers to *Wade*, Administrative Law, 4th Edition and *De Smith*, Judicial Review of Administrative Action, 4th Edition and concludes that in the case of administrative decisions, when hearing is held by one officer and the decision is taken by another on the basis of hearing and officer's report, it is not always necessary to disclose the report to the affected person for inviting the comments before making the final decision.

110. In ***Indore Textiles Limited,*** (supra), the Minister had taken the decision though he did not hear the party concerned rather, hearing was given by a Joint Secretary in the Department whose report and opinion on the question involved was considered by the Minister after obtaining the

opinion of other officers of the department. The decision reached, however, was of the Minister himself who must be presumed to have considered the submissions of the party concerned contained in the report of the Joint Secretary and his views and the views of other officials.

111. In these facts of the case, it was observed in ***Indore Textiles Limited,*** (supra) that it could not be held that there was no hearing by the Minister and his order was invalid for the reason that oral hearing was given by an official of the Ministry and not by the Minister himself. Paragraphs 7 to 12 of the judgment in ***Indore Textiles Limited,*** (supra) are relevant to be extracted here which read as under:

> *"**7.** When a quasi-judicial power is conferred on the Government or a Minister, by a statute, it is presumed that Parliament intends the power to be exercised in accordance with the principles of natural justice according to the usual practice of the department concerned. The normal practice of Government departments is that the Minister in charge of the Department takes assistance from subordinate officials of his department. There is no breach of natural justice if the investigation or the hearing part is done by an official or a committee and the final decision is taken by the Minister after going through the report of the officer concerned and the evidence and material collected by him. Even in acting upon such a report the Minister may take assistance from others in his department and the decision reached by him cannot be treated being in violation of the principles of natural justice if he has honestly applied his mind to the relevant material and the decision reached by him is really his decision [Wade, Administrative Law, 4th edition, p. 467; De Smith, Judicial Review of Administrative Action, 4th edition, p. 2201]. In Local Government Board v. Arlidge [1975 AC 120 (HL).] , which is leading authority on the point, it was held by the House of Lords that an order passed by the Minister, who was head of the Local Government Board, in an appeal, which required a quasi judicial procedure, could not be set aside on the ground that the enquiry in relation to the appeal was not made by and the hearing was not given by the Minister but by an official of the Board. In holding so, Viscount Haldane, L.C. made the following observations:*
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> *"The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he*

himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

8. *The principle laid down in Arlidge's case was accepted by the Privy Council in the case of Jeffs v. New Zealand Dairy Production and Marketing Board [1967 AC 551 (PC).] . In this case, the respondent Board was conferred with a quasi-judicial power by a statute to make a zoning order. It was held that the Board could appoint a person or persons to hear and receive evidence and submissions from interested parties, and if it reached the decision after fully informing itself of the evidence and submissions made, it could not be said that the Board had not heard the interested parties and had acted contrary to the principles of natural justice. It was also held that in some circumstances it may even suffice for the Board to have before it and to consider an accurate summary of the relevant evidence and the submissions if the summary adequately disclosed the submissions and evidence to the Board. The decision of the Board was, however, set aside on the ground that the report which the Board considered did not state what the evidence was and the Board reached its decision without consideration of and in ignorance of the evidence.*

9. *The principle that when a quasi-judicial power is conferred on a Government department or a minister, the pre-decision hearing need not be by the person passing the final order has also been accepted in the American Administrative Law. It was no doubt observed by Chief Justice Hughes in the First Morgan case [298 US 468.] , that "the one who decides must hear". But these observations have not to be understood in a literal sense. The word "hear" is used here in the artistic sense of requiring certain procedural minimum to insure an informed judgment by the one who has the responsibility of making the final decision and it does not necessitate that the person making the final decision must himself be the presiding officer at the hearing. In other words, the one who decides must give heed to the case and, directing his mind to it, must be the one who actually exercises the deciding function. It is not necessary that the person deciding should himself take the evidence and hear the oral arguments : see Schwartz. Administrative Law [(1976) pp. 378 to 383.] . As observed by Professor Wade:*

"The work of holding the inquiry and reporting on the evidence must be delegated to officials, and so in many cases must be the substantive decision itself. But what the Supreme Court of the United States continued to require was that the decision should be the personal decision of the minister in the sense that he sees the record and exercises his personal judgment upon it. The case may be predigested for him in his department, but he is the one who is required to decide. He must therefore 'hear' in the sense of applying his mind to both sides of the case." [Wade, Administrative Law, 4th edition, p. 825].

