

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Contempt)
Original Side

Before:

Hon'ble the Chief Justice
Thottathil B. Radhakrishnan
&
Hon'ble Justice Shampa Sarkar

CC/35/2020

With

APO 89/2020

Arvind Kumar Newar and anr.

.....petitioner

vs.

S S Kothari and ors.

..... alleged contemnors

AND

CC/36/2020

With

APO 90/2020

Arvind Kumar Newar and anr.

.....petitioner

vs.

R C Tapuriah and ors.

..... alleged contemnors

AND

CC/37/2020

With

APO 91/2020

Arvind Kumar Newar and anr.

.....petitioner

vs.

R C Tapuriah and ors.

.....alleged contemnors

AND

CC/38/2020

With
APO 92/2020
 Arvind Kumar Newar and anr.

.....Petitioner

vs.
 Harsh Vardhan Lodha

..... alleged contemnors

AND

CC/39/2020
With
APO 95/2020
 Arvind Kumar Newar and anr.

.....petitioner

vs.
 Vikram Swarup and ors.

.....alleged contemnors

Appearance:-

*Mr. S.K. Kapur, Sr. Adv.,
 Mr. Hirak Kumar Mitra, Sr. Adv.,
 Mr. S.N. Mookherjee, Sr. Adv.,
 Mr. Mukul Rohatgi, Sr. Adv.,
 Mr. K.V. Vishwanathan, Sr. Adv.,
 Mr. V. Giri, Sr. Adv.,
 Mr. Surajit Nath Mitra, Sr. Adv.,
 Mr. Ratnanko Banerjee, Sr. Adv.,
 Ms. V. Meharia, Adv.,
 Mr. D.N. Sharma, Adv.,
 Mr. K. Choudhury, Adv.,
 Mr. Soumabho Ghose, Adv.,
 Ms. Suchismita Ghose, Adv.,
 Mr. Pratik Mukhopadhyay, Adv.,
 Mr. Akash Bajaj, Adv.,
 Ms. Vaibhavi Pandey, Adv.,
 Mr. Debdutta Sen, Adv.,
 Mr. Anuj Singh, Adv.,
 Mr. Ajay Bhargav, Adv.,
 Mrs. Vanita Bhargav, Adv.,
 Mr. Swarnendu Ghosh, Adv.
 ...for petitioners*

*Mr. Darius Khambata, Sr. Adv.,
 Mr. Abhrajit Mitra, Sr. Adv.,
 Mr. Partha Sarathi Sengupta, Sr. Adv.,
 Mr. Soumya Raychowdhury, Adv.,
 Mr. Debarjan Mandal, Adv.,
 Mr. Sanjiv Kumar Trivedi, Adv.,
 Mr. Kunal Vajani, Adv.,
 Mr. Sarvapria Mukherjee, Adv.,
 Mr. Deepan Sarkar, Adv.,
 Ms. Iram Sassan, Adv.,
 Mr. Sanket Sarawgi, Adv.,
 Ms. Mahima Cholera, Adv.
 ...for HVL*

*Mr. Ranjan Bachawat, Sr. Adv.,
Mr. Sayan Roychowdhury, Adv.,
Mr. Satyaki Mukherjee, Adv.,
Mr. Paritosh Sinha, Adv.,
Mr. Saubhik Chowdhury, Adv.,
Mr. Dripto Majumdar, Adv.,
Ms. Ayusmita Sinha, Adv.
...for the Companies*

*Mr. Kihosre Datta, Sr. Adv.
... for APL Minority Member*

*Mr. Joy Saha, Sr. Adv.,
Mr. Yash Vardhan Deora, Adv.,
Ms. Asmita Raychaudhuri, Adv.
...for APL Majority Committee*

Hearing concluded on: 13.04.2021

Judgment on: 22.04.2021

Shampa Sarkar, J.:-

1. These contempt applications have been filed by the defendants in Title Suit No. 6 of 2004 (a testamentary suit) alleging wilful, deliberate and contumacious violation of a common order dated October 1, 2020 passed by this Bench in APO No.89 of 2020, APO No.90 of 2020, APO No.91 of 2020, APO No.92 of 2020 and APO No.95 of 2020. The alleged contemnors are the plaintiff No.1, Harsh Vardhan Lodha (HVL) and each of the directors of the four public listed companies, namely, Universal Cables Ltd. (UCL), Birla Cable Limited (BCab), Vindhya Telelinks Limited (VTL) and Birla Corporation Limited (BCL). Harsh Vardhan Lodha's participation in the Board Meetings of these companies as the director/chairman, have been alleged to be contumacious. The allegations are primarily against HVL and consequently against the directors of the companies who have allegedly aided and abetted HVL in committing the contempt. All the applications have been heard analogously.

2. Before dealing with the allegations, the factual backdrop of the case is discussed for convenience. An Administrator Pendente Lite Committee (APL

Committee) was appointed in course of the probate proceedings which had been given the authority to exercise all rights flowing from the estate of Priyamvada Devi Birla (in short "PDB"), which were mainly controlling block of shares in the companies. The constitution of the committee changed from time to time. The said testamentary suit was filed by R.S. Lodha (RSL) executor, for grant of probate of the last Will and Testament of late PDB. Upon the death of RSL, it was converted into a suit for grant of letters of administration. HVL is the plaintiff No.1. By an order dated August 23, 2012 passed by this court, the extent of the estate of the rights and powers to be exercised by the said APL Committee in relation to the estate of PDB was laid down. APL Committee in the course of administration and management of the estate of PDB issued certain directions on July 19, 2019 and July 30, 2019.

3. These two decisions were challenged by the plaintiffs in the probate suit by filing two separate applications being G.A. 1761 of 2019 and G.A. 1786 of 2019. The defendants in the suit also filed two separate applications being G.A.1735 of 2019 and G.A. 1845 of 2019 praying for implementation of these decisions.

4. A learned Single Judge of this court by a common order dated September 18, 2020 disposed of the above applications filed by the parties. The operative part of the order is quoted below:-

"(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."

5. No orders were passed by the learned Single Judge with regard to the subsequent decisions of the APL Committee dated July 23 and 30, 2020. Aggrieved by the aforementioned order, the above-mentioned appeals were preferred by the companies as also by HVL. HVL challenged the order, inter alia, on the ground that by the order of the learned Single Judge, the APL Committee's interference with his office as a director of these companies, having been duly appointed in accordance with the provisions of the Companies Act, 1956 and 2013 as applicable had been upheld. HVL's further contention was that his role as a director was not in conflict with his capacity as a legatee under the Will and the probate court could not impose such restrictions. That the estate of PDB had not been correctly depicted by the APL committee in their aforementioned decisions and was contrary to what was shown in the affidavits of assets and the report of the APL Committee filed in the probate proceedings.

6. VTL, BCab and BCL were noticee companies before the learned Single Judge but none of the companies were parties to the testamentary suit. The companies filed individual appeals along with applications for leave to prefer the appeals and stay. The companies alleged direct interference by the APL Committee in the affairs of the company. The companies also challenged the

prohibition on HVL from holding any office in any of the M.P. Birla Group of Companies. They prayed for setting aside of the order of the learned Single Judge and stay of operation of the order till disposal of the appeal. The appeals and applications came up for hearing before this Bench. Leave was granted, the appeals were registered and the parties were requested to restrict their arguments only on the point of ad-interim stay of operation of the order dated September 18, 2020. The appellant companies, whose directors have been impleaded as alleged contemnors in these applications mainly challenged the order on the ground that the order, in effect, permitted the APL Committee to meddle with matters touching the affairs of the company. According to the companies, the direction for implementation of the decisions of the APL Committee created a situation where the companies were disabled from acting in consonance with the provisions of the Companies Act, 2013 and the authority and supremacy of the Board of Directors had become subservient to the APL Committee. Their main grievance was that the APL Committee had asked the companies to comply with the order dated September 18, 2020, although, the directions in the order were upon HVL. By a common order dated October 1, 2020, this Bench at the ad-interim stage, clarified the order passed by the learned Single Judge, without granting a stay of the operation of the same. The stay applications and the appeals were kept pending for final adjudication. This Bench clarified that the word 'implement' occurring in paragraph (a) among the three directions issued by the learned Judge would mean 'abide by'. It was 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 the M P Birla Group during the pendency of the suit, on the strength of the shares referable to the estate of PDB.

