

ifci Ltd. Vs. TfcI Ltd.

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Court : Delhi

Decided On : May-16-2011

Judge : Manmohan, J.

Acts : [Companies Act, 1956](#) - Sections 398, 402, 169(6), 190, 173(2)

Appeal No. : CO.A(SB) 13/2011 & CO. APPLS. 538/2011, 564/2011, 764/2011

Appellant : ifci Ltd.

Respondent : TfcI Ltd.

Advocate for Def. : Mr. U.K. Chaudhary; Mr. Abhinav Vashist; Mr. Rajnish Sinha; Ms. Hina Sharif; Ms. Manisha Chaudhary; Ms. Avanti Tewari, Advs.

Advocate for Pet/Ap. : Mr. Ashwini Mata; Mr. Suresh Dobhal; Mr. Dinkar Singh; Mr. Rahul Tyagi, Advs.

Judgement :

1. The present appeal has been preferred against the order dated 22nd March, 2011 passed by the Company Law Board (for short 'CLB') whereby Company Petition No. 124(ND) of 2010 filed by appellant company under Sections 398 and 402 of the [Companies Act, 1956](#) (for short 'Act') was dismissed.

2. Brief facts of the present case are that the appellant company (hereinafter referred to as 'IFCI') owns 37.85% of shares of respondent-company (hereinafter

referred to as 'TFCI'). On 26th November, 2010 IFCI sent a requisition to TFCI for convening an Extra-Ordinary General Meeting (for short 'EOGM') with the objective of appointing four new directors and removal and replacement of one director on the Board of TFCI. However, TFCI vide letter dated 2nd December, 2010 questioned the validity of the requisition on the ground that though it was signed by the Company Secretary of IFCI, but specific authorisation/board resolution to file such requisition had not been annexed and it requested IFCI to send the said board resolution within a period of one week. Subsequently, on not getting the said information, TFCI through its board meeting held on 14th December, 2010 decided not to convene EOGM of TFCI. On receiving this information, IFCI on 15th December, 2010 initiated the process under Section 169(6) of the Act for convening an EOGM on 17th January, 2011. IFCI then filed the present Company Petition No. 124(ND) of 2010 under Sections 398 and 402 of the Act on the same day.

3. On 16th December, 2010, the CLB passed the following interim order:-

CP No. 124/ND/2010 mentioned. Heard on interim reliefs.

After considering the submissions and perusing the petition following interim order is passed:-

A. Both parties shall maintain status quo as it exists today on the Board of Directors.

B. Petitioner shall, besides the steps already taken by him, not take any further steps for holding of EOGM before the next date of hearing.

Response to the petition be filed within three weeks with an advance copy to the other side. Rejoinder, if any be filed within three days thereafter with an advance copy to the other side. No further extension of time shall be sought or granted.

List on 12.1.2011 at 2.30 p.m.

4. On 12th January, 2011, CLB while disposing of CA 17/2011 filed by TFCI praying for stay of EOGM called by the IFCI, held as under:-

8. I am thus of the considered view that for the reasons aforesaid deferment of the EOGM scheduled to be held on 17.01.2011 is inevitable. I accordingly order that the EOGM requisitioned under Section 169(6) of the Act and scheduled to be held on 17.01.2011 under notice dated 15.12.2010 shall be deferred till further orders. Interim order at (A) dated 16.12.2010 shall also continue till further order C.A. 17/2011 stands disposed of accordingly.

5. The aforesaid order dated 12th January, 2011 was impugned before this Court, wherein this Court allowed the EOGM to be held as scheduled on 17th January, 2011 but directed that the decisions taken by EOGM would not be given effect to till the CLB decides the petition finally.

6. CLB in the impugned order held requisition dated 26th November, 2010 issued by IFCI as invalid on the ground that it did not bear the signature of the requisitionist. CLB further held that IFCI issued notice dated 15th December, 2010 subsequent to passing of the order dated 16th December, 2010 for convening EOGM on 17th January, 2011 and the same was a fraudulent act in utter violation of the directions contained in the order dated 16th December, 2010.

The relevant portion of the impugned order is reproduced hereinbelow:-

18. By prefixing the word shall before each of three different commands Section 169(2) mandatorily requires three conditions to be satisfied to make a requisition under Section 169(1) of the Act valid:-

- (a) The requisition shall set out the matters for the consideration for which the meeting is to be called;
- (b) The requisition shall be signed by the requisitionist; and
- (c) The requisition shall be deposited at the registered office of the Company.

The validity of the notice under Section 169(1) therefore has to be judged in the above perspective. There is no dispute that requirement under sub clause (a) and (c) as mentioned above are satisfied. Although Rupa Sarkar, the Company Secretary of IFCI had put her full signatures at the end of the explanatory

statement under Section 173(2) and below the five notices under Section 257 and another notice under Section 190 of the Act after printing her name and designation she did not either print her name and designation on either page of the requisition under section 169(1) of the Act or affix her signature on either page of the requisition. Her signature is not to be found in the requisition under Section 169(1) on page 199-200. These pages only bear an impression of the seal of TFCI and the initial of the person receiving it but does not bear the signature of Rupa Sarkar. A very small initial appears to have been made by someone below the requisition on page 199-200.

