
(2006) 04 DEL CK 0120
In the Delhi High Court
Case No : Co.A. (B) 8 of 2003

Power Grid Corporation of India Ltd.

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Capital Issues (Control) Act, 1947 — Section 3(2), 3(4)
Companies Act, 1956 — Section 108, 108(1), 10F, 111, 111(1)
Income Tax Act, 1961 — Section 193, 80L
Sales of Goods Act, 1930 — Section 19, 2(4), 2(7), 20, 21
Transfer of Property Act, 1882 — Section 6

Citation : (2006) 04 DEL CK 0120

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Shanti Bhushan, S.B. Upadhaya and S.M. Sharma, for the Appellant;
C.S. Sundram Jay Savla and Meenakshi Ogra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 7.2.1992, appellant, Power Grid Corporation of India Ltd. (here-in- after referred to as PGCIL) a Government Company incorporated u/s 617 of the Companies Act, 1956 earlier named as National Power Transmission Corporation obtained approval from the Central Government for issue of taxable/ tax free bonds. Inter alia, condition of the consent recorded:

It is a condition of the consent that the company will be subject to any measures of control, licensing, or acquisition that may be brought into operation either by the Central or any State Government or any authority therein.

2. Canbank Financial Services Ltd. (here-in-after referred to as Canfina), a company wholly owned by Canara Bank, vide it's letter dated 6.3.1992 offered to subscribe to 17% taxable bonds of the face value of Rs. 80 crores on the terms and conditions set out in the said letter. Being relevant, entire contents of the letter dated 6.3.1992 may be noted. It reads :

The Director (Finance)
National Power Transmission
Corporation Ltd.,
89, Nehru Place, New Delhi.

Dear Sir,

Sub: Private Placement of Bonds Aggregating to Rs. 100 crores (Taxable).

Referring to your subject bond issue and our discussions on the subject matter we are pleased to inform you that we are agreeable to subscribe to your bond issue to the extent of Rs. 80 crores including the OTC portion on the following terms:

- (a) The subscription will be made at par.
- (b) The coupon rate shall be 17.00% p.a.
- (c) An all inclusive fee @ 4.00% on our entire subscription of Rs. 80 crores will be payable by NTPC to us. The payment of this fee will be made separately by NTPC immediately on allotment.
- (d) NTPC shall invest Rs. 16.80 crores @ 11% p.a. with us on the date of allotment. This shall be repaid after three months from the date of allotment.
- (e) NTPC shall invest Rs. 60 crores with us on the date of allotment for one year under the Portfolio Management Scheme. This investment shall generate an indicative yield of 12% p.a.
- (f) The investments mentioned in para (d) and (e) above shall be made in Govt. of India securities/PSU Bonds/NCDs/Mutual Fund instruments/Equities/Units of UTI etc.

Our other terms and conditions for subscribing to the issue are enclosed.

The offer is valid till 10.03.92.

We shall be thankful for your favorable consideration of our offer.

Thanking you,

Yours faithfully,

FOR CANBANK FINANCIAL SERVICES LTD.

sd/- Illegible

(K.S.Prabhu)

Sr.Project Manager.

3. Responding to Canfina's letter dated 6.3.1992, on 9.3.1992 appellant wrote a

letter indicating it's willingness to allot 17% taxable bonds. The letter reads as under :

M/s. Canbank Financial Services Ltd.

1E, Vandhana Building,

11, Tolstoy Marg,

New Delhi.

Sub: Allotment of 17% Secured Redeemable Non-Cumulative taxable Bonds of Rs. 1000/- each at par-1st issue. (Private Placement).

Dear Sir,

We refer to your letter No. DCAN/BOMDI/92 dt. 6th March, 1992 and showing your interest for allotment of 17% Secured Redeemable non-cumulative taxable Bonds of Rs. 1000/- each at par 1st issue (Private Placement). Your offer has been considered by the Management and we are pleased to advise that NTPC is agreeable to make the firm allotment of the Bonds on the following terms and conditions:

2. Terms and conditions of Allotment of Bonds:

2.1 Category of Bonds: 17% Secured Redeemable non-cumulative taxable bonds of Rs. 1000/- each issued at par and repayable at par after the expiry of 7 years from the date of allotment.

2.2 Value of Bonds: Rs. 80 crores.

2.3 Allotment : Firm allotment would be made after the aforesaid amount of Rs. 80 crores has been credited in a separate Bank Account to be opened by NTPC for the said purpose with Canara Bank, Janpath Branch, New Delhi.

2.4 Fee: An all inclusive fee shall be payable at the rate of 4% on the total value of Bonds allotted.

2.5 Deployment of funds: In consideration of Canbank Financial Services Ltd. having agreed to subscribe to our Bonds, NTPC will consider placement of a sum of Rs. 60 crores for a period of 12 months under the portfolio management scheme for the date of allotment at the rate of 12% per annum. NTPC shall invest Rs. 16.80 crores at the rate 11% p.a. with Canfina on the date of allotment. This shall be repaid in April, 1992. The allotment will be effective after the receipt of entire funds in our Bond application money Account?.

2.6 Sale of Bonds over the counter: The allotment is subject to the condition that 20% of Bonds allotted must be offered to public through offer for sale over the counter. The public for this purpose will include individuals registered trusts, co-operative societies and HUF. The number of counters and places shall be decided in consultation with NTPC.

2.7 Issue expenses : The company will not undertake any liability to reimburse any expenditure incurred by Canfina in connection with the sale of Bonds to public as stated above Canfina will make their own arrangements for informing the public in this regard. NTPC may, however at its own discretion issue advertisements for the information of the public through any media. 2.8 Brokerage: No other charges/fee/brokerage will be payable by the Corporation.

2.9 Issue of Allotment Letters/Bond Certificates:

The NTPC undertake to issue Allotment Letters in the denomination as desired. After the necessary formalities viz. Creation of charge etc. are completed the Allotment Letters shall be exchanged with the Bond Certificates.

2.10 Interest Payment: The Controller of Capital Issue have given their consent in respect of these Bonds subject to the conditions that there will be deduction of tax at source from the interest which accrues to the investor. Therefore, to implement the above stipulation the procedure for payment of interest after deduction of tax at source and due dates for interest will be finalised in mutual consultations with the Bank.

2.11 Security: The Bonds are proposed to be secured by creating a charge by way of equitable mortgage/hypothecation on the fixed assets and moveable properties of NTPC/NTPC.

2.12 Trustees: The Company will appoint trustees to the Bond holders and enter into an agreement with them for the said purpose.

2.13 By back at par will be allowed for taxable bonds for small investors after one year subject to a ceiling of Rs. 40,000/- per bond holder per financial year subject to a ceiling of Rs. 2 crores in a financial year.

2.14 Listing with Stock Exchange: The bonds shall not be listed with any of the Stock Exchange in the country.

2.15 The bonds are issued in accordance with the applicable Central Govt. guidelines and accordingly governed by the same.

2.16 The bonds will be transferable in accordance with the applicable provisions in the Companies Act and relevant Central Govt. guidelines.

2.17 The appointment of trustees to be bond holders will be decided later on.

3. Acceptance: The aforesaid letter is being issued to you in duplicate. A copy of this letter may be returned to NTPC duly signed marked

"ACCEPTED". We will advise you to deposit requisite application money in our Application Money Current Account to be opened by us with Canara Bank. Janpath Branch, New Delhi by 10.03.1992.

Thanking you,

Yours faithfully,

sd/-

(T.V. Subramanian)

Director (Finance).

4. Canfina unconditionally accepted the terms of letter dated 9.3.1992 written by National Power Transmission Corporation Ltd.

5. Letter dated 9.3.1992 Therefore contains the terms of the contract between the parties. It is obvious that it is a case of a composite contract, the deal between the parties required reciprocal deposits/investments as under :

a) Canfina was to pay National Power Transmission Corporation a sum of Rs. 80 crores by crediting account of National Power Transmission Corporation to be opened with Canara Bank, Janpath Branch, New Delhi and on said amount being credited National Power Transmission was to allot 17% taxable bonds in sum of Rs. 80 crores having face value of Rs. 1000/- per bond.

b) Simultaneously, National Power Transmission Corporation was to pay Rs. 3.2 cores to Canfina towards fee being 4% of the value of the bonds i.e. 4% of Rs. 80 crores = Rs. 3.2 crores. Further National Power Transmission Corporation was to invest Rs. 60 crores in Canfina's portfolio management scheme and was to additionally deposit Rs. 16.8 crores with Canfina, which deposit was to carry interest @ 11% P.A.

6. Thus Rs. 80 crores had to flow from the coffers of Canfina to National Power Transmission Corporation and vice versa. Graphically, flow of money was as under:

Canfina Rs. 80 Crores for 17% taxable bonds ----- Power Transmission Corporation Rs.3.2 crores (As fee) + Rs.16.8 crores (deposit @ 11% pa) Plus Rs. 60 crores investment in portfolio management scheme.

7. Canfina had also agreed to purchase 9% tax free bonds in sum of Rs. 40 crores. Accordingly, on 10.1.1992, a sum of Rs. 120 crores (which included Rs. 80 crores for the 17% taxable bonds) was credited in Account No. 4017 in name of National Power Transmission Corporation opened by Canara Bank, Janpath Branch. Account No. 4006 of Canfina with Canara Bank, Janpath Branch was debited in said sum. Simultaneously thereafter, sum of Rs. 120 crores was debited from the account of National Power Transmission Corporation and was credited in the account of Canfina. This sum included Rs. 3.2 crores to be paid by National Power Transmission Corporation towards fee, Rs. 16.8 crores as deposit with Canfina at interest @ 11% P.A. and Rs. 60 crores to be invested in Canfina's Portfolio Management Scheme.

8. On 10.2.1992, National Power Transmission Corporation issued letters of allotment in name of Canfina allotting 8 lakh bonds of Rs. 1000/- each.

9. Various letters of allotment, each identically worded, were issued and under different letters, different number of bonds ranging between 10,000 to 1,00,000 were allotted.

10. Number of bonds and their distinctive number differing, rest was common to each letter of allotment. Thus, one such representative letter be noted. It reads as under:

This is a valuable document and should be preserved carefully for exchange with the Bond Certificate (s).

NATIONAL POWER TRANSMISSION CORPORATION LTD.

(A Government of India Company incorporated under the Companies Act, 1956.)
Regd. Office Hemkunt chambers, 89 Nehru Place, New Delhi-110 019.

Sl.No.10030

ISSUE 1992 (PRIVATE PLACEMENT)

LETTER OF ALLOTMENT

Date of Allotment : 10th March, 1992

Subject : Issue of Bonds of the value of Rs. 80 crores comprising of 8,00,000 10 and Taxable Non-Cumulative Secured redeemable bonds of Rs. 1000/- each fully paid up.

On the basis of your offer for allotment of 17% Taxable Secured Redeemable Bond(s) of the Company, the Board of Directors is pleased to allot you the number of Bond(s) bearing the Distinctive Number (s) given hereunder as per the terms indicated overleaf and subject to the Memorandum and Articles of Association of the Company.

17% NON-CUMULATIVE SECURED TAXABLE REDEEMABLE BONDS AMOUNT PAID UP ON EACH BOND Rs. 1000/-

Regd.Folio No. T 0000012, Allotment Letter No. NTPC/30/91-92

Name(s) of the Holder(s) Non-Cumulative

Canbank Financial Services Ltd.

1-E, Vandhana Building, 11 Tolstoy Marg

New Delhi-110 001

Distinctive No(s) A-1720001 to A-1730000

The instructions for dealing with this Letter of allotment and set out overleaf and are to be regarded as forming integral part of the conditions of this letter.

For National Power Transmission Corporation Ltd.

