BEFORE THE ADJUDICATORY BOARD FOR MAJOR PORTS, MUMBAI

Application No. 08 of 2025

APPLICANT:

Lulu Convention and Exhibition Center Pvt. Ltd.
Represented by its Director
Nishad M.A., 50/2392,
N.H.17, Edappally, Kochi – 682 024.

V/s.

RESPONDENTS:

1.Cochin Port Trust
Represented by its Secretary
Wilingdon Island,
Kochi – 682 009.

2. The Board of Trustees of the Cochin Port
Cochin Port Trust
Wilingdon Island,
Kochi – 682 009.

APPEARANCE:

For the Applicant : Sr. Advocate P.K. Suresh Kumar along with Advocate P. Vinay Kumar

For the Respondent Nos.1 & 2: Sr. Advocate Joseph Markos along with Advocate Allexander Markos

CORAM:

Hon'ble Justice Shri A. J. Desai – **Presiding Officer**.
Hon'ble Shri C. Viswanath – **Member**.
Hon'ble Dr. Sanjeev Ranjan – **Member**.

J U D G M E N T

Dated: 09 October 2026

1. The present Application has been filed by Lulu Convention and Exhibition Centre Pvt. Ltd. ("the Applicant") against the Cochin Port Trust [presently, Cochin Port Authority] and another ("the Respondents").

2. The dispute arises out of a lease deed executed between the Respondent No.2 and the Applicant on 26.07.2011 and registered on 24.08.2011 in respect of approximately 10.59 hectares of land at Bolghatty, Kochi. The lease is for a period of thirty years commencing from 09.02.2011. The lease was granted by the Respondent No.2

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to the Applicant for development of a hotel, resort, convention centre, shopping mall and allied facilities. The lease was granted against an upfront premium of ₹71,37,66,000/- and annual rent of ₹1,05,900/-, with 30% increment after every five years.

3. The principal dispute concerns additional lease rent demanded by the Respondents by invoking Clause 2(h) of the lease deed. The Applicant challenges the levy of additional lease rent as being contrary to the lease deed, while the Respondents maintain that the levy was made in accordance with the contractual terms and the applicable tariff framework.

4. The Applicant had instituted a legal proceeding before the High Court of Kerala in the year 2016 against the Cochin Port Authority prior to the Major Port Authorities Act, 2021 coming into force. The Single Judge has disposed of the W.P. vide Order dated 22.11.2017 directing the Cochin Port Authority to issue an NOC to the Applicant Lulu Convention and Exhibition Center Pvt. Ltd. on payment of the amount demanded by the Port and had also directed the Central Government to take up and consider the representation filed

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by Lulu Convention and Exhibition Center Pvt. Ltd. under Section 111 of the Major Port Trusts Act, 1963. The Judgment expressly recorded all issues are left open.

5. The said Order was challenged by the Cochin Port to the extent of the directions issued to the Central Govt. The Division Bench, by the Judgment dated 19.11.2024, held that the power under Section 111 of the Major Port Trusts Act, 1963 did not confer adjudicatory power upon the Central Government and interfered with that part of the Single Judge's order. The Division Bench nevertheless left the substantive contentions of the parties open and permitted the Applicant to pursue the appropriate adjudicatory remedy under the Major Port Authorities Act, 2021 (the MPA Act, 2021). As regards the NOC, the Division Bench closed that issue because the NOC had already been issued on payment made by the Applicant to the Respondents without prejudice.

6. The present Application was, thereafter, instituted before the Adjudicatory Board. The Applicant seeks, in substance, a declaration that the additional rent demanded under the impugned communications is illegal and contrary

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to the lease deed; reimbursement of amounts collected by the Respondents; a declaration concerning the refixation of the commencement of construction date and the alleged responsibility of the Port for the delay; and consequential extension/ refixation of the lease period, including the period allegedly lost on account of litigation.

7. At the present stage, the questions requiring determination are the preliminary objections concerning statutory jurisdiction of the Adjudicatory Board to decide on the relief sought by the Applicant.

8. The brief fact of the case is the Applicant states that the Respondent Port executed a lease deed on 26.07.2011 registered on 24.08.2011 in favour of the Applicant for a period of 30 years in respect of approximately 10.59 hectares of land at Bolghatty, Kochi. The lease was granted for development of a hotel, resort, convention centre, shopping mall and allied facilities, by the Applicant against an upfront premium of ₹71,37,66,000/- and annual rent of ₹1,05,900/- subject to quinquennial escalation at the stipulated rate.

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The lease deed entered was based on the tender notice dated 23.06.2010 invited by the Respondent for the lease of 10.59 hectares of land at Bolgatty for a period of 30 years on an upfront lease basis, with an option for renewal for a further period of 30 years, for the purpose of development and establishment of hotels, resorts, convention centres, shopping malls, commercial/ office complexes and allied facilities at Bolgatty.

9. Clause 2(b) of the lease deed states that lessee shall commence construction of the building within six months from 09.02.2011 (date of commencement of lease) and shall within two (2) years from the date (09.02.2011), complete the construction of the same on the land as aforesaid including sewers, drains and other appurtenances thereto according to the plans to be approved in writing by the Lessor. Clause 2(i) provides that the Lessee shall obtain all statutory and mandatory clearances required under law, including environmental clearances from the appropriate authorities, before execution/ commissioning of the project and from time to time thereafter. The Applicant contends that commencement was delayed substantially due to

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circumstances attributable to the Respondent Port, particularly delay in registration of lease deed, supply of land/ revenue records, delay in grant of a possession certificate and litigations relating to the Port's title/ possession over the reclaimed land.

10. The Respondents at the request of the Applicant had initially extended the commencement of construction of the building to 09.02.2012. The Applicant, however, during the initial extension time could not get a building permit from Mulavukadu Panchayat in the absence of the Port obtaining the Possession Certificate for the said land parcel. The possession certificate was given by the Respondents on 18.04.2012. Thereafter, the plan was approved by the Engineering Department of the Respondents on 04.10.2012, the environmental clearance was received by the Applicant on 23.08.2013, development and building permissions were granted by the Panchayat on 11.10.2013 and subsequently construction of the building was commenced by the Applicant on 28.10.2013.

