REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7445 OF 2004

BHAGWATI DEVELOPERS PVT. LTD. **APPELLANT**

VERSUS

PEERLESS GENERAL FINANCE
& INVESTMENT COMPANY LTD AND ANR. **RESPONDENTS**

JUDGMENT

CHANDRAMAULI KR. PRASAD,J.

Appellant aggrieved by the judgment and order dated 30th July, 2003 passed in ACO No.76 of 1999 by the Company Judge, High Court of Judicature at Calcutta affirming the judgment and order dated 25th November, 1998 passed by the Company Law Board, Eastern Region Bench at Calcutta in Original

Petition No.15(111)/ERB/1995 is before us with the leave of the Court.

The appellant, Bhagwati Developers Private Limited, hereinafter referred to as 'Bhagwati' was earlier known as Lodha Services Private Limited. Tuhin Kanti Ghose, hereinafter referred to as 'Tuhin', Respondent No.2 herein, approached Bhagwati for a loan of Rs.38,83,000/- for purchasing 3530 equity shares of Respondent No.1, Peerless General Finance & Investment Company Limited, hereinafter referred to as 'Peerless'. As requested, Bhagwati on 25th of July, 1986 advanced a sum of Rs.38,83,000/- as loan to Tuhin. Bhagwati and Tuhin later, on 19th November, 1986 entered into a formal agreement in respect of the aforesaid loan and Tuhin assured to repay the loan on or before 31st December, 1991. On 30th of October, 1987, Tuhin agreed to transfer 3530 shares of Peerless to Bhagwati by way of repayment of the aforesaid loan. In the light thereof, Tuhin handed over the original share scrips as also the transfer deeds for doing the needful by

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Bhagwati. Tuhin on 30th October, 1987, wrote that Bhagwati would be entitled to all the benefits i.e. dividend, bonus shares etc. in respect of all these shares. It seems that the transfer deeds were not properly filled in and executed and accordingly, Bhagwati on 28th December, 1987 wrote to Tuhin to put his signature in the fresh transfer deeds and return them to it. Bhagwati further requested Tuhin to send it shares and dividends received by him from Peerless. During these developments, Peerless declared bonus shares in the ratio of 1:1 and Tuhin being the registered shareholder, received further 3530 bonus shares. Tuhin, it appears, did not sign the fresh transfer deeds and retained the bonus shares. Bhagwati by its letter dated 6th of July, 1988 asked Tuhin to furnish fresh transfer deeds in respect of the total shares i.e.7060 shares. Peerless declared further bonus shares in the year 1991 in the ratio of 1:1 and Tuhin being the registered shareholder of 7060 shares was further allotted 7060 bonus shares. In this way Tuhin altogether got 14120 shares.

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When Tuhin did not accede to the request of Bhagwati for transferring the entire shares, Bhagwati on 29th May, 1991 filed a suit in the Court of Civil Judge at Allahabad and obtained an ad interim order of injunction restraining Tuhin from claiming any right, title or interest in respect of the aforesaid 14120 shares of Peerless. During the pendency of the suit, Tuhin and Bhagwati settled their dispute out of Court and executed an agreement dated 21st November, 1994, according to which Tuhin acknowledged to have sold 3530 equity shares to Bhagwati on 30th October, 1987 which entitled it to the bonus shares declared in the years 1987 and 1991 totaling 14120 equity shares. In terms of the agreement, an application for recording the compromise was filed in the civil suit and for passing a decree in terms of the compromise. The trial court acceded to the prayer of Bhagwati and Tuhin and decreed the suit in terms of the compromise by judgment and decree dated 28th November, 1994. The trial court further directed

that the compromise petition and the agreement between the parties shall also form part of the decree. According to the compromise decree, it was agreed that Tuhin shall retain as absolute owner the dividend on the entire shares up to the accounting year 1989-90 amounting to Rs.8,64,850/- as part of consideration for the settlement. In terms of the compromise decree, Bhagwati has also paid a further sum of Rs.10 lakh by way of pay order dated 21st November, 1994.