T.V. SUBRAMANIUN

DIRECTOR (FINANCE)

11. Instructions forming integral part of the letter of allotment recorded as under:

INSTRUCTIONS FORMING INTEGRAL PART OF THE LETTER OF ALLOTMENT

1. The bonds will be redeemable at par after maturity period of 7 years from the date of allotment viz. 10th March, 1992. Accordingly, the redemption of bonds will be due on 10th March 1999.

2. The Bonds shall be secured by creating charge on the assets of the NPTC/ NTPC and Canara Bank will act as Trustees to the Bond holders. The Company will enter into an agreement with the Trustees for the above purpose. The value of securities shall be equal to 1.5 times of the outstanding value of Bonds at any given time.

3. The interest on these Bonds shall be payable at the rate of 17% p.a. from the date of allotment of Bonds and paid half-yearly on 10th June and 31st

December each year up to the date preceding the date of redemption. The first payment for the period up to 30th June, 1992 will be made on 30th June, 1992.

4. The interest income from 17% Bonds will qualify for deduction from Income Tax u/s 80-L of the Income Tax Act, 1961 and as amended from time-to-time. The Bonds will also be exempt from Wealth Tax Act, 1957. The Government of India, Ministry of Finance has been approached for issue of necessary Notifications in this regard.

5. There will be deduction of tax at source from the interest income payments in terms of the provisions contained in Section 193 of the Income Tax Act, 1961 as amended from time-to-time.

6. The Bonds shall be transferable in accordance with the applicable provisions of the Companies Act, 1956 and relevant Central Government Guidelines.

7. The Company do not intend to list these Bonds with any of the Stock Exchanges in the country.

8. The Buy-Back facility in respect of these Bonds sold to public over the counter in terms of CCI consent shall be admissible only to those individuals investors who have purchased Bonds for total amount not exceeding Rs. 40,000 per bond holder per financial year subject to ceiling of Rs. 2 crores in a financial year against offer of sale to the public after completion of lock-in-period of one year from the date of allotment.

9. The allotment of these Bonds is also subject to the Memorandum of Association and Articles of Association of the Company.

10. The Bond Certificate(s) to be exchanged against this Letter of Allotment will be ready for delivery within three months from the date of allotment of Bonds or extended period, if any, as may be permitted by the Company Law Board under the provisions of the Companies Act, 1956.

11. For registration of transfer of Bond(s) represented by this Letter of Allotment, the transferee may apply to the Company in accordance with the provisions of Section 108 of the Companies Act, 1956 as modified vide Notification No. GSR 1294 (E) (F No. 2/3/86/CLV) dated 17th December, 1986 issued u/s 620 of the said Act. The Notification, inter alia, provides that the transferee(s) shall intimate by registered post at the Registered Office of the company his name, address, occupation, if any, and specimen signatures and deliver the original Allotment Letter to the Company. No stamp duty is payable under the said Notification on such transfers.

12. This Letter of Allotment will be split into marketable lots fresh charge on a request being made to the Company and on surrender original Letter of Allotment.

13. Surrender of this Letter of Allotment to the Company duly signed by the Holder(s) shall be conclusive evidence in favor of the Company the parties surrendering it, has/have a clear title to the Bond(s) and a right to receive the Bond Certificate(s) from the Company.

12. By and under a trust deed dated 31.1.1990, Canara Bank as the principal trustee, had formed a trust called "Canara Mutual Fund". (here-in- after referred to as the Fund).

13. The Fund had floated a scheme called "Centriple Scheme". On 20.3.1992 the Fund claimed to have purchased letters of allotment of National Power Transmission Corporation from Canfina in sum of Rs. 48 crores. However, letters of allotment were delivered by Canfina to the Fund on 2.11.1992 when transfer deed endorsed in favor of Canara Bank (Principal trustee of the Fund) were executed by Canfina. These letters of allotment were lodged for transfer with PGCIL on 7.12.1992. This was refused. Present proceedings are a consequence of said refusal.

14. Reason for refusal is that between March 1992 and June 1992 a scam surfaced in securities. It was popularly known as "The Security Scam". On 2.6.1992, Government of India wrote a letter to National Power Transmission Corporation Ltd. as under:

T. Sethumadhavan, Ministry of Power and

Joint Secretary, Non-Conventional

Energy Sources

Department of Power.

Shram Shakti

Bhawan, Rafi Marg

New Delhi.

D.O. No. 35011 1 92-Fin. New Delhi.

22nd June, 1992

Dear Shri Subramanian,

Certain press report have been appearing from time to time, about diversion of PSU funds to the capital market either by some of Commercial Banks or by the Undertakings themselves, through Portfolio Management Scheme, Ready Forward transactions, etc. Because of the insistence of the Commercial Banks, the PSUs under the Department of Power had to invest most of the amounts raised by way of private placement of taxable/tax free bonds during 1991-92 with the Purchaser- Banks for different periods. In order to ensure that the transactions carried out by the undertakings under the Department of Power are not affected by the recent Bank scam, it is desired that you may present the position obtaining in respect of your Company before the Board of Directors, by way of a comprehensive paper, indicating full details. To be on the safe side, you may also not part with the Bonds, wherever they are yet to be issued against allotment letters, pending realisation of the amounts deposited with the Commercial Banks. Until then, the Bonds could be kept, on behalf of the Banks in the safe custody of your Company.

2. Wherever the funds realised against the Bonds have been deposited with the Commercial Banks, the PSUs concerned should also get comprehensive monthly statements indicating the pattern of investments, with complete details, which should be monitored carefully. Any doubt about non-reconciliation of funds, Bank Receipts etc. if exists, should be carefully investigated into and the position brought to the notice of the Board of Directors and the Department for corrective action, as called for.

With regard.

Yours sincerely,

sd/-

(T. Sethumadhavan)

15. Inter alia, Government of India wrote to National Power Transmission Corporation Ltd. not to part with bonds, wherever they are yet to be issued against allotment letters, till call money was actually paid.

16. Acting under the letter dated 22.6.1992 written by the Government of India, Board of National Power Transmission Corporation Ltd. resolved as under:

1. CANFINA and ABFs should not be paid interest Installment as due on 10.9.92 and 30.9.92 respectively. NPTC should call for legal advice in this matter as to what will be the possible consequences in case this interest payment to these financial institutions is deferred. NPTC should also write a letter to Canara Bank and take their guarantee that in case CANFINA does not pay the amount Along with interest on amount deposited with them under portfolio management scheme on the maturity date on 10.03.93 Canara Bank shall fully guarantee the full amount Along with interest. A copy of this letter may be sent to JS and FA. Deptt. of Power who will refer the matter to Deptt, of Banking with a copy to RBI for their information and advice.

2. As regard registration or transfer or allotment letters in the name of transferee NPTC should take legal advice from some reputed legal firm and protect their interest. Moreover, legal opinion may be put up to the Board for further deliberations. Till that time no transfer should be registered. 14.2.7.2 As regards allotment letters issued in the favor of ABFs no transfer should be registered till investigations are completed.

17. On 23.9.1992 National Power Transmission Corporation Ltd. wrote a letter to Canara Bank (Principal Trustee of the Fund) as under:

Dear Shri Shetty,

You may kindly recall that CANFINA had subscribed Rs. 120 crores for NPTC bonds- Rs. 80 crores in taxable bonds bearing 17% interest and Rs. 40 crores in tax free bonds with 9% interest. Out of the subscription, Rs. 94.5 crores have been retained by CANFINA for placement in PSU bonds, Canbank Mutual Fund securities etc., with indicative interest at 12%. The amount retained by CANFINA is due for repayment on 10th March, 1993 and interest is also payable thereon at 12%. Recently, CANFINA has also proposed to transfer Rs. 40 crores of NPTC bonds to Canara Bank for which formal transfer application has been received by us.

Considering the present situation, the Board of NPTC desires a confirmation from Canara Bank that they will fully honour the commitments of CANFINA to NPTC and will this confirmation, it will be possible for us to proceed further in the matter with servicing of bonds. As Canara Bank is the principal banker for NPTC, we request you to give us assurance that the money will be refunded to NPTC Along with interest at 12% on 10th March, 1993 so that I will be in a position to persuade our Board to go ahead with servicing of the bond already allotted to CANFINA.

With regards,

Yours sincerely,

Sd/-

(T.V. Subramaniun)

Director (Finance)

18. It was followed by another letter dated 22.10.1992 which reads as under:

Dear Shri Shetty,

Kindly refer to my DO letter of even number dated September 23, 1992 regarding subscription of Rs. 120 crores for NPTC Bonds- Rs. 80 crores in taxable bonds bearing 17% interest and Rs. 40 crores in tax-free bonds with 9% interest. Out of the subscription, Rs. 94.5 crores have been retained by CANFINA for placement in PSU bonds, Canbank Mutual Fund securities etc., with indicative interest at 12%. The amount retained by CANFINA is due for repayment on 10th March 1993 and interest is also payable thereon at 12%. Recently, CANFINA has also proposed to transfer Rsd. 40 crores of NPTC bonds to Canara Bank for which formal transfer application has been received by us.

We had requested you to confirm that Canara Bank will fully honour the commitments of CANFINA to NPTC. This confirmation is still awaited. I would request you to expedite your reply so that we can sort out the pending issues.

With regards,

Yours sincerely,

Sd/-

(T.V. Subramaniun)

Director (Finance)

19. There was wide spread trading in securities with funds of public sector undertakings and banks. Share market was rigged. Major players were stock brokers. Heads of banks and public sector undertakings were involved. Special Courts had to be created to try the offenders. The Special Court (Transaction in Securities) Ordinance 1992 was promulgated on 6.6.1992. A Joint Committee of Parliament (JPC) was constituted. Even Reserve Bank investigated the security transactions involving public sector undertakings and mutual fund schemes floated by various banks.

20. Qua Canfina and Canbank Mutual Fund, J.P.C. Report indicted the two, as also Canara Bank, as under:

Canbank Financial Services Ltd.

6.14 Canfina was set up as a wholly owned subsidiary of Canara Bank and it commenced the operations with its Head Office at Bangalore on 1st June, 1987. Its authorised and paid up capital are Rs. 50 crores and Rs. 10 crores respectively. It was staffed mostly by personnel from Canara Bank and has branches at Ahmedabad, Bombay, Calcutta, Hyderabad, Madras and New Delhi besides Bangalore. As the Board comprised mostly of senior executives of Canara Bank and its Chief Executive is also a senior official of that bank (on deputation)

the company functioned under the umbrella of the parent bank; besides it submits periodical returns on its functioning to the Board of Canara Bank for information.

6.15 The activities authorised to be conducted by the Company are equipment leasing, merchant-banking, venture capital and consultancy services. The Company, initially deployed a major portion of its owned funds and deposits in equipment leasing business and obtained the classification of an "Equipment leasing company" from the Department of Finance Companies of RBI; this classification entitles the company to mobilise public deposits to the extent of ten times its owned funds.

Irregularities in Transactions

6.16 In the context of a number of PSUs raising resources by way of floatation of bonds in the market, the company took the role of market maker and handled 75% of the total PSU bonds issued. It also shifted its activities to "Portfolio Management" and "Corporate Investment Advisory Services". The method adopted by this company for handling bond issues is explained in the subsequent paragraphs.

6.17 When commissioned by a Public Sector Undertaking (PSU) to raise resources by way of bonds, Canfina would agree to an initial subscription of a substantial portion of the Bonds with the stipulation that the amount subscribed by it was to be kept with Canfina itself, under portfolio management services, CIAS. At times, the rate of interest offered on the investment was lower than the coupon rate of the bonds itself. Some illustrations of this kind have been given in the Chapter on PSUs. The general question of the operation of the Public Sector Bonds Schemes has been discussed in the Chapter on Ministry of Finance.

