

ITEM NO.1A

COURT NO.5

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2606 OF 2006

CESC LTD.

Appellant (s)

VERSUS

CHIEF POST MASTER GENERAL & ORS.

Respondent(s)

WITH

Civil Appeal NO. 2607 of 2006

[HEARD BY HON'BLE R.M. LODHA AND HON'BLE SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

Date: 11/05/2012 These Appeals were called on for Judgment today.

For Appellant(s) Mr. Nitish Massey, Adv.

For Respondent(s) Mr. B.K. Prasad, AOR

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya
pronounced the judgment of the Bench comprising Hon'ble Mr.
Justice R.M. Lodha and His Lordship.

For the reasons recorded in the Reportable Judgment
which is placed on the file, the appeals are allowed. The
demand notice and the order passed by the Division Bench of
the High Court is set aside; the last portion of the
direction given by the learned Single Judge authorizing the
Postal Authority to decide the issue afresh and allowing
them to retain the amount of Rs.50 lakhs till such decision
is also set aside. The respondents are directed to refund
the amount of Rs.50 lakhs deposited by the Company pursuant
to the interim order passed by the High Court along with 6%
interest within three months from today. There will be no
order as to costs.

(Parveen Kr. Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2606 OF 2006

CESC LTD.

.... APPELLANT

Versus

CHIEF POST MASTER GENERAL & ORS.

.... RESPONDENTS

WITH

CIVIL APPEAL NO. 2607 OF 2006

CESC LTD.

.... APPELLANT

Versus

CHIEF POST MASTER GENERAL & ORS.

.... RESPONDENTS

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

These appeals have been preferred by the appellant- CESC Limited (hereinafter referred to as the "Company") against the common order and judgment dated 20.1.2004 whereby the Division Bench of the Calcutta High Court allowed the appeal preferred by the first respondent- the Chief Post Master General, West Bengal Circle and others (hereinafter referred to as the "Postal Authority") and dismissed the appeal preferred by the Company.

2. The order impugned before the Division Bench was passed in the Writ Petition No. 2282 of 1999 preferred by the Company against a demand

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notice dated 10.9.1999 issued by Postal Authority asking the Company to deposit a sum of Rs.1,83,89,410/-. The learned Single Judge by order dated 7.11.2000 had allowed the writ petition and held that the demand notice dated 10.9.1999 is contrary to Section 11(2) of the Indian Post Office Act, 1898 (hereinafter referred to as "the Act") and remitted the matter with a direction to the Postal Authority to consider the representation of the Company after giving it a hearing and with a further direction that, till the matter is decided, the entire deposit of Rs.50 lacs as was made by the Company in terms of the interim direction be kept with the Postal Authority. In case, it was decided that the amount was not payable by the Company, the Postal Authority would refund the same, but in the event it is found that the amount was due and payable by the Company, the Postal Authority shall adjust the same against the dues.

3. Against the said order, an appeal was preferred by the Company as the learned Single Judge allowed the Postal Authority to retain the amount of

Rs. 50 lakhs deposited by the Company in terms of the interim order while another was preferred by the Postal Authority against the said order of the learned Single Judge since the notice of demand was quashed and the learned Single Judge held that the Postal Authority had no power to demand such amount.

4. The case of the appellant is that it is a 'company' incorporated under the provisions of the Companies Act and is conducting the business of

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supplying electricity. The Company has about 26 lakh of registered consumers which is increasing continuously. The consumption bills are sent by the Company to its consumers, every month through the Post Office. For the purpose of sending monthly consumption bills by post, a specific area has been allotted to the Post Office in the South-west Regional Office of the Company at Taratola for carrying out the necessary operations, commonly known as the "Taratola Sorting Office" of the Postal Department. This practice is being followed by the company for a considerable period of time. The Officials of the Postal Department are posted at the said Taratola Sorting Office and a sub-office has been set up in a space provided by the appellant company exclusively for the purpose of receiving 'franked' monthly electricity consumption bills as is made by the officials posted there. The appellant company had installed the requisite 'franking machines' for this purpose which are operated by the appellant company's staff.

