

(1999) 03 DEL CK 0018

In the Delhi High Court

Case No : Co. A. 27 of 1993 and Co.A.6 of 1994

Pramod Gupta and Another

APPELLANT

Vs

ANZ Grindlays Bank and Another

RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Citation : (1999) 3 AD 180 : (1999) 79 DLT 16 : (1999) 49 DRJ 803

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. L.R. Gupta, with Mr. Mahendra Rana, Mr. V.P. Singh, with Ms.Anju Bhattacharya, for the Appellant; Mr. V.N. Koura , with Ms. Paramjit Benipal, Mr. V.P. Singh , with Ms.Anju Bhattacharya, Mr. J.C. Seth, for the Respondent

Judgement

K. Ramamoorthy, J.—The order dated 25/26.8.1993 is challenged in Co.A.27/93 by Ms.Pramod Gupta and Mr.Sanjay Gupta, hereinafter called respondents 2 & 3 as per the array of parties in the application filed by the ANZ Grindlays Bank, hereinafter called the "Bank", before the Company Law Board. In Co.A.6/94, the Bank has filed the appeal challenging the order passed by the Company Law Board dated 15/16.3.1994. In Co.A.8/94 the order dated 15/16.3.1994 passed by the Company Law Board is challenged by respondents 2 & 3.

2. Before advertng to the rival contentions of the parties in the application filed by the Bank before the Company Law Board, out of which the three appeals had arisen, the facts culminating in the filing of the Company Petition filed by the Bank u/s 111 of the Companies Act, 1956, hereafter called the "1956 Act", and the filing of the appeals have to be noticed.

3. The genesis, as it were, of the present dispute was the purchase of bonds by respondents 2 & 3 issued by the National Hydro Electric Power Corporation Limited, hereinafter called the "NHPC Ltd". The bond was purchased which had the face value of Rs.9,06,34,000 with interest warrants payable on the 31st of March and the 30th of September of each year. The interest warrants were issued by the NHPC Ltd. by way of post dated cheques payable, as stated above,

on the 31st of March and the 30th of September every year. The interest warrants are detachable from the bond and each of the interest warrants/post dated cheque is a negotiable instrument independently.

4. On the 17th of March, 1992, respondents 2 & 3 sold the bond with one interest warrant which was payable on the 31st of March, 1992 to the Bank. The letter reads as under:-

"Enclosed herewith 90,634 (% NHPC bonds of Rs. 9,06,34,000/- (Rs.NINE CRORE SIX LACS THIRTY FOUR THOUSAND ONLY). You are requested to sell the same @ 74.30, and issue a bankers check favouring Citi Bank with a covering note that credit has to be given to the A/c of Mr.Sanjay Gupta with Citi Bank.

Please receive the same & acknowledge."

5. The impugned bond was given to the Bank with one interest warrant which was for Rs.40,78,530/- and the post dated cheque was given to the Bank. On the 18th of March, 1992, the Bank sold the bond with one interest warrant purchased by it to M/s.Fairgrowth Financial Services Limited for a consideration of Rs.8.50 crores, that is, nearly about Rs.2 crores over and above the consideration for which it was purchased on the 17th of March, 1992 by the Bank. On the 30th of March, 1992, M/s.Fairgrowth Financial Services Limited sold the bond and the interest warrant to M/s. Fairgrowth Investments Limited for a consideration of Rs.8.75 crores. It may be noticed here that both these companies were under the control of Mr.Harshad Mehta.

6. On the same date, M/s.Fairgrowth Investments Limited wrote to the NHPC Ltd. for registering the transfer of the bond with one interest warrant. The NHPC Ltd. complied with the requested. By this process, M/s.Fairgrowth Investments Limited became entitled to the payment of the amount mentioned in the bond and encased the interest warrant/post dated cheque for Rs.40,78,530/-. As a matter of fact, on the 31st of March, 1992, M/s.Fair Growth Investments Limited encased the post dated cheque and received Rs.40,78,530/-. On the 1st of April, 1992, M/s.Fairgrowth Investments Limited sold the bond to M/s.Fairgrowth Financial Services Limited for a consideration of about Rs.8.50 crores. It may be noticed that as M/s.Fairgrowth Investments Limited had received the amount mentioned in the interest warrant/post dated cheque, no interest warrant was subject matter of transfer by M/s.Fair Growth Investments Limited to M/s.Fair Growth Financial Services Limited. The bonds and the bond alone were the subject matter of this transfer.

7. By the 1st of April, 1992, M/s.Fair Growth Financial Services Limited became the holder of the bond by virtue of transfer from M/s.Fair Growth Investments Limited. On the 17th of April, 1992, the Manager, Investment Service, of the Bank wrote to the respondents 2 & 3 stating:

"Please refer to my telephonic discussion with Mr.Sanjeev Malik of your office as per which we are selling you today 9% NHPC Tax Free Bonds, (Intt date 31/3

and 30/9), Face Value Rs.9,06,34,000/- today for Rs.6,40,05,892/- on an Ex-Interest basis."

8. On the 18th of April, 1992, M/s.Fairgrowth Financial Services Limited transferred the bond to the Bank for a consideration of Rs.8 crores. On the same date, the Bank wrote to the third respondent in the following terms:-

"Please refer to the telephonic discussions with Mr.Sanjeev Malik of your office as per which we have purchased from you Rs.9,06,34,000/- face value of 9% NHPC Tax Free Bonds (Interest Date 31/3) today for an amount of Rs.6,40,28,240-31."

9. To this proposal, respondents 2 & 3 had agreed.

10. On the 6th of June, 1992, the Special Court (Trial of Offences Relating to Transactions and Securities) Ordinance, 1992, herein after called the 1992 Act, was promulgated by the President of India, which had affected the right of the Bank to get the bond registered in its name. On the 24th of June, 1992, the Bank wrote to the NHPC Ltd requesting for the register of transfer of the bonds. The said letter reads as under:-

Re: 9% NHPC Bonds - 1987 (B Series) Certificate No.0619665 Face Value Rs.9,06,34,000-00.

"We enclose the captioned bond certificate duly endorsed by the holders viz Fairgrowth Investments Ltd vis-a-vis ourselves as transferees.

Kindly register the transfer in your books in bank's name and return the bonds certificates to us after your above action."

11. On the 2nd of July, 1992, M/s.Fairgrowth Financial Services Limited was notified as a notified person under the Special Court (Trial of Offences Relating to Transaction in Securities) Ordinance, 1992. On the 6th of July, 1992, the Bank had written to the NHPC Ltd. for registering its name in the bond in the books of NHPC Ltd. by virtue of transfer of the bond from M/s.Fair Growth Financial Services Limited to the Bank. On the 16th of July, 1992, the respondents 2 & 3 wrote to the Bank in the following terms:-

"This is to notify to you that we had sold to you our 9% NHPC bonds of the face value of Rs.9,06,34,000/- under a contract dated 18.4.92 with a corresponding right of repurchase to us and a corresponding obligation on your part to reconvey and deliver the said bonds back to us on 17th July, 1992 on the payment of 6,70,27,919.52 and also as per your sale letter dated 17.7.92 which you, in pursuance of the contract, had delivered to us on that date i.e. on 18.4.92 itself. It is needless to emphasize that you are bound to reconvey and deliver back the said bonds to us on 17.7.92 on/against the payment of Rs.6,70,27,919.52. As you know very well on 29.6.92, we offered to exercise our right of repurchase on the payment of the said amount of Rs.6,70,27,919.52 on that date but you declined on the plea that the right of repurchase did not accrue to us prior to 17.7.92 as per contract/sale letter dated 17.7.92. Though your aforesaid plea

was not tenable, yet we thought fit to wait till 17.7.92. However in a meeting held between your officers including Mr.Vishnu Deuskar, Chief Manager Investments, Mr.Nikhil Johri and Mr.Sandeep Chitale with our Mr.Sanjay Gupta and Mr.Sanjeev Malik and others on 30th June, 1992 in our office at 10, Hailey Road, New Delhi-110 001, you promised and assured that our aforesaid bonds would be definitely delivered back to us on 17.7.92 or any other date thereafter as we may require you to deliver.

In view of the aforesaid facts and your contractual sale obligations, you are hereby Therefore required to reconvey and deliver back these bonds to us as per contract dated 18.4.92 read with your sale letter dated 17.7.92, as stated above in pursuance of and in accordance with our right of repurchase of the said bonds. It may be stated that in your sale letter dated 17.7.92, you had clearly stipulated that "We sell you Rs.9,06,34,000/- face value of 9% NHPC tax free bonds (interest dated 31/3) today for an amount of Rs.6,70,27,919.52."

You are, Therefore, required to reconvey and deliver back the said bonds to us on the payment of Rs.6,70,27,919.52 on 17.7.92 as per the aforesaid contract dated 18.4.92 read with your sale letter dated 17.7.92. Please note the bankers' cheque for the said amount shall be delivered to you only against the actual delivery of the bonds and also if required, a confirmatory letter that you have no right or claim of any nature to the said bonds and have no objection to the transfer of the same in our favour. Kindly note that in case you fail to reconvey/ deliver back the said bonds on 17.7.92 against the payment which is ready with us for payment to you, you shall be liable to pay to us the amount of Rs.9,06,34,000/- which is the face value of the said bonds after deducting the amount of Rs.6,70,27,919.52 which is liable to be paid to you by us besides damages. You are also requested to execute documents/letter assuring that the bonds shall be duly transferred in our favor by NHPC in their records.

We have come to know that you had sold these bonds to M/s Fair Growth Financial Services and the bonds already stand transferred in favor of the said company in the records of NHPC. We are constrained to say that as per contract and sale letter mentioned above, you had no right to sell the said bonds to any other person when knowing fully well that we have a right of repurchase of the same from 17.7.92 onwards. Kindly reconvey and deliver back the bonds to us duly endorsed and transferred in your favor from the name of M/s Fair Growth Financial Services by NHPC (in the records of NHPC), so that the bonds may be transferred in our favor by NHPC from your name in our name or in the name of our nominee without any objection, failing which you shall be liable to pay to us Rs.9,06,34,000/- the value of the bonds after deducting Rs.6,70,27,919.52 i.e. Rs.2,36,06,080.48 besides damages which we shall suffer on your failure and breach of the contract/sale.

Please confirm by a return letter that you are ready to reconvey and deliver back the bonds standing endorsed in your favor by NHPC from the name of M/s Fairgrowth Financial Services so that the bankers cheque may be delivered to

you on 17.7.29 and the bond be handed over back to us."

12. On the 17th of July, 1992, the Bank wrote to them, in reply, and the letter reads as under:-

"Please refer to the telephonic discussions with Mr.Sanjeev Malik of your office as per which we sell you Rs.9,06,34,000 face value of 9% NHPC Tax Free Bonds (Interest Date 31/3) today for an amount of Rs.6,70,27,919.52."

13. On the 16th of July, 1992, a circular was issued by the Delhi Stock Exchange, which reads as under:-

"With effect from today i.e. 18th July, 1992, Thursday, _____ will be done on following conditions:-

1. No blank sale can be done.
2. Shares sold will have to be delivered within 48 hours in Stock Exchange Office.
3. Purchase position can be increased.
4. Limited same day jobbing can be done.
5. Notified parties shares can not be delivered as per list attached.
6. If any person create panic in market, he will be punished.
7. Committee of following members will supervise and take action:
 1. Sh.Murari Lal Goel
 2. Sh.Bharat Bhushan Sahny
 3. Sh.R.K.Chugh
 4. Sh.Yogesh Gupta
 5. Sh.Ramesh Goel
8. In the event of further notification of persons u/s 3(2) of the Ordinance, such securities which are in the names of persons who may be so notified, apply anywhere in the transfer would be considered as bad. In such cases the first introducing member after the July, 1992, has to replace the securities or make payment within 7 (seven) days of delivery of securities by receiving member."

LIST OF NOTIFIED PERSONS S.No. Name of the persons 1. Shri Harshad S.Mehta 2. Smt. Jyoti H.Mehta 3. Shri Ashwin S.Mehta 4. Shri Sudhir S.Mehta 5. Smt. Deepika S.Mehta 6. Smt. Reena S.Mehta 7. M/s.Growmore Research & Assets Management Ltd. 8. M/s.Mazda Industries & Leasing Limited 9. Shri Nitesh S.Mehta 10. Smt.Rasila Mehta 11. Smt.Pratima Mehta 12. Shri Atul Vyas 13. M/s.Growmore Leasing & Investment Pvt. Ltd. 14. M/s.Growmore Exports Pvt. Ltd. 15. M/s.Atur Holdings Pvt. Ltd. 16. M/s._____(not legible)_____ 17. M/s._____(not legible)_____

18. M/s.Orion Travels Pvt. Ltd. 19. M/s.Portunu Holdings Pvt. Ltd. 20. M/s.Harshad S.Mehta, Proprietary Concern 21. M/s.Ashwin S.Mehta, Proprietary Concern 22. M/s.J.H.Mehta, Proprietary Concern 23. M/s.Praumila H.Mehta 24. M/s.Harshad S.Mehta, HUF 25. M/s.Ashwin S.Mehta, HUF 26. Hitesh S.Mehta, HUF 27. M/s.Sunrise Enterprises 28. M/s.Treasure Holding Pvt.Ltd. 29. Velvet Holding Pvt. Ltd. 30. Eminent Holding Pvt. Ltd. 31. M/s.Pallavi Holding Pvt. Ltd. 32. M/s.Zest Holding Pvt. Ltd. 33. M/s.Topaz Holding Pvt. Ltd. 34. M/s.Divine Holding Pvt. Ltd. 35. Shri Abhay Dhars 36. Shri Hiten Prasan Dalal 37. Shri C.L.Khomani 38. Shri A.N.Bovadokar 39. Shri B.Sitaraman 40. M/s.Fairgrowth Financial Services Ltd. 41. Shri R.Ganesh 42. Shri Bhupon C. Dalal 43. Shri Jagdish P. Gandhi 44. Shri T.J.Ruia 45. Shri Pankaj V.Shah, Employee of Shri Harshad S.Mehta 46. Shri Atul Parekh, Employee of Shri Harshad S.Mehta 47. Shri Hiten Mehta , Employee of Shri Harshad S.Mehta 48. Sh.M.K.Ashok Kumar, Executive, Vice President 49. Shri Hemant Vyas, Chairman, Metropolitan Coop. Bank 50. Sh.K.K.Kapadia, Vice-Chairman, Metropolitan Coop Bank 51. Sh.Arvind Mohan Lal, Manager, M.I.U. Std. Chartered 52. Shri Jaideep Pathak, Manager Standard Chartered Bank 53. Shri Anil Harchania, Asstt.G.M. Canbank Mutual Fund 54. 14. On the 17th of July, 1992, respondents 2 & 3 wrote to the Bank stating:

"As per our letter dated 16.7.92 we had informed you in advance that in exercise of our right of repurchase of NHPC bonds of face value of Rs.9,06,34,000/- on 17.7.92 against the agreed payment of Rs.6,70,27,919.00 on 17.7.92 as per contract dated 18.4.92 and your sale letter dated 17.7.92. We had already arranged the aforesaid amount of Rs.6,70,27,919.00 to be paid from Renu Sagar Power Co. Ltd. to whom we had contracted to sell the said bonds with a right of repurchase after one year from M/s.Renu Sagar Power Co. Ltd., M/s.Renu Sagar Power Co. Ltd. is ready to pay the said amount to you and balance to us against the delivery of the aforesaid bonds. M/s Renu Sagar Power Co. Ltd. through its senior Vice President (Fin & Comm) contacted you and informed you that they would make the aforesaid payment of Rs.6,70,27,919.00 to your bank against the aforesaid delivery of aforementioned bonds which you had purchased from us but you informed Mr.S.M.Kejriwal that since the said bonds had been transferred to M/s Fair Growth Financial Services Ltd. and the bonds stood transferred in the name of the said Co. in the records of NHPC and the same had been delivered by you to NHPC to transferring the same of your bank and since NHPC has not so far transferred the bonds in your name and had frozen the same and had refused to transfer the same in the name of your Bank and also refused to deliver the same to your Bank, Therefore, in these circumstances you are unable to deliver the said bonds to us or to our nominee Renu Sagar Power Co. Ltd. with the consequence that the aforesaid amount could not be paid to you as you have failed to reconvey/transfer and or deliver the same to us and honour the aforesaid contract of repurchase and sale to us you are responsible for all the consequences and losses resulting to us from the aforesaid breach on your part.

Pl. note the above facts to keep the record straight and uptodate.

You are however requested to kindly confirm to us that you had been unable to deliver the bonds to us and or our nominee on account of the above facts and oblige us for the same."

15. On the same date, the 17th of July, 1992, there was a telex message from NHPC Ltd. to M/s.Fair Growth Investments Limited in the following terms:-

"ANZ GRINDLAYS BANK, DELHI HAVE LODGED WITH US 90634 9% NHPC BONDS `B" SERIES VALUING RUPEES 9,06,34,000.00 (NINE CRORES SIX LAKH THIRTY FOUR THOUSAND ONLY) FOR TRANSFER IN THEIR favor (.) KINDLY CONFIRM THE STATUS OF ABOVE BONDS (.)"

16. On the same date, the 17th of July, 1992, M/s.Fair Growth Investments Limited wrote to the NHPC Ltd. informing:

"Refer your telex message on the status of 90634 9% NHPC Bonds `B" SERIES. The above bonds were sold by us on 31st March, 1992."

17. On the 20th of July, 1992, respondents 2 & 3 wrote to the Bank making a request that:

"We received your telegram dated 17.7.92 at about 8.30 p.m. We are surprised to read the contents thereof. At the outset, we have to state that the contents of your telegram are incorrect, and the facts have been intentionally made-up, twisted and distorted. It is incorrect that our letter dated 17.7.92 was received by you at 4.35 p.m, as falsely alleged to your knowledge. The fact is that the letter was delivered to you at 1.30 p.m., and not at 4.35 p.m, as wrongly alleged by you, for some ulterior purpose.

With regard to the sale of 9% tax free NHPC tax-free bond of face value of Rs.9,06,34,000/- for a consideration of Rs.6,70,27,919.52 to us or to our nominee, it is wholly incorrect and untenable on your part to say that the above bond on its face, is transferable by simple endorsement of the transferor in favor of the transferee. As it came to our notice a few days back, you had wrongfully and unauthorisedly transferred the said bond belonging to us to M/s Fairgrowth Financial Services Ltd. (hereinafter known as M/s FAIRGROWTH FINANCIAL SERVICES LTD.), without our knowledge and consent. We had sold the said bonds to you vide contract dated 18.4.92 subject to our right of repurchase the same for the consideration of Rs.6,70,27,919.52 on 17.7.92 or thereafter. When the said bond had been sold subject to right of repurchase and that too without interest warrants, for the period after 31.3.92, i.e. commencing from 1.4.92 onwards, you had no right to transfer the same to M/s FAIR GROWTH FINANCIAL SERVICES LTD. or to any other person. However, you lodged the said bonds with NHPC for their transfer from the name of M/s Fair Growth Financial Services Ltd. to your name in its records despite your knowledge of the fact that under the ordinance and the orders passed by the custodian, all securities (including Bonds) standing in the name of M/s Fairgrowth Financial Services Ltd. are not transferable and their delivery is bad and vitiated. You also know that M/s Fair

Growth Financial Services Ltd is terribly involved in multi-crore security scandal wherein you are also involved. The Govt./custodian/Reserve Bank of India (RBI) has already required you to pay about Rs.500 crores on account of your involvement in the said scandal. Since M/s Fair Growth Financial Services Ltd. is involved in that scandal and all securities standing in its name are bad and vitiated, NHPC has not agreed or declined to transfer the said bonds in your name. Since a dispute under the said ordinance or otherwise exists about the aforesaid bond/security standing in the name of M/s Fair Growth Financial Services Ltd. the NHPC had already declined and is not prepared to register the transfer of the said bond in your name and as such, the title to the bond is in great jeopardy, dispute, and is not free from any kind of dispute whatsoever, and you are not in a position to give a clean, clear transfer/title free from a dispute of any nature whatsoever to us or to our nominee. Your promise or assurance that the bond endorsement and delivery by you accompanied by your letter of no-objection would be registered in our favor is wholly empty, hollow, meaningless and is a deliberate act of ruse and dishonesty on your part. You know that the transfer cannot be and shall not be effected in our name, yet you by giving false assurance, want to defraud us. Your real intention is to have the money of Rs.6,70,20,919.52 paid by us or our nominee, and after receiving the same, put us or our nominee in great jeopardy, litigation with the custodian and RBI and with your bank and other authorities under the ordinance. You also know fully well that you are not in a position to deliver the bonds duly transferred in your favor by NHPC so as to pass on a clean title/transfer to us, or to our nominee, without any dispute of any nature whatsoever, yet you are trying to dupe us. You will kindly appreciate, as has already been intimated to you on telephone besides our letter dated 16.7.92 and also on 17.7.92 on telephone as well as through our letter that you please obtain due endorsement of transfer in your banks from the name of M/s Fair Growth Financial Services Ltd. in NHPC records by NHPC, after due clearance from custodian, so as to pass on a clean title or transfer - yet you have failed to do so, and dishonestly intend to give the bonds to us which are, in fact, not in your possession, as informed by NHPC.

You are also fully aware that not only the custodian, and the RBI but also all the Stock Exchanges including Bombay Stock Exchange and Delhi Stock Exchange have issued a circular No.24/92 dated 16.7.92 wherein it has been notified that under s 3(2) of the ordinance, securities which have been in the name of persons who are mentioned in the enclosed list, shall be considered as bad delivery, and their transfers would be illegal. Despite the knowledge of all these facts, you are still harping upon dishonestly and fraudulently that you are prepared to give an assurance that the bond would be transferred in our favor by NHPC when you yourself have not been able to obtain the transfer of the bonds in your name by NHPC in NHPC records, despite your efforts for several days. Your real intention in sending the telegram is to entrap and lead us in all kinds of litigations, hazards and irreparable loss. We regret to say that such an act on your part is not befitting a bank of your repute.

