

**(1996) 03 GUJ CK 0028**

**In the Gujarat High Court**

**Case No :** Company Application No's. 113 of 1995 and 36 of 1988 in Company  
Petition No. 35 of 1988

Bipin Vadilal Mehta

APPELLANT

Vs

Ramesh B. Desai

RESPONDENT

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**Date of Decision :** 12-03-1996

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4  
Companies Act, 1956 — Section 155, 36, 399, 77  
Limitation Act, 1963 — Section 17, 17(1)

**Citation :** (1998) 92 CompCas 910 : (1996) 3 GLR 147

**Hon'ble Judges :** Sharad D. Dave, J

**Bench :** Single Bench

**Advocate :** S.H. Sanjanwalla, for the Appellant; S.N. Soparkar and D.S.  
Nanavati, for the Respondent

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**Judgement**

S.D. Dave, J.—The applicants, Shri Bipin Mehta and Shri Priyam Mehta, have  
presented Company Application No. 113 of 1995, and

have taken out the judge's summons.

2. The prayers in the judge's summons can be reproduced thus :

(A) This Hon''ble court would be pleased to dismiss the present petition, being  
Company Petition No. 35 of 1988, on the ground that the petition

is barred by limitation without going into the merits of the petition.

(B) During the pendency of the present application, this Hon''ble court will be  
pleased to stay the further proceedings of Company Petition No. 35

of 1988.

(C) An ex parte ad interim relief in terms of prayer (B) above may please be  
granted.

3. Company Petition No. 35 of 1988 has been presented by Shri R. B. Desai. Respondent No. 1 happens to be the secretary of the company,

namely, Sayaji Industries Ltd. Respondents Nos. 2 and 3 are Shri Bipin Mehta and Shri Priyam Mehta, who have taken out the company

application. The case of the petitioners in the company petition is that, they are the shareholders of the company, namely, Sayaji Industries Ltd. and

of Maize Products, one of the units of the said company and, therefore, they are interested in the proper functioning and the management of the

said company. They feel more concerned, in particular, for the proper utilisation and application of the funds and assets of the company. They are

also interested in seeing that the funds of the company are not utilised for private, personal, or collateral purposes. According to them, respondent

No. 1 company is a public limited company, having its registered office at Kathwada, Ahmedabad. Respondents Nos. 2 to 11 are the directors of

the said company. Respondent No. 2, Shri Bipin Mehta, was inducted as an additional director of Sayaji Industries Ltd. on February 18, 1982,

and was appointed as a managing director on the same day. According to the petitioners, respondent No. 3, Shri Priyam Mehta, was inducted in

the management of the company, right from January, 1982. This was so because, respondent No. 2, Shri Bipin Mehta had acquired a large

number of shares of the company from the previous management, under a memorandum of understanding (MOU), dated January 30, 1982

(annexure ""A"") and memorandum of modification dated November 13, 1982 (annexure ""B""). Under the first MOU dated January 30, 1982, there

was an arrangement between Shri Bipin Mehta, Smt. Nirmayi Mehta and Shri Priyam Mehta on the one hand, and Shri Suhas Mehta and Smt.

Chhaya S. Mehta, on behalf of themselves and their minor son, Saurabh, on the other hand. The object of this agreement or MOU was to entrust

the control and management of Sayaji Industries Ltd. and C. V. Mehta Pvt. Ltd. in the hands of respondent No. 2, Shri Bipin Mehta and his son,

Shri Priyam Mehta, respondent No. 3. It was provided under clause 10 of the MoU that, Shri Bipin Mehta, respondent No. 2, should deposit an

amount of about Rs. 40 lakhs with C. V. Mehta Pvt. Ltd., in order that C. V. Mehta Pvt. Ltd. would pay back the debts towards Shri Suhas

Mehta and other family members. According to the petitioners, this amount of Rs. 40 lakhs was clearly by way of consideration for getting the

controlling interest and management of Sayaji Industries Ltd. and C. V. Mehta Pvt. Ltd. The said sum of Rs. 40 lakhs was required to be deposited by Shri Bipin Mehta with C. V. Mehta Pvt. Ltd. as per the understanding. Unless this was done, the acquisition and/or control over the shares of Sayaji Industries Ltd. and C. V. Mehta Pvt. Ltd. could not have been obtained by Shri Bipin Mehta, as per the first MOU. This amount of Rs. 40 lakhs was payable immediately, by Shri Bipin Mehta to Shri Suhas Mehta through C. V. Mehta Pvt. Ltd. But, according to the petitioners, Shri Bipin Mehta could not, for reasons best known to him, arrange for the said funds. The obvious result was that Shri Bipin Mehta could not obtain the control and management of the said two companies. This had resulted in a request by Shri Bipin Mehta to Shri Suhas Mehta, seeking the modification of the terms of agreement of the MOU. Shri Bipin Mehta had said that he would pay the said sum in two instalments, one in the sum of Rs. 20 lakhs, pursuant to which, the control and management of Sayaji Industries Ltd. were to be transferred to Shri Bipin Mehta and his family members. It appears that this amount was paid and, approximately, 13,000 shares of the company came to be transferred in the name of Shri Bipin Mehta and his family. The remaining amount of Rs. 19 lakhs (approximately) was required to be deposited by Shri Bipin Mehta with C. V. Mehta Pvt. Ltd. This was necessary because C. V. Mehta Pvt. Ltd. held 9,000 equity shares of Sayaji Industries Ltd. It was, therefore, absolutely, necessary for Shri Bipin Mehta to pay or deposit the above said amount of Rs. 19 lakhs to or with C. V. Mehta Pvt. Ltd. within a period of 24 months from the date of the second MOU. It was made clear that if the above said amount of Rs. 19 lakhs were to be paid, during the second period, Shri Bipin Mehta would get into the management. This would happen immediately on the payment of the said sum.

