
(1993) 07 BOM CK 0040

In the Bombay High Court

Case No : Appeal from Order No. 303 of 1993. (Transferred Miscellaneous Civil Appeal No. 128 of 1992)

B.D.A. Breweries and Distilleries Ltd. and others

APPELLANT

Vs

Cruickshank and Co. Ltd. and another

RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Companies Act, 1956 — Section 10, 193, 195, 2(25), 21

Citation : (1996) 85 CompCas 325

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : V.R. Manohar, A.G., T.N. Subramaniam, Ajit Kapadia, Ms. Usha Purohit, Mahesh Jethmalani, Arif Bookwala, Pankaj Sawant, instructed by Mr. Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; K.K. Venugopal, Senior Advocate, M.G. Ramachandran, Parag Tripathi, Dwarkadas, S.A. Divan, V.Z. Kankaria, instructed by Gagrath and Co., for the Respondent

Judgement

M.F. Saldanha J.

1. I need to prefix this judgment with the observation that learned counsel appearing on both sides have done a truly excellent job of presenting every conceivable aspect of the dispute that is the subject-matter of this litigation with their characteristic skill and ability, both of which are of a very high order. While deciding on interim application, normally, this court would have circumscribed itself to the minimum and, consequently, refrained from an elaborate adjudication of the manifold facets, both factual and legal, that have been canvassed. It was, however, pointed out to me by both sides that there are something like three dozen interconnected litigations effectively between the same parties, including an identical suit pending before the Calcutta High Court, in all of which proceedings the subject matter of this litigation is in issue. All those litigations are in a manner of speaking dependant on the outcome of this proceeding which explains why the parties have virtually treated this one as the "mother of all battles" - to borrow an expression that has now become current,

judicial time is precious and it is equally necessary that in order to curtail repetitive hearings and litigations in different parts of the country, the High Court which hears the proceedings, first, must set at rest all the points that are canvassed in view of the principles of *res judicata*. That, in other words, explains the length of this judgment which inevitably involved an elaborate factual and legal exercise of some magnitude. I need to also observe here that the courts which are groaning under the load of arrears can ill-afford multiple litigations and the immediate fall-out of these skirmishes is the disastrous effect on the companies and units that are being fought over which should not be driven to ruination. A total, final resolution of the entire matter is obviously in the interests of all concerned. Shri Manohar, on behalf of the appellants, was almost driven to summarise the plight of his clients as being best expressed by the phrase "to be or not to be" and, to my mind, it is imperative that legal process, to be just, must afford relief where it is deserved and in cases of injury-provide the much-needed healing touch.

2. The present appeal is directed against an order dated May 5, 1992, passed by the learned Second Joint Civil Judge, Junior Division, Aurangabad, confirming the *ex parte* injunction order passed by him on April 16, 1992. The appellants before me are the original defendants, who are aggrieved by the order in question. The suit in question, namely, Regular Civil Suit No. 321 of 1992 was filed before the learned Civil Judge, Junior Division, Aurangabad, by Cruickshank and Co. Ltd. and its erstwhile manager and presently the factory manager of B. D. A. against B. D. A. Breweries and Distilleries Ltd. and the remaining defendants, who are the chairman, the managing director, the chief executive and others connected with the management and control of defendant No. 1 I need to mention, in passing, at this stage, that an appeal was presented at Aurangabad, against the impugned order which was heard by the learned Additional District Judge and reserved for orders at which stage, an application for transfer was filed by the original plaintiffs making allegations against the learned judge. What followed thereafter was something most distressing and what has been aptly summarized by the learned judges of the Supreme Court, when the litigation in relation to that transfer was carried up to the apex court, as "unsavoury". Ultimately, the appeal was transferred to Bombay from Aurangabad and it was decided that it would be heard as an appeal from order by a single judge of the High Court. That is how the litigation, though instituted in Aurangabad where defendant No. 1 company is located, has come to be decided at Bombay.

3. As indicated earlier, the starting point of this litigation was the institution of the civil suit in question and it is very necessary in the context of this appeal for me to summarise as to what precisely was the case made out by the plaintiffs before the trial court. I consider this crucial because this is a vigorously contested litigation in which the pleadings are voluminous, but the greater part of this material has seen the light of day at a subsequent point of time. The plaintiffs are necessarily circumscribed to the case made out by them before the trial court and no amount of padding and grafting on at later stages in the

litigation is really permissible because this appeal is essentially a review of an ad interim order passed by the trial court and then confirmed on the basis of certain material before it and of a specific case made out. It is, therefore, necessary to assess, in the first instance, as to what was the cause of action pleaded at that point of time.

4. The plaintiffs are a wholly owned subsidiary of Shaw Wallace and Co. Ltd. (hereinafter referred to as "Shaw Wallace"), which company, in turn, is engaged, inter alia, in the business of manufacture and sale of Indian made foreign liquor and beer for the past about one hundred years. The plaintiffs contend that Shaw Wallace and Co. Ltd. conceived, developed and promoted various brands of liquors, which were well-received and which are virtual market-leaders. The plaintiffs go on to aver that during 1987-88, Shaw Wallace and the plaintiff-company decided to promote new brands of liquors in the plaintiff-company and that this was done to provide internal competition to the sale of such products amongst Shaw Wallace and the plaintiff-company. Consequently, the plaintiff-company conceived, developed and promoted, among others, three brands, namely, Officer's Choice, 1000-Guinness and Calypso Rum. In respect of these three products, the plaintiffs filed an application for registration of the brands with the Registrar of Trade Marks on April 21, 1988, which applications are pending. It is contended that these three brands were marketed by the plaintiffs from the end of 1988 onwards, that they virtually rocketed to the top of the market and that they were virtual money spinners. The plaintiff-company, however, did not establish or maintain any manufacturing unit and arranged to get these products manufactured from different units.

5. The first defendant-company, B. D. A. Breweries and Distilleries Ltd. (hereinafter referred to as "BDA"), is a company incorporated under the provisions of the Companies Act, 1956, and its registered office was situated at Udyog Bhavan 29, Walchand Hirachand Marg, Ballard Estate, Bombay. The premises in question are taken on lease by Shaw Wallace. The manufacturing unit of the first defendant-company is at Plot No. 6, MIDC Industrial Area, Chikalthana, Aurangabad. The plaintiffs contend that BDA has also been a part of the group companies of Shaw Wallace since 1988. The plaintiffs, as indicated earlier, are a wholly owned subsidiary of Shaw Wallace and the plaintiffs, in turn, through investment companies, namely, Paraganas Investment Ltd. and Arunava Investments Ltd. had been controlling BDA since the year 1988. BDA had been manufacturing and supplying to the plaintiffs the above three brands of liquor as per its specifications since 1988 and it is further averred that BDA has not undertaken manufacture of IMFL products for any company outside the Shaw Wallace group.

6. Next, it is contended that the plaintiff-company "faced certain difficulty" in some of the northern states on account of the Central Excise Regulations because the authorities in those States permitted only those brand owners who manufactured IMFL products to import the same into those States. It is pleaded

that because of this difficulty, the plaintiff-company decided to assign the aforesaid three brands to BDA. Since, it had manufacturing facilities, BDA was in a position to obtain excise licences for import of IMFL products in the States mentioned above. I need to observe, at this stage, that this is the solitary ground set out in justification for the assignment of the three brands in question to BDA, though it was sought to be argued at a subsequent stage that the difficulty was, in fact, a genuine one, nothing has been produced in support of this crucial averment. As I shall presently point out, that does not make much difference because the assignment in question did take place which is a matter of record and the reasons that prompted it, genuine or weak, are not of consequence because it is a case of documents vs. statements in the air.

7. The plaintiffs further contended that they continued to control the manufacture of the products of the above brands at the factory of BDA and that Shaw Wallace had provided various types of equipment for use in the factory on lease basis. The technical and other personnel of the plaintiff company are supposed to have been deputed/assigned from time to time to undertake the supervision of the manufacture of these products and the plaintiffs contend that they have been looking after the marketing, sale and distribution of the products in question through its offices and representatives. The plaintiffs have also pointed out that they have provided a corporate guarantee from the Central Bank of India for the loans and the advances made available to BDA and that the guarantee provided is to the extent of Rs. 5,50,00,000. I would have expected in an important litigation of the present type that generalisation with regard to equipment, technical know-how and personnel would have been avoided, that facts, figures and specific details would have been set out and that, if at all a case was being built up, it would have been on the basis of concrete material and not vague statements that carry one nowhere. Even the reference to the guarantee provided is devoid of all particulars and is virtually floating in a vacuum.

8. In paragraph (10) of the plaint, a bald statement has been made that BDA and the plaintiffs have been "part of the Shaw Wallace group for all intents and purposes" and in the latter part of that paragraph, there is a reference to an "arrangement" whereby the officers of the plaintiff-company from the corporate head office at Delhi have been supervising and controlling the operations of the first defendant-company's factory and offices which, the plaintiff contends, is continuing as on the date of the filing of the suit. I need to only observe here that we are concerned with two separate public limited companies and a so-called working arrangement has been pleaded, but I do not find the requisite resolutions, documents or anything in support of what is contended therein.

9. In paragraph (12), the plaintiffs point out that the third respondent, K. R. Chhabria, has been the managing director of Shaw Wallace since 1987. The fourth defendant, U. K. Ganguly, was one of the vice-presidents of Shaw Wallace until April, 1992, when he submitted his resignation. The fifth defendant, S. S.

Sanyal, was appointed as a chief executive officer of BDA and it is alleged that he had been reporting to the officers of the plaintiff-company in Delhi.

10. Paragraph (13) of the plaint sets out the incident that has given rise to the litigation. The third defendant, K. R. Chhabria, in his capacity as the chairman of BDA issued a circular dated April 10, 1992, to the effect that the fourth defendant has been appointed as the managing director of BDA with effect from April 9, 1992, and that all functions of the company shall be under supervision and control of the fourth defendant and that he will be assisted in his functions by the fifth defendant. The circular specifically states that all sanctions and approvals in regard to BDA are to be obtained from the fourth defendant only and these documents have been issued to the executives of BDA. In other words, what is pleaded is that by virtue of this act on the part of defendant No. 3, BDA was to function independently of the supervision and control of the plaintiffs which, according to them, was being exercised pursuant to an arrangement. I repeat that the plaintiffs have neither produced the agreement, resolution or any other document under which the so-called agreement was arrived at nor have they spelt out in the plaint as to how an agreement of that type is to be considered as enforceable in a court of law.

11. The plaintiffs proceed to state in paragraph (14) that the issuance of the circular dated April 10, 1992, is contrary to the "arrangement" existing for the supervision and control of the affairs of the BDA. They contend that the appointment of the third defendant as the chairman and the fourth defendant as the managing director of BDA are without the consent or knowledge of the plaintiff-company and the Shaw Wallace group and contrary to the existing arrangements made between the parties and further that it has been issued in an attempt to get control of BDA and take it out of the Shaw Wallace group. It is further alleged that defendants Nos. 3 to 7 and certain other persons who are not named but who are alleged to have been supporting them are making efforts to illegally appropriate BDA, its assets and property to the personal benefit and to the exclusion of the Shaw Wallace group.

12. In paragraph (15), the plaintiffs have set out their case with regard to the shareholding of BDA. It is necessary for me to reproduce this because learned counsel for the appellants devoted considerable time to these transactions and learned counsel for the appellants has seriously contested the validity of what transpired and, in the plaint itself, there is a submission that the transaction is illegal and void. The total issued and subscribed capital of BDA was Rs. 2,50,000 consisting of 25,000 equity shares of Rs. 10 each as on March 31, 1990. The entire lot of equity shares was held by Arunava Investments Ltd. Another company by the name of Paraganas Investments Ltd. in turn held the entire shareholding of Arunava Investments Ltd. The plaintiff-company, in turn, holds 110 equity shares out of the total 130 equity shares in Paraganas Investments Ltd. and, consequently, the plaintiff-company was in total control of the equity shares of BDA. It is contended that any change in the shareholdings of the

various companies was required to be done within the group and it is alleged that defendant No. 3 by utilising his position as the managing director of Shaw Wallace, which post he then held, arranged for Arunava Investments Ltd. to transfer the entire lot of shares in BDA to another company. This transfer, it is contended, is illegal and void. The first ground urged in support of this contention is that the transfer of the shares by Arunava Investments Ltd. was without the approval of the shareholders of the company and it is contended that these shares constituted a substantial asset and a substratum of the company and that this disinvestment could not have been done without the shareholders' approval. Secondly, what is pointed out is that at the time of the transfer of these shares, the price paid was inadequate. The plaint is silent with regard to the all important details such as dates, consideration, the manner in which the transfer took place, etc.

13. A scheme for amalgamation of Arunava Investments Ltd. and Shaw Wallace was pending before the High Court of Judicature at Calcutta. That scheme provided for the shares of Arunava Investments, i.e., the shares held in BDA to be transferred and vested in Shaw Wallace. The scheme for amalgamation, which has so far not been approved of by the High Court nor has it become final, provided that with effect from the appointed day and up to the effective date that the transferor companies shall carry on their business and activities and stand possessed of all their property for and on account of and in trust for the transferee-company and shall account for the same to the transferring company... It is contended that the board of directors of Arunava Investments Ltd. had no authority or power to transfer the shares to any third party contrary to the scheme of amalgamation and contrary to the decision of the shareholders in regard to the above scheme. Unfortunately, though an impression is created that the shareholders of Arunava Investments Ltd. have disapproved of such a transfer, the material in support of this contention has neither been stated nor set out.

14. Another serious accusation made by the plaintiffs, and which has been very strongly agitated by Shri Venugopal, learned counsel on behalf of the respondents before me, is that the third defendant, who at the relevant time was the managing director of the Shaw Wallace group, has acted in breach of his fiduciary capacity and has acted contrary to the interest of the Shaw Wallace group of companies and their shareholders.

15. Lastly, under this head, it is the generalised averment that the transfer of shares is contrary to the provisions of law and the regulations of the company. This statement again is vague and nebulous because neither the provision of law nor the regulations of the company have been set out.

16. The next grievance of the plaintiffs is that the name of the first defendant-company, which was BDA Breweries and Distilleries Ltd., has been changed to BDA Limited without the sanction or approval of the plaintiffs or of Shaw Wallace. I assume that the plaintiffs ought to have indicated the legal justification in

support of this charge by pointing out the provisions of law under which such sanction or approvals condition precedent, but there is not even a whisper in this regard.

17. It is thereafter contended that defendant No. 3 to defendant No. 7 and certain other persons who are not named and who are alleged to have been supporting them are making attempts to snatch BDA, its factory premises and property of the company out of the reach of the Shaw Wallace group and out of the arrangement made between the parties since 1988. I have earlier observed that what is pleaded is an arrangement, obviously not an agreement and there is nothing in support thereof. The grievance that is projected is regarding the acts of defendant No. 3 and others and it appears to indicate that if with effect from April 10, 1992, BDA proposed to manage itself and function independently that it constitutes a breach which gives rise to a cause of action in the present suit. The difficulty in comprehending what exactly the plaintiffs are alleging arises from the fact that the term "out of the reach of the Shaw Wallace group" appears to signify that BDA was required to function under the dominion and control of the Shaw Wallace group and any attempt to function independently can be stopped by order of the court.

19. In ground (d), a vague allegation is made to the effect that defendants Nos. 3 to 7 "and certain other persons supporting them" are threatening and pressurising employees of BDA and at other offices which again are unnamed, to the effect that they will suffer if they do not submit to their dictates. It is also alleged that defendants Nos. 4 to 7 have been in the city of Aurangabad since April 13, although ordinarily their presence is not required, and that they have been meeting the employees working in the factory and asking for records and papers, access to various departments and the general control over the premises, and that they are adopting coercive and intimidate attitudes towards the above employees. April 14th and 15th were public holidays and the plaintiffs contended that after the factory reopened, defendants Nos. 4 to 7 and other persons supporting them will cause interference in the working of the factory. A general averment thereafter follows, which is as nebulous and vague as could be, that the defendants will interfere with the working of the factory and the manufacturing activities and cause serious damage and disruption. All these and with the sentence "If the defendants are allowed to interfere with the working of the factory premises, there will be industrial unrest." It is on the basis of these averments that the plaintiffs approached the trial court on April 16, 1992, and I consider it equally necessary to reproduce the four prayers which are as follows :

"(a) A decree in favour of the plaintiffs and against the defendants restraining the defendants from giving effect to the circular issued to the executives of the first defendant-company and attached hereto as annexure "A" or from issuing any other or further circular/s or directions.

(b) A decree in favour of the plaintiffs and against the defendants restraining the defendants from interfering with the working of the first defendant-company and/

or its factory premises and assets.

(c) A decree be passed in favour of the plaintiffs and against the defendants restraining the defendants from making any change in the manufacturing, distribution, selling, marketing and working arrangements including and in particular the operation of bank accounts, appointment or removal of executives and employees of the company, appointment of director/s.

(d) A decree in favour of the plaintiffs and against the defendants directing that the first defendant-company shall continue to be managed as a part of the Shaw Wallace group and all arrangements prevalent in regard to the functioning of the first defendant-company since 1988, shall continue to be in full force and effect."

20. Normally, it would have been totally unnecessary for me to recount in detail the contents of the plaint, but on the special facts of the present case, there is a specific reason for doing so, even at the expense of burdening this judgment. It is necessary to examine as to what was the case and cause of action pleaded before the trial court and the material produced in support thereof. At a subsequent stage, a pointed reference would also be necessary to the other aspect as it would be equally imperative to note as to how much of the material was suppressed from the trial court at this point of time. For this purpose, it would be worthwhile to also summarise the annexures to the plaint which are as follows :

(i) The circular dated April 9, 1992, appointing defendant No. 4 as the managing director of BDA.

(ii) Letter dated April 24, 1989, from the plaintiffs to BDA confirming that the plaintiffs will continue to market all the products of BDA and that they will provide the managerial inputs necessary to sustain the operation of the unit and that certain representatives would be posted there for running the day to day operations the cost of which would be to the account of BDA.

(iii) Letter dated May 20, 1991, from BDA to Central Bank of India including the requisite corporation guarantee from the plaintiffs for the sum of Rs. 5,50,00,000 along with the requisite board resolution and a copy of the guarantee.

(iv) Scheme for the amalgamation and merger of various companies, including Arunava Investments Ltd. and Paraganas Investments Ltd. with Shaw Wallace Co. Ltd., which is pending before the Calcutta High Court.

21. Then follows the interim application for the grant of the injunction prayed for supported by an affidavit of Shovan Roy, who is a vice-president and duly constituted attorney of the plaintiff-company. On the basis of this material, the learned trial judge passed an ex parte order wherein he has reproduced the submissions canvassed by the plaintiffs' learned counsel which have gone way beyond anything contained in the plaint or the documents in support thereof and it would be interesting to reproduce the reasoning and the ultimate order that came to be passed, which are as follows :

"I am satisfied that to protect the interest of the plaintiffs" company and its affairs and to protect the name and dignity of the Shaw Wallace group and to avoid any unrest in the industrial area, it is necessary to pass emergent orders. Therefore, I am satisfied that the plaintiffs have shown to this court at this stage that there is a prima facie material on record to pass ex parte orders dispensing mandatory notice. On the other hand, as stated earlier, if till appearance of the parties and particularly till the appearance of defendants Nos. 3 to 7 if such ex parte orders remains in force, no prejudice will be caused to them, if really they intend to maintain the dignity and name of the Shaw Wallace group. Therefore, dispensing the mandatory notice, I pass the following order.

ORDER

1. The defendants/non-applicants Nos. 3 to 7 are restrained by this ex parte injunction order from interfering with the working of plaintiff No. 2 as factory manager and to interfere in his affair or affairs of plaintiff No. 1 in the premises at plot No. 6, MIDC, Industrial Area, Chikalthana, or making any interference or change in the existing manufacturing, distribution, selling, marketing, working arrangement and operation of the bank accounts, etc., till the appearance of these defendants either by themselves or with the help of any other persons acting under them. As far as circular in dispute is concerned I order that status quo as on today existing be maintained and effect to that circular should not be given till the appearance of these defendants and till their filing of say and hearing.

2. The plaintiffs to comply with the provisions of Order 39, rule 3(a) of the Civil Procedure Code, 1908, as to supply of copies of plaint and documents to these defendants and should swear affidavit in this behalf on April 13, 1992, as tomorrow is holiday. E. Allowed.

3. Issue emergent notice to these defendants asking them why such ad interim ex parte injunction should not be made absolute."

22. At this stage, the only observation that needs to be made is that there was little justification for dispensing with the notice and the subsequent order that was passed by the learned judge which can never be condoned having regard to the type of plaint that had been filed and the material placed before him. A court is obliged to weigh the consequences of judicial orders and to act with a degree of utmost restraint and caution when they are passed ex parte. The material before the court does not justify an order that virtually had the effect of handing over the management and control of a public limited company, namely, the first defendants, to the plaintiffs and at the same time restraining all those who were lawfully entitled to the management and control of that company from performing their functions. The defendants filed their reply and the matter was argued in detail after which the learned judge passed an order dated May 5, 1992, not only confirming the initial order but virtually expanding its scope. It is this order that is the subject-matter of the present appeal. Though the order

runs into as many as fifty pages, I intend summarising the contents of that order because, in my considered view and as indicated in my earlier order dated April 27, 1993, both the ex parte order and the subsequent one dated May 5, 1992, confirming the initial order are thoroughly unjustified, they are unwarranted and, if I may say so, ought not to have been passed. Learned counsel for the appellants had much to say about these orders and in particular about how they came to be passed, but I would prefer to avoid dealing with that unpleasant subject. Suffice it to say, however, that one is reminded of Hamlet's "all is not well in the kingdom of Denmark".

23. After summarising the pleadings in paragraph (5), the learned judge deals with the contention that defendant No. 3 was the managing director of Shaw Wallace since 1987, and that defendant No. 4 was the vice-president of Shaw Wallace until April, 1992. He deals with the contention of the plaintiffs to the effect that the transfer of shares by Arunava Investments Ltd. is a questionable transaction and that defendant No. 3 is alleged to have acted fraudulently and dishonestly in manipulating this transaction which he ought not to have done when he was legally and morally required to safeguard and look after the affairs of Shaw Wallace Ltd. I shall deal with the grounds on the basis of which the transaction is challenged subsequently. The learned judge proceeds to reproduce the allegations which are to the effect that pursuant to the aforesaid transaction or transfer of shares an all-out effort was made by the third defendant to take over complete control of BDA, which was for all intents and purposes under the virtual dominion of Shaw Wallace Ltd.

24. I need to specifically record that the learned judge was conscious of the fact that the defendants had, among other things, specifically pleaded that no cause of action exists, that the transfer of the shares in question that was sought to be debated had taken place in 1990 virtually two years earlier, that the transaction in question is not challenged and, consequently, that no relief can be claimed unless that is done.

