(2014) 05 BOM CK 0080

Bombay High Court

Case No: Company Appeal No. 14 of 2013 and Cross Objections (L) No. 8 of 2013

Advansys (India) Private Limited, Shri Pankaj Inder Balwani, Smt. Shakuntala Balwani and Smt. Jaanhvi Balwani		APPELLANT
	Vs	
M/s. Ponds Investment Limited and M/s. Thakur Vaidyanath Aiyar and Co.		RESPONDENT

Date of Decision: May 9, 2014

Acts Referred:

- Companies Act, 1956 - Section 10, 108, 109, 10F, 110

Citation: (2014) 5 BomCR 199 : (2015) 124 CLA 197 : (2015) 188 CompCas 122 : (2015) 2 CompLJ 456

Hon'ble Judges: G.S. Patel, J

Bench: Single Bench

Advocate: Aspi Chinoy, Senior Advocate, Mr. Zal Andhyarujina, Mr. Manvendra Kane, Mr. Rahul Lamba and Ms. Shalini Sitaraman, i/b W.S. Kane and Co, Vyas and Bhalwal, Advocate for the Appellant; E.P. Bharucha, Senior Advocate, Mr. F.E. Bharucha, Mr. A.M. Bhalerao, Mr. S.A. Bhalwal, i/b Vyas and Bhalwal, Advocate for the Respondent

Final Decision: Allowed

Judgement

G.S. Patel, J.

I: Summary of the Dispute

1. When considering a petition u/s 111(4)(b) of the Companies Act, 1956, does the Company Law Board have the power and authority in law to direct the actual issue of the shares in question? According to Mr. Chinoy, learned senior counsel for the appellants, while the Company Law Board can examine a question of title, it cannot go into the issue of establishing of a right to the shares in question. That must be

done in a civil proceeding. The Company Law Board cannot order the issue of shares; if title is not established, it cannot examine the process of obtaining a title. An adjudication of an entitlement to the shares is not within the compass of Section 111 of the Companies Act. A person has a right to be on the register only when there is a valid transfer deed and a share certificate, i.e., where his entitlement to the shares is already established and proved, and where there is then a refusal to enter the name of the petitioner on the register of members. There cannot be a combined application for specific performance and rectification. The right to get shares has to be separately enforced, de hors proceedings u/s 111 of the Companies Act. When that right had been established an application can then be made for rectification.

2. This is the issue to be decided in this company appeal, one that was admitted on 18th March 2013. The appeal is directed against an order dated 14th January 2013. By that order, the Company Law Board directed original respondent Nos. 2 to 4 (the present appellants) to issue the original 7.5 lakh share certificates of Rs. 10/- each in the original 1st respondent company (the 1st appellant here) duly stamped and sealed to the petitioner (the present 1st respondent). Those respondents (the present appellants) were directed to rectify the register of members by inserting the name of the original petitioner and to inform the competent authorities.

3. By the Companies (Amendment) Act 1988 (effective 31st May 1991; "the 1988 Amendment"), Section 111 of the Companies Act was extensively amended. Clause 16 of the Companies (Amendment) Act sets out the purpose of this amendment. The amended Section 111 assimilated the provisions of the earlier Section 111 and Section 155 and conferred the powers of the Court under the unamended Section 155 on the Company Law Board. Sections 155 and 156 of the unamended Act were altogether omitted by the 1988 Amendment. Clause 16 of the 1988 Amendment said that the purpose of the amendment was to recast existing Section 111 by incorporating in it the provisions of Section 155. This conferred power on the High Court to order rectification of the register of members. The purpose and intent the amendment was to provide sufficient protection to investors against an unlawful refusal to register a transfer of shares. Therefore, the amended section also requires the companies to give reasons before refusing any such transfer. Rights were conferred on the aggrieved investor to apply for relief to the Company Law Board (instead of the High Court), on specified grounds.

4. Section 111 of the Companies Act, as amended, reads thus:

111. Power To Refuse Registration And Appeal Against Refusal

(1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of the company, it shall, within two months from the date on which the instrument of

transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

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

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

(4) If--

(a) the name of any person--

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

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

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become or ceased to be, a member including a refusal under sub-section (1), the person aggrieved, or any member of the company, or the company, may apply to the Company Law Board for rectification of the register.

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

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

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

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

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

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

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

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

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

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

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

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

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

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

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

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

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

(14) In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.

5. Section 111(4) thus operates where the name of a person is incorrectly entered or removed from the register of member or where there is a default of delay in "in entering in the register the fact of any person having become" (or ceased to be) a member. That sub-section includes a refusal to register the transfer under sub-section (1). This would indicate that the transfer of title to the shares must already have taken place, i.e., there must be a valid transfer deed and a share certificate in order to apply for the rectification. The determination of the validity of an agreement to purchase shares is not within the purview of Section 111 of the Companies Act at all.

6. In the present case, the petition before the Company Law Board was cast on the basis, as set out in paragraph XII of the petition, that a share certificate had been issued on 29th June 2007 certifying that the present 1st respondent was the registered holder of 7.5 lakh equity shares in the 1st appellant company, and that this so-called "certificate" was duly signed by the Managing Director and another Director of the Company. This assertion is repeated in paragraph 12 of the petition. The prayers, especially prayer (b) of the petition before the Company Law Board, proceeded on the footing that the 1st respondent was indeed a shareholder, or, to use the words of the petition "a registered shareholder". However, the documents in question, Exhibits "C" and "D" to the petition, are not share certificates at all. At best they are a confirmation that shares were to be issued. I will presently consider the circumstances in which these documents came to be executed.

7. What the Company Law Board directed by its impugned order of 14th January 2013 was this:

1. Subject to the direction No. 2, the Respondent No. 2 to 4 are directed to issue the original 7,50,000 share certificates of Rs. 10/- each duly stamped and sealed to the petitioner Company as per law. They are further directed to rectify the register of the members of the Company by inserting the name of the petitioner and will inform the Competent Authorities. However, this direction will come into force w.e.f. 15th April 2013.

8. The submissions of Mr. Bharucha, learned senior counsel for the respondents to the appeal is that under the doctrine of indoor management he is entitled to presume, on receiving the "certificate" to which I have referred, that everything was done as it ought to have been done. The material on record before the Company Law Board showed that the respondents had exercised their rights as a dominant 75% equity shareholder in the 1st appellant company. What remained to be done was the ministerial or clerical action of rectifying the register. In this view, no question of law sufficient to maintain an appeal u/s 10F of the Companies Act, 1956 arises. The appeal, in Mr. Bharucha''s submission, must be dismissed.

9. Having carefully considered the material, and the rival submissions, including the detailed written submissions filed by both sides, I am not persuaded that Mr. Bharucha''s formulation of the case is at all tenable. There appears to me to have been, on the part of the Company Law Board, a complete misappreciation and a misunderstanding of the frame, sweep and ambit of Section 111 of the Companies Act. This is a question of law that is, in my view, in itself sufficient to make this appeal maintainable. Further, though it is true that an appeal u/s 10F of the Companies Act, 1956 is not in the nature of a first appeal, it is apparent from the submissions of both sides that the appreciation of facts by the Company Law Board is wanting in critical and material aspects. I do realize that the legal term used in such cases is ''perversity'', but that is a phrase that sits uncomfortably when one is dealing with an order of a tribunal such as the Company Law Board. I will only say that the evidence and material was assessed quite incorrectly; the conclusions are unsustainable. What the Company Law Board found, on facts, is neither plausible nor tenable. Correctly read, the documents in question do not support the case propounded by Mr. Bharucha. To the contrary: there are several serious unexplained discrepancies and inconsistencies in the respondents'' case. These are never satisfactorily explained. In my view, the factual background has been glossed over or completely overlooked by the Company Law Board. In any case, since the respondents have also filed a cross appeal, the question of whether or not a question of law arises is, I believe, some what academic now.
10. For the reasons that follow, I have allowed the appeal in its entirety and set aside the order of the Company Law Board. I have also dismissed the respondents'' Cross Appeal.

II. Background

11. The 1st appellant, Advansys (India) Private Limited ("Advansys") is a private limited company promoted by the 2nd and 3rd appellants, Pankaj Inder Balwani ("Balwani") and the 3rd appellant, Pankaj Balwani''s spouse, one Shakuntala Balwani ("Shakuntala Balwani"; together, "the Balwanis"). Since about 2000/2001, the Balwanis, through entities they owned, began a trading relationship with on Tansun Limited ("Tansun"). Tansun is a company registered in the United Kingdom, where it carries on business. The relationship was for export of products and components for heaters and other engineering components. At the relevant time, Tansun was wholly owned by one Piara Singh Rana ("Rana") and his two brothers, Gurmeet Singh Rana and Amrik Singh Rana. One Harcharan Kamal Singh Hunjan ("Hunjan") was a director of Tansun.

12. Advansys was incorporated on 14th January 2002. Balwani held 8,000 shares; Shakuntala 2000. Balwani has been managing Advansys''s affairs from the beginning. Some time in 2002, Tansun and Advansys entered into a formal business relationship. Advansys was to manufacture goods and sell them to Tansun. A buyback arrangement agreement was finalised. This recorded that Tansun intended

to enter into a long term arrangement with Advansys to source manufacturing and product design development services from India, and was willing to provide loans in the form of capital equipment required for Tansun''s manufacturing activity. This buy-back agreement was executed on 18th September 2003 though with effect from 1st February 2002.