Your threat to us that we make the payment of Rs.6,70,20,919.52 and take the delivery of bond on 17.7.92 (informed by you at 8.30 p.m.) is wholly wrongful, illegal and mala fide. We have received your telegram only at about 8.30 p.m. Do you expect us to purchase the bonds and take delivery after 8.30 p.m. on 17.7.92 itself? That shows your utter mala fides and illegalities. Apart from that your right to repurchase comes into existence only on 17.7.92, and we are entitled to repurchase it on 17.7.92 or on any day thereafter. It was for this reason that when on 29.6.92 we asked you to deliver the bonds to us against the payment, you declined to do so, and told us that our right to repurchase would accrue only on and from 17.7.92 onwards. In fact, this telegram under reply has been sent by you as an after-thought, and after the receipt of our letter dated 17.7.92, which could be delivered to you only through the agency of Notary Public at 4.35 p.m. It is also surprising and shocking to mention that we sought to deliver our letter at 1.30 p.m. in your office through our representative Mr.Vinod Singh, but he was asked to wait. Something transpired between your officers and he was continuously told to wait, and it was only at 2.15 p.m. your officials refused to receive the letter. It was only then that we are left with no other option but to send a telegram to you about this fact, expressing our resentment against your wrongful, illegal and mala fide acts, and also approached a Notary Public to get the service of the letter effected upon you immediately, and it was only through the Notary Public who was also made to wait for more than half an hour that the said letter could be delivered to you. Apart from that, your officials committed a fraud by putting a stamp of 18.7.92 date had been intentionally affixed with a mala fide and oblique purpose. A protest then was raised. Your officers refused to change the stamp but it was only when the Notary Public Informed you that he would make report to that effect, that you affixed a second stamp of 17.7.92 on the copy of the letter, and wrote the time as 16.35 p.m. This your conduct itself speaks volumes of wrongful, illegal and malicious acts on your part. This is how the banks behave and conduct. Only as an afterthought and to forestall and pre-empt the breach committed by you that you purported to send the telegram at about 8.30 p.m. to us. It is absolutely false that there is any failure or default on our part to take the delivery of such defective bond, as mentioned above. You are under a legal and contractual obligation to get the bond duly transferred in your name from the name of M/s Fairgrowth Financial Services Ltd. by NHPC records after obtaining a clearance from the custodian under the ordinance and RBI and or any other competent authority, so as to pass on absolutely clean transfer and title to us or our nominee. We need not repeat the contents of our letter dated 17.7.92, which are correct and reiterated herein. As already informed, there is a gross breach of the contract on your part, and you are liable for its consequences, as mentioned in the aforesaid letters dated 16th & 17th July, 1992. However, without prejudice to our rights, we still call upon you to please get the bond duly transferred in your name from the name of M/s Fairgrowth Financial Services Ltd. by NHPC in NHPC records after a clearance from custodian under the ordinance and any other competent authorities so that an absolutely clean title/sale/

transfer can be effected in our name or our nominee, without any dispute of any nature whatsoever, within 15 days from the receipt of this letter. We reiterate that we are ready with the requisite money which we have, and we shall make the payment to you against the delivery of the bonds standing duly transferred in your favor after a clearance from the custodian and or other competent authorities in this behalf failing which, you shall be liable to all the consequences of the breach, default and damages.

With regard to interest warrants, it is absolutely false that we are required or liable to deliver the interest warrants of the bonds to you. You know very well that we had sold the bond with interest warrant payable dated 31.3.92 only, and not with the interest warrant due/payable after 1.4.92 onwards. We have a right to hold and possess the interest warrants, and it is for this reason that the interest warrant of 31.3.92 and not for the subsequent period were given to you and nor you ever demanded or could demand the same. Your demand for the delivery of the interest warrants for the first time is wholly wrongful, mala fide, misconceived and untenable and merely a ruse, make-believe and a device to avoid your liability for breach of the contract and to forestall our claim to damages recoverable from you. We are also constrained to say that you have absolutely no right to sell our bonds on "As is where is basis" as wrongly and illegally threatened in your telegram. You have no right to recover any shortfall from us. On the other hand, you are in breach and guilty of acts of commission and omission and fraud upon us, for which you are liable besides losses, damages caused to us.

With regard to a 2-bonds transactions, your allegations that we have committed any default, are absolutely vague and incorrect. The right of repurchase of the said two bonds came into existence only on 22.6.92 and 1.7.92. We are entitled to exercise our right of repurchase the same at any time. Since your allegations about transactions of these two bonds are vague and have been kept intentionally vague, full reply will be to you only when you come out with full particulars of the Agreement/understanding and the agreement which had been arrived at between you on one side hand and Sumangali Gupta Shri L.R.Gupta and Shri Sanjay Gupta on the other on 4.3.92 and 2.4.92 respectively. It is absolutely false that any default has been committed either in respect of aforesaid two bonds or the bond in question. Those bonds were also handed over to you the interest warrants of 31.3.92 only and you were not entitled to the interest warrants commencing from 30.9.92 and onwards. It was for this reasons that these interest warrants were retained by us.

In view of the above facts and circumstances, you are again requested to honour your commitment, assurance promise, understanding, arrangement and perform part of your obligations, and obtain the transfer of the bonds in question in your name by NHPC in NHPC records, after due clearance from the custodian under the ordinance and other competent authority in this behalf, so as to enable you to pass on an absolutely unfettered, clean and absolute title/transfer of the same

to us or to our nominee, failing which you shall be guilty of gross breach, and liable for all consequences, losses and damages.

We hope that in order to maintain our good relation you will kindly do the needful and perform your contractual obligations etc."

18. On the 21st of July, 1992, NHPC had given a fax message to M/s. Fairgrowth Investments Limited stating:

"REFER YOU LETTER NO.CS/321 DATED 17TH JULY, 92(.) PLEASE INTIMATE SPECIFICALLY THAT 90634 9% NHPC BONDS `B" SERIES WERE SOLD TO ANZ GRINDLAYS BANK(.)"

19. On the same date, M/s.Fairgrowth Investments Limited responded to the fax message by stating:

"This has reference to your fax message dated 21st July, 1992. We wish to inform you that 90634 9% NHPC Bonds `B" Series were sold to our associate M/s Fairgrowth Financial Services Limited on 31st March, 1992.

This is for your information"

20. On the 23rd of July, 1992, respondents 2 & 3 wrote to the NHPC Ltd in the following terms:-

"This is to inform you that I had sold the 9% Tax Free Bond having the face value of Rs.9,06,34,000/- standing in my name bearing Folio No.B2-P05557 to ANZ Grindlays Bank, 10, Sansad Marg, New Delhi only along with the interest warrant of 31.8.92 and not for the subsequent periods. The interest warrants dated 30.9.92 and for the subsequent periods are owned, held and possessed by me and the same shall be presented for encashment on due dates. This fact may be recorded in your records for future reference."

21. On the 29th of July, 1992, the NHPC Ltd. wrote to the Delhi Stock Exchange seeking advice in the following terms:-

Sub: Transfer of NHPC B-Series Bonds Certificate number 0619665 for face value of Rs.9,06,34,000/- in favor of M/s.ANZ Grindlays Bank, Bombay, purchased from M/s. Fairgrowth Financial Services Limited on 31st March, 1992.

"In continuation of our letter No.NH/FA/BONDS/B/MISC./986 dated 17th July, 1992, we are enclosing the photocopy of letter No.CS/NHPC/335 dated 21st July, 1992 wherein M/s.Fairgrowth Investment Limited, Bangalore, has intimated that they have sold the above bonds to M/s. Fairgrowth Financial Services Limited on 31st March, 1992 although no endorsement has been done on bond certificate by M/s.Fairgrowth Financial Services Limited. As per our records the registered holder of bonds is M/s.Fairgrowth Investments Limited and now M/s.ANZ Grindlays Bank has lodged bonds for transfer in their favour.

Vide our letter dated 17th July, 1992 we have requested to advise us whether there is any restriction on transfer of bonds purchased from M/s. Fairgrowth

Investments Limited but your advice in the matter is awaited. M/s.ANZ Grindlays Bank are pressing us for transferring the bonds in their favor immediately. As such, you are requested to kindly advise us immediately in this matter.

Thanking you,

Yours faithfully,

sd/

(H.D.KHUNTETA)

SR.MANAGER(BONDS)

Copy to the Custodian, Office of the DG AUS New Delhi along with letter No.Nil dated 24th July, 1992 of M/s.ANZ Grindlays Bank, New Delhi and photocopy of letter No.NH/FA/BONDS/B/MISC./956 dated 17.7.92 addressed to Executive Director, Stock Exchange, Delhi and copy of letter of M/s.Fairgrowth Investments Limited dated 21st July, 1992 with a request to kindly advise us whether the transfer in favor of M/s.ANZ Grindlays Bank be made. Matter most urgent."

sd/

SR.MANAGER (BONDS)

Copy to Mr.G.L.Vig, Manager Securities, ANZ Grindlays Bank, Parliament Street, New Delhi for information. Further, M/s. Fairgrowth Investments Ltd. has intimated vide their letter dated 21.7.92 that they have not sold the bonds to you. You are also requested to please send the interest warrants immediately.

sd/

(H.D.KHUNTETA)

SR.MANAGER(BONDS)

22. On the 10th of August, 1992, the Bank wrote to the NHPC Ltd. requesting it not to entertain any claim. The letter reads as under:-

Re: Transfer of NHPC B Series Bonds for face value of Rs.9,06,34,000/-

This refers to your letter No.NH/FA/Bonds/Bonds/B/Misc dated 29/7.92. We would like to clarify that the said bonds were purchased by us from M/s Fairgrowth Financial Services Limited on 18th April, 1992 and not on March 31, 1992 as mentioned in your letter. Before selling these bonds to us M/s Fairgrowth Financial Services Limited had purchased the said bonds from M/s Fairgrowth Investments Limited. It so happened that the sale of these bonds by M/s Fairgrowth Investments Limited to M/s Fairgrowth Financial Services Limited was made by a blank endorsement and on sale to ANZ Grindlays Bank plc., the bank's name was filled in as the transferee.

As regards the registration of the transfer of the above bonds in our name, we

have spoken to the Executive Director and Vice-President of the Delhi Stock Exchange. These officials are of the opinion that in this matter they do not have any authority to respond to your letter, since the Delhi Stock Exchange is not involved in the transaction. They have, however, referred us to the circulars of the Delhi Stock Exchange which list the companies the securities registered in whose names are the subject of attachment under the Special Court (Trial of Offences relating to transactions in Securities) Ordinance, 1992. The name of M/s Fairgrowth Investments Limited does not feature on this list. We then met the custodian, Mr.A.K.Menon and he was of the view that he could only attach property of any notified person and had no authority to certify the bonafides of a transaction entered into by notified person much less with regard to securities which are registered in the name of companies or persons whose assets have not been attached. We enclose for your record the custodian's confirmation that there exists no restriction for the transfer of securities registered in the name of M/s Fairgrowth Investments Limited.

In these circumstances we would request you to please immediately register the transfer of bonds in our favor and you may treat this letter as our indemnity to the National Hydro Electric Power Corporation against all contrary claims, actions, demands and proceedings whatsoever.

We would also like to mention that the interest warrants pertaining to the said bonds are not in our possession. These bonds were sold by Mr.L.R.Gupta and Mr.Sanjay Gupta to our Bank on 17th March, 1992 and due to an oversight our Bank did not collect the interest warrants from them. Since the ownership of these bonds rests with us at present, we request you not to entertain any claim with respect to the interest warrants pertaining to these bonds from any person other than our bank."

23. On the same date, the 10th of August, 1992, the Bank wrote to the Custodian, The Special Court under the 1992 Act soliciting information as to whether the Custodian Office had passed any orders. The letter reads as under:-

"Please clarify whether your office has passed any orders till date for attachment of property of M/s Fairgrowth Investments Limited under the Special Court (Trial of Offences relating to Transactions in Securities) Ordinance, 1992."

24. On the 11th of August, 1992, the NHPC Ltd sent a fax message to M/s.Fairgrowth Financial Services Limited in the following terms:-

"ANZ GRINDLAYS BANK DELHI HAVE LODGED WITH US 90634 9% NHPC BONDS `B` SERIES VALUING RUPEES 9,06,34,000/- (RUPEES NINE CRORES SIX LAKH THIRTY FOUR THOUSAND ONLY) FOR TRANSFER IN THEIR favor (.) M/S. FAIRGROWTH INVESTMENT LIMITED BANGALORE VIDE THEIR LETTER DATED 21ST JULY, 92 HAVE INFORMED THAT ABOVE BONDS HAVE BEEN SOLD BY THEM TO YOU(.) KINDLY CONFIRM BY FAX MESSAGE THAT ABOVE BONDS WERE SOLD BY YOU TO ANZ GRINDLAYS BANK THROUGH YOUR BANGALORE OFFICE(.)"

25. On the 20th of August, 1992, M/s.Fairgrowth Financial Services Limited sent a letter to the NHPC Ltd. stating:

"We have for reference you Fax message NH/FA/BONDS/BS/MISE dated 11th August, 1992. We confirm having sold 90,634 NHPC Bonds `B" Series to ANZ Grindlays Bank, New Delhi on 18th April, 1992.

While we have no objection in putting through the transaction, we bring to your notice, the Notification published in the Gazette of India Extraordinary Part III, Section 4 dated 2nd July, 1992 No.Custodian/4/92 notifying our Company u/s 3(1) of the Special Court (Trial of Offences relating to Transaction in Securities) Ordinance, 1992."

26. On the 10th of September, 1992, the Office of the Custodian issued a Public Notice. The Public Notice reads as under:-

"PUBLIC NOTICE

Office of the Custodian appointed under Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992.

1. This is to inform all concerned that under the Special Court (Trial of Offences relating to the transactions in securities) Act, 1992 Section 3(2) names of persons/companies who have been notified by the Custodian appointed u/s 3(1) of the Act are given at the concluding para of this notice.

2. u/s 3(3) of the said Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973 and any other law for the time being in force on and from the date of notification any property movable or immovable or both, belonging to any person so notified shall stand attached simultaneously with the issue of the notification.

3. Further, u/s 3(4) of the said Act, the property attached shall be dealt with by the Custodian in such manner as the Special Court may direct.

4. u/s 13 of the said Act, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than the said act or in any decree or order of any Court, Tribunal or other authority.

5. In view of the above all companies, firms banks individuals and all others concerned are once again informed by this notice that all properties pertaining to notified persons/companies stand attached. No transactions of any kind and in any manner relating to such properties is permissible except as directed by the Hon"ble Special Court which has been constituted at the High Court, Bombay. Nor can any movable property be removed or taken possession of without the consent of the Custodian.

6. All those who have had dealings of are presently dealing in such properties

including banks, financial institutions, mutual funds, etc. are hereby requested to intimate the Custodian at the addresses mentioned below the details of such properties including, all movable and immovable properties, bank accounts, fixed deposits, shares, scrips, stocks, bonds, debentures, units of the Unit Trust of India or any other mutual fund or other marketable securities, vehicles, tenancy rights, etc. as on the date of notification, held by them in the name of the notified persons, jointly or severally or on behalf of the notified persons, as also details and value of shares, bonds, etc. held as collateral security furnished by the notified persons:

Address to which information is required to be sent:

Bombay : C.N.Jayeraman Office of the Custodian, 29th Floor, Stock Exchange Dalal Street, Bombay 400 001 New Delhi : R.Thirumalai Secretary to Custodian, Room No.24, II Floor, Jeevan Deep Building, Banking Division, Department of Economic Affairs, Parliament Street, New Delhi- 110 001. This will also apply to all those who may be notified in future.

Notification No. Name of the person/company notified and Date 1. Custodian/1/92 1. M/s.Harshad S.Mehta, Proprietary Concern date 8.6.92 2. M/s.Ashwin S.Mehta, Proprietary Concern 3. M/s.J.H.Mehta, Proprietary Concern 4. Mr.Harshad S.Mehta, S/o Shantilal Mehta 5. Mr.Ashwin S.Mehta 6. Mr.Hitesh S.Mehta 7. Mr.Sudhir S.Mehta 8. Mrs.Jyoti H.Mehta, wife of Sl.No.____ 9. Mrs.Deepika S.Mehta, wife of Sl.No.5 10. Mrs.Pramila H.Mehta, wife of Sl.No.6 11. M/s.Harshad S.Mehta, HUF 12. M/s.Ashwin S.Mehta, HUF 13. Hitesh S.Mehta, HUF 14. M/s.Sunrise Enterprises 15. M/s.Growmore Research & Assets Management Ltd. 16. M/s.Growmore Leasing & Investment Pvt.Ltd. 17. M/s.Growmore Exports Pvt. Ltd. 18. M/s.Aatur Holdings Pvt. Ltd. 19. Harsh Entrp Pvt.Ltd. 20. Cascae Holding Pvt.Ltd. 21. Orion Travels Pvt. Ltd. 22. Fortune Holdings Pvt. Ltd. 23. Treasure Holdings Pvt. Ltd. 24. Velvet Holding Pvt. Ltd. 25. Eminent Holding Pvt. Ltd. 26. Pallavi Holding Pvt. Ltd. 27. Zest Holding Pvt. Ltd. 28. Topaz Holding Pvt. Ltd. 29. Divine Holding Pvt. Ltd. Addresses of the above, as communicate are as under:

Office: 1. Lentin Chambers 4th Floor Dalal St. Fort, Bombay 400 023 2. 1205/G, Maker Chambers V Nariman Point Bombay 400 021 Residence: Madhuli Annie Basant Road, Worli Bombay 400 025 30. Sh.Abhay Dharumainh Narottam S/o Dharumainh Narottam Addresses: Office: 1. Table No.1, Rear Side, Cama Building, Ground Floor, Dalal Street, Fort, Bombay 400 023 2. Regent Chambers 2nd Floor, 208, Jamanlal Bajaj Marg, Nariman Point Bombay 400 020 31. Sh.Hiten Prasan Dalal S/o Sh.Prasan Jayantilal Dalal Addresses: Office: Room No.11/2, Bombay Mutual Building, 19/21 Hamam St. Bombay Residence: Dev Chhaya, 7th Road, Santacruz(East) Bombay. 2. Custodian/2/92 1. Sh.C.L.Khomani, Dy.Managing dated 13.6.92 Director(&IM) Central Office, SBI, Bombay 2. Sh.A.N.Bhavadar,Dy.Manager, Security Division, Main Branch, SBI, Bombay 3. Sh.R.Sitaraman, JMC. I Officer, Security Division, Main Branch, SBI, Bombay 3. Custodian/3/92 1. Bhupen Dalal dated 2.7.92

Addresses: (i) Managing Director of M/s.Champaklal Investment & Financial Consultancy Services Ltd., Nariman Point, Bombay (ii) Bhupen Chambers No.9, Dalal Street, Bombay 400 023. (iii) 42, Chitrakoot, Altamooount Road, Bombay 400 026. 2. Shri J.P.Gandhi Addresses: (i) C/o.M/s.Champaklal Investment & Financial Consultancy Services Ltd., Regent Chamber, Nariman Point, Bombay (ii) Anita Building Molnbur Hill, Bombay 3. Shri T.B.Ruia Addresses: (i) C/o.Dhanraj Mills Pvt. Ltd. Sitaram Jadhav Marg, Lower Paral, Bombay (ii) 6A, Samundra Gurav, Worli Seaface, Bombay

3. Custodian/4/92 1. Fairgrowth Financial Services Limited dated 2.7.92 Fairgrowth House, Vittal Mallya Road, Bangalore 560 001 2. Shri R.Ganesh, Asstt.Vice- President, Fairgrowth Financial Services Limited Fairgrowth House, Vittal Mallya Road, Bangalore 560 001 4. Custodian/5/92 1. M/s.Dhanraj Mills Pvt. Limited dated 5.8.92 Sitaram Jadhav Marg, Lower Parel, Bombay 400 013."

27. On the 28th of September, 1992, the NHPC Ltd. wrote to the Bank in response to the letter of the Bank dated 10.8.1992. The letter dated 28.9.1992 reads as under:-

"Please refer to your letter No.Nil dated 10th August, 1992 on the subject cited above. The matter is under correspondence will Custodian, Office of the DGADS, North Avenue, Delhi-1100)1/Delhi Stock Exchange. As per the list published by Delhi Stock Exchange, dated 16th July, 1992 the properties of M/s Fairgrowth Financial Services Limited have been attached. The transfer of above bonds shall be effected only on receipt of confirmation from Custodian which is still awaited.

Regarding interest warrants, the contents of your letter are not clear. In 1st para you have written that you have purchased the bonds from Fairgrowth Financial Services Ltd. on 18.4.92 and in last para you are writing these bonds have been sold to you by Mr.L.R.Gupta/Mr.Sanjay Gupta and by oversight you have not collected the interest warrants and want to stop the payment to any other person other than ANZ Grindlays Bank. In this connection, please note that our interest warrants are encashable at part at all the branches of Syndicate Bank and it is not possible for us to stop the payment of interest warrants, so matter may be taken up by you with seller and NHPC does not accept any responsibility whatsoever may be in this context."

28. On the 11th of November, 1992, the Office of the Custodian wrote to the Secretary, Department of Public Enterprises in the following terms:-

"Bonds issued by various Public Sector Undertakings (PSUs) are transferable by endorsement and delivery. The bonds (in some cases, together with post dated interest warrants) are issued to the holders in exchange of letter of allotment. In terms of the conditions printed on reverse of the bonds, the transferee is required to get the bonds registered with the undertakings within 60 days to avail benefit of exemption of tax. The post dated interest warrants are payable at par at all branches of the nominated payee bank; the holder of bonds and the

interest warrants is entitled to interest on the due dates.

2. In this context, I am directed to refer to the above mentioned Act (copy enclosed) and to state that several instances have come to notice where bonds issued by various PSUs are held by the notified persons or transferred by them or they have been intermediary brokers during the process of various transfers.

3. A similar situation arose with reference to purchase and sale transactions of the notified persons through the Stock Exchanges and the Hon"ble Special Court set up under the aforesaid Act has given directions on how to deal with them (copy enclosed).

4. As you are aware, although the parameters prescribed by the Court is with reference to the application filed by the Stock Exchanges, it appears that it would be incumbent for PSUs to be aware of the general position against the background of the Act passed in connection with the establishment of the Special Court and the appointment of the Custodian with reference to dealings in bonds. It is, Therefore, requested that all PSUs are apprised of the above position. They may be asked to indicate to the Custodian's Office details of the following:

(i) Bonds held in the names of the notified persons as on 1.4.1991, 1.4.1992 and on date.

(ii) Bonds held in the names of notified persons any time between 1.4.1991 to the date of notification, where transfers have been effected during the said period as also their value along with details of parties to whom they have been transferred.

(iii) Details of bonds belonging to notified persons that have been transferred after the date of notification.

(iv) Details of bonds which have been transferred on or after 1.4.1991 till date, where the notified person was an intermediary broker.

(v) Bonds that have been received for transfer, where any of the notified person may either be a transferor or a transferee or even where notified persons have been intermediary brokers and have not been registered till date.

5. As the list of assets owned by the notified persons held in their names or on their behalf have to be submitted to the Special Court with various details of transfers with reference to applicability of the Special Court Act to the transactions effected on or after 1.4.1991, if you are requested to direct the PSUs to urgently furnish the above information to this office.

6. A Public Notice issued in this connection which also includes the names of notified persons, is enclosed. It is stated that no PSU has furnished information with reference to this notice so far."

29. On the 4th of December, 1992, the NHPC Ltd. wrote to the Bank to obtain No Objection Certificate from the Custodian. The letter reads as under:-

Sub: Transfer of NHPC B-Series Bonds for face value of Rs.9,06,34,000.00.

"Please refer to the correspondence resting on the subject cited above and in this connection we wish to inform you that we have taken up the matter with Custodian, Office of the DGADS, North Avenue, New Delhi/ Delhi Stock Exchange on priority basis and the transfer of above bonds shall be effected only on receipt of confirmation from Custodian which is still awaited.

Meanwhile we also request to obtain No objection Certificate from Custodian/ Delhi Stock Exchange as mentioned above in order to facilitate transfer of above bonds at the earliest."

30. On the 24th of December, 1992, the Office of the Custodian wrote to M/s.Fairgrowth Investments Limited requesting for details. The letter reads as under:-

"Fairgrowth Investment Ltd. had also 9034 (% NHPC Bonds `B" series to Fairgrowth Financial Services Ltd. on 31st of March, 1992. In this regard please furnish to this office details of consideration paid for this transaction. You may also indicate the reason for not endorsing the securities in FFSL's favour."

