



**THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992**

SPECIAL CASE NO. 3 OF 2001

C.B.I

...Complainant

Vs.

1. B. Raghbir Acharya
2. B.V. Srinivas
3. Hiten P. Dalal
4. Pallav Sheth
5. M.K. Ashok Kumar
6. Saranathan Mohan
7. N. Balasubramaniam

...Accused

Mr. Limosin, Sr. PP for CBI

Mr. A.K. Moily, Advocate for Accused No.1, Accused No.1 present.

Mr. D.R. Pinge, Advocate for Accused No.2, Accused No.2 present.

Mr. Sunil Kale, Advocate for Accused No.3

Accused No.3, Hiten Dalal produced from Kolhapur Jail by A.S.I. Mr.A.B. Raskar, Head Constable-2/125 Mr. Y.B. Patil, Police Constable-2418 Mr. V.B. Sorate and Police Constable-2423 Mr. N.M. Dongre.

Mr. Vivek Sharma for Accused No.4, Accused No.4 present.

Mr. Dinesh Purandare with Ms. Maya Sarkar for Accused No.5,
Accused No.5 present

Mr. D.P. Kamath Legal Aid Advocate for Accused No.6, Accused No.6 present.

Mr. Girish Kulkarni Advocates for Accused No.7, Accused No.7 present

**CORAM : MRS. ROSHAN DALVI, J.
(SPECIAL COURT)**

Date of reserving the Judgment: 23rd September, 2014

Date of pronouncing the Judgment: 6th January, 2015

JUDGMENT :

1. Accused Nos. 1 and 2 (A1 & A2) are the General Manager and Fund Manager of Canara Bank Mutual Fund Mumbai (CBMF Mumbai) which is a

wholly owned subsidiary company of Canara Bank, a nationalized bank. Accused Nos. 5,6 and 7 (A5, A6 & A7) are the Executive Vice President and Assistant Vice Presidents of one “Canbank Financial Services Ltd., Bangalore (Canfina, Bangalore), which is also a wholly owned subsidiary of Canara Bank. Accused Nos. 3 and 4 (A3 & A4) are independent brokers.

2. The essential prosecution case is of conspiracy between the accused to siphon off and misappropriate funds of CBMF, Mumbai and Canfina under their dominion, commit criminal breach of trust, and fabricate documents to camouflage their transaction by falsifying accounts, preparing false documents, committing forgery and using as genuine such forged documents by recording false transactions in the books of accounts of CBMF and Canfina. Consequently these charges are under Section 120B, r.w. Sections 409, 468, 471 and 477A of the IPC.
3. A1 has been charged not only with the above criminal conspiracy but separately for criminal breach of trust in dishonestly entering into the transaction for purchase of 2.1L shares for Rs.6.93 Crores against his authority to transact up to 25 lakhs and dishonestly disposing off a part of this property being 10000 out of 2.1 L shares purchased. A1 is also charged with falsifying the accounts of CBMF, Mumbai showing an ostensible call-money transaction which CBMF, Mumbai which A1 had no authority to enter into. A1 is also charged with dishonestly and fraudulently receiving and misappropriating 10000 shares of Hindalco. A2 is charged with abetting A1 in preparing false documents more specially a bank voucher, inter bank advice (IBA) and call-money deal slip. A3 and A4

are charged with aiding and abetting A1 and A2 in misappropriating the property of CBMF, Mumbai and aiding and abetting them in committing criminal breach of trust of the property of CBMF, Mumbai and for receiving stolen property from A1 and A2. Consequently these charges are under Section 409 and 411 respectively of the IPC. A1 and A2 are charged with preparing false documents which are false to their knowledge and using them as genuine. A5, A6 and A7 are charged with preparing false documents at their end in Canfina, Bangalore. Consequently these charges are under Sections 468, 471 and 477A of the IPC.

4. A case against A1, A2, A5, A6 and A7, who are public servants, is further of having received pecuniary advantage upon the aforesaid illegal means and acts of themselves. Consequently these charges are under Sections 13(1)(c), 13(1)(d) r.w. Section 13(2) of the Prevention of Corruption Act, 1988.

5. The prosecution case can be summarised thus:

(a) A1, and A2 under instructions of A1, the General Manager of CBMF, Mumbai entered into a transaction of purchase of 2.1 L shares of Hindustan Aluminium Company Limited (Hindalco) from a broker's firm C. Meckertech Calcutta (CMac). They executed various documents for the transaction. They showed the transaction camouflaged as a call money transaction. A1 was authorized to enter into a transaction for purchase and sale of shares and securities on behalf of CBMF, Mumbai to the extent of Rs.25 lakhs. The transaction

that he entered into was of a far larger value.

(b) CBMF, Mumbai could have entered into call-money transactions only for borrowing money under the Reserve Bank of India (RBI) guidelines. Consequently A1 and A2 do not have authority to enter into the call-money transactions also for lending purpose. The transaction shown to have been entered into by them for call-money is for lending purpose. The transaction is of 6.93 Crores. The amount is paid by cheque signed by A1. The documents in respect of the transaction are executed by A1 and A2.

(c) 2.1 L shares are delivered by CMac to the office of the counter part of CBMF, Mumbai in Calcutta, CBMF, Calcutta. The office of CBMF, Calcutta is a one-man show. Its venue is in the office of Canbank Financial Services Limited, Calcutta (Canfina, Calcutta). 2.1L shares were received by CBMF, Calcutta under the oral instructions of accused No.1. A1 initially directed the shares to be retained by CBMF Calcutta. These shares were sent to A1 in Mumbai in various installments as per the instructions of A1. These were in installments of 10000 and 50000 shares out of 2.1L shares. The remaining 1.5 L shares were again sold to CMac. The value of the purchase and the sale is different resulting in a profit at the time of sale. 60000 shares received by A1 would have to be accounted for. 10000 shares have not been accounted for. These are the shares stated to have been missing. The prosecution has charged A1 with having siphoned off and misappropriated such funds of CBMF,

Mumbai,. The prosecution has led evidence specifically of the purchase, the delivery, the receipt and the loss of these 10000 shares through various witnesses of these establishments essentially upon documents. 50000 shares out of the aforesaid 60000 shares are stated to have been verified and accounted for.

(d) The prosecution has claimed that 9100 of the 10000 missing shares are traced to A3. A3 is a broker who is shown to have brokered the transaction of further 19000 shares of Hindalco in two installments of 9900 and 9100 shares. 9100 shares are stated to be bearing the same distinctive and same certificate numbers of the 10000 shares out of 2.1 L shares sold and delivered by CMac to CBMF, Mumbai and received by accused No.1 personally. 800 further shares out of those 10000 shares are similarly stated to have been traced to A4 through the transfer deeds of those shares. Further 100 shares are traced to one of the witnesses examined by the prosecution, P.W. 25.

(e) The further case of the prosecution is of recording further false transactions by accused Nos. 1 and 2 in conspiracy with accused Nos.5, 6 and 7. These recordings show a purported purchase of 14% NCD bonds by Canfina, Bangalore without mentioning the names of the companies and a consequent sale of 9% bonds of SCICI bonds to one M/s Rahul & Company which is the sister concern of CMac. This transaction is shown to have been entered into for covering up the purported call-money transaction. The call-money transaction is of

Rs.6.93 Crores plus interest amounting to 6.95 Crores The transaction of purchase of 14% NCD Bonds is for Rs.7 Crores. The sale of 9% SCICI bonds is for Rs.7.5 Crores. The sale transaction bears the reference to “MFund”. The entry of sale bears a reference to “Shares”. The prosecution has sought to link the actual transaction of purchase and sale of shares purported to be a call-money transaction with the transaction falsely shown to be purchase of 14% NCD bonds and sale of 9% SCICI bonds to make out a case of criminal conspiracy between A1 and A2 and A5, A6 and A7.

6. The accused pleaded not guilty to the charge.
7. The prosecution has led oral evidence of 28 witnesses. The prosecution has produced a plethora of documentary evidence. The transactions actually entered into by A1 and A2 and the transactions purportedly entered into by A1, A2, A5, A6 and A7 as also the transactions purportedly shown to be separate and independent transactions entered into by A1 with A3 are all shown and sought to be proved by the prosecution essentially through documentary evidence. The witnesses have produced the documents and led direct oral evidence to prove the documents. Once proved, these documents are essentially to be considered for seeing the bonafides or otherwise of the transactions. The oral evidence, if any, would be excluded by such documentary evidence.
8. Hence the following points of determination arise and are answered as follows:

Sr. No.	Points	Findings
1	Whether A1, A2, A3, A4, A5, A6 and A7 entered into a criminal conspiracy to siphon off and misappropriate the funds of CBMF, Mumbai and Canfina.	No - Not proved
2	Whether A1 committed criminal breach of trust by entering into the transaction of purchase of 2.1 L shares of Hindalco from CMac for Rs.6.93 Cr which he was not authorised to transact and dishonestly disposed off such property by showing it to be an ostensible call-money transaction of Rs.6.93 Cr at 17.5% interest.	Yes - proved
3	Whether A1 received 10000 shares of Hindalco from out of 2.1L shares from CMac, which he dishonestly misappropriated to his own use.	Yes - proved
4	Whether A3 and A4 aided and abetted A1 in misappropriating 10000 shares of Hindalco by showing the delivery of the misappropriated shares bearing the same distinctive numbers as from amongst the 2.1L shares sold by CMac to CBMF Mumbai and thus aided and abetted A1 in committing criminal breach of trust and received stolen property.	Yes – proved only against A3.
5	Whether A1 and A2 committed forgery of certain documents of CBMF, Mumbai in order to cheat CBMF, Mumbai.	No - not proved

- 6 Whether A2 aided and abetted A1 in committing the aforesaid offence by preparing false documents such as the vouchers, IBAs, call-money deal slip and such other documents for the aforesaid transaction knowing them to be false. No – not proved
- 7 Whether A5, A6 and A7 prepared false documents to camouflage the transaction of the purchase of shares as a transaction for purchase of 14% NCD bonds from CBMF, Mumbai and the later sale of 9% SCICI bonds to Rahul & Co., the sister concern of CMac. No - Not proved
- 8 Whether A1 and A2 obtained any pecuniary advantage being the benefit of 10000 shares without any public interest. Yes – proved only against A1.
- 9 Whether A1 and A2 derived any pecuniary advantage without any public interest in purchasing 2.1L shares of Hindalco and not accounting for 10,000 shares. Yes – proved only against A1.
- 10 Whether A5, A6 and A7 derived any pecuniary advantage without any public interest in recording fraudulent transaction of purchase of 14% NCD bonds and sale of 9% SCICI bonds. No - not proved
9. The aforesaid points of determination would require to be considered essentially upon the documentary evidence which would naturally be used for such financial transactions produced by witnesses who have led the necessary direct oral evidence to prove the documents and to state the

circumstances in which the documents came to be executed. It is best demonstrated by columnar statements.

10. The documents relied upon by the prosecution would conveniently be seen in 4 parts; a group of documents showing the purchase of 2.1L shares from CMac by CBMF, Mumbai, a group of documents showing the delivery of 10000 and 50000 shares from CBMF, Calcutta to CBMF, Mumbai, a separate group of documents to show the purchase of 19000 shares of Hindalco from accused No.3 by CBMF, Mumbai and another group of documents show the purported transaction of purchase of 14% NCD bonds of sale of 9% SCICI bonds of Canfina, Bangalore.

11. It is material to see the link between these transactions and the role of the accused therein.

12. 2.1 lakh shares are stated to have been purchased by A1 on behalf of CBMF, Mumbai in one of their Mutual Fund Schemes called “Canbonus” scheme from one CMac in Calcutta. The shares were received in the office of CBMF, Calcutta from the office of CMac in Calcutta. What was the transaction and how it was dealt with shall be considered thus:

13. Canbonus Scheme of CBMF

Date	Exh.No.	Particulars	Remarks
12/09/91	9	Cheque issued by CBMF on Canara Bank as 'Yourself'	Prepared by PW.1, Secretary Grade 1 in

		<p>for Rs.6.93 Crores towards purchase of 2.1L shares.</p>	<p>Canbonus scheme of CBMF on the instructions of A1 and signed by A1 (Ev. PW1 Para.1)</p> <p>This was a normal cheque – not RBI cheque – because it was not and could not be a call money transfer.</p> <p>PW1 distinctly remembered that A1 called him in his chamber to prepare a cheque towards purchase of shares on 12/9/91 (To Court: Ev.PW1 para.3).</p> <p>The cheque was issued 'Yourself' because money had to go from Mumbai to Calcutta. CBMF, Calcutta had no bank account. Hence cheque was issued to Canara Bank 'Yourself' with instructions under letter Exh.10. The cheque was signed by A1 and one BB Shah (Ev.PW2, Divisional Manager, CBMF, Para.9)</p>
<p>12/09/91</p>	<p>10</p>	<p>Letter giving instructions for transfer of Rs.6.93 Crores to Canara Bank.</p>	<p>The letter is written by PW1 on instructions of A1 (Ev. P.W. 1 Para.2).</p> <p>The purpose is shown to be towards purchase of shares</p>



			<p>from Cmac. The beneficiary is Canfina, Calcutta, Overseas Branch.</p> <p>This letter remained with Canara Bank, Tamarind Road Branch, Mumbai. Therefore, it has not been tampered with.</p> <p>It shows the remittance of purchase of shares; not a call money transaction.</p>
12/09/91	11	Deal slip – call money No.1774 for Rs.6.93 Crores showing investment in Canfina @ 17.5% interest.	<p>The date 19/9/91 is shown to be interpolated and corrected to claim that it was 12/9/91.</p> <p>It is signed by A1 & A2 and it is in the handwriting of A1. (Evi.PW1, Para.3 and PW2 Para.6).</p> <p>A2 was not present on 12/9/91 which is stated to be holiday.</p>
12/09/91	12	Voucher for investment of Rs.6.93 Crores in call money prepared by P.W.1 on 19/9/91 but shown to be dated 12/9/91 checked by A2 and initialed by A2 and P.W.1.	<p>Voucher prepared as per the instructions of A2 (Ev. of PW1 Para.3).</p> <p>The voucher shows erasers and interpolation of the words Canfina, (Calcutta). It bears a reference to deal slip No.1774. It shows</p>

			<p>investment in call money with Canfina, Calcutta @ 17.5% interest.</p> <p>It shows the bank as “Tamarind Lane”. That is the office of A1 and A2. The word RBI is struck off. A reference to RBI assumes importance in call money transactions which is struck off.</p> <p>It bears a whitening erasure.</p> <p>P.W.24, the handwriting expert has deposed that the words underneath the erasure, seen by the relevant forensic equipments, showed “Canfina Cal, Canara Bank. (Ev. P.W.24 para 3).</p>
12/09/91	31	Voucher made upon the cheque Exh.9 and the receipt of the letter of instructions Exh.10.	<p>This follows as the corollary to Exh.9 & 10.</p> <p>prepared and initialed by PW3 clerk in Canara Bank, Tamarind Road branch, Mumbai</p> <p>Prepared to give credit to N.S. Road Branch, Calcutta.</p>
12/09/91	32	IBA No.21551 of Canara Bank for Rs.6.93 Crores.	Prepared and initialled by P.W.3.

