
(1995) 05 CAL CK 0039
In the Calcutta High Court
Case No : Suit No. 342 of 1994

Kashinath Tapuriah

APPELLANT

Vs

Incab Industries Limited and Others

RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Companies Act, 1956 — Section 172, 173, 175, 255, 286
Industrial Finance Corporation Act, 1948 — Section 25
Specific Relief Act, 1963 — Section 14, 15, 38, 38(2)

Citation : (1998) 93 CompCas 725 : 99 CWN 1178

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Advocate : P.K. Roy, for the Appellant; A.K. Mitra, for defendant No. 1, S.K. Mukherjee, Banerji and S. Sarkar for defendants Nos. 2 to 5, for the Respondent

Judgement

Shyamal Kumar Sen, J.—On October 17, 1994, the petitioner filed the above suit for the following reliefs :

(a) A declaration that the plaintiff has been, still is and continues to be the chairman of the board of directors of defendant No. 1.

(b) A declaration that a meeting of the board of directors of defendant No. 1, scheduled on October 5, 1994, was adjourned without transacting any business and no matter was discussed and no resolution was passed for the removal of the plaintiff as chairman of the board of directors of defendant No. 1.

(c) A declaration that the alleged minutes of the alleged board meeting dated October 5, 1994, of defendant No. 1 pertaining to the purported removal of the plaintiff from the chairmanship of the board of directors of defendant No. 1 is bad, null and void, cannot be given effect to and is not binding on the plaintiff and defendant No, 1.

(d) A perpetual injunction restraining defendants Nos. 1 to 5 their servants, agents and assigns from giving any effect or further effect to or acting or further

acting in furtherance of the purported resolution dated October 5, 1994, of defendant No. 1, being annexures "M" and "N", respectively hereto in any manner whatsoever.

(e) A perpetual injunction restraining defendants Nos. 1 to 5, their servants, agents and assigns from asserting in any manner whatsoever that the plaintiff has ceased to be the chairman and/or removed from the chairmanship of the board of directors of defendant No. 1.

(f) The alleged minutes of the alleged board meeting of defendant No. 1 held on October 5, 1994, and the purported letter dated October 6, 1994, being annexures "M" and "N", respectively hereto be delivered and cancelled.

(g) Temporary injunction.

(h) Receiver.

(i) Attachment.

(j) Costs.

(k) Further and/or other reliefs.

2. In the plaint it has been alleged, inter alia, as follows :

Defendant No. 1 was originally incorporated under the provisions of the Indian Companies Act, 1913, under the name "Indian Cable Co. Ltd." and is now an existing company within the meaning of the provisions of the Companies Act, 1956. In or about January, 1987, the name of defendant No. 1 was changed from Indian Cable Co. Ltd., to its present name and a fresh certificate of incorporation consequent upon the change of name was issued on January 30, 1987.

Defendants Nos. 2, 3, 4 and 5 are the directors of defendant No. 1 as nominees of the financial institutions, i.e., Industrial Credit and Investments Corporation of India Ltd. (hereinafter referred to as "the ICICI"), LIC Housing Finance Ltd., Unit Trust of India and National Insurance Co. Ltd., respectively. Defendant No. 6 is a nominee director of defendant No. 7.

3. The plaintiff together with his associates holds 35 per cent. shares of in defendant No. 1. The plaintiff became and still continues to be one of the directors and the chairman of the board of directors of defendant No. 1 as nominee of defendant No. 7 by reason of the following.

4. The petitioner has referred to the relevant articles of association of defendant No. 1-company which, inter alia, provides as follows :

"90. The consulting engineers shall be entitled, so long as their agreement with the company as referred to in Article 131 hereof, remains in force, to appoint up to two directors and to remove any director so appointed and appoint another in his place or in the place of a director so appointed who resigns or otherwise vacates his office. Such directors shall be ex-officio directors within the meaning

of these articles and such one of them as from time to time shall be named by the consulting engineers shall be chairman of the board. The ex-officio directors named in the next following article shall be deemed to have been appointed as such under this article.

135. The consulting engineers being an incorporated company its directors for the time being may regulate and conduct their proceedings and exercise all or any of the powers, authorities and discretion of that company as the consulting engineers of this company in such manner as the articles of association of that company may permit or direct and may delegate all or any of such powers, authorities and discretions to such of the managers or other officers of that company and on such terms and conditions as the directors of that company may see fit, and accordingly all deeds and documents required to be signed by the consulting engineers of this company shall be deemed to be sufficiently so signed if signed by any director of the consulting engineers" company or by any other officer of that company to whom its directors may have delegated their powers in that behalf."

5. A copy of the extract of the relevant articles of association of defendant No. 1 has been annexed to the plaint.

6. By an agreement dated January 28, 1947, between defendant No. 1 and defendant No. 7, defendant No. 7 was appointed as a consulting engineer of defendant No. 1, a xerox copy whereof has been annexed to the plaint.

7. Some of the relevant clauses of the aforesaid agreement dated January 28, 1947, are reproduced below :

"(i) So long as the consulting engineers remain consulting engineers to the Indian company and so long as they hold not less than 10,000 shares of any class, in the Indian company of nominal value rupees ten or their equivalent the consulting engineers shall be at liberty at all times and from time to time to appoint two directors of the Indian company to cancel their appointments or the appointment of either of them and upon such cancellation or the retirement or resignation of them or either of them to appoint other directors or another director so long as not more than two directors so appointed hold office as such at the same time. Any director or directors so appointed by the consulting engineers shall be ex officio directors and shall not be subject to retirement by rotation nor shall they be under obligation to take up or acquire any share qualification. So soon as this agreement shall come into force the consulting engineers shall be entitled to nominate one of such ex officio directors to act as chairman of the board of the Indian company and the other of such ex officio directors to be general manager of the Indian company or may nominate one of such ex officio directors to hold both the said offices, subject as aforesaid. Such rights of nomination as aforesaid shall subsist during the continuance of this agreement and may be exercised if and when an ex officio director as aforesaid shall die or otherwise cease to hold the office or offices to which he has been

nominated in pursuance of the provisions hereof. Upon the consulting engineers exercising their right to nominate an ex officio director to act as general manager of the Indian company, the Indian company shall enter into a service agreement with such person appointing him as general manager on terms to be agreed between him and the Indian company and unless otherwise mutually agreed between the parties hereto the terms of service of any ex officio director subsequently nominated by the consulting engineers to act as general manager of the Indian company shall mutatis mutandis and so far as circumstances permit be the same as those contained in such service agreement as aforesaid.

