

Hemant D. Vakil and ors. Vs. Rdi Print and Publishing Pvt. Ltd.

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Court : Company Law Board CLB

Decided On : Apr-21-1993

Reported in : (1995)84CompCas838

Judge : S Upasani, S Balasubramanian, A Ramanathan

Appellant : Hemant D. Vakil and ors.

Respondent : Rdi Print and Publishing Pvt. Ltd.

Judgement :

1. This is a petition filed on May 14, 1992, under Section 397/398 of the Companies Act, 1956, by Shri Hemant D. Vakil and three other shareholders of RDI Print and Publishing Pvt. Ltd. (hereinafter referred to as "RDIL") holding 8.29 per cent. shares. The petition is supported by three other shareholders holding 2.96 per cent. of RDIL.

RDIL was incorporated in December, 1978, as a private limited company with the main object of acquiring, printing, publishing and circulating and/or dealing with newspapers, journals, magazines, periodicals and other publications and for editing and carrying on other business as proprietor and publisher of newspapers, journals, magazines and other literary works. RDIL became a Section 43A-company on October 1, 1988, and as per the certificate issued by the Registrar of Companies, Maharashtra, it ceased to be a Section 43A-company on January 31, 1991, in terms of Notification No. G.S.R. 795(E), dated September 18, 1990.

2. The first respondent is RDIL and the second respondent is Shri Minoo H. Mody, who is the vice-chairman and director of RDIL. Respondent No.3. Shri Anil S. Gore, is the managing director of RDIL and respondent No. 4. Shri V. L. Ukidave, is Director (Finance) of RDIL. Respondent No. 5, Shri Noshir S. Dhabhar, respondent No. 6, Shri Homi S. Ayrton, and respondent No. 8, Shri Gurpreet Seekond, are shareholders of the company either individually or jointly and are additional directors of the company appointed at a meeting of the board of directors of RDIL held on 6th April, 1992, the minutes of which are disputed by the petitioners. Respondent No. 7, Mr. Praxy Fernandas, is also a director of the company. Respondent No. 9, Shri Surendra Butala, is a shareholder of RDIL and supporter of the Mody group and it is the case of the petitioners that he has actively participated in the conspiracy of the Mody group to get a majority control of RDIL and is also a beneficiary of the conspiracy. Respondent No. 10, Crown Holdings Pvt.

Ltd. (hereinafter referred to as "Crown"), is a private limited company, the shareholders of which predominantly comprise directors and employees of RDIL and is controlled by respondents Nos. 2 to 5 and 8.

Respondent No. 10 has been made party by the petitioners on the ground that this company has been used as vehicle for the fraud perpetrated upon the shareholders of RDIL. Respondent No. 11, Shri Malcom Adiseshiah, is the chairman and director of RDIL. Respondent No. 12, Samrat Holdings Pvt. Ltd. (hereinafter referred to as "Samrat"), is a private limited company and is a wholly owned subsidiary of RDIL. the directors of which are respondents Nos. 2 to 5. The petitioners have made this company a party to the proceedings on the ground that this company is being used by respondents Nos. 2 to 6 and 8, to misappropriate and misuse and misdirect the funds of RDIL for the personal aggrandisement of these respondents. All other respondents Nos.

13 to 20 are members of the company and some of them are also directors.

3. In the petition, the petitioners have alleged that respondents Nos.

2 to 6 and 8 have illegally usurped the management of RDIL by fraudulent and mala fide acts and by abuse of power and position and thereafter are proceeding to act and have acted in a manner which is oppressive to the shareholders of RDIL. It is also alleged that these respondents are mismanaging the affairs of the company and have obtained personal benefits for themselves, their wives and children.

The petitioners have alleged that the conduct of the respondents demonstrates lack of probity and is wrongful and unfair to the petitioners and is causing prejudice to them in exercise of their legal and proprietary rights as shareholders. The petitioners have alleged that the acts complained of relate to a conspiracy to illegally gain control and convert the minority into a majority position by wrongful and illegal means of acquiring shares. By these acts respondents Nos. 2 to 5 have managed to acquire further shares of RDIL so as to change the pattern of shareholding resulting in increase in their shareholding from 35.2% in December, 1989, to 54.6% in February, 1992. The petitioners have also alleged that respondent No. 2, Sh. Mody, has misused his position as director so as to get the benefit to his family in relation to 13,200 shares of RDIL which were otherwise at the disposal of the board of directors as a trustee. It is also stated in the petition that there are series of continuous acts of omission and commission on the part of the second respondent which clearly shows that the affairs of the company are being conducted in a manner oppressive to a significant number of members of RDIL and there are sufficient facts to make out a clear case for detailed inquiry. The facts and circumstances, mentioned in the petition, would justify an order that the company should be wound up ; but to wind up the company would unfairly prejudice the members of RDIL, it is further averred.

4. On behalf of RDIL, Shri Anil Gore, managing director, has filed a reply. Respondents Nos. 2, 3 and 4 have also filed short replies denying the personal allegations made against the respondents.

Respondent No. 7 has filed a reply mainly dealing with the appointment of alternate director for him at the board meeting held on April 6, 1992. Shri N.S. Dhabhar, director of respondent No. 10, i.e., Crown, has filed a reply on behalf of

the company and Sh. Gore, chairman of Samrat, has filed a reply on behalf of respondent No. 12.

5. Respondent No. 14, Shri Johri, and respondent No. 13, Sh. Ashok Mahadevan, who are working directors of RDIL have filed affidavits supporting the petition. Respondent No. 16, Shri Bhabha, has also filed an affidavit supporting the petition. Other respondents have not filed any replies though notices were served on them.

6. The petitioners have filed a rejoinder in respect of the replies filed by respondents Nos. 1, 2, 3, 4, 10 and 12. Respondents Nos. 1 and 2 have filed surrejoinders on August 14, 1992.

7. The petitioners, respondents Nos. 1, 10 and 12 have filed a number of documents during the hearing as per directions issued by us.

Affidavits have also been filed by respondents Nos. 2, 3, 4 and 5 about the transactions with respondent No. 12, i.e., Samrat, in respect of payment of share application money in March, 1992, refund and subsequent payment in April, 1992. Respondent No. 12 has also filed a chartered accountant's certificate in respect of these transactions, Arya Gene Plant Technology Pvt. Ltd. which is not a party to the proceedings has also filed on November 19, 1992, certain information as directed by us about the transactions and letters exchanged with Samrat.

8. The petition came up for hearing on May 22, 1992, and after hearing counsel representing the petitioners and the respondents, in respect of the interim relief prayed for in Miscellaneous Application No. 21 of 1992 and after taking into consideration the orders dated April 30, 1992, passed by the Division Bench of the High Court of Judicature in Bombay in Appeal No. 397 of 1992 filed by three directors who are respondents Nos. 13, 14 and 16 in the present petition and also the orders passed on April 13, 1992, in suit (lodging) No. 1096 of 1992 before the Bombay High Court and the affidavit filed before us on May 22, 1992, by respondent No. 14 that the suit filed before the Bombay High Court has been withdrawn, we directed that in the interest of equity, any resolution regarding the appointment of directors passed at the extraordinary general meeting to be held on May 28, 1992, would not be given effect to till the date of next hearing. We also

directed that no further shares shall be issued by Samrat, respondent No. 12, without our specific approval and no rights would be exercised in respect of any shares issued by Samrat to any person other than the original shareholders, i.e., RDIL. We also directed that Samrat shall not further deal with the investments/funds arising out of the sale of Titan shares except for the purpose of getting benefit of capital gains tax. In the hearing held on July 23, 1992, we directed that our interim orders issued on May 22, 1992, restraining the company from giving effect to the resolutions passed in the extraordinary general meeting held on May 28, 1992, would be continued till the disposal of the main petition. In the hearing held on September 1, 1992, we heard the advocates of the petitioners and the respondents about the issue of holding of the annual general meeting of RDIL by September 30, 1992. We noted that both the parties were of the view that finalisation of accounts of RDIL and its subsidiary Samrat and appointment/reappointment of directors may create further controversies in the board and, therefore, it would be desirable to restrain the company from holding the annual general meeting till the date of next hearing and accordingly we directed RDIL not to hold its annual general meeting till the next hearing and at the end of hearing held on 2nd and 3rd November, 1992, we continued this restraint on the company till the disposal of the petition. In the hearing held on 3rd November, 1992, we considered prayers in Company Application No. 93 of 1992 filed by the petitioners praying for maintaining the status quo of the tenancy/sub-tenancy of RDIL and for restraining respondents Nos. 2 to 5 from acting as directors of RDIL and Samrat. During the hearing both RDIL and Samrat gave an undertaking not to make any investments in the organisations in which directors, their relatives or close associates are interested ; not to give any financial assistance to any director or their family members, not to appoint any director or his close relative to any office of profit and not to surrender any tenancy/sub-tenancy rights in any property or to create any encumbrances. In the hearing held on 1st December, 1992, we directed that all the interim orders issued and undertakings given would continue till the disposal of the petition.

9. The petitioners had also moved Miscellaneous Application No. 46 of 1992 on 15th July, 1992, for amendment of the petition which was considered in the hearing held on August 17, 1992. In the schedule of amendments proposed items

(A) and (B) are regarding addition of the three names of joint holders. The other items (C) and (D) relate to allotment of approximately 3,000 shares by Samrat, respondent No. 12, which is a 100% subsidiary of RDIL. Shri Cooper pointed out that the allotment of shares by Samrat was germane to the petition under Section 597/398 as Samrat is a subsidiary of RDIL and the mismanagement of the subsidiary is the mismanagement of the holding company as well. He referred to the observations made in *LIC of India v. Hari Das Mundhra* [1966] 56 Comp Cas 371 (All) wherein a subsidiary company was treated as a department of the holding company though in law both the holding and its subsidiary are separate entities. He also pointed out that all the original investments of the holding company were transferred to the subsidiary and all resources required for the operation of subsidiary company are provided by the holding company. He also pointed out that respondents Nos. 2 to 4 are shareholders of RDIL as well as directors of RDIL and Samrat and respondent No. 5 is also the director of both the companies and a shareholder in the second name of the holding company. Shri Cooper pointed out that effective control of the subsidiary is with the parent company and the parent company's prosperity is affected by the fate of the subsidiary. In fact, the subsidiary in this case is nothing but in the nature of the investment department of the parent company and, thus, the link between the holding company and the subsidiary is completely established. With regard to the prayer for amendment relating to allotment of approximately 3,000 shares by Samrat, he pointed out that this amendment was being proposed, as, at the time of filing of the petition, this information was not available even though in the petition they have expressed apprehension about such likely desubsidiarisation. The facts relating to the allotment of 3,000 shares were suppressed by the respondents and the petitioners became aware of these facts only during the hearing. Shri Cooper then referred to the decision of the Delhi High Court in *Inder Kumar Jain v. Osra Bottling Co. (P.) Ltd.* [1977] 47 Comp Cas 194 (Delhi) and the decision of the Supreme Court in *Jai Jai Ram Manohar Lal v. National Building Material Supply* [1969] 1 SCC 69 (SC) and stated that the leave for amendment is ordinarily granted by the courts however negligent or careless the first omission may have been and, however late the proposed amendment, provided it can be given without injustice to the other side. He stated that rectification of procedural

lapses is intended to help and not to obstruct justice. He also pointed out that the provisions of Order VI, rule 17 of the Civil Procedure Code on the interpretation of which the above cited cases laid down the law in this regard have substantially been incorporated in Regulation 29(5) read with Regulation 46 of the Company Law Board Regulations, 1991.

10. Counsel for the respondents argued that while Section 10E of the Companies Act refers to various provisions of the Civil Procedure Code to be applicable to the proceedings before the Company Law Board, Order VI, rule 17, has not been made applicable. He also took strong objection to the paragraphs of the proposed amendment which purport to be a record of the Company Law Board proceedings and argued that such references amount to creation of records of the Bench which is highly improper. He also referred to the verification of the amendment application signed by one Sh. M.Z.A. Baig to the effect "verified true to his knowledge" and pointed out that he did not attend the Company Law Board hearing on July 23, 1992, and, therefore, the verification in respect of what happened at the Company Law Board proceedings on that day is false and cannot be accepted, as the records of the case cannot be true to his personal knowledge. Counsel further argued that as per Regulation 46, only errors or defects could be rectified and other amendments could not be allowed. Counsel for the petitioners pointed out that verification could be cured at any stage. We carefully considered the arguments advanced by both the parties and allowed the amendments as proposed in Application No. 46 of 1992 in the interest of justice except the paragraphs containing averments in respect of proceedings before the Company Law Board.

11. At the beginning, Shri Cooper referred to the affidavit of Shri Fernandes respondent No. 7, and stated that in view of the contents of the affidavit of Shri Fernandes, he does not want to press the allegations against Shri Fernandes about being involved as one of the directors, in the conspiracy against the shareholders.

12. Shri Cooper then initiated arguments on the main petition and explaining the facts of the case submitted that at the time of incorporation of RDIL, the house of

Tatas played a significant role inasmuch as it was responsible for influencing the composition of the members of the newly incorporated company. He pointed out that respondent No. 2 who is the director and the vice-chairman of RDIL, resigned as chief executive of Tatas in July, 1989. He then, in collusion with respondents Nos. 3 to 6 and 8 to 10, devised a conspiracy to grab control of the majority shareholding of RDIL and succeeded in his objective in March-April, 1992. The petitioners became aware of the existence of such a conspiracy to grab control of RDIL only when respondents Nos. 2 to 6 and 8 to 10 started claiming to be a group controlling 52 per cent. of shares of RDIL. According to Shri Cooper, the entire conspiracy was executed in three phases. Phase I relates to cancellation of the decision to issue convertible debentures as rights issue, replacing it by issue of non-convertible debentures ; phase II relates to the allotment of shares in a disproportionate manner to holders of non-convertible debentures and making the financial resources of RDIL available to the debenture-holders through the conduit of Samrat and Crown for purchasing RDIL shares and phase III relates to desubsidiarisation of Samrat by allotment of Samrat shares to respondents Nos. 2 to 5 with a view to get majority control over Samrat and Rs. 14 crores received by Samrat on account of sale of Titan shares.

13. Elaborating the actions taken in phase I, Shri Cooper pointed out that on July 31, 1989, the annual general meeting of RDIL was held and in that meeting the shareholders approved the issue of 10,920 fully convertible debentures (FCD) of Rs. 300 each for Rs. 32.76 lakhs on rights basis and each of which was to be converted into 10 equity shares of Rs. 10 each at a premium of Rs. 20. Shri Cooper pointed out that the origin of the conspiracy is in the sudden change in the nature of debentures issue from convertible to non-convertible. He pointed out that respondent No. 2 informed the board of directors of RDIL in the meeting held on December 20, 1989, that the rights issue of FCD would not be possible as the proposal for the same had allegedly been informally, negated by Government authorities in Delhi. Shri Cooper pointed out that while the affidavit filed by respondent No. 2 is silent on this aspect ; Shri Gore, the managing director of RDIL, has filed an affidavit on June 30, 1992, in which he has stated "since so far no private limited company had hitherto issued convertible debentures, the Government would have to take a policy decision whether such convertible

debentures by a private company should be permitted." Shri Cooper pointed out that the reasons now advanced cannot be valid as RDIL was not a private company at the relevant time as it became a deemed public company with effect from October 1, 1988, and continued to be so up to January 31, 1991. The proposal of respondent No. 2 to issue 26,000 non-convertible debentures (NCD) of Rs. 100 each on rights basis was approved by the board by a resolution dated December 20, 1989. The closing date for subscription was January 31, 1990. Shri Cooper then pointed out that the sudden change in the proposal to issue non-convertible debentures (NCD) was part and parcel of the plan thought out by the four key persons, viz., Shri Minoo H. Mody, Shri A.S. Gore, Shri V.L. Ukidave and Shri N.S. Dhabhar, for ultimately gaining control of the company. In this context, Shri Cooper drew our attention that the proposal for FCD was made at the board meeting on June 26, 1989, when respondent No. 2 was in the employment of Tatas and he changed the proposal after his resignation in July, 1989, in order to establish his own separate empire. It was also pointed out that while the issue of FCDs was approved by the shareholders, the issue of NCDs was not brought before the shareholders. Shri Cooper further pointed out that significantly although the rights issue was ex facie unattractive, being non-convertible, the said issue was made non-renunciable and discretion was given to the directors to allot the unsubscribed portion to other shareholders evidently in view of the further scheme for effecting an indirect conversion of NCD at a later date. Narrating the further events, he pointed out that although the NCD was heavily undersubscribed, respondent No. 2 mooted a proposal by a circular resolution No. 115, dated February 1, 1990, to permit the management to accept excess subscription to the extent of 25 per cent.

