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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2021

PRONOUNCED ON : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.A. Nos.669, 670, 671, 673 and 674 of 2021

A. Nos.4056 of 2021 and 4057 of 2021

in

C.S. No.322 of 2021

AND

O. A. Nos.662 and 663 of 2021

and

A. No.3807 of 2021

in

C.S. No.320 of 2021

O.A. No.669 of 2021 in C.S. No.322 of 2021

Patrick Bance

..... Applicant

Vs

1. Take Solutions Limited
Having its registered office at
No.27, Tank Bund Road,
Nungambakkam,
Chennai – 600 034,
India.



2. Srinivasan Harikesavanallur Ramani
Director – Take Solutions Limited
Having office at No.27, Tank Bund Road,
Nungambakkam,
Chennai – 600 034,
India.

3. Venkatesan Vedamirtham
Chief Accounts Officer – Take Solutions Limited
Having Office at No.27, Tank Bund Road,
Nungambakkam,
Chennai – 600 034,
India.

4. M. Alagar
Scrutinizer for e-voting of EGM of
Take Solutions Limited
c/o. M. Alagar & Associates,
No.21-B, 1st Floor, ARK Colony,
Eldams Road,
Alwarpet,
Chennai – 600 018.

...Respondents

Prayer: Original Application filed under Order XIV Rule 8 of the O.S. Rules and read with Order XXXIX Rule 1 & 2 of the C.P.C. as to why;

a) this Application should not be treated as urgent?

b) that this Hon'ble Court may not be pleased to Pass and Order of Interim Injunction restraining the Respondents/Defendants, their men Agents, servants, representatives or any person claiming through them or under them from in any manner proceeding with the Extraordinary General Meeting of the 1st Respondent to be held on October 23,2021 or any other subsequent date, to consider and/or



giving effect to any Resolutions pertaining to the proposed sale of the CRO Business, without the consent of the Applicant, pending disposal of this Suit?

c) pass such further orders as this Hon'ble Court may deem fit and just and thereby render justice?

For Applicant : Mr.ARL. Sundaresan
Senior counsel
for Mr.P.V. Balasubramaniam

COMMON ORDER

The two suits and the connected interlocutory applications involve a cross border Corporate dispute between an Interim Judicial Manager appointed by the Singapore High Court under the **Singapore Insolvency Restructuring and Dissolution Act, 2018** for a Holding Company by name Take Solutions Singapore Pte Limited, Singapore and its Subsidiary Company by name Take Solutions Limited, Chennai incorporated in India.

2. Take Solutions Singapore Pte Limited, henceforth will be referred to as the **"Holding Company at Singapore"**, Take Solutions Limited, Chennai the Subsidiary Company incorporated in India will be referred to as the **"Indian Subsidiary Company"** and the Interim Judicial Manager appointed by the Singapore High Court for the **"Holding Company at Singapore"** will be referred



to as **"IJM"**. The **Singapore Insolvency Restructuring and Dissolution Act, 2018** shall henceforth be referred to as the **"Singapore Insolvency Law"**.

3. The parties to the dispute do not dispute the fact that the **"Holding Company at Singapore"** holds 52.897% paid-up Share Capital in the **"Indian Subsidiary Company"**. Due to default committed by the **"Holding Company at Singapore"** to its lenders and at the behest of Madison Pacific Trust Limited, Singapore, the first defendant in C.S. No.320 of 2021 who is a **"Debenture Trustee"** for certain lenders of the **"Holding Company at Singapore"**, an **"IJM"** namely Mr. Patrick Bance, the Plaintiff in C.S. No.322 of 2021 was appointed by the Singapore High Court on 18.10.2021.

4. The dispute between the **"IJM"** and the **"Indian Subsidiary Company"** is with regard to the approval of the Sale of Clinical Research Organisation (CRO) business of the **"Indian Subsidiary Company"** to H.I.G. Taurus Pte. Ltd and H.I.G. Taurus EAL Pte. Limited in the EGM convened by the **"Indian Subsidiary Company"** on 23.10.2021.

5. The case of the **"IJM"** is that even though he was appointed by the



Singapore High Court as **"IJM"** for the **"Holding Company at Singapore"** on 18.10.2021 itself and despite the fact that the said order was duly communicated to the **"Indian Subsidiary Company"** and its Directors, he was not furnished with the login details and was not permitted to cast his E-Vote on behalf of the **"Holding Company at Singapore"** on 23.10.2021 which is the date of the EGM when the approval for Sale of CRO business of the **"Indian Subsidiary Company"** was put to E-Voting.

6. The case of the **"IJM"** is that despite having duly received the order dated 18.10.2021 passed by the Singapore High Court as well as the subsequent orders passed by the Singapore High Court declaring the E-Voting cast on behalf of the **"Holding Company at Singapore"** on 21.10.2021 by an unknown person of the suspended management as null and void, the **"Scrutiniser"** has not permitted the **"IJM"** to cast his vote on behalf of the **"Holding Company at Singapore"** and has also not permitted him to participate in the EGM on 23.10.2021. It is also the case of the **"IJM"** that he is not totally disowning the deal outright reached by the **"Indian Subsidiary Company"** for the sale of its CRO business to H.I.G. Taurus Pte. Ltd and H.I.G. Taurus EAL Pte. Limited at a price of USD 101.63 million but only needs time to study the said deal and find



out whether the price is a just price or not and whether it is beneficial to the Shareholders and Creditors of the **"Holding Company at Singapore"**.

7. According to the **"IJM"**, the declaration of results announced by the **"Scrutiniser"** Mr. M. Alagar in his report dated 25.10.2021 declaring that the Sale of CRO business in the **"Indian Subsidiary Company"** is being approved is illegal as the approval has been given despite the non participation of the **"IJM"** in the E-voting process and in the EGM on 23.10.2021, that too, when the **"Holding Company at Singapore"** is holding majority Shares of 52.897% in the **"Indian Subsidiary Company"**.

8. According to the **"IJM"**, he is the only authorised person to represent the interest of the **"Holding Company at Singapore"** pursuant to the order dated 18.10.2021 passed by the Singapore High Court appointing him as **"IJM"** for the **"Holding Company at Singapore"** and permitting him to vote with regard to the approval for Sale of the CRO business in the **"Indian Subsidiary Company"** and also to participate in the EGM on 23.10.2021. In such circumstances, **"IJM"** (Patrick Bance) has filed a Suit before this Court in C.S. No.322 of 2021 seeking to nullify any resolution passed by the defendants based on the E-Voting carried



out between 19.10.2021 and 22.10.2021 which is the voting window fixed for the E-voting and has also sought for permanent injunction restraining the defendants in the said suit from participating in the EGM on 23.10.2021 or any other subsequent date to consider any resolutions pertaining to the proposed sale of the CRO business of the **"Indian Subsidiary Company"** without the consent of the **"IJM"**.

9. Apart from the aforementioned reliefs, the **"IJM"** has also sought for other reliefs which have now become irrelevant, since the E-Voting cast by the **"Holding Company at Singapore"** on 21.10.2021 by a representative of the suspended management has also been invalidated by the **"Scrutiniser"**. The **"Scrutiniser"** has rejected the **"IJM"**'s request to vote in the EGM and has also invalidated the E-vote cast on behalf of the **"Holding Company at Singapore"** on 21.10.2021 as by then the **"IJM"** was already appointed by the Singapore High Court by order dated 18.10.2021.

10. However, it is the case of the **"Indian Subsidiary Company"** that the sale of its CRO business is essential for its survival in the market. According to them, only for the benefit of the **"Holding Company at Singapore"** which is



facing financial crisis and is indebted to its lenders, the sale of CRO business for USD 101.63 Million in favour of H.I.G. Taurus Pte. Ltd and H.I.G. Taurus EAL Pte. Limited was proposed and finalized through a resolution dated 06.08.2021 and the said resolution was put to E-vote for seeking the approval of the shareholders under the EGM on 23.10.2021.

11. According to the **"Indian Subsidiary Company"**, the sale price for its CRO business is the best market price and nobody can match the same in the Global market.

12. According to the **"Indian Subsidiary Company"**, all the lenders of the **"Holding Company at Singapore"** are fully aware of the proposed sale in February 2020 itself. But despite having knowledge of the same, the first defendant in C.S. No.320 of 2021 has approached the Singapore High Court and initiated insolvency proceedings few days before the EGM and has obtained an order for appointment of **"IJM"** on 18.10.2021 for the **"Holding Company at Singapore"**. It is also the case of the **"Indian Subsidiary Company"** that the sale of its CRO business at a price of USD 101.63 Million is in the best interest of all its Shareholders and it is also not the allegation of the **"IJM"** that the sale



price is low and inadequate.

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13. According to the **"Indian Subsidiary Company"**, having received the best offer for the purchase of its CRO business, any intervention by this Court at this stage with regard to the sale will be detrimental to the interest of the Shareholders and Creditors of both the **"Holding Company at Singapore"** and the **"Indian Subsidiary Company"** as due to the downward trend in the Global market, the price achieved now will not be possible in the near future and the buyers may not be interested later.

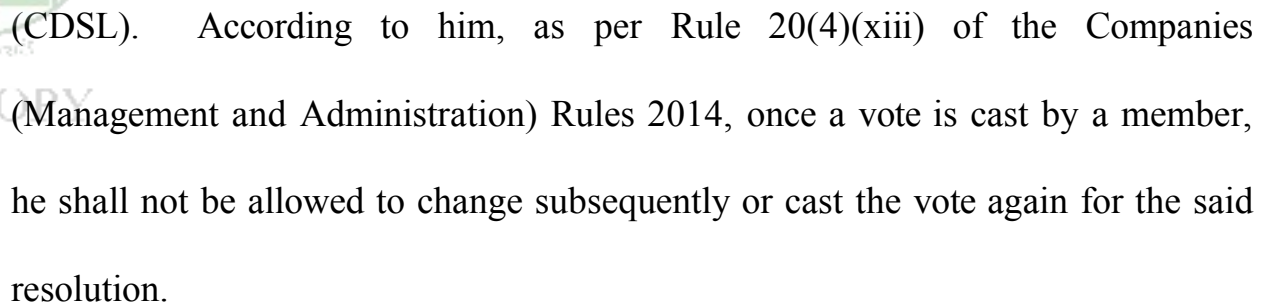
14. According to the **"Indian Subsidiary Company"**, already extension of time has been sought for by them from the buyers for completion of sale, but they may abandon the deal if it is postponed indefinitely. It is the case of the **"Indian Subsidiary Company"** that they have made out a prima-facie case and balance of convenience is also in their favour and irreparable loss will be caused to them, if the deal for the sale of its CRO business does not go through. It is also the case of the **"Indian Subsidiary Company"** that the comity of Courts plea taken by **"IJM"** has no basis, since the EGM dated 23.10.2021 was convened as early as on 06.08.2021 itself under the resolution of the **"Indian Subsidiary Company"**



and the login details for the E-voting between 19.10.2021 and 21.10.2021 was also furnished to the directors of the **"Holding Company at Singapore"** much prior to the date of appointment of **"IJM"** for the **"Holding Company at Singapore"**. Having invalidated the E-vote of the **"Holding Company at Singapore"** exercised by its representative and having rejected the request of **"IJM"** to vote in the EGM on 23.10.2021, the **"Scrutiniser"** has not disobeyed the order dated 20.10.2021 passed by the Singapore High Court.