5. The dispute relates to the period between 1.6.1997 to 29.10.1998, during which, the monthly consumption bills, upon being folded, were marked with the requisite postal stamp of Rs.1/- per bill using franking machines. The monthly consumption bills thus franked, were made over to the counter of the Postal Department located in the said premises. Upon being satisfied with the franking marks and the value thereof, the Postal Officials accepted and took the postal articles, namely, the monthly consumption bills for being dispatched to the addressee consumers. Till then there were no disputes that the appellant had ever breached the franking conditions as enshrined under the license. The

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monthly consumption bills are printed on a sheet of paper which are then

merely folded for convenience. The consumption bills are not sealed at either end and when posted, are not enclosed in any envelop or wrapper. The consumption bills are also not stitched or stapled anywhere. Under the prescribed postal tariff as prevailing with effect from June 1, 1997, a charge of Rs.1/- per letter was prescribed for 'letter cards' under 'Serial No. 3' and for 'Book', 'Pattern' and 'Sample Packets' under 'Serial No. 5' thereof. The monthly consumption bills of the appellant company weighs much less than 50 grams.

6. By letter dated 29.5.1997, the Director of Postal Service informed the Company that as per revised postal tariff w.e.f 1 st June, 1997, charges for 'Book', 'Pattern' and 'Sample packets' for first 50 gms. or fraction thereof is Rs.1/-. For every additional 50 gms. or fraction thereof in excess of 50 gms. is Rs.2/-. Monthly consumption bill, if it is posted as 'Book', 'Pattern' and 'Sample packets' the revised postal tariff w.e.f. 1 st June, 1997, as mentioned above will be applicable.

7. Accordingly, from June 1997 to October 29, 1998, the appellant sent a total of 1,63,60,121 Bills, based on the aforesaid communication dated 29.5.1997, treating the posts as 'book post', affixing Rs.1/-, per postal articles. The posts were cleared by the postal department without any objection and were also delivered to the respective addressee consumers.

8. All of a sudden on 29.10.1998, the appellant, by another letter was
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informed that the letter dated 29th May, 1997 was treated as cancelled by the Postal Authority with further intimation that the 'Monthly Consumption Bill' does not come under the category of 'book post' / 'book packets' and that such type of 'bills' could be posted by affixing postage stamps as applicable to the 'letter mail' with immediate effect. The appellant objected to the cancellation and requested the postal authorities for a review of the decision and to restore the status quo. However, in compliance with the aforementioned letter the Company started posting the consumption bills affixing Rs.3/- stamps under protest and without prejudice.

9. Suddenly the Vigilance Officer, Department of Post by letter dated 18.6.1999 made additional claim for Rs. 1,83,89,410/- for the period from 1 st June, 1997 to 29th October, 1998 during which a total of 1,69,60,121 bills were despatched by the company affixing franking stamp of Rs.1/- per bill. Such claim was made on the ground of postage rate from 1st June, 1997 was Rs.2/- per Book Post and from 30th August, 1998 the rate was Rs.3/- per Book Post.

10. The Company replied on 30.10.98, that under Section 11, the liability is not of the Company to pay but that of the addressee consumers as the posts have already been delivered by the Postal Authority without any objection and hence no such objection can be raised at this stage. It was informed that neither was there any objection taken by the Postal Authority at the time of entrustment of the posts nor at the time of delivery, when they were actually delivered to the addressee. This demand was raised long after the posts had

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been delivered to the respective addressees and hence it requested to review the decision.

11. Pursuant to the said letter the Postal Authority informed the company by letter dated 26.7.1999 that the case was reviewed by the appropriate authority and reiterated the demand for Rs.1,83,89,410/- thereby rejected the prayer for review as is evident from the said letter. The relevant portion of which is quoted hereunder:

"The case was reviewed by the appropriate authority. Though the approval of the Department was given confirming the rates for sending electricity bills by Book Post as Rs.1/-, the same was given by mistake. The question remains that the electricity bills were posted at Book post rate i.e. @ Rs.1/- bill during the period from June 1997 to 29.8.1998 and @ Rs.3/- during the period from 30.8.1998 to 29.10.1998.

