C.B.-I No. 227, Vol. VIII

COMMITTEE ON PETITIONS

(SIXTH LOK SABHA)

EIGHTH REPORT

[**Representation regarding repeal of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976**]

[*Presented to Lok Sabha on the 6th March, 1979*]

LOK SABHA SECRETARIAT
NEW DELHI

March, 1979/Phalguna, 1900 (S)

Price : Rs. 5.30 p.

CORRIGENDA TO THE EIGHTH REPORT
OF THE COMMITTEE ON PETITIONS(6LS)

Page	Line	For	Read
5	1	Statements	Comments
6	9 (from below)	amount of compensation	amount of compensation payable to .....(on line 6 from below on page 7)....at the time of taking over.(ending on line 13 on page 8)
15	28	2.11	2.10
15	28	on an enquiry... Ministry of	In this connection, the Joint Secretary, Department of Mines
17	1 (from below)	country	company
28	13 & 16	nationally	notionally

CONTENTS

COMPOSITION OF THE COMMITTEE ON PETITIONS
(1978-79)

CHAIRMAN

Shri Hari Vishnu Kamath

MEMBERS

2. Shri Aghan Singh Thakur
3. Shri M. Arunachalam
4. Shrimati Kamala Bahuguna
5. Shri Manoranjan Bhakta
6. Shri Haren Bhumij
7. Shri Ahsan Jafri
8. Shri Kishore Lal
9. Shri Lalji Bhai
10. Shri Nanubhai N. Patel
11. Shri Balwant Singh Ramoowalia
12. Shrimati Rano M. Shaiza
13. Shri Pius Tirkey
14. Sardar Raghbir Singh Virk
15. Shri Yuvraj

SECRETARIAT

Shri I. Pershad—*Chief Legislative Committee Officer*

Shri M. P. Gupta—*Senior Legislative Committee Officer.*

EIGHTH REPORT OF THE COMMITTEE ON PETITIONS (SIXTH LOK SABHA)

I

INTRODUCTION

1.1. I, the Chairman of the Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Eighth Report of the Committee to the House on the representation regarding repeal of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976.

1.2. The Committee considered the matter at their sittings held on the 7th February, 16th March and 14th September, 1978 and 31st January, 1979.

1.3. The Committee considered their draft Report at their sitting held on the 2nd March, 1979 and adopted it.

1.4. The observations|recommendations of the Committee on the matter have been included in this Report.

NEW DELHI;

Dated the 2nd March, 1979.

H. V. KAMATH,

Chairman,

Committee on Petitions.

II

REPORT

2.1. Shri A. C. Dutta and other shareholders of the Metal Corporation of India Limited, Calcutta, submitted a representation dated the 8th August, 1977, regarding repeal of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976.

A. Petitioners' Grievances

2.2. In their representation (*See* Appendix I), the petitioners stated *inter alia* as follows:—

"In the last Annual General Meeting of the shareholders of the Corporation held on 31st March, 1977, the matter of voluntary winding up of the Corporation was considered but in the course of deliberations held the consensus arrived at was that in view of the most welcome change of the Government in the country a last attempt is to be made for the repeal of the Nationalisation Act 100 of 1976 and a petition submitted to the Hon'ble Prime Minister of India and through him to the Union Cabinet and submit a petition to the Petition Committee of Lok Sabha on behalf of all the shareholders of the Corporation who have suffered great loss in the hands of the previous Government due to its *malafide* and wrongful action, and denial of natural justice.

The sittings before the Tribunal were very much prolonged and the then Government had adopted litigious and dilatory tactics making the proceedings interminable. Nearly four years had passed from the first sitting of the Tribunal held on 4-9-1972 and yet the case had not entered the stage of evidence and even the primary records of the undertaking had not been placed by the Government| Hindustan Zinc Ltd. before the Tribunal. Even the most reasonable order made by the Tribunal directing the Government to advance to the Corporation a sum of Rs. one lakh to enable the Corporation meet the essential expenses for representation of its case before the Tribunal was challenged by the Government in the High Court

of Delhi in a Writ Petition. The Government had also earlier gone to the High Court in order to resist the direction of the Tribunal on Inspection of material and vital records (as detailed in the annexure). This shows that the Government was bent upon making the proceedings of the Tribunal interminable.

* * * * *

The Tribunal allowed the Corporation to file written submissions. The Corporation was also allowed to file a written note in inspection of the records of the Government|Hindustan Zinc Ltd. Valuation Teams. The Corporation, accordingly, on 19th July, 1976, filed before the Tribunal, its inspection notes, showing that even on Government's own calculation, without disturbing the so-called absurd and irrelevant principles adopted by them, the Corporation would be entitled to a compensation exceeding Rs. 6 crores without taking mine valuation into account. The written arguments on the case were filed by the Corporation before the Tribunal on 31st July, 1976, supporting on a detailed analysis of facts and various decisions of the Supreme Court, the Corporation's claim for compensation as submitted before the Tribunal.

The written arguments and the notes on inspection earlier submitted had immediate electric effect. With the fraud of its valuation exposed by the inspection notes trimming of its prospects of making the proceedings interminable and realising that it had really no answer to the Corporation's legitimate claims, the Government stooped down to a legislative fraud. Emergency was utilised to promulgate on 2nd of August 1976 the Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance, 1976, which was subsequently replaced by the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act 100 of 1976 (Nationalisation Act).

* * *

The Nationalisation Act of 1976 in the light of the law laid down by the Supreme Court in Keshavanand Bharati's case clearly represents a fraud on Art. 31(2). The question of acquiring an already acquired undertaking after more than 10 years of its acquisition can never arise and a law purportedly to bring about such a situation is not

a law under Art. 31. It is also beyond the legislative competence under Art. 31 to compel a deprived owner to take back the property acquired after his right to receive the compensation under that law has become a constitutional right. The Government may acquire a property without the concurrence of the owner but cannot re-vest and re-transfer in the owner the property once acquired without the consent and concurrence of the deprived owner. The sole object of the Nationalisation Act was to get rid of the Schedule of the Acquisition Act of 1966 which provided for payment of compensation computed on the basis of market value and substitute it by specified fictional amount. The Corporation's undertaking was acquired prior to 25th Amendment assuring payment of just equivalent as compensation. Retrospective application even by statutory device of the 25th Amendment is clearly beyond the scope of that Article. The Government clearly did not include the potential value of the mines which constituted the most important asset, the Corporation being a mining undertaking. The Nationalisation Act of 1976 providing for payment of Rs. 1.98 crores as compensation clearly provided for acquisition of the mining rights, without payment of any compensation.

In the circumstances as mentioned aforesaid your humble petitioners most respectfully pray for your kind and sympathetic consideration of the facts and circumstances of the case and, if thought fit, to recommend to the Government to redress grievances of your petitioners by passing appropriate orders:—

(a) For repeal of Metal Corporation (Nationalisation and Miscellaneous Provisions) Act No. 100 of 1976;

(b) For restoration to the Statute Book the Metal Corporation (Acquisition of Undertaking) Act No. 36 of 1966; and

(c) For appointment of the same Tribunal which was appointed under the said Act No. 36 of 1966 and to proceed with determination of compensation for the Undertaking from the stage to which it had reached before its abolition under Nationalisation Act No. 100 of 1976 and to continue the proceedings of the Tribunal expeditiously till the determination of the compensation payable to the Corporation."

B. Statements of the Ministry of Steel and Mines (Department of Mines)

2.3. The representation was referred to the Ministry of Steel and Mines (Department of Mines) for furnishing their factual comments thereon for consideration by the Committee. In their factual note dated the 29th December, 1977, the Ministry have stated as follows:—

"In their representation, Shri A. C. Dutta and others have represented that:

(a) The Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976, be repealed;

(b) the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 be restored to the Statute book; and

(c) the same Tribunal which was appointed under the 1966 Act be reappointed to proceed with the valuation and determination of the compensation."

The facts of the case are briefly as follows:

Acquisition of the undertaking of the MCI

The undertaking of the Metal Corporation of India Ltd., Calcutta (MCI) consisting of the lead-zinc mines at Zawar (Rajasthan) and lead smelter at Tundoo (Bihar) and zinc smelter|ancillary plants at Debari near Udaipur (then under erection) was acquired by the Central Government with effect from 22-10-1965 under an Ordinance (No. 6 of 1965). The Ordinance was replaced by the Metal Corporation of India (Acquisition of Undertaking) Act, 1965 (No. 44 of 1965). To own and manage the affairs of the acquired undertaking, a new Government company, the Hindustan Zinc Ltd, (Udaipur) was formed in January, 1966.

Proceedings before the Tribunal

The Tribunal constituted in November, 1971, commenced its proceedings only in September, 1972. Though the Tribunal called upon the MCI to file its claim immediately but the company desired inspection of the books and accounts of the acquired undertakings. According to the Government Counsel in a case as this, filing of claim has to precede inspection. The company's request for inspection before filing its claim was therefore considered unusual and had to be objected. Later, the Tribunal allowed inspection of the books and records for about three months. After the inspection

the MCI filed its claim only on 27-4-1974. The Union of India filed its written reply in September, 1974. Though the Government Counsel has been pressing the Tribunal to frame the issues, the issues were framed only on 15-5-1975, after allowing two further inspections desired by the MCI.

The allegation of the MCI that primary records had not been placed before the Tribunal is not correct. The MCI was given inspection of all the relevant records. These were later brought from the different units of the acquired undertaking to Delhi as per the orders of the Tribunal.

In regard to the allegation that Government challenged the directive of the Tribunal for payment of an advance of Rs. one lakh to the MCI, it may be stated that though the MCI Act, 1966, provided for computation of compensation based on certain principles, it stipulated that the amount payable shall be only one. The order of the Tribunal was therefore in excess of its powers and had to be challenged.

Recommendations of the Committee on Public Undertakings

Meanwhile, the Committee on Public Undertakings (Fifth Lok Sabha) which had taken up since 1975, examination on the performance of the Hindustan Zinc Ltd., had been kept informed from time to time of the stage of the proceedings before the Tribunal. In its 88th Report (1975-76) presented to the Lok Sabha on 29-4-1976, the Committee observed as under:—

> "Too long a time has been taken in coming to any final decision in regard to the amount of compensation to be paid.
>
> That according to Section 11(4) of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, the one man Tribunal which is considering the question of the amount of compensation."

Challenging the vires of the MCI Act, 1965 by the MCI

The MCI challenged the validity of the Act in the High Court of Punjab, which held that the Act was violative of Article 31(2) of the Constitution on the main ground that the principles laid down in determining compensation did not ensure a "just equivalent"; that decision was upheld by the Supreme Court. Following the judgement of the Supreme Court, Ordinance No. 10 of 1966 was issued on 12-9-1966, amending the previous lacunae which was later

replaced by the Metal Corporation of India (Acquisition of Undertaking) Act, 1966.

Challenging the vires of the MCI Act, 1966 by the MCI

The Metal Corporation of India questioned the vires of 1966 Act, first in the Supreme Court (which was dismissed in limine) and then in the Calcutta High Court. The Calcutta High Court also dismissed the MCI's writ petition.

Offer of compensation to the MCI in 1968

After the MCI Act, 1966, an offer of compensation of a sum of Rs. 212 lakhs was made to the MCI in June, 1968. There was no response to this offer and in the meanwhile the company was engaged in questioning the vires of the MCI 1966 Act. The offer was, therefore, withdrawn by the Government in March, 1969.

Constitution of One-man Tribunal

After the judgement of the Calcutta High Court in April, 1968, on the writ petition filed by the MCI in August, 1968 (referred to in para 3.3 above) the matter was further considered including the implications of the said High Court's judgement and also subsequent pronouncement of the Supreme Court on the Bank Nationalisation case. As a result of that review, a fresh offer of compensation of Rs. 1.98 crores was made to the MCI on 26-4-1971 (the reduction in the amount of compensation offered in June, 1968, was due to the error in computing the fixed assets certain items were reckoned against two sub-heads). As there was no response to the offer from the MCI despite an extension of the time limit on the Company's request One-man Tribunal consisting of Mr. Justice J. R. Mudholkar (a former judge of the Supreme Court) was constituted on 29-11-1971. Though the Act does not specify and time limit for the Tribunal to give its award, for administrative convenience, a period of eight months was originally fixed for the Tribunal to give its award; that period has had to be extended from time to time and latest upto 28-2-1977. [payable to the Metal Corporation of India has the power to regulate its own procedure and decide all matters within its competence and may review any of its decision in the event of there being a mistake etc., but subject thereto "the decision of the Tribunal on any matter within its jurisdiction shall be final and conclusive".

The Committee concluded by making a positive recommendation for action by Government as under:—

> "The Committee feel that when a private enterprise is acquired in a public interest it may be more appropriate if the amount payable in such cases is mentioned specifically in the legislation itself, particularly in those cases where the amount is likely to be huge, the Committee feel that Government should lay down norms for fixing the amount to be paid at the time of take over. The Committee would like **the Government to examine the question of paying an amount which may not be more than the book value of the assets less the liabilities of the unit at the time of taking over.**"

Socio-economic change in the concept of "compensation"

The entire concept of "compensation" for property compulsorily acquired by special legislation has undergone change since the acquisition of this Undertaking in 1965. With the amendment of Article 31(2) of the Constitution, the State can acquire property for a public purpose by paying a specified "amount" representing the value of the property acquired, though it has to be ensured that the "amount" is not arbitrary, or illusory. The validity of the 25th Constitution Amendment, under which Article 31(2) was amended, was upheld by a majority decision in the "Kesvananda Bharti's" case, and the earlier view of the Supreme Court expressed in the "Bank Nationalisation" case regarding the compensation as market value of property, was over-ruled.

Proposal to amend the MCI 1966 Act

After that amendment, the matter was taken up with the Ministry of Law, as to the lines on which this 1966 Act could be modified. That Ministry obtained the opinion of the Solicitor General of India who opined (in September, 1973) that, as the amendment of Article 31(2) was not retrospective, it could not afford protection to a law made prior to the 25th amendment; he, however, advised that the 1966 Act can be amended in such a way that:

(i) the undertaking is deemed to have been "requisitioned" from 22nd October 1965; and

(ii) "acquired" with effect from the date after the 25th amendment.

and the Metal Corporation paid "compensation" for the "requisitioned" period and "amount" for the final "acquisition".

In this connection it may be pointed out that in the nationalisation of the Coal mines, the principles of Bank Nationalisation were not followed for determination of compensation. So the decision of the Supreme Court as given in Kesvananda Bharti's case holds the field at present, and has over-ruled the decision on the Bank Nationalisation case in respect of the concept of compensation and method for determination of the compensation.

Potential value of minerals

A huge part of the claim (Rs. 64.53 crores) prferred by the Metal Corporation of India before the Tribunal is in respect of the "potential" value of the minerals lying underground (in the former lease hold of the Metal Corporation of India in the Zawar area). In India the State Governments are the owners of the minerals, and the rights of lessee (in this case, MCI) are different from those of an owner. In the Act acquiring the Kolar Gold Fields in 1956, the mining leases were specifically declared to have been extinguished. In the recent cases of acquisition of the Coal mines, the Indian Copper Corporation etc., the lump-sum compensation provided excludes "potential" value of mining rights. The decision of the Cabinet dated 6th April, 1971 to pay a compensation of Rs. 1.98 crores to the Metal Corporation of India, specifically excluded payment of any sum towards "potential" value of the minerals.

Inherent drawback in the 1966 *Act*

The MCI (Acquisition of Undertaking) Act, 1966 provided for an one-man Tribunal to determine the amount of compensation. Considering the fact that the MCI chose to prefer a claim of as such as Rs. 101.80 crores, as against the offer of Rs. 1.98 crores made by the Government, it was not considered advisable to leave the amount of compensation indeterminate or to an one-man Tribunal (whose award under the Act would be final and conclusive).

Apart from the long time that had already been taken by the Tribunal, another significant development was that by an order dated 14-8-1975, the Tribunal directed the Central Government to advance a sum of Rs. one lakh in the first instance to the MCI, to enable it to present its case. The MCI Act provided for payment of a single compensation on the determination of the same by the Tribunal but not payment of any interim compensation. As the Tribunal appeared to have exceeded its powers under the Act, that Order of the Tribunal had to be challenged in the Delhi High Court.

The undertaking of the MCI was acquired for the speedy development of the lead-zinc ore reserves, and for increasing the production of these scarce metals required by a number of basic and key industries as also Defence. Award of an unduly high amount of compensation, which would ultimately have to be capitalised by the Hindustan Zinc Ltd., would have made lead-zinc production in the country uneconomic. So it had to be ensured that no award frustrates the efforts of the State to produce adequate lead and zinc metals at reasonable cost to its consumers.

In the circumstances explained above and positive recommendation made by the Committee on Public Undertakings, it, was decided on August 2, 1976 with the approval of the Cabinet to promulgate an Ordinance on the following lines, namely:—

(i) The undertaking of the company (MCI) acquired by the MCI Act, 1966 would be nationally retransferred, and revested in, the same company with respective effect from 22-10-1965. Immediately thereafter, the undertaking of the compay would be deemed to have been notionally under the management of the Central Government from 22-10-65 and till the date of promulgation of the Ordinance.

(ii) For the deprivation of its right to manage its undertaking during the period aforesaid, an amount would be paid on the basis of the average of the yearly profits earned by the MCI over five years preceeding the acquisition.

(iii) The undertaking of the company (MCI) would be acquired with effect from the date of promulgation of the Ordinance and an amount of Rs. 1.98 crores was specified in the Ordinance for the acquisition of the undertaking of the company.

The Ordinance on the above lines which was promulgated on 2-8-1976, was replaced by the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976. Thus the amount of Rs. 320.79 lakhs was paid to the Corporation in October, 1976, as under:—

(i) Amount for the deprivation of the Metal Corporation of the Management of its undertaking as per Section 10 of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976; and Rs. 122.79 lakhs

(ii) Amount for the acquisition of the undertaking of the Metal Corporation of India as per Section 11 of the Metal

Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976	Rs. 198.00 lakhs
Total	Rs. 320.79 lakhs.

Valuation of assets of the acquired undertaking of the MCI to determine the amount of compensation

In regard to the reasonableness of the amount of compensation paid to the MCI, it may be stated that in accordance with the principles laid down in the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 a team of officers of the Hindustan Zinc Ltd. undertook the valuation which was reviewed by a team of Departmental Officers. The amount of compensation payable to the MCI was worked out by the two teams as under:—

Sum total of the assets including value of stock in trade. . .	Rs. 11·0010 crores
Less liabilities. . .	Rs. 9·1238 crores
	Rs. 1·8772 crores
Add interest at the rate of 6% per annum from 22-10-1965 to 13-9-1966	Rs. 0·1028 crores.
Net amount of compensation payable.	Rs. 1·98 crores

In this connection it may also be pointed out that no point of time the Government valued the assets of the Corporation at Rs. 6 crores as alleged in the representation.

It will be seen from the facts stated above that the compensation amounting to Rs. 320.79 lakhs is not only reasonable but generous when viewed in the light of the face value of the shares of the company around the time of acquisition. The paid-up capital of the company as on the date of acquisition was Rs. 246.64 lakhs (including Rs. 7.06 lakhs preference). The equity share of the company of the face value of Rs. 10 had been declining and was quoted as low as Rs. 4.25 around the date of acquisition. On this basis the corporation would normally be entitled to a compensation of Rs. 160 lakhs. The market value of shares of a company, in fact, takes into account the market value of its assets and liabilities, future earning capacity and the net worth of the undertaking which a willing buyer would consider. On the basis of the compensation of Rs. 320.79 lakhs provided for under the Act, 1976, the compensation payable on a Rs. 10 share of the MCI works out to Rs. 13 per share. Considering the above facts, the compensation determined/offered and actually paid is neither illusory nor arbitrary and is, in fact, fair and reasonable.

Regarding the other allegation that gravemen of the petition filed by the shareholders is that it was an act of "legislative fraud" to pass the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976 with a view to stall a possible huge verdict of compensation by the Tribunal which, the shareholders feel, could have been in the neighbourhood of Rs. 100 crores. In this connection, the Ministry of Law, Justice and Company Affairs has been consulted and they have pointed out that "under our theory of parliamentary supremacy, no fraud or malafides can be attributed to that august body though a law can be challenged on the ground of want of legislative competence, infraction of mandatory constitutional provisions, or by proving that it is a colourable piece of legislation."

Though the Metal Corporation of India have conceded that lead-zinc being important metals, the Government could nationalise the industry, it had been engaged in challenging the 1965 and 1966 Acts continuously from 1965 to 1971. The judgement of the Calcutta High Court contained certain observations regarding payment of compensation for potential value of the mines based on the pleadings of the then Attorney General before the Court. The MCI had therefore been expecting a very huge amount by way of potential value of the mines. According to the mining laws of the country, the minerals are the property of the State and the rights of the MCI were purely those of a lease holder. The Government could also not concede payment of potential value for minerals as this would have adverse repercussions in several other cases of nationalisation. The MCI Act of 1966 also did not envisage payment of potential value as will be seen from paragraph II (a) (ii) of the Schedule of the MCI Act, 1966 which are together exhaustive but notionally exclusive.

In this connection, it may also be mentioned that the mining lease held by the Metal Corporation of India in respect of lead-zinc mines in Zawar area was valid upto 1970. The unexpired period of the lease was only about 5 years against which the Corporation have been claiming that they have mining lease rights upto 2100 AD.

Further-more, it would not be out of place to mention that payment of unduly larger amount as compensation to the MCI for the acquisition of its undertaking would have defeated the very purpose of nationalisation of the undertaking producing lead-zinc metals (production of which is exclusively reserved in the public sector) as the amount of compensation paid had to be capitalised by the Hindustan Zinc Ltd. and thus would have made the production of lead and zinc metals uneconomic.

In ragard to the allegation of the MCI about the adoption of litigious attitude by the Government, it may be stated that the Government had to challenge the order of the Tribunal which was considered in excess. In fact, it was the MCI who had adopted a litigious attitude, by challenging the vires of the Acts during 1965 to 1971. The Corporation also did not respond to the first offer of compensation made by the Gvernment in June, 1968, but challenged the vires of the MCI Act, 1966, in the Calcutta High Court.

In the light of the factual position stated above, it is felt that the MCI have no cause for further agitation having accepted the amount of Rs. 320.79 lakhs compensation paid by the Government. The Company should in fact proceed to distribute the amount of compensation to the shareholders or take up alternative gainfull activities. In fact, the Government have received letters from various shareholders that they have not received any return on their investment in the company. The representation of the MCI to the Committee on Petitions of the Lok Sabha seems to be yet another attempt on the part of the company to delay payment to its shareholders."

C. Evidence before the Committee

2.4. At their sitting held on the 16th March, 1978, the Committee examined the representatives of the Ministries of Steel and Mines (Department of Mines) and Law, Justice and Company Affairs (Department of Company Affairs) on the points raised in the representation.

2.5. Explaining the background, the Additional Secretary, Ministry of Steel and Mines (Department of Mines) stated that when the Metal Corporation of India was first taken over in 1965 and later nationalised under an Act in 1966, the Company was in very great financial distress. It was not able to pay even import duty on the equipment which had been ordered. It was not able to buy any material and continue its operations. The Company was not even able to complete the construction of smelter plant because it was not able to find the money to pay the customs duty etc.

Further, lead and zinc were two very essential minerals among the non-ferrous metals. Therefore, in order to develop the resources of the non-ferrous metals in the country, the Government of India felt that development of non-ferrous metals could not be left to the vagaries of the functioning of a private sector undertaking which was not able to discharge its duties and responsibilities efficiently. After nationalisation, that company had made enormous progress. It had now attained a capacity of 75,000 tonnes of zinc per annum.

2.6. When asked to state the production in 1963-64, the Joint Secretary, Department of Mines, stated that in the year 1963-64, the

position was more or less the same as was in 1965 except that that Company had drawn out the plans for setting up a smelter plant with a capacity of 18,000 tonnes. Orders were placed for the import of equipment for that project, but owing to financial difficulties, it was not able to proceed with the project. Even the customs duty for equipment could not be paid. Equipments were lying in the port for clearance for quite some time. The witness added that the actual production unit—the smelter plant was not in existence. There was one lead smelter plant at Tundoo (Bihar). But for zinc it had only the beneficiation plant with a capacity of 500 tonnes ore per day and operating mines. The Company had no zinc smelter plant and it was sending its zinc concentrates to Japan. The witnesses also promised the Committee to furnish a statement indicating the production of zinc-lead ore metals after the take over of the undertaking of the Metal Corporation of India by Government.

2.7. The Committee asked the witnesses to give their comments on the allegation made in the representation that the then Government had adopted a litigious attitude making the proceedings before the Tribunal interminable. The Additional Secretary, Department of Mines, stated that it was true that the proceedings before the Tribunal were very prolonged, but it was not because of the Government. The representatives of the Company themselves were pleading all sorts of reasons for not being able to give information, and that had been going on. The witness added that an offer was made to the Company by Government for compensation in 1968. The Company did not accept that. It did not even reply to their letters offering compensation. Unfortunately, the Tribunal took its own time. It was appointed in 1971 and it framed the issues relevant for the enquiry only 1976. Meanwhile, the Committee on Public Undertakings in their Eighty-eighth Report submitted to the Lok Sabha in April, 1976 passed strictures on this situation. The firm had taken compensation money of about Rupees 321 lakhs in 1976. The Directors had accepted the money, but they had not yet distributed it to their shareholders on the plea that the matter was still under dispute.

2.8. The Additional Secretary, Department of Mines further stated that the 1965 Act provided for a Tribunal in case there was a dispute in regard to the amount of compensation. But since the Tribunal was taking too long a time and since the Committee on Public Undertakings in 1976 commented to this, the Government thought that in fairness and equity the amount which was determined as the value of assets minus the value of liabilities at

the time of taking over, which was recommended by the Committee on Public Undertakings also as the basis of compensation, should be allowed to the Company. An amount of Rs. 1.98 crores was deemed to be compensation added to a sum of Rs. 1.23 crores which was the notional amount for management of the Undertaking and a total amount of Rs. 321 lakhs was offered to the Company. This amount was now with the Company. The witness added that according to Government, the prayers of the petitioners were not just, fair and proper and were not warranted. In reply to a query, the witness informed the Committee that Government first offered compensation of Rs. 212 lakhs. As there was a mistake in calculation, it was revised to Rs. 1.98 crores.

2.9. Asked to state the reasons for not acceding to the request of the Company for an interim payment of a sum of Rs. 10 lakhs to be adjusted later against compensation for the purpose of presenting their case before the Tribunal, the representative of the Department of Mines stated that in terms of the Act of 1966, there could be only one payment. Without an amendment to the Act, they could not pay in two instalments. Now if they asked for some payment in order to carry on a legal battle, then it would mean that irrespective of the amount of compensation, the Government would have to finance the legal expenditure of the company in order to prolong that thing. And that was why it was difficult in view of the provisions of the Act to make any payment other than the amount of compensation. However, be added that a small amount could be considered as an *ex gratia* payment to the Company which was without any assets.

2.11. On an enquiry by the Committee whether the Ministry of stated that the Company had requested for a sum of Rs. ten lakhs for immediate payment in 1972. It was in 1974 that Metal Corporation of India filed its claims with the Tribunal On the 14th August, 1975, the Tribunal gave the award that the money should be paid to them for assisting them to fight their case or rather continue their case in the Tribunal.

2.11. On an enquiry by the Committee whether the Ministry of Steel and Mines sought the advice of the Ministry of Law, on payment of interim amount to the Metal Corporation of India, the Additional Secretary, Department of Mines, stated that they took the advice of the Ministry of Law who advised against the payment. The letter of the party was on the file and the entire file was sent to the Ministry of Law *vide* Law Ministry's *vide* their note dated

the 13th November, 1972 and the Law Ministry's advice *vide* their note dated 24th November, 1972 was:

> "It is suggested that a reply may be sent pointing out that the amount becomes due only after determination by the tribunal and that Government are unable to accede to the request of the Company at this stage."

The Ministry of Law further stated that the Act did not provide for two payments and if the Government made a payment of Rs. 10 lakhs, there might be difficulty in making the final payment without the amendment of the Nationalisation Act later on.

2.12. In regard to quantum of compensation to the Metal Corporation of India, the Additional Secretary, Department of Mines, stated that an amount of compensation was offered to the Company at a very early stage. That quantum of compensation was based on a calculation of the value of the assets. In fact it was on record that the market value of the shares at that point of time was well below par. It was about Rs. 4. for every share of Rs. 10, and if a calculation were to be made on the basis of the market value of the shares, the amount of compensation payable would have been much less than what was offered by the Government because Government wanted to offer a patently fair amount of compensation based on the value of the assets minus the value of the liabilities, and that was the amount that was offered.

2.13. The Committee asked the witness to state the correct position regarding the contention of the petitioners that "even on Government's own calculations ....., the corporation would be entitled to a compensation exceeding Rs. 6 crores without taking mining value into account." The representative of the Department of Mines stated that that position was not correct, They had in their reply given the exact calculation and the actual figure would Rs. 198 lakhs. It was not correct that in calculation the Government had raised the figure of compensation to Rs. 6 crores or more.

2.14. On an enquiry, the Additional Secretary, Department of Mines, stated that although the time for submission of report by the Tribunal was extended up to February, 1977, based on their past experience and how some of these commissions had prolonged indefinitely, the feeling was that perhaps the best thing would be to pay compensation and be done with the matter rather than prolong it. The Company had claimed compensation even in lieu of minerals which were underground. Therefore, since this thing was likely to take a good deal of time and would have got mixed up in the legal entanglement, the best thing considered was to pay the compensation. Therefore, in 1976, in terms of a new enactment, compensation was redetermined. The total amount including the old compensa-

tion plus additional amount for the period 1965—1976 was paid sometime in October, 1976. In reply to a question, the witness stated that the emergency had nothing to do with the matter. He added that there had been nationalisation of coal industry. There was a certain basis for compensation for the coal industry. Then there had been other nationalisation Acts also.