15. According to the **"Indian Subsidiary Company"**, the report submitted by the **"Scrutiniser"** on 25.10.2021 declaring that the sale of the CRO business of the **"Indian Subsidiary Company"** has been approved and done only after correctly calculating and tabulating the votes cast in favour of the resolution.

16. The **"Scrutiniser"** Mr.M.Alagar, appointed by the **"Indian Subsidiary Company"** for the EGM on 23.10.2021 for the proposed Sale is the 5th defendant in C.S. No.320 of 2021 and the 4th defendant in C.S. No.322 of 2021. According to him, as a **"Scrutiniser"**, his powers are limited to that of scrutinising the votes cast through E-Voting facilities of the Central Depository Services (India) Limited



17. According to the "**Scrutiniser**", he is barred by law to consider the NO VOTE, communicated by the "**IJM**" through his letter dated 22.10.2021. It is also the case of the "**Scrutiniser**" that upon completion of the E-Voting facility made available after the EGM, he unblocked the votes cast through E-voting at the EGM and through remote E-voting prior to the date of EGM in the presence of two witnesses and a report was generated from the CDSL portal by him on 23.10.2021 at 16.53.36 (24 Hours format). It is also the case of the "**Scrutiniser**" that only based on the valid votes cast through E-Voting on 23.10.2021, he has declared the results on 25.10.2021 in his report which is in accordance with the Regulation 44 of the Securities and Exchange Board of India (listing obligations and disclosure requirements) regulations, 2014.

18. Further it is the contention of the "**Scrutiniser**" that a Civil Court is barred under Section 430 of the Companies Act, 2013 from exercising jurisdiction



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with regard to the subject matter of the dispute and only the National Company Law Tribunal has the power to entertain such a dispute.

19. Madison Pacific Trust Limited, the **"Debenture Trustee"** acting on behalf of its lenders to the **"Holding Company at Singapore"** is the first defendant in the Suit C.S. No.320 of 2021 and only at their behest, **"IJM"** was appointed by the Singapore High Court on 18.10.2021 for the **"Holding Company at Singapore"**. According to them, the **"Holding Company at Singapore"** as well as the **"Indian Subsidiary Company"** are controlled and managed by Mr.Srinivasan Harikesavanallur Ramani @ Mr.Srinivasan and Mr.Venkatesan Vedamirtham @ Mr.Venkatesan, the 2nd and 3rd defendants respectively in C.S. No.322 of 2021 filed by the **"IJM"**. According to them, both of them are directors and are holding executive positions in both the Companies. It is their case that the **"Holding Company at Singapore"** had borrowed a sum of USD 50,000,000/- from the lenders whom the Madison Pacific Trust Limited represents. Henceforth, Madison Pacific Trust Limited is referred to as **"Debenture Trustee"**.

20. According to the **"Debenture Trustee"**, as early as on 14.10.2021, the



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"Indian Subsidiary Company" was informed about the initiation of insolvency proceedings and filing of the application before the Singapore High Court by the **"Debenture Trustee"** for the appointment of an **"IJM"** and the date of hearing was also informed as 18.10.2021.

21. According to the **"Debenture Trustee"**, the **"Indian Subsidiary Company"** and its Directors were fully aware of the insolvency proceedings initiated by the **"Debenture Trustee"** against the **"Holding Company at Singapore"** on 14.10.2021. It is also their case that one of the Directors of the **"Holding Company at Singapore"** who is also the Director of the **"Indian Subsidiary Company"** viz., the 3rd defendant in C.S. No.322 of 2021 also participated in the insolvency proceedings before the High Court at Singapore. It is also the case of the **"Debenture Trustee"** that the law firm of the **"Holding Company at Singapore"** has also communicated the order dated 18.10.2021 passed by the Singapore High Court to the **"Indian Subsidiary Company"** and its Directors by its communication dated 20.10.2021. The Directors of the **"Indian Subsidiary Company"** were also requested to furnish the login details to enable the **"IJM"** to cast his vote on behalf of the **"Holding Company at Singapore"** in the EGM on 23.10.2021. But, however, both the Directors



deliberately did not furnish the login details to the **"IJM"**.

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22. According to the **"Debenture Trustee"**, one of the Directors viz., the 2nd defendant in C.S. No.322 of 2021 could be contacted and he responded by saying that the login details are available only with the 3rd defendant, but the 3rd defendant was not reachable till the completion of the E-Voting in the EGM on 23.10.2021.

23. According to the **"Debenture Trustee"**, a mere 2.55% of the total Shareholders of the **"Indian Subsidiary Company"** voted in the EGM and passed a resolution approving the sale of CRO business of the **"Indian Subsidiary Company"** at the price agreed upon under the resolution dated 06.08.2021.

24. According to the **"Debenture Trustee"**, even though the **"Holding Company at Singapore"** had 52.897% paid up share capital in the **"Indian Subsidiary Company"** they were illegally not allowed to vote through the **"IJM"** appointed by the Singapore High Court to vote. It is also the case of the **"Debenture Trustee"** that the approval of the sale in the EGM on 23.10.2021 is illegal and has to be declared as null and void in view of the fact that the Singapore



High Court has appointed an **"IJM"** for the **"Holding Company at Singapore"**

on 18.10.2021 and has also declared the vote cast by the management on behalf of the **"Holding Company at Singapore"** on 21.10.2021 as null and void. It is also the case of the **"Debenture Trustee"** that the resolution passed pursuant to the EGM held on 23.10.2021 is opposed to the Principle of Comity of Courts.

25. According to the **"Debenture Trustee"**, the conduct of the **"Indian Subsidiary Company"** rejecting the request made by the **"IJM"** to vote in the meeting destroys the very essential spirit of Judicial Comity.

26. According to the **"Debenture Trustee"**, the **"Indian Subsidiary Company"** who is the plaintiff in C.S. No.320 of 2021 has not approached this Court with clean hands. It is also the case of the **"Debenture Trustee"** that there is inconsistency between the cases pleaded by the **"Indian Subsidiary Company"** before this Court and its Board resolution dated 06.08.2021.

27. According to the **"Debenture Trustee"**, on the perusal of the extract of the minutes of the Board resolution dated 06.08.2021, it is clear that the Board of Directors of the **"Indian Subsidiary Company"** resolved to approve the proposed



sale of the CRO business subject to the approval of the shareholders pursuant to Section 180 of the Companies Act, 2013.

28. According to the "**Debenture Trustee**", not only does Section 180 of the Companies Act mandate the requirement of a resolution of the shareholders, but it mandates the requirement of a special resolution and not an ordinary resolution. It is also the case of the "**Debenture Trustee**" that the pleadings of the "**Indian Subsidiary Company**" makes it clear that the proposed sale of CRO business was to prioritise its own interest. On the other hand, the lenders of the "**Holding Company at Singapore**" whose interest, the "**Debenture Trustee**" represents have no confidence with the Directors viz., 2nd and 3rd defendants in the Suit C.S. No.322 of 2021.

29. According to the "**Debenture Trustee**", the "**IJM**" who was appointed by the Singapore High Court is an independent professional and he alone could objectively analyse the pros and cons as regards the merits of the sale of the CRO business and vote accordingly. It is also the case of the "**Debenture Trustee**" that there is no violation of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.



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30. According to them, the **"IJM"** is a Court appointed officer and is not an agent of the **"Debenture Trustee"** and hence only in accordance with law, **"IJM"** has exercised his powers.

31. **Indusind Bank Limited** has also filed an application in A.No.4056 of 2021 seeking to implead themselves as a party defendant in the Suit C.S. No.322 of 2021. A. No.4057 of 2021 in C.S. No.322 of 2021 has been filed by **Axis Bank** also seeking to implead themselves as a party defendant in C.S. No.322 of 2021. **Indusind Bank** is henceforth referred to as **"Indus Bank"** and **Axis bank** is henceforth referred to as **"Axis Bank"**.

32. Both **"Indus Bank"** and **"Axis Bank"** have filed impleading applications on the ground that the assets which are being transferred by the **"Indian Subsidiary Company"** pursuant to the EGM dated 23.10.2021 are secured with them and therefore they are interested parties to the Suit. They have also pleaded that the sale of CRO business of the **"Indian Subsidiary Company"** is in their interest as the **"Indian Subsidiary Company"** has agreed to discharge



the loan facilities availed from them on receipt of the sale proceeds of USD 101.63 Million.

33. According to "**Indus Bank**", a total sum of Rs.1,60,57,80,022.69/- (Rupees One Hundred and Sixty Crores Fifty Seven Lakhs Eighty Six Thousand and Twenty Two and Paise Sixty Nine Only) is the outstanding due from Take Solutions Global Holding Pte. Limited and Ecron Acunova Limited, the group Companies of the "**Indian Subsidiary Company**" as on 16.11.2021.

34. According to "**Axis Bank**", a sum of Rs.67,28,64,974/- (Rupees Sixty Seven Crore Twenty Eight Lakh Sixty Four Thousand Nine Hundred and Seventy Four Only) is due from Take Solutions Global Holding Pte. Limited, Singapore, a Group Company of the "**Indian Subsidiary Company**". Both the Banks have also claimed that the sale of the CRO business of the "**Indian Subsidiary Company**" is only in their interest.

Submissions of the learned counsels :

35. Mr.A.R.L.Sundaresan learned counsel assisted by Mr.P.V. Balasubramaniam, learned counsel for the "**IJM**" drew the attention of this Court



to the plaint documents and other documents filed in the typed set of papers and in particular, he referred to the following:

- (a) The order of the Singapore High Court dated 18.10.2021;
- (b) Notice sent by the lenders who is represented by the **“Debenture Trustee”** dated 18.10.2021 to the defendants in CS.No.322 of 2021 informing them about the appointment of **"IJM"** for the **"Holding Company at Singapore"**;
- (c) Reply dated 19.10.2021 sent by the **“Indian Subsidiary Company”** to the **“Debenture Trustee”** acknowledging the appointment of Mr.Patrick Bance as **"IJM"** by the Singapore High Court.
- (d) Email dated 19.10.2021 sent by the **"IJM"** to the directors namely the second and the third defendants in CS.No.322 of 2021 seeking for login details for voting in the EGM scheduled to take place on 23.10.2021. Confirmation from the second defendant in C.S.No.322 of 2021 that he does not have the login details.
- (e) Letter dated 20.10.2021 from the Singapore counsel for the **"Holding Company at Singapore"** in respect of whom the **"IJM"** was appointed confirming that the order of the Singapore High Court dated



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18.10.2021 has been intimated to the second and third defendants in C.S.No.322 of 2021. The Law firm of the **"Holding Company at Singapore"** has also stated in the very same letter that the relevant login details of the **"Holding Company at Singapore"** is available with Mr.Venkatesan (Director), the third defendant in C.S.No.322 of 2021. Letter also says that Mr.Venkatesan, the third defendant in C.S.No.322 of 2021 has not contacted them, after the Singapore High Court hearing on 18.10.2021.

(f) Letter from the Singapore Counsel dated 20.10.2021 confirming that Mr.Srinivasan, the second defendant will not procure the **"Holding Company at Singapore"** to vote at EGM scheduled to take place on 23.10.2021.