Armed with the decree, Bhagwati on 12th December, 1994 lodged the transfer deeds in respect of 14120 shares with Peerless for their transfer. Peerless, however, did not accede to the prayer of Bhagwati and by its letter dated 8th February, 1995 refused to register the said shares, inter alia, on the ground that the said transfer of shares by Tuhin in favour of Bhagwati was in violation of the provisions of Securities Contracts (Regulation) Act, 1956; hereinafter to be referred to as 'the Regulation Act'. According to Peerless, the contract

for sale of shares was not a spot delivery contract, signatures of Tuhin differed from the signatures on the record of Peerless and further the stamps affixed on the instruments of transfer had not been cancelled. Bhagwati re-lodged the shares for transfer on 14th February, 1995 with Peerless but again Peerless did not register those shares in the name of Bhagwati.

Bhagwati, aggrieved by that, approached the Company Law Board, Eastern Region by filing an application under Section 111 of the Companies Act, 1956 hereinafter to be referred to as 'the Act' and the Company Law Board by its judgment and order dated 25th November, 1998 dismissed the said application inter alia holding that transfer of shares in favour of Bhagwati was against the provisions of Sections 13 and 16 of the Regulation Act and as such, illegal. In the opinion of the Company Law Board Peerless rightly refused registration of transfer. While doing so, the Company Law Board further observed that the shares

of a public limited company which are not registered in the Stock Exchange also come under the purview of Regulation Act. In this connection, the Company Law Board observed as follows:

> "We, therefore, hold that the provisions of the SCR Act, 1956, including the provisions of Sections 13,16 and 17 of the Act would be applicable to a public limited company even though its shares may not be listed on any recognized stock exchange."

As regards the plea of the appellant that the sales of shares in question is a spot delivery contract, the Company Law Board taking into account that consideration for sales of shares having been paid much after the date on which the sales of shares have taken place, observed that the transaction does not come within the expression, "spot delivery contract" as defined under Section 2(i) of the Regulation Act. While doing so, the Company Law Board observed as follows:

> "It is, therefore, obvious that a part of the consideration for the sale of shares passed on much after the date

on which the sale of shares is alleged to have taken place on 30.10.87. We are unable to accept the argument of Mr. Bose that the payment of Rs.10.00 lacs was made only to buy peace. We find that the agreement dated 21.11.94 clearly states that the payment of Rs.10.00 lacs was made as a part of consideration for the sale of shares and we fail to see how it can be contended to be otherwise. There is other intrinsic evidence in the agreement dated 21.11.94 which indicate against the contention of Mr. Bose, Learned Advocate for the petitioner that the entire transaction of sale of shares was completed on 30.10.87. Clause 2.1 of the said agreement provides that notwithstanding anything contained anywhere in the agreement dated 21.11.94 which indicate against the contention of Mr. Bose Learned Advocate for the petitioner that the entire transaction of sale of shares was completed on 30.10.87. Clause 2.1 of the said agreement provides that notwithstanding anything contained anywhere in the agreement dated 21.11.94. It was agreed that the respondent no.2 would be entitled to retain as absolute owner of the dividend on the entire shares up to the accounting year 1989-90 amounting to Rs.8,64,850/- as part of consideration for the settlement. It is difficult to envisage as to how the respondent no.2 could continue to be absolute owner of the shares up to 1989-90 if the sale was completed on 30.10.87."

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Accordingly, the Company Law Board reached the following conclusion:

> "We, therefore, hold that the contract of sale of shares in question does not satisfy the definition of a spot delivery contract since part of the consideration passed on much after the alleged sale of shares on 30.10.87."

Assailing the aforesaid judgment and order of the Company Law Board, passed in Original Petition No.15(111)/ERB/1995, Bhagwati preferred an appeal before the High Court, inter alia, contending that the shares of Peerless, a public limited Company having not been listed on any recognized stock exchange, it will not come within the definition of 'securities' under Section 2(h)(i) of the Regulation Act. Further the transaction between it and Tuhin was a case of spot delivery contract and therefore, the view taken by the Company Law Board on both the counts are erroneous. The Company Judge, negated both the contentions and observed that the

provisions of the Regulation Act would be applicable to a public limited Company even though its share is not listed on any recognized stock exchange. Further, the transaction did not satisfy the definition of a spot delivery contract since part of consideration passed on 21st November, 1994, when Bhagwati made payment of Rs.10 lakh to Tuhin much after the transfer of shares on 30th October, 1987. To come to the aforesaid conclusion, the High Court also took into account the fact that in terms of the compromise decree as part of consideration Tuhin retained as absolute owner all the dividends on the entire shares including the bonus shares up to the accounting year 1989-90. The observation of the High Court in this connection reads as follows:

