

ON EXEMPTING NCLT SCHEME ORDERS FROM REGISTRATION FEES *VIDE* §17(2)(VI) OF THE REGISTRATION ACT, 1908

*Bhargav Chakraborty**

This paper examines the applicability of §17(2)(vi) of the Registration Act, 1908, which exempts certain court orders from mandatory registration to scheme orders issued by the National Company Law Tribunal (NCLT) under §§230–232 of the Companies Act, 2013 ('2013 Act'). While High Court orders under the analogous provisions of the Companies Act, 1956 ('1956 Act'), were consistently exempt, ambiguity persists post-2013 due to the NCLT's status as a tribunal and occasional judicial conflation of registration fees with stamp duties. Such legal uncertainty is antithetical to the requirement of transactional and operational efficiency underpinning every restructuring process. Through doctrinal analysis, the paper argues that NCLT scheme orders are exempt from registration fees basis three grounds: (i) the enduring applicability of 1956 Act interpretations, preserved by §465(2)(b) of the 2013 Act and §6 of the General Clauses Act, 1897; (ii) the judicial nature of NCLT proceedings, akin to court functions, as supported by §424 of the 2013 Act and case law; and (iii) alignment with the Registration Act's dual objectives of ensuring transparent property records and securing revenue, without necessitating registration. Contra decisions are critiqued as peripheral and lacking reasoned analysis. The paper emphasizes the necessity for legal clarity in a domain with much commercial significance, concluding that NCLT scheme orders are exempt from registration fees, consistent with established statutory provisions and judicial precedent.

TABLE OF CONTENTS

<i>I. INTRODUCTION</i>	2
<i>II. INTERPRETATIONS UNDER THE 1956 ACT AND ITS CONTEMPORARY APPLICATION</i>	3
<i>A. EXEMPTION OF SCHEME ORDERS UNDER THE COMPANIES ACT, 1956</i>	3
<i>B. ADDRESSING CONTRA DECISIONS</i>	6
<i>III. NCLT PROCEEDINGS, BEING JUDICIAL PROCEEDINGS, ARE EXEMPTED UNDER RA, 1908</i>	7
<i>A. EXEMPTION OF JUDICIAL PROCEEDINGS UNDER §17(2)(VI) OF RA 1908</i>	8
<i>B. NCLT/NCLAT PROCEEDINGS AS 'JUDICIAL PROCEEDINGS' AND CONSEQUENT EXEMPTION FROM REGISTRATION FEES</i>	10
<i>IV. CONSONANCE WITH THE TELEOLOGY OF RA 1908</i>	12
<i>V. CONCLUSION</i>	14

* B.A., LL.B. (Hons.), National Law School of India University, Bangalore. I am grateful to Mr. Aniket Agarwal (Partner, Khaitan & Co.) for deepening my understanding of this field. I also thank Mr. Deb Ganapathy, Ms. Shreya Kumar, Mr. Sahil Bhalotia, and Ms. Vedanshi Lath for their research assistance. All errors remain solely mine.

I. INTRODUCTION

§17 of the Registration Act 1908 ('RA 1908') outlines the kinds of legal instruments relating to immovable property for which registration is compulsory.¹ Clause 2(vi) read with clause 1(b) of the same exempts any decree of the court from mandatory registration, insofar as it does not relate to a compromise decree and comprising immovable property other than that which is the subject-matter of the suit.² §17(2)(vi) carves out court decrees and orders from compulsory registration because they take effect by operation of law, as opposed to by private volition.³ The exemption preserves RA 1908's notice and anti-fraud function for voluntary instruments, by denying exemption where a compromise decree creates a new right or deals with property outside the suit.⁴ The question of whether this exemption applies to orders of the National Company Law Tribunal ('NCLT'),⁵ relating to amalgamation/arrangement scheme proceedings under §§230–232 of the Companies Act, 2013 ('2013 Act') is commercially significant when considered against the volume of scheme orders passed daily.⁶ Mitigating avoidable fiscal and procedural burdens, such as the payment of registration fees where the law itself warrants exemption, is integral to preserving the transactional efficiency that underpins every restructuring exercise.

Yet, there lies little clarity on the same, especially when considering the position under the 2013 Act. Some cases have even observed (but only in passing) that registration fees are/ought to be imposed on scheme orders, erroneously treating the same as contiguous with stamp fees.⁷ The question that flows from the relevant clause in RA 1908 is whether the term 'court' is inclusive of tribunals, and if yes, would the provision also cover NCLT decisions on schemes of amalgamations/arrangements?

This paper submits that orders passed by the NCLT under §§230–232 of the 2013 Act,⁸ are exempt from compulsory registration under §17(2)(vi) of the RA 1908 for three independent reasons.⁹ *First*, under the erstwhile Companies Act, 1956 ('1956 Act'), orders of High Courts pertaining to amalgamation/ arrangement scheme proceedings were already exempted *vide* Section 17(2)(vi) of RA 1908. This interpretation still guides the 2013 Act. *Second*, NCLT proceedings qualify as judicial proceedings, which are excluded under §17(2)(vi) as confirmed by several judgments.¹⁰ *Third*, such an interpretation aligns with the twin purposes of the Registration Act — public notice of voluntary transactions and the prevention of fraud — neither of which is implicated when a transfer takes effect by operation of law through a judicial order. These three grounds, conjunctively, address the issue from all necessary angles: the historical treatment of scheme orders under the 1956 Act, the judicial character of NCLT proceedings in relation to the text of §17(2)(vi), and the underlying purpose of the Registration Act. Each operates on a distinct dimension — history, institutional character,

¹ The Registration Act, 1908, §17.

² *Id.*, §17(2)(vi).

³ The Registration Act, 1908, §17(1)(b).

⁴ *Bhoop Singh v. Ram Singh Major*, (1995) 5 SCC 709, ¶¶16–18 (exception protects decrees declaring pre-existing rights); *Som Dev v. Rati Ram*, (2006) 10 SCC 788, ¶¶17–18, 24 (decree recognising pre-existing family-arrangement rights exempt).

⁵ Any reference to NCLT shall also include the National Company Law Appellate Tribunal ('NCLAT').