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21. In the present case, sub clause (2) of Section 169 mandates that the requisition shall be signed by the requisitionist. The use of the work shall' before each of the three conditions enumerated in section 169(2) reflect clearly the intention of the law maker that a mere illegible initial at the end of the requisition would not render it valid. The letter dated 26.11.2010 of Mr. Javed Yunus, Annexure P-6 on page 198 does not disclose in any manner that the requisition has been duly signed by the Company Secretary of IFCL. It is also pertinent to note that Mr. Javed Yunus signed the letter dated 26.11.2010 as Director of TFCI and not as Director of IFCL i.e. the requisitionist company. From this letter one cannot comprehend that the requisition is signed by the Company Secretary of IFCL. The argument that the explanatory statement under Section 173(2) of the Act formed part of the requisition under section 169(1) of the Act is also not substantiated by the covering letter of Mr. Javed Yunus at page 198 as it makes no mention of the explanatory statement under section 173(2), the notices under section 257 or the notice under Section 190 of the Act having been sent with his letter. May be these did not even form part of his letter dated 26.11.2010 containing the requisition under section 169(1). Therefore the fact that these documents bear the signature and seal of Rupa Sarkar, the company secretary of IFCL does not in any manner validate the requisition under section 169(1) of the Act. A perusal of the 2 pages of the requisition shows that the second page is not printed on the letter-head of IFCL. A completely illegible seal appears to have been affixed over the initial put by some person. In both the pages below the initial, the

name of the person initialing is not written as is to be found in the explanatory statement under Section 173(2), and notices under Section 257 and 190 of the Act. Thus the requisition dated 26.11.2010 on page 199 and 200 does not disclose the identity of the person initialing the requisition. So is the case with the letter of Mr. Javed Yunus dated 26.11.2010 (Annexure P-6). Therefore, since the requisition does not bear the signature of the requisitionist or even disclose the identity of the person initialing, it cannot be said that the requisition dated 26.11.2010 under Section 169(1) is a valid requisition as it does not satisfy the mandatory requirement under Section 169(2). A specific resolution of the Board of IFCL for requisitioning an EOGM under Section 169(1) has not been filed with the petition which also renders the requisition under section 169(1) of the Act invalid.

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24. The last question is regarding the validity of the EOGM held on 17.1.2011. Once it is held that the requisition under Section 169(1) dated 26.11.2010 was not a valid requisition and the TFCI was justified in declining to hold EOGM no legal right accrued in favour of the requisitionists to hold an EOGM under Section 169(6). It is pertinent to note that the petition was filed on 15.12.2010 and was heard on interim relief on 16.12.2010 at 2.30 PM. Neither in the petition nor during arguments of the Senior Counsel for the IFCL there was even a whisper that a notice for convening an EOGM under Section 169(6) had been issued on 15.12.2010. The petition stated in para V that after the refusal by TFCI to convene EOGM, the Petitioner had initiated the process to convene an EOGM under Section 169(6). Learned Counsel for the Petitioner made a categorical statement before me that on 15.12.2010, notice under Section 169(6) of the Act by IFCL had not been issued. A certificate given by International Print-O-Pac Ltd., was also handed over which stated that they handed over 63906 numbers of EOGM notices of TFCI to M/s. Blaze Flash Courier on 16.12.2010 at 7 AM. One can easily comprehend the time required for sending 63906 notices by enveloping such notices and putting address on each notices. IFCL could not have, in any manner anticipated the tenor of the interim order to be passed by CLB during mention hour, so as to be in a tearing hurry to dispatch the notices before arguing for interim relief. There is not even an iota of doubt that such notices were issued by IFCL after the order passed on 16.12.2010 at 2.30 PM. Had it not been so, on

16/12/2010 while considering the submission by learned senior counsel for IFCI and TFCI an effort was being made by me to balance the equity on both sides by ordering status quo on the Board of Directors of TFCI and also by injuncting IFCI from taking any further step for convening an EOGM besides the steps already taken by it, i.e., requisitioning an EOGM under Section 169(1), Sr. Counsel for IFCI would have divulged that the notice under Section 169(6) had already been issued by IFCI and nothing else remained to be done. No such statement was made. The argument advanced by learned senior counsel for IFCI and recorded by me in para 4 of my order dated 12.1.2011 also throws light on the stand taken by IFCI. I am therefore of the considered opinion that IFCI in blatant disregard of the order passed by me, fraudulently issued notices under Section 169(6) of the Act after I had passed the interim order dated 16.12.2010 restraining IFCI from taking any further steps for convening an EOGM besides the steps already taken. I, therefore, hold that EOGM convened on 17.1.2010 by IFCI is null and void.

7. Consequently, CLB declared the EOGM of TFCI held on 17th January, 2011 as null and void. Hence this appeal.

8. It is pertinent to mention that CLB rejected the prayer of IFCI to keep in abeyance the impugned order for a day in order to enable IFCI to approach this Court by way of appeal. On the very said date, i.e., 22nd March, 2011, TFCI by Board Resolution reconstituted its Board by appointing five additional Directors.

9. When the present appeal came up for first hearing on 23 rd March, 2011, this Court issued notice in the appeal and directed that neither party would rely upon the observations of CLB in any other proceedings and any other forum. This Court further directed that no further meetings of the TFCI would be held without seeking specific leave of this Court. The order dated 23rd March, 2011 was impugned by TFCI before the Supreme Court by way of Special Leave wherein the Supreme Court on 25th April, 2011 passed the following order:-

Taken on record.