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> "In the abovementioned background it is necessary, in my view, to note the findings of fact arrived at by the Company Law Board. The Company Law Board found, as findings of fact, that the provisions of the Securities Contract (Regulation) Act, 1956 would be applicable to a public limited company even though it's shares might not be listed on any recognized stock exchange. It was,

further, held that it was obvious that the part of consideration for the sale of shares passed on much after the date on which the sale of shares took place on October 30,1987. The payment of Rs.10,00,000/-(Rupees ten lakh) only by Bhagwati to Tuhin on November 21, 1994 was a part of consideration for the sale of the said shares and, further it was agreed between the Bhagwati and Tuhin that Tuhin would be entitled to retain as absolute owner of the dividends on the entire shares including the bonus shares up to the accounting year 1989-1990 as part of consideration. The transaction did not satisfy the definition of a spot delivery contract since part of the consideration passed on much after the transfer of shares on October 30,1987. Moreover, the shares transfer forms were all dated November 21, 1994, that is, on the date on which the consideration of Rs.10,00,000/- (Rupees ten lakh) only passed from the Bhagwati to Tuhin. Therefore, the transfer of shares in question was hit by the provisions of the sections 13 and 16 of the Securities Contract (Regulation) Act, 1956 and, therefore, was illegal, void and a nullity".

Ultimately, the High Court held as follows:

"The Company Law Board has considered all the materials placed before it and, thereafter, arrived

> at the findings of fact that the impugned transactions is hit by the provisions of the Securities Contracts (Regulation) Act, 1956 and the guidelines issued by the Government of India. The Company Law Board cannot be termed as perverse in the sense that no normal person would have arrived at. The Company Law Board found, as findings of fact, that the consideration for transfer of shares included Rs.10,00,000/- (Rupees ten lakh) only paid by Bhagwati to Tuhin on November 21, 1994. The said findings is sustainable from the reasoning given by the Company Law Board and, therefore, cannot be interfered with in this appeal."

That is how, the appellant is before us with the leave of the Court.

It is relevant here to state that the Company Law Board has held that transfer of shares in favour of Bhagwati is in the teeth of Sections 13 and 16 of the Regulation Act and hence, we deem it expedient to refer to the aforesaid provisions one after another. Section 13 of the Regulation Act makes contract in notified areas illegal in certain circumstances, same reads as follows:

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

Provided that any contract entered into between members of two or more recognized stock exchanges in such State or States or area, shall-

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India."

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From a plain reading of the aforesaid provision, it is evident that contract in relation to securities in notified areas is illegal if made otherwise than between the members of recognized stock exchange. It is not in dispute that the place where the contract for sale of shares in question has been entered is a notified area for the purpose of Section 13 of the Regulation Act. Further, the contract is not between the members of a recognized stock exchange.

In order to overcome this difficulty, Mr. Sunil Gupta, learned Senior Counsel appearing on behalf of the appellant submits that the security in question is not marketable and therefore, does not come within the definition of "securities" as defined under Section 2(h)(i) of the Regulation Act. According to him, shares of a public limited company to come within the definition of securities under the Regulation Act has to be marketable and for that purpose has necessarily to

be listed in the Stock Exchange. Mr. Gupta further points out that the aforesaid submission finds support from the judgment of the Bombay High Court in the case of **Dahiben Umedbhai Patel and others v. Norman James Hamilton and Ors. (1985) 57 Com. Cases 700(BHC)** and in the case of **Brooke Bond India Ltd. v. U.B.Ltd and Ors. (1994) 79 Com.Cases 346 (BHC).** In fairness to him, he has drawn our attention to the decision of Calcutta High Court in the case of **B.K.Holdings (P) Ltd. v. Prem Chand Jute Mills & Ors. (1983) 53 Com.Cases 367 (Cal.)** and in the case of **East Indian Produce Ltd. v. Naresh Acharya Bhaduri & Ors. (1988) 64 Com. Cases 259 (Cal.)** which have taken an altogether contrary view. He contends that the Bombay decisions are based on sound reasoning and therefore, commend our acceptance.