It is once again requested kindly to deposit the deficit amount of postage of Rs. 1,83,89,410/- in respect of posting of electric bills during the period from June 1997 to 29.10.98 at any Post Office and intimate the particulars of deposit to this office.

If the deficient amount of postage of Rs. 1,83,89,410/- is not deposited, the same will be treated as due to the Govt. of India from C.E.S.C. Limited."

12. As the Postal Authority continued to make the demand, the Company preferred the Writ Petition No. 2282 of 1999 mainly on the ground that the

demand notice dated 10.9.1999 asking the appellant to deposit Rs.1,83,89,410/-, is contrary to Section 11(2) of the Indian Postal Act, 1898. The learned Single Judge by order dated 7.11.2000 allowed the writ petition affirming that the demand notice is contrary to Section 11(2) of the Indian

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Postal Act, 1898. The learned Single Judge found that the pre-requisite of fastening liability on the sender of the post under Section 11 is not permissible. Therefore, the Company cannot be saddled with the responsibility to pay. Furthermore, it was also found that the person issuing the demand notice did not have the authority to issue such a notice. However, the learned Single Judge of the Writ Court did not order the refund of Rs. 50 lacs, which was deposited by the Company pursuant to the interim order, and held that the said refund would be subject to the decision of the respondent authorities.

13. The Division Bench by the impugned judgment held that the Postal Authority through the Post Master General, West Bengal Circle was completely empowered by Clause 11.5 (xv) and 34 of the Post Office Guide read with Section 12 of the Act to recover the outstanding sum remaining, due by the licensee Company to the Postal Authority. At the same time the Post Master General was also competent enough to direct the denial of acceptance of postal articles from the Company, unless and until the outstanding is paid and the finding of the learned Single Judge to the contrary on that score is wrong and was thereby set aside. The demand notice was upheld, but the direction of the learned Single Judge, directing the authorities to decide the representation of the Company by giving personal hearing was upheld. The Division Bench upheld the order passed by learned Single Judge, while directing the continuance of deposit of the above sum of Rs.50 lacs as and by way of an interim measure. Therefore, the Division Bench refused to interfere with that part of the order of the learned Single Judge.

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14. The learned counsel appearing on behalf of the Company submitted that the Company was guided by the Postal Department for franking and their office staff were present at the site of the Company where franking were made.

The manner of posting the bills was as per the instructions issued by the Postal Authorities. In this regard, there is no difference between a 'normal post' and 'franked' one and the breach of the franking license conditions was not even alleged.

15. It was also contended that liability under Section 11 is only upon the addressee while the liability of the sender is contingent on the pre-requisites which had not happened. The demand was raised without adjudicating or ascertaining the dues. This apart, the authority issuing the demand was not competent to issue the same. It was further submitted that the letter dated 18.6.1999 issued by the Vigilance Officer shows that not only were the authorities making a demand from the wrong person, the right person under Section 11 being the addressee, but were also asking the Company to pay for the "mistake" which was committed by them. Till that date, the Postal Authority had not produced the so called notification dated 27.8.1997. Therefore, the appellant was seriously prejudiced by non-production of that document.

16. It was further contended that the postal charges for despatch of the electricity bill is recovered by the sender along with the electricity tariff, which
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could only be done while preparing the bill. Since the Company had no means of recovering any amount and subsequently it cannot pass-on this liability on the addressees, the claim of the postal authority was denied. It was also contended that there is no provision whatsoever for levying arrears on postal charges and without complying with the terms and mandate of Section 12 of the Act, the Vigilance Officer issued a demand notice for Rs. 1,83,89,410/- with a threat that unless the aforesaid amount is deposited within 30 days, a direction would be given that all postal services conveying articles, except the government services despatched by the Company, be withheld. Therefore, the demand was ex-facie illegal.