(g) Email dated 20.10.2021 from the second defendant in CS.No.322 of 2021 to the **"IJM"** that he is trying to contact the third defendant (Director) in C.S.No.322 of 2021 and get the login details.

(h) Letter dated 20.10.2021 from the **"IJM"** to the board of **"Indian Subsidiary Company"** seeking information to evaluate the contemplated sale and defer voting by 14 days to enable the **"IJM"** to make an informed decision.



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(i) Letter dated 21.10.2021 from the Law Firm of the **“Debenture Trustee”** seeking urgent orders in view of illegal vote cast on account of **“Holding Company at Singapore”**.

(j) Status of E voting dated 21.10.2021 showing vote cast on behalf of the **“Holding Company at Singapore”** at 9.36 am on 21.10.2021.

(k) Order dated 22.10.2021 passed by the Singapore High Court declaring that all the powers of the directors of the **“Holding Company at Singapore”** will vest with the **“IJM”** and any vote cast by any other person on behalf of **“Holding Company at Singapore”** at the EGM is void.

(l) Letter dated 22.10.2021 from the **“IJM”** to the defendants in C.S.No.322 of 2021 seeking login details to participate in EGM, not to consider unauthorized vote and to record 'NO' as the vote of the **“IJM”** in respect of the resolution.

(m) Letter dated 24.10.2021 from the **“IJM”** to the defendants in C.S.No.322 of 2021 to show that no link was made available to participate in the EGM through video conferencing and asking for the 'NO' of **“IJM”** to supersede the unauthorized vote.



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(n) **"Scrutiniser"**'s report dated 25.10.2021;

(o) Shareholding pattern of the **"Holding Company at Singapore"**.

36. After referring to the aforementioned documents/orders, Mr.A.R.L.Sundaresan, learned senior counsel would submit that any resolution passed in the EGM on 23.10.2021 without the approval of the **"IJM"** is null and void, since the **"Holding Company at Singapore"** for whom the **"IJM"** represents pursuant to the order of the Singapore High Court dated 18.10.2021 is holding 52.897% paid up share capital in the **"Indian Subsidiary Company"**. According to him, the **"Scrutiniser"** namely the fourth defendant in CS.No.322 of 2021 has contrived and facilitated the suspended management of the **"Holding Company at Singapore"** to cast its vote on the proposed resolution to be passed at EGM on 23.10.2021. He would submit that the relief sought for in the plaint in CS.No.322 of 2021 has been necessitated on account of the fact that in the E-voting, an illegal vote has been cast by the suspended management of the **"Holding Company at Singapore"** on 21.10.2021 at 9.30 am.

37. The learned senior counsel would submit that even before the



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contemplated sale of CRO business of the **“Indian Subsidiary Company”** could be evaluated by the **"IJM"** and despite intimating the defendants in the suit C.S. No.322 of 2021 about his appointment as an **“IJM”**, the defendants have gone ahead with the EGM on 23.10.2021 and the **“Scrutiniser”** has also illegally declared the result on 25.10.2021 by his report, despite having knowledge of the fact that the Singapore High Court has appointed an **"IJM"** for the **"Holding Company at Singapore"** by its order dated 18.10.2021. According to him, the login details for voting in the EGM on 23.10.2021 was also not furnished to the **“IJM”**, despite repeated reminders.

38. Mr.A.R.L.Sundaresan, learned senior counsel would also submit that the third defendant in the suit C.S. No.322 of 2021 who is having login details has deliberately evaded the **"IJM"** by being 'not reachable' during the E-voting window period between 19.10.2021 and 21.10.2021. He further submitted that illegally, the suspended management of the **"Holding Company at Singapore"** has cast its vote on 21.10.2021 with regard to the proposed sale of CRO business of the **"Indian Subsidiary Company"**.

39. Mr.A.R.L.Sundaresan, learned Senior counsel would further submit that



despite mails having been sent to the defendants which include the **"Scrutiniser"** requesting them to record "NO" as the vote of the **"IJM"** in respect of resolution dated 06.08.2021, the fourth defendant(**"Scrutiniser"**) has illegally rejected the request of **"IJM"** to record "NO" on the ground that on 21.10.2021, the **"Holding Company at Singapore"** through its representative had cast its vote and therefore, once the vote has been cast, there is no question of permitting the **"IJM"** to vote once again on behalf of the **"Holding Company at Singapore"**.

40. According to the learned senior counsel, the e-voting made by the **"Holding Company at Singapore"** on 21.10.2021 is illegal, null and void, since the **"Holding Company at Singapore"** can be represented only by the **"IJM"** and he alone is legally entitled to cast the vote from 18.10.2021 onwards when the Singapore High Court appointed him as **"IJM"**. According to him, from then onwards, the erstwhile management of the **"Holding Company at Singapore"** stands suspended and no one has got the right to cast the E-vote on behalf of the **"Holding Company at Singapore"**. Therefore the learned Senior Counsel submits that the relief sought for in the interim applications by the **"IJM"** has to be granted.

41. Mr.Yashod Varadhan, learned Senior Counsel, assisted by Mr.P.Vinod



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Kumar, learned counsel for the **“Debenture Trustee”** after reiterating the submissions of Mr.ARL.Sundaresan, learned Senior Counsel assisted by Mr.P.V.Balasubramanian for the **“IJM”** would in addition submit that the resolution passed on 23.10.2021 in the EGM approving the sale of CRO business of the **“Indian Subsidiary Company”** has violated the principle of comity of Courts. In support of his submissions, he relied upon the judgment of the Hon'ble Supreme Court in the case of *Alcon Electronics Pvt. Ltd vs Celem S.A. of Fos 34320 Roujan, France and another reported in 2016 SCC Online SC 1444* and would submit that even for interlocutory orders passed by a foreign Court of a reciprocating territory, the said principle will apply. According to him, having disobeyed the orders of the Singapore High Court, the resolution passed on 23.10.2021 in the EGM has to be declared as null and void.

42. Mr.Yashod Varadhan, learned Senior Counsel would further submit that the **“Indian Subsidiary Company”** as well as its Directors, who is the plaintiff in CS No.320 of 2021 have not approached the Court with clean hands. He would emphasise that a suspended management is not empowered to vote in the EGM and only the **“IJM”**, who has been appointed by the Singapore High Court is alone empowered to vote in the EGM, but arbitrarily and illegally by total



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non application of mind, the "**Scrutiniser**" has rejected the request of the "**IJM**" to vote in the EGM. According to him in a hurried and hushed up manner to defeat the rights of the creditors, the "**Indian Subsidiary Company**" has convened the EGM on 23.10.2021 and the "**Scrutiniser**" has also declared the results illegally approving the sale of the CRO business of the "**Indian Subsidiary Company**". He also drew the attention of the Court to the full bench Judgment of the Madras High Court in the case of *Vidya charan Shukla Vs. Tamil Nadu Olympic Association and another reported in AIR 1991 Madras 323* and would submit that although the effect of an order of a Court is effected only to the party to such proceeding, a third party may be held to be in contempt if it has aided or abetted or has obstructed the enforcement of such order. He would submit that the "**Indian Subsidiary Company**" and its Directors have to be punished for contempt as they have aided, abetted and have obstructed the enforcement of the Singapore High Court's orders.

43. Per contra, Mr.P.S.Raman, learned Senior Counsel assisted by Mr.Sashidhar, learned counsel representing the first and second defendants in C.S. No.322 of 2021 and the plaintiff in C.S. No.320 of 2021 would submit that the proposed sale of the CRO business of the "**Indian Subsidiary Company**" is only



in the interest of the shareholders / creditors and other stakeholders of both the **"Indian Subsidiary Company"** and the **"Holding Company at Singapore"**. He would further submit that the **"Holding Company at Singapore"** is managed by a respectable group of persons, who are well accomplished in their respective fields. According to him, the **"Indian Subsidiary Company"**, its Directors have not clandestinely proceeded with the sale of the CRO business and only after due diligence conducted from February 2020 onwards, a resolution dated 06.08.2021 was passed convening an EGM on 23.10.2021 of the shareholders for the purpose of getting their approval for the sale of the CRO business of the **"Indian Subsidiary Company"**.

44. Mr.P.S.Raman, learned Senior Counsel would further submit that if the proposed sale takes place, the interest of all the stakeholders including those of the lenders whom, the **"Debenture Trustee"** represents will be safeguarded. He submitted that if the sale proceeds are received, all other shareholders as well as the creditors will be benefited and there will also be balance amount remaining in the kitty of the **"Indian Subsidiary Company"** after the discharge of the debts of both the **"Holding Company at Singapore"** and the **"Indian Subsidiary**



Company".

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45. Mr.P.S.Raman, learned Senior Counsel would further submit that the **“Scrutiniser”** has rightly invalidated the vote of **"Holding Company at Singapore”** on 21.10.2021 due to the orders passed by the Singapore High Court on 18.10.2021 appointing the **“IJM”** for the **"Holding Company at Singapore”** and has also rightly rejected the request made by the **“IJM”** for voting in the EGM on 23.10.2021 by following Rule 20 (4)(xiii) of the Companies (Management and Administration) Rules, 2014. He would further submit that the comity of Courts principle will not apply since the **“Scrutiniser”** has rejected the vote of **"Holding Company at Singapore”** on 21.10.2021 by strictly adhering to the order dated 18.10.2021 and the subsequent orders passed by the Singapore High Court.

46. Mr.P.S.Raman, learned Senior Counsel would also submit that the relief sought for in C.S. No.322 of 2021 by the **“IJM”** will amount to initiation of two parallel proceedings one at Singapore and the other before this Court, which is not permissible under law. He would submit that the **“IJM”** cannot obtain orders in his favour before the Singapore High Court as well as obtain orders in his favour



in this Court also. Therefore, he would submit that the "**IJM**" having approached this Court by filing a separate suit viz., C.S. No.322 of 2021 before this Court, the principle of comity of Courts will not apply to the facts of the instant case.

47. Mr.P.S.Raman, learned Senior Counsel would further submit that the suit filed by the "**IJM**" before this Court will amount to re-litigation as the same relief has been sought by the "**IJM**" before the Singapore High Court also. In support of the said submission, he relied upon the following authorities;

a) *K.K.Modi Vs. K.N.Modi and anothers reported in (1998) 3 SCC 573*

and

b) *Meenakshi Overseas Vs. VVV and Sons edible Oils Ltd reported in (2019)-2-LW-117.*

48. Mr.P.S.Raman, learned Senior Counsel would further submit that the resolution passed pursuant to the EGM on 23.10.2021 as seen from the "**Scrutniser's**" report dated 25.12.2021 approving the sale of the CRO business of the "**Indian Subsidiary Company**" cannot be declared to be invalid and this Court will have to ratify it.



49. In his concluding submissions, Mr.P.S.Raman, learned Senior Counsel would submit that though a plea of non-maintainability of the suit filed by the “IJM” in C.S. No.322 of 2021 has been raised on the ground that the said suit is a commercial suit and only the Commercial Division of this Court can exercise the jurisdiction, the "**Indian Subsidiary Company**" as well as the second defendant in C.S. No.322 of 2021 are not pressing the said plea.