Since we do not want the Company's working to be hampered, we request the High Court to expeditiously hear and dispose of pending Company Application

No.538 of 2011 and company Appeal No.13 of 2011, within one week from today. Since the impugned order is an interim order, we need not pass any further order in that regard.

Subject to above, the special leave petition is dismissed.

10. Thereafter the matter was heard on day to day basis, subject to availability of learned senior counsel for the parties.

11. Mr. Ashwini Mata, learned senior counsel for IFCI submitted that Section 169 of the Act creates a vested legal right in favour of shareholders to call for a meeting of shareholders of the company.

He further submitted that Section 169(1) of the Act imposes corresponding statutory duty on the Board of Directors of a company to forthwith proceed to call for an EOGM of the shareholders within 21 days from the receipt of the requisition. He submitted when the conditions set out in Section 169(2) and (4) of the Act are fulfilled then it is not open for the Board of Directors to refuse to act on the requisition on any other ground whatsoever.

12. Mr. Mata submitted that any authorisation/Board resolution authorising the Company Secretary to make requisition is an internal matter of IFCI which was not within the scope of TFCI to ask for. Mr. Mata submitted that nonetheless the Board Resolution dated 29th November, 2001, inter alia, enable the Company Secretary to sign, execute all legal documents for and on behalf of IFCI was, in fact, made available to TFCI on 08th December, 2010 as a part of an advance copy of the petition filed by IFCI under Section 169 of the Act before the CLB.

13. Mr. Mata next submitted that in accordance with Section 169(6) of the Act in case the Board fails to call for a meeting within 21 days from the date of receipt of a valid requisition, the requisitionist may proceed to call an EOGM. He submitted that TFCI's refusal to hold EOGM triggered the invocation of Section 169(6) of the Act and IFCI's act of issuing notices and subsequent EOGM are within the parameters of law. In this connection, he relied upon a judgment of Bombay High Court in Cricket Club of India Ltd. & Ors. v. Madhav L. Apte & Ors., (1975) Comp.

14. Per contra, Mr. U.K. Chaudhary, learned senior counsel for TFCI submitted that for a valid requisition under Section 169(1) of the Act, firstly there has to be a board resolution of IFCI requisitioning an EOGM and secondly, such requisition has to be made by a person so authorised by the Board. Mr. Chaudhary submitted that by not replying to the letter dated 02nd December, 2010 and the fact that a new Resolution of IFCI dated 31 st March, 2011 annexed in Co. Appl. No.375/2011 authorising Company Secretary Ms. Rupa Sarkar to issue the requisition dated 1st April, 2011 was passed clearly shows that there was no prior resolution for issuing requisition in the records of IFCI. Mr. Chaudhary submitted that Company Secretary requires a specific authority to represent a company and acting without any authority or Board resolution in his or her favour would amount to usurping the powers of Board of Directors. To emphasise his submission, Mr. Chaudhary relied upon judgments in Mohan Lal Mittal & Ors. v. Universal Wires Ltd. & Ors. (1983) 53 CC 36 CHC and Nibro Limited v. National Insurance Corporation Limited, (1991) 70 CC 388 DHC.

15. Mr. Chaudhary further submitted that requisition as required by Section 169 of the Act should be signed and not initialed. He also referred to Section 193(1)(A) of the Act to submit that Legislature was well aware of the difference between initial and signature. He submitted that the requisition dated 26th November, 2010 consisted of several other documents such as explanatory statements under Section 173(2) of the Act and notices under Sections 257/190/284 of the Act along with the actual requisition. Mr. Chaudhary submitted that these are separate documents not forming the part of actual requisition and in the present case, these other documents are signed but not the actual/stand alone requisition which forms the most relevant document under Section 169 of the Act.

16. Mr. Chaudhary further submitted that TFCI's Company Secretary's letter dated 02nd December, 2010 and the Board Minutes dated 14th December, 2010 from which it appears that TFCI had no doubt that the said requisition was in fact signed by Company Secretary of IFCI does not in any way bar judicial scrutiny of it. He submitted that there cannot be any estoppel against a statute and if a statute

provides something to be done in a particular manner, the same cannot be waived by any party. He quoted judgments of Supreme Court in *Sidh Bali Steel Ltd. v. State of U.P.* (2008) 12 SCC 675 and *State of U.P. v. U.P. Rajya Khanij Vikas Nigam and Ors.* JT 2008 (6) SC 489.

17. Mr. Chaudhary further relied upon CLB's findings that fraud was played by IFCI and the notices were issued after passing of the order dated 16th December, 2010. He submitted that the petition filed on 15th December, 2010, nowhere mentions that 'notice stands issued' and/or date of EOGM is fixed for 17th January, 2011'. The certificate from IFCI's printer that the printed notices were delivered to the designated courier and IFCI office in the morning of 16th December, 2010, clearly shows that since no notice was dispatched to shareholders on 15th December, 2010, it cannot be said that 'the notices were issued to the shareholders on 15th December, 2010'. Mr. Chaudhary further submitted that at the relevant date IFCI was not in possession of list of updated shareholders as it asked for the same by letter dated 15th December, 2010. Mr. Chaudhary also relied upon the receipts from LIC and Bank of Baroda to show that these two institutions received the notices only after 21 st December, 2010. He submitted that it is clear from the above stated events that IFCI had, in fact, after the order dated 16th December, 2010 issued ante dated notices dated 15th December, 2010 for convening EOGM on 17th January, 2011.

