

GA 1 of 2022
C.S. No. 212 of 2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Eastern India Educational Institution

VS

Birla Corporation Limited & Ors.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 16th September, 2022.

Appearance:

Mr. Ravi Shankar Prasad, Sr. Adv.
Mr. Jishnu Saha, Sr. Adv.
Mr. Anirban Ray, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Sankarsan Sarkar, Adv.
Ms. Pritha Basu, Adv.
Mr. Rahul Sharma, Adv.
Mr. Saptarshi Kar, Adv.
Ms. Patrali Ganguly Adv.
... for the plaintiff.

Mr. C. A. Sundaram, Sr. Adv.
Mr. Joy Saha, Sr. Adv.
Ms. Rohini Musa, Adv.
Mr. Avishek Guha, Adv.
Mr. Rajat Gupta, Adv.
Ms. Akansha Chopra, Adv.
... for the respondent no.9.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Debanjan Mandal,, Adv.
Mr. Sanjiv Kr. Trivedi, Adv.
Mr. Soumya Roy Chowdhury, Adv.
Mr. Jishnu Chowdhury, Adv.
Mr. Sarvapriya Mukhejee, Adv.
Mr. Satadip Bhattacharyya, Adv.
Ms. Iram Hassan, Adv.
Mr Sanket Saraogi, Adv,

Ms. Mahima Cholera, Adv.
... for the respondent no. 7&10.

Mr. Ranjan Bachawat, Sr.Adv.
Mr. Paritosh Sinha, Adv.
Ms. Manju Bhuteria, Adv.
Mr. Sayan Roychowdhury, Adv.
Mr. Shaunak Mitra, Adv.
Mr. Saubhik Chowdhury, Adv.
Ms. Tapasika Bose, Adv.
Mr. Satyaki Mukherjee, Adv.
Mr. Rachit Lakhmani, Adv.
... for the respondent no.1.

The Court: 1. The plaintiff is a charitable society, registered under the West Bengal Societies Registration Act, 1961 and has its office within the Ordinary Original Civil Jurisdiction of this Court. The plaintiff has instituted this suit through its Secretary, namely, Sushil Kumar Daga against one defendant and nine proforma defendants, inter alia, claiming the following reliefs:-

- a) *Decree of mandatory injunction directing the defendant no.1 or its men, agents, servants and assigns to abide and act in terms of by the decisions taken by Eastern India Educational Institution, the plaintiff by its Board of Trustees in majority, inter alia, with regard to the shares held by the plaintiff in the defendant no.1 and the exercise of rights in respect thereof;*
- b) *Decree for perpetual injunction restraining the defendant no.1 and/or its men, agents, servants and assigns from preventing the representatives / proxies nominated by the Board of Trustees of the plaintiff to attend the Annual General Meetings and/or Extra Ordinary General Meetings of the company or from voting in the same;*
- c) *Decree for mandatory injunction against the defendant no.1 or its men, agents, servant and assigns directing them to abide by the decisions taken by the plaintiff by its Board of Trustees in regard to the shares held by the*

plaintiff in the defendant no.1 in the matter of voting in the Annual General Meeting of 2022 or any other Annual General Meeting or General Meeting;

- d) Injunction;*
- e) Receiver;*
- f) Attachment before Judgment;*
- g) Judgment upon admission;*
- h) Costs;*
- i) Further and/or other relief or reliefs*

In the said suit the plaintiff has taken out an application for the following reliefs:

- (a) An order of temporary injunction be passed directing the respondent no.1 or its men, agents, servants and assigns to abide and act in terms of by the decisions taken by Eastern India Educational Institution, the petitioner by its Board of Trustees with regard to the shares held by the petitioner in the respondent no.1 and the exercise of rights in respect thereof;*
- (b) An order of temporary injunction be passed restraining the respondent no.1 and/or its men, agents, servants and assigns from preventing the representatives/proxies nominated by the Board of Trustees of the petitioner to attend the Annual General Meetings and/or Extra Ordinary General Meetings of the company or from voting in the same;*
- (c) An order of temporary injunction be passed directing the respondent no.1 and/or its men, agents, servants and assigns to abide by the decisions taken by the petitioner by its Board of Trustees in regard to the shares held by the petitioner in the respondent no.1 in the matter of voting in the Annual General Meeting of 2022 or any other Annual General Meeting or General Meeting;*
- (d) Ad interim orders in terms of prayers above;*
- (e) Such further and/or other order or orders be passed, direction or directions can be given as Your lordships may deem fit and proper.*

