H-1\HLPET-AF.1

07-08-93

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.333 OF 1993

CONNECTED WITH

COMPANY APPLICATION NO. 251 OF 1993

IN THE MATTER Of Sections 391 to 396 of the Companies Act, 1956

AND

IN THE MATTER of the Scheme of Amalgamation of the Tata Oil Mills Company Limited with Hindustan Lever Limited

Hindustan Lever Limited ..... Petitioner

AFFIDAVIT OF FRANKLIN D'SOUZA OPPOSING THE ADMISSION OF THE AFORESAID COMPANY PETITION

I, FRANKLIN D'SOUZA, of Bombay, Indian Inhabitant, aged about 46 years and residing at 3 A, Glendon Apartments, Sundar Lane, Orlem, Malad (West), Bombay 400 064, do hereby solemnly affirm and state as follows : -

1. I am an employee with about 27 years service of Hindustan Lever Limited (hereinafter referred to as "the Petitioner") with the designation of Senior Operator. I am also the Vice President of the Hindustan Lever Employees Union, (hereinafter referred to as "HLEU") a trade Union registered under the Trade Unions Act, 1926, which is the only Union of all the employees working in the Petitioner's factory at Sewri, Bombay. HLEU has a membership of more than 2000 employees of the Petitioner, many of which employees are also shareholders of the Petitioner. I am also a shareholder of the Petitioner holding 204 Equity Shares of Rs. 10 each. I am filing this affidavit as an employee and shareholder of the Petitioner and as the Vice President of HLEU for and on behalf of employees of the Petitioner.

2. I have only recently received a copy of the said Petition filed by the Petitioner seeking various directions from this Hon'ble Court in the proposed amalgamation with The Tata Oil Mills Company Limited (hereinafter referred to as "TOMCO"). I am making this affidavit only for the limited purpose to oppose the admission of the said Petition and to oppose any prayer and/or any draft Minutes of Order of the Petitioner for any orders to be passed for fixing a date of hearing of the said Petition and/or for giving public notice of the hearing of the said Petition and/or giving

notice of the said Petition to the Central Government as prayed for by the Petitioner. I am not dealing at length with the merits of the said Petition and reserve my right to file a detailed and comprehensive affidavit at a later date, if necessary.

3. I say that I had filed an affidavit dated 29th April 1993 opposing the Petitioner's previous Company Application No. 251 of 1993. I say that I filed an Appeal from the Order of Justice Mr. Jhunjhunwala dated 29th April 1993 being Appeal No. _____ of 1993 which was dismissed by Their Lordships Justices Mr. _____ and Mr. _____ by their order dated _____ 1993 which gave me liberty to approach this Honourable Court subsequently if necessary . I ask leave to refer and rely upon the aforesaid proceedings at the time of hearing, if necessary.

4. At the outset I say that the said Petition is not maintainable as per Rule 79 of the Rules, entitled, "Petition for confirming compromise or arrangement," as the Petitioner is required to within seven days of the filing of the Chairman's Report (under Rule 78 on the result of the meetings of shareholders and creditors) to present the said Petition to this Honourable Court for confirmation of the compromise or arrangement. I say that the said report of the Chairman of the Petitioner in

the format of an affidavit was affirmed and filed in this Honourable Court on 15th July 1993 whilst the said Petition was only filed on 26th July 1993 which is beyond the period specified in the Rules and hence on this ground alone the said Petition is liable to be dismissed with costs.

5. I say that no orders and / or directions for admitting the said Petition and/or for fixing a date of hearing of the said Petition be passed by this Honourable Court as the resolutions allegedly passed at the meeting of shareholders and creditors of the Petitioner on 30th June 1993 and 2nd July 1993 respectively to consider the said amalgamation ("the said merger meetings") as well as the resolutions which were allegedly passed at the Petitioner 's Extra Ordinary General Meeting held at Bombay on 30th June 1993 and 1st July 1993 ("the said EGM") which are of relevance to the said amalgamation, are null and void and of no legal consequence whatever for reasons which are set out hereinafter. I say that Mr. S.M. Dutta, Chairman of the Petitioner , who chaired the said EGM and the said merger meetings, grossly mis conducted himself and the proceedings, made false and misleading statements, suppressed the extensive concern and / or interest of Directors of both companies in the said amalgamation as well as his own personal interest as the representative of Unilevers Plc in India, (to whom 29,84,347 shares

at Rs. 105 only are being issued as an integral part of the said Scheme of Amalgamation) all of which are substantial violations of law. I say that the report and affidavit dated ____ July 1993 filed by the said Mr. S. M. Datta as the Court appointed Chairman of the said shareholders merger meeting is not a true and fair report of the said meeting and no reliance can be placed on the same. I say that the said merger meetings have not been properly convened, conducted or recorded and hence its deliberations are of no legal consequence. I say that it is only after these vital preliminary issues of fact and law are considered and decided , that the subsequent questions of whether or not the said Petition should be admitted and/or a date of hearing of the said Petition be fixed as per the Companies (Court) Rules, 1959 , ("the Rules") would arise.