18. Mr. Chaudhary further submitted that the decision of the Board of TFCI dated 22nd March, 2011 appointing five additional Directors cannot be the subject matter of appeal as these appointments were made after the dismissal of IFCI's petition by CLB.

19. Mr. Chaudhary lastly pointed out that IFCI has issued a fresh notice dated 01st April, 2011 by way of requisition under Section 169 of the Act for convening meeting of shareholders proposed to be held on 18th May, 2011 seeking removal of present Directors including the present Chairman and Managing Director (CMD) of TFCI whose tenure otherwise finishes on 19th January, 2012 as well as appointment of their own Directors on the Board of TFCI. He submitted that by way of the said notice, IFCI seeks to takeover the management of TFCI.

20. Mr. Mata in his rejoinder submitted that IFCI has a valid resolution for requisitioning an EOGM by TFCI vide Board Resolution dated 27th October, 2010 wherein it was decided that Board of Directors of TFCI be reconstituted. He further submitted that Ms. Rupa Sarkar, the IFCI's Company Secretary is duly authorized by resolution dated 29th November, 2001 to sign all legal documents on behalf of the company. He further submitted that Resolution of the IFCI Board dated 31st March, 2011 in favour of Chief Executive Officer (CEO) and MD and Company Secretary for requisitioning an EOGM of TFCI was passed only as a measure of abundant precaution.

21. Mr. Mata further quoted Black's Law Dictionary wherein word 'signature' is defined as 'A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of written signature.' He submitted that every page of the requisition dated 26 th November, 2010 is signed and on the last page there is full seal and stamp of the Company Secretary. In this connection, he relied upon the decision of the Supreme Court in Municipal Corporation Greater Bombay v. P.S. Malvenkar & Ors., (1978) 3 SCC 78 wherein it has been held that that there is no legal difference between an initial or a signature and unless the law specifically requires affixation of full signatures, affixation of signatures by initials on a document does not detract from its authenticity. Mr. Mata further relied upon judgment in Gouni Satya Reddy v. Government of Andhra Pradesh, 2004 (7) SCC 398 wherein the Hon'ble Supreme Court has held that the use of initials instead of full name should not be the ground to suspect the genuineness of a document.

22. Mr. Mata submitted that the expression that 'notices as on 15 th December, 2010 stand issued' simply means that as on 15th December, 2010 notices had been given for printing. In this regard he placed reliance upon judgment in Delhi Development Authority v. H.C. Khurana reported in (1993) 3 SCC 196 wherein it has been held as under:-

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary

include: to give exit to; to send forth, or allow to pass out; to let out; to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a charge-sheet, therefore, means its dispatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and dispatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement ..

23. With reference to EOGM scheduled to be held on 18th May, 2011, Mr. Mata submitted that the appellate court has jurisdiction to adjudicate only the question of law arising out of the order passed by the CLB. He relied upon judgments in Mohd. Jafar v. Nahar Industrial Enterprises Ltd., (1997) 4 C.L.J. 201 AT and CIT Vs Scindia Steam Navigation Co. Ltd., AIR 1961 SC 283 to submit that an appeal lies before the High Court from any decision of the CLB on any question of law arising out of the order passed by the CLB and when a question of law was neither raised nor considered by CLB, it would be a subsequent event and not a question arising out of the order. In any event, Mr. Mata submitted that the CMD, who has been employed for a fixed short tenure, does not have any vested right like a shareholder who is the part owner of the company.

24. Having heard the parties and having perused the papers, I am of the opinion that the mere fact that IFCI did not reply to TFCI's letter dated 2nd December, 2010 does not mean that any legal presumption can be drawn that the requisition dated 26th November, 2010 was not authorised by the Board and/or the Company Secretary of IFCI did not have the authority to requisition the EOGM. The fact is that the Board of IFCI has vide its resolution dated 29th November, 2001 given specific authority to its Company Secretary to sign all legal documents. The relevant extract of the aforesaid minutes of meeting of the Board of IFCI is reproduced hereinbelow:-

EXTRACT OF MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF IFCI LTD. (IFCI) HELD AT 12.00 NOON ON THURSDAY, THE 29TH NOVEMBER, 2001 IN THE BOARD ROOM, IFCI TOWER, 61 NEHRU PLACE NEW DELHHI-110019.

ITEM NO. 2.13 Delegation of signing powers to the officers of IFCI.

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The Board considered the matter and passed the following resolution:

RESOLVED that all officers of IFCI in all disciplines, except Private Secretaries viz. Chairman & Managing Director, Whole-time Directors, Executive Directors, Chief General Managers, Company Secretary, General Managers, Dy. General Managers, Asstt. Company Secretary, Asstt. General Managers, Managers and Asstt. Managers and such other officers as may be authorized by the Chairman & Managing Director, be and are severally authorized to: .

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ii) Sign and execute on behalf of IFCI all legal documents, instruments, guarantees and agreements which are required to be executed for and on behalf of IFCI in connection with the current and authorized business of IFCI

(emphasis supplied)

25. Section 2(15) of the Act defines a document to include a requisition. Consequently, if the IFCI's Board minutes dated 29th November, 2001 is read in conjunction with Section 2(15), it is apparent that the Company Secretary of IFCI was authorised by its Board by a prior general authorisation to requisition an EOGM. Also, during the course of hearing of the appeal, it was not controverted before me that the minutes of board meeting dated 29 th November, 2001 had been given on 8th December, 2010 to TFCI as an annexure along with initial petition filed by the IFCI under Section 169 of the Act which was later dismissed as premature.

