S.R. Nayak and another Vs Union of India and others

Court: Supreme Court of India

Date of Decision: April 16, 1991

Citation: 1991 AIR 1420

Hon'ble Judges: N. M. Kasliwal, J; B. C. Ray, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Ray, J-One Mr. Haresh Jagtiani, a practising advocate of the High Court of Bombay and a policy-holder under the Life Insurance Corporation of

India and also holder of units issued by the Unit Trust of India and Mr. Shamit Majumdar, a holder of shares and debentures of Larsen and

Toubro Ltd. filed a Writ Petition being No. 2595 of 1989 in the High Court of Judicature at Bombay against the Union of India and others

including the financial institutions questioning the legality and validity of the consent given. by the Controller of Capital Issues for the proposed issue

of convertible secured debentures aggregating ` 820 crores by Larsen and Toubro Limited insofar as the said issue seeks to offer such convertible

debentures to persons other than the existing shareholders and members and the employees of Larsen and Toubro Limited and praying for

quashing the same as well as for a declaration that the transfer of 39 lakh shares of Larsen and Toubro Ltd. held by Unit Trust of India, Life

Insurance Corporation of India, General Insurance Company and its subsidiaries to Trishna Investment and Leasing Ltd. through the instrumentality

of BOB Fiscal Services Ltd. is arbitrary, illegal, mala fide and a fraud on the statutory powers of the respondents and is clearly ultra vires of

Articles 14 and 39(b) and (c) of the Constitution on the allegations that in or around the middle of the year 1988 the respondents entered into a

secret agreement by which a large chunk of the equity shares of Larsen and Toubro Ltd., the largest engineering company in India, would stand

surreptitiously divested by the respondents in favour of the Ambani Group, the third largest monopoly house in India. This divestment was achieved

not directly but, indirectly and with a motive to conceal the real nature of the deal by interpolating BOB Fiscal Services Ltd. (a wholly owned

subsidiary of Bank of Baroda) as the conduit for the transfer of shares from the public financial institutions to the satellite companies of the Ambani

Group.

2. The petitioners also alleged in the petition that pursuant to this secret agreement, the following events took place in quick succession

In or around August 1988, four satellite companies of Reliance Group, namely Skylab Detergents Limited, Oskar Chemicals Private Limited,

Maxwell Dyes and Chemicals Private Limited and Pro -lab Synthetics Private Limited, gave a total deposit of ` 30 crores to an investment

company associated with Ambanis who, in turn, deposited this amount with BOB Fiscal Services Ltd., a wholly owned subsidiary of Bank of

Baroda, a nationalised bank.

BOB Fiscal Services Ltd., which had been formed only three months earlier acquired either immediately before the above deposit, or immediately

subsequent thereto, 33 lakh equity shares of Larsen and Toubro from UTI, LIC, GIC and its subsidiaries. Later, in January, 1989 it acquired a

further 6 lakh shares from the LIC.

Within weeks after the deposit by the four companies mentioned above, Trishna Investments and Leasing Limited, another satellite company of the

Ambani Group, paid the requisite amounts for the acquisition of the said 33 lakh shares in Larsen and Toubro from BOB Fiscal Services Ltd. to

the latter through a stock broking firm and immediately thereafter the money advanced by the above four companies was returned by BOB Fiscal

Services Ltd. through the investment company associated with Ambanis, which was earlier used as a conduit for making the deposit from the four

satellite companies of Reliance Group.

The deposit by the four companies was made immediately after the divestment of the shares by the respondents was okayed by the highest level in

the Government and the deposit was returned immediately after the Ambani Group was able to divert moneys taken by them in the name of

Reliance Petro-chemicals Ltd. by the issue of convertible debentures of the order of ` 594 crores.

The said 33 lakh shares were registered in the name of BOB Fiscal Services Ltd. in the Register of Members of Larsen and Toubro Ltd. on 11-

10-1988 and later, on 6-1-1989, a further 6 lakh shares were registered in tne name of BOB Fiscal Services Ltd. on any valuation based on

market values of Larsen and Toubro Ltd. shares at the relevant time, the value of 39 lakh shares would cost not less than ` 45 crores.

On the very day of the registration of the shares in the name of BOB Fiscal Services Ltd., namely, 11-10-1988, two nominees of the Ambani

Group, Mr. Mukesh Ambani and Mr. M. Bhakta, a solicitor of Reliance Industries, joined the Board of Larsen and Toubro Ltd. and were co-

opted as additional directors.

Subsequently, on 30th December, 1988, Mr. Anil Ambani another nominee of the Ambani Group was also co-opted on the Board of Larsen and

Toubro Ltd., as an additional director.

On 6th January, 1989, the entire 39 lakh equity shares of Larsen and Toubro Ltd. registered in the name of BOB Fiscal Services Limited (of

which 6 lakh shares transferred to BOB Fiscal Services Ltd. by LIC was registered in the name of BOB Fiscal Services Ltd. only on 6-1-89)

were transferred to Trishna Investments and Leasing Ltd., which is a satellite company of the house of Ambanis.

3. Thus, BOB Fiscal Services merely acted as a conduit for funnelling shares from the public financial institutions to the Ambani group and this

interpolation of BOB Fiscal Services was necessitated to get over the legal impediments in the way of selling any part of the controlling shares held

by public financial institutions to private parties by private deals except to those already in management and at a price equal to two times the

market price.

4. The Chairman of Bank of Baroda, Mr. Premjit Singh, is closely linked to the house of Ambanis through the business of his son Harinder Singh.

BOB Fiscal Services Ltd. is the wholly owned subsidiary of Bank of Baroda and it was incorporated only two months preceding the acquisition of

Larsen and Toubro Ltd. shares by BOB Fiscal Services Ltd. In fact, the acquisition of L and T shares for the Ambani Group for which it had

acted as a conduit is the first business of BOB Fiscal Services Ltd.

5. Subsequently, on 28th April, 1989, Mr. Dhirubhai Ambani, the Chairman of Reliance Group, became the Chairman of Larsen and Toubro Ltd.,

thus completing the process of take-over of the management of Larsen and Touhro by the Ambani Group.

6. By this process, the public financial institutions which had virtual ownership and control of Larsen and Toubro Ltd. holding about 40% shares of

the company (with no other individual shareholder holding more than 2%), voluntarily diluted their holdings to 33% and parted with approximately

7% to the house of Ambanis and made them the single largest private shareholder. This was done, in the submission of the petitioners, deliberately

and by a design to legitimise the eventual take-over of Larsen and Toubro by the Ambanis. While the petitioners challenge the divestment of 7%

ownership rights in Larsen and Toubro Ltd. and the management of the company to the Ambani Group, the immediate and Proximate provocation

for this writ petition is the proposed issue of convertible debentures by Larsen and Toubro Ltd. now under the management of the house of

Ambanis to raise ` 820 crores from stock market.

7. The proposed issue has the effect of aggravating and perpetuating, and irretrievably divesting and transferring the ownership of Larsen and

Toubro in favour of the Ambani group. The concealed and covert intent which is manifest in the direct effect of the proposed issue is to make

Larsen and. Toubro Ltd. a complete family owned and a decisively family controlled Industrial Corporation - whereas the openly declared policy

of the Government is to force the reverse viz. professionalise the existing family controlled companies. By the proposed issue, the house of

Ambanis and the shareholders, debentureholders and employees of Reliance Industlies and Reliance Petrochemical Industries Ltd. would

collectively hold 35.5% of the ownership rights in Larsen and Toubro and will be single largest block or group in the company. This preferred

group which is not in law entitled to any issue of shares from Larsen and Toubro Ltd., has been chosen to be the preferential beneficiaries of the

scheme under which they would get shares in Larsen and Toubro Ltd. at ` 60% per share when the shareholders of Larsen and Toubro Ltd.

themselves (who, by law, are entitled to further issue of shares from Larsen and Toubro Ltd.) would be issued '' Larsen and Toubro shares under

the convertible debentures issued in April 1989 only at ` .65/- per share.Thus, as against 35.5% holding of Ambani Reliance Group, the public

finance bodies, which held 40% shares before they diluted their holdings in favour of the Ambani group, would have had their holding further

diluted to only 22.9% as a result of the present issue. In other words, by approving the terms of the proposed issue the public financial institutions

have agreed to a further dilution of their holdings from 32.8% to 22.9% without any consideration whatsoever for agreeing to such reduction and

to pass on their vested rights u/ s. 81 of the Companies Act to pre-emptive allotment of shares in Larsen and Toubro to the members,

debentureholders and employees of Reliance Industries Ltd. and Reliance Petrochemicals Ltd. It is in this background significant that the

preferential allotment to the shareholders, debentureholders and employees of the house of Ambanis who have no statutory right, offers to them

shares in Larsen and Toubro Ltd. at a premium of only ` 50% per share, while in the fully convertible debentures issue made by Larsen Toubro

Ltd. in April/ May, 1989 the existing shareholders of Larsen and Toubro were given conversion rights at a premium of ` 501 -per share in the first

conversion and ` 55/-per share in the second conversion i.e. ` 5 more than what the Reliance Group is called upon to pay. It means that while the

existing shareholders of Larsen and Toubro were paying for their own shares a premium of ` 50 or ` 55 per share, new group of shareholders,

debentureholders and employees of the house of Ambanis would be getting Larsen and Toubro shares at a premium of only ` 50/ -. It means that,

by making extraordinary favour to a totally different group which is not entitled to Larsen -and Toubro shares, the Ambani group is creating a

favoured lobby of their own, almost a clan, who are already their shareholders, debentureholders and employees to act as a group to own and

control Larsen and Toubro Ltd. This is a device to perpetuate and aggravate their own decisive control over Larsen and Toubro, to which the

public financial institutions are willing and enthusiastic parties inside the Board room and in the general meeting of Larsen and Toubro Ltd.

8. In the facts and circumstances the petitioners pleaded that they are entitled to a declaration that the divestment by the respondents of the

controlling shares in Larsen and Toubro to the house of Ambani in a secret and circuitous arrangement is arbitrary, illegal, mala fide and a fraud on

the statutory powers of the respondents. It was further pleaded that pursuant to this secret arrangement the financial institutions such as the UTI,

LIC, GIC and its subsidiaries divested themselves of 7% shares of Larsen and Toubro Ltd. in favour of Ambani Group in an illegal and arbitrary

manner as a result of which the Ambani Group became the single largest private shareholder. This paved the way for the said private monopoly

group and the Government to rationalise the take over of the management of Larsen and Toubro Ltd. by the Ambani Group with the active

connivance and support of the Central Government.

9. The modus operandi adopted for the transfer was as under:- ,

(a) In the month of May, 1988, Bank of Baroda of which Mr. Premjit Singh is the Chairman, forms a''subsidiary for merchant banking under the

name and style of BOB Fiscal Services P. Ltd. This Company became a public company u/s. 43A of the Companies Act, 1956, in June, 1988.

Mr. Harjit Singh, son of. Premjit Singh, owned a company ''Krystal Poly Fab. Ltd.''whose only business is texturising of partially oriented yarn

from Reliance Industries Ltd. and the supply of texturised yarn back to Reliance Industries Ltd. or its nominees.

(b) On 5th August, 1988, four satellite companies of the House of Ambanis, viz. SKYLAB Detergents Ltd., OSCAR Chemicals Pvt. Ltd.,

MAXWELL Dyes and Chemicals Pvt. Ltd. and PRELAB Synthetics Pvt. Ltd. gave a total deposit of ` 30 crores to an investment company,

associated with Reliance who, in turn, deposited the same amount with BOB Fiscal Services.

(c) Either immediately preceding this deposit or immediately thereafter, BOB Fiscal Services acquired 33 lakh equity shares in Larsen and Toubro

Ltd. from the UTI, LIC and GIC and its subsidiaries. Later, it acquired a further 6 lakh shares in Larsen and Toubro Ltd. from the LIC. The''

manner in which the transfer had been effected by the public financial institutions and the bulk sale amounting to about 7% of the then share capital

of Larsen and Toubro Ltd. left no one in doubt about what the financial institutions intended to do, viz. they intended to shed a vital seven pera

cent. of the ownership rights held by them in Larsen and Toubro Ltd.

(d) In July, 1988 Reliance Petrochemicals Ltd. of the Ambani group had issued convertible debentures for ` 594 crores to public and others and

had raised a vast sum of monies as subscription. The petitioners understand that as soon as the above funds became available to the Ambani group

for employment, a part of it was diverted for acquisition of Larsen and Toubro Ltd. shares not directly in the name of Reliance Industries Ltd. or

Reliance Petrochemicals Ltd. but in the name of faceless, benami concerns of the Ambani group with virtually no financial standing of their own.

(e) Thereafter on October 11, 1988 the 33 lakh equity shares of Larsen and Toubro Ltd. acquired by BOB Fiscal Services Ltd. were registered in

the register of members of Larsen and Toubro Ltd. in Folio No. B 69567 at pages 1851 to 1858. These shares had been transferred by LIC,

UTI, GIC and its subsidiaries to BOB Fiscal Services Ltd.

(f) On the same day two nominees of the Ambani Group Mr. Mukesh Ambani and Mr. M. L. Bhakta, a Solicitor of Reliance Industries Ltd., who

are also directors of Reliance Industries Ltd. and Reliance Petrochemicals Ltd., were co-opted on the Board of Larsen and Toubro Ltd.