10. *The development of the Indian Administrative Law is also on the same lines [Jain and Jain, Principles of Administrative Law, 3rd edition, p. 250]. The Supreme Court in Pradyat Kumar v. C.J. of Calcutta [AIR 1956 SC 285.] , expressly approved and followed the decision of the House of Lords in Arlidge's case. In Pradyat Kumar's case, the question was whether the Chief Justice who had the power to dismiss could not authorise a Judge to make enquiry into the charges and to report and whether it was obligatory on him to himself make the enquiry. In holding that it was not necessary for the Chief Justice himself to make the enquiry, it was observed that although in case of a judicial tribunal, the tribunal cannot delegate its functions unless it is enabled to do so expressly or by necessary implication, the position is different in case of an administrative power which has to be exercised in a quasi-judicial manner and the statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent officer to enquire and report. It was further observed that what cannot be delegated is the ultimate responsibility for the exercise of the power. Arlidge's case had also decided that when hearing is held by one officer and the final decision is taken by another on the basis of the hearing officer's report, it is not always necessary to disclose the report to the affected person for inviting his comments before making the final decision. This principle has also been accepted by our Supreme Court : Suresh Koshy v. University of Kerala [AIR 1969 SC 198.] , Kesava Mills Co. v. Union of India [(1973) 1 SCC 380 : AIR 1973 SC 389.] , Shadi Lal v. State of Punjab [(1973) 1 SCC 680 : AIR 1973 SC 1124.] and Hira Nath v. Rajendra Medical College [(1973) 1 SCC 805 : AIR 1973 SC 1260.] .*

11. *In the light of the principles stated above, the argument of the learned counsel for the petitioners cannot be accepted that as the Minister himself did not hear the petitioner company, the decision taken by him was invalid not being in conformity with the decision in the earlier writ petition and the principles of natural justice. As earlier seen, the hearing was given by Shri R. Ram Krishna, Joint Secretary. His report which contained the submissions made by the petitioner company and his opinion on the*

question of existence of circumstances and legality of take over under section 18AA was considered by the Minister after obtaining the opinion of other officials of the department, namely, Shri Damodaran and Shri Shunglu. The decision reached, however, was of the Minister himself who must be presumed to have considered the submissions of the petitioner company contained in the report of Shri Ram Krishna and his views and the views of other officials. It may here be recalled that although Shri Ram Krishna had recommended withdrawal of the take over on moral grounds, he had also expressed the view that technically the requirements of section 18AA were satisfied. Having regard to the facts of the instant case and the principles of administrative law considered above, it cannot be held that there was no hearing by the Minister and that his order is invalid for the reason that the oral hearing was given by an official of the Ministry namely Shri R. Ram Krishna and not by the Minister himself.

12. *Learned counsel for the petitioners heavily relied upon the case of G. Nageswara Rao v. A.P.S.R.T. Corpn. [AIR 1959 SC 308, p. 327.] , in support of his submission that the Minister could not have delegated the hearing function to an official. It is true that in that case the Supreme Court by a majority held that the Chief Minister who decided the objections to a proposed scheme of nationalisation under section 68-D of Motor Vehicles Act, 1939, in accordance with the rules of business could not delegate the function of hearing the objectors to the Secretary and observed that "if one person hears and another decides then personal hearing becomes an empty formality". But Nageswara Rao's case also refers with approval to the decision of the House of Lords in Arlidge's case (p. 326) which was followed in Pradyat Kumar's case, Nageswara Rao's case cannot, therefore, be taken to have decided contrary to what is laid down in Arlidge's case. In our opinion, the case of Nageswara Rao must be confined to the construction of section 68D of the Motor Vehicles Act and the rules made thereunder which specifically required "giving an opportunity to the person of being heard in person". The case cannot be understood to have decided that whenever a quasi-judicial power is conferred on the Government, the Minister concerned must himself hear and he cannot act on the report of an officer to whom the hearing function is delegated. This view that we have taken is in line with the decisions of the Kerala and Allahabad High Courts : Raghava Menon v. I.G. of Police [AIR 1961 Kerala 299.] and Triambak Pati v. B.H.S. & I. Edu., Allahabad [AIR 1973 All. 1.] ."*