6.18 The outstanding amounts under PMS/CIAS/ICDS as on 31.12.1992, and total value of Bonds of PSUs held by CANFINA/Canara Bank given below will give an idea of the business handled by the company as also as of its liabilities :

-----		Sl. Name of PSUs			
Total as on 31.12.1992 Canfina and No. Outstandings		Total PSUs by Can Bank			
by Canfina respective (including reversals) (Rs. In crores)		(Rs. In crores)			
-----		1. IRFC		425.17	
748.06	2. HUDCO	297.00	278.86	3. MTNL	150.00
				260.13	4. NPC
				248.25	426.58
5. NPTC	94.00	40.00	6. NTPC	165.00	350.69
7. PFC	8.00	287.09	8. CIL	5.31	
76.84	9. OIDB	275.42	NIL	10. NALCO	60.00
			NIL	11. BRPL	27.57
				NIL	12. EXIM
				BANK	40.00
				NIL	13. KRIBHCO
				36.00	NIL
				14. OTHERS	23.75
				NIL	-----
1,855.47	2,468.25	-----	-----		

6.19 CANFINA, however, does not account for these funds in its books on the plea that these are off balance-sheet transactions. The company has stated in one of its replies since the PMS funds and investments were not considered as part of company's liability and asset they were not brought to the balance

sheet.... About utilisation of these funds for BR operations and their proper accounting the company has stated that the requirement that all deliveries must be against payment is not practicable on account of market practices.? In other words, CANFINA issued BRs covering these bonds to brokers, at their instance, without deliveries. Brokers, were thus enabled to get cheques, mostly for banks specified by them and then to rotate the funds at will. Without any doubt CANFINA indulged in unethical risky operation colliding with the PSUs through the medium of brokers supposedly for PMS transactions. As, however, there was no actual transfer of funds by PSUs to CANFINA, as admitted by them in their written replies to the Committee, these transactions cannot be termed as

Portfolio Management Service? at all. In any event the company has not also admittedly complied with other requirements of the PMS such as minimum lock-in period, prohibition of guaranteed return, risk to investor etc. The company has stated in one of its replies to the Committee ; Under the CIAS activity, the company was accepting funds for generally less than one year. Under this activity, conceptually the securities were sold to the party on receiving funds for investment. Similarly, it was bought back from the party when repayment was made. These transactions were treated as buying and selling of securities for clients. It was presumed at that time that the guidelines of RBI are not applicable.

6.20 Apart from this the company had also indulged in a large volume of investment transactions by way of purchase of units of UTI and in certain cases Government securities, even though dealing in investments is not one of its authorized activities. These transactions had been mostly by way of Ready forward or Double Ready Forward deals at the instance of brokers ostensibly with other banks but essentially with the latter's broker clients. Some of these transactions have been commented upon by the Jankiraman Committee as illustrative examples.

6.21 The Committee have observed that CANFINA had been violating the guidelines of RBI in regard to PMS for long. It had been pointed out by the RBI who inspected it in March, 1991, that the Managing Director of the company had given a false assurance to RBI in terms of his letter CANFINA - RBI INS: 1619: 89 dt. 22.9.1989 that the company had been accepting funds with lock in periods of one year and over only. In many cases, it was observed during inspection that funds for a shorter duration had been accepted and further, funds were allowed to be withdrawn as and when the parties desired. The RBI had, inter alia, pointed out several other irregularities.

6.22 It is obvious that the management of CANFINA was well aware of the affairs being conducted irregularly. The company has pleaded in justification of its action and condensation of not having followed PMS guidelines : We would not have been able to do either market making of PSU Bonds or manage the PSU funds since these guidelines were generally not followed by other competitors, mainly foreign banks who entered this arena in early 1991 as a result of Government's liberalised policy and started offering high yields.

Inter Corporate Placement of Funds

6.23 The company also arranged for placement of funds received from some of its corporate clients with other corporate clients who were in need of funds retaining a rate of return for it in the process. It has been observed during the inspection by RBI, conducted as far back as in 1988 that funds had been placed by "borrowers" of Canara Bank at a rate of interest even slightly lower than that charged by that Bank and in gross violation of credit discipline. Here again the funds received/placed were treated as "off-balance" sheet items. However, the letters issued/received do not appear to establish any privity of contract between the "lender" of the funds and the "taker" of the funds and hence, the liability of CANFINA is not ruled out in case the latter does not refund.

Claims by and against CANFINA

6.24 It is observed that an aggregate amount of Rs. 778.17 crores is due to CANFINA and the possibility of recovering bulk of these funds is remote. Besides, the company is contingently liable in respect of claims against it for Rs. 223.81 crores. Thus, the company could be lost to the extent of about Rs. 1000 crores on its speculative and reckless dealings. This is in addition to facing an extreme liquidity crisis. It is understood that the parent bank has so far accommodated it on a no profit no loss basis to the extent of over Rs. 2600 crores against available securities with it. In this context the Chairman of the Canara Bank has stated :

While the involvement of our two subsidiaries in the infamous episode has had an unsettling effect on the bank, the decision to be taken in its aftermath, especially for the bank to rescue CANFINA. However, the fact remains that it is a wholly owned subsidiary of Canara Bank which itself is owned by the Government....

6.25 The Committee hope that the nature and extent of the financial assistance being provided by Canara Bank to its subsidiaries are such as could be justified on prudent commercial norms. Further the parent bank cannot be absolved of the responsibility for various irregularities of its subsidiary.

"Mutual Funds

6.62 Mutual Funds have played an important role in the capital market. The working of the mutual funds is governed by the guidelines issued by Ministry of Finance, RBI and SEBI. A scrutiny of securities transactions by the Committee has disclosed involvement of the Mutual Funds also in irregular transactions. The Committee examined in particular the involvement of Canbank Mutual Fund (CMF).

6.63 CMF had violated some of the critical provisions in the guidelines issued by RBI on 7.7.1989 and Controller of Capital Issues (28.6.1990) relating to secondary and money market operations, investments in the primary market, arms length relationship between the sponsors, its subsidiaries and the mutual

fund. The violations had been in respect of the provision requiring mutual funds to take delivery of scrips purchased and give delivery of scrips sold, provision prohibiting mutual funds making short sale/purchase of securities or carrying over transactions from one settlement to the next, provisions prohibiting mutual fund to enter into any transactions of speculative nature, provision prohibiting mutual funds to invest in any other unit trust/mutual fund, barring exceptional circumstances and then for a temporary period and within a ceiling of 5% of its assets; and, provision prohibiting mutual fund undertaking direct or indirect lending, portfolio/funds management, underwriting, bills discounting, money market operations etc.

6.64 The Committee regret to note that CMF has violated almost all the guidelines and regulations. The sponsor and its subsidiary have derived benefit through the operations of CMF at the cost of the investors.

6.65 A majority of the secondary market operations of CMF has been carried out through just a few brokers. 42% of the turnover of 8 schemes of CMF was transacted through 4 brokers. These brokers had defaulted in delivering the scrips, and instances were noticed where prior approval of the sanctioning authority was not obtained for the purchase of large quantity of shares. Instances have been revealed where CMF had incurred considerable loss for no plausible reasons in their secondary market transactions. Besides, there were also instances where large number of shares were sold by CMF at prices lower than the market prices. These remain unexplained. The Special Audit Report also pointed out several instances in which CMF used the mechanism of wrong credit to divert funds from the CMF schemes to brokers, apparently under advice of Canfina, though these were not in writing.

6.66 CMF also resorted to placement of short, medium and long term deposits of Public and private limited companies ranging from three months to three years categorising all such placements as short terms deposits. They had also entered into private placements of Non-Convertible debentures, subscription to promoters quota and standby arrangements. The irregularities observed in this connection included, investment decisions for private placements made without proper analysis, investment decisions influenced by factors concerning the business of Canara Bank or Canfina, funds placed with several corporate clients of the Canara Bank with the understanding that they should reduce their advance with the bank, investments made which had the effect of transferring underwriting developments of Canara Bank/Canfina to the CMF etc.

6.67 Transactions of CMF in non-SLR securities in one case entailed a loss of Rs. 103 crores to the Fund and ran the risk of potential loss of Rs. 30 crores in another. While the former related to a deal with BOK through a SGL/BR without the backing of securities the latter related to a ready forward transaction with NHB who failed to honour the commitment on reversal transactions.

6.68 Net Assets Value (NAV) basically reflects the economic value of the fund at

a given date on the assumption that the fund needs to be redeemed. The actual NAV can be reflected by determining the market value of all the investments deducting the liabilities arising there from divided by the number of units. The SEBI inspection revealed that the NAVs arrived at by the Fund Managers were inaccurate. They were thus defrauding investors.

6.69 Other irregularities/inadequacies have been observed in respect of maintenance/authenticity of accounts, records and in respect of the Systems and internal control of CMF.

6.70 The manner in which CMF had invested the funds of the schemes indicates that it had not exercised sufficient care, prudence and diligence in the interest of the investors of the schemes and in several instances had exposed the investors in the schemes to high degree of risks without disclosure of it to the investors. This in the view of the Committee, is a serious breach of trust.

6.71 when asked to comment on the repeated defaults, the representative of CMF said:-

it is true that in some areas the violations continued to take place.

6.72 Yet again the Committee do find it necessary to underline the self- admitted or the self-evident. Officials managing this fund were negligent, derelict in the discharge of their responsibility and committed breach of trust with investors.

21. Report of R.B.I. indicted Canfina as under:-

25.1 The Operation of the Funds Department of the company have resulted in an overall loss of Rs. 1077/89 crore as on 20.7.1992. There is depreciation in the value of securities (only PSU bonds) to the extent of Rs. 128.48 crore. These losses have completely eroded the net worth of the company of Rs. 154.62 crore and as on 20.7.1992, it was negative at Rs. 923.27 crore.

25.2 In the resulting situation, the company cannot meet its commitments unless the parent bank comes to its rescue. However, this is proving to be Herculean task. The parent bank has decided that the company should meet its losses. In the circumstances, the company cannot continue to function as it will be almost impossible to overcome the huge losses in the near future.

25.3 The Funds operation of the company have been carried out in complete violation of the REBI/SEBI guidelines. The name CANFINA has become synonymous with unethical and devious market practices. The records of the company are in a state of disorder. None can vouch for their accuracy or completeness or reliability.

25.4 Even after the irregularities became public knowledge and the team was engaged in the scrutiny of the transactions, the management did not come forward to co-operate with the team and facilitate the scrutiny. This was the attitude at all levels. The executives first denied knowledge of the transactions, dodged and delayed submission of information. No piece of information was

furnished by the company willingly. Every singly piece was extracted out of the company with great difficulty. Very often, they merely confirmed what was painstakingly found out by the inspection team, when they could not more avoid or dodge. This attitude towards the regulating authorities runs deep in the entire organization right from the top. This is in sharp contrast to its attitude to JPC where they have on their own admitted the various lapses and irregularities, as soon from their reply to the JPC. The reluctance/unwillingness to prove information is a violation of one of the basic condition subject to which the parent bank was allowed to fleece the subsidiary.

25.5 In view of its financial position, improper practices and attitude to regulating authorities, it is strongly recommended that it will not be in the public interest to allow the company to continue to function under the name and style of CANFINA.

22. It was obvious what was amiss. Sum of Rs. 60 crores invested by Canfina in the Portfolio Management Scheme had disappeared. The rigged market had collapsed. The money disappeared in private hands.