(ii) The consulting engineers shall continue to be the sole consulting engineers of the Indian company under the terms of this agreement (unless the consulting engineers shall give notice to determine this agreement in accordance with the provisions hereinafter contained) for the period of twenty-one years certain from the first day of April, one thousand nine hundred and forty-seven, and thereafter, until they shall be removed therefrom by an extraordinary resolution of the Indian company passed at an extraordinary general meeting specially convened for that purpose and for which not less than twelve calendar months' notice shall be given (but which shall in no case be given on a date earlier than the first day of April, one thousand nine hundred and sixty-seven) and at which persons holding or representing by proxy or power of attorney not less than three-fourths of the issued share capital of the Indian company for the time being and having voting rights shall be present and shall vote for such resolution.

The consulting engineers shall be entitled to determine this agreement by giving twelve months' notice in writing to the Indian company expiring at any time and upon the expiry of such notice this agreement shall cease and determine but without prejudice to the performance and satisfaction of all obligations duties rights and claims which shall have become binding on either party thereto or shall have accrued prior to the expiration of such notice."

8. Subsequent thereto a supplemental agreement was executed on October 30, 1951, between defendant No. 1 and defendant No. 7. A xerox copy of the said supplemental agreement has been annexed to the plaint.

9. In terms of the agreement between defendant No. 1 and defendant No. 7 and in tune with Article 90 of the articles of association of defendant No. 1, defendant No. 7 nominated two directors on the board of defendant No. 1 since 1947, one of whom was also the chairman of the board of directors of defendant No. 1.

10. Till January 31, 1984, Mr. D.P.N. Kanga, Mr. R.G. Hall and Mr. L.A. Farren, defendant No. 6 were the directors of defendant No. 1, nominated by defendant No. 7 on the board of directors of defendant No. 1. Mr. D. P. M. Kanga was further nominated by defendant No. 7 as the chairman of the board of directors of defendant No. 1. On January 31, 1984, at the board meeting of defendant No. 1, the resignation of Mr. R.G. Hall as a director of defendant No. 1 was accepted and the vacancy caused by such resignation was filled up by appointing the

plaintiff as a director of defendant No. 1. A copy of the minutes of the board meeting held on January 51, 1984, has been annexed to the plaint.

11. As Mr. D.P.N. Kanga expressed his desire to retire, by a letter dated November 15, 1984, addressed by defendant No. 7 to defendant No. 1, the plaintiff was also nominated by defendant No. 7 as the chairman of the board of directors of defendant No. 1. A xerox copy of the said letter dated November 15, 1984, has been annexed to the plaint. Thus, the plaintiff and Mr. L.A. Farren, defendant No. 6 continued and still continue to remain as chairman and director, respectively of defendant No. 1 as nominees of defendant No. 7.

12. In terms of the said letter dated November 15, 1984, a board meeting of defendant No. 1 was held on December 17, 1984, whereat the resignation of Mr. D.P.N. Kanga was duly considered and accepted and simultaneously the plaintiff was appointed the chairman of the board of directors. A copy of the minutes of the said board meeting of defendant No. 1 so held on December 17, 1984, has been annexed to the plaint.

13. It has further been alleged that the consulting engineers' agreement between defendant No. 1 and defendant No. 7 remains in force till date, and defendant No. 7 has not removed the plaintiff either from the chairmanship or from the directorship of defendant No. 1.

14. It has been further alleged that the plaintiff has not resigned or vacated his office as director of defendant No. 1 nor has resigned or vacated the post of chairman of the board of directors of defendant No. 1.

15. In or about the first week of September, 1994, the plaintiff received from defendant No. 1, a notice of the board meeting of defendant No. 1 scheduled to be held on September 10, 1994. A xerox copy of the said notice has been annexed and forms part of the plaint without the enclosures.

16. It has been alleged that though the said board meeting scheduled to be held on September 10, 1994, was held, after some discussions it remained inconclusive and was adjourned till September 21, 1994.

17. It has been alleged that the agenda of the board meeting scheduled to be held on September 10, 1994, had no item regarding removal or resignation or cessation of the plaintiff as chairman of the board of directors of defendant No. 1 for discussion by the board. No leave was sought for from the plaintiff, nor any permission was given by the plaintiff to discuss any matter regarding resignation of the plaintiff as chairman of the board of directors of defendant No. 1. Defendant No. 2 as a director of defendant No. 1 wanted to be informed about the consulting engineers' agreement vis-a-vis information about the appointment of the plaintiff as director and chairman of the plaintiff.

18. On or about September 15, 1994, by a letter addressed to defendant No. 1, defendant No. 2, as Assistant General Manager of the ICICI sought for certain information and documents regarding, inter alia, appointment of the plaintiff as

director and chairman of defendant No. 1. A xerox copy of the said letter dated September 15, 1994, has been annexed and forms part of the plaint.

19. The said letter dated September 15, 1994, was duly replied to on behalf of defendant No. 1 by the plaintiff by his letter dated September 19, 1994, a copy whereof has been annexed and the same forms part of the plaint.

20. By a letter dated September 19, 1994, the plaintiff also intimated the chairman of the ICICI Ltd., who had nominated defendant No. 2 as a nominee to the board of directors of defendant No. 1, inter alia, the true position of the plaintiff as nominee chairman of defendant No. 7. A xerox copy of the said letter dated September 19, 1994, has been annexed and the same forms part of the plaint.

21. The adjourned board meeting of defendant No. 1 held on September 21, 1994, was again adjourned till October 5, 1994, without transacting any business.

22. By a letter dated October 3, 1994, as also by fax addressed to the Deputy Managing Director, ICICI, the plaintiff made his position, stand and explanation clear as would be evident from a copy of the said letter which has been annexed to the plaint. In the said message it was reiterated that the issues raised in the communication dated September 15, 1994, and in the ICICI's further letter dated September 21, 1994, stood fully responded to by the plaintiff.