7. The defendants/petitioners have alleged violation of the above-mentioned order of this court, alleging failure on the part of HVL to abide by the directions of the APL Committee by participating in the Board meetings as director/chairman. The allegations of aiding and abetting HVL have been levelled against the directors of each of these companies. Further violation of the subsequent decisions taken by the APL Committee dated July 23, 2020 and July 30, 2020 not to support re-appointment of HVL as director have also been alleged. As the allegation of contumacious violation of the order of this court is primarily against HVL, CC 38 of 2020 is taken up first for our consideration.

CC 38 of 2020 Contempt against HVL

8. The summary of the allegations are, inter alia, as follows:

- (i) HVL continued to hold office as director/chairman in UCL, BCL, BCab and VTL;
- (ii) HVL participated in the meetings of the Board of Directors of the above companies held on November 5, 2020 November 9, 2020 and November 10, 2020 as director and/or chairman thereof;

- (iii) HVL failed to abide by the directions of the APL Committee dated July 19, 2019, July 30, 2019, July 23, 2020 and July 30, 2020, by which the APL Committee decided not to support the re-appointment of HVL as director in the four companies.
- (iv) HVL failed to abide by the directions of the APL Committee contained in the letters dated 4th/5th November, 2020 issued to the Board of Directors of the said companies;

9. The petitioners prayed that Rule be issued, directing HVL to show-cause why he should not be sent to prison or suitably dealt with, for wilfully and deliberately violating, disregarding and disobeying the order dated October 1, 2020. Further prayer was made for a declaration that the alleged contumacious acts be declared as unlawful and non-est in the eye of law.

10. Mr. Vishwanathan and Mr. Rohatgi, learned senior counsels appearing on behalf of the petitioners submitted that this Bench by order dated October 1, 2020 refused to stay the operation of the order of the learned Single Judge dated September 18, 2020 but clarified the order to the extent that the plaintiffs should 'abide by' the decisions dated July 19, 2019, July 30, 2019 and all further decisions of the APL Committee and HVL shall be restrained from holding any office in any of the entities of M.P. Birla Group of Companies during the pendency of the suit, 'on the strength of the shares referable to the estate of PDB'. In the course of the argument, the learned counsels referred to paragraphs 17, 18 and 19 of our order, wherein this Bench had observed that

it was a settled position that the APL Committee represented the estate of the deceased in terms of Section 247 of the Indian Succession Act, 1925 for all purposes, except distribution of the estate. The learned counsels pointed out that as this Bench had observed that the control of a company vested in the voting powers of the shareholders and that the shareholders holding a controlling interest could determine the nature of the business, its management and various other matters touching the affairs of the company, the APL Committee's decision not to support re-appointment of HVL as director of the companies, was binding, as the control over the companies had vested upon the APL Committee being the estate of PDB. HVL by not stepping down from his office of director violated the order of this court. It was submitted that this Bench also was of the view that APL's power included the power to regulate and permit such shares to be utilised to generate appropriate income and to better utilise the same, in the best interest of the affairs of the estate of PDB which would, ultimately, reflect on the end beneficiaries. Thus, HVL's directorship against the APL Committee's decision, were detrimental to the business of these companies. Attention was drawn to the decisions of the APL Committee dated July 19, 2019 and July 30, 2019, in support of the contention that the committee upon taking into consideration that the major part of the estate of PDB consisted of direct and indirect share holdings through cross and chain holdings in various companies, being the controlling interest in the M.P. Group of Companies (as quantified in Annexure-X to the decision dated July 19, 2019), had taken the decision not to support the

resolution for re-appointment of HVL as a director of VTL and BCL in the decision dated July 30, 2019. The APL Committee's view that there was no dispute about the fact that PDB had control over the majority of the shareholdings in all these four companies and upon PDB's death the controlling interest over the companies had vested in the APL Committee which would not be limited to the rights flowing from the number of shares that were recorded in PDB's name, alone was pointed out. Our attention was further drawn to the "Tier-wise Broad Structure of Control of M.P. Birla Group of Companies through Key Companies" (in short 'flow chart') Annexure-X to the decision of the APL Committee and also the "Statement of Shareholding of Promoter Groups in the Four Listed Companies", that is, 60.39% in UCL, 53.86% in VTL, 66.65% in BCab and 62.90% in BCL. The learned counsels further emphasised that the estate of PDB had been decided to be the controlling interest in the companies of M.P. Birla Groups through cross and chain holdings by this court as also the Apex Court in course of the testamentary proceedings. It was urged that no further interpretation of the expression "controlling interest" in these companies "referable to the estate of PDB" was necessary to be gone into and the plea of HVL that he was not holding office on the strength of the shares referable to the estate of PDB was hit by the principle of intra suit res judicata. According to the learned counsels, the shares as referred to in the affidavit of assets were not the actual estate of PDB. Reference was made to the Will of PDB, the notes of arguments submitted by RSL and some orders of this court in order to show that PDB

had complete ownership and control over all the business and properties possessed and owned by PDB either directly or indirectly and as such the entire right, title and interest of all that was bequeathed to late RSL had vested in the APL Committee. The APL Committee had been given superlative authority over the entire estate of PDB, having stepped into the shoes of PDB by law and had complete control over the management of the four listed companies. Thus HVL was bound to abide by the decisions of the committee and should not have attended and chaired the meetings of the Board of Directors of the companies held on 5th November, 2020, 9th November, 2020 and 10th November, 2020, as he was not re-appointed as a director in his individual capacity, but only on the strength of the shares referable to the estate of PDB.

11. HVL filed his affidavit-in-opposition responding to the show-cause issued by this court. HVL stated that he did not commit any deliberate, wilful or contumacious act of violation of the order dated October 1, 2020 and tendered unconditional apology in the event this Bench found any act of contempt on his part.

12. HVL's explanation was that the estate of PDB comprised of only those assets which were mentioned in the affidavit of assets by both the parties and in the interim report filed by the APL Committee. Reference had been made to a decision of the Division Bench of this court dated October 11, 2007 reported in **ILR 2007 (2) CAL 377, Rajendra Singh Lodha vs. Ajoy Kumar Neewar & Ors.** passed in the testamentary proceedings. Special emphasis has been laid

on paragraph 301 of the said judgment, wherein it had been observed that the controlling block of shares of PDB were those disclosed in the affidavit of assets and no dispute on such disclosure as to the number of shares made by the executor (RSL) had been raised by the defendants. According to HVL, at present those shares had been recorded in the names of Justice Mohit Shantilal Shah (Retd.), Sri Mohendra Kumar Sharma and Sri Amal Chandra Chakraborti, (the present APL Committee) as the representative of the estate of the deceased PDB. Those shares were initially recorded in the names of the erstwhile members of the APL Committee; on an application jointly made by the then members of the APL Committee in terms of an order dated August 23, 2012. A unanimous inventory report dated October 15, 2013 had been filed by the APL Committee of which Mr. Justice Raveendran (Retd.) was a member. The same has been annexed to the affidavit-in-opposition and strong reliance has been placed to indicate the shares of PDB. According to HVL, this Bench did not restrain HVL from holding any office in any of the entities of the M.P. Birla Group of Companies, unlike the learned Single Judge. This Bench, on the contrary, clarified the order of the learned Single Judge thereby restricting HVL from holding any office “on the strength of the share referable to the estate of PDB”. Appointment and re-appointment of HVL as director of BCL since 1996, of UCL since 1998, of VTL since 1998-2001 and from May 2004 has been pleaded. Statistics have also been provided in the affidavit-in-opposition to show that the performance of all the four manufacturing companies had substantially improved during HVL’s tenure as director. A chart to that effect

had been annexed to the opposition. An instance had also been given that HVL had not attended the Annual General Meeting of Hindustan Gums Chemical Limited of which he was the chairperson, held on September 23, 2020, that is, after the decision of the learned Single Judge. Only after this Bench clarified the order dated September 18, 2020, HVL attended the Board meetings of the four listed companies. It has been categorically stated that the letters dated October 6, 2020, November 3, 2020 and November 5, 2020 issued to the directors of the companies depicted an incorrect interpretation of the order dated October 1, 2020. HVL denied that the allegation that he had participated in the meetings of the Board of Directors of VTL and UCL held on November 9, 2020, BCab on November 10, 2020 and BCL on November 5, 2020 as its director/chairman on the strength of the shares referable to the estate of PDB. HVL contended that he abided by the decisions of the APL Committee. HVL reiterated that his office as director in the listed companies was not on the strength of the shares referable to the estate of PDB and if the voting pattern in the resolutions of re-appointment were taken into account, the figures would reveal that even on the strength of votes of public shares holders he would have been re-appointed.