23. By March 1993 name of National Power Transmission Corporation Ltd. was changed to Power Grid Corporation of India Ltd. On 16.3.1993 it wrote a letter to Canfina as under:

Dear Shri Kamath,

You are aware, Power Grid Corporation of India Limited (formerly known as M/s. National Power Transmission Corporation Limited) had allotted Rs. 120 crores of Bonds (Rs.80 crores 17% taxable bonds and Rs. 40 crores 9% tax free bonds) to M/s. Canbank Financial Services Limited (CANFINA) on 10.03.92 on the basis of CANFINA's letter No. DCAN:Bond 1:92; dt. 6th March, 1992 and DCAN? KBP:92:Pvt. Dtd.9th March 1992. It was one of the conditions stipulated by CANFINA in its letter of offer for subscription to the bonds that the allotment money of Rs. 94 crores would have to be placed in deposit with CANFINA at an interest rate of 12% per annum for a period of one year from the date of allotment i.e. 10.3.92. This offer was accepted by Powergrid in good faith vide its letter No. NPTC/C/COS/Bonds/ 50106 dt. 10.03.92 forwarding to you the letter of allotment. The deposit of allotment money was due for repayment on 10.03.93.

On the due date i.e. 10.03.93 Powergrid had requested vide telex/fax/letter to your HO and Delhi Branch for the repayment of the above amount of Rs. 94 crores Along with the interest. I am sorry to say that we have not received any response from CANFINA inspire of urgency and the involvement of a huge sum of money.

As already informed (copy enclosed) due to dejure transfer of Assets worth Rs. 4500 corores the construction requirement of the company has increased manifold and the Company is in urgent need of fund to meet the extra financial burden.

Considering our good relations, we would request you once again to repay the amount of Rs. 94 crores Along with interest immediately.

Kindly acknowledge the receipt and confirm repayment.

With regards,

Yours sincerely,

Sd/-

(T.V. Subramaniun)

Director (Finance)

24. Canfina responded on 17.3.1993 as under:

To:

Sri T.V. Subramaniun

Director (Finance)

Power Grid Corporation Ltd.

Nehru Place, New Delhi.

Dear Sir,

Sub: NPTC's Investments with Canfina

We have for reference your telex msg. on the subject matter. We appreciate the concern expressed by you in the matter of return of investments. We would like to assure you that it is the endeavor of Canfina to return the investments at the earliest possible opportunity. We need not perhaps reiterate this as you already know the way in which Canfina has conducted itself in the past whether it related Bond marketing or the promptness with which money flow was ensured.

But as you are aware, the securities market at present is in a bad shape and the usual money from Repost market has evaporated. While we are unable to generate liquidity from the securities market, the problems have aggravated due to large scale depreciation of Bond values, which formed major part of the assets. The mutual fund assets have also depreciated substantially in the stock market due to the general down trend being witnessed these days.

In these circumstances the alternatives available with us are rather limited. Hence, we would only request you to bear with us for the time being.

Yours faithfully,

Sd/-

(K.N. Kamath)

Managing Director.

25. Vide letter dated 21.9.1993, alleging non-payment by Canfina, PGCIL exercised lien on the bonds. It wrote to Canfina as under:

The Managing Director,

CANBANK FINANCIAL SERVICES LTD.,

19/5 and 9/6 Kareem Towers,

Cunningham Road,

Bangalore - 560052.

Sub:Holding of lien on Bonds of Rs. 80 crores.

Dear Sir.

Please refer to the correspondence resting with our telex/letters dated 10.03.93 and 16.03.93 requesting you to make the payment of Rs. 60 crores retained by you as deposit since 10.03.92 Along with accrued interest. As you know, we had allotted you on 10th march, 92, 17% taxable Bonds of the face value of Rs. 80 crores, on the basis of your offer dated 6.3.92, which reads as under:

NPTC shall invest Rs. 60 crores with us on the date of allotment for one year under the Portfolio Management Scheme. This investment shall generate an indicative yield of 12% p.a.

This offer of yours was accepted by us vide our letter No. NPTC/C/COS/Bonds/50106 dated 9/10 March 92 (which again was accepted by you on 10.03.92) resulting into a composite contract for the allotment of Bonds, the consideration of which was retained by you in the form of a deposit payable after one year, which in effect amounts to allotment of bonds on deferred payment basis.

On your offer the Bonds of Rs. 80 crores were allotted to you and the balance allotment money of Rs. 60 crores was kept as deposit with you to be paid on 10.03.93 Along with accrued interest @ 12% per annum. However, all along CANFINA has failed to pay the said allotment money of Rs. 60 crores and the accrued interest thereon up to this date, despite several reminders and personal persuasion/discussions. The said amount has not been paid so far.

It is, Therefore, now apparent that your aforesaid offer dated 6.3.92 was a misrepresentation with a view to persuade us to issue the Bonds to you. You have not paid the deposit amount for which the term has long expired on 10.03.93. As we are Unpaid Seller we have not issued the Bond Certificates to you so far against the letter of allotment dated 10.03.92. Please note that we will NOT be issuing the Bond Certificates to you or any other nominee or transferee of yours to whom you might have handed over the letter of allotment. We shall exercise our RIGHT OF LIEN on the Bonds, in question, till our corporation is paid the full amount due towards the allotment money Along with accrued interest, as per your commitment. Moreover, it has also come to your notice that you have

not effected the sale of 20% of the Bonds allotted to you which were to be sold to the Public over the counter, as one of the terms of allotment made on 10.03.92.

We once again call upon you to to pay the allotment money kept as deposit Along with accrued interest within three weeks from the receipt of this letter. If our Corporation is not paid the allotment money Along with accrued interest and you do not perform your part of the contract during the said period we will not only exercise our Right of Lien on the Bonds till the allotment money is received by us, but would also be entitled to annul/forefeet the letters of allotment issued to CANFINA and would also take such legal action against CANFINA as permissible under the law. Further, you may please inform all the parties to whom you might have transferred our letters of allotment that we shall exercise our "Right of Lien" until we are paid the aforesaid amount of Rs. 60 crores towards the allotment money kept as deposit Along with accrued interest, as per your contract.

Please acknowledge the receipt.

Thanking you,

Yours faithfully,

sd/-

(K.L. Sharma)

Executive Director (Fin)

21.9.93

26. On 9.11.1993, PGCIL amended it's Articles of Association empowering itself to forfeit the bonds in case of failure of payment. On 20.1.1994, PGCIL issued a notice to Canfina that in case it did not pay a sum of Rs. 60 crores with interest @ 12% p.a. within 14 days, the bonds would be forfeited as the same would be unpaid for. On 11.2.1994 PGCIL formally forfeited bonds of the face value of Rs. 63.2 crores and wrote a letter of even date to Canfina as under:-

The Managing Director,

Canbank Financial Services Ltd.

19/5 and 196 Kareem Tower,

Cunningham Road,

Bangalore 560 052

Sub: Forfeiture of 17% Taxable Bonds -I Issue 1992

Dear Sir,

Please refer to our registered Notice dated 20th January, 1994 whereby we had

requested you to remit the allotment money of Rs. 60 crores Along with accrued interest @ 12% p.a. within 14 days of receipt of the notice failing compliance of which you were notified that the Bonds (I-Issue) allotted to you would be forfeited, without further notice. In fact this Notice was reiteration of the earlier letter dated 21.9.93 which formed an integral part of the Notice.

Since, allotment money has not been received, the Board of Directors of POWERGRID have resolved to forfeit the 17% taxable Bonds I-Issue 1992 of the face value of Rs. 63,20,00,000/- registered in your name in the records of this Corporation and accordingly the Chairman and Managing Director as authorised by the Board has issued the Declaration of forfeiture on 11.2.94.

Now Therefore, please take notice that the 17% Taxable Bonds I-Issue 1992, allotted to you on 10.03.92 of face value of Rs. 63,20,00,000/- as listed below stand forfeited with immediate effect.

Sl.	Folio	Letter of Distinctive	No of Amount	No. No allotment	Numbers Bonds	(Rs.Cr.)
=====						
		1.	T-0000012	NPTC/19/91-92	A-1000001 to 100000	
		10.00	A-1100000	2.	T-0000012	NPTC/20/91-92
			A-1100001 to 100000	10.00		
			A-1200000	3.	T-0000012	NPTC/21/91-92
			A-1200001 to 100000	10.00		
			A-1300000	4.	T-0000012	NPTC/22/91-92
			A-1300001 to 100000	10.00		
			A-1400000	5.	T-0000012	NPTC/23/91-92
			A-1400001 to 100000	10.00		
			A-1500000	6.	T-0000012	NPTC/24/91-92
			A-1500001 to 50000	05.00	A-1550000	
			7.	T-0000012	NPTC/25/91-92	A-1550001 to 50000
			05.00	A-1600000	8.	
			T-0000012	NPTC/26/91-92	A-1600001 to 32000	03.20
					A-1632000	
					=====	
					63.20	=====

This is without prejudice to our Corporation right to take further appropriate action against you in terms of the Articles of Association of our Corporation.

Please acknowledge the receipt.

Yours faithfully,

Sd/-

(P.D. Tuteja)

Company Secretary

27. Before letter dated 20.1.1994 and 11.2.1994 were issued by PGCIL, on 25.11.1993, Canara Bank, as the principal trustee of Canbank Mutual Fund lodged a petition u/s 111(4) of the Companies Act, 1956 praying :- "(a) That the Company be directed to rectify the register of the holders of bond in respect of 17 percent NPTC bonds bearing Nos. A-1300001 to A-170000 and A-1720001 to A-1800000 under LOa Nos. NPTC/22, 23, 24,25,26,27,30 to 37/91- 92 and to place the name of the Petitioners in the said register of bonds in respect of the said bonds in place and stead the name of Canbank Financial Services Ltd. and/or any other person whose name may be appearing on the register and to

transfer the said bonds in the name of the Petitioners.

(b) That the Company be directed to pay to the Petitioners half yearly interest accrued on the said bonds on 31st December, 1992 and 30th June, 1993 and/or any other further interest falling due on the said bonds till the Petitioners name is entered on the register of bond holders."

28. A preliminary objection was raised by the appellant before the Company Law Board (CLB). It was to the effect that Canara Bank was wholly owned by Government of India and so was it. Dispute Therefore should be decided by the Committee of Secretaries. Vide order dated 4.6.1992 CLB rejected the said objection. Said order was challenged before the court. Challenge failed. The order has since attained finality. It may be noted that a similar dispute involving Canara Bank and National Thermal Power Corporation stands decided by the Supreme Court in the decision reported as Canara Bank and Others Vs. National Thermal Power Corpn. and Another, It was held that a Mutual Fund was not a public sector company. The CLB accordingly took up the issue on merits.

29. At the second stage, appellant opposed the petition, inter alia, pleading bar of limitation and alternatively on the plea that it had exercised unpaid sellers lien and that the board of directors had acted in good faith to protect the interest of the appellant. It was urged that Canfina had not repaid sum of Rs. 60 crores much less interest @ 12% P.A. i.e. the amount invested in the Portfolio Management Scheme of Canfina. It was urged that Canara Bank, Canfina and the Mutual Fund were one and the same as all operated under one umbrella. That the amendment to the Articles of Association to empower the board to forfeit the bonds was valid and retrospective operation of the amendment was legal. That the appellant acted under directions of the Central Government.

30. By and under the impugned order dated 2.7.2003 all defenses were reflected. Petition filed by Canara Bank was allowed with the following direction :

The name of Can Fina will be restored in respect of the bonds impugned in the petition which have been forfeited within 15 days of this order. Thereafter, redeeming the bonds, the company should pay to the Fund, the face value of the bonds along with coupon rate at 17% per annum till the date of the maturity of bonds and 12% per annum (simple) on the face value from the date of maturity till the date of payment. The entire amount should be paid on or before 15.8.2003.

31. Before noting the issues raised in the present appeal and dealing with the same, I may note that sum of Rs. 16.8 crores deposited in account of the appellant which had to carry interest @ 11% P.A. has been repaid by Canfina to the appellant and between the parties there is no dispute qua said amount. Further, Canfina has not paid a penny to the appellant nor paid any interest or dividend in respect of the sum of Rs. 60 crores invested in the Portfolio Management Scheme. Further 9% tax free bonds in sum of Rs. 40 crores are not in issue.