3). The case of the plaintiff/petitioner can be summarized as below:-

- (i) The plaintiff was set up by and under the directions of M. P. Birla (hereinafter referred to as MPB) and Priyamvada Devi Birla (hereinafter referred to as PDB) in the year 1984, inter alia, for educational purposes and not for purposes of profit. The plaintiff in order to carry out its objectives is empowered to establish, set up, open, promote, take over, support, maintain, and run schools and colleges, universities and other institutions for imparting education.
- (ii) The plaintiff is governed by its own Memorandum of Association and Rules & Regulations.
- (iii) Clause-V of the Memorandum of Association of the plaintiff provides as follows:-
 - “a)
 - i) *All properties movable and immovable belonging to the Society shall vest in the Trustees.*
 - ii) *Notwithstanding any decision by members in any general meeting, the Trustees will have power to nominate the members of the Managing Committee and delegate such authority or authorities in the Managing Committee in relation to the management of the affairs of the Society as they may deem fit and the Managing Committee will be entitled to exercise only such power as are delegated by the Trustees from time to time.*
 - b) *Subject to the aforesaid sub-clause (a), the management of the whole of the affair of the Society shall be entrusted to the*

Managing Committee consisting of not less than five and not more fifteen persons.”

iv). The Rules and Regulations of the plaintiff in Clause-17, 18 and 19, 23 and 35 provides as follows:-

- “17. All properties movable and immovable belonging to the Society shall vest in the Trustees.*
- 18. The number of Trustees shall not be less than 3 and not more than 7. The trustees shall be trustees for their life time but any trustees may resign by giving notice in writing to his co-trustees or shall cease to be a trustee if requested in writing by three fourths of the remaining trustees or the number nearest thereto or if he is convicted of an offence involving moral turpitude or is adjudged insolvent or becomes Lunatic or of unsound mind.*
- 19. The following persons are the Trustees at the date of adoption of these articles.*
- i) Smt. Nandini Nopany*
 - ii) Sri Nawal Kishore Kejriwal*
 - iii) Sri Pradeep K. Khaitan.*
- 23. Notwithstanding any decision by members in any general meeting the trustees will have power to delegate such authority or authorities in the Managing Committee in relation to the management of the affairs of the Society and the managing Committee will be entitled to exercise only such powers as are delegated by the Trustees from time to time.*
- 35. Subject to any regulation made for the time being by the Managing Committee; the Honorary Secretary may sue or be sued on behalf of the Society.”*

- v). The plaintiff holds shares in various companies forming part of MP Birla Group wherein the plaintiff holds 33,61,200 equity shares in the defendant no.1 company which aggregates to 4.36% of total shares of and in the said company. The defendant no.1 is one of such companies under the MP Birla Group. The defendant no.1 is a Public Limited Company and is engaged in manufacture of cement.
- vi). PDB died on 3rd July, 2004. After her demise disputes pertaining to succession of estate left behind by PDB arose in view of an application for grant of probate of the last will and testament said to have been left behind by PDB being filed in this Court. The said application for grant of probate being PLA 242 of 2004 on having become a contentious cause is now numbered as Testamentary Suit No.6 of 2004. The said suit after the death of the named executor is now for grant of Letters of Administration. The proforma defendant no.10 in this suit is the plaintiff in the said testamentary suit.
- vii) In the said suit, an Administrators Pendente Lite Committee (hereinafter referred to as APL Committee) has been appointed, inter alia, for the purpose of protection and administration of the estate left behind by PDB till the disposal of the testamentary suit.