25. With regard to this crucial aspect of the matter, the learned judge has reproduced the stand of the defendants, which was to the effect that on May 4, 1990, a meeting of the board of directors of Arunava Investments was held and a resolution was passed to the effect that the 25,000 equity shares of defendant No. 1 be sold at face value and that an application be made to the Central Government in terms of section 30(c) of the Monopolies and Restrictive Trade Practices Act, 1969, and that any director of the company be authorised to make the said application and to complete the transaction relating to transfer of the shares. Relying on the minutes of the meeting dated May 4, 1990, the defendants contended that the shares were then held by In trust Securities Pvt. Ltd. The transfer of such shares was notified to the Department of Company Affairs, which department by letter dated July 18, 1990, authorised the company to transfer the shares of defendant No. 1 to In trust Securities Pvt. Ltd. They pointed out that Shri S. Roy, signatory to the plaint, was present in the meeting

of May 4, 1990, and has confirmed the resolution. They pointed out that in the said meeting, S. Roy had tendered his resignation. The defendants have also pointed out that on or about August 30, 1990, an agreement of assignment was entered into between plaintiff No. 1 and BDA whereby BDA purchased the three disputed brands. It is their case that these three brands of liquors are essentially manufactured by BDA, that it was because of the efforts of BDA that they became market leaders and that it is for this reason that an attempt is now being made by Shaw Wallace in the name of the plaintiffs to try and secure control of BDA because these three brands are virtually money-spinners. The defendants have also pointed out that on October 26, 1990, defendant No. 1-company have applied for registration of these three brands under the Trade and Merchandise Marks Act, 1958, and that the matter is pending. They further pointed out that the first defendant has obtained a certificate from the Additional Registrar of Companies that with effect from January 17, 1992, the name of the company has also been changed. They have placed heavy reliance on the fact that as per the deed of assignment dated October 26, 1990, plaintiff No. 1 has, in fact, received the consideration of Rs. 15,00,000 and has assigned to BDA all the proprietary rights, benefits and interest in respect of these three brands. The defendants have also pointed out that on April 9, 1992, an extraordinary general meeting of defendant No. 2 was held at Bombay and a resolution was passed empowering the board to elect a chairman and to determine the period for which office will be held by him. Immediately after the extraordinary general meeting, the board of directors' meeting was held and the third defendant was elected as chairman. The learned judge has thereafter reproduced in some detail the denials of the averments in the plaint, affidavit-in-support, etc., and has basically noted that in sum and substance what is contended in defence is that as far as the transfer of shares has become final and binding, that the plaintiffs have no right whatsoever to claim any dominion over BDA which is a wholly independent and separate entity and which is entitled in law to administer itself in the manner as provided for by the Companies Act without any outside interference. The linkage that is the bedrock of the plaintiffs' case, namely, that BDA is a subsidiary of Shaw Wallace and Co. and that the plaintiffs, therefore, have the right to administer it and to control it is without substance in so far as the process of desubsidiarisation has become complete as early as in August, 1990. As far as the main bone of contention, namely, the rights in respect of the three brands of liquors are concerned, the defendants have asserted that the assignment having been completed and having become final these three brands are virtually their property which they are entitled to use without any hindrance, obstruction or interference from the plaintiffs or any other parties. I need to reiterate once again that the defendants had specifically pointed out to the trial court that the desubsidiarisation of the company and the assignment of the brands both of which have not been challenged in the plaint nor is there any relief claimed under these heads, (for which purpose I have reproduced the prayer clauses earlier) and that the plaintiffs are, in these circumstances, wholly and completely precluded from claiming any incidental reliefs. The fact that arguments were

advanced in effect calling these transactions into question would not serve as a means to get over the basic fact that the plaint proceeds on the footing that there is no relief claimed under these two heads. It is not a matter of technicality, but the fact remains that the effect of this situation is not only far-reaching but would provide a complete barrier to the type of reliefs asked for by the plaintiffs being granted. The defendants had, therefore, pleaded that unless the courts were to be satisfied that BDA is, in fact, legally subordinate to the plaintiffs by virtue of the act of severance being required to be struck down and, furthermore, if it were to be apparent to the court that the plaintiffs' rights in respect of the three brands still subsist in so far as the assignment will have to be ignored or set aside, then alone could the plaintiffs prayer for the type of reliefs as had been done. Conversely, the plaintiffs not having asked for a declaration that the transfer of BDA shares is void and that the assignments of the three brands be struck down or set aside, there would be no basis for them to have any case for the grant of reliefs vis-a-vis BDA, even assuming all the remaining allegations were true.

26. In a serious case like this, where the survival of a public limited company, i.e., BDA, as also its shareholders, employees and all those who are dependant on its business is concerned, it is my view that any court dealing with the matter regardless of the angles and contentions, worth-while or frivolous, that may be evident in the litigation, must act with a sense of total responsibility, in the first instance, by deciding as to whether at all the litigation is worthy of being entertained at all, continued and, if so, the consequences of any order passed. There are very important and far-reaching overtones in litigation of the present type and a court must, therefore, be doubly careful by assessing as to what would happen to the company, to those who manage it, to those whose livelihood depends on it, to those who have invested in it and, in other words, to the overall public interest and, to my mind, should be slow in granting reliefs where the consequences will inevitably be disastrous. Equally, it is necessary to sift the material placed before the court, read between the lines wherever necessary and in an instance where the litigation is obviously motivated, to desist from permitting such mala fide objectives to be carried forward. I think in the present context it is equally necessary for a court at the initial juncture to guard against permitting unworthy litigation to be commenced, for as has here happened, some three dozen proceedings followed the present one. It is of equal responsibility that litigation of this character be snuffed out at the inception. The learned trial judge would have been fully justified is not only refusing any reliefs, but in dismissing the suit itself.

27. Having summarised, in detail, the complexities of the case, the learned judge formulated the following points which completely and totally bypassed everything that is in contention before the court and it is, therefore, useful to reproduce the points in question :

Points Findings "(i) Can it be said that this court Yes. has jurisdiction to entertain

the civil suit and decide this interim application? (ii) Do plaintiffs prove that there Proved. is a legal injury and do they further prove that there is a strong prima facie case for grant of ad interim injunction pending disposal of the suit to protect their interest and interest of the Shaw Wallace group and the interest of others who are interested in this litigation, but are absent? (iii) In whose favour does the In favour of plaintiff balance of convenience lie and to irreparable injury and whom will irreparable injury not comparative hardship will compensated in terms of money and be caused to plaintiffs. comparative hardships and mischief be caused? (iv) What order? As per final order".

28. The first issue regarding jurisdiction is hardly of any consequence and learned judge disposed of it by holding that since the factory is located within the territorial jurisdiction of the court that jurisdiction can be exercised. This issue was not even argued before me and, to my mind, rightly so and does not require any further consideration. While deciding issues Nos. 2 and 3, the learned judge first deals with the contentions which were very forcefully projected on behalf of the defendants that no case has been made out on the facts in respect of the grave allegations concerning clandestine transfer of shares, etc., and learned counsel had relied on certain English and Indian authorities in support of the elementary proposition that the law of pleadings requires a definite and specific case, both on facts and in law, to be spelt out. It is unfortunate that this substantial plea, which virtually proceeds on the basis of the first principles, was brushed aside due to a misreading of the ratio of the decision in the case of Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, , wherein the Supreme Court had observed that the law of pleadings is to be applied with some degree of liberty. That does not, however, justify a plaint which is vague, devoid of particulars where even the requisite prayer clauses are absent and the party seeks to cover it all up by advancing detailed submissions at a later point of time without having made out any case in the first instance.

29. The learned judge thereafter takes up for discussion the issue regarding the hotly contested issue with regard to the circumstances under which BDA eased to be a subsidiary of Shaw Wallace. He records the fact that the defendants have pointed out that contrary to the allegations of the plaintiffs that it was defendant No. 3 in his capacity as a managing director of Shaw Wallace who it is alleged manipulated the transfer of BDA shares so that the ownership of the same vests outside the Shaw Wallace group; that in actual fact it was a well-considered decision of the parent company which action was decided upon for very cogent reasons. Strong reliance was placed on the minutes of the meeting of the group executive council of Shaw Wallace where the issue was discussed. The note in question is prepared by Shri J. Bhargav and it was only addressed to the third defendant in his capacity as managing director. In the office-note dated March 24, 1989, and the subsequent office-note dated March 26, 1990, of K. Srinivasan, whereby the delinking of BDA from Shaw Wallace is recommended, reasons have been set out from the business and tax strategy angle as to why this ought to be done and it is significant that a perusal of the documents will

indicate that it was a collective corporate decision and not something underhand or an action that was clandestinely manipulated or pushed through by defendant No. 3. Apart from the various technicalities that were involved in this operation, which are referred to by the learned judge, there is a specific reference to the minutes of the second meeting of the group management committee of Shaw Wallace which was presided over by the chairman of the company, M. R. Chhabria, wherein the aspect of desubsidiarisation of BDA was virtually finalised. The plaintiffs had contended before the learned judge that in the case of another company, namely, Nagarjuna Fertilizers, which was a public limited company in which Shaw Wallace held merely some shares, the decision was to dispose of that investment, but, as far as BDA was concerned, that the mechanics was to make it a tie-up unit. Undoubtedly, the learned trial judge was taken in by the contentions advanced on behalf of the plaintiffs that even if the shares were transferred, the links continued under the so-called "tie-up arrangement", but I fail to see how in a court of law such a position could either be pleaded or for that matter be upheld.

30. Support was sought to be drawn by the plaintiffs by attacking the validity of the transaction from various angles, the first one being that the permission of the Government of India, Ministry of Industries, which approval was necessary, was obtained by suppressing material facts. Though the learned judge has not recorded any conclusions with regards to this charge, I fail to see how and under what circumstances, in the light of a transaction that has been concluded and that has become final and, in any event, that has not been specifically challenged before the court at an interim stage, the plaintiffs can be permitted to question and go behind the transactions that have assumed finality two years back. The whole approach of the learned judge is downright faulty.

31. The learned judge then comes to the crucial meeting dated May 4, 1990, which is the meeting of the board of Arunava Investments Ltd., wherein the resolution regarding transfer of 25,000 equity shares of BDA at face value was passed. The defendants have pointed out that S. Roy and T. K. Sen were the two directors present in the meeting and that the resolution is perfectly valid. S. Roy incidentally who was throughout in the plaintiff's camp and is the signatory to the plaint and he has filed an affidavit stating that the minutes are false and that he was not present in Calcutta on that day. He has produced his air tickets, accounts, etc., to show that he was in Delhi. The defendants contended, and obviously with complete justification, that there is a presumption with regard to the correctness of the minutes until the contrary is proved and that having regard to the provisions of section 195 of the Companies Act that the presumption extend to the extent that the meeting shall be deemed to have been duly called and held and all proceedings having taken place. The learned judge, on the basis of "various documents" produced by Roy, the fact that the minutes do not indicate to whom the shares are to be sold and in so far as they provide for the acceptance of the resignation of Roy, has harboured certain apprehensions, which are reproduced verbatim, namely, "It creates doubt

whether really such meeting happened or not... moreover about the name of Mr. Roy there is no mention... Therefore, it is a suspicious document." Once again, I am required to repeat, as earlier, that no such case with regard to non-holding of the meeting, fabrication of minutes, non-attendance of Mr. Roy, etc., had been originally pleaded by the plaintiffs before the court and all these pleas which have been introduced for the first time at a subsequent stage are sought to be used as justification for confirming the original injunction order. While deciding this head, the learned judge has referred to an allegation from the plaintiffs' learned counsel that the shares were transferred at a price of Rs. 10 per share, that this constitutes gross under valuation as the book value of the shares at that time was more than Rs. 50. This, again, was never the case of the plaintiffs when they first applied for the injunction and has once again been put forward as one of the several grounds to justify its continuance.

32. The learned judge thereafter deals with the circumstances under which defendant No. 3 came to be elected as chairman of BDA in the board meeting held on April 9, 1992. The plaintiffs placed reliance on the affidavit of one Shri Ramani, who states that he was a director of BDA and that he never received notice of the meeting of the board dated April 9, 1992. In view of this position, the defendants produced a copy of the minutes of the board meeting which the learned judge has viewed with suspicion and held that there is doubt whether it is reliable document or whether it is fabricated in order to mislead the court. As regards this last aspect of the matter, the entire controversy over which much heat has been generated is virtually trifling and is wholly insignificant. I did examine the respective contentions carefully in order to ascertain as to whether there was anything of significance, but I found virtually nothing worthy of mention nor are the suspicions expressed of any basis. Normally, the learned judge should have refused to go into the unnecessary details. The reason for it is because this entire controversy again has germinated at a subsequent point of time and was never pleaded when the plaint was originally presented to the court. It is necessary for me to record that the status of defendant No. 3, who had acted in his capacity as chairman of the company, had not been questioned, nor is there even the remotest suggestion that he had not assumed office lawfully and that, therefore, his actions are required to be struck down. It is a matter of regret that with the passage of time this case has grown in dimensions in all sorts of unwieldy directions and the points of fact and law that were never part of the original proceedings have been pleaded, seriously argued and adjudicated upon. Since, all this material has, in fact, formed the basis of the order under appeal, learned counsel for the appellants was required to seriously deal with it. Shri Venugopal, learned counsel appearing on behalf of the respondents, i.e., the original plaintiffs, has sought to justify it and it is, therefore, inevitable that I am required to assess it at this stage. I do not propose to enter into any detailed analysis in respect of the manifold issues that were canvassed, but it is necessary to record as to whether the points were valid and whether the order is sustainable on that basis.

33. This controversy was, however, completely and conclusively set at rest because the original minutes of the meeting dated April 9, 1992, have been produced before me. I have scrutinised them and, to my mind, I find nothing suspicious with regard to the documents, nor is there any ground on which they can be called into question. Before parting with this head, however, I need to deal with two aspects of the matter concerning this crucial meeting which has been dealt with by the learned trial judge. The first of them is the contention put forward by Mr. Ramani that neither he nor Mr. A. K. Jain nor for that matter Mr. R. L. Jain, three of the directors of BDA whose resignations were accepted in the board meeting, received notice of the meeting. It is quite amazing as to how Mr. Ramani can depose about the non-receipt of the notice by the two Jains. A weak excuse has been made that the gentleman concerned were "far away" and that, therefore, their affidavits could not be filed. The implications of Mr. Ramani's charge are far-reaching in so far as it is contended that even if the meeting is supposed to have been held it is not a valid meeting as notice of the same was not served on three of the directors. The defendants have pointed out that these three persons had expressed their desire to leave the board and their resignations were only to be formally accepted in the meeting and that in these circumstances since they ceased to be directors that there is no obligation in law to serve notice on them. Learned counsel for the respondents has refuted this position and contended that the meeting can never be saved and that everything that is alleged to have taken place at that meeting is of no consequence. The law on the point is very clear that it is perfectly permissible for a resignation to be expressed orally. There is no bar to this and as I shall subsequently illustrate from the conduct of the three venerable gentleman, this is what actually transpired.

34. There is not even a whisper in the plaint with regard to any of these facts and a curious procedure is followed in this proceeding of grafting on all sorts of contentions and that too at a stage when the injunction is sought to be defended, but apart from that serious infirmity, what is of greater consequence is the fact that at this important meeting three persons, namely, Mr. Ramani, Mr. R. L. Jain and Mr. A. K. Jain, ceased to be the directors of the company. If it is the plaintiffs' contention as is sought to be made out before the court that these persons and never remained quiet if the removal was against their wishes. There is no letter of protest from any of them and, more importantly, the trio has not taken any legal steps with regard to such a serious matter. I need to take cognizance of one crucial fact, namely, that the board meeting in question is not challenged either by any director or shareholder of the company. The plaintiffs, in any event, have no locus standi to challenge this meeting. I have no doubt whatsoever that the meeting was validly held and that the entire plea put forward before the court is not only an afterthought at the instigation of the plaintiffs, but that it is downright false.

35. The learned judge, while dealing with this meeting, refers to one other aspect which he considers to be of great importance. He has held that the

meeting could not have taken place because a resolution was passed with regard to change of the registered office and that necessary steps for getting permission from the Registrar of Companies should be taken. The learned judge notes that no such document is forthcoming and he relies on the affidavit of Mr. S. S. Sanyal, defendant No. 5, who points out that after January 27, 1992, the registered office of the company is at Bombay. Shri Manohar, learned counsel appearing on behalf of the appellants, has pointed out that this is a total misreading of the record. He has relied on the minutes of the board meeting dated March 9, 1992, of BDA wherein the decision to shift the registered office has been incorporated and it is only an intimation and no permission that is required to be sent to the Registrar of Companies. The conclusions arrived at by the learned trial judge in this regard are not only baseless, but they are too far-fetched and sweeping in so far as there is no justification for the conclusion that the meeting dated April 9, 1992, had never taken place.

36. Coming to the most crucial aspect of the judgment, namely, the justification for the grant of reliefs, the order of the learned judge proceeds on the basis of weird reasoning that I find it not only impossible to sustain but even difficult to comprehend the line of thought even after repeated reading. To start with, the entire approach is wrong. The learned judge proceeds to state that the meetings referred to above had not taken place and if this be so, the defendants cannot justify their stand and in these circumstances the plaintiffs are entitled to the reliefs asked for by them. Through this process of reasoning, the learned judge holds that regardless of the transfer of shares and regardless of the assignment of the three brands, the status quo ante continues in so far as those transactions will have to be ignored and BDA will have to be treated as continuing to be a subsidiary of Shaw Wallace. The basic flaw in this process of reasoning is that the aforesaid two transactions have admittedly reached a stage of finality such as for instance the Central Government having accorded its approval for the transfer of BDA shares and the assignment of the three brands having vested the virtual right, title and interest in BDA; which means that, to put it simply, unless these transactions are declared to be void by a competent court and set aside, it could be wholly impermissible to attempt to overcome them. The defendants had made out an unanswerable case and it is queer and perverted logic to argue that because their defence is unacceptable the reliefs asked for by the other side be granted wholly overlooking the fact that it is the plaintiffs who have made out no case.

37. Digressing here a little, I have had to repeat ad nauseam that the plaintiffs had virtually pleaded nothing and that the cause of action which has been made out for the first time in the affidavit-in-rejoinder ought not to have been considered by the trial court. It is quite elementary that no party is permitted to drastically alter its case or for that matter to make out an entirely new case. The law is well-settled even with regard to the principles applicable in cases of amendments, that it is impermissible to make any substantial departures from the original cause of action. I find in this case that after the defendants filed their

reply, the plaintiffs have come out with everything that has been used by the learned trial judge as signifying the case of the plaintiffs. This is an approach which the law does not permit. It would be impossible to deal with a litigation if fluidity of this type were to be permitted, where a plaintiff approaches the court with a zero case, thereafter gets wise to various contentions, files an affidavit along with annexures running into over 150 pages and then seeks to sustain a relief that was obtained on the basis of non-existent material, it is almost a situation of all accepted canons of law being thrown to the winds. The trend of this litigation, and in particular the plaintiffs' case, reminds me of the troublesome tapeworm that is said to have no head or tail and still keeps multiplying from the smallest bit.

38. The main thrust of the attack of the plaintiffs is directed against defendant No. 3, who is the younger brother of the chairman of Shaw Wallace and as appears from the record has thereafter parted company. The learned judge, in passing, observes that it was contended before him that defendant No. 3 has misused his position as managing director of Shaw Wallace, that he has been guilty of misconduct in his official and fiduciary capacity, that he has acted in furtherance of his personal benefit. The learned trial judge suddenly flies off at a tangent and disapproves of the conduct and behaviour of Mr. Raju Dharmani, company secretary of Shaw Wallace, who is alleged to have locked his office room, never handed over the record and tendered the resignation and who is alleged to have come over to the defendants' side. This gentleman is not a party to the litigation, but the learned judge holds that the court will have to take note of the conduct of the parties. The frame of thought in paragraph (15) is unfortunately very confused. There is no direction to it, there is no justification for the observations made which take on the complexion of findings and what is most distressing is that a host of issues have been virtually picked up at random and decided in an off-the-cuff manner. The process of decision making is illustrated by the fact that the learned judge records the argument that the attempt of the defendants was to capture BDA shares at a cost of Rs. 2,50,000 only, meaning thereby that the consideration was inadequate. On behalf of the defendants, the affidavit has been filed by Shri Sanyal, who has comprehensively dealt with the case and produced all the relevant record, but the learned judge holds that it was necessary for the "star fellow", i.e., defendant No. 3, to have sworn the affidavit and satisfied the court that the actions in question were legal and that defendant No. 3 had never committed breach of trust in his position as managing director of the Shaw Wallace group. It is unfortunate that this inverted reasoning is consistently the approach right through the order.

39. The learned judge in the same paragraph suddenly adverts to the case made out by the plaintiffs that they have provided all the technical know-how and personnel to BDA and that they have provided a corporate guarantee to the UCO Bank for over Rs. 5,00,00,000. I shall deal with these aspects of the matter subsequently because the defendants have pointed out that this charge is factually incorrect. The defendants have also contended that there is no basis for

the contention advanced by the plaintiffs that they have invested large amounts of their money either in BDA or, for that matter, in the three brands that are in dispute. The merits and the facts apart, assuming that this is the case of the plaintiffs as far as the bank guarantee is concerned, it is always open to them to have the guarantee revoked or to take such other steps for purposes of securing their financial interest. Assuming that they are right about their financial stake in BDA, it is at the highest a monetary claim which, to my mind, may be enforceable through a suit, but this could never justify an application of the present type to the court that on these grounds the management and control of an independent limited company be handed over to the plaintiffs on a platter. The position is far worse in law as far as the three brands are concerned because even if everything pleaded by the plaintiffs is true, it will have to be held that the plaintiffs have quantified their investments in the brands and on the basis of this assessment the consideration of Rs. 15,00,000 was paid to plaintiff No. 1 at the time of the agreement. The payment having been accepted, and the transaction having assumed all aspects of finality, the plaintiffs just cannot be heard and that too so late in the day, on a vague complaint that they had invested crores of rupees in these brands and that, therefore, they should be permitted to retain control of the manufacturing unit. Such a conclusion would be downright perverse. I must, at this stage, mention the submission canvassed by Shri Manohar on behalf of the appellants who pointed out that the policy of the plaintiffs was to get the products manufactured by BDA at the lowest possible cost and to thereafter market these products and swallow the cream of the whole transaction which, in monetary terms, runs into crores of rupees. He advanced a powerful contention that BDA has been exploited and bled, that the attempt is to continue that process and not to permit it to stand on its own feet and enjoy the profits which it is entitled to receive from its own products. This aspect is more with regard to the business economics, but that issue is not at all foreign to a court while adjudicating a case of the present type.

40. In the concluding part of the order, which is repetitive and again, though the process weaves its way from transaction to transaction, the learned judge holds that BDA, which was originally a subsidiary of Shaw Wallace and which according to him was being completely looked after by the plaintiffs, ought to continue to be administered and controlled in that manner. The time-frame appears to have been totally overlooked. Years have passed since the shares have been transferred and the three brands were assigned and the defendants have seriously contested the position that BDA was under the dominion and control of the plaintiffs when the dispute came to court in April, 1992. In this view of the matter, therefore, it is not the circular dated April 9, 1992, which the plaintiffs have styled as a declaration of independence, i.e., the material date, but the position in law and in fact, as it obtained when the aforesaid developments had taken the garb of finality. It may be that defendant No. 3 in his capacity as chairman of BDA found it necessary to assert in April, 1992, that the company would invest the overall control of the day-to-day management in the hands of

persons who were not under the sway of the plaintiffs or of Shaw Wallace, but this cannot justify the sweeping conclusion arrived at by the learned judge to the effect that BDA is still a subsidiary of Shaw Wallace and that it is being effectively managed and controlled by the plaintiffs on the date of the filing of the suit. Not only is the record to the contrary, but there is documentary evidence to completely shatter this conclusion, BDA was an independent entity in act and on paper on that day. It was the lawful and legal owner of the three brands in respect of which there was not even a challenge to their right and title and in these circumstances his premise that BDA was a subsidiary, that it is being looked after by the plaintiffs and that there is no harm if the arrangements were to continue was totally and completely unjustified. The learned judge concludes his order with the statement that the balance of convenience is in favour of the plaintiffs and that no prejudice would be caused to the defendants if the relief prayed for were to be granted. Accordingly, the learned judge passed the following order :

"1. Exhibit 5 is allowed.

2. Defendants Nos. 3 to 7 are hereby restrained from interfering with the existing working and day to day affairs of defendants Nos. 1 and 2 which are managed by plaintiffs Nos. 1 and 2 as regards manufacturing, distribution, sale, marketing, working arrangement and operations of the bank accounts by any manner either by themselves or with any person acting under them in any manner except due process of law till further orders of the court. Even they are restrained from giving effect to the alleged circular issued by defendant No. 3 styling as a chairman, dated April 9, 1992, till further orders of the court.

3. Costs of this petition will be costs in the cause."

41. I need to only record at this stage that regardless of whether the contentions canvassed before the learned judge had been pleaded before the court in the original plaint or not, irrespective of the stage at which the plaintiffs had come out with this case and regardless of the fact that they would be disqualified in arguing on the basis of this material, since it formed the basis of the order of the learned judge, I heard learned counsel at length on all the points dealt with in the order under appeal, both on facts and in law. After a protracted hearing, which continued day to day for over three weeks and a re-reading of all the material placed before me and a threadbare consideration of the matter, the only conclusion that was permissible was that the interim order was completely and thoroughly unjustified. The damage done to the defendants sine May 5, 1992, for almost one year during which this order was in force, to my mind, could not be allowed to continue for a single minute longer and it was for this reason that in my earlier order dated April 27, 1993, I had briefly recorded the grounds on which the appeal was allowed and the interim orders vacated. I had rejected the application from the respondents, i.e., the original plaintiffs for stay of the order dated April 27, 1993, principally, because the court had already recorded the fact that the interim relief ought never to have been granted and it would have,

therefore, been a miscarriage of justice in the face of that finding to grant stay and to permit the earlier order to run for several weeks or months until the detailed judgment was ready.