Mr.Bhaskar P.Gupta, learned Senior Counsel representing respondent No.1 submits that the provisions of Regulation Act apply to the shares of a public limited company which are not listed

on any stock exchange. According to him, for securities of a public limited company to be marketable, it does not necessarily require to be sold in any market of a specified nature i.e. stock exchange. He submits that it may be any area where buyers and sellers are in contact with one another and there securities can be sold.

In view of the rival submissions, the first question which falls for our determination is as to whether the provisions of Regulation Act will apply to the shares of a public limited company which are admittedly not listed on any stock exchange?

Admittedly, the shares of Peerless, a public limited company in respect of which the appellant had sought rectification are not listed in the stock exchange. In our opinion, notwithstanding that if shares come within the definition of "securities" as defined under Section 2(h)(i) of the Regulation Act, the indictments contained in

Section 13 would apply. The word, 'securities' has been defined under Section 2(h)(i) of the Regulation Act which reads as follows:

> "**2. Definitions** – In this Act, unless the context otherwise requires, -
>
> x x x
>
> "(h) "securities" include-
>
> (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;"
>
> x x x"

From a plain reading of the aforesaid provision, it is evident that for shares of a public limited company to come within the definition of securities they have to satisfy that they are marketable. The word, 'marketable' has not been defined in the Regulation Act and hence to understand it, we have to revert to its dictionary meaning. Black's Law Dictionary (Sixth

Edition) explains the word, 'marketable' as follows:

> "Marketable. Saleable. Such things as may be sold in the market; those for which a buyer may be found; merchantable."

The compact edition of the Oxford English Dictionary, Vol.I p.1728 gives the meaning of the expression "marketable" as follows:

> "1. Capable of being marketed that may or can be bought or sold; suitable for the market; that finds a ready market; that is in demand, saleable.
>
> 2. Of or pertaining to buying or selling; concerned with trade; of price, value, that may be obtained in buying or selling."

As is evident from the dictionary meaning set out above, the expression "marketable" has been equated with the word saleable. In other words, whatever is capable of being bought and

sold in a market is marketable. The size of the market is of no consequence. In other words, the number of persons willing to purchase such shares would not be decisive. One cannot lose sight of the fact that there may not be any purchaser even for the listed shares. In such a case can it be said that even listed shares are not marketable? In our opinion what is required is free transferability. Subject to certain limited statutory restrictions, the shareholders possess the right to transfer their shares, when and to whom they desire. It is this right which satisfies the requirement of free transferability. However, when the statute prohibits or limits transfer of shares to a specified category of people with onerous conditions or restrictions, right of shareholders to transfer or the free transferability is jeopardized and in that case those shares with these limitations cannot be said to be marketable. In our opinion, therefore, shares of public limited company though not listed in the stock exchange come within the definition

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of securities and hence, the provisions of Regulation Act apply. A Division Bench of the Calcutta High Court in the case of **East Indian Produce Ltd. (supra)** relying on its earlier decision in the case of **B.K.Holdings (P) Ltd. (supra)** came to the same conclusion and held as follows:

> "In my view to accept the contention of Mr. Dipankar Gupta on this aspect of the case would be to ascribe too narrow a meaning to the expression "marketable securities". As will be evident from the dictionary meaning set out above the expression "marketable" has been equated with "saleable". In other words, whatever is capable of being bought and sold in a market is marketable. I see no warrant whatsoever for limiting the expression "marketable securities" only to those securities which are quoted in the stock exchange. This argument of Mr. Gupta, therefore, fails."

True it is that the Bombay High Court in the case of **Dahiben Umedbhai Patel (supra)** has taken a view that the shares of a private company does not

possess the character of liquidity and, therefore, cannot be said to be marketable. Relevant portion of the judgment reads as follows:

> "It is thus clear that the shares of a private company do not possess the character of liquidity, which means that the purchaser of shares cannot be guaranteed that he will be registered as a member of the company. Such shares cannot be sold in the market or, in other words, they cannot be said to be marketable and cannot, therefore, be said to fall within the definition of "securities" as a "marketable security…."

We must at the outset state that this case relates to a private company and having regard to the absence of free transferability, shares were held not to be marketable securities as defined under Section 2(h)(i) of the Regulation Act. This would be evident from the following passage of the said judgment:

> "…A market, therefore, contemplates a free transaction

> where shares can be sold and purchased without any restriction as to title. The shares which are sold in a market must, therefore, have a high degree of liquidity by virtue of their character of free transferability. Such character of free transferability is to be found only in the shares of a public company. The definition of a "private company" in S. 3 of the Companies Act, 1956, speaks of the restrictions for which the articles of the private company must provide.
>
> x x x
>
> The restriction with regard to the transfer of the shares is a characteristic of a private company…."