23. On or about October 3, 1994, the plaintiff was informed by the company secretary of defendant No. 1 that the adjourned board meeting of defendant No. 1 scheduled to be held on October 5, 1994, had been further postponed till October 10, 1994. The plaintiff further came to learn from the company secretary of defendant No. 1 that the other members of the board of directors of defendant No. 1 had also been intimated of the same. In this context, a specimen copy of the fax message dated October 3, 1994, issued by the said company secretary of defendant No. 1 to the members of the board of directors of defendant No. 1 has been annexed to the plaint.

24. It has been alleged that on October 4, 1994, the plaintiff came to know that defendant No. 2 objected to the postponement of the board meeting of defendant No. 1 scheduled to be held on October 5, 1994, and that he contended that the issue regarding the continuation of the plaintiff as chairman of the board of directors of defendant No. 1 was under discussion at the board level since March 31, 1994. It has also been contended on behalf of the plaintiff that the question of discontinuation of the plaintiff as chairman of the board of directors of defendant No. 1 did not and could not arise. At the board meeting of defendant No. 1 held on March 31, 1994, an issue cropped up as to whether the plaintiff would be bringing in fresh funds as a booster to the revival package of defendant No. 1. The plaintiff also at the said meeting and also at the meeting held on September 21, 1994, assured full co-operation with the board for the purpose of revival of defendant No. 1. Moreover, the plaintiff out of his own resources paid a substantial sum to the statutory and other creditors of

defendant No. 1 including the provident fund to show his bona fides in the matter of assurance of such co-operation. The question of removal or resignation or cessation of the plaintiff from the chairmanship of defendant No. 1 did not and could not arise.

25. It has been alleged that though the plaintiff attended the board meeting of defendant No. 1 on October 5, 1994, as the statutory books for holding the meeting were not there because of the absence of the company secretary, the meeting had again to be adjourned without transacting any business till a date convenient to the members of the board of defendant No. 1 at a later date. Since the members of the board of defendant No. 1 were present, some time was utilised for discussing the financial aspects of defendant No. 1.

26. It has further been contended on behalf of defendants Nos. 2, 3, and 4 that such a meeting was held on October 5, 1994, at Bombay and a resolution was passed at such an alleged meeting removing the plaintiff from the chairmanship of the board of directors of defendant No. 1.

27. Defendants Nos. 2, 3 and 4 by a letter dated October 6, 1994, addressed to defendant No. 1 tried to explain the circumstances under which the plaintiff was allegedly removed from the chairmanship of the board of directors of defendant No. 1 enclosing therein the minutes of the meeting to be held on October 5, 1994. By the said letter defendant No. 1 was directed to take necessary action.

28. It has been submitted on behalf of the plaintiff that the board meeting of defendant No. 1 held on October 5, 1994, and the business transacted there as reflected in the alleged minutes and the intimation by defendants Nos. 2, 3 and 4 to give effect thereto by letter dated October 6, 1994, being annexures "M" and "N" are illegal, bad and not enforceable, of no effect and not binding on the plaintiff or defendant No. 1 for, inter alia, the following reasons :

(a) The action of defendants Nos. 2, 3 and 4 and the attempt to remove the plaintiff as chairman of defendant No. 1 is ultra vires its articles of association.

(b) The whole basis of the board meeting dated October 5, 1994, as reflected in the minutes is with regard to earlier discussions allegedly held and is not reflected in the minutes book of the board of directors.

(c) There was no, nor could there be any, agenda for removal of the plaintiff from the chairmanship of defendant No. 1 nor did the plaintiff ever consent to include any such agenda for discussion either on September 10, 1994, or at any adjourned meeting thereof. There was also no fresh agenda either on September 10, 1994, or on September 21, 1994.

(d) When the plaintiff has been appointed at the behest of defendant No. 7 in terms of Article 90 of the articles of association of defendant No. 1 removal can only be made in terms of the said article and not otherwise and defendant No. 7 has not taken any steps for removal of the plaintiff.

(e) Defendants Nos. 2, 3 and 4 even if they had constituted a quorum for a meeting of the board of directors of defendant No. 1 had no authority and/or jurisdiction under the articles of association to appoint and/or remove any person as chairman of defendant No. 1.

(f) The board of directors of defendant No. 1 are not entitled to act contrary to the said agreement between defendant No. 1 and defendant No. 7 and Article 90 of the articles of association of defendant No. 1.

(g) The ability or inability to bring in fresh or further funds does not and cannot have any relation whatsoever in the matter of operation of the terms of the agreement between defendant No. 1 and defendant No. 7 as also in the matter of operation of the provisions of Article 90 of the articles of association of defendant No. 1.

(h) Article 2 of the articles of association expressly provides that save as reproduced in the said articles of association, the regulations contained in Table A of the First Schedule to the Companies Act would not apply to defendant No. 1. It has also been contended that the purported removal of the plaintiff is also contrary to the provisions of Article 98 of the articles of association of defendant No. 1 in any event. It is wholly untrue as allegedly recorded in the said minutes of the board meeting allegedly held on October 5, 1994, to the effect that the enquiries with defendant No. 7 revealed that defendant No. 7 did not consider the plaintiff as their nominee on the board of directors of defendant No. 1. The alleged minutes of the alleged board meeting dated October 5, 1994, do not in any event consider the contents of the plaintiff's letter dated September 19, 1994, and October 3, 1994.

(i) Notice of the alleged board meeting dated October 5, 1994, had not been given to all the directors of defendant No. 1 and in particular defendant No. G and as such, no legal and valid board meeting could be held on October 5, 1994, in any event.

29. The plaintiff by his letter dated October 15, 1994, has intimated to defendant No. 1 not to take any action or further action pursuant to the alleged minutes of the alleged board meeting dated October 5, 1994, as forwarded by defendants Nos. 2, 3 and 4, A copy of the said letter has been annexed to the plaint.

30. In the premises, the plaintiff moved this instant interlocutory application and on October 17, 1994, obtained ad interim order from the Vacation Bench to the following effect :

"The court : Leave is given to the petitioner to have the petition stamped and punched within one week after the re-opening of the long vacation.

In the meantime no further effect to the annexures "M" and "N" to the petition will be given, and status quo be maintained. Let the matter appear on October 21, 1994.

