N.Parthasarathy Etc vs Controller Of Capital Issues And ... on 16 April, 1991

Equivalent citations: 1991 SCR (2) 329, 1991 SCC (3) 153, AIRONLINE 1991 SC 243

Author: B.C. Ray

Bench: B.C. Ray, N.M. Kasliwal

PETITIONER:
N.PARTHASARATHY ETC.

Vs.

RESPONDENT:
CONTROLLER OF CAPITAL ISSUES AND ANOTHER ETC.

DATE OF JUDGMENT16/04/1991

BENCH:
RAY, B.C. (J)
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RAY, B.C. (J)
KASLIWAL, N.M. (J)

CITATION:
1991 SCR (2) 329 1991 SCC (3) 153
JT 1991 (2) 218 1991 SCALE (1)675

ACT:
Constitution of India, 1950: Articles 14, 39(b) and (c) and 298-Shares of public company held by State Instrumentalities - Sale of - Public interest - Chance of creating business monopoly in private hands - Due consideration to ensure public interest - Need for.

Articles 32 and 226 - Public Interest Litigation - Petition against grant of consent by Controller of Capital Issues - Alleged violation of Articles 14: 39 (b) and (c) - Maintainability of.

Capital Issues (Control) Act, 1947: Section 3 - Issue of debentures - Consent of controller of Capital issues - Whether given after due consideration and application of mind - Variation in consent - Whether permissible - Decision as to utilisation of the amount received from public or approving a different consent order - Whether Courts have the power/jurisdiction - preferential issue reserved for share holders of inter-connected company - Validity of -

Public Interest - Constitutional directive under Article 39(b) and (c) - To be ensured by Controller of Capital issues while granting consent for public issue.

Companies Act, 1956 : Sections 55, 61,62,63,72(1) (a) , 81(1-A), 108 110 and 111 - Special Resolution at general meeting Consent for public issue - Granted by the Controller of Capital Issues, after considering the Special Resolution - Third party acting on it and acquiring rights by purchase of debentures - Change of consent order in respect of amount and purpose of utilisation - Whether could be effected contrary to the Special Resolution adopted in a general meeting - Preferential allotment to shareholders of interconnected Group Companies - Validity of - Transfer of shares - Done surreptitiously and with malafide intention - Effect of - Whether opposed to public policy and hence illegal.

Monopolies and Restrictive Trade Practices Act, 1969 : Sections 2(g), 21 and 22 - " Interconnected undertakings" - Meaning of - Clearance for capital issue - Approval given to Group Company - Whether valid in respect of the inter-connected company.

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HEADNOTE:

Out of the Equity Shares of M/s Larsen & Turbro Ltd. held by public financial institutions viz., UTI, LIC and GIC, 39 lakh shares were sold to BOB Fiscal Services, a subsidiary of Bank of Baroda. These shares were purchased by BOB Fiscal Services for Rs. 30 Crores which was given by four satellite companies of Reliance Group. Immediately after the purchase, the shares were transferred and registered in the name of Trishna Investing and Leasing Ltd. which was also a satellite of the Reliance Group. It had only a capital of Rs. 44,000 at that point of time. It was claimed that funds for the purchase of the shares was provided by Reliance Group from out of the amount received by6 way of debentures issued to public. Two Directors of the Reliance Group were co-opted as Director of Larsen and Toubro Ltd. even though the said shares were not registered in their names or in the name of Reliance Group. Even the nominee Director of the financial institutions did not question the induction of the two Directors. One more Director from the Reliance Group was later coopted as Director, which paved the way for the Chairman, Reliance Group to become the Chairman of Larsen and Toubro Ltd. also.

Thereafter the Board of Directors of Larsen and Toubro Ltd. as its meeting approved a proposal to raise funds by issue of convertible debentures for Rs. 920 crores. In the said meeting it was also resolved to issue a notice for convening and extraordinary General Meeting to consider a special resolution for the proposed issue of convertible

debentures. Applications were made to the Controller of Capital Issues seeking sanction to the rights issue of debentures of Rs. 200 crores and for public issue of debentures to the extent of Rs. 620 crores. It was also stated in the application that it was proposed to reserve/preferentially allot Rs. 310 crores out of the public issue, to Larsen and Toubro's Group Companies viz., Reliance Industries Ltd. and Reliance Petro Chemicals Ltd.

In its extraordinary General Meeting, the shareholders of Larsen and Toubro passed a resolution authorising the Board of Directors of the company to issue 12.5 per cent fully secured convertible debentures of the total value of Rs. 820 crores. Accordingly, the Controller of Capital Issues conveyed the Central Government's consent under the Capital Issues (control) Act, 1947, to the proposed issue of debentures by Larsen and Toubro Ltd.

A Writ Petition was filed in the High Court pleading that the divestment by the financial institutions of the controlling shares in Larsen and Toubro to the Reliance Group was a secret circuitous

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arrangement and hence such a divestment was arbitrary, illegal, mala fide and a fraud on the statutory powers of the financial institutions. The High Court, however, dismissed the Writ Petition. Aggrieved by the dismissal of their Writ Petition, the petitioners preferred Letters Patent Appeal before the Division Bench of the High Court. The Respondents in those Writ Petitions filed Transfer Petitions in this Court praying for transfer of the Letters Patent Appeal as also the various Writ Petitions filed in the different High Courts, to this Court. The Court allowed the Transfer Petitions.

In all these matters, the consent granted by the Controller of Capital Issues was assailed mainly on the ground that the sanction was issued without application of mind and without considering the after effect of it, viz., the Reliance Group acquiring debentures of the value of Rs. 310 crores earmarked for preferential allotment to the shareholders of Reliance Industries Ltd. and Reliance Petro Chemicals Ltd. which amounted to allowing the Reliance Group to have control of Larsen and Toubro. It was also contended that the consent was given within 24 hours of the making of the application and the hurry with which the sanction was granted showed that it was done with mala fide intentions and with a motive to help the Reliance Group.

On behalf of the Respondents, it was contended that the shares were sold in the interest of their constituents and for recycling the fund for investing in the business by purchasing shares of other companies in public interest and also in the interest of money market; that there was nothing hanky and panky in it nor was it effected with the motive of diluting shares held by public financial institutions in order to facilitate the increase in the holding of Reliance

group, a private monopoly house, to get into the management of Larsen & Toubro. It has been further contended that the tranfer of 39 lakh shares of Larsen & Toubro was not made in favour of satellite companies of the Group, but through BOB Fiscal Services Ltd. which is a wholly owned subsidiary of Bank of Baroda; that it was not made surreptitiously or discreetly on the basis of any design or secret arrangement. It was also contended that in transferring the equity shares the financial institutions acted purely on business principles and to earn profit by these transactions and in the case of LIC and UTI in the interest of the policy holders and the unit holders as the case may be. Further, it was contended that the acceptance of the requests made by the subsidiary of Bank of Baroda i.e. BOB Fiscal Services for selling the shares of L & T to them at the highest market price through the broker was in public interest in as much as if all those 39 lakh shares had been put in the

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stock market for sale it would have created as adverse effect on the company and would have adversely affected the interest of Larsen and Toubro Ltd., and that it was not possible to know the actual purchasers of these shares from BOB Fiscal Services Ltd.

Dismissing the matters, the Court,

HELD:

(Per Ray, J).

1. The application for consent was submitted on Rs. 26.7.89 for sanction. On August 21, 1989 at the extraordinary general meeting of share holders of L & T, a resolution was passed, with only one shareholder dissenting, for the issue of debentures of Rs. 820 crores. The company sent a copy of this resolution to the Controller of Capital Issues who after duly considering the same accorded the consent on August 29, 1989. It cannot be said that there has been complete non-application of mind by the Controller of Capital Issues in according the consent for the issue Moreover, the Controller of Capital Issues sent a letter dated 15 September, 1989 toM/s. Larsen and Toubro asking it to note amendment of the condition of the consent order to the effect that fund utilisation shall be monitored by Industrial Development Bank of India. This will further go to show that the consent was given after due consideration in accordance with the provisitions of Section 3 of the Capital Issues (Control) Act, 1947. [
355C-E]

2. In view of Sections 55, 61, 62, 63 and 72 of the Companies Act the terms of contract mentioned in the prospectus or the statemets in lieu of the prospectus cannot be varied except with the approval of and on the authority given by the Company in the general meeting. Therefore, the consent that was given by the Central Government, may by the Controller of Capital Issues, on a consideration of the special resolution adopted in the extraordinary general

meeting of the shareholders of the company on august 28, 1989 cannot be varied, changed or modified both as regards the reduction of the amount of debentures as well as the purposes for which the fund will be utilised contrary to what has been embodied in the prospectus and approved by the Controller of Capital Issues on the basis of the special resolution adopted at the general meeting of the shareholders of the company. [363A-C]

3. On a plain reading of section 3(6) of the Capital Issues (Control) Act, 1947, it cannot be inferred that consent order given by the Central Government after consideration of the special resolution passed at the general meeting of the company on taking the no objection certifi-

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cation from the I.D.B.I. can be changed or varied in any manner whatsoever by the Central Government. The Central Government can merely vary all or any of the conditions subject to the consent being given. [363F]

4. There has been no general meeting of the company nor any special resolution was taken for veriation or reduction of the amount of debentures to be issued as, required under Section 81 read with clause IA of the Companies Act. It is also evident that no steps have been taken to have the consent already granted by Controller of Capital Issues, varied or modified as required under the Capital Issues (Control) Act, 1947. Merely because clause (v) of the consent order provides for monitoring of the funds by I.D.B.I.,it does not mean nor it can be inferred automatically that the suggestion of the I.D.B.I. as regards the funds requirement can be automatically given effect to without complying with the statutory requirements as provided in the provisions in the Companies Act as well as in the Capital Issues (Control) Act.The consent order is one and indivisible and as such the same cannot be varied or vivisected without taking recourse to the provisions of the statute. It is also well settled that the contract to purchase shares or debentures is concluded by allotment of shares issued under the prospectus and Section 72 of the Companies Act makes it clear that allotment can only be made after the propectus is issued. The Company is bound by the special resolution, the prospectus and the consent of the Controller of Capital Issues. The power to pass a consent order is a statutory power vested in a statutory authority under the Capital Issues Act and the Court has no power of jurisdiction to step into the shoes of the statutory authority and pass or approve a consent order different from the statutory consent order given by the statutory authority. Moreover, the consent order cannot be varied by the Central Government or Controller of Capital Issues after the said order has been made public and third parties have acted on it and acquired rights thereon. [363G-H;364-E]

State of Madhya Pradesh and Ors. v. Nandlal Jaiswal and

Ors. [1986] 4 SCC 566 and Aaron's v. Twiss, [1896] A.c. 273 referred to.

Palmer's Company law, 24th Edition by C.M. Schmitthoff, pp. 332-333, referred to.

5. In the prospectus of Larsen & Toubro Ltd. it has been mentioned that Larsen and Toubro Ltd. is part of Reliance Group. This is in accordance with Section 2(g) of the Monopolies and Restrictive

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Trade practices Act, 1969 which defines " interconnected undertakings", which is quite in accordance with this provision of Section 81(1A) of the Companies Act, 1956. In the extraordinary general meeting of L & T a special resolution was made providing for preferential allotment of debentures to the equity shareholders of R.I.L. and R.P.L. so the reservation of debentures of the value of Rs. 310 crores of Public issue for allotment to shareholders of R.I.L. and R.P.L. cannot be questioned. In the prospectus of L & T Ltd. under Business Plants it has been mentioned that the requirement of funds of the company for the period from 1st October 1989 to 31st March, 1992 including in respect of Suppliers credit to be extended to customers under turnkey projects/ quasi-turnkey projects and for incurring capital expenditure on new plant and equipment, normal capital expenditure on modernisation and renovation, meeting additional working capital requirements and for repayment of existing loan liability, is estimated to be in the region of Rs. 1425 crores. The suppliers' credits included Rs. 510 crores to be extended to RIL in respect of its Cracker Project. The funds requirement was intended to be met out of the present issue of Debentures to the extent of Rs. 820 crores and the balance would be met from internal accruals by way of short term borrowings, and out of the proceeds of the previous Debenture Issue (III Series). It is seen from the letter dated 2.12. 1988 issued by Government of India to M/s. Reliance Industries Ltd. endorsing a copy of Central Government's order dated 25.11.1988 passed under Section 22(3) (e) of the Monopolies and Restrictive Trade Practices Act, 1969 that it gave approval for the proposal of M/s. Reliance Industries Ltd. for setting up a cracker complex. The approval of Central Government was made under Section 22(3) (d) of the M.R.T.P. Act and communicated to M/s. Reliance Petrochemicals Ltd. by letter dated 30.5.1989. Consent was also given by the Central Government under Section 22(3)(a) of the M.R.T.P. Act for the establishment of a new undertaking for the manufacture of Acrylic Fibre. Thus the consent given by Controller of Capital Issues cannot be challenged on the ground that no M.R.T.P. clearance for the issue of Capital under Section 21 or under Section 22 of the M.R.T.P. Act was not given. [356D-H;357A-B]

Narendra Kumar Maheshwari v. Union of India & Ors., J.T. [1989] 2 S.C.338, referred to.

6.1. The public financial institutions should be very prudent and cautious in transferring the equity shares held by them not only being guided by the sole consideration of earning more profit by selling them but by taking into account also the factors of controlling the finances in

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the market in public interest. The public financial institutions while transferring or selling bulk number of shares must consider whether such a transfer will lead to acquisition of a large proportion of the shares of a public company and thereby creating a monopoly in favour of particular group to have a controlling voice in the company if the same is not in public interest and not congenial to the promotion of business. [351F-G]

6.2. Considering the entire sequence of events and the manner in which the financial institutions sold those 39 lakh equity shares of L & T to BOB Fiscal Service which immediately after purchase of those shares with the 30 crores of rupees given by 4 satellites of the Reliance Group transferred those shares to Trishna Investments and Leasing Ltd., a satellite of Ambani Group though it had a capital of only Rs. 44,000 and money required for purchase was at least Rs. 39 crores, leads to the conclusion that such transfers had been made to help the Ambanis to acquire the shares of L & T Company in a circuitous way. In the instant case, all the circumstances taken together clearly spell some doubt whether the transfer of such a huge number of 39 lakh shares by the Public Financial Institutions was for public interest and was made on purely business principles. However, since the financial institutions have already bought back all the 39 lakh shares from Trishna Investment and Leasing Ltd. with the accretions thereon, nothing turns on it. [350F-H; 351A-F]

L.I.C. of India v. Escorts Ltd., A.I.R. 1986 SC 1370, distinguished.

7. The Writ Petitions filed as Public Interest Litigation Challenging the consent issued by the Controller of Capital Issues, are maintainable.

S.P.Gupta & Ors. v. Union of India & Ors. [1982] 2 SCR 365; Bandhua Mukti Morcha v. Union of India & Ors. [1984] 2 SCR 67 and LIC of India v. Escorts Ltd., [1986] 1 SCC 264, relied on.