On the same day a note was circulated to the directors stating that as response to debentures is disappointing, in order to make it more attractive to the shareholders apart from extending the subscription date from January 31, 1990, to February 26, 1990, the shareholders may be also informed that in future if the company issues additional shares, some shares may be specifically offered to those shareholders who also hold the debentures and a circular resolution No. 116, dated February 2, 1990, was also passed to this effect. In the letter dated February 7, 1990, it was intimated to the shareholders that in the event of RDIL, at any further stage,

deciding to make an issue of additional shares, some shares may be specifically offered to those shareholders who also held NCDs. A caveat was also added that this should not be regarded as a condition or a commitment to issue rights shares to NCD holders. Shri Cooper argued that this caveat was deliberately added to discourage the shareholders from taking up the debentures in spite of the indirect attraction attached to it. Out of the issue of 30,000 debentures (including oversubscription) 23,000 debentures were subscribed by respondents Nos. 2 to 6 and 8 to 10. This included 980 debentures allotted to respondent No. 19, Dr. Mrs. P. M. Mody, wife of respondent No. 2, who was not even a shareholder. The allotment of debentures was effected in March, 1990, by respondents Nos. 2 and 3 without any reference to the board of directors and without intimating the particulars thereof to the board. In this context, Shri Cooper referred to the resolution passed in the meeting of the board of directors held on December 20, 1989, in which it was resolved that the managing director is authorised, in consultation with the chairman and the vice-chairman of the company, to do all administrative acts which are necessary for the purpose of the issue and in particular to grant extension for the payment of amounts due on the debenture and to offer the unsubscribed debentures in favour of any other shareholders. Shri Cooper pointed out that it is clear that there was no authorisation from the board for giving the power of allotment of debentures to respondents Nos. 2 and 3 as has been claimed by the respondents. Shri Cooper referred to the reply of Shri Gore on behalf of RDIL and pointed out that according to the reply the allotment of debentures was made on March 5, 1990, and individual letters informing the shareholders of their respective allotments were sent. Shri Cooper referred to annexures filed along with rejoinders of RDIL in which the circular resolutions passed by the special committee of the board of directors for acceptance and subscription to debentures have been annexed. There are four resolutions, all undated, which indicate the amounts received as subscription for the debentures and two of these resolutions state that the debentures shall be deemed to have been allotted with effect from February 1, 1990. He also referred to the fifth circular resolution of the same committee, which also is undated, in which details of the additional debentures applied for and allotted and the amount received are indicated. All these resolutions are signed by the chairman, the vice-chairman and

the managing director. Shri Cooper argued that the undated circular resolutions signed by three directors cannot be deemed, to be approval of the board of directors as all other directors were kept in the dark. Referring to the reply of the respondent in paragraph 34 that there is no legal provision which requires that debentures in a private company are to be allotted by the board alone and that the company had maintained the register of debenture-holders and other documents of record which were open for inspection by directors, Shri Cooper pointed out that this makes it very clear that the board was kept in the dark about the allotment of debentures.

14. Shri Cooper then referred to the second phase of conspiracy relating to allotment of shares in a disproportionate manner to the debenture-holders. He pointed out that at the board meeting held on August 5, 1990, respondent No. 2 submitted a proposal to raise the capital of RDIL by issue of rights shares for Rs. 18 lakhs on the ground of paucity of funds and financial constraints faced by RDIL.

Shri Cooper pointed out that simultaneously respondent No. 2 had proposed a final dividend of 50 per cent. aggregating to Rs. 13 lakhs which resulted in an outflow of Rs. 26 lakhs in the entire financial year. By another resolution of the board on the same date, a sum of Rs. 20 lakhs was advanced to Samrat. Shri Cooper argued that considering these facts, it is clear that the proposal for increasing the capital by issue of rights shares was not on the ground of financial constraints or paucity of funds as, if this had been the case, RDIL would not have proposed to declare further Rs. 13 lakhs as dividend and given a loan of Rs. 20 lakhs to Samrat in the same meeting. In this context, he also pointed out that as on August 3, 1990, the date of the board meeting in which the decision regarding rights issue was taken, respondent No. 2 owed the company Rs. 5 lakhs and his wife, respondent No. 19, Rs. 4 lakhs and these amounts are still outstanding and constitute 35 per cent. of the total paid-up capital of the company.

Shri Cooper, therefore, argued that the proposal to raise capital by way of rights issue for raising resources purportedly for working capital was mala fide and was mooted obviously to further the conspiracy hatched by respondent No. 2 and his associates to secure to themselves the majority of shares in the company. He also

pointed out that during this relevant financial year between April, 1990, and March, 1991, a sum of Rs. 2.13 crores was lent to Samrat, respondent No. 12. He further pointed out that during August 3, 1990, to October 4, 1990, when the rights issue for working capital was being processed, respondent No. 1 advanced to respondent No. 12, Rs. 1.4 crores and the total amount due from respondent No. 12 to RDIL as on October 4, 1990, was Rs. 3.14 crores.

15. Shri Cooper then pointed out that, while placing the matter of issue of shares before the shareholders' meeting, there was no adequate disclosure of the interest of directors, including respondents Nos. 2 to 4, in the resolution to issue rights shares to the debenture-holders and the proposals also did not bring out clearly the disproportionate offer of shares to the debenture-holders. Referring to the notice of the 12th annual general meeting of the members of RDIL held on September 10, 1990, and the explanatory statement pursuant to Section 173 of the Companies Act in respect of items 6 and 7 relating to increase in the authorised capital by Rs. 50 lakhs and item No. 8 relating to issue of allotment of further 1,80,000 shares of Rs. 10 each at par, totalling to Rs. 18 lakhs, Shri Cooper pointed out that the language of the resolution as well as the explanatory statement were such that the shareholders were made to believe that their approval was a mere formality and only by way of abundant precaution.

In this connection, he drew our attention to the following sentences in the explanatory statement : " The directors have decided to issue further capital of Rs. 18 lakhs by issue of 1,80,000 rights shares at par in order to raise finances required for its working capital requirement. The company has been advised that out of abundant caution it may be desirable to obtain the shareholders' approval for this purpose. The purpose of the proposed resolution is to seek the authority of the shareholders to do so. " 16. He also pointed out that while the resolution and the explanatory statement on item 8 mention that out of 1,80,000 shares, 26,000 shares would be issued to the shareholders in the ratio of 10 equity shares for every Rs. 1,000 face value of shares held, 34,000 shares to directors/ employees of the company and the remaining 1,20,000 shares to the debenture-holders in the proportion of four equity shares for every debenture held, the shareholders' attention was not drawn pointedly to the disproportionate offer to the debenture-

holders. On the contrary, Shri Cooper pointed out that the explanatory statement tries to gloss over this matter by stating "(a) ten new equity shares for Rs. 1,000 of the face value of shares held ; and (b) four new equity shares for every debenture held." While, in fact, the offer to the shareholders was in proportion of 1 : 10 share, the offer to the debenture-holders was in the proportion of 4 : 1 debenture. Shri Cooper concluded that the language of the resolution, camouflaged the real intent of respondents Nos. 2 to 6 and 8 to 10 who held a substantial portion of the debentures and failed to disclose their interest in the proposal. He also pointed out that the annual returns for the year ended March 31, 1990, filed on September 10, 1990, disclosed the particulars of the-number of debentures held by the shareholders of RDIL and these annual returns were filed on the very day of the shareholders' meeting. Shri Cooper also pointed out that notice was trickily worded inasmuch as no basis was mentioned about the distribution of 34,000 shares in the directors'/employees' quota. Shri Cooper then proceeded to point out the misconduct in the allotment of 1,80,000 shares. A statement indicating the distribution of these 1,80,000 shares was presented to the Bench in which it was shown that out of 34,000 shares reserved for directors/employees of the company, only 5,000 shares went to directors other than respondents Nos. 2 to 4 and 6 and 8 and the respondent directors appropriated to themselves 29,000 shares. Referring to the surrejoinder filed on behalf of RDIL, Shri Cooper pointed out that as revealed in the annexure to the circular resolution No. 128, dated October 15, 1990, of the special committee of the board of directors, appointed by a circular resolution No. 126, dated September 26, 1990, for the allotment of shares, Mrs.

Mody was given 11,000 shares from directors' quota and Shri Gore 11,000 shares, Shri Ukidave 4,000 shares and Shri Seekond who was the only employee to get shares; and who was not even a shareholder in the company till then got 3,000 shares. With the allotment of 11,650 shares as shareholders and 96,120 shares as debenture-holders and allotment of 29,000 shares from the directors'/employees' quota, respondents Nos. 2 to 6 and 8 to 10 along with their family members got 1,36,770 shares out of 1,80,000 shares which works out approximately to about 75 per cent. of the total share issue. With this, these respondents were able to convert themselves from an admittedly minority holding of 33 per cent. to a majority holding of 52 per cent. of the equity share capital of RDIL Shri Cooper

also pointed out that though the rights offer was not renunciable, out of 5,080 unsubscribed shares, 3,000 shares were issued to respondent No. 6, Shri Homi Ayrton, brother-in-law of respondent No. 2, who was neither a director nor an employee of RDIL at that relevant time, and Sh. Mody got himself allotted, 2,080 shares in his own name. Thus, 5,080 shares which were not subscribed by the shareholders/debenture-holders and which were non-renunciable were allotted to Minoo Mody and Homi Ayrton in gross violation of the terms and conditions of the rights issue. Regarding the applicability of Section 81(1A) of the Companies Act for issuing shares, Shri Cooper pointed out that no legal advice is found anywhere nor do the minutes of the board meeting indicate the existence of such advice, as claimed by the respondents. Shri Cooper also pointed out that allotment of shares from the quota reserved for directors/employees to Mrs. Mody was in gross violation of the scheme. In fact, he argued, no scheme was prepared for distribution of these shares no applications were invited from the employees and the distribution amongst employees and directors is such as to conclusively establish misuse of fiduciary duties of a director. He also pointed out that shares not taken by directors/employees were to lapse as indicated in the resolution passed by the members and, therefore, the allotment to Mrs. Mody from the reserved quota is void. He also pointed out that in the body of circular resolution No. 128, there is no mention about "annexure to the resolution" and, therefore, the contention of the respondents that this statement was seen and approved by the special committee cannot be believed. He also pointed out that the statement does not indicate entitlement/allotment under each of the three categories as shareholders, debenture-holders and as a director or employee.

17. Shri Cooper then referred to events which took place around this time relating to Crown, respondent No. 10, and Samrat, respondent No.12. Shri Cooper stated that these events will clearly indicate that while the capital of RDIL was being increased on the ground of paucity of funds, at the same time, the funds on which RDIL had control were being frittered away by the respondent directors. In this connection, he pointed out that during April, 1990, to March, 1991, a sum of Rs. 2.13 crores was given by RDIL to its subsidiary Samrat and the total amount due from Samrat as on March 31, 1991, was Rs. 3.14 crores. While the allotment of shares of RDIL took place on October 15, 1990, on August 22, 1990, Crown,

respondent No. 10, made an offer to its shareholders offering 40 shares for every one share held by the shareholders and at this relevant time Crown was controlled by respondents Nos. 2 to 6 and 8. While the total share capital of Crown was Rs. 1.15 lakhs, the rights issue was for Rs. 46 lakhs. This offer was open only for 15 days and none of the respondents controlling the company participated in this rights issue. The purpose behind this offer, according to learned counsel, was nothing but to create a pretext for RDIL, through its subsidiary Samrat to invest money in Crown and thus enable Crown, thereafter, to make an offer to the debenture-holders of RDIL to purchase these debentures "as ex right" enabling respondents Nos. 2 to 6 and 8 to 10 to subscribe to the rights issue of shares of RDIL. This modus operandi was cleverly used by the respondents, as directors of Crown, to use Rs. 22 lakhs received from RDIL through Samrat to purchase debentures issued by RDIL and owned by them, their friends and these resources enabled the respondents to purchase RDIL shares. To substantiate these allegations of fraud in the matter of allotment of shares, Shri Cooper referred to the letter dated August 23, 1990, written by Shri Ukidave, respondent No. 4 on behalf of Samrat to Crown evincing interest in investing in equity to the extent of Rs. 23 lakhs and the letter dated August 27, 1990, from Dhabhar, respondent No. 5 on behalf of Crown asking Samrat to send Rs. 23 lakhs so that the proposal could be considered afterwards. Accordingly, Samrat sent a cheque for Rs. 22 lakhs on September 19, 1990. In the meanwhile on September 17, 1990, Crown made an offer to purchase RDIL debentures ex-rights to all its shareholders and also to Mr. Butala, respondent No. 9, Mr. Ayrton, respondent No. 6, and Mrs. Zarin Alpaiwala who were not shareholders of Crown and an amount of Rs. 20.6 lakhs was spent on this. This money was made available according to Shri Cooper, out of Rs. 22 lakhs given by RDIL to Samrat on September 18, 1990, and Samrat deposited this money with Crown on September 19, 1990, ostensibly by way of application money pending allotment of shares. In this connection, Shri Cooper also pointed out that in spite of payment being made by Samrat to Crown for issue of shares, no allotment of any shares has taken place as yet. The purchase of debentures by Crown was obviously made with a view to enable the debenture-holders who were mainly respondents Nos. 2 to 6 and 8 to 10 to pay for the rights issue to debenture-holders of RDIL. Shri Cooper concluded that, thus, it is clear that the

respondents made proposals to issue rights shares to debenture-holders only with a view to get control of the company and towards this end utilised the company's money through Samrat and Crown to buy the debentures held by them so as to enable them to subscribe to the shares and get the control over the company.

18. Summarising the petitioner's allegations, Shri Cooper pointed out that respondents Nos. 2 to 6 and 8 to 10 conspired and actively abetted in grabbing about 75 per cent. of the total share issue, appropriated all the 5,080 shares out of unsubscribed shares which were not renunciable, got allotted 29,000 shares out of 34,000 shares reserved for directors/ employees to themselves and made available to themselves the funds of RDIL via Samrat and Crown for the purchase of these rights shares. In view of this, Shri Cooper strongly urged that the entire allotment of shares made to the debenture-holders and shares allotted out of the employees'/ directors' quota should be set aside.

19. Shri Cooper then referred to the third and final phase of conspiracy relating to desubsidiarisation of Samrat. Shri Cooper stated that in 1987 RDIL was allotted 4.25 per cent. shares of Titan Watches Ltd. out of the quota reserved for promoters as it was perceived as a Tata-friendly company. These shares were subsequently transferred by RDIL to Samrat which is a wholly-owned subsidiary and this transfer was effected after obtaining the approval of Titan Watches Ltd. In January, 1992, respondents Nos. 2 to 4 approached Tatas regarding sale of Titan shares by Samrat. Realising that the sale of Titan shares was imminent and the huge profit of nearly Rs. 13 crores would accrue to Samrat, an extraordinary general meeting of the shareholders was held on March 3, 1992, to delete Articles 60 and 61 from the articles of association of Samrat, he contended. This meeting was attended by Shri Gore, representing RDIL under Section 187 of the Companies Act, Shri Ukidave, nominee shareholder of RDIL and Shri Minoo Mody and Sh. N.S. Dhabhar as directors of Samrat. These articles were deleted as no shares could be issued to respondents Nos. 2 to 5 unless they were deleted. The purpose behind the deletion of these articles was to take over Samrat and control the money raised by the sale of Titan shares.

20. Shri Cooper further submitted that the issued capital of Samrat was only 2,002 shares out of the authorised capital of 5,000 shares.

Immediately on receipt of payment of about Rs. 14 crores for Titan shares on March 10, 1992, the four persons (respondents Nos. 2 to 5) appropriated to themselves the balance of 2,998 shares of Samrat Holdings. Shri Cooper pointed out that respondents Nos. 2 to 4 who are directors of RDIL and Samrat and respondent No. 5 who was a director of Samrat have indulged in large-scale fabrication of documents especially in relation to the various minutes of board meetings in respect of the allotment of shares of Samrat, In support of his allegation, Shri Cooper pointed out the discrepancy in the bank statement, cash book, and the minutes of the board meeting. Shri Cooper pointed out that though no board resolution is produced, respondents Nos. 2 to 5 paid on March 12/13, 1992, a sum of Rs. 2,99,800 (Rs. 75,000 each by Respondents Nos. 2, 3 and 5 and Rs. 74,800 by respondent No. 4) for allotment of 2,998 shares. Shri Cooper also argued that the explanation given by the respondents for payment of these amounts as deposits and the subsequent alleged refund on March 31, 1992, is also false as it is not supported by any documents but on the contrary, is against the facts revealed in the auditors' certificate, bank account, etc. He pointed out that the auditors' certificate submitted by the respondents shows that these amounts were paid only on April 9/10, 1992. Shri Cooper stated that it is impossible to believe that if the cheques were given by Samrat on March 31, 1992, as claimed, all the four respondents could not deposit these cheques in their accounts till April 9/10, 1992, especially when respondent No. 4 had actually an overdraft account on which he was paying interest. He further pointed out that the minutes of the subsequent board meetings held on April 6, 7 and 8, 1992, are equally false and fabricated as none of the minutes refer to earlier payments or repayments and also while they mention about the receipt of money for allotment of shares, no money was received till April 8, 1992, as the bank book shows payments on April 11, and clearance of these cheques from April 11 to 21, 1992, as shown by the statements filed by the respondents.

21. According to Shri Cooper, the respondents had fabricated these documents as the respondents became aware that if Samrat is desubsi-diarised before March

31, its accounts cannot be part of the holding company and this will be noticed by the directors of RDIL at the time of consideration of the annual accounts and directors' report for the year ending on March 31, 1992. Another possible reason for fabrication of documents was that the respondents were aware that some of the directors of RDIL were challenging the appointment of Shri Manohar Mody as an alternate director for Shri Praxy Fernandes (respondent No. 7) and, therefore, the entire proceedings of the meeting of the board of directors held on April 6, 1992, and that the fact of desubsidiarisation will have to be revealed in the proceedings in suit bearing lodging No. 1096 of 1992, filed in 1992 in the High Court at Bombay, challenging the appointment of Shri Manohar Mody as an alternate director. In support of his allegation of fabrication of the board minutes of Samrat, Shri Cooper advanced additional arguments as follows : (i) Minutes of the extraordinary general meeting dated April 6, 1992, show that the various resolutions are in the name of Shri Gore and Shri Mody as proposers and seconders. Similarly Shri Dhabhar is the seconder of the special resolution passed at that extraordinary general meeting. According to Article 83 of the articles of association of Samrat only the shareholders could be proposers and seconders. Thus, Shri Gore, Shri Mody and Shri Dhabhar could be proposers and seconders only if they had become shareholders prior to April 6, 1992, which means that desubsidiarisation of Samrat had taken place before that date.

(ii) Minutes of the 30th board meeting dated April 6, 1992, of Samrat state reasons for offering shares to respondents Nos. 3 and 4. These reasons are neither based on facts nor are they rational but are stated only as a salvage operation to give legitimacy to what they have already done on March 13, 1992.

(iii) Minutes of the 31st board meeting dated April 7, 1992, indicate that 710 shares are offered to Mr. N.S. Dhabhar. The resolution of the board of directors in the meeting held on March 23, 1992, had stated that shares may be given to shareholders of RDIL. It was pointed out that Mr. Dhabhar was not even a shareholder of RDIL.