17. The learned counsel appearing on behalf of the Postal Authority contended that the postal tariff was revised with effect from 1.6.1997 and again from 1st August 1998. On 29.10.1998, the mistake committed by the

department was detected and, therefore, the Postal Authority immediately cancelled their letter dated 29.5.1997 whereby the authorities informed the Company that for the monthly consumption bills, if posted as 'book post' and 'sample packets' the revised tariff of Rs.1/- will be applicable.

18. On 30.10.1998, the Company made a request to review the decision and thereafter, the Postal Authority made their demand on 18.6.1999 and a further demand was made on 18.8.1999 and finally on 10.9.1999, the threat of panel action was also conveyed through the said letter. Attention was also drawn to a letter dated 5.11.1998 wherein the Company themselves agreed to

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bear the cost as may be required, on demand. On 18.6.1999, the demand for deficit postage was asked for, by the Postal Authority. On 26.7.1999 a demand for deficit postage and a threat was made to recover the same as Government duty followed by another demand dated 18.8.1999 and a threat of penal action under the Act. It was contended that those letters are not under challenge and in the writ petition, only the letter of demand dated 10.9.1999 has been challenged and is the subject matter of the writ petition.

19. The learned counsel for the Postal Authority referred to Rule 17 of the Indian Post Office Rules, 1933 which defines "Book Packets". While Rule 19 stipulates the articles which cannot be posted as "book packets". According to him, the monthly consumption bills satisfied Rule 17 and are not covered under Rule 19.

20. Further according to the counsel for the Postal Authority, 'the Post Office Guide' is an administrative instruction issued to fill up gaps if any, in the Indian Post Office Rules and therefore it has a binding force. The Company having accepted the classification, and by affixing the postal stamps of Rs.3/- per bill by franking since 29.10.1998, cannot object to pay the prescribed rate which was due since 1st June,1997.

21. We have heard the learned counsel for the parties and have carefully perused the Indian Post Office Act, 1898 and the Post Office Guide as relied by

them.

22. The present dispute pertains to the period between 1.6.1997 and 29.10.1998, and as the Company has been affixing the postal franking stamps as per the demanded rate since 30.10.1998, there is no dispute regarding the subsequent period.

23. The only question arising for consideration is whether the respondents have the authority and power under the Indian Post Office Act, 1898 or the Post Office Guide or any other Rule/guidelines to demand the alleged deficit amount of postage from the "sender" of the postal articles, after receiving the same from the "sender" without any objection to the deficit amount and after delivering the postage articles to the addressee without claiming any deficit amount from the "addressee".

24. Clause 11(10) (xv) of the Post Office Guide, relates to recovery of an amount in the event of a breach of the conditions of the license and reads as under:-

"11.Franking Machine.- A postal franking machine is a stamping machine intended to stamp impressions of dies of approved design on private and official postal articles in payment of postage and postal fees. A commission of 1-1/2 per cent is permitted on the value of franks used.

2.	x x x	x x x
x x x		
	x x x	x x x
x x x		

(10) The licence is granted to the following conditions.

(xv) In the event of a breach of any condition of the

licence, the licence will be forthwith cancelled by the head of the Postal Circle who will not be responsible for any loss which the licensee incurs thereby. Any sum that may be due to the licensee on account of postage advanced will, however, be refunded to him and any sum that may be due to the Department on account of postage will be recovered from him."

25. Clause 34 of the said Guide stipulates cancellation of a license in the event of a breach of any prescribed condition, as quoted hereunder:-

"34. In the event of breach of any of the prescribed conditions the license will be forthwith cancelled by the licensing authority who will not be responsible for any loss which the licensee may incur thereby. Any sum that be due to the licensee on account of postage advance will, however, be refunded to him and any sum that may be due to the Department on account of postage will be recovered from him."

