

(1978) 12 CAL CK 0012

In the Calcutta High Court

Case No : Company Petition No's. 204, 205 and 206 of 1973

Turner Morrison and Co. Ltd.

APPELLANT

Vs

Shalimar Tar Products (1935) Ltd. and Others

RESPONDENT

Date of Decision : 06-12-1978

Acts Referred:

Companies Act, 1956 — Section 155

Securities Contracts (Regulation) Act, 1956 — Section 13

Citation : (1980) 50 CompCas 296

Hon'ble Judges : R. Bhattacharya, J

Bench : Single Bench

Advocate : Mukherjee, for the Appellant; D.K. Chatterjee, for respondent No. 1, Roy, for respondent No. 2, Sen, for respondent No. 4, Nag, for respondent No. 5, Mitter and John, for respondents Nos. 11 and 13, for the Respondent

Judgement

R. Bhattacharya, J.—These three applications have been filed under Section" 155 of the Companies Act, 1956, by Turner Morrison & Co. Ltd. (hereinafter called the petitioner-company) against the respondents, Shalimar Tar Products Ltd., Angelo Brothers Ltd., Lodna Colliery Co. (1920) Ltd., Ganapat Rai & Sons (1946) Ltd., Metal Craft (India) Ltd., Haridas Mundhra, Vijay Mundhra and several other persons. Respondent No. 1, Shalimar Tar Products (1935) Ltd., respondent No. 2, Angelo Brothers Ltd., respondent No. 3, Lodna Collieries Go. (1920) Ltd., respondent No. 4, Ganapat Rai & Sons (1946) Pvt. Ltd., and respondent No. 5, Metal Craft (India) Ltd., are hereinafter described respectively as Shalimar Tar, Angelo Brothers, Lodna Colliery, Ganapat Rai & Sons and Metal Craft. The three separate applications are considered and heard together as there are common questions of fact and law.

2. The case of the petitioner-company may be briefly stated. The petitioner-company is one limited by shares duly incorporated, under the provisions of the Indian Companies Act, as far back as in the year 1913, The authorised, subscribed and paid-up capital of the petitioner-company is Rs. 45,00,000 divided into 4,500 ordinary shares of Rs. 1,000 each. Out of the said shares,

2,283 are registered in the name of Hungerford Investment Trust Ltd., 2,199 in the name of British India Corporation Ltd., 3 in the name of Haridas Mundhra and 3 each in the names of W.H.J. Christie, L.W. Balcaomb, A.H. Hume, D.M. Jafrey and C.N. Rodewald. Subsidiary and controlled companies under the petitioner-company are Shalimar Tar, Angelo Brothers, Lodna Colliery, Smith Stanistreet & Co. Ltd., Shalimar Works Ltd. and two other companies. These companies were controlled by the directors of the petitioner-company. Shalimar Tar, Angelo Brothers and Lodna Colliery were organised and incorporated by the directors of the petitioner-company and the petitioner was appointed their managing agent. These companies were undertakings of the petitioner-company and were treated as the departments of the petitioner. The petitioner-company was providing finances, loans and guarantees for loans advanced by the banks in respect of the three companies, namely, Shalimar Tar, Angelo Brothers and Lodna Colliery. These three companies were profitable and had large reserves prior to the taking over of control of the companies by Haridas Mundhra and his men. By an injunction order passed in Suit No. 600 of 1961, Haridas Mundhra got control over the petitioner-company with effect from 25th of February, 1964, and thereafter he kept his nominee-directors working as his tools in the company and its subsidiaries. It has been alleged that Haridas Mundhra placed his men and nominees in the board of directors of the petitioner-company and those nominees and directors acted at the instance of Haridas Mundhra for the personal interest of the latter. The injunction and the decree passed in Suit No. 600 of 1961 on February 25, 1964, was challenged by Hungerford Investment Trust Ltd., but without success and the matter went to the Supreme Court in Civil Appeal No. 488 of 1971. Haridas Mundhra, according to the petitioner, manipulated a fictitious suit on false allegation being Suit No. 2005 of 1965 in this court in the name of the petitioner-company as plaintiff and made a claim for Rs. 1,27,67,052 against the majority shareholder, Hungerford Investment Trust Ltd., and claimed a lien on 51% shares of the petitioner, owned by the said Hungerford Investment Trust Ltd. The suit (No. 2005 of 1965) was dismissed in 1968 and the appeal against that decision was also dismissed by this court in the Appellate Side in 1969. Against that decision an appeal was taken to the Supreme Court being Civil Appeal No. 1223 of 1970. The appeal was heard in February, 1972, and was dismissed by a judgment delivered on March 9, 1972, reported as Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd., . Both the appeals, namely, Appeal No. 488 and Appeal No. 1223, were heard from 8th February to 24th February 1972. The Supreme Court rescinded the decree in Suit No. 600 of 1961 and dismissed the Appeal No. 1223 of 1970. Consequently the injunction order, giving voting rights of 51% shares to Haridas Mundhra, was vacated and the majority shareholders became entitled to voting rights in respect of 51% shares. On an application by the majority shareholders, the Central Govt. called an annual general meeting in July, 1972 and new directors were elected in the said meeting. Against that decision of the Central Govt., Haridas Mundhra filed a writ petition challenging its validity and the said Writ Petition No. 248 of 1972 was dismissed on September 25, 1972. At the end of September, 1972,

however, the elected members of the petitioner-company took over the control of the management.

3. The case of the petitioner-company is that Haridas Mundhra when he realised, during the argument of the appeals before the Supreme Court in February 1972, that the view of the court was against him and that his control over the petitioner-company would be lost, started making attempts to undermine the financial condition of the petitioner-company and wanted to take out the shares of the company by showing false sales of those shares at a rate much below the market rate, through the directors of the company who were tools in his hands and that the sales were shown to have been made in favour of the defendants Nos. 4 and 5 through his men, relations and friends with his own money practically benami. The shares were sold in respect of the respondents Nos. 1, 2 and 3, namely, Shalimar Tar, Angelo Brothers and Lodna Colliery. The alleged sales in the names of respondents Nos. 4 and 5, according to the petitioner-company, were illegal, mala fide, ultra vires and they were sham transactions. It has been alleged that due to this transfer of shares, damage was done to the said respondents as well as to the petitioner-company. In November, 1967, Hungerford Investment Trust Ltd., the majority shareholders, filed a petition before this court on the allegation of oppression and gross mismanagement. The said petition was registered as No. 274 of 1967. It was dismissed in June, 1970, and against that dismissal order, the majority shareholder, Hungerford Investment Trust Ltd., filed appeals and one of them was numbered as Appeal No. 258 of 1970. After the Supreme Court judgment in March, 1972 [(see *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, as already mentioned, an application was filed in Appeal No. 258 for the removal of the board of directors of respondents Nos. 1, 2 and 3 and the Appeal Court removed the board of directors. The share capital of Shalimar Tar is Rs. 43,64,400 divided into 43,644 ordinary shares of Rs. 100 each. Of these shares, the petitioner-company owns 27,950 shares and this was registered in the books of Shalimar Tar up to 10th March, 1972. The total subscribed share capital of Angelo Brothers is Rs. 45,00,000 divided into 4,50,000 ordinary shares of Rs. 10 each. Out of these shares, the petitioner owns 1,43,625 shares and the same stood registered in the name of the petitioner in the share register of the respondent No. 2 up to March 13, 1972. The total share capital of Lodna Colliery is Rs. 87,00,000 divided into 8,70,000 ordinary shares of Rs. 10 each. The petitioner is the owner of 4,64,940 shares, and they were registered in the share register of respondent No. 3 up to March 17, 1972. According to the petitioner the respondents Nos. 1, 2 and 3 were the best subsidiary companies of the petitioner which yielded profit and had large reserves before Haridas Mundhra assumed control over the petitioner-company and its subsidiary companies after the 25th of February, 1964.

4. The grievance of the petitioner-company is that after the delivery of judgment on March 9, 1972, against him, (in *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*,), Haridas Mundhra, through the directors of the petitioner-

company who were his nominees and tools in his hands, manipulated the purported sales and transfers of the shares of the petitioner-company in the respondent-companies Nos. 1, 2 and 3 to the names of respondents Nos. 4 and 5 and got the name of the petitioner-company removed from the share registers of respondents Nos. 1, 2 and 3. These bogus, sham and benami sales were mala fide and illegal and were made for the benefit of Haridas Mundhra and his son, V.K. Mundhra. For the purpose of showing that the sales were bona fide, certain fictitious and mala fide resolutions were written out as the minutes of meetings of the board of directors of the petitioner-company. According to the petitioner, these resolutions were not genuine and they were manipulated after the judgments of the Supreme Court. At the relevant time the directors of the petitioner-company were B.P. Sinha, respondent No. 8, B.P. Moody who died in March 7, 1972, and V.K. Mundhra, respondent No. 7, who is the son of Haridas Mundhra, respondent No. 6. During this relevant time again when the sales of the shares were manipulated and the transfers were illegally and mala fide sanctioned, the directors of respondent No. 1 (Shalimar Tar) were A.M. Ramakrishnan (respondent No. 9), the Chief Executive of the petitioner-company R.C. Rakshit (respondent No. 10), an employee of Angelo Brothers (respondent No. 2) and P.N. Hunda (respondent No. 12), an employee of Angelo Brothers. The directors of respondent No. 2 (Angelo Brothers) were B.P. Sinha, V.K. Mundhra, A.M. Ramakrishnan, K.M. Shrivastava, secretary of the petitioner-company, and George Philip, Chief Executive of respondent No. 1. Respondent No. 3 (Lodna Colliery) at that time had B.P. Sinha, B.P. Moody, Balwant Singh, respondent No. 13, an employee of the petitioner-company, subsequently transferred to respondent No. 1 as its Chief Executive and to Lodna Colliery as its constituted attorney and then as director thereof, A.M. Ramakrishnan and P.N. Hunda.