13. Mr. Khambata, learned senior counsel appearing on behalf of the HVL submitted that from the answer to the show-cause filed by HVL, two interpretations of the order of this Bench were possible. Thus, the benefit of doubt would be in favour of holding HVL not guilty of the alleged contempt. His next argument was that the alleged act of contempt should be strictly

construed in the context of the order made and the violations alleged. Learned counsel urged that the allegations were essentially contumacious violation of the order of the learned Single Judge and there being no merger of the order, the contempt proceedings were not maintainable before this Bench. He relied on the decision of **Kunhayammed and ors. v. State of Kerala and anr.**, reported in **(2000) 6 SCC 359**. His next contention was that the decisions of the APL Committee dated 4th and 5th November were not before this court and those could not be looked into in this special jurisdiction. Subsequent decisions of the APL Committee after the order of this Bench would also not be a part of this proceeding.

14. Mr. Khambata submitted that the shares registered in the name of PDB in the register of the companies would be the shares referable to her estate and not those held by other trust and societies through cross and chain holdings. Reference was made to the affidavit-in-opposition filed by the managing directors and company secretaries of the listed companies to show that the re-appointment of HVL as director in the respective Annual General Meetings (AGM), held on August 18, 2020, in UCL, August 6, 2019 in BCab, August 5, 2019 in VTL and August 25, 2020 in BCL were not on the strength of the shares referable to the estate of the deceased. According to the learned counsel, the votes of the public shareholders, alone, were enough for re-appointment of HVL and the wish of the shareholders that HVL should be re-appointed as the director was to be honoured as a part of corporate democracy. He further submitted that the decision of the APL Committee dated July 19, 2019 did not

mandate HVL to do something or prohibit HVL from doing something in relation to the control and management of the four companies in his personal capacity. The APL Committee nominated themselves and their own persons as directors of the Companies. Mr. Khambata submitted that even the decision of July 30, 2019 did not put any restriction on the activities of HVL as director of these companies. The APL Committee resolved not to support the resolution for re-appointment of HVL as a director of VTL and UCL and accordingly the committee voted against HVL's re-appointment. According to Mr. Khambata, the alleged acts of contempt as elaborated in the application did not reflect that there was any conflict with the directions of the APL Committee and HVL continued to hold the post of director and attended their respective Board Meetings on 5th, 9th and 10th November, 2020, in respect of the four companies. Emphasis was laid on the directions to show that the members of the APL Committee decided to continue as directors of some of the other companies (within MP Birla Group) and also nominated Justice D.G. Karnik (Retd.) as a director of UCB, BCL and VTL and Justice Devadhar (Retd.) as director in the Board of BCab. Attention was drawn to paragraph 26 of the decision dated July 19, 2020, to show that the APL Committee chose to proceed on the basis of a possibility that the estate of PDB had a majority share in the M.P. Birla Group of Companies including, Tire-3 and Tire-4 companies.

15. Learned senior counsel categorically stated that HVL did not ever act as a representative of the estate of PDB. The role of HVL as a legatee under the Will and as a director of the companies were distinct and separate. The

functions of HVL as a director was guided by the provisions of company law and only his functions as a legatee of the estate of the deceased would be subject to the directions of the probate court. Reliance was placed on the decision of the Apex Court in the matter of **Chandrabhai K. Bhoir and ors. v. Krishna Arjun Bhoir and ors.** reported in **(2009) 2 SCC 315**. Mr. Khambata emphasised that the action of HVL in attending the Board meeting and chairing the same were not subject to directions of the probate court as he did not hold office only on the basis of the shares referable to the estate of the deceased. The main thrust of the argument of Mr. Khambata was that once the APL Committee had recorded that it had not made any attempt to take over the management and control over any of the listed companies and Justice R.V. Raveendran (Retd.), erstwhile chairman of the APL Committee was also of the same view, further interference with the management and control of the affairs of the company through the decisions was not permissible.

16. Mr. Khambata relied on the decision of **Life Insurance Corporation of India v. Escorts Ltd. and ors.** reported in **(1986) 1 SCC 264**, wherein the Apex Court held that a company was somewhat like a state functioning under its basic constitution, consistent with the Companies Act and the Memorandum of Association. What Mr. Khambata sought to urge through this decision was that if the powers enjoyed by HVL as a director on the votes of the majority of the shareholders of these companies were required to be curtailed or restricted, then either the Articles of Association of the companies were to be altered or steps be taken for HVL's removal in accordance with the provisions

of the Companies Act. On this issue, reliance was also placed in the decision of **Vodafone International Holdings BV v. Union of India and anr.** reported in **(2012) 6 SCC 613**. The Apex Court held that even if directors in a subsidiary company were appointed at the request of the parent company and directions for their removal were made by the parent company, such directors of the subsidiary companies, who owed their duty to the company could not be dictated by the parent company. The fact that the parent company exercised shareholder's rights on its subsidiaries could not obliterate the decision making power or authority of the subsidiary companies.

17. Mr. Khambata submitted that when the extent of estate of PDB and the decision of the APL Committee were the subject matter in the appeal, the appeal and the pending application for stay should be first disposed of on merits as the issues raised in the contempt applications had a direct bearing on the main '*lis*'. Reliance was placed on the decision of **State of J&K v. Mohd. Yaqoob Khan and ors.** reported in **(1992) 4 SCC 167**. The decision of **Quantum Securities Private Limited and ors. v. New Delhi Television Limited** reported in **(2015) 10 SCC 602** was also referred.

18. Mr. Khambata concluded that as the standard of proving contempt was that of a criminal proceeding, the contempt must be established beyond reasonable doubt and powers under this special jurisdiction should be exercised by courts cautiously and sparingly and in the larger interest, after examining the true effect of the alleged contemptuous conduct. Reliance was placed in the decision of **Mrityunjoy Das and anr. v. Sayed Hasibur**

Rahaman and ors. reported in **(2001) 3 SCC 739** and **Ram Kishan v. Tarun Bajaj and ors.** reported in **(2014) 16 SCC 204.**

19. The other contempt applications in this group are against the directors of Universal Cables Limited (UCL), Birla Cables Limited (BCab), Vindhya Telelinks Limited (VTL) and Birla Corporation Limited (BCL), in their personal names. The Companies have not been impleaded.

20. The allegations against the directors are of aiding and abetting HVL in violating the order of this court. The acts of contempt, inter alia, are summarised below:-

“a) Permitting HVL to continue to hold office as director/chairman of UCL, BCab, VTL and BCL.

b) Permitting HVL to participate in the meeting of the Board of Directors of UCL and VTL on November 9, 2020, BCab on November 10, 2020 and BCL on November 5, 2020.

c) Aiding HVL to not abide by the decisions of the APL Committee dated 19th July, 2019 and participate in the Board Meetings although the APL Committee observed that the shareholding of the estate of Priyamvada Devi Birla (PDB) was 60.57% in UCL, 66.66% in BCab, 53.86% in VTL and 62.9% in BCL.

d) Allowing HVL to hold office as director contrary to the decisions of APL Committee dated July 30, 2019, July 23, and July 30, 2020, not to support the resolution for re-appointment of HVL as a director of these companies.”

21. The petitioners prayed that the directors/alleged contemnors be committed to prison and suitably punished. A prayer was made for undoing the wrong committed by such third parties knowingly and deliberately, by setting aside the resolutions adopted in the Board Meetings.