6. I say that on the basis of submission contained in its Company Application No. 251 of 1993 ("the said Company Application ") the Petitioner obtained an Order from this Honourable Court dated 29th April 1993 appointing Mr. S.M. Datta as the Chairman of the said merger meetings. In the said Company Application the Petitioner represented that Mr. S.M. Datta is a Director and Chairman of its Board of Directors. I say that Mr. S.M. Datta is the representative in India PLC, Ulk (which holds 51 of the paid up capital of the Petitioner) which

vital fact was not disclosed by Mr. S.M. Datta to the Petitioner's _____ Directors as is mandatory under Section 299 and other applicable provisions of the Companies Act, 1956, ("the Act") nor by the Petitioner to this Honourable Court in the said Company Application nor to the shareholders and creditors of the Petitioner in the said Scheme of Amalgamation and explanatory statement under Section 173 , 393 (i) (a) and other applicable provisions of the Act.

I submit that by contravening the mandatory provisions of the said Section 299 . Mr. S.M. Datta has vacated office as a Director of the Petitioner (and ipso facto that of Chairman) as per Section 283 (1) (i) and other applicable provisions of the Act prior to the filing of the said Company Application . Hence the representations contained in the said Company Application that Mr. S.M. Datta is the Chairman (and necessarily a Director) of the Petitioner was wrong, this Honourable Court was misled into appointing Mr.S.M. Datta as the Chairman of the said merger meeting, the deliberations of which are null and void.

7. Without prejudice to any other statement or submission made herein, I say with due respect to this Honourable Court that the practice of appointing Chairman of Applicant Company's as the Chairman of meeting's convened by this Honourable Court under Section 391 and other

applicable provisions of the Act requires reconsideration. I say that such Chairman of court - convened meetings are rarely able to forget or at least set aside that they are also the Chairman of the concerned company which presents them from acting impartially and even otherwise leads to conflict of interest. I say that this is a recognised by other High Courts in India particularly the Calcutta High Court which as a rule appoints eminent _____ and professionals who are not connected with either the Transferor or the Transferee Companies to conduct meetings commenced under Section 391 of the Act.

8. I say that Mr. S. M. Datta proposed the resolution to amalgamate TOMCO with the Petitioner at the said merger meetings which is admitted by the Petitioner in paragraph _____ of the said Petition. I say that it was highly improper of Mr. S.M. Datta as the Court - appointed Chairman to move the said resolution which was the object of the said merger meeting , which was supposed to be conducted by him. Such _____ necessarily implies dispassionate conduct and a Scheme of detachment which is essential for an impartial Chairman. On the contrary, Mr.S.M. Datta abandoned his role as an unbiased Chairman of the said merger meetings and balce instead as participant and prime - mover thereof which underlined his partisan

conduct of the said merger meetings and hence on this ground alone the said Petition is not maintainable and deserves to be dismissed with costs.

9. I say that the Petitioner has given different reasons at different meetings of its shareholders for the same issue of capital to Unilevers Plc which is a substantial violation of law and on this ground alone the said Petition must be dismissed with costs. As per the said Scheme of Amalgamation (Exhibit A to the said Petition) it is specified in Clause 13.5 therein that the Petitioner shall simultaneously with the issue of shares to the shareholders of TOMCO shall also make a preferential offer and allotment of 29,84,347 equity shares of the face value of Rs. 10 each at a price of Rs 105 per share (i.e. Rs. 10 towards the capital and Rs. 95 towards the premium) to Unilevers Plc , UK . The only reason disclosed for such issue is : "to ensure that the shareholding level of the said Unilever Plc continues to remain at 51% of the equity capital of the Transferee Company post amalgamation of the Transferor Company with the Transferee Company."