22. Regarding the allotment made to the four directors by Samrat, Shri Cooper pointed out that these are not supported by any logical formula about entitlement

as rights shares. Referring to the affidavits filed by Shri Gore, respondent No. 3 on behalf of Samrat, Shri Cooper pointed out that it has been claimed that in early 1992 it became apparent that efforts were being made to snatch the business of RDIL by the Tata group. Since the only business of RDIL is to publish Readers Digest, it was felt that if Readers Digest Association, America (RDA, USA), terminated the agreement with RDIL, then the entire business of RDIL would come to a standstill. It is also mentioned in the affidavit that it was, therefore, proposed to enter into a collaboration agreement with RDA, USA and give them up to 51 per cent. shareholding in RDIL and at the same time delink Samrat from RDIL so as to ensure that the benefit of investments of Samrat will be retained only with the original shareholders of RDIL. It is also stated in the affidavit that RDA, USA had expressed a desire that they would not like to participate in the investment activities carried on through Samrat. Shri Cooper pointed out that the respondents have claimed that in these circumstances, it was decided to desubsidiarise Samrat and to issue its shares to the shareholders of the RDIL in the same proportion as the shares they held in RDIL. The rights issue was not transferable or renunciable and the proposal was to make an offer in the ratio of one share of Samrat for every 25 shares held in RDIL to persons who are registered as shareholders on the record date to be determined by the directors. These decisions were taken in the meeting of the board of directors of Samrat held on March 23, 1992. Out of the increased capital of 17,600 shares proposed to be allotted, the entitlement of respondents Nos. 2, 3 and 4 would have been 2,22 shares, 869 and 732 shares respectively on the basis of the formula of 25 : 1 shares.

Respondent No. 5 did not hold any shares in RDIL in his personal name and, therefore, he would not be entitled to any shares. Shri Cooper pointed out that in the affidavit, it is explained that the refund of deposit of share application money made by respondents Nos. 2, 3 and 5 for 750 shares each and respondent No. 4 for 748 shares in March, 1992, was on the ground that if shares were offered to them in accordance with their deposit, in the case of respondent No. 5, it would result in his being offered shares in excess of his entitlement determined in proportion to the shares held by him. As per the affidavit filed on behalf of Samrat, the entitlement of respondents Nos. 2 to 5 would be 780 shares, 750 shares, 730 shares and 710 shares respectively. This statement is full of contradiction as the

affidavit gives further figures of entitlement which are quite different. In fact, Shri Dhabhar (respondent No. 5) was not a shareholder of RDIL and, therefore, not entitled to even one single share in his name. Therefore, the explanation given for refund of deposits as well as for the allotment of shares is false and is not supported by any cogent reasons, counsel argued.

23. Shri Cooper pointed out that apart from this conspiracy to take control of RDIL and desubsidiarise Samrat, the respondents have indulged in misutilising the funds of RDIL through investments made by Samrat in the companies in which the respondents were interested as directors/ shareholders without disclosing this matter to the board of RDIL. In this connection, he referred to the investment made by Samrat in Aryagene Plant Technology Pvt. Ltd. (Aryagene) and Cochin Malabar Estates and Industries Ltd. (Cochin Malabar). As on March 17, 1992, about 50 per cent. of the investible funds of Samrat were placed with these two companies. Shri Cooper pointed out that in both these companies not only was Shri Minoo Mody a director and substantially interested, but in Aryagene respondents Nos. 2 to 6 and their family members also had substantial shareholding and control. There was no disclosure of interest either before RDIL or Samrat when these investments were made. Shri Cooper pointed out that Samrat has suffered a loss on account of investments in Aryagene as no return on these investments in the form of interest or dividends was received. Shri Cooper referred to para 88 of the affidavit dated June 30, 1992, of Shri Gore filed on behalf of RDIL to point out that while the reply of Shri Gore refers to the "huge sum" of Rs. 38,70,000 being invested in debentures of Aryagene earning interest and only Rs. 1,30,000 invested in equity shares, in fact, no interest was received by Samrat on these debentures. Shri Cooper also referred to the statement made in the affidavit. "If the company so preferred, these debentures could be converted into shares at par or at a value well below their true worth.

If it did not, the company would retain the debentures and reduce its exposure" and pointed out that the vague statement made by Shri Gore does not disclose whether these debentures are convertible or non-convertible. Shri Cooper referred to copies of seven letters, i.e., letters of August 27, 1990, June 1, 1991, November 25, 1991, and two letters each dated March 22, 1991, and March 26, 1991, from

Aryagene filed by Samrat relating to allotment of shares and debentures and pointed out that contrary to the statement made in the affidavit, the debentures are unsecured and non-convertible. Shri Cooper also referred to the statement filed by Shri Homi Ayrton, respondent No. 6 and the director of Aryagene which states that Shri Mody was a director of Aryagene up to March 26, 1991, and he was again re-appointed as a director of Aryagene only on March 23, 1992. Shri Cooper also referred to the letter of Shri Minoo Mody dated March 20, 1991, addressed to RDIL about the disclosure of interest and letter dated March 25, 1991, about his resignation from directorship of Aryagene. Shri Cooper drew our attention to the fact that quite contrary to the statement made by Shri Mody and Shri Ayrton, Shri Mody has signed letters on March 22, 1991, and March 26, 1991, as director/chairman of Aryagene. He also recalled that in the meeting of the board of directors of RDIL on March 17, 1992, Shri Mody had stated that he was the chairman of Aryagene while the record shows that he became director again only on March 23, 1992. Shri Cooper then pointed out that in his reply, Shri Gore has stated that "the chairman suggested that these investments in Aryagene could be made only if Shri Mody was closely associated with the project of Aryagene and Shri Mody accepted this responsibility somewhat reluctantly. Shri Cooper stated that Aryagene was promoted by Shri Mody himself and this fact has not been disclosed. In addition, Shri Cooper pointed out that the affidavit is silent about the fact that respondents Nos. 2 to 6 and their family members held a controlling interest in Aryagene. Shri Cooper also pointed out that it is pertinent to note that neither during the discussions in the board meeting of RDIL on March 17, 1992, nor in the affidavit filed on behalf of RDIL or any other respondent director, it has been indicated that the registered office of Aryagene was in the same premises as that of registered office of RDIL.

24. Shri Cooper then pointed out a large number of inconsistencies in respect of rate of interest, total investment in debentures, date of allotment of debentures as revealed in the seven letters mentioned above. In particular, he highlighted the following discrepancies : '(1) As revealed in the cash book of Samrat in the financial year 1990-91, Rs. 25 lakhs were advanced to Aryagene and these advances are shown as "advances against purchase of shares". Further, Rs. 15 lakhs were advanced in April and May, 1991. Shri Mody had signed two letters on

March 26, 1991, in which it is stated that Aryagene had up to that date received a sum of Rs. 40 lakhs from Samrat which is quite contrary to the fact revealed in the cash book. These two letters also state that Rs. 40 lakhs were to be appropriated towards allotment of shares and debentures while as per the cash book, this money was advanced only for shares.

(2) The respondents have stated that Samrat has been allotted 17 per cent. debentures of the face value of Rs. 38.70 lakhs and in support of this, they have produced a certificate of debentures which is dated March 28, 1992, and is signed by Shri Mody and Shri Ayrton on behalf of Aryagene. Shri Cooper pointed out that neither of the two letters dated March 26, 1991, written by Shri Mody to Samrat tallies with this certificate. One of the two letters dated March 26, 1991, purports to allot 17 per cent. secured debentures of Rs. 100 each of value of Rs. 35 lakhs" while the other letter purports to allot "15 per cent. secured debentures of value of Rs. 38.50 lakhs". The only letter produced by the respondents which tallies with the debenture certificate is the letter dated June 1, 1991, signed by Shri Mistry as director of Aryagene. However, this letter states that it is in continuation of the letter dated March 26, 1991, and it is quite clear that the letter dated March 26, 1991, referred to in Shri Mistry's letter cannot be possibly either of the two letters dated March 26, 1991, signed by Shri Mody as they contain contrary statements. Either, therefore, there should be one more letter dated March 26, 1991, which has not been produced before this Bench or the letter of June 1, 1991, and the debenture certificate are totally fabricated, he argued. Shri Cooper also pointed out that what has been stated in the letter dated June 1, 1991, is also contrary to another letter dated November 25, 1991, signed by Shri Mistry as chairman of Aryagene which states that "in response to your application, the board of directors of the company is pleased to allot you today 13,000 shares" and this is contrary to what is stated in his letter of June 1, 1991, which confirms allotment of 13,000 shares, on that date. It was also pointed out by Mr. Cooper that though reference has been made to the application made by Samrat for shares/debentures, no such application has come forward and the respondents have categorically stated that in respect of these transactions, there is no other correspondence.

(3) Referring to the entries made in the investment register of Samrat at page 80 relating to 13,000 shares of Aryagene and at page 81 regarding 38,700 debentures of Aryagene, it was pointed out that at page 80, the entry shows allotment of shares originally on November 25, 1991, and this was subsequently cancelled and another date, i.e., March 23, 1991, is written and as such it is clear that this entry of March 23, 1991, is made with the intention to create false evidence and the letter dated November 25, 1991, from Mistry, chairman of Aryagene clearly shows that the shares were allotted for the first time on November 25, 1991. As regards entries at page 81 regarding debentures, allotment is shown as on March 31, 1991. This is in conflict with the letter dated June 1, 1991, which states that the debentures were allotted on June 1, 1991, and the two letters dated March 26, 1991, cannot be possibly of any help as the figures shown in those letters are different from those mentioned in the investment register. It was also pointed out that this entry is false since as on March 31, 1991, Samrat had paid to Aryagene only Rs. 25 lakhs and not Rs. 40 lakhs. The balance-sheet of Samrat for the year ending on March 31, 1991, also shows that as on March 31, 1991, only 23,700 debentures were held by Samrat. This clearly establishes according to Shri Cooper that the entries are fabricated.

25. Shri Cooper argued that all the facts have been deliberately hidden from the board of RDIL when a question was asked regarding this investment in the meeting and these facts are also not mentioned in the reply affidavit. Shri Cooper argued that copies of letters filed at the specific direction given by the Bench are clearly fabricated documents to justify entries made in the investment register and necessary action must be taken against the directors and the companies which have produced these documents.

26. Shri Cooper then pointed out about the attempts made by Shri Mody to pack the board of directors of RDIL with his own nominees. Shri Cooper stated that Shri Mody did not have majority in the board of directors of RDIL and, therefore, he attempted to force the appointment of Shri Dhabhar Shri Ayrton and Shri Gurpreet Seekond who are also directors in Crown/ Samrat and who actively aided respondents Nos. 2 to 4 in securing an illegitimate majority in RDIL, as additional directors in RDIL for the purpose of his scheme of aggrandisement and in

particular for the purpose of dishonestly diverting to his own use and to the use of his associates, cash resources which have come in the hands of Samrat because of the sale of Titan shares. Shri Cooper pointed out that Shri Ayrton is a relative of Shri Mody and Shri Seekond is an employee of RDIL, director of Crown and the only employee who has received the employee's quota shares of RDIL. He also pointed out that Shri Dhabhar was a chairman of Crown and is a director of Samrat and Cochin Malabar.

27. Referring to the minutes of item No. 9 of the 63rd board meeting of RDIL held on March 17, 1992, Shri Cooper pointed out that there is a mention about the proposal by Shri Mody for the appointment of three additional directors which was opposed by respondents Nos. 13 to 16 and Shri Mody then tabled a notice dated March 17, 1992, from some of the shareholders of the company requisitioning an extraordinary general meeting for their appointment. It is also mentioned in the minutes that it was decided to convene the next board meeting on April 6, 1992, to consider the proposal of Shri Mody to appoint these three persons as additional directors and failing which to consider calling an extraordinary general meeting of the company. Shri Cooper then pointed out that the agenda circulated thereafter for the board meeting for April 6, 1992, does not refer to the appointment of additional directors but mentions an item to consider the requisitions dated March 17 and 19, received from certain shareholders proposing the appointment of three additional directors.

28. Shri Cooper also stated that, while the issue of additional directors was still to be decided, on April 3, 1992, respondent No. 16 received a copy of circular resolution No. 142 which purports to intimate the appointment of Shri Manhar Mody as alternate director for Shri Praxy Fernandes. In this connection, Shri Cooper also referred to a copy of the notice dated March 23, 1992, received from Shri Fernandes by the company and which was tabled at the board meeting on April 6, 1992. Shri Cooper pointed out that the appointment of Shri Manhar Mody as alternate director was opposed by respondent No. 16 in his letter dated April 3, 1992, sent to the company secretary, being contrary to the provisions of Section 3-13 of the Companies Act, 1956. Shri Cooper also referred to paras 12 and 13 of the affidavit dated June 23, 1992, filed by Shri Fernandes. Shri Cooper pointed out

that as per this affidavit it is clear that Shri Mody suggested to Shri Fernandes that the latter was empowered to nominate an alternate director under Clause 128 "of the articles of association, read with Section 313 of the Companies Act. Shri Fernandes did not have any of these two documents to verify the same and he had no reason to doubt what Shri Mody had suggested. Accordingly, he nominated Sh. Manhar Mody as his alternate director. This was against the provisions of Section 313 of the Companies Act. Therefore, noting the intention for appointment by circular resolution it cannot be treated as a valid appointment. In this connection, he also pointed out that the chairman, respondent No.11, also wrote a letter dated April 16, 1992, to the company secretary withdrawing his signature from circular resolution No. 142 as the authority to appoint an alternate director vests in the board only.

29. As per the minutes of the meeting of the board of directors held on April 6, 1992 (which are disputed by the petitioners), the appointment of Shri Manhar Mody as alternate director (item 2) and appointment of three additional directors (item 4) were approved. It is stated in the minutes that out of six directors present, three directors, namely, Messrs. Bhabha, Johri and Mahadevan, voted against the resolution about the appointment of Manhar Mody as alternate director. However, the resolution was carried by the majority after the chairman exercised his cutting vote in favour of the resolution. It is also mentioned in the minutes that the appointment of three additional directors, S/Shri Dhabhar, Ayrton and Seekond, was approved by a majority vote. Shri Cooper pointed out the various irregularities committed by the respondents in conducting the board meeting held on April 6, 1992. In this connection, he referred to the letter dated May 8, 1992, addressed to Shri Mody by S/Shri Bhabha, Johri and Mahadevan seeking rectification of the minutes of the board of directors meetings held on March 17, 1992, and April 6, 1992. Shri Cooper pointed out that as decided in the board meeting held on March 17, 1992, the board meeting to be held on April 6, 1992, was only to consider the item regarding requisition from certain shareholders for calling an extraordinary general meeting of the shareholders to appoint three additional directors. He, therefore, argued that the entire proceedings of the board meeting held on April 6, 1992, are illegal and violate the provisions of the Companies Act. He also stated that the minutes of the meeting held on April 6, 1992, were produced for the first

time on April 13, 1992, after a plaint was filed in the Bombay High Court challenging circular resolution No. 142 appointing Shri Manhar Mody as alternate director. Pointing out further inconsistencies, Shri Cooper stated that the three additional directors were purported to have been appointed in the board meeting itself, when it was not an item on the agenda and Manhar Mody illegally appointed as alternate, director in the same meeting participated and voted in favour of these appointments. It was also pointed out that while the board of directors rejected the requisition given by certain shareholders for appointment of three additional directors, even after this rejection by the board an extraordinary general meeting was called by Shri Mody himself, Shri Cooper alleged that respondents Nos. 2 to 4 adopted these dubious and dishonest methods to secure illegitimate majority at the board level and to reward these three persons with the plums of office in the form of directorship of RDIL for their help in achieving the majority control of the company.

30. Shri Cooper then referred to the siphoning off of money by payment of a sum of Rs. 4,000 per month to Mrs. Dhabhar, wife of respondent No.5, from March, 1991, to March 31, 1992. In the affidavit dated August 12, 1992, filed by Shri A.S. Gore, managing director of the company, this fact has been admitted. However, no explanation has been given as to why such a payment was made, though the respondents have stated that the company has ceased making payment from April 1, 1992. In this context Shri Cooper also referred to the letter dated February 25, 1992, signed by Shri Gore to Mrs. Dhabhar and pointed out the letter does not disclose the department in which she was supposed to work, nor the description of duties assigned to her. Shri Cooper also pointed out that in the information filed by the company in reply to the queries of the Company Law Board, no details have been given regarding the actual work done by Mrs. Dhabhar. Shri Cooper argued that it is clear that Mrs. Dhabhar has been paid without any work and she was really not attending office at all and this amount needs to be recovered from the directors. Similarly, Shri Cooper pointed out that a loan of Rs. 5 lakhs has been sanctioned in 1988 to Mrs. Mody by RDIL and a loan of Rs. 7 lakhs was also given to her by Samrat on April 6, 1992, though she is neither a working director nor an employee of these companies.

31. Referring to certain new facts which came to the notice of the petitioner during the pendency of the petition and mentioned in C. A.No. 93 of 1992 seeking interim relief, Shri Cooper alleged misfeasance against respondents Nos. 2 to 5, in connection with the acquisition of immovable property comprising land admeasuring approximately 240 square yards together with a tenanted building standing thereon, situated at 45, Vaju Kotak Marg, Ballard Estate, Bombay, in which the office of RDIL is housed. The property belonging to the Bombay Port Trust was on lease for 25 years with one Sachanand Bharvani and RDIL is a sub-tenant of the main tenants, namely, Hindustan Thompson Associates Ltd. RDIL is in physical occupation of the premises since inception and, therefore, enjoys certain statutory protection under the provisions of the Bombay Rent Act. This property was decided to be purchased by respondent No.12, viz., Samrat, for a total consideration not exceeding Rs. 6 lakhs excluding other incidental expenses, as early as on January 8, 1988, through a board resolution. At this meeting, Shri H.D. Vakil (the petitioner) and Shri Ukidave, both directors of the company, were authorised individually to execute the necessary papers with regard to the acquisition. The draft agreement with the original assignors was also approved at this meeting. Shri Cooper contended that despite this fact, Shri Ukidave, respondent No. 4, instead of pursuing the proposal for purchase on behalf of Samrat and in clear breach of his fiduciary duties, negotiated and/or permitted negotiation on behalf of Crown, the tenth respondent with the said assignors and now the property stands registered in the name of Crown under a final deed of assignment dated May 6, 1992. Shri Cooper strongly refuted that the draft agreement for assignment of property in favour of Crown Holdings was forwarded by Miss K.F. Captain, secretary of RDIL to Shri H.D. Vakil on April 13, 1989, before its execution on April 26, 1989, and contended that Shri Vakil never received such a letter. He further questioned the authority of Miss K. F. Captain to sign the covering letter dated April 13, 1989, as she is not an employee of Crown and alleged that this letter is fabricated. He also pointed out that the agreement dated April 26, 1989, between Crown and original assignors with regard to the property purchased by the respondents is a clear manipulation since there is no change in the original draft approved except that the word "Samrat" was substituted by the word "Crown" wherever the name "Samrat" occurred.

