

(2009) 11 MAD CK 0026

In the Madras High Court

Case No : Application No. 2954 of 2008 in C.S. No. 481 of 2008

B. Ramachandra Adityan

APPELLANT

Vs

Tamilnadu Mercantile Bank Shareholders Welfare Association
and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Banking Regulation Act, 1949 — Section 10A, 10A(2), 10B, 11, 12(2)
Companies (Court) Rules, 1959 — Rule 89
Companies Act, 1913 — Section 79
Companies Act, 1956 — Section 136, 149, 165, 166(1), 176
Constitution of India, 1950 — Article 300A
Contract Act, 1872 — Section 203, 204, 206, 31, 56
Income Tax Act, 1961 — Section 92A
Industrial Disputes Act, 1947 — Section 11
Reserve Bank of India Act, 1934 — Section 2, 3, 3(2), 7, 7(2)

Citation : (2010) 1 CompLJ 515 : (2010) 10 SCL 333

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The Tamilnad Mercantile Bank Limited is a Banking Company incorporated originally in the year 1921, under the

name Nadar Bank Limited, under the Indian Companies Act 1913. It was re-christened to its present name, in the year 1962. The paid up share

capital of the Company is Rs. 28,44,540/- divided into 2,84,454 equity shares of Rs. 10/- each. As per the Memorandum and Articles of

Association of the Company, it was formed for the purpose of fostering and developing the resources of the Nadar Community and hence the

majority of the shares were held by the members of the community from Tuticorin, Sivakasi and Virudhunagar.

2. In the year 1994, seven different Companies constituting a group known as

ESSAR Group of Companies, purchased 1,91,455 shares from about 229 individual shareholders. The shares purchased by this group, worked out to about 67% of the total paid up capital of the Bank. When the transferees filed applications for effecting the transfers in the Register of Members, the Board of Directors rejected them, by a resolution dated 6-2-1995.

3. Aggrieved by the resolution of the Board, the transferee Companies filed company petitions in C.P. No. 7 to 13 of 1995 on the file of the Southern Regional Bench of the Company Law Board. The Bank also filed petitions in C.P. No. 30 and 31 of 1995, u/s 250 of the Companies Act, 1956 for an investigation into the ownership of the shares sought to be transferred. Another petition was filed by some of the Directors in C.P. No. 39 of 1995 u/s 409 of the Act.

4. All these petitions were disposed of by the Company Law Board by various orders, the effect of which was, that the refusal to effect the transfers was held to be illegal. Consequently, a direction was issued to the Bank to accept the transfers and then seek acknowledgement from the Reserve Bank of India.

5. In the meantime, some of the transferors attempted to revoke the power of attorney, by which the share transfer was sought to be effected. This led to the Transferee Companies filing a suit in C.S. No. 291 of 1995 on the file of this Court. A similar suit was also filed on the file of the Principal District Munsif Court, Tuticorin.

6. Pursuant to the order of the Company Law Board, the Board of Directors decided to seek acknowledgment from the Reserve Bank of India, for the transfer of the shares in favour of the ESSAR Group of Companies. Accordingly, the Bank sent a letter to the RBI dated 2-7-1996. But the Reserve Bank of India, by letter dated 14-10-1996 refused to grant acknowledgment on the ground that it is their policy to avoid a close link between Banking Companies and Industrial houses. Consequently the Board of Directors passed a resolution on 25.10.1996 rejecting the request for transfer of shares.

7. In the meantime, the shareholding in six Transferee Companies constituting the ESSAR Group, changed hands and another Group of

Companies known as Sterling Group of Companies claimed to have gained control over those Companies. Since the question of grant of

acknowledgment by the Reserve Bank of India in favour of Sterling Group of Companies was also a moot question and also since the members of

the community decided to retrieve the shares, a Society of Nadars was floated under the name Nadar Mahajana Bank Share Investors Forum.

This forum entered into a Memorandum of Understanding on 24.06.1999 with those seven Transferee Companies, for the repurchase of the entire

set of shares sold to them.

8. Due to the legal imbroglio created by the transfer of shares and the events that followed, no Annual General Meeting of the Tamilnad Mercantile

Bank Ltd., could be held for several years, leading to an impasse. Therefore the Central Government itself filed a Company Petition in C.P. No.

15 of 2003 on the file of the Company Law Board u/s 408 of the Companies Act. In the meantime, a compromise was reached between different

groups on 31-7-2003 for the transfer of about 96,000 shares (out of the 1,91,455 disputed shares) in favour of individual investors belonging the

the Nadar community. Therefore, the Bank decided to seek acknowledgement from the RBI for the transfer of the balance of shares and to

convene all the Annual General Meetings for the years 1996-96 to 2002-03.

9. However, a new problem cropped up, with the Board of Directors suspending the Chairman of the Bank. On being informed of the same, the

Company Law Board passed orders on 19-12-2003 reinstating the Chairman and suspending all the other Directors. The Company Law Board

also directed that the Bank would function under the supervision of a committee comprising of 2 nominees of the RBI and 2 nominees of the

Central Government. The decision of the Company Law Board was to a great extent upheld by this Court in an appeal in C.M.A. No. 3379 of

2003.

10. Subsequently seven Annual General Meetings were held en bloc on 12.03.2004 under the chairmanship of a retired Judge of this Court Mr.

Justice S. Ramalingam. The right of the Power of Attorney agents to appoint proxies was questioned in that Meeting, but the Chairman allowed the

proxies.

11. Thereafter, the 82nd Annual General Meeting was convened to be held on

24.12.2004. After the notice for the Annual General Meeting was circulated, an outfit known as Tamilnadu Mercantile Bank Shareholders' Association filed a suit in C.S. No. 981 of 2004 on the file of this Court, on 21.12.2004 praying for a permanent injunction restraining the defendants from preventing the members whose names are registered in the Register of Members of Tamil Nadu Mercantile Bank Limited or their duly authorised proxies from participating and exercising their voting rights in the forthcoming Annual General Meeting on 24.12.2004 or any subsequent date. The main contention of the Plaintiff in the suit was that the deeds of Power of Attorney executed by the shareholders in favour of the nominees of the purchasers were invalid. Pending suit, the Plaintiff sought an interim injunction. On 23.12.2004, an interim order was passed in the application for injunction, directing the Chairman of the Meeting to act in terms of Article 85 of the Articles of Association of the Company, whenever the proxies executed by the Power Agents were filed.

12. On 24.12.2004 the 82nd Annual General Meeting was held. The proxies submitted by the Power of Attorney holders in respect of the disputed shares, were accepted and they were permitted to vote. Therefore, a Contempt Petition was filed in Contempt Petition No. 28 of 2005 alleging violation of the interim order dated 23.12.2004 and seeking to set aside the resolutions passed and the elections held at the 82nd Annual General Meeting. Though the Single Judge held that there was a violation of the previous order and consequently declared the elections held on 24.12.2004 to be invalid, the Division Bench reversed the said decision on 20.03.2006, forcing the Plaintiff in C.S. No. 981 of 2004 to file a SLP before the Supreme Court. By an order dated 12.07.2006, the Supreme Court upheld the order of the Division Bench, but directed the suit to be disposed of at an early date.

13. By the time the Civil Appeal was disposed of by the Supreme Court on 12.07.2006, the 83rd Annual General Meeting was already overdue. Therefore the Board of Directors resolved to hold the Meeting on 27.07.2006 and issued notices containing 6 items in the Agenda. Items 3 to 5 of the Agenda related to retirement of the Directors, Re-election and Election.

14. The moment notices were issued convening the 83rd Annual General Meeting on 27.07.1006, Applications in O.A. Nos. 597 to 599 of 2006

were moved by the plaintiff in C.S. No. 981 of 2004 seeking interim orders of injunction. On 26.07.2006 S.R. Singaravelu, J. (as he then was)

passed an order in those applications, permitting the 83rd Annual General Meeting to go on, in respect of Agenda items 1, 2 and 6, but directing

the postponement of Agenda items 3 to 5, which related to election of Directors.

15. In the meantime, two Directors by name M.G.M. Maran and B. Ramachandra Adityan (who are defendants 20 and 19 respectively in C.S.

No. 481 of 2008), entered into agreements with the Sterling Group. By that Agreement dated 10.03.2006, these two Directors were authorised to

identify buyers, to whom shares could be sold in consonance with the guidelines issued by the Reserve Bank of India and other applicable Laws.

In accordance with the said agreement, these 2 Directors (of whom one is the applicant herein) identified Resident Indian Investors, who agreed

buy small percentage of shares, aggregating to 10%. They also identified 9 Non Resident Indians and Foreign Institutional buyers, each of whom

agreed to buy less than 5% shares, aggregating to 23.6% of the shares.

16. After identification of the buyers, these two Directors wrote a letter dated 04.12.2006 to the Executive Director of the Reserve Bank of India

seeking permission for the acquisition of shares by NRIs and Foreign Institutional Investors (FIIs). In response to the said letter, the Foreign

Exchange Department of the Reserve Bank of India sent a communication dated 30.03.2007 to the Chairman of the Tamilnadu Mercantile Bank

communicating their no objection for the transfer of 53,611 shares to 8 NRI/FIIs, named in the communication itself. It was stated in the said letter

dated 30.03.2007 of the Reserve Bank of India that the Reserve Bank of India had no objection for the sale of those shares ""from FEMA angle"".

17. After the receipt of the said letter dated 30.03.2007 from the Foreign Exchange Department of the Reserve Bank of India, the Board of

Directors of Tamilnad Mercantile Bank passed a resolution on 13.05.2007 approving the transfer of 95,418 shares in favour of persons identified

by these 2 Directors, including the applicant herein. Interestingly, the applicant was a member of the Board which passed the said resolution.

18. The moment the share transfers were approved by the Board, a fresh suit in C.S. No. 491 of 2007 came to be filed on the file of this Court by

2 self styled entities by name-

(i) Nadar Mahajana Sangam and

(ii) Nadar Mahajana Share Investors Forum.

While the first Plaintiff was stated to be a Society, the second Plaintiff was stated to be a Trust. The prayer in C.S. No. 491 of 2007 was (i) to

declare the shares transferred by the defendants 1, 5 to 7 and 20 to 22 in favour of the defendants 2, 3, 8 to 19 and 23 to 29 as null and void and

not binding on the plaintiffs; (ii) to restrain the defendants by a decree of permanent injunction from transferring the shares of the fourth defendant

namely Tamil Nadu Mercantile Bank to any third parties; and (iii) to restrain the defendants 2, 3, 8 to 19 and 23 to 29 by a decree of permanent

injunction from claiming any rights under the shares transferred to them by the defendants 1, 5 to 7 and 20 to 22. Pending suit, the Plaintiffs

obtained an interim order of injunction, but the same was suspended on appeal.

19. However the Plaintiffs in C.S. No. 491 of 2007 subsequently entered into a compromise with some of the Defendants on 04.02.2008 and

attempted to get the compromise recorded. But it was opposed by the applicant herein, who was the second defendant in that suit and hence the

Plaintiffs made an endorsement abandoning their claim as against Defendants 12 to 19. Consequently, C.S. No. 491 of 2007 was dismissed as

against defendants 12 to 19 therein.

20. At this stage, taking a sudden U-turn, the Board of Directors of TMB passed a resolution on 17-3-2008 restricting the voting rights of the

Foreign Investors to 10%, in terms of Section 12(2) of the Banking Regulation Act. The Resolution was forwarded to the Reserve Bank of India

on 20.03.2008. This resolution ran contrary to the earlier resolution dated 13-5-2007.

21. In the meantime, the Bank took out an application in A. No. 23 of 2007 seeking suitable directions for holding the 84th Annual General

Meeting. In that application, an order was passed by me on 27.03.2008 appointing Justice R. Balasubramaniam (Retired) as the Chairman for

holding the 83rd, 84th and 85th Annual General Meetings and also extending the time for holding the meetings upto 06.06.2008. Immediately after

the said order, the TMB also communicated to the Foreign Investors by a letter dated 23.04.2008 that their voting rights will be restricted to 10%,

by virtue of the resolution of the Board of Directors dated 17.03.2008.

22. On coming to know of these developments and of the proposal to convene the meetings on 5-6-2008, another Association of shareholders by name Tamilnadu Mercantile Bank Shareholders Welfare Association along with a person by name G.K. Chezhan jumped into the fray and filed a fresh suit in C.S. No. 481 of 2008. The suit was actually filed on 28.04.2008 on the file of this Court. The prayer in the suit was for a declaration that the transfer of 95,418 shares approved by the Board of Directors in the Meeting held on 13.05.2007 was null and void and for various consequential reliefs of permanent and mandatory injunction. Along with the suit, the Plaintiffs in C.S. No. 481 of 2008 also moved several applications for interim injunction in O.S. Nos. 534 to 536 of 2008. These applications were moved on 29.04.2008, which happened to be the date immediately preceding the date of closure of this Court for Summer recess. When these applications were moved for ad interim exparte orders, it was brought to my notice by the learned Counsel appearing for the Bank that the Chairman appointed by the order dated 27.03.2008 in A. No. 23 of 2007 in C.S. No. 981 of 2004 had fixed 05.06.2008 as the date for holding 83rd, 84th and 85th AGMs. Therefore I passed an order on 29.04.2008 in those applications permitting the Annual General Meetings as well as the proposed Elections to go on, as scheduled on 05.06.2008. However it was made clear that any resolution passed in the Annual General Meetings will not be implemented until further orders of this Court.

23. Since the Plaintiffs could not achieve their objective of stalling the meetings, they moved appeals in O.S.A. Nos. 192 to 194 of 2008 before the Division Bench in the First Vacation Court, on 06.05.2008. But the Division Bench refused to entertain the appeals. The Special Leave Petitions filed by the plaintiffs in S.L.P.(C). Nos. 13064-13066 of 2008 were also subsequently dismissed by the Supreme Court on 14.07.2008, as having become in fructuous.

24. Therefore the 83rd, 84th and 85th AGMs were held together on 05.06.2008 under the Chairmanship of Justice Mr. R. Balasubramanian (Retired). Several disputes were raised in the Meeting with regard to the voting rights of the purchasers of the shares. There were also disputes with regard to the proxies. Interestingly some of the disputes were between the

shareholders and proxies and the others were between the proxies

appointed by the same set of shareholders, in favour of different persons. The Chairman therefore evolved a set of formula, with the assistance of

two Experts appointed by him and submitted sealed covers containing the results of the Election.