4. According to the petitioners, Shri Bipin Mehta and Shri Priyam Mehta were not in a position to manage for the above said amount and, therefore, some arrangement which would be in consonance with the provisions of the Companies Act, 1956, was required to be made. As a part of this arrangement, according to the petitioners, the company, respondent No. 1, advanced a sum of Rs. 20 lakhs to Santosh Starch Products, one of the suppliers of the company. This amount was advanced to Santosh Starch Products, by three different cheques for Rs. 10 lakhs, Rs. 5

lakhs and Rs. 5 lakhs. The last cheque came to be signed by the petitioner, Shri R. B. Desai. The said cheques were drawn on Punjab National

Bank, Maskati Market Branch, Ahmedabad. Later on, the said Santosh Starch Products paid an amount of Rs. 20 lakhs on November 13, 1982,

to Shri Bipin Mehta and the members of his family by three cheques, again, drawn on Punjab National Bank, Ahmedabad. The first cheque was in

a sum of Rs. 7 lakhs, drawn in the name of Shri Bipin Mehta, HUF; the second cheque in a sum of Rs. 6 lakhs was drawn in the name of Shri

Bipin Mehta and the remaining amount of Rs. 7 lakhs was paid by a cheque drawn in the name of Shri Priyam Mehta. These amounts came to be

deposited in the personal account of Shri Bipin Mehta and the members of his family. According to the petitioners, inquiries had revealed that this

very amount which had come from Santosh Starch Products was transferred on the very day to C. V. Mehta (P) Ltd. in order to complete the part

of transaction to get the control over Sayaji Industries Ltd. and C. V. Mehta (P) Ltd.

5. According to the petitioners, these facts would suggest beyond any manner of doubt that Shri Bipin Mehta had devised a scheme on or before

November 13, 1982, to use the funds of the company for the purpose of giving effect to the MOU of January 30, 1982. According to the

petitioners without these amounts, Shri Bipin Mehta could not have paid an amount of Rs. 20 lakhs to C. V. Mehta (P) Ltd. and ultimately he

would not have been able to honour his commitment and he could not have acquired the shares of Sayaji Industries Ltd.

6. According to the petitioners, this device was invented and put in practice with a view to violate the salutary provisions contained u/s 77 of the

Companies Act, 1956, which place restrictions on the purchase by a company of its own shares or the shares of its holding company. According

to the petitioners, therefore, under this devised and practised scheme, Shri Bipin Mehta and Shri Priyam Mehta could use the funds of the

company of Sayaji Industries Ltd. for the purpose of acquiring the shares of the same company along with the shares of C. V. Mehta (P) Ltd.

which in its turn was holding substantial shares of Sayaji Industries Ltd. The petitioners aver that these facts would show, beyond any manner of

doubt, that this arrangement, under which the shares could be obtained, was clearly contrary to and in violation of the mandatory provisions

contained u/s 77 of the Companies Act, 1956, and, therefore, the whole transaction would be null and void.

7. It is also the say of the petitioners that, apart from the transactions being void in view of section 77 of the Companies Act, 1956, they are also

bad and violative of article 20 of the articles of association of the company, when read with section 36 of the Companies Act, 1956.

8. According to the petitioners, thus, a fraud came to be practised upon the statute and, therefore, the petitioners, as the shareholders, are entitled

to the relief u/s 155 of the Companies Act, 1956, for the rectification of the share register as the said transactions were a fraud, not only on the

statute, but on the shareholders also, and were effected with mala fide purpose. The petitioners had called upon the respondents to rectify the

share register, so that the status quo ante was re-established, but that has not been done. The petitioners, therefore, have approached this court, by

presenting the company petition for obtaining the principal relief from this court, of nullification of all these transactions which are a fraud on the

company and on the shareholders and are void from the inception.

9. The petitioners have urged that though all this was done in the year 1982, the petitioners could not detect the fraud earlier, but came to know

about the same on the day, when the criminal complaint came to be filed by some of the interested persons, the office bearers of the union of the

company, before the criminal court at Narol, somewhere in the month of May, 1987. Petitioner No. 1 had also given a notice dated June 14,

1987. Nothing could materialise and, therefore, the petitioners, by filing the present petition, have prayed for the principal relief of rectification of

the share register of the company and for the deletion of the names of Shri Bipin Mehta, Smt. Nirmayi Mehta and Shri Priyam Mehta and Smt.

Priya Kothari, from the register of the company. The petitioners have also prayed for the maintenance of status quo ante. These are the prayers for

which the company petition has been filed.

10. Incidentally, it has been said that the delay, if any, in filing the petition may be excused and condoned. At the admission stage, this case of the

petitioners came to be challenged by one Shri R. T. Doshi, who was working as the company secretary of the company, at the relevant point of

time, by filing the affidavit-in-reply. This affidavit-in-reply appears to have been

filed, for the limited purpose of opposing the admission of the petition. Respondent No. 1-company has stated in so many words that they reserve their right to file further affidavit to the petition, if and when necessary. In this affidavit-in-reply, it has been averred by the affiant that the petition is barred by gross laches, delay, acquiescence and waiver, as the petition has been filed after more than five years of the transactions in question. It is further averred that the petitioners have tried to explain away the delay in presenting the petition by saying that they came to know of the alleged transactions only in May, 1987, when the criminal complaint was filed by one Shri Ashim K. Roy. Anyhow, according to the averments in the affidavit, the complaint was filed on June 18, 1987, but before that, petitioner No. 1 had given a notice to the company dated June 17, 1987, available at annexure ""D"". It is further averred that the petitioners were aware of the transactions in question right from November, 1982, as in the said month of year 1982, Shri Vadilal L. Mehta, father of respondents Nos. 2 and 12, and the chairman and managing director of respondent No. 1-company and Shri Suhas Mehta, respondent No. 12, the managing director of respondent No. 1-company and petitioner No. 1-Shri Ramesh Desai, the administrative manager of the company, were all present. The alleged transactions had taken place on November 12, 13 and 25, 1982. On November 18, 1982, Shri Suhas Mehta had resigned as managing director, but had continued as the director of respondent No. 1-company and Shri Bipin Mehta was inducted as its director and the managing director, in the meeting of the board of directors, where both Shri Vadilal Mehta and Shri Suhas Mehta were present. On September 7, 1983, Shri Vadilal Mehta and Shri Suhas Mehta had resigned from their respective posts from the company. On October 7, 1983, petitioner No. 1 Shri R. B. Desai, had also resigned from the company with effect from November 7, 1983. Based upon this factual data the affiant, Shri Doshi, had averred that everything was within the knowledge of the petitioners and especially, petitioner No. 1, who was holding an important position in the company. The affidavit-in-reply goes to say further that the contents of the memorandum of the petition are not correct and that the petition is likely to fail on the merits. Nonetheless, it shall have to be noticed that Shri Doshi has said in terms, in this affidavit-in-reply

filed on behalf of respondent No. 1-company, that the petition is barred by gross laches, delay, acquiescence and waiver and requires to be dismissed on that count.