(Per Kasliwal, J., Concurring)

1. So far as the relief of a writ of mandamus directing the respondents to recover 39 lakh shares of L & T and pay back the amounts received therefor, does not survive in view of the shares having been already bought back by the financial institutions from Trishna Investments. However, for future guidance it may be worthwhile to note that public financial institutions while making a deal in respect of a very

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large number or bulk of shares worth several crores of

rupees must also make some inquiry as to who was the purchaser of such shares. Such transaction should be made with circumspection and care to see that the deal may not be to camouflage some illegal contrivance or in built conspiracy of a private monopoly house in order to usurp the management of a public company and which may not be in public interest. [371E-G]

State of Maharashtra v. Ramdas Shriniwas Nayak & Anr., [1983] 1 SCR 8, referred to.

2. It cannot be said that there was nothing wrong or illegal even if the action of Reliance Group was to corner or purchase all the shares of L& T, and even if done through intermediaries or surreptitiously, cannot become illegal.

Babulal Chaukhani v. Western India Theatres, AIR 1957 Cal. 709 disapproved.

3.1 No doubt any person or company is lawfully entitled to purchase shares of another company in open market, but if the transaction is done surresptitiously with a mala fide intention by making use of some public financial institutions as a conduit in a clandestine manner, such deal or transaction would be contrary to public policy and illegal. [372B]

3.2 In the instant case, all the circumstances taken together clearly spell some doubt whether the transfer of such a huge number of 39 lakh shares by the public financial institutions was for public interest and was made on purely business principles [372H;373A]

4. As regards the preferential issue of Rs. 310 crores in favour of shareholders of the Reliance Group of companies is concerned, L & T and Reliance Group of companies were interconnected within the meaning of Section 2(g) of the MRTP Act and it is permissible according to law. The size of the issue was so large that it was considered necessary to reserve a substantial portion of it in favour of the shareholders of Reliance Group of companies, in order to ensure the successful absorption of the entire issue. It may also be noted that the shareholders of the Reliance Group of companies are numbering about 35 lakhs and they represent the investor base of the entire shareholding community of the country. Preferential issue per se is not a novel idea. The Controller of Capital Issues has been permitting reservations for various categories out of public issue based on the request made by companies after passing a special resolution in the general body meeting and there is no

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restriction on the shareholders of a company to offer shares of their company to any body after passing a special resolution as required under Section 81(1-A)(a) of the Companies Act. The question of bifurcating or vivisecting the consent order given by CCI does not survive. The legal controversy thus raised that the consent given by CCI under the Capital Issues (Control) Act can be held valid or

invalid as a whole but not some part of it as valid and the rest invalid, does not require to be decided in this case and the same is left open. [385A-F]

State of Madhya Pradesh v. Nandlal Jaiswal & Ors. [1987] 1 SCR 54; Life Insurance Corporation of India v. Escorts Ltd & Ors., [1985] Suppl. 3 SCR 909: Jai Narain v. Surajmull, AIR 1949 F.C. 211 and Anisminic Ltd. v. The Foreign Compensation Commission, [1969] 2 A.C. 147, referred to.

De Smith's judicial Review of Administrative Action, 4th Edition p.285 referred to.

It is bounden duty of the CCI before giving an order of consent for the issuance of any mega issue to keep in mind and to carry out the Directive Principles of State Policy as enshrined in Article 39(b) and (c) of the Constitution. It is no doubt correct that the CCI is not required to probe indepth into the technical feasibilities and financial soundness of the proposed projects or the sufficiency or otherwise of the security offered, but at the same time it has to see that the capital available for investment at any given time has to be sized and allocated according to the national priorities, and in the changed socio-economic conditions of the country to secure a balanced investment of the country's resources in industry, agriculture and social services. [386D-H; 387A-B]

Narendra Kumar Meheshwari v. Union of India, JT 1989 2 SC 238, explained.

6. It would not be in the interest of general investor public to cancel the entire mega issue. Many transactions must have already taken place on the floor of the stock exchange regarding the sale and purchase of the debentures during this intervening period. Under the order of this Court dated 9.11.89, no restrictions were placed on L & T in the matter of utilisation of funds. According to L & T against Rs. 410 crores due on application and allotment, the L & T has so far received Rs. 396 crores out of which approximately Rs. 300 crores have been utilised towards issue expenses, capital expenditure, repayment of loans and working capital in terms of the objects of the issue. The balance

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available with the company is approximately Rs. 96 crores only. There is already a safeguard provided in the order of the CCI dated 15.9.89 that the fund utilisation shall be with the approval of the IDBI. In any case, the consent order given by CCI cannot be held invalid on any of the grounds of Challenge raised by the petitioners. In these proceedings this Court is neither called upon nor is entitled to decide as to how and in what manner the amount mopped up from the public by this mega issue could be utilised or spent. Thus, the consent given by CCI is valid. [388C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Transferred Case No. 61 of 1989 etc. etc. (Under Article 139-A of the Constitution of India). Soli J. Sorabjee, Attorney General, Ashok Desai, Solicitor General, N.Santosh Hegde, Addl. Solicitor General, B.R.L. Iyengar, F.S. Mariman, T.R. Andhiyarujina, I. Chagla, Dr. Y.S. Chitale, Dr. L.M. Singhvi, Tapas Ray, G.Ramaswamy, S.S. Ray, Ashok Sen, R.K. Garg, K.Parsaram, Ram Jethmalani, Rajesh Kumar, R.Karanjawala, Mrs. M.Karanjawala, Ram Dashandhi, N.P. Midha, F.H.J. Talayarkhan, Gopal Subramaniam, R.F.Nariman, V.B.Trivedi, S.C.Sharma, Bharat Sangal, Miss A.Subhashini, Rajan Mahapatra, S.S.Shroof, S.A. Shroff, N.Roy, Mrs. Pallavi S.Shroff, A.K.Ghose, A.M. Singhvi, Sandeep Junakar, Shahid Rizvi, D.K. Singh, Dalveer Bhandari, A.K.Sangal, K.Swami, N.D.B. Raju, Vineet Kumar, H.Salve, Ms. Bina Gupta and Ms. Monika Mohil for the appearing parties.

Onkar Seth appeared in person for the Intervenor. The Judgment of the court was delivered by RAY, J. One Mr. Haresh Jagtiani, a practising advocate of the High Court of Bombay and a policy-holder under the Life Insurance Corporation of India and also holder of units issued by the Unit Trust of India and Mr. Shamit Majumdar, a holder of shares and debentures of Larsen & Toubro Ltd. filed a writ petition being No. 2595 of 1989 in the High Court of Judicature at Bombay against the Union of India and others including the financial institutions questioning the legality and validity of the consent given by the Controller of Capital Issues for the proposed issue of convertible secured debentures aggregating Rs. 820 crores by Larsen & Toubro Limited insofar as the said issue seeks to offer such convertible debentures to persons other than the existing shareholders and members and the employees of Larsen & Toubro Limited and praying for quashing the same as well as for a declaration that the transfer of 39 lakh shares of Larsen & Toubro Ltd. held by Unit Trust of India, Life Insurance Corporation of India. General Insurance Company and its subsidiaries to Trishna Investment & Leasing Ltd. through the instrumentality of BOB Fiscal Services Ltd. is arbitrary, illegal, mala fide and a fraud on the statutory powers of the respondents and is clearly ultra vires of Article 14 and 39(b) and (C) of the Constitution on the allegations that in or around the middle of the year 1988 the respondents entered into a secret agreement by which a large chunk of the eqquity shares of Larsen & Toubro Ltd., the largest engineering company in India, would stand surreptitiously divested by the respondents in favour of the Ambani Group, the third largest monopoly house in India. This divestment was achieved not directly but, indirectly and with a motive to conceal the real nature of the deal by interpolating BOB Fiscal Services Ltd. (a wholly owned subsidiary of Bank of Baroda) as the conduit for the transfer of shares from the public financial institutions to the satellite companies of the Ambani Group.

The petitioners also alleged in the petition that pursuant to this secret agreement, the following events took place in quick succession:

> In or around August 1988, four satellite companies of Reliance Group, namely Skylab Detergents Limited, Oskar Chemicals Private Limited, Maxwell Dyes and Chemicals Private Limited and Pro-lab Synthetics Private Limited, gave a total deposit of Rs.30 crores to an investment company associated with Ambanis who, in turn, deposited

this amount with BOB Fiscal Services Ltd., a wholly owned subsidiary of Bank of Baroda, a nationalised bank.

BOB Fiscal Services Ltd., which had been formed only three months earlier acquired either immediately before the above deposite, or immediately subsequent thereto, 33 lakh equity shares of Larsen & Toubro from UTI, LIC, GIC and its subsidiaries. Later, in January, 1989 it acquired a further 6 lakh shares from the LIC.

Within weeks after the deposit by the four companies mentioned above, Trishna Investments and Leasing Limited, another satellite company of the Ambani Group, aid the requisite amounts for the acquisition of the said 33 lakh shares in Larsen & Toubro from BOB Fiscal Services Ltd. to the latter through a stock broking firm and immediately thereafter the money advanced by the above four companies was returned by BOB Fiscal Services Ltd. through the investment company associated with Ambanis, which was earlier used as a conduit for making the deposit from the four satellite companies of Reliance Group.

The deposit by the four companies was made immediately after the divestment of the shares by the respondents was okayed by the highest level in the Government and the deposit was returned immediately after the Ambani Group was able to divert moneys taken by them in the name of Reliance Petrochemicals Ltd. by the issue of convertible debentures of the order of Rs.594 crores.

The said 33 lakh shares were registered in the name of BOB Fiscal Services Ltd. in the Register of Members of Larsen & Toubro Ltd on 11.10.1988 and later, on 6.1.1989, a further 6 lakh shares were registered in the name of the BOB Fiscal Services Ltd. on any valuation based on market values of Larsen & Toubro Ltd. shares at the relevant time, the value of 39 lakh shares would cost not less than Rs.45 crores.

On the very day of the registration of the shares in the name of BOB Fiscal Services Ltd., namely, 11.10.1988, two nominess of the Ambani Group, Mr. Mukesh Ambani and Mr M. Bhakta, a solicitor of Reliance Industries, joined the Board of Larsen & Toubro Ltd. and were co-opted as additional directors.

Subsequently, on 30th December, 1988, Mr. Anil Ambani another nominee of the Ambani Group was also co-opted on the Board of Larsen and Toubro Ltd., as an additional director.

On 6th January, 1989, the entire 39 lakh equity sharhes of Larsen and Toubro Ltd. registered in the naame of BOB Fiscal Services Limited (of which 6 lakh sahres transferred to BOB Fiscal Services Ltd. by LIC was registered in the name of BOB Fiscal Services Ltd. only on 6.1.89) were transferred to Trishna Investments and Leasing Ltd., which is a satellite company of the house of Ambanis.

Thus, BOB Fiscal Services merely acted as a conduit for funneling shares from the public financial institutions to the Aambani group and this interpolation of BOB Fiscal Services was necessitated to get over the legal impediments in the way of selling any part of the controlling shares held by public financial institutions to private parties by private deals except to those already in management and

at a price equal to two times the market price.

The Chairman of Bank of Baroda, Mr. Premjit Singh, is closely linked to the house of Ambanis through the business of his son Harinder Singh. BOB Fiscal Services Ltd. is the wholly owned subsidiary of Bank of Baroda and it was incorporated only two months preceding the acquisition of Larsen & Toubro Ltd. shares by BOB Fiscal Services Ltd. In fact, the acquisition of L & T shares for the Ambani Group for which it had acted as a conduit is the first business of BOB Fiscal Services Ltd.

Subsequently, on 28th April, 1989, Mr. Dhirubhai Ambani, the Chairman of Reliance Group, became the Chairman of Larsen & Toubro Ltd., thus completing the process to take-over of the management of Larsen & Toubro by the Ambani Group.

By this process, the public financial institutions which had virtual ownership and control of Larsen & Toubro Ltd. holding about 40% shares of the company (with no other individual shareholder holding more than 2%), voluntarily diluted their holdings to 33% and parted with approximately 7% to the house of Ambanis and made them the single largest private sharesholder. This was done, in the submission of the petitioners, deliberately and by a design to legitimise the eventual take-over of Larsen & Toubro by the Ambanis. While the petitioners challenge the divestment of 7% ownership rights in Larsen & Toubro Ltd.and the management of the company to the Ambani Group, the immediate and proximate provocation for this writ petition is the proposed issue of convertible debentures by Larsen & Toubro Ltd.now under the management of the house of Ambanis to raise Rs.820 crores from stock market.

The proposed issue has the effect of aggravating and perpetuating, and irretrievably divesting and transferring, the ownership, of Larsen & Toubro in favour of the Ambani Group. The concealed and covert intent which is manifest in the direct effect of the proposed issue is to make Larsen & Toubro Ltd. a complete family owned and a decisively family controlled Industrial Corporation-whereas the openly declared policy of the Government is to force the reverse viz. professionalise the existing family controlled companies. By the proposed issue, the house of Ambanis and the shareholders,debenture holders and employees of Reliance Industries and Reliance Petrochemical Industries Ltd. would collectively hold 35.5% of the ownership rights in Larsen and Toubro and will be single largest block or group in the company. This preferred group which is not in law entitled to any issue of shares from Larsen & Toubro Ltd., has been chosoen to be the preferential beneficiaries of the scheme under which they would get shares in Larsen & Toubro Ltd at Rs.60 per share when the share holders of Larsen & Toubro Ltd. themselves (who, bylaw, are entitled to further isue of shares from Larsen & Toubro Ltd.) would be issued Larsen & Toubro shares under the convertible debentures issued in April 1989 only at Rs.65 per share. Thus, as against 35.5% holding of Ambani-Reliance Group, the public finance bodies, which held 40% shares before they diluted their holdings in favour of the Ambani group, would have had their holding further diluted to only 22.9% as a result of the present issue. In other words, by approving the terms of the proposed issue the public financial institutions have agreed to a further dilution of their holdings from 32.8% to 22.9% without any consideration whatsoever for agreeing to such reduction and to pass on their vested rights u/s 81 of the Companies Act to pre- emptive allotment of shares in Larsen & Toubro to the

members, debentureholders and employees of Reliance Industries Ltd.and Reliance Petrochemicals Ltd. It is in this background significant that the preferential allotment to the shareholders, debentureholderss and employees of the house of Ambanis who have no statutory right, offers to them shares in Larsen & Toubro Ltd at a premium of only Rs. 50 per share, while in the fully convertible debentures issue made by Larsen & Toubro Ltd.in April/May, 1989 the existing shareholders of Larsen & Toubro were given conversion rights at a premium of Rs.50 per share in the first conversion and Rs.55 per share in the second conversion i.e. Rs.5 more than what the Reliance Group is called upon to pay. It means that while the existing shareholders of Larsen & Toubro were paying for their own shares a premium of Rs.50 or Rs.55 per share, new group of shareholders, debentureholders and employees of the house of Ambanis would be getting Larsen & Toubro shares at a premium of only Rs.50. It means that, by making extraordinay favour to a totally different group which is not entitled to Larsen & Toubro shares, the Ambani group is creating a favoured lobby of their own, almost a clan, who are already their shareholders, debentureholders and employees to act as a group to own and control Larsen & Toubro Ltd. This is a device to perpetuate and aggravate their own decisive control over Larsen & Toubro, to which the public financial institutions are willing and enthusiastic parties inside the Board room and in the general meeting of Larsen & Toubro Ltd.