50. Mr.M.S.Krishnan, learned Senior Counsel assisted by Mr.S.Sashidhar, learned counsel for the third defendant in C.S. No.322 of 2021, who is a Director of the "**Holding Company at Singapore**" as well the Director in the "**Indian Subsidiary Company**" would reiterate and support the submissions made by Mr.P.S.Raman, learned Senior counsel and in addition to that with regard to the specific allegations levelled against the third defendant, he would submit that the third defendant was residing in the U.S., when the window period for the e-voting i.e. between 19.10.2021 and 22.10.2021 and the EGM on 23.10.2021 took place and he was infected with Corona during that time and that is the reason why he was unable to access his e-mails and send responses to the “IJM”. According to him, there was no deliberate intention on the part of the third defendant to evade the communications of the “IJM”.



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51. Mr.M.S.Krishnan, learned Senior Counsel would also submit that the **“Debenture Trustee”** and the **“IJM”** are colluding together in scuttling the proposed sale of the CRO business in the **"Indian Subsidiary Company"** which is in the beneficial interest of all the stakeholders. Therefore, he would submit that any interference by this Court with regard to the resolution passed in the EGM on 23.10.2021 will be detrimental to the interest of all the stakeholders in both the **"Holding Company at Singapore"** and the **"Indian Subsidiary Company"**.

52. Mr.T.V.Suresh Kumar, learned counsel for the **“Scrutiniser”** would submit at the outset that the suits filed by the **“IJM”** in C.S. No.322 of 2021 is barred by law as according to him under Section 430 of the Indian Companies Act 2013, only the National Company Law Tribunal has got the jurisdiction over the dispute which has been raised in the suit. He has also submitted that the **“Scrutiniser”** has rightly invalidated the vote of the suspended management of the **"Holding Company at Singapore"** on 21.10.2021 pursuant to the orders passed by the Singapore High Court on 18.10.2021 and has also rightly rejected the request made by the **“IJM”** to vote in the EGM as Rule 20 (4) (xiii) of the Companies (Management and Administration) Rules, 2014 does not permit re-



voting. He drew the attention of this Court to the said rule under which the

“Scrutiniser” has rejected the request of the **“IJM”** to vote in the EGM and submitted that only in accordance with law, the **“Scrutiniser”** has submitted the report dated 25.10.2021 approving the sale of CRO division of the **“Indian Subsidiary Company”** as the majority of the shareholders who cast their votes have approved the sale. He would also submit that the role of the **“Scrutiniser”** is very limited and only on 23.10.2021, when the EGM took place, he has got access. In support of his submissions with regard to the jurisdiction of this Court, he relied upon a Division Bench judgment of this Court in the case of *Viji Joseph vs. P.Chander and others in O.S.A. No.29 and 30 of 2019* and he would submit that the Division Bench has held that the present dispute being similar in nature involving two Companies, only the National Company Law Tribunal has got jurisdiction and the Civil Courts are barred from exercising jurisdiction under Section 430 of the Companies Act, 2013.

53. Mr.Sathish Parasaran, learned Senior Counsel assisted by Mr.M.Senthilkumaran, learned counsel appearing for **“Indus Bank”** and **“Axis Bank”**, who are also lenders for the **“Indian Subsidiary Company”** and other group companies and who have filed impleading applications to implead



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themselves as party defendants in this suit claiming that a huge amount of money is due to them from the **"Indian Subsidiary Company"** as well as its group Companies and that they are secured creditors. He drew the attention of this Court to the alleged outstanding amount payable by the **"Indian Subsidiary Company"** and its group companies to the respective banks and would submit that the proposed sale of the CRO business is only in the interest of the **"Indian Subsidiary Company"** and it is also in the interest of the respective banks since the **"Indian Subsidiary Company"** has agreed to discharge the loan once the sale proceeds are received from the sale of the CRO business.

Discussion:

54. The **"IJM"** has been appointed by the Singapore High Court on 18.10.2021 under the provisions of **Singapore Insolvency Restructuring and Dissolution Act, 2018**, herein after referred to as the **"Singapore Insolvency Law"**. The powers and the duties of the **"IJM"** under the **"Singapore Insolvency Law"** are laid down in Section 99 of the Singapore Insolvency Law which reads as follows;

General powers and duties of judicial manager

(1) When a company enters judicial management, the judicial manager must



take into the custody or under the control of the judicial manager all the property to which the company is or appears to be entitled.

(2) During the period in which a company is in judicial management, all powers conferred and duties imposed on the directors of the company by this Act or the Companies Act, or by the constitution of the company, must be exercised and performed by the judicial manager and not by the directors, but nothing in this subsection requires the judicial manager to call any meetings of the company.

(3) The judicial manager of a company —

(a) has such powers and must do such things as may be necessary for the management of the affairs, business and property of the company; and

(b) must do such other things as the Court may by order sanction.

(4) Without limiting subsection (3)(a), the powers conferred by that provision include the powers specified in the First Schedule.

(5) The judicial manager of a company may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of the judicial manager's functions.

(6) Nothing in this section authorises the judicial manager of a company to make any payment towards discharging any debt to which the company was subject on the date of the company's entry into judicial management, unless —



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(a) the making of the payment is sanctioned by the Court or the payment is made pursuant to a compromise or an arrangement so sanctioned;

(b) the payment is made towards discharging sums secured by a security or payable under a hire-purchase agreement, chattels leasing agreement or retention of title agreement to which section 100(2), (5) and (6) applies;

(c) such payment is necessary or incidental to the performance of the judicial manager's functions; or

(d) such payment is necessary to assist the achievement of one or more of the purposes of the judicial management mentioned in section 89(1).

(7) The judicial manager of a company may at any time, if the judicial manager thinks fit, and must, if the judicial manager is directed to do so by the Court, summon a meeting of the company's creditors.

(8) Any alteration in the company's constitution made by virtue of an order under subsection (3)(b) is of the same effect as if duly made by resolution of the company, and the provisions of this Act and the Companies Act apply accordingly to the constitution as so altered.

(9) A copy of an order under subsection (3)(b) sanctioning the alteration of the company's constitution must, within 14 days after the making of the order, be delivered by the judicial manager to the Registrar of Companies.



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(10) A person dealing with the judicial manager of a company in good faith and for value is not required to inquire whether the judicial manager is acting within the judicial manager's powers.

55. Judicial management is a method of debt restructuring where an independent judicial manager is appointed to manage the affairs, business and property of a company under financial distress. The company is also temporarily shielded from legal proceedings by third parties giving it the opportunity to rehabilitate. A good example would be the case on hand where the **"Holding Company at Singapore"** is temporarily insolvent, but which is expected to receive a very substantial cash inflow from the sale of CRO business of its **"Indian Subsidiary Company"** where the **"Holding Company at Singapore"** is a majority share holder holding 52.897% paid-up share capital in the said company.

56. Admittedly, the **"Holding Company at Singapore"** is in financial distress and indebted to certain big time lenders. The **"Debenture Trustee"** in this litigation represents two of them for whom it is claimed that a sum of USD 50,000,000 is due and payable by the **"Holding Company at Singapore"**.



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57. The judicial management may be more useful in cases where the creditors consider the company's management to be untrustworthy and thus wish to have a judicial manager investigate instead. Under the **Singapore Insolvency Law**, there are two ways for appointment of a judicial manager. One is through Court and the other is by passing a creditor's resolution.

58. In the case on hand, the "**IJM**" has been appointed by the Court namely the Singapore High Court on an application filed by the "**Debenture Trustee**". As seen from the **Singapore Insolvency Law**, it is clear that the Court may make an order for Judicial Management if (a) It is satisfied that the company is or is likely to become unable to pay its debts; and (b) It considers that placing the company under judicial management would be likely to achieve at least one of the following purposes:

- (i) The company's survival, or its undertaking as a going concern (whether in whole or in part);
- (ii) The approval of a scheme of arrangement; or
- (iii) The more effective use of the company's assets to satisfy creditor's claims, compared to if the company was wound up.



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59. The case of the **“Debenture Trustee”** before the Singapore High Court in the insolvency proceedings initiated against the **"Holding Company at Singapore"** is that their case falls under the categories (i) and (iii) supra and only in the said circumstances, an **"IJM"** has been appointed pending appointment of a permanent judicial manager if restructuring of the Company fails.

60. Under the **Singapore Insolvency Law**, the Singapore High Court while exercising its jurisdiction may consider the following factors also before appointment of an Interim Judicial Manager or a Judicial Manager as the case may be:

- (a) Creditor's interests;
- (b) Creditor's opposition to the grant of a judicial management order;
- (c) Likelihood of the company's successful rehabilitation; and/or
- (d) Suitability of judicial management against other regimes, such as winding up.

61. In the case on hand, it is not in dispute that (a) **"Holding Company at Singapore"** owes substantial sums of money to its lenders whom the **“Debenture Trustee”** represents; (b) One of the directors of both the **"Holding Company at**



Singapore" and the **"Indian Subsidiary Company"**, the third defendant in C.S.No.322 of 2021 who is also in charge of the day-to-day affairs of both the companies, was also authorised to represent the interest of the **"Holding Company at Singapore"** in the insolvency proceedings initiated by the **"Debenture Trustee"** at Singapore and has also filed an affidavit and only thereafter, the Singapore High Court has appointed an **"IJM"**, the plaintiff in C.S.No.322 of 2021 and the fourth defendant in CS.No.320 of 2021.

62. In the case on hand, the **"Interim Judicial Manager"** has been appointed by the Singapore High Court in the insolvency proceedings initiated by the **"Debenture Trustee"**. The powers of both the Interim Judicial Manager as well as the Permanent Judicial Manager are more or less the same under the **Singapore Insolvency Law**. As seen from the **Singapore Insolvency Law**, some of the powers of the **"IJM"** are as follows:

- (a) Power to sell, dispose of or grant security over the company's property;
- (b) Power to bring or defend legal actions on behalf of the company;
- (c) Power to use the company seal;
- (d) Power to carry on the company's business;
- (e) Power to make any arrangement or compromise on behalf of the company



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63. Once judicial management has commenced, the appointed judicial manager has 90 days to prepare a statement of his proposals on how he intends to achieve the purpose(s) for which the judicial management order was made. The judicial manager then summons a creditor's meeting for the creditors to decide whether to approve the proposals. If more than 50% in number and value of creditors approve, the judicial manager is obliged to manage the company's affairs, business and property in accordance with the proposals.

64. At the same time, the judicial manager will take control of the company's property. For the entire period of the judicial management, all the powers normally possessed and exercised by the company's directors will be exercised instead by the judicial manager, who can do anything necessary for the management of the company's affairs, business and property. However, throughout the judicial management process, the judicial manager is expected to be honest, impartial and to avoid conflicts of interest. The company's directors and officers are also obliged to give the judicial manager the statement of affairs within the prescribed time containing information on the company and its assets, debts, liabilities and creditors. Judicial management will automatically end after 180 days from the date of the judicial management court order, or of the approval of the



judicial management's appointment by creditors by way of a creditor's resolution, unless that order or resolution provides otherwise.