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11. After series of correspondence, the Respondents ultimately extended the date for commencement of construction to 01.11.2013 vide its communication dated 27.06.2013/17.08.2013 subject to payment of additional lease rent by the Applicant. The Respondents subsequently raised a demand for ₹1,41,77,460/- for the period 09.02.2013 to 01.11.2013 as additional rent @ 50% of the normal rent invoking Clause 2(h) of the lease deed. The Applicant disputes the levy of additional rent on the ground that Clause 2(h) concerns delay in completion of construction and not delay in commencement, and that the Port had itself extended the commencement date. The Applicant further contends that the Port adopted an incorrect and unilateral basis for calculating the additional rent. The Applicant filed a petition on 21 March 2016 under Section 111 of the Major Port Trusts Act, 1963 before the Ministry of Shipping, Government of India in this matter. While the petition before the Government was pending, the Respondents raised a further demand of ₹6,14,43,425/- towards additional rent for the period from 02.11.2013 to 31.03.2017.

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12. The Applicant contends that the additional rent was imposed by the Respondents without legal authority and contrary to the terms of the lease deed. According to the Applicant, the delay was substantially attributable to the failure of the Respondents to provide the requisite possession certificate and other records and was further compounded by litigation by various parties under public litigation concerning the Port's title, possession and the permissibility of non-port-related use of the reclaimed land.

13. Aggrieved by the action of the Respondents, the Applicant had filed Writ Petition No.29593 of 2016 challenging the levy of additional rent by the Respondents before the High Court of Kerala. During those proceedings, the Applicant paid the amounts demanded by the Respondents under protest, in order to secure a No Objection Certificate from the Respondents for creating an additional mortgage over the project for securing additional financial assistance from the Bank. The Hon'ble High Court vide Judgment dated 22.11.2017 disposed of the said Writ Petition directing Cochin Port to issue No Objection Certificate (NOC) and further directed the Govt. to consider

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and pass orders on petition filed by the petitioner under Section 111 of the MPT Act, 1963.

14. The Cochin Port challenged the Judgment dated 22.11.2017 of the Single Judge before the High Court of Kerala in Writ Appeal No.207 of 2018 to the extent the Court directed the Government to consider the representation of the Respondents under Section 111 of the Major Port Trusts (MPT) Act, 1963. The proceedings culminated in Judgment of Division Bench on 19.11.2024. The Division Bench took a view that Section 111 of the MPT Act, 1963 did not confer any adjudicating power on the Government of India and accordingly that part of the judgment of the learned single Judge was modified but at the same time protecting the right of the petitioner to approach the Adjudicatory Board under the new Major Port Authorities Act, 2021 for redressal of its grievances. The present Application dated 01.01.2025 was thereafter instituted before the Adjudicatory Board.

15. The Applicant principally prays that the Adjudicatory Board (i) declare the levy or imposition of additional rent under Annexures 11, 13, 14 and 25 as bad in law and contradict the terms and conditions of the lease deed;

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(ii) direct the Respondent Cochin Port to reimburse the amounts illegally collected from the Applicant by way of Annexures 11, 13, 14 and 25; (iii) declare that the change in the commencement date of construction purely on account of the default of the Cochin Port in obtaining the possession certificate and requisite revenue records legitimizing the ownership of the Port over the reclaimed land; and (iv) direct the Cochin Port to extend the lease period in consonance with the period lost up to 09.02.2013 i.e. the date freshly fixed for commencement of construction and adding up the period lost on account of the litigation.

16. The Respondents have raised a preliminary objection in the reply filed dated 17.03.2025 as to the maintainability of the Application citing lack of jurisdiction of Adjudicatory Board to entertain the present application filed by the Applicant on the grounds of limitation and *res judicata*. The Respondents have argued that the demands impugned by the Applicant pertain to the period between 2013 and 2016, whereas the present Application has been instituted after a considerable lapse of time. Placing reliance upon Section 58(3) of the Major Port

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Authorities Act, 2021 and Rule 71 of the Major Ports Adjudicatory Board Rules, 2023, the Respondents contend that the provisions of the Limitation Act, 1963 are applicable to proceedings before the Adjudicatory Board and that, having regard to the substantial delay of more than ten years, the Application is liable to be dismissed as barred by limitation.

17. The Respondents have also relied upon the earlier proceedings instituted by the Applicant before the High Court of Kerala in W.P.(C) No.29593 of 2016 and argued that substantially similar reliefs had been sought in the said proceedings, including extension/re-fixation of the date of commencement of construction and corresponding extension of the lease period. The Respondents point out that the judgment of the learned Single Judge was carried in appeal by the Port in W.A. No.207 of 2018. The Division Bench allowed the appeal filed by Cochin Port Authority holding that the power of the Central Government under Section 111 of the Major Port Trusts Act, 1963 was not quasi-judicial in nature. According to the Respondents, in view of the said Judgment dated 19.11.2024 which holds

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that the matter as regards grant of NOC need not be opened without prejudice or otherwise having regard to the fact that the payment demanded by the Respondents has been complied with by the Applicant, interference by the Adjudicatory Board is not called for. The Respondents contend that reliefs now sought by the Applicant are barred by the principles of *res judicata*. The Respondents have further submitted that the observation of the Division Bench leaving certain contentions open cannot be construed as conferring a right or jurisdiction upon the Applicant to re-agitate matters which already stood concluded.

18. The Applicant, however, has disputed the applicability of the principle of *res judicata*. It has submitted that although the dispute had earlier been brought before the Hon'ble High Court, the Court did not adjudicate upon the Applicant's claim regarding the legality or validity of the additional rent on merits. According to the Applicant, the learned Single Judge, by Judgment dated 22.11.2017, directed consideration of the Applicant's representation by the Central Government under Section 111 of the Major Port Trusts Act, 1963 and also directed the Applicant to make

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the payment demanded under protest and without prejudice to its contentions on merits. The Applicant has specifically relied upon the concluding observation in the said Judgment that "All issues are left open". On the appeal filed by the Cochin Port Authority, the Division Bench only held that the power under Section 111 of the Major Port Trusts Act, 1963 was not a quasi-judicial power and consequently interfered with that part of the order of the learned Single Judge which directed the Central Government to consider the Applicant's representation under the said provision. The Applicant submits that the Division Bench nevertheless left the substantive contentions of both the parties open. The Applicant has accordingly contended that the present Application is not barred by *res judicata*.