42. It is essential that the reasons be recorded for the conclusions set down in the earlier order dated April 27, 1993. A curious situation has arisen because I have already recorded that the three principal heads in respect of which effective reliefs have been sought, namely, the transfer of BDA shares, the assignment of the three brands of liquor and the status of BDA after desubsidiarisation as completed, not having been specifically challenged in the main suit, the plaintiffs would be disqualified from either asking for or claiming any reliefs under these heads. Shri Venugopal on behalf of the respondents before me, in the course of his arguments, indicated that a composite suit has been filed before the Calcutta High Court in which there is a specific challenge to the validity and consequent legal effect of the aforesaid actions. He stated that certain ad interim orders and interim orders have been passed in that matter and that subsequently the same has been argued in detail and that the judgment is awaited. The fact that a challenge has been presented in some other proceeding is of limited relevance except to the extent that if a court of competent jurisdiction had passed orders in the matter on the merits, it would be an order of which this court would have to take cognizance since it is a decision on the merits on the same issues and between the same parties. The position that now emerges would be the reverse in so far as this court is called upon to decide the issues in question on the merits in the first instance which may inevitably have a bearing on the other proceedings.

43 I categorise the situation as being curious because the plaintiffs in their affidavit-in-rejoinder have made out and built up a detailed case which they had never done in the first instance. The effect of doing this at a subsequent point of time on the question of bona fides and credibility apart, since it goes to the very root of the matter, the defendants, in turn, have met their case in defence squarely, both in the pleadings on facts and in law. Effectively, therefore, the respective parties have produced all the material that they could possibly have wanted to rely on and the learned trial judge has proceeded to evaluate this record and based his order on all of it. In appeal, while reviewing that order, it is, therefore, inevitable that the same procedure will have to be followed of having to evaluate everything that is before the court and adjudicate on it. I am conscious of the fact that the order in question is at an interim stage and that the decision will only hold good till the hearing of the suit. The reliefs granted by the trial court, however, are so sweeping that, to my mind, nothing would virtually survive in the suit thereafter. It was for this reason that the parties have produced all their evidence before the court while applying for the vacation of that order and it is in these premises that this court will have to adjudicate on the basis of that record. That such an exercise may have the effect of virtually disposing of the suit is possible, but that, to my mind, can be no ground on which the bulk of the record before me can be disregarded.

44. The order having been passed against the defendants, it is the appellants' learned counsel who has addressed the court at considerable length. He started by submitting that the order in question is not only wrong, that it is downright perverse and that, consequently, the injunction should be vacated forthwith. The principal purpose for my following the very unusual practice of burdening the judgment with a summary of the plaint, prayers, pleadings, etc., was in order to illustrate how totally and completely unjustified the passing of the ad interim order was and even if one were to assume that the trial court was misled while passing the initial order, once the defendants had appeared and agitated the matter in the manner in which they have done, and ad interim order could and should never have been confirmed. It is true that Shri Venugopal on behalf of the respondents has contended that this court must take a broad and an overall view of the case and should not strictly circumscribe itself to the matter of the record, that the court should appreciate the fact that the plaintiffs had pointed out that one of the most valuable companies from the Shaw Wallace group was virtually being "stolen away" and that emergency measures were required to stop this from happening. He also contended that the problem was an unusual one in so far as it had never been expected that defendant No. 3, who is the real brother of the chairman of Shaw Wallace and who was holding the position of managing director of the group, would suddenly decide to declare was on Shaw Wallace and to spirit away its valuable assets. These arguments may be relevant to some extent while going into the question of the charge against defendant No. 3 with regard to breach of trust or breach of fiduciary obligations. They still do not answer the question as to how in this proceeding on the present record a composite relief of virtually handing over the administration and control of BDA could have been granted. To my mind, the irresistible conclusion is that the question is unanswerable and indefensible. Shri Manohar, learned counsel appearing on behalf of the appellants, alleged that the passing of the orders constituted a fraud on the court because the learned judge was led to believe that such orders were essential for a variety of reasons, including the welfare of the company, but that, more importantly, the plaintiffs owed a fundamental duty to the court to place all the relevant material in respect of the transactions concerned before the court and not to project half-truths and suppress all the remaining material. Everything that has been subsequently disclosed either by the defendants or by the plaintiffs in respect of transactions that are in dispute are matters of record. Most of them are documents. These were available to the plaintiffs and were within their knowledge and to my mind the suppression of this material from the trial court at the initial stages was not accidental.

45. Having dealt with the case of the plaintiffs rather extensively and the shortcomings or infirmities that abound therein for a valid decision on merits which, to my mind, is essential in order to curtail further and unnecessary litigation at different levels and in different parts of the country, since learned counsel informed me that there are something like three dozen proceedings which are an offshoot to the present main dispute; it is equally worthwhile that I

summarise the case of the defendants. The pleadings in his case and the documents re literally voluminous, but I shall record the salient features of what the defendants have sought to establish. This is because the defendants have not chosen to merely deny the allegations made against them or the averments in the pleadings, but they have proceeded very responsibly in their task by contending that the action of defendant No. 3 on April 9, 1992, in exercising his powers as chairman of BDA was an act that is valid and justified, that the independent status that has been claimed by BDA is, in fact, a correct one and that the rights in respect of the three brands have vested completely in the company, which is entitled to exploit them without interference from any third parties. There is no dispute about the fact that the plaintiffs are a limited company belonging to the Shaw Wallace group or, for that matter, that BDA occupied a similar status prior to the year 1990. What is emphasised by Shri Manohar, and this argument is not merely in the air but is substantiated from the record before me, is that Shaw Wallace is a composite and relatively large commercial organisation with full time directors and senior executives like president, vice-president and as a group executive council to take and finalise policy decisions. He emphasised this last aspect of the matter because he contends that in this unfortunate dispute, defendant No. 3 is the main target with the charge being levelled against him that he single-handedly manipulated the transfer of the shares of BDA. Shri Manohar pointed out that one needs to look to the status of persons who formed the board of directors, the group executive council, etc., for purposes of establishing as to whether it is at all possible for one individual, even if he so desired, to have subjugated the collective intellects and to have got all these senior experienced knowledgeable people to act in a fraudulent and dishonest fashion. The second argument proceeds on the footing that there is a chain of actions spread over a period of time, all of which are documented and from which it unmistakably emerges that there is no justification for the charge against defendant No. 3. Towards this end, he points out from the records that a meeting of the group executive council of Shaw Wallace was held on August 27, 1989, which was about the year after BDA was acquired by Arunava Investments Ltd. This meeting was attended by 15 senior executives of Shaw Wallace, some of whom were A. S. Malik, T. S. Venkateswaran, J. Bhargava, K. Srinivasan, S. G. Mazumdar (company secretary), the first four who are at present directors of Shaw Wallace. It was in this meeting that the move was initiated to de-subsidiarise the first defendant-company and T. S. Venkateswaran was directed to examine and record the pros and cons of the decision which was sought to be taken for a specified purpose which I have referred to earlier. Neither the resolution nor for that matter the plaint so much as ascribes any role to the third defendant. Thereafter, there were meetings of the group executive council in September and November, 1989, and we have on record a note dated March 21, 1990, addressed by J. Bhargava recommending the initiation of steps to de-subsidiarise BDA. What is significant is that there is no reference in this note that BDA was to continue within the group after it was delinked or even that it was to continue as a tie-up unit. The

third defendant put an endorsement on this note that K. Srinivasan and T. S. Venkateswaran should comment on it. On March 26, 1990, K. Srinivasan addressed a note to the third defendant in which he stated that Shaw Wallace did not achieve any positive advantage as a result of BDA being a subsidiary, but, on the contrary, that Shaw Wallace had a number of negative factors and that, therefore, there was a strong case for the unit to be outside the Shaw Wallace group and that it should be done fairly soon. Next we have on record the minutes of the meeting of the group managing committee dated April 3, 1990, and the most significant aspect of the matter is that the meeting was presided over by M. R. Chhabria, chairman of Shaw Wallace. The third defendant was present at the meeting, but the aforesaid five persons had also attended. It was in this crucial meeting that the final decision was taken to desubsidiarise BDA and Mr. J. Bhargava was authorised to initiate proper action and implement the decision by the end of June, 1990.

46. On the basis of this material, Shri Manohar contended that it was absolutely false to allege that the decision was clandestine or sudden because it is shown to have been taken in the normal course of business, that the reasons for the decision are set out in the notes and documents and that it is equally wrong to allege the second charge, namely, that it was put through at the instance of defendant No. 3. He stressed the fact that the final meeting on April 3, 1990, was presided over by M. R. Chhabria and not defendant No. 3 and concluded by submitting that the learned trial judge has unfortunately mixed up the reference of Nagarjuna Fertilizers with the present transaction.

47. To my mind, the sequence of events clearly discloses that for business economic and tax reasons, a collective decision was taken to sell out the interests that the Shaw Wallace group had in BDA. I would have thought it more appropriate to consciously use the word "sever" because nothing in the resolutions, minutes or notes would justify the conclusion that this was a "paper transaction" in order to overcome the Central excise difficulties and to get the liquor manufactured at a unit where the production costs were very low or for that matter that it was decided to retain the umbilical cord of control and communication between the two. Had this intention been there, nothing would have prevented the records from indicating it. The omission is not an act of negligence but, on the other hand, is eloquent of the true complexion of the transaction, namely, that BDA, which was a small unit and in any event not doing well, was to be amputated completely. No other conclusion is permissible on this record. The transaction is completely documented and, to my mind, neither affidavits nor oral evidence to the contrary can, at any time, get away from what is there in black and white.

48. The defendants have then pointed out that the plaintiff-company for commercial reasons in the meeting of its board of directors dated April 24, 1990, resolved to assign the three brands in favour of BDA for a total consideration of Rs. 15,00,000, at Rs. 5,00,000 per brand. The minutes of this meeting amplify

one important point, namely, that even though defendant No. 3 was a member of the board he was not a party to this resolution. This meeting was chaired by A. S. Malik who was present in all the meetings of the group managing committee of Shaw Wallace.

49. There is another development that took place even before the aforesaid resolution was acted upon in so far as the board of directors of Arunava Investments Co. Ltd. met on May 4, 1990, and resolved to transfer the 25,000 equity shares of Rs. 10 each of BDA at their face value and that an application be made to the Central Government in terms of section 30(c) of the Monopolies and Restrictive Trade Practices Act, 1969. It is a matter of record that Arunava Investments Co. Ltd. still continues to be a subsidiary of the plaintiff-company and Shaw Wallace who not only have control and access to its records but who are required to annex the audited balance-sheet to the annual balance-sheet of Shaw Wallace, under the provisions of the Companies Act. One of the directors present at this meeting is S. Roy, who happens to be the individual who has declared and affirmed the plaint. There is neither any reference to the resolution in the plaint nor even an averment that the resolution be declared illegal or void, whereas at a subsequent point of time, the contention is put forward that S. Roy was not present at the meeting. The minutes indicate that he was very much present and it is for this reason that the plaintiffs have questioned the genuineness of these minutes, the presumption of correctness u/s 195 of the Companies Act notwithstanding, and they have sought to contend that no such meeting was held nor was such a resolution passed. These events pertain to May, 1990. The record indicates that the transfers had, in fact, taken place and if there was any truth in the plaintiffs' case, one would have expected an immediate and a strong re-action, the absence of which would establish that at this late stage, finding no other means of attacking the transfer, a virtually false ground is made out that Roy had not attended the meeting and that, therefore, the minutes and the resolutions are both bad. S. Roy of all people is not a stranger to this litigation and even if he had not done so earlier in April, 1992, when this very issue was challenged and was the central pivot of the litigation, he could never have omitted mentioning his absence at the meeting unless, as is more than evident, this story is pure concoction.

50. There is another angle from which the defendants' case may be tested and which ultimately lends credibility to it. Pursuant to the resolution dated May 4, 1990, of Arunava Investments Co. Ltd. an application dated May 8, 1990, was drawn up addressed to the Central Government seeking permission for the transfer of the 25,000 equity shares of the first defendant-company and this application is signed by one Sadashivan, who admittedly was a director of Arunava Investments Co. Ltd. and was present in the meeting of May 4, 1990. It is too much to assume that Sadashivan would sign such an application unless the meeting was, in fact, held and the resolution authorised him to do so. The application was actually presented on May 24, 1990, and the proposed transferee is one In trust Securities and Investments Pvt. Ltd., the shareholders and

directors of which are one Mr. and Mrs. Khairulla. One needs to take stock of the fact that Arunava was an investment company and the board had decided to disinvest the aforesaid shareholding in order to release the liquidity for reinvestment with a prospect for faster return of investments. Much has been said with regard to the value of the share, the sale price of which was of the face value of Rs. 10 each. To the application, an explanatory statement was attached determining the break-up value of the share on the basis of the latest balance-sheet of defendant No. 1-company as on March 31, 1989, and which lists the value of the shares at Rs. 3. This valuation was done by Arunava's chartered accountants and one has every reason to presume that they were not only qualified and experienced professionals but that they went about their job correctly. This was obvious from the fact that as a corporate unit, BDA was not doing at all well, nor did it possess any appreciable assets and it is, therefore, not surprising that similar to the decision of the appellant-company Shaw Wallace which had decided to sever it from the group Arunava, in its turn, had decided to get rid of the shares. I do not need to consider this matter in any depth because the validity of the transaction has not been disputed in the plaint nor is a declaration asked for striking it down. It would be of some significance, however, because Shri Venugopal on behalf of the respondents argued at considerable length that BDA is a virtual gold mine, that a simple arithmetical calculation would indicate that the value of the share cannot be less than Rs. 90 and that, in these circumstances, if it was sold for a ridiculously low price, it is liable to be looked upon with suspicion by the court and, in any event, the transfer cannot be approved. The principal hurdle in Mr. Venugopal's way is the fact that it is not the subsequent appraisal of BDA by virtue of its performance and improved conditions that matters but the fact that Shaw Wallace on its own calculations and records have listed the share price as Rs. 3. The plaintiffs at least would be totally estopped from contending anything to the contrary and in the background of that record, the price of Rs. 10 per share can, under no circumstances, be regarded either as inadequate or improper.

51. In relation to this transfer, apart from the charge that defendant No. 3 is alleged to have been instrumental, which conclusion does not emerge from the record, it needs to be pointed out that he was in no way concerned with the management and affairs of Arunava Investments Co. Ltd. except that it was on paper a subsidiary of Shaw Wallace. The record does not indicate that defendant No. 3 was a party to the important resolution dated May 4, 1990, nor is there anything on record to connect him with the application moved to the Central Government u/s 30(c) of the Monopolies and Restrictive Trade Practices Act, 1969. Admittedly, he is not a director of this company. A vague allegation has been levelled against defendant No. 3, which was one of the principal planks of Shri Venugopal's argument, that at all stages he has acted in breach of his fiduciary responsibilities as he was at the relevant time managing director of Shaw Wallace. On this record, I need to point out that the plaintiffs appear to have overlooked the fact that defendant No. 3 was not a director of Arunava

Investments Co. Ltd. and that in his capacity as director of the principal company, it is well-settled law that he holds no fiduciary relationship vis-a-vis its subsidiary. This last aspect is condition precedent. The charge must be supported by positive averments and specific evidence in support thereof, and it is only in these circumstances that the burden of proof may shift to the director against whom such charges have been levelled. I see no justification in this allegation, even after examining the case from every angle adduced by Shri Venugopal.

52. The defendants have placed reliance on the fact that the Central Government upon receipt of the application and after examining the particulars therein by its communication dated July 18, 1990, accorded approval to the transfer of the shares of BDA and it is only upon this approval that further steps for the transfer of the shares came to be taken. Certain consequences flow from this action in so far as the Central Government is presumed to have examined the contents of the application and the accord of approval is virtually the imprimatur of the designated authority to the transfer. This is not to be treated as routine because, to my mind, where the transfer is challenged in a court of law, it would be the duty of the court to examine every facet of the matter and where it is demonstrated that the transfer has been approved by no less an authority than the Central Government, it would be virtually impossible to question that transfer on the basis of some belated allegations that are virtually floating in the air.

53. On behalf of the defendants, Shri Manohar has relied heavily on a note dated July 23, 1990, signed by the company secretary of Shaw Wallace, Shri S. C. Majumdar, which unfortunately has been completely overlooked by the learned trial judge. Whereas it is the case of the plaintiffs that the transfer was clandestine and that the plaintiffs and Shaw Wallace were unaware of it, this note states that unless a demand draft of Rs. 2,50,000 was obtained from In trust Securities and Investments Pvt. Ltd. the share certificates and the transfer deeds must not be handed over to them. The note states that the matter is urgent and it further goes on to state that upon completion of the transaction, the necessary application would be made to the Department of Company Affairs for its deregistration under the Monopolies and Restrictive Trade Practice Act, and, more importantly, that BDA will cease to be a subsidiary of the group effective from the date of payment of the aforesaid shares is received by Arunava Investments Co. Ltd. This last recital demolishes the plaintiffs' case that the transfer regardless, BDA was to continue for all times within the Shaw Wallace group. The record indicates that the share money was received by Arunava on August 3, 1990, the date on which the shares were transferred to In trust Securities and Investments Pvt. Ltd. and the legal effect of this transaction would be that on and from August 3, 1990, BDA stood desubsidiarised from Shaw Wallace. Unusual as it may seem, normally one expects the plaintiffs to establish their case in support of the relief claimed. Ironically, we have a situation whereby the plaintiffs have established nothing, the defendants have established their defence to the hilt and the tragedy of the situation is that the plaintiffs leave the court with almost a decree against the defendants. Obviously, something was seriously

wrong somewhere.

54. As far as the chronology goes, the next major head of dispute centres around the right, title and interest that is claimed by BDA in respect of the three brands of liquors. The record as far as this transaction is concerned starts with the document dated August 30, 1990, which is an agreement between the plaintiff-company and BDA for assigning the three brand names for a consideration of Rs. 15,00,000 in terms of the board resolution of the plaintiff-company dated April 24, 1990. It is of some significance to note that the agreement was preceded by a regular board resolution, and I refer to this at the initial stage because Shri Venugopal had occasion to contend that this was a virtual paper transaction of no significance, but only for purposes of the bare record and, more importantly, that there was a complete understanding on both the sides that the assignment was not to be acted upon. Shri Venugopal's client, namely, Shaw Wallace, happens to be a large corporate outfit and a very old and established one. Under these circumstances, it is a little disturbing when a body of this stature puts forward a plea before a court of law that board meetings, minutes of such meetings, validly drawn-up and executed agreements, deeds of assignments and such other legal documents executed for lawful consideration must all be brushed aside under the cover of an agreement that this was an arrangement of convenience for economic reasons and that, therefore, a court should ignore all of them. I shall presently examine the question as to whether at all, with this mass of unimpeachable and conclusive evidence, any legal forum would be justified in taking such a view and, more importantly, whether at all it is permissible.

55. Pursuant to the agreement between the two companies dated April 24, 1990, a deed of assignment in respect of the three brand names came to be executed and was duly registered with the Sub-registrar on February 26, 1991. The consideration of Rs. 15,00,000 that was agreed upon was paid by a bank draft duly acknowledged by the plaintiff-company which factor is one of consequence because the argument canvassed on behalf of the plaintiffs was that it was an internal and a sham arrangement arrived at in order to throw dust in the eyes of the excise authorities and something very domestic within the members of the corporate group. If that were so, and if it were a mere paper transaction or a camouflage for a working arrangement within the group, there would not have been the physical transfer of Rs. 15,00,000, which is a relatively large amount of money. What really clinches the issue is something else, namely, the wording of clause (7) of the deed of assignment, which contains a negative covenant to the effect that as and from that date the plaintiffs shall not use the trade marks in question. Quite apart from the time factor, namely, that the transaction was completed a good two years prior to the plaintiffs' raising the issue challenging the assignment for the first time before the court, one needs to necessarily examine the question as I shall presently do from a slightly different angle. The documentary evidence before me fully, completely and conclusively establishes that the assignment had taken place in February, 1991, that it was accompanied by the requisite sanctions such as board resolutions, etc., that it was duly

registered and that it was for a lawful consideration and in these circumstances, there can be no going back from the finality of that transfer.

56. The real clue to the dispute can be gauged from the elaborate arguments advanced by Shri Venugopal in respect of these brands, which started with the contention that the brands in question had been propagated and built up in the market by the plaintiffs-company essentially with the backing reputation and marketing expertise and status of the Shaw Wallace group and that the investments under these heads as far as the brands in question are concerned was nothing less than Rs. 10,00,00,000 to Rs. 11,00,00,000. Shri Venugopal drew my attention to various figures in the annual report and the balance-sheet of the Shaw Wallace group of companies as also to some other material on record to indicate that this amount of money had, in fact, been spent. The defendants have seriously contested this position. On the contrary, it was their case that BDA itself was not doing well which was why it was axed and that it was not more than a gesture of charity to let it go with the three brands which at that point of time were also anything but market leaders. With regard to his last aspect of the matter, I do not find on record any reliable material on the basis of which it can be concluded that the three brands were, in fact, at the top of the market or that they could be equated with a veritable gold mine as Shri Venugopal described them. The few figures which I had occasion to look at for the earlier period prior to the assignment, such as the year 1989, do not support the view that these three brands were, in fact, real money-spinners. On the contrary, they appeared to be just another set of run of the mill products and it was for this reason that the consideration for the assignment was fixed at Rs. 15,00,000 which, to my mind, having regard to the 1989 situation, was not at all a modest figure. In fact, it was quite fair and reasonable. The position did alter to a considerable extent in the next two years during which period these brands which belong to BDA did, in fact, do very well in the market and that was obviously the point of time at which the plaintiffs obviously regretted having parted with these brands and resorted to the present litigation in a desperate attempt to get hold of them again. This, in fact, throws up the case of the plaintiffs in very poor light and lends the real key to the present dispute. Whereas an effort was made all through to argue that the defendants have grabbed a company and the best of the brands that belonged to the Shaw Wallace group, I find that what has been attempted is exactly the opposite. Defendant No. 3, who has been attacked by the plaintiffs as being the villain of the piece, does not appear to have figured prominently anywhere in these transactions, nor do I find anything devious or improper that can be attributed to him. The complexion of these transactions unmistakably indicates that they are pure, simple, commercial transaction and that one cannot read in anything underhand in these matters. What literally sets the matter at rest, apart from the conduct of the plaintiffs who accepted the transaction for two long years before they woke up from their slumber is that there is unimpeachable, conclusive documentary evidence which establishes the correctness of the defendants' case

on the one hand against an unsustainable, inconsistent and wholly oral challenge on the other. Obviously, the former will have to be upheld.

57. We then come to the net set of transactions entered into between the plaintiffs and the first defendant which are dated April 1, 1991, the first being a marketing agreement between the plaintiffs and defendant No. 1 and the second is an agreement under which the plaintiffs agreed to make available the personnel and facilities for effectively implementing the marketing agreement. Shri Manohar has advanced the submission that BDA had just about been launched on its own and that, under these circumstances, it necessarily welcomed whatever assistance was forthcoming at the point of time from the plaintiffs who were hitherto almost in the position of a parent company. The plaintiffs, however, had their own interest to secure and it was not out of any sense of goodness or helpfulness that they entered into this agreement. Shri Manohar contended that in the initial stages, it is true that BDA welcomed the assistance by way of personnel from the plaintiff-company, but that it is absolutely wrong on their part to create the impression that through such an arrangement that the management and control of BDA was with the plaintiffs. Shri Manohar submits that BDA was essentially a manufacturing unit and that some persons well-versed in the day-to-day operations were undisputedly provided by the plaintiffs, but that the court must take serious note of the fact that all these persons, namely, the entire staff deputed by the plaintiff-company was officially taken on the pay-rolls of defendant No. 1 company from April 1, 1991, itself and that their salaries and expenses were to the account of BDA as per the provisions in the agreement dated April 1, 1991. Shri Manohar emphasised that this last aspect of the matter would mean that these employees were virtually transferred to BDA because the payment of their salaries and all other benefits by BDA would create the relationship of master and servant between the company and these employees. The argument that they were the plaintiffs' employees is, therefore, according to him, factually incorrect. To my mind, this entire controversy is inconsequential and of no significance-it is not unusual for persons to be deputed from one concern to another for specific reasons, but that would in no way affect the status or management of the recipient.