25. After the Court re-opened after summer recess on 06.06.2008, the Applications in O.A. Nos. 534 to 536 of 2008 in C.S. No. 481 of 2008

were listed and the learned Counsel appearing for the TMB submitted the sealed covers containing the Report of the Chairman of the Meeting.

The sealed covers were then opened by me in the open Court, in the presence of all the learned Counsel, on the same day viz., 09.06.2008. The

Report of the Chairman contained three different sets of results that were possible of production. The projection of the results under three different possibilities were,

(i) the possible outcome if the holders of all the disputed shares or their proxies, were permitted to vote fully.

(ii) the possible outcome if the voting rights of the holders of the disputed shares were restricted to 10%

(iii) the possible outcome if the holders of the disputed shares were denied voting rights in full

I read out in open Court on 09.06.2008, the results of the Elections held in the 83rd, 84th and 85th AGMs, under all the above three possibilities

and directed the learned Counsel appearing for the Bank to distribute copies of the Chairman's Report to the learned Counsel appearing for all the

parties. Since the results were declared in the Open Court and the parties required time to go through the Report of the Chairman and make their

submissions, the hearings of the Applications O.A. Nos. 534 to 536 of 2008 were adjourned. At that time, the learned Counsel for the Bank

brought to my notice that a veiled threat was made by one of the Plaintiffs, in the Meeting held on 05.06.2008 that the very convening of the

Meeting was contemptuous, in view of the earlier orders dated 26.07.2006. Therefore the learned Counsel for the Bank expressed an

apprehension that there was a possibility of the Plaintiffs moving a Contempt Petition, so as to ensure that the further progress in these proceedings

are stalled. But the learned senior counsel who appeared for the Plaintiffs in C.S.

No. 481 of 2008 gave an assurance that the Plaintiffs would not resort to any such tactics.

26. But unfortunately when the Applications for injunction again came up for hearing on 23.06.2008, I was informed that contrary to the assurance

made by the learned senior counsel for the Plaintiffs on 9.6.2008, a Contempt Application was moved by the first Plaintiff and an interim order of

injunction was also obtained on 12.06.2008 in a sub application, from another learned Judge of this Court. In view of this revelation, the learned

Counsel on record as well as the learned senior counsel appearing for the Plaintiffs withdrew their appearance at the time of hearing on

23.06.2008. However the President of the first Plaintiff Association was present in Court on 23.06.2008. Therefore I questioned him and found

that the Contempt Petition was not only moved contrary to the assurance given to this Court, but also suppressing several orders of this Court.

Therefore I passed an order on 23.06.2008 dismissing all the applications for interim injunction in O.A. Nos. 534 to 536 of 2008 in C.S. No. 481

of 2008. But it was made clear that since the erstwhile Board had undergone a change in the AGM held on 5.6.2008, the Managing Director and

the two Nominee Directors of the Reserve Bank of India alone should continue on the Board till the sub application in the contempt application

filed by the plaintiff in C.S. No. 481/2008 was disposed of.

27. As against the order passed on 23.6.2008, dismissing their injunction applications, the plaintiffs filed appeals in O.S.A. Nos. 274 to 277 of

2008. These appeals were dismissed by the Division Bench with costs of Rs. 25,000/-, by an order dated 4.9.2008. The Special Leave Petitions

arising out of the judgment of the Division Bench, were also dismissed by the Supreme Court in S.L.P.(C) Nos. 26996-26999 of 2008 by order

dated 21.11.2008.

28. As against the initiation of contempt proceedings by the plaintiffs against the Managing Director of the Bank, two third parties, who had

secured sufficient votes in the elections held on 5.6.2008 to be declared elected, filed contempt appeals. Since the very maintainability of these

appeals were questioned, a Division Bench of this Court considered the issue in detail and passed an order dated 29.7.2008, holding the appeals

to be maintainable. The plaintiffs filed Special Leave Petitions against these

orders of the Division Bench, but the Supreme Court dismissed the same with heavy costs {reported in Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar and Others, }. Ultimately left with no alternative, the first plaintiff withdrew the contempt petition.

29. Even while the above proceedings were going on, the 19th defendant in C.S. No. 481 of 2008, who is the applicant herein, filed objections to

the report of the Chairman of the 83rd, 84th and 85th Annual General Meetings held on 5.6.2008. Apart from filing objections, the 19th defendant

also filed the present application A. No. 2954 of 2008 praying for a direction to exclude the shares detailed in Schedule-A to the Judge's

summons and to declare the results of the 83rd and 85th Annual General Meetings. It is on account of the pendency of this application that the

declaration of results of the 83rd and 85th Annual General Meetings is withheld for the past 1-1/2 years from 5.6.2008. Therefore this application

was taken up for hearing.

30. I have heard Mr. C. Harikrishnan, learned Senior Counsel appearing for the applicant/19th defendant, Mr. V. Narayanan, learned Counsel for

the 1st respondent/1st plaintiff, Mr. Palanirajan, learned Counsel for the 2nd respondent/2nd plaintiff, Mr. C. Mohan, learned Counsel for the 3rd

respondent (RBI), Mr. A.L. Somayyaji, learned Senior Counsel appearing for the 4th respondent (Tamil Nadu Mercantile Bank), Mr. R. Murari,

learned Counsel appearing for the 32nd respondent, Mr. M.S. Krishnan, learned Senior Counsel appearing for the respondents 13 to 16

(defendants 11 to 14), Mr. Arvind P. Datar, learned Senior Counsel appearing for respondents 12 and 20 (defendants 10 and 18), Mr.

Vedantham Srinivasan, learned Counsel appearing for a newly impleaded defendant in the suit, Mr. R. Thiagarajan, learned Senior Counsel

appearing for an impleaded party and Mr. Vijay Narayan, learned Senior Counsel appearing for the 21st respondent (defendant 20).

31. At the outset, it is to be noted that the prayer in this application A. No. 2954/2008, is for the declaration of the results of the 83rd and 85th

Annual General Meetings held on 5.6.2008 under the orders of this Court, after excluding the votes tendered by and on behalf of (i) defendants 10

to 18 totalling to 70,906 shares (ii) the 20th defendant and his father M.G. Muthu totalling to 13289 shares (iii) one P.S. Sathyaseelan in respect of

2,386 shares (iv) one C.S. Rajendran in respect of 3,220 shares and (v) P.S. Sathyaseelan and C.S. Rajendran jointly in respect of 17,780

shares. In other words, the applicant herein wants the declaration of the results, after excluding the votes in respect of above 1,07,581 shares.

32. The contentions of Mr. C. Harikrishnan, learned Senior Counsel appearing for the applicant/19th defendant, are as follows:

(a) The defendants 10 to 18, who, together purchased 70,906 shares, were found to have ""acted in concert"" and actually constituted a ""group"".

Therefore the Board of Directors of the Bank resolved on 26.5.2008, to keep in abeyance all the rights attached to these equity shares. The Board

of Directors had necessary powers to pass such a resolution, in view of Section 291 of the Companies Act, 1956. Though Section 9 of the

Companies Act confers overriding effect for the provisions of the Act, both upon the memorandum and articles of the company and upon any

resolution passed and though Section 87(1) of the Act confers a right to vote upon every member of a company, in proportion to his share of the

paid-up capital of the company, the learned Senior Counsel contended that by virtue of Section 616(b), the provisions of the Companies Act

would apply to banking companies only in so far as they are not inconsistent with the provisions of the Banking Companies Act. Therefore, it is the

contention of the learned Senior Counsel that even the provisions of Section 182 of the Companies Act declaring the restrictions on the exercise of

voting rights as void and directing the public companies not to prohibit any member from exercising his voting right, are subject to the provisions of

Section 12(2) of the Banking Regulation Act. Since Section 12(2) of the Banking Regulation Act, 1949 restricts the voting rights of a person

holding shares in a banking company, to 10% of the total voting rights of all the shareholders of such a company, and also since in exercise of the

power conferred by Section 35A of the Banking Regulation Act, the Reserve Bank of India has issued directions requiring ""acknowledgement

(meaning approval) for the transfer of shares to a group, the learned Senior Counsel contended that there was a bar for these defendants 10 to 18,

who constituted a group, to exercise voting rights in the meetings. By a letter dated 30.3.2007, the Reserve Bank of India conveyed no objection

for the transfer of about 53,611 shares by way of sale, only from the point of view of the Foreign Exchange Management Act, 1999. Even the

subsequent letter dated 30.5.2008 issued by the Reserve Bank of India merely recorded the fact that their earlier letter dated 30.3.2007 was on

the basis of the information furnished by the Bank at that point of time. However, in pursuance of a direction issued by the High Court of Bombay

in a writ petition filed by one of the shareholders by name Kanagaraj, the Executive Director of the Reserve Bank of India considered the issue in

detail and passed an order dated 12.10.2009, calling upon the Bank to file necessary applications for considering the question of grant of

acknowledgement"". Therefore according to the learned Senior Counsel for the applicant, these defendants were not entitled to vote, so long as the

transfer of shares had not received the acknowledgement of the Reserve Bank of India.

(b) In so far as Mr. M.G.M. Maran (20th defendant) and his father M.G. Muthu were concerned, it is the contention of the applicant that Mr.

M.G. Muthu was seriously ill and was in a hospital in Singapore for three months prior to the meeting held on 5.6.2008. Mr. M.G.M. Maran was

also not in the country. Therefore, the proxies allegedly executed by them in respect of their 13,289 shares ought to have been rejected. It is also

the contention of the applicant that the 20th defendant had received a sum of Rs. 31 crores for the transfer of the shares in favour of the 10th

defendant at a time when he was the Chairman of the Bank. Therefore, the votes polled by them in the election, were liable to be rejected.

(c) The votes polled by P.S. Sathyaseelan and C.S. Rajendran, both on their own behalf and as proxies for others, were also liable for rejection,

since they entered into a compromise with some of the transferees and attempted to withdraw the suits instituted by them in a representative

capacity, in C.S. Nos. 491 of 2007 and 1099 of 2007. Therefore, according to the applicant these persons had also become part of the ""group

of transferees and hence their votes were also liable to be rejected.

(d) In the meeting held on 5.6.2008, the Chairman appointed by this Court rejected the proxies representing 24,717 shares, from out of the

proxies lodged by the applicant in respect of 80,369 shares. The reason stated by the Chairman for the rejection of these proxies was that if two

proxies had been executed on the same day by the same person in favour of different individuals, both are liable to be rejected, though on

principle, a proxy executed later in point of time would prevail over the one executed earlier.

(e) It is also contended by the learned Senior Counsel for the applicant that there was no point, at this distance of time, in declaring the results of

the 83rd Annual General Meeting, since the tenure of the Directors to be elected in the 83rd meeting had already expired. The last dates for

holding the 83rd, 84th and 85th meetings were 31.3.2005, 31.3.2006 and 31.3.2007 respectively. Therefore, the learned Senior Counsel

contended that by now the Directors elected in the 83rd meeting had already crossed the date of retirement.

(f) The learned Senior Counsel for the applicant also submitted that the election held for the appointment of 7 Directors in the 85th AGM, was

contrary to the agenda for the meeting. According to the learned Senior Counsel, there was no indication in the notice for the 85th AGM that an

election was proposed to be held for the appointment of 7 Directors. The absence of an indication in the notice, disabled many aspiring candidates

from contesting. Therefore, the learned Senior Counsel submitted that the election was improper.

33. The applicant in A. No. 2954 of 2008 also filed an application in A. No. 4278 of 2009, seeking permission to file an additional affidavit so that

the averments contained therein could also be taken into account while considering the application A. No. 2954 of 2008. This application A. No.

4278 of 2009 was allowed on 14.10.2009 and hence the affidavit filed therein, has also to be taken as part of the pleadings in A. No. 2954 of

2008.

34. In the affidavit A. No. 4278 of 2009, the applicant has raised the following contentions:

(a) In the 82nd AGM held on 24.12.2004, elections were held to fill up 3 vacancies of Directors, which arose due to the retirement by rotation of

3 existing Directors. Subsequently, the 83rd AGM was held on 27.7.2006, but only in respect of Agenda item Nos. 1, 2 and 6 and not in respect

of the other items relating to the election of Directors. The Agenda relating to election of Directors got postponed by virtue of the orders passed by

S.R. Singaravelu, J., on 26.7.2006. Therefore, the postponed items viz., the items relating to election of Directors, was taken up in the 83rd AGM

convened on 5.6.2008 under orders of this Court along with the agenda for the 84th and 85th AGMs. Article 97 of the Articles of Association,

which is in tune with Section 255 of the Companies Act, 1956, makes 1/3rd of the Directors liable for retirement by rotation. Since the 82nd,

83rd, 84th and 85th meetings related to the years 2003-2004, 2004-2005, 2005-2006 and 2006-2007 respectively, any person elected in the

83rd AGM cannot hold office beyond the 86th AGM. Since 86th AGM relates to the year 2007-2008, the AGM should have been convened

either before 30.9.2008 or at least before 31.12.2008 with the permission of the Registrar. A Director who is liable to retire, cannot continue in

office, merely because of non-convening of the AGMs.

(b) 4 Directors by name R. Kannan Adityan, B. Ramachandra Adityan (applicant herein), Selva Ganesh and M.G.M. Maran, who were liable to

retire by rotation in the 84th AGM, ceased to be Directors on 5.5.2007 as the 84th AGM was not held on time. They were co-opted as

Additional Directors on 5.5.2007 and hence they could at best hold office till the 85th AGM. Consequently, there were 4 vacancies even in the

84th AGM, which was not notified by the Chairman.

(c) In the notice for the 85th AGM, only 3 vacancies were notified. Therefore the declaration of elections held by the Chairman, could only be for

3 vacancies and not otherwise, since under Article 71, no business other than that mentioned in the notice could be transacted.

(d) The net result of the above contentions is that while no purpose will be served in declaring the results of the 83rd AGM, the declaration of

results in respect of the 85th AGM could be only in respect of 3 vacancies alone.

35. The only other person supporting the applicant herein and in fact going one step ahead seeking to scrap the votes polled by the transferees, is

the 12th defendant in C.S. No. 981 of 2004. Therefore before adverting to the contentions of others, I shall take them up. Appearing for the 12th

defendant in C.S. No. 981 of 2004 (by name V. Bhaskaran), Mr. Vedantham Srinivasan, learned Counsel contended (i) that in view of Section 2

of the Banking Regulation Act, which is a special enactment, the provisions of the Companies Act, 1956, will have to pave way for the same; (ii)

that what the purchasers have done in this case, is to achieve indirectly, what could not have been done directly and hence the transfers made

without acknowledgement from RBI, are illegal; and (iii) that it is a fundamental principle of law that no one can take advantage of his own wrong

and that therefore, persons who constituted a group and purchased the shares by adopting a clever device, cannot now seek any protection.