CC 35 of 2020 Contempt against directors of UCL

22. Mr. Kapur, learned senior counsel appearing on behalf of the petitioners submitted that this Bench while refusing stay of the order of the learned Single Judge, observed that the power of the APL Committee to control and administer the estate of PDB has been repeatedly asserted through various judicial orders in the probate proceedings. In order to preserve the estate of PDB which had a large controlling interest through cross and chain holdings in the appellant companies, the APL Committee had been appointed. He submitted that the true purport of our order was that HVL should not be allowed to control the affairs of the companies on the strength of the large controlling interest referable to the estate of PDB, which had vested in the APL Committee. Learned counsel referred to the decisions of the APL Committee and the directions including the flow chart and statements of shareholding, Annexure-X to the decision dated July 19, 2019, in order to demonstrate that there was never any dispute that the estate of PDB directly or indirectly controlled the majority of the shareholdings of these companies and the APL Committee should have a similar weightage and influence on the Boards of these companies as was enjoyed by PDB. Reference was made to the Will to demonstrate the extent of the estate of PDB. He argued that there being a direction by this Bench upon the plaintiffs to abide by the decisions of the APL Committee, taken by majority and a further restriction on HVL from holding any office in any of the M.P. Birla group of companies on the strength of the shares referable to the estate of PDB, the directors of the company

despite several communications, request and directions of the APL Committee, allowed HVL to cast his vote in the Board meeting. Such action amounted to wilful and deliberate violation of the order of this court committed by the directors who aided and abetted HVL in violating our order.

23. Mr. Shyam Divan, learned senior counsel appearing on behalf of the alleged contemnors submitted that UCL, being a public limited company and a separate legal entity not having been impleaded as a contemnor in these proceedings, the directors could not be individually hauled up in contempt, holding them vicariously liable for the alleged acts of the company. In the absence of any allegation against the company of wilful disobedience and violation of the order of this Bench, the directors could not be made personally liable. He submitted that in the affidavit-in-opposition used by the directors, they had tendered unqualified apology and had categorically submitted before the court that none of them had any intention to deliberately violate the order of this Bench and their actions were in consonance with the provisions of the Companies Act, 2013 and for the preservation of corporate democracy. Reference was made to the provisions of Section 12(5) of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act of 1971). Mr. Divan referred to the definition of civil contempt and criminal contempt under the Act of 1971 and submitted that at best, these proceedings could be treated as a civil contempt but, in the absence of any mandate or interdiction on the directors of the company either by this Bench or by the learned Single Judge or even by the APL Committee, the proceedings against the directors, should fail. He further

submitted that the allegation of aiding and abetting was in the realm of criminal contempt and the allegation in this proceeding, would not qualify as criminal contempt. Mr. Divan urged that the individual directors were persons of high qualification and of great repute and should not have been impleaded as alleged contemnors in such a cavalier fashion.

24. The company was listed at the Bombay Stock Exchange and National Stock Exchange and had obligations towards the equity shareholders and serious penalties would be attracted if the company had not held the Board Meeting on time. Mr. Divan relied on the decision of **Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and ors. v. M. George Ravishekaran and ors.** reported in **(2014) 3 SCC 373**.

CC 36 of 2020 Contempt against directors of BCab

25. Mr. S.N. Mookherjee, learned senior counsel submitted that BCab was a noticee company before the learned Single Judge and also an appellant before this court and as such, the directors were bound by the decision of this Bench. It was alleged that the conduct of each of the directors in permitting HVL to attend the Board meeting and sign the resolution amounted to wilful and deliberate violation of the order of this Bench and aiding and abetting HVL to disobey the order of this Bench. He further submitted that the decisions of APL Committee and the order of this court were served upon all the directors of the companies and despite having knowledge of the fact that this Bench had not

granted any stay of the directions issued by the learned Single Judge in the judgment and order dated September 18, 2020, permitted HVL to attend the meeting and act as the director/chairman. Reliance was placed on the flow chart and the statement of shareholdings annexed to the decision of the APL Committee dated July 19, 2019. He further submitted that the defence taken by these directors in their affidavit-in-opposition that, in the absence of any positive directions or restrictions upon the directors from doing any act in relation to the activities of the company in question, contempt would not lie against such third parties, was preposterous and a further contempt on the face of the court.

27. Learned Senior counsel drew the attention of the court to the notes of arguments filed on behalf of RSL, in a proceeding before this court claiming that the controlling block of shares in the M.P. Birla Group of Companies was by far the main asset of PDB. Further reference was made to a decision of another learned Single Judge of this court passed on March 23, 2005, wherein the probate court passed an order of status quo holding that, if the majority shareholding or the controlling block of shares of PDB, were transferred or otherwise dealt with, the same would be having a far reaching effect in the affairs of the company. He referred to the submissions of the learned Advocates for RSL in the said proceeding, that the shares would not be transferred or disposed of. Not only an order of status quo with regard to the transfer of shares was passed by the probate court, a further direction that the said order of status quo would cover any other shareholding in respect of other

companies which might come to the hands of RSL. The attention of this court was further drawn to the decision reported in **(2010) 3 CLT 577**. In the goods of **Smt. Priyambada Devi Birla, Deceased** and in the matter of **Rajendra Singh Lodah vs. Ajoy Kumar Neewar & Ors.** According to Mr. Mookherjee, in the said decision dated August 27, 2010, the extent of the estate of PDB (controlling block of shares) and the rights and powers to be exercised by the APL Committee had been laid down, and the application of HVL to be appointed administrator *pendente lite* was rejected. Learned counsel submitted that the court observed that not only legal persons but experts in the relevant field should be appointed as joint administer *pendente lite* over the estate left behind by the deceased. Accordingly directions were issued to the APL Committee to make an inventory after taking possession of the properties except those under the joint special officer, and also to take custody of the original share scripts and other valuable documents. The directions to operate bank accounts, collect dividends and meet outgoings were also passed. In other words, the committee was directed to take all lawful steps for general administration of the estate left by PDB. A decision of another co-ordinate bench dated August 23, 2012 in an appeal filed by HVL against the abovementioned order was referred to. Certain directions over the estate of PDB were issued. The APL Committee was directed to prepare and file an inventory of the assets of the estate upon appraisal of the value and to take over possession of the said assets of the estate in the manner provided under the law considering the nature of the property. An appeal preferred from the order

was disposed of without interference and the Special Leave Petition preferred therefrom, to the Apex Court by the plaintiffs was also dismissed.

27. Further attention was drawn to the letter dated July 8, 2013 issued by the APL Committee consisting of a former Judge of the Supreme Court of India written to the chairman and Board of Directors of BCL, informing the directors of BCL that as the controlling block of shares in the company vested in the estate of PDB which was represented by the committee, all important decisions touching the control, ownership and management should be intimated to the Committee. A reference was further drawn to the order of the Company Law Board (CLB) passed in **Gouri Shankar Kayan & Ors. vs. East India Investment Company P. Ltd & Ors.** reported in **(2005) 128 Comp Cas 145 (CLB)** where it was observed that immediately on the death of PDB, her interests (the controlling block of shares) in the companies who were parties before the CLB stood devolved on her legal heirs. Reference was made to the decision of **World Wide Agencies (P) Limited v. Mrs. Margaret T Desor** reported in **(1990) 67 Comp Cas 607 (SC)**.

28. Mr. Ranjan Bachawat, learned senior counsel appearing on behalf of the alleged contemnors primarily adopted the submissions of Mr. Divan. It was his specific case that the company being a public listed company had certain statutory duties and compliances, one of which was to hold the Annual General Meeting. That PDB was not the owner of the company and as such the APL Committee could not interfere in the management and affairs of the company as owner thereof, but only enjoy the rights flowing from the shares of PDB. He

submitted that the learned Single Judge also was of the opinion that the companies not being parties to the probate proceedings were not amenable to the jurisdiction of the probate court and, therefore, the prayer for ad interim injunction against the companies/appellants had been categorically refused by the learned Single Judge. He submitted that the defendants could not directly seek any orders either against the companies or against the directors who were not parties to the testamentary suit. He vehemently argued that the appointment of HVL as the director of the companies had not been set aside by the learned Single Judge. Such appointment continued. Moreover, neither the APL Committee nor the defendants approached the appropriate forum for setting aside the resolution for re-appointment of HVL as the director. The applications filed by the defendants for injunction against the companies were not entertained by the learned Single Judge. This Bench also did not upset the findings of the learned Single Judge on these scores and the directions and prohibition were on HVL alone. Mr. Bachawat relied on the following decisions:-

Muthu Karuppan, Commissioner of Police, Chennai v. Parithi Ilamvazhuthi and anr. reported in (2011) 5 SCC 496, **State of Maharashtra v. Mahboob S. Allibhoy and anr.** reported in (1996) 4 SCC 411, **Ram Kishan v. Tarun Bajaj and ors.** reported in (2014) 16 SCC 204, **Debabrata Bandopadhyay and ors. v. State of West Bengal and anr.** reported in (1969) 1 SCR 304 and **Chhotu Ram v. Urvashi Gulati and anr.** reported in (2001) 7 SCC 530.