65. As seen from the above, it is clear that once an **"IJM"** has been appointed, he takes the entire control of the management and affairs of the company and its assets. Admittedly, the lenders whom the **"Debenture Trustee"** represents has issued a notice to the **"Indian Subsidiary Company"** on 14.10.2021 itself about the initiation of proceedings before the Singapore High Court for appointment of an **"IJM"**. The directors of the **"Indian Subsidiary Company"** namely the second and third defendants in the suit C.S.No.322 of 2021 who are also the directors of the **"Holding Company at Singapore"** and who were in-charge of the day-to-day affairs of both the companies, were also informed by the lenders on 14.10.2021 about the initiation of proceedings for appointment of **"IJM"** before the Singapore High Court.

66. The Singapore High Court passed an order on 18.10.2021 on an application filed by the **"Debenture Trustee"** representing certain lenders appointing the plaintiff in C.S.No.322 of 2021 as an **"IJM"** for the **"Holding Company at Singapore"**. Therefore, as on that date, the **"IJM"** has taken control



and management of the **"Holding Company at Singapore"** and its assets wherever found and the erstwhile Management has got suspended. It is also not in dispute that the **"Indian Subsidiary Company"** and its directors were also informed through the notice of the **"IJM"** dated 18.10.2021 about his appointment as an **"IJM"** for the **"Holding Company at Singapore"** which is holding 52.897% paid up capital in the **"Indian Subsidiary Company"**. The **"Indian Subsidiary Company"** has also sent a reply dated 19.10.2021 to the **"Debenture Trustee"** acknowledging the appointment of the plaintiff in C.S.No.322 of 2021 as the **"IJM"** for the **"Holding Company at Singapore"** by the Singapore High Court. But at the same time, they have also intimated the **"Debenture Trustee"** that they have previously received board resolution from the **"Holding Company at Singapore"** authorising its directors to vote in the meeting.

67. The EGM seeking approval of the share holders in the sale of CRO business of the **"Indian Subsidiary Company"** was scheduled to take place on 23.10.2021. Even before the said meeting on 19.10.2021 itself, the **"IJM"** sent an Email to the second and third defendants who are the directors of the **"Holding Company at Singapore"** and the persons in-charge of the day to day affairs of the



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Company and who were having the login details for voting at the EGM requesting them to furnish the login details as he has been appointed as an **"IJM"** by the Singapore High Court for the **"Holding Company at Singapore"**. A reply was sent by the second defendant in C.S.No.322 of 2021 informing the plaintiff in C.S.No.322 of 2021, the **"IJM"** that he does not have the login details and the login details are only with the third defendant who is also a director in the **"Holding Company at Singapore"** as well as the **"Indian Subsidiary Company"**.

68. M/s. Drew and Napier, the counsel for the **"Holding Company at Singapore"** and its directors Venkatesan and Srinivasan by letter dated 20.10.2021 addressed to Providence Law Asia LLC who were the counsels for the **"Debenture Trustee"** in Singapore intimated them that they have already informed their clients that Mr.Patrick Bance has been appointed as an **"IJM"** by the Singapore High Court. In the very same letter, it has also been disclosed by M/s.Drew and Napier that Mr.Srinivasan Harikesavanallur Ramani @ Mr.Srinivasan, one of the directors has confirmed that he will not procure the **"Holding Company at Singapore"** to vote at the EGM on 23.10.2021. In the very same letter, it is seen that the other director namely Mr.Venkatesan



Vedamirtham @ Mr.Venkatesan cannot be contacted ever since the hearing before the Singapore High Court on 18.10.2021. The lawyers of the **"Holding Company at Singapore"** and its directors have also confirmed that they have requested their clients to give the login details to enable the **"IJM"** to E-vote in the EGM of the **"Indian Subsidiary Company"** scheduled to take place on 23.10.2021.

69. A letter dated 20.10.2021 has also been sent by Mr.Srinivasan, one of the directors to the **"IJM"** informing him that he is not having the login details and Mr.Venkatesan, the third defendant in CS.No.322 of 2021 is alone having the same and he is having difficulty contacting him. The **"IJM"** by his letter dated 20.10.2021 to the **"Indian Subsidiary Company"** sought further time to evaluate the contemplated sale of the CRO business of the **"Indian Subsidiary Company"** and defer voting by 14 days to enable the **"IJM"** to make an informed decision. Since the **"IJM"** could not vote in the meeting due to the non availability of login details, the counsel for the lenders sent a letter dated 21.10.2021 to the **"IJM"** requesting them to seek urgent orders in view of the illegal vote cast on behalf of the **"Holding Company at Singapore"** on 21.10.2021. As seen from the E-voting



status dated 21.10.2021, a vote has been cast on behalf of the **"Holding Company at Singapore"** at 9.36 am on 21.10.2021 in favour of the resolution dated 06.08.2021 thereby approving the sale of CRO business of the **"Indian Subsidiary Company"**. Thereafter on the request made by the **"IJM"**, the Singapore High Court has passed an order on 22.10.2021, ordering that all powers of the directors of the **"Holding Company at Singapore"** vest with the **"IJM"** and in case any other person voted at the EGM of the **"Indian Subsidiary Company"** the said e-voting is void.

70. A letter was also sent by the **"IJM"** to the **"Indian Subsidiary Company"** as well as its directors on 22.10.2021 requesting them (a) to give the login details to enable the **"IJM"** to participate in the EGM, (b) to not consider the unauthorised vote and (c) to record 'NO' as the vote of the **"IJM"** in respect of the resolution. Since the login details were not furnished and no link was made available to the **"IJM"** to participate in the EGM on 23.10.2021 through Video Conferencing, the **"IJM"** sent another letter dated 24.10.2021 to the **"Indian Subsidiary Company"** and its directors informing them that no link was made available to the **"IJM"** by them to participate in the EGM through Video Conferencing and asking for the 'NO' of **"IJM"** to supersede the authorised vote.



On 25.10.2021, the **"Scrutiniser"** who is the fourth defendant in CS.No.322 of 2021 submitted a report declaring the resolution dated 06.08.2021 has been approved in the EGM held on 23.10.2021 and in his report, he has also stated that since the Singapore High court has appointed an **"IJM"**, the votes cast by the **"Holding Company at Singapore"** on 21.10.2021 has been invalidated and the **"IJM"** was not permitted to vote in the EGM, since the **"IJM"** was not having a valid authorisation from the board of **"Holding Company at Singapore"**.

71. As seen from the **"Scrutiniser"**'s report dated 25.10.2021, the **"Scrutiniser"** has declared the approval of the resolution dated 06.08.2021 in the EGM held on 23.10.2021, despite the fact that only 2.55% of the total paid-up share capital holders participated in the E-vote.

72. From the above, it is clear that despite the Singapore High Court orders, the **"Indian Subsidiary Company"** and the **"Scrutiniser"** have gone ahead with the sale and approved the sale for a sum of USD 101.63 Million as already highlighted, whereas the **"IJM"** is appointed under the Singapore Law and he is in control and management of the affairs and its assets of the **"Holding Company at Singapore"**.



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73. The Singapore High Court has also confirmed the same as seen from the order dated 22.10.2021 passed by it. Having considered the statutory powers of the **"IJM"** under the **Singapore Insolvency Law**, this Court now deems it fit to analyse the statutory powers of **"Scrutiniser"** under the Indian Companies Act, 2013.

74. The **"Scrutiniser"** has been appointed by the **"Indian Subsidiary Company"** in respect of EGM dated 23.10.2021 in compliance with the statutory requirements under the Indian Companies Act, 2013. Under the Indian Companies Act, 2013, the **"Scrutiniser"** means an examiner, inspector or an investigator who observes carefully the whole process of Voting on behalf of the Company in an Independent manner. A **"Scrutiniser"** is an individual who monitors the entire process of E-Voting.

75. The **"Scrutiniser"** is governed by following provisions under the Companies Act, 2013:-

(a) Section 108:- Voting through E-means read with Rule 20 of the



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Companies (Management and Administration) Rule, 2014.

(b) Section 109:- Demand for Poll read with Rule 21 of the companies (Management and Administration) Rules, 2014.

(c) Section 110:- Voting through Postal ballot read with Rule 22 of the Companies (Management and Administration), Rules, 2014.

76. In the case on hand, being an E-vote in the EGM, section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014 applies. The **"Scrutiniser"** namely the fourth defendant in the suit C.S.No.322 of 2021 and the fifth defendant in C.S.No.320 of 2021 has contended that only in accordance with Rule 20 of the Companies (Management and Administration) Rules, 2014, the **"IJM"** was not permitted to vote in the EGM, since the **"Holding Company at Singapore"** had already exercised its vote on 21.10.2021 which was invalidated by him on the ground that an **"IJM"** has already been appointed by the Singapore High Court on 18.10.2021. The **"Scrutiniser"** has rejected the request of the **"IJM"** to vote also on the ground that the **"IJM"** was not having valid authorisation from the **"Holding Company at Singapore"**.



77. Rule 20 (4)(xii) and (xiii) of the Companies (Management and Administration) Rules, 2014 which was relied upon by the "**Scrutiniser**", applies to E-voting and it reads as follows:

[20. Voting through electronic means. - (1) ...

(2) ...

(3) ...

(4) ...

(xii) the scrutinisers shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutiniser's report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same:

Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

Explanation. - It is hereby clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

(xiii) For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutinisers shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutinisers may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes.



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78. It is clear from the aforementioned Rule that only if a valid vote has been exercised by a member for or against the resolution, the very same member cannot be allowed to re-vote taking a different stand.

79. In the case on hand, in view of the appointment of the **"IJM"**, the vote of the **"Holding Company at Singapore"** was correctly invalidated by the **"Scrutiniser"**. But however, the **"Scrutiniser"** has also arbitrarily and by total non application of mind to Rule 20 (4) (xiii) of the Companies (Management and Administration) Rules, 2014 has rejected the right of the **"IJM"** to cast his vote on behalf of the **"Holding Company at Singapore"**, even though a request to cast vote was made by the **"IJM"** only during the Window period meant for E-voting. The **"Scrutiniser"** by total non application of mind to the provisions of the Rule 20 (4) (xiii) of the Companies (Management and Administration) Rules 2014 which only bars re-voting by the very same member to take a different decision, has rejected the right of the **"IJM"** to cast his vote on behalf of the **"Holding Company at Singapore"**, despite the orders passed by the Singapore High Court permitting him to cast his vote on behalf of the **"Holding Company at Singapore"** in respect of the Agenda of the EGM held by the **"Indian Subsidiary Company"** on 23.10.2021.



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80. The "**Scrutiniser**" failed to take note of the fact that the "**Holding Company at Singapore**" is holding 52.897% paid-up share capital in the "**Indian Subsidiary Company**" and has also failed to take note of the fact that only 2.55% of the total paid-up share capital holders cast their E-votes. The report dated 25.10.2021 submitted by the "**Scrutiniser**" after completion of the E-voting declaring the approval of the resolution in respect of sale of the CRO business of the "**Indian Subsidiary Company**" is void *ab initio* since the rejection of the "**IJM's**" request to vote in the EGM is arbitrary and is illegal.