36. Mr. AL. Somayaji, learned Senior Counsel appearing for the Tamil Nad Mercantile Bank, made it clear, even at the outset, that the

management of the Bank, though a victim of this never ending litigation, would go by the statutory provisions and the directions issued by the

Reserve Bank of India. However the learned Senior Counsel brought to my notice an order passed on 12.10.2009 by the Executive Director of

the Reserve Bank of India. By the said order, the Executive Director had concluded that the defendants 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20,

25 and 31 and a few others, altogether holding 32.62% shares at present, had ""acted in concert"" and that therefore the RBI guidelines on

Acknowledgement of transfer/allotment of shares in Private Sector Banks issued on 3.2.2004 had to be applied. Even while holding so, the

Executive Director of RBI, had indicated in paragraph-20C of his order dated 12.10.2009 that the request made to him, not to take into account

the voting on 95,898 shares, in the elections held on 83rd, 84th and 85th AGMs, cannot be accepted, since the matter is sub-judice before this

Court. In such circumstances, the Executive Director issued a direction in para-21 of his order to the Tamil Nad Mercantile Bank to approach RBI

along with full details in the format enclosed, for the Acknowledgement of transfer of shares in favour of the aforesaid transferees.

37. Apart from bringing to my notice, the order passed by the Reserve Bank of India, Mr. AL. Somayaji, learned Senior Counsel for the Bank,

submitted the following, for my consideration:

(i) The Bank is now being managed only by 2 nominee Directors of the Reserve Bank of India and the Managing Director, who were authorised

by this Court only to carry on the day-to-day administration. Since a full fledged Board of Directors is not in place, policy decisions could not be

taken and the stress on the management is increasing day by day. A lot of vacancies have arisen in various cadres of employees, which could not

also be filled up.

(ii) All the decisions taken by the Chairman appointed by this Court, for the 83rd,

84th and 85th AGMs held on 5.6.2008, were the best in the situation on hand and could not be assailed. The decisions taken by the Chairman of an Annual General Meeting, ought not to be lightly interfered with, except on the grounds of fraud or misconduct.

(iii) The Chairman cannot be found fault with, for holding elections to 7 posts of Directors, since the notices for the 83rd, 84th and 85th AGMs were finalised by the Board of Directors of which, the applicant was one.

(iv) The contention that there was no point in declaring the results of the 83rd AGM, in view of the expiry of the term, may not be correct, since the time for holding the 86th AGM has been extended by this Court.

38. Mr. R. Thiagarajan, learned Senior Counsel appearing for one Mr. T. Rajakumar, who was impleaded as the 32nd defendant in the suit C.S.

No. 481 of 2008 (by virtue of the order passed in the impleading application A. No. 4277 of 2009), submitted that his client, was successful in the

election held on 5.6.2008. The Chairman appointed by this Court had indicated in his report, the possible outcome of the elections, under 3

different contingencies viz., (i) when all the votes polled by the disputed shareholders are taken into account, (ii) when the voting rights in respect of

the disputed shares are restricted to 10% and (iii) when all the votes polled by the disputed shareholders are discarded. Mr. T. Rajakumar,

impleaded as 32nd defendant, has been elected under all the 3 contingencies and hence the learned Senior Counsel submitted that the questions

raised in this application are of mere academic value and that they do not impeach the results of the election. Moreover, the learned Senior

Counsel also submitted that the applicant herein does not have either a moral or legal right to raise a dispute with regard to the validity of the

transfer of shares, since it was he who was instrumental, along with Mr. M.G.M. Maran (D20) in transferring most of these shares to some of the

defendants. The learned Senior Counsel also questioned the locus standi of the applicant to challenge the elections held on 5.6.2008, since he was

not a contestant. The applicant herein had already completed a tenure of 8 years and hence he could not even be a contestant and hence he cannot

challenge the election, when the contestants have not chosen to challenge the election. The learned Senior Counsel further submitted that the entire

controversy in the suit relates only to 95,418 shares and that even if the votes in

respect of these shares are totally excluded, his client gets elected.

Therefore, the learned Senior Counsel pleaded that the results should be declared.

39. Mr. R. Murari, learned Counsel appearing for the 31st defendant, took exceptions to the very maintainability of the application, on the ground

that the prayer in this application travelled beyond the scope of the suit. At any rate, a harmonious construction of Sections 87 and 616(b) of the

Companies Act, 1956 with Section 12(2) of the Banking Regulation Act, would show that there was no bar on transfer of shares. The learned

Counsel also requested me to look at the metamorphosis in the stand taken by the applicant herein as a member of the Board, from 13.5.2007 to

26.5.2008. In the meeting of the Board of Directors held on 13.5.2007, the transfer of these 95,418 disputed shares were approved by the Board

and the applicant herein was a party to the resolution. However, in the next meeting held on 17.3.2008, the Board of Directors resolved to restrict

the voting rights in respect of 70,906 shares purchased by some of these defendants, to 10%. This resolution was communicated after more than a

month, by a letter dated 23.4.2008. On 29.4.2008, the attempt made by the plaintiff in C.S. No. 481 of 2008, to stall the AGM failed and the

appeal arising therefrom, also failed on 6.5.2008. Thereafter, the Board passed a resolution on 26.5.2008, resolving to keep all the rights attached

to the disputed shares, including the voting rights at the 83rd, 84th and 85th AGMs, in abeyance. Thus, the Board of Directors, of which the

applicant was a member in 2007, changed its colours as a chameleon from time to time. After pointing out this change of mind on the part of the

Board, Mr. R. Murari, the learned Counsel submitted that the Chairman appointed by this Court took note of this fact before arriving at a decision

and hence the same cannot be assailed. The learned Counsel further submitted that even in the worst case scenario, the voting rights could be

restricted to 10% but not taken away completely. He also pointed out that the applicant and his nominees got elected earlier only with the proxies

allowed in respect of all the 95,418 disputed shares. The learned Counsel invited my attention to the decision of the Delhi High Court in *Swadeshi*

Polytex Limited 63 Comp. Cases 709, in support of the view taken by the Chairman of the meeting to reject both proxies when two proxies had

been executed on the same date. Moreover, the learned Counsel pointed out that out of a total number of 2,37,514 shares, the proxies invalidated

by the Chairman were only in respect of 4,701 shares and hence the results of the meeting need not be dumped.

40. Mr. M.S. Krishnan, learned Senior Counsel appearing for the defendants 11 to 14, took me through the profile of each of these defendants

and submitted that they had nothing in common and had nothing to do with each other. Unfortunately, when the applicant herein and the 20th

defendant floated a Forum for the purpose of retrieving the shares from the Essor Group and scouted for probable buyers, these defendants came

into contact with them and agreed to buy the shares. Though, according to the learned Senior Counsel, each of these defendants 11 to 14 had

nothing to do with each other, they just formulated a method by which the arrangement for the purchase of shares could be gone through. This

cannot be taken to amount to ""acting in concert"". The very same applicant and the 20th defendant did not think that these defendants constituted a

group, when they spotted these defendants, negotiated with them, made them agree to buy the shares and also wrote letters to RBI and went to

the extent of passing Board Resolutions. Therefore, the sudden volte face on the part of the applicant, according to the learned Senior Counsel,

should not be allowed, especially in view of the fact that the applicant himself has not made any specific averment as against these defendants at

any point of time. Moreover, it is the contention of the learned Senior Counsel that if more than two persons should be taken to be acting in

concert, merely because of the number of proxies delivered by them, the applicant would also get disqualified, since he himself lodged proxies in

respect of 80,369 shares. The learned Senior Counsel also relied upon certain decisions to highlight that the transfer of shares could not be

categorised as void transactions and that therefore, the question of curtailing their voting rights would not arise.

41. Mr. Arvind P. Datar, learned Senior Counsel for the defendants 10 and 18 (respondents 12 and 20), submitted (i) that the prayer in the

present application goes beyond the scope of the prayer in the suit; (ii) that the resolution passed by the Board of Directors on 26.5.2008, goes

contrary to the provisions of Section 291 of the Companies Act, 1956, since the voting rights of a shareholder cannot be curtailed either by the

Board or by the body of shareholders; (iii) that in any event, the order passed by the Executive Director of the Reserve Bank of India, on

12.10.2009, cannot relate back to the AGM held on 5.6.2008 and to the elections held thereat; and (iv) that the mala fides on the part of the

applicant in filing this application, is borne out the very letter of the applicant dated 2.12.2006.

42. Mr. Vijay Narayan, learned Senior Counsel appearing for the 20th defendant (21st respondent) invited my attention to the affidavit filed by the

21st respondent and submitted that though his father Mr. M.G. Muthu was ill and was taking treatment, he was in a position to execute proxies

and that the averment that they received a sum of Rs. 31 crores at Singapore, was false. In other words, it is the contention of the learned Senior

Counsel that the proxies lodged by him and his father, were true and valid and that the transfers effected are also legally valid.

43. Mr. V. Narayanan, learned Counsel appearing for the first plaintiff in the suit contended that the entire contract for the purchase of the shares,

was a contingent contract governed by Section 31 of the Contract Act. Its validity was contingent upon the Reserve Bank of India granting

acknowledgement. Since acknowledgement was not granted, the transaction failed and got frustrated in terms of Section 56 of the Contracts Act.

Having taken such a stand, the learned Counsel for the plaintiff also submitted that the present application A. No. 2954 of 2008 is not at all

maintainable, since it went beyond the scope of the suit. Therefore, the learned Counsel wanted the suit to be taken up for trial and all these issues

decided at the time of trial in the light of the order passed by the Reserve Bank of India. It is also his contention that many of the contesting

respondents had not filed written statements in the suit and hence they should be construed as ex parte and cannot be allowed to advance

arguments in the application.

44. Mr. C. Mohan, learned Counsel appearing for the Reserve Bank of India, after taking me through the contents of the written statement filed by

the Reserve Bank of India and also the various guidelines issued by the RBI from time to time, in exercise of the power conferred by Section 35A

of the Banking Regulation Act, 1949, submitted that by the order dated 12.10.2009, the Executive Director has directed the Tamilnad Mercantile

Bank to submit proposals in the enclosed format for considering the question of grant of acknowledgement. This, according to the learned

Counsel, being a statutory requirement, should necessarily be complied with. Even while pointing out this stand of the RBI, the learned Counsel

submitted that from 9.6.2008, the Tamil Nad Mercantile Bank is carrying on its activities only with a Managing Director and two nominee

Directors of the RBI and that it is always the endeavour of RBI to ensure that a full compliment of Board of Directors take over the day-to-day

affairs. In the Notes of Submissions made by the learned Counsel for the RBI, it is stated that the participation of two nominee Directors in the

day-to-day affairs, involves a serious conflict of interest with the RBI and that it is for this reason that RBI had withdrawn most of its nominees

from various Banks. The learned Counsel also maintained that the clearance granted by the letter dated 30.3.2007, was only by the Foreign

Exchange Department, particularly from the point of view of Foreign Exchange Management Act, 1999 and that therefore the same cannot be

taken to be an acknowledgement.

45. I have carefully considered the submissions made by the counsel representing various parties. The contentions range between two extremes.

On the one extreme, is the contention that the entire election held on 5.6.2008 should be dumped. On the other extreme, is the contention that the

results of the election held on 5.6.2008, should be declared without any delay. In between these two extremes, lie the argument that since the

Chairman of the meeting provided the possible outcome under three different contingencies, the Court could declare the results under any one of

those contingencies.

46. Before determining whether the results are to be declared and if so, the formula to be adopted, let us first take a look at the report of the

Chairman of the meeting. Briefly stated, the report submitted by Justice R. Balasubramaniam (Retired), the Chairman appointed to conduct the

83rd, 84th and 85th AGM, is to the following effect:

(a) On 5.5.2008, the Board of Directors approved the notice for convening the three Annual General Meetings (83rd, 84th and 85th) on 5.6.2008

and issued the notices for the meetings, to the shareholders.

(b) Since the Chairman of the meetings received representations from

shareholders, he directed the Bank to arrange for a preliminary meeting on 1.6.2008. Accordingly, a meeting was convened at 11.00 A.M., on 1.6.2008 at Sagar Sadan (Guest House), Tuticorin.

(c) In the meeting, about 23 persons, who were either shareholders or their representatives, made various suggestions. At the end of the meeting,

the Chairman decided to engage the services of two consultants viz., (i) M/s. Deloitte Haskins and Sell and (ii) M/s. Karvy Consultants Ltd.

(d) In the meeting, three things were brought to the notice of the Chairman. The first was the resolution passed by the Board of Directors on

17.3.2008, restricting the voting rights of the transferees to 10% of the total share capital. The second was the resolution of the Board of Directors

dated 26.5.2008, by which, all the rights including the voting rights of Foreign Investors, relating to 70,906 shares were decided to be kept in

abeyance. The third was the fax message sent by the Reserve Bank of India on 30.5.2008 to the effect that the Reserve Bank had earlier given its

approval for the transfer of 53,611 shares, after examining the proposal from various regulatory angles, on the basis of the information furnished at

that point of time and that since the issue became sub-judice, the RBI was unable to comment upon the second resolution of the Board dated

26.5.2008.

(e) After the discussions, the Chairman was requested by some, to decide on the validity of the resolutions of the Board of Directors dated

17.3.2008 and 26.5.2008. However, the Chairman took a decision to leave it to the Court to decide this issue. He also decided to allow every

eligible shareholder to exercise his voting right in proportion to the number of shares held by him. Consequently, the Chairman directed the

consultants (described as ""scrutineers"") to prepare the results of the election, after everyone is allowed to vote, on the following lines:

(i) Result that would be produced by applying the restriction imposed by the Board's resolution dated 17.3.2008 invoking Section 12(2) of the

Banking Regulation Act, 1949;

(ii) Result that would be produced by giving effect to the Board resolution dated 26.5.2008 freezing the voting rights of all the shares of the Foreign

Investors in entirety;

(iii) Result that would be produced without applying any of the aforesaid

restrictions or in other words taking into account all the valid votes polled.