viii) In the said testamentary suit, an order was passed on 18th September, 2020. The operative portion of the said order is as follows:-

- “a) The plaintiffs shall implement the decision dated 19th July, 2019 and 30th July, 2019 of the APL Committee taken by majority as also all consequential decisions of the APL in furtherance of the said decisions and shall be restrained from drawing any benefit personally from out of the assets of the estate of the deceased during pendency of the Testamentary Suit.*
- b) Plaintiffs are also restrained from interfering with the decisions of the APL and any decision which might be taken by it in future by majority if the same directly or indirectly relates to the estate of the deceased and further the plaintiff no. 1, Harsh Vardhan Lodha is restrained from holding any office in any of the entities of M.P. Birla Group during pendency of the Suit.*
- c) Defendants are also restrained by an order of temporary injunction from interfering with the APL’s decision by majority during pendency of the suit.”*

ix). The said order has been subsequently clarified by an interim order dated 1st October, 2020 passed in appeals preferred against the said order in the following manner:-

- “20. We may, however, clarify that the word “implement occurring in paragraph (a) among the three direction issued by the learned Judge means “abide by”. It is further clarified that the operation of paragraph (b) among the directions would be a restriction on plaintiff no. 1 Harsh Vardhan Lodha to the extent of it being a restriction from holding any office in any of*

the entities of the M P Birla Group during the pendency of the suit, on the strength of the shares referable to the estate of PDB.”

x) The defendant no.1 is presently under the illegal de-facto control of Harsh Vardhan Lodha (HVL), the proforma defendant no.10. The proforma defendant no. 10 was also a Trustee and Chairman and Member of the Managing Committee of the plaintiff prior to being removed by a resolution dated 4th March, 2021 passed by circulation by majority of the trustees of the plaintiff in accordance with the rules and regulations of the plaintiff as per the direction of the APL Committee. The plaintiff also appointed the proforma defendants no. 4 to 6 as trustees and members of the Managing Committee on the recommendation of the APL Committee. The proforma defendant no. 2 is a trustee while proforma defendant no. 3 is a trustee and also a member of the managing committee. The proforma defendant no. 7 who happens to be the wife of the proforma defendant no. 10, is a trustee and member of the managing committee. The proforma defendant no. 8 is a member of the managing committee. Proforma defendant nos. 7 and 8 act under the instruction and dictates of the proforma defendant no. 10.

xi). Defendant no.1 (BCL) issued a notice for holding its Annual General Meeting (AGM) on 26th September, 2021. Pursuant to such notice,

the APL Committee issued a letter on 10th September, 2021 to the Trustees/Managing Committee of the plaintiff giving direction as to how it should exercise its voting rights in respect of the shares held by it in defendant no.1 at the AGM of BCL scheduled on 26th September, 2021. However, the proforma defendant no.10 even after being removed, by representing himself to be the Chairman and Member of the Managing Committee by a letter dated 17th September, 2021 gave contrary directions to those given by the APL Committee with regard to voting at the AGM of the defendant no.1 on 26th September, 2021.

xii). Although the plaintiff was able to exercise its voting right at the AGM on 26th September, 2021 through electronic process but owing to certain disputes raised by another faction of the plaintiff as per the instruction of the proforma defendant no.10, the scrutinizer (Anil Murarka) appointed at the AGM of defendant no.1 held on 26th September, 2021, rejected the votes said to have been validly and legally cast by the plaintiff.

xiii) Apprehending repetition that the same thing may happen at the AGM of this year, the plaintiff filed the above suit on or about 17th August, 2022. The instant application being G.A. no. 1 of 2022 filed inter alia for interim reliefs was filed by the plaintiff around the same time.