(g) It is evident from the above events that the sale to BOB Fiscal. Services Ltd. by the financial institutions was accepted by all parties concerned

to be a sale to the Ambani Group itself. Otherwise there is no provocation or justification for the financial institutions to propose or to support

appointment of Mr. Mukesh Ambani and Mr. M. Bhakta, who are the nominees of the Ambani Group, on the Board of Larsen and Toubro Ltd.

The date of the transfer to BOB Fiscal Services Ltd. and the date of appointment of the Ambani Group nominees on the Larsen and Toubro Ltd.

Board being the same and not a mere coincidence.

(h) Again, in December, 1988, Mr. Anil Ambani, another nominee of the Ambani Group was co-opted on the Board of Larsen and Toubro Ltd:as

an Additional director with the support of financial institutions even though the 33 lakh shares still stood in the name of BOB Fiscal Services Ltd.

10. It has been further pleaded that Trishna Investments and Leasing Ltd. to which the 33 lakh equity shares of Larsen and Toubro Ltd. were sold

by the financial institutions through the instrumentality of BOB Fiscal Services Ltd. was incorporated as a private limited company on 1 st October,

1986 with a paid up capital of ` 11,000 It is evident that even after acquisition of 3,300 equity shares of ` 10 each of Reliance Industries Ltd., the

paid up share capital was only ` 44,000/-.

11. An affidavit in opposition was filed on behalf of the respondent by Mr. S. D. Kulkarni, a whole-time Director and Vice- President (Finance) of

Larsen and Toubro Ltd. In para 6 of the said affidavit it has been stated that the shareholders are different and distinct frtin the company and do

not have any interest whatsoever in the property of the company unless and until the winding up takes place. The company is a distinct legal entity

and it does not have in law or fact any control over the shareholders in regard to the dealing with their investment in the new company or any other

company. It has been further stated that the resolution regarding the issue of the debentures was taken at a special General Meeting of the

Company and the decision is a near unanimous decision of the 1.5 lakh shareholders with only one dissent among them. It was stated in these

circumstances the writ petition under Article 226 was not maintainable. It has also been stated that the entirety of the consent granted by the CCI

under the Act is legal and valid. These statements have been made by the deponent without filing any proper verification or affidavit and as such

there was no proper controvertion or denial of the statements made in the writ petition. The other affidavits filed on behalf of the respondents are

also not affirmed or verified duly in accordance with the provisions of the rules of the Supreme Court nor in accordance with the provisions of

Order 19, Rule 3 of the Code of Civil Procedure.

12. The High Court of Bombay by its judgment and order dated September 29, 1989 dismissed the writ petition at the preliminary hearing.

13. A Letters Patent Appeal was filed in the High Court at Bombay against the said judgment by the petitioners. The respondents filed Transfer

Petitions Nos. 506-507/ 89 and Transfer Petitions Nos. 571-573 of 1989 in this Court under Article 139A of the Constitution of India praying for

the transfer of the said Letters Patent Appeal No..... / 89 as well as Writ Petition No. 13199/ 89 filed in the High Court at Madras by one Mr.

N. Parathasarathy, a shareholder of L and T Ltd. against the Controller of Capital Issues and Larsen and Toubro Ltd. and Writ Petition No.

18399 of 1989 filed in the Karnataka High Court by Prof. S. R. Nayak and Anr. against the Union of India and others raising the .similar

questions.

14. This Court vide its order dated November 9, 1989 allowed the Transfer Petitions Nos. 506-507 of 1989 and 571 to 573 of 1989 and

directed that the L. P. A. No..... of 1989 against the judgment passed in Writ Petition No. 2595 of 1989 pending in the Bombay High Court

be transferred to this Court for final disposal. The Writ Petition No. 13199 of 1989 filed in the Madras High Court and the writ petition No.

18399 of 1989 filed in the Karnataka High Court were also transferred to this Court. These matters on transfer to this Court were numbered as

Transfer Case No. 1 of 1990, Transfer Case No. 61 of 1989 and Transfer Case No. 62 of 1989 respectively.

15. The Transfer Petitions Nos. 458-467 of 1990 praying for the transfer of cases filed in different High Courts raising the similar grounds are

allowed and the Transferred Cases arising out of these are also heard along with the Transferred Cases Nos. 1 of 1990, 61 of 1989 and 62 of

1989.

16. Two questions that pose themselves for consideration in all these above cases are":- 1) whether the surreptitious divestment of 39 lakhs shares

of. L and T, a large Industrial undertaking by sale through the instrumentality of BOB Fiscal Services Ltd., a subsidiary of a nationalised Bank i.e.

Bank of Baroda by the public financial institutions -G.I.C., L.I.C., U.T.I. and thereby helping a private monopoly house of the Ambani Group to

acquire the said shares and thereby to get into the management of the Public Company amounts to an arbitrary exercise of statutory power of the

State and the respondents. Secondly, whether the consent accorded by Controller of Capital Issues, a preferential issue of debentures by Larsen

and Toubro Ltd. of ` 310 crores for being subscribed by, the shareholders and employees of R.P.L., R.I.L. amounts to immeasurable injury and

prejudice to the public without any application of mind and thereby enabling the Ambani group to have the largest share holding and thereby to

control the L and T Company which is ultra vires of Articles 14 and 39(b) and (c) of the Constitution.

17. The Larsen and Toubro Ltd. is a public limited company incorporated under the Companies Act of 1913 and it is recognised as a Premier

Engineering Company in the country with a. pool of highly trained and experienced people. It has been engaged in diverse activities. in the

engineering field, cement manufacture, shipping, switch gear, industrial machinery, electrical equipments etc. and various other core Sector

industries including manufacture of sophisticated equipment for space and defence programmes of the country. On October 1, 1986, Trishna

Investment and Leasing Ltd., a satellite company of the Ambani group was incorporated with paid up capital of ` 11000 / - (1100 shares of ` 10/-

each). This continued till 29-12-1988 when its capital was raised to ` 44,000 / -.

18. In May, 1988, BOB Fiscal Services Ltd., was incorporated as a wholly owned subsidiary of Bank of Baroda, a nationalised Bank. The entire

share capital of BOB Fiscal Services Ltd. was contributed by Bank of Baroda aggregating to about Rupees 10,00,00,000/- (Ten Crores) to

undertake mutual fund activities. It is to be taken notice of in this connection that Premjit Singh was the Chairman of the Bank of Baroda at the

relevant time and his son Harjeet Singh owned Kristal Poly Fab. Ltd. whose only business is with R.I.L. Ltd. Premjit Singh is closely linked to the

house of Ambani s through the business of his son Mr. Harjeet Singh. BOB Fiscal Services Ltd., was incorporated as a subsidiary of Bank of

Baroda only two months prior to the acquisition of shares Larsen and Toubro Ltd., for the Ambani group for which it had acted as a conduit and it

was the first business of BOB Fiscal Services Ltd. On July 15, 1988 BOB Fiscal Services Ltd., approached Life Insurance Corporation of India

and Unit Trust of India to sell to it two ''baskets'', of blue chip shares of the value of ` 25 crores approximately each. This will be evident from para

6(c) of the affidavit of Unit Trust of India. On August 1, 1988 U.T.I. and L.I.C. each offered to sell to BOB Fiscal Services Ltd. a basket of

shares valued at ` 25.Crores. The U.T.I. basket was valued at-Rs. 23.66 crores including 10 lakh Larsen Toubro Ltd. shares which were sold `

108/-, per share. The L.I.C. Basket was valued at ` 25.56 crores and it included 15 lakh L and T shares. L and T shares constituted

approximately 55% of the value of the two baskets. This is clear from para 6(d) of the affidavit of Unit Trust of India. On 3-8-88 BOB Fiscal

Services Ltd. accepted the two baskets of shares comprising of 25 lakhs L and T shares and shares of 7 other companies valued in total ` 50.23

crores. On August 5, 1988 four satellite Companies of the Reliance Group gave ` 30 crores to V. B. Desai, Finance Broker, who in turn gave a

short term call deposit of ` 30 crores to BOB Fiscal Services Ltd. as is evident from the affidavit filed by BOB Fiscal Services Ltd. On August 5,

1988, BOB Fiscal Services Ltd. sold 25 lakhs L and T shares to V. B. Desai, the Broker. Thus BOB Fiscal Services Ltd. acquired 33 lakhs

equity shares of L and T from U.T.I., L.I.C., G.I.C. and its subsidiaries. Later in January, 1989 it acquired a further 6 lakhs shares from the L.I.C.

within weeks after the deposit by the four companies mentioned above. Trishna Investment and Leasing Ltd., another satellite Company of the

ambani Group paid the requisite amounts for the acquisition of the said 33 lakh shares of L and T from BOB Fiscal Services Ltd. through the

Finance Broker, V. B. Desai, associated with Ambanis. It is convenient to mention in this connection that in July, 1988 the Reliance Petro

Chemicals Ltd. of the Ambani Group issued convertible debentures for ` 594 crores to the public and others and had raised a vast sum of rupees

as subscription. The Ambani Group diverted a part of it for acquisition of L and T shares in the name of benami concerns of their group who had

virtually no financial standing.

19. On October 11, 1988, 33 lakh shares were registered at a meeting of Board of Directors of L and T in the name of BOB Fiscal Services Ltd.

On the same day two nominees of R.I.L., M.L. Bhakta and Mukesh Ambani, who are directors of R.I.L. / R.P.L. were coopted as Directors of L

and T. The nominee directors of U.T.I., L.I.C.and I.D.B.1. did not raise any question as to the induction''of Ambani''s on the Board of L and T

Company even though not a single share of L and T stood in their names. On December 30, 1988, Trishna Investment and Leasing Ltd. issued

3,300 equity shares of ` 10/- each to R.I.L. and R.P.L. Ltd. The capital of Trishna Investment was ` 44,000/ -. On that day the registered Office

of Trishna Investment was shifted to Maker Chamber IV i.e. the office of R.I.L. Ltd., On 30-12-1988 Anil Ambani was co-opted as Director of

L and T without any question being raised by nominee directors of U.T.I., L.I.C. and I.D.B.1. On 6-1-89 the 39 lakh shares sold by U.T.I.,

L.I.C.. and G.I.C. to BOB Fiscal Services Ltd. were lodged by BOB Fiscal Services Ltd. for transfer in favour of Trishna Investment and Leasing

Ltd. whose registered office was located at the office of R.I.L. Thus BOB Fiscal Services Ltd. merely acted as a conduit for funneling shares from

the public financial institutions to the Ambani group. This is apparent from the fact that Mr. Premjit Singh, the Chairman of Bank of Baroda who is

closely linked to the house of Ambani through the business of his son Mr. Harjeet Singh and BOB Fiscal Services Ltd. is the wholly owned

subsidiary of Bank of Baroda and it was incorporated only two months preceding the acquisition of Larsen and Toubro Ltd. shares by it.

20. On 28th April, 1989 Dhirubhai Ambani, the Chairman of Reliance Group, became the Chairman of Larsen and Toubro. By this process the

public Financial Institutions which held 40% of the shares of L and T company voluntarily diluted their holding to 33% and parted with

approximately 7% to the house of Ambani''s and made them the single largest private shareholder. This was done as submitted by the appellants

deliberately and with a design to legitimise the eventual take over of Larsen and Toubro by the Ambanis. It is to be noticed that on 26-5-89 the

Board of Directors of L and T decided to convene an annual General Meeting on 27-7-89. Board also resolved to recommend that 8 crores be

invested in two specified companies and that a further sum of ` 50 crores be invested in the purchase of equity shares in any other company. On

23-6-1989 Board of Directors of L and T further resolved to invest a sum of ` 76 crores in the purchase of Equity Shares of R.I.L. On 21-7-89

R.I.L. and R.P.L. wrote letters. to L and T seeking suppliers credit to the extent of ` 635 crores for projects which they planned to entrust to L

and T. It is appropriate to note that prior to this the total inter corporate investment of L and T was approximately ` 4 crores and investment in the

shares of other companies was less than ` 50 lakhs. On 22-7-89 the Board of Directors of Larsen and Toubro approved a proposal to raise funds

by issue of convertible debentures amounting to ` 920 crores. Board resolved that notice should be issued convening an extraordinary general

meeting on 21-8-89 to consider special Resolution for issue of convertible debentures of ` 920 crores.

21. On 26-7-89 two applications were made to C.C.I. for (1) the right issue of ` 200 crores, and (II) the public issue of ` 720 crores. The

application states that it is proposed to reserve preferentially allotment of ` 360 crores out of public issue (i.e'' 50% of the public issue) for L and T

group companies viz. Reliance Industries Ltd. and Reliance Petrochemicals Ltd.wrhe application further mentions that Dhirubhai Ambani is the''

Chairman and Mukesh Ambani is the Vice Chairman of L and T and that Anil Ambani and Mr. M. L. Bhakta are Directors. On 11-8-89 further

letter was addressed by L and T to the C.C.I. forwarding copies of M.R.T.P. clearance with regard to projects awarded to L and T made by

Central Government under Section 22(3)(a) of M.R.T.P. Act. On 29-8-1989 C.C.I. passed an order approving the issue of convertible

''debentures. The prospectus is dated 5-9-89 stating that the company is part of the Reliance Group.