31. On the 5th of January, 1993, the Bank has issued a notice to respondents 2 & 3 for the delivery of the interest warrant or to pay the amount of loss. On the 9th of February, 1993, the Office of the Custodian, wrote to the NHPC Ltd for details. The letter reads as under:-

"Kindly refer to your letter NO.NH/FA/Bonds/Misc/B dated 20.1.93, 2.2.93 on the subject cited above. Fairgrowth Financial Services Ltd., Bangalore was notified on 2.7.92 vide notification No.Custodian/4/72 dated 2.7.92. As such considering the receipt of the transaction on 6.7.92, after the date of notification as indicated in statement 5 of your letter under reference, it would be prudent for the transferee to get orders of the Special Court before such transfer.

As regards statement I, since the Bonds indicated in Series "B" & "D", folio Nos.BZ-G09554, DZ-G00074 and DZ-G0080 stand in the name of the attached persons these bonds are attached properties in terms of Special Court Act.

The information on the following points may also kindly be arranged to be furnished.

(i) What is the face value per Bond of "B", "D" & "E" Series mentioned in Sl.No.1 to 4 of statement 1, Sl.No.1 of Statement 2 and Sl.No.1 of Statement 5;

(ii) What were the dividends/interest warrants paid/payable on these bonds from 1.6.92 onwards."

32. On the 2nd of March, 1993, the NHPC Ltd. wrote to the Bank requesting the Bank to get orders from the Special Court. The letter reads as under:-

"Sub: Transfer of NHPC B-Series Bonds for face value of Rs.9,06,34,000.00.

Kindly refer to the correspondence resting on the subject cited above. In this connection we wish to inform you that it has been intimated to us by the Office of the Custodian, Special Court, (Trial of Offences Relating to Transactions in Securities) Act, 1992, Parliament Street, New Delhi that "It would be prudent for the transferee to get orders of the Special Court before such Transfer."

Accordingly, we request you to obtain No objection Certificate from the Office of the Custodian in order to facilitate early transfer of the above Bonds."

33. On the 10th of March, 1993, respondents 2 & 3 gave a detailed reply to the letter dated 5.1.93 of the Bank.

34. On the 31st of March, 1993, the Bank presented before the Company Law Board the Company Petition u/s 111 of the 1956 Act praying for the following reliefs:-

(i) direct the respondent No.1 Corporation to forthwith register the said 9% NHPC 1987 (B-Series) Bonds of the face value of Rs.9,06,34,000/- as covered by the Bond Certificate No.0619665 in favor of the petitioner Bank with effect from June 24, 1992 and rectify the Register of the Bond holders accordingly;

(ii) direct the respondent No.1 Corporation to pay to the petitioner Bank compensation for non-payment of interest payable on the said bonds on and after April 1, 1992, which works out to Rs.1,29,24,870/- (Rupees one crore twenty nine lacs twenty four thousand eight hundred seventy only) up to March 15, 1993;

(iii) direct the respondent No.1 Corporation to pay to the petitioner Bank compensation as specified in para 25 hereof foregoing on the installments of interest becoming due on the said bonds pendente lite and until registration of the said bonds in favor of the petitioner Bank;

(iv) direct the respondent No.1 Corporation to pay to the petitioner Bank pendente lite interest @ 24% per annum on the amounts due as per Clauses (ii) and (iii) above;

(v) direct the respondent No.1 Corporation to pay to the petitioner Bank interest falling due on the said bonds after registration of the said bonds in favor of the petitioner Bank and direct the respondent No.1 Corporation to issue in favor of the petitioner Bank cheques/interest warrants for the said period to enable collection of the interest becoming due thereon;

(vi) direct the respondent No.1 Corporation to stop the payment of cheques/interest warrants already issued by them in favor of the respondents No.2 & 3 for the collection of interest due on the bonds after March 31, 1992;

(vii) restrain the respondents No.2 & 3 from in any manner collecting, encashing or otherwise utilising the interest warrants held by them in respect of the said bonds and/or dealing with the said interest warrants in any manner except for delivery to the petitioner Bank."

35. On the 10th of May, 1993, the NHPC Ltd. filed its objections. On the same day, respondents 2 & 3 filed the preliminary objections.

36. On the 26th of August, 1993, the Company Law Board passed the following order:-

"Respondents 2 & 3 (Smt.Pramod Gupta and Shri Sanjay Gupta) pressed for their application being CA No.107/03, seeking extension of time for filing replies to the main petition to be allowed and their replies already filed be taken on record. Respondent No.1 (National Hydro Electric Power Corporation Ltd.) also sought permission for filing their replies to the main petition.

Since the hearing could not be concluded today and the matter stands adjourned to 9th and 10th December, 1993, the replies of respondents 2 & 3 are allowed to be taken on record and the respondent 1, the company is permitted to file its reply to the main petition on or before 30.9.93 and the petitioners are allowed to file rejoinders on all the above replies by 15th November, 1993. In the meanwhile, respondent No.1 shall deposit the interest payable on 30.9.93 in a separate fixed deposit account for a period of 91 days with the company's main bankers. They shall also renew the earlier deposits made as per our order dated 10th May, 1993 so as to mature on 31st December, 1993."

37. Respondents 2 & 3 filed Co.A.27/93 in this Court. The reliefs prayed for in the Co.A.27/93 are:-

"(a) The proceedings including the impugned Order dated 25th/26th August, 1993 before the Company Law Board be quashed being without jurisdiction and a nullity.

(b) It be held that the Company Law Board has no jurisdiction to entertain the Bank's petition u/s 111 of the Companies Act and its jurisdiction is excluded/barred by the provisions of Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance No.10 of 1992 and Act No.27 of 1992 and the Company Petition filed by the respondent Bank against the appellants and NHPC is liable to be rejected being barred by law and without jurisdiction.

(c) The impugned Orders dated 25th/26th of August 1993 be quashed/set aside and NHPC be restrained from putting any obstruction, hindrance or impediment in the encashment of the interest warrants due and payable on 31st March, 1993 and 30th September, 1993 and thereafter with the direction to immediately encash the interest warrants presented by the appellants on their due dates for payment to them."

This Court directed the Company Law Board to consider the point of jurisdiction.

38. On the 16th of March, 1994, the Company Law Board passed by the following order:-

"M/s.Anz Grindlays Bank (ANZ) has filed a petition u/s 111 of the Companies Act, 1956 on 9.3.93, praying inter alias for rectification of the Register of Bond

Holders. The respondents in this case apart from the company concerned, namely, National Hydro Power Corporation Limited (NHPC) include Smt.Pramod Gupta and Shri Sanjay Gupta residents of 6 Anand Lok, New Delhi-49. The other respondents are Fairgrowth Financial Services Limited (Res.4) and Fairgrowth Investments Ltd. (Res.5). The case of the petitioner is that on or about 17th March, 1992 they purchased from Smt.Promod Gupta and Shri Sanjay Gupta, respondents 2 & 3 respectively (the original allottees and the joint holders) 9% NHPC 1987 (B Series) Bonds issued by National Hydro Electric Power Supply Corporation (Respondent No.1) of a total face value of Rs.9,63,40,000 for a total consideration of Rs.6,73,41,062 covered by Bonds Certificate No.0619665. The Bonds carried interest at the rate of 9% per annum free of income tax and the same is payable through post dated interest warrants issued Along with the Bond Certificate. When the respondents 2 & 3 sold the bonds to the petitioner, on or about 17th March, 1992 they omitted to deliver the cheques/interest warrants in respect of interest due thereafter except one due on 31st March, 1992 and retain the balance post dated cheques with themselves.

The petitioner (ANZ) further transferred these bonds immediately thereafter for a valuable consideration to R-4 (a Notified Person under the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992) along with one interest warrant in respect of interest due on 31st March, 1992. In turn R-4 transferred the bond to R-5 along with interest warrant in respect of the interest due on 31st March, 1992. R.5 got the said Bonds registered in its name in the records of NHPC. Thereafter R-5 transferred the said bonds back to R-4 by signing/endorsing on the reverse of the Bonds Certificate as transferors and delivered the certificate to R-4. ANZ again purchased these bonds from R-4 on or about 16th April, 1992 through a firm of broker. Thus the bonds took exactly a reverse course.

On non registration of the bonds by NHPC, ANZ has filed this petition u/s 111 of the Companies Act, which include prayers against res. 2 and 3 as well with regard to interest warrants.

2. An application dated 10.5.1993 was filed on behalf of respondents No.2 and 3 praying that the petition deserves to be dismissed summarily in view of the fact that the securities in question were tainted securities and would be within the exclusive competence and jurisdiction of the Custodian appointed under the provisions of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992. It was further contended that even assuming that the Company Law Board has jurisdiction to entertain the petition, there was no need for impleading respondents 2 and 3 inasmuch as u/s 111 of the relief sought is only for rectification of the register for the bonds and these bonds have already been transferred by respondents No.2 and 3 and Therefore there is no cause of action against them. During the hearing on 12.8.93 Shri L.R.Gupta appearing on behalf of respondents No.2 and 3 reiterated the contentions made in the application. Since the issue relating to the applicability or otherwise of the

Special Court Act to the transaction involved would require going into the full details of the case and as per interpretation of Section 111 the Company Law Board has to decide the issue relating to interest also as contended by the counsel for the petitioner, with a view to maintain the status-quo, we ordered that the interest payable on these bonds should be kept in a fixed deposit with company's main banker's. The preliminary objections raised by respondents No.2 and 3 could not be decided in isolation without looking into the facts of the case, as it is a mixture of Law and facts. The mixed questions of law and facts in this case are - (a) whether the interest warrants are separable from the bond certificate; (b) whether there was an agreement between ANZ and respondents 2 and 3 earlier to purchase and (c) whether the Company Law Board is divested of the power available u/s 111(6)(c) with regard to incidental or consequential orders particularly relating to interest warrants in this case. In the above connection, the observation of the Supreme Court in *Major Khanna Vs. Dhillon* AIR 1964 SC 1497 in which it was held that where issues of both law and of facts arise in the same suit, the court should try all the issues especially when the decision on issues even of law depend upon the decision on issues of fact and not to do so would result in a lopsided trial of the suit, is relevant. Accordingly, we considered it appropriate to come to final conclusions only after hearing the facts in addition to law with regard to maintainability of the petition. The counsels were advised to go ahead with their arguments on the main petition also so that the order relating to maintainability of the petition could also be included in the final order which practice the Company Law Board has been following all along. This line of action is also in the spirit of the decision of Supreme Court *D.P.Maheshwari Vs. UOI* AIR 1984 SC 153. In the meanwhile aggrieved by the interim orders directing the respondent No.4 to deposit the interest which have become due vide our order dated 26th August, 1993, the applicant filed an appeal in the High Court against this order raising various issues and the High Court vide its order dated 17th November, 1993 gave certain directions to the Company Law Board. In the meanwhile, as there was a change in the composition of the Bench of Company Law Board the whole case had to be heard de novo. Many hearings took place on various dates before the present Bench.

3. During these hearings a reference was made to certain submissions made on behalf of the Custodian before the Western Region Bench of the Company Law Board in certain other matter related to tainted securities. At this point we decided to call for clarification and advice from the Custodian as to whether the securities before us are already attached or are being attached. In reply the Custodian vide his letter No.3351/CUS/ANZ/CLB/Pet.93(1226) dated 20.1.94 categorically asserted that these Bonds became attached properties simultaneously with the issue of the Notification by the Custodian in 1992 and can be dealt with only as directed by the Special Court. In addition to this categorical assertion the Custodian also stated that the Special Court has constituted a Committee to examine transactions and file report in Special Court where the holders of the securities claim that the purchases were made prior to

the issue of the Notification. As such according to him this case also appears to be within the purview of the Committee appointed by the Special Court. We made available to the parties, copies of this letter dated 20.1.94 of the Custodian to react on the same, during the hearing held on 24.1.94. Since the parties needed time to react we adjourned the case to 2nd Feb. 94. On this date however our attention was drawn to an ordinance promulgated by the President of India on 25th January, 1994, namely, the Special Court (Trial of Offences Relating to Transactions in Securities Act, Amendment Ordinance 1994 by which it appeared that our very jurisdiction to hear this case has been taken away. We Therefore asked the parties to argue this first. Both the parties agreed to study the Ordinance and present their views and accordingly, we decided to hear them on 4th February, 1994. On this date, Shri V.N. Koura, Advocate, for the petitioner stated that as per the new Section 9A(2) introduced by clause 3 of the Ordinance, all suits, claims and other legal proceedings pending before any Court before the commencement of the Ordinance relating to securities, arising out of the transactions entered into between 1st April, 1991 and 6th June, 1992 in which a notified person is involved as a party/broker/intermediary or in any other manner, the entire proceedings stand transferred to the Special Court, on coming into force of the Ordinance. According to him the jurisdiction of the Company Law Board has been completely withdrawn with regard to the matter relating to these transactions as respondent No.4, Fairgrowth Financial Services Ltd. is a notified person. Hence the present proceedings before the Company Law Board including the main petition has to be transferred to the Special Court. Shri L.R.Gupta however, submitted on behalf of the respondents that an exception for transfer has been carved out in Section 9A(2) in respect of appeals. His contention was that the present proceedings of the Company Law Board arose out of the order of the Delhi High Court from an appeal against an interim order passed by the Company Law Board. His case was that as apart of the appeal proceedings, the High Court has directed the Company Law Board to decide about the jurisdiction and maintainability of the petition against respondent No.2 & 3. As such this falls under Rule 25 of Order 41 of the CPC, whereby the Appeal Court directs one or more issues to be decided by the Trial Court after which the matter goes back to the Appeal Court. To this extent the present proceedings be construed as mere extension of the appeal proceedings. In this connection, a question was raised by petitioner as to whether the petitioner can prefer an appeal in case the order goes against him, because no fresh proceedings can be entertained by any Court on these matters after the promulgation of the Ordinance. In reply, Shri Lala Ram Gupta stated that the petitioner could prefer a cross appeal before the same High Court where the appeal is already lying.

4. We have observed from the office copy of Order sheet dated 12.10.93 read with that dated 17.11.93 of the High Court that the appeal is at a very preliminary stage, that is the stage of admission, for which show cause notice was given to the respondents. The question of High Court framing the issues and referring them for trial to the Court appealed from as per Rule 25 of Order 41 of

CPC arises only after the appeal is admitted. In the present case since there is no finding given by us with regard to the jurisdiction and maintainability that the High Court has decided with the concurrence of parties that we should first pronounce our Judgment on jurisdiction and maintainability. The respondents 2 and 3 also attempted to search our records perhaps to ascertain whether we have recorded any decision on jurisdiction and maintainability on which they could not find anything on record. The appellants themselves have admitted that we have heard the parties on issues regarding jurisdiction and maintainability but we have not passed any orders on the issue. Such a situation does not fall squarely within Rule 25 of Order 41 of CPC. If at all reference may arise from the Appellate Court after the petition is admitted. Therefore, we are of the view that this is not a case which falls under Rule 25 of Order 41, as contended by Shri L.R.Gupta.

Even the order dated 17th Nov., 1993 of the Delhi High Court contains directions to the Company Law Board on the basis of an agreement between the parties in these proceedings, that we should hear the question of jurisdiction and maintainability of the petition qua respondent Nos.2 and 3 first and it is also seen from the order dated 14.12.93 of Delhi High Court that in case we decide the question of jurisdiction and maintainability against respondent Nos.2 and 3, then we should also decide on the interim relief sought by the respondents in appeal.

From the reading of the above, it is apparent that what we have been directed to do is within our own original jurisdiction and cannot be construed as proceedings in appeal as contended by Shri Gupta.

Accordingly in view of the fact that transaction in the Bonds in view of the involvement of a notified person, falls within the provisions of the Ordinance we are of the view that as per Section 2 of the Ordinance the proceedings before us automatically stand transferred to Special Court w.e.f. 25.1.94 and our jurisdiction is barred as provided u/s of the Ordinance which reads as follows:

"(3) On and from the commencement of the Special Court (Trial of Offences relating to Transactions in Securities) Amendment Ordinance, 1994, no court other than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1)."

Therefore, we are of the view that we have no jurisdiction at this point of time to proceed with this case.

We may also note, in passing, that the contention of respondents No.2 and 3 has all along been that the petition is not maintainable and falls within the jurisdiction of the Special Court, which issue we have been examining but has become infructuous in view of the Ordinance."

39. The Bank has filed Co.A.6/94 challenging the order dated 16.3.1994 of the

Company Law Board. The point taken by the Bank in the Co.A.6/94 could be noticed.

40. Reliefs prayed for by the Bank in Co.A.6/94 are:

"In view of the aforesaid it is most humbly prayed that this Hon"ble Court may be pleased to;

i) allow the present appeal and set aside the impugned order dated March 15/16, 1994 of the Company Law Board."

41. With reference to the interest warrants/post dated cheques, respondents 2 & 3, felt aggrieved at the order passed by the Company Law Board that the rights to interest warrants and post dated cheques should also be dealt with by the Special Court, have filed the Co.A.8/94 challenging the order dated 15/16.3.1994. The main case of respondents 2 & 3 before the Company Law Board was that the right to interest warrants/post dated cheques cannot be the subject matter of the petition u/s 111 of the 1956 Act and the Bank cannot claim any right therefore. It was contended by respondents 2 & 3:

"The appellants" case was that since the transaction of sale of bond with the appellants was with ANZ Grindlays Bank and not with Fair Growth Financial Services Limited, the said transaction did not fall within the jurisdiction/purview or competence of either the Company Law Board or even the Special Court as per the terms of the earlier Ordinance as well as the amended Ordinance of 1994."

42. It was further contended:-

"As no notified person was involved in the sale and transfer of the bonds by these appellants to the Bank, the Special Court did not have any jurisdiction over the said matter/contract between the appellants and the Bank and, so, any proceedings against these appellants could neither be entertained by the Company Law Board and nor by the Special Court and, as such, the petition was not maintainable against these appellants and was liable to be dismissed summarily."

43. It was further urged before the Company Law Board by respondents 2 & 3:

"It may be stated that the company appeal filed by the Bank which is registered as company appeal No.8 of 1994, is wholly misconceived, untenable barred by law and is liable to be dismissed summarily. For the sake of convenience of this Hon"ble Court, the provisions of Section 9(A)(3) of the amended Ordinance of 1994, are reproduced below:

"(3) On and from the commencement of the Special Court (Trial of Offences Relating to Transaction in Securities) Amendment Ordinance, 1994, no court other than the Special Court shall have or be entitled to exercise any jurisdiction, power or authority in relation to any matter or claim referred to in sub-Section (1)."

By enacting the aforesaid provision, the President/Legislature has clearly intended and laid down that neither the Board nor this Hon"ble Court shall have any jurisdiction in respect of any matter or claim which is referred to in sub-Section () of Section 9A, that is, any matter or claim relating to any properties standing attached under sub-Section (3) of Section 3. Even according to the letter/order dated 20.1.1994 of the Custodian, the bonds in question already stand attached with the Custodian/Special Court and any matter or claim arising out of transactions in securities entered into after the 1st April, 1991 and on or before 6th June, 1992, in which a person notified under sub-Section (3) of Section is involved as a party, broker, intermediary or in any other matter, is to be adjudicated upon only by the Special Court. Fair Growth Financial Services Limited, the alleged transferor of the bonds in question to the Bank purported to have been transferred on 18th April, 1992 is a notified person and such a transaction between the said notified person and the Bank is clearly hit by the provisions of sub-Section 3 of Section 3 as well as Section 4 of the previous Ordinance and the Act of 1992 as well as Section 9(A)(a) and (b) of the amended ordinance and, as such, this Hon"ble Court has no jurisdiction to entertain any appeal of the Bank and nor the Company Law Board has any jurisdiction and, as such, the petition filed by the Bank is liable to be dismissed summarily and it is only for the Bank to file any proceedings before the Special Court if it is so advised but as regards any relief in respect of the bonds and interest warrants in question is concerned, certainly the Bank does not and cannot have any relief in respect of the interest warrants which are held and possessed by these appellants and which had not been transferred to the Bank at all."

44. Respondents 2 & 3 put their case clearly before the Company Law Board:

"That the Company Law Board has no jurisdiction to grant any relief against these appellants to the Bank as claimed in its petition. None of the reliefs claimed by the Bank in its company petition lie within the jurisdiction of the Company Law Board except, at the best, to order of rectification of register of the bonds maintained by the NHPC and, at the best, to direct NHPC to register the transfer of the bonds by Fair Growth Financial Services Limited in favor of the Bank. Since the appellants are not a party to the alleged transaction of sale of the bonds between Fair Growth Financial Services Limited and the Bank alleged to have taken place on 18th April, 1992, no relief against the appellants pertaining to the said matter can be claimed against these appellants and nor any other relief claimed in the petition lies within the jurisdiction of the Company Law Board either to grant against the NHPC or against these appellants. It is well settled law that the act of rectification of register is a clerical/ministerial act and the jurisdiction of the Company Law Board is summary. The Company Law Board has no jurisdiction to grant a decree or pass an order of perpetual injunction restraining these appellants from collecting, encashing or utilising the interest warrants which are held and possessed by them. The interest warrants admitted are negotiable instruments, distinct and separate from the bonds and are not even attached coupons thereto and are negotiable by endorsement and delivery

and encashable on their presentation on any branch of the Syndicate Bank in India and, admittedly, no interest warrants in question due and payable after 31.3.92 were endorsed and delivered to the bank and nor the Company Law Board has jurisdiction to grant a perpetual injunction against NHPC to stop the payment of cheque/interest warrants issued by them in favor of these appellants or to pay damages or to pass a decree for any amount against NHPC."

45. Respondents 2 & 3 prayed for the following reliefs in Co.A.8/94:-

"In view of the aforesaid facts and grounds, it is most respectfully prayed that the impugned order dated 15th/16th March, 1994 passed by the Company Law Board be quashed/set aside and the appeal be accepted and the company petition filed by the Bank u/s 111 of the Companies Act be dismissed with costs."

46. Mr.L.R.Gupta, the learned senior counsel, appeared for respondents 2 & 3. Mr.V.N.Koura, the learned senior counsel, appeared for the Bank. Mr.J.C.Seth appeared for the NHPC Ltd in Co.A.6 & 8/94. Mr.V.P.Singh, the learned senior counsel, appeared for the NHPC Ltd. in Co.A.27/93.

47. Mr.L.R.Gupta, the learned senior counsel for respondents 2 & 3 submitted that:

1. The Company Law Board did not act as per the terms of the orders passed by this Court in Co.A.27/93 and, Therefore, the entire order is vitiated.

2. The bonds and the interest warrants are distinct and separate categories of negotiable instruments, and the interest warrants are detachable from the bonds. The interest warrants can be independently dealt with by the holders and they are in the form of post dated cheques issued by the NHPC Ltd.

3. The Bank cannot, in law, make any claim when the interest warrants are held by respondents 2 & 3 and the right to the interest warrants cannot be the subject matter of the petition u/s 111 of the 1956 Act.

4. The Bank purchased from respondents 2 & 3 the bonds and the only one interest warrant, which was payable on the 31st of March, 1992, for Rs.40,78,530.

5. The bonds and the interest warrant were transferred by the Bank on the very next date of the purchase to M/s.Fairgrowth Financial Services Limited making a huge profit. The Bank was fully aware of its rights.

6. The total cost of the bonds and the interest warrant would be in the region of about Rs.14 crores and respondents 2 & 3 in normal course of human conduct would not part with the interest warrants for the consideration paid by the Bank which was for Rs.6,40,05,892/-.