			<p>IBA is prepared upon the voucher Exh.31 which is prepared upon the cheque Exh.9.</p> <p>Hence the corresponding IBA number is put on the voucher. (Ev. PW.3 para 5).</p>
12/09/91	84	Credit Slip of Canara Bank, NS Road branch, Calcutta referring to Inter Bank Advice (IBA) No.21551 Exh.32.	<p>Prepared by Canara Bank, NS Road Branch, Calcutta.</p> <p>Produced by A6 in cross examination by PW15.</p>
12/09/91	91	Debit Slip of Canara Bank for Rs.6.93 Crores towards IBA No.21551 dated 12/9/91 on account of purchase of shares.	This is analogous to Exh.84, the Credit Slip.
12/09/91	57	Letter of Canbank financial services Ltd. (Canfina), Calcutta to Canara Bank for transfer of Rs.6.93 crores and for crediting the Current Account of CMac in Canara Bank on account of purchase of shares.	<p>Written and signed by PW8, clerk in Canfina, Calcutta on telephonic instructions of A1.</p> <p>PW8 was the Junior most clerk and took the instructions on phone because no one was available to take the call (Ev. PW8 Para.2).</p>
12/09/91	90	Note of PW17 Chief Manager of Canara Bank, Calcutta. Taken down in the handwriting of P.W.17	PW 17 passed on the note to the concerned officer Mr. Ghosal who was incharge of Current Account

		upon the telephonic conversation with A1 from Canfina local office (Calcutta) to credit CMac with Rs.6.93 Crores for purchase of shares as per the instructions of Mumbai.	department (Ev. P.W. 17 Para 2).
12/09/91	93	HO responding summary showing Rs.6.93 Cr. debited on 12/9/91 under IBA No.21551.	The statement prepared at the end of each day for the credits and debits recorded and reconciled.
	24	List of equity transactions of CBMF of Canbonus Scheme of the period September 91 to March, 92.	Signed by P.W. 2
	25	List of Call Money transactions of CBMF of the period September 91 to March 92.	Certified by P.W. 2
	92	Account of CMac in the books of Canara Bank	The culmination of the transaction for purchase of shares from CMac.
12/09/91	92A	Credit Entry of CMac for Rs.6.93 Cr.	The culmination of the transaction for purchase of shares from CMac.
	93	Carbon copy of statement	Statement prepared at the

		of Canara Bank showing Head office responding summary.	end of each day showing credits and debits recorded and reconciled.
12/09/91	93A	Debit entry of CBMF (Mumbai) of Rs.6.93 Cr.	Rs.6.93 debited to Tamarind Road Branch (CBMF Mumbai) under IBA No.21551 (Ev. P.W.17 para 9).
	120	Attendance signing register of CBMF for Canbonus Scheme in Canara Bank showing debit entry of Rs.6.93 Cr.	Showing transfer to N.S. Road Calcutta branch (CBMF, Calcutta, N.S. Road Branch) showing the A2 was not present on 12/9/91 which is stated to be a holiday.
12/09/91	23	Bank statement of CBMF for Canbonus Scheme in Canara Bank showing debit entry of Rs.6.93 Cr.	Showing transfer to N.S. Calcutta (CBMF Calcutta, N.S. Road Branch).
14/9/91	15	Letter signed by A2 enclosing IBA 21551 dated 12/9/91 for Rs.6.93 Crores drawn on NS road, Calcutta for payment to be made to Canfina, Calcutta.	Showing transfer to N.S. Calcutta (CBMF Calcutta, N.S. Road Branch). Prepared on 19/9/91 on the basis of IBA No.21551, Exh/32. On the basis of this entry a daily summary and thereafter a consolidated summary is prepared.
19/9/91	13	Deal slip – call money	Written by PW1 except the

		No.1792. The deal slip is for Rs.6.93 Crores with interest @ 17.5% showing interest amount of Rs.232582.20 and the total of 69532582.20.	<p>slip No.</p> <p>Prepared for recalling the money invested on 19/9/91 on instructions of A2 (Ev. of PW1, Para.4).</p> <p>Initialed by A2 as the Fund Manager and signed by A1 as the dealer.</p> <p>Filled as per the chit brought by A2 to PW1 (Exh.14A & 14B)</p>
	14A & 14B	Chit given by A2 to PW1 to fill in the deal slip Exh.13.	<p>Upper part of the chit is written by A2 and lower part by A1 (Evi.PW1 Para.5).</p> <p>The upper part shows Rs.6.93 Crores + interest Rs.232582.20 making total of 69532582.20 which are the particulars entered by PW1 in the deal slip Exh.13 except its number.</p> <p>The lower part shows a completely different IBA No.31087 written by A1. It also shows 'Rs.7 Crores' (hitherto not mentioned)</p>
19/9/91	16	Voucher No.253 of CBMF prepared by P.W. 1 upon banker Tamarind Lane	Shows the break-up of the said amount as an investment in call money

		<p>Branch for Rs. 69532582.20.</p>	<p>Rs.6.93 Crores and interest on call money Rs.232582.20. It shows amount recalled from Canfina, Calcutta @ 17.5%.</p> <p>The voucher is prepared by PW1 initialed by PW1 on instructions of A2 and checked and initialed by A2 for recalling the call money amount. (Evi.PW1 Para.7).</p> <p>It bears a whitening erasure.</p> <p>P.W. 24, the handwriting expert has deposed that the words underneath the erasure, seen by the relevant forensic equipments, showed "Canara Bank, Canfina Cal" (Evi. P.W. 24 para 6).</p>
<p>19/9/91</p>	<p>17</p>	<p>Voucher No.254 of CBMF showing account "banker Tamarind Lane for the amount of Rs.467417.80 received from Canfina, Calcutta. That is the office of A1 and A2.</p>	<p>The lower portion of the voucher shows Sundry Creditors for the same amount.</p> <p>The remarks show that the excess amount was received from Canfina, Calcutta.</p>

			This voucher was prepared and initialed by PW1 and checked by A2 and initialed. It is prepared on the basis of the chit Exh.14A & 14B and prepared on instructions of A2 (Evi.PW1 Para.8)
19/9/91	18	Letter of CBMF, Mumbai to Canara Bank showing reference of IBA No.31087 dated 19/9/91 for Rs.7 Crores from Cunningam Road, Bangalore being the amount remitted by Canfina.	The letter is in the handwriting of PW1 and signed by A2 enclosing the IBA for Rs.7 Crores prepared by PW1 on instructions of A2. (Evi.PW1 Para.9)
19/9/91	107	IBA No.31087 of Canara Bank, Cunningam Road, Bangalore on Tamarind Road branch, Mumbai for Rs.7 Crores .	The IBA is issued for credit of CBMF remitted by Canfina. Canfina gives IBA Number after the deal goes through. PW21 received the original IBA in the regular course of his work from Canara Bank which he sent to Mumbai. (Evi.PW21 Para.7)
25/9/91	19	Letter of CBMF, Mumbai enclosing IBA No.31087 dated 19/7/91 for Rs.7 Crores.	IBA is drawn by Canfina Bangalore on Canara Bank, Tamarind Lane branch for the payment received from Canfina, Calcutta.
21/9/91	40	Letter of CMac to Canfina,	PW6 the only staff of

		Calcutta giving delivery of 2.1L shares of Hindalco for Rs.6.93 Crores and requesting acknowledgment of the shares.	<p>CBMF, Calcutta received this letter with annexures. Initially PW6 refused to accept the letter. He spoke to A1. He was told to accept it and asked to wait for further instructions. He accepted it (Evi.PW6 Para.4) and then made entry of the receipt of shares in the Stock register Exh.43/43A.</p> <p>The letter annexed a list of the shares delivered Exh.41 (Colly.) and the bill of CMac (Exh.42.)</p>
	41	List of 2.1 L shares delivered by CMac.	<p>Sent by CMac to PW6 along with letter Exh.40 and bill, Exh.42. (Evi.PW.6. Para 2)</p> <p>Exhibit 41 shows the various listings of shares amongst the 2.1L shares from pages 164 to 218.</p> <p>Pg. 196 is the list of 10,000 shares.</p>
9/9/91 / 11/9/91	42	Bill of CMac for sale of 2.1L Hindalco shares as per list attached for Rs.6.93 Crores.	Usual broker's bill for purchase of shares received by P.W.6.
09/09/91	78	Contract note of CMac.	prepared and signed by the Executive of CMac P.W.14 for 2.1L shares of Hindalco.

11/09/91	79	Delivery note of CMac for the delivery of 2.1L shares sent to CBMF along with share certificates and the bill of CMac.	Signed by one S.K. Mukharjee identified by P.W. 14.
24/9/91	43	Stock register showing entries of all shares received.	P.W. 6 made the necessary entry in the stock register upon receipt (after his initial refusal).
29/2/92	53	Letter of P.W.7 to CBMF, Mumbai asking for instructions regarding 2.1L shares-whether to be sent to CBMF, Mumbai.	Prepared by P.W. 7 on instructions of Calcutta office of CMac as instructions had not been received from A1 until then.
26/3/92	80	Contract Note of CMac addressed to Citibank NA.	Prepared by P.W. 14 on instructions of Calcutta office of CMac.

14. The reason for the admitted execution of the cheque **Exh.9** by A1 would have to be seen. The aforesaid documents would show the initial reason to be the purchase of 2.1L shares of Hindalco by CBMF of which A1 was the chief dealer being the General Manager of CBMF, Mumbai. The instructions letter **Exh.10** signed by A1 specifically shows that the demand is made towards purchase of shares from CMac through the credit slip **Exh.31** and the letter of Canfina, Calcutta **Exh-57**. Similarly, the instructions of A1 taken down by PW17 in his handwriting on the chit **Exhibit-90** shows the purchase of shares from CMac. The letter of CMac **Exh.40** annexing the list of shares **Exh.41** and its bill **Exh.42** along with

the contract note **Exh.78** and the letter of CMac **Exh.79** unmistakably show the transactions for purchase of shares by A1 in CBMF, Mumbai.

15. **Exhibit-22** the RBI Circular dated 9/10/1990 shows the limit of participation in call money transactions. It shows only Banks permitted to participate in CM Transactions as lender as well as borrower. CBMF was permitted to participate in call money transactions only as lender. (Canfina was not permitted by RBI either as lender or borrower). A1 has, for some ulterior reason, which shall be seen presently, sought to show the transaction as call money transaction which he had no authority to enter into. CBMF has sought to lend money under the call money transaction to Canfina, Calcutta on 17.5% interest. CBMF had no authority to lend money to Canfina to that extent. Canfina Bangalore had no authority to borrow money thus.
16. Nevertheless A1 and A2 as dealer and Fund Manager respectively issued the deal slip as the dealer of CBMF, Mumbai upon Canfina bearing No.1774 **Exh.11** and the voucher No.237 showing investment made in Canfina, Calcutta **Exh.12**. The return of call money with interest is shown under the deal slip 1792 dated 19th September, 1991 **Exh.13** also signed by A1 and A2 as dealer and Fund Manager respectively for Rs.69532582.20 which includes interest of Rs.232582.20 as per the slip / chit **Exh.41 A** and **41B** made out by A1 and A2 in the respective handwritings identified by their staff PW1. Similarly the voucher No.253 **Exh.16** shows the break up of the amount of call money and the return with interest. The voucher No.254 **Exh.17** shows the excess received from Canfina, Calcutta.

17. It is seen that thus far even the documents relating to call money transactions do not show any transaction of Rs.7 Crores which first finds its place in the letter dated 19th September, 1991 **Exh.18** making a reference to IBA No.31087 written by A1 in the lower portion of the chit **Exh.14B** for the first time and the later letter dated 25th September, 1991 for Rs.7 Crores.
18. It may be mentioned that the transaction for the sale of shares would be reflected in the equity transaction listing of CBMF, Mumbai. The equity transaction listing for the period of 1st September, 1991 to 30th September, 1991 **Exh.24** produced by PW2, he having maintained it in the regular course of his business in the computerised form for the Canbonus scheme, does not show the transaction of purchase of 2.1L shares of Hindalco. A1 was the final decision maker in respect of equity transactions of CBMF, Mumbai (Evi.PW2 Para 5). The listing of call money transaction of CBMF Mumbai for the period 1st September, 1991 to 30th September, 1991 shows entry No.37 against 12th September, 1991 and 19th September, 1991 showing Rs.6.93 Crores @ 17.5 % interest remitted to Canfina on 12th September, 1991 and returned by Canfina along with interest of Rs.232582.20 on 19th September, 1991.
19. The statement of the current account of Canfina in Canara Bank A/c. No.26645 **Exh.113** for the period from 1st September, 1991 to 30th September, 1991 does not show any entry of 12th September, 1991. 12th September, 1991 is shown to be a holiday in the attendance signing

register, **Exh.120** It shows the entry of Rs.7 Crores as a withdrawal under cheque No.9050 and IBA No.13085 being **Exh.113A**. The entry under IBA No.31085 does not show Rs.69532582.20 being the total sum received on the call money transaction upon the principal amount of Rs.6.93 Crores and interest of Rs.232582.20.