58. Interlinked with this argument, Shri Manohar points out that taking advantage of the infancy of BDA, the plaintiffs entered into a marketing agreement whereby the entire production of BDA was sold by the plaintiffs and, in other words, the virtual cream out of all the efforts put in by BDA went to the plaintiffs apart from the fact that they took all the liquor on credit which BDA just could not afford. The plaintiffs for their own convenience, therefore, offered the bank guarantee so that BDA could draw against it; whereas, in fact, the plaintiffs were the real beneficiaries and that the plaintiffs are attempting to make capital of the fact that they had provided the bank guarantee to the extent of Rs. 5,50,00,000 to the Central Bank of India for the loan facilities to be availed of by defendant No. 1-company. This bank guarantee was furnished by virtue of

resolution of the plaintiff-company dated April 26, 1991, which was subsequent to the entering into for the marketing agreement. Shri Manohar was quick to illustrate that there was no risk or liability whatsoever to the plaintiffs because they were fully secured by virtue of the huge liquidity, namely, the recoveries from the sale proceeds of everything manufactured by BDA and, more importantly, by the fact that the bank guarantee was only a reassurance to the Central Bank of India, but did not involve any risk to the plaintiffs because BDA was a running unit, the company possessed its own assets and the subsequent events do illustrate that the bank guarantee was never invoked nor were the plaintiffs required at any time to pay any money on this account. It is quite evident, in these circumstances, that the plaintiffs have presented half-truths to the trial court. The bank guarantee issue does not assist the case of the plaintiffs one single bit.

59. Shri Manohar then demonstrated to me that the plaintiffs had contended that they had incurred expenses in marketing the brands, that they have conveniently suppressed the fact that this was not to their own account. On the contrary, under the terms of the marketing agreement, which are rather one-sided, the plaintiffs were to hand over the sale proceeds to BDA after taking their expenses and commission - the latter being rather hefty. As far as this head was concerned, Shri Manohar was quick to insist on pointing out that there is nothing on record to indicate that defendant No. 3 was instrumental in either passing the resolution in question or that he had a hand in any of these arrangements.

60. Dealing with the last aspect of the matter first, it is true that the plaintiffs have contended, though without much substance, that defendant No. 3 had carefully and systematically planned all these moves. I do not need dwell on this aspect of the matter because they were simple incorporate agreements and one must take cognizance of the fact that BDA had just about separated from the Shaw Wallace group, it had virtually worked in association with the plaintiffs up to that point of time and that, therefore, there was nothing unnatural and improper about these reciprocal arrangements. Shri Venugopal has devoted considerable time towards several references from the record to indicate that BDA on its own was neither independent nor could it have functioned that way for a single minute and that it was virtually, even after the transfer of the shares, wholly and completely dependent on the plaintiffs. He stated that the strongest indication in support of the plaintiffs' case that the management and control of BDA was with the plaintiffs is completely established from the fact that pursuant to the agreement, the requisite personnel were made available by the plaintiffs. Shri Venugopal elaborated on this and he submitted that even as far as the technical know-how was concerned, in the words, the making of the three brands of liquors, it was not only the expertise and the professional experience but the techniques and, more importantly, the various other inputs that went into the production of the quality control and every stage of production came from the plaintiffs. This last aspect was objected to by learned counsel on behalf of the defendants, who contended that the plaintiffs are not and never were a

manufacturing unit and that, therefore, even if they sent some of their administrative staff it was impermissible to contend that every single input came from the plaintiffs. Shri Venugopal also contended that BDA has wrongly created the impression that the employees concerned had become the employees of defendant No. 1-company and that it was wrong to contend that they were functioning as employees of the plaintiffs. The argument is a novel one in so far as Shri Venugopal submitted that, admittedly, they were employees of the plaintiffs prior to April 1, 1991, and that they were not reappointed after their services were terminated by the plaintiffs. In substance, Shri Venugopal contends that these employees were only on deputation and that, therefore, since they were working physically for BDA, it was only natural that BDA had to pay their salaries during that period of time.

61. The short point that arises for determination from this state of affairs centres around the question as to whether, in these circumstances, the conclusion arrived at by the trial court that BDA was effectively under the management and control of the plaintiffs as on the date of the filing of the suit is justified. The marketing agreement cannot lead to any such conclusion because it was a plain and simple commercial arrangement whereby the plaintiffs were to sell the products of BDA, retain a certain amount of money and hand over the rest to BDA. This would not give BDA the status of a subsidiary or an interlinked company. On the contrary, the reverse position would be evident in so far as if BDA was effectively still part of the group as in the old set-up prior to the transfer of the shares and if it was effectively managed and controlled by the plaintiffs, no such formal agreement would have been necessary because they would have worked on the basis of a domestic understanding. Again, I do not see any special significance in the plaintiffs furnishing a bank guarantee of the Central Bank of India because that transaction was a sequel to the marketing arrangement. The value of BDA's production was relatively high, the earnings to the plaintiffs were of very generous proportions and under normal circumstances, as in the commercial world, the plaintiffs would have had to furnish substantial deposits against the entire production handed over to them and, to my mind, they got away lightly by furnishing a bank guarantee at minimum expense and virtually no risk. In the commercial world, bank guarantees are even provided for a prescribed payment and, therefore, I am unable to accept Shri Venugopal's submission that the plaintiffs would never have given the bank guarantee to BDA had it been independent, but did so only because it was effectively still part of the group. Similarly, as far as the staff were concerned, there was nothing unusual about the arrangement. The plaintiffs, who earned huge amounts out of the sales, were naturally desirous of getting the best out of BDA and for this purpose, to start with, if they made the requisite personnel available this action was in their own interest because it paid them rich dividends on the sales of the products. The real aspect of significance is that had the old status of BDA continued, the staff and officers would have easily moved within the group and if they had been deputed from one company to the other, their salaries would have

continued with the plaintiff-company as their status cannot be changed. But in this instance the payment of their salaries by BDA is the strongest evidence to support the view that since BDA was no longer a part of the Shaw Wallace group but had assumed the status of an outsider that it was specifically provided that they would have to take over the staff which they, in fact, did. To my mind, before a conclusion can be reached that the management and the control of BDA effectively vested in the plaintiffs, it will have to be demonstrated that all matters of administration, policy and decision making and the day-to-day working were under the supervision and control of the plaintiffs. We are in the present instance concerned with two corporate entities and there is nothing from the record before me to indicate that BDA did not have a board of its own and, furthermore, that the board of the plaintiffs was, in fact, administering BDA. Unless this can be demonstrated, which has not been done in spite of voluminous material being placed on record by the plaintiffs, it is completely and totally impossible for the plaintiffs to support a conclusion that BDA was still interlinked to the plaintiffs or the Shaw Wallace group or that the management and control of defendant No. 1-company was still under either of those bodies. Unfortunately, the learned trial judge failed to analyse the material placed before him and appears to have acted on statements that are far from true, in the pleadings, that BDA which was admittedly once part of the Shaw Wallace group and functioning under the umbrella of the plaintiffs was still in the very same position at the point of time when the plaintiffs moved the court in April, 1992.

62. That brings us closer to the circumstances that are alleged against the defendants as being the immediate provocation for the present litigation. I have, in some detail, dealt with the developments that took place in the year 1990-91 whereby the status of BDA had changed from being one of the associate concerns of the Shaw Wallace group to that of an individual corporate entity and that it was also the full-fledged owner of the three brands that had been remnants of the old set-up or rather the shackles of some sort had not been completely divested in so far as the constitution of the board had not appreciably changed and Shri Manohar points out on behalf of the defendants that for its own administrative reasons, it became necessary to undertake a change so that the company could manage its own affairs through a board of its choice. For purposes of reorganising the board, a meeting of the board of directors of BDA was held on March 9, 1992, in which resignations of three directors, Shri A. K. Jain, Shri R. L. Jain and Shri R. Ramani, were accepted and new directors of the choice of defendant No. 1 came to be appointed as additional directors, one of whom was the third defendant. In a subsequent extraordinary general meeting of the company held on April 9, 1992, the board was invested with the authority of electing a chairman. In a meeting of the board of the company held on the same evening, defendant No. 3 was appointed as chairman of the board and, acting in this capacity, he appointed the fourth defendant as managing director and issued the circular dated April 9/10, 1992, the validity of which is contested in the present suit.

63. The trial court has unfortunately glossed over what according to me was the real background for the institution of the present suit. The plaintiffs have adopted a sanctimonious approach whereby they have made out that defendant No. 3, through his actions on April 9, 1992, virtually left the plaintiffs with no option except to seek legal redress and in this context what is, in fact, pleaded is that this was an attempt to upset the existing arrangement that then existed. Having regard to the volume of material suppressed from the trial court at that stage, it was not difficult for the plaintiffs to project the image that they were the aggrieved parties, taking maximum advantage of the fact that BDA originally was one of the Shaw Wallace companies and the trial court was made to believe that the old situation, in fact, prevailed and was sought to be unjustifiably disturbed. Undoubtedly, if this was true, the defendants would be put in the wrong box and it was on the basis of such a projection that the ad interim orders were obtained. An interesting document, and a very important one, is the letter of resignation submitted by BDA's officers dated April 1, 1992. I shall have occasion to deal with this document subsequently, but suffice it to say that it clearly exposes the true state of affairs and what made it virtually necessary for defendant No. 3 to take an urgent and immediate decision to stabilise the management and functions of BDA regardless of what had happened. It is inconceivable to accept that the en masse resignations on April 1, 1992, were voluntary or that they were not inspired and there is no doubt in my mind, after a thorough investigation, that this action was instigated by the plaintiffs and that it was a virtual plot in order to create an internal revolt and virtually hijack the company. This, unfortunately, is the true complexion of the sequence of events that immediately preceded the filing of the suit and it was this action that was to be used as justification for the invocation of the court assistance. Viewed at in this light, the action taken by defendant No. 3 assumes an entirely different complexion and is, in fact, not only explained but rendered fully justified.

64. I need to refer to one aspect of some significance that has taken place during this period only because it concerns Mr. S. Roy, an employee of the plaintiff-company and the person who has incidentally affirmed the present plaint. He held a power of attorney of the first defendant-company which came to be revoked on April 9, 1992, notice of which was published in the leading newspapers on April 19, 1992. The record indicates that it was only after the meeting of the first defendant-company on April 9, 1992, that steps were taken by Shaw Wallace from April 11, 1992, which is of some significance, when the powers of defendant No. 3 as the managing director of Shaw Wallace were withdrawn even though there is a furious challenge in this litigation to the earlier set of actions concerning BDA which, as I have illustrated, were protracted over a period of time where collective decisions, all of which are documented and in respect of which considerably large sums of money have passed, but none of these transactions were at that time questioned. At this stage, I need to also deal with a vital part of the record which has been completely overlooked by the trial court while considering the status of BDA. We have on record a document,

namely, the annual report and the balance-sheet of Shaw Wallace as well as Arunava Investments Co. Ltd. for the year 1990-91 ending on March 31, 1991, which as per requirements of law had to be tendered as at the annual general meeting of Shaw Wallace in keeping with the provisions of the Companies Act, appending therewith the balance-sheet of its subsidiaries. Shri Manohar made capital out of the fact that the name of defendant No. 1-company had been removed from the list of subsidiaries of Shaw Wallace in this balance-sheet and in the balance-sheet of Arunava Investments Co. Ltd., the shareholding of BDA Ltd. as well as one more company, Vinedale Ltd., which are to be found as on March 31, 1990, have been deleted as on March 31, 1991. These balance-sheets have been signed by the chairman of the group, Shri M. R. Chhabria, and the same applies to the report. Under the statutory provisions of the Companies Act, the balance-sheet has to be signed at least by two directors and has to be approved at the annual general meeting. In this case, these requirements have been fulfilled. The inevitable consequence that emerges from this record is that the general body of the shareholders of both, Arunava Investments Co. Ltd. as well as Shaw Wallace, had the knowledge of desubsidiarisation of defendant No. 1-company from Shaw Wallace. Short of the present challenge, it is quite significant that neither the plaintiff-company nor Shaw Wallace nor Arunava Investments Co. Ltd. took any action or any steps if, as is now contended by them, the process of desubsidiarisation was clandestine and fraudulent. I have principally referred to this document because it happens to be the most reliable and official record of the plaintiffs and the Shaw Wallace group prepared, verified, signed and published by them and, in these circumstances, nothing could bind them more than their own evidence. It is this very material, unfortunately, that fully and completely establishes not the plaintiffs' case but the case of the defendants. That brings me to the forceful allegations made by Shri Manohar at the Bar that these facts were within the special knowledge of the plaintiff-company as well as Shaw Wallace and were kept back from the trial court when the ad interim ex parte injunction was obtained on April 16, 1992. This was one of the strongest grounds on which Shri Manohar contended and quite judiciously that the plaint must be construed as a fraud on the trial court.

65. Shri Venugopal reacted equally sharply and he contended that the basic pleadings are there, that all this material is a matter of evidence, that, in fact, his clients were completely taken aback by the unprecedented "revolt and declaration of independence by defendant No. 3" and that as the plaint itself indicates, it had to be hurriedly drafted and filed. Shri Venugopal objected to the charge that there was deliberate suppression of facts and he maintained that the mass of material that was subsequently produced before the court could never have been placed before the trial court at the earliest point of time and in particular in the circumstances in which his clients were placed. I shall deal with the main plank of Shri Venugopal's arguments whereby he contended that defendant No. 3 who held the post of managing director of the Shaw Wallace group right through the period turned out to be a traitor in their camp and that

he was systematically planning, plotting and working towards snatching away some of the companies, such as BDA. According to Shri Venugopal, nobody had ever suspected that defendant No. 3, who is the real brother of Shri M. R. Chhabria, would, at any time, turn a traitor. In these circumstances, he contends that if at all references of the aforesaid type did appear in the records that it was not surprising and that it was only on April 9, 1992, with a sense of sudden shock, that the plaintiffs and everybody else in Shaw Wallace realised what the implications were.

66. I find it impossible to even take a charitable view of what has happened in this case because there is no manner of doubt that it is not a few stray facts or documents that have been kept back from the trial court, but I find after the three-week hearing of this proceeding from day to day that virtually everything that mattered an everything that was of necessity was absent from the plaint. I refuse to accept that this was because of exigencies of time or that it happened accidentally. These are facts that stare one in the face, and if any of this material was placed before the trial court at the earliest point of time, it would have been impossible for the plaintiffs to have obtained the ad interim order. In these circumstances, the one and only conclusion is that the material was deliberately suppressed. I need to add that it was not the ethical consideration of being fair with the court which is on a higher plane that I am concerned with, but I need to take a serious view of what has happened in so far as it was incumbent on the plaintiffs to at least comply with legal obligations. Though Shri Manohar appeared to be harsh when he insisted that a fraud had been played on the trial court, after a very mature consideration of the case, I am inclined to agree with that observation. It is in this background that the question arises as to whether at all, devoid of every other consideration, the plaintiffs are entitled to a discretionary relief in the form of an injunction. A lot of case-law was cited on both sides with regard to the principles that need to be observed in respect of the pleadings. I do concede that some degree of allowance needs to be allowed and that laxity of approach is sometimes required, but there can never be justification in a case where there has been wholesale suppression. Even in a case where reasonably good material is relied on, a court would refuse a relief to a party with tainted hands. This last finding alone is sufficient to completely disqualify the plaintiffs from any reliefs in this proceeding,

67. I have had occasion to observe from time to time that the main attack in this proceeding is directed against defendant No. 3. Much was said at the Bar on both sides, which I would prefer to avoid dealing with in this judgment because it concerns a furious family dispute, resulting in hostile relationships and the inevitable sniping at each other. What I am, however, required, as of necessity, to deal with is the legal head which has been repeated at some length, namely, the accusation that there is a breach of a fiduciary capacity on the part of defendant No. 3 in so far as he was the managing director of Shaw Wallace right through the period 1990-91 and up to 1992 when everything that is the subject-matter of this dispute had taken place. I shall deal with this aspect under two

brief heads. In the first instance, Shri Manohar pointed out to me from the record that there are virtually no pleadings to justify this charge. A stray reference here or there would not answer the definition of even general allegations. The law on the point is more than well-crystallised and this is probably the only field in which the principles of civil law and criminal law have merged completely. One does not need to cite elaborate case law, but ever since the decision of the Privy Council in the case *A. L. L. Narayan Chetiyar v. Official Assignee* AIR 1944 PC 93, the position has been quite unambiguous, namely, that where a fraud or breach of trust are alleged as in a criminal trial, the charge will have to set out full, complete and specific particulars in the form of facts, dates, incidents and allegations and that there can be no compromise with regard to this requirement. Shri Manohar submitted that even in the case of an allegation of fraud or misconduct relating to a director, the party making the charge and who is in possession of the particulars of the fraud is obliged under Order 6, rule 4 of the Code of Civil Procedure, 1908, to set out the full particulars of such objective facts. It is impermissible to get away with mere vague allegations in the plaint. It is true that Shri Venugopal accepted that there is no quarrel with regard to the requirements of law, but he maintains that in a case of the present type where the broad particulars have been averred, that the details were a question of subsequent evidence and substantiation and he contended that the plaintiffs have placed on record voluminous records from which the plaintiffs are in a position to completely bring home the original accusation. This is virtually begging the question.

68. The requirements of law in a case where fraud and breach of trust are pleaded do not have to be restated and every judicial decision on the point lays down that a party approaching the court with such a charge simply has fully substantiate it with full facts. For good reason, the law does not permit the procedure which Shri Venugopal's clients have tried to adopt, that you level an accusation and in common parlance state that you will prove it later on. This puts the defendants to an impossible handicap and makes the task of the court even worse because in the absence of the requisite material, the court cannot act on the charge and as the plaintiffs begin to disclose their cards, the defendant who in the first instance did not know what case he has to meet is taken by surprise the inevitable result is the type of situation that we are faced with in the present litigation, namely, that the plaintiffs come to court with no case and thereafter burden the record with masses of material and the defendant cannot be precluded from countering it in the same manner. This is precisely how the record in the present case has grown in volume, out of all proportion from time to time and today almost resembles the traditional octopus. The legal position being quite unambiguous, it is most unfortunate that the learned trial judge overlooked these basics and went to the extent of recording that the charges under these heads were established. Even on an evaluation of the material which I have done, since it was all placed before the court, such a conclusion is unwarranted, but that exercise, to my mind, could have been saved had the trial

court adopted the correct position in law in having refused to permit any material under this head to be produced by the plaintiffs at a later point of time and to have recorded the conclusion that they are precluded in law from agitating this head. I am required to repeat once again that even though that was the correct course to follow, I have been required to do otherwise by re-examining all the material under this head in so far as the learned judge having recorded an adverse finding, it was necessary for me at the appellate stage to decide as to whether that material justifies any such conclusion. Though not strictly material, Shri Manohar stated at the Bar that defendants Nos. 1 and 3 are being subjected to litigation in different forums on the same record that is before this court and that, therefore, in order that judicial time be saved, this court should apply its mind, hear both the parties and decide the issue once and for all. That briefly is why this lengthy exercise became necessary. That the plaintiffs have miserably failed to substantiate the charge against defendant No. 3 would be putting it mildly.

69. It is now necessary for me to deal with another unusual aspect of this case which concerns the exercise on the part of the plaintiffs in disputing the minutes of the meeting of its subsidiary Arunava Investments Co. Ltd. dated May 4, 1990, as also disputing the minutes of the board meeting of BDA dated March 9, 1992, and April 9, 1992. At the very outset, I found it rather unusual that a challenge of considerable seriousness was levelled on these counts even though there were no pleadings in the plaint to that effect. What was really surprising was that as far as the minutes dated May 4, 1990, relating to Arunava Investments Co. Ltd. are concerned, not only had a period of two years elapsed but, more importantly, the various steps that have been discussed by me earlier had all been implemented as a follow-up of those minutes in spite of which the very validity of the minutes has been called into question. Unfortunately, there does not appear to be any consistency or direction when it comes to challenges and accusations as far as the plaintiffs are concerned, but, again, the trial court permitted this and adjudicated on it which entitled learned counsel at the hearing of the appeal to argue at considerable length under these heads, the inevitable consequence being that the issues in question have to be decided. I have had occasion to refer to the provisions of section 195 of the Companies Act, which attaches a presumption as to the validity of the minutes of the meeting of the company and the settled law is that the minutes in the books are received, though not as conclusive yet as evidence of resolution of the proceedings. At an interlocutory stage, this can be the only correct approach. If a controversy is raised, evidence of a conclusive nature would be a must, but on the present record and that too at an interlocutory stage merely because the validity or genuineness of the minutes are called into question, the trial court was not justified in expressing doubts or discarding the minutes in question. The ground of challenge themselves have been looked at by me and they are so weak and hollow that it is unnecessary to burden this judgment with them since in law those records are sacrosanct. If the heads of challenge were very substantial or if

they had been supported by conclusive material, then alone would there have been justification to express doubts. The allegations in the present case are frivolous, virtually hanging in the air and are devoid of substance and no cognizance can be taken of them.

70. As regards the challenge to the meetings of BDA dated March 9, 1992, and April 9, 1992, it is imperative for me to record that the plaintiffs are outsiders or, in other words, strangers to the company and it is amazing that they have taken up the challenge when neither the shareholders nor the directors of that company have disputed those minutes. To my mind, the plaintiffs have no right to raise any such plea nor do they have a locus standi to do so. During the hearing before me, however, Shri Manohar produced the original minutes book, which was shown not only to the court but to the plaintiffs' learned counsel. A careful examination of this book completely satisfied me that there was no justification for the adverse findings recorded by the learned trial judge in respect of these minutes. The appellants' learned counsel pointed out to me that the learned trial judge seems to have been swayed by trivialities and in the process has overlooked the basic substance. The original minutes book resolves the controversy completely, it inspires complete confidence and, therefore, does not require detailed re-examination of that aspect of the case.

71. Two aspects to which I have made a brief reference earlier require to be disposed of at this stage, the first of them being the case of the defendants that the three persons who ceased to be directors of BDA had orally expressed their desire to resign. Shri Venugopal contended that this is unthinkable in a corporate set-up and that not only was the plea a false one but that it justified the charge of the plaintiffs that it was a clever ploy to get over the absence of the three directors when defendant No. 3 took several crucial decisions. Shri Manohar countered the arguments by pointing out that there is no prohibition in the Companies Act against oral resignations and that such a resignation is perfectly legal and valid. He further contended that the removal of a director from the board of a company is an issue which concerns that very individual and that, consequently, the plaintiffs cannot, under any circumstances, espouse the cause of these three persons who have not taken any legal action and for that matter not even recorded a protest through a letter.

72. As regards the first aspect of the matter, Shri Manohar may be technically right when he states that an oral resignation is permissible and if it is permissible that it is also legal. Under normal circumstances, I would have looked upon the transaction with some degree of hesitation. What unfortunately lends total credibility to the whole action is the fact that not one but three persons, and that too company directors who ceased to be on the board by virtue of what transpired at that meeting, have neither protested nor have they taken action to challenge that decision. In such a situation, the irresistible conclusion is that the defendants are right when they point out that these directors had expressed their desire to resign and that this was why the minutes have recorded this fact

and they were removed from the board. In any event, where the individuals concerned have, through their conduct, ratified the decision, it is not for a third party, namely, the plaintiffs to question it.

73. Dealing now with a slightly different head, I need to consider the legal implications of admissions as far as the present record is concerned. There is one document to which I have made repeated reference earlier, namely, the annual accounts and the balance-sheet of Shaw Wallace and Arunava Investments Co. Ltd. for the year 1990-91 ending on March 31, 1991. The learned trial judge has unfortunately lost sight of this crucial document and in the process has overlooked and ignored it. The annual accounts and the balance-sheet being a statutory document passed by the general body of the shareholders of Arunava Investments Co. Ltd. and Shaw Wallace, which records the deletion of the shareholding of defendant No. 1, BDA, in the balance-sheet of Arunava Investments Co. Ltd. and the deletion of the name of defendant No. 1, BDA, from the list of subsidiaries of Shaw Wallace is a clear and conclusive admission that binds those companies. The balance-sheet has the signatures of the chairman of Shaw Wallace and its directors and the same is the position as far as Arunava Investments Co. Ltd. is concerned. The legal implication that flows from such a situation is that a presumption arises on the basis of the material that all concerned, including the shareholders to whom the balance-sheet was despatched, were in the knowledge of the fact of desubsidiarisation of defendant No. 1-company. I do not need to deal with the judicial decisions cited by learned counsel at length because the legal position is unambiguous, but as regards this aspect of the matter, Shri Venugopal met the argument from an entirely different angle. He reiterated that the transactions did, in fact, take place, but that in the background pointed out by him, it must be accepted by the court that the act of severance was for business and tax reasons with the full understanding of all the parties that it was only for record purposes and not intended to be given effect to or acted upon. Shri Venugopal's argument, therefore, proceeds on the lines that these facts cannot be construed as admissions, but only reflect the transactions which were not of any consequence. In this context, what he further points out is that the arrangement did, in fact, work perfectly for virtually two years until defendant No. 3 decided to "hijack" the company. Shri Venugopal contends that there was no question of anybody challenging the validity of those transactions as everyone understood them in the spirit in which Shaw Wallace intended and that regardless of those transactions, BDA continued to function in exactly the same manner as it did prior to the transfer of the shares and the assignment. He states that it was only after Shaw Wallace and the plaintiffs realised that defendant No. 3 was trying to capitalise on that position and to appropriate the company that the plaintiffs were left with no option except of present a challenge to the transactions. In this background, he maintains that nothing contained in the balance-sheet and accounts constitute admissions. It appears to me that the plaintiffs are virtually switching their stand from time to time and from subject to subject. In respect of the transfer of shares and the delinking of BDA as also the

assignment of the three brands, they have presented a comprehensive challenge from virtually every angle and have sought to overcome every aspect of delay by stating that it was only after April 9, 1992, that their eyes were opened. When confronted with their own statutory documents, which contain irrefutable evidence and that too emanating from the plaintiffs' camp, there is a complete shift of stand and an attempt is made to convince the court through an involved process of logic that these are no admissions.