26. In this case, it has not been alleged by the Postal Authority that the Company has breached any of the conditions of license. In the absence of any such allegation relating to a breach, the provisions of Clause 11(10) (xv) or Clause 34 of the Post Office Guide are not attracted.

27. The applicability of Clause 34 is conditions precedent such as (a) breach of any of the conditions of license to use the franking machine (b) cancellation of the license to use the franking machine (c) a sum due to the department on account of postage. Such conditions have not been fulfilled in this case nor any averment has been made and no such stand has been taken by the Postal Authority. Therefore, Clause 11(10)(xv) or Clause 34 is not applicable in the

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present case. The Division Bench of the High Court erred in holding that the provisions of Clause 11(10) (xv) and Clause 34 are attracted in the present case.

28. Section 11 of the Act, 1898 stipulates "liability for payment of postage" and reads as under:-

"11. Liability for payment of postage.- (1) The addressee of a postal article on which postage or any other sum chargeable under this Act is due shall be bound to pay the postage or sum so chargeable on his accepting delivery of the postal article, unless he forthwith returns it unopened:

Provided that, if any such postal article appears to the satisfaction of the Post Master General to have been maliciously sent for the purpose of annoying the addressee, he may remit the postage.

(2) If any postal article on which postage or any other sum chargeable under this act is due, is refused or returned as aforesaid, or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or sum due thereon under this Act."

29. Section 12 of the said Act, 1898 empowers the Postal Authority to recover the postage and other sums due, in respect of postal articles which reads

as under:-

"12. Recovery of postage and other sums due in respect of postal articles.- If any person refuses to pay any postage or other sum due from him under this Act in respect of any postal article, the sum so due may, on application made by an officer of the Post Officer authorised in this behalf by the written order of the Post Master General, be recovered for the use of the Post Office from the person so refusing, as if it were a fine imposed under this Act, by any Magistrate having jurisdiction where that person may for the time being be resident, and the Post Master General may further direct that any other postal article, not being on (Government) Service, addressed to that person shall be withheld from him until the sum so due is paid or

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recovered as aforesaid."

30. Thus from Section 11 it is clear that the 'addressee' will be liable to pay the deficit postal charges, if any, once the addressee accepts the postal article or opens it. On the other hand, the 'sender' will be liable to be charged for the deficit postage, if it is detected at the time of postage or if the addressee refuse or return the postage or if the addressee is dead or cannot be found. If such amount is found due from the sender, the Postal Authority is empowered to recover the sum dues from the sender under Section 12 of the Act.

31. It is not the case of the Postal Authority that any of the postage has been refused or returned by any of the addressee or any addressee is dead or could not be found. In absence of any such allegation no charge can be made from the sender-company under Section 11 and the Company cannot be made liable to pay the postage or sum due thereon for franking Rs.1/- per bill for postage and for that there was no occasion for the authority to exercise power under Section 12 to recover such due from the sender- company.

32. Admittedly, the Director of Postal Services by his letter dated 29.5.1997 informed the Company that as per the revision of postal tariff w.e.f. 1.6.1997, the electricity bills can be posted by paying Rs.1/- w.e.f. 1.6.1997, whether the post sent either as 'Book' or 'Pattern' or 'Sample Packet'. The said letter reads as follows:-

"DEPARTMENT OF POST, INDIA

OFFICE OF THE CHIEF POST MASTER GENERAL, W.B.
CIRCLE, YOGAYOG BHAWAN,

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CALCUTTA - 700 012

To

The Deputy Manager(Com)
C.E.S.C. House,
Chowrighee Square
Calcutta 700 001

No. Tech/Z-27/9/90

Dated the 29.5.1997

SUB: Revision of Tariffs in respect of certain Inland Postal
Services with effect from 01.6.1997.