112. Reference in this respect may also be made to the judgment of Hon'ble Supreme Court in ***Ossein and Gelatine Manufacturers' Assn.***

(supra), wherein ***Gullapalli Nageswara Rao (supra)*** has been referred to and it has been observed that in the facts of the said case it was unnecessary to enter into a decision on the issue for the reason that the issue there was one of grant of approval by the Government and not by any particular officer statutorily designated. Paragraph 6 of the judgment of ***Ossein and Gelatine Manufacturers' Assn. (supra)*** is extracted herein below:-

> *"**6.** There was some discussion before us on a larger question as to whether the requirements of natural justice can be said to have been complied with where the objections of parties are heard by one officer but the order is passed by another. Shri Salve, referring to certain passages in Local Government Board v. Alridge [1915 AC 120 : 84 LJKB 72] , Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 3] , Regina v. Race Relations Board, Ex parteSelvarajan [(1975) 1 WLR 1686] and in de Smith's Judicial Review of Administrative Action (4th Edn., pp. 219-220) submitted that this was not necessarily so and that the contents of natural justice will vary with the nature of the enquiry, the object of the proceeding and whether the decision involved is an "institutional" decision or one taken by an officer specially empowered to do it. Shri Divan, on the other hand, pointed out that the majority judgment in Gullappalli Nageswara Rao v. APSRTC [AIR 1959 SC 308 : 1959 Supp 1 SCR 319] has disapproved of Alridge case [1915 AC 120 : 84 LJKB 72] and that natural justice demands that the hearing and order should be by the same officer. This is a very interesting question and Alridge case [1915 AC 120 : 84 LJKB 72] has been dealt with by Wade [Administrative Law, 6th Edn., p. 507 et seq] . We are of opinion that it is unnecessary to enter into a decision (sic discussion) of this issue for the purposes of the present case. Here the issue is one of grant of approval by the Government and not any particular officer statutorily designated. It is also perfectly clear on the records that the officer who passed the order has taken full note of all the objections put forward by the petitioners. We are fully satisfied, therefore, that the requirements of natural justice have been fulfilled in the present case."*

113. In ***Kalinga Mining Corpn. (supra),*** the High Court had directed grant of hearing to the party concerned to be given by the Central Government and though parties were heard by a Joint Secretary of the Department but the

order was passed/communicated by a Deputy Secretary. The Hon'ble Supreme Court observed that it was a case of institutional hearing and judicial review is limited only to correcting errors of law or non compliance to fundamental procedural requirements, which may lead to manifested justice. The Apex Court in the said case held that orders may often be communicated by an officer other than the officer who gave the hearing and found that the judgment of the High Court, which was under challenge before the Supreme Court, was not contrary to established principles and parameters for exercise of power of judicial review and further that in such a situation order of the Central Government did not suffer from any legal or procedural infirmity. Paragraphs 64 to 68 of the ***Kalinga Mining Corpn. (supra)*** are apposite to be quoted here which read as under:-

> ***"64.*** *Applying the aforesaid principles, the High Court has examined the entire record and has concluded that the decision-making process is not flawed in any manner, as canvassed by the appellant. The High Court noticed that the record was duly produced by Mr J.K. Mishra, learned Assistant Solicitor General. It was also noticed that throughout the proceedings, no reference has been made to any particular officer or post or any designation. The order dated 11-7-2001 passed by the High Court merely directed that they shall appear before the Central Government on 18-7-2001. The order dated 14-8-2001 clearly indicates that the matter was being heard in view of the directions [Kalinga Mining Corpn. v. Union of India, AIR 2002 Ori 83] given by the High Court in OJC No. 11537 of 1999 and secondly, notice was issued for hearing on 28-8-2001. The record further indicated that the matter was heard by Mr S.P. Gupta, Joint Secretary for two days i.e. on 28-8-2001 and 13-9-2001. Both the parties had been given opportunity to place on record any documents and written submissions in support of their claim. It was also apparent that the particulars submitted were made available to all the parties. On 13-9-2001, Mr S.P. Gupta, Joint Secretary made a note as under:*
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> *"Thus, all the documents available with the Central Government are also available with both the parties."*