26. I am also in agreement with Mr. Mata that IFCI's subsequent board resolution dated 31st March, 2011 passed in favour of its Company Secretary as a measure of abundant precaution did not prove that there was no prior authorisation in favour of IFCI's Company Secretary when requisition dated 26th November, 2010 was issued.

27. Moreover, the Board of IFCI vide its resolution dated 27th October, 2010 had taken a conscious decision to reconstitute the board of TFCI. The extract of the minutes of said Board meeting is reproduced hereinbelow:-

EXTRACT OF MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF IFCI LTD. (IFCI) HELD ON WEDNESDAY, OCTOBER 27, 2010 AT IFCI TOWER, NEW DELHI.

ITEM No.1.9 To take note of the information memorandum regarding TFCI circulated to the Board of Directors.

The Board deliberated the contents of Memorandum No.72/2010-11, dated October 15, 2010 and expressed its anguish over the manner in which affairs of TFCI are being conducted by their top management over the last few years, resulting in IFCI having to abstain from supporting elevation of an unsuitable person on the TFCI Board. The Board observed the following:

- a) It needs to be ensured that as long as IFCI enjoys a substantial shareholding in TFCI, the official documents and communications of TFCI must duly reflect the status of IFCI as TFCI's promoter and founder.
- b) The board of Directors of TFCI needs to be so constituted as to protect and promote commercial and strategic interests of IFCI, and to restore the pre-eminence of IFCI in the Board of TFCI, in which context steps may be taken to nominate additional number of members on the Board of TFCI.
- c) Resistance by the top Management of TFCI and IFCI's commercial and strategic interests needs to be dealt with firmly and not ignored.

(emphasis supplied)

28. Subsequently, to implement the aforesaid decision taken by IFCI's Board, its CEO and MD (who had been entrusted with the power of management by its board) in turn authorised its Company Secretary to take all necessary steps to issue a requisition for convening an EOGM.

29. The judgments relied upon by Mr. Chaudhary, namely, Mohan Lal Mittal & Ors (supra) and Nibro Limited (supra) are not applicable to the present facts as in the present case the Board of IFCI had deliberated on the policy matter relating to re-constitution of TFCI's board and issued direction to its officers to execute its decision dated 27th October, 2010.

30. As far as the finding of the CLB that the requisition dated 26th November, 2010 was not signed as required under Section 169(3) of the Act is concerned, I am of the view that law prescribes no particular form of the requisition.

31. All the documents as annexed at pages 152 to 176 to the paper book comprising of notices under Sections 169, 257, 190, 284 of the Act and explanatory statement under Section 173(2) of the Act were served as a bundle and were deposited 'in one go' with the registered office of TFCI on 26th November, 2010. In my opinion, if all the documents served by IFCI are taken as a composite document, there is no iota of doubt that requisition was signed by the Company Secretary of IFCI.

32. In fact, from a bare reading of TFCI's own letter dated 2nd December, 2010 as well as minutes of board meeting of TFCI dated 14th December, 2010, it is apparent that even TFCI had no doubt that the requisition was signed by the Company Secretary of IFCI. The relevant portion of the TFCI's letter dated 2nd December, 2010 as well as the minutes of Board Meeting of TFCI dated 14th December, 2010 are reproduced hereinbelow:-

A) Extract from TFCI's letter dated 2nd December, 2010:-

Re: Requisition for convening an Extra-Ordinary General Meeting (EGM) for consideration of Appointment of Directors/Removal/Replacement of Directors
With reference to your letter No.TFCI/2010-26101 dated November 26, 2010 on the subject. In this regard, we inform you that while examination of the papers submitted by you we have found that the requisition submitted on behalf of IFCI Ltd was signed by the Company Secretary, IFCI Ltd. and the required authorization/Board resolution was not submitted alongwith the requisition. You are, therefore, requested to send the specific

authorization/Board resolution (emphasis supplied)

B) Extract from minutes of board meeting of TFCI dated 14th December, 2010 :-

.The Board was informed that while examining the papers submitted by IFCI, it was found that requisition and notices submitted on behalf of IFCI were signed by the Company Secretary of IFCI (CS-IFCI) and no authorization in favour of CS-IFCI had been submitted alongwith the requisition. Accordingly, a letter dated December 2, 2010 was sent to Shri Javed Yunus, Executive Director, IFCI to send specific authorization/Board resolution in favour of CS- IFCI

(emphasis supplied)

33. Consequently, from the aforesaid it is apparent that neither the authorship nor source of origin of the requisition was ever in doubt.

34. Further, the reliance placed by CLB in the impugned order on the Apex Court's judgment in *Sau. Laxmi Verma v. State of Maharashtra & Ors.*, Civil Appeal No. 3411-3412 of 2010 decided on 19th April, 2010 is misplaced as it is distinguishable on facts. Under Section 41(2) of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, a Councillor in order to resign has to sign the resignation letter in the presence of the Collector, whereas the Councillor in the above said case presented an already signed copy to the Collector and initialed before him only to make a correction in that resignation. The question, therefore, which was dealt in the above said judgment was as to whether the Councillor had signed the resignation letter before the Collector or not.