32. In the present appeal, Shri Shanti Bhushan, learned Senior Counsel for PGCIL urged:-

a) That Section 111 of the Companies Act 1956 applied only to shares and debentures. That as defined in Section 2(12) of the Companies Act 1956 "Bonds" are debentures. Counsel urged that said issue stands conclusively decided by and under the decision dated 10.10.2002 in Co.A.(B) No. 5/1995 Power Grid Corporation of India Ltd. v. Citi Bank N.A. and Ors.

b) That the petition before the CLB was barred by limitation. It was urged that Section 111 of the Companies Act confers a right on a transferee to appeal to the CLB against refusal of a Company to register the transfer of or the transmission by operation of law of the right to any share or debenture. The limitation for such an appeal has been laid down in Sub-section 3 of Section 111 which is 2 months from the receipt of notice of the refusal or where no notice has been sent by the company within 4 months from the date of which the instrument of transfer was delivered to the company. Counsel urged that Sub-section (1), (2) and (3) of Section 111 of the Companies Act, clearly provided that once an intimation of transfer has been made by the transferee, where there is an actual refusal to register the transfer or there is no such actual refusal to register the transfer, the transferee has been given the right to appeal to CLB against the refusal or against inaction of the company or for both. Such limitations have been provided as 2 months from the date of refusal in the case of refusal and 4 months from the date of intimation in the case of any absence of refusal. It was submitted that in the present case, the intimation of transfer was given by the respondent to the Company on 7.12.1992. The petition filed on 25.11.1993 was Therefore hopelessly time-barred. That view taken by CLB that Sub-section 4 of Section 111 of the Companies Act 1956 gives an independent right makes the entire Section 111 absurd. There would be no point in providing a limitation under Sub-section (3) of that Section if it could just be avoided by heading a petition u/s 111(4) instead of Section 111(2) of the Act. Counsel submitted that the proper view of correct interpretation of Section 111 would be that the cases which are clearly covered under Sub-section (2) would be governed by the limitations provided by Sub-section (3) whether one heads the petition under Sub-section (2) or under Sub-section (4). And, it is only cases which are not covered by u/s 111(3) would alone be dealt with by the power u/s 111(4) of the Act. It was urged that Sub Section 4 is not confined to cases of refusal to register the transfer it also applies to cases where a person without sufficient cause is entered in the register of transfer of the company or cases in which a person after having entered into register is without sufficient cause omitted there from. It is these cases to which no limitation is applicable and the CLB can proceed to rectify the register in such cases. Counsel submitted that while Sub-section (4) gives right to a transferee to appeal against the refusal of the company to register the transfer or failure to take action the transfer, it does authorize the CLB to itself proceed to rectify the register. The result would be that Sub-section (4) provides for rectification of the register by the CLB itself without giving the

company right to rectify the same while Sub-section (2) applies in case of refusal of the company to register the transfer. In case of a refusal under Sub-section (4) if a person has come up for appeal against such refusal within the period of limitation provided by Sub-section (3), the CLB may adjudicate upon the correctness of the company to refuse the transfer and after adjudicating the same the CLB may send the same back to the company for further action. Counsel submitted that if this interpretation is given to Sub-section (4) of Section 111 there would be no conflict between Sub-section (3) and (4) and the entire provision of Section 111 could be harmonized. On the other hand if an interpretation is given to Sub-section (4) as for impugned order, there would be a clear conflict between Sub-section (3) and (4) and it would introduce uncertainty in Section 111 itself. Mr. Shanti Bhushan urged that it is well settled that when two interpretations are possible only that interpretation should be adopted which would cause harmony to different Sub sections of the Section and any other interpretation which introduces conflict between different Sub sections of the same section has to be avoided.

c) That as per sub sections 2 and 4 of Section 3 of the Capital Issues (Control) Act 1947, the Central Government was empowered to lay down terms under which securities could be offered for sale by companies. Approval granted by the Central Government vide letter dated 7.2.1992 was on the condition that PGCIL would be subject to the measures of control that may be brought into operation by the Central Government. That on 22.6.1992, Central Government wrote a letter containing a directive to PGCIL that it should not part with the bonds unless money was actually received and since none was received, bonds could not be issued. If impugned orders were to stand, PGCIL would be compelled to violate the term of sanction dated 7.2.1992 read with the directive dated 22.6.1992.

d) That the appellant had an unpaid vender's lien on the letters of allotment and since sum of Rs. 60 crores was not paid by Canfina, PGCIL was justified in forfeiting the letters of allotment.

e) Canbank Mutual Fund was not a bona-fide purchaser for value and could not maintain the action. Counsel urged that assuming title of the letters of allotment could be transferred by delivery of allotment letters, the transfer took place on 2.11.1992. By said date the scam had surfaced much before and Canara Bank, the principal trustee was aware that the scam had surfaced. The scam was prior to even 20.3.1992, the date on which the Fund claims to have purchased the letters of allotment. Principal trustee was aware that Canfina had not paid for the bonds. Counsel urged that Canara Bank is the holding company of Canfina. Canara Bank is also the principal trustee of Canbank Mutual Fund. Canara Bank was the banker of Canfina and the Fund. In these circumstances, the knowledge of Canara Bank as principal trustee of the Fund that the purchase price for the bonds had not in reality been paid can be attributed as knowledge of the Fund as Canara Bank exercised supervisory and administrative control over, both, Canfina

and the Fund. Relying upon report of JPC and RBI (contents noted in para 20 and 21 above) Counsel urged that it is evident that Canara Bank, Canfina and the Fund acted in tandem and were collaborators in the scam.

33. Per contra, Shri C.S. Sundaram learned Senior Counsel for the respondent urged:-

a) Letters of allotment are goods in as much as they have the same effect as bonds. Letters of allotment in question themselves represent the debt due from the issuer, they were transferable and at any time could be exchanged for the bonds. Counsel referred to clauses 6, 10, 11 and 12 of the letters of allotment to bring home the point. That Section 108 of the Companies Act 1956 provides for registration of transfer relating to shares or debentures on the basis of letters of allotment. Thus letters of allotment are goods which are freely transferable. That Government Notification No. GSR 1294 (E) dated 17.11.1986 allows transfer of bonds issued by Government companies on the basis of letter of allotment and Therefore in view of the notification qua government companies, a letter of allotment stands on the same footing as bonds. Referring to Clause 11 of the letter of allotment, Counsel urged that the notification stood incorporated by reference in the letter of allotment itself.

b) Alternatively, counsel urged that as defined u/s 2(4) of the Sale of Goods Act 1930, letters of allotment were documents of title to goods and as title documents, could be freely sold.

c) That Sub-section 4 of Section 111 as in force in the year 1993 when petition was filed before CLB was as amended by Companies (Amendment) Act 1988 w.e.f. 31.5.1991. Being subsequent amendment the same would prevail over earlier law. Since the subsequent amendment clearly omits specifying any period of limitation for initiating proceedings, Courts cannot impute limitation. Counsel urged that Section 111(4) deals with a situation where refusal is challenged or where there is delay or default in entering the names in the register of members and rectification of members is sought for. That Section 111(2) applies only when decision of refusal to register has been taken and intimated. In the instant case this was done after petition was filed before CLB (as per letter dated 20.1.1994 and 11.2.1994).

d) That consideration was paid by the Fund to Canfina on 20.3.1992 evidenced by the deal slips. That there was no dispute between Canfina and the Fund that transfer took place on 20.3.1992. This was accepted by CLB. That the question as to when a transfer takes place is a question of fact and u/s 10(F) of the Companies Act 1956 appeal lies on question of law. Findings of fact cannot be challenged. That mere handing over physical possession of letters of allotment in November 1992 is neither here nor there.

e) That contract between the parties was a composite contract. First limb of the contracts stood fulfilled when sum of Rs. 80 crores was credited to the account of the appellant maintained with Canara Bank. Consideration stood paid. Second

limb of the contract required the money to flow back to Canfina. This happened as per contract. Thus appellant had no unpaid sellers lien.

f) That for exercise of unpaid sellers lien, sine qua non was that possession of goods had to remain with the seller. If possession was parted with, merely because the seller came into possession of the goods at a later stage, it could not retain possession under unpaid sellers lien.

g) Assuming that letters of allotment are documents of title to goods and transfer from Canfina to the Fund would have to be made in good faith, in the instant case there are no findings, much less any material to show lack of good faith.

34. Letters of allotment issued by PGCIL, inter alias record:-

This is a valuable document and should be preserved carefully for exchange with the Bond Certificate(s).

xxx xxx xxx

Subject : Issue of Bonds of the value of Rs. 80 crores comprising of 8,00,000 10and Taxable Non-Cumulative Secured redeemable bonds of Rs. 1000/- each fully paid up.

xxx xxx xxx

On the basis of your offer for allotment of 17% Taxable Secured Redeemable Bond(s) of the Company, the Board of Directors is pleased to allot you the number of Bond(s) bearing the Distinctive Number (s) given hereunder as per the terms indicated overleaf and subject to the Memorandum and Articles of Association of the Company.

xxx xxx xxx

Name(s) of the Holder(s) Non-Cumulative

Canbank Financial Services Ltd.

1-E, Vandhana Building, 11 Tolstoy Marg

New Delhi-110 001

xxx xxx xxx

The Bonds shall be transferable in accordance with the applicable provisions of the Companies Act, 1956 and relevant Central Government Guidelines.

xxx xxx xxx

The Bond Certificate(s) to be exchanged against this Letter of Allotment will be ready for delivery within three months from the date of allotment of Bonds or extended period, if any, as may be permitted by the Company Law Board under the provisions of the Companies Act, 1956.

xxx xxx xxx

For registration of transfer of Bond(s) represented by this Letter of Allotment, the transferee may apply to the Company in accordance with the provisions of Section 108 of the Companies Act, 1956 as modified vide Notification No. GSR 1294 (E) (F No. 2/3/86/CLV) dated 17th December, 1986 issued u/s 620 of the said Act. The Notification, inter alia, provides that the transferee(s) shall intimate by registered post at the Registered Office of the company his name, address, occupation, if any, and specimen signatures and deliver the original Allotment Letter to the Company. No stamp duty is payable under the said Notification on such transfers.

xxx xxx xxx

This Letter of Allotment will be split into marketable lots fresh charge on a request being made to the Company and on surrender original Letter of Allotment.

xxx xxx xxx

Surrender of this Letter of Allotment to the Company duly signed by the Holder(s) shall be conclusive evidence in favor of the Company the parties surrendering it, has/have a clear title to the Bond(s) and a right to receive the Bond Certificate(s) from the Company.

35. Section 82 of the Companies Act 1956 reads as under:-

82. Nature of shares or debentures.- The shares or debentures other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

36. Section 108(1) of the Companies Act 1956 reads as under:- 108. Transfer not to be registered except on production of instrument of transfer.-

(1) A company shall not register a transfer of shares in, or debentures of, the company, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate relating to the shares or debentures or if no such certificate is in existence, along with the letter of allotment of the shares or debentures:

Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer on such terms as to indemnify as the Board may think fit:

Provided further that nothing to this section shall prejudice any power of the

company to register as shareholder or debenture-holders any person to whom the right to any shares in, or debentures of, the company has been transmitted by operation of law.

37. Section 2(12) of the Companies Act 1956 defines a debenture as under:-

debenture? includes debenture stock bonds and any other securities of a company, whether Constituting a charge on the assets of the company or not.

38. Section 2(7) of the Sale of Goods Act 1930 defines goods as:-

"goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

39. Government of India notification No. GSR 1294 (E) dated 17.12.1986 reads as under:-

G S R 1294 (E) : In exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 620 of Companies Act, 1956 (1 of 1956), the Central Government hereby directs that the provisions of Sub-section (1) of Section 108 of the said Act, insofar as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect of bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond, a copy of this notification having been laid in draft before both the Houses of Parliament as required by Sub-section (2) of Section 620 of the said Act.

