BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 194 of 2007

Date of decision : 14.7.2008

1. Rajkot Saher/Jilla Grahak Suraksha Mandal
2. Pradeep Nambiar,
3. Bhupendra Singh . …… Appellants

Versus

1. Securities and Exchange Board of India
2. Reliance Power Ltd. …… Respondents

Mr. K.T.S. Tulsi Senior Counsel with Mr. Arvind P. Datar Senior Advocate, Mr. V. Hari Pillai, Mr. Manish K. Saryal, Mr. Gaurave Bhargava, Mr. Ravinder Singh and Mr. Suchandran B.N. Advocates for the Appellants.
Mr. J.J. Bhatt Senior Advocate with Dr. Poornima Advani and Haihangrang E.H. Newme Advocates for the Respondent No.1.
Mr. Iqbal Chagla with Ms. Anjali Chandurkar and Ms. Bhavna Singh Advocates for the Respondent No.2.

Coram : Justice N.K. Sodhi, Presiding Officer,
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Arun Bhargava, Member

The issue before us in this appeal is whether Reliance Power Limited (for short, RPL), which is Respondent no.2 in this appeal violated in letter and spirit the provisions of clauses 4.1 and 4.6.2 of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (for short, the guidelines), pertaining to the promoters' contribution in any public issue by an unlisted company.

2. RPL and Reliance Public Utility Private Limited (for short, RPUPL), were two unlisted companies of Anil Dhirubai Ambani group and were promoted by Reliance Energy Limited (for short REL) and AAA Projects Ventures Limited (for short, AAA). RPUPL decided to merge in RPL and a petition seeking sanction of the scheme of amalgamation was filed before the Bombay High Court on August 10, 2007. The objectives of the scheme as set

out in the petition were to consolidate the similar businesses, increase the net worth of RPL, reduce the overhead and other expenses, and ensure optimum utilization of available services and resources of the two companies. The High Court of Bombay approved on 27.09.2007 the scheme of amalgamation under the provisions of sections 391 to 394 of the Companies Act, 1956 (for short, the Act). The amalgamation became effective on 29.9.2007 when a certified copy of the order of the Bombay High Court was filed with the Registrar of Companies, Mumbai. Pursuant to the scheme of amalgamation, the High Court approved the exchange ratio of 1:1 and accordingly REL and AAA, the two promoters, received one equity share each of RPL for every equity share held by them in RPUPL. Consequently, both these companies were allotted 50 crore equity shares of Rs.10 each of RPL on the said amalgamation. After the amalgamation, the paid up capital of RPL as on 30.9.2007, out of its total authorized capital of Rs.16000 crores, was Rs.2000 crores and consisted of 200 crore equity shares of Rs.10 each. It was held by the promoters as per the details hereunder :

Name of the Promoter	No. of shares
Anil Dhirubhai Ambani jointly with AAA	1,000
Reliance Innoventures Pvt. Ltd. Jointly with AAA	1,000
REL (includes thirty equity shares of Rs.10 each jointly held with six individuals)	1,00,00,00,000 *
AAA	99,99,98,000**
Grand Total	2,00,00,00,000

[* includes (a) partly paid up 49.9950 crore shares acquired before one year and made fully paid up on 14.9.2007; and
(b) 50 crore shares received pursuant to the scheme of amalgamation with RPUPL.
** includes (a) partly paid up 49.9973 crore equity shares acquired before one year on 13.6.2006 and made fully paid up on 14.9.2007; and
(b) 50 crore shares received pursuant to the scheme of amalgamation with RPUPL]