13. Between 2002 and 2004, Tansun made various advance payments to Advansys. These were utilised by Advansys for acquiring land at Pune, constructing a factory and installing the necessary machinery. All these advance payments were, according to Advansys, later repaid by adjusting them toward the price of exports by Advansys and its associated entities to Tansun.

14. On 13th February 2003, an amount of ₹4000 was transferred by one Copex Management Services Limited ("Copex") to Advansys. Copex claimed to be the company secretary and administrator of the 1st respondent, the original petitioner, Ponds Investment Limited ("Ponds"), a Mauritius-based company said to be wholly controlled or owned (or both) by Rana and Hunjan.

15. As Balwani and Shakuntala on the one hand and Hunjan and Rana on the other had not reached any concluded agreement on the shareholding and valuations of Advansys, Balwani asked Hunjan and Rana about the purpose of this remittance. Hunjan and Rana told Balwani that this amount was to be adjusted toward invoices for products supplied by Advansys to Tansun, since there was no agreement reached on a proposal for a buy-in by Tansun into Advansys''s equity, though there had been some discussions.

16. On 18th September 2003, Advansys sent an email to Hunjan forwarding a draft of the buy-back agreement. This buyback agreement was signed by Hunjan on 18th September 2003. A signed copy was faxed to Advansys on the same day.

17. About a year later, and more than one year after the remittance of ₹4000, Advansys received an email from Copex asking for a confirmation of the subscription and the share certificate in relation to the purported subscription to 75% of the equity of Advansys. On 22nd September 2004, Balwani forwarded this email from Copex to Hunjan, seeking his views and advice since, till then, there were no concluded agreement between the parties for any equity subscription by Hunjan, Rana or Ponds in Advansys. According to the appellants, Hunjan told Balwani that no response was necessary since there was no agreement between the parties in relation to any subscription to an equity shareholding in Advansys. On 23rd September 2004, Hunjan confirmed the execution of the buy-back agreement.

18. From 2001 onwards, Tansun''s orders on Advansys declined considerably. This adversely affected Advansys''s operations and cash flow. Also, Tansun began withholding or delaying payments to Advansys against the latter''s invoices for supplies and exports. This in turn has a cascade effect, and Advansys began to default on payments to its own suppliers. This situation continued to deteriorate for

the next two years. From 2006 onward, the pressure on Advansys was so considerable that Balwani repeatedly requested Hunjan and Rana to release payments for pending invoices raised by Advansys. These requests were denied or paid only in part.

19. From 2006 onward, i.e., at about the time that Advansys and the Balwanis were facing the most acute financial pressure, Hunjan and Rana began demanding that certificates be issued for 75% of the shareholding in Advansys to them. They said that these share certificates were required "for internal purposes" of Ponds, because one Ian Johnstone ("Johnstone") of C.K. Chartered Accountants, Tansun''s chartered accountants, was by then pressurising Hunjan and Rana to produce this share certificate. Balwani responded by saying to Hunjan and Rana that in order to issue the share certificate, the parties would first have to arrive at a share subscription agreement, comply with statutory formalities, and only then could any shares in Advansys be issued to Ponds. On 16th August 2006, Hunjan reminded Balwani about the share certificates, saying that the matter was now urgent. He also says that nothing further could be done in relation to the outstanding payments and other issues between the parties until the share certificate was received.

20. On 17th August 2006, Balwani wrote to Hunjan saying that he had instructed Advansys''s chartered accountant for the share certificate. Advansys and Balwani claimed that this was under economic and financial duress, since, by then, Advansys was completely dependent on Tansun for all business support; Tansun had reduced considerably the orders that it placed on Advansys; and Tansun was also either delaying payment of Advansys''s past invoices or withholding them altogether. However, Balwani pointed out in his email that there was a procedure that had to be followed for the issue of these shares, and that necessary permissions needed to be obtained. The share agreement issue was yet to be resolved, and this was essential as it had to be submitted to the Banks and the Registrar of Companies as part of share issuing process.

21. On 17th August 2006, Hunjan replied to Balwani saying that the share certificates were required for internal use; that he was aware of bank guarantees; and that he did not want to "upset the apple cart". In express terms, Hunjan said that he did not want Balwani to go to such lengths in following complex legal procedures or concluding any share purchase agreement at this stage. Hunjan followed this with an email on 29th August 2006, once again asking for the share certificate, while reconfirming that this was needed for "internal purposes only". By this time, Hunjan was clearly agitated. The email is threatening in its tone and indicates that unless such a certificate was issued, there would be no further remittance to Advansys.

22. On 13th September 2006, Advansys wrote to Hunjan and Rana. Advansys said that it would be illegal to attempt any such share issue without intimation to the Reserve Bank of India and the Registrar of Companies. Advansys operated under an

industrial licence. The terms of that licence required the Licensing Authorities to be kept informed of any issue relating to shares. Further, any share issue that was or could be construed as violation of the Foreign Exchange Regulation Act, 1997 ("FERA") and Foreign Exchange Management Act, 2000 ("FEMA") attracted penal consequences. Since the share issue was demanded against a foreign investment, this foreign remittance would need to be declared on a Foreign Inward Remittance Certificate ("FIRC").

23. Three months latter, on 15th December 2006, Hunjan asked Balwani about the share certificates again. It seemed that Johnstone was still following the issue with Hunjan. On 30th January 2007, Balwani circulated a draft of the Shareholding Agreement to Hunjan and Rana by email. He said that once the Shareholding Agreement was signed, an application would need to be submitted to the Registrar of Companies and the Reserve Bank of India informing them of this share issue, the shareholding structure and the consideration for the shares. Details of the joint-venture Company and the nature of business also needed to be submitted in prescribed forms to the Reserve Bank of India. Finally, proof of payment of consideration for these shares was a legal and inescapable requirement. I must note at this stage that although this Share Purchase Agreement was circulated in draft, it is an admitted position that it was never executed.

24. On 2nd March 2007, Balwani received an email from Johnstone, in which Johnstone expressed a concern that Ponds did not have on its record copies of the relevant share certificates. He claimed that Pond''s Board of Directors were "demanding sight" of these share certificates. Balwani replied on 9th March 2007 to Johnstone, with a copy to Hunjan and Rana. He clarified that no shares had yet been issued; that were any shares to be issued, this could only be done as on a current date; that Bank''s and other regulatory agencies needed to be informed of the issue of the shares; and most importantly, that consideration would need to be shown as having been paid towards these share subscription. A week later, Johnstone emailed Balwani expressing a concern that the shares in Advansys had not been properly issued or allotted. He claimed that it was not necessary to draft or execute a shareholders'' agreement for the purpose of issuing these shares.

25. As of June 2007, Tansun owed Advansys an amount of Rs. 1.58 crores against invoices raised by Advansys. Moreover, finished products manufactured by Advansys exclusively for Tansun, and in a value of over Rs. 1 crore, were then ready for Advansys''s plant awaiting collection by Tansun.

26. On 26th June 2007, Hunjan sent an email to Balwani attaching two separate documents for signature. The first was a draft of the minutes of a meeting of the Board of Directors of Advansys. The second was a certificate by which Advansys was to confirm issuance of shares to Ponds. Around 29th June 2007, Rana visited Balwani''s office in Pune. At this meeting, Rana pressurized Balwani and demanded that these two documents sent by Hunjan in draft be executed at the earliest. Rana

maintained and reaffirmed, according to Balwani, that these were required by Ponds for its internal use. Balwani claims that, given the circumstances, he had little option but to agree. He then filled in the draft documents forwarded by Rana and Hunjan and forwarded these to Hunjan, while also circulating them by email to Johnstone for approval. Johnstone replied on the very same day by email confirming that these documents seemed to be in order. It is, according to the appellants, in these circumstances that the two documents, Exhibits "C" and "D" to the petition, were signed and issued. The minutes are signed by both Balwanis; the "certificate" by Pankaj Balwani alone.

27. On that very day, i.e., 29th June 2007, an amount of ₹ 92,500 (approximately equal to Rs. 75,36,900/-) was remitted to Advansys''s bank account by Johnstone''s firm, CK Chartered Accountants. On 30th June 2007 HSBC Bank issued a FIRC for these remittances of ₹92500. The FIRC categorically states that the purpose of the remittance as disclosed by the remitter, i.e., CK Chartered Accountants, was toward invoices.

28. On 5th October 2007 Hunjan sent an email to Balwani with a reconciliation statement. This reconciliation statement, which is on record, evidences payments made to Advansys against its invoices. This reconciliation shows that the amount of ₹ 92,500 transferred by Tansun through its chartered accountants, CK Chartered Accountants, in June 2007 was in payment of invoices raised by Advansys on Tansun. This document is Exhibit "D" to an affidavit in reply dated 20th November 2012 by Balwani to an affidavit in surrejoinder by Hunjan. The third page of this reconciliation statement shows that value of six invoices of June 2007 correspond exactly to the remittance of ₹ 92,500. In his email, Hunjan specifically directed Balwani to apply the remittances only in the manner provided in the reconciliation statement and in no other. Indeed, in rather stentorian tone, he said:

Pankaj, I want you to come back with your agreement/acceptance of my spread sheet by Monday 8th October 2007 latest. You will apply the funds send to you as we direct you to do. You WILL NOT apply the funds any other way.