74. This is a judicial proceeding and one cannot, in the face of unimpeachable documentary evidence, accept belated and involved explanations which run counter to the plain letter of the material before me and that too statutory records originating from the plaintiffs themselves. There is no way in which the plaintiffs can get out of these admissions which not only bind them, but establish to the hilt that the transfer of shares, desubsidiarisation and assignment were official transactions with the full knowledge and consent of the board of directors, shareholders and all others concerned with Shaw Wallace and the plaintiffs and that these transactions, which have become final, cannot be called into question. Conversely, this material is very damaging to the case of the plaintiffs in so far as it establishes the falsity of the contentions put forward by them.

75. I need to observe that in the rather involved and furious battle that this litigation has created, a large number of documents have come on record. The learned trial judge has been critical with regard to many of the documents produced by the defendants, the ostensible reason being that these documents are either documents of the plaintiffs or of the Shaw Wallace group to which they are parties and thus have conscious knowledge. As I have had occasion to indicate earlier, these documents ought to have been produced by the plaintiffs themselves along with the plaint if they were serious about a full, candid, faithful and fair disclosure to the court. What is surprising is that the authenticity, probity and genuineness of these documents is not disputed by the plaintiffs, nor for that matter is the question of their relevance. The learned trial judge has been unjustifiably critical of the conduct of the company secretary, Rajiv Dharmani, which, to my mind, was unnecessary in so far as it would virtually amount to putting a premium on deliberate suppression of documents from the court. The position in law is illustrated in the case of Pushpadevi M. Jatia v. M. L. Wadhavan : 1987CriLJ1888 .

76. It is true that Shri Venugopal was very vehement on this aspect while dealing with this issue and he did spend considerable time pointing out to me that one of the virtual acts of breach of faith on the part of defendant No. 3 was that he had decoyed several of the responsible officers at various levels from Shaw Wallace and the plaintiff-company to switch their loyalties and come over to him and it was through these sources that the documents and records have virtually been "pilfered". The point made by Shri Venugopal was that this set of documents produced has not come out of lawful custody of the defendants in so far as the defendants could never have got them except through some devious means and

in so far as they constitute official records relating to the working and business of his clients that the learned trial judge ought to have totally excluded them from consideration. Shri Venugopal was severe on the manner in which these documents have been obtained and he made an issue of the fact that where it is clear as day light that these documents have come only through a process of inducement to officers to shift their loyalty, that this court should refuse to look at them.

77. I do not need to adjudicate on this issue except to observe that it is the nature of documents that is significant. If several of the officers have shifted over from one camp to the other, those are individual decisions and senior executives always have the freedom of choosing for whom they would like to work and this court cannot question such shifts. Had the documents been secret, confidential or of such a character that their removal from lawful custody would constitute an offence, perhaps, this court would have taken a different view of Shri Venugopal's objections. Where the documents which are virtually run of the mill records, where they are neither secret nor valuable and where the defendants have essentially produced them because the plaintiffs have suppressed them from the court, I do not see any justification in the plaintiffs' objections. In passing, I need to record that one of the grounds on which the transfer of BDA shares by Arunava was challenged by the plaintiffs related to the provisions of section 293(1)(a) of the Companies Act in so far as it amounted to a sale of undertaking without a resolution of the general body of Arunava. When Shri Manohar on behalf of the appellants took up this point, Shri Venugopal, learned counsel on behalf of the plaintiffs, stated that the contention and challenge under this head was not being pressed by the plaintiffs. I, therefore, do not need to consider it.

78. The next major head of controversy centres around the question as to whether at all BDA as a company could have been severed from the Shaw Wallace group since a petition u/s 391/394 of the Companies Act for the amalgamation of Arunava Investments Co. Ltd. with Shaw Wallace was proposed and the scheme was pending approval of the court. The factual position is that the scheme of amalgamation of 14 companies, including Arunava Investments Co. Ltd. with Shaw Wallace, is set out at page 32 of the paper-book, and the scheme provides for the appointed date, namely, July 1, 1988, and the effective date, meaning the date on which the scheme becomes effective in accordance with clause (1) of the scheme. Clause 1 in terms provides that the scheme is subject of the conditions and upon the five conditions provided in clause 1(a) being fulfilled, one of them being the sanction of the High Courts of Calcutta, Madras and Bombay u/s 391 of the Companies Act to the scheme and the necessary order or orders u/s 394 of the Act being obtained. Clause (d) provides that with effect from the appointed day and up to the effective date, each of the transferor companies shall be deemed to carry on all business activities and they stand possessed of all their properties for and on account of and in trust for the transferee-company and any profits accruing to the transferee-company or losses

arising or incurred by them shall, for all purposes, be treated as profits or losses of the transferee-company. It needs to be stated that the scheme does not prescribe any impediment or embargo as far as the dealing with the properties of the transferor-company by them only with the prior approval of the transferee-company and they are entitled to carry on their business, including dealing with their properties, till the time and scheme is finalised and approved. There is nothing on record to show that the requirements of clause (1) have been satisfied and a statement was made at the Bar before me that the High Court of Calcutta has not even till date sanctioned the scheme. It is also significant to record that even after July 1, 1988, the shares of BDA were acquired by Arunava Investments Co. Ltd. in September, 1988, and it is not the case of the plaintiffs that for acquiring these shares the approval or permission of Shaw Wallace was obtained. Likewise, on the same basis, there appears no impediment for Arunava Investments Co. Ltd. as an investment company to dispose of the shareholding of BDA, particularly when as stated in the application to the Central Government made by Arunava Investments Co. Ltd., the object of disposing of the shareholding was in order to invest it in due course of business for earning better income.

79. Shri Manohar placed reliance on the case in *Brooke Bond India Ltd. Vs. Dinkar Landge*, , in support of his submission that the scheme for becoming effective requires the sanction of the court and even thereafter it does not become immediately operative as there are certain approvals that are needed. He also sought reliance on another case in *Marshall Sons and Co. (India) Ltd. v. ITO* [1992] 74 Comp Cas 236 (Mad), in support of his argument that if the court refuses to set its seal to the scheme of amalgamation, the arrangement would fall to the ground and it is, therefore, the sanction of the court which gives life to it. Learned counsel also pointed out to me that even an order of the court does not have retrospective operation to enable a claim that the scheme has been in operation from the date anterior to the date of the scheme. Also, in support of his contention that this head of challenge is groundless, Shri Manohar pointed out to me that as against the shareholding worth Rs. 2,50,000 of BDA, that Arunava Investments Co. Ltd. had transferred a shareholding of an amount of Rs. 55,50,000 held by it in Vinedale Distilleries Ltd. and no grievance had been made by Shaw Wallace in respect of transfer of this holding. A scrutiny of the present record does indicate that there is no material produced in support of any such challenge.

80. Shri Venugopal, learned counsel representing the respondents, did seriously urge that the pendency of the scheme of amalgamation would prescribe a complete bar to any form of alienation while the scheme is pending, the principal reason being that according to learned counsel where it is proposed that a group of companies amalgamate, the process virtually becomes final on the decision being arrived at and the scheme being placed before the court for its approval. Referring to the provisions of the present scheme, Shri Venugopal stated that the companies along with their assets and liabilities and effectively merged with

Shaw Wallace once the scheme had been lodged in court as specifically provided therein and that, consequently, any transfer of the present type is void in law. Answering Shri Manohar's submission with regard to Vinedale, Shri Venugopal stated that the transaction relating to that effect has also been challenged before the appropriate forum. As far as the present transfer is concerned, Shri Venugopal contended that it was wholly impermissible and that it would, therefore, have to be struck down. He further contended that there is always a time-lag between the finalisation and presentation of a scheme and the completion of the requisite judicial process and it is precisely for this reason that specific prohibition is in-built for preventing any transfers. This, according to Shri Venugopal, is an essential requirement because the scheme is required to be kept intact until the legal process is completed as otherwise the complexion of the holdings will have drastically altered and the scheme itself would require modification.

81. As far as this head of challenge is concerned, it is undisputed that the scheme is pending approval and that, at least, one out of the three High Courts has so far not approved of it. What I find difficult to accept is the plaintiffs' argument that the court is bound to accord its approval to the scheme which, to my mind, is contrary to the position in law. In a given instance, for commercial reasons or with the best of intentions, a scheme of amalgamation may be presented to the court, but, as often happens, some of the shareholders, creditors, etc., may oppose the sanction of the scheme or, on the other hand, the court itself may find that it is not in the interest of the company or in the public interest, in which case the approval will be refused. The sanction of the court, therefore, is not something that is certain, nor can it be presumed. In these circumstances, the scheme is no more than a proposal or declaration of intent or, in other words, it cannot be invested with a garb of finality. If this is its legal status, then it necessarily follows that the proposals contained therein are not of a binding character, but are essentially fluid and flexible. Apart from other aspects of the issue which I have referred to earlier, in the ultimate analysis, before the transfer can be questioned on grounds of legality or permissibility, a specific legal prohibition will have to be pointed out. The terms of the present scheme of amalgamation viewed at from any angle do not provide any such prohibition and, therefore, the transfer in question cannot be struck down on this ground.

82. Having held that the transfer does not suffer from any infirmity, one needs to devote some time to the examination of the next argument canvassed by Shri Venugopal, which is to the effect that it was only an ostensible transfer or, in other words, that it was a sham transaction. To summarise, it was supposed to have been done in order to get out of and avoid the provisions of the Monopolies and Restrictive Trade Practices Act to avail of taking facilities which were otherwise not available or, to put it very candidly, to jump over various legal provisions. I have earlier pointed out that it was also argued that certain excise difficulties were experienced for which the transfer was pleaded as the solution.

In the first instance, it is rather amazing that such an argument is at all canvassed by a party who has approached a court for the grant of a discretionary relief of injunction. If the contention advanced were to be accepted, it would mean a candid admission that the plaintiffs had entered into a transaction to defeat the provisions of law and regardless of that fact, the court should still turn a Nelson's eye to their conduct and grant them the relief prayed for.

83. Shri Manohar has seriously contested this position. He draws my attention to the value of the internal memo signed by S. C. Mazumdar, the company secretary, dated July 23, 1990, which categorically states that upon receipt of the bank draft of Rs. 2,50,000 from In trust Securities and Investments Ltd., necessary steps to deregister BDA Ltd. under the Monopolies and Restrictive Trade Practices Act would be taken and that it shall cease to be the subsidiary of Shaw Wallace. The application made by Arunava Investments Co. Ltd. to the Central Government, particularly clause 4(d), states about the composition of the board of directors of the company whose shares are proposed to be transferred by indicating that there is no nominee director of Arunava Investments Co. Ltd. in the board of BDA Shri Manohar also points out that the various agreements entered into by the plaintiffs' company with BDA, including the marketing and service personnel agreements, totally belie the correctness of the submission that the transaction was an illusory one. One also needs to take cognizance of the fact that under the provisions of the Benami Transactions Act, the transfer cannot be claimed to be either nominal or ostensible.

84. I have had occasion to comment about this aspect of the matter in the earlier part of the judgment, but it did require a further consideration in so far as this issue is very basic to the litigation. The case has been extensively argued, every conceivable angle has been debated by both sides and it was, therefore, necessary to record a conclusive finding on this crucial aspect of the matter.

85. Shri Manohar was extremely critical of the type of relief granted by the trial court and there were even flashes of anger in his argument when he severely attacked the validity of what had been done. He advanced before me an argument which is one of considerable substance and requires to be upheld. I had occasion to observe earlier that in sum and substance, the learned trial judge had handed over the management and control of BDA to the plaintiffs. Shri Manohar pointed out to me that this would virtually invest the plaintiffs with the status of a managing agent as defined in section 2(25) of the Companies Act. Section 324A of the Companies Act abolishes the concept of managing agency and u/s 294, the appointment of sole selling agents has been prohibited. The relief granted, therefore, would be tantamount to appointing the plaintiffs as the managing agents of BDA and would be in complete violation of law. Admittedly, defendant No. 1-company has only one manufacturing unit at Aurangabad and the order of the trial court would, therefore, comprehensively mean that the entire company is under the total dominion and control of the plaintiffs. It is very unfortunate that the effect and consequences of such orders are not taken into

account and that such an order came to be passed. The situation becomes all the worse when one finds that in spite of everything pointed out to the trial court, the order was confirmed and I must record with a degree of distress that it is such orders which are responsible for bringing a bad name to the courts.

86. The gravity of this last aspect of the matter needs to be further highlighted. I have had occasion to refer earlier to the need of a sense of complete caution and responsibility on the part of a court dealing with a case of this type because, inter alia, there are the lives and careers of the employees and officers, of the directors and the shareholders, the interest of financial institutions and banks, of dealers and a host of other angles which need to be responsibly taken cognizance of. In the present instance, there is the aspect of compliance with obligations, contracts and, above all, legal responsibility under the numerous laws and regulations, a breach of which would entail not only serious civil consequences but also criminal liabilities. Where the record had demonstrated that the parties are virtually at war, it was a reckless act, to my mind, to have permitted the management and control of defendant No. 1-company to vest in the hands of persons, admittedly, hostile and belonging to the opposite group and, above all, having adverse interests. That irreparable injury to the defendants was most likely to result is something which the trial court could not have overlooked. Shri Manohar pointed out to me that in spite of the defendants' best efforts, the injunction order has continued for a year in the course of which staggering losses have accrued to the defendants and that the company itself would find it extremely difficult to get going from this stage onwards. I have carefully applied my mind to this aspect of the matter and, as indicated by me in the order dated April 27, 1993, I have held that the injunction order should not be permitted to continue for even a single minute and even if the paper-work in relation to the judgment takes time the interim orders should be vacated forthwith.

87. On April 12, 1993, when the arguments of the appellants were almost completed, a civil application under Order 41, rule 27 of the Code of Civil Procedure, 1908, was filed by Shri Venugopal on behalf of the respondents and the appellants have filed their reply to that civil application. I have passed a separate order whereby the application has been rejected, but it is necessary for a brief reference to be made in this judgment to the contents of that civil application. The effort of the respondents was to admit additional evidence and annexed to the application were extracts of affidavits of defendant No. 3, K. R. Chhabria, in a litigation pending at Calcutta and before the Supreme Court and annexure No. 3 consisted of a list of documents without setting out any copies thereof. As far as the application itself is concerned, for the reasons set out by me in the order separately passed, I have held that, in the first instance, this application is an obvious afterthought filed with the sole purpose of delaying the disposal of the present appeal, that the copies of affidavits sought to be relied upon have been reduced to extracts and none of the so-called documents, which are supposed to be additional evidence, are even certified copies. The

technicalities apart, in the overall interest of justice and particularly in a litigation of the present type, where several issues are being decided, I would have overlooked technicalities if the application were bona fide, if it was justified and if it would assist the fair disposal of this appeal. Where it was as clear as daylight that the respondents having held on to the benefit of the interim order for one year desire to put a spanner in the works virtually at the last stage when the appeal was being disposed of and that too by attempting to introduce the material which, even if considered, would not make any difference whatsoever to the final decision, there was no question of allowing that application.

88. The two principal contentions repeatedly advanced by the respondents as also emphasised in their written submissions centred around the charge that the managing director of Shaw Wallace, who at the relevant time was the third defendant, derived personal advantage in transferring the shareholding of BDA as well as the three brands of I. M. F. L. products to himself and his family members for his private and personal benefit at an extremely inadequate consideration which constitutes the breach of his fiduciary duty. Once again, it is my bounden duty to record that even though learned counsel appearing on behalf of the respondents has devoted the greater part of his energies and arguments towards these two heads, on a strict consideration the respondents would be precluded from arguing these points. The only three grounds on which the transfer of shareholding of BDA was challenged were (a) violation of section 291(1)(a) of the Companies Act, (b) the transfer being in violation of the scheme of amalgamation, (c) the third defendant acting in breach of his fiduciary capacity and I need to clarify here that beyond these bald statements, the supportive data is conspicuously absent in the entire pleadings; and (d) the transfer being contrary to the provisions of law and the regulations of the company.

89. The ground that the transfer was invalid or illegal because of the inadequacy of price of the shares is not even averred in the plaint and as far as the transfer of the trade marks are concerned, the only reference is to an agreement to assign the brands, there is not even a pleading as regards the actual agreement, the consideration or for that matter its inadequacy. In this background, therefore, I would have been justified in refusing to consider this head of challenge. However, as indicated at the commencement of this judgment, since this litigation is virtually the forerunner of numerous other ones, it would only prolong the agony of the parties and utilise the judicial time of another court if the angles canvassed are to be left undecided. It is true that certain limited references have been made in the affidavit of Shri S. Roy, which came to be filed as late as on April 28, 1992, when the matter was being heard, but what needs to be noted is that the statements made therein are not supported by what was later contended before me at the Bar during the oral arguments.

90. In order to test the validity or otherwise of the charge levelled against defendant No. 3, which would have a bearing on the larger issue, I have

scrutinised everything that has come before this court which has been done in spite of the absence of the pleadings in order to look at the material, if any, that even if it had gone by default, when the suit was originally filed, could be of assistance to the plaintiffs. Admittedly, the shareholding of BDA was transferred in favour of In trust Securities and Investments Co. Ltd., but I also find that the third defendant and his family members had no concern with this company. It is not alleged in the plaint nor is there any document on record to show that In trust was a nominee devised or designed by defendant No. 3. This is the obvious reason why the transfer in favour of In trust cannot be and, in fact, is not challenged or impugned in this suit. In any event, In trust is not even a party to this proceeding and, therefore, nothing concerning the transfer to that company can be examined in their absence. What is relevant to note is that the defendant was not responsible for, nor did he play any role in the resolution of Arunava Investments Co. Ltd. dated May 4, 1990, the application preferred by Arunava Investments Co. Ltd. to the Central Government u/s 30C of the Monopolies and Restrictive Trade Practices Act dated May 8/24, 1990, nor did he play any role in determining the price of the shares or at any time instruct anyone to take any of these steps. Though it is easy to hurl accusations, either in writing or orally, it is necessary before a court of law to establish that the nexus was real and that the mala fides are not imaginary. Merely being the director of the plaintiffs or the managing director of Shaw Wallace, defendant No. 3 held no fiduciary capacity qua Arunava Investments Co. Ltd. and the question of breach of the fiduciary capacity cannot be examined in a vacuum in the absence of any specific allegation against defendant No. 3 in the pleadings. We, therefore, come back to the position that the transaction was one determined by the business prudence of Arunava Investments Co. Ltd. not objected to by the plaintiffs or Shaw Wallace till the issuance of the circular by defendant No. 3 on April 9, 1992. Another aspect of the matter which is crucial is that defendant No. 3 had no interest whatsoever even as a shareholder in either In trust or even in BDA.

91. Coming to the price factor, the record indicates that in September, 1988, when Arunava Investments Co. Ltd. acquired the shareholdings of BDA, it did so at a face value of Rs. 2,50,000 and it is conspicuous to note that the total liabilities of the company at that time was around Rs. 55,00,000. The final decision to desubsidiarise BDA was taken in the minutes of the meeting of the group management committee of Shaw Wallace dated January 3, 1990, which, significantly enough, was chaired by Mr. M. R. Chhabria and in terms of these decisions, the board of directors of Arunava Investments Co. Ltd. on May 4, 1990, resolved to dispose of the shareholding at a face value of Rs. 10 each. I find that it is virtually admitted even from the affidavit of Mr. S. Roy that even on August 2, 1990, when the shareholding was actually transferred, the current liabilities of BDA were Rs. 3,31,00,000 as is clear from page 130 of the paper-book. In practical terms, therefore, the company which was acquired in September, 1988, with current liabilities of Rs. 55,00,000 was being sold on August 2, 1990, when the liabilities had mounted to Rs. 3,31,00,000. It is in this

background that Shri Venugopal's charge that the company has been "hijacked" for an amount of Rs. 2,50,000 will have to be not only examined but straightaway discarded. The valuation of the shares, which is normally worked out on the basis of the assets and liabilities, was done so by the board of Arunava Investments Co. Ltd. on the basis of the balance-sheet, which was available to them for the year 1988-89 ending March 31, 1989. If one traces the relevant date for purposes of the price as May 4, 1990, when it was resolved to dispose of the shareholding at face value, the balance-sheet of BDA for the year 1989-90 was not available. In terms of the decision reported in 100 CLR 447, at page 456, the directors would be acting diligently and correctly if they were to go by the immediately last available balance-sheet for purposes of determining the value of the shares. I have taken the trouble to cull out a few relevant figures, particularly because Shri Venugopal did repeatedly advance the argument that the figure of Rs. 2,50,000 was so ridiculously absurd that the plaintiffs were entitled to succeed on this solitary argument.

92. As on March 31, 1989, the liabilities of BDA, as per the balance-sheet (page 262 of the record) were Rs. 1,10,34,000 whereas the liabilities as already stated on August 2, 1990 (record page 236) were Rs. 3,31,40,016. Even on March 31, 1990, the balance-sheet discloses that the liabilities were Rs. 2,22,48,143 (record page 240). The other important factor which needs to be seen is that as per the balance-sheet of BDA as on August 2, 1990, the secured and the unsecured loan amounted to Rs. 55,95,085 (record page 236) and this unsecured loan comprised an amount of Rs. 37,50,000 of Arunava Investments Co. Ltd., which has been repaid by BDA after the transfer was effected, a gesture which is relevant even for examining the claim of the ostensible nature of the transfer. Another aspect of significance is that the application made to the Central Government on May 8/24, 1990, clearly states that no revaluation of the assets has been made; whereas as per the balance-sheet of August 2, 1990 of BDA, the balance in the profit and loss account gives a figure of Rs. 12,82,922 and to it is added the capital reserves by devaluation of the fixed assets to the extent of Rs. 7,54,818 (record page 238). The revaluation assumes significance if it is a consistent feature, but, if done for the first time, could equally be an exercise to project as bright a picture to the shareholders as possible which is the normal window dressing in order to avail of bank facilities. I have had occasion to mention earlier that not much of all this is of any consequence because the application made to the Central Government was a serious matter and Arunava Investments Co. Ltd. itself had worked out the value of shares at Rs. 3 on the basis of the last available balance-sheet ending March 30, 1989, and the Central Government on a perusal of the records, has accorded the approval for the transaction. This last aspect virtually put a full stop to the controversy. It is binding, conclusive and beyond question.

93. I have dealt, in passing, with certain references and features pertaining to the Companies Act, but it is necessary to deal specially with the provisions relating to subsidiaries because that is one of the main planks of challenge in this

litigation. u/s 212 of the Companies Act, particulars of the subsidiaries are required to be furnished and attached to the balance-sheet of the holding company and such particulars are to be signed by the persons by whom the balance-sheet of the holding company is to be signed. u/s 215 of the Companies Act, every balance-sheet is to be signed by not less than two directors and the manager and the secretary. It does not require to be emphasised that these are responsible officers and persons holding positions of some status. It is also a requirement that the balance-sheet in question is required to be approved by the board of directors before filing. Section 220 of the Companies Act requires laying of the accounts before the general body and in pursuance of these provisions, the balance-sheet of Arunava Investments Co. Ltd. for the year ended March 31, 1991, was approved by the general body on June 24, 1991, which revealed the disposal of the shareholding of BDA at the face value of Rs. 10. Similarly, the balance-sheet of Shaw Wallace to which was appended the balance-sheet of Arunava Investments Co. Ltd. was approved by the board of directors of that company on June 26, 1991, and was approved by the annual general meeting of the shareholders on September 27, 1991. These balance-sheets, which clearly convey to the shareholders the disposal of the shareholding of BDA at the face value of Rs. 10, cannot be lightly ignored and the contents of the balance-sheet are, in law, an admission made by the board of directors and proved against them u/s 21 of the Evidence Act. The legal position is amply illustrated in the case of *Official Liquidator v. Krishnaprasad Singh* [1969] 1 C LJ 327. This, in substance, was the submission canvassed by Shri Manohar in support of his contention that it is nothing short of absurdity to allege that the entire transaction relating to the disposal of BDA shares was clandestine or that it was without the knowledge of the persons in the management or shareholders of the respective companies or that it was a one-man manipulation attributable to defendant No. 3 when it has gone through all these proceedings.