81. This Court is of the considered view that being a court appointed "**IJM**" and having rejected the E-vote of the suspended management of the "**Holding Company at Singapore**" on 21.10.2021, the "**Scrutiniser**" ought to have accepted the E-vote of the "**IJM**". Further as seen from the correspondence between the "**IJM**" and the "**Scrutiniser**" as well as the "**Indian Subsidiary Company**" and its directors, the "**IJM**" never wanted to stall the EGM, but only wanted to participate in the E-voting and participate in the EGM on 23.10.2021. The "**IJM**" has himself communicated to the "**Indian Subsidiary Company**" and its directors that he requires further time to evaluate the proposals for the sale of



CRO business of the **"Indian Subsidiary Company"** as he was appointed only on 18.10.2021 by the Singapore High Court, whereas the EGM is scheduled to take place on 23.10.2021 within few days from the date of his appointment. Despite the repeated requests made by the **"IJM"** to defer the EGM or allow the **"IJM"** to participate in the EGM, the **"Scrutiniser"** arbitrarily and by total non application of mind has not permitted the **"IJM"** to participate in the meeting and ultimately refused to register the vote of the **"Holding Company at Singapore"** despite the fact that they were holding 52.897% of paid-up share capital in the **"Indian Subsidiary Company"**. As a **"Scrutiniser"**, he is expected to be a neutral person who has to act in the interest of all the share holders.

82. The interest of the majority share holders will be affected, if the resolution passed by the minuscule minority share holders is implemented. When the position is well known to the **"Scrutiniser"** that excluding the **"Holding Company at Singapore"**, the paid-up share capital in the **"Indian Subsidiary Company"** held by others is in a minority and that too, when the **"IJM"** has been appointed by the High Court at Singapore on 18.10.2021, this Court is of the considered view that the **"Scrutiniser"** has arbitrarily and by total non application of mind has rejected the request of the **"IJM"** to E-vote in the EGM scheduled to



take place on 23.10.2021.

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83. As seen from the communications exchanged between the **"IJM"**, the directors of the **"Holding Company at Singapore"** as well as the **"Indian Subsidiary Company"** namely the second and third defendants in the suit C.S.No.322 of 2021, it is clear that the **"Scrutiniser"** despite being informed about the non availability of login details to the **"IJM"** for the purpose of voting in the EGM, has gone ahead and submitted his report on 25.10.2021 declaring the resolution passed by the **"Indian Subsidiary Company"** on 06.08.2021 with regard to the sale of CRO business has been approved, despite the fact that only 2.55% of the total paid-up share capital holders E-voted in the EGM with regard to the resolution seeking approval of sale of CRO business of the **"Indian Subsidiary Company"**.

84. The **"Scrutiniser"**, the fourth defendant in C.S.No.322 of 2021 has also raised the plea of jurisdiction of this Court to decide the dispute between the parties. By relying upon section 430 of the Indian Companies Act, 2013, the **"Scrutiniser"** would submit that since the dispute revolves upon two companies involving the sale of shares/business, only the National Company Law Tribunal



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has got jurisdiction under the Indian Companies Act, 2013 to decide such a dispute. When the dispute is between two Indian Companies, the submission of the "**Scrutiniser**" may be correct, but in the case on hand, the dispute is between an "**IJM**" appointed for a "**Holding Company at Singapore**" by the Singapore High Court and the "**Indian Subsidiary Company**".

85. Section 1(1), 2(20) and 7 of the Indian Companies Act, 2013 makes it clear that insofar as the present dispute is concerned, only a Civil Court has got the jurisdiction and not the National Company Law Tribunal. The only provision under the Indian Companies Act, 2013 regarding Foreign Companies are mentioned in Chapter XXII of the Indian Companies Act, 2013. Section 379 of the Indian Companies Act, 2013 which deals with the application of the Companies Act illustrates as to when the Indian Companies Act, 2013 applies to foreign companies. Section 379 of the Indian Companies Act, reads as follows:

379. Application of Act to foreign companies

[(1) Sections 380 to 386 (both inclusive) and section 392 and 393 shall apply to all foreign companies:

PROVIDED that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order,



from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament.]

[(2) Where not less than fifty per cent. of the Paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

86. Even under section 379 of the Indian Companies Act, 2013 extracted supra, the National Company Law Tribunal (NCLT) has jurisdiction to adjudicate matters related to the Indian Companies Act where an Indian citizen or a body incorporated in India holds more than 50% share capital in a foreign company. Only in those cases, the National Company Law Tribunal can exercise long arm jurisdiction over a Foreign Company. The case on hand stands on a different footing.



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87. In the present case, the Holding Company incorporated at Singapore has majority stakes in the **"Indian Subsidiary Company"** and therefore, the NCLT does not have jurisdiction to decide the present dispute and it is only a Civil Court which can exercise jurisdiction. Further the dispute is not between two companies alone, but the dispute pertains to an **"IJM"** appointed by the Singapore High Court for the **"Holding Company at Singapore"** and the **"Indian Subsidiary Company"** and the issue of comity of courts also arises.

88. It is also to be noted that neither the **"Holding Company at Singapore"** nor the **"Indian Subsidiary Company"** have raised the jurisdiction issue before this Court and it is only the **"Scrutiniser"** who has raised the same without any basis. The decision of the Division Bench of the Madras High Court in the case of *Viji Joseph and others Vs. P. Chander and others reported in 2019-3-LW370* has no bearing for the facts of the instant case since in that case both the Companies were Indian incorporated Companies and there was no Foreign incorporated Company involved. Further in the instant case, apart from the involvement of a foreign incorporated Company, there is also an involvement of an **"IJM"** in the dispute and therefore this Court is of the considered view that



Section 430 of the Indian Companies Act, 2013 is not attracted for the facts of the instant case.

89. Ever since the advent of the Insolvency and Bankruptcy Code, 2016, the position in that code with regard to jurisdiction over foreign companies is almost similar to that of Companies Act 2013 as is understood from the reading of Section 2 (a) of the code which is almost a replica of S.2 (20) of Companies Act 2013. The scope for intervention under the IBC 2016 by the NCLT over foreign companies is very limited and restricted to cases falling under Sections 234 and 235 of the IBC 2016. The said sections reads as follows:

“**234.** (1) The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Code.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of corporate debtor or debtor, including a personal guarantor of a corporate debtor, as the case may be, situated at any place in a country outside India with which reciprocal arrangements have been made, shall be subject to such conditions as may be specified.

235.(1) Notwithstanding anything contained in this Code or any law for the



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time being in force, if, in the course of insolvency resolution process, or liquidation or bankruptcy proceedings, as the case may be, under this Code, the resolution professional, liquidator or bankruptcy trustee, as the case may be, is of the opinion that assets of the corporate debtor or debtor, including a personal guarantor of a corporate debtor, are situated in a country outside India with which reciprocal arrangements have been made under section 234, he may make an application to the Adjudicating Authority that evidence or action relating to such assets is required in connection with such process or proceeding.

(2) The Adjudicating Authority on receipt of an application under sub-section (1) and, on being satisfied that evidence or action relating to assets under sub-section (1) is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may issue a letter of request to a court or an authority of such country competent to deal with such request.”

The case on hand does not fall under any of the aforementioned categories laid down under Section 234 and 235 of the IBC 2016. Hence, only the Civil Court has got jurisdiction to decide this dispute.

90. The principles of comity of nation demand the Indian Courts to respect



the order of Foreign Courts including its interlocutory orders as held by the Hon'ble Supreme Court in the case of *Alcon Electronics Pvt. Ltd vs Celem S.A. of Fos 34320 Roujan, France and another reported in 2016 SCC Online SC 1444*.

The Hon'ble Supreme Court while dealing with the scope of Section 44-A of the CPC which deals with the execution of decrees passed by the Courts in reciprocating territory held that the principles of comity of nation demand the Indian Courts to respect the order of the English Court. Even in regard to an interlocutory order, the Indian Courts have to give due weight to such an order unless it falls under any of the exceptions under Section 13 CPC. The Hon'ble Supreme Court observed that Section 44-A CPC indicates an independent right conferred on a foreign decree holder for enforcement of a decree / order in India. It was further explained that Section 44-A CPC is meant to give effect to the policy contained in the Foreign judgments (Reciprocal Enforcement) Act, 1933. It is a part of the arrangement under which on one part decrees of Indian Courts are made executable in United Kingdom and on the other part, decrees of Courts in the United Kingdom and other notified parts of Her Majesty's dominions are made executable in India. It is to be seen that as United Kingdom is a reciprocating territory and the High Court of Justice, Chancery Division, England is a recognised superior Court in England. Therefore, the order passed by that Court is executable



in India under Section 44-A CPC.

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91. Singapore is also a reciprocating territory as in the case of United Kingdom. In the case on hand, the orders passed by the Singapore High Court will not fall under any of the exceptions contained in Section 13 CPC. Section 13 of the CPC reads as follows :-

13. When foreign judgment not conclusive.- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of [India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

f) where it sustains a claim founded on a breach of any law in force in India.

92. The orders passed by the Singapore High Court have been passed in accordance with the **Singapore Insolvency law** referred to supra. The "**Holding**



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"Company at Singapore", is having its registered office at Singapore which has borrowed money from its lenders at Singapore for whom the **"Debenture Trustee"** had acted upon and validly initiated insolvency proceedings against the **"Holding Company at Singapore"** before the Singapore High Court and obtained an order for appointment of an **"IJM"** on 18.10.2021 who has taken control of the Management and affairs of the **"Holding Company at Singapore"**, its assets and liabilities effective from 18.10.2021. The **"IJM"** has also communicated the orders to all the parties concerned including the **"Indian Subsidiary Company"** and its Directors. Infact, the order appointing the **"IJM"** was passed by the Singapore High Court only in the presence of the lawyers of the third defendant in the Suit C.S. No.322 of 2021, who is also the Director of the **"Holding Company at Singapore"** and was also in charge of day to-day affairs of the said company, till the Management's suspension, pursuant to the order dated 18.10.2021 passed by the Singapore High Court. The orders passed by the Singapore High Court are based on the evidence available on record before the said High Court at Singapore. The Singapore High Court who is the competent Court to exercise the jurisdiction with regard to the insolvency proceedings initiated by the **"Debenture Trustee"** acting on behalf of the lenders of the **"Holding Company at Singapore"**. The orders have been passed based on the



merits as admittedly even according to the Directors of both the **"Holding Company at Singapore"** as well as the **"Indian Subsidiary Company"**, the **"Holding Company at Singapore"** is indebted to various lenders for a substantial sum of money. The principles of natural justice has also been followed by the Singapore High Court as seen from the orders passed by it with regard to the appointment of the **"IJM"** for the **"Holding Company at Singapore"** and the subsequent directions given by it in favour of the **"IJM"** with regard to the voting in the EGM on behalf of the **"Holding Company at Singapore"**. Infact, even prior to the initiation of the insolvency proceedings on 14.10.2021, the **"Debenture Trustee"** who is the applicant before the Singapore High Court has intimated the **"Indian Subsidiary Company"** as well its Directors who are also the Directors of the **"Holding Company at Singapore"** that they propose to initiate insolvency proceedings against the **"Holding Company at Singapore"** before the Singapore High Court.

93. The orders passed by the Singapore High Court till date are only in accordance with the **Singapore insolvency law** and have not been obtained behind the back of the **"Indian Subsidiary Company"** or its Directors and therefore, the question of fraud will never arise. The orders passed by the Singapore High Court



are all well founded and does not breach any law in force in India.