This is a statement that Hunjan is unable to explain at any point subsequent. I do not see how, in light of this, when Balwani applied those funds in precisely the manner indicated in the reconciliation spread sheet and not in "any other way", Hunjan can now turn around and demand precisely that which he first forbade; i.e., that the funds be applied, or be held to have been applied, in a completely different manner. How the Company Law Board could have possibly overlooked this material evidence is inexplicable.

29. At the same time, according to the appellants, Hunjan and Rana continued to refuse payment of other pending invoices raised by Advansys. They began for the first time to raise disputes in relation to the quality of products supplied by Advansys. This had never been done before. Balwani repeatedly requested Hunjan

and Rana to settle the outstanding dues and to release Advansys''s payments. In his email of 22nd September 2007, Balwani specifically told Hunjan and Rana that an amount of ₹195,000 was still outstanding and payable.

30. On 9th October 2007, Johnstone, under instructions of Hunjan and Rana, forwarded by email to Balwani and Advansys an email that Johnstone had in turn received from Copex asking for an updated list of shareholders, reflecting Ponds as a shareholder ostensibly for completeness of records. Balwani claims that given the dire financial straits in which Advansys then found itself and its by now almost complete dependence on Tansun for financial support, he was compelled to respond saying that the change process had been initiated and that Ponds'' name would be included shortly. On 24th October 2007, Hunjan wrote to Balwani saying that further funds could be released only after the issues relating to the email of 9th October 2007 were resolved. Again, attributing these to the circumstances in which Advansys and the Balwanis found themselves, Balwani sent an email to Hunjan with a draft letter saying that the shareholders of Advansys included Ponds. On 31st October 2007, Hunjan again demanded from Balwani that a letter of shareholding as approved by Hunjan and the accounts of Advansys be sent to Johnstone. A further reminder followed on 2nd November 2007.

31. Several months later, on 30th July 2008, Hunjan emailed Advansys reconfirming the reconciliation statement sent previously and also reconfirming that the remittance of £ 92,500 made in June 2007 through CK Chartered Accountants was to be applied toward payment of the invoices raised by Advansys on Tansun. On 31st March 2009, Balwani emailed Hunjan asking him not to continue pressurizing him (Balwani) into signing papers in the absence of agreement.

32. By about April 2009, Advansys''s manufacturing and plant activities had come of a virtual standstill, principally on account of Tansun''s refusal to collect its finished stock of products lying with Advansys. It seems that this stock is still uncollected today.

33. On 7th May 2009, Johnstone wrote to the chartered accountants of Advansys. He expressed what he described as serious concern about "the behaviour of Balwani and his co-director Shakuntala Balwani". He alleged that the Balwanis had intentionally concealed the issue of shares to Ponds on 29th June 2007 in the accounts of Advansys. As we shall see, this is a stand that is of some consequence. In this, Johnstone unequivocally states that the issue of shares was in June 2007 and against the remittance made at that time of £ 92,500. This is in material contradiction to a conflicting case that the share subscription was originally of the ₹4000 remittance made by Copex on 13th February 2003.

34. Advansys''s chartered accountants responded on 11th May 2009. They clarified that the amount of £ 92,500 (equivalent to Rs. 78,67,125/-) received from CK Chartered Accountants was not recorded in the Advansys''s balance sheet as at 31st

March 2008 toward share subscription but as current liabilities, i.e., as advances received against invoices, this being the stated purpose in the FIRC. Advansys''s chartered accountants also confirmed that the Company''s records did not reflect a board meeting of 29th June 2007 and did not show Ponds as shareholders or members.

35. On 8th June 2009, Rana sent an email with comments on a draft amendment of the Shareholders Agreement.

36. On 17th June 2009, Ian Johnstone sent a reminder mail to Advansys''s chartered accountants. On 22nd June 2009, Ponds sent an email to Rana saying that while a resolution seemed to be in sight, there was still some problems and that the proposal for a 75% to 25% shareholding was not what was discussed. Rana replied to Balwani on 23rd June 2009. He said that the agreement was not between Advansys and Tansun and that it was Ponds that was taking a 75% shareholding in Advansys, the Balwanis holding the remaining 25%. Further correspondence continued in June 2009. In an email of 26th June 2009, Balwani made it clear that he was attempting to resolve the long pending issue but without a binding commitment at that stage.

37. On 13th February 2010, Rana sent an email to Ponds saying that discussions had been going on for some time and this now needed to be resolved. One of the three matters pending resolution, according to Rana, was about the share holding.

38. On 14th June 2012, a legal notice was issued to Advansys by the advocates for Ponds calling on Advansys to issue a share certificate to Ponds for 7,50,000 shares of Rs. 10/- each. On 14th June 2012, Ponds filed a complaint against the Balwanis with the Registrar of Companies. The reliefs sought in that complaint are similar to the ones sought by Ponds in its petition before the Company Law Board. Ponds also filed a criminal complaint against the appellants with the Economic Offences Wing. On 7th September 2012, Ponds filed Company Petition No. 23 of 2012 before the Company Law Board. The impugned order was passed on 14th January 2013.

39. Before I proceed to outline the rival submissions made by Mr. Chinoy and Mr. Bharucha, I must note that the Company Petition was filed more than five years after the remittances of 92,500/-. This, according to Ponds, was its share subscription payment. That payment was made on 29th June 2007. There is also a case made, and which I will presently consider, that the share subscription payment was actually the payment of 4,000 paid on 13th February 2003. If that be so, the petition before the Company Law Board was nearly nine years after that payment. These dates and time periods will have some consequence while considering the issue of delay and laches.

III: Rival Submissions

40. It is on these statement of facts that Mr. Chinoy, learned senior counsel for the appellants, and Mr. Andhyarujina, learned counsel for the appellants who also addressed the Court briefly, framed their submissions. These can, broadly, be summarised thus:

(a) The Company Petition filed by Ponds u/s 111 of the Companies Act, 1956 was per se not maintainable. The Company Law Board was not entitled to direct the issuance of shares or share certificates u/s 111(5) of the Companies Act, 1956. The Company Law Board was not, Mr. Chinoy and Mr. Andhyarujina contended, entitled u/s 111 of the Act to adjudicate complex questions of fact as to the entitlement of Ponds to the shares. Proceedings u/s 111 of the Act cannot be used to establish the right of Ponds to become a member of that Company. That right must be established in independent and other proceedings. A proceeding u/s 111 cannot be combined with an action for specific performance.

(b) There was no concluded agreement whatever between Ponds and Advansys for the so-called issue of 75% of the share capital of Advansys.

(c) In any event, this so-called issue of 75% of the equity share holding in Advansys was entirely without consideration.

(d) The two documents Exhibits "C" and "D" to the Company Petition, being the certificates or certifications issued by Balwani on 29th June 2007 were, in any case, void and incapable of legal enforcement. These were in violation of the applicable provisions of FEMA and the FEMA Regulations as also in violation of various provisions of the Companies Act including Section 26 read with Section 94.

(e) The Company Petition filed by Ponds suffered from delay, laches and acquiescence and was, therefore, not maintainable.

(f) That there was suppression of material facts in the petition and Ponds had approached the Company Law Board with unclean hands disentitling itself to any equitable or other relief.

41. In response, Mr. Bharucha, learned senior counsel for Ponds placed his submissions thus:

(a) Ponds was entitled, in the factual matrix outlined above, to be recorded and registered as a 75% equity shareholder of Advansys. It was to hold 7,50,000 equity shares of Rs. 10/- each, and it had fully paid the consideration for these shares. According to Mr. Bharucha, the shares were paid for twice, first by the remittance of ₹4,000 in 2003 and then subsequently by the remittance of ₹ 92,500 in June 2007. There is no dispute till June 2007 of Ponds'' entitlement to 75% shares of Advansys.

(b) Ponds is entitled to rely on the minutes of 29th June 2007 signed by Balwani, following the doctrine of indoor management and the doctrine set out in the reported English judgment of the Chancery Division, In Re Duomatic Limited. (1969)

2 WLR 114 This principle has been applied and followed by various High Courts in this country as also by the Supreme Court.

(c) Ponds'' assertion of its rights as a shareholder has never been objected to by Advansys or the Balwanis.

(d) Hunjan''s email of 5th October 2007 and the reconciliation statement attached to it are being misconstrued. The amount of ` 92,500 could never have been adjusted towards invoices since, by then, it had already been adjusted toward the share subscription in June 2007. By October 2007, when the reconciliation statement was sent, that amount was simply not available for adjustment toward invoices.

