Shoe Specialities Ltd. And Others vs Tracstar Investment Ltd. And Others on 4 April, 1996

Equivalent citations: [1997]88COMPCAS471(MAD)

JUDGMENT

S.S. Subramani, J.

1. All these appeals arise against the order in Company Petition No. 3/111(4) SRB/94 [See Tracstar Investment Ltd. v. Gordon Woodroffe Ltd. [1996] 87 Comp Cas 941 (CLB)]. Except C.M.A. No. 132 of 1996, all the other appeals are preferred by the various respondents in the company petition. C.M.A. No. 132 of 1996 is filed by the petitioner in respect of that portion of the finding which went against them.

2. For the sake of convenience, the reference to the parties hereafter will be according to their rank before the Company Law Board.

3. In its first meeting after the board of directors was reconstituted on June 2, 1994, the following subjected came for discussion and resolutions were passed by the second respondent as under :

> It was reported to and noted by the board that the share certificate No. 47768 for 5,00,000 equity shares of Rs. 10 each fully paid-up of Gordon Woodroffe Ltd., registered in the name of the company, bearing Distinctive Nos. 02617978 to 03117977, both inclusive, has been lost, as the share certificate has been illegally removed from the custody of the company and taken away by a person claiming to have control over Tracstar Investments Pvt. Ltd. Accordingly, it was necessary to submit an applications to the said Gordon Woodroffe Ltd. for issue of duplicate share certificates, together with a deed of indemnity; a draft whereof, was tabled for the board's consideration and approval. It was also reported to and noted by the board that it was necessary to have the above holding of the company sub-divided in the lots of Rs. 1,75,000 shares, 1,75,000 shares and 1,50,000.

4. In this connection the following resolutions were passed by the board :

> "Resolved that Mr. M.S.A. Kumar, Mr. K.K. Banerjee and Mr. A. Syed Ahamed, directors, be and are hereby severally authorised to make an application to Gordon Woodroffe Ltd., 36, Rajaji Salai, Madras 600 001, for the issue of duplicate share certificate in lieu of share certificate No. 47768 lots, in respect of 5,00,000 equity shares, bearing distinctive Nos. 2617978 to 3117977, both inclusive, and also to apply for sub-division of the said 5,00,000 equity shares, in the lots of 1,75,000 shares,

1,75,000 shares and 1,50,000 shares.

Further resolved that the deed of indemnity proposed to be executed by the company in favour of Gordon Woodroffe Ltd. in connection with the issue of duplicate certificates as hereinbefore mentioned; a draft whereof tabled at this meeting, be and is hereby approved, and that Mr. M.S.A. Kumar, director, be and is hereby authorised to execute the same for and on behalf of the company."

5. It is seen that on the same date, namely, June 2, 1994, the second respondent wrote a letter to the first respondent, to issue a duplicate certificate. An indemnity bond was also sent to the first respondent.

6. On June 3, 1994, the second respondent again held a board meeting, and it was resolved that :

"Resolved unanimously that 5,00,000 equity shares of Rs. 10 each, fully paid-up Gordon Woodroffe Ltd., 36, Rajaji Salai, Madras 600 001, bearing distinctive Nos. 02617978 to 03117977, both inclusive and registered in the name of the company, be sold and disposed of, at the best available market price, but at a price not below Rs. 12.75 per share, nett of brokerage, if any, and that Mr. M.S.A. Kumar, director, who failing Mr. M.M. Gupta, director, be and is hereby severally authorised to sign the requisite transfer deeds, for the on behalf of the company."

7. On June 4, 1994, the first respondent again held a board meeting, and it was resolved thus :

"Resolved to issue a new certificate bearing No. 48177 (for 1,50,000 shares), No. 48178 (for 1,75,000 shares) and No. 48179 (for 1,75,000 shares) under its common seal, in the name of Shoe Specialities Pvt. Ltd. in lieu of original certificate No. 47768 as recorded in the register of loss of certificate, tabled at the meeting."

8. Respondents Nos. 17 to 19 seem to have purchased the shares and their names were entered in the registers.

9. The company petition was filed challenging the above actions of respondents Nos. 1 and 2 by the petitioners under section 111 of the Companies Act whereby they prayed for the following reliefs after issuing notices to the sixteenth respondent on June 11, 1994, and June 14, 1994, asking for particulars :

"(a) To declare that the transfer of shares said to have been effected by respondent Nos. 10 to 15 for and on behalf of SSPL in respect of 5,00,000 shares held by SSPL in Gordon Woodroffe Ltd. bearing distinctive Nos. 02617978 to 03117977, covered by folio No. GLS 05348, certificate No. 57768 as non est in law, illegal, fraudulent and invalid in law, as being violative of section 108(1) of the Companies Act, section 4(3) of the Companies (Issue of Share Certificates) Rules, 1970, and section 22A(4) of the SCRA and not binding on the company and/or the petitioners....."

10. The material averments in the petition are as follows :

> The late Dwarakadoss Chhabria had two sons, R.D. Chhabria (R.D.C.) and M.D. Chhabria (M.D.C.) R.D.C. had two sons, namely, M.R. Chhabria (M.R.C.) and K.R. Chhabria (K.R.C.). In this case, we are concerned with the dispute between M.R.C. on the one hand and R.D.C. and M.D.C. on the other. The Chhabria family was controlling various companies. M.R.C. is having control over the Shaw Wallace group of companies, and R.D.C. and M.D.C. are having control over the second respondent.

11. One of the members of the family, namely, K.R.C. (named above), was a non-resident Indian. He contributed substantially to the growth of the companies while he was abroad till 1984. The family gained control over the shareholdings of R.C. Shaw and Co. Ltd., in Shaw Wallace Co., and, in the year 1984, K.R.C. was required to go over to India by his brother M.R.C. to secure and completely take over control of Shaw Wallace and Co. It is seen that K.R.C. gave up his non-resident Indian status under the Foreign Exchange Regulation Act and income-tax laws. In view of this, M.R.C. was the only member of the M.R.C. family who was having control over Shaw Wallace Co. but also the other Shaw Wallace group of companies abroad, as, under the provisions of FERA, a non-resident Indian cannot acquire or hold assets abroad, without the permission of the Reserve Bank of India. It is seen that there was some oral understanding between the members of the Chhabria family whereby it was agreed that M.R.C. would own and control most of the companies of the Chhabria group, which includes Shaw Wallace Co. and its subsidiaries. Others were given control of distillery companies which included Tracstar Investments Pvt. Ltd. and Gordon Woodroffe Ltd. (GWL). In these companies, the majority shares were held and owned by M.D.C. and R.D.C. As a consequence of this arrangement, K.R.C. was relieved of his obligation given under bank guarantees in favour of Hongkong Bank. It is seen that M.D.C., and R.D.C., had good business in beverages, and this was not liked by M.R.C. It is alleged that due to the development of the companies owned by M.D.C. and R.D.C., M.R.C. was perturbed. He decided to do everything within his reach to go back on the family arrangement and with that intention, some time in April, 1993, M.R.C. decided to undo all that had been done from April, 1990 to September, 1991, in pursuance of the family arrangement. He began to claim that all the companies including GWL, Tracstar, etc., belonged to him and to SWC, and not to any other Chhabrias. It began as a family dispute, and became a news item, and finally the same was converted into a corporate battle. It is seen that from April, 1992, onwards, the dispute which began as a family dispute, ended in dispute over the ownership and control of the companies. On April 22, 1992, a notice was issued on behalf of M.D.C. and R.D.C. regarding their rights in the second respondent/ company, and their apprehension regarding the interference by M.R.C. and his people. The reason for the apprehension was that the second respondent-company was controlled by a board of directors who were employees of SWC owned by M.R.C. The notice requested the board of directors to desist from exercising their powers in a manner which prejudices or undermines the interest of the shareholders of the company.

12. SWC owned by M.R.C. filed an application before the Company Law Board as C.P. No. 19 of 1992 under section 247 and 250 of the Companies Act. One of the main reliefs sought in that case was, to investigate into the persons who held the shares in the second respondent-company. That applications is dated May 5, 1992. It was alleged in that petition that M.R.C. wanted to interfere with

the rights of Standard and Stridewell in the second respondent company. The second respondent was manufacturing shoe-uppers and had been manufacturing the same through GWL. GWL was being managed by the board of directors which controlled the employees of SWC. The second respondent was also being managed by a board of directors which essentially consisted of employees of SWC or its consultants or its constituents. Thus, the persons who managed the second respondent were obliged to M.R.C. by virtue of their jural relationship, and the employees were dependent on M.R.C. It is further averred that M.R.C., emboldened by the jural and fiduciary relationship between him and the directors of respondents Nos. 1 and 2, was inspired by the fact that the directors will dance to his tune and, therefore, abused his position. They wanted to wrest control over the second respondent-company. With that intention, M.R.C. ignited the series of fraud, first by unauthorisedly increasing the share capital of the second respondent from 5,000 to 25,000 shares and again illegally allotted an enhanced capital of 20,000 shares to Bhankerpur Shimbhaoli Beverages Pvt. Ltd., which in turn created a pledge in favour of Malleswara Finance and Investments Pvt. Ltd. The enhancement of the capital, issue of allotment of the same and the subsequent pledge were questioned and a company petition was filed as C.P. No. 29 of 1992 by M.D.C. and R.D.C., before the Company Law Board. That was on July 15, 1992. In Company Petition No. 29 of 1992, an interim application was also filed, to restrain the second respondent herein from alienating its shares in the first respondent-company. On August 20, 1992, counsel for the second respondent undertook not to alienate its shares in the first respondent's company. On May 20, 1993, the Company Law Board passed an order whereby the issue of allotment of 20,000 shares was set aside and a direction was also issued to rectify the registers. In spite of the order, the board of directors did not comply with the direction and, therefore, on August 2, 1993, another application, namely, C.P. No. 44 of 1993 [See Standard Distilleries and Breweries P. Ltd. v. Shoe Specialities Pvt. Ltd. [1995] 83 Comp Cas 727 (CLB)] was filed by M.D.C. and R.D.C. complaining of continued oppression by the directors of the second respondent, who were employees of SWC.