All parties are to act on a signed copy of the minutes of this order on the usual undertaking."

31. Mr. P.K. Roy, the learned advocate for the plaintiff, has submitted at the outset that Article 2 of the articles of association of defendant No. 1 company expressly excludes the operation/applicability of Table A of the Companies Act.

32. He has also submitted that the plaintiff's claim is based on Article 90 read with Articles 129, 130, 131, 132, 133, 134 and 135 of the company.

33. Referring to the said articles it has been submitted that the purported attempt to remove the petitioner from the post of chairman is clearly contrary to the said articles, and as such, should not be allowed to be given effect to. Mr. Roy has also submitted that the purported resolution for removal of the plaintiff from chairmanship of defendant No. 1 company is ultra vires the articles of the company and directly affects the plaintiff, and as such the objection raised by the contesting defendants regarding the locus standi of the plaintiff to maintain the application cannot be sustained.

34. It has also been submitted that letter dated November 15, 1984, signed by L. A. Farren, executive director of BICC (Consulting Engineers), expressly provides that the plaintiff was nominated by BICC as chairman of Incab. The said letter is not under challenge.

35. It has been contended that in the affidavit-in-opposition filed on behalf of defendants Nos. 2 to 5 a copy of a letter dated October 4, 1994, has been annexed to show as if the plaintiff is not holding the position of chairman/director of Incab as BICC's nominee.

36. The learned advocate has further contended that the said document does not merit any credence, for the following reasons :

(i) It is not a communication to Incab, the identity of the signatory to the letter is unknown.

(ii) The letter does not indicate that it was written under the authority of the board of directors of BICC or of its shareholders in general meeting.

(iii) The provision as to the termination of the agreements of 1947 and 1951 have not been adverted to.

(iv) The alleged faxes of September 30, 1994, and October 4, 1994, emanating from P.K. Mukherji of the ICICI have not been disclosed-it is thus not appreciated, in what context the said letter was written.

(v) Finally, in the concluding paragraph, the author of the letter expressed inability to influence "those affairs."

37. It has been contended that the said letter cannot and does not have the effect of overriding the earlier undisputed letter of November 15, 1984.

38. It has further been submitted that no question of any perpetual agreement arises in the present case. The agreements between BICC and Incab contains the provisions for termination thereof. However, nothing has been produced by the contesting defendants to show that such agreements have been terminated excepting the disputed letter of October 4, 1994, on which no reliance can be placed for the reasons stated herein-above.

39. Mr. Roy has further submitted that by getting himself elected, a director does not necessarily cease to be a nominee director of the company. By virtue of nomination as permissible under the articles of association and also by getting himself elected, the plaintiff in effect stands on two legs with the consequence that in the event of removal/loss of one leg, he can still continue to stand on the other. There is no bar in law to such a position and none has been cited before this court. Nomination does not get supplanted by election as suggested in the disputed letter dated October 4, 1994. On the contrary, nomination gets supplanted by election.

40. It has been contended by Mr. Roy, the learned advocate for the plaintiff that notwithstanding whether the law does or does not require circulation of a formal agenda, in practice it is done almost invariably in all cases. Even a cursory glance through the minute books of board meetings of Incab kept in the custody of this court would show that it has been always the practice of Incab to circulate the agenda of such meetings, There is no warrant for departure from such a statutory practice and more so while discussing a highly crucial issue like the chairman's removal. This issue is of such a high magnitude and it is so projected by defendants Nos. 2 to 5 as if the very survival of Incab is dependent on that issue. It is, therefore, obvious that there should have been at least an indication of such an important issue in the agenda and more so when very minor issues, e.g., fixed deposit holders--repayment of principal, interest, recovery of intercorporate loans, flat at M-11, Greater Kailash and the date of the next board meeting have been detailed in the agenda.

41. It is the contention of Mr. Roy that some indication even if not in the shape of a formal agenda, should be given in advance of a board meeting stands to reason, as the importance of such an issue, may be the deciding factor for a director to opt to attend the meeting or to attend to some other more important business, may be of the company itself.

42. It has also been contended that it is one case of not having an agenda at all and completely another, when there are as many as 29 items on the agenda and the very vital one and in fact the only one claimed to have been discussed at the relevant meeting dated October 5, 1994, was not included in the agenda.

43. Mr. Roy has also submitted that in any event, the rudimentary principles of natural justice require that before an act is done affecting the substantive rights of a person, that person be given notice of such proposed act so that he has a chance of persuading the concerned persons as to why such act should not be

done. In the present case, the contesting defendants acted in complete breach of the principles of natural justice.

44. He has submitted that it is not necessary to give reasons for removal of the plaintiff from chairmanship. Even then, where reasons have in fact been given but are unsustainable, no decision should be allowed to rest thereon. Mr. Roy has further submitted that an analogy may be drawn from a speaking and non-speaking award. At law, an arbitrator is not obliged to give reasons for the award. But where he chooses to give reasons, the same may come under judicial scrutiny and may be set aside.

45. Mr. Roy has relied upon the judgment and decision in the case of Punjab National Bank v. Sanchaita Investment [1985] 89 CWN 509, and in the case of Krishna Lal Sadhu and Another Vs. Mt. Promila Bala Dasi, , and also in the case of M.C. Chacko Vs. The State Bank of Travancore, Trivandrum,

46. Mr. Roy has further submitted that a beneficiary under an agreement can insist on specific performance thereof and can maintain legal proceedings for that purpose. However, the plaintiff has not instituted the present suit as a nominee of the BICC. The plaintiff was appointed as chairman of the board of directors and has a right to continue as such until he is removed in accordance with the procedure prescribed, expressly or impliedly, in the constitution of the company. The said right of the plaintiff has been infringed by the contesting defendants who have purported to remove the plaintiff from chairmanship illegally and in exercise of a power which they do not have. It is to redress such wrong done to the plaintiff that the present proceedings have been instituted.

47. It is the contention of Mr. Roy that there is no question of specific performance of any agreement in the instant case. The plaintiff's suit is for redressal of a wrong done to the plaintiff and hence an order of injunction could be and should be passed to restrain the concerned defendants from doing and/or further doing such wrong to the plaintiff.