(e) Ponds throughout acted as a majority shareholder and never as a buyer of goods manufactured by Advansys. This, according to Mr. Bharucha, is inter alia established from much of the correspondence which shows that Ponds made payment towards capital expenses, played a role in the deployment of funds for civil works and construction etc. The FIRC statement or certificate issued by HSBC is unreliable. On enquiries made by Ponds, HSBC appears to have confirmed, some three years later, that it has no records available of the SWIFT message from Nat West Bank, the originating Bank, mentioning the purpose of remittance. How the purpose of invoices came to be stated in the FIRC issued by HSBC was, according to Mr. Bharucha, unexplained. That FIRC certificate is, therefore, according to Mr. Bharucha, entirely unreliable.

(f) The petition is maintainable u/s 111(4), for, according to Mr. Bharucha a formal share certificate is not a prerequisite to the rectification sought u/s 111(4)(b). The scope of Section 111(4)(b) is much wider than Section 111(1). Section 111(4)(b) includes a refusal under sub-section (1). Under the next sub-section, Section 111(5), the Company Law Board has been conferred a power to direct the rectification in respect of any applications received by it under sub-section (4). Therefore, the Company Law Board has the express power to deal with the application even in the absence of a formal share certificate being issued. Further, the two certificates issued by Balwani leave no room for doubt as to what exactly was intended and the rights that were created.

(g) In any event, the question of title to shares is capable of adjudication and proceedings u/s 111. Merely because Advansys and the Balwanis have sought to confuse the business relationship with Tansun, Hunjan and Rana with the shareholding subscription by Ponds, that does not mean that Ponds'' investment in Advansys can be denied in this fashion.

(h) According to Mr. Bharucha, all allegations of so-called violations under FEMA/FERA and the FDI Policy are a smokescreen and without any substance. These, like the submissions made that Foreign Direct Investment is permissible through an automatic route only if an export oriented unit is physically situated in a special economic zone, are merely diversions and should not be allowed to defeat Ponds''

legitimate rights.

IV: Maintainability of the petition; scope of Section 111 of the Companies Act.

42. Mr. Chinoy''s first submission is that u/s 111(4) of the Companies Act, the Company Law Board''s powers do not extend in an omnibus fashion to a question of determining whether the petitioner before the Company Law Board is entitled to the shares or whether the petitioner has established his right to become a member of the Company. The scope of the enquiry before the Company Law Board is limited to ordering a rectification of the register or a transfer or transmission to be registered, and awarding damages for improper conduct, but only where it is found that that right or entitlement of the petitioner has already been established and is undisputed. u/s 111(5) of the Companies Act, the Company Law Board can only direct registration of the transfer of shares or rectification of registration of members. The Company Law Board has no power to direct the Company to actually issue shares or share certificates to a party who seeks such a rectification. The submission made by Ponds before the Company Law Board was that the Advansys was bound to issue a proper share certificate u/s 83 read with Section 113 of the Act. In other words, it was an admitted position that no share certificate had till then been issued. The so-called rectification application followed on this application for the issuance of the share certificate. The application before the Company Law Board was, therefore, according to Mr. Chinoy, a combined action for specific performance of an alleged share subscription agreement and an application for rectification. What is not in doubt, says Mr. Chinoy, and I must agree with him, is that the 7.5 lakh shares of Advansys were never actually issued by Advansys to Ponds.

43. Moreover, the frame of the prayers--asking for an issue of the shares--is materially contradictory of the averments, where Ponds claims to be a ''registered shareholder'' of Advansys. The petition proceeds on the basis, in at least two places distinctly stated, that Exhibit "D" to the petition is a share certificate issued by Advansys. This does not appear to be correct. Exhibit "D" to the petition is by all accounts is clearly not a share certificate, although it is signed on behalf of the Advansys. It is a certificate addressed "to whomsoever this may concerned" and purports to say that 7.5 lakh shares have been issued to Ponds; and that the name of Ponds has been included in Advansys''s certificates, as also in what is described as a "M & A document", a reference never explained at all. The names of the three shareholders of Advansys, namely Ponds, Balwani and Shakuntala Balwani are set out in these documents. This is by no stretch of imagination a share certificate. Yet the petition says at paragraph 1 that this is a share certificate. This is repeated in paragraph 12 of the petition were Ponds claims to be "registered shareholder" on the basis of this document and in paragraph XIII where this document is described as a share certificate. Sections 83 and 84 of the Companies Act along with the Companies (Issue of Share Certificate) Rules, 1960 (the "Share Certificate Rules") do not contemplate this kind of document being treated as a share certificate. There is

no common seal of Advansys on the document. It does not contain the signatures of two directors of the appellant Company and a third person. There are no distinctive share numbers or folio numbers. The document is on a letterhead and not in the prescribed form. Most importantly, nowhere in the document Exhibit "D" is any consideration stated to have been paid. At best this is only a letter addressed to a person or persons unknown, purportedly stating that certain shares have been issued. The express provisions of Sections 83 and 84(1) of the Companies Act, and Rules 5, 6 and 8 of the Share Certificate Rules are all left non compliant. The lacunae are many, and they are fatal.

44. What is not in doubt, therefore, is that there was no share certificate issued at all. Absent a share certificate, is it possible for the Company Law Board to direct rectification of the register? There is also no valid share transfer form or any instrument by which these shares could be said to have been transferred from one previous holder to another. If, on the other hand, these additional shares were sought to be issued by increasing the capital of the Company, that required the Company necessarily to follow the prescribed route (of a General Body resolution at a meeting), with a number of mandatory compliances, not least of which would be the requirements of Sections 94(1)(a) and 94(2) of the Companies Act, 1956. This, too, has never been done. I cannot see how any share issue could possibly be done in the manner suggested by Ponds.

45. The action before the Company Law Board was brought on the basis of a document that is not a share certificate, devoid of any share transfer or share issuance instrument, and on the basis of an undisclosed, possibly dubious and certainly unspecified agreement for purchase of shares. Any such share purchase agreement, even assuming that the Company Law Board could adjudicate it, would necessarily have to be in express terms. It would have to state the consideration. There is a complete lack of clarity and certainty as to the consideration paid for this so-called "75%" of the equity share holding in Advansys allegedly acquired by Ponds.

46. What lay before the Company Law Board was, therefore, not an application for rectification of the register simpliciter. It was a complex question that required Ponds first to establish whether there was or was not in fact an agreement for purchase of shares, and whether this agreement was proved to exist; proved to have been acted upon and given effect to; and whether, in pursuance of any such purported and proved agreement, the shares had actually been issued for consideration paid for that purpose and no other. An assessment of complicated question of facts and a disputed right of a person to become a member of a Company is beyond the purview of the Company Law Board acting u/s 111 of the Act. The Company Law Board certainly cannot adjudicate or establish the right of a person to become a member of the Company.

47. In essence, what the Company Law Board seems to have done in this case is to first make the petitioner before it, i.e., Ponds, a member of the Company and

thereafter directed rectification of Advansys''s register. A fundamental prerequisite, on any fair reading of Section 111 of the Act, is that the petitioner before the Company Law Board must already demonstrably and indisputably be a member of the Company. That question of membership of the Company is not one that can be directed or ordered by the Company Law Board u/s 111 of the Companies Act. No shares of Advansys were ever issued or allotted to Ponds.

48. In these circumstances, it is difficult to see how it could ever have been said that Ponds had become a member or shareholder of Advansys. In order to be a member and shareholder and one holding alleged 7.5 lakh shares, those shares would have had first to have been issued to Ponds, making Ponds a member of Advansys. Absent any such share issue, no rectification of the register of members could have been permitted. If, as it does indeed appear in the present case, all that Ponds could at highest lay claim to, was an agreement for purchase of shares (and even this is extremely doubtful and not established), Ponds would nonetheless first have to file a civil suit for specific performance of such an agreement. It could not bundle that claim for specific performance with an application for rectification of the register. The suit for specific performance was a necessary precursor to a rectification application. Only by way of that civil suit, could Ponds ever establish its entitlement or right to the shares in question.

49. Mr. Chinoy relied on the decision of the Supreme Court in M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd. and Others, That was a case decided under the old section 155 of the Companies Act prior to its amendment. Since the present Section 111, after its amendment, is assimilation of old Sections 111 and 155, those principles continue to govern. In paragraph 27, 28, 29, 31 and 32 the Supreme Court said:

27. In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the Register of the company has to be stated to have been complied with by the applicant at least that part as required by the Act and assertion of what has not been complied with under the Act and the Rules by the person or authority of the respondent-Company before the applicant claims for the rectification of such Register. The court has to examine on the facts of each case whether an application is for rectification or something else. So field or peripheral jurisdiction of the court under it would be what comes under rectification, not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the court as referred u/s 155 read with Section 2(11) and Section 10, it is the Company Court alone which has exclusive jurisdiction. Similarly, u/s 446, the court refers to the Company Judge which has exclusive jurisdiction to decide matters what is covered under it by itself. But this does not mean by interpreting such court having exclusive jurisdiction to include within it what is not covered under it, merely because it is cloaked under the nomenclature rectification does not mean the court

cannot see the substance after removing the cloak.