13. Against the order of the Company Law Board in C.P. No. 29 of 1992, Malleswara Finance and Investment Co. Pvt. Ltd. filed a writ petition before this court as W.P. No. 19256 of 1993. It came before a learned single judge for admission, and the order of the Company Law Board dated May 28, 1994, was stayed. In the meanwhile, C.P. No. 44 of 1993 filed by M.D.C. and R.D.C. for giving relief against the continued oppression, came for consideration, and, in view of the stay order passed by this court in the writ petition, the Company Law Board also reserved its orders after the disposal of the stay petition. On May 10, 1994, the writ petition filed by Malleswara Finance and Investment Co. Pvt. Ltd. was dismissed. In the meanwhile, some of the respondents in C.P. No. 29 of 1992 filed C.M.A. before this court as A.A.O. Nos. 743 of 1993 and 875 of 1994. Against the dismissal of the writ petition, Malleswara Finance and Investment Co. Pvt. Ltd., filed writ Appeal No. 806 of 1994. The writ appeal as well as the appeal against the order in C.P. No. 29 of 1992 were heard and disposed of. The judgment dated September 27, 1994, is reported in Malleswara Finance and Investments Co. P. Ltd. v. Company Law Board [1995] 82 Comp Cas 836.

14. When the attempt of M.R.C. to increase the share capital in the second respondent-company failed, another attempt was made by him to sell its shares in the first respondent-company in which the first petitioner claimed some right. For the said purpose, M.R.C. issued direct instructions to the board of directors to dispose of the shares held by the second respondent in the first respondent, to

third parties. Since there was already a judgment against the board of directors, in C.P. No. 29 of 1992 which was subsequently confirmed by this court, these directors expressed their dissent and, therefore, it is alleged that M.R.C. wanted those directors to resign their post, and, immediately, after the resignation, his own employees were appointed as additional directors and later inducted as directors by M.R.C. It is said that the same was done June 1, 1994, and June 2, 1994, and in the first meeting itself, in its board meeting, it was decided to obtain duplicate certificates and, thereafter, sell the same to third parties. It is averred that the resolution to get duplicate certificates and to sell the same to third parties and subsequent purchase by respondents Nos. 17 to 19 is invalid. The main reasons mentioned in the petition are (1) that it is against the undertaking filed by counsel in C.P. No. 29 of 1992; (2) that the appointment of the board of directors is against law and they have not formed any opinion in good faith either to issue duplicate certificates or for selling the same; and (3) before issuing duplicate certificates, the relevant provision of law had not been applied, and no attempt was made to get the original.

15. It is also contended that the above acts are the result of collusion between the directors of respondents Nos. 1 and 2 companies and respondents Nos. 17 to 19. It is not only against the interest of the first petitioner-company but also the other petitioners. The issuance of duplicate certificate is mala fide and is only with an intention to take away the right of the first petitioner in the second respondent-company. It is also said that the board of directors have not applied their mind, nor were they aware of the real state of affairs, and they have acted negligently and they have danced according to the tune of M.R.C. since they were none other than his own employees.

16. In the counter-statement filed by the respondents, it is contended that the petition is not maintainable. It is said that the transfer of shares effected by the second respondent, a members of the first respondent, is in accordance with law, and when the transferor and the transferee had no complaint, the petitioners herein can have no locus standi to challenge the same.

17. It is further stated that the action challenged relates to the affairs of the second respondent and the same cannot be the subject-matter of a petition under section 111 of the Companies Act. It is further said that the first petitioner cannot claim any right, title or interest in the five lakhs shares held in the second respondent which shares were transferred by the second respondent to three persons who are respondents Nos. 17 to 19 in the petitions. It is further said that there is no restriction on the sale or disposal of shares held by the second respondent and, therefore, the second respondent disposed of those shares without any restriction. It is said that such a claim will be invalid and opposed to clauses 40(a) and 40(b) of the listing agreement forms and also in violation of section 372 of the Companies Act. It is further said that the first respondent-company had issued duplicate certificates and the same were registered in accordance with law. There is no violation either under section 23A(iv) of the Securities Contracts Regulation Act, 1956, and rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1960. According to them, the challenge is without any merit, and the directors have done only their duties in accordance with law. It is further said that the board of directors duly elected in pursuance of the resolution passed by the board of directors were competent to effect the transfer. It is said that the duplicates certificate was issued pursuant to the request made by the second respondent stating that the certificate held by it was lost from its custody, the same having been taken away by persons claiming to have control over the first

petitioner-company. The request was made on June 2, 1994, and the second respondent also made a request for three split certificates. It is said that share transfer committee of the first respondent, constituted by the board of directors of the company to deal with such matters considered the matter on June 4, 1994, and the documents presented by the second respondent were perused, and they were satisfied that the conditions provided for the issue of duplicate certificate had been complied with. It is said that the first respondent received an application for registration of the transfer of the shares from third persons, who were subsequently impleaded as respondents Nos. 17 to 19. The allegation regarding fraud and collusion between respondents Nos. 1 and 2 and respondents Nos. 17 to 19 was denied. They also dispute the right of the first petitioner in its claim over the said shares. They also dispute the claim of the first petitioner as pledgee of the said shares, which were registered in the name of the second respondent. It is said that the said claim is contrary to law. They also dispute the locus standi of the other petitioners in filing the petition under section 111 of the Companies Act. They also said that there was no necessity to investigate the loss of the original certificate, the reason being that the first petitioner was in possession of the same without any authority and, therefore, when the second respondent applied to the first petitioner for the issue of a duplicate certificate, so far as the second respondent was concerned, it was denied its right to be in custody and, therefore, deemed to have been lost.

18. The contentions of the other respondents are also similar, except those of respondents Nos. 17 to 19 wherein they further allege that they have purchased the shares bona fide for consideration without notice about the inter se dispute between the members of the Chhabria family. It is their case that they have purchased the shares as an investment. They also contend that as against them no separate relief has been claimed in the petition and they have not been issued any notice before they were impleaded. They also say that the provisions under section 111 of the Companies Act cannot be invoked in this case, since disputed questions of fact and law are in issue. It is their case that there is no violation of either section 84 or section 108 of the Companies Act, and the remedy of the petitioners, if any, is only to file a suit and get appropriate relief.

19. On the above contentions, the Company Law Board raised the following issues (at p. 952 of 87 Comp Cas) :

> "(1) Whether the petitioners have locus standi to present the petition ?
>
> (2) Whether the matter is to be relegated to a suit ?
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> (3) Whether SSPL has violated the undertaking given to the Company Law Board in C.P. No. 29 of 1992 ?
>
> (4) Whether sale of shares of SSPL is deemed to be the sale of the undertaking ?
>
> (5) Whether GWL has violated the provisions of section 84(2) of the Act and the Companies (Issue of Share Certificates) Rules, 1960 ?

(6) Whether removal of the name of SSPL and consequent entry of the names of respondents Nos. 17, 18, and 19 in the register of members of GWL was 'without sufficient cause' ?

(7) Whether the prayer for rectification of the register of members is to be granted ?"

20. On issue No. 1, the Board held in favour of the petitioners. On issues Nos. 2, 3 and 4, the finding was against the petitioners. On issue No. 5, the finding was in favour of the petitioners. On issues Nos. 6 and 7 also, the finding was in favour of the petitioners. Finally, the Board held that the transferees were not able to establish that they were bona fide purchasers for value without notice, and the name of the second respondent was omitted from the register of members without sufficient cause and, therefore, it was directed to be entered therein, after removing the names of the transferees. It also directed the second respondent to pay respondents Nos. 17 to 19 the consideration for the sale of the shares and that will be sufficient to protect their interest. It also held that the issuance of a duplicate certificate was against law, and respondents Nos. 17 to 19 will not get any right therein. It is against the said judgment, these appeals have been preferred.

21. The main argument advanced on behalf of the respondents in these various appeal is that the finding by the Company Law Board that there is collusion between respondents Nos. 1 and 2 to gain control over the first respondent is not correct. All of them attack the finding that the directors of the second respondent deviated from their fiduciary position and decided to act against the interest of the majority of the second respondent with the active co-operation of the first respondent, is without any basis. The further finding of the company Law Board that without the active co-operation and pre-arrangement between the directors of respondents Nos. 1 and 2, the alleged transaction could neither have been conceived, planned or implemented with such fine tuning is also based on no evidence and, therefore, liable to be set aside. It is their case that since that finding is without any evidence, the order of the company Law Board has only to be set aside.