19. Without prejudice to the aforesaid preliminary objections, the Respondents have disputed the Applicant's substantive allegations concerning the delay in construction and the levy of additional lease rent. It is submitted that, under Clauses 2(b) and 2(h) of the lease deed, the responsibility for obtaining the requisite permissions and approvals for construction rested upon the Applicant. The

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Respondents contend that the Port duly considered the circumstances and granted extension of the construction period up to 01.11.2013, subject to payment of additional lease rent calculated at 50% of the normal lease rent for the extended period. Accordingly, a sum of ₹1,41,77,460/- was demanded and paid by the Applicant under protest. The Respondents maintain that the demand was made strictly in accordance with the lease deed and the applicable rate approved by TAMP, and that the Applicant, having entered into the lease with full knowledge of its terms and conditions, cannot subsequently seek to avoid the contractual obligations. The Respondents consequently contend that the dispute is essentially contractual in nature and does not give rise to a matter falling within the jurisdiction of the Adjudicatory Board, and pray for dismissal of the Application with costs.

20. The Respondents have also made written submissions raising preliminary objection on the jurisdiction of this Hon'ble Board to entertain this Application. The Respondents have contended that the jurisdiction of the Adjudicatory Board is confined to the specific powers and

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functions enumerated in Section 58 of the Major Port Authorities Act, 2021, and that Section 59 excludes the jurisdiction of Civil Courts only in respect of matters falling within the statutory jurisdiction of the Adjudicatory Board. They submit that the present dispute, being essentially one concerning interpretation and performance of a lease deed, does not fall within clauses (a), (b), (c) or (e) of Section 58(1). They contend that Section 32 is only an enabling/ procedural provision for filing an application and cannot be construed as an independent source of jurisdiction to the Board under Section 58. The Respondents further contend that Rule 28 of the 2023 Rules cannot enlarge the substantive jurisdiction conferred by the Act merely by separately mentioning Application under Section 32.

21. The Respondents submit that the only potentially relevant provision is Section 58(1)(d), but the Applicant does not satisfy either of its essential requirements, namely, that the complainant must be a "port user" and that the complaint must be against the "services and terms of service rendered" by the Major Port. According to the Respondents, the Applicant is merely a lessee of Port land for a non-port-

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related purpose, namely construction of a hotel and convention centre, and is not a user of any operational Port facility or service. They contend that the expression "port user" cannot be extended to every person who enters into a contract with a Major Port, as that would effectively bring every contractual dispute involving the Port within the jurisdiction of the Board.

22. On the other hand, the Applicant in their written arguments has vehemently objected the jurisdiction issue raised by the Respondents. The Applicant has submitted that the present Application is maintainable before the Adjudicatory Board under Section 32 of the Major Port Authorities Act, 2021, contending that the lease of Port land and all matters relating to its performance arise from the exercise of the Port's powers under Sections 22 to 31, particularly Sections 22 and 24. The Applicant further relies upon Rule 28 of the Major Ports Adjudicatory Board Rules, 2023, which specifically recognizes applications under Section 32 as a separate category of proceedings before the Board.

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23. The Applicant has further submitted that, apart from Section 32, the Application falls within Section 58(1)(d), as it is a complaint by a "port user" against the services and terms of service rendered by the Major Port Authority. Relying upon Rule 2(1)(g) of the Major Ports Adjudicatory Board (MPAB) Rules, 2023, the Applicant contends that, as the lessee and user of Port land, it is a "port user", and that the lease of Port land constitutes the provision of a facility/service, irrespective of whether the use is port-related or non-port-related by placing reliance on the definition of "services" given in the Major Port Authorities (Fixation and Implementation of Scale of Rates, Fees and Conditions) Rules, 2021, which include the use of Port assets and land within the scope of "services".

24. The Applicant has also drawn reference to Section 21 of the Act concerning the succession of the Major Port Authority to the erstwhile Board of Trustees and the transfer of its assets, liabilities, contracts and legal proceedings to the Port Authority and contended that the pre-existing lease and the obligations arising therefrom continued with the successor Major Port Authority and that the Applicant's

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pending grievance could consequently be pursued under the adjudicatory mechanism established by the MPA Act, 2021.

25. Learned counsel for the parties were heard at length on jurisdiction aspect raised by the parties and the written arguments submitted by the learned counsel of both the parties on the jurisdiction matter are also considered by the Adjudicatory Board. In the light of the objections raised by Respondents on the statutory jurisdiction of the Adjudicatory Board to entertain the present application, the issue which is required to be first adjudicated by this Adjudicatory Board is to determine whether the present Application falls within the scope of jurisdiction of this Board as per the statute. Consequently, Order was reserved by Adjudicatory Board to first determine the jurisdiction matter of the present application as it is only if the Application were held to be maintainable, could this Adjudicatory Board examine the merits of the Application. Accordingly, this decision is confined only to the aspect of jurisdiction.

26. The Board considers it appropriate to clarify that the objections raised by the Respondents on the grounds of

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limitation and *res judicata*, though raised as preliminary objections in the written arguments on the jurisdiction, are distinct from the question of the subject-matter jurisdiction of this Board. The question of jurisdiction concerns the competence of the Adjudicatory Board to entertain and adjudicate upon the nature of the dispute brought before it under the Major Port Authorities Act, 2021. The questions whether the present Application is barred by limitation or by the principles of *res judicata* involve examination of the accrual of the cause of action/right to apply, the applicability of the Limitation Act, 1963, the effect of the proceedings previously instituted by the Applicant, and the precise matters which were or were not finally adjudicated in those proceedings. These questions are, therefore distinct from, and do not determine, the statutory jurisdiction of the Board. The Board is of the view, that after having determined whether the present application falls within the jurisdiction of the Board, the objections relating to limitation and *res judicata* may appropriately be considered at the stage of adjudication of the Application on merits, after examination of the pleadings, documents and the complete factual and

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legal matrix. Accordingly, no final finding on the objections of limitation or *res judicata* is being recorded in the present Order, and all contentions of the parties in that regard are kept open for consideration at the appropriate stage. This Order of the Adjudicatory Board is confined only to the aspect of jurisdiction.

27. Based on the rival contentions on the jurisdiction issues raised by the parties, the points to be decided by the Adjudicatory Board is –

Whether, having regard to the nature and purpose of the lease, the statutory powers exercised by the Major Port Authority, the present Application falls within the jurisdiction of the Adjudicatory Board under the Major Port Authorities Act, 2021?