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94. From the aforementioned facts, it is clear that the comity of Courts as held by the decision of the Hon'ble Supreme Court in the case of *Alcon Electronics Pvt. Ltd vs Celem S.A. of Fos 34320 Roujan, France and another reported in 2016 SCC Online SC 1444* applies to the case on hand also. Despite the reminders sent by the "IJM" to the "**Indian Subsidiary Company**", its Directors and the "**Scrutiniser**", the e-voting on behalf of the "**Holding Company at Singapore**" in the EGM was not granted to the "IJM" despite the fact that the "**Holding Company at Singapore**" for whom the "IJM" represents was having 52.897% paid-up share capital in the "**Indian Subsidiary Company**" and was a majority shareholder.

95. The "**Scrutiniser**" being an independent person under the Indian Companies Act to protect the interest of the shareholders ought to have permitted the "IJM" to vote on behalf of the "**Holding Company at Singapore**" in the EGM, which took place on 23.10.2021 but instead has arbitrarily by total non application of mind has not alone invalidated the vote cast on behalf of the "**Holding Company at Singapore**" by an unknown representative of the



suspended Management but also has rejected the request of the **"IJM"** to vote in the EGM despite the orders passed by the Singapore High Court permitting him to vote and also declaring that the vote cast by the suspended Management on behalf of the **"Holding Company at Singapore"** on 21.10.2021 as null and void. The case on hand does not involve re-voting as alleged by the **"Scrutiniser"**. It involves only a case where the vote cast by the suspended Management has to be substituted by the vote of the **"IJM"**, pursuant to the orders of the Singapore High Court. The explanation given by the **"Scrutiniser"** for not permitting **"IJM"** to vote on the ground that it will amount to re-voting in view of the fact that vote has already been cast by the **"Holding Company at Singapore"** on 21.10.2021 is arbitrary and illegal and the said explanation has been given by total non application of mind to Rule 20 (4)(xiii) of the Companies (Management and Administration) Rule, 2014. The suspended Management of the **"Holding Company at Singapore"** had voted on 21.10.2021, which was rightly invalidated by the **"Scrutiniser"** but at the same time he has arbitrarily and illegally by total non application of mind has also rejected the request made by the duly appointed **"IJM"** to vote in the EGM. The Rule referred to supra by the **"Scrutiniser"** does not apply to the case on hand as the said Rule is applicable only when a duly constituted authorised representative of the Company had cast his vote and



thereafter desired to change his decision by re-voting. But in the case on hand, it is not so as the vote cast by the suspended Management on 21.10.2021 is invalid and the duly appointed **"IJM"** pursuant to the orders of the Singapore High Court had only requested for casting the e-voting on behalf of the **"Holding Company at Singapore"** in place of the invalid vote cast by the suspended Management.

96. Once an **"IJM"** is appointed as seen from the provisions of the **Singapore Insolvency Law** referred to supra, he is in full control and management of the day to day affairs of the **"Holding Company at Singapore"** including its assets and liabilities. The role and powers of the **"IJM"** have been elaborately dealt with by this Court earlier and therefore, there is no necessity to repeat the same once again. As seen from the said powers, whether it is a Permanent Judicial Manager or an Interim Judicial Manager, the powers are more or less one and the same. The **"IJM"** is having similar powers as that of an insolvency resolution professional in India under the Insolvency and Bankruptcy code, 2016. Once an **"IJM"** is appointed, moratorium will also come into effect and the assets of the **"Holding Company at Singapore"** cannot be dealt with, without the approval of the **"IJM"**. The **"Scrutiniser"** though is having a limited



statutory power and exercises his powers only with regard to the voting alone is having the power to accept or reject the vote by applying his mind objectively to the facts of each case.

97. In the case on hand, the **"Scrutiniser"** though under the Companies Act is a neutral person with regard to the voting in respect of the Company's resolution, he has the power to objectively decide whether a person is entitled to vote or not. When the Singapore High Court's order dated 18.10.2021 has made it clear that an **"IJM"** has been appointed for the **"Holding Company at Singapore"** and from that date onwards only the **"IJM"** can represent the interest of the **"Holding Company at Singapore"**, the **"Scrutiniser"** ought to have permitted the **"IJM"** to vote in the EGM in place of the invalid vote cast by the suspended management of the **"Holding Company at Singapore"**. The **"Scrutiniser"** is also well aware of the fact that the **"Holding Company at Singapore"** was holding 52.897 paid up share capital in the **"Indian Subsidiary Company"** which has proposed to sell its CRO business to the prospective buyers. Therefore, it is clear that the **"Indian Subsidiary Company"**, its Directors and the **"Scrutiniser"** have shown scant respect to the principles of comity of Court by disregarding the orders passed by the Singapore High Court and instead they



have gone ahead with the sale and approved the same as seen from the report of the **"Scrutiniser"** dated 25.10.2021. Infact, the **"IJM"** has not totally rejected the sale proposal of the CRO business of the **"Indian Subsidiary Company"** but has only sought for 14 days time to study the offer given by the prospective buyers of the CRO business of the **"Indian Subsidiary Company"** and requested only for deferment of the EGM. These factors were also not taken into consideration either by the **"Indian Subsidiary Company"**, its Directors or the **"Scrutiniser"**.

98. Eversince the date of appointment of the **"IJM"** by the Singapore High Court on 18.10.2021, as seen from the communications exchanged between the **"IJM"** and the **"Indian Subsidiary Company"** and its Directors who are also the Directors of the **"Holding Company at Singapore"**, a hide and seek game has been played by the **"Indian Subsidiary Company"** and its Directors for the request made by the **"IJM"** to furnish the Login details and they have successfully thwarted the attempts of **"IJM"** to get the login details to enable him to cast his e-vote on behalf of the **"Holding Company at Singapore"** in the EGM on 23.10.2021. The communications exchanged between 18.10.2021 and 23.10.2021 between the **"IJM"** and the **"Indian Subsidiary Company"**,



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"Scrutiniser" and the Directors of **"Indian Subsidiary Company"** who are also the Directors of **"Holding Company at Singapore"** will clearly reveal that deliberately the login details were not furnished to the **"IJM"** by giving some lame excuse or other. There is also no evidence placed on record before this Court to prove that the third defendant in C.S. No.322 of 2021 who was having the login details was infected with Corona and was bedridden which prevented him from furnishing the login details to the **"IJM"**.

99. The contention of the second defendant in C.S. No.322 of 2021 who is the Director of both the **"Holding Company at Singapore"** as well as the **"Indian Subsidiary Company"** and who is also in-charge of day to-day affairs of both the Companies that the 3rd defendant who is having the login details could not be contacted since he was infected with Corona has to be rubbished. Infact the 3rd defendant in C.S. No.322 of 2021 has participated in the proceedings through his lawyer in the Singapore High Court and orders were passed by Singapore High Court only in the presence of his lawyers, though the 3rd defendant may now state that only a watching brief was given to his lawyers which is unbelievable that too when the stakes involved in the transaction is very high. The lawyers of the **"Holding Company at Singapore"** have also intimated the Directors viz., 2nd and



3rd defendants in the suit C.S. No.322 of 2021, who are also the Directors of the

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"Indian Subsidiary Company" about the orders passed by the Singapore High Court and requested them to permit the **"IJM"** to vote in the EGM in place of the suspended Management. Despite having knowledge of the orders passed by the Singapore High Court, the **"Indian Subsidiary Company"** or its Directors, who are also the Directors of the **"Holding Company at Singapore"** failed to furnish the login details to enable the **"IJM"** to vote at the meeting. Each of them have pointed fingers at the other with regard to the availability of the login details and ultimately despite the best efforts made by the **"IJM"** to get the login details, he was unable to get the login details. Due to the wilful and deliberate conduct of the **"Indian Subsidiary Company"** and its Directors not to furnish the login details to the **"IJM"**, the desperate attempts made by the **"IJM"** to get the login details all went in vain.

100. Even according to the Directors of the **"Holding Company at Singapore"**, a substantial sum of money are due and payable by the **"Holding Company at Singapore"** to its lenders. While that be so, the Management Board of the **"Holding Company at Singapore"** who is having a majority stake in the **"Indian Subsidiary Company"** has to be independent and any sale effected by



the **"Indian Subsidiary Company"** must be to the benefit of the majority of the share holders and when the **"Holding Company at Singapore"** represents the majority in the **"Indian Subsidiary Company"**, naturally the interest of the shareholders of the **"Holding Company at Singapore"** must be protected through an independent and a neutral person representing their interest.

101. In the case on hand, the **"IJM"** being a neutral and an independent person can alone take objective and appropriate decision with regard to the sale of CRO business of the **"Indian Subsidiary Company"** and the Directors cannot no longer act on behalf of the **"Holding Company at Singapore"** as they may have personal interest in the sale of CRO business in the **"Indian Subsidiary Company"** of the prospective buyers which may be detrimental to the whole body of shareholders and creditors. Whether the sale is beneficial or not to the **"Holding Company at Singapore"** can be decided by the **"IJM"** only after giving him sufficient opportunity to do his due diligence with regard to the sale and with regard to the sale price. Having come into the picture only on 18.10.2021 pursuant to the appointment made by the Singapore High Court, the **"IJM"** must be given sufficient opportunity to study the deal and do his due



diligence with regard to the advantages and disadvantages of the said deal and take an appropriate decision objectively thereafter in the interest of the stake holders in the **"Holding Company at Singapore"**.

102. The **"Indian Subsidiary Company"** as well as its Directors have contended that the price fixed for the sale of CRO business is the best price and no one can match it. It is also their contention that the sale price fixed at USD 101.63 Million is the best possible price and is in the interest of all the shareholders. When the **"Holding Company at Singapore"**, which is having a majority stake in the **"Indian Subsidiary Company"** is the subject matter of insolvency proceedings initiated by the **"Debenture Trustee"** at Singapore and Singapore High Court having appointed an **"IJM"**, whether the price of USD 101.63 Million is a fair price or not cannot be decided by the Directors who are under suspension and who are no longer in control and management of the **"Holding Company at Singapore"**, as they are no longer the independent representatives of the Company acting in the beneficial interest of all the stakeholders viz., shareholders, creditors and others. **"IJM"** being a person appointed by the Singapore High Court is an independent and neutral person appointed as per the provisions of **Singapore Insolvency Law** by the Singapore High Court who will



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also be monitored by the Singapore High Court on regular basis with regard to the decisions taken on behalf of the **"Holding Company at Singapore"**. Further **"IJM"** has never rejected the offer price for the sale of the CRO business of the **"Indian Subsidiary Company"**, but has only sought time to study the deal and its benefits to the shareholders, lenders and other stake holders in the **"Holding Company at Singapore"**. In a hushed up manner, a hurried decision has been taken in the EGM on 23.10.2021 that too by the participation of only 2.55% of the total shareholders in the **"Indian Subsidiary Company"**, an illegal resolution has been passed in the EGM on 23.10.2021 approving the sale.