3. In January 2008, RPL came out with the public issue of 26 crore equity shares of Rs.10 each for cash at premium in the price band of Rs.405 to Rs.450. Before the issue, it filed a draft Red Herring Prospectus with the Securities and Exchange Board of India (for short, the Board) on 3.10.2007 as required under the guidelines. While the draft Red Herring Prospectus was pending with the Board, the appellant made a representation before it on 18.10.2007 seeking

stoppage of the IPO, inter alia, on the ground that the amalgamation of RPUPL with RPL had been got approved from the Bombay High Court fraudulently and that the promoters' contribution to the IPO was in effect much less than 20 per cent of the post issue capital as stipulated in the guidelines. The representation remained pending with the Board. The appellants, therefore, moved the Bombay High Court by way of a Public Interest Litigation seeking a direction that the Board should investigate into the alleged irregularities in the IPO. The High Court disposed of the petition on 01.11.2007 with direction to the Board to deal with the representation of the first appellant and others expeditiously. The impugned order dated 27.12.2007 passed by the two whole time members of the Board is in compliance with the order of the Bombay High Court. The Board gave the following directions in para 6 of the impugned order:

> "In view of the above findings, in exercise of the powers under Sections 11 and 11A of the SEBI Act we direct that that the equity shares acquired by the promoters of RPL at the face value of Rs.10/- each pursuant to the Scheme of Merger/Amalgamation approved by the Hon'ble High Court of Bombay vide order dated 27.09.2007 would be eligible for computation of promoters' contribution subject to the following conditions:
>
> a) The entire promoters' quota i.e. 20% of the capital in RPL shall be locked-in for a period of five years from the date of allotment in the proposed IPO,
>
> b) The RPL and the Lead Merchant Banker appointed by it in respect of its proposed IPO shall ensure all disclosures as per the Companies Act, DIP Guidelines and as per the observations/ changes suggested by SEBI on the DRHP filed on behalf of RPL."

4. The appellants were not satisfied with the findings in the impugned order as the IPO was not stopped by the Board and filed the present appeal before us. The main relief sought by them was that the operation of the impugned order should be stayed and that this Tribunal should prevent the IPO from being issued to public in the form envisaged in the Red Herring Prospectus that had been issued on 1.1.2008. The appeal was first heard on 4.1.2008 and the case was adjourned to 14.1.2008. No stay was granted. The appellant thereafter filed a writ petition in the Gujarat High Court on 8.1.2008 seeking

stay of implementation and operation of the impugned order passed by the Board on 27.12.2007. They also pleaded that the proceedings before this Tribunal be stayed and that RPL should not be allowed to proceed with the public issue. RPL and others immediately moved the Supreme Court for grant of an interim stay of the proceedings before the Gujarat High Court. The Supreme Court in Transfer Petition (Civil) nos. 30 and 31 of 2008 granted an interim stay on 9.1.2008. The Supreme Court further passed the following order on 11.1.2008 in the same case after some proceedings were filed in various courts including the City Civil Court of Mumbai for the stay of the IPO:

> "There shall be interim stay of further proceedings of Suit No.43 of 2008 on the file of the City Civil Court of Mumbai. The Initial Public Offering of Reliance Power Limited may be continued despite any ex-parte interim order that may be passed by any other court/authority/tribunal. Applications for direction are also allowed accordingly."

5. The main prayer of the appellants that the IPO should be stopped has become infructuous in view of the fact that the IPO has gone through under the order of the Hon'ble Supreme Court. The other issues raised by the appellants are based on the various provisions of the guidelines as under :

(a) the shares acquired at their face value of Rs.10 by the promoters within a period of one year prior to the IPO as also the partly paid shares acquired earlier but fully paid within a year prior to the IPO should be excluded from the promoters' contribution of 20 per cent of the post issue capital; and

(b) the promoters should also be directed to pay, towards their contribution to post issue capital, the premium amount of Rs.440 per share, as paid by the public shareholders.