22. We have heard the arguments of the respondents. The public financial institutions tried to justify the transfer of blue chip equity shares of

Larsen and Toubro Ltd. on the'' ground that while deciding to sell those shares they acted purely on business principles and sold those shares at a

very high market price and thereby earned huge profit. These sales were made in order to earn much profit for the interest of their constituents and

for recycling the fund for investing in the business by purchasing shares of other companies in public interest and for interest of money market.

There is nothing hanky and panky in it nor it is effected with the motive of diluting shares held by public financial institutions in order to facilitate the

increase in the holding of Ambani group, a private monopoly house, to get into the management of this public company. It has been further

contended on behalf of the respondents Nos. 3 to 6 and 9 that the transfer of 39 lakh shares of Larsen and Toubro were not made in favour of

satellite companies of Ambani Group, through BOB Fiscal Services Ltd. which is a wholly owned subsidiary of Bank of Baroda, surreptitiously

and discreetly on the basis of a design and a secret arrangement by transferring 7% out of 40% of the shareholding in L and T and thus reducing

their shareholding in the Company to 33%. It has also been submitted that in transferring those equity shaes the financial institutions acted purely on

business principles and to earn profit by these transactions and in the case of L.I.C. and U.T.I. in the interest of the policv holders and the unit

holders as the case may be. It has also been urged that the acceptance of the requests made by the subsidiary of Bank of Baroda i.e. BOB Fiscal

Services for selling the blue chip shares of L and T to them at the highest market price through the broker was in public interest in as much as if all

those 39 lakh shares had been put in the stock market for sale it would have created an adverse effect on the company and there would have been

a run affecting adversely the interest of the L and T company. It has also been contended that it was not possible to know the actual purchasers of

these shares from respondent No. 10, BOB Fiscal Services Ltd. Certain decisions of this Court have been cited at the Bar.

23. Considering the entire sequence of events and the manner in which the financial institutions sold those 39 lakh equity shares of L and T to BOB

Fiscal Services it immediately after purchase of those shares with the 30 crores of rupees given by 4 satellites of the Reliance group transferred

those shares to Trishna Investment and Leasing Ltd., a satellite of Ambani Group though it had a capital of only ` 44,000/ - and money required

for purchase was at least ` 39 crores leads to the conclusion that such transfers had been made to help the Ambanis to acquire the shares of L and

T Company in a circuitous way. Moreover, the fund for purchase of the said shares was provided by Ambani Group from out of the money

received by issue of convertible debentures for ` 594 crores to public and others. Furthermore, immediately after acquisition of share of L and T

Ltd. Mukesh Ambani and M. L. Bhakta, who are Directors of R.I.L. / R.P.L. were co-opted as Directors without any question as to their

induction in the Board of Directors even by the nominee Directors of financial institutions even though the shares were not registered in their

names". Anil Ambani was also co-opted as Director in December, 1988 and in April 1989, Dhirubhai Ambani became Chairman of L and T. All

these circumstances taken together clearly spell some doubt whether the transfer of such a huge number of 39 lakh shares by the Public Financial

Institutions was for public interest and was made on purely business principles. The public financial institutions should be very prudent and cautious

in transferring the equity shares held by them not only being guided by the sole consideration of earning more profit by selling them but by taking

into account also, the factors of controlling the finances in thel market in public interest. In L.I.C. of India v. Escorts Ltd., AIR 1986 SC 1370 at p

1424, it was observed:-

Broadly speaking, the Court will examine the actions of the State if they pertain to the public law domain and refrain from examining them if they

pertain to the private law field. The difficulty will be in demarcating the frontier between the public law domain and the private law field..... The

question must be decided in each case with reference to the particular action..... When the State or an instrumentality of the State ventures into

the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a

shareholder with all the rights available to such a shareholder.

This observation, in my considered opinion, has no application to the facts of the instant., case as the public financial institutions are not purchasing

the shares of a company.

24. However, I do not think it necessary to dilate on this point as the financial institutions have already bought back all the 39 lakh shares from

Trishna Investment and Leasing Ltd. with the accretions thereon but at the same time we add a note of caution that the public financial institutions

while transferring or selling bulk number of shares must consider whether such a transfer will lead to acquisition of a large proportion of the shares

of a public company and thereby creating a monopoly in favour of a particular group to have a controlling voice in the company if the same is not in

public interest and not congenial to the promotion of business.

25. The contention regarding the maintainability of the Writ Petition as a public interest litigation cannot be taken into consideration in view of the

decisions of this Court in S. A. Gupta v. Union of India, (1982) 2 SCR 365 , Bandhua Mukti Morcha v. Union '' of India, (1984) 2 SCR 167.

Even the case of LIC of India v. Escorts Ltd., (1986) 1 SCC 264 , arose out of a public interest litigation.

26. The next crucial question that falls for consideration is about the legality and validity of the consent given to the mega issue of debentures for the

right issue of ` 200 crores and for convertible issue of debentures of ` 620 crores out of which 3 10 crores of debentures were earmarked for issue

to the shareholders and debentureholders of Reliance Industries Ltd. and Reliance Petrochemicals Ltd. As stated hereinbefore that after the

purchase of 39 lakh equity shares of L and T company from the public financial institutions, BOB Fiscal Services, a subsidiary of Bank of Baroda

transferred the same on the same day on which the transferred shares were registered in its name in the Register of L and T to Trishna Investing

and Leasing Ltd., a satellite of Ambani Group. It has also been alleged that after Dhirubhai Ambani became the Chairman of the Board of

Directors of L and T Ltd. on April 28, 1989, Mukesh Ambani and M. L. Bhakta, Directors of R.I.L. R.P.L. and Anil Ambani were co-opted as

Directors of L and T. The Board of Directors of L and T at its meeting held on 22-7-1989 approved a proposal to raise funds by issue of

convertible debentures of ` 920 crores and further resolved that notice should.be issued convening an extraordinary general meeting on 21-8-89 to

consider special resolution for issue of convertible debentures of ` 920 crores. Immediately thereafter on July 26. 1989 two applications were

made to the Controller of Capital Issues, Department of Economic Affairs for sanction to the Right issue of debentures of ` 200 crores and for the

public issue of debentures worth ` 720 crores. The application records that it is proposed to reserve/preferentially allot ` 360 crores out of the

public issue (i.e. 50% of the public issue) for L and T''s group companies viz. Reliance Industries Ltd. and Reliance Petrochemicals Ltd. The

application also mentions that Dhirubhai Ambani is the Chairman and Mukesh Ambani is the Vice-Chairman of L and T and that Anil Ambani and

Mr. M. L. Bhakta are Directors. On 11-8-89 another letter was sent by L and T to the Controller of Capital Issues, respondent No. 2 stating inter

alia that the Company wishes to modify their proposal by reducing the reservation for the shareholders of R. 1. L. / R. P. L. from ` 360 crores to `

310 crores etc. and the issue of total debentures was reduced to ` 820 crores. On August 21, 1989 at the extraordinary general meeting of L and

T Ltd. resolution was passed authorising the Board of Directors of the company to issue 12.5% fully secured convertible debentures of the total''

value of ` 820 crores to be subscribed in the manner as stated therein. The respondent No. 2, Controller of Capital Issues, by its letter dated 29-

8-89 addressed to M/ s. Larsen and Toubro Ltd. with reference to its letter dated 26-7-89 intimated that the Central Government in exercise of

the powers conferred by the Capital Issues (Control) Act, 1947 gave their consent to the issue by L and T Ltd. of 12.5% secured fully

convertible, debentures of the value of ` 820 crores in the manner specified therein.

27. The consent given by the Controller of Capital Issues was challenged on the ground that it was given in undue haste without du!y considering

the question that providing the preferential allotment of debentures of ` 310 crores to the equity shareholders of R.I.L. and R.P.L. will increase

considerably the holding of equity shares by the Ambani group to control the public limited company. The consent order made by the Controller of

Capital Issues was attacked mainly on the ground that the said order was made casually without any application of mind and without considering

that the effect of the same order will be to help the Ambani Group to acquire debentures of the value of ` 310 crores specifically earmarked for

preferential allotment to the shareholders of Reliance Industries Ltd. and Reliance Petroche-micals Ltd. and thereby to have the control of the L

and T, a public limited company. It has also been alleged that this consent has been given hurriedly within 24 hours of the making of the application

for consent to the Controller of Capital Issues.

28. An affidavit in reply has been filed on behalf of respondents Nos. 1 and 2, Union of India and the Controller of Capital Issues denying all these

allegations. It has been submitted that the claim made in the Writ Petition that the undue haste in clearing the application (under the CCI Act) was

shown by respondents Nos. 1 and 2 and the application was cleared in just 24 hours, is not correct. It is not correct that the approval was given

by the empowered committee on 21-8-89 at 4.00 p.m., even before the General Body meeting of L and T took place. It has been submitted that

the application by M/ s. L and T Ltd. was dated 26-7-89 and the consent was given on 29-8-89. The charge is false, baseless and mischievous. It

has been stated in paragraph 3 of the said affidavit that the preferential issue, per se, is not a novel idea. It has been stated that CCI has been

permitting reservations for various categories out of public issue based on the requests made by companies after passing a special resolution in their

general body meeting to that effect. There is no restriction on the shareholders of the company to offer shares of their company to anybody after

passing a special resolution in the General Body meeting as per Section 81(IA) of the Companies Act. Through such resolution resolved at such

meetings shareholders can also offer shares of their company to any person or corporate body who is not even connected with the company.

However, CCI would not normally permit reservations for shareholders of any unconnected company out of public issue, unless it is offered to

shareholders -of Associate/ Group company of the Issuing Company. It is submitted that Larsen and Toubro had indicated that Reliance Industries

Ltd. (RIL) and Reliance Petrochemicals Ltd. (RPL) are their group Companies. It is also submitted that Larsen and Toubro filed a copy of the

special resolution passed in the General Body meeting held on 21-8-89 which permitted the company to offer its convertible debentures worth `

310 crores to the shareholders of RIL and RPL. It is submitted that the CCI permitted similar reservation for shareholders of Associate/ Group

companies in the.public issue of M/ s. Apollo Tyres Ltd., M/s Essar Gujarat Ltd., M/s. Bindal Agro Ltd., M/s. Chambal Fertilizers and several

other companies. It is submitted that there was no reason for CCI to reject the request of Larsen and Toubro for this reservation as the

shareholder of L and T had approved such reservation.

29. It has been further submitted that the charge for favouring Reliance Group/Ambani Group is frivolous and misleading and seeks to convey a

wrong impression and imputes motives for which there is no basis. It has been further submitted that the impugned issue had been consented by

Central Government after due consideration, including the need for funds. It is submitted that the funds are required by the company for working

capital needs, normal capital expenditure and for executing the turnkey contracts of L and T Ltd. It is submitted that L and T indicated the turnkey

contracts including inter alia the Gas Cracker Project and Acrylic Fibre Project of Reliance Industries Ltd. and Caustic Chlorine Project of

Reliance Petrochemicals Ltd., for ` 635 crores as projects are to be executed. CCI has not permitted Reliance Industries Ltd. and Reliance

Petrochemicals Ltd. to raise funds for these projects so far. Earlier funds raised from capital markets were used or/ are being used for the following

projects:

RIL - PSF, PFY, PTA, LAB and Textile Units;

RPL - HDPE. PVCL MEG.

The allegation that for the same projects, CCI permitted L and T to''raise funds is baseless. The financing detail of projects of RIL and RPL were

also examined in Maheshwari''s case (supra) in Supreme Court and no double financing of same project was found. Reliance Industries Ltd. and

Reliance Petrochemicals Ltd., have given undertaking that these companies will not'' raise funds from public for financing the cost of projects to the

extent suppliers'' credits are extended by L and T. It is stated that MRTP approval to Reliance Industries Ltd., for gas cracker does not provide

for Suppliers'' Credit from L and T in the scheme of finance and it is submitted that this statement is correct. It is also submitted that CCI will take

this aspect into account before permitting any further issue, in future; to Reliance Industries Ltd. and Reliance Petrochemicals Ltd.., for these

projects. However, this aspect does not affect the consent order of L and T in view of the undertaking of RIL and RPL mentioned above.

30. The application for consent was submitted to the respondent No. 2 on 26-7-89 for sanction. On August 21, 1989 at the extraordinary general

meeting of shareholders of L and T, a resolution was passed with only one shareholder dissenting for the issue of debentures of ` 820 crores as

provided therein. A copy of this resolution was sent to the Controller of Capital Issues who after duly considering the same accorded the consent

on August 29, 1989. The argument that there has been complete non-application of mind by the Controller of Capital Issues in according the

consent is not sustainable. Moreover, the Controller of Capital Issues issued a letter dated 15th September, 1989 to M/s. Larsen and Toubro to

note amendment of the condition of the consent order to the effect that fund utilisation shall be monitered by Industrial Development Bank of India.

This will further go to show that the consent was ,given after due consideration in accordance with the provisions of S. 3 of the Capital

Issues(Control) Act, 1947 (Act 29 of 1947).