28. Question for scrutiny before us is the peripheral field within which the court could exercise its jurisdiction for rectification. As aforesaid, the very word rectification connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act. To show this error the burden is on the applicant, and to this extent any matter or dispute between persons raised in such court it may generally decide any matter which is necessary or expedient to decide in connection with the rectification.

29. Both under the 1913 Act and the 1960 Act, a procedure is prescribed for admitting a person as a member by purchase or transfer of shares of that company. With reference to the 1913 Act u/s 29, a certificate of shares or stock shall be prima facie evidence of the title of the number of the shares or stock therein. Section 30 defines member to be one who agrees to become a member of a company and whose name is entered in its Register. Section 31 is to keep a Register of its members. Section 34 deals with transfer of shares and application for the registration of the transfer of shares is to be made either by the transferor or the transferee. Where such application is made by the transferor for registration of his share, a registered notice is to be sent to the transferee. Section 34(3) restricts to register a transfer share until the instrument of transfer duly stamped and executed by the transferor and transferee has been delivered to the company. Thus before the name of any transferee is registered this procedure has to be shown to have been followed, which is an obligation of any such applicant under the Act. This shows that an application is to be made either by the transferor or transferee for registering the name of the transferee as members or shareholders of the company by placing before the company duly stamped and signed document both by the transferor and transferee. Similar is the position u/s 155 of the Indian Companies Act, 1960 that before power is exercised for rectification essential ingredients are to exist. Section 108 gives a mandate to a company not to register transfer of shares unless proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee has been delivered to the company along with certificates relating to the shares.

31. Sub-section (1)(a) of Section 155 refers to a case where the name of any person is without sufficient cause entered or omitted in the Register of Members of a company. The word sufficient cause is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the court has to exercise its jurisdiction. It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the

rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court u/s 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court. Unless jurisdiction is expressly or implicitly barred under a statute, for violation or redress of any such right the civil court would have jurisdiction. There is nothing under the Companies Act expressly barring the jurisdiction of the civil court, but the jurisdiction of the court as defined under the Act exercising its powers under various sections where it has been invested with exclusive jurisdiction, the jurisdiction of the civil court is impliedly barred. We have already held above the jurisdiction of the court u/s 155, to the extent it has is exclusive, the jurisdiction of the civil court is impliedly barred. For what is not covered as aforesaid the civil court would have jurisdiction. Similarly we find even u/s 446(1), its words itself indicate the jurisdiction of the civil court is not excluded. This sub-section states,... no suit or legal proceedings shall be commenced... or proceeded with... except by leave of the court. The words except by leave of the court itself indicate on leave being given the civil court would have jurisdiction to adjudicate one''s right. Of course discretion to exercise such power is with the court. Similarly u/s 446(2), court is vested with powers to entertain or dispose of any suit or proceedings by or against the company. Once this discretion is exercised to have it decided by it, it by virtue of the language therein excludes the jurisdiction of the civil court. So we conclude that the principle of law as decided by the High Court that the jurisdiction of the court u/s 155 is summary in nature cannot be faulted. Reverting to the second limb of submission by learned counsel for the appellant that the Court should not have directed for seeking permission to file a suit only because a party for dispute''s sake states that the dispute raised is a complicated question of facts including fraud to be adjudicated. The Court should have examined itself to see whether even prima facie what is said is a complicated question or not. Even dispute of fraud, if by a bare perusal of the document or what is apparent on the face of it on comparison of any disputed signature with that of the admitted signature the Court is able to conclude no fraud, then it should proceed to decide the matter and not reject it only because fraud is stated. Further on the other hand learned counsel for the respondent totally denies any share having been purchased by the appellant-Company or any amount paid to it. No transfer of any such share was ever approved by the Board of Directors. It is urged that the money even if advanced to Shri V.K. Bhargava by the appellant-Company, if at all, was a private transaction between the two with which the respondent-Company has no concern. So we find there is total denial by the respondent.

32. We have gone through the judgment of the High Court. It has rightly held the law pertaining to the jurisdiction of the court u/s 155 and even referred to some of

the documents of the appellant but concluded that since they are disputed and said to be forged hence it directed for seeking leave if advised for suit. We feel it would have been appropriate if the Court would have seen for itself whether these documents are disputed and if any document is alleged to be forged, whether it is said to be so only to exclude the jurisdiction of the Court or it is genuinely so. Similarly we feel appropriate that while deciding this the Court should take into consideration the submissions for the respondents, whether it would come within the scope of rectification or not in the light of what we have said above.

(emphasis supplied)

50. Mr. Chinoy also relied on the decisions of the Supreme Court in Smt. Claude-Lila Parulekar Vs. Sakal Papers Pvt. Ltd. and Others, of which the Supreme Court said:

14. The power of the court u/s 155 is limited to the rectification of the register of members of a company in three situations (a) when the name of a person is wrongly entered in such register, (b) when the name of a person, whose name having been entered in the register is omitted therefrom, and (c) when default is made in entering the name of any person who has already become or who has ceased to be a member. None of the three situations envisaged under sub-section (1) of Section 155 would allow the person whose right as a member qua the disputed shares is yet to be established to apply for rectification by inclusion of such person''s name. The appellants could not, therefore have applied for transfer of the disputed shares in their favour u/s 155 of the Companies Act. They would have to establish that right by way of a separate suit or otherwise. The appellants in para 26 of the company petition correctly reserved their right to file appropriate action for transfer of the 3417 shares to themselves.

(emphasis supplied)

51. Finally, there is a decision of the Division Bench of this Court in Shirish Finance and Investment (P.) Ltd. Vs. M. Sreenivasulu Reddy, reads thus:

203. On a careful reading of the judgment of the Supreme Court, it is apparent that the Court held that the jurisdiction exercised by the Court u/s 155 is a summary jurisdiction. The Company Court is invested with exclusive jurisdiction in regard to questions raised within the peripheral field of rectification. However, if the claim is based on some seriously disputed civil right or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member, and if the Court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar, some such facts falling outside rectification, its discretion to send the party to seek its relief before a Civil Court first for the adjudication of such facts has not been taken away from the Court. The Court, therefore, has to find whether the dispute raised is really for rectification or is of such a nature, unless decided first, it would not come within the purview of rectification. It, therefore, follows that the Company Court, in its discretion, may

refer the parties to a suit where the issues involved are issues which cannot be appropriately dealt with in a summary jurisdiction. Where the application for rectification cannot be allowed without deciding other complicated questions of law and fact, or serious disputed questions of title, right, etc., are raised, the Company Court may direct the parties to get such matters decided by a Court of competent civil jurisdiction. As we understand the judgment in Ammonia Supplies Corporation (P) Ltd. case, it only means this, that in an application for rectification u/s 155, the Company Court would entertain and decide the application if the issues reused therein are such as can be decided by a Court exercising summary jurisdiction. If, however, it is necessary before granting the application for rectification to decide other issues involving complicated questions of law and fact, and disputed questions of title, right, etc., then, the Company Court may direct the parties to get their disputes adjudicated by a Civil Court. The exclusive jurisdiction u/s 155 is confined only to those cases where the Court can appropriately in a summary jurisdiction decide the questions raised therein. It, therefore, follows that if an application for rectification does not raise any complicated questions of law or disputed question of title or any other such complicated issue which require determination by a Court of law, the applicant cannot seek relief by filing a civil suit because the questions that arise can be conveniently and appropriately dealt with by a Court exercising summary jurisdiction. Thus, in every case, the Court has to consider the facts and the issues involved and, thereafter exercise its discretion to grant relief or to relegate the parties to a suit in exercise of jurisdiction u/s 155 of the Companies Act. We are, therefore, of the considered view that the decision in Ammonia Supplies Corporation Ltd., does not overrule the law as laid down in Public Passenger Service Ltd., and cannot be cited as an authority for the proposition that the jurisdiction of the Civil Court is completely barred.

205. In the instant case, the application for rectification proceeds on the basis that the acquisition of shares by defendants No. 3 and 4 were illegal and void being in breach of the mandatory provisions of the SEBI Regulations of 1994. This was not a case where rectification was sought on the ground that the application for transfer was not properly made or duly stamped or that the name of the transferor did not appear in the share register or that any other formality had not been complied with, but on the ground that defendants No. 3 and 4 had acquired no title to the shares in view of the breach of the 1994 Regulations. In a case of this nature, the Court exercising jurisdiction u/s 155 of the Companies Act will have to decide many important and complicated questions of law and fact. It will have to consider whether there was in fact a breach of the Regulations which would involve questions relating to interpretation of SEBI Act and the Regulations, the meaning of the word "acquirer", the meaning and import of "acting in concert, and appreciation of facts to reach a conclusion as to whether the defendants were really acting in concert, a decision on the question as to whether in the facts and circumstances, the defendants acquired any title to the shares at all, and a host of other questions

which have been raised in the suit. We are of the view that these questions cannot be decided in exercise of summary jurisdiction. The rectification of the register could be ordered only after answering all these questions and, therefore, having regard to the ratio in Ammonia Supplies Corporation Pvt. Ltd., these are questions which did not fall within the "peripheral field of rectification" but raised complicated questions of law and fact, and questions of title, which could appropriately be decided only by a Court of competent jurisdiction. They cannot, therefore, be considered to be questions raised within the peripheral field of rectification contemplated by section 155 of the Companies Act.