94. Shri Venugopal counters the argument by contending that, undoubtedly, the requisite procedures were followed and a prima facie view of the relevant records would indicate that it was a collective, well-considered and correctly executed operation, which is now being questioned. Shri Venugopal submitted in detail that in order to appreciate his argument, it would be necessary to take stock of two factors, the first being that defendant No. 3 is no other person than the younger brother of Shri M. R. Chhabria, the chairman of Shaw Wallace, and, secondly, that he was holding the most powerful position in Shaw Wallace, namely, that of managing director. Shri Venugopal contended that the managing director of the group is virtually the person in complete charge and control and that the chairman, as always happens, is only a titular figure-head. It is his case that in these circumstances, when defendant No. 3 decided to execute his scheme of breaking away from the group and taking with him some of the most valuable assets, that he went about his job very carefully, very systematically and very intelligently. It is Shri Venugopal's case that defendant No. 3 only by virtue of the position which he occupied fully and completely dominated

everything that was happening in Shaw Wallace and, frankly, that there was never any opportunity for Mr. M. R. Chhabria to so much as worry about, leave alone suspect, what he was up to. In these circumstances, Shri Venugopal contends that defendant No. 3 was instrumental in getting the decision to alienate BDA passed through the requisite channels without personally involving himself because the various executives were virtually all under his control. Shri Venugopal also contended that the court will have to take cognizance of the fact that even if many of these persons had smelt a rat and did not like what they were being asked to do, they had virtually no option and dared not go against the managing director of the group, who happened to be the chairman's own brother. He, therefore, submitted that this court would have to adopt the unusual approach of disregarding the fact that all procedures right up to the Government approval are apparently beyond question and would have to review the entire transaction in this background.

95. Shri Venugopal thereafter proceeded to enumerate before me at considerable length various facts and figures on the basis of which he justified a paper calculation that the value of the share could not have been less than Rs. 90. He contended that it is, therefore, a matter of examining the evidence that the entire transaction is vulnerable and that it would have to be set aside.

96. In the first instance, where the requirements of law have been complied with and where the challenge has been presented for the first time something like two years after the transaction has been completed, a court would be fully justified in refusing to even entertain a challenge, howsoever ingenious it might be. In the present instance, the basis on which it is argued that the shares were undervalued is merely another way of juggling around with figures. I did seriously examine the correctness of this exercise and, to my mind, it is highly speculative approach. I did even consider the last argument advanced by Shri Venugopal as to whether the line projected by him is capable of being substantiated by evidence through the witness-box and, to my mind, after a careful consideration of that material, I am sorry to conclude that it is so much of wishful thinking.

97. The added reason for this conclusion is obvious in so far as the other limb of the argument proceeded on the footing that defendant No. 3 was exercising the powers synonymous with a military dictator, and, secondly, that highly placed executives at different points of time would carry out whatever he asked them to do regardless of the consequence. A perusal of the record of this case, and particularly the notes and minutes, will indicate that this could never have been the state of affairs. What really clinches the whole issue is the fact that even though there has been a clear division at least after April 9, 1992, when the present litigation started, none of the persons involved in the transactions who are even today working with the Shaw Wallace group and holding top positions have come forward with a complaint or an affidavit or otherwise that defendant No. 3 had coerced them into fabricating notes, minutes and being parties to

decisions. It is easy to level accusations, particularly in the course of a litigation, but it is equally necessary to sustain those accusations and it is in the latter exercise that the plaintiffs have miserably failed. It is my considered view, on a very complete and thorough appraisal of the record, that the charges levelled, in particular those directed against defendant No. 3, are not only unjustified but are false.

98. The parallel allegations relate to the adequacy of consideration in respect of the three brands of IMFL products and that the entire transaction is liable to be struck down. Once again, it is my painful task to record that there are no pleadings in the entire plaint except a reference to an agreement of assignment and even that is so hopelessly inadequate that it does not even mention the deed for the assignment thereof. In the course of arguments before me, capital was made of the total consideration being only Rs. 15,00,000, and Shri Venugopal devoted considerable time towards supporting this charge. He demonstrated to me, through various references, that the three brands were virtually market leaders and that the turnover in respect of these three brands ran into not only lakhs but into crores of rupees. Even though there is no pleading to that effect, Shri Venugopal contended that these brands were virtually conceived, promoted and propagated until they reached the top of the ladder on which exercise alone, about Rs. 11,00,00,000 have been spent. As far as the pleadings go, the solitary reference is in the affidavit of Shri S. Roy dated April 28, 1992, wherein at page 153 of the paper-book in paragraph 3(g), we find a bald statement "the plaintiff has incurred since 1988, substantial amounts running into several crores on the promotion and development of the brands". Shri Venugopal proceeded to substantiate his argument that the assignment which, admittedly, has taken place and is recorded and in respect of which the consideration has passed was never intended to be acted upon, the reason being that it was to tide over certain excise and business difficulties. He did explain to me at the Bar as to what exactly the whole arrangement was, which I have had occasion to deal with and need not repeat once more and, therefore, contended that the consideration, if hopelessly inadequate, would be destructive of the legality of the entire transaction. Shri Venugopal spent considerable time in showing to me the figures particularly in respect of the turnover, sales, etc., relating to these transactions which are undoubtedly substantial and he concluded by stating that where it is demonstrated that these three brands are virtually money-spinners, virtually at the top of the market and worth crores of rupees to the owner nothing more needs to be illustrated in support of the argument that the consideration of Rs. 15,00,000 is not even a small fraction of what a court of law would regard as either adequate or lawful.

99. Shri Manohar in response, firstly, contended that the plaintiffs are disqualified on a simple rule of legal procedure from spending the precious time of the court in advancing arguments that are not supported by pleadings, but he essentially maintained that unless the deed of assignment was challenged and a declaration is claimed for declaring the assignment as invalid or illegal that the

plaintiffs cannot argue anything in respect of the transfer being bad in law. He, however, stated that he did not want to run away from what was argued on the merits as the defendants had to face those contentions some time and would, therefore, like to set the matter at rest. He pointed out to me that as far as the time-frame was concerned that the brands were conceived sometime in the year 1988 and came to be manufactured for the first time in October, 1988, that they were introduced in the market a couple of months later around December, 1988. It was on April 24, 1990, which was within hardly a year, that the plaintiffs had resolved to assign the labels to BDA for a consideration fixed at Rs. 15,00,000. Shri Manohar has objected very strongly to the manner in which the plaintiffs have glossed over one very important fact, namely, that the figures themselves would indicate that these brands did not catch on like wild fire, that the turnover was relatively small to start with and that it took considerable amount of effort before they received public acceptance and began to do well. Shri Manohar illustrates this by pointing out that one would have to draw the line at about March/April, 1990, and that it is true that in the subsequent period, these brands not only did well, but that the sales virtually galloped. In retrospect, by April, 1992, when the present dispute arose, undoubtedly, the plaintiffs or Shaw Wallace must have regretted having disposed of them because they were doing extremely well. What we are concerned here is with the status and performance of these brands in the pre-April, 1990, period during which time there was absolutely no indication that they would turn into market leaders. In relation to the position as it obtained at that point of time, the consideration of Rs. 15,00,000 was a very fair and correct evaluation. Shri Manohar also presented before me certain calculations in support of the defendants' contention that it is really one of the three brands, namely, Officer's Choice that was reasonably well-received and the performance of the other two was, in fact, relatively poor. It was this one which really anchored the other two and, therefore, the price of Rs. 5,00,000 each cannot be faulted.

100. As far as this head of challenge is concerned, I have had occasion to observe earlier that the record does not support the contention that it was a mere arrangement in order to get over certain excise or business difficulties. This is a claim made in the air unsupported by material and directly contrary to what the documents and records indicate and will, therefore, have to be rejected in its entirety. As regards the question of consideration, the defendants are right in pointing out that the pre-April, 1990, position is what was, in fact, material. I am considering these aspects of the case even though there is no prayer in the plaint challenging the transaction or for a declaration that it should be struck down only because, as indicated by me in the beginning of this judgment, the issue has been agitated threadbare, considerable amount of judicial time spent and, therefore, it does not have to be shifted to some other court or forum for a re-examination. There was nothing at the beginning of 1990, from which the plaintiffs themselves could have assumed that the three brands would skyrocket. The documents indicate that it was the plaintiffs who fixed the price and not the

defendants, that they accepted the consideration and, if at all, it was improper or inadequate, one would have expected a composite challenge and that too at an earlier point of time. The utter inconsistency of approach is well-illustrated from the fact that the plaintiffs are totally and completely confused even in their contentions before the court because on the one hand they contend that the transaction is perfectly in order, but was intended not to be given effect to. I fail to understand how a legally-concluded transaction can either be put into cold storage or be ignored, particularly at an intercorporate level. If this was so, the plaintiffs would never have put in a negative covenant extinguishing any right on their part in the brands. In the same breath, a composite attack is levelled against the main transaction where the plaintiffs have virtually gone for the jugular, which incidentally is quite inconsistent with their earlier plea, contending in the alternate that the transaction itself should be struck down. On the figures placed before me, at the point of time when the evaluation was done and having regard to the totality of circumstances, it is crystal-clear that the plaintiffs willingly and voluntarily disposed of the three brands for a price which they themselves fixed and which they obviously considered to be adequate. The challenge, technicalities apart, is, therefore, wholly and completely devoid of any merit.

101. I need to mention, in passing, that Shri Manohar pointed out to the court that the plaintiffs have not done any act of charity to the defendants because the plea with regard to the expenses spent on promotion is utterly false and hollow. He stated that the expenses mentioned by the plaintiffs had been incurred on account of BDA from out of the sale proceeds of its products which were marketed by the plaintiffs. He pointed out to me that the entire sale proceeds in respect of all the production of BDA have been received by the plaintiffs and that even though on paper they were required after deducting the expenditure, including that for promotion of the brands, marketing charges and commission, to pay over the remaining amount to BDA, this has not been done. Shri Manohar contended that the interim order of the court was so wrong and unfair that it enabled the plaintiffs to bleed defendant No. 1 by physically taking charge of all its production and putting back nothing. I refrain from commenting about this last part of the argument, but have recorded it for the limited reason that I do see justification in the charge made by the defendants' learned counsel that the interim order was an atrocious one because it enabled the plaintiffs from the date on which that order was passed to not only run the unit but to appropriate the entire production. To think that such an illegality has taken place, as a result of court orders, is something very very disturbing, to put it mildly.

102. The maximum amount of heat that was generated in the course of the very protracted arguments centred around the allegations levelled against defendant No. 3 personally under the head of breach of fiduciary duty. A lot of the court's time was spent citing case-law on both sides, but as is apparent from the pattern followed by me in this judgment, it is the legal principles that are culled out from the cases cited that have, in fact, to be applied to the facts. I do not, for a

moment, dispute the proposition canvassed by Shri Venugopal that respondent No. 3, who through the entire period of time that we are concerned with, namely, from 1990 up to April, 1992, was the managing director of Shaw Wallace. Shri Venugopal insisted that the court must be equally conscious of the fact that he was the younger brother of the chairman of the company because he maintained that the relationship between the two brothers has much to do in this case in so far as it was for the latter reason that defendant No. 3 was never questioned about anything he did and was implicitly obeyed by officers of the companies and even directors up to the highest level. That defendant No. 3 was required by virtue of the office which he held to act in consonance with law and to uphold at all times the interests, particularly financial, of the concerned companies is accepted. I, however, consider it wholly irrelevant to take cognizance of the relationship between the two brothers because, to my mind, that has little to do with legal responsibilities. If defendant No. 3 has misused his position or if he has been guilty of breach of fiduciary duty, merely because he is the chairman's younger brother would not in the least bit come to his assistance before a court of law. Also, the argument that senior executives and directors would join hands with him in sabotaging the interest of the company of the magnitude of Shaw Wallace is to my mind, far-fetched and in any event this charge is unjustified on an examination of the present record. The plaintiffs contend that it was defendant No. 3 who was responsible for the alienation of BDA shares by Arunava Investments Co. Ltd. I have discussed the transactions in some detail and have recorded the finding that this was not so. The plaintiffs further allege that defendant No. 3 was responsible for the price at which the shares were transferred, the material in support of this charge has been examined by me and I have recorded a conclusive finding that this allegation is baseless. It is also contended that part of his manipulations included the assignment of the three brands by the plaintiffs to BDA for what is termed as an absurdly low price of Rs. 15,00,000 and Shri Venugopal contended that the court will have to view all these developments in retrospect when the whole plan clearly falls into place even though it may not have appeared so at an earlier point of time. I have devoted considerable time towards considering the evidence in support of this charge and I find that the defendant No. 3 had no hand in the decision to assign the three brands to BDA nor for that matter was he responsible for the price fixation. The last allegation and one which subsequently emerged in the course mainly of the arguments at the Bar was that the transfer of the shares to In trust Securities Ltd. was planned out by defendant No. 3 and that this was the final step in the operation to snatch away this company. This allegation again is impossible to sustain because the directors of that company, namely, Khairullas, are persons with whom no connection whatsoever of defendant No. 3 has been established. It has not even been alleged that these persons who were the directors and shareholders of the company were the nominees of defendant No. 3.

103. While dealing with this aspect of the matter, I need to record that Shri

Manohar pointed out to me that neither In trust nor the Khairullas are parties to this litigation and in their absence, a transfer in their favour cannot even be discussed, leave alone adjudicated upon in the present litigation. He also pointed out to me that the only party entitled to complain, if at all that was permissible, is Arunava Investments Co. Ltd., who held the shareholding of BDA and this party is also not before the court and one other significant aspect of the matter is that the plaintiffs project this challenge as though they were the mouthpiece of Shaw Wallace without Shaw Wallace itself being a party to this litigation. Shri Manohar is justified in contending that on these technical pleas, the court should refuse to spend any time examining this argument. I have repeatedly said through this judgment from time to time that under normal circumstances, I would have straightaway adopted a strict cut and dried approach and pointed out to the plaintiffs that everything that is outside the original set of pleadings will be ignored. I have been virtually prevented from adopting that procedure because the trial court permitted the scope of the dispute to be enlarged and magnified and based its decision on that material. Also, it has been pointed out to me repeatedly that there is a host of litigations between the same parties effectively where all these issues have, in fact, been canvassed and that, therefore, this court must not refuse to give its decision on all points. The interest of justice would require that a total adjudication of the entire matter is the right and correct course rather than a piecemeal one and it is certainly not in the interest of judicial time that there should be multiple hearings before different courts. This is precisely the reason why in spite of strong pleas from Shri Manohar who did of course also deal with the merits of each point since he had to contend with the judgment of the lower court, that I have to give my findings on the merits in respect of each issue.

104. As indicated earlier, in the circumstances of this case, I refused to avoid deciding the issue or bypassing it on to another forum. The examination of what is placed before me indicates that one test alone would be sufficient to completely nullify the plaintiffs' case and that is the time factor. We are concerned with a two-year time span which encompassed the period April, 1990, to April, 1992. Each of the transactions was official. They involved several persons. They have been reflected in all the records right up to the balance-sheets and annual report of Shaw Wallace, etc., and, therefore, it would be downright wrong to argue that these transactions were clandestine. There is not even the remotest of evidence to support the plea that defendant No. 3 had misused his position or that he had coerced any of the executives or directors to assist him in such activities. For this long period of 24 months, not only was there no challenge to the transactions in question, but they were not questioned and nobody so much as pointed a finger at defendant No. 3. This, to my mind, is very very significant. The timing of the allegation, namely, after defendant No. 3 assumed charge of BDA, indicates that the whole charge is an after-thought and that it is a weak but vain attempt to malign him at a point of time when the real game is to somehow get control of BDA by means that have been demonstrated

to be more foul than fair.

105. I now need to deal, in passing, with the general contentions that have found favour with the trial court. The first of these is the general statement that as on the date of passing of the ad interim orders, BDA was de facto being managed by a board of directors who were under the control of Shaw Wallace. This statement has unfortunately found favour with the learned trial judge while effectively passing the impugned orders which are justified by him as they are on the lines of continuing what according to him was the existing arrangement. This position was factually and legally incorrect because, in the first instance, after the transfer of shares, the status of BDA had changed and, consequently, after that point of time, its character had changed in so far as the management was that of an independent entity and not a satellite or subservient or subsidiary company. The contention that the management of BDA was in the hands of the plaintiffs or of Shaw Wallace is also not correct in view of the specific prohibition u/s 324 of the Companies Act. This important aspect of the matter has been lost sight of by the learned judge who was possibly misled by the fact that after BDA ceased to be a subsidiary in view of the past association, there was no immediate sudden change in the management structure, but the important difference in law was that they were no longer nominees of Shaw Wallace. This is more than adequately established from the affidavit of Shri S. Roy dated April 28, 1992, where, in paragraph (15), he states that since the desubsidiarisation, the share capital of BDA increased and this had to be done by a resolution of the board of directors who took the decision in question regarding the allocation. It is significant that no additional shares were issued and allotted either to Shaw Wallace or to any of its allied companies, but the allotment was made to different persons with which Shaw Wallace had no concern.

106. Shri Venugopal did advance the argument before me that regardless of the transactions concerning the shares and assignment of the brands, de facto BDA was managed and controlled by Shaw Wallace personnel and that this was the principal reason why the ad interim and interim orders came to be passed. It is his argument that the validity of the other transactions having been challenged, as far as the day-to-day continuity of the working was concerned, it was very necessary for the court to maintain the status quo ante pending an adjudication of the illegalities in question. This, Shri Venugopal contended, was necessary in the interest of continuity of production and avoidance of any dislocation to the unit. Shri Venugopal's argument proceeds on the footing that several employees who were, in fact, working with BDA had, admittedly, been deputed from the plaintiff-company. I have dealt with that aspect of the matter earlier and pointed out that the affidavit of Shri S. S. Sanyal at page 66, in sub-paragraph (4) specifically points out that all these persons were on the pay-roll of BDA and that the entire administrative expenditure was looked after by that company. Significantly, this has not been denied by Shri S. Roy, who has filed a detailed affidavit on behalf of the plaintiffs. It is true that he has made a general statement that directions for the running of the day-to-day affairs of BDA used to

come from the corporate office of the company at Delhi. If he expects a court to act on a statement of this type since we are concerned with the working of a company and not an individual, I would have expected him to substantiate this statement, but there is nothing that has been produced in support thereof. The plaintiffs were interested in the entire production of BDA and there was obviously commercial communication which is entirely different to controlling and managing the company. Shri Manohar has pointed out to me that such capital has been made with regard to the power of attorney dated December 26, 1990, in favour of Shri S. Roy and he has clarified the position that the defendants do not at all dispute that in the early stages, they had availed of the technical personnel from the plaintiffs and their expertise, but that they have paid for all of this. On the other hand, he points out that this document supports the case of the defendants that BDA has become a separate entity and it was precisely for this reason that Shri S. Roy required a formal power of attorney on the basis of which he could act on behalf of BDA. This power of attorney was subsequently revoked.

107. The plaintiffs had also contended that the factory manager had been employed by them. This claim does not appear to be justified because the document at page 375 wherein the signature of the factory manager, who incidentally is plaintiff No. 2, appears at serial No. 1 shows that he is resigning from the service of BDA. I do not need to emphasise that he could resign from service only if he was an employee of BDA. Shri Manohar went on to state that this document would indicate something else of importance, namely, the fact that in the course of this unfortunate dispute, the loyalties of many of the employees have shifted and that was the principal reason why the third defendant was required to take the steps which he did on April 9, 1992, which were necessary for the proper administration of BDA since some of the employees had crossed the floor.

108. Another head that was relied upon by the plaintiffs and which Shri Venugopal did emphasise was that there is considerable amount of equipment in the possession of BDA, which has been provided for by Shaw Wallace. He stated that this is conclusive proof of the fact that the character of BDA was that of being one of the group companies which had never been challenged and that was the reason why Shaw Wallace had provided it with such assistance. He also stated that this equipment remained with BDA long after the events of 1990 and that it, therefore, supported his contention that at least the day to day management and control continued with Shaw Wallace or, for that matter, with the plaintiffs. In response to this, Shri Manohar has drawn my attention to page 20/21 of the record which clearly shows that Shaw Wallace was recovering lease rent on everything that was supplied, that the assistance was not gratis and that it was on payment of regular lease-money and, therefore, a simple commercial arrangement between the two companies.

109. One more angle that was referred to by Shri Venugopal was with regard to

the annual report of Shaw Wallace ending on March 31, 1991, which mentions Officer's Choice as a premium brand and this, according to Shri Venugopal, supports his argument that irrespective of the paper arrangements, the understanding between the parties even thereafter was that the old situation would still continue, namely, that the plaintiffs would for all intents and purposes be regarded as the owners of the brand. Shri Manohar has explained this reference by pointing out that right up to February 26, 1991, the plaintiffs were, in fact, the owners of the brands which covers almost eleven months of this financial year, which explains the reference to this brand. This, in fact, is a complete answer.

110. I do not need to dilate at any great length with regard to this last group or heads, but I have referred to them as they have influenced the decision of the trial court. To my mind, one has to get down to basics and the real guts of the matter without being sidelined by trivialities, and after a very thorough examination of the record, I am more than satisfied that there is nothing to stop the conclusive finding that after the transfer of the shares, BDA assumed the status of an independent corporate entity. The fact that some of the old employees of the Shaw Wallace group may continue at different levels is irrelevant because on and from that date their status in law automatically changed. Again, merely because BDA did not, for good reason, sever its business links or working arrangements from the Shaw Wallace group cannot, under any circumstances, lead to the conclusion that it was legally interlinked or subservient or that it was being managed and controlled by the Shaw Wallace group. Out of the voluminous record running into thousands of pages, there is not one scrap of paper that can support this view.

111. Shri Manohar advanced a strong plea at the conclusion of his arguments, as he had done in the beginning, that immediate interference by the appellate court is essential in the present case. He submitted that after three weeks of day-to-day hearings and of a threadbare examination of the record, it will be more than evident to this court that the trial court has ignored the three basic requirements, namely, the existence of a prima facie case, the balance of convenience and the aspect of irreparable injury which governs the grounds for the grant of a discretionary order. Shri Manohar contended that this has been done in blatant disregard and violation of the basic norms and that the trial court has acted unreasonably and capriciously that it has ignored material and facts on record and has arrived at perverse and unsustainable findings. He stated that painful as it may seem, the two orders whereby the total management and control of the company has been handed over to the plaintiffs and the lawfully empowered authorities of the company have been bound hand and foot are even worse than a final decree and that in the interest of the survival of his clients, the orders must be vacated forthwith.

112. On behalf of the plaintiffs, Shri Venugopal submitted that it is unfair to make such strong charges against the learned trial judge who has directed that

once the unit was being run and looked after by his clients he has only continued that arrangement. He stated that this was merely an interim order and that it is only after a final adjudication of the evidence that a composite decision can follow; that the plaintiffs are running the unit as well as it was being done earlier and as that his clients were perfectly ready for the suit to be heard immediately.

113. I do not need to repeat what I have said more than once; that the manner in which the ad interim and interim orders were passed, and that too in the face of a record of the present type, are sufficient for me to hold that all existing norms and canons of jurisprudence have been flouted. The type of damage that has occurred is almost unthinkable and it was for this reason, after reading and re-reading the record and checking and re-checking the law on each and every point, that was canvassed in this case, I found that it was virtually a matter which shocked the conscience of this court and required immediate corrective steps. I had, therefore, observed in my order dated April 27, 1993, that the interim orders cannot be allowed to continue for even a single minute and that was the ground on which I had held that there was no justification whatsoever for the grant of any stay of that order, even if the plaintiffs desired to carry the matter higher.