7. The Bank did not make any claim to other interest warrants after its purchase for the bond and one interest warrant.

8. The NHPC Ltd. had clearly stated in its letter dated 28.9.1992 that the entire

interest warrants are encashable at par at all branches of the Syndicate Bank and, Therefore, the NHPC Ltd. cannot legitimately contest the right or respondents 2 & 3 to the interest warrants held by them.

48. The learned senior counsel, Mr.L.R.Gupta, referred to Sections 8, 13, 14, 15, 46, 47, 48, 50 and 78 of the Negotiable Instruments Act, 1881. The learned senior counsel, Mr.L.R.Gupta, submitted that knowing fully well the position of the bond and the interest warrant, the Bank in the garb of the petition u/s 111 of the 1956 Act is claiming the relief of specific performance on the basis of an alleged implied term in the contract. The learned senior counsel, Mr.L.R.Gupta, referred to the decisions of the Supreme Court of the United States which would provide an exegesis, as it were, on the point relating to the scope interest warrants/coupons/post dated cheques. The learned senior counsel, Mr.L.R.Gupta, also referred to the statements of law in American jurisprudence and Corpus Jurisdiction Secundum.

49. Mr.V.N.Koura, the learned senior counsel for the Bank, submitted that the Company Law Board has jurisdiction to adjudicate on the claims of the Bank. On the date of the notification under the 1992 Act, the Bank had become the owner of the bonds and the interest warrant and there is no question of transfer of proceedings to the Special Court. According to the learned senior counsel, Mr.V.N.Koura, the interest warrants form an integral part of the bonds and they go along with the bonds. The detachability is not relevant for the purpose of deciding the issue. No doubt, the NHPC Ltd. had issued interest warrants in the form of post dated cheques, but that would not affect the ownership of the Bank to the interest warrants when it had purchased the bonds. The learned senior counsel, Mr.V.N.Koura, proceeded to argue that it is only for the convenience of the holder of the bonds post dated cheques are issued for interest warrants. In the light of the provisions of the 1992 Act, and also the language of Section 111 of the 1956 Act, the Company Law Board should have gone into the merits of the case and committed an error in transferring the proceedings to the Special Court.

50. The learned senior counsel, Mr.V.N.Koura, submitted that Co.A.27/93 had become infructuous in the context of the order passed by the Company Law Board on the 15th of March, 1994.

51. Mr.J.C.Seth, the learned counsel for the NHPC Ltd., submitted that the notified person under the Act was the holder/owner of the bonds on the relevant date, and, Therefore, the claim of the Bank could be dealt with only by the Special Court and the order of transfer made by the Company Law Board is perfectly valid. Mr.J.C.Seth, the learned counsel for the NHPC Ltd., did not advance any arguments on the scope of the interest warrants. Mr.V.P.Singh, the learned senior counsel for the NHPC Ltd., appearing in Co.A.27/93, submitted that the NHPC Ltd. being a public authority would abide by the decision rendered by this Court.

52. The points that arise for consideration in these appeals are:

1. Whether the Bank could made any claim to the interest warrants held by respondents 2 & 3 and whether that could be subject matter of petition u/s 111 of the 1956 Act filed by the Bank?

2. Whether the claim of the Bank to the bonds for Rs.9,06,34,000/- u/s 111 of the 1956 Act could be transferred to the Special Court under the 1992 Act?

3. Whether the Co.A.27/93 has become infructuous?

53. It is not necessary to dilate upon the facts once over again. In the petition u/s 111 of the 1956 Act, the Bank has put forth the case that the NHPC Ltd. should register its name in its books as the holder of the bonds and the interest warrants, except the one transferred by the Bank to M/s Fair Growth Financial Services Limited, and the other interest warrants should be given to the Bank and the proceeds thereof must go to the Bank.

54. When the Bank filed the petition u/s 111 of the 1956 Act before the Company Law Board, respondents 2 & 3 had taken exception to the maintainability of the petition with reference to the interest warrants.

55. Without giving any decision on the question of maintainability in respect of the interest warrants, the Company Law Board passed an order on the 26th of August, 1993 which had already been extracted.

56. That was challenged, as noticed above, by respondents 2 & 3 in Co.A.27/93.

57. On the 12th of August, 1993, this Court passed the following order:-

"Co.A.27/93

Notice to the respondents to show cause as to why the appeal be not admitted, returnable on 11th November, 1993.

CA.Nos.1548 & 1549/93

Notice for 11th November, 1993.

In the meantime, the operation of the impugned order shall remain stayed. Record of the Company Law Board be also sent for the next date."

58. On the 11th of November, 1993, this Court passed the following order in the appeal:

"Co.A.27/93

Mr.G.K.Gupta has brought the record of the Company Law Board and the same be kept.

Respondent No.2 is directed to deposit all the interest money accrued till date (lying in the Bank) in this court in the name of Registrar by or before 16th Nov., 93. Reply on behalf of respondent No.1 may also be filed by 16th Nov., 93. Reply on behalf of respondent No.2 has been filed and the same is taken on record.

The matter be relisted on 17th Nov., 1993. Order Dasti."

59. On the 17th of November, 1993, by consent of the parties, this Court passed the following order:-

"Co.A.27/93

During the course of arguments, it is agreed by the counsel for the parties that the matter pertaining to jurisdiction of the Company Law Board and the maintainability of the petition filed by the Bank against the present appellant be decided by the Company Law Board first. In view of this agreement between the counsel for the parties, directions are hereby given to the Principal Bench of Company Law Board to hear the question of its jurisdiction and maintainability of the petition by the Bank qua the present appellant on 25th November, 1st and 2nd December, 1993 and give its decision on the preliminary objections by or before 9th December, 1993.

Matter will be taken up on 10th December, 1993.

As regard the amount deposited by respondent No.2 in the name of the registrar of this Court, let the Registrar deposit the same in the form of FDR with the Uco Bank, Delhi High Court for a period of 46 days. File of Company Law Board be sent by Special Messenger latest by tomorrow."

60. Again on the 14th of December, 1993, the parties, by consent, invited the Court to pass an order, and the order reads as under:-

"Co.A.27/93

It is agreed between the parties that the arguments on the question of maintainability as well as jurisdiction will be concluded and that the decision by the Company Law Board should be available by or before 10.1.1994. In case the Company Law Board decides the question of jurisdiction and maintainability against the appellant then the application filed by the respondent herein, asking for the interim relief be decided by the Company Law Board after hearing the parties by or before 20.1.1994.

Matter be listed before this Court on 27.1.1994 for disposal."

61. The Company Law Board had not at all appreciated the orders issued by this Court and had proceeded on the basis that the only question to be decided was the transfer of the proceedings to the Special Court.

62. The case of respondents 2 & 3 before the Company Law Board was that the petition u/s 111 of the 1956 Act by the Bank was not competent in so far as it related to the interest warrants held by them. In other words, the Bank had no right to the interest warrants. The notified person under the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance No.10 of 1992 and Act No.27 of 1992 to make any claim to the interest warrant. The Bank resting its case on the transfer of the bonds from M/s Fairgrowth Financial Services

Limited cannot lay its hands on the interest warrants held by respondents 2 & 3. It was submitted that the Bank cannot claim what its vendor, M/s Fair Growth Financial Services Limited, did not convey or transfer to the Bank. The learned senior counsel, Mr.L.R.Gupta, submitted that the projection of the right to the interest warrants by the Bank was absolutely unsustainable.

63. The points raised in the appeals do not involve any detailed investigation into facts. There were broadly two aspects of the matter before the Company Law Board. One was the right of respondents 2 & 3 to the interest warrants held by them as against the claim of the Bank. The other aspect was the dispute between the NHPC Ltd. and the Bank about the right of the Bank to get its name in the books of the NHPC Ltd registered in view of the fact that in the records of the NHPC Ltd the bonds are registered in the name of the notified person, and, Therefore, the petition u/s 111 of the 1956 Act should be dealt with by the Special Court.

64. The Company Law Board should have addressed itself to this question. When that has not been done, in Co.A.27/93 this Court can go into that question. It is well settled that an appeal is a continuation of the original proceedings. All the points before the original authority/court are at large before the appellate court/appellate authority. If the matter involves recording of evidence, to ascertain facts to give findings on the issues, the appellate authority/court would normally remit the matter back to the original authority or call for a finding when recording of evidence is necessary. In some cases, the appellate court itself can record evidence as provided in Order 41 Rule 27 of the Civil Procedure Code.

65. In the instant case, the Court has to consider the scope of the bonds and the interest warrants. It does not involve any investigation into facts and it was not argued before this Court that unless evidence is recorded, the question mooted out cannot be decided by this Court in the appeals.

66. Mr.J.C.Seth, the learned counsel appearing for the NHPC Ltd. in Co.A.6/94, was an officer working in the NHPC Ltd., and he had a very vital role to play in formulating the scheme for issuing the bonds. The learned counsel for the NHPC Ltd., Mr.J.C.Seth, explained the circumstances in which the NHPC Ltd. decided to issue bonds to mobilise resources and how the subject was studied in detail, and the NHPC Ltd. had taken into consideration the law in the United States of America and in the United Kingdom and other democratic countries where rule of law reigns supreme. Mr.J.C.Seth, the learned counsel for the NHPC Ltd., produced the notification issued on the 17th of December, 1986 u/s 108 of the 1956 Act. The same is as under:-

"Transfer not to be registered except on production of instrument of transfer 108.
(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 indemnity as the Board may think fit:

Provided further that nothing in this section shall prejudice any power of the company to register as shareholder or debenture-holder any person to whom the right to any shares in, or debentures of, the company has been transmitted by operation of law.

(1A) Every instrument of transfer of shares shall be in such form as may be prescribed, and -

(a) every such form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented, and

(b) every instrument of transfer in the prescribed form with the date of such presentation stamped or otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company,-

(i) in the case of shares dealt in or quoted on a recognised stock exchange, at any time before the date on which the register of members is closed, in accordance with law, for the first time after the date of the presentation of the prescribed form to the prescribed authority under clause (a) or within [twelve] months from the date of such presentation, whichever is later;

(ii) in any other case, within two months from the date of presentation.

(1B) Notwithstanding anything contained in sub-section (1A), an instrument of transfer of shares, executed before the commencement of section 13 of the Companies (Amendment) Act, 1965 (31 of 1965), or executed after such commencement in a form other than the prescribed form, shall be accepted by a company, -

(a) in the case of shares dealt in or quoted on a recognised stock exchange, at any time not later than the expiry of six months from such commencement or the date on which the register of members is closed, in accordance with law, for the first time after such commencement, whichever is later;

(b) in any other case, at any time not later than the expiry of six months from such commencement.

(1C) Nothing contained in sub-sections (1A) and 1(B) shall apply to-

(A) any share -

(i) which is held by a company in any other body corporate in the name of a director or nominee in pursuance of sub-section(2), or as the case may be, sub-section (3), of section 49, or

(ii) which is held by a corporation, owned or controlled by the Central Government or a State Government, in any other body corporate in the name of a director or nominee, or

(iii) in respect of which a declaration has been made to the Public Trustee u/s 153B, if-

(1) the company or corporation, as the case may be, stamps or otherwise endorses, on the form of transfer in respect of such shares, the date on which it decides that such share shall not be held in the name of the said director or nominee or, as the case may be, in the case of any share in respect of which any such declaration has been made to the Public Trustee, the Public Trustee stamps or otherwise endorses, on the form of transfer in respect of such share under his seal, the date on which the form is presented to him, and

(2) the instrument of transfer in such form, duly completed in all respect, is delivered to the-

(a) body corporate in whose share such company or corporation has made investment in the name of its director or nominee, or

(b) company in which such share is held in trust, within two months of the date so stamped or otherwise endorsed; or

(B) any share deposited by any person with-

(i) the State Bank of India, or

(ii) any scheduled bank, or

(iii) any banking company (Other than a scheduled bank) or financial institution approved by the Central Government by notification in the Official Gazette (and any such approval may be accorded so as to be retrospective to any date not earlier than the 1st day of April, 1966), or

(iv) the Central Government or a State Government or any corporation owned or controlled by the Central Government or a State Government,

by way of security for the repayment of any loan or advance to, or for the performance of any obligation undertaken by, such person, if-

(1) the bank, institution, Government or corporation, as the case may be, stamps or otherwise endorses on the form of transfer of such share-

- (a) the date on which such share is returned by it to the depositor, or
- (b) in the case of failure on the part of the depositor to repay the loan or advance or to perform the obligation, the date on which such share is released for sale by such bank, institution, Government or corporation, as the case may be, or
- (c) where the bank, institution, Government or corporation, as the case may be, intends to get such share registered in its own name, the date on which the instrument of transfer relating to such share is executed by it; and
- (2) the instrument of transfer of such form, duly completed in all respects, is delivered to the company within two months from the date so stamped or endorsed.
- (C) any share which is held in any company by the Central Government or a State Government in the name of its nominee, except that every instrument of transfer which is executed on or after the 1st day of October, 1966, in respect of any such share shall be in the prescribed form]
- (2) In the case of a company having no share capital, sub-section (1) shall apply as if the references therein to shares were references instead to the interest of the member in the company.

67. The amount under bonds and the interest warrants are tax free. Mr.J.C.Seth, the learned counsel for the NHPC Ltd., submitted that the scope of the bonds and the interest warrants is the same as is in the United States of America. The learned counsel for the NHPC Ltd., Mr.J.C.Seth, submitted that the interest warrants which are given in the form of post dated cheques are independently negotiable.

68. The Company Law Board had observed in its order:

"The preliminary objections raised by respondents No.2 and 3 could not be decided in isolation without looking into the facts of the case, as it is a mixture of Law and facts. The mixed questions of law and facts in this case are - (a) whether the interest warrants are separable from the bond certificate; (b) whether there was an agreement between ANZ and respondents 2 and 3 earlier to purchase and (c) whether the Company Law Board is divested of the power available u/s 111(6)(c) with regard to incidental or consequential orders particularly relating to interest warrants in this case."

The Company Law Board had not properly appreciated the ratio laid down in Major Khanna Vs. Dhillon AIR 1964 SC 1497 and that would not apply to the facts of this case. The Company Law Board was bound to follow the directions issued by this Court on 17.11.93 which was on the basis of consent of the parties. The following observation of the Company Law Board is not at all sustainable in law:-

"We may also note, in passing, that the contention of respondents No.2 and 3

has all along been that the petition is not maintainable and falls within the jurisdiction of the Special Court, which issue we have been examining but has become infructuous in view of the Ordinance."

In the light of these broad facts, I am unable to accept the contention of Mr.V.N.Koura, the learned senior counsel for the Bank, that Co.A.27/93 has become infructuous.

69. Having regard to the fact that five years had elapsed since the proceedings commenced, I do not want to go into the question whether the Company Law Board was justified in not acting in accordance with the orders passed by this Court. For, that is not going to serve any purpose, and an order of remittal would only prolong the litigation and that would not benefit any of the parties in the litigation.

70. This straightway takes me to take to the scope of the bonds and the interest warrants. A copy of the bond is on record. The terms and conditions make it clear that the bonds and the interest warrant are distinct and disparate. The interest warrants are negotiable without any reference to the bonds. The date of issue of the bonds is 11.12.1987. The date of redemption is 11.12.1997. It is stated in the Bond Certificate: "This is a negotiable security and should be preserved". The names of the holders are mentioned in the certificate and they are respondents 2 & 3. The rate of interest is 9% (Tax Free). Distinctive numbers are mentioned in the bond certificate as 10619665 to 10710298. Number of bonds is mentioned in the Bond Certificate as 90,634. Value of the bonds mentioned in the Bond Certificate is Rs.9,06,34,000/-. It is also stated in the Bond Certificate:

"Post dated half yearly due interest warrants are attached and form part of this certificate. Balance due interest will be paid on redemption."

71. The bonds and the interest warrants are detachable. Clause 4 of the Terms of Bonds reads as under:-

"Interest income on bonds carrying 13% interest will qualify for exemption u/s 80(L) of The Income Tax Act, 1961 as per Government Notification No.7607/(F).No.1781/247/87-IT(A1) dated 3rd November'87 and on bonds carrying 9% interest will qualify for exemption u/s 10 and 15) of Income Tax Act, 1961 vide Government Notification No.7606/(F).No.178/247/87-IT(A1) dated 3rd November'97. These bonds qualify for Wealth Tax exemption u/s 5(1)(xvii) of The Wealth Tax Act, 1957 as per Government Notification No.328/101/87-WT dated 4th November, 1987. Income tax deduction at source from the interest accruing to the bond_____ is exempted u/s 193 of the Income Tax Act, 1961 vide Government Notification No.7604/FNo.275/99/87- IT(B) DATED 22.10.1987. The Company, if requested, will certify the ownership of bonds which are registered with it at the relevant time, to avail of tax benefits, the transferee will have to approach the Company within 60 days of the transfer for registration."

72. It is made clear in clause 5 of the Terms of Bonds that the bond is freely transferable by endorsement and delivery by the transferor making an endorsement on the bond by signing as per the specimen signatures in the Corporation's record, at the place indicated in the bond and delivery thereof. The transferee should also put his signature thereon.

73. The interest warrants also are independently negotiable by endorsement and delivery. The Bank had purchased the bonds and one interest warrant and, Therefore, this position cannot be disputed by the Bank.

74. Mr.L.R.Gupta, the learned counsel for respondents 2 & 3 referred to a few provisions of the Negotiable Instruments Act, 1881, hereafter called the 1881 Act, for the purpose of showing that the interest warrants issued in the form of post dated cheques are independently negotiable and it is a settled position of law that the negotiable instruments are transferred by delivery and endorsement. In the instant case, according to the learned counsel for the respondents 2 & 3, the amount due had been exempted from tax and also stamp duty, which is not in dispute.

75. Section 6 of the 1881 Act defines cheque in the following terms:-

"Cheque"._A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

N O T E

Cheque defined._A cheque is a kind of bill of exchange and must be drawn in accordance with the requirements of Section 5 supra. It must be signed by the maker, must contain an unconditional order for payment of a certain sum of money, to or to the order of a specified person or to the bearer and must specify the banker upon whom it is drawn. Cheques differ from other forms of bills of exchange in two important respects: (1) they are drawn on a banker, and (2) are payable immediately on demand."

76. Section 13 of the 1881 Act defines what is a negotiable instrument. The same is as under:-

"Negotiable instrument"._[(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.]

Explanation (i)._A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words, prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii)._A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Explanation (iii)._Where a promissory note, bill of exchange or cheque either

originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

[(2) A negotiable instrument may be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.]

N O T E

Receipt of army pension._A receipt for an army pension bearing the following endorsement at foot: "This receipt must be presented for payment by a London Banker, but, may be negotiated in the country or abroad, and is to be left by the banker at the Pay-mater-General's office one day for examination" is not a negotiable instrument."

77. Section 14 of the 1881 Act gives the meaning of negotiation and the same reads as under:-

"Negotiation._When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated."

78. The bond itself makes it clear that it is transferable by delivery and endorsement and no other formalities are required.

79. Section 15 of the 1881 Act explains what is endorsement. The reads as under:-

"Indorsement._When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser".

N O T E

Consideration for indorsement._An indorsement may be valid, though there is no consideration for the transfer. Even there be consideration, it need not be stated in the indorsement, for, the law presumes consideration for every indorsement or transfer."

80. The person whose name is mentioned in the negotiable instrument is holder and that is defined in Section 8 of the 1881 Act in the following terms:-

"Holder._The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction."

81. The fact that respondents 2 & 3 are the holders of the bonds and payees in the post dated cheques is not in dispute.

82. Section 46 of the 1881 Act explains what is delivery and the same reads as under:-

"Delivery._The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

N O T E

Escrow. Under the English law a deed may be delivered conditionally to a person other than the obligee but not to the obligee himself. A deed thus delivered is called an escrow. But the "term" escrow is also applied loosely to denote a bill delivered conditionally."

83. Section 47 of the 1881 Act speaks of negotiation by delivery and the provision is as under:-

"Negotiation by delivery._Subject to the provisions of Section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception._A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker

does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it."

84. Section 48 of the 1881 Act refers to negotiation by endorsement. The same is as under:-

"Negotiation by indorsement._Subject to the provisions of Section 58 a promissory note, bill of exchange or cheque [payable to order], is negotiable by the holder by indorsement and delivery thereof.

85. Section 50 of the 1881 Act lays down what is the legal effect of endorsement and the same reads as under:-

"Effect of indorsement._The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with right of further negotiation; but the indorsement may, by express words, restrict or include such right, or may merely constitute the indorsee an agent to indorse the instrument or to receive its contents for the indorser, or for some other specified person.

Illustration

B signs the following indorsements on different negotiable instrument payable to bearer:

- (a) "Pay the contents to C only."
- (b) "Pay C for my use."
- (c) "Pay C or order for the account of B."
- (d) "The within must be credited to C."
- (e) "Pay C."
- (f) "Pay C value in account with the Oriental Bank".
- (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Indorsee of promissory note; Right to claim full amount under promissory note._The indorsee of the promissory note executed by A in favor of B should be entitled to the amount under the promissory note and not the amount which he might have been proved to have actually paid for the indorsement or assignment of the promissory note in his favor by B."

86. The 1881 Act clearly states that who would be entitled to the payment under the negotiable instrument. Section 78 of the 1881 Act provides:-

"To whom payment should be made._Subject to the provisions of Section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder

of the instrument."

87. Therefore, the position that the holders of the interest warrants would be entitled to the payment thereof cannot be a matter of any debate in the light of the provisions of the statute governing the issue.

88. It is in the above backdrop, as it were of the legal position, the transaction between respondents 2 & 3 and the Bank has to be appreciated. The Bank purchased the bonds and one interest warrant from respondents 2 & 3 for a consideration of Rs.6,70,27,919.52. Before entering into the transaction, the Bank must have had legal advice and must have studied the terms and conditions and must have noted the negotiable character of the bonds and the interest warrants, and the Bank being a foreign Bank is well versed with the scope of bonds and interest warrants and securities and the Bank has the knowledge of the transaction prevailing in other parts of the globe.

89. Bearing in mind the above position, the interest warrants are to be dealt with by what is called the *Las Merchant*. This was the subject matter of debate before the Supreme Court of the United States. In 1869, i.e., 130 years ago, in the case of "*The City of Aurora Vs. Charles W. West & Joseph Torrence*", 74 US 42, the Supreme Court of the United States, perhaps for the first time, dealt with the point. The facts, as noticed by the Supreme Court of the United States, are:

"Fifty bonds, of \$1,000 each, were issued by the Corporation defendants on the first day of January, 1852, in payment of a subscription of \$50,000, previously made by the order of the Common Council of the City, to the capital stock of the Ohio & Mississippi Railroad Company. Authority to subscribe for such stock, and to issue such bonds, under the conditions therein specified, is conferred upon the Corporation by the 18th section of their charter. Said bonds were negotiable, and were made payable in twenty-five years from date, with interest at six per cent. per annum. Interest warrants or coupons were attached to the several bonds, for the payment of each year's interest, till the principal of the bonds should fall due."

90. In that case, the plaintiffs became the holders for value of all the bonds together with the coupons attached thereto and the defendants having failed and neglected to pay the interest, the plaintiffs brought an action of *assumpsit* to recover the amount of the unpaid interest as represented in the respective coupons for the period mentioned therein. *Assumpsit* is an action brought upon promise. The whole basis of the action was the promise mentioned in the interest warrants.