2.15. The witness further stated that the relevant Report of the Committee on Public Undertakings became available in February, 1976. In the Report, it was recommended:—

> "The Committee would like the Government to examine the question of paying the amount which may not be more than book value of the assets less the liability of the unit at the time of taking over."

The Government interpreted this report to mean that the Committee on Public Undertakings felt that there was no justification for prolonging this question interminably and that Government should fix the compensation at a level which would be equal to the value of assets minus liabilities at the time of take-over. According to that, the value would have been Rs. 1.98 crores. In this amount of Rs. 1.98 crores, Government felt, a further amount should be added because meanwhile a lot of time had elapsed, namely, between 1965 and 1976. Therefore, a further amount was added, and the total amount payable became Rs. 3.21 crores.

2.16. When asked to state the basis of calculation of additional amount of Rs. 1.23 crores, the representative of the Department of Mines stated that it was on the basis of the average of five years' profits. He added that the company's profits were as follows: in 1960-61 Rs. 14.92 lakhs, in 1961-62 Rs. 2.48 lakhs, in 1962-63 Rs. 4.11 lakhs, in 1963-64 Rs. 5.76 lakhs and in 1964-65 Rs. 29:68 lakhs: The average of these five years was Rs. 11.39 lakhs. They took the average of five years. They did not take the figure of 1963-64 which was very low. They did not also take the figure of 1964-65 which was high. They felt that an average over a priod of five years would be fair, and the average of five years was taken as the notional amount to be paid to the company for the entire period between 1965 and 1976. It was a very fair proposition. In response to a query, the witness stated that the profitability of a company had nothing to do with the bank rate. They had a large number of companies in the country which were incurring losses even when the bank rate was quite high. The compensation in respect of a company could not be determined on the basis of bank rate; it depended on the condition of the country.

2.17. The Committee desired to know from the witnesses whether the notional amount of compensation calculated on the basis of interest would be more. The witness stated that they did not make that calculation. They made another calculation. Right from the initial period, the share of the company in the market had been falling continuously. The share of the company dropped to something like Rs. 4.25 per share on the date of take-over and it had been falling continuously from something like Rs. 13.75 in 1962. So, the share value was declining steadily and the health of the company was reflected in the market value of the share. The witness also promised to furnish a statement showing the values of the equity shares of the Metal Corporation of India.

2.18. Replying to a question if there was any proposal under consideration of the Government for review of compensation, the Additional Secretary, Department of Mines stated that the Government had not considered the question of reviewing the quantum for compensation to the shareholders of the Metal Corporation.

2.19. Commenting on the allegation made by the petitioners that the Nationalisation Act providing for payment of compensation provided for acquisition of mining rights without payment of any compensation the witness stated that it was totally wrong because ownership of all mineral resources vested in the State. Even today, when mining leases were granted for working these minerals, a certain royalty was payable because of the fundamental principle that all mineral resources of the country vested with the State and not with any individual party. Therefore they could not accept that the amount of compensation to be paid to the Metal Corporation should include payment for minerals or for the mining leases held by the Company. The argument that there should be compensation for the mining leases was not tenable. They were paying for whatever had been spent. The payment was for assets minus the liabilities.

2.20. Asked to state the legal position on the submission made by the petitioners in their representation that "The Government may acquire a property without the concurrence of the owner but cannot revest and re-transfer in the owner the property once acquired without the consent and concurrence of the deprived owner". the representative of Department of Mines stated that as a commonsense approach, it was just a national thing which was done. This was a notional way of solving the problem, but the legality was some-

thing to which the answer had to be sought from the Department of Legal Affairs.

2.21. Explaining the reasons for disbanding the Tribunal when it was computing the compensation, the witness stated that he would still submit again for consideration of the Committee that the way the Tribunal was functioning, they were not sure, whether it would finish its work in 10-15 years. The Tribunal was set up in 1971; the issues were framed in 1975 and communicated in 1976. The Tribunal would investigate and take evidence. The share-holders would never have got the payment. Some of them would have died by then.

2.22. Asked what was the basis of the statement contained in their note dated the 20th December, 1977 that the representation of Metal Corporation of India to the Committee on Petitions of Lok Sabha seems to be another attempt on the part of the Company to delay payment to its share-holders", the representative of the Department of Mines stated:

> "They got the payment in October, 1976 and as on March, 1978 they have not distributed it. I feel this is a matter about which something should be done. We have received a large number of representations from the shareholders. Some people have even suggested that we should have distributed this money among the share-holders but it is not possible for us because the Company is a legal entity and compensation has to be paid to the legal entity and it is for that legal entity to make the payment. How the problem is to be resolved is really beyond us. It has to be resolved by the Department of Company Affairs. May be the shareholders will have to go to the court and get their share. We feel that by sending this petition they are only delaying the payment of the compensation to the share-holders because then they can tell the share-holders 'We have made an appeal.' So this will go on for so long and we feel that there should be some finality in the matter."

2.23. When asked to state the action taken on the letter received by the Government from the various share-holders stating that they had not received any return on their investment in the Company, the Secretary, Department of Company Affairs, stated that functionally the Department of Company Affairs was to administer the

Companies Act, 1956. In administering the Companies Act their main aim was to safeguard the interests of the share-holders and the general public. Therefore, in this particular case, an amount of about Rs. 3 crores odd had already been disbursed to the Management of the Metal Corporation of India and they seemed to have kept it in fixed deposit for 91 days at that time. Probably, they might have renewed it subsequently. That was beneficial to the banks while the share-holders had not received a penny for the last 12 years. So, from their point of view, Government's sympathies were with the share-holders. They must get their money quickly. For that, the Company had to go into liquidation. There were many ways for that. Actually, on 31st March, 1977, a meeting was held asking for voluntary liquidation but at that time the accounts were not ready. So, they decided that after the accounts were ready they would hold another meeting, to start liquidation proceedings and distribute the amount to the share-holders. Since then nothing had been done but the Management of the Company had submitted that petition. The witness added that if this Committee did not want to upset the legal position which was standing today, the Company could go into liquidation in a number of ways. They could call a general body meeting, pass a special resolution and to go into voluntary liquidation or some of the shareholders might move the court for liquidation or even if that failed, the Government representatives in Calcutta, the Registrar of Companies could move the courts to liquidate this Company and distribute the amount to the share-holders. He informed the Committee that that would not prejudice the case of the shareholders for claiming extra compensation from the Government. They could even go to the court saying that the compensation was not adequate. That could be done through the liquidator. That was the easiest and the quickest way by which the share-holders could get money. More than two thousand share-holders had not received a paisa for the last 12 years. It was high time to put this company into liquidation and the share-holders could get the money. In reply to a question, the witness stated that the liquidator could keep a certain amount with him and the rest of the money could be distributed to share-holders.

In this connection, the Member, Company Law Board, stated that the share-holders had a right to get the dividend during particular year, but they had no right to get back the capital. In this case, it was the value of the assets taken over under the statutory provisions and this could be distributed as return of capital only by liquidation. The Company could not arrange for return of capital to the share-holders without taking the Company into liquidation.

2.24. The Additional Secretary, Ministry of Steel and Mines (Department of Mines) informed the Committee that the Management of the Metal Corporation of India had sent a petition to the Prime Minister. That had been rejected.

2.25. The Ministry of Steel and Mines (Department of Mines) *vide* their communication dated the 22nd March, 1978, furnished the following:—

(i) A statement indicating the production of zinc-lead ore| metals after the take over of the undertaking of the Metal Corporation of India (See Appendix II) and

(ii) A statement showin gthe value of the equity share of the Metal Corporation of India (See Appendix III).

2.26. In his letter dated the 8th May, 1978, the petitioner Shri A. C. Dutta, Chairman, Metal Corporation of India Ltd., Calcutta stated as follows:—

"After the deliberations on the Directors' Report the consensus arrived at at the meeting was that the share-holders shall await the decision of your Committee before the Board of Directors consider further steps to be taken in the matter of disposal of the amount received from the Government. We are fully aware that the proceedings of your Committee are confidential but we may assume that the representatives of the petitioner-shareholders may be called by you to submit their evidence to the Committee in support of their petition. If this assumption of ours is correct then we could request you to call for such evidence from the petitioner-shareholders as at an early date as possible.

We would draw your kind attention to our letter No. 107 dated 8|11-3-78. We mentioned therein that the share-holders were eagerly awaiting the decision of the Committee. Quite a number of share-holders are writing to the Company for early distribution of the money and it is possible that some of the share-holders might also have written to the Ministry concerned asking them to put pressure on the Company for distribution of money. But as will be seen from the proceedings of the Annual General Meeting enclosed herewith, as mentioned earlier in this

letter, that by far the majority of the share-holders of the company who were present in the meeting by proxy and in person have decided unanimously to await your decision before any step as to the distribution of money be considered by the Board of Directors and share-holders."

2.27. The Ministry of Steel and Mines (Department of Mines) *vide* their communication dated the 20th June, 1978, furnished legal opinion of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) on a legal point raised in the representation that "the Government may acquire a property without the concurrence of the owner but cannot revest and re-transfer in the owner the property once acquired without the consent and concurrence of the deprived owner." which reads as follows:—

"This case has been referred to us for opinion on the legal point raised by a petitioner in the representation submitted to the Committee of Petitions to the effect that "the Government may acquire property without the concurrence of the owner but cannot revest and re-transfer in the owner the property once acquired without the consent and concurrence of the deprived owner".

No copy of the said petition has been forwarded to us but it appears from the notes of the department that the said representation has arisen as a result of passing the Metal Corporation (Nationalisation and Misc. Provisions) Act, 1976. Section 4(1) of this Act provides in substance that on the Commencement of this Act, the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 was to stand repealed and on such repeal, the undertaking of the Metal Corporation, which had been transferred to, and vested in, the Central Government by virtue of the Repeal Act, was to be deemed to have been re-transferred to and revested, in the Metal Corporation, and, immediately thereafter the management of the undertaking of the Metal Corporation was to be deemed to have been transferred to, and vested in, the Central Government. Section 7 of the said Act also provides for vesting of the undertaking of the Metal Corporation in the Central Government on the appointed date. For purposes of answering the query, we need not describe in detail the various provisions of this Act. It is sufficient to mention

that it is not a case of transfer or re-transfer of the property by the act of parties. In this case, the property had been acquired by a statute, it is deemed to have been re-transferred to the Metal Corporation by the statute. The Law Ministry had already given opinion on this point after obtaining the opinion of the law officers. A copy of the opinion dated 5-7-76 of Shri P. V. Swarlu, JS&LA given in this regard is placed below. (*See* Appendix IV).

The property cannot ordinarily be re-transferred to the original owner without his consent when it is the case of transfer by the (voluntary) act of parties which does not appear to be the case here."

2.28. The Committee, at their sitting held on the 14th September, 1978, heard oral evidence of Shri A. C. Dutta, the Chairman and a Share-holder of the Metal Corporation of India Limited, Calcutta on the points arising out of his representation regarding repeal of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976.

2.29. Explaining his grievances and background of take over and nationalisation of the Metal Corporation by Government, Shri A. C. Dutta in his evidence stated that the Government had offered them on their own calculation a compensation of Rs. 2.12 crores but on the advice of their counsel, they did not accept that amount as the matter was under judicial review. Then a Tribunal was appointed under the provisions of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 to determine the quantum of compensation. The Tribunal commenced its sittings. After more than thirty hearings, the Tribunal issued an order for the documents to be given to them for inspection. Immediately the Government went to the High Court against the order of the Tribunal. Ultimately they were allowed inspection of records.

2.30. Shri Dutta added that they had entrusted to M|s. Kapadia and Baria & Toplis and Hardings, a Bombay firm, the assessment of all their assets long before acquisition with a view to submitting these to the financial institutions for financial help. That report was not complete. But Government took over that report as the basis for assets of the Metal Corporation. Then came a stage when it become necessary to find out how Government had arrived at the figure of Rs. 1.98 crores as the net value of the assets as

against their claim of Rs. 101 crores. That compelled them to submit an application to allow inspection by them of the Government valuation report. For several months there were a spate of objections. Finally the Judge gave the order in early 1976. Meanwhile as they had no monetary resources, they applied for some money to be given to them by the Government. The Tribunal recommended a loan of Rs. 1 lakh, but the Government went on appeal against that order.

2.31. Shri Dutta informed the Committee that after the inspection of the Government valuation report, they found that each and every item had not been taken into calculation. They also found that according to their method of valuation, it should not be Rs. 1.98 crores. But it should have been nearly Rs. 6.0 crores. They also submitted to the Tribunal a complete calculation the basis for that figure, by the end of July, 1976.

2.32. Shri Dutta further stated that on 2nd August, 1976, it was announced over the Radio that a new ordinance had been issued. The previous Act of 1966 was repealed. The undertaking was taken over.

2.33. When asked to state why they did not challenge the provisions of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976, in the Supreme Court; Shri Dutta stated that in those days of the Emergency they were afraid that if they challenged the provisions, they might be imprisoned under MISA. The Government very, graciously provided in the new Act that they would give them a sum of about Rs. 11.35 lakhs per year for the period of 11½ years. In the month of October, 1976, they received a cheque for that amount which they had kept in the bank in fixed deposit. Then in the Annual General Body meeting held on 31st March, 1977, there was a long discussion on that point. Some shareholders told him. "Sir, we have waited for 12 years and we shall wait for another year or two. Now the Emergency has gone and the new Government has come and the Janata Government has declared, as a matter of policy, that they will undo the evils of Emergency. I think we will again challenge the Act before the Supreme Court." But on the suggestion of some other share-holders they had submitted their grievances to the Committee on Petitions for redress.

2.34. Shri Dutta further stated that in their representation they had submitted all their figures. They had submitted that the market value of the land included its potential value. While calculating the value of the land it should not only be the value of the surface of the land but the value of the minerals lying underground would

have to be taken into consideration. Another submission of theirs was that "All along in this matter, Government was saying that they were only lease-holders and were to continue only upto 1970. It was absolutely a mis-statement of facts. Our lease was naturally for an initial period of 20 years with the right of renewal for two like periods of 20 years, which could not be refused by the Government, i.e., the Government of Rajasthan; except on grounds of gross misuse of their right over the mines." Shri Dutta added that they had made a submission to the Committee to undo the injustice done to the Corporation consisting of about 2500 share-holders who were tax-payers and voters of the country and who had agreed to wait the decision of the Committee in the matter before taking any further steps about the future of the company.

2.35. Shri Dutta further submitted that the Committee should recommend the repealing of the Act of 1976 (Act No. 100 of 1976) and the reinstatement of the Act of 1966 and ask the same tribunal to proceed in the matter of assessment or valuation from the day his proceedings stopped. Whatever the Tribunal decided they would certainly accept.

2.36. The Committee pointed out to the representative of the Metal Corporation of India Ltd. that some of the share-holders had complained that out of the compensation awarded by the Government to the Company, they had not received a single paisa, and asked why they had not paid. Shri Dutta stated that in the meeting of the share-holders held on 31st March, 1977 nearly 80 per cent of the shareholders were represented by proxy or in person. The members present in person were only 51 and by provy 26. Practically, a majority of the shareholders who purchased the shares after the acquisition of the company when the price of the share slumped, were very eager to get back their money because they knew that they would get Rs. 2 or Rs. 3 more than what was the original price of the share paid for. So, these were small shareholders who were perhaps creating some trouble. But they did not know whether anybody had written to the Government because no letter had been forwarded to them by the Government. The shareholders who came to their office about it, were explained the position and they went satisfied.

2.37. Referring to the proceedings of the Thirty-third Annual General Meeting held on the 25th April, 1978, Shri Dutta stated that the consensus arrived at in the meeting was that the Company could wait for a reasonable time for the decision of the Committee

On Petitions on their representations and thereafter the Board might consider further steps to be taken in the matter for dealing with the amounts received from Central Government.

2.38. Shri Dutta further pointed out that they could not distribute the money until and unless they had passed a resolution and appointed a liquidator. However, they would wait for the decision of the Committee on Petitions before taking further steps for distribution of money.

2.39. On asking what was the legal hitch in distributing Rs. 1.23 crores which was compensation for deprivation of the management of the Company for 12 years, to the share-holders, Shri Dutta stated that the amount of Rs. 1.20 crores was to be considered by the Income tax authorities as a revenue income. Income Tax Act was amended in the year 1972-73, providing that any such amount received in lieu of deprivation of the management of the undertaking was a revenue amount. Their auditors or lawyers could not say whether the whole of it would be liable to taxation or the amount received subsequent to 1972 *i.e.* upto 1976 would be taxable. The matter would not end with Income Tax Department. It would not end with High Court. It would go to the Supreme Court. So, Rs. 120 crores could never be distributed. Rs. 1.98 crores could be distributed only after the company went into voluntary liquidation. The question of payment to the share-holders did not arise. If they forced them they would go into liquidation. If they went to the law court, they had got enough justification to satisfy the court. It was not advisable to go into voluntary liquidation at that stage. In reply to a query Shri Dutta informed the Committee that the number of share-holders was 2,400.

2.40. In reply to a question, Shri Dutta informed the Committee that in 1965, the Company was in great financial difficulty. It was a fact that they did not have the money to clear the goods and machinery at that time. He also admitted that Government had offered them compensation in 1968, but the Company did not reply.

2.41. In reply to a question, Shri Dutta stated that they wanted Rs. 10 lakhs at one stage in 1972 and the Tribunal simply forwarded the request to the Government. The Company also wrote to the Government. But no acknowledgement or reply was received by them from Government. Shri Dutta added that after some time, they told the Tribunal that they could not pay their lawyers. So, they again applied, and the Tribunal passed an order that Rs. 1 lakh might be given to the Company on the specific condition that the Tribunal would scrutinise the expenses to ensure that the amount was being spent only for the purpose of prosecuting the case before

the Tribunal, and not for any other purpose. As soon as that order was passed by the Tribunal, the Government immediately went on appeal to the High Court. With the promulgation of the Nationalisation Act, that High Court case was withdrawn.

2.42. On an enquiry Shri Dutta also clarified that according to their procedures of calculation on the basis of Government's valuation report, the Metal Corporation was entitled to a compensation of about Rs. 6 crores and not Rs. 1.98 crores.

2.43. When asked to elaborate the Statement made in his representation that the compensation was wrongly and arbitrarily calculated, Shri Dutta stated that they had actually gone by the undertaking given by the Attorney General in a case before the Calcutta High Court where he said that the land would include the minerals under ground and its potential value. The Company was in possession of the land as a leases holder upto the year 2010, not upto 1970. For the next 40 years, the land belonged to them on the basis of interpretation given by the Attorney General himself, they submitted their claim including the potential value of the land and the minerals lying under ground for the period they were supposed to be in possession of the land. They did not take into consideration what they had done in the case of coal mines.

2.44. In regard to dividend to the Share-holders, Shri Dutta informed the Committee that they had paid dividend on equity share once only in 1952. All the profits were ploughed back into the Company.

2.45. Shri A. C. Dutta vide his letter dated the 23rd September, 1978 furnished the requisite information on the various points asked for by the Committee and a Note submitted to Tribunal on valuation Report of Government and Hindustan Zinc Limited (See Appendices V & VI).

D. Recommendation of the Committee

2.46. The Committee note that the undertaking of the Metal Corporation of India Limited, Calcutta was first acquired by the Central Government with effect from the 22nd October, 1965 under an Ordinance. On the 29th November, 1971, a one-man Tribunal was constituted under Section 11 of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, to determine the amount of compensation payable to the Metal Corporation of India. The term of the Tribunal was extended from time to time, and the last extension was upto the 28th February, 1977. In the meanwhile after the

amendment of Article 31(2) of the Constitution by the Constitution (Twenty-fifth Amendment) Act, 1971, the Ministry of Steel and Mines took up the question with the Ministry of Law, as to the lines on which the Metal Corporation of India Act, 1966, could be modified. The Solicitor-General of India, however, expressed the opinion in September, 1973 that, as the amendment of Article 31(2) was not retrospective, it could not afford protection to a law made prior to the Constitution (Twenty-fifth Amendment) Act, 1971.

2.47. On the 2nd August, 1976, however, an Ordinance was promulgated by the Government, which was later replaced by the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976, under which the undertaking of the Metal Corporation of India which was originally acquired in 1965, was nationally retransferred and re-invested in the same Company with retrospective effect from the 22nd October, 1965, and was then immediately thereafter deemed to be nationally under the management of the Central Government from the 22nd October, 1965, and acquired from the date of promulgation of the Ordinance i.e. 2-8-1976, and an amount of Rs. 1.98 crores was specified in the Ordinance as compensation for the acquisition of the undertaking of the Company. Besides, an amount of Rs. 122.79 lakhs was also paid to the Company for deprivation of the management of its undertaking. Thus a total amount of Rs. 320.79 lakhs was paid to the Corporation in October, 1976 by Government. The Ordinance had been duly replaced by an Act of Parliament on the 9th September, 1976.

2.48. The Committee feel that the compensation was fixed by Government in somewhat peculiar circumstances. The Committee are of the view that the contention of the petitioners that a just compensation has not been paid to them, needs re-examination by an Expert Committee consisting of independent financial and legal experts. The Committee, therefore, recommend that Government may expeditiously consider the appointment of such an Expert Committee which should submit its report within a fixed time to the Government for further consideration of the matter, and necessary action, if any.

NEW DELHI;
Dated the 2nd March, 1979.

H. V. KAMATH,
Chairman,
Committee on Petitions.

APPENDIX I

(*See* para 2.2 of the Report)

[*Representation regarding repeal of the Metal Corporation Nationlisation and Miscellaneous Provisions) Act, 1976.*]

BEFORE THE CHAIRMAN, PETITIONS COMMITTEE

Lok Sabha, New Delhi.

The humble petition of the share-holders of the Metal Corporation of India Limited most respectfully.

SHEWETH:

1. That your petitioners being the shareholders of the above named Company most humbly and respectfully make this petition to you to take expeditious action to repeal the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act No. 100 of 1976 (for short: Nationalisation Act) and restore the Metal Corporation of India (Acquisition of Undertakings) Act 36 of 1966 (for short: Acquisition Act) as one of the measures in the process of restoration of the rule of law, equity and good conscience which were bulldozed during the regime of previous Government which was a reign of terror. The Janata Party has pledged to the people of India to undo all oppressive, undemocratic, unjust, and arbitrary enactments steamrolled by a particular group or caucus through the Parliament during emergency. Your petitioners humbly and most earnestly approach you to redeem this pledge and undo the gross and pradatory injustice done to the shareholders of the Corporation during the Emergency.

2. In the last Annual General Meeting of the shareholders of the Corporation held on 31st March, 1977 the matter of voluntary winding up of the Corporation was considered but in the course of deliberations held the consensus arrived at was that in view of the most welcome change of the Government in the country a last attempt is to be made for the repeal of the Nationalisation Act 100 of 1976 and a petition submitted to the Hon'ble Prime Minister of India and through him to the Union Cabinet and submit a Petition be the Petition Committee of Lok Sabha. The total number of shareholders as in the Share Register of the Corporation as on the date of the last

Annual General Meeting in 2266. Your petitioners are tax-payers and voters of the country. In the meeting several letters were read out by the Chairman of the Corporation received from the different shareholders suggesting either challenging the Act or submit petition for repeal of same. Your petitioners as such shareholders therefore, are submitting this petition on their behalf and for and on behalf of all the shareholders of the Corporation who have suffered great loss in the hands of the previous Government due to its *malafide* and wrongful action, and denial of natural justice.

3. The sittings before the Tribunal were very much prolonged and the then Government had adopted litigenous and dilatory tactics making the proceedings interminable. Nearly four years had passed from the first sitting of the Tribunal held on 4.9.1972 and yet the case had not entered the stage of evidence and even the primary records of the undertaking had not been placed by the Government|Hindustan Zinc Ltd. before the Tribunal. Even the most reasonable order made by the Tribunal directing the Government to advance to the Corporation a sum of Rs. one lakh to enable the Corporation meet the essential expenses for representation of its case before the Tribunal was challenged by the Government in the High Court of Delhi in a Writ Petition. The Government had also earlier gone to the High Court in order to resist the direction of the Tribunal on inspection of material and vital records (as detailed in the annexure).* This shows that the Government was bent upon making the proceedings of the Tribunal interminable.

4. All these facts and circumstances made it clear that:

(a) It would not be possible for the Corporation to arrange finances and effectively and meaningfully participate in the proceedings before the Tribunal with assistance of lawyers and experts as the very nature of the case required;

(b) Any effective and meaningful participation of the Corporation in the proceedings before the Tribunal would be exploited by the Government to make the proceedings interminable;

(c) Maddenedby by the Emergency powers, the Government was in no mood to honour either the decisions of the Tribunal to just compensation assured to the Corporation under the Acquisition Act;

---

*Not circulated.

(d) Government's own report and recorded of valuation at least supported the Corporation's claim to a considerable extent on block and other assets, excluding mineral rights and the potential value of the mining assets;

(e) The case before the Tribunal did not invite any oral evidence and all records of the undertaking were with the Government|Hindustan Zinc Ltd. which could be obtained and examined by the Tribunal with or without assessors for valuation. The Tribunal already had the report of expert valuers: Kapadia & Baria and Toplis & Harding Pvt. Ltd. (KBTH) and the valuation of the Government| Hindustan Zinc Ltd. Valuation Teams, to make tribunal's own assessment.

(f) In any event, the Corporation, after over ten years, felt at completely exhausted and frustrated that it could fiifht no more for its just and legal rights. The litigious approach of the Government its defiance of even the legitimate orders of the Tribunal, its frequent runs to the High Court to challenge all just and fair orders of the Tribunal and at the top of it all, the dictatorial and unprincipled powers with which the leviathan had equipped itself under the Emergency, made it crystal clea rthat any legitimate compensation awarded by the Tribunal would not be paid by the Government and only achieve for the Corporation and interminable litigation, perhaps, for another 10 or 20 years and that too, with ominus results.

5. The shareholders have reasons to believe that the action taken by the bureaucracy in promulgation of the Nationalisation Ordinance No. 12 of 1976 enacted into Nationalisation Act No. 100 of 1976 was presumably motivated by the fear in their mind that the compensation arrived at in a judicial forum would have been just and equitable as against the compensation fixed by the Executive Branch of the Government and thus to shut out the possibility of any just and reasonable compensation being determined by the Hon'ble Tribunal on the basis of the Constitution before its 25th amendment.

6. In the circumstances, the Corporation was left with no option but to request the Tribunal by an application to allow the Corporation to file written arguments leaving it to the Tribunal to decide the matter on perusal of the records of the undertaking and any evidence or submissions the Government would choose to make. The Corporation expressed its inability due to financial distress to effectively and meaningfully participate before the Tribunal through counsel and expert. The Corporation assured the Tribunal that whatever taking had already been fulfilled with its acquisition on 22-10-1965.

compensation it may award, will be acceptable and it felt confident in entrusting its fate to the fair and noble judge who headed the Tribunal. This procedure, it was stated, would help the Tribunal to expeditiously conclude the proceedings and frustrate the deliberate and consistent efforts being made by the Government to make the proceedings interminable.

7. The Tribunal allowed the Corporation to file written submissions. The Corporation was also allowed to file written note on inspection of the records of the Government/Hindustan Zinc Limited Valuation Teams. The Corporation, accordingly on 19th July, 1976 filed before the Tribunal, its inspection notes, showing that even on Government's own calculation, without disturbing the so-called absurd and irrelevant principles adopted by them, the Corporation would be entitled to a compensation exceeding Rs. 6 crores without taking mine valuation into account. The Written arguments on the case were filed by the Corporation before the Tribunal on 31st July, 1976, supporting on a detailed analysis of facts and various decisions of the Supreme Court, the Corporation's claim for compensation as submitted before the Tribunal.

8. The written arguments and the notes on inspection earlier submitted had immediate electric effect. With the fraud of its valuation exposed by the inspection note trimming of its prospects of making the proceedings interminable and realising that it had really no answer to the Corporation's legitimate claims, the Government stooped down to a legislative fraud. Emergency was utilised to promulgate on 2nd of August 1976 the Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance, 1976 which was subsequently replaced by the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 100 of 1976 (Nationalisation Act). Even bare examination of the relevant Sections of the Nationalisation Act revealed its fraudulent and expropriatory objective. Its preamble was a clear fraud. The sole object of the Act was to repeal the Schedule of the Acquisition Act by which the earlier representative Parliament in its considered wisdom had assured the Corporation compensation computed at the market value of all the assets and properties which comprised its undertaking at the time of acquisition on 22-10-1965.

9. The Preamble of the Nationalisation Act of 1976 declared the object of the legislation to be to take over the managment of the undertaking of the Corporation after retransferring and revesting the undertaking to the Corporation and for subsequent acquisition of the undertaking for the purpose of enabling the Central Government in public interest, to exploit the zinc and lead deposits and utilise the minerals for common good. The objective of acquiring the under-

There was, therefore, no factual or legal necessity for enacting the Nationalisation Act, 1976. The management of the undertaking was already with the Government/Hindustan Zinc Ltd. since 22-10-1965 and there could be no occasion on 2nd of August 1976—nearly 11 years after the undertaking had remained in the exclusive management of Government/Hindustan Zinc Ltd. to take over the management *de-novo* from 22-10-65. The entire undertaking had also been acquired and vested in the Government with effect from 22-10-1965 under the acquisition Act of 1966. There was, therefore, no factual or legislative need for re-transferring and re-vesting the undertaking already acquired, back to the Corporation on 2nd August, 1976 with effect from 22-10-65. There was also no factual or legislative need for re-acquiring the undertaking with effect from 2nd August, 1976 *de-novo*. Acquisition of a property *de-novo* after nearly 11 years of its acquisition, without there being any challenge to the acquisition is something unheard of. It is also unprecedented to legislate taking over of management of an undertaking after the management had remained for nearly 11 years with the Government and its Company under a law which was no more under challenge. The object of enabling the Central Government to exploit the deposits and utilise the minerals in the manner stated, had already been fully achieved under the earlier law and there was no earthly reason for its repeal. As it will be presently shown, the sole object of enacting the Nationalisation Act was to get rid of legislative fraud, the Schedule of the Acquisition Act of 1966 and do away with the Tribunal set up under Sec. 10 of that Act, prevent the Corporation from having its claim determined by the Tribunal under the provisions of that Act and acquire forfeit and confiscate without any compensation a large part of the compensation assured under the Acquisition Act No. 36 of 1966 by substituting and replacing it by the fictional amounts provided under Sections 10 and 11 of the Nationalisation Act No. 100 of 1976. With the above malafide and preditory objectives, the Nationalisation Act was streamrolled by the then Government through a Parliament which had already lost its representative character and which was notoriously destroying every principle and institution of national life including its fundamental law, the Constitution and its basic institutions, *viz.* a legislature representing the will of the people, a judiciary—fearless and independent and an executive subservient to the rule of law.