The same reason was disclosed in paragraphs _____ in the Petitioner's Company Application No 251 of 1993 in this Honourable Court on the basis of which the said merger meetings were convened. However in the Explanatory Statement to

the Notice of the said EGM dated 18th May 1993, in the explanation to resolutions 3 and 4 dealing with issue of shares to shareholders of TOMCO and Unilevers it is stated therein that ;

> " Government of India has now formulated a Scheme for automatic approval of increase in foreign share capital to 51% level subject to certain terms and conditions. It is proposed to avail of this Scheme and obtain appropriate approvals to increase the level of non resident equity in your company to restore Unilever Plc's shareholding in your company to 51% simultaneously in the proposed amalgamation . This would entail investments in two projects covered by Annexure III as notified by Government. Your Company is investing in a project for the manufacture and project of Surimi at Verawal in the State of Gujarat at an estimated capital expenditure of Rs. 15 crores and in a detergent grade zeolite project at Haldia , Dt. Midnapore , West Bengal involving a capital outlay of Rs. 15 crores . On the basis of this investment, your Company is eligible to raise Unilever Plc's share holdings to 51% in your Company to restore its 51% share holdings in the capital of your Company post merger with TOMCO ."

It is submitted that the above explanations

regarding investments in the aforementioned two projects is an after thought which subsequently occurred to the Petitioners who has fabricated these so called "reasons" only to avoid going to New Delhi for these approvals . In any event this Honourable Court was never informed of these so called two projects nor was the same disclosed in the said Scheme of Amalgamation or in the statement dispatched to shareholders and creditors of the Petitioner under Section 393 of the Act. Furthermore,the shareholders and creditors of TOMCO have not been informed at all of this additional and / or new reasons for issue of capital to Unilevers which is an integral part of the said Scheme .

10. I further say that it is false that the Petitioner is entitled to avail of the benefits of the said 51% automatic approval Schemes which is only available for Companies engaged in high technology industries mentioned in the said Annexure III.

11. I ask leave to refer and rely upon the said guidelines and list of industries following within the said Annexure III when produced . I say that a shareholder had inquired at the said merger meeting and at the said EGM as to what items of the said Annexure III covered the two said projects. I say that the said query was significantly not answered by Mr. Datta. This

omission to answer this question is significant as it is totally false that the said two projects falling within the said Annexure III industries . I say that even otherwise as the said two projects do not constitute the predominant business of the Petitioner which is not covered by the said Annexure III industries , the Petitioner does not come within the aforesaid guidelines for automatic approval and hence on this ground alone the resolution for issue and allotment of shares to Unilevers and the said Scheme of Amalgamation should be declared null and void.

12. I say that Mr. S.M. Dutta , Chairman of the Petitioner, has not disclosed that he is the representative of Unilevers in India and as such is concerned or interested in any matter relating to Unilevers . On the contrary the said Section 393 Statement and the Explanatory Statement to the notice of the said EGM wrongly states that , Mr. S.M. Dutta and another Director, Mr. K.B. Dadiseth , except to the extent of their personal shareholding in the Petitioner :

> "Do not own any shares in TOMCO or in Unilever Plc and have therefore no interest in the allotment of shares to the members of TOMCO or of preferential allotment to Unilever Plc . "

13. I say that at the said merger meeting and at the said EGM , a shareholder , read out a letter by the said Mr. S.M. Dutta to Mr. Dan Gallin , Secretary General , International Union of Food and Allied Workers Associations , Geneva, Switzerland , dated 4th October , 1991, (copy of which is annexed hereto marked as Exhibit '___ ') wherein the said Mr. Dutta has represented that

> "... the matter to which you refer arose in India where I am responsible for Unilever's interests ." I further say that the said Mr. Dutta in his concluding remarks at the said merger meeting , unequivocally confirmed the above by stating that :
>
> " Yes , I am the representative of Unilevers in India."

I further say that it was pointed out by a shareholder at the said EGM and at the said merger meeting that all the Directors of the Petitioner have been elected with the support of Unilever which owes 51% of the paid up capital of the Petitioner , a subsidiary Company of Unilevers which controls the activities of the Petitioner for all practical purposes . In the absence of the aforementioned disclosure , there is violation of Sections 173 , 393 (1) (a) and other applicable provisions of the Companies Act, 1956 , ("the Act

") as material facts and concern or interests of the Directors have not been disclosed to the shareholders of the Petitioner and of TOMCO and on this ground alone the resolutions for issue of capital to Unilevers and the said Scheme of Amalgamation is null and void .