31. Much arguments have been made as to the provision in the prospectus reserving preferential allotment of debentures of ` 310 crores to the

equity shareholders of Reliance Industries Ltd. and Reliance Petrochemicals Ltd., mainly on the ground that it will increase the share holding of the

Ambani group and thereby and to the monopoly control of Ambani group over this public limited company. Under S. 2(g) of the Monopolies and

Restrictive Trade Practices Act, 1969 ""interconnected undertakings"" mean two or more undertakings which are interconnected with each other in

any of the manner mentioned therein. Explanation (1) - For the purposes of this Act, two bodies Corporate, shall be deemed to be under the same

management (I1) if one such body corporate holds not less than one fourth of the total equity shares in the other or controls the composition of not

less than one fourth of the total membership of the Board of Directors of the other. In the prospectus of Larsen and Toubro Ltd. obviously it has

been mentioned that Larsen and Toubro Ltd. is part of Reliance group. Referring to the said provisions it has been contended on behalf of the

respondents i.e. the financial institutions that mention of L and T Company as part of the Reliance group is quite in accordance with this provision.

Apropos to this reference may be made to the provisions of S. 81(1A) of the Companies Act, 1956 which are set out hereunder:-

Notwithstanding anything contained in sub-sec. (1), the further shares aforesaid may be offered to any persons whether or not those persons

include the persons referred to in Cl. (a) of sub-sec. (1) in any manner whatsoever-

(a) if a special resolution to that effect is passed by the company in general meeting, or"".

32. In the extraordinary general meeting L and T a special resolution was made providing for preferential allotment of debentures to the equity

shareholder of R.I.L. and R.P.L. So the reservation of debentures of the value of ` 310 Crores of public issue for allotment to shareholders of

R.I.L. and R.P.L. cannot be questioned. In the prospectus of L and T Ltd. under Business Plans it has been mentioned that the requirement of

funds of the company for the period from 1 st October, 1989 to 31 st March, 1992 including in respect of suppliers credit to be extended to

customers under turnkey projects/ quasi-turnkey projects and for incurring capital expenditure on new plant and equipment, normal capital

expenditure on modernisation and renovation, meeting additional working capital requirements and for repayment of existing loan liability is

estimated to be in the region of ` 1425 crores. The suppliers'' credits, inter alia, include ` 5 1 0 crores to be extended to R.I.L. in respect of its

Cracker Project. The funds requirement is intended to be met out of the present issue of debentures to the extent of ` 820 crores and the balance

would be met from internal accruals by way of short term borrowings, and out of the proceeds of the previous Debenture Issue (III Series). The

consent was challenged on the ground that no M.R.T.P. clearnace for the issue of capital under S. 21 or under S. 22 of the Monopolies and

Restrictive Trade Practices Act, 1969 was given. It appears from the letter dated 2-12-1988 issued by Government of India to M/ S. Reliance

Industries Ltd endorsing a copy of Central Government''s''order dated 25-11-1988 passed under S. 22(3) (e) of the M. R. T. P. Act, 1969 that it

gave approval for the proposal of M/ s. Reliance Industries Ltd. for setting up a craker complex. The approval of Central Government was made

under S. 22(3)(d) of the M.R.T.P. Act and communicated to M/s. Reliance.Petrochemicals Ltd. by letter dated 30-5-1989. Consent was also

given by the Central Government under S. 22(3)(a) of the M.R.T.P. Act for the establishment of a new undertaking for the manufacture of 20,000

of Acrylic Fibre. Thus, challenge to the consent given by Controller of Capital issues is, therefore, meritless and so it is rejected.

33. It is pertinent to refer in this connection this Court''s judgment in the case of Narendra Kumar Maheshwari v. Union of India JT 1989 (2) SC

338 , in.which considering the duties of the C.C.I. under the Controller of Capital Issues Act while giving consent it has been observed:-

That apart, whatever may have been the position at the time the Act was passed, the present duties of the C.C.I. have to be construed in the

context of the current situation in the country, particularly, when there is no clear cut delineation of their scope of the enactment. ''This line of

thought is also reinforced by the expanding scope of the guidelines issued under the Act from time to time and the increasing range of financial

instruments that enter the market. Looking to all this, we think that the CCI has also a role to play in ensuring that public interest does not suffer as

a consequence of the consent granted by him. But as we have explained later, the responsibilities of the CCI in this direction should not be

widened beyond the range of expeditious implementation of the scheme of the Act and should, at least for the present, be restricted and limited to

ensuring that the issue to which he is granting consent is not patently and to his knowledge, so manifestly impracticable or financially risky as to

amount to a fraud on the public. To go beyond this and require that the CCI should probe indepth into the technical feasibilities and financial

soundness of the proposed projects or the sufficiency or otherwise of the security offered and such other details may be to burden him with duties

for the discharge of which he is as yet ill-equipped.

34. Three applications for directions being I.A. No. 1, I.A. No. 2 and I.A. No. 3 of 1990 have been filed in T. C. No. 61 of 1989, T.C. No. 62

of 1989 and in T.C. No. 1 of 1990 by the L and T Ltd. It has been stated therein that the Deputy Controller of Capital Issues by a letter dated

15th September, 1989 has intimated M/s. Larsen and Toubro Ltd. that condition of No. V of the consent letter provides that the utilisation of fund

shall be monitered by Industrial Development Bank of India Ltd. The representatives of Industrial Credit and Investment Corporation of India Ltd.

(instant ICICI) issued a letter to the L and T stating that it would not be correct for them as Debenture Trustees to give conversion of those

debentures to equity shares before reference was made to the Controller of Capital Issues and without obtaining prior written consent of the IDBI.

The IDBI considered the unaudited statement of the utilisation of debenture fund up to March 31, 1990 and were of the opinion that the applicants

should make the first call only after utilising substantially the surplus funds available to the extent of ` 226 crores in investments (after expenditure)

up to June 30, 1990 satisfying the IDBI about the need for raising further funds by way of first call. This was communicated to the applicants by

IDBI''s letter dated 7th May, 1990.

35. The Board of Directors at its meeting held on 11 th May, 1990 considered the above circumstances as well as the proceedings that the

Company could not proceed-with the conversion of Part A of the debentures which was due on 23rd May, 1990. The Board authorised the

Company Secretary to make the necessary application to the Controller of Capital Issues seeking directions for the course of action to be followed

by the Company in regard to the conversion. The applicant''s letter dated 15th May, 1990 to the Controller of Capital Issues pursuant to the

aforesaid Board meeting refers to the letter dated 7th May, 1990 from IDBI as well as to the objections raised by the ICICI.

36. The applicants sent a letter dated 15th May, 1990 to the Controller of Capital Issues pursuant to the above Board''s meeting. After lengthy

and detailed discussion by the I.D.B.I.with the applicant, the IDBI was satisfied that the amount of funds that would be presently required would

be to the tune of ` 650 to 700 crores. The company keeping this in view proposed to make a call (first and final) of ` 85 / - on or before 3 1 st

October, 1990 in place of originally envisaged first call of Rs.751- and the final call of Rs.75/-aggregating ` 1501-. The applicants recorded

theabove discussions and intimated IDBI of its modified proposal by its letter dated 28-6-1990.

37. On 29th June, 1990 the Board of Directors of the Company were apprised of the relevant proposals as approved by the IDBI. In the meeting

of the Directors it was decided (though not unanimously) that directions of the Supreme Court be sought on the said proposals and that the

company should take necessary. steps to approach this Court and Madras High Court and implement the proposals after obtaining the directions

and vacating the order of the Madras High Court.

38. These interim applications were filed for following directions:-

(a) (i) that the size of the issue do stand reduced from ` 820 croresto ` 640 croresas follows:-

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Public issue of debentures of `235/- each Rs. 485 crores

Rights issue of debentures of `225/- each Rs. 155 crores

_____

Total Rs. 640 crores

_____

(ii) that in place of the first call of ` 75 aid the final call of ` 75 as originally provided for the prospectus, a first and final call of ` 85 / - in the case of

the public issue and ` 80 / - in the case of the rights issue be made on the debenture-holders on or before 31st October, 1990.

(iii) that the first conversion of Part A of the debentures into one equity share of ` 1 0 / - at a premium of ` 40 (premium of ` 30 / - in the case of

rights issue) be made on 1 st December, 1990.

(iv) that the second conversion of Part B of the debentures into two equity shares of ` 10/- each at a premium of ` 50/- be made on the date

originally scheduled viz. 23rd May, 1991.

(v) that the third equity conversion of Part C of the debentures be made on the originally scheduled viz. 23rd May, 1992 at such premium per

equity share as may be fixed by the Controller of Capital Issues but not exceeding ` 55 per share and such conversion be made into one or more

equity shares of ` 10/- each as against two or more equity shares as originally provided in the prospectus.

(b) that in case of any debenture-holder not agreeing to the modifications, in prayer (a) above and on intimation being received by the applicant-

company as mentioned in prayer (c) below the applicants do refund to such debenture-holders their'' its application and allotment money with

interest thereon at such rate as may be directed by this Court;

(c) that this Court be pleased to direct the applicants to give notice to all debentureholders individually and by publication in national newspapers of

the order passed in terms of prayers (a) and (b) above that in case of any debenture-holder not agreeing to the modifications in prayer (a) such

debentureholders do give intimation to the applicant company within 30 days of such notice in which case the applicant-company would. refund the

applications/''allotment money with interest.

(d) for further orders and directions consequential to the orders passed by this Court;

(e) for costs of the application.

39. Larsen and Toubro Ltd. Respondent No. 2 in T.C. No. 61 of 1989 filed a rejoinder affidavit to the statement of objections filed by N.

Parthasarathy to the interim application No. 1 of 1990 in T.C. No. 61 of 1989. In para 2 of the said rejoinder affidavit it has been stated that:-

By his order dated November 9, 1989 this Court specifically directed Larsen and Toubro Ltd. to make allotment subject to the decision of this

Court in the said matters. This Hon''ble Court therefore allowed the issue to proceed on the basis of the original consent purported to be impugned

by the petitioner in the Madras High Court petition. I, therefore, submit that Larsen and Toubro Limited was fully justified in seeking the directions

of this Hon''ble Court as prayed for in the interm application. I deny that the directions in the interim application, if granted, would render nugatory

the petition filed by the petitioner or that the same would amount to a determination of the issue in the petitioner''s writ petition as erroneously

contended by the petitioner. I deny that Larsen and Toubro Limited are at all misleading this Hon''ble Court or that it committed any act. which is

at all illegal, as falsely alleged. I submit that a decision of this Hon''ble Court on the legality of the original consent order is not necessary for the

issue of interim directions of the nature prayed for by Larsen and Toubro Limited in the above interim application.

40. It has also been stated in para 3 of the said affidavit that this Court does not have jurisdiction to entertain the said interim application either for

the reasons alleged or otherwise. The said application, it is submitted, does not amount to performance of any executive function by this Court as

erroneously alleged by the petitioner.

41. The statement that the Controller of Capital Issues has no power to modify or vary a consent as alleged has been denied. It has been submitted

that the Controller of Capital Issues has not varied his consent nor is any such variation of the consent order per se being sought by the respondent

No. 2. It has also been stated that under sub-sec. (6) of S. 3 of the Capital Issues (Control) Act, 1947, the Central Government has the power to

vary all or any of the conditions qualifying a consent.

42. It has been denied in para 8 of the said affidavit that the consent order of the Controller of Capital Issues is at all illegal or improper as alleged.

It has been denied that it is not open for this Court or for the Controller of Capital Issues to modify the terms of the said consent order.

43. It is to be noted that the Industrial Development Bank of India by its letter dated June 28, 1990 to the Managing Director, Larsen and Toubro

Ltd. stated that:-

..... From a quick review of the status of the new proposal mentioned in your letter dated June 22, 1990, we feel that the net requirements of

funds to be met out of debenture funds would be in the region of ` 600 to ` 650 crores as indicated by you.

We further note that from your letter dated June 28, 1990 that you propose to make first and final call ` 85 on the debentures on or before 31st

October and to effect the first conversion by the end of November, 1990 and second and third conversion according to the original dates

mentioned in the prospectus.

The L and T Board will have to take a view on the size of the debenture issue in the light of the requirements of funds indicated in your letter and

other modifications suggested in the terms of the debentures. The company will no doubt obtain necessary approvals from CCI, debenture-holders

/shareholders, etc. in consultation with its Legal Advisers.

44. A meeting of the Board of Directors of the Company was held on June 29, 1990 and it was resolved that the directions of the Supreme Court

of India be sought on the said proposals and necessary steps be taken to approach the Hon''ble High Court at Madras to vacate the said order

and/or modify the same suitably and implement the proposals only after the directions from the Supreme Court were obtained and the order

passed by the Hon''ble High Court at Madras was vacated and/ or modified suitably.

45. It appears that S. 55 of the CompaniesAct, 1956 enjoins that.-

The prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary

is proved, be taken as the date of publication of the prospectus.

46. Under S. 61 of the Companies Act it is specifically provided that:-

A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to

the approval of, or except on authority, given by, the company in general meeting.