In the present case, we are concerned with a public limited company and the aforesaid judgment clearly indicates that shares of a public limited company will come within the definition of securities. This would be evident from the following passage from the said judgment:

> "It is thus clear to us that the definition of "securities" will only take in shares of a public limited company notwithstanding the use of the words "any

> incorporated company or other body corporate" in the definition."

For all these reasons, we are of the opinion that the aforesaid decision of the Bombay High Court is clearly distinguishable.

As stated earlier, a learned Single Judge of the Bombay High Court in the case of **Brooke Bond India Ltd. (supra)** had followed its earlier Division Bench judgment in **Dahiben Umedbhai Patel (supra)** and expressed a prima facie view that transaction of shares of a public limited company unlisted on the stock exchange is not intended to be covered under the Regulation Act. While doing so, the learned Single Judge had referred to the decisions of the Calcutta High Court in the case of **B.K. Holdings (supra)** and **East Indian Produce Ltd.(supra)** but disagreed with the ratio of those judgments without assigning any reason. The learned Single Judge found himself bound to follow the earlier Division Bench judgment in the case of **Dahiben Umedbhai Patel (supra).** The observation

of the learned Single Judge in this connection reads as follows:

> "On the contrary, my prima facie view of these two judgments accords with the submission of Mr. Mehta. I am of the prima facie view that a transaction of shares of a public limited company, unlisted on the stock exchange, is not intended to be governed by this Act.
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> Mr. Cooper strongly relied on the judgment of the Division Bench of the Calcutta High Court in East Indian Produce Ltd. (1988) 64 Comp. Cas 259 on this issue also. The Calcutta High Court relied on an earlier judgment of the same High Court in B.K. Holdings (P) Ltd. v. Prem Chand Jute Mills (1983) 53 Comp Cas 367. At that stage, the judgment of Mrs. Manohar J. was cited before the learned single judge of the Calcutta High Court. He seemed to take the view that the decision of Mrs. Manohar J. in Norman J. Hamilton v. Umedbhai S. Patel (1979) 49 Comp Cas 1, must be confined to a situation of transfer of shares of a private limited company. So far as the decision of the Division Bench of the Calcutta High Court in East Indian Produce Ltd. (1988) 64 Comp Cas 259 is concerned, it seems to follow the earlier judgment in B.K. Holdings. With great respect to the learned Judges of the

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> Calcutta High Court, who decided the aforesaid two cases, even if the matter were not res integra, I would be inclined to disagree with their observations made therein. However, in the view I have taken of the judgments of the learned single judge and the appeal judgment of our court, I consider myself bound to take the view that the Securities Contracts (Regulation) Act, 1956, is not intended to regulate private transactions in shares of public limited companies, not listed on the stock exchange. This contention also, therefore, fails."

The Regulation Act was enacted to prevent "undesirable transaction in securities by regulating business of dealing therein" and from that one cannot infer that it was to apply only to the transfer of shares on the stock exchange. The Bombay High Court in this case was greatly influenced by the fact that the Act was intended to govern transactions in the stock exchange. As stated earlier, we do not find anything in the object of the Act to warrant that conclusion. We, for the reasons stated above, are not inclined to

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endorse the view of the Bombay High Court in **Brooke Bond India Ltd.(supra).**

We are fortified in our view from a judgment of this Court in the case of **Naresh K. Aggarwala & Co. vs. Canbank Financial Services Ltd. and Another (2010) 6 SCC 178,** wherein this Court considered the term "securities" as defined under Section 2(h)(i) of the Regulation Act, with reference to the notification issued under Section 16(2) and held that the definition does not make any distinction between listed securities and unlisted securities. Relevant portion of the judgment reads as follows:

> "**41**……..A perusal of the abovequoted definition shows that it does not make any distinction between listed securities and unlisted securities and therefore it is clear that the circular will apply to the securities which are not listed on the stock exchange……."