48. It has been strongly urged by Mr. Roy that by purporting to remove the plaintiff from chairmanship, defendants Nos. 2 to 5 have arrogated to themselves and exercise a power which they do not have in view of the concerned articles as aforestated. In the premises such act of the said defendants is null and void and invalid since the directors and members of a company are bound to comply and act in accordance with the memorandum and articles of a company (Section 36 of the Companies Act).

49. Accordingly, Mr. Roy has submitted that the present application should be allowed and the plaintiff should be granted redress by way of passing an order in terms of the prayers in the said petition.

50. The following grounds have been mainly urged on behalf of the plaintiff in support of his case :

(a) The item regarding the removal of the plaintiff as chairman of the board of

directors of the company was not mentioned in the agenda of the board meeting convened to be held on March 31, 1994.

(b) The grounds for removal being alleged inability to bring in Rs. 20 crores by Tapuriah is not correct and the minutes have not been properly written.

(c) The removal of the chairman by the directors is ultra vires the powers of the directors.

51. On the question whether there was no agenda for removal of the plaintiff as chairman the plaintiff has referred to the penultimate items in the agenda to the effect following :

"Any other points with the permission of the chairman".

52. In this connection, this ground has been taken in the plaint, paragraph 22(c), page 24.

53. The plaintiff/petitioner has relied upon Articles 2, 90 and 129 to 131 of the articles of association of the company. These articles have been referred to for the purpose of showing that BICC were entitled to nominate two directors one of whom would be nominated as chairman and the agreement of 1947 was for 21 years and thereafter it would continue until terminated as provided in the said agreement.

54. Reference was made to annexure "E" to the petition a letter dated November 15, 1984, written by L.A. Farren to the board of directors of the company to the effect that Mr. D.P.M. Kanga, who was nominated by BICC as chairman was desirous of retiring and BICC wanted to nominate Mr. Kashinath Tapuriah who was already a director as chairman in the place of Mr. Kanga.

55. Mr. A.K. Mitra, the learned advocate for defendant No. 1-company, represented by the secretary, has submitted that the initial appointment of the plaintiff as chairman has not been disputed. According to him the provisions of the Companies Act and the articles of the company do not contemplate appointment of a permanent chairman.

56. He has also referred to the relevant articles in this connection and submitted that in terms of the articles as well as the agreement the BICC has under the authority vested in it nominated the petitioner as chairman and the petitioner continues to be chairman until it is revoked by the consulting engineer.

57. Mr. Mitra has referred to Sections 194, 195 and 286 of the Companies Act.

58. Section 286 of the Companies Act, 1956, provides as follows :

"Under Section 286 of the Companies Act notice of every meeting of the board of directors of a company is required to be given in writing to every director for the time being in India. There is no other provision in the Act requiring the notice of the board meeting to specify any agenda. In this connection, reference may be made to Section 172 of the Companies Act. Under Sub-section (1), every notice

of a meeting of a company shall specify the place and the day and hour of the meeting and shall contain a statement of the business to be transacted thereat. u/s 173, in respect of every special business, the explanatory statement is also required to be given relating to each item of special business, Therefore, the distinction is quite clear regarding the notices of board meetings and general meetings."

59. Mr. Mitra has further submitted that the plaintiff has been duly nominated by the consulting engineers by subsequent election at the said meeting in terms of Article 90 of the company and also in terms of the agreement and his authority to act as chairman has not been revoked by B1CC. The said nomination has been duly adopted.

60. He has further submitted that only because of his subsequent re-election, it cannot be said that there is no question of nomination by the consulting engineers, BICC. In fact the subsequent election is a mode of ratification of the nomination originally made and it cannot be contended that the question of nomination does not arise.

61. Mr. S.B. Mukherjee, the learned advocate for respondents Nos. 2 to 5, has submitted that even if there is no specific agenda under the miscellaneous items with the permission of the chairman, any other business may be transacted. In the instant case, the respondents' contention is that the chairman himself raised the question of his stepping down from the chairmanship of the company. This is evident from the letter dated October G, 1994 petition, written by three of the directors who attended the meeting. In the second para, of this letter it has been stated that Mr. Tapuria assured that he would bring in necessary funds for revival of the company, failing which he suggested that he is stepping down as chairman be considered at the meeting scheduled to be held on April 18, 1994. Therefore, Mr. Tapuria is estopped from contending otherwise.

62. He has further submitted that even if the business is not one of the items in the agenda still the matter may be considered at the board meeting and appropriate resolution may be passed in connection therewith.

63. In support of the contention, he has referred to the following decisions :

1. La Compagnie De Mayville v. Whitley [1896] 1 Ch D 788.
2. Ferruccio Sias v. Jai Manga Ram Mukhi [1994] 1 Comp LJ 345 ; [1998] 93 Comp Cas 750 infra.
3. Smt. Abnash Kaur v. Lord Krishna Sugar Mills Ltd. [1974] 44 Comp Cas 390 .

64. He has also referred to Palmer's Company Law, 24th Edition, Article 61-03, pages 910-911 and Buckley on the Companies Acts, 14th Edition, Volume I, page 1019.

65. It is the contention of Mr. Mukherjee that the transaction of such a business might only be an irregularity and not an illegality.

66. Mr. Mukherjee has further submitted that the court does not interfere with the internal management of a company if the acts complained of can be set right by the members or directors.

67. In support of his contention learned advocate has relied upon the following decisions :

1. Abnash Kaur Vs. Lord Krishna Sugar Mills and Others,
2. Bentley-Stevens v. Jones [1974] 2 All ER 653 .
3. Life Insurance Corporation of India Vs. Escorts Ltd. and Others,

68. Mr. Mukherjee has referred to Articles 2, 90, and 129 to 131 of the company's articles. He has submitted that Tapuriah cannot assert any right on the basis of the said articles.

69. Mr. Mukherjee has further submitted that Article 90 merely confers the rights on the consulting engineers to nominate a chairman of the board of directors. A mere nomination would not automatically amount to such director being appointed chairman and this is obvious from the minutes of the board meeting dated January 31, 1984, on which reliance has been placed by the petitioner. At this meeting consequent upon the nomination by BICC, the plaintiff was appointed as chairman by the board of directors, Therefore, the appointing authority being the board of directors they have also the right to remove the chairman. No such power of appointment of chairman or removal of chairman is vested in the consulting engineers.