5. According to the petitioner-company, although the sale transactions were completed according to the resolution dated February 15, 1972, they were not completed as stated and the resolution was, never acted upon. According to the petitioner, the resolution was either manufactured subsequently or was not given effect to. According to the Security Contracts Regulation Act, 1956, the contracts for sale or the sales of the shares were illegal, ineffective and void as they were not made through or with any member of the Calcutta Stock Exchange. The purported sales were at a gross undervalue and highly detrimental to the interest of the petitioner-company. It has been alleged by the petitioner that respondents Nos. 6 to 15 who were acting as directors of the petitioner-company and/or of respondents Nos. 1, 2 and 3 held a fiduciary position in the nature of trustees for the benefit of the petitioner-company, but they were acting in breach of trust. According to the allegation of the petitioner-company only on April 14, 1972, the majority shareholder, Hungerford Investment Trust Ltd., for the first time came to know of the purported sale transactions and immediately the said transactions were challenged. The resolution passed on February 15, 1972, was got up and there was no such contract or sale of transfers. There was no occasion for sale of

the shares of the petitioner in the respondent-companies Nos. 1, 2 and 3. The resolution passed on January 14, 1972, was also not genuine. There was no offer for sale or acceptance with regard to the disputed sales of shares. The financial condition of the respondent-companies did not require the sale of the shares. Respondent Nos. 4 and 5 were not financially sound and they had no sufficient money to purchase the shares. In the petition, the petitioner-company, besides the main allegations challenging the validity and genuineness of the sales of the shares in the subsidiary companies, have stated facts in support of the allegations made. It is not necessary at this stage to refer to all these facts. The petitioner-company says that the transactions of purported sales and the purported resolution sanctioning the purported transfers are illegal, void, ultra vires and mala fide and prays that the sales of shares be declared illegal and that the shares registered in the books of respondents Nos. 1, 2 and 3 be rectified by removing the names of respondents Nos. 4 and 5 from the relevant registers and by restoring the name of the petitioner-company as the owner of the relevant shares.

6. Some of the respondents filed affidavits-in-opposition in reply to the petitions. Only four had contested the claim of the petitioner-company by filing affidavits-in-opposition challenging the material allegations made by the petitioner-company. Hariram Lohariwala swore an affidavit on behalf of Ganapat Rai & Sons challenging the allegations of the petitioner. It has been alleged that Ganapat Rai & Sons is not concerned with Haridas Mundhra. It has been asserted in the affidavit that there were bona fide purchases of the shares of the petitioner-company in the respondent-companies Nos. 1 and 2 by Ganapat Rai & Sons for consideration. The respondent No. 4 offered for the purchases of the shares of the petitioner-company in the respondent-companies Nos. 1 and 2 and the said offer was accepted. The shares in respondent No. 1 were not quoted in the Stock Exchange and considering the financial position of the company the rate offered was considered reasonable. In view of the heavy liability of respondent No. 1 and as it was a losing concern, the price of Rs. 15 per share was considered reasonable. It has been stated in the affidavit that the valuation was corroborated by M/s. S. S. Batliboi & Co., Chartered Accountants. The purchase of the share was bona fide and for valuable consideration. On March 7, 1972, the purchase money was paid in respect of 22,838 shares in respondent No. 1 and on March 8, 1972, money was paid for 5,112 shares. Regarding the shares in respondent No. 2 it has been stated that the purchase was a bona fide one for valuable consideration. Some money was paid on March 9, 1972, and the balance was paid on March 10, 1972. All the shares were duly registered. That the respondents Nos. 1 and 2 were subsidiaries or departments of the petitioner-company was not admitted. That Haridas Mundhra had anything to do with the transfer of holdings of the petitioner in respondents Nos. 1 and 2 has been denied. It has been denied that the sales were benami for the benefit of Haridas Mundhra or his son, V.K. Mundra, or any other person. The case of the petitioner-company that the board's resolutions already mentioned were manipulated and

not genuine have not been admitted. The petitioner's allegation that the sale transactions were not completed and that the resolutions passed were not. acted upon have also been denied. All the material allegations against respondent No. 4 have also been challenged as false. It has also been denied that V.K. Mundhra acted as if the said offer of respondent No. 4 have been accepted. It has also been stated that the purchases of the shares in respondents Nos. 1 and, 2 by respondent No. 4 were legal and according to law. It has been asserted in the affidavit that the shares were delivered to respondent No. 4 after the payment of the price thereof. It has been stated that respondent No. 4 became the owner of the shares purchased by it and the petitioner- company has no right or interest therein. That Dhirajmal Gupta or Omrao Singh Gupta was kept as director in Lodna Colliery and Shalimar Works Ltd. has been denied. That Haridas Mundhra had anything to do with the sale transaction has also been denied. It has been stated that respondent No. 4 was in a position to raise and actually raised funds through its directors who enjoyed confidence of the business community and are well- known persons who possessed some creditworthiness. It has been denied that Omrao Singh Gupta, Dhirajmal Gupta and Hariram Lohariwalla were associates of respondent No. 6 or 7 or that they were kept as directors in the board of respondents Nos. 1, 2 and 3 by respondents Nos. 6 and 7, namely, Haridas Mundhra and V. K. Mundhra, or that Haridas Mundhra could be personally interested in the sale transactions. It has been denied that the petitioner-company suffered any loss due to the sales of shares in favour of respondent No. 4. It has also been denied that respondent No. 4 is a tool and collaborator of respondents Nos. 6 and 7 as alleged by the petitioner. Respondent No. 4 in the affidavit of objection wants to say that the sales of shares in respondent Nos. 1 and 2 in favour of respondent No. 4 are all bona fide and for valuable consideration. The price of the shares was paid by respondent No. 4 who had sufficient funds and respondent No. 4 had sufficient means to collect and raise the funds for the purchase of the shares. It has also been stated and asserted in the affidavit that respondent No. 4 had no connection with Haridas Mundhra or V.K. Mundhra ; neither was it a tool in the hands of the Mundhras. It has been asserted that the sales were legal and for the benefit of the petitioner-company.

7. The affidavit of objection against the petitioner-company has been sworn to by one Kailash Nath Agarwal, a director of the Metal Craft. It is stated that respondent No. 5 received an offer from the petitioner-company for sale of shares in Lodna Colliery and the sale was confirmed and executed on or about March 15, 1972, As the petitioner was facing a grave financial crisis, it offered the shares for sale in its best interest. The price of Rs. 10,21,062.50 was paid by respondent No. 5 for the purchase of 4,07,225 shares at the rate of Rs. 2.50 per share and the purchase money was paid by taking recourse to loans which respondent No. 5 could raise and agreed to pay compound interest at the rate of 12%. It has been further alleged that there was an agreement that 50% of the shares purchased in Lodna Colliery would be transferred and/or delivered to the lenders and they would be registered owners thereby. In the event the said sale

was not completed by delivery of the shares, the same sale would stand cancelled and the company would pay additional interest at the rate of 12%. The terms were fixed at the instance of the deponent Kailash Nath Agarwal who was the broker to arrange for the loan. It has been stated that the purchase of the shares was bona fide and for valuable consideration and the petitioner-company was benefited by the sale of the shares and the money obtained from sale was utilised for its benefit. It is also stated that in case the shares are directed to be sold to the petitioner-company, the respondent No. 5 would claim not only the principal amount of consideration, but also compound interest at the rate of 12% with additional interest at the same rate inasmuch as the said amount was to be paid for repayment of the loan. In fact respondent No. 5 wants to say that the shares of Lodna Colliery purchased by it were bona fide and on payment of valuable consideration of money raised through loans and that by the sale of the shares in Lodna Colliery the petitioner-company was benefited.

8. Haridas Mundhra, respondent No. 6, has sworn to an affidavit in reply to the allegations made by the petitioner-company. Haridas Mundhra has denied all the allegations made by the petitioner-company. It has been denied by him that after the Supreme Court judgments or at any time he had manipulated for the purported sales of the controlling shares of the petitioner in respondents Nos. 1, 2 and 3. It is also denied that the sales of the shares were to the names of respondents Nos. 4 and 5 in his interest. That the sales were illegal, mala fide or sham transactions has also been denied. Respondent No. 6 has denied that at any period he was in control of the petitioner or its subsidiary and controlled companies. The subsidiary and controlled companies were managed by a lawfully constituted board of directors and Haridas Mundhra had nothing to do with the appointments of the directors. He has denied that he purported to sell or transfer the holdings of the petitioner in respondents Nos. 1, 2 and 3 to the names of respondents Nos. 4 and 5 or that the directors were his nominees or tools or that he manipulated to secure the sanction of his transfers or to do anything with the transfers of shares. It has been denied that the sales were sham, bogus or benami transaction for his benefit or for the benefit of his son. He had nothing to do with the resolutions passed by the board of directors. Respondent No. 6 had no control over the management of the petitioner. It has also been denied that the sale or transfer in favour of respondent No. 4 was in favour of the three brothers who are his close associates or that he had kept Hariram, Dhirajmal or Omrao on the board of the respondents. He has stated that he had never any control over the petitioner or its subsidiaries and controlled companies. The respondent has further denied that either respondent No. 4 or respondent No. 5 had no money to pay for the shares or that he arranged payments or that manipulated to show payment as alleged. It has been denied that respondent No. 6 purchased and/or manipulated to sell any of the shares or that he made profits in respect of the sales. Throughout the affidavit, respondent No. 6 has denied all the allegations made by the petitioner-company in the petition. It has been denied that the sales were made at the instance of respondent No. 6 for his

benefit or for the benefit of his son or any other person or that the sales were illegal or sham or that the directors of the subsidiary and controlled companies were his men or tools or that the resolutions of the companies were made at his instance. Practically speaking, all allegations appearing in the petition have been denied and sometimes he has stated that certain facts are matters of record.