28. The Respondents have submitted that the jurisdiction of the Adjudicatory Board is a jurisdiction created by statute and can be exercised only within the limits expressly prescribed by the Major Port Authorities Act, 2021 ("the Act"). The Respondents submit that Section 58 of the Act specifically enumerates the powers and functions of the

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Adjudicatory Board. Section 32 is, therefore, the enabling provision to make an Application to the Adjudicatory Board with respect to a complaint against a Major Port and which can be adjudicated by the Adjudicatory Board in the exercise of its powers under Section 58(1)(d). They contend that Section 32 is not an independent power or function of the Adjudicatory Board. Section 32 lays down that the Application has to be in such form and manner and payment of such fee as may be prescribed in the Rules framed under Section 71 of the Act, viz., Major Ports Adjudicatory Board Rules, 2023. The Respondents contend that such Rules can only be subservient to the Act itself and cannot enlarge the powers and functions of the Adjudicatory Board. The Respondents further submit that Section 22 together with Section 58(1)(d) show that while the Port may sell or lease land or immovable properties for "port related use" and "non-port related use", only a dispute by a "port user" can be adjudicated by the Adjudicatory Board. In other words, a non-port-related user of a property of the Port will not be entitled to file a complaint before the Adjudicatory Board. A complaint against the Port concerning such a contract/lease

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cannot be entertained because it does not fall under Section 58(1)(d) as putting up a hotel would fall within the meaning of "non-port related use".

29. The Respondents particularly dispute the Applicant's reliance upon Section 24. The mere existence of a statutory power to enter into a contract or lease, according to the Respondents, does not mean that every person entering into contract with the Port can file a complaint before the Adjudicatory Board. According to them, Section 24 enables the Major Port Authority to enter into and perform contracts necessary for discharging its functions under the Act including service contract with employees, engaging services of advocates, purchase of stationery and office items, lease of land for non-port related use. If the contention of the Applicant is accepted, the Adjudicatory Board will be flooded with litigation relating to every contract entered into by the Port. The clear legislative intention is that while the Board has power to enter into any type of contracts in the discharge of its functions and subject to the restrictions contained in Section 24, only the disputes pertaining to contracts with "port users" will fall within the power and

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jurisdiction of this Adjudicatory Board under Section 58(1)(d).

30. The Respondents also contend that Section 58 exhaustively enumerates the powers and functions of the Adjudicatory Board and that Section 32 is only an enabling provision prescribing the manner in which an application may be filed. According to the Respondents, MPAB Rules, 2023 can only be subservient to the Act itself. Therefore, merely because Rule 28 separately mentions an application under Section 32 cannot by itself enlarge the jurisdiction conferred by the Act and the reference to applications under Section 32 in Category F in the MPAB Rules, 2023 cannot be construed as creating an independent source of jurisdiction. They argue that the contention of the Applicant that Section 32 is an independent power dehors Section 58 is not correct.

31. The Applicant, on the other hand, submits that Section 32 itself confers a substantive statutory right upon an aggrieved person to approach the Adjudicatory Board where the impugned action has been taken by a Major Port Authority in exercise of its powers under Sections 22 to 31,

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except Section 29. Further, they argue that Rule 28 expressly recognizes such applications as a distinct category (Category 'F') of proceedings before the Board.

32. The Applicant further submits that Section 22 confers powers on a Major Port to use its property, assets and funds in such manner and for such purposes as it may deem fit for the benefit of that Major Port. Section 22 further provides that the usage of Port assets can be either 'Port related' or 'non Port related' and in the said process a Port can enter into any contract or lease arrangement or sale of land or lease of immovable property. Section 24 empowers the Port to enter into contracts for discharging any of the functions under the Act. Section 32 confers a right on any person to approach the Adjudicatory Board if he is aggrieved by any action of a Major Port in relation to matters covered by Sections 22 to 31. A person or a company which holds the lease of an immovable property under a Major Port, if aggrieved, by any action of the Port in relation to contracts entered into between them can approach the Adjudicatory Board for redressal of their grievances. The Applicant, therefore, submits that the application is very well

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maintainable under Section 32 of the Major Port Authorities Act, 2021 which confers a right on it to file the said application before the Board. The Applicant further submits that, Sections 21 and 75 preserve the continuity of the rights, liabilities, contracts and instruments of the erstwhile Board of Trustees and that the mere fact that the lease and demands originated before the MPA Act, 2021 came into force cannot deprive the Board of its jurisdiction.

33. At the outset, it is necessary to examine the statutory provisions of the Major Port Authorities (MPA) Act, 2021. Section 54(1) of the Act provides that the "*The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Board to be known as the Adjudicatory Board to exercise the jurisdiction, powers and authority conferred on such Adjudicatory Board by or under this Act*". Thus, the Act provides the Adjudicatory Board constituted by the Central Govt. shall exercise the jurisdiction, powers and authority conferred on such Adjudicatory Board by or under the Act.

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34. Section 58 of the Act specifies the following powers and functions other than tariff setting to be performed by the Adjudicatory Board:

(i). the functions envisaged to be carried out by the erstwhile Tariff Authority for Major Ports arising from the Tariff Guidelines of 2005, 2008, 2013, 2018 and 2019 and tariffs orders issued by the said Authority;

(ii). to receive and adjudicate reference on any dispute or differences or claims relating to rights and obligations of Major Ports and Public Private Partnership concessionaires or captive users for dedicated berth within the framework of their concession agreements and to pass orders after considering and hearing all the parties involved in the dispute;

(iii). to appraise, review the stressed Public Private Partnership projects as referred by the Central Government or the Board, and to suggest measures to revive such projects;

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(iv). to look into the complaints received from port users against the services and terms of service rendered by the Major Ports or the private operators operating in the Major Ports and to pass necessary orders after hearing the parties concerned; and

(v). to look into any other matter relating to the operations of the Major Port, as may be referred to it by the Central Government or the Board, and to pass orders or give suggestions, as the case may be.

35. Section 32, is immediately after Sections 22 to 31, which deals with the powers of the Board of the Major Port Authority relating, *inter alia*, to the use of port assets, contracts, planning and development, scale of rates and recovery of dues. Section 32 is reproduced here-

"32. Any person aggrieved by any action of the Board while exercising its powers under sections 22 to 31 (except section 29), may approach the Adjudicatory Board constituted under section 54 by filing an

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application before it in such form, manner and on payment of such fee, as may be prescribed."

36. Section 32 does not merely prescribe the form or manner in which a proceeding already falling within Sections 22 to 31 (except 29) is to be instituted. It identifies the persons who may invoke it, the nature of the action complained of, the statutory provisions under which the impugned power must have been exercised, and the forum before which the application is to be filed.