4). After institution of the suit and filing of the interlocutory application, the plaintiff has received a notice dated 8th August, 2020 issued by defendant no. 1 for holding its AGM on 27th September, 2022. The said notice containing the agenda of the AGM scheduled on 27th September, 2022 has been brought on record by way of a supplementary affidavit filed in the instant application. Pursuant to such notice, the APL Committee has again directed the plaintiff through its trustees to exercise its voting right with regard to the shares held by it in defendant no.1 at the AGM scheduled on 27th September, 2022 in a particular manner. The plaintiff says it is willing to abide by the direction given by the APL Committee but apprehends that the votes that may be cast by it at the AGM on 27th September, 2022 may be again illegally cancelled as in the previous year.

5). Submission of the Plaintiff/Petitioner:-

(i) The plaintiff says that its action is a *quia timet* action apprehending the repetition of the same story that is cancellation of its valid votes cast at the AGM of BCL. Although, the proforma defendant no. 10 has been removed from being a trustee and member of the managing committee of the plaintiff but still he, with the help and assistance with his aides is likely to prevent the plaintiff from casting its votes at the AGM of defendant no. 1 or take such steps which will lead to the cancellation of votes cast by the plaintiff. The plaintiff therefore seeks an ad-interim order of temporary injunction directing the defendant no.1 (BCL) to abide and act in terms of by the decision taken by the

plaintiff/petitioner by its board of trustees with regard to shares held by it in BCL so that votes cast by it is validly counted.

(ii) The plaintiff also says that its apprehension is well founded in view of the past conduct of the proforma defendant no. 10 and the defendant/respondent no.1. The plaintiff further says that though an application for rejection of the plaint and dismissal of the suit has been made by the defendant no. 1 but in view of the ratio laid down in the judgments reported in **1997 (3) SCC 443 (Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.)** and that reported in **2021 SCC Online SC 29 (Rama Narang vs. Ramesh Narang and others)** this Court can pass an interim order to be effective till the Court actually decides that it has no jurisdiction to try and determine the suit. The Court is within its jurisdiction to pass appropriate ad-interim order pending on the decision of question of jurisdiction.

(iii) The plaintiff also says that it has a strong prima facie case to go to trial, the balance of convenience and inconvenience in the light of the facts narrated in the plaint and the petition is in favour of passing an ad interim order to protect the interest of the plaintiff. The interim relief is necessary to avoid multiplicity of judicial proceedings. That apart and in any event the plaintiff is entitled to an interim relief in equity on anticipated breach. Unless the interim protection is granted to the plaintiff, the purpose and object of the suit will be frustrated and the same will be rendered infructuous for all practical purposes.

(iv)The refusal to pass an ad interim order will in effect diminish the value of the shares being part of the estate of PDB for the protection whereof APL Committee has been appointed and the decision of APL Committee to protect the interest will be rendered nugatory. The plaintiff also says that under the Memorandum, Rules and Regulations of the plaintiff the properties and assets of the plaintiff vests in the trustees of the plaintiff and as such the decision taken by the trustees at the direction of APL Committee should be carried out. Despite best endeavour due to the mischief of the HVL the decision of the trustees may not be ultimately executed. The preventive orders are also necessary for such purpose.

6). Submission of APL Committee:

(i) The APL committee says that the estate of PDB has the controlling share in defendant no. 1 company is well settled in view of the various orders passed in the testamentary suit, proceedings before the Company Law Board (in short CLB) which has been affirmed till up to the Hon'ble Supreme Court. Despite such position, the proforma defendant no. 10 with the aid and assistance of others have continuously flouted such orders and has successfully prevented the decision of the APL committee from being carried forward, followed and executed.

(ii) The APL Committee has been appointed to preserve, protect and administer the estate of PDB till the testamentary suit is finally decided. The shares held by the plaintiff in BCL are the valuable properties and assets of the estate of

PDB. Unless the directions of APL Committee are carried upon by the entities wherein PDB had controlling interest, the value of the estate is likely to diminish which in effect will leave nothing for being distributed to the beneficiaries after the final decision in the testamentary suit. The APL Committee having admittedly stepped into the shoes of PDB is entitled to take decision for the purpose of administration of the estate and have them carried out for the protection of the estates. Unless these decisions are carried out it will also render the orders passed in the testamentary suit as also the purpose for which it has been appointed infructuous.