10. In contra-distinction to the compensation provide under Sections 10 and 11 of the Nationalisation Act of 1976, the compensation provided under the Acquisition Act of 1966 were as follows:—

> "Section 10 of the Acquisition Act provided that the Central Government shall pay compensation to the Corporation

for the acquisition of its undertaking and this compensation shall be determined in accordance with the principles specified in the Schedule and in the manner set out under Section 10. It was provided that if the amount of compensation can be fixed by agreement, it shall be determined in accordance with such agreement. But when no agreement can be reached, the Central Government shall refer the matter to the Tribunal. Section 11 provided for the set up of Tribunal consisting of a person who is or had been or is qualified to be a Judge of a High Court or of the Supreme Court. The Tribunal may choose one or more persons possessing special knowledge of matters under inquiry to assist the Tribunal. The Tribunal was also given certain powers of the Civil Court as regards summoning witnesses, compelling discovery and production of documents, receiving evidence on *affidavits* etc. The tribunal was also left free to regulate its own procedure and decide all matters within its competence. The Schedule of the Acquisition Act provided that compensation to be paid to the Corporation in respect of the acquisition of the undertaking shall be an amount equal to the sum total of the value of the properties and assets of the Company as at the commencement of the Act calculated in accordance with the provisions of paragraph II of the Schedule less the sum total of liabilities and obligations of the Corporation as at the commencement of the Act calculated in accordance with the provisions of paragraph III of the Schedule together with interest on such amount calculated in accordance with the provisions of paragraph IV. Paragraph II (a) provided for market value at the commencement of the Act:—

(i) of any land or building;

(ii) of any plant, machinery or other equipment; and

(iii) of any shares, securities or other investments.

Besides, the Schedule also provided refund of premia proportionate to unexpired period of leases realisable debts and the market value at the commencement of the Act of all tangible assets and properties other than those falling under the proceeding categories. Out of the total sums so computed, the total amount of liabilities and obligations incurred by the Corporation in connection with the for-

mation of management and administration of the undertaking and subsisting immediately before the commencement of the Act were to be deducted. On the amount so computed the Corporation was to be paid interest from 11-10-1965 to 13-9-1966 calculated at the average bank rate."

11. Thus in substance and effect, the Nationalisation Act of 1976 confiscated and expropriated a large part of the compensation which the Parliament had secured for the Corporation while acquiring its undertaking under the Acquisition Act of 1966. Such a law is perverse to Art. 31 of the Constitution. The Nationalisation Act of 1976 in fact has all the features and characteristics of the so-called laws made under Emergency directed to bring to an end the rule of law.

12. The official records will reveal that the Government contemplated making of Nationalisation Act only after the Corporation was able to inspect the records of the Government/Hindustan Zinc Limited valuation teams and submitted its notes to the Tribunal exposing the fraud concealed behind the Government's claim of net compensation to be only Rs. 1.98 crores as against over Rs. 6 crores on Government's own estimate. The prospect of having to pay a further substantial amount towards potential value of the mines were exercising the minds of the officials. The Nationalisation Act of 1976 represents nothing short of a legislative fraud to deny the Corporation compensation to which it was legitimately entitled under the Acquisition Act of 1966.

13. The Corporation does not wish to reverse the entire process of history. Zinc and lead mteals are important national assets. The Corporation never stood in the way of nationalisation of its undertaking in *bonafied* nataional interest. All that the Corporation claimed and fought for was its right under the Constitution to a just compansation. The Undertaking of the Corporation having been acquired under the Acquisition Act with effect from 22-10-65, the Corporation had acquired a concluded vested right to compensation provided under Section 10 of that Act with the Schedule. That compensation, though still in the judicial process of being quantified property. The Nationalisation Act of 1976 in fact sought to acquire a large part of that property. It was not the undertaking of the Corporation which in reality could be said to have been acquired or intended to be acquired by the Nationalisation Act No. 100 of 1976. What was in fact acquired was a large part of the compensation to which the Corporation was entitled under the Acquisition Act of 1966 without payment of any compensation. The

amounts to be paid under Sections 10 and 11 of the Nationalisation Act 1976 clearly appear illusory and represented only a small part of the compensation guaranteed to the Corporation under the Acquisition Act. This is a clear fraud on Art. 31 of the Constitution.

14. The Nationalisation Act of 1976 in the light of the law laid down by the Supreme Court in Keshavanand Bharti's case clearly represents a fraud on Art. 31(2). The question of acquiring any already acquired undertaking after more than 10 years of its acquisition can never arise and a law purportedly to bring about such a situation is not a law under Art. 31. It is also beyond the legislative competence under Art. 31 to compel a deprived owner to take back the property acquired after his right to receive the compensation under that law has become a constitutional right. The Government may acquire a property without the concurrence of the owner but cannot re-vest and re-transfer in the owner the property once acquired without the consent and concurrence of the deprived owner. The sole object of the Nationalisation Act was to get rid of the Schedule of the Acquisition Act of 1966 which provided for payment of compensation computed on the basis of market value and substitute it by specified fictional amount. The Corporation's undertaking was acquired prior to 25th amendment assuring payment of just equivalent as compensation. Retrospective application even by statutory device of the 25th amendment is clearly beyond the scope of that Article. The Government clearly did not include one potential value of the mines which constituted the most important asset, the Corporation being a mining undertaking. The Nationalisation Act of 1976 provided for payment of Rs. 1.98 crores as compensation clearly provided for acquisition of the mining rights, without payment of any compensation.

15. If in the the national interest the Government wishes to retain the undertaking, it is most welcome to do so. The Corporation has already submitted to and abided by the Acquisition Act of 1966 and was appearing before the Tribunal for a reasonable compensation in terms of that Act to be fixed by the Judiciary instead of by the Executive Branch of the Government.

16. The facts mentioned above as also in the annexure attached hereto will amply justify our appeal to you for redress of the great injustice done to the Corporation with its about 2300 shareholders who are tax-payers and voters of the country and we earnestly pray that the matter will receive your sympathetic consideration and you will be pleased to take steps to redress the negation of natural justice

to the shareholders by promulgation of Nationalisation Act No. 100 of 1976 at a time when the Tribunal appointed was at the point of completion of the work for determination of the compensation payable under previous Act of 1966.

In the circumstances as mentioned aforesaid your humble petitioners most respectfully pray for your kind and sympathetic consideration of the facts and circumstances of the case and, if thought fit, to recommend to the Government to redress grievances of your petitioners by passing appropriate orders:

(a) For repeal of Metal Corporation (Nationalisation and Miscellaneous Provisions) Act No. 100 of 1976;

(b) For restoration to the Statute book the Metal Corporation (Acquisition of Undertaking) Act No. 36 of 1966; and

(c) For appointment of the same Tribunal which was appointed under the said Act No. 36 of 1966 and to proceed with determination of compensation for the Undertaking from the stage to which it had reached before its abolition under Nationalisation Act No. 100 of 1976 and to continue the proceedings of the Tribunal expeditiously till the determination of the compensation payable to the Corporation; and

Your petitioners as in duty bound shall ever pray.

Sd/-

Atul Chandra Dutta,

56, Purna Das Road,

Calcutta-29,

and others.

Dated Calcutta,

8th August, 1977.

ANNEXURE TO APPENDIX I

THE METAL CORPORATION OF INDIA LIMITED
135, BIPLABI RASHBEHARI BASU ROAD, CALCUTTA-700001

PREFACE

Facts and short history of the Metal Corporation of India Limited and acquisition of its undertaking by the Central Government since 22-10-1965 under the following relevant Ordinances and Acts:—

(a) Acquisition Ordinance No. 6 of 1965 dated 22-10-1965 enacted into Acquisition Act No. 44 of 1965 dated 12-12-1965, the said Act was declared *ultra vires* Constitution by the then Punjab High Court and its judgment subsequently upheld by the Supreme Court on 5-9-1966 (Parliament was in session upto 8-9-1966).

(b) Acquisition Ordinance No. 10 of 1966 dated 13-9-1966 enacted into Acquisition Act No. 36 of 1966 dated 3-12-1966 and appointment of Tribunal thereunder for determination of quantum of compensation payable to the Corporation.

(c) Final stroke by Nationalisation Ordinance No. 12 of 1976 dated 2-8-1976 enacted into Nationalisation Act No. 100 of 1976 dated 7-9-1976, promulgated while the Tribunal proceedings were continuing under the Act No. 36 of 1966. The previous Ordinance and the Act was repealed and the Undertaking was retransferred and revested to the Corporation, previously acquired under Act No. 36 of 1966 and management of the Undertaking was taken over simultaneously and then on the same day the Government re-acquired the undertaking and vested same in the Government Company—all these events taking place simultaneously at the moment of the promulgation of the Ordinance by the President.

FACTS OF THE CASE

The Facts of the case are herein stated in two or three stages for

(a) The early history of the formation of M.C.I. and its activities upto October 1965 when the first Ordinance and Act of Acquisition being Act. 44 of 1965 was promulgated and enacted.

(b) The period between 1965 and 1972 during which M.C.I. took various legal steps on the best of available legal opinions to recover its undertaking and undo the injustice done.

(c) The period between 1972 and 2nd August, 1976 during which the Tribunal appointed under the Acquisition Act No. 36 of 1966 had its proceedings and finally promulgation and enactment of the Nationalisation Ordinance and Act No. 100 of 1976.

M.C.I. was incorporated in the year 1944 with a paid-up capital of about Rs. 30 lakhs when it acquired the assets and liabilities of Eastern Smelting & Refining Co. Pr. Ltd., who had earlier in 1942 started mining of lead in a small mine near Jaipur and installed a pilot lead smelter plant near Dhanbad. E.S.R. Ltd., during that period had the opportunity of recruiting two top technologists of the then Burma Corporation Ltd., who had evacuated during the early part of the war before Japanese occupation of Burma. One of them was experienced Mining Engineer and other one was the Superintendent of the Lead Smelting plant. In 1944 M.C.I. negotiated with the then Government of Mewar for a prospecting licence-*cum*-lease of Zawar Mines area in Udaipur over 20 sq. miles for a period of twenty years subject to renewal of two further like periods at the option of M.C.I. The lease was executed in 1950 after prolonged negotiation. M.C.I. had negotiated for a loan of Rs. 40 lakhs from the Industrial Finance Corporation of India (I.F.C.) and such loan was obtained immediately after the Lease document was executed. This loan was guaranteed by the Government of India on certain terms and conditions. The Development of the mine continued and a technical collaboration for mine development was arranged with Mitsui Mining & Smelting Co. Ltd., of Japan in 1950 under which one of their top mining engineers was deputed to Zawar Mines for a period of two years each and this arrangement continued for eight years. M.C.I. also arranged with Mitsui for smelting of zinc concentrates produced at Zawar mines at their works at Japan on payment of treatment charges and return of the zinc metal produced therefrom. This was brought back to the country and sold in the open market. This procedure saved our country about 50 per cent of foreign exchange required for the import

of zinc metal directly. Lead concentrates produced was smelted in its own smelter near Dhanbad.

2. By about 1955 additional finance was required for increasing the capacity of the lead and zinc ore beneficiation plant and also for increasing the capacity of the lead smelter. The authorities of Indian Steel & Wire Products Ltd. of Jamshedpur joined M.C.I.; paid up share capital was increased to Rs. 50 lakhs and I.S.W.P. financed in shares and loans to the extent of about Rs. 25 lakhs. The Capacity of mining and beneficiation plant was raised from 200 tonnes per day to about 500 tonnes per day. In approving this financial participation of I.S.W.P. the Government *inter alia* stipulated that M.C.I. shall proceed to increase the mining capacity to 1000 tonnes per day and then in consultation with the Government install a zinc smelter in the country and issue capital for same the Government having option to participate in such equity capital as might be mutually agreed upon in case the required capital could not be raised from the market.

3. Upto the year 1957 M.C.I. was selling lead produced by it indigenously in its lead smelter and zinc brought back from Japan out of its concentrate in the open market. The import of non-ferrous metal was under O.G.L. and free from any custom or other duties and sales were in competition with imported materials. During 1957 there was very steep fall in international prices of zinc and lead. M.C.I. therefore approached the Government and the case was referred to Tariff Commission for their recommendation.

4. In 1958 import of lead, zinc and copper and other non-ferrous metals was removed from O.G.L. and the price in the internal market started going up progressively. M.C.I. thereupon represented to the Government both in writing and verbally that protection will not be necessary any more and that allotment of zinc should be withdrawn and metal allowed to be sold at the open market as before. The Government did not agree to this reasonable proposal. This was the starting point of official obstacles on the way of the development of the lead zinc industry in the private sector. During these days I.F.C. had a nominated director on the Board. The Tariff Commission submitted its report on 6-2-1959 and on the basis of their enquiry and the sale price of lead and zinc was fixed at a very low figure based on the cost of production during the years 1957 and 1958, upto 31-3-1961.

5. In 1959 M.C.I. started negotiations with two foreign collaborators for development of the mines and installation of an electrolytic

zinc smelter. A licence was issued by the Government in favour of M.C.I. for installation of zinc smelter with a capacity of 12—15,000 tons of zinc per annum with corresponding ancillary products like sulphuric Acid, Super-phosphate and Cadmium. The same licence was later on modified for increase in capacity to 18—20,000 tons of zinc per annum with proportionate increase in production of bye products.

6. In the year 1961 collaboration was finally established with Societe KREBS and Societe PENNARROYA of France for installation of zinc smelter and development of the mines. At that time finance required for the projects was estimated at about Rs. 7.50 crores. Industrial Finance Corporation of India sanctioned a term loan of Rs. 1.00 crore and guaranteed a foreign exchange loan together with interest thereon under French Credit for deferred payment to the extent of Rs. 4.25 crores. M.C.I. raised its paid up share capital to Rs. 2.47 crores. The technical fees payable to Societe KREBS-PENNARROYA of Rs. 28 lakhs was agreed to be taken by them by allotment of equity shares.

7. Various representations at this stage were being made to the Government to release M.C.I. from the obligation of the price fixed by the Government on a Tariff Commission report based on costing of 1957-58. It was submitted forcefully that heavy increase in cost of production during the intervening years left practically no surplus for ploughing back funds towards the cost of its development project. Such representations were systematically ignored and zinc metal was allotted on the price fixed by the Government as per Tariff Commission report based on assessment of cost during 1957-58. This was the second step of deliberate opposition and obstacle on the part of the officials concerned.

8. On 26-1-1962 Foundation Stone Laying Ceremony of the Zinc Smelter was carried out at Debari near Udaipur City and was attended by a galaxy of personnel and Sri Manubhai Shah the then Minister of Industry presided over the function. Thereafter work of civil construction of zinc smelter was started in right earnest. Order for machinery for zinc smelter was placed with Krebs et Cie of France. The estimate of financial requirement for the project as mentioned above was originally based on report received from one of the prospective collaborators with whom negotiations were started in 1959. This estimate was made on the basis of zinc content in the ore at about—4.8—5 per cent with corresponding lead content. Accordingly it was estimated that about 1400 tonnes of ore will have to be mined daily for 300 days to feed the zinc smelter of originally

licensed capacity (12—15000 tonnes of zinc per annum) and the then existing ore beneficiation plant of 500 tonnes per day capacity was to be increased to 1200 tonnes per day by installing additional equipments to work 330 days to treat the ores raised. Estimate of financial requirements was based on these data.

9. By the end of 1962 the experts of Indian Bureau of Mines were at Zawar mines and they directed that the ore-body was to be worked on the basis of 2 per cent cut instead of 3 per cent-cut which meant that the percentage of zinc would decrease to about 3/3.2 per cent with corresponding lower lead content with the result that larger quantity of ores would have to be mined to feed the proposed smelter to its capacity.

10. By end of 1962 the expert team of mine collaborators *viz.* Societe Pennarroya arrived at the mines and submitted their report in early 1963. Taking into consideration the lower zinc content of the ore to be mined as per restriction imposed by the Indian Bureau of Mines, they estimated that 2200 tonnes of ore will have to be mined every day for 300 days to feed the zinc smelter under the modified licence and it also became evident that a new ore beneficiation plant with a capacity of 2000 tonnes per day will have to be installed to work 330 days per year to take care of such increased Ore production. It was found that a new ore beneficiation plant will have to be installed as it would not be possible to enlarge the plant of 500 tonnes to 2000 tonnes per day capacity for efficient working.

11. Moreover by 1963 when machinery for smelter started arriving in India customs duty on such machinery had been increased from 10 per cent, which was prevailing at the time of making the earlier estimate to 22 per cent and the prices of steel, cement and labour wages had started going up very sharply due to the fresh imposition of excise duty and cost of production due to sharp rise in cost of living index.

12. All these factors totally altered the financial aspect of the project due to circumstances beyond the control of the management of M.C.I. and factors which could not be at all foreseen initially *i.e.* increase in customs and excise duty and sharp rise in cost of living index.

13. On fresh estimation it was found that additional financial requirement will be of the order of Rs. 4 to 5 crores and this put M.C.I. in a very difficult position. On 22-10-1963 after consultation and discussion with the State Government of Rajasthan, M.C.I. submitted an application to the Planning Commission for a loan of this

amount to be extended through the State Government of Rajasthan with adequate financial control by them over M.C.I. till the loan was repaid. The Central Government constituted a Committee to investigate into the matter around November 1963. The Committee was formed under the Chairmanship of Mr. Kumar the then D.G.T.D. The Committee submitted its report on 21-3-1964 recommending an immediate loan of Rs. 2 crores to M.C.I. so that the development project could be carried on uninterruptedly subject to future set up of M.C.I. to be decided upon at a later date on submission of the final report by the Committee. The real acts of motivated obstruction started thereafter in full force.

14. As stated earlier M.C.I. went on submitting repeated representations for higher prices to be allowed on the zinc being allocated by the Government but to no effect. The Government went on making such allotments to TISCO & IISCO on the price fixed on the findings of the Tariff Commission on the basis of the cost of M.C.I. during 1957-58. By notification the Government made the price effective upto 31-3-1964. This was a great injustice done to M.C.I. because there could be no rational justification for price to be fixed upto 1964 on the basis of costs of M.C.I. as assessed by the Tariff Commission for the working of the years 1957-58. The increase in the cost of living index during the period was enormously high upto 100 per cent if not more besides increase in cost of all material input. The management of M.C.I. could understand during this time that very serious adverse motivations were acting in the minds of the officials concerned in the Ministry as well extraneous influence to put M.C.I. in an intolerable position.

15. It was emphatically submitted several times that it was the middlemen who were benefiting at the cost of the producers. The price of the products made with lead and zinc produced by M.C.I. were not controlled in any way and as such the profit was going to the individual producers of these products and the ultimate consumers were not benefited at all. It was pointed out that if M.C.I. was allowed to sell at the open market price then M.C.I. will be in a position to earn adequate surplus to plough back same in financing the development project for 2000 tonnes of mining and milling and completion of the installation of zinc smelter with its ancillaries to the licensed capacity without any financial help from the Government. All these representations fell on deaf ears.

16. The recommendation of the Kumar Committee mentioned earlier also came to no effect as one of the members of the Committee who had earlier signed the unanimous report came out with a note of dissent which was presumably at the instigation of some

people either in the Government or outside and as a consequence of same the recommendations of Kumar Committee was given an indecent and cynical burial. The note of dissent was not even forwarded to the Chairman of the Committee for consideration by the full committee for their opinion thereon. A committee of Secretaries called the undersigned for discussion. A minutes of such discussion can be supplied to those who are interested which will reveal how antagonistically the minds of the officials concerned were working and how even then they had decided not to help M.C.I. to stand on its own feet to prepare grounds for their attempts to take over the undertaking.

17. At that point of time realising forces inside and outside Ministry were acting to the detriment of the interest of M.C.I., a negotiation was carried out with State Bank of Bikaner and Jaipur to find out whether they would be willing to advance the required finance on the basis of a long term loan against the guarantee of the Government of Rajasthan. The Bank on consideration of the matter issued a letter in favour of M.C.I., stating that they would be willing to advance to M.C.I. a sum of Rs. 6 crores (enabling them to pay the overdue loan of I.F.C. over and above the requirement of finance for the development scheme) provided a guarantee from the Government of India was forthcoming instead of Government of Rajasthan. Earlier a guarantee for a smaller amount had been extended by the Government of India, as mentioned earlier, in favour of M.C.I. in the year 1950/51 when the first loan of Rs. 40 lakhs was sanctioned by Industrial Finance Corporation of India. The letter from the State Bank of Bikaner and Jaipur was submitted to the then Ministry with a copy to the then Prime Minister but our representation was not even acknowledged, possibly it was bogged up at the lower levels of motivated officials.

18. Finding that no decision was being taken during the course of the whole year 1964 upto middle of 1965 probably at the instance of various forces working against M.C.I., forcible representations were made to allow us to sell zinc at the market price. It was also represented that the M.C.I. may be allowed to sell zinc at about Rs. 3000/- per tonne as against the then market price of Rs. 5000/- per tonne. M.C.I. made a strong representation to the effect that controlling price of zinc and lead at the producers' end does not help the consumer at all because the price of end product was not controlled. Undertaking was given that all the profits earned by M.C.I. after tax, will be ploughed back in the development project and no dividend will be declared till the development project could come to fruition. M.C.I. was told that the Government cannot allow them higher price because that was the black market price! M.C.I.

would have sold its products openly against bills for genuine transaction but the minds of the then officials concerned were made up to finish M.C.I. As such M.C.I. represented that it had a stock at that time of 4500 tonnes of Zinc metal in India and Japan and also had 10,000 tonnes of zinc concentrate at mines which would have yielded about 4500 tonnes of additional zinc. It was stated that sale of this quantity of zinc at the price asked for and further quantity to be obtained in course following year would generate sufficient finance to enable M.C.I. to complete its development project without any direct financial help from the Government. The only result would have been that the operation of the zinc smelter, which was by that time 90 per cent complete might be delayed by about six months or so to come into operation latest by end of 1965. The mine development would have been completed and beneficiation plant installed by the end of 1968 or early 1969 to the envisaged capacity of 2000 tonnes per day but no heed was paid to the representation of M.C.I. Even the foreign exchange for charges for treatment on toll of concentrates produced was stopped on one plea or other though saving in foreign exchange of 50 per cent of the value of imported zinc would have been thereby assured. What could be more vindictive with a view to harm M.C.I. even at the cost of country's interest!

19. Pig lead produced by M.C.I. to the capacity of 250 to 350 tonnes per month was so far allowed to be sold at the market price. The income derived therefrom enabled M.C.I. to meet its revenue expenditure of about Rs. 8 lakhs and plough back the surplus of Rs. 4/6 lakhs per month during that time in maintaining the development project at a very reduced scale. The result of such action by the officials was delayed by several years—after take-over by the Government the smelter was started in 1967-68 and mine production and beneficiation thereof to the extent of 1800/-2000 tonnes commenced in the year 1975 at much enhanced scale of requirement of finance and with a great deal of over-staffing as is prevalent in most of the public sector undertakings.

20. Negotiations were going on without any result because M.C.I. was always facing a stone-wall as everyone had shut down their minds deliberately and all the representations made by M.C.I. from time to time had no effect. This went on upto middle of 1965. It will be of interest to note that during this time the then Dy. Secretary drew up a financial projection for ten years on the basis of price of zinc and lead at about Rs. 1250 per tonne and showing that M.C.I. would be running at a loss and would not be in a position to pay off its loans. During this time the Managing Director of I.S.W.P. of Jamshedpur, with a view of calling the bluff of the

officials, in a meeting with the then Secretary offered to sell their holdings of about 45% equity of M.C.I. at a nominal total price of Re. 1 only for the whole lot provided the Government would enter into an agreement with them and sell to them the total output of the zinc smelter at the rate of Rs. 1250 per tonnes for ten years from the start-up of operation. The discussions naturally stopped at that point.

21. On consideration of the case of M.C.I. the I.F.C., themselves during those days recommended to the Government that M.C.I. should be allowed to sell its zinc and lead in the open market so that by ploughing back the profits they could meet the expenses of the development project adequately and also pay off the loans as they fell due. Even this recommendation of I.F.C., who had extended loan and guaranteed for deferred payment to the extent of over Rs. 5.25 crores, was not heeded. Such recommendation naturally found its place in the waste paper baskets of the officials concerned.

22. It will be greatly relevant and of interest and pertinent to note a fact here. On 29-11-1971 news appeared in the "Statesman" which can be quoted ".....The Minister was candid enough to admit that there was no point in controlling the prices of non-ferrous metals like zinc at the producers' end when consumers were unable to reap the resultant benefits. Since the present system seemed to help middleman and intermediary users to make high profits, Mr. Kumarmangalam thought it would be more rational to have prices that the market could bear and which would not harm the interests of the consumers."

On the same date a news appeared in "The Financial Express" a part of which can be quoted:—

> ".....Controlled price of idigenous zinc will be increased. A hint to this effect was given by Mr. Mohan Kumarmangalam, Union Minister for Steel and Mines, while presiding over a meeting here yesterday of heads of 10 Public sector undertakings under the Ministry's charge."
>
> "Speaking at the meeting Mr. Kumarmangalam said that there was 'no point in controlling producers' prices when the benefit is not being passed on to the consumer."
>
> "The prevailing system appeared to help only middlemen and intermediary users make 'unreasonable' profits. It might be more 'rational' to have prices which the market and the consumer could bear, he said"....

After all wisdom dawned in the minds of the authorities who had earlier maliciously and cynically denied the fruits of over 20 years dedicated work of M.C.I. management for bringing the most vital lead and zinc mining and smelting industry in the then emerging industrial picture of India as a pioneering venture in the face of all sorts of obstructions and difficulties. The only lacuna perhaps was that the management of M.C.I. was not in the hands of anyone of the so-called big business groups who knew the knack of having their projects approved.

23. It was really an irony of fate that when the same point was being emphasised by M.C.I. earlier to the Ministry, nothing resulted and the Government Company had since then been selling zinc at increasingly high prices upto about Rs. 15,000 per tonne (!!) as against about Rs. 1500 per tonne fixed for M.C.I. when the market price was ruling at about Rs. 5000.

24. Nearabout at this point of time (middle of 1965) the grand strategy or could it be said final conspiracy was hatched by the persons concerned. Finding that M.C.I. was carrying on its business and meeting its day to day obligations out of the sale of pig lead at the market price as allowed upto that time, an order was promulgated on 14th September 1965 under the name and style of "Scarce Industrial Materials (Control) Order". It was stipulated in the Order that along with copper zinc and tin which were mostly imported and were being sold at controlled rates *lead produced wholly indigenously* by M.C.I. shall also be sold at the landed cost. A strong representation was made that pig lead produced by M.C.I. was wholly indigenously produced commodity and there was no earthly valid reasons whatsoever why the lead produced by M.C.I. should be brought into ambit of the order, controlling the prices of indigenously produced commodity and pegging same to the landed cost. This was a grossly malafide and badly intentioned act on the part of the officials concerned. There was no other wholly indigenously produced commodity whose selling price had been pegged to landed cost. By the provision of the Control Order the Government was to allocate stock in the country of the four metals to help *war-effort* but there was no allocation made of either zinc or lead in the stock of M.C.I. during the months of September upto 22nd October 1965, even at the ridiculously unfair prices fixed by the Government. M.C.I. was thereby crippled and its income sources were dried up and M.C.I. was forced to fall in a position that no finance were available even to pay sale-rises and wages to the employees though the most pertinent fact was that at the point of time M.C.I. had stock of metal which at the market value was of about Rs. 3 crores and even at the Government fixed landed cost at

about Rs. 1 crores. What could be more malicious and vindictive step that could be taken in ruination of M.C.I.? This was solely done to prepare the ground for acquiring the Undertaking of M.C.I. on totally false premises. This will be referred to later.

25. M.C.I. came to the conclusion that various extraneous factors was agitating the Government officials to the detriment of interest of M.C.I. They then in early 1965 took legal opinion at the highest level and was surprised to find that all orders isued by the Government in allocation of zinc and the price fixation of zinc was against the law of the country. The Solicitors of M.C.I. served a notice on 24th July 1965 to Government demanding justice in the matter of fixation of price of zinc. Immediately on receipt of Solicitors' notice and presumably finding that they were absolutely in the wrong the Government very promptly issued a notification dated 31st July 1965 cancelling the previous notification dated 13-5-65 so that no price either provisional or final was fixed for zinc from 1-4-65 and then by a letter dated 2-8-1965 the Government wrote to M.C.I. fixing provisional price of zinc at a slightly higher rate of Rs. 1589 per tonne and allocated same to TISCO & IISCO. M.C.I. wrote back pointing out that such fixation of provisional price was also illegal and that they would deliver zinc to TISCO & IISCO without prejudice to their contention that the price would be fixed at the market rate and that failing such decision M.C.I. would be free to sell the zinc produced in open market. It was at this point of time that a great strategy of a conspiracy was hatched by the officials as mentioned above in promulgation of the "Scarce Industrial Materials (Control) Order" in September 1965.