(f) The representatives of the consultant M/s. Deloitte Haskins Sell reached Tuticorin on 2.6.2008 and the last date for submission of Proxy Forms

was prescribed as 3.6.2008. The verification of Proxy Forms commenced on 3.6.2008 and continued till late night of 4th June, 2008. During

scrutiny of the Proxy Forms, it was noticed by the consultants that in some cases, a shareholder had executed more than one proxy in favour of

more than one person, to act individually and not jointly and severally. In view of this, the Chairman directed the Company Secretary to explore

the possibility of contacting the shareholders and finding out their final intention, so that no member is deprived of the right to vote. But such a

possibility appeared to be remote and hence the Chairman considered the legal aspects and took the following decision:

(i) Wherever a member has executed more than one proxy in favour of two different persons on different dates, the one executed later in point of

time shall be preferred.

(ii) Where a member has executed more than one proxy in favour of two different persons and both were executed on the same day, both the

proxies shall be treated as invalid.

(g) Objections were raised by some members that they were not allowed to inspect the proxies. But those objections were overruled by the

Chairman in view of the fact that the work involved was voluminous, while the number of persons available for carrying out the same, was

insufficient.

(h) On 4.6.2008, the plaintiff in C.S. No. 481 of 2008 served notice on the Board of Directors, calling upon them to defer the elections on the

ground that the conduct of elections would amount to contempt of the order dated 26.7.2006, passed in O.A. Nos. 597 to 599 of 2006 in C.S.

No. 981 of 2004. However, after consulting the Bank's counsel and after going through the records and orders of all the proceedings, the

Chairman decided to proceed with the Agenda indicated in the notices of the meetings.

(i) Two representations were made to the Chairman. One was by the plaintiff in C.S. No. 981 of 2004, to count the votes in respect of the

transferred shares viz., 95,418 shares separately and to put them in a separate

cover. The other representation was by one Mr. Soundarapandian, alleging that the proxies lodged by M.G. Muthu and his son M.G.M. Maran were forged ones.

(j) Before the commencement of the meeting on 5.6.2008, the Bank furnished the list of valid and invalid proxies, arrived at after a strict scrutiny.

The list is as follows:

No. of proxies	No. of shares
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Valid proxies	11,065 2,01,468
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Invalid proxies	4,389 24,717
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Total	15,454 2,26,185
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(k) After disposing of all other items in the Agenda for all the three AGMs, the Chairman took up the Agenda relating to election of Directors. He

found that there were three Directors who were retiring by rotation, out of whom 2 did not offer for reappointment. There were 4 additional

Directors appointed by the Board, out of whom, 2 had completed a term of 8 years, beyond which they cannot continue on account of statutory

bar. Therefore, the Chairman found that there were 3 vacancies due to the retirement by rotation of 3 Directors, 2 vacancies due to the completion

of tenure by the additional Directors and 2 vacancies of the other 2 additional Directors. Consequently, the Chairman ordered poll in respect of

these 7 vacancies.

(l) The polling was conducted in 7 Halls where 25 boxes had been kept. Out of these 25 boxes, 4 were exclusively earmarked for proxies. The

entry and exit of the proxy holders into the venue of poll, was separately earmarked, to avoid any confusion. All the boxes were opened in the

presence of the Chairman, the scrutineers and some members and after ensuring that they were empty, the boxes were locked and sealed.

Thereafter, ballot papers were issued to members or the proxies, after obtaining their signatures. Indelible ink was used to prevent mischief. The

polling was completed at 5.30 in the evening. The boxes were sealed and taken to the Head Office of the Bank at Tuticorin. The counting began at

8.00 P.M., on 5.6.2008 and ended at 9.00 P.M., on 6.6.2008. The final tally of

results are as follows:

I. 83rd Annual General Meeting:

Results - All Votes Considered

Names No. of Votes Rank

S.C. Sekar 1,50,273 1

V.V.D.N. Vikraman 1,46,898 2

S.R. Arvind Kumar 1,46,675 3

Results - With 10% Restriction

Names No. of Votes Rank

S.C. Sekar 1,07,812 1

V.V.D.N. Vikraman 1,04,437 2

S.R. Arvind Kumar 1,04,214 3

Results - Ignoring 70,906 Shares

Names No. of Votes Rank

S.C. Sekar 79,367 1

P.H. Arvinth Pandian 76,380 2

A. Venugopalan 76,165 3

II. 85th Annual General Meeting:

Results - All Votes Considered

Names No. of Votes Rank

P. Mahindravel 1,56,978 1

B. Prabhakaran 1,56,101 2

T. Raja Kumar 1,55,880 3

Shankar Jaganathan 1,55,707 4

Thirukumar Vethanayagam 1,55,620 5

S. Ganapathy 1,55,468 6

P. Yesunathan 1,51,975 7

Results - With 10% Restriction

Names No. of Votes Rank

P. Mahindravel 1,14,517 1

B. Prabhakaran 1,13,640 2
T. Raja Kumar 1,13,419 3
Shankar Jaganathan 1,13,246 4
Thirukumar Vethanayagam 1,13,159 5
S. Ganapathy 1,13,007 6
P. Yesunathan 1,09,514 7

Results - Ignoring 70,906 Shares

Names No. of Votes Rank

P. Mahindravel 86,072 1
B. Prabhakaran 85,195 2
T. Raja Kumar 84,974 3
Shankar Jaganathan 84,801 4
Thirukumar Vethanayagam 84,714 5
S. Ganapathy 84,562 6
P. Yesunathan 81,069 7

47. Thus it is seen from the results compiled by the Chairman and the consultants that in so far as the 83rd AGM is concerned, there was no

variation in the results between the situation in which all votes are considered and the situation in which the voting rights in respect of the disputed

shares are restricted to 10%. However, the results vary, in respect of two out of three Directors, if all the voting rights relating to the disputed

shares are frozen. But in so far as the 85th AGM is concerned, there is no variation in the results at all, under all the three possible alternatives. In

other words, it is the very same set of 7 persons, who would get elected as Directors, in the 85th AGM, irrespective of whether all votes are

considered or all votes are rejected or the voting rights are curtailed to 10%.

48. Keeping the above dynamics in mind, let us now scan the contentions raised by the applicant. As pointed out earlier, the contentions of the

applicant (i) raised in the affidavit in support of this application (ii) raised in the additional affidavit filed in the form of a separate application and (iii)

raised by way of arguments advanced at the time of hearing, can be broadly classified as follows:

(i) All the transfers effected in favour of Foreign Investors and others who constituted a group and who acted in concert, without obtaining the prior "acknowledgement" of the Reserve Bank of India, are void and they confer no rights on the transferees, including voting rights.

(ii) The procedure adopted by the Chairman of the meeting, in rejecting some of the proxies, executed on the same day in favour of more than one person, has no sanction of law.

(iii) The election of 7 Directors in the 85th AGM, was not in tune with the Agenda indicated in the notice for the 85th AGM.

(iv) Today no purpose will be served by declaring the results, in view of the fact that the date up to which these elected Directors were to hold Office, had expired.

Now let me take up these contentions one after another.

CONTENTION-1 (Transfers without obtaining acknowledgement from RBI, void):

49. To test the correctness of the first contention of the learned Senior Counsel for the applicant, it is necessary to have a comparative study of

some of the provisions of the Companies Act, 1956 and the Banking Regulation Act, 1949.

Section 9 of the Companies Act, 1956, reads as follows:

9. Act to override memorandum, articles, etc. - Save as otherwise expressly provided in the Act-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a Company, or

in any agreement executed by it, or in any resolution passed by the Company in general meeting or by its Board of Directors, whether the same be

registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the

provisions of this Act, become or be void, as the case may be.

Section 87 of the Companies Act, 1956, reads as follows:

Section 87. Voting rights-(1) Subject to the provisions of Section 89 and Sub-section (2) of Section 92-

(a) every member of a company limited by shares and holding any equity share

capital therein shall have a right to vote, in respect of such capital,
on every resolution placed before the company ; and

(b) his voting right on a poll shall be in proportion to his share of the paid-up equity capital of the company.

Section 182 of the Companies Act, 1956, reads as follows:

Section 182. Restrictions on exercise of voting right in other cases to be void.-

A public company, or a private company which is a subsidiary of a public company, shall not prohibit any member from exercising his voting right

on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken,

or on any other ground not being a ground set out in Section 181.

Section 616 of the Companies Act, 1956, reads as follows:

Section 616. Application to Act to insurance, banking, electricity supply and other companies governed by Acts.- The provisions of this Act shall

apply

(a) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (IV of 1938);

(b) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Act, 1949 (X of

1949);

50. Coming to the provisions of the Banking Regulation Act, 1949, it is seen that similar to Section 9 of the Companies Act, 1956, the Banking

Regulation Act, also contains a provision in Section 35A, conferring overriding effect for its provisions upon the Memorandum and Articles of

Association of a Company. It reads as follows:

Act to override memorandum, articles, etc. - Save as otherwise expressly provided to this Act-

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking

company or in any agreement executed by it or in any resolution passed by the banking company in general meeting or by its Board of Directors,

whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies

(Amendment) Act, 1959; and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

51. The Banking Regulation Act, 1949, contains a reference to the various provisions of the Companies Act, 1956, both for the purpose of

making them applicable in some cases and also for the purpose of excluding them in certain cases. A bird's eye view of the Banking Regulation

Act, would disclose that it contains a non obstante Clause (a) with specific reference to the provisions of the Companies Act at some places and

(b) with general reference to any other law for the time being in force, at some other places. A summary of the provisions of the Banking

Regulation Act, which contain a non obstante clause are as follows:

(i) Section 10A of the Banking Regulation Act, 1949, mandates that not less than 51% of the total number of members of the Board of Directors

of a Banking Company, shall consist of persons having special knowledge in one or more of the matters listed in Clause (a) of Sub-section (2) of

Section 10A. This provision contains a non obstante clause, to the effect that it will have force, notwithstanding anything to the contrary contained

in any other law for the time being in force.

(ii) Similarly, Section 10B contains a non obstante clause, making it necessary for a Banking Company to have one of its Directors as the

Chairman, notwithstanding anything contained in any other law for the time being in force.

(iii) Section 11, while prescribing the requirement as to minimum paid up capital and reserves, contains a non obstante clause which excludes the

applicability of Section 149 of the Companies Act.

(iv) Section 12(3), containing a non obstante clause, bars a suit or other proceedings against any person registered as the holder of a share in a

Banking Company, on the ground that title to the share vests in another person, notwithstanding anything contained in any law.

(v) Section 13 restricting the payment of commission, brokerage, discount, etc., on sale of shares, applies to a Banking Company notwithstanding

anything to the contrary contained in Sections 76 and 79 of the Companies Act, 1956.

(vi) Section 15(2) enabling a Banking Company to pay dividend on its shares,

contains a non obstante clause, excluding the provisions of the Companies Act.

(vii) Section 20 restricting the grant of loans or advances on the security of its own shares, is made applicable to a Banking Company,

notwithstanding anything to the contrary contained in Section 77 of the Companies Act.

(viii) Section 20A restricting the power of a Banking Company to remit certain types of debts, applies notwithstanding anything to the contrary

contained in Section 293 of the Companies Act.

(ix) Section 21A bars the jurisdiction of a Court to question the rate of interest charged by a Banking Company, notwithstanding anything

contained in the Usurious Loans Act, 1918 or any other law relating to indebtedness in force in any State.

(x) Section 34A protects a Banking Company from being compelled to produce any document of confidential nature, notwithstanding anything

contained in Section 11 of the Industrial Disputes Act, 1947 or any other law for the time being in force.

(xi) Section 35 empowers the Reserve Bank to cause an inspection to be made, of a Banking Company, notwithstanding anything to the contrary

contained in Section 235 of the Companies Act, 1956.

(xii) Section 35B contains non obstante clauses both under Sub-section (2) and under Sub-section (2A), excluding the applicability of various

provisions of the Companies Act, such as Sections 268, 269, the proviso to Section 309(3), , 311, the proviso to Section 387, 388 and 198.

(xiii) Section 36AC specifically provides that Part IIA of the Banking Regulation Act, 1949, dealing with the appointment or re310moval of a

Director, Chief Executive Officer or other Officer or employee in pursuance of Sections 36AA or 36AB, shall have effect notwithstanding anything

to the contrary contained in the Companies Act, 1956 or any other law.

(xiv) Section 38(1) empowers the High Court to order the winding up of a Banking Company notwithstanding anything contained in Sections 391,

392, 433 and 583 of the Companies Act, 1956.

(xv) Section 39 enables the High Court to appoint the Reserve Bank of India or any other Bank, as the Official Liquidator of a Banking Company,

in the course of its winding up, notwithstanding anything contained in Section 488 or 449 of the Companies Act, 1956.

(xvi) Section 39A makes all the provisions of the Companies Act, relating to a Liquidator, applicable to a Liquidator appointed under the Act, in

so far as those provisions are not inconsistent with the Banking Regulation Act, 1949.

(xvii) Section 40 restricts the power of the High Court to stay the proceedings for winding up of a Banking Company, notwithstanding anything to

the contrary contained in Section 466 of the Companies Act.

(xviii) Section 41, which provides for a preliminary report by the Official Liquidator, makes it applicable notwithstanding anything to the contrary

contained in Section 455 of the Companies Act, 1956.

(xix) Section 42 enables the High Court to dispense with any meetings of creditors or contributories, in any proceedings for the winding up of a

Banking Company, notwithstanding anything to the contrary contained in Section 460 of the Companies Act.

(xx) Section 43 raises a rebuttable presumption in favour of a depositor of a Banking Company, notwithstanding anything to the contrary contained

in Section 474 of the Companies Act.

(xxi) Section 44(1) restricts the right to voluntary winding up, of a Banking Company, notwithstanding anything to the contrary contained in Section

484 of the Companies Act. However the power of the High Court to order the winding up of a Banking Company, u/s 44(3) is made without

prejudice to the provisions of Sections 441 and 521 of the Companies Act.

(xxii) Sections 44A and 44B, respectively prescribing the procedure for sanctioning a scheme of amalgamation or a compromise or arrangement in

respect of a Banking Company, have non obstante clauses, excluding anything contained in any law for the time being in force.

(xxiii) The power of the Reserve Bank to seek moratorium in respect of a Banking Company u/s 45(1) is also preserved, notwithstanding anything

contained in any other law for the time being in force.

(xxiv) Section 45A makes the provisions of Part IIIA of the Banking Regulation Act, 1949 (containing special provisions for speedy disposal of

winding up proceedings), to have effect notwithstanding anything inconsistent therewith, contained in the Companies Act, 1956 or the Code of

Civil or Criminal Procedure.

(xxv) Section 45D(1) empowers the High Court to settle a list of debtors of a Banking Company being wound up, notwithstanding anything to the contrary contained in any law.