91. Defendants in the action raised several pleas. The plaintiff had obtained decrees in two Courts of competent jurisdiction on different set of interest coupons attached to the same 50 bonds.

92. The Lower Court rendered judgment for the plaintiffs in the sum of \$10,534.50.

93. The defendants tendered, what is called, a bill of exceptions. The Federal Rules of Civil Practice in the United States provide for such a procedure. Bill of exception used to be a formal statement in writing mentioning all the objections or exceptions taken by a party during the trial of a cause and to the decisions or rulings or the instructions of the Trial Judge stating the objections with the facts and circumstances on which it was founded and in order to ensure its accuracy signed by the Judge. It is stated to have now been abolished. This digression became necessary to explain the bill of exceptions.

94. Coming to the case, the submission on behalf of the defendants was that in the Former Cities the plea of want of consideration was not taken, and, Therefore, it was not considered and thus it would be open to the defendants to point out by way of defense, and the Judgment rendered earlier would not preclude the defense from raising the plea of want of consideration. That was not accepted by the Lower Court and the decision of the Lower was confirmed by the Supreme Court of the United States. Dealing with the coupons, the Supreme Court of the United States posited:

"Bonds and coupons like these, by universal usage and consent, have all the qualities of commercial paper. *Mercer Co. Vs. Hackett* 1 Wall., 83 68 U.S. 548; *Meyer Vs. Muscatine*, 1 Wall. 384 68 U.S. 564. Coupons are written contracts for the payment of a definite sum of money, on a given day, and being drawn and executed in a form and mode for the very purpose that they may be separated from the bonds, it is held that they are negotiable, and that a suit may be maintained on them without the necessity of producing the bonds to which they were attached. *Knox Co. Vs. Aspinwall*, 21 How., 544 62 U.S. 210; *While Vs. Railroad*, 21 How., 575 62 U.S. 221; *McCoy Vs. Co. of Wash.* 7 ALR 193; *Pars Bills & N.*, 115. Interest as a general rule, is due on a debt from the time that payment is unjustly refused, but a demand is not necessary on a bill or note payable on a given day. *Vose Vs. Philbrook*, 3 Story, 336; *Hollingsworth Vs. Detroit*, 3 McLean, 472. Being written contracts for the payment of money, and negotiable because payable to bearer and passing from hand to hand, as other negotiable instruments, it is quite apparent on general principles that they should draw interest after payment of the principal is unjustly neglected or refused. *Delafield Vs. Stephens*, 2 Hill, 177; *Williams Vs. Sherman*, 7 Wend., 112. Where there is a contract to pay money on a day fixed, and the contract is broken, interest, as a general rule, is allowed, and that rule is universal in respect to bills and notes payable on time 2 Pars., Bills & N., 393. Governed by that rule this court, in the case of *Gelpcke Vs. Dubuque*, 1 Wall., 206 68 U.S. 525, held that the plaintiff, in a case entirely an aloguous, was entitled to recover interest. *Thompson Vs. Lee Col*, 3 Wall., 332 70 US. 178.

Necessity for remark upon the other exceptions is superseded by what has already been said in respect to the plaintiff's demurer.

Judgment affirmed, with costs."

95. On the 11th of January, 1875, the Supreme Court of the United States gave its opinion in "Luther C. Clark Vs. Iowa City" 87 US 427. The case arose out of an action for the recovery of money due on ten coupons for \$50 each, payable to bearer on the 1st of January, 1860. The coupons had been cut from the bonds issued by the defendant in the action to the Mississippi and Missouri Railroad Company. The action was commenced in the month of January, 1874. The main defense was one of limitation. What was stated was that by the laws of Iowa, the period of limitation for commencement of action upon bonds and coupons was ten years and the action having commenced beyond the period mentioned in the statute from the date of accrual of cause of action, the action was liable to be dismissed. The Court noticed the following facts:-

"In 1856, Iowa City issued certain bonds in sums of \$500 each, payable to bearer in the City of New York, on the first of January, 1876, with annual interest at the rate of ten per cent. a year, payable on the first day of January of each year. For the different installments of interest, coupons were annexed."

96. Regarding the characteristics of bonds and coupons, the Court observed:

"Most of the bonds of municipal bodies and private corporations in this country are issued in order to raise funds for works of large extent and cost, and their payment is, Therefore, made at distant periods, not unfrequently beyond a quarter of a century. Coupons for the different installments of interest are usually attached to these bonds, in the expectation that they will be paid as they mature, however distant the period fixed for the payment of the principal. These coupons, when severed from the bonds, are negotiable and pass by delivery. They then cease to be incidents of the bonds, and become in fact independent claims; they do not lose their validity, if for any cause the bonds are cancelled or paid before maturity; nor their negotiable character; nor their ability to support separate actions; and the amount for which they are issued draws interest from its maturity. They, then, possess the essential attributes of commercial paper, as has been held by this court in repeated instances. Thompson Vs. Lee Co., 3 Wall., 327, 18 L.ed. 177; Aurora City Vs. West, 7 Wall. 105 19 L. ed. 50; see, also, Co. of Beaver Vs. Armstrong, 44 Pa. St., 63, and Bk. Vs. R. Co. 8 R.I. 375."

97. On the 18th of April, 1881, the Supreme Court of the United States decided the case in "Town of Walnut Vs. J.H.Wade" 103 US 526. The facts of that case could be briefly stated thus:

"This suit was brought upon one thousand and ten coupons for \$10 each, representing the annual interest on these hundred and twenty one bonds for the sum of \$100 each, purporting to be executed by the plaintiff in error. It was claimed that said bonds were issued in aid of the Illinois Grand Trunk Railway Company, and in payment of stock in that company subscribed for by the plaintiff in error and delivered to it.

The coupons bore the following numbers: from 1 to 200 inclusive, 258, and from 281 to 400 inclusive, and were cut from bonds bearing corresponding numbers.

Before final judgment in the court below, the defendant in error took a noneuit as to all coupons sued on, bearing numbers from 301 to 400 inclusive and withdrew the same from consideration by the court, and left, as the cause of action, only those coupons which bore numbers under 301.

The declaration set out a copy of one of the coupons sued on, and averred that all the others were of the same tenor and effect, except as to their numbers and date of payment respectively. The copy was as follows:

"No.251. Series 4, due January 1, 1875 for \$10]

\$10] WALNUT TOWNSHIP [No.251. Railway bond Interest warrant

Supervisor of Walnut Township, pay to bearer, January 1st, 1875, ten dollars, at the office of the State Treasurer, Springfield, Illinois.

WM. SANDERS, TOWN CLERK."

98. The Court noticed the findings given by the Lower Court in respect of the coupons. It is stated:

"That the coupons offered in evidence and upon which judgment is rendered in this case were cut from bonds of said issue numbered from one to three hundred."

99. The Lower Court accepted the claim of the plaintiff. The defendant challenged the validity of the Act to amend an Act entitled an Act to incorporate the Illinois Grand Trunk Railway. The Act was upheld by the Court. Regarding the coupons, the Court held:

"The form of the coupons does not change their nature. They are evidences of the sums due for interest on the bonds. The fact that they are made payable at a particular place does not make a presentation for payment at that place necessary, before a suit can be maintained on them. Wallace Vs. McConnell, 13 Pet., 148; Irvine Vs. Withers, 1 Stew., 234; Montgomery Vs. Elliott, 6 Ala., 701.

The second and third grounds of objection are answered by the decision of this court in Clark Vs. Iowa City, 20 Wall., 583 87 U.S. 427, where it is said: "Coupons for installments of interest when severed from bonds are negotiable, and pass by delivery. They then cease to be incidents and become in fact independent claims; and they do not lose their validity if, for any cause, the bonds are canceled or paid before maturity, nor their negotiable character, nor their ability to support separate actions." See, also, Aurora Vs. West, 7 Wall., 82 [74 u.s., XIX., 42]; Thompson Vs. Lee Co., 3 Wall., 327 70 U.S.18 "

100. On the 6th of March, 1882, the Supreme Court of the United States decided the case in "John J. Stewart Vs. Town of Lansing", 104 U.S. 866. It is not necessary to advert to the facts of that case, except to the extent that it is necessary for focussing the point involved. The facts of that case are:

"On the 30th of May, 1874, a suit was brought in the name of Stewart, the

present plaintiff in error, in the Circuit Court of the United States for the Northern District of New York, to recover the coupons due July 1, 1873, averring his ownership thereof.

On the 20th of July, 1872, Manassah Bailey brought suit in the same court to recover the coupons of July 1, 1872. In each of the suits the defenses were that the bonds and coupons were issued without the authority of law, and that the plaintiffs respectively were not bona fide holders. The suits were tried together, and upon the same evidence, so far as applicable. In both cases it was decided that the bonds were invalid, and in that of Bailey, judgment was given for the defendant, because it had not been satisfactorily shown that he was a bona fide holder. In the Stewart Case, however, the court used this language in its opinion: "The suit of Stewart differs from the one by Bailey, in that it appears that the bonds were pledged as collateral in February, 1873, to Elliott, Collins & Co., of Philadelphia, and sold by them after consultation with the officers of the railroad company. Elliott, Collins & Co. were holders for value before maturity, and their sale to satisfy the pledge conveyed their title to the purchaser. Whether the plaintiff was the purchaser from them directly or not is not clear, but, however this may be, he succeeds to all the rights of Elliott, Collins & Co., and occupies the position of a bona fide purchaser. As against a bona fide holder of the coupons, none of the defenses interposed are tenable." Acting on this principle, the court gave judgment in favor of Stewart for the coupons he held."

101. Relating to the negotiability of the bonds and the warrants, the Court observed:-

"We have often held that coupons detached from bonds are negotiable instruments, and capable of separate ownership and transfer. *Clark Vs. Iowa City* 20 Wall. 589 [87 U.S., XXII., 429]"

102. The Supreme Court of the United States, it can be noticed, followed the earlier case which had already been dealt with by it.

103. On the 6th of March, 1882, the Supreme Court of the United States decided the case in "*Town of Koshkonong Vs. Oscar A. Burton*" 104 U.S. 886. The facts, as noticed by the Court, are:

The object of this action, which was commenced on the 12th day of May, 1880, is to recover the amount due on bonds, with interest coupons attached, issued on the first day of January, 1857, by the Town of Koshkonong, a municipal Corporation of Wisconsin, pursuant to authority, conferred by an Act of the Legislature of that State. They were made payable to the Chicago, St. Paul and Fond du Lac Railroad Company or its assigns, on the first day of January, 1877, at the American Exchange Bank, in the City of New York, with interest at the rate of 8 per cent per annum, payable semi-annually, on the presentation of the interest warrants at that bank on the first day of each July and January, until the principal sum should be paid. Of the bonds in suit, with their respective coupons, Burton became the owner by written assignment from the railroad company,

indorsed upon the bonds, under dated of November 16, 1857. None of the coupons have ever been detached from the bonds nor paid, except those maturing July 1, 1857, and January 1, 1858.

The coupons are all alike, except as to dates of maturity. They are complete instruments, capable of sustaining separate actions, without reference to the maturity or ownership of the bonds. [Knox Co. Vs. Aspinwall}, 21 How., 539 62 U.S. 208; [Clark Vs. Iowa City], 20 Wall., 583 [87 XXII., 427]; [Amy Vs. Dubuque] 98 U.S. 473 [XXV., 230]. The following is a copy of the one last due: "The Town of Koshkonong will pay to the holder thereof, on the first day of January, 1877, at the American dollars, being for half yearly interest on the bond of said Town No.22, due on that day. S.R.Crosby, Clerk."

The main question is, whether the action, as to coupons maturing more than six years prior to its commencement, is not barred by the Statute of Limitation of Wisconsin. The court below, being of opinion that no part of plaintiff's demand was barred, gave judgment for the principal of the bonds, with interest from the first day of January, 1877, at the stipulated rate of 8 per cent per annum until paid, and also for the amount of each coupon in suit, with interest from its maturity at the rate of 7 per cent per annum; the latter being the rate established by the local law in the absence of a special agreement by the parties.

The present writ of error questions the correctness of that judgment, as well because it overrules the defense of limitation to coupons maturing more than six years before the commencement of this action, as because it allows interest upon the amount of each coupon from its maturity."

104. Dealing with the contentions of the defendant relating to plea of limitation, the Court held:

"The Statutes of Wisconsin, in force when the bonds and coupons were issued, provided that "All actions of debt founded upon any contract or liability, not under seal" (except such as are brought upon the judgment or decree of some court of record of the United States, or of a State or Territory of the United States), shall be commenced within six years after the cause of action accrued, and not afterwards; and that all personal actions on any contract, not otherwise limited by the laws of the State, shall be brought within twenty years after the accruing of the cause of action. R.S. Wis., 1849, secs.14-22, pp.644, 645.

We remark that the foregoing provisions, without substantial change of language, were taken from the Statutes of the Territory of Wisconsin, adopted in 1839. Further; that the revision of 1849 did not, in terms, prescribe any limitation to actions upon sealed instruments. They were, Therefore, embraced by the limitation of twenty years as to personal actions on contracts not covered by other provisions.

The revision of 1849 was superseded by one made in 1858, which went into operation on the first day of January, 1859. By the latter, as modified by an Act,

passed in 1861, civil actions, other than for the recovery of real property, were required to be commenced within the following periods: actions upon judgments or decrees of courts of record of the State, and actions upon sealed instruments when the cause of action accrued in the State, within twenty years, R.S.Wis., 1858, ch. 138, sec. 15; actions upon the judgments or decrees of courts of record of any State or Territory of the United States or of courts of the United States, and actions upon sealed instruments, when the cause of action accrued out of the State, within ten years, lb., sec. 16; and actions upon contracts, obligations or liabilities, express or implied, excepting those mentioned in sections 15 and 16, within six years; the time to be computed, in each case, from the date where the cause of action accrued. Gen. Laws, Wis., 1861, p.302. The revision of 1858 also contained the general clause that, "In any case where a limitation or period of law, prescribed in any of the Acts hereby repealed, (which included the revision of 1849), for the acquiring of any right or barring of any remedy, or for any other purpose, shall have begun to run, and the same or any similar limitation is prescribed in the Revised Statutes, the time of limitation shall continue to run, and shall have the like effect, as if the whole period had begun and ended under the operation of the Revised Statutes." 1b., ch.191, sec. 13, p.1038.

Thus stood the law of the State until the 9th day of March, 1872, a little over fifteen years after these bonds and coupons were issued, when an Act was passed entitled "An act to Limit the Time for the Commencement of Actions against Towns, Counties, Cities and Villages on Demands Payable to Bearer." It provides that "No action brought to recover any sum of money, on any bond, coupon, interest warrant, agreement or promise in writing, made or issued by any town, county, city or village, or upon any installment of the principal or interest thereof, shall be maintained in any court, unless such action shall be commenced within six years from the time when such sum of money has or shall become due, when the same has been or shall be made payable to bearer or to some person or bearer, or to the order of some, or to some person or his order; Provided, That any such action may be brought within one year after this Act shall take effect; Provided, further, That this Act shall in no case be construed to extend the time within which an action may be brought under the laws heretofore existing." Gen. Laws, Wis., 1872, p.56.

Our attention has also been called to certain sections in the revision of the Statutes of Wisconsin of 1878, which went into operation on the first day of November of that year, superseding that of 1858, as well as the Act of 1872. Those sections contain, in substance, the clauses first quoted from the revision of 1858, with the modifications made by the Act of 1872. R.S.Wis., 1878, pp. 1015, 1016. It is to be observed in this in this connection, for it has some bearing upon what we shall presently say, that section 4220 of the revision of 1878, in terms, prescribed twenty years as the limitation for "An action upon a sealed instrument when the cause of action accrues within this State, except those mentioned in section 4222," while the latter section embraces, among others, "An action upon

any bond, coupon, interest warrant, or other contract for the payment of money, whether sealed or otherwise, made or issued by any town, county, city village or school district in this State;" thus indicating that the framers of the revision of 1878 regarded municipal securities for the payment of money, as belonging to the class of sealed instruments. We observe, also, that the revision of 1878 contains a provision in reference to those cases in which limitation had commenced to run, similar to that already quoted from the revision of 1858. R.S., 1878, sec. 4984; R.S., 1858, p.1038."

105. The Court further, explaining the provisions and their impact on the case before it, observed:

"From the foregoing summary, it will be seen that, by the local law, when the bonds in suit were issued, all civil actions for debt, founded on contract or liability, not under seal (except actions upon judgments or decrees of some court of record of the United States or of a State or Territory), could be brought within six years after the cause of action accrued and not afterwards; while such actions, if founded on contract or liability, under seal, would not be barred until twenty years after the cause of action accrued. If, as contended by plaintiff, the question of limitation is to be determined exclusively by the revision of 1849, in force when the bonds were issued; and if, as is further insisted, an action on municipal bonds and coupons, such as are here in suit, is, within the meaning of that revision, "founded on contract or liability not under seal," it is clear that, without reference to the Statute of 1872, this action is barred as to all coupons maturing more than six years before its commencement, whether such coupons were separated or not from the bonds to which they were originally attached. This, upon the authority of *Amy v. Dubuque* 98 U.S. 470, with the doctrines of which we are entirely satisfied. We there said, construing the Statutes of Iowa, upon the subject of limitation, that suits upon unpaid coupons, such as those in suit, might be maintained in advance of the maturity of the principal debt; that "Upon the non-payment at maturity of each coupon, the holder had a complete cause of action. In other words, he might have instituted his action to recover the amount thereof at their respective maturities. From that date, Therefore, the statute commenced to run against them. * * * Upon principle, his failure or neglect to detach the coupon and present it for payment at the time when, by contract, he was entitled to demand payment could not prevent the statute from running."

But we are inclined to the opinion, although uninformed upon the subject by any direct decision of the Supreme Court of the State, to which our attention has been called, that municipal bonds and coupons were regarded by the framers, both of the revision of 1849 and that of 1858, as, alike, sealed instruments to which the limitation of twenty years was applicable. The word "bond" at common law (and even now as a general rule), imports a sealed instrument. And although, under some circumstances, a municipal corporation issuing and delivering bonds and coupons, in aid of railroad enterprises, may be liable

thereon, notwithstanding they are unattested by its corporate seal, we are satisfied that the Legislature of Wisconsin intended, by the revision of 1849, as well as that of 1858, to prescribe the same limitation for actions upon such obligations, as was, in terms, prescribed for actions upon what, technically or in common legal parlance, are denominated sealed instruments.

If this interpretation of the revision of 1849 and 1858 be correct, it would follow that this action was not, at the passage of the Act of 1872, barred by limitation as to any of the coupons in suit. Twenty years had not then expired from the maturity of any of them."

106. On the 22nd of January, 1883, the Supreme Court of the United States decided the case in "Town of Thompson, In the County of Sullivan Vs. Orlando Perrine" 106 U.S. 298. In that case, the action was brought in the Court below to enforce the payment of certain coupons amounting to a sum of \$8,890 with interest alleged to be due and unpaid. The trial Court decreed the suit. The Supreme Court of the United States referred to the judgment in Thompson v. Perrine 103 U.S. 806 and noted the effect of judgment on the facts of the case. The Court observed:

"In Thompson Vs. Perrine 103 U.S. 806, we affirmed a judgment of the Circuit Court of the United States for the Southern District of New York, against the Town of Thompson, in that State, for the amount of certain coupons of bonds, executed in behalf of that Town, by virtue of the provisions of an Act passed May 4, 1869, and amended April 1, 1869. Those Acts, as will be seen from the statement of the former case, authorised the Town of Thompson, in aid of the construction of a railroad from Monticello, New York, to Port Jervis, in the same State (a majority of its taxpayers, appearing upon the last assessment roll and representing a majority of the taxable property, not including lands of non-residents, having first consented to the debt being contracted), to issue bonds and to invest the proceeds, when disposed of, in the capital stock of the railroad company organized to construct the proposed road. Bonds were issued, and instead of selling them and investing the proceeds in the company's stock, the local authorities exchanged them directly with the railroad company for stock. This, according to certain decisions of the highest court of New York, was in violation of the Act giving authority to issue the bonds. But, by an Act passed April 28, 1871 (previous to which time the bonds had been issued and delivered), that exchange for stock was, in express terms, ratified and confirmed. And the controlling question in the former case was as to the constitution in the former case was as to the constitutional validity of the latter statute. In Horton Vs. Thompson, 71 N.Y., 513, decided January, 1878, the Court of Appeals of New York held that, as the taxpayers had only consented to an issue of bonds, the proceeds of the sale of which should be invested in stock, it was beyond the power of the Legislature to validate bonds, which, in violation of the Act under which they were issued, were not sold but were directly exchanged for stock, of which fact all purchasers had notice from the recitals of the bonds themselves.

That adjudication, it was contended, was binding upon this court. But to that proposition we declined to give our assent and stated, with some fullness, the reasons why this court could not give to the decision in Horton's Case the effect claimed for it by the Town."

107. The Court expressed the view:

"We held, for reasons which need not be repeated, that it was within the constitutional power of the Legislature of New York to pass the curative Statute of April 28, 1871, and that from the moment it was enacted, if not before the bonds, by whomsoever held, whether by the railroad company or others, became binding obligations upon the Town, as much so as if they had originally been sold and the proceeds invested in stock of the railroad company, as required by the Acts under which they were issued."

108. Curative Statute is explained in Black Law Dictionary in the following terms:-

"A law, retrospective in effect, which is designed to remedy some legal defect in previous transactions. A form of retrospective legislation which reaches back into the past to operate upon past events, acts or transactions in order to correct errors and irregularities and to render valid and effective many attempted acts which would otherwise be ineffective for the purpose intended."

109. The Court observed that the point raised in that case was covered by the judgment in Thompson Vs. Perrine 103 U.S. 806. The Supreme Court of the United States proceeded to hold:

"That decision controls the present case, for the latter, in its essential features,, differs from the former only in the circumstance of the time when Perrine acquired title to the coupons in suit. Those heretofore sued on were purchased by him in 1875, while those now in suit were purchased by him in 1878, when they were overdue, and after the decision in 71 N. Y. was announced. Counsel for the Town now insist that this court should follow the ruling in that case, at least as to holders of coupons or bonds who purchased after Horton v. Thompson was decided; and they suppose that this court placed its former decision upon the ground, mainly, that Perrine purchased the bonds there in suit before the Court of Appeals declared the Act to be unconstitutional. But in this view we do not concur. The reference, in the former case, to the date when Perrine purchased, was to illustrate the injustice which would be done were we, in opposition to our own view of the law, to follow the ruling of the the state court made after he purchased; a decision which, with entire respect for the state court, was held not to be in harmony with its former decisions. What we decided was, that the curative statute was within the limits of legislative power, and that, at least from its passage, the bonds, by whomsoever held, whether by the railroad company or others, became enforceable obligations of the Town. Mitchell Vs. Burlington 4 Wall., 274 71 U.S. 3552; TAYLOR Vs. YPSILANTI 105 U.S. 1008; Ohio L. & T.Co. Vs. Debolt 16 How. 433."

110. Another point taken was that the plaintiff was an assignee within the meaning of the Judiciary Act of 1789 and within the meaning of the Act of March 3, 1875. The Court noticed the contentions in the following terms:-

"There is, however, one point made in this case not made in the former one, and which it is our duty to notice. It is, that this action is excluded by statute from the jurisdiction of a Circuit Court of the United States.