⁶ The Companies Act, 2013, §§230–232.

⁷ *In re Emami Biotech*, (2012) 170 Comp Cas 212, ¶15, 19 ('Emami Biotech'); *Dalgreen Agro (P) Ltd. v. State of West Bengal*, (2019) 215 Comp Cas 452, ¶7 ('Dalgreen Agro')

⁸ The Companies Act, 2013, §§230–232.

⁹ The Registration Act, 1908, §17(2)(vi).

¹⁰ *Id.*

and statutory design — and taken together, they sufficiently delimit the application of the exempting provision to NCLT scheme orders.

A brief clarification is warranted because the judicial character of the NCLT is not uniform across all subject-matters. The Supreme Court has repeatedly held that the NCLT exercises the powers of a ‘court’ only within the limited field assigned to it — namely, corporate and insolvency matters — and not in areas of public law or private civil disputes.¹¹ The argument advanced in this paper is confined to this recognised domain.

II. INTERPRETATIONS UNDER THE 1956 ACT AND ITS CONTEMPORARY APPLICATION

Under the 1956 Act schemes of arrangement under §§391–394 were sanctioned by the High Courts,¹² and such sanctioning orders were consistently understood as falling within the exemption contained in §17(2)(vi) of the RA 1908.¹³ The inquiry that follows is whether this settled position has been altered merely because jurisdiction now stands transferred to the NCLT under §§230–232 of the 2013 Act.¹⁴ As will be shown, the answer can be found in the principles governing repeal and savings, as well as in the legislative continuity preserved between the two enactments.

A. EXEMPTION OF SCHEME ORDERS UNDER THE COMPANIES ACT, 1956

Different High Courts have ruled that the scheme orders on amalgamations/arrangements passed by them under §§391–394 of the 1956 Act are exempted under §17(2)(vi) of the RA 1908.¹⁵ Under the 1956 Act, §§391–394 together constituted the statutory framework governing compromises, arrangements and amalgamations.¹⁶ §391 empowered the High Court to sanction such schemes; §392 conferred supervisory and enforcement powers; §393 dealt with disclosure obligations to members and creditors; and §394, crucially, authorised the Court to transfer the whole or part of the undertaking, property and liabilities of one company to another pursuant to a sanctioned scheme.¹⁷ It is under this provision that High Courts routinely issued amalgamation orders whose registrability under the RA 1908 later became a matter of dispute. In *Kusum Agrotech Ltd. v. State of Rajasthan*, (‘Kusum Agrotech’) one of the central questions seizing the Court was whether an order passed by a High Court under §394 of the 1956 Act was compulsorily registrable under §17 of the RA

¹¹ The clarification is doctrinally necessary because the NCLT’s judicial character is not universal but subject-matter specific. The argument in the main text relies only on this recognised sphere of judicial power. *See Embassy Property Developments Pvt. Ltd. v. State of Karnataka*, (2020) 13 SCC 308, ¶¶29, 30, 37, 41, 53 (the Supreme Court held that the NCLT is a specialised tribunal whose authority is confined to matters expressly entrusted to it under the Companies Act and the IBC; it cannot adjudicate disputes that fall within the domain of public law); *Tata Consultancy Services Ltd. v. SK Wheels (P) Ltd.*, (2022) 2 SCC 583, ¶¶24, 28, 29 (the Court reaffirmed that the NCLT’s powers are limited to corporate and insolvency disputes and do not extend to enforcing private contractual rights outside that framework).

¹² The Companies Act, 2013, §§391–394.

¹³ *See infra* notes 21–22.

¹⁴ The Companies Act, 2013, §§230–232.

¹⁵ No Supreme Court decision directly address the point on registration fees imposition on scheme orders; hence, High Court decisions have been relied upon for analysis. While there are Supreme Court and High Court decisions on the potential imposition of stamp duty on such orders, the same is a separate State levy, and not the focus of this paper. For this aspect, *see supra* Part II.B on “Addressing *Contra* Decisions”.

¹⁶ Companies Act, 2013, §§391–394.

¹⁷ *Id.*

1908.¹⁸ Justice Chauhan at Paragraph 13, in a well-reasoned verdict of the Rajasthan High Court, held that:¹⁹

“an order passed by the High Court under §394 of Companies Act has not been passed on a compromise entered into between the parties. However, it is an order passed by the High Court which is clearly covered under §17(2)(vi) of the Registration Act. Therefore, the said order passed by the Calcutta High Court on 16.6.1999 needs no registration under the Registration Act”. (Emphasis added)

Similarly, a Division Bench of the Kerala High Court in *The Additional Tahsildar v. Zuri Hotels and Resorts (P) Ltd.* (‘Zuri Hotels’) was seized with an analogous issue.²⁰ It considered an appeal against the rejection of an application for mutation of lands that had come into Zuri Hotels’ ownership pursuant to orders of the Bombay High Court sanctioning a scheme of amalgamation under §§391, 394 of the 1956 Act.²¹ The reason cited by the government body for the rejection was non-payment of registration fees on the same orders.²² Viewed against the peremptory requirements of transactional and operational efficiency that underlie every scheme proceeding, this case further illustrates the commercial relevance of the issue. The Division Bench observed that the orders of the Bombay High Court “clearly come within the ambit of ... §17(1)(b)” and, by virtue of §17(2)(vi) read with *Som Dev v. Rati Ram*, (‘Som Dev’) “would not require registration” under the RA 1908.²³ In *Som Dev*, the Supreme Court clarified that even where a decree may appear to fall within §17(1)(b), the independent exemption in §17(2)(vi) nonetheless excludes court decrees and orders from compulsory registration, save for the limited statutory exception relating to compromise decrees.²⁴ This principle was relied upon in *Zuri Hotels* to support the conclusion that amalgamation sanction orders do not require registration.²⁵ At the same time, the Court clarified that mutation must proceed through the procedure contemplated in §89(5) read with §21 of RA 1908, whereby the court transmitting its order to the registering officer itself ensures public recordation of property transfers.²⁶ By recognising this built-in statutory mechanism, the Bench avoided redundant registration formalities and incidentally safeguarded the speed and finality that merger transactions demand.