11. There was an endeavour on the part of learned counsel, Mr. Sanjanwala, to urge that, while deciding the application, this affidavit-in-reply, which was submitted by Shri Doshi for the limited purpose of opposing the admission, cannot be taken into consideration. It is extremely difficult, rather impossible, to agree with the contention coming from learned counsel because, a clear-cut contention has been taken in this affidavit, saying that the petition is barred by the law of limitation. The mere fact that, despite this contention, the petition came to be admitted, would not allow one to urge that the whole question regarding the limitation was finally decided and that the said question was not open to be raised, at a later stage. It happens that despite several questions, both of law and fact, which require some consideration, the proceedings are being admitted, but once again, at the time of the final hearing, the contentions are not only being canvassed, but are being recognised and accepted and the proceedings fail on that count alone or also.

12. One more important aspect which should not go unnoticed is the fact that section 3 of the Limitation Act, 1963, empowers the court to dismiss

a suit or an appeal or an application filed or made after the prescribed period of limitation "although the limitation has not been set up as a defence".

The verbalism of the provisions contained in section 3 of the Limitation Act, 1963, and especially, the utilisation of the word "shall" goes to show

very clearly that, even if the limitation has not been set up as a defence, the proceedings can be dismissed by the court. It could be said that, if the

proceedings appear to be barred by the law of limitation, the same should be dismissed by the concerned court. Therefore, when these provisions

are taken note of, it is clear that, even if the further affidavit-in-reply has not been filed, it would not be open for learned counsel, Mr. Sanjanwala,

to urge that the contention regarding the proceedings being barred by the law of limitation, has, in fact, not been taken, and that the said question,

therefore, is not open for a judicial scrutiny.

13. Mr. Devang Nanavati, learned counsel, while supporting the application for dismissing the petition on the preliminary issue of limitation, without

settling the other issues, urges that the petition appears to have been presented years after the expiry of the period of limitation. No allegations of fraud in the eye of law have ever been averred, much less established, and there is not a slightest suggestion in the pleadings that due to fraud, the petitioners were kept away from the knowledge of their right to initiate the proceedings. That it is pleaded that after due diligence the petitioners could not have the awareness of fraud which would take away the knowledge of their right to move the court and have appropriate remedy. All this, contends learned counsel, would be enough to brand the petition as barred by the law of limitation, which requires to be dismissed on the hearing and decision of the preliminary issue.

14. Combating these proposition, Mr. Sanjanwala, learned counsel for the petitioners, contends that the issue of limitation cannot be decided as a preliminary issue, that in no way could the petition be said to be barred by the law of limitation and that the delay, if any, requires to be condoned.

Learned counsel, therefore, urges that the petition should be heard on the merits at the stage of final hearing only.

15. Mr. S. N. Soparkar, learned counsel appearing for the supporting respondent, endorses the view of learned counsel, Mr. Sanjanwala.

16. Upon the above said pleadings and the contentions raised at the Bar, the following questions fall for my consideration and decision :

Questions :

(A) "Whether the petition appears prima facie, to be barred by the law of limitation, regard being had to article 137 of the Limitation Act, 1963 ?

(B) Whether the "averments of fraud" said to be made in the petition can be said to be "averments of fraud in the eye of law" regard being had to

the provisions contained in Order VI, rule 4 of the Civil Procedure Code, 1908 ?

(C) Whether the provisions contained u/s 17(1)(b) of the Limitation Act, 1963, would bring the petition, within the prescribed time-limit, on the

ground that the knowledge of the right upon which the petition is founded was concealed by the fraud of the respondent ?

(D) Whether no period of limitation is attracted and the petition cannot be said to be barred by the law of limitation upon the plea that the alleged

transaction of acquiring the shares by the respondent is void ?

(E) Whether the petition requires to be admitted on the ground that the

petitioners have been able to satisfy that they have sufficient cause within the meaning of section 5 of the Limitation Act, 1963 ?

(F) Whether in the alternative to question (E), it can be said that, the alleged transaction being a continuing wrong, a fresh period of limitation

begins to run at every moment of time during which the transaction continue ?

But, the basic question appears to be as under :

Basic question :

Whether, in the facts and circumstances of the case and regard being had to the provisions contained in Order XIV, rule 2(2) of the Civil

Procedure Code, 1908, the issue regarding limitation can be or requires to be tried first ?

17. This basic question requires to be formulated and answered because of the fact that learned counsel, Mr. Sanjanwala, has urged with great

vehemence that the issue regarding the limitation cannot be considered and decided as a preliminary issue. Reliance is being placed upon the

provisions contained in Order XIV, rule 2(2) of the Civil Procedure Code, 1908. Upon reference to the above said provisions on which learned

counsel, Mr. Sanjanwala, places heavy reliance, it becomes apparent that there is a command to the court, to pronounce judgment on all issues.