6. Soon after the issue of the impugned order dated 27.12.2007 by the Board, RPL issued the Red Herring Prospectus on 1.1.2008 for 100 per cent Book Built offer. The public issue was of 26 crore equity shares of Rs.10 each. The net issue to the public was of 22.8 crore equity shares. The promoters' contribution was to be 3.2 crore equity shares. The price band was fixed between Rs.405 and Rs.450 per equity share. The bid/issue was to open on 15.1.2008 and close on

18.1.2008. In view of the aforesaid order of the Supreme Court dated 11.1.2008, the IPO continued as per the schedule and was oversubscribed. The equity shares of the face value of Rs.10 each were offered to public at Rs.450 per share. The position of the post issue capital of RPL is given below:

Issued, subscribed and paid up capital	**Aggregate Face Value (in Rupees)**	**Premium Paid (In Rupees)**
200 crore equity shares of Rs.10 each held and paid by the Promoters before the issue	2000 crores	NIL
3.2 crore equity shares of Rs.10 each acquired by the promoters in terms of Red Herring Prospectus.	32 crores	1408 crores (3.2crores X 440)
22.8 crore equity shares of Rs.10 each issued and subscribed by public in terms of Red Herring Prospectus	228 crores	10032 crores (22.8crores X440)
Total : 226 crore equity shares	2260 crores	11440 crores

The grievance of the appellants is that the public shareholders who were offered 10.1% stake in the company paid a whopping sum of Rs.10,260 crores for acquiring 22.8 crore equity shares at premium, whereas the promoters have managed to acquire 89.9% stake in the company (203.2 crores equity shares) by paying Rs.3,440 crores only. Mr. K.T.S. Tulsi, the learned senior counsel appearing on behalf of the appellants called it a massive fraud on the innocent public shareholders and stated that this was exactly the kind of unjust enrichment that the provisions of the guidelines are meant to prevent.

7. At this stage we may examine the relevant provisions of Chapter IV of the guidelines which read as under:

> " CHAPTER IV
> PROMOTERS' CONTRIBUTION AND LOCK-IN REQUIREMENTS
> PART I: PROMOTERS' CONTRIBUTION
>
> 4.0 Promoters' contribution in any public issue shall be in accordance with the following provisions as on the date of filing of draft offer document with SEBI, unless specified otherwise in this Part:
> **4.1 Promoters' contribution in a Public Issue by Unlisted Companies.**
> 4.1.1 In a public issue by an unlisted company, the promoters shall contribute not less than 20% of the post-issue capital.
> ……..

> **4.6 Securities Ineligible for Computation of Promoters' Contribution.**
> ……..
> 4.6.2 In case of public issue by unlisted companies, securities which have been acquired by the promoters during the preceding one year, at a price lower than the price at which equity is being offered to public shall not be eligible for computation of promoters' contribution:
> ……..……..…..
> 4.6.4 In respect of clauses 4.6.1, 4.6.2 and 4.6.3, such ineligible shares acquired in pursuance to a scheme of merger or amalgamation approved by a High Court shall be eligible for computation of promoters' contribution.
> ……
> **4.9 Promoters' Contribution to be brought in before Public Issue Opens**
> 4.9.1 Promoters shall bring in the full amount of the promoters' contribution including premium at least one day prior to the issue opening date which shall be kept in an escrow account with a Scheduled Commercial Bank and the said contribution/amount shall be released to the company along with the public issue proceeds."

These provisions of the guidelines, in short, provide that:

i. the promoters' contribution in a public issue by an unlisted company shall not be less than 20% of the post issue capital; and

ii. shares acquired by the promoters during the preceding one year, at a price lower than the price at which they were offered to public, shall not be eligible for computation of promoters' minimum contribution of 20% unless such acquisition is in pursuance of a scheme of merger or amalgamation approved by a High Court.