In both *Kusum Agrotech* and *Zuri Hotels*, the courts engaged in a textual and functional reading of §17(2)(vi) of the RA 1908 in its interaction with §394 of the 1956 Act. The Rajasthan High Court in *Kusum Agrotech* held that a High Court order under §394 “is clearly covered under §17(2)(vi)” because the transfer it effects arises by operation of law, not by private volition.²⁷ Likewise, the Kerala High Court in *Zuri Hotels* observed that the Bombay High Court’s orders “would not require registration” and directed that mutation proceed once the court’s transmission under §89(5) is satisfied.²⁸ The language of §17(2)(vi) exempts from

¹⁸ *Kusum Agrotech Limited v. State of Rajasthan*, 2009 SCC OnLine Raj 2698, ¶6(4) (‘*Kusum Agrotech*’).

¹⁹ *Id.*, ¶13.

²⁰ *The Additional Tahsildar v. Zuri Hotels and Resorts (P) Limited*, W.A. No. 1622 of 2019 (Ker HC, 26 Aug 2019) (‘*Zuri Hotels*’).

²¹ *Id.*, ¶¶1-3.

²² *Zuri Hotels*, *supra* note 20, ¶4.

²³ *Som Dev v. Rati Ram*, (2006) 10 SCC 788, ¶15.

²⁴ *Id.*

²⁵ *Zuri Hotels*, *supra* note 20, ¶6.

²⁶ *Zuri Hotels*, *supra* note 20, ¶6.

²⁷ *Kusum Agrotech*, *supra* note 18.

²⁸ *Zuri Hotels*, *supra* note 20, ¶ 6.

compulsory registration any “decree or order of a court”, save for compromise decrees involving property outside the proceeding.²⁹ A merger or amalgamation order fits within this formulation: it is a judicial order effecting a statutory transfer of the very undertaking that forms the subject-matter of the petition. It is therefore not a compromise decree, nor does it extend to property beyond the proceeding, and consequently falls squarely within the exemption. These rulings reaffirm that a sanctioned scheme is a judicial act effectuating transfer by operation of law, not a bilateral instrument, and that imposing registration in such cases would contradict both the text and the design of the statute.

After enforcement of the 2013 Act, mergers and amalgamations were dealt under it *vide* §§230–232.³⁰ This gives rise to a possible indeterminacy insofar as whether the interpretation of the High Courts, exempting §391–394 orders,³¹ under §17(2)(vi) of the RA 1908,³² would also be applicable to its corresponding provisions in the 2013 Act *viz.* §230–232.³³ Apropos herein is §465(2)(b) of the 2013 Act,³⁴ by effect of which:

“any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act”.

Relying more generally on principles of statutory interpretation, §6 of the General Clauses Act, 1977 preserves rights, liabilities and proceedings under a repealed statute “unless a different intention appears”.³⁵ In *The Brihan Maharashtra Sugar Syndicate Ltd. v. Janardan Ramchandra Kulkarni & Ors.*, (‘Brihan Maharashtra Sugar Syndicate’) the Supreme Court held that repeal and re-enactment do not in themselves evince a contrary intention, and continuity is to be presumed unless the subsequent legislation clearly displaces existing rights.³⁶ The approach was reaffirmed in *Shakti Yezdani & Anr. v. Jayanand Jayant Salgaonkar & Ors.*, where the Court interpreted provisions of the 1956 Act and the 2013 Act in a parallel fashion and read one by reference to the other.³⁷ Given that the merger and scheme provisions of the 2013 Act,³⁸ are essentially in *pari materia* with §§391–394 of the 1956 Act, the jurisprudence under the earlier regime—exempting court-sanctioned scheme orders from registration—remains directly applicable to §§230–232 of the 2013 Act.³⁹ Although §§230–232 of the 2013 Act are procedurally broader than §§391–394 of the 1956 Act, these differences are ancillary to our argument. The 2013 regime adds disclosure safeguards, regulatory participation and a shift from High Courts to the NCLT, but the juridical character of the

²⁹ The Registration Act, 1908, §17(2)(vi).

³⁰ The Companies Act, 2013, §§230–232.

³¹ *Id.*, §§391–394.

³² The Registration Act, 1908, §17(2)(vi).

³³ The Companies Act, 2013, §§230–232.

³⁴ *Id.*, §465(2)(b).

³⁵ General Clauses Act, 1977, §6.

³⁶ *The Brihan Maharashtra Sugar Syndicate Ltd. v. Janardan Ramchandra Kulkarni & Ors.*, (1960) 3 SCR 85, ¶¶5,6 (‘Brihan Maharashtra Sugar Syndicate’).

³⁷ *Shakti Yezdani & Anr. v. Jayanand Jayant Salgaonkar & Ors.*, (2017) 7 SCC 192, ¶¶62, 63.

³⁸ The Companies Act, 2013.

³⁹ *Id.*, §§391–394.

sanction remains unchanged: rights and liabilities continue to pass “by operation of law”⁴⁰ upon approval, not by voluntary conveyance. The basis for exemption under §17(2)(vi) is therefore unaffected.

This continuity is reflected in early NCLT practice: in *In re Anite Telecoms India (P) Ltd.* and *In re ORCC Solutions (P) Ltd.*, the petitions were expressly instituted and disposed of under both §§391–394 of the 1956 Act and §§230–232 of the 2013 Act, evidencing a seamless doctrinal transition.⁴¹ No judicial authority has found the scheme provisions of the 2013 Act to be in conflict with their predecessors under the 1956 Act. On the contrary, tribunal practice reflects continuity in their application. Accordingly, under the interpretive principle affirmed in *Brihan Maharashtra Sugar Syndicate*,⁴² the absence of any contrary intention preserves the validity and continued relevance of prior judicial interpretations.