14. I say that the Petitioner is not competent or otherwise able to issue shares to the shareholders of TOMCO and 29,84,347 shares to Unilevers PLC , UK , as envisaged in the said amalgamation scheme as the Petitioner's authorised capital as of the time of the passing of the resolutions to approve the said scheme at the said merger meeting, was only Rs. 140 crores whilst the issued , subscribed and paid up capital was Rs. 139.98 crores. I say that the Petitioner had after perusing my earlier affidavit dated 29th April 1993 where I had raised this point in paragraph 20 therein had issued a notice dated 18th May 1993 to call an Extra Ordinary General Meeting of the Petitioner at 2 p.m. on 30th June 1993. I say that one of the resolutions proposed to be passed at the said EGM pertained to the increase of authorised share capital of the Petitioner from Rs. 140 crores to Rs. 150 crores. I say that the Petitioner's Chairman, Mr. S.M. Datta, who was chairing the said EGM, adjourned the said EGM at 2.55 p.m. on 30th June and at 3 p.m. declared open the said merger meeting of shareholders to consider

the said Scheme of Amalgamation as the Court appointed Chairman thereof. I say that the said merger meeting continued from 3 p.m. to midnight when it was concluded. I say that thereafter , i.e. shortly after midnight , i.e. on 1st July 1993 , Mr. S. M. Datta recognised the said EGM on which date , following queries and speeches from shareholders , the said resolutions were put to vote and declared passed by the said Chairman by a show of hands. I say that as per the provisions of Section 191 and other applicable provisions of the Act , where a resolution is passed at an adjourned meeting of a Company or the holders of any class of shares in a Company , the resolution shall for all purposes, be treated as having being passed on the date on which it was infact passed, and shall not be deemed to have been passed on any earlier date. In the circumstances , even if the proceedings of the said EGM are deemed to be valid , it will not rescue the proceedings of the said merger meeting which were ultra vires of the Petitioner's Memorandum and Articles of Association as the Petitioner wrongly "issued " shares to TOMCO shareholders and to Unilevers when it did not have the authorised capital to do so.

15. I further say that the Petitioner's management defeated an ammendment resolution (which is annexed as Exhibit "I(4)" to the said Petition) which had proposed ammending Clause 2.2

of the said Scheme of Amalgamation (Exhibit A to the said Petition) to reflect that the authorised capital of the Petitioner was not Rs. 140 crores but Rs. 150 crores and in the circumstances and otherwise the Petitioner cannot now be allowed to argue that the purported increase of the Petitioner's authorised capital as allegedly passed at the said EGM should date back or prior to the said merger meeting itself.

16. I say that the aforementioned vital facts which were raised and discussed at the said merger meeting find no mention whatever in the affidavit dated 15th July affirmed by Mr. S.M. Datta which claims to be a report of the said meeting. I say that the said affidavit has deliberately failed and neglected to record the actual proceedings of the said merger meeting or to even provide a fair summary thereof. The said affidavit gives a false and misleading picture of the said merger meeting by neglecting the record to the aforementioned and other objections raised by shareholders which have been glibly glossed over and described as "clarifications" . Significantly , Mr. Datta has emitted all reference to his being the representative of Unilevers in India which was raised and admitted by him as described above. I say that in the circumstances and otherwise the said affidavit does not present a true and fair picture of the said merger meeting and should

therefore be set aside and no reliance placed on the same.

17. I say that vide my letters addressed to the Petitioner dated 18th May and 6th July 1993 , I had requested the Petitioner as a shareholder to accord me inspection and copies of statutory registers and records of the Petitioner. I had with my letter of 6th July 1993 enclosed a demand draft for Rs. 950 for the minutes of the General Meetings of the Petitioner maintained pursuant to Section 196 of the Companies Act, 1956, ("the Act "). I had also specifically requested for minutes of the said EGM held on 30th June 1993 and 1st July 1993) , and of the said meetings of shareholders and creditors of the Petitioner to consider the said amalgamation. I say that I also requested copies of the video cassette recording of the proceedings of the said amalgamation meeting. I say that the aforesaid documents and particularly the said video recording are vital as they would show the manner in which the Petitioner and its Chairman Mr. S.M. Datta misconducted the said meetings, the record of which differs significantly from what has been informed to this Honourable Court. I say that the Petitioner for this and other reasons has deliberately failed and neglected to give me copies of the said minutes and the said video recordings, (despite my offer to pay for and/or supply blank video cassettes for duplication) and

has suppressed the same. I ask leave to refer and rely upon my said letters when produced. I say that it is necessary and in the interests of justice that the said minutes and the said video recording be made available to me and to other shareholders of the Petitioner before any orders are passed for the hearing and / or admission of the said Petition.

18. I now turn to dealing with the contents of Mr. S.M. Datta's affidavit of 15th July 1993 ("the said affidavit") :

(i) With reference to paragraph 5 of the said affidavit , I say that it is necessary to name the shareholder who proposed the resolution referred to therein and to specify whether the said resolution was seconded. I say that as per Rule 77 the decisions of the meeting or meetings held in pursuance of the order made under Rule 69 on all resolutions shall be ascertained only by taking a poll. I say that Mr. Datta had to submit the said resolution to a poll and was not empowered to rule it out of order . I submit that he has there by committed a breach of the Rules and on this ground alone the deliberations of the said merger meetings are void and of no legal consequence .