26. M.C.I. has filed an application to Punjab High Court against this price fixation and challenging the Control Order. The application was admitted and Civil Rule being C.P.W. No. 599. D:65 was issued by the High Court and notice was issued for hearing of an application for interim order being CM-3450:D:65. The hearing on the application for injunction prayed for by M.C.I. took place at the Punjab High Court on 20-10-65 and the Hon'ble Judge made a pointed reference to the Counsel of the Gevernment as to why allocations had not been made even at the Govt. controlled rate under the "Scarce Industrial Material (Control) Order" of the stock of metal lying with M.C.I. to enable them to carry on their business? On that day *viz.* 20-10-1965 the Counsel on behalf of the Government gave a solemn assurance to the Court to the effect that allotment orders would be issued before 30-10-1965. On such an assurance the Hon'ble Judge did not pass any interim order for injunction as to the sale of lead and zinc by M.C.I. in the market or

even to D.G.S & D, an order from whom for over 300 tonnes of lead at a price of little over Rs. 5000 per tonne had been received even after promulgation of the said Control Order, was placed before the Hon'ble Judge.

27. Apparently such assurances were given with deliberate motive of avoiding any injunction order of the Court as otherwise the ground of taking over of the undertaking of M.C.I. would have been frustrated and the acquisition Ordinance No. 6 of 1965 which must have been ready by that day could not have been promulgated on 22-10-65 *i.e.* only two days later of the solemn assurance by the Government Counsel to the Court.

28. On 22-10-1965 *i.e.* two days after the solemn assurance given before the High Court, acquisition Ordinance No. 6 of 1965 was promulgated by the President and later on converted into Acquisition Act No. 44 of 1965 for acquisition of the undertaking of M.C.I.

29. The Ordinance was enacted into an Act No. 44 of 1965 and debated in the Parliament between 20th and 23rd November 1965. During the debate it was stated on behalf of the Government that grounds of such acquisition were that M.C.I. was unable to pay even the salaries and wages of its more than 1000 employees and therefore this was one of the main grounds why the Government had to take this step. It was very much known to the Government officials that M. C. I. had in its stock at that time as has been stated above, about 4500 tonnes of zinc metal in India and Japan besides about 10,000 tonnes of concentrates at the mines. The total sale value of this metal in stock, if allowed to be allotted and sold even at the price fixed by the Government, would have been over Rs. 1.5 crores. If such allotment could be made as per the solemn assurance by the Government Counsel before the Punjab High Court on 20-10-1965 to avoid injunction Order then certainly M. C. I. would have been in a position to discharge its obligations to its employees for a long time. Such statement before the Parliament therefore can be considered as deliberate suppression of facts from the members of the Parliament. The proceedings of Parliament of 22nd November 1965 are very illuminating and pertinent and may be referred to by any one interested.

30. All the early action during the previous two years were motivation and led to this culmination and negation of justice to M.C.I. and its about 3000 shareholders who were and are tax-payers and voters of the Country. It is a fact that the said "Scarce Industrial Materials (Control) order" promulgated in September 1965

was repealed on June 1966. It will be of interest to find out whether any non-ferrous metal and if so what quantity, had been allocated to the consuming industries during this period. It is a fact that this Order had totally upset and created chaos in the non-ferrous metal market and thousands of small and large manufacturers using these metals had to suffer greatly. The very fact of such early repeal of the Order immediately after Government take-over amply proves the earlier motivations.

31. M. C. I. then filed an application before the then Punjab High Court at Delhi challenging vires of the Act No. 44 of 1965. The circuit Bench of Punjab High Court delivered judgment on 14-3-1966 declaring the Act No. 44 of 1965 as *ultra vires* Article—31 (2) of the Constitution of India and held that Ordinance No. 6 of 1965 had become inoperative. On 4-4-1966 Civil Appeal No. 1222 (N) of 1966 was filed by the Government of India in the Supreme Court. Supreme Court upheld the judgment delivered by Punjab High Court and on 5-9-66 held that the Act No. 44 of 1965 was *ultra vires* Constitution.

32. On 8-9-1966 the President of India prorogued both the Houses of Parliament with effect from 9-9-1966, and thereupon on 13-9-1966 the President of India promulgated another Ordinance being Ordinance No. 10 of 1966 acquiring the undertaking of M.C.I. in almost the same terms of the earlier Act except paragraph 2 (b) of the Ordinance which laid down the market value to be taken into account for determination of the price of plant and machinery. It is to be noted that the Parliament was in session between 5-9-1966 & 9-9-1966 and the Govt. took no action during that time in bringing forward another Act and promulgated the Ordinance No. 10 of 1966 on 13-9-1966 after the Parliament was prorogued. In other words the Parliament was ignored on plea of shortage of time though the Ordinance No. 10 must have been ready much earlier on the facts of the case having gone against them on valid grounds. The Ordinance ante-dated the commencement of the Act and valuation of the undertaking was taken as from 22-10-65 as was the date from which the earlier Ordinance and Act of 1965 acquired the undertaking of M.C.I. The Writ Petition under Article 32 of the Constitution was filed by M.C.I. directly before the Hon'ble Supreme Court on 26-2-1967. The Hon'ble Supreme Court with a bench of five judges heard the admission of the Writ petition on 20-3-67 and after hearing the arguments put up by late Mr. M. C. Setalvad for the admission of the case for about an hour and a half the Chief Justice simply dismissed the petition 'inlimine' without speaking

order. This summary dismissal of the pleadings of the eminent counsel came as a surprise and shock to all the legal luminary present in the Court on that fateful day. Thus ended one chapter.

33. On further legal advice M.C.I. filed another Writ Petition at the Calcutta High Court being Matter No. 551 of 1968 challenging the vires of the Act. The learned Judge heard the whole case. Sri C. K. Daphtary appeared on behalf of M.C.I. and the Attorney General Sri Niren De appeared on behalf of the Government. During the course of hearing the Attorney General on behalf of the Govt. of India conceded that—

(a) "The market value of the land included its potential value. In other words that in computing the value of the land not only the value of the surface of the land but the value of the minerals underground would be taken into consideration. He submitted that this question regarding valuation of underground rights was well settled." (Pr. 33 and 34 at P. 31-32 in AIR 1970 Calcutta 15).

(b) "Citing various decisions, the Attorney General concluded that:

It was well settled that compensation for land compulsorily acquired must include not only its present value but also its potential value, which must in this case, include the value of the minerals lying underground."

(c) The Attorney General was well aware that he was talking about the land covered by the mining lease subsisting in favour of the Company at the commencement of the Act, Mr. C. K. Daphtary on this submission of the Attorney General had same confirmed before the Hon'ble Judge and the same was included in the judgment delivered by him on 1-4-1969 as follows:—

"It seems to me that this contention of the learned Attorney General is well founded. The Schedule to the Act lays down the principles for determining compensation to be paid to the Company and Paragraph II(a) of the Schedule specifies that compensation would be the market value at the commencement of the Act. The assets to be acquired under the Act in this case include land and the compensation payable for such land would include the potential value of the land, that is to say, the value of the minerals lying underground. I must at once point

out however that Mr. Daphtary conceded that if the value of the land included its potential value he would not urge that the land was sought to be acquired without payment of compensation. As to what the value of the land would be is a matter for the Tribunal set up by section 11 of the Act to consider. In this view of the matter I need say nothing more on this question" (Pr. 34 at P. 32 AIR 1970 Calcutta 15)".

— The petition of M.C.I. has however to be dismissed on the ground of "res judicata" having been earlier dismissed inlimine by the Supreme Court as mentioned earlier.

34. Thereafter some of the shareholders of the M.C.I. filed a suit being Matter No. 419 of 1971 challenging the vires of the Act following the judgment of Bank Nationalisation Case. The petition was admitted but before the final hearing could take place the Constitution of India was amended (25th amendment) to the effect that the Parliament could fix any 'amount' as compensation and that the same would not be justiciable in any court of law. The shareholders therefore did not proceed with the case when it came up for hearing and withdrew same and the matter of determination of compensation remained under the purview of the unamended Constitution. Such withdrawal of the case by the shareholders possibly came as a great disappointment to the Government officials as the Act No. 36 of 1966 being declared *ultra vires* Constitution by the Court, which was a great possibility, the Government could then have come out with another Act under the new amended Constitution and provided for much lesser compensation which would have been then unjusticiable.

35. The Government had earlier appointed the Tribunal consisting of Hon'ble Mr. Justice J. R. Mudholkar, a retired Judge of Supreme Court. The proceedings of the Tribunal started from 4.9. 1972.

36. Here again obstructions after obstructions were forthcoming from the side of the Government Counsel in dealing with the proceedings on innumerable untenable grounds.

37. The Company was asked to submit its statement of claim. M.C.I. submitted before the Tribunal for allowing inspection of all the papers and documents etc. Which had been taken over on 22-10-65 which vested in the Government and through them in the Government Company namely Hindusthan Zinc Ltd. M.C.I. had made a submission before the Tribunal for the valuation Report prepared by M|s. Kapadia and Baria & Toplis and Harding a reputed firm a

valuers to be placed before the Tribunal. This firm was entrusted with the valuation of the assets of the Company much before the acquisition of the Undertaking with a view to support its application to Financial Institutions for larger amounts of loan. Before the complete report could be obtained the acquisition took place on 22.10.1965, though the summary of the valuation was received by M.C.I. The valuation Report was pre-empted by the Central Government on the ground that the Report formed a part of the assets of M.C.I. and restrained the valuers from submitting the final valuation Report to M.C.I. The Counsel on behalf of the Government vehemently objected to allowing M.C.I. either to have a copy of the valuation Report or any inspection of papers documents etc. which were their property upto 22.10.65. It was argued on behalf of M.C.I. that unless and until such inspections were allowed of the papers etc. it could not be possible for them to submit a statement of claim. About 40 sittings of Tribunal had to take place for the hearing of the objections put up by the Government Counsel. The Tribunal ultimately issued an order allowing M.C.I. inspection of the documents etc. and also for submission before it the final valuation Report. *The Government immediately challenged THE ORDER OF THE Tribunal at Delhi High Court.* At the time of hearing of the suit the Solicitor General on behalf of the Government of India agreed that if the Tribunal asked for such inspection and production of valuation Report from the Hindustan Zinc Ltd. instead of the President of India, the Government would have no objection. The Hon'ble Tribunal thereon issued his order under registered post to the offices of Hindusthan Zinc Ltd. at Udaipur and Delhi and fixed another date of hearing after about two weeks. On the date of hearing it was found that the letter addressed to the Delhi office of Hindustan Zinc Ltd. had been refused acceptance and that a plea has been made on a piece of paper to the effect that the Tribunal being a Civil Court had no jurisdiction beyond 200 miles for calling of such papers and documents. The matter thereon was again referred to the High Court in continuation of the previous suit. The High Court had to painfully observe "the conduct of the petitioner (U.O.I.) does not entitle it to the grant of a discretionary relief....". The High Court further said "in order to carry out the statutory functions it is essential that the Central Government, which took possession of the goods, properties, books and records of the Corporation, should place the necessary documents at the disposal of the Tribunal for the purpose of determining the valuation of the said properties..... "Those advising the Government acted so irresponsibly only motivation could be to make M.C.I. suffer more and more losses by such reprehensible delaying tactics. The non-acceptance of the letter addressed to the Delhi Office of Hindustan

Zinc Ltd. which was within a distance of only 5 K. M. (and not beyond 200 mile) was also commented upon.

38. Thereafter in the following sitting a copy of the Valuation Report was submitted before the Hon'ble Tribunal by the Counsel of the Government and inspections of documents were made out by officers of the Company at Udaipur and Calcutta offices. M.C.I. thereafter submitted a Statement of Claim under different headings. For the market value of the assets including mine development etc. claim was for an amount of about Rs. 30 crores and potential value of the leasehold right for the period of lease upto the year 2010 on the basis of working of the mine at 2500 tonnes for the initial ten years and at the rate of 6000 tonnes for balance of lease period but upto 2000 A.D. instead of 2010 A.D. and at the price of metal at Rs. 2750 only, was about 65 crores besides other justifiable claim for other tangible assets.

39. The Government in their Written Statement submitted to Tribunal offered a total compensation of Rs. 1.98 crores and gave a summary of accounts as to how they have arrieved at that figure. A series of sittings of the Hon'ble Tribunal took place thereafter. M.C.I. prayed for further inspection of the papers and documents and the valuation report of the Government teams on the basis of which the Government had calculated the compensation at Rs. 1.98 crores. At sittings after sittings objections were raised. Finally the Tribunal issued an order for inspection of such documents. These inspections were carried out at the office of Hindustan Zinc Ltd. at Delhi for about 40 days by two Officers of M.C.I. during the months of April and May 1976. Extensive copies were made of the documents and the typed copies constituted two volumes—one of 143 pages, another 83 pages.

40. Meanwhile M.C.I. had applied to the Tribunal to recommend an advance of Rs. 10 lakhs to M.C.I. out of the compensation money so that M.C.I. could carry on with its case adequately with the help of lawyers, expert witnesses etc. as M.C.I. had been left with no resources of its own. A recommendation was made by the Hon'ble Tribunal and accordingly an application was submitted to the Government. The letter was not acted upon nor even acknowledged.

41. On further application the Hon'ble Tribunal had issued an order for advance of Rs. 1 lakh to M.C.I. to enable it to pay lawyers' fees etc. and Hon'ble Tribunal undertook to scrutinize the expenses

to ensure that the amount would be disbursed by M.C.I. only for the prosecution of its cases before the Tribunal. *The Central Government again challenged this order before the Delhi High Court.* That case did not come up for hearing till the date of abolition of the Tribunal.

42. Meanwhile M.C.I. prepared a "NOTE" on the basis of the inspection made out of the documents on the basis of which the Government had offered Rs. 1.98 crores as compensation. Such inspection was an eye opener.

43. During sitting of the Tribunal on 21|22 June 1976 the Chairman of M.C.I. attended the same and submitted an application to the Tribunal saying that they would not be able to effectively participate in the proceedings of the Tribunal with their lawyers as they had no finance whatsoever and was unable to pay the fees of their Lawyers or to maintain a small office with 2|3 clerks at New Delhi. The Chairman further submitted that inspection of the documents carried out had disclosed a statement of affairs which was astounding and that the NOTES which he has prepared would show that even on the basis of principles followed by the two Teams of Valuers of the Central Government and Hindustan Zinc Ltd. the amount of compensation for the visible assets minus the liabilities would come to a minimum of Rs. 6 crores. This came as a surprise to the Hon'ble Tribunal and he asked as to how soon M.C.I. could submit its Note to him. The NOTES as prepared were submitted before the Hon'ble Tribunal on 19-7-76 and M.C.I. also submitted at the same time their "Written Submission" before the Tribunal giving detailed arguments on all the issues framed in the case and left to the judgment of the Tribunal the determination of the compensation on his own. In the sitting from 21st June 1976 the Counsel of the Central Government raised a point that profit potentiality of such mines had not as yet been done in India though same is carried out in some of the foreign countries. This argument was properly replied to by the Chairman of M.C.I. It was apparent from the observations of the Government Counsel that the Government had become apprehensive that the profit potentiality of the mines will also have to be taken into consideration by the Tribunal in determining the amount of compensation in accordance with the judgment of Calcutta High Court referred to earlier.

44. Then suddenly on 2nd August 1976 the bolt from the blue came. The Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance 1976 was promulgated on that day which

was enacted into Act No. 100 of 1976. At the moment of promulgation of this Ordinance *all the following events took place simultaneously under* various "deeming clauses" :

(a) previous Act No. 36 of 1966 was repealed and that the undertaking was taken over finally with retrospective from 22-10-1965 and the Tribunal was abolished.

(b) That the undertaking inclusive of its assets and liabilities etc. taken over under earlier Act No. 44 of 1965 together with *all additions thereto* upto the date of Ordinance of 2nd August 1976 were re-transferred to and revested in Metal Corporation of India.

(c) Simultaneously the Central Government took over the management of the undertaking and appointed its own administrator including Hindustan Zinc Ltd. with retrospective effects. On the same day namely 2nd August 1976 the Government again took over the transferred and revested undertakings and revested same in the Government Company namely Hindustan Zinc Ltd.

(d) The Government provided for payment of an amount of Rs. 198 lakhs as compensation and an amount of Rs. 122.79 lakhs in lieu of "deprivation of management" of the undertaking by M.C.I. for those about eleven years from 22-10-1965 to 2nd August 1976 at the rate of Rs. 11.39 lakhs per year. All these were done under "deeming" provisions.

45. NOW THE QUESTION ARISES AS TO WHAT WAS THE EMERGENCY OR NECESSITY OF AN ORDINANCE FOR REPLACING THE ACQUISITION ACT NO. 36 OF 1966 AND TAKING OVER THE MANAGEMENT OF THE METAL CORPORATION OF INDIA LTD. BY THE NATIONALISATION ACT 100 OF 1976, AFTER LAPSE OF ELEVEN YEAR AFTER ACQUISITION OF ITS UNDERTAKING. THE ANSWER TO THIS QUESTION IS GLARINGLY EVIDENT. IT IS NOTHING BUT FEAR IN THE MINDS OF THE AUTHORITIES CONCERNED ABOUT MUCH LARGER AMOUNT OF COMPENSATION BEING DETERMINED UNDER THE PREVIOUS OLD ACT NO. 36 OF 1966.

(a) The Act No. 36 of 1966 was governed by the provision of the Constitution of India prior to its amendment as regards the amount payable as compensation as fixed by the Parliament. By repealing that Act and by this new Ordinance the whole acquisition has now been brought under the new provision of the amended Constitution so

that the amount fixed by the Parliament however small or inadequate the same could not be questioned by M.C.I. or its shareholders.

(b) M.C.I. was only retaining its corporate entity, and the work they were carrying out was only transfer of shares which was very extensively being dealt with through Calcutta stock Exchange and prosecuting its cases to look after the interest of the shareholders before the duly constituted Tribunal. In the initial stages some of the shareholders themselves met the expenses of various litigations that were being carried out in the interest of the shareholders but ultimately they could not go further and submitted petition before the Tribunal as mentioned.

(c) The most glaring fact is that on the submission of the findings of M.C.I. to the Tribunal on the work carried out by the Valuation Teams of the Government and Hindustan Zinc Ltd. and also in its Written Submission justifying its total claim including the potentiality of the mines as a part of the assets, the concerned authorities of the Government had to assume that the compensation would have to be determined at a very high figure much beyond what the Government had offered. Being afraid of such a situation the present ordinance/Act No. 100 of 1976 had been promulgated.

(d) The least that can be said against the action on the part of the Government is their depriving about 2600/2700 shareholders of the Company (M.C.I.) of their legitimate dues after 11 years of acquisition of their property as per the trend of the hearing going on before the Tribunal and to stick to their original offer of Rs. 1.98 crores and with an extra amount thrown in the guise of administrative expenses for eleven years. There could be no other reasons except fear in the minds of the authority of much higher compensation being determined for promulgation of this Ordinance which if challenged before the Court will certainly be found again ultra vires Constitution.

46. It may be noted some of the glaring discrepancies in the valuation made by the Government team:—

(a) In the valuation of ores, concentrates, metals etc. a stock of ore totalling of 172,772 M.T. lying underground in the mines and in surface valued by the Government

valuers themselves at Rs. 34.55 and odd lakhs had not been taken into account by the teams.

(b) The teams had not taken into acount expenses under stamp duty on mortgage and pronotes; registration fees; interest on capital loans; guarantee commission and commitment charges to the financial institutions; insurance charges and trusteship Commission. These are the amounts spent for the purpose of creating block assets being financing charges for the large amounts of loans taken for creation of capital assets and had got to be taken into account.

47. The valuation team of the Government and Hindustan Zinc Ltd. made certain extra provisions for liabilities which were not in the books of M.C.I. at the time of taking over. It is pertinent to note that these liabilities were provided in 1966-67 and the amount of such liabilities in all the cases had been determined and settled much before the Tribunal commenced its sitting, yet while submitting the accounts before the Tribunal in reply to the claim of compensation by M.C.I. The Government did not rectify the glaring mistakes in other words submitted a wrong statement before the Tribunal for justification of their determination of compensation to a ridiculously lower figure of Rs. 1.98 crores. Some of the items may be pointed out.

The Government provided a liability of Rs. 60 lakhs for Port Commissioners' charges and customs duty. Out of this amount Rs. 32 lakhs was paid as duty and could be taken into account, the balance of Rs. 28 lakhs was to be added back but this was not done.

A provision was also made for Rs. 25 lakhs for income-tax, sales tax etc. These liabilities were settled much prior to the sitting of the Tribunal at a total amount of about Rs. 10 lakhs, therefore balance of Rs. 15 lakhs was to be added back which was not done.

Provision of Rs. 20 lakhs was made for royalty payable to the Rajasthan Government upto 22-10-1965. H.Z.L. settled the account with the Government of Rajasthan at about Rs. 8 lakhs, so the balance amount of about Rs. 12 lakhs was to be added back. This was also settled much before the sitting of the Tribunal.

The Government made a provision of Rs. 5 lakhs for claim of Cementation Ltd. a contracting firm. There was no record of such payment having been made and as such the amount should have been added back.

The Government made a provision of Gratuity and Leave Salary for Rs. 15 lakhs. The Company did not make any provision for gratuity etc. for year to year in its account and such were paid from year to year as retirement or termination took place. Therefore the whole of this amount of Rs. 15 lakhs was to be added back.

The Government made a provision of Rs. 25 lakhs for "Stowing of excavated stopes" at the mines. No such stowing was necessary as were determined by the Dhanbad Mining Institute and no such stowing had been done by the Government Company so far. Therefore the provision of Rs. 25 lakhs was to be added back.

The Government made a provision of Rs. 5 lakhs under head "miscellaneous". On a scrutiny of record it was found there was a surplus of atleast Rs. 3 lakhs in this account. Therefore at least Rs. 3 lakhs should have been added back.

Total provisions of such liabilities made by the Government valuation team was for Rs. 155 lakhs. In the statement submitted before the Tribunal by M.C.I. on 19-7-1976 it had been shown that an amount of over Rs. 100 lakhs would have to be added back as per their own account as inspected by M.C.I.

It is to be specially noted here that much before the Government submitted its Written Statement before the Hon'ble Tribunal these facts were known to them or to the Government Company yet no such corrections were made at the time of submission of summary of accounts to the Tribunal which, to say the least, was unpardonable.

48. If in the national interest the Government wishes to retain the undertaking, it is most welcome to do so. The M.C.I. has already submitted to the Acquisition Act of 1966 and was appearing before the Tribunal for a reasonable compensation in terms of that Act.

49. M.C.I. therefore, most respectfully submit that Metal Corporation (Nationalisation and Miscellaneous Provisions) Act 100 of 1976 may be repealed and the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 be restored. The Government may further be pleased to re-appoint and restore the Tribunal already appointed under the Acquisition Act No. 36 of 1966 and direct the Tribunal to proceed with the valuation from the stage to which it had reached till it was abolished under the Nationalisation Act. If any other new Tribunal is appointed then the hearing of the case will have to start *de novo* which will delay matters by a very

long time, whereas the last Tribunal appointed had practically come to an end of its preceedings during the course of about four years of its sittings.

50. The facts of the case enumerated above shall amply justify M.C.I's. appeal to redress the great injustice done to M.C.I. with its about 2500 shareholders who are tax-payers and voters of the Country and it is hoped that steps should be taken by repeal of this act and re-instatement of the former Act of 1966 as submitted above to redress the total denial of natural justice to the shareholders of M.C.I. by the new Act No. 100 of 1976 at a time when the Tribunal was at the point of conclusion of its work for determination of compensation payable under previous acquisition Act No. 36 of 1966.

Sd/-
Chairman,
The Metal Corporation of India.

APPENDIX II

(See para 2.25 of the Report)

Statement indicating production of ore, zinc and lead metals after the acquisition of the undertaking of the Metal Corporation of India by the Government on 22-10-1965.

Year	Quantity produced (in tonnes)		
	Ore	Zinc Metal	Lead Metal
1965-66 (from 22nd Oct., 65)	62,485	..	1,138@
1966-67	1,53,591	..	2,515
1967-68	1,74,026	..	2,336
1968-69	1,91,604	13,402	1,853
1969-70	2,29,949	9,925	1,892
1970-71	2,70,006	10,734	1,719
1971-72	3,18,861	12,251	1,768
1972-73	3,51,883	9,565	2,892
1973-74	4,56,340	2,147*	2,700
1974-75	5,91,868	13,952	4,109
1975-76	7,14,460	16,032	5,155
1976-77	8,34,560	14,533	6,181
1977-78 (up to Jan. 1978)	7,85,370	24,812	6,051

*Lower production of zinc metal was due to break-down of melting furnace and does not include 10,912 tonnes of zinc cathodes produced equivalent to 10,365 tonnes of zinc ingots.

@Includes production for full month of October, 1965.

APPENDIX III

(*See* para 2.25 of the Report)

Statement Showing the Value of Equity Shares (of the Face value of Rs. 10) of the Metal Corporation of India as Quoted in the Financial Express During 1962-67.

1962		1963		1964		1965		1966		1967	
Date	Rate	Date	Rate	Date	Rate	Date	Rate	Date	Rate	Date	Rate
3/1	10·50	3/1	9·37	2/1	8·00	3/1	5·94	4/1	5·12	2/1	6·66
10/1	10·62	10/1	9·37	10/1	8·00	10/1	5·50	16/1	5·47	15/1	6·69
20/1	10·75	20/1	9·37	21/1	8·08	20/1	5·69	28/1	5·19	29/1	7·44
2/2	10·62	1/2	8·12	1/2	7·75	3/2	5·69	1/2	5·16	1/2	7·44
11/2	11·75	10/2	8·96	10/2	7·37	10/2	5·75	15/2	5·19	17/2	6·87
20/2	12·25	20/2	8·44	20/2	7·56	20/2	5·75	27/2	4·94	..	..
1/3	12·78	1/3	8·31	1/3	8·12	1/3	5·62	1/3	4·94	..	..
11/3	12·50	12/3	8·31	10/3	7·37	10/3	5·62	15/3	4·94	..	..
20/3	12·19	20/3	8·06	20/3	7·25	20/3	5·37	30/3	4·94	31/3	5·62
1/4	12·50	1/4	7·25	1/4	7·44	1/4	5·25	1/4	4·75	1/4	5·69
10/4	12·19	10/4	7·69	10/4	7·31	10/4	5·31	14/4	4·62	14/4	5/50
20/4	12·19	20/4	8·75	22/4	7·00	20/4	5·31	30/4	4·78	30/4	5·06
1/5	12·31	1/5	8·44	1/5	7·06	1/5	5·06	1/5	4·78	4/5	5·10

	12·12	10/5	8·12	10/5	6/87	11/5	3·06	15/5	4·50	14/5	5·00		
20/55	13·75	21/5	8·00	20/5	6·69	20/5	4·78	30/5	4·34	31/5	4·50		
1/6	12·91	1/6	7·94	1/6	6·44	1/6	5·06	1/6	4·34	1/6	4·50		
10/6	12·25	9/6	8·00	10/6	6·69	10/6	4·84	15/6	4·37	15/6	4·56		
20/6	12·56	20/6	7·94	20/6	6·51	20/6	5·31	30/6	4·19	30/6	4·69		
4/7	12·37	1/7	7·91	2/7	6·62	1/7	5·56	2/7	4·12	2/7	4·69		
10/7	12·06	10/7	8·19	10/7	6·62	10/7	5·12	16/7	4·25	15/7	4·56		
20/7	11·69	20/7	8·75	21/7	6·56	20/	4·72	31/7	4·25	30/7	5·06		
1/8	12·00	2/8	8·19	1/8	6·25	1/8	4·56	2/8	4·25	1/8	5·06		
10/8	12·31	10/8	8·06	11/8	6·06	10/8	4·44	17/8	5·37	15/8	5·25		
21/8	12·75	20/8	8·06	21/8	6·06	21/8	4·37	30/8	5·12	31/8	5·22		
1/9	13·06	1/9	8·15	1/9	6·31	1/9	4·22	1/9	4·94	1/9	4·87		
11/9	10·81	10/9	8·28	10/9	5·70	10/9	4·12	15/9	5·00	15/9	5·25		
20/9	9·87	20/9	8·25	20/9	6·25	21/9	4·25	30/9	5·94	30/9	5·34		
2/10	9·87	4/10	8·19	1/10	6·19	4/10	4·25	1/10	6·19	1/10	5·34		
8/10	9·94	10/10	8·31	10/10	6·31	13/10	4·37	15/10	6·31	19/10	5·34		
20/10	9·69	20/10	9·44	24/10	6·25	20/10	4·56	20/10	6·81	31/10	5·31		
1/11	9·37	5/11	8·84	1/11	6·19	2/11	6·06	1/11	6·87	1/11	5·41		
13/11	9·37	10/11	8·56	10/11	6·00	10/11	5·59	15/11	6·62	16/11	5·12		

1962		1963		1964		1965		1966		1967	
20/11	9·37	20/11	8·56	20/11	5·62	30/11	6·25	27/11	6·41	30/11	5·31
1/12	9·37	1/12	7·87	1/12	6·00	2/12	6·25	1/12	6·37	1/12	5·31
11/12	9·37	10/12	8·31	11/12	6·00	15/12	5·12	15/12	6·25	15/12	5·31
22/12	9·37	20/12	8·12	20/12	6·00	31/12	5·12	30/12	6·66	30/12	5·20
Total . .	409·38		299·58		242·50		196·84		188·29		178·27
Average .	11·370		8·321		6·736		5·161		5·230		5·402

APPENDIX IV

(*See* para 2.27 of the Report)

[*Copy of opinion dated the 5th July, 1976, given by Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) Advice (A) Section*]

The summary for the Cabinet relates to a proposal to bring forward legislation to replace the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 and to provide for payment of a fixed amount.