9. V.K. Mundhra (R-7), son of Haridas Mundhra, respondent No. 6, has also sworn to an affidavit of objection against the allegations made by the petitioner-company. He was a director of the petitioner. Regarding paras. 1, 2 and 3 of the petition, they have been admitted to be substantially correct. He has challenged all the material allegations made by the petitioner-company. According to him, Lodna Colliery and Shalimars Tar are no longer subsidiary companies of the petitioner. So is Angelo Brothers not a controlled company of the petitioner any longer. It has been asserted that the shares in the respondent-companies Nos. 1, 2 and 3 held by the petitioner were sold for valuable consideration and in the best interests of the petitioner. It has been denied that Mundhra secured control of the companies. Respondent No. 7 has also denied that his father had at any point of time secured the control over the petitioner or over the other companies or that Haridas Mundhra had placed his nominees in the board of directors of the companies. The sale of the shares in the respondent-companies Nos. 1, 2 and 3 effected by the petitioner-company not only benefited the petitioner but were in the best interests of the petitioner and some liabilities had been paid off. Respondent No. 7 has stated in his affidavit that the directors of the petitioner-company had been watching from time to time, with great caution the financial requirements and could no longer delay the decision of finding out ways and means to settle the liabilities as there were threats of the banks to dispose of the company's securities pledged or mortgaged with them. The directors made a thorough examination of the financial position and found that they were left with no alternative other than clearing such liabilities which brooked no further delay by selling its saleable assets in the interest of the company. Due to these compelling circumstances, a meeting of the board of directors of the petitioner-company was held on April 21, 1972 (sic), and February 15, 1972, and it was decided to sell the shares held by the company in respondents Nos. 1, 2 and 3. The decision of the board of directors was taken in view of certain facts mentioned by respondent No. 6 in his affidavit. It has been stated that before the sale of the shares of Shalimar Tar, the said shares were valued by M/s. S. R. Batliboi & Co. The shares of Shalimar Tar were sold at the rate of Rs. 15 per share to respondent No. 4 pursuant to the resolution of the board of directors. The shares of Angelo Brothers were sold at the rate of Rs. 5 per share to respondent No. 4 and the rate was the prevailing quoted rate. The stock exchange quotation as on 14th and 15th of February, 1972, was also considered when the offer made by respondent No. 4 for purchase was accepted by the board of directors. In the meeting held on February 15, 1972, the board of directors decided to accept the offer made by Metal Craft for the purchase of the shares of Lodna Colliery at the rate of Rs. 2.50 per share which was found to be

reasonable and fair and as no better offer could be possible the sales were effected in the best interests of the petitioner. It has been stated that diverse liabilities were met by the money out of the sale proceeds. It has been denied that the sales were made to the names of respondents Nos. 4 and 5 for the benefit of Haridas Mundhra or himself and/or that they were sham transactions, illegal or mala fide. It is stated that the sales of the shares were made to respondents Nos. 4 and 5 for valuable consideration paid by them. The resolutions passed by the board of directors on 15th February 1972, was bona fide and the sale transactions were gone into in pursuance thereof. The allegation about under-valuation of the shares has been denied. It has been asserted that the resolution of 14th January, 1972, is also valid and duly passed by the board of directors. There was no collusion amongst the directors or with Haridas Mundhra or himself. That the petitioner was under the control of Haridas Mundhra has also been denied. Respondent No. 7 has stated in his affidavit that he had resigned from the directorship of respondent No. 2 in April, 1972. It is stated that in view of the compelling circumstances and the financial position of the petitioner, its board of directors had held meetings on 14th January, 1972, and 15th February, 1972, and decided to sell the shares held by the petitioner in respondents Nos. 1, 2 and 3 and the said decision was taken in view of the circumstances as stated. It has been denied that the sale deeds after the sale were in the control of respondent No. 6 or respondent No. 7 or that the said two respondents were in any way benefited by the sale. It has also been denied that other respondents were associates with Haridas Mundhra in the matter of the sales or otherwise. The relevant part of the defence of respondent No. 7, V.K. Mundhra, is that the sales of the shares in respondents Nos. 1, 2 and 3 made in favour of the respondents Nos. 4 and 5 were bona fide and in the best interests of the petitioner-company as decided by the board of directors of the petitioner who were not in any way connected with respondent No. 6 or 7 in view of the financial difficulties of the petitioner and in fact the consideration money was paid by respondents Nos. 4 and 5. By these sales the petitioner-company was benefited and some of its liabilities were met. The sales were not at all benami or in the interest either of respondent No. 6 or respondent No. 7. The consideration money was not supplied by Haridas Mundhra but by the purchasers themselves. The resolutions of the board of directors were legal and the sales of the shares were legal, bona fide and for consideration. Haridas Mundhra or V.K. Mundhra, his son, had no influence on any of the directors of the companies or the petitioner. It has also been stated that the prices of the shares were reasonable and not under-valued.

10. We also find that respondents Nos. 1, 2, 10, 11 and 14 filed affidavits in reply to the petition. Respondent No. 10 has stated that he has been unnecessarily dragged in the proceedings and that he had never participated in the management of respondent No. 2. He had no control over the said respondent. He did not, however, appear or contest at the time of hearing.

11. Respondent No. 11, George Philip, in his affidavit has stated that he is the

Chief Executive of respondent No. 1, Shalimar Tar. He has denied all allegations made by the petitioner against him. He has not admitted that he held a fiduciary position or that his conduct in any way was blameworthy or that the sales or transfers were sham or mala fide. He has denied that the sales were manipulated for his benefit or that he is a tool or collaborator.

12. Respondent No. 14, K.N. Shrivastava, also filed an affidavit in reply to the petition. He has stated in his affidavit that he was the secretary of the petitioner with effect from 31st August, 1970, and his services were terminated with effect from 1st March, 1972. He was co-opted as a director of Angelo Brothers on December, 24, 1971 (sic), but the said appointment ceased on 24th December, 1971. It has been denied that he was in any way connected with the petitioner or with respondents Nos. 1, 2 and 3 after February 29, 1972. He had no connection with the sale transactions. This respondent did not contest at the time of hearing.

13. The secretary of respondent No. 2, Angelo Brothers, and also of the interim board of management has sworn to an affidavit. He admits that respondent No. 2 was a subsidiary of the petitioner. In the affidavit it appears that respondent No. 2 has no special interest in contesting the petitioner's allegations. It is non-committal in one sense. However, I do not like to deal with the affidavits filed by the respondents other than those who contested at the time of hearing challenging the claim of the petitioner-company. Those who contested are respondent Nos. 4, 5 and 7.

14. Mr. Mitter, learned counsel, appeared on behalf of respondent No. 7, V.K. Mundhra, Mr. Sen, for Ganapatrai & Sons, respondent No. 4, and Mr. Nag for Metal Craft, respondent No. 5. They opposed Mr. Mukherjee, the leader of counsel appearing on behalf of the petitioner. Mr. John appeared on behalf of respondents Nos. 11 and 13, Mr. Roy for respondent No. 2 and Mr. D.K. Chatterjee for respondent No. 1.

15. The following issues were framed upon hearing the learned counsel of the contesting parties and at their suggestions :

1. Whether each of the petitions is maintainable in law ?
2. Are the alleged sales or transfer of 1,43,625 ordinary shares in the capital of respondent No. 2, Angelo Brothers Ltd., in favour of the respondent No. 4, Ganapat Rai & Sons (1945) Private Ltd., fraudulent, illegal, void and a nullity as alleged in petition No. 204 of 1973 ?
3. Are the alleged sales or transfer of 4,07,225 ordinary shares in the capital of respondent No. 3, Lodna Colliery Co. (1920) Ltd. in favour of Metal Craft (India) Ltd., respondent No. 5 herein, fraudulent, illegal, void and a nullity as alleged in petition No. 205 of 1973 ?
4. Are the alleged sales or transfer of 27,950 ordinary shares in the capital of respondent No. 1, Shalimar Tar Products (1935) Private Ltd., in favour of respondent No. 4, Ganapatrai & Sons (1946) Private Ltd., fraudulent, illegal, void

and a nullity as alleged in petition No. 206 of 1973 ?

5. Are the alleged sales or transfers or any one of them in each of the petitions at an under-value ?

6. Are the alleged sales or transfers or any one of them in contravention of the provisions of the Securities Contracts (Regulation) Act, 1956, in each of the petitions ?

7. Is the petitioner entitled to get relief for the rectification of the share register and/or register of members of respondents Nos. 1, 2 and 3 in each of the petitions, namely, Petitions Nos. 204, 205 and 206 of 1973?

8. Is the petitioner entitled to any damages against any of the respondents ? If so, what would be the amount in each of the petitions ?

9. To what relief, if any, is the petitioner entitled in each of the three petitions ?

16. With regard to issue No. 1, the contention of Mr. Hitter, learned counsel on behalf of respondent No. 7 V.K. Mundhra, is that the applications u/s 155 of the Companies Act (1 of 1956) are not maintainable in law. The contentions of Mr. Mitter are that when the petitioner-company itself sold the shares on the basis of the resolutions or the decision of its board, such sales cannot be challenged by itself, that before filing the applications at any rate, respondents Nos. 1, 2 and 3 should have been approached for the rectification of the register of shareholders and that on their refusal the petitioner-company could have approached the court. It has been further contended that when the transfer of the shares were recorded by the respective companies in their registers after the sale of the shares, there can be no scope for filing the present application when the relevant companies entered the names of the transferees on such sales because the companies will only see whether there has been any transfer and if there is a prima facie transfer that would be sufficient ground for recording the names of the transferees.

17. According to Section 155 of the Companies Act if the name of any person is without sufficient cause entered in the register of members of the company or after having been entered in the register is without sufficient cause omitted therefrom, the person aggrieved or any member of the company or the company may apply to the court for rectification of the register. The words "without sufficient cause" as stated and mentioned in the section itself are very important. The question, therefore, is whether the grounds on which the present applications have been filed can be stated to be without sufficient cause, that is to say, to be more clear, whether respondents Nos. 1, 2 and 3 in the present cases omitted the name of the petitioner-company in the register of members without sufficient cause and again entered the names of respondents Nos. 4 and 5 in the register of members of the companies concerned, I have already given in short the case of the petitioner-company against the respondents in the present applications. To be very concise, the allegations of the petitioner are that the

sales of the shares of respondents Nos. 1, 2 and 3 were fraudulent due to the illegal actions and conspiracy amongst the members of the board of directors of the petitioner-company, respondents Nos. 6 and 7 and the other respondents mentioned in the petition and that the sales were not for the benefit of the petitioner-company, but in the personal interest of respondents Nos. 6 and 7, the members of the board of directors and the other respondents. Moreover, it has been alleged that not only are the sales mala fide, but also illegal and against the provisions of law. According to the petitioner-company the sales are illegal and ineffective and there was no sufficient reason for the sales. Consequently the petitioner-company wants to say that the name of the petitioner-company was omitted from the registers of members of the relevant companies and the names of respondents Nos. 4 and 5 were entered in the register without sufficient cause and as such the rectification of the registers concerned have been prayed for deleting the names of the fraudulent purchasers and inclusion of the petitioner's name as before. Sub-section (3) of Section 155 of the Companies Act reads as follows :

"(3) On an application under this section, the court-

(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, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand ; and

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

18. On a consideration of the provision of Section 155 of the Act, I have no doubt that in connection with an application under this section the court, if necessary, is to decide whether the alleged transfers of shares are invalid in view of the provision of law, forged or fraudulent and whether such sales are a nullity. In such a case the alleged sales are no sales in law and they carry no title to the alleged purchasers. Even if, in spite of such sales, the company records such sales by omitting the names of the sellers from the register of members of the company and enters the names of purchasers therein, such omissions of the names of the sellers and the entries of those of the purchasers in the register must be deemed to be without sufficient cause as mentioned in Section 155 of the Companies Act. If the sales are invalid, illegal and ineffective, the court in these circumstances is to direct a rectification of the register. The application by the aggrieved party challenging the sales of shares of the companies as illegal, fraudulent and ineffective, therefore, comes under the purview of Section 155 of the Companies Act and are maintainable in law.