(ii) With reference to paragraph 6 of the said affidavit , it is true that persons mentioned

therein proposed and / or seconded the resolutions referred to therein.

(iii) With reference to paragraph 7 of the said affidavit , I say that the so called "short" recess extended from 7.45 p.m. to 9.30 p.m. as the Petitioner had not made provisions for sufficient quantities of ballot paper.

(iv) With reference to paragraph 8 of the said affidavit , I say that the appointment of scrutineers was irregular as neither of them was a shareholder of the Petitioner as is necessary under the provisions of the Act and hence on this ground alone the said poll is null and void and no reliance can be placed on the same .

(v) With reference to paragraph 9 of the said affidavit, I say that several shareholders and myself took objection to the consolidated ballot paper for all the 13 ammendments which said objections have typically not been recorded by Mr. Datta . I say that the format of the consolidated ballot paper vis-a-vis the ballot paper for the main resolution was deliberately designed in such a way as to prejudice voters in favour of the main resolution which had prominently printed thereon the legend "for approving the Scheme of Amalgamation of The Tata Oil Mills Co.Ltd. with Hindustan Lever Ltd. " In contrast the consolidated ballot paper blurred the identity of each of the

13 ammendments which were separate and distinct from one another . In fact the voters were confused as to the subject matter of each of these ammendments which was not summarised (like the main resolution) in a box against each of these ammendment resolutions . This was particularly necessary as balloting continued from 9.30 p.m. to 11.50 p.m. approx. It was for these reasons that shareholders had protested against the said consolidated balloting paper and demanded a separate ballot paper for each of the ammendment resolutions as was done at the TOMCO merger meeting held on the proceeding date.

(vi) With reference to the said ammendment resolutions , I say that the management of the Petitioner by voting against the same have acted against public policy and exposed their malafide intention in , interalia, gifting valuable properties to the Tatas for undisclosed consideration . I say that without prejudice to the generality of the said ammendment resolutions, I am in the immediate instance focusing attention on the following ammendment resolutions :

(a) Ammendment resolution No. 3 at Exhibit A - 1 to the said Petition : this provided that tenanted properties of TOMCO mentioned in Clause 1.7 of the said Scheme should first be valued by a reputed valuer appointed by the High Court Bombay and the owners of the said properties pay the valuation

calculated by the said valuer to TOMCO as an by way of consideration for releasing and / or surrendering the said properties to the said owners before the Effective Date. I say that by defeating the said ammendment the Petitioner and TOMCO have revealed their secret understanding of not taking any consideration for the release / surrender of these valuable properties to their undisclosed owners with whom the TOMCO Directors are concerned / interested. Without prejudice to the aforesaid I say that the owners of the said tenanted premises should at the very least have reimbursed to TOMCO all costs and expenses spent on maintaining and renovating the said premises for at least 10 years.

(b) Ammendment resolution No. 5 at Exhibit A – 5 to the said Petition : This provided for TOMCO / the Petitioner realising the best possible price for properties owned by TOMCO (specified in Clause 4 of the said Scheme) by disposing off the same to the highest bidder after giving public notice of the same. By voting against this ammendment, the malafide intentions of the Petitioner and TOMCO to transfer these properties at an artifically low price to a single purchaser , viz , Tata Sons Limited or its nominees which is to the detriment of the Petitioner and its shareholders and creditors.

(c) Ammendment resolution No. 6 annexed as

Exhibit A - 6 to the said Petition : This provided that properties owned by TOMCO which are listed in Clause 4 of the said Scheme , are transferred to Tata Sons Limited or its nominees as originally provided but subject to the sanction of the Competent Authority under Chapter XX - C of the Income Tax Act, 1961. I say that by voting against and defeating the said amendment resolution the Petitioner has revealed its actual intention of trying to remove the transfer of these valuable properties from the scrutiny of the Income Tax Authority by leasing the same or otherwise making misleading representations that as the said properties are being transferred by virtue of an amalgamation order of this Honourable Court , the Income tax authorities have no jurisdiction to question the mode and consideration for the said transfers . I say that this is essential for the Petitioner and TOMCO who have secretly agreed that the Sterling Apartments flat at Peddar Road , Bombay , (market value about Rs. 3 crores) will be transferred to Mr. N.S. Sundar Rajan, Managing Director of TOMCO who is residing in the said flat , which fact was illegally not been disclosed to anyone. Similarly, the Aarti will be transferred to Mr. K. Rajan ,Vice - President (Personnel) at Ridge Road , Bombay, of TOMCO , both these two gentleman being close friends of Dr. Sethna , Chairman of TOMCO , who have all previously served together in the Bhabha Atomic Research Centre.