35. Moreover, the issue whether requisition is signed or initialed by the Company Secretary is a question of fact. TFCI neither in its reply to the company petition nor in its Company Application bearing no. 17/2011 filed before the CLB raised any objection on this score. In my opinion, in view of the admission by the Board of TFCI that the requisition had been duly signed by the Company Secretary of IFCI, the findings of CLB to the contrary in the impugned order is unsustainable and are hereby set aside.

36. I am also of the opinion that CLB's finding that IFCI has played fraud upon it, is a finding based on presumptions and surmises. It is pertinent to mention that CLB has primarily reached this conclusion on the ground that there is no mention in the petition that notices had been issued and/or that the date of EOGM had been fixed for 17th January, 2011.

37. In fact, in para 5(v) of the company petition filed before CLB it has been categorically averred by IFCI that it had initiated the process for convening an EOGM under Section 169(6) of the Act.

The relevant portion of the company petition is reproduced hereinbelow:-

5. FACTS OF THE CASE

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v) The Petitioner humbly submits that after being intimated the decision of the Board of Respondent Company not to convene EOGM, it has in exercise of its right u/s 169(6) of [Companies Act, 1956](#) initiated the process to convene the EOGM ..

38. It is pertinent to mention that Section 169(6) of the Act only provides for issuance of notices to members by the requisitionist.

39. Moreover, IFCI in its rejoinder affidavit dated 10th December, 2010 filed before CLB has categorically averred that the CLB had been informed of the date of convening of EOGM as 17 th January, 2011 and it was for this reason that the CLB had fixed the next date of hearing as 12th January, 2011. The said averment in the rejoinder affidavit is reproduced hereinbelow:-

6. The contents of para 6 are wrong and denied. It is wrong to allege that the petitioner has not disclosed about the convening of EOGM. It may be recalled that the Hon'ble CLB was informed of the date of convening of EOGM (17-1-2011) and on the request made by the Counsel for the petitioner, the CLB has fixed the next date of hearing on 12-1-2011. Further the interim order passed by the Hon'ble CLB on 16-12-2010 clearly shows that the CLB is aware of the steps initiated by the

petitioner and for this reason had restrained the petitioner from taking further steps till the next date of hearing

40. Also, TFCI in its additional affidavit filed before the CLB had itself annexed a certificate given by IFCI's printer. In the said certificate the printer has categorically stated that 63,906 copies of notices had been delivered to IFCI's designated courier on 16 th December, 2010 at 7.00 a.m., that means much prior to the passing of the interim order by the CLB, namely, on 16 th December, 2010 at around 2.30 p.m. The extract of the certificate issued by IFCI's printer is reproduced hereinbelow:-

TO WHOM SO EVER IT MAY CONCERN

Reg: Supply of EOGM Notice of TFCI

This is to certify that we have printed 70,000 EGM Notice of TFCI and handed over 63906 copies of the same to IFCI's designed courier on 16th Dec. 2010 at 7 A.M. Balance 6094 copies were delivered to IFCI, Nehru Place by 10 A.M. on same day.

For International Print-O-Pac Limited

Sd/-

Authorised Signatory

41. Further, the fact that IFCI on 15th December, 2010 had asked for an updated list of the shareholders from TFCI, does not prove that the notices had been dispatched subsequent to the interim order passed by the CLB. This is more so when the admitted position is that the updated list subsequently furnished by TFCI had not been accepted by IFCI.

42. I am also of the view that the alleged receipt of EOGM notices by LIC and Bank of Baroda around 21st December, 2010 do not prove that IFCI had issued notice subsequent to the passing of the interim order by the CLB. This is more so when 17 th December, 2010 was a holiday on account of 'Id-ul-zuha' and 18th and 19th December, 2010 were Saturday and Sunday respectively. Consequently, I

am of the view that finding of fraud given by the CLB is based on no evidence.

43. In view of the aforesaid discussion, I am of the opinion that the reasoning given by the CLB in the impugned order is unsustainable. Accordingly, the impugned order is set aside and the requisition dated 26th November, 2010 as well as the EOGM dated 17th January, 2011 are held to be legal and valid. Consequently, subsequent appointment of five Directors by TFCI's Board on 22nd March, 2011 is set aside, as on the said date there were no vacancies on the Board.

44. Normally neither CLB nor this Court interferes with the appointment and/or removal of directors, but in the present case, I am prima facie in agreement with Mr. Chaudhary that the subsequent requisition dated 1st April, 2011 seeking removal of three directors including CMD whose tenure expires on 19th January, 2012 is an act of takeover of management of TFCI by its largest shareholder who only owns about 37.85% shares. At this stage, it cannot be ruled out that the intent of the EOGM scheduled for 18th May, 2011 is to remove the Directors who had not supported the earlier requisitions and resolutions moved by IFCI. Though it is correct that the CMD is not a shareholder of TFCI but she is a professional who has been appointed for a specific tenure to run a financial institution. In my opinion, a professional is certainly required at the helm of affairs and there cannot be any hiatus in the management of such a company. I am also of the view that if their tenure are not protected, it would not only amount to takeover of TFCI's management by IFCI but it would also constitute an act of mismanagement by IFCI. It is pertinent to mention that out of total TFCI's Board strength of 15, 2 are to be nominated by the Reserve Bank of India and debenture holders. Today with the passing of this order, 7 out of 13 appointments on the Board of TFCI would have been at the instance/recommendation of IFCI. Consequently, I am of the opinion that if the resolutions in the EOGM scheduled for 18th May, 2011 are passed, then it would virtually amount to making TFCI a subsidiary of IFCI.