20. The stock register maintained by PW6 in normal course of his business as Secretarial staff of CBMF, Calcutta, **Exh.43** shows the entry of 24th September, 1991 for 2.1 L shares of Hindalco received by CMac and sent to Bombay as per instructions over the telephone from Bombay given by A1, the General Manager.
21. The account of CMac in the books of CBMF, Calcutta also shows the entries of 12th September, 1991 and 14th September, 1991 for purchase of 2.1 L Hindalco shares for Rs.6.93 Crores marked **Exh.82B & 82C** in the register **Exh.82**. Similarly the account of CMac maintained by Canara Bank showing it to be a firm of share brokers, **Exh.92** shows the entry of 12th September, 1991 for transaction of shares worth Rs.6.93 Crores, **Exh.92A** kept in the normal course of the business of Canara Bank and certified to be true.
22. The shares were received by PW 6 in the office of CBMF, Calcutta where he served as the secretarial staff. He was the only staff of CBMF Calcutta because CBMF Calcutta did not have separate office and shared the office with Can Bank Financial Services (Canfina) Calcutta.

23. P.W.6 received 2.1L shares including the hitherto missing 10,000 shares specified in the list of shares and the original share certificates **Exhibit-41** from CMac as has been set out in the above columnar statement. He did not know and had no instructions for the receipt. He has deposed that hence he refused the receipt. Thereafter he contacted his head office in Mumbai, CBMF, Mumbai. He spoke to A1 who was the General Manger, in charge of purchase of shares and securities. A1 told him to accept the receipt and await further instructions. P.W.6 has deposed that he entered the shares received in the stock register **Exhibit-43** dated 24th September, 1991.

24. How these shares have been dealt with would be important to see. This is reflected essentially in the evidence of P.W.6 who received instructions from accused No.1 for sending/delivering groups of these 2.1 lakh shares. It is also reflected in the evidence of P.W.4 who dealt with these transactions in Mumbai as the Secretary of the General Administrative Department (GAD) of CBMF, Mumbai and the corroborative evidence of P.W. 14 who was the executive of CMac and who ultimately acted upon the transactions which ensued upon the instructions of the A1. These transactions are best seen from another similar columnar statement thus:

Date	Exh.No.	Particulars	Remarks
10/03/92	44	Carbon copy of the letter written by PW 6 to CBMF Mumbai enclosing 10000 shares of Hindalco.	The letter has been written by PW6 as per the telephonic instructions of A1. He received a message from A1 to send 10000 shares out of 2.1lakh shares. PW.6 sent it under consignment note of Rex courier.
10/03/92	35	Original and cc of consignment notes of Rex courier.	PW.4, the inward and outward dispatch Clerk, received the original consignment and has produced it. PW.6 has identified the note. The note was accepted at the reception of CBMF Mumbai by PW.4.
11/03/92	34	Share Inward register maintained by CBMF, Mumbai.	Shows letters/parcels received. Produced by PW. 4. Various entries show parcels sent to / received by "custody" department.

11/03/92	34A	Entry of 10000 shares of Hindalco received by CBMF, Mumbai from Rex courier.	<p>The entry has been made by P.W.4. P.W.4 received the packet sent by CBMF, Calcutta through Rex courier and forwarded it to A1 as the addressee. He would not know the contents.</p> <p>This packet is not shown to have been sent to / received by “custody” department.</p>
10/03/92	45	Courier register of CBMF, Calcutta.	Maintained by P.W.6. The entries are made by him. All the entries in the register are made for transactions only through Rex courier.
10/03/92	45A	Entry made by P.W.6 in his handwriting showing letter dated 10/03/92 with the details of 10000 shares sent through Rex courier.	The entry shows the name of A1.



23/03/92	46	Carbon copy of letter written by PW.6 to CBMF, Mumbai for delivery of 50000 shares of Hindalco with the details enclosed.	<p>These were sent by P.W. 6 upon the specific instruction of A1 to be sent by DHL or Airfreight couriers.</p> <p>PW.6 sent the parcel through Airfreight as directed by A1 and not through Rex courier which was their usual courier. Hence there is no entry in the register Exhibit-45 which has entries of transactions sent only through the regular courier of CBMF, Calcutta.(Ev.: P.W. 6 para 12)</p>
24/03/92	47	Receipt of Airfreight courier for Rs.975/- upon CBMF (Calcutta)	<p>PW.6 made the payment to Airfreight to send the parcel Exhibit-46. The amount having been paid on 24/03/92, the parcel was received on 25/03/92 in CBMF, Mumbai.</p> <p>The courier has acknowledged the packet (through A1 has not acknowledged). (Ev.: P.W. 6 para 18).</p>

25/03/92	34B	Entry in the inward register of CBMF, Mumbai showing the packet containing the letter dated 25/03/92 and the details of shares enclosed received by P.W.4 in CBMF, Mumbai.	P.W.4 received the packet and forwarded it to Custody Department. (Ev.: P.W.4 para 4). This was received through Airfreight on the specific instructions of A1 given to P.W. 6 through Rex courier was the normal courier. (Ev. : P.W. 4 para 4 through).
25/03/92	36	Carbon copy of the receipt of Airfreight courier received by P.W.4 from CBMF, Cal.	The parcels under the Courier receipts were forwarded to the addressee (P.W.4 para 7). They were addressed to A1.
06/03/92	101	Two contract notes of CMac identified by its proprietor P.W.19 for 50000 shares of Hindalco brought for CBMF.	Admitted to be issued by CMac and signed by Santosh Mukherjee of CMac.
24/03/92	48	Carbon copy of letter dated 24/03/92 of P.W.6 sending 1 lakh shares of Hindalco to CMac, Calcutta and requesting payment to Canfina, Bangalore upon delivery of the shares.	1 lakh shares were returned to CMac on the instructions of A1. (Evi.P.W.6 para 13)

24/03/92	48A	Endorsement of receipt of 1 lakh shares of Hindalco by the representative of CMac.	The endorsement was made in the office of CBMF Calcutta in the presence of P.W.6 by the representative of CMac. (Ev.: P.W. 6 para 13).
26/03/92	49	Carbon copy of letter addressed by P.W.6 to CMac Calcutta returning total 50000 shares and requesting payment to Canfina upon delivery of the shares.	Letter sent under the instructions of A1 to send further 50000 shares to CMac. (Evi.P.W.6 para 14)
26/03/92	49A	Endorsement showing receipt of specified 50000 shares of Hindalco by representative of CMac showing the break-up of shares.	The representative signed in the office of CBMF Calcutta in the presence of P.W.6. (Ev.: P.W. 6 para 14).
26/03/92	80	Contract note of CMac upon Citibank NA for 1.5L Hindalco shares @ Rs.600 per share including brokerage of CMac.	Produced by the executive of the CMac P.W.14.

<p>26/03/92</p>	<p>86</p>	<p>Deal slip No.508 of Citibank NA prepared by the dealer Citibank, Mumbai for purchase of shares initialled by the dealer.</p>	<p>Deal slips are filed day-wise. This deal slip is produced by P.W.16 who served in Citibank as Assistant Vice President in 1999 from the bank records kept in the normal course of the business of the bank for securities transactions and given to the CBI.</p> <p>The deal-slip makes reference to CMac as the broker. It is for the purchase of shares of the net value of Rs.600/- per share. It shows the total proceeds of Rs. 9 crore for 1.5L shares. It shows the shares purchased by SCICI.</p> <p>The cross examination in respect of this document has been declined by all the accused. None has the explanation for it.</p>
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<p>18/03/93 (after about 1 year)</p>	<p>50</p>	<p>Carbon copy of letter written by P.W.6 to CMac requesting confirmation regarding payment against delivery of 1.5L shares of Hindalco to Canfina, Bangalore.</p>	<p>This has reference to letters dated 24/03/92 Exhibit-48 and 26/03/92 Exhibit-49.</p> <p>Exhibit-48 requests payment specifically to be made to Canfina Bangalore. Exhibit-49, sent two days thereafter does not specify to whom to take payment.</p> <p>Exhibit-50 requires confirmation for payment upon Exh-48 and Exh-49. The payment made to Canfina is written in another ink and is not the carbon copy.</p>
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19/03/93	51	Letter of CMac to CBMF referring to letter of CBMF Calcutta dated 18/03/93 confirming payment of 7.5 crores to Canfina through American Express Bank Ltd. Calcutta on 28/03/92 for 1.5 lakhs shares of Hindalco.	For the shares sent by CBMF Calcutta to CMac in March 92 the payment is confirmed to have been made in March, 93 to Canfina. Canfina (Bangalore) was otherwise not concerned with this transaction at all. Canfina (Calcutta) has no role to play in this transaction at all. Confirmation to Canfina would mean and imply Canfina, Bangalore and none other.
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25. There has been a transaction of 19000 shares consisting of 9900 and 9100 shares through the broker A3 under the Canshare Scheme of CBMF. This is an admitted transaction and stated by accused No.3 to be a separate distinct transaction for sale of shares upon its market price made under his two separate covering letters duly acknowledged by CBMF. This transaction is evidenced by the following documents which may be also seen best in a columnar statement.

26. Documents of transfer of 9900 shares:

27/11/91	D2	<p>Preprinted letter of CBMF produced by A3 without annexure showing the list of 9900 shares addressed to the Company Secretary of Hindalco Industries Ltd enclosing 9900 shares with their completed transfer deeds for registering the transfer.</p>	<p>The letter shows an endorsement of “Canshare”. The letter is signed by PW.27 and is the covering letter showing the shares sent for registration. It is sent along with outward delivery challan Exhibit-67 on 03/02/92 also signed by PW.27. This constitutes the first lot of 9900 shares and shows part delivery prior to advance payment made. 3 blanks are filled in the letter in a very different ink. The blanks filled in show 9900(shares) and 198 (transfer forms). These blanks are in the same ink as the endorsement Exh.-60A on the contract note Exh. 60 (See below).</p>
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28/11/91	60	Contract note of A3 upon CBMF for 19000 Hindalco Company shares @ Rs.3.20 per share showing advance paid Rs.60.80 lakhs on 2/12/91.	<p>PW.9 stamped the contract note and entered the details of the cheque and the voucher showing the amount paid by CBMF.</p> <p>Note: The first transaction of purchase of 2.1L shares was @ Rs.3.30 per share.</p>
	60A	Endorsement made on contract note Exhibit-60 showing two separate blocks of shares of 9900 delivered on 2/12/91 and 9100 delivered on 12/3/92.	<p>This endorsement Could have been made only after 12/3/92.</p> <p>This endorsement is made in a different ink and is made on a later date than the date of the contract note given the dates in the endorsement.</p> <p>The endorsement is seen to be made by the same pen in the same handwriting as the blanks of 9900 (shares) and 198 (transfer deals) in the pre-printed letter dated 27/11/91 Exhibit-D2.</p>

02/12/91	59	Voucher prepared by PW.9 on instructions of A2 the Fund Manager showing advance outstanding amount of Rs.60.80 lakhs for 19000 shares of Hindalco under contract note No.691.	It shows cheque of Rs.60.80 lakhs issued on 2/12/91.
02/12/91	63	Inward delivery challan for 9900 shares of CBMF counter signed by P.W.10 after delivery of shares and verification of script and number of shares.	The broker gets this prepared by the Fund Manager or his staff and brings shares along with the voucher to the Custody Department. The challan is prepared based upon the delivery endorsement (Evi: P.W.10 para 3).
03/02/92	67	Outward delivery challan for 9900 shares of Hindalco in "Canshare Scheme signed by Papa Rao.	It is prepared when shares are sent out to the company by the custody department of CBMF (Evi: PW.11 Para 4).

2. Documents of transfer of 9100 shares:

12/03/92	64	<p>Inward delivery challan for 9100 shares showing A3 as the broker.</p>	<p>Verified and counter signed by P.W.10 who served as officer in the custody department of CBMF Mumbai.</p> <p>It is prepared after the shares duly registered with the company come back from the company showing CBMF as the owner of the shares (Evi: P.W.10 para 6).</p> <p>The broker gets this challan prepared by the Fund Manager or his staff. Based upon the shares inwarded the challan is prepared (Evi: P.W.10 para 3).</p> <p>Advance is stated to be paid- The advance paid is for all 19000 shares being 60.80 lakhs.</p> <p>A3 has stated in his 313 statement that this challan confirms the balance of 9100 shares in satisfaction of contract No.881 making a total of 19000 shares.</p> <p>These balance 9100 shares which constituted the 2nd delivery was inordinately delayed; it was delivered as late as 12th March, 1992.</p>
28/11/91	60	Contract note of A3	It is for all 19000 shares.