29. Learned counsel submitted that contempt being in the nature of a quasi-criminal proceeding, the standard of proof should be beyond reasonable doubt and the court should use such power sparingly, cautiously and with circumspection. Such power could be exercised only in the clearest of cases. He further submitted that if two interpretations were possible, then benefit of doubt should lean in favour of the alleged contemnor.

CC 37 of 2020 Contempt against directors in VTL

30. Mr. Hirak Kumar Mitra, learned senior counsel appearing on behalf of the petitioners vehemently argued that the directors of the company were guilty of contempt as they had aided and abetted HVL by permitting him to attend the Board meetings and act as the chairman of the company. In support of his contention, he relied on the decision of **Seaward and ors. v. Paterson** reported in **(1897) 1 Ch. 545**. He further submitted that the justification given by the directors in their affidavit-in-opposition of acting on the basis of the legal advice received by them could not be a ground for exoneration, as legal advice would at best fall within the realm of opinions of experts and unless these opinions were on a point of foreign law or science or art, they would not be relevant for the purpose of disposal of the instant proceedings. Moreover, opinions or treatises of living authors were not accepted by courts of law as relevant authorities.

31. Mr. Amit Sibal, learned senior counsel appearing on behalf of the directors of VTL submitted that neither the company nor the directors were

parties to the probate proceedings. Aggrieved by the refusal on the part of the learned Single Judge to injunct the companies from doing certain acts contrary to the decisions of APL Committee and refusal to set aside HVL's re-appointment as director, cross-objections have been filed by the defendants before this court. He submitted that the learned Single Judge did not set aside the re-appointment. That contempt by the directors would have to be proved beyond reasonable doubt and in this case, ingredients of civil contempt against the directors were missing. The directors were individuals of great repute and standing and could not be arrayed in the list of alleged contemnors in such a callous manner. The derivative liability could not fall on the directors when there were no specific allegations against the company. The resolution adopted in the Board Meeting was the decision of the company and taken by the company, as per law. He submitted that the quantum of shares referable to the estate of PDB was a question to be decided in the appeal. The register of the company was referred to, in order to show the extent of the shares in the name of the APL Committee. He submitted that no further declaration under the Companies Act had been filed by the committee. The inventory filed by the APL Committee and the affidavit-of-assets filed by the parties were also referred to in order to demonstrate that the APL Committee could not have any right over and above the numbers of shares which were previously recorded in the name of PDB. Mr. Sibal referred to the affidavit-in-opposition filed by the alleged contemnor No.9, Yashwant Singh Lodha, Managing director of VTL and submitted that HVL had been appointed and re-appointed as a director many

times since 1998 and also prior to the execution of the Will by PDB. At the AGM of the Company held on 5th August, 2019, the estate of PDB holding 500 shares voted against HVL, but such votes were found invalid since proxy was not submitted against the resolution for re-appointment of HVL. According to Mr. Sibal, HVL was not holding office of director on the strength of the shares referable to the estate of late PDB. According to him, HVL would have been appointed as director even on the votes of public shareholders. Mr. Sibal submitted that the company acted with caution and invited HVL to the meeting upon obtaining legal advice and thus the actions of the directors which were based on legal advice, would not amount to wilful violation of the order of this Bench. He relied on the following decisions:- **Kashinath Kher and ors. v. Dinesh Kumar Bhagat and ors.** reported in (1997) 6 SCC 141, **Arun Kumar Gupta and Eleven ors. v. Jyoti Prasanna Das Thakur and ors.** reported in (1996) 2 CHN 445, **Aneeta Hada v. Godfather Travels & Tours (P) Ltd.** reported in (2012) 5 SCC 661, **Ram Kishan v. Tarun Bajaj and ors.** reported in (2014) 16 SCC 204 and **Mrityunjay Das and anr. v. Sayed Hasibur Rahaman & ors.** reported in (2001) 3 SCC 739.

CC 39 of 2020 Contempt against directors of BCL

32. Mr. Giri, learned senior counsel appeared on behalf of the petitioners. While referring to the decisions of the APL Committee and the decisions of the learned Single Judge, he submitted that major part of the estate of PDB consisted of controlling power over all the M.P. Birla Group of Companies and

such control was exercised through cross and chain shareholdings in various companies' trusts and institutions. Reliance was placed on the flow chart with the title "Tier wise Broad Structure of Control of M.P. Birla Group of Companies through Key Companies". Decisions of various judgments of this court, the Company Law Board and the Supreme Court rendered in earlier proceedings on the vastness of the control of the estate of PDB through shareholdings, in various companies, were relied upon. He submitted that as far as Tier 1 and Tier 2 companies were concerned, there was no doubt about the fact that the estate of PDB had majority shareholdings in the appellant companies. He further submitted that the quantum of shares indicated in the affidavit-of-assets in the name of PDB could not be taken in isolation in order to understand the extent of the estate of PDB. The cross and chain shareholdings of the estate of PDB through the subsidiaries would also have to be taken into consideration. If these cross and chain shareholdings were taken into consideration, then the estate of PDB in these companies formed majority of the shareholdings and, as such going by the decisions of the APL Committee, HVL could not function as the director/chairman in the meetings. The actions of the directors in allowing HVL to participate and hold office amounted to aiding and abetting the disobedience of our order. Mr. Giri relied on the following decisions, namely, **Sita Ram v. Balbir Alias Bali** reported in **(2017) 2 SCC 456**, **Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and anr.** reported in **(1996) 4 SCC 622**, **Mohammad Idris and anr. v. Rustam Jehangir Babuji and ors.** reported in **(1984) 4 SCC 216**, **All Bengal**

Excise Licensees' Association v. Raghendra Singh and ors. reported in (2007) 11 SCC 374, **Ghanshyam Sarda v. Sashikant Jha, Director, M/S J.K. Jute Mills Company Limited and ors.** reported in (2017) 1 SCC 599 and **Vidya Charan Shukla v. Tamil Nadu Olympic Association** reported in 1991 2-LW 295. He further submitted that this court must set aside the resolutions taken in the Board Meetings as the resolutions were adopted in violation of the order of this court.

33. Mr. Sajan Poovaiya, learned senior counsel appearing on behalf of the alleged contemnors submitted that Birla Corporation Limited was the Flagship Company of the Group. It was a public listed company. It had 1.2 crores equity shareholders and the company had held the Board Meeting in discharge of the statutory mandate. Referring to the register of members he submitted that HVL being a director was entitled to attend the meetings. Individual members of the Board, who had been appointed as per law, did not have any power to deny HVL the right to attend the Board meeting as his re-appointment had not been set aside. Referring to the affidavit-in-oppositions filed by the directors, he submitted that the direct shareholding of PDB was to the extent of 1260 shares. He referred to the provisions of Sections 47, 88, 89 and 114 of the Companies Act, 2013 and submitted that every member of a company holding shares had a right to vote on every resolution placed before the company and the rights of such member voting on poll, would be proportionate to his share in the paid up equity share capital of the company. Thus, HVL was allowed to participate on the principle of corporate democracy. According to him, no

declaration was received from either the APL Committee or the beneficiaries of the alleged estate of PDB with regard to transfer of the beneficial interest in favour of the APL Committee representing the estate of PDB. He submitted that the resolution in the AGM was passed in terms of provisions of Section 114 of the Companies Act, 2013.

34. Mr. Poovaiya referred to a judgment of the Delhi High Court in the matter of **Dr. Bimal Chandra Sen v. Mrs. Kamla Mathur and anr.** reported in **ILR (1982) II Delhi 407**, in support of his contention that a person who was not a party to the proceedings could not be proceeded against for committing civil contempt, on the allegation of aiding and abetting the breach. That aiding and abetting the breach was an essence of criminal contempt.

35. We have heard the rival contentions of the parties. We are of the view that the allegations do not fall within the definition of criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971. The proceedings have not been initiated by the court suo moto or on the consent of the Advocate General.