B. ADDRESSING CONTRA DECISIONS

Contra decisions — affirming the imposition of registration fees on scheme orders — must be addressed at this stage. *First*, the point of distinction between these decisions and those aforementioned (and relied upon by the author) is that the question of registration of scheme orders was central only in the latter instances; the *contra* decisions have observed merely in passing the imposition of registration fees. *Second*, the brief consideration of the question of registration fees imposition in the *contra* decisions was predicated on an erroneous reasoning that treated stamp duty imposition (which is undoubtedly imposable upon scheme orders) — for they fall under ‘conveyance’ *vide* §2(10) of the Indian Stamp Act, 1899,⁴³ — as contiguous with registration fees.⁴⁴

An emblematic instance of this brief (and erroneous) judicial treatment holding stamp and registration duties as contiguous can be seen at Paragraph 6 of *Dalgreen Agro Pvt. Ltd. v. State of West Bengal*,⁴⁵ wherein Justice Basak treated imposition of registration fees on scheme orders as *a priori*, holding that “Emami Biotech Limited after noticing Gemini Silk Ltd. Madhu Intra Ltd. and Hindustan Lever has held that, the order sanctioning the scheme of amalgamation is registrable notwithstanding any amendment being made to the Act of 1899” (Act of 1899 being the Stamp Act).

The petition itself concerned a demand for stamp duty on an amalgamation order under the Stamp Act, 1899, the issue of registration was neither pleaded nor argued. The Court’s reference to it was thus incidental and unsupported by reasoning, revealing an uncritical conflation of the two statutory frameworks. In fact, in none of the cases cited by Justice Basak was the question of registration fees imposition central. As noted by Justice Banerjee in *In re Emami Biotech Ltd*, the primary issue in these cases was as to whether stamp duty would be payable upon an order sanctioning a scheme of amalgamation, and whether the same be regarded as an instrument chargeable under the Stamp Act.⁴⁶ Hence, these cases — lacking

⁴⁰ Kusum Agrotech, *supra* note 18, ¶9.

⁴¹ *In re Anite Telecoms India (P) Ltd.*, 2017 SCC OnLine NCLT 2033, 7-8; *In re ORCC Solutions (P) Ltd.*, 2017 SCC OnLine NCLT 2304, 6.

⁴² *Brihan Maharashtra Sugar Syndicate*, *supra* note 36.

⁴³ *Hindustan Lever & Anr v. State of Maharashtra*, (2004) 9 SCC 438, ¶43, 45 (‘Hindustan Lever’); *In re Emami Biotech*, (2012) 170 Comp Cas 212, ¶15, 19 (‘Emami Biotech’); *Dalgreen Agro (P) Ltd. v. State of West Bengal*, (2019) 215 Comp Cas 452, ¶7 (‘Dalgreen Agro’).

⁴⁴ The Indian Stamp Act, 1899, §2(10).

⁴⁵ *Dalgreen Agro*, *supra* note 43.

⁴⁶ *Emami Biotech*, *supra* note 43, ¶3.

both a specific focus as to the registration fees question as well as sustained reasoning on the point — are consequently not strong authorities for the proposition that registration fees should be imposed on scheme orders. This is more so the case when considered against the authorities such as *Kusum Agrotech* and *Zuri Hotels*, wherein the question of registration fees was directly addressed, and their application to scheme orders was categorically rejected.⁴⁷

As mentioned above, Justice Basak offered no independent reasoning for equating the two levies; the statement treating registration and stamp duties as contiguous was an unexamined conflation of distinct statutory schemes. The two are conceptually and legally separate. Stamp duty under the Stamp Act, 1899 is a tax on instruments of conveyance, levied to authenticate and fiscally recognize the transfer of rights or property; it has been held payable on court-sanctioned amalgamation schemes because such orders constitute ‘conveyances’ within the meaning of §2(10), read with §3.⁴⁸ Registration fees, by contrast, arise under §17 of the RA 1908 and are merely administrative charges payable upon presentation of a document for registration; they are not a fiscal impost on the transaction itself.⁴⁹ Consequently, where a decree or order falls within the exemption under §17(2)(vi), no occasion for payment of registration fees arises. This distinction was explicitly acknowledged in *Zuri Hotels*, where the State’s counsel unsuccessfully sought to equate the two levies; the Court declined to entertain arguments on stamp duty, noting that the impugned rejection concerned only registration and that §89(5) of the RA 1908 provided the proper procedural mechanism instead.⁵⁰

In summation, basis the consistent approach adopted in *Kusum Agrotech* and *Zuri Hotels*, along with the statutory prescriptions of §465(2)(b) of the 2013 Act, read with §6 of the General Clauses Act, 1977 — it is amply established that the interpretations of the High Courts exempting orders under §§391–394 from registration fees, are also applicable to the decisions of NCLT under its analogous provisions under the 2013 Act. We submit that there is no internal conflict between the schemes of the two legislations for espousing this view. The *contra* decisions holding otherwise did not provide sustained reasoning behind their position, for this very question was not a central issue in their respective factual matrices.

III. NCLT PROCEEDINGS, BEING JUDICIAL PROCEEDINGS, ARE EXEMPTED UNDER RA, 1908

An important issue that remains unaddressed is whether — by virtue of the very nature of the NCLT (in that it is a ‘tribunal’ and not a ‘court’ *sensu stricto*) — the same may not enjoy exemption of registration fees under §17(2)(vi) of RA 1908.⁵¹ In the following scheme of arguments, we challenge this notion. This is done by highlighting the nature of NCLT scheme proceedings as ‘judicial proceedings’ and relying upon the provision of §424 of the 2013 Act that clarifies attributes of such a ‘judicial proceeding’, while also granting it powers akin to a civil court.⁵² We also explore cases wherein a tribunal was held to mirror the characteristics of a ‘court’ and assess whether the NCLT falls under this categorization. To establish that NCLT proceedings are ‘judicial proceedings’ and thereby exempt under §17(2)(vi) of the RA 1908, two aspects must be delineated: *first*, the exemption of ‘judicial proceedings’ *per se* from registration fees and the contours of such exemption; and *second*,

⁴⁷ *Kusum Agrotech*, *supra* note 18, ¶12, 13; *Zuri Hotels*, *supra* note 20, ¶6.

⁴⁸ *Hindustan Lever*, *supra* note 43; *Delhi Towers Ltd. v. G.N.C.T. of Delhi*, 2009 SCC OnLine Del 3261, ¶10.14.

⁴⁹ The Registration Act, 1908, §17.

⁵⁰ *Zuri Hotels*, *supra* note 20, ¶6.