(emphasis supplied)

52. Mr. Bharucha''s response to these decisions of the Supreme Court and of this Court is to say that it is now well settled that questions of title can be examined by the Company Law Board u/s 111 of the Companies Act. He relied on decision of the Supreme Court in Canara Bank Vs. Nuclear Power Corporation of India Ltd. and Others, In particular he relied on paragraph 31 of that decision to submit that u/s 111 the Company Law Board now performs all the functions that were earlier performed by Civil Court u/s 155 of the unamended Companies Act. That paragraph in terms says that it may also decide any question relating to the title of any person who is a party before it to have his name enter upon the Company''s register. On this basis, Mr. Bharucha submits that the decisions of the Supreme Court Ammonia Supplies and Claude-Lila Parulekar are per incuriam, since the Supreme Court did not consider Canara Bank in either of those two cases.

53. It is not possible to accept this submission. The question before the Supreme Court in Canara Bank is whether the Company Law Board was a "Court" for the purposes of Section 9-A of the Special Courts Act and not whether it had the authority or right to decide complex questions of fact in relation to a petitioner''s title u/s 111. In any case, that decision of the Supreme Court Canara Bank was explained by the Supreme Court itself in Ammonia Supplies. In paragraphs 8, 17 and 18 of Ammonia Supplies, the Supreme Court specifically considered its earlier decision in Canara Bank. It is, therefore, incorrect to say that Canara Bank was not considered by the Supreme Court in Ammonia Supplies. Canara Bank was also specifically considered in Claude-Lila Parulekar. In paragraph 21 of Claude-Lila Parulekar, the Supreme Court specifically considered the decision of the larger bench in Canara Bank, and, in particular, paragraph 31. The Claude-Lila Parulekar Court held that both in Ammonia Supplies and Canara Bank, the material before the Courts was sufficient for a resolution of the disputes. That is not the case here.

54. From a reading of these decisions of the Supreme Court, it is possible to deduce a few principles. The first of these is that the Company Law Board is certainly entitled decide any question relating to the title of a party before it in an application to have his name entered into company''s register. However, where membership of the applicant in the Company in relation to disputed shares has not yet been

established, such a person cannot apply for rectification. That applicant would first have to file a civil suit or take other proceedings to establish his rights in relation to shares and its dispute. The Company Law Board''s jurisdiction u/s 111 is of a summary nature. It is, therefore, limited to those cases that can be decided in a summary fashion. Where, therefore, complex questions of fact or disputed questions of title arise, these must be referred to a Civil Court for trial in an appropriate proceeding. Finally, every applicant u/s 111 must show that he has complied with every single requirement and statutory procedure prescribed under the Companies Act and applicable Rules. Absent such a compliance, no application for rectification can possibly lie.

55. Even on Mr. Bharucha''s formulation of the case, and his reading of the correspondence and documents, it is difficult to see how it can be said that complicated questions of fact do not arise in this case relating to Ponds'' title to shares in question. There is very little, for example, to evidence a concluded agreement between the parties for this share issue. There is a significant dispute and a considerable grey area regarding the consideration that Ponds claims to have paid for its 75% equity shareholding to Advansys. There is also no manner of doubt that the question of the remittance of 92,500 and its application--Advansys claiming that it was toward pending invoices, and Ponds claiming it was towards share subscription--only further muddies already turbid waters. There seems to have been no approval at a shareholders'' meeting or a board meeting for an issue of shares to Ponds. Then, there are, also the other issues of coercion, undue influence, fraud, misrepresentation and economic duress set up by Balwani and Advansys. These are not merely matters of whistling in the wind; for both Advansys and Balwani referred to a considerable amount of material to demonstrate the dire financial position in which the Advansys found itself at the relevant time. Finally there remains the inexplicable endorsement on FIRC by HSBC Bank. I am unable to understand how any bank could have made an endorsement of the purpose of that remittance unless it was specifically so stated by the remitter and the originating bank. On the face of it, the explanation set up by Ponds is no explanation at all. Ponds merely says that it had not indicated that the purpose of the remittance was towards invoices. It has not affirmatively stated what, if any, purpose was stated on that remittance when it originated from Nat west Bank in the UK. It defies credulity that such a substantial amount would have been remitted, without specifying or identifying a purpose, especially given the fact that the transactions and the correspondence between the parties pertained to a large number of interlocking issues. The FIRC is dated 30th June 2007. HSBC''s clarification on which Mr. Bharucha places so much reliance is of 8th November 2012, and in this, HSBC only says that it is not able to trace the communication that discloses the purpose of the remittance. Till date, the FIRC has never been amended. I do not think that it is possible to accept to Mr. Bharucha''s submission that merely because HSBC is, four years down the road, unable to find the originating document, therefore it must be held that the

stated purpose of the remittance is something other than what is stated in the FIRC. Indeed, it appears to me that exactly the reverse should be the case. There does not seem to be any indication in the prior correspondence to explain how this figure of ` 92,500 is actually derived. What that figure actually does achieve is a complete and an explicable match with the reconciliation statement of outstanding invoices. Thus, on the one side, as postulated by Mr. Chinoy, on behalf of Advansys, there is entirely plausible explanation for the remittance. There is the endorsement of the FIRC certificate. The amount can be traced and exactly matched to the invoices in a reconciliation statement sent by Hunjan himself. On the other hand, the case propounded by Ponds, remains in a shadowy, grey area absent all specifics.

V: No concluded agreement; no consideration

56. A principal plank of Mr. Chinoy''s case is that there was never any concluded agreement between Ponds and Advansys for the purported issue of 75% of the equity share capital of Advansys to Ponds. Mr. Chinoy submits that the findings of the Company Law Board in this regard are entirely perverse. Critical material has been overlooked. The Company Law Board has proceeded only on the two documents Exhibit "C" and "D" to the petition and the e-mail of 9th October 2007 from Balwani to Johnstone saying that the change process had been initiated. As we have seen Exhibits "C" and "D" do not show a concluded contract on the share issue. At this stage, it seems clear that Ponds'' approach has been one of constantly changing stands. Originally, the claim was that the equity share contribution was in the remittance of `4,000 transferred by Copex Management Service Limited, Ponds'' auditors on 13th February 2003. This amount, in its entirety, was adjusted in the books of account of Advansys toward invoices raised on Tansun. Mr. Bharucha now contends that on 29th March 2003 Balwani and Shakuntala "clandestinely" issued additional shares to themselves; and that they did so again on 30th March 2003. This is no explanation at all. There is no indication of Ponds having been unaware of the deployment or application of the `4000 that it remitted. If, in 2012, before the Company Law Board it now contends that the additional share of issue of 2003 was "clandestine", then it is for Ponds to explain why for a period of nine years it did absolutely nothing in that regard. What seems to have happened is that the error, if one wants to be generous, or the mischief, which is probably closer to the truth, is that between Tansun, Rana, Hunjan and Ponds, there was some sort of internal discord. Ponds seems to have recorded in its financial statement or returns in 2003-2004 that it had been issued 75% equity shares of Advansys. At this time, there was no talk of any consideration, valuation, permission or agreement. No documents were drawn up. No shares were issued, and no compliances were ever done. It is for this reason that Hunjan and Rana, as directors of Tansun, repeatedly demanded from Balwani a document like a share certificate. This was evidently needed to satisfy their own auditors, Copex. This is the only possible explanation for the several messages and e-mails from Hunjan and Rana saying that this certificate was (a) required for internal purposes only, and (b) that Hunjan did not want

Advansys of Balwani to go down "the legal route" or to "upset the apple cart". To this, Mr. Bharucha has no compelling explanation that I am able to discern. Indeed the tenor of the correspondence as a whole seems to indicate that this two Exhibits "C" and "D" were to be used only for these internal purposes of Tansun, Ponds, Hunjan and Rana. There was no agreement to give them any legal effect. Hunjan kept pestering Balwani for the issue of these certificates. He alternately reassured Balwani and Advansys that these were required for internal purposes, while simultaneously threatening a stoppage of financial support should that share certificate not be made available. At no point is there is an agreement between the players in this somewhat sordid drama to comply in a timely and structured fashion with the very many legal requirements and statutory compliances necessary for the issuance of equity shares against a foreign remittance.

57. I must also note the curious circumstance in which these exhibits were actually executed. Drafts of both documents were sent by Hunjan to Balwani. Balwani filled in the necessary particulars and circulated these to Johnstone for approval to assist Ponds in its internal audit. Johnstone responded on 29th June 2007, confirming that these seemed to be in order. It was on that basis that both the documents came to be executed. This can hardly be said to constitute a share subscription agreement, let alone a share certificate as claimed in the petition before the Company Law Board.