In the facts and circumstances the petitioners pleaded that they are entitled to a declaration that the divestment by the respondents of the controlling shares in larsen & Toubro to the house of Ambanis in a secret and circuitous arrangement is arbitrary illegal, mala fide and a fruad on the statutory powers of the respondents. It was further pleaded that pursuant to this secret arrangement the financial institutions such as the UTI, LIC, GIC and its subsidiaries divested themselves of 7% shares of Larsen & Toubro Ltd. in favour of Ambani Group in an illegal and arbitrary manner as a result of which the Ambani Group became the single largest private shareholder. This paved the way for the said private monopoly group and the government to rationalise the take- over of the management of Larsen & Toubro Ltd. by the Ambani Group with the active connivance and support of the Central Government.

The modus operandi adopted for the transfer was as under:

> (a) In the month of May 1988, Bank of Baroda of which Mr. Premjit Singh is the Cahirman, forms a susidiary for merchant banking under the name and style of BOB Fiscal Services P. Ltd. This Compay became a public company u/s 43 A of the companies Act 1956, in June, 1988. Mr. Harjit Singh, son of Premjit owned a company 'Krystal Poly Fab. Ltd.' whose only business is texturising of partially oriented yarn from Reliance Industries Ltd.

and the supply of texturised yarn back to Reliance Industries Ltd. or its nominees.

(b) On 5th August, 1988, four satellite companies of the House of Ambanis, viz. SKYLAB Detergents Ltd., OSCAR Chemicals Pvt. Ltd., MAXWELL Dyes & Chemical Pvt. ltd. and PRELAS Synthetics Pvt. ltd. gave a total deposit of Rs.30 crores to an investment company, associated with Reliance who, in turn, deposited the same amount with BOB Fiscal Services.

(c) Either immediately preceding this deposit or immediately thereafter, BOB Fiscal Services acquired 33 lakh equity shares in Larsen & Toubro Ltd. from the UTI, LIC and GIC and its subsidiaries. later, it acquired a further 6 lakh shares in Larsen & Toubro Ltd. from the LIC. The manner in which the transfer had been effected by the public financial institutions and the bulk sale amounting to about 7% of the then share capital of Larsen l& Toubro Ltd. left no one in doubt about what the financial institutions intended to do, viz. they intended to shed a vital seven per cent of the ownership rights held by them in Larsen & Toubro Ltd.

(d) In July, 1988 Reliance Petrochemicals Ltd. of the Ambani Group had issued convertible debentures for Rs.594 crores to public and others and had raised a vast sum of monies as subscription. The petitioners understand that as soon as the above funds became available to the Ambani group for employment, a part of it was diverted for acquisition of Larsen & Toubro Ltd. shares not directly in the name of Reliance Industries Ltd. or Reliance Petrochemicals Ltd. but in the name of faceless, benami concerns of the Ambani group with vitrually no financial standing of their own.

(e) Thereafter on October 11, 1988 the 33 lakh equity shares of Larsen & Toubro Ltd. acquired by BOB Fiscal Services Ltd. were registered in the register of members of Larsen & Toubro ltd. in Folio No.B 69567 at pages 1851 to 1858. These shares had been transferred by LIC, UTI, GIC and its subsidiaries to BOB Fiscal Services Ltd.

(f) On the same day two nominees of the Ambani Group Mr.Mukesh Ambani and Mr.M.L.Bhakta, a Solicitor of Reliance Industires Ltd., who are also directors of Reliance Industries Ltd. and Reliance Petrochemicals Ltd., were co-opted on the Board of Larsen & Toubro Ltd.

(g) It is evident from the above events that the sale to BOB Fiscal Services Ltd. by the financial institutions was accepted by all parties concerned to be a sale to the Ambani Group itself. Otherwise there is no provocation or justification for the financial institutions to propose or to support appointment of Mr.Mukesh Ambani and Mr.M.Bhakta, who are the nominees of the Ambani Group, on the Board of Larsen & Toubro Ltd. The date of the transfer to BOB Fiscal Services Ltd. and the date of appointment of the Ambani Group nominees on the Larsen & Toubro Ltd. Board being the same and not a mere coincidence.

(h) Again, in December, 1988, Mr.Anil Ambani, another nominee of the Ambani Group was co-opted on the Board of Larsen & Toubro Ltd. as an Additional Director with the support of financial institutions even though the 33 lakh shares still stood in the name of BOB Fiscal Services Ltd.

It has been further pleaded that Trishna Investments & Leasing Ltd. to which the 33 lakh equity shares of Larsen & Toubro Ltd. were sold by the financial institutions through the instrumentality of BOB Fiscal Services Ltd. was incorporated as a private limited company on Ist October, 1986 with a paid up capital of Rs.11,000. It is evident that even after acquisition of 3,300 equity shares of Rs.10 each to Reliance Industries Ltd., the paid up share capital was only Rs.44,000.

An affidavit in opposition was filed on behalf of the respondents by Mr.S.D.Kulkarni, a whole-time Director and Vice-President (Finance) of Larsen & Toubro Ltd. In para 6 of the said affidavit it has been stated that the shareholders are different and distinct from the company and do not have any interest whatsoever in the property of the company unless and until the winding up takes place. The company is a distinct legal entity and it does not have in law or fact any control over the shareholders in regard to the dealing with their investment in the new company or any other company. It has been further stated that the Resolution regarding the issue of the debentures was taken at a special General Meeting of the Company and the decision is a near unanimous decision of the 1.5 lakh shareholders with only one dissent among them. It was stated in these circumstances the writ petition under Article 226 was not maintainable. It has also been stated that the entirety of the consent granted by the CCI under the Act is legal and valid. These statements have been made by the deponent without filing any proper verification or affidavit and as such there was no proper controvertion or denial of the statements made in the writ petition. The other affidavits filed on behalf of the respondents are also not affirmed or verified duly in accordance with the provisions of the rules of the Supreme Court nor in accordance with the provisions or Order 19 Rule 3 of the Code of Civil Procedure.

The High Court of Bombay by its judgment and order dated September 29, 1989 dismissed the writ petition at the preliminary hearing.

A Letters Patent Appeal was filed in the High Court at Bombay against the said judgment by the petitioners. The respondents filed Transfer Petition Nos.506-507/89 and Transfer Petition Nos.571-573 of 1989 in this Court under Article 139A of the Constitution of India praying for the transfer of the said Letters Patent Appeal No.-----/89 as well as writ petition No.13199/89 filed in the High Court at Madras of one Mr.N.Parthasarathy, a shareholder of L & T Ltd. against the Controller of Capital Issues and Larsen & Toubro Ltd. and Writ Petition no. 18399 of 1989 filed in the Karnataka High Court by Prof.S.R.Nayak and Anr. against the Union of India & Ors. raising the similar questions.

This Court vide its order dated November 9, 1989 allowed the Transfer Petition Nos.506-507 of 1989 and 571 to 573 of 1989 and directed that the L.P.A. No.---- of 1989 against the judgment passed in Writ Petition No.2595 of 1989 pending in the Bombay High Court be transferred to this Court for final disposal. The Writ Petition No.13199 of 1989 filed in the Madras High Court and the Writ petition No. 18399 of 1989 filed in the Karnataka High Court were also transferred to this Court. These matters on transfer to this Court were numbered as Transfer Case No.1 of 1989, Transfer Case No.61 of 1989 and Transfer Case No.62 of 1989 respectively.

The Transfer Petition Nos.458-467 of 1990 praying for the transfer of cases filed in different High Courts raising the similar grounds are allowed and the Tranferred Cases arising out of these are also heard along with the Transferred Cases Nos.1 of 1990, 61 of 1989 and 62 of 1989.

Two questions that pose themselves for consideration in all these above cases are: 1) whether the surreptitious divestment of 39 lakhs shares of L&T, large Industrial undertaking by sale through the instrumentality of BOB Fiscal Services Ltd., a subsidiary of a nationalised Bank i.e. Bank of Baroda

by the public financial institutions G.I.C., L.I.C., U.T.I. and thereby helping a private monoploy house of the Ambani Group to acquire the said shares and thereby to get into the management of the Public Company amounts to an arbitrary exercise of statutory power of the State and the respondents. Secondly, whether the consent accorded by Controller of Capital Issues, to preferential issue of debentures by Larsen & Toubro Ltd. of Rs.310 crores for being subscribed by the shareholders and employees of R.P.L., R.I.L. amounts to immeasurable injury and prejudice to the public without any application of mind and thereby enabling the Ambani group to have the largest share holding and thereby to control the L & T Company which is ultra vires of Article 14 and 39(b) and (c) of the Contitution.

The Larsen & Toubro Ltd. is a public limited company incorporated under the Companies Act 8 of 1913 and it is recognised as a Premier Engineering Company in the country with a pool of highly trained and experienced people. It has been engaged in diverse activities in the engineering filed, cement manufacturer, shipping, switch gear, industrial machinery, electrical equipments etc. and various other core Sector industries including manufacture of sophisticated equipment for space and defence programmes of the country. On October 1, 1989, Trishna Investment and Leasing Ltd., a satellite company of the Ambani group was incorporated with paid up capital of Rs.11000 (1,000 shares of Rs.10 each). This continued till 29.12.1988 when its capital was raised to Rs.44,000.

In May, 1988, Bob Fiscal Services Ltd., was incorporated as a wholly owned subsidiary of Bank of Baroda, a nationalised bank.The entire share capital of Bob Fiscal Services Ltd. was contributed by Bank of Baroda aggregating to about Rs.10,00,00,000 (Ten Crores) to undertake mutual fund activities. It is to be taken notice of in this connection that Premjit Singh, was the Chairman of the Bank of Baroda aat the relevant time and his son Harjeet Singh owned Kristal Poly Fab. Ltd. whose only business is with R.I.L. Ltd. Premjit Singh is closely linked to the house of Ambani's through the business of his son Mr.Harjeet Singh. Bob Fiscal Services Ltd., was incorporated as a subsidiary of Bank of Baroda only two months prior to the acquisition of shares of Larsen & Toubro Ltd., for the Ambani group for which it had acted as a conduit and it was the first business of Bob Fiscal Services Ltd. On July 15, 1988 Bob Fiscal Services Ltd., approached Life Insurance Corporation of India and Unit Trust of India to sell to it two `baskets', of blue chip shares of the value of Rs.25 crores approximately each. This will be evident from para 6(c) of the affidavit of Unit Trust of India. On August 1, 1988 U.T.I and L.I.C. each offered to sell to Bob Fiscal Services Ltd. a basket of shares valued at Rs.25 Crores. The U.T.I. basket was valued at Rs.23.66 crores including 10 lakh Larsen & Toubro Ltd. shares which were sold at Rs.108 per share. The L.I.C. Basket was valued at Rs.25.56 crores and it included 15 lakh L & T shares. L & T shares constituted approximately 55% of the value of the two baskets. This is clear from para 6(d) of the affidavit of Unit Trust of India. On 3.8.88 Bob Fiscal Services Ltd. accepted the two baskets of shares comprising of 25 lakhs L & T shares and shares of 7 other companies valued in total Rs.50.23 crores. On August 5, 1988 four satellite Companies of the Reliance Group gave Rs.30 crores to V.B.Desai, Finance Broker, who in turn gave a short term call deposit of Rs.30 crores to Bob Fiscal Services Ltd. as is evident from the affidavit filed by Bob Fiscal Services Ltd. On August 5, 1988, Bob Fiscal Services Ltd. sold 25 lakhs L & T shares to V.B.Desai, the Broker. Thus Bob Fiscal Services Ltd. acquired 33 lakhs equity shares of L & T from U.T.I., L.I.C., G.I.C. and its subsidiaries. Later in January, 1989 it acquired a further 6 lakh shares from the L.I.C. within weeks after the deposit by the four companies mentioned above.

Trishna investment and Leasing Ltd., another satellite company of the Ambani Group paid the requisite amounts for the acquisition of the said 33 lakh shares of L & T from Bob Fiscal Services Ltd. through the Finance Broker, V.B.Desai, associated with Ambanis. It is convenient to mention in this connection that in July, 1988 the Reliance Petro Chemicals Ltd. of the Ambani Group issued convertible debentures for Rs.594 crores to the public and others and had raised a vast sum of rupees as subscription. The Ambani Group diverted a part of it for acquisition of L & T shares in the name of benami concerns of their group who had virtually no financial standing.

On October 11, 1988, 33 lakh shares were registered at a meeting of Board of Directors of L & T in the name of Bob Fiscal Services Ltd. On the same day two nominees of R.I.L., M.L.Bhakta and Mukesh Ambani, who are directors of R.I.L./R.P.L. were co-opted as Directors of L & T. The nominee directors of U.T.I., L.I.C. and I.D.B.I. did not raise any question as to the induction of Ambani's on the Board of L & T Company even though not a single share of L & T stood in their names. On Dember 30, 1988, Trishna Investment & Leasing Ltd. issued 3, 300 equity shares of Rs.10 each to R.I.L and R.P.L. Ltd. The capital of Trishna Investment was Rs.44,000. On that day the registered Office of Trishna Investment was shifted to Maker Chamber IV i.e. the office of R.I.L.Ltd. On 30-12-1988 Anil Ambani was co- opted as Director of L & T without any question being raised by nominee directors of U.T.I, L.I.C. and I.D.B.I. On 6.1.89 the 39 lakh shares sold by U.T.I., L.I.C. and G.I.C. to Bob Fiscal Services Ltd. were lodged by bob Fiscal Services Ltd. for transfer in favour of Trishna Investment & Leasing Ltd. whose registered office was located at the office of R.I.L. Thus Bob Fiscal Services Ltd. merely acted as conduit for funneling shares from the public financial institutions to the Ambani group. This apparent from the fact that Mr.Premjit Singh, the Chairman of Bank of Baroda who is closely linked to the house of Ambani through the business of his son Mr.Harjeet Singh and Bob Fiscal Services Ltd. is the wholly owned subsidiary of Bank of Baroda and it was incorporated only two months preceding the acquisition of Larsen and Toubro Ltd. shares by it.

On 28th April, 1989 Dhirubhai Ambani, the chairman of Reliance Group, became the Chairman of Larsen and Toubro. By this process the public Financial Institutions which held 40% of the shares of L & T company voluntarily diluted their holding to 33% and parted with approximately 7% to the house of Ambani's and made them the single largest private shareholder. This was done as submitted by the appellants delibeately and with a design to legitimise the eventual take over of Larsen & Toubro by the Ambanis. It is to be noticed that on 26.5.89 the Board of Directors of L & T decided to convence an annual General Meeting on 27.7.89. Board also resolved to recommend that 8 crores be invested in two specified companies and that a further sum of Rs.50 crores be invested in the purchase of equity shares in any other company. On 23.6.1989 Board of Directors of L & T further resolved to invest a sum of Rs.76 crores in the purchase of Equity shares of R.I.L. On 21.7.89 R.I.L. and R.P.L. wrote letters to L & T seeking suppliers credit to the extent of Rs.635 crores for projects which they planned to entrust to L & T. It is appropriate to note that prior to this the total inter corporate investment of L & T was approximately Rs.4 crores and investment in the shares of other companies was less than Rs.50 lakhs. On 22.7.89 the Board of Directors of Larsen & Toubro approved a proposal to raise funds byissue of convertible debentures amounting to Rs.920 crores. Board resolved that notice should be issued convening an extraordinary general meeting on 21.8.89 to consider special Resolution for issue of convertible debentures of Rs.920 crores.