40. PGCIL is admittedly a government company. Notification GSR 1294 (E) dated 17.12.1986 applies to the company. In so far Section 108(1) of the Companies Act 1956 applies to the company, the notification exempts the instrument of transfer, transferring bonds, to be duly stamped, provided that an intimation by the transferee has been delivered to the company along with the certificate relating to the bond and if no such certificate is in existence, along with the letter of allotment of the bond.

41. A conjoint reading of Section 2(12) and Section 82 of the Companies Act 1956 along with Section 2(7) of the Sale of Goods Act 1930 makes it abundantly clear that bonds are movable property/goods.

42. A conjoint reading of Section 108(1) of the Companies Act 1956 and GSR 1294 (E) dated 17.12.1986 makes it clear that qua government companies, where bond certificates are not issued, letters of allotment stand at par with bonds.

43. The instant letter of allotment clearly states that bond certificates would be

issued after 3 months of allotment of bonds (Clause 10) and would be exchanged against the allotment letter (Clause 10). Clause 12 of the letter of allotment clearly states that on request, the letter of allotment will be split into marketable lots on surrender of original letter of allotment. Clause 11 of the letter of allotment, incorporates by reference, Notification No. GSR 1294 (E) dated 17.12.1986. Mr. C.S. Sundaram was perfectly correct when he submitted that instant letters of allotment are goods inasmuch as they have the same effect as bonds. Instant letters of allotment have all the features of a bond and in themselves represent the debt due from the issuer. (PGCIL) They are transferable and can be exchanged for a bond.

44. Shri Shanti Bhushan, learned Senior Counsel for the appellant had referred to a passage from the decision dated 10.10.2002 in Co.A. (B) 5/95 Power Grid Corporation Ltd. v. Citi Bank. Dealing with an identical bond sold by Canfina to Citi Bank, Vikramajit Sen, J., in para 13 observed:-

The object and intent of Section 108, the compliance of which has been held to be mandatory in Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, , would be frustrated if Letters of Allotment exchanged between two persons would attain infinite currency and transferability. In my view Section 108 cannot be availed of by CITIBANK, (to whom it was not addressed) in the role of a transferor. CITIBANK has at best merely a "right to sue", which cannot be transferred u/s 6(e) of the Transfer of Property Act. The protection of this Section would inure only to the benefit of the person to whom the Letter of Allotment is issued, otherwise it would itself attain the attributes of shares, bonds, debentures and be freely transferable. Letters of Allotment are not a negotiable instruments.

45. But just prior to said observations, in the same para His Lordship has observed:-

However, while Mr. Kaura may be correct in relying on Section 108 of the Companies Act insofar as CITIBANK is concerned, this provision would not come to the succour of CANFINA as the successor in title of CITIBANK. Section 108 was introduced into the statute to check the currency of blank transfer forms. Logically, only CITIBANK (as the transferee) was eligible to claim the registration of the "Bonds" in its name on the strength of the Letters of Allotment, which cannot be equated with or be held to be synonymous to shares, bonds or debentures which are inherently and per se negotiable.

46. Furthermore, in para 14, it was observed:-

14. Furthermore, the claim of "CITIBANK" assumes that despite the forfeiture CANFINA enjoyed valid title over the Bonds which it purportedly sold to CITIBANK the transfer of which was refused by POWERGRID. What needs to be cogitated upon is whether CITIBANK could have entered into further transactions in respect of these Bonds, title of which is contingent on CITIBANK succeeding in its action u/s 111 of the Act. It must again be understood that the rights of

CITIBANK are the second link in the chain of transactions i.e. between CANFINA and CITIBANK when the first and preceding link itself i.e. between POWERGRID and CANFINA has been broken and rendered as under. It is certainly debatable as to whether CANFINA could have transferred/sold Bonds to CITIBANK without having perfected its title to them by legal action. It is the common case that no Bonds whatsoever were issued even to CANFINA, which has neither taken any action under the Companies Act, nor has assailed the forfeiture by POWERGRID on 11.2.1994. What has made the situation worse confounded is that CITIBANK has transferred them further, albeit coincidentally to the very party from whom it had purportedly purchased the Bonds, i.e., CANFINA. At the highest, CITIBANK merely had a right to sue POWERGRID for the registration of Bonds purportedly purchased by it from CANFINA.

47. Facts relatable to aforesaid decision are that Canfina had transferred letters of allotment for bonds worth 30 crores to Citibank. PGCIL had refused to transfer the letter of allotment in name of Citibank when it was lodged for transfer. defense was the same as in the instant case. Citibank had approached CLB. Against decision of CLB, PGCIL had filed the appeal. During pendency of the proceedings before CLB, Canfina repurchased the letters of allotment. It was in this context that it was held that Section 6(e) of the Transfer of Property Act, 1882 which states that a mere right to sue cannot be transferred, was attracted. Meaning thereby that according to the decision since Citibank was litigating on the issue whether bonds/letters of allotment could be forfeited, by re-transferring the letters of allotment it had in fact transferred a mere right to sue to Canfina.

48. It is trite that ratio of a decision cannot be dissociated from the facts. Addition or subtraction of a fact may render a decision not to be followed as a precedent.

49. Be that as it may, Section 2(12) and Section 82 of the Companies Act 1956, Section 2(7) of the Sale of Goods Act 1930, Notification No. GSR 1294 (E) dated 17.12.1986 and the special features of the letters of allotment noted by me in para 34 above were unfortunately not brought to the notice of brother Vikramajit Sen, J.

50. Matter could be viewed in the context of Section 108(1) of the Companies Act 1956 from another angle. Whereas shares or debenture (bonds being debentures as per Section 2(12) of the Companies Act 1956) indicate the interest of a person in the company as members or debenture holders, a share or debenture certificate or letter of allotment is an evidence of the entitlement of the interest. Section 108(1) of the Companies Act 1956 brings out the aforesaid where it is clearly provided that a company shall not register a transfer of shares or debentures of the company unless either the share or debenture certificate, or if no such certificate is in existence, a letter of allotment is delivered to the company. The scheme of the Act is that in order to register the transfer of share or debenture the evidence in the form of either a share/debenture certificate or letter of allotment is essential. The Act clearly recognises a letter of allotment as

an alternative evidence to a share/debenture certificate. It would also be relevant to note that all companies invariably issue letters of allotment at the first instance and thereafter in lieu of the letters of allotment issue share/debenture certificates. Instant letters of allotment clearly makes the same as marketable commodity. Evidenced by Clause 12 of the Instructions forming integral part of the letter of allotment wherein it is recorded that on request, letter of allotment will be split into marketable lots.

51. As regards the second submission of Shri Shanti Bhushan, learned Senior Counsel for the appellant, that the petitioner could not invoke Sub-section 4 of Section 111 and remedy was under Sub-section 2 of Section 111 and Therefore petition was barred by limitation, a brief purview of the legislative history of relevant provisions of the Companies Act 1956 needs to be noted.

52. Prior to the amendments incorporated by the Companies (Amendment) Act 1988 w.e.f. 31.5.1991, remedy for an aggrieved transferee was provided u/s 111 of the Companies Act 1956 and the forum was the CLB. A concurrent remedy was provided u/s 155 by way of an application to the High Court for rectification of register of members/debenture-holders. While the then Section 111 dealt with the right of appeal only relating to transfer, Section 155 provided the right to any aggrieved person for rectification of the register. Unlike the provisions of Section 111 there was no limitation for proceeding u/s 155. Judicial view was that remedies u/s 111 and 155 are alternative remedies and the choice of electing either was at the discretion of an aggrieved person. By the Companies (Amendment) Act 1988 provisions of Section 155 and 111 were assimilated. Section 155 was deleted and Sub-section 4 of Section 111 was amended. The forum became one i.e. CLB. Post amendment by the Companies (Amendment) Act 1988, Sub-section 1, 2, 3 and 4 of Section 111 read as under:-

Section 111. Power to refuse registration and appeal against refusal.

(1) If a company refuses, whether in pursuance of any power of the company, under its articles or otherwise, to register the transfer of, or the transmission by operation of law to the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in Sub-section (1), either to register the transfer or transmission or to send notice of its refusal to register the same.

(3) An appeal under Sub-section (2) shall be made within two months of the

receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transferor, or the intimation of transmission, as the case may be, was delivered to the company.

(4) If-

(a) the name of any person-

(i) is, without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is, without sufficient cause, omitted there from; or

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member including a refusal under Sub-section (1).

the person aggrieved, or any member of the company, or the company, may apply to the Company Law Board for rectification of the register.

53. Core area of the submission made by Shri Shanti Bhushan was that since a time limit was prescribed u/s 111(3), it would be inappropriate to give same right as u/s 111(2) to be agitated u/s 111(4). Submission was that right u/s 111(4) had to be one of a consequential nature i.e. where the aggrieved person had already got a verdict in his favor and the company still delayed effecting the transfer.

54. One does appreciate the soundness of the proposition canvassed by Shri Shanti Bhushan that if in one section there are two provisions- one fixing a time limit and the other without any time limit, and if both are held applicable in a given situation, then it would make the provision fixing a time limit redundant, but submission of Shri C.S. Sundaram pertaining to harmonious interpretation of statutes before and after and amendment are equally forceful.

55. As noted above, legal view was unanimous that remedies available u/s 111 and 155 were alternative remedies. The only question which arises for consideration is whether while assimilating Section 155 in Section 111 consequent to the 1988 amendment, there is any change in the legal position.

56. Maxwell's Interpretation of Statutes (Tenth Edition Page 81) has the following passage :

Presumption against implicit alteration of law: One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters, outside those limits, the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental

principles, infringe rights, or depart from the general system of law without expressing its intention with irresistible clearness.

57. In *Cricket Club of India Ltd. and Others Vs. Madhav L. Apte and Others*, the four principles of interpretation were set out as follows :

(1) There is presumption against the alteration of well settled law by implication and such a change should be either by explicit or express words or only if such inference of alteration is irresistible.

(2) If the matter is evenly balanced or fairly arguable on either side, then that interpretation should be preferred which would involve the least alteration of the existing law.

(3) If one of the two possible constructions would lead to startling or bizarre results, or to any absurd or harsh consequences, then that construction is one which ought not to be preferred and is one which ought to be avoided.

(4) The intention of the legislature is primarily to be gathered from the actual words used and not from any words not to be found in the statute, but which are required to be added to make the statute clear and to bring out the policy intention.

58. In *Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others*, Hon"ble Supreme Court held that the principle that when a legislative enactment has received authoritative interpretation whether by judicial decision or by a long course of practice is again adopted in the framing of a later statute, it is sound rule of construction to hold that the words so adopted were intended by the legislature to bear the meaning which has been so put upon them. The court said :

It was observed by Lord Scarman in the case of *R v. Chard* (1984) AC 279, at p.295, that the theory which was noted hereinbefore was not a canon of construction of absolute obligation, but only a presumption in the circumstances to be taken in judicial interpretation. This proposition, according to Lord Scarman, is well settled.

59. In *Keshavji Raviji and Co. v. CIT* : [1990]183ITR1(SC) , the contention was that where the meaning of a word used in a statute had been judicially ascertained by a court and where the legislature where re-enacting the law on the subject uses the same word, it must be taken to have been aware of the meaning so judicially ascertained earlier and not to have used the word with a different content. Acknowledging the fact that the principle was a well recognised guide to construction, however the Court held that there were limitations to its application. The Court said : The rules of interpretation are not rules of law; they are mere aids to construction and constitute some broad-pointers. The interpretative criteria apposite in a given situation may, by themselves, be mutually irreconcilable.

It is the task of the court to decide which one, in the light of all relevant circumstances, ought to prevail. The rules of interpretation are useful servants, but quite often tend to become difficult masters.