⁵¹ The Registration Act, 1908, §17(2)(vi).

⁵² The Companies Act, 2013, §424.

whether NCLT proceedings are judicial proceedings and thereby also entitled to such exemption.

A. EXEMPTION OF JUDICIAL PROCEEDINGS UNDER §17(2)(VI) OF RA 1908

Several decisions have laid down that judicial proceedings are exempted under §17(2)(vi) of the RA 1908. The High Court of Orissa has held in a case that proceedings of a judicial nature do not require registration:⁵³

“Documents of this kind (security bond) executed in favour of the Court are not executed between the decree-holder and the surety but between the surety and the Court and are steps in the judicial proceedings and, therefore, they fall within the purview of the broad general principle laid down by the Privy Council in the aforesaid cases that proceedings of the Court do not require registration”. (Emphasis added)

This has been reiterated by several other High Courts in a manner that it is safe to conclude that §17 of the RA 1908 does not apply to proper judicial proceedings. The reasoning itself has withstood the test of time — it stems from decisions of the Privy Council dating back to at least 1896. For instance, in *Bindesri Naik v. Ganga Saran Sahu*, (‘Bindesri Naik’) it was held by Lord Watson that “having heard counsel fully upon the point, they are satisfied that the provisions of Section 17 of RA 1908 do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties, or of orders made by the Court” (Emphasis added).⁵⁴

The High Court of Kerala, applying the above reasoning, held in *Meenachil Panchayat v. Sivsankara Marar* (‘Meenachil Panchayat’) that:⁵⁵

“Section 17(2)(vi) says that nothing in clauses (b) and (c) of sub-sec. (1) applies to any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding. Can a security bond executed in favour of a Court, when accepted by the Court despite the fact that it is not registered be said to be an ‘order’ within the meaning of that word in Section 17(2)(vi)? The decisions that have answered that question in the affirmative have taken their inspiration from the decision of the Judicial Committee in Bindesri Naik v. Ganga Saran Sahu, ILR 20 All 171 (P.C.) wherein it was held that Sec. 17 of the Registration Act does not apply to proper judicial proceedings whether consisting of pleadings filed by the parties or orders made by the Court. These observations undoubtedly support the contention of the petitioner”. (Emphasis added)

The exemption for ‘judicial proceedings’ under §17(2)(vi) of RA 1908 turns on whether an instrument’s efficacy flows from judicial authority rather than party volition.⁵⁶ Two related ideas recur across the cases. *First*, courts have excluded from compulsory registration what they term ‘proper judicial proceedings’ — acts that owe their force to the court’s adjudicatory power (pleadings received or ‘orders made by the court’) rather than to a voluntary

⁵³ *Indian Metals & Ferro Alloys Ltd. v. Orissa State Electricity Board*, 1979 SCC OnLine Ori 143, ¶27.

⁵⁴ *Bindesri Naik v. Ganga Saran Sahu*, 1897 SCC OnLine PC 26 : (1897-98) 25 IA 9, 15 (‘Bindesri Naik’).

⁵⁵ *Meenachil Panchayat v. High Court of Kerala*, 2003 SCC OnLine Ker 522, ¶7.

⁵⁶ The Registration Act, 1908, §17(2)(vi).

conveyance between parties; as the Privy Council formulation quoted in later judgments puts it, §17 “does not apply to proper judicial proceedings”.⁵⁷ *Second*, even when property rights are incidentally affected, it is the court’s order that creates or perfects the operative liability; the document is exempt because the transfer or obligation arises by force of law, not by consent—hence a bond or similar instrument, once accepted by the court, “falls within the provisions of sub-§(2)(vi) ... and is excluded from the necessity of registration”. Read together, *Bindesri Naik*, *Meenachil Panchayat*, and *Indian Metals & Ferro Alloys Ltd. v. Orissa State Electricity Board* (‘Indian Metals’) express a consistent test: if the dispositive effect is judicial — an order or decree integral to an adjudicatory proceeding — rather than contractual, the exemption under §17(2)(vi) applies.⁵⁸

Indian courts have further understood a judicial proceeding to denote a process in which a duly constituted authority hears parties, applies law to adjudicate rights, and renders a decision that binds *proprio vigore* — by its own legal force.⁵⁹ The emphasis, therefore, is on the adjudicatory character of the act rather than the forum in which it occurs or the fiscal outcome it produces. The rulings in *Bindesri Naik*, *Meenachil Panchayat*, and *Indian Metals* all proceed on this premise: that an act emerging from such an adjudicatory process, as distinct from a voluntary conveyance, constitutes a step in a ‘judicial proceeding’ for the purposes of §17(2)(vi).⁶⁰ Although the analysis above draws from these cases’ focus on ‘judicial proceedings’, it may be argued in contra, that they do not explicitly deal with tribunals and are only concerned with traditional ‘courts’, *sensu stricto*. This is a challenge that, it is submitted, can be addressed by a textual analysis of the exempting provision itself.

A closer reading of §17(2) confirms that the legislature did not intend to confine the exemption solely to decrees or orders of civil courts per se.⁶¹ Several of its clauses — such as clauses (viii), (ix), (x), and (xii) — expressly refer to acts of revenue officers, statutory officers, or other authorities exercising delegated statutory or quasi-judicial power.⁶² These provisions demonstrate that the animating principle of exemption is functional and not institutional: what matters is that the instrument derives its efficacy *ex lege* — by operation of statutory or judicial authority — rather than *ex consensu*, by voluntary execution. Clause (vi)’s reference to “any decree or order of a court” must therefore be read contextually, as a paradigmatic instance of adjudicatory authority, not an exhaustive limitation to civil courts *stricto sensu*.⁶³ Read as a whole, §17(2) evidences a legislative design to exempt acts of sovereign or statutory adjudication from registration whenever they perfect or transfer rights independently of private volition.⁶⁴ The emphasis placed on ‘judicial proceedings’ rather than the ‘forum’ in which they occur is thus textually sound — and provides the interpretive foundation to extend the same rationale *qua* NCLT’s scheme-sanction orders under the 2013 Act. This construction is consistent with the approach reflected in *Bindesri Naik*, where the

⁵⁷ *Bindesri Naik v. Ganga Saran Sahu*, 1897 SCC OnLine PC 26: (1897-98) 25 IA 9, 15 (‘*Bindesri Naik*’); *Indian Metals & Ferro Alloys Ltd. v. Orissa State Electricity Board*, 1979 SCC OnLine Ori 143, ¶27; *Meenachil Panchayat v. High Court of Kerala*, 2003 SCC OnLine Ker 522, ¶7.

