OD- 34 to 36

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINAL SIDE

IA NO. GA/3/2022

In CS/235/2022

EASTERN INDIA EDUCAIONAL INSTITUION

Vs.

HINDUSTAN GUM AND CHEMICALS LIMITED AND ORS

IA NO. GA/2/2022

In CS/235/2022

EASTERN INDIA EDUCAIONAL INSTITUION

Vs.

HINDUSTAN GUM AND CHEMICALS LIMITED AND ORS

IA NO. GA/1/2022

In CS/235/2022

EASTERN INDIA EDUCAIONAL INSTITUION

Vs.

HINDUSTAN GUM AND CHEMICALS LIMITED AND ORS

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Date: 23rd September, 2022.

Appearance:

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.
...for the petitioner

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Debanjan Mondal, Adv.
Mr. Sanjit Trivedi, Adv.
Mr. Soumya Roy Chowdhury, Adv.
Mr. Satadip Bhattacharyya, Adv.
Mr. I. Hassan, Adv.
Mr. Sanket Sarogi, Adv.
Ms. Mahima Cholera, Adv.
....For the defendant No. 2

Mr. Jishnu Chowdhury, Sr. Adv.
...For the defendant No. 11

Mr. Rupak Ghosh, Adv.
Mr. Roshan Pathak, Adv.
...For the respondent nos. 3, 4 and 5 (CS No. 235 of 2022)

Mr. Ranjan Bachawat, Sr. Adv.
Mr. Paritosh Sinha, Adv.
Mr. Sayan Roy Chowdhury, Adv.
Mr. Saunak Mitra, Adv.
Mr. Satyaki Mukherjee, Adv.
Mr. Saubhik Chowdhury, Adv.
Mr. Tirthankar Das, Adv.
...for the defendant no. 1.

Mr. Joy Saha, Sr. Adv.
Mr. Avishek Guga, Adv.
Ms. A. Chopra, Adv.
...for the defendant no. 13.

ORDER

The petitioner is a charitable Society registered under the West Bengal Societies Registration Act, 1961, having its office at 'Birla Building', 4th Floor, 9/1 R.N. Mukherjee Road, Kolkata within the Ordinarily Original Civil Jurisdiction of this Court.

The petitioner is governed by its Memorandum of Association and Rules and Regulations. The petitioner has been set up solely for educational purposes and not for purposes of profit. To carry out the said objects, the petitioner is, inter alia, empowered to establish, set up, open, promote, take over, support, maintain, run schools, colleges, universities or other institutions for imparting education.

The petitioner has two tier management pattern, namely, the Board of Trustees and Managing Committee, which governs and manages the petitioner in accordance with the Memorandum of Association and Rules and Regulations. The trustees have the power to delegate their authority to Managing Committee in relation to the affairs of the petitioner, and the Managing Committee would be entitled to exercise only such power as are delegated by the trustee from time to time. The trustee may, by a resolution, delegate any of its authority and such delegation of the authority may be by a general or special resolution passed without any meeting of the trustee and evidenced in writing under the hands of majority of the trustee and it shall be valid and effectual as a resolution passed at the meeting of the trustee.

The trustees are thus empowered to act by a majority and have all along since inception been doing so during the tenure of Late M.P Birla (hereinafter referred to as "MPB") and Late Priyamavada Devi Birla (hereinafter referred to as "PDB") and after their demise even while Late Rajendra Singh Lodha (hereinafter referred to as "RSL") and Harsh Vardhan Lodha (hereinafter referred to as "HV Lodha") were part of Board of Trustee including holding of office of Chairman of the Board of Trustees.

Subject to delegation of powers by the trustees in terms of Regulation 23, the management of the affairs of the petitioner is entrusted to the Managing Committee consisting of not less than five and more than fifteen person. In terms of Regulation 5 (f) of the Rules and Regulations of the petitioner, a person ceases to be a member of the Managing Committee, inter alia, if so resolved by the trustee.

Ordinarily, all decisions of the Managing Committee of the petitioner shall be according to the opinion of the majority on show off hands. Only upon the demand of a member present at the meeting, a question under consideration at the meeting shall be decided by ballot. A resolution by circulation passed by a majority members of the Managing Committee without any meeting of the Managing Committee and evidenced in writing under the hands of the majority of the members of the Managing Committee and signed by either Chairman or Honorary Secretary shall be valid and effectual as a resolution duly passed a meeting of the Managing Committee called and held in accordance with the provisions of the Rules of the petitioner.