22. The said argument is elaborated by them by stating that in the petition, there is no substantial pleading regarding fraud or collusion and the particulars are also not given. It is their further case that if it is a case of fraud and collusion, minute details will have to be pleaded, for which the summary procedure under section 111 of the Companies Act is not the proper forum. The Company Law Board should have directed the parties for a regular civil suit.

23. I will first consider the question whether there is a pleading in this case, and whether the alleged vagueness or its absence has in any way prejudiced the case of the respondents, and whether they have been misled by absence of pleadings.

24. Learned counsel for the respondents (appellants herein) relied on the decision reported in Bishundeo Narain v. Seogeni Rai, and also on the decision reported in Ladli Parshad Jaiswal v. Karnal Distillery and Co. Ltd. , for the said purpose. Learned counsel also relied on the provisions of order 6, rule 4 of the Civil Procedure Code for the said purpose. I will deal with these decisions and the provisions of the Code of Civil Procedure seriatim.

25. The object of pleadings is to present a full picture of the cause of action with such information and detail as to make the opposite party understand the case.

26. The object of giving such particulars is to enable the opposite party to know as to what case he has to meet and thus to prevent a surprise trial and to limit the generality of the pleadings to definite and limited issues to be tried and thus save unnecessary expenses.

27. "Fraud" is defined in section 17 of the Contract Act. But the "fraud" dealt with therein is concerning the fraud between two contracting parties. In fact, the provisions under section 17 of the said Act may not be specifically applicable to the facts of this case. According to the petitioners' case, the acts of directors of respondents Nos. 1 and 2 have affected their rights, and their act was a secret arrangement. The petitioners herein are not the contracting parties, but the affected persons. They are not parties to the alleged secret arrangement. If so, what they can plead are only the circumstances from which an inference has to be drawn, whether the secret arrangement is in any way fraudulent or collusive.

28. In G. Subashini v. P. Lakshmi Bai [1987] II MLJ 107, one of us (Srinivasan J.) had occasion to consider a similar question. In paragraph 18 of the judgment, at page 113, the learned judge discussed the law and held as to what is sufficient compliance with Order 6, rule 4 of the Civil Procedure Code. The relevant portion of paragraph 18 reads thus :

> "The provisions of Order 6 of the Code of Civil Procedure would only mean that where a party is in a position to give all the particulars regarding the grounds set out in the rule, he shall set out the same in the pleading itself. The object of the rule is to enable the opposite party to know what case he has to meet and thus to prevent a surprise at the trial. But, it must always depend upon the facts of each case as to what decree of particularity is required. (vide Philips v. Philips [1879] 4 QB 127). The general rule that full particulars must be given in the pleading cannot be made applicable to a case where the concerned party is not in a position to know the full particulars."

29. On going through the petition, and also the reply affidavit filed by the petitioners, it is clear that they have averred the necessary circumstances from which, if they are proved, an inference of collusion can be inferred.

30. Before going to the facts, we have also to consider what is meant by "fraud" independent of contract, and what is the effect of the power exercised by persons who stand in a fiduciary relationship. It cannot be disputed that the directors of the company stand in a fiduciary position in discharging their duties which they owe to the company and they are to be treated as trustees of the properties of the company under their control.

31. In Shackleton on the Law and Practice of Meetings, 7th edition (1983), at page 229, the learned author says thus :

> "... the management of company is vested in its directors who are, in effect, agents for the company in relation to the transactions into which they enter on behalf of the company, and trustees for the company so far as concerns the company's funds and property."

32. At page 230, the learned author further says thus :

> "Directors are in a fiduciary position. They must exercise their powers for the company's benefit and, if abuse of these powers is threatened, the court will intervene. There have been cases, for example, of directors having been restrained by the court from abusing powers in the articles relating to the registration of transfers and the issue of shares under their control.
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> Alternatively, the court may order a general meeting :
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> Under a scheme designed to avoid a takeover bid, the board altered the voting rights attaching to shares so that the board and its associates obtained a majority of votes at general meetings by means of an issue of new preference shares. The court regarded this action as unconstitutional but made no order until a general meeting had an opportunity of approving the scheme."

33. Palmer's Company Law, volume 1, 23rd edition (1982), Chapter 64 deals with "Directors" and "Fiduciary Duties". At page 850 (Chapter 64-04), the learned author says that directors are under a duty to act bona fide in the best interest of the company. While dealing with the said subject the learned author further says thus :

> "Although directors' duties are owed primarily to, and are enforceable by, the company and not to individual shareholders, the company is defined in equity usually by reference to the shareholders as a whole and not by reference to the company as an entity distinct from its members. In a celebrated instance, counsel advised that 'the expression "the company" did not mean the sectional interest of some (it may be a majority) of the present members, but of present and future members of the company' and that, on the basis that the company has to continue as a going concern, the directors 'should balance along-term view against short-term interests of present members'. A similar view was taken by Megarry J. in Gaiman v. National Association for Mental Health [1970] 2 All ER 362, when he said :
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> 'The interests of some particular section or sections of the company cannot be equated with those of the company, and I would accept the interests of both present and future members of the company as a whole, as being helpful expression of a human equivalent.' It may be that when the company is no longer solvent the interests of the company include the interests of its creditors."

34. The power to manage the company is vested in them.

35. We may have also to consider what is meant by "collusion".

36. In P. Ramanatha Aiyar's The Law Lexicon, reprint edition 1987, at page 216-i, "collusion" is defined as "a secret agreement for a fraudulent purpose; a secret or dishonest arrangement in fraud of the rights of another; a secret agreement by two or more persons to obtain an unlawful object, an agreement between persons to obtain an object forbidden by law, or to obtain a lawful object by illegal means". The petitioner's case is that there is secret and dishonest arrangement between the directors of respondents Nos. 1 and 2, in fraud, which has affected their right.

37. In Wharton's Law Lexicon, 14th edition (1993), at page 212, "collusion" is defined as "to unite in the same play or game, and thus to unite for the purposes of fraud of deception; an agreement or compact between two or more persons to do some act in order to prejudice a third person, or for some improper purpose."

38. In Shrisht Dhawan V. Shaw Bros. , their Lordships considered a similar question as to how far fraud and collusion invalidate any decision or action. In paragraph 20 of the judgment, their Lordships said thus (page 553) :

> "Fraud and collusion vitiate even the most solemn proceeding in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit.....".

39. After extracting the various definitions in the dictionaries, their Lordships further held thus :

> "... fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in Khawaja that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation to statutory law... The present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provisions of the statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is, misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensure that he acquires the

> information necessary to avoid bad bargain'. In public law the duty is not to deceive....".

40. In De Smith's Judicial Review of Administrative Law Action, fourth edition (1980), at pages 335 and 336, the learned author says thus :

> "A power is exercised fraudulently if its repository intends to achieve an object other that for which he believes the power to have been conferred. For example, a local authority committee would exercise in bad faith its power to exclude interested members of the public if it deliberately chose to hold the meeting in a small room. The intention may be to promote another public interest or private interests. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise."

41. In "Administrative Law" by justice C.K. Thakker, (1992) edition, at page 328, the learned author has stated thus :

> "Sometimes, an authority entrusted with a power does not exercise that power but acts under the dictation of a superior authority. Here, an authority invested with the power purports to act on its own but 'in substance' the power is exercised by another. The authority concerned does not apply its mind and take action on its own judgment, even though it was so intended by the statute. In law, this amounts to non-exercise of power by the authority and the action is bad."

42. In Equity and the Law of Trusts by Philip H. Pettit, fifth edition (1985), at page 148, the learned author says that there is no distinction between the words "fraud" and "dishonest".

43. Both of these mean the same thing and the use of the two together does not add to the extent of dishonesty required. The learned author also says at page 149 what a trustee should know before he is made liable or charged with dishonesty or fraudulent act. The learned author says thus :

> "(i) actual knowledge;
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> (ii) wilfully shutting one's eyes to the obvious-'Nelsonian knowledge';
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> (iii) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make;
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> (iv) Knowledge of circumstances which indicate the facts to an honest and reasonable man;
>
> (v) knowledge of circumstances which would put an honest and reasonable man on inquiry."

44. A director of a company must know that he is a trustee for the company; though he need not know all the details of it. He must know of the dishonest and fraudulent design, though not necessarily of the whole design; and he must know that his act assisted in the implementation of such design - if these acts proved, fraudulent act on the part of the directors can be imputed.

45. In this connection, it is better to refer to Kerr on the Law of Fraud and Mistake, 7th edition (1952), at pages 672 and 673, the learned author has said thus :

> "It is not, however, necessary, in order to establish fraud, that direct affirmative or positive proof of fraud is given. Circumstantial evidence is not only sufficient, but in many cases it is the only proof that can be adduced. In matters that regard the conduct of men the certainly of mathematical demonstration cannot be expected or required. Like much of human knowledge on all subjects, fraud may be inferred from facts that are established. Care must be taken not to draw the conclusion hastily from premises that will not warrant it, but a rational belief should not be discarded because it is not conclusively made out. If the facts established afford a sufficient and reasonable ground for drawing the inference of fraud, the conclusion to which the proof tends must, in the absence of explanation, or contradiction, be adopted. It is enough if from the conduct of a party the court is satisfied that it can draw a reasonable inference of fraud, or if facts be established, from which it would be impossible upon a fair and reasonable conclusion, to conclude but that there must have been fraud....."