	60A	Endorsement on the contract note	<p>It shows 2 separate blocks of shares – 9900 shares delivered on 2/12/91 and 9100 shares delivered on 12/3/92.</p> <p>The endorsement is made in a different ink.</p> <p>It is made by the same pen and in the same handwriting as the additions in the letter produced by A3 – Exhibit-D2.</p>
12/03/92	61	Letter of CBMF to custody department showing the particulars of 9100 shares “accepted” signed by P.W.9 on behalf of A2.	<p>Prepared to inward the shares when the shares are received (Evi: P.W. 9 para 6).</p> <p>9100 shares were <u>to be accepted</u> and 9900 shares were <u>already delivered</u> showing the total quantity of 19000 shares.</p> <p>Advance is stated to be paid.</p>
26/03/92	68	Pre-printed letter of CBMF Mumbai addressed to the Company Secretary of Hindalco Ltd. for registering 9100 shares in the name of CBMF with a request to send the shares to it.	<p>An endorsement in blue ink shows 606 – 7/4/1992. (which is the date on which the company effected the transfer under 182 transfer deeds). Payment is not shown being the particulars of the delivery challan Exhibit-69.</p> <p>The annexure to this letter is Exh-138, the list of 9100 shares.</p>



	<p>138 List of 9100 shares prepared by CBMF P.W. 27 custodian division / registration department of CBMF for sending to the company along with the covering letter for registering the transfer.</p>	<p>The list is the enclosure to Exhibit-68, the covering letter signed by P.W. 27.</p> <p>9100 shares in this list bear the same distinctive and certificate numbers as the 10000 shares on page 196 amongst the 2.1L shares purchased by CBMF from CMac and sent by CMac under the annexure Exhibit-41 to the letter Exhibit-40.</p> <p>Similar list annexed to the letter Exhibit-D2, but not produced by A3 who got Exhibit-D2 produced, is for the other set of 9900 shares.</p> <p>The top portion shows the denomination of share transfer stamps required for registering the transfer.</p> <p>9100 shares were in lots of 50. Hence 182 share transfer forms were filled up and sent to the company, Handlco as shown in the entry. (Evi. P.W. 27 para 6)</p>
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07/04/92	69	Outward Delivery challan No.606 for 9100 Hindalco shares.	It is verified and signed by PW.27. It is prepared when the shares are sent out of the company for registration (Evi: P.W. 11 para 6).
02/06/92	65	Inward delivery challan for 9100 shares of Hindalco duly registered showing Canara Bank as a trustee (CBMF) signed by PW.10.	It is prepared after shares registered with the company came back to the CBMF (Evi: P.W.10 para 6).
07/04/92	70	Acknowledgment receipt of Hindalco for 9100 shares received from CBMF.	Shows the 9100 shares registered with Hindalco.

27. Thus one purported transaction of 19000 shares is divided into 2 parts of 9900 shares and 9100 shares. Which are those shares would be important to see. 9900 shares are clear; they are separate and distinct. 9100 shares are not clear – separate and distinct, but the same 10000 shares sold by CMac to CBMF, Mumbai received by PW. 6 in CBMF Calcutta and sent to A1 in CBMF Mumbai as shown above and as shall be clarified below.

28. The aforesaid documents read together show that accused No.1 as the General Manager of CBMF Mumbai contracted to purchase 2.1 lakh shares of Hindalco at Rs.330/- per share aggregating to Rs.6.93 Crores from CMac on 9th September, 1991. The consideration for the shares was paid on 12th September, 1991 from Canbonus Scheme to CMac. CMac delivered 2.1 lakh shares on 24th September, 1991 to CBMF Calcutta. CBMF

Calcutta forwarded 10000 shares initially out of 2.1 lakh shares to CBMF Mumbai through Rex Courier on 10th March, 1992 and was received by accused No.1 in Mumbai on 11th March, 1992. Though the outward register of CBMF shows the delivery of shares, the evidence of P.W.6 specifically shows how the shares came to be delivered initially upon the specific instructions of accused No.1. That evidence is corroborated by the various documents showing delivery through Rex Courier. The lack of inward entry of those shares despite the account of CBMF Mumbai having been debited for its value, shows that CBMF Mumbai did not receive the shares for which the value was paid and the shares remained at large. The plethora of documentary evidence aforesaid shows that these were the very shares which were delivered to accused No.1 and later shown to be purchased from A3. The aforesaid documents show the transaction of Canshare scheme and not Canbonus scheme. The two groups of documents show the purchase of shares of CBMF for consideration paid by CBMF, Mumbai to the broker A3, accepted and admitted by A3 and the sale made by A3 upon receiving payment for 19000 shares shown in two lots of 9100 shares and 9900 shares. CBMF was entitled to purchase shares for consideration and the shares are shown to have been sent for registration and registered in the name of CBMF under unit "Canshare". It is tried to be shown by A3 in his 313 statement that CBMF is not shown to have made a loss in these two transactions.

29. In fact 9100 shares are seen to be a part of 10000 shares already purchased by CBMF, Mumbai from CMac and for which Rs.6.93 Crores was already paid. Rs.60.90 Lakhs is stated to have been paid by CBMF,

Mumbai and admitted to have been received by A3. This would constitute double payment for the same shares. This would not be anything but a loss to CBMF, Mumbai engineered by its General manager, A1, as shall be presently made clear.

30. It is interesting to see that 2.1L shares are shown in the list of shares received and produced by P.W.6, Exhibit-41 which runs from page 164 to page 218 of the chargesheet. Page 196 amongst these pages shows 9100 shares. (These would soon be found missing and would be traced in a unique but scientific manner by a chartered accountant as shall be shown presently). The 1st 10 entries in the list of 10000 shares on page 196 are totalling to 9100 shares. These are precisely the same shares in the list of 9000 shares sent by P.W. 27 to the company Hindalco for affecting and registering the transfer under 182 shares transfer forms of 50 shares each.
31. Hence shares initially purchased from CMac for consideration being @ Rs.330 per share are tried to be shown to be purchased later from A3 are for consideration being @ Rs.320 per share. Double payment is nothing but a loss to the CBMF, Mumbai. The payment is made by and under the directions of none other than A1 as specifically deposed by all the concerned witnesses. A1, being the General Manager and dealer, would alone have the necessary authority to decide the purchase of shares by CBMF, Mumbai.
32. Upon appreciating this position of A1 and the contact of A1 on behalf of CBMF, Mumbai with A3 and CMac, it would be material to appreciate

the documents leading to the 2 separate transactions of 9900 + 9100 shares and not a single transaction of 19000 shares from the aforesaid columnar statement.

(i) The first letter dated 27th November, 1991 for registering the transfers is for the clear 9900 shares. The list of these 9900 shares though annexed is not shown by A3 who got produced the document **Exhibit-D2**.

(ii) The contract note is prepared for 19000 shares and not 9900 shares, on the very next day.

(iii) The voucher prepared 3 days thereafter in the office of CBMF, Mumbai is for purchase of not 9900 shares, but 19000 shares.

(iv) The consideration paid and admitted to be received is for 19000 shares, not 9900 shares.

(v) The endorsements on the contract note show 2 deliveries in December 91 and March 92.

(vi) The initial inward and outward delivery challans are also for 9900 shares and not 19000 shares.

(vii) Only after March, 92 similar documents for 9100 shares are prepared.

(viii) The delivery of 9100 shares is thus inordinately delayed after the initiation of the transaction on 28th November, 1991 by the contract note, **Exhibit-60**.

(ix) The list of 9100 shares annexed to the letter sent to the company for effecting transfer shows the same shares initially purchased from CMac and being the bunch of 10000 shares (Pg.

196).

- (x) Hence the dealing of 9900 shares is clear;
The dealing of 9100 shares is duplicated
The consideration is paid by CBMF, Mumbai twice –
to CMac & to A3.**

33. The initial 2.1L shares were purchased from CMac @ Rs.330 per share on 21/09/1991. 9100 shares were later shown to be purchased from A3 @ Rs.320 per share on 12/03/1992.

34. Such is the loss to CBMF, Mumbai in the transaction for purchase of shares engineered by A1 and in which A3 partook.

35. Now if the aforesaid columnar statement is seen and collated with the earlier columnar statement showing the letters of P.W. 6 of the various separate bundles of shares received from CMac and sent to A1 by P.W. 6 the last piece of the puzzle falls into place.

- (i)** The first letter of P.W. 6 to CBMF, Mumbai is dated 10/3/1992.
P.W. 6 was to send only 10000 shares out of 2.1L shares received by him from CMac.
- (ii)** The entries in the registers of CBMF Calcutta as well as Mumbai are made on 11/3/1992.
- (iii)** The inward delivery challan for 9100 shares in the transaction with A3 is made the very next day on 12/3/1992.
- (This has taken place more than 3 months after the contract note,



Exhibit-60 was executed and a day after these shares were received by CBMF, Mumbai from CBMF, Calcutta.)

(iv) The letter of CBMF, Mumbai shows these 9100 shares “accepted”.

(v) These together would form 19000 shares sought to be registered in the name of CBMF, Mumbai in the books of the Company Hindalco.

36. 10,000 shares were stated to be missing. These are 10,000 out of 2.1L shares initially sold by CMac to CBMF, Mumbai. PW 18 who is a CA has made a report about how he found the missing shares. He has led substantive direct oral evidence in that regard. He has deposed that in 1992 shares were held in physical custody. Some of the shares certificates were lost. CBMF had purchased 2.1 L shares from CMac in Calcutta. 1.50L shares were resold to CMac. (This sale is not disputed although the exact date is not shown). 50,000 physical shares were available in CBMF. That was personally verified by him / his firm. CBMF did not maintain any record of the distinctive numbers or the certificate numbers of the shares. Hence it was not possible to identify from their record which shares were missing. PW18 asked CMac for details of the shares sold to CBMF. The physical shares were in fact sent by CMac to CBMF, Calcutta under its letter dated 21/9/91 **Exhibit-40** showing the distinctive and registration numbers of 2.1L shares, **Exhibit-41** – page 196 of which is the list of 10000 shares. PW6 from CBMF, Calcutta had called for instructions from CBMF, Mumbai. A1 had given specific instructions telephonically. A1 had asked for 10,000 shares initially. They were sent through Rex Courier. Thereafter



CBMF Calcutta was asked to send 50,000 shares to A1. They were sent through Airfreight Courier. Since CBMF could not provide the information of the distinctive numbers and certificate numbers of those shares, PW18 enquired from CMac how CMac had acquired those shares which CMac had sold to CBMF. CMac had purchased those shares from different brokers in different lots. The brokers had sent shares under their respective covering letters with details of the distinctive certificate numbers. PW18 got details of 1,82,400 shares. The CBMF, Calcutta under the instructions of A1 from CBMF Mumbai had sold back 1.5 L shares to CMac. Those shares never came to Mumbai. They were in the CBMF, Calcutta office. PW18 matched the other 50,000 shares which were sent in the second consignment through Airfreight couriers by PW6 from CBMF, Calcutta to CBMF, Mumbai and which was received in the office of the CBMF, Mumbai and handed over to A1. PW18 matched those 50,000 shares and found that they were out of 1,92,400 shares of which CMac had the distinctive and certificate numbers having purchased them from one broker, who in turn purchased them from various brokers. One broker had sold 37,000 shares. PW18 could trace 20,000 shares out of the 50,000 shares of CBMF. PW18 also found that the other 10,000 shares which were missing were in two lots of 5050 and 4950. PW18 concluded that out of the 37,000 shares sold by one broker to CMac 10,000 shares were missing.

37. PW 18 verified the registry of Hindalco. PW18 found out that out of those 10,000 shares 9100 shares were sent for registration immediately after they were supposed to have been received by CBMF, Mumbai but were missing or not accounted for. Those shares were the shares

admittedly sold by A3 to A1 on behalf of CBMF as the 2nd installment of sale endorsed in this contract note. The endorsement shows the sale the next day after the shares were sent by P.W. 6 to A1; the shares being sent on 10/3/91 by P.W.6 received on 11/3/91 by A1 on behalf of CBMF, Mumbai and sold on 12/3/91 by A3 ! PW18 saw **the inward register of CBMF, Mumbai which shows 10,000 shares received from CBMF, Calcutta entered as received and also entered as handed over to the GM, CBMF, Mumbai.**

38. Those are the very shares sent by CBMF Mumbai under its pre-printed letter **Exhibit-68** to the Company Secretary of Hindalco to register the transfer @ list of 9100 shares **Exhibit-138**.

39. P.W. 18 prepared a list of 10,000 shares that he thus found. He titled that list in his handwriting. He identified his handwriting on the top of the list. The list has been marked **Exh-98**.

40. PW 18 concluded that 10000 missing shares were amongst the shares received by the Calcutta office of the CBMF from CMac, and handed over to GM of CBMF, Mumbai. PW18 has deposed that subsequently those shares were shown as the shares delivered by firm of A3. They were forwarded by CBMF, Mumbai to the company for registration in the name of CBMF. This is amplified in the aforesaid documentary evidence, **Exhibit-41** and **Exhibit-138**.

41. It must be worth remembering the 2.1L shares were received from

CMac by CBMF, Calcutta. PW6 did not know about the transaction and did not know what to do. He refused to accept the delivery initially. He took the instructions from A1. A1 told PW6 to await instructions when PW6 enquired as to what to do with the parcel received. The ultimate instructions were segregation of 10,000 shares from 2.1L shares. Indeed the amount of 2.1L shares itself is rather peculiar. A mutual fund has sought to purchase 2.1L shares. Out of those only 10,000 shares were initially called for and went missing. Out of the remaining 2L, 1.5 L shares were resold to CMac and 50,000 remained for CBMF, Mumbai which were received in the 2nd installment by Airfreight Courier upon the specific instructions of A1 not to send through Rex Courier though the inward register would show entries only of Rex Courier who was their normal courier.