Rule 2(1) of Order XIV says that, notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions

of sub-rule (2) pronounce judgment on all issues. Thus, it is clear that sub-rule (1) of rule 2 of the Order is made subject to the provisions of sub-

rule (2). Sub-rule (2) says that, where the issues, both of law and fact, arise in the same suit, and the court is of the opinion that the case could be

disposed of on an issue of law only, it may try that issue first, if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created

by any law. It is further made clear that, for the said purpose, if the court thinks fit, it may postpone the settlement of other issues until after that

issue has been determined. Thus, upon a reading of the provisions contained under Order XIV, rule 2, it is apparent that though there is a general

command to the courts to pronounce judgment on all the issues, an important exception has been carved out and the court has been permitted to

dispose of the case on an issue of law only, if that issue relates to the jurisdiction of the court or a bar to the suit created by any law. Order XIV,

rule 1, which relates to the framing of the issues makes it clear that, each material proposition affirmed by one party and denied by the other, shall form the subject of a distinct issue. Issues are said to be of two kinds, namely, issues of fact and issues of law. Here, before me, looking to the averments in the petition and in the affidavit-in-reply, it can be said that, a material proposition regarding the limitation has been affirmed by the petitioners and the same is being denied by the other side and, therefore, there is a subject of a distinct issue and that issue appears to be an issue of law, for the reasons which I shall have to assign.

18. Learned counsel, Mr. Sanjanwala, urges that, here, I am not concerned with an issue of law only, but I am concerned with an issue of fact

also. Learned counsel urges that, at any rate, I am concerned with an issue which is a mixed question of law and fact. As I would make it

abundantly clear in the course of the present orders hereinafter, the case being presented by learned counsel, Mr. Sanjanwala, regarding the fraud

cannot be accepted. I shall have to go to the extent of saying that there is not only no proof of fraud, but even the ""averments of fraud"" made in the

petition do not amount to the ""averments of fraud, in eye of law"". At this juncture, thus, I would satisfy by saying that the question regarding the

limitation appears to be a question of law only, to me. This conclusion shall have to be made clearer, on the reasoning which would follow

hereinafter. Learned counsel for the petitioners places heavy reliance upon the Supreme Court pronouncement in Major S.S. Khanna Vs. Brig.

F.J. Dillon, . It is said in this decision that, under Order XIV, rule 2 of the Civil Procedure Code, 1908, where issues, both of law and fact arise in

the same suit and the court is of the opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues

first. It is also said that, normally, all the issues in a suit should be tried by the court and not to do so, especially when the decision on the issues

even if law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit. The decision rendered by the Supreme Court in

the year 1963, of course, is prior to the general amendment in the CPC and the relevant linked provisions contained in Order XIV, rule 2. Reliance

is being placed upon the pronouncement of this court in Saurashtra Cement and Chemicals Industries Ltd. and Others Vs. Esma Industries P. Ltd.

and Others, . In this decision, while examining the provisions contained under Order XIV, rule 2, it has been said that, whether a company petition

is not maintainable as not complying with the requirements of section 399 is a mixed question of law and fact and is not a pure question of law.

Further, there is no bar of jurisdiction of the court. Therefore, the issue as to whether a company petition is maintainable or not, cannot be tried as

a preliminary issue in view of the mandate of Order XIV, rule 2. It should not be overlooked while making a reference to this pronouncement that

it was a case wherein it was urged that the petition was not maintainable as it was not complying with the requirements of section 399 and it was,

of course, a mixed question of law and fact. Moreover, there was no bar of jurisdiction of the court. A rather recent decision of this court, in

Jasuben Madhusudan Pandya v. Manharlal Narandas Bhatt [1990] 1 GLR 199, is also pressed into service by learned counsel, Mr. Sanjanwala,

in his efforts to persuade me that the question of limitation cannot and should not be decided as a preliminary issue. Firstly, this decision makes it

clear that issues may be framed by the court from all or any of the materials, namely, the allegations made on oath, by the parties, allegations made

in the pleadings and the contents of the documents produced by either party. Coming to the question concerned, the learned single judge, upon a

reading of the provisions contained in Order XIV, rule 2, says that the court cannot take up an issue of law as a preliminary issue unless it falls

within the substituted rule. As seen above, the substituted rule permits the court to decide the case on an issue of law only if that issue relates to the

jurisdiction of the court or a bar to the suit created by any law, for the time being in force. While referring to the provisions contained u/s 3 of the

Limitation Act, 1963, I have noticed that there is a bar of limitation placed upon the court saying that every suit instituted, appeal preferred or

application made, after the prescribed period shall be dismissed by the court, although the limitation has not been set up as a defence.

19. Therefore, upon the consideration of all this, I have no hesitation in coming to the conclusion that the case or the part thereof, can be decided

on an issue alone, if that issue falls within the purview of the provisions contained in Order XIV, rule 2. I have made it clear that, because of the

reasons which I am going to assign in the course of the present orders the issue appears to be an issue of law alone. This question, therefore,

requires to be replied in the affirmative, by saying that, in the facts and circumstances of the case and regard being had to the provisions contained

in Order XIV, rule 2 of the Civil Procedure Code, the issues regarding limitation can be tried first. The settlement of the remaining issues could be

postponed. Upon consideration of all the aspects of the case, if one is satisfied that the case could be disposed of by deciding any issue of law

only, it could be done. This is all that has been said by the above said statutory provisions and the case law. This is what I feel :

Question (A) : The whole controversy has arisen because of the provisions contained under article 137 of the Limitation Act, 1963. This residuary

article says that, in an application for which no period of limitation is provided elsewhere, the period of limitation would be three years and the

period of limitation would start to run from the date, when the right to apply accrues. It is not in dispute before me, in the present proceedings, that

the petition for the rectification of the register has not been made within the stipulated period of three years. In fact, it appears to have been

presented after about six years. It is, therefore, clear that the petition appears, prima facie, to be barred by the law of limitation, regard being had

to the residuary article 137 of the Limitation Act, 1963.

Questions (B) and (C) : The contention coming from learned counsel, Mr. Sanjanwala for the petitioners, is that, regard being had to the provisions

contained u/s 17(1)(b) of the Limitation Act, 1963, the petition would be within the prescribed time limit because, there has been an invention and

then the practice of fraud by respondents Nos. 1, 2 and 3 and they have rendered themselves guilty and answerable too, by practising fraud upon

the statute and upon the company. Regard being had to the peculiar nature of the allegations of alleged fraud, the question has arisen as to whether

the averments of fraud made in the petition can be said to be the averments of fraud in the eye of law. This question shall have to be decided

regard being had to the provisions contained in Order VI, rule 4 of the Civil Procedure Code, which can be reproduced as under :

Order VI, rule 4 : In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence,

and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and

items if necessary) shall be stated in the pleading.