8. The essence of Mr. K.T.S. Tulsi's arguments is that the Bombay High Court was kept in the dark about the hidden agenda behind the merger during the amalgamation proceedings before it and that it was misled about the technical capabilities, manpower skills and business activities of RPUPL and RPL because not a single power project of even one MW had ever been executed by them. It was stated that both RPUPL and RPL were 'shell companies' which were created and amalgamated only as a device to circumvent the rigours of clause 4.6.2 of the guidelines. It was argued that the Board should have considered all these issues in the right perspective before clearing the IPO. It was submitted that the amalgamation approved by the High Court could be perfectly valid under the Act but if it was a device to circumvent the basic objectives of investor protection under the guidelines, this Tribunal would

be entitled to deny the benefit of clause 4.6.4 to the promoters of RPL. The arguments raised on behalf of the appellants were summarized in the written submissions of Mr. Tulsi as under:

> " 1. ……..
> 2. The expression "Post Issue Capital" as used in clause 4.1.1 of DIP guidelines refers to such acquisition of shares as are made at least one year prior to the IPO. If the acquisition of shares is within one year, acquisition at face value is impermissible if the shares have been offered to the public at a premium. This is so because of the provision of level paying field as contemplated in clause 4.6.2. In the instant case, although the shares were issued prior to one year as partly paid shares, yet they will be deemed "acquired" only when the money is brought in. Bringing in capital only a few days before the DRHP would not only amount to breach of fiduciary duty by the promoters or unjust enrichment at the expense of the investing public but a gigantic fraud on clause 4.6.4 of DIP Guidelines.
>
> 3. The effect of the order of Bombay High Court sanctioning the scheme of amalgamation cannot by any stretch of imagination be deemed to mean that the amalgamation satisfies the requirement of DIP Guidelines. The object, purpose and scope of the scheme of amalgamation by the High Court is different particularly when the question of IPO was not even brought to the notice of the High Court.
>
> 4. The impugned order of the SEBI has failed to enforce the letter and spirit of SEBI (Disclosure and Investor Protection) Guidelines 2000 (referred hereinafter as the DIP Guidelines) framed under section 11 of the SEBI Act, 1992. Despite coming to the conclusion that the amalgamation could be interpreted as a "device to bring the case under exemption of Clause 4.6.4 of DIP Guidelines", it failed to enforce the rigors of Clause 4.6.2. The prime objective of Clause 4.6.2 clearly is to provide the investors a level playing field. That is why it has been stipulated that the securities acquired by promoters at a price lower than the price at which the security is being offered to the public shall not be eligible for computation of the promoter's contribution. Thus, SEBI ought to have ensured that if shares were being offered at Rs.450/- per share and if certain shares were acquired at a price lower than that price, such contribution was not to be eligible for computation of promoter's contribution. Besides, if the entire contribution (grossly deficient) was made within a year, the same also could not be eligible to compute the promoter's contribution.
>
> 5. Despite categorical findings on facts, a major scam of Rs.16,900 crores (at the very least) has been allowed to go through. This is so because the DRHP dated 01.01.2008, itself makes an offer to the public of 22.8 crore equity shares at Rs.450/- per equity share having face value of Rs.10/- each. Under Clause 4.1.1 of DIP Guidelines the promoter must make contribution of at least 20% of the

post issue capital. The total number of shares of Reliance Power Limited (RPL) as per DRHP are 226 crore shares. 200 crore shares were already held by promoters at Rs.10 per share. 22.8 crore shares were issued to public in the IPO. 20% of 226 crore shares is 45.20 crore shares. Promoter's contribution for 45.20 crore shares must be reckoned at the same price as offered to public. Thus, in the instant case, promoter contribution should be 45.20 crore share (20% of 226 crore shares) at Rs.450 per share i.e. a total of Rs.20,340 crores. As against this the total promoters contribution made is only Rs.3,440 crores (3.2 crore shares out of 26 crore proposed in IPO reserved for promoters @ Rs.450 = Rs.1,440 + Rs.2,000 crores invested (which is ineligible under clause 4.6.2), which tantamount to an evasion of Rs.16,900 crore and thereby frustrates the object and purpose of Guidelines.