REF: Your letter No. Nil dated 28.9.1997

Sir,

As per revised Postal Tariff w.e.f. 01.6.1997 charges for Book, pattern and sample packets for first 50 Gms or fraction thereof is Re.1/-. For every additional 50 Gms or fraction thereof in excess of 50 Gms. is Rs.2/. Monthly consumption bill, if it is posted as Book, pattern and sample packets the revised Postal Tariffs w.e.f. 01.6.1997, as mentioned above, will be applicable.

Thanking you,

Yours faithfully

Sd/-

(MRS. A. GHOSH)

Director of Postal Services
Calcutta Region/Cal-12"

In view of the letter dated 29.5.1997, the Company charged Rs. 1/- per Bill for the period from 1.6.1997 till by letter dated 29.10.1998, the Company was informed of cancellation of such letter as evident and quoted hereunder:

"DEPARTMENT OF POST, INDIA

OFFICE OF THE CHIEF POST MASTER GENERAL, W.B.
CIRCLE, YOGAYOG BHAWAN,
CALCUTTA - 700 012

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From O/O the Chief P.M.G.
Manager

West Bengal Circle

Yogayog Bhawan

House

Calcutta 700 012

To The Deputy

(Commercial)

Victoria

Chowrighee Square
Calcutta 700 001

No. Tech/Z-27/9/90
29.10.1998

Dated at Calcutta-700012 the

Subject

Sir,

I am directed to inform you that this office earlier letter of even no. dtd. 29.5.97 is hereby treated as cancelled. Monthly consumption bill is not under the category of Book Post/Book Packets as per this office rule. This type of bill can be posted affixing the postage stamp as applicable on the letter mail with immediate effect.

Yours faithfully
Sd/-
(S.C. Sahu)
A.D.P.S. (Technical)
For Chief Postmaster-General, Cal-12"

33. Thus it is apparent that due to a wrong intimation given by the Postal Authority, the Company affixed the postal stamp of Rs.1/- per bill, treating it as 'book post' and the staff of the Postal Department without any objection cleared and delivered to the respective addressees.

34. Clause 30(iv) of Post Office Guide reminds the office of the Postal Authority to check the bundles to ensure proper check of franking articles and reads as under:-

"30. The following procedure must be insisted upon and should be strictly endorsed in all the offices:

(iv) Office which accepts the posting should check the

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bundles to see if various articles have been franked for correct postage and also the total value of the articles tallies with the details given in the dispatch slip and that entries in col.1 to 3 of the Franking Machines register of posting have correctly been made. A separate dispatch slip should be there for articles franked with different machines. He will then put his initials, date and date stamp in the Franking Machine Register of postings and return the same to the licensee or his agent."

35. Though under Clause 30(iv) the office which accepts the posting is required to check the bundles franked for correct postage and also to tally the total value of the articles, before dispatch of the article, there is failure on the part of the office of the Postal Authority as noticed by the Division Bench of the High Court and for that the sender company cannot be made liable.

36. The Postal Authority mislead the sender company which caused charging of lesser amount for the bills is evident from the letters written by the Director, as quoted in the preceding paragraphs. The failure on the part of the Postal Authority to ensure correct postage as per Clause 30(iv) is also not in dispute. The mistake having been committed by the Postal Authority and there being failure on the part of office of the Postal Authority to check the postal articles and postage for recovering the amount from the addressee, it is not open for the Postal Authority to pass on such liability on the sender-company

or to recover the same from the Company.

The demand notice being not

proper was rightly held to be illegal by the learned Single Judge. The question thus raised in this case is answered in negative and against the respondents.

37. In the result, the appeals are allowed. The demand notice and the order passed by the Division Bench of the High Court is set aside; the last portion of the direction given by the learned Single Judge authorizing the Postal Authority to decide the issue afresh and allowing them to retain the amount of Rs. 50 lakhs till such decision is also set aside. The respondents are directed to refund the amount of Rs.50 lakhs deposited by the Company pursuant to the interim order passed by the High Court along with 6% interest within three months from today. There will be no order as to costs.

.....J.
(R.M. LODHA)

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI,
MAY 11, 2012