46. Now, let us consider whether the above ingredients are proved in this case.

47. While narrating the facts, we have already stated that Malleswara Finance and Investment Co. Pvt. Ltd. filed a writ petition and the same was dismissed by a learned single judge of this court on May 10, 1994. With the dismissal of the writ petition, Malleswara had to be removed from the register of members of the second respondent. The result was, petitioners Nos. 2 and 3 herein became the majority shareholders of the second respondents. The order was received by the affected persons including the third respondent herein some time in the third week of May 1994. It may be seen from the minutes of meeting of the board of directors of the second respondent that on June 1, 1994, six new persons were appointed as additional directors, and the resignation of three directors of the earlier board was accepted. We must note that the directors who resigned were also employees of the third respondent. In the meeting on June 1, 1994, only two directors of the earlier board were present. They are, Eswaran and Ramani. Except for the resignation of the three directors, no other business was transacted at that time. Next day, i.e., on June 2, 1994, Easwaran also submitted his resignation and one Mr. Sriram was appointed as additional director. He is the 14th respondent herein. In that board meeting held on June 2, 1994 only the additional directors who were appointed on June 1, 1994, and the 14th respondent were present. In that meeting, a decision to obtain duplicate certificates was taken, and it was also decided to apply for sub-division of the said certificates into three different lots of 1,75,000, 175,000 and 1,50,000. In the 43rd meeting held on June 3, 1994, it was unanimously resolved to sell the 5,00,000 equity shares at the best available market price, but at a price not below Rs. 12.75 per share. On June 8, 1994, there was

another board meeting of the second respondent in which it was decided that out of the sale consideration, a sum of Rs. 22,19,725.77 due to the first respondent as per letter dated June 1, 1994, be paid off. It was also resolved to pay another sum of Rs. 33,18,248 to the first respondent towards the admitted liabilities. It was further resolved to keep in amount not exceeding Rs. 10,65,000 out of the balance amount as inter-corporate deposits with the first respondent, for a period of three years at an interest at the rate of 18 per cent. per annum. In this connection, it may also be noted that the only valuable asset held by the second respondent was the impugned shares. On June 2, 1994, when a decision was taken to dispose of the shares, there was no urgency. The minutes also do not contain any details as to the needs of the company. It is admitted that the company was not carrying on any business at that time.

48. The newly constituted aboard took charge of the office only on June 2, 1994, and it was in its first meeting that such a decision was taken. In the resolution, it is state :

> "It was resorted to and noted by the board that the share certificate No. 47768 for 5,00,000 equity shares of Rs. 10 each fully paid-up of Gordon Woodroffe Ltd..... has been lost, as the share certificate has been illegally removed from the custody of the company and taken away by a person claiming to have control over Tracstar Investment Ltd.".

49. Who reported about the removal of the share certificate and who took away the same as all not stated. But one thing is clear from the wording. That is, "it was reported", and they were not acting on their own. But they believed the so called report and took a decision. It can be further seen that when the decision to dispose of the shares was taken on June 3, 1994, the first respondent has not taken any decision to split and issue duplicate certificates. It may also be noted that the indemnity bond executed by the second respondent is written on a stamp paper purchased by it on June 1, 1994, i.e., even before the board meeting was held.

50. We have already mentioned that the new board of directors were acting on the report, without any verification of records. What made them to split the certificate into three lots is not explained. But it is clear that ultimately the sale was made to three different parties.

51. The three parties are respondents Nos. 17 to 19 in this case. How respondents Nos. 1 and 2 happened to negotiate with these persons is not explained. In the objection, when that fact in disclosed, the answer of respondents Nos. 17 to 19 is only that they are not bound to give the details. When the decision is taken on the basis of a report and that too in its first meeting and immediately thereafter it is implemented, there is a presumption that all these things are pre-determined, and the negotiation for sale also might have been the consequence of such a per-determination. It is here the role of the third respondent gains importance.

52. While extracting the facts, we have already stated about the fight in the Chhabria family, and how the third respondent was taking steps to unsettle the family arrangement. The additional directors who were appointed on June 1, 1994, and June 2, 1994, are admittedly employees of the third respondent in S.W.C. The first respondent is also a company under the direct control of the

third respondent.

53. In this connection, we may also note that in Company Petition No. 29 of 1992, orders were pronounced on May 28, 1993, whereby the allotment of 20,000 shares in the second respondent company was set aside and the Company Law Board directed rectification of the register. The immediate consequence was the attempt of the third respondent to take control of the second respondent company failed. When the oppression was continued, another petition, namely, C.P. No. 44 of 1993 was filed and when the same was about to be taken up for consideration, Malleswara Finance and Investment Co. Pvt. Ltd. filed the aforementioned writ petition before this court and obtained stay of implementation of the order passed in C.P. No. 29 of 1992. So, naturally, the Company Law Board was not in a position to proceed with C.P. No. 44 of 1993 and, therefore, orders were reserved by it. On May 19, 1994, the writ petition was dismissed. There was not obstruction or other impediment for the Company Law Board to take into consideration C.P. No. 44 of 1993. So, some immediate steps had to be taken to defeat that implementation of the order passed in C.P. No. 29 of 1992. It is with that intention, the directors of the second respondent company were asked to resign and new directors were inducted by the third respondent. On June 8, 1994, the Company Law Board passed the order in C.P. No. 44 of 1993 (see [1995] 83 Comp Cas 727). In paragraph 21 of the order, it was held thus (at page 736) :

> "We are of the view that it may not be appropriate to look into the bona fides of SSPL in rejecting the requisition by the first petitioner, at this distant point of time and consider the prayer for removal of the board of directors especially when petitioners Nos. 1 and 2 having become majority shareholders in view of our order dated May 28, 1993, and can effectively exercise their majority right to elect their own directors on the board of SSPL.
>
> Accordingly, we dispose of this petition with the directions to the board of directors of SSPL to act on the requisition lodged by the petitioner on October 8, 1993, as per the provision of section 169 of the Companies Act as if requisition has been lodged with SSPL on June 21, 1994. Both the parties are at liberty to approach us in case of any difficulty in convening the extraordinary general meeting. Till the extraordinary general meeting is convened, the present board will not take any decision except relating to the said requisition." In view of that order, no positive decision could be taken after June 8, 1994. Therefore, records had to be made as if decision had already been taken regarding the issue of duplicate certificates and sale thereof. So, the available dates are only between June 1, 1994 and June 2, 1994.

54. In this connection, we may also take note of one more allegation in the petition.

55. When C.P. No. 29 of 1992 was filed, the petitioners therein wanted an interim order to restrain the third respondent and others from alienating the shares of the second respondents in the first respondent company. Such, application was filed on July 15, 1992. On August 20, 1992, counsel for the second respondent undertook not to alienate the share of the second respondent in the first respondent company and that undertaking was there at least till the disposal of that petition, i.e., till

May 28, 1993. So, even at that time, the petitioners herein had the apprehension that their right over the company will be taken away by illegal methods by the third respondent, and the same had to be prevented.

56. In this connection, we may also note that the third respondent is also a director and chairman in the first respondent company. C.P. No. 44 of 1993 itself was filed to remove the directors appointed by the third respondent and to have an extraordinary general meeting for the election of directors. The action of the third respondent in asking the previous boards to resign and in appointing his own employees, was to pre-empt the decision that was to be taken in C.P. No. 44 of 1993. So, the intention or motive of the third respondent was clear, i.e., to dislodge the control of the second respondent in the first respondent company, by some means. It was that power which he exercised through his nominees who stood in a fiduciary position to the shareholders. The directors did not exercise their discretion, nor did they consider the interest of the company. As stated earlier, those shares were the only asset of the second respondent in the first respondent company. What was the urgency for selling the same was not considered. They just obeyed the dictates of the third respondent. Their action can be termed only as reckless and dishonest. They may be obedient servants of the third respondent. But when we consider the interest of the second respondent company, their action can only be termed as dishonest and fraudulent. Since they did not exercise their own discretion and were only obeying the orders of the third respondent, their entire action is bad in law. In this connection, we may also note that between December 9, 1992, and March 29, 1994, there were only three or four meetings, and every meeting took place between an interval of nearly two months. But, in so far as the impugned decisions are concerned, they were taken in meetings held within a period of eight days, within which four meetings were held, within these eight days, we have one Saturday and Sunday, and above all, in all the meetings, the only business that was transacted was, regarding the sale of shares in the first respondent company. That also shows the mala fide intention on the part of the directors, to some how or other scuttle the control of the petitioners herein over the second respondent company.