2. Briefly speaking, the Government purported to acquire this undertaking originally by an Ordinance (No. 6 of 1965) w.e.f. 22-10-65. The constitutionality of this Ordinance was questioned in the Punjab High Court by the Company. The High Court struck down the Ordinance on the ground that it was unconstitutional in that it failed to provide for payment of 'just equivalent'. While the proceedings were pending in the High Court, the Ordinance was replaced by a regular Act, namely, the Metal Corporation of India (Acquisition of Undertaking) Act, 1965. The Government appealed against the decision to the Supreme Court, but the Supreme Court approved the decision of the Punjab High Court. To give effect to this decision, the Act was replaced by the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 whose constitutionality was later upheld by the High Court of Calcutta on a challenge by the Company. The Calcutta High Court, however, observed in the course of the judgement that the valuation of the undertaking should include the potential value of the minerals underlaying the land.

3. The MCI made a claim in respect of the unmined Ore, *i.e.*, the potential value of the minerals. The Government felt the need of amending the Schedule to the Act of 1966 by providing that the potential value of the minerals shall not be taken into consideration for determining the compensation. However, this proposal was finally dropped.

4. Following the decision of the Supreme Court in *Shantidas Mangaldas* case which held that the adequacy of compensation was not justiciable provided the law stated the principles for determin-

ing the compensation or fixed the compensation and so long as the stated principles are relevant or the compensation fixed is not illusory, the question of amending the 1966 Schedule was once again taken up and referred to the Attorney General who advised against amending the Schedule to the 1966 Act.

5. So, the Government offered 1.98 crores as compensation to the Company which the Company did not accept. The matter was, therefore, referred to the one man tribunal set up under the Act.

6. The Company has now claimed 101.80 crores which includes the *potential value* of the minerals. As the Government felt that it would not be prudent to leave the decision of the case to the wisdom of a one man tribunal the matter was referred to the Solicitor-General, who advised legislation on the following lines:—

(a) to acquire the undertaking with effect from date after the 25th amendment of the Constitution;

(b) to treat the period from 22-10-65 to the date of the fresh legislation as a period of management;

(c) to pay compensation for the management period; and

(d) to pay 'an amount' for the acquisition of the undertaking.

7. He also advised that the new law should not expressly repeal the Act, so that if the new legislation is struck down for any reason, the 1966 Act would continue to remain in operation.

8. As MLJ & CA wanted A. G. also to be consulted, the matter was referred to the Attorney General, who advised that (1) compensation payable to the company must conform to article 31 (2) of the Constitution as it stood before the 25th Amendment; (2) the Act may be amended to provide for payment of a lump sum amount with a view to settling the payment of compensation expeditiously; (3) the lump sum amount be fixed by valuing the undertaking in accordance with the recognised methods of valuation; (4) the valuation should be as on 22-10-65; (5) the valuation should take into account the lease-hold interest of the company (Potential value); and (6) the amount to be paid should in no case be less than the amount worked out on the basis of the principles contained in the Schedule to the 1966 Act.

9. The tribunal which commenced its proceedings in September, 1972 could frame issues only on 15-5-76. The Committee of Public Undertakings seems to have suggested that the Government should examine the question of paying an amount which may not be more

than the book value of the assets less the liabilities on the union at the time of the taking over.

This suggestion apparently implies that the Government should think in terms of legislation if necessary to pay a fixed amount.

10. The department says that it has never been the practice of the Government to pay compensation for the potential value of the minerals. The Department proposes to pay an amount of Rs. 1.98 crores for the acquisition of the undertaking and Rs. 11.39 crores as management compensation for the period 22-10-65 to the date of the Ordinance which the department proposes to promulgate.

11. It is also proposed to place the enactment, which will replace the Ordinance in due course of time, in the 9th Schedule to the Constitution, so that the legislation may be immune from any attack on the ground that it is violative of the fundamental rights guaranteed under Part II of the Constitution.

12. The only question to which reference has to be made is whether in fixing the amount any principles have to be followed. The majority in Kesavananda Bharati have held that the amount fixed should not be (a) illusory, (b) arbitrary, and (c) be based on norms or principles, which are relevant to the subject matter of the acquisition. Sikri, Shelat and Grover, Hegde and Mukherjee and Chandrachud, held so. Ray CJ, Mathew, Beg and Dwivedi JJ held that the amount fixed was not open to judicial review and the question of relevance of the principles could not be gone into. Khanna did not commit himself on this aspect.

13. The department has, therefore, to justify that the determination of the amount is based on certain norms or principles relevant to the subject matter of the acquisition.

14. In any event, as it is proposed to place the enactment in the 9th Schedule, the question of the legislation being thrown out on a challenge on the ground that if violated any fundamental rights, does not appear to arise.

15. This was discussed with ML J & CA.

16. We may concur in the summary for the Cabinet.

(Sd.|)
P. V. SWARLU,
JS & LA
5-7-1976.

APPENDIX V

(*See* para 245 of the Report)

[*Statement containing replies|information furnished by Shri A. C. Dutta on the various points asked for by the Committee during evidence on* 14-9-1978].

The Hon'ble Chairman and his companion Hon'ble Members of the Committee on Petitions, Lok Sabha.

Lok Sabha Secretariat,
New Delhi.

SUBJECT: *Repeal of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act,* 1976.

Reply and clarificatory submissions on behalf of the Metal Corporation of India Ltd. and its shareholders on question raised by the Committee,

SHEWETH:

PART I

Question 1.—Please explain in brief your grievances and the background of the take over and nationalisation of the Metal Corporation by Government.

Answer 1.—Grievances and background of the take over and nationalisation of the undertaking of the Metal Corporation (for short the Corporation) by the Government is not directly relevant in the context of the representation of the Corporation for repeal of Act 100 of 1976 and restoration of Act 36 of 1966 in as much as the Corporation had submitted to the acquisition of its undertaking in national and public interest under Act 36 of 1966. The Corporation has stated in para 13 of its representation as follows:—

> "The Corporation does not wish to reverse the entire process of history. Zinc and Lead Metals are important national assets. The Corporation never stood in the way of nationalisation of its undertaking in bona fide national interest. All that the Corporation claimed and fought for was its right under the Constitution to a just compensation."

1.1 It may, however, be stated in passing that a series of unwise and vindictive actions of the Government systematically stuffled the development project in this vital mining sector to provide backdrop for ultimate acquisition. The Corporation was made to sell its Zinc Metals not at available market price, but at a price fixed on cost of production of the year 1957-58 even upto 1964-65, only to the benefit of TISCO and IISCO, both in private sector. On the difference between the prevailing market price of zinc metal and the price allowed to the Corporation in the Government directed supplies to TISCO and IISCO during the period came to about Rs. 3.28 crores. The Corporation's zinc was made available to them at a throw-away price without any control of the prices of their products in which the metal was used. The Zinc Smelter-cum-Mining Development Project of the Corporation was thus denied even the reasonably available self generated finance. The Government even ignored IFC's recommendation for allowing the Corporation permission to sale zinc at market price. Even Kumar Committee's (DGTD) recommendation for financial assistance of Rs. 2 crores was not accepted. Finally, by clamping Scarce Industrial Materials Control Order (SIMCO) under DIR in September, 1965 as prelude to the first acquisition Ordinance, the Corporation was dragged to the dead end and an atmosphere was created through public media on false, unfounded and misleading allegations of Corporation's financial distress to justify the pre-planned acquisition. SIMCO prevented the Corporation from selling its Zinc or lead in ready stock, worth over Rs. 1.5 crores even at Government prices, to any one and the Government in spite of definite assurance and undertaking given to the High Court did not allot any part of the stock to any defence organisation to enable the Corporation to sell even a part of its stock to meet its urgent liabilities and have the imported machinery released.

1.2 Curiously, one of the main justification given for acquisition was that the Corporation had not been able to pay the labour or get imported machinery released. This allegation was made at a time when even on supply of the outstanding order of D.G.S.&D. for 300 MT of Lead Metal at contracted rate of Rs. 5000 MT, the Corporation would have received much more money than required to meet the wages bill. Further, the Corporation had ready stock of 4500 MTs of Zinc Metal and about 10000 MTs of Zinc Concentrate as would have on processing added another nearly 4000 MT of Zinc Metal to the ready stock. Calculated even at the provisional price fixed by the Government, the value of this immediately salable stocks would have come to over Rs. 1.5 crores. In fact the Hindustan Zinc Ltd. the Government Company, after the acquisition of the Corporations undertaking, sold these very stocks at the rate much

above Rs. 2500 per M.T. for Zinc and supplied to DGS&D Lead at Rs. 5000 per MT. These facts eloquently expose the unfounded allegations.

Question 2.—What is the outcome of the petition made to the Prime Minister and through him to the Union Cabinet?

Answer.—The Hon'ble Prime Minister referred the petition to the concerned Ministry who informed the Corporation that nothing further could be done by them in the matter.

Question 3.—It has been stated in your representation dated the 8th August, 1977 that

> "even on Government's own calculation, the Corporation would be entitled to a compensation exceeding Rs. 6 crores without taking mine valuation into account."

Whereas the Government have stated that at

> "no point of time the Government valued the assets of the Corporation at Rs. 6 crores."

—What are your comments in this regard?

Answer.—The words "even on Government's own calculation do not in fact precisely express what the Corporation actually said in its written submissions before the Tribunal, on analysis of the reports of the Government valuers. The Corporation had submitted:

"Para 10.—The position, therefore, finally is as follows:

The value of assets as per para 8(f) above	Rs. 13,98,70,481
Less liabilities (as above)	Rs. 8,07,38,155
	Rs. 5,91,32,326
Add interest @ 6% per annum from 22-10-65 to 13-9-66 .	Rs. 31,69,492
Total amount of compensation	Rs. 6,23,01,818

This is the amount of compensation arrived at as against Rs. 1.98 crores offered by the Government in their statement submitted to the Hon'ble Tribunal.

This figure is arrived at on the basis of calculation made by two Teams in the 1st and 2nd reports and the submissions made by us thereon the items deducted, or excess provisions made but not tenable and unacceptable."

3.1 Based on inspection of the two reports made by the two valuation teams appointed by the Government and the Hindustan Zinc Ltd. the Corporation through its Chairman filed a NOTE along with an application before Hon'ble Mr. Justice Mudholkar, the Tribunal appointed under Act 36 of 1966. After commenting on the valuation of various items of block assets made by the second team of Government valuers, the Corporation stated as follows:—

In para 7(h) of the NOTE:

"The total value of the assets therefore as valued by the 2nd Team and subject to our observations above will be:—

(a) Civil Works	Rs. 2,04,27,961
(b) Zinc Smelter	Rs. 5,51,75,675
(c) Zawar Mines	Rs. 4,79,38,171
(d) Lead Smelter	Rs. 16,14,480
(e) Calcutta & Delhi Offices	Rs. 1,60,000
	Rs. 12,53,16,287

Subject to further observations hereunder:

This value included the value of stock-in-trade, *i.e.*, ore, concentrates metals etc. valued at Rs. 1,59,64,220 (Page 11, item 29) Vol. I. Deducting same the value of block and other assets come to

	Rs. 12,53,16,287
minus	Rs. 1,59,64,220
	Rs. 10,93,52,067

3.2. Para 8 showed certain item of expenditure which should have been capitalised and added back to the value of the block-assets. Para 8(e) is reproduced for ready reference:

"The total amount of expenditure under these items are as follows:

(i) Stamp duty on mortgage and Pronotes.	Rs.	2,90,922
(ii) Registration fees	Rs.	40,133
(iii) Interests & difference of exchange rates.	Rs.	84,00,307
(iv) Guarantee commission & Commitment charges.	Rs.	21,11,715
(v) Insurance charges.	Rs.	2,53,341
(vi) Trusteeship Commission.	Rs.	2,336
	Rs.	1,10,98,754

This amount is to be capitalised and added to the valuation of assets".

All the items of expenditure had been mentioned in Government's valuation reports, but were not capitalised and added to the value of the block assets for the creation of which the expenditure had been incurred. The NOTE then proceeded to add back the figure worked out in para 8(b) to the figure arrived at in para 7(h) and further add back the value of stock in trade as shown in para 8(b) with the two add backs, the value of assets came to Rs. 13,98,70,481. For ready reference para 8(f) of the note is hereunder reproduced.

"The value of the assets now can be calculated as follows:—

Value of block and other assets except stock-in-trade as shown in page 8 para (h)	Rs.	10,93,52,067
Added back amount mentioned in para above.	Rs.	1,10,98,754
Therefore the value of total assets (except stock-in-trade) come to	Rs.	12,04,50,821
Add back value of the stock-in-trade [(page 8 para 8 (b)] of these notes.	Rs.	1,94,19,660
Value of total assets.	Rs.	13,98,70,481"

3.3. It will thus be seen that the figures given in the NOTE had been taken from the two reports of the valuers appointed by the Central Government and the Hindustan Zinc Ltd. The Corporation had pointed out various lacunas and discrepancies and showed that even on the principles of valuation as may be culled out from the two reports of the Government valuers, the total value of the assets would work out to Rs. 13,98,70,481 even excluding the potential value of the mine.

3.4. The NOTE then proceeded to examine the computation of liabilities. It was found that Two Valuation Teams had taken the net liabilities as shown in the books to be at Rs. 7,57,38,158 after providing for Bad debts to Rs. 50,000/-. To that amount was added a further sum of Rs. 1.55 crores as Provisions for liabilities not provided for in the Books of the Corporation. The details of these provisions were shown at page 108 Volume-I of the report of the Government valuers. These provisions were much in excess of the actual liabilities on the relevant items to the knowledge of the Government before it filed written statement before the Tribunal. In spite of this the inflated figures shown under various items of liability were not corrected. The obvious intention was to under value the net compensation. To the extent liabilities were thus inflated were shown under para 9 of the NOTE. For instance Rs. 60 lakhs had been shown as liability towards Customs Duty. The actual liability settled and paid on this account came to Rs. 32 lakhs. Similarly provision was made for Rs. 20 lakhs towards Royalty payable to the Rajasthan Government. The total amount of royalty with over-due interest worked out to a little over Rs. 8 lakhs. Provision of Rs. 5 lakhs on account of Cementation Ltd. was not shown to be against any admitted or claimed liability. There was nothing to show that the amount was claimed or paid. Rs. 15 lakhs was provided towards Gratuity and leave salary. The payment of Gratuity was from year to year and there could be no contingent liability as has been held by the Supreme Court. There was no outstanding view on gratuity on or Leave Salary and none had in fact been paid out of these provisions for any period upto 22nd October 1965 when the undertaking was acquired. Rs. 25 lakhs had been provided for Income Tax and Sales Tax even though the total demand on both the accounts were settled at approximately Rs. 10 lakhs. No stowing was due or necessary and Mining Research Institute, Dhanbad did not recommend any stowing on mine inspection. Nothing was placed on record to show that any stowing was done and paid for after take over. Yet Rs. 25 lakhs had been provided on this item.

Provision of Rs. 5 lakhs for miscellaneous was unjustified as elaborately shown in para 8(vii). Thus the total figure of provisions towards liabilities came to only Rs. 50,05,103 and not Rs. 1.55 crores. Thus a sum of Rupees one crore was surreptitiously kept away from even the fictional and arbitrary figure of valuation to arrive at the net amount of Rs. 1.98 crores.

3.5. On the above basis the Corporation had stated that even on calculations made in the two Government valuation reports and

lacunas and discrepancies pointed out therein, the total amount of compensation will work out to above Rs. 6 crores.

Question—4(*a*) Please elaborate the statement made in your representation dated the 8th August, 1977 that the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976, in the light of law laid down by Supreme Court in Keshavanand Bharathi's case clearly represents a fraud on Art. 31(2).

Answer 4.1.—The undertaking of the Corporation was acquired and vested in the Central Government w.e.f. 22nd October, 1965, under Act 44 of 1965. After the Corporation had succeeded in having that Act declared *ultra vires*, Act 36 of 1966 was enacted. The Corporation eventually submitted to this Act on being to be compensated for the potential value of its mining undertaking represented by the mining lease which was to remain valid at the Corporation's exclusive option upto the year 2010 and which had been acquired as a part of the undertaking as one of its principal asset. The Corporation then approached the Tribunal of Hon'ble Mr. Justice Mudholkar constituted under the Act for determining the compensation payable on the valuation of assets on principles laid down in the schedule to the Act. The Government and its Counsel one Shri Ram Panjwani took notoriously litigious approach to the proceedings before the Tribunal to make the proceedings interminable. Even the request made on the first day of Tribunal's hearing on 4-9-72 to be allowed inspection of essential records of the Corporation taken over by the Government for preparing Corporation's claim was resisted by the Government for more than a year at first before the Tribunal, and after loosing the matter there, in the Delhi High Court through an abortive writ petition. The Corporation had stated before the Tribunal that "the Government was advised to behave as a common litigent of the lowest order. The persons advising the Government so irresponsibly clearly committed misconduct as may be properly referred to the Central Vigilance Commission for enquiry". Even the Delhi High Court was constrained to observe:

> "The conduct of the petitioner (Union of India) does not entitle it to the grant of discretionary relief of a writ of certiorari."

4.2. Eleven years of distressing existence without compensation or any business, the Corporation was left with no resources to fight the litigious leviathan. Even a small sum of Rs. 1 lakh recommended to be advanced to the Corporation by the Tribunal for essential

The Corporation, therefore, decided to tender written submissions on law and facts on its claim which was done on 31-7-76. The Corporation requested the Tribunal to determine the valuation of the Corporation's undertaking and the compensation payable under the Act on the basis of the written submissions, the records of the undertaking placed before the Tribunal and any evidence or submissions which the Government may tender.

The proceedings before the Tribunal had thus reached to the conclusive stage before Act 100 of 1976 was enacted.

4.3. The object of Act 100 of 1976 could not have been the object stated in its preamble.

The preamble of Act 100 of 1976 declares the object of the legislation to be taken over the management of the undertaking of the Corporation after re-transferring and re-vesting the undertaking in the Corporation and for subsequent of the Corporation and for subsequent acquisition of the same undertaking for the purpose of enabling the Central Government in public interest to exploit the Zinc and Lead deposits at Zawar in Rajasthan. The entire undertaking stood acquired and vested in the Central Government with effect from 22.10.65 under Act 36 of 1966 and was being managed ever since by the Central Government undertaking Hindustan Zinc Ltd. (HZL) constituted for the purpose. There was thus no legal impediment or let or hinderance to this absolute vesting the management of the undertaking and power to exploit the mines and the minerals by Central Government for the avowed public interest.

All that remained to be done in relation to the acquisition was determination of the quantum of compensation by the Tribunal and its payment to the Corporation. Even this aspect had reached to a near conclusive stage with the filing of written arguments and NOTES on behalf of the Corporation. It only remained for the Government to lead evidence and conclude its submissions. The final arguments were submitted by the Corporation on July 31, 1976.

4.4. It was only after the Corporation had on 19-7-76 filed its NOTES on inspection of valuation reports of the Government team before the Tribunal with a copy to the Government and written submissions were filed closing all doors for the Government to delay the proceedings before the Tribunal, that on 2nd August, 1976 Ordinance 12 of 1976 was promulgated which was later replaced by Act 100 of 1976. The Corporation has reasons to believe, and the relevant facts can easily be ascertained by this High Power Committee from Government records, that immediately after receipt of the

NOTE, hurried consultations took place, in the light of which opinion of the Solicitor General Sri Lal Narain Sinha was also obtained, to find ways to do away with the Tribunal, and the Schedule of Act 36 of 1966. The product was Act 100 of 1976.

4.5. It can also be ascertained from Government records that even earlier the Ministry entertained apprehension that the Government may have to pay substantial amount as compensation under Act 36 of 1966. This apprehension was strengthened after the Attorney General's statement in the Calcutta High Court admitting Corporation's entitlement to compensation on potential value of mines. This apprehension became a staggering reality for the Government after the Corporation had submitted its claim before the Tribunal computed at over Rs. 100|- crores out of which value of Block-assets amounted Rs. 24.73 crores, of stocks of metals at hand at Rs. 6.64 crores and potential value of the assets comprising the mining lease and properties and rights thereunder based on estimated capacity to mine, mill, extract and sell during the subsisting period of the Mining Lease including two options extending upto the year 2010 AD, valued at Rs. 64.53 crores. Even this valuation of mines was on an under estimate being based on the value of Lead and Zinc concentrates on the application of international formula on prices of Lead and Zinc metals taken at Rs. 2500/- MT for both and market price of bye-product silver and Cadmium. The extent of underestimation can be realised from the fact that the Hindustan Zinc Ltd. has been selling zinc metal at various prices upto 15000/- per MT and lead metal upto Rs. 7/ 8000/- per Mt.

4.6. Efforts were made to amend the Act 36 of 1966 to take away the Schedule and the Tribunal and substitute them by an amount of Rs. 2.12 crores as compensation. This, however, could not be achieved as the legal opinion was against it. To amend the law to reduce the compensation after the property had been acquired would have appeared as perverse to many in the Parliament. Such a law would be tantamount to acquisition of a part of compensation, which is property without payment of any compensation.

4.7. Then came the Emergency, and under its protective cover, they questioned law.

4.8. There was no factual or legal necessity for the enactment of Act 100 of 1976. After nearly 11 years of the undertaking remaining in the exclusive ownership and management of Government/ HZL the tomfoolery of taking over the management denovo on 2nd August, 1976 with retrospective effect from 22-10-1965 was not dictated by the avowed object of the Act. Similarly, re-vesting of

the undertaking only to acquire again instantaneously, represents a perversity unknown to Parliament. There was no factual or legislative necessity for this. The denovo acquisition of a property which already stood acquired for nearly 11 years could not possibly arise out of any legitimate objective. The real object of the Act was even kept concealed from the Parliament.

4.9. Above facts and circumstances and the text of Act 100 of 1976 leave no doubt that the sole object behind its enactment was to get rid of section 10, the Schedule of Act 36 of 1966 and the Tribunal so that the Corporation could be deprived of the compensation computed on principles laid down in the Schedule and from having its claim determined by the Tribunal under that Act. The fictional restoration of the acquired undertaking to the Corporation with retrospective effect was motivated to have the acquisition covered under 25th Amendment of the Constitution which was considered as a protective cover to enable the Government to pay to the Corporation an arbitrarily computed fixed amount of money as compensation. The object was to enforce by law, the amount of Rs. 1.98 crores as compensation for the acquisition of Corporation's undertaking, an amount which appeared indefensible before the Tribunal even on Government's own valuation report, and to forefeit and confiscate thereby a large part of compensation assured to the Corporation under Act 36 of 1966. It was only to dress up this predatory law that a sum calculated at the rate of Rs. 11.39 lakhs per annum was provided to be paid to the Corporation from 22-10-1965 to 2-8-1976 for the so-called deprivation of the management of the undertaking. This amount is even less than bank interest on Rs. 1.98 crores.

4.10. The mandate of Article 31(2) is that no property shall be compulsorily acquired save for a public purpose. The Article also requires the law to provide for payment of compensation by either fixing an amount of compensation to be paid or laying down the principles for determining compensation and the manner of its payment. There cannot possibly be a public purpose in depriving by acquisition a part of the compensation already secured by law to be paid to the deprived owner. When the Constitution requires provision for payment of compensation as the basic essential condition of any valid law for acquisition of property, any law materially and substantially motivated to acquire a part of that compensation itself cannot be said to be a law contemplated under Article 31(2) of the Constitution.

4.11. Moreover, compensation itself is property under Articles 19 and 31(2) of the Constitution. The compensation assured to the Corporation under Section 10 read with the Schedule of Act 36 of 1966 is property. A substantial part of that property has been acquired under Act 100 of 1976 without any compensation. Where essential constitutional requirements for acquisition of any property is provision for compensation, acquisition of compensation or a part thereof cannot be a permissible legislative objective contemplated under Art. 31. If power to make a law to acquire compensation itself by substitution of the compensation provided for in the law acquiring the property by another or in any other manner is upheld as permissible under Art. 31(2), it will lead to absurd results and make redundant the Constitutional safe-guard.

4.12. In Keshavanand Bharathi's case (1973 SCR Suppl.) the Supreme Court held that even under the substituted Article 31(2) if a law while acquiring property provided for payment of an amount fixed by the law, it will be justiciable if the amount is illusory, arbitrary and has no relevance to the nature of the property acquired and the law represents a fraud on Article 31(2) and is colourable having been made for achieving an ulterior purpose which has nothing to do with acquisition. This is precisely what has been done by Act 100 of 1976. A property already acquired 11 years ago and belonging to the Government/Government company has been fictionally re-acquired. Chief Justice Sikri held in Keshavanand's case that "effect of amendment in Article 31(2) is that a person whose property is acquired can no-longer claim full or just compensation; but he can still claim that law should lay down principle to determine the amount which he has to get and these principles must have a rational relation to the property sought to be acquired. When amount is fixed by law the amount so fixed must be fixed in accordance with some principle because it could not have been intended that if amount is fixed by law, the legislature could fix the amount arbitrarily..." The Chief Justice further held that the legislature are not empowered to fix an arbitrary or illusory amount or an amount that virtually represents confiscation. Shelat and Grover, JJ speaking on amended Article 31(2) held that fixation of amount under the Article has to be based on some norm or principle which must have relevance for the purpose of arriving at the amount payable in respect of the property acquired. It should have reasonable relationship with the value of the property; the amount should neither be illusory nor fixed improperly and such matters are open to judicial review. Hegde and Mukherjee JJ. held that the substituted Art. 31(2) of does not destroy the right to property and the

amount should not be illusory or fixed arbitrarily. Jaganmohan Reddy J. held that the amount fixed can be challenged on the ground of arbitrariness, illusoriness or having been based on irrelevant principles, Chandrachud J. held that courts have power to question such a law if the power of compulsory acquisition is exercised for a collateral purpose or if the law is in the nature of a fraud on the Constitution. The Corporation has used the word fraud in the same context in which the former Chief Justice Sikri and the present Chief Justice Chandrachud had used in Keshavanand's case. Act 100 of 1976 has been legislated clearly for a collateral purpose and not for the purpose contemplated under Act. 31(2), of the Constitution. This legislation, from legal aspect, is comparable with the proclamation of Emergency by Mrs. Indira Gandhi. The power is there under Article 352 of the Constitution. But this power was used in a manner and for a purpose not contemplated and hence as a fraud on the constitutional power to declare Emergency. The country as whole and a very large number of members of the Parliament including those in this committee have direct personal experience in the matter. When power is there, but it is used to achieve a purpose not contemplated on any reasonable interpretation or scope of the power, it is tantamount to fraud on the power or colourable exercise of the power. Thus when a constitutional power to make a law is used only to negative a Constitutional safe-guard, it will be a fraud on the power to make law. Law laid down in Keshavanand's case on 25th Amendment did not permit substitution of section 10 or the principles in the Schedule of Act 36 of 1966 by fictitious amount, or to reacquire an undertaking already acquired to give retrospective effect to the 25th Amendment for the purpose of acquiring a part of the compensation assured under earlier law. A device to evade or avoid provision of law may be permissible. But use of legislative power to change by fiction an existing reality to eat up a substantial part or the compensation guaranteed at the time of acquisition is perhaps the worst instance of legislative fraud.

Question—4(b).Why have you not challenged the provisions of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976 in the Supreme Court?

Answer.—When the Ordinance was promulgated and the Act 100 of 1976 was enacted, the entire country was living through the nightmare of Emergency. Citizens could question the Executive, maddened with Emergency powers, only at the risk of loosing life and liberty. Even according to the Supreme Court no citizen had any right to liberty or life under the Emergency. In that terrorising at-

mosphere the Corporation and or the shareholders could not have moved the court for redress. The fear of MISA was hauting the Chairman and the shareholders of the Corporation. Then came the new political amalgam, based on national consensus, to power under the leadership of the Janata Party on unequivocal pledge to the country to undo all Emergency laws and injustices. With faith in this assurance the shareholders of the Corporation and its Management considered it to be more just, efficatious, as well as, expeditious remedy to move the highest Court in this country, the law makers themselves, for undoing this injustice of Emergency. The shareholders, therefore, in their meeting held on 31-3-77 by consensus resolved that the proper course for the Corporation will be to move this august Committee of the Parliament for upsetting one of the ravages of Emergency by repealing Act 100 of 1976 and restoring the Act 36 of 1966 in the statute book.

Question 5.—It has been stated in your representation dated the 8th August, 1977 that the Government clearly did not include for compensation the potential value of the mines which constituted the most important asset. The Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976 providing for payment of Rs. 1.98 crores as compensation clearly provided for acquisition of the mining right without payment of any compensation. Whereas the Government have stated that according to the mining laws of the country, the minerals are the property of the State and the rights of the Metal Corporation were purely those of a lease-holder.

Please state your comments in this regard.

Answer:—Under Section 2(1) of the Mines Act, 1952 an lessee of a mine is the owner of the mine. This ownership has been acquired entitling the Corporation to compensation for acquisition of this property.

5.1. Under the mining laws minerals are the property of the States subject to the mining lease granted under the Mines and Minerals (Regulation and Development) Act, 1957 and Mineral Concession Rules, 1960. A mining lease vests in the lessee the right to win and extract minerals and sell the smelted metals as the exclusive property of the lessee. This absolute proprietory right of the lessee over the mines and the minerals subsists in favour of the lessee for the entire period of the lease. The lessee has only to pay a royalty and abide by the terms and conditions of the lease. The lease can be cancelled only under prescribed conditions.