The petitioner, respondent no. 1 and respondent nos. 3 to 5 form part of M.P Birla Group. The petitioner was formed by or under the authority of MPB and PDB. The members of the first managing committee, inter alia, included the close relation and confidents of the MPB and PDB. PDB continue to be a trustee and member of the managing committee of the petitioner till her date. MP Birla Group comprises of large number of companies and prominent Charitable Societies and Trusts. During his lifetime, MPB was the principal promoter and controlled all the companies, societies and trusts of M.P Birla Group. He was the single directing mind and hand of the MP Birla Group. Even though all entities whether companies or trust or societies comprised in M.P Birla Group had their respective Boards, but the fact remained that all decisions were taken only under the aegis and directions of the PDB after the death of MPB. After the death of PDB, RSL propounded a Will as executor thereof.

The shareholding pattern of the respondent no. 1 is as under :

Sl. No.	Name of Shareholder	No. of Shares	%	Remarks
1	Eastern India Educational Institution	1,80,000	20%	M.P. Birla Group
2	Gwalior Webbing Co. Pvt. Ltd.	90,000	10%	M.P. Birla Group
3	Baroda Agents & Trading Co. Pvt. Ltd.	90,000	10%	M.P. Birla Group
4	The Punjab Produce &	90,000	10%	M.P. Birla

	Trading Co. Pvt. Ltd.			Group
5	Solvay India Holding Inc. U.S.A.	4,50,000	50%	Foreign Venture Partner
	Total	9,00,000	100%	

The petitioner holds 1,80,000 equity shares representing 20% of total issued subscribed and paid up share capital of and in the respondent no. 1 and is a part or constituent of the 50% shareholding of the M.P. Birla Group in the respondent no. 1. The remaining portion of the 30% of the issued, subscribed and paid up share capital of and in the respondent no. 1 is held by the three companies of M.P. Birla Group being proforma respondent nos. 3 to 5 all jointly are Indian partners as per the Joint Venture Agreement.

The respondent no. 2 is presently the Chairman and Director of respondent no. 1 representing the M.P. Birla Group. The said respondent was originally appointed as director on May, 2004 as representing the M.P. Birla Group, the Indian partner of Joint Venture Company respondent no. 1, and since then the respondent no. 2 has been getting reappointed on retirement by rotation from time to time based on the support of and as representing the M.P. Birla Group. The respondent no. 2 was also formally a trustee and the Chairman and member of the Managing Committee of the petitioner but has ceased to be so pursuant to the orders passed by the Coordinate Bench of the Court dt. 18.09.2020 and 01.10.2020 in the proceeding arising out of TS No. 6 of 2004 (Harsh Vardhan Lodha –vs- Arvind Kumar Newar & Ors.).

PDB died on 03.07.2004 and after her death, disputes pertaining to succession of the 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 before this Court. The said application for grant of probate being PLA No. 242 of 2004 was taken as contentious cause and was numbered as Testamentary Suit No. 6 of 2004. After the death of the executor in the said suit is now for grant of Letters of Administration.

In the said suit, an Administrators Pendente Lite Committee (hereinafter referred to as "APL") has been appointed for the purpose of protection and administration of the estate left behind PDB till the disposal of the Testamentary suit.

In the said Testamentary Suit, an order was passed on 18.09.2020 and the operative portion of the said order reads as follows:-

> *"a. The plaintiff shall implement the decision dt. 19.07.2019 and 13.07.2019 of the APL Committee taken by majority as also all consequential decision of the APL in furtherance of the said decision 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 decision of the APL and any decision which might be taken 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."*

The order dt. 18.09.2020 was subsequently clarified by and interim order dt. 01.10.2020 by the Appellate Court which reads as follows:-

> *"20. We may, however, clarify that the word "implement occurring in paragraph (a) among the three directions 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 the plaintiff no. 1, Harsh Vardhan Lodha to the extent of it being a restriction from holding any office in any of the entities of M.P. Birla Group during the pendency of the suit, on the strength of shares referable to the estate of PDB."*

Despite being ineligible to hold any officer in the petitioner, the respondent no. 2 has been continuing making illegal attempts to interfere with the affairs of the petitioner for making wrongful, illegal and unlawful gain and is causing irreparable loss and injury to the petitioner and is attempting to usurp control over the various investee companies of the M.P. Birla Group through the petitioner.