70. The learned advocate referred to Section 255 of the Companies Act and Section 25 of the Industrial Finance Corporation Act, 1948.

71. He has also submitted that Articles 129 to 131 referred to the agreement between the company and the consulting engineers. The plaintiff is not a party to the agreement nor is any personal right or benefit conferred on him under the said agreement. In fact, he was nowhere in the picture when the agreement was entered into in 1947 and modified in 1951. Therefore, he cannot enforce any rights or obligations under the said agreement.

72. In support of the aforesaid contention, Mr. Mukherjee has relied upon the following decisions :

1. M.C. Chacko Vs. The State Bank of Travancore, Trivandrum,
2. Krishna Lal Sadhu and Another Vs. Mt. Promila Bala Dasi,
3. Punjab National Bank v. Sanchaita Investment [1985] 89 CWN 509.

73. The learned advocate for defendants Nos. 2 to 5 has also referred to Chapter VIII, Section 38 of the Specific Relief Act. He has submitted that no perpetual injunction could be claimed as u/s 38(2) the provisions of Chapter II would be attracted. Under Sections 14 and 15 of Chapter II no specific performance can be

claimed inasmuch as monetary compensation would be an adequate relief and it is only a party to the contract who can enforce the agreement.

74. He has further submitted that in any event, the instant suit is not a suit for specific performance nor are the essential pleadings required in a suit for specific performance made therein. Therefore, no temporary injunction can also be granted.

75. It is the contention of learned advocate that there cannot be an agreement in perpetuity ; it is obvious that from the conduct of the parties and in particular the BICC that they have treated the contract as having been abandoned and no longer in force nor enforceable.

76. Mr. Mitra has strongly relied upon the letter of the BICC and submitted that they do not consider the plaintiff to be their nominee.

77. He has further submitted that the agreements with the consulting engineers made in 1947 and 1951 are not in force.

78. It is also the contention of learned advocate that after such a long lapse of time and in view of the changed circumstances, the agreements are not enforceable.

79. He has further submitted that they are entirely neutral on the issue of dismissal or appointment of the chairman or any director.

80. Accordingly, he has submitted that the petitioner cannot claim to continue on the basis of the nomination originally made by the BICC.

81. The learned advocate for defendants Nos. 2 to 5 has referred to Article 117 which provides that in the absence of the chairman, the board may appoint any other director to be chairman of the meeting.

82. It has been contended by the learned advocate that no grounds are necessary for removal.

83. He has further submitted that four directors attended the disputed meetings. Three out of the said four directors are of the view that a certain thing transpired at the meeting. They are disinterested directors who have nothing to gain personally. There is no reason why their version should not be accepted.

84. It has also been contended that the question raised in this proceeding cannot be finally decided at this stage on affidavit evidence.

85. It has also been submitted that that the minutes have not been recorded in the minutes book does not mean that no meeting was held. Admittedly, a meeting was held. The original minutes book was being retained by the secretary who is openly siding with the plaintiff. The minutes books have since been produced in the court.

86. It has also been contended that apart from the fact that the plaintiff has

failed to bring funds of Rs. 20 crores there is lack of confidence in the plaintiff by the financial institution as shareholders, and also the workers and the bankers.

87. The learned advocate has also submitted that in the interest of the company the court should not intervene in the internal management as no illegality has been committed by removal of the plaintiff.

88. In this connection he has relied upon the following decisions :

(i) Bentley-Stevens v. Jones [1974] 2 All ER 653 .

(ii) Life Insurance Corporation of India Vs. Escorts Ltd. and Others,

89. He has also contended that the appointment of the plaintiff was made by the board and, as such, the removal can be also made by the board. The plaintiff has been appointed director by the shareholders as also L.A. Farren.

90. Apart from their question of nomination under Article 90 by the consulting engineers they are not nominee directors of BICC but shareholders directors duly elected at the general meeting.

91. According to Mr. Mukherjee, Article 117 clearly shows that if the chairman is not present the directors present shall appoint a chairman. So this is not a permanent appointment. He has referred to Section 175 of the Companies Act, 1956, which provides for powers of the chairman.

92. He has also submitted that Table "A" does not apply in terms of Article 2 of the company. He has further submitted that chairmanship is not a legal status. By his removal no legal right or contractual right has been infringed.

93. He has referred to Section 9 which provides that anything in the memorandum or articles or agreement or resolution contrary to the Act will be void.

94. I have considered the submissions of the parties and the decisions cited from the Bar.

95. The question in issue is if the removal of the plaintiff as chairman of the company at the board meeting is valid,

96. The first contention of the plaintiff is that there was specific agenda at the meeting on the question of removal of the chairman. In this connection, it may be noted that Section 286 of the Companies Act, 1956, is that notice of every meeting of the board of directors of a company is required to be given in writing to every director for the time being in India. Sub-section (1) of Section 172 of the Companies Act, 1956, provides that every notice of a meeting of a company shall specify the place and the day and hour of the meeting and shall contain a statement of the business to be transacted thereat. Section 173 provides that in respect of every special business the explanatory statement is also required to be given relating to each item of special business. Therefore, the distinction is quite clear regarding the notices of board meetings and general meetings.

97. It cannot be disputed that even if there is no specific agenda, under the miscellaneous items with the permission of the chairman any other business may be transacted. In the instant case, it appears from the record that the chairman himself raised the question of revival package and the question of bringing in funds by the chairman was considered at several meetings. It is also not in dispute that the company was passing through a financial crisis.

98. The plaintiff himself wrote to the chairman, the Industrial Credit and Investment Corporation of India Ltd, by letter dated September 19, 1991, that he had made the commitment to bring in Rs. 20 crores, whereas in the draft minutes of the meeting held on March 31, 1994, defendant No. 2 had changed the figure to Rs. 30 crores, The plaintiff has also admitted in the said letter that the company might require somewhere around Rs. 30 crores, as against Rs. 20 crores originally envisaged. He also recorded in the said letter that the draft minutes of the meeting dated March 31, 1994, do not contain the correct statement regarding his commitment to step down from the post of chairmanship of the company.

99. It has, however, been noted in the said letter that the funds required for the revival package as committed by the plaintiff are now ready. The relevant portion of the said letter is as follows :

"In the meantime, I wish to inform you that the funds required for the revival package as committed by me are now ready and I would be pleased to produce before you proof of the same.