There is a clear rubbing out in the signature clause also. These changes have been carried out surreptitiously without the knowledge of Shri H. P. Vakil who was originally authorised by the board of Samrat, in the same stamp paper which was purchased on October 6, 1988, for the execution of the documents on behalf of "Samrat". According to him this was practicable since all the current directors of Samrat, namely, S/Shri Ukidave, Mody, Gore and Dhabhar owned and controlled over 60 per cent. of the share capital of Crown.

32. Referring to the minutes of the meeting of the board of directors of Crown held on April 5, 1989, and September 11, 1992, and filed by Crown as per our direction, Shri Cooper pointed out that item 4 of the minutes of April 5, 1989, shows that the board has given authority to Ukidave and Gore as directors of Crown to negotiate and sign the documents. As per the minutes of the board meeting of Crown held on March 16, 1990, item 5, Gore and Ukidave had resigned as directors. In view of this, Ukidave, could not have signed the final agreement dated May 6, 1992, with the original assignor as a director of Crown was only authorised to sign. Shri Cooper argued that in view of this, it is clear that the minutes of April 5, 1989, by which power was given to Ukidave to negotiate and sign documents is fabricated in order to justify the letter of April 13, 1989, which was never received by the petitioner. Shri Cooper also alleged that the role of Miss Captain, company secretary of RDIL, is also dubious as she has acted against the interests of RDIL and should not have signed the letter on behalf of Crown and acted as Crown's authorised signatory.

33. Referring to the allegations made in C. A. No. 48 of 1992 seeking directions and commencement of action for the punishment of directors and the secretary of the company for violation of the provisions of Section 539 of the Companies Act and reply dated August 3, 1992, filed by Miss Khurshid F. Captain and rejoinder filed in August, 1992, by the petitioner, Shri Cooper pointed out that the company secretary of RDIL is responsible for ensuring that the subsidiary's accounts are published with the accounts of the holding company and consequently the information pertaining to the investment, writing of its books, preparation of its records for compliance with the requirement of the Companies Act are the obligations of the secretary. Shri Cooper pointed out that it is an admitted fact that

there is no separate company secretary for respondent No. 12 and investments made in Crown and Aryagene are to the knowledge of the company secretary of RDIL.

Shri Cooper argued that since Miss Captain is aware of all these facts and the changes in the minutes of the board meetings of Samrat, she is also involved in the falsification of records. He pointed out that it is on record that Miss Captain has signed documents as the authorised signatory of Samrat and Crown. He also pointed out that the letter dated April 13, 1989, signed by Miss Captain on the letter-head of Crown bears no designation under her signature. As admitted by her, she has signed this letter at the request of Shri Ukidave, a director of Crown. It is on record that Crown had authorised Miss Captain to act as its constituted attorney and has given her the general power of attorney dated March 22, 1990. While acting under such general power of attorney, Shri Cooper pointed out that she had acted for the companies which had conflicting interests with the company, its subsidiary, for which Miss Captain was the company secretary. It clearly shows that she has acted in connivance with respondents Nos. 2 to 5 and has played an active role in the conspiracy which resulted in the defrauding of the shareholders of RDIL. He also pointed out that in her statement she has submitted that "she has, on occasion at the request of directors of the respondents of Samrat/Crown also assisted in preparation of minutes of board meetings." However, she denied having received any remuneration from these companies. According to Miss Captain, her assisting directors in carrying out certain activities in other companies without any remuneration cannot be in conflict with the role as company secretary of RDIL.

34. In support of the petition, Shri Cooper pointed out that, as held in Needle Industries' case [1981] 51 Comp Cas 743 (SC), in order to entitle a petitioner to relief under Section 397, what is to be shown is, conduct which lacks in probity, conduct which is unfair and which causes prejudice to shareholders. Shri Cooper argued that all the facts narrated clearly point out that respondents Nos. 2 to 6 and 8 have indulged in large scale fabrication of documents, used funds of the company for investment in the companies under their control without disclosing their interest and there are no returns on these investments. All these facts clearly

point out that the conduct of the respondent directors lacks in probity and has caused prejudice to the petitioners, he asserted. He also pointed out that though the first event in the chain of events took place in July, 1989, the petitioners became aware of such a conspiracy only in March, 1992, when Shri Mody claimed 52 per cent. majority control in RDIL. He, therefore, argued that there is no delay in seeking relief. He further argued that a mere delay in seeking relief is not significant by itself unless such delay can amount to acquiescence and condonation, especially where oppression and its effects are continuing. He pointed out that, as held in *Firestone Tyre and Rubber Co. v. Synthetics and Chemicals Ltd.* [1971] 41 Comp Cas 377 (Bom), there could be no acquiescence without full knowledge of all the facts and of the right to take action. He pointed out that in the allotment of shares to debenture-holders of the company, there was no disclosure of interest to the shareholders by respondent directors Nos. 2 to 4. It cannot be held that the shareholders were given full and complete opportunity with all the material facts placed before them to decide the issue. As the notice was defective and not in terms of the mandatory requirements, the resolution on that item will have to be treated as null and void.

Referring to the decision in *Laljibhai C. Kapadia v. Lalji B. Desai* [1973] 43 Comp Cas 17 (Bom), Shri Cooper pointed out that if the explanatory statement is false or even tricky or misleading and does not disclose or suppresses facts which are material for decision, the resolution passed on such subject will have to be set aside. Shri Cooper pointed out that the powers under Section 402 are wide enough for the Bench to grant any relief to regulate the company's affairs in future including setting aside the issue of shares to debenture-holders and shares allotted to directors/employees from the reserved quota and reduce the share capital as a consequence thereof. Referring to the decision in *Syed Mahomed Ali v. R. Sundaramurthy* [1958] 28 Comp Cas 554 (Mad) ; AIR 1958 Mad 587, Shri Cooper also pointed out that the Bench can even order an investigation and enquiry into the affairs of the company, if it comes to a conclusion that such an enquiry is necessary, even if such an enquiry is not specifically prayed for in the petition.

35. Concluding his arguments, Shri Cooper pointed out that the respondent directors belonging to the Mody group have misused their position as directors in RDIL/Samrat in order to convert their 34 per cent. minority shareholding into a 52 per cent. majority, shareholding which has resulted in the oppression of the petitioners as shareholders and have also indulged in various acts of mismanagement which are detrimental to the financial interest of the company and, therefore, the petitioners are entitled for relief as prayed for.

36. Referring to various reliefs mentioned in paragraph 48 of the petition, Shri Cooper pointed out in view of the facts established, he is now pressing for setting aside all the 34,000 shares allotted from the quota reserved for employees and directors as the allotment is the result of a mala fide exercise of the powers of directors completely in breach of their fiduciary duties. Shri Cooper also pleaded for setting aside the allotment of 1,20,000 shares to debenture-holders as the petitioners have clearly proved that these shares were allotted on the basis of an approval given as a result of the tricky explanatory statement made to the shareholders and is a consequence arising out of a conspiracy by the Mody group and also involving directors using company resources for the purchase of shares. He also requested that once the allotment of these shares is set aside, the amount paid by shareholders should be refunded to them after deducting the amount of dividend paid to them on these shares. Shri Cooper argued that those who fraudulently got shares from the directors'/employees' quota and as debenture-holders and prospered because of fraud, must perish by its consequences. In modification of his request in the petition for reallo-ment of these 1,54,000 shares proportionately to all the shareholders, Shri Cooper pressed for the relief of ordering a reduction of share capital after cancelling 1,54,000 shares as resources were raised when money was not required by the company.

Referring to reliefs (G) and (H) of para 48 of the petition, Shri Cooper argued that respondents Nos. 2 to 6 and 8 should be removed from the board of directors of RDIL and respondents Nos. 2 to 5 from Samrat and all other subsidiaries of RDIL. Referring to various facts established relating to the mismanagement of RDIL and Samrat, Shri Cooper sought further reliefs regarding (i) retransfer of rights acquired by Crown in respect of the property at Viju Kotak Marg, Bombay to

Samrat on payment of the amount spent by Crown, (ii) reimbursement by directors 2 to 5 of Rs. 40 lakhs invested in shares and debentures by Samrat in Aryagene and Rs. 22 lakhs given to Crown as share application money and Rs. 20 lakhs outstanding intercorporate deposit with Crown together with interest, (iii) reimbursement by the director responsible for the unauthorised and illegal payment of Rs. 52,000 to Mrs. Dhabhar as remuneration, and (iv) order immediate repayment of outstanding loans made by RDIL/Samrat to Sh. Mody and Mrs. Mody along with interest. Referring to the illegal steps taken by respondents Nos.

2 to 5 for desubsidiarisation of Samrat, Shri Cooper requested for setting aside the allotment of 2,998 shares in Samrat to respondents Nos. 2 to 5 and order consequential reduction of capital. Shri Cooper also pleaded that respondent directors Nos. 2 to 6 and 8 have utilised the funds of the company for defending the present petition and the Bench should not allow it as the cause of action for the petition is the fraud practised by them on the minority shareholders and mismanagement of the affairs of the company on account of the various acts of omission and commission by respondents Nos. 2 to 6 and 8. He requested that such a cost for defending the litigation should not be a burden on the resources of the company and if any amount has been paid in this respect by RDIL or Samrat, the directors should be asked to refund the same to these companies.

37. In the hearing held on November 24, 1992, Shri R. A. Kapadia, senior advocate, appearing on behalf of Shri Mody, RDIL and Crown, submitted that the petitioners have made wild and serious allegations without any basis. He pointed out that the verification given by the petitioners Shri Hemant Vakil and Smt. Bhabha was not in accordance with the Company Law Board Regulations, 1991, and the Civil Procedure Code, 1908. He argued that the petition, affidavits verifying the same, subsequent applications and pleadings filed on behalf of the petitioners are not clear, He pointed out that paragraphs containing allegations are shown to have been verified on the basis of legal advice. Shri Kapadia stated that allegations cannot be a consequence of legal advice but should be based on facts. He also referred to some of the interlocutory applications filed on behalf of the petitioners but verified by Shri M.Z.A. Baig who is a constituted attorney of the petitioners. Shri Kapadia pointed out that a holder of the power of attorney cannot

verify the contents of an interlocutory application since he does not have personal knowledge about the allegations made in it. Shri Kapadia referred to C. A. No. 96 of 1992 filed by the respondents on November 12, 1992, in which prayer is made for allowing cross-examination of petitioners Nos. 1 to 4, Mr. Baig, Mr; Xerxes Desai and respondents Nos. 13, 14 and 16 and made a fervent plea not to rely only on the documents filed. He also referred to the decision of the Supreme Court in Needle Industries' case [1981] 51 Comp Cas 743 to support his claim and pointed out that, normally, cross-examination of a party is allowed in order to discern the veracity of the allegation made against the respondents or the basis thereof, which otherwise is difficult to be established through affidavits alone.

38. We pointed out that, normally, applications under Section 397/398 are disposed of on the basis of averments in pleadings, unless the matter is specifically directed to be tried on the evidence in respect of events. It is for the petitioners to rely either on the documents or tender oral evidence and establish their allegations. In this particular case, the petition was filed on May 14, 1992, and the first hearing was held on May 22, 1992, and, thereafter, a number of hearings have taken place. At no stage, either the petitioners or the respondents made any request for trial on evidence. The request of the respondents, at this stage of final arguments, for oral evidence on the ground that the allegations in the petition, pleadings and various affidavits leave certain issues unexplained, cannot convince us that this entitles the respondents to cross-examine the petitioners to find out which allegations are true. Most of the allegations in the petition are based on the documents which are part of the statutory records of the company or its subsidiary and the respondents are aware of these documents. The observations made by the Supreme Court in Needle Industries' case [1981] 51 Comp Cas 743 were in respect of affording an opportunity to the person accused of wrongful conduct to controvert the inference said to arise from the documents. No doubt, in this case, the allegations have been made about the probity and the fairness of conduct against the respondents but we find that the respondents at no stage even during the last 10-12 hearings and even on the hearings held on November 2 and 3, 1992, when the dates of next hearing on November 23 to 25, 1992, were fixed, had asked for recording oral evidence. This application is being made at a stage when counsel for the petitioners has practically completed his final arguments and

counsel for the respondents is required to argue the case of the respondents at the final hearing. In view of this, this request is nothing but an attempt to delay the final hearing. We had asked Shri Kapadia to indicate whether any of the respondents against whom allegations have been made would like to give any oral evidence to rebut or explain the documents Shri Kapadia answered in the negative. Considering all these aspects, we have asked Shri Kapadia to proceed with the final arguments and as requested by both counsel we had given opportunity to both the parties to file their written reply and counter-reply as regards the issues raised in C. A. No. 96 of 1992. The petitioners filed reply on December 15, 1992, and the respondents filed their counter-reply on December 28, 1992. We have carefully considered these replies and find that verification of this petition as well as other affidavits is in compliance with the provisions in Regulations 11, 14, 15 and 16 of the Company Law Board Regulations. Almost all the documents presented by either of the parties on their own or as per our specific directions are admitted documents except the disputed minutes of the board meetings of RDIL held on March 17, 1992, and April 6, 1992. The case is based on inferences drawn from and assessment and interpretation of the contents of these documents. The authors of the documents who are parties to the proceedings have neither disputed these documents nor availed of the opportunity to enter the witness box to clarify or elaborate the contents of these documents. In the context of serious allegations of fraud, conspiracy, fabrication of documents, an opportunity to give oral evidence to rebut these allegations can be given to a person accused of wrongful conduct. However, the plea in the application is not for availing of an opportunity to rebut the allegations but the plea is for cross-examination of the petitioners in order to discern the veracity of the allegations. We did not agree with learned counsel that such a request, if conceded, would further the interests of justice and, therefore, the request for cross-examination in C. A. No. 96 of 1992 was rejected.

39. Shri Kapadia began his arguments by challenging the maintainability of the petition on the ground that the present petition is nothing but an attempt by the directors/shareholders having close links with the Tatas to misuse the facility of obtaining discretionary relief under Section 397/ 398 for their ultimate objective of obtaining the control of the company and resources garnered through sale of Titan

shares.

Shri Kapadia "then dealt at length with the court cases filed by the respondent directors S/Shri Bhabha, Mahadevan and Johri and pointed out that as they were unable to prove anything against the present management of RDIL, they with drew the suits filed. In all these cases including the present petition, Shri Kapadia argued, the supervisory and supportive role of the Tatas is crystal clear and the filing of the present petition is mala fide and for oblique motives. He narrated the events right from February, 1984, when the agreement between Questor Investment Limited and Tamil Nadu Industrial Development Corporation Limited was signed under which the Tatas were to hold 24 per cent. of the equity capital of Titan Watches Limited, till the filing of the petition and argued that the House of Tatas was desirous of controlling RDIL by reason of the fact that Samrat held a substantial percentage of shares in Titan Watches Limited. According to Shri Kapadia, the Tatas realised that they would be able to achieve this only by edging out Minoo Mody and towards this objective, the first step was adopted by Shri Xerxes Desai in trying to establish that RDIL was a Tata company.

When that did not work and Shri Ratan Tata was forced to disown the suggestion that the letter dated January 27, 1992, addressed by Shri Xerxes Desai to Shri Grune of RDA, USA, was written, at his instance and the Tatas had to purchase the shares of Titan Watches Limited from Samrat. The second step taken for achieving this objective was an attempt to acquire control of RDIL with the view that, although the price of shares was paid, the entity to which it was paid-- Samrat--would be itself controlled by the Tatas. When the Tatas failed to achieve this also as they realised that the Tatas are no longer in control of RDIL, they decided to take steps to stall the move of Minoo Mody to desubsidiarise Samrat and this was done by stone-walling the proposal in the meeting of the board of directors of RDIL and then by asking for a deferral of that proposal.

Simultaneously, the Tatas also made direct moves with RDA, USA to take away the business of RDIL of publishing of Readers Digest. In this context, Shri Kapadia referred to the affidavit dated July 15, 1992, of Shri Xerxes Desai, managing director of Titan Watches Limited, filed by Shri M.Z.A. Baig, constituted attorney as

annexure to his counter-reply. Shri Kapadia pointed out that it is an admitted fact that right from the initial stages, the selection of the members of the company was made basically out of employees of the Tata group and certain distinguished individuals suggested by the Tatas. He pointed out that respondent directors Nos. 14 and 16, Shri Johri and Shri Bhabha, who are supporting the petition have connections with the Tata organisation, Shri Johri being an ex-employee of the Tatas and Shri Bhabha, chairman of some of the Tata group companies. He also pointed out that Mr. Baig, the constituted attorney of the petitioners is an employee of Tata services in New Delhi, Shri Kapadia also alleged that part of the expenses in connection with the present litigation are paid from Tata services. Referring to various reports about this dispute appearing in the newspapers, Shri Kapadia pointed out that the public perceives the present proceeding as a tussle between the Tata group and the Mody group for retention of control of RDIL. Shri Kapadia concluded that these events clearly point out that the Tatas who are rivals of the present management are the main moving spirit behind the present litigation and the petition has been filed for oblique and collateral purposes of destabilising the management and, therefore, the petition is not maintainable. In support of this argument, Shri Kapadia referred to Company Law by Palmer, 24th edition, page 978, and pointed out that the nature of the action under Section 397/398 is that of a derivative action which is subject to the doctrine of "clean hands". In the commentary it is observed "as an equitable invention, the derivative action cannot be used to do injustice. This principle has been applied in cases of acquiescence by the plaintiff shareholder in the wrong doing of which he later complains and in cases where the plaintiff has been regarded as a puppet of outsiders whose interests are opposed to those of the company". He also referred to Company Law by Pennington, sixth edition, pages 677-78, and highlighted the observations therein.