On 09.09.2022, the APL Committee had issued a letter to the petitioner as well as the other entities of M.P. Birla Group regarding the manner of exercise of voting rights at the AGM of the respondent no. 1 i.e. scheduled to be held on 26.09.2022. In the said letter, the APL Committee informed to the petitioner as well as the other entities for following directions concerning the AGM of the respondent no. 1.

a. *Resolution no. 4 : To vote against the resolution for re-appointment of the respondent no. 2.*

b. *To vote in favour of the resolution, if proposed pursuant to the notice of the Proforma Respondent no. 5 in terms of provisions of Section 160 of*

> *the Companies Act, 2013 for appointment of Mr. Sudeep Roy as Director, liable to retire by rotation, of the respondent no. 1.*

On 09.09.2022, the proforma respondent no. 5 has issued a notice under Section 160 of the Companies Act, 2013 to the respondent no. 1 proposing candidature of Mr. Sudeep Roy for his appointment as Director on the Board of the respondent no. 1 to fill up the vacancy caused by the retirement of the respondent no. 2.

The petitioner apprehends that the respondent nos. 1 and 2 and their respect men, agents, servants and assigns are restrained, even at the ensuing the AGM of the respondent no. 1 to be held on 26.09.2022, the respondent no. 2 in collusion and conspiracy with the respondent no. 1 and others are likely to again try to disrupt the day to day internal management of the petitioner, refuses to accept certified copy of the resolution of the Board of Trustees of the petitioner and also interfere in the lawful exercise of voting rights of the petitioner in respect of shares held in the respondent no. 1 as they have done in the past.

The petitioner submits that as the AGM is going to be held on 26.09.2022 and unless and until an ad interim order of temporary injunction is not granted by restraining the respondent no.2 to represent in any manner or purpose, as representative of the Indian promoters of the respondent no. 1 for seeking reappointment as Director of the respondent no. 1, the petitioner will be badly prejudiced.

Counsel for the respondent no. 1 submits that the estate does not hold any share and APL and PDB were not having any share as per the shareholding pattern of the respondent no. 1. The Solvay India Holding Inc. USA who is the Foreign Venture partner having 50% share but he has not made as party to the instant suit. The respondent no. 1 company is having the registered office at Bhiwani, Rajasthan and thus this Court has no jurisdiction to try the instant suit.

The Learned Counsel of the respondent no. 1 submits that in the order passed by the Coordinate Bench of this Court dt. 18.09.2020, the Hon'ble Court has held that the Probate Court cannot decide any issue against a stranger to the probate proceedings and no order in this probate proceeding can be passed against the noticee company. He further submits that in the said proceeding, it was also held that the Probate Court cannot extent its jurisdiction over a person or entity who is not the party to the proceeding.

Learned Counsel further submits that in the contempt proceeding, the following allegations were made against the respondent no. 1 :

> "1. *HVL continued to hold office as Director/ Chairman in UCL, BCL, BCab and VTL.*
>
> *2. HVL partici0ated in the meeting of the Board of Directors of the above companies held on 5th November, 2020, 9th November, 2020 and 10th November, 2020 as Director and/or Chairman thereof.*
>
> *3. HVL failed to abide by the directions of the APL Committee dt. 19.07.2019, 30.07.2019, 23.07.2020 and 30.07.2020 by which the APL Committee decided not to support the re-appointment of HVL as Director in the four companies.*

> *4. HVL failed to abide by the directions of the APL Committee contained in the letter dt. 4th/ 5th November, 2020 issued by the Board of Directors of the said companies."*

The Hon'ble Division Bench while deciding the said issue held that "We are not deciding in this contempt case whether the 'estate of PDB' as given by the respondents or the one given by the petitioner is correct or not. That question has to be decided in the pending appeals. For the purpose of this proceeding, it is sufficient to say that HVL participation in Board meetings cannot be termed as contemptuous violation of the order of this Court as the wilful disobedience has not been proved beyond reasonable doubt and there is a possibility that HVL could continue to hold office on the strength of votes of the public shareholders in exclusion to the votes of the APL Committee and the promoter and promoters group and PACs.

Learned Counsel for the respondent no. 2 had referred Section 152 (6) (e) of the Companies Act and submits that at the annual general meeting at which a Director retires as aforesaid, the Company may fill up the vacancy by appointing the retiring director or some other persons thereto. Learned Counsel for the respondent no. 2 further submits that as per Clause 103 of the Memorandum of Association, it is crystal clear that subject to Article 86 of the company at the Annual General Meeting at which a Director retires by rotation in manner aforesaid may fill up the vacated office by appointing the retiring Director or some other persons thereto. Learned Counsel for the respondent no. 2 further contended that the Hon'ble Division Bench of this Court while disposing of the appeal against the common judgment and order dt. 27.08.2010 in connection with PLA No. 242 of 2004, the Hon'ble Division Bench has held that "*the appellants/petitioners have specifically sought in their application for being appointed as APL to enable him to collect devident paid against the shares and all other incomes of the estate which is one of the trait and characteristic of the different kind of rights emanating from ownership of shares, stocks of company as provided under the Companies Act.*"

Considering the said facts, the joint Administrators were appointed to administer property of the deceased including the shareholdings and stocks held by the deceased in various companies with the assured objects of its protection and preservation.