May I also point out for your kind information that during the last board meeting of the company held on September 10, 1994, when Mr. P.K. Mukherjee asked me to step down as chairman I had made a specific enquiry whether the financial institutions had an alternate promoter who was willing to be associated in the revival of the company. To this, the answer from the institutional nominees was evasive. You will kindly appreciate that while the institutions, no doubt, have a substantial stake in the company, I, too, have a considerable interest and, therefore, any alternative proposal should, in all fairness, be disclosed to me rather than pressurising me in this manner.

I am writing all this to you because I know that you are a fair and dispassionate person who can be relied upon to take an objective view of the entire situation.

Our next board meeting is fixed for Wednesday, September 21, 1994, and I would seek your intervention so that matters can be resolved amicably and with grace and dignity.

With kind regards."

100. It appears to me that the question of bringing in funds by the plaintiff and his stepping down as chairman was discussed in the earlier meeting held on March 31, 1994, and also on September 10, 1994, and subsequently the meeting was adjourned to October 5, 1994, for further discussion.

101. In fact the plaintiff-petitioner contended that he could not be removed at the board meeting since he was appointed by the consulting engineers in terms of the agreement with the said consulting engineers and also by virtue of Article 90 he would continue to remain as chairman until removed by the consulting engineers and it is not open for the board to remove him. He did not, however, raise any objection to the discussion on the issue at any of the meetings in view of the absence of agenda.

102. It may be noted that even if the business is not one of the items in the agenda still the matter may be considered at the board meeting and appropriate resolution may be passed.

103. In this connection reference may be made to Palmer's Company Law, 24th Edition, Article 61-03 pp. which deals with the notice of board meeting at page 911. It has been noted that "Notice of a board meeting need not, unless the articles otherwise provide, specify the nature of the business to be transacted",

104. In this connection, in the judgment and decision in the case of *La Compagnie De Mayville v. Whitley* [1896] 1 Ch. 788, it may be noted that the relevant portion of *Lindley L. J.* appears to be very important. The relevant portion of the judgment of *Lindley L. J.*, as appears at pages 796-797 of the said report, is set out hereinbelow :

"This case involves one question which is of great importance to companies. The rest of the points are comparatively trifling. The great point is whether, when a directors' meeting is to be held, it is necessary to give a notice not only of the meeting, but of the business to be transacted at the meeting. I am not prepared to say as a matter of law that it is necessary. As a matter of prudence it is very often done, and it is a very wise thing to do it : but it strikes me, as it struck Lord Tenterden in *Rex v. Pulsford* 8 B & C 350, that there is an immense difference between meetings of shareholders or corporators and meetings of those whose business it is to attend to the transaction of the affairs of a company or corporation. It is not uncommon for directors conducting a company's business to meet on stated days without any previous notice being given either of the day or of what they are going to do. Being paid for their services as they generally are, and as is the case in this company--it is their duty to go when there is any business to be done, and to attend to that business whatever it is ; and I cannot now say for the first time that as a matter of law the business conducted at a directors meeting is invalid if the directors have had no notice of the kind of business which is to come before them. Such a rule would be extremely embarrassing in the transaction of the business of companies."

105. In this connection, it will be appropriate to note the observations of Buckley on the Companies Acts, Fourteenth Edition, Volume 1, page 1019, wherein it has been observed by the learned author as follows :

"But notice of the business as distinguished from notice of the meeting is not

necessary. In the case of special business it may be prudent and right to give notice of it, but it is not legally necessary to do so."

106. The judgment and decision in the case of *Ferruccio Sias v. Jai Manga Ram Mukhi* [1994] 1 Comp LJ 345 ; [1998] 93 Comp Cas 750 (Appx.) *infra* relied upon by Mr. S.B. Mukherjee, the learned advocate for the petitioner may also be taken note of. In the aforesaid decision, the learned judge of the Delhi High Court held that if no agenda is circulated the directors could object at the meeting and the meeting has to be adjourned.

107. In the instant case as already noted the matter in issue was discussed at the meeting. The petitioner did not raise any objection to such issue being discussed nor did he pray for any adjournment of the meeting on the ground that the matter was not on the agenda.

108. In my view at the worst the transaction of such a business might only be an irregularity and not an illegality. It is well-settled that the court does not interfere with the internal management of a company if the acts complained of can be set right by the members or directors.

109. In this connection, the following decisions, relied upon by the learned advocate for respondents Nos. 2 to 5, may be taken note of :

1. *Burland v. Earle* [1902] AC 83 (PC).

(2) *Bentley-Stewns v. Jones* [1974] 2 All ER 653 .

(3) *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*,

In the case of *Burland v. Earle* [1902] AC 83 (PC), at page 93, it was, *inter alia*, held that "it is an elementary principle of law relating to joint stock companies that the court will not interfere with the internal management of companies acting within their powers, and in fact has no jurisdiction to do so".

110. In the case of *Bentley-Stevens v. Jones* (1974) 2 All ER 653, it was held that a shareholder had a statutory right to move a resolution to remove a director and that the court was not entitled to grant an injunction restraining him from calling a meeting to consider such a resolution. The proper remedy of the director was to apply for a winding up order on the ground that it was "just and equitable" for the court to make such an order.

111. In the case of *Ebrahimi v. Westbourne Galleries Ltd.* [1972] 2 WLR 1289; [1972] 2 All ER 492 the absolute right of the general meeting to remove the directors was recognised and it was pointed out that it would be open to the director sought to be removed to ask the company court for an order for winding-up on the ground that it would be "just and equitable" to do so. The House of Lords said, "My Lords, this is an expulsion case, and I must briefly justify the application in such case of the just and equitable clause . . . The law of companies recognises the right in many ways, to remove a director from the board. Section 184 of the Companies Act, 1948, confers this right on the

company in general meeting whatever the articles may say. Some articles may prescribe other methods, for example a governing director may have the power to remove of (cf *Re Wondoflex Textiles Pty. Ltd.*, In re [1951] VLR 758), And quite apart from removal powers, there are normally provisions for retirement of directors by rotation so that their re-election can be opposed and defeated by a majority, or even by a casting vote. In all these ways a particular director member may find himself no longer a director, through removal, or non re-election ; this situation he must normally accept, unless he undertakes the burden of proving fraud or mala fides. The just and equitable provision nevertheless comes to his assistance if he can point to, and prove, some special underlying obligation of his fellow member(s) in good faith, or confidence, that so long as the business continues he shall be entitled to management participation an obligation so basic that if broken, the conclusion must be that the association must be dissolved".