36. We have heard the rival contentions of the parties. We do not accept the contention of Mr. Khambata that the contempt applications should be rejected as the allegations made in the applications against HVL and the directors of the companies were actually violation and disobedience of the order of the learned Single Judge dated September 18, 2020, as there was no merger of the said order with the ad-interim order dated October 1, 2020. In this case, the petitioners have alleged violation of our order dated October 1, 2020 and they have enumerated the acts of contempt in the applications. We shall only decide

whether there has been violation of our order dated October 1, 2020. Thus, this court does not need to decide the issue of merger.

37. The sum and substance of the arguments made by the learned senior counsels appearing on behalf of the petitioners is that the deliberate and wilful violation of the directions of this court contained in paragraph 20 of the order dated October 1, 2020, struck at the very root of rule of law which was the foundation of a democratic society. Judiciary being the institution through which the rule of law was achieved, the disobedience of HVL and the directors of the companies shook this very foundation which would ultimately erode the faith and confidence reposed by the people in the judiciary. They submitted that the order dated October 1, 2020 should have been complied with in its letter and spirit. HVL should have stepped down from directorship. HVL, by attending the Board meetings on the relevant dates in the different companies as director/chairman and, the other directors by allowing HVL to attend the meetings and put his signature on the resolutions, deliberately overreached the order of this court. This court by invoking the extraordinary jurisdiction should proceed against each of them and punish them appropriately for the contempt and also undo the wrong committed, by setting aside the resolutions adopted in the respective Board Meetings. According to them, the alleged contemnors should not be allowed to reap the fruits of their own contumacious acts. They also submitted that it was not open to the contemnors to provide a wrong interpretation of our order and justify their conduct on the basis of such incorrect interpretation. Learned counsels further submitted that the directors

of these companies who aided and abetted HVL in committing the breach of the order of this court were equally liable for having committed contempt, on the principle laid down in **Seaward (supra)**. Even if no order was passed against the companies, the actions of the directors amounted to frustrating the order of this court and rendering the order ineffective. The directors were all along in the knowledge of the order, they were repeatedly requested by the APL Committee as also by the learned advocates-on-record of the petitioners to obey the order but these directors who were managing the affairs of the company, overreached the order of this court by allowing HVL to participate in the Board meetings as a director/chairman. The essential ingredient of wilful culpability could clearly be ascribed to the actions of HVL and the directors as well. They submitted that it was trite law that even a non-party to an action in which an order had been passed, could be committed for contempt if he with knowledge of the order aided and abetted the respondent in the action against whom the order had been passed, to break the order. If a person, who knew that an injunction had been granted, aided and abetted in committing a breach of it, the court had jurisdiction to commit him for contempt, although he was not a party in the action and was not a person against whom the injunction had been passed.

38. What has fallen for decision is whether the contumacious acts as elaborately stated in the applications filed by the defendants/petitioners herein satisfied the test of civil contempt. Civil contempt has been defined under 2(b) of the said Act of 1971 as follows:-

“(b) ‘civil contempt’ means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an under taking given to a court;”

39. To constitute civil contempt, the court must be satisfied about the guilt of the alleged contemnors beyond reasonable doubt. It is fundamental that none would be proceeded against for disobedience of an order unless the disobedience was wilful.

40. The order dated October 1, 2020 has two parts:- (a) that the plaintiffs shall abide by the decisions dated July 19, 2019 and July 30, 2019 of the APL Committee; (b) HVL would be restricted from holding any office in any of the entities of the M.P. Birla Group of Companies during the pendency of the suit, on the strength of the shares referable to the estate of PDB.

41. With regard to the disobedience of the first part of our order that HVL had failed to abide by the decisions of the APL Committee, reference to the two decisions of the APL Committee dated July 19, 2019 and July 30, 2019 is necessary. It appears from the records that the decision dated July 19, 2019 was an attempt by the APL Committee to resolve the contentious issues raised by the parties in the meetings held on 15th and 16th June, 2019. Upon hearing the rival submissions, the APL Committee recorded that there were two major controversies between the parties. The APL Committee observed as follows:-

“17. From the rival submissions advanced at the meetings held on 15th and 16th June 2019, it appears that two major controversies between the parties, broadly stated, are as under:

(A) The first major controversy is about the scope and ambit of the estate of late Mrs. P.D. Birla;

(B) Controversy about the role of APL Committee.”

42. The APL Committee considered the flow chart titled Tier Wise Broad Structure Of Control of M.P. Birla Group of Companies through Key Companies, and the Statement of Shareholding of the Promoter Group in the Four Listed Operating Companies of M.P. Birla Group, marked as Annexure-X to its decision and came to the conclusion that the APL Committee was not in a position to take a final decision regarding what formed part of the estate of PDB, but so long the controversy between the parties were alive and pending before the Calcutta High Court, the APL Committee would have to proceed on the basis of a possibility that the estate of PDB had a majority share in the M.P. Birla Group of Companies. The said flow chart and the Statement of Shareholding referred to above were documents prepared and relied upon by the defendants which were annexed as annexure-I to the minutes of the meetings dated 15th and 16th June, 2019. Paragraph 26 of the decision dated July 19, 2019 being relevant, is quoted below:-

“26. At the cost of repetition, the Committee is not to take any final decision regarding what forms part of the Estate of late Mrs. P.D. Birla, but so long as the controversy between the parties is live and pending before the Calcutta High Court, inter alia, in Civil Suit No.73 to 77 of 2010 filed by Mr. Ram Kishore Chaudhary and others and CP No.1 of 2010 against the Trusts, APL Committee will have to proceed on the basis of the possibility that the Estate of late Mrs. P.D. Birla has a majority share in the M.P. Birla Group of Companies including Tier 3 and Tier 4 Companies also.”

43. In the same decision, with regard to the role of the APL Committee it was observed as follows:-

“34. At the same time APL Committee would hasten to add that the Committee has not attempted to take over the management and control of any of the listed companies under consideration – Universal Cables Ltd, Hindustan Gum and Chemicals Ltd. Birla Cables Ltd, Birla Corporation Ltd. Vindhya Telelinks Ltd. (VTL) or the wholly owned subsidiaries of VTL. On the contrary, in fact, in the Minutes of the Meeting of APL Committee held on 21st July, 2017, it was specifically observed as under:

‘It is the view of the APL Committee that it is not possible for the APL Committee to virtually takeover or take charge of the management of the listed companies which was also the view of Justice R.V. Raveendran, erstwhile Chairman of the APL Committee’.”

44. Thus the committee upon taking into account the controlling interest and the possibility that the estate of PDB included majority shares in the M.P. Birla Group of Companies, took the following decisions on July 19, 2019 which are quoted below:-

“In view of the above discussion, APL Committee decides that during pendency of the Probate proceedings before the Hon’ble High Court at Calcutta, being Probate Suit T.S No. 6 of 2004 and connected proceedings (including Civil Suit Nos.73 to 77 of 2010 and CP No.1 of 2010) pending before the Hon’ble High Court at Calcutta.

(a) All the three Members of APL Committee will be/continue to be Directors of:

- (i) East India Investment Co. Pvt. Ltd.,*
- (ii) Gwalior Webbing Co. Pvt. Ltd.,*
- (iii) Baroda agents & Trading Co. Pvt. Ltd.,*
- (iv) Punjab Produce & Trading Co. Pvt. Ltd. And*
- (v) Punjab Produce & Holdings Pvt. Ltd.*

(b) Mr. Justice D.G. Karnik (Retd.) will continue to be a Director on the Boards of Universal Cables Ltd., Vindhya Telelinks Ltd., and Birla Corporation Ltd.:

(c) Mr. Justice D.G. Karnik (Retd.) will be appointed as a Director on the Boards of (i) August Agents Ltd., (ii) Insilco Agents Ltd., and (iii) Laneseda Agents Ltd.;

(d) Mr. Justice J.P. Devadhar (Retd.), Former Judge, Bombay High Court and former Chairman, Securities Appellate Tribunal, Mumbai, will be a Director on the Board of Directors of Hindustan Gums & Chemicals Ltd., upon vacancy arising in the said Board of Directors;

(e) Mr. Justice J.P. Devadhar (Retd.), will be a Director on the Board of Directors of Birla Cables Ltd.”