⁵⁸ *Id.*

⁵⁹ *The Bharat Bank Ltd. v. Employees*, 1950 SCC 470, ¶108; *Engineering Mazdoor Sabha v. Hind Cycles Limited*, 1963 Supp (1) SCR 625, ¶9; *Associated Cement Companies Ltd. v. P.N. Sharma*, 1964 SCC OnLine SC 62, ¶9.

⁶⁰ *Supra* note 57.

⁶¹ The Registration Act, 1908, §17(2).

⁶² *Id.*, §17(2)(viii), (ix), (x), (xii).

⁶³ The Registration Act, 1908, 17(2)(vi).

⁶⁴ *Id.*, §17(2).

exemption was framed in terms of ‘proper judicial proceedings’ rather than in strictly institutional terms.⁶⁵

*B. NCLT/NCLAT PROCEEDINGS AS ‘JUDICIAL PROCEEDINGS’ AND
CONSEQUENT EXEMPTION FROM REGISTRATION FEES*

The Apex Court has held that a tribunal while ‘adjudicating’ rights and liabilities are vested with the same powers as a civil court,⁶⁶ as opposed to when they are exercising a purely administrative function.⁶⁷ To substantiate and compare the nature of the NCLT in this regard, reference is made to §424 of the 2013 Act, which statutorily corroborates that the nature of NCLT proceedings is predominantly such as that of a Civil Court by virtue of their powers.⁶⁸ The NCLT/NCLAT is performing and discharging a ‘solemn’ judicial function. The NCLAT in the case of *Ergomaxx (India) Private Limited v. Registrar*,⁶⁹ opined that:

“No wonder, a Judgment/Order of a Court of Law/‘Tribunal’/‘Appellate Tribunal’ is to be written only after deep travail and positive vein. The term ‘communication’ means making known or sharing or imparting. In legal parlance, it means to officially or solemnly, to declare or affirm as affirm the pronouncement of an ‘Order’/‘Judgment’. It is to be remembered that pronouncement of an ‘Order’/‘Judgment’ of a Court of Law/a Tribunal is not an empty ritualistic formality. Undoubtedly, the ‘Tribunal’/‘Appellate Tribunal’ is performing/discharging a solemn judicial function. [...] It cannot be forgotten that if a particular act is to be performed in a particular manner, then, it has to be performed only in that way and not otherwise. Indeed, a procedural wrangle cannot be allowed to be shaken or shackled with. Also that the judicial function of a ‘Tribunal’ is to be transparent and per contra, it is not to be conducted/performed in an ‘opaque’ manner”. (Emphasis added)

As an addendum, it is pertinent to note that some tribunals have been held to perform judicial functions within their respective domains, as per various judgments.⁷⁰ However, not all tribunals are courts. Through a catena of decisions, certain conditions have been developed wherein a tribunal may be considered to perform/take the form of a court. Apropos herein is *State of Gujarat & Anr. v. Gujarat Revenue Tribunal Bar Ass’n*, wherein the Supreme Court concurred with the observations made by the High Court that, in the facts and

⁶⁵ Bindesri Naik, *supra* note 57.

⁶⁶ *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*, 1980 Supp SCC 420, ¶7; *See also* *The Bharat Bank Ltd, Delhi. v. Employees of The Bharat Bank Ltd*, 1950 SCC 470, ¶¶5–6, 97 (‘Bharat Bank’); *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala*, AIR 1961 SC 1669, ¶¶31, 33 (‘Harinagar Sugar Mills’).

⁶⁷ *Union of India v. R. Gandhi*, (2010) 11 SCC 1, ¶¶40, 42 (‘R Gandhi’); *Associated Cement Companies Ltd. v. P.N. Sharma*, AIR 1965 SC 1595, ¶¶7–9; *The Bharat Bank Ltd. v. Employees*, 1950 SCC 470, ¶97 (citing an Australian judgment which also distinguishes a judicial function with mere administrative powers).

⁶⁸ The Companies Act 2013, §424(4) (expressly deems every proceeding before the NCLT/NCLAT to be a ‘judicial proceeding’ and the Tribunal to be a ‘civil court’ for specified Code of Criminal Procedure and Indian Penal Code purposes).

⁶⁹ *Ergomaxx (India) (P) Ltd. v. Registrar, NCLT*, 2021 SCC OnLine NCLAT 3574, ¶¶24, 25, 26; *R. Gandhi, supra* note 67, ¶¶90, 108 (‘R. Gandhi’); *Madras Bar Association v. Union of India*, (2015) 8 SCC 583, ¶¶71-79, 87, 88, 90 (treating NCLT/NCLAT as judicial tribunals replacing the company-jurisdiction of the High Courts).

⁷⁰ *Id.*

circumstances, the nature of the Tribunal was akin to a Court and performs similar functions.⁷¹ It specifically laid down that,⁷²

“The aforesaid observations made by the High Court, taking into consideration various statutes dealing with not only the revenue matters, but also covering other subjects, make it crystal clear that the Tribunal does not deal only with revenue matters provided under the Schedule I, but has also been conferred appellate/revisional powers under various other statutes. Most of those statutes provide that the Tribunal, while dealing with appeals, references, revisions, would act giving strict adherence to the procedure prescribed in the CPC, for deciding a matter as followed by the Civil Court and certain powers have also been conferred upon it, as provided in the Cr.P.C. and IPC. Thus, we do not have any hesitation in concurring with the finding recorded by the High Court that the Tribunal is akin to a court and performs similar functions”. (Emphasis added)

Similar reasoning has been espoused in *The Bharat Bank Ltd v. Employees of The Bharat Bank Ltd*.⁷³ and *Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala*.⁷⁴ In these decisions, bodies that were not ‘courts’ in the strict sense were nevertheless treated as tribunals performing a court-like function because:

1. They were entrusted by statute with an adjudicatory duty to decide a *lis* between parties;
2. They rendered definitive, reasoned decisions binding on the parties, subject only to appellate correction; and
3. In doing so, they exercised a portion of the State’s sovereign judicial power rather than merely executing executive policy.