19. I say that the Petitioner and TOMCO have entered into a secret deal to back - date the transfer of various investments of TOMCO to the other Tata Companies to the detriment of the shareholders and creditors of the Petitioner. I say that the Section 393 Statement disclosed that a letter dated 31st March 1993 written by Dr. H . N. Sethna to Mr. S. M. Datta was available for inspection . I accordingly went to take inspection of the same consisting of an extract of a a graphs 3 and 4 thereof which were copied down by me. The said copied extract annexed as Exhibit _____ hereto. I say that the said extract refers to the following share investments of TOMCO:

"(a) 8,96,800 shares of Lakme

(c) 835 shares of Rs.1000/- each of Tata Services

(d) 10,000 shares of Rs. 1000/- each of Tata Export.

(e) 44,15 shares of Rs. 100/- each of Tata Industries

(f) 7,5000 shares of Rs. 100/- each of Tata Project.

(g) 425 shares of Rs. 900/- each of Associated Building Company.

(h) 8750 Preference shares of Rs. 100/- each of Tata Share Registry Ltd.

(i) 4250 ordinary shares of Rs. 100/- each of Tata Shares Registry Ltd."

20. I say that the said letter dated 31st March 1993 admits to the back-dated transfer of these share-investments by stating therein ;

> "It has been agreed that these shares would be sold, transferred before 31-03-1993 but if for any reason not possible HLL has agreed to sell these investments to Tata Sons or its nominees whenever called upon to do so. TOMCO shall assist HLL to use its good offices to enable HLL to acquire 51,000 equity shares of Rs. 100 each of IPL (Industrial Perfumes Limited) which are currently held by other Tata Companies.... Unlisted share transfer would be effected at fair values assessed by Y.H. Malegaum.

21. I say that the aforementioned transfers of shares of unlisted and listed Companies in which the Directors of Tomco are interested in was never disclosed to this Honourable Court in Company Application No. 257 of 1993 or to the shareholders and creditors of the Petitioner and Tomco who were instead given a misleading picture by disclosing only a short list of share investments in Clause 5 of the said Scheme. I further say that the full

range of Mr. Y.H. Malegaum's responsibilities as a valuer of these share investments of TOMCO were not disclosed to this Honourable Court and to the shareholders and creditors of the two companies even though it is ostensibly as per Mr. Malegaum's valuation report that the share exchange ratio of the said amalgamation has been fixed. Mr. Malegaum is also a director of TOMCO which was not disclosed to this Honourable Court in Company Application No. 251 of 1993 nor to the shareholders and creditors of the Petitioner in the Section 393 statement distributed to them. I say that the contradiction between the list of investments contained in the said letter of 31st March 1993 and those contained in the said Scheme of Amalgamation was raised at the said merger meeting by shareholders. In reply thereto, Mr. S.M. Datta, whilst evading giving a reply to the other investments, admitted that 5,00,000 shares of Lakme Limited, ("Lakme") held by TOMCO consisting of more than 10% of Lakme's paid up capital were transferred to other Tata companies and hence only the balance shares, i.e. 3,96,500 share of Lakme have been disclosed in the said Scheme. I say that the above has also not been corrected by Mr. S.M. Datta in his said affidavit. I say that the above suppressions are against I am and public policy and hence on these grounds alone the said Petition should be dismissed.

22. I say that TOMCO with the connivance of the Petitioner has back-dated the sale of the aforementioned shares listed in the letter dated 31st March 1993 to a date prior to 31st March 1993. I say that as per the audited accounts of the Transferor Company (TOMCO) for the year ended 31st March 1993 (Exhibit E to the said Petition), it is noted on pages 502 - 503 read with page 533 of the said Petition , that Aftab Investment Company Limited , ("Aftab") a wholly owned subsidiary of TOMCO , has purchased the shares mentioned below :

Shares Purchased by Aftab	No.of Shares	Purchase Price (Rs.)	Price/ Share (Rs.)
a) Tata Exports Ltd	12,000	6,99,48,002	5829
b) Tata Industries Limited	44,415	91,50,600	206
c) Tata Projects Limited	7,500	82,91,270	1105
d) Tata Services Limited	912	9,16,539	1005
e) Tata Share Registry Limited	13,000	67,93,800	522

f) The Associated Building Co Limited	425	3,84,415	904
Total		9,54,84,626	

Aftab's purchase of the aforementioned said shares worth Rs. 9,54,84,626 is financed by short term loan / advance of Rs. 9,23,90,227 (Page 534 of the said Petition) extended by TOMCO in the financial year ending March 1993. Thus the finance to buy unquoted shares held by TOMCO for Aftab is financed by TOMCO itself . Subsequently Aftab has been delinked from TOMCO as Aftab's 24,800 ordinary shares of Rs. 100 held by TOMCO have been transferred at the rate of Rs. 1,960 per share to Tata Companies as mentioned in pages 20-21 of the said Petition.