57. We have already dealt with the aspect as to how the second respondent company conducted its meeting between June 1, 1994, and June 2, 1994. Now, we come to the role of the first respondent company. We have already said that the third respondent is controlling the first respondent company and has satisfied the requirements of law when it decided to issue duplicate certificates. The issuance of duplicate certificate is governed by section 84(2) of the Companies Act and also rule 4 of the Companies (Issue of Share Certificates) Rules, 1960. Section 84(2) to (4) of the Companies Act reads thus :

> " 84. Certificate of shares.....
>
> (2) A certificate may be renewed or a duplicate of a certificate may be issued if such certificate -
>
> (a) is proved to have been lost or destroyed, or
>
> (b) having been defaced, or mutilated or torn is surrendered to the company.

> (3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand rupees and every officer of the company, who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.
>
> (4) Notwithstanding anything contained in the articles of association of a company, the manner of issue of renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewal) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate certificates, the forms of such registers, the fee on payments of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence) on which a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed."

58. Rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1960, says thus :

> "No duplicate shares certificates shall be issued on lieu of those that are lost or destroyed without the prior consent of the board or without payment of such fees, if any, not exceeding Rs. 2 and on such reasonable terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as the aboard thinks fit."

59. Therefore, sub-rule (3) of rule 4 of the said Rules contemplates consent of board and also evidence and investigation regarding the loss of shares. Under rule 3(b) of the said Rules, "board" has been defined thus :

> "'board' means the board of directors of a company, or a committee thereof consisting of not less than three directors where the total numbers of directors exceeds six and not less than two directors where the total numbers does not exceed six."

60. In J.C. Bali on Secretarial Practice in India, 5th revised edition, at page 121, it is stated thus :

> "Loss of share certificate. - Sometimes a shareholders loses or misplaced his share certificate and is compelled to apply to the company for another certificate in place of the one lost. The articles of association of most companies and Table A provide that if a share certificate is lost or destroyed the shareholder may obtain another on payment of a fee and on supplying such evidence and giving such indemnity as the company may require. When a shareholders loses his share certificate he should at once write to the company stating clearly the loss or destruction of the certificate and request for the issue of a duplicate certificate. On receipt of the letter the company will ask the shareholders to fill in an indemnity form in which the shareholder will agree to indemnity the company against any claim that may be made by any person

on the original certificate. He is also required to prove a guarantee by way of double security."

61. In Palmer"s Company Precedents, 17th edition (1956), the learned author says that "the company incurs a serious responsibility by issuing a new certificate unless the old one is cancelled, and it ought not to be done except on very satisfactory proof of loss or destruction, or on a satisfactory indemnity being given." The learned author further says at page 771 that an advertisement has to be made regarding the loss of the expiry of the period stipulated for getting the objections, a duplicate certificate will be issued.

62. In this case, we find that on June 2, 1994, the second respondent wrote to the first respondent about the loss of certificate and wanted a duplicate certificate to be issued. Without waiting for any investigation or evidence regarding the loss of certificate on June 4, 1994, the first respondent company, at its 127th meeting, resolved to issue a new certificate bearing No. 48177 (for 1,50,000 shares), No. 48178 (for 1,75,000 shares) and No. 48179 (for 1,75,000 shares) under its common seal, in the name of the second respondent, in lieu of Original Certificate No. 47768 as recorded in the register of loss of certificate, tabled at the meeting. It was further resolved that share certificate No. 47768 be cancelled. Such decisions were taken by two directors of the company, namely, K.P. Jayakar and P.L. Narasimhan, who are respondents Nos. 4 and 5 in the company petition.

63. Before taking a decision to issue duplicate certificates, a decision had to be taken or satisfaction must be entered that the original certificates was lost. In this case, the very request by the second respondent says that the original certificate is with the first petitioner herein. Hence, by no stretch of imagination, can it be said that the share certificate is lost or destroyed. The authority to issue a duplicate certificate rests with the company only on proof that it is lost, or at least there must be some investigation before coming to the conclusion that it could not be traced. The first respondent company is aware of such a procedure. One of the constituents, Sanman Investments Pvt. Ltd., requested the first respondent to issue a duplicate certificate. The first respondent did not issue duplicate certificate immediately. It directed an investigation to be made, and caused an advertisement to be published in the dailies, and waited for objections. For nearly eight months, the duplicate certificates was not issued to Sanman Investments Pvt. Ltd. So, the first respondent is also aware of the normal practice. Before the Company Law Board, the petitioners have also given other instances where the first defendant took time to investigate and satisfy itself about the loss of the certificate.

64. The bona fides of the first respondent at least could have been shown by issuing a notice to the first petitioner to produce the original. The inaction on the part of the first respondent in issuing a notice to the first petitioner to produce the original and the hurried manner in which a resolution was passed on the very second day of reconstitution of the new board of directors to issue a duplicate certificate shows lack of goods faith in its acts. In this connection, we may also note that even though there is not statutory provision for giving any notice or advertisement, when there is an established practice by the first respondent itself, why it deviated from such a practice should have been properly explained. No attempt was made on its part in that regard.

65. It may also be mentioned that section 84(2) was incorporated in the Companies Act in 1960 to prevent fraud. Any violation of the provisions of section 84(2) meets with a penal action. It may also be seen that once a duplicate certificate is issued, the original certificate has to be cancelled. In this case, when the original is issued to the first petitioner and the duplicate is issued to the second respondent, both the certificates co-exist in the market. Once a duplicate certificate is issued, the original has to be destroyed or cancelled. The first petitioner is a person entitled to be in possession of the original certificate and this fact is affirmed by the ninth respondent in this case in an earlier proceeding, namely, C.P. No. 19 of 1992, between the same parties. The share certificate in this case is the entire and the only asset of the second respondent in the first respondent company and the value is also very high. Under these circumstances, necessary precautions ought to have been taken by the first respondent which it failed to do. The reason for such speedy action is that every formality had to be complied with before June 8, 1994. So, the procedure and fairness in action were all thrown to winds.

66. As per rule 3 of the Companies (Issue of Share Certificates) Rules, 1960, "board" is defined. There must be at least three directors when the board consists of more than six members, and in other cases where there are less than six, the board, for the purpose of that rule, is fixed as two. In this case, the board of directors consists of more than six members and the resolution to issue duplicate certificates was passed only by respondents Nos. 4 and 5 in this case who constitute only two directors. Patently the said resolution passed is invalid in law. It is contended on behalf of the respondents that the said rule has not fixed the quorum. According to the petitioners, it is for the board to decide the quorum. It is also contended that as per the board meeting dated November 29, 1993, of the first respondent company, a share transfer committee was formed in which it was decided that any two directors will form the quorum for a meeting of the share transfer committee. This, according to learned counsel, satisfies the statutory requirement and, therefore, the decision taken on June 4, 1994, is valid in law. The said argument cannot be accepted. Originally, a certificate could be issued only under the authority of the board, and it is per the rules, the committee authorised by the board of directors, can issue or approve the issue of certificates. The question that has to be considered is, whether the term thereof consisting of not less than three directors denotes the quorum of three, or the board while constituting a committee consisting of three or more can fix the quorum with less than three directors. According to us, the rule itself has stated that a board, for the purpose of issuance of certificates, would include a committee with three members, and that has to be taken as quorum. There cannot be any valid authority for the board of directors to fix a quorum of less than three. If that be so, the resolution passed on June 4, 1994 by the first respondent approving or permitting the issue of duplicate certificate is invalid in law.

67. In this connection, learned counsel for the petitioners also submitted that the certificates that has been authorised to be issued as per resolution date June 4, 1994, cannot be termed as "duplicate certificate". What is a "duplicate" has been defined in P. Ramanatha Aiyar's The Law Lexicon, reprint edition 1987, at page 3369. It reads thus :

> "A copy of the original; the double of anything; a counterpart; one of the two originals of the same tenor; a document resembling another in all essentials. A document essentially the same as some other document having precisely the like operation and

effect."

68. In Wharton's Law Lexicon, 14th edition, at page 356, it is stated as "second letters-patent, granted by the Lord Chancellor in the same term as the first when the letters were void; a copy or transcript of a deed, or other writing....."

69. In The Oxford Study Dictionary, "duplicate" is defined as "one of two or more things that are exactly alike; an exact copy". As an adjective, it means "exactly like another thing".

70. In view of the above meaning given for the word "duplicate", a contention was raised that the resolution passed by the first respondent, and the request by the second respondent cannot be for the issue of duplicate certificates, in the sense, what they wanted was, to sub-divide the certificate in three lots and give three different numbers. The further contention is that once it is sub-divided and three different numbers are given, it cannot be a duplicate as known to law.

71. Under the Companies (Issue of Share Certificates) Rules, 1960, rule 5(3) provides thus :

> "When any certificate is issued in any of the circumstances specified in rule 4, sub-rule (3), it shall state on the face of it and against the stub or counterfoil to the effect that it is a 'duplicate issued in lieu of share certificate No.....' Further, the word 'duplicate' shall be stamped or punched in bold letters across the face of the share certificate."

72. Once new numbers are given and the quantum of shares is also changed, legally, the certificates issued as per resolution dated June 4, 1994, cannot be treated as duplicate certificates. If that be so, even though the resolution purports to say "duplicate certificate", the same cannot satisfy the requirements of law. According to learned counsel for the petitioners, the sub-division is also another attempt to confuse the shareholders or the members of the public. We find force in the said contention. The statutory requirement of rule 5 is also not complied with in this case.