19. In the present case the allegations of the petitioner-company relate to fraud and illegality and these applications are filed by the petitioner-company against the persons practising fraud and doing illegal actions. Some of the respondents were the directors of the board of the petitioner-company and the applications

have been made by the petitioner-company for its own interest alleging that the actions of the respondents were detrimental to the petitioner. In these circumstances, it cannot be said that the petitioner-company cannot challenge the sales of the shares as stated in the circumstances. Moreover, I find that it is not incumbent upon the petitioner-company to approach respondents Nos. 1, 2 and 3 for the rectification of the registers as the allegations are against them as well. The law does not require that before filing an application u/s 155 of the Companies Act, the petitioner is to approach the relevant companies for rectification of their registers. Even if a company enters the name of a transferee of shares on prima facie evidence of sale, the entry of the name of the transferee can be challenged in an application u/s 155 on the ground of illegality and fraud committed by its officers and other persons. The scope of Section 155 of the Companies Act is wide and generous for doing justice against illegality and fraudulent actions. In the present case the contesting respondents filed affidavit of objection in reply to the petition of the company supported by an affidavit. Upon hearing the learned counsel, issues were framed. All the parties were given full opportunity to prove their respective cases and objections by proving documents and by examining their witnesses. They had also opportunity to take all necessary steps in the form of discoveries, interlocutories, production of documents, etc., as allowable by the Code of Civil Procedure. For the purpose of correct decision, the court allowed all the parties to produce evidence by examining witnesses or otherwise. The court did not like to decide the disputes raised and to dispose of the applications on the basis of affidavits, counter-affidavits or affidavits-in-reply. On the allegations made by the petitioner and those in the objections, the court directed the parties to produce their evidence through documents and witnesses on dates fixed for the hearing. In these circumstances giving my best consideration I hold that the present applications u/s 155 of the Companies Act are maintainable in law. Issue No. 1 is thus disposed of in favour of the petitioner-company.

20. For the sake of convenience and to avoid unnecessary repetition, issues Nos. 2, 3, 4 and 5 are taken up for consideration together for a proper decision. Although there are several allegations both in the petition and in the objections, for a decision correct and to the point only vital, important and relevant evidence, I will deal with. Before dealing with the oral evidence in this case, I will take up some documents connected with the issues. As I have already stated earlier, in the present applications sales or transfers of ordinary shares in the capital of respondents Nos. 1, 2 and 3 have been challenged. The sale of shares in respondents Nos. 1 and 2, Shalimar Tar and Angelo Brothers, respectively, were made in favour of respondent No. 4, Ganapat Rai, and the sales or transfers of the ordinary shares in the capital of respondent No. 3, Lodna Colliery, were made in favour of respondent No. 5, Metal Craft. These sales were based upon certain resolutions passed by the board of directors of the petitioner-company in its meetings. It would be convenient, therefore, to consider at the very outset these resolutions appearing in the minutes book of the petitioner-company.

According to the petitioner-company, the directors of the company were men of Haridas Mundhra and they acted at the instance of Haridas Mundhra and not for the benefit of the company.

21. In Ex. 5 we find minutes of the meeting of the board of directors of the petitioner-company held on January 14, 1972. The respondent, B.P. Sinha, was the chairman and the other directors, B.P. Moody and V.K. Mundhra, were present. K.N. Shrivastava, secretary of the company, was also present. Of those persons B.P. Moody is dead. In the resolution it has been stated that it had been reported to the "board that the company"s bankers were pressing hard for repayment of loans and threatened to take steps for distress sale of the company"s assets. It is noted that in the minutes it is stated that it was "reported" as already stated, but there is no tangible material mentioned in the minutes supporting these facts. It does not appear that there was any particular material or discussion about the alleged threatening or about distress sale of the company"s assets. It is further stated in the minutes, that if liabilities such as tax deducted at source, provident fund dues, etc., were not paid, consequences" would follow affecting the directors and principal officers of the company. There is no indication either in the minutes about the exact nature of the liabilities or the extent thereof. It is said further that the subsidiary companies were not immediately in a position to pay to the petitioner-company its dues and that financial difficulties were there. Except this general statement there is no indication about the basis which they considered. On this consideration it was resolved by the board that in order to avoid any distress sale of the company"s assets by the bankers and for payments of statutory liabilities, some of the assets of the company including investments be sold. The way in which those resolutions were passed shows that in so important a meeting where assets and investments were decided to be sold, there was no proper discussion about the nature of the utter necessity. There is no mention also or indication about the nature of assets or investments to be sold. There is no indication in the minutes as to ascertaining the market price of the assets or investments at which any particular property would be sold. We find nothing to say as to who would be authorised to take proper steps or to negotiate for selling such properties. The resolution is too general and vague without any proper and reasonable consideration and it appears that the resolution was made in a summary way and in general terms without any specification and determination. In a matter like this, of the directors of a company like the petitioner, it is not expected and it is also unthinkable that the resolution would be made in such a fashion unless it was done in a haphazard manner and to make a show. It does not appear to be normal and reasonable that for such an important decision the directors of a company like the petitioner should act and record the minutes like that and it is clear that the directors did not take the matter seriously. At the relevant time the petitioner-company was to get heavy amounts from the subsidiary companies like Shalimar Tar. There was outstanding dues of no less than Rs. 50 lakhs, but some terms were formulated for recovery of the dues in a manner, which was

clearly most unreasonable and prejudicial to the interest of the petitioner-company that even to a man having ordinary intelligence, not to speak about men of business, it requires no discussion to show that the terms of repayment or rather getting back the dues were certainly to the prejudice of the company and that such terms could not have been even prayed for by the debtors if they were reasonable business men. It further appears that although at the instance of A.M. Ramakrishnan and K.N. Shrivastava and by mutual agreement, their services were terminated, the directors recorded a resolution for granting full superannuation benefits to them from the superannuation fund. These recommendations, it appears to me, were made as a special favour for the said two employees.

22. Let us now consider the minutes of the meeting of the board of directors of the petitioner-company held on 15th February, 1972. The respondents B.P. Sinha and V.K. Mundhra, were present along with the other director, Moody, now dead. It is stated in a general way that the board viewed with alarm the company's inability to liquidate liabilities specially for the banks and statutory liabilities and also the penal consequences thereof, but strange to say that the details of liabilities have not been indicated at all. There is a reference to a letter dated February 11, 1972, received from National & Grindlays Bank Ltd. It has been alleged that the board noted that the bank would sell securities pledged with them and take steps to enforce the equitable mortgage of the building at 6, Lyons Range, if the entire overdraft was not liquidated by the end of February, 1972. In the minutes it is stated that it was reported to the board by V.K. Mundhra that the Central Bank of India would not accommodate with any further facility and would sell the securities pledged with them, but in support of this report no material was placed before the board. It is to be remembered in this connection that V.K. Mundhra has not examined himself in this case in support of this resolution. In the minutes I further get that Moody informed the board that in view of the decision of the board on January 14, 1972, he had negotiated for the sale of the shares in Angelo Brothers, Shalimar Tar and Lodna Colliery and that Ganpatrai & Sons had offered to purchase the shares in Shalimar Tar and Angelo Brothers at the rates of Rs. 15 and Rs. 5 per share respectively and that Metal Craft had offered to purchase the shares in Lodna Colliery at a price of Rs. 2.50 per share. It is stated that the letters of offer were placed before the meeting. These letters have not been produced in this case ; neither does any of the respondents adduced evidence acceptable to the court by examining themselves or otherwise. I further get in the minutes that B.P. Moody also reported that in view of the position of Shalimar Tar, Lodna Colliery and Angelo Brothers, the prices offered were reasonable and that the prices would be in the interest of the company. Regarding this offer of reasonableness of the price we find that in the previous meeting of January 1972, nobody was authorised to negotiate for the sale of any share in the subsidiary companies not to speak about B.P. Moody. How then could he negotiate without authority ? Moreover, in the previous meeting there is not the slightest indication that the shares of

respondents Nos. 1, 2 and 3 were to be sold. There is no evidence, not even a suggestion, that any step was taken by the company or its directors for the proper publication of the sales or to invite offers so that there could have been occasions for bona fide purchasers to make their offers and also for the company to accept the highest offer made. No step was taken for ascertaining the market value or the public demand of the shares in the subsidiary companies. In the minutes it is stated that a report on the valuation of the shares in Shalimar Tar Products by S. R. Batliboi & Co. was placed before the board and was considered. Unfortunately there was no report of the market value of the shares in Shalimar Tar Products, strictly speaking for the purpose of sale, and no such report is forthcoming. It also appears from the minutes that the stock exchange quotation in respect of shares of Angelo brothers was placed before the board, but no such quotation has been produced in this court by the contesting respondents. The valuations of Lodna Colliery shares was assessed by the board according to the opinion of Moody who stated that the valuation of each share was in the region of Rs. 2 per share. The basis of such valuation has not been indicated. The board passed the resolution that the shares in Shalimar Tar would be sold at Rs. 15 per share to Ganpat Rai & Sons, shares in Angelo Brothers be sold at Rs. 5 per share to Ganpatrai & Sons and the shares in Lodna Colliery be sold to Metal Craft at the rate of Rs. 2.50 per share. In the minutes it is stated that although B.P. Sinha Roy, the chairman of the meeting of the directors agreed that the shares might be sold, yet he did not make any comment with regard to the price at which the said shares should be sold because he was not in touch with the financial market in the country and was not personally aware of the market valuation of the shares. The resolution was passed that V.K. Mundhra or B.P. Moody was authorised to negotiate with the banks for the release and delivery of the shares against payments of the sale value. From the minutes, it is thus clear, that the director, B.P. Sinha, did not accept the valuation of the shares as indicated in the minutes and that he was not satisfied about the market value thereof. There was no specific resolution about a concluded contract of sale of the shares. There was no firm or final decision of the board for a finalised sale.

23. One relevant and important document is to be taken note of and that is Ex. NNNNN, minutes of the meeting of the board of directors of the petitioner-company held on November 21, 1967. It appears from the minutes that a suggestion was made for sale of the company's investment in Shalimar Tar in connection with a resolution for a short term loan to the said subsidiary company. In the meeting a discussion was had, as it appears, for the profitable working of Shalimar Tar and when a question arose for sale of the company's investment in Shalimar Tar, Mr. K.N. Tapuria indicated to the board that he was not inclined to agree to sell the investment except as a last resort. In that meeting it was agreed at the suggestion of the director, B.P. Sinha, that legal opinion was to be obtained from eminent counsel after consultation with the company's solicitors, if at any point of time the question should arise whether it would be proper for the board to sell the investment in view of the pending

litigations. In the present case no such opinion of any counsel was taken nor was there any consultation with any solicitor.