47. Section 62 of the said Act provides for payment of compensation to every person who subscribes for any shares or debentures on the faith of

the prospectus for any loss Or , damage he may have sustained by reason any untrue statement included in the prospectus. Similarly, S. 63 of the

said Act provides for criminal liability for misstatements made in the prospectus. S. 72 of the Companies Act provides that:-

No allotment shall be made of any shares in or debentures of a company in pursuance of a.prospectus issued generally, and no proceedings shall

be taken on applications made in pursuance of a prosepctus so issued, until the beginning of the fifth day after that on which the prospectus is first

so issued or such later time, if any, as may be specified in the prospectus.

48. Thus, it is evident from a considertion of the above provisions of the Companies Act that the terms of contract mentioned in the prospectus or

the statements in lieu of the prospectus cannot be varied except with the approval of and on the authority given by the Company in the general

meeting. Therefore, the consent that was given by the Central Government nay by the Controller of Capital Issues, on a consideration of the

special resolution adopted in the extraordinary general meeting of the shareholders of the company on August 28, 1989 cannot be varied, changed

or modified both as regard! the reduction of the amount of debentures as well as the purposes for which the fund will be utilised contrary to what

has been embodied in the prospectus and apprqved by the Controller of Capital Issues on the basis of the special resolution adopted at the general

meeting of the shareholders of the company. Sub-sec. (6) of the S. 3 of the Capital Issues (Control) Act, 1947 states that:

The Central Government may by order at any time-

(a) revoke the consent or recognition accorded under any of the provisions of this section; or

(b) where such consent or recognition has been qualified with any conditions, vary all or any of those conditions:

Provided that before an order under this sub-section is made, the company shall be given a reasonable opportunity of showing cause why such

order shall not be made.

49. On a plain reading of this provision, it cannot be inferred that consent order given by the Central Government after consideration of the special

resolution passed at the general meeting of the company on taking the no objection certification from the I.D.B.I. can be changed or varied in any

manner whatsoever by the Central Government. The Central Government can merely vary all or any of the conditions subject to the consent being

given.

50. It is appropriate to mention in this connection that the I.D.B.I. also asked the Larsen and Toubro Ltd. to obtain the necessary approval from

the Controller of Capital Issues, debenture-holders/shareholders etc. in respect of the reduction in requirement of funds. There has been no general

meeting of the company nor any special resolution was taken for variation or reduction of the amount of debentures to be issued as required ""under

S. 31 read with Cl. IA of the Companies Act. It is also evident that no steps have been taken to have the consent already granted by Controller of

Capital Issues, varied or modified as required under the Capital Issues (Control) Act, 1947. Merely because Cl. (v) of the consent order provides

for monitoring of the funds by I.D.B.I., it does not mean nor it can be inferred automatically that the suggestion of the I.D.B.1. as regards the funds

requirement can be automatically given effect to without complying with the statutory requirements as provided in the provisions in the Companies

Act as well as in the Capital Issues (Control) Act. The consent order is one and indivisible and as such the same cannot be varied or vivisected

without taking recourse to the provisions of the statute. It is also well settled that the contract to purchase shares or debentures is concluded by

allotment of shares issued under the prospectus and S. 72 of the Companies Act makes it clear that allotment can only be made after the

prospectus is issued. The Company is bound by the special resolution, the prospectus and the consent of the. Controller of Capital Issues. The

power to pass a consent order is a statutory power vested in a statutory authority under the Capital Issues Act and the Court has no power or

jurisdiction to step into the shoes of the statutory authority and pass or approve a consent order different from the statutory consent order given by

the statutory authority. Moreover, the consent order cannot be varied by the Central Government or Controller of Capital Issues after the said

order has been made public and third parties have acted on it and acquired rights thereon.

51. In Palmer''s Company Law (24th Edition) by C. M. Schmitthoff under the caption ''The ""golden rule"" as to framing prospectuses'' at pp. 332-

333 it is stated that:

Those who issue a prospectus, holding out to the public the great advantages which will accrue to persons who will take shares in a proposed

undertaking, and inviting them to take shares on the faith of the representations therein contained are bound to state everything with strict and

scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their knowledge, the existence

of which might in any degree affect the''nature, or extent, or quality, of the privileges and advantages which the prospectus holds out as

inducements to take shares.

52. Reference may also be made to the observations in Aaron''s v. Twiss, 1896 AC 273 in which Lord Watson said:-

It was argued for the company that, inasmuch its contracts for the purchase of the concession are generally referred to towards the end of the

prospectus,"the respondent must be held to have had notice of their contents. This appears to me to be one of the most audacious pleas that ever

was put forward in answer to a charge of fraudulent misrepresentation. When analysed it means simply that a person who has induced another to

act upon a statement made with intent to deceive must be relieved from the consequences of his deceit if he has given his victim constructive notice

of a document, the perusal of which would expose the fraud.

In the case of State of Madhya Pradesh v. Nandlal Jaiswal, (1986) 4 SCC 566 , this Court while dealing with the laches and delay held that:-

The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause

confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is

exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice

on third parties.

53. For the reasons aforesaid I dismiss all these transferred cases. There will be no order as to costs. All the interim applications filed in these

transferred cases stand disposed of in view of the observations made hereinbefore.

54. The Special Leave Petition (C) No. 13801 of 1989 filed against the order of the Bombay High Court in Contempt Petition No. 1 of 1989 in

Writ Petition No. 2595 of 1989 is dismissed.

55. The Contempt Petitions Nos. 121 and 130 of 1989 are also dismissed without costs.

56. KASLIWAL, J-I have gone through the judgment of my learned brother B. C. Ray, J. and I agree with the conclusions drawn by him. But, I

would like to express my own views.

57. Writ Petition No. 2595 of 1989 was filed by Haresh Jagtiani and Shamit Majumdar (hereinafter called "the petitioners) in the Bombay High

Court challenging the validity of the consent given by the Controller of Capital Issues (CCI) dated 29-8-89 and subsequently amended by Order

dated 15-989 for the issuance of Fully Convertible Debentures of ` 820 crores by Larsen and Toubro, a Public Limited Company (in short L and

T). Challenge was also made in respect oi transfer of 39 lac shares of L and T held by Unit Trust of India (UTI), Life Insurance Corporation of

India (LIC), General Insurance Company (GIC) and its subsidiaries to Trishna Investments and Leasing Limited (in short Trishna Investments)

through the instrumentality of Bob Fiscal Services Limited (in short Bob Fiscal). The Writ petition was dismissed on 29-9-89 by learned single

Judge of the Bombay High Court. Letters Patent Appeal against the said judgment was filed in the Bombay High Court. Several other writ

petitions and suits were filed in vario''us''other High Courts. Some Contempt Petitions were also filed and all the above matters were transferred to

this Court. Some Interim Applications were also filed by L and T before this Court. The issues raised in these cases are of far reaching impact on

the affirmatory public duty and public obligations on the Governmerit of India and its instrumentalities, to preserve and to refrain from squandering

away the property and economic power of the 3Late and to prevent illegitimate growth of private monopoly power and to ensure honesty and

probity in public life and in industry and business. This is a largest mega issue so far as India is concerned and involves to a great extent the

investment of the country''s bulk economic resources to be invested for industrial growth or development of the country to a public limited

company. The n-ftter has to be looked into on the basis of larger public interest which can be fulfilled by a balanced investment of country''s

resources.

58. My learned brother has already given the details regarding the manner and circumstances in which 39 lack shares of L and T were transferred

by public financial institutions to Trishna Investments, a subsidiary of Reliance Group of Industries i.e. Reliance Industries Limited (RIL) and

Reliance Petro-chemicals Limited (RPL), through the conduit of Bob Fiscal, as such I need not repeat the same.

59. On the date of the filing of the writ petition in the Bombay High Court a prayer was made in this regard to declare that the transfer of 39 lack

shares of L and T held by UTI, LIC, GIC and its subsidiaries to Trishna Investments through the instrumentality of Bob Fiscal is arbitrary, illegal,

mala fide and a fraud on the statutory powers of the respondents and is clearly ultra vires Arts. 14,,39(b) and (c) of the Constitution and to issue a

writ of mandamus directing the respondents to recover the shares of L and T and pay back the amount received therefor. This.later part of the

prayer for writ of mandamus has now become infructuous in view of the changed circumstances that the 39 lack shares of L and T have already

been returned back to the public financial institutions, but Mr. Chinoy, counsel for the petitioners has prayed that it would be very necessary to

declare that such transfer of 39 lac shares at the relevant time was arbitrary, illegal, mala fide and a fraud in order to further hold that the consent

given by the CCI for the proposed issue of convertible debentures of ` 820 crores by L and T was not only arbitrary but based on mala fide

exercise of power based on extraneous grounds. In this regard it would be necessary to state some more facts which happened after the dismissal

of the writ petition by the learned single Judge of the Bombay High Court dated 29-9-1989. The petitioners aggrieved against the judgment of the

learned single Judge filed a Letters Patent Appeal before the Division Bench of the High Court. Some shareholders filed writ petitions and suits in

several High Courts and this Court in the above circumstances thought it proper to transfer all the cases to this Court. Pursuant to the order of this

Court dated October 27, 1989 learned Additional Solicitor General appearing on behalf of the financial institutions submitted a memorandum. It

was stated in the memorandum that the financial institutions had already bought back 39 lac shares of L and T with accretion thereto from Trishna

Investments. It was further stated that by buying back the said shares, the financial institutions were in no way either remotely or impliedly acceding

the position that the original transactions of sales were illegal or, void. The financial institutions stood by their contentions which had been upheld by

the Bombay High Court in its Judgment dated September 29, 1989. It was further stated that the transactions had been completed on the expectat

ion that the petitioners would withdraw the proceedings as even otherwise a basic portion ,of the petitions filed in the High Court had become

infructuous.

60. Mr. Jethmalani, learned counsel appearing on behalf of Haresh Jagtiani also filed a draft of consent terms to be recorded in the transfer

petition. On 9-11-89 this Court after considering all the circumstances of the matter thought it just and fair to pass an order that the allotment of

debentures will be made by the petitioner company i.e. L and T and such allotment will abide by the decision of this Court in the said matters. It

was further directed that the L and T will also affix a similar notice at its Registered Office for the information of the shareholders as well as the

original allottees. The Court also indicated in the above order as under:

The Court will further make it clear that no equities will be pleaded in respect of allotment of shares.

After the passing of the above order debentures were released and several lacs of persons have purchased these debentures.

61. Trishna Investments had not filed any counter to the writ petition before the. Bombay High Court, bitt have filed counteraffidavit and written

submissions before this Court. Dr. L. M. Singhvi, learned Sr. Advocate appearing on behalf of Trishna Investments contended that Trishna

Investments had agreed to the retransfer of 39 lac shares to the financial institutions and it was agreed by'' learned counsel for the petitioners that it

would form the basis for fully comprehensive and wholistic settlement of the matter. Indeed, Shri Ram Jethmalani learned counsel appearing for the

petitioners so stated that this Hon''ble Court was also pleased to record the same in its order dated 9-11-89. Since the petitioners have now

resiled from their categorical offer, Trishna Investments also cannot be made to agree to a settlement upon de novo terms and conditions. It has

been submitted that in its affidavit dated 7-11-90 filed by Trishna Investments, it has been stated that the retransfer of shares resulted in a loss of `

10 crores to Trishna Investments. It has also been submitted that though Trishna Investments is a company wholly owned and subsidiary of RIL

but contracts made by Trishna Investments in the present case should not be construed to mean that this Hon''bie Court may hear and adjudicate

all other allegations against Reliance Group without making the later as party to the present proceedings. Trishna Investments cannot be treated as

a substitutable alter ego without making RIL/ RPL as parties.

62. It was contended by Dr. Singhvi, learned counsel for Trishna Investments that the present proceedings have now become infructuous in view

of the admitted retransfer of 39 lac shares by Trishna Investments to financial institutions. It is well settled that the Court should not decide merely

academic points. In this regard it is submitted that the principal relief as sought in prayers (a) and (c), no longer exists and the aforesaid transaction

of retransfer of 39 lac shares was on the expectation that the petitioners will withdraw the proceedings. In support of the above contention reliance

is placed on State of ''Maharashtra v. Ramdas Shriniwas Nayak (1983) 1 SCR 8 at page No. 12. It has been further submitted that in the

alternative Trishna Investments must be put in the identical status quo ante position by retransfer of its 39 lac shares back to it, along with all

accretions It was also urged that there are large number of disputed questions of fact which cannot be decided in exercise of extraordinary

jurisdiction contained in Art. 226 of the Constitution.

63. Dr. Singhvi also urged that even if the action of the Reliance group was to corner or purchase all shares of L and T, there is nothing wrong or

illegal about it. There was no law or rule prohibiting the purchase of shares of a company. Thus there was nothing wrong or illegal in purchasing the

shares by Trishna Investments. Apart from that the total shareholding vested in Trishna Investments was only about 6.5% and the representation of

Ambanis including Mr. Bhakta on the Board of Directors of L and T was only 4 out of 20. it was wholly misleading, deliberately mischievous and

erroneous to suggest on the part of the petitioners that the real value of the shares transferred/sold by financial institutions was far more than the

market value. There are no guidelines, rules, regulations, directions or documents prescribing any method of sale of shares where such shares are

sold individually or in chunk. No control can be said to have been transferred on the basis of 6.42% share holding and representation of Board of

Directors after the transfer to Trishna Investments. Reliance in support of the above contention is placed on Babulal Chaukhani v. Western India

Theatres AIR 1957 Cal 709 at page No. 715, on the passage which reads as under:

It is in evidence that Modi has been purchasing large blocks of shares of this company, but cornering as such or purchase of large block of shares

as such, so long as they are permissible by law is not unjustified. That by itself does not prove mala fides or bad faith either in fact or in law. To

acquire a control which the law permits cannot be illegal.