On careful reading of Section 32, it is seen that the said Section contains several distinct elements: (i) the applicant must be "*any person aggrieved*"; (ii) the grievance must arise from "*any action of the Board while exercising powers under sections 22 to 31, (except section 29)*" (iii) the statutory forum for filing the application is the "*Adjudicatory Board*" constituted under Section 54; and (iv) the mode of invoking the jurisdiction is by filing an application in the prescribed form and manner.

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Firstly, the Act has used the expression "*any person aggrieved*" and has separately prescribed the statutory linkage by reference to Sections 22 to 31. The expression "*any person aggrieved*" in Section 32 is materially different from the expression "port users" appearing in Section 58(1)(d). The language of Section 32 does not expressly refer to Section 58(1)(d), nor does it make the right to approach the Board conditional upon the Applicant being a "port user". To import the latter limitation into Section 32 would add a condition which the Parliament has not expressly placed in Section 32.

Secondly, Section 32 itself specifies the statutory provisions under which the impugned action must have been taken and expressly excludes Section 29. This indicates the provision is intended to operate by reference to the statutory powers of the Major Port Authority under Sections 22 to 31 except 29.

Thirdly, Section 32 provides that the statutory forum for the aggrieved person to approach is the Adjudicatory Board constituted under Section 54.

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Fourthly, Section 71(2)(g) separately authorizes prescription of the form, manner and fee for an application before the Adjudicatory Board under Section 32. This is consistent with Section 32 being a substantive statutory avenue of approach, for which procedural requirements are to be prescribed by rules.

Fifthly, Rule 28(1)(f) of the Major Ports Adjudicatory Board Rules, 2023 notified by the Central Government expressly recognizes "*Applications made under section 32 of the Act*" as Category F. Rule 28(1) states that the Adjudicatory Board shall exercise the powers and perform the functions provided in Section 58 and shall receive, review and adjudicate specified categories. Categories A to E correspond to the functions identified in Section 58(1)(a) to (e), whereas Category F separately identifies "*Application made under Section 32 of the Act*". Rule 32 also provides for filing of Category F applications before the Registrar. These provisions cannot enlarge the Act, but they are consistent with and give procedural effect to a statutory route already contained in Section 32. Section 71(2)(g) specifically authorizes the Central Government to frame rules

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concerning applications under Section 32 as reproduced below:

> "***71. Power of the Central Government to make rules***
>
> *(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.*
>
> *(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—*
>
> *(a) .....*
>
> *(g) the form, manner and fees for filing application before the Adjudicatory Board under section 32;"*

The separate placement of Category F is significant. It demonstrates that the Rule-maker did not treat Section 32 application as merely a complaint under Section 58(1)(d). The procedural rules also separately provide for filing, scrutiny and processing of Category F applications. As the Act itself contains Section 32 and Section 71(2)(g) specifically authorises rules concerning applications under

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Section 32, Rule 28(1)(f) is understood as giving procedural effect to the jurisdiction already conferred by the Parliament.

37. The Supreme Court in the Judgment dated 17 December 2002 in Cellular Operators Association of India vs Union of India [2003 (3) SCC 186] has considered the jurisdiction of the Telecom Dispute & Settlement Appellant Tribunal (TDSAT) and emphasised that the extent of jurisdiction of a statutory tribunal depends upon the statute creating it and that TDSAT is a creature of statute whose jurisdiction is conferred by statute. The Apex Court in para 8 and 27 held that –

> "8. .....*Having regard to the very purpose and object for which the Appellate Tribunal was constituted and having examined the different provisions contained in Chapter IV, more particularly, the provision dealing with ousting the jurisdiction of the civil court in relation to any matter which the Appellate Tribunal is empowered by or under the Act, as contained in Section 15, it must be held that the power of the Appellate Tribunal is quite wide, as has been indicated in the statute itself and the decisions of the Supreme*

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Court dealing with the power of a court, exercising appellate power or original power, will have no application for limiting the jurisdiction of the Appellate Tribunal under the Act. Since the Tribunal is the original authority to adjudicate any dispute between a licensor and a licensee or between two or more service providers or between a service provider and a group of consumers and since the Tribunal has to hear and dispose of appeals against the directions, decisions or order of TRAI, it is difficult to import the self-contained restrictions and limitations of a court under the judge-made law. The Tribunal has the power to adjudicate any dispute between the persons enumerated in clause (a) of Section 14....."

"27. TDSAT was required to exercise its jurisdiction in terms of Section 14A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to sub-section (7) of Section 14A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in

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an application under sub-section (1) thereof. The Tribunal being an expert body is entitled to exercise its appellate jurisdiction both on fact as also in the law over a decision or order/ decision/ direction of the authority. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a Tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by the Parliament in the Amending Act of 2000....."

The principle emerging from the said judgment is that while a statutory Tribunal cannot assume jurisdiction beyond that conferred upon it by the legislature, the jurisdiction expressly conferred by the Parliament cannot also be artificially restricted by adopting a narrower construction inconsistent with the statutory scheme.

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The same principle was explained by the Hon'ble Supreme Court in *Union of India and Anr. v. Paras Laminates (P) Ltd. [(1990) 4 SCC 453]*. The Hon'ble Supreme Court, in para 8 has held as follows:

> *"There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and*

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ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution".

The Supreme Court in this case has emphasized that while jurisdiction of the Tribunal is defined and limited by the statute, within that defined field it possesses not only the powers expressly conferred but also such incidental and ancillary powers as are necessary to make the express grant of jurisdiction effective and meaningful. The Supreme Court, however, has made it clear that such incidental powers cannot travel beyond the express statutory grant.

38. These principles have particular relevance to the present case. The jurisdiction of this Adjudicatory Board must undoubtedly be traced to the provisions of the Major Port Authorities Act, 2021, and the Board cannot assume jurisdiction merely on the ground that the dispute concerns a Major Port Authority. Equally, however, where Parliament

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has expressly enacted Section 32, providing that *"any person aggrieved by any action of the Board while exercising its powers under sections 22 to 31 (except section 29), may approach the Adjudicatory Board"*, the provision must be given its natural and meaningful effect. The Adjudicatory Board is not entitled to read into Section 32 a restriction which Parliament has not expressly imposed. Section 32 of the Act acts as a route by which an aggrieved person may approach the Board in respect of actions taken under Sections 22 to 31.

39. The Adjudicatory Board must, therefore, now examine the source and character of the impugned action. For the purpose of Section 32, the examination at this stage is confined to whether there is a statutory nexus between the impugned action and the exercise of powers under Sections 22 to 31.