24. Now let me consider the financial condition of the petitioner-company and its position at the relevant time. Exhibit EEEE, a letter dated January 4, 1972, written by the chief executive of Shalimar Tar to the board of directors of the petitioner-company will show that in all a sum of Rs. 51 lakhs was due from Shalimar Tar towards loan, interest, rent, services and other charges. It is unthinkable and most unreasonable in my view for any person to sell the shares of Shalimar Tar for a sum of about Rs. 4 lakhs when from the company a sum of Rs. 51 lakhs is due. Exhibit 11, the balance sheet of the petitioner-company for the year ended December 31, 1968, will show secured loan to the extent of Rs. 25,26,728 regarding Grindlays Bank and Rs. 6,04,877 from Central Bank. Exhibit 25, the ledger of the petitioner-company for March, 1972, indicates liability of about Rs. 27,09,633. I have noticed the documents, Exhibit 7 series. I find that there was a demand of dues from the petitioner-company by the bank and naturally as ordinarily happens there was an indication of starting litigations. I have considered the letters and there was a demand for additional security, but after August, 1971, there was no threat for distress sale of the company's assets. In this view of the matter the question would be whether there was any pressing, utter or at least reasonable necessity for the petitioner-company to sell the shares or investments in the subsidiary companies, respondents Nos. 1, 2 and 3. In the circumstances, as indicated, I find no material before me, produced in court, which may reasonably suggest that unless the shares of the petitioner-company in respect of respondents Nos. 1, 2 and 3 were sold in January, February or March and at the relevant time, there was a chance of any serious danger to any property of the company which would be sold out or that the directors or the principal officers of the petitioner-company would be immediately penalised. I do not find any reasonable ground or pressing necessity for selling the company's holdings in the subsidiary companies in or about March, 1972.

25. The next point that will be relevant for decision to test the bona fides of the sale relates to the question of valuation of the shares sold or the market price at the relevant time or, to put it precisely, the question would be whether the price at which the shares were sold were grossly undervalued to one's conscience and to the prejudice of the company and whether the sales at the prices mentioned were made deliberately to the prejudice of the petitioner's interest. First of all let me take up the shares in Shalimar Tar. Each share is of Rs. 100. The number of shares sold was 27,950. Each share was sold at Rs. 15. The purchaser of the shares is respondent No. 4, Ganpatrai & Sons. The face value of all the shares sold was Rs. 27,95,000. The total value of the price at which it was sold to respondent No. 4 is Rs. 4,19,250. 64% of the shares was sold. The evidence shows that in 1964, the petitioner-company purchased 13,975 shares and paid Rs. 13,97,500, that is to say, at the rate of Rs. 100 per share, the face value. Exhibit GGGGGG is the balance-sheet of Shalimar Tar for the year ended December 31, 1964, which shows that the said company earned profit after

providing for depreciation, etc. According to the balance-sheet in 1971, Shalimar Tar earned a profit of Rs. 18,27,996. Exhibit OOOOO shows that 10 shares in Shalimar Tar were sold to Kusum Bed, Shantilal Mehta and another by Kusum Bed and another at the rate of Rs. 100 per share. The nature of the sale may not conclusively prove the market valuation of the share. The said sale was in October, 1971.

26. Exhibit RRRRR shows that one private company sold 332 shares in respondent No. 1 to the Bank of India, the price of each share being Rs. 100. This sale is certainly a bona fide sale particularly in view of the fact that the Bank of India purchased the shares. From Exhibit SSSSS I get that on November 25, 1970, 5 shares in respondent No. 1 was sold to one Surya Kanta by one Ramdas at the price of Rs. 40 per share. I also get that on April 9, 1970, some shares were sold at the rate of Rs. 100. Again, on February 12, 1969, some shares were sold at the price of Rs. 100 per share. In view of the evidence on record I am of the view that at the relevant time the price of each share in Shalimar Tar was Rs. 100 per share and that was the market value. The sale to Surya Kanta does not indicate that the price at the rate of Rs. 40 is the market rate. The opposite parties do not produce any reasonable and acceptable evidence of sale as against the evidence on record.

27. Regarding the valuation of the shares in Angelo Brothers, I get Exhibit JJJ which is the Share Transfer Register of Angelo Brothers. The shares sold were 1,43,625. The face value of each share is Rs. 10. 7,18,125 shares were purchased by respondent No. 4, Ganpatrai at the rate of Rs. 5 per share. The shares sold represented 32% of the shares. Exhibit EEE is the balance-sheet of Angelo Brothers ended August 31, 1972. Cash and bank balance come to Rs. 1,51,803 and taxation payments in advance amount to Rs. 5,53,569. The valuation of stock of raw materials is Rs. 6,34,288 and the valuation of the finished goods is Rs. 24,41,377. From the profit and loss account we get the extent of sales during the year as Rs. 2,62,34,319. The financial strength of respondent No. 2, Angelo Brothers, was good. Share transfer record register was called for by subpoena but it was not produced. None of the respondents have produced any material before this court to show that at the relevant time the market price of each share in respondent No. 2 was Rs. 5. Directors are alive but nobody besides respondent No. 4 has come forward to give evidence that Rs. 5 was the reasonable market price of the share in Angelo Brothers in or about March, 1972.

28. Next we come to the shares in Lodna Colliery. The petitioner-company holds 4,64,940 shares. The face value of each share is Rs. 10. 4,07,225 shares were sold to Metal Craft at the rate of Rs. 2.50 per share. The total price of those shares was Rs. 10,18,062.50. Those shares represented 56% of the total share capital of the company. Exhibit HHHHH shows that 50 shares were sold on August 31, 1971, to one Mulchand Chhaganlal Parekh by Mudhan Dev Chand Sethia. The price was at the rate of Rs. 10 per share. From Ex. IIIII we get that

100 shares in Lodna Colliery were sold on September 15, 1970, to one Bhatia by one Ghosh at a price of Rs. 5 per share. Exhibit LLLLL shows that on September 1, 1970, 1,000 shares were sold to one Sambhu Nath Dey by one Joy Narayan Dey and another at the rate of Rs. 9'06 per share. According to Ex. JJJJJ one Lahariwal sold 100 shares in respondent No. 2 to one Dadriwala at a price of Rs. 8 per share. On February 15, 1971, 100 shares were sold by a company to one Shah at the rate of Rs. 7 per share. Lastly, we get from Ex. GGGG that one Tulsian sold 3,100 shares in respondent No. 2 to Sakuntala and the consideration was Rs. 5 per share. From these documents and in view of the materials on record there can be no doubt that the price of Rs. 2.50 per share in Lodna Colliery was grossly undervalued and against one's conscience. Considering the records, there can be no doubt that at the relevant time, namely, March, 1972, or thereabout, the reasonable market value of each share in Shalimar Tar was Rs. 100, that in Angelo Brothers was no less than Rs. 10 and the share in Lodna Colliery cannot be in any view less than Rs. 5 if not Rs. 10 per share. The prices at which the shares in respondents Nos. 1, 2 and 3 were sold cannot but be grossly undervalued and are unreasonable to any man with a bit of conscience and honesty.

29. Regarding the financial position of Shalimar Tar, I find that there was profit in the year 1971. During the year 1971-72 there was the profit of Rs. 18,27,996. The profit of the company will be relevant to see whether there, was any reasonable occasion for selling the share in the company and also to ascertain the value of each share. According to the balance-sheet of Angelo Brothers I find also that in 1968 and 1969 the company earned profits. Regarding Lodna Colliery for 1966 there was a profit of Rs. 18,08,269 and the balance-sheet ended December 31, 1967, will show a profit of Rs. 16,55,261 after providing for depreciation. The amount of sales was Rs. 7,77,58,967. Exhibit UUUU shows that there was also profit for the year 1968. From the side of the respondents it was argued that after the taking over of Coaking Coal Mine, the position of Lodna Colliery became bad. We should not, however, forget that heavy and large compensation was granted for taking over. The position of Lodna Colliery cannot be miserable as suggested from the side of the respondent. The interim report of the board, Ex. XXXXX, shows the profit of Shalimar Tar. During the year 1972-73 there was the profit of Rs. 22,87,517.

30. The disbursement of the amounts obtained by sale of the shares would appear in Exs. 13-16 and 18-23. Exhibit 20 is the cash book of the petitioner-company. We do not find that the debts of the banks, which according to the contesting respondent were heavy and for which the property of the company was threatened, were cleared. Some amount was paid towards employees' Income Tax, some towards provident fund and smaller amounts were paid to the bank and still smaller sums were paid towards rates and taxes. The way in which the sale proceeds were handled does not show that there was any urgent necessity for selling the shares and that there was any apprehending danger or threat to the company's properties or assets. About two lakhs of rupees was on

April 12, 1972, not spent. It appears from the documentary evidence that respondent No. 7, V.K. Mundhra, son of Haridas Mundhra, respondent No. 6, had been dealing with all matters, transactions, letters, etc., and he was taking the leading part as director. He was granting leave to the officers, he appears to have taken action in the matter of sale of the shares and he signs letters regarding the sales saying "no objection". Practically speaking, from the facts and circumstances, it appears to me that V.K. Mundhra was all in all and he was taking the leading part in the matter of sale of the shares. Even at the time of hearing of this case he himself was present and giving instructions to his counsel for cross-examination of the petitioner's witnesses and of course he has a right to do it.

31. One striking fact in this case is that the sales were approved rather hastily without issuing proper and reasonable notice. Shares in Lodna Colliery were deposited on March 15, 1972, and the sales were approved the very next day, namely, on March 16, 1972. Shares in Shalimar Tar were deposited on March 8, 1972, and the same was approved on March 10, 1972. Share transfer register regarding Angelo Brothers was not produced in spite of subpoena. Exhibit JJJ shows that the shares were approved on March 13, 1972. Exhibit SSSS-6 shows that in October some shares were received in respect of Lodna Colliery and they were approved on 26th of December, 1971. I do not find any other case of hasty approval as in the case of the present sales. The share transfer paper shows that in these cases no date was mentioned in the column "sellers-notice issued on". Instead there was a note, "no objection letter received". It is very reasonable to hold that in fact no notice was issued. This is a circumstance which may indicate that the transfer of the shares in the present case were not normal and not duly made.