73. One more circumstance has also been brought to our notice by learned counsel for the petitioners. The sixteenth respondent in the petition, namely, Tata Consultancy Services, wrote a letter on June 3, 1994, to the first respondent for the approval of the board. Item 7 in that letter deals with Certificates Nos. 48171 to 48179 which includes the number of new certificates in the resolution of the first respondents. In that letter, the 16th respondent has sent those share certificates for affixing the common seal and signature of the first respondent. We have already said that the decision of the first respondent to issue new certificates bearing Nos. 48177, 48178 and 48179 was taken only on June 4, 1994. But, even before that date, the 16th respondent has sent those certificates for affixing the common seal and signature. That also shows that the decisions must have been taken long before June 4, 1994. The said inference is also seen supported in the loss of share certificate register of the first respondent company. These three distinctive numbers are given only on June 4, 1994. How the sixteenth respondent came to know about the numbers even before the decision was taken by the first respondent, is not explained by any of the respondent in this case.

74. The action of respondents Nos. 1 and 2 in splitting the shares and issuing three different numbers will have to be viewed from another angle also. Clauses 40(a) and 40(b) of the listing agreements form stipulate certain conditions for continued listing. Rupees five lakhs worth (sic) of shares were divided into three lots so that the value of each split certificate will be less than 5% of the total voting rights. In this case, the second respondent had 12.73% voting rights. So, if it is sold as a block, the provisions of clauses 40(a) and 40(b) will have to be complied with. It is to avoid the stock exchange that such a procedure was adopted. Clause 39 of the listing agreements form shows that the company shall comply with all rules and bylaws and regulations of the exchange which are now or hereafter will be in force, and the company shall further agree to comply within a reasonable time with such further regulations as may be promulgated as general requirements, for new listing. To escape from the rigour of those clauses, the entire shares had been split so that even without the knowledge of the stock exchange, this could be negotiated. The attempted fraud is being perpetrated by ingenious methods.

75. Now, I come to the conduct of respondents Nos. 17 to 19, for it is from the cumulative effect of all these acts, a legal inference has to be drawn. Respondents Nos. 17 to 19 are also stock brokers, and they are well aware of the intricacies involved in the sale and purchase of shares. Respondents Nos. 17 and 18 are residents of Calcutta and the nineteenth respondents is a resident of Secunderabad. It is the case of these respondents that they purchased these shares bona fide for consideration. It is said that they paid the consideration on June 7, 1994. The very decision to issue duplicate certificates was taken only on June 4, 1994. How respondents Nos. 17 to 19 who are residing in Calcutta and Secunderabad, came to know about the intended sale of duplicate certificates is not explained. When the same was questioned in the company petition, they only said that they were not bound to explain. It is also their case that they purchased these shares for the purpose of their business investments. We must not that the first respondent company is a sick company, which is under the supervision of BIFR and the shares of this company are not readily available in the market. It is a non-specified share which is usually known as class B shares, in the share market. When the shares are not readily available in the market, and that too when it is a sick company, some enquiry ought to have been made by respondents Nos. 17 to 19 before the alleged purchase. No details are given. Further, if it is a duplicate certificate, the first enquiry will be, what happened to the original. That apart, after the so called purchase on June 7, 1994, within a few days, one of them was appointed as director in the first respondent company. We find that in the board meeting of the first respondent company held on June 24, 1994, the seventeenth respondent was appointed as director.

76. By appointing the seventeenth respondent as one of the director of the board on the basis of shares purchased by it, the attempt of the third respondent in displacing the petitioners from its control was completed. We do not think that the purchase of shares by respondents Nos. 17 to 19 was a prudent act. The purchase by them was on the basis of private negotiation. As per resolution dated June 3, 1994, the second respondent wanted to sell those shares for a price not less than Rs. 12.75 per share. By private negotiation, it follows that there was no competition and it cannot be said that it has been sold for the best available market price, which is the purport of the resolution dated June 3, 1994. What price respondents Nos. 17 to 19 paid is not specifically stated, though it is the case that they paid nearly Rs. 66 lakhs for the entire 5 lakhs shares. If that be so, each share ought to

have been sold at Rs. 12.75. If it is a case of private negotiation and not through the exchange, better enquiry ought to have been made by respondents Nos. 17 to 19. In this connection, we may also note that when there was inter se fight between the members of the family and also inter se corporate dispute between the companies, and they were published in local dailies, being stock brokers, respondents Nos. 17 to 19 might have been well aware of the circumstances under which these shares are being sold.

77. The cumulative effect of all these acts can be summarised thus :

> The third respondents is controlling respondents Nos. 1 and 2. There is a family dispute between the third respondent and other members of the family. The other members of the family were controlling the second respondents-company. When the same was attempted to be dislodged by the third respondent, it ended in serious litigations. He failed. He appointed new directors and wanted the shares to be sold by issuing duplicate certificates. It was achieved through his employees, who were appointed as directors in both the companies.

78. Respondents Nos. 17 to 19 actively participated in purchasing these shares by private negotiations, and, subsequently, the seventeenth respondent was also appointed as a director of the first respondent-company. These are the facts that are made mention of in the company petition. The same was proved by documentary evidence in this case. The documents are produced by respondents Nos. 1 and 2 themselves. So, even if there is any defect in the pleading or the particulars are wanting, respondents Nos. 1 and 2 supplemented them after knowing that they have to answer the allegations in the petition. Respondents Nos. 17 to 19 also know the allegations against respondents Nos. 1 to 3. Even though they were not originally impleaded, the averments in the original petition itself are sufficient as against them also. The circumstances show that there was an active collusion between these parties so as to defeat the rights of the petitioners in this case. We hold that the directors of respondents Nos. 1 and 2 have actual knowledge of their dealings and they were wilfully shutting their eyes to the realities. They wilfully and recklessly failed to make such enquiries which an honest and reasonable man would make, and would have gained knowledge of the facts if only the director had acted honesty. If only they had acted in accordance with the fiduciary position. The shareholders would have been saved. The majority shareholders to whom the directors stand on a fiduciary relationship have been defeated by the fraudulent and collusive acts of the directors of respondents Nos. 1 and 2 along with respondents Nos. 17 to 19. All of them joined together in defeating the rights of the majority shareholders under the dictates of the third respondent.

79. We have already stated that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. The duty enjoined on them was not to deceive the shareholders. But their intention was otherwise. They have abused their power and used the same for extraneous and irrelevant considerations, and have protected the interests of the company. After the sale of the only asset of the company, what remained was only a shell, with no rights or obligations. They passed resolutions not only stating incorrect facts, but also deliberately wanted to invoke the provisions of law to issue duplicate certificates.

80. Learned counsel for the respondents submitted that the issue of fraud and collusion should not be decided on affidavits and the same should have been relegated to a regular suit. For the said purpose, learned counsel relied on a Full Bench decision of the Delhi High Court reported in Ammonia Supplies Corporation (P.) Ltd. v. Modern Plastic Containers (P.) Ltd. [1994] 79 Comp Cas 163. In fact, the judgment rendered was on a reference. Their Lordships answered the reference by stating that it is a discretion which has to be exercised by the company court. The question that came up for consideration was, whether the civil court's jurisdiction is barred in cases coming under section 111 of the Companies Act. Their Lordship said that the jurisdiction of the civil court is not barred. It is very wide, unrestricted and unlimited. Their Lordships further said that the provision of section 155 of the Companies Act, 1956 (at present section 111), does not whittle down or abrogate the provision for filing a suit available under section 9 of the Civil Procedure Code, 1908. Their Lordships further said that the provisions of the Companies Act only show that a question regarding title can also be answered by a company court, but that is also possible without detailed examination of complicated questions of fact and law, requiring extensive oral and documentary evidence and it cannot be inferred from section 155(3) that the remedy is not summary. Their Lordships further said that it is not necessary in every case where questions relating to title may be involved that there has to be a detailed examination and determination of oral and documentary evidence. Their Lordships further held that it is the discretion of the company court to refer the matter to the civil court or not.

81. In this case, we do not think there will be any difficulty in entertaining the application. A similar question came up for consideration in the decision in Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. , wherein their Lordships held thus :

> "It is generally unsatisfactory to record a finding involving grave consequences to a person on the basis of affidavits and documents without asking that person to submit to cross-examination. It is true that men may lie but documents will not and often, documents speck louder than words. But a total reliance on the written word, when probity and fairness of conduct are in issue, involves the risk that the person accused of wrongful conduct is denied an opportunity to controvert the inference said to arise from the documents. But where both sides had agreed to proceed with the matter on the basis of affidavits and correspondence only and neither party asked for a trial in the sense of examination of witnesses, the party having taken up the particular attitude, it was not open to it to contend that the allegation of mala fides could not be examined on the basis of affidavits of the correspondence only.
>
> Held there was ample materials on the record of this case in the form of affidavits, correspondence and other documents, on the basis of which proper and necessary inference could safely and legitimately be drawn. The court could record a finding of male fides or abuse of fiduciary power on the basis of the affidavits, correspondence and the other documents which were on the record of the case especially where these were on the record by consent of parties."

82. Before the company court also such an arguments was put forward. The Company Law Board did not think it proper to relegate the matter to a civil court. It held that materials are available to

enter a finding as to whether a fraud has been committed or not. Documentary evidence is available and nobody has a case that there are other documents which they could not produce. An inference has to be drawn from the evidence already before the court. For the said purpose, we do not think that the matter has to be referred to a civil court.