58. Balwani''s email of 9th October 2007 to Johnstone is construed by both the Company Law Board and commended by Mr. Bharucha as an unequivocal admission of the issue of shares. Indeed, it is on this basis that Mr. Bharucha founds his entire argument of the doctrine of indoor management. He is, he submits, entitled to presume that whatever needed to be done is properly done. He is not concerned with any lacunae in statutory compliances on the part of Advansys. Here again, I must disagree with this submission. Balwani''s email 9th October 2007 does not establish a concluded agreement for any share issue. That email cannot be read in isolation. It is a response to Johnstone''s email of the same date asking for a list of share holders of Advansys. This, in the context in which all his correspondence was exchanged, was, therefore, also for the "internal purpose/use" of Ponds and Hunjan/Rana. What seems to have happened is that confronted with an audit query they could not answer, one occasioned by their own internal incorrect entry in their books and in the books of Ponds, Hunjan and Rana attempted to pressure Balwani into issuing a document that would satisfy or sate their auditors'' appetite.

59. In any case, the documents at Exhibits "C" and "D" to the petition before the Company Law Board were of 2007. There is a considerable amount of material on record to indicate that till as late as 2009, it was still unsettled between the parties whether or not there was any actual share issued. Indeed, Balwani''s email of 22nd June 2009 disputes the 75% to 25% split in the share holding. There is then Rana''s email dated 23rd June 2009 where he clarifies that the 75% holding is of Ponds and

not of Tansun. Clearly, there were a very large number of unresolved issues between the parties.

60. There is, I think, a distinction to be drawn at this stage between a document being asked for and given by one party to another to satisfy the latter''s audit requirements and queries and an agreement for purchase of shares. The first, i.e., an accommodation or convenience letter of document may have no legal effect whatsoever. It may be the kind of casual, non-binding document that often in the real world of commercial transactions, comes to be exchanged between parties. Acquiring a significant stake in a Company is a different matter altogether. It requires extensive preparation. It demands close adherence to statutory and regulatory norms. It demands compliances at several levels. Most of all it demands complete clarity and a lack of all ambiguity as to certain essential facts: (i) the consideration being paid; (ii) the manner in which that consideration is paid and whether this is subject to any provisions of conditions; (iii) the precise nature of rights sought to be acquired; and (iv) a recorded and demonstrable and unambiguous document that shows how much is being acquired by whom and under what conditions. Every one of these essential requirements is altogether absent in this case. Advansys seems to have found itself on constantly shifting sands, possibly because by that time Ponds and the Tansun-Hunjan-Rana group were in a financially dominant position. This financial dominance is not, contrary to what Mr. Bharucha suggests, the dominance of a majority shareholder. It is the dominance of a person on whom the other party is wholly dependent for survival. That there was in fact this complete lack of clarity is also evident from the fact that Advansys''s books do not refer to any meeting held on 29th June 2007, either of the general body or all the Board of Directors. This, read with the exchange of messages between Hunjan-Rana, Johnstone and Balwani, and Hunjan''s repeated assurances that these documents were required for internal purposes, indicate beyond any manner of doubt that there was in fact no concluded agreement for the issue of any shares to Ponds.

61. I am unable to comprehend as to how and on what basis, given these factual background, the Company Law Board could have possibly have concluded that there existed such an agreement or that it had been acted upon and fully effected. In order to arrive at that conclusion, the Company Law Board would have had to find as a matter of incontrovertible fact, capable of no other interpretation, that there was such an agreement and that it had been implemented. It is impossible to sustain the finding of the Company Law Board.

62. It is equally impossible to sustain the Company Law Board''s second finding, implicit in the first, and also explicitly stated, that valid consideration flowed from Ponds to Advansys for the issue of these shares. As I have already noted, this is unsupported either by the FIRC or the reconciliation statement. The FIRC must also be read not only in isolation but in the context of the email from Hunjan, specifically

those of 5th October 2007 and 30th July 2008, where Hunjan said that the remittance of €93,500 was towards invoices. This is in complete consonance with the endorsement on the FIRC. Hunjan not only maintained this at that time but also in his email of 22nd April 2009, responding to Balwani''s email saying that the amount received was against overdue payments.

63. I will not dwell at any length on the submission made by the respondents to this appeal that since Tansun has provided much amount of money to Advansys for buying land, plant and machinery, that this was also a part of the consideration package for the issue of shares. There is no such pleading in the petition. It is not open to a party to constantly attempt to improve his case in this manner. As against this, there is evidence in the form of buyback agreement dated 1st February 2002 that prima-facie indicates that Tansun would provide loans in the form of capital equipment to Advansys. This explains why Balwani treated the payments from Tansun as loans or advances for manufacturing, and which were latter set off against exports. The buyback agreement also says that the relation between the parties is not that of a joint-venture, a joint undertaking, a partnership or co-ownership. What, therefore, is the material to indicate that the amounts remitted by or on behalf of Ponds, twice, in 2003 and 2007, were towards share subscription or the acquisition of shares in Advansys? I find no material. The entire edifice seems to have constructed around the consequence of a inconvenient or awkward audit query, which itself was result of some internal inconsistency or contradiction created by the Ponds, Tansun, Hunjan and Rana.

64. The finding of the Company Law Board on this crucial issue, i.e., that there was a concluded agreement for valuable consideration, is entirely unsustainable.

VI: Fema/Fera Violation

65. I am also unable to understand how it can possibly be said that the two documents Exhibits "C" and "D" to the Company Petition (two certificates signed by Balwani) are consistent with FEMA and Regulations issued under FEMA. The Reserve Bank of India''s circular dated 2nd July 2007 allows foreign residents to invest up to 100% in an Indian manufacturing company. According to Mr. Bharucha, therefore, no prior approval is required. What this argument overlooks is that the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 ("FEMA Regulations") prohibit an Indian Company from issuing any shares to a non-resident except as provided under the FEMA Act, or the FEMA Regulations. An exception to this general prohibition is under the Foreign Direct Investment ("FDI") Scheme, Schedule I to the FEMA Regulations. This FDI Scheme contemplates two routes by which shares can be acquired in an Indian Company by a foreign resident. The first is an automatic route where no prior Government approval is needed. The second is the approval route. The automatic route is unavailable where the Indian company in question is licensed under the Industries (Development & Regulation) Act, 1951 ("IDRA"). This is explicitly stated in

the proviso to sub-clause (1) of Clause (2) of Schedule I of the FEMA Regulations. Clause 3 of Schedule I also clarifies that where an automatic route is unavailable, the approved route has to be followed and prior approval is required of the Secretariat for Industrial Assistance or the Foreign Investment Promotion Board ("FIPB"). There is no dispute that Advansys is governed by IDRA. Mr. Bharucha contends that the automatic route was available. But this ignores the proviso to clause 2(1) of Schedule I of the FEMA Regulations. No such route was available to Advansys. The approvals were mandatory. In any case, the issuance would have had to be issued at a fair value done by the chartered accountants. There are controlling guidelines that apply to such valuations. Particularly, the discounted free cash flow method would have to be used to determine the fair value. Under the erstwhile Controller of Capital Issues ("CCI") Guidelines, the fair value of the shares of Advansys would have been about Rs. 396.40. This is not disputed by Advansys. How, then, Advansys could have claimed to have acquired these shares at a face value of Rs. 10/-, is incomprehensible.

66. There is a material factual error in the Company Law Board''s decision where it notes that Advansys being a 100% Export Oriented Unit ("EOU"), it is located in SEEPZ. For any unit located in SEEPZ, a 100% automatic investment is permissible (except for certain prohibited manufacturers such as arms, ammunitions, alcohol, cigarettes, etc.). The material error lies in the fact that while Advansys is a 100% EOU, it is located in Pune. It is not situated in any SEEPZ or any Special Economic Zone. It is only the Development Commissioner who has his office in SEEPZ, Mumbai. When Advansys applied for an industrial license, that application was made to the Development Commissioner at his office at SEEPZ, Mumbai. I cannot fathom how the fact that the office of a statutory authority is located in SEEPZ could also suggest that the unit in question is physically located in SEEPZ, or how could this even constitute any kind of a deeming fiction. Indeed, it is only on this basis that the Ponds'' entire case of the permissibility of automatic investment is constructed.

67. I am also surprised to note from the written submissions and the cross-objections filed by the respondents that since an automatic investment without approval was permissible in a Small Scale Industry ("SSI") that was also a 100% EOU, therefore, since Advansys was a 100% EOU, the automatic route of FDI was available to it. This is an argument that suffers from the fallacy of the undistributed middle ("all Z is B; all Y is B; therefore all Y is Z"). It is nobody''s case that Advansys was a SSI. The fact that it was a 100% EOU would not make it a SSI also. Thus, even on the respondents'' own construct, the automatic route was never available for investment in Advansys.

68. Mr. Bharucha also relied on a letter from the Reserve Bank of India dated 9th April 2013. Of this, the less said the better. This was a letter written by the RBI following the impugned order of the Company Law Board, which, inter alia directed that a copy of the order be sent to, among others, the RBI. At the time when the

petition was admitted, on 18th March 2013, this Court also stayed the operation of the impugned order of the Company Law Board. Despite this, the Reserve Bank of India responded to the letter dated 16th January 2013 from the Bench Officer of the Company Law Board forwarding a copy of the impugned order. The RBI in its letter dated 9th April 2013, set out its response. By an order dated 2nd May 2013, this Court observed that the RBI''s letter was in breach of the stay order of this Court passed on 18th March 2013. A contempt notice was issued to the Manager of the Reserve Bank of India in this regard. Further, the Ministries of Finance, Corporate Affairs and Commerce & Foreign Trade were restrained from acting on the impugned order of the Company Law Board. In these circumstances, I must decline Mr. Bharucha''s invitation to consider that letter from the RBI. Indeed, I refuse to do so.