6. Clause 4.6.4 of the DIP Guidelines can only be interpreted harmoniously in a manner in which the most fundamental objective of offering a level playing field to investor and promoter is not frustrated. For that purpose, the amalgamation referred to in clause 4.6.4 of DIP Guidelines must be result of genuine restructuring of Companies. Where amalgamation is secured between two shell companies merely as a device for evasion of mandatory obligations under the Guidelines of bringing in promoters contribution at a certain price in a certain time frame, such amalgamation must be ignored and the object underlying the Guidelines must be secured and achieved."

Our attention was also drawn to several judgments including that in M/s McDowell & Company Ltd. Vs. Commercial Tax Officer (1985) 3 SCC 230 to highlight the following propositions of law:

1. The rule of purposive interpretation has been repeatedly commended by Hon'ble Supreme Court. If literal interpretation results in defeating the purpose of a statute, such literal meaning must give way to purposive interpretation.

2. The golden rule of interpretation of giving literal meaning to the provisions unmindful of the consequence has been squarely rejected by the Hon'ble Supreme Court. When literal interpretation leads to unjust results which legislature never intended, the interpretation according to the legislative intent is accepted to be more logical.

3. The rule of interpretation with respect to giving effect to the "preordained series of transaction", which may individually be legal and valid but when combined in a single comprehensive transaction serve no commercial or business purpose other than avoiding a liability to tax is required to give way to a construction of a statute which is against evasion of tax and protects the integrity of the statute or the guidelines. The principles laid down by the House of Lords in tax cases and approved by the Hon'ble Supreme Court of India are equally applicable in interpreting SEBI regulations that are intended to protect a large body of investors.

9. Mr. Iqbal Chagla, learned senior counsel for RPL stated that the amalgamation of RPUPL in RPL was genuine and that the allotment of the shares to the promoters was in terms of the scheme approved by the Bombay High Court and, therefore, squarely covered by clause 4.6.4 of the guidelines. He stated that all the conditions laid down in clause 4.6.4 were satisfied. He clarified that about 44 per cent equity shares were allotted to promoters more than one year prior to the issue of the IPO. He brought to our notice the provisions of sections 78 and 211 of the Act and Schedule VI thereto to clarify that the 'share premium account' forms part of 'Reserves and Surplus' and is different from 'share capital'. He also referred to sections 87(1)(b) and 110(2) of the Act to state that the holders of the partly paid up shares of a company are legally its full-fledged members. Therefore, according to him, the partly paid up shares acquired by the promoters one year before the public issue cannot be excluded in terms of clause 4.6.2 of the guidelines. The learned senior counsel refuted the charge that RPL (earlier known as Reliance Energy Generation Ltd.) was a 'shell company'. He brought to our notice the extracts from the minutes of the proceedings of the meeting of the board of directors of REL held on 14.4.2005 and some other documents to show that the restructuring of these companies was very much on the cards even then. He strongly relied upon the observations contained in the following paragraphs of the Supreme Court in the case of Union of India & Anr. Vs. Azadi Bachao Andolan & Anr. (2004) 10 SCC 1 to stress that the intention of the legislature should be gathered from the language of the provisions particularly where the language is plain and unambiguous and that the reliance of the appellants on the extreme view of Hon'ble Mr. Justice Chinnappa Reddy (as he then was) in the aforesaid case of McDowell is misplaced as it does not lay down the correct law and that there is nothing wrong in tax planning:

> "137…… Placing strong reliance on McDowell it is argued that McDowell has changed the concept of fiscal jurisprudence in this country and any tax planning which is intended to and results in avoidance of tax must be struck down by the Court. Considering the seminal nature of the

contention, it is necessary to consider in some detail as to why McDowell says, what it says, and what it does not say.

……..

139. Similar views were expressed by Lord Tomlin in IRC v. Duke of Westminster which reflected the prevalent attitude towards tax avoidance: (All ER p. 267 I)

"Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however, unappreciative the Commissioners of Inland Revenue or his fellow tax gathers may be of his ingenuity, he cannot be compelled to pay an increased tax."

……..