(xxvi) Section 45E contains a special provision to make calls on contributories, notwithstanding that a list of contributories has not been settled u/s 467 of the Companies Act.

(xxvii) Section 45F(2) raises a presumption in favour of the entries recorded in the books of account or other documents of a Banking Company, as against the Directors, Officers and other employees of the Banking Company, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872.

(xxviii) Section 45-O(2) containing a special period of limitation for a Banking Company in liquidation, to recover the arrears of calls from any Director, is made applicable notwithstanding anything to the contrary contained in the Limitation Act or Section 543 of the Companies Act.

(xxix) Section 49 makes the exemptions available to a Private Company under Sections 90, 165, 182, 204, 225, 293(1)(a)&(b), 300, 388A and 416 of the Companies Act, inapplicable to a private Banking Company.

(xxx) Section 49B makes it incumbent upon the Central Government to take a no objection from the Reserve Bank, before approving the change of name of a Banking Company, notwithstanding anything contained in Section 21 of the Companies Act.

(xxxi) Section 49C makes an application for alteration of the Memorandum of a Banking Company, not maintainable, unless the Reserve Bank issues no objection, notwithstanding anything contained in the Companies Act, 1956.

52. Thus it is clear that the scheme of the Banking Regulation Act, 1949, is (i) to make it co-extensive with that of the provisions of the Companies Act, 1956, in certain areas (ii) to make some of the provisions of the Companies Act, inapplicable in certain situations and (iii) to make its own provisions have overriding effect upon all other laws.

53. Keeping this scheme of the Banking Regulation Act, 1949, in mind, let us now see what Section 12(2) of the Banking Regulation Act, 1949,

around which the case of the applicant spins, says. Section 12(2) of [The] Banking Regulation Act, 1949, reads as follows:

12(2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights on poll in excess of ten per cent of the total voting rights of all the shareholders of the banking company.

54. It is interesting to note that while Sub-section (3) of Section 12 contains a non obstante clause in relation to any law for the time being in force,

while barring the institution of a suit against a shareholder, Sub-section (2) does not contain such a non obstante clause, either in relation to the

Companies Act or in relation to any other law. The legislature, while amending the Banking Regulation Act, 1949 (after the advent of the

Companies Act, 1956) and even while enacting the Companies Act, 1956 must be presumed to have taken note of Sections 9, 87 and 182 of the

Companies Act, 1956. This is why, Section 616(b) of the Companies Act, 1956, made the provisions of the Companies Act, applicable even to

Banking Companies, except in so far as they are inconsistent with the provisions of the Banking Regulation Act, 1949. Every Section of the

Banking Regulation Act, 1949, has been drafted so carefully, as to take note of the provisions of the Companies Act, 1956, the Limitation Act, the

Industrial Disputes Act, the CPC and the Code of Criminal Procedure and any other law, as seen from the list contained in paragraph-51 above.

In such circumstances, it may be difficult to read into Section 12(2) of the Banking Regulation Act, 1949, a non obstante clause and then contend

that the restriction regarding voting rights contained therein, would apply, notwithstanding anything to the contrary, contained in the whole of

Section 87 of the Companies Act, 1956. To read into Section 12(2), a non obstante clause, would tantamount to supplying the *causis omisus*.

55. However, the absence of a non obstante clause in section 12(2) of the Banking Regulation Act does not resolve our problem fully. If we look

into the legislative history of these enactments it is seen that the law relating to Banking Companies, originally formed part of the general law

applicable to companies and was actually contained in Part XA of the Indian Companies Act, 1913. It was first introduced in 1936 and it

underwent two subsequent modifications, before a separate legislation was brought forth. Thus, the law relating to other companies and the law

relating to Banking Companies, have always walked together, hand in hand and the legislature was always conscious of both the mutually

complimentary as well as the conflicting provisions contained in both the enactments. Therefore, the absence of a non obstante clause in Section

12(2) assumes significance to a limited extent, not because of its own reach but because of something else, which we shall consider now.

56. Though one cannot fall back upon Section 12(2) of the Banking Regulation Act, due to the reasons stated above, to contend that it overrides

the provisions of the Companies Act, 1956, one should certainly go by Section 616(b) of the Companies Act. As pointed out elsewhere, Section

616(b) of the Companies Act makes inapplicable, such of the provisions of the Companies Act which are inconsistent with the provisions of the

Banking Regulation Act. Section 87(1)(a) of the Companies Act confers voting right upon every member of a company limited by shares and

holding an equity share capital. There is no provision in the Banking Regulation Act which is inconsistent with section 87(1)(a) of the Companies

Act. Even section 12(2) of the Banking Regulation Act is not inconsistent with section 87(1)(a) of the Companies Act. But section 87(1)(b) which

confers voting right upon a member, in proportion to his share of the paid up capital, is inconsistent with Section 12(2) of the Banking Regulation

Act, 1949, which restricts such voting right of any single member, only to 10% of the total paid up capital. Therefore, despite Section 87(1)(b) of

the Companies Act, 1956, conferring voting rights in proportion to one's shareholding, the restriction u/s 12(2) of the Banking Regulation Act,

1949, would still apply, on account of Section 616(b) of the Companies Act, 1956 itself. Even Section 182 of the Companies Act, which declares

as void, any restriction on the exercise of voting rights of a member of a public company, may not stand against section 616(b). This is because the

mandate u/s 182 is primarily against the company. It says, in simple terms, that a public company shall not prohibit any member from exercising his

voting right. It does not say that even by law, the voting rights cannot be restricted. Therefore, while the substantive right of a shareholder u/s 87(1)

(a), to vote, is not obliterated by any provision, the extent to which such right is available u/s 87(1)(b) is restricted by section 12(2) of the Banking

Regulation Act and such restriction has sanction under the Companies Act itself, in the form of section 616(b).

57. Apart from relying upon Section 12(2) of the Banking Regulation Act, 1949, the applicant as well as the Reserve Bank of India rely upon the directions and guidelines issued by the Reserve Bank of India to buttress their contention. It appears that the earliest circular issued by the Department of Banking Operations and Development of the Reserve Bank of India, to all Scheduled and Non-Scheduled Banks (other than Nationalised and Foreign Banks), was the one bearing reference No. EFS.93/C.249.70 dated January 13, 1970. The circular directed all Scheduled and Non-Scheduled Banks to advise the Regional Office of the Reserve Bank of India, of all necessary particulars, whenever an application is made seeking transfer of so much of shares as would make the holding of the proposed transferee equivalent to 1% and over of the total paid up capital of the Bank. The Banks were also directed, by the said circular, to file a declaration to the effect that the proposed transferee was not likely to acquire either by himself or with others in a "group", a controlling interest in the Bank. If the Bank suspected any attempt at cornering of shares with a view to acquiring a controlling interest in the Bank, the same was also to be informed to the RBI. The Reserve Bank further directed all the Banks by the aforesaid circular, to await an acknowledgement from RBI before effecting such transfers. This circular of the RBI dated 13.1.1970, was obviously in tune with two amendments made to Section 12(2), by the Banking Companies (Amendment) Act, 1959 and by Banking Laws (Miscellaneous Provisions) Act, 1963.

58. The above circular was followed by several circulars bearing (i) No. BC.129/C.249-91 dated May 23, 1991 (ii) No. BC.44/16.13.100/94 dated April 16, 1994 (iii) No. BC.349/16.13.100/99-2000 dated September 21, 1999 and (iv) No. BC.64/16.13.100/2003-04 dated February 3, 2004. The cumulative effect of all these circulars, is as follows:

(a) By the circular dated 16.4.1994, the RBI made it necessary for the Banks to make a reference to them, even when individual allotment/transfer of shares is for less than 1% of the paid up capital of the Bank, if a dubious method was adopted to get over the ceiling and to camouflage the purpose of cornering of shares by individuals/groups. The Boards of Directors of the Banks were also directed to await Reserve Bank's acknowledgement, for approving the registration of the transfers in their books.

(b) By the circular dated 21.9.1999, the ceiling limit of 1% was increased to 5%. But the other instructions contained in the earlier circulars were retained.

(c) By the circular dated 3.2.2004, a set of detailed guidelines was issued, for the purpose of streamlining the procedure for obtaining

acknowledgement and removing uncertainties for investors, including Foreign Investors. In paragraph-3 of the said circular, the Private Sector

Banks were directed to ensure, through an amendment to the Articles of Association, that no transfer takes place, of any acquisition of shares to a

level of 5% or more of the total paid up capital of the Bank, unless there was a prior acknowledgement by the RBI. In the Annexure to the said

circular, the broad criteria followed by RBI, with regard to the grant of acknowledgement, was laid down, in paragraphs-4 to 14.

59. In paragraph-4 of the Annexure to the circular dated 3.2.2004, it was reiterated that the acknowledgement from RBI was necessary in all

cases of acquisition/transfer of shares, if it will take the aggregate holding of an individual or group to 5% or more of the paid up capital. In para-5,

the term ""holding"" was defined to include both direct and indirect holding, beneficial or otherwise. It was also indicated in para-5 that the holdings

will be computed with reference to the holding of the applicant, his/her relatives (as defined u/s 6 of the Companies Act) and associated enterprises

(as defined in Section 92A of the Income Tax Act). In para-7, it was indicated that RBI would ensure, before taking a decision, that the

shareholders meet the ""fitness and propriety"" tests, adopted internationally as a regulatory mechanism. In para-9, the relevant factors for

determining the fitness and propriety of a person to be a shareholder, are enlisted. In para-9, the additional factors that could be taken into account

by the RBI, in cases where the acquisition or investment takes the shareholding of an applicant to a level of 10% or more and upto 30%, are

indicated. In para-10, the special factors to be taken into account, in cases where the acquisition or investment exceeds the level of 30%, are

enlisted.

60. It is interesting to note that in para-13 of the Annexure to the circular dated 3.2.2004, it was made clear that ""the voting rights, restrictions and

other related provisions of the Banking Regulation Act will continue to be

applicable as appropriate". By para-14, these guidelines were declared to be effective from the date of issue viz., 3.2.2004.

61. Incidentally, it is also to be noted that the above circulars dated 13.1.1970, 16.4.1994, 21.9.1999 and 3.2.2004, were issued respectively in

the names of (i) Deputy Chief Officer (ii) Chief Officer (iii) Chief General Manager and (iv) Chief General Manager of the Department of Banking

Operations and Development. There is no express stipulation in any of these circulars that they are issued by the Reserve Bank in exercise of the

power conferred u/s 35A of the Banking Regulation Act, 1949, either (i) in public interest or (ii) in the interest of the Banking Policy or (iii) to

prevent the affairs of the Banking Company being conducted in a manner prejudicial to the interest of the depositors or the Company or (iv) to

secure the proper management of the Banking Company.

62. The Reserve Bank of India Act, 1934, defines the word "Bank" u/s 2(aii) to mean the Reserve Bank of India constituted by the Act. u/s 3, the

Reserve Bank is constituted as a statutory Corporation wholly under the control of the Government of India. Section 7 of the Act, speaks of the

Management of the Reserve Bank. Sub-sections (2) and (3) of Section 7 vest with the Central Board of Directors and the Governor and in his

absence the Deputy Governor, all the powers to do all acts and things that may be exercised or done by the Bank. Section 7 of the Reserve Bank

of India Act, 1934 reads as follows:

7. Management (1) The Central Government may, from time to time, give such directions to the bank as it may, after consultation with the

Governor of the bank, consider necessary in the public interest.

(2) Subject to any such directions, the general superintendence and direction of the affairs and business of the bank shall be entrusted to a Central

Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the bank.

(3) Save as otherwise provided in regulations made by the Central Board, the Governor and in his absence the Deputy Governor nominated by

him in this behalf, shall also have powers of general superintendence and direction of the affairs and the business of the bank, and may exercise all

powers and do all acts and things which may be exercised or done by the bank. Section 5(1) of the Banking Regulation Act, 1949, defines

Reserve Bank"" to mean the Reserve Bank of India constituted u/s 3 of the Reserve Bank of India Act. Section 35A(1) of the Banking Regulation

Act, empowers the Reserve Bank to issue directions. As observed earlier, the Reserve Bank is constituted as a body corporate with common seal

and perpetual succession u/s 3(2) of the Reserve Bank of India Act, 1934. Therefore, the exercise of all powers and the performance of all acts

and things that may be exercised by the Reserve Bank, stand entrusted to the Central Board of Directors of the Reserve Bank u/s 7(2). They also

stand entrusted with the Governor and in his absence, with the Deputy Governor, u/s 7(3). The powers and functions about which Sub-sections

(2) and (3) of Section 7 speak, are two fold viz., (i) the general superintendence and direction of the affairs and business of the Reserve Bank and

(ii) all powers and all acts and things that may be exercised or done by the Reserve Bank. Therefore, the power conferred by Section 35A of the

Banking Regulation Act, may fall under the second limb of Sub-sections (2) and (3) of Section 7 of the Reserve Bank of India Act, 1934. In such

circumstances, I do not know how far the circulars dated 13.1.1970, 16.4.1994, 21.9.1999 and 3.2.2004, issued by the Deputy Chief Officer,

Chief Officer and Chief General Manager, without even a reference to Section 35A of the Banking Regulation Act, 1949, could be construed as

falling within the four corners of Section 7(2) and (3) of the Reserve Bank of India Act, 1934. This is especially so, since there is no indication

anywhere in the circulars, either about the policy decisions taken by the Central Board or by the Governor/Deputy Governor or about the

delegation of their powers in favour of the Chief Officer/Deputy Chief Officer/Chief General Manager.

63. By the above observations, I am neither suggesting that those circulars do not have the force of law nor am I coming to a conclusion that they

do not fall within the ambit of Section 35A. I am not concerned in this case, either with the validity of those circulars or with their applicability to

the situation on hand. The only purpose for which I have gone into greater detail, into the contents and the scope of the circulars, is to find out how

far the contention of the appellant on the basis of these circulars, would hold good.

64. From the above limited perspective, if we analyse the provisions of the Companies Act, 1956, the provisions of the Banking Regulation Act,

1949 and the above circulars issued by the RBI, it appears, prima facie, that there is no total prohibition or absolute bar on the transfer of shares.