On 26.7.89 two applications were made to C.C.I. for (1) the right issue of Rs.200 crores and (ii) the public issue of Rs.720 crores.The applications states that it is proposed to reserve preferentially allotment of Rs.360 crores out of public issue (i.e. 50% of the public issue) for L & T group companies viz. Reliance Industries Ltd. and Reliance Petrochemicals Ltd. The application further mentions that Dhirubhai Ambani is the Chairman and Mukesh Ambani is the Vice-Chairman of L & T and that Anil Ambani and Mr.M.L.Bhakta are Directors. On 11.8.89 further letter was addressed by L & T to the C.C.I. forwarding copies of M.R.T.P. clearance with regard to projects awarded to L & T made by Central Government under Section 22(3)(a) of M.R.T.P. Act. On 29.8.1989 C.C.I. passed an order approving the issue of convertible debentures. The prospectus is dated 5.9.89 stating that the company is part of the Reliance Group.

We have heard the arguments of the respondents. The public financial institutions tried to justify the transfer of blue chip equity shares of Larsen & Toubro Ltd. On the ground that while deciding to sell those shares they acted purely on business principles and sold those shares at a very high market price and thereby earned huge profit. These sales were made in order to earn much profit for the interest of their constituents and for recycling the fund for investing in the business by purchasing shares of other companies in public interest and for interest of money market. There is nothing hanky and panky in it nor it is effected with the motive of diluting shares held by public financial institutions in order to facilitate the increase in the holding of Ambani group, a private monopoly house, to get into the management of this public company, It has been further contended on behalf of the respondents Nos.3 to 6 and 9 that the transfer of 39 lakh shares of Larsen & Toubro were not made in favour of satellite companies of Ambani Group, through Bob Fiscal Services Ltd. which is a whooly owned subsidiary of Bank of Baroda, surreptitiously and discreetly on the basis of a design and a secret arrangement by transferring 7% out of 40% of the shareholding in L & T and thus reducing their shareholding in the Company to 33%. It has also been submitted that in transferring those equity shares the financial institutions acted purely on business principles and to earn profit by these transactions and in the case of L.I.C. and U.T.I. in the interst of the policy holders and the unit holders as the case may be. It has also been urged that the acceptance of the requests made by the subsidiary of Bank of Baroda i.e. Bob Fiscal Services for selling the blue chip shares of L & T to them at the highest market price through the broker was in public interest in as much as if all those 39 lakh shares had been put in the stock market for sale it would have crated an adverse effect on the company and there would have been a run affecting adversely the interest of the L & T company. It has also been contended that it was not possible to know the actual purchasers of these shares from respondent No.10, Bob Fiscal Services Ltd., Certain decisions of this court have been cited at the Bar.

Considering the entire sequence of events and the manner in which the financial institutions sold those 39 lakh equity shares of L & T to Bob Fiscal Service and it immediately after purchase of those shares with the 30 crores of rupees given by 4 satellites of the Reliance Group transferred those shares to Trishna Investment and Leasing Ltd., a satellite of Ambani Group though it had a capital of only Rs.44,000 and money required for purchase was at least Rs.39 crores leads to the conclusion that such transfers had been made to help the Ambanis to acquire the shares of L & T Company in a circuitous way. Moreover, the fund for purchase of the said shares was provided by Ambani Group from out of the money received by issue of convertible debentures for Rs.594 crores to public and

others. Furthermore, immediately after acquisition of share of L & T Ltd. Mukesh Ambani and M.L.Bhakta, who are Directors of R.I.L./R.P.L. were co-opted as Directors without any question as to their induction in the Board of Directors even by the nominee Directors of financial institutions even though the shares were not registered in their names. Anil Ambani was also co-opted as Director in December, 1988 and in April 1989, Dhirubhai Ambani became Chairman of L & T. All these circumstances taken together clearly spell some doubt whether the transfer of such a huge number of 39 lakh shares by the Public Financial Institutions was fro public interest and was made on purely business principles. The public financial institutions should be very prudent and cautious in transferring the equity shares held by them not only being guided by the sole consideration of earning more profit by selling them but by taking into account also the factors of controlling the finances in the market in public interest. In L.I.C. of India v. Escorts Ltd., A.I.R. 1986 SC 1370 at 1424 it was observed:

> "Broadly speaking, the Court will examine the action of the State if they pertain tothe public law domain and refrain from examining them if they pertain to the private law field. The difficultywill be in demarcating the frontier betwen the public law domain and the private law field..... The question must be decided in each case withreference to the particular action..... When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder with all the rights available to such a shareholder."

This observation, in my considered opinion, has no application to the facts of the instant case as the public financial institutions are not purchasing the shares of a company.

However, I do not think it necessary to dilate on this point as the financial institutions have already bought back all the 39 lakh shares from Trishna Investment and Leasing Ltd. with the accretions thereon but at the same time we add a note of caution that the public financial institutions while transferring or selling bulk number of shares must consider whether such a transfer will lead to acquisition of a large proportion of the shares of a public company and thereby creating a monopoly in favour of a particular group to have a controlling voice in the company if the same is not in public interest and not congenial to the promotion of business.

The contention regarding the maintainability of the Writ Petition as public interest litigation cannot be taken into consideration in view of the decisions of this Court in S.A. Gupta & Ors. v. Union of Indian & Ors., [1982] 2 SCR 365; Bandhua Mukti Morcha v. Union of India & Ors., [1984] 2 SCR 67. Even the case of LIC of India v. Escorts Ltd., [1986] 1 S.C.C. 264 arose out of a public interest litigation.

The nex crucial question that falls for consideration is about the legality and validity of the consent given to the mega issue of debentures for the right issue of Rs.200 crores and for convertible issue of debentures of Rs.620 crores out of which 310 crores of debentures were earmarked for issue to the shareholders and debentureholders of Reliance Industries Ltd. and Reliance Petrochemicals Ltd. As stated hereinbefore that after the purchase of 39 lakh equity shares of L & T company from the

public financial institutions, Bob FIscal Services, a subsidiary of Bank of Baroda transferred the same on the same day on which the transfered shares were registered in its name in the Register of L & T to Trishna Investing and Leasing Ltd., s stellite of Ambani Group. It has also been alleged that after Dhirubhai Ambani became the Chairman of the Board of Directors of L & T Ltd. on April 28, 1989, Mukesh Ambani and M.L. Bhakta, Directors of R.I.L./R.P.L. and Anil Ambani were co-opted as Directors of L & T. The Board of Directors of L & T at its meeting held on 22.7.1989 approved a proposal to raise funds by issue of convertible debentures of Rs.920 crores and further resolved that notice should be issued convening an extraordinary general meeting on 21.8.89 to consider special resolution for issue convertible debentures of Rs.920 crores. Immediately thereafter on July 26, 1989 two applications were made to the Controller of Capital Issues, Department of Economic Affairs for sanction to the Right issue of debentures of Rs.200 crores and for the public issue of debentures worth Rs.720 crores. The application records that it is proposed to reserve/preferentially allot Rs.360 crores out of the public issue (i.e. 50% of the public issue) for L & T's group companies viz. Reliance Industries Ltd. and Reliance Petrochemicals Ltd. The application also mentions that Dhirubhai Ambani is the Chairman and Mukesh Ambani is the Vice-Chairman of L & T and that Anil Ambani and Mr. M.L. Bhakta are Directos. On 11.8.89 another letter was sent by L & T to the Controler of Capital Issues, Respondent No. 2 stating inter alia that the Company wishes to modify their proposal by reducing the reservation for the shareholders of R.I.L./R.P.L. from Rs.360 crores to Rs.310 crores etc. and the issue of total debentures was reduced to Rs.820 crores. On August 21, 1989 at the extraordinary general meeting of L & T Ltd. resolution was passed authorising the Board of Directors of the company to issue 12.5% fully secured convertible debentures of the total value of Rs.820 crores to be subscribed in the manner as stated therein. The respondent No. 2, Controller of Capital issues, by its letter dated 29.8.89 addressed to M/s Larsen & Toubro Ltd. with reference to its letter dated 26.7.89 intimated that the Central Government in exercise of the powers conferred by the Capital Issues (Control) Act, 1947 gave their consent to the issue by L & T Ltd. of 12.5% secured fully convertible debentures of the value of Rs.820 crores in the manner specified therein.

The consent given by the Controller of Capital Issues was challenged on the ground that it was given in undue haste without duly considering the question that providing the preferential allotment to debentures of Rs.310 crores to the equity shareholders of R.I.L. and R.P.L. will increase considerably the holding of equity shares by the Ambani group to control the public limited company. The consent order made by the Controller of Capital Issues was attacked mainly on the ground that the said order was made casually without any application of mind and without considering that the effect of the same order will be to help the Ambani Group to acquire debentures of the value of Rs.310 crores specifically earmarked for preferential allotment to the shareholders of Reliance Industries Ltd. and Reliance Petrochemicals Ltd and thereby to have the control of the L & T, a public limited company. It has also been alleged that this consent has been given hurriedly within 24 hours of the making of the application for consent to the Controller of Capital Issues.

An affidavit in reply has been filed on behalf of respondent Nos. 1 & 2, Union of India and the Controller of Capital Issues denying all these allegations. It has been submitted that the claim made in the Writ Petition that the undue haste in clearing the application (under the CCI Act) was shown by Respondent Nos. 1 & 2 and the application was cleared in just 24 hours, is not correct. It is not correct that the approval was given by the empowered committee on 21.8.89 at 4.00 p.m., even

before the General body meeting of L & T took place. It has been submitted that the application by M/s L & T Ltd. was dated 26.7.89 and the consent was given on 29.8.89. The charge is false, baseless and mischievous. It has been stated in paragraph 3 of the said affidavit that the preferential issue, per-se, is not a novel idea. It has been stated that CCI has been permitting reservations for various categories out of public issue based on the requests made by companies after passing a special resolution in their general body meeting to that effect. There is no restriction on the shareholders of the company to offer shares of their company to anybody after passing a special resolution in the General Body meeting as per Section 81(IA) of the Companies Act. Through such resolution resolved at such meetings shareholders can also offer shares of their company to any person or corporate body who is not even connected with the company. However, CCI would not normally permit reservations for shareholders of anyunconnected company out of public issue, unless it is offered to shareholders of Associate/Group company of the Issuing Company. It is submitted that Larsen and Toubro had indicated that Reliance Industries Ltd. (RIL) and Reliance Petrochemicals Ltd. (RPL) are their group Companies. It is also submitted that Larsen and Toubro filed a copy of the special resolution passed in the General Body meeting held on 21.8.89 which permitted the companyto offer its convertible debentures worth Rs. 310 crores tothe shareholders of RIL and RPL. It is submitted that the CCI permitted similar reservation for shareholders of Associate/Group companies in the public issue of M/s. Apollo Tyres Ltd., M/s Essar Gujarat Ltd., M/s Bindal Agro Ltd., M/s Chambal Fertilizers and several other companies. It is submitted that there was noreason for CCI to reject the request of Larsen and Toubro for this reservation as the shareholder of L & T had approved such reservation.

It has beenfurther submitted that the charge for favouring Reliance Group/Ambani Groupis frivolous and misleading and seeks toconvey a wrong impression and imputes motives for which there is no basis. It has been further submitted that the impugned issue had been consented by Central Government after due consideration, including the need for funds. It is submitted that the funds are required by the company for working capital needs, normal capital expenditure and for executing the turn-key contracts of L & T Ltd. It is submitted that L & T indicated the Turn-key contracts including inter alia the Gas Cracker Project and Acrylic Fibre Project of Reliance Industries Ltd. and Caustic Chlorine Project of Reliance Petrochemicals Ltd. for Rs.635 crores as projects are to be executed. CCI has not permitted Reliance Industries Ltd. and Reliance Petrochemicals Ltd. to raise funds for these projects so far. Earlier funds raised from capital markets were used or/are being used for the following projects:

RIL-PSF,PFY,PTA,LAB and Textile Units; RPL-HDPE.PVCL MEG.

The allegation that for the same projects, CCI permitted L & T to raise funds is baseless. The financing detail of projects of RIL and RPL were also examined in Maheshwari's case in Supreme Court and no double financing of same project was found. Reliance Industries Ltd. and Reliance Petrochemicales Ltd. have given undertaking that these companies will not raise funds from public for financing the cost of projects to the extent suppliers' credits are extended by L & T. It is stated that MRTP approval to Reliance Industries Ltd. for gas cracker does not provide for suppliers' Credit from L & T in the scheme of finance and it is submitted that this

statement is correct. It is also submitted that CCI will take this aspect into account before permitting any further issue, in future, to Reliance Industries Ltd. and Reliance Petrochemicals Ltd. for these projects. However, this aspect does not affect the consent order of L & T in view of the undertaking of RIL and RPL mentioned above.

The application for consent was submitted to the respondent No. 2 on 26.7.89 for sanction. On August 21, 1989 at the extraordinary general meeting of shareholders of L & T, a resolution was passed with only one shareholder dissenting for the issue of debentures of Rs.820 crores as provided therein. A copy of this resolution was sent to the Controller of Capital Issues who after duly considering the same accorded the consent on August 29, 1989. The argument that there has been complete non-application of mind by the Controller of Capital Issues in according the consent is not sustainable. Moreover, the Controller of Capital Issues issued a letter dated 15th September, 1989 to M/s Larsen and Toubro to note amendment of the condition of the consent order to the effect that fund utilisation shall be monitered by Industrial Development Bank of India. This will further go to show that the consent was given after due consideration in accordance with the provisions of Section 3 of the Capital Issues(Control) Act, 1947 (Act 29 of 1947).

Much arguments have been made as to the provision in the prospectus reserving preferential allotment of debentures of Rs.310 crores to the equity shareholders of Reliance Industries Ltd. and Reliance Petrochemicals Ltd. mainly on the ground that it will increase the share holding of the Ambani group and thereby add to the monopoly control of Ambani group over this public limited company. Under Section 2(g) of the Monopolies and Restrictive Trade Practices Act, 1969 "interconnected undertakings" mean two or more undertaking which are interconnected with each other in any of the manner mentioned therein, Explanation (1) - for the purposes of this Act, two bodies Corporate, shall be deemed to be under the same management (II) if one such body corporate holds not less than one fourth of the total equity shares in the other or controls the composition of not less than one fourth of the total membership of the Board of Directors of the other. In the prospectus of Larsen & Toubro Ltd. obviously it has been mentioned that Larsen and Toubro Ltd. is part of Reliance group. Referring to the said provisions it has been contended on behalf of the respondents i.e. the financial institutions that mention of L & T company as part of the Reliance group is quite in accordance with this provision. Apropos to this reference maybe made to the provisions of Sec. 81(IA) of the Companies Act, 1956 which are set out hereunder:

"Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons (whether or not those persons include the persons referred to in clause(a) of sub-section (1) in any manner whatsoever-

(a) if a special resolution to that effect is passed by the company in general meeting, or"

In the extraordinary general meeting of L & T a special resolution was made providing for preferential allotment of debentures to the equity shareholder of R.I.L. and R.P.L. so the reservation of debentures of the value of Rs.310 crores of Public issue for allotment to shareholders of R.I.L. and R.P.L. cannot be questioned. In the Prospectus of L & T. Ltd under Business Plans it has been mentioned that the requirement of funds of the company for the period from 1st October 1989 to 31st March, 1992 including in respect of Suppliers credit to be extended to customers under turnkey projects/quasiturnkey projects and for incurring capital expenditure on new plant and equipment, normal capital expenditure on modernisation and renovation, meeting additional working capital requirements and for repayment of existing loan liabilityh is estimated to be in the region of Rs. 1425 crores. The suppliers' credits, inter alia include Rs.510 crores to be extended to RIL in respect of its Cracker Project. The funds requirement is intended to be met out of the present issue of Debentures to the extent of Rs.820 crores and the balance would met from internal accruals by way of short term borrowings, and out of the proceeds of the previous Debenture Issue (III Series). The consent was challenged on the ground that no M.R.T.P. clearance for the issue of capital under Section 21 or under Section 22 of the Monoplies and Restrictive Trade Practices Act, 1969 was given. It appears from the letter dated 2.12.1988 issued by Government of India to M/s Reliance Industries ltd. endorsing a copy of Central Government's Order dated 25.11.1988 passed under Section 22(3)(e) of the M.R.T.P. Act 1969 that it gave approval for the proposal of M/s Reliance Industries Ltd. for setting up a cracker complex. The approval of Central Government was made under section 22(3)(d) of the M.R.T.P. Act and communicated to M/s Reliance Petrochemicals Ltd. by letter dated 30.5.1989. Consent was also given by the Central Govt. under section 22(3)(a) of the M.R.T.P. Act for the establishment of a new undertaking for the manufacture of 20,000 of Acrylic Fibre. Thus challenge to the consent given by Controller of Capital issues is, therefore, meritless and so it is rejected.