141. As we shall show presently, far from being exorcised in its country of origin, Duke of Westminster continues to be alive and kicking in England. Interestingly, even in McDowell, though Chinnappa Reddy, J. dismissed the observations of J.C. Shah, J. in CIT v. A. Raman and Co. based on Westminster and Fisher's Executors, by saying (SCC p.242, para 17)

> "we think that time has come for us to depart from the Westminster principle as emphatically as the British courts have done and to dissociate ourselves from the observations of Shah, J. and similar observations made elsewhere",

it does not appear that the rest of the learned Judges of the Constitutional Bench contributed to this radical thinking. Speaking for the majority Ranganath Mishra, J. (as he then was) says in McDowell: (SCC pp.254-55, para 45)

> "45. Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges." (emphasis supplied)

142. This opinion of the majority is a far cry from the view of Chinnappa Reddy, J.: (SCC p. 243, para 17)

> "In our view, the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it."

We are afraid that **we are unable to read or comprehend the majority judgement in McDowell as having endorsed this extreme view of Chinnappa Reddy, J.,** which, in our considered opinion, actually militates against the observations of the majority of the Judges which we have

> just extracted from the leading judgment of Ranganath Mishra, J. (as he then was).
> …….
> 152. **In Mathuram Agarwal v. State of M.P. another Constitution Bench** had occasion to consider the issue. The Bench observed : (SCC p. 673 para 12)
>
> > **"The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language.** It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature."
>
> …….……
>
> 154. It thus appears to us that not only is the principle in Duke of Westminster alive and kicking in England, but it also seems to have acquired the judicial benediction of the Constitutional Bench in India, notwithstanding the temporary turbulence created in the wake of McDowell." (emphasis supplied)

10. Shri. J.J. Bhatt, the learned senior counsel appearing on behalf of the Board, supported the impugned order. He stated that the 'share premium account' cannot be taken as a part of the 'post issue capital' because the provisions of the Act make a clear distinction between the two. He also stated that the promoters of RPL are not fly by night operators and that the Board by locking-in the entire promoters' contribution of 20 per cent of the capital, for a period of five years from the date of allotment, took sufficient measures to protect the interest of the public shareholders of the company. According to him, by directing the lead merchant banker to ensure that all disclosures as per the Act and the guidelines are incorporated in the Red Herring Prospectus, the Board did all that could be done in the circumstances.

11. We have considered the submissions of the learned senior counsel on both sides and the material on record. As already observed, the main prayer of the appellants in this appeal that the IPO of RPL should be stopped has become

infructuous in view of the fact that the IPO has gone through under the order of the Hon'ble Supreme Court dated 11.1.2008. Now, the first issue to be dealt by us relates to the quantum of the post issue capital for the purposes of clause 4.1.1 of the guidelines. The case of the appellants initially was that the 'share premium account' was a part of the 'share capital' and, therefore, the promoters should also have been directed by the Board to pay their share of 20 per cent of premium amount, as paid by the public shareholders. However, eventually it was conceded on behalf of the appellants that according to the provisions of the Act, the post issue capital in this case works out to Rs.2260 crores only as disclosed in the prospectus. Given this fact, it is clear from the chart in para 6 ante that the promoters had contributed more than 20 per cent of the post issue capital and that they had brought in their entire contribution prior to the issue opening date in terms of clause 4.9 of the guidelines. We have, therefore, no hesitation in saying that the requirements of clause 4.1.1 were met by the promoters in this case.

The next issue raised by the appellants is that 99.923 crore partly paid up shares of RPL though acquired by its promoters REL and AAA earlier but not fully paid by them within a year of the issue, should not be considered as eligible for computation of promoters' contribution. This argument cannot be accepted. The provisions of sections 87 (1)(b) and 110 (2) of the Act clearly show that the holders of the partly paid equity shares of a company are its legal members. Further, as is clear from the chart in para 2 ante, these shares were also fully paid by the promoters before 15.1.2008, the issue opening date and this met with the requirements of clause 4.9 of the guidelines. In these circumstances, we cannot agree with the appellants that the partly paid up shares should be considered ineligible under clause 4.6.2 of the guidelines. The provisions of the Act and the guidelines do not support the claim of the appellants.