There is also no total and blanket restriction on the voting rights of such transferees. The picture that emerges from a cumulative consideration of

the provisions of both the enactments and the circulars of the RBI, can be summarised as follows:

(a) While Section 87(1)(a) of the Companies Act, 1956, confers upon every member a statutory right to vote, section 87(1)(b) indicates that it will

be in proportion to his share of the paid up equity capital. Section 12(2) of the Banking Regulation Act, 1949, merely restricts the voting right of a

shareholder in a Banking Company to 10% of the total voting rights of all the shareholders. Section 12(2) of the Banking Regulation Act, neither

overrides Section 87(1)(a) nor restricts the right of a member to transfer the shares held by him in a Banking Company.

(b) The circulars issued by the Reserve Bank of India in 1970, 1991, 1994, 1999 and 2004, requiring the Banking Companies to obtain

acknowledgement before effecting transfer of shares to persons who constitute a group, show a clear trend. The trend is that if such shareholders

pass the "fitness and propriety" tests and satisfy the factors indicated in the 2004 circular, it is still possible for such shareholders to obtain

acknowledgement from the RBI. In other words, the public policy, if any, reflected by these circulars, is not to impose a "regime of total ban" on

transfer of shares, but to impose a "regime of restricted entry after clearance".

65. Therefore, it appears that a dichotomy is maintained between the "property rights" of a person in the shares that he owns and his "voting rights

conferred by statute. Though the right to acquire, hold and dispose of property is not a fundamental right after the 44th Amendment to the

Constitution, it is nevertheless guaranteed by Article 300A. Therefore, the right can be deprived only by authority of law. Alternatively, the very

document by which a property is conveyed, can also impose certain restrictions. This is why, the restriction on the right of the member of a Private

Company to transfer his shares, is both recognised by law as well as by the very nature of the rights attached to such shares of a Private Company.

On the contrary, in the case of the shares of a Public Company, the right not only to acquire and hold, but also to dispose them of, inheres in the

shares themselves.

66. Therefore, if the right to acquire or to dispose of such shares, which forms an integral part of the property rights that a member has on those

shares, is to be restricted, it should be done only by authority of law. Despite being conscious of this, the Parliament thought fit, not to curtail,

through Section 12(2) of the Banking Regulation Act, 1949, the property rights of a person, which include the right to dispose of the property viz.,

the shares. On the other hand, Section 12(2) sought to curtail only the voting rights attached to these shares, in view of the fact that they are

conferred either by contract or by statute or by both. Since voting rights are either contractual or statutory rights, the Companies Act, 1956,

envisaged the possibility of such voting rights being curtailed by contract viz., the Articles of Association. In order to prevent such contractual

contraction, the Companies Act contains Section 9, which confers overriding effect to the provisions of the Act, upon the Memorandum and

Articles of Association of a Company. The Act also contains several provisions under Sections 87 - 90, dealing with the voting rights in detail.

67. Therefore, two things are very clear from a careful reading of the Banking Regulation Act, 1949 and the Companies Act, 1956 viz.,

(i) that the Companies Act recognises the property rights of a shareholder in a Public Company, to acquire, hold and dispose of his property viz.,

the shares and it also confers voting right as a statutory right, irrespective of and overriding any restriction on such right under the terms of the

contract viz., the Articles of Association; and

(ii) that the Banking Regulation Act, 1949, leaves the property rights in the shares untouched, but restricts the statutory right viz., voting rights u/s

12(2), to a limited extent.

68. If so, it is not known as to how far the circulars issued by the Reserve Bank of India, even if they are in exercise of the power conferred by

Section 35A of the Banking Regulation Act, 1949, could curtail the property rights in shares, especially when the parent legislation (viz., the Act

itself) left the property rights untouched, but merely restricted the voting rights conferred by statute to a particular percentage. One must not lose

sight of the fact that the directions issued by the Reserve Bank of India u/s 35A of the Banking Regulation Act, 1949, are in the nature of

subordinate legislation. What is to be done in a case where a person holds so much of shares in a Public Company as would confer upon him, voting rights in excess of a particular percentage, is covered by Section 12(2) of the Act. When the Act, which is the parental legislation has gone only so far, as to merely restrict the statutory rights (voting rights), it is not known whether the subordinate legislation could take it further and curtail the property rights in the shares also.

69. If the provisions of the Companies Act, the Banking Regulation Act and the circulars, are understood in the above perspective, it would become clear that at the most, the applicant could only seek a restriction on the total voting rights of the transferees to 10% of the total paid up capital. The applicant cannot contend that the votes of all the transferees should be rejected in entirety.

70. As a matter of fact, the counsel on both sides advanced arguments on the basis of two letters of the Reserve Bank of India, one dated

30.3.2007, by which the Reserve Bank recorded no objection for the transfer of shares from FEMA Angle and another dated 30.5.2008, by

which the Reserve Bank took a stand that their no objection was after examining the proposal from various regulatory angles. While the contention

of the transferees was that these letters amounted to an acknowledgement from the RBI, the contention of the applicant was that they did not. I

have carefully avoided going into this question, in view of the latest development in the form of the letter dated 12.10.2009 issued by the Executive

Director of the Reserve Bank of India. I have also not gone into the question of correctness of this letter dated 12.10.2009 of the RBI, as it is

beyond the scope of the present application. I have only analysed the provisions of the Companies Act and the Banking Regulation Act as well as

the impact of the circulars issued by the Reserve Bank of India, just for the purpose of testing the first contention of the applicant that these

transfers are invalid and that they confer no voting rights.

71. In fine, I am of the considered view, in the light of the above discussion, that the voting rights of the transferees, could at the most be restricted

to 10%, but cannot be washed out. Since the Chairman of the meeting has provided the possible outcome of the elections, even in a situation

where the voting rights of the transferees are confined to 10%, it is not possible

to stretch the legal provisions to the extent of annulling the voting rights in entirety of the transferees. Therefore the first contention of the applicant is rejected.

Second Contention (Rejection of Proxies):

72. It is seen from the report of the Chairman that if a shareholder had executed proxies in favour of more than one person on the same day, both proxies were rejected. If the proxies had been executed on different dates, the one executed later in point of time was accepted.

73. The applicant has taken exception to this procedure adopted by the Chairman of the meeting, primarily on two grounds viz., (i) that the proxies executed by a shareholder without indicating a date, would leave scope for the proxy holder to fill up the date to his own convenience, thereby obliterating the intention of the shareholder to supersede the same by another proxy and hence the procedure adopted is faulty and (ii) that unless the revocation of the earlier proxy by the execution of a later one, is notified, such revocation would be invalid.

74. In support of the above contention, Mr. C. Harikrishnan, learned Senior Counsel for the applicant, relied upon a decision of the Division

Bench of this Court in S.R.M. S.T. Narayanan Chettiar v. Kaleeswarar Mills Ltd 1951, Companies Act 351. In that case, one of the questions that

arose for consideration was as to whether the Chairman of the meeting was justified in rejecting the revocation of proxies. It was held by the

Division Bench, on the said issue, as follows:

Until recently, both in England and in India, a member had no right to vote by proxy unless the articles provided for such a right as common law

did not recognise voting by proxy. The articles, however, generally conferred such a right subject to such conditions and limitations as are

prescribed thereunder. This right has now been recognised by statute both in England from 1947, now enacted as Section 136 of the Act of 1948;

and by Section 79 of the Indian Companies Act, as amended in 1936. As the articles generally recognised a right to vote by proxy, it is a

contractual right as the articles of association undoubtedly constituted a contract between the company on the one side and the members on the

other. Independently of the contract, therefore, until the statute altered it there was no right of voting by proxy. The reason why the right to vote by

proxy was not recognised seems to be that "when persons agreed", as pointed out by Bowen, L.J., in *Harben v. Phillips*, "to act together in the conduct of a business, the way in which that business is to be carried on must depend on each case on the contract, express or implied, which exists between them as to the way of carrying it on". The decision on every question relating to the business of an incorporated company should essentially be that of the shareholders, having regard to their interest in the company. Unless, therefore, there was a contract between the company and the shareholders, they could not delegate this power of expressing their opinion at a meeting of the company to another. These propositions are so well established as not to require citation of a number of authorities in support of them. It is summarised in *Palmer's Company Law*, 19th Edition, at page 153. A proxy is defined by Lord Hanworth, M.R., in *Cousins v. International Brick Co.* as "a person representative of the shareholder who may be described as his agent to carry out a course which the shareholder himself has decided upon" and the Lord justice in the same case defined a proxy as an agent of the shareholder who, as between himself and the principal, was not entitled to act contrary to his instructions in the matter. It cannot therefore be seriously disputed that the relationship brought about between the shareholder and his proxy is that of a principal and agent. The argument of the respondents is that unless the power revocation is expressly conferred by the articles under which a right of voting by proxy is recognised, the power of revocation does not exist and that the contract creating the agency is exhaustive of the rights and duties of the proxy. This contention proceeds upon a wrong view of the incidents of a contract of agency. When once the relationship of principal and agent is created by contract, the incidents of that contract of agency are governed and have to be determined by applying the law of contracts. In India such law is to be found in the Contract Act. The argument on behalf of the respondents amounts to this that all the rights and liabilities which flow from a contract by reason of the application of the general law of contracts do not attach themselves to a contract unless they are enumerated in the contract itself. In other words, if there is a contract of sale of goods unless all the rights and liabilities of the seller and buyer which are to be found in the Sale of Goods Act are specifically enumerated in the contract itself, they have no application. When once there is a

contract all the legal incidents of such a contract are governed by the law of contracts whether it is in the form of a statute as in India or is ascertainable from judicial decisions as in England. It will be an intolerable state of affairs if one is obliged to embody in every contract the provisions of the Contract Act or the Sale of Goods Act, as the case may be, relevant to such a contract. When once the relationship enters the region of contract, the law of contract alone must determine its incidents. On the argument of the respondents, the relationship of agent and principal brought about by the execution of the proxies cannot be terminated even by death though they are forced to concede that such a termination follows and that even when the principal is present in person at the meeting, the right of the proxy to exercise his vote on behalf of the principal must yield to the right of the principal to exercise the vote personally. If so much is conceded, it is difficult to see why the principal should be denied his right to revoke a contract which brought about the relationship of principal and agent. The articles might make the proxy irrevocable or impose restrictions or circumscribe the limitations within which the power of revocation should be exercised. But all these are matters within the region of contract between the parties and in the absence of anything to the contrary, there is no reason to exclude the right of revocation which is recognised u/s 203 of the Contract Act. There are other limitations imposed by the Contract Act on the exercise of the power of revocation, e.g., if the revocation is made after the authority had been partly exercised, Section 204 of the Act preserves the validity of such acts and obligations and makes the revocation effective only in respect of future acts. If the agency is limited to a period of time and without sufficient cause it is revoked before the expiry of the period, u/s 205 the agent is entitled to compensation. The principal is bound to give reasonable notice of revocation as otherwise he would be liable to pay damages to the agent which result from such act of his. As regards third persons, u/s 208 the termination of authority of the agent does not take effect before it becomes known to them so that if third persons are sought to be affected by revocation of the authority of the agent, the principal must give due notice of the same. Termination of the authority by death of the principal is recognised u/s 209. On an examination of the authorities cited at the Bar, it will be seen that the same principles have been applied for the

revocation of proxy by a shareholder.

75. The following principles emerge out of the above decision:

(i) Common law did not recognise voting by proxy. But when the Articles of Association conferred a right to vote by proxy, the same became a

contractual right. This right was first recognised by statute, u/s 79 of the Indian Companies Act, 1913, as amended in 1936. It is now recognised

by Section 176 of the present Act, viz., The Companies Act, 1956.

(ii) The relationship between the shareholder and his proxy is that of a principal and agent. Since the said relationship is contractual in nature, the

rights and obligations that govern the relationship, can be traced to the law of contracts. Consequently, (i) the right of revocation recognised by

Section 203 of the Contract Act, (ii) the limitations imposed u/s 204 of the Contract Act, on the exercise of such a power, (iii) the entitlement of

the agent to compensation u/s 205, (iv) the effect of revocation u/s 208 upon third parties and (v) the termination of authority by the death of the

principal, by virtue of Section 209, are all applicable to the revocation of proxy by a shareholder.

(iii) Since the right of the shareholder to vote in person is paramount to the right of the proxy, the shareholder will still be entitled to attend and vote

at the meeting, despite the presence of the proxy holder, provided he votes before the proxy holder could vote. The exercise of a personal vote by

the shareholder, after he had adopted the proxy system, does not revoke the proxy, but prevents the exercise of the vote by the proxy.

76. The decision of the Division Bench in *Narayanan Chettiar*, from which the above principles are elicited, arose before the advent of the

Companies Act, 1956. As stated earlier, the provision relating to proxies was found in Section 79 of the Indian Companies Act, 1913, as

amended in 1936. But the Company Law Committee while recommending a new provision for proxies in the 1956 Act, observed that the

provisions relating to proxies in the 1913 Act, constituted one of the least satisfactory features of the 1913 Act. Therefore, the decision in

Narayanan Chettiar has to be seen in the backdrop of Section 176 of the Companies Act, 1956.

77. Section 176 of the Companies Act, 1956, reads as follows:

176. Proxies (1) Any member of a company entitled to attend and vote at a

meeting of the company shall be entitled to appoint another person

(whether a member or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speak at the

meeting:

Provided that, unless the articles otherwise provide-

(a) this sub-section shall not apply in the case of a company not having a share capital;

(b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting,

there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or where that is

allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with

fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies

or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any

instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order

that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such

provision for such deposit.

(4) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the

invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy,

every officer of the company who knowingly issues the invitations as aforesaid or willfully authorises or permits their issue shall be punishable with

fine which may extend to one thousand rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of

appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member

entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall -

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by

an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy, if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with

any special requirements specified for such instrument by the articles.

(7) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period

beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect

the proxies lodged, at any time during the business hours of the company, provided not less than three days notice in writing of the intention so to

inspect is given to the company.

78. Two significant features are to be noticed in Section 176. The first is that by virtue of Clause (b) of the proviso under Sub-section (1) of

Section 176, a member of a Private Company is not entitled to appoint more than one proxy to attend on the same occasion, unless the Articles

provide otherwise. No such restriction is found in respect of a member of a Public Company. The second feature is that by implication, Sub-

section (2) of Section 176, enables a shareholder of a Public Company to appoint one or more proxies, where it is permitted by the Articles. In

other words, a shareholder is entitled to appoint different proxies for different shares. But if he appoints more than one person as proxy, in respect

of the same share, the same may be valid only when all of them are authorised to act jointly and/or severally.