32. From the evidence it appears that Hariram Lohariwala was a director of Shalimar Tar till 1971. He was also a director of Ganpatrai & Sons at the time of purchase and before (vide Exhibit WWWWW-1). Exhibit YYYYY, balance-sheet of Shalimar Tar, ended June 30, 1971, shows that the amount of Rs. 42,30,193 was due from Shalimar Tar to the petitioner-company. No steps were taken for realising the said amount and there were also no steps taken for guarantee for the unsecured dues. Exhibit UUUU, balance-sheet of Lodna Colliery, shows that there is a debt of about Rs. 2 lakhs from Lodna Colliery to the petitioner-company. There was a consent decree for Rs. 60 lakhs against Lodna Colliery. It is still subsisting. Regarding the valuation of the share, my attention has been drawn to Batliboi's report. I have considered Ex. BBBBBB, Ex. EEEEEEE and Ex. DDDDDD. I have also seen Ex. 41 based on an unaudited balance-sheet of Shalimar Tar ended June 30, 1970. This is to be considered along with the evidence of a petitioner's witness, Narielvala. He says that he was requested by V.K. Mundhra, a director of the petitioner-company, to give the break-up value of Shalimar Tar. He was given an unaudited balance-sheet of Shalimar Tar on June 30, 1970. On the basis of that unaudited balance-sheet, he prepared a report and it was drafted by him and addressed to the director of Turner Morrison. As

indicated in the letter dated February 15, 1972, he finds that the book value of the liabilities was more than the book value of the assets on the basis of the unaudited balance-sheet and on that basis he was of the view that the break-up value would be nil. Mundhra personally came to him on 15th of February or a day or two thereafter. Mundhra came to him to take his opinion and at that time he produced a letter dated February 11, 1952, asking for it showing authority, and the witness handed over the original and prepared 1 or 2 extra copies of the document, Ex. 41. As far as the witness remembers, Mundhra came to collect the break-up value in the morning of 15th of February, 1972. The witness has stated that Mundhra did not give any reason for obtaining the break-up valuation. The witness has stated further that he was not told that the break-up value asked for was to be the basis of sale of the shares of the company. According to the expert witness, a chartered accountant, the break-up value is not at all relevant for the purpose of sale of shares of any particular company because for the valuation of the shares of the company for sale or purchase a large number of considerations are to be kept in mind. The break-up value may be one of these circumstances, but not the principal consideration. We also get from him that the break-up value cannot be the fair value of the shares of a particular company. Subsequent to the disputed sales of the shares we are dealing with, in reply to a letter from the chief accountant of Shalimar Tar and another from the Registrar of Companies, West Bengal, the witness stated that the break-up valuation he made was purely a mathematical computation based on an unaudited balance-sheet and, according to him, it was not the basis for fair value of the shares of the company. According to the witness the break-up value of the shares in Angelo Brothers on the basis of the balance-sheet of August 31, 1969, was calculated at Rs. 19,951 per share and according to the balance-sheet of December 31, 1967, the break-up value of Lodna Colliery shares was worked out at Rs. 25,898 per share and according to the balance-sheet for the year 1968 it was at Rs. 25,298 per share. With reference to Ex. DDDDDD, a letter dated May 2, 1973, P. M. Narielvala (P.W.) has stated that the break-up value is an arithmetical computation prepared for a specific purpose. It cannot be regarded in any sense of the term as a fair valuation and that is why that cannot be the valuation of the shares. The witness has given in detail the nature of considerations which are relevant and necessary for ascertaining fair valuation of shares whether they are a large number of shares or small. Particularly answers to question No. 72 onwards are important. Regarding the nature of market value the witness has given answers to question No. 107 onwards. Clearly, therefore, the break-up value relied upon by the contesting respondents cannot be accepted as the market or saleable value of the shares in the company in question. The market value of the shares in the company concerned will depend on the status and standing of the company, its financial position, its scope for improvement, scope for controlling the administration and for proper improvement and several other factors as indicated by the witness, Narielvala. Batliboi's report is of no assistance in this case and the conduct of V.K. Mundhra in the matter of obtaining the report clearly shows that there were no bona fides in the action of the said respondent

and that the break-up value was obtained on an unreliable and unaudited balance-sheet of the company to show that the company's share was of no value. It is to be noted that there has been no cross-examination of Narielvala regarding the break-up value of the shares in Angelo Brothers and Lodna Colliery on the basis of the audited balance-sheet of the companies already mentioned.

33. Let us now have an idea of the respondent, Ganpatrai & Sons, as I find in evidence. Exhibit RR is the annual return of Ganpatrai & Sons with the balance-sheet ended March 31, 1971. The shareholders are Omrao Singh, Hariram Lohariwala, Dhirajmal, all sons of Ganapatrai, Chandravati, wife of Hariram, and Misri Devi, daughter of Omrao. Total issued capital consists of 10,000 shares of Rs. 5 per share. There were two directors, Hariram and Dhirajmal. Hariram was also a director of Shalimar Tar and Dhirajmal was a director of Lodna Colliery. There was a loss in Ganpatrai & Sons of about Rs. 1,91,000. Exhibit OO is the balance-sheet of Ganpatrai & Sons ended March 31, 1973. The company suffered loss in 1972, but in 1973, after the purchase of the shares, the company had some profit. Hariram, as we find from evidence, was a director of Shalimar Tar during 1968-69 and 1970-71 and he was removed from the board of directors by the order of court in December, 1972. It appears from Ex. MMMMM-6, minutes of the board of directors dated March 15, 1967, that Dhirajmal was invited to be an additional director in Turner Morrison. He was a director of Angelo Brothers in 1968. Tapuria and B.P. Sinha were also directors of Angelo Brothers. I have noticed Ex. VVVV series, particularly VVVV-5, 6, 7, & 15 of the meeting of the board of directors of Lodna Colliery. The directors were Dhirajmal, B.P. Sinha, Shrivastava and Moody. Dhirajmal, however, left in December, 1971. Exhibit SS is the annual statement as on June 26, 1972. The directors of this company were S.G. Khaitan and S.N. Khaitan, two brothers as also L.K. Khaitan. S.G. Khaitan and L.K. Khaitan were once directors of Lodna Colliery. Exhibit PP as at December 31, 1971, shows that the company had a paid-up capital of Rs. 5 lakhs of 50,000 shares, each share being of Rs. 10. There was, however, some loss. It appears that there was a total sale of Rs. 85,000 and in 1970 the total sale was Rs. 4,152. According to Ex. PP the loss of Metal Craft was carried over to the extent of Rs. 2,97,269 and the loss of the previous year was Rs. 2,98,674. I have already mentioned about the meagre extent of sale. The condition of Metal Craft and that of Ganpatrai & Sons were deplorable in February and March, 1972. The extent of business was also meagre and it does not appear that their financial condition was good. In the circumstances, reasonably, Ganpatrai & Sons and Metal Craft could not, afford to have sufficient money to purchase the shares in question. In view of the state of affairs appearing in Ex. PP, it was not possible for Metal Craft for raising loans for the purchase of the shares beyond the paid-up capital and free reserves on the very face of Section 293(1)(d) of the the Companies Act. It becomes a question before the court whether the story of loan allegedly raised by Ganpatrai & Sons can be accepted. No evidence is forthcoming either from respondent No. 4 or from respondent No. 5 to assert about the procurement of the money with which the shares were purchased.

34. In this case Baijnath Garg has been examined on behalf of the petitioner-company. He is a director of the petitioner-company. He was appointed in the general meeting held on 6th and 7th of July, 1972. Of the directors, B.P. Sinha resigned in March, 1972, and V.K. Mundhra, the other director at the relevant time was the son of Haridas Mundhra. B.P. Sinha had no share in the petitioner-company. V.K. Mundhra did not have any share likewise. Of the fully paid-up ordinary shares in the company, Haridas Mundhra held 49% and 51% of the shares was held by the Hungerford Investment Trust Ltd. The company had a hold in Shalimar Tar to the extent of more than 60%. The petitioner-company had shares in Angelo Brothers to the extent of about 32% and the company had also shares in Lodna Colliery to the extent of about 53% and 54%. We get from the evidence that 49% shares in the petitioner were sold to Haridas Mundhra in 1959 under an agreement of sale with an option to Haridas Mundhra to purchase 51% shares from Hungerford Investment Trust Ltd, within 5 years claiming a certain sum of money. Haridas Mundhra, it appears, filed a suit for specific performance of the agreement for the said purchase. The suit was decreed. However, ultimately this matter was taken to the Supreme Court by Hungerford Investment Trust Ltd. It appears that Haridas Mundhra filed a suit in the name of the petitioner-company against Hungerford Investment Trust Ltd. for recovery of certain amounts and claimed a lien of 25% shares. Connected matter was decided against Haridas Mundhra and ultimately an appeal was taken to the Supreme Court. It is stated by Mr. Garg that Haridas Mundhra had friends and associates as directors of the petitioner-company, Shalimar Tar, Angelo Brothers, Lodna Colliery and other concerns and thus he was controlling these companies. Up to June, 1964, Shalimar Tar was being run at heavy profits. We also get that on March 9, 1972, the judgments of the two appeals already mentioned were pronounced and there Mundhra failed, but Hungerford Investment Trust Ltd. was successful. On applications filed before the court, the boards of directors of Shalimar Tar, Angelo Brothers and Lodna Colliery were dismissed. Baijnath Garg got inspection of the documents of the petitioner-company in or about April, 1972. At the time the witness found that shares belonging to Turner Morrison in Shalimar Tar had been transferred. Similarly he found that the total holding of Turner Morrison in Angelo Brothers had been transferred and the major part of the holdings in Lodna Colliery was also transferred. He also came to know that the names of the transferees in respect of Shalimar Tar and Angelo Brothers was Ganpatrai & Sons and that the transferee of the shares in Lodna Colliery was Metal Craft. The witness had an inspection of the records of these companies in the office of the Registrar of Companies, West Bengal. Under the court's order Baijnath Garg had inspection of the minutes, share register and some of the records of respondents Nos. 1, 2 and 3. He also inspected some records of Turner Morrison. The appeals in the Supreme Court were heard from 12th February to 22nd February, 1972. The witness represented Hungerford Investment Trust Ltd. and along with him were present one N.H. Hoon and counsel. During the hearing A.M. Ramakrishnan, the chief executive of Turner Morrison and K.N. Shrivastava, secretary of Turner Morrison were instructing the

