IFCI's move on 17 crore escrowed GTL Infrastructure shares illegal: Delhi High Court

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NEW DELHI: The Delhi High Court has held as "illegal" the move of financial institution IFCI Ltd to "forfeit" shares of GTL Infrastructure Ltd which were pledged as a security against a loan of Rs 250 crore.

"The forfeiture of the shares in the present case without notice is not permissible under the law of pledge which distinguishes the same from mortgage. Thus, the said act of the IFCI Ltd whereby on July 20, 2011 the it appropriates the proceeds of the 17,63,68,219 shares to itself is bad as it amounts to forfeiture which is impermissible under the law," Justice Manmohan Singh said.

The court's ruling came on a petition of GTL Ltd against IFCI's move to "forfeit", "realise", "appropriate" and "sell" escrowed shares on the ground that no notice was issued by the lending company before it opted to various measures to realise the loan advanced to Chennai Network Infrastructure Ltd (CNIL), a subsidiary of GTL Ltd, on July 12, 2010.

The High Court allowed the plea saying the provisions of the Contract Act make it mandatory to issue a notice before such sale of goods or shares. It also held that since the appropriation of 17.63 crore shares was illegal, the status of IFCI towards those shares along with remaining 10 crore shares is still of a "pledgee". The shares are open to redemption, sale and "all other consequential remedies under the law of pledge," it said.

The court also termed as illegal the sale of around 5.05 lakh shares of GTL infrastructure by IFCI during July 18 to August 4, 2011 in open market. However, the bench said that the sale of shares in open market was irreversible and hence, the only remedy available to the GTL was to go for separate civil proceedings.

CNIL, a subsidiary of GTL Ltd, had taken a loan of Rs 250 crore from IFCI and as per the loan agreement, around 17.63 crore shares of GTL Infrastructure were placed in an escrow account as security. CNIL was required to maintain a security cover of two times of the loan amount through the shares in the escrow account.

IFCI appropriated 17.63 crore shares to itself and realised Rs 251 crore as the borrower firm allegedly could not maintain Rs 500 crore security shares in the escrow account. The move was challenged alleging that no notice was issued by IFCI which rendered the act as "illegal".

GTL Ltd, in its petition, alleged said the IFCI proceeded with the sale without any notice despite the fact that CNIL and GTL Infrastructure were re-structuring their debt and were referring the matter to the Corporate Debt Restructuring Cell.

IFCI had opposed the plea saying issuing notice was not mandatory and it cannot be restrained from selling the shares as it would be blocking the realization of the debt after the default in the payment.