79. So long as different proxies are appointed for different shares (even if by the

same shareholder) or so long as different proxies are appointed to act jointly and/or severally in respect of the same share, all of them would be entitled to act. But when two or more persons stake a claim to act as proxies in respect of the same share, and those claims conflict with each other, there are only two options left open to the Chairman of the meeting. He can either direct one among them to vote or reject the claim of both. The third option available to a Returning Officer, in an election to the local body or the Assembly or the Parliament, viz., that of allowing the rival claimant also to cast a vote as "tendered vote", is unknown to the law of contracts and consequently to the law relating to proxies under the Companies Act.

80. u/s 203 of the Contract Act, 1872, the principal is entitled to revoke the authority given to his agent at any time before the authority has been exercised, so as to bind the principal. But once the authority has been partly exercised, no revocation is permissible, by virtue of Section 204, as regards the acts and obligations that arise from the acts already done in the agency. The notice contemplated u/s 206, for revocation or renunciation, is obviously for the purpose of avoiding any damage resulting from such revocation or renunciation to the principal or the agent as the case may be. But Section 207 makes it clear that the revocation by the principal and the renunciation by the agent, may be express or implied in the conduct of the principal or agent respectively. The illustration u/s 207 of the Contract Act, goes as follows:

A empowers B to let A's house. Afterwards, A lets it himself. This is an implied revocation of B's authority.

The termination of the authority of an agent takes effect, by virtue of Section 208 - (i) from the time the agent comes to know of it, in so far as the agent is concerned and (ii) from the time third parties come to know of it, in so far as they are concerned.

81. Once the above principles underlying the law relating to creation and extinction of agency are kept in mind, it would be easy to appreciate that if a shareholder himself attends the meeting, despite appointing a proxy earlier, and seeks to exercise his right to vote (even before the proxy could cast his vote), three things would become obvious viz., (i) that there is implied revocation; (ii) that the revocation becomes known to the agent; and

(iii) that it also becomes known to third parties viz., the Company and the other shareholders. This is because of the fact that the shareholder, the proxy holder and the third parties are physically present at the same time at the same venue.

82. But when two proxy holders stake rival claims, the Chairman would only have two options viz., (i) either to contact the shareholder and get a confirmation as to which of the two proxies would terminate the other or (ii) to take a decision on the spot, depending upon the information filled up in both the proxy forms, if he is unable to contact the shareholder.

83. While exercising the second option, out of necessity, it is not possible for the Chairman of a meeting to conduct a roving enquiry, as to whether

both the proxy forms were filled up by the shareholder himself, indicating the date and time thereon or whether the date and time were filled up by

the proxies themselves and if so, which of the 2 should be taken to be valid. Section 176(5) merely requires a proxy to be in writing and to be

signed by the appointer. If a blank proxy form duly signed by the shareholder is handed over to a person, it would mean in the normal

circumstances that apart from the authority to attend a meeting and vote in a poll thereat, the proxy holder was also conferred with the authority to

fill up the blanks in the form. Therefore in such circumstances, the Chairman would be discharging his duties properly if he goes by the date

indicated in both the proxies. It would not be necessary nor is it possible for him to conduct an enquiry to go beyond the dates indicated therein

and find out which of the 2 forms were executed later. Similarly, if both forms carry the same date, the Chairman would have no alternative except

to declare both as invalid.

84. A similar view was taken by a learned Judge of the Delhi High Court In *Re Swadeshi Polytex Ltd* (1988) 63 Comp. Cases 709. In the ""Guide

to The Companies Act"" by A. Ramaiah, the learned author says, in his commentary u/s 176 as follows:

If there are two or more proxies given by the same shareholder in respect of the same shares, the proxy bearing the latest date will supersede the

earlier ones. If the proxies bear no date or bear the same date, both the proxies would be ineffective.

Even in respect of proxies signed and delivered in blank, the learned author has

the following to say:

A proxy signed in blank as to the name of the appointee, or as to the date of the meeting and delivered with authority to fill up the blank, is not

open to objection if, when deposited with the company, the blank has been duly filled up. It is not a deed and there is, therefore, no objection to

the blank being filled up by the agent of the appointee, even though appointed by parol. The instrument in such circumstances is not complete until

it is filled up, and when filled up the only question is whether it is duly stamped. {Palmer's Company Precedents, Part I, 16th Edn., page 560}.

85. Therefore, the question as to which proxy was executed earlier and which was executed later in point of time, when one or both of the forms

had been handed over by the shareholder unfilled up or when both bear the same date, would be a highly contentious issue. The same cannot be

expected to be decided by the Chairman of the meeting, given the time constraint. Therefore, if the Chairman simply goes by the dates indicated in

both the forms and allows the proxy holder holding the form that carries a later date, he cannot be found fault with. Similarly, if the Chairman

rejects both the forms on the ground that both carry the same date, the said decision cannot also be said to be arbitrary or illegal. Theoretically it

can be argued that a proxy executed at 11.00 A.M., on a day, revoked by implication, the one executed at 10.59 A.M., on the same day. But it

would be too much to expect the Chairman of a meeting to hold an enquiry about the time at which the proxies could have been executed by the

shareholder. Though the right to vote is a valuable right conferred by statute, a shareholder who distributes proxies like pamphlets because of being

fickle minded or trades with them at the time of elections, by executing more than one proxy, cannot be allowed to contend later on that he lost a

valuable right.

86. Therefore, I am of the considered view that the Chairman was right in accepting the form that carried a later date and rejecting both forms if

they carried the same date. This is why, as rightly pointed out by some of the learned Counsel appearing for the respondents, even the Division

Bench held in Narayanan Chettiar that if the Chairman in exercise of his powers, comes to a decision, such a decision is binding, so long as it is not

vitiated by fraud or misconduct. Therefore, the second contention of the

applicant is also rejected.

Third Contention (Election of 7 Directors not in tune with the Agenda indicated in the meeting):

87. It may be recalled that the time for holding the 83rd, 84th and 85th AGMs was extended by the orders of this Court and those meetings were

held together on 5.6.2008 under the Chairmanship of Justice R. Balasubramanian (Retired). The statutory notices for the 83rd AGM (in respect of

the adjourned agenda items 3, 4 and 5 relating to election of Directors), 84th AGM and 85th AGM were finalised and approved by the Board of

Directors on 5.5.2008. On 5.5.2008, the resolution approving the statutory notices was passed by the Board comprising of Mr. G. Narayana

Moorthy, Managing Director and CEO, Mr. R. Kannan Adityan (son of the applicant herein), Mr. V. Bhaskaran, Mr. P.H. Arvindh Pandian, Mr.

A. Narayanan, Mr. N. Balasubramanian, Mr. A. Selvaganesh, and Mr. S. Swaminathan, (RBI Nominee).

88. While approving the notice for the 85th AGM, the Board of Directors took note of the impending retirement by rotation, of 3 Directors by

name V. Baskaran, A. Narayanan and N. Balasubramanian. But the fact that by the resolutions of the Board dated 5.5.2007, 4 persons namely (i)

M.G.M. Maran (ii) the applicant herein (B. Ramachandra Adityan)(iii) the applicant's son (R. Kannan Adityan) and (iv) A. Selva Ganesh were

co-opted only as additional Directors u/s 260 of the Companies Act, 1956, to hold office only upto the date of the next AGM, though known to

those who finalised the statutory notice for the 85th AGM, was not incorporated in the notice. But that by itself, in my considered view, would not

make the elections of 7 Directors in the 85th AGM, contrary to law.

89. None of the shareholders present at the 85th AGM appear to have objected to the election of 7 Directors in the 85th AGM. The applicant

herein who demitted office after completion of the statutory prescription of 8 years also did not raise any objection at the meeting. I do not know if

the applicant was physically present at the meeting. But his proxies were admittedly present. It is seen from the report of the Chairman that about

21 persons contested in the election, for the post of 7 Directors, in the 85th AGM. None of them have so far raised any objection.

90. In *Choppington Collieries Ltd v. Johnson and Ors.* 1944 (1) All ER 762, a

similar question arose. The notice for the 17th ordinary General Meeting contained 3 items of Agenda viz., (i) to receive the report of the directors and the accounts of the Company to December 31, 1943, with the auditors' report thereon (ii) to elect directors and (iii) to appoint auditors for the ensuing year. Along with the second item, there was included a line reading "in accordance with the Articles of Association Mr. C.W. Coan retires and, being eligible, offers himself for re-election". A motion for amendment and later a substantive motion, were moved for electing 3 other persons as Directors, apart from C.W.Coan. The motions were rejected by the Chairman, on the ground that the notice for the meeting was confined to the election of one Director. The Chancery Division held that the Chairman was wrong both in refusing to allow the amendment and in not putting the substantive motion to the meeting. While doing so, the Chancery Division held that one should construe the notice for the meeting as a business document and give it a fair business construction. The Court rejected the contention that by virtue of the sentence added to Agenda item No. 2, the notice gave an indication as though the business was confined to the election of only one Director in the place of Mr. C.W. Coan. While holding that the requirement of law was only to indicate the general nature of the business to be transacted at the meeting, it was held therein as follows:

There is no need to specify that the business is special. There is no need to specify the exact nature of the business. It is not necessary to say "I propose A or X as a Director". All you have to do, to comply with the Articles, is to specify the general nature of the business. I think there is in this notice a sufficient specification of the general nature of the business to bring it within the competence of the meeting to elect Directors upto the number permitted by the Articles.

The said decision of the Chancery Division was also upheld by the Court of Appeal. Therefore, it is clear that if there was sufficient indication in the notice, of the nature of the business to be transacted, it cannot be contended that the resolution passed was without proper notice.

91. The notices for the 83rd as well as the 85th AGM were both dated 5.5.2008. Both notices were also sent simultaneously. While the notice for the 83rd AGM indicated the retirement of 3 Directors by rotation, the notice for

the 85th AGM indicated the names of 3 others as retiring by rotation. Since both meetings were to be held on the same date viz., 5.6.2008, the shareholders certainly had notice of at least these 6 vacancies.

Moreover, since the Company in question happened to be a Banking Company, the notices for the 83rd and 85th AGM contained a Note in terms of the circular of the Reserve Bank of India dated 25.6.2004, requiring all persons proposed to be appointed as Directors to submit a declaration in the prescribed format to enable the Bank to undertake due diligence. The declaration was required to be submitted at the time of submission of the notice u/s 257 of the Companies Act. No allegation is made in the affidavit in support of this application that any of the contestants failed to fulfill this prescription. As seen from the report of the Chairman, 21 persons fulfilled the requirements and contested for 7 vacancies. Therefore, it appears that the shareholders rightly understood the Agenda for the meeting, participated in the poll, exercised their voting rights and accepted the results without any murmur. In such circumstances, the third contention that the election of 4 out of 7 Directors in the 85th AGM was invalid for want of notice, cannot be accepted.

92. Though Article 71 of the Articles of Association of Tamil Nadu Mercantile Bank stipulates that "no General Meeting, Annual or Extra-ordinary shall be competent to enter upon, discuss or transact any business which has not been mentioned in the notice convening such meeting", Article

100 gives a leverage. It reads as follows:

The Bank at any Annual General Meeting at which any Directors retire in the manner aforesaid may fill up the vacated offices by electing a like number of persons to be Directors and may fill up any other vacancies.

Therefore, the election held for filling up 7 vacancies cannot be held to be vitiated for want of inclusion of an Agenda in the notice for the 85th

AGM, with regard to 4 of those vacancies.

93. It is true, as contended by Mr. C. Harikrishnan, learned Senior Counsel for the applicant, that Section 257(1-A) of the Companies Act, 1956,

requires notices to be served on the members, not less than 7 days in advance, about the candidature of a person for the office of the Director. The

provision reads as follows:

257 (1-A) The Company shall inform its members of the candidature of a person for the office of director or the intention of a member to propose

such person as a candidate for that office, by serving individual notices on the members not less than seven days before the meeting: Provided that

it shall not be necessary for the company to serve individual notices upon the members as aforesaid if the company advertises such candidature or

intention not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company

is located, of which one is published in the English language and the other in the regional language of that place.

But the contention on the basis of Section 257(1-A) cannot be entertained by me for two reasons viz.,

(i) Neither in the set of objections filed on 16.6.2008 nor in the affidavit in support of the present application A. No. 2954 of 2008 nor in the

additional affidavit filed by the applicant by way of an application in A. No. 4278 of 2008, this contention has been raised. This contention is

actually a mixed question fact and law, in the sense that the question whether or not a notice was actually given in terms of Section 257, is a

question of fact. Since it is not pleaded by the applicant, there was no opportunity for the respondents to accept or deny the same.

(ii) Moreover, the applicant has admitted in paragraph-11 of his affidavit in support of this application that he himself lodged proxies in respect of

80,369 shares. Though the applicant is under the impression that out of these proxies for 80,369 shares, 24,717 were rejected, the Chairman of

the meeting had rejected proxies only to the extent of 4,701. It means that the proxies in respect of approximately about 75,000 shares were

allowed to vote in the poll on behalf of the applicant. The proxy holders being his agents, did not raise any objection at the time of the poll, on the

ground of non issue of notice u/s 257. Apart from the applicant, no other shareholder, out of those holding 2,37,514 shares, who participated in

the poll, has so far raised any objection. Therefore the third contention of the applicant is also rejected.

Fourth Contention (No purpose will be served in declaring the results):

94. It is the contention of the applicant that no purpose will be served in declaring the results of the elections held in the 83rd and 85th AGM, since

the very tenure of office of those elected, had expired. This contention is raised on the basis that the 83rd and the 85th AGMs related to the years

ending 31.3.2005 and 31.3.2007 respectively. Therefore, these meetings ought to have been convened on or before 30.6.2005 and 30.6.2007.

The Registrar of Companies is entitled to extend the time by a period not exceeding 3 months. Therefore, according to the applicant, the meetings

could have been held at the most before 30.9.2005 and 30.9.2007 respectively. The Directors elected in the 83rd AGM, would have got elected

in the normal course, at the latest by 30.9.2005 and hence they would have retired by 30.9.2008. Alternatively, a person elected in the 83rd AGM

has to retire in the 86th AGM. The 86th AGM related to the year ending 31.3.2008 and the meeting ought to have been convened not later than

30.9.2008. Therefore, there was no way, according to the applicant, that those elected in the 83rd AGM could hold office even for a day, even if

the elections are declared now.

95. In support of his contention that a Director due to retire at the next AGM would cease to hold office after the last day on which the next

meeting was due, Mr. C. Harikrishnan, learned Senior Counsel for the applicant relied upon a decision of the Division Bench of this Court in A.