Learned Counsel for the respondent no. 2 further submits that the respondent no. 1 is having the registered office at Bhiwani, Rajasthan and thus the suit filed by the petitioner against the respondent is not maintainable as this Court is not having any jurisdiction.

The Learned Counsel for the respondent no. 2 further submits that the suit filed by the petitioner is also barred under Section 430 of the Companies Act.

Counsel for the respondent no. 13 has supported the case of the petitioner and submits that the respondent no. 2 may be restrained for represent in any mode or manner as representative of Indian promoters of the respondent no. 1 for seeking reappointment as Director of the respondent no. 1.

Heard, the Learned Counsel for the respective parties, perused the application and documents available on record. The main contention of the petitioner is that, the Coordinate Bench of this Court vide order dt. 18.09.2020 has restrained the respondent no. 2 from holding any office in any of the entities of M.P. Birla Group during the pendency of the suit. The APL vide letter dt. 09.09.2022 informs the petitioner as well as the other entities regarding holding Annual General Meeting of BCL, UCL, VTL, BCab and HGCL. On 09.09.2020, the PPT had issued notice under Section 160 of the Companies Act proposing the candidature of Sudeep Roy as Director on the Board of Hindustan Gum and Chemical Limited. The HVL has issued a letter to the petitioner as well all the entities wherein it is mentioned that :

4	Appointment of Director in place of Mr. Harsh V Lodha (DIN : No. 00394094), retiring by rotation and being eligible offered himself for reappointment.	To vote in favour.

As per Clause 103 of the Memorandum of Association, the Annual General Meeting at which Director retires by rotation in manner aforesaid may fill up in the vacated office by appointing the retiring Director or some other person thereto. Admittedly, the office is going to be vacated and the same is to be filled up and accordingly the respondent no. 2 had also forwarded the resolution informing that he is retiring by rotation and being eligible offered himself for reappointment.

The scrutinizer at the AGM who is otherwise authorized to scrutinize the votes in view of the statutory provision as an embedded authority to see whether the voting rights have been exercised in compliance of the Rule and Regulation. The plaintiff is not a private individual shareholder that the voting rights are to be exercised by such individual or through his authorized person.

The Hon'ble Division Bench while deciding the contempt application held that HVL's participation in the Board Meeting cannot be termed as contemptuous violation of order of this Court as the wilful disobedience has not be proved beyond reasonable doubt and there is a possibility that HVL could continue to hold office on the strength of the votes of public shareholders in exclusion to the votes of the APL Committee and the promoter and promoters groups of PACs.

The APL had preferred an SLP before the Hon'ble Supreme Court and vide order dt. 04.02.2022, the Hon'ble Supreme Court has clarified that the APL Committee would be at liberty to seek reliefs as may be necessitates to ensure its effective functioning. Moreover, as clarified by this Court in its earlier order, extracted above, the observation has been made while declining to exercise the contempt jurisdiction shall not influence the disposal of the appeals.

In the present case, the petitioner came before the Court by filling the suit praying for perpetual injunction restraining the respondent no. 2 to represent any mode or manner or purposes as representative of Indian promoters of the defendant no. 1 for seeking reappointment as Director of the defendant no. 1 and other reliefs but the APL has not came before this Court for any allegation that the defendant no. 2 has no right for reappointment. It is the scrutinizer of AGM to see whether the defendant no. 2 is entitled to be reappointed as Director but the petitioner herein has not made any request to the scrutinizer to scrutiny of the request of the respondent no. 2.

In view of the above, this Court do not finds any prima facie material to pass any ad interim order of injunction in favour of the petitioner at this stage and thus the application filed by the petitioner is to be decided only after exchange of affidavit.

Let, affidavit in opposition be filed within two weeks after puja vacation, reply if any thereto be field by a week thereafter.

As regard, the point of maintainability of the suit raised by the respondents, it is find from record that the parties have filed separate application for rejection of plaint and the same is to be decided on merits accordingly this Court has not decided the point raised by the respondents at this stage.

(KRISHNA RAO, J.)

p.d