42. The number of the purchase of shares as also specific instructions of A1 as deposed by PW6 shows the peculiarity of the transaction. The evidence of PW6 is clear and concise. He has supported his oral evidence by all documentary evidence. The documentary evidence does show segregation of 10,000 shares from the inception. 10000 shares were sent by P.W. 6 from CBMF, Calcutta on 10th March, 1992 and received by accused No.1 in CBMF, Mumbai being handed over to accused No.1 by the forwarding Clerk on 11th March, 1992 and the transaction for 9100 shares having taken place on the very next day being 12th March, 1992 for which payment is made as per the initial document dated 28th November, 1991 from when the transaction with accused No.3 had commenced. If the 10000 shares are received from CMac amongst 2.1L shares which is crystal

clear from the evidence of P.W. 6 corroborated by the documentary evidence of the list of shares received from CMac, **Exhibit-41**, they could never have been sold by A3 to A1. The shares were received by A1 from PW 6 but one day before they were shown to be inwarded as per the inward delivery challan, **Exhibit-64**. Those were the shares that went missing.

43. In the cross examination of the PW18 by A1 he has deposed how he has seen the entry in the inward register of the shares having been handed over to A1. That evidence is sufficient to see the act of A1. The evidence of PW6 is clear about shares which came from CMac to CBMF sent through Rex Courier to CBMF, Mumbai upon the specific telephonic instructions of A1. The aforesaid documents, accepted by A3, show the 2 transactions for effecting delivery of 19000 shares by A3.

44. In the cross examination of PW18 by A3 he has deposed about the purchase of 19000 shares by CBMF, Mumbai from A3. However that was the later transaction of 2nd December, 1991. That was in two installments of 9900 and 9100 shares; the first transaction was of December, 91 and the later transaction was of March, 92. They were sent for registration and registered in the name of CBMF. 9900 shares were registered on 3rd February, 1992. In his further cross examination by A3 PW18 has deposed that he has seen the transfer deeds of those 10000 shares including 9100 shares. He did not recollect whether he saw or did not see the stamp of the A3 on the transfer deeds.

45. The prosecution has thus sought to link the 10,000 shares brought in CBMF, Mumbai under the instructions of A1 with A3. 19,000 shares purchased by CBMF, Mumbai in two lots of 9900 and 9100 under contract Note No.881 and are evidenced by inward and outward delivery challans Exh. Nos.63,64 & 65 and 67 & 69. 9900 shares are clear and different; 9100 shares which came into CBMF, Mumbai and forwarded to A1 are no different from 10000 shares that A1 received from CMac through CBMF, Calcutta as per his instructions and sent by Rex Courier.
46. The moot point to be decided as per the written argument on behalf of A3 is whether 9100 shares delivered by A3 were from the lot of 10000 shares couriered by P.W.6 and received by A1. Accepting that the evidence would have to be “scanned” in that behalf, A3 has contended that there is no attempt of the prosecution to get the identity of the shares established – which is belied by a look at **Exhibits 41 and 138** itself. It does not matter whether P.W.6 did not show which shares by their distinctive and certificate numbers were sent. The reference to the letter dated 17/3/92 by A3 is misconceived since the shares were received on 11/3/92 and purported to be sold again by A3 to A1 on behalf of CBMF, Mumbai on 12/3/92.
47. Similarly the reliance upon the documents **Exhibits 59, 60, 60A, D2, 63, 64, 65, 66 & 67** reflecting meticulous records of the transaction dated 28/11/91 for 9900 shares misses the total absence of such meticulousness in the second transaction of 9100 shares. It is conspicuous by its absence. The difference is apparent. Hence the endorsement **Exhibit-60A** is seen to be made after the second transaction on 12/3/92 in the contract note

dated 28/11/91 **Exhibit-60**.

48. The lament that P.W. 6, 7 and 9 have not deposed about the identity of 9100 shares is also to no avail because the prosecution has produced the entire list of 2.1 L shares purchased by A1 on behalf of CBMF, Mumbai sent by CMac to PW 6, **Exhibit-41** and the separate list of 10000 shares out of those same shares bearing the same distinctive and certificate numbers, **Exhibit-138** the annexure to the letter of P.W.27, **Exhibit-68** to Hindalco for registration of those 9100 shares (**Exhibit-138** being page 196 of **Exhibit-41**). The contention that those were not the shares which can be “attributed to” A3 is wholly without substance.
49. The arguments with regard to the transaction of 28/11/91 or the later transactions by way of later transfers of these shares affected in the records of Hindalco are wholly irrelevant to the charge of A3 receiving the same shares purchased by A1 on behalf of CBMF, Mumbai and thereby becoming a receiver of stolen property and purporting to sell (re-sell) them to A1 on behalf of CBMF, Mumbai as its General Manager and dealer and thus aiding and abetting A1 in misappropriating 9100 shares and thereby committing criminal breach of trust. It is for A1 and A3 to explain the 2 lists as enjoined in the criminal jurisprudence with regard to the accused having to explain the incriminating circumstances proved by the prosecution (See State of **Maharashtra Vs. Laxman Narsinhrao Ganti 2013 All MR (Cri.) 456**). Neither has done so even remotely as shall be seen presently.

50. 900 shares would remain if the prosecution case has to be accepted in respect thereof also. It would have to be proved similarly by showing the distinctive and certificate numbers of these 900 shares to be a part of **Exhibit-41**. 800 shares out of those 900 shares are claimed by prosecution to have been sold by A4 to CBMC, Mumbai. The remaining 100 shares are stated to be sold by PW25, one Ketan Parekh to CBMF, Mumbai. Out of 800 shares sold by A4, 600 shares were transferred under deeds **Exh.74**. A4 has accepted his stamp as broker on the reverse of some of the share transfer forms showing transfer to Canfina Financial Services Ltd. though he would not remember them out of lacs of shares that he stated his office dealt with daily in his 313 statement.
51. 100 shares brokered by PW25 are accepted to be under the transfer deeds in his name by CMac and signed by him in **Exh.74**.
52. The arithmetical calculation of 10,000 shares would be 9100+800+100 shares. The remaining 900 shares are also a part of 10000 shares out of 2.1L shares sold to CBMF, Mumbai by CMac under **Exhibit-41** at page 196. The remaining entries after the 1st 10 entries show 900 shares in lots of 50 shares each. These are not shown to have been paid for and got registered separately as 9100 shares sought to be purchased from A3.
53. Accused No.1 must specifically account for the shares received by the office of CBMF Mumbai where he held the position of General Manager and dealer and which were handed over to him as the addressee, they

having been received upon his specific telephonic instructions. In reply to question No.2 in the statement of accused No.1 recorded under Section 313 of the Cr.P.C. (313 statement) Accused No.1 has admitted having signed **Exhibits – 9 to 13** except **Exhibit No.12**. This would show the initial transaction which is the bed-rock of the prosecution case. Accused No.1 has accepted the payment made to CMac in reply to question No.20. Accused No.1 has thrown his hands up to state that the parcel from CBMF Calcutta sent through Rex Courier as also later parcel sent through Airfreight Courier were not received by him and did not come to him. That however is no answer to the specific case of P.W. 6 of having sent bundles of shares from out of 2.1 lakh shares received from CMac as per specific instructions of accused No.1 and the evidence of P.W. 1 and 2 that accused No.1 alone could have given such instructions. Incidentally accused No.1 has accepted in reply to question No.58 that P.W.15 who served with CMac to maintain accounts used to sometimes come to CBMF Mumbai where accused No.1 was the General Manager.

54. A1 was again specifically shown **Exhibits 40/41 and 68/138** and put the prosecution case and the clear evidence of the purchase of 2.1L shares specified in the list **Exhibit-41**, the annexure to **Exhibit-40**, sent by the broker CMac with their distinctive and certificate numbers and the letter of P.W. 27 sending 9100 shares for registration bearing the same numbers of the 10,000 shares shown on page 196 of the list **Exhibit-41** in his letter, **Exhibit-68** annexing a list of shares, **Exhibit-138**. His refrain was similar and devoid of any explanation.

55. Accused No.1 has hence not explained the transaction of the purchase of shares of Hindalco. He has not accounted for the 10000 shares found missing and lost from 2.1 lakh shares received by CBMF Mumbai.
56. What is criminal breach of trust shall have to be first seen. It is defined under Section 405 of the IPC the relevant part of which runs thus:

“405. Criminal breach of trust. – Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

The case of A1 is of admission of some of the documents shown by the prosecution to have been executed by him, but of denial of his liability. A1 has not explained how 10000 shares were missing from 2.1L shares purchased by him on behalf of CBMF Mumbai as its General Manager under the admitted cheque dated 12/9/1991 signed by him and how the shares of the same distinctive and certificate numbers came to be repurchased by him on behalf of CBMF Mumbai being 9100 shares from A3 on 12/3/1992, a day after he received 10000 shares from P.W.6 which have been clearly shown and other 800+100 shares which have not been clearly shown to have been purchased from A4 or P.W.25. It is argued on his behalf that since A1 has denied receipt of 10000 shares by himself through Rex Courier, it must be taken to have been received in the normal course by

the receiving clerk of CBMF, Mumbai of which A1 has no knowledge. In view of the clear oral evidence of P.W.6 backed by the documentary evidence contained in the letters, courier receipts and the registers maintained by CBMF Mumbai and the further clear oral evidence of the other witnesses of CBMF Mumbai all stating that they acted only on the instructions of the A1, the argument cannot be countenanced. The act of A1, in segregating the initial 10000 shares by specifically informing P.W.6 to send only those shares from CBMF Calcutta to CBMF Mumbai and in later purchasing 9100 shares out of 19000 shares from A3 containing the same certificate and distinctive numbers as the 10000 shares set out in **Exhibits 41 and 138** and for which he duplicated the payment by himself as General Manager and dealer of CBMF Mumbai thus misappropriating the said 10000 shares and the consideration paid therefor to his own use having dominion over such property, must be taken to have committed criminal breach of trust and further to have obtained pecuniary advantage by misappropriating them to the said extent as a public servant.

57. It is argued on behalf of A1 that no incriminating documents are produced by the prosecution against him. This is wonderous in view of the plethora of documentary evidence, several of them admitted by A1 himself and all proved by direct oral evidence of witnesses of CBMF, Mumbai who worked under him. The argument that the prosecution failed to establish the physical delivery of the alleged parcel would be set at naught by the oral evidence of P.W.4 showing the entry 34A in the Shares Inward Register **Exhibit-34** made by him showing the packet of 10000 shares handed over to A1 as the addressee of the parcel as per his specific

instructions to P.W.6 who sent the parcel addressed to A1 and not by “custody” department of CBMF, Mumbai as was the usual practice.

58. Hence the further argument that the Board of Trustees and its Chairman, to whom A1 reported, should have been arraigned is without substance; A1 must alone be criminally responsible for his own acts; his subordinates including A2 may not be. It does not matter that his seniors have not deposed; these acts would be known to the staff members alone.
59. The argument that the Auditors of CBMF, Mumbai appointed by A1 himself have not reported the transaction is of no consequence because the missing shares would, in fact, represent a fraud by suppressio veri which was detected upon the scam having been brought to light when such transactions were investigated by the CBI upon the Securities Exchange Board of India (SEBI) having been constituted.
60. The argument that the prosecution has not obtained the sanction under Section 197 Cr.PC to prosecute A1 as a public servant runs counter to the argument that A1 had surpassed other officers. He is stated to have been appointed from Scale I officer to Scale IV officer and posted to CBMF, Mumbai as General Manager and which was not objected by RBI contending that such promotion on merit could only be in a private organisation. This would rule at the requirement of sanction under Section 197 of the Cr.PC. In any event sanction under Section 197 of the Cr.PC is not required to be obtained for the offence of criminal breach of trust by a public servant.

61. It is contended on behalf of A1 that sanction to prosecute A1 as a public servant under Section 19 of the PCA is not shown to have been obtained by the prosecution. Consequently cognizance of the said offences made the PCA cannot be taken. That contention is clearly erroneous because A1 had been dismissed from service well before the prosecution was launched. The sanction to prosecute him was, therefore, not required.
62. Indeed upon the criminal breach of trust having been detected, A1 was dismissed from service. The argument that there was no case of disproportionate assets against A1 is immaterial, this case having been proved by the prosecution beyond reasonable doubt.
63. Accused No.2 is also seen to have acted in the transaction for the sale of shares which was shown to be call-money transaction which CBMF Mumbai had no authority to transact in view of its value. Accused No.2 has accepted his signatures on the documents initialled or signed by him in the transaction. However he was working under the instructions of accused No.1. It is his statement that only accused No.1 would take care of the call money transactions in the Corporate office. He has claimed that on 12th September, 1991 when the transaction took place he was sent for training and was accordingly absent in the office. He was given call-money deal slip on 13th September, 1991 when he resumed. He has explained in his 313 statement how the transaction took place in his absence upon the instructions of accused No.1 through his covering letter under the IBA from Canara Bank where the beneficiary was shown to be Canfina Calcutta.

When he resumed, the Clerk in CBMF Mumbai told him to make a remittance of Rs.6.93 Crores to Calcutta for which he signed the deal slip and accordingly passed the call-money entry. He has stated that he followed up to get the call-money with interest returned to Canbonus Fund. He has stated that on 19th January, 1991 accused No.1 wrote the IBA number on his slip showing the calculation of entries and asked him to take that amount as credit and close the account. Accused No.1 signed the call-money deal slip and accordingly the books of CBMF Mumbai were closed. Accused No.2 has explained that he thus closed the account as per the instructions of accused No.1. Accused No.2 has stated that he has no investment decision making power and that he looks after only accounting work.