A bare perusal of the above said text of the rule would go to show that in all cases in which the party relies on fraud, the particulars thereof should

be provided in the pleading. When the pleadings in the petition are examined in view of the abovesaid statutory provision, it shall have to be said

that the requirements of this rule have not been complied with. At more than one place, the petitioners do say in the petition that there has been a

fraud upon the statute, upon the company and upon the shareholders. But, this repeated recital regarding the existence of the fraud is devoid of any

particulars whatsoever. It should be appreciated that the law of pleadings requires that an allegation of fraud is to be made specifically and that the

particulars thereof are to be furnished and later on, with a view to succeed on the basis of the plea of fraud, the fraud as alleged requires to be

established. Learned counsel, Mr. Devang Nanavati, in this respect, draws my attention to a classic decision on this point rendered by the Privy

Council in the year 1915 in *Bal Gangadhar Tilak v. Shrinivas Pandit* AIR 1915 PC 7. The Privy Council, while dealing with the provisions

contained in Order VI, rule 4 of the Civil Procedure Code, has said thus :

Under the contract law of India, as well as by ordinary principles, coercion, undue influence, fraud, and misrepresentation are all separate and

separable categories in law. They may overlap or may be combined. But in pleadings, general allegations, however strong may be the words in

which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice.

20. This say of the Privy Council said in the year 1915 makes it abundantly clear that, by ordinary principles, coercion, undue, influence and fraud,

etc., are all separate and separable categories in law. They may overlap or may be combined. But, in pleadings, general allegations, however

strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any court ought to take notice.

Thus, it is clear that general allegations regarding fraud without the necessary particulars would even not amount to an averment of fraud of which

the court ought to take notice. The principle laid down by the Privy Council should be appreciated by noticing that, if only fraud is alleged with all

the general allegations in the strongest possible words, but if they are not

sufficient enough in particulars, then it can be said that there is not even an averment of fraud in the pleadings. If such general allegations do not amount to an averment of fraud, necessarily, the court cannot be called upon to take notice of that fact. The court would be bound to take notice of those averments which are or which can be said to be averments in the eye of law. The very same principle appears to have been laid down by the Supreme Court in *Afsar Sheikh and Another Vs. Soleman Bibi and Others*, . While examining the question regarding the provisions contained u/s 16 of the Contract Act, 1872, and that too, in respect of undue influence, the Supreme Court has made it abundantly clear that general allegations would not do. The say of the Supreme Court can be made clear by quoting thus (headnote) :

Although "undue influence", "fraud", "misrepresentation" are cognate vices and may, in part, overlap in some cases, they are in law distinct categories, and are in view of Order 6, rule 4, read with Order 6, rule 2 of the Civil Procedure Code, 1908, required to be separately pleaded, with specificity, particularity and precision.

21. Thus, Indian courts have also said that, though the concepts like ""undue influence"", ""fraud"" and ""misrepresentation"", etc., are cognate vices and may, in part, overlap in some cases, regard being had to the provisions contained under Order VI, rule 4 of the Civil Procedure Code, 1908, they are required to be separately pleaded with specificity, particularity and precision. It is also pointed out that a general allegation in the plaint in this respect would not do. It was a case of an alleged undue influence upon the plaintiff who was a simple old man of 90 years, who had reposed great confidence in the defendant. But, this general allegation, was found to be, much too insufficient, to amount even to an averment of undue influence.

22. Thus, the provisions contained under Order VI, rule 4 of the Civil Procedure Code, 1908, as indicated above, and the case law, one rendered by the Privy Council in the year 1915 and the other one by the apex court of the country in the year 1976, would go to make it abundantly clear that the particulars regarding fraud should be given in the pleadings. It is further clear that, if such particulars are not provided, the recital of the word ""fraud"" repeatedly and in strong fashion, also would not even amount to an averment regarding the fraud of which the court should take

cognizance or notice.

23. When the pleadings in the petition before me are examined, in view of this settled principle, it appears that, though the word "fraud" and the terms "fraud on the company", "fraud on the statute" and "fraud on the shareholders" are used more than once, absolutely no particulars in that respect are provided. The position would be that these averments of fraud said to be made in the petition cannot be said to be the averments of fraud in the eye of law, within the meaning of Order VI, rule 4 of the Civil Procedure Code, 1908.

24. The whole exercise on the part of learned counsel, Mr. Sanjanwala, to establish that there are averments of fraud in the pleadings was necessary because learned counsel wanted to have shelter under the provisions contained in section 17(1)(b) of the Limitation Act, 1963. Section 17 of the Act of 1963 deals with the question of effect of fraud or mistake. It is said that, where, in the case of any suit or application for which a period of limitation is prescribed by the Act, the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence, have discovered it. The provisions contained in section 17 of the Act of 1963 are elaborately clear. For obtaining the advantage u/s 17 of the Act of 1963, the person claiming the benefit or advantage has to show to the satisfaction of the court that the knowledge of his right upon which a suit or application is founded was concealed by the fraud by the other side. The emphasis is not on the prevention of the exercise of the right, but it is on the knowledge of the right which was concealed. The party claiming to have the benefit within the purview of section 17 of the Act of 1963, therefore, shall have, undoubtedly, to establish that, because of the fraud of the other side, his knowledge of his right was concealed.