counsel. In the proceedings Haridas Mundhra and V.K. Mundhra were parties. In Appeal No. 488 of 1971 the parties were Hungerford Investment Trust Ltd. v. Haridas Mundhra and in Appeal No. 1223 of 1970 Turner Morrison was the appellant and Hungerford Investment was the respondent. While Garg and Hoon were on the side of Hungerford Investment, Ramakrishnan and Shrivastava were on the side of Turner Morrison. They were with Haridas Mundhra. In 1971 the directors of Metal Craft were Gajendra Khaitan, Srigopal Khaitan and Lalit Khaitan whereas the directors of Ganpatrai & Sons in or about 1973 were Hariram Lohariwala and Dhirajmal Gupta, the two brothers. The witness on inspection of the records of the Shalimar Tar found that the shares held by Turner Morrison were shown to have been transferred on 10 March, 1972, in favour of Ganpatrai & Sons. He found that 1,43,000 odd shares in Angelo Brothers were transferred in favour of Ganpatrai & Sons on March 30, 1972. He also found that 2,49,000 odd shares belonging to Turner Morrison were transferred on March 16, 1972, to Metal Craft and 1,57,000 odd shares were transferred to the said Metal Craft on April 7, 1972. In March, 1972, the witness says, the directors of Angelo Brothers were B.P. Sinha, V.K. Mundhra and George Philip and the directors of Lodna Colliery were B.P. Sinha, Balwant Singh and P.N. Hunda. We get from the witness also that Ramakrishnan was the chief executive of the petitioner-company and also a director in Shalimar Works and Lodna Colliery. P.N. Hunda, an employee of Angelo Brothers, was a director of Shalimar Tar and Lodna Colliery. It appears that B.P. Sinha and V.K. Mundhra were directors of Osman Sahi Mills Ltd., in which Balwant Singh was a senior executive and that mill was under the control of Haridas Mundhra. Thereafter, B.P. Sinha became a director in Turner Morrison, Lodna Colliery and Angelo Brothers. Baijnath Garg has also stated that George Philip was brought to Shalimar Tar as a senior executive by Hariram Lohariwala in or about 1970 and thereafter he was appointed a chief executive of Shalimar Tar. From the cash book of the petitioner-company the witness found that about twenty-one and a half lakhs of rupees were alleged to have been paid. In answer to question No. 302 the witness made serious allegations against Haridas Mundhra. According to the witness the resolution of the Board of Shalimar Tar passed in January, 1972, revealed that the company had made a profit of Rs. 9 lakhs in 5 months from 1st July, 1971, to November, 1971. The witness has stated that the purported transactions of sale of shares of the company in question were not put through or completed through any recognised stock exchange or members of the stock exchange nor through any brokers nor through any recognised or authorised brokers. According to the witness, on inspection of the records, Hariram Lohariwala, Dhirajmal Gupta and Omrao Gupta, sons of. Ganapatrai Lohariwala, were the major shareholders of the said company. We get from the witness in his answer to question No. 771 that before the Supreme Court in connection with the appeals an affidavit was sworn to on behalf of the petitioner-company stating that it was a solvent and well established running company and that there was no danger of any damage to its assets and Haridas Mundhra also filed an affidavit stating that the apprehension of Hungerford Investment Trust Ltd. that he would cause ruin to

the assets of Turner Morrison was absolutely unfounded and that there was no necessity for any receiver. These affidavits were filed in July, 1971. The witness has also given evidence referring to certain transactions to show that the value of shares in Lodna Colliery at the relevant time was enormously higher than that at which the disputed shares were sold. The relevant questions and answers, will appear from question No. 780 onwards. He has also given the market value of the shares of the other two companies we are concerned with. He has asserted in reply to question No. 851 that the financial position of the petitioner-company was quite sound in January, 1972, and that Shalimar Tar, Lodna Colliery and Angelo Brothers were working nicely and that the turnover of all these companies would be more than Rs. 50 crores per year. The witness has spoken about the assets and financial condition of the companies to show that there was no occasion for selling the disputed shares. He has given evidence in this case also to show that although there was some indebtedness, there was no imminent danger or any threat to the assets which might create any occasion for selling the disputed shares. According to the witness, for 1971-72 the profit of Shalimar Tar was shown at Rs. 18,27,996 and for 1972-73 the profit is shown at Rs. 22,87,517. In this connection Ex. 5(n) may be considered. Although according to Ex. 5(n), the minutes of the meeting of the board of directors of the petitioner held on November 21, 1967, legal opinion should be obtained before making any transfer of the share of the petitioner-company, no such legal advice was obtained by the directors of the petitioner-company in connection with the disputed shares held by the company. The witness has clearly stated that the minutes alleged to have been recorded on January 14, 1972, and February 15, 1972, at the meetings of the board of directors were not genuine. He has asserted further that the disputed transfers were not beneficial or advantageous to the petitioner-company, but were detrimental and prejudicial to the interest of Turner Morrison. He has stated that transfers were made to serve designs and the interest of Haridas Mundhra and he has given his evidence regarding this in answer to question No. 1054. The witness has further stated that Ganpatrai & Sons had a paid-up capital of only Rs. 50,000 which had been wiped away by losses and had nothing to pay for the disputed shares. The witness has further stated how Haridas Mundhra was connected with the Metal Craft in answer to question No. 1100. He has stated that at the relevant time Gajendra Khaitan, his sons, Lalit Khaitan and Srigopal Khaitan, were the directors in Metal Craft. Haridas Mundhra's sister is married to Lalit Khaitan and Srigopal Khaitan was on the board of Osman Sahi Mills with V.K. Mundhra and B. P. Sinha who were close associates of Haridas Mundhra. He has stated that the disputed purchases made by respondents Nos. 4 and 5 were mala fide and in the interest of Haridas Mundhra. Regarding the mala fide and fraudulent transfers the witness has given his answer to question No. 1107. The witness has been examined at length by the learned counsel for the contesting respondents to show that the witness had no personal knowledge about the evidence he has given and that he has given false evidence against Haridas Mundhra and other respondents making malicious allegations, and, in my view, the attempt has not been successful.

35. P.M. Narielvala (P.W.) has been examined on the side of the petitioner-company on the question of valuation of the shares. I have dealt with the relevant portions of his evidence. One Narayan Chandra Pathak has also been examined on the side of the petitioner. He was an employee of the petitioner-company. Practically speaking, his evidence relates to several documents. This witness generally speaks about the working of the petitioner-company and the subsidiary and managed companies under it.

36. Two witnesses have been examined on behalf of the respondent Ganpatrai & Sons. Ashit Kumar Seth is one of them. He is a credit officer of National & Grindlays Bank. He proved two letters from the bank, Exs. 43(a) and 43(b) dated February 11, 1972, and March 17, 1972, respectively. Those letters were sent to Turner Morrison, the petitioner-company. The other witness is Sambhu Nath Banerjee, an employee of the Calcutta Stock Exchange. The witness brought some quotation books. He says with reference to January 11, 1972, in the book, that the rate of Angelo Brothers share was Rs. 4.62 and Rs. 4.69 and with reference to February 15, 1972, it was Rs. 4.94. In cross-examination the witness has stated that he has no personal knowledge about the transaction relating to the shares which took place in the Calcutta Stock Exchange. The book referred to by the witness was not a primary book but copied from black board. The witness has stated that he did not copy the quotations. They are printed. There is no material to prove the basis of the quotation. Regarding the evidence of this witness, in my view, it cannot be relied upon particularly in view of the actual price of the shares recorded in the transfer register. The valuation of the shares appearing in the share transfer register during the relevant time purchased by an uninterested person would be the most reliable evidence as to the market and saleable price. In this connection I may at once say that in spite of subpoena the share transfer register, though called for, was not produced in court. I have already discussed about the rates appearing in the share transfer register in respect of Lodna Colliery and Shalimar Tar. Respondent No. 4 ought to have given evidence in respect of the fair and marketable price of the shares. In the circumstances, the quotation referred to by Sambhu Nath Banerjee cannot be accepted. No case of transfer has been brought to the notice of the court nor the basis of the quotation is forthcoming. On the other hand, on the financial position of Angelo Brothers as also other circumstances, it is very reasonable to hold that the market price of each share in Angelo Brothers cannot be less than the face value. Rupees 5 per share is most unreasonably low and unacceptable in any circumstance.

37. The petitioner-company has in this case adduced evidence both documentary and oral. In particular Baijnath Garg has been examined. During evidence the witness stated many facts and circumstances. His evidence is to prove that the sales of the shares in the respondents Nos. 1, 2 and 3 were all fraudulent, unreasonable and illegal. According to the witness there was no necessity for the sales of the shares, that the price of the shares have been deliberately undervalued to the detriment of the petitioner-company, that Haridas Mundhra

was the prime mover in the matter of sales for his own interest in conspiracy with the directors of the petitioner-company as well as the directors of the respondents Nos. 1, 2 and 3 as also some officers of those companies as well as of the petitioner-company who were under his control and influence and that the purchases were made for the interest of Haridas Mundhra and his son. The witness wanted also to say that respondents Nos. 4 and 5 had no means to purchase the shares and that the purchase money was supplied through the agency of Haridas Mundhra.

38. In spite of the pointed allegations made by the witness, Baijnath Garg, against Haridas Mundhra, V.K. Mundhra, the directors, respondents Nos. 4 and 5 as also some of the respondents, none of those persons have been examined in this case to challenge those allegations in order to prove that the sales were bona fide and that the market price of the shares in question were fair and that there was necessity for the sales of the shares and that respondents Nos. 4 and 5 had sufficient money to purchase the shares. Those persons against whom allegations were made by the witness were necessary and important witnesses in this case. It is to be particularly noted that at the time of trial when the witnesses of the petitioner-company were being examined, V.K. Mundhra, respondent No. 7, instructed his counsel and Kailas Nath Agarwalla personally assisted the counsel for Ganpatrai & Sons by giving instructions, but it is strange that they did not examine themselves or any other competent witness to challenge the allegations made by Baijnath Garg and to give evidence in support of their defence. It has also been seen that Haridas Mundhra, although he filed an affidavit-in-opposition against the allegations made in the petition, did not contest at the time of trial. It is clear, therefore, in the facts and circumstances of this case, that none of the directors of respondents Nos. 1, 2, 3, 4 and 5 nor any other respondent ventured to step into the witness box although serious allegations of fraud and misconduct have been made against them. It is very reasonable to hold, in the facts and circumstances, that those persons did not dare to face the court personally and to deny those allegations. The non-examination of those witnesses raises a presumption u/s 114 of the Evidence Act. It is to be further noted that on behalf of respondent No. 5 there was no cross-examination directed against the witnesses of the petitioner-company. Mr. Nag, the learned counsel, came at the last moment and made his submission after the arguments of all the parties had been concluded. His argument practically was that in case the disputed sales of the shares in question were held to be fraudulent and illegal, then his client, respondent No. 5, would be entitled to get back the consideration money paid by respondent No. 5 along with interest.