It is pertinent torefer in this connection this Court's judgment in the case of Narendra Kumar Maheshwari v. Union of India & Ors., J.T. 1989 2 S.C. 338 in which considering the duties of the C.C.I. under the Controller of Capital Issues Act while giving consent it has been observed:

> "That apart, whatever may have been the position at the time the Act was passed, the present duties of the CCI have to be construed in the context of the current situation in the country, particularly, when there is noclear cut delineation of their scope in the enactment. This line of thought is also reinforced by the expanding scope of the guidelines issued under the Act from time to time and the increasing range of financial instruments that enter the market. Looking to all this, we think that the CCI hasalso a role to play in ensuring that public interest does not suffer as a consequence of the consent granted gy him. But as we have explained, later, the responsibilities of the CCI in this direction should not be widened beyond the range of expeditious implimentation of the scheme of the Act and should, at least for the present, be restricted and limited to ensuring that the issue to which he is granting consent is not, patently and to his knowledge, so manifestly impracticably or financially risky as

to amount to a fraud on the public. To go beyond this and require that the CCI should probe in-depth into the technical feasibilities and financial soundness of the proposed projects or the sufficiency or otherwise of the security offered and such other details may be to burden him with duties for the discharge of which he is as yet illequipped."

Three applications for directions being I.A. No. 1, I.A. NO. 2 and I.A. No. 3 of 1990 have been filed in T.C. Nos. 61 of 1989, T.C. No.62 of 1989 and T.C. No. 1 of 1990 by the L & T. Ltd. It has been stated therein that the Deputy Controller of Capital Issues by a letter dated 15th September, 1989 has intimated M/S Larsen & ToubroLtd. that condition No. V of the consent letter provides that the utilisation of fund shall be monitered by Industrial Development Bank of India Ltd. The representatives of Industrial Credit and Investment Corporation of India Ltd. (instant ICICI) issued a letter to the L & t stating that it would not be correct for them as Debenture Trustees to give conversion of those debenturs of equity shares before a reference was made to the Controller of Capital Issues and without obtaining prior written consent of the IDBI. The IDBI considered the unaudited statement of the utilisation of debenture fund upto March 31, 1990 and were of the opinion that the applicants should make the first call only after utilising substantially the surplus funds available to the extent of Rs.226 crores in investments (after expenditure) upto June 30, 1990 satisfying the IDBI about the need for raising further funds by way of first call. This was communicated to the applicants by IDBI's letter dated 7th May, 1990.

The Board of Directors at its meeting held on 11th May, 1990 considered the above circumstances as well as the proceedings pending in this Hon'ble Court and decided that the Company could not proceed with the conversions of Part A of the debentures which was due on 23rd May, 1990. The Board authorised the Company Secretary to make the necessary application to the Controller of Capital Issues seeking direction for the course of action to be followed by the Company in regard to the conversion. The applicant's letter dated 15th May, 1990 to the Controller of Capital Issues pursuant tothe aforesaid Board Meeting refers to the letter dated 7th May, 1990 from IDBI as well as to the objections raised by the ICICI.

The applicants sent a letter dated 15th May, 1990 tothe Controller of Capital Issues pursuant to the above Board's meeting. After lenghthy detailed discussion by the I.D.B.I. with the applicant, the IDBi was satisfied that the amount of funds that would be presently required would be to the tune of Rs.650 to 700 crores. The company keeping this in view proposed to make a call (first and final) of Rs.85 on or before 31st October, 1990 in place of originally envisaged first call of Rs. 75 and the final call of Rs. 75 aggregating Rs. 150. The applicants recorded the above discussions and intimated IDBI of its modified proposal by its letter dated 28.6.90. On 29th June, 1990 the Board of Directors of the Company were apprised of the relevant proposals as approved by the IDBI. In the meeting of the Directors it was decided (though not unanimously) that directions of the Supreme Court be sought on the said proposals and that the company should take necessary steps to approach this Court and Madras High Court and implement the proposals after obtaining the directions and vacating the order of the Madras High Court.

These Interim Applications were filed for following directions:

(a) (i) that the size of the issue do stand reduced from Rs.820 crores to Rs.640 crores as followes:

Public issue of debentures of Rs.235 each Rs.485 crores Rights issue of debentures of Rs.225 each Rs.155 crores

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Total	Rs.640 crores

(ii) that in place of the first call of Rs.75 and the final call of Rs.75 as originally provided for in the prospectus, a first and final call of Rs.85 in the case of the public issue and Rs.80 in the case of the rights issue be made on the debentureholders on or before 31st October, 1990.

(iii) That the first conversion of Part A of the debentures into one equity share of Rs.10 at a premium of Rs. 40 (premium of Rs.30 in the case of rights issue) be made on 1st December, 1990.

(iv) that the second conversion of Part B of the debentures into two equity shares of Rs.10 each at a premium of Rs. 50 be made on the date originally scheduled viz. 23rd May, 1991.

(v) that the third equity conversion of Part C of the debentures be made on the date originally scheduled viz. 23rd May, 1992 at such premium per equity share as may be fixed by the Controller of Capital Issues but not exceeding Rs.55 per share and such conversion be made into one or more equity shares of Rs.10 each as against two or more equity shares as originally provided in the prospectus.

(b) that in case of any debentureholder not agreeing to the modifications, in prayer (a) above and on intimation being received by the applicant company as mentioned in prayer (c) below the applicants do refund to such debentureholders their/its application and allotment money with interest thereon at such rate as may be directed by this Court;

(c) that this Court be pleased to direct the applicants to give notice to all debentureholders individually and by publication in national newspapers of the order passed in terms of prayers (a) and (b) above that in case of any debentureholder not agreeing to the modifications in prayer (a) such debentureholders do give intimation to the applicant companywithin 30 days of such notice in which case the applicant company would refund the application/ allotment money with interest.

(d) for further orders ands directions consequential to the orders passed by this Court;

(e) for costs of the applications.' Larsen & Toubro Ltd. respondent No. 2 in T.C. No. 61 of 1989 filed a rejoinder affidavit to the statement of objections filed by N. Parthasarathy to the interim application No. 1 of 1990 in T.C. No. 61 of 1989. In para 2 of the said rejoinder affidavit it has been stated that:

"By his order dated November 9, 1989 this Court specifically directed Larsen & Toubro Ltd. to make allotment subject to the decision of this Court in the said matters. This Hon'ble Court therefore allowed the issue to proceed on the basis of the original consent purported to be impugned by the petitioner in the Madras High Court Petition. I, therefore, submit that Larsen & Toubro Limited was fully justified in seeking the directions of this Hon'ble Court as prayed for in the Interim Application. I deny that the directions in the Interim Application, if granted, would render nugatory the Petition filed by the Petitioner or that the same would amount to a determination of the issue in the Petitioner's writ petition as erroneously contended by the petitioner. I deny that Larsen & Toubro Limited are at all misleading this Hon'ble Court or that it committed any act which is at all illegal, as falsely allged. I submit that a decision of this Hon'ble Court on the legality of the original consent order is not necessary for the issue of interim directions of the nature prayed for by Larsen & Toubro Limited in the above Interim Application.' It has also been stated in para 3 of the said affidavit that this Court does not have jurisdiction to entertain the said interim application either for the reasons alleged or otherwise. The said application, it is submitted, does not amount to performance of any executive function by this Court as erroneously alleged by the petitioner.

The statement that the Controller of Capital Issues has no power to modify or vary a consent as alleged has been denied. It has been submitted that the Controller of Capital Issues has not varied his consent nor is any such variation of the consent order per-se being sought by the Respondent No. 2. It has also been stated that under sub section (6) of Secftion 3 of the Capital Issues (Control) Act, 1947, the Central Government has the power to vary all or any of the conditions qualifying a consent.

It has been denied in para 8 of the said affidavit that the consent order of the Controller of Capital Issues is at all illegal or improper as alleged. It has been denied that it is not open for this Court or for the Controller of Capital Issues to modify the terms of the said consent order.

It is to be noted that the Industrial Development Bank of India by its letter dated June 28, 1990 tothe Managing Director, Larsen & Toubro Ltd. stated that; ".... From a quick review of the status of the new proposal mentioned in your letter dated June 22, 1990, we feel that the net requirements of funds to be met out of debenture funds would be in the region of Rs.600 to Rs.650 crores as indicated by you.

We further note that from your letter dated June 28, 1990 that you propose to make first and final call Rs.85 on the debentures on or before 31st October and to effect the

> first conversion by the end of November, 1990 and second and third conversion according to the original dates mentioned in the prospectus.
>
> The L & T Board will have to take a view on the size of the debenture issue in the light of the requirements of funds indicated in your letter and other modifications suggested in the terms of the debentures. The company will no doubt obtain necessary approvals from CCI, debenture-
>
> holders/shareholders, etc. in consultation with its Legal Advisers."

A meeting of the Board of Directors of the Company was held on June 29, 1990 and it was resolved that the directions of the Supreme Court of India be sought on the said proposals and necessary steps the taken to approach the Hon'ble High Court at Madras to vacate the said order and/of modify the same suitably and implement the proposals only after the directions from the Supreme Court were obtained and the Order passed by the Hon'ble High Court at Madras was vacated and/of modified suitably.

It appears that Section 55 of The Companies Act, 1956 enjoins that:

> "The prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus."

Under Section 61 of The Companies Act it is specifically provided that:

> "A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject tothe approval of, or except on authority, given by, the company in general meeting."

Section 62 of the said Act provides for payment of compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included in the prospectus. Similarly, Section 63 of the said Act provides for criminal liability for mis- statements made in the prospectus. Section 72 of The Companies Act provides that:

> "No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the fifth day after that on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus."

Thus, it is evident from a consideration of the above provisions of The companies Act that the terms of contract mentioned in the prospectus or the statements in lieu of the prospectus cannot be varied except with the approval of and on the authority given by the Company in the general meeting.

Therefore, the consent that was given by the Central Government nay by the Controller of Capital Issues, on a consideration of the special resolution adopted in the extra-ordinary general meeting of the shareholders of the company on August 28, 1989 cannot be varied, changed or modified both as regards the reduction of the amount of debentures as well as the purposes for which the fund will be utilised contrary to what has been embodied in the prospectus and approved by the Controller of Capital Issues on the basis of the special resolution adopted at the general meeting of the shareholders of the company. Sub- section (6) of Section 3 of The Capital Issues (Control) Act, 1947 states that:

> "The Central Government may by order at any time -
>
> (a) revoke the consent or recognition accorded under any of the provisions of this section; or
>
> (b) where such consent or recognition has been qualified with any conditions, vary all or any of those conditions:
>
> Provided that before an order under this sub- section is made, the company shall be given a reasonable opportunity of showing cause why such order shall not be made."

On a plain reading of this provision, it cannot be inferred that consent order given by the Central Government after consideration of the special resolution passed at the general meeting of the company on taking the no objection certification from the I.D.B.I. can be changed or varied in any manner whatsoever by the Central Government. The Central Government can merely vary all or any of the conditions subject to the consent being given.

It is appropriate to mention in this connection that the I.D.B.I. also asked the Larsen & Toubro Ltd. to obtain the necessary approval from the Controller of Capital Issues, debentureholders/shareholders etc. in respect of the reduction in requirement of funds. There has been no general meeting of the company nor any special resolution was taken for variation or reduction of the amount of debentures to be issued as required under Section 81 read with clause 1A of The Com-

panies Act. It is also evident that no steps have been taken to have the consent already granted by Controller of Capital issues, varied or modified as required under The Capital Issues (Control) Act, 1947. Merely because clause

(v) of the consent order provides for monitoring of the funds by I.D.B.I., it does not mean nor it can be inferred automatically that the suggestion of the I.D.B.I. as regards the funds requirement can be automatically given effect to without complying with the statutory requirements as provided in the provisions in The Companies Act as well as in The Capital Issues (Control) Act. The consent order is one and indivisible and as such the same cannot be varied or vivisected without taking recourse to the

> provisions of the statute. It is also well settled that the contract to purchase shares or debentures is concluded by allotment of shares issued under the prospectus and Section 72 of the Companies Act makes it clear that allotment can only be made after the prospectus is issued. The company is bound by the special resolution, the prospectus and the consent of the Controller of Capital Issues. The power to pass a consent order is a statutory power vested in a statutory authority under the Capital Issues Act and the Court has no power or jurisdiction to step into the shoes of the statutory authority and pass or approve a consent order different from the statutory consent order given by the statutory authority. Moreover, the consent order cannot be varied by the Central Government or Controller of Capital Issues after the said order has been made public and third parties have acted on it and acquired rights thereon.

In Palmer's Company Law (24th Edition) by C.M. Schmitthoff under the caption The "golden rule" as to framing prospectuses at page 332-333 it is stated that:

> "Those who issue a prospectus, holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality, of the privileges and advantages which the prospectus holds out as inducements to take shares."

Reference may also be made to the observations in Aaron's v.

Twiss, [1896] A.C. 273 in which Lord Watson said:

> "It was argued for the company that, inasmuch its contracts for the purchase of the concession are generally referred to towards the end of the prospectus, the respondent must be held to have had notice of their contents. This appears to me to be one on the most audacious pleas that ever was put forward in answer to a charge of fraudulent misrepresentation. When analysed it means simply that a person who has induced another to act upon a statement made with intent to deceive must be relieved from the consequences of his deceit if he has given his victim constructive notice of a decument, the perusal of which would expose the fraud."

In the case of State of Madhya Pradesh and Ors. v. Nandlal Jaiswal and Ors., [1986] 4 SCC 566 this Court while dealing with the laches and delay held that:

> "The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may

> intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties."

For the reasons aforesaid I dismiss all these Transferred Cases. There will no be order as to costs. All the interim applications filed in these Transferred Cases stand disposed of in view of the observations made hereinbefore.

The Special Leave Petition (C) No. 13801 of 1989 filed against the order of the Bombay High Court in Contempt Petition No. 1 of 1989 in writ petition No. 2595 of 1989 is dismissed.