"Thus, even if the directors or majority shareholders have been guilty of improper or irregular conduct, so that there is a prima facie case for relief, it will be refused if the petitioner's purpose is to obtain payment of a debt owed by the company, or to force the directors to accept his views as to the way in which the company's business should be managed or if the petitioner has submitted to the conduct complained of without protest and has acquiesced in the improper management of

the company's affairs".

40. Shri Kapadia then referred to the various court decisions in *Bellador Silk Ltd., In re* [1965] 1 All ER 667 (Ch D), *Nurcombe v. Nurcombe* [1985] 3 Comp LJ 163 (CA), *Towers v. African Tug Co.* [1904] Ch 904, *Forest v. Manchester Railway Co.* [1861] Ch 1131 and these decisions establish the following propositions : (1) A petitioner is not entitled to a discretionary relief under Section 397/398 if the presentation of the petition is in order to bring pressure to bear to achieve a collateral purpose as it is an abuse of the process of the court. If the purpose of the suit is to promote the interests of another company, such a thing would be so much at variance with the principles of a court of equity and, therefore, the suit cannot be entertained.

(2) A minority shareholder's action in form, is nothing more than a procedural device for enabling the court to do justice to a company controlled by miscreant directors or shareholders and, therefore, whoever comes forward to start the proceedings must be doing so for the benefit of the company, and not for some other purpose. The court is entitled to look at the conduct of a plaintiff in a minority shareholder's action to satisfy itself that he is a proper person to bring the action on behalf of the company ; and that the company itself will benefit and if his conduct is tainted in some way, the rules of equity may bar relief.

(3) A shareholder in a limited company who has, with full notice or knowledge of the facts, himself received part of the proceeds of an ultra vires act committed by the directors--such as payment of a dividend out of capital--and who still retains the money, cannot, either individually or as suing on behalf of the general body of shareholders, maintain action against those directors.

41. Shri Kapadia then referred to the decision of the Karnataka High Court in *Srikanta Datta Narasimharaja Wadiyar v. Sri Venkateswara Real Estate Enterprises Pvt. Ltd.* [1991] 72 Comp Cas 211 (Kar) in which it was held that the relief under Sections 397 and 398 of the Companies Act, 1956, is an equitable relief which is entirely left to the discretion of the company court's jurisdiction and the requirement of good faith on the part of the petitioner is necessary. It was also observed "the question of good faith has to be tested by the conduct of the

petitioner as reflected not only in the proceedings before the company court but in a parallel proceedings in civil courts and in other litigations. A mere proof of the allegations of oppression and mismanagement does not entitle the petitioners to the reliefs sought for when the reliefs are discretionary reliefs ; they will be available only to persons who approach the court with a clean record." Referring to all these decisions, Shri Kapadia submitted that considering the chain of events and the facts that the shares of RDIL were allotted in 1990, after following due procedure prescribed under the Companies Act that one annual general meeting and one extraordinary general meeting were also held subsequently and that the petitioners participated in both the general meetings and also enjoyed the dividends, they cannot now challenge the issue of shares as they have already acquiesced in it as shown by their conduct. He also pointed out that the respondent directors, S/Shri Bhabha, Johri and Mahadevan, who are supporting the petition, had approached the High Court on the same matter and for the same reliefs and prayers in the petition filed before the High Court are not very different from the prayers before this Bench. Shri Kapadia vehemently argued that the petition is based on the documents to which a shareholder has no access and it is only when these documents were made available by these respondent directors to the petitioners that the latter have resorted to the present action. Shri Kapadia also pointedly drew our attention to the prayers in sub-para (A)(I) and (2) in para 48 of the petition in which the relief sought for is allotment of shares to the original shareholders after cancellation of 1,54,000 shares and urged that the purpose behind this relief is nothing but to bring RDIL under the control of the House of Tatas. In view of this nexus between the petitioners and these respondent directors, Shri Kapadia urged that the present proceeding before the Company Law Board is nothing but a fight by proxy. He also pointed out that the petitioner had originally moved the resolution for issue of convertible debentures but did not protest when the proposal for non-convertible debentures was made. Shri Kapadia argued that a petition under Section 397/398 is a derivative action and cannot be invoked with reference to the personal grouse of any individual. In view of this, he urged that the petition was not maintainable.

42. Shri Kapadia then turned to the allegations in the petition and argued that the main theme of the petition is alleged conspiracy hatched by the respondent

directors of RDIL, S/Shri Mody, Ukidave and Gore and abetted by the respondent directors, S/Shri Dhabhar, Seekond and Ayrton, who actively participated in the conspiracy and got personal benefits for their role played in the conspiracy. Neither any documentary nor oral evidence has been tendered to establish a conspiracy ; it is mainly based on inferences drawn and surmises of the petitioners. Serious allegations like fraud, fabrication of documents or conspiracy cannot be established purely on the basis of inferences, which only exist in the mind of the petitioners. Shri Kapadia also pointed out that it is the case of the petitioners that the main purpose of such a conspiracy was to obtain the majority control of RDIL and its subsidiary, Samrat, which had substantial investment in Titan Watches and that they became aware of the existence of such a conspiracy only in March, 1992, when the Mody group claimed a majority of 52 per cent. and attempted to appoint alternate additional directors on the board of directors of RDIL. Referring to the correspondence filed along with the affidavit of Shri Xerxes Desai, Shri Kapadia pointed out that the contention of the petitioners that the conspiracy had started sometime in June, 1989, after Shri Mody resigned as the chief executive of the Tatas and they became aware of this conspiracy in March, ' 1992, is quite contrary to what is revealed in the correspondence filed along with Shri Xerxes Desai's affidavit and it is clear that the Tata group was aware of Mody's desire to deal with investment in Titan shares in a manner which was not to the liking of the House of Tatas. Shri Kapadia pointed out that this clearly proves that the petitioner's argument about the alleged conspiracy covering its various phases and their becoming aware of the same only in March, 1992, is nothing but an afterthought and is being put forth only to cover up their laches and acquiescences in the various phases of the alleged conspiracy. Shri Kapadia then pointed out that all resolutions in respect of the issue of NCDs in the place of FCDs, provision of incentives to NCD holders, allotment of debentures, proposal of allotting shares to debenture-holders, etc., have been approved unanimously by the board of directors and shareholders meetings in which the directors supporting the petition and the petitioners as shareholders have participated. He pointed out that the allotment of debentures and shares was approved by a duly authorised committee of directors in which the chairman of RDIL had participated and there are no allegations of conspiracy against the chairman. He also referred to the

correspondence with all the shareholders in respect of debentures including offer letter, modification of terms, provision of incentives, extension of time for payment, invitation to contribute for additional debentures and, finally, issue of allotment letter to indicate that nothing was done behind the back of shareholders as being alleged. He pointed out that the suggestion of learned counsel for the petitioners that the shareholders belonging to the Mody group knew that the shares would be allotted to debenture-holders and, therefore, they applied for additional debentures is farfetched as neither there was any guarantee that the shareholders would approve such a proposal at the time of consideration of increase in capital nor the Mody group's holding of only 33 per cent. shares could guarantee/the approval of such a proposal at the shareholders' meeting.

43. Referring to Shri Cooper's argument that the funds were raised by issue of debentures/shares when there was no need for resources, Shri Kapadia submitted that the board of directors is the appropriate authority to decide about the need for funds and pointed out the contradiction in the petitioners' argument by referring to the prayer in the petition for re-allotment of shares issued to debenture-holders to themselves while questioning the need for issue of shares. Counsel also justified the offer of an incentive of a possible rights share issue for the debenture-holders due to poor response from the shareholders and pointed out that the offer of incentive was approved by the board of directors and circular resolution passed on February 2, 1990, after considering the detailed note submitted to the board members on February 1, 1990. To a query from the Bench regarding the mention of "poor response" to the debenture issue and simultaneously certain shareholders requesting for additional debentures mentioned in circular resolution No. 115, dated February 1, 1990, counsel agreed to file" information as to the applications for debentures received up to February 1, 1990, and also requests for additional debentures received on that day.

44. With regard to the allegations about the tricky and misleading nature of the notice given to the shareholders of RDIL at the time of the annual general meeting held on September 10, 1990," in respect of the issue of further shares to shareholders, debenture-holders and directors/employees, Shri Kapadia pointed out that proper disclosure is available in the explanatory statement attached to the

notice. He submitted that the particulars regarding the entitlement to shares to the existing shareholders is fully set out and there is no ambiguity in the resolution and it was clear that the shareholders were going to get 26,000 shares and the debenture-holders were going to get 1,20,000 shares. He also pointed out that all the debenture-holders were shareholders and no outsiders were being given any share. Regarding disclosure of interest of directors, he argued that by the amendment to the Companies Act, the words in Section 173 were modified and the original words "the nature and extent of the interest" were substituted by the words "nature of the concern or interest" and, therefore, there was no need for quantifying the extent of interest of the directors as there was no statutory requirement to disclose the number of debentures held by directors. It was common knowledge that the offer was made to all the shareholders for the non-convertible debentures and in this context, he referred to the various letters exchanged with the shareholders. Shri Kapadia also attempted to seek support from the decision of the Supreme Court in Needle Industries' case [1981] 51 Comp Cas 743 with regard to the necessity for resolution to be passed under the provisions of Section 81(1A) in respect of Section 43A companies.

However, counsel conceded that the decision of the Supreme Court was in the context of renunciation of rights and the question relating to resolution under Section 81(1A) has not been dealt with by the decision of the Supreme Court. In regard to "legal advice" mentioned in the explanatory statement, Shri Kapadia conceded that there was no such advice available with the company.

45. Regarding the allotment of shares, Shri Kapadia submitted that offer of shares was made through proper resolution and after due compliance with all the legal provisions. He submitted that allotments were made by a special committee of the board. As regards allotment of 34,000 shares reserved for directors/employees he conceded that there was no specific scheme of offer excepting that 11,000 shares were allotted each to the vice chairman and the managing director, 4,000 shares to the finance director and 1,500 shares to each working director, 3,000 shares to one employee and 500 shares each to all other directors including the chairman. He could not explain how in the absence of any scheme for allotment of these shares, the shareholders' resolution which contemplated "lapse" of shares not

taken by the employees could be implemented.

46. Regarding the allegation of modus operandi used for utilising the funds of RDIL through Samrat and Crown for the purchase of shares by the respondent, Shri Kapadia referred to various approvals given by the board of directors, investment committee and pointed out that no illegality has been committed and no case has been made out supporting the allegations on the basis of documents filed before the Company Law Board. Regarding the specific allegation that the purchase of shares of RDIL by respondents Nos. 2 to 6 and 9 was made out of the money supplied by RDIL itself, Shri Kapadia pointed out that money has no identity and there is no evidence produced, either documentary or oral, to prove a nexus between the purchase of shares and the money received by the respondents from the company. He also pointed out that the loans availed of by Shri Mody are like any other loan availed of by the other directors and he was repaying the same regularly along with the interest due thereon. Shri Kapadia also pointed out that adequate explanation has been given in respect of the loan granted to Mrs. Mody.

Shri Kapadia strongly refuted the allegations of fabrication of documents' and submitted that such an allegation cannot be established on the basis of inferences. While conceding that there are certain contradictions in the documents filed by Aryagene and the entries made in the investment register and cash book of RDIL, Shri Kapadia submitted that such contradiction cannot prove the charge of fabrication of documents. He pointed out that all the documents which have been shown as contradictory have been submitted by the respondents before the Company Law Board without any reservation and no attempt is made to hide anything.

47. Shri Kapadia then dealt with the allegations regarding desubsidi-arisation and the allotment of 2,998 shares in Samrat to four directors in the alleged board meeting held on March 12, 1992. Shri Kapadia pointed out that if such an allotment of shares on March 12, 1992, had been made as alleged, no proposal could have been moved for allotting shares to the shareholders of RDIL on March 17, 1992, in the meeting of the board of directors of RDIL or on March 22, 1992, in

the meeting of the board of directors of Samrat. Explaining the circumstances relating to deposits made by respondents Nos. 2 to 5 on March 12 and 13, 1992, Shri Kapadia pointed out that the amount was paid not as share application money but was in the nature of deposit.

Shri Kapadia pointed out that allotments could be made only in the meeting of the board of directors held on April 7 and 8, 1992, after getting the approval of the extraordinary general meeting of shareholders held on April 6, 1992, for deletion of Articles 60 and 61 of the articles of association of Samrat. Shri Kapadia, therefore, argued that there was no meeting held on either on March 12, 1992, or around that time for the purpose of allotment of shares to respondents Nos. 2 to 5 as claimed by the petitioners and their allegation of destruction of board minutes of those meetings is not at all supported either by any documentary or circumstantial evidence. Shri Kapadia admitted that when the payments were made and refunds were given, no letters were sent along with the cheques to indicate the purpose for such remittance.

48. Dealing with the various allegations regarding siphoning off of funds, Shri Kapadia first dealt with the payment of Rs. 4,000 per month for 13 months made by RDIL to Mrs. Kamal Dhabhar, wife of respondent No. 5. He admitted the fact that such a payment was made and produced a copy of the letter dated February 26, 1991, of Shri Gore regarding her appointment as an executive in RDIL. Regarding the allegation of siphoning off of funds by way of investment in Aryagene, Shri Kapadia pointed out that investment in Aryagene was a business decision and Samrat considered it worthwhile to make investment by way of venture capital as this company was going into new areas of technology. He also pointed out that in the context of substantial funds available with Samrat, an investment of Rs. 38.70 lakhs in debentures cannot be considered as a huge investment and considering the assets of Aryagene, the investment was safe. Shri Kapadia, while admitting non-disclosure of interest by the concerned director, contended that the investment cannot be considered as bad or objectionable only on that ground. He pointed out that the investments were made after obtaining the approval of the board of directors/investment committee and these investments made in 1990 and 1991 were disclosed in the balance-sheets of these companies

which were approved in the shareholders' meetings.

49. Regarding the allegation of misfeasance with regard to the acquisition of the property at 45, Vaju Kotak Marg, Bombay by Crown, Shri Kapadia stated that the proposal for acquisition was made as early as in 1985 and the agreement to transfer the lease was signed in April, 1989, at which time respondent No. 2 was not in the picture at all and the property matter has no relevance to this petition. Since RDIL which is in physical possession of the premises, enjoys statutory protection under the provisions of the Bombay Tenancy Act, it is of no significance whether it is acquired in the name of Samrat or Crown. He further stated that the amount involved is very small and is not of much value. Moreover, it was considered that ultimately Crown would also become a subsidiary of RDIL, he added.

50. Shri J. Mukhi, advocate for respondents Nos. 3, 4 and 12, reiterated the points made in the affidavits and surrejoinders. Shri Mukhi also highlighted the role played by the Tatas in filing the present petition before this Bench. He pointed out that Shri Ukidave had joined Reader's Digest even before Tata-connected people were either brought, in the management or made shareholders of the company.

He admitted that Shri Mody and Shri Gore were inducted into the organisation only because of their connections with the Tatas. He also supported the arguments made by Shri Kapadia that the entire dispute arose only because of the sale of Titan shares held by Samrat. Since the Tatas did not succeed in persuading Samrat not to sell the shares, there was no option left to the Tatas but to make an all out effort to achieve control over RDIL/Samrat so as to control the money they had to pay for buying Titan shares. Shri Mukhi drew our attention to the fact that till the board meeting held on March 17, 1992, all the resolutions in the board of RDIL and Samrat were passed unanimously and without any dissent. Shri Mukhi argued that there was a free flow of information among the directors and shareholders and a great trust was being shown by all the professionals involved in running the company. According to him, all the directors were aware of the various steps being taken in respect of the issue of debentures, issue of shares to debenture-holders, advances made through Samrat and in support of this, he referred to the

correspondence between Shri Xerxes Desai, Shri Mody and Shri Gore. He also pointed out that the supporters of the petition had also received benefits from the acts complained about. He further pointed out that when Samrat wanted to pledge the shares to City Bank for raising a loan, request for the transfer of Titan shares in the joint name of Samrat and City Bank was not conceded by Titan Watches Ltd. (TWL). In this connection, he pointed out that earlier when the shares were transferred from RDIL to Samrat, TWL had approved the transfer of shares. Shri Mukhi then elaborated the three strategies adopted by the Tatas to gain control over RDIL/Samrat. According to Shri Mukhi, the first strategy was to win over the shareholders of RDIL as revealed in Shri Desai's letter. The second strategy was to destabilise the management of the company by resorting to legal proceedings and the third strategy was to directly negotiate with RDA, USA for setting up a separate company to take away the business of RDIL. Explaining the rationale behind the desubsidiarisation of Samrat, Shri Mukhi pointed out that it was essentially a defensive action as the respondent directors, having got the majority over the holding company, were already having control over the subsidiary also. He further stated that it was the most equitable way to desubsidiarise Samrat by making an offer of shares to all the shareholders of RDIL in the proportion of their holdings. While admitting that there might be some inconsistencies in documents or some irregularities in the working of the company, Shri Mukhi argued that this alone cannot make out a case of oppression of shareholders or lack of probity or unfair conduct on the part of the respondent directors. Shri Mukhi also stated that if necessary and if considered appropriate, the Company Law Board may appoint some independent directors on RDIL but there is no other relief that is justified to be given to the petitioners. Shri Haksar, senior advocate for respondents Nos. 5, 6 and 8 and Dr. Gaurishankar, senior advocate for respondent No. 10, reiterated the pleadings and supported the arguments already advanced by Shri Kapadia.