103. It is the contention of the Directors of the suspended management of the **"Holding Company at Singapore"** viz., third and fourth defendants in the Suit C.S. No.322 of 2021 that due diligence was done with regard to the proposed sale of the CRO Business in the **"Indian Subsidiary Company"** ever since February 2020 and the **"Debenture Trustee"** as well as the lenders whom **"Debenture Trustee"** represents and other lenders as well were very much aware of the proposed sale of the CRO Business as the **"Indian Subsidiary Company"** duly informed them periodically about the steps they have been taking with regard to the proposed sale and therefore the act of the **"Debenture Trustee"** in



approaching the Singapore High Court and getting the order of appointment of an

"IJM" is arbitrary, illegal and is not to the benefit of the Shareholders. The said contention has to be summarily rejected in view of the following reasons;

a) Due diligence is done either by the buyer or by the seller. In most cases it is done by the buyer. In the case on hand, the seller is the **"Indian Subsidiary Company"** and the buyer is H.I.G. Taurus Pte. Ltd and H.I.G. Taurus EAL Pte. Limited. The Caveat Emptor Principle i.e., "Buyers beware" comes into play and therefore it is the responsibility of the buyer to do due diligence with regard to the purchase and get themselves satisfied that the business is free from encumbrance and is marketable. The seller only assists and aids the buyer with all documentation and information to enable the buyer to be satisfied with the marketability and nil encumbrance. The **"Debenture Trustee"** represents the lenders of the **"Holding Company at Singapore"** and they have no role to play in the due diligence made either by the **"Indian Subsidiary Company"** or by the buyers with regard to the proposed sale of CRO Business of the **"Indian Subsidiary Company"**. As seen from the documents filed by the respective parties, it is clear that though the **"Debenture Trustee"** and other lenders may have been aware of the proposed sale but they were not given full details of the sale and they were also not aware of the total liabilities of the **"Holding Company**



at Singapore".

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104. It is also the contention of the Directors of the suspended management of the **"Holding Company at Singapore"** that if the sale goes through it is beneficial to all the creditors/ lenders as the purchase price will satisfy their dues as well. This Court does not know as to what is the total extent of the liabilities of the **"Holding Company at Singapore"** as only one of the creditors viz., **"Debenture Trustee"** representing the interest of some of the lenders of the **"Holding Company at Singapore"** has approached the Court in Singapore and has initiated insolvency proceedings under the **Singapore Insolvency Law** against the **"Holding Company at Singapore"**. When the management of the **"Holding Company at Singapore"** is itself suspended, the question of a suspended management casting its vote in the EGM on 23.10.2021 will not arise and any vote cast by the suspended management has to be necessarily declared as null and void.

105. Under Section 100 of the Indian Companies Act, in case of Company having a share capital, holding at least one tenths of such paid up capital can alone requisition an EGM. They must carry voting rights regarding the agenda on the date of submitting of the request. In the case on hand, though on the date of the



resolution passed on 06.08.2021 to convene an EGM on 23.10.2021, the members who passed the said resolution were holding more than 10% of the Company's Paid-up Capital, the resolution pursuant to the EGM held on 23.10.2021 approving the sale of CRO Business of the **"Indian Subsidiary Company"** was passed only by the members having only 2.55% of the Paid-up Share Capital in the **"Indian Subsidiary Company"**. The object of the EGM on 23.10.2021 should be for the whole body of shareholders. If the vote of only 2.55% of the total paid share capital was taken into consideration, the object of the EGM which is to obtain the approval of the majority shareholders will be defeated and will be certainly detrimental to the interest of the **"Holding Company at Singapore"** which cannot be allowed to happen. Infact in the resolution dated 06.08.2021, it has been made clear that the sale will be subject to the approval of the shareholders.

106. The defendants 1 to 3 in C.S. No.322 of 2021 have pleaded that the balance of convenience is in their favour since the proposed sale is beneficial to the interest of the shareholders, creditors and other stakeholders as the price offered by the prospective buyers cannot be matched by anyone in the global market. The said contention has to be summarily rejected by this Court for the following



reasons :-

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a) Admittedly, the **"Holding Company at Singapore"** is facing financial crisis and is indebted to lenders / creditors and owes a substantial sum of money.

b) Their major source of income is only through the CRO business of its **"Indian Subsidiary Company"**

c) The **"Holding Company at Singapore"** for whom **"IJM"** represents is having 52.897% paid-up share capital in the **"Indian Subsidiary Company"**, which is proposing to sell its CRO business to the prospective buyers. If the proposed sale, is later found to be detrimental to the interest of the **"Holding Company at Singapore"**, the shareholders, lenders and other stakeholders will be put to irreparable loss and they will not be in a position to recover the big loss.

d) Admittedly only members holding 2.55% of the total paid-up share capital of the **"Indian Subsidiary Company"**, had voted in the EGM and only based on the said voting, the results were declared by the **"Scrutiniser"** approving the sale of CRO business in the **"Indian Subsidiary Company"** which cannot be permitted as it will be detrimental to the interest of the **"Holding Company at Singapore"**, who is having a majority stake in the paid up capital of the **"Indian Subsidiary Company"**.

e) Admittedly, the CRO business of the **"Indian Subsidiary Company"** is



75% source of revenue generation for the **"Holding Company at Singapore"**.

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f) **"IJM"** had only sought for deferment of the EGM on 23.10.2021 as he was appointed, pursuant to the orders of the Singapore High Court only on 18.10.2021 to enable him to study the advantages and disadvantages of the deal and take an appropriate and objective decision thereafter. Instead of deferring the EGM, the **"Indian Subsidiary Company"**, its Directors and the **"Scrutiniser"** have hurriedly and in a hushed up manner have ignored the frantic requests made by the **"IJM"** to defer the EGM.

107. From the aforementioned reasons, it is clear that the balance of convenience is only in favour of the **"IJM"** and not in favour of the **"Indian Subsidiary Company"** or its Directors, viz., the second and third defendants in C.S. No.322 of 2021, who are also Directors of the **"Holding Company at Singapore"** whose powers are now suspended over the **"Holding Company at Singapore"** pursuant to the appointment of **"IJM"** by the Singapore High Court. Any EGM has to be held in a crystal-clear and a transparent manner giving opportunity to all the shareholders to participate in the meeting. When the **"Holding Company at Singapore"** which is having 52.897% shareholding in the **"Indian Subsidiary Company"** has been prevented from exercising its valid vote



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through the **“IJM”** duly appointed by the Singapore High Court, this Court is of the considered view that the results declared by the **“Scrutiniser”** on 25.10.2021 approving the sale of the CRO business of the **"Indian Subsidiary Company"** based on the participation of only 2.55% shareholders has to be necessarily declared as null and void. The said decision is arbitrary, illegal and has been passed by total non application of mind to Rule 20 (4) (xiii) of the Companies (Management and Administration) Rules, 2014.

108. Out of the total sale price of USD 101.63 million, it is revealed by the **"Indian Subsidiary Company"** that USD 91.63 Million will have to be paid by cash by the prospective buyers. The huge cash component has also raised a doubt in the mind of this Court about the genuineness of the deal that too when the **"Holding Company at Singapore"** is indebted to creditors / lenders and also has got a bearing for taking a decision in favour of the **"IJM"**.

109. For the foregoing reasons, this Court is considered view that a prima facie case has been made out by the **“IJM”** and the balance of convenience is also in his favour for the grant of interim injunction as prayed for in A. Nos.670, 671, 673 and 674 in C.S. No.322 of 2021. Irreparable loss will be caused to the



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"Holding Company at Singapore" for whose interest the **"IJM"** represents if the proposed sale of CRO Business of the **"Indian Subsidiary Company"** is approved in a hurried manner without an objective and appropriate assessment made by the **"IJM"** after proper scrutiny with regards to the deal in the interest of all the Stakeholders of the **"Holding Company at Singapore"**.

110. For the foregoing reasons, there is no merit in the contentions raised by the **"Indian Subsidiary Company"** and therefore, the applications filed by them viz., A. No.3807 of 2021 and O.A. Nos.662, 663 of 2021 in CS No.320 of 2021 have to be necessarily dismissed. The decisions relied upon by the **"Indian Subsidiary Company"** viz., *K.K.Modi's* case rendered by the Hon'ble Supreme Court and *Meenakshi Overseas* case rendered by a single bench of the Madras High Court referred to supra has no bearing for the facts of the instant case as the suit filed by the **"IJM"** before this Court in C.S. No.322 of 2021 will not amount to re-litigation for the reasons stated supra.

111. **"Axis Bank"** and **"Indus Bank"** have filed applications viz., A. Nos.4056 and 4057 of 2021 seeking to implead themselves as party defendants in the suit C.S. No.322 of 2021. Both the banks claim to be secured creditors and



they have granted financial facilities to the **"Indian Subsidiary Company"** as well as its group Companies. Both the banks have expressed that the proposed sale of the CRO business to the **"Indian Subsidiary Company"** is only in their interest as the **"Indian Subsidiary Company"** has promised to discharge their loans on receipt of the sale proceedings. **"Indus Bank"** has stated that as on 16.11.2021 a sum of Rs.1,60,57,80,022.69 is due and payable to them in respect of the loan facilities and the **"Axis Bank"** has stated that as on 16.11.2021, a sum of Rs.67,28,64,974/- is due and payable. Even though they are not concerned with the *inter-se* dispute between the **"IJM"** for the **"Holding Company at Singapore"** and the **"Indian Subsidiary Company"**, as financial institutions and secured creditors and having lent substantial sum of money, they are certainly interested entities to know the outcome of the proposed sale of the CRO business as the sale proceeds will be beneficial to their interest of recovering their respective dues from the **"Indian Subsidiary Company"** and its group Companies. No prejudice will also be caused to any of the parties to the suit if they are impleaded as party defendants in the suit. Accordingly A. Nos.4056 and 4057 of 2021 has to be allowed as prayed for.

112. In the result, (a) the interim injunction granted by this Court in A. Nos.670, 671, 673 and 674 in C.S. No.322 of 2021 on 27.10.2021 in favour of the



"IJM" is made absolute and the said applications are allowed as prayed for. Since

A. Nos.670, 671, 673 and 674 in C.S. No.322 of 2021 have been allowed as prayed for, there is no necessity for this Court to pass separate orders in the other connected application filed by the "IJM", in O.A. No.669 of 2021 in C.S. No.322 of 2021 and the said application is disposed of in terms of the order passed in A. Nos.670, 671, 673 and 674 in C.S. No.322 of 2021.

(b) A. Nos.4056 and 4057 of 2021 are allowed as prayed for. The plaintiff in C.S. No.322 of 2021 is directed to carry out the amendment.

(c) A. No.3807 of 2021 and O.A. Nos.662, 663 of 2021 in CS No.320 of 2021 are dismissed. However, it is made clear that there is no prohibition for the Plaintiff in C.S. No.320 of 2021 to convene a fresh EGM for getting approval from the Shareholders for the sale of the CRO Business of the Plaintiff after giving proper notice as per law to all the Shareholders including the "IJM" who represents the interest of Take Solutions Singapore Pte. Ltd ("**Holding Company at Singapore**").

(d) No Costs.

29.11.2021

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Index:Yes/No

Internet:Yes/No



Speaking/Non-speaking order

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Note :

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ABDUL QUDDHOSE, J.

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Pre-delivery Order in

O.A. Nos.669, 670, 671, 673 and 674 of 2021

A. Nos.4056 of 2021 and 4057 of 2021

in

C.S. No.322 of 2021

AND

O. A. Nos.662 and 663 of 2021

and

A. No.3807 of 2021

in

C.S. No.320 of 2021

29.11.2021