112. The Supreme Court in the case of *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, , held and observed as follows (at page 636 of Comp Cas):

"Thus, we see that every shareholder of a company has the right subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review. It is true that u/s 173(2) of the Companies Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein, of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, all material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before them. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they propose to move at the meeting. The Life Insurance Corporation of India, as a shareholder of Escorts Limited, has the same right as every shareholder to call an extraordinary general meeting of the company for the purpose of moving a resolution to remove some directors and appoint others in their place. The Life Insurance Corporation of India cannot be restrained from doing so nor is it bound to disclose its reasons for moving the resolutions."

113. It appears on consideration of the relevant articles of the company, namely, Articles 2, 90 and 129 to 131, that the petitioner cannot claim that he has the right to continue on the basis of the said articles for an indefinite period.

114. It is also on record that the petitioner was also elected as a chairman by the board of directors as will appear from the minutes of the board meeting dated

January 31, 1984. If the petitioner was elected by the board, the board may also express its no confidence and remove the petitioners as chairman. The fact that he was nominated by the consulting engineers does not mean that he will continue forever.

115. In my view, there cannot be an agreement in perpetuity ; it is obvious that from the conduct of the parties and in particular BICC that they have treated the contract as having been abandoned and no longer in force nor enforceable,

116. It appears from the correspondence exchanged with BICC that BICC does not specifically express any views in the matter. It is also on record that the consulting engineers in terms of the agreement are not receiving any remuneration for long years. There is nothing on record to show that the consulting engineers are still acting as consulting engineers. It appears from the letter written by the BICC as disclosed in the proceeding that they are entirely neutral on the issue of dismissal or appointment of the chairman or any director. There is great doubt if the said agreement can have any force still. Moreover, they have specifically mentioned in the letter that they are not taking any sides in the dispute between other directors and the chairman.

117. In that view of the matter, the petitioner cannot claim to continue to be chairman for ever, by virtue of the fact that he is a nominee of BICC. It also appears that all directors except L.A. Farren who is out of India express lack of confidence in the petitioner and are against his continuance as chairman.

118. Article 117 provides that in the absence of the chairman, the board may appoint any other director to be chairman of the meeting. The board, therefore, under the articles is expressly authorised to appoint any chairman. Simply because there was an agreement at one point of time with the consulting engineers with power of nomination of the chairman and although the consulting engineers do not come forward to enforce the same, it cannot be said that the action of the board is unjustified. It appears a deadlock has been created in the management of the company. The action of the chairman has been criticised by the majority of the directors. As already noted they expressed lack of confidence in the chairman.

119. Under such circumstances, as already noted, the court should not interfere in the internal affairs relating to the management of the company and, as such, in my view, it will not be proper for me to interfere in the decision taken by the board and by the majority of the directors.

120. It may be noted that four directors attended the meeting wherein lack of confidence was expressed by three out of the said four directors. The said directors represent financial institutions holding major shares in the company.

121. Article 117 clearly shows that if the chairman is not present then the directors present shall appoint a chairman. It, therefore, appears that appointment of the chairman is not a permanent one.

122. Section 175 of the Companies Act also shows that there is provision for chairman for any particular meeting.

123. It is not in dispute that Table "A" does not apply in view of Article 2 of the company.

124. The relief if granted will be in the nature of specific performance which is not permissible in view of Section 38(2) of the Specific Relief Act. Under Sections 14 and 15 of the Specific Relief Act, no specific performance can be claimed inasmuch as monetary compensation would be an adequate relief.

125. In the instant case it would not be proper to pass the order of injunction. In this connection the judgment and decision in the case of Plantations Trusts Ltd. v. Bila (Sumatra) Rubber Lands Limited (144 L T 676), relied upon by Mr. Mukherjee, the learned advocate for the petitioner, may be taken note of.

126. In the aforesaid decision, there was an agreement to appoint nominees of the guarantee company as directors. Clause 6 of the agreement provides as follows :

"The company will appoint two persons, to be nominated by the trust, to be directors of the company and by Clause 7, the Bila Company's manager was to be replaced by another manager to be approved by the Trust Company."

127. It was held that although upon the true construction of the contract there was a right in the Trust Company to nominate two directors, the nomination had not the effect of appointing the nominee directors of the Bila Company and on the merits the injunction, being asked for not with the view of protecting the Trust Company's security ought not to be granted.

128. In the aforesaid decision, on similar facts the prayer for injunction was refused.

129. Considering the facts and circumstances of the case and the principles of law as settled by different decisions it appears to me that it will not be proper for me to interfere in the internal management of the company. Passing of interlocutory relief at this stage will really amount to such interference in the internal management of the company. Accordingly, in my view, the petitioner is not entitled to any interlocutory relief of injunction as prayed in the application.

130. The application for injunction accordingly fails and dismissed. The ad interim order passed by the Vacation Bench of this court on October 17, 1994, stands vacated.

131. In view of the order made in the main interlocutory application no order is required to be passed in the application for revocation and the cancellation of the vakalatnama filed by Jalan and Co. which was made during the pendency of this application.

132. Mr. Banerji, the learned advocate prays for stay of operation of the

judgment and order passed today and submits that since the ad interim order has continued from October 17, 1994, it should be allowed to continue for one week more and the judgment and order should remain stayed for one week.

133. Mr. S. Sarkar, the learned advocate for respondents Nos. 2 to 5 opposes this prayer. Mr. Banerjee, however, submits that the resolution passed on October 5, 1994, should not be given effect to by the company for at least one week. Mr. Sarkar does not really oppose the same. Accordingly, the resolution passed on October 5, 1994, at the company's meeting will not be given effect to for one week from date. In that view of the matter, no order is required to be passed staying the operation of my judgment and order passed today.

134. All parties concerned are to act on a signed copy of the operative part of this judgment and order on the usual undertaking.