> ***65.*** *The High Court also took note of the fact that independently of all the material supplied by the State Government along with the recommendation and the material made available by the parties, the Central Government had also asked the Indian Bureau of Mines to furnish certain reports in support of both the parties. These reports were, in turn, made available to the rival parties. The High Court further noticed that after complying with all the formalities required, the issues were finally adjudicated.*
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> ***66.*** *Upon conclusion of the arguments by the parties, Mr S.P. Gupta, Joint Secretary who had heard the parties prepared the note running into 19 pages (from pp. 30-49) containing 47 paragraphs of original record. The note has been duly signed by Mr S.P. Gupta, Joint Secretary on 17-9-2001. The High Court further noticed that in fact this is the report which had been duly approved by the Secretary on 18-9-2001 and by the Central Government Minister on 25-9-2001. While making the endorsement of the approval, the Secretary has written as under:*
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> *"I endorse fully the above note of the Joint Secretary. This is a very old case in which the parties have repeatedly recourse to the courts. As such (sic) even now near litigation may follow. Therefore the decision of the Central Government has to be in terms of a speaking order which is backed by facts and law."*
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> *(emphasis supplied)*
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> ***67.*** *The High Court further notices that the impugned Order dated 27-9-2001 is, in fact, a verbatim copy of the report/note prepared by Mr S.P. Gupta, Joint Secretary. Upon examination of the entire matter, the High Court has concluded that the Order has been signed by Mr R.P. Khatri merely to communicate the approval of the Central Government to the parties.*
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> ***68.*** *We are of the considered opinion that the conclusions reached by the High Court cannot be said to be contrary to the established principles and parameters for exercise of the power of judicial review by the courts."*

114. If we examine the submissions of learned counsel for Respondent Nos. 5 to 7 in light of the aforesaid principle relating to institutional decisions, what we find is that in the instant case, the decision maker is the Government which took the decision according its *ex post-facto* approval of investment made by appellant No.1–PCP in appellant No.2–PCM taking into account the recommendation made by FIPB and the opinion of the

Committee and the said Committee had formed its opinion considering the application made by the appellant no.1-PCP, various representations/objections made by respondent No.5, the opinion provided by the Department of Legal Affairs and the Department of Heavy industry, Ministry of Heavy Industry and Public Enterprise and other relevant matter and aspects. This Committee had given an opportunity of oral hearing as well to the respondent No.5. Therefore, in our considered opinion, merely because the Committee which had communicated its opinion to FIPB did not comprise of Ms. L.M. Vas, the earlier Chairman of the Committee or Mr. Prabodh Saxena who was a part of the earlier Committee, it cannot be said that principles of natural justice, in the instant case, having regard to the nature of decision, were violated.

115. It is worthwhile to note that the Committee which furnished its opinion to the FIPB as per its decision arrived at the meeting dated 04.08.2010, had noticed the minutes of all earlier meetings of the Committee and had also considered the case which was set up by respondent Nos. 5 to 7. In this view as well, it is difficult to agree with the submission made on behalf of respondent No.5 that the process adopted by the respondent No.2 which culminated in its decision dated 29.09.2010 in any way suffered from the *vice* of non-observance of principles of natural justice.

116. For the discussions made and reasons given above, we do not find ourselves in agreement with the impugned judgment and order dated 29.10.2024 passed by the learned Single Judge in W.P. 8148 of 2010.

117. Resultantly, the appeal is allowed and the judgment and order dated 29.10.2024 passed by learned Single Judge in W.P. 8148 of 2010 is hereby set aside.

118. There will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

MARCH 30, 2026
MJ/S.Rawat/N.K./"shailndra"