39. I have given my best consideration to the evidence of the contesting parties, both oral and documentary. I have already discussed about the relevant facts and circumstances in this case and indicated my decisions at times. Besides, I mentioned some of the important facts and circumstances. First of all, there was the decision at a meeting of the board of directors of the petitioner-company, as

already mentioned, that in case there might be occasions for sale of the shares, legal opinion was to be obtained. In the present case although the shares in respondents Nos. 1, 2 and 3 were sold, no such legal opinion was taken. I do not find any evidence about such opinion. In this case I find that V.K. Mundhra was clearly taking a leading part in the matter of sales of the shares. It was he who wanted to obtain the break-up value from Batliboy & Co., although there is no evidence that there was any bona fide attempt on the part of the board of directors to obtain the marketable value of the shares in question. There was no advertisement or any sort of publicity for the sale of the shares so that there might be an occasion for the petitioner-company to get the highest bid from the purchasers. There is no tangible and reliable evidence that in fact genuine proposals were made to respondents Nos. 4 and 5 for the sale of the shares. There is no evidence why, of all persons, only respondents Nos. 4 and 5 were approached for sale of the shares. There is no evidence that other persons were also approached for sale. I find no evidence, worth the name even, that any offer of sale was accepted in due course of business by the competent authority of respondents Nos. 4 and 5. The evidence shows that the financial condition of respondents Nos. 4 and 5 were not at all sufficient for the purchase of the shares. I find no evidence which may suggest any reasonable ground to prompt respondents Nos. 4 and 5 to purchase the shares by obtaining money from outside. If really respondents Nos. 4 and 5 wanted to purchase the shares by raising funds from outside by loans or otherwise, in that case the shares purchased must have been of great value and importance and if that was so, then certainly the price of the shares at which they were sold could not have been so low. No reasonable person would ever purchase unprofitable and unimportant shares by taking loan or otherwise at any hazard. Nobody has come from the side of respondents Nos. 4 and 5 to give evidence about the circumstances in which the shares were purchased and why and about the nature of the transactions. From the evidence I have no doubt in holding that the marketable value or the market price of the shares could not have been less than their face value in any view of the matter. In spite of sufficient opportunity none of the directors of respondents Nos. 1 to 5 nor any other respondent has dared to come to face the court and to step into the witness box to challenge the allegations made by the petitioner through their evidence, both oral and documentary. No explanation has been given as to non-examination of those relevant, important and necessary witnesses and non-production of necessary and relevant documents.

40. The case of the petitioner-company is that Haridas Mundhra on failure to get majority shares of the petitioner-company after the decisions of the Supreme Court in March, 1972, and particularly during the hearing of those appeals when he had no chance of success wanted to snatch away the valuable shares in respondents Nos. 1, 2 and 3 for his own interest and also for V.K. Mundhra in order to cripple the petitioner-company and thus managed to sell away the shares in respondents Nos. 1, 2 and 3, in benam, in his own interest at a price

unduly low thus causing great damage and loss to the petitioner-company. From the evidence, I have already stated, I find that V.K. Mundhra was all in all and he was dominating in the affairs of sale and the other directors of the petitioner-company did not use their proper or reasonable discretion in the interest of the petitioner-company. Of course, B.P. Sinha, the chairman of the board of directors did not commit as to the proper valuation of the shares at which they should be sold. I have already discussed that the directors of respondents Nos. 4 and 5 are related or connected with Haridas Mundhra and V.K. Mundhra by relationship or business link. I have no doubt, however, that the decision of the board of directors of the petitioner-company was not bona fide and that it definitely caused detriment and financial loss to the petitioner-company by selling the shares at so low a price which was against one's conscience. The transactions of sale in respect of the shares in favour of respondents Nos. 4 and 5 were clearly fraudulent, mala fide and illegal. They were not reasonable, but were made quite hastily when the appeals were being heard before the Supreme Court and the judgments were passed against Haridas Mundhra. The evidence of fraud cannot be tangible and perceived. The fraud can be proved by facts and circumstances and as such conceived. It is a matter of reasonable inference. The actions of Haridas Mundhra with regard to the majority shares of the petitioner-company through litigations and ultimately his failure, have an important bearing in this case. His son, V.K. Mundhra, was very much active to take away valuable portion of the assets of the petitioner-company in the shares which were sold causing great loss to the petitioner-company when the attempts of Haridas Mundhra to get the shares through litigations failed. I, therefore, find without the least hesitation that the sales or transfers of shares as mentioned in issues Nos. 2, 3 and 4 were fraudulent, illegal, void and a nullity. These issues are thus decided in favour of the petitioner-company. I have already held that the sales of those shares were made at an undervalue, much below the market value and thus issue No. 5 is answered in favour of the petitioner-company as well.

41. I shall now deal with issue No. 6. The question is whether the sales we are concerned with are in contravention of the provisions of the Securities Contracts (Regulation) Act, 1956. The contention of Mr. Mukherjee, learned counsel for the petitioner-company, is that in view of the provision u/s 13 of the Securities Contracts (Regulation) Act, 1956, the disputed sales of shares are all illegal and void. The said section reads as follows :

"If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or area, that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such State or area, and thereupon every contract in such State or area which is entered into after the date of notification otherwise than between members of a recognised stock exchange in such State or area or through or with such member shall be illegal."

42. The word "securities" has been defined in Clause (h) of Section 2 of the Act

and it says :

" "Securities" include-

(i) Shares, scrips, stocks, bonds, debentures, debenture stock 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 ;"

43. In this connection the definition of "spot delivery contract" should be noted as will appear in Clause (i) of Section 2 of the Act. I quote the same below :

"(i) "spot delivery contract" means a contract which provides for the actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality."

44. We have seen in Section 13 of the Securities Contracts (Regulation) Act, 1956, that the application of the said section will depend upon a notification of the Central Govt. in the Official Gazette. In the present case the Notification No. GSR-1381 dated 15th December, 1969, issued by the Central Govt. in its Ministry of Finance, Department of Economic Affairs, was published in Gaz. of India, Extry., Pt. II, Section 3, at p. 803. The said notification runs as follows :

"Where the Central Government is satisfied having regard to the nature or volume of transactions in securities in the areas covered by the municipal limits of Calcutta and Howrah, that it is necessary to do ; now, therefore, in exercise of the powers conferred by Section 13 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Central Government hereby declares that the said Section 13 shall apply to the said areas."

45. Section 18(1) of the Act says that nothing contained in Sections 13, 14, 15 and 17 shall apply to spot delivery contracts. I have already mentioned what spot delivery is according to the Act. Admittedly, in the present case, the transaction dealing with the disputed sale of shares is not a case of spot delivery contract. The evidence does not disclose that Mr. Mukherjee's contention with regard to the issue No. 6 is that when the contract involved in the present case relating to the sale of the shares was not entered into between the members of a recognised stock exchange or through or with any such member, the sales of shares involved in this case were illegal and void. In the instant case the shares in respondents Nos. 1, 2 and 3 were not negotiated through the members of any recognised stock exchange as required u/s 13 of the Securities Contracts (Regulation) Act. Had there been any such sale, there would have been an occasion for publicity or at least there might have been an opportunity of getting

a fair market price. On the other hand the shares were sold surreptitiously without letting any outsider know about the sale. However, the fact is proved that Section 13 of the Securities Contracts (Regulation) Act, 1956, has been deliberately violated to effect the fraudulent sale of the shares. There can be no doubt, therefore, that all the sales of the shares in question were illegal and void and the sales were ineffective. Issue No. 6 is, therefore, answered in favour of the petitioner-company.

46. I will now consider issues Nos. 7, 8 and 9 together as they are connected. In view of my findings and decisions on issues Nos. 1 to 6 as made above, that the sales of the shares in the three petitions are fraudulent, illegal, void and a nullity, the question arises as to the relief or reliefs which the petitioner-company is entitled to. First of all, it would be declared that the sales of the shares challenged are fraudulent, illegal, void and the names of respondents Nos. 4 and 5, namely, Ganpatrai & Sons and Metal Craft, respectively, shall be removed from the relevant registers of shares and also from the relevant registers of members of the respondents Nos. 1, 2 and 3 and in their places the name of the petitioner-company shall be restored as before as the owner of the share scrips in question and thus the said register should be rectified. As the consideration money for these sales was credited to the account of the petitioner-company, although these are fraudulent transactions, in my view, the petitioner-company is to return the consideration money to respondents Nos. 4 and 5 as paid by them and the said two respondents shall be entitled to recover the amounts they paid from the petitioner-company. I do not think that the petitioner should be entitled to any other damages against any of the respondents. Respondents Nos. 4 and 5 cannot claim in the circumstances of this case any interest on the sums to be refunded to them. In the result and in view of my findings above, the 3 petitions succeed. The sales of shares in respondents Nos. 1, 2 and 3 as challenged are hereby declared fraudulent, illegal, void and a nullity. The share registers and/or register of members of respondents Nos. 1, 2 and 3 are to be rectified and corrected by removing the names of respondents Nos. 4 and 5 from the relevant registers and inserting the name of the petitioner-company in their places, that is to say, restoring the name of the petitioner-company as owner of the shares in question. Respondents Nos. 4 and 5 shall, however, be entitled to recover the actual consideration money they paid for the shares transferred in their names illegally. Respondent No. 4 shall get Rs. 7,18,124 for the shares in Angelo Brothers and Rs. 4,19,250 for the shares in Shalimar Tar and respondent No. 5 shall get Rs. 10,18,062.50 for the shares in Lodna Colliery. The petitioner-company shall pay the said consideration monies to respondents Nos. 4 and 5 within one year from this date and in case of non-payment of the amounts within this period, the said respondents Nos. 4 and 5 shall be entitled to recover the same according to law. The petitioner-company is hereby restrained from transferring the said shares or any of them in any form so long as the said amounts are not paid to respondents Nos. 4 and 5 or deposited in court, but will be entitled to get back the share scrips in question deposited in court on the

undertaking that they shall be produced in court whenever called upon to do so by this court and during the pendency of any appeal, if there be any. The petitioner-company shall, however, get the costs of these applications from respondents Nos. 4, 5 and 6. This judgment shall govern all the three applications.