60. Task Therefore is to find out whether at the time when Section 155(1) was assimilated in Section 111(4), did the legislature intend, remedy u/s 111(4) as limited to what was contended by Shri Shanti Bhushan i.e. a remedy to enforce a decision already existing in favor of the transferee.

61. Bare perusal of Section 111(4) shows that it is practically a reproduction of the erstwhile Section 155(1) except to the addition of words "including a refusal under Sub-section (1)" and substitution of the words "Company Law Board" for the word "court".

62. The term "having become a member" had been judicially interpreted to mean "any person having become entitled to be a member" or "any person having got the right of membership". Therefore, a transferee who has a valid instrument of transfer is one who is entitled to become a member and not necessarily one who has obtained an order from a court or CLB. The position of a transferee coming to courts under erstwhile Section 155 was well recognised. I find no change in this legal position, post amendment, save and except forum is now CLB.

63. Refusal u/s 111(1) is appealable under Sub-Section 2. It is also actionable under Clause "b" of Sub Section 4. The words "including a refusal under Sub-section (1)" in the last line of Clause "b" of Sub Section 4 makes it clear that refusal to lodge a transfer is actionable under Sub Section 4. Refusal is clearly actionable under Sub Section 2. Howsoever sound and logical may be the submission made by Shri Shanti Bhushan that, if in one section, there are two provisions - one fixing a time limit and the other without fixing a time limit, and if both are applicable in a given situation, then it would make the provision fixing a time limit redundant. However, the legal position is as it is, it must be held that the petition filed by the respondent was clearly maintainable u/s 111(4) and hence suffered no bar of limitation.

64. In para 34 above, I have noted the relevant terms of the letters of allotment. In paras 35 to 38 above I have noted Sections 2(12), 82 and 108 of the Companies Act, 1956 and Section 2(7) of the Sale of Goods Act, 1930. In para 39 above, I have noted Govt. of India's Notification No. GSR: 1294 (E) dated 17.12.1986. Since appellant is a Government Company, in paras 40 to 42 above I have held that in view of the Notification No: GSR: 1294 (E) and the sections noted above, the instant letters of allotment stand at par with bonds and are hence goods as defined under the Sale of Goods Act, 1930.

65. Assuming that a letter of allotment is not goods but is a document of title to goods, what would be the legal consequences 66. Section 2(4) of the Sale of Goods Act, 1930 defines a "document of title to goods" as under :

(4) document of title to goods? includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented ;

67. Section 53 of the Sale of Goods Act, 1930 reads as under:-

Effect of sub-sale or pledge by buyer.-(1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Provided that where a document of title to goods has been issued, or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

68. As per definition of documents of title to goods a warrant or order for delivery of goods or any other document used in the ordinary course of business as proof of possession or control of goods or authorising either by endorsement or by delivery, the possessor of the document to receive goods is a document of title to goods. Bonds are goods was not disputed by Shri Shanti Bhushan. The instant letters of allotment authorise the holder to get the bonds. So viewed, the letters of allotment may be classified as documents of title to the goods. Proviso to Section 53 of the Sale of Goods Act 1930 would come into play if the transferee takes the document of title in good faith and for consideration. If seller is unpaid, he loses unpaid seller's lien.

69. Decision reported as 1876 (1) AC 476 T. Robins Goodwin v. Henry Christopher Robarts and Ors. may be referred to at this stage. Action of trover, with a count for money to recover the value of a scrip was in issue. In the words of Lord Cairns facts were as under :

Part of the scrip in question was scrip of a Russian Government loan. Each scrip note was for 100 Pounds, and represented that when the Installments in which the 100 Pounds were to be advanced, were all paid up, the bearer would be,

after receipt thereof by Messrs. Rothschild, entitled to receive a definitive bond, or bonds for 100 Pounds from the Imperial Government. The 100 Pounds were to bear interest from the 1st of December, 1873, and a coupon was attached to the scrip as a warrant for the payment of the half-year's interest due on the 1st of June, 1874. The other scrip related to an Austrian or Hungarian loan, and was in substance in the same form, except that although the interest began to run from the 1st of December, 1873, there was no coupon for the payment of the first half-year's interest. On all the scrip all the installments were fully paid up before the plaintiff became owner of the scrip. The receipts for the installments were signed by the house of Rothschilds, but it was not seriously disputed in the argument that Rothschilds acted merely as agents for the foreign Governments, and that any liability which existed on the scrip was the liability of the foreign Governments, and not of Rothschilds. The appellant bought the scrip on the London Stock Exchange, through Clayton, his broker. At the time he bought it, the instruments, as I have already said, were fully paid up; that is to say, the whole amount represented by the scrip had been advanced to the foreign governments; and the scrip receipts represented, upon the face of them, that the bearer, whoever he might be, would be entitled to receive the bonds of the foreign government for the amount of the scrip.

70. It was held:

The plaintiff bought in the market scrip which, from the form in which it is prepared, virtually represented that the paper would pass from hand to hand by delivery only, and that any one who became bona fide the holder might claim for his own benefit the fulfilment of its terms from the foreign Government. The Appellant might have kept this scrip in his own possession, and, if he had done so, no question like the present could have arisen. He preferred, however, to place it in the possession, and under the control, of his broker or agent, and although it is stated that it remained in the agent's hands for disposal or to be exchanged for the bonds when issued, as the Appellant should direct, those into whose hands the scrip would come could know nothing of the title of the Appellant, or of any private instructions he might have given to his agent. The scrip itself would be a representation to any one taking it—a representation which the Appellant must be taken to have made, or to have been a party to—that if the scrip were taken in good faith, and for value, the person taking it would stand to all intents and purposes in the place of the previous holder. Let it be assumed, for the moment, that the instrument was not negotiable, that no right of action was transferred by the delivery; and that no legal claim could be made by the taker in his own name against the foreign Government; still the Appellant is in the position of a person who has made a representation, on the face of his scrip, that it would pass with a good title to any one on his taking it in good faith and for value, and who has put it in the power of his agent to hand over the scrip with this representation to those who are induced to alter their position on the faith of the representation so made.

My Lords, I am of the opinion that on doctrines were established, of which *Pickard v. Sears* (1) may be taken to an example, the Appellant cannot be allowed to defeat the title which the Respondents have thus acquired.

x x x

But it was contended that the scrip was at most a promise to give a bond, and not a promise to pay money, and Therefore was not a security for the payment of money. In my opinion it is impossible to maintain this distinction. The whole sum of 100 Pounds had been actually advanced and paid; the loan was carrying interest from the 1st of the previous December; there was nothing more remaining to be done on the part of the holder of the scrip; and if any such holder had been asked what security he had for the advance which had been made, he would unhesitatingly have pointed to the scrip. Under these circumstances I cannot regard the scrip as playing any different part from a bond, and the statement in paragraph 9 of the Case, carrying the custom as to negotiability of scrip quite as high as the evidence stating the custom in *Gorgier v. Mievile* (1) as to bonds, I am clearly of opinion that we ought to hold, in this case, that this scrip was negotiable, and that any person taking it in good faith obtained a title to it independent of the title of the person from whom he took it.

71. In a concurring decision, Lord Hatherley observed :

Now it is also found in the Case that these instruments are taken as securities and pass from hand to hand as such. Here is a gentleman in possession of a document, which on the face of it entitles the holder to receive another document of a different character, a bond instead of scrip, upon the mere presentation by him of that scrip as holder. He knows that if he places this document in the hands of a broker, that broker if he should be told to dispose of it, would dispose of it by simply handing over the scrip as it had been handed to him for his client, the Appellant, when the Appellant became entitled to it. The person buying of his broker would not be expected to ask, and would not necessarily ask, according to the course of business and dealing in the market, any question as to how the scrip had been acquired, or what the title of the previous holder of it had been. The Appellant, Therefore, gives the broker scrip which is, and for the last fifty years has been, disposed of every day in the market, and has, for all those years, been so disposed of, upon the sole presentation by the holder, the seller, or pledger, to the person to whom he wishes to sell or to pledge it, and that without any suspicion being aroused to suggest the necessity, or even the propriety, of asking a single other question. Can a person who, himself, in that manner acquired the instrument, who knows that as long as he has it safe in his pocket, in his box, or in his desk, he can rely upon that instrument, but that as soon as he parts with it the new holder will, as he did, become in a position to claim those bonds which he himself might have claimed if he had retained possession of the scrip-can he, placing it in the hands of a broker with no instructions whatever except to dispose of it as he may direct-can he, according to the principle of the cases which were referred to in the

course of the argument with regard to limited agency, when on the face of it that which constitutes, you may say, the authority of the agent, namely, the possession of the document, appears to be sufficient alone for obtaining the bonds in question? I agree with my noble and learned friend on the woolsack in thinking that this case might be disposed of upon that ground alone.

72. The distinction sought to be drawn by Shri Shanti Bhushan that scrip dealt with in *T. Robins Goodwin's* case was a bearer scrip and instant letters of allotment are in favor of a named person is of no consequence as the letters of allotment were transferable by endorsement. Is not a promisor note equally effective in the hands of the original promisee or the holder in due course? Of course, it is.

73. In the report published as (1877) 2 Q.B. 194 *Rumball v. The Metropolitan Bank* facts were that scrip certificates, by which it was certified that, after the payment of certain installments, the bearer thereof would be entitled to be registered as the holder of shares in a banking company, were issued to the plaintiff, and by him deposited with a stockbroker for the purposes of paying the installments remaining due, and dealing with the scrips as the plaintiff would direct. The broker in fraud of the plaintiff, and without his authority, deposited the script with the defendants as security for an amount due from him i.e. the broker to the defendants. This fraud was not known to the defendants. It was proved that the scrips were treated as negotiable instruments transferable by mere delivery. It was held :

The first question which presents itself is, whether the present case falls within the principle of the decision in *Goodwin v. Roberts*, as decided in the Court of Exchequer Chamber (1), and in the House of Lords on appeal (2); and we think it does, both with reference to the usage of the monetary world in respect of such certificates, which brings the case within the principle of the decision of the Court of Exchequer Chamber-which principle was affirmed by the Lord Chancellor in the House of Lords-and also on the other ground on which the decision of the House of Lords proceeded, namely, that if a party possessed of a security purporting on the face of it to be transferable by delivery chooses to leave such security in the hands of a third party, and the latter makes it over to a bona fide holder for value, the true owner must be taken to have brought about his own loss, and cannot recover it back.

74. Letters of allotment in question carry an endorsement that it is a valuable document and should be preserved carefully for exchange with the Bond Certificate(s). It also carries an endorsement that amount stands paid up. Any purchaser would be justified in presuming that the bonds were fully paid for. Be that as it may, if a document is transferable, restrictions have to be specified in the document. I find none. It is also relevant to note that the letters of allotment shows that the name of Canfina stands entered in the register of bond holders maintained by the appellant.

75. Document of title is right in the goods as distinct from a right to sue.

76. On the issue of Canbank Mutual Fund being a purchaser for consideration and when did title in the letters of allotment pass from Canfina to the Fund; as per the two transfers were effected on 20.3.1992. Deal slips between the two and receipt issued by Canfina shows money was paid by the Fund to Canfina on 20.3.1992.

77. Section 19 of the Sale of Goods Act 1930 states as under:-

19. Property passes when intended to pass.-(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at any such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

78. Section 20 of the Sale of Goods Act, 1930 reads as under:-

20. Specific goods in a deliverable state.- Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

79. Sub-Section 3 of Section 4 of the Sale of Goods Act, 1930 reads as under:

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

80. There is no dispute between Canfina and the Fund that the transfer took place on 20.3.1992. It is clear from a bare reading of Section 19 of the Sale of Goods Act 1930 that property in goods passes when the parties intend it to pass. u/s 20 if there is an unconditional contract for sale of specified goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed. (See Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.,

81. It is clear from Section 4(3) of the Sale of Goods Act, 1930 that only when the transfer of property is to take place at a future time or subject to some conditions to be fulfilled is the contract an agreement to sell. There is no condition to be fulfilled by Canfina or the Fund nor is there any material to show

that parties intended that property would pass at a future date.