The 11th section of the Judiciary Act of 1789 declares that no district or circuit court shall "Have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange." 1 Stat. at L., 73; R.S., sec. 629. The provision in the Act of March 3, 1875 [18 Stat. at L., 470], is: "Nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee, unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant, and bills of exchange."

It is not claimed that the words "assignee" and "assignment," as found in the Act of 1875, have any meaning different from that attached to the same words in the Act of 1789, or in section 629 of the Revised Statutes. But the contention of counsel is that the coupons in suit, being detached from the bonds and overdue when Perrine purchased them, were dishonored and, Therefore, not negotiable by the law merchant; consequently, it is claimed, they are not within the exception of promissory notes negotiable by the law merchant, but are embraced by the general inhibition upon suits founded on contract where the assignor himself could not have sued in the circuit court."

111. The Court did not accept the contentions. The Court held:

"This position cannot be sustained. It is an immaterial circumstance that the coupons, when purchased by Perrine, were detached from the bonds. And the bonds not having then matured, the coupons, though overdue, had not lost the quality of negotiability by the law merchant. This result must follow from the principles announced in *Cromwell Vs. Sac Co.* 96 U.S. 58. Further, and apart from any consideration of the question as to the negotiability, according to the law merchant, of these coupons, Perrine is not an assignee within the meaning of the Act of 1875, nor of the previous statutes relating to the same subject. Giving the words, assignee and assignment, their broadest signification and conceding that, in some cases, the holder of a promissory note may become such in virtue alone of an assignment; yet, according to the established construction of the Judiciary Act of 1789, the right of the holder of a promissory note or bond, payable to a particular person or bearer, to sue in his own name, did not depend upon the citizenship of the named payee or of the first or any previous holder; this, because, in all such cases, the title passed by delivery and not in virtue of any

assignment. In *Bullard Vs. Bett*, 1 Mason, 243, Mr. Justice Story said that to bring a case within the exception contained in the 11th section of the Act of 1789, "The action must not only be founded on a chose in action, but it must be assignable; and the plaintiff must sue in virtue of an assignment." "A note," said he, "payable to bearer, is often said to be assignable by delivery; but in correct language there is no assignment in the case. It passes by mere delivery; and the holder never makes any title by or through any assignment, but claims merely as bearer. The note is an original promise by the maker to pay any person who shall become the bearer; it is, Therefore, payable to any person who successively holds the note bona fide not by virtue of any assignment of the promise, but by an original and direct promise, moving from the maker to the bearer." In *Bank v. Wister*, 2 Pet., 326, this court said that it had "Uniformly held that a note payable to bearer is payable to anybody, and is not affected by the disabilities (to sue) of the nominal payee." *Thompson Vs. Lee Co.* 3 Wall. 331 70 U.S. 178; *Bushnell Vs. Kennedy*, 9 Wall., 391 76 U.S. 788; *Lexington Vs. Butler*, 14 Wall., 293 81 U.S. 812; *Cooper Vs. Thompson* 13 Blatchf. 434; *Coe Vs. v. R. R. Co.* 19 Blatchf. 522.

The coupons here in suit are payable to the holder thereof, and, upon the authority of the adjudged cases, Perrine is not an assignee within the meaning of the Act of 1875 18 Stat. at L. 470. He is entitled to sue without reference to the citizenship of any previous holder.

We perceive no error in the record and the judgment must be affirmed. It is so ordered."

112. On the 18th of April, 1892, the Supreme Court of the United States decided the case in "*Eleanor Nesbitt Vs. The Independent District of Riverside, in the County of Lyon*" 144 U.S. 562. The plaintiff in the action brought a suit in the United States Circuit Court at De Moines, Iowa, against the Independent District of Riverside sued upon the interest coupons detached from two bonds. According to the plaintiff, she was the owner of the two bonds and the coupons detached thereto, and prayed for judgment upon six coupons then due and unpaid. To this, the defense was that, at the time of the issue of the bonds indebtedness of the district exceeded five per cent of the taxable property of the district, as shown by the state and county tax lists, and, Therefore, the bonds were void under the Constitution of the State of Iowa. The judgment was rendered by the Lower Court in favor of the plaintiff for the full amount of the six coupons.

113. The plaintiff brought the suit for the recovery of the amounts due on the bonds. The defense was that, the suit was barred under Article 11.3 of the Constitution of Iowa of 1857. That provision reads as under:-

"No county, or other political or municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate exceeding five per centum on the value of the taxable property within such country or corporation-to be ascertained by the last state and country tax lists, previous to the incurring of such indebtedness."

114. The argument advanced on behalf of the plaintiff was that the suit on the coupons was decreed and when the plaintiff sought to recover the money due on the bonds and it was answered by saying that it was barred under Article 11.3. of the Constitution of Iowa of 1857. The cause of action was the same, and, Therefore, the plaintiff was entitled to decree. According to the plaintiff, the defendant, Trust, was precluded from taking the plea on the principle of estoppel by judgment. The Supreme Court of the United States rejected the case of the plaintiff and observed:-

"But the question which is most earnestly pressed upon our attention is the estoppel which is alleged to have been created by the judgment against the district in the United States Circuit Court at Des Moines, upon coupons detached from the two bonds numbered 14 and 15. Is this a case of estoppel by judgment? The law in respect to such estoppel was fully considered and determined by this court in the case of *Cromwell Vs. Sac County* 94 U.S. 351. It was there decided that when the second suit is upon the same cause of action, and between the same parties as the first, the judgment in the former is conclusive in the latter as to every question which was or might have been presented and determined in the first action; but when the second suit is upon a different cause of action, though between the same parties, the judgment in the former action operates as an estoppel only as to the point or question actually litigated and determined, and not as to other matters which might have been litigated and determined."

115. Relating to the scope of the rights under coupons, the Supreme Court of the United States observed:-

"Now, the present suit is on causes of action different from those presented in the suit at Des Moines. Bonds 16,17, and 18 were not presented or known in that suit; and while bonds 14 and 15 were presented, alleged to be the property of plaintiff, and judgment asked upon six coupons attached thereto, yet the cause of action on the six coupons is distinct and separate from that upon the bonds or the other coupons. Each matured coupon is a separable promise, and gives rise to a separate cause of action. It may be detached from the bond and sold by itself. Indeed, the title to several matured coupons of the same bond may be in as many different persons, and upon each a distinct and separate action be maintained. So, while the promises of the bond and of the coupons in the first instance are upon the same paper, and the coupons are for interest due upon the bond, yet the promise to pay the coupon is as distinct from that to pay the bond, as though the two promises were placed in different instruments, upon different paper."

116. On the 18th of May, 1896, the Supreme Court of the United States decided the case of "*James C. Edwards Vs. Bates County, imp leaded in Behalf of Mount Pleasant Township*" 163 U.S. 155. The facts in that case, as noticed by the Supreme Court of the United States, are:

"On October 5, 1891, plaintiff in error filed his petition to recover from the defendant an aggregate alleged indebtedness, consisting of the following items: (1) The principal of two bonds for \$1,000 each, issued by the defendant on January 18, 1871, with interest from the date of maturity of the bonds, January 18, 1886; (2) the amount interest coupons on said bonds, due and payable on the 18th day of January, in the year 1873 to 1886, both inclusive, with interest from the maturity of each coupon; and, (3) the principal of seven funded bonds of said county, each for the sum of \$100, dated October 1, 1885, and payable October 1, 1905.

The petition alleged that due notice had been given by the county, pursuant to an option reserved by it, that it would redeem said last-named bonds at a place named on the 1st of July, 1891, and that on that date and at the place designated said bonds had been duly presented and payment thereof demanded and refused.

A plea to the jurisdiction was filed on behalf of the defendant, based upon the claim that the matter in controversy, exclusive of interest and costs, did not exceed the sum or value of \$2,000. It was alleged, among other things, that each of the funded bonds provided on its face that the said county of Bates, for and on behalf of the township of Mount Pleasant, reserved the right at its option to redeem the bonds at any time after five years from the first day of October, 1885, in accordance with the conditions printed on the back, which conditions, among other things, provided for the giving of notice, by advertisement, of the intention to redeem, and further provided that "if any bond be not presented on the back, which conditions, among other things, provided for the giving of notice, by advertisement, of the intention to redeem, and further provided that "if any bond be not presented as required in such notice, or within thirty days after the date therein fixed, interest thereon shall cease from said date, but said bond, with interest accrued to said date, shall be payable upon presentment at the office of the treasurer of Bates county at any time thereafter."

It was further alleged that the funding bonds in question had not been presented for payment, and that the purpose of including them in the suit at bar was merely in aid of an attempt to confer jurisdiction upon the court over the claim of plaintiff upon the two \$1,000 bonds. The plaintiff filed a reply to the plea to the jurisdiction and the issue thereby raised was heard upon an agreed statement of facts and certain documentary evidence unnecessary to be specifically stated.

In the agreed statement of facts it was admitted that the funding bonds in question had never been presented for payment at the place designated by the contract for the redemption of the same, though said county had on deposit at the depository named in the advertised notice of intention to redeem, on said first day of July, 1891, and for more than thirty days thereafter, sufficient funds to pay said bonds, which funds had been deposited for such special purpose, and that the county of Bates had in the hands of its county treasurer money sufficient belonging to said township to pay said bonds at any and all times after said thirty

days from said first day of July, 1891, if they had been presented for payment by the holder thereof.

The trial court sustained the plea, and dismissed the case for want of jurisdiction. 55 Fed. Rep. 436. The case was then brought to this court by writ or error."

117. Ultimately, the Supreme Court of the United States remanded the matter setting aside the judgment of the Lower Court on the ground of want of jurisdiction. The Supreme Court of the United States referred to the judgment in *Aurora Vs. West* 74 U.S. 7 relating to the scope of the coupons.

118. The Supreme Court of the United States proceeded to consider the negotiable character of the coupons and the nature of the obligation of the person liable to pay on the coupons. The Court held:-

"Each matured coupon upon a negotiable bond is a separable promise, distinct from the promises to pay the bond or other coupons, and gives rise to a separate cause of action. *Nesbitt Vs. Riverside Independent Dist.* 144 US 610 . In that case this court said (p.619[565]):

"Each matured coupon is a separable promise, and gives rise to a separate cause of action. It may be detached from the bond and sold by itself. Indeed, the title to several matured coupons of the same bond may be in as many different persons, and upon each a distinct and separate action be maintained. So, while the promises of the bond and of the coupons in the first instance are upon the same paper, and the coupons are of interest due upon the bond, yet the promise to pay the coupon is as distinct from that to pay the bond, as though the two promises were placed in different instruments, upon different paper."

Not only may a suit be maintained upon an unpaid coupon in advance of the maturity of the principal debt, but the holder of a coupon is entitled to recover interest thereon from its maturity. *Amy Vs. Dubuque* 98 U.S.470. The logical effect of these rulings is that when the interest evidenced by a coupon has become due and payable the demand based upon the promise contained in such coupon is no longer a mere incident of the principal indebtedness represented by the bond, but becomes really a principal obligation. Clearly, such would be the nature of the claim of one who, as owner of the coupons and not of the bonds, brought his action to enforce payment of the indebtedness evidenced by the coupons. So, also, before maturity of the bonds, their holder could still have sued upon the matured coupons as an independent indebtedness, and not as a mere accessory to a demand for a recovery of the face of the bonds. No good reason, therefore, exists for creating a distinction between such cases and the case at bar in which there is coupled with the demand to recover upon the coupons a demand for judgment upon the bonds. The confusion of thought, to which we alluded, in the case of *Brown Vs. Webster* 156 U.S.328, is also involved in the decision below, that is, the failure to distinguish between a principal and accessory to any other demand, but was in itself principal and primary."

119. From the above discussion, it is clear that the negotiability of the coupons and the transfer by deliver and endorsement and the post dated cheques are independently negotiable by the holder and the fact that the holder is the owner thereof cannot be disputed.

120. The statement of law in American jurisprudence is also to the same effect. In paragraph 56 Volume 12 American Jurisprudence IInd Edition, it is stated:-

"Interest coupons.

Interest coupons from private corporate bonds and public bonds, in the form in which they are generally drawn, are negotiable separately from the bond itself. It is not necessary that the holder of interest coupons own the bonds from which they are detached for the coupons to be negotiable.

To be negotiable the coupons must contain all the necessary elements of negotiability and so, for example, if they are not payable to order or bearer or do not contain other equivalent words, they are not negotiable. Moreover, to be negotiable the coupons must be so upon their face without reference to any other paper. But the fact that they are declared to be for interest on bonds specified by their numbers does not destroy their negotiability when separated from the bonds, or impair the title of one purchasing from another without production of the bonds. On the other hand, interest coupons not negotiable in form are not negotiable instruments when separated from the bonds, although the latter are themselves negotiable, and the purchaser of these detached instruments takes them subject to all defects in title.

Generally, until negotiated or used in some way, coupons serve no independent purpose, and while they are in the hands of the holder they remain mere incidents of the bonds and have no greater or other force or effect than the stipulation for the payment of interest contained in the bonds. However, it has been held that when the interest evidenced by a coupon has become due and payable, the demand based upon the promise contained in it is no longer a mere incident of the principal debt represented by the bond but itself becomes a principal obligation."

121. Referring to the transfer by way of delivery, it is stated in paragraph 58 of the 12 American Jurisprudence IInd Edition:

"Transfer by delivery.

Delivery effects negotiation of a negotiable public bond or coupon, or private corporate bond or coupon, payable to bearer. Delivery will also effect a negotiation of a negotiable public bond or coupon, or private corporate bond or coupon, payable to a certain person or bearer. Negotiable bonds are sometimes made payable to a designated person or his order and in such case are negotiated by indorsement and delivery.

It has been held that non-negotiable city bonds, even though payable to bearer,

are not transferable merely by delivery; title thereto can be derived only through the indorsement of the person from whom the consideration moved to the maker when issued. Similarly, registered bonds are not transferable merely by delivery and have been held to be transferable only by regular assignment on books of the obligor."

122. In Volume 11 Corpus Jurisdiction Secundum IIInd Edition the statement of law is found in paragraph 65. The same reads as under:-

"Interest coupons attached to negotiable bonds, when payable to order or to bearer at a time and place stated, are negotiable promissory notes, subject to the rules governing negotiable instruments, and when detached from the bond possess all the attributes of negotiable paper. Such interest coupons attached to bonds, even though they contain no provision that they are subject to separate negotiable; but until detached and separately negotiated they serve no independent purpose. On detachment, such coupons may be negotiated separately by simple delivery, provided they are payable to order or to bearer; and this rule applies after the bond itself has been paid and satisfied as well as before. Coupons once detached and negotiated cease to be mere incidents of the bond and become independent claims, unless they refer to the bonds for their terms and conditions. The mere fact that coupons are declared to be for interest on bonds specified by their numbers does not destroy their negotiability when separated from the bond, nor impair the title of one purchasing from another without production of the bond."

123. Dealing with the right of action, it is stated in paragraph 100 of Volume 11 Corpus Jurisdiction Secundum IIInd Edition:

"A negotiable coupon being governed by the rules pertaining to commercial paper in general may support a separate and independent action, and, although several coupons may be due at the time of the recovery on one, such recovery will not bar a suit on the others.

Where coupons are so drawn and executed that they may be separated from the bond and negotiated, an action may be maintained thereon by the owner without producing the bonds; nor is it necessary that he should own the bonds from which they were detached."

124. I may now refer to the transactions between the Bank and the respondents 2 & 3.

125. On the 17th of March, 1992, the respondents 2 & 3 wrote to the Bank, which has already been extracted, stating that they were offering the bonds and one interest warrant for sale. On the 17th of April, 1992, the Bank wrote to the second respondent informing:

"Please refer to my telephonic discussion with Mr.Sanjeev Malik of your office as per which we are selling you today 9% NHPC Tax Free Bonds, (Intt date 31/3 and 30/9), Face Value Rs.9,06,34,000/- today for Rs.6,40,05,892/- on an Ex-

Interest basis."

126. The Bank had clearly stated that the bonds had been sold on ex-interest basis. The word "ex interest", according to Mr.V.N.Koura, the learned senior counsel for the Bank, would mean without interest. The learned senior counsel, Mr.V.N.Koura, referred to the meaning given the legal dictionary and the same is as under:-

Ex-interest: In the language of stock exchanges, a bond or other interest-bearing security is said to be sold "ex-interest" when the seller reserves to himself the interest already accrued and payable (if any) or the interest accruing up to the next interest day."

127. Therefore, the Bank cannot now claim the money payable under the post dated cheques. The learned senior counsel, Mr.V.N.Koura, also explained the position relating to the meaning of "cum-dividend" and "ex-dividend". The meanings given in the legal dictionary of "cum-dividend" and "ex-dividend" are as under:-

"Cum Dividend: Means that when a share of stock is sold after a dividend is declared, the buyer has the right to the dividend, lit with dividend. See also Dividend (Cumulative dividend)

Ex dividend: A synonym for "without dividend." The buyer of a stock selling ex-dividend does not receive the recently declared dividend. Said of a stock at the time when the declared dividend becomes the property of the person who owned the stock on the record date. The payment date follows the ex-dividend date. When stock is sold ex-dividend, the seller, not the buyer, has the right to the next dividend which has been declared but not paid."

128. The learned senior counsel for the Bank, Mr.V.N.Koura, referred to para 58 of the Volume 11 Corpus Jurisdiction Secundum IInd Edition and submitted that the right to interest would depend upon the proper construction of the bond itself. The same reads as under:-

"The question of whether an award of interest may be made in an action on a bond is, in so far as the right is based on contract, determined by the proper construction of the bond itself, and interest coupons must be considered when construing a bond. In determining the liability on interest coupons attached to a bond, however, the bond, and not the coupons, controls the rights of the parties, since interest coupons in the hands of bondholders are mere incidents thereto, and have no greater effect than a stipulation in the bonds for the payment of interest."

129. The learned senior counsel for the Bank, Mr.V.N.Koura, referred to paragraph 59 of the Corpus Jurisdiction Secundum IInd Edition, Vol.11, wherein it is stated:-

"Unless irrevocable, a bond may be canceled or rescinded by the parties.

Except where the character of a bond is such as to be irrevocable, a bond may be canceled, rescinded, or revoked, following which action the bond is extinguished to all intents and purposes. A bond will be annulled by the cancellation of a contract which forms a part of the bond, unless the latter is excepted from the operation thereof. A mere agreement between the parties to cancel a bond without an actual cancellation, or a mere unexecuted testamentary direction for the destruction of the bond, will not have this effect; nor will a notice, not in conformity with the requirements of a provision Therefore in the bond, terminate the obligatio. A claim of release from a bond due to a promise by the obligee to look only to the land securing the bond for payment thereof, which land is already mortgaged to the obligee, is not enforceable because of the absence of consideration therefore."

130. In paragraph 65 of the Corpus Jurisdiction Secundum Vol.11, it is stated:-

"It has been held, however, that although a statute providing for the registration of bonds does not affect the negotiability of the coupons, it does not authorise the detachment of all coupons on bonds due some years in the future and give such coupons a separate status as negotiable instruments."

131. The statement of law does not represent the accurate position in law in the light of the judgments of the Supreme Court of the United States. The learned senior counsel for the Bank, Mr.V.N.Koura, referred to another part of the same paragraph, wherein it is stated:-

"Where coupons are subject to conditions or reservations in the bond or mortgage securing the same, affecting the time of payment, and not within the control of the holders, the coupons are deprived of the character of negotiable instruments, but where the reservation relates merely to procedure under the mortgage and does not prevent the bondholders from enforcing their general remedies at law for the collection of the obligation, the negotiability of the coupon is not affected. A provision in the coupons or mortgage securing the payment of the bonds that the coupons will be paid only on their presentation and surrender does not change their negotiable character."

132. The position in the instant case is entirely different and by its own conduct, the Bank itself had accepted the position. Therefore, the reliance on the above passage, which would depend upon so many other factors, would not, in any way, in my view, affect the rights of holders of interest warrants.

133. The learned senior counsel for the Bank, Mr.V.N.Koura, referred to yet another part in the same paragraph. The same reads as under:-

"In the absence of negotiable words, or language from which negotiability can be inferred, a bond coupon is not negotiable, in the absence of a statutory provision to the effect, even though the bond from which it has been severed itself contains negotiable words."

134. The statement of law is not relevant in the present case in view of the

terms of the contract between respondents 2 & 3 and the NHPC Ltd., as could be seen from the terms and conditions of the bonds. The learned senior counsel for the Bank, Mr. V.N. Koura, also referred to paragraph 71 of the Corpus Jurisdiction Secundum Vol.11, which reads as under:-

"Since interest coupons, if detached, are treated as negotiable instruments if they meet the requirements thereof, the rights and liabilities of the parties to such coupons are governed accordingly.

If interest coupons are negotiable in form and cut from the bonds they may be treated as negotiable securities, as already discussed in para 65, and, accordingly, presentment, protest, and notice to hold an indorser may be required. However, the rule is altogether different with regard to coupons allowed to remain attached to the bond, the coupons are mere incidents of the debt as long as they remain attached to the bond, and the same act which fixes the liability of the indorser for the debt equally fixes his liability for the interest, the payment of which is expressly stipulated for in the bond."

135. I am unable to appreciate the submission that this passage is of any assistance to the Court in deciding the point.

136. In the petition u/s 111 of the 1956, Act before the Company Law Board, the claim made by the Bank has now to be noticed. In paragraph 6.(e) of the petition it is stated:

"For the convenience of the holders of the said bonds, certain cheques, called interest warrants, which enabled collection of the interest due on said bonds on due dates were also issued and delivered to the first holders aforesaid of the said bonds, Mrs.Pramod Gupta and Mr.Sanjay Gupta (respondents Nos. 2 and 3 respectively). The said cheques/interest warrants were not intended to have any independent existence, and were intended on the transfer of said bonds to be endorsed by the holder to the extent not already encashed, and delivered to the purchaser to enable the purchaser to collect the interest due on the said bonds."

137. It is asserted that there is a covenant in the transaction itself for the delivery of interest warrants. In paragraph 6.(f) it is asserted that how the Bank omitted to take delivery of the interest warrants/post dated cheques. It is stated in paragraph 6.(g):

"In contravention of the said covenant and condition aforesaid of the said Bond Certificate, on the purchase aforesaid of the said bonds by the petitioner Bank, the said Mrs.Pramod Gupta and Mr.Sanjay Gupta (respondent Nos.2 and 3 respectively) delivered to the petitioner Bank, the said Bond Certificate signed/endorsed by them as transferors, together only with one cheque/interest warrant for the collection of the interest due on the said bonds up to March 31, 1992. They, however, omitted to deliver the cheques/interest warrants enabling the collection of interest on the said bonds due thereafter."

138. The Bank admitted that it transferred to Fairgrowth Financial Services

Limited the bonds and the one interest warrant. It is stated in paragraph 6.(h) of the petition u/s 111 of the 1956 Act:

"The petitioner in turn transferred the said bonds to the respondents No.4, Fairgrowth Financial Services Ltd., for valuable consideration on or about March 18, 1992 by delivering to the respondent No.4 the said Bond Certificate endorsed by respondents No.2 & 3 together with the said interest/warrant cheque entitling the holder to receive the interest becoming due on the said bonds on March 31, 1992."