Anantalakshmi Ammal v. The Indian Trades and Investments Ltd 1952 (Vol.XXII) Comp. Cases 324. In that case, two issues arose before the

Division Bench. One was about the validity of the co-option of a Director, by the Board, of which all but one were deemed to have vacated the

office on the last date for holding the meeting. Though ultimately the Division Bench held that even a truncated Board with less than the minimum

number of Directors could exercise the power of co-option under Article 81, the Division Bench incidentally accepted the contention that the

Directors who were due to retire at an Annual General Meeting should be held to have vacated their office on the last date on which the AGM

ought to have been held.

96. However, the above decision of the Division Bench in Anantalakshmi's case, was actually based upon Rule 89 in Schedule-I of the

Companies Act, 1948 (of England), which in terms, corresponded to Article 83 under the Indian Companies Act, 1913. Therefore, the learned

Judges of the Division Bench quoted the commentary of Buckley on Companies

Act to the following effect:

If in any calendar year, an annual meeting is not held under an Article in this form, those Directors who would have retired at the meeting had the same been held will vacate office on the last date of the year.

97. Therefore, the decision of the Division Bench, with reference to Article 83 under the Indian Companies Act, 1913, may not be of relevance, especially in view of Article 101 of the Articles of Association of the Bank, as follows:

101. If at any meeting at which an election of Directors ought to take place, the places of the vacating Directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place, and if at the adjourned meeting the places of the vacating Directors are not filled up, the vacating Directors or such of them as have not had their places filled up, shall, subject to the provisions of Section 256(4)(b) of the Act be deemed to have been re-elected at the adjourned meeting.

The above Article 101 is in tune with Section 256(4) of the Act. If the Directors elected at a particular meeting would cease to hold office on the last date for convening the meeting in respect of the year in which their tenure would come to an end, there is no scope for Article 101 containing a deeming fiction. It must be noted that the deeming fiction under Article 101 comes into play even in cases where a meeting is held but the vacancies are not filled up either at the same meeting or at the adjourned meeting. Let us take for instance a case where the AGM is held exactly on the last day, but no election takes place. By virtue of Section 256(4) and Article 101, the meeting would get adjourned to next week and if none get elected even in the adjourned meeting, the vacating Directors would be deemed to have got re-elected. If the deeming fiction could apply even to such cases, I fail to understand why it should not be applied to cases of extraordinary nature, like the one on hand where AGMs are held together at irregular intervals under orders of Court, at least for a limited purpose.

98. It is seen from "'A. Ramaiya Guide to the Companies Act'", 16th Edition, Reprint 2006(Part 2 Page 2614) that in normal circumstances, a Director who is to retire by rotation at an Annual General Meeting, cannot

continue in office after the last day on which the AGM should have been held as required by Section 166(1). But the rationale behind this, is that by omitting to summon the Annual General Meeting, which is one of the duties and responsibilities of the very Board itself, the Board should not get an extended tenure. It is a fundamental principle of law that no man can take advantage of his own wrong. Keeping this principle in mind, it appears that the Courts in England and India have taken the view that a Director liable to retire by rotation at an Annual General Meeting, cannot continue in office beyond the last date on which the AGM is to be held.

A. Ramaiah cites several authorities for this proposition as follows:

{See *In re, Consolidated Nickel Mines Ltd.* (1914) 1 Ch 883; *Kanssen v. Rialto* (1945) 15 Comp Cas 23 : (1944) 1 All ER 751 (CA) and

Morris v. Kanssen (1946) 16 Comp Cas 186 : (1946) 1 All ER 586 (HL). The principles laid down in these cases have been followed by the

High Courts in India in the following cases: *A. Ananthalakshmi Ammal and Another Vs. The Indian Trades and Investments Ltd. and Another*, ;

B.N. Viswanathan and Another Vs. Tiffin's Baryt Asbestos and Paints Ltd. and Others, ; *Krishnaprasad Jwaladutt Pilani Vs. Colaba Land and*

Mills Co. Ltd., and Lalchand Mengraj and Others Vs. Shree Ram Mills Ltd. and Others, ; *V.P. Singh Vs. Chairman, Metropolitan Council of*

Delhi and Others, ; *B.R. Kundra, Delhi Vs. Motion Pictures Association, Delhi and Others*, . The rule laid down *In re, Consolidated Nickel Mines*

Ltd., has also been approved and quoted in all well-known Treatises on Company Law, viz., *Buckley's Companies Acts* 14th Edn., page 1014;

Gore-Browne on Companies 44th Edn., 1986, Para 25-16 and *Palmer's Company Precedents* (17th Edn., page 598)}.

99. But the above principle has been evolved to prevent Directors from taking advantage of their own wrongs, in not convening the Annual

General Meetings and thereby continuing in office beyond the period upto which they are statutorily entitled to. However in the case on hand, it is

not the Directors who have delayed the holding of the meetings. The Directors elected at the 83rd and 85th AGMs, have not even assumed office.

They are actually waiting in the wings from the date of the election viz., 5.6.2008. It is not the object behind Section 256 to make an appointment

entirely on paper and to declare the retirement, also on paper, without the

elected person assuming office even for a single day. We must remember that Section 256(1) merely makes a Director who is liable to retire, to bow out of office, at the Annual General Meetings. The Act by itself does not speak of the liability to retire on the last day for holding the meeting. It is only by way of purposive interpretation to Section 256 and to prevent the mischief that is possible, that the Courts have interpreted Section 256 to mean that a Director shall retire on the last date for holding the meeting. Therefore, it is the very same purposive interpretation that should be invoked to extraordinary cases of this nature, where the Directors have not assumed office even for a single day on account of the litigation and where these Directors were not responsible for the non-holding of the Annual General Meetings. The problem on hand is extraordinary to Section 256 and hence the solution for the same, cannot also be ordinary. Therefore, I do not accept the contention that by declaring the results of the 83rd and 85th AGMs, no purpose would be served and that those elected would have retired.

100. Thus all the major contentions raised by the applicant, are liable to be rejected. There are 2 more ancillary contentions raised by the applicant. They are (i) that the votes cast by persons claiming to be the proxies of M.G. Muthu and M.G.M. Maran should be rejected since the former was not in a position to execute proxies as he was bed ridden in a hospital at Singapore and a sum of Rs, 31 crores exchanged hands and (ii) that the votes polled by C.S. Sathiyaseelan and Rajendran should also be rejected as they compromised their suits with the purchasers and thereby became part of the "group".

101. The first of the above contentions cannot hold water, since M.G.M. Maran has filed a counter affidavit denying these allegations. He has also engaged a counsel to argue the application. Mr. Vijay Narayan, learned Senior Counsel appeared for him and denied these allegations. Therefore, in the absence of any proof to substantiate these allegations, they are liable to be rejected. Moreover, we are concerned here with the question whether what the Chairman of the meeting did was right or wrong. The applicant did not raise these issues before the Chairman at the time of the meeting. The person who raised the issue did not produce any proof before the Chairman. As a matter of fact, the applicant was hand in glove with

M.G. Muthu and M.G.M. Maran at the time of transfer of shares. After they fell out, for reasons best known only to both of them, such allegations are made, possibly because of the impression that there was a booty (of Rs. 31 crores) which was not shared. Therefore, I reject the first ancillary contention.

102. In so far as Sathiyaseelan and Rajendran are concerned, the compromise reached by them with some of the defendants, cannot perse make them part of the "group". If it is so, the applicant himself is guilty of lodging more than 80,000 proxies. If all his votes had gone in favour of a few individuals, he is also to be treated as part of a group, though different from the one he is now attacking. Therefore, the second ancillary contention is also rejected.

103. Though on the basis of my conclusions on the contentions raised by the applicant, the present application is liable to be dismissed, I need to consider the submissions of Mr. Vedantham Srinivasan, learned Counsel appearing for the 12th defendant in C.S. No. 981 of 2004 and the submissions of Mr. V. Narayanan, learned Counsel appearing for the first plaintiff in C.S. No. 481 of 2008.

104. The contentions of Mr. Vedantham Srinivasan, learned Counsel for the 12th defendant in C.S. No. 981 of 2004 are (i) that without obtaining an acknowledgement from RBI, the transfer of shares is void, in view of Section 12(2) of the Banking Regulation Act and the circulars issued by the RBI, as the Banking Regulation Act is a special enactment, while the Companies Act is a general enactment; (ii) that no one can take advantage of his own wrong; and (iii) that what cannot be done directly, cannot be done indirectly.

105. My answer to the first contention of Mr. Vedantham Srinivasan, learned counsel, is already covered by the discussion relating to the first contention of the applicant in this application. Therefore, the same is liable to be rejected.

106. In so far as the second and third contentions are concerned, I am of the view that even if the transferees of shares are presumed to have committed any wrong, in purchasing the shares, the issue has not attained finality. By the order dated 12.10.2009, the Reserve Bank has merely directed the Tamil Nadu Mercantile Bank to file necessary forms for considering

the question of acknowledgement. Therefore, neither the transferors nor the transferees nor even the Bank can be said to have committed any wrong or attempted to achieve indirectly, what could not be achieved directly. Hence, all the contentions of the learned Counsel are rejected.

107. Coming to the contentions of Mr. V. Narayanan, learned Counsel for the first plaintiff in the present suit, out of which the present application arises, it is seen that there is no clarity on his part. At the beginning, the learned Counsel took a stand that he was opposing the present application

A. No. 2954 of 2008 on the ground that it does not arise out of the prayer in the suit and also on the ground that the suit should be disposed of at the earliest. However, later on, at the time of conclusion of the arguments of all the respective counsel, the learned Counsel filed written

submissions contending that the transfer of shares is illegal in view of the fact that they were contingent upon the acknowledgement by the RBI.

Inasmuch as the acknowledgement was not granted, the contract relating to transfer got frustrated by Section 56 of the Contract Act. Therefore, the learned Counsel requested that the results of the election need not be declared, but the hearing of the suit should proceed.

108. However, the above contentions of the learned Counsel are thoroughly misconceived. The Reserve Bank has not so far rejected any

application of the Bank for acknowledgement. On the contrary, the Reserve Bank has only directed the Tamil Nad Mercantile Bank to file

necessary forms. Therefore, the contract cannot be said to have been frustrated.

109. Though an early hearing of the suit is not only warranted but also already suggested by the Apex Court, it does not mean that the results of

the election need not be declared. After a long drama with several twists and turns matching only a tele serial, the time for holding the AGM was

extended, a Chairman was appointed and the whole exercise has been carried out. The election was conducted way back on 5.6.2008. Till date,

the results could not be declared. Article 89 of the Articles of Association of the Company prescribes a minimum of 7 and maximum of 11

Directors. By virtue of the orders passed by me in O.A. Nos. 534 to 536 and 621 of 2008 on 9.6.2008, the Board of Directors holding office at

that time got disbanded. Ever since then, a truncated Board comprising of one Managing Director and two nominee Directors of the Reserve Bank

of India alone are holding office. Therefore, the Reserve Bank of India itself has sought for the declaration of results at the earliest on the ground

that it is not possible for their nominee Directors to take policy decisions and that as a matter of policy, RBI does not encourage the continuance of

its nominee Directors in such situations, as conflict of interest would arise. Most of the arguments against the declaration of results, are based upon

RBI circulars and the failure to obtain acknowledgement from RBI for transfer of shares. But RBI itself has taken a stand at the time of hearing of

this application, that the results should be declared and a full complement of the Board of Directors should take charge. This stand reflected in the

Notes of submissions"" filed by the learned Counsel for the RBI, is also in tune with paragraph 20C(iii) of the order of the Executive Director of the

Reserve Bank of India, dated 12.10.2009, which reads as follows:

20C(iii) Shri Kanagaraj's request for directing TMBL not to take into account the voting on 95,898 shares conducted in the 83rd, 84th and 85th

Annual General Meetings held on 5.6.2008 can also not be accepted, as the matter is sub-judice before the Hon''ble High Court of Madras.

Therefore, there is no impediment for the declaration of the results. On the other hand, there is an imperative need to announce the results, in view

of the fact that as on today, there is no elected Board in terms of Article 89, for the past more than 1-1/2 years, putting the very institution to

jeopardy.

110. Once it is concluded that the results are to be declared, then the next question to be considered is as to whether all the votes of the

transferees are to be rejected or whether all their votes are to be counted or whether their voting rights should be restricted to 10%. The answer to

this question, does not pose a great difficulty in so far as the 85th AGM is concerned. The same set of 7 persons have been elected under all three

contingencies and especially in the very same order. They are (1) P. Mahindravel (2) B. Prabhakaran (3) T. Raja Kumar (4) Shankar Jaganathan

(5) Thirukumar Vethanayagam (6) S. Ganapathy and (7) P. Yesunathan. They have been elected irrespective of whether all the votes in relation to

the disputed shares are accepted or rejected or restricted to 10%. Therefore, there is no impediment in declaring these 7 persons as having been

elected in the 85th AGM.

111. In so far as the 83rd AGM is concerned, 3 persons by name (1) S.C. Sekar, (2) V.V.D.N. Vikraman and (3) S.R. Arvind Kumar have been

elected under two contingencies viz., (i) when all the votes are considered and (ii) when the voting rights are restricted to 10%. But if all the votes

relating to the disputed shares are ignored, (1) S.C. Sekar (2) P.H. Arvinth Pandian and (3) A. Venugopalan would get elected. Therefore, in my

considered view, (1) S.C. Sekar, (2) V.V.D.N. Vikraman and (3) S.R. Arvind Kumar could be declared to have been elected, since their

election, would not be violative of Section 12(2) of the Banking Regulation Act, 1949. Moreover, these 3 persons are going to hold office only till

the next Annual General Meeting (86th), which has already become overdue and for which the time has been extended by the order dated

8.10.2009. Therefore, the declaration of their results, is not of serious consequence, considering the short tenure that they have.

112. In view of the above, the application A. No. 2954 of 2008 is dismissed. The Tamil Nadu Mercantile Bank is directed to declare (1) S.C.

Sekar, (2) V.V.D.N. Vikraman and (3) S.R. Arvind Kumar to have been elected in the 83rd Annual General Meeting. The Bank shall also declare

(1) P. Mahindravel (2) B. Prabhakaran (3) T. Raja Kumar (4) Shankar Jaganathan (5) Thirukumar Vethanayagam (6) S. Ganapathy and (7) P.

Yesunathan as having been elected in the 85th AGM. The Board of Directors shall meet and call for the next AGM (86th) within the time

stipulated by the order dated 8.10.2009. There will be no order as to costs.