



\$~11 (Original Side Part-Heard)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 414/2020 and IA Nos. 12483/2020, 567/2021, 4577/2021, 5934/2021, 7859/2022, 1823/2023, 13013/2023, 13341/2023, 3870/2024, 4415/2024, 4416/2024

DR. P.V. VIJAYARAGHAVAN & ORS.

.....Plaintiffs

Through: Mr. Manish Kumar, Mr. Piyush
Kaushik and Ms. Aparajita Jha, Advs.

versus

NITYAM SOFTWARE SOLUTION PVT. LTD. & ORS.

.....Respondents

Through: Mr. Akshay Chowdhary, Mr. A.K.
Chowdhary, Mr. Harsh Kumar and
Ms. Sonali Madaan, Advs. for IOA.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **09.08.2024**

1. The matter is listed today to consider the various directions requested by the learned administrator, appointed by this court vide judgment dated 20.10.2023, concerning the Indian Orthopaedic Association (IOA).

2. Learned administrator has filed a third report dated 13.02.2024 wherein it has been, *inter alia*, sought as under:

“Directions Sought:

(i) Appointment of an organization for Forensic Audit of 2020; 2021 and 2022 Elections of IOA and verification of the Voters List of IOA.”

3. Learned administrator has filed a fourth report dated 28.05.2024 wherein it has been, *inter alia*, stated as under:

“54. The undersigned proposes the following schedule of IOA elections to be conducted on the basis of the list of verified members to be submitted by Ernst & Young as on 25th May, 2024.



<i>Election Notification & Inviting Nomination Form</i>	<i>01st June, 2024</i>
<i>Last date of receipt of Nomination form</i>	<i>15th June, 2024</i>
<i>Last date for withdrawal of nominations</i>	<i>20th June, 2024</i>
<i>Final list of candidates after withdrawal</i>	<i>23rd June, 2024</i>
<i>Start of Online voting at 12 Noon</i>	<i>27th June, 2024</i>
<i>Last date of receipt of online voting till 05:00 PM</i>	<i>11th July, 2024</i>
<i>Counting and Final Tally Venue: IOA House, New Delhi/Zoon Platform</i>	<i>12th July, 2024</i>

55. *The undersigned has received a representation from Dr. Manish Dhawan that verification process be extended by three-four weeks so that at least 8000 members out of more than 14,500 members participate in the elections. Dr. Navin Thakkar has represented that the members be given 90 days more to submit their declaration. Copy of the emails and representations made by Dr. Manish Dhawan & Dr. Navin Thakkar are attached hereto as ANNEXURE - X (COLLY).*

56. *The undersigned is of the view that if the verification process is extended by three months, the elections would take place around September for the year 2023 and the office bearers' of 2023 elections would hold office for hardly two-three months as the elections for the year 2024 would be due in October- November, 2024. That apart, this Hon'ble Court has directed the undersigned to draw the election schedule to conduct the elections by 30th May, 2024 and we are already running late for the reasons discussed hereinabove.*

57. *The undersigned is seeking directions from this Hon'ble Court whether the verification process of the members should be extended further. One option is to request Ernst & Young to verify the balance 1,056 applications till 26th June, 2024 and all members verified till 26th June, 2024 be permitted to vote from 27th June, 2024 onwards. However, if the extension has to be more than one month, it would be appropriate to conduct the election for the year 2023 and 2024 together. It may be pointed out that for 2024 Elections, the new members enrolled in last General Body Meeting would be eligible to vote for 2024 elections and their membership shall also have to be verified.*



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64. Vide email dated 20th May 2024, the IOA wrote an email to CDSL seeking confirmation that they shall conduct the elections on the fees schedule of ` MOU dated 07th June, 2023. CDSL agreed to conduct elections as per MOU dated 07th June, 2023 at the fees of Rs.5,00,000 plus taxes excluding boarding and lodging cost of CDSL officials required for the aforesaid elections. CDSL however also sought reimbursement of legal expenses of Rs.1,75,000/- incurred by them on various court cases in respect of IOA elections. Copy of email dated 20th May, 2024 and response of CVL are attached hereto as ANNEXURE - BB (COLLY).

65. Ernst & Young initially quoted Rs.7,00,000/- in their proposal dated 22nd March, 2024 but have now agreed to charge professional fees of Rs.5,00,000/- plus GST as gesture of goodwill for conducting the IOA elections

Directions Sought

A. Whether 2023 elections of IOA be conducted on the basis of the verified life members of IOA as on 25th May, 2024 or the time period for verification of the members be extended.

B. If the time period is to be extended, whether it should be extended only for completing the verification of life members who have submitted their declaration till 15th May, 2024 or the fresh declarations be also permitted to be filed by the members.

C. If the time period for verification of members is to be extended, whether the elections of 2023 and 2024 can be conducted together to save the cost of elections.