23. I say that the aforementioned transfer of 5,00,000 shares of Lakme Limited held by TOMCO to other Tata Companies is a violation of Clauses 40 A and 40 B of the Listing Agreement with the Stock Exchange. An extract of the said Clauses 40 A and 40 B is annexed hereto as Exhibit . I say that the said 5,00,000 shares of Lakme Limited, consisting of more than 10% of Lakme Limited's paid up capital has been excluded from the ambit of the said amalgamation . Accordingly, Clause 40 B (13) (6) which makes an exclusion "In pursuance of orders of amalgamations, mergers and acquisitions

passed by the court under Sections 391 and 394 of the Companies Act" does not apply. I say that neither the Petitioner nor TOMCO have carried out the stipulations held down in the said Clauses 40 A and 40 B and on this ground alone the said amalgamation is based in law and against public policy and hence the said Petition deserves to be dismissed with costs.

24. I say that the concern and/or interest of the Directors of both the Petitioner and of TOMCO in the said Amalgamation which is very extensive has not been disclosed to the shareholders and creditors of both the Companies nor to this Hon'ble Court. I say that according to the inspection of the statutory registers of both the Petitioner and of TOMCO which I personally undertook, and on the basis of other information which was made available to me, it has been ascertained that the Directors interest of both Companies is, interalia, as under :-

(i) All the Directors of the Petitioner and particularly Mr.S.M. Datta, Chairman of the Petitioner are concerned and/or interested in the preferential allotment of shares to Unilevers and or any matter pertaining to Unilevers for reasons set out in the preceding paragraphs.

The said merger meeting was chaired by Mr.S.M. Datta on his representation to

this Honourable Court that he is the Chairman and Director of the Petitioner. I say that Mr.S.M. Datta has violated Section 299 of the Act in not disclosing his concern and/or interest as a representative of Unilevers in India to the Board of Directors of the Petitioner and hence as per Section 283 of the Act he has ipso facto vacated office as a Director. In the circumstances, the said Mr.S.M. Datta has misconducted both himself as well as the proceedings of the said merger meeting and on this ground alone the said meeting is void and of no legal consequence whatever.

(ii) The undisclosed concern and/or interest of the Directors of TOMCO, is inter alia, as under:

(a) Dr. H.N. Sethna, Chairman of TOMCO is a Director of Industrial Perfumes Limited, International Fisheries Limited, Tata Vashisti Detergents Limited, which companies are tenants of the premises mentioned at Clause 1.7 of the said Scheme of Amalgamation. Dr.Sethna is also a Director of Tata Sons Limited which together with its affiliated companies holds more than 20% of the paid

up capital of TOMCO. Further more, as per the said Scheme of Amalgamation extensive powers are sought to be given to Tata Sons Limited which will nominate companies who will for undisclosed consideration obtain rights to assets owned by TOMCO specified in Clause 4 of the said Scheme of Amalgamation. Further more, specified shares as mentioned in clause 5 of the said Scheme of Amalgamation including 3,96,800 Equity Shares of Lakme India (of which Dr.Sethna is also a Director) will be transferred to Tata Sons Limited and/or its nominees. Similarly as per Clause 6 of the said Scheme of Amalgamation guarantees provided by Tata Sons Limited and guarantees provided by TOMCO to Lakme Limited also involves Directors interest. Further more, one is informed for the first time on pages 20 and 21 of the said Petition that at undisclosed dates prior to the date of the said Petition, shares worth Rs.336 lakhs of Tata Ceramics Kerala Limited have been transferred to Tata Hydro Electric Power Supply Co Limited ("Tata Hydro") , Andhra Valley Power Supply Limited ("Andhra Valley") and Tata Power Co Limited ("Tata Power")

Further more, 24,800 ordinary shares of Rs.100 each in Aftab Investments Co Limited ("Aftab") have been sold at the rate of Rs.1,960 to Tata Hydro, Andhra Valley, Tata Power and another company. It is not disclosed that Dr.Sethna is a Director of Tata Power, Andhra Valley and Tata Hydro.