64. It was further submitted in this regard that if purchase or cornering, per se and by itself, is neither illegal nor impermissible, then purchase or

cornering through intermediaries or even if done surreptitiously cannot become illegal merely by the existence of such intermediaries or by the

allegedly surreptitious nature of the transactions. The aforesaid decision of the Calcutta High Court has been applied in a large number of decisions

of statutory authorities dealing with allegations of chunk purchase or cornering of shares.

65. Dr. Chitaley appearing on behalf of Bob Fiscal pointed out that the members of the Bob Fiscal Services Private Limited at an extraordinary

general meeting held on 24th September, 1990 have passed a special resolution"for voluntary winding up of the company in accordance with S.

484 (i)(b) of the Companies Act, 1956. By the said resolution Chartered Accountant has also been appointed as liquidator for the beneficial

winding up of the Bob Fiscal Services Pvt. Ltd. It was further submitted by Dr. Chitaley that essential grievance of the writ petitioners related to

the transfer of 39 lac shares of L and T by the investment institutions and its subsidiaries to M/s. Trishna Investments and Leasing through the

alleged conduit or instrumentality of Bob Fiscal. It has been alleged by the petitioners that a conspiracy was hatched between investment

institutions and Ambani group represented by Trishna and Bob Fiscal in order to camouflage the transactions and to prove the transfer of shares to

Bob Fiscal in order to avoid compliance of the alleged guidelines and policy of the financial institutions to charge at two times the market price for

such sale of shares. The allegations were denied by various respondents which were upheld by Bombay High Court by its judgment dated 29th

September, 1989. It was further submitted that during the course of the proceedings before this Court on 18th October, 1989 Trishna Investments

made offer in open Court to sell back or retransfer the 39 lac shares in quetion together with accretions to the investment institutions on no loss no

profit basis. On 27th October, 1989 the institutions agreed to buy back the said 39 lac shares with accretions thereon. It was expressly submitted

and clarified by Trishna Investments and the institutions that Trishna Investments was sellling back the said shares and the institutions were buying

back the same without in any manner admitting any of the allegations in the writ petitions, nor were they admitting the position that the original

transfer of shares by investment institutions to Bob Fiscal were in any manner arbitrary or unlawful. Subsequently, it transpired that on or about 8th

November, 1989 institutions had purchased the said 39 lac shares on full payment. As a sequel to the above, the main relief sought by the

petitioners have become infructuous and do not survive at all. The entire challenge of the writ petitions in regard to the actions of the financial

institutions for sale of shares to Trishna Investments through Bob Fiscal had become merely academic and any trial of the issue in relation thereto

would only be an abuse of the process of law and wholly unnecessary and waste of time of this Hon''ble Court. Bob Fiscal is not concerned with

the challenge of the petitioners in regard to the order of CCI. It was thus submitted that the entire petition has become infructuous but if for any

reasons this Hon''ble Court desires to continue with the case in respect of the challenge to the consent of the CCI then Bob Fiscal and its Chairman

should be dropped from the array of parties.

66. The stand taken by the public financial institutions in this regard is that while deciding to sell those shares they acted purely on business

principles and sold those shares at a very high market price and thereby earned huge profit. There was no basis in the allegation made by the

petitioners that the investment institutions ought to have charged and recovered substantially higher price (which according to the petitioners should

have been at least 200% of the market price) for the transfer of such shares had the shares been transferred directly to Trishna Investments being a

company, representing a group/persons other than those in the management. The investment institutions had transferred 39 lac shares to Bob Fiscal

as part of a ''basket'' of securities purely on commercial considerations. Investment institutions were in no way concerned with any subsequent

dealings of the said shares by Bob Fiscal. The entire challenge of the writ petitioners to the actions of the financial institutions was now merely

academic and any decision in this regard would be a waste of judicial time and totally unnecessary. It was also submitted that all allegations of

conspiracy between the financial institutions and any other party are denied. It is denied that investment institutions at any time were aware of the

fact that 39 lac shares which were sold to Bob Fiscal were at any time intended or destined for the Ambani group as alleged.

67. I agree with the observations made and conclusions arrived at by my learned brother B. C. Ray in respect of transfer of 39 lac shares. 1 may,

further, add that so far as the relief of a writ of mandamus directing the respondents to recover 39 lac shares of L and T and pay back the amounts

received therefor, does not survive in view of the shares having already bought back by the financial institutions from Trishna Investments.

However, for future guidance it may be worthwhile to note that public financial institutions while making a deal in respect of a very large number or

bulk of shares worth several crores of rupees must also make some inquiry as to who was the purchaser of such shares. Such transactions should

be made with circumspection and care to see that the deal may not be to camouflage some illegal contrivance or inbuilt conspiracy of a private

monopoly house in order to usurp the management of a public company and which in its opinion may not be in public interest.

68. We cannot subscribe to the contention raised by Dr. Singhvi that there was nothing wrong or illegal even if the action of Reliance Group was to

corner or purchase all the shares of L and T, and even if done through intermediaries or surreptitiously cannot become illegal. If, that is the law laid

down by Calcutta High Court in Babulal Chaukhani v. Western India Theatres (supra), we disapprove it.

69. It is no doubt correct that any person or company is lawfully entitled to purchase shares of another company in open mark to but if the

transaction is done surreptitiously with a mala fide intention by making use of some public financial institutions as a conduit in a clandestine manner,

such deal or transactions would be contrary to public policy and illlegal. If the, matter was so simple as propounded by Dr. Singhvi, why Trishna

Investments did not come forward directly to purchase 39 lac shares from public financial institutions and why entered in a deal through the conduit

of Bob Fiscal in a clandestine manner. That apart why Trishna Investments readily agreed to sell back these shares to public financial institutions

even at a loss of ` 10 crores as suggested, after the filing of these petitions. This itself speaks volumes against the conduct of Trishna Investments

who was a subsidiary of Reliance Group. There is no force in the contention that the propriety of such deal cannot be considered without

impleading RIL/RPL as parties to these proceedings.It may be stated that the entire transactions have been made by Bob Fiscal and Trishna

Investments who are already parties. It may be noted that Bob Fiscal and Trishna Investments were made parties to the writ petition field in the

Bombay High Court and serious allegations were made against them but they did not choose to refute any allegations by filing any counter-affidavit

in the High Court. In any case we have derived our conclusions on the basis of admitted facts and not otherwise. It may be worth mentioning that

Bob Fiscal was formed in June, 1988 and soon thereafter entered into transactions of purchase of 39 lac shares of L and T on the strength of

deposit of ` 30 crores by the four satellite companies of the Ambani Group and soon thereafter transferred the shares in favour of Trishna

Investments. It has now, been stated before us by Dr. Chitaley appearing on behalf of Bob Fiscal that in an Extraordinary General meeting held on

24-9-90 a special resolution has been passed for voluntary winding up of Bob Fiscal. This leads one to draw a legitimate inference that Bob Fiscal

was brought into existence merely to act as a conduit and was merely an interloper to affect the transfer of 39 lac shares of public financial

institutions in favour of Ambani Group and their satellite firms. It came into existence like a rainy insect and lived out its utility after acting as a

conduit for the transfer of 39 lac shares in favour of Trishna Investments. I do not consider it necessary to further dilate on this point and fully agree

with my learned brother that all the circumstances taken together clearly spell some doubt whether the transfer of such a huge number of 39 lac

shares by the public financial institutions was for public interest and was made on purely business principles.

70. Another important question is with regard to the consent given by CCI. L and T had filed two applications to CCI on 26-7-89. One for the

Rights Issue of ` 200 crores and another for the Public Issue of ` 720 crores (subsequently reduced to ` 620 crores). It may be noted that up to

this time 39 lac shares of L and T had come to Trishna Investments and M. L. Bhakta, Mukesh Ambani and Anil Ambani had been co-opted as

Directors of L and T and lastly Dhirubhai Ambani had become the Chairman of L and T on 28-4-89. On 23-6-89 Board of Directors of L and T

had resolved to invest a sum of ` 76 crores in the purchase of Equity Shares of RIL. On 21-7-89 RIL and RPL had written letters to L and T

seeking suppliers credit to the extent of ` 635 crores for turnkey projects which they planned to entrust to L and T. Out of the above public issue

of ` 820 crores it was proposed to reserve preferential allotment of ` 310 crores (50% of the issue after deducting Rights Issue) for the

shareholders of RIL and RPL treating them as group companies of L and T. On 29-8-89 CCI passed an order approving the above issue of

Convertible Debentures. The Prospectus was issued on 5-9-89 in which it was stated that L and T was part of the Reliance Group. CCI by a

further order dated 15-9-89 amended the earlier consent order dated 29-8-89 to the- effect that fund utilisation shall be monitored by Industrial

Development Bank of India (IDBI). CCI in another letter of the same date namely 15-9-89 also stated that 50% to be raised in calls would be

based upon the monitoring by IDBI for utilisation. This Court on 9-11-89 allowed the L and T to open the issue subject to the condition that

allotment will abide by the decision of this Court. The issue was then opened and it was over subscribed and more than 11 lac applicants applied

for the allotment of the debentures. On the ground that by virtue of the conditions in the consent Order, IDBI being the monitoring agency required

the L and T to furnish its funds requirement before making calls and since considerable details had to be worked out by the L and T, it became

necessary to postpone the first call originally due on 30th April. Accordingly the Board of Directors of L and T resolved that the date of payment

of the first call money payable by the debenture holders on or before p30th April 1990 would be postponed till such time as may be decided by

the Directors. Meanwhile the Industrial Credit Investment Corporation of India (ICICI) who are the debenture trustees in respect of Series IV

debentures issued a letter dated 30th April, 1990 to L and T stating that it would not be correct for them as debenture trustees to give conversion

of these debentures into equity shares before a reference was made to the CCI and without obtaining prior written consent of the IDBI. IDBI then

considered the unaudited statement giving details of the utilisation of debenture funds up to 30th March, 1990 and were of the view that the

applicants (L and T) should make the first call only after utilising substantially the surplus funds available to the extent of ` 226 crores in investments

(after expenditure) up to June 30, 1990 and after satisfying IDBI about the need for raising further funds by way of first call. After a prolonged

discussion and correspondence with all the concerned authorities L and T proposed to make a call (first and final) of ` 85/- on or before 31st

October, 1990 in place of the originally envisaged first call of ` 75 / -and the final call of ` 75 aggregating to ` 1501-. L and T thus proposed to

affect the first equity conversion by end of November, 1990. IDBI approved the above propsoal. In view of the fact that the postponement of the

first call upon the debenture holders to be made on 30th April, 1990 and the postponement of the first conversion of Part A of the debentures into

equity shares as originally scheduled to be on 23rd May, 1990 was occasioned by IDBI requiring L and T to first satisfy IDBI as to its requirement

of funds and an objection raised by ICICI for giving its consent to the conversion of Part-A of the debentures, L and T submitted interim

applications before this Court for directions which have been mentioned in extenso in the judgment of my learned brother.

71. Mr. Nariman. learned Sr. Advocate appearing on behalf of L and T in the changed circumstances submitted that the impugned issue of

convertible debentures was passed by a special resolution in the Extraordinary General Meeting of the shareholders of L and T dated 21-8-89 and

the said special resolution had not been challenged by any of the petitioners. Only consent order of the CCI had been challenged and thus the

debentures which had been issued on the authority of a special resolution remained unchallenged. It was further argued that as regards the authority

of CCI"s consent order the scope and parameters of the Court"s power to scrutinise the consent order have already been laid down in a recent

decision of this Court in N. K. Maheshwari v. Union of India (1989) 3 SCR 43. It was submitted that the limits as laid down in N. K.

Maheshwari"s case (supra) have not been transgressed so as to call for any interference in the consent order. Mr. Nariman thus justified the

sanctioning of preferential allotment of shares worth ` 300 crores for the shareholders of Reliance Group as well as the consent order for the entire

issue of ` 820 crores. It may be further noted that initially L and T had taken the stand to reduce the total amount of the issue to ` 640/ -crores

instead of ` 820 crores, but finally took the stand that the issue may be proceeded to the full extent of ` 820 crores in view of the fact that the IDBI

had itself in an affidavit in reply to their application before this Court had taken the stand that it was not IDBI"s view to curtail the amount of issue

and that it was L and T"s own decision. The L and T thus in its affidavit dated 11 th September, 1990 made it clear that the issue may be

proceeded to the full extent of ` 820 crores and only a postponement of the dates of the first call, first equity conversion and the second call may

be permitted.

