

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI****Company Appeal (AT) No.25 of 2017****IN THE MATTER OF:****IVRCL Ltd****(Formerly known as IVRCL Infrastructure & Project Ltd) ...Appellant****Vs****M/s IOT Utkal Energy Services Ltd & Others****...Respondents****Present: S/Shri Sumesh Dhawan, Samiron and Ms Vatsala Kak,  
Advocates for the appellants.****Mr. Aditya Dogra, Advocate for the Respondent No.1.****Sh Krishnan Venugopal, Senior Advocate, Mr. Amit Meharia,  
Advocate and Ms Tannishtha Singh and Ms Ayushi Gupta,  
Advocates for the Respondent No.2.****ORDER**

29.03.2017- This appeal has been preferred by the appellant against order dated 20<sup>th</sup> December, 2016 passed by National Company Law Tribunal, Kolkata Bench (hereinafter referred as the "Tribunal" for short) in Company Application No.552/2013 in Company Petition No.41 of 2013 whereby and whereunder the amendment petition filed by the appellant has been partly allowed allowing the appellant to implead Mr. Jatin Jamandas Mavani, nominee director of the IOTL as 10<sup>th</sup> Respondent to the Company Petition.

2. The appeal was heard on 16<sup>th</sup> February, 2017, when this Court passed the following order:-

*“The Tribunal vide impugned order dated 20.12.2016 observed that the appellant/petitioner had the knowledge about the Board Meeting held on 31<sup>st</sup> December, 2012 as also the Extra-ordinary General Meeting (EGM) held on the same date i.e. 31<sup>st</sup> December, 2012. In view of the fact that the appellant/petitioner had knowledge of the fact but not specifically pleaded the facts as to what transpired in the Meeting on the said date i.e. 31.12.2012, refused to allow the appellant to amend the petition though partly allowed the application to implead Mr. Jatin Jamandas Mavani, the director nominated by IOTL, as 10<sup>th</sup> respondent.*

*According to the appellant what transpired in the Meeting held on 31.12.2012 came to its notice much after the filing of the Company Petition. Immediately on such knowledge, the application for amendment was filed in the year 2013. It is also submitted that the appellant wanted to bring the subsequent development and oppression and mismanagement to the notice of the Tribunal but the same was disallowed.*

*Ld. Counsel appearing on behalf the 2<sup>nd</sup> Respondent refuted the stand taken by the appellant. According to the 2<sup>nd</sup> Respondent, the representative of the appellant, one Mr. S. Ramachandran, attended the Board Meeting held on 31.12.2012 as also EGM held on the same day and consented to the passing of the Resolutions. It is also disputed that Mr. S. Ramachandran left the Board Meeting due to confrontation with other members. According to 2<sup>nd</sup> Respondent, such statement was not made in the original petition.*

*After hearing the Ld. Counsel for the parties when this Court expressed its prima facie view that the proceedings of the Board Meeting held on 31.12.2012 and EGM dated 31.12.2012 should be placed on record, and the Tribunal was required to allow the appeal to the extent of subsequent development if taken place after filing of the Company Petition, Ld. Counsel for the parties requested to pass an appropriate order after hearing the parties.*

*Let notice be issued on the Respondents No.1 and 3 to 9 by speed post. Requisites with process fee, if not filed, be filed by tomorrow. Notice be also issued through email, if provided. Dasti service is permitted.*

3.

*Post this matter on 6<sup>th</sup> March, 2017. The appeal may be disposed of on the next day.”*

3. Heard Mr. Shri Sumesh Dhawan, Learned Advocate for appellant and Mr. Krishnan Venugopal, Learned Senior Advocate for the Respondents.

4. Having gone through the records and copy of the order, we are of the view that the Tribunal should have allowed the appellant to bring on records the relevant facts related to acts of ‘oppression and mismanagement’ as was alleged in the company petition.

5. In this regard we may observe that if the facts relate to the period prior to filing of the company petition, and the appellant had no knowledge of the same and came to know after filing of the company petition then the Tribunal should allow the appellant to bring such facts to the notice of the Tribunal.

6. On the other hand, if the act of ‘oppression and mismanagement’ relates to earlier period, including both the Meeting dated 31<sup>st</sup> December, 2012, and the appellant had knowledge of the same directly or through its representative, the same cannot be allowed to be pleaded.

7. Similarly, if during the pendency of the company petition further acts of ‘oppression and mismanagement’ taken place and is connected with the allegations already made, such as consequential action taken by Respondent, , the Tribunal should allow the appellant to bring development to the notice of the Tribunal.

4.

8. On the other hand, if the subsequent acts of 'oppression and mismanagement' is a fresh cause of action, such plea cannot be raised in the pending company petition, though it is always open to the aggrieved party to move before the NCLT under Section 241 and 242 of the Companies Act, 2013 by filing a separate petition.

9. The impugned order dated 20.12.2016 stands modified and substituted to the extent above, with liberty to appellant to file additional affidavit in consonance with the observations made above, within 15 days.

10. The Tribunal in its turn will take into account the additional facts, if it is in consonance with the observations made in the preceding paragraphs, otherwise will ignore the other facts by deleting such paragraphs from the additional affidavit.

11. We may make it clear, that we have not allowed the appellant to raise any plea with regard to Mr. Ramachandran's presence in the Board's Meeting/EGM Meeting on 31.12.2016, except to the extent it has already been pleaded.

12. The parties are directed to cooperate with the Tribunal to enable the Tribunal to dispose of the company petition expeditiously preferably within one month, uninfluenced by any observations earlier made by the Tribunal.

5.

13. The appeal stands disposed off with the aforesaid observations and direction. However, on the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)

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