64. The position and designation of the two accused, accused Nos. 1 and 2, do show that only accused No.1 would have the decision making power and the evidence, both oral and documentary produced by the prosecution amply shows the decision making powers vested as also enforced only by accused No.1. Accused No.2 could only have acted upon the instructions of accused No.1.
65. A3 has answered in his 313 statement that he had sold 19,000 shares of Hindalco to CBMF and delivered the shares against payment. He had delivered 9900 shares under his covering letter acknowledged by CBMF. He has claimed that that record was seized by the CBI in 1991. He has claimed that the inward delivery challan **Exh.63** confirms delivery of 9900 shares under contract No.881. He has further stated that inward delivery

challan of CBMF **Exh.64** confirms the delivery of 9100 shares under contract No.881 making a total of 19,000 shares. The delivery was under his covering letter acknowledged by CBMF. A3 has stated that the shares were received by the officers (witnesses) of CBMF, Mumbai “from my office”. Such evidence is not shown to Court by Advocate on his behalf despite that case of A3. A3 has specified in his 313 statement that **his entire delivery had gone in two parts along with two covering letters.** The covering letters of A3 duly acknowledged by CBMF, Mumbai which would be only in his possession and which are not shown to be recovered by CBI or given to CBI by A3 are not produced. A3 has further stated that this transaction of delivery of 19,000 shares against payment did not result in any loss to CBMF and that PW18 has not implicated him, but only relied upon the record of CMac. He has refuted the prosecution case that the 10,000 missing shares received by CBMF, Mumbai handed over to A1 were subsequently shown as the shares supplied by him and forwarded to Hindalco for registration. He stated that two lots were on 27/11/1991 and 12/3/1992 (wrongly stated as 3/2/1992) as reflected in his contract note **Exh-60.** He emphasized that he had delivered his 19,000 shares independent of any other shares by Hindalco to CBMF, Mumbai as reflected in the inward delivery challan **Exh. Nos.63, 64 & 65** and outward delivery challan **Exh.Nos. 67 & 69** relating to his contract note **Exh-60.** **These documents do not show the distinctive and certificate number of the shares transacted thereunder.** He disputed the research of PW.18 showing the missing 10000 shares on the ground that A3 was not referred to by P.W.18 only commented on “unilateral documents prepared by parties” and “not produced the records of CBMF” and relied upon “non-confirmed

records of CMac”.

66. He stated that there was no co-relation with regard to the shares **Exhibit-138** annexed to the letter **Exhibit-68**.
67. A3 was also again specifically shown **Exhibits 40/41 and 68/138** and put the prosecution case and the clear evidence of the purchase of the initial 2.1L shares specified in the list **Exhibit-41**, the annexure to **Exhibit-40** sent by the broker CMac to CBMF, Mumbai with their distinctive and certificate numbers and the letter of P.W. 27 sending 9100 shares admittedly sold by A3 to A1 bearing the same distinctive and certificate numbers as the 10000 shares amongst the 2.1L shares shown on page 196 of the list **Exhibit-41** in his letter, **Exhibit-68** annexing the list of these shares, **Exhibit-138**. A3 once again shrugged knowing anything of the transaction between CMac and CBMF, Mumbai and insisted that his transaction of 9100 shares was apart.
68. He was again asked about his letter delivering the shares to A1 on behalf of CBMF and the acknowledgment of receipt as per his earlier 313 statement. His refrain was the documents being seized by the CBI. Alas he has not called upon the prosecution to produce the said document which would be the back-bone of his defence.
69. It is argued on his behalf with regard to his further statement recorded under Section 313 of the Cr.P.C that the reply of Hindalco Industries Limited to CBI regarding the names of the share holders of 9100

shares, **Exhibit-73** shows that the shares stood in the name of Unit Trust of India (UTI) from 1st August, 1991 to 24th March, 1992 and were transferred to CBMF on 25th March, 1992. Respondent No.3 would contend that he had delivered 9100 shares on 12th March, 1992. If the shares were registered in the name of UTI he could not have delivered those shares. Hence he delivered some other 9100 shares. He has, of course, not given particulars of those shares. Which other shares were delivered is, therefore, not known. The delivery is admitted to be a day after A1 was handed over the shares on 11th March, 1992. P.W. 27 sought to register those shares soon thereafter under **Exhibit-68** on 26th March, 1992 upon verification of the distinctive numbers and certificate numbers of the shares and specifying them in the list Exhibit-138. The shares were sent to UTI for registration. They were ultimately registered and acknowledged in the share acknowledgment receipt dated 7th April, 1992. The rectification of the register of members to specify the name of the new registered holder of the shares would take such time. This would explain the endorsement of 7th April, 1992 on **Exhibit-68**. The mention of the time period of the UTI shares registered with Hindalco is of no consequence . It wholly ignores the factual market position that prevailed in 1991-92 under Section 108 of the Companies Act 1956 and the rules made thereunder for transfer of shares of limited companies listed on registered stock exchanges prior to the age of dematerialisation of shares. UTI may have held the shares registered in its name from 1st August, 1991. The shares would continue in the name of UTI until it is registered in the name of another holder who presents the share transfer forms duly signed by UTI in its / her/ his favour. There may be any number of bearer transfers during the period between

the two registrations. That is what precisely would have happened in this case and that is how UTI shares have been with CMac. Some of the shares sold by CMac show the previous registered holder to be UTI. The shares may change a number of hands as has been shown in the share transfer forms annexed to the letter of Hindalco Industries Ltd., to CBI dated 2nd September, 1999, **Exhibit-74**. That is precisely why and how stock brokers would be involved in the transaction. The reference to the time period mentioned in the letter, **Exhibit-73** of Hindalco Industries Ltd., is therefore, both misconceived and mischievous. The reply of A3 to the specific case of the prosecution under the list of shares, **Exhibit-168** which is the same as a part of the shares under **Exhibit-41** and the list of 10,000 shares, **Exhibit-98** is, therefore, not satisfactory or acceptable. Consequently it is clear that 9100 shares purportedly sold by A3 to A1 who accepted them on behalf of CBMF is a part of the 10000 shares which P.W. 6 sent to CBMF, Mumbai and which P.W.4 actually handed over to A1 and which were in turn a part of the shares which were sold by CMac and sent to CBMF, Calcutta and which were received by P.W. 6 as per the list, **Exhibit-41** annexed to the letter of CMac, **Exhibit-40**.

70. The documentary evidence **Exhibit-41 & Exhibit-138** is testimony to the falsehood of A3. The very lists of shares would rubbish his enthusiastic claim of no loss or no duplication.

71. The remaining 800 shares were registered in the name of M/s. Komaf Financial Services Ltd., through accused No.4 and 100 shares were registered in the name of P.W. 25. 600 out of these shares are stated to

have been transferred. These 900 shares are not shown to be got registered in the name of CBMF, Mumbai together with the aforesaid 9900 + 9100 shares.

72. The prosecution has not produced any evidence, oral or documentary showing the sale of 800 shares alleged to have been sold by A4 to A1 on behalf of CBMF, Mumbai as its General Manager and dealer from out of 10000 shares purchased from CMac under similar documents being his contract note and vouchers. Hence the role of A4 as the broker of those shares is not satisfactorily shown.

73. So far it is seen how 2.1 lakh shares were purchased by CBMF, Mumbai upon the instructions of A1. It is seen how initially 10000 shares are called by A1 from CBMF Calcutta to CBMF Mumbai sent through Rex courier. Thereafter further 50000 shares are called by A1 from CBMF Calcutta specifically through Airfreight courier and not entered in the register maintained by CBMF Calcutta but shown as received in the inward register maintained by CBMF Mumbai. This leaves 1.5 lakh shares of Hindalco. These 1.5 lakh shares are sold in March 92 in two installments of 1 lakh shares and 50000 shares back to the CMac the broker. These are received by his representative in the office of CBMF Calcutta. The payment for 1 lakh shares was directed to be made specifically to Canfina Bangalore on 24/03/1992. The payment for 50000 shares was directed to be made to Canfina, but not specifying Bangalore. However, the contract note for this transaction shows the face value of all the 1.5 lakh shares @ Rs.600/- which would total to Rs.9 Crores. The deal slip of Citibank is for Rs.9

Crores and shows SCICI as the client for the face value of 1.5 lakh shares at the net price of Rs.600 per share. The contract note of the broker CMac and the deal-slip of Citibank are of the same date – 26/03/92 for which payment is made on 19/03/93 not to CBMF Mumbai who sold the shares, but to Canfina Bangalore as specially requested by P.W.6 upon the instructions only of A1.

74. The link for the payment of these shares to Canfina Bangalore and the link to Citibank NA which issued the deal-slip in favour of the client SCICI is, therefore, required to be seen. It is upon this link that the prosecution has sought to make out a case of criminal conspiracy between A1 & A2 on the one hand in CBMF, Mumbai and A5, A6 and A7 on the other in Canfina, Bangalore.

75. The transaction of purchase of 2.1 lakh shares for Rs.6.93 crores by CBMF has found its way into the accounts of Canfina Bangalore. It is the prosecution case that the call money transaction shown by accused No.1 was not reflected in the records of Canfina Bangalore because the Canfina Bangalore falsified its record to show the purchase of 14% NCD bonds instead. This has been the deposition of the Investigating Officer P.W. 28 in para 40 thereof. This is reflected in the receipt of Rs. 7 crores under IBA No.31085 from Canfina Bangalore. How this transaction was recorded will have to be similarly seen.



19/9/91	106	Deal Pad of Canfina for purchase of 14% NCD of "Mfund"(CBMF) for Rs. 7 Crores.	<p>The deal pad shows IBA No.31087 on "T Lane" (Tamarind Lane) Bombay (CBMF office in Bombay).</p> <p>Lower portion of the deal pad showing Internal Branch Advice (IBA) number and address is in the handwriting of A6 (Evid: P.W. 21 para 2)</p> <p>Cheque No.9050 is in the handwriting of M. Dhiren, since deceased.</p> <p>The cheque number is of the cheque issued of this transaction.</p> <p>The dealers prepare the deal pad. A5 is the Chief Dealer of Canfina Bangalore (Evi: P.W.21 para 4)</p> <p>(After writing the deal pad P.W.21 makes xerox copies to make entries in the register of Canfina (Evi: P.W. 21 para 4).</p>
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19/9/91	107	<p>IBA No.31087 issued by Canara Bank, Cunningham Road Branch, Bangalore upon "T lane" Bombay (CBMF Mumbai)</p>	<p>P.W. 21 bought the IBAs from the bank and sent them to the branches.</p> <p>It is received in the normal course of the business of P.W.21 who sent it to Bombay (Evi: P.W. 21Para 7).</p> <p>Canfina gives IBA numbers after the deal goes through.</p> <p>Original IBA is issued upon the transaction entered into in the IBA Issued Register (Evi: PW.21 para 8).</p>
19/9/91	108	<p>Entry in IBA issued register under IBA No.31087 showing "T Lane" Bombay for Rs. 7 Crores.</p>	<p>Written by A 6 (Evi: P.W. 21 para 6).</p> <p>When the deal takes place Canfina issues IBA. This is the number allotted to the deal on the IBA.</p> <p>The entry is made in the register when the IBA is issued (Evi: PW.21 para 6).</p>



<p>19/9/91</p>	<p>109, A,B & C</p>	<p>Entry in cheque issued register of Canfina Bangalore showing transaction of 7 Crores with "T Lane Bombay" against cheque No.50 (9050).</p>	<p>P.W. 21 made the entry on 19/9/91. 50 is the cheque number in the series beginning 9041.</p> <p>After all the deals take place during the day, P.W. 21 issues cheques upon Canara Bank, Bombay for issue of IBA on the respective branches (Evi: P.W.21 para 10).</p> <p>The balance value in the account from time to time is shown by P.W. 21 (Evi: P.W.21 para 11).</p> <p>P.W. 21 would tally entries at the end of the day and show the balance lying in the account (Evi: P.W. 21 para 12).</p> <p>A6 has signed against the entries of balances on 19/9/91 (Exhibit-109A).</p>
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19/9/91	110 A & B	Register of stock of security (SOS) of Canfina Bangalore entry of 14% NCDs showing the entry of 7 Crores against “M fund” (CBMF).	<p>Maintained by P.W.21.</p> <p>Most of the entries in this register are in his handwriting.</p> <p>The register shows entries of market, purchase and sales as also allocation.</p> <p>The entry of 19/9/91 shows purchase by the Mutual Fund of 14% NCD for Rs. 7 Crores.</p> <p>P.W.21 made this entry.</p> <p>M Fund means CBMF.</p> <p>The prosecution has shown this endorsement as the link between the acts of A1 and A2 in CBMF Mumbai and those of A5, 6 & 7 in Canfina, Bangalore.</p>
19/9/91	111 A	Physical register of Canfina, Bangalore showing 14% NCD Bonds maintained by Canfina Bangalore.	<p>Entries are based on the deal pad.</p> <p>Made at the end of each day. (Evi: PW. 21 para 14).</p> <p>The entry dated 19/9/91 is made by Satish Shetty for purchase of NCD of 7 Crores from CBMF (110A).</p>

-	113	Bank account statement of Canfina, Bangalore Canara bank, Bangalore for September, 91.	Certified under the Bankers Book Evidence Act as correct.
19/9/91	113A	Entry of 7 Crores debited to Canfina. IBA No. 13085(7) under Cheque No.9050.	
19/9/91	18	Letter of CBMF, Mumbai to Canara Bank showing reference of IBA No.31087 dated 19/9/91 for Rs.7 Crores from Cunningam Road, Bangalore being the amount remitted by Canfina.	The letter is in the handwriting of PW1 and signed by A2 enclosing the IBA for Rs.7 Crores prepared by PW1 on instructions of A2. (Evi.PW1 Para.9)
25/9/91	19	Letter of CBMF, Mumbai enclosing IBA No.31087 dated 19/7/91 for Rs.7 Crores.	IBA is drawn by Canfina, Bangalore on Canara Bank, Tamarind Lane branch for the payment received from Canfina, Calcutta.