(iii) The APL committee therefor supports the prayer made by the plaintiff for ad interim injunction for the purpose of protection of the estate of PDB and this Court should pass appropriate orders to protect the estate of PDB. The plaintiff according to APL Committee is entitled to an ad-interim order of injunction as prayed for in equity following the principles of *quia timet* action.

7). Submission of BCL (defendant no. 1):

(i) On behalf of BCL it is submitted that going by the averments in the petition, it is absolutely clear that the trustees who according to the plaintiff controls the operation and management of the plaintiff through the Managing Committee are divided and there is no unanimous decision of the trustees. The Managing Committee is equally split up. Admittedly proforma respondent no.7 is a trustee and member of the Managing Committee of the plaintiff.

(ii)The proforma respondent no. 10 was also a trustee and member of the Managing Committee, who appears to have been the Chairman of the Managing Committee. The removal of proforma defendant No.10 is an internal act of the plaintiff to which BCL is not concerned. The proforma defendant appears to have been illegally removed from trusteeship. Proforma defendant no. 8 is also a member of the managing committee of the plaintiff. At least two of the managing committee members of the plaintiff and one of the trustees even according to the plaintiff are not sailing in the same boat with the other members of the managing committee and the trustee. The plaintiff being unable to control its internal affairs is seeking for an injunction on BCL a separate juristic entity. By obtaining the interim order in this suit the plaintiff is actually trying to suppress its internal dispute. Other courses are open for the plaintiff in law to resolve their internal dispute.

(iii)In case of a trust in view of the provisions of Sec. 48 of the Indian Trust Act, 1882 read with the provisions of Order 31 of the Code of Civil Procedure, 1908 no suit can be maintained unless all the trustees have joined as parties to a proceeding initiated by the trust. Relying upon a passage of “Lewin on Trusts”, Sixteenth Edition (at page 181 thereof) it is submitted that Trust is a joint office and cannot function without being in unanimity. Finding that both the managing committee and also the trustees are split up the plaintiff has devised this suit claiming reliefs which the plaintiff is not otherwise entitled to.

(iv)The trustees being Defendant nos. 4 to 6 have been appointed as per the majority direction of the APL Committee. As to whether APL Committee could have done so is also an issue. This issue has become more pertinent in view of the fact that whether the APL Committee can act by majority is a question pending before the Appeal Court hearing the appeal arising out of the order dated 18th September, 2020 passed in Testamentary Suit no. 6 of 2004. The defendant no.1 further submits that it is a separate entity which functions as per its memorandum and articles of association abiding by the provisions of the Companies Act, 2013, the rules framed there under and other statutory rules required to be complied with. In compliance of such statutory rules it had held the AGM on 26th September, 2021 and is also holding the AGM this year. The plaintiff admittedly exercised its voting rights at the last AGM. However, due to internal dispute in the plaintiff two erring factions exercised the voting rights on behalf of the plaintiff which the scrutinizer appointed at the AGM after being asked to take a decision by the NSDL had rejected the votes casted by both the factions. The plaintiff therefor cannot complain any illegal action on the part of the defendant no. 1 (BCL).

(v) The plaintiff and APL Committee after the last AGM apart from writing letters took no action to challenge the alleged rejection of votes by the scrutinizer. Although allegations at galore have been made against the scrutinizer, interestingly the scrutinizer has not been made a party to this proceedings. BCL also refers to the order dated 18th September, 2020 and submits that the Learned Single Judge while passing the said order had

categorically held that no orders can be either prayed or passed against the companies who are not parties to the testamentary suit. The injunction in the order dated 18th September, 2020 to which the plaintiff and APL committee as referred to have been subsequently clarified in the interim order of the Appeal Court dated 1st October, 2020. That apart, APL Committee in its resolutions has categorically held that it is in no way willing or trying to take control and management of the Companies in the M.P. Birla Group. Faced by this situation, the plaintiff at the instance of the majority of the APL Committee is indirectly trying to take control over the management and operation of BCL which neither of them can directly do.