114. Shri Venugopal on behalf of the respondents listed a series of circumstances, which I shall summarise, in support of his argument that the plaintiffs were justified in factually contending that the management and control of BDA was with the Shaw Wallace group as on April 16, 1992, when the suit was filed and they are as follows :

(i) BDA was a 100 per cent. subsidiary of Shaw Wallace until August 1, 1990, through the plaintiffs.

(ii) Being a part of the group of companies, the plaintiff-company as well as Shaw Wallace made huge investments by way of capital expenditure, manpower, adoption, utilisation and promotion of trademarks, labels, brands, making available expert advice know-how, marketing and distribution facilities, incurring liabilities and obligations, making available officer premises, giving bank guarantees, etc. In fact, the bank guarantee was given on April 29, 1991 (at page 247).

(iii) In March, 1989 (see exhibit 10, at page 261, volume 1), the board of directors of Arunava approved a scheme of amalgamation of Arunava with Shaw Wallace with the purpose that "the business of Arunava could become integrated with that of Shaw Wallace and the company's investment would be rationalised by their being held by a single company, namely, Shaw Wallace." Under the Scheme, the business of Arunava was to vest in with effect from July 1, 1988, i.e., the appointed date.

(iv) In March, 1989 (see exhibit 10, at page 259, volume 1), the board of directors of Shaw Wallace approved such a scheme.

(v) On March 29, 1989, applications filed by Arunava and Shaw Wallace in the High Court at Calcutta for directions regarding holding of meeting of the shareholders to consider the scheme of amalgamation. The High Court directed the holding of the meeting (pages 282 to 328, volume 1).

(vi) In May, 1989 (see exhibit 10, at pages 262-263 of volume 1), the shareholders of Arunava and Shaw Wallace approved the scheme of amalgamations as required by law.

(vii) Thereafter, in June, 1989, the petitions were filed in the High Court at Calcutta for sanction of the scheme proposed and approved by the shareholders of Arunava and Shaw Wallace (pages 138 and 139 of volume 1).

(viii) On June 12, 1989, an application was made on behalf of Shaw Wallace u/s 23(2) of the Monopolies and Restrictive Trade Practices Act, 1969, seeking approval of the Central Government to the scheme of amalgamation (exhibit 10, at page 256 of volume 1).

(ix) On March 22, 1991, order passed by the Central Government u/s 23(2) of the Monopolies and Restrictive Trade Practices Act, 1969, approving the scheme of amalgamation (see exhibit 10, at pages 225 and 256).

(x) Between August, 1989, and August, 1990, the GEC (Group Executive Committee) and the GMC (Group Management Committee) of Shaw Wallace decided to desubsidiarise BDA and convert it into a "tie-up unit" for three reasons :

(a) to bring down the cost of labour,

(b) easier access to finance from banks, and

(c) to prevent the stifling of growth on account of restrictions contained in the Companies Act, 1956, and the Monopolies and Restrictive Trade Practices Act, 1969, due to "interconnection" (see documents at pages 431, 393, 396, 397 and 441 to 445 of volume 2).

It was not the intention of the GEC or the GMC that there should be an outright sale of the shares or to convert BDA into a competitor of the Shaw Wallace group. Nor was the intention of the GEC and GMC that the plaintiff or Shaw Wallace would cease to exercise any control over this "tie-up unit".

(xi) In April, 1990, the board of directors of the plaintiff-company decided to assign three trademarks/labels to BDA on account of problems faced from certain State Excise Departments (see minutes of the meeting of the board of directors dated April 24, 1990, exhibit 1, at page 450).

(xii) Pursuant to the above, an agreement of assignment was executed on August 30, 1990, under which the plaintiff agreed to assign the three valuable trademarks for a nominal sum of Rs. 5,00,000 for each brand (see pages 79-81, page 450 of volume 1).

(xiii) Pursuant to the above, on February 26, 1991, a deed of assignment was executed between the plaintiff and BDA (see exhibit 6, at page 86 of volume 1).

(xiv) Even after BDA was desubsidiarised and the aforesaid three trademarks assigned, the existing arrangements with regard to the management and control of the affairs of defendant No. 2 continued to subsist.

(xv) In fact, a general power of attorney was given to Mr. Shovan Roy as far back as in December, 1990, by BDA, was not terminated or revoked, on the contrary Shri Shovan Roy continued to exercise the powers conferred thereby (pages 131 and 132 of the plaintiff's affidavit-in-rejoinder).

(xvi) In April/May, 1991, further liabilities were incurred by the plaintiff by giving a corporate guarantee for Rs. 5.50 lakhs (see pages 260-261 and pages 244-251 of volume 1).

(xvii) Even subsequent to the desubsidiarisation, the board of directors of BDA consisted of nominees appointed by Shaw Wallace and/or the plaintiff (see page 127 of volume 1).

(xviii) Defendant No. 3 continued to be a managing director of Shaw Wallace as well as director of the plaintiff-company. At the same time, defendant No. 3 has illegally claimed the control of the affairs of BDA (see para 15 at page 135 of volume 1 and para 16, pages 553-554 of the judgment) and wants to engage in business in competition with the Shaw Wallace group.

(xix) For the first time on April 9/10, 1992, an attempt was made by defendant No. 3 to disturb the existing arrangement and assert his rights over BDA (see page 19, volume 1 and pages 13 and 14 of volume 1 plaint).

(xx) On April 11, 1992, and April 25, 1992, the board of directors of Shaw Wallace curtailed the power of defendant No. 3 as a managing director of Shaw Wallace on account of his subversive activities (see pages 165-167 of volume 1). The board of Shaw Wallace consisted amongst others of independent professionals and a nominee of financial institutions.

115. Once can almost carry on the debate endlessly and in this long judgment, I have had occasion to glean the more substantial issues and to evaluate the main areas that govern the overall decision of the case without losing sight of the relevant facts and the law. This sequence as presented by Shri Venugopal does at first blush look both impressive and convincing, but I have already dealt with every one of these factors, the answers presented by Shri Manohar piecemeal and on an overall basis and my findings, stage by stage and collectively to establish that both in law and on the facts, the trial court was in error in holding that the management and the control of BDA as on the date of the filing of the suit continued with the plaintiffs or with the Shaw Wallace group.

116. The subsequent contentions raised by Shri Venugopal are in relation to what he categorised as subsequent conduct which is highly supportive of his

contentions and he lists out the following set of circumstances in support of his plea that even after August 2, 1990, there was no change of situation. Shri Venugopal contends that despite the transfer of BDA Breweries and Distilleries Ltd. by Arunava to In trust on August 2, 1990, BDA Breweries continued to be managed and controlled as a part of the Shaw Wallace group without any interference by any third person. The facts relevant in this regard are as under :

(i) The directors of BDA Breweries and Distilleries Ltd. continued to be the nominees of the Shaw Wallace group, namely, the executives and employees of the group companies. Neither the Kheyroolas nor any of the Chhabrias or their nominees became the directors.

(ii) The day-to-day affairs of BDA Breweries and Distilleries Ltd. were looked after and controlled by Cruickshank and Co. Ltd. All directions were given by Cruickshank's corporate office at Delhi. Mr. Sankar Sanyal, the chief executive and Mr. S. K. Sinha, the factory manger, and others were reporting to the Delhi office of Cruickshank where Mr. S. Roy, the vice-president of the Shaw Wallace group, was functioning. All sanctions were being taken from Mr. S. Roy.

(iii) A general power of attorney dated December 26, 1990, was executed by BDA Breweries and Distilleries Ltd. in favour of S. Roy which continued to remain in force until April, 1992, without any interference whatsoever (cancelled on April 19, 1992).

(iv) Cruickshank provided a corporate guarantee in the sum of Rs. 5,50,00,000 for credit facilities sanctioned to BDA Breweries by the Central Bank of India. This guarantee was given in April-May, 1991, i.e., after the desubsidiarisation.

(v) The principal employees working at the factory of BDA Breweries and Distilleries Ltd. were those deputed/assigned/seconded by Shaw Wallace group. These include technical people, such as the factory manager, the blender, etc.

(vi) The essences, specification, the blending formula developed by Shaw Wallace group continued to be used by BDA.

(vii) The registered office of BDA Breweries has been at all relevant times situated within the premises taken by Shaw Wallace on lease.

(viii) At the time of acquisition of BDA shares by Arunava in 1988, BDA Breweries had a liability of Rs. 55,00,000. The acquisition cost was, therefore, Rs. 57,50,000 (Rs. 55 lakhs plus Rs. 2.50 lakhs). The sale price was only Rs. 2,50,000, particularly when the book value of the shares at the time of transfer of shares was itself Rs. 90. After transfer of the shares, the Shaw Wallace group arranged for finances and other facilities to BDA Breweries and Distilleries, including the following :

(a) Deferment of amount due from BDA to Cruickshank amounting to Rs. 2,25,00,000 at the time of transfer on August 2, 1990.

(b) Lease of machines and equipment.

(c) Arrangement for procuring raw materials and packing materials.

(d) Corporate guarantee of Rs. 5,50,00,000.

(e) Arrangement for deputing technical personnel.

(ix) The annual report of Shaw Wallace for the year ended March 31, 1991, specifically mentions Officer's Choice as one of the premium brands of the group with large market potential. The director's report of Cruickshank mentions Officer's Choice becomes a million case brand and additional sources of supply identified.

(x) Even after August 2, 1990, BDA continued to manufacture the three brands as before, without any document incorporating any agreement for such manufacture after the desubsidiarisation. If the letter dated April 24, 1989 (at page 20) is ignored, there is no other document on record regarding any agreement, particularly concerning the period after August 2, 1990. Admittedly, BDA continued to manufacture the said three brands after August 2, 1990.

117. Here, again, Shri Manohar has, in the course of his submissions, dealt with these contentions and, in order of sequence, I have examined each one of them. I am conscious of the fact that it is not one or two stray circumstances or for that matter a point here or a document there that has to be picked out, but that the approach of the court has to be uphold at all times the position in law regardless of what may be pleaded otherwise. As far as this area of controversy is concerned, it is probably the weakest area of the plaintiffs' tottering case and it is, indeed, with a degree of courage that they solemnly contend before a law court that legally concluded transactions be ignored on the ground that these were a camouflage for getting over various legal provisions or contributions by way of taxes to the State and its exchequer. One can scarcely look for a more absurd argument.

118. As regards the question of breach of fiduciary duties by defendant No. 3, Shri Venugopal summarised the position under the following heads :

(a) It is obvious from the facts stated above that defendant No. 3 has abused his powers as a managing director of Shaw Wallace and as a director of the plaintiff-company and has committed the gravest breach of his fiduciary duties as a trustee of the shareholders of Shaw Wallace and the plaintiffs by acquiring the control of the company which was a substantial asset and/or one of the undertakings of the Shaw Wallace group at a throw-away price and that too without disclosing his interest therein.

(b) The breach of fiduciary duties on the part of defendant No. 3 is two-fold, namely, (i) by acquiring control over BDA on the erroneous footing that there was an intended outright sale of shares of the undertaking of BDA, and (ii) by converting BDA into a competitor of Shaw Wallace and the plaintiff whilst holding charge as a managing director of Shaw Wallace and a director of plaintiff No. 1. The argument that the real value of the shares held by Arunava in BDA as on

March 31, 1990, or August 2, 1990, was not known or available is an eyewash. The real question is whether the same could not have been ascertained. Defendant No. 3 being a managing director of Shaw Wallace in any event cannot be heard to say that he was not aware or could not have ascertained the real value of the shares. The argument that the application to the monopolies and restrictive trade practices authorities required the valuation to be ascertained on the basis of "latest audited balance-sheet" is fallacious. Neither the provisions of the Monopolies and Restrictive Trade Practices Act, 1969, nor the requisite form states so (see clause 16(a) of Form 6(a) at page 406).

(c) The contention that the sale of shares of BDA was in favour of the Kheyroolas is only a red-herring and/or a smoke screen. This can be demonstrated by the following :

(i) Kheyroolas are not the defendants;

(ii) Kheyroolas never objected to the control and management of BDA being with the plaintiff and Shaw Wallace and Kheyroolas never insisted that the control of BDA should vest in them;

(iii) No material has been placed by defendant No. 3 as to how, when and for what consideration the share capital of defendant No. 2 came to be transferred to the companies under the control of defendant No. 3 and/or to his family members.

(iv) The fact that the interest of BDA was never intended to be inimical to the interest of the plaintiff and Shaw Wallace was never in doubt.

(v) Equally, it was never intended that the ultimate beneficiary of all the shares of BDA should be defendant No. 3.

(vi) On the contrary, if defendant No. 3 were the intended beneficiary of the shares of BDA, defendant No. 3 has clearly placed himself in a position where there is a clear conflict of duty and interest which the company law as well as the law of trust abhors.

(d) Defendant No. 3 has, however, asserted that the intended beneficiary of the shares of BDA were the members of his family and companies under his control pursuant to a family arrangement. This is clearly borne out by the assertions made by defendant No. 3 in an affidavit filed by him in the Calcutta High Court wherein it is clearly alleged that BDA came to their share as part of a "family arrangement" (see para 4(b) pages 5-11 of the affidavit dated May 10, 1992, of defendant No. 3 filed in the Calcutta High Court) and also (see arguments advanced on behalf of the defendants before the trial judge listed at para 16 of the judgment dated May 5, 1992, pages 553 and 554).

(e) In this connection, the allegations made in the plaint filed by BDA Limited, declared on June 7, 1992, in the Bombay City Civil Court, to the effect that BDA Limited along with the various other companies forms part of "Kishore Chhabria

Group of Companies" is also extremely relevant (see para 6 of the plaint filed in B. C. C. Suit No. 4421 of 1992).

119. I am firmly of the view, after hearing learned counsel for both sides, that there is more of a personality clash than substance in this head of charge and that is the reason why voluminous case-law was cited in support of the contention that the conduct of defendant No. 3 is unpardonable. It is unnecessary for me to repeat the findings that I have recorded earlier except to observe that my approach to the matter has been totally dispassionate and to decide the controversy strictly in keeping with the accepted principles of law that a court has to observe. That defendant No. 3 has been relentlessly attacked is an understatement, but none of the grounds of attack are capable of being sustained or upheld.

120. Shri Venugopal then adverted to his main defence as far as the order is concerned, by pointing out that regardless of the plea canvassed by BDA that its entitled to be maintained by its own shareholders and to enjoy an independent corporate existence apart from the Shaw Wallace group, the contention itself is unsound both as far as the facts are concerned, but, more importantly, that there was a complete legal justification for the grant of the reliefs. I have, therefore, summarised his contentions under this important head, which are as follows :

(a) In support of the aforesaid submissions, the defendants have placed reliance upon three decisions, two of which are of the Calcutta High Court and one of which is of the Madras High Court, namely, (i) ILR 1976 Cal 286 ; (ii) Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd., " and (iii) Spencer and Co. Ltd., Madras Vs. The Commissioner of Wealth Tax Madras, . As far as the decisions reported in Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd., and Spencer and Co. Ltd., Madras Vs. The Commissioner of Wealth Tax Madras, are concerned, the same have been expressly overruled by a decision of the Supreme Court in State of U. P. v. Renusagar Power Co. [1991] 70 Comp Cas 127. As regards the other decision which is to the same effect, the same is also deemed to be impliedly overruled by the law as laid down by the Supreme Court in the aforesaid Renusagar's case [1991] 70 Comp Cas 127 . The law as recently laid down by the Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, ; and in the case of State of U. P. v. Renusagar Power Co. [1991] 70 Comp Cas 127 clearly carves out an exception to the law enunciated in A. Saloman v. A. Saloman and Co. Ltd. [1897] AC 22 to the effect that the veil of corporate personality ought not, and cannot, be easily lifted. In fact, sine Saloman's case [1897] AC 22, which was decided in he year 1897, the law has undergone a sea-change, which is clear from the following observations made by the Hon'ble Supreme Court in Renusagar's case [1991] 70 Comp Cas 127 :

"The ghost of Saloman's case [1897] AC 22 , still visits frequently the hounds of company law but the veil has been pierced in many cases."

The law with regard to the lifting of the corporate veil as laid down by the Hon''ble Supreme Court is expressly applicable and has been applied in the case of holding and subsidiary companies, particularly where the facts requires the court to assess "the business realities" and where the facts would disclose that the subsidiary company was in substance though not in law of partnership between the holding company and its subsidiaries.

(b) Similar is the position in England which would be revealed by the statement of the law as set out in Palmer's Company Law, 24th edition, para. 18-23, sub- paras 12, 14 and 16 at pages 218 to 220.

(c) In this behalf, it would not be out of place to refer to the law with regard to the role of a managing director/director, the duties cast upon him and the position enjoyed by him qua the shareholders of the company of which he is a director/managing director.

(d) The law in this behalf is found eloquently stated in paragraph 63-13 at page 943 of Palmer's Company Law as also in the ratio of the case decided by the House of Lords in the case of Real (Hastings) Ltd. v. Gulliver [1942] 1 All ER 378 and 392; and in the case of Cranleigh Precision Engineering Ltd. v. Bryant [1964] 3 All ER 289 (referred to by the trial judge). See Pennington's Company Law, 6th edition, pages 606 and 607. Also see Buckley, 14th edition, pages 988-989. Also see the judgment delivered by a Division Bench at the Delhi High Court in the case of Globe Motors Ltd. v. Mehta Teja Singh and Co. (Agencies) [1984] 55 Comp Cas 445.

(e) In view of the fact that the law permits the courts to lift the corporate veil in order to ascertain the "business realities" and in order to ascertain as to where the real control and beneficial ownership of the company's undertaken lay, the arguments advanced on behalf of the respondents that section 293(1) does not apply to the facts of the present case, inasmuch as in the present case what was transferred was only the "shareholding" of Arunava in BDA and not the "undertaking" itself is nothing short of an attempt to make the court shut its eyes to the "business realities". As per the law laid down by the Supreme Court in Renusagar's case [1991] 70 Comp Cas 127, the court is empowered by lifting the corporate veil to ascertain as to who is the equitable owner of the properties or undertaking of the company (see [1991] 70 Comp Cas 127).

(f) The contention that the corporate veil can only be lifted in exceptional cases, such as fraud, is no longer the law as applicable to companies in India in view of the expanding horizons of "modern company jurisprudence" as per the law as laid down by the Hon''ble Supreme Court. On the other hand, in cases where there has been a breach of fiduciary duty on the part of directors, it has been held that the right of the company to recover the property so transferred is unlimited and the director's knowledge of such a transaction does not preclude the company from having the transaction set aside :

See -

(i) AIR 1983 Bom 539 ,

(ii) Selangor United Rubber Estates Ltd. v. Cradock (No. 3) [1969] 39 Comp Cas 485,

(iii) The aforesaid passages from the commentaries of Company Law referred to on page 10 of the submission.

(iv) Commentary by Ramaiya, 12th edition, at page 1427 relying upon the decision of the House of Lords in the case of Guinness plc. v. Saunders [1990] 1 All ER 652 (HL).

121. My short comment with regard to all these legal niceties is that this case and at the present stage requires to be decided exclusively on the facts, which is why I have consciously avoided extensive references to case law. I see no camouflage or ambiguity nor do I need to go into any involved research for purposes of deciding on the status of BDA, which originally was a subsidiary of Shaw Wallace and thereafter ceased to be one, both factually and legally, which is why it needs to be treated as a wholly independent corporate entity.

122. Apart from what has been pointed out by me earlier, Shri Venugopal advanced certain contentions with regard to the board meetings dated May 4, 1990, March 9, 1992, and April 9, 1992, which I am recounting :

(1) In order to support the allegation that the meeting of the board of directors of Arunava was purportedly held on May 4, 1990, and that the meeting of the board of directors of BDA was purportedly held on March 9, 1992, reliance was placed by the appellants upon the provisions of section 195 of the Companies Act as also upon the ratio of the judgments of the Bombay High court in (i) F. A. C. Rebello v. Co-operative Navigation and Trading Co. Ltd. AIR 1925 Bom 105 , and (ii) Killick Nixon Ltd. v. Dhanraj Mills Pvt. Ltd. [1983] 54 Comp Cas 432 .

(2) The provisions of section 195 only give rise to prima facie evidence, which is rebuttable (see paras 58-03 footnotes 3 and 4 and at page 864 of Palmer's Company Law, 24th edition and at para 58-05 footnote 20 at page 865, Palmer's Company Law 24th edition). The same is the position as found in the decision of the Division Bench of the Bombay High Court in Killick Nixon Ltd. v. Dhanraj Mills Pvt. Ltd. [1983] 54 Comp Cas 432. It is submitted that the prima facie presumption has been rebutted in the case of the purported meetings of Arunava held on May 4, 1990, by the affidavit filed by Shri Shovan Roy dated April 28, 1992. Since the plaintiffs' contention was that in the absence of Shri Shovan Roy, a meeting of the board of directors of Arunava could not have taken place and the purported minutes are invalid the question of challenging the same in the plaint as was sought to be alleged could not and did not arise.

(3) Even in the case of the purported meeting of BDA held on March 9, 1992, the presumption has been rebutted in the affidavit filed by Mr. Ramani dated April 28, 1992, and the other dated May 16, 1992, filed by Mr. R. Ramani and the affidavit of Mr. R. L. Jain dated May 14, 1992, both filed in the proceedings at

Calcutta and Bombay.

(4) It is significant to note that, on the other hand, the defendants save and except for relying upon the purported minutes have not produced any other evidence whatsoever to establish that the purported board meetings were held. In any event, the purported board meeting dated May 4, 1990, is invalid and illegal inasmuch as :

(i) there was admittedly no quorum for the said meeting;

(ii) Mr. Sadashivan, as would be clear from the purported minutes, came to be co-opted after the purported resolution for transfer of shares had already been passed;

(iii) Mr. Shovan Roy had already tendered his resignation as far back as on April 19, 1990. It is well-settled that the resignation by a director does not have to be accepted by the company in order to become effective, see -

(a) T. Murari Vs. State, ,

(b) Lakshmana Pillai (S. S.) v. Registrar of Companies [1977] 47 Comp Cas 652 (Mad),

(c) Glossop [1907] 2 Ch 370.

As would be clear from a plain reading of section 195 of the Companies Act, the presumption contained therein would be applicable only where the minutes of the proceedings of the "meeting of the board of directors have been kept in accordance with the provisions of section 193." The burden of proving that the minutes of the meeting have been kept in accordance with the provisions of section 199(3) rests upon the party which is seeking to place reliance upon such minutes. It is only when this burden is discharged that the burden of proving "to the contrary" is shifted to the other party. Section 193 sets out the manner in which the minutes of the proceedings of board and other meetings are required to be kept.

(5) As regards the purported resignations of Mr. R. L. Jain, Mr. A. K. Jain and Mr. R. Ramani from the board of BDA, it is pertinent to note that the same is alleged to be oral. No particulars of the day, date, time and place and to whom and by whom the purported oral request was made are forthcoming. Furthermore, Mr. P. R. Pandya, who acted as the chairman of the purported meeting, reportedly held on March 9, 1992, has not filed any affidavit in these proceedings. The purported minutes merely seek to record the alleged request of the aforesaid three directors to resign. The law as is clear from the passage relied upon by the appellants themselves as found reflected in Ramaiya's Commentary on the Companies Act (Ref. page 1300, 12th edition), requires that the oral request to resign must be made by the director only "at the general meeting" and ought to be accepted at that meeting of the shareholders. In fact, in Palmer's Company Law, 24th edition, at page 898, para 60-31 the law is set out as under :

"A verbal resignation accepted at a general meeting is effective even though the articles provide that a director shall vacate office if by notice in writing he resigns his office. A verbal resignation would not, however, be effective in the light of such an article if made to and accepted by the board, since the board would have no authority to accept, and the resignation director would be unable to end his contract with the company, except in accordance with its terms, express or implied, or with the company's agreement."

This is admittedly not the case and the arguments of the defendants in this regard are untenable.

(6) The futile attempt made to fabricate the minutes of the purported meeting held on March 9, 1992, is amply demonstrated by the observation made in the judgment of the trial court in paragraph 14 at page 546, volume 2.

(7) The argument that Mr. Ramani has not impugned the meeting purportedly held on March 9, 1992, is deliberately misleading. The purported minutes of the meeting purportedly held on March 9, 1992, have not been referred to in any earlier affidavit filed by the defendants. The same were furnished for the first time with the affidavit dated May 2, 1992, which was filed on the last date of the hearing before the trial court (i.e., on May 2, 1992), giving no opportunity to the plaintiffs to rebut the same. Mr. Ramani declared his affidavit on April 28, 1992. However, Mr. Ramani has, in a subsequent affidavit dated May 16, 1992, filed in the proceedings in the Calcutta and Bombay High Courts, challenged the impugned minutes.