This brings us to the 100 crore shares acquired by REL and AAA – the promoters of RPL - at their face value within one year prior to the public issue in

pursuance to the scheme of amalgamation approved by the Bombay High Court on 27.09.2007. These shares are also eligible for inclusion in the computation of promoters' contribution of 20 per cent of the post issue capital in terms of clause 4.6.4 of the guidelines. It is the case of the appellants that the approval of amalgamation was obtained by fraud and by keeping the Bombay High Court in the dark about the real purpose of amalgamation and that, therefore, this Tribunal should deny the promoters the benefit of clause 4.6.4. There is no material before us to say that the order of the High Court was obtained by fraud and, in any case, we cannot go behind the order and hold that it was obtained by keeping the High Court in the dark. We are informed that the order of the High Court dated 27.9.2007, approving the amalgamation has become final and therefore, the claim of the appellants cannot be accepted. In this context, it would be relevant to reproduce the following observation made by the Hon'ble Supreme Court in the case of Mihir H. Mafatlal Vs Mafatlal Industries Ltd. (1997) 1 SCC 579, while dealing with the role of the Company Court in amalgamation matters:

> "…….On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy……. Consequently it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the company concerned, has to act merely as a rubber stamp and must almost automatically put its seal of approval on such scheme....."

From the above observations of the Supreme Court, it is clear that the Company Court while approving a scheme of amalgamation does not automatically put its seal of approval on such schemes. In these circumstances, the appellants cannot

claim that the aforesaid order of the High Court may be ignored and the promoters of RPL denied the benefit of clause 4.6.4 of the guidelines.

Finally, it has been argued on behalf the appellants that we should follow the rule of purposive interpretation in this case because the literal interpretation will lead to unjust results not intended by the legislature. It was also contended that the 'series of transactions' like in the present case, which may individually be legal and valid but taken together serve no purpose other than the unjust enrichment of the promoters at the expense of the innocent public shareholders, should be ignored and any unjust benefit so availed by the promoters be withdrawn. Reliance was placed in this regard on the observations of Hon'ble Mr. Justice Chinnappa Reddy in the case of McDowell supra. On the other hand, RPL has placed reliance on the judgment of the Supreme Court in the case of Union of India & Anr. Vs. Azadi Bachao Andolan & Anr. (relevant portion of the judgment is reproduced in para 9 ante) in which the Supreme Court has analysed the judgments delivered by Hon'ble Mr. Justice R. Mishra (as he then was) for the majority, and Hon'ble Mr. Justice Chinnapa Reddy in the case of McDowell, to say that the opinion of the majority was a far cry from the view of Hon'ble Mr. Justice Chinnapa Reddy. In the light of the observations of the Supreme Court in the case of Azadi Bachao (supra), no fault can be found with the action of RPL and its promoters as they have meticulously complied with the provisions of the guidelines.

12. There is one more reason why we cannot agree with the appellants. The case of the appellants is that the innocent public shareholders were cheated by RPL. We cannot accept this. RPL had furnished all the relevant and detailed information in the Red Herring Prospectus as required by law. It also carried information that the promoters had acquired the huge holding of shares of RPL by making payment at the face value of Rs.10 per share and that the offer to the public was to make a bid between Rs.405 and Rs.450 per equity share. Inspite of this information, the pubic issue was oversubscribed. On the basis of the information furnished in the prospectus, the public shareholders had taken an

informed commercial decision when they applied for shares in the IPO. In these circumstances, we fail to understand as to how RPL can be faulted after it had furnished information as required by law in the Red Herring Prospectus.

13. In the result, the appeal stands dismissed. No order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

14 7.2008
bk/ddg