139. If the case of the Bank could be accepted in law, the Bank should have stated that it purchased bonds and all the interest warrants from respondents 2 & 3 and it retained all the interest warrants and transferred only one interest warrant. That is not the case. What was purchased by the Bank was only the bonds and one interest warrant. The Bank had with-held the material facts and it had chosen to aver in paragraph 6.(i) that:

"The respondent No.4 thereafter transferred the said bonds to the respondent No.5, Fairgrowth Investments Limited by delivering the said Bond Certificate endorsed by the respondent Nos.2 & 3 together with the said interest warrant. The respondent No.5, Fairgrowth Investments Limited entered its name as transferee of the said bonds on the reverse of the said Bond Certificate and got the said bonds registered in its favor in the records of the respondent No.1 Corporation and on the reverse of the said bonds."

140. In paragraph 6.(j) of the petition u/s 111 of the 1956 Act, it is stated:

"Thereafter the respondent No.5, Fairgrowth Investments Limited transferred the said bonds to the respondent No.4, Fairgrowth Financial Services Limited by signing/endorsing on the reverse of the said Bond Certificate endorsed as aforesaid to the respondent No.4."

141. But the Bank had with-held the fact that the Fairgrowth Investments Limited had encased one interest warrant for Rs.40,78,530/-. Therefore, from these averments, it is clear that the Bank purchased the bonds and the one interest warrant and it transferred what it had purchased, to Fairgrowth Financial Services Limited and the Fairgrowth Financial Services Limited had transferred the same to the Fairgrowth Investments Limited. It is further stated in paragraph 17 of the petition u/s 111 of the 1956 Act:

"....since the original interest warrants which formed part of the said bonds and were deliverable with the said Bond Certificates, were not delivered by the vendor together with the said bonds certificate at the time of the original purchase of the said bonds from them."

142. This is obviously an averment made for the purpose of this case.

143. In paragraph 24.(b) of the petition u/s 111 of the 1956 Act, it is stated:-

"The petitioner Bank further submits that on transfer of the said bonds to the

petitioner, the respondents No.2 & 3 did not have any right to hold the interest warrants entitling the holder of the said bonds to collect the interest accruing due thereon after March 30, 1992 nor entitled them to collect the interest payable on the said bonds or any part thereof."

144. The Bank is guilty of suppression of material facts. If the Bank had purchased the bonds for the first time from Fairgrowth Financial Services Limited, one can understand, but what the Bank was purchasing only what had transferred by it to Fair Growth Financial Services Limited and what the Bank had purchased from the Fairgrowth Financial Services Limited was only the bonds with one interest warrant which had been encased by the Fairgrowth Investments Limited before it had sold the bonds to the Fairgrowth Financial Services Limited. What is stated in the appeal is as if the Bank had acted in a very casual way, and that the interest warrants were not delivered by respondents 2 & 3.

145. On the 10th of August, 1992, when the Bank wrote to the NHPC Ltd., five months after the contract when the Bank had purchased the bonds from Fairgrowth Financial Services Limited, the Bank had stated:

"Due to an oversight our Bank did not collect the entire interest warrants from them". The Bank has made

The Bank has made contradictory statements. In a magnitude of this nature, an institution like the Bank could not say that there was an oversight, it cannot at all be believed. The Bank is trying to approbate and reprobate. The Bank has not even chosen to explain in the appeal the effect of the contents of the letter dated 10.8.1992. Though the Bank had referred to the letter dated 28.9.1992 from NHPC Ltd. to the Bank, the Bank had not explained as to how the NHPC Ltd. was not justified in stating:

"In this connection, please note that our interest warrants are negotiable at par at any branch of Syndicate Bank and it is not possible for us to stop the payment of interest warrants."

The fact that the Bank did not send any reply to the above letter dated 28.9.1992 is suppressed by it.

146. Respondents 2 & 3 in their objections to the petition had submitted that the petitioner u/s 11 of the 1956 Act was not at all competent and it was liable to be dismissed. In paragraph 7 of their objections respondents 2 & 3 had explained their position. The same reads as under:-

"That the petition is mala fide and the predominant object of the petition to fraudulently and deceitfully grab the interest warrants in question which are negotiable and are held and possessed by these respondents which had not been sold/transferred to the petitioner and that too without any consideration. This Hon"ble Board has no jurisdiction to order the transfer of the interest warrants in question in favor of the petitioner to which it is not entitled and that too for no

consideration."

147. In the light of the provisions of Section 111 of the 1956 Act, in paragraph 8 of the objections, it is stated:-

"That the present petition does not lie and is not maintainable against these respondents who are bona fide holders in due course of the interest warrants in question. This Hon"ble Board does not have jurisdiction to issue a mandamus/mandatory injunction directing thee respondents to endorse, transfer, sell, assign the interest warrants in question owned and possessed by them and to give actual delivery thereof to the petitioner Bank. The jurisdiction u/s 111 of the Companies Act is limited only to the extent of rectification of register against a default or unnecessary delay made by a Company (herein the respondent No.1) to register the fact of any person (petitioner herein) having become a member of the said Company (respondent No.1), and not to determine the rights claims and interests of a third party vis-a-vis the holder of a bond. Even on the showing of the petitioner itself, these respondents are in actual physical possession of the interest warrants in question which neither had been endorsed in favor of the petitioner nor transferred and nor delivered to the petitioner company at any point of time. The petitioner, thus, has no locus standi to approach this Hon"ble Board u/s 111 of the Act."

148. In paragraph 13 of the objections, respondents 2 & 3 had also exposed the contradictory stand of the Bank and suppression of material facts by the Bank. The same reads as under:-

"That the petitioner is guilty of suppression of material facts and making false representations to this Hon"ble Board. It has not approached this Hon"ble Board with clean hands. It has deliberately not disclosed as to what was the contract between the petitioner and the respondents with regard to sale of bond in question. The documents relating to the contract of sale of bond in question and purchase thereof by the petitioner from these respondents have not been intentionally filed before this Hon"ble Board. Had the same been filed and so also the correspondence ensued between these respondents and the petitioner whereby thee respondents had claimed damages to the extent of about Rs.3 crores from the petitioner on the failure of the petitioner to transfer and sell this bond to these respondents who were entitled to exercise their option to purchase the bond back on 17.7.1992, this Hon"ble Board would neither entertain the petition and nor would grant any relief whatsoever to the petitioner.

The case of these respondents has always been and is that under the terms of the sale of the bond, these respondents did not sell, transfer or assign the interest warrant in question and that the sale of the bond was on "ex-interest warrant basis" and it was for this reason that on 17.3.1992, the bond having a face value of more than Rs.9 crores was sold for about Rs.Six crores seventy three lacs with only one interest warrant of more than Rs.40 lacs, which was payable and due on 31.3.1992 when the share market had a boom and share/

bonds prices were at high peak. It is pertinent to state that these respondents served a registered notice dated 17.7.1992 calling upon the petitioner bank to transfer and give actual delivery of the bond to them, but they failed to do so. Again by registered notice dated 20.7.1992, these respondents called upon the petitioner to transfer and give actual delivery of the bond in question to them or to their nominee purchaser within a period of 15 days from the receipt of the notice, but the petitioner again miserably failed to comply with the terms of the notice, and the demand made therein and became liable to pay damages of more than Rs.3 crores. The respondents' case and the false, fraudulent and mala fide stand of the petitioner which has not been disclosed before this Hon'ble Board shall be evident from the letters sent by these respondents and the letter/reply given by the petitioner enclosed herewith as annexures A,B,C and D."

149. The point relating to jurisdiction had been taken by respondents in paragraph 15 of their objections. The same reads as under:-

"The respondents, thus, humbly submit that this Hon'ble Board has no jurisdiction to go into the question of the terms of the contract of sale of bond and decide the rights between the parties relating to the interest warrants, which has no concern or nexus to the so-called rectification of the register of members between the petitioner and respondent No.1."

150. In its objections, the NHPC Ltd., did not touch on the interest warrants. In paragraph 1 of its objections, the NHPC Ltd. had stated:

"The petitioner sent to respondent No.1 the Certificate No.0619665 of 9% NHPC Bonds `B' Series for Face Value of Rs.9,06,34,000.00 along with the letter dated 24th June, 1992 which was received by respondent No.1 on 06th July, 1992. In that letter the petitioner informed the respondent No.1 that they had forwarded the said Bond Certificates duly endorsed by the holders, namely, M/s.Fairgrowth Investments Limited and asked the respondent No.1 to register the transfer in the books of respondent No.1. A copy of the letter dated 24th June, 1992 addressed by the petitioner to the respondent No.1 is enclosed as R-1."

151. From this, it is clear that the Bank had represented to the NHPC Ltd. that it had obtained the endorsement from Fairgrowth Investments Limited. That was not a correct representation. The Bank knew that Fairgrowth Financial Services had been declared as a notified person. But yet the Bank had represented to the NHPC Ltd. that the NHPC Ltd. had to register its name as holder of the bonds as Fair Growth Investments Limited has made endorsement in its favour.

152. In paragraph 2 of its objections, the NHPC Ltd. had stated that it wanted to confirm from the Fair Growth Investments Limited about the status of the said bonds and a telex message was sent by the NHPC Ltd on the 17th of July, 1992 to Fairgrowth Investments Limited. The Fairgrowth Investments Limited had informed the NHPC by its letter dated 17th of July, 1992 that the bonds had been sold on 31.3.1992 to Fairgrowth Financial Services Limited. The NHPC Ltd. had sent another fax message on the 21st of July, 1992 to the Fairgrowth

Investments Limited asking it to indicate specifically whether the said bonds were sold by the Fairgrowth Investments Limited to the Bank. In reply to this message, the Fairgrowth Investments Limited responded by its message dated 21.7.1992 stating that the bonds were sold to their associate M/s.Fairgrowth Financial Services Limited on 31.03.1992.

153. The NHPC Ltd. had further stated that it addressed a letter to the Delhi Stock Exchange, by its letter, dated 29.7.1992, asking for advice whether the transfer in favor of the Bank be effected. The NHPC Ltd. obtained a copy of the circular No.24/92 dated 16.7.1992, which contains the list of notified persons. In that list, M/s.Fairgrowth Financial Services Limited is mentioned as notified person. The NHPC Ltd. had sent a message to Fairgrowth Financial Services Limited on the 11th of August, 1992 asking it to confirm whether the said bonds were sold by it to M/s. ANZ Grindlays Bank. In reply thereto, the Fairgrowth Financial Services Limited informed the NHPC Ltd. that it had sold the bonds to the ANZ Grindlays Bank on the 18th of April, 1992. The Fairgrowth Financial Services Limited had also informed the NHPC Ltd. about the notification published by the Custodian on the 2nd of July, 1992 notifying M/s.Fairgrowth Financial Services Limited u/s 3(1) of the 1992 Act. This was by letter dated 20.8.1992. The stand of the Bank before the NHPC at that time was, as stated by the NHPC Ltd. in paragraph 10 of its objections dated 10.5.1993 to the petition filed by the Bank,:

"The petitioner in his letter dated 10th August, 1992 addressed to respondent No.1 informed that they had purchased the said bonds from M/s.Fairgrowth Financial Services Limited on 18th April, 1992 and not on March 31, 1992. In that letter they had contended that since the Fairgrowth Investments Limited which was not a notified party, there existed no restriction for the transfer of securities registered in the name of M/s.Fairgrowth Investments Limited. A copy of the letter dated 10th August, 1992 from the petitioner is enclosed as Annexure R-10."

154. It is only thereafter by letter dated 28.9.1992 the NHPC Ltd. had written to the Bank that any transfer could be effected only after the receipt of a confirmation from the Custodian. By letter dated 4.12.1992, the NHPC Ltd. had informed the Bank that it should obtain no objection certificate from the Custodian/Delhi Stock Exchange to facilitate transfer of bonds.

155. The NHPC Ltd. received the communication dated 11.11.1992 from the Office of the Custodian, Special Court, constituted under the 1992 Act, asking for details about the bonds, including the bonds held in the names of the notified persons as on 1.4.1991 and 1.4.1992 and as on the date of the letter. The NHPC Ltd. complied with the request by its letter dated 21.1.1993/2.2.1993. By letter dated 9.2.1993, the Custodian, Special Court, constituted under the 1991 Act, had informed the NHPC Ltd., "it would be prudent for the transferee to get orders of the Special Court before such transfer".

156. The NHPC had explained how the matter was projected by the Bank. In paragraph 16 of its objections, the NHPC Ltd. declined to comply with the request of the Bank for transferring and registering its name. The same reads as under:-

"It is clear from the above submission that there was a transaction whereby the said bonds were transferred from M/s.Fairgrowth Investments Limited to M/s.Fairgrowth Financial Services Limited without endorsement on bond certificate. Further, as seen from the photocopy of the relevant bond certificates lodged with the respondent No.1, no endorsement has been made in favor of M/s.Fairgrowth Financial Services Limited. However, by the admission of M/s.Fairgrowth Investments Limited, M/s.Fairgrowth Financial Services Limited and the petitioner, the bonds were transferred by Fairgrowth Investments Limited to M/s.Fairgrowth Financial Services Limited. A copy of the relevant bond certificate is attached as Annexure R-16. It may be relevant to point out here that the office of the Custodian, Special Court addressed a letter to the Company Secretary, Fairgrowth Investments Limited letter No.1211/Cus/Att/FFSL/NHPC/92(86) dated 24th December, '92 asking him to furnish details to the office of the Custodian, Special Courts the reason for not endorsing the securities in favor of M/s.Fairgrowth Financial Services Limited. A copy of the letter endorsed to the respondent No.1 is enclosed as Annexure R-17."

157. In paragraph 18 of its objections, the NHPC Ltd. stated:

"It may be seen from the above submission of the respondent No.1 that the said bonds have been transferred by Fairgrowth Investments Limited to a notified person, namely, M/s.Fairgrowth Services Limited and in terms of the provisions of the Special Courts Act the respondent No.1 is not in a position to effect the transfer of these bonds unless necessary no objection certificate is obtained by the petitioner from the office of the Custodian. Since the Special Courts (Trial of Offences Relating to Transaction in Securities) Act, 1992 has over-riding jurisdiction over any other law on the subject, the respondent No.1 humbly submits that this Bench has no jurisdiction to entertain any petition/application from the petitioner in regard to the transfer of the said bonds.

In view of the above, the respondent No.1 considers that the petitioner is knocking at the wrong door."

158. Section 111 of the 1956 Act reads as under:-

"Power to refuse registration and appeal against refusal

111. (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 of 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 the 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 transfer, 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.

(5) The Company Law Board, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order-

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) The Company Law Board, while acting under sub-section (5), may, at its discretion, make-

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the

allotment of bonus or rights shares.

(7) On any application under this section, the Company Law Board-

(a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.

(9) If default is made in giving effect to the orders of the Company Law Board under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to one thousand rupees, and with a further fine which may extend to one hundred rupees for every day after the first day after which the default continues.

(10) Every appeal or application to the Company Law Board under sub-section (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public company:

Provided that the company Law Board may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid, within such time as maybe allowed for the purpose by the order, on payment to the purchaser of the price paid by him Therefore or such other sum as the Company Law Board may determine to be a reasonable compensation for the right in all the circumstances of the case.

(12) If default is made in complying with any of the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company."

159. What we are concerned is the right of respondents 2 & 3 to post dated cheques and the claim made by the Bank. The Supreme Court in Anil Kumar Sawhney Vs. Gulshan Rai, had held that post dated cheques would be negotiable

instruments. In the light of the discussion above, the fact that the interest warrants are negotiable instruments, cannot at all be challenged by the Bank. The question before the Company Law Board was not on its power to adjudicate on the right but the point was, whether the Bank had any right in the interest warrants at any time? It is very important to notice that the notified person did not make any claim to the interest warrants. The notified person had allowed the Fairgrowth Investments Limited to encash only interest warrant which was payable on 31.3.1992, and thereafter the notified person had only the bonds. The Company Law Board had assumed that the notified person had made a claim to the interest warrants and, Therefore, the Company Law Board was of the view that the entire petition had to be transferred to the Special Court; that there was no vinculum Jurisdiction between respondents 2 & 3 and the notified person with reference to interest warrants is not disputed but what was contended by Mr.V.N.Kaura, the learned senior counsel, for the Bank was that there was a covenant with reference to transfer of interest warrants, and Therefore, the Bank was within its rights in making claim to the interest warrants. That is not at all acceptable in law.

160. The Supreme Court dealt with a similar situation in Kudremukh Iron Ore Co. Ltd. Vs. Fair growth Financial Services Ltd. and Another, . The facts, as noticed by the Supreme Court, are: It is interested to note that the Supreme Court had to deal with a transaction with Fairgrowth Financial Service Limited, the notified person. The appellant before the Supreme Court (M/s.Kudremukh Iron Ore Co.Ltd.) had deposited, in July, 1992, some money with the Andhra Bank Financial Services Limited under what are called inter-corporate deposits to the tune of about Rs.55 crores. When the appellant made a demand on the Andhra Bank Financial Service Limited, the reply was that it was not in a position to make payment as its funds were locked-up with the Fairgrowth Financial Services Limited, which was a notified person u/s 3(2) of the 1992 Act. It was not disputed before the Supreme Court that there was no privity of contract between the appellant and the Fairgrowth Financial Services Limited and yet the appellant before the Supreme Court moved the Special Court for a direction that the securities of the Fairgrowth Financial Service Limited in the hands of the custodian be directed to be sold and the proceeds disposed of in favor of the Andhra Bank Financial Services Limited and from out of those funds, the claim of the appellant could be paid over. The Special Court on the 26th of August, 1993, passed by the following order:-

"In my view, this Court can only adjudicate on claim in respect of properties belonging to notified parties. The petitioner's claim against the 2nd respondent does not fall within the purview of the jurisdiction of this Court. This Court has no jurisdiction over such claims or dispute. It is for the petitioners to adopt such proceedings as they maybe advised in the normal civil or criminal courts."

161. The Supreme Court dismissed the appeal holding:

"Indeed, section 11 of the Act exclusively empowers the Special Court to give

directions in the matter of the property of a notified person. The foundation for the jurisdiction u/s 11 to deal with any such property is that it should have a property under attachment. Section 3(3) of the Act provides that attachment of property, whether movable or immovable, or both, belonging to the notified person becomes effective simultaneously with the issue of the notification u/s 3(2) of the Act. It is with respect to this attached property that powers u/s 11 of the 'Act' could be exercised. We might, here, take a look at section 11 of the Act:

"11. Discharge of liabilities. - (1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment.

(2) The following liabilities shall be paid to discharged in full, as far as may be, in the order as under:-

(a) all revenues, taxes, cases and rates due from the persons notified by the Custodian under sub-section (2) of section 3 to the Central Government or any State Government or any local authority;

(b) all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund;

(c) any other liability as maybe specified by the Special Court from time to time."

The reasoning implicit in the order under appeal is that the power to order payment of amounts due from a "notified person" "to any bank or financial institution or mutual fund" presupposes and proceeds on the existence of obligations inter-se between the parties based on contractual, statutory or other legally recognised rights and that such vinculum Jurisdiction is absent as between the appellant on the one hand and the Fairgrowth Financial Services Limited on the other. What is further implicit is that the appellant which is a stranger to the consideration respecting transactions between the Andhra Bank Financial Services Ltd. and the Fairgrowth Financial Services Ltd., cannot seek to enforce the obligations thereunder. The remedy of the appellant against its debtor which itself is not a notified person, lies in the ordinary courts of the land. This reasoning is not shown to be unsound."

162. Respondents 2 & 3, the holders of the interest warrants/post dated cheques are owners thereof, and they are, in law, entitled to encash the same. The Bank has absolutely no rights over the interest warrants/post dated cheques.

163. The next question to be decided is: Whether the petition u/s 111 of the 1956 Act in respect of the bonds has to be transferred to the Special Court, as opined by the Company Law Board? Before I notice the relevant provisions of the 1992 Act, It is better to have a brief survey of the appeals from where we could have a clear picture of the above stand of the Bank in its petition u/s 111 of the 1956 Act.

164. In paragraph 6 (a) of the petition u/s 111 of the 1956 Act, it is stated:-

"On or about March 17, 1992, the petitioner purchased from Mrs.Pramod Gupta and Mr.Sanjay Gupta, (the respondents Nos.2 & 3 respectively) the original allottees and the joint holders there of, 9% NHPC 1987 (B- series) bonds issued by the respondent No.1 Corporation of a total face value of Rs.9,06,34,000/- (Rupees nine crores six lakhs thirty four thousand only) (hereinafter collectively called the "said bonds") for a total consideration of Rs.6,73,41,062/- (Rupees six crores seventy three lakhs forty one thousand sixty two only) covered by Bond Certificate No.0619665 (hereinafter called the said "Bond Certificate") issued by the respondent No.1 Corporation."

165. It is admitted in paragraph 6 (h) of the petition u/s 111 of the 1956 Act, which is already extracted, that the Bank had transferred the said bonds together with interest warrants/cheques to Fairgrowth Financial Services Limited on or about 18th of March, 1992. In paragraph 7 of the petition u/s 111 of the 1956 Act, it is stated:-

"On or about the April 16, 1992 the petitioner Bank purchased through M/s.Chandrakala & Co., a firm of authorised shares & securities dealer/broker, the said bonds cum interest accrued till the date of transaction, for a total consideration of Rs.7,95,25,748/- (Rupees seven crores ninety five lacs twenty five thousand seven hundred forty eight only). In this behalf, the said M/s.Chandrakala & Co. raised a transaction/contract note upon the petitioner Bank. A copy of their Contract Note is annexed hereto and marked as Annexure-P/1."

166. Therefore, there is a clear admission by the Bank that it had purchased the bonds from Fairgrowth Financial Services Limited on the 16th of April, 1992 for Rs.7.95,25,748. As I had noticed above, the case of the Bank in para 6 (j) of the petition u/s 111 of the 1956 Act is that the Fairgrowth Investments Limited transferred the bonds to Fairgrowth Financial Services Limited by signing an endorsement on the reverse of the bonds certificates, whereas there was no such endorsement by the Fairgrowth Investments Limited and assuming it to be so, the admitted case of the Bank is that the bonds were purchased from Fairgrowth Financial Services Limited. What was claimed in the petition u/s 111 of the 1956 Act before the Company Law Board by the Bank was:

"Since the said Bonds are transferable by endorsement and delivery of the said Bond Certificate, the purchase of the said bonds had been completed in favor of the petitioner Bank on or about April 18, 1992, and the petitioner Bank was Therefore entitled to get the bonds registered in its favor in the records of the respondent No.1 Corporation.

Accordingly the petitioner Bank lodged the said Bond Certificate with the respondent No.1 Corporation under the cover of its letter dated June 24, 1992 requesting, inter alia, that the transfer of the said bonds be registered in the name of the petitioner Bank. A copy of the said letter dated June 24, 1992 is annexed hereto and marked as Annexure-P/4.

The respondent No.1 Corporation after verifying the signature on the Bond Certificate mischievously informed the representative of the petitioner Bank that the signature of the transferor on the Bond Certificate did not tally with the specimen signature of the transferor in the respondent No.1 Corporation's record, and that the signatory should re-sign the endorsement. Pursuant thereto, the petitioner Bank got the Bond Certificate re-signed on behalf of the said Fairgrowth Investments Ltd. (respondent No.5), and returned the said re-signed Bond Certificate to the respondent No.1 Corporation on July 6, 1992 for registration of the transfer.