51. Replying to the arguments made by Shri Kapadia and Shri Mukhi regarding the petitioners' connection with the Tatas, the suit being filed to regain control of RDIL/Samrat by the Tatas and challenging the maintainability of the petition on the ground of delay, laches and acquiescence, Shri Cooper argued that a great deal is sought to be made of the fact that the Tatas had some connection with RDIL which is of only historical significance and is not directly relevant to any of the issues in

the petition. He referred to the facts as set out in paragraph 6 of the petition to give the background regarding the formation of RDIL and stated that it was never the case of the petitioners that RDIL was a company controlled by the Tatas ; but their case was that the original shareholders were individuals of some eminence of a high calibre and were recommended to the Reader's Digest for being invited to become the shareholders of the company on the recommendations of the House of Tatas. He argued that it is an admitted position that RDIL is not a Tata company as is evident from the reply filed by RDIL and also from the unanimous decision of the board of directors in the meeting held on February 4, 1992, condemning the act of Shri Xerxes Desai to represent differently to RDA, USA. He also pointed out that Shri Mody himself participated, particularly as he held a very high position in the Tata hierarchy at that time, in recommending original shareholders. He then referred to the next facet of the Tata connection in the year 1987 when Titan Watches Limited was formed jointly by the House of Tatas and the State of Tamil Nadu and the agreement between the Tatas and the State of Tamil Nadu provided for the retention of 24 per cent. equity in the hands of the Tata group. Although RDIL was not a Tata company, it was, however, rightly or wrongly considered as a Tata-friendly company and the equity allotted to this company was considered as part of the 24 per cent.

which the Tata group had to hold. It is significant that at this point of time Shri Mody who was the vice-president of Tata Sons was to a considerable extent responsible for the allotment of these shares to the various companies in the Tata group. However, these shares which were originally allotted to RDIL were then transferred to Samrat, its wholly owned subsidiary. Shri Cooper stated that although it appears that the management of Titan Watches protested against the disposal of these shares in any manner, RDIL/Samrat were probably right that they were not bound by the undertaking of reserving 24 per cent. within the Tata group and this was ultimately agreed to by the Tatas and the shares were purchased by a company of the Tata group. Shri Cooper pointed out that he had not referred to the correspondence filed along with the affidavit of Shri Xerxes Desai, which was filed as an annexure to the rejoinder of Shri Baig, on the ground that the respondents had objected to this correspondence annexed to that affidavit being selective and not exhaustive and Shri Desai not being a party to the petition.

However, since now the respondents have referred to this correspondence, he has to deal with it and he pointed out that the entire correspondence is not relevant to the issues raised in the petition as it only relates to the dispute as to whether the shares of Titan held by Samrat are disposable or non-disposable. He also pointed out that if this correspondence is taken into consideration, it also clearly establishes that the original shareholders of RDIL were invited to participate in equity on the recommendation of the House of Tatas and none of them was a nominee of the Tatas or held shares on behalf of the Tatas. It also points out that the company was sponsored by the Tata hierarchy, including Shri Gore, as a Tata-friendly company and was even considered so for the purpose of making 24 per cent. minimum holding in Titan Watches by the Tata group. Shri Cooper also pointed out that since the entire controversy relating to the disposal of Titan shares has come to an end, it has no bearing on the decision of this Bench. Shri Cooper pointed out that the attempt of learned counsel of the respondents to establish a nexus between the House of Tatas and the petitioners and to prove that this petition is to further the interests of the House of Tatas who have initiated separate negotiations with RDA, USA in competition with RDIL is baseless and is contrary to the unanimous resolutions passed by the board of directors supporting RDIL's negotiations with RDA, USA and declaring that RDIL is not a Tata company. He also stated that no proof has been given in support of the wild allegation about the cost of the petition being met by Tata Services. Referring to the court decisions referred to by learned counsel of the respondents, Shri Kapadia about "collusive suits", Shri Cooper pointed out that while he is not disputing the well-established principles which were enunciated by learned counsel, these principles are not relevant in this case as the respondents have not established any facts regarding collusiveness on the part of the petitioners except to state that one of the petitioners was an employee of the Tatas and one of them is the wife of a respondent director who has filed affidavit in support of the petition.

52. Referring to the arguments of Shri Kapadia about acquiescence, laches and delay, Shri Cooper pointed out that the decision of Firestone's case [1971] 41 Comp Cas 377 (Bom) clearly establishes that if there is no knowledge, there cannot be any acquiescence. He listed out various matters which either the directors or the shareholders did not know and which have resulted in oppression

of shareholders. In this connection, he pointed out that the detailed break-up of allotment of debentures, allotment of shares from the directors'/employees' quota or to debenture-holders or allotment of shares in Samrat, use of RDIL resources for purchasing shares of RDIL, etc., were never brought before the directors or shareholders of RDIL. Shri Cooper emphasised the clandestine manner in which the management has been functioning and in support of this he referred to the investments made in Aryagene and Crown and also the steps taken during the pendency of the petition for establishing new subsidiaries of RDIL without informing the board of directors at any stage while incurring expenditure from the funds of RDIL. Shri Cooper also pointed out that while the allegation that the present petition is for establishing the control of the Tatas is being made with reference to the prayers made in the petition, such an allegation now does not survive considering the final prayers made by him. Dealing with the justification given by Shri Mukhi regarding the issue of further shares in Samrat, pointing out that this was the only equitable way to desubsidiarise Samrat, Shri Cooper pointed out that Samrat is a 100 per cent. subsidiary of RDIL and the shareholders of RDIL have already a proportionate interest in Samrat and, therefore, to ask them to pay further contribution as equity in Samrat to retain the same shares cannot be treated as an equitable way by any stretch of imagination.

53. Shri Sanjay Johri, respondent No. 14 and a working director of RDIL, filed a supplementary affidavit on November 25, 1992, as directed by us in the hearing held on the same day. Shri Johri had made allegations regarding the working of RDIL based on the inspection of books of account of the company taken by him and the two main allegations were regarding the floating of two subsidiaries of RDIL, namely, Wintry Holdings Private Limited and Abhiyan Investment Private Limited, without the approval of the board of directors and placing intercorporate deposits of Rs. 28 lakhs in Crown in the financial year ending on March 31, 1991, which was suppressed by the respondents when RDIL investments in Crown were discussed. Shri Johri alleged that respondents Nos. 2 to 4 and Miss Captain, company secretary, were fully aware of the fact of the floating of the two new subsidiaries as early as December, 1991, but these facts were deliberately withheld from the board of directors of RDIL though the board met on December 19, 1991, February 4, 1992, March 17, 1992, and April 6, 1992, and these facts

were also not revealed to the Company Law Board while filing the replies relating to these two subsidiaries. On the contrary a misleading statement was made in response to directions given by the Company Law Board on November 3, 1992, that these companies became subsidiaries in July, 1992, by purchase of shares of Rs. 2,000 each. In this connection, Shri John filed copies of the bills submitted by P.R.Gandhi and Associates, auditors of Samrat who rendered services for floating of these companies and the directions given by Miss Captain, secretary of RDIL, for payment of these bills from RDIL funds.

54. With regard to Rs. 28 lakhs deposited with Crown, Shri Johri pointed out that on an examination of the general ledger of RDIL for the year 1991-92, he discovered that the opening balance in the account head "Crown Holdings Private Limited" on April 1, 1991, was Rs. 25,70,534 and this was the balance out of an intercorporate loan of Rs. 28 lakhs given to Crown after adjusting the dues of Rs. 2,29,466 owed by RDIL to Crown. The balance-sheet of Crown Holdings Private Limited filed on September 1, 1992, discloses a sum of Rs. 28 lakhs as intercorporate deposit as on March 31, 1991. He pointed out that out of the total funds of Rs. 57.83 lakhs of Crown as on March 31, 1991, as much as Rs. 50 lakhs originated from RDIL itself, i.e., Rs. 22 lakhs "as application money pending allotment" from Samrat and Rs. 28 lakhs as "intercorporate deposit" from RDIL. Apart from these two allegations, there are other allegations regarding fraudulent purchases of paper and printing material from certain companies, without actually receiving the material and unauthorised payment of huge personal expenses of Shri Mody, vice-chairman of the company, and travelling expenses of Shri Homi Aryton, Shri Surendra Butala, Shri Noshir Dhabhar and Mrs. Mody.

55. In the hearing held on November 25, 1992, we had given opportunity to the respondents to file replies to these serious allegations about continuing mismanagement and suppression of facts from the Company Law Board. However, respondent-directors Nos. 2 to 4 and the company failed to reply to these allegations. At the conclusion of the hearing on December 29, 1992, Shri Kapadia, counsel for RDIL and Samrat, requested further time to file a reply, though hearing was concluded on that day.

Considering the seriousness of the allegations, we permitted the company to file a reply by January 7, 1993, with liberty to the petitioners and Shri Johri, to file their rejoinders, if any, by January 14, 1993. However, we made it clear that no further hearing will be given on this matter.

56. In the reply filed on January 7, 1993, by Shri Ukidave on behalf of RDIL, it is admitted that the facts stated regarding incorporation of two subsidiaries are substantially correct and the decision to incorporate these two subsidiaries was taken by S/Shri Mody, Gore and Ukidave and these were incorporated to overcome difficulties in raising additional overdraft facilities from the bank on account of the Reserve Bank of India restrictions on limits granted to a private company.

According to him these are "shell companies" and it was decided to incur the incorporation expenses from RDIL which will be subsequently reimbursed these expenses after these companies became fully functional. Regarding not keeping the directors of RDIL informed about incorporating these subsidiaries, it is pointed out that since April 6, 1992, no board meetings were held and, therefore, there was no opportunity to disclose it. In regard to "intercorporate deposit" of Rs. 28 lakhs in Crown, it was submitted that this was in the ordinary course of business and that Rs. 20 lakhs were placed with Crown on September 29, 1988, and Rs. 8 lakhs on May 11, 1990, as RDIL had surplus funds to lend on a temporary basis and at present the outstanding deposit is only Rs. 20 lakhs. With reference to the other allegations about payment to two Bombay based companies/firms, it is stated that payments are made by crossed cheques and receipts obtained but there is no reply to the allegation that payment was made without getting any material. Regarding payment to directors for travelling conveyance, etc., detailed explanation is given which is disputed in the rejoinder filed by Shri Johri on January 14, 1993. In his counter-reply, Shri Johri had reiterated the allegations regarding suppression of facts from the Company Law Board and from the directors of RDIL about incorporation of the subsidiaries though respondents Nos.

2 to 5 and Miss Captain, company secretary, were aware of the same since long and suppression of the fact of giving loan/deposit of Rs. 28 lakhs to Crown in the

statement of November 2, 1992, filed by Shri Gore, in which a categorical statement with reference to non-inclusion of Rs. 22 lakhs invested in Crown in the list of investments of Samrat placed before the board of directors of RDIL in the meeting held on March 17, 1992, was made that "apart from this investment (Rs. 22 lakhs placed withdrawn), there was no other investment of such nature in any other company".

57. We have carefully considered the averments made in the petition, rejoinders and surrejoinders filed by the parties, arguments advanced by counsel appearing for the petitioners and the respondents and also various documents filed before us in response to specific directions given by us. The maintainability of the petition has been challenged on the grounds that the petition is collusive as construed from the nexus between the petitioners and respondents Nos. 13, 14 and 16 who are directors of RDIL and who had initiated similar proceedings before the Bombay High Court and that the petition is for a collateral purpose as the petition has been moved to help business rivals, i.e., the House of Tatas, and strengthening their negotiating position with RDA, USA to take away the business of RDIL. The maintainability of the petition has also been challenged on the ground of delay, acquiescence and laches.

The arguments put forth before us mainly revolve around the nexus between the House of Tatas and the petitioners and respondent-directors Nos. 13, 14 and 16. It is admitted by the petitioners that the House of Tatas played an important role in the initial selection of the shareholders of RDIL. No doubt, all counsel for the respondents have given considerable importance to the issue of investment and sale of Titan shares in order to establish nexus. However, in the surrejoinders filed by respondents Nos. 1 and 2, they have categorically stated that the investment in Titan Watches Limited by RDIL was in its individual capacity and it was a business decision taken only because other Tata companies were reluctant to invest. In fact, Shri Gore denies that "all the shareholders of the first respondent company have sometime or other been connected with the so called House of Tatas". He has also denied that Titan shares were allotted to RDIL because it was treated as an associate of the Tata group. Shri Mody, respondent No. 2, also confirms these averments of Shri Gore in his surrejoinder. Shri Mody's affidavit is important

because he was the chief executive of Tata Sons when the Titan shares were allotted. In his affidavit, he refers to Clause 11 of the agreement between Questar Investment Private Limited and TIDCO which requires Questar to obtain letters from its associates stating that such associates would be bound by the terms of the agreement and he has pointed out that no such letter was asked for from or given by RDIL. He also referred to the share retention agreement entered into with International Finance Corporation, in which the name of RDIL is not included in the schedule attached to the agreement relating to the list of associated companies. Shri Gore also denies that RDIL had obtained prior approval of Questar Investment for transfer of Titan shares to Samrat. It is thus clear that RDIL was never treated either by RDIL or the House of Tatas as an associated company. On the basis of the facts which have come before us, it is clear that the petitioners have referred to and filed along with the petition, copies of resolutions of the board of directors and other correspondence/documents which are available only to the directors of the company. It is quite possible that these documents were made available to them by respondent-directors Nos. 13, 14 and 16, who have filed affidavits supporting the petition. While in the proceedings before the Bombay High Court the main issue was regarding the appointment of alternate/additional directors of RDIL, the issues before us are much broader and comprehensive covering, inter alia, the rights of the shareholders, lack of probity and fairness in the conduct of the respondent-directors, Shri Mody, Gore, Ukidave and others which is prejudicial to the interest of the company and shareholders and breach of fiduciary duties of the directors. The case of the petitioners is based mainly on the material which is part of the records of the company and though technically shareholders have no access to these records, if shareholders rely on such documents for strengthening their case, and some of the directors support the petition, the maintainability of the petition, on these grounds alone, cannot be challenged as collusive.

58. Regarding the allegation that the petition had been filed for collateral purpose, we find that the Tatas' negotiations with RDA, USA were discussed in great detail in the board meeting of RDIL held on February 4, 1992, in which serious concern was expressed about the efforts of the House of Tatas to directly negotiate with RDA, USA, for taking over the business of publishing and printing of header's

Digest.

An unanimous resolution was passed by the board of directors supporting the position of the company in this respect and for taking action against Shri Xerxes Desai, a shareholder of RDIL and managing director of Titan Watches Limited for writing a letter to RDA, USA and thus indulging in activities detrimental to the interest of the company. We had also seen the telex message exchanged between RDA, USA and RDIL in the month of March, 1992, in relation to these negotiations and note that RDA, USA had assured RDIL "that no decision of any kind will be reached by Reader's Digest until we have diligently reviewed all the options and have held further discussions with you in continuation of our discussions held in February, 1992". The decision of the board of directors in the meeting held on February 4, 1992, also noted that Shri Ratan Tata had denied having instructed Shri Xerxes Desai, to write the letter to RDA, USA and has stated that RDIL is not a Tata company. This matter also came up briefly in the directors meeting held on March 17, 1992, in which Shri Bhabha informed the board that Tatas have approached RDA, USA to revive the idea of joint participation between RDA, USA and Tata in the equity of the joint venture and this may affect the future of the company. Considering all these facts, it is clear that representatives of the Tatas are discussing directly with RDA, USA, a proposal for joint participation for publishing Reader's Digest which is the main activity of RDIL undertaken under a licence from RDA, USA. Thus, it is clear that the House of Tatas is a rival of RDIL so far as the business of publishing Reader's Digest is concerned and both of them are independently negotiating this matter with RDA, USA. It is also clear that the directors of RDIL unanimously supported the stand of the present management for negotiation with RDA, USA and in fact had suggested taking action against Shri Xerxes Desai, a shareholder of RDIL, who had attempted to propagate the case of the House of Tatas and misrepresented various facts in the letter addressed to Shri Grune of RDA, USA. However, all these matters do not establish that the present petition filed before us is going to strengthen the case of the House of Tatas in their negotiation with RDA, USA. Neither do the issues raised in the petition have anything to do with the negotiations of the company with RDA, USA nor will the petition weaken the case of the company or strengthen the case of the rival business house. The stand taken by RDA, USA as revealed in the

telex messages exchanged clearly points out that RDA, USA does not intend to take any action on the proposals submitted by the Tatas unless the matter is first discussed with RDIL. In view of this, it is very difficult for us to agree with the argument that the present proceeding is not maintainable on the ground that it is filed for a collateral purpose.

59. Regarding the third ground relating to laches, acquiescence and delay, we find that there are a large number of material facts which neither the shareholders nor all the directors had any knowledge of till March-April, 1992. It is a well-established principle of law that if there is no full knowledge of all the facts and of the right to take action, there could be no acquiescence.

60. In view of the above, we hold that the petition is maintainable and reject all the grounds advanced by the respondents for challenging the maintainability of the petition.

(i) Whether the acts complained of in the petition relate to a conspiracy for illegally gaining control of the company and converting the minority into a majority by wrongful and illegal means of acquiring shares (ii) Whether the acts complained of in the petition show that respondents Nos. 2 to 6 and 8 have acted mala fide and fraudulently, and abused their power and position and whether their conduct demonstrates lack of probity and fairness to the petitioners and whether it is oppressive to the shareholders (iii) Whether the respondents are mismanaging the affairs of the company and have obtained personal benefits for themselves and their family members (iv) If allegations of oppression and/or mismanagement of affairs of the company are established, are the petitioners entitled to any reliefs 62. A substantial part of the petition as well as arguments advanced by counsel for the petitioner relates to the establishment of a chain of acts and linking them together, to constitute a conspiracy and to substantiate allegations of lack of transparency, probity and fairness in the acts committed by the respondents to gain a majority control and which are prejudicial to the interests of the company and the shareholders. In the case of corporate bodies, frequently one comes across attempts made by a group of persons to improve its voting strength and if such acts are transparent and through lawful means after following the prescribed

procedure and are not unfair or oppressive to others or do not involve any breach of fiduciary duties of directors, they cannot be considered as prejudicial to the interests of the company or to those of the shareholders. No doubt the concept of free transferability of shares in a public limited company listed on a stock exchange is not applicable in all respects to share transfers in a private limited company even if it becomes a Section 43A-company.