25. The principle appears to have been better explained by the Supreme Court decision in *Yeswant Deorao Deshmukh Vs. Walchand Ramchand Kothari*, . Paragraph 19 of this decision makes it clear that "concealing from a person the knowledge of his right to apply for execution of a decree is undoubtedly different from preventing him from exercising his right, of which he has knowledge". This say of the Supreme Court makes it clear

that, the party who wants to take shelter u/s 18 of the Limitation Act, 1908, equivalent to section 17 of the Limitation Act, 1963, has to show that,

because of the fraud, the knowledge of his right to have recourse to law was concealed by the other side by practising a fraud upon him. In the

Madras High Court pronouncement in *In Re: Marappa Goundar*, , three things have been prescribed for a person desiring to invoke the aid of

section 18 of the Limitation Act, 1908, equivalent to section 17 of the Limitation Act, 1963. The Madras High Court based the principle thus

(headnote) :

A person desiring to invoke the aid of this section must establish three things, viz., (1) that there has been fraud, (2) that by means of such fraud he

was kept from the knowledge of his right to sue or apply or of the title on which such right is founded; and (3) time will be extended under the

section only as against the person guilty of fraud, or who is accessory thereto or who claims through the person guilty of fraud otherwise than in

good faith and for valuable consideration. These three conditions must concur in proceedings to set aside execution sales on the grounds set out in

section 18 of the Limitation Act, 1908. It is not enough for instance for the plaintiff or the applicant to show that the action by the defendant or

respondent was fraudulent.

26. Moreover, the question regarding reasonable diligence as understood within the meaning of section 17 of the Limitation Act, 1963, also

requires to be considered. As made clear by the Madras High Court in *The Ramanathapuram Market Committee Vs. East India Corporation Ltd.*,

, by the use of the words ""with reasonable diligence"" u/s 17, the Legislature has given scope to the defendant to contend that, with reasonable

diligence, the plaintiff could have discovered the fraud or the mistake earlier. I have already taken a view that all was done in the presence of

everybody concerned. Even if it was not so, the petitioners could have discovered this with reasonable diligence. On this count also, they would

not be able to bring their case within the purview of section 17 of the Limitation Act, 1963.

27. This decision, thus, clarifies that, in the instant case, the petitioners shall have to establish that there was a fraud and that, by means of such

fraud, they were kept from the knowledge of their right to sue or apply before

this court. It is not enough to say that the action of the other side was a fraudulent one.

28. Going to the English decision in *Beaman v. A.R.T.S. Ltd.* [1949] 1 All ER 465, it again becomes clear that there must be a fraudulent

concealment of the right of action within the meaning of section 26(b) of the Limitation Act, 1939. In *Kitchen v. Royal Air Forces Association*

[1958] 2 All ER 211, it has been said that there must be a concealment by fraud of the right of action. In *Clark v. Woor* [1965] 2 All ER 353, it is

held that the plaintiffs' right of action must have been concealed by the defendant.

29. Thus, it is clear that, if the petitioners wanted to have recourse to the provisions contained u/s 17 of the Limitation Act, 1963, they are required

to establish, not only that there was a fraud, but also that by means of such fraud, they were kept from the knowledge of their right to apply for the

rectification of the register and that the time will be extended under the section only against those persons who were guilty of fraud. It would not be

enough for the petitioners to show that the action by the respondents was fraudulent. As indicated above, it has been noticed by me that, excepting

the bare recitals regarding the fraud, no particulars have been furnished qua the fraud. Because of this, taking in view the settled legal position, it

cannot even be urged that there is the averment of fraud. If it is accepted that there has been the averment of fraud, then also, there is even not an

averment much less, any material to show that, by means of such fraud, the petitioners were kept away from the knowledge of their right to initiate

the proceedings for the rectification of the register. It should not be overlooked that, as pointed out by the respondents in the affidavit-in-reply, the

father, Shri Vadilal Mehta, was present along with petitioner No. 1, Shri Ramesh Desai, at the material time. By way of an arrangement, Shri

Suhas Mehta had resigned as the managing director, but has continued as the director of the respondent-company and Shri Bipin Mehta was

brought in as the director and managing director of the respondent-company. This had happened in pursuance of a resolution of the board of

directors of respondent No. 1-company, where both Shri Vadilal Mehta and Shri Suhas Mehta were present. Even thereafter, Shri Vadilal Mehta,

father, had continued and functioned as chairman and managing director. On the

top of this, the last cheque dated November 25, 1982, for Rs. 5

lakhs given to the suppliers, Santosh Starch Products, as part payment of the total sum of Rs. 2 lakhs, was drawn and signed not by anybody else,

but petitioner No. 1, Shri Ramesh B. Desai himself. The facts, therefore, would go to show that the whole arrangement was known to the parties.

It was within the knowledge of the petitioners, Shri Ramesh Desai along with the secretary of respondent No. 1-company and Shri Bipin Mehta

and Shri Priyam Mehta, respondents Nos. 2 and 3, respectively. It was also within the knowledge of respondent No. 12, Shri Suhas Mehta, who

supports the case of the petitioners. Therefore, it is clear, beyond any manner of doubt that the petitioners have not been able to establish their

case under which, they would be able to fall within the purview of section 17 of the Limitation Act, 1963. It must, therefore, be said that the

averments of fraud said to be made in the petition, cannot be said to be the averments of fraud in the eye of law, regard being had to the provisions

contained under Order VI, rule 4 of the Civil Procedure Code, 1908. In the same way, the petitioners are not able to fall within the purview of the

provisions contained u/s 17(1)(b) of the Limitation Act, 1963.

30. Question (D) : Learned counsel, Mr. Sanjanwala, for the petitioners and Mr. Soparkar for the supporting respondent No. 12, have urged that

the alleged transactions of acquiring the shares, by the respondents would be void and, therefore, no period of limitation would be attracted.

Learned counsel have urged this, on the basis of certain decisions in which the orders passed by the court below were said to be ab initio void.

Here, I am concerned with a case in which, the question is regarding the alleged voidness of the share transfer transactions. Those cases, on which

reliance has been placed by learned counsel, Mr. Sanjanwala and Mr. Soparkar, would not be applicable to the facts of the case on hand.

31. One of such cases on which a strong reliance has been placed is the decision of this court in Mafatlal Khodidas v. Girdharilal Dhurabhai 9

GLR 186. It was a case of default of appearance of the tenant during the proceedings under the Bombay Tenancy and Agricultural Lands Act,

1948. The Tribunal was holding that the tenant was not willing to purchase the land and the purchase was ineffective, but this order was not

communicated to the tenant, despite the statutory requirement. It is in the

background of these facts that the learned single judge has opined that such orders would be ultra vires the proviso to section 32G of the Act and, therefore, the Limitation Act does not apply. This case law being based upon the statutory provisions under which the tenant, who was absent before the Tribunal, was required to be communicated with the orders of the Tribunal, stands entirely on a different footing and would hardly render any assistance to learned counsel, Mr. Sanjanwala and Mr.