At the same time, the Supreme Court has emphasised the converse, that a tribunal is *not* a court when its functions are purely administrative or involve no exercise of the State’s judicial power. In *Associated Cement Companies Ltd. v. P.N. Sharma*, P.B. Gajendragadkar, C.J. held that a tribunal “would be outside the ambit of Article 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties”.⁷⁵ In other words, tribunals are not courts when they act only as administrative managers or regulators, without determining rights through a judicial process. Measured against these indicia, NCLT and NCLAT satisfy the conditions for being treated as court-like tribunals in the limited field of company and insolvency law. *First, vide* §424 of the 2013 Act⁷⁶ and various decisions characterizing NCLT proceedings as ‘judicial proceedings’,⁷⁷ these Tribunals are statutorily mandated to follow principles of natural justice, and exercise powers analogous to those of a civil court when adjudicating company matters. *Second*, scheme-sanction orders under §§230–232, with finality, restructure corporate rights and obligations and bind shareholders, creditors, and the companies themselves, operating as

⁷¹ State of Gujarat v. Gujarat Revenue Tribunal Bar Ass’n, (2012) 10 SCC 353, ¶27.

⁷² *Id.*

⁷³ Bharat Bank. *supra* note 66, ¶¶5, 6.

⁷⁴ Harinagar Sugar Mills Ltd., *supra* note 66.

⁷⁵ Associated Cement Companies Ltd. v. P.N. Sharma, AIR 1965 SC 1595, ¶9; This formulation is reaffirmed across the trilogy of Supreme Court verdicts on this issue, *see* Bharat Bank, *supra* note 66; Harinagar Sugar Mills, *supra* note 66; R. Gandhi, *supra* note 67.

⁷⁶ Companies Act, 2013, §424.

⁷⁷ *Supra* note 69.

definitive judgments rather than administrative permissions.⁷⁸ *Third*, as recognised in *Union of India v. Madras Bar Association*, Parliament has transferred to NCLT/NCLAT the jurisdiction earlier exercised by the High Courts in company matters, thereby vesting them with a share of the State's judicial power in this domain.⁷⁹ Accordingly, while not all tribunals are courts, NCLT/NCLAT-issued scheme orders fall on the 'judicial' side of this divide, and for the purposes of §17(2)(vi) are properly assimilated to "any decree or order of a court".⁸⁰

IV. CONSONANCE WITH THE TELEOLOGY OF RA 1908

Lastly, approaching the question from a teleological perspective, we submit that the aforementioned interpretation is in congruity with the overall purposes of the RA 1908.⁸¹ The RA 1908 predominantly serves two purposes: *first*, providing a permanent record of transmission of rights of individuals, especially relating to immovable properties; and *second*, securing to the State revenue through stamp duties imposed for various categories of transactions, and giving it power to collect registration charges thereon.⁸²

The first purpose (that of providing a permanent record) ensures transparency by virtue of a public disclosure on matters relating to title transfers; that, barring actual notice of some unregistered transaction that may be valid, every person dealing with property (where such dealings require registration) may rely with confidence upon the statements contained in the register as a complete account of all transactions by which his title may be affected. It was argued in *Zuri Hotels*, unsuccessfully, that without registration of scheme orders, the procedure contemplated under the Transfer of Registry Rules, 1966 cannot be followed to effect a mutation of the property in the name of the transferee company.⁸³ The Kerala High Court, while rejecting this teleological view *vide* a reading of the RA 1908 *in toto* and in particular of §89(5) of the said act,⁸⁴ held that:⁸⁵

"every court passing any decree or order creating, declaring, transferring, limiting or extinguishing any right, title or interest to or in immovable property in favour of any person, is expected to send a copy of such decree or order, together with a memorandum describing the property as far as may be practicable, in a manner required by §21, to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such order is situated, and such Officer has to file the copy and memorandum in his Book No.1. [...] entry of the details of the property in Book No.1 is the starting point for the enquiry that is then to be made by the authorities functioning under the Transfer of Registry Rules, 1966".

⁷⁸ Companies Act, 2013, §232(3), §232(4); *Silvertone Securities Private Limited v. Affluent Securities Private Limited*, 2024 SCC OnLine NCLT 9175, ¶7(i) (*See, e.g.*, the binding nature of the scheme order is mentioned in the sanctioning paragraph of virtually every such order.)

⁷⁹ *Union of India v. Madras Bar Association*, (2010) 11 SCC 1, ¶¶71-79, 87, 88, 90.

⁸⁰ The Registration Act, 1908, §17(2)(vi).

⁸¹ *Id.*

⁸² D.F. Mulla, *THE REGISTRATION ACT*, vii (Srinath Sridevan ed., Lexis Nexis, 15th edn., 2025).

⁸³ *Zuri Hotels*, *supra* note 20, ¶4.

⁸⁴ This provision was added *vide* a State amendment and is also present in Gujarat and Maharashtra. §89(5) of RA 1908 obliges every court passing a decree or order affecting immovable property to transmit an authenticated copy, with a property memorandum compliant with §21, to the appropriate registering officer for filing in Book No. 1. *See* The Registration Act, 1908, §21, 89(5).

⁸⁵ *Zuri Hotels*, *supra* note 20, ¶6.

The NCLT has sufficient powers under §424 of the 2013 Act,⁸⁶ to carry out such delivery of the relevant scheme order to the appropriate authorities as envisaged under the procedure of §89(5) read with §21 of the RA 1908.⁸⁷ In practice, however, reported NCLT scheme orders have not yet treated §89(5) as a distinct transmission route operated by the Tribunal.⁸⁸ Instead, Benches typically adopt the Regional Director's observation of paying registration fees (often written in conjunction with stamp fees) and to file the requisite forms upon sanction.⁸⁹ Routinely, in these cases, the undertaking to pay registration fees were recorded and accepted without any analysis of §17(2)(vi) of the RA 1908.⁹⁰ The argument advanced here is therefore prescriptive: that NCLT's §424 powers can be used to operationalise the §89(5) mechanism, so that scheme orders are transmitted by the Tribunal itself rather than being treated as instruments requiring registration fees. In view of the court's duty to notify the Registry as to the transfer of immovable property forming subject-matter of the scheme and the NCLT's capacity to effectuate the same, the argument that the function of disclosure/transparency which the RA 1908 engenders would be somehow compromised due to non-registration of scheme orders, is a manifestly weak one.