(vi) BCL then refers to Rule 20 (4) (ix) of the Companies (Management and Administration) Rules, 2014 to contend the Board of Directors of BCL were statutorily obligated to appoint a scrutinizer at the AGM and the scrutinizer was well within his right to reject the votes cast by two erring groups of the plaintiff for the same share. The plaintiff without adverting to resolve the internal dispute is seeking protection from this Court to compel BCL to accept the views of one group which the plaintiff claims to be the actual representation on its part. Referring to the judgments in Hind Rubber (Supra) and Rama Narang (supra) BCL says that the same specifically hold that the jurisdiction of the Court has to be first decided. However, in the light of the Maharashtra Amendment to the Code of Civil Procedure, 1908 it has been held that in appropriate case without first deciding upon the jurisdiction the Court can pass interim orders till the jurisdiction is decided. The said amendment is

not applicable to the State of West Bengal and that apart and in any event to a suit filed in this Court as this Court assumes jurisdiction under the provisions of Letters Patent 1865 and tries a suit in terms of the Original Side Rules of this Court with applicability of the Code of Civil Procedure 1908 where the Original Side Rules are silent.

BCL therefore should be allowed to hold its AGM as per the statutory provisions without any interference or conditions laid at the instance of the plaintiff or the APL Committee. No ad interim order should also be passed in this suit without first deciding upon the jurisdiction of this Court, receive, try and entertain the suit in view of the case made out by the plaintiff.

8). Submission on behalf of proforma defendant no. 10 (HVL):

(i) On behalf of HVL it is submitted that though he has been made a proforma defendant and no reliefs are claimed against him but indirectly orders are sought for in effect against HVL. The orders passed in the testamentary suit and in appeal arising out therefrom are specific and no further order can be passed against HVL till the pending appeal against the order dated 18th September, 2020 is finally decided. The acts of HVL which the plaintiff alleges to be illegal had been considered in the contempt proceedings by the Appeal Court by a detailed discussion after a severe contest.

(ii) The Appeal Court wherein in the same set of allegations were made by the defendants therein and APL Committee had dismissed the contempt proceedings holding that HVL has not violated the order dated 18th September,

2020 as clarified by the Appeal Court being the pivot of plaintiff's argument in this suit. HVL as clarified by the order of the Appeal Court can be appointed or reappointed as a director in BCL if he is not taking the support of the votes pertaining to shares belonging to the estate of PDB or the promoters share holding. There is also no allegation that BCL has violated any of the statutory provisions while holding its AGM or even otherwise. It is because of the internal dispute in the plaintiff that the votes of the plaintiff in the last AGM of BCL got cancelled. Neither BCL nor HVL had any role to play in the cancellation of votes by the scrutinizer.

(iii) That apart and in any event the suit itself is not maintainable and unless the jurisdiction of this Court is first decided particularly when there is already an application for rejection of plaint and dismissal of the suit, no ad interim order can be passed in favour of the plaintiff. BCL being a separate juristic entity should be allowed to function and operate on its own in accordance with its Amendment and Articles of Association abiding by the statutory provisions. Any direction or condition imposed on BCL in holding its AGM will in effect amount to alteration of its Memorandum and Articles of Association and from abiding the statutory provisions.

9). Reply of plaintiff and APL Committee:

In reply the plaintiff contends that the Trust Act has no manner of application in respect of the plaintiff as the plaintiff is admittedly a society registered under the West Bengal Societies Registration Act, 1961. The chain of events as

narrated in the plaint and the petition demands protective orders to be passed in favour of the plaintiff in equity and under the settled principles for granting ad interim order of injunction. The scrutinizer had not right or authority to decided upon the validity of votes under any applicable law and by rejecting the votes cast by the plaintiff in the previous AGM of BCL have acted illegally and wrongfully.