45. The allegations of contumacious acts enumerated in the applications do not disclose that HVL had violated any of the above-mentioned directions. The APL Committee had also not decided conclusively on the quantification of the shareholdings (controlling interest) in all the M.P. Birla Group of Companies but on the possibility that the majority of the shareholdings belonged to the estate of PDB, took the above decisions to continue as directors in some of the other companies of the M.P. Birla Group and to nominate their chosen persons as directors of the four listed appellant companies.

46. With regard to the decision of the APL Committee dated July 30, 2019 it is on record that the decision was arrived at on the submissions made by the parties at the meetings held on July 20 and July 21, 2019. The points for consideration, inter alia, were:-

“a) Notices for AGMs of Universal Cables Ltd., Vindhya Telelinks Ltd., Birla Cable Ltd., and Birla Corporation Ltd., scheduled to take place on 5.8.2019/6.8.2019/13.8.2019, proposing payment of remuneration/compensation by way of profit related commission to Non Executive Directors including Independent Directors of the companies (i.e. Directors other than the Managing Director or Whole time Director) upto 1% of the net profit of the concerned companies for the FY 2019-20;

b) Notices for Annual General Meetings of Vindhya Telelinks Ltd. and Birla Cable Ltd., proposing re-election of Mr. H.V. Lodha as a Director.”

47. On the above issues, the decisions of the APL Committee dated July 30, 2019 are set out hereunder:-

DECISION OF APL COMMITTEE

I

- A. *APL Committee (having control over majority shareholdings in the Companies in the MP Birla Group of Companies including Vindhya Telelinks Ltd. and Birla Cable Ltd.) does not support the resolution for re-appointment of MR. H.V. Lodha as a Director of Vindhya Telelinks Ltd. and Birla Cable Ltd.*
- B. *APL Committee supports in principle the resolution for payment of profit-based remuneration/commission to Non-Executive Directors of Universal Cables Ltd., Vindhya Telelinks Ltd., Birla Cable Ltd., and Birla Corporation Ltd.*

However, the Committee does not support the payment of profit-based remuneration/commission to Non-Executive Chairman of the above companies upto 0.75% of net profit of the company.

- C. *Secretary to the Committee shall send a copy of this decision to Registrar of Trademarks Calcutta with a prayer not to continue with proceedings for registration of the Trademark/ Trade name/ Logo of MP Birla Group of Companies during pendency of TS No. 6 of 2004 and CS Nos. 73 to 77 of 2010 and CP No.1 of 2010, without leave of the Hon'ble High Court of Calcutta.*

II

The Committee accordingly directs that a copy of this decision shall be sent by the Secretary to the Committee by email at the earliest and not later than morning of 31.07.2019 to all the companies and their directors for acting in conformity with the present decision.

This decision will also be sent by the Secretary to the Committee by email by email at the earliest and not later than morning of 31.07.2019 to Trustees/Management Committee of the following Trusts/Societies which have been holding shares in the Companies of the MP Birla Group for a long time as forming part of Promoters Group, for doing the needful:

- 1) MP Birla Foundation Educational Society.*
- 2) MP Birla Foundation Medical Society;*
- 3) Belle Vue Clinic;*
- 4) MP Birla Institute of Fundamental Research;*
- 5) Hindustan Medical Institution;*
- 6) Eastern India Educational Institution;*
- 7) Shreyas Medical Society;*
- 8) South Point Foundation.*

30.07.2019

AC Chakrabortti

Justice Mohit S. Shah (Retd.)

48. Although there are allegations against HVL for violation of the first paragraph marked 'A' of the above-noted decision but there are no allegations of violation of the decisions marked 'B' and 'C' above. It is also pertinent to mention here that while disposing of a Special Leave Petition, the Apex Court had made the re-appointment of HVL subject to the decision of the learned single Judge. The learned Single Judge refused to set aside the re-appointment of HVL as a director of the companies and aggrieved by such refusal cross-objections have been filed after our order dated October 1, 2020 which are pending hearing along with the main appeals.

49. The allegation of not abiding by the decision contained in paragraph 'A' above is taken up for consideration. A Division Bench of this court in GA 3356 of 2011 arising out of APOT 551 of 2010 which was heard analogously with other applications, recognised that the APL Committee enjoyed the rights incidental to the ownership of the shares and stocks held by the deceased and would have to apply to the respective companies to obtain such benefit, in case the company came out with rights issued or bonus shares as representative of the estate of the deceased. The Division Bench also observed that it was not in dispute that the controlling of block of shares in M.P. Birla Group of Companies had been enjoyed by PDB and as such, the APL Committee would enjoy all the rights flowing from such shares for the larger interest of the ultimate beneficiaries. The APL Committee was permitted to approach the various companies to get their names recorded as representative of the estate with further directions that the APL Committee would have all rights and all

powers flowing from such control. In exercise of such power and control, the decisions dated July 19, 2019 and July 30, 2019 were taken by the APL Committee holding themselves out to be representatives of the entire estate of PDB.

50. The members of APL Committee got their names recorded in respect of the shares which were in the name of PDB as was disclosed in the inventory contained in the interim report prepared and submitted in the probate proceeding. They exercised their voting rights at the meetings held on August 5, 2019, August 16, 2019, August 18, 2020 and August 25, 2020 when HVL was re-appointed as a director in the four listed companies. The strength of voting of the shareholders at the AGMs are quoted below:-

Name of Company	Date of last AGM	Total votes cast in favour of re-appointment	Votes cast by public [non-promoters/non-promoter group/non-PAC]shareholders	Total no. of votes cast against re-appointment of HVL including votes cast on the basis of the shares of PDB
UCL	August 18, 2020	2,68,54,019	30,81,451	197,566
BCab	August 6, 2019	1,71,60,083	2,66,768	800
VTL	August 5, 2019	71,60,469	24,51,753	57,594
BCL	August 25, 2020	5,86,33,799	1,02,00,868	12,05,732

51. The APL Committee as per its above decision (A) voted against re-appointment of HVL. Such votes in respect of some of the companies were declared invalid. Excluding the votes against HVL, HVL was re-appointed as

the director. We find that the APL Committee implemented its decision (A) and voted against HVL's re-appointment.

52. The subsequent decisions of the APL Committee dated July 23, 2020 and July 30, 2020 were also not to support the resolution for re-appointment of HVL as a director in the other two companies. The plaintiffs have challenged the said decisions by filing G.A.1236 of 2020 which is pending adjudication before the learned Single Judge.

53. With regard to allegation of violation of the prohibitory part/second part of the order restricting HVL from holding any office in the M.P. Birla Group of Companies, on the strength of the shares referable to the estate of PDB, we find that going by the voting pattern, it is a possible view that HVL could have been re-appointed even on the strength of the shares not referable to the estate of PDB (personal shares of PDB and the shares referable to the promoters, promoter group and persons acting in concert). In all the AGMs, the shares which were in the name of PDB voted against the re-appointment of HVL as the director of these companies. The voting figures and statistics have been elaborately stated in the affidavits-in-opposition filed by the directors of each of the companies. In the affidavits-in-reply to these affidavits, the statistics/voting figures have not been rebutted by furnishing separate set of figures and/or voting pattern.

54. It is true that the CLB in its order dated April 25, 2005 in **Gauri Shankar Kayan (supra)** had recorded that even though the direct shareholding of PDB in the companies were negligible, by virtue of her control over the other

companies which held majority shares, PDB was not only materially interested in the companies but was also able to control the companies and that upon her death, her interests in the companies stood devolved upon the legal heirs immediately. As the question as to who were the lawful heirs of PDB, was an issue before the Calcutta High Court, the CLB held that no case had been made out for an order of investigation into the affairs of BCL in terms of Section 247(1A) of the Companies Act, 1956, specially because the estate was intact and the question as to who was entitled to control the estate was also an issue before the High Court. It was also observed that no material change in the composition of the Board of Directors had been brought about in BCL. Thus reliance placed on this decision at this stage does not impress us, inasmuch as, what was finally decided was that an investigation into the ownership of the company could not be directed.