Soparkar. Learned counsel, Mr. Nanavati, places reliance upon the Supreme Court decision in State of Punjab and Others Vs. Gurdev Singh, . It

was a case of dismissal from service. The case of the servant was that the dismissal orders were illegal. A declaration to that effect was sought for.

It was held that, the suit would be one under article 113 of the Limitation Act, 1963, and if the statutory time limit expires, the court cannot give the declaration sought for. The whole situation gets clarified from the following observations of the apex court :

If an Act is void or ultra vires it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party

can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not

"quash" so as to produce a new state of affairs. But none the less the impugned dismissal order has at least a de facto operation unless and until it

is declared to be void or a nullity by a competent body or court. ... It will be clear from these principles, that the party aggrieved by the invalidity of

the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach

the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for ... That in our

opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is

wrongful, illegal or ultra vires, is governed by article 113 of the Limitation Act.

32. The above said observations would go to nullify the contentions being raised by learned counsel, Mr. Sanjanwala and Mr. Soparkar.

33. Learned counsel Mr. Nanavati draws my attention to the classic work by H. W. R. Wade and C. F. Forsyth, Administrative Law. Page 341

of the seventh edition of the treatise deals with the remedies and relativity. The

author says thus :

In one case Lord Denning MR said that if a rating list is so defective that it is a nullity "there is no need for an order to quash it. It is automatically null and void without more ado". Here also there is a logical difficulty, since unless an order of the court is obtained, there is no means of establishing the nullity of the list. It enjoys a presumption of validity, and will have to be obeyed unless a court invalidates it. In this sense every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well-known passage Lord Radcliffe said :

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

This must be equally true even where the "brand of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy

Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly, saying that :

"It leads to confusion to use such terms as "voidable", "voidable ab initio", "void" or "a nullity" as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction."

The words "patent or latent" show that it makes no difference for this purpose whether the order bears a "brand of invalidity upon its forehead".

Lord Diplock pointed out that the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue. He added that there might be no one entitled to sue, for example if a statutory time-limit had expired. In that case, the order would have to stand. Cooke J. expressed the same idea in a New Zealand case. Except perhaps in comparatively rare cases of flagrant invalidity, the decision in question is recognised as operative unless set aside.

The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid.

34. This say of the learned author based upon decisions would go to show that the order may hypothetically be a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing. The lack of standing may be due to various reasons, but in such a case the ""void"" order remains effective and is, in reality, valid.

35. Learned counsel, Mr. Nanavati, draws my attention to the Court of Appeal decision in *R. v. Secretary of State for the Environment, Ex parte Ostler* [1976] 3 All ER 90. In this decision, the Court of Appeal holds that, since the respondent had failed to apply to the court within the period of six weeks from the date of publication of the order as required under the statute, the court had no jurisdiction to entertain the application. It was immaterial that the respondent was seeking to question the validity of the order on the ground of bad faith and after the expiry of the time-limit, the order was not to be questioned in any legal proceedings whatsoever.

36. In this decision, a reference has been made to the decision rendered by Browne J., who had placed reliance upon *Smith v. East Elloe Rural District Council* [1956] 1 All ER 855. The relevant portion runs thus (page 95 of [1976] 3 All ER) :

Cases in which the inferior tribunal has been guilty of bias, or had acted in bad faith, or has disregarded the principles of natural justice. [He said of those cases :] It is not necessary to decide it for the purposes of this case, but I am inclined to think that such decisions are not nullities but are good until quashed (of the decision of the majority of the House of Lords in *Smith v. East Elloe Rural District Council* [1956] 1 All ER 855, that a decision made in bad faith cannot be challenged on the ground that it was made beyond powers and Lord Radcliffe's dissenting speech).

37. A reference is also made to the say of Lord Radcliffe in *Smith v. East Elloe Rural District Council* [1956] 1 All ER 855, 871. The observations

run thus :

But this argument is, in reality, a play on the meaning of the word nullity. An order (and he is speaking of an order such as we have got here), even

if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary

proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible

purpose as the most impeccable of orders. And that brings us back to the question that determines this case : Has Parliament allowed the

necessary proceedings to be taken ?

38. The above said material is sufficient to warrant a conclusion that learned counsel Mr. Sanjanwala and Mr. Soparkar are not in a position to

urge, successfully, before me that, because they would brand the transaction as void, the period of limitation as provided under the Limitation Act,

1963, under the relevant article would not be attracted.

39. Question (E) : Learned counsel for the petitioners has urged that the petition requires to be admitted on the ground that the petitioners have

been able to satisfy that they have sufficient cause within the meaning of section 5 of the Limitation Act, 1963. As a necessary corollary to this,

learned counsel urges that the delay if any, should be condoned and the petition should be admitted. This contention also coming from learned

counsel cannot be accepted even recognising that the term ""sufficient cause"" occurring in section 5 of the Limitation Act, 1963, requires a liberal

construction. With a view to have the benefit of the extension of the prescribed period by bringing their case within the purview of section 5 of the

Limitation Act, 1963, the petitioners were required to assign a cause and thereafter, to urge that, regard being had to the facts and circumstances

of the case and the settled legal principle, the cause assigned by them could be said to be ""sufficient cause"" within the meaning of the said provision.

As seen above, the whole case of the petitioners is based upon allegation of fraud practised upon the company, the statute and the shareholders.

No particulars, whatsoever, have been furnished and the petitioners have rested content by use of the word ""fraud"". I have taken a view, as

indicated above, that these averments of fraud cannot be said to be averments of fraud, in the eye of law. No cause, therefore, has been shown or

even pleaded by the petitioners in the petition. When no cause is shown or pleaded, it is impossible to construe a non-existing cause as a sufficient cause within the meaning of section 5 of the Limitation Act, 1963. It is, therefore, undoubtedly, clear that it cannot be urged that the petition requires to be admitted, on the ground that the petitioners have been able to satisfy that they had sufficient cause within the meaning of section 5 of the Limitation Act, 1963.