Section 23 relates to procedure when immovable property cannot be acquired by agreement. Section 25 relates to power of the Board of the Major Port to create master plan in respect of infrastructure development. Section 26 is the power of Board to make Rules with respect

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to the planning and development as enumerated therein. Section 27 relate to the power of the Major Port Authority under the Act to frame Scale of Rates for various services rendered and for use of Port assets. Sections 28 & 29 deal with the lien of the Board for the rates leviable under the Act. Section 30 is the enabling power of the Board to sell goods as stipulated in Section 48 of the Customs Act for recovery of dues to the Board and Section 31 is the enabling power to recover dues by detaining the vessel. None of these are applicable to the instant case. The relevant sections to be examined in the present application are Sections 22 and 24 read with Section 32.

40. The subject matter is a lease of land forming part of the Port's assets. Relevant Section 22 of the Act reads as follows:

> *"22. (1) The Board of each Major Port shall be entitled to use its property, assets and funds in such manner and for such purposes as it may deem fit for the benefit of that Major Port.*

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(2) All port assets shall be used and developed as per the regulations made by the Board in that behalf and to the exclusion of any municipal, local or Government regulation:

Provided that the manner of any contract or arrangement by the Board for sale of land or immovable property, or period and manner for lease of land or immovable property for port related use and non-port related use, shall be in such manner as may be prescribed:"

41. In the present case, the contract in question is not an ordinary private contract entered into by the Port in a field wholly unconnected with its statutory functions. The subject matter of the contract is approximately 10.59 hectares of land forming part of the assets of the Major Port Authority. The lease was granted by the Port in exercise of its statutory powers concerning the use and disposal of the port assets, and the impugned action relates to the administration and enforcement of the financial terms governing such use, including the levy of additional lease rent. The statutory source of the Port's authority to deal with

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the property and to enter into the arrangement is, therefore, directly relevant to the determination of jurisdiction. As per Section 24, the Major Port Authority is competent to enter into any contract for discharge of its functions. Section 22 makes an express distinction between port-related and non-port-related use and permits the lease of land or immovable property for both categories viz. port-related and non-port-related, subject to the prescribed manner.

The Act specifically provides the manner in which the property and assets of a Major Port are to be used and, in the proviso to Section 22(2), has expressly dealt with the sale or lease of land or immovable property for both port-related and non-port-related use. The legislature has thus consciously brought the leasing of Port land, including land intended for non-port-related use, within the statutory scheme governing the management and administration of Major Port assets. The present lease cannot, therefore, be characterized as an arrangement wholly outside the statutory field merely because the intended development was a hotel, convention centre or other non-port-related commercial facility.

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To accept the Respondents' submission that a non-port-related lease is, for that very reason, outside Section 22 would effectively render the express reference to "non-port related use" in the proviso to Section 22(2) without meaningful effect.

The Adjudicatory Board also takes note that the nature and structure of the arrangement between the parties may not be characterised merely as a simple or stand-alone lease of Port land for an unrelated commercial purpose. The arrangement contemplated not only the grant of land but also the development and construction by the Applicant of a hotel/building and associated facilities in accordance with the requirements of the Port Authority. This is also expressly borne out from the subsequent communication issued by the Respondents dated 04.10.2012 giving consent to the Applicant to commence construction, bearing the subject "Leasing of 10.59 Ha of land to M/s. Lulu Convention and Exhibition Center Pvt. Ltd. for setting up hotels & allied facilities at Bolghaty Island – Approval for construction of structures". The nature of the obligations undertaken by the Applicant and the facilities contemplated under the

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arrangement are therefore relevant in appreciating the statutory character of the transaction. It is also material fact that the Port has developed and operates facilities including a cruise terminal with passengers embarking and dis-embarking the Port of Cochin, as part of the broader Port's infrastructure. The contractual arrangement has elements extending beyond a conventional landlord–tenant relationship and involves development and provision of facilities within the Port estate.

In view of the foregoing paragraphs, the argument of the Respondents that a non-port-related lease is necessarily outside Section 22 is, therefore, not accepted by the Adjudicatory Board.

42. The submissions of Respondents is that Section 24 was enacted merely to specify the persons who may enter into contracts on behalf of the Board and the form and manner in which such contracts are to be made.

Section 24 must be read in the statutory context. Section 3(2) undoubtedly confers upon the Board of a Major Port Authority the status of a body corporate, including the

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general legal capacity to contract. That general corporate capacity, however, does not render Section 24 redundant. Section 24 specifically addresses contracts by the Board in the context of the discharge of its functions under the Act. Thus, Section 3(2) answers the question whether the Board, as a body corporate, has legal capacity to contract, whereas, Section 24 operates in the context of the exercise of that contractual capacity in furtherance of the statutory functions entrusted to the Major Port Authority.

43. The Adjudicatory Board takes note of the submission made by the Respondents that not every contract entered into by a Major Port Authority would attract Section 32. A contract for procurement of stationery, engagement of an advocate and employment contract illustrated by the Respondents or any other transaction which has no nexus with the exercise of a power under Sections 22 to 31 cannot be brought within Section 32 merely because one of the contracting parties happens to be a Major Port Authority. The statutory connection requirement is, therefore, real and substantive. The present case, however, is materially different. The contract concerns the lease of Port land for the

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development and construction by the Applicant of a hotel/building and associated facilities in accordance with the requirements of the Port, an activity expressly dealt with in Section 22, and its performance and enforcement involve the contractual powers addressed in Section 24.

In view of the foregoing, the argument of the Respondents that accepting the Applicant's interpretation would result in the Adjudicatory Board being flooded with disputes arising from every contract entered into by a Major Port Authority does not arise in the facts of the present case. The words of Section 32 continue to operate and require a demonstrable connection between the impugned action and the exercise of powers under Sections 22 to 31 except 29.

44. It is also significant that the impugned action is not confined to the initial execution of the lease. The grievance concerns the implementation, administration and enforcement of the lease, including the levy of additional lease rent under the contractual and tariff framework governing the use of Port land. The Respondents themselves contend that the additional rent was levied pursuant to the terms of the lease and the applicable Port tariff framework.

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The action complained of, therefore, bears a direct and continuing connection with the statutory arrangement under which the Port's land was made available to the Applicant.

45. Having regard to the nature of the property involved, the statutory provisions governing the use and lease of Port assets, and the contractual powers of the Major Port Authority, the Board is satisfied that such nexus exists in the present case. The Board accordingly holds that the action impugned by the Applicant, relating to the administration and enforcement of the lease of Port land and the levy of additional lease rent thereunder, is capable of being regarded as an action taken by the Major Port Authority while exercising its statutory powers under Sections 22 and 24 of the Act. The requirement under Section 32 is, therefore, satisfied at the jurisdictional stage.