76. Thus there was a transaction between CBMF and Canfina Bangalore for Rs.7 Crores reflected in the deal pad prepared by the dealers in Canfina showing it to be purchase of 14% NCD bonds of CBMF for Rs. 7 crores for which an IBA came to be issued and entered into IBA issued register and the cheque issued register for the cheque that was issued in respect of the transaction. The transaction was entered in the register of stocks and securities and the physical ledger of NCD securities and came to be debited in the statement of account of Canfina in Canara Bank.

77. This transaction apparently has nothing to do with the other

transactions of CBMF Mumbai of purchase of 2.1L shares except that both **the transactions are of the same date 19/9/91**, the deal slip chit and voucher No.s 253 and 254, Exhibits 13, 14 and 16 being dated 19/9/91. In fact in that transaction though the voucher Exhibit-12 shows interpolation in the date (from 19/9/91 to 12/9/91) the cheque for payment of 2.1L shares the covering letter for transfer the deal slip No.1774 and the vouchers, Exhibits 9,10,11,12 & 31 are dated 12/9/91.

78. However, aside from showing this fact, the prosecution has, not made out a link between the 2 transactions of CBMF, Mumbai & Canfina Bangalore in support of their case of criminal conspiracy of A1, A2, A5, A6 and A7.

79. However, the transaction of Canfina Bangalore is further reflected in the documents of Canfina Bangalore for the sale to SCICI for Rs.7.5 crores on 30th March, 1992. It would have to be seen whether this transaction of Rs.7.5 Crores of 30/3/92 entered into by A5, A6 and A7 bears any link with the sale of 1.5 L shares by CBMF, Mumbai to CMac and what would be the financial loss to CBMF Mumbai, or Canfina Bangalore by the acts of A1, A2, A5, A6 and A7, if any. We would have to remember the letters dated 18/3/93 and 19/3/93, **Exhibits- 50 and 51** (written after about a year of the transaction of sale of shares to CMac March 92) confirming payment of Rs.7.5 Cr made by CMac to Canfina, Bangalore, who was not at all involved in the transaction of purchase or sale of the shares of Hindalco, through American Express Bank Ltd, Calcutta on 28/3/92. This further transaction comes close on the heels of such correspondence on 30/3/92

and is evidenced by further documents thus :

	112	Register of deal pads of March, 1992 maintained by Canfina.	
30/3/92	112A	Entry of IBA No.12678 for Rs.7.50 Crores shown against Clearing Section, Calcutta.	<p>The entry in the IBA received by the Clearing Section of Calcutta from CMac. is made in the handwriting of A7 and is accepted by A7.</p> <p>The entry is for the transaction with CMac (Evi: P.W. 21 para 17).</p> <p>It shows the word “Shares” in another ink.</p> <p>P.W. 21 does not know for what purpose the entry is made and who has written “Shares” below the entry. (Evi: P.W. 21 para 17)</p>
	114	Bank account of Canfina Bangalore in Canara Bank for the month of March 92.	Certified under the Bankers Book Evidence Act as true.
30/3/92	114A	Entry of Rs.7.5 crores credited to the account of Canfina Calcutta received from clearing section Calcutta under IBA No.12678.	

31/3/92	115	Physical Ledger/register of 9% SCICI showing entries dated 31/3/92.	<p>The entry is made in the handwriting of M. Dhiren, since deceased.</p> <p>Any market, purchase register related to 9% SCICI showing entries as of 31/3/92 would be entered in this register.</p>
30/3/92	116	Physical register recording the market, sale and purchase.	<p>Shows as securities sold 9% SCICI Bonds to Rahul & Company for Rs.7.5 Crores.</p> <p>Rahul and Company is the sister concern of CMac who sold 2.1 L shares to CBMF initially and who purchased 1.5 L shares from CBMF Mumbai later.</p> <p>See Exhibit-51.</p>
30/3/92	117	Copy of cancelled Manual cash voucher under IBA No.12678 on clearing section, Calcutta for Rs.7.5 Crores in favour of Rahul & Co.	The voucher is for allocating the securities prepared by P.W.21.



20/7/92	118	Reversal entry of Rs.7.3 crores in a computer print out of Stock of Securities (SOS) register for 14% NCD.	<p>Purchased at the instance of A6. (Evi: P.W.21 para 43).</p> <p>Entry made for reversal of ready forward transfer. (Evi: P.W. 21 para 47).</p> <p>The entry shows reference of CBMF.</p>
	D3	Allocation register showing the entry of 7.5 crores received from Rahul & Company and 9% SCICI bonds allocated to Rahul & Company.	Produced at the instance of accused No.6 in the cross examination of P.W.28 the Investigating Officer.
18/03/93 (after about 1 year)	50	Carbon copy of letter written by P.W.6 to CMac requesting confirmation regarding payment against delivery of 1.5L shares of Hindalco to Canfina, Bangalore.	<p>This has reference to letters dated 24/03/92 Exhibit-48 and 26/03/92 Exhibit-49.</p> <p>Exhibit-48 requests payment specifically to be made to Canfina Bangalore. Exhibit-49, sent two days thereafter does not specify to whom to make payment.</p> <p>Exhibit-50 requires confirmation for payment upon Exh-48 and Exh-49. The payment made to Canfina is written in another ink and is not in the carbon copy.</p>

19/03/93	51	<p>Letter of CMac to CBMF referring to letter of CBMF Calcutta dated 18/03/93 confirming payment of 7.5 crores to Canfina through American Express Bank Ltd. Calcutta on 28/03/92 for 1.5 lakhs shares of Hindalco.</p>	<p>For the shares sent by CBMF Calcutta to CMac in March 92 the payment is confirmed to have been made in March 92 and confirmed in in March, 93 to Canfina. It is made in March, 93.</p> <p>Canfina (Bangalore) was otherwise not concerned with this transaction at all.</p> <p>Canfina (Calcutta) has no role to play in this transaction at all.</p> <p>Confirmation to Canfina would mean and imply Canfina, Bangalore and none other.</p>
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80. Hence is the prosecution case of criminal conspiracy between A1, A2, A5, A6 and A7 CMac has confirmed payment of Rs.7.5 Crores made to Canfina Bangalore which is proved by the aforesaid letters **Exhibit-50** and **Exhibit-51** not challenged by A5, A6 or A7 in the evidence of the proprietor or other employees. The entry of 7.5 crores in favour of Rahul & Company, the sister concern of CMac, is made in respect of SCICI bonds by Canfina, Calcutta. Though 7.5 crores is credited in the account of Canfina, Bangalore upon IBA No.12678 received from Clearing Section Calcutta in respect of SCICI bonds, the physical register of SCICI does not show this

entry. Yet computer print out shows 9% SCICI sold to Rahul & Company on 31st March, 1992 of Rs.7.5 crores. Since this entry was shown to be wrongfully effected, a reversal entry is shown on 20th July, 1992 of Rs.7.3 Crores. The entry of 7.5 Crores under IBA No. 12678 is entered in the deal pad register. Just as there is no apparent reason for crediting Canfina Bangalore with Rs.7.5 Crores by Cmac on 28/3/92, there is no apparent reason for crediting the sister concern of CMac, Rahul & Co., 2 days thereafter by Canfina, Bangalore. The transaction accepted and affirmed by A5, A6 and A7 is left wholly unexplained with regard to the receipt on 28/3/92 of Rs.7.5 Crores and the corresponding payment of Rs.7.5 Crores on 30/3/92 by Canfina Bangalore. The explanation sought to be given by A5, A6 and A7 is that the purpose of 14 NCD of Rs. 7 Crores has culminated in the sale of SCICI bonds to Rahul & Co.,

81. It has to be seen whether the case of the prosecution that accused Nos. 1 and 2 in Mumbai acted in conspiracy with A5, A6 and A7 in Bangalore for a single transaction shown in the aforesaid documents is correct and what that transaction was. The initial transaction was of purchase of shares. It was shown as Call Money Transaction. (CM transaction) Such a transaction could not have been entered into by CBMF, Mumbai or by accused No.1 on behalf of CBMF Mumbai for total lack of authority. The shares have indeed being sold by CMac and received by the office of CBMF, Calcutta. The shares have been sent to CBMF, Mumbai, in various installments – initially 10000 shares, followed by 50000. The remaining 1.5 lakh shares are unaccounted for atleast to the extent of how they were sent from the office of CBMF, Calcutta to CBMF, Mumbai. The

link sought to be established with the office of Canfina, Calcutta is upon the case that the call money transaction was with Canfina, Bangalore but was shown as purchase for NCD Bonds hence leaving no record of call money transaction in Canfina, Bangalore. It could not have been entered into by Canfina, Bangalore. Having shown the transaction as purchase of 14% NCD the sale of that NCD is shown in respect of 9% SCICI bonds.

82. However what has been left unexplained is how the shares of 6.93 crores or call money transaction of that extent came to be to the extent of 7 crores in Canfina Bangalore as a purchase transaction and 7.5 crores as the sale transaction. Expenses for registration and stamp duty are stated to have been added to the transaction but the exact amount of such duties paid is not reflected in the above documents. The amount of R.4.67 lakhs received in excess of the principal amount of Rs.6.93 Crores and interest thereon as deposed by P.W. 1 is not explained by either A1 or A2 or A5, A6 and A7. P.W. 1 has stated in his cross examination by accused No.5 that apart from the instructions that he received (from A1) he was not shown any record to show the call money transaction. P.W.1 who served as Grade-I Secretary in the Canbonus Scheme of CBMF had never seen another transaction like this; this was the only CM transaction during his tenure in which he received more amount (than the principal + interest).

83. Similarly P.W.2 has deposed in his cross-examination by accused No.5 that the return of CM transaction would be of exactly the principal amount + interest. CBMF record does not show any CM transaction other than this transaction with Canfina. This is in consonance with the RBI circular, **Exh-**

22. Further this transaction was under a normal banker's cheque **Exh.-9** which could not have been used for CM transaction and which can only be inter-bank transaction or inter mutual fund transactions done only through RBI cheques. Hence though the books of CBMF Mumbai show this as a CM transaction, it could not have been so. Yet the link in the unlawful acts of A1 & A2 on the one hand and A5, A6 & A7 to the other in a single transaction is not clearly established despite reference to the word “Shares” in the deal pad or reference to “M Fund” (CBMF Mumbai) in the SOS register.

84. This is how A5, A6 and A7 in Canfina, Bangalore are stated to be involved in the transaction for purchase of shares by CBMF Mumbai from CMac. Despite the purchase of shares the transaction was recorded as call-money transaction by A1 and A2. The involvement of A5, A6 and A7 in the transaction is sought to be shown by the prosecution only through the payment made to Canfina Bangalore for no apparent reason.

85. The prosecution case of criminal conspiracy between accused Nos.1 and 2 in CBMF Mumbai and A5, A6 and A7 in Canfina Bangalore is sought to be shown essentially from the letters dated 24/3/1992 and 26/3/1992 of P.W. 6 to CMac and the letter dated 19/3/1993 of CMac to CBMF referring to the letter of CBMF Calcutta of 18/3/1993 confirming payment of Rs.7.5 Cr. to Canfina for 1.5L shares of Hindalco, **Exhibit-51**. Though the reference specifically to Canfina Bangalore is made only in the letter dated 24/3/92, **Exhibit-48** and not the letter dated 26/3/92, **Exhibit-49** or the letter of Cmac dated 19/3/93 **Exhibit-51** (sent a year later) confirming

the payment, Canfina Bangalore alone is seen to be involved in both the transactions in view of the consolidated letter of CMac dated 19/3/93, **Exhibit-51** and the consolidated contract note, **Exhibit-80**. Indeed the transaction of sale of shares having been shown as call-money transaction has been linked with Canfina Bangalore and has been shown as purchase of 14% NCD Bonds by Canfina Bangalore, which is not for the exact amount of the transaction. That transaction is for 7 Crores instead of R.6.93 Crores and is shown to have culminated in the later transaction of 7.5 Crores of Rahul & Company, the sister concern of CMac. The explanation of A5, A6 and A7 of Canfina Bangalore to de-link the two transactions accounting for the registration and stamp duty required to be paid thereon is indeed not satisfactory. However a clear link of A5, A6 and A7 with A1 and A2 in a single transaction in which shares came to be siphoned off or its consideration came to be appropriated has not been brought out by the prosecution to make out a case of criminal conspiracy as per the parameters shown in the case of **Navjot Sandhu Vs. State (NCT of Delhi) (2005) 11 SCC 600**.

86. What the prosecution has clearly established beyond reasonable doubt is the actual loss to CBMF Mumbai of 10000 shares of Hindalco which were purchased @ Rs.330 per share by A1 on behalf of CBMF, Mumbai. A1 having admittedly signed documents **Exhibits 9 to 13** except **Exhibit 12** is shown to be fully accountable for the loss caused to CBMF Mumbai to the extent of Rs.33 lakhs. The misappropriation of these shares is shown by 9100 shares out of 10000 shares bearing the same distinctive and registration numbers being again sold by A3 to A1 on behalf of CBMF,

Mumbai.

87. The prosecution has hence established the case of A1 committing criminal breach of trust as the General Manager of CBMF, Mumbai by siphoning off 10000 shares out of 2.1 lakh shares purchased by CBMF Mumbai and left unaccounted by deceiving CBMF Mumbai to the extent of the value of those 10000 shares being Rs.33 lakhs @ Rs.330 per share purchased by CBMF Mumbai by not accounting for the same in the books of CBMF Mumbai which caused damage and harm to CBMF Mumbai to the extent of value of the shares and by fraudulently and dishonestly entering into a transaction for purchase and sale of 9100 of the same 10000 shares out of 2.1 lakh shares and thus committing the offence defined under Section 405 of the Indian Penal Code (IPC) and punishable under Section 409 thereof.