In reply to a fax message dated July 21, 1992 of the respondent No.1 Corporation, the said Fairgrowth Investments Ltd., (Respondent No.5) confirmed by a letter of the same date that the said bonds were sold by it to Fairgrowth Financial Services Ltd., (Respondent No.4) on March 31, 1992. A Copy of the said letter dated July 21, 1992 is annexed hereto and marked as Annexure P/5."

167. The grievance by the Bank against the NHPC Ltd. before the Company Law Board was:

"The petitioner Bank submits that the respondent No.1 Corporation has illegally, arbitrarily and erroneously failed to register the said bonds in favor of the petitioner Bank. Admittedly, the said bonds are negotiable by endorsement and delivery. The transaction of sale of the said bonds was complete on or about April 18, 1992 when the Bond Certificate duly endorsed in its favor was delivered to the petitioner and the full consideration in respect thereof was paid. In the circumstances, the said bonds became the property of the petitioner Bank on or about April 18, 1992, much prior to July 2, 1992 when a notification in respect of Fairgrowth Financial Services Ltd. (respondent No.4) was made under the Special Court (Trial of Offences Relating to transactions in Securities) Ordinance, 1992, and the said Ordinance had no application to the said bonds or the transaction in respect thereof by which the petitioner Bank had acquired the said bonds nor had any notification in respect to the said bonds or transaction in respect thereof in favor of the petitioner been made u/s 4 of the said Ordinance."

168. Therefore, the Bank wanted the registration of its name with the NHPC Limited with reference to the bonds which it had purchased from the Fairgrowth Financial Services Limited, the notified person.

169. It is now necessary for me to turn to the 1992 Act. On the 6th of June, 1992, an Ordinance was issued which later on became the Act. Section 2(c) of the 1992 Act defines securities, which reads as under:-

"(2)(c) "securities" includes-

(i) shares, scrips, stocks, bonds, debentures, debenture stock, units of the Unit Trust of India or any other mutual fund or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) Government securities; and

(iii) rights or interests in securities;"

170. Section 5 of the 1992 Act provides for the establishment of Special Court. The same reads as under:-

"5. Establishment of Special Court._ (1) The Central Government shall, by notification in the Official Gazette, establish a Court to be called the Special Court.

(2) The Special Court shall consist of a sitting Judge of the High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India."

171. Section 3 of the 1992 Act empowers the Government to appoint custodian, which reads as under:-

"3. Appointment and functions of Custodian._ (1) The Central Government may appoint one or more Custodians as it may deem fit for the purposes of this Act.

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before the 6th June, 1992, notify the name of such person in the Official Gazette.

(3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification.

(4) The property attached under sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

(5) The Custodian may take assistance of any person while exercising his powers or for discharging his duties under this section and section 4."

172. Section 4 of the 1992 Act gives power to the custodian to cancel the contracts entered into between the 1st of April, 1991 and the 6th of June, 1992, which are fraudulent. The provision reads as under:-

"4. Contracts entered into fraudulently may be cancelled._ (1) If the Custodian is satisfied, after such inquiry as he may think fit, that any contract or agreement entered into at any time after the 1st day of April, 1991 and on and before the 6th June, 1992 in relation to any property of the person notified under sub-section (2) of section 3 has been entered into fraudulently or to defeat the provisions of this Act, he may cancel such contract or agreement and on such cancellation such property shall stand attached under this Act:

Provided that no contract or agreement shall be cancelled except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(2) Any person aggrieved by a notification issued under subsection (2) of section

3 or any cancellation made under subsection (1) of section 4 or any other order made by the Custodian in exercise of the powers conferred on him u/s 3 or 4 may file a petition objecting to the same within thirty days of the assent to the Special Court (Trial of offences Relating to Transactions in Securities) Bill, 1992 by the President before the Special Court where such notification, cancellation or order has been issued before the date of assent to the Special Court (Trial of Offences Relating to Transactions in Securities) Bill, 1992 by the President and where such notification, cancellation or order has been issued on or after that date, within thirty days of the issuance of such notification, cancellation or order, as the case may be; and the Special Court after hearing the parties, may make such order as it deems fit."

173. Section 6 of the 1992 Act speaks of:

"6. Cognizance of cases by Special Court._ The Special Court shall take cognizance of or try such cases as are instituted before it or transferred to it as hereinafter provided."

174. Section 7 of the 1992 Act deals with the jurisdiction of the Special Courts, which reads as under:-

"7. Jurisdiction of Special Court._ Notwithstanding anything contained in any other law, any prosecution in respect of any offence referred to in sub-section (2) of section 3 shall be instituted only in the Special Court and any prosecution in respect of such offence pending in any court shall stand transferred to the Special Court."

175. Section 10 of the 1992 Act enables a party aggrieved by the order of the Special Court to prefer an appeal to the Supreme Court. The same reads as under:-

"10. Appeal- (1) Notwithstanding anything in the Code, an appeal shall lie from any judgment, sentence or order, not being interlocutory order, of the Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of the Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of any judgment, sentence or order of the Special Court: Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

176. Sections 11, 12, 13, 14 & 15 of the 1992 Act are not relevant for the present discussion. Section 9 of the 1992 Act lays down the procedure for the Special Court and power for the Special Court. The same reads as under:-

"9. Procedure and powers of Special Court._ (1) The Special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of

warrant cases before a Magistrate.

(2) Save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before the Special Court and for the purposes of the said provisions of the Code, the Special Court shall be deemed to be a Court of Sessions and shall have all the powers of a Court of Session, and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

(3) The Special Court may pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted.

(4) While dealing with any other matter brought before it, the Special Court may adopt such procedure as it may deem fit consistent with the principles of natural justice."

177. On the 25th of January, 1994, the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 was issued inserting Sections 9A and 9B in Section 9 of the principal Act. The same read as under:-

"9A. Jurisdiction, powers, authority and procedure of Special Court in civil matters._ (1) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, the Special Court shall exercise all such jurisdiction, powers and authority as were exercisable, immediately before such commencement, by any civil court in relation to any matter or claim-

(a) relating to any property standing attached under sub-section (3) of Section 3;

(b) arising out of transactions in securities entered into after the 1st day of April, 1991, and on or before the 6th day of June, 1992, in which a person notified under sub-section(2) of Section 3 is involved as a party, broker, intermediary or in any other manner.

(2) Every suit, claim or other legal proceeding (other than an appeal) pending before any court immediately before the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section (1), shall stand transferred on such commencement to the Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceeding, proceed to deal with it, so far as may be, in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage or de novo as the Special Court may deem fit.

(3) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, no Court other

than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1).

(4) While dealing with cases relating to any matter or claim under this section, the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and subject to the other provisions of this Act and of any rules, the Special Court shall have power to regulate its own procedure.

(5) Without prejudice to the other powers conferred under this Act, the Special Court shall have, for the purposes of discharging its functions under this section, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a case for default or deciding it ex parte;

(h) setting aside any order of dismissal of any case for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government under sub-section (1) of Section 14.

9B. Powers of the Special Court in arbitration matters._ (1) The Special Court shall have the jurisdiction and powers of a Court conferred under the Arbitration Act, 1940 to decide any question forming the subject matter of a reference relating to any matter or claim mentioned in sub-section (1) of Section 9A.

(2) Every suit or other proceeding (other than an appeal) in relation to any matter or claim referred to in sub-sec. (1) of Section 9A pending before any Court and governed by the Arbitration Act, 1940, immediately before the date of commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 shall stand transferred on that date to the Special Court.

178. The Company Law Board, by its order dated 15.3.1994, held:

"Accordingly in view of the fact that transaction in the Bonds in view of the involvement of a notified person, falls within the provisions of the Ordinance we are of the view that as per Section 2 of the Ordinance the proceedings before us automatically stand transferred to Special Court w.e.f. 25.1.94 and our jurisdiction is barred as provided u/s of the Ordinance which reads as follows:

"(3) On and from the commencement of the Special Court (Trial of Offences relating to Transactions in Securities) Amendment Ordinance, 1994, no court other than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1)."

Therefore, we are of the view that we have no jurisdiction at this point of time to proceed with this case."

179. The submission by the Bank before the Company Law Board, as noticed by the Board, is as under:-

"During these hearings a reference was made to certain submissions made on behalf of the Custodian before the Western Region Bench of the Company Law Board in certain other matter related to tainted securities. At this point we decided to call for clarification and advice from the Custodian as to whether the securities before us are already attached or are being attached. In reply the Custodian vide his letter No.3351/CUS/ANZ/CLB/Pet.93(1226) dated 20.1.94 categorically asserted that these Bonds became attached properties simultaneously with the issue of the Notification by the Custodian in 1992 and can be dealt with only as directed by the Special Court. In addition to this categorical assertion the Custodian also stated that the Special Court has constituted a Committee to examine transactions and file report in Special Court where the holders of the securities claim that the purchases were made prior to the issue of the Notification. As such according to him this case also appears to be within the purview of the Committee appointed by the Special Court. We made available to the parties, copies of this letter dated 20.1.94 of the Custodian to react on the same, during the hearing held on 24.1.94. Since the parties needed time to react we adjourned the case to 2nd Feb. 94. On this date however our attention was drawn to an ordinance promulgated by the President of India on 25th January, 1994, namely, the Special Court (Trial of Offences Relating to Transactions in Securities Act, Amendment Ordinance 1994 by which it appeared that our very jurisdiction to hear this case has been taken away."

180. The Company Law Board noticed the point, as argued on behalf of the Bank:

"We Therefore asked the parties to argue this first. Both the parties agreed to study the Ordinance and present their views and accordingly, we decided to hear them on 4th February, 1994. On this date, Shri V.N. Koura, Advocate, for the petitioner stated that as per the new Section 9A(2) introduced by clause 3 of the Ordinance, all suits, claims and other legal proceedings pending before any Court before the commencement of the Ordinance relating to securities, arising out of

the transactions entered into between 1st April, 1991 and 6th June, 1992 in which a notified person is involved as a party/broker/intermediary or in any other manner, the entire proceedings stand transferred to the Special Court, on coming into force of the Ordinance. According to him the jurisdiction of the Company Law Board has been completely withdrawn with regard to the matter relating to these transactions as respondent No.4, Fairgrowth Financial Services Ltd. is a notified person. Hence the present proceedings before the Company Law Board including the main petition has to be transferred to the Special Court."

181. In spite of this in Co.A.6/94, the Bank has taken the plea that the Company Law Board is not a Court and, Therefore, the proceedings did not stand transferred to the Special Court. In ground No.K of the Co.A.6/94, it is stated:

"BECAUSE the Company Law Board misconstrued and misunderstood the arguments and contentions on behalf of the appellant. The contentions on behalf of the appellant was that the Company Law Board while exercising jurisdiction u/s 111 of the Companies Act, 1956 was not a "Civil Court" and Therefore, the provisions of the said Amendment Ordinance did not effect in any manner it's jurisdiction to try, entertain and adjudicate the said petition. If, however, the Company Law Board found that it was a "Court" exercising powers of a "Civil Court", only then the said petition would stand transferred under and by virtue of Clause 3 of the Ordinance. Without deciding whether it is a "Court", exercising powers of a "Civil Court", the Hon'ble Company Law Board has held that the petition stood transferred."

182. From this, it could be seen that the Bank would not challenge the order of the Company Law Board if the Court is of the view that the Company Law Board is a Court within the meaning of the 1992 Act. This was squarely answered by the Supreme Court in Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others, . The facts, as noticed by the Supreme Court are:

"The Canara Bank (the appellant) had made an application before the CLB u/s 111 of the Companies Act seeking relief against the Nuclear Power Corporation of India Ltd. (the first respondent), which had refused to register in its books in the name of the Canara Bank bonds of the Nuclear Power Corporation purchased by the Canara Bank. The Standard Chartered Bank (the fourth respondent) had also claimed ownership of the said bonds. The Canara Bank alleged that it had acquired the said bonds from the Andhra Bank Financial Services Ltd. (the third respondent) through one Hiten P.Dalal is a person notified under the provisions of Section 3(2) of the Special Court Act and was, as the application of the Canara Bank before the CLB showed, involved as a broker in the transaction relating to the said bonds. The application of the Canara Bank was pending disposal before the CLB when, on 25th January, 1994, the Special Court Act was amended by the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994, and Section 9-A was introduced. The Canara Bank stood transferred to the Special Court by virtue of the provisions of Section 9-A(2) of the Special Court Act. The Standard Chartered Bank (Stanchart)

contended that the CLB retained the jurisdiction to deal with the application. The CLB held that it was not a court within the meaning of the Companies Act nor was it a civil court."

183. The Supreme Court held:

"Now, u/s 111 of the Companies Act as amended with effect from 31st May, 1991, the CLB performs the functions that were Therefore performed by courts of civil judicature u/s 155. It is empowered to make orders directing rectification of the company register, as to damages, costs and incidental and consequential orders. It may decide any question relating to the title of any person who is a party before it to have his name entered upon the company's register; and any question which it is necessary or expedient to decide. It may make interim orders. Failure to comply with any order visits the company with a fine. In regard to all these matters it has exclusive jurisdiction (except under the provisions of the Special Court Act, which is the issue before us). In exercising its function u/s 111 the CLR must, and does, act judicially. Its orders are appealable. The CLR, further, is a permanent body constituted under a statute. It is difficult to see how it can be said to be anything other than a court, particularly for the purposes of Section 9A of the Special Act."

184. Therefore, it is no longer open to the Bank to contend that the Company Law Board is not a Court within the meaning of the 1992 Act.

185. The Supreme Court again had to consider the scope of the provisions of the 1992 Act and 1994 Act in B.O.I. Finance Ltd. Vs. Custodian and Others, . The facts relevant to be noticed for the present discussion, as noticed by the Supreme Court, are:

"The appellant banks had prior to 6th June, 1992, entered into contracts with different brokers for the purchase and sale of certain securities which were not listed on any stock exchange. For the purpose of this case these contracts have been regarded as ready-forward transactions or buy-back transactions. The parties are agreed, and it is on this basis that the High Court also proceeded, that the nature of such a transaction is that it consists of two inter-connected legs, namely, the first or the ready leg, consisting of purchase or sale of certain securities at a specified price, and the second or forward leg, consisting of the sale or purchase of the same or similar securities at a latter date at a price determined on the first date. Such readyforward transactions have, in most cases, been entered into either by execution of a single document or by execution of two documents contemporaneously, one representing the first or ready leg and the other the forward or second leg. On such contracts being entered into the ready leg of the transactions were completed with the appellants paying the agreed price and receiving the delivery of the securities which were agreed to be purchased.

Before the forward leg of the transactions could be completed, a Special Court (Trial of Offences relating to transactions in securities) Ordinance 1992 was

issued on 6.6.1992 which was subsequently replaced by the Act.

186. On the initiation of proceedings, it is observed by the Supreme Court:-

"The custodian filed applications before the Special Court to the effect that the above mentioned contracts entered into between the banks and the notified persons were void. It was contended that such ready-forward transactions were illegal under the provisions of the Banking Regulation Act 1949 and the Securities Regulation Act 1956. It was, Therefore, contended that as the contracts were void those securities which had been sold to the appellants in the ready leg continued to be, in law, the properties of the notified persons on the date they were so notified and the same stood attached u/s 3(3) of the Act. The applications required the Special Court to direct the appellant banks to return the said securities. Similar applications were also filed, subsequently, by Shri Harshad Mehta one of the notified parties, with whom such transactions had been entered into by some other appellant banks.

187. Referring the decision of the Special Court, the Supreme Court held:

"The Special Court heard the applications only on the points of law without going into the facts of any case. The case proceeded on the assumption that the appellants had entered into ready-forward transactions. It was accepted by the parties before the Special Court that the ready-forward transaction (or as sometimes described as a buy-back transaction) had four ingredients; (i) there must be a present sale or purchase with the commitment to repurchase or resale in future; (ii) the contract must be between the same parties; (iii) it must be in respect of some kind of securities and for the same quantum of securities and; (iv) the transaction must be entered into on the same day or contemporaneously and the price of resale and repurchase would be fixed at the stage of first leg itself.

The Special Court by a common judgment proceeded to decide the general questions of law which arose by regarding the transactions in question to be ready-forward transactions. It took note of the concession on behalf of the counsel for the Custodian that if a transfer had already taken place prior to the date of the notification then the concerned property could not be properly regarded as belonging to the notified persons and would not stand attached. It allowed the applications of the respondents holding that the circulars issued under the Banking Act were binding and, since the transactions were contrary thereto, the same were illegal and void in respect of the third parties. It rejected the contention that the contract was severable and that the first leg was not hit by the illegality. It further came to the conclusion that the contracts were also illegal under the provisions of the Securities Regulation Act, 1956 and the notification issued u/s 16 thereof. It also came to the conclusion that the principles of "in pari delicto" did not come into play in the present case as the Custodian was not making any claim in the applications but was merely bringing to the attention of the court the fact that third parties were in possession of

properties which stood attached under the provisions of Act of 1992. The fact that the Custodian had not exercised any power u/s 4 of the Special Courts Act, in respect of these transactions, was also taken note of."

188. The Supreme Court dealt with the question whether the ready-forward transactions are severable. The Supreme Court observed:

"We will first deal with the submission that the agreements in question were severable and the illegality attached to the forward leg cannot affect the ready leg of the transaction."

189. Dealing with this aspect, the Supreme Court noticed the submissions and expressed the view:

"In the present case also some of the banks which had purchased the securities had sold them. There was, at no point of time, any stipulation between the parties that the banks could not trade in the securities which have been purchased by them. The obligation to re-sell the securities to the notified person, in the forward leg of the agreement could be fulfilled by the purchase by the appellants of the securities from the market and then to sell them to the notified persons, in order to complete the forward leg. The trading in the securities purchased by the banks in the ready leg was not in conflict with any law. The appellants were free to deal with them. This would show that with the first or the forward leg of the transaction being completed the banks had become the absolute owners of the said securities and they could deal with them in any manner in which they liked. There was nothing in the terms of ready-forward transaction which prohibited the banks, if they had sold the securities, from purchasing the securities of the same value from the market and selling the same to the broker in order to complete the second or the forward leg of the transaction. This will itself show that the two legs of the transaction are severable.

It was contended by Mr. Setalvad that being a composite contract there can be no severance of the same. But the question of severance will arise only in the case of a composite agreement consisting of reciprocal promises. It is only in such a case that the court has to see whether the contract is such that the illegal or void part of the transaction can be severed. This is clearly evident from the decision in the case of *Ram Sarup Vs. Mussumat Bela and Ors.* (Vol. XI Indian Appeals 44). There the Privy Council dealt with a case where a person - Hearsey - had gifted certain property owned by him to his second wife, generally called Vilayati Begum, and her three children on the condition of the wife obeying her husband and the children remaining faithful to their religion. There were decrees obtained by the predecessor in interest of the appellant against the said Hearsey. In execution thereof the transfer of the aforesaid property by Hearsey was inter alias challenged by suits being instituted by the decree holder challenging the gift by Hearsey on the ground that the said transaction was invalidated by the immorality of the consideration. If the transaction was invalidated then the

property would have continued to belong to Hearsay and would have been available in order to satisfy the decree against him. It was contended before the Privy Council that by reason of Hearsay's descent and religion the case was to be governed by rules of English law and that the Begum could not be his lawful wife; that the stipulation as to her continuing to act as his wife was immoral; though she was under the Mohammedan law, which allowed sexual relations forbidden to Christians; and that the gift was so thoroughly vitiated as to leave Hearsay, the grantor, still the owner of the property in such a sense that the plaintiff could treat it as his right, title and interest liable to be sold under an attachment. While upholding the decision of the courts below in treating the gift to the Begum as resting on the valid and moral considerations, it was observed by the Privy Council as follows:-

"Their Lordships are of opinion that the gift is in fact unconditional, because, as it was complete at the time when the actual transfer took place the parties could not afterwards import a condition; and the petition must be treated as inefficacious for that purpose. But even if it were otherwise - assuming a condition, and an immoral condition it would be the condition that is immoral and not the consideration; and then the case would fall under the general rule of law that a gift to which an immoral condition is attached remains a good gift, while the condition is void."

In the case of a ready-forward contract the stipulation to retransfer the securities, on a later date, can only be regarded as condition precedent and it is only this part or condition which will fail."

190. The Supreme Court ultimately held:

"It is not possible to accept the contention of Mr. Setalvad that severing the agreements into two parts would amount to re-writing or re-arranging the contract. We are here dealing with a case where there was one agreement, but which envisaged two sale transactions. Execution of each transaction envisaged the transfer of title in the securities. The valid part (the ready leg) of the transaction has been completed while the invalid part (forward leg) has to be ignored."

191. The Supreme Court concluded:

"The ready forward contract is severable into two parts, namely, the ready leg and the forward leg. The ready leg of the transaction having been completed, the forward leg, which alone is illegal, has to be ignored."

With the ready leg having been performed the illegality of the forward leg contained in the agreements cannot affect the transfers which had already taken place."

192. The Supreme Court set aside the judgment of the Special Court which is reported in (Vol.81 1994) CC 508. Therefore, the Bank cannot make any claim u/s 111 of the 1956 Act which it had not purchased from the notified person.

Consequently, the question of transfer of petition u/s 111 of the 1956 Act with reference to the interest warrants would not at all arise for consideration. With reference to the interest warrants, the petition u/s 111 of the 1956 Act by the Bank was not at all competent. The Company Law Board has absolutely no jurisdiction to pass the order dated 26.8.1993 which is impugned in Co.A.27/93. The observation of the Board that this issue had become infructuous is not sustainable in law.

193. In view of the legal position and the facts and circumstances, I hold that:

1. The Bank is not entitled to make any claim to the interest warrants/post dated cheques issued by the NHPC Ltd. and held by respondents 2 & 3, as claimed by it in petition u/s 111 of the 1956 Act before the Company Law Board.

2. The petition filed by the Bank u/s 111 of the 1956 Act with reference to the bonds only, stands transferred to the Special Court under the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992 and amended in 1994.

3. The Co.A.6/94 filed by the Bank u/s 111 of the 1956 Act stands dismissed.

4. Respondents 2 & 3, who are the holders/owners of the interest warrants/post dated cheques issued by the NHPC Ltd., are entitled to encash all the interest warrants.

5. The Company Law Board has no jurisdiction to deal with the rights with reference to the interest warrants.

6. The question relating to transfer of the proceedings relating to interest warrants to the Special Court does not arise as respondents 2 & 3 are the owners, and the notified person did not claim any interest and has not claimed any interest therein.

7. Co.A.27/93 filed by respondents 2 & 3 is allowed and the appellants are entitled to the reliefs prayed for by them in the appeal. The order of the Company Law Board dated 26.8.1993 stands set aside.

8. Co.A.8/94 is allowed with reference to the interest warrants/post dated cheques held by respondents 2 & 3. The order of the Company Law Board, to this extent, stands set aside.

9. Respondents 2 & 3 are entitled to have the money deposited in this Court.

194. Accordingly, Co.A.27/93 and Co.A.8/94 are allowed and the Co.A.6/94 filed by the Bank is dismissed.

195. The Registry shall pay the amount, lying in this Court in the shape of FDRs to respondent No.2 (Smt.Pramod Gupta) and respondent No.3 (Shri Sanjay Gupta) jointly along with up to date interest accrued thereon forthwith.

196. There shall be no order as to costs.