5.2. The Corporation was granted the mining lease by the Government of Rajasthan with the approval of the Central Government for 20 years, in 1950 at the first instance and two renewals thereafter each of 20 years duration at the exclusive option of the Corporation who was thus entitled to the renewal of mining lease over the Zawar Mines upto 2010. The grant of the mining lease and its terms including renewals have never been disputed by the Government. Neither Act 100 of 1976 nor Act 36 of 1966 terminated the mining lease subsisting in favour of the Corporation on the date of acquisition. On the contrary, it was the subsisting lease and rights, title and interest in and over the mines and minerals flowing from the mining lease which has been acquired as a part of the Corporation's undertaking and property. In fact by the deeming provision of Act 100 of 1976 the entire undertaking including the mineral rights would be deemed to have been owned by the Corporation throughout period upto 2nd August, 1976, only the management having been taken over by the Government. The "undertaking" defined under Section 3 of Act 100 of 1976 includes the mining leases including rights over the mines and the minerals. Section 8 of the Act provides for vesting of the rights of the Corporation under the mining lease in favour of the Central Government as a part of vesting of the undertaking of the Metal Corporation in the Central Government under Section 7 as a part of the acquired undertaking. Section 8 also recognises as a subsisting right on 2-8-1976 the right of the Corporation to renewal of the mining lease for the maximum period of renewal provided and acquires this right as a part of the undertaking and property of the Corporation. In view of Sections 7 and 8 of the Act it cannot be contended by the Government that at the time of vesting the mining lease in favour of the Corporation had expired for want of any renewal or otherwise.

5.3. It does not require any elaborate argument to appreciate that mining lease is property acquisition of which tentamounts to acquisition of property under Article 31(2). Otherwise, Article 31(A) (i) (e) would not have found place under "Right of Property" in the Constitution. Since the Act has not extinguished or prematurely terminated or cancelled the mining lease subsisting in favour of the Corporation at the time of acquisition, Article 31(A) (i) (e) is not attracted in the case. The acquisition of mining rights and mining lease under the Act must therefore, satisfy the mandatory requirements of Article 31(2) of the Constitution. On the admitted case of the Government as stated in the question, that no compensation has been provided for acquisition of mining lease and that while computing Rs. 1.98 crores as compensation, no compensation has been provided on potential value of the mines on

the plea that minerals are the property of the States, the acquisition is clearly bad as contravening the provisions of the Article 31(2) of the Constitution.

5.4. Mining lease is not, and is not even comparable, to ordinary lease holds. Mining lease is a special property which creates for a specified period definite rights, title and interest in the specified minerals in respect of which lease has been granted. This right and title includes the right to win or process and refine them to finished metals and market the metals. All these definite properties, rights and interests are covered by the terms "mining lease". The essential characteristics and attributes of a mining lease was considered by the Supreme Court in the case of Gujrat Pottery Works (1967 1 SCR 965). Dealing with the definition of mining lease, the Supreme Court held that a mining lease is a lease granted for the purpose of searching for, mining, working, getting, making merchantable, disposing of minerals and includes exploring or prospecting. Mine includes any excavation for the purpose of searching for or obtaining minerals. Supreme Court also held in this case, as well as, in the case of Bihar Mines Ltd. (1967 1 SCR 707) that "wining" in the Constitutional sense should be given a wider meaning and cover cases which deal with obtaining of minerals *i.e.* to say to get or extract minerals from the mine. Property thus involved in the mining lease is the property right over the mines and minerals and to get or extract the minerals from the mines situated within the area covered under the mining lease and market them. It is in this context that a definite right and title is created in and over the under ground minerals upon grant of a mining lease and during its subsistence only the lessee and no one else, including the State, can claim any right, title or interest in the under ground minerals covered by the lease.

5.5. The Supreme Court has held that mining lease is property (Biswanath Prasad-Vs.-Union of India—AIR 1965 SC 821). The true character and extent of the proprietary right over the minerals covered by mining lease also appear distinctly identified and recognised under Minerals Concession Rules, 1960 which provide that without prior permission of the Central Government no mining lease or right or title or interest therein in respect of the scheduled minerals can be transferred. It is thus a transferable right, of course, subject to permission. In view of Sections 7 and 8 of Act 100 of 1976, it cannot be disputed that on the appointed date *i.e.* 2nd August, 1976, the Corporation had subsisting mining lease with right of renewal which was acquired and vested in the Central Government with effect from that date. That the mining lease as subsisting lease with two options of renewal subsisting upto 2010 AD was acquired under

Act 36 of 1966 has not been disputed. In fact HZL is enjoying the lease with right to renewals by stepping into the shores of the Corporation and by suceeding to its mining rights upon acquisition. The nature and essential attributes of mining lease will further be clear from the following extracts from the standard form of mining lease under Mineral Concession Rules, 1960 which also featured as Part—II Cl. 1 in the Mineral Concession Rules, 1959 under which the Corporation was initially granted the mining lease:—

> "Liberty and power at all times during the terms hereby demised to enter upon the said lands to search for, mine, bore, dig, drill or win, work, dress, process, conduct, carry away and dispose of the mineral....Liberty is granted to the lessee to use sufficient part of land to beneficiate the ore products and carry away such beneficiated ore."

5.6. In the case of R. C. Cooper-vs-Union of India (1970) 3 SCR 530, the Supreme Court held that a provision for payment of compensation for the unexpired period of lease by payment of proportionate premium for its unexpired duration is not a provision for payment of compensation for the unexpired period of the lease. The Supreme Court held that leases involved in the case were properties of substantial value and its exclusion or payment of proportionate premium for the unexpired period will not be compensation for the loss of lease hold rights.

5.7. It is well known that for a mining undertaking, such as the Corporation, the mining lease and its mining undertaking including beneficial value of mines constituted the most important asset. The Government admits, while claiming that the Corporation had no right over minerals that no compensation has been provided for the acquisition of mining lease under section 7 of the Act while computing the figure of Rs. 1.98 crores. The mining lease and the right, title and interest constituted by that most important component of the Corporation's undertaking has thus been admittedly acquired without payment of any compensation.

Question 6.—What was the book value of the assets of the Metal Corporation of India Ltd. and what were its liabilities at the time of its take over by Government? In your opinion what should have been the amount of compensation at that time?

Answer.—It is settled law that for the purpose of compensation in case of acquisition book value of the assets is irrelevant. The concept of book value of the assets is artificial, fictional and relatable to the depreciation provided under Section 32 of the Income Tax

Act. The books show the depreciated value of the assets computed in terms of the Income Tax Act which is also permissible under the Companies Act. The Companies Act of course gives an added option of charging depreciation at a flat rate. Where a substantial part of assets are imported plant and machinery or the economy is infected by spiral inflation, book value will give no indication as to the actual worth of the assets. This was the precise issue on which the Supreme Court struck down the first Act (44 of 1965) acquiring the undertaking. The real worth of the block assets of the Corporation at the time of initial acquisition i.e. 22nd October, 1965 computed on standard principles and supported by valuation made by one of the top valuers and assessors M/s. Kapadia and Baria and Toplis & Harding (P) Ltd. were computed by the Corporation in its claim filed before the Tribunal as follows:

BLOCK ASSETS

Item	Amount Rs.
1. Buildings	2,52,80,396
2. Plant & Machinery.	10,10,59,402
3. Mining Equipments.	1,53,75,000
4. Trolley & Track Lines.	12,96,200
5. Electrical Installation.	18,36,500
6. Water Works.	1,45,000
7. Oil Storage	3,25,000
8. Tailing Disposal	1,25,439
9. Main & Auxilliary Shaft.	35,68,050
10. AIR & Pipelines.	22,42,625
11. Telephones	3,70,000
12. Motor Cars & Lorries.	5,91,761
13. Hospitals.	88,048
14. Furniture & Fixtures.	9,33,252
15. Laboratory Equipments.	66,000
16. Stores	27,37,930
Total.	15,60,40,603
Post devaluation.	4,18,24,436
	19,78,65,039
Further increase to give full effect of devaluation.	4,94,66,266
	24,73,31,299

The value of other assets were computed as follows:

Other Assets.

1. Market value of works carried out at the mines.	1,44.10,000
2. Market value of stock-in-trade as on 22-10-65. .	6,64,56,824
3. Market value of other assets not covered by the report of the valuers..	1,23,34,335
4. Market value of the mining lease potential value of the mines .	64,53,58,000
6. The total liabilities as on 22-10-65 stood at	7,66,31,568

6.2. The Corporation has not included in the above figures, its claim pending on the date of acquisition towards difference between the price fixed by the Government for supply of Corporation's Zinc and the price which the Corporation claimed on the basis of market value at the relevant time.

6.3. On the above estimate the amount of compensation payable to the Corporation works out to Rs. 90,92,53,890 assets minus liabilities plus interest on this amount for the period 22-10-65 to 13-9-66.

Question 7.—What are your objections to the determination of compensation by Government as per provisions of the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976?

Answer.—The objections are:

(i) Section 10 read with the Schedule of Act 36 of 1966 created right to property of the Corporation in the compensation determinable under that Act by the Tribunal on the basis of the principles prescribed in the Schedule. Rs. 1.98 crores represents a very small fraction of that property;

(ii) The Act fixes the amount of Rs. 1.98 crores as compensation which is even less than what the Government had at first offered *i.e.* Rs. 2.12 crores.

(iii) Rs. 1.98 crores was said to be the net value of the assets on 22-10-65. The same figure cannot be the net value of the assets on 2-8-76 after nearly 11 years specially when the price of Zinc rose during this period to Rs. 15000/- per MT and lead to Rs. 7/8000 per MT and HZL showed profits of over Rs. 5 crores in 1973-74. nearly Rs. 9 crores in 1974-75, over Rs. 10 crores in 1975-76 which will give an idea of the progressive profitability of the Corporations' undertaking.

(iv) Rs. 1.98 crores payable in 1965 even if invested at nominal interest of 12 per cent per annum would have yielded an interest income of nearly Rs. 2.60 crores.

(v) Rs. 1.98 crores is nearly 2 per cent of the value of the corporations' undertaking computed on the principles under Act 36 of 1966. The same fictional figures has been sought to be given statutory status.

(vi) The amount of Rs. 1.98 crores represents forfeiture of the major part of compensation assured under Act 36 of 1966.

(vii) Rs. 1.98 crores has been arrived at without applying any principle, and arbitrarily. Even all the block-assets, stocks-in-trade and other items of assets have not been taken into account. The figure of liabilities, including provisions for liabilities had been inflated to the extent of over Rs. one crore as already stated.

(viii) The most important asset, the mining undertaking including mining lease and potential value of the mining property acquired under the Act have not been compensated for, but has been confiscated.

(ix) Zinc and Lead metals acquired as a part of the undertaking of the Corporation has been valued at artificial and fictional rates. The Government had sold those very metals acquired as stock of Corporation at much higher rates. Price of Zinc Metal for compensation has been shown at Rs. 1870 per MT and Lead Metal at Rs. 1690 per MT while Government/HZL had sold the acquired Lead Metal at Rs. 5200/- per MT and above and the acquired Zinc Metal at prices ranging from Rs. 2,500 to Rs. 3,500/-. This is clearly perfidious.

(x) The NOTES on reports of two valuation teams of Government/HZL will give detailed analysis of the arbitrary valuation. Even the valuers had commented on record that some independent experts/assessors should be engaged to assess the value of the undertaking.

(xi) Ordinarily, where only a stated amount of compensations is given under any law, it may not be possible to assess what factors had been taken into account, what principles applied and what components constituted the

amount. It will also be assumed that relevant principles have been followed and all material components of the property have been taken into account in computing the amount and no part of the assets stand confiscated without compensation. In this case, however, detailed statements and records are available and exposed to the Corporation and the Tribunal. The fictitious and confiscatory basis of the figure of Rs. 1.98 crores in definite and clear from the records produced before the Tribunal. They show that no appropriate or relevant principle had been followed to arrive at the figure Rs. 1.98 crores. Some instances of arbitrary valuation may be given:

(a) Initially the Government considered the Valuation Report of M/s. Kapdia and Baria and Toplis and Harding (P) Ltd., in which market value of block-assets of the Corpn. had been shown at Rs. 19.78 crores as on 15th October, 1965, *i.e.*, nearest to the date of initial acquisition on 22nd October, 1965 as so valuable as to decline its disclosure to the Corporation. But when after a long legal battle, the Delhi High Court came to the Corporation's help and the Government was compelled to make a copy of this report available to the Corporation as directed by the Tribunal and the Corporation relied upon this report and valued block-assets primarily on this report that the Government overnight changed its view on the Report and in its written statement before the Tribunal questioned the merit of this report, though without basis.

(b) The valuation teams of the Government/HZL adopted a peculiar method to value the imported and other block-assets. They took the original cost of each item of building, plant and machinery as shown in the books and escalated it by price increase on the basis of price index given under different heads in U.N. Year Book of 1966 to arrive at the current cost of the assets. From the costs thus arrived at depreciation at the rate provided under the Income Tax Act was deducted to arrive at the so-called "nearest value" of the various assets. For construction of Civil Works and escalation of original costs were obtained from National Building Construction Corpn. of the Government who had nothing to do with the constructions. The imported plant and machinery which were new and had been

imported after years of efforts and negotiations and which were not easy to get, were valued at an appreciated cost of only 6.3 per cent though such plant and machinery would not have been available even at double the cost and their prices had appreciated by 56.6 per cent due to devaluation alone. It was claimed that the method adopted by the valuation team of HZL/Government was "most practical".

It was said that "mines are wasting assets".

On valuation of stock-in-trade the Government claimed that the Corporation was not entitled to claim the money actually realised by Government/HZL on sale of the acquired stocks. The Corporation could get compensation only at the price permissible under S.I.M.C.O. which was conveniently enforced prior to the acquisition of the undertaking and withdrawn soon after. The Government claimed that run of ore had no market value even though the Government Valuers themselves admitted that mined ore of about 1.70 lakh tons was lying at the surface and underground ready to be lifted at the time when the undertaking was acquired. These are just a few instances of the arbitrary nature of the Government valuation.

(c) Rs. 1.98 crores was not computed on the basis of principles prescribed in the schedule under Act 36 of 1966 or on any other relevant principle. This figure also does not represent the valuation of the assets of the undertaking as on the date of the acquisition under the new Act *i.e.* as on 2nd August, 1976. The undertaking having been restored to the Corpn. and being under its ownership throughout the period from 22nd October, 1965 to 2nd August, 1976 in terms of Act 100 of 1976, all profits and benefits accrued and added to the undertaking and its value, including benefits of the spiral rise in the market value of Zinc and Lead, Zinc touching up to Rs. 15,000/- per MT during the period, belonged to the Corporation, the Government being entitled only to a managerial remuneration during the period. Whatever way it is looked at the compensation offered is fictional and arbitrary and represents forfeiture to large part of Corporation's assets.

Question 8.—The Committee have been informed by Government that the paid up Capital of the Company as on the date of acquisition was Rs. 246.64 lakhs. Compensation amounting to 320.79 lakhs

is not only reasonable but generous when viewed in the light of the face value of share of Rs. 10 per share which was quoted as low as Rs. 4.25 around the date of acquisition. On this basis the Corporation, would normally be entitled to a compensation. Please state your comments in this regard?

Answer.—Paid up Capital of the Corporation or quoted price of its shares in the market is irrelevant for determining the value of the undertaking. Moreover, a mining undertaking has well known special features. Where mining and smelting are inter-connected, the value of the mining undertaking depends on availability and extent of smelting facilities. This is supported by authority of experts. Even in the case of Corporation's undertaking the value of its shares were being quoted in the market in the year 1962 at Rs. 13.75 at the time when development project including setting up of the Zinc smelter project had been approved by the Government. The approval itself was sufficient to create confidence in the minds of the shareholders. A mining undertaking also has a long gestation period. This period is even long in the case of non-ferrous metals where mining has to be deep underground. Any mining undertaking has necessarily to begin by prospecting of the mining area. Then starts mining and milling, as well as, prospecting going on simultaneously. After some time smelting is commenced when the mining has been sufficiently developed. It is also known about a mining undertaking that initially it requires heavy capital investment and takes a long time to break even and come to a stage of profitability. The value of its shares in the market during this period cannot reflect its existing or potential worth. In the case of the Corporation some of these factors were prominently in existence. Some others, adverse to its public image and interest were being added to by the Government which seriously eroded public confidence in the Corporation's prospects. Low quotations in October, 1975 or paid up capital at the relevant time gave no indication of the value of the Corporation's undertaking. In fact the relevant factors for the determination of the real worth of the Corporation's undertaking were its valuable collaboration and imported plant and machinery obtained after years of persistent efforts, years spent in prospecting and developing the mines, exclusive mining rights upto 2010 AD over the single richest reserve of Zinc, lead and by-product Silver and Cadmium in the country and spiral rise in the prices of Zinc and lead metals and Silver in the national and inter-national market. These facts coupled with the actual valuation of block-assets alone by nationally reputed valuer above Rs. 19 crores, are sufficient answer to those who have propounded Rs. 1.10 crores as compensation on share valuation.

Question 9.—It has been stated by Government that it was the Metal Corporation of India who had adopted a litigious attitude by challenging the vires. of the Act during 1965 to 1971. The Corporation did not respond to the first offer of compensation made in June, 1968. What are your comments in this regard?

Answer.—The allegation is wrong and not founded on facts. The Corporation no doubt challenged the first Act, but did so successfully. The Government could have accepted the verdict of the Delhi High Court but choose to go to the Supreme Court and lost. The Corporation also challenged the second Act and on the basis of the correct law subsequently appreciated by the Supreme Court in the Bank Nationalisation case and Kesavananda Bharathi's case the Corporation's attack against Act 36 of 1966 was well founded. It will be for an imbecile to allege that the Corporation was not justified of fighting for its only undertaking and for the legal and constitutional rights of the share-holders. The Corporation, however, did not wish to proceed further with any litigation and accepted the acquisition of the undertaking as a fact of life. The Corporation, therefore, approached the Government for negotiations for determining the amount of compensation on agreed basis as provided under the Act 36 of 1966. In a meeting held with the then Minister Dr. Triguna Sen, the Corporation proposed that valuation of block-assets be settled across the table by valuers on both sides. The valuation report on block-assets could facilitate this deliberation. For the valuation of mines an expert may be engaged. Since mine valuation is annual feature in the U.S. and U.S. Bureau of Mines has reliable experts on this subject, the Corporation's Chairman, on a pre-consultation with the Mining Adviser of the U.S. Embassy, suggested engagement at a nominal remuneration an expert valuer of mines from U.S. The Corporation and the Government could accept this valuation. The Government did not respond to this proposal. The Government even withdrew the offer of compensation at Rs. 2.12 crores made earlier. After keeping quiet for a considerable time on Corporations's request for negotiations, the Government ultimately by its letter dated 8-7-1971 rejected the proposal for negotiation. The Corporation then approached the Tribunal.

9.2. At the first sitting of the Tribunal held on 4-9-72, the Corporation requested to be allowed to inspect its own records then with the Government and its Company H.Z.L. The Government was advised to oppose this elementary and just request. The Tribunal by its order dated 12-4-1973 rejected the Government's objections and directed that the Corporation be allowed inspection

of its records and given a copy of the valuation report of M/s. Kapadia & Baria and Toplis & Harding (P) Ltd. The Government then moved the Delhi High Court against this just and legitimate Order. The Delhi High Court by its order dated 19-10-1973 dismissed in limini CW No. 876/73 moved by the Government with the observation made in the order that the conduct of the Government did not entitle it to the grant of discretionary relief. The Government still persisted in dilatory and litigious approach in an effort to make the proceedings before the Tribunal interminable. The Corporation's Counsel requested the Tribunal to frame issues even without waiting for tendering of records by the Government which was being unduly delayed for one reason or the other. The Tribunal accordingly in its order of 3-3-75 recorded as follows:—

> "Mr. Chatterjee wants a date to be fixed for the framing of issues straightaway even before the documents are made available to the Tribunal for ready reference."

The Corporation then proposed that draft issues be submitted by the parties in writing and the Tribunal may finalise them. The Government proposed that detailed submissions on the case must be allowed even at that preliminary stage. The Corporation was by then completely exhausted financially, having no resources or business since after the acquisition of the undertaking. It had no money to finance the proceedings before the Tribunal any more. The Corporation did not even have resources to pay fees to its lawyers. In the circumstances, the Corporation decided to submit written arguments before the Tribunal which the Corporation did on 31-7-76. The Corporation had earlier on 19-7-76 submitted NOTES on inspection of Government/HZL valuation reports.

In the circumstances the allegation that the Corporation had adopted litigious approach should appear to be far from truth. In fact the Corporation had submitted in writing before the Tribunal that the way Government had delayed the proceedings called for enquiry by the Vigilance Commission.

Question 10.—Have you accepted the compensation paid by Government?

Answer.—The correct position is that the Corporation has received the cheque forwarded to it. The entire amount has been deposited in F D. account with two nationalised Banks. The Corporation has not utilised this money for commencing any business or distribution to the shareholders. Under the Companies Act it is not permissible

to distribute any money to the shareholders unless by way of dividends or on winding up towards shares after meeting the liabilities. Receipt of the money and its deposit do not prejudice the Corporation's right to challenge the Act.

Question 11.—It has been stated by Government that the representation of the Metal Corporation of India to the Committee seems to be another attempt on the part of the Company to delay payment to the shareholders. What are your comments in this regard?

Answer.—The allegation is baseless. The allegation would have some sense if any benefit was being derived by the management by delaying winding up of the Corporation. Of course, the interested officials would like the Corporation to wind up and thereby betrary the interest of the sare-holders, and their legitimate constitutional right to get appropriate compensation. Shareholders themselves in the General meeting have decided for action. The Corporation has approached this Committee instead of running to the Court. The Corporation has an absolute case to frustrate and expose the legal jugglery involved in the making of Act 100 of 1976 as one of the notorious product of Emergency.

Question 12.—The Committee have been informed that the shareholders of the Metal Corporation of India have not received a paise for the last 12 years. Some of them might have died Further, distribution of money to the shareholders would not prejudice the case of the company for claiming extra compensation from the Government.

Have you anything to say in this regard? What are the reasons for not making payment to the shareholders for such a long time?

Answer.—If the shareholders have not received a paise for 12 years, the fault lies with the Government. The Government enacted a law which was found to be *ultra vires*. As regards the second Act nothing prevented the Government to tender the amount they had fictionally computed as payable compensation and admit at the outset that the potential value of mines were included for compensation under the Schedule. The Government need not have waited for admitting this only at the time of final hearing of the Corporation's Writ Petition in the Calcutta High Court. The Government also did not accept the modus of working out agreed valuation which would have enabled the parties to demarcate the areas of agreement and the areas of dispute. When the vires of the Act was no more under challenge, this method could have

easily been accepted if the officials were acting bonafide. The Tribunal could have finished its deliberations within 6 months, if the Government had co-operated. The Government was entirely responsible for dragging on with the proceedings before the Tribunal from Sept. '72 to July, 1976' delaying the proceedings at each step. Eventually when the Corporation by making written submission closed all possible ways for the Government to delay the proceedings before the Tribunal that this infamous new law was brought in. No part of the money received could be distributed to the shareholders without prejudice to the Corporation's case. The distribution of the money can be done under the prescribed circumstances. The shareholders are not creditors of the company. Under the Companies Act shareholders can be given money either by reduction of share capital or by declaration of dividents when there is profit or in the course of winding up proceedings. There was no question of any profit and the money received under Sec. 10 of Act 100 of 1976 cannot be called 'profit' under Sec. 205 of the Companies Act. In any case the appropriation of any part of the money by the shareholders as a gain would have prejudiced thus in the Corporation's case against the Act. There is no other way for the Company to distribute money to its shareholders. The expression "extra compensation" is not the appropriate language for appreciating the Corporation's case. The Corporation is claiming compensation to which it is legitimately entitled under the basic law of the country, the Constitution of India and nothing more and nothing less.

PART II

ADDITIONAL SUBMISSIONS ON THE SUPPLEMENTARY QUESTIONS PUT AT THE TIME OF ORAL EVIDENCE ON 14-9-1978.

1. *Book Value of assets as on* 22-10-1965.

Book Value of the assets as on 22-10-1965 were as follows:

Fixed Assets :	Rs.	3469645·35
Expansion Programme Suspense Account :	Rs.	87693643.78
Investments:	Rs.	42300.11
Current Assets Loans & Advances. : .	Rs.	1745796.55
	Rs.	1086,62,86·09

As for relevance of Book Value of Assets, submissions made under reply to Question 6 in Part I may be referred to.

2. *Financial crisis in* 1964-65

The financial crisis was entirely due to factors for which officials of the concerned Ministry were largely responsible. Various actions and/or inactions of the Government Officials which were primarily responsible for the financial crisis have already been stated in reply to the main questions as well as in the Statement of Facts already submitted. Suffice it to say that inspite of having about Rs. 1.50 crores worth of finished metals immediately marketable, the Corporation was not allowed to sell even a part the metals to enable it to raise money to pay the current wages bill. Had the Corporation been allowed to normally function without arbitrary Governmental interference and if some private parties were not allowed to reap the benefit of market value on Corporation's products while denying the Corporation the benefit of mopping up available finance for the development project, there would not have been any financial crisis but there would have been a period of financial flourish for the Corporation during 1964-65. Even if the Corporation was allowed even a reasonable and fair price for zinc in addition to market price for lead metals, it would have had sufficient money not only for the release of the imported plant and machinery lying at Bombay Port but also to complete a substantial part of the development project including setting up of the Zinc Smelter. It will therefore be misleading to say that the Corporation was in financial crisis in 1964-65.

3. *Labour Trouble in* 1964-65

There was no labour trouble at the relevant period or at any other time. The Corporation had in fact maintained enviable cordial management labour relationship. The condition of labour secured by the Corporation was best in Rajasthan.

4. *If regular contribution (employers and employee) were paid to the Trustees.*

Yes.

5. *Share value as on* 3-5-1962 *at Rs.* 13.75 *as appeared in Financial Express and Rs.* 4.12 *as in September,* 1965.

Reasons for the stated fluctuation in the share value and the lower share value touched in September, 1965 have been partially stated in reply to question 6 in Part I. Some of the added reasons for low quotation in September, 1965 were—Indo-Pak conflict and enforcement of Scarce Industrial Materials (Control) Order of 14-9-1965.

6. *What was the justification of using the words in the petition in para 7 of page 5—"Government's own calculation"—Amendment of the petition.*

Kindly refer to answer to question No. 3 in Part I.

7. *Justify the use of words 'fraud on Art. 31 of the Constitution' (Para 13 in page 10 of the petition).*

—Amendment of the petition, if cannot be justified.

Kindly refer to answers to Question No. 4(a) in Part I.

8. *Provision in the Act—'Single compensation'—Justification for asking advance of Rs. 10 Lakhs and Rs. 1 lakh.*

'Single compensation' used under section 10(2) is in reference to the Schedule of Act 36 of 1966. The object behind provision is to protect the Act from any attack that while the entire Undertaking as a going concern had been acquired, the Compensation was being paid on separate valuation of each item of its assets valued, detached from the entire Undertaking. The words 'Single Compensation' had no other meaning. In any case the Government was not prevented from advancing some money to the Corporation to meet essential expenditure to enable the Corporation to appear before the Tribunal to assist in the valuation of the Undertaking. It was the Government's duty to facilitate enforcement of fundamental rights by the Corporation. The words 'Single Compensation' did not stand in the way of the Government to advance the money.

If the principles of 'Land Acquisition Law' is followed, then the Government should have tendered for payment the entire sum of Rs. 1.98 crores which the Government on its own wisdom had calculated and declared as the net compensation payable. The Government in the concluding para of its Written Statement before the Tribunal had stated as follows:—

> "62.5. In view of the aforesaid facts and circumstances the claim of Metal Corporation of India is liable to be rejected except to the extent of Rs. 1.98 crores offered by the Government to the Corporation."

The Government had no reason to withhold this amount. Even under civil law any claim to the extent admitted could be decreed on admission. In any case the Corporation under Schedule, Paragraph IV had earned interest on the amount of compensation from

22-10-1965 to 13-9-1966 which according to Government's estimate came to Rs. 10 28 lakhs. The Government should have advanced this money to the Corporation. Further, the entire and the only business of the Corporation and all assets including Bank balance having been acquired, the Government had the duty to keep alive the corporate status and assure facilities to the Corporation to assist in the valuation of the Undertaking. The tribunal had taken all these factors into consideration to make the order for the advance in the interest of justice.

9. *Why the Company did not respond to the first offer made in June,* 1968?

Apart from the petition in the Calcutta High Court which made the matter sub-judice, the Corporation could not accept the offer of Rs. 2.12 crores without the commitment by the Government that potential value of the mines and all other assets including intangibles were included in the purview of compensation. After this clarification was made by the Attorney General, the Corporation approached the Government for negotiations to arrive at mutually agreed valuation of the Undertaking as provided under Act 36 of 1966, but the Government declined in the circumstances already stated. The Government then came forward with arbitrary second offer of Rs. 1.98 crores.

10. *What are the reasons for delay in payment to the shareholders?*

11. *What are the bonafied reasons on the part of the management not to make a token payment to the shareholders out of the amount received (Rs.* 1,22,79,000) *by way of average profit on the basis of last* 3 *years. Some of the shareholders were complaining that not a single paise had been received by them for the last* 12 *years.*

Kindly see the answers to Questions 11 and 12 in Part I. As already stated no payment could be made to the shareholders unless by declaration of Bonus or reducing share capital or in the course of winding up after meeting all liabilities. No amount had been given to, or earned by the Corporation by way of profit. The stated amount has been received as compensation for loss of management. A few shareholders might not be concerned with the larger interest of the Corporation's major shareholders and may not be even aware of their constitutional rights. Appropriation of any amount and its distribution to shareholders may, have prejudiced the Corporation's case against Act 100 of 1976. In any case the entire amount has been kept in Fixed Deposits earning interest which adequately protects the interest of the shareholders. The consensus

arrived at in the meeting of the shareholders held on 31st March, 1977 is being strictly implemented and followed by the management, including making of this representation before this Hon'ble Committee and retention of the money received in Fixed Deposits in the Banks.