The second purpose, relating to the revenue function of RA 1908, is considered independently. This purpose of the RA 1908 affixes to it a fiscal imperative — in that it imposes a monetary burden on the subject, contingent on a taxable event (i.e., entering a scheme of amalgamation/arrangement) — and these statutes must be interpreted as per specific principles of construction applicable to fiscal statutes. Namely, that any ambiguity as to the imposition of a fiscal duty must be made in favour of the subject.⁹¹ This is supported by a plethora of both English and Indian authorities — and expressed in myriad corollaries, such as that the court will interpret nothing in favour of stamp duty,⁹² that any ambiguity in language will entitle the subject to be exempt from tax or duty,⁹³ that the benefit of doubt is the right of the subject,⁹⁴ or that if the language of a section admits of two possible constructions, the construction more favourable to the subject should be preferred.⁹⁵ Basis these widely accepted principles of construction *vis-à-vis* fiscal statutes, it is submitted that any residual ambiguity as to the imposition of registration fees must aver on the side of the subject. Given that registration fees operate as a fiscal levy, the canon of strict construction applies. In fiscal matters, ambiguity is

⁸⁶ The Companies Act, 2013, §424.

⁸⁷ The Registration Act, 1908, §21, 89(5).

⁸⁸ The Companies Act, 2013, §424; The Registration Act, 1908, 89(5).

⁸⁹ National Company Law Tribunal, Hyderabad Bench, 2023 SCC OnLine NCLT 31941, ¶10; National Company Law Tribunal, Ahmedabad Bench, CP (CAA) No. 11/NCLT/AHM/2024 in CA (CAA) No. 63/NCLT/AHM/2023 (3 July 2024), ¶8.1.iii.

⁹⁰ *But see* In re, Mahavir Rolling Mill Private Limited, 2023 SCC OnLine NCLT 22289, ¶10.vi (where the company counsel argued their case for exemption from registration fees; however, the NCLT Bench did not engage with this point at all).

⁹¹ *State of Punjab v. Jullundur Vegetables Syndicate*, 1965 SCC Online SC 133 (“It is a settled rule of construction that in interpreting a fiscal statute the court cannot proceed to make good the deficiencies, if there be any, in the statute; it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the taxpayer.”).

⁹² *U.K. Janardhan Rao v. Secy. Of State*, 1930 SCC OnLine Cal 36: (1929-30) 34 CWN 470, 475.

⁹³ *Kingston-upon-Hull Dock Co v. La Marche*, (1828) 8 B & C 42, ¶50-51 (King's Bench) (“the general rule as to construing Acts of Parliament which impose a charge on the public is applicable in this case ... there is no longer any question to be discussed, for beyond all doubt, the words of the Act do not impose the charge in unambiguous language.”).

⁹⁴ *Rex v. Winstanley*, (1831) 1 C & J 433, ¶442 (HL) (per Wynford J.) (“if there be any ambiguity, let the Crown suffer, and not the subject.”)

⁹⁵ *Waman v. Commissioner of Income-Tax*, 1924 SCC OnLine Bom 205: ILR (1925) 49 Bom 73, 79-90; *In re Har Krishna Das*, 1931 SCC OnLine ALL 26: ILR (1931) 53 All 671, 683.

resolved for the subject, never for the State. Where §17(2)(vi) reasonably admits of an interpretation exempting judicial decrees, the law mandates adoption of that construction in favour of the company-subject.⁹⁶ On this basis, scheme-sanction orders of the NCLT/NCLAT cannot attract registration fees.

V. CONCLUSION

Commercial certainty is paramount in merger transactions, yet inconsistencies persist regarding the registration of NCLT (and NCLAT) awards dealing with mergers/arrangements under §230–232 of the 2013 Act.⁹⁷ Undoubtedly, NCLT performs ‘solemn’ judicial functions being vested with powers as that of a civil court *vide* §424(2) of the 2013 Act,⁹⁸ and this understanding finds support basis several decisions of the High Courts and the Apex Court.⁹⁹ Consequently, orders passed by the NCLT are rendered *vide* ‘proper judicial proceedings’, which have been specifically exempted under §17(2)(vi) of the RA 1908 through a consistent and reasoned approach adopted in decisions stemming from at least 1896.¹⁰⁰ The interpretation followed under the erstwhile 1956 Act relating to §391–394 proceedings being exempt from registration fees guides the corresponding provisions under 2013 Act as well, basis §465(2)(b) of the 2013 Act and §6 of General Clauses Act, 1897.¹⁰¹ This approach is congruous with the twin teleology of the RA 1908,¹⁰² for *first*, the NCLT has sufficient *vires* to convey details regarding title transfers basis §89(5) read with §21 of the same and thereby facilitating public record of title transfers of immovable properties forming subject of the scheme proceeding. *Second*, principles of statutory interpretation applicable to fiscal statutes such as RA 1908 are consistent in holding that any ambiguity in interpretation must be construed in favour of the subject. The *contra* decisions that aver on the side of registration fees imposition cannot be strongly relied upon, for neither was this question a central issue in their factual matrices, and nor were their opinions on the same based on any sustained analysis. The unavoidable conclusion, therefore, is that scheme orders issued by the NCLT under §230–232 of the 2013 are exempted from registration fees *vide* §17(2)(vi) of the RA 1908.

⁹⁶ The Registration Act, 1908, §17(2)(vi).

⁹⁷ Companies Act, 2013, §§230–232.

⁹⁸ Companies Act, 2013, §424(4).

⁹⁹ *Supra* notes 57, 69.

¹⁰⁰ *Supra* note 57.

¹⁰¹ *Supra* notes 36, 37.

¹⁰² *Supra* note 85.