69. The argument that FEMA violations can be compounded is singularly lacking in appeal. Apart from the decision of the Supreme Court in Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, it seems to me impossible to accept that any such compounding should be permitted in a case such as this. I have very little doubt that there was no consideration for this so-called agreement at all. Indeed, there was no agreement in the first place. There was, therefore, nothing on which any permission of FEMA could be obtained or, not having been obtained and the provisions of FEMA having been violated could have been compounded.

VII: Delay, laches, acquiescence, suppression and bona fides

70. As I have noted, there is no explanation for Ponds'' delay in approaching the Company Law Board. Reckoned from the 2007 foreign exchange remittance, the delay is of over five years; if taken from the 2003 remittance, it is over nine years. The emails of 31st March 2009 from Hunjan and 7th May 2009 from Johnstone make it clear that at least from 2009, two years after the June 2007 remittance, to the knowledge of Hunjan, Rana, Johnstone and Ponds, no shares had been issued. Yet Ponds did nothing till 2012. Even computed from the last of the 2009 dates, 7th May 2009, the delay is of over three years. There is no explanation at all for this delay. Why the Company Law Board thought it unnecessary to call for an explanation of this delay and, correspondingly, why it thought it necessary to issue a sweeping, even Draconian, order is unclear. Importantly, at no time was any application made for condonation of this indubitable delay. The lack of diligence and vigilance is telling. Ponds'' claim is to a 75% equity ownership in Advansys. It seems to me most unlikely that a majority shareholder with such a stake would take so casual and cavalier approach to the enforcement of the rights it claims. This is no mere indolence or lethargy; in that time, contrary to its much-vaunted claim, Ponds allowed Advansys to be managed and run in its absence and without its participation at any level. This does not merely not sit well with the claim; to my mind it is destructive of it. At some point, forensic niceties must yield to robust common sense.

71. This inaction must, I think, be viewed in a certain context. The petition almost wholly elides the quite considerable correspondence between Tansun, Hunjan, Rana and the Balwanis. This came to light only in the Balwanis'' reply. Had it been disclosed in the petition, very likely matters would have taken a different turn: the petition would, on its own showing of that correspondence, have met only with a dismissal. There is also no mention in the petition of the critical FIRC of 30th June 2007. Matters that are fundamental were carefully occluded from the petition.

72. What is even more peculiar is that the petition was filed by one Chatrabhuj Mathuradas, a gentleman who surfaced only at the time of affirmation of the petition. He claimed to be a director and shareholder of Ponds. He claimed to have a general power of attorney. This general power of attorney however shows that Mathuradas is merely a "friend" of Hunjan and Rana; that, between them, Hunjan and Rana hold 75% and 25% respectively, i.e., the entirety of the equity in Ponds. They are also the only two directors of the Respondent No. 1. In an affidavit in rejoinder, it is admitted that Mathuradas is neither a shareholder nor a director. This may seem a trivial, but it is not. It is, I think, possible to discern a larger pattern of consistent financial bullying, prevarication, duplicity and mendacity on the part of Hunjan, Rana and Tansun; and Mathuradas''s false assertion is only of a piece of all this.

73. Instances of such duplicity abound. Hunjan filed an affidavit in rejoinder on 4th October 2012. He dealt with the issue of delay. He said that 2012 was the first time since 2009, when he had a stroke, that he visited India to attend to this litigation. He then filed an affidavit in surrejoinder on 30th October 2012. In this he attempted to explain several discrepancies as "typographical errors", including the description of Mathuradas as a director and shareholder of Ponds, but more importantly, now admitting that between 2009 and 2012, he visited India several times. He claimed that the date of 2009 in his affidavit in rejoinder was a typographical error for 2011. He admitted to having visited India more than once. He was here on five occasions in 2010 and also again in 2012.

74. This makes matters even worse on the question of delay and laches. If Hunjan was in India in 2010, and more than once, there is certainly no explanation for the delay in filing this petition. How this issue could have been seen in favour of Ponds is baffling. There is absolutely no basis for the Company Law Board''s finding that there was delay in approaching it. Hunjan''s affidavits shown him to be an Ananias in every respect; no credence whatever could be given to a single word.

VIII: Indoor Management

75. It remains only to deal with Mr. Bharucha''s submissions regarding the doctrine of indoor management. Mr. Bharucha relied on the decision of the Chancery Division of the UK Court In Re Duomatic Limited. 1969 2 WLR 114 The proposition was that where it can be shown that all the shareholders who had a right to attend

and vote at a general meeting assented in some manner to the business that could have been done at that meeting, that assent is binding. A formal meeting cannot be insisted upon. An outsider cannot be prejudiced on that score. Mr. Bharucha submits that since the minutes of a meeting held on 29th June 2007 are signed by all the shareholders of Advansys, i.e., Balwani and Shakuntala and bear a common seal of Advansys, therefore, Advansys is bound by the decision. The so-called "minutes" of which Mr. Bharucha speaks is the document at Exhibit "C". It has been signed by Balwani and Shakuntala. However, there is no common seal to it. This is the very document that was in the format required by Johnstone, Hunjan and Rana for their internal purposes. On the face of it, the document that is annexed is incomplete, the last sentence especially. I do not think either the Duomatic principle or the decision of the Andhra Pradesh High Court in Brilliant Bio Pharma Limited Vs. Brilliant Industries Limited, can be said to have application to a case such as this. Similarly, Mr. Bharucha''s reliance on the decision of the Supreme Court in M.R.F. Ltd. Vs. Manohar Parrikar and Others, is entirely misplaced. The Supreme Court dealt with the interpretation of this doctrine to say that it imposes a limitation on the doctrine of constructive notice. Persons dealing with a Company are entitled to presume that internal requirements prescribed in the Memorandum of Articles have been properly observed.

76. Mr. Bharucha relies on these decisions to say that it is not open to the Balwanis to assail the minutes of 29th June 2007. I disagree. It is open to them to do so. What Mr. Bharucha overlooks is that these are not minutes properly so-called. There was no formal meeting. There was no agenda. There was no discussion between the shareholders or directors about this item of business. Hunjan, Rana and Johnstone, in the circumstances that I have already described, insisted that Balwani issue these documents. These were said to be required for internal purposes. This was said not once but repeatedly. The correspondence from Johnstone indicates that he, as a relatively late entrant, could not understand how the initial remittance of Copex of ₹4000 could have been shown as towards share subscription. This is the entire genesis of these two documents. That is the only purpose for which they were issued, i.e., to suit the respondents'' internal auditing and accounting purposes. Mr. Bharucha''s argument glissades over all these factors, every one of which is of his clients'' own making. It is also not without significance that the first draft of these documents emanated from Hunjan, was sent to Balwani, who filled it in having been by then totally subjugated and bent to the financial and commercial will of Tansun, Hunjan and Rana, and sent it back to Johnstone for "approval", with a copy of Hunjan. All of this is in the context of Hunjan''s repeated statements that the share certificates were needed "for internal purposes", without "upsetting the apple cart". That is something that is never satisfactorily explained, and it lies at the core of the dispute.

IX: Cross Objections

77. Ponds'' Cross Objections are directed to the second part of the impugned order, that which directed the RBI and various ministries to examine whether there were any statutory violations by the parties. Ponds wants this part of the order to be set aside. It also seeks an enforcement of the remaining order, directing the issue of shares to Ponds. Since I am allowing this appeal entirely, the Cross Objections can only be dismissed. They are.

X: Conclusion

78. There is no doubt in my mind that the impugned order dated 14th January 2013 of the Company Law Board is entirely unsustainable. There was no agreement for purchase of shares. Certainly, there was no consideration for it. The Company Law Board had not the power or authority u/s 111 of the Act to hold as it did, effectively decreeing a suit for specific performance and also simultaneously ordering a rectification of the register.

79. The two documents at Exhibits "C" and "D" are not share certificates and do not confer any rights on Ponds. At no point did Ponds make any payment for the shares it claims. The only basis for the claim is of Hunjan''s and Rana''s own contrivance in incorrectly, or perhaps for other, murkier reasons, showing the initial remittance of ₹4000 as being toward share subscription in Ponds'' own books of account. The relentless audit that followed forced Hunjan and Rana into an intractable position, one from which there was no escape except by badgering and pressuring Balwani into issuing a share certificate to assuage increasingly perturbed auditors. That is the only plausible explanation for Hunjan''s repeated assurances that these documents were needed for internal use.

80. Ponds'' entire case is bogus. It is an edifice built of straw on a foundation of half-truths, deceit and wholly improper financial duress.

81. The appeal is allowed. The impugned order dated 14th January 2013 is quashed and set aside. The Company Petition and filed by the present respondents is dismissed. The Cross-Objections are dismissed.

82. List the matter on 16th June 2014 for submissions on the issue of costs. A separate order will be made on that issue.