10). Conclusion:

After hearing the parties and considering the materials on record prima facie I find the plaintiff's cause to seek interim and ad interim orders is the cancellation of votes vast by the plaintiff in respect of shares held by it in BCL. BCL for exercising the voting right against the shares held by the plaintiff had sent the requisite document. It is for the plaintiff to decide who will exercise the voting rights. BCL has no role to play in the same.

Plaintiff admittedly exercised its voting rights which it claims to be as per its decision in obedience to the direction given by APL. Another erring faction of the plaintiff claiming to be competent to vote had exercised voting right in respect of the selfsame share. BCL after having sent the documents for voting at the AGM was absolved of its responsibility. It is not for BCL to decide who will vote for such shares.

The scrutinizer at the AGM who is otherwise authorized to scrutinize the votes in view of the statutory provision has an embedded authority to see whether the voting right have been exercised in compliance of the rules and regulations. Upon having found that the same set of shares two groups have

exercised voting rights, he had no other option but to cancel the votes cast by the two groups. Had he decided to accept one and rejecting the other then the question would have arisen that the scrutinizer is deciding on the voting rights and in effect was expressing his opinion with regard to the right title and interest of the shares.

The plaintiff is not a private individual share holder that the voting rights are to be exercised by such individual or through his authorized person. The plaintiff exercises its voting right as per its resolution. It is neither for scrutinizer nor for BCL to decide on the correctness of the resolution of the plaintiff. If this is done then BCL and the scrutinizer will overstep their respective jurisdiction. The scrutinizer, therefor, in his wisdom rejected the votes cast by both the groups. The plaintiff, if was aggrieved by the act of the scrutinizer could have challenged his report or the report of the Chairman of the AGM as such reports are displayed in the website and filed at the Companies (Management and Administration) Rules, 2014. The plaintiff did not do so except writing letters and waited for about a year to institute the suit. That being not the case the decision of the scrutinizer cannot be cited as a ground to seek protective orders against BCL at its ensuing AGM.

The APL had given directives regarding the last AGM which the official faction as claimed by the plaintiff had abided with regard to the last AGM. An erring group standing against the official faction as claimed by plaintiff is an internal dispute in the plaintiff society wherein the BCL has no role to play. To probe

beyond this will require the lifting of corporate veil which is impermissible at this stage. I, therefore, do not find any prima facie reason to injunct BCL as prayed for by the plaintiff even if I set apart the jurisdictional ground at this stage.

The case made out by the plaintiff also does not warrant any restriction to be imposed on BCL while holding its AGM. It is for the plaintiff to see and ensure that the decision said to have been taken by its trustees is carried out at the AGM of BCL which can be done only by the plaintiff by setting its own house in order. I also refrain from making any further observation as that may amount to venturing into the internal disputes of the plaintiff which is not the subject matter of the suit and putting an official seal to a particular voting pattern at the AGM of BCL.

Quia timet action for passing preventive measures to arrest the apprehended breach as relied upon by the plaintiff as also the APL Committee for granting injunction is based on certain principles. These principles on which *quia timet* action can be maintained for seeking interim orders fell for consideration of the Supreme Court in the judgment reported in **2020 (7)SCC 275 (Ratnagiri Nagar Parishad vs. Gangaram Nayaran Ambekar & Ors)**. In paragraph 19 of the said report by referring to a judgment reported in **2000 (4) SCC 50 (Kuldip Singh v. Subhash Chander Jain)** it has been approved that *quia timet* action is a bill in equity. The Court is to be convinced and only then should interfere by issuing an injunction or any other remedial process.

In the instant case the facts does not convince this Court to grant preventive measures for any alleged apprehended wrong or anticipated mischief at this stage. In view of the aforesaid ad interim order as prayed for by the plaintiff petitioner is refused. The matter should be heard on affidavits.

Affidavits in opposition by 7th November, 2022. Reply if any thereto by 28th November, 2022.

Parties will be at liberty to mention the matter for inclusion in the list after the affidavits are complete or on expiry of the time permitted for filing of the affidavits if no affidavits are filed.

(ARINDAM MUKHERJEE, J.)