D. Appointment of the organization for conducting the IOA Elections.”

4. Learned administrator has also filed a fifth report dated 02.07.2024 wherein it has been, *inter-alia*, stated as under:

“Present Status of IOA Members Verification

14. On 30th June, 2024, Ernst & Young submitted the Status Report according to which 7074 declarations were submitted by the members out of which 6905 are verified including 16 IOA Foreign Life Members approved as per fourth report, 140 are not verified and 29 are partially verified.



S.No.	Particulars	Count of Members
(a.)	Members who submitted their details for verification	7074*
(b.)	Verified Members	6905**
(c.)	Partially Verified Members	29
(d.)	Members Not Verified as on 27 th June 2024	140

***Note : 6905 [5756 are verified members; 1116 Members whose details are Verified based on the discussions and approval provided by IOA; 17 Members whose details are considered Verified as per the undertakings provided by the members in terms of the notice issued by Hon'ble Administrator of IOA dated 22nd June 2024; 16 IOA Foreign Life Members approved as per fourth report]*

The Status Report of Ernst & Young along with the list of verified members; not verified members; partially verified members and Foreign Verified Members are attached hereto as Annexure – F (Colly).

Audit of IOACON, 2023 Accounts

15. This Hon'ble Court directed the undersigned to ensure successful completion of IOACON, 2023. In the third meeting convened on 20th November, 2023, it was decided that IOACON, 2023 accounts shall be audited by an Auditor appointed by the undersigned. The undersigned appointed an Auditor to audit the IOACON, 2023 accounts on 22nd April, 2024. The Secretary General - IOACON, 2023 was directed handover the accounts to the Auditor vide email dated 22nd April, 2024. However, the accounts have not yet been handed over and therefore, directions being are sought from this Hon'ble Court. Copy of the emails dated 22nd April, 2024 are attached hereto as Annexure – G (Colly).

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Directions Sought:

- A. IOA Elections be permitted to be conducted on the basis of verified members;*
- B. Schedule of IOA Elections to be fixed;*
- C. Direct the Secretary General - IOACON, 2023 to furnish the accounts to the Auditor within two weeks."*

5. Learned counsel for the administrator has submitted that there is no impediment to holding the elections for the IOA. It is proposed that the elections for both 2023 and 2024 be held concurrently, given that the office bearer elected in 2023 Elections would serve a term of approximately two



months. It is further submitted that it has been conveyed by the vendors responsible for organizing the elections that the whole election process would require approximately 45 to 60 days to complete.

6. Learned counsel for the plaintiffs contends that the IOA Elections for 2023 can be held prior to the IOA Elections for 2024. He submits that the IOA Elections for 2022 were conducted within a span of 15 days. He submits that learned administrator has been empowered to exercise oversight over the committees of the IOA and request that the pending applications be heard today.

7. Vide judgement/order dated 20.10.2023, this court has appointed the learned administrator to ensure that the affairs of IOA are put in order, and particularly to ensure that appropriate steps are taken to ensure the authenticity of the voters' list and setting up of a robust electoral mechanism for the upcoming IOA Elections 2023. Learned counsel for the administrator has submitted that the exercise for verification of members of the IOA stands concluded and, there is no impediment in conducting the elections of IOA.

8. In the fourth report, the learned administrator has identified two organisations, CDSL and Ernst & Young, for conducting the IOA Elections. Therefore, the learned administrator is requested to appoint a suitable organization to conduct the IOA Elections 2023. The elections should be conducted using the list of verified life members of the IOA as of June 30, 2024, as mentioned in the fifth report.

9. The IOA Elections for 2024 are stated to schedule for November 2024; however, it would not be appropriate to postpone the IOA Elections for 2023 in order to hold both elections simultaneously. According to Article



15 of the IOA Constitution, the maximum allowable interval between two elections is fourteen months. Given that the IOA Elections for 2023, originally set for November 2023, have already experienced significant delays, it is crucial to conduct these elections as soon as possible. The fact that the elected office bearers will serve a short term does not justify delaying the elections, particularly when all other factors support proceeding with them. Once the IOA Elections for 2023 are completed, the newly constituted executive committee or office bearers can take the necessary steps to organize the IOA Elections for 2024 in accordance with the IOA Constitution.

10. Regarding the request by the learned administrator for the appointment of an organization to conduct a forensic audit of the IOA elections for the years 2020, 2021, and 2022 (as sought vide the third report), *prima facie*, it would be inappropriate to issue such a directive within the scope of the present suit. As such, at present it is not possible to accede to the said request. The primary mandate of the administrator is to take necessary measures to uphold the purity and integrity of the IOA Elections 2023.

11. In the circumstances, the learned administrator is requested to draw up a firm election schedule so that IOA Elections 2023 are conducted and concluded as soon as possible and in any event latest by October 1, 2024 so as to ensure that the elected body can take charge of the affairs of IOA immediately thereafter. The mandate of the administrator is accordingly extended till October 1, 2024.



12. The other aspects sought to be raised by the parties and consideration of the pending applications is deferred till conclusion of the IOA Elections 2023.
13. The matter is released from part-heard.
14. List before the Roster Bench on 01.10.2024.

SACHIN DATTA, J

AUGUST 09, 2024/hg