12. *Term of Tribunal was first fixed for 8 months. On whose representation/petition the terms from time to time were extended from 1971 to 1976 or 1977?*

The Corporation is not aware about extension of time of the Tribunal from time to time. As already stated if the Officials and Counsel representing the Government before the Tribunal had not indulged in dilatory tactics, and basic and relevant records of the Undertaking were placed before the Tribunal at its very first hearing held on September 1972, the deliberation could have been easily concluded within a period of six months.

13. *Can it be said that the action of the Government for payment of compensation an arbitrary and/or discreminatory on the basis of the payment made towards Coal Mining Nationalisation during or immediately after the acquisition of your Company?* (1972—76).

Coal Mining Nationalisation and the basis for payment of compensation are not comparable. The Corporation is not familiar about details but assumes that while fixing the amount of compensation the Government and the Parliament had taken into consideration the principles laid down by the Supreme Court in the cases of Bank Nationalisation and Keshavanand Bharati. As already shown the fictitious and illusory amount provided as compensation in Act 100 of 1976 is demonstratable with facts and reasons available and disclosed before the Tribunal and otherwise. For reasons already stated the action of the Government and the law are arbitrary and contrary to Article 31(2).

The two acquisitions are radically different and distinguishable. Act 100 of 1976 materially and substantially acquired a substantial part of the compensation assured to the Corporation under Section 10 read with Schedule of Act 36 of 1966 which are Corporation's property and that property were acquired without payment of any compensation, Act 36 of 1966 assured, even according to the Attorney General, compensation on potential value of mines. Act 100 of 1976 acquired on 2.8.76, the subsisting Mining lease and mineral rights of the Corporation. Coal Mining Nationalisation, therefore, could not be compared wth the acquisition of the Corporation's Undertaking.

14. *Are you the owner of the land?*

(Check up whether the word 'Owner' has been used in the petition. If so, amendment is required).

Yes. "Owner" as defined under Section 2(1) of the Mines Act, 1952 included the 'Lessee' or 'Occupier' of the Mines or any part thereof.

As already stated the Lessee of a Mining Lease enjoys under law exclusive right, title and interest in the mines and minerals for the duration of the lease. He has only to pay a specified sum of Royalty to the State and abide by specified regulatory conditions in the interest of mineral development.

15. *Documentary proof to show that the Mining Lease was for upto 2010 A.D.*

Yes, the original Lease Deed has been acquired as a part of the acquired undertaking and is now with the Government Company. A copy of the Lease Deed is also in the records of the Tribunal. Reference may also be made to Sections 7 and 8 of Act 100 of 1976 which prove that as on 2nd August, 1976 there was valid and subsisting lease in favour of the Corporation. Corporation's lease was renewable for two additional periods of 20 years each upto 2010 A.D. and was duly admitted and accepted by the Central Government.

16. *Justification of the profit shown as Rs. 29.65 lakhs for the preceding year of acquisition—whether by way of sale of the finished products or by way of sale of ores, concentrates. Clarify by way of allocation.*

The profit of Rs. 26.65 lakhs (and not Rs. 29.65 lakhs) shown in the Profit & Loss accounts for the year 1964-65, was not a cash profit received by the Corporation. This profit was computed after inclusion of the value of saleable stocks in hand of zinc metal and concentrates. A large part of zinc metal produced during the year remained blocked as stock-in-trade from 1st October, 1964 to the end of the financial year due to the refusal of the Government to allow their sale at market price or at a reasonable price. The profit shown, therefore, did not represent cash receipts. This is what resulted in the so-called financial crisis. The revenue expenditure could be met during the year largely because of sale of lead and silver metals at the market prices. As already stated if the Corporation was allowed to sell zinc metal at the market or reasonable prices, it would have had no financial problem at all.

The profit of Rs. 26.65 was earned in the year previous to the year of acquisition *i.e.* during the financial year 1964-65, largely due

to radical appreciation in the price of Lead metal from Rs. 1812.95 during 1963-64 to Rs. 3079.30 per M.T. on an average during the year 1964-65 and nearly 90 per cent increase in the production of Silver metal with some increase in its price during the said financial year. In any case the profit shown was neither on account of the price fixed by the Government for zinc metal being fair as alleged nor due to any sale of "raw materials". In fact as a mining and smelting undertaking, what the Corporation sold were industrial raw materials consumable in other industries. Another reference to Tariff Commission had not been asked for and did not arise since the Corporation was not asking for any protective price, but asking for recognition of its legal rights to the market/fair price of Zinc metal.

17. *Financial assistance from Financial Institutions and others.*

As already stated, Financial Institutions being expert bodies and more competent to assess the health of an Industry and potentiality of its development, had always come to Corporation's assistance. The Government however, did not advance any loan at any stage and inspite of recommendation for loan of Rs. 2 crores by Government's own Committee headed by the then Director General of Technical Development, Sri S. S. Kumar, the Government could refuse to advance any loan.

18. *Have you obtained clarification from the Income-tax authorities whether the amount received by way of profit/deprivation of management would be liable to tax?*

The Corporation has not yet submitted its Returns and hence the view of the Income-tax authorities about the tax liabilities on the amount received could not be ascertained.

Sd|-

New Delhi; (A. C. DUTTA)

Dated: 23-9-1978.

For Self and for and on behalf of Metal Corporation of India Limited, and its shareholders petitioners.

APPENDIX VI

(*See* para 2.45 of the Report)

[*Note submitted by the Metal Corporation of India Ltd. to the Tribunal on the Valuation Report of Government and Hindustan Zinc Ltd.*]

BEFORE HON'BLE MR. JUSTICE J. R. MADHOLKAR, TRIBUNAL CONSTITUTED UNDER THE METAL CORPORATION OF INDIA (ACQUISITION OF UNDERTAKING) ACT, 1966.

IN THE MATTER OF METAL CORPORATION OF INDIA LTD.

VS.

UNION OF INDIA.

Sir,

A 'Note' prepared on the basis of inspection of records as mentioned therein is being herewith filed for kind perusal of the Hon'ble Tribunal. Along with the accompanying 'Note' two Volumes containing extracts of the original records taken during inspection are also being filed for the kind perusal of the Hon'ble Tribunal.

The Hon'ble Tribunal may also call for and examine the original records referred to in the enclosed 'Note'.

One set of papers herewith filed is being delivered to the Government

A. C. DUTTA,
Chairman,
For and On Behalf of
The Metal Corporation of India Ltd.

Encl:

(1) 'Note',

(2) Two Volumes of papers.

Dated, New Delhi,
19th July, 1976.

NOTES OF INSPECTION OF DOCUMENTS

As per order of the Hon'ble Tribunal dated 27-3-1975 and 19-4-1976 certain records and papers as per details in our application dated 3-3-1975 had been arranged for inspection at the office of the H. Z. L. at Delhi. All record, statements, books of accounts etc., as per the list in our application dated 3-3-1975 were not available. Details of some were submitted by us before the Hon'ble Tribunal per our reply filed on 8-5-1976.

Inspection has been carried out of such records and papers as were available at H.Z.L. office and copies of same taken down as far as practicable.

2. Such copies are being submitted herewith to the Hon'ble Tribunal in two Volumes.

VOLUME I. Copies of Valuation Report as carried out by two teams—Government Team and Hindustan Zinc Ltd.—designated as First & Second Report and certain minutes of meetings.

VOLUME II. Copies of such of the Correspondence and Records as have been found, carried on between Government/Hindustan Zinc Ltd. Authorities as well as with Bombay Port Trust Authorities regarding Port Charges/demurrages etc. for the Mining Machinery that were lying at the Bombay Docks.

Reference to the page numbers of these Volumes I and II of the copies of the records has been made in our observations as made below.

3. Our contentions and observations on these two Reports are as follows:—

(a) The 1st Report drawn up is admittedly an approximate one and apparently is not based on any definite principles of valuation. Reference may be made to Page 8 (para 2 of Vol. I) of copies of the records. It is mentioned therein "It must be appreciated that within the limited period of two months a meticulous valuation of all the assets of M.C.I. was not possible and as such only an approximate assessment was attempted at. This we have endeavoured to present in the summarised form in the attached evaluation sheets already referred to this approximate assessment may be found wanting in some

respect, but, we may say with reasonable confidence that it will nevertheless give a fairly good idea about the tangible assets of M.C.I. and provide a well worked out base for onward meticulous valuation."

(b) The basis of calculation was admitted, as mentioned in the same page (Vol. I—page 8—para 3), that prices recorded in books of account of M.C.I. have been the basis of the valuation. These prices as recorded in books of account has been escalated according to the rise in Index from year to year in different countries under different heads as per N.H. Year Book 1966. After escalation the depreciation for years of use was calculated on the escalated value at rates allowed under *Income-tax Rules*. In valuation of assets of this nature, depreciation at the income-tax rate is not admissible. Market value or replacement value was to be determined as on the date of acquisition and thereafter, on the basis of determination of life of each equipment, plant and building, depreciation is to be deducted. For instance, for a Class I building the life to be taken easily at 75/100 years. Therefore the rate depreciation would be @1 p.c. to 1.3 p.c. from the date of installation to the date of acquisition. Similarly for any machinery life was to be similarly estimated and depreciation deducted according to this formulae. This has not been done and as a result the valuation done by the Team is definitely against the principle of valuation, and cannot be taken as market value as on date of acquisition. Our estimate of depreciation on assets at Zawar mine and lead smelter is dealt with later.

(c) In case of such valuation it is seen that a tendency has all along been shown to minimise the valuation on all sorts of untenable grounds. The idea possible came in the minds of the members of such Team or they were instructed to reduce the quantum of cofpensation to the minimum possible without any regard for principles of valuation or any reasonableness.

(d) Even taking into account the valuation done by H.Z.L. Team, it will be seen that various items have been deducted or not taken into account without any ground or basis. This will now be first indicated to show the amounts which are to be added back according to their own figures and facts.

(e) Reference to Page No. 9 (Vol. I) will show that the value of large number of items have not been taken into account on the plea that they are intangible in nature. These items *inter alia* are as follows:—

1. Engineering fees paid to krebs for Zinc Smelter.
2. Engineering fees paid to Pemarroya for Mines Development.
3. Consultancy fees paid to Indian Firms for Zinc Smelter construction and erection.
4. Supervision and Establishment charges for Zinc Smelter erection.
5. Erection overhead in Zinc Smelter.
6. Interest on deferred payment.
7. Guarantee commission payable to I.F.C. on guarantee issued in favour of Krebs.
8. Interest and commitment charges payable to I.F.C. for loan raised from them.
9. Guarantee commission payable to Government of Rajasthan.
10. Trusteeship Commission to C.N.E.P.
11. Stamp duty and registration charges of mortgage documents including legal expenses.
12. Stamp duty on Promissory notes.
13. Mines Development expenditure.

(f) Expenses on all these items are connection with the development of mines to 2000 tonnes of mineral per day and installation of the Zinc Smelter. All these items are of capital nature and without such expenditure neither the mines development could be carried out nor the Zinc Smelter installed. Therefore all these expenditure are for purpose of creating of assets and as such are part and parcel of tangible assets, created at the mines and the smelter and are definitely to be capitalised as allowed under standard accounting principles and practice. The total expenditure of these items will be shown later on in this note and such amount is to be added back.

(g) Besides these they have also not taken in account the following items : (Items 15 to 18 in Page 9 of Vol. I)

1. Proved ore reserve
2. Stock of slag in Tundoo Smelter
3. Stock of Tailings at Zawar Mines
4. Zinc short received from Japan for which insurance claim has been lodged. Our comments on these items will follow when considering the value of the sock-in-trade.

(h) The first team of valuers first tabulated the value of the assets of Zinc Smelter as per account of M.C.I. (pg. 15 Vol I). The total figure arrived at by them came to Rs. 5,49,49,109.07 which was the book value. From this amount they then deducted (pg. 14 Vol. I) the following items:

(a) Engineering fees paid to Krebs.	Rs. 39,41,000·00
(b) Supervision & Establishment charges.	Rs. 16,49,572·93
(c) Erection Overhead.	Rs. 8,29,461·76
	Rs. 64,30,434·59

These deductions are arbitrary and cannot be made. These are the expenses incurred for creation of assests and are definitely to be capitalised. This error of judgment was later rectified by the 2nd Team as described later in this note.

(i) According to the first Report the value of all the block assets and stock-in-trade comes to Rs. 8,64,28,804.62 (Page 10 Vol. I)

4. *Valuation of Imported Mining Machinery*:

(Ref. Page 47 Vol. I)

In the valuation of Mining Machinery which was lying at the Dock the Team has deducted Rs. 10 lakhs as depreciation after escalation. These machinery were not used at all and were lying at the Bombay Dock in the process of importation awaiting clearance. No depreciation therefore can be charged on this. Accordingly the sum of Rs. 10 lakhs is to be added back.

5. *2nd Report on Valuation* Pages 54—63, Vol. I.

Our comments and submissions on the 2nd Report are as follows:

(a) It will be seen that there has been persisting tendency of lowering the valuation of the assets by taking recourse to various pleas. Reference to *Pages* 57/58 it will be seen that on the basis of certain calculation made by Dastoor & Co. in the case of Jessop & Co., the value of Civil Works at Rs. 2,04,27,961 was further reduced by Rs. 5,65,729 bringing it down to Rs. 1,98,62,232. This is not based on any principles of valuation, therefore assuming but no, admitting that the 1st Report of valuation being correct, this deduction should not have been made and therefore is to be added back. It is not clear how analogy of the case of Jessop & Co. applies in our case. If it so does then analogy is to be complete and principles of valuation adopted in that case should also apply in our case.

(b) Refer page 58 [Para 2 (a) (i) & (ii) Vol. I]. A very invidious argument has been taken recourse to reduce the value of the mechancial, electrical, mining equipment and current assets. In the case of Zinc Smelter the argument is that though the order for the machinery of the smelter was placed in November, 1960 the delivery was effected in 1962/63 and therefore the sellers of machinery must have taken into account price escalation for these two years so the 2nd Team of valuers have thought it fit to reduce the escalation by 50 per cent. This is the most fallacious argument. If the order has been placed in November|December 1965 by the Government after take over the quotations received would have, according to their argument, taken into account escalation for following two years. Therefore the escalation of price should be taken for 5 years between 1960 and end of 1965, and the escalation cannot be taken to commence from 1962|63. The deduction, therefore, made by the 2nd Team is Rs. 33,16,816 minus Rs. 16,58,408 equal to Rs. 16,58,408 is untenable and goes to confirm our observation that the tendency of the Valuer has been to reduce the value of assets on untenable and flimsy grounds. This amount of Rs. 16,58,408 must therefore be added back or in other words the valuation made by the 1st Team should stand.

6. *Page* 58 *Para* 2 *a* (*iii*): Vol. I

The 2nd Team has, however, taken into consideration and capitalised the expenditure under (a) technical and engineering fees;

(b) supervision and establishment charges; and (c) erection overhead But here again they have arbitrarily deducted a sum of Rs. 10 lakhs from the fees being the amount H.Z.L. had to pay subsequently to Krebs. Similarly deduction in the supervision and establishment charges and erection overheads has been made on arbitrary basis. But our submission is that the total amount spent by M.C.I. has got to be taken into account and capitalised. Moreover, as mentioned earlier, deduction on account of lesser escalation is also not justifiable.

7. *Therefore the Zinc Smelter should be valued as follows*: (*Ref. page 57/58 Vol. I*)

(a) Civil Works (Pg. 58 Vol. I) . .	1,98,62,232	
Add back deduction on a/c depreciation.	5,65,729	2,04,27,961
(b) Zinc Smelter (pg. 59-Vol. I) . .	4,85,28,675*	
Add : For Technical & Engineering fees in full	41,67,000	
Supervision and Establishment charges in full	16,50,000	Pg. 58 Vol. I
Erection Overheads. .	8,30,000	5,51,75,675

*Note: The deduction on account of escalation by 2nd Team is not admitted and the amount is already included in this figure of valuation made by the 1st Team.

(c) Valuation of Zawar Mines Machinery: Page 59|60 Vol. I.

In the 2nd Team Report the Team has also reduced the escalation by 50 per cent being Rs. 4,89,522 on the same ground as mentioned above. This is untenable and as such this amount is to be added back. The Team has further deducted a sum of Rs. 10 lakhs on account of shortage and damage in the machinery lying at Bombay Dock. Actually it has not been substantiated in any report and according to our information no shortage or damage was found and no substitute machinery has been imported. Therefore the sum of Rs. 10 lakhs arbitrarily deducted must be added back. If there was any damages or shortage consignments were covered under insurance. Teams are silent on this point.

(d) As mentioned earlier in para 3 (b) depreciation on the machinery to arrive at a value cannot be taken at Income-tax rate but on the average estimated life of individual machinery, plant, equipments, buildings etc. Reference may please be made to page 11, Vol. I being the statement of Valuation of the assets in Zawa Mines pages 20 & 21 Vol. I showing calculation of depreciation, page 22 showing the rate of depreciation as per Income-tax Rules. In our opinion the rate of depreciation calculated according to estimated life of machinery and the years of use will come to about 25 per cent of the depreciation allowed by the Team of Valuers. In the valuation of assets of Zawar Mines (Page 11, Vol. I) total amount of depreciation deducted taken into account by the Teams can be calculated as follows [in round figures upto thousand (page 11, Vol. 1)]:

Item No. 2	Rs. 94·84 lakhs	
minus	Rs. 42·55	52·29 lakhs.
Item No. 3	Rs. 1·92 lakhs.	
minus	Rs. 1,03 lakhs	0·89 lakhs.
Item No. 4	Rs. 4·70 lakhs.	
minus	Rs. 3·92 lakhs.	0·78 lakhs.
Item No. 5	Rs. 9·90 lakhs.	
minus	Rs. 5·57 lakhs.	4·33 lakhs.
Item No. 6	Rs. 3·62 lakhs.	
minus	Rs. 2·43 lakhs.	1·39 lakhs.
Item No. 10	Rs. 0·95 thousands.	
minus	Rs. 0·30 thosands.	0·65 thousands.
Item No. 21	Rs. 3·17 lakhs.	
minus	Rs. 2·22 lakhs.	0·95 lakhs.

The total depreciation taken on main items come to:

52·29
0·89
0·78
4·33
1·39
0·65
0·95

61·19 .lakhs

75 per cent of this item should be added back to the valuation of assets of the Zawar Mines *i.e.* Rs. 45.90 lakhs should be added back. Opinion of the Valuers appointed by the Company will have validity in the matter.

(e) The team has, however, taken into account:

(i) Customs duty to mining equipment	Rs. 32,00,000	Pg. 60 Vol. I.
(ii) Technical Engineering fees.	Rs. 7,25,000	
(iii) Mines Development expenditure. .	Rs. 9,74,000	

(f) The value of the assets at Zawar should therefore be as follows: . . Rs. 4,18,63,649

(i) Add back deduction on escalation..	Rs. 4,84,522	
(ii) Add back deduction on account of shortage and damage on mining equipment at Bombay . . .	Rs. 10,00,000	
(iii) Add back 75% of depreciation deducted (approx) . .	Rs. 45,90,000	
	Rs. 4,79,38,171	

(g) Value assets at the Lead Smelter at Tundu—

Detailed valuation could not be noted but in page 17, Vol. I attempt has been made to value the assets on an arbitary basis and on the of depreciation at Income-tax rate. We maintain that the deduction of depreciation made by the Team is to be reduced by 75 per cent of such amounts. In page 17 it is found that the escalated value of assets being 17.09 lakhs has been reduced to 5.93 lakhs *i.e.* a total depreciation calculated by the Team come to Rs. 11.16 lakhs; 75 per cent of this amount namely Rs. 8.37 lakhs is to be added back. The value of the Smelter should stand at Rs. 7,77, 480 plus Rs. 8,37,000 —Rs. 16,14,480 lakhs.

(h) The total value of the assets therefore as valued by the 2nd Team subject to our observation above will be—

(a) Civil Works . .	Rs.	2,04,27,961
(b) Zinc Smelter. .	Rs.	5,51,75,675
(c) Zawar Mines . . .	Rs.	4,79,38,171
(d) Lead Smelter	Rs.	16,14,480
(e) Calcutta & Delhi Office . .	Rs.	1,60,000
	Rs.	12,53,16,287

subject to further observations hereunder:

This value included the value of stock-in-trade i.e. are concentrates metals etc. etc. valued at Rs. 1,59,64,220 (Page 11 item 29) Vol. I, Deducting same the value of block and other assets, come to .	Rs. 12,53,16,287
minus.	Rs. 1,59,64,220
	Rs. 10,93,52,067

8. Valuation of Ores, Concentrates Metals, etc. (Ref. Vol. I Pages 12 & 13 also page 11 item 29)

(a) At this stage we withheld our comments on the methods of calculation or the values taken into account in the Ist Report accepted also in the 2nd Report. The main point of issue here is the price of lead and price of Zinc taken by both the Teams.

(b) First of all attention is drawn to the Note 'A' in page 12 Vol. I where stock of ore totaling 172,772 M.T. lying underground in the mine and at surface valued by them at Rs. 34,55,440 have not been taken into account by the Team. These ore underground and at the surface have been mined or paid for by M.C.I. and in definitely a part of the assets to be included under valuation of "Ore, concentrates & Metals etc." There amounts are therefore to be added definitely to the value of stock-in-trade. Therefore the total value of ores, concentrates metals etc. (Ref. Vol. I page 11 item 29) is to be as follows:

	Rs. 1,59,64,220	
plus	Rs. 34,55,440	Rs. 1,94,19,660

(c) Item not taken into calculation: [Ref. Page 2 para 3 (c) of this Note]

Out of these items the following have been taken into account by the 2nd Team for valuation at Zinc Smelter namely:

1. Technical & Engineering fees paid to Krebs.
2. Technical & Engineering fees paid to Penarroya for mine development.
3. Supervision and establishment charge for zinc smelter.
4. Erection overhead for Zinc Smelter and the following for calculating the value of mines assets:

(a) Engineering fees paid to Penarroya.

(b) Mines development expenditure.

All other items as per the following list have been excluded:

(i) Consultancy fees paid to Indian Firms for zinc smelter construction and erection.

(ii) Interest on deferred payment.

(iii) Guarantee Commission payable to I.F.C. on guarantee issued in favour of Krebs.

(iv) Interest and commitment charges payable to I.F.C. for loan raised from them.

(v) Guarantee commission payable to Government of Rajasthan.

(vi) Trusteeship commission paid to C.N.E.P. (French Bank).

(vii) Stamp duty and registration of mortgage documents including legal expenses.

(viii) Stamp duty on promissory notes.

(d) We submit that the expenditure under the above excluded items are also to be taken into calculation and capitalised as such expenditure was required to be incurred for procuring plant and equipment for the zinc smelter at the mines, and installation of same. Interest paid on loan obtained to create Capital assets and as such are to be capitalised. In this connection we may refer to the inter-Ministry Minutes of Meeting [Ref. Pg. 104 item (d)] wherein it has been directed that the following items should be excluded:

(i) Guarantee commission payable to I.F.C. on guarantee issued in favour of Krebs.

(ii) Interest and comitment charges payable to I.F.C. for loan raised from them.

(iii) Guarantee commission payable to Government of Rajasthan.

(iv) Trusteeship Commission to C.N.E.P. (French Bank).

By implication it may be taken that the other items were admitted to be taken into account. We however submit that expenditure

on these 4 items are also to be taken into account on grounds mentioned above.

(e) The total amount of expenditure under these items are as follows:

(i) Stamp duty on mortgage & Pronotes.	Rs.	2,90,922
(ii) Registration fees.	Rs.	40,133
(iii) Interests and difference of exchange rates.	Rs.	84,00,307
(iv) Guarantee commission & commitment charges.	Rs.	21,11,715
(v) Insurance charges.	Rs.	2,53,341
(vi) Trusteeship Commission.	Rs.	2,336
	Rs.	1,10,98,754

This amount is to be capitalised and added back to the valuation of assets.

(f) The value of the assets now can be calculated as follows:—

Value of block and other assets except stock-in-trade as shown in [(page 8 para (h)]	Rs.	10,93,52,067
Added back amount mentioned in para above.	Rs.	1,10,98,754
Therefore the value of totol assets (except stock-in-trade) come to	Rs.	12,04,50,821
Add back value of the stock-in-trade [page 8-Para 8(b)] of these notes.	Rs.	1,94,19,660
Value of total assets.	Rs.	13,98,70,481

9. Net liabilities (Page No. 108 Annex. IIIE-Vol. I)

(a) The 2nd Report drawn by F.A. & C.O. of H.Z.L. and F.A.O., Deptt. of Minies, Ministry of Steel & Mines assessed the liabilities of the Company (Ref. pg. 108—Annex IIIE—Vol. I) and computed the net liability at Rs. 7,57,38,158 after providing for bad debt of Rs. 50,000. This will be dealt with later on according to statement of contingent liability inspection in the records.

(b) The valuers then made certain arbitrary provisions (same page 108—Vol. I) for several items of liabilities not provided for in the books of account of M.C.I. totalling Rs. 1,55,00,000. These items are as follows:—

(i) *Port Rent and Customs Duty on mining equipment*—Rs. 60 lakhs:

The copies of documents taken out during inspection of correspondence between Government & H.Z.L. on one side and B.P.T. on

the other side reveals rather peculiar set of circumstances. These papers are being submitted herewith to the Hon'ble Tribunal as Vol. II on Notes on Inspection. Our comments on same regarding provision of Rs. 60 lakhs as liability are being attached herewith as Annexure 'A' to these note. Liability is admitted noly for Rs. 32 lakhs paid as import duty on the machinery.

(ii) *Royalty to Rajasthan Government—Rs. 20 lakhs.*

The documents on the subject of calculation of royalty was inspected. It is found that royalty on stock of lead and zinc concentrates lying at the different establishment as on 22-10-65 has been calculated at Rs. 3,51,300 (pg. 140—Vol. I). Interest on the overdue amount of royalty on account of M.C.I. upto 22-10-65 had been calculated at Rs. 3,84,772.34 and another amount on account of difference on past calculation of royalty being Rs. 69,031.19 making a total of Rs. 4,53,803.52. Thus the total amount comes to Rs. 8,05,103.55.

In the statement of valuation of stock of ore, concentrates, metal etc. (pg. 12 Vol. I) the valuing Team had taken into account the value of 62,708 M.T. of ore @ Rs. 20|- per tonne.

It is now seen (page No. 140|141-Vol. I) that a provision has been made for royalty on this quantity of ore for an amount of Rs. 87,780. Our contention and submission is that this ore had been valued at Rs. 20|- per tonne which was less than the then operation cost. The royalty was to be paid on this ore only after same had been beneficiated and corresponding quantity of lead and zinc concentrates had been despatched out of the mines. As such the royalty was payable by H.Z.L. on the property acquired by them at less than operational cost and this amount could by no means be debited to the account of M.C.I. In the statement it is seen that the H.Z.L. has shown a balance of Rs. 11,07,116.47 out of the provision of Rs. 20 lakhs on Royalty account lying at credit of M.C.I. In other words they have added this amount of Rs. 87,780|- to the debit of M.C.I. This amount of royalty of ore is to be added back. Therefore the amount lying as balance to the credit of M.C.I. shall be Rs. 11,94,987|- or the provision for Royalty should stand at Rs. 8,05,103 instead of Rs. 30 lakhs.

It is however to be noted that in settling the Royalty account for the period upto 22-10-65 in negotiation with Director of Mines & Geology, Government of Rajasthan, M.C.I. authorities were not consulted or asked to be associated for such negotiations. It is quite possible that M.C.I. authorities if associated with such negotiations

could have prevailed upon the State Government for waiver of at least overdue interest but apparently H.Z.L. authorities did not care for same as they would be entitled to debit the amount to the compensation amount of M.C.I.

(iii) *Claim of Cementation Ltd.—Rs. 5 lakhs (page 108—Vol. I).*

There is nothing in the record placed for inspection as to at what figure this amount was settled. It is our impression that as subsequently the total order of completion of the main shaft and underground development had been placed with Cementation, the claim might have been withdrawn. Therefore, provision for Rs. 5 lakhs under this head does not stand.

(iv) *Gratuity and Leave Salary:—Rs. 15 lakhs (Page 108—Vol. I).*

M.C.I. did not allocate any sum in their annual balance sheet/ profit and loss account as provision for gratuity any year or year to year, because gratuity was being paid year to year at actual on the basis of retirement. No provision of any gratuity was made from year to year and as such liability for that cannot be apportioned to M.C.I. and this provision of Rs. 15 lakhs is untenable and cannot be accounted for as contingent liability.

(v) *Income-tax and Sales-tax liability—Rs. 25 lakhs: (Pg. 108—Vol. I).*

An amount of approximately Rs. 10 lakhs has been paid by H.Z.L. on account of M.C.I. to I.T.O. at Calcutta and to the Sales-tax authorities Therefore this provision under this head is to be reduced to Rs. 10,00,000.

(vi) *Stowing the exavated stopes:—Rs. 25 lakhs (same page).*

The rock structure at the Mochia Mogra and Balaria mines was such that no stowing was necessary. Our information is that Mining Research Institute, Dhanbad sent their representative and on inspection of the mines had given their opinion that no stowing was necessary. To our information H.Z.L. has done no stowing since takeover. As such provision of this amount under this head is not allowable.

(vii) *Miscellaneous:—Rs. 5 lakhs (same page).*

A long statement has been found in the records inspected. Adjustment of contingent liability has been made. It appears that proper effort had not been made to realize all the debts, possibly on the

ground that whatever amount could not be realised by H.Z.L. would be arbitrarily debited to the account of M.C.I. Even after such adjustment an amount of Rs. 1,85,096.59 is lying at the credit of M.C.I. out of this Rs. 5 lakhs as on 31st March, 1974 (Page 116—Vol. I). Our contention is that with serious effort all the back debts could have been realised.