83. We have already said that learned counsel for the respondents cited the decisions in Bishundeo Narain's case, and Ladli Parshad Jaiswal's case, , to substantiate their case that better particulars are required. We have already said that the strict principles of contract law are not applicable to the facts of this case. It is the collusion between the respondents which has affected the rights of the petitioners herein. The details of the facts have been narrated in the petition.

84. Even if there is any lack of particulars, we do not think that can be a ground which could be rightly agitated by the respondents herein. They know the purpose of this petition, and the accusations made against them. When they are aware of the allegations and have answered the same, and have also produced documents to substantiate their case, it is too late for them to contend that they were prejudiced by the lack of particulars. After all, the pleadings are intended only to give notice. If the respondents are aware of the matter and were given opportunities to substantiate their defence, a technical plea of lack of particulars will not hold good. Hence, the decision cited by them will have no application to the facts of this case.

85. It is next contended by learned counsel for the respondents that section 22A of the Securities Contracts (Regulation) Act, 1956, is a special law and, therefore, the Company Law Board went wrong in applying the provisions of section 111 of the Companies Act in giving a direction for rectifying the register. It is further contended by them that even though in the company petition, allegations were made under section 22A, there was no argument put forward by the petitioners, nor was there any finding that there is violation of section 22A(4) of that Act. It is further said that so long as there is no violation of section 22A and no case has been proved by the petitioners, the order of the Company Law Board has to be set aside.

86. Learned counsel for the respondents has placed reliance on the decision in Kothari Industrial Corporation Ltd. v. Lazor Detergents Pvt. Ltd. [1994] 81 Comp Cas 699 (Mad.). In that case, a Division Bench of this court held thus (at page 729) :

> "Having regard to the purpose and object sought to be achieved by the introduction of section 22A and the mischief sought to be remedied thereby as well as the deliberate change in the language adopted in the new section we hold that the doctrine of implied repeal will come into play and the provision in section 22A of the Securities Contracts (Regulation) Act will prevail over the provisions of section 108 of the Companies Act in relation to listed securities to the extent to which they are inconsistent."

87. In so far as the rectification was concerned, an arguments was taken by the respondents in that case that it is an exercise of quasi-judicial power which is also a discretionary power. Equitable consideration will arise before exercise of that power which depends upon the facts of that case. It is

also further contended that equity will have to be decided before granting the rectification. It is not a matter of right. Circumstances like laches, conduct and prejudice also shall be taken into account. The principle of estoppel also can be applied if the facts of the case warrant the same. While considering the said arguments, the Bench held that section 22A(4) of the Securities Contracts (Regulation) Act is mandatory in its terms and the company has to form an opinion, in goods faith, whether registration ought or ought not to be refused on any of the grounds set out in sub-section (5), before the expiry of two months from the date of lodgment. After holding that the company has registered the shares, after forming an opinion in good faith as required under sub-section (4) of the said section 22A of the Act, this court held that in such cases, registration ought not to be refused, and the company has to effect the registration. After holding thus, this court further went on to say at page 745 thus :

> "We do not accept the contention of learned senior counsel for the appellants that the proceeding for rectification should be dealt with exclusively under section 111(4) and (5) of the Companies Act, corresponding to section 155 prior to May 31, 1991, without having any regard to section 22A of the Securities Contracts (Regulation) Act. The two sections cannot be put in two different separate compartments for the purpose of considering an application for rectification. The language of section 111(4) of the Companies Act shows that even the person who seeks rectification has to rely upon the provisions of section 22A of the Securities Contracts (Regulation) Act for the purpose of showing that the name of any person is entered in the register without sufficient cause. After the introduction of section 22A(3), registration could be refused only on the four grounds expressly set out therein. Sub-section (4) of section 22A provides that with reference to one of the grounds, the transferor and the transferee have to be given notice about the requirement of law and with reference to three other grounds the company has to make a reference to the Company Law Board. It is necessary for the Company Law Board to consider, before granting any relief under section 111(4) of the Companies Act to the applicant, whether the applicant has fulfilled the requirements of section 22A(3) and (4) of the Securities Contracts (Regulation) Act. As pointed out in the passage extracted from the text books already, the jurisdiction being an equitable one and the board being obliged to take into account all the facts and circumstances of the case, the requirements of section 22A(3) and (4) cannot be ignored."

88. A combined reading of section 111(4) of the Companies Act and section 22A(3) of the Securities Contracts (Regulation) Act, 1956, makes it clear that if the name of any person is entered in the register without any sufficient cause, or after having been entered in the register, if removed therefrom without sufficient cause, rectification can be had either to delete the names or to have the names entered, provided the provisions of section 22A(3) are also complied with. The provisions of section 111(4) of the Companies Act cannot be said to be inconsistent with the provisions of section 22A of the Securities Contracts (Regulation) Act. As stated in the reported judgment, these two sections cannot be put in two different separate compartments, and a person who moves an application for rectification will have to rely on section 22A(3) also. So, if the grounds under section 22A(3) are complied with, a rectification under section 111(4) has to be ordered.

89. Now let us see whether grounds have been made out under section 22A(3) of the Securities Contracts (Regulation) Act, 1956. Sub-clause (b) of sub-section (3) of section 22A of the said Act reads thus :

> "That the transfer of the securities is in contravention of any law or rules made thereunder or any administrative instructions or conditions of listing agreements laid down in pursuance of such laws or rules."

90. We have already held that the issue of duplicate certificate and their transfer were in exercise of fraud and collusion. We have also held that 5,00,000 shares were split into three lots so as to overcome the provisions of clauses 40(a) and 40(b) of the listing agreement form and respondents Nos. 17 to 19 have also purchased the shares not in good faith. All of them colluded together to defeat the rights of the petitioners in this case. As stated by the Supreme Court in Shrisht Dhawan's case , fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. The respondents' counsel submitted that the transfer of securities in contravention of law can only be a corresponding law which deals with the transfer of any security and, therefore, relied on section 19(b) of the Foreign Exchange Regulation Act. According to learned counsel, the law that is said in clause (b) of sub-section (3) of section 22A of the Securities Contracts (Regulation) Act refers to clause (b) of section 19 of the FERA.

91. According to us, the submission made by learned counsel is not correct. Clause (b) refers to contravention of any law. It refers to any law that is in force in India, and not only to section 19(1) of the FERA. If the intention was only to include the provisions of FERA, clause (b) to sub-section (3) of section 22A of the Securities Contracts (Regulation) Act could have been more clearly stated. Further, we have to refer to section 111(4) of the Companies Act to find out whether the names of respondents Nos. 17 to 19 have been entered in the register without sufficient cause. If the court feels or is of opinion that the discretion exercised by the board of directors is capricious or that they have acted in bad faith, this court is entitled to find that the discretion is without sufficient cause and the name entered in the register can be ordered to be removed and rectified. In Indian Chemical Products Ltd. v. State of Orissa , in para 9, their Lordships said thus :

> "The power under article 11 to refuse registration of the transfer is a discretionary power. The directors must exercise this power reasonably and in good faith. The court can control their discretion if they act capriciously or in bad faith....."

92. We have already held that the directors of respondents Nos. 1 and 2 have not acted in accordance with law and have abused their fiduciary position. The names of respondents Nos. 17 to 19 were entered in the register without sufficient cause and the name of the second respondent was likewise removed. Since the petitioners have proved the ingredients under section 22A of the Securities Contracts (Regulation) Act read with section 111 of the Companies Act, rectification has to be ordered. The contention of learned counsel for the respondents that the powers under section 111(4) of the Companies Act stand abrogated, cannot be accepted.

93. After all the arguments under section 22A of the Securities Contracts (Regulation) Act were exhausted by all the senior counsel, it was brought to our notice that section 22A of the said Act is not in the statute book, and that the same stands repealed by Ordinance 6 of 1996 (Depositories Ordinance, 1996). By virtue of that Ordinance in section 111 of the Companies Act, one more sub-section was added as sub-section (14) and, thereafter, section 111A is also included. As per section 111A of the Companies Act, rectification of the register on transfer is newly added, and sub-section (3) deals with the same. Even though the same was brought to our notice, no serious argument was put forward by learned senior counsel about the legal consequences. But a reading of sub-section (30 makes it clear that the Company Law Board is empowered to rectify a register if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (Act 15 of 1992), or regulations made therein or the Sick Industrial Companies (Special Provisions) Act, 1985 (Act 1 of 1996). The Securities and Exchange Board of India Act, 1992, has made it clear that the provisions of that Act are only in addition to and not in derogation of the provisions of any other law for the time being in force (vide section 32). If so, by virtue of section 111(4) of the Companies Act itself, rectification could be ordered. That apart, we have already held that the entire procedure has been violated by respondents Nos. 1 and 2 along with respondents Nos. 17 to 19 and that they have acted against all the provisions of law and, therefore, rectification has only to be ordered.

94. Learned counsel for the respondents also contended that section 111(4) of the Companies Act, contemplates the removal of the "name of any person" or insertion of the "name of any person" in the register of the company. It is contended that respondents Nos. 17 to 19 were not made parties originally, and after they were impleaded, no consequential amendment was made. Therefore, relief(s) prayed for in the company petition cannot be granted.