40. In the alternative to question (E), and the contention covered there-under, it is urged by learned counsel Mr. Sanjanwala and Mr. Soparkar

that the alleged transaction being a continuing wrong, a fresh period of limitation begins to run at every moment of time during which the transaction

continued. In other words, learned counsel wanted me to believe that, as the act of the transfer of shares is continuing even uptill now, there has

been a continuing wrong and, therefore, a fresh period of limitation would begin to run, at every moment. The contention appears to have been

based upon section 22 of the Limitation Act, 1963, which provides that, in the case of a continuing breach or in the case of a continuing tort, a

fresh period of limitation begins to run, at every moment of time, during which, the breach or tort as the case may be, continues. With a view to

examine the correctness of this contention coming from learned counsel, the concept regarding continuous tort requires to be clarified. The decision

on which reliance is being placed by learned counsel Mr. Sanjanwala is a Bench decision of this court in *President, Kalol District Municipality v.*

*Bai Champa* 17 GLR 44. In this decision, while considering the provisions contained u/s 23 of the Limitation Act, 1908, equivalent to section 22 of

the Limitation Act, 1963, it has been said thus :

The essence of a continuing wrong, is that the act complained of creates a continuing series of injuries and is of such a nature that it renders the

doer of that act responsible for the said continuance. Where the injury complained of is complete on a certain date there is no "continuing wrong"

even though the damage caused by that injury might continue. If, however, the act is such that the injury itself is continuous, then there is a

"continuing wrong" and the case is governed by section 23 of the Limitation Act, 1908. However, in cases where the wrong committed infringes a

right which is of a continuing nature and which can be enjoyed every day and

every moment, that wrong is of a continuing character and gives rise to a fresh cause of action every moment it continues.

41. The above said was a case of erection of a cabin on disputed land. The action was said to be a continuing wrong, because by the erection of

the cabin, the right of easement or right to keep a certain piece of land open, which was a right of continuing nature, was found to be infringed.

Here, in the instant case, it should not be overlooked that, as soon as the alleged transaction had taken place and the share transfer was reflected in

the share register, the alleged wrong was over. The wrong cannot be equated with the continuous effect thereof. A wrong would be complete on

the doing or on the not doing of a certain thing. The consequence thereof may be continuing or permanent till there has been a redressal, but a

continuing wrongful effect cannot be equated with a continuing wrong. If the wrongful act causes an injury which is complete, there is no continuing

wrong even though the damage resulting therefrom may continue for a longer time or in a continuous manner.

42. The wrongful act complained of is complete in all manner and only because of the lasting effect of the said wrong, it cannot be said that it is a

continuing breach or a continuing fraud. This contention, therefore, coming from learned counsel cannot be accepted. It cannot be successfully

urged and cannot be accepted that the alleged transaction is a continuing wrong, and, therefore, a fresh period of limitation begins to run, at every

moment of time, during which the transaction continues.

43. Lastly, as the supplementary contention, it is being urged by learned counsel, Mr. Sanjanwala, that, in rectification proceedings under the

Companies Act, unlimited jurisdiction has been granted to the court to rectify the register and in all cases where justice requires it, the order to

rectify will be made nunc pro tunc. The contention appears to have been based upon certain English decisions. But, it should not be overlooked

that the instant one is a case of a dispute between the members of the family, as the head of which, Shri Vadilal Mehta, wanted to see the division

of the companies during his lifetime. Certain arrangements were made under which the controlling power by the purchase of the shares was to be

obtained. The dispute is essentially a family dispute. The other shareholders appear to be unconcerned with the matter. In view of this, it could

hardly be urged that when the petition is found to be barred by the law of limitation and gross delay and laches could be attributed to the petitioner,

I should venture to examine the alleged transaction on the merits and to correct and rectify the register, if need be. This contention, therefore, also

does not appear to be accepted.

44. In the result, therefore, the following conclusions could be drawn :

(1) The petition has been presented beyond the period provided by the law of limitation, i.e., article 137 of the Limitation Act, 1963.

(2) In the facts and circumstances of the case and regard being had to the provisions contained in Order XIV, rule 2(2) of the Code of Civil

Procedure, 1908, the issue regarding limitation can and requires to be tried first.

(3) The provisions contained u/s 17(1)(b) of the Limitation Act, 1963, do not save the petition from being branded as barred by the law of

limitation as ""averments of fraud"" do not amount to ""averments of fraud in law"" under which it can be said that the knowledge of the right of the

petitioners was concealed. The special facts and circumstances annexed to the petition oblige to come to the conclusion that, even if the case of

fraud is accepted or assumed, the petitioners by due diligence could have become aware regarding their right.

(4) The law of limitation cannot be ignored on the count that the alleged transaction is void.

(5) No cause for condonation of delay is shown, much less established.

45. Thus, Company Application No. 113 of 1995, requires to be allowed and Company Petition No. 35 of 1988, requires to be dismissed, on the

preliminary issue, as being barred by law of limitation. Company Application No. 36 of 1988, has been presented and the judge's summons has

been taken out, for certain interim relief. Nothing has been ordered on that application, except saying that it is to be heard with the company

petition. When the company petition gets disposed of in the above said manner, Company Application No. 36 of 1988, requires to be disposed

of, in sequence.

46. The net result is that Company Application No. 113 of 1995 is allowed. Company Petition No. 35 of 1988 is dismissed as being barred by

the law of limitation and Company Application No. 26 of 1988 is being disposed of as having become infructuous. Orders accordingly. No costs.

47. Before parting, it requires to be placed on record that the proposition of law, i.e., that the petition presented u/s 155 of the Companies Act, 1956, even after the amendment which confers powers on the Company Law Board, remains a matter which can be decided by this court as pending proceedings"" u/s 68 of the Companies (Amendment) Act, 1988, was not disputed by the parties.