55. Although the defendants all along contended that the issue as to what comprised the estate of PDB had already been decided through different judicial orders of this court as well as the Apex Court, and should not be reopened in order to give a different interpretation, it is possible that the extent of the estate of PDB with regard to the controlling interest over the other M.P. Birla Group of Companies would include the shareholdings of the Promoter and Promoter's group and the Person Acting in Concert (PACs) with PDB. However if HVL could have been re-appointed even without the votes of the Promoter groups and PACs and only on the votes of the public shareholders, in such event, it is also possible that HVL did not continue to hold office only on

the strength of the shares of PDB. HVL could also hold office excluding the shares referable to the estate of PDB. Thus the contempt has not been proved beyond reasonable doubt. We hold so on the basis of the pleadings in the affidavit-in-opposition filed by the alleged contemnors. When HVL could have been re-appointed on the shares of the public shareholders, invitation to HVL to attend the Board meetings and participate in the same was as per procedure prescribed by the Companies Act, 2013. If HVL could be re-appointed as a director on the strength of votes of public shareholdings alone, as per the voting figures, any deeper probe into the merits would not be proper at this stage. The contempt has to appear on the face of the order. The averments in the affidavits-in-opposition filed by the alleged contemnors including HVL has raised a valid question with regard to HVL's continuation in office. The possibility of his re-appointment only on the strength of the shares of the public shareholders cannot be ruled out. No contrary figures are forthcoming in denial of such possibility. If this court has to decide the contempt on an appreciation of the Will, Codicil other orders of CLB, judgments of this court, notes of arguments etc, in such a situation, contempt on the face of the order is not proved. The order of the CLB in **Gauri Shankar Kayan (supra)** was challenged before this court in an appeal under Section 10F of the Companies Act, in the matter of **Gauri Shankar Kayan and ors. v. East India Investment Company** reported in **[2006] 133 Comp Cas 515 (Cal)**. The learned Judge of this court also observed that the CLB had rightly recorded that the estate of late PDB was in control of majority of the shares of BCL and PDB had a

controlling interest in the other 28 companies who jointly owned 3.8% shares in BCL but Her Lordship went on to hold that it was not for the CLB to record a finding on the true persons in control of the estate of late PDB or order an investigation in the absence of any allegation of mis-management, mis-appropriation or siphoning off of fund or any acts contrary to law. Reliance placed by Mr. Mookherjee by taking out a few lines from the entire order has not persuaded us to accept the contentions of the petitioners, inasmuch as, what fell for decision in that proceeding was whether an investigation in terms of Section 247(1A) of the Companies Act, 1956 should be directed on the allegations made before the CLB. Moreover, these contentions are not to be considered in depth as they are not germane for disposal of the contempt proceedings but may be material issues to be decided in the appeal as they might have a bearing on the merits of the '*lis*' involved. When questions of interpretations are involved, the violation cannot be said to be wilful disobedience. The expression 'wilful' has been used interchangeably with the expression deliberate and intentional. The participation of HVL in the Board Meetings as gathered from the affidavits-in-opposition filed by HVL and the directors cannot be said to be wilful, deliberate and intentional violation of the order of this court.

56. The court must be satisfied about the guilt of the alleged contemnor (HVL) beyond reasonable doubt. Contempt being in the nature of quasi-criminal proceedings, the allegations should be strictly construed. The standard of proof to establish contempt, is akin to a criminal proceeding. In

this case, mere allegation of violation based on surrounding circumstances and observations made by the CLB and the High Court are not enough. The breach of the order of this court must be proved beyond reasonable doubt.

57. On the one hand, the affidavit of assets and the inventory/interim report of the APL committee give rise to a possible interpretation that the extent of the estate and the controlling interest of PDB can be to the extent admitted by the alleged contemnors. On the other hand, the extent of the estate can also be as contended by the petitioners. Controlling interest however is yet to be conclusively defined and quantified. The APL Committee has not quantified the same. In this case, the extent of control can also be the influence PDB had over the shareholders/Promoter Groups or Person Acting in concert. There is a possibility that the Promoters/Promoter Groups and PACs did not vote in concurrence with the APL Committee's decision in the AGMs where HVL was re-appointed as director. Moreover, there is also no allegation of dissipation or depletion of the estate or transfer of shares in violation of the order of status quo and thus the emphasis laid by Mr. S.N. Mookherjee on the orders of status quo over the shares as also on the orders of the CLB are not relevant in the contempt proceedings. There is also a decision of a Division Bench of this court, where the controlling interest of the estate of PDB was held to be primarily in the nature of shares which had been mentioned in the affidavit of assets filed by the respective parties as also in the inventory filed by the APL Committee. Moreover, the APL Committee recorded its wish not to take over the management and control over the affairs of the companies and also recorded

that no final decision as to what constituted the estate of PDB, had been taken by the APL committee.

58. The reference to the letter of the APL Committee headed by Justice R.V. Raveendran relied upon by Mr. S.N. Mookherjee also does not disclose that the APL Committee had laid any claim to take over the management of the companies on the rights flowing from the controlling interest of PDB.

59. The decision of the APL Committee dated 4th and 5th November, 2020 are not before the court for consideration of alleged violation of the order dated October 1, 2020.

60. In view of the preponderance of probabilities in the facts of this case, contempt has not been proved beyond reasonable doubt. It is desirable in the larger interest of the parties that the main '*lis*' should be decided on the merits first, or else, calling upon the court to decide the alleged contempt will be actually inviting the court to go beyond the order and decide the issues on merits which is beyond the scope of contempt jurisdiction. Unless the court is satisfied beyond reasonable doubt on the assimilation of the facts pleaded by the petitioners and the show-cause filed by the alleged contemnors in response to such allegations, that contempt has been committed wilfully, deliberately and intentionally, the court cannot hold that HVL and the other directors are guilty of contempt.

61. In the decision of **Debabrata Bandopadhyay and ors. (supra)**, it has been held that if only a clear case of contumacious conduct not explainable

otherwise arises, that the contemnor must be punished. Punishment under the law of contempt is called for when the disobedience is deliberate.

62. With regard to standard of proof in deciding contempt, the Apex Court in **Chhotu Ram (supra)** held that contempt being a quasi-criminal proceeding, the standard of proof required to be shown was the same as in a criminal proceeding and the breach complained of would have to be established beyond reasonable doubt. In **Kashinath Kher (supra)** it was held that the common law phrase of “he would asserts must prove” had its due application in the matter of proof of allegations said to be constituting an act of contempt. In this case, the voting pattern shows that HVL could have been re-appointed as a director excluding those shares referable to the estate of PDB and we cannot hold under such circumstances, without any doubt that HVL was holding his office as a director/chairman solely on the shares referable to the estate of PDB.

63. Only such directions which are explicit in the judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there had been any disobedience or wilful violation of the same.

64. In order to punish a contemnor, it has to be established that the disobedience is wilful. This requires an assessment of the mind of the alleged contemnors that is, whether the contemnors knowingly intentionally, consciously, calculatedly and deliberately with full knowledge of consequences committed a breach of the order of this Bench. There has to be a calculated action with evil motive.

65. In *V.G. Nigam v. Kedar Nath Gupta* reported in (1992) 4 SCC 697, the Apex Court held that it would be rather hazardous to impose a sentence for contempt in exercise of contempt jurisdiction on mere probabilities. If the doubt persisted, the alleged contemnors were entitled to have the benefit or advantage of such a doubt having regard to the nature of the proceeding.

66. In our view, the rival contentions involve an interpretation of the orders passed in the probate proceedings, by the CLB and other documents filed in course of the suit. We are not deciding in this contempt case whether the interpretation of the “estate of PDB” as given by the respondents or the one given by the petitioners 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’s participation in the Board meetings cannot be termed as contumacious violation of the order of this court as the willful disobedience has not been 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 Promoter Groups and PACs. The contempt application against HVL is dismissed.

67. With regard to the contempt against the directors of the company, in view of the aforesaid findings of this court that HVL has not committed contempt by attending the Board meetings as director/chairman, the contempt proceedings against the directors are also dismissed accordingly.

68. The decisions cited by the learned Advocates for the petitioners in CC 35 of 2020, CC 36 of 2020, CC 37 of 2020 and CC 39 of 2020 are mainly on

whether contempt against third parties for aiding and abetting would be punishable. The said decisions need not be discussed in view of our aforementioned findings.

69. These contempt applications are dismissed. There shall be no order as to costs.

Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)

(Thottathil B. Radhakrishnan, C.J.)