88. The prosecution has also made out a clear case of A1 having committed the offence of dishonestly and fraudulently misappropriating the property of CBMF, Mumbai by him as a public servant, being the General Manager of CBMF, Mumbai and of obtaining for himself the valuable thing contained in 10000 shares of CBMF, Mumbai and the consequent pecuniary advantage to the extent of the value of those 10000 shares which aggregates to Rs.33 lakhs @ Rs.330 per share. Following as a corollary therefrom, the prosecution has made out a clear case of the criminal misconduct of A1 as a public servant, for the aforesaid offences of which are punishable under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, (PCA).

89. The prosecution has not made out a specific case of A1 having committed other offences including entering into a criminal conspiracy with the other accused with which also A1 is charged.
90. The prosecution has also not made out any case of A2 having committed the offence of aiding and abetting A1 in preparing false documents and thus committing breach of trust since A2 worked under the instructions of A1.
91. The prosecution has made out a clear case beyond reasonable doubt of A3 aiding and abetting A1 to commit criminal breach of trust by showing the sale of 9100 shares of Hindalco out of the 10000 shares already purchased by A1 on behalf of CBMF, Mumbai from CMac @ Rs.320 per share which were shown to be sold from amongst 19000 shares of Hindalco under his contract note, **Exhibit-60** for Rs.60.80 lakhs and thus causing pecuniary loss to the extent of the sale prices / purchase price of these 9100 shares already purchased @ Rs.330 per share and later purchased @ Rs.320 per share and thus having committed the offence of receiving stolen property being the payment @ Rs.320 per share for 9100 shares of Hindalco which were already sold by CMac to CBMF, Mumbai for consideration under his contract note **Exhibit-60** punishable under Section 411 of the IPC.
92. The prosecution has not made out a specific case of A3 having committed other offences including entering into criminal conspiracy with

the other accused beyond reasonable doubt.

93. The prosecution has not made out any case of A4 having entered into any criminal conspiracy with accused No.1 in respect of the sale of 800 out of 19000 shares sold by A3 to CBMF Mumbai or of receiving stolen property punishable under Sections 120B or 411 of IPC.
94. The prosecution has not clearly made out the case beyond reasonable doubt against accused Nos. 5, 6 and 7 of having entered into any criminal conspiracy with A1 in respect of the purchase of 2.1 lakh shares of Hindalco or having forged documents or having misappropriated those shares or having obtained any pecuniary advantage therefrom as public servants by corrupt means and thereby having committed the offence of criminal misconduct.
95. Consequently the prosecution has failed to establish the charges made out against A2, A4, A5, A6 and A7. The prosecution has made out the charges to the above extent only against A1 and A3.
96. Since the prosecution has not clearly made out the case of conspiracy between accused No.1 and A5, A6 and A7 of misappropriating the funds of CBMF, Mumbai and showing that those funds went into Canfina, Bangalore camouflaged and shown as purchase of 14% NCD bonds and the consequent sale of 9% SCICI bonds to Rahul and company, the sister concern of CMac despite the words “M fund” and “Shares” in the documents executed by them, A5, A6 and A7 would require to be given

benefit of doubt in respect of the various charges shown by the prosecution against them.

97. This case is an economic offence. It involves pecuniary loss. Upon seeing the clear case against A1 under Section 409 IPC and against A3 under Section 411 IPC, the loss would be required to be made good by A 1 and A3 to the public institution which bore it by the act of its officer, A1 and to the public exchequer by the acts of its citizen who was a stock broker, A3.

98. Hence A1 is convicted of dishonestly and fraudulently receiving 10000 shares of Hindalco from out of 2.1 lakhs shares for which consideration of Rs.6.93 crores was paid by CBMF, Mumbai and consequently became the property of CBMF, Mumbai and which was dishonestly and fraudulently misappropriated and converted to his own use by him being entrusted with the property of CBMF, Mumbai and having dominion over it in violation of the RBI directions in such investment for which he had no authority to transact and by which CBMF suffered loss to the extent of the purchase value/sale value of 10000 shares @ of Rs.330 per share and thus committing offence of criminal breach of trust by public servant punishable under Section 409 of the IPC.

99. A1 is also convicted of abusing his position as a public servant as General Manager/Dealer of CBMF, Mumbai to obtain undue pecuniary advantage for the price of 10000 shares of Hindalco fraudulently misappropriated by him thus constituting criminal misconduct punishable

under Sections 13(1)(c), 13(1)(d) and 13(2) of the PCA.

100. A1 is given benefit of doubt and acquitted of the other charges.
101. A2 is acquitted of the charge of entering into any conspiracy with A1 or aiding and abetting accused No.1 in the commission of offence of preparation of false documents and entering into transaction which he was not authorized to transact and committing any breach of trust by misappropriation of 10000 shares of Hindalco received from CMac, Calcutta or of forgery or fabrication of documents, or of obtaining any pecuniary advantage or of criminal misconduct as he had acted under the directions of A1 being subordinate to A1 as Fund Manager of CBMF, Mumbai.
102. A3 is convicted of the offence of aiding and abetting A1 to commit criminal breach of trust by showing the sale of 9100 shares @ Rs.320 per share out of 10000 shares already sold by CMac to CBMF, Mumbai and produced by CBMF, Mumbai for consideration @ Rs.330 per share and bearing the same distinctive and certificate numbers in respect of which criminal breach of trust was committed by A1 and thus causing pecuniary loss to the extent of the sale price / purchase price of those 9100 shares knowing and having reason to believe that it was stolen property and thus committing the offence of receiving stolen property punishable under Section 411 of the IPC.
103. A3 is given benefit of doubt and acquitted of other charges.

104. A4 is acquitted of the charge of receiving stolen property as none of the shares purchased by CBMF, Mumbai from CMac, stated to be sold by A4 to CBMF, Mumbai are shown to be sold by him.
105. A5, A6 and A7 are given benefit of doubt and thereby acquitted of the charge of entering into criminal conspiracy with A1 by completing the transaction of purchase of shares as call-money transaction and of falsifying accounts and documents and committing forgery and using forged documents as genuine in their capacity as public servants.
106. Upon the conviction of A1 the question of compensation under Section 357 of the Cr.P.C is mandatorily required to be considered as per the judgment in the case of **Ankush Shivaji Gaikwad Vs. State of Maharashtra (2013)6 SCC 770**. A1 caused loss to CBMF, Mumbai and to the public treasury by issuing cheque for purchase of 2.1L shares of Hindalco, but accounted for only 2L shares by way of receiving, registering and / or the consequent sale. He misappropriated to his own use the remaining 10000 shares which were found missing. He must make good the loss to CBMF, Mumbai with the usual commercial rate of interest to CBMF, Mumbai under Section 357(3) of the Cr.P.C with all accrued interest thereon until payment / realisation. This shall be entitled to be recovered by the CBI on behalf of CBMF, Mumbai as arrears of land revenue to effectuate the purport and intent of the judgment.
107. A3 was given and took those very shares and purported to sell (re-

sell) them to CBMF, Mumbai though they were not his shares and accordingly received stolen property and made a profit / undue gain therefrom knowing it to be the same shares purchased by CBMF, Mumbai earlier and received by A1 on its behalf but a day before. He must also make good the sale price of 9100 shares received by him to the public Treasury under Section 357(3) of the Cr.P.C. with the usual commercial rate of interest. The sale price of the shares with interest until payment / realisation shall be forfeited to the State and shall be entitled to be recovered by the CBI as arrears of land revenue to effectuate the purport and intent of the judgment.

108. A1 to A3 are asked on the point of sentence.

109. Accused No.1 stated that he is the only earning member of his family, his son is visually impaired, he has high BP, sugar problem as also heart ailment. He, therefore, stated that the sentence may not be harsh.

110. Accused No.3 stated that he has already been sentenced to suffer imprisonment of 5 years, which he is undergoing. He, therefore, stated that the sentence be not harsh.

111. Advocate on behalf of accused No.3 requested to address the Court. He was allowed to do so. He stated that accused No.3 had already surrendered bail and was undergoing imprisonment. He also stated that the order of compensation must not be harsh as it would be un-executable because accused No.3 has been a notified person since 8th June, 1992. The

custodian has taken charge of his properties, both movable and immovable. Some of the properties have been sold and some are going to be sold. Hence he contended that the compensation under Section 357 of the Cr.P.C may be reasonable.

112. The learned Special PP stated that accused No.3 had surrendered bail to undergo imprisonment in another case. He has not undergone imprisonment in this case. The imprisonment in another case is of no consequence. He exhorted the Court to consider the impact of the crime of accused No.3 on the society. He reminded the Court of the fact that such crimes affected the economy of the entire country driving the legislature to enact the Special Courts Act. He, therefore, urged that the sentence as also the compensation should be commensurate with the gravity of the offence.

113. It is trite that the sentencing policy of the Court must reflect the conscience of the society. It must signal the deprecation of the wrong done to the society as also the public institutions. However, crimes of the economic nature lend themselves to punishment by compensation more arithmetically accurately than crimes against human body, public health, safety, convenience, decency, morals, religion or public justice. However upon the mathematical calculation of the loss caused by both the accused to the public exchequer, the sentence of imprisonment would certainly required to be tempered.

114. Hence the following order:

1. A1 is found guilty and convicted of committing the offence of criminal breach of trust by public servant punishable under Section 409 of the IPC and sentenced to suffer Rigorous Imprisonment for a term of 1 (one) year and to fine in a sum of Rs. 1 lakh and i/d to suffer further R.I for a period of 3 months.
2. A1 is also found guilty and convicted of committing the offence of abusing his position as public servant being General manager/Dealer of CBMF, Mumbai by obtaining undue pecuniary advantage for the purchase of 10000 shares of Hindalco dishonestly and fraudulently misappropriated by him from CBMF Calcutta punishable under Sections 13(1)(C), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer Rigorous Imprisonment for a term of 1 (one) year.
3. The aforesaid sentences shall run concurrently.
4. A1 shall pay compensation of Rs.33,00,000/- (Rupees Thirty-three Lakhs) being the purchase value / sale value of 10000 shares misappropriated by A1 for which consideration was paid by CBMF, Mumbai @ Rs.330 per share aggregating to Rs.33 lakhs with interest thereon @ 18% p.a from the date of the transaction of the purchase of those shares when the cheque of Rs.6.3 Crores was issued by A1

on behalf of CBMF, Mumbai being 12th September 1991 till the date of this judgment. A1 shall pay further interest @ 18% pa from the date of this judgment till payment/reasalisation. The presecution shall be entitled to recover receive the compensation as arrears of land revenue.

5. A1 is found not guilty and given benefit of doubt and acquitted of all other charges.
6. A2 is found not guilty and acquitted of the charge of entering into any conspiracy with A1 or aiding and abetting accused No.1 in the commission of offence of preparation of false documents and entering into transaction which he was not authorized to transact and committing any breach of trust by misappropriation of 10000 shares of Hindalco received from CMac as he had acted under the directions of A1 being subordinate to A1 as Fund Manager of CBMF, Mumbai.
7. A3 is found guilty and convicted of committing an offence of receiving stolen property being 9100 shares of Hindalco knowing and having reason to believe that in respect of those shares A1 has committed criminal breach of trust and thus it was stolen property punishable under Section 411 of the IPC and sentenced to suffer RI for a term of 1 (one) year and to pay fine of Rs.1 lakh and i/d to suffer further RI for a period of 3 months.

8. A3 shall pay compensation of Rs.32,00,000/- (Rupees thirty-two lakhs only) being the sale value of 9100 shares received as stolen property by A3 for which consideration was paid by CBMF, Mumbai @ Rs.320 per share aggregating to Rs.29.12 lakhs with interest thereon @ 18% pa from the date of the transaction of the purchase of those shares being 12th March, 1992 till the date of this judgment. A3 shall pay further interest @ 18% p.a from the date of this judgment till payment / realisation. The prosecution shall recover the compensation as arrears of land revenue.
9. A3 is found not guilty and given benefit of doubt and acquitted of all other charges.
10. Accused No.4 is found not guilty and acquitted of the offence of receiving 800 shares of Hindalco from out of the 10000 shares of Hindalco being the property of CBMF, Mumbai knowing and having reason to believe that in respect of those shares A1 has committed criminal breach of trust and is thus stolen property.
11. A5, A6 and A7 are given benefit of doubt and acquitted of the charge of entering into criminal conspiracy with A1 or of falsifying accounts or documents or committing forgery or issuing forged documents as genuine in their capacity as public servants as also of offences under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

12. The bail bonds of A1 to A3 are cancelled. A1 is taken in custody. A3 is already in custody. The Superintendent of the relevant prison shall be given a copy of this judgment by the prosecution for computing his term of imprisonment in this case.
13. The bail bonds of A2, A4, A5, A6 and A7 are discharged.
14. A1 and A3 shall be entitled to set off the period of imprisonment, if any, already undergone by them in this case.
15. It is recorded that the Advocate appointed by the Maharashtra Legal Services Authority as Legal Aid Advocate for A6 has NOT appeared and argued for A6 who represented his case personally by way of cross examination as also arguments before the Court. A6 shall pay the fees of the Advocate appointed on his behalf at his instance on all the dates that he himself appeared before the Court and cross examined the witnesses as also argued before the Court at the time of the framing of the charge and after the trial. The Maharashtra Legal Services Authority shall deduct such extent of fees payable to the Advocate of A6 from the final payment to be made to him. This direction is specifically passed to prevent abuse and misuse of the legal aid facility provided to the accused who insist upon obtaining the services not needed or required by them as in the case of A6 who was fully abreast of his case and very efficiently represented it himself despite the appointment of his Advocate.

16. The Court records its satisfaction and appreciation of the diligence, sincerity and commitment of the young, learned Special Public Prosecutor Mr. Limosin in conducting the trial.

(ROSHAN DALVI, J.)