The Contempt Petition Nos. 121 and 130 of 1989 are also dismissed without costs.

KASLIWAL,J. I have gone through the judgment of my learned brother B.C. Ray,J. and I agree with the conclusions drawn by him. But, I would like to express my own views.

Writ Petition No. 2595 of 1989 was filed by Haresh Jagtiani and Shamit Majumdar (hereinafter called 'the petitioners') in the Bombay High Court challenging the validity of the consent given by the Controller of Capital Issues (CCI) dated 29.8.89 and subsequently amended by Order dated 15.9.89 for the issuance of Fully Convertible Debentures of Rs.820 crores by Larsen & Toubro, a Public Limited company (in short L & T). Challenge was also made in respect of transfer of 39 lac shares of L & T held by Unit Trust of India (UTI), Life Insurance Corporation of India (LIC), General Insurance Company (GIC) and its subsidiaries to Trishna Investments and Leasing Limited (in short Trishna Investments) through the instrumentality of Bob Fiscal Services Limited (in short Bob Fiscal). The Writ petition was dismissed on 29.9.89 byu learned Single Judge of the bombay High Court. Letters Patent Appeal against the said judgment was filed in the Bombay High Court. Several other writ petitions and suits were filed in various other High Courts. Some Contempt Petitions were also filed and all the above matters were transferred to this Court. Some Interim Applications were also filed by L & T before this Court. The issues raised in these cases are of far reaching impact on the affirmatory public duty and public obligations on the government of India and its instrumentalities, to preserve and to refrain from squandering away the property and economic power of the State and to prevent illegitimate growth of private monopoly power and to ensure honesty and probity in public life and in industry and business. This is a largest mega issue so far as India is concerned and involves to a great extent the investment of the country's bulk economic resources to be invested for industrial growth or development of the country to a public limited company. The matter has to be looked into on the basis of larger public interest which can be fulfilled by a balanced investment of country's resources.

My learned brother has already given the details regarding the manner and circumstances in which 39 lac shares of L & T were transferred by public financial institutions to Trishna Investments, a subsidiary of Reliance Group of Industries i.e. Reliance Industries Limited (RIL) and Reliance Petro-chemicals Limited (RPL), through the conduit of Bob Fiscal, as such I need not repeat the same.

On the date of the filing of the writ6 petition in the Bombay High Court a prayer was made in this regard to declare that the transfer of 39 lac shares of L & T held by UTI, LIC, GIC and its subsidiaries to Trishna Investments through the instrumentality of Bob Fiscal is arbitrary, illegal, mala fide and a fraud on the statutory powers of the respondents and is clearly ultra vires Articles 14, 39(b) &

(c) of the Constitution and to issue a writ of mandamus directing the respondents to recover the shares of L & T and pay back the amount received there for. This later part of the prayer for writ of mandamus has now become infructuous in view of the changed circumstances that the 39 lac shares of L & T have already been returned back to the public financial institutions, but Mr. Chinoy, counsel for the petitioners has prayed that it would be very necessary to declare that such transfer of 39 lac shares at the relevant time was arbitrary, illegal, mala fide and a fraud in order to further hold that the consent given by the CCI for the proposed issue of convertible debentures of Rs. 820 crores by L & T was not only arbitrary but based on mala fide exercise of power based on extraneous grounds. In this regard it would be necessary to state some more facts which happened after the dismissal of the writ petition by the learned Single Judge of the Bombay High Court dated 29.9.1989. The petitioners aggrieved against the judgment of the learned Single Judge filed a Letters Patent Appeal before the Division Bench of the High Court. Some shareholders filed writ petitions and suits in several High Courts and this Court in the above circumstances thought it proper to transfer all the cases to this Court. Pursuant to the order of this Court dated October 27, 1989 learned Additional Solicitor General appearing on behalf of the financial institutions submitted a memorandum. It was stated in the memorandum that the financial institutions had already bought back 39 lac shares of L & T with accretion thereto from Trishna Investments. It was farther stated that by buying back the said shares, the financial institutions were in no way either remotely or impliedly acceding the position that the original transactions of sales were illegal or void. The financial institutions stood by their contentions which had been upheld by the Bombay High Court in its Judgment dated September 29, 1989. It was further stated that the Transactions had been completed on the expectation that the petitioners would withdraw the proceedings as even otherwise a basic portion of the petitions filed in the High Court had become infructuous.

Mr. Jethmalani, Learned counsel appearing on behalf of Haresh Jagtiani also filed a draft of consent terms to be recorded in the transfer petition. On 9.11.89 this Court after considering all the circumstances of the matter thought it just and fair to pass an order that the allotment of debentures will made by the Petitioner company i.e. L & T and such allotment will abide by the decision of this Court in the said matters. It was further directed that the L & T will also affix a similar notice at its Registered Office for the information of the share-

holders as well as the original allottees. The Court also indicated in the above order as under:

> "The Court will further make it clear that no equities will be pleaded in respect of allotment of shares."

After the passing of the above order debentures were released and several lacs of persons have purchased these debentures.

Trishna Investments had not filed any counter to the writ petition before the Bombay High Court, but have filed counter affidavit and written submissions before this Court. Dr. L.M. Singhvi, learned Sr. advocate appearing on behalf of Trishna Investments contended that Trishna Investments had agreed to the retransfer of 39 lac shares to the financial institutions and it was agreed by learned counsel for the petitioners that it would form the basis for fully comprehensive and wholistic settlemtn of the matter. Indeed, Shri Ram Jethmalani learned counsel appearing for the petitioners so stated that this Hon'ble Court was also pleased to record the same in its order dated 9.11.89 Since the petitioners have now resiled from their categorical offer, Trishna Investments also cannot be made to agree to a settlement upon de novo terms and conditions. It has been submitted that in its affidavit dated 7.11.90 filed by Trishna Investments, it has been stated that the retransfer of shares resulted in a loss of Rs. 10 crores to Trishna Investments. It has also been submitted that though Trishna Investments is a company wholly owned and subsidiary of RIL but contracts made by Trishna Investments in the present case should not be construed to mean that this Hon'ble Court may hear and adjudicate all other allegations against Reliance group without making the later uyjhnb7as party to the present proceedings. Trishna Investments cannot be treated as a substitutable alter ego without making RIL/RPL as parties.

It was contended by Dr. Singhvi, learned counsel for Trishna Investments that the present proceedings have now become infructuous in view of the admitted retransfer of 39 lac shares by Trishna Investments to financial institutions. It is well settled that the Court should not decide merely academic points. In this regard it is submitted that the principal relief as sought in prayers (a) and (c), no longer exist and the aforesaid transaction of retransfer of 39 lac shares was on the expectation. That the petitioners will withdraw the proceedings. In support of the above contention reliance is placed on State of Maharashtra v. ramdas Shriniwas Nayak & Anr., [(1983) 1 SCR, 8 at p. 12]. It has been further submitted that in the alternative Trishna Investments must be put in the identical status quo ante position by retransfer of its 39 lac shares back to it, alongwith all accretions. It was also urged that there are large number of disputed questions of fact which cannot be decided in exercise of extraordinary jurisdiction contained in Art. 226 of the Constitution.

Dr. Singhvi also urged that even if the action of the Reliance group was to corner or purchase all shares of L & T, there is nothing wrong or illegal about it. There was no law or rule prohibiting the purchase of shares of a company. Thus there was nothing wrong or illegal in purchasing the shares by Trishna Investments. Apart from that the total shareholding vested in Trishna Investments was only about 6.5% and the representation of Ambanis including Mr. bhakta on the Board of Directors of L & T was only 4 out of 20. It was wholly misleading, deliberately mischievous and erroneous to suggest on the part of the petitioners that the value of the shares transferred/sold by financial institutions was far more than the market value. There are no guidelines, rules, regulations, directions or documents prescribing any method of sale of shares where such shares are sold individually or in chunk. No control can be said to have been transferred on the basis of 6.42% shareholding and representation of Board of Directors after the transfer to Trishna Investments. Reliance is support of the above contention is placed on Babulal Chaukhani v. Western India Theatres, AIR 1957 Cal. 709 at p. 715 on the passage which reads as under:

> "It is in evidence that Modi has been purchasing large blocks of shares of this company, but cornering as such or purchase of large block of shares as such, so long as they are permissible by law is not unjustified. That by itself does not prove mala fides or bad faith either in fact or in law. To acquire a control which the law permits cannot be illegel."

It was further submitted in this regard that if purchase or cornering, per se and by itself, is neither illegal nor impermissible, then purchase or cornering through intermediaries or even if done surreptitiously cannot become illegal merely by the existence of such intermediaries or by the allegedly surreptitious nature of the transactions. The aforesaid decision of the Calcutta High Court has been applied in a large number of decisions of statutory authorities dealing with allegations of chunk purchase of cornering of shares.

Dr. Chitale appearing on behalf of Bob Fiscal pointed out that the members of the Bob Fiscal Services Private Limited at an extraordinary general meeting held on 24th September, 1990 have passed a special resolution for voluntary winding up of the company in accordance with etc. 484(i)(b) of the Companies Act, 1956. By the said resolution Chartered Accountant has also been appointed as liquidator for the beneficial winding up of the Bob Fiscal Services Pvt. Ltd. It was further submitted by Dr. Chitale that essential grievance of the writ petitioners related to the transfer of 39 lac shares of L & T by the investment institutions and its subsidiaries to M/s Trishna Investments and Leasing through the alleged conduit or instrumentality of Bob Fiscal. It has been alleged by the petitioners that a conspiracy was hatched between investment institutions and Ambani group represented by Trishna and Bob Fiscal in order to camouflage the transactions and to prove the transfer of shares to Bob Fiscal in order to avoid compliance of the alleged guidelines and policy of the financial institutions to charge at two times the market price for such sale of shares. The allegations were denied by various respondents which were upheld by Bombay High Court by its judgment dated 29th September, 1989. It was further submitted that during the course of the proceedings before this Court on 18th October, 1989 Trishna Investments made offer in open Court to sell back or retransfer the 39 lac shares in question together with accretions to the investment institutions on no loss no profit basis. On 27th October, 1989 the institutions agreed to buy back the said 39 lac shares with accretions thereon. It was expressly submitted and clarified by Trishna Investments and the institutions that Trishna Investments was selling back the said shares and the institutions were buying back the same without in any manner admitting any of the allegations in the writ petitions, nor were they admitting the position that the original transfer of shares by investment institutions to Bob Fiscal were in any manner arbitrary or unlawful. Subsequently, it transpired that on or about 8th November, 1989 institutions has purchased the said 39 lac shares on full payment. As a sequel to the above, the main relief sought by the petitioners have become infructuous and do not survive at all. The entire challenge of the writ petitions in regard to the actions of the financial institutions for sale of shares to Trishna Investments through Bob Fiscal had become merely academic and any trial of the issue in relation thereto would only be an abuse of the process of law and wholly unnecessary and waste of time of this Hon'ble Court. Bob Fiscal is not concerned with the challenge of the petitioners in regard to the order of CCI. It was thus submitted that the entire petition has become infructuous but it for any reasons this Hon'ble Court desires to continue with the case in respect of the challenge to the consent of the CCI then Bob Fiscal and its

Chairman should be dropped from the array of parties.

The stand taken by the public financial institutions in this regard is that while deciding to sell those shares they acted purely on business principles and sold those shares at a very high market price and thereby earned huge profit. There was no basis in the allegation made by the petitioners that the investment institutions ought to have charged and recovered substantially higher price (which according to the petitioners should have been at least 2005 of the market price) for the transfer of such shares had the shares been transferred directly to Trishna Investments being a company, representing a group/persons other than those in the management. The investment institutions had transferred 39 lac shares to Bob Fiscal as part of a 'basket' of securities purely on commercial considerations. Investment institutions were in no way concerned with any subsequent dealings of the said shares by Bob Fiscal. The entire challenge of the writ petitioners to the actions of the financial institutions w2as now merely academic and any decision in this regard would be a waste of judicial time and totally unnecessary. It was also submitted that all allegations of conspiracy between the financial institutions and any others party are denied. It is denied that investment institutions at any time were aware of the fact that 39 lac shares which were sold to Bob Fiscal were at any time intended or destined for the Ambani group as alleged.

I agree with the observations made and conclusion arrived at by my learned brother B.C. Ray in respect of transfer of 39 lac shares. I may, further add that so far as the relief of a writ of mandamus directing the respondents to recover 39 lac shares of L & T and pay back the amounts received there for, does not survive in view of the shares having already bought back by the financial institutions from Trishna Investments. However for future guidance it may be worth while to note that public financial institutions while making a deal ins respect of a very large number of bulk of shares worth several crores of rupees must also make some inquiry as to who was the purchaser of such shares. Such transactions should be made with circumspection and care to see that the deal may not be to comouflage some illegal contrivance or in built conspiracy of a private monopoly house in order to usurp the management of a public company and which in its opinion may not be in public interest.

We cannot subscribe to the contention raised by Dr. Singhvi that there was nothing wrong or illegal even if the action of Reliance Group was to corner or purchase all the shares of L & t, and even if done through intermediaries or surreptitiously cannot become illegal. If, that is the law laid down by Calcutta High Court in Babulal Chaukhani v. Western India Theatres, (supra), we disapprove it.

It is no doubt correct that any person or company is lawfully entitled to purchase shares of another company in open market, but if the transaction is done surreptitiously with a mala fide intention by making use of some public financial institutions as a conduit in a clandestine manner, such deal or transactions would be contrary to public policy and illegal. If the, matter was so simple as propounded by Dr. Singhvi, why Trishna Investments did not come forward directly to purchase 39 lac shares from public financial institutions and why entered in a deal through the conduit of Bob Fiscal in a clandestine manner. That apart why Trishna Investments readily agreed to sell back these shares to public financial institutions even at a loss of Rs. 10 crores as suggested, after the filing of these petitions. This itself speaks volumes against the conduct of Trishna Investments who was a subsidiary of Reliance Group. There is no force in the contention that the propriety of such deal

cannot be considered without implading RIL/RPL as parties to these proceedings. It may be stated that the entire transactions have been made by Bob Fiscal and Trishna Investments who are already parties. It may ber noted that Bob Fiscal and Trishna Investments were made parties to the writ petition filed in the Bombay High Court and serious allegations were made against them but they did not choose to refute any allegations by filing any counter affidavit in the High Court. In any case we have derived our conclusions on the basis of admitted facts and not otherwise. It may be worth mentioning that Bob Fiscal was formed in June. 1988 and soon thereafter entered into transactions of purchase of 39 lac shares of L & T on the strength of deposit of Rs.30 crores by the four satellite companies of the Ambani Group and soon thereafter transferred the shares in favour of Trishna Investments. It has now, been stated before us by Dr. Chitale appearing on behalf of Bob Fiscal that in an Extraordinary General Meeting held on 24.9.90 a special resolution has been passed for voluntary winding up of Bob Fiscal. This leads one to draw a legitimate inference that Bob Fiscal was brought into existence merelyh to act as a conduit and was merely an interloper to affect the transfer of 39 lac shares of public financial institutions in favour of Ambani Group and their satellite firms. it came into existence like a rainy insect and lived out its utility after acting as a conduit for the transfer of 39 lac shares in favour of Trishna Investments. I do not consider it necessary to further dilate on this point and fully agree with my learned brother that all the circumstances taken together clearly spell some doubt whether the transfer of such a huge number of 39 lac shares by the public financial institutions was for public interest and was made on purely business principles.