72. Mr. Chinoy, learned counsel appearing for the petitioners vehemently submitted that the petitioners had not come forward with a grievance

regarding the validity of issue of debentures only. His contention was that the petitioners had come forward raising larger issues affecting the entire

economy of the country and the underhand practice adopted by the financial institutions and the big private industrialists. It was submitted that there

was a limited financial capacity of the investor public in the shares and CCI as a controller ought to see that such public investment should not go in

the hands of a few industrialists which would be contrary to the Directive Principles enshrined in Art. 39(b) and (c) of the Constitution of India. It

should adhere to the above State Policy enshrined in the Directive Principles that the ownership and control of the material resources of the

community are so distributed as best to subserve the common good and that the operation of the economic system does not result in concentration

of wealth and means of production to the common detriment. It was submitted that the facts on record clearly establish that the mega issue was

conceived proposed and implemented with the intent and object of utilising the reputation and goodwill of L and T to raise funds to the extent of `

635 crores for funding projects of Reliance Group of Industries. The consent so given by CCI was vitiated on account of the non-application of

mind and its failure to consider the facts of the case in the light of its application to act in public interest and in consonance with the principles

embodied in Art. 39(b) and (c).

73. Dr. Singhvi, learned Sr. Advocate appearing on behalf of Trishna Investments submitted that economic and corporate issues can never be a

subject matter of judicial review as already laid down in State of Madhya Pradesh v. Nandlal Jaiswal (1987) SCR 154 and Life Insurance

Corporation of India v. Escorts Ltd. (1985) 3 Suppl. SCR 909 at pp. 1017 and 1018). It was submitted that CCI had given consent after

thoroughly applying its mind. In any case the impugned consent order is a single, composite indivisible order which cannot be appropriately

bisected or bifurcated. Even if for arguments sake it may be considered that the consent was not proper then the whole consent must go and it

cannot be selectively upheld and selectively quashed. As regards suppliers credit it has been urged that provision of suppliers credit is an extremely

common and well known commercial modality and indeed construes an alternative scheme and mechanism of finance. Indeed, the concept of

suppliers credit is integrally connected and inextricably intertwined with the concept of a turnkey project. In sum and substance the concept of

suppliers credit simply means that the entire turnkey project is the property of L and T who executes it and then hands it over to the purchaser (in

this case RIL/RPL) and extends credit for payment to RIL/RPL with effect from the date when the project is handed over as a running unit by L

and T. The suppliers/workers contractor (L and T) gives credit in the sense that the purchaser promises to pay, inter alia, by bills of exchange or

other customary payment organised with the price of the project would be paid in instalment inclusive of further running"interest from the date of

handing over till the date of payment. It has been submitted that all official documents and other materials in the present case specifically stipulate

and specify the precise particular projects for which the moneys were sought to be raised by L and T. Thus it is uncontrovertibly clear that the sole

and only purpose for raising of funds and the sole and only requirement of funds by L and T related to the extension of suppliers credit to RIL, inter

alia in respect of its cracker. project which has also been shown on pages 10 and 11 of the prospectus. Similarly, reference has been made to

other turnkey projects of RIL/ RPL in the prospectus. It has thus been argued that if the consent of CCI was given taking note of all these

circumstances then L and T has no right to change the same and utilise the funds for other purposes. The issue was only of ` 820 crores for specific

projects of RIL/ RPL worth 635 crores and the entire issue would be subject to the fulfilment of the above contracts made with RIL/ RPL.

Theoriginal consent of the Controller was given on 29-8-89 and the same cannot be changed by subsequent letters of the Controller dated 15-9-

89. Those letters can only be construed harmoniously and in conjunction with the sanction of 29-8-89. They can only be construed as nominating

IDBI to monitor the sanction of 29-8-89 which is based on the proposal and the special resolution of the company. It was argued that the issue

was carried out according to the prospectus filed on 6th September, 1989. The two letters of 15th September, 1989 cannot be construed as

authorising IDBI or L and T to redraw the consent or to override the special resolution or the prospectus for that would be completely violative of

the provisions of the Companies Act, Capital Issues Control Act and the Rules made thereunder.

74. Mr. Asoke Sen, learned Sr. advocate appearing on behalf of K.B.J. Tilak opposed the interim applications submitted on behalf of L and T. It

was contended that L and T had no right to change the conditions of the consent order as well as the terms and conditions mentioned in the

prospectus. Mr. Sen also placed reliance on the principles set out in De Smith''s Judicial Review of Administrative Action 4th Ed. page 285 which

sets out the principles governing the exercise of discretionary powers as under:

The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be

compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority

to which it is committed. That authority must genuinely address itself to the matter before. It must not act under the dictation of another body or

disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been

forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and

must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it

power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly

exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main

categories:failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not mutually exclusive. Thus, discretion

may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to

another body it acts ultra vires. Nor, as will be shown, is it possible to differentiate with precision the grounds of invalidity contained within each

category.

75. When such order is passed without regard to relevant consideration or irrelevant grounds or for an improper purpose or in bad faith then the

order becomes void. Mr. Sen also cited a passage of House of Lords in Anisminic Ltd. v. The Foreign Compensation Commission, (1969 2 AC

147) which has been quoted by the Supreme Court in (1971) 3 SCR 557 at p 570, which reads as under:

It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word

jurisdiction"" has been used in a very wide sense and 1 have come to the conclusion that it is better not to use the term except in the narrow and

original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction

to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It

may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the

enquiry to comply with the requirements of natural justice. It may in perfect good faith have miscontrued the provisions giving it power to act so

that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into

account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting

it up, it had no right to take into account. 1 do not intend this list to be exhaustive. But if it decides a question remitted toit for decision without

committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.

It was also submitted that the consent order of the Controller is an integrated and composite order and it cannot be vivisected either by the IDBI

or by the High Court. It is a statutory order which has been made by a statutory authority in accordance with the Capital Issues (Control) Act and

Rules, approved by the controller and the issue was subscribed on the basis of such consent order and prospectus and no other functionaries can

change this order. It was submitted that the prospectus did not specify any contract apart from the turnkey contract of RIL and also did not

mention anything except the supply credit necessary for financing these turnkey projects which would require ` 635 crores out of 820 crores. In

other words, the principal purpose of the issue was the financing of the turnkey projects of the value of ` 635 crores. It is fallacious to argue that

the issue was for ` 1425 crores as is sought to be argued on behalf of L and T. The prospectus mentions at page 45 of the interim application

under the head ''business plans'' that for the period Ist October, 1989 to 31st March, 1992 funds requirement was estimated at ` 1425 crores. It

was further specifically stated that the suppliers credit, inter alia, included ` 510 crores to be extended to RIL in respect of its Naptha Cracker

project. It was further specifically stated that the funds requirement was intended to be met out of the present issue of the debentures to the extent

of ` 820 crores and the balance would be met from internal accruals, in other words from the internal resources of the company and not borrowing

or debenture proceeds.

76. Mr. Parasaran, learned Sr, Advocate appearing on behalf of the petitioners in Writ Petitions Nos. 11112 - 11113 of 1990 filed in the High

Court of Madras and subject matter of Transfer Petitions in this Court argued that each compulsorily convertible debenture holder has rights

accrued in his favour pursuant to the allotment. Each debenture holder has his own perception of the rights accrued in his favour which he may

seek to enforce. Such enforcement of rights accrued in his favour will necessarily result in his taking up a legal position which may agree with the

stand taken by''one or other of the parties. It has been submitted that the consent order passed by CCI is either valid or invalid. There is no third

position possible. It was further submitted that prospectus is an invitation for offer from the public for the subscription or purchase of any shares or

debentures. The invitation is accepted and the offer is made when an application is made for allotment of debentures. Once the debentures is

allotted, the contract is concluded. It was further contended that each and every allottee of the debenture is entitled to specifically enforce the

contract for specific performance. The Court will enforce specific performance in favour of the allottee debenture holder and maintain consent as a

whole and bind other allottees on grounds of equity as all have acted on the basis of the consent. It was contended that with regard to the shares,

specific performance is the rule. Reliance in support of this contention is placed on Jai Narain v. Surajmull, (supra). It was pointed out by the

Federal Court that shares of a company are limited in number and are not ordinarily available in the market, it is quite proper to grant a decree for

specific performance of a contract for sale of such shares. The IDBI can only monitor the utilisation of funds by L and T as they are collected in

terms of the clause as specified in the prospectus to ensure that the funds are actually utilised for the specific predetermined projects for which they

are raised and this condition cannot be so interpreted to confer right on IDBI to decide as to the mode and manner and collection of funds itself.

77. Mr. S. S. Ray, learned Sr. Advocate contended that consent order dated 29-8-1989 was perfectly lawful and valid and the judgment of the

Bombay High Court in this regard was correct. It was not possible for the Court to dissect or vivisect the consent order or to apply the"blue pencil

theory"thereto and also to hold that a part of it is valid while the rest is invalid. The consent order was an integral part of a single scheme having a

single purpose and had to be considered in total conjunction of a series of documents and happenings. Mr. Ray drew attention of the Court to the

correspondence which took place from 26-7-89 to 15-9-89 between the L and T and the CCI.

78. Mr. Ray also brought to the notice of the Court two events happened thereafter namely order of this Court dated 9-11-89 by which allotment

of the debentures was allowed without claiming any equity by the allottee and allotment of the debentures to the plaintiff on 23-11-89. Mr. Ray

also brought to the notice of this Hon"ble Court further events relevant for the purpose of this case. Notice given by LIC and L and T on 2-4-90

to call an Extraordinary General Meeting to remove Ambanis from the board but no meeting was held. On 19-4-90 Mr. Dhirubhai Ambani

stepped down as Chairman of L and T. Various correspondence between L and T and ID-BI vide two letters dated 22-6-90 and one dated 28-

6-90. IDBI also sent a reply on 28-6-90 to both the letters dated 22-6-90 and 28-6-90 sent by L and T. In this reply letter IDBI stated as under:-

From a quick review of the status of the new proposal mentioned in your letter date 22-6-90 we feel that the net requirement of funds to be met

out of debenture funds would be in the region of ` 600 to ` 650 crores as indicated by you..... The L and T Board will have to take a view

on the size of the debenture issue in the light of the requirement of funds indicated in your letter and other modifications suggested in the series of

the debentures. The company will no doubt obtain necessary approvals from CCI, debenture holders/shareholders, etc. in consultation the with its

legal advisors.

It is clear that IDBI also realised that further approvals from CCI was necessary and also of the debenture holders, but this was never done.

79. A meeting by the Board of Directors of L and T was held on 26-9-90 in which the mega issue was reduced from ` 820 crores to ` 640 crores.

The dates of conversion of debentures were varied and the suppliers credit for ` 545 crores in respect of turnkey projects of RIL were cancelled.

It was pointed out by Sh. Ray that taking note of the above documents and the happenings even if a part of the consent order dated 29-8-89 is

found to be bad or unlawful, nothing can remain of the consent order and it has to go in its entirety.

80. Mr. Hegde, learned additional Solicitor General appearing on behalf of the Financial Institutions submitted that it was wrong that the Ambani

holding in L and T has increased from 12% to 35.3% It is based on a completely erroneous hypothesis that the share holding in RIL/RPL are only

of Ambanis. 35 lac shareholders comprised of 50 percent, of the investing public of India are in fact the public at large. 200 crores worth of

debentures were under the rights issue and it was mandatory under the guidelines for subscribing any issue. Out of remaining 620 crores,

approximately 320 crores debentures were reserved for preferential entitlement to equity shareholders of RIL/ RPL. The prospectus itself mentions

that any unsubscribed portion in the public offered by prospectus would go to the category of public. The claim of any loss as suggested in the

statement given by the petitioners is completely wrong and baseless. The allegation that an illegal benefit is made by the Anibanis from the 7%

transfer of shares does not survive as the entire shares with accretions have been handed over back to the public financial institutions.

81. Mr. R. K. Garg, learned Sr. Advocate appearing on behalf of respondents Nos. 1 and 5 in Transfer Petitions Nos. 458-467/90 contended

that the sole question involved in all the cases is whether the Controller of Capital Issues was acting illegally or constitutionally in giving consent to L

and T for coming out with mega issue of ` 820 crores, primarily and substantially for execution of turnkey contracts for Reliance projects, with a

stipulation in the contract that the cost of construction would be ` 510 crores and suppliers credit will be extended on mutually agreed terms and

conditions. The CCI after application of mind insisted on an undertaking to be given by Reliance that on extension of suppliers credit they would be

precluded to raise this amount from the market. It was further submitted that L and T themselves had applied for sanction in order to compete for

these lucrative contracts with foreign business rivals who were extending suppliers credit as a matter of routine and Indian companies were losing

business to them because of their superior financial strength though without superior special skills or experience. According to Mr. Garg

construction of Hajira project sponsored by RIL would have gone to foreign business rivals who were required to, be paid in foreign exchange

with considerable detriment to national economy and as sucn RIL did a good turn to the national economy by giving contract of turnkey projects to

L and T. It was further submitted that after the allotment of debentures a concluded contract between the debenture holders and L and T has come

into existence and the rights and liabilities as contained in the prospectus cannot be varied by this Hon''ble Court. The CCI has no power to defeat,

destroy or vary the contracts made between the investor and the company concerned.

82. On the other hand, Mr. Harish Salve, learned counsel appearing on behalf of petitioners in transferred case No. 61/89 submitted that the order

granting permission by the CCI is alleged to be illegal as the CCI overlooked the implications of the MRTP Act vis-a-vis the suppliers credit. The

dominant and real object underlying the issue was to make available funds for application to the Reliance group projects and also to provide a tool

by which Ambanis and Reliance Group shareholders could increase their control over L and T and dilute the control of the financial institutions.