46. For the foregoing reasons, the Board rejects the contention of the Respondents that Section 22 is inapplicable merely because the intended use of the leased land was non-port-related. The impugned action, concerning the administration and enforcement of the lease

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of Port land and the levy of additional lease rent thereunder, is directly traceable to the exercise of the statutory powers of the Major Port Authority under Sections 22 and 24. The requisite statutory nexus contemplated by Section 32 is, therefore, clearly established. Accordingly, the present Application falls within the jurisdiction of the Adjudicatory Board under Section 32 of the Major Port Authorities Act, 2021, and is maintainable before this Board.

47. The Board would like to emphasize that the above finding is confined strictly to the question of subject-matter jurisdiction. By holding that the impugned action has the requisite statutory nexus with Sections 22 and 24, the Board has not expressed any opinion on the legality, validity or dispute between the parties on the additional lease rent, etc. All such questions, including the interpretation of the lease conditions, demand for additional rent by the Respondents, objection raised relating to limitation period, *res judicata* are left open for determination on merits.

48. The Applicant submits that it is a port user and that the application would also fall under Section 58(1)(d) of the Act. In this context, the contention of the Respondents is

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that the complaint under Section 58(1)(d) can only be filed by a "port user" and "against services and terms of services rendered by a Port" and the present complaint filed under Section 58(1)(d) is not maintainable.

The "Port User" is defined under the Major Port Adjudicatory Board Rules, 2023. Rule 2(1)(g) defines "port user" as-

> "(g) "port user" means a person who, either directly or through agents, avails of the services or facilities offered by any Major Port Authority and includes representative bodies of such port users;"

The Respondents have argued that the Applicant is neither a "port user" as per the definition in the Rules nor is the complaint "against services or facilities offered by a Port" and, therefore, the present complaint filed under Section 58(1)(d) is not maintainable.

The Lease Deed does not contemplate a mere letting of vacant Port land to the Applicant for unrestricted commercial exploitation. On the contrary, the terms of the Lease Deed impose specific obligations upon the Lessee

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concerning the construction, development and use of the leased premises. The contractual obligations imposed upon the Applicant and the corresponding powers reserved by the Lessor demonstrate that the land was leased as part of a regulated development project and not as an ordinary private tenancy.

49. The Lease Deed specifically provides that:

"The Lessee shall use the said land for construction of hotels/ resorts/ convention center/ shopping mall/ commercial/ office complex and allied facilities for the purpose of which, the land has been leased, unless otherwise approved by the Lessor..."

Clause 2(i) of the lease deed specifically provides "The Lessee shall obtain all statutory and mandatory clearances required under law, including environmental clearances from the appropriate authorities, before execution/ commissioning of the project and from time to time thereafter."

The subsequent communication issued by the Respondents dated 04.10.2012 giving consent to the

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Applicant to commence construction, bears the subject "Leasing of 10.59 Ha of land to M/s. Lulu Convention and Exhibition Center Pvt. Ltd. for setting up hotels & allied facilities at Bolghaty Island – Approval for construction of structures" and the consent letter gives details of the construction of the Hotel, villas etc., with areas etc., by the Respondent.

It demonstrates that the subject matter of the lease was not simply the occupation of land, but the development and construction of specified buildings, facilities and allied infrastructure upon Port land, subject to the continuing control and approval of the Lessor. The development contemplated by the Lease Deed therefore formed part of a project undertaken within the statutory domain and control of the Major Port Authority.

The Lease Deed further mandates commencement and completion of construction within specified periods. The obligation is thus, not merely to pay rent and occupy the land. The essential consideration underlying the grant of the lease includes the creation of a specified assets in

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accordance with plans requiring the written approval of the Lessor.

The Lease Deed further provides that, in the event of failure to complete the construction within the stipulated period, the Lessor reserves the right to repossess the land, subject to the provision for extension in exceptional circumstances and payment of additional lease rent. This provision further demonstrates the integrated nature of the transaction. The development and construction of the building/structures are not incidental matters left entirely to the discretion of the Lessee; they constitute an express and enforceable condition governing the use of Port land and the continuation of the Lessee's rights thereunder.

Equally significant for the question of jurisdiction is the provision of the Lease Deed under which the Lessor expressly reserves the right, in the event of non-payment of dues, to:

"...disconnect electricity & water connection and stop all port related services to the lessee..."

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The reference in the Lease Deed itself to "port related services" is a significant indicator of the nature of the relationship between the parties. The contractual relationship was not confined to the bare transfer of possession of land. The Lease Deed expressly contemplated the provision of, and the Lessor's control over, services described by the parties themselves as port related services.

Section 58(1)(d) and Section 32 operate in distinct statutory fields. Section 58(1)(d) specifically concerns complaints from "port users" against services and terms of service rendered by Major Ports or private operators, whereas Section 32 is attracted where "any person" is aggrieved by an action of the Major Port Authority while exercising its powers under Sections 22 to 31, except Section 29.

In view of the finding recorded herein that the present Application is maintainable under Section 32 of the Major Port Authorities Act, 2021 and having decided that there is an independent and sufficient statutory basis for entertaining the present Application under Section 32, the Board considers it unnecessary, for the purposes of the

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present preliminary determination, to decide the alternative basis urged by the Applicant and disputed by the Respondents.

50. Another objection raised by the Respondents is that the lease was executed and the underlying dispute and demands arose prior to the MPA Act, 2021 coming into force. It is contended by the Respondents that the jurisdiction created under the MPA Act, 2021 cannot be invoked in respect of a dispute which had already arisen under the erstwhile Major Port Trusts Act, 1963 and the contractual framework then prevailing. The Applicant, on the other hand, submits that the subsequent statutory regime expressly provides for continuity of the assets, liabilities, contracts and legal proceedings of the erstwhile Board of Trustees and that the continuing lease and subsequent actions thereunder cannot, merely by reason of their historical origin, be placed outside the jurisdiction of the statutory forum created under the MPA Act, 2021.

51. The Adjudicatory Board is unable to accept the proposition that the mere fact that the underlying transaction or the initial cause of action predates the MPA

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Act, 2021, by itself, is determinative of the present question of subject-matter jurisdiction. At the same time, the Board is conscious that a subsequent statute cannot be presumed to operate retrospectively so as to alter substantive rights and liabilities which had already accrued under the earlier law, unless the statute expressly or by necessary implication so provides. The question before us is - whether, having regard to the statutory scheme of succession, continuity and adjudication under the MPA Act, 2021, a dispute concerning a continuing contractual relationship and subsequent action of the successor Major Port Authority can be brought before the Adjudicatory Board under the jurisdiction expressly conferred by Section 32.