However, every company is required to follow the statutory provisions contained in the Companies Act and other relevant Acts and the provisions of its articles of association in relation to increase in paid-up capital, issue and allotment of shares and transfer of shares in order to ensure fairness and transparency in all actions by which a person or group of persons can still increase their shareholding in a company. The company is also required to implement, both in letter and spirit, the terms and conditions of such issue and allotment of shares as determined by the general body of shareholders. In the case of a listed company, it has, in addition, to adhere to the listing requirements.

63. Admittedly, RDIL was a Section 43A-company from October 1, 1988, to January 31, 1991, during which the shareholding of the respondents has gone up. Mody, Gore, Ukidave, Ayrton, Seekond and Dhabhar who are part of the Mody group are directors/controlling shareholders of RDIL/ Samrat/Crown/Aryagene. In the chain of events leading to increase in the shareholding of the respondents belonging to the Mody group from 35.2 per cent. in December, 1989, to 54.6 per cent. in October, 1990, the main acts cover : (i) decision taken in the meeting of the board of directors held on December 20, 1989, to issue non-convertible debentures (NCD) of Rs. 26 lakhs without taking further action on the shareholders' approval in the annual general meeting held on July 31, 1989, for issue of fully convertible debentures (FCD) of Rs. 32.76 lakhs which were to be converted into shares at a premium of Rs. 20 per share of Rs. 10 each ; (ii) decision taken by circular resolution dated February 1, 1990, to permit the management to accept excess subscription to the extent of 25 per cent. though the response from the shareholders was not encouraging and by a circular resolution dated February 2, 1990, to make the NCDs attractive by indicating the likely specific allotment of shares to debenture-holders and extending the date of

subscription from January 31, 1990, to February 26, 1990 ; (iii) allotment of debentures of Rs. 30 lakhs in March, 1990, out of which debentures worth Rs. 23 lakhs were taken by respondents Nos. 2 to 6 and 8 to 10, some of the debentures being allotted to relatives who were not even shareholders and allotment of debentures without any reference to the board of directors and without intimating the details of the same to the board at any stage ; (iv) decision taken in the meeting of the board of directors held on August 3, 1990, to raise capital by issue of 1,80,000 shares of Rs. 10 each at par totalling Rs. 18 lakhs to shareholders, debenture-holders and directors/employees on the ground of paucity of funds, which is not supported by facts ; (v) approval of shareholders obtained in the annual general meeting held on September 10, 1990, without disclosing the interest of the directors, for a disproportionate entitlement to debenture-holders as compared to shareholders by giving a tricky explanatory statement implying that the shareholders' approval is being sought as a mere formality ; (vi) allotment of shares in October, 1990, in which respondents Nos.

2 to 6 and 8 and 9 along with their family members got 1,36,770 shares out of 1,80,000 shares approximately about 75 per cent. of the total shares issued which they got allotted to themselves by misusing their position as directors and in violation of the resolution passed by the annual general meeting in respect of the directors'/employees' quota, and allotment of unsubscribed shares which were not renunciable.

(vii) directors belonging to the Mody group misutilising the funds of RDIL to the extent of Rs. 22 lakhs through the channel of Samrat, a subsidiary of RDIL and Crown which is controlled by directors belonging to the Mody group ; for the purchase of debentures of RDIL ex-rights, so that they were able to subscribe to the shares of RDIL which enabled them to increase their shareholding and in the process RDIL and Samrat suffered financial loss on account of "nil" return on these funds placed with Crown and are also in danger of losing the principal amount.

64. It is clear that during this period from December, 1989, to October, 1990, whenever a proposal was placed before the board of directors or before the

meeting of the shareholders, it was approved unanimously. In, fact, till the board meeting of March 17, 1992, all the resolutions of the board of directors and general body were passed unanimously revealing complete trust among all the directors. No resolution of the general body meeting was necessary for issue of NCDs but all shareholders were aware of such an issue as letters of offer to subscribe to NCDs, extension of closure date and modified terms were sent to them and none of the shareholders objected. While approving the proposed allotment of shares to the debenture-holders none of the directors disclosed his interest to the board of directors, nor did any director ask for the list of debenture-holders. Similarly, at the annual general meeting of September 10, 1990, none of the shareholders present at the meeting raised any question as to who were the debenture-holders or why disproportionate shares were proposed to be issued to the debenture-holders. Though the directors and shareholders have approved all the resolutions, the facts before us clearly point out that some of these approvals have been obtained by false representations and non-disclosure of material facts. So far as "false information" is concerned the areas are : (i) Seeking approval of the board of directors for the abandoning of the FCD issue approved by the shareholders on the ground that such an issue was not possible, RDIL being a private limited company, when it was a deemed public company under Section 43A of the Companies Act.

(ii) Seeking approval of the board of directors for extension of the closing date, collection of extra 25 per cent. of subscription and making the terms of NCD attractive in the circular resolutions of February 1, 1990, and February 2, 1990, on the ground of contradictory reasons of "poor" response and demand for additional debentures from shareholders. The facts reveal that as on January 31, 1990 (closing date), the company had received subscription money in respect of 14,350 out of 26,000 debentures and only one shareholder had asked for additional debentures at that time.

(iii) Seeking approval of the shareholders for rights issue of Rs. 18 lakhs by making a tricky explanatory statement by which shareholders were made to believe that as per legal advice such approval was a mere formality when no such legal advice was given to or obtained by the company.

(i) non-disclosure of details of allotment of debentures either to the board of directors or to the committee of directors as is evident from the circular resolutions of the committee ; (ii) non-disclosure to the shareholders about the holding of debentures by directors as "interested parties" when disproportionate shares were being proposed for issue to debenture-holders in the resolution on rights shares ; (iii) non-disclosure to directors or shareholders about allotment of debentures/shares in violation of the terms and conditions of issue and allotment, especially relating to the directors'/employees' quota shares and unsubscribed shares.

66. Apart from the above established facts, Shri Cooper had vehemently argued that RDIL and respondents Nos. 2 to 4 had deliberately misled the board of directors and shareholders about the "need for additional funds" as a ground for issuing NCDs while during the period when NCDs/shares were issued by the company, there was an outflow of funds for payment of dividend, granting of loans to subsidiary and directors/their relatives and also for investment in companies in which respondents Nos. 2 to 4 and their family members had a substantial financial stake and which were under their control. No doubt the facts stated by Shri Cooper could not be controverted by the respondents but we are inclined to agree with Shri Kapadia, advocate for the respondents, that raising of resources by issue of debentures was purely a business decision within the purview of the board of directors especially when the shareholders had already recognised such a need for funds while approving the issue of FCDs and at no stage had the petitioner challenged it. However, we do not agree with Shri Kapadia's argument that in view of the amendment to Section 173, by which the phrase "the nature and extent of the interest" was substituted by "nature of the concern or interest", it was not necessary for the directors to indicate their extent of interest in the rights issue to debenture-holders. It is clear that at the annual general meeting of September 10, 1990, items 5 to 9 were placed before the shareholders as special business and the explanatory statements in respect of these items show disclosure of directors' interest in respect of items 6 and 7 regarding the increase in authorised share capital and item 9 regarding authorising the board to invest surplus funds in other corporate bodies. However, on item 8 regarding the proposed allotment of shares to debenture-holders, employees, directors and right issue to shareholders,

there is no disclosure of interest. Thus, where no disclosure was necessary, there was disclosure of interest and where disclosure was essential, it was found wanting. In our opinion, disproportionate entitlement to shares between shareholders, debenture-holders and directors/employees was likely to tilt the balance of the shareholding and, therefore, particulars of the beneficiaries or the manner of the allotment should have been indicated in the statement. Not only this, but in order to ensure fairness and transparency in the allotment, the directors ought to have disclosed how many debentures were held by them and their family members in view of the fact that disproportionate shares were being offered to debenture-holders and that all the shareholders had not taken the debentures. Similarly, in case of the special quota of shares reserved for directors/employees, it was necessary to formulate a scheme of allotment of the shares to directors and employees so that offers could be made to them for subscription. In the absence of such a scheme and offer letters, there would be no unsubscribed shares and the question of lapse of such shares would not arise as contemplated in the shareholders' resolution. Therefore, it should be presumed that the mandate given by the shareholders requires preparation of such a scheme in which all the employees would be entitled to participate. Looking at the actual allotment out of these reserved shares for the directors/employees, substantial shares out of a total 34,000 shares available have been taken by the directors, only one employee belonging to the Mody group has received shares and about 33 per cent. shares have been allotted to Mrs. Mody, wife of the vice-chairman who is neither a director nor an employee. In the absence of any scheme for allotment of these shares and offer to all the employees, it is obvious that the directors who were members of the allotment committee have misused the authority given by the shareholders in order to get the maximum number of shares for themselves and allotment to Mrs. Mody is beyond the mandate given by shareholders. Nothing has come before us in what capacity either as a director or an employee Mrs. Mody had applied or was allotted shares reserved for the Directors/employees. Neither the shareholders nor the directors had any opportunity to know the details of allotment of shares made in respect of debenture-holders and from the quota reserved for the directors/employees at any stage till Shri Mody announced in the meeting of the board of directors held on March 17, 1992, that he had a majority

control of the company in the context of the requisition for the special extraordinary general meeting asked for by his group.

67. Also it is clear that in the allotment of 5,080 unsubscribed shares out of the rights shares, which were not renunciable, to Shri Ayrton and Shri Mody, the committee of directors had not only violated the terms of issue approved by the shareholders but had also acted in breach of fiduciary duties of directors by allowing Shri Mody to derive personal gain. Similarly allotment of 11,000 shares out of 34,000 shares reserved for directors/ employees to Mrs. Mody who was neither a director nor an employee of RDIL was in gross violation of the shareholders' resolution. In fact RDIL and its directors who were members of the allotment committee have acted fraudulently in so far as allotment out of the employees' quota is concerned as no scheme was prepared and no offer letters were sent to the employees and there is total absence of transparency in their actions. The directors in the company who are in a fiduciary position vis-a-vis the company, must exercise their power for the benefit of the company. If the power to allot shares was exercised by the directors in order to get the maximum allotment of shares to themselves and their group and solely for their personal aggrandisement and to the detriment of the other shareholders, the judicial authority has to intervene to undo what has been done by the directors in gross violation of their fiduciary duties belying the trust reposed in them by the shareholders.

68. In addition to the above facts, it is also noted that in the issue of NCDs/shares, the directors and shareholders have failed to protect the interests of the company and obtained pecuniary benefits for themselves. While approving the issue of FCDs in July, 1989, for Rs. 32.76 lakhs, the conversion of debentures into equity shares was planned at a premium of Rs. 20. This means, on" conversion, the equity of the- company would have gone up by Rs. 10.92 lakhs and the reserves by Rs. 21.84 lakhs which would have been "cost free" funds available to the company. In the issue of NCD/shares, the total resources raised were Rs. 18 lakhs as equity and Rs. 30 lakhs as debentures for a period of seven years. The shares were issued at par and no premium was charged. Considering the financial position of the company in August, 1990, as compared to the position in July,

1989, the shares ought to have been issued at a premium of Rs. 20 at least, if not, higher.

However, when the proposal for the rights issue was placed before the shareholders in August, 1990, there is no explanation given to the shareholders that while proposing FCDs in July, 1989, the directors had proposed to issue shares at a premium of Rs. 20 but when now the rights issue was proposed in August, 1990, no such premium was being charged.

Such explanation and disclosure to the shareholders was necessary especially when the entitlement to rights shares was disproportionate, debenture-holders being given preferential allotment by reserving about 66 per cent. of 1.8 lakh shares for them and about 20 per cent. shares were being reserved for the directors and employees and that the Mody group was going to get substantial shares, while in the FCDs all the shareholders were offered shares proportional to their shareholding.

Thus, respondents Nos. 2 to 4 and their relatives and family members along with the other shareholders received shares at par, when they ought to have paid a premium, resulting in considerable financial gain to them at the cost of the interest of the company. If such a premium had been charged, the company would have been able to get about Rs. 36 lakhs ($1,80,000 \times \text{Rs. } 20$) as "cost-free funds". As revealed during the hearing, the Mody group got 75 per cent. of these Rs. 18 lakhs shares and, therefore, it can be safely concluded that they obtained a pecuniary gain of Rs. 27 lakhs against the interest of the company which is in total disregard of the directors' fiduciary duties.

Probably the Mody group deliberately did not disclose or explain this to the shareholders as they would have been required to bring in more funds which was not possible for them as even to subscribe to the shares at par they had to raise resources by making Crown buy their debentures for which Crown was provided "cost-free funds" of RDIL through Samrat. Alternatively, since the total need of funds was only of Rs. 18 lakhs, the funds could have been raised by issuing only 60,000 shares at a premium of Rs. 20 ; but then the Mody group would not have been able to get majority control even if the Mody group was able to get 75 per

cent. of the shares issued, as the Mody group had a 35.2 per cent. shareholding as on December 31, 1989, 39.42 per cent. as on August 3, 1990, and this percentage would have gone up to only 46 per cent. It is thus clear that respondents Nos. 2 to 4 deliberately remained silent on this premium matter with an ulterior motive as charging the premium would have required more financial resources to achieve majority control. It is a well established principle that when directors decide upon a course of action which is advantageous to themselves but injurious to the company and even if the majority of the shareholders also support them, in such a case the directors are not acting as directors but are wronging the company as third persons and are liable for such actions. This brings us to that final event in the chain of acts about the allegation of misutilisation of RDIL funds. The sequence and dates of the various decisions which are relevant in this event are : Sixth annual general meeting of Crown approves increase in equity and issue of rights shares. Meeting is attended by Mody, Gore, Dhabhar, Ukidave and Seekond as shareholders. Proposal for increase in capital is moved by Mody and seconded by Seekond and for the issue of rights shares proposal is made by Dhabhar and seconded by Gore.

Dhabhar as director of Crown sends offer letters to shareholders of Crown, last date of subscription being 4-9-1990.

Ukidave as director of Samrat writes to Crown indicating Samrat's interest in investing in equity of Crown up to Rs. 23 lakhs.

Dhabhar as director of Crown sends letter to Ukidave informing him that Crown will consider Samrat's offer but without any commitment towards allotment of shares and asking Samrat to deposit Rs. 23 lakhs.

Twelfth annual general meeting of RDIL to approve issue of shares. Dhabhar sends offer of Crown to debenture-holders of RDIL for purchase last date being 1-10-1990.

Dhabhar and Seekond, directors of Crown at board meeting note purchase of RDIL debentures for Rs. 20.56 lakhs and also note Samrat's offer to subscribe shares to the tune of Rs. 22 lakhs.

69. The above events and personalities involved clearly establish that in order to enable respondents Nos. 2 to 4, their friends and family members who constitute the Mody group to purchase rights issue, (75 per cent. of total issue) funds of RDIL were used through Samrat and Crown and in making this possible Mody, Gore, Ukidave and Dhabhar had played an active role. This operation has resulted not only in the misuse of funds of RDIL but also resulted in pecuniary loss to RDIL as there are no returns on the money deposited as share application money with Crown from September 19, 1990, onwards and the principal amount itself is likely to be a total loss. Not only was this investment in gross violation of the provisions of Section 370/372 of the Companies Act as RDIL and Samrat were at that time Section 43A-companies requiring prior approval from the Government but having taken the decision to deposit the money as "share application money" the directors did not bother to follow it up for practically two years till during the hearing we asked them about the efforts made to get the shares allotted. When Crown offered rights shares to Mody, Gore, Ukidave, Dhabhar and their family members or friends/ relatives none of them found it attractive enough to put in their personal money, though Crown had in the annual general meeting of August 21, 1990, declared Rs. 10 as dividend on a share of Rs. 10, but they were quite "generous" with the funds at their disposal in Samrat of Rs. 22 lakhs for subscribing to the same equity to which not a single shareholder of Crown subscribed. The decision to invest in the equity of Crown was taken by Mody, Gore and Ukidave and they were all interested parties, as together they controlled Crown, and, therefore, it was necessary for them to declare their interest and seek the permission of the holding company to make this investment. By failing to do so, they have acted in breach of their fiduciary duty and even their bona fides can be doubted as they themselves have not taken the rights issue offered to them when Crown had declared a 100 per cent. dividend. This clearly establishes the role of the directors belonging to the Mody group in misusing RDIL funds and in this they have all acted with a common intention and in furtherance of a common design of ultimately establishing majority control over RDIL. Thus, the chain of events clearly brings out the role of these directors in successive stages and they were all united in achieving the common purpose of getting majority control on RDIL through measures which were unfair to the shareholders and to the company and which

enabled the directors belonging to the Mody group to get pecuniary benefits for themselves, their family members, relatives and friends.