When the word 'Securities' has been defined under the Regulation Act, its meaning would not vary when the same word is used at more than one place in the same Statute, otherwise it will defeat the very object of the definition Section. Accordingly, our answer to the first question set out earlier is that the provisions of the Regulation Act would cover unlisted Securities of Public Limited Company. In other words, shares of Public Limited Company not listed in the stock-exchange is covered within the ambit of Regulation Act.

As stated in the preceding paragraph of the judgment, the Company Law Board has held that transfer of shares in favour of Bhagwati was also against the provisions of Section 16 of the Regulation Act. Section 16(1) of the Act confers power on the Central government to prohibit contracts in certain cases. Section 16 reads as follows:

> "**16. Power to prohibit contracts in certain cases.-** (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.
>
> (2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal."

From a plain reading of the aforesaid provision it is evident that in order to prevent undesirable stipulation in specified securities in any State or area the Central Government by notification is competent to declare that no person in any State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification. The Central Government in

exercise of the aforesaid power issued notification dated 27th of June, 1969 and declared that in the whole of India "no person" shall "save with the permission of the Central Government enter into any contract for the sale or purchase of securities other than such spot delivery contract" as is permissible under the Act, the Rules, bye-laws and the Regulations of a recognized stock exchange. The appellant, therefore, can come out of the rigors of Section 16 of the Act only when it satisfies that the transaction comes within the definition of "spot delivery contract".

Mr. Sunil Gupta, further submits that the contract in question is a spot delivery contract and, therefore, does not come within the mischief of Section 16 of the Regulation Act. Mr. Bhaskar P. Gupta, joins issue and submits that in view of the limited rule the appellant cannot be allowed to raise the point of spot delivery contract. In this connection, he has drawn our attention to the

order dated 19th of December, 2003. We are not inclined to sustain this objection of Counsel for the respondent.

By the aforesaid order while issuing rule this Court noted the submission advanced on behalf of the appellant in regard to the conflicting decisions of the Bombay and Calcutta High Courts in regard to the question of applicability of Regulation Act. From the aforesaid it cannot be said that the limited rule was issued. Further, by order dated 5.11.2004 leave has been granted by this Court and it has not been confined to any specific question. From the aforesaid it cannot be said that the appellant has got a limited rule.

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On merit, the respondents submit that the contract in question cannot be said to be a spot delivery contract and, in this connection, the learned Senior Counsel draws our attention to the terms of agreement which formed part of the decree.

The second question, therefore, which falls for our determination is as to whether the contract in question is a spot delivery contract. This expression is defined under Section 2(i) of the Regulation Act. It reads as follows:

> "**2. Definitions** – In this Act, unless the context otherwise requires, –
>
> x x x
>
> (i) "spot delivery contract" means a contract which provides for –
>
> (a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual periods taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
>
> (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such

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> securities are dealt with by a depository;
>
> x x x"

According to the definition, a contract providing for actual delivery of securities and the payment of price thereof either on the same day as the date of contract or on the next day means a spot delivery contract. When we consider the facts of the present case bearing in mind the definition aforesaid, we find that the contract in question is not a spot delivery contract. True it is that by letter dated 30th of October, 1987 written by Tuhin to Bhagwati, he had stated that the formal agreement had been executed between them on 10th November, 1986 and as per the agreement he is transferring the entire 3530 shares of Peerless purchased from the loan amount and the transfer is in its repayment. However, the agreement dated 21st November, 1994 between Bhagwati and Tuhin which formed part of the compromise decree provides that the sale of shares took place on 30th October, 1987 and in

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consideration thereof Bhagwati paid a sum of Rs. 10 lakhs on 21st November, 1994 and further the dividend on the entire shares up to the accounting year 1989-90 amounting to Rs.8,64,850 to be retained by Tuhin. In the face of it, the plea of Bhagwati that the payment of Rs. 10 lakh was made to buy peace, is not fit to be accepted and, in fact, that forms part of the consideration for the sale of shares. Once we take this view, the plea of the appellant that it is a spot delivery contract is fit to be rejected. We agree with the reasoning and conclusion of the Company Law Board and the High Court on this issue.

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Both the contentions of the appellant having no substance, we do not find any merit in this appeal and it is dismissed accordingly but without any order as to costs.

……J.
(CHANDRAMAULI KR. PRASAD)

……..…….……..J.
(V.GOPALA GOWDA)

NEW DELHI,
JULY 15, 2013.

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