82. Bona fide purchaser of goods has to be understood in the context of whether the buyer had notice of defect in the title of the seller in the goods. As held above, Canfina acquired good title to the letters of allotment on 10.3.1992. There being no defect in title, question of the Fund buying the letters of allotment not in good faith does not arise.

83. Appellant parted with the letters of allotment when delivery was made to Canfina. Delivery being a fact, statutory results must follow. Rs. 60 crores invested by the appellant with Canfina in the portfolio management scheme had to be returned after 1 year. Default in repayment had to be on 10.1.1993. Assuming consideration failed, what happens?

84. In the report published as 1926 Vol 94 1.C.824 (PC) Maneckji Pestanji Bharucha and Anr. v. Wadilal Sarabhai and Co. facts were that plaintiff sold certain shares of Company to defendant No. 1. He took from various brokers blank transfers signed by the registered holders along with corresponding certificates and handed them over to the defendant No. 1. The defendant No. 1 gave the plaintiff a cheque which was dishonoured. The defendant No. 1 made certain propositions as to the raising of money with defendant No. 2 and handed the certificates and transfers to him. Defendant No. 2 did likewise with defendant No. 3.

85. In an action by the plaintiff against the defendants it was held, that as soon as the plaintiff handed over the certificates and transfers and the defendant accepted them and gave a cheque, property in the shares passed to the defendant No. 1 and the plaintiff had neither had any jus in re of the certificates and transfers nor he had any statutory lien on them. The plaintiff could only sue the defendant No. 1 on the cheque or on the price of the shares unpaid in respect that the cheque had not been honoured and could not sue defendants Nos. 2 and 3 for delivery of shares.

86. In the report published as AIR 1943 249 (Nagpur) the facts were that the plaintiff-respondent Azavedo purchased second-hand refrigerator for Rs. 120 and, it was agreed between him and the appellant vendor E.C. Eduljee that the refrigerator should be put in order at a cost of Rs. 320. The respondent purchaser took delivery on 20th February, 1937 and admitted that its condition was satisfactory. Later, he said that it was not in working order and the appellant took away two parts of it for further repairs, the thermostat and the engine. The full bill for repairs had not however been paid and the defendant-appellant Eduljee refused to return the parts taken for repairs until he was paid a balance of Rs. 70 due for the original repairs.

87. It was held that when the contract was fully performed and when the goods were handed back (although the cost of the repairs had not been fully paid), the lien was ended and it could not be revived because the purchaser undertook further repairs.

88. Section 49 of the Sale of Goods Act, 1930 reads as under:-

49. Termination of lien.- (1) The unpaid seller of goods loses his lien thereon-

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods ;

(b) when the buyer or his agent lawfully obtains possession of the goods ;

(c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

89. Letters of allotment being lawfully parted with in March, 1992, PGCIL can under no circumstances claim unpaid sellers lien.

90. Was PGCIL an unpaid seller? If not, the whole controversy becomes a non-issue.

91. As held by their Lordships of the Supreme Court in the decision reported as Jammu and Kashmir Bank Ltd. Vs. Attar-UI-Nissa and Others, as soon as money is credited into an account, consideration is paid.

92. As per composite contract terms whereof are contained in PGCIL's letter dated 9.3.1992 consideration had to be paid by Canfina by depositing the sum of Rs. 80 crores in an account to be opened in name of PGCIL with Canara Bank, Janpath Branch. Admittedly, on 10.3.1992 account of PGCIL with Canara Bank, Janpath Branch was credited in said sum. Thus consideration passed. 2nd part of the composite contract required Rs. 3.2 crores to be paid by PGCIL to Canfina as 4% fee on bonds worth Rs. 80 crores, Rs. 16.8 crores to be invested with Canfina at interest @ 11% and Rs. 60 crores to be invested in the portfolio management scheme of Canfina. Thus Rs. 3.2 crores + Rs. 16.8 crores and Rs. 60 crores had to be debited from account of PGCIL and credited to that of Canfina. This was done. It cannot Therefore be said that the bonds were not paid for. It was for said reason that the letters of allotment recorded that the bonds were fully paid for.

93. Appellant cannot claim unpaid sellers lien.

94. I may note a submission made by Shri Shanti Bhushan that no payment was made by the Fund to Canfina as the cheque towards the consideration was issued by the Fund in name of Canara Bank and not Canfina.

95. In the petition before CLB in para 5(a) it was specifically averred by the respondent as under:

(a) On or around 20th March, 1992 the said Fund had purchased in its Can triple Scheme 17 percent Power Grid Corporation Bonds of the face value of Rs.80 crore from Canbank Financial Services Ltd.(hereinafter referred to as Canfina). The consideration in respect of the said bonds was paid by the Petitioners by way

of R.B.I. Cheque No. 22001 drawn by the Fund in favor of Canara Bank for Rs. 102,67,67,123.28 which includes the cost of 17% Power Grid Corporation bonds for Rs. 80 crores @ Rs. 97/- - Rs. 77,97,26,027.39 and the Cost of 17% MTNL bonds for Rs. 25 crore @ Rs. 97/-- Rs. 24,70,41,095.89.

96. Appellant's reply before CLB was as under:

5(a) Para 5 (a) of the Petition states that the Petitioner had purchased the bonds (17% taxable) of the face value of Rs. 80 crores from CANFINA on or around 20.03.92. This is not feasible since as per the terms of the composite contract between the Respondent Corporation and CANFINA vide letter No.NPTC/Cos/Bonds/50106 dated 9/10.3.92, CANFINA was allotted Bonds (17% taxable) of the face value of Rs. 80 crores only out of which 20% were to be sold to the public over the counter. Hence the CANFINA could not sell all the bonds of face value of Rs. 80 crores to the Petitioner as alleged. It is also pertinent to note that Citi Bank NA claims to have purchased the same very bonds (17 taxable) of the face value of Rs. 30 crores on 5.5.1992 from CANFINA. The Petitioner has not submitted any documents/contract of sale to establish the transfer of bonds of face value of Rs. 80 crores in its favor by CANFINA on or about 20.03.1992.

97. There is no specific denial to respondent's pleadings in para 5(a) of the petition. Appellant cannot set up pleas of facts for the first time in the present appeal. Be that as it may, Shri C.S. Sundaram, learned senior counsel for the respondent explained that in financial circles, all banking and financial institutions have accounts with the RBI and payment by RBI cheque is a very common practice followed by Banks and Financial Institutions in securities market in order to facilitate speedy transfer of funds (on the same day). While the Mutual Fund and Canara Bank have RBI account, Canfina, being a non-banking financial institution does not have an RBI account. Instead Canfina has an account with Canara Bank, Cunningham Road, Bangalore. It was in such circumstances that the sale consideration for the LOA's in question was first given to Canara Bank which in turn has credited the proceeds to Canfina's account. It was only pursuant to such receipt of money that Canfina issued the receipts evidencing payment by the Mutual Fund.

98. Appellants submissions based on Sub-section 2 and 4 of Section 3 of the Capital Issues (Control) Act 1947 may be dealt with. It was urged that as per said provisions the Government was empowered to lay down terms under which securities could be offered for sale and that in the instant case approval granted by Central Government vide letter dated 7.2.1992 made it a condition that PGCIL would be subject to the measures of control that may be brought into operation by the Central Government. That on 22.6.1992 Central Government directed PGCIL not to part with the bonds till money was actually received. That on 9.11.1993 PGCIL amended its Articles of Association empowering the Board to forfeit the bonds.

99. Sub-section 4 of Section 3 of the Capital Issues (Control) Act 1947 reads as

under:-

The Central Government may qualify any consent or recognition accorded by it under Sub-section (2) or Sub-section (3) with such conditions, whether for immediate or future fulfilment, as it may think fit to impose; and where a company acts in pursuance of such consent or recognition, it shall comply with the terms of any condition so imposed.

100. Condition imposed vide letter dated 7.2.1992 has been noted by me in para 1 above. The condition is that PGCIL will be subject to any measure of control, licensing or acquisition that may be brought into operation by the Government. Prima-facie read, the term of the condition cannot mean that the Central Government directives, in relation to contracted obligation of PGCIL, can be issued to vary the terms of a contract. But I chose to decide the issue on different grounds. Central Government's letter dated 22.6.1992 required PGCIL to receive Rs. 60 crores before parting with the bonds. But sale of letters of allotment to the respondent by Canfina had taken place on 20.3.1992. Third party rights had intervened. These could not be put to naught. Besides, as already held in para 91 above, consideration stands paid as soon money is credited into an account. Admitted account of PGCIL with Canara Bank, Janpath Branch was credited on 10.3.1992. Money passed on from Canfina to PGCIL.

101. In the report published as 1992 (73) Comp Cas 80, Mathrubhumi Printing and Publishing Co. Ltd. v. Vardhaman Publishers Ltd. and Ors. passage from the decision of the Madras High Court reported as 1988 WLR 41, Swaminathan (M.U.) v. Chairman and Managing Director and IDCO was cited with concurrence. The same reads as under:-

Section 31(2) of the Companies Act cannot be understood to mean that any alteration made in the articles of association would have retrospective effect as if it was there from the inception of the articles of association. The section is intended only to confer validity on the alteration made to the articles. It is only for the limited purpose of making the alteration valid it is to be treated as it was originally in the articles. It is seen from Sections 29 and 30 of the Companies Act that certain formalities are prescribed for articles of association. Unless the requirements of Section 29 and 30 are satisfied, the articles of association will not be valid in law. If the same formalities are to be gone through whenever any alteration is made, it may lead to several difficulties. For example, Section 30(c) of the Companies Act requires the articles to be signed by each subscriber of the Memorandum of Association. If an alteration to the articles is also to be signed by all the subscribers to the memorandum of association, it may not be possible at all. In order to avoid such a situation, Section 31(2) of the Act provides that the alteration made in accordance with Section 31(1) shall be valid as if it was part of the original articles. It is only for this limited purpose that the legal fiction is introduced by the said Section. We cannot extend the scope of the fiction so as to make the alteration itself retrospective in effect for all purposes.

102. Controversy raised by the appellant that knowledge of Canfina is knowledge of the Fund as both operated under the umbrella of Canara Bank is neither here nor there for the reason as of 20.3.1992 neither existed the letter dated 2.6.1992 of the Central Government nor existed the controversy of interpreting the agreement between the parties. As of that date the appellant treated the sum of Rs. 60 crores as paid to it.

103. Before concluding, I may note that even after 2.6.1992, the appellant did not demand the sum of Rs. 60 crores from Canfina. Evidenced by letters dated 23.9.1992 (noted in para 17 above) and letter dated 22.10.1992 (noted in para 18 above), appellant wanted an assurance that its money was safe in the hands of Canfina and would be returned in March 1993 with interest @ 12% per annum. The 2 letters show that the appellant treated the sum of Rs. 60 crores as paid to it at the first instance and thereafter appropriated by Canfina (in the Portfolio Management Scheme). As regards insistence of the appellant that Canfina should assure repayment within interest @ 12% per annum, the same was baseless as at no point of time Canfina agreed to pay interest @12% per annum. Appellant knew that the sum of Rs. 60 crores was invested in the portfolio management scheme and Therefore would earn the dividend depending upon how the stocks purchased in the portfolio management scheme failed. The 12% return referred to by Canfina was only an indicative return. In the letter dated 23.9.1992 and 22.10.1992, appellant itself (in the first para of the letters) referred that 12% interest was the indicative interest.

104. The Appeal is dismissed.

105. No costs.