95. In relief(s), the petitioners have sought "to rectify the register of members of GWL and remove the name of any other person as a member of the GWL with regard to 5,00,000 equity shares bearing distinctive Nos. 2617978 to 3117977....." Learned counsel submitted that since there is no prayer to remove the names of respondents Nos. 17 to 19, the relief under section 111(4) cannot be granted.

96. Learned counsel further submitted that the petitioners were informed about the details of the transferees in the various counter-statements, and even after coming to know of the same, they have failed to incorporate the amendment.

97. We do not find any substance in the said arguments. It is true that in the petition that was filed before the Company Law Board, the petitioners stated that they were not aware of the details of the transferees and they reserved their rights to implead them. After the details were submitted in the counter-statements, application was filed to implead respondents Nos. 17 to 19, and that was also allowed. After impleading respondents Nos. 17 to 19, notice was issued, and those respondents also filed reply statements before the Company Law Board and contested the proceedings. After respondents Nos. 17 to 19 were impleaded, they knew that the relief(s) is only directed against them and all possible defences were also taken by them. Merely because in the relief portion their names had not been specifically stated, that will not affect the maintainability of the application, nor can

the Company Law Board be accused of exceeding its jurisdiction in granting the relief by directing removal of the names of respondents Nos. 17 to 19 from the register of members.

98. Learned counsel for respondents Nos. 17 to 19 contended that the Company Law Board has wrongly cast the burden of proof on them, and that has vitiated the entire decision. According to learned counsel, it is for the petitioners to prove that they are not bona fide purchasers for value for consideration without notice. At least prima facie evidence should have been adduced to prove the same, and only, thereafter, they can rebut the presumption.

99. We cannot agree with the said submission that when the action of the directors of respondents Nos. 1 and 2 is fraudulent and was the result of collusion, it is void in law. Respondents Nos. 17 to 19 wanted to protect themselves from that consequence claiming themselves as bona fide purchasers for valuable consideration and without notice of the actions of the directors. It is for them to prove that assertion. In Yajju Adinarayana v. Gurala Jagannadha Rao, AIR 1949 Mad 762, it was held that if a person claims that he is a bona fide purchaser for value, the burden is on him to substantiate the same. That is a case under the Specific Relief Act, 1877.

100. That apart, in this case, both the parties have adduced evidence and, therefore, the question of burden of proof loses its importance. Appreciation of evidence alone remains. We have already held on appreciation of evidence that respondents Nos. 17 to 19 are not bona fide purchasers for value.

101. It was next contended by learned counsel that the first petitioner claimed himself to be a pledgee of the impugned shares and the said case has been given up. While describing the first petitioner, it is stated that the first petitioners is a pledgee in respect of 12.73% of the paid-up capital of the first respondents-company, which is registered in the name of the second respondent company in respect of which the petitioner is a beneficial holder, having foreclosed the pledge for non-payment of dues. The same is reiterated while describing the fourth petitioner also. Therein, it is stated that the fourth petitioner holds the original certificate for and on behalf of the first petitioner-company which is a pledgee of 12.73% of the paid-up capital of the first respondent company registered in the name of the second respondent company. Before the Company Law Board, when the matter was argued, learned counsel for the petitioners submitted that he did not want the Company Law Board to adjudicate upon the claim of pledge, but only wanted the board to take note that the claim of pledge by Tracstar was known both to SSPL and GWL. In paragraph 10(4) of the order of the Company Law Board, again it is reiterated that the locus standi of the petitioners to institute the petition can be considered even without deciding the question of pledge. It is contended by learned counsel for the respondents that once the case of pledge is given up, the petitioners will have no locus standi and, therefore, the application is bad. It has not given up the claim of pledge. What the petitioners wanted was the Company Law Board need not adjudicate the same, and even without a finding on pledge, they have got the locus standi to agitate the matter. It is not disputed that the first petitioner is a shareholder in the first respondent-company. Even without proving the pledge as a members of the first respondent, he can maintain the petition. So far as petitioners Nos. 2 and 3 are concerned, the Company Law Board has found that the action of respondents Nos. 1 and 2 is prejudicial to their interest and, therefore, they are aggrieved persons and so far as the other petitioners are concerned, they are majority shareholders, of petitioners Nos.

2 and 3. We do not find any ground to interfere with that finding of the Company Law Board regarding the locus standi of the petitioners in maintaining the application.

102. Under section 10F of the Companies Act, an appeal is maintainable before this court only on a question of law. In those appeals we do not find any question of law, and the finding rendered by the Company Law Board is only an inference from proved facts.

103. What remains to be considered is only the appeal filed by the petitioners in C.M.A. No. 132 of 1996.

104. The petitioners are aggrieved on two grounds : (1) The Company Law Board has found that the undertaking given by the second respondent in C.P. No. 29 of 1992 has no life after the company petition has been disposed of; and (2) the second respondent has been directed to pay the value of the shares to respondents Nos. 17 to 19.

105. The case of the petitioners in so far as the undertaking is concerned, is that when they moved C.P. No. 29 of 1992 they apprehended that the share of the second respondent in the first respondent company will be alienated so as to defeat their rights, and, therefore, they wanted an injunction prohibiting the second respondent from doing so. An undertaking was given by counsel appearing for the second respondent thus :

> "As directed in our last order, copies of the minutes of the extraordinary general meeting held at the registered officer of the company on July 28, 1992, have been filed by the chairman of the meeting. Shri S.S. Ray, senior advocate appearing on behalf of the petitioners, pointed out certain developments that have taken place after filing of the petition and submitted that the company should be restrained, till the petition is disposed of from issuing any further share capital, from registering any further transfer of shares of the company and also from disposing of the shares held by the company in GWL without the permission of the Company Law Board. Shri Mitra, senior advocate appearing on behalf of Shoe Specialities Ltd., stated that the company has already registered transfer of 20,000 shares in the name of Malleswara Finance and Investment Co. Pvt. Ltd. and undertook not to register any further transfer of shares except under the orders of the court or the Company Law Board till the disposal of the petition. He further stated that the company has neither any intention nor proposes to transfer its shareholdings to GWL to anyone. In view of this undertaking given by counsel appearing on behalf of the company we are not giving any directions in respect of the request made by the petitioners."

106. It is true that a reading of the undertaking makes it clear that there is an unconditional undertaking by counsel that they will not alienate their shares. According to learned counsel for the petitioners, the passing of the resolution seeking issuance of duplicate certificates and the subsequent sale of the shares to respondents Nos. 17 to 19 are in violation of the undertaking and, therefore, it cannot bind them. We cannot accept the said submission as correct. The subject-matter in C.P. No. 29 of 1992 was not the sale of shares in the second respondent-company. The

subject-matter therein was illegal increase in the share capital in that company which was sold to Malleswara Finance and Investment Co. Pvt. Ltd. The proceeding therein was to remove the name of Malleswara Finance and Investment Pvt. Ltd. from the register of members. Since that was the only subject-matter, the undertaking that was unconditional far exceeded the matter in issue. That apart, what the petitioners wanted was only an order restraining the second respondent from dealing with the assets of the company till the disposal of that petition. By no stretch of imagination, can it be said that the life of the undertaking even if it related to the subject-matter will survive, after the petition was disposed of. The finding of the Company Law Board in that regard has only to be upheld.

107. The direction by the Company Law Board to pay the consideration of the share value to respondents Nos. 17 to 19 is seriously objected top by the petitioners. According to us, the said submission deserves consideration. The finding of the Company Law Board is that respondents Nos. 17 to 19 were not bona fide purchasers for value. In fact, the second respondent company is a victim of the fraud committed by its directors. The interest of the shareholders was not protected. The directors were dancing to the tune of the third respondent without taking into consideration the grievance of the majority shareholders. They committed breach of trust and violated the fiduciary relationship. Violating all the provisions of law, respondents Nos. 17 to 19 also purchased the shares. When there is a finding by the Board that they are not bona fide purchasers for value, the impugned direction, directing the company itself to repay the amount cannot stand. Respondents Nos. 17 to 19 are also parties to the fraud and collusion. The question of restitution in such case will never arise. That direction by the Company Law Board is, therefore, to be deleted. The question whether respondents Nos. 17 to 19 are entitled to get reimbursement of their share value from the directors or the price paid by them from 6,00,000 shares from the directors need not be considered in these proceedings. It is for respondents Nos. 17 to 19 to take appropriate proceedings. We hold that the second respondent company is not liable to pay any amount for the same. To that extent, interference is called for with the order of the Company Law Board.

108. In the result C.M.A. Nos. 106, 107, 108 and 109 of 1996 are all dismissed with costs of Rs. 3,000 each. C.M.A. No. 132 of 1996 is allowed in part as indicated above. There will be no order as to costs in that appeal. We further direct that the names of respondents Nos. 17 to 19 be deleted from the register of members kept by the first respondent-company and the name of the second respondent be entered in the register of members of the first respondent-company within ten days from today.

109. In view of the disposal of the main C.M.As., the connected C.M.As., namely, C.M.P. Nos. 1068 to 1071 of 1996, are dismissed.