45. I was inclined to grant protection to all the three Directors for their remaining tenures, but from the written submission filed by IFCI subsequent to the conclusion of hearing, I find that certain fresh allegations have been made by IFCI like CMD,

TFCI having initiated false and frivolous cases under Section 397/398 of the Act, which do not find mention either in this appeal or in the CLB paper book. Consequently, I direct that EOGM requisitioned by the IFCI for 18th May, 2011 shall be held on the scheduled date but if the resolution removing the three Directors of TFCI is passed therein, then it shall not be given effect till permission for the same is granted by the CLB. For this purpose, I grant liberty to IFCI to file an application before CLB in the disposed of petition bearing Company Petition No. 124(ND) of 2010 seeking permission of CLB to give effect to the said resolutions.

46. As during the course of hearing certain allegations have been made by IFCI's counsel that the minutes of the board meetings of TFCI do not correctly reflect as to what transpired in the said meetings and removal of CMD in the EOGM scheduled for 18th May, 2011 is a virtual certainty, I appoint Mr. Justice R.C. Chopra, a retired judge of this Court as Chairman of the Board of TFCI till the term of present CMD expires, that means, 19th January, 2012 or till earlier determined by CLB. The Chairman would attend and chair the board meetings of TFCI, but would not vote. The minutes of said board meetings would be prepared and circulated under the supervision of Mr. Justice R.C. Chopra. Justice Chopra shall be entitled to a fee of Rs. 40,000/- for every board meeting that he chairs and attends. Fees will be paid by TFCI.

47. However, before I pass the final directions, I must deal with Mr. Mata's objection with regard to this Court's power to examine subsequent events and to mould the relief. I am of the opinion that this Court has extremely wide powers to mould the relief and to examine subsequent events. It is pertinent to mention that it is on IFCI's instance that subsequent event of appointment of 5 Directors by TFCI Board has been held to be invalid. Consequently, I am of the view that the IFCI cannot approbate or reprobate and this Court has the power to examine subsequent events. In any event, I am fortified in my opinion by the judgment of Supreme Court in *Pasupuleti Venkateswarlu v. The Motor & General Traders*, (1975) 1 SCC 770, wherein the Apex Court has held as under:-

4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed

(emphasis supplied)

48. The Apex Court has also upheld the aforesaid principle in *Rameshwar & Ors. v. Jot Ram & Anr.*, (1976) 1 SCC 194 and *Lekh Raj v. Muni Lal & Ors.*, (2001) 1 SCALE 650.

49. Sections 398 and 402 of the Act are relevant to determine the power of this Court. The said sections are reproduced hereinbelow:- 398. Application to [Tribunal] for relief in cases of mismanagement.

(1) Any members of a company who complain (a) that the affairs of the company [are being conducted in a manner prejudicial to public interest or] in a

manner prejudicial to the interest of the company; or

(b) that a material change not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors, [***] [or manager], [***] or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company [will be conducted in a manner prejudicial to the company [will be conducted in a manner prejudicial to the interests to public interest or] in a manner prejudicial to the interests of the company, may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the [Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the [Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

402. Powers of [Tribunal] on application under section 397 or 398-- Without prejudice to the generality of the powers of the [Tribunal] under section 397 or 398, any order under either section may provide for--

- (a) the regulation of the conduct of the company's affairs in future;
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;
- (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
- (d) the termination, selling aside or modification of any agreement, howsoever arrived at, between the company on the one hand; and any of the following

persons, on the other, namely: -

(i) the managing director,

(ii) any other director,

[***]

(v) the manager, upon such terms and conditions as may, in the opinion of the [Tribunal], be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the

application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(g) any other matter for which in the opinion of the [Tribunal] it is just and equitable that provision should be made.

50. In fact, the Supreme Court in *Needle Industries (India) Ltd. & Ors. v. Needle Industries Newey (India) Holdings Ltd. & Ors.* reported in AIR 1981 SC 1298 held as under:-

172. Even though the company petition fails and the appeals succeed on the finding that the Holding Company has failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been if the meeting of 2nd May were held in accordance with law (emphasis

supplied)

51. The Bombay High Court in *Bennet Coleman and Co. vs. Union of India and Ors.*, 1997 Vol. 47 Company Cases 92 has, after referring to the entire scheme of the Act, held as under:-

Further, an analysis of the sections contained in Chapter VI of Part VI of the Act will also indicate that the powers of the court under section 397 or 398 read with section 402 cannot be read as being subject to the other provisions contained in sections dealing with usual corporate management of a company in normal circumstances . Moreover, the topics or subjects dealt with by sections 397 and 398 are such that it becomes impossible to read any such restriction or limitation on the powers of the court acting under section 402. . Similarly, under section 398 read with section 402 power has been conferred upon the court "to make such orders as it thinks fit" if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change has taken place in the management or control of the company by reason of which it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, "with a view to bringing to an end or preventing the matters complained of or apprehended". Both the wide nature of the power conferred on the court and the object or object sought to be achieved by the exercise of such power are clearly indicated in sections 397 and 398. Without prejudice to the generality of the powers conferred on the court under these sections, section 402 proceeds to indicate what type of orders the court could pass and clauses (a) to (g) are clearly illustrative and not exhaustive of the type of such orders We are, therefore, unable to accept Mr. Sen's contention that the court's powers under section 398 read with section 402 should be read as subject to the other provision of the Act dealing with normal corporate management or that the court's orders and directions issued thereunder must be in consonance with the other provisions of the Act.