(b) Mr.J.R.D. Tata is a Director of Tata Sons Limited whose interest in the said Scheme of Amalgamation has been described hereinabove. Further, Mr.J.R.D. Tata is a Director of Tata Industries Limited. As per the letter dated 31st March 1993 addressed by Dr.Sethna to Mr.Datta, (which was open for inspection by shareholders of the Petitioner and was referred to in the statement issued by the Petitioner under Section 393 of the Act) it is specified therein that 44,450 shares of Rs.100 each of Tata Industries will be excluded from the said Scheme of Amalgamation which has not been disclosed to the shareholders, creditors or to this Hon'ble Court.

(c) Mr.N.S.Sunder Rajan, Managing Director of TOMCO, is residing at Flat No.29, Sterling Apartments, Peddar Road, Bombay, which was confirmed by the said

Managing Director and by Dr.Sethna in response to a query from a shareholder at the said merger meeting. The said Sterling Flat is mentioned at Clause 4.5 of the said Scheme of Amalgamation as one of the properties which will be transferred to companies nominated by Tata Sons Limited. I say that the real aim and intention is to transfer the said flat to the said Managing Director and/or his relatives and/or companies controlled by them at book value. Mr.Sunder Rajan is also a Director of Aftab, Industrial Perfumes Limited, International Fisheries Limited and Tata Vashisti Detergents Limited whose connections with the said Scheme of Amalgamation is specified hereinabove. Furthermore, the trade marks of the aforesaid companies and of Kalyani Soaps Industries Limited of which Mr.Sunder Rajan is also a Director will be handed over to the Petitioner (excluding certain trade marks) as specified in clause 7 of the said Scheme of Amalgamation. Further more, in the said letter exchanged between Dr.Sethna and Mr.Datta dated 31st March 1993 it is specified therein that 835 shares of Rs.1000 each of Tata Services Limited,

7500 shares of Tata Projects Limited, 425 shares of Associated Buildings Co Limited, 8750 preference shares of Rs.100 each of Tata Share Registry Limited and 4250 ordinary shares of Rs.100 each of Tata Share Register Limited are to be excluded from the said Scheme of Amalgamation. Mr.Sunder Rajan is also a Director of these aforesaid Companies. Mr. Sunder Rajan is also a Director of Tata Ceramics Kerala Limited which as per clause 4.1 of the said Scheme of Amalgamation will Ernakulam, Kerala and shares worth Rs.366 lakhs in the said Tata Ceramics Kerala Limited representing advances by TOMCO as a promoter thereof are being excluded from the said Amalgamation as per clause 5 of the said Scheme of Amalgamation.

(d) Mr.Vinay Nagji Meckoni is a Director of Aftab whose connection with the said Amalgamation has been spelt out hereinabove.

(e) Mr.K.N. Suntook is a Director of Lakme Exports Limited, to which TOMCO has given guarantees as specified in Clause 6 of the said Scheme of Amalgamation.

(f) Mr.Y.H. Malegam, is a Director of the

Industrial Credit and Investment Corporation of India Limited ("ICICI") which is a debenture trustee of various series of debentures issued by TOMCO. As per Section 393 (5) of the Act, every trustee for debenture holders of the Company is required to give notice to the Company in such matters relating to themself as may be necessary, which has not been done in the instant case. Further more, the statutory Directors' Register of Contracts maintained by TOMCO does not record therein that Mr.Malegam is deemed to be concerned and/or interested in any contracts and particularly in execution of debenture trust deeds with ICICI. Further more, the same was not disclosed in the said Company Application or in the said statement to Shareholders and Creditors under Section 393 of the Act or in this Company Petition itself. It is also not disclosed to the shareholders of the Petitioner that Mr.Malegam who has done the valuation report is a Director of TOMCO and has directly and/or indirectly through M/s.S.B. Billimoria & Co of which he is a partner, received remuneration for the same.

I say that the aforementioned suppression of Directors' interest in a serious violation of the provisions of the Act and of the basic tenets of company law and on this ground alone the said Petition should be dismissed with costs.

25. I say that in the aforesaid circumstances and even otherwise if the Petitioner's prayers as contained in the said draft Minutes of Order are granted, considerable loss and damage will be caused to the shareholders, creditors and employees of both companies. In the circumstances I say and submit that the said Minutes of Order be disregarded and the said Petition should be dismissed with costs.

Solemnly affirmed at Bombay)
this_____ day of August 1993.)

Before me,

Identified by me,

Rabindra Hazari

Advocate

HIGH COURT BOMBAY

O.O.C.J.

Company Petition No.333 of 1993

Connected with

Company Application No.251 of 1993

Hindustan Lever Limited

..... Petitioner

Affidavit of Franklin D'Souza,
opposing the admission
of the said Petition

Dated August 1993

Rabindra Hazari
Advocate for the
Hindustan Lever Employees Union
C/o H.S. Cox & Co Private Ltd.,
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