Another important question is with regard to the consent given by CCI. L & T had filed two applications to CCI on 26.7.89. One for the Rights Issue of Rs.200 crores and another for the Public Issue of Rs.720 crores (subsequently reduced to Rs.620 crores). It may be noted that upto this time 39 lac shares of L & T had come to Trishna Investment and M.L. Bhakta. Mukesh Ambani and Anil Ambani had been coopted as Directors of L & T and lastly Dhirubhai Ambani had become the Chairman of L & T on 28.4.89. On 23.6.89 Board of Directors of L & T had resolved to invest a sum of Rs. 76 crores in the purchase of Equity Shares of RIL. On 21.7.89 RIL and RPL had written letters to L & T seeking suppliers credit to the extent of Rs.635 crores for turnkey projects which they planned to entrust to L & T. Out of the above public issue of Rs.820 crores it was proposed to reserve preferential allotment of Rs.310 crores (50% of the issue after deducting Right Issue) for the shareholders of RIL and RPL treating them as group companies of L & T. On 29.8.89 CCI passed an order approving the above issue of Convertible Debentures. The Prospectus was issued on 5.9.89 in which it was stated that L & T was part of the Reliance Group. CCI by a further order dated 15.9.89 amended the earlier consent order dated 29.8.89 to the effect that fund utilisation shall be monitored by Industrial Development Bank of India (IDBI).CCI in another letter of the same date namely 15.9.89 also stated that 50% to be raised in calls would be based upon the monitoring by IDBI for utilisation. This Court on 9.11.89 allowed the L & T to open the issue subject to the condition that allotment will abide by the decision of this Court. The issue was then opened and it was over subscribed and more than 11 lac applicants applied for the allotment of the debentures. On the ground that by virtue of the conditions in the consent Order, IDBI being the monitoring agency required the L & T to furnish its funds requirement before making calls and since considerable details had to be worked out by the L & T, it became necessary to postpone the first call originally due on 30th April. Accordingly the Board of Directors of L & T resolved that the date of payment of the first call money payable by the debenture holders on or before 30th April, 1990 would be

postponed till such time as may be decided by the Directors. Meanwhile the Industrial Credit Investment Corporation of India (ICICI) who are the debenture trustees in respect of Series IV debentures issued a letter dated 30th April, 1990 to L & T stating that it would not be correct for them as debenture trustees to give conver-

sion of these debentures into equity shares before a reference was made to the CCI and without obtaining prior written consent of the IDBI. IDBI then considered the unaudited statement giving details of the utilisation of debenture funds upto 30th March, 1990 and were of the view that the applicants (L & T) should make the first call only after utilising substantially the surplus funds available to the extent of Rs.226 crores in investments (after expenditure) upto June 30, 1990 and after satisfying IDBI about the need for raising further funds by way of first call. After a prolonged discussion and correspondence with all the concerned authorities L & T proposed to make a call (first & final) of Rs.85 on or before 31st october, 1990 in place of the originally envisaged first call of Rs. 75 and the final call of Rs. 75 aggregating to Rs. 150. L & T thus proposed to affect the first equity conversion by end of November, 1990. IDBI approved the above proposal. In view of the fact that the postponement of the first call upon the debenture holders to be made on 30th April, 1990 and the postponement of the first conversion of Part-A of the debentures into equity shares as originally scheduled to be on 23rd May, 1990 was occasioned by IDBi requiring L & T to first satisfy IDBI as to its requirement of funds and an objection raised by ICICI for giving its consent to the conversion of Part-A of the debentures, L & T submitted interim applications before this Court for directions which have been mentioned in extenso in the judgment of my learned brother.

Mr. Nariman, learned Sr. advocate appearing on behalf of L & t in the changed circumstances submitted that the impugned issue of convertible debentures was passed by a special resolution in the Extraordinary General Meeting of the shareholders of L & t dated 21.8.89 and the said special resolution had not been challenged by any of the petitioners. Only consent order of the CCI had been challenged and thus the debentures which had been issued on the authority of a special resolution remained unchallenged. It was further argued that as regards the authority of CCI's consent order the scope and parameters of the Court's power to scrutinise the consent order have already been laid down in a recent decision of this Court in N.k. Maheshwari v. Union of India, [1989] 3 SCR 43. It was submitted that the limits as laid down in N.K. Maheshwari's case (supra) have not been transgressed so as to call for any interference in the consent order. Mr. Nariman thus justified the sanctioning of preferential allotment of shares worth Rs.300 crores for the shareholders of Reliance Group as well as the consent order for the entire issue of Rs. 820 crores. It may be further noted that initially L & T had taken the stand to reduce the total amount of the issue to Rs. 640 crores instead of Rs. 820 crores, but finally took the stand that the issue may be proceeded to the full extent of Rs.820 crores in view of the fact that the IDBI had itself in an affidavit in reply to their application before this Court had taken the stand that it was not IDBi's view to curtail the amount of issue and that it was L & T's own decision. The L & T thus in its affidavit dated 11th September, 1990 make it clear that the issue may be proceeded to the full extend of Rs.820 crores and only a postponement of the dates of the first call, first equity conversion and the second call may be permitted.

Mr. Chinoy, learned counsel appearing for the petitioners vehemently submitted that the petitioners had not come forward with a grievance regarding the validity of issue of debentures only. His

contention was that the petitioners had come forward raising larger issues affecting the entire economy of the country and the under hand practice adopted by the financial institutions and the big private industrialists. It was submitted that there was a limited financial capacity of the investor public in the shares and CCI as a controller ought to see that such public investment should not go in the hands of a few industrialists which would be contrary to the Directive Principles enshrined in Article 39(b) & (c) of the Constitution of India. It should adhere to the above State Policy enshrined in the Directive Principles that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. It was submitted that the facts on record clearly establish that the mega issue was conceived, proposed and implemented with the intent and object of utilising the reputation and goodwill of L & T to raise funds to the extent of Rs.636 crores for funding projects of Reliance Group of Industries. The consent so given by CCI was vitiated on account of the non application of mind and its failure to consider the facts of the case in the light of its application to act in public interest and in consonance with the principles embodied in Article 39 (b) &

(c).

Dr. Singhvi, learned Sr. advocate appearing on behalf of Trishna Investments submitted that economic and corporate issues can never be a subject matter of judicial review, as already laid down in State of Madhya Pradesh v. Nandlal Jaiswal & Ors., [1987] 1 SCR, 54 and Life Insurance Corporation of India v. Excorts Ltd. & Ors., [1985] Supp 3 SCR, 909 at p. 1017 & 1018. It was submitted that CCI had given consent after thoroughly applying its mind in any case the impugned consent order is a single, composite indivisible order which cannot be appropriately bisected or bifurcated. Even if for arguments sake it may be considered that the consent was not proper then the whole consent must go and it cannot be selectively upheld and selectively quashed. As regards suppliers credit it has been urged that provision of suppliers credit is an extremely common and well known commercial modality and indeed, construes and alternative scheme and mechanism of finance. In deed, the concept of suppliers credit is integrally connected and inextricably intertwined with the concept of a turnkey project. In sum and substance the concept of suppliers credit simply means that the entire turnkey project is the property of L & T who executes it and then hands it over to the purchaser (in this case RIL/RPL) and extends credit for payment to RIL/RPL with effect from the date when the project is handed over as a running unit by L & T. The suppliers/workers contractor(L & T) gives credit in the sense that the purchaser promises to pay, inter alia by bills of exchange or other customary payment organised with the price of the project would be paid in installment inclusive of further running interest from the date of handing over till the date of payment. It has been submitted that all official documents and other materials in the present case specifically stipulate and specify the precise particular projects for which the moneys were sought to be raised by L & T. Thus it is uncontrovertibly clear that the sole and only purpose for raising of funds and the sole and only requirement of funds by L & T related to the extension of suppliers credit to RIL, inter alia in respect of its cracker project which has also been shown on pages 10 and 11 of the prospectus. Similarly, reference has been made to other turnkey projects of RIL/RPL in the prospectus. It has thus been argued that if the consent of CCI was given taking note of all these circumstances then L & T has no right to change the same and utilise the funds for other purposes.

The issue was only of RS.820 crores for specific projects of RIL/RPL worth 635 crores and the entire issue would be subject to the fulfillment of the above contracts made with RIL/RPL. The original consent of the Controller was given on 29.8.89 and the same cannot be changed by subsequent letters of the Controller dated 15.9.89. Those letters can only be construed harmoniously and in conjuction with the sanction of 29.8.89. They can only be construed as nominating IDBI to monitor the sanction of 29.8.89 which is based on the proposal and the special resolution of the company. It was argued that the issue was carried out according to the prospectus filed on 6th September, 1989. The two letters of 15th September, 1989 cannot be construed as authorising IDBI or L & T to redraw the consent or to override the special resolution or the prospectus for that would be completely violative of the provisions of the Companies Act. Capital Issues Control Act and the Rules made thereunder.

Mr. Ashok Sen, learned Sr. advocate appearing on behalf of K.B.J. Tilak opposed the interim applications submitted on behalf of L & T. It was contended that L & T had no right to change the conditions of the consent order as well as the terms and conditions mentioned in the prospectus. Mr. Sen also placed reliance on the principles set out in De Smith's Judicial Review of Administrative Action 4th Ed. page 285 which sets out the principles governing the exercise of discretionary powers as under:

> "The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be complelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires. Nor, as will be shown, is it possible to differentiate with precision the grounds of invalidity contained within each category."

When such order is passed without regard to relevant consideration or irrelevant grounds or for an improper purpose or in bad faith then the order becomes void. Mr. Sen also cited a passage of House of Lords in Anisminic Ltd. v. The Foreign Compensation Com-

mission, [1969] 2 A.C. 147 which has been quoted by the Supreme Court in [(1971) 3 SCR p. 557] at page 570 which reads as under:

> "It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word"jurisdiction" has been used in a very wide sense and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act sothat it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had not right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

It was also submitted that the consent order of the Controller is an integrated and composite order and it cannot be vivisected either by the IDBI or by the High Court. It is a statutory order which has been made by a statutory authority in accordance with the Capital Issues (Control) Act and Rules, approved by the Controller and the issue was subscribed on the basis of such consent order and prospectus and on other functionaries can change this order. It was submitted that the prospectus did not specify any contract apart from the turnkey contract of RIL and also did not mention anything except the supply credit necessary for financing these turnkey projects which would require Rs. 635 crores out of 820 crores. In other words, the principal purpose of the issue was the financing of the turnkey projects of the value of Rs. 635 crores. It is fallacious to argue that the issue was for Rs. 1425 crores as is sought to be argued on behalf of L & T. The propectus mentions at page 45 of the interim application under the head 'business plans' that for the period 1st October, 1989 to 31st March, 1992 funds requirement was estimated at Rs.1425 crores. It was further specifically stated that the suppliers credit, inter alia included Rs.510 crores to be extended to RIL in respect of its Naptha Cracker project. It was further specifically stated that the funds requirement was intended to be met out of the present issue of the debentures to the extent of Rs.820 crores and the balance would be met from internal accruals, in other words from the internal resources of the company and not borrowing or debenture proceeds.

Mr. Parasarn, learned Sr. advocate appearing on behalf of the petitioners in writ petitions Nos. 11112-11113 of 1990 filed in the High Court of Madras and subject matter of Transfer Petitions in this Court argued that each compulsorily convertible debenture holder has rights accrued in his favour pursuant to the allotment. Each debenture holder has his own perception of the rights accrued in his favour which he may seek to enforce. Such enforcement of right accrued in his favour will

necessarily result in his taking up a legal position which may agree with the stand taken by one or other of the parties. It has been submitted that the consent order passed by CCI is either valid or invalid. There is no third position possible. It was further submitted that prospectus is an invitation for offer from the public for the subscription or purchase of any shares or debentures. The invitation is accepted and the offer is made when an application is made for allotment of debentures.Once the debentures are allotted, the contract is concluded. It was further contended that each and every allottee of the debenture is entitled to specifically enforce the contract for specific performance. The Court will enforce specific performance in favour of the allottee debenture holder and maintain consent as a whole and bind other allottees on grounds of equity as all have acted on the basis of the consent. It was contended that with regard to the shares, specific performance is the rule. Reliance in support of this contention is placed on Jai Narian v. Surajmull, AIR 1949 F.C., 211. It was pointed out by the Federal Court that shares of a company are limited in number and are not ordinarily available in the market, it is quite proper to grant a decree fro specific performance of a contract for sale of such shares. The IDBI can only monitor the utilisation of funds by L & T as they are collected in terms of the clause as specified in the prospectus to ensure that the funds are actually utilised for the specific predetermined projects for which they are raised and this condition cannot be so interpreted to confer right on IDBI to decide as to the mode and manner and collection of funds itself.

Mr. S.S. Ray, learned Sr. advocate contended that consent order dated 29.8.89 was perfectly lawful and valid and the judgment of the Bombay High Court in this regard was correct. It was not possible for the Court to bisect or vivisect the consent order or to apply the 'blue pencil theory' thereto and also to hold that a part of it is valid while the rest is invalid. The consent order was an integral part of a single scheme having a single purpose and had to be considered in total conjunction of a series of documents and happenings. Mr. Ray drew attention of the Court to the correspondence which took place from 26.7.89 to 25.9.89 between the L & T and the CCI.

Mr. Ray also brought to the notice of the Court two events happened thereafter namely order of this Court dated 9.11.89 by which allotment of the debentures was allowed without claiming any equity by the allottee and allotment of the debentures to the palaintiff on 23.11.89. Mr. Ray also brought to the notice of this Hon'ble Court further events relevant for the purpose of this case. Notice given by LIC to L & T on 2.4.90 to call an Extraordinary General Meeting to remove Ambanis from the board but no meeting was held. On 19.4.90 Mr. Dhirubhai Ambani stepped down as Chairman of L & T. Various correspondence between L & T and IDBI vide two letters dated 22.6.90 and one dated 28.6.90. IDBI also sent a reply on 28.6.90 to both the letters dated 22.6.90 and 28.6.90 sent by L & T. In this reply letter IDBI stated as under:

> "From a quick review of the status of the new proposal mentioned in your letter dated 22.6.90 we feel that the net requirement of funds to be met out of debenture funds would be in the region of Rs. 600 to Rs. 650 crores as indicated by you..... The L & T Board will have to take a view on the size of the debenture issue in the light of the requirement of funds indicated in your letter and other modifications suggested in the series of the debentures. The company will no doubt obtain necessary approvals from CCI, debenture holders/shareholders, etc. in consultation with its legal

advisors."

It is clear that IDBI also realised that further approvals from CCI was necessary and also of the debenture holders, but this was never done.

A meeting by the Board of Directors of L & T was held on 26.9.90 in which the mega issue was reduced from Rs. 820 crores to Rs. 640 crores. The date of conversion of debentures were varied and the suppliers credit for Rs. 545 crores in respect of turnkey projects of RIL were cancelled. It was pointed out by Sh. Ray that taking note of the above documents and the happenings even if a part of the consent order dated 29.8.89 is found to be bad or unlawful, nothing can remain of the consent order and it has to go in its entirety.