In other words, instead of destroying the corporate existence of a company the court has been enabled to continue its corporate existence by passing such orders as it thinks fit in order to achieve the objective of removing the oppression to any member or members of a company or to prevent the company's affairs from being conducted in a manner prejudicial to public interest the court must have the power to supplant the entire corporate management, or rather corporate mismanagement by resorting to non-corporate management which may take the form of appointing an administrator or a special officer or a committee of advisers, etc., who could be in charge of the affairs of the company. If the court were to have no such power the very object of the section would be defeated

XXXX XXXX XXXX XXXX

Having regard to the above discussion, we are clearly of the view that the court had jurisdiction to reconstitute the board in the manner done in this case and such board is not violative of section 255 of the Companies Act and we are also of the further view that the learned judge had ample powers to alter the original article 95 of respondent No. 1- company in the manner done by him while acting under section 398 read with section 402 of the Act.

(emphasis supplied)

52. In *Sangramsinh P. Gaekwad and Ors. vs. Shantadevi P. Gaekwad & Ors.*, 2005 Vol. 123 Company Cases 566, the Supreme Court has held that Section 402 of the Act provides for reliefs which may be granted without prejudice to the generality of the powers of the Court under such provisions.

53. In *Manish Mohan Sharma and Ors. vs. Ram Bahadur Thakur Ltd. and Ors.*, (2006) 4 SCC 416, the Supreme Court has held that the powers under Section 402 of the Act are residuary in nature and in addition to the powers available under Sections 397(2) and 398(2) of the Act which permit the CLB and this Court in appeal to make such order as it thinks fit with a view to bringing an end to the matters complained of under Section 397(1) of the Act and with a view to bring to an end or prevent the matters complained or apprehended under

Section 398(1) of the Act.

54. In fact, in *M.S.D.C. Radharamanan vs. M.S.D. Chandrasekara Raja and Another*, (2008) 6 SCC 750 the Apex Court specifically rejected the submission that the CLB was not justified in issuing direction to the petitioner to purchase the shares of the respondent under Section 402 of the Act despite arriving at a finding of fact that no act of oppression had been committed by the appellant. The relevant portion of the said judgment is reproduced hereinbelow:-

15. Ordinarily, therefore, in a case where a case of oppression has been made a ground for the purpose of invoking the jurisdiction of the Board in terms of Sections 397 and 398 of the Act, a finding of fact to that effect would be necessary to be arrived at. But, the jurisdiction of the Company Law Board to pass any other or further order in the interest of the company, if it is of the opinion, that the same would protect the interest of the company, it would not be powerless. The jurisdiction of the Company Law Board in that regard must be held to be existing having regard to the aforementioned provisions.

xxx xxx xxx

17. When there are two Directors, non-cooperation by one of them would result in a stalemate and in that view of the matter the Company Law Board and the High Court have rightly exercised their jurisdiction.

xxx xxx xxx

22 ..The Company Law Board may not shut its doors only on sheer technicality even if it is found as of fact that unless the jurisdiction under Section 402 of the Act is exercised, there will be a complete mismanagement in regard to the affairs of the company.

23. Sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. If the consequences of refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, would still the Company Law Board be powerless to pass appropriate orders is the question. If a literal interpretation to the provisions of

Section 397 or 398 is taken recourse to, may be that would be the consequence. But jurisdiction of the Company Law Board having been couched in wide terms and as diverse reliefs can be granted by it to keep the company functioning, is it not desirable to pass an order which for all intent and purport would be beneficial to the company itself and the majority of the members? A court of law can hardly satisfy all the litigants before it. This, however, by itself would not mean that the Company Law Board would refuse to exercise its jurisdiction, although the statute confers such a power on it.

(emphasis supplied)

55. In view of the aforesaid, it is apparent that this Court has wide powers to do complete justice and mould the relief.

56. Consequently, the present petition is disposed of with the following directions:-

A) The impugned order dated 22nd March, 2011 passed by the CLB is hereby set aside.

B) The requisition dated 26th November, 2010 and EOGM dated 17th January, 2011 are held to be legal and valid.

C) Appointment of five Directors by TFCI's Board on 22nd March, 2011 is set aside.

D) EOGM scheduled for 18th May, 2011 is allowed to be held on the said date but if resolution removing the three Directors including CMD, TFCI is passed therein, the same shall not be given effect to till permission of CLB is obtained by IFCI by filing an application in Company Petition No. 124(ND) of 2010.

E) Mr. Justice R.C. Chopra, a retired Judge of this Court is appointed as Chairman of the Board of TFCI. He shall only attend and chair board meetings of TFCI till the term of the present CMD expires, that means, till 19th January, 2012 or if so earlier determined by the CLB.

57. With the aforesaid directions, the present appeal and all pending applications are disposed of, but without any order as to costs.