70. Apart from the chain of events described in para 32 of this order, the other acts alleged in the petition resulting in oppression of the petitioners as shareholders relate to desubsidiarisation of Samrat. It is an admitted fact that the issued capital of Samrat was initially only 2,002 shares out of the authorised capital of 5,000 shares and all the 2,002 shares were subscribed by RDIL. As decided in the board meeting of Samrat held on March 23, 1992, further shares were to be issued to the shareholders of RDIL in the ratio of one non-renunciable share for every 25 shares held in RDIL after the board of directors determine the timing of the offer and record date and after giving 21 days time to accept the offer. In the board meetings of Samrat held in April, 1992, and which were attended by S/Shri Gore, Mody, Ukidave and Dhabhar, as against the proposed entitlement of Mody, Gore and Ukidave of 2,227, 869 and 732 shares, Mody was allotted 780 shares, Gore 750 shares and Ukidave 730 shares. In addition, Dhabhar was also given 710 shares, though he is not a shareholder of RDIL and though the shares were non-renunciable, thus violating the conditions of the rights issue. The allotment of shares was done in violation of the resolution of the board of directors as neither any record date was announced nor offer letters were sent to any shareholder of RDIL. Consequently, RDIL became a minority shareholder and Samrat stood desubsidiarised. Prior to the allotment of the shares, an extraordinary general meeting of shareholders of Samrat was held on March 3, 1992, to delete Articles 60 and 61 from the articles of association of Samrat, as without deleting these articles, no shares could be issued to respondents Nos. 2 to 5 and another extraordinary general meeting on April 6, 1992, for approval of increase in the authorised capital from Rs. 5 lakhs to Rs. 25 lakhs. Both these extraordinary general meetings were attended only by Shri Gore representing RDIL under Section 187 of the Companies Act, Shri Ukidave, nominee shareholder of RDIL and Shri Mody and Shri Dhabhar as directors of Samrat. Considering all these aspects, it is clear that respondents Nos. 2 to 5 indulged in these acts without keeping the board of directors or shareholders of RDIL informed, in order to gain control of the amount of Rs. 14 crores which Samrat received by sale of Titan shares on March, 10, 1992. While the respondents have claimed that the shares of

Samrat were allotted in the meetings of the board of directors held on April 7 and 8, 1992, from the entries in the bank statements of these four individuals, and entries in the cash book of Samrat, it is clear that the statements made in the minutes of the board meeting held in April, 1992, about receipt of allotment money are incorrect and payments were received by Samrat after the date of the board meeting. In view of the fact that payments made by respondents Nos. 2 to 5 to Samrat around March 12 and 13, 1992, and refund by Samrat around March 30, 1992, have remained unexplained and that some of these respondents acted as shareholders in the extraordinary general meeting held on April 6, 1992, the possibility of fabrication of documents as alleged by the petitioners cannot be ruled out. The fact regarding issue of shares in Samrat to respondents Nos. 2 to 5 was not known to the petitioners at the time of filing the petition, as it was revealed during the hearing in response to queries raised by us. The unexplained transactions in March, 1992, allotment of shares in Samrat to Dhabhar when he was not even a shareholder of RDIL, the speed with which these four persons between March 23, 1992, and April 8, 1992, passed board and extraordinary general meeting resolutions to allot to themselves shares in Samrat for getting rid of the control of RDIL and contradictions in the explanation relating to entitlement of shares clearly establish that respondents Nos. 2 to 4 have not acted in the best interest of Samrat or RDIL whom they represented on the board of Samrat and their actions were not in the interest of shareholders of RDIL. The plea submitted by respondents Nos. 2 to 4 that they have done so only in order to protect the investments for the shareholders of RDIL because of the threat of takeover by the Tatas, is not supported by facts, as the Mody group has by that time already achieved and claimed majority in RDIL and their action to desubsidiarise Samrat was nothing but to get independent control of Samrat so that nobody could question investments made by Samrat in companies controlled by them and that they would also be free to deal independently with Rs. 14 crores realised by the sale of Titan shares. Samrat was a 100 per cent. subsidiary of RDIL and the shareholders of RDIL had already a proportionate interest in Samrat and, therefore, the justification given by the respondents about the further issue of shares in Samrat to RDIL shareholders to protect their interest is without any basis and does not seem sound. The act of issuing shares exclusively to directors of

Samrat and thereby desubsidiarising Samrat is oppressive to the shareholders of RDIL which had a 100 per cent. interest in Samrat. Considering all these aspects mentioned above and in para 32 above, we have no hesitation to come to the conclusion that the various acts complained of in the petition relating to allotment of debenture issue, rights share issue and desubsidiarisation of Samrat and the conduct of respondents Nos. 2 to 5 in respect of these acts, were for the purpose of illegally gaining control of the company and converting a minority into a majority by wrongful and illegal means involving breach of fiduciary duties of directors, lack of transparency, probity and fairness in their conduct.

71. Regarding mismanagement by respondents Nos. 2 to 4 of the affairs of RDIL and Samrat, the allegations relate to : (i) investment made by Samrat of about Rs. 40 lakhs in Aryagene and about Rs. 50 lakhs in Crown on which at present there is no return and decision to invest these amounts was taken by S/Shri Mody, Gore and Ukidave though they and their family members together had substantial controlling interest in these companies and non-disclosure of these investments to the board of directors of RDIL ; (ii) inconsistencies in the debenture certificate of Aryagene, in respect of the nature of security, amount and rate of interest and date of allotment of debentures as revealed in the documents filed before us and wrong entries in the investment register of Samrat establishing attempts to fabricate documents of various companies to suit the interests of respondents Nos. 2 to 4 ; (iii) attempt to appoint Shri Manohar Mody as alternate director to Shri Fernandas under Article 128 of the articles of association in violation of the provisions of Section 313 of the Companies Act by giving incorrect information to Shri Fernandes, by a circular resolution and failing in their attempt in the board meeting of April 6, 1992, to appoint him as the alternate director ; (iv) preparation of incorrect and wrong minutes of the meetings of the board of directors held on March 17, 1992, and April 6, 1992, in which attempt was made to appoint S/Shri Dhabhar, Seekond and Ayerton as additional directors to achieve majority in the board ; (v) siphoning off of money from RDIL by payment of a sum of Rs. 4,000 per month to Mrs. Dhabhar for 13 months even when she did not do any work for the company ; (vi) manipulation of documents by respondents Nos. 2 to 4 and the secretary of RDIL, Miss Captain, in respect of transactions relating to tenanted premises situated at 45, Vaju Kotak Marg, Ballard Estate, Bombay, in which the

office of RDIL is housed ; (vii) loans made to Mrs. Mody by RDIL and Samrat when she is neither a director nor an employee of these companies ; and (viii) Miss Captain, secretary, RDIL acting as authorised signatory of Samrat and Crown and also writing letters on behalf of Crown at the request of Shri Ukidave and as such acting against the interest of RDIL which is in conflict with her role, as secretary of RDIL.

72. In addition to the above allegations, Shri Johri, working director of RDIL, had also made allegations during the hearing by filing a supplementary affidavit regarding floating of two subsidiaries of RDIL, namely, Wintry Holdings (P.) Ltd. and Abhyan Investments (P.) Ltd., by respondent No. 2 to respondent No. 4 without the approval of the board of directors of RDIL and certain payments made in regard to the purchase of raw materials without getting the material and payment of travelling allowances made to directors without any justification.

73. We have carefully considered all these allegations and documents placed before us by both the parties and we find that so far as Crown is concerned, out of total funds of Rs. 57.85 lakhs available to it as on March 31, 1991, as much as Rs. 50 lakhs originated from RDIL itself.

Crown was entirely under the control of the Mody group. Similarly, in Aryagene, the Mody group had invested Rs. 40 lakhs and Aryagene is controlled again by persons belonging to the Mody group. In respect of these investments, it is clear from the documents placed before us that respondents Nos. 2 to 5 have misused their position as directors in Samrat and gave pecuniary benefits to the companies controlled by them disregarding the interest of Samrat and the holding company RDIL.

Aryagene had received between June, 1990, and October, 1990, Rs. 25 lakhs from Samrat and at that time Shri Mody was a director of Aryagene and no disclosure was made in this respect to Samrat and RDIL. The various provisions in the Companies Act relating to fiduciary duties of directors are based on the principle that a director is precluded from dealing on behalf of the company and from entering into arrangements in which he has a personal interest conflicting, or which possibly may conflict, with the interest of those whom he is bound by

fiduciary duty to protect. The object underlying these provisions is that when a director is directly or indirectly interested in any arrangement, the other directors must have knowledge of it and they should be enabled to take an unbiased decision which would be in the interest of the company and the terms of arrangement should be fair, reasonable and not solely beneficial to the interested director. As held by the Delhi High Court in *Globe Motors Ltd. v. Mehta Teja Singh and Co.* [1984] 55 Comp Cas 445 a director, having fiduciary duties towards the company, must act bona fide in the interest of the company and both a formal compliance with the provisions of the Act in respect of disclosure of interest and not voting on the resolutions by interested directors as well as observance of the spirit behind these provisions, would be essential. Considering the interests of all these directors in Crown and Aryagene, they failed to bring these transactions to the notice of RDIL before making investments. Not only this but when the investments in Aryagene were discussed in the board meeting of RDIL on March 17, 1992, an attempt was made by Shri Mody to conceal his close association with Aryagene as one of the promoters as well as his and his family's financial stake in the company. From documents, it is also revealed that Shri Mody had signed a letter as chairman on March 26, 1991, after resigning as director from Aryagene from March 25, 1991, and we find it hard to believe the explanation given that he had signed the letter as "chairma" of the advisory committee of Aryagene and not as chairman of Aryagene. Similarly, in respect of Crown in the same board meeting of RDIL, the fact that apart from investment of Rs. 22 lakhs in Crown, an intercorporate deposit of Rs. 28 lakhs was made was also suppressed. At no stage it was revealed to the board of directors of RDIL, that Crown and Aryagene have registered offices in the premises of RDIL for which RDIL was not charging any rent. Also documents/letters relating to these transactions clearly brings out the conflicting, inconsistent stands taken by these companies and Shri Mody from time to time.

Entries made in the records of these companies were also not factually correct and the allegation of fabrication of documents and company records in respect of debentures is clearly established.

74. Regarding the appointment of Shri Manohar Mody as alternate director to Shri Fernandes, respondent No. 7, both Shri Fernandes in his affidavit and Shri Malcom Adiseshiah, respondent No. 11, in his letter dated April 16, 1992, pointed out that the company had failed to point out the correct legal position about the provisions of Section 313 of the Companies Act. We do not think it necessary to further deal with this matter as it is clear that the appointment of Shri Manohar Mody as alternate director by using a circular resolution of April 3, 1992, was in complete violation of the provisions of Section 313 of the Companies Act.

75. Regarding the matter of appointment of S/Shri Dhabhar, Seekond and Ayerton as alternate directors, as these minutes are disputed and two contradictory versions are available before us, it is very difficult to come to a conclusion about what happened at the meetings. In any case, even as per the Mody group's version, such appointments were possible only after the appointment of Shri Manohar Mody as alternate director, by the use of the casting vote of the chairman, which shows that every attempt was made to gain a majority in the board of directors once the disputes surfaced between the Mody group and the other directors.

76. Regarding the payment to Mrs. Dhabhar for 13 months without her doing any work, no explanation has been given by the respondents and, therefore, we have to conclude that the payment made to Mrs. Dhabhar was irregular and Shri Gore who appointed her is guilty of misusing his position as director/managing director of RDIL.

77. Regarding the allegations against Miss Captain, secretary of RDIL, on the basis of documents filed before us, it is clear that while "she had a full-time job with RDIL, she had acted on behalf of Crown the interests of which were in conflict with that of RDIL. It is also difficult to accept that Miss Captain was not at all aware of any dealings of S/Shri Mody, Gore, Ukidave and Seekond in relation to Samrat, Crown and Aryagene all of which had registered offices in the same premises as RDIL and when she had admitted that she had helped sometimes these directors to write minutes of the board meetings of some of the companies. It is also on record that she is a shareholder of Crown. In any case, her role in relation to

registration of Wintry Holdings (P.) Ltd. and Abhyan Investments (P.) Ltd. is clearly established as payments for their registration were authorised by her.

All this requires a deeper probe and full scale investigation regarding the role played by Miss Captain in the alleged manipulations so that RDIL would be able to decide the nature of action to be taken against her.

78. Regarding the additional allegations made by Shri Johri, it is prima facie clear that the managing director, finance director and company secretary have continued to mismanage the affairs of the company and made questionable payments to directors, suppliers etc. It requires further probe and full investigation in order to quantify the benefits bestowed on directors, their family members and friends at the cost of the company. We also find that there is hardly any justification for granting loans by RDIL and Samrat to Mrs. Mody, wife of the vice-chairman of RDIL, when she was neither a director nor an employee. Also there does not appear to be any adequate justification for payment for the travels of Mrs. Mody by RDIL.

79. In the facts and circumstances of this case and the conclusions we have reached as mentioned in paragraphs 32, 33 and 34 of this order, we have no hesitation in holding that the affairs of the company are being conducted in a manner oppressive to the petitioners, matters relating to the company's affairs, its books of account and statutory books and other material documents are such as would justify the making of a winding-up order on the ground that it is just and equitable that the company should be wound up ; but to make an order for winding up would be unfair and prejudicial to the petitioners. We also hold that the affairs of the company are being conducted in a manner prejudicial to the interests of the company. In our opinion, S/Shri Mody, Gore, Ukidave, who are directors of RDIL/Samrat and Shri Dhabhar, who is a director of Samrat, have acted in breach of fiduciary duties of directors and are responsible for the various acts of mismanagement. In our opinion, the petitioners are entitled for reliefs to bring the state of things that exists today to an end as early as possible.

80. While considering the various reliefs that have been asked for by the petitioners, we have noted that all the debenture-holders who participated in the

rights issue are not before us but both the Mody group and the petitioners' group and other respondents to the petition have got more than 98 per cent. of the shares allotted to debenture-holders. We also note that all those who have received shares from the reserved quota for directors/employees are parties. We have also noted that all the key persons involved in the affairs of RDIL/Samrat are parties to these proceedings and all of them have filed their replies and counter-replies except respondent No. 11, Shri Malcom Adiseshiah, chairman of RDIL who did not file any reply to the petition nor was he represented at the hearings in spite of due service of notice and our order dated July 23, 1992. Apart from S/Shri Mody, Gore and Ukidave, Shri Adiseshiah was also a member of the share and debenture allotment committee and his reply would have been very useful as there are no allegations of conspiracy against him. However, as he has failed to contradict the allegations made in the petition and other averments made on behalf of the petitioners, we have no other option except to conclude that Shri Adiseshiah does not want to contradict the allegations made in the petition. Considering all these facts, we order that- (i) The allotment of 1,16,800 shares to debenture-holders of RDIL and 3,200 unsubscribed shares out of shares reserved for debenture-holders allotted to Shri Minoo Mody and Shri Homi Ayerton be set aside. We also set aside the allotment of 34,000 shares reserved for directors/employees. We also set aside 1,880 unsubscribed rights shares allotted to Shri Minoo Mody.

Consequently, the subscribed capital of RDIL shall stand reduced to that extent and the amount paid by the debenture-holders/directors/ employees for these cancelled shares will be refunded to them without any interest as they have already enjoyed dividend on the same. The amount due as refund will be paid to each person only after adjustment of the amounts to be recovered from him under these orders wherever applicable. The members' register will be rectified accordingly.

(ii) The allotment of further 2,970 shares in Samrat to S/Shri Mody, Gore, Ukidave and Dhabhar is declared as null and void and the subscribed share capital of Samrat stands reduced to that extent.

Refund of this amount will be subject to recovery of dues of RDIL and Samrat from these individuals. The members' register of the subsidiary will be rectified accordingly.

(iii) The amount paid to Mrs. Dhabhar at Rs. 4,000 per month for a period of 13 months should be recovered from Shri Gore who was responsible for her appointment.

(iv) The boards of directors of RDIL and its subsidiaries are superseded and a committee of administrators is appointed to take charge of the affairs and conduct of the business of the company and its subsidiaries. The committee of administrators will have all the powers of the board of directors of RDIL and its subsidiaries. Only the committee of administrators or a person authorised by the committee will be entitled to operate the company's and its subsidiaries' banks accounts. Each member of the committee of administrators will be paid a monthly honorarium of Rs. 15,000 by RDIL. The company will also place at each of their disposal a company car with a driver for company's work. Justice Bhaktawar Lentin, retired High Court Judge of the Bombay High Court, will be the chairman of the committee of administrators and Shri D.M. Sukthankar, retired chief secretary to the Government of Maharashtra will be the other member of the committee of administrators. The chairman of the committee of administrators is authorised to appoint one more person as member of the committee of administrators if he so considers it necessary for carrying out the duties assigned to the committee of administrators under these orders.

(v) The committee of administrators will also consider appointment of a special auditor to look into the accounts of the company for the current year to ascertain the veracity of the various allegations made in the affidavits/application filed before us by Shri Johri.

(vi) The committee of administrators will also look into the allegations made against the company secretary and decide whether to take any action against her and whether she should be continued in the service of the company.

(vii) The present full-time executive directors S/Shri Ukidave, Johri, Mahadevan will also cease to function as directors as the board of directors stands superseded. However, they will continue to remain as employees of RDIL, unless the committee of administrators considers their continuation as employees, not desirable for the smooth functioning of the company. As Shri Gore ceases to be a director of RDIL, he also ceases to be the managing director of RDIL. All the loans taken by the non-working directors and Mrs. Mody should be repaid forthwith. S/Shri Mody, Gore," Ukidave and Dhabhar who were as directors of Samrat responsible for investments made by Samrat in Crown and Aryagene either as debenture or share application money or intercorporate deposit will ensure that these companies in which they have controlling interest will forthwith refund the entire amount failing which they will be individually responsible for repayment of these amounts.

(viii) Resolutions passed regarding the appointment of directors at the extraordinary general meeting held on May 28, 1992, and which we had stayed by our interim order are declared as null and void, in view of our above orders superseding the board of directors of RDIL.

(ix) The chairman of the committee of administrators should rectify the register of members as directed above and call a special meeting of the shareholders within a period of four months from the date of taking over charge of the company for election of eight directors one of whom will become the chairman. The first board meeting of the newly elected directors will also take a decision about the appointment of a new managing director of the company.

(x) All interim orders passed by us during the hearing of the case stand vacated.

(xi) Regarding Application No. 47 of 1992 filed by the petitioners for suspension of directors during the pendency of the petition, since final orders are being passed, the application has become infunctuous and stands disposed of. The petitioners have also filed another Application No. 48 of 1992 for commencing action against the directors and the company secretary for falsification of books of account and minutes books with intent to defraud the shareholders/creditors. Since we have already given directions as in (v) and (vi) above to the committee of administrators

to further investigate certain allegations, it is now for RDIL to decide whether to commence action against the directors and the company secretary based on our observations and conclusions in this order or to wait till the above investigations are complete. In view of this, Application No. 48 of 1992 is also disposed of.

(xii) Regarding payment of litigation costs, we have considered the points agitated by Shri Cooper and we find that RDIL will be unjustifiably burdened if required to pay the legal costs for defending these proceedings by the directors and, therefore, no director will be entitled to get any reimbursement of the legal or any other cost in connection of this petition and if any payment has already been made by the company, it should be recovered from these directors.

(xiii) The committee of administrators may approach the Company Law Board to seek clarification if there is any difficulty in respect of implementation of these orders.

81. A copy of this order be sent to the chairman and the member of the committee of administrators so as to enable them to take further steps as per our orders. RDIL and its officers will render all necessary assistance to the committee of administrators and its chairman to fulfil the task assigned to them under these orders.

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