One particular point can be mentioned here. An amount of about Rs. 1,87,000 was paid by M.C.I. to the Northern Railway on account of construction of railway siding. This amount has been mentioned in their report Vol. I page 38—item E. This was not added to the value of the railway siding, but on the other hand they debited this amount to the contingency account (Ref. Pg. 119—Vol. I).

An amount of Rs. 21,966.68 (Ref. Pgs.125 and 134—Vol. I) has been debited to the account of M.C.I. being unrealised amount written off being 5 per cent of bill A/31/66, dated 19th February, 1966. The facts of the case are very pertinent and revealing. Before the date of acquisition D.G.S. & D. had placed an order with M.C.I. for about 300 tonnes of Pig Lead at the rate of Rs. 5000/- per tonne by their A/T No. S.R. 5/201/25/423/1/PACC/7389, dated 29th September, 1965 even during the pendency of Scare Industrial Material Control Order. The supply was made by H.Z.L. after take-over as per Bill dated 19th February, 1966 at the rate of Rs. 5000/- at a total value of Rs. 4,39,333.50 or 87.8667 M.T. At the time of supply H.Z.L. submitted a bill for 95 per cent as per terms of A/T. It appears that an amount of Rs. 22,406.01 being the 5 per cent value could not be recovered from the buyer. H.Z.L. has now debited, as mentioned earlier, the amount of Rs. 21,966.68 as unrealised amount on the basis of price of Rs. 5000/- per tonne, whereas in making the valuation of stocks of ores, concentrates, metal etc. (Ref. page 12) they valued the Lead in stock at Calcutta being 87.8667 tonnes at Rs. 1600/- per tonne.

Our contention is that having sold the stock of lead, taken over, under a contract received by M.C.I. prior to acquisition the whole amount of sale value @ Rs. 5000/- per ton should have been credited to the account of M.C.I. and then only the valuers could have been entitled to debit the amount of 5 per cent unrealised at the same rate. Further H.Z.L. should have made every effort to realise this amount of 5 per cent even proceeding under law. But to have debited the account of M.C.I. for the unrealised amount of 5 per cent on the basis of sale value of Rs. 5000/- per ton while valuing the stock of lead acquired @ Rs. 1690/- per ton shown to what extent the persons concerned were perversely motivated.

Therefore the provision for Rs. 1.55 crores as additional liability will stand reduced as follows:—

(a) Port Rent & Custom Duty (Rs. 60 lakhs)	Rs. 32,00,000
(b) Royalty Rajasthan Government (Rs. 20 lakhs).	Rs. 8,05,103
(c) Claim of Cementations (Rs. 5 lakhs)	nil
(d) Gratuity & Leave Salary (Rs. 15 lakhs)	nil
(e) Income-tax & Sales tax (Rs. 25 lakhs)	Rs. 10,00,000
(f) Stowing the excavated stopes (Rs. 25 lakhs)	nil
(g) Miscellaneous (Rs. 5 lakhs)	nil
	Rs. 50,05,103

(Say Rs. 50,00,000/-)

Therefore such provisions can be made only for Rs. 50 lakhs. Total liabilities with provisions will therefore come to—

Net Liabilities as calculated by teams.	Rs. 7,57,38,155
Plus Provisions allowable	Rs. 50,00,000
	Rs. 8,07,38,155

A very pertinent fact may be noted here. These estimated provisions for liability or contingent liability have been made in the 2nd Valuation Report long time back. With efflux of time it could be seen that major part of the provision of Rs. 1.55 crores were no more applicable, particularly in the matter of provision for income-tax and Sales tax, stowing excavated stopes and provisions for Royalty. These figures therefore were to be revised on their own by the Government or the Team of Valuers. In the Written Statement submitted before the Hon'ble Tribunal the Government have offered Rs. 1.98 crores without taking into account the redundent or surplus provisions which were by that time more than apparent and known to them. Such a lapse could only be deliberate and this fact amongst others goes to prove incontestably by motivation of trying to reduce the quantun of compensation by taking recourse to any means whatsoever. And this is certainly the reason why the learned Counsel of the Respondent had so very vehemently opposed in sitting after sitting of the Hon'ble Tribunal to allow inspection of documents questioning the authority of the Hon'ble Tribunal in that respect *ad nauseum* in repeated sittings.

10. The position therefore finally stands as follows:

The value of assets as per para 8 (f) above	Rs.	13,98,70,481
Less liabilities (as above). . . .	Rs.	8,07,38,155
		Rs.5,91,32,326
Add interest @ 6% per annum from 22-10-65 to 13-9-66 . .	Rs.	31,69,492
Total amount of compensation . .	Rs.	6,23,01,818

This is the amount of compensation arrived at as against Rs. 1.98 crores offered by the Government in their statement submitted to the Hon'ble Tribunal.

This figure is arrived at on the basis of calculation made by two Teams in the 1st and 2nd Reports and the submissions made by us thereon the items deducted, or excess provisions made but not tenable and unacceptable.

11. We are now to make our further submission on the valuation of the block asset, stock of ores, concentrates, metals etc.

(a) The value of the assets as determined by the Team in the 2nd Report was Rs. 11,24,06,817 (Ref. pg. 61 Vol. I). This included the value of ores, concentrates and metal etc. as calculated by them at (Vol. I pg. 11—item 29)—Rs. 1,59,64,220.

The value of block and other assets excluding the value of stock-in-trade as per the 2nd Team therefore is as follows:—

Total value of block and other assets excluding stock-in-trade as calculated by them..	Rs.	11,24,06,817
Less value of stock-in-trade .	Rs,	1,59,64,220
	Rs.	9,64,42,597

(b) The M.C.I. had entrusted a firm of repute with valuation of all its block assets before the acquisition of its undertaking by the Central Government with a view to utilise same for the purpose of seeking additional loans from the Financial Institutions. A detailed list of all the assets in all the establishments of M.C.I. was furnished to them by our staff and the same was scrutinised and checked by repeated visits of the officers of the valuers over a prolonged period of time. The valuation made by them in the block assets was Rs. 15.61 crores on pre-devaluation of our currency. The difference in valuation arrived by

the Team of Valuers of H.Z.I. in 2nd Report and that of the independent valuer is of the order of Rs. 6 crores. The valuation done by the Team as will be evident from the perusal of the 2nd Report was not based on any definite principles.

(c) On the compilation of the 1st Report the matter had been referred to the Ministry concerned and the same considered in a high level inter-ministerial meeting held on 11th January 1967 (ref. pg. 64 Vol. I) and subsequently in another meeting held on 15th November 1967 (ref. pg. 101, Vol. I). We crave indulgence of the Hon'ble Tribunal to these Minutes of the meeting, copies of which were taken during the inspection. There had been discussion on the subject of determination of market value. In para 3 (page 102, Vol. 1) opinion expressed by one of the senior officials was to the effect that "market value should not only take into account the replacement value also the return of the investment. In other words earning capacity of the project was a relevant factor to be taken into account."

Further remark by another senior official is recorded in para 3 of the minutes to the effect that "the determination of the market value should be based on recognised international principles of valuation and that the valuation should not only be reasonable in the view of the Government but should also appear reasonable to the tribunal if the matter went before it. He was of the view that an independent firm of valuers should be consulted for advice regarding the basis adopted for the valuation of different groups of assets".

Further remarks may be quoted on the opinion expressed by another senior official as noted in para 4—

"It was further pointed out whether an independent counsultant was appointed or not. If the matter went before the Tribunal, the Tribunal was not bound by the valuation made by the Government but would independently arrive at the amount of compensation to be paid". He also pointed out the difference between the Coal-bearing Acquisition Act and the M.C.I. Act. In the former case the Tribunal under the Act was to enquire into compensation arrived at by the Government while under the M.C.I. Act the Tribunal was to arrive at the compensation on its own."

In para 5 of the minutes it was further suggested as to whether independent consultants could be engaged at the time to obtain advice on the principles adopting for valuation of the various assets and in that connection names of 2 firms of valuers were suggested.

Further in page No. 104 (Vol. I) under heading (e) (Liabilities) it was pointed out that the port rent and customs duty of mining equipment had since been reduced by the Port and Customs Authorities and it was decided that THE REDUCED AMOUNT SHOULD BE TAKEN INTO ACCOUNT. As a matter of fact, as pointed out in Annex. 'A' this completely negatived by un-warranted correspondence by H.Z.I| but B.P.T. pointing out difference between private sector and Government sector.

(d) It is submitted before the Hon'ble Tribunal that the valuation made by the independent valuers as to the market value of the fixed assets of the Corporation should be taken into account and he should, if he so desires, scrutinise the details of the valuation made by the independent valuer appointed by M.C.I. and arrive at his own conclusion.

The M.C.I. is now without any financial resources and cannot now call upon the valuers as witnesses. This can only be done by the Hon'ble Tribunal, if he so desires.

We submit that the valuation of the assets should be on the basis of independent valuers appointed by M.C.I. and further sum of Rs. 6 crores be added to the value of assets (other than stock-in-trade) as calculated by the Government/H.Z.I. valuers to arrive at the market value of the assets (excluding value of stock-in-trade) and other assets to be dealt with further submissions to be made by us.

12. **Valuation of minerals underground leasehold rights:**

Reference may be made to the observation of Attorney General of India as recorded in the judgment delivered by the High Court of Calcutta in the Case No.

Reference may also be made to the minutes of the inter-ministerial meeting held on 15-11-67 (pg. 101, Vol. I) wherein it has been recorded that "market value should not only be taken into account the replacement value but also the return on the investment. In other words earning capacity of the project was a relevant factor to be taken into account." In other words the "profit potentiality" of the project is to be taken into consideration.

In this connection reference may also be made to the Arbitration Agreement between the Government and the majority shareholders of Jessop & Co. Ltd. In this Agreement it has been provided that the Arbitrator will assess the value of the shares keeping in view "the VALUE OF THE TANGIBLE AND INTANGIBLE ASSETS; GOOD WILL, KNOW-HOW AND PROFIT POTENTIALITY (Page 4, para 5 (a) of this Note).

The valuation of the proved and probable are reserves at the point of acquisition and also further reserves which were to be proved with the progress of development during the whole period of lease is therefore to be taken into account as this forms the most valuable assets of the Company and also falls under the category of "earning capacity" or "profit potentiality" of the undertaking. This calculation has been done on a very moderate basis and incorporated in our Statement of Claim submitted to the Hon'ble Tribunal.

13. **Valuation of stock-in-trade ores, concentrates, metals etc.**

(a) **Pig Lead in Stock:** The valuation team, as per their 1st and 2nd reports, have calculated, as contained in page 12 of Vol. I—value of the stock of finished metals on the basis of the price of pig lead at Rs. 1690|- per m.t., and zinc metal at Rs. 1878|- per m.t. This is disputable. Ostensibly this was done as per provisions of the so-called Scarce Industrial Materials (Control) Order, 1965 promulgated some time in the middle of September, 1965 (14-9-65?) just about a month before the 1st Ordinance dated 22-10-65 and the said control order was withdrawn on 6-6-66/7-6-66. Reference is to be made to our observations made in page 13 of this NOTE H.Z.L. had sold 287,8667 m.t. pig lead to D.G.S. & D. as per Bill dated 19-2-66 against A/T Note (ref. page 134 of Vol. I) issued in favour of M.C.I.

It is to be noted that this transaction took place during the pendency of the so-called Control Order. Therefore, H.Z.L. sold the pig lead at a price which was then prevalent at the market price irrespective of the directive in the so-called order. Therefore the price of pig lead has to be taken at the price of Rs. 5000/- per m.t. and not at Rs. 1690|- per m.t. as has been taken into calculation.

(b) **Zinc metal in stock:** The aforesaid Control Order was promulgated on 11-9-65(7). The appeal preferred by Union of India at the Supreme Court against the judgement of Punjab High Court on Act 44 of 1965 was dismissed on 5-9-66. Thereafter, Union of India brought

Ordinance No. 10 of 1966 on 12-9-66 which was replaced by present Act No. 36 of 1966 on 3-12-66 with retrospective effect from 22-10-65. H.Z.L., was incorporated on 10-1-66 to which the Undertaking of M.C.I. vested. Meanwhile the so-called control order was withdrawn on or about 5-6-66/7-6-66(?).

It is to be noted that the so-called control order was withdrawn before promulgation of the 2nd Ordinance on 13-9-60 and passing of the Act of 1966 on 3-12-66.

It is to be noted that how quickly this so-called control order was withdrawn before the promulgation of 2nd Ordinance on 13-9-66 and passing of Act 36 of 1966. As a matter of fact the control order was withdrawn during the pendency of Rule issued in C.W.P. 5990/1965 challenging the validity of the said order before Punjab High Court which Rule was discharged much later on 27-3-67; the control order was withdrawn even before the judgment on the appeal preferred by the Union of India against the judgment of Punjab High Court was dismissed on 5-9-66.

It is evident that even while the litigation in regard to the validity of the said control order and regarding the 1st Ordinance of the relevant Act was going on, the control order had been vacated during pendency of such litigation ostensibly at the pressure or insistance of HZL to enable them to sell the stock of zinc of about 4500 m. t. to provide for their working capital at that point of time when presumably there was delay in sanctioning of adequate finance by the Central Government for day to day operation of H.Z.L. Reference has been made to this aspect of the case in the Annex. 'A'—dealing with the B.P.T. matter.

This very fact will prove the mala fide of the said order which was promulgated for the sole purpose of bringing the operation of M.C.I. to a stand still from September, 1965 with a view to create the ground for acquisition of the undertaking which will be evident from the remarks of the then concerned Minister on floor of the Parliament at the time of passing of the Act 44 of 1965.

We therefore submit that the price of zinc metal is to be calculated at the market price as was prevalent on the day previous to the date of promulgation of the said control order and the calculation for the prices of land, zinc, concentrates etc. is to be done on the basis indicated above to arrive at a value of the assets.

IT MAY NOT BE out of place to put on record that the profit earned by H.Z.L. out of sale of pig lead and zinc metal in stock and metals produced from the concentrates in stock can be shown on calculation to be much more than Rs. 1.98 crores which has so very graciously been offered as compensation by the Union of India as submitted in its written statement before the Hon'ble Tribunal.

14. Our comments and observations submitted herein concern the valuation and liabilities of the Company as carried out by two teams of Government|HZL. We have pointed out the deliberate and arbitrary deductions made on various items and also arbitrarily not taking into accounts of various expenses incurred in connection with creation of the block assets in the development of mine and installation of zinc smelter. These submissions are therefore to be taken only a correction of the valuation made by the two teams. which has been based on book value of assets as per M.C.I. accounts. These calculations cannot be taken as 'market value'.

There are many other items of assets which have been described in the 'Statement of Claim' submitted by us before the Hon'ble Tribunal. These items together with arguments on these submissions will be dealt with elaborately in support of our claims in a comprehension "Written Submission" which will be placed before the Hon'ble Tribunal within next few days as mentioned in para 8 of our Written Submission/application dated 21-6-76.

In going through these two reports of valuation we have come to the conclusion that the comparatively young Engineers and Accountant comprising the team of valuers did not have the requisite knowledge, experience and competency in the matter of valuation of an undertaking of the magnitude acquired under the Act by the Government. Our this opinion also finds some support from the views expressed by some of the senior officials of the Government in their meetings referred to in these notes where suggestions have been made for appointment of independent valuers of repute to help in such valuation work. This however was not done.

It is quite possible that the teams had to act under directives or advice of their "Masters' Voice" and as such possibly had been compelled or obliged to act against their own better judgment and conscience. The persons higher up who had guided or advised the two teams were apparently the persons who were instrumental in promulgating the "Scarce Industrial Material Control Order" just prior to acquisition which was done with the sale motivation of crippling the activities of the Company at a time when it had over

Rs. 2.5 crores worth of saleable metals and concentrates etc. in their stock at the then prevailing market value.

Such exercise in valuation as is evident from our inspection of the records had, in our opinion, been a mere exercise in futility or absurdity.

A. C. DUTTA.
Chairman.
For & On behalf of
The Metal Corporation of India Ltd.

Dated, New Delhi,
19th July, 1976.

ANNEXURE 'A'

Item: *Provision for Port Rent and Custom duty on mining equipment Rs. 60 lakhs.*

Copies of the documents pertaining to this matter taken during inspection, as submitted in Volume II reveals the following facts:

1. From the Note Dated 22-12-65 (page 9 of Vol. II) from the Managing Director, HZL to Secretary, Ministry of Mines & Metals it is seen that the BPT were willing to remission of 50 per cent of the Demurrage Charges if delivery were taken on payment of the dues on this basis immediately. It appears that at that point of time sufficient funds were not being placed by the Government at the disposal of H.Z.L. as will be seen in the Note (Page 10 of Vol. II) wherein it has been mentioned.

> "THE ADMINISTRATOR MUST HAVE DEFINITE FUNDS, OTHERWISE PROGRESS WILL BE HAMPERED AND IT WILL BE DIFFICULT THING FOR US TO JUSTIFY TAKE OVER."

It is further mentioned therein that;

> "PORT TRUST INSISTS ON PAYMENT IN CASH BEFORE ALLOWING CLEARANCE OF THE GOODS, ADMINISTRATOR IS NOT IN A POSITION TO MAKE THIS PAYMENT AND IF FURTHER DELAY OCCURS THE PORT AUTHORITIES WILL...."

Further found in the same page it is being noted.

> "from note on pre-page also indicated that you would like Government to place funds, immediately at the disposal of the Administrator H.Z.L. This can be only done, as you know, by operating upon the Contingency Fund. I would therefore, suggest that your Deptt. draw up a memorandum approved by you, containing your proposal for putting minimum amount justifying immediate needs (that cannot wait) giving *inter alia* items of expenditure and their urgency."

Noting of the facts recorded above lends support to our contention that shortage of funds for working capital of H.Z.L. made their financial position rather precarious and this situation presumbly led

its authorities to insist on the concerned Ministry to withdraw the "Scarce Industrial Material Control Order" to enable them to sell the metal etc. in stock of M.C.I. at the time of take over at higher prices thus making large financial resources available to them towards their working capital. The said Order, having by that time served the purpose of its promulgation for crippling the activities of M.C.I. and thereby providing grounds for acquisition of the undertaking, was very readily and promptly withdrawn by the concerned Ministry. The implications are very clear and we should refrain from making any further comments thereon. Reference may be made to page 20 (b) of this Note.

2. Thereafter as will be seen in pages 14—21 of Vol. II—the negotiations proceeded on the basis of BPT allowing clearance of machinery by H.Z.L. against an undertaking by the Central Government to pay all dues on account of Duty, Demurrage, Ground Rent etc. as will be determined by BPT. It will be seen in page 22 of Vol. II that a Guarantee duly executed by the Jt. Secretary was forwarded to the Administrator on 5-1-66 by the Dy. Secretary of the Ministry along with a letter directing extinguishing the liability as soon as possible after funds are placed at the disposal of the Administrator of H.Z.L.

3. H.Z.L. addressed letter dated 1-8-66 (page 23 Vol. II) to the CBE & C, Board of Revenue, pointing out that at the time of actual receipt of the equipment in India June/July '64 the total. Duty payable on the entire equipment was worked out at Rs. 17.49 lakhs at the then prevailing rate of duty but at the time of actually taking delivery of the machinery the duty at the then prevailing rate was calculated at about Rs. 33.52 lakhs an increase of about Rs. 16 lakhs over the original Duty. H.Z.L. urged to charge the duty on the equipment at the rate prevalent at the time of actual import when the equipment landed at Bombay.

4. Per letter dated 12-12-66 (page 25 Vol. II) the C B E & C informed the H.Z.L. that:

> "In this case the goods have been removed from the Bonded Warehouse in January '66 hence the rate of duty payable will be the rate prevailing on that date."

5. It will be seen from the Note dated 3-7-66 (page 32 of Vol II) from the FA & CAO of H.Z.L. to the Mg. Director, H.Z.L. indicating that:

> "It has been informally learned from the representatives of Loyds Surveyors—circumstances where central Board of

Taxes are satisfied that clearance was delayed on account of circumstances beyond one's control, the Board (BPT)

*Note: This firm of repute had been the valuers engaged by MCI. may at its discretion agree to clearance of goods on payment of duty at the rates ruling at the time of import. As the additional amount involved is about Rs. 16 lakhs and the delay in clearance could not be attributed to us, it is a fit case where we can make representation to the Government for assessment of duty at the rates prevailing at the time of actual import into the country. If it is agreed to by them there would be a saving of Rs. 16 lakhs in Customs Duty."

6. It may be further seen from the Note dated 22-8-66 (page 24 Vol. II) by the FA & CAO to Managing Director, H.Z.L. that:

"assessment of wharfage and port charges on the consignments lying in Bombay it has assessed an amount of Rs. 36 lakhs against original indication of Rs. 25 lakhs given by them .....which BPT would now be demanding from Government/HZL. It may be further noted that when H.Z.L. wanted to clear the consignment, Port Trust were prepared to consider payment by H.Z.L. of 50 per cent of the charges provided H.Z.L. were agreeable to immediate payment but since H.Z.L. had no funds at its disposal, at that time, they could not do so and the equipment was released on a guarantee from Government of India."

It was also indicated by the FA & CAO that charges for such wharfage etc. could be reduced to Rs. 3 lakhs or to about Rs. 3.5/4 lakhs against Rs. 36 lakhs on certain basis of calculations.

7. On 24-8-66 representation was made by the Managing Director, H.Z.L. (Page 35 Vol. II) to the Chairman BPT suggesting payment of only "the consignments on Bonded Warehouse Charges."

8. Further representations were made by Managing Director H.Z.L. as will be seen on pages 40-41 of Vol. II.

9. Some very important documents in this respect if disclosed in page 42 of Vol. II.

The Dock Manager of BPT addressed a letter dt. 18-7-67 to M.C.I. Calcutta on the subject of remission of demurrage on the six consignments of the mining machinery stored at the Bombay Docks. It is mentioned there that the Trustees of BPT has sanctioned only ground rent under section 3 of the relevant scale of rates inclusive

of demurrage for the period upto 21-10-65. *Thereafter 1/3rd demurrage to be recovered for the subsequent period upto date of clearance of each consignment. These six consignments were* apparently lying at Bombay Sharf. On the remaining seven consignments which were in the Bonded Warehouse the related charges upto date of their clearance was amounting to Rs. 53,70,901 against which a deposit of Rs. 50,000 had been lodged by the Clearing Agents-D. Abraham & Sons, necessary arrangements were therefore requested to be made for release of the balance amount of Rs. 3, 709,01 due. It was, however, noted that M.C.L. would be advised of the actual charges payable on account of the other consignments.

It is to be noted that this letter was addressed to M.C.I. *and not H.Z.L.* apparently *on the basis that the remission being made on account of demurrages etc. on the consignments were upto* 21-10-65 i.e. *the period prior to acquisition of the undertaking of M.C.I.*

This letter came to the Calcutta office of H.Z.L. and *was not handed over to M.G.I.* but was forwarded to Udaipur office of H.Z.L.

10. The letter mentioned above was apparently forwarded to the Clearing Agents of H.Z.L. at Bombay and they wrote buck to H.Z.L. per their letter of 31-7-67 suggesting payment of the balance amount of Rs. 3,709,01 immediately. They had given their opinion that Port Trust decision charging ground rent on the balance consignment plus 1/3rd demurrage appeared quite high and that they would be trying to obtain unofficially the department's calculations and communicate same to H.Z.L. that they can take up the matter with the Port Trust Authorities again. On this copy of the letter it is noted that "We will pay full amount at a time". This decision appears to be Managing Director's of H.Z.L.

11. In page 45 of Vol. II there is a copy of letter addressed by the Under Secretary of Ministry of Steel, Mines & Metals to the Managing Director, H.Z.L. indicating that the liability on account of increased Customs Duty and Demurraged etc. is that of M.C.I. and they felt it should be examined whether such liabilities could be set-off against the compensation payable to M.C.I.

12. Kind attention of the Hon'ble Tribunal may also be drawn to pages 47 & 48 of Vol. II as also pages 51—53 of the same Volume.

13. A most important letter dated 2-9-67 (Page 54 of Vol. II) is from the Chairman BPT to Managing Director, H.Z.L. which shows that the Dock Manager *vide* his letter dated 25-8-67 had raised a demand Note for Rs. 38,678.07 being the ground rent upto 21-10-65 and Rs. 3,70,257,58 being 1/3rd demurrage fees from 22-10-65 upto

date of clearance of each consignment. In absence of the copy of the letter dated 25-8-67 of the Dock Manager BPT from the documents inspected, it is not clear whether this Rs. 38,678.07 as mentioned in his letter dated 25-8-67 was the total charges on account of both Bonded and un-bonded consignments.

For the subsequent period after 22-10-65 the BPT raised claim for Rs. 3,70,257.58 being 1/3rd domurrage from 22-10-65 up to date of clearance.

14 Kind attention of Hon'ble Tribunal is drawn to page 60 Vol. II to the letter dated 20-9-67 from the Chairman BPT to Managing Director, H.Z.L. We quote the second paragraph of the letter—

> "Your contention that the charging demurrage though one-third to the Public Sector Undertaking and only ground rent on a Private Sector undertaking would amount to discrimination is mis-conceived. The reason for charging ground rent for the period prior to 22-10-65 was that the Government should not be penalised for the mismanagement of the business by the private Sector undertaking which preceeded it. If anything it amounts to preferential treatment for the Government undertaking and certainly not discrimination against it. It was the great difficulty that the Board was persuaded by me to sanction levying of the ground rent for the period. As regards the period from 22-10-65, onwards we have shown concession by levying only 1/3rd demurrage. This would not have been accorded to a private firm under similar circumstances."

15. The most surprising event happened thereafter. The Managing Director, H.Z.L. addressed a letter to the Chairman BPT *vide* D.O. letter no. 15. (8). 66-adm. dated 4-10-67 regarding the demurrage charges on certain consignments of M.C.I. In this letter apparently the Managing Director, H.Z.L. questioned the decision of the BPT about their waiving of demurrage charge of about Rs. 24 lakhs for the period upto 22-10-65 payable by M.C.I. and charging in lieu only ground rent and that for subsequent period for after take-over *i.e.* from 22-10-65 charging to a Government Company demurrage of Rs. 3½ lakhs being 1/3rd and pointed out that this was not fair decision. In this letter it was further specifically pointed out that the amount of demurrage upto 21-10-65 would be on account of the Private Sector Co. and would be debited to the compensation account of that Company. The Managing Director, H.Z.L. therefore called upon the Chairman BPT to consider the matter afresh and to make further concession for the period subsequent to take over *i.e.* from 22-10-65.

At such pointed reference as to debiting all demurrage charges to the account of M.C.I. of liability the full mischief was done. The Chairman BPT wrote back to the Managing Director, H.Z.L. per his D.O. letter No. T/DT-RR/14000.Z of 18-10-67 (page 64 Vol. II). We quote extensively from this letter—

> "When the BPT considered the matter earlier it was not known that the demurrage which had accrued on the cargo prior to 22-10-65 i.e. prior to M.C.I. was acquired by Government, could be recoverable from the compensation payable to the Corporation by the Government. As you have very kindly pointed out in your letter that the demurrage would be adjusted against the compensation and the amount will be paid to the BPT, the board has reconsidered the matter in the light of your letter and has decided that the full demurrage amount Rs. 24,39,891,89 should be paid to BPT out of the compensation payable by Government to M.C.I.
>
> ———
>
> Will you please let us know the amount of compensation payable by Government to M.C.I. and confirm that the demurrage of Rs. 24,39,896.89 due to BPT in respect of the period prior to 22-10-65 will be paid to BPT.....".

Thereafter prolonged correspondence went on between H.Z.L. and BPT and finally the full amount was paid at a much later date.

The final account on the representation made by H.Z.L. to BPT was submitted by BPT *vide* letter dated 22-9-71—(Page 85 Vol. II).

The BPT having been able to charge the maximum amount payable to the period pre-acquisition, reduced the charge for the post acquisition period to a party sum of Rs. 25,076.40.

16. Our submission is that when the amount demurrage charges was waived by BPT and charged only ground rent H.Z.L. had no earthly reason to dispute the decision of BPT and go out of their way to point out that the amounts due would be deducted from the compensation account of a Private Company M.C.I. The whole episode was very highly motivated with the gleeful anticipation of reducing the compensation payable to M.C.I. to the minimum amount possible. But H.Z.L. authorities were misguided and misconceived the whole situation as payment made to BPT on the machinery lying there could not be unilateraly charged or debited to M.C.I. account without correspondingly capitalising same by crediting to the value of assets.

We submit that if MCI had been able to clear the machinery from Bombay Docks on payment of dues before acquisition of the undertaking in receipt of the loans payed for them M.C.I. would have been entitled to capitalise the amounts paid to BPT on account of all costs and demurrages etc. as a part of the installed cost of the machinery and it would have been allowed according to standard accounting practice and under the Income-tax Rules, under which M.C.I. would have benefits of depreciation and other allowances on the enhanced installed value of the machinery.

As such our further submission is that it was quite wrong on the part of H.Z.L. to dispute the earlier decision of BPT but once they have done so, the payment of this amount becomes a penalty to be borne by them because of their miscevied motivated action. The amount they have so paid against the demurrage and other charges is to be added to the value of the machinery as they have done in case of the Customs Duty of Rs. 32 lakhs which has been added to the value of the assets and rightly also shown as a corresponding liability.

Therefore, provision of Rs. 60 lakhs under this head will be reduced to Rs. 32 lakhs being the Customs Duty paid by them or alternately it will be Rs. 32 lakhs plus Rs. 24 lakhs i.e. Rs. 56 lakhs provided the amount of Rs. 24 lakhs is added to the value of the assets (machinery).

A. C. DUTTA,

Chairman.

For & On Behalf of

The Metal Corporation of India Ltd.

Dated, New Delhi,
19th July 1976.

GMGIPMRND—RSI—4267 LS—26-5-79—525.