(8) If the purported meeting dated March 9, 1992, was never held, as is now abundantly clear, the extraordinary general meeting purportedly held on April 9, 1992, as well as the purported meeting of the board of directors held on April 9, 1992, of BDA would be equally null and void.

(9) In the circumstances, defendant No. 3 would also have no authority to issue the purported circular dated April 9/10, 1992 (see page 19, volume 1).

123. Shri Venugopal also advanced a contention in law that the sale of shares of BDA was illegal u/s 30B of the Monopolies and Restrictive Trade Practices Act and what he contended was as follows :

(i) The purported transfer of shares held by Arunava in BDA is also in violation of section 30B of the Monopolies and Restrictive Trade Practices Act. The argument that by reason of a letter addressed by Shri Sadashivan (page 421, volume 2), in which it is alleged that section 30B is not applicable, the said section is inapplicable is an untenable contention. The provisions of section 30B are mandatory. There can be no estoppel against a provision contained in a statute. If the provision of section 30B are attracted, the same cannot be nullified by any letter addressed by Arunava to the contrary.

(ii) The argument that section 30B is applicable only to cases where the shares of a private company, which is subsidiary of public company, are acquired by a

company "under the same management" is a clear misreading of the provisions contained in section 30B. The words "under the same management" appearing in section 30B govern only the words immediately preceding thereto, namely, the words "bodies corporate". In other words, the provisions of section 30B would be attracted to an individual firm, group, constituent of a group, as well as to any body corporate as well as to two or more "bodies corporate under the same management" if they are acquiring shares in a private company, which is a subsidiary of a public company which exceeds 25 per cent. of the paid-up equity share capital of such company.

(iii) As is clear from section 30A(b) read with section 30B, section 30B would apply in acquiring shares in a company which was the owner of an undertaking to which Part A of Chapter III applied. Admittedly, BDA at the time of the purported transfer of shares was owning an undertaking registered under Part A of Chapter III. In fact, Part A of Chapter III continues to apply to such undertaking till it is deregistered u/s 26(3). In this behalf, the pleadings on behalf of the respondents/plaintiffs set out at para (g) at pages 143-144, volume 1 of the compilation may also be taken into consideration.

124. It is rather late in the day for the plaintiffs to come out with this "profound" challenge, which in any event has been examined by me, since it was argued. Each state of the process of transfer has been scrutinised and I have upheld it right up to the final extent. These arguments virtually amount to legal hair-splitting and do not assist the plaintiffs" case one bit.

125. Shri Venugopal concluded by defending the order passed by the trial court of the following grounds :

(i) In the light of the above, it is submitted that the injunction as granted by the trial judge has been granted after due and careful consideration of the facts, material and evidence on record and in proper exercise of the discretionary jurisdiction vested in him. It is submitted that since the exercise of discretion by the learned trial judge is in accordance with the well-known principles of law and based on sound exercise of judicial discretion, the appellate court is not empowered to interfere with the same. See the law as laid down by the Hon"ble Supreme Court in the case of Wander Ltd. and Another Vs. Antox India P. Ltd., . All that I need to observe is that the basic premise on which the argument is founded is absolutely wrong-the learned trial judge, if he had gone through the exercise required of him, could never have passed the orders in question.

(ii) The trial court in granting the injunction had also acted within the four-corners of law inasmuch as the present case being a clear case of breach of trust and fiduciary duties by directors who are constructive trustees is a case where compensation in monetary terms cannot afford adequate relief and would clearly be governed by the exception contained in section 41(h) of the Specific Relief Act. The reply to this is that sadly enough, the court has not assessed the more important aspect, namely, the havoc caused by the passing of the order. I have

had occasion to deal with this at the end of the judgment.

126. I have had occasion to refer more than once to the charge levelled against defendant No. 3, which alleges that he has been guilty of impropriety which is defined as breach of fiduciary duties during the period when he was managing director/director and Shri Venugopal has repeatedly adverted to this aspect of the matter because, according to him, the entire case hinges on this. I have summarised the sequence of his arguments very briefly as follows :

That admittedly :

- (i) BDA was a subsidiary and part of the Shaw Wallace group until August 2, 1990, and;
- (ii) K. R. Chhabria is presently claiming that BDA is now owned and controlled by himself, his father and uncle;
- (iii) K. R. Chhabria was the managing director of Shaw Wallace and a director of Cruickshank and Company Ltd. (the plaintiff) at all material times, namely :-
 - (i) At the time when BDA became a subsidiary of Shaw Wallace group in 1988;
 - (ii) At the time when the plaintiff and Shaw Wallace invested substantial amounts in BDA and promoted it as one of the principal manufacturing unit;
 - (iii) At the time when the proposals for desubsidiarisation of BDA were mooted and decisions taken during 1989-90;
 - (iv) At the time when the shares held by Arunava in BDA were transferred in July-August, 1990, to In trust Securities and Investments Ltd. (a company with negligible share capital of Rs. 2,000 and with no activity and the shares purported to be held by Mr. and Mrs. Kheyroolas) and;
 - (v) At the time when the impugned circular was issued around April 9/10, 1992.
- (iv) K. R. Chhabria is presently claiming that In trust and through In trust BDA belongs to his group of companies.

127. Consequently, Shri Venugopal submits that everything pleaded by the defendants, namely, the transfer of shares, the change of status of BDA and the assignment of the three brands would all come into the category of illegal and fraudulent transactions which have to be struck down. I have examined each of these heads earlier and I have also examined the present arguments of Shri Venugopal, the basic premise of which is unfortunately unacceptable. I have recorded a conclusive finding that the transaction in question cannot be attributable personally to the third defendant. The only limited aspect that survives for consideration is the question of the timing and Shri Venugopal's charge that the third defendant, while he held the aforesaid positions with the Shaw Wallace group, ought never to have assumed control of BDA. It is not merely a matter of ethics that we are concerned with because even in the field of corporate management, there are certain requirements of law. The situation that

we are faced with, however, to my mind, cannot be of any assistance to the plaintiffs because it is their case that the transactions right up to the process of delinking were done on the grounds of business and trade and financial considerations alone. Shri Venugopal's argument completely overlooks the fact that it is the plaintiffs' own case that the entire production of BDA was being marketed by them, that they had no manufacturing unit of their own and that, consequently, they were heavily dependent on BDA as far as the sales were concerned and, according to them, the I. M. F. L. was one of the main products of the Shaw Wallace group; though I found it a little difficult to comprehend, all these involved business intentions. Shri Venugopal repeatedly told me that there was also the intention of generating "internal competition between various brands, etc." This kind of shadow-boxing was apparently the name of the game. If I were to, therefore, proceed on the basis of this logic and thought process of Shri Venugopal's clients, I would assume that it would be beneficial rather than detrimental for the plaintiffs and the Shaw Wallace group if, even after it had become an independent entity, a person connected with the Shaw Wallace group were to head the management and control of that company also. As developments took place, this situation was short-lived because Shaw Wallace stripped defendant No. 3 of all these powers, but even assuming that this did not happen, I do not see the plaintiffs being able to justify their charge on the basis of the present record even on the admitted set of facts. Defendant No. 3 having parted company with Shaw Wallace really renders all this purely academic.

128. Learned counsel on both sides have, in the course of their arguments, advanced a large number of decisions. In a furious tug of war centred around the question as to whether this is a case in which the corporate veil ought to be lifted or not. I cannot afford to burden this judgment any more with much reference to case-law, but I shall recount as briefly as possible Shri Venugopal's contentions in this regard which are as follows :

(i) In order to demonstrate that though a holding company owns the entire share capital of a subsidiary company, both the companies are distinct and separate entities and that to explain the concept of a holding company and a subsidiary company reference was made to *Spencer and Co. Ltd., Madras Vs. The Commissioner of Wealth Tax Madras*, and *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, . The question of lifting the corporate veil does not arise in the present case at all.

(ii) In *A. Saloman v. A. Saloman and Co. Ltd.* [1897] AC 22 , it has been laid down that the corporation in law is equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own. Its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose. This doctrine has been subjected to certain exceptions in special circumstances. For example, the court will pierce the corporate veil in cases of fraud and tax evasion and other cases of circumventing

the taxation laws. These are the broad categories and the court may lift the corporate veil facade.

(iii) Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, , decision by the Constitution Bench of five judges.

Certain sales tax recovery was challenged as invalid on various grounds and one of the grounds was violation of article 19. The protection of article 19 is available only to a citizen. The Supreme Court earlier held in State Trading Corporation of India Ltd. v. CTO [1963] 33 Comp Cas 1057: AIR 1963 SC 1811, that a company and corporate body is not a citizen. In order to overcome the decision of the Supreme Court, a petition came to be filed by the company and some of the shareholders. It was argued that the shareholders are the real beneficial owners and, therefore, they are entitled to complain in a case of violation of article 19 (paragraphs 6, 23 to 27).

The Supreme Court reiterated the principles of a company being equal to a natural person and having a legal entity of its own following the judgment in A. Saloman v. A. Saloman and Co. Ltd. [1897] AC 22 . The Supreme Court after categorising the cases where the doctrine of lifting the veil applied, overruled and rejected the arguments of the shareholders for lifting the corporate veil.

(iv) Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, .

The question was whether the company is carried on under the authority of the Central government within the meaning of section 2(a), 2(g) and section 10 of the Industrial Disputes Act (paras 1 and 4).

The Supreme Court again, after referring to the cases of Saloman [1897] AC 22 and also Kuenigl v. Donnersmarck [1955] 1 QB 515, held that the company incorporated under the Companies Act derives powers and functions from and by virtue of its memorandum of association and its articles of association and, therefore, the mere fact that the entire share capital of the company was contributed by the Central government and the fact that all its shares are held by the president and certain officers of the Central Government does not make any difference.

(v) Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . In view of certain schemes introduced by the Union of India, 13 NRI companies purchased shares. The argument was that all the 13 companies are a facade and Mr. Swaraj Paul was the real investor. The Supreme Court refused to investigate into this question by observing that when the Legislature requires lifting of the corporate veil for a particular purpose the court will lift the corporate veil only to that extent and no more. Basically, the question of lifting the corporate veil arises while considering various legislations. (paragraphs 90, 91).

(vi) Juggi Lal Kamlapat Vs. Commissioner of Income Tax, U.P., and Chandulal Harjivandas, Jamnagar Vs. Commissioner of Income Tax, Gujarat, , respectively are the examples where the court has lifted the corporate veil as the conception

of corporate veil was used for tax evasion or to circumvent the tax obligation.

(vii) *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, .

The holding company and a subsidiary company are two different and distinct entities. In a suit between the subsidiary companies, the holding company has no locus standi. The High Court pointed out that the holding company and subsidiaries are incorporated companies and each is a separate legal entity. Each has a separate corporate veil except to the extent that the statute indicates the nature of the holding company and the subsidiary company, the corporate veil still remains (para 21).

(viii) *Spencer and Co. Ltd., Madras Vs. The Commissioner of Wealth Tax Madras*, .

On the construction of the Wealth-tax Act, the court held that it was not case of tax evasion and, therefore, it was not necessary to lift the corporate veil (paras. 6 and 7).

(ix) *Commissioner of Income Tax, Calcutta Vs. Associated Clothiers Ltd.*, Calcutta, .

There were two companies, A and B, having identical set of directors. The entire shareholding of company, B, was owned by company, A. Company B's property was transferred to company, A. It was contended that the transfer was self to self and, therefore, there was no liability to pay tax. The company's claim was that they are actually one and the same person and, therefore, the corporate veil should be lifted and, therefore, they are not liable to pay tax. The court refused to lift the corporate veil.

The High Court, after laying down the broad category of cases for lifting the corporate veil, observed that this is generally permitted when the statute gives a lead in that respect and not otherwise (paragraphs 9, 10, 11, 16, 17, 21 and 22).

(x) *State of U.P. and Others Vs. Renusagar Power Co. and Others*, .

Hindustan Aluminium Corporation (Hindalco) is a statutory corporation having its factory in U. P. Renusagar Power Company is a wholly-owned 100 per cent. subsidiary of Hindalco. Renusagar Power Company is producing electricity solely for consumption for Hindalco. The judgment refers to several facts and various amendments in the Electricity (Duty) Act of U. P. Only the last amendment is relevant (pages 134-136). The question was whether the case of Hindalco would be covered by clause (c) which contemplated a person who is consuming electricity from his "own source of generation". The question was one of interpretation of the words "own source of generation" (page 141, second paragraph).

From pages 143-147, the Supreme Court has narrated various facts and circumstances which, firstly, show that Renusagar was a captive unit of Hindalco, generating power only for Hindalco. Secondly, under the Indian Electricity Act, Renusagar was held to be Hindalco's own source of generation.

Thirdly, all along the Government of India and the State of U. P. proceeded on the basis and treated that Hindalco had its "own source of generation" in Renusagar. In fact, the government took advantage of the fact that Renusagar was its "own source of generation" of Hindalco in various ways and aspects.

Fourthly, in State of U.P. and Others Vs. Hindustan Aluminium Corpn. and Others, , the Supreme Court proceeded on the basis that Renusagar was its own source of generation of Hindalco (page 146).

In the escapable conclusion that Renusagar was its own source of generation for Hindalco, the State of U. P. argued that such conclusion would be violative of article 14 (page 150). In order to meet this contention, the Supreme Court considered the concept of lifting the corporate veil.

After making reference to the Supreme Court judgments, the Supreme Court proceeded to consider the English cases and thereafter the relevant discussion is at page 158, where the Supreme Court has made a reference to the judgments of the Calcutta High Court and the Madras High Court and also Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . All that the Supreme Court said was that the three tests laid down by the various judgments are not conclusive by themselves and, in the facts and circumstances of the case, the Supreme Court held that there are special circumstances to hold that the corporate veil should be lifted. These principles are laid down in the context of a fiscal statute. The Supreme Court has not laid down that the corporate veil needs to be lifted as and when demanded by the parties. The English decisions referred to by the Supreme Court cannot be read out of context. In all the cases the court was considering the effect of cases of fully-owned subsidiaries. The respondents are simply picking up some sentences from these observations and saying that the facts of the present case are on par with the facts of those cases and, therefore, the corporate veil should be lifted. This is only an attempt to mislead this court and nothing else.

The entire discussion in State of U.P. and Others Vs. Renusagar Power Co. and Others, is about lifting of the corporate veil between a holding company and a subsidiary company. It is an undisputed fact that BDA has been desubsidiarised and is no longer a subsidiary of Arunava Investments Ltd. and, consequently, there does not exist any "holding company-subsidiary company" relationship between the plaintiff-company and the defendant-company. In each and every case, there existed a "holding company-subsidiary company" relationship between the two companies.

(xi) Further, in this case, the party which was involved and concerned in the desubsidiarisation and has taken advantage of desubsidiarisation, now comes before the court and submits to the court to ignore the desubsidiarisation and urges that the corporate veil should be lifted for this purpose. It is submitted that this should not be allowed. Further, it is the case of the plaintiffs that desubsidiarisation took place to come out of the clutches of the Monopolies and

Restrictive Trade Practices Act and to get around the excise problem. Thus, according to the plaintiffs, they used this method of desubsidiarisation to get out of certain legislation and statutes and have as such derived certain benefits and the court should not aid such a party and lift the corporate veil because it would amount to assisting a party which has on its own showing tried to avoid certain legislation by the method of desubsidiarisation and is now using the concept of lifting the corporate veil to set aside the effect of desubsidiarisation.

129. It is necessary for me to reiterate that this entire and rather profound debate is hardly relevant on the present facts. I have considered and decided this issue already bearing in mind the principles applicable to the present facts.

130. This brings me to the final summation of the case. The plaintiffs had approached the trial court on April 14, 1992, on the false plea that BDA was still under their management and control and that this situation was sought to be disturbed by defendant No. 3 who, in actual terms, had taken certain steps towards independent management. The subsidiary pleas apart, the plaintiffs had essentially contended that BDA's status had not changed regardless of the shares having been transferred by Arunava and regardless of the legal assignment of the three brands. The trial court, as indicated earlier, upheld the plea of the plaintiffs and passed an ad interim order which had the effect of permitting BDA to be managed and controlled by the plaintiffs without any interference from the remaining defendants and as indicated earlier, the ad interim order was confirmed in even wider terms. I have pointed out that almost the entire case pleaded by the plaintiffs is justification for their action has seen the light of day long after the plaint was presented to the court and the plaintiffs have successfully managed to hold on to the initial orders right up to April, 1993, when this appeal was heard. After a day-to-day hearing lasting over three weeks, I indicated on April 27, 1993, through my order of that date, that the appeal is allowed and that the orders of the trial court are set aside. I have set out in this judgment the salient and the material areas that fall for determination with reference to the relevant parts of the record and that which is of crucial importance. Undoubtedly, this is a hotly contested litigation and quite apart from the documents and pleadings the written submissions and compilations of cases run into several thousand pages. The conclusions that emerge ultimately are as follows :

(a) That the record establishes that the BDA shares were transferred to In trust and that this constituted the entire holding of Arunava as far as BDA was concerned, which was done for a valuable consideration. The entire transaction right from the requisite procedure up to the Government approval is a valid and binding transaction, which has assumed finality. The legal implications and the immediate fall-out of this situation is that BDA as a company has assumed independent status and it, therefore, cannot be subjugated or managed or controlled by any outside agency other than its own board of directors and the power of taking all decisions in respect of its working also vested in the general

body and the board of directors.

(b) That the grounds on which the transfer of shares has been called into question are not only stale, but are totally devoid of substance. There is no merit in the challenge. The time-factor regardless, even on a consideration of the merits, this is the position.

(c) The lengthy debate with regard to the contention that this court must, in the light of what has been pointed out by the plaintiffs, examine the de facto status of the company BDA brushing aside what may apparently appear is not a doctrine that needs to be applied in the present case where there is no ambiguity whatsoever about the status of BDA either before or after the transfer.

(d) As far as the assignment of the three brands is concerned, the position that emerges is that this was an action instituted by the plaintiffs, that the consideration has passed and that the transaction has assumed a binding character in so far as it is lawful, duly executed and for valid consideration. I would categorise this transaction as having become irrevocable. The grounds on which the court has been asked to ignore it or water it down are wholly and totally unacceptable. These brands are undisputedly the property of BDA. There is no subsisting right, title or interest in them as far as the plaintiffs are concerned and BDA is, therefore, entitled to treat these brands as its very own.

(e) As regards the main charge, which is to the effect that defendant No. 3 is guilty of breach of fiduciary responsibilities, the allegation proceeds on a personal basis, but the material on record does not support any adverse finding against him.

(f) As regards the general charge levelled by the plaintiffs against the defendants, which concerns the allegation that the minutes of the meetings have been fabricated because the meetings were never held, after a careful consideration and, in fact, a repeated consideration of everything placed before me, the only permissible finding is that the allegation is completely groundless. There is ample supportive evidence to indicate that the meetings were held, they were valid and that the decisions taken therein are legally sustainable and binding.

131. I am constrained to observe at this stage that the record before me justifies the defendants' charge that the plaintiffs has suppressed almost all relevant material from the trial court at the stage when the ad-interim order was obtained and that this was highly improper. The word "improper" is, in fact, a gross understatement, the conduct of the plaintiffs bristles with mala fides. Regardless of the plaintiffs' conduct, the record before the court at that time could never justify an ex parte injunction order let alone the type of order that was passed. That order is atrocious and the plaintiffs cannot be permitted to get away with the damage that has resulted, more so considering the fact that they have ensured at all stages that the order continued for as long as possible, which was a matter to their benefit and to the detriment of the defendants. A party who

obtains interim relief from a court in these circumstances cannot be absolved of the responsibility and would, therefore, be liable to compensate the plaintiffs for the entire loss that has occurred. Shri Manohar, in the course of the hearings, demonstrated in actual terms how staggering these figures are, but it will still be essential for the heads to be quantified. The defendants may, if they so desire, quantify the loss/damage and apply to this court separately for the award of such compensation.

132. Having examined virtually every letter of the record, sifted through it carefully and discreetly and assessed whatever is most relevant, I find a very devious plan which has been the real basis for this litigation. At page 374 of the record, there is a very shabbily drafted-out letter dated April 1, 1992, a xerox copy of which is on record. In view of its importance, I am reproducing it verbatim :

"Dear Sir,

We respectfully wish to mention that we, the undersigned, were appointed in Cruickshank and Co. Ltd. and were working at the factory at BDA Breweries and Distilleries Ltd., Aurangabad, for over two years. We had agreed to join Cruickshank and Co. since it was a part of the Shaw Wallace group and we were looking apart from prospects job security and status.

Subsequently, we joined BDA Breweries and Distilleries Ltd. on April 1, 1991, after technically resigning from Cruickshank and Co. as it was conveyed to us that it may be better in the long run as indirectly we would still be part of the Shaw Wallace/Cruickshank as BDA was still within the group.

We now feel that this information was not correct and from what we hear, attempts are now to take this unit away from the group and hence would prefer it to back to Cruickshank and Co., i.e., reverse of what was done last year.

Yours faithfully, (Sd.)....."

133. This strange document, which does not indicate to whom it is addressed and in respect of which even the English and the contents leave much to be desired, is supposed to have been signed by 13 persons, including plaintiff No. 2, though there appear to be all sorts of overwriting, etc. I refer to this document because the justification for the entire litigation has emanated from the charge that it was defendant No. 3 who fired the first shot by virtue of the circular dated April 9, 1992, etc., which according to the plaintiffs, was responsible for upsetting the apple cart. In actual fact, there is no doubt in my mind, whatsoever, that it was the letter dated April 1, 1992, which was virtually an en masse resignation of the officers of BDA that was instigated by the plaintiffs in order to bring about a virtual coup and swing the company back into the hands of the Shaw Wallace group through such devious and unfair means. Put very simply, the game was directed towards paralysing the working of BDA on the one hand and then using the court machinery for purposes of taking over the

company. This was the real reason for instituting the proceedings in Aurangabad and, to my mind, when at the beginning of April 1992, BDA was faced with a plot of this type, there was no option left except to take immediate corrective steps. It was the virtual conspiracy between the executives of BDA who were ex-Cruickshank/Shaw Wallace to enact the drama of resigning en bloc and to collectively sign the letter dated April 1, 1992, that made it absolutely necessary for defendant No. 3 to issue the 9th April circular. It was inevitable when a situation of this type emerged for defendant No. 3 to take necessary measures for the survival of the company and to keep it running and to offset the act of treachery that had been instigated. A mere reading of the letter dated April 1, 1992, leaves no doubt in my mind that this was the carefully planned step which was the forerunner to the court proceedings and it was used in order to hijack the unit and achieve a coup in conspiracy with the executives. That the so-called resignations were not only inspired but were part of a plot is as clear as daylight and the action that followed from the plaintiffs in misusing the court machinery to achieve their objective clearly puts the plaintiffs very much in the wrong box.

134. The appeal succeeds and is allowed. The interim orders passed by the trial court that are the subject-matter of this appeal are vacated. It shall be necessary for me to further direct, since those orders were of an exceptional nature whereby they divested the entire management and control of BDA from the persons in lawful authority of that company and virtually handed over the same to the plaintiffs, that the trial court shall take all necessary and immediate steps to ensure that the effect of the orders that have been set aside is completely eliminated. The defendants shall be entitled to function in their independent capacity and after removal of all fetters that have been put on them as a result of the ad interim and interim orders and the trial court shall ensure that this is done forthwith.

135. I need to also record here that the defendants have been subjected to this harrowing litigation since April, 1992, which is thoroughly and completely unjustified and to this extent, therefore, this court will have to take stock of the volume of the litigation, which has gone into as many as five vigorous rounds, the nature of the litigation, the length of the hearings and a realistic view of the actual legal expenses that the defendants have been subjected to, and having regard to all of these, the appeal is allowed with costs that are quantified at Rs. 5,00,000.

136. Before parting with this judgment, I need to record my deep appreciation and indebtedness for the valuable assistance from not only the two senior counsel, Shri Manohar and Shri Venugopal, but to the teams assisting them.

(The aforesaid orders and directions shall, undoubtedly, be subject to such orders as the Supreme Court may pass in this case. The office record placed before me indicate that even though a SLP was filed before the Supreme Court against the order dated April 27, 1993, the apex court has so far not granted any reliefs staying the operation of the judgment of this court. The office shall furnish

to the parties a copy of this judgment immediately and the respondents shall, if they so desire, apply for appropriate orders from the Supreme Court within an outer limit of three weeks, failing which the orders of this court shall be implemented.)