Mr. Hegde, learned Additional Solicitor General appearing on behalf of the Financial Institutions submitted that it was wrong that the Ambani holding in L & T has increased from 12% to 35.3% it is based on a completely erroneous hypothesis that the shareholdings in RIL/RPL are only of Ambanis. 35 lac shareholders comprised of 50 per cent of the investing public of India are in fact the public at large. 200 crores worth of debentures were under the rights issue and it was mandatory under the guidelines for subscribing any issue. Out of remaining 620 crores, approximately 320 crores debentures were reserved for preferential entitlement to equity shareholders of RIL/RPL. The prospectus itself mention that any unsubscribed portion in the public offered by prospectus would go to the category of public. The claim of any loss as suggested in the statement given by the petitioners is completely wrong and baseless. The allegation that an illegal benefit is made by the Ambanis from the 7% transfer of shares does not survive as the entire shares with accretions have been handed over back to the public financial institutions.

Mr. R.K. Garg, learned Sr. advocate appearing on behalf of respondent Nos. 1 and 5 in Transfer Petitions Nos. 458- 467/90 contended that the sole question involved in all the cases is whether the Controller of Capital Issues was acting illegally or constitutionally in giving consent to L & T for coming out with mega issue of Rs. 820 crores, primarily and substantially for execution of turnkey cantracts for Reliance projects, with a stipulation in the contract that the cost of construction. would be Rs. 510 crores and suppliers credit will be extended on mutually agreed terms and conditions. The CCI after application of mind insisted on an undertaking to be given by Reliance that on extension of supliers credit they would be precluded to raise this amount from the market. It was further submitted that L & T themselves had applied for sanction in order to compete for these lucrative contractrs with foreign business rivals who were extending suppliers credit as a matter of routine and Indian companies were loosing business to them because of their superior financial strength though without superior special skills or experience. According to Mr. Garg construction of Hajira project sponsored by RIL would have gone to foreign business rivals who were required to be paid in foreign exchange with considerable detriment to national economy and as such RIL did a good turn to the national economy by giving contract of turnkey projects to L & T. It was further submitted that after the allotment of debentures a concluded contract between the debenture holders and L & T has come into existence and the rights and liabilities as contained in the prospectus cannot be varied by this Hon'ble Court. The CCI has no power to defeat, destroy or vary the contracts made between the investor and the company concerned.

On the other hand, Mr. Harish Salve, learned counsel appearing on behalf of petitioners in transferred case No. 61/89 submitted that the order granting permission by the CCI is alleged to be illegal as the CCI overlooked the implications of the MRTP Act vis a vis the suppliers credit. The dominant and real object underlying the issue was to make available funds for application to the Reliance Group projects and also to provide a tool by which Ambanis and Reliance Group shareholders could increase their control over L & T and dilute the control of the financial institutions. The issue was brought about directly as a result of the illegal takeover of L & T by the Ambanis. Thus the entire issue is tainted by fraud and void ab initio.

It has been further submitted that in reality and substance, the entire issue is tainted since the issue was an attempt of the Ambanis who had by means fair and foul garnered the control of L & T to raise moneys using the fair name of L & T for their own purposes. The money raised admittedly was not even required except for projects of Reliance Group.

Mr. B.R.L. Iyengar, learned Sr. advocate appearing on behalf of petitioners S.R. Nayak and Ors. in the writ petition filed in the Karnataka High Court and transferred to this Court, supported the contentions of the petitioners in the writ petitions filed in the Bombay High Court. Mr. Iyengar further submitted that the capital available for investment at any given time has to be sized and allocated according to national priorities by laying down an investment policy which should inform and govern the action of the different departments of the Govt. including the Controller of Capital Issues, who is a functionary in the Finance Ministry. At the given time that is in 1988-89 the capital market had according to available economic reports, about Rs.5000 crores public investment funds, limited as it was by poor savings and high inflation. There were so called mega issues four or five in number who had the resources to exploit the media including the electronic media. None of these mega issues had anything like suppliers credit from their associates, companies or otherwise. The reliance Petro Chemicals had already appropriated Rs.560 crores thus nearly 3000 crores of rupees had been appropriated by large issues when the impugned issue was presented. After that the capital available for wage goods industries, other labour intensive industries critical industries, sought to be set up by hundreds of professionals who had neither political influence nor the means to exploit the media would have been left with a very meagre amount available for allocation. Thus Articles 38 and 39(b) & (c) of the Constitution were not kept in mind by the authorities in making capital allocation. They addressed themselves to the so called requirement of L & T in isolation and admittedly did not have material priorities on the investment policy in mind.

It was further contended that the Reliance Group of Industries had in about one year established access to about 1500 crores of rupees, including suppliers credit of Rs.635 crores and had thereby become India's largest conglomerate, with three different kinds of industries and that by its very nature a conglomerate unlike a linear monopoly defies control and regulation was a glaring factor quite apart from the technicalities of the Monopolies Act. Sec 22 (3) (b) and

(d) of the Monopolies Act required indepth policy examination at the highest policy levels and consultation with the Monopolies Commission and the Planning Commission. The record does not disclose any such consideration or consultation, on the other hand the so called consideration can be seen to be casual, perfunctory and biased. Even in the case of transfer of shares of an ordinary

company, the directors have discretion to refuse the transfer if they feel that the person is undesirable or his shareholding is not in the best interests of the company and repeatedly the Courts have upheld such bonafide refusal to transfer. Such being the case, it was notorious in the present cases that the Ambanis' high ambitions were out to takeover L & T. It was thus contended that the nominees of the financial institutions were at the very outset put on inquiry, when without any shareholding the first two Ambanis sat on the Board of Directors and, thereafter Dhirubhai Ambani usurped the Chairmnan's seat. The CCI failed to perform its duties in a proper manner and such action of granting consent in the prevailing circumstances was not done in good faith. The sale of shares by the financial institutions itself was a grave breach of trust. For Reliance Group of industries it was not possible to further increase their capital base by releasing any mega issues and they have tried to succeed in doing indirectly what they could not have done directly. The first step in the execution of this nefarious plan was to transfer of 39 lac shares from the financial institutions to Bob Fiscal. The second step was the transfer of these shares by Bob Fiscal to Trishna Invest-

ments a subsidiary of Ambanis. The third step was the induction of Ambanis into the board of management of L&T and fourth step was of convening an Extraordinary General Meeting of the shareholders and to get a resolution passed in such meeting for execution of certain projects of RIL and RPL cornering more than 3/4th amount out of the entire mega issue of Rs.820 crores. This could not have been done without the active connivance and support of CCI and other financial institutions. The question raised in this case is not one of legality but of propriety and resonableness and bonafide of the action of the financial institutions in the course of execution of this plan which has virtually resulted in not merely transfer of professionalised managed company with a reputation built over the years into the hands of a private group but also the said company being used by the said private group to raise enormous capital in the capital market for the execution of its projects. It was further submitted by Mr.Iyengar that the whole consent is liable to be quashed and the same cannot be bifurcated.

The petitioners and the group of lawyers supporting them have argued that the consent given by CCI is bad and should be struck down on the ground that it was given in undue haste, without proper application of mind, in violation of the provisions of the MRTP Act and mollified in order to benefit Reliance Group. In the alternative it has been contended that no preferential reservation could have been made of Rs.310 crores of Convertible Debentures for the shareholders of Reliance Group of Companies. In this regard it has been contended that in case this Hon'ble Court does not hold the entire consent as invalid, then the part giving preferential reservation of Rs.310 crores of Convertible Debentures for the shareholders of the Reliance group of companies may be declared invalid but the remaining part of the issue of Rs.510 crores be declared valid, as the consent can be legally bifurcated in valid and invalid portions.

The other group of lawyers have contended that the consent given by CCI did not suffer from any infirmity and in any case it cannot be bisected or bifurcated in valid and invalid portions. The consent order was an integral part of a single scheme and shall be valid or invalid as a whole and it does not lie within the judicial review of the Courts to declare one part of the consent order as valid and the other part as invalid.

As already mentioned above this is a mega issue amounting to Rs.820 crores, out of which Rs.200 crores is the Right Issue for the shareholders and employees of L & T itself. Issue of Rs.310 crores being reserved as preferential issue for the shareholders of Reliance group of companies being an associate/group of L & T itself. The balance issue of Rs.510 crores is meant for the general public. So far as the Rights Issue of Rs.200 crores is concerned, the same is perfectly valid and nobody has come forward to challenge the same. As regards the preferential issue of Rs.310 crores in favour of shareholders of the Reliance group of companies is concerned, L & T and Reliance group of companies were interconnected within the meaning of Sec.2(g) of the MRTP Act and it is permissible according to law. The size of the issue was so large that it was considered necessary to reserve a substantial portion of it in favour of the shareholders of Reliance group of companies, in order to ensure the successful absorption of the entire issue. It may also be noted that the shareholders of the Reliance group of companies are numbering about 35 lacs and they represent the investor base of the entire shareholding community of the country. My learned brother B.C.Ray has dealt with this matter in detail and has found that preferential issue per se is not a novel idea. CCI has been permitting reservations for various categories out of public issue based on the Request made by companies after passing a special resolution in the general body meeting and there is no restriction on the shareholders of a company to offer shares of their company to anybody after passing a special resolution as required under Sec.81 (I-A) (a) of the Companies Act. I am fully in agreement with the above view taken by my learned brother B.C.Ray, J. After the aforesaid view taken by us, the question of bifurcating or vivisecting the consent order given by CCI does not survive. The legal controversy thus raised that the consent given by CCI under the Capital Issues (Control) Act can be held valid or invalid as a whole but not some part of it as valid and the rest invalid does not require to be decided in this case and the same is left open.

The next question which calls for consideration is whether the consent order for the mega issue of Rs.820 crores as a whole given by the CCI can be declared illegal or not on the grounds raised by the petitioners. This Court in N.K.Maheshwari's case (supra) while considering the duties of the CCI under the Control of Capital Issue Act while giving consent has observed under:

> "The apart, whatever may have been the position at the time the Act was passed, the present duties of the CCI have to be construed in the context of the current situation in the country, particularly, when there is no clear cut delineation of their scope in the enactment. This line of thought is also reinforced by the expanding scope of the guidelines issued under the Act from time to time and the increasing range of financial instruments that enter the market. Looking to all this, we think that the CCI has also a role to play in ensuring that public interest does not suffer as a consequence of the consent granted by him. But as we have explained later, the responsibilities of the CCI in this direction should not be widened beyond the range of expeditious implementation of the scheme of the Act and should, at least for the present, be restricted and limited to ensuring that the issue to which he is granting consent is not patently and to his knowledge, so manifestly impracticable or financially risky as to amount to a fraud on the public. To go beyond this and require that the CCI should probe in-depth into the technical feasibilities and financial soundness of the proposed projects of the sufficiency or otherwise of the security

offered and such other details may be to burden him with duties for the discharge of which he is as yet ill-equipped."

In the above paragraph this Court has clearly laid down that the CCI has also a role to play in ensuring that public interest does not suffer as a consequence of the consent granted by him. The CCI connot be permitted to take an alibi and a policy of hands off on the ground that this Court had said in the above case that it may be "to burden him with duties for the discharge of which he is as yet illequipped". It was never the intention in the above case to lay down that the CCI was not even required to see whether any public interest suffers or not as a consequence of the consent granted by him. It is the bounden duty of the CCI before giving an order of consent for the issuance of any mega issue to keep in mind and to carry out the Directive Principles of State Policy as enshrined in Article 39(b) &

(c) of the Constitution which provide as under:

39(b):

"That the ownership and control of the material resources of the community are so distributed as best to subserve the common good:

39(c):

That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

It is no doubt correct that the CCI is not required to probe in-depth into the technical feasibilities and financial soundness of the proposed projects or the sufficiency or otherwise of the security offered, but at the same time it has to see that the capital available for investment at any given time has to be sized and allocated according to the national priorities, and in the changed socio-economic conditions of the country to secure a balanced investment of the country's resources in industry, agriculture and social services.

It has been agrued by Mr.Iyengar that in 1988-89 the capital market, according to available economic reports, had about Rs.5000 crores public investment funds, limited as it was by poor savings and high inflation. There were so called mega issues 4 or 5 in number who had the resources to exploit the media including the electronic media. None of these mega issues had anything like suppliers credit from their associates, companies or otherwise. The Reliance Petro Chemicals had already appropriated Rs.560 crores and nearly 3000 crores of rupees had been appropriated by large issues when the impugned issue was presented. After that the capital available for wage goods industries, other labour intensive industries critical industries sought to be set up by hundreds of professionals who had neither political influence nor the means to exploit the media would have been left with a very meagre amount available for allocation. It has been further contended that the Reliance Group of companies had in about one year established access to about 1500 crores of rupees, including suppliers credit of Rs.635 crores and had thereby become India's largest

conglomerate with three different kinds of industries and that by its very nature a conglomerate unlike a linear monopoly defies control and regulation was a glaring factor quite apart from the technicalities of the Monopolies Act, which ought to have been considered by the CCI.

In N.K.Maheshwari's case challenge was made to an order of consent of the CCI granted for the issue of shares (Rs.50 crores) and debentures (Rs.516 crores) by the RPL. It was pointed out that though the issue proposed was of shares of Rs.50 crores and Debentures of Rs.516 crores, the company was allowed to retain over subscription to the tune of 15% amounting to Rs.77.40 crores. RIL was the promoter of RPL. Though mega issues had already been issued byRIL/RPL and a substantial amount of about Rs.1060 crores had already been mopped up from the public for the projects of Reliance group of companies and they were not entitled to raise any further public issue in this regard, a devise of suppliers credit and turnkey projects to the extent of Rs.635 crores was made for funding the projects of Reliance Group of industries by L & T. It was proposed from the side of L&T at the time when Dhirubhai Ambani was the Chairman and his two sons and M.L.Bhakta their Solicitor were on the Board of Directors of L & T. Thus the intention was to syphon an amount of Rs.635 crores out of the issue of Rs.820 crores in utilising and funding for the turnkey projects of the Reliance group. These facts were known to the CCI and were certainly relevant at the time of granting consent of the impugned issue of Rs.820 crores. Though this point has lost its force now in the changed circumstances but certainly it was worth noticing by the CCI at the time of granting consent. This Court on 9.11.89 had allowed the allotment of the debentures and thereafter approximately 11 lac debenture holders have bought the debentures. It would not be in the interest of general investor public to cancel the entire mega issue. Many transactions must have already taken place on the floor of the stock exchange regarding the sale and purchase of the debentures during this intervening period. Under the order of this Court dated 9.11.89, no restrictions were placed on L & T in the matter of utilisation and allotment, the L & T has so far received Rs.396 crores out of which approximately Rs.300 crores have been utilised towards issue expenses, capital expenditure, repayment of loans and working capital in terms of the objects of the issue. The balance available with the company is approximately Rs.96 crores only. There is already a safeguard provided in the order of the CCI dated 15.9.89 that the fund utilisation shall be with the approval of the IDBI. In any case, the consent order given by CCI cannot be held invalid on any of the grounds of challenge raised by the petitioners. In these proceedings this Court is neither called upon nor is entitled to decide as to how and in what manner the amount mopped up from the public by this mega issue could be utilised or spent. Thus, I agree with my learned brother B.C.Ray, J. that the consent given by CCI is valid.

All the above cases including the interim applications stand disposed of by the above order.The judgment of the Bombay High Court dated 29.9.89 also stands modified in accordance with the findings and observations recorded by us as mentioned above. The Contempt applications are dismissed. The parties are left to bear their own costs.

G.N. Applications dismissed.