The issue was brought about directly as a result of the illegal takeover of L and T by the Ambanis. Thus the entire issue is tainted by fraud and void

ab initio.

83. It has been further submitted that in reality and substance, the entire issue is tainted since the issue was an attempt of the Ambanis who had by

means fair and foul garnered the control of L and T to raise moneys using the fair name of L and T for their own purposes. The money raised

admittedly was not even required except for projects of Reliance Group.

84. Mr. B.R.L. lyengar, learned Sr. Advocate appearing on behalf of petitioners S. R. Nayak in the writ petition filed in the Karnataka High Court

and transferred to this Court, supported the contentions of the petitioners in the writ petitions filed in the Bombay High Court. Mr. lyengar further

submitted that the capital available for investment at any given time has to be sized and allocated according to national priorities by laying down as

investment policy which should inform and govern the action of the different departments of the Govt. including the Controller of Capital Issues,

who is a functionary in the Finance Ministry. At the given time that is in 1988-89 the capital market had according to available economic reports,

about ` 5000 crores public investment funds, limited as it was by poor savings and high inflation. There were so called mega issues four or five in

number who had the resources to exploit the media including the electronic media. None of these mega issues had anything like suppliers credit

from their associates, companies or otherwise. The Reliance Petro Chemicals had already appropriated ` 560 crores thus nearly 3000 crores of

rupees had been appropriated by large issues when the impugned issue was presented. After that the capital available for wage goods industries,

other labour intensive industries, critical industries, sought to be set up by hundreds of professionals who had neither political influence nor the

means to exploit the media would have been left with a very meagre amount available for allocation. Thus Articles 38 and 39 (b) and (C) of the

Constitution were not kept in mind by the authorities in making capital allocation. They addressed themselves to the so called requirement of L and

T in isolation and admittedly did not have material priorities on the investment policy in mind.

85. It was further contended that the Reliance Group of Industries had in about one year established access to about 1500 crores of rupees

including suppliers credit of ` 635 crores and had thereby become India''s largest conglomerate, with three different kinds of industries and that by

its very nature a Conglomerate unlike a linear monopoly defies control and regulation was a glaring factor quite apart from the tecnicalities of the

Monopolies Act, Sec. 22 (3) (b) and (d) of the Monopolies Act required indepth policy examination at the highest policy levels and consultation

with the Monopolies Commission and the Planning Commission. The record does not disclose any such consideration or consultation, on the other

hand the so called consideration can be seen to be casual, perfunctory and biased. Even in the case of transfer of shares of an ordinary company,

the directors have discretion to refuse the transfer if they feel that the. Person is undesirable or his shareholding is not in the best interests of the

company and repeatedly the Courts have upheld such bona fide refusal to transfer. Such being the case, it was notorious in the present cases that

the Ambanis'' high ambitions were out to take over L and T. It was thus contended that the nominees of the financial institutions were at the very

outset put on inquiry, when without any shareholding the first two Ambanis sat on the Board of Directors and, thereafter Dhirubhai Ambani

usurped the Chairman''s seat. The CCI failed to perform its duties in a proper manner and such action of granting consent in the prevailing

circumstances was not done in good faith. The sale of shares by the financial institutions itself was a grave breach of trust. For Reliance Group of

industries it was not possible to further increase their capital base by releasing any mega issues and they have tried to succeed in doing indirectly

what they could not have done directly. The first step in the execution of this nefarious plan was to transfer of 39 lac shares from the financial

institutions to Bob Fiscal. The second step was the transfer of these shares by Bob Fiscal to Trishna Investments a subsidiary of Ambanis. The

third step was the induction of Ambanis into the board of management of L and T and fourth step was of convening an Extraordinary General

Meeting of the shareholders and to get a resolution passed in such meeting for execution of certain projects of RIL and RPL cornering more than

3/4th amount out of the entire mega issue of ` 820 crores. This could not have been done without the active connivance and support of CCI and

other financial institutions. The question raised in this case is not one of legality but of propriety and reasonableness and bona fides of the action of

the financial institutions in the course of execution of this plan which has virtually resulted in not merely transfer of professionalised managed

company with a reputation built over the years into the hands of a private group but also the said company being used by the said private group to

raise enormous capital in the capital market for the execution of its projects. It was further submitted by Mr. Iyengar that the whole consent is liable

to be quashed and the same cannot be bifurcated.

86. The petitioners and the group of lawyers supporting them have argued that the consent given by CCI is bad and should be struck down on the

ground that it was given in undue haste, without proper application of mind, in violation of the provisions of the MRTP Act and mala fide in order

to benefit Reliance Group. In the alternative it has been contended that no preferential reservation could have been made of ` 3 10 crores of

Convertible Debentures for the shareholders of Reliance Group of Companies. In this regard it has been contended that in case this Hon''ble Court

does not hold the entire consent as invalid, then the part giving preferential reservation of ` 310 crores of Convertible Debentures for the

shareholders of the Reliance group of companies may be declared invalid but the remaining part of the issue of ` 510 crores be declared valid, as

the consent can be legally bifurcated in valid and invalid portions.

87. The other group of lawyers has contended that the consent given by CCI did not suffer from any infirmity and in any case it cannot be bisected

or bifurcated in valid and invalid portions. The consent order was an integral part of a single scheme and shall be valid or invalid as a whole and it

does not lie within the judicial review of the Courts to declare one part of the consent order as valid and the other part as invalid.

As already mentioned above this is a mega issue amounting to ` 820 crores, out of which ` 200 crores is the Rights Issue for the shareholders and

employees of L and T itself. Issue of ` 310 crores being reserved as preferential issue for the shareholders of Reliance group of companies being

an associate/ group of L and T itself. The balance issue of ` 510 crores is meant for the general public. So far as the Rights Issue of ` 200 crores is

concerned, the same is perfectly valid and nobody has come forward to challenge the same. As regards the preferential issue of ` 310 crores in

favour of shareholders of the Reliance group of companies is concerned, L and T and Reliance group of companies were interconnected within the

meaning of Sec. 2(g) of the MRTP Act and it is permissible according to law. The size of the issue was so large that it was considered necessary

to reserve a substantial portion of it in favour of the shareholders of Reliance group of companies, in order to ensure the successful absorption of

the entire issue. It may also be noted that the shareholders of the Reliance group of companies are numbering about 35 lacs and they represent the

investor base of the entire shareholding community of the country. My learned brother B. C. Ray has dealt with this matter in detail and has found

that preferential issue per se is not a novel idea. CCI has been permitting reservations for various categories out of public issue based on the

request made by companies after passing a special resolution in the general body meeting and there is no restriction on the shareholders of a

company to offer shares of their company to anybody after passing a special resolution as required under S. 81(1-A) of the Companies Act. 1 am

fully in agreement with the above view taken by my learned brother B. C. Ray, J. After the aforesaid view taken by us, the question of bifurcating

or vivisecting the consent order given by CCI does not survive. The legal controversy thus raised that the consent given by CCI under the Capital

Issues (Control) Act can be held valid or invalid as a whole but not some part of it as valid and the rest invalid does not require to be decided in

this case and the same is left open.

88. The next question which calls for consideration is whether the consent order for the mega issue of ` 820 crores as a whole given by the CCI

can be declared illegal or not on the grounds raised by the petitioners. This Court in N. K. Maheshwari''s case, (supra) while considering the duties

of the CCI under the Control of Capital Issues Act while giving consent has observed as. under:

That apart, whatever may have been the position at the time the Act was passed, the present duties of the CCI have to be construed in the

context of the current situation in the country, particularly, when there is no clear cut delineation of their scope in the enactment. This line of thought

is also reinforced by the expanding scope of the guidelines issued under the A t from time to time and the increasing range of financial instruments

that enter the market. Looking to all this, we think that the CCI has also a role to play in ensuring that public interest does not suffer as

consequence of the consent granted by him. But as we have explained later, the responsibilities of the CCI in this direction should not be widened

beyond the range of expeditious implementation of the scheme of the Act and should, at least for the present, be restricted and limited to ensuring

that the issue to which he is granting consent is not patently and to his knowledge, so manifestly impracticable or financially risky as to amount to a

fraud on the public. To go beyond this and require that the CCI should probe in depth into the technical feasibilities and financial soundness of the

proposed projects of the sufficiency or otherwise of the security offered and such other details may be to burden him with duties for the discharge

of which he is as yet ill-equipped.

89. In the above paragraph this Court has clearly laid down that the CCI has also a role to play in ensuring that public interest does not suffer as a

consequence of the consent . granted by him. The CCI cannot be permitted to take an alibi and a policy of hands off on the ground that this Court

had said in the above case that it may be ""to burden him with duties for the discharge of which he is as yet ill-equipped"". It was never the intention

in the above case to lay down that the CCI was not even required to see whether any public interest suffers or not as a consequence of the consent

granted by him. It is the bounden duty of the CCI before giving an order of consent for the issuance of any mega issue to keep in mind and to carry

out the Directive Principles of State Policy as enshrined in Article 39 (b) and (c) of the Constitution whicn provide as under:

39 (b):

That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

39 (c):

That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

It is no doubt correct that the CCI is not required to probe in depth into the technical feasibilities and financial soundness of the proposed projects

or the sufficiency or otherwise of the security offered, but at the same time it has to see that the capital available for investment at any given time

has to be sized and allocated according to the national priorities, and in the changed socio-economic conditions of the country to secure a balanced

investment of the country''s resources in industry, agriculture and social services.

It has been argued by Mr. lyengar that in 1988-89 the capital market, according to available economic reports, had about ` 5000 crores public

investment funds, limited as it was by poor savings and high inflation. There were so-called mega issues 4 or 5 in number who had the resources to

exploit the media including the electronic media. None of these mega issues had anything like suppliers credit from their associates, companies or

otherwise. The Reliance Petro Chemicals had already appropriated ` 560 crores and nearly 3000 crores of rupees had been appropriated by large

issues when the impugned issue was presented. After that the capital available for wage goods industries, other labour intensive industries critical

industries sought to be set up by hundreds of professionals who had neither political influence nor the means to exploit the media would have been

left with a very meagre amount available for allocation. It has been further contended that the Reliance Group of companies had in about one year

established access to about 1500 crores of rupees, including suppliers credit of ` 635 crores and had thereby become India"s largest conglomerate

with three different kinds of industries and that by its very nature a conglomerate unlike a linear monopoly defies control and regulation was a

glaring factor quite apart from the technicalities of the Monopolies Act, which ought to have been considered by the CCI.

90. In N. K. Maheshwari"s case, (supra) challenge was made to an order of consent of the CCI granted for the issue of shares (Rs. 50 crores)

and debentures (Rs. 516 crores) by the RPL. It was pointed out that though the issue proposed was of shares of ` 50 crores and Debentures of `

516 crores, the company was allowed to retain over subscription to the tune of 15% amounting to ` 77.40 crores. RIL was the promoter of RPL

though mega issues had already been issued by RIL/RPL and a substantial amount of about ` 1060 crores had already been mopped up from the

public for the projects of Reliance group of companies and they were not entitled to raise any further public issue in this regard, a device of

suppliers credit and turnkey projects to the extent of ` 635 crores was made for funding the projects of Reliance Group of industries by L and T. It

was proposed from the side of L and T at the time when Dhirubhai Ambani was the Chairman and his two sons and M. L. Bhakta their Solicitor

were on the Board of Directors of L and T. Thus the intention was to syphon an amount of ` 635 crores out of the issue of ` 820 crores in utilising

and funding for the turnkey projects of the Reliance group. These facts were known to the CCI and were certainly relevant at the time of granting

consent of the impugned issue of Rs.820 crores. Though this point has lost its force now in the changed circumstances but certainly it was worth

noticing by the CCI at the time of granting consent. This Court on 9-11-89 had allowed the allotment of the debentures and thereafter

approximately 11 lac debenture holders have bought the debentures. It would not be in the interest of general investor public to cancel the entire

mega issue. Many transactions must have already taken place on the floor of the stock exchange regarding the sale and purchase of the debentures

during this intervening period. Under the order of this Court dated 9-11-89, no restrictions were placed on L and T in the matter of utilisation of

funds. According to L and T against ` 410 crores due on application and allotment, the L and T has so far received ` 396 crores out of which

approximately ` 300 crores have been utilised towards issue expenses, capital expenditure, repayment of loans and working capital in terms of the

objects of the issue. The balance available with the company is approximately ` 96 crores only. There is already a safeguard provided in the order

of the CCI dated 15-9-89 that the fund utilisation shall be with the approval of the IDBI. In any case, the consent order given by CCI cannot be

held invalid on any of the grounds of challenge raised by the petitioners. In these proceedings this Court is neither called upon nor is entitled to

decide as to how and in what manner the amount mopped up from the public by this mega issue could be utilised or spent. Thus, 1 agree with my

learned brother B. C. Ray, J. that the consent given by CCI is valid.

91. All the above cases including the interim applications stand disposed of by the above order. The judgment of the Bombay High Court dated

29-9-89 also stands modified in accordance with the findings and observations recorded by us as mentioned above. The Contempt applications

are dismissed. The parties are left to bear their own costs.