52. In this context, the decision of the Hon'ble Supreme Court in *Shashi Prakash Khemka (Dead) through LRs. v. NEPC Micon (now NEPC India Ltd.), [(2019) 18 SCC 569]* in para 5 to 7 is reproduced below:

> *"**5.** The learned counsel has also drawn our attention to Section 430 of the Act, which reads as under:*

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*"**430. Civil court not to have jurisdiction**.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."*

The effect of the aforesaid provision is that in matters in respect of which power has been conferred on NCLT, the jurisdiction of the civil court is completely barred.

***6.** It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power would be vested with the National Company Law Tribunal (NCLT) under Section 59 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy,*

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especially considering the manner in which Section 430 of the Act is widely worded.

7. *We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before NCLT under the Companies Act, 2013. In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today."*

The Apex Court has held that the mere fact that the cause of action or underlying transaction originated under an earlier statutory regime does not, by itself, determine the forum before which a dispute is required to be adjudicated after a subsequent statute has created a specialised adjudicatory mechanism and allocated jurisdiction to that forum. The Hon'ble Supreme Court, while noticing that the dispute had its origin prior to the coming into force of the Companies Act, 2013, considered the subsequent statutory allocation of jurisdiction and the effect of the comprehensive exclusion of Civil Court jurisdiction under Section 430 of that Act. The decision, however, does not lay down that every

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pre-existing dispute automatically stands transferred to the newly created forum.

53. The MPA Act, 2021 itself provides for continuity between the erstwhile statutory regime and the regime created by the MPA Act, 2021. Section 21 expressly declares the Board of the Major Port Authority to be the successor of the Board of Trustees constituted under the Major Port Trusts Act, 1963. It further provides for the transfer and vesting of the assets and liabilities of the erstwhile Board and, significantly, treats debts, obligations, liabilities and contracts entered into by the erstwhile Board as continuing with the successor Board. Section 21(e) further provides for the continuation or institution of suits and other legal proceedings by or against the successor Board in the circumstances specified therein. The statutory provisions in the MPA Act, 2021, therefore, does not support a proposition that the repeal of the Major Port Trusts Act, 1963 extinguished existing contractual relationships or rendered all disputes concerning them incapable of adjudication under the new statutory framework.

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54. The continuity contemplated by Section 21 is reinforced by Section 75 of the MPA Act, 2021. Section 75(2)(b) provides, subject to the conditions stipulated therein, for the continuance of agreements, deeds and other instruments made under the repealed enactment which were in force immediately before the commencement of the MPA Act, 2021, as if they had been made under the corresponding provisions of the MPA Act, 2021. Section 75(3) further preserves the application of Section 6 of the General Clauses Act, 1897, subject to the provisions of the MPA Act, 2021. The legislative scheme thus does not proceed on the basis that the repeal of the Major Port Trusts Act extinguished existing contractual relationships or liabilities of the Major Port Authorities.

55. The effect of these provisions, in our view, is that the MPA Act, 2021 creates a statutory continuity between the erstwhile Board of Trustees of Major Port and the successor Major Port Authority in respect of existing assets, liabilities, contracts and specified proceedings under the repealed Act. The continuation of a lease originally executed under the repealed enactment is therefore not, merely on account of

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its date of origin. The said continuation is consistent with the subsequent statutory framework under the MPA Act, 2021. What is material for the present purpose is not the date on which the lease was originally executed, but the character of the action impugned before the Adjudicatory Board and whether that action satisfies the jurisdictional requirements of Section 32.

56. The present Application concerns the action of the successor Major Port Authority in relation to the continuing lease of Port land and, in particular, the levy and enforcement of additional lease rent under the terms of that lease. The issue at this stage is confined to whether the subsequent action impugned before the Board falls within the statutory jurisdiction conferred by Section 32.

57. Section 59 of the MPA Act, 2021 provides that no other court shall have jurisdiction to entertain a suit or proceeding in respect of a matter falling within the scope of the Adjudicatory Board under the Act, subject to the proviso concerning arbitration. The Respondents are correct that the jurisdiction of a Civil Court is ousted under Section 59 only with respect to matters falling within the powers of the

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Adjudicatory Board. The Board's jurisdiction must first arise under the substantive provisions of the Act.

58. In the present case, having regard to our findings under the preceding issues that Section 32 constitutes a distinct statutory avenue and that the impugned action concerning the continuing lease of Port land and levy of additional lease rent has the requisite statutory nexus with the powers of the Major Port Authority under Sections 22 and 24, the Board finds no merit in the Respondents' objection that the jurisdiction of this Board is excluded merely because the lease and the original demands predate the MPA Act, 2021. Once the present matter is found to fall within Section 32, Section 59 operates as a consequence of that statutory allocation of jurisdiction.

59. In view of the foregoing discussion and the findings recorded hereinabove, the Adjudicatory Board rejects the preliminary objection raised by the Respondents regarding the jurisdiction and maintainability of the present Application.

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It is further held that the impugned action of the Respondents Cochin Port Authority relating to the administration and enforcement of the lease of Port land, including the levy of additional lease rent, has the requisite statutory nexus with the powers of the Major Port Authority under Sections 22 and 24 of the Major Port Authorities Act, 2021. Accordingly, the statutory condition contemplated under Section 32 is satisfied.

The objection of the Respondents that the jurisdiction of this Board is excluded merely because the lease was executed and the original demands arose prior to the coming into force of the Major Port Authorities Act, 2021, is rejected.

Accordingly, the present Application is held to be maintainable before the Adjudicatory Board under Section 32 of the Major Port Authorities Act, 2021. The determination herein is confined to the question of the jurisdiction of the Board. All other objections, contentions and issues raised by the parties, including those relating to limitation, *res judicata* and all questions arising for determination on the merits of the dispute, are expressly

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kept open. The Adjudicatory Board shall accordingly proceed for consideration and adjudication of the remaining issues and the substantive dispute, in accordance with law.

Sd/-

(**Justice A.J. Desai**)
Presiding Officer.

Place : Mumbai.
Date : 09/10/2026

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Sd/-

(**C. Viswanath**)
Member.

Sd/-

(**Dr. Sanjeev Ranjan**)
Member.